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# **General Terms and Conditions of Purchase SMR Automotive Australia Pty Limited**

Revision 3

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## 1. Scope of Purchase Terms

- 1.1 These terms and conditions of purchase ("Purchase Terms") of SMR Automotive Australia Pty Limited ABN 77 007 550 094 ("Buyer") shall exclusively apply to all of Buyer's purchases of parts, materials and assemblies ("Goods") by means of any purchase orders issued by Buyer; Buyer does not accept and shall not be bound by Supplier's terms and conditions unless their application has been agreed expressly in writing by Buyer in advance. The Purchase Terms shall also apply in all cases in which Buyer accepts Supplier's delivery without objecting to the conflicting or deviating terms and conditions of the Supplier (whether or not Buyer is aware of them). Supplier accepts the Purchase Terms by the delivery of its Goods to Buyer.
- 1.2 These Purchase Terms shall apply equally to the purchase of Goods as production material (for the purposes of Buyer's own serial production), as spare parts or as machines, tools and other products unless the applicability of any of the following provisions of these Purchase Terms is expressly limited to individual or specific kinds of Goods.
- 1.3 The provisions of these Purchase Terms shall prevail over any other agreements which the Parties may enter into in addition (e.g. Buyer's Quality Agreement or Supplier Manual).

## 2. Order

- 2.1 All enquiries of Buyer with Supplier about Supplier's Goods and terms of their supply or Buyer's requests for quotations by Seller do not legally bind Buyer in any way. The estimated quantities quoted in any price inquiry statement or requests for quotation are indicative only, and do not bind Buyer, until Buyer explicitly calls for fixed quantities in any purchase order or in calls for delivery (as applicable).
- 2.2 Buyer's purchase orders are only binding if they are made in writing. Orders made orally or by telephone are not binding and do not cause under any circumstances a contractual relationship to come into existence. Likewise, changes to the contract (subject to the detailed provisions in Clause 7 below) as well as side-agreements must be made in writing in order to be legally effective.
- 2.3 A valid and binding contract between Buyer and Supplier incorporating these Purchase Terms shall be formed by:
- (i) Buyer's written purchase order submitted to Supplier (constituting a purchase offer), and
  - (ii) Supplier's express written acceptance of the purchase order by means of a confirmation of order to be received by Buyer within seven days of the date of the purchase order, or
  - (iii) Supplier's commencement of performance of the purchase order.
- Any order confirmation by the Supplier which is received later or which differs from Buyer's purchase order represents a new purchase offer and must be accepted by Buyer in writing.
- 2.4 If the contract or the purchase order specify that the Goods to be delivered shall be designated by calls for delivery, such calls for delivery shall be-

come effective 2 days after submission to Supplier, unless the Supplier has objected to them in writing by then.

## 3. Prices – Terms of Payment

- 3.1 The price set out in the purchase order is a fixed price for delivery to the delivery address stated on the purchase order comprising packaging, freight, insurance and other such costs. The statutory goods and services tax is not included in the price and will be charged separately.
- 3.2 Unless credit entry procedures have been agreed with the Supplier, invoices can be processed by Buyer only if they state – in accordance with the requirements in its purchase order – the order number and the article number as quoted in the purchase order as well as in the case of tools or investment products the respective project number; the Supplier shall be responsible for all consequences resulting from the failure to comply with this obligation.
- 3.3 Unless otherwise agreed in writing payment for the Goods will be made on the last day of the second month following the date of invoice.
- 3.4 If Buyer's purchase order specifies that a deposit is payable by Buyer, that amount is payable by Buyer at the time specified in the purchase order, with the balance payable in accordance with these Purchase Terms. Deposits paid by Buyer will be repayable by Supplier in full where:

(i) Buyer has a right to terminate the contract under these Purchase Terms or at law; and

(ii) Supplier fails to comply in full with its obligations or other requirements set out in any purchase order issued by Buyer.

3.5 Buyer shall make payment by wire transfer. Other modes of payments as well as Credit entry procedures need to be agreed specifically between the Parties to be applicable.

