

# GENERAL TERMS AND CONDITIONS

Within the following document the term “Seller” refers to any and all of the following named Companies:

- Callen Manufacturing Corporation
- Callen Casting, LLC.
- Callen Die Casting, LLC.

The term “Buyer” refers to any customer who purchases Die Castings from any of these companies.

## **1 The Contract.**

1.1 Offer and Acceptance. Seller’s quote, whether in the form of a quotation or bid document, (hereinafter “Offer”) is Seller’s offer to supply the products (“**Products**”) and services (“**Services**”) identified in the Offer. Products and Services will sometimes be referred to collectively as “Supplies”. Buyer will be deemed to have accepted Seller’s Offer if Buyer (1) issues a Purchase Order for the supplies; (2) acknowledges in writing its acceptance of Seller’s Offer; (3) authorizes Seller to provide the supplies or to commence work related to the supplies; (4) accepts delivery of the supplies; or (5) otherwise indicates its agreement that Seller is to provide the supplies.

1.2 Contents of the Contract. Upon acceptance, the Contract shall consist of the Offer, including these General Terms and Conditions, together with (1) any other documents specifically incorporated or referenced in the Offer; (2) any other documents separately agreed to in writing, such as specifications, drawings, requirements of Buyer’s customer, maintenance, replacement and repair or quality requirements; (3) Buyer’s purchase order and any documents incorporated or referenced in the Buyer’s purchase order, unless the terms of which conflict with these Terms and Conditions or other terms expressly agreed to by the parties. The documents comprising the Contract shall, to the extent possible, be read together consistently, but in the event of conflict: (i) these General Terms and Conditions shall take priority over any general terms or other standard Buyer documents that are incorporated in Buyer’s purchase order.

1.3 Changes. Buyer may from time to time request that Seller make reasonable changes, within the scope of the Contract, to the drawings, specifications, materials, packaging, testing, quantity, time or method of delivery or shipment, or similar requirements prescribed in the Contract. At Seller’s request with appropriate supporting documentation, the parties will agree upon an equitable adjustment to the Contract prices, times for performance and other affected Contract terms as a result of Buyer’s changes. Contract changes must be in writing signed by Buyer’s authorized representative, and Buyer will not unreasonably withhold or delay consent to a Contract change proposed by Seller.

1.4 Other Changes. Except for the changes described in **Section 1.2**, neither party may make any changes to the Contract during its term (as described in **Section 12.1**) without the written agreement of Buyer and Seller's authorized representative. If the General Terms and Conditions change during the term of the Contract, those changes shall not apply during the term, unless expressly agreed in writing by Buyer and Seller's authorized representative.

## **2 Products and Services.**

2.1 Quantity. If quantities or delivery schedules are not specified in the Contract, they will be as reasonably determined by Buyer and stated in Buyer's firm releases issued to Seller from time to time. Whether quantities or delivery terms are "reasonably determined" shall take into account, without limitation: (i) any capacity limitations specified in the Contract or otherwise agreed to by Buyer and Seller in writing; (ii) unusual volume or timing fluctuations that are inconsistent with customary lead time requirements or any lead time requirements specified in the Contract or otherwise agreed to by Buyer and Seller in writing; (iii) any output fluctuations of Seller that are agreed by the parties or, if not agreed, acceptable within the industry in light of the nature of the Products and production methods; and (iv) the amount, if any, of contractually agreed inventory. However, in all events, Seller shall use best efforts to meet Buyer's quantities and delivery schedules.

2.2 Past-Model Service Requirements. The parties will negotiate in good faith the prices, quantities, and delivery terms for past-model service parts. Products based on the availability and cost of needed materials, supplies, and skilled workers, the additional costs for equipment setup, packaging, shipping and handling, related services, and other relevant factors.

