

The word "Scout" is written in a bold, black, cursive script font, centered within a light gray rectangular background.

**SCOUT MOTORS INC.**

**GENERAL TERMS AND CONDITIONS  
FOR INDIRECT GOODS AND SERVICES**

*May, 8 2024*

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These General Terms and Conditions for Indirect Goods and Services (“Terms and Conditions”) applies to all Purchase Orders that reference these Terms and Conditions, between Scout Motors Inc. (“Buyer”) and the party to whom a Purchase Order or other document of purchase is addressed (“Seller”). Buyer and Seller are each also referred to as a “Party” and collectively as the “Parties.”

**1. DEFINITIONS**

1.1 “**Affiliate**” means, with respect to a Party, any other entity or person directly or indirectly controlling, controlled by, or under common control with such Party. The term “control,” means possessing the power to direct or cause direction of the management, policies, or operations of such entity, whether through the ownership of voting securities, by contract, or otherwise.

1.2 “**Agreement**” means these Terms and Conditions, Purchase Orders issued by Buyer and accepted by Seller in accordance with these Terms and Conditions, all other applicable written agreements between the Parties, and documents referenced in any of the foregoing, all of which will collectively constitute the Agreement between the Parties.

1.3 “**Background IP**” means any and all Intellectual Property developed, acquired, or reduced to practice by a Party or its Representatives prior to the Effective Date, or in a strictly independent and separate manner from the Agreement.

1.4 “**Confidential Information**” means any non-public information or item that is disclosed by or on behalf of a Party (the “Disclosing Party”) to the other Party or its Representatives (collectively, the “Receiving Party”) that: (a) is marked as confidential; (b) is identified as confidential when it is disclosed; or (c) if not so marked or identified, should reasonably have been understood by the Receiving Party to be confidential given its nature and circumstances of its disclosure. Confidential Information includes, but is not limited to, all information relating to the actual or anticipated business, research, or development of the Disclosing Party, any trade secrets, inventions, designs, discoveries, techniques, formulas, prototypes, or know-how of the Disclosing Party or its licensors, improvements, product data, specifications and processes, customer lists and contacts, personal data and information, technical requirements, product pricing information, geographic and sales data, technical or commercial information, financial information, software and its documentation, commercialization plans, and all information, materials, processes, demonstrations, notes, reports, summaries, excerpts, and documents using, derived from, based on or arising from Confidential Information, all copies (in whole or in part), reproductions (in any form or medium) and extracts of Confidential Information, and all computer-generated studies and data containing, derived or arising from, based on or using Confidential Information. “Confidential Information” does not include information that: (a) is or becomes publicly known or made generally available to the public through no wrongful act or omission of the Receiving Party; (b) was in the Receiving Party’s possession, without confidentiality restrictions, at the time of disclosure by the Disclosing Party; (c) is or becomes known to the Receiving Party through disclosure by an unaffiliated third party, except where such third party is known by the Receiving Party to be disclosing such information in breach of confidentiality obligations; or (d) is independently developed by or for the Receiving Party without use of or reference to the Confidential Information and by persons who have not had access to such information.

1.5 “**Copyleft Materials**” means materials subject to any license that requires as a condition of use, modification, or distribution thereof that such materials, or materials combined or distributed with such materials, be (a) disclosed or distributed in source code or similar form, (b) licensed for the purpose of making derivative works, or (c) redistributable at no charge. The term includes materials subject to the GNU General Public License, the GNU Lesser General Public License, a Mozilla Public License, or similar licenses.

1.6 “**Deliverables**” means the Goods, and any and all deliverables, documents, works of authorship, customizations, technologies, inventions, technical or functional descriptions, requirements, plans, reports, or other materials in any form or format that are developed, produced, or required to be delivered by Seller (whether or not jointly with Buyer) pursuant to the Agreement, including in performance of the Services.

1.7 “**Goods**” means all products, software, equipment, supplies, materials, and any other goods which Buyer may purchase from Seller under the Agreement or that are identified in the Agreement.

1.8 “**Intellectual Property**” means all inventions, patents, patent applications, utility models, industrial designs, trademarks, trade names, trade dress, copyrights, moral rights, know-how, trade secrets, software code, data, procedures, methods of manufacture, writings, icons, layouts, original artwork and original practice, and any other subject matter, material, or information that is considered to be proprietary and/or otherwise qualifies for protection under any applicable law providing or creating Intellectual Property Rights, including the Uniform Trade Secrets Act.

1.9 “**Intellectual Property Rights**” means any intellectual property rights or similar proprietary rights in any jurisdiction, whether registered or unregistered, including such rights in and to: (a) trademarks and pending trademark applications, trade dress, service marks, certification marks, logos, domain names, uniform resource locators, tradenames and fictional business names, together with all translations, adaptations, derivations and combinations and like intellectual property rights, and all goodwill associated with the foregoing; (b) issued patents and pending patent applications, and any and all divisions, continuations, continuations-in-part, reissues, renewals, provisionals, continuing patent applications, reexaminations, and extensions thereof, any counterparts claiming priority therefrom, utility models, patents of importation/confirmation, certificates of invention, certificates of registration and like rights, inventions, invention disclosures, discoveries and improvements, whether or not patentable; (c) works of authorship, all copyrightable works (including software) and all copyrights including all applications, registrations and renewals thereof, and all rights corresponding thereto; (d) trade secrets, proprietary business, technical and know-how information, non-public information, and Confidential Information and rights to limit the use or disclosure thereof by any person; (e) mask works; and (f) moral rights.

1.10 “**Open Source Component**” means any software component that is subject to any open source license agreement or any other license approved by the Open Source Initiative. Open Source Components may include Copyleft Materials.

1.11 “**Representatives**” means, as applicable, a Party, its Affiliates, and their respective employees, agents, consultants, auditors, advisors, subcontractors, contractors, or other authorized representatives or third parties acting on behalf of a Party or its Affiliates or subcontractors.

1.12 “**Purchase Order**” means a purchase order issued by Buyer to Seller for the purchase of Goods and/or Services.

1.13 “**Services**” means (a) the services, functions, tasks, and responsibilities described in the Agreement for which Seller is responsible to perform; and (b) any services, functions, tasks, or responsibilities not specifically described in the Agreement but that are an inherent or necessary part of the services, or are required for proper performance or provision of the services and/or Goods described in the Agreement.

1.14 “**Specifications**” means any samples, drawings, data, spec sheets, or other descriptions or specifications or representations provided by Seller that are approved or relied upon by Buyer, or are provided by Buyer.

1.15 “**Work Product**” means the (a) Deliverables, and (b) any and all know-how, methods, inventions, ideas, concepts, strategies, plans, or processes (i) produced or reduced to practice by Seller (whether or not jointly with Buyer) pursuant to the Agreement; or (ii) that incorporate Buyer’s Confidential Information.

## 2. OFFER AND ACCEPTANCE

2.1 Offer. Each Purchase Order issued by Buyer is an offer to the Seller for the purchase of Goods and Services and includes and is governed by these Terms and Conditions. The Agreement does not constitute an acceptance by Buyer of any offer or proposal by Seller, whether in Seller’s quotation, acknowledgement, invoice, or otherwise. In the event that any Seller quotation or proposal is held to be an offer, that offer is expressly rejected and is replaced in its entirety by the offer made up of the Agreement.

2.2 Acceptance. Seller will accept any Purchase Order that conforms to a written agreement signed by both Parties. Each Purchase Order, including these Terms and Conditions, will be deemed accepted by Seller by: (a) commencing any work under the Purchase Order; (b) written acceptance (including electronically); or (c) any other conduct of Seller that recognizes the existence of a contract regarding the subject matter of the Purchase Order. Additionally, each Purchase Order will be deemed accepted five (5) business days after Buyer delivers the Purchase Order to Seller, if Seller fails to object to the Purchase Order during such period by informing Buyer in writing of Seller’s objection and proposing alternative terms. If Buyer accepts such alternative terms, Buyer will issue a revised Purchase Order setting forth such alternative terms. If a revised Purchase Order is not issued by Buyer, the Parties acknowledge and agree that such alternative terms are expressly rejected.

2.3 No Purported Acceptance. Seller’s acceptance of the Agreement, including a Purchase Order, is expressly limited to the terms of such Agreement and these Terms and Conditions exclusively. No purported acceptance of any Purchase Order on terms and conditions which modify, supersede, supplement, or otherwise alter these Terms and Conditions, will be binding upon Buyer, and such terms and conditions are expressly rejected and replaced by these Terms and Conditions, notwithstanding Buyer’s acceptance of or payment for any Goods or Services.

2.4 Order of Precedence. In the event of a conflict between or among any document comprising the Agreement, the terms of such documents will prevail in the following order: (a) any Purchase Order amendment issued by Buyer (if any); (b) the Purchase Order; (c) any written agreement between the Parties, including a Purchase Agreement; and (d) these Terms and Conditions.

### 3. PROVISION OF GOODS AND SERVICES

3.1 General. Buyer will purchase from Seller, and Seller will sell to Buyer, the Goods and Services in accordance with the Agreement, free and clear of any liens, charges, and encumbrances of any nature or kind whatsoever. Seller will provide the Goods and Services in the quantity and at the times set forth in any Purchase Order issued by Buyer and accepted by Seller in accordance with these Terms and Conditions. Unless otherwise stated in the Agreement, if the quantity is not specified on the Purchase Order, the quantity is for one hundred percent (100%) of Buyer's requirements.

