



**General Terms and Conditions  
for the Purchase of Direct Materials and Automotive Components**

1. Scope. These General Terms and Conditions for the Purchase of Direct Materials and Automotive Components (the "**Terms**") apply to all transactions conducted by Harbinger Motors Inc. (formerly known as Electron Transport Inc.) and its affiliates and representative agents ("**Harbinger**"), as the purchaser, from the seller or service provider (the "**Supplier**") for the supply of the goods ("**Goods**") and services ("**Service**") specified in any purchase order(s) (each, a "**Purchase Order**") entered by the Parties, and are expressly incorporated into such Purchase Order. Harbinger and Supplier shall each hereafter be referred to individually as a "**Party**" or collectively as the "**Parties**."

2. Contractual Agreement.

(a) Offer and Acceptance. Each purchase order Harbinger issues is its offer to purchase the Goods and Services identified in such Purchase Order. These Terms are not intended to be signed, and instead Supplier will be deemed to have accepted a Purchase Order as issued, where Supplier either (i) commences work under the Purchase Order (or any statement of work thereunder); (ii) accepts the Purchase Order in writing; or (iii) fails to object to the Purchase Order in writing within ten (10) days of issuance, whichever is earliest. These Terms may be modified by specific written reference in a Purchase Order; if and to the extent that these Terms and a Purchase Order contain contradictory statements, the terms of the Purchase Order shall prevail. The Purchase Order and these Terms, together with any statement of work or other documents specifically incorporated in the Purchase Order, such as specifications, drawings, or the packaging, shipping or quality requirements of Harbinger (collectively, this "**Agreement**"), comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral.

This Agreement expressly limits Supplier's acceptance to the terms of this Agreement. These Terms prevail over any of Supplier's general or special terms and conditions of sale regardless of whether or when Supplier has submitted its sales confirmation or such terms. Any additional or different terms proposed by Supplier, whether in Supplier's quotation, acknowledgement, invoice or otherwise, shall be understood to be expressly rejected and objected to by Harbinger, and will not become part of the Purchase Order or this Agreement, unless expressly accepted in a writing signed by Harbinger. If Supplier timely objects to any Purchase Order and proposes additional or alternate Terms, any such changes will become part of the Agreement only if and when Harbinger and Supplier expressly agree in writing, even if Supplier commences or has already commenced performance under the Purchase Order. Any reference in a Purchase Order to any offer or proposal previously made by Supplier is solely to incorporate the description or specifications of Goods or Services in the prior proposal, but only to the extent that the description or specifications do not conflict with the description and specifications in the Purchase Order or any statement of work or other Harbinger technical guidance incorporated therein.

Notwithstanding anything herein to the contrary, if a written contract signed by both parties is in existence covering the sale of the Goods and Services or other matters covered herein, provided that such contract has been incorporated into the applicable Purchase Order, the terms and conditions of said contract shall prevail to the extent they are inconsistent with these Terms.



Any work for hire agreement, collaboration agreement, or other similar agreement executed by the Parties, if any, shall govern the supply of pre-production or development Goods or Services set forth in any statement of work or Purchase Order expressly issued with respect thereto.

(b) Amendments and Modifications. No change to a Purchase Order is binding upon Harbinger unless it is in writing, identifies and specifically states that it amends such Purchase Order and is signed by an authorized representative of Harbinger. Harbinger may, from time to time, at any time, by written instructions and/or drawings issued to Supplier (each a “**Change Order**”), make changes to the terms of any previously issued Purchase Order and the Goods or Services purchased thereunder. The parties are obligated to promptly negotiate, reasonably and in good faith, any adjustments to price (up or down) or to delivery schedule which would result from the proposed changes. Supplier shall within ten (10) days of receipt of a Change Order (or by such other date as indicated thereon) submit to Harbinger a firm cost proposal for the Change Order; and if Harbinger accepts such cost proposal or a modified proposal agreed by both parties, Supplier shall promptly proceed with the implementation of the approved changes subject to the agreed cost proposal and the terms and conditions of this Agreement. Supplier shall not at any time modify the Goods or Services or discontinue the production or supply of the Goods or Services during the term of any Purchase Order without Harbinger’s prior written consent. Supplier shall not relocate the production, manufacture, assembly or shipping locations of the Goods from the facilities and locations approved by Harbinger or substantially alter the nature or quality of the Services to be performed (including changes to key personnel involved in the Services) without Harbinger’s prior written consent.

(c) Other Changes. Except for the changes described in *Section 2(b)*, neither Party may make any changes to the Agreement during its term without the written agreement of each Party’s authorized representative. If these Terms (as posted on Harbinger’s website, attached to or incorporated into a Purchase Order, or communicated by Harbinger to Supplier) change during the term of the Agreement, those changes shall not apply during the term to any previously issued Purchase Order, unless expressly agreed in writing by each Party’s authorized representative.

### 3. Delivery, Shipment, and Inspection.

(a) Place and Manner of Delivery. Supplier shall deliver all Goods and Services in accordance with the date(s) and, with respect to Goods, the quantities specified in the Purchase Order (“**Delivery Date**”) to the address specified in the Purchase Order (the “**Delivery Point**”), during Harbinger’s normal business hours, or as otherwise instructed in writing by Harbinger. If no delivery date is specified, Supplier shall deliver the Goods and Services as soon as reasonably possible following receipt of the Purchase Order.

Supplier acknowledges that time is of the essence with respect to Supplier’s obligations hereunder and the timely delivery of the Goods and Services, including compliance with all delivery and performance dates, timetables, project milestones and other requirements in this Agreement. If Supplier fails to deliver the Goods in full on the Delivery Date, Harbinger may terminate this Agreement, in whole or in part, immediately by providing written notice to Supplier, and, except if and to the extent a delay or failure of delivery results from Harbinger’s actions or other excusable cause under this Agreement (e.g., a Force Majeure Event), Supplier shall indemnify Harbinger against any losses, claims, damages, costs and expenses directly attributable to Supplier’s failure to deliver the Goods on the Delivery Date, including without limitation the additional costs of any expedited or other special transportation deemed appropriate by Harbinger to remedy the delay. If at any time prior to the scheduled Delivery Date Supplier has reason to believe that the delivery of any Goods or Services may not be made in strict conformity with applicable



delivery schedules, Supplier shall immediately notify Harbinger in writing and set forth the cause for the delay, so that the Parties can work together to reach an expeditious resolution.

