

**HFI, LLC**  
**GENERAL TERMS AND CONDITIONS OF PURCHASE**

**1 SCOPE OF APPLICATION**

These General Terms and Conditions (“GTC”) shall apply to all Purchase Orders issued to Supplier pursuant to which HFI, LLC (“HFI” or “Buyer”) purchases Products and Services (collectively “Supplies”). The Supplies and Supplier are identified on the face of the Purchase Order. Products may be either production items used by HFI to produce components used in the manufacture of motor vehicles or “Equipment,” which includes tooling, fixtures, gauges, jigs, patterns, castings, cavity dies and molds, with all related software, appurtenances, accessions, and accessories. “Purchase Order” includes documents titled “Purchase Order” and any other document, however titled, that performs the same function, together with any associated Releases.

**2 CONTRACT**

**2.1 Contract.** The Contract consists of the following documents, in decreasing order of priority: (i) the Releases, (ii) the Purchase Order, (iii) these GTCs; and (iv) HFI’s supplier requirements that are posted to HFI’s website (collectively, “HFI Policies”). The HFI Policies are currently found at <https://www.hfi-inc.com/en/supplier-resources/>.

**2.2 Offer and Acceptance.** The Purchase Order issued by HFI is an offer by HFI to purchase the Supplies from Supplier on the terms of the Contract. Supplier acknowledges that neither a request for quotation or similar communication issued by HFI nor a quotation or similar document issued by Supplier is an offer. Acceptance is limited to acceptance of the HFI’s offer, without any additional or different terms. Any proposal for additional or different terms or any attempt whatsoever by Supplier to vary any of the terms (whether in Supplier’s quotation form, acknowledgement form, invoice or otherwise) shall be deemed material and is hereby objected to and rejected. Supplier accepts the Contract upon the earlier of its: (i) written acceptance; (ii) beginning work or performance; (iii) failure to reject the offer within ten (10) days of receipt; or (iv) submission of an invoice or shipping statement referencing or relating to the Supplies.

**2.3 Entire Agreement.** The Contract constitutes the entire agreement between the Parties and supersedes all prior, contemporaneous, express or implied written or verbal, representations and/or agreements.

**2.4 Amendments.** Amendments of the Contract must be in writing and must be validly signed by authorized representatives of the Parties.

**3 CHANGES TO THE SUPPLIES**

**3.1 Buyer Changes.** Buyer reserves the right to change the Supplies, including the Specifications. “Specifications” means engineering, package and installation drawings, specifications, testing protocols and results, documents, data and other information and requirements relating to the Supplies, whether issued by Buyer, Supplier, or jointly. If directed by Buyer, Supplier will promptly make any such change without regard to whether Buyer and Supplier have reached agreement on an adjustment of the price or other terms.

**3.2 Supplier Changes.** Supplier will not make any change to the Supplies except at Buyer's written instruction or with Buyer's written approval. If Supplier learns of a possible change to the Supplies that may reduce costs, improve quality, or otherwise be beneficial to Buyer, Supplier shall inform Buyer of the possible change.

**3.3 Impact on Cost.** If the Supplies are changed pursuant to this Section 3, Supplier may request a price adjustment, not to exceed the change in Supplier’s actual and reasonable costs incurred or to be incurred as a result of the change. Supplier’s request shall be submitted within thirty days of Buyer’s direction of a change and shall be supported by necessary documentation and analyses. The Buyer and the Supplier will negotiate in good faith on an equitable adjustment of price (up or down) or other relevant terms.

**4 EXPERTISE, NOTICES, WARNINGS**

**4.1 Expertise.** Supplier acknowledges and agrees that it has the requisite design, development, engineering, and manufacturing expertise and experience, and will use, and HFI is relying on, such expertise and experience, to design, develop, engineer, and manufacture Supplies that perform properly, safely, and adequately under all reasonably foreseeable conditions the Supplies could experience in their intended applications and uses. Supplier further acknowledges that it is aware of those intended applications and uses. As the expert in its field, Supplier shall be fully responsible for all technical decisions and shall be responsible for identifying to HFI any potential material issues in any Specifications. Customer means any entity to which Buyer, directly or indirectly, sells the

Supplies, or sells any goods or services into which the Supplies are incorporated, including any original equipment manufacturer and any upper tier supplier to an original equipment manufacturer. Any suggestions that are given or other acts of participation by HFI, except for changes directed pursuant to Section 3.1 are to be classified as advice or recommendations and shall not modify Supplier's obligation under this Section 4.1. Supplier shall independently assess such recommendations by HFI for plausibility, state of the art, technical discrepancies, substantive correctness and completeness and shall promptly inform HFI of such assessment.

4.2 **Notification.** Supplier shall promptly transmit to HFI all necessary information, instructions, advisories and warnings relating to the Supplies, including their quality or their safety, regardless of the skills and/or know-how of HFI. In particular, Supplier shall:

- 4.2.1 Provide HFI with all information and instructions that are necessary for the correct storage, packaging and use of the Supplies.
- 4.2.2 Ensure that the Specifications are complete and suitable for the intended use.
- 4.2.3 Inform HFI of any quality risks or other inadequacies of which it is aware with respect to the Supplies and promptly warn HFI if the Supplies are defective, particularly if such defect could endanger the safety of people or property; and
- 4.2.4 Propose measures to HFI to improve the quality, reduce the costs or otherwise improve the Supplies.

## 5 QUALITY ASSURANCE

5.1 **Quality Assurance.** Supplier shall maintain a quality assurance system in line with most recent standards of automotive technology, including without limitation IATF16949:2016 quality certification, OHSAS 18001 health and safety certification and ISO 14001 environmental certification including registration. Supplier will also comply with and participate in supplier quality and development programs of HFI and its Customers. HFI's quality and development programs, including the following HFI Policies: (i) HFI's Supplier Standards Manual (including all subsections and forms) (ii) Advanced Quality Planning (AQP) and Supplier Individual Development Plans (SIDP); (iii) supplier performance evaluations; and (iv) minority business expectations.

5.2 **PPAP.** Supplier shall meet the full requirements of industry Production Part Approval Processes (PPAP) as specified by HFI and (as applicable) Customers and agrees to present this information to HFI upon request, at the level requested. In the event of any discrepancy between any part of the above programs or standards and an express provision of these Terms, these Terms will control.

## 6 QUANTITIES; DURATION

6.1 **Requirements contract.** If the Contract does not specify a quantity, states zero, "requirements," "blanket," "per release" or similar term, HFI shall buy and Supplier shall sell 100 percent of HFI's requirements of the Supplies in order to meet HFI's Customer's demand. However, HFI may obtain Supplies from other suppliers for purposes of: (i) trial production, testing or similar purposes; and/or (ii) protecting against actual or potential shortages or disruptions in supply from Supplier, as determined in HFI's reasonable discretion.