3.2 Ability to Deliver. If Seller's ability to deliver any Goods or Services is, or is reasonably likely to be, constrained, Seller will immediately notify Buyer in writing of any anticipated or actual delay, and Seller will use best efforts to resolve the issue causing the constraint as promptly as possible. Seller will fulfill Buyer's Purchase Orders before fulfilling orders for the same or similar goods for any of Seller's other customers during the period of the constraint, using Seller's actual output and existing stock. This is in addition to Seller's other obligations under the Agreement and Buyer's other rights and remedies at law, in equity, and under the Agreement.

3.3 Schedule. The critical path schedule for the performance of Seller's obligations under the Agreement, including for design, manufacturing, delivery, installation, start-up, training, testing, and other obligations under the Agreement, including any applicable lead times for any purchase or aspects of Seller's work will be set forth in the Agreement. Where applicable, the Agreement will include all obligations of Seller and dates for the successful completion of Preliminary Acceptance and Final Acceptance as set forth in Section 7. Seller agrees to promptly notify Buyer in writing of any anticipated or actual deviation from provided schedules.

3.4 Installation. If Seller is responsible for installation of Goods under the Agreement, Seller must demonstrate to Buyer's reasonable satisfaction that the Goods, as installed, meet the performance requirements and specifications set forth in the Agreement as of the Delivery Date.

3.5 Training. Where training is provided in conjunction with the Goods and Services, Seller will use qualified personnel to train Buyer's personnel in the operation, maintenance, and repair of the Goods and Services. The training is part of the Agreement and included in the purchase price and will be held in English at the Buyer's facilities identified in the Agreement.

3.6 Drawings. Before beginning manufacture of any Goods, Seller will provide Buyer with all fabrication drawings necessary for installation, schematic, operation, maintenance, and layout purposes of the Goods, and instruction manuals for the Goods, all in English. Manuals, bills of materials, and parts lists will be in a clear, legible form and in English.

3.7 Software. Unless otherwise indicated in the Agreement, the purchase price for the Goods includes all software necessary for the full and proper operation of the Goods (in source code and object code format), along with any related media and documentation, that Seller will provide to Buyer on Buyer's request, or in any event, no later than the Final Acceptance Testing of the Goods. Seller authorizes Buyer to make copies of the software at any time. If the Agreement expressly states that Seller is not required to provide any such Goods directly to Buyer, Seller will deposit a copy of all such Goods in escrow with an agreed, independent third-party escrow agent. Unless otherwise stated in the Purchase Order, Seller is responsible for paying the escrow agent's fees during the Warranty Period (as defined in Section 9.7), and

Buyer will be responsible for paying such fees thereafter. The third-party escrow agreement will state that Buyer is entitled to prompt release of the escrowed Goods upon written notice to the escrow agent in the event of termination of the Agreement or Seller's insolvency. If the Agreement expressly indicates that the source code is not included as part of the purchase of the Goods, Seller will grant to Buyer and Buyer's affiliates a non-exclusive, perpetual, fully paid-up, royalty-free, worldwide, transferable license to use, operate, and maintain the source code in connection with the use, operation, and maintenance Goods.

3.8 Conduct and Safety. Seller is responsible for its Representatives at all times, including at Buyer's facility. Seller will ensure that its Representatives conduct themselves in a professional manner and in compliance with all applicable laws, regulations, and industry standards, and Buyer's Code of Conduct and other policies, procedures, and rules of Buyer disclosed to Seller from time to time. Buyer may require, at Seller's expense, health, safety, or other reasonable testing to prove the fitness of Seller's Representatives to enter into Buyer's facility.

3.9 Removal. Buyer may, upon written notice to Seller, require Seller to reassign, replace, or remove any of Seller's Representatives performing Services under the Agreement within five (5) business days, without liability to Buyer, provided that Seller will immediately remove Seller's Representative if Seller's Representative violated any rules, regulations, policies, procedures, or laws, or breached the Agreement. Seller will promptly replace removed or terminated Representatives and avoid impact to performance or timing of the Agreement.

3.10 Legal Eligibility. Seller will verify and ensure that all Representatives performing Services at Buyer's facility are legally eligible to perform such work in the applicable country, state, and location where such Representatives perform Services. Furthermore, Seller represents, warrants, covenants, and agrees to ensure that such Representatives meet all of the requirements under U.S. immigration laws and regulations including, the Immigration Reform and Control Act of 1986, as amended, in order to perform Services for Buyer.

3.11 Performance at Buyer's Facility. If Seller and its Representatives enter Buyer's facility, Seller will examine such facility to determine whether it is safe for Seller's purposes. Seller agrees that Seller will be solely responsible for, and Buyer will have no liability to Seller, its Representatives or any third party for, any loss, expense, damage, or claim arising out of, or in connection with, the Seller's performance under the Agreement at Buyer's facility (including personal injury or death).

4. **TIME, QUANTITY, AND QUALITY ARE OF THE ESSENCE.** Time, quantity, and quality are of the essence. Failure to timely deliver the full quantity of Goods or Services or to meet a quality requirement under the Agreement will constitute default by Seller and Buyer may pursue any of its rights or remedies under the Agreement or at law or in equity, including terminating the Agreement, in whole or in part. In addition to Seller's other obligations under the Agreement, Seller will immediately notify Buyer in writing if Seller cannot meet a delivery date or a quantity or quality requirement under the Agreement. Notwithstanding anything herein to the contrary, and in addition to any other remedies provided under the Agreement, at law, or in equity, Buyer will be permitted to charge for each day a delivery is late or each day the Services are not completed on time liquidated damages in the amount of two-tenths of a percent (0.2%) of the total purchase price; provided, however, that such liquidated damages will not exceed, in the aggregate, five percent (5%) of the total purchase price for the late Goods or Services. If the liquidated damages applicable to Seller reach the aggregate limit of five percent (5%) of the total purchase price for the late Goods or Services, any further delay by Seller will be a material breach of the Agreement and Buyer may pursue any of its rights or remedies under the Agreement, at law, or in equity, including terminating

the Agreement, or any part thereof, for cause. Seller acknowledges that these liquidated damages are reasonable, are not Buyer's exclusive remedy in the event of delay and that Buyer may pursue any and all rights and remedies it may have under the Agreement, at law, or in equity, including recovering liquidated damages in accordance with this Section 4.3, in the event of Seller's delay. Buyer, without cost or liability to Seller, may reschedule delivery of the Goods or Services by giving written notice to Seller.

## 5. COMPLIANCE AND QUALITY

5.1 Verification. Prior to Seller delivering Goods, if requested by Buyer, Seller will make the Goods available at its facility to allow Buyer to inspect the Goods and view their operation.

### 5.2 Compliance with Quality Procedures, Purchase Agreements, and Timelines.

5.2.1 Seller will comply with all quality requirements stated in any guideline furnished by Buyer or agreed upon in any Purchase Agreement or other document.

5.2.2 Seller must ensure that its quality assurance system is registered to ISO 9001:2008 or ISO/TS 16949:2009 or AS9100 Rev C, as modified from time to time, or similar standards applicable to the Goods as specified by Buyer. Seller acknowledges that Buyer is ISO/TS 16949:2009 and AS9100 Rev C registered and will take actions reasonably requested by Buyer to assist Buyer in maintaining its registration. Buyer and its customers have the right during reasonable business hours and upon prior written notice to inspect the Seller's facilities and to perform quality audits with respect to the Goods provided. A positive outcome of Buyer's verification under Section 5.1 above or a compliance audit or implementation of any quality recommendations will not relieve Seller of any liability under this Agreement.

5.2.3 Seller will maintain an environment management system certified according to ISO 14001 or a comparable environment management system.

5.3 Inspection and Rejection. Buyer will have the right to inspect any Goods after delivery and before acceptance and reject any Goods that are non-conforming in whole or in part. Seller will not replace Goods rejected by Buyer as non-conforming unless directed by Buyer to do so. Non-conforming Goods will be held by Buyer for disposition in accordance with Seller's instructions, and at Seller's cost, for three (3) days after notification of rejection, or such shorter period as may be commercially reasonable under the circumstances. If Seller fails to provide timely disposition instructions, Buyer may, at its option, charge Seller for storage and handling or dispose of such Goods without liability. Payment for non-conforming Goods will not constitute an acceptance or impair, limit or otherwise restrict Buyer's right to claim any legal or equitable right, nor will it relieve Seller of any responsibility or liability for defects or breach of warranty that are discovered after delivery, payment, or acceptance.

5.4 Quality Audits. During the Warranty Period (as defined in Section 10.7), Seller will audit the Goods upon written request by Buyer to ensure that they conform to the warranties, specifications, and any other requirements of Buyer.

5.5 Buyer's Standards. Seller will comply with all requirements, procedures, rules, policies, and standards of Buyer, including Buyer's Supplier Code of Conduct, that are available on [www.scoutmotors.com](http://www.scoutmotors.com) or otherwise disclosed to Seller in writing from time to time and are applicable to Seller's performance under the Contract. Buyer

5.6 Open Source Components. Seller represents and warrants that (i) any use hereunder of Open Source Components that are integrated or bundled with the Work Product will not violate the terms and conditions of the applicable open source license; and (ii) no Copyleft Materials have been incorporated into any Work Product in a manner that triggers an obligation, with respect to the Work Product, to (a) disclose or distribute any source code; (b) license for the purpose of making derivative works; or (c) redistribute at no charge. Seller will, upon request by Buyer, identify and describe each of the Open Source Components that are integrated or bundled with the Work Product, and provide Seller a complete copy of the source code for each such Open Source Component in accordance with the terms of the corresponding controlling open source license.