(b) Packing and Shipping. Supplier shall properly pack and ship all Goods in accordance with the applicable Incoterms as set forth in any Purchase Order (if any) and, to the extent they do not conflict therewith, in accordance with Harbinger's instructions or, if there are no instructions, in a manner sufficient to ensure that the Goods are delivered on time and in undamaged condition (meaning, industry standard practice or better), with marks/labeling on each package sufficient to enable Harbinger to easily identify the Goods purchased. Unless otherwise set forth in any Purchase Order, the cost of packing, marking, insuring the Goods in transit and shipping the Goods shall be borne solely by Supplier. Supplier shall properly mark each package with a clear label or tag and shall promptly forward a packaging slip and the original bill of lading or other shipping receipt for each shipment in accordance with Harbinger's instructions. Notwithstanding Harbinger's instructions, Supplier shall, subject to the applicable Incoterms, be responsible for ensuring that all packing, shipping materials, labeling and marking of the Goods shall meet the requirements of all applicable laws, rule and regulations of the jurisdictions of origin, destination, and intermediary transit. Supplier must provide Harbinger prior written notice if it requires Harbinger to return any packaging material, and any return of such packaging material shall be made at Supplier's risk of loss and expense.

(c) Quantity. If quantities are not specified in the Purchase Order, the quantity will be as reasonably determined by Harbinger and stated in Harbinger's firm releases issued to Supplier from time to time and Supplier shall use best efforts to meet Harbinger's quantity requirements. If Supplier delivers more or less than the quantity of Goods ordered, Harbinger may reject all or any short or excess Goods. Any such rejected Goods shall be temporarily held, disposed of and/or returned to Supplier at Supplier's sole risk and expense. If Harbinger does not reject the Goods and instead accepts the delivery of Goods at the increased or reduced quantity, the Price for the Goods shall be adjusted on a pro-rata basis. Unless otherwise specifically stated in the Agreement, the Agreement is not exclusive and Harbinger may purchase similar Goods and Services from third parties.

(d) Shipping Terms. Delivery shall be made in accordance with the terms on the face of the Purchase Order or, absent such term, FCA Delivery Point (Incoterms 2020). The Purchase Order number, , Harbinger's trade name and Supplier's customs tariff number, if applicable, must appear on all shipping documents, shipping labels, bills of lading, air waybills, invoices, correspondence and any other documents pertaining to the Purchase Order.

(e) Title and Risk of Loss. Subject to the applicable Incoterms as set forth in the Purchase Order (if any), title and risk of loss passes to Harbinger upon delivery and Harbinger's acceptance of the Goods at the Delivery Point. Prior to delivery at the Delivery Point, Supplier shall bear all risk of loss or damage to the Goods. In addition to any other insurance requirements set forth at *Section 15 (Insurance)*, Supplier agrees to insure, and/or shall cause any carrier engaged by Supplier to insure, the Goods up to their full replacement value at all times during transport.

(f) Inspection. Harbinger or its representatives may, upon reasonable advance notice to Supplier, inspect production processes, audit records and conduct reasonable testing at any premises where Services are performed or Goods are developed or manufactured for the sole purpose of verifying Supplier's performance under the Agreement. Supplier may restrict Harbinger's access as reasonably necessary to protect proprietary information and may require appropriate indemnification and releases in



advance of any such visit. Harbinger is not required to inspect Goods delivered or Services performed, and no inspection or failure to inspect will reduce or alter Supplier's obligations under the Agreement or reduce Harbinger's remedies.

(g) Hazardous Materials. Prior to and with the shipment of Goods, Supplier shall furnish to Harbinger or its designated representative sufficient advance warning and notice in writing (including, without limitation, appropriate labels on the Goods, containers and packing) of any dangerous Goods or hazardous materials that are included in any shipment of Goods, together with such special handling instructions as may be necessary to advise carriers, Harbinger, and their respective employees, contractors or agents of how to exercise that measure of care and precaution that shall comply with any applicable laws or regulations and best prevent bodily injury or property damage in the handling, transportation, processing, use or disposal of the Goods, containers and packing shipped from Supplier.

#### 4. Supplier Performance Obligations.

(a) At all times while operating under this Agreement, Supplier shall, and shall ensure that any of its subcontractors and affiliates performing under this Agreement:

(i) obtain, and at all times during performance, maintain, all necessary licenses and consents and comply with all relevant laws in the jurisdiction(s) applicable to the provision of the Goods and performance of the Services;

(ii) comply with all rules, regulations and policies of Harbinger, including security procedures concerning systems and data and remote access thereto, building security procedures, including the restriction of access by Harbinger to certain areas of its premises or systems for security reasons, and all health and safety practices and procedures;

(iii) maintain complete and accurate records relating to the provision of the Services under this Agreement, including records of the time spent and materials used in producing the Goods or providing the Services in such form as Harbinger shall approve. During the term of this Agreement and for a period of two years thereafter, upon Harbinger's written request, Supplier shall allow Harbinger to inspect and make copies of such records and interview Supplier personnel in connection with the provision of the Services;

(iv) ensure that all persons, whether employees, agents, subcontractors, or anyone acting for or on behalf of Supplier, are properly licensed, certified or accredited as required by applicable law and are suitably skilled, experienced and qualified to perform the Services and that necessary supervision is provided to ensure compliance with the terms of the Purchase Order;

(v) ensure that all of its equipment used in the production of Goods and the provision of the Services is in good working order and suitable for the purposes for which it is used, and conforms to all relevant legal standards and standards specified by Harbinger;

(vi) keep and maintain any Harbinger equipment in its possession in good working order and shall not dispose of or use such equipment other than in accordance with Harbinger's written instructions or authorization;



(vii) ensure that all Services to be performed at the Harbinger facilities shall not interfere with the operations of Harbinger or third parties any more than reasonably necessary for performance of the Services; and

(viii) ensure that, in producing the Goods and performing the Services, Supplier takes particular care to utilize methods and substances that are not harmful to the environment. If Supplier releases any hazardous substances in the course of producing the Goods or performing the Services, finds any hazardous substances, or suspects the presence of such substances, Supplier shall notify Harbinger immediately and cooperate with Harbinger to promptly remedy the issue.