6.2 **Releases.** Unless otherwise stated in the Contract, HFI will communicate the times, quantities and locations for delivery of the Supplies ("Delivery Requirements") through periodic releases, manifests, broadcasts or similar communications (collectively, "Releases.") Unless otherwise stated in the Contract, the Release period shall be limited to 4 Weeks and any information beyond four weeks is a Forecast, provided only for planning purposes. Buyer may require Supplier to participate in electronic data interchange or similar inventory management program, at Supplier expense, for notification of Releases, shipping confirmation and other information. Buyer may modify the Delivery Requirements at any time, without additional compensation to Supplier.

6.3 **Forecasts and estimates.** HFI or its Customer may provide Supplier with forecasts or estimates of delivery times, quantities and locations, estimated program length or other forward-looking information (collectively, "Forecasts"). . . All such information is subject to change from time to time and shall not be binding upon Buyer. Supplier understands that such information, like any other forward looking projections, are based on a number of economic and business factors, variables and assumptions, some or all of which may change over time, and may or may not be accurate at the time they were made or later. Supplier acknowledges that this risk, and possible reward, is an aspect of the automotive industry and that Supplier bears all risks with respect to such changes.

6.4 **Program life.** Unless otherwise stated in the Contract, and subject to Section 18.4, the term of the Contract shall be for the life of the subject vehicle program, which can be extended, suspended/resumed, or shortened from time to time by HFI's Customer.

## 7 DELIVERY TERMS

**7.1 Delivery.** Unless otherwise designated in the Purchase Order, delivery of the Supplies shall be made FCA (as that term is defined in Incoterms 2020 Edition). HFI's facility and all transportation, freight and delivery charges shall be at Supplier's expense. No charge shall be made for insurance, storage, parking or detention except as stated in the Contract.

**7.2 Conforming Delivery.** The Delivery Requirements are of the essence and Supplier agrees to 100% on-time and conforming delivery. Supplier is responsible for obtaining and maintaining at its risk and expense all Inputs and other resources and for manufacturing Supplies necessary to meet Buyer's Delivery Requirements. If Supplier is unable to satisfy any Delivery Requirement, then Supplier will immediately notify HFI. If Supplier, for any reason, does not comply with Buyer's Delivery Requirements, HFI may charge Supplier a standard administrative fee for non-conforming deliveries, in an amount reasonably determined by HFI. The administrative fee is neither a penalty nor liquidated damages. Performance or delivery of the Supplies in advance of the date communicated by HFI shall require the prior written approval of HFI.

**7.3 Packaging.** Supplier shall store, pack, mark and ship the Supplies in a reasonable manner, such that the Supplies are not damaged and, if packaging instructions are communicated by HFI, also in strict accordance with the instructions provided by HFI, and in conformity with HFI's Supplier Logistics Manual, Label Quality Procedure and other HFI Policies.

**8 SERVICE AND REPLACEMENT PARTS.** During the vehicle production period and 15-year period thereafter, Supplier will sell Supplies to HFI to fulfil HFI's past model service and replacement parts requirements. Unless otherwise agreed to by HFI in writing, the price for Service Parts will be no greater than the price specified in the then current Purchase Order or, for the post-production period, the final production Purchase Order, adjusted up for costs that are unique to service parts, such as special packaging and kitting, and down for costs that are avoided with service parts, such as production packaging and any costs that are amortized over the production period, all as reasonably determined by HFI.

## 9 ACCEPTANCE

**9.1 Acceptance of Products.** Products are deemed accepted upon the earlier of: (i) payment by HFI; or (ii) HFI's shipment to its Customer of the Products or any goods into which they are incorporated. Until acceptance, HFI may reject non-conforming Products by written notice to Supplier. If HFI has accepted Products, it may revoke its acceptance at any time prior to the time that HFI has substantially changed the condition of the Supplies. Upon receiving notice of rejection or revocation, Supplier shall promptly refund to HFI any amounts previously paid for those Products. HFI may, but is not required to, inspect the Products at or following delivery, and failure to do so shall not waive or impair HFI's right to reject, revoke its acceptance, or assert any other right under the Contract or at law or equity arising out of the non-conformity. Supplier waives its right to notice of any non-conformity. Except as otherwise provided in the Contract, Supplier has no right to cure any non-conformity.

**9.2 Acceptance of Services.** Services shall be accepted by HFI only upon completion of performance, which shall occur only when HFI executes a written acknowledgement that the Services conform to the Contract, including mutually agreed acceptance criteria or, if no such criteria have been agreed upon, are reasonably satisfactory to HFI. If the Services are not acceptable, HFI may, at its option, and in addition to any other remedies, do one or more of the following: (i) reject the Services or, in HFI's discretion, any segregable portion of them, in which case Supplier shall refund to HFI any amounts paid for the rejected Services; (ii) allow Supplier to cure the non-conformities within a time determined by HFI and without additional compensation; (iii) have such nonconforming Services performed by a third party designated by HFI, at the sole expense of Supplier; or (iv) accept the non-conforming Services, with an equitable adjustment in the Price, as reasonably determined by HFI.

## 10 PRICE, INVOICING AND PAYMENT TERMS

**10.1 Price.** HFI shall pay the amount set forth in the Contract ("Price") for all accepted Supplies. The Price shall constitute lump-sum remuneration for the Supplies and covers all direct and indirect costs of Supplier associated with the provision of the Supplies, including shipping, packaging, transports, administration, tax and other customs duties, and quality controls. The Price shall be fixed and final for the duration of the Contract. Supplier acknowledges that it agreed to the Price knowing that direct and indirect costs, volumes, duration and any other factor may materially vary from those assumed or forecast or previously experienced by Supplier, HFI or its Customer, and that none of those variations shall entitle Supplier to a change in price or other adjustment, even if the Contract proves to be unprofitable or otherwise results in financial hardship. Supplier further acknowledges that the Price is a material inducement to HFI's award of business to Supplier and that HFI is relying on such Price to deliver the Supplies to its Customers.**Invoicing.** All Invoices must conform to Buyer's instructions as to form, content and method for submission. HFI may reject, return and withhold payment for Invoices that do not conform to the foregoing requirements. For shipments to or from Mexico, in accordance with the Value Added Tax Law ("VATL"), this tax must be stated expressly and separately from any other item, including the price.

**10.3 Payment.** Subject to Section 10.4, net invoices (subject to applicable withholding taxes, charge-backs and other matters, if any) for conforming Supplies shall be paid within 5 days of 60 days after the end of the month during which a conforming Invoice was received or for Equipment, in accordance with Section 15.2. Payment shall be deemed to occur upon transmittal of payment by Buyer. All payment shall be made in U.S. dollars unless otherwise agreed.

