

AM GENERAL LLC

South Bend, Indiana

TERMS AND CONDITIONS OF TOOLING PURCHASE OR REFURBISHMENT

1. Offer; Acceptance; Exclusive Terms.

- 1.1. Each purchase order issued by AM General LLC (“**AMG**”) for the purchase or refurbishment of Tooling (“**Order**”), together with these Terms and Conditions of Tooling Purchase or Refurbishment (“**Tooling Terms**”), is an offer by AMG or its applicable affiliate, subsidiary or division (“**Purchaser**”) to the party to whom this Order is addressed and that party’s affiliates and subsidiaries (“**Seller**”) to enter into a contract for the production, construction, refurbishment, or purchase and sale of Tooling. As used throughout these Tooling Terms, the term Order includes, as applicable, (i) the purchase order issued by Purchaser to Seller; (ii) any Change Orders; (iii) all releases and authorizations issued by Purchaser to Seller, including those related to raw material, fabrication, shipment, and design; (iv) these Tooling Terms; and (v) any statement of work, statement of performance, requirement, specification, exhibit, supplement, or other document attached to, referenced by, or incorporated by reference into the foregoing. Notwithstanding the foregoing, if Purchaser attaches to the Order Seller’s quotation or any other Seller-generated documentation, whether for purposes of reference to applicable specifications or otherwise, any references to terms and conditions or other terms specified by Seller are rejected, excluded and do not apply to the terms of the Order. The term “**Tooling**” means the tooling identified in the Order from Purchaser to Seller including, even if not identified in the Order, prototype and production tools, dies, test and assembly fixtures, gauges, jigs, patterns, casting patterns, cavities, molds, software, accessories, and documentation (including engineering specifications and test reports) used by Seller in connection with the Order.
- 1.2. A contract for the Order is formed when Seller accepts Purchaser’s offer. Each Order will be deemed accepted by Seller immediately upon the occurrence of one or more of the following: (i) Seller’s commencement of performance under the Order; (ii) Seller’s written acknowledgement accepting the Order; or (iii) any other conduct of Seller that recognizes the existence of a contract pertaining to the subject matter of the Order.
- 1.3. Seller’s acceptance is expressly limited to these Tooling Terms and such other terms and conditions as expressly referenced on the face of the Order, as the same may be amended. No purported acceptance of any Order on terms and conditions which attempt to modify, supersede, supplement or otherwise alter or amend these Tooling Terms will be binding upon Purchaser and such terms and conditions are deemed rejected and replaced by these Tooling Terms. For the avoidance of doubt, an Order does not constitute an acceptance by Purchaser of any offer or proposal by Seller, whether such offer or proposal is in the form of Seller’s quotation, acknowledgment, invoice, or otherwise. If any Seller quotation or proposal is held to be an offer (even if all or a portion of Seller’s quotation is included within the Order for any purposes, including for reference to specifications or

otherwise), that offer is expressly rejected and is replaced in its entirety by the offer made up of the Order.

1.4. If there is conflict between the Order, these Tooling Terms, any prior or contemporaneous agreement or document exchanged between Purchaser and Seller, or any other document attached to or incorporated into the Order by reference, (A) the applicable FAR and DFARS clauses incorporated by reference in these Tooling Terms shall control over any other document, including any other provision of these Tooling Terms except this Section 1.4; (B) the terms of the Order (excluding these Tooling Terms and any document attached to or incorporated by reference in the Order) shall control over any other document except the applicable FAR and DFARS clauses incorporated by reference in these Tooling Terms and this Section 1.4; and (C) these Tooling Terms shall control over any document other than the Order, including, without limitation, any Statement of Work attached to or incorporated by reference in the Order. To the extent of any conflict between drawings and written specifications provided by Purchaser, the written specifications will govern. The parties have agreed and it is their intent that the “battle of the forms” described in Section 2-207 of the Uniform Commercial Code will not apply to this Order or to any invoice or acceptance form of Seller relating to this Order.

2. Applicability of Tooling Terms. These Tooling Terms, as may be amended from time to time, apply to and are part of all Orders issued by Purchaser to Seller with respect to Tooling. No exception to, deviation from, or waiver of these Tooling Terms are valid or binding on Purchaser unless specified on the face of an Order.

3. Duration. Unless the Order specifies otherwise, and subject to earlier termination as provided in these Tooling Terms, the term of this Order commences on the effective date of this Order and continues for the production life of the Tooling plus any period of time thereafter during which the Tooling is being utilized to produce or manufacture component parts (including the Goods) in accordance with these Tooling Terms.