## **3 Delivery.**

3.1 Packing and Shipment. The form of packaging, including labeling and hazardous materials instructions and any other special requirements, the method of transportation, and the type and number of packing slips and other documents to be provided with each shipment shall be as provided in the Contract, or if not in the Contract, in accordance with sound die casting practices. Unless packaging cost is expressly included in the price, Buyer is responsible for the cost of returnable packaging or other non-customary forms of packaging required by the Buyer. Buyer will be responsible for cleaning and cost for returning the returnable packaging. If returnable packaging is not available, Seller may use expendable packaging and Buyer will reimburse Seller for the reasonable costs of expendable packaging.

3.2 Delivery Schedules. Seller will deliver Products and Services in accordance with the Contract terms. Unless otherwise stated in the Contract, Products will be delivered FOB origin and title will transfer upon receipt of the Products by the carrier. Any delivery related charges in connection with postponement or cancellation of delivery are the responsibility of the Buyer. Buyer will also be responsible for additional costs of expedited or other special transportation that Buyer may require as a result of changes to its firm

releases or delivery schedules or for other reasons not caused by Seller. Deliveries of samples and product are contingent upon strikes, Die or machine breakdown, fires, floods, wars, accidents, delays of carriers or other cause beyond Seller's control. As Seller cannot predetermine rejections by our inspection or spoilage, Seller has the right to manufacture and ship, and Buyer will accept, ten percent over or under the number of castings ordered by Buyer. Deliveries of product, unless otherwise specified, shall commence as soon as our schedules permit after approval of samples and shall be made in accordance with our rate of production until orders are completed.

#### **4 Inspection.**

Buyer may, upon reasonable advance notice to Seller, inspect production processes and Property and, subject to Seller's prior written approval, conduct testing at Seller's premises for the sole purpose of verifying Seller's performance under the Contract. Seller may restrict Buyer's access as necessary to protect proprietary information and may require appropriate indemnification and releases.

#### **5 Taxes.**

Unless otherwise stated in the Contract, the Contract price includes all applicable federal, state, provincial, and local taxes other than sales, value added, or similar turnover taxes or charges. Seller will separately invoice Buyer for any sales, value added, or similar turnover taxes or charges that Seller is required by law to pay or collect from Buyer.

#### **6 Payment.**

If no payment terms are specified, payment will be due thirty (30) days from invoicing. Seller will promptly submit correct and complete invoices or other agreed billing communications with appropriate supporting documentation and other information reasonably required by Buyer after delivery of Products or performance of Services. Seller will accept payment by check or other cash equivalent, including electronic funds transfer. Buyer will pay Seller in the currency specified in the Contract or, if none is specified, in the currency of Seller's shipping or service location. Interest will accrue on late payments at the rate of 12% per year, pro-rated daily. Buyer may setoff or deduct from sums owed to Seller under the Contract only those sums owed by Seller to Buyer and agreed to between the parties or upon final determination by dispute resolution. Unless Seller consents in writing, Buyer may not setoff or deduct amounts owed to Buyer by Seller's affiliates or others who are not parties to the Contract. Buyer agrees to make prompt payment of invoices due in accordance with the terms of the contract. Credit terms herein extended, or subsequently allowed, are not binding upon Seller and establish no binding precedent. Seller shall have the right to modify, change or withdraw credit terms at any time without notice and to request guarantees, security or payment in advance of the amount of credit involved.

## 7 **Product Warranties.**

7.1 *Seller's Warranties.* Seller's sole warranties to the Buyer are:

- (a) The Products will be free from material defects in workmanship and materials, and will conform to the specifications, drawings, samples, and performance requirements specifically incorporated in the Contract. Products which conform to approved samples shall be conforming, notwithstanding any variation from other specifications or drawings.
- (b) If the Contract is for the sale of services, Seller's sole warranty is that the Services will be performed in a workmanlike manner consistent with the level of care and skill ordinarily exercised by service providers providing similar services under similar conditions.
- (c) Seller will transfer to Buyer ownership and good title to Products delivered and Services provided, free of all liens, encumbrances, and rights of third parties (except those created by Buyer).
- (d) Seller does not warrant that the Supplies will be merchantable or fit for their intended purpose.
- (e) Seller does not warrant and is not responsible for the design of the Products. Seller is ready at all times to offer suggestions covering metals and design, but Seller assumes no responsibility for the effects of such suggestions, or their suitability for the purposes intended by Buyer.
- (f) Notwithstanding anything in this **Section 7.1**, the above warranties do not apply to and Seller shall not be responsible for any defect, non-conformity or failure resulting from: (i) Property (as defined in **Section 11.1(a)**) supplied by Buyer or procured from a source other than Seller, including a directed supplier; (ii) any alterations, machining or finishing mishandling, or improper storage of the Product after delivery by the Seller; (iii) compliance with Buyer's specifications; or (iv) the integration or interaction of the Products with systems or components not supplied by Seller.

