

TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC.

TERMS AND CONDITIONS

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**TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC.
TERMS AND CONDITIONS**

THESE TERMS AND CONDITIONS (“Terms and Conditions”) by and between **TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC.** (“TEMA”) and each party or parties providing Items to a Toyota Party pursuant to any Contract Documents (individually, a “Supplier”).

RECITALS:

A. TEMA is in the business of coordinating the purchase of raw materials, tooling, export parts, trial parts, goods, software and other intellectual property, production parts, service parts and components, and related tools and supplies (“Items”) and the direct and indirect supply of services (“Services”) (for purposes of these Terms and Conditions the term Items shall (a) from time to time or as the context requires also include Services and (b) be limited to such Items as are supplied, developed, processed, manufactured or otherwise provided to Toyota Party by or on behalf of Supplier, all pursuant to these Terms and Conditions) (i) for Toyota Motor Manufacturing, Kentucky, Inc., Toyota Motor Manufacturing, Indiana, Inc., Toyota Motor Manufacturing, West Virginia, Inc., Toyota Motor Manufacturing, Alabama, Inc., Toyota Motor Manufacturing, Texas, Inc., Toyota Motor Manufacturing, Mississippi, Inc., Toyota Motor Manufacturing de Baja California, S. de R.L. de C.V., Bodine Aluminum, Inc., TABC, Inc., Catalytic Component Products, Inc., Toyota Motor Manufacturing Canada Inc., Canadian Autoparts Toyota, Inc., New United Motor Manufacturing, Inc., Toyota Motor Manufacturing, California, Inc., Toyota Motor Manufacturing, Northern Kentucky, Inc., and any other direct or indirect subsidiary of TEMA currently existing or subsequently formed (collectively referred to as “NAMCs”, and individually as an “NAMC”), (ii) for Toyota Motor Corporation (collectively, “TMC”), and (iii) for Toyota Motor Sales, U.S.A., Inc. (collectively, “TMS”), which such Items are utilized directly or indirectly in the manufacture and sale of vehicles under the nameplates of TMC. (TEMA, the NAMCs, TMC and TMS are collectively, and where applicable, individually, referred to as “Toyota Party”).

B. Supplier is engaged in the business of providing Items to Toyota Party.

C. In establishing the relationship created by these Terms and Conditions, Toyota Party and Supplier desire to state their mutual intent and objective for that relationship. The mutual intent of Toyota Party and Supplier is to promote and foster goodwill among Toyota Party, Supplier and their respective local communities in creating an ongoing and mutually beneficial relationship. Their primary objective is customer satisfaction at all levels for the vehicles manufactured under the nameplates of TMC. To fulfill their mutual intent and accomplish their primary objective, Toyota Party and Supplier shall strive to communicate openly and honestly, share information on a continuous basis and strive together to consistently improve their relationship and the Items provided pursuant to these Terms and Conditions. Overall, it is the goal of Toyota Party and Supplier to develop mutual trust, cooperation and goodwill in performing these Terms and Conditions.

AGREEMENT:

NOW, THEREFORE, the parties hereby agree as follows:

1. General.

1.1 Acceptance. The parties do not intend for these Terms and Conditions to be signed, but instead intend for these Terms and Conditions to be accepted by the performance of Supplier for Toyota Party. Supplier’s commencement of work on Items for Toyota Party and its continuing and ongoing performance under Contract Documents shall constitute Supplier’s acceptance of these Terms and Conditions. Submission of a Conforming Invoice by Supplier (or submission of any advance shipping notification, evidence of shipment of Items, other documentation concerning a Supplier Payable or any other documentation which demonstrates that Supplier is performing its commercial relationship with Toyota Party, all of the foregoing as acceptable to Toyota Party in its sole discretion, and whether such notification, evidence or document is transmitted to Toyota Party electronically or otherwise but which can be reduced to writing) will constitute an independent written acknowledgement of the

agreement between the parties.

1.2 Third Party Beneficiary Purchasing Relationship. These Terms and Conditions encompass a continuous and ongoing purchasing relationship among Toyota Party and Supplier. In conjunction with the purchasing relationship, TEMA is acting either as (i) an agent on behalf of one or more NAMCs as purchaser or (ii) a purchaser on its own behalf. In addition, TEMA coordinates the manufacturing of vehicles under the nameplates of TMC and as vehicles sold to TMS. Since the performance of the purchasing relationship is intended to benefit TEMA, each applicable NAMC, TMS and TMC, the relationship of each such Toyota Party to these Terms and Conditions is that of a third party beneficiary. Supplier consents to the third party beneficiary status of each applicable Toyota Party as consistent with the intent of the parties. Where context or course of dealing between the parties requires, any reference to TEMA shall be deemed to be a reference to (or include) the applicable Toyota Party.

1.3 Agency Relationship.

(a) General. Subject to the terms and conditions of the Agency Agreements, each NAMC designates TEMA as its exclusive agent, and TEMA accepts such appointment, in connection with the rights, responsibilities, benefits and obligations of Toyota Party arising under or related to any NAMC purchasing relationship. It is the intention of the parties that the scope of the express and apparent authority granted to TEMA is deemed to be as broad and complete as is possible and necessary, all as reasonably determined and interpreted by TEMA, to allow TEMA to fully discharge its duties as agent for each NAMC.

(b) Agency Agreements. The agency relationship between TEMA and any NAMC is pursuant to such other documents as the parties may deem appropriate from time to time (collectively, the "Agency Agreements"). Pursuant to such agreements, TEMA has both expressed and apparent authority to act on behalf of the applicable NAMC as its principal in conjunction with all NAMC Contract Documents. Further, from time to time, and as set forth in the applicable Agency Agreements, a NAMC may act as agent for TEMA. Pursuant to such agreements, and in such circumstances, the applicable NAMC has both expressed and apparent authority to act on behalf of TEMA as its principal in conjunction with all TEMA Contract Documents. Finally, and from time to time, an NAMC may act on its own behalf notwithstanding the agency relationship created with TEMA, and TEMA may act on its own behalf notwithstanding the agency relationship created with any NAMC. As designated by TEMA in its sole discretion, or as circumstances require for the reasonable interpretation of any applicable Contract Documents, Toyota Party shall indicate: (i) TEMA as agent for the applicable NAMC; (ii) the applicable NAMC; (iii) the applicable NAMC as agent for TEMA; and/or (iv) both TEMA and the applicable NAMC or NAMCs.

(c) Rights of TEMA. Nothing contained herein shall at any time limit the right of TEMA to act on its own behalf with respect to these Terms and Conditions by and between TEMA and any Supplier, irrespective of whether the relationship (i) is a direct relationship between TEMA and such Supplier or (ii) was an indirect relationship, with TEMA acting as agent on behalf of an NAMC, but is now a direct relationship because of the termination of the agency relationship between TEMA and the applicable NAMC.

1.4 Contract Documents. The parties intend to and will use additional documents to supplement these Terms and Conditions and further define the purchasing relationship between the parties ("Contract Documents"). Contract Documents will be both specific to the Supplier (such as purchase orders, releases, manifests specifications and drawings) (the "Specific Contract Documents") and generic to all Suppliers (such as the supplier quality assurance manual and other quality manuals, purchasing and accounting systems and similar matters) (the "Generic Contract Documents"). Specific Contract Documents and Generic Contract Documents are collectively referred to herein as "Contract Documents". Contract Documents will be both in written form and Electronic Forms, and will be provided to Supplier independently of these Terms and Conditions. Finally, Contract Documents will be created one time in some instances, and will be created, amended and modified on an ongoing basis in other instances. Contract Documents, which will be exchanged and updated from time to time, are not independent contractual agreements between Supplier and Toyota Party, but constitute additional terms and provisions of these Terms and Conditions. All Contract Documents shall be such documents as are designated by Toyota Party from time to time and can be added or deleted by Toyota Party from time to time, all in its sole discretion. Toyota Party shall (i) provide copies of or access to Specific Contract Documents, including any amendments or modifications, pursuant

to procedures established by TEMA in the reasonable exercise of its sole discretion and (ii) take reasonable steps to provide notice of Generic Contract Documents, including any amendments or modifications, pursuant to procedures established by TEMA in the reasonable exercise of its sole discretion. Supplier may at any time submit questions to TEMA about the Contract Documents and TEMA will review and take reasonable steps to respond to Supplier. All Contract Documents are incorporated by reference in these Terms and Conditions, notwithstanding the fact that Contract Documents may not be physically attached to these Terms and Conditions. TEMA, the applicable NAMC, TMS and TMC shall jointly and severally be entitled to the benefits of, and to enforce the terms of, the Contract Documents, as third party beneficiaries and Supplier acknowledges the rights of these parties under the Contract Documents.

1.5 No Requirements/Output Contract. Toyota Party may buy Items from other sources or reduce quantities acquired from Supplier irrespective of the course of dealing between the parties. These Terms and Conditions shall not constitute a requirements or output contract unless specifically designated as such in a Contract Document signed by both parties.

1.6 Continuous Improvement; Toyota Requirements. Supplier has an ongoing responsibility to perform under these Terms and Conditions in a manner which results in continuous improvement in Supplier's provision of Items to Toyota Party. Supplier shall participate in all quality improvement and other manufacturing programs and initiatives of Toyota Party, as set forth in applicable Contract Documents and as modified from time to time, and otherwise comply with all manufacturing, design, specification, quality and other requirements and procedures of Toyota Party as also set forth in Contract Documents (collectively, "Toyota Requirements").

1.7 Access.

(a) Access to Supplier's Premises. Toyota Party and its authorized representatives shall have the right from time to time and on reasonable notice to Supplier to access Supplier's premises, as Toyota Party may reasonably request, to verify, validate and monitor (i) compliance with Manufacturing and Legal Requirements, (ii) compliance with Toyota Requirements and (iii) Supplier's performance or ability to perform under these Terms and Conditions. Supplier shall have the right to limit or restrict Toyota Party's access to the extent necessary to protect confidential information of or relating to Supplier's other customers. In exercising any access rights, Toyota Party will take commercially reasonable steps to protect the confidentiality of and not interfere with the business relationship between Supplier and any of its other customers.

(b) Access to Supplier's Financial Information. Toyota Party and its authorized representatives shall have the right from time to time on reasonable notice to obtain from Supplier financial information and business records ("Supplier's Financial Information") related to Supplier's performance under these Terms and Conditions to assist Toyota Party in evaluating the financial stability and strength of Supplier; all pursuant to such processes, procedures and policies as are designated by Purchasing Risk Management or another financial assessment section of Toyota Party. Toyota Party shall have the right to copy, evaluate, and provide Supplier's Financial Information to third party consultants assisting with the evaluation. Supplier's Financial Information provided to Toyota Party shall be protected as Confidential Information under these Terms and Conditions, including, but not limited to, Toyota Party's disclosure of Confidential Information to third party consultants. Nothing herein shall require Supplier to disclose any information in violation of any Legal Requirement.

1.8 Good Faith. In performing these Terms and Conditions, including any provision of these Terms and Conditions whereby Toyota Party may act in its sole discretion, the parties agree (i) to at all times act in good faith towards each other and (ii) to negotiate in good faith all matters, issues and/or provisions which arise under or are related to these Terms and Conditions that require the parties to reach a consensus, understanding or agreement (a "Negotiated Matter"). Toyota Party agrees to discuss and seek input from Supplier on all Negotiated Matters. In the event the parties cannot agree on the resolution of a Negotiated Matter after complete discussion and negotiation, and as a matter of last resort, it is agreed that the decision of the Toyota Party, made in its sole discretion and in good faith on the basis of its best business judgment, will be final in reaching resolution of any Negotiated Matter, subject to Section 7.8 Alternative Dispute Resolution.

1.9 Guiding Principles. Supplier understands the importance of guiding principles for Toyota Party (“Guiding Principles”) which provide, among other things, the philosophical direction for the company. Guiding Principles specifically govern the practices and policies of Toyota Party as a corporate citizen in its dealings with its suppliers, customers and communities in which Toyota Party team members and families live and work (“Local Community”). In all dealings between Toyota Party and Supplier, both parties agree to use their commercially reasonable efforts to comply with the Guiding Principles (as these may be adopted and modified by Toyota Party from time to time), including (a) compliance with the spirit of all applicable commercial and other laws and all principles of corporate ethics, (b) exhibiting proper care and concern for the environment and safety, (c) respect for and contribution to the betterment and improvement of the Local Community, (d) enlightenment, growth and continuous improvement of all management, employees and business partners, (e) adoption and practice of customer first principle, (f) practice of fair trade and sound business practices in all business dealings, (g) promotion of social responsibility for all management, employees and business partners and (h) consideration of, and regular contribution towards, sustainable development of society, the environment and the overall well-being of the Earth.

