

Terms and Conditions of Purchase Australia

1. DEFINITIONS

Affiliate: an entity that is owned and/or controlled directly or indirectly by Buyer.

Agreement: these Terms and Conditions of Purchase together with the Order pursuant to which Goods or Services are being provided and all documents specifically referenced herein or in such Order.

Buyer: The Marathon entity issuing the Order and any successor or assignee of Buyer.

Buyer's Customer: a purchaser or lessee of the Goods, including the ultimate owner, lessee, or operator of the Goods, and including the purchaser or lessee of a product incorporating the Goods and/or Services provided by Seller under the Order.

Buyer Indemnitees: Buyer and its Affiliates and its and their respective past, present and future members, shareholders, owners, directors, officers, agents and employees; and Buyer's Customers; and all of their respective successors and assigns.

Deliverables: Goods and/or Services depending on the context.

Goods: materials or products described in Orders, the purchase of which is governed by the terms of the Agreement.

GST: has the meaning given to it in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Order: a document issued by Buyer to Seller referring to this Agreement and ordering Deliverables.

Order Term: the duration of the Order as set out in an Order.

Intellectual Property: inventions, patents, software, copyrights, mask works, industrial property rights, trademarks, trade secrets, know-how, proprietary information and rights and information of a similar nature, including, without limitation, designs, processes, drawings, prints, specifications, reports, data, technical information, and instructions, whether registered or unregistered.

Parties: means each of the Seller and the Buyer, as appropriate.

Seller: the individual, partnership, corporation or other entity contracting to furnish the Deliverables described in the Order.

Seller Person: a Seller employee, agent, representative, subcontractor, subcontractor employee, consultant, or advisor.

Services: services (whether or not ancillary to a sale of Goods) described in an Order.

Specifications: Buyer's requirements for the Goods or Services set forth in any applicable specifications, drawings, designs, samples or other documents

Tooling: has the meaning set out in Exhibit B.

2. SCOPE OF THIS AGREEMENT

(a) This Agreement shall apply to all Deliverables purchased by Buyer pursuant to an Order. This Agreement may be modified in writing by mutual agreement of the Parties from time to time.

(b) Any terms or conditions proposed in Seller's acceptance or in any acknowledgment, invoice, or other form of Seller that add to, vary from, or conflict with the terms herein are hereby rejected. Any such proposed terms shall be void and the terms and conditions of this Agreement shall constitute the complete and exclusive statement of the terms and conditions of the contract between the parties and shall apply to each Deliverable received by Buyer from Seller hereunder.

3. DELIVERABLES

(a) Buyer may purchase and Seller shall sell to Buyer the Deliverables set out in Exhibit A, and all components, replacement parts and accessories therefore.

(b) In respect of Goods sold under this Agreement:

(i) model number and a unique serial number shall be printed in English on a rating nameplate (to be affixed to the Goods), along with the manufacture year, month and run number;

(ii) all literature, labels or markings on the Product shall have no reference to Seller and shall refer only to Buyer, except where required by law; and

(iii) to the extent Tooling is required for the manufacture of the Goods, the terms of Exhibit B shall apply.

4. ORDERS

(a) Buyer shall purchase Deliverables by issuing to Seller an Order. Orders must be in writing and signed by Buyer in order to be valid and enforceable against the Seller. Each Order must include:

(i) a list of Deliverables for purchase and price payable (total and itemized);

(ii) the Order Term;

(iii) applicable delivery terms including Delivery Dates; and

(iv) any additional terms applicable to the supply of the Deliverables not already set out in this Agreement.

(b) Seller must accept the Order in writing within five (5) Business Days of receipt, failing which Seller will be deemed to have accepted the Order.

5. PRICE AND PAYMENT

(a) **Price.** The price for the Deliverables is as set out in Exhibit A, or as otherwise specified in an applicable Order. Such price is inclusive of all taxes (including GST) and shall not exceed the price last granted or quoted by Seller, whichever is less. The prices shall be firm and fixed throughout the Order Term, subject to any adjustments required or allowed as set out in this Agreement.

(b) **Payment Terms.** Unless otherwise stated in the Order, payment terms will be net sixty (60) days following (i) receipt of conforming Deliverables delivered pursuant to Buyer's delivery requirements, and (ii) satisfaction of the invoicing requirements (electronic or otherwise) set forth in this Agreement. Unless otherwise agreed between the Parties, payments will be made in AUD.

(c) **Alternative Sourcing.** If Buyer gives notice to Seller in writing that Buyer can purchase Deliverables from another source or manufacture Goods or provide Services itself at a lower price or on overall better terms in comparable quantities ("**Competitive Offer**"), and Seller is subsequently unable to match the terms of the Competitive Offer within thirty (30) days after receipt of Buyer's written notice, then Buyer may obtain Deliverables from such other source(s) without any further obligation or liability to Seller.

(d) **Invoices.** All invoices must contain the following information: Order number, item number, description of items, quantities, unit prices, taxes, and other details as Buyer may reasonably request. Payments of invoices

shall not constitute acceptance of Deliverables and shall be subject to adjustment for shortages, defects and other failures of Seller to meet the requirements of this Agreement. Buyer or any of its Affiliates may set off any amount owed by Seller or any of its affiliated companies to Buyer or any Affiliates against any amount owed by Buyer hereunder.

6. FORECASTS AND INVENTORY

(a) To the extent required by an applicable Order, Seller will plan the acquisition of raw materials and purchased parts for its production, and of its work in process and finished goods inventory within the agreed lead times to fulfill Buyer's delivery requirements based on forecasts provided by Buyer, if any. Seller and Buyer agree to review the amount of this inventory at agreed upon intervals to ensure proper inventory levels according to their usage.

(b) If the possibility of any labor disruption which could affect Seller's ability to meet its obligations hereunder exists at Seller's location or its supplier(s)'s location(s) during the Term, Seller shall, at its expense, prior to commencement of such disruption, manufacture and locate in a mutually satisfactory location that will not be affected by any labor disruption, an inventory of finished Products sufficient in quantity to fulfill Seller's obligations to Buyer for a minimum of six weeks after commencement of such disruption.

(c) Seller agrees to provide storage at Buyer's request for up to twelve (12) months.

(d) Buyer may provide Seller with usage forecasts. Seller acknowledges and agrees that such forecasts may not reflect Buyer's actual requirements for Products. Any forecast is an estimate only. Buyer does not guarantee the purchase from Seller of any minimum quantity of Products or any minimum share of Buyer's requirements for such Products. Changes and fluctuations in Buyer's forecast shall not relieve Seller of its obligations to fulfill Buyer's purchase orders.

