

## **LEAR INDIA PURCHASE ORDER TERMS AND CONDITIONS**

**August 30, 2013 Version**

### **1. Formation; Offer; Acceptance; Exclusive Terms.**

- A. Each purchase order (the “**Order**”), together with these Terms and Conditions (the “**Terms and Conditions**”) is an offer by Lear Automotive India Private Limited (the “**Lear India**”) or its applicable affiliate or subsidiary (the “**Purchaser**”) to the party to whom such Order is addressed and such party’s applicable affiliates and subsidiaries (the “**Seller**”) to enter into the agreement it describes and it shall be the complete and exclusive statement of such offer and agreement. An Order does not constitute an acceptance by the Purchaser of any offer or proposal by the Seller, whether in the 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 Order.
- B. An individual contract is formed when the Seller accepts the Order of the Purchaser. Each Order shall be deemed accepted upon the terms and conditions of such Order by the Seller by shipment of goods, performance of services, commencement of work on goods, written acknowledgement, or any other conduct of the Seller that recognizes the existence of a contract pertaining to the subject matter hereof.
- C. Acceptance is expressly limited to these Terms and Conditions and such terms and conditions as are otherwise expressly referenced on the Framework Agreement accompanying an Order (the “**Framework Agreement**”), or the face of the Order. No purported acceptance of any Order on terms and conditions of the Seller which modify, supersede, supplement or otherwise alter these Terms and Conditions shall be binding upon the Purchaser and such terms and conditions shall be deemed rejected and replaced by these Terms and Conditions unless the Seller’s proffered terms or conditions are accepted in a physically signed writing (a “**Signed Writing**”) by the Purchaser’s Vice President – Purchasing, notwithstanding the Purchaser’s acceptance of or payment for any shipment of goods or similar act of the Purchaser.
- D. In the event of a conflict between the Orders and any prior or contemporaneous agreement or document exchanged between the Purchaser and the Seller, the Order governs except as otherwise amended by the Framework Agreement.
- E. Lear India may from time to time administer purchasing for its affiliates and subsidiaries and issue Orders containing the Lear Corporation logo, but identifying a different Purchaser. The Seller acknowledges and agrees that no such Order shall constitute or be interpreted to represent an Order of Lear Corporation or a guaranty by Lear Corporation of any obligations or liabilities of the Purchaser identified on the Order.

### **2. Applicability of Terms and Conditions.**

- A. These Terms and Conditions, as may be amended from time to time apply to the purchase by the

Purchaser of all goods and/or services, as applicable, from the Seller as described on the face of each Order (collectively the “**Goods**”) or on any document expressly referenced on the face of such Order describing such Goods. Goods throughout these Terms and Conditions includes, without limitation, raw materials, components, intermediate assemblies, tooling, molds, equipment and end products and all services, whether or not performed in connection with any of the foregoing items. Certain of the Terms and Conditions apply only to particular types of Goods, but only where expressly limited to those types of Goods.

- B. These Terms and Conditions apply to all Sellers under an Order, including, without limitation, any Seller that is a Directed Supplier. A “**Directed Supplier**” is any Seller from which the Purchaser has been requested or recommended to procure Goods at the direction or suggestion of the Purchaser’s customer and/or the ultimate Original Equipment Manufacturer (“**OEM**”) customer, if different (collectively, the “**Customer**”) (including through co-sourcing arrangements), or when, due to a Customer’s product description, specification or other limitation, the Purchaser is limited to such Seller for the Goods required. Each Seller that is a Directed Supplier acknowledges the applicability of these Terms and Conditions and agrees to be bound by these Terms and Conditions, including, without limitation, the World Class Supplier requirements under Section 6 and the payment terms under Section 33.
- C. Each Order and Order amendment issued by the Purchaser to the Seller incorporates these Terms and Conditions which shall apply to each such Order, as amended, in its entirety. In addition, Lear Corporation’s Supplier Requirements Manual, Tooling Guidelines and Definitions, Tooling Audit Guidelines, packaging and shipping requirements, and other manuals, guidelines and requirements available from time to time under the heading “Web Guides” through links provided on the Lear Corporation web site at [www.lear.com](http://www.lear.com) under Supplier Information (together, the “**Web Guides**”) are incorporated by reference. In the event of a conflict between any Web Guides and these Terms and Conditions, these Terms and Conditions shall govern. The Purchaser may modify any Web Guides or add additional Web Guides, at any time, by posting a notice of such modified or new Web Guides through links provided on the Lear Corporation web site at [www.lear.com](http://www.lear.com) under Supplier Information at least ten (10) days prior to any modified or new Web Guides becoming effective. The Seller shall review the Lear Corporation website and the Web Guides periodically. The Seller’s continued performance under the Order without providing written notice to the Purchaser in accordance with Section 44 detailing the Seller’s objection to any modified or new Web Guide prior to the effective date of such modified or new Web Guide will be subject to and will constitute the Seller’s acceptance of such a modified or new Web Guide.
- D. The Terms and Conditions and Web Guides that are applicable to each Order are the Terms and Conditions that are in effect on the Issue Date of the Order (“**Issue Date**”) shown on the later of the Order or any Order, amendment applicable to such Order.
- E. No exception to, deviation from, or waiver of these Terms and Conditions shall be valid or binding on the Purchaser unless specified on the face of an Order or an Order amendment or made in a Signed Writing by the Purchaser’s Vice President – Purchasing.

### 3. Documents used in Purchasing.

The following documents may be used by the Purchaser as a part of the Purchaser's sourcing and purchasing process. The Order supersedes all such documents in their entirety except as otherwise expressly provided:

- (i) in one of the following documents enumerated in subsections A through I that has been signed by the Purchaser's Vice President – Purchasing; or
- (ii) on the face of the Order.

#### A. Lear Supply Agreement (“**LSA**”)

This is an agreement that provides relationship terms between the Seller and the Purchaser including agreed upon price changes and that also is used, in some cases, as an indicator for eligibility to quote on certain business.

#### B. Joint Development Agreement (“**JDA**”)

This is an agreement between the Purchaser and another party to develop jointly a specific product or technology.

#### D. Early Sourcing and Target Agreement (“**ESTA**”)

This is an agreement that, without commitment by the Purchaser to source the Seller, provides a prospective supplier with the opportunity to develop required technology and processes that may be necessary for the production of Goods for the Purchaser. The Purchaser owns any related developments under an ESTA or has the right to acquire such developments at audited incremental costs.

#### E. Supplier Engineering Target Agreement (“**SETA**”)

This is an agreement between the Purchaser and the Seller relating to engineering owned by the Seller that is used, in certain cases, to supplement the relevant terms of the Order.

#### F. Supplier Owned Tooling Agreement (“**SOTA**”)

This is an agreement between the Purchaser and the Seller relating to tooling owned by the Seller that is used, in certain cases, to supplement the relevant terms of the Order.

#### G. Request for Quotation (“**RFQ**”)

This is an introductory step in potentially generating an offer from the Purchaser to the Seller contained in an Order. It may include Volume and Duration Projections (See Section 5) and specifications for the Goods being quoted.

#### H. Engineering Change Notice (“ECN”)

This is an alternative introductory step in potentially generating an offer from the Purchaser to the Seller contained in an Order. It may include Volume and Duration Projections (See Section 5) and specifications for the Goods being quoted.

#### I. Quotation

Following the RFQ or ECN, this is generally the next step in generating the offer from the Purchaser to the Seller contained in the Order. It also may include Volume and Duration Projections (See Section 5) and may reference projected prices.

#### J. Order

The Order describes the Goods being purchased, specifies the name and address of the Purchaser and the Seller and incorporates these Terms and Conditions. In accordance with Section 1, each Order constitutes the Purchaser’s offer to the Seller to enter into the agreement it describes and is the complete and exclusive statement of such offer and agreement. Each Order is either a Spot-buy Order, a Blanket Order or a Requirements Contract Order depending on the quantity and duration specified on the face of the Order.

A Spot-buy Order is a one-time Order for a specific quantity of Goods. (“**Spot-buy Order**”).

A Blanket Order (“**Blanket Order**”) is an Order for Goods in accordance with the firm quantities and delivery schedules specified in the Releases issued by the Purchaser pursuant to the Order.

A Requirements Contract Order (“**Requirements Contract Order**”) is an Order for all or a designated portion of the Purchaser’s requirements for Goods for a specified period of time in accordance with the firm quantities and delivery schedules specified in the Releases issued by the Purchaser pursuant to the Order.

All references to an Order shall mean the initial Order, as amended by any Order amendments issued by the Purchaser.

#### K. Release (“**Release**”)

This is a schedule by which the Purchaser:

- (i) specifies the firm quantity of Goods that the Seller is to deliver to the Purchaser on at least a weekly basis;
- (ii) authorizes material fabrication; and/or

- (iii) authorizes the purchase of raw materials/components, each for the period specified therein.

The Release indicates the firm quantity of Goods and/or the firm quantity of raw materials/components, as applicable, for which the Purchaser is liable to the Seller and that the Seller is obligated to provide to the Purchaser for the period specified therein. The Release may also provide a forecast of the quantity of Goods that will be ordered beyond the firm quantity amount. The forecast is not binding on the Purchaser or the Seller.

L. Order amendment

This is an amendment to the Order issued by the Purchaser on the Purchaser's purchase order form through the Purchaser's standard purchasing protocol to reflect an amendment or modification to the Order.