4. Changes.

4.1. Purchaser reserves the right at any time, by written direction of Purchaser’s authorized representatives, to direct changes, or cause Seller to make changes, to the Tooling under any Order, including, without limitation, changes in the design (including drawings and specifications), processing, methods of packing and shipping (as applicable), the date or place of delivery of Tooling (as applicable) or to otherwise change the scope of work covered by the Order, including work with respect to matters of inspection and testing or quality control. Purchaser will notify Seller of such change by sending Seller a written notice of such change (“**Change Order**”) and Seller shall promptly make such change. Seller must immediately forward any such Change Order to Seller’s third party suppliers or permitted assignees, if any. In no event will Seller be entitled for compensation for any changes other than those changes specified in a Change Order. Information, advice, approvals, or instructions given by Purchaser’s technical personnel or other representatives shall be deemed expressions of personal opinion only and shall not affect Purchaser’s and Seller’s rights or obligations and shall not be suspensions or changes within the meaning of this Section.

- 4.2. A Change Order is incorporated into the Order to which it pertains as if originally stated in the Order. Further, any changes identified in a Change Order will not affect the time for performance or cost under the Order unless (i) Seller provides Purchaser with written notice of a claim for adjustment to time for performance or cost (the "Adjustment Notice") within ten (10) days after Seller's receipt of a Change Order, (ii) Purchaser agrees in writing that the adjusted time for performance is acceptable, and (iii) after auditing such claim, Purchaser determines that a price adjustment (up or down) is appropriate. Any such claim by Seller for adjustment to the time for performance or cost under an Order must be solely and directly the result of a Change Order issued by Purchaser and any Adjustment Notice will only be effective if accompanied by all relevant information sufficient for Purchaser to verify such claim. In addition, Purchaser has the right to audit all relevant records, facilities, work or materials of Seller to verify any claim. Purchaser's obligation to make payment under the Adjustment Notice is expressly conditioned upon Seller's full cooperation in any audit. Nothing in this Section excuses Seller from proceeding with the Order as changed.
- 4.3. Without the prior written approval of Purchaser, Seller may not make any changes to any Order or the Tooling covered by the Order, including, without limitation, changing (i) any third party supplier to Seller of services, raw materials or goods used by Seller in connection with its performance under the Order, (ii) the facility from which Seller or such third party supplier operates, (iii) the price of any of the Tooling covered by the Order, (iv) the nature, type or quality of any services, raw materials or goods used by Seller or its third party suppliers in connection with the Order, (v) the fit, form, function, appearance, or performance of any Tooling covered by the Order, or (vi) the production method, or any process or software used in the production or provision of any Tooling under the Order. Any change by Seller to any Order or the Tooling covered by the Order without Purchaser's prior written approval constitutes a breach of the Order and is null and void.
5. Lead Time. Seller will complete the manufacture, acquisition or refurbishment of Tooling in the time frame set forth on the Order. Seller agrees that time is of the essence for each Order and if Seller fails to meet any lead times or performance milestones specified in the Order, Purchaser reserves the right, without liability of any kind, to cancel the Order in whole or in part and/or refuse to accept such late Tooling.
6. Specifications. Seller will construct, design and/or refurbish the Tooling in accordance with Purchaser's specifications and/or other specifications on which Purchaser and Seller agree and deem appropriate for the Tooling to produce the parts to be manufactured (the "**Goods**") as specified in the Order. Seller will promptly inform Purchaser of any inconsistencies or ambiguities in Purchaser's specifications of which Seller is or becomes aware. After reviewing Purchaser's specifications, Seller must immediately notify Purchaser in writing of any questions that Seller has concerning whether the Tooling will meet Purchaser's needs for the Goods or otherwise. If requested by Purchaser, Seller will provide Purchaser with a schedule setting forth certain milestones for percentage of completion of the Tooling or refurbishment thereof, as the case may be, so that Purchaser may monitor the ability and likelihood that Seller will meet its delivery requirements in connection with the Goods.

