


MTD PRODUCTS INC		Document: PP-3-932-064 Rev.: 002		
BUSINESS PROCESS: Terms and Conditions for Purchase of Production Parts and Materials				
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**Terms and Conditions for Purchase of
Production Parts and Materials**

1. Acceptance, Contract Formation.


(a) If preceded by a Request For Quote from MTD Products Inc (“MTD”) and/or MTD’s Affiliates (as defined herein) and Seller’s submission of an unconditional offer in response thereto which incorporates and contains only the terms and conditions herein set forth, then the “Purchase Order” and/or “Release” (including the face-pages thereof, if applicable) to which these terms and conditions apply (collectively referred to hereinafter as the “Order”) constitutes MTD’s acceptance of such offer as purchasing agent on behalf of its subsidiaries and affiliates which make up its principal group of manufacturing and sales affiliates (“Affiliates”). For purposes of the Order, all references to MTD shall refer to MTD in its capacity as purchasing agent on behalf of the Affiliates. MTD has authority as agent on behalf of its Affiliates (any of which shall have privity of contract hereunder) to enter into the Order.

(b) Except as otherwise stated in Section 1(a) above, the Order constitutes MTD’s offer to buy goods, and is expressly conditioned upon Seller’s assent to and acceptance of all terms and conditions set forth herein and without any additional or different terms. Any additional or different terms proposed by Seller hereby are rejected and excluded from the terms of purchase and sale between MTD and Seller.

(c) Seller may accept the Order in accordance with the preceding Section 1(b) and by either: (i) providing MTD written acknowledgement of Seller’s acceptance of MTD’s Order via MTD’s internet-based Supplier Portal located at <https://portal.mtdproducts.com/> (“Portal”); or (ii) commencing performance strictly in accordance with the terms of the Order and within a reasonable time (not to exceed sixty (60) days) from the date contained on the applicable Purchase Order or Release. If Seller objects to any term hereof or proposes any additional or different terms, whether or not material, Seller must give to MTD written notice stating any such objections and/or proposed additional or different terms before commencing performance, and no acceptance of the Order can occur until such objections and/or proposals are either withdrawn by Seller or settled by written agreement signed by MTD and Seller.

2. Goods.

(a) As used herein, “goods” denotes only the items specifically shown and/or described in the specifications, drawings and/or other written documents either attached hereto or otherwise identified or incorporated herein by reference (including, without limitation, each MTD Purchase Order and/or Release), as may be modified as provided in Section 9 herein.

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(b) All goods delivered hereunder must be in a new and unused condition and not previously rejected for shipment hereunder or under any contract between Seller and another customer.


3. Buy/Sell Commitments.

(a) MTD will buy from Seller, and Seller will make, deliver and sell to MTD, the quantity of goods or the percentage of MTD’s requirements of the goods as specified in MTD’s Purchase Order and/or Release as given by MTD to the Seller via the Portal, (or as otherwise set forth elsewhere in the Order), all as herein provided.

(b) If MTD’s Purchase Order and/or Release issued to Seller specifies a percentage of requirements, MTD will buy from Seller the quantities of goods set forth: (i) in the Shipping Schedules and Releases which MTD provides to Seller pursuant to Section 7(a)(ii) herein; and (ii), if applicable, in the Production Planning Schedules which MTD provides to Seller pursuant to Section 7(a)(i) herein and are applicable to the sixty (60) day period following the last ship date of goods specified in MTD’s final Shipping Schedule and Release for the applicable production year. Except as provided in this Section 3, MTD has no obligation hereunder to buy any estimated quantity of goods stated in or in connection with the Order or any quantity exceeding MTD’s actual requirements in the applicable production year, or other applicable period, whether or not the quantity actually purchased is deemed unreasonably disproportionate to any stated estimate or requirements or other quantity purchased in any prior production year or other applicable period.

(c) As used herein, “requirements” as to quantity of goods denotes only the goods described above in Section 2 and excludes all modifications thereof, except those modified as directed by MTD pursuant to Section 9 herein or otherwise approved by MTD in writing for purchase hereunder. MTD’s commitment to buy all or part of its requirements will not limit MTD’s right to terminate the Order under Section 17 with regard to any goods due to MTD’s decision to change the design, composition or configuration thereof and/or to discontinue use and/or sale thereof for any technical, economic or commercial reason, including a change in or termination of a contract with any MTD customer.