**4. Quantity and Duration.**

- A. The quantity applicable to each Order and its duration are specified on the face of the Order. The quantity specified may be for up to one hundred percent (100%) of the Purchaser's requirements for the Goods. For all Blanket Orders and Requirements Contract Orders, the Purchaser shall issue a Release (see Section 3.K) to specify the quantities needed, delivery locations, and dates. The Seller acknowledges and agrees that, notwithstanding anything in any Order to the contrary, the Seller is obligated to provide Goods to the Purchaser in at least the quantity and for at least the period specified in any Release. A Release will specify a firm quantity of Goods and/or a firm quantity of raw materials/components that the Purchaser will be responsible for in the event of termination (see Section 17.B). Releases may include Volume and Duration Projections (see Section 5), but Releases are only binding upon the Purchaser for, and the Purchaser will have no obligation or liability beyond, the quantity specified as firm in the Release. The Seller acknowledges and agrees to accept the risk associated with the lead times of the various components if they are beyond the firm Release amounts provided by the Purchaser.
- B. Unless the Order specifically provides that the Seller shall produce one hundred percent (100%) of the Purchaser's requirements for the Goods, the Purchaser shall have the right to obtain a portion of such Goods from another third party source or from the Purchaser's internal sources.

**5. Volume and Duration Projections.**

From time to time and in connection with quotations, requisitions and Orders, the Purchaser may provide the Seller with estimates, forecasts or projections of its future volume or quantity requirements for the Goods and/or the term of a program ("**Volume and Duration Projections**"). Volume and Duration Projections, unlike a Release for a firm quantity, are not binding on the Purchaser. They also are not evidence of a requirements contract. The Seller acknowledges that the Volume and Duration Projections, like any other forward looking projections, are based on a number of economic and business factors, variables and assumptions, some or all of which may

change over time, and may or may not be accurate at the time they were made or later. The Purchaser makes no representation, warranty, guaranty or commitment of any kind or nature, express or implied, regarding any Volume and Duration Projections or other estimate, forecast or projection provided to the Seller, including as to its accuracy or completeness. The Seller accepts that Volume and Duration Projections may not be accurate and that actual volume or duration could be less than or greater than the projections. The Seller acknowledges that this risk, and possible reward, is an aspect of the automotive industry.

## **6. World Class Supplier Requirements.**

The Seller must provide world-class competitive Goods in terms of *cost* (see Section 7), *quality* (see Section 8), *delivery* (see Section 9), *technology* (see Section 10) and *customer support* (see Section 11). Each reference to World Class Supplier in these Terms and Conditions and in any other document or agreement between the Purchaser and the Seller incorporates by reference each of the foregoing elements (cost, quality, delivery, technology and customer support) and all of the conditions, provisions and requirements pertaining to such elements in these Terms and Conditions. The Seller's failure to meet the requirements of a World Class Supplier is a basis for the Purchaser's immediate termination of the Order under Section 17A.

## **7. Cost.**

- A. Prices charged for Goods listed on the Order are not subject to increase, including specifically any increase based upon changes in raw material or component pricing, labour or overhead, unless specifically agreed to by the Purchaser on the face of an Order amendment or in a Signed Writing by the Purchaser's Vice President – Purchasing.
- B. The Seller represents that the price charged to the Purchaser for Goods is at least as low as the price charged by the Seller to buyers of a class similar to the Purchaser under conditions similar to those specified in the Order and that all prices comply with all applicable governmental laws and regulations in effect at the time of quotation, sale and delivery. The Purchaser under conditions similar to those specified in the Order and that all prices comply with all applicable governmental laws and regulations in effect at the time of quotation, sale and delivery. The Seller agrees that any price reduction implemented by the Seller for any Goods or related charges will apply to all shipments of such Goods under the Order or any Order amendment from and after the Seller's implementation of the price reduction.
- C. The Seller shall ensure that the price charged to the Purchaser for Goods remains competitive with the price for similar goods available to the Purchaser from other sellers.
- D. The Seller agrees to participate in the Purchaser's cost savings and productivity programs and initiatives and to implement the Seller's own cost savings and productivity programs and initiatives to reduce the Seller's costs and the Purchaser's costs.

## **8. Quality.**

- A. The Seller shall meet all quality requirements of the Purchaser and all quality requirements of the Purchaser's Customer, including, but not limited to, the applicable plans relating to TS 16949, ISO 14001 and the various OEM End of Life Vehicle ("ELV") reporting and other requirements.
- B. The Seller agrees to participate in the Purchaser's quality and development program(s) and to comply with all quality requirements and procedures specified by the Purchaser, as revised from time to time. Based on the Purchaser's assessment of responsibility, the Seller may be held responsible for any and all costs associated with quality issue investigation, containment and Remedial Actions on account of Goods provided by the Seller to the Purchaser (including third party activities identified and initiated by the Purchaser). The Seller is obligated to provide any and all reasonable support requested by the Purchaser to address immediately and correct concerns regarding the quality of Goods provided. The Seller shall provide additional resources, as necessary and as identified by the Purchaser, to support product development, process development, validation, production launch, or any issue that may jeopardize the success of the manufacture or assembly of any Goods or of the program.
- C. The Seller must assure overall equipment (shared and specific) and plant capacity are adequate to meet the Purchaser's needs. Ongoing capacity analysis must account for at least: scrap variation, downtime, maintenance, and other Customer requirements. Each production process must successfully complete a Run-at-Rate (the "**Run-a-Rate**"). The Run-at-Rate must demonstrate that the Seller's production process can produce in less than 24 hours at least one day's quantity of acceptable quality Goods to satisfy the Seller's Capacity Planning Volume ("**CPV**"). The Purchaser is not obligated to pay the Seller any incremental costs as long as the Release quantities do not exceed the Seller's CPV. The requirement for capacity and the CPV is not a volume, program or other commitment by the Purchaser.
- D. The Seller is responsible for all sub-tier providers of goods or services. The Seller must maintain adequate development, validation, launch, and ongoing supervision to assure all Goods provided to the Purchaser conform to all specifications, standards, drawings, samples and descriptions, including, without limitation, as to quality, performance, fit, form, function and appearance, under the Order.
- E. For all Goods, in addition to any other applicable warranties, the Seller shall provide the warranties specified in Section 12.

**9. Delivery.**

- A. Deliveries shall be made both in quantities and at times specified on the Order or on Releases furnished by the Purchaser. Time and quantity of the delivery are of the essence of each Order. The Seller shall adhere to shipping directions specified on the Order or Releases. The Purchaser shall not be required to make payment for Goods delivered to the Purchaser that are in excess of firm quantities and delivery schedules specified in the Purchaser's Releases. The Purchaser may change the rate of scheduled shipments or direct temporary suspension of scheduled shipments, neither of

which shall entitle the Seller to a modification of the price of Goods covered by any Order. With each delivery, the Seller shall be deemed to have made the representations, warranties and covenants with respect to its financial and operating condition provided in Section 14.

- B. Premium shipping expenses and/or other related expenses necessary to meet delivery schedules set forth in Releases shall be the Seller's sole responsibility, unless the delay or expense was solely the result of the Purchaser's negligence and the Seller provides the Purchaser with notice of any claim against the Purchaser within ten (10) days after the occurrence of the alleged negligent action of the Purchaser giving rise to such a claim.
- C. Notwithstanding any agreement concerning payment of freight expenses, delivery shall not have occurred and the risk of loss shall not have shifted to the Purchaser until the Goods have been delivered to the Purchaser's applicable facility and have been accepted at that facility.

## **10. Technology**

- A. If the Purchaser furnished or supplied the Seller with any designs, drawings, specifications, blueprints or other materials that contain proprietary information, the Seller shall not disclose or use for the benefit of the Seller or others such designs, drawings, specifications, blueprints or other material including any copies thereof, except as approved by the Purchaser on the face of an Order or Order amendment or in a Signed Writing by the Purchaser's Vice President - Purchasing.
- B. The Seller expressly warrants that all Goods covered by each Order will not and do not infringe on any patent, trademark, copyright or other intellectual property of any third party.

The Seller:

- (i) agrees to defend, hold harmless and indemnify the Purchaser and its Customers against all claims, demands, losses, suits, damages, liability and expenses (including actual fees for attorneys, experts and consultants, settlement costs and judgments) arising out of any suit, claim or action for actual or alleged direct or contributory infringement of, or inducement to infringe, any Indian or foreign patent, trademark, copyright or other proprietary right by reason of the manufacture, use or sale of the Goods ordered, including infringement arising out of compliance with specifications furnished by the Purchaser or for actual or alleged misuse or misappropriation of a trade secret resulting directly or indirectly from the Seller's actions; and
- (ii) waives any claim against the Purchaser and its Customers, including any hold-harmless or similar claim, whether known or unknown, contingent or latent, in any way related to a claim asserted against the Seller or the Purchaser for infringement of any patent, trademark, copyright or other proprietary right, including claims arising out of compliance with specifications furnished by the Purchaser. In consideration for the price paid for the Goods and other good and valuable consideration (the receipt and sufficiency of which the Seller acknowledges), the Seller hereby assigns to the Purchaser all right, title and interest in and to

all inventions, trademarks, copyrights and other proprietary rights in any material created for and paid for by the Purchaser under each Order. The Seller shall execute all necessary documentation and do all things necessary to give effect to such assignment. Technical information and data furnished to the Purchaser in connection with each Order are disclosed on a non confidential basis.

