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## **KSUS INTERNATIONAL, LLC**

### **TERMS AND CONDITIONS OF PURCHASE**

*Last revised March 9, 2017*

These Terms and Conditions of Purchase (“Terms”) apply when referenced by KSUS International, LLC (“KSUS” or “Buyer”) documentation.

**1. Offer; Acceptance; Exclusive Terms; Identity of Buyer.** Each order issued by Buyer (“Order”) is an offer to Seller for the purchase of goods and/or services (“Supplies”). The Terms apply to each Order and are included in each Order by reference. The Order supersedes all prior agreements, orders, quotations, proposals and other communications regarding the Supplies covered by the Order, except that a signed prior agreement (such as a letter of intent, Statement of Work or Non-Disclosure Agreement) will continue in effect provided it does not materially conflict with the Order. Any other modification of Buyer’s Terms must be expressly stated in the Order. Seller accepts these Terms and forms a contract with Buyer by doing any of the following: (a) commencing any work under the Order; (b) accepting the Order in writing; or (c) any other conduct that recognizes the existence of a contract with respect to the subject matter of the Order. **The Order is limited to and conditional upon Seller’s acceptance of these Terms exclusively.** Any additional or different terms proposed by Seller, whether in Seller’s quotation, acknowledgement, invoice or otherwise, are unacceptable to Buyer, are expressly rejected by Buyer, and will not become part of the Order. An Order can be modified only according to the provisions of Section 36 of the Terms.

**2. Quantities; Delivery; Material Releases.** Quantities listed in each Order as estimated are Buyer’s best estimate of the annual quantities required. Buyer is not required to purchase any quantity of Supplies unless expressly stated as a “minimum” quantity in the Order. Buyer is required only to purchase those quantities identified as “definite quantities” in material authorization releases, manifests, or similar releases (“Material Releases”) submitted by Buyer to Seller. Likewise, Buyer is required only to purchase services to the extent expressly stated as a “definite order” in a Statement of Work signed by Buyer. Buyer may require Seller to participate in an electronic data interchange or similar inventory management program, at Seller’s expense, for notification of Material Releases, shipping confirmations and other purchasing information. Buyer may purchase additional quantities of up to 15% in excess of Supplier's tooled capacity using Orders or Material Releases. Unless otherwise agreed in writing by Buyer, the risk of loss passes from Seller to Buyer upon delivery to Buyer’s designated facility location. Deliveries shall be made both in quantities and at times specified in Buyer’s schedules. Buyer shall not be required to make payment for goods delivered to Buyer which are in excess of quantities specified in Buyer’s delivery schedules. Time and quantities are of the essence under the Order. except as otherwise agreed in writing by the parties. Buyer may revise the rate of scheduled shipments or direct temporary suspension of scheduled shipments, neither of which entitles Seller to modify the price for Supplies. Buyer is not obligated to accept early deliveries, late deliveries, partial deliveries or excess deliveries. Unless specifically stated in the Order, Buyer shall not be required to purchase the subject Supplies only from Seller.

**3. Invoicing and Pricing; Premium Freight.** Except as expressly stated in the Order under the heading “Freight,” the price of Supplies includes storage, handling, packaging and all other expenses and charges are the expense of Seller. Except as otherwise stated in the Order, Supplies will be shipped F.O.B. at Seller’s



**KOLBENSCHMIDT**  
**PISTONS**

final production location, using Buyer's transportation. All invoices for the Supplies must reference the Order number, amendment or release number, Buyer's part number (including revision designation when applicable), Seller's part number (when applicable, including revision designation when applicable), quantity of pieces in the shipment, number of cartons or containers in the shipment, bill of lading number, and other information required by Buyer. Buyer will pay proper invoices in compliance with all of the terms of the Order. The total price also includes all duties and taxes except for any value added tax (VAT) imposed by a non-USA jurisdiction, which must be shown separately for each shipment on Seller's invoice. Buyer is not responsible for any business activity taxes, payroll taxes or any other taxes assessed or imposed on Seller's income or assets (including without limitation the Michigan Single Business Tax). Seller will pay all premium freight costs if Seller needs to use an expedited shipping method to meet delivery dates due to Seller's own acts or omissions. Seller will pay any costs incurred by Buyer, including costs charged by Buyer's customer(s) to Buyer, as a result of Seller's failure to fulfill all shipping or delivery requirements.

**4. Packaging; Marking; Shipping; Disclosure; Special Warnings or Instructions.** Seller will: (a) pack, mark, and ship Supplies according to the requirements, including labeling and hazardous materials requirements, of Buyer, the transportation carriers and the country of destination; (b) international shipments shall be accompanied by all necessary documentation to permit legal entry and customs clearance into country of destination; (c) route the shipments according to Buyer's instructions; (d) label or tag each package according to Buyer's instructions; (e) provide documentation with each shipment clearly showing the Order number, amendment or release number, Buyer's part number (including revision designation when applicable), Seller's part number (when applicable and to include revision designation when applicable), number of pieces in the shipment, number of containers in the shipment, Seller's name and number, and the bill of lading number; and (f) promptly forward the original bill of lading or other shipment receipt for each shipment according to Buyer's instructions and carrier requirements. Seller will promptly provide Buyer with the following information in the form requested by Buyer: (i) a list of all ingredients and materials in Supplies; (ii) the amount of all ingredients, and (iii) information concerning any changes in or additions to the ingredients. Before and at the time Supplies are shipped, Seller will give Buyer sufficient warning in writing (including appropriate labels on all Supplies, containers, and packing, including without limitation disposal and recycling instructions, material safety data sheets and certificates of analysis) of any hazardous or restricted material that is an ingredient or part of the Supplies, together with any special handling instructions that are needed to advise carriers, Buyer, and their employees how to take appropriate measures while handling, transporting, processing, using or disposing of the Supplies, containers, and packing. Seller agrees to comply with all federal, state, and local laws and regulations pertaining to product content and warning labels, including without limitation the Toxic Substances Control Act and European Union Directive 2000/53/EC. Seller will reimburse Buyer for any expenses incurred as a result of improper packing, marking, routing, or shipping.