**THE FOREGOING WARRANTIES ARE THE SOLE WARRANTIES AND ALL OTHER WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, ARISING BY LAW OR**

**CUSTOM, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE EXPRESSLY DISCLAIMED.**

*7.2 Non-Conforming Supplies.* Except as otherwise specifically provided in the Contract and subject to **Sections 7.3, 8 and 13.2(c)**, Buyer's sole remedy for Supplies that do not conform to the warranties in **Section 7.1** will be to: (1) reject the non-conforming Supplies; (2) require Seller, at Seller's option and expense (including applicable shipping costs), to either repair or replace the non-conforming Supplies; and/or (3) require Seller to implement at its expense containment, inspection, sorting, and other quality assurance procedures if Buyer reasonably determines that the quantity of incoming non-conforming Supplies significantly exceeds customary commercial standards. To the full extent possible, Buyer will inform Seller of non-conforming Supplies within three (3) business days and, upon Seller's request, will provide Seller with immediate access to any data related to the Products and any field-returned Products. Buyer will also notify Seller of all plans to perform root cause analysis on the Supplies and provide Seller with an immediate opportunity to participate. Seller's liability shall be no greater than the maximum amount of recovery for any covered event under Seller's applicable insurance policy. Acceptance of returned goods by Seller's Receiving Department shall not be binding and has no force or effect unless acceptance is afterward made in writing by an Officer of Seller's company.

## **8 Product Liability.**

*8.1 Seller's Indemnification.* Seller will indemnify and defend Buyer against third-party claims or demands for injury or death to persons, property damage, and any resulting damages, losses, costs, and expenses (including reasonable legal fees), regardless of whether the claim or demand arises under tort, contract, strict liability, or other legal theories, if and to the extent caused by Seller's delivery of non-conforming Products or Services, or its negligent acts or omissions in its performance under the Contract. This **Section 8.1** will not apply to the extent that the injury, loss, or damage results from causes for which Seller is entitled to indemnification under **Section 8.2**.

*8.2 Buyer's Indemnification.* Buyer will indemnify and defend Seller against third-party claims or demands for injury or death to persons, property damage, economic loss, and any resulting damages, losses, costs, and expenses (including reasonable legal fees), regardless of whether the claim or demand arises under tort, contract, strict liability, or other legal theories, if and to the extent caused by (1) Buyer's design of the Products; (2) any alteration or improper repair, maintenance, handling, or installation of the Products by anyone other than Seller; (3) the integration or interaction of the Products with systems or components not supplied by Seller; (4) Property supplied by Buyer or procured from a source other than Seller, including a directed supplier; (5) any alterations, machining or finishing of the Product after delivery by the Seller; or (6) compliance with Buyer's specifications.

*8.3 Procedure.* The party seeking indemnity ("Indemnitee") will notify the other party ("Indemnitor") promptly after it becomes aware of the basis for a claim under this **Section 8**. The parties will cooperate with each other to determine the root cause of a defect in or failure of the Products (and related systems and components) and an equitable allocation of responsibility among all responsible parties. Each party may examine and test all available Products and related systems and components that are subject to

a third-party claim. Indemnitor will endeavor to include Indemnitee in settlement discussions where indemnity has been or will be sought.

## **9 Compliance with Laws.**

Seller will comply with applicable laws, rules and regulations of the country where the Products are manufactured or the Services are performed. Seller will provide Buyer with material safety data sheets regarding the Products and, upon Buyer's request, will provide Buyer with other information reasonably required in order to comply with applicable laws.