(d) Except as otherwise expressly provided herein, Seller will provide and supply, at its expense and without any charge, other than the purchase price, all materials, equipment, tools, facilities, licenses, and other items required to perform its obligations under the Order, except the provision of special tooling which Seller provides pursuant to a separate purchase order or agreement between MTD and Seller, or the cost of which special tooling MTD has agreed in writing to pay or reimburse to Seller apart from the purchase price of the goods.

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4. Duration, Renewal.

(a) The initial term and duration of the Order is the period stated on the applicable Purchase Order and/or Release issued by MTD to Seller, or, if no time period is so stated, the initial term will be a period of one (1) production year of the goods as determined by MTD. In any event, the initial term will commence on the issue date of the Purchase Order.


(b) MTD may extend or issue a revision to the Order for one (1) or more successive periods of one (1) production year by notice to Seller at least sixty (60) days before expiration of the initial or any subsequent extended term unless Seller has previously given MTD notice that Seller is unwilling to extend the Order.

5. Seller Compliance and Production Approval.

(a) Before starting the manufacture of any goods (except sample parts and/or sample goods), Seller must certify, and if requested, demonstrate to MTD’s satisfaction that Seller is in compliance with all (i) applicable laws as set forth in Section 21 herein, and (ii) applicable expectations and requirements of Seller as stated in the Portal, including, but not limited to: (A) these terms and conditions; (B) MTD’s Engineering requirements, including Production Part Approval Process (PPAP); (C) Receiving Inspection and Finished Goods Product Audits; (D) Purchasing and Logistics requirements; (E) Warranty Administration Procedures; and (F) Seller’s submission to MTD (via the Portal) of all required Engineering Drawings, Engineering Specifications and Supplier Requirements Documents (including the Supplier Quality Audit and Supplier Quality Self-Assessment), as well as all other required documents, certifications, approvals and information. No statements, terms, conditions and/or any other response of Seller contained in Seller’s PPAP response or any other Seller document submitted to MTD shall alter or modify these Terms and Conditions. Upon MTD’s acceptance of Seller’s certification regarding compliance with the foregoing requirements, Seller will thereafter manufacture the goods in compliance with such requirements, and will not make any change in the goods or any equipment, process, or method used in making the goods without written notice to MTD and MTD’s written approval thereof.

(b) The foregoing compliance, submission and approval requirements also will apply to any subsequently approved change which is made or to be made to the goods and/or to any materials, equipment, tooling, process or method used in making the goods.

(c) To qualify any new or modified Seller-owned production tooling for use hereunder, Seller, at its sole cost and expense, will use such Seller-owned tooling to make the number of pre-production sample parts and/or goods that MTD specifies and to furnish such samples to MTD with Seller’s certification that such samples comply with applicable requirements of the Order, including the requirements set forth in Section 5(a) hereinabove.

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6. Packing, Marking, Shipping.

(a) Seller will properly pack, mark, route and ship all goods and containers thereof in accordance with MTD’s Bar Coding Standard and Routing Guide (as set forth on the Portal), and/or such other written instructions regarding the packaging, marking, or shipping of the goods as MTD provides to Seller in writing. Seller will reimburse to MTD all expenses incurred by MTD as a result of improper packaging, marking, routing or shipping.

(b) Except as expressly provided in the Order, Seller will make no charge for containers, crating, boxing, handling, damage or storage without MTD’s prior written authorization.

(c) MTD’s examination, inspection and/or acceptance of goods will not bar MTD’s later rejection and/or revocation of acceptance of any goods which are defective or fail to conform to any requirement of the Order.

7. Planning Schedules, Shipping Schedules and Releases.

(a) From time to time during the applicable production year, MTD will provide to Seller (via the Portal):


(i) MTD’s Production Planning Schedules, each of which is a forecast and estimate of the goods that MTD expects to need for production purposes during the period(s) specified therein; and

(ii) MTD’s Shipping Schedules and Releases, each of which is an order and release for the fabrication and shipment of a specific quantity or quantities of goods to MTD during the period(s) specified therein.