3.6 Buyer may set off any monies that it owes to the Seller against any monies that it is owed by the Seller.

## 4. Shipment, Packaging and Delivery

4.1 The Goods are to be delivered carriage paid to the address designated by Buyer (i.e. the agreed delivery address) during Buyer's normal working hours.

4.2 All Goods shall be suitably packed or otherwise prepared for shipment. No charge is allowed for wrapping, packing, transportation, cartons, boxing, crating, cartage or insurance unless designated on the purchase order.

4.3 Buyer will specify in each purchase order the means of delivery to it; it may do so specifically by the use of trade terms customary in the automotive industry. Insofar as the purchase order states the Incoterms to be applicable, the Incoterms valid and in force at the time of the purchase order shall apply.

4.4 Containers and packing must be supplied free of charge but will be returned, if required, at the Supplier's risk and expense.

Transportation equipment (containers, racks etc.) shall be specified by its number on the transport documents / delivery notes failing which they shall pass into Buyer's ownership.

- 4.5 All shipments of Goods (or other materials) must be accompanied by a detailed delivery note stating Buyer's purchase order number, name and quantity and giving full particulars (including the part number) of the Goods (or other materials) supplied.

Supplier shall also provide Buyer with such other advice notes, statements and other reasonable documentation as Buyer may specify from time to time.

- 4.6 In accordance with the applicable EC Directives Supplier is obligated to provide a supplier declaration. A certified annual supplier declaration must be submitted at the latest at the time of delivery. This declaration must be renewed without request prior to the expiration of this period. Any changes with respect to the origin must be notified to Buyer without undue delay. At Buyer's request, Supplier must submit an information paper duly certified and cleared through the customs for the delivered Goods. If and to the extent that additional official documents for the use of Goods in accordance with their specifications are required for the import or export of the Goods Supplier undertakes to make those documents available to Buyer or, as the case may be, to procure them without undue delay.

- 4.7 Supplier shall not deliver any Products in advance of the schedule set forth in the purchase order, without Buyer's written permission. Buyer reserves the right to store at Supplier's risk and expense all Products received at Buyer's plant in advance of the schedule shown on the purchase order until the due date for delivery.

If Buyer accepts early deliveries on this basis, Buyer shall nevertheless not be obliged to make payment earlier than on the due date pursuant to the scheduled delivery.

## 5. Property and Risk

The property and risk in the Goods will pass to Buyer at the time of their delivery at the agreed delivery address (manufacturing site).

## 6. Late Delivery

- 6.1 Time shall be of the essence in respect of delivery dates and delivery periods for Goods and the Supplier shall comply in all respects with any delivery programme issued by Buyer at no additional cost to Buyer.
- 6.2 Supplier must immediately notify Buyer in writing of any and all circumstances which arise or of which Supplier becomes aware as a result of which the agreed delivery date or delivery periods cannot be kept. Such notification does not release the Supplier from its obligation of delivery on the agreed due date.
- 6.3 If the Supplier is late in delivering the Goods to Buyer's agreed delivery address, Buyer shall be entitled to damages and be indemnified according to Clause 10.6.
- 6.4 In the event of late delivery of Goods and without prejudice to all of Buyer's other rights (in particular with respect to damages pursuant to Clause 6.3), Seller shall pay liquidated damages for each working day of delay in the amount of 0.1 % of the value of the delayed Goods up to a maximum

of 10 %. All such liquidated damages shall be credited against any otherwise asserted damages.

## 7. Contractual / Technical Changes

- 7.1 Changes to any contract including changes to quantities, method of shipment, packing, time or place of delivery or changes in the drawings or specifications must be mutually agreed by the Parties and recorded in writing, taking into account and reflecting any resulting increases in costs of, or time required for, the performance of the contract (if any). With respect to technical modifications, in particular modifications of Buyer's drawings or specifications, the following provisions of this Clause 7 shall apply in addition.

