

# General Terms and Conditions of Purchase



## 1. APPLICABILITY, OFFER AND ACCEPTANCE AND TERMS OF ORDER

(a) These General Terms and Conditions of Purchase are specifically incorporated in and made a part of the purchase order(s) out of which the sale of goods and/or services is/are made by and between FFT Production Systems, Inc. and/or any of its associated entities (hereinafter referred to either individually or jointly as "FFT") and the seller of the good and/or services (hereinafter referred to as "Seller")

(b) Each purchase order and purchase order revision ("the Order") issued by FFT is an offer to Seller for the purchase of goods and/or services, and includes and is governed by the express terms contained on the face of the Order, these GENERAL TERMS AND CONDITIONS of Purchase, and the terms contained in any addendum or supplement to the Order, any supplier manual provided by FFT to Seller, and other document incorporated by reference in the Order or in these GENERAL TERMS AND CONDITIONS of Purchase (collectively, the "Terms"). The first occurring expression of acceptance of the Order by Seller, including Seller's (i) written acceptance, (ii) commencement of work on the goods subject to the Order (the "Goods"), (iii) shipment of the Goods, (iv) commencement of performance of all or any portion of the services subject to the Order (the "Services"), (v) failure to object to the Order, in writing, within ten (10) days of receipt of the Order, or (vi) conduct that indicates Seller's acceptance, including preparation for Seller's performance, shall constitute an acceptance of FFT's offer. If Seller objects to an Order, Seller's objections are deemed waived and FFT's original issued Order is deemed accepted if Seller subsequently commences work on the Goods, or upon shipment of the Goods or performance of the Services prior to any express written modification and reissuance of an updated Order having been made by FFT. Any acceptance of the Order is limited to and conditional upon Seller's acceptance of the Terms. Any proposal for additional or different terms or any attempt by Seller to vary any of the Terms, whether in Seller's quotation form, acknowledgement form, invoice, correspondence or otherwise, shall be deemed a material alteration and is hereby rejected by FFT. If Seller thereafter commences work, makes shipment of any of the Goods or performs any of the Services, or otherwise proceeds with performance, Seller shall be deemed to have accepted the original Order as issued by FFT, without giving effect to any of Seller's counterproposals or modifications. The Order does not constitute an acceptance of any prior offer or proposal by Seller, and any reference in the Order to any such prior offer or proposal is solely to incorporate the description or specifications of the Goods and the Services in such offer or proposal, but only to the extent that such description or specifications are not directly in conflict with the description and specifications in the Order... FFT may cancel all or any part of the Order at any time prior to FFT's actual knowledge of acceptance by Seller.

(c) The Order contains the entire agreement between FFT and Seller and, except as otherwise expressly stated in the Order, supersedes all prior agreements, orders, quotations, proposals and other communications relating to the subject matter hereof and there are no other understandings or agreements, verbal or otherwise, in relation hereto that exist between FFT and Seller.

(d) In the event of any conflict, inconsistency or ambiguity between the documents comprising the Order, the following order of precedence shall govern, with the document listed first having priority over those listed thereafter: 1) The face of the Order, 2) these GENERAL TERMS AND CONDITIONS of Purchase, 3) any other documents incorporated by reference

in the Order or these GENERAL TERMS AND CONDITIONS of Purchase.

## 2. CUSTOMER REQUIREMENTS

(a) Where the Goods or Services under the Order are or will be sold, or incorporated into other goods or services that are or will be sold, by FFT to an original equipment manufacturer of vehicles, whether directly or indirectly through an upper tier supplier, or any other third party customer (collectively, the "Customer"), Seller shall take such steps, provide such disclosure, comply with such requirements and do all other things as FFT deems necessary or desirable and within Seller's control to enable FFT to meet FFT's obligations to the Customer under the terms and conditions of any contract or purchase order or other document (the "Customer Terms") that may be applicable to FFT from time to time in respect of its direct or indirect supply of such goods or services to the Customer, including, but not limited to: delivery, packaging and labeling requirements, warranties and warranty periods, intellectual property rights, indemnification and liability requirements, confidentiality, access to facilities and records, and replacement and service parts. FFT may, from time to time, in its sole discretion, provide Seller with information regarding the applicable Customer Terms, but, in any event, Seller shall be responsible for ascertaining the Customer Terms that may affect Seller's obligations hereunder and hereby agrees to be bound to such Customer Terms.

(b) If there is any conflict between the provisions of the Customer Terms and any provisions of the Order, FFT shall have the right to have the provisions of the Customer Terms prevail to the extent necessary or desirable to resolve such conflict.

(c) In the event that the Customer directly suffers an Insolvency Event (as such term is defined in subparagraph 25(a)) and, in the course of any proceedings relating to such Insolvency Event and in connection with actual or threatened termination, modification or suspension by the Customer of its contract(s) with FFT resulting in FFT agreeing to or receiving a reduced payment from the Customer to FFT for products incorporating the Goods and/or the Services, then, effective as of the date of such reduction, the prices payable by FFT to Seller for the Goods and/or Services shall be automatically reduced by the same proportional percentage.

(d) In the event Customer fails to pay FFT for products incorporating the Goods and/or Services supplied by Seller, FFT reserves the right to assign Seller the right to collect such amounts from the Customer, in whole or in part, and Seller agrees to accept such assignment as payment for any invoices due from FFT to Seller on a dollar for dollar basis.

(e) In addition to any other rights or remedies provided for in the Order, if the Customer directed, recommended or requested that Seller be the source from whom FFT is to obtain the Goods and/or the Services: (i) FFT will pay Seller for the Goods and/or Services only after and to the extent of, and in proportion to, FFT's actual receipt of payment from the Customer for those goods into which the Goods and/or the Services are incorporated; (ii) any lengthening of the Customer's payment terms to FFT for those goods into which the Goods and/or Services are incorporated will automatically lengthen the payment terms as between FFT and Seller by the same amount of time; and (iii) within three (3) business days of any change in price, specifications or other terms negotiated or proposed between Seller and the Customer, Seller shall notify FFT in writing and immediately adjust its invoices to reflect any price reduction, provided that no change will be binding on FFT without FFT's specific written consent.

# General Terms and Conditions of Purchase



## 3. LABELING, PACKING AND SHIPMENT

(a) The Goods are to be suitably prepared for shipment and must be labeled, packed and shipped as required by law and in accordance with FFT's specifications, as specified in the Order and/or in any written directions and/or instructions as may be provided by FFT to Seller from time to time. If the Goods are not shipped in accordance with FFT's specifications, Seller shall pay or reimburse FFT for any excess costs occasioned thereby.

(b) Unless otherwise expressly stated in the Order, Seller shall not charge FFT for labeling, packing, boxing or crating.

## 4. DELIVERY AND PRODUCTION VOLUMES

(a) Time is of the essence of the Order. Seller shall deliver the Goods in the quantities and on the delivery dates and times specified in the Order. Seller shall immediately notify FFT in writing if Seller is unable to deliver the Goods in the quantities and on the delivery dates and times specified in the Order. Goods delivered in excess of the quantities or in advance of delivery dates or times specified in the Order shall be at Seller's risk and may be returned to Seller by FFT, and all transportation charges both to and from the original destination shall be paid by Seller. FFT shall not be required to make payment for any Goods delivered to FFT that are in excess of the quantities specified in the Order. Unless otherwise expressly stated in the Order or authorized in writing by FFT, Seller shall not make any commitments for raw materials or other inventory or manufacture any Goods in advance of the time necessary to permit shipments on the delivery dates. FFT may on notice to Seller change the rate of scheduled shipments or direct temporary suspension of scheduled shipments, neither of which shall entitle Seller to a modification of the price of the Goods or the Services covered by the Order.

(b) If the face of the Order does not specify the quantities, or specifies the quantities as "blanket order", "as released", "as scheduled", "as directed", "subject to FFT's production releases" or in another similar fashion, then, Seller grants to FFT an irrevocable option during the term of the Order to purchase the Goods in such quantities and on such delivery dates and times as indicated in the firm delivery or shipping releases, authorizations, manifests, broadcasts or similar written instructions issued or transmitted by FFT to Seller from time to time in reference to the Order (each a "Release"), and Seller shall deliver such quantities on such dates and times, at the price and on the other terms specified in the Order; provided that FFT shall purchase no less than one piece or unit of each of the Goods or the Services and no more than one hundred percent (100%) of FFT's requirements for the Goods or the Services, as applicable. All references herein to "the Order" shall include any Releases.