2. General Terms and Conditions.

2.1 Sale of Items.

(a) Generally. Quantities and descriptions of Items shall be as designated in one or more Contract Documents that expressly relate to or identify the Items to be purchased by Toyota Party, all as determined by Toyota Party in its sole discretion. Toyota Party reserves the right to generate Contract Documents which project vehicle volumes or target quantities for volumes provided, however, such Contract Documents are not intended to be nor shall they be deemed a firm commitment or guarantee that a certain quantity of Items will be purchased by Toyota Party, rather they will be effective only as forecasts and will be superseded in their entirety by the issuance of applicable Contract Documents.

(b) Sale of Items. Supplier is prohibited from selling any Items that are unique to Toyota Party (“Unique Items”) to any non-Toyota Party at any time, regardless of whether the Items conform to these Terms and Conditions or constitute Rejected Items, and this obligation shall survive the expiration, termination or cancellation of these Terms and Conditions. For purposes of this *section*, the term Unique Items shall not include (i) Items of Supplier that Toyota Party and Supplier have mutually agreed in writing to be standard stock of Supplier, (ii) Items which are commercially recognized as standard stock or have been established as a course of dealing to be standard stock or (iii) any other Items which Toyota Party has consented to in writing, at the written request of Supplier, as eligible for resale.

2.2 Price.

(a) Generally. The price to be paid for Items (“Toyota Price”) shall be as designated in one or more Contract Documents that expressly relate to or identify the Items to be purchased by Toyota Party, all as determined by Toyota Party in its sole discretion. If a Contract Document indicates that any Items are to be provided on an interim price basis, the interim Toyota Price shall be adjusted from time to time and for such period of time as is stated in the applicable Contract Document. Any interim Toyota Price shall not be higher than Supplier's then-average prevailing price as of the date of the applicable Contract Document for the same or substantially similar Items of comparable quantity and quality.

(b) Price Adjustments. As part of the ongoing, ordinary course of business between the parties, the Toyota Price may be adjusted by Toyota Party from time to time, either higher or lower, all as evidenced by one or more Contract Documents issued by Toyota Party, after consultation with Supplier.

(c) Timing of the Applicable Price. The effective date for the start of any Toyota Price, and the duration of the Toyota Price, shall be as set forth in applicable Contract Documents. The applicable price is effective only for such time as is stated in such Contract Document and unless otherwise agreed to by Toyota Party in a Contract Document, all pricing agreements will terminate and be reset as part of the annual price review process established by Toyota Party. Price review will occur at times and according to procedures established by Toyota Party in its sole discretion.

2.3 Payment.

(a) Generally. Payment by Toyota Party for accounts payables owed to Supplier ("Supplier Payables") arising from conforming Items duly accepted by Toyota Party ("Accepted Items") shall be pursuant to such processes, procedures and payment systems as are designated by Toyota Party in its sole discretion ("Payment Procedures"), including but not limited to ePayment and the Electronic Invoice Presentment and Payment system (the "EIPP System"). Payment Procedures also include provisions for additions to and offsets against Supplier Payables arising in the ordinary course of dealing between the parties. Supplier agrees to (i) invoice Toyota Party for Accepted Items solely in strict conformity with the applicable Payment Procedures (a "Conforming Invoice") and (ii) accept payment for such Accepted Items at the times and in the amounts determined by the applicable Payment Procedures. Toyota Party may withhold payment of any Supplier Payables until it has received written confirmation of the absence of any liens, security interests, or other encumbrances and claims in or against the applicable Accepted Items, all in such form and at such time as requested by Toyota Party in its sole discretion.

(b) General Payment Terms. Except as otherwise provided by Toyota Party or in a Contract Document, the general payment terms shall be:

(1) Outside the EIPP System. For Supplier Payables arising under or related to Items which are not eligible for payment under the EIPP System (i) on or before the 25th day of the month following the month in which the Items are received by the applicable Toyota Party ("Net 25th Prox") and (ii) otherwise in conformity with the applicable Payment Procedures.

(2) The EIPP System. For Supplier Payables arising under or related to Items which are eligible for payment under the EIPP System (i) 45 days following the date of any Conforming Invoice from Supplier and (ii) otherwise in conformity with the applicable Payment Procedures.

(c) Payment Obligation of Toyota Party. Notwithstanding any other provisions of these Terms and Conditions to the contrary, Toyota Party will have no obligation whatsoever to make any payment for Items provided to Toyota Party (and irrespective of whether such Items have been accepted by Toyota Party), whether pursuant to Payment Procedures or any other legal or equitable basis for a recovery against Toyota Party, and whether such Items were provided pursuant to a Contract Document, or any other document or agreement from or involving Toyota Party, unless and until Toyota Party is in receipt of a Conforming Invoice with respect to the Items in issue.

(d) Applicable Currency. All payments due Supplier under these Terms and Conditions shall be paid in United States Dollars or such other currency as determined by Toyota Party in its sole discretion and as evidenced by an additional Contract Document.

(e) Audit. Supplier agrees to allow Toyota Party or its agents, at all reasonable times, access to all pertinent bookkeeping and accounting information, as reasonably requested by Toyota Party, for the purpose of auditing all Supplier's Payables as invoiced to Toyota Party under these Terms and Conditions. Supplier also agrees to allow Toyota Party or its agents to make copies of those portions of its records that Toyota Party deems reasonably necessary for its audits, and further agrees to use its commercially reasonable efforts to keep copies of all such records for a period of five (5) years after payment of the corresponding Supplier Payable. Supplier's information provided to Toyota Party under this *section (f)* shall be protected as Confidential Information under these Terms and Conditions.

2.4 Delivery.

(a) Generally. In conjunction with the delivery of Items and as designated from time to time by Toyota Party in one or more Contract Documents, Supplier agrees to (i) properly pack, mark and ship Items in strict conformity with the packaging and delivery requirements of Toyota Party and any applicable carrier, (ii) route deliveries of Items in strict conformity with the routing requirements of Toyota Party, (iii) deliver Items in quantities and at the time and the place specified in delivery schedules furnished by Toyota Party, (iv) not charge Toyota Party for handling, packaging, storage or transportation of Items unless otherwise stated in applicable Contract

Documents, and (v) provide with each shipment of Items such packing slips, bills of lading and/or other shipping receipts or identifying documentation which taken together will allow Toyota Party to identify the Items shipped and determine that such Items have been delivered in strict conformity with all applicable packaging, delivery, and routing requirements of Toyota Party.

(b) General Delivery Terms. Delivery terms and schedules for Items shall be as designated in one or more Contract Documents that expressly relate to or identify the Items to be purchased by Toyota Party, all as determined by Toyota Party in its sole discretion. Toyota Party may at any time or from time to time change delivery terms and/or delivery schedules, or direct temporary suspension of scheduled deliveries (a "Delivery Change"). Supplier agrees to honor all instructions from Toyota Party concerning any Delivery Change. Toyota Party shall reimburse Supplier for reasonable costs incurred as a result of any Delivery Change. The amount to be reimbursed to Supplier for such costs, and timing of payment, shall be set forth in a separate Contract Document. Delivery Changes shall not entitle Supplier to a modification of the price for the applicable Items affected by such change.

(c) Time is of the Essence. Time is of the essence in making all deliveries of Items to Toyota Party. If the acts or omissions of Supplier result or are likely to result in a failure by Supplier to meet the delivery requirements of Toyota Party, Supplier agrees to select a premium freight option and ship the Items in issue to Toyota Party as quickly as is possible, all at Supplier's sole expense.

(d) Returnable Packaging. In the event returnable packaging, items, equipment and goods are deemed by Toyota Party to be advisable or necessary for the delivery of Items ("Returnable Packaging"), Toyota Party shall reimburse Supplier for reasonable costs of such Returnable Packaging. The amount paid for such Returnable Packaging (the "RP Costs"), and timing of payment, shall be set forth in a separate Contract Document.

(1) Property Rights. The Returnable Packaging shall be the property of Supplier unless otherwise designated by Toyota Party. Supplier grants Toyota Party an exclusive option to acquire any and all Returnable Packaging at a cost equal to the value of the applicable Returnable Packaging less the RP Costs, the option to be exercisable by Toyota Party at such times, on such terms and for such Returnable Packaging as is determined by Toyota Party in its sole discretion.

(2) Use. Unless otherwise agreed to by Toyota Party in a Contract Document, Supplier is responsible for cleaning, replacing and repairing any lost or damaged Returnable Packaging. Supplier will not sell, transfer, loan, lease or otherwise allow any other party to use Returnable Packaging or destroy Returnable Packaging, without the prior written approval of Toyota Party. Supplier will use all Returnable Packaging strictly for the packaging and transportation of Items for delivery to the applicable Toyota Party ("Toyota Transportation"), and will not use Returnable Packaging for internal transportation purposes, for in-production transit of Items, for shipment to or from Supplier for fabricating, coating or any other in-production work or assembly by third parties or affiliates of Supplier, or for any other purpose other than Toyota Transportation.

(3) Fabrication. At the direction of Toyota Party, one or more third-party suppliers (collectively, "Fabricators") may be designated to fabricate and manufacture Returnable Packaging, including the development of design services, software and/or other Intellectual Property for Returnable Packaging (collectively, "Fabricated Returnable Packaging"), all on terms and conditions, and at prices (the "RP Prices") set by Toyota Party. Further, Toyota Party in its sole discretion may direct Supplier to acquire and use Fabricated Returnable Packaging as Returnable Packaging, and further direct Supplier to acquire such Fabricated Returnable Packaging from one or more designated Fabricators. In such event, Toyota Party reserves the right (i) to deal directly with all applicable Fabricators to set the design, price and other terms and conditions for the fabrication of any such Fabricated Returnable Packaging and (ii) to make payment to any applicable Fabricator (on behalf of Supplier and Toyota Party) of any applicable RP Costs (not to exceed applicable RP Prices) otherwise due and payable for such Fabricated Returnable Packaging. Alternatively, Toyota Party may direct Supplier to deal directly with any Fabricator and to pay the applicable RP Costs to such Fabricator. If Supplier pays RP Costs to a Fabricator, it may make a claim to Toyota Party for reimbursement of such costs. Toyota Party will reimburse Supplier for such RP Costs, but only to the extent such costs are (i) the reasonable costs of such Fabricated Returnable Packaging and (ii) otherwise in conformity with any applicable RP Prices and other Toyota Party requirements for such packaging.

(e) Emergency Shipments. Toyota Party may, from time to time, require emergency shipments of Items for production or service requirements, and Supplier will use its best efforts to deliver such Items within the time frame required. If Toyota Party requires Supplier to make such emergency shipments, Toyota Party shall reimburse Supplier for reasonable costs incurred as a result of such emergency shipments. The amount to be reimbursed to Supplier for such costs, and timing of payment, shall be set forth in a separate Contract Document. In the event of any inability of Supplier to make deliveries of Items in strict conformity with applicable delivery terms and schedules, Supplier will, at its cost, make provision for delivery of applicable Items on an emergency basis (a "Supplier Emergency Shipment") in order to provide Items to Toyota Party at the time and in the quantities required by applicable Contract Documents. Supplier will notify Toyota Party as soon as possible of any Supplier Emergency Shipment and comply with all Toyota Party instructions concerning any such shipment.

(f) Overshipments; Undershipments. Toyota Party will have no liability for payment of Supplier Payables arising from Items delivered to Toyota Party that exceed the quantities specified in the applicable Contract Documents. At the sole option of Toyota Party, Toyota Party may keep any overshipments of Items and elect to have the quantities of Items under the applicable Contract Documents increased by the same amount of Items as the quantity of overshipments. Alternatively, overshipments of any Items shall, if so requested by Toyota Party, be returned to Supplier at Supplier's expense. In case of undershipments of any Items, Supplier shall, if so requested by Toyota Party, immediately at its cost, ship to the destination and by the time designated by Toyota Party the additional Items needed to fully complete the applicable Toyota Party requirements. Alternatively, Toyota Party may elect to have the quantities of Items under the applicable Contract Documents reduced by the same amount of Items as the quantity of any undershipments.