## **10 Intellectual Property Rights.**

10.1 *Buyer's Intellectual Property.* Buyer does not transfer to Seller any patent, trade secret, trademark, service mark, copyright, mask work, or other intellectual property right ("**Intellectual Property Right**") of Buyer in information, documents, or property that Buyer makes available to Seller under the Contract, other than the right to use Buyer's Intellectual Property Rights to provide Supplies to Buyer.

10.2 *Seller's Intellectual Property.* Seller does not transfer to Buyer any Intellectual Property Right of Seller related to the Supplies or incorporated in Buyer's Property, other than the right to incorporate or use Seller's Supplies in Buyer's products.

### **10.3 Infringement.**

(a) Subject to **Section 10.3(c)**, Seller will indemnify and defend Buyer and its customers against claims, liabilities, losses, damages, costs, and expenses, including reasonable legal fees, arising out of the actual or alleged infringement by the Products of a third-party Intellectual Property Right (1) in the United States, the European Union, or Japan, and (2) in another jurisdiction if Seller is aware of the actual or alleged infringement in that other jurisdiction at the time the Purchase Order is issued and fails to disclose it to Buyer within 10 days after commencing supply under the Contract. If a claim under this **Section 10.3** results, or is likely to result, in an injunction or other order that would prevent Seller from supplying or Buyer from using Products for their intended purpose, Seller will at its option and expense either (i) secure a license of the Intellectual Property Right that permits Seller to continue supplying the Products to Buyer, or (ii) modify the Products so that they become non-infringing, so long as the modification does not materially alter the operation or performance of the Products, or (iii) replace the Products with non-infringing but practically equivalent Products. Seller will have no liability under this **Section 10.3** if and to the extent that a claim of infringement is based on (1) a Product modification made by Buyer or a third party, (2) a Product modification made by Seller at Buyer's request, (3) use or interconnection by Buyer of the Product in combination with other products not made or sourced by Seller, or (4) Products made to specifications not provided by Seller.

(b) To the extent that a claim of infringement is based on (1) a Product modification made by Buyer or a third party, (2) a Product modification made by Seller at Buyer's request, (3) use or interconnection by Buyer of the Product in combination with other products not made or sourced by Seller, or (4) Products made to specifications not provided by Seller, Buyer will indemnify and defend Seller against claims, liabilities, losses, damages, costs, and expenses, including reasonable legal fees, arising out of the actual or alleged infringement by the Products of a third-party Intellectual Property Right (1) in the United States, the European Union, or Japan, and (2) in another jurisdiction if Buyer is aware of the actual or alleged infringement in that other jurisdiction at the time the Purchase Order is issued and fails to disclose it to Seller within 10 days after issuance of the Purchase Order.

(c) The party seeking indemnity will have no liability under this Section 10.3 unless it provides the other party with full information, cooperation, and assistance regarding, and authority to defend, a claim covered by this **Section 10.3**.

## **11 Property.**

### *11.1 Buyer's Property.*

(a) Buyer will own the tooling, jigs, dies, gauges, fixtures, molds, patterns, supplies, materials, and other equipment and property used by Seller to manufacture, store, and transport Products or provide Services ("**Property**") if (1) the Property is so designated in the Contract, or (2) Buyer or its customer has provided or paid for the Property ("**Buyer's Property**"). Seller will assign to Buyer contract rights or claims in which Seller has an interest with respect to Buyer's Property and execute bills of sale, financing statements, or other documents reasonably requested by Buyer to evidence its or its customer's ownership of Buyer's Property. Seller will indemnify and defend Buyer against claims or liens adverse to Buyer's or its customer's ownership of Buyer's Property except those that result from the acts or omissions of Buyer or its customer. Seller will hold Buyer's Property on a bailment basis and will be responsible for loss or damage to Buyer's Property while in its possession or control. Buyer will be responsible for personal property taxes assessed against Buyer's Property.

