

## **MPI International LLC.**

### **PURCHASE ORDER TERMS AND CONDITIONS (August 25<sup>th</sup>, 2010)**

#### **1. OFFER AND ACCEPTANCE**

Each purchase order issued by MPI International LLC as its subsidiaries and/or affiliates (MPI) is an offer by MPI to the party to whom such purchase orders are addressed (“Seller”) to purchase goods and/or services (“Supplies”) identified therein and includes and is governed by these Purchase Order Terms and Conditions. Upon acceptance by seller, MPI’s purchase order(s), delivery releases issued there under, these Purchase Order Terms and Conditions, any agreement executed by MPI that incorporates by reference or is incorporated by any of the foregoing accepted in writing by an authorized representative of MPI (each, an “MPI Authorized Representative”) will become a binding contract between MPI and Seller (collectively, the “Contract”). Seller shall accept MPI’s offer and form a Contract by doing any of the following: (a) signing (whether manually or electronically) and acknowledgement of MPI’s purchase order, (b) commencing any work under the purchase order, or (c) engaging in any other conduct that recognizes the existence of a contract with respect to the subject matter of the purchase order. Accepted is expressly limited to the terms of MPI’s offer. Any additions or modifications proposed by Seller (whether in Seller’s quotation, invoice, acknowledgement or otherwise) are unacceptable to MPI, are expressly rejected by MPI and shall not become part of the Contract in the absence of an agreement in writing signed by a MPI Authorized Representative. In no event shall MPI’s purchase order constitute an acceptance of any offer or proposal made by Seller.

#### **2. CHANGES**

- (a) MPI reserves the right at any time to direct changes, or cause Seller to make changes, to drawings and specifications of the Supplies or otherwise to change the scope or specific requirements of the work covered by the Contract, including work with respect to such matters as inspection, testing or quality control, and Seller agrees to implement such changes promptly: any reasonable difference in the Seller’s cost or time for performance resulting from such changes shall be equitably adjusted by MPI after receipt of documentation in such form and detail as MPI may reasonably direct. All change order directions issued by MPI must be in writing and signed by a MPI Authorized Representative.
- (b) Seller must submit a proposal for adjustment under this clause within fourteen (14) days from receipt of the written change order direction or such additional time as parties may agree in writing is reasonable under circumstances.
- (c) If Seller’s proposal includes the cost of excess material or property or material of property made obsolete by the change, MPI shall have the right to prescribe the manner of disposition of such material or property.
- (d) Failure to agree to any adjustment shall be considered a dispute under Section 33 hereof and shall not excuse Seller from proceeding with the Contract as changed.

#### **3. VOLUME PROJECTIONS**

From time to time, MPI may issue forecasts of its anticipated Material Requirements. The parties acknowledge that any forecast is an estimate only and is subject to change at any time. Seller will not manufacture Supplies or procure raw materials in excess of that required to fill MPI’s firm releases, unless earlier procurement (not to exceed 2 weeks fabrication, 4 weeks raw material for forecasted requirements) is necessary to maintain orderly supply. Seller shall reserve enough production capacity for MPI’s estimated

annual requirements plus an additional 20% to cover any unforeseen requirements. Seller should also use its best efforts to make additional capacity available should the need arise.

#### **4. SOURCING LIMITATIONS**

Unless the contract expressly states that Seller shall produce one hundred percent (100%) of MPI's requirements for Supplies, MPI shall have the right to obtain a portion of such Supplies from another source.

#### **5. DELIVERY**

(a) The delivery date shall be the date designated by MPI in written material releases or other writing. The parties agree that in the event that Seller fails to deliver an order/release for Supplies on the delivery date, MPI, in addition to other rights or remedies it may have, shall be entitled, as its option, to cancel the order/release for the material which was not timely delivered without any obligation or liability to Supplier and to purchase material from a third party.

(b) As time is of the essence, Seller shall deliver all orders for material 100% "on time". The term "on time" shall mean on, or no sooner than one (1) day prior to, the delivery date.

(c) Should at any time Seller fail to deliver required materials per the delivery date, Seller shall incur all costs of expedited delivery and any other reasonable and verifiable costs including, without limitation, any additional costs incurred in purchasing substitute supplies or other costs incurred to meet required delivery to MPI's customers.

#### **6. INVOICES AND PAYMENT**

Seller shall prepare at the time of shipment full and complete invoices for the Supplies under the Contract and shall deliver said invoices to MPI by mail or as otherwise directed by MPI. Terms of payment shall be stated in the Contract. Seller shall be paid the prices stipulated in the Contract for Supplies delivered and accepted, less applicable deductions. MPI may return quantities in excess of quantities specified at the Seller's expense and risk. For purposes of invoice payment, the effective date of the invoice shall be construed to be the date of acceptance of Supplies at MPI's facility (or such other destination as designated in the Contract). Notwithstanding the foregoing, payment shall not constitute an acceptance of any Supplies failing to meet applicable drawings, specifications, samples, symbols or other descriptions furnished or approved in writing by MPI.