**10.4 Directed Supply.** If a Customer directed, recommended, requested, suggested or otherwise identified Supplier as the source from which HFI is to obtain the Supplies (“Direct Supply Relationship”), then notwithstanding anything to the contrary in the Contract: (1) in no event will Supplier have a right to receive payment from HFI for the Supplies except following, and in proportion to, HFI’s actual receipt of payment for those goods in which the specific Supplies are incorporated, and (2) any lengthening of applicable payment terms to HFI will automatically lengthen the payment terms as between HFI and Supplier by an identical amount of time, and HFI may, at its option and on notice to Supplier, otherwise revise its payment terms for Supplies to take into account any other change in the payment terms of HFI’s Customer(s) for the Supplies under the Contract; (3) within three business days of any change in price, Specifications or other terms negotiated or proposed between Supplier and Customer, Supplier will notify HFI in writing and will immediately adjust its invoices to reflect any price reduction, provided that no change will be binding on HFI without HFI’s specific written consent; (4) any debits claimed by Customer arising from or relating to the Supplies will be passed through HFI to Supplier; and (5) it shall agree to any commercially reasonable three-party directed supply agreement acceptable to HFI and its Customer, which agreement shall have priority over this Contract in the event of conflict.

**10.5 Set off.** In addition to any right of set-off or recoupment provided by law, all amounts due or to become due to Supplier from HFI shall be considered net of any amounts for which Buyer determines in good faith is an indebtedness of Supplier (and/or Supplier’s affiliates) to HFI (and/or HFI’s affiliates), and HFI may deduct or set-off at any time any such amount from any amounts due or to become due to Supplier (and/or Supplier’s affiliates) from HFI (and/or HFI’s affiliates).

## 11 WARRANTY

**11.1 Express Warranty.** Supplier represents and warrants that all Supplies:

- 11.1.1 conform to this Contract in all respects, including all Specifications;
- 11.1.2 be free from all defects in design (to the extent designed by Supplier), workmanship and materials and be of highest quality and workmanship;
- 11.1.3 be merchantable;
- 11.1.4 be selected, designed (to the extent designed by Supplier), manufactured and assembled by Supplier based upon Buyer’s stated use and be fit and sufficient for the purposes intended by Buyer.
- 11.1.5 Comply with all applicable Laws. Laws means Federal, State, local and foreign laws; codes; ordinances; rules, standards and regulations; Executive Orders; and all amendments thereto, including but not limited to, Laws regarding labor, health, safety, anti-corruption, anti-dumping, transportation and the environment, that are applicable to the manufacture, sale, delivery and use of the Supplies
- 11.1.6 for Services, Supplier further warrants that its work will be performed in a professional and workmanlike manner, consistent with all standards agreed on with Buyer, Specifications and industry standards.
- 11.1.7 Supplier also warrants that title to all Supplies shall be vested in HFI free and clear of any and all liens and encumbrances of any nature.

**11.2 Warranties Cumulative.** These warranties shall be in addition to all other warranties and conditions, express, implied, statutory or otherwise, available under Law and are not modified, waived or discharged by delivery, inspection, tests, acceptance or payment. Supplier waives any right to notice of breach.

**11.3 Warranty Period.** The warranty period is the longest of four years, the warranty period provided by applicable law, or the warranty period offered by Buyer or its Customer to end-users for the Supplies or products into which the Supplies are incorporated. All warranties of Supplier extend to future performance of the Supplies.

## 12 INDEMNITY

**12.1 Scope of Indemnity.** Supplier shall indemnify and hold harmless (together, “Indemnify”) HFI, its affiliates, Customers, and users of the Supplies or the vehicles in which they are incorporated, and each of their shareholders, directors, officers, employers and agents (collectively, “Indemnified Parties) harmless from all liability, damages and associated costs and expenses (collectively, “Losses”) resulting in whole or in part from:

- 12.1.1 noncompliance by Supplier with any of its representations, warranties or obligations under the Contract;
- 12.1.2 negligence or fault of the Supplier in connection with the Supplies.
- 12.1.3 any recall campaign, corrective service action, or other voluntary or involuntary action in which Buyer or any Customer participates with respect to the Supplies or products into which the Supplies are incorporated which is determined by HFI in its reasonable judgment to be attributable to the negligence or non-compliance of Supplier;
- 12.1.4 any spill, discharge or emission of hazardous wastes or substances which relates, in whole or in part, to the Supplies;
- 12.1.5 infringement (including claims of direct or contributory infringement or inducement to infringe) of any Intellectual Property Right relating to Supplies provided by Supplier, even if they are made to Buyer's Specifications;
- 12.1.6 damages to the property of or personal injuries to Buyer, its Customer, their respective agents, or any other person or entity to the extent arising from or in connection with Supplier's work on the premises or Supplier's use of Buyer's or Customer's Property.
- 12.1.7 challenge to Buyer's sole right, title and interest in the Equipment, or right to possession of the Equipment, brought by any third party, including toolmakers, subcontractors, and lending institutions.

## 12.2 Procedure and Participation.

- 12.2.1 Buyer shall promptly notify Supplier if it learns of any third party claim to which Section 12.1 applies (each a "Claim"), provided that failure to provide notice shall not relieve Supplier of its obligations under this Section 12.1 except to the extent that Supplier can demonstrate that it has been materially prejudiced as a result of such failure.
- 12.2.2 Supplier shall defend Buyer from any Claim unless Buyer, by written notice to Supplier, elects to itself defend the Claim, in each case, at Supplier's expense. . If Buyer so elects, Supplier shall fully cooperate with Buyer, at Supplier's expense, including in any investigation into the facts or circumstances surrounding such Claim, including responding to discovery requests, providing technical support and witnesses for deposition or trial, and otherwise fully cooperating in the defense and trial of the matter.
- 12.2.3 If Buyer does not elect to defend a Claim, then Buyer may at its option participate in the defense of any claim with its own counsel. Supplier shall not have the right to settle or compromise any Claim without Buyer's prior written consent, provided that Buyer may withhold consent only if a proposed settlement does not, in Buyer's reasonable judgment, imposes upon Buyer any obligation (except for the payment of money in exchange for an unconditional release) or in any way prejudices the rights of Buyer.

**12.3 Effect of Negligence.** To the maximum extent permitted by Law, Supplier's obligation under this Section 12 will apply even as to Losses caused in part by HFI's negligence, unless Losses resulted solely and directly from the negligence or willful misconduct of HFI.