(b) Seller will at its expense provide routine maintenance to Buyer's Property throughout the useful life of Buyer's Property. The definition of "routine maintenance to Buyer's Property" refers to: cleaning, replacement of ejector pins, replacement of small non-complex cores, replacement of Trim Die punches and sharpening of cutters, minor zonal polishing and lubrication of tooling between production runs. All other maintenance, repairs or replacements shall be at Buyer's expense. Seller may make recommendations to Buyer regarding the need for such maintenance, repairs, or replacements. If Buyer declines to follow Seller's recommendations, then Seller shall have no responsibility (including warranty responsibility) for any non-conforming Products or other consequences of Buyer's failure. Seller may undertake any maintenance, replacement or repair without first seeking Buyer's approval if doing so is reasonably necessary to prevent a supply disruption or other substantial harm.

(c) Seller will: (i) use Buyer's Property only for the manufacture, storage, and transport of Products for Buyer unless Buyer otherwise approves in writing, (ii) at Buyer's request and expense, mark Buyer's Property as belonging to Buyer or its customer, and (iii) not remove Buyer's Property (other than shipping containers and the like) from Seller's premises without Buyer's written approval. All replacement parts, additions, improvements, and accessories to Buyer's Property will become part of Buyer's Property, so long as they are paid for by Buyer. Rapid wear components shall be the property of the Seller, unless paid for by the Buyer.

(d) Buyer will pay for Buyer's Property that it is required to purchase at the price specified in the Contract or, if no amount is specified in the Contract, at (1) Seller's actual cost of the Buyer's Property, if manufactured by a third party, or (2) Seller's actual cost of purchased materials, components, and services plus Seller's actual cost of labor and overhead allocable to the Buyer's Property, if manufactured by Seller. Unless otherwise stated in the Contract, payment for Buyer's Property is due: (i) one third on issuance of the purchase order; (ii) one third upon completion or receipt of the Property by Seller; and (iii) one third upon completion of testing, acceptance of sample parts or commencement of production, whichever is earlier. Castings made in accordance with approved samples or approved blue prints will be considered as made in compliance with the contract and acceptable to Buyer. Approval of sample castings by Buyer overrides any deviation from blueprints. Blueprints will be changed to conform to casting dimensions by Buyer.

(e) Seller will release to Buyer upon request, and Buyer may retake possession of, Buyer's Property or its customers, with or without cause with the following exception: all outstanding invoices for tooling, fixturing, gaging and shipped parts (including scheduled but not yet shipped parts) must be paid in full prior to the release of Buyer's property. If the release or recovery of Buyer's Property or other property renders Seller unable to produce a Product, the release or recovery will be deemed a termination of the Contract with respect to that Product pursuant to **Section 12** or **13**, as applicable.

(f) Interruptions in the construction of dies increase cost, if for any reason Buyer causes an interruption, such increase in cost may be billed to Buyer at Seller's option. Tooling Amortization Funds may be used to refurbish, repair or replace cavities at Seller's discretion. Inclusion of Continuous Die Replacement (using Tooling Amortization Funds) CDR is optional, however, previously collected CDR funds will not be refunded. Seller will have a lien upon such tools, dies and fixtures. Gating and overflow design is proprietary, shall remain the exclusive property of Callen Manufacturing Corporation and may be removed if tooling is transferred. Gauges are not included in the contract. Dies, tools and fixtures not used for two years may be scrapped on thirty days notice.

11.2 *Seller's Property*. Seller will own all Property that is not Buyer's Property ("**Seller's Property**") Seller will at its expense furnish, maintain in good condition, and replace when necessary Seller's Property needed to perform the Contract. While a Contract for Products remains in effect, Buyer may purchase Seller's Property used exclusively to produce those Products and not needed by Seller to produce Products or products for other customers, for a purchase price equal to the greater of fair market value or Seller's unamortized acquisition cost.

## **12 Term and Termination.**

12.1 *Generally.* Each Contract will remain in effect for the term specified in the Contract unless earlier terminated by either party pursuant to **Section 13** or **16**. Upon termination of a Contract, Seller will cooperate in the transition of production to the alternate source selected by Buyer.