(c) Seller warrants that any representation made in a quote or otherwise regarding its production capacity shall be considered a warranty that Seller can manufacture or produce the stated quantity of the Goods or the Services without the imposition of overtime charges or other surcharges. Seller acknowledges that any estimates or forecasts of production volumes or length of program, whether from FFT or the Customer, are subject to change from time to time, with or without notice to Seller, and shall not be binding upon FFT. Unless otherwise expressly stated in the Order, FFT makes no representation, warranty, guarantee or commitment of any kind or nature, whether express or implied to Seller in respect of FFT's quantitative requirements for the Goods or the

Services or the term of supply of the Goods or the Services.

(d) Unless otherwise expressly stated in the Order, FFT shall not be required to purchase the Goods or the Services exclusively from Seller.

## 5. DELAYS IN DELIVERY OR ACCEPTANCE

(a) If Seller fails or refuses to proceed with the Order or fails to deliver the Goods or perform the Services within the delivery dates and times specified in the Order, FFT may, without limiting or affecting its other rights or remedies available hereunder or at law and without any liability to FFT, cancel the then remaining balance of the Order, unless the delay is an excusable delay (as defined in subparagraph 5(c)). In addition, if Seller fails to meet the delivery dates or times of the Goods, other than by reason of an excusable delay, FFT may, without limiting or affecting its other rights or remedies available hereunder or at law and without any liability to FFT, direct expedited shipment and/or incur premium freight or transportation costs, and Seller shall pay upon demand all excess costs incurred thereby, including additional handling charges and other expenses (whether related or not) resulting therefrom. Seller shall be responsible for all other direct, consequential, and incidental damages incurred by FFT as a result of Seller's failure to meet the delivery dates or times, other than by reason of an excusable delay, including the cost of any line shutdown, lost revenue, lost profit, attorney fees and the cost of obtaining goods from an alternate source. FFT's actions in obtaining substitute or replacement products shall not limit the rights and remedies available hereunder or at law.

(b) The Seller also recognize the delays, expenses and difficulties involved in proving the actual loss suffered by FFT if the Goods or Services and/or part thereof is not completed on time. Accordingly, instead of requiring such proof, should the Seller not deliver the Goods or Services in accordance with the time specified, FFT shall be entitled to liquidated damages from the Seller. The total amount owing on the Order shall be discounted by 0.5% of said total Order amount for every Three (3) days the delivery is delayed, but said cumulative discount shall not exceed 20% of the total value of the Order. These liquidated damages shall not affect any other claims FFT may have against Seller for delay in delivery or otherwise. Seller's invoice shall be reduced in accordance with this liquidated damages clause. Liquidated damages are intended to compensate FFT for delay during the periods which the liquidated damages are applicable; provided, however, nothing in this paragraph shall limit FFT's rights to specific performance herein (including but not limited the right to demand that Contractor accelerate its schedule), or the right to terminate the Contract in the event of a delay or limit FFT's right to claim for direct and indirect damages arising from such delay in delivery.

(c) The term "excusable delay" means any delay in making or accepting deliveries or performance which results without fault or negligence on the part of the party involved and which is due to causes beyond its reasonable control, such as acts of God or of a public enemy, any preference, priority or allocation order issued by government, fires, floods, epidemics, quarantine restrictions, freight embargoes, unusually severe weather, explosions, riots, war and terrorism. The term "excusable delay" shall not, however, mean or include any delay arising from or as a result of: (i) Seller's financial difficulties; (ii) a change in cost or availability of materials or components based on market conditions or supplier actions affecting Seller; (iii) any labor strike or other labor disruption applicable to Seller or to any of its subcontractors or suppliers that are engaged in manufacturing or providing goods or services to Seller in

# General Terms and Conditions of Purchase



connection with Seller's obligations under the Order or (iv) any routine governmental actions, including ordinary governmental regulation, clearances, permitting, approvals and/or processing.

(d) An excusable delay shall not constitute a default hereunder, provided that if Seller is subject to one or more excusable delays that persist for more than thirty (30) days in the aggregate, FFT may cancel the then remaining balance of the Order, without liability to FFT and without limiting or otherwise affecting its other rights or remedies available hereunder or at law.

(e) Seller, at its expense, shall use its best efforts to mitigate any adverse effects or costs to FFT due to any actual or potential delay, including: (i) the implementation of a production contingency plan; and (ii) upon FFT's express written authorization, increasing Seller's inventory of finished Goods to a level sufficient to sustain deliveries during such delay.

(f) Whenever any actual or potential delay threatens to delay deliveries or Seller's performance under the Order, Seller shall immediately give written notice thereof to FFT. Such notice shall include all relevant information with respect to such delay, including the anticipated duration and impact of such delay. In addition, Seller will notify FFT in writing: (i) at least sixty (60) days prior to the expiration of any labor contract or collective agreement; and (ii) as soon as Seller becomes aware of any actual or threatened labor strike or other labor disruption; in each case as may be applicable to Seller or to any of its subcontractors or suppliers that are engaged in manufacturing or providing goods or services to Seller in connection with Seller's obligations under the Order.

(g) FFT may delay acceptance of delivery of the Goods or performance of the Services by reason of an excusable delay, in which case Seller shall hold the Goods and/or delay performance of the Services, at FFT's direction, until the cause of the excusable delay has been removed.

(h) If, under the terms of the Order, FFT grants Seller exclusive or "single source" rights to supply the Goods or the Services to FFT, such rights shall not restrict FFT's right to procure goods or services similar to the Goods or the Services in substitution therefor in the event of any delay.

## 6. TRANSPORTATION CHARGES, CUSTOMS DUTIES AND TAXES

(a) Unless otherwise expressly stated in the Order, all Goods shall be delivered by Seller "DDP - FFT's plant" (as defined in Incoterms 2020), in which case: (i) all transportation charges (including terminal switching charges) shall be at Seller's expense; and (ii) FFT shall not be liable for any insurance, storage, parking or detention charges.

(b) Unless otherwise expressly stated in the Order, prices include customs duties and expenses, tariffs and all federal, provincial, state and local taxes (including all import taxes, excise taxes and sales taxes) applicable to the manufacture, sale or provision of the Goods or the Services.

(c) Any reduction in Seller's cost resulting from a reduction in transportation charges, customs duties, import taxes, excise taxes and/or sales taxes from those in effect on the date of the Order shall be paid to FFT by Seller as a reduction of the price.

(d) Should FFT pay for any of the costs stated in this

paragraph 6, Seller shall fully indemnify, hold harmless and reimburse FFT for said costs with FFT having the additional right to set-off these costs against any current or future invoice payments owed to Seller or any of Seller's affiliates.

## 7. CUSTOMS DRAWBACK DOCUMENTS AND EXPORTCONTROLS

(a) Seller agrees to fulfill any customs' related obligations, including properly declaring the value of the Goods and complying with the appropriate origin or labeling requirements. Upon request, Seller shall promptly furnish to FFT all documents and other information required for customs drawback purposes, properly completed in accordance with applicable governmental regulations. Unless otherwise expressly stated in the Order, all customs drawback shall be reserved and retained for, or credited to, FFT.

(b) Export licenses or authorizations necessary for the export of the Goods shall be the responsibility of Seller unless otherwise expressly stated in the Order, in which case Seller shall provide such information as may be necessary to enable FFT to obtain such licenses or authorizations. Seller shall undertake such arrangements as necessary for the Goods to be covered by any duty deferral or free trade zone programs of the country of import.

(c) To the extent that any Goods covered by the Order are to be imported into the United States of America, Seller shall, upon FFT's request, comply with all applicable recommendations or requirements of the United States Bureau of Customs and Border Protection's Customs-Trade Partnership Against Terrorism initiative or any successor or replacement initiative or program. Upon request, Seller shall certify in writing its compliance with the foregoing. Seller shall indemnify and hold FFT harmless from and against all liabilities, demands, claims, losses, costs, damages and expenses of any nature or kind (including legal and other professional fees) arising from or relating to Seller's noncompliance with the foregoing.