7. Inspection and Approval of Tooling.
- 7.1. Seller agrees Purchaser has the right to inspect and test all Tooling at all reasonable times and places including, when practicable, during manufacture or refurbishment. As part of such inspection or testing, whether or not at Seller's facilities, Seller will provide, if requested by Purchaser, the following: (i) all documentation related to the production, construction, acquisition or refurbishment of Tooling; (ii) a detailed status report of the Tooling, including, without limitation, digital photos of the Tooling that display the current status of the construction, production and/or refurbishment of the Tooling; and (iii) a sample of Goods manufactured from the Tooling or refurbished Tooling, as the case may be. In addition, Seller will make available the Tooling for completion of a full "run at rate" test by Purchaser's Quality Department in a production environment at Seller's facility.
- 7.2. If any such inspection or test is made on Seller's premises, Seller will furnish all reasonable facilities and assistance required for a safe and convenient inspection or test without additional charge to Purchaser.
- 7.3. Purchaser's inspection of the Tooling or documentation related to the construction or refurbishment of the Tooling, no matter how or when occurring, does not constitute acceptance of any work-in-process, finished Goods, or finished Tooling. Further, notwithstanding prior inspection, payment, or use of the Tooling, Purchaser has the right to reject any Tooling that does not conform to the requirements of the Order.
- 7.4. Notwithstanding anything contained herein, Purchaser will not make final payment of funds for Tooling until (i) Purchaser accepts the Tooling in accordance with Section 8 of these Tooling Terms and (2) Seller transfers title to Purchaser to the Tooling free and clear of all liens, claims or other encumbrances and completes all related services required under the Order or, at Purchaser's option, provides adequate assurance of continued performance in such form as requested by Purchaser.
- 7.5. Seller will submit the documentation of construction breakdown as Tooling lineups to Purchaser as part of the quoting process.
8. Acceptance. For purposes of each Order, acceptance of Tooling means receipt by Seller of a signed writing by Purchaser's authorized representative that acknowledges (i) the Tooling's compliance with all manufacturing and/or refurbishment specifications, (ii) completion of a full "run at rate" in a production environment at Seller's facility conducted by Purchaser's Quality Department, and (iii) completion of the production part approval process ("PPAP") by Purchaser. If Purchaser requests, Seller will provide to Purchaser a pre-acceptance run-off test at Seller's facility, at no cost to Purchaser.
9. Delivery of Tooling Layouts and Drawings. Upon request, Seller will immediately deliver to Purchaser all Tooling layouts and engineering drawings by first-class mail, courier service, or in-person at the destination identified in such request.
10. Price and Payment Terms.
- 10.1. The price for the purchase or refurbishment of Tooling set forth on the Order (the "**Purchase Price**") must include all charges and costs associated with the design,

development, manufacture and refurbishment of the Tooling. Seller is solely responsible for the payment of any taxes, tariffs and duties and all costs associated with freight, transportation, insurance, shipping, storage, handling and similar charges associated with the Tooling. Subject to the terms and conditions contained herein, the Purchase Price is not subject to increase, including, without limitation, increases in cost based upon raw material, labor, or overhead unless Purchaser's authorized representative specifically agrees in a signed writing.

10.2. Seller represents and warrants to Purchaser that the Purchase Price is at least as low as the price charged by Seller to buyers of a class similar to Purchaser under conditions similar to those specified in the Order and that the Purchase Price complies with all applicable governmental laws and regulations in effect at the time of, as the case may be, quotation, construction, completion, sale, and delivery.

10.3. Subject to the terms and conditions of the Order, Purchaser will pay the Purchase Price in the amounts and at the times specified on the face of the Order.

11. Purchase Price Adjustments and Cost Audits.

11.1. Tooling and refurbishment are purchased by Purchaser on a fixed price basis and the Purchase Price is the maximum amount Purchaser will pay (subject to any Change Orders). Seller agrees it is not entitled to make a profit on Tooling and is only to recover the actual and reasonable costs of manufacturing, acquiring, or refurbishing the Tooling. All internal costs associated with the procurement or refurbishment of Tooling are considered to be part of Seller's overhead costs that are recovered in the piece price of Goods manufactured or assembled with Tooling. If Seller determines that the actual cost of Tooling is or will be less than the Purchase Price, Seller must notify Purchaser so that the Purchase Price can be corrected.

11.2. Upon request, Seller must provide Purchaser with a detailed breakdown of the costs of the Tooling or refurbishment which are the basis for the Purchase Price, including copies of all invoices from Seller's third party suppliers. Purchaser reserves the right to audit all costs and expenses claimed by Seller as part of the Purchase Price, and Seller must grant Purchaser reasonable access to Seller's books and records and other documentation reasonably substantiating the Purchase Price. Purchaser's obligation to pay the Purchase Price is expressly conditioned upon Seller's full cooperation in any such audit. If Purchaser's audit concludes that Seller's actual costs were lower than the Purchase Price, Seller will be obligated to reduce the Purchase Price, or if the Purchase Price has been paid, refund the excess to Purchaser within 30 days of Purchaser's request.