2.5 Inspection. In conjunction with the inspection of Items, the following provisions shall apply:

(a) Agency Relationship; Toyota Party and Other Toyota Parties. From time to time, one or more of the other Toyota Parties may act as agent for Toyota Party for purposes of performing inspections of Items.

(b) Inspection Period. All Items shall be received subject to Toyota Party's acceptance or rejection on or before the end of the Inspection Period. Payment by Toyota Party for Items under these Terms and Conditions prior to the end of the Inspection Period shall not constitute its acceptance thereof, nor shall such payment remove Supplier's responsibility for any nonconforming Items. "Inspection Period" shall mean (i) a reasonable period of time after delivery to Toyota Party or (ii) the time at which the Toyota Party shall have completed its final inspection of the vehicle into which the Items are incorporated, and its written release of the vehicle for delivery, whichever is applicable as determined by Toyota Party in its sole discretion.

2.6 Rejected or Nonconforming Items.

(a) Remedial Work; Replacement Items. If any Item or shipment of Items is rejected as nonconforming to Contract Documents, Toyota Requirements or these Terms and Conditions by Toyota Party before the end of the Inspection Period ("Rejected Items"), Toyota Party shall have the following options:

(1) No Repair or Replacement. Toyota Party may elect to have the quantity of Items under the applicable Contract Documents reduced by the same amount as the quantity of Rejected Items; and, Toyota Party will have no obligation to pay Supplier for such Rejected Items. Supplier will not replace Rejected Items without new Contract Documents from Toyota Party. Rejected Items will be held by Toyota Party in accordance with Supplier's instructions and at Supplier's risk. Supplier's failure to provide instructions to Toyota Party within ten (10) days (or such shorter period as may be commercially reasonable under the circumstances) after notice to Supplier by Toyota Party, shall entitle Toyota Party to charge Supplier for storage and handling and to dispose of the applicable Rejected Items without liability to Toyota Party.

(2) Replacement Items. Toyota Party may elect to have Supplier, at its cost and as directed by Toyota Party, replace the Rejected Items with replacement Items, such replacement Items to be delivered to the Toyota Party in accordance with any and all instructions provided by Toyota Party in one or more Contract Documents.

(3) Toyota Party Right to Remedial Work. Notwithstanding the provisions of *subsections (1) and (2)* above, if Toyota Party determines that it is necessary to repair any Rejected Items, which shall include, but not be limited to, performing such additional work (including the cost of any materials) as is necessary to make such Rejected Items fully conforming (the “Remedial Work”), then Toyota Party may elect to (i) perform the Remedial Work itself, (ii) have a third party perform the Remedial Work or (iii) have Supplier perform the Remedial Work. In the case of (i) or (ii), the cost of such Remedial Work shall be offset against the amounts otherwise due Supplier for such Rejected Items or charged separately to Supplier pursuant to one or more Contract Documents.

(b) No Limitation of Remedies. It is the intention of Toyota Party to attempt to utilize repair or replacement as its principal remedies in the case of Rejected Items, but such intention shall not be deemed a limitation of its remedies. If Toyota Party and/or inspecting party requires and accepts Replacement Items or Remedial Work, such actions shall not be an election of remedies (“Election of Remedies”), nor shall it in any way limit the rights and remedies of Toyota Party under these Terms and Conditions for the breach by Supplier caused by its tender of Rejected Items.

2.7 Delay.

(a) Notification of Delay; Supplier Performance. If at any time Supplier has reason to believe that the delivery of any Items may not be made in strict conformity with applicable delivery schedules, Supplier shall immediately notify Toyota Party setting forth the cause for the anticipated delay. Any oral communication shall be immediately confirmed in writing. During the period of any delay, Supplier shall use its best efforts to provide the Items called for in the applicable Contract Documents from other sources and reduce its deliveries of Items to Toyota Party by such quantities of substituted Items, all without cost or liability to Toyota Party.

(b) Right to Acquire Substitute Items. In the event of any delay, Toyota Party shall have the right to immediately acquire substitute or replacement Items from one or more alternate sources (“Alternative Items”). Toyota Party may elect to have the quantities of Items under the applicable Contract Documents reduced by the same amount of Items as the quantity of Alternative Items, unless otherwise notified by Toyota Party in a separate Contract Document. Supplier will not replace Alternative Items without new Contract Documents from Toyota Party. Toyota Party will have no obligation to pay Supplier for Items replaced by Alternative Items.

(c) Force Majeure. Except as otherwise provided in *Section 2.7(d)*, any delay or failure of Supplier to perform its obligations hereunder shall be excused if and to the extent that it is caused by an event or occurrence beyond the reasonable control of Supplier and without its fault or negligence, such as, by way of example and not by way of limitation, acts of God, actions by any government authority (whether valid or invalid), fires, floods, windstorms, explosions, riots, natural disasters, wars, embargoes, acts of terrorism, sabotage, or court injunction or order; provided that written notice of such delay (including the anticipated duration of the delay) shall be given by Supplier to Toyota Party within ten (10) days of the occurrence of such event. During the period of such delay or failure to perform by Supplier, the provisions of *Section 2.7(b)* shall apply. If requested by Toyota Party, Supplier shall, within ten (10) days of such request, provide adequate assurances that the delay shall not exceed thirty (30) days. To the extent that the force majeure event is reasonably foreseeable, Supplier shall at its expense take such actions as are necessary to ensure the uninterrupted supply of Items to the applicable Toyota Party, in the quantities and at the delivery times required by such Toyota Party, for a period of at least thirty (30) days (the “Projected Force Majeure Expenses”). In the event the Projected Force Majeure Expenses will cause a financial hardship to Supplier, Toyota Party agrees to negotiate in good faith a reasonable allocation of the Projected Force Majeure Expenses between Toyota Party and Supplier. If the delay lasts (or is reasonably believed by Toyota Party to last) more than thirty (30) days or Supplier does not provide adequate assurances that the delay will cease within thirty (30) days, Toyota Party may immediately (i) cancel or modify any and all outstanding Contract Documents and/or (ii) adjust, suspend (in whole or in part) or modify the performance of Supplier under the terms of outstanding Contract Documents, all in an effort to adjust the timing and quantity of Items being furnished by Supplier to Toyota Party to account for the force majeure event. The decision to resume Supplier performance under applicable Contract Documents, and the terms of such resumption shall be made by Toyota Party in its sole discretion.

(d) Labor and Supply Problems Not Force Majeure. Notwithstanding anything in this *Section 2.7* to the contrary, no delay or failure of Supplier to perform its obligations hereunder shall be excused if and to the extent that it is caused by (i) labor problems of Supplier, its subcontractors and/or its suppliers such as, by way of example and not by way of limitation, lockouts, strikes and slowdowns or (ii) the inability of Supplier, its subcontractors and/or its suppliers to obtain power, material(s), labor, equipment or transportation.

(e) No Limitation of Remedies. It is the intention of Toyota Party to work with Supplier in the event of any delay, but such intention shall not be deemed a limitation of its remedies. If Toyota Party obtains Alternative Items, such actions shall not be an Election of Remedies, nor shall it in any way limit the rights and remedies of Toyota Party under these Terms and Conditions for the breach by Supplier caused by its delay.

3. Tooling Terms and Conditions. This *Section 3* shall apply to any Items that constitute Tooling. To the extent any conflict arises between *Section 3* and other Sections of these Terms and Conditions, for Tooling, *Section 3* shall control. This *Section 3* shall have no application to any Items other than Tooling. For all other purposes, the term Items shall include Tooling.

3.1 Tooling.

(a) Tooling. “Tooling” shall mean, collectively, such production-based tooling, jigs, dies, gauges, fixtures, molds and/or patterns as are required for Items already identified to a vehicle in production or for Items of a vehicle which is beyond the prototype stage of engineering or production, in all cases irrespective of whether assigned a Toyota Party asset tag or other material identifying number or badge or whether such an asset tag or badge is actually affixed to such Tooling.

(b) Tooling Authorization. “Tooling Authorization” shall mean the Contract Documents designated by Toyota Party which collectively identify the Tooling to be manufactured by Supplier (or on its behalf) and purchased by Toyota Party (and which may include quantity, description, and delivery terms). Until such time as Supplier receives the Tooling Authorization, Supplier has no authority to commence cutting or other work on the Tooling. Once Supplier receives the Tooling Authorization, Supplier’s commencement of work on the Tooling shall constitute acceptance of the applicable Contract Documents for such Tooling (and as applicable, these Terms and Conditions).

(c) Tooling Purchase Order. “Tooling Purchase Order” shall mean the Contract Documents designated by Toyota Party which collectively identify the terms of purchase for any Tooling. In the event there is an inconsistency or conflict between any Tooling Purchase Order and these Terms and Conditions, these Terms and Conditions shall control.

(d) Part Approval. “Part Approval” shall be the date and time at which preliminary approval (which may include quantity, description, and delivery terms) of the Tooling occurs, all as determined by Toyota Party in its sole discretion and evidenced by one or more Contract Documents.

(e) Final Approval. “Final Approval” shall be the date and time that the Tooling has been approved for standard production of Items at full production rates, all as determined by the Toyota Party in its sole discretion and evidenced by one or more Contract Documents.

(f) Property. All Tooling is solely and exclusively the property of Toyota Party and when in the possession of Supplier, any Toolmaker, any tier two or other party involved in the operation of the Tooling or in the possession any other third party shall be deemed a bailment (collectively, other than Supplier, a “Tooling Third Party”). Supplier shall prominently mark and identify the Tooling as property of Toyota Party by utilizing asset tags or other identifying materials provided to it by Toyota Party. With the prior written permission of Toyota Party, Supplier may maintain Tooling on the premises of a Tooling Third Party, solely as a bailment and otherwise on terms and conditions established by Toyota Party in applicable Contract Documents. Tooling shall not be commingled with other property of Supplier (or any Tooling Third Party) and will be insured by Supplier, at its expense, against loss or damage. Supplier, at its expense, shall maintain the Tooling in good condition, including

wear and tear, and immediately replace any items associated with the Tooling, which are lost, destroyed or worn out.

3.2 Sale of Tooling. Supplier is expressly prohibited from selling any Tooling to a Tooling Third Party or any other third party at any time. This obligation shall survive the expiration, termination or cancellation of such Tooling Authorization, Tooling Purchase Order and/or these Terms and Conditions.

3.3 Supplier Owned Toyota Production Tooling. In the event Toyota Party deems it to be advisable or necessary, tooling may be purchased and owned by Supplier, solely for the production of Items for Toyota Party (“Supplier Owned Toyota Production Tooling”), all pursuant to these Terms and Conditions and as set forth in such Contract Documents as Toyota Party may designate. In the event that any Supplier Owned Toyota Production Tooling is procured, Toyota Party shall reimburse Supplier for the reasonable costs of such Supplier Owned Toyota Production Tooling, pursuant to an adjustment to the piece price for Items manufactured with such Supplier Owned Toyota Production Tooling or such other Payment Procedures as Toyota Party may designate. The amount paid for such Supplier Owned Toyota Production Tooling (the “SPT Costs”), and timing of payment, shall be set forth in a separate Contract Document. The Supplier Owned Toyota Production Tooling shall be the property of Supplier unless otherwise designated by Toyota Party. Supplier grants Toyota Party an exclusive option to acquire any and all Supplier Owned Toyota Production Tooling at a cost equal to the value of the applicable Supplier Owned Toyota Production Tooling less the amounts paid by Toyota Party to Supplier as SPT Costs, the option to be exercisable by Toyota Party at such times, on such terms and for such Supplier Owned Toyota Production Tooling as is determined by Toyota Party in its sole discretion.

3.4 Items. The Tooling may be used to produce trial parts or production quantities of Items for Toyota Party. All aspects of such production of Items shall be controlled solely by one or more Contract Documents.

3.5 Price and Payment for Tooling.

(a) Price. In establishing the price for Tooling (“Tooling Price”), Toyota Party shall evaluate and take into consideration (i) the costs of comparable Tooling for past vehicle models (whether produced by Supplier or another party) and (ii) reasonable and necessary variances from any and all quotes provided by Supplier as may be required under the circumstances; provided, however, that the price shall be set by Toyota Party after good faith negotiations with Supplier and shall be evidenced only by the Tooling Purchase Order.