(b) Supplier shall obtain Harbinger's written consent, which shall not be unreasonably withheld or delayed, prior to entering into agreements with or otherwise engaging any person or entity, including all subcontractors/subsuppliers and affiliates of Supplier, other than Supplier's employees, to produce any Goods or provide any Services to Harbinger (each such approved subcontractor or other third party, a **"Permitted Subcontractor"**). Harbinger's approval of any Permitted Subcontractor shall not relieve Supplier of its obligations under the Agreement, and Supplier shall at all times be fully responsible for the performance of all Supplier subcontractors and affiliates and any of their employees or agents and for the compliance by Supplier's subcontractors and affiliates with all of the terms and conditions of this Agreement as if they were Supplier's own employees. Supplier shall require each of its subcontractors and affiliates performing under this Agreement to be bound in writing by the confidentiality provisions of this Agreement, and, upon Harbinger's written request, to enter into a non-disclosure or intellectual property assignment or license agreement in a form that is reasonably satisfactory to Harbinger. Nothing contained in this Agreement shall create any contractual relationship between Harbinger and any Supplier subcontractor.

## 5. Pricing and Payment Terms.

(a) The price of the Goods and Services is the price stated in the Purchase Order (the **"Price"**). Unless otherwise specified in the Purchase Order or required by law, the Price includes all packaging, transportation costs to the Delivery Location, storage, handling, insurance, customs duties and fees and applicable taxes, including, but not limited to, all sales, use, value-added, transfer, or excise taxes. No increase in the Price is effective, whether due to increased material, labor or transportation costs or otherwise, without the prior written consent of Harbinger. Supplier will separately invoice Harbinger for any sales, value-added, or similar turnover taxes or charges that Supplier is required by law to pay or collect from Harbinger. Supplier shall exclude from the Price any duties, taxes or fees where an exemption is indicated as available by Harbinger (e.g., by furnishing a certificate of exemption).

(b) As a general matter, Supplier is expected to not apply a markup or take any profit on tooling. The price of tooling (if any) shall not, unless specifically authorized by Harbinger in a Purchase Order, exceed the lower of: (i) the maximum amount reimbursable for the tools as specified on the Purchase Order; (ii) Supplier's actual costs of acquiring the tooling from a toolmaker without markup; or (iii) Supplier's actual costs of fabrication of the tooling in accordance with Harbinger's guidelines provided to Supplier.

(c) Payment terms are as set forth in the Agreement. Supplier shall promptly after delivery of the Goods or acceptance by Harbinger of the Services (or at such other time specified in the Purchase Order) submit correct and complete invoices to Harbinger, along with any reasonably appropriate



supporting documentation. Unless otherwise set forth in any Purchase Order, Harbinger shall pay all properly invoiced amounts due to Supplier within forty-five (45) days of Harbinger's receipt of such invoice, except for any amounts disputed by Harbinger in good faith. Unless a Purchase Order specifically states otherwise, all payments for Goods or Services will be made in U.S. dollars. Without prejudice to any other right or remedy it may have, Harbinger reserves the right to set off, at any time, any amount owing to it by Supplier against any amount payable by Harbinger to Supplier. In the event of a payment dispute, Harbinger shall deliver a written statement to Supplier listing all disputed items and providing a reasonably detailed description of each disputed item. The Parties shall seek to resolve all payment disputes expeditiously and in good faith. Supplier shall continue performing its obligations under this Agreement notwithstanding any such dispute. Payment by Harbinger for Goods or Services shall not constitute its acceptance thereof, nor shall such payment remove Supplier's responsibility for any nonconforming Goods or Services or limit Harbinger's right to assert any other legal or equitable remedy.

6. Supplier Warranties.

(a) General. Supplier represents and warrants to Harbinger that: (i) Supplier has the right to enter into the Agreement, to grant the rights herein and to perform fully all of its obligations in the Agreement, including under each Purchase Order; and (ii) Supplier entering into this Agreement with Harbinger and its performance of any Services and delivery of any Goods hereunder does not and will not conflict with or result in any breach or default under any other agreement to which it is subject. All warranties set forth in this *Section 6* are cumulative and in addition to any warranties express or implied by law or equity or otherwise made by Supplier. Any applicable statute of limitations runs from the date of Harbinger's discovery of the noncompliance of the Goods or Services with the foregoing warranties.

(b) Warranty on Goods. Unless otherwise specified in the Agreement (including a Purchase Order hereunder), the warranty period is the period for which Harbinger warrants the Goods to end users. During the warranty period, Supplier warrants to Harbinger that all Goods will be free from any defects in workmanship, design and materials, will comply with the US Federal Motor Vehicle Safety Standards (the "**FMVSS**") and any other applicable motor vehicle safety standards set forth in the Purchase Order/incorporated into the Agreement (if any), will conform to the specifications, drawings, designs, statements of work, samples, and other performance requirements specified or approved by Harbinger and incorporated in the Agreement. All Goods are warranted to be merchantable and fit for their intended purpose. Supplier warrants to Harbinger that it will transfer to Harbinger ownership and good title to Goods delivered and Services provided, free of all liens, encumbrances, and rights of third parties (except those created by Harbinger). These warranties survive any delivery, inspection, acceptance or payment of or for the Goods by Harbinger.

(c) Warranty on Services. Supplier warrants to Harbinger that it shall perform any Services under this Agreement using personnel of appropriate skill, training, experience and qualifications and in a professional and workmanlike manner, in accordance with any established professional standards for similar services, and with the best practices in Supplier's industry, in conformance in all material respects with the specifications, statements of work, or other requirements specified or approved by Harbinger, and in compliance with applicable law in the jurisdiction(s) where Services are performed. Any deliverables produced in connection with the Services shall be warranted as provided for Goods above.

(d) Testing and Inspection. Supplier shall be responsible for testing and evaluating the Goods prior to delivery in accordance with Harbinger's instructions, including the requirements stipulated in



Harbinger's supplier quality manual, and standard industry practice and shall, upon request, deliver to Harbinger the results of such tests and evaluations. In addition, Harbinger has the right, but not the obligation, to inspect all or a sample of the Goods (either directly or via a third-party inspector) prior to and/or within a reasonable period of time after delivery to ensure conformity with this Agreement and all requirements and specifications incorporated herein. Neither inspection nor failure to inspect by Harbinger shall relieve Supplier of any obligations, representations or warranties under this Agreement.