## 6. SHIPPING, PACKING, CUSTOMS, AND TAXES

6.1 Shipping, Risk of Loss, and Title. Unless otherwise stated in the Contract, Seller will ship Goods DDP (Incoterms 2020) Buyer's designated facility. Shipping, including carriage, will be arranged by Seller. Title and risk of loss will pass to Buyer upon delivery to Buyer's facility. Premium shipping expenses necessary to meet delivery schedules under the Contract are Seller's sole responsibility except to the extent caused by Buyer. Buyer will not be required to pay for Goods delivered to Buyer that are in excess of firm quantities and delivery schedules specified in the Contract. Shipments in excess of those authorized by Buyer may be returned to Seller at Seller's expense, and Buyer may debit Seller for the cost of such returns. Buyer may change shipping schedules or direct temporary suspension of such scheduled shipments, neither of which will entitle Seller to a modification of the price. Buyer may reschedule delivery of any Goods up to one hundred twenty (120) days past the delivery date without liability.

6.2 Shipping Delays by Seller. If any shipping delay exceeds four (4) weeks Buyer: (a) may reject the Goods in whole or in part, without affecting Buyer's other remedies, in which case Seller will promptly: (i) refund to Buyer all payments of the purchase price less the reasonable market value of any portion of the Goods retained by Buyer within seven (7) calendar days of Buyer's notice of termination; (ii) arrange to dismantle, pack, and pick up the Goods from Buyer's plant, at Seller's sole expense, within fourteen (14) calendar days of Buyer's notice of termination; and (iii) if Seller fails to recover the Goods within the foregoing timeframe, reimburse Buyer's costs and expenses to dismantle, package, transport and store such items until Seller recovers them (including charges for time spent by Buyer personnel); or (b) complete the Goods on its own in accordance with Section 22.9 (Right to Finish Goods) below, in which case Seller will reimburse all costs and expenses incurred by Buyer (including costs for time spent by Buyer personnel) to complete such work in accordance with the Schedule.

6.3 Packing. Seller represents and warrants that the Goods will be properly packed, prepared, secured, loaded, unloaded, marked, handled, stowed, shipped, and transported in accordance with applicable law and Buyer's instructions (or in the absence of such instructions, in accordance with industry standards). Unless designated by Buyer under the Contract, Seller will select transportation methods and carriers using reasonable care. For international shipments, all wooden packaging will be properly heat treated with IPPC stamp applied, and Seller will deliver the IPPC certificate to Buyer upon request. Buyer may specify the method of transportation and the type and number of packing slips and other documents to be provided with each shipment. Seller will reimburse Buyer for all expenses, including damage to the Goods, incurred due to Seller's failure to comply with this Section. Unless otherwise provided in the Contract, any charges or costs related to the handling, packaging, storage, or transportation of the Goods are the responsibility of the Seller and have been included in the price of the Goods.



6.4 Customs; Certificate of Origin. Trade and export credits, and refunds of duties (including duty drawback), taxes, and fees belong to Buyer. Seller will provide (a) all documents, information, and certificates necessary for Buyer to receive the credits and benefits; (b) all certificates of origin (including FTA and USMCA certificates) and the value added in each country; (c) all required export licenses and authorizations; (d) all other required export, import, customs, and trade preference documents; and (e) any other documents reasonably requested by Buyer in relation to the foregoing. Seller agrees to notify Buyer in writing of any Goods or Services which are subject to United States or any other country's import or export laws, and of any changes, including to local, state, or FTA or USMCA content, which in each case are subject to Buyer's approval. Seller will comply with all applicable regulations. Seller will indemnify Buyer and Buyer's Affiliates against all losses, costs, or damages (including any fines or penalties) resulting directly or indirectly from Seller's delay in furnishing the certificates or other information to Buyer and from any errors or omissions contained in those certificates and from any failure by Seller to comply with the regulations.

6.5 Taxes. Unless otherwise stated in the Contract or prohibited by law, Seller will pay all federal, state, local, transportation, and other taxes, including customs duties and tariffs which arise from the sale of the Goods or rendering of the Services. Unless Buyer has furnished Seller with an applicable exemption certificate, Buyer will pay Seller any applicable sales, excise, use or other taxes imposed by any federal, state, local, or foreign government that directly arise from the sale of the Goods or the rendering of the Services and that Seller is responsible by law to collect from Buyer. All other taxes for which Buyer is responsible under the Agreement will be submitted in an invoice to Buyer. Seller will provide Buyer with documents required to obtain any applicable exemption, credit, rebate, remission, refund, reduction, or other relief from taxes or foreign tax credit, and other documents applicable to the Parties' performance under the Agreement and reasonably requested by Buyer such as W-9 Forms and similar documentation. Buyer is authorized to deduct or withhold from each payment to Seller all taxes which Buyer is required by law to deduct or withhold. Seller will timely comply with all applicable taxing statutes and will provide written proof of such compliance upon Buyer's request. If Seller qualifies for a sales tax exemption, Seller must include a description of the Goods or Services subject to the exemption and the assigned serial certificate number extended to Buyer. Seller will indemnify, defend, and hold harmless Buyer for any amounts assessed against Buyer arising from Seller's failure to so comply.

## 7. **PRICE, INVOICES, AND PAYMENT TERMS**

7.1 Price. Buyer will pay Seller the purchase price set forth in the Agreement, which represents the total amount due to Seller for the Goods and Services under the Agreement. The price listed in the Agreement, including the Purchase Order (a) is fixed and not subject to increase for any reason (including any increases in raw material or component costs, foreign exchange rates, labor, production, or other supply costs), unless specifically agreed to by Buyer in writing; (b) includes all shipping (subject to the Incoterms), storage, packaging, crating, labeling, and all other expenses and charges; and (c) includes all customs, duties and all applicable taxes. Unless otherwise set forth in the Agreement, all travel undertaken by Seller or its Representatives will be at Seller's expense. If Buyer elects to use returnable packaging, any charges for non-returnable packaging will be deducted from the price. Seller represents and warrants that the price in the Purchase Order is the total price to be charged to Buyer for the applicable Goods or Services, and no additional charges of any sort may be added without Buyer's express written consent.

7.2 Competitive Pricing. Seller will ensure that the price charged to Buyer will not exceed the price charged to any other customer of Seller for similar Goods or Services and that the price charged to

Buyer remains competitive with the price for similar Goods or Services available to Buyer from other sellers.

7.3 Invoices. Seller will issue invoices only after delivery of the Services and/or Goods to Buyer. Each invoice must be accompanied by a bill of lading along with appropriate shipment tracking information. The invoices must be itemized in English and include the Purchase Order number, a description of the Goods and/or Services provided, the quantity of Goods in the shipment, number of cartons or containers, bill of lading number, the price, net weights, country of origin, Seller's name and address, consignee name and address, delivery name and address, currency, and any other information required by Buyer or otherwise necessary for identification of the Goods delivered or Services provided.

7.4 Payment. Buyer will pay any undisputed amount set forth in a properly submitted invoice Net sixty (60) days after Buyer's receipt of Seller's conforming invoice. Buyer may withhold payment for any charges that Buyer disputes in good faith. Unless otherwise specified in the Contract, payments will be made in U.S. Dollars. Payment may be made by bank or wire transfer or check and is deemed to be made on the date Buyer's check is mailed or funds transfer is initiated. Buyer's payment of any invoice will not be deemed to be acceptance of the Goods or Services, and Buyer's acceptance of the Goods or Services will not be construed as evidence that they, in fact, conform to the requirements of the Contract, or as a waiver of Seller's warranty obligations.

7.5 Setoff. In addition to any right of setoff or recoupment provided by law, Buyer may set off and recoup against its accounts payable to Seller any amounts for which Seller or Seller's Affiliate is liable to Buyer under any Agreement or agreement with Seller or Seller's Affiliate.

## 8. ACCEPTANCE TESTING

8.1 Preliminary Acceptance. If acceptance testing is applicable to the Goods ordered, Seller will give prompt written notice to Buyer when the Goods are ready for initial inspection, evaluation, and testing for purposes of identifying any non-conformities or defects and confirming Seller's compliance with all preliminary acceptance requirements as set forth in the Agreement (such activities are collectively referred to as "Preliminary Acceptance Testing"). Unless expressly agreed otherwise by the parties in the Agreement, Preliminary Acceptance Testing will take place at Seller's manufacturing location or other place of origin and will involve trial operation of the Goods by Buyer and Seller. Notwithstanding the foregoing, Buyer and Seller may mutually agree in the Agreement or through a Change Order to conduct Preliminary Acceptance Testing at Buyer's facilities and may extend the timeframe as reasonably necessary. Buyer will notify Seller in writing upon completion of the Preliminary Acceptance Testing and state whether Buyer identified any non-conformities or defects in the Goods. If Buyer identifies any non-conformities or defects in the Goods during the Preliminary Acceptance Testing, Buyer will give notice of such issues to Seller and Seller will promptly (and, unless agreed otherwise in writing by both parties, within ten (10) calendar days after the date of Buyer's notice), at no additional charge to Buyer, correct such issue(s) and notify Buyer when the Goods are ready for additional Preliminary Acceptance Testing. The foregoing process will repeat until Buyer gives notice that it has not identified any non-conformities or defects in the Goods. If Seller fails to meet the timing requirements of the Agreement due to on-going work by Seller required to achieve Preliminary Acceptance, Seller will owe liquidated damages for such delay pursuant to Section 4. (Liquidated Damages) above. If Buyer does not identify any non-conformities or defects, Buyer's written notice will be referred to as "Preliminary Acceptance." For the avoidance of doubt, Preliminary Acceptance will not be deemed to be Final Acceptance of the Goods, and Buyer may

later identify any non-conformities or defects in the Goods during the Final Acceptance Testing (defined below).

