



# **General Terms and Conditions of Purchase Mexico**

SPEC7.4-02 Rev. D 20/10/21

## **SMR Automotive Vision Systems Mexico S.A de C.V (SMR) Purchasing Terms and Conditions**

### **1. Scope of Purchase Terms**

1.1 Supplier acknowledges and agrees that these SMR Purchasing Terms and Conditions are incorporated in, and made a part of, each request for quote, purchase order, release, drawing, requisition, work order, shipping instruction, specification and other document, whether expressed in written form, by electronic data interchange or other tangible format, provided to Supplier (collectively, the Terms), which are applicable to all purchases made by SMR, its subsidiaries and divisions, and any entity controlling, controlled by, or under common control with it (SMR), from the Supplier, whether for tooling, machines, parts, spare parts, raw materials, or other various goods or services (hereinafter individually or collectively called the Supply).

1.2 The Terms will constitute the only agreement binding on SMR and expressly excludes the application of the Suppliers' general terms of sale as well as any documents issued by Supplier now or in the future in relation, directly or indirectly, to the Supply. The Terms may not be varied or modified in any manner, unless in a subsequent writing signed by an authorized representative of SMR. Any proposal for additional or different terms or any attempt by Supplier to vary in any degree any of the Terms is rejected. All such proposals will be considered a material alteration of the Terms, and the additional and different terms will not become a part of the contract between the parties. Any stenographic or clerical errors are subject to correction by SMR. Supplier's written acknowledgment, commencement of work on the Supply, or shipment of the Supply, whichever occurs first, will be considered an effective mode of acceptance of the Terms. If these Terms will be considered an acceptance of a prior offer by Supplier, such acceptance is limited to and expressly made conditional on assent to the express terms set forth in the Terms.

1.3 The provisions of these terms shall prevail over any other agreements that the parties may enter into in addition to the Terms, e.g. quality agreement, etc.

### **2. Order, Prices and Terms of Payment**

2.1 All prices for Supply are as stated in the purchase order for Supply. Supplier will be solely responsible for all transport and unloading costs, customs charges, taxes and insurance costs, unless otherwise specified on the purchase order.

2.2 Supplier warrants that the prices for the Supply sold to SMR are no less favorable than those prices Supplier currently extends to any other customer for the same or similar Supply in similar quantities. If Supplier reduces its prices to third parties during the term of the purchase order for the Supply, Supplier will correspondingly reduce the prices charged to SMR. Supplier warrants that the prices on the purchase order are complete and that no other charges will be added without SMR's written consent.

2.3 Supplier's invoice will include all information appearing on the purchase order necessary for identification and origin of the Supply. The invoice will be sent to the invoicing address written on the face of the purchase order.

2.4 No payment will be made by SMR in advance of receipt of the Supply. Unless otherwise stated on the purchase order, the invoice will be payable on the first Friday, sixty (60) days from the date of invoice of the Supply to SMR. All invoicing and payment will be made through electronic data interchange or such other means as SMR may require in writing.

2.5 SMR may apply late delivery penalties against any invoice, in an amount determined by SMR, for all purchase orders for which Supply was delivered late to SMR through no fault of SMR.

2.6 Payment for Supply will not constitute final acceptance of the Supply or waive SMR's right to reject Supply. SMR may reject the Supply and hold Supplier in default if, at any time, SMR discovers a defect or its customer discovers a defect.

2.7 In addition to any right of setoff provided by law, all amounts due to Supplier will be considered net of indebtedness of Supplier and its affiliates/subsidiaries to SMR; and SMR will have the right to set off against or to recoup from any amounts due to Supplier and its affiliates/subsidiaries from SMR.

2.8 Supplier may not assign any accounts receivable from SMR to third parties without SMR's prior written approval.

2.9 SMR has the right to audit and review all records of Supplier to enable SMR to verify the accuracy of the prices for the Supply, assess Supplier's ongoing ability to perform its obligations under the Terms or to verify any claim submitted to SMR in accordance with these Terms. Supplier agrees to maintain all records relating to the Supply to facilitate an audit by SMR for a period of four (4) years following final payment under the Terms.

### **3. Forecasts: Quantity of Supply**

3.1 SMR may provide Supplier with estimates or forecasts of its future anticipated volume or quantity requirements for Supply, included any quantity represented on a blanket purchase order, release or other document. Supplier acknowledges that any estimates or forecasts of quantity are provided for informational purposes only and, 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.

3.2 SMR makes no representation, warranty, guaranty or commitment, express or implied, regarding any estimates or forecasts provided to Supplier, including the accuracy or completeness of the estimates or forecasts. Supplier will rely on those quantities that are indicated as firm as set forth on releases issued by SMR only and no other documentation.