12.2 *Long-Term Contracts.* If Buyer terminates a Contract issued for a term of more than one year (“**Long-Term Contract**”) before the end of its specified term (other than for Seller’s Default), Buyer will (1) purchase completed Products at the Contract price and work-in-process and raw materials at Seller’s actual cost, in each case to the extent the quantities are reasonably necessary to Supplier’s performance under the Contract, and (2) reimburse Seller for reasonable costs actually incurred by Seller as a result of the early termination, including the cost to store the items to be purchased and relocate production to an alternate source and the cost of unreimbursed and unamortized research and development costs, engineering costs, capital equipment, Seller’s Property, and supplies that are unique to the Products. If Seller terminates a Long- Term Contract before the end of its specified term (other than for Buyer’s Default). Buyer may purchase completed Products at the Contract price and work- in-process and raw materials at Seller’s actual cost.

12.3 *Short-Term Contracts.* If Buyer terminates a Contract issued without a definite term or for a term of one year or less (“Short-Term Contract”) before the end of its specified term (other than for Seller’s Default) Buyer will purchase completed Products at the Contract price and work-in-process and raw materials at Seller’s actual cost, in each case to the extent the quantities are reasonably necessary to Supplier’s performance under the Contract. If Seller terminates a Short-Term Contract (other than for Buyer’s Default), Buyer may purchase completed Products at the Contract price and work-in-process and raw materials at Seller’s actual cost.

## **13 Default.**

13.1 *Events of Default.* Subject to **Section 16**, either party will be in “**Default**” under the Contract if it (1) fails to perform any material obligation under the Contract and, if the non-performance can be cured, fails to cure the non-performance within 15 business days after notice from the other party specifying the non-performance, (2) admits in writing its inability to pay its debts as they become due, commences a bankruptcy, insolvency, receivership, or similar proceeding, or makes a general assignment for the benefit of creditors, or (3) becomes a debtor in a bankruptcy, insolvency, receivership, or similar proceeding commenced by a third party that is not dismissed within 30 days after commencement.

13.2 *Remedies.*

- (a) Subject to **Sections 7 and 8** (which provide the exclusive remedies for breach of warranty, Recalls, and products liability) and to the limitations in this **Section 13.2**, either party may exercise the remedies provided in this **Section 13.2**, which are cumulative and are in addition to all other rights and remedies available elsewhere in the Contract or by law.
- (b) Either party may recover from the other party actual out-of-pocket damages or costs directly caused by the other party's breach of the Contract, regardless of whether the breach subsequently becomes a Default with the passage of time or giving of notice or both. All damages under this **Section 13.2** will be reasonably determined based on the nature, type, price, and profitability of the Supplies, industry practices, and the overall volume, scope, and profitability of other business relationships between Seller and Buyer.
- (c) Upon the occurrence of a Default and while that Default is continuing, the non-defaulting party may terminate the Contract by notice to the defaulting party. If Buyer is in Default, Seller's damages will include (1) the Contract price for completed Products and Services and the actual cost of work-in-process and raw materials (which will become Buyer's property upon payment in full), and (2) the cost of unreimbursed and unamortized research and development, capital equipment, Property, and supplies that are unique to the Products. If Seller is in Default, Buyer's damages will include the reasonable costs actually incurred to relocate the work to an alternate source, and Buyer may purchase completed Products at the Contract price and work-in-process and raw materials at Seller's actual cost.

**EXCEPT AS OTHERWISE EXPRESSLY AUTHORIZED IN THE CONTRACT, ALL INDIRECT, SPECIAL, CONSEQUENTIAL (INCLUDING CONSEQUENTIAL LOST PROFITS OR MARKET SHARE OR DAMAGE TO BRAND VALUE), INCIDENTAL, MULTIPLE, PUNITIVE, AND EXEMPLARY DAMAGES, WHETHER OR NOT FORESEEABLE, ARE EXCLUDED UNDER THESE GENERAL TERMS AND CONDITIONS TO THE EXTENT PERMITTED BY APPLICABLE LAW.**