(b) Price Adjustments. Any Tooling Price may be interim (pending completion of engineering, cost analysis and other details concerning actual costs of Tooling, and other matters) and may be adjusted by Toyota Party, either higher or lower, before it becomes a final Tooling Price, all as evidenced by one or more Contract Documents issued by Toyota Party, after consultation with Supplier. Tooling Price review will occur at times and according to procedures established by Toyota Party in its sole discretion. No adjustments to any Tooling Price will be made for increases in Supplier’s manufacturing and other costs, including but not limited to, increases in its costs for labor, materials, overhead or other direct, indirect, fixed or variable costs. In the event Required Changes to Tooling have or will result in a material increase or decrease in the costs of such Tooling and/or the time for performance, Toyota Party and Supplier will negotiate in good faith a reasonable allocation of such costs or other equitable adjustment of the relationship between the parties. Any Tooling Price adjustment shall be evidenced by a new or revised Tooling Purchase Order or other Contract Document.

(c) Payment. Payment by Toyota Party of the Tooling Price (or such amount as is a Supplier Payable; a “Tooling Payment”) arising from Tooling duly accepted by Toyota Party shall be pursuant to such Payment Procedures as are designated by Toyota Party in its sole discretion. Payment terms, unless otherwise provided in a Contract Document, shall be as follows. First, 80% of the Tooling Payment shall be paid in accordance with *Section 2.3(b)* after Toyota Party receives both (i) Supplier’s Tooling invoice (a “Tooling Invoice”) for such amount and (ii) a copy of the applicable Part Approval. Next, the remaining 20% of the Tooling Payment shall be paid in accordance with *Section 2.3(b)* after Toyota Party receives both (i) a Tooling Invoice for such 20% (which invoice MAY NOT be submitted until at least one (1) day following Start of Production (“SOP”) for the applicable Toyota vehicle) and (ii) a second copy of the applicable Part Approval.

(d) Modification of Payment Terms. Whether before or after SOP, Toyota Party reserves the right to suspend or withhold payment of any Tooling Invoice and to modify or amend any Tooling Payment terms or

Payment Procedures, all on such terms and conditions as established by Toyota Party in its sole discretion and until such time as there is a full and complete resolution of any and all production, operational and/or quality problems or issues, or any other issues related to the applicable Tooling, all to the satisfaction of Toyota Party.

3.6 Inspection.

(a) **Right to Inspect.** Toyota Party shall have the right to inspect Supplier's premises, and in the event the Tooling is manufactured by a third party vendor (the "Toolmaker"), Supplier shall secure oral or written (if requested by Toyota Party) consent from the Toolmaker for Toyota Party to inspect Toolmaker's premises in connection with these Terms and Conditions. This inspection right extends to both Part Approval and Final Approval. Payment of a Tooling Invoice shall not be deemed acceptance of any Tooling, and Tooling shall be accepted by Toyota Party only in connection with Part Approval and Final Approval.

(b) **Rejected Tooling.** At any time prior to Final Approval, if the Tooling is not producing Items in strict conformity with the specification or engineering requirements of Toyota Party, or is otherwise nonconforming, all as determined by Toyota Party in its sole discretion (the "Rejected Tooling"), Toyota Party may designate such Tooling as Rejected Tooling. In such event, the provisions of *Section 2.6* of these Terms and Conditions shall apply to such Rejected Tooling (as if the Rejected Tooling was a Rejected Item).

3.7 On-Time Completion.

(a) **Completion Target Date.** Completion of the Tooling within the designated timeframe (the "Production Timetable") shall be as set forth in the Tooling Authorization and/or Part Approval (the "Completion Target Date"). Supplier is solely responsible for having the Tooling completed prior to the Completion Target Date, irrespective of any additional cost or expense incurred. For purposes of meeting the Completion Target Date, *Section 2.7* of these Terms and Conditions shall apply to both Supplier and any Toolmaker utilized by Supplier.

(b) **Rescheduling.** Toyota Party may either shorten or extend the Production Timetable. If such rescheduling occurs and results in a shorter Production Timetable, and such shorter production time has or will result in a material increase or decrease in the cost of the Tooling and/or the time for performance, Toyota Party and Supplier will negotiate in good faith a reasonable allocation of such costs or other equitable adjustment of the relationship between the parties. Any Tooling Price adjustment shall be evidenced by a new or revised Tooling Purchase Order or other Contract Document.

(c) **Cancellation.** If Toyota Party reasonably concludes that a delay in meeting the Production Timetable, all as more fully provided in *Section 2.7* (i) will extend more than thirty (30) days or (ii) cause Supplier and/or Toolmaker to miss the Completion Target Date, then Toyota Party has the right to immediately cancel the Tooling Purchase Order and any other applicable Contract Documents, all consistent with the provisions of *Section 2.7*.

3.8 Status of Tooling. In the event Tooling is acquired by Supplier from a Toolmaker, Toyota Party shall have the rights of a third party beneficiary under, and with respect to, any contract or agreement between Supplier and Toolmaker regarding such Tooling ("Tooling Contract").

3.9 Encumbrances. Supplier shall not pledge or encumber its interest in any accounts receivable related to or arising from any Tooling without Toyota Party's prior written consent. In the event of such consent, any secured party's rights in and to such interest shall at all times be subject and inferior to Toyota Party's rights including, but not limited to, Toyota Party's right to cancel any Tooling Purchase Order, other Contract Document and/or the right of Toyota Party to set-off amounts owed with respect to any Tooling against claims of Toyota Party against Supplier. Any security interest in accounts receivable shall also be subject to Toyota Party's right to (i) compromise or settle the Tooling Authorization and/or Part Approval, and any other aspect of its relationship to the Tooling and (ii) pay to Toolmaker amounts otherwise due Supplier in connection with any independent agreement with Toolmaker or an assumption of the Tooling Contract.

3.10 Disposal of Tooling. Supplier shall not dispose of any Tooling except in strict conformity with any Toyota Party policies and procedures.

3.11 Use; Removal of Tooling. All Tooling is to be used exclusively for Toyota Party's benefit. Toyota Party may remove Tooling from Supplier's premises at any time in the event of a breach by Supplier or cancellation, expiration or termination of these Terms and Conditions or any applicable Contract Documents. Supplier shall not remove Tooling from its premises without Toyota Party's prior written consent.

3.12 Additional Remedies. In the event of a breach, cancellation or termination of any Tooling Purchase Order, these Terms and Conditions or any other applicable Contract Document, Toyota Party shall be entitled to one or more of the following additional remedies, which remedies shall be cumulative and additional to any other or further remedies provided by these Terms and Conditions:

(a) **Cancel.** Cancel the Tooling Purchase Order and any Tooling Authorization;

(b) **Set-Off.** Set-off of any amounts held for or due to Supplier (whether for SPT Costs or otherwise) against claims of Toyota Party against Supplier;

(c) **Direct Dealings with Toolmaker.** Deal directly with Toolmaker, including, but not limited to, the following actions:

(1) To assume the Tooling Contract or to contract independently with Toolmaker for the completion of the Tooling;

(2) To make payments to Toolmaker; all amounts paid to Toolmaker shall be credited against any amounts still due and owing to the Supplier;

(3) If Toolmaker completes the Tooling and is paid in full for such work by Toyota Party, the payment to Toolmaker shall fully satisfy and discharge any additional amounts due to Supplier, irrespective of the original agreed-upon price or the actual amount paid to Toolmaker; and

(4) If Toolmaker completes the Tooling and is paid more than the original agreed-upon price due to Supplier's default and in order to complete the Tooling, Toyota Party shall have a claim against Supplier for such differential in price.

(d) **Tooling.** Upon any breach, cancellation or termination of the Tooling Purchase Order, Supplier shall, at the request of Toyota Party:

(1) Immediately stop production and/or use of any Tooling;

(2) Assemble and segregate Toyota Party's Tooling from any other property, including the removal of Tooling from presses or other machinery;

(3) Allow Toyota Party to immediately take possession of the Tooling, which includes the right to enter onto Supplier's premises or to require Supplier to pack and ship the Tooling, at Supplier's expense, to a destination selected by Toyota Party; and

(4) Indemnify and hold harmless Toyota Party from any Toolmaker or other third party claim, including any claim arising out of any state mechanic's lien or similar statute.

4. Continuing Terms and Conditions.

4.1 Changes to Items.

(a) **Required Changes.** Toyota Party reserves the right at any time and from time to time to direct changes (Toyota Requirements, engineering, design or other changes; collectively, "Required Changes"), and

Supplier agrees to make such Required Changes as directed by Toyota Party. Required Changes may also extend to drawings and specifications for the Items supplied or manufactured by Supplier, and may additionally extend to the scope of work covered by the applicable Contract Documents including such matters as inspection, testing, quality control and other matters ancillary to the production of Items. Required Changes shall be evidenced by one or more Contract Documents, and all Required Changes shall be made in strict conformity with such documents.

(b) Adjustments for Required Changes. In the event Required Changes have or will result in a material increase or decrease in the cost of and/or the time for performance by Supplier, Toyota Party and Supplier will negotiate in good faith a reasonable allocation of such costs or other equitable adjustment of the relationship between the parties. Any price or other adjustment shall be evidenced by a new or revised Contract Document. In the event the parties cannot mutually agree (even in the event of an objection) concerning Required Changes and the impact of such changes, or if Toyota Party reasonably deems it necessary to implement Required Changes without consultation, such Required Changes shall be effective as directed by Toyota Party, all as evidenced by additional Contract Documents.

4.2 Service Parts.

(a) New Model/Current Production Period. Supplier will manufacture, produce and supply to Toyota Party Items designated by Toyota Party as service parts ("Service Parts") for either a new vehicle model or current production of a particular vehicle model ("Current Model Production"). Supplier shall produce Service Parts at such times and in such quantities as are necessary to allow Toyota Party to fulfill its current model service and replacement parts requirements for all applicable vehicles. Upon Toyota Party's reasonable request, Supplier will, at no charge to Toyota Party, provide Toyota Party with service literature and other written materials concerning Service Parts in order to support all Service Part sales activities and programs of Toyota Party. In the event the expense of providing such service literature to Toyota Party will cause a financial hardship to Supplier, Toyota Party agrees to negotiate in good faith a reasonable allocation of the expense between Toyota Party and Supplier.

(b) Past Model Service Parts. Notwithstanding any other prior agreements between the parties or prior versions of terms and conditions of Toyota Party, Supplier will manufacture, produce and supply to Toyota Party Service Parts for a period of up to fifteen (15) years (the "PMSP Period") after the conclusion of all Current Model Production purchases for a particular vehicle model ("Past Model Service Parts"). Supplier shall produce Past Model Service Parts at such times and in such quantities as are necessary to allow Toyota Party to fulfill its past model service and replacement parts requirements for all applicable vehicles. Upon Toyota Party's reasonable request, Supplier will, at no charge to Toyota Party, provide Toyota Party with service literature and other written materials concerning Past Model Service Parts in order to support all Past Model Service Part sales activities and programs of Toyota Party. In the event the expense of providing such service literature to Toyota Party will cause a financial hardship to Supplier, Toyota Party agrees to negotiate in good faith a reasonable allocation of the expense between Toyota Party and Supplier.

(c) Price for Service Parts. Unless otherwise agreed to by Toyota Party in a Contract Document, Service Parts and Past Model Service Parts will be produced, sold and delivered to Toyota Party at the standard production piece price, payment and delivery terms and otherwise in conformity with the provisions of *Section 2*, all as set forth in one or more Contract Documents.

(d) Responsibility for Production Costs and Other Matters. Supplier will be solely responsible for all costs needed to maintain such equipment, raw materials, tooling and other assets as are necessary to produce Service Parts and Past Model Service Parts, and shall be responsible for complying with any additional identification and labeling procedures, distribution and shipping requirements, and such other requirements and instructions as Toyota Party may designate from time to time. Supplier will be responsible for the disposal of any remaining Service Parts, Past Model Service Parts and accompanying dies, tooling and raw materials at the end of the PMSP Period with Toyota Party's prior written approval, and in accordance with any instructions from Toyota Party with respect to such disposal.

(e) PMSP Period. Toyota Party reserves the right, subject to reasonable prior notice to Supplier, to modify the PMSP Period (shorten or lengthen) as business circumstances, marketing, sales and other production

issues require, all as determined on the basis of the reasonable business judgment of Toyota Party.