(b) Seller will ship goods both in the quantities and at the times specified in the Order (including the applicable Shipping Schedule, Purchase Order and/or Release) as required for the goods to arrive on the applicable due date at the designated ship-to destination as identified in the Order, or as otherwise designated in MTD’s written instructions to Seller.

(c) MTD may change both the quantities and times for shipment of goods previously scheduled for shipment and delivery hereunder, including temporary suspensions and postponements, by written notice to Seller at any time prior to shipment.

(d) If Seller fails or is unable to ship goods for delivery on the due date at the designated ship-to location for any reason, except a cause or condition which excuses

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Seller's performance under Section 19 hereof, MTD may direct Seller to ship such goods or part thereof, as and when available, at the earliest time and by the most expeditious method of transport, including air freight, and Seller will pay or reimburse to MTD the full cost of such expeditious method of transport.

8. Receipt, Inspection.


(a) MTD may inspect and test all goods delivered to the ship-to location or other location as MTD elects. MTD may accept and retain, reject and/or revoke acceptance, of any or all goods, as MTD elects, which are delivered at the designated location: (i) in a quantity which is either less than or more than the authorized quantity; (ii) either before or after the due date or time, or (iii) in a condition or manner that fails to conform to any requirement of the Order. MTD may reject and/or revoke acceptance of goods which are incorporated in products manufactured and sold to third persons by MTD (including MTD's Affiliates), and, thereafter, are discovered not to conform to a material requirement of the Order or otherwise determined by MTD to be defective.

(b) Seller will pay to MTD all handling, sorting, packing, transportation (including in-bound and out-bound freight charges), and other expenses which MTD incurs in connection with any goods returned pursuant to Section 8(a) plus an administrative fee up to ten percent (10%) of the aggregate purchase price of the goods returned. If MTD elects to retain any defective or non-conforming goods to support immediate production needs, Seller will pay or reimburse to MTD all costs incurred in correcting such defective or non-conforming condition. In addition, Seller will pay or reimburse to MTD all costs and expenses incurred by MTD in connection with or related to MTD's testing of defective and/or non-conforming goods whether or not MTD elects to accept and retain, reject and/or revoke acceptance of such defective and/or non-conforming goods.

(c) If (i) Seller fails to deliver any goods to the designated location on the due date or in a condition that fails to conform to any requirement hereunder and (ii) as a result thereof, MTD is unable to start or continue any of its production operations, then unless such failure is excused under Section 19 hereof, Seller will pay or reimburse to MTD an amount which is not less than thirty-eight dollars (\$38.00) per hour multiplied by the aggregate number of hours that each production employee was unable to perform work as a result thereof. MTD will provide to Seller its calculation of such amount. The foregoing remedy is not in lieu of or in limitation of other rights or remedies available to MTD either hereunder or at law.

9. Changes.

(a) By providing a written change notice to Seller, MTD may direct Seller to make, and Seller will make, changes within the general scope of the Order, including changes in: (i) the

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design, drawings and specifications of the goods; (ii) the physical composition and structure of the goods; (iii) the materials, equipment, processes and methods used to make the goods; and (iv) the quantities and the times for shipment of goods previously scheduled for fabrication and/or shipment hereunder.

(b) If, in Seller's reasonable opinion, any such change affects the cost of manufacture or furnishing the goods or the time for performance, Seller will give MTD immediate written notice thereof and, within thirty (30) days after such notice, will provide to MTD full information as to each such cost change and the total amount thereof and any additional time required for performance.

(c) Unless MTD revokes the change order within thirty (30) days thereafter, MTD will make an equitable adjustment in the price of the goods, delivery schedules, and/or any other provision hereof that may be required as a result of any such change.

(d) Seller will not make any change of the type specified above in Section 9(a) without: (i) giving MTD written notice of Seller's intention to make such change; and (ii) receiving MTD's prior written approval to make such change.


10. Pricing, Taxes.

(a) The unit price for goods is the amount shown on the applicable Purchase Order and/or Release given by MTD to Seller and includes all charges related to preparation for production, fabrication, and delivery of the goods, except as otherwise expressly set forth herein. Seller will pay, without additional charge, any taxes or duties imposed on Seller and required by law to be paid by Seller.

(b) The unit price will not exceed the price that Seller offers or has agreed to sell the same or like goods to another person on terms and conditions substantially similar to those set forth herein.

