



# **SMR Automotive Systems USA Inc (SMRUSA) Purchasing Terms and Conditions**

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# **SMR Automotive Systems USA Inc (SMRUSA) Purchasing Terms and Conditions**

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

1.1 Supplier acknowledges and agrees that these SMRUSA 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 SMRUSA, its subsidiaries and divisions, and any entity controlling, controlled by, or under common control with it ( SMRUSA ), 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 SMRUSA 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 SMRUSA. 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 SMRUSA. 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 SMRUSA 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 SMRUSA. Supplier warrants that the prices on the purchase order are complete and that no other charges will be added without SMRUSA'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 SMRUSA 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 SMRUSA. All invoicing and payment will be made through electronic data interchange or such other means as SMRUSA may require in writing.

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

2.6 Payment for Supply will not constitute final acceptance of the Supply or waive SMRUSA's right to reject Supply. SMRUSA may reject the Supply and hold Supplier in default if, at any time, SMRUSA 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 SMRUSA; and SMRUSA will have the right to set off against or to recoup from any amounts due to Supplier and its affiliates/subsidiaries from SMRUSA.

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

2.9 SMRUSA has the right to audit and review all records of Supplier to enable SMRUSA 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 SMRUSA in accordance with these Terms. Supplier agrees to maintain all records relating to the Supply to facilitate an audit by SMRUSA for a period of four (4) years following final payment under the Terms.

2.10 SMRUSA may set off any monies that it owes to Supplier against any monies that it is owed by Supplier.

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

3.1 SMRUSA 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 SMRUSA 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 SMRUSA 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 SMRUSA may provide to Supplier. At any time, SMRUSA 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 SMRUSA, Supplier will promptly furnish to SMRUSA: (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 SMRUSA 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, SMRUSA 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 SMRUSA until receipt of the Supply by SMRUSA at the location indicated on the purchase order or as otherwise directed by SMRUSA.

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

6.1 Time and quantity are of the essence. Unless otherwise specified by SMRUSA, delivery will be FOB SMRUSA facility indicated on the purchase order. SMRUSA 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 SMRUSA 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. SMRUSA will not pay for any Supply, materials, Tools and related costs that are not authorized by the Terms. If the requirements of SMRUSA's customers or market, economic or other conditions require changes in delivery schedules, SMRUSA 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 SMRUSA.

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 SMRUSA 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, SMRUSA may purchase the Supply from a third party immediately, without notice.

6.5 Supplier will provide written notice to SMRUSA 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. SMRUSA may purchase Supply from a third party immediately upon receipt of notice from Supplier if SMRUSA deems necessary, in its sole discretion. Supplier will notify SMRUSA 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 SMRUSA may require Supplier to implement changes to the Supply, including design, inspection, testing or quality control. SMRUSA 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 SMRUSA as required by SMRUSA relating to the changes, including cost and timing of implementation.

7.3 Supplier will comply with any and all applicable federal, state and local laws, regulations and standards in force in the United 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, and the reporting and use of conflict minerals. Upon request from SMRUSA, Supplier will certify in writing its compliance with this Article 7.3.

7.4 At the request of SMRUSA, 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 SMRUSA, including quality and production **according to SMR Global Supplier Manual**.

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.

## **8. Contractual Changes**

8.1 SMRUSA 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 SMRUSA, at SMRUSA's sole discretion.

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

8.3 Upon approval of the claim by SMRUSA, any excess or obsolete Tools or Supply set forth in the claim will become the property of SMRUSA, for SMRUSA 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 SMRUSA and SMRUSA 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 SMRUSA or SMRUSA's customers in the course of the investigation. Final acceptance of the Supply by SMRUSA will not be conclusive with respect to latent defects or misrepresentations **according to SMR Global Supplier Manual**.

9.2 SMRUSA reserves the right to reject or revoke acceptance of non conforming Supply at any time **according to SMR Global Supplier Manual**.

