

ATC Drivetrain Purchasing General Terms and Conditions (Version 1.1)

These Purchasing General Terms and Conditions (“Terms”) are incorporated into and are a part of every Purchase Order through which ATC Drivetrain (“ATC”) purchases Goods or Services from any Supplier. (“Supplier” is the entity designated as such on the face of the Purchase Order or Delivery Framework Agreement.) As used throughout these Terms, the “Purchase Order” includes not only the Purchase Order itself, but also these incorporated Terms, any Releases, and any other incorporated documents, as well as any modifications to any of these documents. As used throughout these Terms, the “Goods” are the products, parts, components, matters, or materials (including related documentation and the source code and object code of any software) the delivery of which is the subject of the Purchase Order. As used throughout these Terms, the “Services” are the services the provision of which is the subject of the Purchase Order.

1. Application

- 1.1. The Purchase Order shall govern any and all deliveries of the Goods or provision of the Services by Supplier to ATC. **ATC objects to any other terms and conditions, including any terms and conditions of Supplier, and including any additional or contradicting terms or conditions in any offer or acceptance of Supplier, and such terms and conditions shall not become part of the agreement between the parties.** No action or inaction on the part of ATC, including acceptance of or payment for any Goods or Services, shall be an acceptance of any terms or conditions of Supplier.
- 1.2. The Purchase Order, including these Terms, shall not be amended or modified, nor shall any collateral agreements be formed, unless such amendment, modification, or agreement is in a writing signed by ATC. (The signature may be transmitted via fax or electronically.)
- 1.3. The Purchase Order, including these Terms, shall be the entire and final agreement between ATC and Supplier, and cancel and supersede any prior or contemporaneous negotiations or agreements regarding the Goods or Services.

2. Purchase Order and Releases / Modifications

- 2.1. Every Purchase Order, as well as any acceptance, modification, or amendment of each Purchase Order, shall be made in writing, via fax, or via electronic data transfer.
- 2.2. Offer and Acceptance:
 - 2.2.1. Any Purchase Order issued by ATC is an offer to Supplier. Until it is accepted in a manner consistent with these Terms, each Purchase Order may be revoked by ATC at any time, without incurring any liability towards Supplier.
 - 2.2.2. Supplier will be deemed to have accepted the Purchase Order when Supplier accepts the Purchase Order in writing or by means of electronic data transfer, or when Supplier takes any step in furtherance of its obligations under the Purchase Order, including the procurement of raw materials or the initiation of the manufacture of the Goods or the provision of Services. The acceptance shall be of the Purchase Order and these incorporated Terms in their entirety and without any modification.
- 2.3. Quantity and Delivery Date:
 - 2.3.1. Fixed-Quantity Contracts:
 - 2.3.1.1. If a specific quantity is set forth on the face of the Purchase Order, the Purchase Order is a fixed quantity contract. Supplier is obligated to supply ATC with the specified quantity of Goods, and ATC is obligated to purchase from Supplier that quantity of Goods at the price indicated.
 - 2.3.1.2. Supplier shall deliver such Goods to the locations and at the times set forth in the Purchase Order or in any Release issued by ATC.

2.3.2. Requirements Contracts:

2.3.2.1. If no specific quantity is set forth on the face of the Purchase Order, or if the Purchase Order identifies the quantity as “REQ” (or similar), the Purchase Order is an exclusive 100% requirements contract under Oklahoma law and the Uniform Commercial Code.

2.3.2.2. ATC is obligated to order exclusively from Supplier all of the Goods that ATC may need during the Term of the Purchase Order (as defined below), Supplier is obligated to deliver to ATC all of the Goods so ordered, and ATC is obligated to pay for those Goods at the price indicated, but only upon 100% fulfillment of each order. ATC will not be obligated to pay for Goods for each order until that order is completely filled.

2.3.2.3. Supplier shall deliver such Goods in the quantities, at the times, and to the locations set forth in any Release issued by ATC.

2.3.2.4. ATC’s needs for the Goods are determined by the needs of ATC’s customer. When ATC’s customer communicates its needs for ATC’s products to ATC, ATC will determine its needs for Supplier’s Goods, including quantities and delivery dates, and communicate those quantities and delivery dates to Supplier through Releases.

2.3.3. The Purchase Order or Release may specify a firm quantity of Goods or a firm quantity of raw materials or components, as well as a firm delivery date. All firm quantities and delivery dates are binding on both ATC and Supplier.

2.3.4. Unless expressly identified as “firm” or set forth as a fixed quantity on the face of the Purchase Order, all quantities and delivery dates set forth in the Purchase Order or any Release are estimates, and are provided to the Supplier for planning purposes only. ATC shall have no obligation whatsoever to Supplier for any quantities and delivery dates except for those identified as “firm” or set forth as a

fixed quantity on the face of the Purchase Order.