### **4. Shipments and Packaging**

4.1 Supply will be packed in accordance with the Terms, industry standards or such other instructions that SMR may provide to Supplier. At any time, SMR may change packaging or transport requirements. Supplier will be responsible for any damage to the Supply arising from packaging or transport.

4.2 If requested by SMR, Supplier will promptly furnish to SMR: (a) a list of all ingredients in the Supply and corresponding amounts of ingredients; and (b) information concerning any changes in or additions to such ingredients. Supplier will provide all Material Safety Data Sheets and "hazardous substance" warnings related to the Supply, together with special handling instructions to advise SMR and third parties, including transportation carriers, as to the degree of care and precaution that will prevent bodily injury or property damage in handling, transportation, processing, use, recycling or disposal of the Supply.

4.3 Supply will be labeled as required under federal, state and local regulations, regulations from the country of manufacture and supply and AIAG standards, including any storage requirements, SMR purchase order number, description of the Supply, quantity and the gross or net weight of Supply. Supplier will include a bill of lading consisting of delivery and identification information for the Supply, including a clear description of the origin of the Supply.

### **5. Risk of Loss**

5.1 Risk of loss of the Supply will not be transferred to SMR until receipt of the Supply by SMR at the location indicated on the purchase order or as otherwise directed by SMR.

### **6. Deliveries and Late Delivery**

6.1 Time and quantity are of the essence. Unless otherwise specified by SMR, delivery will be FOB SMR facility indicated on the purchase order. SMR may modify delivery terms from time to time.

6.2 Supplier will take all measures necessary to meet the delivery date for the Supply and comply with the Terms. Deliveries will be made in the quantities, on the dates, and at the times specified by SMR in the Terms.

6.3 Supplier will not fabricate, assemble or ship any Supply, or procure materials or Tools, except to the extent authorized by the Terms. SMR will not pay for any Supply, materials, Tools and related costs that are not authorized by the Terms. If the requirements of SMR's customers or market, economic or other conditions require changes in delivery schedules, SMR may change the rate of scheduled shipments or temporarily suspend scheduled shipments without liability to Supplier, except for that quantity of Supply specified as firm on a release issued by SMR.

6.4 Other than as set forth in Article 18 of these Terms, in the event of late delivery of Supply, all damages suffered by SMR will be the responsibility of Supplier and Supplier will pay costs of any kind incurred by to meet the specified delivery schedule. In the event of late delivery, SMR may purchase the Supply from a third party immediately, without notice.

6.5 Supplier will provide written notice to SMR immediately of any actual or potential labor dispute, and all related information relating to the dispute, which may delay or threaten to delay the timely performance of the Terms by Supplier. SMR may purchase Supply from a third party immediately upon receipt of notice from Supplier if SMR deems necessary, in its sole discretion. Supplier will notify SMR six (6) months in advance of the expiration of any current labor contract(s). Prior to the expiration of any labor contract, Supplier will store, at its expense, a minimum thirty (30) day inventory of finished Supply at a warehouse unaffected by the labor contract.

## **7. Compliance, Technical Changes and Quality**

7.1 Without prejudice to the provisions of Article 7.3, the Supply will be manufactured in compliance with the Terms.

7.2 SMR may require Supplier to implement changes to the Supply, including design, inspection, testing or quality control. SMR will equitably determine, in its sole discretion, any adjustment in price or delivery schedules resulting from the changes. Upon request, Supplier will provide information to SMR as required by SMR relating to the changes, including cost and timing of implementation, **according with AIAG requirements and our Global Supplier Manual, preceding this order.**

7.3 Supplier will comply with any and all applicable federal, state and local laws, regulations and standards in force in the United Mexican States and in the country of manufacture and sale, including those that relate to the quotations, pricing, manufacture, labeling, transportation, importation, exportation, licensing, approval, performance and/or certification of the Supply, including those relating to environmental matters, wages, hours and conditions of employment, subcontractor selection, discrimination, occupational health/safety and motor vehicle safety. Upon request from SMR, Supplier will certify in writing its compliance with this Article 7.3.

7.4 At the request of SMR, Supplier will provide an appropriate certificate stating the country of manufacture of the Supply.

7.5 Supplier will comply with all ISO/IATF16949 requirements and other requirements as specified by SMR, including quality and production requirements **according with our Global Supplier Manual.** Supplier will also comply with any NOM and any other importation or customs requirement to import, use, or store the goods supplied by the Supplier.