#### **7. PACKING, MARKING AND SHIPPING**

Seller shall pack, mark and ship all Supplies in accordance with the requirements of the Contract and in compliance with transportation regulations and good commercial practice for protection and shipment so as to assure delivery free of damage and deterioration, and shall in good faith seek to secure the most advantageous transportation service and rates available. No separate or additional charge is payable by MPI for containers, crafting, boxing, bundling, dunnage, drayage, or storage unless specifically stated in the Contract.

#### **8. F.O.B. POINT**

Unless otherwise specified in MPI's purchase order, the F.O.B. point of all Supplies shall be made F.O.B. Ship Point, Seller's plant. One noted exception is steel material which typically within this industry is a delivered price and is so noted in MPI's purchase order.

**9. WARRANTY**

(a) In addition to all other warranties expressed or implied in law, Seller warrants that all Supplies will conform to all applicable specifications, drawings, samples, symbols or other descriptions furnished or approved in writing by MPI, all U.S. industry standards, and all laws, regulations and other governmental requirements in force in countries where Supplies or products equipped with such Supplies are to be installed or sold, will be of good material and workmanship and free from defects in design and manufacture, will be new and will be adequately marked, contained, packaged and labeled. Seller further warrants that it will not substitute non-conforming Supplies without the prior written consent of MPI. Seller additionally warrants that all Supplies will be free and clear of all liens and encumbrances whatsoever and that Seller will convey to MPI good and marketable title to the Supplies. Seller acknowledges that Seller knows of MPI's intended use for the Supplies and expressly warrants that all Supplies will be fit and sufficient for the particular purpose intended by MPI, including, without limitation, the specified performance in the component, system, subsystem and vehicle location specified by MPI and the environment in which the Supplies are or reasonably may be expected to perform. Seller agrees to hold harmless and defend MPI from and against any and all claims, demands, actions, debts, liabilities, judgments, costs, and reasonable attorneys' fees arising out of, or in any manner predicted upon any breach of the foregoing warranties, and to indemnify and hold MPI harmless from and on account of damages or liability of any kind that MPI may suffer as a result of any breach of such warranties. If any Supplies are non-conforming, then Seller shall at MPI's option and in addition to all other remedies of MPI, either credit MPI for any such nonconformity or defects, or at Seller's expense, replace, repair, or correct any such article. Seller agrees to make all corrections to the satisfaction of MPI. The foregoing warranties and indemnification obligations of Seller shall survive inspection, testing, use and acceptance and run to MPI, its successors and assigns, and all customers and users of the Supplies.

(b) If MPI's products are subject to any recall, service fix, customer satisfaction or safety campaign (whether required or recommended by Seller, MPI, any governmental or regulatory body or third party, including, without limitation, MPI's customers) as a result of suspect, defective or allegedly defective Supplies sold by Seller under the Contract and incorporated in MPI's products, Seller shall reimburse MPI for all costs and expenses including reasonable attorneys' fees, arising therefrom or relating thereto.

**10. INDUSTRY COMPETIVENESS**

Seller warrants that its pricing, terms, delivery, service and quality are competitive with the industry. If MPI reasonably determines that Seller's performance is not consistent and competitive with the industry in any such respect, then MPI may terminate the Contract and/or cancel any undelivered quantities of Supplies under outstanding purchase orders. In the event of such termination, MPI shall have no liability other than payment agreed purchase price for Supplies delivered prior to the termination date.

**11. HOLD HARMLESS – INDEMNITY (PRODUCT LIABILITY); COOPERATION IN RESOVING CLAIMS**

(a) Seller agrees to defend, indemnify, and hold harmless MPI, its employees, officers, directors, agents, other representatives, affiliates and assigns from and against any and all claims, demands, actions, debts, liabilities, judgments, costs, and reasonable attorneys' fees arising out of the product liability claims relating to any actual or alleged negligence of Seller or any actual or alleged defect in

Supplies supplied to MPI by Seller pursuant to the Contract. MPI reserves the right to participate in the defense of any such suit without relieving Seller of any obligation thereunder.

(b) Seller agrees to cooperate with MPI and provide technical assistance, as requested by MPI, toward the resolution of any and all claims, demands, actions, debts, liabilities, judgments, costs, and attorneys' fees arising out of product liability claims within Section 11 (a), above.