9.3 In addition to Article 9.2 and any other remedies SMRUSA may have, at its option, SMRUSA 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. SMRUSA 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 SMRUSA prior to a successful runoff and final acceptance, SMRUSA 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 SMRUSA in the Terms or as otherwise agreed to in writing by the parties, regardless of any assistance provided by SMRUSA or approval by SMRUSA **according to SMR Global Supplier Manual**.

## **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) SMRUSA 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 SMRUSA or SMRUSA'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 SMRUSA 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 SMRUSA, its successors, assigns, customers and the end users of SMRUSA's Supply. These warranties may not be limited or disclaimed by Supplier. SMRUSA'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 SMRUSA or acceptance by SMRUSA, whichever occurs later; or (b) if the

Supply is incorporated, in whole or in part, into products sold by SMRUSA 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, consumed or vended (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 SMRUSA 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 SMRUSA, 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 SMRUSA 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 SMRUSA will not apply to any Liabilities arising from SMRUSA's sole negligence.

12.2 Supplier will maintain insurance coverage in amounts not less than the following, which insurance will cover the particular SMRUSA 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 SMRUSA entity as an additional insured. Such certificates will provide that the SMRUSA 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, SMRUSA 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.



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

13.1 If Supplier's work under these Terms involves operations by Supplier on SMRUSA 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.

13.2 Supplier will maintain such public liability, property damage and employee's liability and compensation insurance as will protect SMRUSA 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.

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

### **14. Confidentiality**

14.1 All information provided to Supplier by SMRUSA under these Terms will remain SMRUSA's property and be considered confidential by Supplier. 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 SMRUSA's prior written consent and that the information is used only for the purpose submitted.

14.2 Without obtaining the prior written consent of SMRUSA, Supplier will not advertise or publish the fact that Supplier has contracted to furnish SMRUSA Supply, or use any trademarks or trade names of SMRUSA 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 SMRUSA, Supplier agrees to return to SMRUSA 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 SMRUSA, 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 SMRUSA a royalty free, fully paid-up license for all Technical Information in order to manufacture, or have manufactured, the Supply. At SMRUSA's request, Supplier will transfer to SMRUSA ownership of the tooling and equipment necessary to manufacture the Supply, whether or not such tooling and equipment has been paid for by SMRUSA.

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

15.4 SMRUSA 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 SMRUSA in perfecting its right, title and interest and will execute and deliver all documents reasonably requested by SMRUSA in order to perfect, register or enforce the same. SMRUSA 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 SMRUSA, will obtain for SMRUSA and its customers, the right to manufacture, use and sell the Supply or will substitute an equivalent item

acceptable to SMRUSA, and will reimburse SMRUSA for any costs incurred related to this Article 15.5.

#### **16. SMRUSA's Property Interests in Supply or Tools**

16.1 Notwithstanding Article 5 above, ownership of the Supply will be transferred to SMRUSA 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.

16.3 If SMRUSA 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 SMRUSA immediately upon payment. Supplier, as bailee, will identify the raw materials and semi finished products by plainly marking them as SMRUSA 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 SMRUSA, in whole or in part, or by third parties on SMRUSA's behalf, to Supplier under these Terms, or for which Supplier has been reimbursed by SMRUSA, will remain the property of SMRUSA and will not be pledged to any third party. Supplier will provide SMRUSA 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 SMRUSA, not a fixture, (d) will be conspicuously identified as property of SMRUSA 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 SMRUSA'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 SMRUSA. Upon the request of SMRUSA, the Tools will be delivered to SMRUSA 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 SMRUSA, or (b) to any location designated by SMRUSA, provided that SMRUSA will pay Supplier the reasonable cost of delivering the Tools to the location. SMRUSA 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. SMRUSA does not guarantee the accuracy of any Tooling or the availability or suitability of any Tools furnished by SMRUSA 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 SMRUSA 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 SMRUSA is the sole owner of the Tools and Supplier grants SMRUSA a security interest in the Tools to secure Supplier's obligations under these Terms. Supplier authorizes SMRUSA, at SMRUSA's sole option, to file financing statements to evidence SMRUSA's interest in the Tools.