- 7.2 Buyer may at all times – also during serial production – request technical modifications of the Goods. Immediately after receipt of Buyer's request for modification, Supplier shall submit a cost estimate on possible cost increases or reductions as well as information on deadline shifts, consequences on the weight, function and quality resulting from the modifications. The Supplier is obliged to keep the costs caused by the modifications requested by Buyer as low as possible.

- 7.3 The Supplier will fulfill the request for modification as soon as the Parties have reached an agreement on any increased or reduced costs, the deadline shifts, the consequences on weight, function and quality.

- 7.4 If in Supplier's opinion technical modifications or deviations are sensible – e.g. due to more efficient production methods or for the improvement and increase of the safety of its Goods or for an adjustment to the engineering progress – the Supplier will propose them to Buyer; simultaneously information must be given about the consequences on the price, the delivery dates, etc. Buyer shall examine these modification proposals without delay and shall not randomly refuse their acceptance.

- 7.5 The Supplier shall not perform any technical modifications until it has received Buyer's written approval. The procedure concerning the initial sample tests must be repeated with respect to all Goods which are subject to technical modifications after the original product release.

- 7.6 Buyer's technical documents, drawings and plans must be examined by Supplier with regard to their completeness and correctness prior to commencement of processing or production. If Supplier considers them to be incomplete or to contain faults or defects the Supplier is obliged to notify Buyer accordingly in writing without delay (but in any case prior to commencement of the processing or production); any missing technical documents, drawings or plans must be requested in writing without delay.

## 8. Quality Management

The following provisions of this Clause 8 shall apply exclusively to the delivery of production material and/or spare parts.

- 8.1 Supplier shall presently and in the future maintain a quality management system in accordance with ISO/TS 16949:2009. As an alternative a quality management system which corresponds to and is consistent with the standards in the automobile industry according to VDA or ISO 9001:2008 may be agreed by the Parties at the request of Supplier.

If Supplier does not meet the quality levels required by any such quality management system, and Supplier does not correct such deficiencies within three months after notification by Buyer, in addition to any other rights of Buyer, Buyer may terminate the contract immediately without any further obligations to Supplier.

- 8.2 In accordance with the quality standard of the automobile industry the Supplier is always obliged to make an initial sample test according to ISO / TS 16949: 2009 at the latest prior to the production release for serial production. This must, in principle, always be made at the Supplier's premises unless Buyer or its customers (in particular the manufacturer of automobiles) require an exception thereto.
- 8.3 Notwithstanding Clause 8.2 and at Buyer's request, Supplier will furnish Buyer test samples of such Products as may be reasonably required by Buyer to determine if Seller's manufacturing is being performed in accordance with the specifications furnished by Buyer. These test samples will be provided at no cost to Buyer.
- 8.4 Interruptions in the quality management process – also with regard to parts concerned which are purchased or processed by third Parties – must be notified to Buyer without undue delay.
- 8.5 For use in serial production a target value is determined for the quality ppm and reviewed on a monthly basis. The Supplier bears the responsibility not to exceed at any time the required quality failure rate (without prejudice to any of Buyer's possible warranty claims which are not affected thereby).
- 8.6 Buyer may, upon reasonable notice, during normal business hours, make reasonable inspections, at such intervals as Buyer deems necessary, of the facilities where Supplier manufactures Goods.
- Buyer may terminate this contract, effective after written notice to Supplier, if Supplier fails to maintain the agreed quality standards for a period of three months.
- 8.7 Inspection or testing as aforesaid shall not be deemed to constitute acceptance of the Goods or any part thereof nor shall it relieve Supplier from complying with any and all of the express or implied conditions in the purchase order (the contract).
- 8.8 The Supplier is obliged to supply Buyer for a period of 15 years after discontinuation of serial production with spare parts which correspond with the contractually agreed quality required for the respective serial delivery. This obligation shall also apply to materials, raw materials, vendor parts or components which the Supplier purchases from third parties.
- 8.9 The Supplier agrees before delivery to furnish Buyer in writing with a list by name and description of any harmful or potentially harmful properties or ingredients in the Goods and thereafter information concerning any changes in such properties or ingredients. Buyer will rely on the supply of such information from the Supplier in order to satisfy its own obligations under relevant health and safety requirements.