(c) As expressly stated in Section 1(a) hereinabove, MTD is the purchasing agent for its Affiliates which manufacture or produce goods for resale in each location in which they engage in such operations and, therefore, such Affiliates are exempt from sales and use taxes with respect to goods procured for resale. Upon request, MTD will furnish to Seller an exemption certificate or such other document required by law to exempt MTD's purchase of goods hereunder from sales and use taxes.

11. Invoices, Payment.

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(a) Seller will provide an invoice to MTD (or MTD’s Affiliate, as applicable) as identified by the “bill-to” location shown on the applicable Purchase Order and/or Release in an electronic and/or other hard-copy form. Each invoice will include the applicable Purchase Order and/or Release number, the part number, quantity of goods, unit price, ship-to location, and such other information as MTD may designate by notice to Seller.

(b) MTD will pay to Seller the purchase price of goods and other charges shown on the invoice in accordance with the price and payment terms stated on the applicable Purchase Order and/or Release. However, if MTD disputes the amount of any invoice and gives Seller written notice thereof, MTD may deduct the amount in dispute from the amount of such invoice. MTD also may set-off and deduct from any invoice or other amount owed to Seller (including Seller’s subsidiaries and affiliates) hereunder any amounts that Seller owes to MTD (including MTD’s subsidiaries and affiliates) under the Order or any other agreement between MTD (including MTD’s subsidiaries and affiliates) and Seller (including Seller’s subsidiaries and affiliates). As such, MTD and Seller each hereby waive any condition of mutuality with regard to set-off rights.

(c) Seller will show separately on each applicable invoice each charge or amount, if any, which MTD is required hereunder to pay or reimburse to Seller. Similarly, Seller will show separately on each applicable invoice each amount which Seller is required hereunder to pay or reimburse to MTD hereunder and deduct such amount from the invoice amount.


(d) Seller will not submit an invoice for goods before delivery thereof at the ship-to or other location designated by MTD.

(e) In the event of nonpayment of a Seller invoice, verified to be completed in compliance with the terms herein, MTD Products Inc will be the guarantor of its principal Affiliate with regard to the corresponding claim of nonpayment, according to the terms of the Order.

12. MTD Tooling.

(a) For the purposes of the buy-sell relationship between MTD and Seller (including, without limitation, each Order), the term “Tooling” shall mean all tooling (including molds, stamping dies, related parts and documents related thereto): (i) provided by MTD to Seller; (ii) designed by MTD, either on its own or in collaboration with Seller; and/or (iii) paid for or funded by MTD, either wholly or in part. These terms and conditions shall apply to all Tooling possessed by or in the possession of Seller.

(b) Seller shall utilize the Tooling in accordance with instructions from MTD and in conformance with MTD’s PPAP requirements and the requirements as stated in the Portal.

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Seller will utilize the Tooling solely and exclusively for the manufacture and sale of goods to MTD.

(c) MTD will be and shall remain at all times the exclusive owner of the Tooling. Seller will place and/or maintain on the Tooling the following labeling, “*Property of MTD Products Inc*”. Seller will not move or attempt to move the Tooling from Seller’s production facility without MTD’s prior written approval. During any period of non-use of the Tooling, Seller will store the Tooling without additional charge, in a safe and secure place and manner. Seller will not lien or otherwise encumber the Tooling.

(d) At its own expense, Seller will: (i) use the Tooling in accordance with instructions provided by MTD and in accordance with the terms of Section 12(b) above; (ii) maintain the Tooling in proper working condition and order and make all repairs that may be required for this purpose; and (iii) replace any Tooling which wears out prior to the expiration of the anticipated useful life of the Tooling as reasonably determined by MTD, or is otherwise damaged or destroyed by any cause or event. Seller will not make any modification or addition to the Tooling without MTD’s prior written approval and all such modifications and additions will automatically become part of the Tooling and be the personal property of MTD.


(e) Seller will bear the risk of loss of and/or damage to the Tooling while the Tooling is in Seller’s possession, custody and control (normal wear and tear excepted). Seller waives all rights of claims against MTD with regard to any injury to or death of any of Seller’s employees or damage to Seller’s property, which arises in connection with the Tooling, however caused, and whether or not due to MTD’s negligence.