(e) Non-Conforming Goods. In addition to all other rights and remedies provided under the Agreement, if any Goods or Services do not conform to the warranties in this *Section 6*, Harbinger shall have the right to: (i) reject the non-conforming Goods or Services; (ii) require Supplier, at Supplier's expense, to either repair or replace the non-conforming Goods or Services; or (iii) require Supplier to implement, at its expense, containment, inspection, sorting, and other quality assurance procedures if Harbinger reasonably determines (through statistical sampling or other quality assessments) that a substantial quantity of incoming Goods do not conform to the warranties in this *Section 6*. To the fullest extent possible, Harbinger will provide Supplier with access to any available warranty data related to the Goods and any available field-returned Goods. If Harbinger rejects or requires replacement of the Goods, Supplier shall, at its sole expense, promptly recall the nonconforming or defective Goods and pay for all expenses related to the rejection and/or replacement, including, but not limited to, transportation charges for the delivery of replacement Goods (including, if necessary to meet as closely as possible an originally scheduled delivery date, by premium/expedited freight methods) and the costs of any required installation (including removal of the rejected Goods). Harbinger will also have the right to cancel any unshipped portions of the affected and any related order. If Supplier fails to timely deliver replacement Goods, Harbinger may replace them with goods from a third party and terminate this Agreement for cause pursuant to *Section 11*. Neither inspection nor failure to inspect by Harbinger shall relieve Supplier of any obligations, representations or warranties under this Agreement. For the avoidance of doubt, any actions taken by Harbinger in accordance with this Section shall not be an election of remedies, nor shall such actions in any way limit the rights and remedies available to Harbinger under these Terms for the breach by Supplier caused by the nonconforming Goods or Services.

(f) Recalls. This *Section 6(f)* applies to any voluntary or government-mandated recall by Harbinger (or its designated manufacturer) to remedy any alleged defect that affects motor vehicle safety or to address any alleged failure of a vehicle to comply with applicable motor vehicle safety standards or guidelines, including, without limitation, the FMVSS (each a "**Recall**"). If any Recall results in whole or in part from a failure of the Goods to conform to the Supplier warranties in this *Section 6* during the warranty period, in addition to all other rights or remedies which Harbinger may have under this Agreement or at law, Supplier shall be liable for its proportionate share of all costs and damages resulting from such Recall, provided, as a condition precedent to Supplier's liability under this *Section 6(f)*, Harbinger must: (i) notify Supplier as soon as practicable after Harbinger learns that a Recall being considered implicates the Goods; (ii) provide Supplier with any available performance evaluations, accident reports, engineering investigations, and other data relating to the potential Recall, and (iii) provide Supplier a reasonable opportunity to participate in inquiries and discussions among Harbinger, its customer, and governmental agencies regarding the need for and scope of the Recall.

## 7. Product Liability and Indemnification.

(a) Indemnification. Supplier will defend, indemnify and hold harmless Harbinger and its subsidiaries, affiliates, successors or assigns, along with their respective customers, distributors, dealers, suppliers, subcontractors, and business partners, and each of their respective directors, officers, shareholders, lenders, agents and employees (collectively, "**Indemnitees**") from and against any and all loss, injury, death, damage, liability, claim, deficiency, action, judgment, interest, award, penalty, fine, cost or expense,, including any third-party claims or demands for injury or death to persons, property damage, economic loss, and any resulting damages, losses, costs, and expenses (including reasonable attorney and professional fees and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers) (collectively, "**Losses**"), regardless of whether the claim or demand arises under tort, contract, strict liability, or other legal theories, if and to the extent caused by: (i) Supplier's defective design or manufacture of Goods or provision of Services; (ii) the failure of the Goods to comply with the Supplier's warranties at *Section 6 (Supplier Warranties)*; (iii) Supplier's delivery of non-conforming Goods or Services; or (iv) Supplier's failure to comply with applicable law, including, without limitation, the FMVSS, or negligent acts or omissions in its performance under the Agreement. Notwithstanding the foregoing, Supplier shall not be liable to the extent that the injury, loss, or damage results from the manufacture of Goods in accordance with written instructions received from Harbinger and Supplier, taking the level of care that is customary in the industry, could not or should not have reasonably known or foreseen that following these instructions would result in the injury, loss or damage.

(b) Procedure. Harbinger will notify Supplier promptly after Harbinger becomes aware of the basis for a claim under this *Section 7*. The Parties will reasonably cooperate with each other to determine the root cause of a defect in or failure of the Goods (and related systems and components) and an equitable allocation of responsibility among all responsible parties. Supplier may examine and test all available Goods and related systems and components that are subject to a third-party claim. Harbinger will endeavor to include Supplier in any settlement discussions where indemnity has been or will be sought from Supplier, and Harbinger may not settle or compromise any third-party claim that gives rise to an indemnification claim without Supplier's prior written consent, which consent will not be unreasonably withheld, conditioned or delayed.

## 8. Intellectual Property Rights.

(a) Harbinger's Intellectual Property. Except as set forth in any other duly signed agreement between the Parties, Harbinger does not transfer to Supplier any patent, trade secret, trademark, service mark, copyright, mask work, or other intellectual property right ("**Intellectual Property Right**") of Harbinger in or to any information, documents, or property that Harbinger makes available to Supplier under the Agreement, other than the right to use Harbinger's Intellectual Property Rights to produce and supply Goods and Services for Harbinger.

(b) Supplier's Intellectual Property. Except as stated in this *Section 8(b)* or as otherwise set forth in any duly signed agreement between the Parties, Supplier does not transfer to Harbinger any pre-existing Intellectual Property Right of Supplier related to the Goods or Services, other than the right for Harbinger and its affiliates and subcontractors to use such Intellectual Property Right of Supplier in conjunction with the use of any Goods manufactured by or for Harbinger for the manufacture, assembly, production and sale (to be understood for purposes of this *Section 8* to be inclusive of similar transactions such as leases, rentals, etc.) of Harbinger vehicles and products, whether for indirect purposes or by incorporating, modifying or assembling Goods purchased from Supplier into component parts or directly





into Harbinger vehicles. Supplier hereby grants to Harbinger a non-exclusive, fully paid, worldwide right and license, with rights to grant sublicenses to affiliates and subcontractors, to use Supplier's Intellectual Property Rights in the manufacture, assembly and production of Harbinger vehicles and products, and to sell Harbinger vehicles and any related products, including components, and services ("**Harbinger Production**"). If this Agreement is breached by Supplier and subsequently terminated by Harbinger, Supplier shall be deemed to have simultaneously granted to Harbinger a non-exclusive, fully paid, worldwide right and license, with rights to grant sublicenses, covering a period of no more than thirty-six (36) months from the date of termination, to the extent reasonably necessary to continue Harbinger Production, including, without limitation, to enable Harbinger to obtain Goods or Services from alternate sources solely and exclusively for use in Harbinger vehicles.