## 9. Inspection of Goods

- 9.1 In view of the quality management system

adopted by Supplier pursuant to Clause 8.1 the Parties agree that Buyer's inspection of incoming Goods shall be replaced by their examination by Supplier prior to the dispatch of the Goods to Buyer. For these purposes the Parties agree further:

Buyer will inspect the Goods on delivery only with regard to their identity (correspondence with the Goods listed in the relevant purchase order or call for delivery), completeness (additional or short delivery in relation to the amount of the requested Goods listed in the purchase order or call for delivery), transport damage or other extrinsically noticeable damage.

Buyer will notify to the Supplier in writing any possible wrong or poor delivery or any such damage without delay. Otherwise Buyer is not obliged to inspect the delivered Goods upon their delivery; the outgoing inspection of the Goods is effected by Supplier at its premises instead.

In so far as Buyer detects any defects later on, Buyer will notify the Supplier thereof in writing without delay.

- 9.2 Prior to delivery to Buyer the Supplier shall adequately inspect and test the Goods and if Buyer so requires the Supplier shall furnish Buyer with test certificates. The Supplier shall allow Buyer or its authorized representative on prior notice and during normal business hours unrestricted access to any area of any premises where the Goods or any part are being manufactured or stored or where any of Buyer's Goods are being kept in order that Buyer or its authorized representative may test or inspect the Goods or verify conformance of Goods with the specification requirements of Buyer. The Supplier shall afford Buyer or its authorized representative such use of the Supplier's equipment and employees as is reasonable in the circumstances in order to facilitate such inspection, testing or verification.

No inspection or testing by Buyer pursuant to this Clause 9 shall imply any acceptance of the Goods by Buyer or in any way relieve the Supplier of its obligations and duties under the contract or otherwise.

## 10. Warranty

The following provisions of this Clause 10 shall apply exclusively to the delivery of production material and/or spare parts (to all other Goods relevant applicable statutory provisions or laws shall apply):

- 10.1 Supplier warrants the compliance with the specifications in Buyer's documentation, drawings and plans:
- the conformity of the Goods with the initial samples released by Buyer,
  - the existence of the features as contained in the signed initial sample test report,
  - that the used/chosen materials and/or vendor parts are free from defects and suitable,
  - the absence of defects in the Goods with respect to design, materials and workmanship which nullify or reduce the value or the suitability of the Goods for the contractually presumed use,

- the compliance with the latest state-of-the art of science and technique,
- that all work will be carried out with skill and care and be suitable for the purposes indicated or to be reasonably inferred from the specification and as may be made known by Buyer to the Supplier prior to the contract being entered into.

10.2 Any Goods supplied or installed under the contract shall be so formulated, designed, constructed, finished and packaged as to be safe and without risk to health.

Any Goods which are (or will be upon supply in the European Community) within the scope of the CE marking requirements of any relevant EC Directive or local laws implementing the same shall satisfy the relevant requirements and shall bear a properly affixed CE mark, have a certificate of conformity and all necessary technical specifications.

Goods must meet all relevant health and safety requirements applicable to Goods both in the state or form supplied to Buyer and when combined with other goods. It is the responsibility of the Supplier to acquaint itself with the purpose for which the Goods are to be supplied.

10.3 If defective Goods or parts thereof are discovered by Buyer prior to commencement of the production (processing, installation or fitting) the following shall apply:

(i) The Supplier must, at Buyer's option, deliver without delay defect-free new products or remedy (repair) the defective Goods. Any possibly required sorting work or other reworking, will be carried out by Supplier in coordination with Buyer at Buyer's premises.

(ii) All costs incurred in connection with the delivery of the defective Goods (sorting, transportation, costs for remedying, investigating (including research and development efforts) the causes of defects etc.) shall be borne by the Supplier.