## 13 FORCE MAJEURE

**13.1 Force majeure.** Supplier's failure to perform the Contract will be excused if it is prevented by reason of an event that is beyond its reasonable control and without its fault or negligence, such as: acts of God; restrictions, prohibitions, priorities or allocations imposed or actions taken by a governmental authority (whether valid or invalid); embargoes; floods, earthquakes, explosions; natural disasters; riots; wars; or sabotage, provided that Supplier shall, as soon as possible (but no more than one full business day) after becoming aware of the occurrence or that the occurrence is reasonably likely, provide written notice to HFI describing such delay, the causes thereof, remedial steps being taken to mitigate impact on HFI and its Customer, the anticipated duration of the delay and the time that the delay will be cured. Supplier's inability to perform as a result, or delays caused by, Supplier's insolvency or lack of financial resources, or a change in cost or availability of Inputs based on market conditions, supplier actions, or contract disputes or any labor strike or other labor disruption applicable to Supplier or any of its Subcontractors or suppliers, will not excuse Supplier's performance. This Section 13.1 is the sole basis on which performance may be excused based on the occurrence of unforeseen or unforeseeable events and supersedes any excuse under UCC 2-615 or any other statutory or common law theory.

**13.2 HFI options.** During the delay or failure to perform by Supplier, HFI may at its option: (a) purchase supplies from other sources and reduce its schedules to Supplier by such quantities, without liability to HFI; (b) require Supplier to deliver to HFI at HFI's expense all finished goods, work in process and Inputs produced or acquired for performance under the Contract; or (c) have Supplier provide supplies from other sources in quantities and at a time requested by HFI and at the price set forth in the Purchase Order. Supplier will cooperate with HFI in securing alternate supplies, providing requested information as to the event and duration, and in any investigation into whether an event is under Supplier's reasonable control or not. In addition, Supplier at its expense will take all necessary actions to ensure the supply of supplies to HFI for a period of at least 30 days during any anticipated labor disruption or resulting from the expiration of Supplier's labor contracts. If upon request of HFI, Supplier fails to provide within ten (10) days (or

such shorter period as HFI requires) adequate assurance that any delay will not exceed thirty (30) days, or if any delay lasts longer than thirty (30) days, HFI may terminate the Contract without liability and Supplier shall reimburse HFI for costs associated with the termination.

## 14 PROPERTY

**14.1 Buyer's Property.** Buyer's Property means all Supplies (including Equipment) owned by Buyer.

14.1.1 Except for Equipment, ownership of the Supplies shall pass to Buyer upon the earlier of: (i) delivery and acceptance of the Supplies at Buyer's plant; or (ii) payment by Buyer of all or part of the purchase price of identified Supplies

14.1.2 Buyer shall take ownership of Equipment for which Buyer has paid or promised to pay in accordance with Section 15.1 ("Buyer's Equipment") upon fabrication, whether fabricated by Supplier or a third party.

**14.2 Supplier's Property.** All Equipment and other items that are not Buyer's Property and that are used in the production of Supplies are Supplier's Property. Supplier at its own expense shall keep it in good working condition, house, maintain, repair and replace it and keep it fully insured. If Supplier uses Supplier'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, tradenames or part numbers.

## 15 EQUIPMENT

**15.1 Supplier Purchase.** Supplier shall not purchase any Equipment for the account of Buyer or charge Buyer for any Equipment except as authorized in a Purchase Order.

**15.2 Compensation.** If Buyer has agreed to compensate Supplier for Equipment, then:

15.2.1 The price for Equipment set forth in the Purchase Order will be adjusted to credit Buyer in the amount, if any, by which the price exceeds Supplier's actual cost as verified. Supplier will retain all cost records for a period of two years after receiving final payment of the charges. Supplier will provide to Buyer, as requested, access to Supplier's premises and all documentation relating to the Equipment prior and subsequent to payment, to inspect work performed and to verify charges submitted by Supplier.

15.2.2 The Supplier shall be entitled to receive payment only after Equipment is completed, including completion of PPAP, sample submission and all other required testing and submission of all necessary documentation. Supplier shall be entitled to receive payment only after and to the extent of, and in proportion to, Buyer's actual receipt of such reimbursement or other payment from the Customer.

15.2.3 Payment terms shall be 90 days after PPAP approval.

15.2.4 Supplier's obligations under this Section 15 are not conditioned upon payment for the Equipment.

**15.3 Equipment Requirements.** Equipment shall: (i) comply with any Specifications; (ii) be capable of producing Supplies that satisfy the Contract, including meeting any volume requirements or estimates provided to Supplier during the life of the product as well as satisfying the requirements for Service Parts. Time is of the essence for Supplier's acquisition or fabrication of Equipment. Supplier shall provide Equipment progress reports on Buyer's request and shall promptly notify Buyer in writing if it believes that the Equipment might not be completed by the completion date specified on the Purchase Order.

**15.4 Toolmakers.** If all or part of the fabrication, modification, repair or refurbishment of Equipment will be subcontracted to a third-party toolmaker, the Supplier will: (a) give Buyer advance written notice of the identity of the toolmaker and the location of the Equipment; (b) inform the toolmaker in writing that it is a bailee-at-will, through the Supplier, of Equipment owned by Buyer; and (c) be solely responsible for payments to the toolmaker. Buyer has no obligation to the Supplier or subcontractor other than payment to the Supplier of the Order price. If a subcontractor brings an action against the Supplier for payment of the Equipment, the Supplier will not join Buyer in the action.

**15.5 Identification.** Prior to Supplier's first production shipment, Supplier must submit to HFI in writing a listing of the Identification Numbers for all Equipment detailed descriptions and locations for each item with an Identification Number, tooling biographies and confirmation that each is properly marked as detailed above.

**15.6 Supplier in Possession.** If Supplier (which includes its suppliers, contractors or agents) has custody or control of Buyer's Equipment:

- 15.6.1 Supplier shall have only temporary possession as a bailee at will. Supplier may not release, relocate or dispose of Buyer's Equipment to any third party without the express written permission of Buyer. Supplier shall promptly notify Buyer of the location of Buyer's Equipment if located at any place other than Supplier's facility.
- 15.6.2 Supplier's only right, title or interest in Buyer's Equipment is the limited right, subject to Buyer's sole discretion, to use Buyer's Equipment in the manufacture of Supplies for Buyer.
- 15.6.3 It shall be held at Supplier's risk, shall be kept insured by Supplier, at Supplier's expense, against loss or damage in amounts equal to its full replacement value.
- 15.6.4 Immediately upon Buyer's request or upon any bankruptcy or insolvency filing, and without payment of any kind, the Supplier will return Buyer's Equipment, and will comply with Buyer's instructions relating to its return, including but not limited to the method and location for its return. In which event Supplier shall prepare the Equipment for shipment and shall deliver it to HFI in accordance with HFI instructions. Supplier is responsible for labor and other costs incidental to its return. The Supplier will cooperate with Buyer and will provide Buyer with access to all facilities at which Buyer's Equipment is located. Supplier expressly waives any right to additional notice or process relating to Buyer's exercise of its rights under this Section 15.6.3.
- 15.6.5 Upon the completion or termination of the Contract, all Equipment shall be retained by Supplier, at Supplier's expense, until disposition directions are received from HFI.
- 15.6.6 Where permitted by Law, Supplier hereby waives any possession rights, lien rights, requirements for the posting of bond or other surety, or other rights that Supplier might otherwise have in any of such Equipment or other of HFI's property for work performed on such Equipment, goods manufactured with such Equipment or otherwise.