7. TAXES

(a) Unless otherwise stated in this Agreement and except to the extent prohibited by applicable law:

(i) the price for the Deliverables shall include all applicable taxes, including but not limited to sales taxes, use taxes, value added taxes ("GST"), transaction privilege taxes, gross receipts taxes, and other charges such as duties, customs, tariffs, imposts, any payroll taxes for Services performed in country by Seller's personnel, and any other government-imposed taxes (each and all hereafter referred to as "**Taxes**"), each of which shall be stated separately on Seller's invoice;

(ii) except to the extent prohibited by applicable law, Seller shall have sole responsibility for the payment of all Taxes without reimbursement by Buyer other than by Buyer's payment to Seller of the price for the Deliverables; and

(iii) Seller is solely responsible for the fulfillment of Seller's obligations under law or statute in respect to collecting and remitting Taxes collected from Buyer under this Agreement to the proper tax authority.

(b) Any penalties, fees or interest charges imposed by a tax authority or other authority as the result of non-payment of Taxes collected by Seller from Buyer will be borne by Seller. Seller also shall pay any Taxes, penalties, fines or fees arising out of its willful misconduct or negligence for which Buyer becomes liable.

(c) In the event that Buyer is prohibited by law from making payments to Seller unless Buyer deducts or withholds Taxes therefrom and remits such Taxes to the local taxing jurisdiction, then Buyer shall duly withhold such Taxes and shall pay to Seller the remaining net amount of the price after the Taxes have been withheld. Buyer shall not reimburse Seller for the amount of such Taxes withheld

8. DELIVERY

(a) **Delivery Date.** Seller shall deliver the Deliverables in accordance with the terms set out in the applicable Order. If delivery dates are not stated in the Order, Seller shall offer Buyer its best delivery dates ("**Delivery**

Dates). A Delivery Date shall be considered an agreed delivery date when the time allotted between the date of issue of the Order and the delivery date specified in the Order is equal to or greater than the lead time agreed upon by the Parties and/or the customary lead time for delivery of the Deliverables, or alternatively, when Buyer provides written acceptance of a Delivery Date offered by Seller. Time is of the essence in Seller's performance of the Order, and Seller shall deliver Goods and perform Services by the Delivery Dates. Delivery Dates may be amended by mutual agreement of the parties.

(b) **Failure to Deliver by the Delivery Date.** Seller must notify Buyer immediately in writing if it encounters an actual or suspected delivery delay. If Seller fails to deliver the Deliverables in full by the Delivery Date without the prior consent of Buyer, Buyer may (acting reasonably):

- (i) terminate the Order immediately by providing written notice to Seller;
- (ii) refuse any subsequent delivery of the Products that Seller attempts to make;
- (iii) vest in itself title to finished parts, raw materials or work in process associated with this Agreement and request the Seller to deliver all such material and other Buyer property to such location or locations outside its facility as may be designated by Buyer; and/or
- (iv) require Seller to indemnify Buyer against any losses, claims, damages, and reasonable costs and expenses directly attributable to Seller's failure to deliver the Deliverables on the Delivery Date.

(c) **Terms.** The delivery conditions shall be expressly set forth in the Order. Title and risk of damage and loss shall pass to Buyer on delivery of Goods (for the avoidance of doubt, unloading is at the risk of Seller). If delivery is required to be made to a third party (drop shipment), title and risks of damage and loss shall pass to Buyer when delivered at the third party's facility.

(d) **Packing.** All Goods shall be packed for shipment according to Buyer's instructions or, if there are no instructions, in a manner sufficient to ensure that the Goods are delivered in undamaged condition. Seller shall not charge separately for packaging, packing or boxing, unless Buyer has agreed to such charges in writing. Seller shall not combine in the same container, material that is to be delivered to different receiving locations. Seller shall not combine, in the same package or box, Goods that are not the same (i.e. same part number). All wood products used in packaging shall be ISPM 15 compliant.

(e) **Marking.** Unless otherwise agreed in writing, exterior containers shall be marked with the following: (i) address of Buyer site and Seller; (ii) Order number; (iii) part number of the Goods; (iv) special markings called for on the Order; (v) quantity; and (vi) where applicable, vendor code or other vendor identification number.

(f) **Bills of Lading.** Bills of Lading shall reference the Order and Buyer's receiving address and purchase point of contact. When Buyer will be the importer of record, Seller will follow the instructions of Buyer's designated representative regarding completion of documentation used in the importation process and proper declaration of value. The original copy of the bill of lading with Seller's invoice shall be mailed to the location specified by Buyer's procurement contact, or if no location is specified by Buyer, to Buyer's applicable Accounts Payable Department or Accounts Payable service provider.

(g) **Packing Slip.** Seller shall include an itemized packing slip with all shipments that will adequately identify the Goods shipped, including Buyer part number.

(h) **Shipping and Approved Carriers.** Seller shall use only Buyer-approved carriers and forwarders for transportation of the Goods and shall reduce prices by an amount equal to the shipping costs if Buyer pays the freight carrier directly. In the event Seller makes any shipment by a carrier or method other than that approved by Buyer, Seller shall reimburse Buyer for all losses or additional expenses incurred by Buyer by reason of the unapproved shipment. No shipment shall be made by air freight unless specifically authorized by Buyer.

9. LIENS. Seller shall pay for labor, services, materials, equipment and parts thereof, and other expenses incurred by it or its suppliers in connection with the Order and indemnify and defend Buyer Indemnitees against all claims and liens arising out of unpaid accounts.

10. INSPECTION, ACCEPTANCE AND REJECTION

(a) All Deliverables may be inspected and tested by Buyer or its designee, Buyer's Customers and/or any competent regulatory authority, at all reasonable times and places, including during manufacture. Seller shall provide, without additional charge, all reasonable facilities and assistance for such inspections and tests. Such inspection may, at Buyer's option, include confirmation of Seller's compliance with any or all requirements of the Order. Seller shall permit access to Seller's facilities for such inspection or testing at all reasonable times and provide all tools, facilities and assistance reasonably necessary for such inspection and/or confirmation. All Goods are subject to final inspection and acceptance within 60 days of delivery to Buyer.

(b) Deliverables furnished hereunder shall have no defects, and Seller has the obligation to properly inspect such items prior to delivery to Buyer. If any Deliverables covered by the Order are defective or otherwise not in conformity with the requirements of the Order including the Specifications, Buyer may:

- (i) rescind the Order as to such Deliverables, and rescind the entire Agreement if such defect or non-conformity materially affects Buyer;
- (ii) accept such Deliverables at an equitable reduction in price; or
- (iii) reject such Deliverables and require the delivery of replacements.