**5. Customs; Related Matters.** Credits or benefits resulting from the Order, including trade credits, export credits or the refund of duties, taxes, or fees, belong to Buyer. Seller will provide all information and certificates (including NAFTA Certificates of Origin) necessary to permit Buyer (or Buyer's customers) to receive these benefits or credits. Seller agrees to comply with and fulfill all customs-related or NAFTA-related obligations, origin marking or labeling requirements, and local content origin requirements. Export licenses, Importer Security Filings or authorizations necessary for the export of Supplies are Seller's responsibility unless otherwise stated in the Order, in which case Seller will provide the information necessary to enable Buyer to obtain the required licenses or authorizations. Importer Security Filing



**KOLBENSCHMIDT**  
**PISTONS**

information must be available prior to loading of Supplies at the export location and must be made available to the appropriate authorities by the Seller in a timely manner so as not to delay scheduled deliveries.

Seller will promptly notify Buyer in writing of any material or components used in filling an Order that Seller purchased in a country different from the country in which the Supplies are delivered. Seller will furnish all documentation and information necessary to establish the country of origin or to comply with the applicable country's rules of origin requirements. Seller will promptly advise Buyer of any material or components imported into the country of origin and any duty included in the Supplies' purchase price. If Supplies are manufactured in a country other than the country in which Supplies are delivered, Seller will mark Supplies "Made in [country of origin]". Seller will promptly provide Buyer and the appropriate governmental agency with the documentation necessary to determine the admissibility and the effect of entry of Supplies into the country in which Supplies are delivered. Seller warrants that any information that is supplied to Buyer about the import or export of Supplies is true and that all sales covered by the Order will be made at not less than fair value under the anti-dumping laws of the countries to which the Supplies are exported.

For Seller's goods to be imported into the United States, Seller shall comply with all applicable recommendations or requirements of the United States Bureau of Customs and Border Protection's Customs-Trade Partnership Against Terrorism ("C-TPAT") initiative (for information go to the <http://www.cbp.gov/> link to the C-TPAT section). At Buyer's or the Bureau of Customs and Border Protection's request, Seller shall certify in writing its compliance with the foregoing. Seller shall indemnify and hold Buyer harmless from and against any liability, claims, demands or expenses (including attorney's or other professional fees) arising from or relating to Seller's non-compliance.

**6. Inspection; Non-Conforming Goods/Services; Audit.** Buyer may enter Seller's facility at any time to inspect the facility, Supplies, materials, and any of Buyer's property related to the Order. Buyer's inspection of Supplies, whether during manufacture, prior to delivery, or within a reasonable time after delivery, does not represent acceptance of any work-in-process or finished goods. Buyer's acceptance, inspection, or failure to inspect Supplies does not relieve Seller of any of its responsibilities or warranties regarding the Order. Seller acknowledges that Buyer will not perform incoming inspections of the goods, and waives any rights to require Buyer to conduct such inspections. Nothing in the Order releases Seller from its obligation regarding testing, inspection and quality control of the Supplies. If defective Supplies are shipped to Buyer and rejected by Buyer, the quantities for the Order will be reduced unless Buyer otherwise notifies Seller. Seller shall, at Buyer's request, and at no additional cost to Buyer, promptly deliver replacement parts conforming to the specifications and delivery instructions. Seller will not replace reduced quantities without a new Material Release or Order from Buyer. In addition to other remedies available to Buyer: (i) Seller agrees to accept return, at Seller's risk and expense at full invoice price, plus transportation charges, and to replace defective Supplies as Buyer deems necessary; (ii) Buyer may have corrected, at any time prior to shipment from Buyer's plant, Supplies that fail to meet the requirements of the Order; and/or (iii) Seller will reimburse Buyer for all reasonable expenses that result from any rejection or correction of defective Supplies. Seller will document an initial corrective action response within 24 hours. Seller's failure to provide written disposition instructions within 10 days, or such shorter period as may be commercially reasonable under the circumstances, after notice of nonconformity, shall entitle Buyer, at Buyer's option, to charge Seller for storage and handling and/or to dispose of the goods without liability to Seller. Payment for nonconforming Supplies is not an acceptance, does not limit or impair Buyer's right to assert any legal or equitable remedy, and does not relieve Seller's responsibility for latent defects. Upon reasonable notice to Seller, either Buyer or its direct or indirect customers may conduct a routine audit at Seller's production facility for the purpose of quality, cost or delivery verification. Seller will ensure that the terms of its



**KOLBENSCHMIDT**  
**PISTONS**

contracts with its subcontractors provide Buyer and its customers with all of the rights specified in this Section.

**7. Payment.** Unless different payment terms are stated in the Order, Buyer will pay proper invoices on a Net 60 day basis. Invoices for tooling must be issued only as approved, and as provided in the Order. Invoices for tooling will be paid on a Net 60 day basis only after completion of, and Buyer customer's written approval of, a fully warranted, five (5) level Production Part Approval Process (PPAP), or the appropriate level of PPAP required by Buyer and Buyer's customer, for Buyer's product and the related Supplies, and the receipt of payment funds from Buyer's customer. Buyer may withhold payment pending receipt of evidence, in the form and detail requested by Buyer, demonstrating the absence of any liens, encumbrances, or claims on Supplies provided under the Order. Payment will be made in U.S. Dollars unless otherwise expressly stated in the Order.