**15.7 Subcontracting.** If the Supplier intends to locate Equipment on a subcontractor's premises, Supplier will: be solely responsible for payments to the subcontractor. Supplier shall ensure that its suppliers, contractors or agents are contractually obligated to comply with all of Supplier's obligations with respect to Buyer's Equipment.

**15.8 Condition and treatment of Equipment.** Supplier shall, at Supplier's expense, maintain all Equipment in at least as good condition and repair as when originally received by Supplier, reasonable wear and tear excepted, and shall, if and as necessary, replace any items that are used, worn, damaged or destroyed. HFI does not provide any representations, assurances, warranties or conditions whatsoever (and whether express, implied, statutory or otherwise) with respect to the Equipment.

**15.9 Option to Purchase.** HFI shall have the option at any time to purchase Equipment, including any and all molds, tools, tooling, dies, jigs, fixtures, and other equipment, used in the manufacture of Supplies for not already owned by HFI, at the then current book value, less any costs for repair or refurbishment.

## 16 INTELLECTUAL PROPERTY RIGHTS

### 16.1 Definitions.

- 16.1.1 "Intellectual Property Rights" means trademarks, trade dress, patents, copyrights, trade secrets, and industrial design rights. The Supplier may use the Intellectual Property Rights of the Buyer only in the production and supply of the Supplies to the Buyer.
- 16.1.2 "Background Intellectual Property Rights" means any Intellectual Property Rights of either Buyer or Supplier relating to the goods or services contracted (i) existing prior to the effective date of this Contract or prior to the date Buyer and Supplier began any technical cooperation relating to the goods or services contracted, whichever is earlier, or (ii) that each party acquires or develops after these dates but in a strictly independent manner and entirely outside of any work conducted under this Contract.
- 16.1.3 "Foreground Intellectual Property Rights" means any Intellectual Property Rights, except Background Intellectual Property Rights.
- 16.1.4 "Technical Information" means engineering, package and installation drawings, specifications, testing protocols and results, documents, data and other information relating to the Supplies.
- 16.1.5 "Inventions" means (i) any invention or any experimental, development or research activities, including engineering related thereto, whether or not patentable, (ii) any reduction to practice of any subject matter, application or discovery which could be patented or copyrighted, or (iii) any improvement in the design of the Supplies or any alternative or improved method of accomplishing the objectives of the Contract

**16.2 Ownership.** Background Intellectual Property. Buyer and Supplier will each retain ownership of their respective Background Intellectual Property Rights.

16.2.2 Foreground Intellectual Property. Buyer will own Foreground Intellectual Property.

16.2.3 Inventions. If Supplier, or any person employed by or working under the direction of Supplier, in the performance of the Contract conceives or first reduces to practice an Invention, it shall be owned by Buyer and be deemed confidential and proprietary property of Buyer, whether such Inventions or any portions thereof can be copyrighted or patented or not. Supplier shall immediately disclose all Inventions to Buyer and shall cooperate (and cause its employees to cooperate) in executing any documents and taking any other actions necessary or convenient to patent, copyright, assign to the Buyer or otherwise perfect or protect such Inventions for the benefit of Buyer. **Work for Hire** Any work of authorship created by Supplier or Supplier's employees under the Contract will be considered as a "work made for hire" and all copyrights for such works of authorship will belong to Buyer by operation of law. In the event that any work of authorship or portion thereof created by Supplier under a Purchase Order does not qualify as a "work made for hire," Supplier hereby assigns to Buyer all right, title, and interest in all copyrights and moral rights therein. If Supplier has failed to previously secure ownership of all copyrights in any such work of authorship or portion thereof, Supplier will obtain title and assign all copyrights and moral rights in such work to Buyer

**16.4 Use of Technical Information.** Supplier will provide Buyer and its Related Companies with Technical Information required by the Buyer to install, assemble, and otherwise use the Supplies.

**16.5 License.** Supplier hereby grants to Buyer, its subsidiaries and affiliates, and their respective successors and assigns, and Buyer hereby accepts, a non-exclusive, irrevocable, royalty-free, fully paid up worldwide license, including the right to sublicense to others in connection with providing the Supplies to Buyer or the Customer, under: (i) any Intellectual Property Rights owned or controlled by Supplier or its affiliates, and relating to the Supplies, to make, have made, repair, reconstruct, rebuild, relocate, use, sell and import the Supplies, and (ii) any works of authorship fixed in any tangible medium of expression (including drawings, prints, manuals and specifications) furnished by Supplier in the course of Supplier's activity under the Contract, to reproduce, distribute and display such works and to prepare derivative works based thereon, subject to the other provisions of under the Contract (all items in clauses (i) and (ii) above, collectively, "Supplier's Intellectual Property", and such license in respect thereof, the "License"). Supplier acknowledges and understands that the License shall be effective from the first date of delivery of the Supplies under the Contract and extend for so long as Buyer has contractual obligations to the Customer. The License is intended to be subject to 11 USC Section 365(n), as an executory agreement under which Buyer has license rights to Supplier's Intellectual Property and is supplementary to any other rights of Buyer under the Contract and any other agreement with Supplier.

**16.6 Exclusive Rights.** Supplier shall not manufacture or provide, or offer to manufacture or provide, any goods or services that are based in whole or in part upon Inventions, confidential or proprietary information of Buyer or intellectual property of Buyer, whether for its own purposes (other than to satisfy its obligations under the Contract), for the Customer or any other third parties, without Buyer's prior written consent.

**16.7 Warranty.** Supplier warrants that the Supplies and the sale and/or use thereof (before or after incorporation into products during manufacture) do not and will not infringe any Intellectual Property Rights.

**16.8 Subcontractors** Supplier will ensure that the terms of its contracts with its subcontractors and employees are consistent with the terms of this Section 16.

**16.9 Intellectual Property Rights of third parties** Without prejudice to HFI's right to terminate the Contract and right to damages, indemnity or any other remedy, should HFI be required to cease the use of all or part of the Inventions and/or Supplies, or reasonably conclude that ceasing use is prudent to mitigate the risk infringing the rights of any third party, Supplier undertakes to at its sole expense and at HFI's sole discretion, (i) obtain from the relevant third party a right of use for the Inventions and/or the Supplies for, HFI and/or the Customer; or (ii) subject to HFI's written approval, not to be unreasonably withheld, replace or modify the Supplies within a reasonable time period only to the extent necessary to cease any infringement of the third party's Intellectual Property Rights.