(c) Deliveries of replacements shall be accompanied by a written notice specifying that such Deliverables are replacements. If Seller fails to deliver required replacements promptly, Buyer may:

- (i) replace, obtain or correct such Deliverables and charge Seller the cost occasioned Buyer thereby; and/or
- (ii) terminate the Order for cause.

(d) Rejected Deliverables may be returned to Seller at Seller's cost.

11. CHANGES

(a) Buyer shall have the right at any time prior to the Delivery Date to request changes to the Specifications, packaging, place of delivery, nature and duration of Services, method of transportation, or require additional or diminished work (a "**Change Order**").

(b) Seller must accept Buyer's Change Order within five (5) Business Days unless Seller provides sufficient evidence to satisfy Buyer that the requested change/s are not reasonably practicable, in which case the Parties will engage in good faith discussion to amend the Change Order or otherwise use best endeavors to implement the Change Order.

(c) If any such changes cause an increase or decrease in the cost or the time required for the performance or otherwise affect any other provision of the Order, Seller shall notify Buyer of its proposed modifications of the Change Order, including pricing for the change, including a cost breakdown and substantiation for the change, and the parties shall negotiate an equitable adjustment in the corresponding provisions of the Change Order in writing.

12. WARRANTY

(a) **Goods Warranty.** Seller warrants to Buyer and Buyer's successors, assigns, Buyer's Customers, and users of Goods sold by Buyer that all Goods provided under the Order shall be and, if applicable, continue to be:

- (i) merchantable;
- (ii) fit for the purpose intended;
- (iii) new;
- (iv) free from defects in material and workmanship;
- (v) free from defects in design if the design is not provided by Buyer;
- (vi) manufactured in strict accordance with the Specifications;
- (vii) free from liens or encumbrances on title; and
- (viii) to the extent the Goods are, or contain, hardware, software, and/or firmware products, be able to accurately process date/time data (including, but not limited to, calculating, comparing, and sequencing all times and dates) and are free of viruses and other sources of network corruption,

(collectively, for this section, the "**Goods Warranty**"). If the Order requires specific Goods to perform as a system, the foregoing Goods Warranty also shall apply to those Goods as a system.

(b) **Goods Warranty Remedy – Repair or Replace.** Buyer may require Seller to promptly repair or replace, at Buyer's option, any Goods that breach the Goods Warranty. Buyer may return ship the Goods on the fastest available commercial carrier at Seller's expense and risk of loss. Replacement or repaired Goods shall be shipped at Seller's expense and risk, accompanied by notice stating whether they are new replacements or repaired originals and shall continue to be covered under this Goods Warranty. Seller shall conduct intake, review, analysis and any other activity required to evaluate whether the returned Goods are covered by the Goods Warranty at no expense to Buyer.

(c) **Services Warranty.** Seller warrants to Buyer that all Services provided under or in connection with an Order:

(i) will be performed in a professional and workmanlike manner and in accordance with current, sound and generally accepted industry standards and practices by appropriately licensed, trained, supervised and personnel who are experienced in the appropriate fields; and

(ii) conform to and be in compliance with the Specifications, performance requirements and other requirements contained in the Order, (the "**Service Warranty**"). Seller agrees that should any of the Services be defectively performed by Seller, Seller will re-perform or correct such defective Services at no additional charge.

(d) **Liability for Non-Compliance with Warranty.** Notwithstanding any other provision of this Agreement, Seller shall be liable for Buyer's actual costs, expenses and damages related to or arising from the Services not conforming to the Goods Warranty or Services Warranty.

(e) **Permits and Licenses.** Except for permits and/or licenses required by statute or regulation to be obtained by Buyer, Seller shall obtain and maintain - at its own expense - all permits, licenses and other forms of documentation required by Seller in order to comply with all existing national, state, provincial or local laws, ordinances, and regulations, or of other governmental agency, which may be applicable to Seller's performance of work hereunder. Buyer reserves the right to review and verify all applications, permits, and licenses prior to the commencement of any work hereunder.

(f) **Support Obligation.** Seller shall maintain, at its expense, the ability to, and shall, provide product support for the Deliverables for ten (10) years after the last Order is placed by Buyer under this Agreement.

13. MANUFACTURING, SAFETY AND QUALITY

(a) **Compliance with Laws.** Seller shall be responsible for manufacture of the Goods and for the adequacy of all warnings and instructions accompanying the Goods. Seller also shall be responsible for and shall take all necessary steps to ensure that the Goods comply with all applicable codes, laws, rules and regulations (both in the country of manufacture and in the countr(ies) where Buyer has notified Seller that Buyer or Buyer's Customers will distribute the Goods).

(b) **Quality and Safety Standards.** The Goods shall conform in quality and safety to all Buyer, Seller and governmental requirements, will be fit for sale in Australia and for exportation to the countr(ies) designated by Buyer without modification, will be subject to acceptance by Buyer and shall be inspected at Seller's factory in accordance with its standard factory test procedures, which shall be subject to review and acceptance by Buyer. Where any governmental agency requires, as a condition of selling the Goods within its jurisdiction, that part or all of used Goods or packaging of new Goods be accepted back from consumers, Seller shall assist Buyer in satisfying those agency take-back requirements.

(c) **Specifications.** Seller shall meet the Specifications applicable to the Goods and the Goods shall pass all reasonable Buyer-required testing.

(d) **Support.** Seller will maintain sufficient product engineering, service engineering and application engineering capabilities to support Goods sold to Buyer. Seller will provide customer service to Buyer and its customers as may be reasonably requested by Buyer, including diagnostic support and trouble-shooting assistance. At no cost to Buyer, Seller will make available to Buyer all technical information about the Goods, including service and owner's manuals, training materials, parts diagrams, schematics, and parts lists with pricing (collectively, "Technical Information"). When engineering or design changes are proposed, revised Technical Information shall be forwarded for Buyer approval in advance of the changes. All original and revised Technical Information for the Goods shall be delivered to Buyer at least sixty (60) days prior to the first delivery date of the Goods or the changed Product.

(e) **Cessation of Production.** Seller shall give Buyer at least one hundred eighty (180) days prior written notice of the permanent discontinuance of production of items covered by Orders, provided however that compliance with this provision shall in no way relieve the Seller from its obligations under the Order.

14. INTELLECTUAL PROPERTY

(a) "**Background Intellectual Property**" shall mean all Intellectual Property other than Foreground Intellectual Property. "**Foreground Intellectual Property**" shall mean all Intellectual Property and tangible work product conceived, created, acquired, or first reduced to practice in connection with the Order.