8.2 Final Acceptance. After receipt of Preliminary Acceptance from Buyer, Seller will promptly take the steps required to prepare the Goods for Final Acceptance Testing (including, as applicable, packaging, shipment, delivery, installation, configuration, and other requirements of the Agreement). When the Goods are ready for Final Acceptance Testing at Buyer's facilities and Seller has provided all Goods as required under the Agreement, Seller and Buyer will promptly inspect, evaluate and test the Goods for purposes of confirming that: (a) the Goods (i) are complete, (ii) are conforming and non-defective, (iii) operates in accordance with the specifications (including Buyer's output and availability requirements), (iv) are capable of completing a performance run of production-ready parts with the applicable availability requirements; and (b) Seller has provided and performed all Goods in accordance with the Agreement (such activities are collectively referred to as "Final Acceptance Testing"). Unless expressly agreed otherwise in the Agreement, the Goods must achieve 99% availability over a period of fourteen (14) consecutive production days over two (2) consecutive eight-hour shifts per day. Buyer's obligation to conduct Final Acceptance Testing will be contingent on Seller's provision and (if applicable) installation of all Goods in accordance with the Agreement. If and to the extent any Goods are delivered or installed earlier or later than scheduled, the timeframe for Final Acceptance Testing will be extended as reasonably necessary to accommodate the availability of any required Buyer personnel. If Buyer determines during the Final Acceptance Testing that there are any deficiencies, non-conformities or defects in the Goods, Buyer will notify Seller in writing of the issue(s), and Seller will, at no additional charge to Buyer, promptly (and, unless agreed otherwise in writing by both Parties, within ten (10) calendar days after the date of Buyer's notice) correct any such issue(s). The foregoing process will repeat until satisfactory completion of Final Acceptance Testing and Buyer's delivery of written notice that the Goods have been delivered and meet Buyer's reasonable requirements and the requirements of the Agreement. The parties will then jointly execute a certificate of final acceptance, at which point the Goods will be deemed to have achieved "Final Acceptance." If, at any time, Buyer determines that the Goods will not be able to achieve Final Acceptance, Buyer may terminate this Agreement in whole or in part for material breach.

## 9. CONFIDENTIALITY

9.1 Existing NDA. If an applicable non-disclosure agreement ("NDA") exists between Buyer and Seller, in the event of any conflict with these Terms and Conditions, these Terms and Conditions will prevail.

### 9.2 Confidentiality Obligations.

9.2.1 Disclosure and use restrictions. The Parties agree that the Receiving Party will, and will ensure that its Representatives, (i) use the Confidential Information solely for the purpose of performing such Party's obligations under the Agreement ("**Authorized Purpose**"); (ii) restrict disclosure of the Confidential Information only to the Receiving Party's Representatives who need to know the Confidential Information for the Authorized Purpose and who, prior to disclosure, (a) are informed of the confidential nature of the information and (b) have agreed to a duty of confidentiality to the Receiving Party no less restrictive than the terms of the Agreement; (iii) be responsible for any breach of the confidentiality obligations of the Agreement by its Representatives; (iv) protect the Disclosing Party's Confidential Information using the same degree of care as it uses to protect its own information of similar nature, but no less than reasonable care; and (v) promptly notify the Disclosing Party of the discovery of Receiving Party's unauthorized use or disclosure of the Confidential Information.

9.2.2 Legally Required Disclosure. Nothing contained herein will be deemed to prevent the disclosure of any Confidential Information if, in the written opinion of counsel to the Receiving Party, such disclosure is legally required to be made in a judicial, administrative, or governmental proceeding; provided, however, that before making any such disclosure, the Receiving Party will provide the Disclosing Party with prompt written notice (to the extent legally permissible) of each such proceeding so that the Disclosing Party may seek an appropriate protective order or other appropriate remedy. In the event that such protective order or other remedy is not obtained, the Receiving Party may furnish that portion (and only that portion) of the Confidential Information which it is legally compelled to disclose and will exercise reasonable efforts to obtain reliable assurance that confidential treatment will be accorded to any Confidential Information so furnished.

9.2.3 Return or Destruction. Upon any request from the Disclosing Party, the Receiving Party will, and will cause its Representatives to, return or destroy the Confidential Information in the Receiving Party's or its Representatives' possession or control, and provide written certification to the Disclosing Party that all such Confidential Information has been returned or destroyed within ten (10) days of the Disclosing Party's request. Notwithstanding the foregoing, the Receiving Party may retain one (1) copy of the Confidential Information for archival purposes only, provided that such Confidential Information will remain subject to the provisions of this Section 9 for as long as such Confidential Information is retained.

9.2.4 Injunctive Relief. Because Confidential Information is valuable and unique and the breach of either Party's confidentiality obligations may cause the other Party to suffer irreparable harm in an amount not easily ascertained, any such breach, whether threatened or actual, will give the non-breaching Party the right to seek equitable relief to enjoin or restrain the disclosure or use of such Confidential Information.

9.2.5 Confidentiality Period; Ownership. The provisions of this Section 8 will survive the termination or expiration of the Agreement and continue for five (5) years from the later of the disclosure of the Confidential Information or the date of termination or expiration of the Agreement; provided that each Party agrees to maintain indefinitely the confidentiality of any trade secret of the other Party. Unless otherwise agreed to herein, all right, title and interest, including all Intellectual Property Rights, in the Confidential Information will remain the property of the Disclosing Party.

## 10. REPRESENTATIONS AND WARRANTIES

10.1 General Warranties. Seller represents and warrants to Buyer that Seller: (a) is duly qualified to do business and is in good standing in every jurisdiction in which such qualification is required for purposes of the Agreement; and (b) has the authority and ability to enter into, perform the obligations under, and agree to the covenants contained in the Agreement, and to grant the rights and licenses granted under the Agreement.

10.2 Goods Warranties. In addition to any warranties set forth in the Agreement, and any warranties implied or provided by law, Seller, on behalf of itself and its Representatives, represents and warrants to Buyer and its customers, successors, and assigns that the Goods provided under the Agreement will: (a) not infringe or misappropriate any Intellectual Property Right of any third party, either on its own or in combination with any reasonably foreseeable goods, services, or software; (b) strictly conform to and operate in accordance with the applicable Specifications; (c) strictly conform to all drawings, samples, and other descriptions furnished or relied upon by Buyer or otherwise part of the Agreement; (d) be

merchantable, free from defects in design (except to the extent designed by Buyer without input from Seller), material, and workmanship, and will be new and meet or exceed the quality standards specified by Buyer; (e) be fit for the purpose for which they are intended and safe for any use that is consistent with the applicable Specifications or that is reasonably foreseeable; (f) be free and clear of all liens, claims, or other encumbrances, and conveyed to Buyer with good title; and (g) comply with all applicable laws, regulations, and standards.

10.3 Services Warranties. In addition to any warranties set forth in the Agreement, and any warranties implied or provided by law, Seller, on behalf of itself and its Representatives, represents and warrants to Buyer and its customers, successors, and assigns that the Services provided under the Agreement will: (a) be performed in a professional and workmanlike manner, using qualified Representatives with the required skill, experience, and qualifications to meet Seller's obligations under the Agreement, consistent with all standards and specifications established by Buyer or if none are provided consistent with industry standards; (b) not infringe or misappropriate any Intellectual Property Rights of any third party; and (c) comply with all applicable laws, regulations, and standards.

10.4 Additional Warranties. Without limiting the foregoing, Seller represents and warrants to Buyer and its customers, successors, and assigns that Seller and its Representatives: (a) will not utilize slave, child, prisoner, or any other form of forced, involuntary, or illegal labor, or engage in abusive worker treatment or corrupt business practices; (b) are licensed and permitted and will comply with all applicable laws, regulations, and standards; and (c) are not Specially Designated Nationals and will not employ or subcontract any person who is a Specially Designated National, as defined from time to time by the Office of Foreign Asset Control of the United States Department of the Treasury. Seller will certify Seller's and its Representatives' compliance with the foregoing upon Buyer's request.

10.5 Future Performance. All warranties of Seller extend to future performance of the Goods and are not modified, waived, or discharged by delivery, inspection, tests, acceptance, and payment. Buyer's approval of any design, drawing, material, process, or specifications will not relieve Seller of these representations and warranties. The warranties under the Agreement are in addition to any warranties express or implied by law or equity or otherwise made by Seller.

10.6 Notice. Seller will immediately notify Buyer in writing if Seller breaches, or has reason to believe that it will breach, any representation, warranty, or other obligation of Seller under the Agreement.