## 8. CERTIFICATES OF ORIGIN

Upon request, Seller shall promptly furnish to FFT all certificates of origin or domestic value-added and all other information relating to the costs and places of origin of the Goods or the Services and the materials contained therein or used in the performance thereof, as may be required by FFT to comply fully with all customs, tariffs and other applicable governmental regulations including those customs, tariffs, and regulations that enable FFT to claim preferential duty treatment at the time of entry of the Goods and related tooling and equipment. Seller shall make all necessary arrangements for said Goods to be eligible for and certified by any applicable duty deferral or free trade program(s) of the country of import. Seller shall indemnify and hold FFT, its subsidiaries and affiliates, their respective successors, assigns, representatives, employees and agents, and the Customer harmless from and against all liabilities, demands, claims, losses, costs, damages and expenses of any nature or kind (including fines and penalties) arising from or as a result of: (i) Seller's delay in furnishing such certificates or other information to FFT; (ii) any errors or omissions contained in such certificates; and (iii) any noncompliance by Seller with such regulations.

## 9. PAYMENT

(a) Except as otherwise expressly stated in the Order, and subject to subparagraphs 2(c), (d) and (e), FFT shall pay net

# General Terms and Conditions of Purchase



invoices (subject to applicable withholding taxes, if any) by the later of: (i) sixty (60) days after the end of the month during which the Goods were delivered and/or the Services performed, as the case may be; or (ii) sixty (60) days after the invoice date.

(b) Notwithstanding the foregoing, where FFT is entitled to receive reimbursement or other payment from the Customer for the Goods and/or the Services to be provided by Seller to FFT under the Order that constitute Tooling (as such term is defined in subparagraph 16(b)), Seller shall be entitled to receive payment under the Order for such Tooling only after and to the extent of, and in proportion to, FFT's actual receipt of such reimbursement or other payment from the Customer.

## 10. SET-OFF, RECOUPMENT

In addition to any right of set-off or recoupment provided by law, all amounts owed to Seller and its subsidiaries and affiliates shall be considered net of indebtedness or obligations owed by Seller and its subsidiaries and affiliates to FFT and its subsidiaries and affiliates. FFT and its subsidiaries and affiliates may set-off against or recoup any amounts owed or to become owed by Seller and its subsidiaries and affiliates to FFT and its subsidiaries and affiliates however and whenever arising. FFT may do so without notice to Seller or its subsidiaries or affiliates. If any obligations of Seller or its subsidiaries or affiliates to FFT or its subsidiaries or affiliates are disputed, contingent or unliquidated, including, without limitation, Customer warranty claims made before final determination of cause, FFT may defer payment of amounts otherwise owed until such obligations are resolved.

## 11. CHANGES

(a) FFT reserves the right to make changes, or to cause Seller to make changes, to the drawings, specifications, sub-suppliers, sub-contractors, and other provisions of the Order. If any such change results in an increase or a decrease in the cost of, or the time required for, manufacturing or delivering the Goods or performing the Services, an equitable adjustment may be made in the price or delivery schedule, or both, and the Order shall, subject to the agreement of FFT and Seller, be modified in writing accordingly. No claim under this paragraph 11 shall be asserted by Seller after fourteen (14) days following the notification of the change by FFT. If Seller fails to submit such claim within this fourteen (14) day period, the change shall take effect without any adjustment to price, delivery schedule or time of performance. During the time period the parties are negotiating adjustment to the price or time of performance under a change request made by FFT, Seller shall not delay or suspend performance of the change request with the understanding that the parties will continue to negotiate in good faith until an equitable adjustment is agreed to.

(b) Seller shall not, without FFT's prior written authorization, make any changes to specifications, designs, materials or part numbers (or other types of identification), any major changes in processes or procedures, or any changes in the location of the facilities used by Seller for the performance of its obligations under the Order.

## 12. PRICE WARRANTIES AND COMPETITIVENESS

(a) Seller warrants that the prices for the Goods and the Services are, and shall ensure that such prices remain, not

less favorable to FFT than the prices currently extended to any other customer of Seller for the same or substantially similar goods or services in the same or substantially similar quantities and delivery requirements. If Seller reduces the prices of such same or substantially similar goods or services during the term of the Order, Seller shall reduce the prices of the Goods and the Services correspondingly.

(b) Seller warrants that the prices in the Order shall be complete, firm and final, and no surcharges, premiums or other additional charges of any type shall be added, without FFT's prior written consent. Seller expressly assumes the risk of any event or cause (whether or not foreseen) affecting such prices, including, but not limited to, any foreign exchange rate changes, increases in raw materials costs, increases in packaging or shipping costs, any increase in any taxes, duties and/or tariffs, inflation, increases in labor and other manufacturing costs.

(c) Seller shall ensure that the Goods and the Services remain competitive, in terms of price, technology and quality, with substantially similar goods and services available to FFT from other suppliers.

## 13. WARRANTIES REGARDING THE GOODS AND THE SERVICES

(a) Seller expressly warrants that the Goods and the Services, including any special tools, dies, jigs, fixtures, patterns, machinery and equipment that are obtained at FFT's expense for the performance of the Order and/or are or become the property of FFT (including the FFT's Property, as such term is defined in subparagraph 16(b)), shall: (i) conform to all drawings, specifications, samples and other descriptions furnished, specified or adopted by FFT; (ii) comply with all applicable laws, regulations, rules, codes and standards of the jurisdictions in which the Goods or the Services, and the products containing the Goods and Services, are to be sold; (iii) be merchantable; (iv) be free from any defects in design, to the extent furnished by Seller or any of its subcontractors or suppliers, even if the design has been approved by FFT; (v) be free from any defects in materials and workmanship; (vi) be fit, sufficient and suitable for the particular purpose for which FFT intends to use the Goods or the Services, including the specified performance in the component, system, subsystem and vehicle location and the environment in which they are or may reasonably be expected to perform; and (vii) be free of all liens, claims and encumbrances whatsoever. For the purposes of clause (vi) above, Seller acknowledges that Seller knows the particular purpose for which FFT intends to use the Goods or the Services. Seller further expressly warrants that, unless otherwise expressly stated in the Order, the Goods are manufactured entirely with new materials and none of the Goods are, in whole or any part, governmental or commercial surplus or used, remanufactured, reconditioned or of such age or condition so as to impair its fitness, usefulness or safety. Seller further warrants to FFT that all services supplied by Seller in performance of the Order shall be supplied by personnel who are careful, skilled, experienced and competent in their respective trades or professions. Seller agrees that it is supplying professional services, findings, and/or recommendations as a part of the performance of the Order and warrants to FFT that the same shall conform with high professional and engineering principles which are generally accepted in the United States. The warranties in this subparagraph 13(a) are referred to in the Order as the "Seller's Warranties".

(b) The Seller's Warranties are available to, and for the benefit

# General Terms and Conditions of Purchase



of, FFT, its subsidiaries and affiliates, their respective successors and assigns, the Customer and users of products containing the Goods or the Services. The warranty period shall be that provided by applicable law or at minimum 24 months starting with the date of final acceptance, whatever is the longer period, except that if FFT is obligated to provide a longer warranty period to the Customer pursuant to the Customer Terms, such longer period shall apply. The Seller's Warranties shall be in addition to all other warranties available under applicable law.

(c) Seller shall indemnify and hold FFT and the Customer, and their respective representatives, employees, agents, customers, invitees, subsidiaries, affiliates, successors and assigns, harmless from and against all liabilities, claims, demands, losses, costs, damages and expenses of any nature or kind (including consequential and special damages, personal injury, property damages, lost profits, recall or other Customer field service action costs, costs allocated under a Customer warranty allocation program, production interruption costs, inspection, handling and reworking charges, professional and other legal fees, and other costs associated with FFT's administrative time, labor and materials) arising from or as a result of: (i) any breach of the Seller's Warranties; and (ii) any other acts, omissions or negligence of Seller or of any of its subcontractors or suppliers in connection with Seller's performance of its obligations under the Order. No limitations on FFT's rights or remedies in any of Seller's documents shall operate to reduce or exclude such indemnification.

(d) Seller acknowledges that FFT may defend any claim brought by the Customer that the Goods or Services are in breach of the Seller's Warranties or are otherwise defective and do not meet the contractual requirements of the Order. Seller agrees that FFT's action to defend such claims is in the interest of both FFT and Seller and is done to mitigate damages. Seller waives the right to argue that FFT's defense of such claims in any way limits FFT's right to seek indemnity from Seller or assert a claim against Seller that Seller has breached the Seller's Warranties or otherwise failed to meet the legal and contractual requirements of the Order.