10.4 If a defect is discovered after the commencement of production, the provisions of Clause 10.3 shall initially apply; in addition thereto, the following shall apply:

(i) If a defect is discovered before the end products are delivered to Buyer's customers, then the Supplier shall bear in addition to the costs for remedying or replacement also the costs for the disassembling and assembling as well as for any reworking (cost of labor, cost of materials, costs for further tools required).

(ii) If a defect is discovered only after the end products have been delivered to Buyer's customers, then the Supplier shall bear in addition the proportion of the costs incurred for taking back and/or field measures which correspond to or reflect the causal or fault contribution of the Supplier. Buyer shall inform the Supplier upon occurrence of such defects and on the further procedure and measures to be taken.

10.5 Buyer is entitled to remedy any defects itself or to have this carried out by a third party or may procure replacement from a third party if

(i) the Supplier is at default with the replacement or remedy,

(ii) the defect was discovered before the commencement of production and this is required in cases of special urgency to prevent substantial disadvantages, e.g. shutdown of the conveyer.

The Supplier must be informed about this situation without delay. Costs incurred in connection therewith shall be borne by the Supplier.

10.6 Indemnity

10.6.1 Without prejudice to Buyer's rights under any condition, warranty or other term implied herein by statute or by law or under any term of the contract, the Supplier will be liable to Buyer for and indemnify and keep Buyer indemnified against any liability, claim, cost (on a full indemnity basis) proceeding, loss or damage of any kind whatsoever (including the stopping of or interference with the production or manufacture or supply or recall by Buyer of any Goods or works):

(i) caused by any defect in any Goods supplied or work done by the Supplier or by the Supplier not complying with the agreed specifications or the negligence of the Supplier,

(ii) in the event of delays, defaults or non-deliveries (arising other than as a result of negligence on the part of the Buyer), against any increase in

- the cost of labour or material required to produce the Goods or obtain the work elsewhere,

- the cost of transportation,

- the cost of any other item in connection with the Goods or work which would not have been incurred but for such delay, default or non-delivery,

(iii) incurred by Buyer under contracts entered into by the Buyer and the performance of which has been delayed or rendered impossible by the Supplier's breach of its obligation hereunder,

(iv) arising directly or indirectly out of any breach by the Supplier of the contract terms.

Any costs and expenses incurred by Buyer so caused or arising shall be reimbursed to Buyer by the Supplier on demand.

10.6.2 In connection with any liability, claim, proceeding, loss or damage under this Clause 10.6 the Supplier must provide all such facilities, assistance or advice as Buyer may request for the purpose of contesting the same and further must, if so requested by Buyer, accept as final and binding the decision of any Court (anywhere in the world) in relation to the same.

10.6.3 The Supplier consents to Buyer transferring any guarantee or similar rights given by the Supplier to Buyer in relation to the Goods or works supplied to any other person or company to whom the Buyer sells, hires or disposes of such goods and services to the extent that such guarantee or similar right may be enforced against the Supplier not only by Buyer but also any other person or company claiming through the Buyer.

10.7 Buyer shall be entitled to terminate the contract without liability to the Supplier and without prejudice to Buyer's other rights in any of the following circumstances:

- (i) the Supplier fails to deliver the Goods or perform the work on the agreed date or set out in any delivery schedule, time being of the essence
- (ii) the Goods supplied or work performed by the Supplier is such that they do not comply in every way with the contract or any contractual specifications
- (iii) any breach by the Supplier of a term of these Purchase Terms.

10.8 Except for Goods which are integrated into automobiles and which are thereafter exported to North America (USA, Canada, Puerto Rico) the warranty period for defects shall end upon the expiry of 24 months from the first registration date of the cars or from installation of spare parts or 30 months from the delivery to Buyer's customers, whichever period expires first.

For the Goods to be exported to North America (USA, Canada, Puerto Rico) after the integration into the automobiles the warranty period for defects shall end upon expiry of 48 months from the first registration date of the car or installation of the spare parts or 50 months from the delivery to Buyer's customers, whichever period expires first, at the latest, however, after 50,000 kilometers.

