

Purchase Order Terms & Conditions

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Refer to Engine Power Components, Inc. Website for current version.

- 1. ACCEPTANCE.** Each Purchase Order ("Order") which conforms to the Agreement shall be deemed accepted by Seller. It may also be accepted by Seller by shipment of Goods (the term "Goods" throughout this document includes without limitation, raw materials, components, services, intermediate assemblies, and end products), performance of services, commencement of work on Goods, written acknowledgment, or any other conduct of Seller which recognizes the existence of a contract pertaining to the subject matter hereof. NO PURPORTED ACCEPTANCE OF ANY ORDER ON TERMS AND CONDITIONS WHICH MODIFY, SUPERSEDE, OR OTHERWISE ALTER THE TERMS AND CONDITIONS HEREOF SHALL BE BINDING UPON BUYER AND SHALL BE DEEMED REJECTED UNLESS THEY ARE ACCEPTED IN WRITING BY AN AUTHORIZED REPRESENTATIVE OF THE HEADQUARTERS OFFICE OF BUYER NOTWITHSTANDING BUYER'S ACCEPTANCE OR PAYMENT FOR ANY SHIPMENT OF GOODS OR SIMILAR ACT OF BUYER. Unless otherwise stated in such Order, each Order is Buyer's offer to Seller and does not constitute an acceptance by Buyer of any offer or proposal by Seller. Any reference herein to any such offer or proposal by Seller is solely for the purpose of incorporating the description and specifications of the subject matter thereof into the Order and then only to the extent that such description and specifications do not conflict with the description and specifications contained in such Order.
- 2. DELIVERY.** Delivery must be in strict compliance with the schedule contained in each Order and shall be made by Seller at such times and places and of such items and quantities as may be specified by Buyer. Time is of the essence of each Order. Shipments of Goods in excess or in advance of Buyer's requirements contained in each Order are at Seller's risk. Buyer reserves the right to return to Seller, at Seller's expense, all Goods received more than seven (7) calendar days ahead of the required delivery date. Buyer reserves the right, without loss of any rights or privileges under the Agreement or this Schedule, including, without limitation, the right to benefit from any cash discounts, to pay invoices covering items shipped in advance of the schedule on the normal maturity after the date specified for delivery. If Seller fails to meet its scheduled delivery dates and Buyer elects to call for expedited shipments, Seller will pay the difference between the method of shipping specified and the actual expedited rate incurred. Seller shall be responsible for any additional charges resulting from any deviation from Buyer's routing instructions. Should Buyer accept Goods which are not delivered on or before the required delivery date, which option Buyer reserves, then Seller shall be liable for all additional costs incurred by Buyer because of such delay(s), including, but not limited to, telecommunication costs, additional or premium transportation charges, special handling expenses, and costs to Buyer to store the materials in addition to other remedies available by law to Buyer. Title and risk of loss shall remain in Seller until Goods are delivered to Buyer's designated receiving location specified herein. Notwithstanding such delivery, Seller shall bear the entire risk of loss or damage to Goods purchased hereunder from the time that Buyer gives notice of rejection of such Goods pursuant to the inspection provisions of the applicable Order. If Seller encounters or anticipates difficulty in meeting the delivery schedule, Seller shall immediately notify Buyer in writing, giving pertinent details, provided however, that the receipt of such data shall be for information purposes only and shall not be construed as a waiver by Buyer of any delivery schedule or date or of any rights or remedies provided by law or in the applicable Order. If Seller fails to make delivery promptly and regularly, as required by the Order, Buyer may, in addition to other remedies available at law, terminate such Order in accordance with the paragraphs of this schedule entitled "Termination for Default." Nothing contained in this paragraph shall prevent termination by Buyer under the provisions of the "Termination for Default" paragraphs of this schedule.
- 3. SHIPPING INSTRUCTIONS.** Seller agrees to prepare and properly pack, box or crate Goods for shipment as well as to pay for the cost of the container, to comply with Buyer's shipping instructions and/or routings, and to describe the Goods on the bill of lading in conformity with appropriate freight classifications. Any additional charges resulting from failure to comply with this provision, including incidental and consequential damages, shall be charged to Seller. Each container must be marked to identify contents and quantities without opening. Packing lists and certifications, when applicable, must accompany each shipment and be attached to the Seller packing sheet. The location of the packing list must be clearly marked on the container. In addition to the container, when multiple containers are used, the packing list will show the items in each container. Multiple containers will be numbered consecutively, for example, 1 of 4, 2 of 4, etc. Buyer's purchase order number and plant location must appear on all invoices, packing sheets, delivery tickets, shipping orders and bills of lading. If Buyer requires or requests Seller to apply Buyer-specified, computer-scannable bar codes on the packing sheets and/or Goods containers, then Seller agrees to do so, free of charge.
- 4. INVOICING AND PAYMENT:** Individual invoices showing purchase order number and purchase order item number (and/or any other information required by Buyer) must be issued by Seller for each shipment made pursuant to each Order. Three (3) copies of each invoice must be rendered with prices and extensions. Invoices shall be mailed within three (3) days after shipping date. Invoice date shall not precede shipment date. Rejections, delays in delivery or delivery in advance of required delivery date, and/or invoices and/or shipping documentation, errors and/or omissions will be considered just cause for withholding payment without loss of cash discount privilege(s). Unless otherwise specified, the price set forth in each Order shall include all charges for Seller's packing and crating, for insurance in transit and for transport and delivery to Buyer's facilities. Buyer shall have no obligation to pay any invoices received by Buyer more than three months after Seller is required to submit such invoices.