- C. The Seller expressly warrants that all copyrightable works of original authorship (including but not limited to computer programs, technical specifications, documentation and manuals), ideas, inventions (whether patentable, patented or not), know-how, processes, compilations of information, trademarks and other intellectual property (collectively, “**Deliverables**”) shall be original to the Seller and shall not incorporate any intellectual property (including copyright, patent, trade secret, mask work, or trademark rights) of any third party.
- D. All Deliverables that are created in the course of performing any Order (separately or as part of any Goods), and all intellectual property rights in Deliverables, are owned by the Purchaser and not by the Seller. To the extent that, by operation of Indian law in particular under the Copyright Act, 1957, the Seller owns any intellectual property rights in the Deliverables, in consideration for the price paid for the Goods and other good and valuable consideration (the receipt and sufficiency of which the Seller acknowledges) the Seller hereby assigns to the Purchaser all rights, title and interest, including copyrights and patent rights, in such Deliverables. The Seller shall execute all necessary documentation and do all things necessary to give effect to such assignment.
- E. The Seller grants to the Purchaser an irrevocable, non-exclusive, worldwide license with the right to grant sublicenses to affiliates to use any technical information, know how, copyrights and patents owned or controlled by the Seller or its affiliates to make, have made, use and sell any Goods provided by the Seller under each Order. The license shall be effective from the first delivery of Goods under the Order. For a period of two (2) model years from the Seller's first delivery of Goods under the Order, the Purchaser shall pay to the Seller a “reasonable royalty” for such license, which is acknowledged by the Seller to be included in the price paid by the Purchaser to the Seller for the Goods. In the event the Purchaser sources the Goods from a party other than the Seller and the manufacture, sale, or use of such Goods by the Purchaser or such other party would use Seller’s intellectual property rights, the Purchaser shall pay the Seller a “reasonable royalty” for a period of two (2) model years from the date of the Seller's first delivery of Goods and thereafter, the Purchaser’s license shall be royalty free, fully paid-up, permanent and irrevocable.
- F. The Seller shall ensure that any subcontractors to the Seller shall have contracts with the Seller in writing consistent with the terms of this Section 10 to ensure that the protections required by the Purchaser from the Seller are also received from subcontractors for the benefit of the Purchaser and the Seller.

## **11. Customer Support.**

- A. The Seller shall support all supplier initiatives of the Purchaser and support the Purchaser in

meeting the initiatives of its Customers. Upon the Seller's written request, the Purchaser shall cooperate with the Seller to explain to the Seller the terms, conditions and requirements of the Purchaser's Customers.

- B. As all elements of the automotive tiered supply network must work together to ensure that the Purchaser's Customer's terms, conditions and requirements are met, it is the intent of both the Seller and the Purchaser that the applicable terms, conditions and requirements of the Purchaser's Customer shall flow through the Purchaser to the Seller to the extent that they do not conflict with the terms of the Order. To the extent that the Seller does not meet the applicable terms, conditions or requirements of the Purchaser's Customer or to the extent that the terms of the Purchaser's Customer do conflict with the terms of the Order, the Seller agrees, notwithstanding any such conflict, to indemnify and hold harmless the Purchaser from any and all claims and demands from the Purchaser's Customer relating to any actual or alleged problem or issue with the Goods sold by the Seller under any Order or the manner in which the Seller has supplied such Goods under the Order.
- C. The automotive industry is customer focused and the Seller agrees to work with the Purchaser to meet the requirements of the Purchaser's Customers. Therefore, in the event that any requirement imposed by any Order on the Seller is found to be unenforceable or a gap is otherwise created in the terms applicable to any Order through operation of law, conflict in terms or otherwise, the parties agree that the corresponding requirement of the Purchaser's Customer, which are disclosed by the Purchaser, shall be applicable to and binding on the Seller for the benefit of the Purchaser. The Seller acknowledges that it is familiar with the automotive industry and the applicable terms of the Purchaser's Customer that would apply in such an event.

## **12. Warranty.**

- A. The Seller expressly warrants that all Goods covered by each Order will conform to all specifications, standards, drawings, samples or descriptions furnished to or by the Purchaser, and all industry standards, laws and regulations in force in countries where Goods or vehicles equipped with such Goods are to be sold and that all Goods will be merchantable, of good material and workmanship and free from defects. In addition, the Seller acknowledges that the Seller knows of the Purchaser's intended use and expressly warrants that all Goods covered by each Order will be fit and sufficient for the particular purpose intended by the Purchaser.
- B. The Seller expressly warrants that, for all Goods under the Order, the Seller shall convey good title to the Purchaser, free and clear of all liens, claims or other encumbrances.
- C. All warranties will be effective for the longer of either:
  - (i) 3 years or 60,000 kilometers from the date of delivery of the product incorporating the Goods to the Purchaser's Customer; or
  - (ii) the period provided by applicable law; or

- (iii) the warranty period provided by the Purchaser to its Customer; provided, however, in the event that the Purchaser or its Customer voluntarily or pursuant to a government mandate, makes an offer to owners of vehicles (or other finished products) on which the Goods, or any parts, components or systems incorporating the Goods, are installed to provide remedial action to address a defect or condition that relates to motor vehicle safety or the failure of the vehicle to comply with any applicable law, safety standard or guideline, whether in connection with a recall campaign or other customer satisfaction or corrective service action (a “**Remedial Action**”), the warranty shall continue for such time period as may be dictated by the Purchaser's Customer or the federal, state, local or foreign government where the Goods are used or provided and the Seller shall fully comply with the requirements under Section 12.I.
  
- D. The warranty period for non-production Goods shall be the longer of one (1) year after final acceptance by the Purchaser or the period stated in the Seller's sales materials.
  
- E. All warranties are intended to provide the Purchaser with protection from any and all warranty claims brought against the Purchaser by its Customer. This includes, but is not limited to, meeting any Customer-required warranties relating to the Goods in question or products into which the Goods are incorporated. All such Customer-required warranties are incorporated by reference.
  
- F. The following communications shall each constitute notice of breach of warranty under the Order:
  - (i) any communication specifying a defect, default, claim of defect or other problem or quality issue with Goods sold under the Order;
  
  - (ii) any communication to the Seller claiming that the Seller's Goods are in breach of any warranty or that the Seller is in default under the Order; and
  
  - (iii) a termination notice from the Purchaser under Section 17.A. Any such claim of breach by the Purchaser may only be rescinded in writing by an authorized member of the Purchaser's Legal Department.
  
- G. To mitigate its damages, the Purchaser may fully defend any claim from any Customer that any Goods supplied by the Seller are defective, in breach of warranty, or otherwise did not meet applicable legal or contractual requirements because such Customer may attempt to hold the Purchaser responsible for problems caused in whole or in part by the Seller. The Seller and the Purchaser agree that this defense is in the interest of both the Seller and the Purchaser. The Seller hereby waives the right to argue that the fact that the Purchaser took any such position in any way limits the Purchaser's right to assert a claim against the Seller by the Purchaser for breach of warranty, contribution, indemnification or other claim that may arise from or be related to the subject matter of any of the foregoing.
  
- H. In the event that the Seller wishes to participate in any of the negotiations with the Purchaser's

Customer regarding any of the foregoing or any related litigation or defense of any such claim, then in each case that the Seller receives notice of default or claim of breach, the Seller shall give the Purchaser prompt notice of its request to participate in accordance with Section 44, which notice shall describe with particularity the details of the alleged default or breach.

- I. Notwithstanding the expiration of the warranty period set forth in Section 12.C, the Seller shall nonetheless be liable for costs and damages associated with the conduct of any Remedial Action to the extent that such Remedial Action is based upon a reasonable determination (including by use of statistical analysis or other sampling methodology) that the Goods fail to conform to the warranties set forth in the Order. Where applicable, the Seller shall pay all reasonable expenses associated with determining whether a Remedial Action is necessary. The Purchaser and the Seller agree that any Remedial Action involving Goods for the Purchaser shall be treated separately and distinctly from similar Remedial Actions of other goods of the Seller; provided that such separate and distinct treatment is lawful and the Seller shall in no event fail to provide at least the same protection to the Purchaser on such Goods as the Seller provides to its other customers in connection with such similar Remedial Actions.

### **13. Changes.**

- A. The Purchaser reserves the right at any time to direct changes, or cause the Seller to make changes, to the Goods under any Order or Order amendment, including, but not limited to, changes in the design (including drawings and specifications), processing, methods of packing and shipping and the date or place of delivery of the Goods covered by the Order or to otherwise change the scope of the work covered by the Order including work with respect to such matters as inspection, testing or quality control, and the Seller agrees to promptly make such changes.

Any such changes shall be deemed not to affect the time for performance or cost under the Order unless:

- (i) The Seller provides the Purchaser with written notice in accordance with Section 44 of claim for adjustment to time for performance or cost within ten (10) days after the Purchaser's notice to the Seller of the change; and
- (ii) after auditing such claim, the Purchaser determines that an adjustment (up or down) is appropriate. Any such claim by the Seller for adjustment to time for performance or cost under an Order must be solely and directly the result of the change directed by the Purchaser and any notice of such claim shall be effective only if accompanied by all relevant information sufficient for the Purchaser to verify such claim. In addition, the Purchaser shall have the right to audit all relevant records, facilities, work or materials of the Seller to verify any claim. The Seller shall consider and advise the Purchaser of the impact of a design change on the system in which the Goods covered by the Order are used.

Nothing in this Section 13 shall excuse the Seller from proceeding with the Order as changed.