7.6 Supplier will participate in productivity initiatives in order to improve quality of the Supply, increase customer satisfaction or reduce costs of the Supply, **according with our Global Supplier Manual.**

## **8. Contractual Changes**

8.1 SMR may make changes to the Terms at any time. If any change causes an increase or decrease in the cost of or time required for performance of the Terms by Supplier, an equitable adjustment may be made by SMR, at SMR's sole discretion.

8.2 Supplier must submit in writing any claim for adjustment to SMR within thirty (30) days from the date that notification of the change is received by Supplier.

8.3 Upon approval of the claim by SMR, any excess or obsolete Tools or Supply set forth in the claim will become the property of SMR, for SMR to dispose or utilize as it deems necessary. Notwithstanding the foregoing, Supplier must continue to perform under the Terms as changed.

## **9. Acceptance and Inspection of Supply**

9.1 SMR and SMR customers will have the right to enter Supplier's premises at reasonable times to verify that the Supply conforms to the Terms. Supplier agrees to provide all supporting documentation requested by SMR or SMR's customers in the course of the investigation. Final acceptance of the Supply by SMR will not be conclusive with respect to latent defects or misrepresentations.

9.2 SMR reserves the right to reject or revoke acceptance of non conforming Supply at any time.

9.3 In addition to Article 9.2 and any other remedies SMR may have, at its option, SMR may (a) correct or have corrected the non conforming Supply at Supplier's expense, (b) reject and return the Supply at Supplier's own risk and expense, or (c) instruct Supplier to retrieve the non conforming Supply at its expense within seven (7) days of notification of rejection or revocation of acceptance. SMR will be permitted to dispose of the Supply upon Supplier's failure to retrieve the non conforming Supply. If defects or deficiencies in the Tools provided by Supplier are discovered by SMR prior to a successful runoff and final acceptance, SMR will be entitled to, among other remedies, a return of all sums paid to date under this contract.

9.4 Supplier will be responsible for the design and/or manufacture of the Supply to the extent designated by SMR in the Terms or as otherwise agreed to in writing by the parties, regardless of any assistance provided by SMR or approval by SMR.

## **10. Express Warranty**

10.1 Supplier expressly warrants for the Warranty Period (as defined in this Article 10) as follows: (a) the Supply will strictly conform to the Terms, including instructions, advertisements, statements on containers or labels, descriptions and samples, then current release/revision levels of specifications and drawings; (b) the Supply will be free from

defects in workmanship and material and will be new and of the highest quality; (c) SMR will receive title to the Supply that is free and clear of any liens, encumbrances and any actual or claimed patent, copyright or trademark infringement; (d) the Supply will be merchantable, safe and fit for any purpose intended by SMR or SMR's customer, including the specified performance in the component, system, subsystem and environment in which the Supply is or reasonably may be expected to perform; and (e) Supplier's performance will be in strict accordance with these Terms. These warranties will be in addition to all other warranties afforded to SMR by operation of law or by industry standards, except that no course of dealing or usage of trade will be applicable unless expressly incorporated into these Terms by a writing signed by the parties. These warranties will survive the expiration or termination of the Terms and will apply to SMR, its successors, assigns, customers and the end users of SMR's Supply. These warranties may not be limited or disclaimed by Supplier. SMR's approval of Supplier's design, material, process, drawing, specifications or the like for the Supply will not be construed to relieve Supplier of strict compliance with the warranties in this Article 10. For purposes of these Terms, Warranty Period will be the longer of the following time periods: (a) 60 months from the date of first use of the Supply by SMR or acceptance by SMR, whichever occurs later; or (b) if the Supply is incorporated, in whole or in part, into products sold by SMR to third parties, the latter of the following dates: (i) 18 months after acceptance by such third parties (ii) the time period of warranty that such third parties give to their customers, or (iii) the date on which any longer or broader federal, state or local law, regulations may require, including those regulations of countries in which the Supply is installed, used or sold (iv) warranty mileage is valid according with the current OEMs requirements at the moment of acceptance of this document.

10.2 Supplier warrants that Supplier will make the Supply, including the sub assemblies and spare parts, available to SMR and its customers for fifteen (15) years after the date of final shipment of the Supply under the Terms. During this period, Supplier will continue to provide technical support and service at the same level as presently provided.

## **11. Product Liability, Recall Campaigns**

11.1 Notwithstanding the expiration of the Warranty Period, if SMR, its customers and/or the manufacturer of the vehicles (or other finished product) on which the Supply, or any parts, components or systems incorporating the Supply, are installed, voluntarily or pursuant to a government mandate, makes an offer to owners of such vehicles to provide remedial action to address a defect that relates to motor vehicle safety or the failure of the vehicle to comply with any applicable law, safety standard or guideline (a Recall ), Supplier will nonetheless be liable for costs and damages associated with the Recall to the extent that the costs and damages are based upon a reasonable determination that the Supply fails to conform to these Terms.