10.7 Warranty Period. The warranty period for the warranties set forth in the Agreement is the longer of (a) four (4) years from delivery of the Goods and Services to Buyer; (b) the warranty period specified by Seller and Seller's documentation relating to the Goods and Services; and (c) the warranty period provided by applicable law. The Warranty Period for any defect or nonconformance with respect to parts that are repaired or replaced under warranty will begin anew on completion of the repairs or acceptance of the repaired or replaced parts.

10.8 Non-conformity. If Buyer determines that any Goods or Services are defective, damaged, or otherwise not in conformity, Buyer may reject the Goods or Services in whole or in part and in such case, Buyer will not be obligated for payment of the purchase price and may cancel the order in whole or in part without obligation or liability. Should Seller not make whole on promised Goods or Services or, if Buyer has already paid for the Goods or Services in question, Seller will, at Buyer's option, either: (i) replace or reprocess the Goods and Services, or (ii) reimburse Buyer for the purchase price of the Goods and Services. In either case, in addition to all other damages that Buyer is entitled to under the law, Seller

will pay for incidental and verifiable costs including, without limitation, Buyer's cost of repackaging, manufacturing, and transporting the defective Goods and Services or replacement Goods and Services to and from Buyer's facility.

10.9 No Buyer Warranty. ANY SPECIFICATIONS, STANDARDS, DRAWINGS, SAMPLES, DESCRIPTIONS, OR OTHER QUALITY OR OTHER REQUIREMENTS PROVIDED BY PURCHASER RELATING TO THE GOODS, SERVICES, AND ANY INTELLECTUAL PROPERTY, IS PROVIDED BY PURCHASER TO SELLER ON AN "AS-IS" BASIS, AND PURCHASER MAKES NO REPRESENTATIONS, WARRANTIES, OR COVENANTS WHATSOEVER, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR ANY OTHER WARRANTIES THAT MAY BE IMPLIED UNDER LAW, ALL OF WHICH ARE HEREBY EXPRESSLY DISCLAIMED.

## 11. SERVICE

11.1 Response Time. During the Warranty Period and at no additional cost to Buyer, Seller will make available to Buyer at least two service contact telephone numbers that will be available during Buyer's normal business hours and a 24-hour emergency telephone contact number. These numbers will put Buyer in contact with a competent service representative of Seller who can respond to basic inquiries regarding repairs and maintenance of the Goods. If the provided emergency contact number is limited to an automated or answering service, response time to Buyer by a competent service representative will be no more than 60 minutes from the time Buyer places the call. At no additional cost to Buyer, Seller's support personnel will be sent to Buyer's plant if (a) Buyer maintenance/engineering personnel have been unable to resolve the problem, and (b) troubleshooting with Seller's service personnel via telephone has not led to the Goods being returned to service (in Buyer's judgment, i.e., producing parts that are acceptable to Buyer) and within the specifications. From delivery of the Goods to Buyer's plant until six months after successful achievement of Final Acceptance and at no additional cost to Buyer, Seller will maintain availability of such personnel for dedicated on-site support at Buyer's plant 24 hours per day/ seven days per week. For the remainder of the Warranty Period, Seller's support personnel must be onsite within (i) 36 hours of Buyer's notification if traveling between continents, or (ii) 24 hours of Buyer's notification if traveling within a single continent. Throughout the Warranty Period, Seller must also provide Spares onsite within 24 hours of Buyer's notification, as requested by Buyer or as required to repair or maintain the Goods. If the problem remains unresolved 24 hours after Seller's service personnel arrive at Buyer's plant, Seller will, at no additional cost to Buyer dispatch additional personnel and other appropriate resources within eight hours of Buyer's request.

## 12. REMEDIES

12.1 Rejection of Goods. In addition to Buyer's other rights under the Agreement, the Uniform Commercial Code, and any other applicable law, Buyer has the right to reject Goods as non-conforming or defective, and at Buyer's option, Buyer may: (a) retain the non-conforming or defective Goods in whole or in part with an appropriate adjustment in the price for the Goods; (b) require Seller to repair or replace the non-conforming or defective Goods within twenty-four (24) hours of Buyer's notice thereof, at Seller's sole expense, including all shipping, transportation, and installation costs; and/or (c) correct or replace the non-conforming or defective Goods with similar items and recover all costs relating thereto from Seller.

12.2 Rejection of Services. In the event of any deficiencies in the Services, Buyer has the right to take remedial steps and is entitled to, at Buyer's option: (a) Seller's re-performance of the deficient

portion of the Services, or (b) a reduction to the price or refund for the deficient portion of the Services, provided that such steps will be in addition to, and not in exclusion of, any other rights or remedies of Buyer under the Agreement or at law or in equity.

12.3 Late Delivery. If Seller cannot meet a delivery date, or a quantity or quality requirement under the Agreement, or indicates it will not meet a future delivery date, Seller will promptly notify Buyer and:

12.3.1 Buyer may, at its option: (a) cancel all or any part of the Agreement without liability to Seller in accordance with Section 22.2.1 (Termination for Seller's Default); (b) require Seller to deliver the Goods using priority freight delivery with incremental freight charges at Seller's expense; and/or (c) perform the Services that were to have been performed by Seller using additional labor, at Seller's expense;

12.3.2 if the provisions of Section 12.3.1 alone or together, are insufficient to meet Buyer's requirements or if Seller will be unable to comply with such provisions (as determined by Buyer in its sole discretion), Buyer may purchase substitute goods and procure alternative services from an alternative supplier and hold Seller accountable for the difference between the price of the Goods or Services under the Agreement and the price paid by Buyer for substitute goods or services, if higher, including amounts charged for shipping, insurance, handling, and any taxes or duties, and other costs incurred by Buyer; or

12.3.3 if the provisions in Section 12.3.1 and Section 12.3.2 alone or together, are insufficient to meet Buyer's requirements, or if Seller will be unable to comply with such provisions (as determined by Buyer in its sole discretion), Seller's default will subject Buyer to irreparable and continuing injury for which remedies at law would be inadequate and, accordingly, Buyer will have the right to apply at any time to a judicial authority for appropriate injunctive relief (or other interim or conservatory measures), including, as applicable, the exercise of the rights set forth in Section 2-716 of the Uniform Commercial Code and/or as otherwise available at law or in equity. Seller acknowledges and agrees that injunctive relief consistent with the terms of this Section is an appropriate remedy for Seller's default and will not oppose the granting of such relief on the basis that Buyer has an adequate remedy at law.

12.4 Other Remedies. The rights and remedies reserved to Buyer will be cumulative with and in addition to all other legal or equitable remedies. Seller will reimburse Buyer for any incidental, consequential, and other damages arising out of Seller's breach of the Agreement, including costs, expenses, reasonable attorneys' fees, and losses incurred by Buyer: (a) in inspecting, sorting, storing, reworking, repairing, or replacing nonconforming Goods or Services; (b) resulting from production interruptions; and (c) resulting from personal injury (including death) or property damage. Because the breach of Seller's obligations, whether threatened or actual, may cause Buyer to suffer irreparable harm, Buyer will have the right to apply at any time to a judicial authority for appropriate injunctive relief (or other interim or conservatory measures), including, as applicable, the exercise of the rights set forth in Section 2-716 of the Uniform Commercial Code and/or as otherwise available at law or in equity.

## 13. **CHANGES**

13.1 Buyer Change Requests. Buyer may direct in writing that revisions be made with respect to the Goods or Services set forth in this Agreement, and Seller will promptly make those revisions, provided that if the change directed by Buyer affects the cost or time of performance, Seller must provide

Buyer a written notice of a claim for adjustment and a revised quotation, along with supporting information and documentation regarding the effect on cost and time of performance resulting from such change within five (5) business days after Seller's receipt of the change directed by Buyer and before Seller's implementation of the change. Buyer, in its sole and reasonable discretion, may agree to an equitable adjustment (up or down) to the cost or the time of performance. Buyer will issue a Purchase Order to Seller reflecting any such equitable adjustment.

13.2 Seller Changes. Seller may not make any changes to the Goods or Services without the Buyer's prior written approval on the face of a Purchase Order amendment, including changing (a) the price under the Agreement; (b) a third party supplier of raw materials, goods, or services; (c) the facility from which Seller operates; or (d) the production method, process, or software used in the production or provision of the Goods or Services under the Agreement.

13.3 Beneficial Changes. If Seller learns of any possible change to the Goods or Services that may reduce the costs to perform under the Agreement, improve the quality of the Goods or Services, or that may otherwise be beneficial to Buyer, Seller will promptly inform Buyer of the same in writing.

14. Audits. To verify Seller's compliance with the Agreement or to validate Seller's performance or ability to perform under the Agreement, Seller will allow Buyer and its Representatives access to Seller's facility and to audit Seller's books, records, and other information relating to the Agreement at any reasonable time upon Buyer's request. Seller will reasonably cooperate and comply with any such audit or access requests of Buyer or its Representatives. Seller will maintain its books, records, and other information relating to the Agreement for at least five years after the Termination Date unless a longer period is required under the Agreement or by law. Buyer further reserves the right to audit, at any time, the qualifications and performance of any Representatives of Seller and at Buyer's request, the Parties will review the performance of any subcontractor.