4.3 Compliance with Manufacturing and Legal Requirements; Applicable Laws.

(a) Compliance with Applicable Laws. Supplier will comply with (and all Items manufactured, produced or supplied by Supplier to Toyota Party shall comply with) all applicable federal, state, local and provincial statutes, rules and regulations, orders, conventions, ordinances or standards of (A) the United States, (B) other countries of destination for the vehicles produced by Toyota Party or manufactured and sold as part of any Toyota Production, or (C) other country or countries where Items (or Items used in subassemblies or in the manufacture or production of Items) are manufactured, produced or acquired, which directly or indirectly relate to (i) the manufacture of vehicles, vehicle equipment, vehicle materials or vehicle supplies, (ii) the labeling, transportation, importation, exportation, licensing, approval or certification of any Item, or Toyota vehicle incorporating any Item, (iii) environmental, vehicle safety, data protection, privacy, wages, hours and conditions of employment, subcontractor selection, discrimination, immigration and occupational health and safety (collectively, "Manufacturing and Legal Requirements"). As part of the Manufacturing and Legal Requirements Supplier represents, for itself and for its agents, employees and subcontractors, that it has not and does not use slave, prisoner or any other form of forced or involuntary labor in the manufacture or supply of Items to Toyota Party under these Terms and Conditions. Supplier shall indemnify Toyota Party and its employees and agents from and against any claims, demands or expenses (including attorney's and other professional fees) arising from or related to Supplier's noncompliance with or violation of any Manufacturing and Legal Requirements.

(b) Testing; Certifications. In order to determine that all Items comply with all Manufacturing and Legal Requirements and all Toyota Requirements, Supplier shall perform (or have performed on its behalf), at its cost and in a manner satisfactory to Toyota Party, all testing, inspections, analyses, and certifications reasonably required to determine such compliance (collectively, "Testing and Certification"). Toyota Party reserves the right to determine with Supplier what Testing and Certifications are required to insure compliance with all Manufacturing and Legal Requirements. Supplier shall provide to Toyota Party originals or copies, as required, of the test reports or other written materials used to obtain or maintain compliance with all Manufacturing and Legal Requirements and Toyota Requirements as soon as they are available, or as otherwise required by law.

(c) Ongoing Compliance; Access. If requested by Toyota Party, Supplier shall certify to Toyota Party in writing that it is in compliance with all Manufacturing and Legal Requirements and that all Testing and Certification have been performed and completed, and shall provide Toyota Party with copies of state, federal, provincial, local and applicable foreign country certifications, permits, approvals, and any other documentation that evidences that the Items satisfy Manufacturing and Legal Requirements.

4.4 Environmental Reports; Material Data Sheets and Other Ingredient Information.

(a) Environmental Reports; Material Safety Data Sheets. Prior to the shipment of any Item, Supplier will provide Toyota Party with (i) any and all Material Safety Data Sheets ("MSDS") that are related, directly or indirectly, to the Items (or Items used in subassemblies or in the manufacture or production of Items) (ii) such other documentation as Toyota Party may request from time to time that is prepared pursuant to any applicable Manufacturing and Legal Requirements and any and all Toyota Requirements relating to environmental or similar matters (collectively, "Environmental Reports"). Environmental Reports shall be deemed Confidential Information. Supplier agrees to promptly furnish to Toyota Party any modifications, amendments or supplements to the Environmental Reports. Further, Supplier agrees to promptly inform Toyota Party of any changes in materials or ingredients in Items, and to promptly furnish Toyota Party with updated or new Environmental Reports relating, directly or indirectly, to the Items. Supplier also agrees to provide Toyota Party with any other ingredient information related, directly or indirectly, to the Items that is required to be provided by Supplier under any applicable Manufacturing and Legal Requirements.

(b) Additional Information. Supplier agrees to notify Toyota Party immediately upon obtaining any information or indications that Items supplied by, or to be supplied by, Supplier have hazardous characteristics, regardless of the information provided in any Environmental Reports. If requested by Toyota Party, Supplier shall provide Toyota Party with any other information it reasonably requests concerning the ingredients, composition, manufacturing processes or materials in any Items.

4.5 Property of the Parties.

(a) **Supplier Property.** Supplier shall at its expense furnish, maintain, keep in good condition and replace when necessary or prudent, all machinery, equipment, jigs, fixtures, test gauges, molds, patterns, transportation equipment and other items (for any party, "Property," and for Supplier, "Supplier's Property") necessary for the production of Items in conformity with Toyota Requirements, these Terms and Conditions and all applicable Contract Documents. The cost of changes to Supplier's Property required from time to time by Toyota Party, whether for Required Changes or otherwise, shall be paid by Supplier.

(b) **Toyota Property.** All Tooling and other Property of Toyota Party ("Toyota Property") furnished to Supplier shall remain the property of Toyota Party and, as applicable, be deemed a bailment. Supplier shall bear the risk of loss for any damage to Toyota Property. At Supplier's expense, Toyota Property shall be marked by Supplier as "PROPERTY OF (insert applicable Toyota Party name)," or as otherwise directed by Toyota Party, and shall be stored and maintained apart from Supplier's Property (and not commingled with the property of Supplier or any third party), free of liens and encumbrances, and in good condition. Toyota Property shall not be used by Supplier for any purpose other than the performance of these Terms and Conditions. Toyota Property shall not be removed from Supplier's premises without the prior written approval of Toyota Party. Toyota Party reserves the right to inspect all Toyota Property, and records relating to the property, at reasonable times and on reasonable notice to Supplier.

(c) **No License.** Performance by Supplier under these Terms and Conditions shall not transfer any rights of ownership in, nor license of, nor constitute permission granted by Toyota Party to Supplier to use (i) any Toyota Property or (ii) any Toyota Intellectual Property, except (i) if otherwise agreed upon by Toyota Party in writing or (ii) to the extent necessary for Supplier to produce the Items and to fulfill its obligations required by these Terms and Conditions.

(d) **Return of Toyota Property.** Upon demand by Toyota Party, Supplier shall immediately release to Toyota Party or return to Toyota Party all Toyota Property. If requested by Toyota Party, all Toyota Property will be properly packaged, marked and sequenced at Supplier's premises in accordance with instructions from Toyota Party, or the applicable carrier selected by Toyota Party, for delivery (i) on behalf of Toyota Party at the Supplier's premises or (ii) to the location designated by Toyota Party (in which event Toyota Party will pay for all transportation costs). If permitted by law, Supplier waives any statutory or other lien or lien rights it may have on or against any Toyota Property for any work performed on or with such property.

4.6 Confidential Information; Intellectual Property; Technical and Business Information.

(a) **Confidential Information.** Neither party may disclose to a third party any confidential or proprietary information concerning the business or technology of the other party ("Confidential Information"). This provision shall not restrict or limit Toyota Party from using Confidential Information provided by Supplier under Sections 4.3 or 4.4 in documents or reports prepared and submitted by Toyota Party to governmental agencies in order to comply with obligations arising under any Manufacturing and Legal Requirements. Further, Toyota Party reserves the right to disclose Confidential Information to any other Toyota Party. Supplier will not disclose to any party Confidential Information that Supplier may acquire in performing under these Terms and Conditions other than such limited disclosure to (i) Supplier's agents, employees, attorney and other professional advisors and (ii) Supplier's internal or affiliated divisions, subsidiaries or similar entities as is reasonably required to perform under these Terms and Conditions, all to be under an obligation to maintain the confidentiality of such Confidential Information. Information will not be considered Confidential Information if it (i) is or becomes available in the public domain through no wrongful act of receiving party; (ii) is already in receiving party's possession prior to the performance hereunder without an obligation of confidentiality; (iii) is rightfully disclosed to receiving party by a third party without an obligation of confidentiality; (iv) is independently developed by receiving party; or (v) is required to be disclosed pursuant to a final non-appealable court or regulatory order served on receiving party, provided that receiving party gives disclosing party prompt notice of such order. This nondisclosure obligation shall survive the termination, expiration or cancellation of these Terms and Conditions.

(b) Additional Confidentiality Requirements. Supplier recognizes that Toyota Party has agreed to comply with certain confidentiality requirements required by TMC, and Supplier agrees that, upon Toyota Party's request, Supplier shall cooperate with Toyota Party to ensure that these Terms and Conditions are in compliance with TMC's confidentiality requirements.

(c) Limited Disclosure. Confidential Information may be disclosed (i) in order for any party to fulfill its obligations under these Terms and Conditions, (ii) in ordinary course of business situations where disclosure is needed in order to comply with contract, insurance or similar obligations of either Toyota Party or Supplier, (iii) to any Toyota Party, or a person or entity directly involved in the design or manufacture of the Items, and (iv) to any Toyota Party, or a person or entity directly involved in the design or manufacture of vehicles under the nameplates of TMC; provided, however, that with respect to (iii) and (iv), any third party to whom disclosure is made agrees to be bound by these Terms and Conditions relating to nondisclosure of Confidential Information, including the obligation to not commercially exploit the Confidential Information.

(d) Intellectual Property. "Intellectual Property" shall mean (collectively) for any party (i) any patent, trade secret, trademark, service mark, copyright, mask work, or other intellectual property right of such party in information (electronic or written), documents, or property and (ii) all sketches, drawings, blueprints, CAD designs or renderings, process sheets, dimensional layouts, test and trial result data and similar data that is proprietary to such party and which is used (directly or indirectly) or otherwise made available to the other party for or in connection with the manufacture, supply or production of any Tooling or any Items. Intellectual Property shall be Confidential Information.

(1) Toyota Intellectual Property. Toyota Party does not transfer to Supplier any Intellectual Property of Toyota Party ("Toyota Intellectual Property") other than the limited right to use such Toyota Intellectual Property (which shall not be deemed a license) strictly and solely in conjunction with Supplier's manufacture, supply and/or repair of any Items or Tooling.

(2) Supplier Intellectual Property.

(A) Generally. Supplier does not transfer to Toyota Party any Intellectual Property of Supplier ("Supplier Intellectual Property") other than the rights to use such Supplier Intellectual Property (i) in conjunction with the use of any Tooling manufactured by or for Supplier and (ii) in connection with the use of any Items provided to Toyota Party for the manufacture, assembly, production and sale of Toyota vehicles, whether by incorporating, modifying and/or assembling Items purchased from Supplier into other component parts or assembling Items directly into Toyota vehicles (collectively, "Toyota Production"). Supplier grants to Toyota Party a non-exclusive, paid-up, worldwide license, with rights to grant sublicenses to any other Toyota Party (the "General License"), to use Supplier's Intellectual Property solely for use by Toyota Party in the manufacture, assembly and production of Toyota vehicles.

(B) Other Rights. If these Terms and Conditions or any Contract Documents are breached by Supplier and subsequently terminated by Toyota Party, Supplier shall be deemed to have simultaneously granted to Toyota Party a non-exclusive paid-up, worldwide license, with rights to grant sublicenses to any other Toyota Party (the "Limited License"), to use Supplier's Intellectual Property. Further, in the event there is no breach of these Terms and Conditions or any Contract Documents by Supplier, but after good faith consultation with Supplier Toyota Party deems the grant of a Limited License reasonably necessary in order to maintain Toyota Production, then Toyota Party shall be deemed to have a Limited License and the corresponding right to use Supplier Intellectual Property, and to allow third parties to use such Intellectual Property, in order to obtain Items or Tooling from alternate sources solely and exclusively for use in Toyota Production. The Limited License and use of Supplier Intellectual Property to maintain Toyota Production shall be only for such period of time as is deemed reasonable by Toyota Party. There will be no fee to Supplier for the Limited License if Toyota Party terminates these Terms and Conditions and any Contract Documents by reason of a breach by Supplier. In all other instances, including the need to maintain Toyota Production, the parties will negotiate a reasonable fee for use of Supplier Intellectual Property.

(e) Infringement.

(1) Generally. Subject to *subsection (2)*, Supplier will indemnify and defend Toyota Party against claims, liabilities, losses, damages, costs, and expenses, including reasonable legal fees, arising out of the actual or alleged infringement by any Tooling or any Items manufactured or supplied by Supplier of a third-party Intellectual Property right (i) in the United States, the European Union, or Japan, and (ii) in another jurisdiction if Supplier has knowledge or notice of the actual or alleged infringement in that other jurisdiction at any time and fails to promptly disclose it to Toyota Party in a manner and at a time which will allow Toyota Party to adequately respond to any such claim. If such a claim results, or is likely to result, in an injunction or other order that would prevent Supplier from producing or supplying, or Toyota Party from using, applicable Tooling or Items in Toyota Production, Supplier shall at its expense either (i) secure a license of the applicable Intellectual Property that permits Supplier to continue producing or supplying, or Toyota Party to continue using, applicable Tooling or Items in Toyota Production, or (ii) if requested by Toyota Party and solely in conformity with any requirements of Toyota Party, modify the Tooling and/or Items so that they become non-infringing, so long as the modification does not materially alter the operation or performance of the Items or (iii) replace the Items with non-infringing but practically equivalent Items, equivalency to be determined by Toyota Party in its sole discretion.