#### **14 Confidential Information.**

Trade secrets, specifications, drawings, notes, instructions, engineering data and analyses, compositions of matter, financial data, and other technical and business data which are supplied or disclosed by Buyer or Seller in connection with the Contract, in each case that are marked or otherwise identified as confidential or where their confidential nature is apparent at the time of disclosure ("**Confidential Information**"), will be deemed confidential and proprietary to, and remain the sole property of, the disclosing party. The receiving party may not disclose Confidential Information or use Confidential Information for any purpose other than as contemplated under the Contract without in each case the written consent of the disclosing party. Confidential Information will not include information that (1) is or becomes generally available to the public other than as a result of a violation of this **Section 14** by the receiving party, (2) was obtained by the receiving party on a non-confidential basis from a third party who had the apparent right to disclose it, or (3) is legally required to be disclosed. Buyer and Seller will each use the same degree of care to safeguard Confidential Information that it uses to protect its own confidential information from unauthorized access or disclosure (but not less than a reasonable degree of

care). Upon request by the disclosing party, the receiving party will promptly return or destroy the original and all copies of Confidential Information received.

#### **15 Assignment and Subcontracting.**

Neither party may assign or subcontract its duties or responsibilities under the Contract without the prior written consent of the other party, which will not be unreasonably withheld or delayed. Unless otherwise stated in the consent, any assignment or subcontracting by either party, with or without the required consent, will not relieve that party of its duties or obligations under the Contract or its responsibility for non-performance or Default by its assignee or subcontractor. If Buyer requires Seller to subcontract all or a portion of its duties or obligations under the Contract to a designated subcontractor, Seller will not be responsible for a breach of the Contract caused by that subcontractor's failure to meet its warranty, delivery, or other contractual obligations.

#### **16 Excusable Non-Performance.**

A delay or failure by either party to perform its obligations under the Contract will be excused, and will not constitute a Default, only if (1) caused by an event or occurrence beyond the reasonable control of that party and without its fault or negligence, including a labor dispute, and (2) the party unable to perform gives notice of the non-performance (including its anticipated duration) to the other party promptly after becoming aware that it has occurred or is reasonably likely to occur, followed by prompt notices of any material changes in the facts relative to its ability to perform and/or the anticipated duration of the non-performance. Seller and Buyer shall share information, confer, seek agreement and otherwise act cooperatively to avoid or mitigate the effects of the potential or actual excused non-performance. If Seller is unable to perform for any reason, Buyer may purchase Products and Services from other sources and reduce its purchases from Seller accordingly without liability to Seller. Within three business days after written request by the other party, the non-performing party will provide adequate assurances that the non-performance will not exceed 30 days. If the non-performing party does not provide those assurances, or if the non-performance exceeds 30 days, the other party may terminate the Contract by notice given to the non-performing party before performance resumes. If Seller reasonably incurs extraordinary costs in order to maintain or restore supply in response to an inability to perform (or what would be an inability to perform except for those extraordinary costs), the cost shall be allocated between the parties in an equitable manner.

#### **17 Customs.**

Transferable credits or benefits associated with Products purchased, including trade credits, export credits, or rights to the refund of duties, taxes, or fees, belong to Buyer unless otherwise prohibited by applicable law. Seller will provide Buyer with all information and records relating to the Products necessary for Buyer to (1) receive these benefits, credits, and rights, (2) fulfill any customs obligations,

origin marking or labeling requirements, and certification or local content reporting requirements, (3) claim preferential duty treatment under applicable trade preference regimes, and (4) participate in any duty deferral or free trade zone programs of the country of import. Seller will obtain all export licenses and authorizations and pay all export taxes, duties, and fees unless otherwise stated in the Contract, in which case Seller will provide all information and records necessary to enable Buyer to obtain those export licenses or authorizations.

## **18     Insurance.**

Unless otherwise provided in the Contract, Buyer shall be responsible for maintaining insurance on all Buyer's Property in the possession of Seller. Seller shall provide insurance protection in reasonable amounts against fire, theft and vandalism on all Buyer's Property that is in the possession of Seller. Seller shall also provide worker's compensation insurance as required by applicable law.

## **19     Dispute Resolution.**

19.1 Negotiation. Before commencing litigation or other action, Buyer and Seller will first endeavor to resolve all disputes arising under the Contract through good faith negotiations.