**8. Changes.** Buyer reserves the right to direct changes, or to cause Seller to make changes, to drawings, specifications, samples or descriptions of Supplies. Buyer also reserves the right to change the scope of the work covered by the Order, including, without limitation, such matters as inspection, testing or quality control. Buyer also may direct the supply of raw materials from itself or from third parties. Seller will make any such requested change promptly. In order for Seller to request a reasonable difference in price or time for performance as a result of such a change, Seller must notify Buyer in writing within ten days after receiving notice of the change. Buyer can request additional documentation from Seller relating to any change in specifications, price or time for performance. Seller will not make any change in the Supplies' design, specifications, processing, packing, marking, shipping, price or date or place of delivery except at Buyer's written instruction or with Buyer's written approval.

**9. Warranties.** Seller expressly warrants and guarantees to Buyer, to Buyer's successors, assigns and customers, that all Supplies delivered to Buyer will: (a) conform to the specifications, standards, drawings, samples, descriptions and revisions as furnished to or by Buyer; (b) conform to all applicable laws, orders, regulations and standards in countries where Supplies or vehicles or other products incorporating Supplies are to be sold, including without limitation the National Traffic and Motor Vehicle Safety Act, United States motor vehicle safety standards and European Union Directive 2000/53/EC; (c) be merchantable and free of defects in design (to the extent designed by Seller), materials and workmanship; and (d) be selected, designed (to the extent designed by Seller), manufactured and assembled by Seller based on Buyer's stated use and be fit and sufficient for the purposes intended by Buyer; and (e) Seller has and will transfer to Buyer ownership and good title to Supplies delivered and Services provided, free of all liens, encumbrances, and rights of third parties (except those created by Buyer).. The warranty period provided by applicable law applies, except that if Buyer or Buyer's customer offers a longer warranty to end-users for Supplies installed on or as part of vehicles, the longer period will apply. For all services, Seller further warrants that its work will be performed in a professional and workmanlike manner, consistent with all standards and specifications agreed on with Buyer, and otherwise consistent with industry standards. Seller will immediately notify Buyer in writing when it becomes aware of any ingredient, component, design or defect in Supplies that is or may become harmful to persons or property. The warranty in clause (c) will continue for the warranty period specified in the Contract. The warranty in clause (e) will continue for the life of the Supplies and Services.

**10. Supplier Quality and Development; PPAP; Required Programs.** Seller will conform to the quality control standards and inspection system, as well as related standards and systems (including without



**KOLBENSCHMIDT**  
**PISTONS**

limitation, quality control policies, ISO 9000, QS 9000 and ISO/TS 16949), that are established or directed by Buyer. Seller also will participate in supplier quality and development programs of Buyer as directed by Buyer. Seller agrees to meet the full requirements of industry Production Part Approval Processes (PPAP) as specified by Buyer and (as applicable) Buyer's customer(s) and agrees to present this information to Buyer on request, at the level requested. As requested by Buyer at any time, Seller will participate in and comply with the following Buyer programs and standards: (a) *Advanced Product Quality Planning (APQP)*; (b) *supplier performance evaluations*; and (c) *minority business expectations*. In the event of a discrepancy or conflict between any part of the above programs or standards and an express provision of these Terms, these Terms will control.

**11. Service and Replacement Parts.** During the term of the Order and for five years thereafter (unless a shorter or longer period is agreed in writing by the parties or stated in Buyer's applicable Statement of Work, Seller will supply Buyer's written "service parts" orders with Supplies, component parts and materials that are the same as the Supplies, component parts and materials that Buyer purchases under the Order, at the price(s) set forth in the Order plus any actual cost differential for special packaging. If the Supplies are systems or modules, Seller will sell each component or part at a price that does not, in the aggregate, exceed the system or module price specified in the Order, less assembly costs, plus any actual cost differential for packaging. In addition, from five years after expiration or termination of the Order and continuing for an additional ten years (or a different period if stated in a signed Statement of Work, Seller will sell Supplies to Buyer in order to fulfill Buyer's past model service and replacement parts requirements, at price(s) based on the most recent price(s) under the Order, taking into account actual, documented differences in the cost of materials, packaging, and costs of production after the current model purchases have been completed, as mutually and reasonably agreed by the parties. At Buyer's request, Seller will make service literature and other materials available at no additional charge to support Buyer's service part sales activities.

**12. Remedies.** The rights and remedies reserved to Buyer in the Order will be cumulative with and in addition to all other or legal or equitable remedies. At Buyer's request, Seller will reimburse Buyer for any incidental or consequential damages caused by nonconforming Supplies, including without limitation costs, expenses and losses incurred directly or indirectly by Buyer or its customer(s) (a) for inspecting, sorting, repairing or replacing the nonconforming Supplies; (b) resulting from production interruptions; (c) for conducting recall campaigns or other corrective service actions; or (d) resulting from personal injury (including death) or property damage caused by the nonconforming Supplies. Consequential damages include reasonable professional fees incurred by Buyer. If requested by Buyer, Seller will enter into a separate agreement for the administration or processing of warranty charge-backs for nonconforming Supplies, and will participate in and comply with warranty reduction or related programs as directed by Buyer that relate to the Supplies. In the event that Supplies are discovered to be defective or nonconforming, during or after assembly with Buyer's components, and Buyer's customer will not permit disassembly of the components and/or use of the disassembled, conforming Supplies or components, Seller shall reimburse Buyer for the full cost of Buyer's products rejected by Buyer's customer under such circumstances. In any action brought by Buyer to enforce Seller's obligation to produce and deliver Supplies under the Order, the parties agree that Buyer does not have an adequate remedy at law, and Buyer is entitled to specific performance of Seller's obligations under the Order.