## 17 CONFIDENTIALITY

**17.1 Confidential information.** The Parties undertake to treat in a confidential manner any information of any nature whatsoever, in whatever form (including oral, written, magnetic or electronic form) in particular but not limited to any commercial and financial documents, technical details, data, Specifications, the Inventions, software, business plans, designs, studies, recommendations, Personal Data, know-how and other Intellectual and/or Industrial Property Rights, herein after the Confidential Information, of which they become aware as a result of the Contract. Confidential Information shall not encompass information that: (i) Can be shown by the disclosing party to be already in the public domain, or (ii) Had become accessible to the public other than through the Parties having failed in their contractual obligations, or (iii) Has been legally received from a third party who was completely at liberty to



disclose, or (iv) Has to be disclosed by of a statutory provision, a judgment or any other decision from a regulatory authority, provided, however, that the disclosing party has notified the non-disclosing party of such regulatory or judicial requirement and made best efforts to secure the confidential treatment by such authority therefor.

**17.2 Non-use.** Except as otherwise authorized under this Agreement, each of the Parties undertake not to use the other Party's Confidential Information for any other purpose than the performance of the Contract or to disclose or reveal in whole or in part, directly or indirectly, to any third party the Confidential Information, unless such disclosure is necessary for the performance of the Contract and has been approved by the other Party. In such a case, the Party which discloses Confidential Information shall ensure that such third party is bound by the same terms and obligations as set forth herein; and copy or reproduce in whole or in part the Confidential Information except when necessary for the performance of the Contract.

**17.3 Restrictions on tangible items.** Drawings, models, templates, samples, and similar objects may not be provided or made available to unauthorized third parties.

**17.4 No Publicity.** Supplier will not advertise, publish or disclose to any third party (other than to Supplier's professional advisors on a confidential and need-to-know basis) in any manner the fact that Supplier has contracted to furnish Buyer the Supplies covered by the Contract or any terms of the Contract (including prices), or use any trademarks or trade names of Buyer in any press release, advertising or promotional materials, without first obtaining Buyer's written consent. Supplier will not disclose or imply that any goods or services that it produces or supplies are equivalent to those supplied to Buyer.

**17.5 Non-disclosure agreements.** Notwithstanding the provisions of Section 17, if the Parties have concluded a separate confidentiality agreement, the provisions of the confidentiality agreement shall have priority over this Section 17.

## 18 DATA SECURITY

**18.1 Enterprise Cybersecurity.** Supplier must: (a) maintain reasonable, risk-based cybersecurity programs, supported by appropriate technical and operational measures including policies and procedures, to protect the confidentiality, integrity, and availability of Confidential Information, prevent disruption of the supply of goods, and respond in a timely and effective manner to any cybersecurity incident that may compromise any Confidential Information or disrupt supply of goods; (b) promptly, but no less than 48 hours subsequent to the Supplier's first knowledge of the incident, notify the Buyer of any attempted or actual unauthorized possession, access, use, or knowledge of the Buyer's Confidential Information by any person or entity that may become known or suspected by Supplier; (c) promptly furnish full details of the attempted or actual unauthorized possession, access, use, or knowledge; (d) assist the Buyer in investigating or preventing the recurrence of any attempted or actual unauthorized possession, access, use, or knowledge of Confidential Information; (e) adopt other reasonable cybersecurity measures identified by Buyer; and (f) upon request, at Supplier's expense, demonstrate compliance through a third-party audit or other reasonable measure agreed upon by the Buyer.

**18.2 Product Cybersecurity.** Supplier must maintain a reasonable, risk-based program, supported by appropriate technical and operational measures including policies and procedures, to ensure the cybersecurity of any Supplies that includes software, hardware, or other electrical components. Supplier's product cybersecurity program must provide for security by design, vulnerability management, governance, and any other elements identified by Buyer in a manner consistent with industry best practices, including but not limited to ISO/SAE 21434.

**18.3 Supply Chain Cybersecurity.** Supplier shall ensure its subcontractors are contractually bound to comply with the provisions of this Section 18.

**18.4 No Personal Data.** No Personal Data protected under applicable Law is or shall be disclosed or processed by either Party processed by Receiving Party on behalf of Disclosing Party.

## 19 TERMINATION

### 19.1 HFI's termination for convenience

19.1.1 HFI shall be entitled to terminate the Contract, partially or entirely at any time for any reason by providing thirty (30) days advanced written notice to Supplier (including notice by e-mail).

19.1.2 Upon receipt of notice of termination, Supplier shall (a) subject to Section 19.3, stop work on the termination date and to the extent specified in the notice and terminate all orders and subcontracts to the extent they relate to the terminated work, (b) comply with HFI's instructions regarding the protection, transfer and disposition of title to and possession of such work and Inputs.

19.1.3 Supplier shall submit to HFI any claims relating to termination under this Section 19.1 as soon as possible, but in any event within 30 days from the effective date of such termination. The failure of Supplier to submit its claim within this time period shall be an absolute waiver of any right of compensation. Supplier hereby grants HFI the right to audit and inspect Supplier's books, records, and all other documents relating to Supplier's termination claims. Such claim shall be limited to: (i) the Purchase Order price for all finished Supplies in the quantities ordered by HFI for which Supplier has not been paid; (ii) Supplier's actual and reasonable cost of merchantable and useable work-in-process and Inputs (but excluding Inputs which are part of Supplier's standard stock or which can be returned to Supplier's vendors or subcontractors for credit); (iii) Supplier's actual costs, to the extent such costs are reasonable, of settling contractual obligations to its subcontractors, to the extent directly caused by the termination, provided that, in each instance, Supplier's claim shall be limited to the quantities authorized for the 4 week Release period, and further provided that Buyer shall have the right to take possession (and pay for) additional quantities. Upon Buyer's request, and without regard to payment, Supplier shall immediately transfer to Buyer all Supplies, work in process and Inputs that are in the possession of Supplier or any sub-contractor.

19.1.4 **Except for amounts due under Section 19.3, the amounts described in this Section 19.1.3 are the sole amounts due to Supplier in connection with Termination.** HFI shall have no obligation to Supplier 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, or general administrative burden charges. HFI's obligation upon termination under Section 19.1.3 will not exceed the obligation HFI would have had to Supplier in the absence of termination.

## 19.2 Termination upon Supplier Default

19.2.1 HFI reserves the right to terminate a Contract in whole or in part for default. Default includes, but is not limited to:

19.2.1.1 Supplier's threatened or actual failure to perform in accordance with the requirements of the Contract

19.2.1.2 the change in control/ownership of Supplier or the sale by Supplier of a material part of its assets used to perform under a Contract.

19.2.1.3 the insolvency, bankruptcy, reorganization, arrangement, receivership or liquidation by or against Supplier or if Supplier makes an assignment for the benefit of creditors or ceases to carry on business in the ordinary course.