(b) Each Party retains its existing rights in Background Intellectual Property.

(c) Buyer shall own all Foreground Intellectual Property. Seller shall disclose and deliver to Buyer all Foreground Intellectual Property. Seller hereby irrevocably assigns to Buyer all right, title and interest to all Foreground Intellectual Property, and agrees to do all things reasonably necessary to enable Buyer to secure and perfect Buyer's Foreground Intellectual Property rights, including, without limitation, executing specific assignments of title in Foreground Intellectual Property by Seller to Buyer and cooperating with Buyer at Buyer's expense to defend and enforce Buyer's rights in any such Foreground Intellectual Property..

(d) Seller represents and warrants that Seller has sufficient rights in all Goods, Services, and Intellectual Property and other items that Seller uses or transfers to Buyer in connection with the Order to allow Seller to lawfully comply with the Order.

(e) Seller hereby grants to Buyer and Buyer's Affiliates a worldwide, non-exclusive, perpetual, fully paid, irrevocable, transferable license to the Seller's Background Intellectual Property to:

(i) use, sell, offer for sale, import, export, copy, adapt, embed, modify, make derivative works, make and have made Goods and Services; and

(ii) to enable Buyer to exploit the Foreground Intellectual Property.

(f) Buyer hereby grants to Seller a non-exclusive, revocable, non-transferable license to the Buyer's Background Intellectual Property solely for the purposes of permitted the Seller to fulfil its obligations under this Agreement and pursuant to any Order.

(g) Seller hereby consents to the Buyer taking any actions which would, absent of consent, amount to an infringement of the Seller's moral rights in the Goods, Services, and Seller's Intellectual Property.

(h) Except as expressly authorized herein, nothing in the Order shall be construed as Buyer granting Seller a license in or any right to use any of Buyer's Intellectual Property other than in the performance of work under the Order.

15. CONFIDENTIAL INFORMATION

(a) "**Confidential Information**" shall mean all information, knowledge or data (including without limitation financial, business, and product strategy information; product specifications; product designs; procedures;

studies; tests; reports, and information obtained in respect of sample products, equipment, products or materials provided to the Seller by the Buyer) in written, electronic, tangible, oral, visual or other form, whether disclosed by, or obtained from, Buyer or conceived, created, acquired, or first reduced to practice in connection with the Order.

(b) Unless Seller has received the Buyer's express written consent to the contrary, Seller shall:

- (i) use the Confidential Information solely for the purposes of fulfilling its obligations under the Agreement and any Order, and not for any other purpose;
- (ii) safeguard the Confidential Information to prevent its disclosure to or use by third parties;
- (iii) not disclose the Confidential Information to any third party; and
- (iv) not reverse engineer, disassemble, or decompile the Confidential Information.

(c) Seller may disclose the Confidential Information to officers, directors, employees, contract workers, consultants, agents, affiliates or subcontractors of the Seller who have a need to know such Confidential Information for the purposes of performing the Order and who have executed a written agreement with Seller obligating such entity or person to treat such information in a manner consistent with the terms of this section.

(d) The Order shall not restrict Seller from using or disclosing any information that, as proven by written contemporaneous records kept in the ordinary course of business:

- (i) is or may hereafter be in the public domain through no improper act or omission of the Seller or a third party;
- (ii) is received by Seller without restriction as to disclosure by Seller from a third party having a right to disclose it;
- (iii) was known to Seller on a non-confidential basis prior to the disclosure by the Buyer, as evidenced by Seller's written records prepared prior to disclosure; or
- (iv) was independently developed by employees of the Seller who did not have access to any of Buyer's Confidential Information.

(e) If Confidential Information is required to be disclosed pursuant to law, Seller shall promptly provide notice of such process to Buyer and, upon request, shall fully cooperate with Buyer in seeking a protective order or otherwise contesting such a disclosure. Disclosure of such requested Confidential Information shall not be deemed a breach of the Order provided that the obligations of this section are fulfilled by Seller.

(f) Buyer shall have the right to audit all relevant documentation of Seller, and to make reasonable inspection of Seller's premises, in order to verify compliance with this section.

(g) Unless required otherwise by law or the Order, Seller shall promptly return, or otherwise dispose of Confidential Information as the Buyer may direct. Seller shall destroy all Confidential Information one (1) year after termination or completion of the Order and provide written acknowledgement to Buyer of such destruction.

(h) Seller agrees to ensure all information regardless of form containing or derived in whole or in part from Confidential Information will bear the following statement:

This document contains the property of Buyer and/or an Affiliate. Seller may not possess, use, copy or disclose this document or any information in it for any purpose, including without limitation to design, manufacture, or repair parts, or obtain government approval to do so, without express written permission. Neither receipt, from any source, nor possession of this document, constitutes such permission. Possession, use, copying or disclosure by anyone without express written permission of Buyer and/or an Affiliate issuing the Order is not authorized and may result in criminal and/or civil liability.

(i) Notwithstanding any confidential labels or markings, all information of Seller disclosed to Buyer relating to the Order will be deemed non-confidential and the content of the Order may be disclosed by Buyer to any of Buyer's Affiliates. Moreover, Buyer may disclose all Seller information, in accordance with applicable

governmental regulations, to any department or agency of Australia, including, without limitation, for the purpose of obtaining necessary government approvals.

(j) Seller agrees to notify Buyer in writing and to obtain Buyer's written consent, not to be unreasonably withheld, prior to manufacturing any parts for another entity that have the same form, fit and function as any parts Seller manufactures for Buyer using Confidential Information. Seller's notification shall describe the parts to be manufactured for the other entity, identify the corresponding parts Seller manufactures for Buyer and provide Buyer with sufficient information to demonstrate that Seller will manufacture such parts without reference to or use of Confidential Information. If Seller manufactures or sells any such parts without obtaining Buyer's written consent (or applies for or assists another entity in obtaining government approval for such parts), then it shall be considered a breach of the Order and Buyer shall be entitled to injunctive relief and such other remedies as a court may order.

(k) Seller shall not make accessible or sell completed or partially completed or defective Goods manufactured using or containing Confidential Information to any unauthorized third parties. Goods not provided to Buyer shall be disposed of in a manner that prevents disclosure of Confidential Information (including by reverse engineering).

16. TERM OF AGREEMENT

The term of this Agreement shall begin on the date this Agreement is last signed or accepted, and will expire three years after that date. Prior to its expiry, this Agreement may be extended for convenience of Parties.