- 2.3.5. Supplier shall maintain sufficient capacity to meet any quantities, including estimated quantities, set forth in the Purchase Order or any Release.
- 2.3.6. Time is of the essence as to all obligations of Supplier under the Purchase Order, including as to the firm quantities and delivery dates identified in the Purchase Order or in any Release.
- 2.4. Unless stated otherwise on the face of the Purchase Order, the duration of the Purchase Order shall be the life of the remanufacturing program(s) into which the Goods are ultimately incorporated (including model refreshes as determined by ATC's customer), and including any period during which ATC is obligated to provide service or replacement parts incorporating the Goods or related to the Services to ATC's customer (the "Term"). ATC and Supplier acknowledge, however, (1) that nothing in this section affects or otherwise changes ATC's rights of termination set forth in these Terms, and (2) that the Term may be lengthened or shortened as a result of ATC's customer increasing or decreasing the life of the applicable vehicle program.
- 2.5. Upon the expiration or termination of any Purchase Order, Supplier shall cooperate with ATC and provide all reasonably requested support and information required by ATC to facilitate ATC's sourcing of the Goods or Services to a replacement supplier.
- 2.6. All Goods, including prototype and production parts, delivered under the Purchase Order shall be in accordance with the Specification. The "Specification" is the drawing and the written specification approved by ATC. ATC may revise or amend the Specification on its own initiative or at the request or suggestion of the Supplier. If, during the course of production of any prototype, Supplier develops any changes or improvements that it has verified are suitable for the intended purpose and required quality of the Goods at issue, Supplier shall inform ATC of that change or improvement so that ATC may consider amending the Specification accordingly.

- 2.7. ATC reserves the right to make, or request that Supplier make, modifications with regard to the Goods, the Specifications, the processes, or the Services at any time. Supplier will, within ten days of the date it is notified of such a modification by ATC, demonstrate the effects of the modification on price and delivery date by means of a cost breakdown and appropriate documentation. If the modification requires any deviation in price or delivery date, ATC and Supplier shall agree on an appropriate adjustment in writing.

3. Contracting of Third Parties / Transfer of Production

- 3.1. Supplier may not subcontract any or all of its obligations under a Purchase Order without the express written consent of ATC.
- 3.2. Regardless of whether Supplier subcontracts some or all of its obligations under the Purchase Order, Supplier remains directly responsible to ATC for the performance of its obligations under the Purchase Order.

4. Delivery Dates and Periods

- 4.1. Time is of the essence, including delivery dates and periods stated in the Purchase Order or any Release. Deliveries shall be made both in the quantities and at the times specified by ATC. Unless a different method is set forth in the Purchase Order, delivery is made when the Goods are received at the ATC plant to be supplied.
- 4.2. Unless stated otherwise on the Purchase Order or in a Release, delivery shall be made FOB Supplier's dock, and shall include the return of the packaging in circulation to Supplier.
- 4.3. Supplier shall notify ATC immediately in writing of any delays that become apparent. Notification must include the root cause of the delay, the revised delivery date, and the corrective actions being implemented to prevent future delivery delays.

- 4.4. **Supplier shall bear all direct and indirect costs that ATC or its customers incur due to a failure to meet delivery dates or timely provide Services.** Such direct and indirect costs include, without limitation, additional freight charges, retrofitting costs, extra shifts, overtime, price differential realized to resource the products or services, production restart costs, and additional expenditures for covering purchases. In the event of such a delay, ATC shall be entitled to recover, in addition to its direct and indirect costs, a liquidated amount equal to 25% of the Purchase Order or Release value for each week of the delay. ATC's right to claim further damages shall remain unaffected by any demand for such liquidated damages. This provision shall apply to any and all delays for which ATC is not responsible. ATC shall not pay for Goods related to any order until such order is fulfilled 100%.
- 4.5. In the event that Supplier is unable to deliver Goods in the quantity specified by a Release to be delivered at a specific time, or timely provide the Services, Supplier is in breach of this contract. In that event, Supplier must inform ATC of this situation as soon as it is apparent to Supplier. Further in that event, ATC may, at its option, procure some or all of the quantity of Goods or the Services that Supplier cannot provide from an alternate supplier. If ATC exercises that option, that action is not a breach of contract by ATC. Further, if ATC exercises that option, Supplier is obligated to compensate ATC for any additional costs or expenses (including a higher price and increased or expedited shipping costs) incurred by ATC in covering for Supplier's failure to deliver Goods or provide Services (i.e., cover or mitigation costs).
- 4.6. ATC's acceptance of a late delivery of Goods or provision of Services shall not effect or waive its right to exercise the rights set forth under Section 4.4 at a later point in time. Furthermore, the acceptance of a late delivery shall not constitute a waiver of any other compensation claims to which ATC may be entitled.