**19.3 Continued performance.** Notwithstanding the termination of a Contract, in whole or part, Supplier shall have the absolute obligation to continue to provide or deliver the Supplies in accordance with the terms of the Contract for a reasonable period of time so as to permit HFI the opportunity to procure a replacement supplier and permit an orderly transition of the production of the Supplies without any interruption of production at HFI's facilities or the facilities of HFI's Customer. Supplier shall be equitably compensated if it is required to incur incremental expenses other than those incident to the ordinary production and delivery of Supplies, such as, by way of example, warehousing of safety stock.

## 20 SUPPLIER'S REMEDIES

**20.1 Exclusion and Limitation.** Except for payment of amounts due under Section 10, HFI's entire liability to Supplier for any loss, liability or damage, including attorneys' fees, for any claim arising out of or related to the Contract, regardless of the form of action, will be limited to Supplier's direct out-of-pocket expenses which are reasonably incurred by Supplier, but not to exceed the total amount of purchases by HFI during the three (3) month period immediately preceding such claim. IN NO EVENT WILL HFI BE LIABLE TO SUPPLIER OR ANY THIRD PARTY FOR LOST PROFITS, CONSEQUENTIAL, SPECIAL, MULTIPLE, INCIDENTAL, OR PUNITIVE DAMAGES, HOWSOEVER ARISING OUT OF OR RELATED TO THE CONTRACTUAL PRODUCTS OR CONTRACTUAL SERVICES PROVIDED TO HFI, REGARDLESS OF THE BASIS OF SUCH CLAIM.

**20.2 No Supplier Cancellation.** Supplier shall not terminate, cancel or suspend performance under the Contract for any reason, including a breach or default by Buyer. Supplier acknowledges that an action for damages, subject to the terms of this Contract, is an adequate remedy for any breach or default by Buyer and that any disruption of supply would cause Buyer irreparable harm, for the reasons set forth in Section 21.2.

**20.3 Waiver.** Supplier hereby waives any claims that it may have against HFI in tort, under statute or in equity, and confirms that Supplier's complete rights and remedies as against HFI, including the right of Indemnity and measure of damages in the event of HFI's breach or default, are limited to those expressly conferred by or provided for in these GTC.

## 21 HFI'S REMEDIES

**21.1 Cumulative remedies.** The remedies reserved to HFI in these GTC and at law are cumulative and in addition to any other rights and remedies provided for or available to HFI at Law, in equity or otherwise, provided only that HFI shall not be entitled to double recovery. No amounts recoverable by HFI under the Contract are penalties or liquidated damages,

**21.2 Irreparable harm.** SUPPLIER ACKNOWLEDGES THAT ANY BREACH OR THREAT OF BREACH BY SUPPLIER THAT DISRUPTS OR THREATENS TO DISRUPT HFI'S ABILITY TO PRODUCE AND DELIVER TO HFI'S CUSTOMERS ON SCHEDULE WOULD RESULT IN IRREPARABLE HARM TO HFI, ITS CUSTOMERS AND THE BUSINESS AND REPUTATION OF EACH OF THEM, AND THAT MONEY DAMAGES WOULD NOT BE A SUFFICIENT REMEDY FOR ANY SUCH BREACH. THE PARTIES AGREE THAT IN SUCH EVENT, HFI SHALL BE ENTITLED TO EQUITABLE RELIEF, INCLUDING INJUNCTIVE RELIEF AND SPECIFIC PERFORMANCE. SUPPLIER FURTHER AGREES THAT HFI WOULD SUFFER IRREPARABLE HARM EVEN IF SUPPLIER OFFERS TO DELIVER THE GOODS ON CONDITION THAT IF HFI AGREES TO PAY A PRICE IN EXCESS OF THE CONTRACT PRICE. HFI MAY SEEK RELIEF UNDER THIS PROVISION IN A COURT OF HFI'S CHOOSING WITHOUT APPLICATION OF PRINCIPLES OF CONFLICTS OF LAW.

**21.3 Legal fees.** In addition to any other remedy available to HFI, HFI shall be entitled to recover its costs, reasonable attorneys' fees and costs, and expert fees and costs incurred in connection with any legal proceeding brought by or against HFI.

## 22 INSURANCE

**22.1 Minimum coverage:** During the Term, Supplier will maintain, at its own expense, the following insurance coverages with minimum limits as stated:

22.1.1 Workers Compensation: Statutory limits, including Employers' Liability limits, of not less than \$1,000,000; Commercial General Liability: Not less than \$5,000,000 limits (including products/completed operations, contractual liability, personal injury, and advertising injury) applying to bodily injury or property damage per occurrence. This coverage will not contain an exclusion for liability arising out of professional services. The coverage will apply on a worldwide basis regardless of where the event that creates the liability occurs or where the suit or claim for the liability is brought. If such coverage is written on a claims made basis (that is, policies that provide cover for claims made during the term of the policy), the retrospective date must be no later than the Effective Date and such coverage will be maintained for five years after the termination of the Contract.

22.1.3 Automobile Liability: Where applicable, \$5,000,000 limits covering use of owned, non-owned, and hired vehicles applying to bodily injury or property damage per accident wherein such vehicles will be used in connection with the Contract.

22.1.4 Property: Where applicable, all risk property coverage (including transit/cargo) for property, whether or not owned by HFI, which is being supplied under the Contract and which is in the care, custody, or control of the Supplier or the Supplier's agents or contractors until such time HFI has possession.

22.1.5 Umbrella/Excess Liability: \$5,000,000 per occurrence applying over the primary commercial general liability, auto liability, or employer's liability coverages.

22.1.6 Crime: Where applicable, Commercial Crime coverage to include property of others. Other: Any other insurance coverage HFI deems appropriate

**22.2 Other Requirements** Any coverages required under the Contract will be written or endorsed so that they are primary coverages and not excess or contributory to any coverages maintained by HFI. Supplier shall be required to inform HFI of any termination of the insurance contract, regardless of the reason for the termination, promptly within the termination notice period. As of the Effective Date and upon each subsequent renewal of its insurance coverages, Supplier will furnish HFI with certificates of insurance evidencing the required coverages and stating any deductibles or self-insured retentions. In the event of cancellation or non-renewal of any required insurance coverages, Supplier or its insurer will give HFI 30 days prior written notice of such. Supplier will name HFI as an additional insured on all policies specified above, with the exception of workers' compensation insurance policies.

**23 AUDIT. Right to Audit:** Upon reasonable notice to Supplier, either Buyer or its Customers (or a third party designee) (each, an "Auditor") may, in its sole discretion, audit, inspect and / or review (collectively, "Audit"): (i) Supplier's production facility, Supplies and any other Buyer Property (including all pertinent documents, data and other information) related to the Contract for the purpose of verifying Supplier's costs and its compliance with its obligations under the Contract (hereafter, a "Performance Audit"); and (ii) the financial condition and accounting records of Supplier. (hereafter, a "Financial Audit"). Buyer's decisions as to whether, how and when to conduct any inspection, audit or review does not modify or relieve Supplier of any obligations under the Contract, does not give rise to any liability of Buyer to Supplier.