## **12. Indemnification and Insurance**

12.1 To the fullest extent permitted by law, Supplier agrees to indemnify, save harmless and defend SMR and its affiliated companies, their directors, officers, employees, agents and customers ("Indemnities") from and against any loss, liabilities, costs, expenses, suits, actions, claims and all other obligations and proceedings, including without limitation all judgments rendered against, and all fines and penalties imposed upon, Indemnities and all attorney's fees and any other cost of litigation ("Liabilities") arising out of a breach of these Terms. However, Supplier's obligation to indemnify SMR will not apply to any Liabilities arising from SMR's sole negligence.

12.2 Supplier will maintain insurance coverage in amounts not less than the following, which insurance will cover the particular SMR entity for which the Supply is to be provided: (a) Worker's Compensation Statutory Limits for the state or states in which this agreement is to be performed (or evidence of authority to self insure); (b) Employer's Liability \$1,000,000 for Bodily Injury by Accident per Accident, \$1,000,000 for Bodily Injury by Disease per policy limit, and \$1,000,000 for Bodily Injury by Disease, per employee; (c) Comprehensive General Liability (including Completed Operations and Blanket Contractual Liability) \$1,000,000 combined bodily injury and property damage per occurrence; (d) Automobile Liability (including owned, non owned and hired vehicles) \$1,000,000 combined bodily injury/property damage per occurrence; and (e) Commercial Umbrella limits in the amount of \$5,000,000 per occurrence and \$10,000,000 annual aggregate. Supplier will furnish certificates of insurance setting forth the amounts of coverage, policy numbers and dates of expiration for insurance maintained by Supplier that will name the specific SMR entity as an additional insured. Such certificates will provide that the SMR entity will receive thirty (30) days prior written notification from the insurer of any termination or reduction in the amount or scope of coverage. Supplier's insurance carrier will be rated a minimum of A or better under the AM Best rating. Supplier's insurance will be primary and must offer a blanket waiver of subrogation endorsement. Supplier's purchase of insurance coverage and the furnishing of certificates of insurance will not release Supplier of its obligations or liabilities under these Terms. In the event of Supplier's breach of this Article 12, SMR will have the right to cancel the undelivered portion of any Supply covered by these Terms and will not be required to make further payments except for conforming Supply delivered or services rendered prior to cancellation.

The above obligations may be substituted as it relates to the Supplier's employees with proper coverage in the terms of the applicable Social Security Law.



The Supplier shall give SMR a copy of the insurance policy on the date of execution of this agreement, as well as the documents evidencing the renewal of said policy or agreement, as required. The wording of the insurance agreement shall be approved by SMR prior to contracting for it, and the same may not be amended or cancelled without prior authorization in writing of SMR.

12.3 The Supplier undertakes to give SMR a bond with a value of \_\_\_\_\_00/100 Mexican currency), which shall be contracted for with the company \_\_\_\_\_, agent \_\_\_\_\_, for the purpose of guarantee the obligations of the Supplier arising from this agreement, including its labor obligations to the workers who render their services at the facilities of SMR, as well as to guarantee any other credit, debt, or obligation deriving from the labor relation with the aforementioned workers, to the Mexican Social Security Institute, INFONAVIT, AFORE, SAR, or any other governmental agency or authority. Prior to the Supplier's hiring or issuance of the bond referred to in this Clause, SMR shall approve the wording of the respective policy or agreement. The bond policy or agreement shall also contemplate that it cannot be amended without SMR's prior consent in writing. Such bond policy and/or agreement shall be delivered to SMR on the date of execution of this agreement, and the documents proving the renewal of said policy or agreement shall be delivered to SMR at least thirty (30) calendar days prior to the date of expiry of the term of such bond.

### **13. Work on Premises**

13.1 If Supplier's work under these Terms involves operations by Supplier on SMR premises or one of its customers, Supplier will take all necessary precautions to prevent injury to any person or property during the progress of such work. Both parties agree that the personnel used by the Supplier for the performance of its duties shall be the sole responsibility of the Supplier, without making any additional charges to SMR for such concept, releasing SMR of any past, present or future labor, social security or tax-labor liabilities that may result from the relationship between the Supplier and its own employees and other individuals subcontracted by the Supplier.