**13. Compliance with Laws; Ethics.** Seller, and any Supplies supplied by Seller, will comply with all applicable laws, including rules, regulations, orders, conventions, ordinances and standards, that relate to



**KOLBENSCHMIDT**  
**PISTONS**

the manufacture, labeling, transport, import, export, licensing, approval or certification of the Supplies, including laws relating to environmental matters, data protection and privacy, hiring, wages, hours and conditions of employment, subcontractor selection, discrimination, occupational health or safety and motor vehicle safety. By way of illustration and not limitation, for compliance with Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Seller shall supply all certifications and information relating to “Conflict Minerals” (as defined in the Act) in such form and at such time as requested by Buyer or its Customer. Seller is required to comply with all Buyer policies relating to compliance with legal, regulatory and social obligations, including by way of example and not limitation, Buyer’s Conflict Minerals policy (which may be amended from time to time). Seller shall also contractually require its supply base (and its suppliers’ supply base) to comply with all obligations under this paragraph. The Order incorporates by reference all clauses required by these laws. All materials used by Seller in the Supplies or in their manufacture will satisfy current governmental and safety constraints on restricted, toxic and hazardous materials as well as environmental, electrical and electromagnetic considerations that apply to the country of manufacture, sale or destination. At Buyer’s request, Seller will certify in writing its compliance with the foregoing. Seller will indemnify and hold Buyer harmless from and against any liability, claims, demands or expenses (including, without limitation, legal or other professional fees) arising from or relating to Seller’s noncompliance.

**14. Customer Requirements.** As directed by Buyer in writing, Seller agrees to comply with the applicable terms of any agreements, including, without limitation, quality terms and conditions, between Buyer and its customer(s) to which Buyer provides the Supplies (as incorporated into products supplied to such customer(s)). Buyer may, in its discretion, provide Seller with information regarding purchase orders from its customer(s). Seller will be responsible for ascertaining how such customer purchase order information affects Seller’s obligations under the Order, and Seller will meet all such disclosed customer terms to the extent within Seller’s control. By written notice to Seller, Buyer may elect to have the provisions of this Section prevail over any conflicting term between the Buyer and Seller.

**15. Indemnification.** To the fullest extent permitted by law, Seller will defend, indemnify and hold harmless Buyer, Buyer’s customers (both direct and indirect, including manufacturers of vehicles in which Supplies are incorporated), and dealers and users of the products sold by Buyer (or the vehicles in which they are incorporated) and all of their respective agents, successors and assigns, against all damages, losses, claims, liabilities and expenses (including reasonable attorneys’ and other professional fees, settlements and judgments) arising out of or resulting from any defective Supplies, or from any negligent or wrongful act or omission of Seller or Seller’s agents, employees or subcontractors, or any breach or failure by Seller to comply with any of Seller’s representations or other terms and conditions of an Order (including any part of these Terms). If Seller performs any work on Buyer’s or Buyer’s customer’s premises or utilizes the property of Buyer or Buyer’s customer, whether on or off Buyer’s or Buyer’s customer’s premises: (a) Seller will examine the premises to determine whether they are safe for the requested services and will advise Buyer promptly of any situation it deems to be unsafe; (b) Seller’s employees, contractors, and agents will comply with all regulations that apply to the premises and may be removed from Buyer’s premises at Buyer’s discretion; (c) Seller’s employees, contractors, and agents will not possess, use, sell, transfer or be under the influence of alcohol or unauthorized, illegal, or controlled drugs or substances on the premises; and (d) to the fullest extent permitted by law, Seller will indemnify and hold Buyer and Buyer’s customer, and their respective agents, successors and assigns, harmless from and against any liability, claims, demands or expenses (including reasonable attorneys’ and other professional fees, settlements and judgments) for damages to the property of or personal injuries to Buyer, its customer, their respective



**KOLBENSCHMIDT**  
**PISTONS**

agents, or any other person or entity to the extent arising from or in connection with Seller's work on the premises or Seller's use of Buyer's or Buyer's customer's property, except to the extent caused by Buyer's gross negligence.

16. **Insurance.** Seller will maintain insurance coverage for the Supplies in amounts as may be reasonably requested by Buyer or (to the extent directed by Buyer) Buyer's customer(s), in each case naming Buyer and its affiliates and customer(s) as "additional insured" as requested by Buyer. Prior to commencing work on Buyer's premises or utilizing Buyer's property, Seller will maintain and upon request furnish to Buyer a certificate evidencing (1) general liability insurance with coverage limits reasonably acceptable to Buyer (but not less than \$1,000,000 for property damage and \$5,000,000 for personal injury) and naming Buyer as an additional insured, (2) all risk property perils insurance covering the full replacement value of Buyer's property while in Seller's care, custody, or control and naming Buyer as loss payee, and (3) worker's compensation insurance as required by applicable law.

Seller will furnish to Buyer a certificate showing compliance with this requirement or certified copies of all insurance policies within 10 days of Buyer's written request. The certificate will provide that Buyer (and, if applicable, Buyer's customers) will receive 30 days prior written notice from the insurer of any termination or reduction in the amount or scope of coverage. The existence of insurance does not release Seller of its obligations or liabilities under the Order.

17. **Insolvency.** The Order may be terminated immediately by Buyer without liability to Seller if any of the following or comparable events occur, and Seller will reimburse Buyer for all costs incurred by Buyer in connection with any of the following, including without limitation attorneys' and other professional fees: (a) Seller becomes insolvent; (b) Seller files a voluntary petition in bankruptcy; (c) an involuntary petition in bankruptcy is filed against Seller; (d) a receiver or trustee is appointed for Seller; (e) Seller needs accommodations from Buyer, financial or otherwise, in order to meet its obligations under the Order; or (f) Seller executes an assignment for the benefit of creditors.