19.2 Arbitration. If mediation fails to resolve the dispute within 30 days after the first mediation session, either party may submit the dispute to binding arbitration by notice to the other party. The arbitration proceedings will be conducted, and a single arbitrator will be selected, in accordance with the rules of the National Center for Dispute Resolution or other rules approved by the parties, and will be governed by the United States Arbitration Act, 9 U.S.C. **Sections 1-16**, and this **Section 20**. The arbitration will be conducted at an agreed location or at a location selected by the arbitrator if the parties are unable to agree. The arbitrator will issue a written opinion setting forth the basis for the arbitrator's decision, which may include an award of legal fees and costs. The arbitrator's award will be final and non-appealable absent fraud or manifest error, and judgment on the arbitrator's award may be entered in any court having jurisdiction. While arbitration proceedings are pending, the parties will continue to perform their obligations under the Contract without setoff for any matters being contested in the arbitration proceedings.

19.3 Litigation. The parties have selected binding arbitration as the sole means to resolve a dispute between them over monetary claims that cannot be resolved through mediation. Either party may pursue through litigation claims that also involve third parties who have not consented to arbitration, claims in litigation commenced by third parties, and claims for injunctive or other non-monetary relief.

## 20 Miscellaneous.

20.1 Electronic Communication. Buyer and Seller will both comply with the method of electronic communication specified in the Contract, if any, including requirements for electronic funds transfer, purchase order transmission, electronic signature, and communication. Buyer and Seller will also make commercially reasonable efforts to comply with any modification requested by the other party after the date of the Contract, subject to **Section 1.2**.

20.2 Relationship of the Parties. Buyer and Seller are independent contractors, and nothing in the Contract makes either party the agent or legal representative of the other party for any purpose. Neither party has authority to assume or to create any obligation on behalf of the other party.

20.3 Waiver. The failure of either party to enforce any right or remedy provided in the Contract or by law on a particular occasion will not be deemed a waiver of that right or remedy on a subsequent occasion or a waiver of any other right or remedy.

20.4 Commercial Standards. The “Product Specification Standards for Die Castings” published by the North American Die Casting Association (“NADCA Standards”) shall be considered in determining the parties’ compliance with commercial standards, reasonableness, diligence or other pertinent requirements of the Contract. The NADCA Standards are available at [www.diecasting.org/](http://www.diecasting.org/). Castings will be manufactured to meet or exceed dimensional criteria established by “NADCA” Standards. Taper or draft as required, will be considered part of the design and will be provided in such form as will, in our judgment, best suit functions of the part, unless otherwise instructed. No allowance for finish or machining will be made except where specified. Close limits or dimensions must be called to Seller’s attention and agreed upon before die work is begun. When conflicting models and prints are submitted, prints will be followed unless otherwise instructed in writing.

20.5 Entire Agreement. The Contract constitutes the entire agreement between the parties with respect to its subject matter, and supersedes all prior oral or written representations or agreements by the parties with respect to the subject matter of the Contract, including Buyer’s request for quotation and Seller’s quotation unless specifically incorporated in the Contract. Except as authorized in **Section 1.2**, no subsequent terms, conditions, understandings, or agreements purporting to modify the terms of the Contract will be binding unless in writing and signed by both parties.

20.6 Severability. A finding that any provision of the Contract is invalid or unenforceable in any jurisdiction will not affect the validity or enforceability of any other provision of the Contract or the validity or enforceability of that provision in any other jurisdiction.

20.7 Interpretation. When used in these General Terms and Conditions, “including” means “including without limitation” and terms defined in the singular include the plural and vice versa.

20.8 Notices. Any notice or other communication required or permitted in the Contract must be in writing and will become effective on the date of actual receipt if the date of actual receipt is a business day or on the next business day if the date of actual receipt is not a business day.

20.9 Governing Law. Unless otherwise agreed in writing, the Contract will be governed by and interpreted according to the internal laws of the state of Illinois. The United Nations Convention on Contracts for the International Sale of Goods will not apply to the Contract.