## 12. COMPLIANCE TO QUALITY PROCEDURES

- (a) Supplier shall comply with MPI's quality system requirements located at [www.mpi-int.com](http://www.mpi-int.com) and additional requirements upon which both parties mutually agree in writing. Supplier acknowledges and understands that the Manual and the Standard may be periodically updated, revised and amended and that is Supplier's obligation to comply with the Manual and the Standard at all times. Supplier's certification regarding the Standard is incorporated by reference in the T&C.
- (b) Supplier must ensure that its quality assurance system is certified to ISO 9001-2000 or ISO/TS 16949:2002, as modified from time to time or similar standards applicable to the Materials as specified by MPI. Supplier acknowledges that MPI is ISO/TS 16949:2002 certified and agrees to take actions reasonably requested by MPI to assist MPI in maintaining its certification. MPI and its customers shall have the right during reasonable business hours and upon at least two (2) days prior written notice to inspect the Supplier's facilities, and perform quality audits with respect to the Materials provided. Supplier agrees to participate in all MPI Supplier quality and development programs and implement recommended outcomes. A positive outcome of a compliance audit or implementation of quality recommendations shall not relieve Supplier of any liability under this part.

## 13. INSPECTION AND TITLE PASSAGE: VISITATION RIGHTS; ACCEPTANCE TESTING; LICENSE

- (a) All Supplies and all raw materials, components, intermediate assemblies, end products, and lots of Supplies shall be subject to inspection and testing by MPI on reasonable notice at all reasonable times and places including the place of manufacture. Final inspection and acceptance of Supplies shall be made after delivery at MPI's designated delivery point, notwithstanding any prior payment or inspection.
- (b) Unless provided elsewhere in the Contract, risk of loss and title to all conforming Supplies provided under the Contract shall pass to MPI at the F.O.B. point, or at the time of acceptance, whichever is later; provided, however, that in the event the Supplies subsequently are rejected by MPI for any reason, risk of loss and title will be divested from MPI and will revert immediately to Seller.
- (c) During performance of the Contract, Seller's quality control inspections, or inspection system and manufacturing processes are subject to review, verification, and analysis by MPI, its authorized agents and/or MPI's customers.
- (d) Seller shall maintain quality control, inspection and manufacturing record keeping systems acceptable to MPI.
- (e) Seller agrees that MPI or its authorized agents or MPI's customer may visit Seller's facility where the Contract is to be performed, in whole or in part, to review progress, discuss problems/failures and witness testing pertaining to the requirements of the Contract. Seller agrees to provide, without charge, all reasonable facilities and assistance for the safety and convenience of MPI, its authorized agents and customers during such visits.
- (f) To the extent that Supplies include customized machinery, equipment and/or computer hardware, or any components and parts of such equipment, machinery and/or computer hardware, or any services, additional components and parts necessary or required for operation of the same (collectively, "Equipment"), then unless waived by MPI, all Equipment shall undergo successful acceptance testing before final payment for the Equipment is made. As used herein, a successful acceptance test

shall mean that the Equipment, as delivered and installed, shall have performed its full intended purpose and function in accordance with the applicable specifications, and shall have met all performance criteria and operational functions under circumstances which stimulate or duplicate the day-to-day environment in which such Equipment is to be used by MPI. If Equipment consists of one or more discrete items delivered and/or installed in stages, each such item shall undergo acceptance testing. In the event any Equipment fails an acceptance test, Seller will use its best efforts to repair, replace or service such Equipment, whereupon a new acceptance test shall commence. If any Equipment fails two successive acceptance tests, MPI, may, at its option, cancel the Contract, whereupon Seller will immediately tender to MPI all amounts previously paid by MPI for the Equipment and MPI will return the failed Equipment to Seller at Seller's expense.

- (g) If the Equipment includes operating system software, Seller grants to MPI a perpetual, fully paid-up license to use such software in connection with the Equipment. The license granted hereby shall be nontransferable except if the Equipment is sold by MPI to a third party.

#### **14. TITLE TO DRAWINGS AND SPECIFICATIONS**

- (a) MPI at all times shall have title to all designs, drawings and specifications furnished or funded by MPI to Seller and intended for use in connection with the Contract. Seller shall use such designs, drawings and specifications only in connection with the Contract and, upon MPI's request or upon completion of the Contract, shall promptly return all designs, drawings and specifications to MPI. In addition, MPI shall have and Seller hereby grants, a non-exclusive, perpetual, irrevocable, fully paid, royalty-free, world-wide, fully transferable and fully sub licensable license to make, have made, reproduce, use, modify, adapt, create derivative works of, publicly display, publicly distribute and otherwise commercially exploit without restriction any intellectual property right of Seller (whether patent, trade secret or otherwise) which are or may be incorporated in any of MPI's Property (as defined in Section 15), Seller's Property (as defined in Section 16) or otherwise used in the manufacture of any of the Supplies sold under the Contract.
- (b) The approval or concurrence by MPI of any drawings or specifications developed by Seller shall not be construed as a complete check, but will only indicate that the general method of construction and detailing are satisfactory to MPI. Such approval of drawings and specifications will not relieve Seller of responsibility for any errors that may exist, and Seller shall be responsible for the dimensions and design of adequate connection details and satisfactory construction of Equipment.
- (c) All references in any MPI specification incorporated herein to other MPI specifications shall be deemed to include all supplementary or superseding specifications at the time of quotation.