- B. Without the prior approval of the Purchaser on the face of an Order amendment or in a Signed Writing by the Purchaser's Vice President – Purchasing, the Seller shall not make any changes to any Order or the Goods covered by the Order, including, without limitation, changing:
- (i) any third party supplier to the Seller of services, raw materials or goods used by the Seller in connection with its performance under the Order;
  - (ii) the facility from which the Seller or such supplier operates;
  - (iii) the price of any of the Goods covered by the Order;
  - (iv) the nature, type or quality of any services, raw materials or goods used by the Seller or its suppliers in connection with the Order;
  - (v) the fit, form, function, appearance, performance of any Goods covered by the Order; or
  - (vi) the production method, or any process or software used in the production or provision of any Goods under the Order. Any changes by the Seller to any Order or the Goods covered by the Order without the prior approval by the Purchaser on the face of an Order amendment or in a Signed Writing by the Purchaser's Vice President – Purchasing shall constitute a breach of the Order.

#### **14. Financial and Operational Condition of Seller.**

- A. The Seller represents and warrants to the Purchaser as of the date of each Order (which representations and warranties shall be deemed repeated as of the date of the Seller's acceptance of each Release under the Order and at the time of each delivery under the Order) that it is not insolvent and is paying all debts as they become due; that it is in compliance with all loan covenants and other obligations; that all financial information provided by the Seller to the Purchaser concerning the Seller is true and accurate; that such financial information fairly represents the Seller's financial condition; and that all financial statements of the Seller have been prepared in accordance with generally accepted accounting principles, uniformly and consistently applied.
- B. The Seller shall permit the Purchaser and its representatives to review the Seller's books and records concerning compliance with each Order and the Seller's overall financial condition and agrees to provide the Purchaser with full and complete access to all such books and records for such purpose upon the Purchaser's request. The Seller agrees that, if the Seller experiences any delivery or operational problems, the Purchaser may, but is not required to, designate a representative to be present in the Seller's applicable facility to observe the Seller's operations. The Seller agrees that, if the Purchaser provides to the Seller any accommodations (financial or other) that are necessary for the Seller to fulfill its obligations under any Order, the Seller shall reimburse the Purchaser for all costs, including attorneys' and other professionals' fees, incurred by the

Purchaser in connection with such accommodation and shall grant a right of access to the Purchaser to use the Seller's premises, machinery, equipment and other property necessary for the production of Goods covered by such Order (and a lien to secure the access right) under an access and security agreement.

**15. Seller Insolvency.**

A. The Purchaser may immediately terminate each Order without any liability of the Purchaser to the Seller upon the occurrence of any of the following or any other similar or comparable event (each, a “**Seller Insolvency**”):

- (i) insolvency of the Seller;
- (ii) The Seller’s inability to promptly provide the Purchaser with adequate and reasonable assurance of the Seller’s financial capability to perform timely any of the Seller’s obligations under any Order;
- (iii) filing of a voluntary petition in bankruptcy by the Seller;
- (iv) filing of an involuntary petition in bankruptcy against the Seller;
- (v) appointment of a receiver or trustee for the Seller; or
- (vi) execution of an assignment for the benefit of creditors of the Seller.

**16. Remedies for Breach by the Seller.**

A. The rights and remedies reserved to the Purchaser in each Order, including, without limitation, the rights of entry, reclamation and inspection under Section 22, shall be cumulative with, and additional to, all other or further remedies provided in law or equity. Without limiting the generality of the foregoing, should any Goods fail to conform to the warranties set forth herein or should the Seller or any Goods provided by the Seller fail to meet any of the conditions of a World Class Supplier under Section 6, the Purchaser shall notify the Seller and the Seller shall, if requested by the Purchaser, reimburse the Purchaser for any special, incidental and consequential damages caused by nonconforming Goods, including, but not limited to, costs, expenses and losses incurred by the Purchaser in the following:

- (i) inspecting, sorting, testing, repairing or replacing such nonconforming Goods;
- (ii) resulting from production interruptions;
- (iii) in conducting Remedial Actions; and
- (iv) in connection with claims for personal injury (including death) or property damage caused by

such nonconforming Goods.

If requested by the Purchaser, the Seller shall, without charge to the Purchaser, administer and process warranty charge-backs for nonconforming Goods in accordance with the Purchaser's directions. The Seller acknowledges and agrees that money damages would not be a sufficient remedy for any actual, anticipatory or threatened breach of any Order by the Seller with respect to its delivery of Goods to the Purchaser and that, in addition to all other rights and remedies which the Purchaser may have, the Purchaser shall be entitled to specific performance and temporary, preliminary and permanent injunctive or other equitable relief as a remedy for any such breach, without proof of actual damages and without bond or other security being required.

- B. In addition, notwithstanding the foregoing, the Seller acknowledges that shutting down Customer's plant creates issues for which money damages are not a sufficient remedy. While the cost of a plant shutdown may easily generate substantial costs, the damages to the Purchaser's relationship with the Purchaser's Customer through potential loss of business, and other damages which are equally difficult to calculate, are far worse. Because of these risks, in the event of a breach or threatened breach by the Seller of any of the representations, warranties or covenants of the Seller (including without limitation, any commitment related to being a World Class Supplier), the Purchaser may, without notice to the Seller, resource the production of Goods from the Seller to another supplier or dual source any of the Goods covered hereby (i.e., have another supplier produce or be prepared to produce Goods being produced by the Seller), to protect the Purchaser and its Customers. This process of moving business may take a considerable amount of time and the Seller understands that, given the risks posed by the possible shutdown of the Purchaser's Customer, the Purchaser is justified in initiating and transferring business without prior notice to the Seller.
- C. The Seller understands that the resourcing of business during a program, while not desirable, is a part of the automotive business and is an acknowledged risk to the Seller in the industry. Even the risk of the Seller's financial or operational uncertainty, in light of the huge risks to the Purchaser and the Purchaser's Customer, is an example of a justified reason to move production, without notice, and that any incidental or related activity by the Purchaser is understandable and reasonable.
- D. Notwithstanding anything to the contrary contained in any Order, the Purchaser does not release any claim against the Seller that is based in whole or in part on any fraud or duress in connection with the Order or any breach or anticipatory breach of the Order or any other Order between the Purchaser and the Seller (even if that Order relates to other products).

## **17. Termination.**

- A. The Purchaser's Right to Terminate for Breach.

The Purchaser reserves the right to terminate immediately all or any part of each Order, without any liability of the Purchaser to the Seller if the Seller:

- (i) repudiates, breaches or threatens to breach any of the terms of the Order including, without limitation, the Seller's warranties and World Class Supplier provisions;
- (ii) fails to perform or deliver Goods as specified by the Purchaser; or
- (iii) fails to provide the Purchaser with adequate and reasonable assurance of the Seller's ability to perform timely any of the Seller's obligations under any Order, including, without limitation, delivery of the Goods; or if the Purchaser terminates for breach any other Order issued by the Purchaser to the Seller in accordance with the terms of such other Order (whether or not such other Order is related to the Order).

B. The Purchaser's Right to Terminate for Convenience.

- (1) In addition to any other rights of the Purchaser to terminate each Order, the Purchaser may at its option, immediately terminate all or any part of the Order at any time and for any reason by giving written notice to the Seller.
- (2) Upon receipt of notice of termination pursuant to this Section 17.B, the Seller, unless otherwise directed in writing by the Purchaser, shall:
  - (i) terminate immediately all work under the Order;
  - (ii) transfer title and deliver to the Purchaser the usable and merchantable finished Goods, work in process, and raw materials/components that the Seller produced or acquired in accordance with firm Release amounts under the Order and which the Seller cannot use in producing goods for itself or for others;
  - (iii) settle all claims by subcontractors approved by the Purchaser on the face of an Order or Order amendment or in a Signed Writing by the Purchaser's Vice President – Purchasing, if any, for reasonable actual costs that are rendered unrecoverable by such termination;
  - (iv) take actions reasonably necessary to protect property in the Seller's possession in which the Purchaser has an interest; and
  - (v) upon the Purchaser's request, cooperate with the Purchaser in effecting the resourcing of the Goods covered by the Order to an alternative supplier designated by the Purchaser.
- (3) Upon termination of any Order by the Purchaser under this Section 17.B, the Purchaser shall pay to the Seller the following amounts without duplication:
  - (i) the Order price for all finished and completed Goods that conform to the requirements of the Order and not previously paid for;

- (ii) the Seller's reasonable actual cost of the usable and merchantable work in process and raw materials/components transferred to the Purchaser in accordance with subsection B(2)(ii) hereof;
  - (iii) the Seller's reasonable actual cost of settling claims for the obligations the Seller would have had to the subcontractors approved by the Purchaser on the face of an Order or Order amendment or in a Signed Writing by the Purchaser's Vice President – Purchasing in the absence of termination, and
  - (iv) the Seller's reasonable actual cost of carrying out its obligations under subsections B(2)(iv) and B(2)(v). The Purchaser shall not be liable for and shall not be required to make payments to the Seller, directly or on account of claims by the Seller's subcontractors, for any other alleged losses or costs, whether denominated as loss of anticipated profit, unabsorbed overhead, interest on claims, product development and engineering costs, facilities and equipment rearrangement costs or rental, unamortized depreciation costs, general and administrative burden charges resulting from termination of the Order or otherwise. Notwithstanding anything to the contrary, the Purchaser's obligation to the Seller upon termination under this Section 17.B shall not exceed the obligation the Purchaser would have had to the Seller in the absence of termination.
- (4) Within twenty (20) days after the effective date of termination under this Section 17.B, the Seller shall furnish to the Purchaser its termination claim, together with all supporting data which shall consist exclusively of the items of the Purchaser's obligation to the Seller that are listed in subsection B(3). The Purchaser may audit the Seller's records before or after payment to verify amounts requested in the Seller's termination claim.