- 5. PAYMENT TERMS:** Buyer and Seller agree to payment terms of 45 day net average for domestic product Sellers and net average 90 days for international Sellers. Buyer reserves the right to alter these terms upon thirty (30) day prior written notice. Any discount terms must be agreed to, in writing, by both parties. Product tooling terms paid 90 days after Customer program approval. Capital payment terms will be paid 90 days after commissioning.
- 6. INSPECTION:** Seller agrees to inspect and test all Goods and monitor all services furnished in performance of each Order to insure compliance with the specifications and requirements of each Order. Seller agrees to permit and assist Buyer in inspecting and testing Buyer's all Goods and services furnished in performance of each Order during manufacture or production, where practical, while being performed and at all other times and places. All Goods shall be received subject to Buyer's inspection and acceptance or rejection. Inspection or testing of, or payment for, any Goods or services shall not constitute acceptance of them. Acceptance by Buyer does not relieve Seller of liability for latent defects, negligence, fraud or such gross error or defects as amount to fraud. Buyer reserves the right to reject any Goods and refuse any services found not to be in compliance with the specifications or other requirements of the Order and the Agreement. The obligations of this paragraph shall survive the cancellation, termination or completion of the Agreement and each Order.
- 7. LIMITED WARRANTY:** A. Seller warrants/guarantees that the Goods covered by this contract will conform to the specifications, drawings, samples, or descriptions furnished to or by Buyer, and will be merchantable, of good material and workmanship and free from defect. In addition, Seller acknowledges that Seller knows of Buyer's intended use and warrants/guarantees that all Goods covered by this contract that have been selected, designed, manufactured or assembled by Seller based upon Buyer's stated use will be fit and sufficient for the particular purposes intended by Buyer. The warranty period shall be that provided by applicable law, except that if Buyer offers a longer warranty to its customers for Goods installed on vehicles, such longer period shall apply. B. Buyer may, at its option, either (i) return defective or non-conforming Goods for credit or refund (without Seller having any right to furnish conforming Goods), (ii) require correction of the defective or nonconforming Goods, (iii) have the defective or nonconforming Goods repaired or replaced at Seller's expense and deduct the cost thereof from any monies due Seller. Such Goods will be held for Seller's instructions and at its risk, or at Buyer's option, will be returned at Seller's risk. The return to Seller of any defective or nonconforming Goods and delivery to Buyer of any corrected or replaced Goods shall be at Seller's expense. Buyer's packing sheet, which accompanies Goods returned, will indicate whether Goods are to be corrected, replaced or credited to Buyer. No credit will be given unless the Goods are returned to Seller without Buyer's written instructions. Goods which have been rejected or required to be corrected, shall not thereafter be tendered for acceptance unless the former rejection or correction requirement is disclosed in writing. C. Any services that do not conform to the requirements of an Order shall, at the option of Buyer be (a) replaced forthwith with substitute services, which do conform, or (b) terminated. If necessary, Buyer may replace such services from a provider other than Seller and Seller shall pay or credit to Buyer on demand all amounts paid by or charged to Buyer for such nonconforming services, all Buyer's cost of such replacement services and all costs and expenses suffered or incurred by Buyer as a result of Seller's failure to provide services conforming to the requirements of the Order. D. In addition to other remedies available to Buyer for breach of this warranty and notwithstanding any other provision of any Order to the contrary, Buyer shall have the right, but not the obligation, and is hereby granted a non-exclusive, royalty-free license, to make or have made by a third party service provider such modifications to the Goods provided by Seller hereunder as may be necessary to rectify any failure of such programs to comply with this warranty. The remedies provided in this paragraph are in addition to all other remedies provided to Buyer by law and herein, including Termination under paragraph 12. The obligations of this paragraph shall survive the cancellation, termination, or completion of each Order and the expiration or termination of the Agreement.
- 8. CHANGES:** Buyer shall have the right at any time to make changes in one or more of the following: (i) method of shipment or packing, (ii) place or time of delivery or performance, and (iii) the quantities covered by any Order. Notices of changes hereunder shall be delivered to Seller in writing and Seller shall be bound by such changes upon receipt of such writing. Seller understands and agrees that it shall not be liable for any claims, damages or expenses as a result of Buyer's changes in the time of delivery or performance. Seller shall not make changes in the specifications, physical compositions of or processes used to manufacture Products (including destroying or moving tooling or equipment from one location to another) without Buyer's prior written consent.