## 14. DEFECTIVE OR NON-CONFORMING GOODS OR SERVICES

(a) Correction of Defective or Non-Conforming Goods or Services before Final Acceptance. FFT may reject any or all parts of defective Goods or Services. Rejection by FFT of any or all parts of defective Goods and Services shall be final and binding. Such defective Goods and Services shall be promptly corrected or replaced by Seller at Seller's expense. If Seller fails to replace or correct such defective Goods and Services immediately after receipt of written notice from FFT to correct or replace the defective Goods and Services, and in any event the correction or replacement must be within ten (10) days of such notice, FFT may, at its option, remove and replace the defective Goods and Services, and Seller shall reimburse FFT within ten (10) days of receipt of FFT's invoice for the costs of such removal and replacement of defective Goods and Services and any other direct or indirect costs incurred by FFT resulting from the defective Goods and Services.

(b) Correction of Defective Goods and Services After Final Acceptance. Without limitation of any other rights or remedies of FFT, if any defect in the Goods and Services arises within the Warranty Period such that the Goods and Services becomes defective Goods and Services then Seller shall, upon receipt of written notice of such defect promptly furnish,

at no cost or expense to FFT, design and engineering, labor (including travel related expenses), equipment, materials and construction services (including freight charges) necessary to correct such defective Goods and Services and cause the Goods and Services to comply fully with the guarantees in the Contract. Any period during which the Goods and Services is not available for use due to defects in the Goods and Services furnished by Seller shall extend Seller's obligation of correction by an equal period of time.

(c) FFT's Right To Correct Deficiencies. In the event Seller shall have been notified of any defective Goods and Services in violation of Seller's warranties and shall fail to adequately complete the correction of such defects within ten (10) days of such notices, FFT shall have the right, without prejudice to any other remedy it may have, to correct or to have such defective Goods and Services corrected for the account of Seller, and Seller shall reimburse FFT the costs incurred in correcting such Defective Goods and Services within ten (10) days after receiving FFT's invoice therefor.

(d) Reimbursement of Costs by Seller. Seller shall also reimburse FFT for all direct and indirect costs incurred by FFT as a result of the existence and continuance of any and each such breach of warranty, including without limitation direct and indirect costs incurred in connection with any such breach.

(e) Acceptance by FFT of Nonconforming Goods and Services. If FFT prefers to accept the Goods and Services which is not in accordance with the requirements of the Contract Documents, FFT may do so instead of requiring correction, in which case the Contract Price will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

(f) After notice to Seller, all defective or non-conforming Goods shall be held at Seller's risk. FFT may, and at Seller's direction shall, return such defective or non-conforming Goods to Seller at Seller's risk, and Seller shall promptly pay, upon FFT's demand, all transportation and other applicable charges, both to and from the original destination.

(g) Any payment made by FFT for defective or non-conforming Goods or Services shall be refunded by Seller, except to the extent that Seller promptly replaces or corrects the same at Seller's expense.

(h) None of FFT, its subsidiaries or affiliates, or their respective successors, assigns, representatives, employees, agents or customers shall be liable for, or be obligated to indemnify or hold any of Seller, its subsidiaries or affiliates, or their respective successors, assigns, representatives, employees, agents, subSellers or suppliers harmless from and against, any liabilities, claims, demands, costs, damages or expenses of any kind or nature (including personal injury, property damage, consequential or special damages) arising from or as a result of any non-conforming, improper, unsafe or defective Goods and Services or improper design of the Goods or the Services.

## 15. INSPECTION AND QUALITY CONTROL

(a) FFT has the right to inspect any and all of the Goods, both prior to and after making payment therefor. Seller acknowledges and agrees that FFT may choose not to perform incoming inspections with respect to the Goods, without prejudice to any rights or remedies available to FFT hereunder or at law, and Seller waives any rights to require FFT to conduct such inspections.

# General Terms and Conditions of Purchase



(b) FFT also has the right to inspect or test all materials and Goods and Services utilized by Seller in the performance of the Order, and Seller shall permit such inspection or testing by FFT and/or the Customer to the extent practicable at all times and places, including during the period of manufacture. If any such inspection or testing is made on Seller's premises, Seller shall provide, without additional charge, all reasonable facilities and assistance. Inspection and approval at Seller's premises does not preclude rejection or other relief for any defects subsequently discovered. Seller shall provide and maintain, without additional charge, a testing and inspection system (which shall include documented quality control and reliability procedures) acceptable to FFT covering the materials and Goods and Services utilized in the performance of the Order.

(c) At FFT's option, FFT and/or the Customer may from time to time review and inspect Seller's testing, inspection, quality control and reliability procedures, as well as the records and data supporting the same. Seller shall comply with FFT's most recently adopted quality control specifications, inspection standards and quality assurance manuals as may be supplied by FFT to Seller directly, or as may be posted on FFT's Website from time to time. Seller shall, if requested by FFT, furnish certificates indicating such compliance.

(d) FFT's payment for and/or acceptance of the Goods or the Services shall not relieve Seller from any of its obligations and/or warranties under the Order. Subject to FFT's rights under subparagraph 16(b) respecting FFT's title to the Goods upon payment therefor, in no event shall payment for the Goods or the Services be deemed to constitute acceptance by or on behalf of FFT for any other purposes hereunder or at law.

(e) Seller will conform to the quality control standards and inspection systems, as well as related standards, policies and systems, that are established or required by FFT and, to the extent directed by FFT, the Customer. Seller agrees to meet the full requirements of industry Production Part Approval Processes (PPAP) as specified by FFT and the Customer, as applicable, and agrees to present this information to FFT upon request, at the level requested, unless otherwise specifically agreed by FFT in writing.

## 16. MATERIALS, EQUIPMENT, TOOLS AND FACILITIES

(a) Unless otherwise expressly stated in the Order, Seller shall supply at its own expense all materials, equipment, tools, jigs, dies, fixtures, patterns, drawings, specifications, samples and facilities required to perform the Order (the "Seller's Property").

(b) Notwithstanding any other provision in the Order, Seller expressly acknowledges and agrees that: (i) all materials, parts, components, assemblies, equipment, tools, jigs, dies, fixtures, patterns, drawings, specifications, samples and facilities, including any replacements thereof, any materials affixed or attached thereto and any special tooling produced by Seller for the performance of its obligations under the Order ("Tooling"), that are furnished to Seller or specifically paid for, in whole or in part, by FFT (including pursuant to subparagraph 16(a)) or by the Customer; and (ii) all of the Goods that have been paid for, in whole or in part, by FFT, whether or not FFT has exercised its rights of inspection in respect thereof (all items in clauses (i) and (ii) above, collectively the "FFT's Property"), shall be held by Seller on a bailment basis and remain the property of, with both title and the right of possession in, FFT and without limitation to any

rights and remedies available hereunder or at law. FFT's Property, while in Seller's custody or control or while in the custody or control of Seller's suppliers, sellers or agents, shall be held at Seller's risk, shall be kept insured by Seller at Seller's expense against loss or damage in an amount equal to the replacement cost thereof, and shall be subject to removal at FFT's written request. Seller shall promptly notify FFT of the location of FFT's Property, if any are located at any place other than Seller's facility. Unless otherwise expressly stated in the Order, Seller shall maintain accounting and property control records for FFT's Property in accordance with sound industrial practices. Seller shall, at Seller's expense, maintain FFT's Property in good condition and repair, and shall replace any of FFT's Property if, as and when necessary or reasonably required. FFT does not provide any warranties with respect to FFT's Property. Upon completion or termination of the Order, Seller shall retain on a bailment basis for FFT, as aforesaid, FFT's Property still then in the physical possession of Seller, at Seller's expense, until disposition directions are received from FFT. Upon receipt of FFT's demand or disposition directions, Seller shall, at Seller's expense, prepare FFT's Property for shipment and shall deliver it to such locations as may be specified by FFT. FFT's Property shall be in no less than the same condition as originally received by Seller, reasonable wear and tear excepted. If FFT or Seller defaults under the Order, Seller shall upon FFT's demand immediately deliver FFT's Property to FFT and, if FFT so requests, grant FFT access to Seller's premises for the purpose of removing FFT's Property.

(c) All materials, supplies, Goods and Services to be manufactured, produced or provided in conjunction with the Order must be in strict accordance with the specifications set forth in the Order or as otherwise specified by FFT to Seller.

(d) Seller shall use FFT's Property referenced in clause 16(b)(i) solely for the purpose of performing its obligations under the Order.