C. No Termination Right by the Seller.

Because the Purchaser's commitments to its Customers are made in reliance on the Seller's commitments under each Order, the Seller has no right to terminate any Order.

D. Transition of Supply.

Upon the expiration or earlier termination of any Order for whatever reason, the Seller agrees to take such action as may be reasonably required by the Purchaser to accomplish the transition from the Seller to an alternative seller, including, without limitation the actions set forth below. The term "the alternative seller" expressly includes, but is not limited to, a Purchaser-owned facility.

- (1) The Seller shall provide all notices necessary or desirable for the Purchaser to resource the Order to an alternative seller;
- (2) The Seller shall provide a sufficient bank of Goods covered by the Order to ensure that

the transition to any alternative seller chosen by the Purchaser will proceed smoothly. Unless otherwise specified by the Purchaser on the face of an Order amendment or in a Signed Writing by the Purchaser's Vice President – Purchasing, a six week parts inventory bank will be deemed sufficient to accomplish the transition. Such "six week parts bank" will be calculated using the Orders of the Purchaser from the six weeks immediately prior to the Seller's notice of termination not including any temporary interruptions, plant or industry shutdowns or other reduced schedules;

- (3) The Seller shall return to the Purchaser all Bailed Property and any other property furnished by or belonging to the Purchaser or any of the Purchaser's Customers in as good as condition as when received by the Seller, reasonable wear and tear excepted;
- (4) The Seller shall, at the Purchaser's option,
  - (i) assign to the Purchaser any or all supply contracts or orders for raw material or components relating to the Order,
  - (ii) sell to the Purchaser, at the Seller's cost, any or all inventory and work in process relating to the Order and
  - (iii) sell to the Purchaser, at the unamortized portion of the cost of such items, less any amounts the Purchaser previously has paid to the Seller for the cost of such items, any or all the Seller's Property relating to the Order (see Section 21).

#### **18. Limitation of Damages.**

In no event shall the Purchaser be liable to the Seller for anticipated profits or for special, incidental or consequential damages. This limitation of liability provision applies notwithstanding the type of the Order (including, without limitation, Spot-buy Orders, Blanket Orders or requirements contract Orders). The Purchaser's liability for a claim of any kind or for any loss or damage arising out of or in connection with or resulting from each Order, the Goods or any other agreement between the Purchaser and the Seller is the Reasonable Obsolescence, if any, created by the event giving rise to the claim. The Purchaser and the Seller agree that "**Reasonable Obsolescence**" means the following amounts without duplication:

- (i) the Order price for all finished and completed Goods that conform to the requirements of the Order and not previously paid for;
- (ii) the Seller's reasonable actual cost of the usable and merchantable work in process and raw materials/components transferred to the Purchaser in accordance with the termination and that are covered by outstanding firm Releases from the Purchaser; and
- (iii) the Seller's reasonable actual cost of settling claims for the obligations the Seller would have had to the subcontractors approved in a Signed Writing by the Purchaser's Vice

President – Purchasing in the absence of termination limited to the amount of the firm quantities of Goods and raw materials/components specified in Releases issued by the Purchaser that are currently outstanding. The Purchaser shall not be liable for and shall not be required to make payments to the Seller, directly or on account of claims by the Seller's subcontractors, for any other alleged losses or costs, whether denominated as loss of anticipated profit, recoupment of investment, unabsorbed overhead, interest on claims, product development and engineering costs, facilities and equipment rearrangement costs or rental, unamortized depreciation costs, general and administrative burden charges resulting from termination of the Order or otherwise. Notwithstanding anything to the contrary, the Purchaser's obligation to the Seller upon termination of any Order shall not exceed the obligation the Purchaser would have had to the Seller in the absence of termination of such Order.

#### **19. Assignment.**

The Seller shall not assign or delegate any of its duties or obligations under any Order without the prior consent of the Purchaser on the face of an Order or Order amendment or in a Signed Writing by the Purchaser's Vice President – Purchasing, which consent may be withheld in the Purchaser's sole discretion. Any sale or other transfer of stock or other securities of the Seller that would result in a change in control of the Seller shall be deemed an assignment under the Order. The Seller may assign its claims for money under any Order as collateral security for indebtedness of the Seller, but the Purchaser shall not be required to pay the assignee until the Purchaser receives written notice of the assignment, a true copy of the assignment and a release from the Seller reasonably acceptable to the Purchaser. Any such assignment shall not prohibit The Purchaser from enforcing its rights against the Seller or the assignee, including, without limitation, The Purchaser's rights to setoff and recoupment under Section 34, all of which rights of the Purchaser against the Seller or assignee are senior to any rights of such assignee. The Purchaser may freely assign to any third party its rights and obligations under any Order without the consent of the Seller.

#### **20. Bailed Property.**

- A. All supplies, materials, molds, machinery, equipment, patterns, tools, dies, jigs, fixtures, blueprints, designs, specifications, drawings, photographic negatives and positives, art work, copy layout, consigned material for production or repair and other items furnished by the Purchaser, either directly or indirectly, to the Seller or to any sub-supplier of the Seller in connection with or related to any Order, or for which the Seller has been reimbursed by the Purchaser (collectively, the "**Bailed Property**"), shall be and remain the property of the Purchaser and be held by the Seller on a bailment at-will basis. The Seller shall bear the risk of loss of and damage to the Bailed Property and the Seller, at its own expense, shall keep such Bailed Property insured for the benefit of the Purchaser, naming the Purchaser as the loss payee and additional insured. The Bailed Property shall at all times be properly housed and maintained by the Seller; shall not be used by the Seller for any purpose other than the performance of the Order; shall be deemed to be personal property; shall be conspicuously marked by the Seller to identify it as the property of the Purchaser and indicate the Purchaser's name and address; shall not be commingled with the property of the Seller

or with that of a third person and shall not be moved from the Seller's premises without the prior approval by the Purchaser on the face of an Order or Order amendment or in a Signed Writing of the Purchaser's Vice President – Purchasing. The Seller, at its expense, shall maintain, repair and refurbish Bailed Property in first class condition. All replacement parts, additions, improvements and accessories for such Bailed Property shall automatically become the Purchaser's property upon their incorporation into or attachment to the Bailed Property.

B. The Seller agrees that the Purchaser has the right, at any time, with or without reason and without payment of any kind to retake possession of or request return of any or all Bailed Property, without the necessity of obtaining a court order. Upon the request of the Purchaser, the Bailed Property shall be immediately released to the Purchaser or delivered to the Purchaser by the Seller, either

- (i) F.O.B. transport equipment at the Seller's plant, properly packaged and marked in accordance with the requirements of the carrier selected by the Purchaser to transport such property; or
- (ii) to any location designated by the Purchaser, in which event the Purchaser shall pay to the Seller the reasonable cost of delivering such Bailed Property to such location. The Purchaser shall have the right to enter onto the Seller's premises at all reasonable times to inspect the Bailed Property and the Seller's records with respect thereto. When permitted by law, the Seller waives any lien or other rights that the Seller might otherwise have on any of the Bailed Property for work performed on such property, for the purchase price of any Goods or otherwise. The Seller agrees that any missing components of or inserts to any Bailed Property shall be replaced by the Seller at current costs.

C. The Seller acknowledges and agrees that:

- (i) The Purchaser is not the manufacturer of the Bailed Property neither the manufacturer's agent nor a dealer therein;
- (ii) The Purchaser is bailing the Bailed Property to the Seller for the Seller's benefit; and
- (iii) The Seller has inspected the Bailed Property and is satisfied that the Bailed Property is suitable and fit for its purposes, and
- (iv) THE PURCHASER HAS NOT MADE AND DOES NOT MAKE ANY WARRANTY OR REPRESENTATION WHATSOEVER, EITHER EXPRESS OR IMPLIED, AS TO THE FITNESS, CONDITION, MERCHANTABILITY, DESIGN OR OPERATION OF THE BAILED PROPERTY OR ITS FITNESS FOR ANY PARTICULAR PURPOSE and the Purchaser will not be liable to the Seller for any loss, damage, injury or expense of any kind or nature caused, directly or indirectly, by the Bailed Property, including, without limitation, its use or maintenance, or its repair, service or adjustment, or by any interruption of service or for any loss of business whatsoever or howsoever caused, including, without limitation any anticipatory damages, loss of profits or any other indirect, special or consequential damages.

- D. The Seller shall provide the Purchaser, upon the Purchaser's request, with a written inventory of all Bailed Property.

## **21. Seller's Property.**

Unless otherwise agreed to by the Purchaser and the Seller in a written agreement signed by both the Seller and the Purchaser's Vice President – Purchasing, the Seller, at its expense: shall

- (i) furnish;
- (ii) keep in good condition; and
- (iii) replace when necessary all the Seller's Property (hereinafter defined).