- 9. INTELLECTUAL PROPERTY:** Seller agrees that it will, at its own expense, including payment of costs and attorney fees and disbursements, defend any claims, charges or lawsuits instituted by any party against Buyer or its customers arising out of, in connection with or related to alleged misuse, misappropriation or infringement of any patent, trademark, copyright or other right relating to Goods or services furnished to Buyer in the performance of each Order, or relating to, resulting from or arising out of the receipt of such services or use of such Goods in combination with other Goods as is recommended by Seller. Seller further agrees to indemnify and hold harmless Buyer and all persons claiming under Buyer in respect of any claims, demands, liabilities, losses, judgments, awards, fines, settlements, court costs, attorney fees, and expenses incurred by reason of such claims, charges or lawsuits. Seller shall notify Buyer in writing of each such notice or claim of which Seller has knowledge. Seller shall, at its own expense, either procure for Buyer the right to continue using the article, apparatus, material, part, device, process or method or, if the performance thereof will not be adversely affected, replace same with a non-infringing substitute or modify it so it becomes non-infringing, or remove it and refund the purchase price, transportation and installation costs thereof. The obligations of this paragraph shall survive the cancellation, termination, or completion of each Order and the expiration or termination of the Agreement.
- 10. NOTICE OF DELAYS:** Whenever Seller has knowledge that any actual or potential occurrence is delaying or threatens to delay the timely performance of any Order, Seller shall immediately give notice thereof to Buyer, including all relevant information with respect thereto. Delivery delays caused by such occurrence shall be governed by the paragraph of this schedule entitled "FORCE MAJEURE" (and paragraph 11, Force Majeure, if and to the extent applicable).
- 11. COMPLIANCE WITH LAWS:** Seller agrees to comply with all applicable local, state, foreign and federal laws, orders, directives and regulations at any time in effect, including, but not limited to, those found in 41 CFR Chapter 60 requiring equal opportunity and affirmative action without regard to race, color, religion, sex, national origin, presence of a disability or status as a special disabled veteran or Vietnam era veteran, which are specifically incorporated herein by reference. If Seller fails to comply with the provisions of this paragraph, Buyer may, by written notice to Seller, terminate any Order or the Agreement as if under a default in accordance with the "Termination for Default" paragraphs of this schedule in addition to any other rights or remedies provided by law.
- 12. FORCE MAJEURE:** (A) Seller shall not be liable for any excess costs if the failure to perform this order arises out of causes beyond the reasonable control and without any fault or negligence of Seller. Such causes may include, but are not limited to, acts of God, or of the public enemy, acts of the government in either its sovereign or contractual capacity, fires, floods, terrorism, strikes, quarantine restrictions, strikes by those in the Seller's workforce), freight embargoes, and unusually severe weather, but in every case the failure to perform must be beyond the control and without the fault or negligence of Seller. No failure of Seller's internal business systems related to the proper processing of date information that results in any defect or failure in products or services, deliveries, or any other aspect of performance by Seller or its subcontractors in connection with an Order excuse the performance of Seller under the Agreement. Seller shall notify Buyer in writing within two (2) calendar days of any and all events of Force Majeure. (B) If Force Majeure continues for longer than five (5) calendar days, then Buyer, at its sole option, may terminate any Order affected thereby or the Agreement in whole or in part without any obligation or liability except that Buyer is still responsible for payment for Goods or services which have been delivered to and accepted by Buyer prior to Force Majeure notice receipt. (C) Buyer may cancel any Order at any time prior to delivery or performance if its business is interrupted for reasons beyond Buyer's reasonable control. Buyer shall give prompt notice of such cancellation to Seller.
- 15. TERMINATION AND SETTLEMENT:** Termination for Default (1) Buyer may, by written notice of default to Seller, immediately terminate the whole or any part of any Order or the Agreement itself if Seller fails to make delivery of the Goods or to perform the services required by any Order within the time specified or any written extension thereof. If Seller fails to satisfy any of the other requirements of any Order, or so fails to make progress as to endanger performance of an Order in accordance with its terms and conditions, and does not cure such failure within a period of ten (10) calendar days (or such longer period as Buyer may authorize in writing) after receipt of notice from Buyer specifying such failure, then Buyer may terminate the whole or part of such Order or the Agreement. (2) In the event Buyer terminates an Order or the Agreement in whole or in part as provided in Subparagraph (1) above, Buyer shall have no further obligation to Seller under the terminated portion of an Order and Buyer may procure, upon such terms and in such manner as Buyer may deem appropriate, Goods or services similar to those so terminated, and Seller shall be liable to Buyer for any excess costs. Termination for Involuntary Buyer termination shall constitute this contract without ability to Seller in any of the following or any other comparable events: (a) insolvency of Seller (b) filing of a voluntary petition in bankruptcy by Seller (c) filing of an involuntary petition in bankruptcy against Seller (d) appointment of a receiver or trustee for Seller or (e) execution of an assignment for the benefit of creditors by Seller, provided that such petition, appointment or assignment is not vacated or nullified within 15 days of such event. Seller shall reimburse Buyer for all costs incurred by Buyer in connection with any of the foregoing, including, but not limited to, attorney's and other professional fees. Termination for Convenience: Buyer may at any time by written notice terminate all or any part of any Order or the Agreement for Buyer's convenience, in which event Seller agrees to stop work immediately as to the terminated portion and to notify subcontractor(s) (if any permitted) to stop work, and protect and preserve property in its possession in which Buyer has an interest. If any Order or the Agreement is terminated, in whole or in part, for Buyer's convenience, Seller shall be paid an amount, to be mutually agreed upon, which shall be adequate to cover the reasonable cost of Seller's actual performance of work under such Order to the effective date of termination. Buyer shall have no obligation to make any of the aforementioned payments to Seller, either for completed items or in connection with terminated work-in-process.