## 17. INTELLECTUAL PROPERTY

(a) Seller shall indemnify and hold FFT, its subsidiaries and affiliates, their respective successors and assigns, the Customer and users of products containing the Goods or the Services, harmless from and against all liabilities, demands, claims, losses, costs, damages and expenses of any nature or kind (including court costs and legal and other professional fees) arising from or as a result of the infringement or alleged infringement of any patent, trademark, copyright, industrial design or process of manufacture for or on account of the manufacture, sale or use of the Goods or the Services, or of the products containing the Goods or the Services. Seller expressly waives any claim against FFT that any such infringement or alleged infringement arises out of compliance with FFT's specifications. FFT shall notify Seller of any suit filed against FFT, its subsidiaries and affiliates, their respective successors and assigns, the Customer or users of products containing the Goods or the Services, on account of any such infringement or alleged infringement and, at Seller's request, shall give Seller control of the defense of such suit, insofar as FFT has the authority to do so, and reasonable information and assistance in connection therewith, all at Seller's expense. FFT and other indemnified parties shall have the right to be represented by their own counsel and actively participate in any such suit, and the reasonable costs of such representation shall be paid by Seller on demand.

(b) Seller hereby grants to FFT, its subsidiaries and affiliates, and their respective successors and assigns, and FFT hereby

# General Terms and Conditions of Purchase



accepts, a non-exclusive, irrevocable, worldwide license, including the right to sublicense to others in connection with providing the Goods or the Services to FFT or the Customer, under: (i) patents, industrial designs, technical information, know-how, processes of manufacture and other intellectual property, owned or controlled by Seller or its affiliates, and relating to the Goods or the Services, to make, have made, repair, reconstruct, rebuild, relocate, use, sell and import the Goods and the Services, and (ii) any Goods and Services of authorship fixed in any tangible medium of expression (including drawings, prints, manuals and specifications) furnished by Seller in the course of Seller's activity under the Order, to reproduce, distribute and display such Goods and Services and to prepare derivative Goods and Services based thereon, subject to the other provisions of the Order (all items in clauses (i) and (ii) above, collectively, "Seller's Intellectual Property", and such license in respect thereof, the "License"). Seller acknowledges and understands that such License shall be deemed to be royalty free and fully paid-up in the prices paid by FFT to Seller under the Order. FFT and Seller acknowledge and agree that the License granted and accepted under this subparagraph 17(b) shall be royalty free and fully paid-up to FFT in the event that the Order is terminated by FFT pursuant to paragraphs 22 or 25, or in the event that Seller for any reason is unable to satisfy the quality, quantity, delivery or related requirements of FFT for the Goods or the Services under the Order.

(c) To the extent that Seller creates or develops any patents, industrial designs, technical information, know-how, processes of manufacture or other intellectual property in the performance of Seller's obligations under the Order, Seller shall: (i) assign to FFT each invention, discovery or improvement (whether or not patentable) that is conceived or first reduced to practice by Seller, or by any person employed by or under the direction of Seller, in the performance of Seller's obligations under the Order; and (ii) promptly disclose in an acceptable form to FFT all such inventions, discoveries or improvements and cause Seller's employees to sign any papers necessary to enable FFT to obtain title to and to file applications for patents throughout the world. To the extent that any Goods and Services of authorship (including, without limitation, software and computer programs) are created in the performance of Seller's obligations under the Order, such Goods and Services shall be considered "Goods and Services made for hire", and to the extent that such Goods and Services do not qualify as "Goods and Services made for hire", Seller hereby assigns to FFT all right, title, and interest in all copyrights and moral rights therein.

(d) Seller shall not manufacture or provide, or offer to manufacture or provide, any goods or services that are based in whole or in part upon FFT's intellectual property and/or the drawings or specifications in respect of the Goods or the Services, or any derivative thereof, whether for its own purposes (other than to satisfy its obligations under the Order), for the Customer or any other third parties, without FFT's prior written consent. The foregoing restriction shall not apply in respect of "off-the-shelf" or "catalogue" goods or services that have been routinely manufactured or provided by Seller and developed by Seller, in each case prior to the Order and independently of its relationship with FFT.

## 18. CONFIDENTIALITY AND NON-DISCLOSURE

(a) Seller shall consider and treat all Information (as defined in subparagraph 18(b)) as confidential and shall not disclose any Information to any other person, or use any Information itself for any purpose other than pursuant to and as required

by the Order, without FFT's prior written consent. FFT retains all rights with respect to the Information, and Seller shall not acquire, nor attempt to obtain, any patent, trademark, copyright, license or other rights in respect of the Information. Seller shall not allow any Information to be reproduced, communicated or in any way used, in whole or in part, in connection with services or goods furnished to others, without FFT's prior written consent.

(b) For the purposes of the Order, "Information" means all drawings, reproductions, specifications, designs, engineering instructions, photographs, reproducible copy, parts lists, plans, reports, Goods and Service papers, computations and other information furnished by FFT and shall include all terms and conditions and any other information relating to the Order.

(c) Seller shall not advertise or otherwise disclose the fact that FFT has contracted to purchase the Goods or the Services from Seller, without FFT's prior written consent.

## 19. DISCLOSURE TO FFT

Unless otherwise expressly stated in the Order and except as may be agreed in a prior written agreement between FFT and Seller, no commercial, financial or technical information furnished or disclosed in any manner or at any time by Seller to FFT shall be deemed to be secret or confidential, and Seller shall have no rights against FFT or the Customer with respect to any use or disclosure of such information.

## 20. COMPLIANCE WITH SUSTAINABILITY GUIDELINE AND LAWS

(a) Seller's performance of its obligations under the Order shall be in compliance with FFT's Sustainability Guideline for Suppliers and Business Partners and all federal, provincial, state and local laws, ordinances, rules, codes, standards and regulations that are applicable to the Order, including but not limited to the United States Foreign Corrupt Practices Act, the Arms Export Control Act, the International Traffic in Arms Regulations, the Export Administration Act and the Export Administration Regulations, including the requirement for obtaining any export license or agreement, if applicable (collectively, "Laws"). Seller shall furnish FFT with certificates of compliance, where required under such applicable Laws or when requested by FFT. Each invoice rendered to FFT under the Order shall constitute written assurance by Seller that Seller has fully complied with all applicable Laws. Seller will participate in or respond to, at Seller's expense, any audit, investigation, inquiry, certification or screening process reasonably requested by FFT or its third party vendors to verify Seller's compliance with this paragraph 20.

(b) Seller shall package, label and transport the Goods and their containers, in particular those which constitute a health, poison, fire, explosion, environmental, transportation or other hazard, in compliance with all applicable Laws in effect in the place to which the Goods are shipped or as otherwise specified by FFT. Upon request, Seller shall furnish FFT with information regarding the ingredients of the Goods.

(c) Seller represents that: (i) neither it nor any of its subSellers or suppliers will either engage in or permit substandard conditions in the supply of the Goods or the Services under the Order, (ii) child labor or underage labor, as defined by applicable law, will not be utilized, (iii) it will not allow any form of forced or compulsory labor, (iv) Goods and Services will be provided without fear of reprisal, intimidation or harassment by Seller and individuals providing Goods and Services on behalf of Seller shall have the right to associate freely and join labor unions and councils or to otherwise refrain from joining such

# General Terms and Conditions of Purchase



organizations as they so choose, in accordance with applicable laws, (v) individuals providing Goods and Services on behalf of Seller shall be protected against any form of harassment and discrimination in any form, including but not limited to gender, age, religion, disability and political beliefs, (vi) individuals providing Goods and Services on behalf of Seller shall have a safe and healthy place that meets or exceeds all applicable standards for occupational health and safety, (vii) individuals providing Goods and Services on behalf of Seller shall be compensated with wages and benefits that comply with applicable law, including minimum wages, overtime hours and legally mandated benefits and (viii) individuals providing Goods and Services on behalf of Seller working hours shall comply with all applicable laws regulating hours of work.

(d) Upon request, Seller shall furnish FFT with such written verification as FFT deems necessary to certify the origin of any ingredients or materials in the Goods. Seller shall also promptly furnish to FFT all documents and other information requested by FFT so that FFT may comply in a timely manner with all applicable laws governing consumer protection, conflict minerals or similar materials or ingredients.