12. Ownership of Tooling.

12.1. Regardless of when Tooling is accepted by Purchaser, title to Tooling will pass to Purchaser upon the sooner to occur of (i) when the Tooling is fabricated or completed by Seller or acquired by Purchaser or, (ii) in the case of an Order for refurbishment of Tooling to which Purchaser does not already hold title, when refurbishment is substantially completed. Title to the Tooling will pass to Purchaser even if Purchaser has not made full payment; however, the title transfer will not affect Purchaser's obligation to pay for the Tooling as provided in and according to the terms of the Order.

- 12.2. Once title to Tooling passes to Purchaser, the Tooling and related blueprints, designs, specifications, drawings, photographic negatives and positives, art work, and copy layout provided by Purchaser or developed by Seller or its third party suppliers in connection with or related to any Order (collectively, “**Bailed Property**”), will be held by Seller as a bailee-at-will for the benefit of Purchaser. Seller bears the risk of loss of and damage to the Bailed Property and, at its own cost and expense, must keep such Bailed Property insured for the benefit of Purchaser, naming Purchaser as the loss payee and additional insured. Seller must at all times, and without charge to Purchaser, properly house the Bailed Property and protect it against destruction, damage or theft. Subject to the terms contained herein, Purchaser’s ownership of such Bailed Property will not affect Purchaser’s obligation to pay for the Tooling.
- 12.3. Seller agrees that the Bailed Property: (i) will not be used by Seller for any purpose other than pursuant to the terms of the Order; (ii) will be deemed personal property of Purchaser; (iii) must be conspicuously marked by Seller to identify it as property of Purchaser (including indicating Purchaser's name and address); (iv) must not be commingled with Seller’s property or with that of a third party; and (v) must not be moved from Seller's premises without the prior written approval of Purchaser. Seller must also, at its sole cost and expense, maintain, repair and refurbish Bailed Property in first class condition. All replacement parts, additions, improvements and accessories for such Bailed Property automatically become Purchaser's property upon their incorporation into or attachment to the Bailed Property.
- 12.4. Seller will ensure the operational readiness of the Tooling and maintain it at Seller’s own cost including repair and replacement at all times in the condition necessary to produce the Goods in the required quality and quantities. Tooling replacement requires the approval of new initial samples by Purchaser.
- 12.5. Unless Purchaser directs an earlier release by Seller, Seller must have the capability to store, and must store, all Bailed Property for a maximum of ten (10) years after termination of serial production of the Goods. Notwithstanding the expiration of the time period in the preceding sentence, Seller will not destroy any Tooling without the prior written consent of Purchaser.
- 12.6. Seller must immediately inform Purchaser in writing if the projected lifetime quantities of Goods reach up to 85% of available Tooling capacity to allow Purchaser to plan for further production quantities in the future.

13. Use of Tooling.

- 13.1. Seller must use the Tooling exclusively for production of Goods required by Purchaser. Seller will not, without the prior written consent of Purchaser, use Tooling for the production of (i) larger quantities of Goods than those specified by Purchaser or (ii) goods or services for Seller or any other person.
- 13.2. Notwithstanding Section 13.1, Seller may sell directly to the United States Government Goods that Purchaser designates in writing as items that are not “commercial items” as defined by the Federal Acquisition Regulation, 48 CFR § 2.101. Seller shall immediately notify Purchaser of any prospective sales directly to the United States Government of Goods that are “commercial items” as defined by the Federal Acquisition Regulation, 48

CFR § 2.101, and proceed with such sales only if and as directed by Purchaser.