#### 11. Product Liability, Recall Campaigns, Liability Insurance

11.1 To the extent that the Supplier is responsible (at fault) for any product defect Supplier is obliged to provide damages or to indemnify Buyer against any third Party claim upon first request provided the cause of the claim lies in the Supplier's sphere of control and organization and Supplier would be liable vis-à-vis third Parties itself. Insofar as Buyer has contributed any fault or causation Supplier may assert such contributory fault (negligence) or causation against Buyer. As between Buyer and Supplier their respective share of damages shall be subject to their respective pro rata contribution of causation and/or fault.

11.2 Within the scope of its liability for damages pursuant to Clause 11.1 the Supplier is also obliged to reimburse any expenses which result from or in connection with a recall campaign carried out by Buyer. Buyer shall inform the Supplier to the extent possible and reasonable about the contents and scope of the recall actions to be carried out and shall offer Supplier the opportunity to comment thereon. All other statutory claims remain unaffected.

11.3 In the event Buyer, any of Buyer's customers, and/or any car manufacturer (OEM) determines that a recall campaign or owner notification program is necessary to comply with a law, regulation, order or other government requirement, or as a safety measure to avoid personal injury or death, including but not limited to labour, transportation and traceability costs, shall be apportioned on the basis of the causal or fault contribution respectively attributable to Buyer and Supplier.

Buyer shall inform the Supplier to the extent possible and reasonable about the contents and scope of the recall actions to be carried out and shall provide to Supplier the opportunity to comment thereon. All other statutory claims remain unaffected.

11.4 For the purposes of Clauses 11.2 and 11.3, a recall campaign is defined as a systematic effort

to locate Goods that are in breach of Buyer's or Buyer's customers' and/or any automobile manufacturer's warranties or otherwise required to be recalled to inspect and correct or replace such Goods or parts of Goods as necessary.

11.5 The Supplier commits itself to take out and maintain sufficient product liability insurance. The Supplier shall provide Buyer at its request with evidence of the relevant insurance policies in writing. If the Supplier is not able to provide evidence of the insurance policies within two weeks, Buyer is entitled to take out such insurance at Supplier's expense.

#### 12. Documents / Confidentiality

12.1 Buyer retains all property rights to documents, product specifications, pictures, drawings, calculations and other documents provided for the performance of its order; these documents shall not be disclosed to any third Party without Buyer's express written approval. They shall be used exclusively for the performance of Buyer's orders and must, as they represent Buyer's confidential business information, be especially protected. On completion of the contract those documents shall be returned to Buyer without any specific request, unless otherwise agreed. Blueprints or models may also not be retained; the same shall apply if no contract materializes or the contract is dissolved retroactively.

12.2 The use of the drawings, reports, specifications, trade secrets, processes, and/or other data furnished is strictly limited to the purpose for which it is transmitted. Rights to all ideas, and features of novelty or invention described in the data supplied, to the extent originating with Buyer, and all design, manufacturing, reproduction use and sales rights regarding the same, are the property of and reserved to Buyer. Supplier shall not, without prior written consent of Buyer disclose, reproduce, or use such data for any purposes other than those for which the material is supplied. Supplier commits itself to demand the same guarantees of its own suppliers.

12.3 This confidentiality obligation shall also apply for a period of three years following termination of this contract.

#### 13. Intellectual Property Rights

13.1 Supplier expressly warrants that the Goods supplied under any contract and the production and sale of such Goods does not and will not infringe any intellectual property rights. Supplier will, at its own expense, defend any claim, suit, proceeding or action that may arise in respect of any such claim for infringement and indemnifies and hold harmless the Buyer, its successors and assigns, from and against all losses, damages, costs and expenses which may be incurred on account of any such alleged or actual infringement.

13.2 The Supplier's indemnity obligation refers to all expenses which Buyer might necessarily incur due to or in connection with any claims asserted against Buyer by third Parties.