Any liability that may arise from accidents and/or labor illness to the above-mentioned personnel and social security obligations, such as Employee's Housing Fund (INFONAVIT) quotas and/or Employee's Savings Fund and/or Social Security Institute (IMSS) quotas and/or Employee's Retirement Savings Fund (SAR) contributions and/or any other social security obligation, shall be fully covered by the Supplier.

Supplier expressly states that it has sufficient human and economic resources to be liable for its labor obligations and that all and each one of Supplier's employees shall be deemed at all times as the exclusive personnel of Supplier, without understanding that a labor relation has emerged between such personnel of Supplier and SMR. Therefore, Supplier shall fully comply with all its labor obligations as employer and shall indemnify and hold harmless SMR for any labor, social security or retirement savings fund claims or suits, filed by the competent authorities or the employees of Supplier. For such purposes, the Supplier shall assume the defense of the case as sole employer, and cooperate as needed to demonstrate the non-existence of working relationships with SMR.

All the expenses that SMR may incur due to claims of Supplier's employees, including attorneys fees and expenses, as well as all the costs, damages that SMR may have suffered, shall be paid by Supplier, immediately upon written request of SMR.

If the Supplier fails to take all necessary actions to release SMR from any liability of the Supplier, SMR shall have the right to hire counsel and/or the necessary personnel that may be required for the solution of the labor conflict or of any other nature, at Supplier's expense.

13.2 Supplier will maintain such public liability, property damage and employee's liability and compensation insurance as will protect SMR from these risks and from any claims under applicable workers compensation and occupational disease acts. This insurance is in addition to the insurance provisions as set forth in Article 12.2.

13.3 Supplier's performance under these Terms will be consistent and in accordance with current labor agreements between SMR and any union organization with which SMR may have a collective bargaining agreement.

### **14. Confidentiality**

14.1 Supplier acknowledges that, in the delivery of the Supply under this agreement, it shall have access and shall make use of the confidential or technical information of SMR, its subsidiaries, and affiliates. Therefore, pursuant to the provisions of the Industrial Property Law and the Copyright Law and any other intellectual property legislation applicable in México, and without limitation to any other obligation of the Supplier under this agreement, the Supplier undertakes to: a) Keep secret and confidential and not disclose, either orally or in writing or by any other means, to any person and for any reason, and not use for its own benefit or for the benefit of a third party, any Confidential

Information (as defined herein below), except as may be required for the compliance of the Supply under this agreement or with SMR's authorization in writing; b) Deliver to SMR, on a timely basis upon termination of this agreement, all the correspondence, books and records, models, drawings, and any other material or record constituting or containing Confidential Information or proprietary information of SMR, and do not take for it or with it any of such materials.

For the purposes of this Clause, Confidential Information means: (i) any technical or business information, know-how, and trade secrets, whether or not patentable, existing in any form, be it material or electronic, including without limitation, information, diagrams, blueprints, notes, drawings, models, prototypes, specifications, manuals, memoranda, reports, and computer programs given to the Supplier by SMR, its parent company, subsidiaries, or affiliates, or information to which SMR, its parent company, subsidiaries, or affiliates have granted access to, or that is procured or prepared by the Supplier or together with others in the course of performing the Supply under this agreement; (ii) information that was known by the Supplier prior to its disclosing by or on behalf of SMR; (iii) information that the Supplier receives in good faith from a third party (other than the parent company, subsidiaries, or affiliates of SMR) which has no obligation of confidentiality to SMR with respect thereof. Supplier will take all necessary measures to ensure that neither Supplier nor its employees, agents, suppliers or authorized subcontractors, communicate such confidential information to any third party without SMR's prior written consent and that the information is used only for the purpose submitted.

14.2 Without obtaining the prior written consent of SMR, Supplier will not advertise or publish the fact that Supplier has contracted to furnish SMR supply, or use any trademarks or trade names of SMR in Supplier's advertising or promotional materials. These confidentiality requirements will be maintained for the duration of performance under the Terms and for a period of five (5) years thereafter. Upon the request of SMR, Supplier agrees to return to SMR all information, including all copies thereof, confidential or otherwise, related to the Terms.

## **15. Intellectual Property Rights and Technical Information**

15.1 Supplier will create, maintain, update and provide to SMR, all technical information relating to the Supply, including information subject to industrial and/or intellectual property rights and information that may relate to tooling, machines or equipment, software, works of authorship, computer programs and databases (including object code, micro code, source code and data structures) and all enhancements, modifications and updates to such information (the Technical Information). The Technical Information will not be subject to any use or disclosure restriction.

