

# MAHINDRA TRACTOR ASSEMBLY, INC.

## DBA MAHINDRA GENZE

### Terms and Conditions of Purchase

for

### GOODS AND SERVICES

**1. Introduction and Applicability of Terms and Conditions.** Mahindra Tractor Assembly, Inc. dba Mahindra GenZe (the “**Purchaser**”) and Seller acknowledge these *Terms and Conditions of Purchase for Goods and Services* (the “**Terms and Conditions**”) have been developed specifically for goods and services purchased by the Purchaser. These Terms and Conditions apply to Purchaser’s purchase of all goods and/or services from Seller described in each Order (collectively, “**Goods**”). The term “Goods” includes, without limitation, raw materials, components, intermediate assemblies, end products, software and all services, whether or not performed in connection with the Order. The term “**Order**” includes, as applicable, (1) the purchase order issued by Purchaser to Seller with respect to the Goods that are the subject of such Order; (2) any change order applicable to the Order (a “**Change Order**”); (3) all releases and authorizations issued by Purchaser to Seller; and (4) these Terms and Conditions. Purchaser and Seller acknowledge the following in entering into the Order: (1) to ensure a reliable and timely supply of Goods covered by the Order; (2) to implement common or complimentary processes to forecast necessary quantities, place orders, ship, receive and make payment for Goods; (3) to identify, contain and resolve promptly and fairly any issues as to timeliness and quality of Goods delivered; and (4) collaborate to identify opportunities and implement cost saving measures related to the Goods covered by the Order, all in accordance with applicable law and the Order (including without limitation), the Terms and Conditions. Services purchased by Purchaser shall be governed by these Terms and Conditions and those set forth in Exhibit A.

**2. Acceptance.** Seller has read and understands the Order and agrees that upon either (a) Seller’s written acceptance or (b) commencement of any work or performance of any services under the Order shall constitute Seller’s acceptance of the Terms and Conditions for the Order. All terms and conditions which are different from or in addition to the Order are expressly rejected by Purchaser and shall not become a part of the Order. No additional or different terms contained in any invoice, quote, proposal, sales order, bill of lading or other document supplied by Seller will be binding on the Purchaser or have any effect unless specifically agreed to in writing by the Purchaser. Neither the Order nor the Terms and Conditions applicable to the Order may be modified or amended without the express written consent of Purchaser. No officer, employee or other representative of Purchaser is authorized to make any oral contract of commitment for the purchase of Goods or to modify or change the Terms and Conditions that are a part of the Order unless such modification or change is in writing and approved by Purchaser, also in writing. Upon acceptance, the Order (including without limitation), the Terms and Conditions and any other documents specifically incorporated in the Order or separately agreed to in writing such as specifications, drawings, requirements of Purchaser’s customer, or quality requirements, will become binding between Purchaser and Seller.

**3. Duration.** Unless the Order specifies otherwise, the initial term of the Order begins on the effective date shown on the Order (the “**Effective Date**”) and continues for twelve (12) months after the Effective Date (the “**Initial Term**”). Thereafter, the Order will automatically renew for successive twelve (12)-month terms for production Goods (each, a “**Renewal Term**”) unless Purchaser provides Seller with a notice of non-renewal at least sixty (60) days before the end of the Initial Term or any Renewal Term. For prototype Goods, the Order will terminate on the date specified on the Order or when the Order has been fulfilled by Seller.

**4. Price; Payment Terms; Early Payment Discount.** Prices for the Goods set forth in the Order are fixed as specified in the Order and constitute the total price for the manufacture and delivery of the Goods. Seller is not entitled to adjustments in the purchase price and will not add charges of any type to an invoice without prior written consent from Purchaser, which consent of Purchaser would constitute an amendment to the Order, also known as a revision with a revision date. No charge for packaging, crating, or boxing will be allowed, unless specified on the face of the Order. Seller represents and warrants to Purchaser that the price charged to Purchaser complies with all applicable governmental laws and regulations in effect at the time of quotation, sale, and delivery. Invoices will be issued in the currency as directed by the Order. The Order is inclusive of all federal, state, provincial, and local taxes and any duties applicable to provision of the Goods. Seller will separately invoice Purchaser for any sales,

value added, or similar turnover taxes or charges that Seller is required by law to pay or collect from Purchaser. Seller will provide Purchaser with all information and documentation that is required under the applicable laws in order to enable Purchaser to recover any sales, value added, or similar turnover taxes or charges. Seller's invoices shall also be in the appropriate form as required by applicable law to enable Purchaser to deduct payments for income tax purposes. If Purchaser is required by law to make any deduction or withholding from any sum otherwise payable to Seller under the Order, Purchaser shall be entitled to deduct or withhold such amount and effect payment thereof to the applicable tax authority. Purchaser will, upon request from Seller, provide Seller official tax receipts or other evidence issued by the applicable tax authorities sufficient to establish any taxes which are withheld and that have been paid.

Purchaser is entitled to any discounts allowable by Seller for prompt payment even though Purchaser is unable to make payment within the time limits set by Seller where such failure is due to a Force Majeure event as defined under the Order. The Seller warrants that the pricing for the Goods for Purchaser on the Order is no less favorable than those the Seller currently extends to any other customer for the same or similar Goods in similar quantities. If the Seller reduces its price to third parties during the term of the Order for the Goods, the Seller will correspondingly reduce the price charged to Purchaser.

Payments will be processed when Goods are received against the Purchase Order. When shipments to places other than Purchaser's plant are authorized, Seller's invoices will be paid by Purchaser at the time specified on the face hereof but not before acknowledgment of receipt of shipment by the consignee.

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 Purchaser unless otherwise prohibited by applicable law. Seller will provide Purchaser with all information and records relating to the Goods necessary for Purchaser to: (1) receive these benefits, credits, and rights; (2) fulfill any customs obligations, including country of origin documentation, country of origin marking or labeling requirements, and certification or local content reporting requirements; (3) claim preferential duty treatment under applicable trade preference regimes; and (4) participate in any duty deferral or free trade programs of the country of import. Seller will obtain all export licenses and authorizations and pay all export taxes, duties, and fees unless otherwise stated in the Agreement, in which case Seller will provide all information and records necessary to enable Purchaser to obtain those export licenses or authorizations.

**5. Quantity and Delivery.** Unless the Order (or a separate written agreement executed by Purchaser's authorized representative) requires Seller to manufacture, ship, and/or provide only a specified quantity of Goods, the Order is a requirements contract under which, (1) Seller is required to supply Purchaser's requirements for Goods in such quantities as are identified from Purchaser as firm orders in material authorization releases, manifests, broadcasts or similar releases that are transmitted to Seller during the term of the Order; and (2) Seller will supply all such Goods on such dates and times, at the price and on the other terms specified in the Order. Purchaser's requirements of Goods shall be determined by Purchaser for the needs of its customer and market, economic, or other related conditions. Purchaser is not required to make payment for Goods delivered to Purchaser which are in excess of quantities specified in Purchaser's releases (as defined below) or on face of Order (as in the case of a specified quantity of Goods). If Goods are not ready for delivery from Seller in time to meet Purchaser's schedule, Seller will be responsible for the additional costs of any resulting expedited or other special transportation if Seller caused delay.