(e) Seller shall indemnify and hold FFT, its subsidiaries and affiliates, their respective successors, assigns, representatives, employees and agents, and the Customer harmless from and against all liabilities, claims, demands, losses, costs, damages and expenses of any kind and nature (including personal injury, property damage, consequential and special damages) arising from or as a result of Seller's failure to comply with this paragraph 20.

## 21. SELLER'S ENTRY UPON FFT'S OR CUSTOMER'S PREMISES

If Seller or any of its representatives, employees, agents, subSellers or suppliers (collectively, "Seller Parties") enter upon the premises owned or controlled by FFT or its subsidiaries or affiliates (the "FFT's Premises") or upon the Customer's premises, in each case in connection with Seller's performance of its obligations under the Order, Seller shall: (i) indemnify and hold FFT and the Customer, and their respective representatives, employees, agents, customers, invitees, subsidiaries, affiliates, successors and assigns, harmless from and against all liabilities, demands, claims, losses, costs, damages and expenses of any kind or nature (including legal and other professional fees) by reason or on account of property damage, death and/or personal injury, arising from or as a result of Seller's performance of its obligations under the Order, which is or are occasioned by Seller Parties' actions, omissions or negligence; and (ii) ensure that Seller Parties are in compliance with all requirements of compensation legislation of the jurisdictions in which the FFT's Premises or the Customer's premises are located.

## 22. INSURANCE

(a) Seller shall maintain and carry: (i) property and general liability insurance, including public liability, property damage liability, product liability and contractual liability coverages and professional liability coverage as FFT may require based on the Services; and (ii) workers' compensation and employers' liability insurance covering all employees engaged in the performance of the Order; in each case in such amounts and with such limits (subject to subparagraph 22(c)) and with such insurers that are reasonably acceptable to FFT and which are licensed to provide insurance coverage in the jurisdictions in

which any Services will be conducted or otherwise are applicable to Seller. Each policy shall expressly state that it provides primary coverage to any other insurance coverage available to FFT and shall include an endorsement under which the insurer waives any rights of subrogation it may have against FFT.

(b) Unless otherwise expressly stated in the Order, Seller's liability insurance policies shall have combined single limits of no less than five million U.S. dollars (U.S.\$5,000,000) per occurrence and in the aggregate; provided that such limits shall not limit Seller's liability under the Order. Seller's property insurance policies shall be written on a "replacement cost" basis and Seller's workers' compensation policies shall be in compliance with applicable statutory requirements and limits.

(c) Seller shall furnish FFT with certificates or other satisfactory proof of insurance confirming the foregoing insurance coverages within ten (10) days of FFT's request. Any such insurance and the certificates shall provide for terms and conditions satisfactory to FFT whereby, among other things: (i) the interest of FFT in such insurance coverage is recognized by designating FFT as an Additional Insured or Loss Payee, as interests may appear, or as may be requested by FFT from time to time; and (ii) each policy shall contain an endorsement that the coverage will not be cancelled or materially changed or amended in any way without at least thirty (30) days prior written notice to FFT. FFT shall have the right, but not the obligation, to maintain such insurance coverage prior to the expiration of such notice. The receipt or review of such certificates or other proof of insurance coverage at any time by FFT shall not relieve Seller from its liability or its insurance obligations hereunder or reduce or modify such insurance obligations.

## 23. TERMINATION FOR CONVENIENCE UPON NOTICE

(a) In addition to any other rights of FFT to terminate the Order, FFT may, in its sole discretion, upon ten (10) days prior written notice to Seller or, if applicable, such shorter period as may be required by the Customer, terminate the Order for convenience or any other reason, in whole or in part (other than the minimum quantities specified in subparagraph 4(b)) at any time, and notwithstanding the existence of any excusable delay or other events or circumstances affecting Seller. FFT's notice to Seller may be given by facsimile, e-mail or other form of electronic transmission, and shall state the extent and effective date of termination. Seller may not terminate the Order for convenience or any other reason, except as otherwise expressly provided in the Order. (b) Upon receipt of notice of termination from FFT, Seller shall, to the extent directed by FFT or its representatives: (i) stop Goods and Services under the Order and any other orders related to Goods and Services terminated by such notice; and (ii) protect all property in Seller's possession or control in which FFT has or may acquire an interest, including FFT's Property. Seller shall promptly submit to FFT any claims relating to such termination, and in any event within twenty one (21) days (unless FFT agrees otherwise) from the effective date of such termination. Seller hereby grants FFT the right to audit and inspect its books, records and other documents relating to any termination claims.

(c) FFT shall, in addition to making payment of the price specified in the Order for the Goods and the Services delivered or performed and accepted by FFT prior to the effective date of termination, pay to Seller the following amounts, without duplication: (i) the price specified in the Order for the Goods and the Services manufactured or provided in accordance with the terms of the Order but not previously paid for; and (ii) the

# General Terms and Conditions of Purchase



actual costs of Goods and Services-in-process and parts and raw materials incurred by Seller in performing its obligations under the Order, to the extent such costs are reasonable in amount and are properly allocated or apportioned under generally accepted accounting principles to the terminated portion of the Order. FFT shall not be obligated to make any payment for: (x) the Goods, the Services, or Goods and Services-in-process or parts or raw materials inventory that are manufactured, provided or procured by Seller in amounts in excess of those authorized in any Release, that are damaged or destroyed or that are not merchantable or useable; (y) any undelivered Goods that are in Seller's standard stock or that are readily marketable; or (z) Goods and Services-in-process or parts or raw materials inventory that can be returned to Seller's suppliers or subSellers for credit. Payments made in connection with a termination of the Order under subparagraph 24(a) shall not exceed the aggregate price for the Goods or Services that would be manufactured or provided by Seller under any Release outstanding at the effective date of termination. Except as provided in this subparagraph 23(c), FFT shall not be liable for and shall not be required to make payments to Seller, directly or indirectly (whether on account of claims by Seller's subSellers or otherwise), for any loss arising from or attributable to failure to realize anticipated revenue, savings or profit, unabsorbed overhead, storage costs, financing costs, interest on claims, product development and engineering costs, facilities and equipment rearrangement costs or rental, unamortized depreciation cost or general and administrative burden charges from a termination of the Order. In the event of a termination of the Order by FFT as a result of FFT ceasing to be a supplier to the Customer for the vehicle program in respect of which FFT issued the Order, FFT shall only be obligated to compensate Seller for any costs under this paragraph if, when and to the extent that the Customer reimburses FFT first for such costs.

(d) Subject only to subparagraph 16(b), Seller may, with FFT's prior written consent, retain or sell at an agreed price any of the Goods, the Services, Goods and Services in process or raw materials inventory, the cost of which is allocated or apportioned to the Order under clause 23(c)(ii), and shall credit or pay the amounts so agreed or received as FFT directs, with an appropriate adjustment for any delivery cost savings. Seller shall, if directed by FFT, transfer title to and make delivery of any Goods, Goods and Services in process or raw materials inventory not so retained or sold.

(e) FFT may, at any time, by written notice to Seller, suspend performance of all or a portion of the Order. Said notice of suspension shall specify the date of suspension and the estimated duration of the suspension. Upon receiving any such notice of suspension, Seller shall promptly suspend further performance of Services or delivery of Goods to the extent specified and, during the period of suspension, shall properly care for and protect any Goods, materials and work-in-process Seller has on hand for performance of the Order. FFT may at any time withdraw the suspension by written notice to Seller and Seller shall resume performance of the Order.

(f) Where an Order requires Seller to provide staffing or manpower on a project, FFT shall have the right, in its sole discretion and at any time, to reject or request removal of Seller's assigned employees or contractors for any reason, including, but not limited to, lack of skills, performance concerns, suitability, operational needs or for no stated reason. Within twenty-four (24) hours of receipt of notice from FFT, Seller shall remove the assigned employee(s) or

contractor(s) as directed by FFT at no additional cost or expense to FFT. FFT may, in its sole discretion and at no additional cost, require Seller to provide replacements for the removed personnel or FFT may elect to proceed without replacements. FFT shall only be required to pay for staffing hours actually performed and expressly approved in writing by FFT.

## 24. TERMINATION UPON SELLER'S DEFAULT OR CHANGE OF CONTROL

(a) FFT may terminate the Order, in whole or in part, for default occasioned by Seller's: (i) breach of any terms of the Order; (ii) failure to perform in accordance with the requirements of the Order; or (iii) failure to make progress so as to endanger timely and proper delivery of the Goods or completion of the Services and, in each such case, Seller does not cure or correct such breach or failure within ten (10) days (or such shorter period of time as FFT may determine, if commercially reasonable under the circumstances) after receipt of written notice from FFT specifying such breach or failure. Seller shall be liable for all costs, damages and expenses caused by or resulting from its default under the Order.