unless Seller shall establish to Buyer's satisfaction that such completed items, or the work-in-process, including materials, are unusable in connection with Seller's other bargains. In no event shall the termination charges or all previous payments made under any Order exceed the total price shown in such Order. If an Order is terminated as provided in paragraph 12 (a)-(c), Buyer, in addition to any other rights provided in the Order, may require Seller to transfer title and deliver to Buyer, in the manner and to the extent directed by Buyer, the following: (i) any completed Goods; and (ii) such partially completed Goods and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing materials") as Seller has specifically produced or specifically acquired for the performance of such part of such Order as has been terminated. Seller shall also, upon direction of Buyer, protect and preserve property in the possession of Seller in which Buyer has an interest. Payment for completed Goods delivered to and accepted by Buyer shall be at the contract price. Payment for manufacturing materials delivered to and accepted by Buyer and for the protection and preservation of property shall be in an amount agreed upon by Buyer and Seller; failure to agree to such amount shall be a dispute within the meaning of the paragraph the Agreement amounts to a dispute. Buyer may withhold payment from amounts due Seller for such completed Goods or manufacturing materials such sum as Buyer determines to be necessary to protect Buyer against loss because of outstanding liens or claims of former lien holders. The rights and remedies of Buyer provided in this paragraph 12 shall not be exclusive and are in addition to any other rights and remedies provided by law or under such Order or under the Agreement. Any termination of an Order under this paragraph 12 shall not relieve Seller of any obligations and liabilities which may have arisen under any of the terms and conditions of such Order prior to such termination, including, but not limited to, patent infringement, latent defects, and warranty obligations.