(2) Limitations. Supplier will have no liability under this *subsection (e)* unless Toyota Party provides Supplier with full information, cooperation, and assistance regarding a claim covered by *subsection (e)*. Toyota Party in the reasonable exercise of its business judgment will determine if it has fully cooperated with Supplier in the event of any infringement claim. Supplier will have no liability under this *subsection (e)* if and to the extent that a claim of infringement is based on (1) an Item or Tooling modification made by Toyota Party, or (2) an Item or Tooling modification made by Supplier at Toyota Party's request. Supplier will have proportional liability (if any) under this *subsection (e)* all as determined by the mutual agreement of the parties, or if the parties cannot agree, by Toyota Party in the reasonable exercise of its business judgment, if and to the extent that a claim of infringement is based on (1) use of Items in Toyota Production where, without the actual knowledge or involvement of Supplier, such Items are used or assembled in combination with other Items not made or sourced by Supplier or (2) Items manufactured or supplied to specifications not provided by Supplier or Toyota Party.

(f) Produced Technical Information and Data. Any technical information, drawings, documents, data or other materials produced or acquired by Supplier in providing Unique Items under these Terms and Conditions which is not Supplier Intellectual Property ("Technical Information") shall be the property of Toyota Party. At Toyota Party's request, Supplier shall furnish to Toyota Party all Technical Information, without restrictions on disclosure or use. Supplier agrees not to assert any claim with respect to any Technical Information that Supplier has or may disclose to Toyota Party in connection with its performance of these Terms and Conditions.

(g) Other Information. At Toyota Party's request, Supplier will furnish to Toyota Party from time to time any other information and data of Supplier which is not Supplier Intellectual Property and which Toyota Party deems necessary to understand (i) the design, manufacture, engineering, transportation, operation or maintenance of any Items, or any other aspect of the Item and its relationship to any applicable Toyota Requirements, and (ii) any Technical Information (collectively, "Other Information"), without restrictions on disclosure or use by Toyota Party. Supplier agrees not to assert any claim with respect to any Other Information that Supplier has or may disclose to Toyota Party in connection with its performance of these Terms and Conditions.

4.7 Design; Work Made for Hire; Inventions.

(a) Mutually Developed Design or Proprietary Product. If a design or other proprietary product is mutually developed between Supplier and a Toyota Party (the "Mutually Developed Item"), the parties agree that control of the use of the Mutually Developed Item shall be governed by a joint agreement, to be mutually agreed upon by the parties (the "Joint Development Agreement"). As to any Mutually Developed Item, the parties agree that the terms of such Joint Development Agreement shall be deemed to supersede *Section 4.6 and 4.7* of these Terms and Conditions. The parties further agree that no commercial development of any Mutually Developed Item shall occur without first entering into a mutually acceptable Joint Development Agreement.

(b) Work Made for Hire. Any work of authorship created by Supplier or its employees which is

ordered or commissioned by Toyota Party, or is a necessary part of the performance of Supplier under these Terms and Conditions, will be considered a “work made for hire” and all copyrights for such work shall belong to Toyota Party.

(c) **Inventions.** With respect to inventions which Supplier conceives or first reduces to practice in the course of Supplier’s activities under a Contract Document which has been issued by Toyota Party with the intent of having Supplier conceive and develop such inventions, Supplier grants to Toyota Party a permanent, paid-up, nonexclusive, worldwide license, with a right to sublicense others, to make, have made, use, have used any such inventions (whether patented or not) in any manufacturing or production process.

5. General Covenants, Rights

5.1 Independent Contractor. Supplier's relationship to Toyota Party hereunder is solely that of an independent contractor. Supplier agrees to indemnify and protect Toyota Party against all liability, claims or demands for injuries or damages to any person or property arising out of the negligent performance, willful misconduct or breach of these Terms and Conditions by Supplier or its employees, agents or representatives, or employees, agents or representatives of its subcontractors or suppliers.

5.2 Toyota’s Rules, Regulations, Policies and Procedures. While on Toyota Party’s premises, Supplier and its employees, agents and subcontractors shall be subject to and conform to Toyota Party’s rules, regulations, policies, procedures and programs (as these may be adopted and modified by Toyota Party from time to time and made available to Supplier).

5.3 Insurance.

(a) Supplier shall, at its own cost and expense, maintain, and carry in full force and effect general liability, general automotive liability, workers' compensation liability and property damage (fire, casualty and theft) insurance, and such other business insurance as (i) set forth in any Toyota Requirements or (ii) as Toyota Party may direct from time to time in one or more Contract Documents (collectively, “Supplier Insurance”). All Supplier Insurance will be maintained in such amounts and with such deductibles as are commonly carried by prudent businesses similarly situated or as is otherwise required by applicable law. Supplier Insurance shall insure against any liability for loss, injury, damage or claims caused by or arising out of or in connection with the operation of Supplier's business including injury to or death of Supplier's employees, agents, or any other persons and damage to or destruction of public or private property. Upon request, Supplier shall provide to Toyota Party (i) proof of insurance, and if it is necessary for Supplier’s employee(s) to be on Toyota Party’s property for any reason, proof of insurance shall be provided before such employee(s) may enter the property or (ii) if Supplier is self-insured, verification of such; provided, however, that acceptance of such self-insurance is in Toyota Party’s sole, reasonable discretion.

(b) **Self-Insurer; Worker’s Compensation.** If Supplier is a self-insurer, with respect to worker's compensation, the certificate of the Department of Labor and Industry of state(s) or province(s) in which work under these Terms and Conditions is to be performed must be furnished by such Department directly to Toyota Party.

5.4 Warranty; Quality Assurance; Claims.

(a) **Express Warranties.** Supplier expressly warrants to Toyota Party that all Items will be manufactured, provided and transported to Toyota Party in full and complete conformity and compliance with (i) all applicable Contract Documents, (ii) these Terms and Conditions, (iii) all Toyota Requirements and (iv) all Manufacturing and Legal Requirements. Further, Supplier expressly warrants that all Items will be merchantable, of good material and workmanship and that the design of the Items shall be free from defects to the extent the Items are designed by Supplier or its suppliers. Supplier expressly warrants that all Items will be fit and sufficient for the purposes intended by Toyota Party, to the extent such purposes have been communicated to Supplier (collectively, all of the foregoing the "Supplier's Warranties").

(b) **Conformity with Quality Standards.** Supplier agrees that its Supplier’s Warranties for quality

includes its express warranty that all Items shall comply strictly and completely with any and all Toyota Requirements related to quality and additional quality assurance procedures for particular Items separately prescribed by Toyota Party (collectively, the "Quality Standards"). Toyota Party, in its sole discretion, shall decide whether the Quality Standards are being met. Supplier shall, in accordance with the Quality Standards, provide, maintain and enforce all measures necessary to secure the quality of Items and the manufacturing process thereof, including but not limited to quality control standards, inspection standards and specifications.

(c) Evidence of Supplier's Quality Assurance; Testing. Upon Toyota Party's request, Supplier shall deliver to Toyota Party data, records and other materials to evidence Supplier's testing, inspection, and analysis of field quality data as provided by Toyota Party and such other quality assurance actions as will validate compliance with all Quality Standards. Toyota Party may, upon prior notice and during normal business hours, (i) inspect the Items and/or work in process on the Items and (ii) conduct quality control measures and tests at Supplier's or any subcontractor's premises. Without cost to Toyota Party, Supplier shall provide facilities and assistance for Toyota Party's inspections, tests and measures. Toyota Party shall not be liable for any reduction in value of samples used, nor shall any Items rejected be submitted to Toyota Party.

(d) Base Consumer Warranty Period.

(1) Generally. Except as otherwise required by applicable law and subject to the provisions of this Section 5.4, the duration of Supplier's Warranties for any particular Item (other than Service Parts) shall be for a period beginning with the acceptance of such Item and ending on a date which coincides with the expiration of the consumer vehicle warranty (the "Base Consumer Warranty Period") for any vehicle into which the Item subject to Supplier's Warranties has been installed or incorporated. Supplier recognizes that Toyota Party produces a variety of vehicles under different TMC nameplates, and that the consumer vehicle warranty for such vehicles will vary in length, duration and scope between such vehicles. As a result, even in the event Supplier provides Toyota Party with a uniform Item, but such Item is installed in or incorporated into different TMC vehicles with differing consumer vehicle warranties, then in such event, the Base Consumer Warranty Period for such Items will likewise vary so as to correspond to the applicable consumer vehicle warranty.

(2) Other Warranties; Changes. The Base Consumer Warranty Period shall be exclusive of any individual extended warranty period purchased by a customer. The parties hereto recognize that the Base Consumer Warranty Period may be modified from time to time by Toyota Party and that the Base Consumer Warranty Period as modified will be effective prospectively to Items manufactured as of and after the effective date of any revision to the Base Consumer Warranty Period.

(3) Service Parts; Past Model Service Parts. For Service Parts, the duration of Supplier's Warranties shall be the greater of (i) twelve (12) months from the date of delivery of the part to Toyota Party's customer or (ii) the remainder of the Base Consumer Warranty Period on the vehicle on which the Service Part is installed.

(e) Dispute Resolution. Supplier may object to Toyota Party's claims in writing within a reasonable period after Supplier's receipt of the claim notice from Toyota Party. Supplier and Toyota Party agree to negotiate and to make reasonable efforts to settle such situations prior to pursuing other remedies.

(f) Remedies Post-Base Consumer Warranty Period; Extension. In case any substantial defect is found in any of the Items after the Base Consumer Warranty Period has expired but within reasonable years of such Item's life, and the cause for such defect is determined by mutual agreement of Toyota Party and Supplier to be attributable to Supplier, Toyota Party and Supplier shall, acting reasonably and in good faith, fully discuss the resolution of and apportionment of responsibility for such claims. If Toyota Party, in its sole judgment, elects to extend its Base Consumer Warranty Period or to otherwise provide additional remedies to the customer because of any substantial defect in the Items, then Supplier shall also extend reciprocal remedial rights (both as to quality and as to duration) to Toyota Party, and the parties agree to negotiate in good faith to reasonably allocate the costs of providing the remedial rights to the customer(s) and to Toyota Party.

(g) Warranty Cost Settlement Procedure. The parties intend to mutually negotiate and resolve a

means of calculating the actual cost of any warranty claim with respect to Supplier's Warranties, including but not limited to Remedial Work, replacement Items and related costs, all in conformity with such warranty cost settlement procedures ("Warranty Cost Settlement Procedures") as are adopted by Toyota Party from time to time. The parties agree to allocate such costs with respect to Supplier's Warranties in an effort to have both Toyota Party and Supplier each bear its respective share of the cost.

(h) No Limitation of Remedies. It is the intention of Toyota Party to work with Supplier in the event of any nonconformity or warranty claim with respect to Supplier's Warranties, but such intention shall not be deemed a limitation of its remedies. If Toyota Party obtains replacement Items, such actions shall not be an Election of Remedies, nor shall it in any way limit the rights and remedies of Toyota Party under these Terms and Conditions.

5.5 Recall; Products Liability.

(a) Remedies; Allocation of Costs. Upon the occurrence of a Recall or Products Liability Situation (Recall and Products Liability Situation are collectively referred to as a "Reimbursement Event"), Supplier and Toyota Party agree to negotiate in good faith with one another, and with all other suppliers to reasonably allocate the costs of complying with or contesting any Reimbursement Event and of providing the remedial rights to the customer(s) and to Toyota Party in connection with any such Reimbursement Event. Toyota Party shall be entitled to (but not limited to) any and all rights and remedies under these Terms and Conditions, and Supplier will indemnify and hold Toyota Party harmless for the costs of any services or other actions undertaken by Toyota Party to correct or remedy any Reimbursement Event that is determined to be attributable to Supplier. Toyota Party's remedies under this *Section 5.5* shall include, but not be limited to, a claim for actual, consequential and incidental damages (including, without limitation, attorneys' fees and administrative costs and expenses) arising out of, resulting from or related to any such Reimbursement Event. Notwithstanding anything contained in these Terms and Conditions that might be interpreted to the contrary, the provisions of this *Section 5.5* shall survive the termination or expiration of these Terms and Conditions and the duration of Supplier's Warranties as set forth in *Section 5.4(d)*.