## 15. INDEMNIFICATION

15.1 Indemnification. Seller will indemnify, defend, and hold harmless Buyer and its Affiliates, successors, and assigns, and their directors, officers, employees, and shareholders (collectively, "**Buyer Indemnitee**") from and against any and all claims, costs, demands, losses, damages, liabilities, causes of action, judgments, settlements, awards, fines, penalties, assessments, and expenses, including reasonable attorneys' and experts' fees (collectively, "**Claims**"), incurred by the Buyer Indemnitee or brought by a third party which arise from or relate to: (a) Seller's noncompliance or breach of any representation, warranty, or obligation of Seller under the Agreement; (b) liens, encumbrances, and payment and other Claims relating in any manner to the Goods and Services which are asserted by Seller, its Representatives, or anyone engaged by any of them or for anyone for whose acts they may be responsible; (c) any infringement, misappropriation, or other violation of any Intellectual Property Right relating to any Goods or Services or any portion thereof; (d) the acts or omissions of Seller and its Representatives and their respective officers, directors, managers, shareholders, members, employees, subcontractors, agents, or representatives; (e) Claims by Seller or its Representatives relating to any benefits normally associated with employment at Buyer; or (f) any personal injury Claim, including death or injury, or damage to property, caused by or attributable to the performance of Seller or its Representatives. Seller's indemnification obligations will apply regardless of whether the Claim arises in tort, negligence, contract, warranty, strict liability or otherwise.



15.2 Procedures. The Buyer Indemnatee will have the right to determine who controls the defense in any negotiations or legal proceedings pertaining to a Claim in such manner as they may deem appropriate, at Seller's cost and expense. If the Buyer Indemnatee elects to control its own defense and permit Seller to control its own defense, both Parties may select its own legal counsel and experts; however, Seller will reimburse Buyer on a monthly basis for all reasonable attorneys' fees, expenses, and other costs incurred by Buyer and to the extent possible permitted by the circumstances and ethical considerations, counsel for Seller and counsel for the Buyer Indemnatee will work together to avoid duplication of effort or expense, in attorney fees or otherwise. In addition, Seller and the Buyer Indemnatee will make good faith efforts to coordinate their activities so as to take consistent positions in the course of negotiations or legal proceedings. If Seller controls the defense, Seller will timely provide to Buyer all information with respect to such defense, compromise, or settlement as Buyer may request. Seller will not assume any position or take any action in connection with such defense, compromise or settlement that would impose an obligation of any kind on, or restrict the actions of, Buyer. Seller will obtain the prior approval from Buyer of any proposed settlement of any Claims before entering into any settlement of such Claims or ceasing to defend such Claims.

15.3 Intellectual Property Claims. In addition to the indemnification obligations set forth above and Seller's other obligations under the Agreement, if a Good or Service becomes, or in Seller's reasonable opinion is likely to become, the subject of a Claim of infringement, misappropriation, or other violation of any Intellectual Property Right, Seller will, at its sole expense, and at Buyer's option: (a) procure for Buyer the right to use the alleged infringing Good or Service; (b) promptly replace or modify the alleged infringing Good or Service to make it non-infringing, provided that the modified Good or Service meets all requirements under the Agreement; and/or (c) remove the alleged infringing Good or Service and refund the price (including transportation costs) paid by Buyer to Seller.

16. **LIMITAION OF LIABILITY. PURCHASER WILL NOT, UNDER ANY CIRCUMSTANCES, BE LIABLE TO SELLER FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL, EXEMPLARY, OR STATUTORY DAMAGES IN CONNECTION WITH THE CONTRACT, INCLUDING BUT NOT LIMITED TO ANTICIPATED OR LOST PROFITS OR LOSS OF BUSINESS, WHETHER BASED UPON CONTRACT, TORT OR ANY OTHER LEGAL THEORY, EVEN IF PURCHASER IS APPRISED OF THE LIKELIHOOD OF SUCH DAMAGES.**

17. **LIMITAION ON CLAIMS.** Any legal action by Seller under the Agreement must be commenced no later than one (1) year after the breach or occurrence of the event giving rise to Seller's claim, regardless of Seller's lack of knowledge of the breach or event giving rise to the claim.

18. **FORCE MAJEURE**

18.1 Any delay or failure of either Party to perform its obligations will be excused if it is caused by an extraordinary and unforeseeable event beyond the nonperforming party's control and without its fault or negligence, which could not be prevented or cannot be reasonably circumvented through the use of alternate sources, workaroud plans, or other means, such as: acts of God; government actions; pandemics; embargoes; floods; earthquakes; explosions; natural disasters; riots; wars; and sabotage. Within one business day of such event, Seller will provide written notice to Buyer describing the force majeure event and the anticipated duration of the delay. Seller will use its best efforts to reduce the effects of the event on Seller's performance of its obligations. During any delay or failure to perform by Seller, Buyer may at its option purchase Goods or Services from other sources and reduce its schedules to Seller by such quantities, without liability to Seller, and may require Seller to deliver to Buyer in accordance with the terms of the

Contract all finished Goods, work in process, and parts and materials produced or acquired for work under the Agreement. If Seller's delay lasts longer than thirty days, or Seller does not provide adequate assurance that the delay will cease within such thirty days, Buyer may immediately terminate the Agreement, in whole or in part, without liability. Seller acknowledges and agrees that the following will not excuse Seller's performance under theories of force majeure, commercial impracticability, or otherwise, and Seller assumes these risks, including: (i) change in cost or availability of materials, components, or services based on market conditions; and (ii) supplier actions, contract disputes, or any labor strike or other labor disruption. Upon notice to Seller, Buyer may cancel the Agreement, in whole or in part, at any time before delivery or performance if its business is interrupted by an extraordinary and unforeseeable event beyond Buyer's reasonable control.

## 19. INSURANCE

19.1 During the term of each Agreement and for a period of three (3) years after the termination or expiration of any applicable Agreement, Seller will maintain in force, and cause its subcontractors to maintain in force, at its own expense, the following types and amounts of insurance:

19.1.1 "All Risk" property insurance to cover Goods or Services while housed in the facilities of Seller and its Representatives, and in transit to the delivery location identified in the Agreement, with minimum coverage equal to the greater of (a) \$5,000,000 and (b) the full replacement value of the Goods or Services (including additional storage, clean-up costs, salvage, security, expediting or additional transportation fees). Seller and its subcontractors will name Buyer as loss payee and additional insured with respect;

19.1.2 Statutory workers' compensation insurance in accordance with the legal requirements of each country, state, territory, or locality exercising jurisdiction over the Seller's Representatives performing under the Agreement in such country, state, territory, or locality;

19.1.3 Employer's liability insurance with a minimum limit in an amount not less than \$1,000,000 per accident, covering bodily injury by accident, and \$1,000,000 per occurrence covering bodily injury by disease, including death;

19.1.4 Comprehensive commercial general liability insurance (written on an occurrence basis and including contractual liability and products and completed operations liability insurance) in an amount not less than \$5,000,000 per occurrence. Seller will name Buyer and its subcontractors as additional insured with respect to its interest in the Goods or Services;

19.1.5 Comprehensive automobile liability insurance for owned, hired, or non-owned vehicles with a combined single limit in an amount not less than \$5,000,000 per accident for bodily injury and property damage liability. Seller will name Buyer and its subcontractors as additional insured;

19.1.6 Professional Liability or Errors and Omissions insurance, with a per claim limit equal to the greater of (a) \$2,000,000 and (b) the value of the applicable Agreement(s) in the annual aggregate;

19.1.7 Employee fidelity bond with third party liability endorsement, or Buyer added as loss payee, in an amount not less than \$500,000;

19.1.8 Umbrella/excess liability (written on an occurrence basis) insurance, with per occurrence coverage equal to the greater of (a) \$10,000,000, and (b) the value of the applicable Agreement. Buyer and its Representatives will be named as additional insureds;

19.1.9 Cybersecurity liability insurance, with coverage of not less than \$5,000,000; and

19.2 Seller will ensure that all policies described above will be written by insurance companies rated at least A-:VII by A.M. Best's rating service or equivalent. The required insurance will provide primary and non-contributory coverage to Buyer for claims arising out of or in connection with the Agreement.

19.3 Seller, for itself and its subcontractors, including their respective insurance carriers, hereby agrees to waive any right of subrogation and have no right of recovery from Buyer, its Representatives or its insurers. Seller, for itself and on behalf of its subcontractors, warrants that their respective insurance carriers grant them the right to agree to such advance waivers of subrogation. Seller represents that the required types and amounts of insurance required by this Section 19 are adequate to respond to all exposures to losses attributed to Seller and its Representatives. The required limits of insurance do not limit the indemnity and any other obligations of Seller under the Agreement. Seller acknowledges and agrees that it is financially responsible for its and its subcontractors' respective deductibles, retentions, self-insurance or co-insurance obligations, or claims or losses in excess of the required insurance coverage limits.

19.4 Insurance Documentation. Upon Buyer's request, Seller, and if applicable its subcontractors, will furnish to Buyer certificates of insurance and other appropriate documentation (including endorsements as required to bind the insurers) evidencing all coverage referenced in this Section 18. Such certificates or other documentation will include a provision under which the applicable insurer will give at least thirty (30) days' written notice to Buyer before limits or scopes of coverage are materially altered or insurance is cancelled or non-renewed. Seller also will require each subcontractor to furnish such certificates and other appropriate documentation to Buyer and that the certificates or other appropriate documentation include a provision under which the applicable insurer will give at least thirty (30) days' written notice to Buyer before limits or scopes of coverage are materially altered or insurance is cancelled or non-renewed. Seller will promptly advise Buyer in writing if it becomes aware that required limits or scopes of coverage are materially altered or that required insurance is cancelled or not renewed.