15.2 Upon a breach by Supplier of these Terms, Supplier grants to SMR a royalty free, fully paid-up license for all Technical Information in order to manufacture, or have manufactured, the Supply. At SMR's request, Supplier will transfer to SMR ownership of the tooling and equipment necessary to manufacture the Supply, whether or not such tooling and equipment has been paid for by SMR.

15.3 Supplier agrees not to assert any claim (other than patent infringement) against SMR, SMR's customers or their respective suppliers with respect to any Technical Information that Supplier discloses under the Terms.

15.4 SMR will own all right, title and interest in any idea, invention, concept, discovery, work of authorship, patent, copyright, trademark, trade secret, know-how or other intellectual property developed by Supplier under these Terms. Supplier will assist SMR in perfecting its right, title and interest and will execute and deliver all documents reasonably requested by SMR in order to perfect, register or enforce the same. SMR will reimburse any associated costs incurred by Supplier in providing such assistance 15.5 If a third party asserts claims of actual or alleged infringement of any Technical Information relating to the Supply, Supplier, at no expense to SMR, will obtain for SMR and its customers, the right to manufacture, use and sell the Supply or will substitute an equivalent item acceptable to SMR, and will reimburse SMR for any costs incurred related to this Article 15.5.

## **16. SMR's Proprietary Interests in Supply or Tools**

16.1 Notwithstanding Article 5 above, ownership of the Supply will be transferred to SMR immediately upon its identification in the purchase order.

16.2 Supplier will not impose or permit to be imposed any lien, encumbrance or security interest or similar reservation of title on the Supply. Supplier waives any statutory, non-consensual lien that may apply to the Supply.

16.3 If SMR purchases or finances all or part of the raw materials or semi finished products for incorporation into the Supply, the raw materials and semi finished products will become the property of SMR immediately upon payment. Supplier, will identify the raw materials and semi finished products by plainly marking them as SMR owned property.

16.4 All supplies, materials, tools, jigs, dies, gauges, fixtures, molds, patterns, equipment, ancillary products, materials and other items (collectively Tools ) purchased by or furnished by SMR, in whole or in part, or by third parties on SMR's behalf, to Supplier under these Terms, or for which Supplier has been reimbursed by SMR, will remain the property of SMR and will not be pledged to any third party. Supplier will provide SMR with drawings, technical specifications,

FMEAs and control plans for the Tools. Supplier will bear the risk of loss and damage to the Tools. The Tools (a) will at all times be properly stored, operated and maintained by Supplier, (b) will not be used by Supplier for any purpose other than the performance of these Terms, (c) will be deemed to be personal property of SMR, not a fixture, (d) will be conspicuously identified as property of SMR with relevant part numbers, (e) will not be commingled with other property of Supplier or with that of a third party, and (f) will not be moved from Supplier's premises without SMR's prior written approval. Supplier will insure the Tools for damage or loss (including theft) in an amount not less than replacement value and will maintain general liability insurance regarding operation of the Tools in amounts and coverage reasonable in the circumstances and acceptable to SMR. Upon the request of SMR, the Tools will be delivered to SMR by Supplier, either (a) F.O.B. transport equipment at Supplier's plant, properly packed and marked in accordance with the Terms and requirements of the carrier selected by SMR, or (b) to any location designated by SMR, provided that SMR will pay Supplier the reasonable cost of delivering the Tools to the location. SMR has the right to enter Supplier's premises at all reasonable times to inspect the Tools and Supplier's records with respect to the Tools. SMR does not guarantee the accuracy of any Tooling or the availability or suitability of any Tools furnished by SMR to Supplier, including any warranty, either express or implied, as to fitness, condition, merchantability, design or operation or fitness for a particular purpose. Supplier agrees to check carefully and approve all Tools supplied by SMR prior to use.

Supplier will assume all risk, loss, damages, injuries or expenses arising, either directly or indirectly, from the use, maintenance, repair of the Tools, including any interruption of service or loss of business, profits or any other indirect, special or consequential damage and/or personal injury or death. In any dispute involving ownership of Tools, there is a rebuttable presumption that SMR is the sole owner of the Tools and Supplier grants SMR a security interest in the Tools to secure Supplier's obligations under these Terms. Supplier authorizes SMR, at SMR's sole option, to file financing statements to evidence SMR's interest in the Tools.

The Supplier, having no rights or title to the Tools, cannot transfer any rights to the Tools to a third party. Supplier waives: (a) any lien that might have or otherwise be able to assert against the Tools for work done on the Tools or otherwise, including any statutory non-consensual liens; and (b) any objection to SMR's repossession and removal of the Tools for any or no reason, including bankruptcy, or insolvency proceedings.