The Seller hereby grants the Purchaser an irrevocable option to purchase, free and clear of all liens, claims and other encumbrances, any or all of the Seller's supplies, materials, molds, machinery, equipment, patterns, tools, dies, jigs, fixtures, blueprints, designs, specifications, drawings, photographic negatives and positives, art work, copy layout and other items necessary for the production of the Goods under any Order (collectively, the “**Seller's Property**”) that are specially designed or configured for manufacture or assembly of Goods under the Order upon the Purchaser's payment of the unamortized portion of the cost of such items of the Seller's Property, less any amounts the Purchaser previously has paid to the Seller for the cost of such Seller's Property. The Seller shall permit the Purchaser to audit the Seller's records to verify the amount due for any of the Seller's Property. This option will not apply to any of the Seller's Property that is used by the Seller to produce a substantial quantity of like products for other customers of the Seller which cannot readily be obtained by the Seller's customer(s) from third parties unless, at the Purchaser's election upon exercise of the option, the Seller assigns to the Purchaser and the Purchaser or its designee assumes the Seller's obligation to produce such products for the Seller's other customers using those items of the Seller's Property during the period subsequent to the sale of the Seller's Property to the Purchaser. The Seller shall cooperate with the Purchaser's reasonable requests for information regarding any such obligation to the Seller's other customer(s) and to effect such assignment and assumption. The Purchaser's right to exercise the option under this Section 21 is not conditioned on a breach by the Seller or the Purchaser's termination of the Order.

## **22. Rights of Entry, Reclamation and Inspection.**

The Purchaser shall have the right to enter the Seller's facility during normal business hours or, in the event of a the Seller shutdown, at reasonable times, to inspect the facility, Goods, materials and any property of the Purchaser covered by each Order and, without the necessity of a court order, may enter upon the Seller's property and remove property belonging to the Purchaser or any Customer of the Purchaser, including, without limitation, Bailed Property and other Goods, inventory or the Seller's Property that has been or is agreed to be sold to the Purchaser under the Order. The Purchaser's inspection of the Goods whether during manufacture, prior to delivery or

within a reasonable time after delivery, shall not constitute acceptance of any work in process or finished Goods.

### **23. Subcontracting.**

- A. The Seller shall not subcontract any of its duties or obligations under any Order without prior approval by the Purchaser on the face of an Order or Order amendment or in a Signed Writing by the Purchaser's Vice President – Purchasing. The Seller shall ensure that any subcontractor so approved complies with all production part approval process requirements of the Purchaser's Customer and any other requirements of the Purchaser. The Purchaser or the Purchaser's representative shall be afforded the right to verify at any subcontractor's premises and the Seller's premises that subcontracted Goods conform to specified requirements. Verification by the Purchaser or the Purchaser's representative shall not,
- (i) shift responsibility for quality by the subcontractor from the Seller to the Purchaser,
  - (ii) absolve the Seller of the responsibility to provide acceptable Goods nor
  - (iii) preclude subsequent rejection of Goods by the Purchaser. Notwithstanding any verification by the Purchaser or the Purchaser's representative, the Seller remains fully liable for any work subcontracted.
- B. In the event the Seller's subcontracting of any of the work under any Order is approved by the Purchaser on the face of an Order or Order amendment or in a Signed Writing by the Purchaser's Vice President – Purchasing, and as a condition to such approval, the Seller shall provide the Purchaser with written evidence that the subcontractor agrees to be bound by these Terms and Conditions and the Order.
- C. In the event that the Seller cannot fulfill any of its obligations under any Order, the Seller shall, at the Purchaser's option and in addition to any other rights or remedies available to the Purchaser under the Order or otherwise, assign to the Purchaser all of the Seller's rights with respect to any subcontractors under such Order.

### **24. Nonconforming Goods.**

The Purchaser, at its option, may reject and return at the Seller's risk and expense, or retain and correct, Goods received pursuant to any Order that fail to conform to the requirements of the Order even if the nonconformity does not become apparent to the Purchaser until the manufacturing, processing or assembly stage or later. To the extent the Purchaser rejects Goods as nonconforming, the quantities under the Order will not be reduced by the quantity of nonconforming Goods unless the Purchaser otherwise notifies the Seller in writing. The Seller shall replace nonconforming Goods with conforming Goods unless otherwise notified in writing by the Purchaser, including, without limitation by way of a termination notice from the Purchaser under Section 17.A. Nonconforming Goods will be held by the Purchaser for disposition in accordance with the Seller's

written instructions at the Seller's risk. The Seller's failure to provide written instructions within ten (10) days (or such shorter period as may be commercially reasonable under the circumstances) after notice of nonconformity shall entitle the Purchaser, at the Purchaser's option, to charge the Seller for storage and handling, or to dispose of the Goods without any liability of the Purchaser to the Seller. The Seller shall reimburse the Purchaser for:

- (a) any amounts paid by the Purchaser on account of the purchase price of any rejected nonconforming Goods; and
- (b) any costs incurred by the Purchaser in connection with the nonconforming Goods, including, but not limited to inspection, sorting, testing, evaluations, storage or rework, within ten (10) days after a debit memo for the costs has been issued by the Purchaser. Payment by the Purchaser for nonconforming Goods shall not constitute an acceptance, limit or impair the Purchaser's right to assert any legal or equitable remedy, or relieve the Seller's responsibility for latent defects.

## **25. Indemnification.**

- A. The Seller hereby covenants and agrees to indemnify and hold harmless the Purchaser, its affiliates and subsidiaries, and their respective directors, officers, employees and agents from any claims, liabilities, damages (including special, consequential, punitive and exemplary damages), costs and expenses (including actual fees for attorneys, experts and consultants, settlement costs and judgments) incurred in connection with any claims (including lawsuits, administrative claims, regulatory actions and other proceedings to recover for personal injury or death, property damage or economic losses) that are related in any way to or arise in any way from the Goods, the Seller's representations, the Seller's performance of or failure to perform obligations under any Order, including claims based on the Seller's breach or alleged breach of warranty (whether or not the Goods have been incorporated into the Purchaser's products and/or resold by the Purchaser), and claims for any violation of any applicable law, ordinance or regulation or government authorization or order. The Seller's obligation to indemnify will apply regardless of whether the claim arises in tort, negligence, contract, warranty, strict liability or otherwise, except to the extent of any such liability arising solely out of the gross negligence of the Purchaser. The Seller's indemnification obligations will apply even if the Purchaser furnishes all or a portion of the design and specifies all or a portion of the processing used by the Seller unless a separate written agreement signed by the Seller and the Purchaser's Vice President – Purchasing provides otherwise.
- B. If the Seller performs any work on the Purchaser's premises or utilizes the property of the Purchaser, whether on or off the Purchaser's premises, the Seller shall indemnify and hold harmless the Purchaser, its affiliates and subsidiaries, and their respective directors, officers, employees and agents from and against any liabilities, claims, demands or expenses (including actual fees for attorneys, experts and consultants, settlement costs and judgments) for damages to the property of or injuries (including death) to the Purchaser, its employees or any other person arising from or in connection with the Seller's performance of work or use of the Purchaser's property except to the extent of any such liability, claim or demand arising solely out of the gross negligence of the Purchaser.

## **26. Insurance.**

The Seller shall obtain and maintain at its sole expense insurance coverage customary in the industry and as otherwise required by law or reasonably requested by the Purchaser with such insurance carriers and in such amounts as are reasonably acceptable to the Purchaser. This includes, without limitation, providing full fire and extended coverage insurance for the replacement value of:

- (i) all the Seller's Property; and
- (ii) any Bailed Property, both for their full replacement value. All such insurance coverage shall name the Purchaser as loss payee and additional insured. The Seller shall furnish to the Purchaser certificates of insurance setting forth the amount of coverage, policy number and date(s) of expiration for insurance maintained by the Seller and such certificates must provide that the Purchaser shall receive thirty (30) days prior written notification from the insurer of any termination or reduction in the amount or scope of coverages. The Seller's furnishing of certificates of insurance or purchase of insurance shall not release the Seller of its obligations or liabilities under any Order. If the Seller shall fail to maintain any insurance under any Order, the Purchaser shall have the right to procure such insurance and the Seller shall reimburse the Purchaser on demand, for all actual costs and expenses of procuring such insurance.

## **27. Compliance.**

- A. The Seller agrees to comply with all federal, state, local and foreign laws, executive orders, rules, regulations and ordinances that may be applicable to the Seller's performance of its obligations under each Order, and each Order shall be deemed to incorporate by reference all the clauses required by the provisions of said laws, executive orders, rules, regulations and ordinances. All purchased materials used in manufacture of the Goods shall satisfy current governmental and safety constraints on restricted, toxic and hazardous materials as well as environmental, electrical and electromagnetic considerations applicable to the country of manufacture and sale. All suppliers must be in compliance with ISO14001, TS16949 and ELV or their successors, as amended from time to time.
- B. The Seller shall not:
  - (i) utilize forced or involuntary labor, regardless of its form;
  - (ii) employ any child, except as part of a government approved job training, apprenticeship or similar program; or
  - (iii) engage in abusive employment or corrupt business practices, in the supply or provision of Goods under any Order.
- C. The Seller shall adopt and enforce a code of conduct for business practices with principles, policies

and procedures consistent with the principles, policies and procedures set forth in the Purchaser's Code of Business Conduct and Ethics available through links provided on the Lear Corporation web site at [www.lear.com](http://www.lear.com) under Corporate Governance. The Seller shall promptly report all violations of the Seller's code of conduct to the Purchaser's Vice President – Purchasing.