#### **15. BUYER'S PROPERTY**

- (a) All supplies, materials, tools, jigs, dies, gauges, fixtures, molds, castings, cavity dies, patterns, equipment and other items furnished by MPI, either directly or indirectly, to Seller in connection with the Seller's performance of its obligation under the Contract, or for which MPI has agreed to reimburse Seller, with all related appurtenances, accessions and accessories, and all documents, standards or specifications, trade secrets and proprietary information (collectively, "Buyer's Property") shall be and remain the property of MPI (or such other owner as designated by MPI) as and when fabricated or acquired, regardless of payment. Seller shall hold MPI's property on a bailment basis as a bailee-at-will. Seller shall bear the risk of loss of and damage to MPI's Property.
- (b) MPI's Property shall at all times be properly housed, maintained, repaired and replaced by Seller at Seller's expense in good working condition capable of producing Supplies meeting all applicable specifications. MPI's Property shall not be used by Seller for any purpose other than the performance of this Contract; shall be deemed to be personalty and shall be dealt with

by Seller as such; shall be conspicuously marked by Seller as property of MPI or marked by Seller using MPI customer asset identification tags in such manner as MPI shall approve; shall not be commingled with the property of Seller or with that of any third party; and shall not be moved from Seller's premises without MPI's prior written approval. Seller shall insure MPI's Property with full fire and extended coverage for the replacement value thereof naming MPI as loss payee. MPI will have the right to enter Seller's premises to inspect MPI's Property and Seller's records regarding MPI's Property.

(c) Seller acknowledges that neither Seller nor any other person or entity other than MPI (or MPI's designee), has any right, title or interest in MPI's Property other than Seller's rights, subject to MPI's unfettered discretion, to utilize MPI's Property in the manufacture of Supplies under the Contract. Effective immediately, without further notice or legal action, MPI, or its designee, has the right to enter the premises of Seller and take possession of all of MPI's Property without payment of any kind. Seller agrees to cooperate with MPI if MPI elects to take possession of MPI's Property. Seller expressly waives any right to additional notice or process and agrees to provide MPI or its nominee(s) with immediate access to MPI's Property. Seller grants to MPI a limited and irrevocable power of attorney, coupled with an interest, to execute and record on Seller's behalf any notice financing statements with respect to MPI's Property that MPI determines are reasonably necessary to reflect MPI's interest in MPI's Property. At MPI's request, MPI's Property will be immediately released to MPI or delivered by Seller to MPI or in accordance with MPI's instructions.

(d) Seller acknowledges that the continued and unauthorized possession of MPI's Property by Seller would cause irreparable harm to MPI, MPI's customer, and others. Therefore, Seller recognizes the right and need of MPI to obtain immediate relief in the nature of a replevin or claim and delivery action. Accordingly, provided that Seller receives at least twenty-four (24) hours notice of any request for hearings in connection with proceedings instituted by MPI, Seller waives, to the fullest extent possible under applicable law, the right to notice in excess of twenty-four (24) hours in connection with any judicial proceedings instituted by MPI. Further, Seller hereby waives any requirement for MPI to post a bond in a replevin or claim and delivery action under Michigan Court Rules Section 3.105, other Michigan Court Rules, or under similar procedures found in other states. However, if a bond is required by a Court Rule or Court Order, it is agreed that the bond shall not exceed fifty percent (50%) of MPI's actual cost of MPI's Property. Seller shall pay all costs incurred by MPI including, but not limited to reasonable attorneys' fees, the cost of the bond and sheriff and other court officers' fees in connection with the recovery of MPI's Property through the legal process.

## **16. SELLER'S PROPERTY**

Seller at its expense, will furnish, keep in good working condition capable of producing Supplies meeting all applicable specifications, and replace when necessary, all machinery, equipment, tools, jigs, dies, gauges, fixtures, molds, patterns, and other items that are not MPI's Property and that are necessary for the production of Supplies ("Seller's Property"). Seller shall insure Seller's Property with full fire and extended coverage for the replacement value thereof. Seller grants MPI an irrevocable option to take possession of and title to any of Seller's Property that is special for the production of the goods or the performance of services under the Contract upon payment to Seller of the net book value thereof less any amounts that MPI has previously paid to Seller for the cost of such Seller's Property; provided, however, that this option shall not apply to the extent such Seller's Property is used to produce goods that are general inventory of Seller held for sale to additional parties other than MPI.