16.5 Supplier grants SMR an exclusive, irrevocable option to purchase any Tools owned by Supplier and used in the manufacture of the Supply at a price agreed upon in writing by the parties, but in no event greater than the replacement cost of the Tools less depreciation. SMR may exercise this option at any time, provided that Supplier does not utilize the Tools owned by Supplier for staple goods for third parties. Supplier will obtain any applicable waiver, release or approval from financing sources so that SMR may exercise its rights under this Article 16.5.

## **17. Cancellation of Orders / Termination**

17.1 SMR may terminate any purchase order without judicial resolution, in the event of any breach by Supplier of these Terms or Supplier's failure to provide SMR with reasonable assurances of future performance upon request. SMR has no obligation to purchase a minimum amount of goods and services. Additionally, SMR may cancel any purchase order in the event of any of the following: (i) insolvency of Supplier; (ii) filing of an involuntary or voluntary petition of suspension of payments; (iii) execution by Supplier of an assignment for the benefit of creditors; or (iv) appointment of a receiver over Supplier's assets; (v) impossibility of Supplier to pursue the purpose of this Agreement; (vi) acts of God or force majeure in accordance with section 18 below; (vii) the commission of any crime by the Supplier, and (viii) any other cause that may affect SMR's interests. In the event of termination for cause, SMR will not be liable to Supplier for any amount except for conforming Supply that has been delivered to SMR in accordance with these Terms prior to termination, and Supplier will be liable to SMR for all damages sustained by reason of the default which gave rise to the termination.

17.2 SMR reserves the right to terminate any purchase order for its sole convenience. Supplier may not terminate any purchase order once accepted and at all times must continue to deliver Supply in accordance with the Terms. In the event of such termination by SMR, Supplier, its suppliers and subcontractors, will stop immediately all work. At SMR's sole discretion, Supplier may be paid a reasonable termination charge consisting solely of a percentage of the order price reflecting the percentage of the work performed pursuant to valid purchase orders or material releases from SMR prior to the notice of termination, which shall be Supplier's sole and exclusive remedy on account of such termination. Within thirty (30) days after receipt of a termination notice, Supplier will submit its claim. Supplier will not be paid for any work performed after receipt of the notice of termination, or for any costs incurred by Supplier's suppliers or subcontractors that Supplier could reasonably have avoided or that were not authorized pursuant to a valid purchase order or material release by SMR. In no event will SMR be liable for loss of profits or cancellation charges.

## **18. Force Majeure**



18.1 Any delay or failure of either party to perform its obligations will be excused if caused by an extraordinary event or occurrence beyond the control of the nonperforming party and without the nonperforming party's fault or negligence, such as acts of God, fires, floods, windstorms, explosions, riots, natural disasters, wars, terrorist attacks and sabotage. Written notice of the delay, including the anticipated duration of the delay, must be given by the nonperforming party within ten (10) days of the event. During the period of any delay or failure to perform by Supplier, SMR, at its option, may purchase Supply from other sources and reduce its schedules to Supplier by such quantities, without liability to SMR, or cause Supplier to procure the Supply from other sources in quantities and at times requested by SMR and at the price set forth in this agreement. If requested by SMR, Supplier will, within five (5) days of such request, provide adequate assurance that the delay will not exceed a period of time that SMR deems appropriate. If the delay lasts more than the time period specified by SMR, or Supplier does not provide adequate assurance that the delay will cease within the time period, SMR may, among its other remedies, immediately cancel this agreement and seek damages against Supplier for its non performance.

## **19. Ethical Trading**

**19.1** Supplier warrants that no child, prison, forced or involuntary labor shall be used by Supplier or its subcontractors in the provision of Supplies. Supplier and its subcontractors shall maintain a work place free from physical abuse and any practice in violation of local law. Supplier and its subcontractors shall provide a healthy, safe work environment, wages and benefits as required by law, freedom of association and reasonable working conditions.