(f) Seller consents to filings by MTD (currently and in the future) of one or more financing statements or other appropriate documents to give public notice of MTD’s ownership of Tooling in Seller’s custody.

(g) Upon MTD’s request, Seller will promptly deliver the Tooling to MTD, FOB Seller’s production facility, properly packed and marked in accordance with the requirements of the common carrier selected by MTD. Seller waives all rights under any molder’s lien law or other lien law to retain possession of the Tooling pending resolution of any dispute concerning such Tooling, or payment of any amount which MTD owes to Seller.

13. Plant Inspections.

Upon reasonable notice, Seller will permit MTD, through its employees and agents, to have access to Seller’s premises and the premises of Seller’s first tier suppliers so that MTD may determine Seller’s compliance with the Order. MTD’s right of access includes, but is not limited to, the right to inspect the goods being produced, and to audit any books and records

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of Seller which are related either to Seller's performance of the Order or Seller's use and maintenance of MTD's property.

14. Supplier Warranties and Indemnification.

(a) As of the time of delivery of the goods, Seller warrants to MTD and the Affiliates that: (i) the goods are new and unused; (ii) title to all goods will pass to MTD (or the Affiliates, as applicable) free and clear of any claim or lien of any third person asserting through or against Seller; (iii) all goods will conform to the applicable drawings, specifications, samples and/or descriptions, whether furnished by Seller or by MTD, and other requirements of the Order; (iv) all goods will be merchantable and will be both suitable and usable by MTD and the Affiliates for the intended purpose; (v) all goods will be free of any defect in material and/or workmanship and in design if Seller has designed the goods or any part thereof; and (vi) all goods were produced in compliance with applicable requirements of the Fair Labor Standards Act, as amended, including all orders and regulations issued by the Administrator of the Wage and Hour Division.

(b) Seller will pay or reimburse MTD for any and all expenses that MTD and/or the Affiliates incur in connection with any repair or replacement of: (i) any goods delivered hereunder due to any defect in material, workmanship, or manufacture of any goods and/or in the design thereof if Seller designed same or part thereof; (ii) goods that fail to conform to any requirement hereof; and/or (iii) any product that MTD and/or the Affiliates sells to any customer which incorporates any goods delivered by Seller hereunder if MTD is required to repair or replace such product due to any such defective and/or non-conforming condition of the goods.

(c) Seller will defend MTD and/or the affected Affiliate(s), at Seller's expense, against any claim, lawsuit or other proceeding brought against MTD and/or its Affiliates and customers to the extent such claim, lawsuit or proceeding is based on a claim that any goods delivered hereunder fail to conform to any requirement of the Order (including, without limitation, any defect in material or workmanship and/or in the design of any goods if Seller designed same or part thereof) caused or contributed in any way to the death of or injury to any person and/or damage or destruction of any property. Seller will indemnify and hold MTD (including the Affiliates) harmless from and against any such liability, claims, demands, or expenses, including but not limited to reasonable settlement costs, attorney fees, other professional fees, costs associated with any litigation including travel costs, and all damages incurred or awarded therein, if: (i) MTD provides Seller written notice of the claim, lawsuit or proceeding; (ii) MTD provides Seller with a copy of any documents received which state the basis of the claim, lawsuit or proceeding; and (iii) MTD cooperates with Seller, at Seller's expense, in the defense of the claim, lawsuit or proceeding.

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(d) In the event that any goods sold by Seller to MTD are determined by a governmental agency, court or MTD to contain any material defect that poses a safety issue and/or not to be in compliance with the terms of the Order (including any mandatory or mutually agreed upon voluntary standards or requirements) so as to make advisable that such items be reworked or recalled, MTD shall promptly communicate all relevant facts to Seller and MTD and Seller shall then determine what corrective action should be taken. These actions may include service bulletins and/or recalls. The parties shall cooperate with and assist each other in completing all necessary filings and corrective action; provided that, nothing contained in this Section 14(d) shall preclude MTD from taking any unilateral action as may be required of MTD under applicable law or regulation. Any costs associated with a product recall or a corrective action agreed upon shall be borne by Seller and Seller shall reimburse MTD for all such costs and expenses, including, without limitation, legal fees incurred by MTD in connection with these matters and any fines and/or penalties assessed, levied or imposed upon MTD by a governmental agency or court.