14. Claims, Lien, and Other Encumbrances. Seller represents and warrants that neither Seller nor any other person or entity other than Purchaser has any right, title, interest, or liens in the Tooling, other than Seller's right, subject to Purchaser's unfettered discretion, to utilize the Tooling in the manufacture of the Goods. In the event Seller has, or obtains, any intellectual property rights in the Tooling and/or documentation related to such Tooling, Seller hereby conveys, assigns, and otherwise grants Purchaser all of Seller's right, title, and interest in and to such intellectual property and Seller agrees not to transfer, assign, or otherwise grant such intellectual property rights, by operation of law or otherwise, to any other person or entity. For the avoidance of doubt, any intellectual property produced by Seller for the Tooling and/or Goods will be deemed to be "work for hire."
15. Return of Tooling. Upon request, Seller must deliver the Tooling, existing spare parts, and all related documentation in Seller's possession or under its control to Purchaser at the location Purchaser determines. Seller will be reimbursed for reasonable transportation charges related to this request, including freight and packaging costs. Seller has no right to withhold any Tooling, documentation, or production equipment that has been paid for by Purchaser.
16. Force Majeure. Any delay or failure on the part of either Seller or Purchaser to perform its obligations hereunder will be excused if, and to the extent that, the party is unable to perform specifically due to an event or occurrence beyond its reasonable control and without its fault or negligence, including, without limitation, the following: acts of God or a public enemy; restrictions, prohibitions, priorities or allocations imposed or actions taken by a governmental authority; fires; floods; epidemics; quarantine, restrictions; strikes; embargoes; natural disasters; riots; wars; sabotage; inability to obtain power; or unusually severe weather. As soon as possible (but no more than five (5) business days) after the occurrence of such event, Seller must provide written notice to Purchaser describing such delay and assuring Purchaser that the anticipated duration of such delay will not exceed 30 days from its occurrence. During the delay or failure to perform by Seller, Purchaser may at its option: (a) purchase Tooling from other sources and reduce its Order commitment to Seller by such quantities, without liability of Purchaser to Seller and if Seller is the cause of any delay, require Seller to reimburse Purchaser for any additional costs to Purchaser for obtaining the substitute Tooling compared to the prices set forth in the Order; (b) require Seller to deliver to Purchaser at Purchaser's expense all finished Tooling, Goods, work in process and parts and materials produced or acquired for work under the Order; or (c) require Seller to provide the Tooling from other sources in quantities and at a time requested by Purchaser and at the price set forth in the Order. In addition, Seller, at its expense, will take all actions deemed reasonably necessary by Seller to ensure that in the event of any anticipated labor disruption, strike or worker slowdown resulting from the expiration of Seller's labor contracts, the Tooling will be available to Purchaser in an area that will not be affected by any such disruption for a period of at least 30 days. If, upon request of Purchaser, Seller fails to provide within ten (10) days (or such shorter period as Purchaser requires) adequate assurances that any delay will not exceed 30 days or, if any delay lasts longer than 30 days, Purchaser may terminate the Order without liability and Seller will reimburse Purchaser for costs associated with the cancellation. Seller agrees that the change in cost or availability of materials, components or services based on market conditions, supplier actions or contract disputes will not excuse performance by Seller under theories of force majeure, commercial impracticability or otherwise and Seller expressly assumes these risks.

17. Indemnification. In addition to Seller's other indemnification obligations arising hereunder, Seller shall defend, indemnify and hold harmless Purchaser and Purchaser's customer from any and all claims, suits, liabilities, damages or expenses asserted against or incurred by Purchaser arising out of the manufacture and/or use of the Tooling. If this Order is placed under a United States Government Prime Contract or subcontract, the indemnification shall extend to the United States Government, but only if and to the extent that the United States Government is or may be indemnified by Purchaser.
18. Termination.
- 18.1. For Cause. Purchaser may immediately terminate any Order, in whole or in part, at any time, and without any liability to Seller or any other party, by written notice to Seller if: (i) Seller defaults under any of the provisions of the Order and fails to remedy such default within a ten (10) day period; (ii) Seller becomes insolvent, files a petition or has a petition filed against it in bankruptcy, or suffers any similar action in consequence of debt; or (iii) the majority interest in Seller's shares of ownership in whole or in part of its assets are transferred to a third party to which Purchaser objects in writing.
- 18.2. For Convenience. In addition to Purchaser's right to terminate any Order for cause, Purchaser may, at its option, terminate any Order, in whole or in part, at any time by providing written notice Seller including if a customer of Purchaser has cancelled or terminated the project for which the Tooling was intended.
- 18.3. Return of Tooling. Upon termination of an Order, Seller must return the Tooling and all related documentation in accordance with Section 15 above.
- 18.4. Termination Claim. If an Order is terminated under Section 18.2, Purchaser will reimburse Seller for actual and reasonable out of pocket expenses incurred by Seller as evidenced by documentation (including invoices) from Seller or its third party suppliers; provided, however, Seller will not be reimbursed for any unamortized engineering, design, and development costs, unrealized return on investment or capital, profit, attorney or other professional fees, unabsorbed overhead, facilities and equipment rearrangement costs or rental, unamortized depreciation costs and general and administrative burden charges resulting from termination of the Order. In addition, the amounts reimbursed to Seller under this Section 18.4 will not exceed the Purchaser Price minus all progress payments made under Section 10. Notwithstanding the above, Seller agrees that if Purchaser terminates the Order as a result of a customer of Purchaser cancelling or terminating the project for which the Tooling was intended, Purchaser will have no obligation under this Section 18.4 unless Purchaser receives actual compensation on account of such cancellation from its customer and any amounts due to Seller will be limited to the pro rata portion of such compensation that was designated for the Tooling.
19. Warranty.
- 19.1. Seller warrants to Purchaser, its customers, and its successors and assigns that all Tooling purchased or refurbished pursuant to each Order will, following the date of acceptance for such Tooling identified in Section 8, (i) conform to the applicable drawings, specifications and other descriptions furnished pursuant to each Order, and all applicable laws and regulations, (ii) be free of defects in design (to the extent that Seller furnished the design), materials and workmanship, and (iii) be suitable for the purpose intended by