**23.2 Cooperation:** Supplier shall cooperate with and assist the Auditor, including promptly providing the requested documents and information, answering all questions of the Auditor, and providing access to facilities and personnel including, without limitation: (i) in a Performance Audit, access to any location of the production facilities, installation, tooling, equipment, finished goods, work in progress, Inputs and other premises and permit the Auditor to take Supplies and/or samples for documentation purposes in order to, among other things, confirm the compliance of the samples with the quality standards and to confirm that the Supplies will conform to all warranties; and (ii) in a Financial Audit, financial records and statements, business plans, banking contracts and loan documents and making its financial managers available for discussion. Buyer will take reasonable steps to minimize disruption of Supplier's operations and will keep confidential any non-public information about Supplier and use such information only for purposes of the Audit, except as needed to enforce the Contract.

**23.3 Response.** If the Audit identifies any deficiencies, Buyer may, in its discretion: (i) identify actions required to remedy the deficiencies or (ii) allow Supplier to propose a remediation plan, and, if accepted by Buyer, execute such plan.

## 24 COMPLIANCE

**24.1 Compliance with laws.** Supplier shall furnish HFI with certificates of compliance with any Law where required thereunder or when requested by HFI.

**24.2 MSDS safety requirements.** Supplier shall transport, package and label the Supplies and their containers, including, in particular, those which constitute a health, poison, fire, explosion or other safety hazard, in accordance with all applicable Laws. Without limitation, such obligations shall include the proper preparation and provision of applicable material safety data sheets (MSDS) and other prescribed documentation and/or information.

**24.3 Country of origin.** Upon request, Supplier shall promptly furnish to Buyer all certificates of origin or domestic value-added and all other information relating to the costs and places of origin of the Supplies as may be required by Buyer to comply with all customs, tariffs and other applicable Laws or to permit HFI (or its Customers) to receive benefits or credits. Supplier shall comply with all such Laws and warrants that any such information that is supplied to Buyer is true and that all sales covered by the Contract will be made at not less than fair value under the anti-dumping laws of the countries to which the Supplies are exported.

**24.4 Ethical business practices.** Supplier shall comply with all requirements and demands of HFI with respect to ethics, social acceptability, and environmental sustainability, whether these obligations have been requested by HFI, by the Customer or agreed between HFI and the Customer.

**24.5 Cooperation.** Supplier shall provide HFI with all certifications and information reasonably requested by HFI to assist HFI in complying with its obligations under Law, including, by way of illustration, information relating to "conflict minerals" as defined by the Dodd-Frank Wall Street Reform Act.

**24.6 Subcontractors.** It is Supplier's responsibility to cause its subcontractors, vendors, agents or other associated third parties to comply with the requirements of this Section 24. **Error! Reference source not found.**

## 25 CUSTOMER TERMS

**25.1 Compliance.** Supplier shall comply with the general terms and conditions of purchasing of HFI's Customer or other agreement received by HFI from the Customer ("Customer Terms"). Supplier shall be responsible for ascertaining the Customer Terms that may affect Supplier's obligations hereunder and for notifying HFI in writing if it determines that it is impossible to satisfy both the Customer Terms and this Contract, in which case HFI will provide appropriate direction. Without restricting the foregoing, Supplier shall take such steps within Supplier's control to enable HFI to meet HFI's obligations to the Customer under the Customer Terms.

**25.2 Customer Bankruptcy.** In the event that a Customer files or has filed against it a petition in bankruptcy or insolvency and, in the course of such proceeding and in connection with actual or threatened termination by the Customer of its contract(s) with HFI (by rejection or otherwise), HFI permits a reduction in the price(s) paid to HFI for products incorporating the Supplies, the price paid to Supplier for the Supplies from and after the date of such reduction will be automatically adjusted proportionally by the same percentage as the price paid to HFI, and the Contract will otherwise remain in effect without modification.

## 26 CHOICE OF LAW, DISPUTE RESOLUTION AND JURISDICTION.

26.1 Law. The Contract shall be governed, construed and enforced under the domestic laws of the State of Ohio, excluding its choice of law rules. All sales by Supplier to Purchaser shall be subject to the Uniform Commercial Code as adopted in the State of

Ohio, including the sale of services, whether not the services are otherwise ancillary to and part of a sale of goods. . The United Nations Convention on Contracts for the International Sale of Supplies shall not apply.

26.2 **Arbitration.** The parties have selected binding arbitration before the American Arbitration Association (AAA) in accordance with AAA's Commercial Rules as the sole means to resolve a dispute between them arising out of or related to this Contract, except for claims outside the jurisdiction of the AAA. Notwithstanding the preceding, HFI may, at its option, proceed in court with respect to requests for equitable or injunctive relief, specific performance or possession of Equipment. The arbitration will be conducted within Franklin County Ohio. The arbitrator(s) will issue a written opinion setting forth the basis for the decision, which may include an award of legal fees and costs. The arbitrator's award will be final and non-appealable absent fraud or manifest error, and judgment on the arbitrator's award may be entered in any court having jurisdiction.

26.3 **Litigation.** For any claim not subject to arbitration, the state or federal courts presiding in Franklin County, Ohio shall have exclusive jurisdiction over the parties and the claims arising under or related to the agreement, unless waived in a writing signed by Seller.

## 27 MISCELLANEOUS

27.1 **Survival** Provisions of the Contract that, by their nature, extend beyond the end of the Contract shall remain valid after the end of the Contract. This shall apply regardless the reason for which the Contract comes to an end.

27.2 **Waiver.** Either party's failure to insist on the performance by the other party of any term or failure to exercise any right or remedy reserved in the Contract, or either party's waiver of any breach or default hereunder by the other party shall not, thereafter, waive any other terms, conditions, rights, remedies, breaches or defaults, whether of the same or a similar type or not.

27.3 **Severability.** If any provision of the Contract, or portion of any provision, is declared or found to be unenforceable, the balance of the Contract or such provision shall be interpreted and enforced to the greatest extent possible as if the unenforceable provision or portion had never been a part hereof.

27.4 **Interpretation.** No provision may be construed against the Buyer as the drafting party. Section headings are for convenience or reference only, and do not affect the meaning of the Contract.

27.5 **Relationship of Parties.** Supplier and Buyer are independent contracting parties and nothing in the Contract will make either party the employee, agent or legal representative of the other for any purpose. The Contract does not grant either party any authority to assume or to create any obligation on behalf of or in the name of the other. Supplier 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 Contract, except as expressly provided in a written agreement signed by Buyer. All employees and agents of Supplier or its respective contractors are employees or agents solely of Supplier 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 Supplier or its contractors.