15. Intellectual Property.

(a) Seller warrants to MTD that MTD’s sale or use of goods purchased from Seller (including the incorporation of such goods in products manufactured, assembled and sold by MTD) does not and shall not infringe upon any patent, trademark, trade secret and/or copyright (“Intellectual Property”) of any third-party in any jurisdiction in which the goods (including any MTD product incorporating such goods) are sold.

(b) Seller hereby grants to MTD and the Affiliates an unrestricted and royalty-free right and license under each patent owned and/or controlled by Seller to use and sell goods delivered hereunder, including the right to modify and reconstruct same.

(c) In the event that a claim is asserted against MTD and/or the Affiliates that any goods or part thereof or any device or product resulting from use thereof infringes any Intellectual Property right, then Seller will indemnify, hold harmless and defend MTD (including the Affiliates), at Seller’s own expense, such claim and any lawsuit or other proceeding to the extent based on such claim, and Seller will pay all damages, attorney fees, and costs awarded therein, if MTD: (i) gives Seller written notice thereof; (ii) provides Seller with copies of all documents received in connection therewith; (iii) cooperates with Seller, at Seller’s expense, in the defense thereof; and (iv) gives Seller full authority to control the defense thereof through lawyers of its own choice, including compromise and settlement of all claims. Further, if any such goods, parts, devices or products are held to infringe and use thereof is enjoined, Seller, at its own expense and option, will either procure for MTD (including its Affiliates and customers) the right to continue using same by license or otherwise, modify same to avoid infringement, replace same with a non-infringing article, or refund the full purchase price thereof and pay all costs which MTD (including its Affiliates and

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customers) incurs in connection with receipt and return such goods, parts, devices or products.

(d) To the extent any material prepared by Seller in connection with the sale of the goods to MTD is or may be subject to copyright protection (“Work”), Seller agrees to assign and hereby assigns copyright in the Work to MTD. Seller will execute and deliver any necessary documentation to transfer copyright in the Work to MTD.

(e) The names and trademarks of each party and its affiliates will remain the sole and exclusive property of that party or its affiliate. A party will not use any name or trademark of the other party or any of its affiliates for any purpose whatever without the owner’s prior written authorization. The preceding sentence notwithstanding, MTD may resell any goods, whether alone or as a part of another product, which Seller provides hereunder and bears the trade name, trademark and/or trade dress of Seller.

16. Confidentiality.


(a) All patterns, designs, drawings, specifications, bills of material, manufacturing documentation, quality control procedures, plans and other materials and/or documents which MTD provides to Seller in connection with the Order, whatever the form, whether printed, documentary, electronic media or otherwise, is the proprietary and confidential information of MTD (“MTD Confidential Information”), and such MTD Confidential Information will be deemed to contain trade secrets and will be and remain the property of MTD.

(b) Seller will hold all such MTD Confidential Information in confidence; will not use such MTD Confidential Information for any purpose, except the production and delivery of goods pursuant to the Order; and will not disclose MTD Confidential Information to any third person, except to suppliers of materials and services that Seller requires to perform its obligations hereunder and Seller’s other authorized agents or representatives. Seller’s confidentiality obligations hereunder shall be in addition to, and not in lieu of, Seller’s confidentiality obligations to MTD in accordance with the terms of any separate confidentiality agreement between Seller and MTD (including MTD’s Affiliates).

17. Termination by MTD.

(a) MTD may terminate the Order, in whole or in part, at any time by written notice to Seller, whether or not Seller is in default of any obligation hereunder and without regard to the existence of any cause or event specified in Section 18 herein.

(b) After receipt of a termination notice, unless MTD otherwise directs, Seller will immediately cease all work directly related to the terminated part of the Order and, also: (i)

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terminate all orders and subcontracts directly related thereto; (ii) settle all claims arising out of or related to such termination; (iii) transfer title and deliver to MTD (A) all completed work which conforms to the requirements of the Order and does not exceed the quantity authorized for shipment to MTD and (B) all reasonable quantities (but not in excess of amounts authorized by MTD) of any work in process and materials produced or acquired in respect of the performance of the terminated part of the Order, which are of a type and quality suitable for producing supplies which conform to the requirements of the Order and which Seller cannot reasonably use in producing products or other materials for itself or its other customers; (iv) take all action necessary to protect property in Seller's possession in which MTD has or may acquire an interest; and (v) present its termination claim to MTD promptly but not later than thirty (30) days after the effective date of the termination notice. On the basis of information available to it, whether or not Seller submits its termination claim as herein specified, MTD may determine the amount of compensation, if any, reasonably due to Seller with respect to the termination of the Order or part thereof and such determination shall be final.