**19.2** Supplier shall not: (i) give or offer to give any gift or benefit to SMR's employees; (ii) solicit or accept any information, data, services, equipment or commitment from SMR's employees unless it is: (a) required under a contract between SMR and Supplier, (b) made pursuant to a written disclosure agreement between SMR and Supplier, or (c) specifically authorized in writing by SMR's management; (iii) solicit or accept favoritism from SMR's employees; (iv) enter into any outside business relationship with SMR's employees or other suppliers without full disclosure to and prior approval of SMR's management; or (v) provide to or accept from other suppliers any information regarding SMR or its business. For the purposes of this Section: "employee" includes members of the employee's immediate family and household, plus any other person who is attempting to benefit from his or her relationship to the employee; "Supplier" includes all employees and agents of Supplier; "gift or benefit" includes money, goods, services, discounts, favors and the like in any form but excluding items with a value of \$25.00 USD or less; "supplier" includes prospective, current and past suppliers; and "favoritism" means partiality in promoting the interest of Supplier over that of other suppliers. Any breach by Supplier of its obligations under this Section shall constitute a material default by Supplier of every contract and Order with SMR and may further result in Supplier's debarment from doing business with SMR. Supplier shall also comply with all Discrimination and Harassment, neutrality of Interests, Conflict of Interest, Non-Disclosure, Solicitation, Immigration Law Compliance, and Equal Employment Opportunity policies of SMR.

## **20. Miscellaneous Provisions**

**20.1 Assignment/Change in Control** Supplier will not assign, in whole or in part, this purchase order or delegate the performance of its duties without the written consent of SMR. Any assignment or delegation without the previous written consent of SMR, at the option of SMR, will cancel the purchase order. Any consent by SMR to an assignment will not waive SMR's right to recoupment from Supplier and/or its assigns for any claim arising out of these Terms. If SMR agrees to the assignment of the purchase order, in whole or in part, Supplier will remain solely liable to SMR for the adherence of the assignee to these Terms. In addition, SMR may terminate these Terms upon giving at least 30 days written notice to Supplier, without any liability to Supplier, if Supplier (i) sells, or offers to sell, a material portion of its assets or (ii) sells or exchanges, or offers to sell or exchange, or causes to be sold or exchanged, a sufficient amount of its stock or other equity interests that effects a change in the control of Supplier or (iii) executes, or otherwise becomes subject to, a voting or other agreement or trust that effects a change in the control of Supplier.

**20.2 Duty Drawback Rights** This purchase order includes all related customs duty and import drawback rights, if any, which Supplier can transfer to SMR, including rights developed by substitution and rights which may be acquired from Supplier's suppliers. Supplier agrees to inform SMR of the existence of any such rights and upon request will supply documents as may be required to obtain the drawback.

**20.3 Limitation on SMR's Liability/Waiver** In no event will SMR be liable to Supplier for anticipated profits or for incidental or consequential damages. SMR's liability for a claim of any kind or for any loss or damage arising out of or in connection with or resulting from these Terms, or from any performance or breach, will in no case exceed the price allocable to the Supply giving rise to the claim. No action or inaction by SMR to enforce the Terms will constitute a waiver of compliance with any of the provisions in these Terms.

**20.4 Relationship of Parties** These Terms are executed between independent contractors, on an equal basis. The Supplier is an independent contractor and, therefore, shall provide the Supply and, in general, shall enter into these

Terms with its own personnel and under its own supervision and control. The Supplier shall not be an agent, representative, or attorney-in-fact for SMR; therefore, it shall not have the authority to act in the name or on behalf of SMR nor to bind SMR in any way whatsoever.

**20.5 Remedies and Injunctive Relief** The rights and remedies to SMR in these Terms are cumulative with, and in addition to all other and further remedies provided in law or equity. To the extent that these Terms are for Supply for use as, or fabrication into, parts, components or systems, Supplier acknowledges and agrees that money damages would not be sufficient remedy for any actual, anticipatory or threatened breach of these Terms by Supplier and that, in addition to all other rights and remedies which SMR may have, SMR shall be entitled to specific performance and injunctive or other equitable relief.

**20.6 Customs-Trade Partnership Against Terrorism** To the extent that any Supply covered by these Terms is to be imported into the United States of America, Supplier shall comply with all applicable recommendations or requirements of the Bureau of Customs and Border Protection's Customer-Trade Partnership Against Terrorism ( C-TPAT ) initiative. Upon request, Supplier will certify in writing its compliance with the C-TPAT initiative.

**20.7 Applicable Law and Jurisdiction** In case of any dispute or claim resulting from these Terms, both parties expressly submit to the applicable commercial laws and the jurisdiction of the courts of San Luis Potosi, Mexico, waiving to any other jurisdiction that may be applicable to either of them because of their present or future domiciles or any other reason whatsoever. The United Nations Convention on Contracts for the International Sale of Goods will not apply to these Terms. If any provision is or becomes invalid or unenforceable under any law, the remaining provisions will be in full force and effect as written.

**20.8 Continuing Obligations** The obligations of Supplier under the following Articles will survive the expiration, non-renewal or termination of any purchase order: Articles 2.9, 7, 10, 11, 12, 14, 15, 16 and 20.