(c) Non-Infringement. Supplier warrants that any Goods and the use of any Goods for their intended purpose or making, having made, selling, offering to sell, importing, exporting, or using any good made by using the Goods for their intended purpose, will not infringe any Intellectual Property Right of any third party. Supplier shall hold harmless, defend, and indemnify the Harbinger Indemnitees from and against any and all claims or demands, and all associated Losses, made against any of them that any Goods, including use of any Goods for their intended purpose or making, having made, selling, offering to sell, importing, or using any Goods for its intended purpose, infringes any Intellectual Property Rights of any third party. Supplier shall pay all costs and expenses (including reasonable attorney and professional fees) that are incurred or sustained by reason of any such claim. If Harbinger receives notice of any claim that calls for indemnification by Supplier under these Terms, Harbinger shall give Supplier prompt written notice. Harbinger shall allow Supplier to evaluate the circumstances of the claim and shall offer Supplier reasonable assistance to this end. Supplier shall assume in writing the defense of the claim; provided, however, that if any settlement would impose any liability on Harbinger or limit use by Harbinger of any Goods, it shall require the written approval of Harbinger, which shall not be unreasonably withheld or delayed.

(d) If a claim under this *Section 8* results, or is likely to result, in an injunction or other order that would prevent Supplier from supplying or Harbinger from using Goods for their intended purpose, Supplier will, at its expense, either: (i) secure a license of the Intellectual Property Right that permits Supplier to continue supplying the Goods to Harbinger, or (ii) modify the Goods so that they become non-infringing, so long as the modification does not alter in any substantial manner the operation, purpose or performance of the Goods for their intended purpose, or (iii) replace the Goods with non-infringing alternative Goods that do not alter in any substantial manner the operation, purpose or performance of the Goods for their intended purpose.

(e) Without prior written consent, Supplier shall not use or permit the use of Harbinger's or its affiliates' word or trademark(s) in the description or marketing of products produced by Supplier, nor shall Supplier advertise or publish that Supplier has contracted to furnish Goods or Services to Harbinger pursuant to this Agreement.

9. Property. All production and pre-production supplies, tooling (including fixtures, gauges, jigs, patterns, castings, cavity dies and molds, with all related appurtenances, accessions, and accessories), and all other deliverables, data, inventions (whether or not patentable), industrial designs, technical information, know-how, processes of manufacture and other intellectual property and information, which has been either: (i) provided by Harbinger; or (ii) created, developed, conceived or first reduced to practice by or on



behalf of Supplier to produce the Goods or Services, unless otherwise expressly agreed in writing signed by Harbinger, shall be and/or remain the sole and exclusive property of Harbinger ("**Harbinger Property**"). To the extent that this Agreement is issued for the creation of copyrightable works, the works shall be considered "works made for hire" for Harbinger, except to the extent that the works do not qualify as "works made for hire," in which case Supplier hereby assigns to Harbinger all right, title and interest in all copyrights and if lawfully permitted waives all moral rights therein. Harbinger Property shall explicitly exclude any intellectual property rights to off-the-shelf goods or software of Supplier. Harbinger Property shall be held by Supplier on a bailment basis until such time as it is transferred to Harbinger in accordance with this *Section 9* (Property). Supplier shall bear the risk of loss of and damage beyond reasonable wear and tear to Harbinger Property and shall adequately insure Harbinger Property for its full replacement value at Supplier's cost, with loss payable to Harbinger, at all times while Harbinger Property is in Supplier's possession. At all times while in Supplier's possession, Harbinger Property shall also be properly housed and maintained by Supplier, at its expense, and clearly marked as Harbinger Property. Harbinger Property shall not be used by Supplier for the production of Goods or Services to supply to third parties absent Harbinger's prior written consent. Any Harbinger Property must be kept at the address indicated in an equipment database regularly updated by Supplier and provided to Harbinger. If Harbinger Property is to be attached to real estate, Supplier shall provide Harbinger with a disclaimer or disclaimers of any interest in such Harbinger Property and shall also ensure that the equipment may be removed without damage to the real estate. Supplier shall not use Harbinger Property for any purpose other than Supplier's performance under any Purchase Order with Harbinger. Upon Harbinger's written request and after payment has been made by Harbinger for the Harbinger Property, such Harbinger Property shall be released to Harbinger or delivered by Supplier to Harbinger, pursuant to Harbinger's written instructions and at Harbinger's expense. To the fullest extent permitted by applicable law, Supplier waives all rights to any liens that Supplier may otherwise have on any Harbinger Property.

10. Confidential Information.

(a) Definition. Supplier acknowledges that, during the course of its performance under this Agreement, it will have access to certain non-public information that is considered highly valuable and confidential by Harbinger, including without limitation: (a) the existence and terms of this Agreement; (b) trade secrets, patents and patent applications; (c) information, ideas, techniques, sketches, drawings, works of authorship, models, inventions, know-how, processes, apparatuses, equipment, algorithms, software programs, software source documents, and formulae related to the business operations and strategies, customers, investors, pricing, sourcing, personnel or operations of Harbinger, its affiliates, or its suppliers or customers, in each case whether spoken, written, printed, electronic, or in any other form or medium; and (d) all other information that Supplier knew, or reasonably should have known, was the Confidential Information of Harbinger (collectively, the "**Confidential Information**"). Notwithstanding the foregoing, any Confidential Information that Supplier develops in connection with a Purchase Order or with reference to Harbinger's Confidential Information, including but not limited to, any Goods, shall be subject to the terms and conditions of this *Section 10*.

(b) Obligations. Supplier agrees to: (a) treat all Confidential Information as strictly confidential; (b) not to disclose Confidential Information or permit it to be disclosed, in whole or part, to any third party without the prior written consent of Harbinger; and (c) not use any Confidential Information for any purpose except as required in the performance of its obligations under the Agreement. Supplier shall notify Harbinger immediately in the event Supplier becomes aware of any loss or disclosure of any Confidential



Information. Upon Harbinger's request, Supplier shall promptly return all documents and other materials received from Harbinger, including any Confidential Information. In addition to all other relief afforded under this Agreement, Harbinger shall be entitled to injunctive relief for any violation of this *Section 10*.