- D. The Seller shall provide the Purchaser written notice immediately upon becoming aware that any director, officer or employee of the Seller, or any of its subsidiaries or affiliates, is also a director, officer or immediate family member of any director or officer of the Purchaser, or any of its subsidiaries or affiliates. As to employees of the Seller only, the Seller only needs to report this information to the Purchaser if the employee (excluding an officer or director of the Seller) is substantively involved in the Seller's business relationship with the Purchaser or receives any direct or indirect compensation or benefit based on the Seller's business relationship with the Purchaser.
- E. In the event the Seller subcontracts any of its duties or obligations under any Order in accordance with Section 23, the Seller shall ensure that all subcontractors comply with the requirements under this Section 27. At the Purchaser's request, the Seller shall certify in writing the Seller's and its subcontractor's compliance with all such requirements. The Purchaser shall have the right to audit and monitor the Seller's and its subcontractor's compliance with the Seller's and its subcontractor's obligations under any Order. The Seller shall indemnify and hold harmless the Purchaser, its affiliates and subsidiaries, and their respective directors, officers, employees and agents from and against any liability claims, demands or expenses (including actual fees for attorneys, experts and consultants, settlement costs and judgments) arising from or relating to the Seller's or its subcontractor's noncompliance

## **28. Production Part Approval Requirements.**

With respect to Orders for production parts, the Seller agrees to meet the full requirements identified in the industry production part approval process manual and agrees to present this information and data relating thereto to the Purchaser upon request, regardless of the authorized submission level, at Level No. 3 or its current equivalent unless otherwise authorized by the Purchaser on the face of an Order or Order amendment or in a Signed Writing by the Purchaser's Vice President – Purchasing.

## **29. Identification of Goods.**

All Goods supplied pursuant to each Order that are construed as a completed part shall permanently bear the Purchaser's part number and name or code name, the Seller's name or code name, and date of manufacture by the Seller.

## **30. Shipping.**

A. The Seller agrees:

- (i) to properly pack, mark and ship Goods in accordance with the requirements of the Purchaser

and the involved carrier in a manner to secure the lowest transportation cost;

- (ii) to route shipment in accordance with the Purchaser's instructions;
- (iii) to make no charge for handling, packaging, storage, transportation (including duties, taxes, fees, etc.), cost of vehicle or other transport expenses or drayage of Goods unless otherwise approved by the Purchaser on the face of an Order or Order amendment or in a Signed Writing by the Purchaser's Vice President – Purchasing;
- (iv) to provide with each shipment papers showing the Order number, Order amendment or Release number, the Purchaser's part number, the Seller's part number where applicable, quantity of pieces in shipment, number of cartons or containers in shipment, the Seller's name and vendor number, the bill of lading number and the country of origin; and
- (v) to promptly forward the original bill of lading or other shipment receipt for each shipment in accordance with the Purchaser's instructions and carrier requirements. The marks on each package and identification of the Goods on packing slips, bills of lading and invoices shall be sufficient to enable the Purchaser to easily identify the Goods purchased.

B. For Goods that may contain potentially hazardous and/or restricted materials, if requested by the Purchaser, the Seller shall promptly furnish to the Purchaser in whatever form and detail the Purchaser requests:

- (i) a list of all potentially hazardous ingredients in the Goods;
- (ii) the quantity of one or more such ingredients; and
- (iii) information concerning any changes in or additions to such ingredients. Before shipping the Goods, the Seller agrees to furnish to the Purchaser sufficient warning and notice in writing (including appropriate labels on the Goods, containers and packing) of any hazardous material that is an ingredient or a part of any of the Goods, together with such special handling instructions necessary to advise the involved carriers, the Purchaser, and their respective employees how to exercise that measure of care and precaution that will best prevent bodily injury or property damage in the handling, transportation, processing, use or disposal of the Goods, containers and packing shipped to the Purchaser. The Seller shall comply with all applicable federal, state, local and foreign laws and regulations pertaining to product and warning labels. If Goods are shipped by the Seller to European destinations, before shipments are made, the Seller shall notify the Purchaser of the "Classification of Dangerous Goods" as required by the European Agreement concerning the "International Carriage of Dangerous Goods".

C. Any packaging made of wood (including pallets) must conform to the international softwood standards. In the event the Seller fails to comply with such standards, the Seller shall be liable for all related replacement and transportation costs.

**31. Customs Drawback Documents, Other Government Requirements, and Export Controls.**

- A. Upon the Purchaser's request, the Seller shall furnish promptly all documents required for customs drawback purposes, properly completed in accordance with government regulations applicable thereto. The Seller shall furthermore, at its expense, provide all information necessary (including written documentation and electronic transaction records relating to the Goods, tooling and equipment necessary for the Purchaser to fulfill any customs-related or other Governmental agency-related obligations, origin marking or labeling requirements and certification or local content reporting requirements, to enable the Purchaser to claim preferential duty treatment at the time of entry for Goods, tooling and equipment eligible under applicable trade preference regimes, and to make all arrangements that are necessary for the Goods to be covered by any applicable duty deferral or free trade zone program(s) of the country of import. The Seller shall, at its expense, provide the Purchaser or the Purchaser's nominated service provider with all documentation to enable the Goods to be exported, and obtain all export licenses or authorizations necessary for the export of the Goods, tooling and equipment unless otherwise indicated in the Order, in which event the Seller shall provide all information as may be necessary to enable the Purchaser to obtain such licenses or authorization(s). Credits or benefits resulting or arising from any Order, including trade credits, export credits or the refund of duties, taxes or fees, shall belong to the Purchaser.
- B. The Seller is responsible for any incorrect information provided by the Seller or any noncompliance with the Indian customs regulations by the Seller that results in penalties and/or additional duties for the Purchaser. The Seller also acknowledges and agrees to adhere to all security procedures as may be required by the Purchaser, in accordance with Indian law.

**32. Invoices.**

All invoices and/or advanced shipping notices ("ASN") for Goods shipped pursuant to each Order must reference the Order number, Order amendment or Release number, the Purchaser's part number, the Seller's part number where applicable, quantity of pieces in shipment, number of cartons or containers, the Seller's name and number, and bill of lading number, before any payment will be made for Goods by the Purchaser. In addition, no invoice may reference any term separate from or different than these Terms and Conditions or the terms that appear on the face of the Order. The Purchaser reserves the right to return all invoices or related documents submitted incorrectly. Payment terms will begin to run once the latest correct invoice or ASN is received and input into the Purchaser's system by the applicable Purchaser facility. Any payment by the Purchaser of a nonconforming invoice is not an acceptance of any nonconforming element or terms on such invoice.

**33. Payment Terms.**

- A. Payment terms are set forth in the Order.
- B. If a payment date falls on a non-business day, payment will occur on the following business day.

- C. Notwithstanding the particular payment terms applicable to an Order:
- (i) in no event will the Seller have a right to payment for Tooling before the Purchaser is paid by its Customer for such Tooling, unless it is otherwise agreed in writing by Purchaser;
  - (ii) in no event will a Seller who is a Directed Supplier have a right to receive payment from the Purchaser until the Purchaser is fully paid by the Purchaser's Customer for the related Goods or, as applicable, the goods into which such Goods are incorporated; and
  - (iii) The Purchaser may, at its option, upon notice to the Seller, revise its payment terms for production Goods to take into account any change in the payment terms of the Purchaser's Customer applicable to the Goods under any Order.

#### **34. Setoff and Contractual Recoupment.**

- A. In addition to any right of setoff or recoupment provided or allowed by law, all amounts due the Seller, or any of its subsidiaries or affiliates shall be considered net of indebtedness or obligations of the Seller, or any of its subsidiaries or affiliates to the Purchaser or any of its subsidiaries or affiliates, and the Purchaser or any of its subsidiaries or affiliates may setoff against or recoup from any amounts due or to become due from the Seller, or any of its subsidiaries or affiliates to the Purchaser or any of its subsidiaries or affiliates however and whenever arising. In the event that the Purchaser or any of its subsidiaries or affiliates reasonably feels itself at risk, the Purchaser or any of its subsidiaries or affiliates may withhold and recoup a corresponding amount due to the Seller or any of its subsidiaries or affiliates to protect against such risk.
- B. An “**affiliate**” of a party means any other company that controls, is controlled by, or is under common control with such party. For purposes of this definition, the term “**control**” means the ownership, directly or indirectly, of twenty percent (20%) or more of the capital or equity of a company or the ability, by voting securities, contract or otherwise, to elect a majority of the board of directors or other governing body of such company.
- C. If an obligation of the Seller or any of its subsidiaries or affiliates to the Purchaser or any of its subsidiaries or affiliates is disputed, contingent or unliquidated, the Purchaser or any of its subsidiaries or affiliates may defer payment of all or any portion of the amount due until such obligation is resolved. Without limiting the generality of the foregoing and by way of example only, in the event of a bankruptcy of the Seller, if all of the Orders between the Purchaser and the Seller have not been assumed, then the Purchaser may defer payment to the Seller, via an administrative hold or otherwise, for Goods against potential rejection and other damages.

#### **35. Advertising.**

The Seller shall not refer to the Purchaser in advertising or public releases without the prior approval in a Signed Writing of the Purchaser's Chief Officer of Purchasing Department and shall

not use the Purchaser's trademarks or trade names in advertising or promotional materials.