## **17. ASSIGNMENT AND SUBCONTRACTING**

- (a) Seller may not assign or delegate any of its rights or obligations under the Contract without prior written consent from MPI. In addition, MPI may terminate the Contract upon giving at least (60) sixty days written notice to Seller, without any liability to Seller, if Seller (i) sells, or offers to sell, a material portion of its assets or (ii) sells or exchanges, or offers to sell or exchange, or causes to be sold or exchanged, a sufficient amount of its stock or other equity interest that effects a change in the control of Seller or (iii) executes, or otherwise becomes subject to, a voting or other agreement or trust that effects a change in control of Seller.
- (b) Seller shall not subcontract any of its duties under the Contract, without prior written consent from MPI. If MPI consents to Seller's subcontracting of any of Seller's duties under the Contract, Seller will ensure that the subcontractor agrees to be bound by all the terms and conditions of the Contract. No subcontracting by Seller, whether or not consented to by MPI, shall relieve Seller of its obligations under the Contract.

## **18. SETOFF AND RECOUPMENT**

In addition to any right of setoff or recoupment provided by law, all amounts due Seller or its subsidiaries or affiliates shall be considered net on indebtedness or obligations of Seller or its subsidiaries or affiliates, and MPI or its subsidiaries or affiliates may setoff against or recoup from any amounts due or that become due to Seller or its subsidiaries or affiliates from MPI or its subsidiaries or affiliates, however and whenever arising.

## **19. TAXES**

Except as may be otherwise provided in Contract, the price or prices charged to MPI for the Supplies purchased under the Contract as set forth on MPI's purchase order(s) includes all applicable Federal, state, foreign country or local taxes, fees and duties.

## **20. RELEASE OF NEWS INFORMATION AND CONFIDENTIALITY**

- (a) Without the prior written consent of MPI, Seller shall not make any news release or public announcement or any part of the subject matter of the Contract.
- (b) The following shall be considered Confidential Information of MPI: (i) any written specifications for the Supplies and processing of the Supplies covered under the T&C which MPI has or later does provide to with regard to the Supplies covered under the T&C ("Purchase Specifications"); (ii) any other business or technical information, including without limitation, all oral or written information relating to the Supplies, or information relating to MPI's customers, suppliers, business practices, products, designs, inventions, or research and development; and (iii) the terms and conditions of the T&C. However, "Confidential Information" shall not include any information that Seller can establish by written documentation was (i) in the public domain at the time of disclosure or thereafter through no fault of Seller, (ii) independently developed by Seller, or (iii) obtained by Seller without restriction from a third party. Seller agrees to safeguard the Confidential Information by using reasonable efforts, consistent with those used in the protection of its own proprietary information of a similar nature, to prevent its disclosure to third parties. Seller agrees to cause its employees, "contractors", officers, directors, agents and representatives to be bound by and comply with the foregoing restrictions regarding use or disclosure or such confidential and proprietary information. Seller further agrees not to assert any claims with respect to any technical information which Seller shall have disclosed or may thereafter disclose to MPI in connection with the Supplies.

## **21. PATENT INDEMNITY**

At its expense, Seller shall hold harmless and defend MPI, its customers, employees, officers, directors, agents, affiliates and assigns against any claim or suit alleging the infringement of any patent, copyright or trademark, and shall indemnify the aforesaid parties against all damages, costs, and expenses (including reasonable attorneys' fees) arising therefrom by reason of the manufacture, sale or the normal or intended use of the Supplies, covered by the Contract, provided that the foregoing hold harmless obligation shall not apply to any infringement claim arising solely out of Seller's compliance with specifications furnished by MPI. MPI shall give Seller prompt notice in writing of any suit for infringement and such opportunity as is afforded by applicable laws, rules, or regulations to participate in the defense thereof.

## **22. HOLD HARMLESS – WORK ON BUYER PREMISES**

In the event Seller, its agents, and/or employees are required to perform the Contract or any part thereof on the premises of MPI (including any premises under MPI's control or responsibility), Seller agrees to hold harmless and defend MPI and its customers, employees, officers, directors, agents, affiliates and assigns from and against any and all claims, demands, actions, debts, liabilities, judgments, costs, and attorneys' fees arising out of claims on account of, or in any manner predicated upon loss of, or damage to the property of, the injuries to, or the death of, any or all persons whatsoever (including employees of Seller), in any manner caused or contributed by Seller, its agents or employees while in, upon, or about MPI's premises and to indemnify and save the aforesaid parties harmless, from and on account of damages or liability of any kind which such parties may suffer as a result of the acts of any of Seller's agents or employees in or about the area involved. MPI reserves the right to participate in the defense of any such suit without relieving Seller of any obligation thereunder. Seller shall not employ, or engage, in the performance of the work any person unfit or unskilled in the work assigned to it. The foregoing obligations of Seller shall not apply to any such loss, damage, injury or death proximately and solely caused by the negligent acts or omissions of MPI or its employees.