(c) Exclusions. Supplier shall not be obligated under *Section 10(b)* regarding information that: (a) is or becomes generally available to the public other than as a result of Supplier's breach of this Agreement; (b) is obtained by Supplier on a non-confidential basis from a third-Party that was not legally or contractually restricted from disclosing such information; or (c) was or is independently developed by Supplier without use of or reference to any Confidential Information. Nothing herein shall be construed to prevent disclosure of Confidential Information as may be required by applicable law or regulation, or pursuant to the valid order of a court of competent jurisdiction or an authorized government agency, provided that the disclosure does not exceed the extent of disclosure required by such law, regulation, or order. Supplier agrees to provide prompt written notice of any such order to an authorized officer of Harbinger sufficiently in advance of making any disclosure to permit Harbinger the option to contest the order or to seek confidentiality protections, as determined in Harbinger's sole discretion.

The confidentiality obligations in this *Section 10* shall be considered to be in addition to any mutually signed confidentiality agreements entered into between the parties.

11. Term and Termination. These Terms shall remain in effect so long as Purchase Orders hereunder remain in effect. Purchase Order shall remain in effect for the term specified in such Purchase Order ( or, absent the specification of a term, until the completion of delivery of all Goods and acceptance by Harbinger of all Services contemplated pursuant to the Purchase Order), provided that Harbinger may earlier terminate any Purchase Order: (i) for any reason upon reasonable notice of no less than thirty (30) days; (ii) pursuant to a Supplier Default under *Section 13 (Default and Remedies)*; or (iii) pursuant to a Force Majeure Event under *Section 21 (Force Majeure)*.

12. Transition of Supply. Upon the expiration or earlier termination of any Purchase Order, for any reason, or during any period of Supplier Default, Supplier agrees to take all actions reasonably necessary to ensure that there is no interruption in the supply of Goods or Services to Harbinger. As part of such obligation, Supplier agrees to take any such actions as may be reasonably requested by Harbinger to accomplish the transition from Supplier to an alternative Supplier, including, without limitation: (a) provide all notices necessary or desirable for Harbinger to resource the Purchase Order to an alternative Supplier; (b) promptly provide all requested information and documentation regarding and access to Supplier's manufacturing process, including on-site inspections, bill-of-material data, tooling and process detail and samples of Goods and components; (c) provide a sufficient bank of Goods covered by the Purchase Order to ensure the orderly transition to any alternative Supplier chosen by Harbinger; (d) provide to Harbinger all Harbinger Property in good condition, reasonable wear and tear excepted; (e) assign to Harbinger any or all supply contracts or Purchase Orders for raw material or components relating to the Purchase Order; and (f) sell to Harbinger, at fair market value, any or all perishable tooling and Goods inventory relating to the Purchase Order, to the extent not already paid by Harbinger. The term "alternative Supplier" expressly includes, but is not limited to, a Harbinger-owned facility.

13. Default and Remedies.

(a) Events of Default. Time is of the essence and, subject to *Section 21 (Force Majeure)*, Supplier will be in "Default" under this Agreement if it: (i) fails to perform any obligation under this



Agreement, including any Purchase Order; (ii) fails to provide Harbinger with adequate and reasonable assurance of Supplier's ability to perform any obligation under any Purchase Order upon reasonable written request by Harbinger (see also *Section 13(b)* below); (iii) threatens not to deliver Goods or Services in connection with any Purchase Order or is unable to provide the Goods or Services on commercially reasonable terms pursuant to the Agreement; (iv) enters or offers to enter into any transaction which includes a sale of a substantial portion of its assets used for production of the Goods or supply of the Services that would result in a change in control of Supplier; (v) admits in writing to its inability to pay its debts as they become due, commences a bankruptcy, insolvency, receivership, or similar proceeding, or makes a general assignment for the benefit of credits; or (vi) becomes a debtor in a bankruptcy, insolvency, receivership, or similar proceeding commenced by a third party (each, a "**Supplier Default**"), provided that, in each case, Supplier does not cure such breach, rejection, failure or other event of Default within fourteen (10) days (or such shorter period of time if commercially reasonable under the circumstances) after receipt of written notice from Harbinger specifying such failure or breach. Harbinger will be in "Default" under this Agreement only for non-payment for Goods or Services which are thirty (30) or more days past due, or as otherwise set forth in any Purchase Order, and then only if: (i) Supplier provides Harbinger written notice specifying the amounts past due; and (ii) Harbinger, within thirty (30) days of any such notice, does not either: (A) pay the past due amounts; or (B) notify Supplier that the amounts claimed to be unpaid are disputed by Harbinger.

(b) Assurance of Performance. In the event that Harbinger has reasonable grounds for insecurity with respect to Supplier's continued performance under this Agreement (including any Purchase Order), Harbinger may, in writing, demand adequate assurance of such performance from Supplier. After receipt of such demand, Supplier's failure, within a reasonable period of time under the circumstances (not to exceed 10 days), to provide assurances adequate under the circumstances shall be deemed a breach of this Agreement by Supplier.

(c) Remedies. Supplier acknowledges that, in entering into any Purchase Order, Harbinger shall become entirely dependent upon Supplier for the timely development and production of the Goods and Services, for the supply of the Goods and Services, and, as a result, for the production of Harbinger vehicles in accordance with the schedules contemplated by the Purchase Order. Supplier further recognizes that failure to timely and fully perform its obligations hereunder may affect the viability of the manufacturing of the vehicles, and that Harbinger may suffer substantial losses and damages which cannot be measured solely in monetary terms. Supplier, therefore, expressly agrees that Harbinger shall have the right to compel specific performance of any Purchase Order by Supplier, or alternatively, in Harbinger's discretion, to terminate the Purchase Order upon written notice to Supplier in the event of a Supplier Default. In any such event, Harbinger may cancel the Purchase Order, in whole or in part, without any liability, except for any payment due for Goods or Services delivered and accepted through the date of termination. Upon any such termination, Harbinger shall also have the right to take title to and possession of Harbinger Property in Supplier's possession and all or any other part of work performed by Supplier or paid for by Harbinger through the date of termination. Harbinger shall also be entitled to recover from Supplier all losses, expenses and damages of every kind and nature, including, but not limited to, actual out of pocket costs, attorney's fees, court costs, incidental and consequential damages and lost profits, which Harbinger may suffer as a result of any Supplier Default. The remedies set forth in this *Section 13(c)* shall be cumulative and in addition to all other rights and remedies otherwise available in the Agreement or at law.