Quantities referenced in any Order represent Purchaser's estimate of its anticipated needs for such Goods during the timeframe referenced in such Order, shall not be construed as a minimum purchase requirement and are provided for Seller's planning purposes only. By accepting an Order, Seller agrees it is willing and able to provide all quantities referenced in the Order during the period referenced in the Order. Purchaser makes no warranties regarding the quantity of Goods that it or any other authorized Purchasers will order, if any. Quantities referenced in a purchase order or release or in discussions are non-binding on the Purchaser,

Time of delivery of the Order is of the essence. Purchaser will issue schedules and/or releases specifying the quantities needed, delivery locations, and shipment dates for the Goods (each a "**Release**" and together the "**Releases**"). For prototype Goods, delivery information is listed on each Order. Deliveries must be made both in quantities and at times specified in Purchaser's releases or Order. If no instructions are indicated on the Order, for domestic orders, Goods will be delivered FCA Seller's dock, and title will transfer upon receipt of the Goods by Purchaser at the designated facility. For international orders, Goods will be delivered DAP. Seller will maintain at its expense and risk a quantity of safety stock of finished Goods and materials at the latest design level for production Goods. Purchaser may change the rate or timing of scheduled shipments or direct temporary suspension of

scheduled shipments, neither of which will entitle Seller to a modification of the price for Goods or services covered by the Order. For orders of Goods where quantities and/or delivery schedules are not specified, Seller will deliver Goods in such quantities and times as Purchaser may direct in subsequent Releases. Seller will promptly furnish all documents and other information required in accordance with customs, tariffs or other applicable governmental regulations properly completed including, but not limited to, customs documentation and certificates of origin. Purchaser reserves the right to cancel the Order without liability and without waiver of any other remedies provided herein or under applicable law if delivery is not effected as specified herein or in the Releases.

Title to Goods and risk of loss pass to Purchaser at the time and place of delivery set forth in the Order.

**6. Packaging.** All Goods must be appropriately packed, marked and shipped in accordance with the Purchaser's "Supplier Packaging/Labeling Standards". Packing slips identifying order number, order line item number, part number, part name, and lead engineer's name must accompany each shipment with corresponding invoices, packing slips, and bills of lading. Seller must mark Goods, packaging and packing as instructed by Purchaser and otherwise in accordance with applicable law and standards of the industry. Markings must be in English unless this order specifies otherwise. Bar coding information issued by Purchaser must also be adhered to. If Purchaser does not identify packing and/or shipping instructions, Seller must pack and ship Goods in accordance with reasonable commercial practices. If Seller is required to use Purchaser's returnable packaging, Seller will be responsible for proper care and cleanliness of the returnable packaging. If returnable packaging is not available, Seller may use expendable packaging, and if applicable, will be noted on Order as a separate line item.

**7. Nonconforming Goods.** Goods purchased are subject to Purchaser's inspection and approval at destination. If rejected, material will be returned for credit, replacement or reworking at Seller's risk and expense, and all handling and transportation expenses both ways are Seller's responsibility. No material returned as defective will be replaced or reworked without written authorization from Purchaser. Payment for material on the Order before inspection will not constitute acceptance of the Goods, or limit or impair Purchaser's right to assert any legal or equitable remedy, or relieve Seller's responsibility for latent defect.

If Goods are reasonably determined to fail to conform to order specifications, Purchaser, in its sole discretion, may request Seller at Seller's own expense and risk to replace or rework the nonconforming Goods. If Goods are in the production process of Purchaser, Seller must have Goods replaced or reworked at Seller's own expense and risk by Purchaser or a third party.

Seller must comply with all quality standards, regulations and legal requirements associated with the Goods (or goods into which the Goods are incorporated) are to be sold, and any specified customer requirements, including requirements necessary to timely complete Purchaser's approval process. Seller will perform inspections before delivery and must certify inspection results in the manner requested by Purchaser. Seller must maintain complete records of all inspection work as to a particular Good for a ten (10)-year period. Seller will analyze and review Purchaser's specifications and drawings of the Goods before acceptance of the Order. Purchaser may choose to inspect the Goods in process at facilities of Seller or its lower-tier suppliers. Any inspection that is conducted by Purchaser or its Customer will not constitute acceptance of the Goods and does not relieve Seller of any liability or warranty for the Goods.

**8. Warranty.** Seller warrants and guarantees to Purchaser, its successors, assigns and customers, for the duration set forth herein, that the Goods and Services covered by the Order will (1) be new; (2) be free from all liens, claims and encumbrances whatsoever; (3) conform to the then current release/revision level (based on date Purchaser's release is issued to Seller) of Purchaser's applicable specifications and; (4) conform to all samples, descriptions, brochures, standards and manuals furnished by Seller or Purchaser; (5) be merchantable; (6) be of good material and workmanship; (g) be free from defect (latent or otherwise); (h) be free of all malware, viruses and all other malicious code(s) that cause the Good, or goods into which the Good is incorporated, to perform in an unintended manner; (7) not cause any portion of the Goods or any software owned or licensed by Purchaser, or any derivative thereof to be (a) disclosed or distributed in source code form, or (b) be licensed to third parties for the purpose of making derivatives of such software, or (c) be redistributed free of charge; and (8) be selected, designed (to the extent designed by Seller), manufactured and assembled by Seller based upon Purchaser's stated use and be fit and sufficient for the particular purposes intended by Purchaser and any customer of Purchaser. Purchaser's approval of any design, drawing, material, process or specifications will not relieve Seller of these warranties. The foregoing warranties are in addition to those available to Purchaser by law. Except to the extent otherwise provided in the Order, the warranty period for Goods is the longest of: (1) the warranty period required by applicable law; or (2) the warranty period offered by Purchaser or its customers or distributors to end-users; or (3) one (1) year from

date of end users' purchase of the Purchaser's Goods(s) or the goods into which the Goods are incorporated. All representations and warranties of Seller extend to future performance of the Goods and are not modified, waived or discharged by delivery, inspections, tests, acceptance or payment. Purchaser's approval of any design, drawing, material, process or specifications will not relieve Seller of these representations and warranties. Seller agrees to immediately notify Purchaser in writing in the event Seller breaches or has reason to believe that it will breach of any of its representations or warranties under the Order. The provisions of this Section are in addition to all of Seller's other obligations under the Order and are in addition to all of Purchaser's other rights and remedies provided at law and in equity.