(b) Recall. The term "Recall" shall mean (i) a determination by Toyota Party that an Item fails to meet Toyota Requirements and/or contains a defect related to motor vehicle safety or otherwise fails to comply with applicable Manufacturing and Legal Requirements, (ii) a decision by a Toyota Party to voluntarily recall any Items or vehicles incorporating Items due to a determination that such Item or Items failed to meet Toyota Requirements or otherwise failed to comply with applicable Manufacturing and Legal Requirements, (iii) a determination by a government agency or authority that an Item failed to meet Toyota Requirements and/or contains a defect related to motor vehicle safety or otherwise failed to comply with applicable Manufacturing and Legal Requirements or (iv) any activity by Toyota Party, whether as a safety, maintenance or improvement campaign or otherwise, that would be deemed or constitute a recall under applicable Manufacturing and Legal Requirements. Any decision of Toyota Party in its sole discretion to contest in a legal proceeding any determination by a governmental agency or authority with respect to a Recall shall not waive or diminish in any manner any rights of Toyota Party under the provisions of this *Section 5.5*.

(c) Products Liability. The term "Products Liability" shall include any action brought for or on account of personal injury, death or property damage caused by or resulting from the manufacture, construction, design, formulation, development of standards, preparation, processing, assembly, testing, listing, certifying, warning, instructing, marketing, advertising, packaging or labeling of any Item. Furthermore, as used in these Terms and Conditions, the term "Products Liability Situation" shall refer to any Products Liability contested by Toyota Party in a court of competent jurisdiction or applicable agency, and a determination is made by such court or agency as a result of the proceeding that there is Products Liability on the part of Toyota Party or Supplier with respect to any Item.

(d) No Limitation of Remedies. If Toyota Party obtains damages or takes other action in response to a Reimbursement Event, such actions shall not be an Election of Remedies, nor shall it in any way limit the rights and remedies of Toyota Party under these Terms and Conditions for the breach by Supplier caused by a Reimbursement Event.

(e) Joint Defense Agreement. Notwithstanding the terms and conditions of this *Section 5.5*, it is

recognized that Supplier may from time to time enter into a Joint Defense Agreement (“JDA”) with TMS pursuant to which TMS and Supplier agree to implement a joint defense program for any actual or potential claims, actions or proceedings for alleged Product Liability Situation (the “PL Claims”). As to any PL Claim which is subject to a JDA, Supplier’s liability to Toyota Party for such PL Claim shall be determined solely by reference to such JDA and to such extent, the terms of the JDA shall be deemed to supersede *Section 5.5* of these Terms and Conditions.

5.6 Advertising. Without Toyota Party’s prior written consent, Supplier shall not use or permit use of the words "Toyota Motor Engineering & Manufacturing North America, Inc.", "Toyota", "TEMA" or any similar word or trademark of any Toyota Party in the description or marketing of products produced by Supplier, nor shall Supplier advertise or publish that Supplier has contracted to furnish Items pursuant to these Terms and Conditions.

5.7 Duty and Tax.

(a) Generally. Supplier agrees to provide Toyota Party with such documents as may be required to obtain any applicable benefits related to or arising from these Terms and Conditions, including trade credits, export credits or the refund of duties, taxes or fees available to Toyota Party. Supplier shall provide Toyota Party all information requested by Toyota Party (including written documentation and electronic transaction records) to allow Toyota Party to receive such benefits and credits, as well as fulfill any custom obligations, local content obligations or other Manufacturing and Legal Requirements.

(b) Export and Import. Export licenses or authorizations necessary or advisable for the export of Items shall be the responsibility of Supplier unless otherwise provided in applicable Contract Documents, in which event Supplier will provide such information to Toyota Party in order to enable Toyota Party to obtain such licenses or authorizations. Supplier shall arrange for and perform such steps as are requested by Toyota Party for any Items to be covered by any duty deferral or free trade programs of the country of import for all applicable Items. Toyota Party reserves the right, at its sole option, to direct entry of all Items in bond to a foreign-trade zone or subzone instead of a consumption entry. In the absence of contrary instructions in one or more Contract Documents, Supplier should arrange for a consumption entry prior to sale to Toyota Party.

(c) Excise Tax. Where applicable, Supplier certifies that a claim for refund has not been made nor has any credit been taken for any portion of any excise tax regarding any Items sold to and later exported by Toyota Party, and hereby waives any claim for refund of the foregoing tax in favor of Toyota Party.

(d) Other Taxes. Toyota Party shall not be liable for any federal, state, provincial or local taxes unless separately stated on a Contract Document and billed to Toyota Party as a separate item. No sales/use tax shall be added to the price of Items under these Terms and Conditions when an exemption is indicated on the face of the appropriate Contract Document.

5.8 Termination.

(a) Toyota Party. Toyota Party may, at its sole option, immediately terminate all or any part of any Contract Documents, at any time and for any reason, by giving written notice to Supplier as provided for in these Terms and Conditions. Toyota Party may, at its sole option, terminate these Terms and Conditions at any time and for any reason, by giving not less than six (6) months prior written notice to Supplier as provided for in these Terms and Conditions.

(b) Supplier. Supplier may, at its sole option, terminate these Terms and Conditions at any time and for any reason, by giving not less than six (6) months prior written notice to Toyota Party as provided for in these Terms and Conditions.

(c) Obligations of Supplier on Termination. Upon receipt of a notice of termination under this *Section 5.8*, Supplier will, unless otherwise directed by Toyota Party, (i) terminate promptly all work under any Contract Documents, (ii) transfer to Toyota Party raw materials, inventory and such other materials which Supplier produced or acquired in performing any purchase order, and (iii) take all actions reasonably necessary to protect any Toyota Property and Items in the possession of Supplier until it has received written instructions from Toyota Party

regarding such property.

(d) Obligations of Toyota Party on Termination.

(1) Generally. Upon termination by Toyota Party under this *Section 5.8*, Toyota Party will pay to Supplier (i) the prevailing Toyota Price for all conforming Items provided to Toyota Party, (ii) the actual cost to Supplier for all work in process, raw materials fabricated or procured by Supplier and finished goods inventory to the extent such costs and quantities are reasonable in amount and are proportional and properly allocated to the terminated portion of these Terms and Conditions and (iii) the actual cost of Supplier in protecting any Toyota Property or Items (collectively, a "Termination Payment"). Toyota Party will make no payment to or for the benefit of Supplier for work in process, raw materials fabricated or procured by Supplier and finished goods inventory in amounts in excess of those authorized in releases or other Contract Documents or in amounts consistent with releases and/or the general course of dealing between the parties concerning the quantity of Items generally purchased by Toyota Party at the time of termination.

(2) Calculation. Supplier will furnish its written claim for a Termination Payment to Toyota Party within one (1) month of the effective date of a termination, consisting exclusively of the costs outlined in this Section. Payment to Supplier under this *Section 5.8* will not exceed the aggregate Toyota Price payable to Supplier for the quantity of finished goods Items that would have been manufactured or supplied by Supplier under release schedules outstanding at the date of termination of these Terms and Conditions. Subject to audit and review by Toyota Party, and verification of amounts in any claim for a Termination Payment, Toyota Party will pay the Termination Payment within sixty (60) days after the claim is received. Toyota Party reserves the right to offset against any Termination Payment any costs or other expenses related to any termination under this Section or prior performance of Supplier.

(3) Limitations. Unless otherwise agreed to by Toyota Party in a Contract Document, Toyota Party shall not be liable for and shall not be required to make payment to Supplier of any amount for claims by Supplier arising out of or related to subcontractor or other third party claims, labor or employee benefit charges, professional or other fees, for loss of anticipated profit, overhead, interest, product development or engineering and design costs, equipment or facilities costs, general and administrative burden or any other operating costs of any kind related to the termination of these Terms and Conditions.

(e) Default. Toyota Party shall have no obligation to Supplier under *subsection (d)* if Toyota Party terminates these Terms and Conditions because of Supplier's breach of these Terms and Conditions or any Contract Documents, as set forth in *Section 5.9*.

5.9 Termination for Breach.

(a) Breach. The following events shall constitute a default under these Terms and Conditions, including any applicable Contract Documents:

(1) If Supplier breaches any provision of these Terms and Conditions or any Contract Document including, but not limited to, Supplier's Warranties;

(2) If at any time a material adverse change ("MAC") in the business, operations or property and assets of Supplier has occurred, the consequence of which is a substantial likelihood that any Toyota Production will be imminently interrupted, all as determined by Toyota Party in its sole discretion; or

(3) If at any time there is a MAC in the financial condition of Supplier, all as determined by Toyota Party in its sole discretion.

(b) Remedies in Event of Breach. Upon Supplier's breach of these Terms and Conditions and any Contract Documents, Toyota Party's remedies shall be cumulative, shall include the following and shall be in addition to any and all remedies provided to Toyota Party at law or in equity:

(1) Canceling these Terms and Conditions and any Contract Documents, in whole or in

part, which cancellation shall be effective immediately on the date of the notice of the cancellation.

(2) Upon demand, Supplier shall grant Toyota Party access to its premises to allow Toyota Party to pursue its remedies, and if requested, immediately return Toyota Property pursuant to written instructions from Toyota Party regarding such property, such return to be at Supplier's cost and expense;

(3) Purchasing any and all Items, work in process, raw materials, and inventory from Supplier by making a Termination Payment to Supplier (provided that Supplier has complied with *Section 5.8(c)*), and offsetting against any Termination Payment any damages or costs that Toyota Party may have under these Terms and Conditions;

(4) Bring suit or otherwise seek all rights and remedies for actual and other damages under law or in equity, including but not limited to the Uniform Commercial Code or Personal Property Security Act as a buyer of goods;

(5) Demand that Supplier provide Toyota Party with replacement Items in conformity with these Terms and Conditions;

(6) For any Items that are Rejected Items or which otherwise do not comply with Supplier's Warranties, or for any other breach, seek any and all incidental and consequential damages caused by such breach, including such incidental and consequential damages as have resulted from any production delays or interruptions, from any Reimbursement Event, or from any other consequence of any breach;

(7) Set-off against any amounts owed to Supplier any costs incurred in Toyota Party's exercise of its rights under these Terms and Conditions prior to or as a result of Supplier's breach.

(c) **No Election.** The remedies reserved in these Terms and Conditions shall be cumulative and additional to any other or further remedies elsewhere in these Terms and Conditions and provided by law or equity. Resort to any remedy by Toyota Party, as provided in these Terms and Conditions or otherwise, shall not be deemed an Election of Remedies or a waiver of any breach or remedies.

(d) **No Waiver.** No waiver of a breach of any provision of these Terms and Conditions shall constitute a waiver of any other breach or of such provision. Any failure by Toyota Party to insist on strict performance by Supplier of any term or condition hereunder shall not be deemed a waiver of Toyota Party's rights thereunder.

6. Toyota Supplier Network.

6.1 Generally. Designated aspects of the purchasing relationship between Supplier and Toyota Party will be controlled by applicable provisions of the Toyota Supplier Network including (1) the TEMA World Wide Automotive Real Time Purchasing System ("WARP"), (2) the Toyota Supplier Interface (the "Supplier Interface") to WARP, (3) *toyotasupplier.com* and such other such processes, procedures and electronic systems as are designated by Toyota Party in its sole discretion (collectively, the "Toyota Supplier Network"). Procedures, terms and conditions for the Toyota Supplier Network ("TSN Procedures") will be set forth in one or more Contract Documents, and may be revised and updated from time to time by Toyota Party all in its sole discretion. To the extent any conflict arises between the provisions of the TSN Procedures and these Terms and Conditions, for the Toyota Supplier Network, the TSN Procedures shall control. Toyota Party reserves the right to designate what aspects of the purchasing relationship between the parties is controlled by, and what portions of these Terms and Conditions are superseded by, the TSN Procedures, all in its sole discretion.

6.2 Acceptance. By using the Toyota Supplier Network, Supplier agrees to and accepts the TSN Procedures, and agrees to be bound by all such TSN Procedures. Toyota Party reserves the right at any time to add, delete or modify the functionality of the Toyota Supplier Network and/or the TSN Procedures upon notice, delivered by e-mail, or by an on-screen alert on the Toyota Supplier Network site. Toyota Party also reserves the right to terminate Supplier's enrollment in, and use of, the Toyota Supplier Network at any time.