(b) FFT may terminate the Order, in whole or in part, in the event of a change of control of Seller. For the purposes of the Order, a "change of control" includes: (i) any sale, lease or exchange of a substantial portion of Seller's assets used in connection with Seller's performance of its obligations under the Order; (ii) any sale or exchange of a sufficient number of shares of Seller, or of any affiliate that controls Seller, to effect a change in management of Seller; or (iii) the execution of a voting or other agreement of control in respect of Seller, or of any affiliate that controls Seller. Seller shall notify FFT in writing within ten (10) days of any change of control of Seller, and FFT may terminate the Order by giving written notice to Seller at any time up to sixty (60) days after FFT's receipt of Seller's notice of change of control.

(c) Any termination under this paragraph 24 shall be without liability to FFT, except for the non-defective Goods delivered and accepted by FFT or the non-defective Services performed by Seller and accepted by FFT.

## 25. TERMINATION UPON INSOLVENCY, BANKRUPTCY, ETC.

(a) FFT may terminate the Order (i) in the event of the insolvency, bankruptcy, reorganization, receivership or liquidation by the Seller; (ii) upon FFT's reasonable determination that Seller is likely to become insolvent or bankrupt during the term of the Order, (iii) in the event that Seller makes an assignment for the benefit of its creditors or ceases to carry on business in the ordinary course; or (iv) if a receiver is appointed in respect of the Seller or all or part of its property (collectively, an "Insolvency Event"). In the event of such termination, the Seller shall be liable for all costs, damages and expenses suffered by FFT and the Customer. Any such termination shall not affect the entitlement of FFT with respect to FFT's Property, including pursuant to subparagraph 16(b).

(b) In the event that FFT does not terminate the Order upon the occurrence of an event in subparagraph 25(a) in respect of Seller, FFT may make such equitable adjustments in the price and/or delivery requirements under the Order as FFT deems appropriate to address the change in Seller's circumstances, including Seller's on-going liability to perform its obligations regarding warranty, defective Goods or Services or other

# General Terms and Conditions of Purchase



requirements under the Order.

## 26. SUBCONTRACTS

(a) Except as otherwise agreed by FFT, prior to entering into a subcontract with a third party, Seller will (i) notify FFT of the components of the Offer affected, the scope of the proposed subcontract, the identity and qualifications of the proposed SubSeller, and (ii) obtain FFT's prior written approval of such SubSeller. Any proposed engagement of a new SubSeller (whether in substitution of an existing SubSeller or not) requires FFT's written approval.

(b) FFT will have the right during the Term to direct Seller to replace a SubSeller as soon as possible after providing reasonable notice. Seller will comply with such a direction and continue to perform its obligations under this Agreement, notwithstanding the removal of the SubSeller. FFT will have no responsibility for any termination charges or cancellation fees charged to Seller by any third party that are applicable to terminated subcontracts as a result of any withdrawal or cancellation of Goods and Services or FFT's demand that Seller replace a SubSeller as permitted under this Agreement.

(c) Seller shall be fully responsible for the Goods and Services of the Order in accordance with these General Terms and Conditions, and Seller shall have full authority over and assume full responsibility for the execution of Goods and Services by SubSellers. Seller will be responsible and liable for any failure by any SubSeller to perform in accordance with the Order and these General Terms and Conditions. No contractual relationship shall be created under the Order between FFT and any of Sellers' SubSellers.

(d) All Goods and Services of SubSellers shall, in all events, comply with applicable standards, laws, codes, ordinances, rules and regulations of all public authorities having jurisdiction over it. Any part of the Order performed for Seller by a SubSeller shall be pursuant to a written subcontract which shall contain provisions that: (a) preserve and protect the rights of FFT with respect to the Goods and Services performed under the subcontract; (b) require such Goods and Services to be performed in compliance with all standards, laws, codes, ordinances, rules and regulations of public authorities having jurisdiction over same; (c) provide for diligent, timely and lien-free completion of the SubSeller's portion of the Offer; (d) bind every SubSeller to the terms of the Offer and these General Terms and Conditions, as far as applicable to SubSeller's portion of the Goods and Services;

(e) provide maintenance of good quality Goods and Services in accordance with the warranties contained in the Order and these General Terms and Conditions.

(e) Seller shall, in all events, promptly pay to each SubSeller with whom it has a direct contract, and shall ensure that each such SubSeller promptly pays to its respective sub-SubSellers, amounts due for the portion of the Goods and Services performed in accordance with the terms of each subcontract and the Offer.

(f) Seller shall indemnify and hold FFT, its subsidiaries and affiliates, their respective successors, assigns, representatives, employees and agents, and the Customer harmless from and against all liabilities, claims, demands, losses, costs, damages and expenses of any kind and nature (including personal injury, property damage, consequential and special damages) arising from or as a result of any claims and suits brought by a Seller's employee or SubSeller's employee relating to his or her employment.

(g) As a condition precedent to any payment by FFT to the Seller under the Order, including progress payments and/or final payments, the Seller shall submit evidence that all of the SubSellers and third party contractors that Seller retained and contracted with under this Order have been paid in full through the date of Seller's invoice. Such evidence may be made by providing copies of documents showing payments having been made, an executed waiver and release or an executed affidavit as demanded by FFT. Failure of Seller to provide the requested evidence and written confirmation shall entitle FFT to withhold payment, without interest or penalty, until adequate evidence and written confirmation are received. FFT shall also have a right to audit Seller's books to confirm that the SubSellers and third parties have been paid in full prior to FFT having to pay Seller.

## 27. SERVICE AND REPLACEMENT PARTS

(a) Except as otherwise expressly agreed in writing, for fifteen (15) years after delivery/final acceptance of the Goods, Seller shall supply FFT's written "service parts" orders for the same Goods, component parts and materials, at the prices set forth in the Order plus any actual cost differential for special packaging. If the Goods are systems or modules, Seller shall sell each component or part at a price that does not, in the aggregate, exceed the system or module price specified in the Order, less assembly costs, plus any actual cost differential for packaging. Seller's obligation with respect to service or replacement parts shall survive the termination or expiration of the Order.

(b) At FFT's request, Seller shall make service literature and other materials available at no additional charge to support FFT's service part sales activities.

## 28. RIGHT TO AUDIT AND FINANCIAL REVIEW

(a) Seller grants to FFT and to FFT's authorized agents and representatives access to all pertinent information, including books, records, payroll data, receipts, correspondence and other documents, for the purpose of auditing Seller's charges under the Order and compliance with its terms, during the term of the Order and for an additional five (5) years after the final payment under the Order. Seller shall preserve such information for such period (or longer, if required by applicable law). In addition, all Goods and Services, materials, inventories and other items provided for under the Order must at all times be accessible to FFT and to FFT's authorized agents and representatives, including parts, tools, fixtures, gauges and models. Seller shall segregate its records and otherwise co-operate with FFT so as to facilitate any such audit.

(b) If such audit shows any price discrepancy or Seller's non-compliance, Seller shall reimburse FFT for such discrepancy or other loss caused by its noncompliance with the Order, together with interest at an annual rate of twelve percent (12%) (or such maximum rate allowed by applicable law, if lower), plus the cost of such audit.

(c) FFT, or a third party designated by and acting on behalf of FFT, may at any time review the financial condition of Seller and its affiliates, and Seller shall fully co-operate in such review and shall make its financial managers available for discussions during reasonable business hours. FFT and any such designated third party shall keep confidential any non-public information about Seller and its affiliates obtained in such financial review and shall use such information only for purposes of such financial review, except as otherwise needed to enforce the Order.