## **23. INSURANCE REQUIREMENTS**

Seller shall obtain and present evidence acceptable to MPI of insurance coverage in amounts at least equal to the minimums described below. Such insurance shall provide that no cancellation or material changes in the policies shall become effective except on thirty (30) days written notice to MPI, and that MPI shall be named as an additional insured on coverages (b), (c), and (d) below. Seller shall maintain all required coverages in effect throughout the term of the Contract and for a minimum of five (5) years thereafter. Seller shall furnish to MPI certificates evidencing all required coverages and stating the expiration date for each coverage. Seller shall likewise furnish to MPI certificates evidencing all required renewals of coverage. The minimum insurance that Seller must obtain (unless lower coverage is approved in writing by a Buyer Authorized Representative) is:

- (a) Worker's Compensation insurance, including Employer's Liability – Statutory limits;
- (b) Comprehensive General Liability insurance--\$5,000,000 combined single limit for bodily injury and property damage, including owner's and contractor's protective coverage, contractual liability coverage and products/completed operations coverage;
- (c) Comprehensive Automobile Liability insurance covering all owned, hired and non-owned vehicles--\$1,000,000 combined single limit for bodily injury and property damage; and
- (d) Excess Liability coverage--\$10,000,000 per occurrence.

## **24. DIRECTED SUPPLIER**

If MPI's customer directed, recommended, requested, suggested or otherwise identified Seller as a source of the Materials: (s) MPI will pay Seller for the Supplies only following and to the extent of MPI's actual receipt of payment from that customer for those goods in which the Supplies are incorporated; (b) within three business days of any change in price, specifications or other terms negotiated or proposed between Seller and the customer. Seller will notify MPI in writing and will immediately adjust its invoices to reflect any price reduction, provided that no change will be binding on MPI without MPI's specific written consent.

## **25. TRADEMARKS AND MARKS**

- (a) Trademark Protection: MPI may require Seller to place MPI's trademarks (MARKS) on the Material. If MPI makes such a request, MPI grants to Seller a limited, revocable, nonexclusive royalty free license for the term of the T&C to use the MARKS on products and packaging materials in connection with the sale of Material to MPI only. This license grant is limited to sales made to MPI or at the direction of MPI. The license granted in the T&C is limited to Material manufactured and/or produced by Seller at the direction of and for MPI, or MPI's manufacture or distribution of any products or services unless expressly authorized by MPI in writing. Upon expiration or termination of the T&C for any reason, Supplier will immediately refrain from further use of the MARKS or any further reference to them, direct or indirect, or anything deemed by MPI to be similar to the MARKS in connection with the manufacture, sale or distribution of any of Supplier's products.
- (b) Seller recognizes there is significant value and good will associated with the MARKS, and acknowledges that the MARKS and all rights and good will associated with the MARKS belong exclusively to MPI.
- (c) Seller's every use of the MARKS shall inure to the benefit of MPI and Seller shall not at any time acquire any rights in the MARKS by virtue of any use it may make with of the MARKS. Seller shall cooperate fully and in good faith with MPI for the purpose of securing and preserving MPI's rights to MARKS.
- (d) Upon the termination or expiration of the T&C, Seller will be deemed to have assigned, transferred, and conveyed to MPI any rights or good will to the MARKS that may have been obtained by Seller. Seller shall cooperate with and do all acts necessary so that MPI can accomplish or confirm the foregoing. Any such assignment, transfer, or conveyance shall be without other consideration than the mutual covenants and considerations of the T&C.
- (e) Seller and its parent company, subsidiaries, and divisions, if any, and its subcontractors, agents, and representatives, agree not to attempt to register the MARKS on any product or service either during the terms of or after termination of the T&C.

## **26. CHANNELS OF COMMUNICATION; SELLER'S RISK**

All communications between the parties shall be through a MPI Authorized Representative and any matter requiring the consent or approval of MPI under the Contract shall be deemed consented to or approved only with the consent or approval of a MPI Authorized Representative. From time to time, MPI's engineering and technical personnel may render assistance or give technical advice to, or effect and exchange of information with Seller's personnel in liaison effort concerning the Supplies to be furnished under the Contract. Such exchange of information or advice, however, shall not vest Seller with the authority to

change the Supplies to be furnished under the Contract or the provisions of the Contract, nor shall such change in Supplies or provisions of the Contract be binding upon MPI, unless incorporated as a change, pursuant to Section 2 hereof, or as an amendment hereto, in either case in writing signed by a MPI Authorized Representative. Seller's actions or non-actions, based on such exchange from engineering or technical personnel, shall be at Seller's risk unless it obtains proper written authorization in advance.