### **36. Force Majeure.**

Any delay or failure of the Purchaser or the Seller to perform its obligations under the Order will be excused if, and to the extent that, the party is unable to perform specifically due to an event or occurrence beyond its reasonable control and without its fault or negligence, such as: acts of God; restrictions, prohibitions, priorities or allocations imposed or actions taken by a governmental authority; embargoes; fires; explosions; natural disasters; riots; wars; sabotage; or inability to obtain power. As soon as possible (but no more than one full business day) after the occurrence, the Seller shall provide written notice describing such delay and assuring the Purchaser of the anticipated duration of the delay and the time that the delay will be cured. During the delay or failure to perform by the Seller, the Purchaser may at its option:

- (a) purchase Goods from other sources and reduce its Releases to the Seller by such quantities, without liability of the Purchaser to the Seller and require the Seller to reimburse the Purchaser for any additional costs to the Purchaser of obtaining the substitute Goods compared to the prices set forth in the Order;
- (b) require the Seller to deliver to the Purchaser at the Purchaser's expense all finished Goods, work in process and parts and materials produced or acquired for work under the Order; or
- (c) require the Seller to provide Goods from other sources in quantities and at a time requested by the Purchaser and at the price set forth in the Order. In addition, the Seller at its expense shall take all actions deemed reasonably necessary by the Seller to ensure that in the event of any anticipated labor disruption, strike or worker slowdown or resulting from the expiration of the Seller's labor contracts, an uninterrupted supply of Goods will be available to the Purchaser in an area that will not be affected by any such disruption for a period of at least thirty (30) days. If upon request of the Purchaser, the Seller fails to provide within ten (10) days (or such shorter period as the Purchaser requires) adequate assurances that any delay will not exceed thirty (30) days or if any delay lasts longer than thirty (30) days, the Purchaser may terminate the Order without liability and the Seller shall reimburse the Purchaser for costs associated with the cancellation. The Seller acknowledges and agrees that the change in cost or availability of materials, components or services based on market conditions, supplier actions or contract disputes will not excuse performance by the Seller under theories of force majeure, commercial impracticability or otherwise and the Seller expressly assumes these risks.

### **37. Service and Replacement Parts.**

- A. Upon receipt of a Release, the Seller shall sell to the Purchaser all Goods necessary for the Purchaser to fulfill the Purchaser's and its Customer's service and replacement parts requirements for its current model year at the then current production prices plus any actual net cost differential for required unique packaging. If the Goods are systems, modules or assemblies, the Seller shall sell the components or parts of such systems, modules or assemblies at prices that will not in the

aggregate exceed the then current production price of the system, module or assembly less the costs of labor involved in connection with the system, module or assembly plus any actual net cost differential for required unique packaging.

- B. After termination of the current model production of the vehicle involved, the Seller shall sell to the Purchaser Goods necessary for the Purchaser to fulfill the Purchaser's and its Customers' service and replacement parts requirements for past model years at the prices then specified in the last Order for current model production plus any actual net cost differential for required unique packaging for the first five (5) years of past model service. For the following ten (10) years of past model service or such longer period as the Purchaser's Customer requires service parts, the prices shall be as specified in the last Order for current model production plus any actual net cost differential for required unique packaging, plus any actual net cost differential for manufacturing costs as mutually agreed between the Purchaser and the Seller.

**38. Compliance with Equal Employment Opportunity.**

To the extent that the Goods provided under any Order may be deemed to be necessary for the performance of a government contract, the Seller agrees to comply with applicable Indian law.

**39. Packaging.**

All packaging must conform to the Purchaser's standard packaging requirements, which are available through links provided on the Lear Corporation web site at [www.lear.com](http://www.lear.com) under Supplier Information.

**40. Claims from the Seller.**

Any action by the Seller under any Order must be commenced within one (1) year after the breach or other event giving rise to the Seller's claim occurs, regardless of the Seller's lack of knowledge of the breach or other event giving rise to such claim.

**41. Severability.**

If any term(s) of the Order is invalid or unenforceable under any statute, regulation, ordinance, executive order or other rule of law, such term(s) 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.

**42. Electronic Communications and Electronic Signatures.**

If requested by the Purchaser, the Seller shall comply with any method of electronic communication specified by the Purchaser, including requirements for electronic funds transfer, purchase order transmission, production Releases, electronic signature, and communication. E-mails, even those containing a signature block of one of the Purchaser's representatives shall not

constitute a Signed Writing.

#### **43. Notices.**

All notices, claims and other communications to the Purchaser required or permitted under the Order shall be made in writing and sent by certified or registered mail, return receipt requested and proper postage prepaid to the following address and shall be effective only upon receipt by the Purchaser:

Lear Automotive India Private Limited  
E-25, 26 & 27, MIDC, Bhosari,  
Pune 411026  
India  
**Attn:** Purchase Head

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

#### **44. Confidentiality.**

A. The Seller shall:

- (i) keep all the Purchaser's information confidential and disclose it only to its employees who need to know such Purchaser's information in order for the Seller to supply Goods, tooling, and equipment to the Purchaser under the Order; and
- (ii) use the Purchaser's Information solely for the purpose of supplying Goods to the Purchaser.

**"Purchaser's information"** means all information provided to the Seller by the Purchaser or its representatives or subcontractors in connection with the business, programs, and Goods covered by the Order, including without limitation, pricing and other terms of the Order, specifications, data, formulas, compositions, designs, sketches, photographs, samples, prototypes, test vehicles, manufacturing, packaging or shipping methods and processes and computer software and programs (including object code and source code). Purchaser's information also includes any materials or information that contains, or are based on, any Purchaser's Information, whether prepared by the Purchaser, the Seller or any other person.

#### **45. Tooling & Equipment - Supplemental Terms.**

A. In addition to being governed by these Terms and Conditions, each Order for the purchase of tooling ("**Tooling**") and equipment ("**Equipment**") shall be governed by the Purchaser's Supplemental

Tooling and Equipment Terms which are available through links provided on the Lear Corporation web site at [www.lear.com](http://www.lear.com) under Supplier Information (the “**Supplemental Tooling and Equipment Terms**”); provided, that in the event of an inconsistency between these Terms and Conditions and the Supplemental Tooling and Equipment Terms, the Supplemental Tooling and Equipment Terms shall control as to all such Tooling and Equipment.

**46. Service Terms - Supplemental Terms.**

- A. In addition to being governed by these Terms and Conditions, each Order for the purchase of services unrelated to production Goods shall be governed by the Purchaser’s Supplemental Service Terms which are available through links provided on the Lear Corporation web site at [www.lear.com](http://www.lear.com) under Supplier Information (the “**Supplemental Service Terms**”); provided that, in the event of an inconsistency between these Terms and Conditions and the Supplemental Service Terms, the Supplemental Service Terms shall control as to all such services unrelated to production Goods.

**47. Construction.**

- A. When used in the Order, “**including**” means “including, without limitation,” and terms defined in the singular include the plural and vice versa. The headers, titles and numbering are for convenience of reference only and shall not affect the construction or interpretation of the Order.

**48. Entire Agreement; Modification.**

- A. The Order, together with the attachments, exhibits or supplements specifically referenced in the Order, constitutes the entire agreement between the Seller and the Purchaser with respect to the matters contained in the Order and supersedes all prior oral or written representations and agreements.
- B. The Purchaser may modify the Terms and Conditions, at any time, by posting notice of such modified Terms and Conditions through links provided on the Lear Corporation web site at [www.lear.com](http://www.lear.com) under Supplier Information at least ten (10) days prior to any modified Terms and Conditions becoming effective. The Seller shall review the Lear Corporation website and the Terms and Conditions periodically. The Seller’s continued performance under the Order without providing written notice to the Purchaser in accordance with Section 44 detailing the Seller’s objection to any modified Terms and Conditions prior to the effective date of such modified Terms and Conditions will be subject to and will constitute the Seller’s acceptance of such modified Terms and Conditions. Except as provided in the preceding sentences or as otherwise provided in these Terms and Conditions, the Order may only be modified by an Order amendment or a Signed Writing by the Purchaser’s Vice President – Purchasing.

**49. Governing Law; Jurisdiction; Venue.**

- A. Each Order shall be governed by the internal laws of the Republic of India without regard to any

applicable conflict of laws provisions. The United Nations Convention on the International Sale of Goods is expressly excluded. Subject to the arbitration provisions of Section 51, the Seller consents to the exclusive jurisdiction of the courts of India or any other court of competent jurisdiction for any legal or equitable action or proceeding arising out of, or in connection with, each Order. The Seller specifically waives any and all objections to venue in such courts.

**50. Arbitration.**

- A. All disputes arising under or in connection with any Order or any other document pertaining to any Order shall be finally settled by arbitration in New Delhi, India, before a single arbitrator appointed by the Arbitration and Conciliation Act, 1996 which arbitration shall be conducted in accordance with the Arbitration and Conciliation Act, 1996 provided however, that discovery shall be permitted in accordance with the Indian Code of Civil Procedure. The decision of the arbitrator shall be final and binding upon the Purchaser and the Seller, shall not be appealable, and judgment on the award rendered may be entered in any court of competent jurisdiction.
  
- B. The arbitrator will have no authority to award punitive or other damages not measured by the prevailing party's actual damages. Each party will bear equally the costs and expenses of the arbitration and of the arbitrator. Each party will bear its own costs and expenses. The failure by one party to pay its share of arbitration fees constitutes a waiver of such party's claim or defense in the arbitration. All arbitration proceedings shall be confidential, except to the extent that disclosure is necessary to enforce an arbitration award in a court of competent jurisdiction. Notwithstanding anything to the contrary, the Purchaser shall have the right, without waiving any remedy under the Order, to seek from any court of competent jurisdiction (i) equitable relief and (ii) any interim or provisional relief that is necessary to protect the rights or property of the Purchaser.