# General Terms and Conditions of Purchase



## 29. ENVIRONMENT

(a) Environmental Requirements means all applicable present and future statutes, regulations, rules, ordinances, codes, licenses, permits, orders, approvals, plans, authorizations, concessions, franchises, and similar items, of all governmental agencies, departments, commissions, boards, bureaus, or instrumentalities of the United States, states and political subdivisions thereof and all applicable judicial, administrative, and regulatory decrees, judgments, and orders relating to the protection of human health or the environment, including without limitation: i. All requirements, including, without limitation, those pertaining to reporting, licensing, permitting, investigation, and remediation of emissions, discharges, releases, or threatened releases of Hazardous Material, chemical substances, pollutants, contaminants, or hazardous or toxic substances, materials or wastes whether solid liquid, or gaseous in nature, into the air, surface water, ground water, or land, or relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport, or handling of chemical substances, pollutants, contaminants, or hazardous or toxic substances, materials, raw materials or wastes, whether solid, liquid, or gaseous in nature; and ii. All requirements pertaining to the protection of the health and safety of employees or the public

(b) Hazardous Material means any substance: i. The presence of which requires investigation or remediation under federal, state or local statute, regulation, ordinance, order, action, policy or common law; ii. Which is or becomes defined as a "hazardous waste", "hazardous substance", "pollutant" or "contaminant" under any federal, state or local statute, regulation, rule or ordinance or amendments thereto including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9601 et seq.) and/or the Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.); iii. Which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous and is or becomes regulated by any governmental authority, agency, department, commission, board, agency or instrumentality of the United States, the State of South Carolina or any political subdivision thereof; iv. The presence of which on the FFT's or Customers premises causes or threatens to cause a nuisance upon the property or to adjacent properties or poses or threatens to pose a hazard to the health or safety of persons on or about the property; v. The presence of which on adjacent properties could constitute a trespass by Seller; vi. Which contains petroleum hydrocarbons (including, without limitation, gasoline or diesel fuel); or vii. Which contains (without limitation) polychlorinated biphenyls (PCBs), asbestos or urea formaldehyde foaminsulation.

(c) Seller shall not, under any circumstances, cause or permit the discharge, spill or release of any Hazardous Material in connection with the Goods and Services to be performed, in violation of any Environmental Requirements. Seller represents and warrants that it is and will remain in full compliance with and will adhere to all Environmental Requirements and, if necessary, obtain or arrange for, at its expense, all identification numbers, applications and other governmental approvals, certificates, licenses, permits, or the like, required in connection with the Goods and Services.

(d) Without limiting the effect of the foregoing, Seller agrees that it will (i) not store any hazardous wastes at the premises of FFT or FFT's customers in violation of the applicable site storage limitations imposed by law, FFT, or Customer, whichever shall be more restrictive; (ii) take, at its expense, all actions necessary to protect third parties, including without

limitation, employees and agents of FFT and Customer from any exposure to, or hazards of, any Hazardous Material generated or utilized in Seller's operations; and (iii) report to FFT immediately all discharges, releases and spills of any Hazardous Material and, if by rule or regulation Seller is also required to make such report to a governmental agency, Seller shall also make such report.

(e) Further, if in the performance of the Order, Seller is required to use any hazardous material, Seller shall provide before or with said use a Material Safety Data Sheet and label which are current, accurate and complete and include, without limitation, a statement of product hazards and precautions for safe use.

(f) Seller shall indemnify and hold FFT, its subsidiaries and affiliates, their respective successors, assigns, representatives, employees and agents, and the Customer harmless from and against all liabilities, claims, demands, losses, costs, damages and expenses of any kind and nature (including personal injury, property damage, consequential and special damages) arising from or as a result of Seller's failure to comply with this paragraph 29.

## 30. ASSIGNMENT

(a) Seller shall not assign the Order or any portion hereof or Goods and Services hereunder or any interest herein, except that Seller may, with FFT's prior written consent, make an assignment of monies due or which may become due hereunder to a bank or other financing institution; provided that any such assignment by Seller shall be subject to set-off, deduction, recoupment or any other lawful means of enforcing any present or future claims that FFT may have against Seller, and provided further that any such assignment shall not be made to more than a single assignee. In the event of any such assignment, Seller shall provide to FFT, in addition to written notice of the assignment, a true copy of the instrument of assignment for FFT's information only and, notwithstanding such receipt by FFT, such notice of assignment and/or instrument of assignment shall not be deemed to vary or waive the provisions of this paragraph.

(b) FFT shall have the right to assign the Order or its interest herein, without Seller's consent, to any of its affiliates or to any purchaser or successor to FFT's business.

## 31. RIGHT OF FFT TO PERFORM

If Seller fails to perform any of its obligations under the Order, FFT and its agents may, without limiting or affecting its other rights and remedies available hereunder or at law, but shall not be obligated to, perform such obligations without waiving or releasing Seller from such obligations. All costs, damages and expenses incurred directly or indirectly by FFT in connection with the foregoing, including legal and other professional fees and FFT's administrative time, labor and materials, shall be paid by Seller to FFT on demand or, at FFT's sole option, may be set off against and deducted from any amounts then owing by FFT to Seller.

## 32. REMEDIES

(a) The remedies reserved in the Order shall be cumulative and not alternative and may be exercised separately or together, in any order or combination, and are in addition to any other remedies provided for or allowed by law, at equity or otherwise. (b) Seller expressly acknowledges and agrees that any failure of Seller to deliver the Goods on the delivery dates and times as specified in the Order will cause irreparable harm to FFT and

# General Terms and Conditions of Purchase



that FFT shall be entitled to equitable relief, including injunction, in such event.

(c) Any proceeding or action initiated by Seller for breach of contract or any other act or omission (including tort) arising from or in any way related to the Order must be commenced within one (1) year from the date the breach, act or omission giving rise to Seller's claim occurs, regardless of Seller's knowledge of such breach, act or omission or of its consequences.

(d) In no event shall FFT be liable to Seller for any indirect, punitive, incidental, liquidated, consequential or special damages, including damages for lost revenue or lost profit, arising out of or relating to the Order. In no event shall FFT's overall total liability, for any cause of action, of whatever kind and nature, exceed the value of the Order out of which the liability arose. The limitations of liability set forth in this paragraph 32(d) shall supersede and control over any conflicting provisions contained in the Order.

### 33. WAIVER

Either party's failure to insist on the performance by the other party of any Term or failure to exercise any right or remedy reserved in the Order, or either party's waiver of any breach or default hereunder by the other party shall not, thereafter, waive any other terms, conditions, rights, remedies, breaches or defaults, whether of the same or a similar type or not.

### 34. MODIFICATIONS

No modification of the Order, including any waiver of or addition to any of the Terms, shall be binding upon FFT, unless made in writing and signed by FFT's authorized representative.

### 35. RELATIONSHIP OF THE PARTIES

Seller and FFT are independent contracting parties and nothing in the Order shall make either party the agent or legal representative of the other for any purpose whatsoever, nor does the Order grant either party any authority to assume or to create any obligation on behalf of or in the name of the other. None of the persons engaged by Seller in the performance of its obligations under the Order shall be considered as employees of FFT.

### 36. SEVERABILITY

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

### 37. NOTICES

(a) Except as otherwise expressly stated in the Order, any notice given or other communication sent under the Order shall be in writing and shall be properly delivered to its addressee by hand, prepaid courier, registered mail, e-mail (receipt confirmed) or facsimile (receipt confirmed) at the applicable address noted on the face of the Order. Any notice or communication given as provided herein shall be deemed to have been received at the time of its delivery if delivered by hand, on the business day following its dispatch if transmitted

by courier, e-mail or facsimile or on the third business day following its mailing if transmitted by registered mail. Either party may notify the other party, in the manner provided for herein, of any change of address, for the purpose of giving notices or sending communications under the Order.

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

### 38. SURVIVAL

The obligations of Seller to FFT shall survive termination of the Order, except as otherwise expressly stated in the Order.

### 39. GOVERNING LAW AND JURISDICTION

(a) If the location of FFT from which the Order issued is in the United States of America, the Order shall be interpreted and enforced in accordance with the local, domestic laws of the State of South Carolina and of the United States of America, exclusive of the choice of law rules thereof. For greater certainty, the United Nations Convention on Contracts for the International Sale of Goods shall not apply to the Order.

(b) Any litigation on contractual claims arising from the Order may be brought by FFT in any court having jurisdiction over Seller or, at FFT's option, in any court having jurisdiction over any FFT's locations specified in the Order, in which event Seller consents to jurisdiction and service of process in accordance with applicable procedures. Any claim or proceeding by Seller against FFT shall be brought by Seller only in the courts located in the State of South Carolina. Seller irrevocably waives and agrees not to raise any objection it might now or hereafter have to any such claim or proceeding in any such court, including any objection that the place where such court is located is an inconvenient forum or that there is any other claim or proceeding in any other place relating in whole or in part to the same subject matter.