(c) Upon reasonable notice, MTD, through its representatives and agents, shall have access to the premises and records of Seller and/or Seller's first tier suppliers prior or subsequent to payment so that MTD may verify any charges supporting any termination claim asserted by Seller.

(d) The provisions of Section 17(b) and 17(c) shall not apply in the event that MTD cancels and/or terminates the Order due to or as a result of Seller's default.

18. Cancellation for Default.

MTD will have the right to terminate the Order, without liability to Seller, if: (a) Seller defaults in the performance of any material obligation hereunder unless such default is excused by a cause or event specified in Section 19; (b) Seller ceases to conduct its operations in the normal course of business; (c) Seller is unable to meet its obligations as they mature; (d) any proceedings under the bankruptcy or insolvency laws is brought by or against Seller and involves Seller's assets; (e) a receiver is appointed or application is made for appointment of a receiver of Seller's assets; (f) Seller makes an assignment of assets for the benefit of its creditors; or (g) Seller assigns or otherwise transfers the Order (or any part or portion thereof) to any other person, and/or sells or transfers ownership or control of its entire business or the part of its business which makes and delivers goods to MTD hereunder to any other person, whether or not Seller owns, controls or otherwise is affiliated with such other person, without the prior written consent of MTD.

19. Excusable Delays.

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Neither MTD nor Seller, as applicable, will be liable hereunder for a failure to perform which arises from any cause or event beyond the reasonable control and without the fault or negligence of either MTD or Seller, as applicable, in failing to perform any of its respective duties hereunder, including but not limited to, labor disputes of any kind; provided that the party whose performance is delayed or is likely to be delayed (a) gives the other party prompt written notice thereof, (b) takes all reasonable steps to avoid or remove the cause of such delay, and (c) resumes performance as promptly as reasonably possible after the cause of such delay ends.


20. Service Parts.

For a period of ten (10) years after the discontinuance of the production of the product in which the goods are utilized, Seller will continue to produce and sell the goods to MTD and the Affiliates (pursuant to their requirements for such goods), at a reasonable price determined from time to time by MTD, for use as service and replacement parts.

21. Compliance with Laws.

(a) Seller and all goods delivered hereunder will comply with all applicable federal, state and local laws, executive orders and regulations relating to the manufacture, labeling, transport and/or use of such goods including, but not limited to regulations and/or standards promulgated by the U.S. Environmental Protection Agency (“EPA”), the California Air Resources Board (“CARB”), the Consumer Product Safety Commission (“CPSC”), American National Standards Institute, Inc. (“ANSI”), Underwriter’s Laboratories, Inc. (“UL”), the Restriction of Hazardous Substances Directive (“RoHS”), and the California Transparency in Supply Chains Act, as applicable.

(b) Seller will promptly provide to MTD any information that Seller is required to provide under any such law, executive order, or regulation, concerning any substance deemed hazardous or toxic, including, but not limited to (i) material safety data sheets; and (ii) written descriptions of any such substance, the hazards associated with the handling or use thereof, the precautions to be exercised in connection therewith, any action to be avoided, and the procedures for responding to emergencies likely to arise from improper handling or use of any such substance. Additionally, Seller will package, mark and ship any such substance in compliance with all applicable laws.

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(c) In performing the work hereunder, Seller will comply with all applicable provisions of Presidential Executive Order No. 11246, all provisions of which are incorporated herein by reference.


22. Insurance.

During the term hereof, Seller will have and carry the following occurrence based insurance coverage on a primary and non-contributory basis: (a) comprehensive general liability insurance, including premises and operations, completed products and contractual liability, with limits (unless otherwise designated in the Order or otherwise mutually agreed in writing between the parties), in the amounts of \$1.75 million per occurrence, \$4 million annual aggregate; and (b) umbrella liability insurance with limits of \$5 million and such other levels of insurance as may be adequate to cover any consequential damages arising as a result of its Seller's sale of goods to MTD hereunder and MTD's incorporation of such goods into its products and sale thereof. Seller's insurance provider(s) must be A.M. Best "A" rated (Class IX minimum). Within thirty (30) days of any material change and/or upon MTD's request, Seller will provide proof of such insurance coverage to MTD and name MTD and the Affiliates as additional insureds under each such policy of insurance.