17. TERMINATION FOR CONVENIENCE

Buyer may terminate all or part of this Agreement for convenience at any time by providing 30 days' written notice to Seller. If the Agreement is terminated pursuant to this clause, Buyer's sole obligation will be to pay Seller for completed Deliverables that are delivered to Buyer pursuant to an Order which was already in place at the time Buyer provided written notice of termination to Seller.

18. TERMINATION FOR DEFAULT

(a) In addition to any other right or remedy provided by this Agreement or by law, Buyer has the right to terminate this Agreement and/or any affected Order immediately by written notice to Seller in the event that:

- (i) Seller commits a breach of this Agreement or any Order which is not capable of remedy;
- (ii) Seller commits a breach of this Agreement or any Order which is capable of remedy, and Seller does not remedy such breach within 30 days of receiving written notice thereof;
- (iii) Buyer reasonably determines any of Seller's representations, warranties, certifications or covenants are untrue;
- (iv) if Seller experiences a change of control of its business; or
- (v) is insolvent, determined by a court to be bankrupt, or becomes subject to similar bankruptcy or reorganization proceedings under relevant applicable law.

(b) Seller shall be liable to Buyer for any reasonable costs incurred by Buyer as a result of a termination under this clause. Buyer also may require Seller to transfer title and deliver to Buyer any completed Goods, and such partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights as Seller has specifically produced or specifically acquired for the performance of such part of this Agreement and any technology or information necessary for production of Deliverables.

19. INDEMNIFICATION AND LIMITATION OF LIABILITY

(a) Seller covenants and agrees at all times to defend, protect, hold harmless and indemnify Buyer, its parent and Affiliates, and its and their respective directors, officers, employees, successors and assigns from and against any and all losses, damages, costs and expenses arising out of or in connection with:

(i) Any and all claims for loss, damage (including but not limited to property damage) or injury made against Buyer ("Claims") and from and against any suits, actions, or legal proceedings of any kind brought against Buyer ("Actions"), so long as such Claims and/or Actions are made and/or brought on account of any damages incurred and/or injuries received or sustained by any person or persons or entity or entities in any manner (howsoever arising, including without limitation, by reason of negligence, violation of law, violation of these Terms and Conditions, breach of warranty, defect in design, material or workmanship or otherwise, and even though strict liability be claimed), directly or indirectly caused by, incident to, or growing out of defects in the design, manufacture, or materials used in the goods supplied, negligence in the manufacture, or provision of the goods supplied, or performance of any services hereunder;

(ii) loss, damages, costs and expenses related or in connection to the default on Agreement execution;

(iii) defects in the design, manufacture, or materials used in Goods;

(iv) Seller's negligence in the manufacture or provision of Goods; or

(v) Seller's performance of any Services.

(b) The indemnity in clause 19(a) will not apply to the extent that such losses, damages, costs or expenses were caused or contributed to by Buyer's willful misconduct, or by a negligent act or omission of Buyer or Buyer Personnel.

(c) If directed by Buyer, Seller shall have responsibility to defend and/or settle all claims and defend any actions. However, Seller agrees that in any instance where a claim or action in any way affects Buyer's interest under this Agreement or otherwise, Seller shall not finalize any settlement without Buyer's prior written consent. This indemnity shall continue in full force and effect notwithstanding the termination or expiration of this Agreement or any Order under the Agreement. Seller's obligations under this section are contingent upon Buyer providing Seller prompt notice of any claim or action, and Buyer's provision of all necessary information and assistance to Seller.

(d) To the extent permitted by law, Buyer's liability under this Agreement and any Order shall be limited to the purchase price paid for the Goods and Services in the 12 months preceding the relevant claim or action.

(e) NOTWITHSTANDING ANY PROVISION OF THIS ORDER OR THE LAW, IT IS EXPRESSLY AGREED THAT IN NO EVENT SHALL BUYER BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES OF ANY KIND.

20. INSURANCE

(a) Seller shall maintain if applicable, at a minimum, the following types and amounts of insurance:

(i) worker's compensation insurance as required by law;

(ii) public liability insurance providing coverage for at least USD 10 million per occurrence and in the annual aggregate;

(iii) professional indemnity insurance providing coverage for at least USD 2 million per occurrence and in the annual aggregate; and (iv) any other insurance as set out in an Order.

(b) Seller shall furnish a certificate of insurance reflecting Seller's insurance coverage in excess of its self-insured retention to Buyer upon request.

21. INTELLECTUAL PROPERTY WARRANTY AND INDEMNIFICATION

(a) Seller warrants that Buyer, Buyer's Customers, Affiliates, subsidiaries, agents, directors, officers, and employee's use of the Deliverables in accordance with the terms of this Agreement will not infringe on the Intellectual Property rights of any third party.

(b) Seller shall indemnify and hold harmless Buyer, Buyer's Customers, Affiliates, and subsidiaries, their agents, directors, officers, and employees, and each subsequent purchaser or user of the Deliverables from any losses, costs, damages, or liabilities, including without limitation, any attorney's fees, court costs and fines, arising from any alleged or actual infringement of any third-party Intellectual Property rights related to the Goods or Services ("**Claim**").

(c) Seller shall not be liable for any Claim based on Seller's compliance with the Specification created by the Buyer, unless: (i) Seller could have complied with Buyer's specification using a solution that was non-infringing; (ii) the relevant portion of the specification was derived from, recommended by, or provided by, Seller; or (iii) Seller knew or should have known of a Claim or potential Claim and did not promptly notify Buyer in writing.

(d) In the event Seller refuses or is unable by operation of law to provide or supply any Goods or Services as a result of an actual or potential third-party claim, Seller shall either (i) secure for Buyer the right to provide, use or sell such Goods or Services; (ii) modify or replace such Goods or Services with equivalent non-infringing Goods or Services; or (iii) provide such other solution acceptable to Buyer. Seller shall reimburse Buyer for Buyer's costs incurred in obtaining all relevant approvals, qualifications, certifications and the like necessary for making, using and selling alternate non-infringing Goods or Services. Seller shall refund to Buyer the purchase price of any such Goods or Services that Buyer is prohibited from providing, using, selling offering for sale, importing, exporting, or otherwise exploiting.