18. **Termination for Breach or Nonperformance.** Buyer reserves the right to terminate all or any part of the Order, without liability to Seller, if Seller: (a) repudiates, breaches or threatens to breach any of the terms of the Order; (b) fails or threatens not to deliver Supplies or perform services in connection with the Order; (c) fails to make progress or to meet quality requirements so as to endanger timely and proper completion or delivery of Supplies and does not correct the failure or breach within 10 days (or such shorter period of time if commercially reasonable under the circumstances) after receipt of written notice from Buyer specifying the failure or breach; or (d) enters or offers to enter into a transaction that includes a sale of a substantial portion of its assets used for the production of Supplies for Buyer or a merger, sale or exchange of stock or other equity interests that would result in a change in control of Seller. Seller will notify Buyer within ten days after entering into any negotiations that could lead to the situation specified in subsection (d) above, provided that upon Seller's request, Buyer will enter into an appropriate nondisclosure agreement related to information disclosed to Buyer in relation to such transaction.

19. **Termination.** In addition to any other rights of Buyer to cancel or terminate the Order, Buyer may, at its option, immediately terminate all or any part of the Order at any time and for any reason by giving written notice (electronic or otherwise) to Seller. Upon receipt of notice of termination, and unless otherwise directed by Buyer, Seller will: (a) promptly terminate all work under the Order; (b) transfer title and deliver to Buyer the finished Supplies, the work in process, and the parts and materials that Seller reasonably produced or acquired according to quantities ordered by Buyer and that Seller cannot use in producing



**KOLBENSCHMIDT**  
**PISTONS**

goods for itself or for others; (c) verify and settle any claims by subcontractors for actual costs incurred directly as a result of the termination and ensure the recovery of materials in subcontractors' possession; (d) take actions reasonably necessary to protect property in Seller's possession in which Buyer has an interest until disposal instruction from Buyer has been received; and (e) upon Buyer's reasonable request, cooperate with Buyer in transferring the production of Supplies to a different supplier. Upon termination by Buyer under this Section, Buyer will be obligated to pay only the following: (i) the Order price for all finished Supplies in the quantities ordered by Buyer that conform to the Order; (ii) Seller's reasonable actual cost of work-in process and the parts and materials transferred to Buyer under part (b) above; (iii) Seller's reasonable actual costs of settling claims regarding its obligations to its subcontractors to the extent directly caused by the termination; and (iv) Seller's reasonable actual cost of carrying out its obligation under subsection (d). Notwithstanding any other provision, Buyer will have no obligation for and will not be required to pay 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, tooling, facilities and equipment rearrangement costs or rental, unamortized capital or depreciation costs, finished goods, work-in-process or raw materials that Seller fabricates or procures in amounts exceeding those authorized in the Material Releases, or general administrative burden charges from termination of the Order, except as otherwise expressly agreed in a separate Order issued by Buyer. Buyer's obligation upon termination under this Section will not exceed the obligation Buyer would have had to Seller in the absence of termination. Seller will furnish to Buyer, within one month after the date of termination (or such shorter period as may be required by Buyer's customer), its termination claim, which will consist exclusively of the items of Buyer's obligation to Seller that are expressly permitted by this Section. Buyer may audit Seller's records before or after payment to verify amounts requested in Seller's termination claim. Buyer will have no obligation for payment to Seller under this Section if Buyer terminates the Order or portion thereof because of a default or breach by Seller. If Buyer's customer requires Buyer to subcontract all or a portion of its duties or obligations to a designated Seller or subcontractor, the designated Seller or subcontractor is responsible for a breach of Buyer's contract with the customer caused by the designated Seller's or subcontractor's failure to meet its warranty, delivery, pricing or other contractual obligations to Buyer's customer or to Buyer.

**20. Force Majeure.** Any delay or failure of either party to perform its obligations will be excused if and to the extent that it is caused by an event or occurrence beyond the reasonable control of the party and without its fault or negligence, such as: acts of God; restrictions, prohibitions, priorities or allocations imposed or actions taken by a governmental authority; embargoes; fires; explosions; natural disasters; riots; wars; terrorism, sabotage; inability to obtain power; or court injunction or order. As soon as possible (but no more than one full business day) after the occurrence, Seller will provide written notice describing such delay and assuring Buyer of the anticipated duration of the delay and the time that the delay will be cured. During the delay or failure to perform by Seller, Buyer, at its option: (a) may purchase Supplies from other sources and reduce its schedules to Seller by such quantities, without liability to Seller; (b) may ask Seller to deliver to Buyer at Buyer's expense all finished goods, work in process and parts and materials produced or acquired for work under the Order; or (c) have Seller provide Supplies from other sources in quantities and at a time requested by Buyer and at the price set forth in the Order. In addition, Seller at its expense will take all necessary actions to ensure the supply of Supplies to Buyer for a period of at least 30 days during any anticipated labor disruption or resulting from the expiration of Seller's labor contracts.

**21. Technical Information Disclosed to Buyer.** Seller agrees not to assert any claim against Buyer, Buyer's customers, or their respective suppliers, with respect to any technical information that Seller has





**KOLBENSCHMIDT**  
**PISTONS**

disclosed or may disclose to Buyer in connection with the Supplies covered by the Order, except to the extent expressly covered by a separate written confidentiality and/or license agreement signed by Buyer or by a valid patent expressly disclosed to Buyer prior to or at the time of the Order.