**9. Intellectual Property Rights.** To the extent that the Goods delivered under the Order are not manufactured pursuant to the designs originated solely by Purchaser, Seller guarantees that the sale and/or use of any or all Goods delivered hereunder will not infringe any United States or foreign patents, trademarks, or copyrights. Seller further agrees to indemnify, hold harmless, and defend Purchaser, at Seller's own expense, (1) against any and all claims of patent, trademark or copyright infringement or of unfair competition arising out of the sale and (2) against all liens, security interests, and/or encumbrances whatsoever asserted against such Goods, including claims to said merchandise, asserted by others. To the extent that the Goods delivered hereunder are manufactured pursuant to the designs originated by Purchaser, Seller hereby assigns to Purchaser, without reservation, all patent rights, copyrights and trademark rights relating to the Goods and all related documents, models, computer drawings and other electronic expression, photographs, drawings, specifications or other materials (the "**Protected Materials**"). Purchaser grants to Seller a non-exclusive license to reproduce the Protected Materials for purposes related directly to Seller's performance of its obligations to Purchaser and for Seller's archival records. No other Protected Materials may be reproduced for any other purpose without the express written permission of Purchaser, as applicable. This non-exclusive license shall terminate immediately upon termination of the Order.

**10. Legal / Regulatory Compliance with Laws.** Seller agrees to comply with all federal, state and local laws, executive orders, rules, regulations and ordinances which may be applicable to Seller's performance of its obligations under the Order, and to certify its compliance in writing at Purchaser's request.

Seller warrants that the Goods will be in compliance with all applicable product safety and environmental regulations. Seller warrants that each chemical substance contained in the Goods is on the list of chemical substances compiled and published by the Administrator of the EPA (Environmental Protection Administration) in conjunction with the TSCA (Toxic Substances Control Act), as amended. The Goods shall be in compliance with the applicable sections of the CPSA (Consumer Product Safety Act), as amended, and the Federal Hazardous Substances Act (FHSA), as amended, and are not considered hazardous under any state or federal law, except as clearly stated on the shipping and storage containers.

Seller declares to be aware of all economic sanction laws, anti-boycott laws and trade restrictions imposed by the U.S., including but not limited to the EAR (Export Administration Regulations), UN (United Nations) and the EU (European Union) as may be amended from time to time, and warrants to comply with them in all respects related to the performance of this Agreement. Nothing herein is meant to require either party to take any action which is likely to place it or its affiliates in a position of non-compliance with, or in contravention of, the above mentioned laws and restrictions.

In providing Goods to Purchaser, Seller and its subcontracts agree that they will not act in any fashion or take any action that will render Purchaser liable for a violation of the FCPA (Foreign Corrupt Practices Act), which prohibits the offering, giving or promising to offer or give, directly or indirectly, money or anything of value to any official of a government, governmental entity political party or instrumentality to assist it or Purchaser in obtaining or retaining business or to gain an unfair business advantage. Seller further represents that neither it nor any of its subcontractors will utilize forced, compulsory, or child labor in connection with the supply of Goods.

Unless otherwise required or prohibited by law, the Seller warrants, to the best of its knowledge, that in relation to the supply of Goods under the terms of this Order, to comply with the ethical standards and human rights provided for under the ILO's (International Labour Organization) conventions and the UN's UDHR (Universal Declaration of Human Rights). Further, Seller will cooperate and provide requested documentation in support of any supply chain review or audit by Purchaser to ensure compliance with any laws related to slave, child or forced labor, or conflict materials.

Seller will notify Purchaser of any labor contract expiration date at least six (6) months before the expiration of a current labor contract that has not been extended or replaced. Purchaser may thereafter direct Seller in writing

to manufacture up to thirty (30) days of additional inventory of Goods, specifying the quantities of Goods required and any packaging and storage requirements. Seller will use commercially reasonable efforts to comply with Purchaser's written directions prior to expiration of the current labor contract and until the current labor contract has been extended or a new contract completed. By authorizing the additional inventory, Purchaser commits to buy the entire quantity of conforming Goods requested and produced. Seller is responsible for carrying costs and any additional costs of manufacture

To the extent that Goods and tooling will be transported into the US, Seller represents that either: (1) it is C-TPAT (Customs-Trade Partnership Against Terrorism) certified by CBP (Customs and Border Protection), and will maintain that certification throughout the term of the Order; or (2) it will comply with the C-TPAT security procedures that may be found on the customs website at [www.cbp.gov](http://www.cbp.gov) (or successor website). Seller agrees to comply with all applicable customs regulatory requirements and will cooperate with Purchaser in relation to any customs matter. Seller will promptly notify Purchaser of any investigations, retraction, change to information and documentation in support of Purchaser's customs and trade compliance programs. Such information includes, but is not limited to:

- (1) a changed country of origin of a Goods purchased from Seller by Purchaser;
- (2) a change of free trade agreement status eligibility of Goods purchased from Seller by Purchaser (commonly referred to as "de-certifications");
- (3) commencement of a customs investigation against Seller affecting or pertaining to Goods provided to Purchaser.

Seller will indemnify, defend and hold Purchaser harmless from and against any liability claims, demands or expenses (including attorney's or other professional fees) arising from or relating to Seller's noncompliance with all applicable laws and regulations, including fraud or misrepresentation.

**11. Ingredients Disclosure: Special Warnings and Instructions.** Seller will provide the required Safety Data Sheet(s) (SDSs), when applicable, to comply with the Globally Harmonized System of Classification and Labeling of Chemicals (GHS). Seller will advise and furnish to Purchaser in such form and detail as Purchaser may direct (1) a list of all ingredients in the Goods; (2) the amount of all ingredients; and (3) information concerning any changes in or additions to such ingredients. Prior to and with the shipment of Goods, Seller agrees to furnish to Purchaser and all carriers sufficient warning and notice in writing (including appropriate labels on the Goods, containers and packing and/or provision of applicable materials safety data sheets) of any hazardous material that is an ingredient or a part of any of the Goods, together with such special handling instructions as may be necessary to advise carriers, Purchaser and their respective employees of how to exercise that measure of care and precaution that will best prevent bodily injury or property damage in the handling, transportation, processing, use or disposal of the Goods, containers and packing shipped to Purchaser. Such Seller will also provide Purchaser with any information necessary to allow Purchaser to comply with any of its reporting processes.

**12. Proprietary Information.** Information, including, but not limited to, technical, process or economic information derived from drawings, specifications, blueprints or other documents or data, including copies furnished by Purchaser in connection with an Order is considered "**Confidential Information**". Seller must keep Confidential Information confidential and will not disclose or use, directly or indirectly, such Confidential Information for the benefit of Seller or any other third party except with Purchaser's prior written consent as required for performance of the Order.

In connection with the development of any ideas, inventions, improvements or discoveries, including all related information and know-how, related to the Goods or services to be provided under the Order and for which Purchaser has provided or is to provide support to Seller in the form of funding, including, but not limited to, payments in whole or part for prototype components or tooling, designing, testing or consulting, Purchaser will automatically be entitled to and Seller agrees to and hereby assigns all rights, title and interest in and to such ideas, inventions, improvements and discoveries to Purchaser (unless otherwise specifically agreed to in writing and in such event Purchaser is entitled to at least a nonexclusive, paid up, irrevocable, worldwide right and license including the right to fully sublicense third parties, including the U.S. Government for all Governmental purposes to practice and have practiced for its purpose such invention). Seller agrees to promptly notify Purchaser in writing of any such idea, invention, improvement or discovery so developed. The provisions of this clause shall survive termination of fulfillment of the Order.