16.5 Supplier grants SMRUSA 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. SMRUSA 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 SMRUSA may exercise its rights under this Article 16.5.

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

17.1 SMRUSA may terminate any purchase order in the event of any breach by Supplier of these Terms or Supplier's failure to provide SMRUSA with reasonable assurances of future performance upon request. Additionally, SMRUSA 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 bankruptcy against Supplier; (iii) execution by Supplier of an assignment for the benefit of creditors; or (iv) appointment of a receiver over Supplier's assets. In the event of termination for cause, SMRUSA will not be liable to Supplier for any amount except for conforming Supply that has been delivered to SMRUSA in accordance with these Terms prior to termination, and Supplier will be liable to SMRUSA for all damages sustained by reason of the default which gave rise to the termination.

17.2 SMRUSA 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 SMRUSA, Supplier, its suppliers and subcontractors, will stop immediately all work. At SMRUSA'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 SMRUSA 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 SMRUSA. In no event will SMRUSA 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, SMRUSA, at its option, may purchase Supply from other sources and reduce its schedules to Supplier by such quantities, without liability to SMRUSA, or cause Supplier to procure the Supply from other sources in quantities and at times requested by SMRUSA and at the price set forth in this agreement. If requested by SMRUSA, Supplier will, within five (5) days of such request, provide adequate assurance that the delay will not exceed a period of time that SMRUSA deems appropriate. If the delay lasts more than the time period specified by SMRUSA, or Supplier does not provide adequate assurance that the delay will cease within the time period, SMRUSA 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 USA's employees; (ii) solicit or accept any information, data, services, equipment or commitment from SMR USA's employees unless it is: (a) required under a contract between SMR USA and Supplier, (b) made pursuant to a written disclosure agreement between SMR USA and Supplier, or (c) specifically authorized in writing by SMR USA's management; (iii) solicit or accept favoritism from SMR USA's employees; (iv) enter into any outside business relationship with SMR USA's employees or other suppliers without full disclosure to and prior approval of SMR USA's management; or (v) provide to or accept from other suppliers any information regarding SMR USA 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 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 USA and may further result in Supplier's debarment from doing business with SMR USA. 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 SMRUSA.

## **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 SMRUSA. Any assignment or delegation without the previous written consent of SMRUSA, at the option of SMRUSA, will cancel the purchase order. Any consent by SMRUSA to an assignment will not waive SMRUSA's right to recoupment from Supplier and/or its assigns for any claim arising out of these Terms. If SMRUSA agrees to the assignment of the purchase order, in whole or in part, Supplier will remain solely liable to SMRUSA for the adherence of the assignee to these Terms. In addition, SMRUSA 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 SMRUSA, including rights developed by substitution and rights which may be acquired from Supplier's suppliers. Supplier agrees to inform SMRUSA 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 SMRUSA's Liability/Waiver** In no event will SMRUSA be liable to Supplier for anticipated profits or for incidental or consequential damages. SMRUSA'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 SMRUSA to enforce the Terms will constitute a waiver of compliance with any of the provisions in these Terms.

**20.4 Relationship of Parties** Supplier and SMRUSA are independent contracting parties and nothing in these Terms will make either party the agent or legal representative of the other for any purpose, nor does it grant either party any authority to assume or to create any obligation on behalf of or in the name of the other.

**20.5 Remedies and Injunctive Relief** The rights and remedies to SMRUSA 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 SMRUSA may have, SMRUSA 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**

These Terms will be governed by the laws of the State of Michigan without regard to rules pertaining to conflicts of law with the only exception that if there is deemed to be insufficient contacts with the State of Michigan, the laws of the State of the manufacture of the Supply will apply. The federal, state and local courts located in the State of Michigan will have exclusive jurisdiction for any disputes relating to these Terms, subject to the sole exception above. 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 Language for Communications**

It is the obligation of Supplier to assure that Supplier communicates with SMRUSA in the English language for all forms of communication, including corporate and day-to-day communications.

**20.8 9 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.