**22. Proprietary Rights.** Seller agrees: (a) to defend, hold harmless and indemnify Buyer, its successors and customers against claims of direct or contributory infringement or inducement to infringe any proprietary right (including any patent, trademark, copyright, moral, industrial design right or misuse or misappropriation of trade secret) and against any resulting damages or expenses, including attorneys' and other professional fees, settlements and judgments, arising in any way in relation to Supplies procured or provided by Seller (including without limitation their manufacture, purchase, use and/or sale), including such claims where Seller has provided only part of Supplies, and Seller expressly waives any claim against Buyer that such infringement arose out of compliance with Buyer's specification, except to the extent such infringement is actually embodied in designs created by Buyer and provided in writing to Seller; (b) to waive any claim against Buyer, including any hold-harmless or similar claim, in any way related to a third party claim asserted against Seller or Buyer for infringement of any proprietary right (including any patent, trademark, copyright, moral, industrial design right or misuse or misappropriation of trade secret); (c) that Buyer and its subcontractors and direct or indirect customers have the worldwide, irrevocable right to repair, reconstruct or rebuild, and to have repaired, reconstructed or rebuilt, Supplies delivered under the Order without payment of any royalty or other compensation to Seller; (d) that manufactured parts based on Buyer's designs, drawings or specifications may not be used for Seller's own use or sold to third parties without Buyer's express written consent; (e) to assign to Buyer each invention, discovery or improvement (whether or not patentable) that is conceived or first reduced to practice by Seller, or by any person employed by or working under the direction of Seller, in the performance of the Order; (f) to promptly disclose in an acceptable form to Buyer all such inventions, discoveries or improvements and to cause its employees to sign any papers necessary to enable Buyer to obtain title to and to file applications for patents throughout the world; and (g) to the extent that the Order is issued for the creation of copyrightable works, that the works will be considered "works made for hire," and to the extent that the works do not qualify as such, to assign to Buyer upon delivery thereof all right, title and interest in all copyrights and moral rights therein. Except as expressly agreed by Buyer in a signed writing, all Supplies or other deliverables provided under the Order (including without limitation computer programs, technical specifications, documentation and manuals) will be original to Seller and will not incorporate any intellectual property rights (including copyright, patent, trade secret or trademark rights) of any third party. Except as expressly agreed by Buyer in a signed writing, all Supplies or other deliverables provided under the Order, and all related intellectual property rights, are owned solely by Buyer. Seller will ensure that the terms of its contracts with its subcontractors and employees are consistent with the terms of this Section. At no additional cost, Seller will grant Buyer a license to use any intellectual property owned by Seller that is necessary or incident to the reasonably intended use or application of the Supplies.

**23. Buyer's Property.** All tooling (including fixtures, gauges, jigs, patterns, castings, cavity dies and molds, with all related appurtenances, accessions, and accessories), packaging and all documents, standards or specifications, trade secrets, proprietary information and other materials and items furnished by Buyer, either directly or indirectly to Seller to perform the Order or for which Seller is reimbursed by Buyer (collectively, "Buyer's Property"), will remain Buyer's property. Buyer's Property will be held by Seller or by a third party, to the extent that Seller has transferred possession of Buyer's Property to a third party, on a bailment basis as a bailee-at-will. Seller bears the risk of loss of and damage to Buyer's Property. Buyer's Property will be housed, maintained, repaired and replaced by Seller at Seller's expense in good



**KOLBENSCHMIDT**  
**PISTONS**

working condition capable of producing Supplies meeting all applicable specifications, will not be used by Seller for any purpose other than the performance of the Order, will be deemed personal property, will be conspicuously marked by Seller as the property of Buyer, will not be commingled with the property of Seller or with that of a third person, and will not be moved from Seller's premises without Buyer's prior written approval. Seller will insure Buyer's Property with full fire and extended coverage insurance for its replacement value. Seller may not release or dispose of Buyer's Property to any third party without the express written permission of Buyer. Buyer will have the right to enter Seller's premises to inspect Buyer's Property and Seller's records regarding Buyer's Property. Only Buyer (or Buyer's affiliates) has any right, title or interest in Buyer's Property, except for Seller's limited right, subject to Buyer's sole discretion, to use Buyer's Property in the manufacture of Supplies. Buyer and its affiliates have the right to take immediate possession of Buyer's Property at any time without payment of any kind. Seller agrees to cooperate with Buyer if Buyer elects to take possession of Buyer's Property. Effective immediately upon written notice to Seller, without further notice or legal action, Buyer has the right to enter the premises of Seller and take possession of all of Buyer's Property. Seller expressly waives any right to additional notice or process and agrees to provide Buyer or its nominee(s) with immediate access to Buyer's Property. Seller grants to Buyer a limited and irrevocable power of attorney, coupled with an interest, to execute and record on Seller's behalf any notice financing statements with respect to Buyer's Property that Buyer determines are reasonably necessary to reflect Buyer's interest in Buyer's Property. At Buyer's request, Buyer's Property will be immediately released to Buyer or delivered by Seller to Buyer either (i) F.O.B. (F.C.A. for international shipments) transport equipment at Seller's plant, properly packed and marked in accordance with the requirements of Buyer's selected carrier, or (ii) to any location designated by Buyer, in which case Buyer will pay Seller the reasonable costs of delivery. Seller waives, to the extent permitted by law, any lien or other rights that Seller might otherwise have on any of Buyer's Property.

**24. Seller's Property.** Seller, at its expense, will furnish, keep in good working condition capable of producing Supplies meeting all applicable specifications, and replace when necessary, all machinery, equipment, tools, jigs, dies, gauges, fixtures, molds, patterns and other items that are not Buyer's Property and that are necessary for the production of Supplies ("Seller's Property"). Seller will insure Seller's Property with full fire and extended coverage insurance for its replacement value. If Seller uses Seller's Property to produce goods or services similar to Supplies for other customers, including aftermarket customers, such goods or services will not incorporate any of Buyer's logos, trademarks, trade names or part numbers. Seller will not disclose or imply in its marketing efforts that such goods or services are equivalent to those purchased by Buyer. Seller grants to Buyer an irrevocable option to take possession of and title to Seller's Property that is special for the production of Supplies under the Order upon payment to Seller of its net book value less any amounts that Buyer has previously paid to Seller for the cost of such items. This option does not apply if Seller's Property is used to produce goods that are the standard stock of Seller or if a substantial quantities of like goods are being sold by Seller to others.