14. Service and Replacement Parts. Supplier shall sell Goods to Harbinger as ordered and released by Harbinger for use as production and as service and aftermarket replacement parts for Harbinger and its customers. If the Goods are systems or modules, Supplier shall sell to Harbinger, as ordered by Harbinger, the system or module or the components or parts that comprise the system or module. The prices for the components or parts shall not, in the aggregate, exceed the price of the system or module less assembly costs. During the period in which Harbinger is required by its customers to provide service or replacement parts, Supplier shall sell Goods to Harbinger or its customers as ordered to fulfill Harbinger's service and replacement parts requirements, at prices based on the most recent pricing specified under the Purchase Order, taking into account actual, documented differences in the cost of materials, packaging and costs of production after any Harbinger current model purchases have been completed, and as mutually and reasonably agreed by the parties. At Harbinger's request, Supplier shall make service literature and other reasonable materials available at no additional charge to Harbinger or its customers to support Harbinger's service part sales activities. Unless otherwise expressly agreed in writing by an authorized representative of Harbinger, or Harbinger removes tooling from Supplier necessary for production of service or replacement parts, Supplier's obligations under this *Section 14* shall survive termination or expiration of the Purchase Order, for any reason.

15. Insurance. Supplier shall carry all industry standard/best practice insurance policies for the jurisdiction(s) in which it operates, which shall include at minimum commercial general liability insurance and/or product liability coverage in at least the amount of \$5,000,000 combined single limits per occurrence. Prior to commencing work on Harbinger's premises or utilizing Harbinger's property and for a period of twenty-four (24) months thereafter, Supplier will maintain and upon request furnish to Harbinger: (a) worker's compensation insurance (as required by applicable law) including employer's liability coverage "B" (or stop gap coverage) in the amount of \$1,000,000; (b) vehicular liability insurance in at least the amount of \$1,000,000; and (c) umbrella coverage in the amount of \$5,000,000. Any shortfall in the above coverages can be made up for by the umbrella policy so long as proof is provided in writing that the umbrella covers that policy. All policies must be undertaken with financially sound and reputable insurers. To the extent a form of insurance specified above is not applicable to a particular Supplier's business with Harbinger, the requirement to maintain such insurance may be waived by explicit reference to such in the Purchase Order. Upon Harbinger's request or prior to commencement of any Services or delivery of any Goods, Supplier shall provide Harbinger with a certificate of insurance from Supplier's insurers evidencing the insurance coverage specified in these Terms. The certificate of insurance shall name Harbinger as an additional insured. Supplier shall provide Harbinger with at least thirty (30) days' advance written notice in the event of a cancellation or material change in Supplier's insurance policy(ies). Except where prohibited by law, Supplier shall require its insurers to waive all rights of subrogation. Supplier must also require all Permitted Subcontractors to comply with all insurance requirements of these Terms. Nothing in this *Section 15* shall be construed as or act as a cap on liability or otherwise limit any damages which Harbinger may otherwise be entitled to seek under this Agreement or at law.

16. Dispute Resolution.

(a) Negotiation and Mediation. Harbinger and Supplier will first endeavor to resolve through good faith negotiations any dispute arising under the Agreement, whether through duly authorized representatives for each Party or through a formal, non-binding mediation.

(b) Binding Arbitration. If the Parties cannot resolve any dispute pursuant to *Section 16(a)* within a reasonable period of time, except with respect to any claim for injunctive relief under *Section 10 (Confidential Information)*, any claim or controversy arising out of or relating to this Agreement shall be settled by binding arbitration before a single, neutral arbitrator in Los Angeles, in accordance with the Commercial Arbitration Rules of JAMS, which can be found at <https://www.jamsadr.com>, and which are incorporated herein by reference. Arbitration shall be conducted by one or more arbitrators appointed in accordance with said Rules. The language of the arbitration shall be in the English language. The award and the proceedings shall be kept confidential except to the extent required to enforce the award. The Parties shall be bound by the award rendered by the arbitration and judgment thereon may be entered in any court of competent jurisdiction. Any judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction. Each Party shall pay the fees of its own attorneys, the expenses of its witnesses and all other expenses connected with presenting its case; however, Harbinger and Supplier agree that, except as may be prohibited by law, the arbitrator may, in his or her discretion, award reasonable attorney's fees to the prevailing Party. Other costs of the arbitration, including the cost of any record or transcripts of the arbitration, administrative fees, the fee of the sole arbitrator, and all other fees and costs, shall be borne by the Parties based on each Party's liabilities according to the arbitration rules and the arbitration judgment.

(c) Injunctive Relief. Notwithstanding anything to the contrary set forth in this *Section 16*, each party has the right at any time, whether before or during mediation or arbitration, to seek and obtain from the appropriate court, provisional remedies or other equitable or non-monetary relief such as attachment, claim and delivery, preliminary injunction, or replevin, to avoid irreparable harm, maintain the status quo or preserve the subject matter of the arbitration and including, but not limited to, any claim for injunctive relief by Harbinger to enforce its rights and the obligations of Supplier under this Agreement.

17. Customs. Licenses, consents, permits or other authorizations required for the import or export of Goods or Services shall be the responsibility of Supplier unless otherwise indicated in this Agreement, in which event Supplier shall provide such information as may be requested by Harbinger to enable Harbinger to obtain such licenses or authorizations. Transferable credits or benefits associated with Goods purchased, including trade credits, export credits, or rights to the refund of duties, taxes, or fees, belong to Harbinger unless otherwise prohibited by applicable law. Supplier will provide Harbinger with all information and records relating to the Goods necessary for Harbinger to (i) receive these benefits, credits, and rights, (ii) fulfill any customs obligations, origin marking or labeling requirements, and certification or local content reporting requirements, (iii) claim preferential duty treatment under applicable trade preference regimes, and (iv) participate in any duty deferral or free trade zone programs of the country of import. Supplier will obtain all export licenses and authorizations and pay all export taxes, duties, and fees unless otherwise stated in the Agreement, in which case Supplier will provide all information and records necessary to enable Harbinger to obtain those export licenses or authorizations.