In the event that the Seller becomes compelled by law or order of court or administrative body to disclose any Confidential Information of Purchaser, Seller shall be entitled to disclose such Confidential Information, provided that (1) Seller provides the Purchaser with prompt prior written notice of such requirements to allow the Seller to take any necessary action to safeguard the Confidential Information, including without limitation the issuance of a protective order, and (2) if required to do so, Seller shall furnish only that portion of the Confidential Information which is legally required to be disclosed and shall exercise commercially reasonable efforts to obtain assurances that the Confidential Information will be treated in confidence.

Seller agrees to notify Purchaser promptly in the event of any breach of its security under conditions in which it would appear that the Confidential Information is prejudiced or exposed to loss. Seller shall, upon request of the Purchaser, take all other reasonable steps necessary to recover any compromised Confidential Information disclosed to or placed in the possession of receiving party by virtue of this Agreement. The cost of taking such steps shall be borne solely by Seller.

Upon the request of Purchaser and, in any event, when this Agreement has expired or terminated, the other Seller will promptly return to Purchaser or destroy (1) all Confidential Information in Seller's possession or control and (2) all analyses, studies, or other materials, or part thereof, that were created by Seller that are based on or contain Confidential Information of the Purchaser.

Seller's obligations under this section shall not apply to any information that was: (1) independently developed; (2) in its possession prior to receiving the information from the disclosing Party; (3) publicly available; or (4) disclosed by the disclosing party to third parties without obligations of confidentiality.

**13. Changes.** Purchaser has the right at any time, by written direction stating it constitutes an amendment, modification, or change to the Order, to (1) suspend all or any portion of Seller's work or (2) to make changes within the general scope of the Order that affect any one or more of the following:

- (a) drawings, designs, specifications or quantities of Goods or services to be provided hereunder;
- (b) the statement of work or description of services;
- (c) method of shipment or packing;
- (d) the time or place of performance, inspection, delivery or acceptance of Goods or of services; and

If any such suspension or change causes a change in the cost of, or the time required for, performance of the Order, an equitable adjustment will be made in the price or delivery schedule or both, and the Order will be modified in writing accordingly. Seller may request a change to the Order in writing within five (5) business days if such change will affect cost, timing or quality, and provide the basis for such determination. Any claim by Seller for such an adjustment must be made within ten (10) days from the date of receipt of a written Order from Purchaser directing such a suspension or change.

Nothing in this clause, including any disagreement with Purchaser as to any equitable adjustment, will excuse Seller from proceeding with the Order as changed. Information, advice, approvals, or instructions given by Purchaser's technical personnel or other representatives will be deemed expressions of personal opinion only and will not affect Purchaser's and Seller's rights or obligations and shall not be actions within the meaning of this "**Changes**" clause.

**14. Service Parts.** Seller will sell to Purchaser the production Goods necessary for it to fulfill Purchaser's current model service and replacement parts requirements at the price(s) set forth in the Order (the "**Production Period**"). If the Goods are systems or modules, Seller will sell the components or parts that comprise the system or module at price(s) that will not, in the aggregate, exceed the price of the system less assembly costs. During the ten (10)-year period after Purchaser completes current model purchases, or such longer period as prescribed by applicable law, Seller will sell Goods to Purchaser to fulfill Purchaser's past model service and replacement parts requirements (the "**Service Period**"). Unless otherwise agreed to by Purchaser, the price(s) during the first three (3) years of this period will be those in effect at the conclusion of the Production Period. For the remainder of the Service Period, the price(s) for Goods will be as agreed to by the parties in good faith. After the end of the Production Period, Seller agrees to maintain the tooling and an adequate stock of materials and supplies needed to produce new service

parts through the Service Period. When requested by Purchaser, Seller will make service literature and other materials available, if applicable, at no additional charge to support Purchaser's service-part sales activities.

**15. Training Documents and Owner's Manuals.** Seller will cooperate with Purchaser in the development of owner's manuals and technical training documents where applicable.

**16. Force Majeure.** Any delay or failure on the part of either party to perform hereunder will be excused if and to the extent that such delay or failure is caused by circumstances beyond the control and without the fault or negligence of either party, including, acts of God or of the public enemy, acts of the Government (including, but not restricted to, any preference, priority or allocation order), fires, floods, epidemics, quarantine, restrictions, strikes, freight embargoes, unusually severe weather, and delays of a subcontractor due to such causes, provided that Seller will give Purchaser prompt notice in writing of any cause that will result in such delay (and the anticipated duration) within five (5) days. During the period of such delay or failure to perform by Seller, Purchaser, at its option, may purchase Goods from other sources and reduce its releases to Seller by such quantities, without liability to Seller, or have Seller provide the Goods from other sources in quantities and at times requested by Purchaser and at the price set forth in the Order. Likewise, Seller shall fulfill Purchaser's Orders prior to fulfilling orders for the same or similar Goods for any of Seller's other customers for the period in which Seller's production is constrained. If requested by Purchaser, Seller will, within five (5) days of such request, provide adequate assurances that the delay will not exceed thirty (30) days. If the delay lasts more than thirty (30) days or Seller does not provide adequate assurance (within a commercially reasonable time not to exceed ten (10) days from the date of the request) that the delay will cease within thirty (30) days, Purchaser may immediately cancel the Order without liability.

**17. Insolvency.** Purchaser may cancel the Order without liability to Seller in the event of the happening of any of the following or comparable event: (1) Seller's insolvency; (2) Seller's inability to promptly provide Purchaser with adequate and reasonable assurance of Seller's financial and operational capability to perform timely any of Seller's obligations under the Order; (3) Seller's filing of a voluntary petition in bankruptcy; (4) the filing of any involuntary petition to have Seller declared bankrupt provided it is not vacated within thirty (30) days from the date of filing; (5) the appointment of a receiver or trustee for Seller provided such appointment is not vacated within thirty (30) days from the date of such appointment; or (6) Seller's execution of an assignment for the benefit of creditors. Purchaser's exercise of the right of cancellation reserved in this paragraph will neither impose any liability upon Purchaser by reason of the cancellation nor have the effect of waiving damages to which Purchaser might otherwise be entitled. Upon request, Seller must deliver any associated tooling with the Order, existing spare parts, and all related documentation in Seller's possession or under its control to Purchaser.

**18. Termination for Cause.** Except as otherwise provided in this clause, Purchaser may, by written notice of default to Seller, terminate the Order in whole or in part if Seller fails to:

- (1) Deliver the Goods or to perform the services within the time specified in the Order or any extension;
- (2) Perform any of the other provisions or meet any of the requirements or terms of the Order, including meeting quality requirements;
- (3) Make progress so as to endanger the timely performance of the Order (see following paragraph);

Purchaser's rights to terminate the Order under subdivisions (2) and (3) above, may be exercised if Seller does not cure such failure within ten (10) days (or more if authorized in writing by Purchaser) after receipt of the notice from Purchaser specifying the failure. No such cure notice or period is required for a termination under subdivision (1) above.