**25. Tooling; Property...** This Section applies only to orders for tooling. Buyer will have access to Seller's premises, prior and subsequent to payment, to inspect work performed and to verify charges submitted by Seller against the Order or amendment. The price set forth in the Order or amendment will be adjusted so as to credit Buyer in the amount, if any, by which the price exceeds Seller's actual cost as verified. Seller further agrees to retain all cost records for the period that the part is in regular and service production or for two years after receiving final payment of the charges whichever is longer. All tools are to be made to Buyer's specifications (or, where directed by Buyer, those of Buyer's customer). Any exception to such specifications must be stated in writing on the Order or otherwise in a signed writing by Buyer. To the



**KOLBENSCHMIDT**  
**PISTONS**

extent the Order expressly states that it is for “tooling” and unless otherwise stated in the Order, freight terms are F.O.B. Origin, Freight Collect; and Seller should not prepay or add freight charges. Payment for tooling is subject to the terms in Section 8 above.

#### **25.1 Buyer's Property.**

(a) Buyer will own the tooling, jigs, dies, gauges, fixtures, molds, patterns, supplies, materials and other equipment and property used by Seller to manufacture, store and transport Products or provide Services (“**Property**”) if (1) the Property is so designated in the Contract, or (2) Buyer or its customer has provided or paid for the Property (“**Buyer's Property**”). Seller will assign to Buyer contract rights or claims in which Seller has an interest with respect to Buyer's Property and execute bills of sale, financing statements or other documents reasonably requested by Buyer to evidence its or its customer's ownership of Buyer's Property. Seller will indemnify and defend Buyer against claims or liens adverse to Buyer's or its customer's ownership of Buyer's Property except those that result from the acts or omissions of Buyer or its customer. Seller will hold Buyer's Property on a bailment basis and will be responsible for loss or damage to Buyer's Property while in its possession or control. To the extent permitted by law, Seller waives any lien or similar right it may have with respect to Buyer's Property. Buyer will be responsible for personal property taxes assessed against Buyer's Property. (b) Seller will (1) at its expense maintain Buyer's Property in good condition and repair, normal wear and tear excepted, throughout the useful life of Buyer's Property, (2) use Buyer's Property only for the manufacture, storage and transport of Products for Buyer unless Buyer otherwise approves in writing, (3) at Buyer's request and expense, mark Buyer's Property as belonging to Buyer or its customer, and (4) not remove Buyer's Property from Seller's premises without Buyer's written approval. All replacement parts, additions, improvements, and accessories to Buyer's Property will become part of Buyer's Property. (c) Buyer will pay for Buyer's Property that it is required to purchase at the lesser of (1) the amount specified in the Contract, or (2) Seller's actual cost of the Buyer's Property, if manufactured by a third party, or (3) Seller's actual cost of purchased materials, components and services plus Seller's actual cost of labor and overhead allocable to the Buyer's Property, if manufactured by Seller. Unless otherwise stated in the Contract, final payment for Buyer's Property is due (i) on the vehicle manufacturer's PPAP (Production Part Approval Process) approval date, or (ii) within 90 days after the Property is tendered for PPAP approval if no action has then been taken on the request for PPAP approval. (d) Seller will immediately return to Buyer upon request, and Buyer may retake immediate possession of, Buyer's Property and other property of Buyer or its customers at any time, with or without cause and without payment of any kind unless otherwise provided in the Contract. As requested by Buyer and at Buyer's expense, Seller will either (1) release the requested Property and other property to Buyer F.C.A. Seller's plant (Incoterms 2000), properly packed and marked in accordance with the requirements of Buyer's carrier, or (2) deliver the requested Property and other property to a location designated by Buyer. If the return or recovery of Buyer's Property or other property renders Seller unable to produce a Product, the return or recovery will be deemed a termination of the Contract with respect to that Product pursuant to **Section 12** or **13**, as applicable.

**25.2 Seller's Property.** Seller will own all Property that is not Buyer's Property (“**Seller's Property**”). Seller will at its expense furnish, maintain in good condition, and replace when necessary Seller's Property needed to perform the Contract. While a Contract for Products remains in effect, Buyer may purchase Seller's Property used to produce those Products, if no longer needed by Seller to produce Products or products for other customers, for a purchase price equal to the greater of fair market value or Seller's unamortized acquisition cost.



**KOLBENSCHMIDT**  
**PISTONS**

26. **Set-Off; Recoupment.** In addition to any right of setoff or recoupment provided by law, all amounts due to Seller will be considered net of indebtedness of Seller and its affiliates or subsidiaries to Buyer and its affiliates or subsidiaries. Buyer will have the right to set off against or to recoup from any payment or other obligation owed to Seller, in whole or in part, any amounts due to Buyer or its affiliates or subsidiaries from Seller or its affiliates or subsidiaries. Buyer will provide Seller with a statement describing any offset or recoupment taken by Buyer.

27. **Confidentiality.** Seller acknowledges that proprietary and confidential information will be received from Buyer or developed for Buyer under the Order, regardless of whether such information is marked or identified as confidential. Seller agrees to keep all proprietary or confidential information of Buyer in strictest confidence, and further agrees not to disclose or permit disclosure to others, or use for other than the purpose of the Order, any proprietary and confidential information of Buyer. Following the expiration or termination of the Order, upon Buyer's request, Seller will promptly deliver to Buyer any and all documents and other media, including all copies thereof and in whatever form that contain or relate to Buyer's confidential or proprietary information. Seller's obligations under this Section will continue for a period of five (5) years from the date of disclosure of information covered by this Section, unless a longer period is specified in writing by Buyer. The restrictions and obligations of this Section will not apply to information that: (a) is already publicly known at the time of its disclosure by Buyer; (b) after disclosure by Buyer becomes publicly known through no fault of Seller; or (c) Seller can establish by written documentation was properly in its possession prior to disclosure by Buyer or was independently developed by Seller without use of or reference to Buyer's information. Notwithstanding anything to the contrary in these Terms, any confidentiality or non-disclosure agreement between the parties that predates the Order will remain in effect except as expressly modified by the Order, and to the extent of a conflict between the express terms of such an agreement and this Section, the terms of that agreement will control.