16. PRICES: No Order may be invoiced at a higher price than required by the Agreement. If no lower price is shown, the price in the Agreement shall be the price. Prices are inclusive of delivery charges to the place shown on the face of each Order and are exclusive of state sales taxes (add) V.A.T. and all duties. No charge will be allowed for packing, crating, drayage, or storage. Seller warrants that prices charged for the Goods are not higher than those charged to any other customer, including the government, for Goods of like grade and quality in similar quantities.

17. INDEMNITY: Notwithstanding anything contained in Seller's warranty to the contrary, Seller and Buyer expressly agree that Seller is responsible for and agrees to indemnify Buyer for any and all damages, losses, expenses, attorney fees, court costs, etc., that result from incidents, accidents, injuries or deaths to any persons or damage and/or losses to property, that arise out of the Goods purchased by Buyer from Seller or their existence, presence or use, or services rendered by Seller to Buyer and from the presence of any of Seller's personnel or agents on any premises of Buyer (or with respect to which Buyer has liability). This paragraph shall survive termination or completion of any order and expiration or termination of the Agreement.

18. GRATUITIES; POLICIES AND PROCEDURES: (a) If it is found that gratuities (in the form of entertainment, gifts or otherwise) are offered by Seller, or any agent or representative of Seller, to any employee of Buyer with a view toward securing favorable treatment with respect to the awarding or performing of any Order, Buyer may, by written notice to Seller, terminate any or all Orders or the Agreement as upon a default in accordance with such Order in addition to any other rights or remedies provided by law. (b) Seller, its employees, representatives, and agents shall comply with all of Buyer's rules, regulations, policies and procedures while on Buyer's premises or in the company of any of Buyer's employees. If Seller, its employees, representatives, or agents violate Buyer's rules, regulations, policies, or procedures, Buyer may, by written notice to Seller, terminate any Order or the Agreement as upon a default in accordance with such Order in addition to any other rights or remedies provided by law.

19. APPLICABLE LAW: Buyer and Seller expressly agree to exclude from applicability to this Agreement and any Order under it the United Nations Convention on Contracts for the International Sale of Goods, 1980, and any successor thereto. Each Order shall be deemed to be a contract entered into in, and exclusively governed by and construed in accordance with the laws of, the state set forth in the Agreement with respect to choice of law, (and should the agreement fail to identify any state, default to the Laws of the State of Michigan), and without regard to the conflict of laws rules of any jurisdiction. Buyer and Seller agree to submit to the sole and exclusive jurisdiction and venue of either (a) the courts of general jurisdiction of the state and county in which such facility is located or (b) the United States District Court for the district in of the state of jurisdiction and venue as set forth in the Agreement. Any provision in any Order or in any attachments hereto and incorporated herein which is prohibited by the laws of any state shall, as to such state, be ineffective to the extent only of such prohibition, but without invalidating any of the remaining provisions hereof.