22. BUSINESS CONDUCT AND COMPLIANCE WITH LAWS

Seller represents and warrants that, in connection with this Agreement:

(a) **Seller Code of Ethics.** Seller has and shall comply with a code of conduct or policy statement regarding business conduct, ethics and compliance that satisfies, at a minimum, the principles and expectations set forth in the WEG Code of Ethics for Suppliers available at Buyer's Supplier Site (https://static.weg.net/medias/downloadcenter/he6/ha5/WEG-Code_of_Ethics_for_Suppliers.pdf) ("**Code of Ethics for Suppliers**"). Seller shall have management systems, tools and processes in place that (i) ensure compliance with applicable laws and regulations and the requirements set forth in the Code of Ethics for Suppliers; (ii) promote an awareness of and commitment to ethical business practices, including, without limitation, the expectations set forth in the Code of Ethics for Suppliers; (iii) facilitate the timely discovery, investigation (including cooperation with any Buyer initiated investigation involving Seller), disclosure (to Buyer and others as appropriate) and implementation of corrective actions for violations of law, regulations, this Agreement, an Order, or the expectations set forth in the Code of Ethics for Suppliers; and (iv) provide training to its employees on compliance requirements, including the expectations set forth in the Code of Ethics for Suppliers.

(b) **Anti-Corruption and Anti-Bribery.** Seller shall comply with all applicable national, state, provincial, and local laws, ordinances, rules, and regulations, relating to anti-corruption or antibribery, including, but not limited to, legislation implementing the Organization for Economic Cooperation and Development "Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (the "OECD Convention") or other applicable anti-corruption/anti-bribery convention, including section 70.2 of the Schedule to the Australian Criminal Code, regardless of whether Seller is within the jurisdiction of Australia. Seller shall, neither directly nor indirectly, pay, offer, give, or promise to pay or give, any portion of monies or anything of value received from Buyer to a public official or any person in violation of any applicable laws relating to anticorruption or anti-bribery.

2 Environment, Health and Safety ("EHS"). Seller, all Deliverables provided by Seller, and any other actions or items provided to Buyer pursuant to this Agreement or an Order shall comply with all applicable national, state, provincial, foreign and local laws, ordinances, rules, and regulations, relating to pollution control, waste management and disposal, hazardous substances, occupational health and safety, consumer product safety, and any other laws dealing with protection of the environment, health and safety ("**EHS Laws**") including in respect of:

a Test Reports. Any Seller test reports or other test results, pertaining to tests performed pursuant to EHS Laws and related to the Deliverables or to Seller's compliance with EHS Laws, have been and/or shall be provided to Buyer as specified in an Order or upon Buyer's request.

b Buyer's EHS Standards. Seller shall comply with Buyer's EHS standards as notified to Seller from time to time.

c Use of Hazardous Substances. Seller represents and warrants that none of the Goods contain any, and Seller or its representatives shall not, in the production or delivery of any Deliverables or any actions taken related to an Order, use any substances which are restricted or hazardous under applicable laws in Australia or in any jurisdiction in which the Goods are shipped to or through, including but not limited to arsenic, asbestos, benzene, polychlorinated biphenyls (PCBs), carbon tetrachloride, beryllium, or radioactive materials. Seller shall provide, upon and as requested by Buyer to satisfy any applicable regulatory or Buyer's Customer requirements, all reasonably necessary documentation to verify the material composition, on a substance-by-substance basis including quantity used of each substance, of any Goods ordered by Buyer and/or of any process used to make, assemble, use, maintain or repair any Goods ordered by Buyer.

3 Employment Practices. Seller shall comply with all applicable national, state, provincial, and local laws, ordinances, rules, and regulations, relating to employment practices, including those pertaining to child labor, equal employment opportunity, forced labor, abuse of labor, freedom of association, collective bargaining, wages and benefits, work hours and overtime, and modern slavery.

(g) Data Privacy. Seller shall comply with all applicable national, state, provincial, and local laws, ordinances, rules, and regulations, relating to data privacy, meaning laws relating to data privacy, trans-border data flow or data protection, including, without limitation, the *Privacy Act 1988 (Cth)*. Seller further acknowledges that Seller has read and understood Buyer's Privacy Notice at: <https://www.weg.net/institutional/BR/en/privacy-policy>. Where required under law, and to the extent required, Seller provides consent to the processing and transfer according to Buyer's Privacy Notice, and further confirms that it has obtained consent from relevant data subjects, including Seller employees, where required.

4 Product Chemical and Mineral Content Reporting. Seller shall provide information regarding chemical and mineral contents of its Goods as may be requested by Buyer in connection with any laws with which Buyer, Buyer's Customers, and the Goods must comply.

23. TRADE COMPLIANCE. Seller represents and warrants that, in connection with this Agreement:

(a) Export.

(i) Export Laws. Seller shall comply with any applicable Australian laws and regulations governing exports from Australia, any applicable Non-Australian laws and regulations of any other country, region, locale or territory where exports are conducted through or in under this Agreement, or relating to economic sanctions, embargoes, or compliance with unsanctioned foreign boycotts.

(ii) Export Compliance Program. Seller shall maintain an export compliance program sufficient to ensure compliance by all of its respective operating units with all applicable laws and regulations pertaining to the export of Goods. Seller shall provide Buyer with the export control classification number of the Goods, shall maintain export records as required under applicable law, and notify Buyer if any Goods are restricted or controlled products.

(iii) Export License Failures Not an Event of Default. It is not an event of default and neither party shall be liable for:

- (1) the inability to obtain or renew an export license;
- (2) the cancellation of an export license by a governmental entity; or
- (3) either party's inability to perform any of its obligations under this Agreement due to the occurrence of item (1) or (2) of this section. Upon the occurrence of either (1) or (2) of this section, Seller shall immediately

notify Buyer and the parties shall use all reasonable efforts to remedy or abate the impact of such occurrence and to agree to terms pursuant to which the obligations under this Agreement shall be performed in the future.

(b) Imports, Customs and Duty Drawback

(i) Seller shall comply with all applicable laws, ordinances, rules, and regulations, relating to customs and import, including country of origin marking requirements, including, without limitation, Australian customs and import laws.

(ii) In addition to any marking requirements set forth in the Specifications, Seller shall determine, and mark all Goods with, the English name of the "country of origin" in accordance with the laws of the destination country.

(iii) **Anti-Dumping/Countervailing Duties.** Seller shall inform Buyer of any applicable antidumping or countervailing duty, investigation and/or orders that are applicable directly to the Goods supplied by Seller to Buyer pursuant to this Agreement. To the extent that documentation is obtained or generated by Seller to exclude raw materials, components or Goods imported by Seller from the scope, investigation and/or orders, such documentation shall be provided to Buyer upon Buyer's request.

(c) **Free Trade Agreements.** When requested by Buyer, Seller shall furnish annual certificates to Buyer for Deliverables that meet applicable Free Trade Agreement rules of eligibility and no other Deliverables, maintain adequate records to support such qualification, and follow all applicable regulations under the applicable Free Trade Agreements when issuing certificates of origin and/or other documents that allow Buyer to take advantage of duty-free status.