6.3 Internet Accessibility; Third Party Software Providers. The Toyota Supplier Network is made available to Supplier via a public Internet connection using commercially available third-party web browsers and Internet utility software from various unaffiliated software providers. Toyota Party does not warrant the performance of, and bears no responsibility for, Supplier's use of the Internet or any third party web browser or related software. Further, Supplier is solely responsible for its subscription to and connection with the Internet.

6.4 Supplier Content. Information, data, text and other materials that Supplier posts or transmits to the Toyota Supplier Network site or supplies to Toyota Party are referred to as "Supplier Content." By posting or transmitting Supplier Content to the Toyota Supplier Network site, Supplier agrees that Supplier is solely responsible for the origination, accuracy, completeness, ownership, publication and dissemination of Supplier Content. Supplier agrees that any Supplier Content will not contain software viruses or any other computer code, files or programs designed to or which may interrupt, destroy or limit the functionality of any computer software or hardware, any other telecommunications equipment or any other part of the Toyota Supplier Network.

6.5 Electronic Forms.

(a) In connection with these Terms and Conditions and Toyota Supplier Network, Toyota Party may use electronic purchase orders and other Electronic Forms (collectively, the "Electronic Forms") to supplement written documents (collectively, "Toyota Written Forms") used with these Terms and Conditions. From time to time, Electronic Forms will supplement Toyota Written Forms, or Electronic Forms may replace Toyota Written Forms entirely. Toyota Party reserves the right to set policies and procedures, from time to time, for the transition to, and implementation of, Electronic Forms, and such policies and procedures will be posted on the Toyota Supplier Network. All policies and procedures will become effective as of the date established by Toyota Party.

(b) In the event Toyota Party uses Electronic Forms, all data and other information required for or associated with Electronic Forms will be entered, stored and transmitted electronically, both within the computer systems maintained by Toyota Party for the Toyota Supplier Network, and within computer systems maintained by Supplier. In addition, both Toyota Party and Supplier may use the same or different software to prepare, transmit, store and produce written copies of the applicable Electronic Forms. It is also understood that in the transmission of Electronic Forms content from Toyota Party to Supplier, and in the storage and retrieval of such content using the same or different software, errors, miscommunications and other mistakes can occur for reasons solely related to the transmission and interfaces used to read the Electronic Forms content, or otherwise. Notwithstanding the foregoing, the following procedures shall apply to Electronic Forms.

(1) Electronic Forms content as maintained, stored or reproduced by Toyota Party from the Toyota Supplier Network shall be the controlling form and record of such content.

(2) In the event of inconsistencies, conflicts, ambiguities or other disagreements between any Electronic Forms content as maintained by Toyota Party and the same or similar Electronic Forms content as maintained by Supplier, the version of such content maintained by Toyota Party shall control.

(3) Any paper or printed copies of Electronic Forms Content generated by Supplier from software, facsimile or other electronic means (collectively, "Supplier Written Records") shall be for Supplier convenience and/or internal records only, and shall not replace or modify the provisions or terms of any Electronic Forms content as maintained by Toyota Party. In the event of inconsistencies, conflicts, ambiguities or other disagreements between any Electronic Forms content as maintained by Toyota Party and any Supplier Written Records, the version of the Electronic Forms content maintained by Toyota Party shall control.

(4) Toyota Party reserves the right to (i) continue the use of Toyota Written Forms, (ii) prepare, print or otherwise generate from software, by facsimile or other electronic means, written copies of Electronic Forms content (collectively, "Toyota Written Records"). In the event Toyota Party uses Toyota Written Forms, or produces Toyota Written Records, the Toyota Written Forms and Toyota Written Records shall be controlling and binding on Supplier, notwithstanding any other writings between the parties.

6.6 Disclaimer.

(a) THE TOYOTA SUPPLIER NETWORK AND ALL MATERIALS, INCLUDING, WITHOUT LIMITATION, ANY ELECTRONIC FORMS AND SOFTWARE, ARE PROVIDED "AS IS" AND "AS AVAILABLE" WITHOUT ANY EXPRESS OR IMPLIED WARRANTY OF ANY KIND. TOYOTA PARTY, WITHOUT LIMITING THE FOREGOING, SPECIFICALLY DISCLAIMS ANY AND ALL WARRANTIES, INCLUDING BUT NOT LIMITED TO: (1) WARRANTIES OF TITLE, MERCHANTABILITY, NONINFRINGEMENT OF INTELLECTUAL PROPERTY, OR FITNESS FOR ANY PARTICULAR PURPOSE AND (2) WARRANTIES CONCERNING THE AVAILABILITY, ACCURACY, APPROPRIATENESS, RELIABILITY, TIMELINESS, USEFULNESS, OR OTHERWISE OF THE TOYOTA SUPPLIER NETWORK, ITS CONTENT, ANY ELECTRONIC FORMS OR MATERIALS. IN NO EVENT WILL TOYOTA PARTY, ITS OFFICERS, DIRECTORS, EMPLOYEES, PARENTS, AFFILIATES, SUCCESSORS OR ASSIGNS, BE LIABLE TO ANY PARTY (I) FOR ANY INDIRECT, DIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF PROGRAMS OR INFORMATION, AND THE LIKE), OR ANY OTHER DAMAGES ARISING IN ANY WAY OUT OF THE AVAILABILITY, USE, RELIANCE ON, OR INABILITY TO USE THE TOYOTA SUPPLIER NETWORK, EVEN IF TOYOTA PARTY OR ITS REGISTERED AGENT HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND REGARDLESS OF THE FORM OF ACTION.

(b) Toyota Party will make reasonable efforts to provide accurate information to Supplier, however, Toyota Party does not warrant the accuracy or completeness of the information, text, graphics, links or other items contained within any Electronic Forms or any other part of the Toyota Supplier Network. Toyota Party may make changes to Electronic Forms at any time without notice.

(c) The Toyota Supplier Network utilizes the Internet to transport data and communications. Toyota Party will take reasonable security precautions to safeguard data and communications; however, Toyota Party has no liability for interception of any such data or communications. Toyota Party, and any third party working with Toyota Party to provide services to Supplier, shall not be responsible for any damages caused by (i) communications line failure, systems failure, and other occurrences beyond their control, or (ii) from any unauthorized activity caused by any third party who gains access to Toyota Supplier Network, or (iii) other breach of security requirements as a result of any intentional or unintentional conduct, including negligence, by Supplier or its representatives. Toyota Party will not be responsible for any costs Supplier incurs to connect to the Toyota Supplier Network.

6.7 Binding Agreement; Electronic Acknowledgment. Supplier shall be bound by any use of, affirmation, assent or agreement transmitted through, the Toyota Supplier Network. Supplier further acknowledges that any decision or action to click on an "I agree", "I consent" or other similarly worded "button" or entry field using a mouse, keystroke or other computer device, shall be deemed and constitute its agreement or consent to such decision or action, and will be legally binding and enforceable and the legal equivalent of the handwritten signature of Supplier.

7. Miscellaneous.

7.1 Supremacy Clause. In the event of any inconsistencies or ambiguities between these Terms and Conditions and any Contract Documents, these Terms and Conditions shall control. Throughout these Terms and Conditions, unless the context requires otherwise, reference to these Terms and Conditions shall also include Contract Documents.

7.2 Governing Law; Choice of Forum.

(a) **Governing Law.** These Terms and Conditions and the rights and obligations of the parties under these Terms and Conditions shall not be governed by the provisions of the United Nations Convention on Contracts for the International Sale of Goods or the United Nations Convention on the Limitation Period in the International Sale of Goods, as amended; rather, this requirement and these rights and obligations shall be governed

by the laws of the Commonwealth of Kentucky, including its provisions of the Uniform Commercial Code, without regard to its conflict of laws rules.

(b) Choice of Forum. The parties agree that neither shall commence any litigation against the other except in a court located in the Commonwealth of Kentucky. Each party consents to jurisdiction over it by and exclusive venue in such a court.

7.3 Assignment; Subcontracts. Supplier may not assign its rights or obligations hereunder without Toyota Party's prior written consent. Except for supplies proprietary to Supplier and parts and supplies normally purchased by Supplier, no work may be subcontracted without Toyota Party's prior written consent.

7.4 Notices. Notices required under these Terms and Conditions must be in writing and, if given to Toyota Party, must be sent by one of the following means: (i) regular mail or (ii) a nationally recognized overnight courier service addressed to Toyota Motor Engineering & Manufacturing North America, Inc., 25 Atlantic Avenue, Erlanger, Kentucky 41018. Notices sent to Toyota Party must be sent to the address in these Terms and Conditions, marked for the attention of the Vice President of Purchasing, and must refer to these Terms and Conditions. Notices sent to Supplier must be sent by one of the following means: (i) regular mail, (ii) a nationally recognized overnight courier service or (iii) telefax, and must be sent to such address and to the attention of such department or individual as is maintained in Toyota Party's files concerning notices to or the contact person of Supplier.

7.5 Battle of the Forms Not Applicable. The parties have agreed and it is their intent that the battle of the forms section of §2-207 of the Uniform Commercial Code shall not apply to these Terms and Conditions or to any invoice or acceptance form of Supplier relating to these Terms and Conditions. It is the parties' intent that these Terms and Conditions shall exclusively control the relationship of the parties, and in the event of any inconsistency between any invoice or acceptance form sent by Supplier to Toyota Party and these Terms and Conditions, these Terms and Conditions shall control.

7.6 Entire Agreement. These Terms and Conditions together with all applicable Contract Documents constitute the entire agreement between the parties, and supersede all prior and contemporaneous agreements, representations, and understandings of the parties as of the effective date.

7.7 Survival. Any provision of these Terms and Conditions which by their nature extend beyond the expiration, termination or cancellation of these Terms and Conditions shall remain in full force and effect until fulfilled and/or performed and shall inure to the benefit of and be binding upon Supplier and Toyota Party and their respective successors and assigns.

7.8 Alternative Dispute Resolution. Subject to either party's right to seek injunctive relief, in the event of a dispute of any kind arising out of or in any way related to the Contract Documents, the parties shall endeavor in good faith to settle the dispute through negotiation. If the dispute cannot be resolved through negotiation, or another mutually agreeable dispute resolution mechanism, either of the parties has the right to request non-binding mediation. If mediation fails to resolve the dispute, the parties agree to submit the matter in dispute to binding arbitration. Written notice of the intent to submit a matter to arbitration shall be given by the party requesting the same. The arbitration proceedings shall be conducted in accordance with the CPR Rules for Non-Administered Arbitration, then in effect, or, if the parties so agree, the relevant rules of another arbitration entity or organization. In any case, regardless of any rules of the selected arbitration organization to the contrary, only one (1) arbitrator shall be used to decide the outcome of the arbitration. Such arbitration shall be held in Covington, Kentucky, or if the parties agree upon another location, that other location. The prevailing party shall be entitled to an award of reasonable attorneys' fees. The arbitration shall be governed by the United States Arbitration Act, 9 U.S.C. §§1 et seq., and judgment upon the arbitrator's award may be entered in any court having jurisdiction over such matter. Each party agrees that any applicable limitations period, whether arising from contract, statute, or otherwise, will be tolled and suspended beginning when a party provides written notice to the other party, as provided for in these Terms and Conditions, of a dispute to be resolved under this section or when the parties begin negotiations under this section, whichever is earlier. Tolling and suspension of the limitations period will continue until: (i) the parties resolve the dispute as evidenced by a written settlement agreement or (ii) forty-five (45) calendar days after a binding arbitration decision is rendered, whichever is earlier. Notwithstanding the foregoing, in the absence of a

written notice from one party to the other to submit the dispute to either non-binding mediation or binding arbitration (an “ADR Notice”), then either party may provide the other party with written notice that it desires the running of the limitations period to recommence. Such limitations period shall recommence forty-five (45) days thereafter, unless within such forty-five (45) day period the receiving party delivers an ADR Notice to the other party, in which event the limitations period shall be tolled and suspended as set forth above.

SUPPLIER ACKNOWLEDGES THAT ITS SALE OF ITEMS IS MADE SUBJECT TO THESE TERMS AND CONDITIONS AND TO THE TERMS OF ANY CONTRACT DOCUMENTS. ALL CONTRACT DOCUMENTS ARE HEREBY INCORPORATED BY REFERENCE, NOTWITHSTANDING THAT SOME CONTRACT DOCUMENTS INCORPORATED BY REFERENCE ARE NOT ATTACHED TO THESE TERMS AND CONDITIONS.