If Purchaser terminates the Order in whole or in part, it may acquire, under the terms and in the manner Purchaser considers appropriate, Goods or services similar to those terminated, and Seller will be liable to Purchaser for any excess costs for those supplies or services. Seller must, however, continue the work not terminated.

If the Order is terminated in whole or in part for default, Purchaser may require Seller to transfer the title and deliver to Purchaser, as directed by Purchaser, any (1) completed supplies, and (2) partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (collectively referred to as "**manufacturing materials**" in this clause) that Seller has specifically produced or acquired for the terminated portion of the Order. Purchaser may also require Seller to deliver possession to Purchaser any Purchaser-owned tools, dies,

jigs, fixtures, plans, drawings, information and contract rights that remain in Seller's possession. Upon Purchaser's direction, Seller will also protect and preserve property in its possession in which Purchaser has an interest.

Purchaser will pay the Order price for completed supplies delivered and accepted. Seller and Purchaser will agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under "Dispute Resolution". Purchaser may withhold from these amounts any sum Purchaser determines to be necessary to protect Purchaser against loss because of outstanding liens or claims of former lien holders.

The rights and remedies of Purchaser in this clause are in addition to any other rights and remedies provided by law, including the U.C.C. as adopted by the State of Michigan, or in equity, or under this Order.

**19. Termination for Convenience.** In addition to any other rights of Purchaser to terminate the Order, Purchaser reserves the right to terminate the Order, without cause and at any time, in whole or in part upon written notice to Seller. Upon termination by Purchaser, under this paragraph, Purchaser will pay Seller upon the following amounts without duplication: (1) the purchase order price for all Goods or services which have been completed, in accordance with this order and the releases for which Purchaser did not pay previously; and (2) the actual costs incurred (exclusive of profit) by Seller in accordance with this purchase order and the releases, which are properly allocable or apportionable under generally accepted accounting practices to the terminated portion of this purchase order, including the cost of discharging liabilities which are so allocable or apportionable. In no event, however, will payments made under this paragraph exceed the aggregate price payable by Purchaser for finished Goods which would be produced by Seller under the release(s) outstanding at the date of termination. Except to the extent provided in this paragraph, Purchaser is not liable for and shall not be required to make payments to Seller, directly or on account of claims by Seller's subcontractors, for loss of anticipated profit, unabsorbed overhead, interest on claims, product development and engineering costs, facilities and equipment rearrangement costs or rental, unamortized depreciation costs and general and administrative burden charges from termination of this Order. Within thirty (30) days from the effective date of termination, Seller must submit to Purchaser a comprehensive termination claim, with sufficient supporting data to permit Purchaser's audit, and shall thereafter promptly furnish such supplemental and supporting information as Purchaser shall request. Seller's obligations under the warranty, intellectual property, and proprietary rights clauses of the Order survive any termination for convenience.

**20. Obligations Following Termination.** If requested by Purchaser, Seller shall transition supply to a successor supplier (and fully cooperate in such transition), including the following, (which will collectively be referred to as "**Transition Support**"):

- (1) Seller will continue production and delivery of all Goods as ordered by Purchaser, at the prices and other terms stated in the Order, without premium or other condition, during the entire period reasonably needed by Purchaser to complete the transition to the alternate supplier(s), such that Seller's action or inaction causes no interruption in Purchaser's ability to obtain Goods as needed;
- (2) At no cost to Purchaser, Seller will promptly provide all requested information and documentation regarding and access to Seller's manufacturing process used to make Goods, including on-site inspections, bill-of-material data, tooling and process detail and samples of Goods and components;
- (3) Subject to Seller's actual capacity constraints, Seller will provide special overtime production, storage and/or management of extra inventory of Goods, extraordinary packaging and transportation and other special services as expressly requested by Purchaser in writing;

**21. Dispute Resolution.** In the event Seller fails or refuses to deliver the Goods, or otherwise repudiates any provision of the order, Seller agrees that Purchaser may pursue any remedy available at law or equity, including, without limitation, specific performance of Seller's obligations under the Order. At Purchaser's option, however, any claim by either party for the threatened, alleged or actual breach of the Order (a "**Dispute**"), which cannot otherwise be resolved after good faith negotiations by the parties, must be resolved as follows: (1) the Dispute will be submitted in writing to Seller's Account/Sales Manager and Purchaser's Chief Financial Officer; (2) the respective managers will attempt to resolve the Dispute within ten (10) business days of such submission; and (3) if the respective parties are unable to resolve the Dispute within ten (10) business days of such submission and either party wishes to pursue the Dispute further, the Dispute will be referred to non-binding mediation by a mediator approved by both parties. If mediation fails to resolve the dispute within thirty (30) days after the first mediation session, either party may submit the dispute to binding arbitration by notice to the other party. The arbitration proceedings will be conducted, and a single arbitrator will be selected, in accordance with the rules of the National Center for Dispute Resolution or other rules approved by the parties, and will be governed by the United States

Arbitration Act, 9 U.S.C. §§1-16, and this Section 21 The arbitration will be conducted at an agreed location or at a location selected by the arbitrator if the parties are unable to agree. The arbitrator will issue a written opinion setting forth the basis for the arbitrator's decision, which may include an award of legal fees and costs. The arbitrator's award will be final and non-appealable absent fraud or manifest error, and judgment on the arbitrator's award may be entered in any court having jurisdiction. While arbitration proceedings are pending, the parties will continue to perform their obligations under the Order without setoff for any matters being contested in the arbitration proceedings. If the Dispute arises out of a difference in interpretation between the parties as to the performance requirements of the Order, then Seller will continue performance in accordance with the interpretation of performance as determined by Purchaser.

**22. Lien Waiver.** Neither the final payment nor any part of the retained percentage will become due under the Order until Seller delivers to Purchaser waivers of liens from all subcontractors providing for a complete release of all possible liens arising out of the Order, or receipts in full in lieu thereof; and, in either case, a notarized affidavit stating that said releases and receipts cover all materials and labor incorporated in the work for which a lien might be filed. Seller may, if any subcontractor refuses to furnish a release or receipt in full, furnish a bond satisfactory to Purchaser, to indemnify Purchaser against any claim by lien or otherwise. If any lien or claim remains unsatisfied after all payments are made, Seller shall refund to Purchaser all moneys that Purchaser may be compelled to pay in discharging such lien or claim, including all costs and reasonable attorney's fees.