Purchaser of which Seller acknowledges it is aware. Seller's responsibility under this warranty includes, without limitation, all parts, labor and transportation costs incurred by Purchaser in the event the Tooling must be returned to Seller for repair or replacement. Furthermore, Seller will require its third party suppliers of component parts of goods and/or equipment for Tooling purchased or refurbished pursuant to each Order to provide a warranty equal to or better than the warranties provided to Purchaser by Seller in the Order, and all such warranties shall be freely assignable to Purchaser. Seller will provide all necessary documentation to Purchaser to evidence that Seller has assigned such warranties from its suppliers to Purchaser. In the event that Seller fails to obtain or assign such warranties, Seller will reimburse Purchaser for all loss, cost, liability or expense (including actual fees for attorneys, experts and consultants, settlement costs and judgments) related to such failure.

19.2. Seller warrants to Purchaser, its customers and its successors and assigns that it will, whenever possible, use parts of the highest industry quality, and supply a detailed bill of materials listing all such parts. Seller further agrees that it will comply with all specific product sourcing directions of Purchaser.

19.3. The warranties provided in this Section 19 shall survive the acceptance and delivery of the Tooling and will continue in full force and effect for the production life of the applicable Tooling and any such period of time following thereafter during which Seller utilizes the Tooling for the production of Goods for Purchaser.

20. Defective Tooling. If the Tooling fails to comply with the warranties provided in an Order or otherwise provided by the Seller ("**Defective Tooling**"), Seller must repair such Defective Tooling as promptly as possible, but in no event later than the time period reasonably determined by Purchaser. If Seller is unable to repair the Defective Tooling within such time period or the repair by Seller is not suitable for Purchaser's needs, as determined by Purchaser in its sole discretion, Purchaser reserves the right to either (i) terminate the Order or (ii), at Seller's sole cost and expense, repair the Defective Tooling itself or have such repair done by a third party. Notwithstanding anything to the contrary contained in an Order, Seller must indemnify, defend and hold Purchaser and its successors and assigns harmless from and against all claims, damages (including incidental, special, and consequential damages), losses, costs, and expenses (including reasonable attorney's fees), incurred by Purchaser in connection with Defective Tooling. For the avoidance of doubt, the indemnification in the preceding sentence extends to all costs Purchaser may incur in repairing the Defective Tooling, including, without limitation, transportation, sorting, investigative, and testing costs. Further, all amounts due from Seller for such indemnification are due when incurred by Purchaser and are not subject to any intermediate or final determination of Purchaser's claim against Seller.

21. Confidentiality. If a proprietary information, mutual confidentiality, or non-disclosure agreement ("PIA") exists between Purchaser and Seller covering the Tooling or the Order, the term of such PIA is hereby extended to be co-terminus with the Order, and such PIA is incorporated into and forms a part of the Order and governs the use and disclosure of proprietary information hereunder. In the event that no PIA covering Tooling or the Order exists between Purchaser and Seller, then Seller agrees that the information contained herein and given to Seller from Purchaser, including, without limitation, all drawings, specifications or other documents used in connection with an Order, is strictly confidential and will not be disclosed by Seller without the