**27. NO WAIVER; CUMULATIVE REMEDIES**

Any MPI delay in enforcing or failure to enforce at any time any of the provisions of the Contract, or any rights in respect thereto, or to exercise any election provided in the Contract, shall in no way be considered to be a waiver of the right to thereafter enforce such provisions or rights or exercise any subsequent elections. Any and all of the rights and remedies conferred upon MPI under the Contract shall be cumulative and in addition to, and not in lieu of, any other or further rights and remedies available at law or in equity.

**28. GOVERNING LAW AND COMPLIANCE WITH LAWS**

Seller shall comply with all applicable Federal, state, local and foreign country laws, government orders and regulations in performing the Contract. Seller covenants to save and hold MPI harmless from and to reimburse MPI for damage and expenses (including reasonable attorneys' fees and court costs) incurred by MPI as a result of any failure of Seller to comply with any such law, order or regulation. Irrespective of the place of performance, the Contract will be constructed and interpreted according to the laws of the State of Michigan without giving effect to any applicable principles of conflicts of laws, and Seller hereby consents to the jurisdiction of the Federal and state courts situated in Michigan and to personal service as provided by Michigan law. Application of the 1980 United Nations Convention on Contracts for the International Sale of Goods is expressly excluded.

**29. INSOLVENCY OF SELLER**

MPI may immediately terminate the Contract without any liability to Seller in the event of any of the following or any comparable event: (a) insolvency of Seller; (b) filing by Seller of a voluntary petition in bankruptcy; (c) filing of any involuntary petition in bankruptcy against Seller; (d) appointment of a receiver or trustee for Seller, or (e) execution by Seller of any assignment for the benefit of creditors of Seller.

**30. BREACH BY SELLER; MPI RIGHT TO TERMINATE FOR CONVENIENCE**

- (a) MPI shall have the right to terminate immediately all or any part of the Contract or releases under the Contract, without any liability of MPI to Seller, if Seller (i) fails to maintain prices competitive with the market; (ii) repudiates or breaches any of the terms of the Contract, including without limitation Seller's warranties; (iii) fails to perform services or deliver goods as specified by MPI in accordance with the terms of the Contract; or (iv) fails to make progress so as to endanger timely and proper completion of services or delivery of goods as specified in the Contract.
- (b) In addition to any other rights of MPI to cancel or terminate the Contract, MPI may at its option terminate immediately all or any part of the Contract or releases under the Contract, at any time and for any reason, by giving written notice to Seller. Upon such termination, MPI shall pay to Seller, without duplication, the following amounts, which shall be Seller's exclusive remedy: (i) the Contract price for all Supplies that have been completed and delivered in accordance with the

Contract and not previously paid for; and (ii) the actual cost of work-in-process and raw materials incurred by Seller in furnishing Supplies pursuant to the Contract to the extent such costs are within the scope of the commitments made by MPI in delivery releases issued by MPI under the Contract, are reasonable in amount and nature, and are properly allocable or apportionable to the terminated portion of the Contract, less the reasonable value or cost (whichever is greater) of any goods or materials used or sold by Seller with MPI's written consent and of any goods of materials that are damaged or destroyed or would otherwise be unusable in the performance of the Contract.

- (c) Notwithstanding the foregoing, MPI shall not be obligated to make payments for finished goods, work-in-process or raw materials fabricated or purchased by Seller in excess of amounts authorized by the Contract and delivery releases issued by MPI under the Contract, nor shall MPI be obligated to make payments for undelivered goods or materials that are in the Seller's standard inventory or that are readily marketable. In all cases, payments by MPI pursuant to this Section shall not exceed the aggregate Contract price payable by MPI for finished goods that would be produced and delivered by Seller under the Contract and delivery releases issued by MPI under the Contract outstanding at the date of MPI's termination notice. Except as expressly provided in this Section, MPI shall not be liable for, and shall not be required to make payments to Seller, directly or on account of claims by Seller's suppliers, for loss of anticipated profit, unabsorbed overhead, interest on claims, product development, qualification, engineering or similar costs, facilities and equipment purchase or rental costs, unamortized capital expenditures, or general and administrative or burden charges as a result of any termination of the Contract or releases issued by MPI under the Contract, in whole or in part. Within forty-five (45) days from the effective date of termination, Seller shall submit its complete termination claim to MPI, together with sufficient supporting data and evidence to enable MPI to audit such claim, and Seller shall thereafter promptly furnish such supplemental and supporting information as MPI shall request. MPI or its agents shall have reasonable access to and the right to audit and examine all books, records, facilities, work, material, and other items of Seller and Seller's suppliers relating to any termination claim submitted by Seller.