20. AMENDMENT BY LAW: Buyer and Seller expressly agree that all provisions required to be included by any applicable local, state, federal or Provincial laws, orders, regulations or directives heretofore or hereafter promulgated without the subsequent amendment of such Order specifically incorporating such provisions.

21. CUSTOMS EXPORT CONTROLS: Credits or benefits resulting or arising from this contract, including trade credits, export credits or the refund of duties, taxes or fees, shall belong to Buyer. Seller shall provide all information necessary (including written documentation and electronic transaction records) to permit Buyer to receive such benefits or credits, as well as to fulfill its customs related obligations, origin marking or labeling requirements and local content origin requirements, if any. Export licenses or authorizations necessary for the export of the Goods shall be the responsibility of Seller unless otherwise indicated in this contract, in which event Seller shall provide such information as may be necessary to enable Buyer to obtain such licenses or authorization(s). Seller shall undertake such arrangements as necessary for the Goods to be covered by any duty deferral or free trade zone program(s) of the country of import.

22. ASSIGNMENT: Seller shall not assign or delegate its obligations or performance of this Order without prior written consent of Buyer. Proceeds due or to become due under this Order may be assigned by Seller only with the written consent of Buyer and then provided that payment to an assignee of any claim related to this order shall be subject to all applicable defenses, reductions and setoffs. Buyer may assign its rights hereunder to any corporation controlled, by controlling or under common control with Buyer and not successfully or substantially all the business of the Buyer.

23. DISPUTE: Buyer and Seller shall strive to settle amicably and in good faith any dispute arising in connection with this Order. If representatives of Buyer and Seller are unable to resolve a dispute within (30) days, Buyer or Seller may result to such legal proceedings as may be available to such party. Pending resolution of any dispute hereunder, Seller shall proceed diligently with the performance of work, including the delivery of Goods in accordance with Buyer's direction.

24. OTHER ENVIRONMENTAL AND HEALTH AND SAFETY REQUIREMENTS: Seller will take appropriate actions to provide a safe and healthy workplace and to protect local environmental quality at and near all facilities and operations where it will conduct activities to supply Products, materials or services under this Contract. For all Products and other materials sold or otherwise transferred to Buyer under this Contract containing hazardous materials, Seller shall provide all information that a U.S. manufacturer or importer must provide to comply with the Hazard Communication Standard codified at 29 CFR 1910.1200, including complete Material Safety Data Sheets (OSHA Form 20) and labeling, whether or not the standard applies to the activities of Seller. Seller further represents, warrants and certifies that Products were not manufactured with child, indentured, forced or prison labor.

25. INSURANCE: Seller shall maintain insurance coverage with carriers acceptable to Buyer and in the amounts set forth in the Special Terms. Seller shall furnish to Buyer either a certificate showing compliance with these insurance requirements or certified copies of all insurance policies within 10 days of Buyer's written request and Seller shall provide to Buyer within 30 days of Buyer's written notice from the insured of any termination or reduction in the amount or scope of coverage. Seller's furnishing of certificates of insurance or purchase of insurance shall not release Seller of its obligations or liabilities under this contract.

26. SELLER'S PROPERTY: Unless otherwise agreed to by Buyer, Seller, at its expense, shall furnish, keep in good condition, and replace when necessary all machinery, equipment, tools, jigs, dies, gauges, fixtures, molds, patterns and other items ("Seller's Property") necessary for the production of the Goods. The cost of changes to Seller's Property necessary to make design and specification changes authorized by Buyer shall be paid for by Buyer. Seller shall insure Seller's Property with full fire and extended coverage insurance for its replacement value. Seller grants Buyer an irrevocable option to take possession of and title to Seller's Property that is special for the production of the Goods upon payment to Seller of its net book value less any amounts that Buyer has previously paid to Seller for the cost of such items provided, however, that this option shall not apply if Seller's Property is used to produce Goods that are the standard stock of Seller or if a substantial quantity of like Goods are being sold by Seller to others.