express written consent of Purchaser. Notwithstanding the foregoing, Seller may disclose the existence and terms of this an Order (i) to the extent required by law (including the rules of any applicable stock exchange) or by any governmental agency or required or requested to be disclosed pursuant to legal process (including discovery requests); (ii) to the extent necessary to enforce this Order; and (iii) to any employee, officer or director; provided, that any such person or entity is (a) informed of the confidential nature of such information and (b) directed by Seller to maintain such information in confidence. Seller is responsible for the breach of such PIA by any of Seller's employees, or an officer or director of Seller. Nothing in this Agreement or incorporated PIA prohibits or otherwise restricts Purchaser or Seller from: (a) lawfully reporting or seeking to report waste, fraud, or abuse to a designated investigative or law enforcement representative of a U.S. Government department or agency authorized to receive such information; or (b) communicating with any federal, state, or local governmental agency, or participating in an investigation by any such agency. Furthermore, nothing in this Agreement or incorporated PIA requires Purchaser or Seller to notify or seek approval from Disclosing Party at any time regarding such activities.

22. Subcontracting. Seller may not subcontract any production or refurbishment of the Tooling or parts for the Tooling without the prior consent of Purchaser. In the event Purchaser consents to the use of a third party supplier, such third party supplier must also agree to be bound by these Tooling Terms. Notwithstanding the foregoing, Seller agrees that it will remain liable for the fulfillment of the obligations under the Order. Seller must flow down the requirements of these Terms and Conditions Order, including but not limited to Section 19 "Warranty" to any third party supplier.
23. Insurance. Seller must, at all times, maintain the following insurance coverage with carriers acceptable to Purchaser: Comprehensive General Liability/Product Liability of not less than combined single limits of \$5 million and Professional Liability/Error & Omission of not less than combined single limits of \$5 million. All insurance by Seller must name Purchaser as an additional insured and Seller must furnish to Purchaser certificates of insurance and additional insured endorsements showing compliance with these insurance requirements.
24. Setoff. In addition to any right of setoff or recoupment provided or allowed by law, all amounts due to Seller will be considered net of indebtedness of Seller and/or its affiliates or subsidiaries to Purchaser and/or its affiliates or subsidiaries. Purchaser may deduct any amounts due or to become due from Seller and/or its affiliates or subsidiaries to Purchaser and/or its affiliates or subsidiaries from any sums due or to become due from Purchaser and/or its affiliates or subsidiaries. If an obligation of Seller is disputed or contingent, 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 Orders between Purchaser and Seller have not been assumed (under applicable bankruptcy law), Purchaser may then withhold payment to Seller for Tooling previously delivered (via administrative hold or otherwise) until the risk of potential rejection and other damages is eliminated.
25. Compliance with Equal Employment Opportunity. Seller represents it is, and will at all times during the term of the Order remain, an equal opportunity employer. No employee or applicant for employment will be discriminated against due to race, color, religion, national origin, sex, handicap status, veteran status, age, marital status, height, weight or any other reason prohibited by applicable law. Without limiting the foregoing, to the extent the Tooling provided or

refurbished under any Order may be deemed to be necessary for the performance of a United States Government contract, Seller shall comply with Section 202 of Executive Order 11246, as amended, and any successor thereto.

26. Fair Labor Standards. Seller represents and warrants during the term of the Order that the manufacture, production, refurbishment and sale of the Tooling are in compliance with the Fair Labor Standards Act of 1938, as amended.
27. Dispute Resolution. In the event Seller fails or refuses to deliver the Tooling, 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: (i) the Dispute will be submitted in writing to Seller's Account/Sales Manager and Purchaser's Director of Supply Chain Management; (2) the respective managers will attempt to resolve the Dispute within seven (7) calendar days of such submission; and (3) if the respective parties are unable to resolve the Dispute within seven (7) calendar days of such submission and either party wishes to pursue the Dispute further, the Dispute will be adjudicated in a court of competent jurisdiction in St. Joseph County, Indiana. Pending final decision of any Dispute hereunder, Seller must continue to perform its obligations under the Order. If the Dispute arises out of a difference in interpretation between the parties as to the performance requirements of any Order, then Seller will continue performance in accordance with the interpretation of performance as determined by Purchaser.
28. Governing Law. Each Order is to be construed according to the laws of the State of Indiana without regard to any applicable conflict of law provisions or the United Nations Convention on Contracts for the International Sale of Tooling, as amended.
29. No Waiver, Cumulative Remedies; Unenforceability. Neither party will, by any act, delay, indulgence, omission, or otherwise, be deemed to have waived any right or remedy contained herein. A waiver by either party of any right or remedy on any one occasion will not be construed as a bar to any right or remedy which that party would otherwise have had on a subsequent occasion. No failure to exercise, nor any delay in exercising, any right, power, or privilege contained herein will operate as a waiver, nor will any single or partial exercise of any right, power or privilege contained herein preclude the exercise of any other right, power or privilege or the future exercise thereof. The rights and remedies contained herein are cumulative, may be exercised singly or concurrently, and are not exclusive of any rights and remedies available at law, in equity, or provided by any other agreements between the parties. Should any provision hereunder be held invalid or unenforceable, the remainder of the Order will not be affected thereby.
30. Survival. Notwithstanding anything in this Agreement to the contrary, Sections 9, 12-17, 19-21, 24, and 27-32 (together with any other provision which according to its terms should continue in effect) shall survive the termination or expiration of the Order.
31. Construction. When used in the Order, "including" means "including, without limitation," and terms defined in the singular include the plural and vice versa. The headers, titles and