18. Audit Rights. If requested by Harbinger, Supplier will permit Harbinger to examine all pertinent documents, data and other information relating to the Goods or Services, Supplier's obligations under any Purchase Order, or any payment made to Supplier during the term of this Agreement and for a period of twenty-four (24) months thereafter. Harbinger further reserves the right to conduct inspections in accordance with *Section 3(f) (Delivery, Shipment, and Inspection - Inspection)*. Any examination under this *Section 18* will be conducted during normal business hours and upon advance written notice to the Supplier. Supplier will use its best efforts to permit the Buyer to obtain from Permitted Subcontractors the

information and permission to conduct the reviews specified in this *Section 18*, regardless of any other right Harbinger may have to that information or facilities.

19. Compliance with Law. Supplier, and all Goods and Services supplied by Supplier, shall comply with all applicable laws and regulations in the jurisdiction(s) in which it (or its agents) operates and shall obtain all applicable permits and licenses required in connection with the performance of its obligations under this Agreement. Without limiting the generality of the foregoing, Supplier shall: (i) comply fully with all applicable data protection, privacy, and similar laws and regulations of the United States of America, the European Union, and other countries; (ii) comply fully with all applicable export laws and regulations of the United States of America, the European Union, and other countries, including, but not limited to, the International Traffic in Arms Regulations ("**ITAR**"), the Export Administration Regulations ("**EAR**"), and the regulations administered by the U.S. Treasury Department's Office of Foreign Assets Control ("**OFAC**") (collectively "**U.S. export and import control laws and regulations**"), and Supplier shall promptly notify Harbinger if any Good (including any technical data) provided hereunder is subject to U.S. export and import control laws and regulations; and (iii) comply fully with all applicable anti-corruption and anti-bribery laws, including, but not limited to, the U.S. Foreign Corrupt Practices Act, the UK Bribery Act, and the anti-corruption laws, regulations and policies of the home country of Supplier (hereinafter "**Anti-Corruption Requirements**"). Supplier warrants and represents that no compensation payable hereunder has been used, nor will be used, for any activity or purpose where a reasonable belief exists that the Anti-Corruption Requirements would be violated or that Supplier or Harbinger would be exposed to liability under any of the Anti-Corruption Requirements. Supplier also warrants and represents that none of its principals, officers, directors, shareholder, employees, or agents has performed or will perform any act related to or arising out of this Agreement with Harbinger that would constitute a violation, or present a credible risk of a violation, of the Anti-Corruption Requirements. Supplier will provide Harbinger with material safety data sheets regarding the Goods and, upon Harbinger's reasonable request, and will provide Harbinger with any other information reasonably required in order to comply with applicable laws. Subject to any applicable Incoterms, Supplier assumes all responsibility for shipments of Goods requiring any government import clearance. At Harbinger's request, Supplier shall certify in writing its compliance with any or all of the foregoing. Harbinger requires strict compliance with this provision and has the right to immediately terminate any Purchase Order or this Agreement if there is a breach hereof.

20. Waiver. No waiver by Harbinger of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Harbinger. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

21. Force Majeure. No party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement, when and to the extent such party's (the "**Impacted Party**") failure or delay is caused by or results from the following force majeure events ("**Force Majeure Event(s)**"): (a) acts of God or the public enemy; (b) flood, fire, earthquake, or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order, law, or action; (e) embargoes or blockades in effect on or after the date of this Agreement; (f) national or regional emergency officially declared by a governmental authority; (g) strikes, labor stoppages or slowdowns or other industrial disturbances, to the extent unforeseeable or unavoidable; (h) shortage of adequate power or utility

facilities; and (i) other events or circumstances of a like nature to those above that are beyond the reasonable control of the defaulting party, without such party's fault or negligence, and which by their nature could not have been foreseen by such party or, if foreseeable, were unavoidable. Material risks known to a party at the time a Purchase Order was accepted shall generally not be considered unforeseeable or unavoidable. Supplier's economic hardship or changes in market conditions are not considered Force Majeure Events. The Impacted Party shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized and shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause of the Force Majeure Event. If a Force Majeure Event prevents Supplier from carrying out its obligations under this Agreement for a continuous period of more than thirty (30) days, Harbinger may terminate this Agreement immediately by giving written notice to Supplier.

22. Assignment. Supplier shall not assign, transfer, delegate or subcontract any of its rights or obligations under this Agreement without the prior written consent of Harbinger. Any purported assignment or delegation in violation of this *Section 22* shall be null and void. Notwithstanding the foregoing, no assignment or delegation shall relieve Supplier of any of its obligations hereunder. Harbinger may at any time assign or transfer any or all of its rights or obligations under this Agreement without Supplier's prior written consent to any affiliate or to any person acquiring all or substantially all of Harbinger's assets.

23. Relationship of the Parties. The relationship between the Parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the Parties, and neither Party shall have authority to contract for or bind the other Party in any manner whatsoever.

24. No Third-Party Beneficiaries. This Agreement is for the sole benefit of the Parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

25. Governing Law. All matters arising out of or relating to this Agreement shall be governed by and construed first in accordance with the rules of the applicable arbitration center (see *Section 16(b)*) and secondly in accordance with the internal laws of the State of California, without giving effect to any choice or conflict of law provision or rule that would cause the application of the laws of any other jurisdiction to apply. The United Nations Convention on Contracts for the International Sale of Goods (as amended) will not apply to this Agreement or any matter arising out of or relating thereto.

26. Notices. All notices, requests, consents, claims, demands, waivers and other communications hereunder (each, a "**Notice**") shall be in writing and addressed to the Parties at the addresses set forth on the face of the Purchase Order or to such other address that may be designated by the receiving Party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile or electronic mail (valid only if and upon confirmation of receipt by the receiving party) or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (a) upon receipt of the receiving Party, and (b) if the Party giving the Notice has complied with the requirements of this *Section 26*.



27. Severability. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

28. Survival. Provisions of these Terms which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Agreement including, but not limited to, the following provisions: *Section 6 (Supplier Warranties), Section 7 (Product Liability and Indemnification), Section 8 (Intellectual Property Rights), Section 9 (Property), Section 10 (Confidential Information), Section 13 (Default and Remedies), Section 14 (Service and Replacement Parts), Section 16 (Dispute Resolution), Section 18 (Audit Rights), Section 19 (Compliance with Law), Section 25 (Governing Law), Section 26 (Notices) and Section 28 (Survival)*.

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