27. BUYER'S PROPERTY: All supplies, materials, tools, jigs, dies, gauges, fixtures, molds, patterns, equipment and other items furnished by Buyer, either directly or indirectly, to Seller to perform this contract, or for which Seller has been reimbursed by Buyer, shall be and remain the property of Buyer and held by Seller on a bailment basis ("Buyer's Property"). Seller shall bear the risk of loss of and damage to Buyer's Property. Buyer's Property shall at all times be properly housed and maintained by Seller, at its expense, shall not be used by Seller for any purpose other than the performance of this contract shall be deemed to be personally shall be conspicuously marked by Seller as the property of Buyer shall not be commingled with the property of Seller or with that of a third person and shall not be moved from Seller's premises without Buyer's prior written approval. Buyer shall have the right to enter Seller's premises at all reasonable times to inspect such property and Seller's records with respect thereto. Upon the request of Buyer, Buyer's Property shall be immediately returned to Buyer or destroyed by Seller, either (i) F.O.B. transport equipment at Seller's plant, properly packed and marked in accordance with the requirements of the carrier selected by Buyer to transport such property, or (ii) to any location designated by Buyer, in which event Buyer shall pay to Seller the reasonable costs of delivering such property to such location. When permitted by law, Seller waives any lien or other rights that Seller might otherwise have on any of Buyer's Property for work performed on such property or otherwise.

28. BUYER'S RIGHT TO ENTER PREMISES: Seller shall permit and obtain from its suppliers the right for Buyer's agents to enter such suppliers and their sub-suppliers' premises at reasonable times to determine adherence to the terms hereof. This provision shall include the right to inspect and test all Products, tooling, and workmanship. However, the failure to test or inspect will neither relieve Seller of any liability for defects, nor create any liability on the part of Buyer for noninspection.

29. CONFIDENTIAL OR PROPRIETARY INFORMATION: (a) No knowledge or information disclosed to Buyer by Seller which in any way relates to Products or services covered by this Purchase Order and Buyer's Material Schedule, shall, unless otherwise specifically agreed in writing by Buyer, be deemed to be confidential or proprietary information, and Buyer shall acquire all such knowledge and information free from any restrictions (other than a claim for patent infringement), as part of the consideration for this Contract and Buyer's Material Schedule. (b) All technical and other information obtained or learned by Seller as a result of this buyer/Seller relationship and all technical and other information furnished by Buyer or jointly developed by Buyer and Seller shall remain Buyer's property and, unless otherwise consented to in a writing signed by Buyer's representative, shall be used only for performance of the work under this Contract and shall not be divulged to third parties. Buyer's consent will not be unreasonably withheld.

30. FOREIGN PURCHASES: (a) Unless specifically provided otherwise herein, Buyer shall be Importer of Record. (b) If Buyer is Importer of Record, Seller warrants that all sales made hereunder are or will be made at not less than fair value under the United States Anti-Dumping Law (19 U.S.C. Sec.160, et. seq.). (c) If Seller is Importer of Record, Seller agrees that Seller will not be a party to the importation of Products, that the importer(s) represented by this Contract will be consummated subsequent to importation, and that Seller will neither cause nor permit Buyer's name to be shown as "importer of record" on any customs declaration. Upon request and where applicable, Seller will provide Buyer Customs Form 7552 entitled "Certificate of Delivery" properly executed and will further provide all commercial invoices in proper form to allow for entry and possible drawback. Seller will not disclose any information regarding Buyer contrary to export control laws and regulations of the U.S.