**23. Remedies.** The rights and remedies reserved to Purchaser in the Order shall be cumulative, and in addition to all other or further remedies provided in law or equity. Without limiting the foregoing, should any Goods fail to conform to the warranties set forth above or if the materials contained within the Goods are alleged to or are determined to cause injury to third parties, Purchaser shall notify Seller and Seller shall, if requested by Purchaser, reimburse Purchaser for any incidental, special and consequential damages caused by such nonconforming Goods, including, but not limited to, costs (including all attorney's or other professional fees), expenses and losses incurred by Purchaser in (1) inspecting, sorting, containing, repairing or replacing such nonconforming Goods, (2) resulting from production interruptions, (3) conducting recall campaigns or other corrective service actions, and (4) claims or litigation arising from personal injury (including death) or property damage caused by such nonconforming Goods. If requested by Purchaser, Seller will enter into a separate agreement for the administration or processing of charge backs for nonconforming Goods. In addition, Seller shall reimburse Purchaser for all liability, claims, demands or expenses (including attorney's or other professional fees) arising from or relating to Seller's breach or anticipatory repudiation of the Order or any other contract between Seller and Purchaser, a request or demand by Seller to modify or change the terms of the Order, or legal proceedings involving Seller that in the reasonable judgment of Purchaser, may impact upon Seller's continued or future performance under the Order, or if Seller is a party to a court case or proceedings in which Purchaser appears, participates, monitors or becomes a party. In the event the Order is issued or renewed after Seller becomes a debtor in bankruptcy, Purchaser shall be entitled to all of its attorney's or other professional fees arising from or relating to the bankruptcy case, including for monitoring the case.

**24. Indemnification.** In addition to Seller's other indemnification obligations arising hereunder, Seller agrees to defend, indemnify and hold harmless Purchaser from any and all claims, suits, liabilities, damages or expenses asserted against or incurred by Purchaser by reason of the use of Seller's product (including the Goods) by Purchaser, Purchaser's customers or others.

Purchaser shall notify Seller in writing, and with reasonable promptness, of any claim, demand, suit, cause of action or legal proceeding that may give rise to a claim against Seller for defense. If Purchaser fails to give notice, Seller is still obligated to indemnify, hold harmless and defend Purchaser, except that Seller is not liable for any expense or cost that Purchaser incurs before the time when notice is given. At the request of Purchaser, Seller shall conduct Purchaser's defense (employing counsel acceptable to Purchaser), at Seller's expense, against any claim, demand, suit, cause of action or legal proceeding within the scope of this paragraph, whether or not litigation is actually commenced, or the allegations are meritorious. At its own option, Purchaser may employ separate counsel, including in-house counsel, to conduct Purchaser's defense against such a claim. Purchaser and Seller shall cooperate in the defense of any such claim. Seller may control the defense and settlement of such a claim, but if the settlement of a claim may have an adverse effect on Purchaser, then Seller shall not settle such claim without the consent of Purchaser. Seller shall bring no claim or action for indemnification, contribution, or subrogation against Purchaser, nor shall Seller implead any of them in any action brought by another, based on injury to a person or death arising out or relating to Seller's performance under the Order. If, through any such action, Seller ever acquires a lien on a judgment against Purchaser, then Seller shall assign such lien to Purchaser. Seller waives any immunity from indemnification that Seller may hold, by virtue of Seller's compliance with its workers' compensation obligations in any jurisdiction, even if such immunity arises under the constitution or statutes of such jurisdiction. In no event shall

Seller settle any Claim in whole or in part in a manner that would negatively impact Purchaser in a material way (relative to a similar settlement by any other participating parties). Seller shall make no admissions or settlement of any Claim that binds the Purchaser without the prior written consent of the Purchaser. If any compromise or settlement is made with respect to any claim, Seller shall pay all settlement amounts.

**25. Insurance.** Seller will maintain insurance coverage with carriers acceptable to Purchaser and in the following amounts: Comprehensive General Liability / Product Liability of not less than combined single limits of \$2 million and Professional Liability / Error & Omission of not less than combined single limits of \$2 million. Seller will furnish to Purchaser certificates of insurance and Additional Insured endorsements showing compliance with these insurance requirements, if requested. All such certificates of insurance and endorsements must not be subject to cancellation or material alteration except after thirty (30) days prior written notice by Certified Mail to the Additional Insured. The limits of liability coverage set forth above are established as minimum coverage required of Seller and will in no way be construed as a limitation of the liability of Seller under any hold-harmless or indemnification provision contained in the Order. The Seller's policies will contain a provision by the respective insurers waiving the right of such insurers to subrogation. Prior to commencing any type of work on Purchaser's property, if applicable and required for the Goods, Seller will maintain and upon request furnish to Purchaser a certificate evidencing (1) general liability insurance with coverage limits reasonably acceptable to Purchaser and naming Purchaser as an additional insured, (2) all risk property perils insurance covering the full replacement value of Purchaser's property while in Seller's care, custody, or control and naming Purchaser as loss payee, and (3) worker's compensation insurance as required by applicable law.

**26. Recall and Other Field-Service Actions.** If Purchaser, on its own initiative or pursuant to a government mandate, makes a recall or other field-service action or customer recall campaign (a "**Recall**"), Seller is liable to Purchaser for all damages related to such Recall to the extent the Recall arises in any way from a defective Good or Seller's breach of any provision set forth in the Order.

**27. No Limitation.** Any right or remedy expressly conferred on Purchaser herein shall not limit or modify any right or remedy which Purchaser would otherwise have.

**28. Furnished Property.** All tooling, dies, gauges, fixtures, molds, patterns and related software, drawings and other documentation for tooling, equipment or material, unless otherwise agreed to in the Order, furnished to Seller, paid for by Purchaser or to be amortized over time in the Order and any replacement thereof, or any additions, attachments, accessories and repairs ("**Furnished Property**"), are and will remain property of Purchaser and are held by Seller on a bailment basis. Upon request by Purchaser, Seller shall provide access to permit Purchaser to inspect the Furnished Property. Seller must use the Furnished Property solely for the production of the Goods under the Order and must not, without prior written consent of Purchaser, use or permit others to use Furnished Property for any other purpose. Furnished Property must be plainly marked as the property of Purchaser and shall be safely stored by Seller. Seller, at its own expense, shall keep Furnished Property in good working condition and replace when necessary. Seller shall not remove Furnished Property from Seller's premises without Purchaser's written approval.

While in Seller's control, Furnished Property will be held at Seller's risk and will be insured by Seller at Seller's expense in an amount equal to the replacement-value cost, with loss payable to Purchaser. Seller assigns to Purchaser any claims for payment or loss of such Furnished Property that Seller might have against its insurer and Purchaser accepts this type of assignment. Seller must use Furnished Property in a careful and safe manner and shall indemnify, defend and hold Purchaser completely harmless against any-and-all claims, liabilities, expenses and damages arising from or related to the installation, use, storage, or repair of the Furnished Property. Upon request by Purchaser, Seller must immediately release the Furnished Property and prepare it for shipment or deliver it to Purchaser in the manner requested. Purchaser will assume the cost of delivery and will pay Seller for this delivery amount. Seller cannot hold or retain possession of Furnished Property to secure payment owed for any reason other than this cost of delivery.