(d) **Sanctions.** Seller shall undertake appropriate due diligence checks to ensure that no parties with whom Seller engages in respect of the Goods or Services are included on Australia's Consolidated List of persons and entities subject to restrictions under Australian sanctions law. Seller shall also make commercially reasonable efforts to require such screening by its suppliers and services providers with respect to sub-tier suppliers and services providers. This requirement is intended to ensure that Seller identifies persons or entities, whom Seller engages or solicits under this Agreement, that are ineligible to perform such activities or services because of any embargo, sanction, debarment or denied party designation.

24. SECURITY

(a) This provision applies whenever a Seller Person will be granted access to:

(i) Buyer's facilities or, the facilities of a Buyer's Customer ("**Facilities**"); or

(ii) Buyer's or a Buyer's Customer's computer-based information systems, computer systems, databases and/or files ("**Systems**").

(b) Seller is responsible for ensuring that any Seller Person requiring access to Facilities or Systems meets the following minimum requirements designed to assess honesty and trustworthiness:

(i) Seller must verify the identity of the Seller Person, verify that the person has requisite work authorization to perform services requiring access to specific Facilities and/or Systems contemplated by this Agreement, and provide written certification in the form satisfactory to Buyer that the requirements of this provision have been satisfied; and

(ii) Seller shall perform a background screen on the Seller Person using a service provider satisfactory to Buyer. As allowable by local/applicable laws, Seller shall provide written certification in the form satisfactory to Buyer that the Seller Person does not have any criminal convictions, as reported in the result of a background screen, or if the Seller Person does have one or more convictions, the Seller Person was hired only after an individualized assessment was conducted and taking into consideration the nature and severity of the underlying offenses, the specific jobs at issue, and the length of time since the convictions; and

(iii) Seller shall perform global sanctions search on the Seller Person and provide written certification in the form provided by Buyer that the Seller Person has not been identified in any such screenings.

(c) Buyer reserves the right to impose additional requirements before granting a Seller Person access to Facilities and/or Systems (e.g., drug screening, credit check, security clearance, signing an intellectual property agreement). If additional requirements are imposed, Seller shall provide Buyer with written certification in the form provided by Buyer that the requirements have been met. Seller shall retain documents verifying that the additional requirements have been satisfied. Buyer may further direct Seller to use a designated service provider to verify authorization to work, along with additional attributes regarding citizenship and the Seller, at Seller's sole cost and expense.

(d) Should Seller desire to assign a Seller Person that does not fully meet the requirements herein, Seller may make a request for an exception in writing to Buyer, detailing the specific circumstances. Buyer may, on a case-by-case basis and in its sole discretion, either grant or deny any such requests.

(e) Failure to provide the certifications required herein may result in a refusal to grant Seller Persons access to Facilities and/or Systems, and Seller shall be responsible for promptly providing a replacement.

(f) Seller shall immediately update Buyer if, at any time during performance of this Agreement, any information related to a Seller Person is altered or rendered inaccurate for any reason. Inability of Seller to comply with the requirements of this provision shall not excuse Seller from performing this Agreement and shall not constitute an excusable delay.

(g) Buyer may audit the methodology, process, and results relied upon by Seller to confirm that a Seller Person meets the requirements herein, and deny access to Facilities and/or Systems where Buyer reasonably believes that a Seller Person does not meet the requirements of this section.

25. AUDIT RIGHTS

Upon reasonable notice, Buyer or its duly authorized representative shall have the right to audit at Seller's facility, or any of Seller's suppliers' or subcontractors' Seller's facilities, compliance with any of the provisions of this Agreement.

26. FORCE MAJEURE AND DISASTER RECOVERY

(a) Neither Seller nor Buyer shall be liable for damages for any failure or delay in the performance of this Agreement or any Order resulting from causes beyond its reasonable control that may include, but not be limited to, unforeseeable events such as acts of God, acts of Government, war, court order, riots, natural disasters, and labor strikes (a "**Force Majeure Event**"). Buyer may cancel without liability to Seller its purchase of any Deliverables affected by Seller's failure or delay in performance in the case of a Force Majeure Event. The party incurring the delay shall give timely notice to the other of any such event and shall use all reasonable efforts to avoid or remove the cause and resume performance with minimum delay. If requested by Buyer, the parties shall jointly prepare a contingency plan to address the potential impact of any such event. If a failure or delay in performance is caused by an event affecting any of Seller's suppliers, such failure or delay shall not be excusable unless such event is a "Force Majeure Event" as defined above and the Good or Service to be provided by such Seller is not obtainable by Seller from other sources in time for timely delivery to Buyer.

(b) Seller that is either a sole source of supply or providing Deliverables of which lead-time exceeds one hundred twenty (120) days, shall develop and maintain a disaster recovery plan. The disaster recovery plan must include strategy and actions for recovery and continuation of business, related to production of Seller's Deliverables furnished under this Agreement, in the event of a disaster or emergency in order to prevent or limit interruption of supply of Deliverables. Seller shall furnish a copy of its disaster recovery plan to Buyer upon Buyer's request.

27. GOVERNING LAW

(a) This Agreement shall be interpreted in accordance with the plain English meaning of its terms and the construction thereof shall be governed by the laws the place where Buyer is located without regard to conflicts of law principles.

(b) The parties specifically disclaim application to this Agreement of the United Nations Convention on Contracts for the International Sale of Goods.

28. DISPUTE RESOLUTION

(a) Where the Parties are in dispute in relation to the subject matter of this Agreement or an Order, prior to commencing court proceedings (except for equitable actions that may be necessary to protect a Party's rights):

(i) a Party will issue a written notice to the representative of the other Party identifying the matter in dispute and setting out adequate detail (**Dispute Notice**);

(ii) the Parties shall endeavor to resolve the dispute through good faith discussions between the management personnel of each Party. If one level of management from each side cannot resolve the dispute within 10 Business Days, then each party will appoint a higher level of management to review the dispute and endeavor to reach resolution; and

(iii) if the dispute remains unresolved by higher management, the parties may commence court proceedings.

29. CHANGE OF CONTROL. Prior to a potential change of control of Seller and at least ninety (90) days prior to the proposed effectiveness of such change of control, Seller will promptly notify Buyer in writing thereof, and provide the identity of the potential new controlling party and information on such party and the transaction as Buyer may request, consistent with applicable law and confidentiality restrictions. In the event there is a change in control with respect to Seller or in the event that a competitor of Buyer acquires an interest in Seller, Buyer shall have the right to terminate the Order in whole or in part upon thirty (30) days written notice with Buyer's only obligation to pay for those conforming Goods and Services actually received prior to the expiry of such thirty (30) day period. A change in control of Seller is deemed to have occurred if there is a change in the beneficial ownership, directly or indirectly, of fifty percent (50%) or more of the ownership interests in Seller.