31. PRODUCT RECALL: If any Products are determined by Seller, Buyer or any governmental agency or court to contain a defect or a quality or performance deficiency, or not be in compliance with any standard or requirement so as to make it advisable that such Products be reworked or recalled, Seller or Buyer will promptly communicate relevant facts to each other and shall undertake corrective action, provided that Buyer shall cooperate with and assist Seller in any necessary filings and corrective action, and provided that nothing contained in this Section shall preclude Buyer from taking such action as may be required of it under any such law or regulation. Where applicable, Seller shall pay all reasonable expenses associated with determining whether a recall or rework is necessary. Seller shall perform all necessary repairs or modifications at its sole expense, except to any extent Seller and Buyer agree to the performance of such repairs by Buyer upon mutually acceptable terms. The parties recognize that it is possible that other Seller-manufactured products might contain the same defect or noncompliance condition as do Products manufactured for Buyer. Buyer and Seller agree that any recall involving Products for Buyer shall be treated separately and distinctly from similar recalls of other products of Seller, provided that such separate and distinct treatment is lawful and Seller shall in no event fail to provide at least the same protection to Buyer on such Products as Seller provides to its other customers in connection with such similar recalls. Each party shall consult the other before making any statements to the public or a governmental agency relating to potential safety hazards affecting Products, except where such consultation would prevent timely notification required by law.

32. REPLACEMENT PARTS: Seller shall provide replacement parts to Engine Power Components, Inc. and its affiliates for a period of 10 years after production, or at OEM requirements, whichever is greater. Seller shall continue to supply such parts past the 10-year period if Engine Power Components, Inc. or its affiliates order at least 100 parts per year. Non-production or obsolete parts shall be offered to Engine Power Components, Inc. or its affiliates for a lifetime buy at current production prices before Seller shall be allowed to discontinue. All other non-production parts shall be offered at production prices for two years after obsolescence. Thereafter, prices shall be negotiated based on Seller's actual cost of production plus any special packaging. Seller shall notify Engine Power Components, Inc. or its affiliates and receive written approval before scrapping any tooling used to make Buyer's replacement parts.

33. SET-OFF: Buyer shall have the right at all times to set off any amounts owing from Seller to Buyer, any component of Buyer or any of its affiliates, against any amount payable at any time by Buyer.

34. TRADEMARKS: The names and trademarks of each party and its affiliates shall remain the sole and exclusive property of that party or its affiliates and shall not be used by the other party for any purpose whatsoever unless expressly authorized by the owning party.

35. TESTING: Testing of any kind of Products by Buyer, whether for performance or reliability, shall not negate, diminish or relieve Seller's obligation or responsibility under any warranty, express or implied; indemnification; hold harmless or other similar term or provision existing at law or under this Contract.

36. QUALITY ASSURANCE: Seller supplies Product under ISO9000, QS9000, AS9000, VDA 6.1 or any other quality assurance system specified by Buyer or its customers. Seller shall comply with such quality system standard for such Products covered by this Order. Seller agrees to permit Buyer or its customers to review Seller's procedures, practices, processes and related documents to determine such acceptability. This requirement is in addition to any special quality assurance provisions, which may be incorporated elsewhere in this Order. Records of all inspection work by Seller shall be kept complete and available to Buyer or its customers during the performance of this Order and for such longer period and in such manner as may be specified by Buyer.

37. MATERIAL MANUFACTURED BY Engine Power Components, Inc.: Equipment and services provided by Engine Power Components, Inc. or its affiliates shall be used when the product is suitable for the application.

38. INCORPORATED DOCUMENTS: All documents attached to an Order are incorporated therein by reference and made a part of the Order as if fully set forth herein.

39. ORDER OF PRECEDENCE: In the event of any inconsistency among provisions contained in any Order and any documents incorporated by reference herein, the inconsistency shall be resolved by giving precedence in the following order: (i) separate, written contract; (ii) the Agreement to which these Terms and Conditions are attached; (iii) these Terms and Conditions; (iv) drawings; (v) specifications; and (vi) any other documents incorporated by reference.