numbering are for convenience of reference only and will not affect the construction or interpretation of the Order.

32. **Waiver of Jury Trial.** **PURCHASER AND SELLER AGREE THAT THE RIGHT TO TRIAL BY JURY IS A CONSTITUTIONAL ONE, BUT THAT IT MAY BE WAIVED. EACH OF PURCHASER AND SELLER, AFTER CONSULTING (OR HAVING THE OPPORTUNITY TO CONSULT) WITH COUNSEL OF THEIR RESPECTIVE 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.**

33. **Entire Agreement.**

33.1. The Order, together with the attachments, exhibits or supplements specifically referenced in the Order, and these Tooling Terms constitute the entire agreement between Seller and Purchaser with respect to the subject matter contained in the Order and supersede all prior oral or written representations and agreements. For avoidance of doubt, this Order does not supersede other purchase orders from Purchaser for other goods, services or both, including, but not limited to, purchase orders for Goods manufactured with the Tooling. In performance of this Order, Seller must comply with the requirements of all purchase orders from Purchaser and require its third party suppliers to comply with all applicable requirements.

33.2. Purchaser may modify these Tooling Terms, at any time, by providing written notice to Seller at least ten (10) days prior to any modified Tooling Terms becoming effective. Seller's continued performance under the Order, without providing written notice to Purchaser detailing Seller's objection to any modified Tooling Terms prior to the effective date of such modified Tooling Terms, will be subject to and will constitute Seller's acceptance of such modified Tooling Terms. Except as provided in the preceding sentences or as otherwise provided in these Tooling Terms, the Order may be modified only by a Change Order signed by Purchaser's authorized representative.

34. **Incorporated FAR and DFARS Provisions.**

34.1. The Federal Acquisition Regulation ("FAR") and Defense Federal Acquisition Regulation Supplement ("DFARS") clauses in "Appendix 1 to Terms and Conditions of Tooling Purchase or Refurbishment (Non-Commercial)" or "Appendix 1 Terms and Conditions of Tooling Purchase or Refurbishment (Commercial)", as specified on the face of the Order, as posted on Purchaser's corporate website, and as amended by Purchaser from time to time upon changes in such clauses, are incorporated by reference herein with the same force and effect as if they were given in full text as modified by any notes following the clause citation.

34.2. Except where otherwise specified in these Terms and Conditions, any reference to the "Disputes" clause in any applicable FAR or DFARS clause incorporated into this Order shall mean Section 27 of these Tooling Terms.

34.3. Seller shall insert the FAR and DFARS clauses in the version of Appendix 1 specified in

the Order (and any update or change thereto) in lower tier subcontracts to the extent required for each lower tier subcontract by the FAR or DFARS either verbatim, in substance, by incorporation-by-reference or otherwise as appropriate.

- 34.4. Wherever used, the terms "Contract" and "Contractor" shall mean this Order and Seller (including Seller as Bidder or Offeror), respectively. The terms "Government," "Contracting Officer," and equivalent phrases in the FAR and DFARS clauses in Appendix 1 (and any update or change thereto) shall mean Purchaser, except where further clarified or modified, except that in clauses identified by * shall have their original meaning as written in the FAR or DFARS, and when identified by ** shall not only have their original meaning as written in the FAR or DFARS, but shall also mean "Purchaser." "Subcontractor" shall mean "Seller's Subcontractor."
- 34.5. Seller, by accepting the Order, hereby certifies compliance with the mandated clauses set forth within FAR 52.204-8/DFARS 252.204-7007 (for non-commercial items) and FAR 52.212-3 (for commercial items). (See Purchaser's "Attachment A Supplier Certifications" document, available at Purchaser's corporate website.) Completed "Attachment A Supplier Certifications" documents are to be submitted with all offers.