13.3 The limitation period is ten years, calculated as of the conclusion of the contract.

#### 14. Buyer's Proprietary Interests in Tools or Parts

- 14.1 All design, tools, patterns, drawings, information or other equipment supplied by Buyer, or if acquired by Supplier at Buyer's cost and expense (and to be reimbursed by Buyer or to be included in the price to be paid for the Goods) and relating to, or for use in, or the manufacture of the Goods shall remain or become the sole property of Buyer ("Buyer's Property"). Supplier expressly agrees that the same will not be used in manufacture or design for the account of third Parties, without prior written consent of Buyer.
- 14.2 Supplier is obliged to carry out in time all possibly required service and inspection works of Buyer's Property as well as all maintenance and repair services at its own costs. Supplier must notify Buyer immediately of any breakdown; if Supplier culpably fails to do this, any claims for damages remain unaffected.
- 14.3 The Supplier shall keep Buyer's Property separate and apart from all property of other persons and shall clearly mark Buyer's Property "Property of Buyer". Buyer's Property shall not be removed from the Supplier's premises without the written instructions of Buyer except for the purpose of fulfilling the contract. All such Buyer's Property shall be returned to Buyer at termination, cancellation or completion of the purchase order or any contract, unless Buyer shall otherwise direct in writing.
- 14.4 Buyer is granted irrevocable authority to enter upon the Seller's premises or other premises where Buyer's Property are located by its employees or agents to take possession of Buyer's Property and (if necessary) to dismantle Buyer's Property from anything to which they are attached.
- 14.5 The Supplier hereby agrees to indemnify Buyer against loss of or damage to Buyer's Property during the time it is in the Supplier's possession, custody or control. During such time the Supplier shall adequately insure Buyer's Property in the name of and for the benefit of Buyer at the Supplier's expense with a reputable insurance company against loss or damage arising from any cause whatsoever at replacement value and shall produce to Buyer on demand the policies of such insurance and the receipts for premiums paid thereon.
- 14.6 The Supplier shall keep Buyer's Property free of all mortgages, charges, liens or other encumbrances and will procure that any such security over Buyer's Property is discharged forthwith.
- 14.7 To the extent Buyer provides parts or materials ("Parts") to the Supplier, Buyer hereby reserves its title in respect of such Parts. Processing or transforming of such Parts by the Supplier are carried out on Buyer's behalf. If Buyer's retained Parts are processed together with other items which are not owned by Buyer, Buyer shall acquire the co-ownership in the new product in proportion of the value of Buyer's Parts (purchase price plus goods and services tax) to the other processed items at the time of processing.
- 14.8 If the Parts provided by Buyer are inseparably mixed with other items that are not owned by Buyer, Buyer shall acquire co-ownership in the new product in proportion of the value of its retained Parts (purchase price plus goods and services tax) to the other mixed items at the time of mixing. If the mixing takes place in such a way that the items of the Supplier are to be considered to be the main items then it is agreed that the Supplier transfers co-ownership to Buyer on a pro-rata basis; the Supplier shall store and keep Buyer's sole ownership or co-ownership on Buyer's behalf.
- 14.9 All Parts furnished by Buyer under a contract (except that which becomes normal industrial waste) shall be returned in the form of parts or unused material and Supplier shall exercise reasonable care in the safeguarding of all such materials until so returned. Supplier's spoiled or surplus material manufactured to Buyer's design must be so defaced or destroyed that it cannot be used for the purpose for which it was designed.
- 14.10 The Supplier:
- a) grants a first ranking security interest and purchase money security interest ("PMSI") in all Buyer's Property and Parts supplied under these Purchase Terms, and all proceeds from the sale of the Parts, for the purposes of the *Personal Property Securities Act 2009* (Cth) (and all regulations made pursuant to it) ("PPSA");
- b) will do all things necessary (including executing all documents the Buyer requires) and provide all relevant information to enable the Buyer to register a financing statement or financing change statement in relation to the Buyer's Property and the Parts on the Personal Property Securities Register or otherwise perfecting the Company's interest in the Buyer's Property and the Parts; and waives the right to receive any verification statement.
- c) The parties agree that the notice requirements under sections 95, 96, 123, 125, 126, 128, 129, 130, 132(3)(d), 132(4), 134(1), 135, 142 and 143 of the PPSA shall not apply
- 15. Cancellation of Orders / Contracts**
- In case of any contract with a term of not less than 6 months for the supply of Goods to the Buyer, the following provisions on term and termination shall apply:
- 15.1 Either Party may terminate the contract by giving six months' written notice to the other Party.
- 15.2 Quantities which are manufactured by the Supplier prior to such termination shall be accepted and paid for by Buyer up to a maximum of three months' need (30 days finished product + 60 days raw material). Quantities manufactured in excess thereof will be exclusively for Supplier's risk and account.
- 15.3 Each Party is entitled to terminate a contract for good cause at any time without observing any notice period. Good cause shall exist, in particular, in the following cases:
- (i) if either Party becomes insolvent or ceases to conduct its business as a going concern, or applies for or consents to or otherwise obtains the appointment of a receiver, trustee, administrator, liquidator or similar appointment to that Party or the assets of that Party, or if proceedings are instituted under any applicable insolvency law in the jurisdiction of that Party;
- (ii) Breach of substantial contractual obligations; in case of any breach which may be remedied, however, only after the innocent Party has requested the other Party to remedy the breach in writing, warning the other Party of an imminent termination for good cause and setting a reasonable grace period of at least four weeks which period has expired without success;