23. Arbitration of Claims and Related Disputes.

(a) MTD and Seller will seek to resolve all claims and disputes concerning the construction, interpretation, and/or application of the provisions of the Order by informal discussion. If any such claim is not resolved to the satisfaction of the claimant, such party will either discontinue making the claim or (except as otherwise mutually agreed between the parties with regard to alternative forms of dispute resolution), submit the claim and related dispute(s) to arbitration with the American Arbitration Association ("AAA") by a single arbitrator in the Cleveland, Ohio metropolitan area pursuant to the then current rules of the AAA applicable to commercial matters. The parties will have all rights to pretrial discovery provided under the Ohio Rules of Civil Procedure and the Ohio Arbitration Act, except as otherwise mutually agreed between the parties.

(b) The arbitrator will have authority to hear and decide in the same proceeding all issues related to such claim and related disputes, including any counterclaims asserted by the other party which concern the construction, interpretation, and/or application of the provisions of the Order, and award any damages and other relief provided under the Order or by law, except punitive damages. The arbitrator will base any decision and award on the provisions of the Order or, absent an applicable provision, the Ohio Uniform Commercial Code, and the facts presented at the hearing. Any court having jurisdiction, including any state or federal court in Ohio, may confirm the award and enter judgment thereon.

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(c) Each party will pay one-half (1/2) of the fees and expenses of the arbitrator and charges for the hearing room. Except as provided in the preceding sentence, each party will bear any expenses it incurs in connection with the arbitration of any claim.

(d) Nothing herein will limit the right of either party to name the other party as a third-party plaintiff or defendant in any pending lawsuit or other proceeding or institute a lawsuit to obtain possession or prevent use of any of its property which is in the other party's possession or control, including, without limitation, MTD Tooling.

(e) Any claim of right under an Order must be submitted to arbitration within two (2) years after: (i) the claim was first asserted; or (ii) with respect to a claim(s) against MTD, the expiration or earlier termination or cancellation of this Order, whichever event first occurs, except as otherwise expressly provided herein.

24. Remedies.

The remedies herein specified are in addition to, and not in limitation of, any other remedies available to MTD or Seller at law or in equity.

25. Transfers.


(a) Seller may not assign or transfer any right or obligation hereunder, including the right to money, without MTD's prior written approval. Any such assignment or transfer made without MTD's prior approval, whether by operation of law or otherwise, will be void and have no force or effect.

(b) MTD may assign and/or transfer all or part of its rights and duties hereunder to any person which is owned and/or controlled by MTD or is under common ownership and/or control with MTD, and such person will be entitled to exercise all rights and remedies of MTD hereunder upon reasonable notice to Seller. Nothing in this Section 25(b) will be deemed to relieve MTD of any obligation hereunder.

26. Notices.

(a) Any notice (including a written notice) which is required or permitted to be given hereunder may be given to the other party or its designated representative by electronic means and confirmation of receipt thereof.

(b) All such notices must be sent to the other party or its designated representative at the address shown herein, or such other representative or address as may be designated by

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subsequent notice to the other party, and will be deemed given and effective only when received by the other party.

27. Entire Agreement.

(a) The Order: (i) includes each MTD document identified or referenced herein, including each exhibit and attachment thereto and any documents and instructions that MTD is required to give or gives to Seller as herein provided; (ii) contains the entire agreement between the parties regarding the subject matter hereof, and (iii) supersedes any prior or contemporaneous agreements and understandings, oral or written, between the parties.

(b) Except as expressly set forth herein, no representative of MTD has the authority to make any representation or warranty to Seller in respect of the Order which is not reduced to writing, signed by both parties and incorporated by reference or otherwise into the Order. In entering into the Order, Seller affirms that it is not relying on any representation or other assurance by MTD or any of its representatives, which is not set forth in writing and expressly incorporated herein.

(c) The Order may be modified only by a writing signed by an authorized representative of each party.