30. ASSIGNMENT. Any assignment, whether by operation of law or otherwise, by Seller of this Agreement or any Order without Buyer's prior written consent shall be null and void and shall constitute a material breach of the Agreement. Buyer may assign or transfer this Order in its sole discretion.

31. SET-OFF. Buyer and its Affiliates may withhold, deduct and/or set off all money due, or which may become due to Supplier arising out of Supplier's performance under this Agreement or any other transaction with Buyer or its Affiliates.

32. PUBLICITY. Seller shall not make or authorize any news release, advertisement, or other disclosure which shall deny or confirm the existence of this Agreement or which shall make use of Buyer's name or logo without the prior written consent of Buyer, except as may be reasonably required to perform this Agreement.

33. MISCELLANEOUS

(a) **Duty to Proceed.** Seller shall proceed diligently with the performance of this Agreement. Except as expressly authorized in writing by Buyer, no failure of Seller and Buyer to reach any agreement regarding a dispute related to this Agreement shall excuse Seller from proceeding. During a dispute, Buyer shall continue to pay in accordance with this Agreement for Seller's performance related to matters not in dispute. Notwithstanding the generality of the foregoing, Buyer shall retain its rights with respect to set-off and withholding.

(b) **Independent Contractor.** Seller shall perform the services required under this Agreement as an independent contractor and shall have exclusive control and direction of the persons engaged by Seller to perform such services, including, but not limited to, employees of Seller working at Buyer facilities. Seller assumes full responsibility for the acts and omissions of such persons. Seller shall have exclusive liability for the payment of and compliance with regulations pertaining to local, state, and federal or other governmental entity payroll taxes or contributions, and taxes for unemployment insurance, workers' compensation, social security

and/or similar or related protection for such persons, as required by applicable law. Seller shall have no power to legally bind, or act on behalf of, Buyer and shall not hold itself out as an agent of Buyer.

(c) **Survival.** All obligations and duties under any provisions, which by their nature extend beyond the expiration or termination of this Agreement, including but not limited to warranties, indemnifications, intellectual property (including protection of Confidential Information) shall survive the expiration or other termination of this Agreement of which these provisions are made a part.

(d) **Waiver.** Buyer's failure to seek a remedy for any breach by Seller or Buyer's failure to insist on performance of any of the terms or conditions herein or to exercise any right or privilege hereunder shall not thereafter be deemed a waiver for any such terms, conditions, rights or privileges or any other terms, conditions, or privileges whether of the same or similar type. Acceptance of any Deliverables or payment therefore shall not waive any breach.

(e) **Severability.** If any provision of this Agreement shall be held by a court of competent jurisdiction to be contrary to law, the remaining provisions of this Agreement shall remain in full force and effect.

(f) **Remedies.** Seller shall be liable for any damages incurred by Buyer as a result of Seller's acts or omissions under this Agreement. The rights and remedies herein reserved to Buyer shall be cumulative and additional to any other or further rights and remedies provided in law or equity.

(g) **Partial Invalidity.** If in any instance any provision of this Agreement shall be determined to be invalid or unenforceable under any applicable law, such provision shall not apply in such instance, but the remaining provisions shall be given effect in accordance with their terms unless the purposes of this Agreement can no longer be preserved by doing so.

(h) **Interpretation.** This Agreement shall be construed as if drafted jointly by the parties and no provision in this Agreement shall be interpreted for or against any Party because that Party or that Party's legal representative drafted the provision.

(i) **Captions.** The captions, headings, section numbers, and table of contents appearing in this Agreement have been inserted as a matter of convenience and for reference only and in no way define, limit or enlarge the scope or meaning of this Agreement or any provision hereof.

Rev.01 – April, 2024

EXHIBIT A: DELIVERABLES, PRICES, ORDER QUANTITIES

No.	Deliverable P/N	Deliverable Name	Price (\$s)	Lead Time	Min Order Quantity	EAU*
1						
2						
3						
4						
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*EAU is the estimated annual usage. This does not comprise any Buyer minimum purchase commitment.

EXHIBIT B: TOOLING

1. The following Tooling forms part of this Agreement:

Part Number	Name	Quantity	Serial Number (s)	Location

2. All Tooling costs associated with manufacturing Goods for Buyer shall be at Seller's cost, however Buyer may choose at its discretion to place purchase orders with Seller in respect of additional Tooling. Upon receipt of such purchase order, Seller shall provide such Tooling at the Tooling vendor's actual price, without markup. Buyer reserves the right to inspect/review all Tooling and associated documentation at any time and reserves the right to first piece article approval or pilot runs as may be specified by Buyer prior to payment for any Tooling. Seller shall invoice for Buyer Tooling purchase orders and shall be paid in accordance with the standard payment terms for Orders, unless otherwise agreed. Normal maintenance, spare parts, and repair shall be provided at Seller's expense.

3. All Tooling, equipment dies, gauges, models, drawings or other materials furnished by Buyer to Seller or made by Seller for the purpose of the Order or paid for by Buyer, and all replacements thereof and materials fixed or attached thereto, shall be and remain the property of Buyer.

4. Seller shall be responsible for any loss or damage or destruction of such Tooling in Seller's possession to the extent of its replacement value, excepting only such damages as may be attributable to normal wear and tear. Seller shall insure Tooling against all risks until such time that the Tooling is returned to Buyer and/or to an Affiliate of Buyer.

6. Seller shall include provisions having the same effect as those set forth in this Exhibit B for the benefit of Buyer in its purchase orders placed by Seller with its suppliers who will use Buyer's and/or Buyer's Affiliate(s)'s Tooling.

7. Such Tooling shall be subject to removal at Buyer's written request and, upon receipt of such request, Seller shall prepare in a timely fashion such Tooling for shipment and shall deliver it to Buyer in the same condition as originally received by Seller, reasonable wear and tear excepted. Reasonable costs of preparation for return and transportation of Tooling shall be at Buyer's expense.

8. Seller shall indemnify and hold Buyer and/or Buyer's Affiliate(s) harmless from and against all liability, loss, costs (including reasonable attorney fees) or damages which Buyer may suffer as a result of claims, demands or judgments made against Buyer arising out of or related to the Tooling, except for that caused directly by Buyer's negligence.

10. Buyer may enter Seller's premises, upon at least two business days prior notice to Seller, to exercise its rights set forth herein.