(iii) One Party due to a change of its shareholders or stockholders comes under the dominating control of a competitor of the other Party.

15.4 In case of a cancellation or other termination of the contract, the Supplier must return all items provided by Buyer, including all drawings and other documents, appliances and tools.

#### **16. Force Majeure**

Events which are unforeseeable, unavoidable and lie beyond the sphere of influence of Supplier and for which Supplier is not at fault, such as Acts of God, war, natural disasters or labour disputes (e.g. strike or lockout), shall release Supplier for the duration of such event from its obligation to make timely delivery or perform timely. The due date for performance of the contract shall be extended by the length of such disturbance. Buyer shall be informed of the occurrence of such disturbance within a reasonable time. If the end of such disturbance is not foreseeable, or should it continue for more than one month from the date of commencement of the disturbance, either Party is entitled to terminate the contract.

#### **17. Miscellaneous Provisions**

17.1 In the event any provision of these Purchase Terms is found to be invalid, illegal or unenforceable, such provision shall be deemed to be modified or restricted to the extent necessary to make such provision valid, legal and enforceable. If such modification or restriction is not possible, the nullity of one or more of the present clauses will not affect the validity of the others or the validity of the contract.

17.2 Supplier may not assign any purchase order or contract, or any part thereof, without the prior written consent of Buyer.

17.3 Supplier must not retain one or more subcontractors for the discharge of all or part of any purchase order without the Buyer's prior written consent.

17.4 In performing its contractual obligations Supplier must comply with the statutory and official regulations concerning environmental protection.

17.5 The ingredients (heavy metals) which are relevant in accordance with the EC End of Life Vehicles Directive (ELV) shall be entered in the IMDS-Database by Supplier at its own costs and are, thus declared.

17.6 If Supplier moves its production facilities or manufacturing premises it shall give Buyer reasonable advance notice thereof, consult with Buyer on any consequences regarding the manufacturing and delivery of the Goods and, in particular, arrange for new initial sample presentation of the Goods on the completion of such move.

17.7 Supplier shall respond to inquiries regarding the use of minerals designated as Conflict Minerals by section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

#### **18. Governing Law, Jurisdiction, Place of Performance**

The contractual relations between Buyer and Supplier shall be governed by the laws of South Australia, Australia, and the parties submit to the non-exclusive jurisdiction of the courts of that State. The UN Convention on Contracts for the International Sale of Goods (CISG) shall not apply.