## 20. **BAILED PROPERTY**

20.1 Property Damage. Seller bears all responsibility for loss of and damage to any property owned by Buyer and in Seller's possession or control for use in performing under the Agreement, including responsibility for loss and damage that occur despite Seller's exercise of reasonable care. Seller will: (i) properly house and maintain such property on Seller's premises; (ii) prominently mark it property of Buyer; (iii) adequately insure such property against loss or damage; and (iv) refrain from commingling it with the property of Seller or with that of a third party.

20.2 Liens. Seller affirmatively waives any lien, whether based in statute or common law, that Seller might otherwise have on any Goods or Services or Buyer's property for work done thereon or otherwise. Seller will assign to Buyer any claims against third parties with respect to Buyer's property. Upon request, Seller will immediately deliver such property at Buyer's option DDP Buyer's premises, properly packed and marked in accordance with the requirements of the carrier and Buyer. Seller will

cooperate with Buyer's removal of the property from Seller's premises. Seller's cooperation with delivery and removal of Buyer property is not contingent on final payment.

## 21. INTELLECTUAL PROPERTY

21.1 Seller Background IP. As between Buyer and Seller, Seller is and will remain the sole and exclusive owner of all right, title, and interest in and to the Seller Background IP, including all Intellectual Property Rights relating thereto, subject only to the authorization and license granted to Buyer in this Section 21.1. Notwithstanding the foregoing, Seller hereby grants to Buyer and its Affiliates a non-exclusive, sublicensable, transferable, worldwide, perpetual, irrevocable, and royalty-free license to all Seller Background IP incorporated into the Work Product, as necessary or useful to make, have made, use, have used, distribute, display, modify, perform, repair, remanufacture, rebuild, offer to sell, sell, and import such Work Product and any derivative works thereof.

21.2 Buyer Background IP. As between Buyer and Seller, Buyer is and will remain the sole and exclusive owner of all right, title, and interest in and to the Buyer Background IP, including all Intellectual Property Rights relating thereto, subject only to the authorization and license granted to Seller in this Section 21.2. Buyer hereby grants to Seller a limited, revocable, fully paid-up, royalty-free, non-exclusive, and non-transferable right to use Buyer's Background IP, solely in connection with, and as necessary for, the performance of Seller's obligations under the Agreement.

21.3 Ownership of Foreground IP. Except for any Seller Background IP incorporated into Work Product, Buyer will own, and Seller hereby assigns to Buyer, all right, title and interest, including all Intellectual Property Rights, in and to all Work Product ("**Foreground IP**"). Seller further agrees, and will cause its Representatives to agree, that with respect to any Foreground IP that may qualify as "work made for hire" as defined in 17 U.S.C. §101, such Foreground IP is hereby deemed a "work made for hire" for Buyer. To the extent that any of the Foreground IP does not constitute a "work made for hire," Seller hereby irrevocably assigns, and will cause its Representatives to irrevocably assign to Buyer, in each case without additional consideration, all right, title, and interest throughout the world in and to the Foreground IP, including all Intellectual Property Rights therein. Seller will cause its Representatives to irrevocably waive, to the extent permitted by applicable Law, any and all claims such Representative may now or hereafter have in any jurisdiction to so-called "moral rights" or rights of droit moral with respect to the Foreground IP. Upon the reasonable request of Buyer, Seller will, and will cause its Representatives to, promptly take such further actions, including execution and delivery of all appropriate instruments of conveyance, as may be necessary to assist Buyer and its Affiliates to prosecute, register, perfect, or record its rights in or to any Foreground IP.

21.4 Third Party IP. Seller will not incorporate any third party's intellectual property into any Work Product unless Seller has obtained for Buyer a worldwide, perpetual, non-exclusive, royalty-free, fully transferable, fully paid-up license, with right to sublicense, permitting Buyer and its Affiliates to use, sublicense, and distribute such third party's intellectual property in the conduct of Buyer's business.

21.5 Marks. Neither Party will acquire, by reason of each Agreement, any right, title, or interest in or to the other Party's names, trade names, or trademarks.

## 22. TERM AND TERMINATION

22.1 Agreement Term. Unless otherwise stated in the Agreement, the term of the Agreement will begin on the earlier of (a) the date the Parties execute a written agreement, including a Purchase Agreement; (b) the date Seller accepts a Purchase Order issued by Buyer; or (c) the date the Parties begin cooperating in connection to Goods, Services, and/or Deliverables (the “**Effective Date**”) and end on the day which is one hundred and eighty (180) days after all Goods have been delivered and Services have been fully performed, unless extended or earlier terminated in accordance with the Agreement (the “**Termination Date**”).

### 22.2 Termination for Default.

22.2.1 Termination for Seller’s Default. Buyer may terminate all or any part of the Agreement without any liability to Seller, by providing written notice to Seller if Seller is in breach of the Agreement, including Seller’s warranty, and either the breach cannot be cured or, if the breach can be cured, it is not cured by Seller promptly and within thirty (30) days after Seller’s receipt of written notice of such breach; provided, however, Buyer may immediately terminate the Agreement, in whole or in part, by providing written notice to Seller if Seller repudiates, willfully breaches, or otherwise threatens to breach the Agreement, or if there is a reasonable likelihood that there will be an imminent interruption in Buyer’s operations, Seller fails to perform or deliver Goods or Services as specified by Buyer or fails to make progress so as to endanger timely and proper completion of the Goods or Services.

22.2.2 Termination for Buyer’s Default. Seller may terminate the Agreement upon sixty (60) days’ written notice to Buyer in the event of Buyer’s default for failing to pay two (2) consecutive and undisputed invoices when due, which default remains uncured sixty (60) days after Buyer’s receipt of written notice from Seller specifying the default. Seller has no right to terminate the Agreement except in accordance with this Section 22.2.2.

22.3 Termination for Insolvency. Buyer may immediately terminate all or any part of the Agreement if Seller (a) provides Buyer grounds for insecurity; (b) files for bankruptcy; (c) becomes or is declared insolvent or is the subject of any proceedings related to its liquidation, insolvency or the appointment of a receiver or similar officer for it; (d) makes an assignment for the benefit of all or substantially all of its creditors; (e) is unable to pay its debts generally as they come due; or (f) enters into an agreement for the composition, extension or readjustment of substantially all of its obligations, by giving written notice to Seller of Buyer’s intention to terminate the Agreement as of a date specified in the written notice, which date will not be less than ten (10) days after the date of the written notice, during which time Seller may cure such default by causing any such proceeding to be terminated or dismissed, or by providing Buyer with verification of solvency or otherwise of Seller’s ability to perform its obligations hereunder. If Seller fails to cause such proceeding to be terminated or dismissed or otherwise to provide Buyer with the information set forth above, the Agreement will terminate on the date set forth in Buyer’s written notice.

22.4 Termination For Convenience. Buyer may terminate all or any part of the Agreement at any time without cause upon thirty (30) days’ prior written notice to Seller.

### 22.5 Termination Obligations.

22.5.1 Upon expiration or receipt of written notice of termination of the Agreement for any reason, unless otherwise directed by Buyer, Seller will: (a) promptly terminate all work under the

Agreement on the effective date of termination or expiration; (b) verify and settle all claims by subcontractors for actual costs that are rendered unrecoverable by such termination; (c) if and to the extent requested by Buyer, transfer title and deliver to Buyer all Goods, work-in-process, supplies, parts and other materials produced as a part of or acquired in connection with the performance of the work terminated by the notice of termination; (d) if and to the extent requested by Buyer, deliver to Buyer the completed or partially-completed plans, drawings, information, documentation, media, software, and other property that, if the Agreement had been completed, would have been required to be furnished or delivered to Buyer; (e) refund to Buyer amounts paid to Seller for work that Seller did not substantially complete in accordance with the Agreement; (f) take actions reasonably necessary to protect property in Seller's possession in which Buyer has an interest; and (g) deliver to Buyer any remaining property of Buyer in Seller's possession.

22.5.2 Upon termination per Section 22.2.1 (Termination for Seller's Default) or Section 22.3 (Insolvency), Seller will not be entitled to any further payments by Buyer except for payment at the Purchase Order price for finished and conforming Goods and Services already delivered to Buyer before the effective date of termination.

22.5.3 Upon termination by Buyer under Section 22.4 (Termination for Convenience), Buyer will be obligated to pay only the following without duplication: (a) payment at the Purchase Order price for finished and conforming Goods and Services already delivered to Buyer before the effective date of termination; and (b) Seller's reasonable actual cost of useable and merchantable work in process and raw materials/parts transferred to Buyer per Section 22.8.

22.6 Except to the extent specifically provided in this Section 22, Buyer will not be liable for and will not be required to pay Seller in any circumstance, directly or on account of claims by Seller's subcontractors, for any other losses or costs, whether characterized as lost profits, lost fees, lost business, loss of use, costs associated with business interruptions, unabsorbed overhead, interest on claims, product development or engineering costs, facilities or equipment rearrangement costs or rental, exit charges, unamortized capital costs or expenditures, depreciation costs, work-in-process, raw materials, finished Goods that Seller fabricates or procures in amounts exceeding those authorized in firm releases under the Agreement, labor costs, general administrative burden costs from termination of the Agreement, or any other losses or costs unless otherwise expressly stated for the specific amount in a separate Purchase Order issued by Buyer before such losses or costs were incurred. Notwithstanding the foregoing, Buyer's obligation to Seller upon any termination will not exceed the obligation that Buyer would have otherwise had to Seller under the Agreement on the date of termination in the absence of termination.