Seller will own all property that is not Purchaser's property ("**Seller's Furnished Property**"). Seller will at its expense furnish, maintain in good condition, and replace when necessary Seller's Furnished Property needed to perform the Order. Purchaser may purchase Seller's Furnished Property used exclusively to produce Goods and not needed by Seller to produce Goods for other customers, for a purchase price equal to the greater of fair market value or Seller's unamortized acquisition cost as shown in Seller's relevant records used for filing its federal income tax returns or Seller's cost amortized over five (5) years. Purchaser has no obligation to pay Seller any charges under

this Order for the purchase, use, or maintenance of Seller's Furnished Property after such time as both parties cease to use the Furnished Property.

**29. Limitation of Damages.** In no event will Purchaser be liable to Seller or Seller's subcontractors for anticipated profits or for special, incidental or consequential damages.

**30. Setoff.** In addition to any right of setoff or recoupment provided by applicable law, (i) all amounts due Seller shall be considered net of indebtedness of Seller and/or its affiliates/subsidiaries to Purchaser and/or its affiliates/subsidiaries and (ii) Purchaser may deduct any amounts due or to become due from Seller and/or its affiliates/subsidiaries to Purchaser and/or its affiliates/subsidiaries from any sums due or to become due from Purchaser and/or its affiliates/subsidiaries. If an obligation of Seller is disputed, contingent or unliquidated, Purchaser may defer payment of all or any portion of an amount due until such dispute or contingency is resolved or the obligation is liquidated. In the event of Seller's bankruptcy, if all of the orders (including the Order) between Purchaser and Seller have not been assumed (under applicable bankruptcy law), then Purchaser may withhold payment to Seller for Goods previously delivered (via administrative hold or otherwise) until the risk of potential rejection and other damages is eliminated.

**31. Non-Solicitation.** Purchaser will not solicit, and Seller will not provide, any gifts or gratuities (including but not limited to money, fees, commission, credits, gifts, things of value or compensation), of any kind which is provided directly or indirectly to any employee of Purchaser for the purpose of improperly obtaining or rewarding favorable treatment in connection with award of a purchase order or subcontract. Seller will report in writing any solicitation or suspected solicitation of gifts or gratuities by Purchaser's employees to the Purchaser's Chief Financial Officer.

**32. Debarment.** For the full term of the Order, Seller represents and warrants that: (i) Seller shall not be debarred, suspended, excluded or disqualified from doing business with the United States Government; and (ii) Seller shall not be listed on the Excluded Parties List System maintained by the General Services Administration of the United States Government (found at [www.epls.gov](http://www.epls.gov)). Seller agrees to immediately notify Purchaser in writing in the event Seller breaches any of the preceding representations and warranties or has reason to believe that it will become in breach of any of the preceding representations and warranties. Such breach of any representation or warranty under this section shall be deemed a default under the Order for which Purchaser may immediately terminate the Order without being required to provide notice or permit Seller to cure such default.

**33. Notices.** Unless otherwise stated, notifications required or permitted hereunder shall be sent to Purchaser or Seller at the addresses set forth in the purchase order issued by Purchaser (as part of the Order). Any notice is to be given in writing and is deemed effectively given: (1) upon personal delivery to the party notified; (2) upon confirmation of receipt of a facsimile by the party to be notified; or, (3) upon receipt of verification of delivery when using an overnight courier, prepaid for overnight delivery.

**34. Equal Opportunity.** Purchaser requires all hiring decisions be made fairly, ethically, and in accordance with all relevant laws and regulations. Seller agrees not to discriminate against qualified individuals based on status as a protected class, veterans or individuals with disabilities, and will prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin.

**35. Right to Audit.** Purchaser and its authorized representatives shall have the right from time to time to access Seller's premises and verify: (1) Seller's compliance with the terms of the Order; and (2) Seller's performance or ability to perform under the Order. Seller will maintain records as necessary to demonstrate Seller's compliance with the terms of the Order, including showing that amounts charged to Purchaser are true and correct. Purchaser and its representatives may audit Seller's records made within five (5) years prior to the audit date (including of transactions completed), to the extent needed to verify compliance with the Order, including verifying that quantities shipped and the prices charged match the Order's prices. Any audit will be conducted at Purchaser's expense (but will be reimbursed by Seller if the audit uncovers errors in the amounts charged in excess of 5% or other Seller breaches that expose Purchaser to potential liability).

**36. Third-Party Beneficiary.** Seller agrees that Purchaser is an intended third-party beneficiary of any contracts between Seller and its suppliers relating to the production or assembly or use of the Goods covered by the Order with the right to enforce such contracts.

**37. Supplier Conduct Requirements.** Purchaser is committed to ensure that working conditions in Purchaser's supply chain are safe and humane, that workers are treated with respect and dignity, and that

manufacturing processes are environmentally responsible. Accordingly, Seller agrees to comply with all supplier conduct requirements that Purchaser may provide and amend from time to time, and further agrees that Seller shall: (1) not request or encourage, directly or indirectly, any Seller personnel to furnish false or incomplete information in connection with any audit and inspection; (2) take retaliatory action against any Seller personnel interviewed; and (3) immediately implement corrective action to remedy any non-conformance with supplier conduct requirements. Purchaser reserves the right to disclose or have an authorized third-party disclose on an aggregated basis, the results of any audit and inspection regarding Seller's treatment of its workers, including any non-conformance with supplier conduct requirements. Seller's failure to remedy any non-conformance with supplier conduct requirements after a reasonable amount of time will be deemed to be a default.

**38. Limitation.** Purchaser's obligations under the Order are expressly limited to procurement of the Goods pursuant to the terms of the Order.

**39. No Implied Waiver.** The failure of either party at any time to require performance by the other party of any provision of the Order will not affect the right to require such performance at any time thereafter. The waiver of either party of a breach of any provision of the Order shall not constitute a waiver of any succeeding breach of the same or any other provision. To be effective, any waiver by Purchaser of any provision of the Order must be in writing signed by Purchaser. No failure or delay in exercising any right or remedy will operate as a waiver thereof nor will any single or partial exercise thereof preclude other or further exercise thereof. No course of dealing or course of performance may be used to evidence a waiver or limitation of Seller's obligations under the Order.

**40. Non-Assignment.** Purchaser may assign its rights and obligations under the Order without any consent of Seller. Seller may not assign or delegate its rights or obligations under the Order without the prior written consent of Purchaser.

**41. Relationship of Parties.** Seller and Purchaser are independent contracting parties. Nothing in the Order will make either party the agent or legal representative of the other for any purpose whatsoever. Nothing in the Order will grant either party any authority to assume or to create any obligation on behalf of or in the name of the other party.

**42. Governing Law.** The Order is to be construed according to the laws of the State of Michigan, excluding the provisions of the United Nations Convention on Contracts for the International Sale of Goods and any conflict of law provisions that would require application of another choice of law. In addition, Seller agrees to comply with all applicable laws, rules, regulations, ordinances or other requirements of any national, state, local, multi-national or international body (collectively "**Laws**") relating to the manufacture, sale, delivery and use of the Goods. Upon request, Seller will submit to Purchaser evidence of such compliance.