28. **No Publicity.** Seller will not advertise, publish or disclose to third parties (other than to Seller's professional advisors on a need-to-know basis) in any manner the fact that Seller has contracted to furnish Buyer the Supplies covered by the Order or the terms of the Order, or use any trademarks or trade names of Buyer in any press release, advertising or promotional materials, without first obtaining Buyer's written consent.

29. **Relationship of Parties.** Seller and Buyer are independent contracting parties and nothing in the Order will make either party the employee, agent or legal representative of the other for any purpose. The Order does not grant either party any authority to assume or to create any obligation on behalf of or in the name of the other. Seller will be solely responsible for all employment and income taxes, insurance premiums, charges and other expenses it incurs in connection with its performance of the Order, except as expressly provided in a written agreement signed by Buyer. All employees and agents of Seller or its respective contractors are employees or agents solely of Seller or such contractors, and not of Buyer, and are not entitled to employee benefits or other rights accorded to Buyer's employees. Buyer is not responsible for any obligation with respect to employees or agents of Seller or its contractors.

30. **Conflict of Interest.** Seller represents and warrants that its performance of the Order will not in any way conflict with any continuing interests or obligations of Seller or its employees or contractors. Seller further warrants that while the Order is in effect, Seller and those of its employees and contractors participating in the performance of the Order will refrain from any activities which could reasonably be



**KOLBENSCHMIDT**  
**PISTONS**

expected to present a conflict of interest with respect to Seller's relationship with Buyer or its performance of the Order.

**31. Non-Assignment.** Seller may not assign or delegate its obligations under the Order without Buyer's prior written consent. In the event of any approved assignment or delegation authorized by Buyer, Seller retains all responsibility for Supplies, including all related warranties and claims, unless otherwise expressly agreed in writing by Buyer.

**32. Sales Tax Exemption.** Buyer certifies that Supplies purchased under the Order and identified as industrial processing are eligible for state and federal sales tax exemption under the federal identification number indicated in the Order or otherwise provided by Buyer.

**33. Governing Law; Arbitration; Jurisdiction.** The Order is to be construed according to the laws of the State of Wisconsin and the United States of America, excluding the provisions of the United Nations Convention on Contracts for the International Sale of Goods and any conflict-of-laws provisions that would require application of another choice of law. The arbitration provisions of this Section will be governed by the United States Federal Arbitration Act. Any dispute regarding the Supplies, the Order, the validity of the Order or any of these Terms, or any other matter between the parties (other than requests for injunctive relief) will be resolved by binding arbitration, conducted in the English language using a single arbitrator selected by the parties, under the commercial arbitration rules of the American Arbitration Association (AAA) and under Rules 26 through 37 of the U.S. Federal Rules of Civil Procedure, in a location agreed by the parties. If the parties cannot agree on a location within 30 days of either party's written request for arbitration, the arbitration will be conducted in metropolitan Detroit, Michigan and if the parties cannot agree on an arbitrator within 30 days of the selection of the arbitration location, each party will select a person from the AAA-approved commercial arbitrator list and those two people will jointly select a third person from such list who will conduct the arbitration as the sole arbitrator. The arbitrator will issue written findings of fact and conclusions of law, and may award attorneys' fees and costs to the substantially prevailing party. In no event will any party be awarded punitive or exemplary damages. The award of the arbitrator will be enforceable in any court of competent jurisdiction, provided that either party may appeal to the state or federal court, as applicable, closest to Marinette, Wisconsin, for correction of any clear error of fact or law by the arbitrator (provided that the appealing party must first post an appropriate bond and that the prevailing party in any such action will be entitled to its attorneys' fees and costs). Any request for injunctive relief may be brought by Buyer in any court(s) having jurisdiction over Seller or, at Buyer's option, in the state or federal court, as applicable, closest to Marinette, Wisconsin, in which event Seller consents to the jurisdiction of such court. Any request for injunctive relief against Buyer may be brought by Seller only in the court(s) having jurisdiction over the location of Buyer from which the Order issued.

**34. Language; Severability; No Implied Waiver.** The parties acknowledge that it is their wish that these terms and all documents relating thereto be in the English language only. If any term of the Order is invalid or unenforceable under any statute, regulation, ordinance, executive order or other rule of law, the term will be deemed reformed or deleted, as the case may be, but only to the extent necessary to comply with applicable law. The remaining provisions of the Order will remain in full force and effect. 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 performance at any later time, nor will the waiver of either party of a breach of



**KOLBENSCHMIDT**  
**PISTONS**

any provision of the Order constitute a waiver of any later breach of the same or other provision of the Order.

35. **Survival.** The obligations of Seller to Buyer survive termination of the Order, except as otherwise provided in the Order.

36. **Entire Agreement; Modifications.** Except as described in Section 1, the Order, together with the attachments, exhibits, supplements or other terms of Buyer specifically referenced therein, constitutes the entire agreement between Seller and Buyer with respect to the matters contained in the Order. The Order may only be modified by a written amendment executed by authorized representatives of each party or, for changes within the scope of Section 9 of these Terms, by a purchase order amendment issued by Buyer. Buyer may modify these Terms with respect to future Orders at any time. Such revised Terms will apply to all Orders issued thereafter.