22.7 Seller will furnish its termination claim, together with all supporting data, to Buyer within thirty (30) days after the termination date. All other claims under Section 22 are waived. Buyer may audit Seller's records before or after payment to verify amounts requested in Seller's termination claim.

22.8 Transition Support. Seller will provide transition support as reasonably requested by Buyer for a period of up to ninety (90) days after the effective expiration or termination of the Agreement for any reason to ensure there is no interruption in the supply of Goods or Services to Buyer.

22.9 Right to Finish Goods. If Buyer terminates the Agreement for Seller's default, Buyer may, without prejudice to any other right or remedy, take possession of the Goods and work-in-progress and finish the manufacture, installation and configuration by whatever method Buyer may deem expedient without waiving rights against Seller.

23. **PUBLICITY.** Seller will not use Buyer's name, trademarks, or service marks or refer to Buyer directly or indirectly in any media release, public announcement, or public disclosure relating to the Agreement or its subject matter without obtaining specific prior written consent from Buyer for each use or release, which consent may be withheld at Buyer's sole discretion. This restriction includes, but is not limited to, any promotional or marketing materials, customer lists, or business presentations. Seller will immediately take down or remove Buyer's name, trademarks, service marks, or other references to Buyer upon written request by Buyer, regardless of any previous specific written consent provided by Buyer for such use or release.

24. **NON-DISPARAGEMENT.** Seller will not, and will ensure that its Representatives do not, make or publish any disparaging or derogatory statements with respect to Buyer, its integrity, or its business or professional standing and reputation.

25. **NOTICES.** All notices, claims, demands, and other communications to Buyer under the Agreement must be in writing and sent by certified or registered mail, return receipt requested, and postage prepaid to the below address (or such other address provided by Buyer to Seller) and will be effective only upon receipt by Buyer in the form set forth in this Section 24.

If to Buyer: Scout Motors Inc., 1775 Tysons Blvd., 5th Floor, McLean, VA, 22102, Attn: VP, Supply Chain, with a copy to the General Counsel at the same address, and a copy to any business contact specified in any applicable Purchase Agreement or Purchase Order.

If to Seller: To Seller's address as may be set forth in any applicable Purchase Agreement.

26. **ASSIGNMENT.** Seller will not assign, delegate, or otherwise transfer the Agreement, or Seller's rights or obligations thereunder, in whole or in part, whether voluntarily, by operation of law, by corporate reorganization or a direct or indirect change of control without the prior written consent of Buyer, and any assignment or transfer in violation of the foregoing is null and void. Any consent by Buyer to an assignment will not be deemed to waive Buyer's right to recoupment from Seller and/or its assigns for any claims or damages arising out of the Agreement. Buyer may transfer or assign the Agreement in whole or in part to any third party upon notice to Seller. Subject to the foregoing, the Agreement is binding upon and will inure to the benefit of the Parties and their respective successors and assigns.

27. **SUBCONTRACTORS.** Seller must not subcontract any of its obligations under the Agreement without the prior written consent of Buyer. Any consent of Buyer will not release Seller from, or limit Seller's obligations under the Agreement, and Seller remains liable for all acts or omissions of such subcontractor. Seller warrants and guarantees that all subcontractors' performance will satisfy all obligations and requirements applicable to Seller under the Agreement.

28. **NO GUARANTEE OF FUTURE WORK.** The Parties acknowledge and agree that entering into these Terms and Conditions and any Agreement is not a guarantee of future work or of any minimum payment or volume commitment.

29. **INDEPENDENT AGREEMENT.** Seller and Buyer are independent contracting parties. The Agreement will not be construed as creating an employment, agency, partnership, or joint venture relationship, or as permitting a Party to incur obligations on behalf of the other Party, or as making either Party the agent or legal representative of the other Party for any purpose. Seller is not authorized to bind Buyer to any liability or obligation or to represent that Seller has any such authority.

30. **NON-SOLICITATION.** During the term of the Agreement and for an additional twelve (12) months thereafter, Seller will not, directly or indirectly through any third party: (a) induce or advise any employee or independent contractor of Buyer to leave the employ of or cease the engagement with Buyer; or (b) solicit for employment or engagement as an employee or independent contractor.
31. **WAIVER.** Any waiver by Buyer of a right or remedy will not affect Buyer's rights or remedies subsequently arising under the same or similar clauses. Failure or delay of Buyer to enforce the provisions of the Agreement or its rights or remedies is not to be construed as a waiver of Buyer's rights under the Agreement and does not in any way affect the validity of the Agreement or prejudice Buyer's right to take subsequent action.
32. **NO THIRD PARTY BENEFICIARIES.** Each Agreement is for the sole benefit of the Parties and is not intended to, and will not, confer any rights or benefits on any third party.
33. **MODIFICATION.** These Terms and Conditions may be amended from time to time by Buyer in its sole discretion, and such amendments will be posted on Buyer's website at [www.scoutmotors.com](http://www.scoutmotors.com) or available upon request. The Parties agree such modified Terms and Conditions will be effective the day of posting. No other notice will be given and Seller has the obligation to check the website for such amendments. No other modification of these Terms and Conditions is effective unless such modification is evidenced in writing and signed by an authorized representative of Buyer.
34. **SEVERABILITY.** If any term of the Agreement is invalid or unenforceable under any statute, regulation, ordinance, executive order or other rule of law, the term will be deemed reformed or deleted, as the case may be, but only to the extent necessary to comply with applicable law. The remaining provisions of the Agreement will remain in full force and effect.
35. **GOVERNING LAW; DISPUTES.** The Agreement is governed by the laws of the state of South Carolina. The provisions of the United Nations Convention on Agreements for the International Sale of Goods, and any conflict of laws provisions that would require application of another choice of law are excluded. Any claims, demands, disputes, or other claims made regarding any matter arising out of or relating to the Agreement will, at Buyer's sole election, be resolved through binding arbitration in the Commercial Arbitration Rules and mediation procedures published by the American Arbitration Association by a single arbitrator appointed in accordance with said rules. If arbitration is elected by Buyer, the arbitration will take place in Richland County, South Carolina and be conducted in the English language. The arbitration may permit discovery, as deemed reasonable by the arbitrator. If Buyer does not elect arbitration, then Seller hereby consents to the jurisdiction of the state courts of South Carolina or, if original jurisdiction can be established, in the federal court in the U.S. District Court for the District of South Carolina, in any suit, action or proceeding arising out of, or in connection with, the Agreement. Seller agrees that it will consent to and not oppose any effort or motion by Buyer to submit any such state court action to the South Carolina Business Court. SELLER KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES ANY RIGHT TO TRIAL BY JURY IN ANY ACTION OR OTHER LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THE CONTRACT and irrevocably waives, to the fullest extent permitted by law, any objection which it may now or hereafter have to the laying of the venue of any such suit, action or proceeding in any such court or that any such suit, action or proceeding which is brought in any such court has been brought in an inconvenient forum.
36. **ENTIRE AGREEMENT.** The Agreement, together with any documents Buyer specifically referenced therein, and these Terms and Conditions (as may be amended from time to time), constitutes the



final, entire, and exclusive agreement between the Parties with respect to the subject matter hereof, and supersedes all prior oral or written representations or agreements by the Parties regarding such subject matter. Except where explicitly authorized under this Agreement, no subsequent terms, conditions, understandings, or agreements purporting to modify the Agreement or these Terms and Conditions will be binding unless in writing and signed by both Parties.

37. **BATTLE OF THE FORMS.** The battle of the forms described in Section 2-207 of the Uniform Commercial Code does not apply to these Terms and Conditions or to any invoice from Seller relating to these Terms and Conditions.

38. **RIGHTS AND REMEDIES ARE CUMULATIVE.** All rights and remedies of Buyer set forth in these Terms and Conditions are cumulative with, and in addition to, all other rights and remedies available to Buyer at law or in equity. All costs incurred in connection with any remedy and as a result of Seller's breach of the Agreement, will be Seller's obligation, including reasonable attorneys' fees, expenses, and costs incurred by Buyer. Seller has no right of any setoff.

39. **SURVIVAL OF CERTAIN PROVISIONS.** The provisions of the Agreement that by their nature should survive any termination of the Agreement, including Section 2.4 (Order of Precedence), Section 7 (Price, Invoices, and Payment Terms), Section 9 (Confidentiality), Section 10 (Representations and Warranties), Section 15 (Indemnification), Section 16 (Limitation of Liability), and Section 22 (Term and Termination), will survive such termination and any Transition Support.

40. **DATA PROTECTION AND INFORMATION SECURITY.** Seller will (i) maintain and enforce reasonable information security safeguards against the loss, destruction, modification, or unauthorized access or use of Buyer's Confidential Information in Seller's possession in accordance with Scout's Vendor Information Security Requirements located at [www.scoutmotors.com](http://www.scoutmotors.com) which is incorporated by reference and forms a part of the Agreement. The Parties agree that any information the Buyer shares with Seller that may directly or indirectly identify, relate to, describe, or link to a particular natural person may only be processed in accordance with the Supplier Data Processing Addendum located at [www.scoutmotors.com](http://www.scoutmotors.com) which is incorporated by reference and forms a part of the Contract.