**43. Survival.** The expiration or termination of the Order shall not affect Seller's obligations or representations and warranties and Purchaser's rights under the Order.

**44. Severability.** If any term of the Order is invalid or unenforceable under any statute, regulation, ordinance, executive order or other rule of law, such term shall be deemed reformed or deleted, but only to the extent necessary to comply with such statute, regulation, ordinance, order of rule, and the remaining provisions of this Order shall remain in full force and effect.

**45. No Advertising.** Without the prior written consent of Purchaser, Seller shall not in any manner either (i) advertise or publish the fact that Seller has contracted to furnish Purchaser the Goods or services covered by the Order or (ii) use any trademarks or trade names of Purchaser in Seller's advertising or promotional materials.

**46. Waiver of Jury Trial.** Purchaser and Seller acknowledge that the right to trial by jury is a constitutional one, but that it may be waived. Each of Purchaser and Seller, after consulting with counsel of its choice, knowingly voluntarily and intentionally waives any right to trial by jury in any action or other legal proceeding arising out of or relating to any Order or any other document pertaining to any Order.

**47. Entire Order.** The entire agreement, together with the releases and any other attachments, exhibits, or supplements, specifically referenced in the Order, including the Purchaser's "Supplier Handbook" and Purchaser's "Packaging/Labeling Standards", constitutes the entire agreement between Seller and Purchaser with respect to the matters contained in the Order and supersedes all prior oral or written representations and agreements. The Order may only be modified by an Order amendment/revision issued by Purchaser.

## EXHIBIT A

### Terms and Conditions for Indirect Services

**Purchased services shall be governed by Mahindra Tractor Assembly, Inc. Terms and Conditions of Purchase for Goods and Services (which is incorporated by reference) and the following additional terms:**

#### 1. Scope of Performance; Deliverables.

1.1 Services. Seller shall furnish to Purchaser the services described in this Order ("**Services**"). Unless otherwise specified, Seller shall furnish all necessary labor, supervision and other services, and shall complete the work hereunder in compliance with the terms of this Order. Seller shall at all times keep the premises free from accumulations of waste material and rubbish resulting from its operations and, upon completion, it shall remove all surplus materials and leave the premises broom clean. During the progress of the work, Seller shall take every precaution against the possibility of fire and any other hazard to persons or property and shall comply with all safety regulations and instructions of Purchaser.

1.2 Materials. Seller shall furnish to Purchaser all materials, supplies, tools, and equipment necessary to perform the Services that are specified in this Order ("**Materials**"). All such Materials shall conform to the requirements of this Order, shall be suitable for the purpose intended, and shall be new unless otherwise specified.

1.3 Work Product. Seller shall furnish to Purchaser all concepts, documents, reports, ideas, designs, drafts, models, samples and any other results produced in connection with Seller's performance described or referenced in this Order and contained on any media whatsoever ("**Work Product**").

1.4 Acceptance of Deliverables. The Services, Materials and Work Product (together, "**Deliverables**") must conform to the performance criteria and other requirements set forth in this Order and are subject to acceptance by Purchaser. Purchaser is not required to accept any Deliverable that does not conform with the performance criteria and other requirements set forth in this Order. Seller shall notify Purchaser in writing of the completion and provision of the Deliverables. Notwithstanding any payment or prior test or inspection, Purchaser shall have a reasonable time after receipt of such notice to inspect and test the Deliverables. No inspection, test, delay, acceptance, failure to inspect or test, or failure to discover any defect or other nonconformance shall relieve Seller of any of its obligations under this Order or impair any rights or remedies of Purchaser or Purchaser's customers.

1.5 Amendments. Purchaser may unilaterally make amendments or modifications to this Order ("**Amendments**"), and such Amendments shall apply to the Deliverables. If the Amendments require additional work, Seller shall nonetheless accept Purchaser's amended Order and provide the Deliverables requested, and shall furnish proof of additional expenses acceptable to Purchaser within (fifteen) 15 business days of receiving the Amendments.

1.6 Management of Performance. Seller shall perform under this Order, using its best skills and attention, and Seller shall be solely responsible for all means, methods, techniques, sequences and procedures and for coordinating all portions of the work necessary to complete the Order.

1.7 Documents, Standards. Unless otherwise agreed in this Order, Seller shall produce or maintain all drawings, data and other development and documentation records in accordance with the requirements, procedures and guidelines issued by Purchaser, if applicable.

1.8 Best Efforts. Seller shall use best efforts, employ the latest state of the art technology, draw on its own know-how and experience, and comply with all applicable statutory and regulatory provisions in rendering the Deliverables to Purchaser.

1.9 Stop Work Order. Purchaser may, from time to time, require Seller to stop all or any portion of the work called for by this Order for a period of up to sixty (60) days ("**Stop Work Period**") per occurrence. Upon receipt of a written Stop Work Notice from Purchaser, Seller shall immediately comply with its terms at no charge. Within the Stop Work Period, Purchaser shall either: (a) cancel the stop-work order and Seller shall resume work; or (b) terminate the work covered by the stop-work order and negotiate any charges in good faith.

## 2. Rights and Ownership of Deliverables.

2.1 Ownership of Work Product; Assignment and Transfer. All Work Product shall be solely owned by Purchaser. Seller acknowledges and agrees that all copyrightable materials of the Work Product will be deemed a "work made for hire" for the purposes of Title 17 of the United States Code, Section 101 et seq. (the "Copyright Act"). In the event that (a) any of the Work Product may not be considered "work made for hire," or (b) ownership of all right, title and interest to the legal rights in and to the Work Product, including, without limitation, all worldwide copyrights, industrial design rights, trademarks, patents or other intellectual property rights therein, does not vest automatically and exclusively in Purchaser, then, without further consideration, Seller agrees to, and hereby does irrevocably, assign, convey, and otherwise transfer to Purchaser, and Purchaser's respective successors and assigns, all such right, title and interest, in and to all Work Product and any derivative works thereof.

2.2 Cooperation by Seller; Additional Documents. Seller and Seller's employees and subcontractors will cooperate with Purchaser to ensure the effective and complete transfer and license of rights contemplated under these Terms and Conditions. Without limiting the foregoing, at Purchaser's request and expense, Seller agrees to perform any acts necessary or useful to vest fully recordable title in and to the Deliverables in Purchaser and to otherwise perfect, defend and enforce Purchaser's ownership of and rights in and to the Deliverables, including, but not limited to:

- a. reviewing, commenting and executing all documents necessary or useful for securing patent, trademark and copyright protection for the Deliverables ("Applications");
- b. reasonably explaining the nature of the Deliverables to persons designated by Purchaser;
- c. providing any other assistance reasonably required for the orderly prosecution of Applications or defense of any patent, trademark, copyright, or other intellectual property-related claims or any litigation or other proceedings involving any Deliverables.

END OF EXHIBIT A.