### **31. FORCE MAJEURE**

- (a) Any delay or failure of either party to perform its obligations under the Contract shall be excused if Seller is unable to produce, sell or deliver, or MPI is unable to accept delivery, buy or use the Supplies covered by the Contract as the result of an event or occurrence beyond the reasonable control of the party and without its fault or negligence, including, but not limited to, acts of God, actions by any governmental authority (whether valid or invalid), fires, floods, windstorms, explosions, riots, natural disasters, wars, sabotage, labor problems (including lockouts, strikes and slowdowns), inability to obtain power, material, labor, equipment or transportation, or court injunction or order, provided, that written notice of such delay (including anticipated duration of the delay) shall be given by the affected party to the other party as soon as possible after the event or occurrence (but in no event more than forty-eight (48) hours thereafter). Notwithstanding the foregoing, the change in cost or availability of materials, components or services based on market conditions, supplier actions or contract disputes will not constitute *force majeure* or otherwise be excused pursuant to this Section, and Seller assumes these risks.
- (b) During the period of any delay or failure to perform by Seller under Section 31(a), MPI, at its option, may purchase goods and services from other sources and reduce its schedules to Seller by such quantities, without liability to Seller, or have Seller provide the goods from other sources in quantities and at times requested by MPI. Seller shall, within ten (10) days of such request, provide adequate assurances that the delay will not exceed thirty (30) days. If the delay lasts more than thirty (30) days or Seller does not provide adequate assurance as requested, MPI may immediately terminate the Contract without liability.

- (c) Either party affected by a delay or failure to perform under Section 31 (a) shall use its commercially reasonable efforts to eliminate and/or mitigate the effect of such delay or failure to perform.

### **32. LABOR DISPUTES**

In the event of any actual or potential labor dispute delaying or threatening to delay Seller's timely performance of the Contract, Seller will immediately notify MPI and provide all relevant information concerning such dispute or potential dispute. In addition, Seller will notify MPI in writing at least six (6) months in advance of the expiration of any labor contract. Before any of Seller's labor contracts expire as soon as Seller anticipates or learns of any impending strike, labor dispute, work stoppage or other disruption at Seller's facilities that might affect delivery of Supplies to MPI, Seller will produce (and locate in an area that will not be affected by any such disruption) a finished inventory of Supplies in quantities sufficient to ensure the uninterrupted supply of Supplies to MPI for at least forty-five (45) days after such disruption commences.

### **33. LANGUAGE; SEVERABILITY**

The parties acknowledge that it is their wish that these terms and all documents relating thereto be in the English language only. If any term or provision of the Contract is invalid or unenforceable under any applicable statute, regulation, ordinance, executive order or other rule of law, such term or provision shall be deemed reformed or deleted, but only to the extent necessary to comply with such statute, regulation, ordinance, executive order or other rule of law, and the remaining provisions of the Contract shall remain in full force and effect.

### **34. ENTIRETY OF AGREEMENT; MODIFICATIONS**

The Contract, as written, embodies the entire understanding between MPI and Seller with respect to the subject matter of the Contract, and all previous negotiations, discussions, and written or oral agreements are hereby superseded by the Contract. The terms of the Contract supersede and control any previous course of dealing or usage of trade. In the event of any conflict between the terms of the Contract and the terms of any acknowledgement, invoice or other document delivered by the Seller to MPI relating to the Contract, the terms of the Contract shall control. Except as specifically provided for herein, the Contract may not be altered, amended or modified except in writing, signed by a MPI Authorized Representative and a duly authorized representative of Seller. Notwithstanding the foregoing, MPI may modify these Purchase Order Terms and Conditions with respect to MPI's future purchase orders at any time by posting revised Purchase Order Terms and Conditions to its website and such revised Purchase Order Terms and Conditions will apply to all of MPI's purchase orders issued thereafter.

### **35. ORDER OF PRECEDENCE**

Conflicting provisions of the Contract, if any, shall prevail in the following descending order of precedence: (1) provisions on the face of MPI's purchase order or delivery releases issued pursuant thereto; (2) provisions in other Contract documents executed by MPI that explicitly supersede there Purchase Order Terms and Conditions; and (3) these Purchase Order Terms and Conditions. MPI's specification shall prevail over any subsidiary documents referenced therein. Seller shall not use any specification in lieu of those incorporated in the Contract without written consent from a MPI Authorized Representative.

**36. NOTICES**

All notices and payments required to be given or made by MPI under the Contract shall be given or made to Seller at the address designated by Seller in writing. All notices or payments required to be given or made by Seller shall be given or made to MPI at the following address:

MPI International LLC  
21177 Hilltop Dr.  
Southfield, MI 48033

Or other MPI address identified by MPI and shall be directed by Seller to the attention of the representative designated by MPI.

**37. SURVIVAL**

All representations, warranties, covenants and agreements of Seller contained in the Contract shall survive the expiration or earlier termination of the Contract.