- 4.7. If it becomes apparent that Supplier will permanently be unable to meet the delivery dates or provide the Services, Supplier must, upon the request of ATC, surrender all tools/devices required for production in order to enable ATC to produce or have a third party produce the Goods or provide the Services. ATC's rights to claim damages under Section 4.4 will be unaffected by such a request, and ATC expressly reserves all its repossession rights and remedies, including the right to claim further damages under any security interest, lien, lease, gratuitous bailment or any other document that ATC and Supplier may enter into.

5. Force Majeure

- 5.1. Force majeure, breakdowns for which the affected party is not responsible, riots, acts of public authorities or any other unforeseeable, unavoidable and serious events shall release the parties from their obligation to perform for the duration of the disturbance and to the extent of its effects. ATC shall be entitled to purchase from third parties for the duration of the disturbance.

If the duration of the disturbance is significant, and if the disturbance results in a significant decrease in ATC's need for the Goods or Services, ATC may cancel the portion of the Purchase Order or Release that has not yet been fulfilled, without prejudice to any other rights ATC may have.

- 5.2. Supplier shall notify ATC immediately of any delay within the meaning of section 5.1 that becomes apparent. If Supplier fails to notify ATC to this effect, or fails to notify ATC in due time, and if Supplier is responsible for such failure to notify ATC or to notify ATC in due time, Supplier shall be liable to ATC for the damage that could have been prevented had the notification been given in due time.
- 5.3. Supplier must, within 10 days of accepting the Purchase Order, present to ATC an appropriate emergency plan for the occurrence of the examples listed under section 5.1.

6. Packaging / Shipping / Proof of Origin

- 6.1. All Goods must be properly packed, labeled and shipped in such a manner as to ensure the lowest transportation costs, using customary care and diligence. Unless agreed otherwise, the Goods shall be packed according to the packaging specifications of ATC as applicable from time to time. Supplier shall be liable for any damage due to faulty packaging.
- 6.2. Supplier shall immediately obtain in full any and all documents and other information required under customs provisions or any other applicable state provisions, including, without limitation, (1) drawback documents, (2) all proofs of origin, and (3) any and all other information relating to the origin of the Goods and the materials contained therein under commercial law or provisions governing preferential trade.
- 6.3. If ATC determines a carrier or a means of transport, Supplier shall ship the Goods with such carrier and means of transport.

7. Quality and Environmental

Except as otherwise expressly amended by ATC and Supplier in a written agreement signed by ATC's authorized representative, the Purchase Order is subject to the terms and conditions contained in the ATC Quality Manual, and such terms and conditions are binding on Supplier. In addition, Supplier will maintain an inspection and quality system that is acceptable to ATC and that conforms to (a) any drawings, specifications, and data that are part of the Purchase Order, and (b) any quality program of ATC described in materials referenced in the Order. Supplier shall maintain adequate authenticated inspection and test reports, affidavits, and certifications relating to the work performed under the Purchase Order, shall retain such records for a period of ten years after completion of the Purchase Order or as otherwise specified by ATC in writing, and shall make such records available to ATC upon request. Supplier acknowledges that ATC may reduce its incoming inspection procedures in reliance upon Supplier's maintenance of a quality system as required hereunder.

7.1 Part Approval - Parts supplied must meet the drawing revision level as indicated by the part number(s) on the Purchase Order. For first time shipments of OEM Customer parts, a copy of the Customer approved Parts Submission Warrant (PSW) must be submitted. For first time shipments of non-OEM Customer parts, the appropriate Production Part Approval Process (PPAP) documentation must be approved prior to shipment.

7.2 Restricted Substances – All materials must satisfy all current governmental and safety constraints for restricted, toxic and hazardous materials, as well as environmental, electrical and electromagnetic considerations applicable to the country of manufacture and sale.

7.3 Recycled Material – Suppliers are encouraged to utilize returnable, reusable or recyclable dunnage whenever practical.

8. Competitiveness

Supplier acknowledges that maintaining the competitiveness of the Goods or Services is of critical importance to the parties' commercial relationship. The competitiveness of the Goods or Services is ensured if the Goods or Services correspond to comparable goods of Supplier's competitors in terms of prices and technology. Supplier guarantees that ATC will received most favored pricing. If a comparable product or service is offered to ATC at competitive conditions, ATC will notify Supplier thereof in writing and will set a reasonable period of time, not less than 90 days, for Supplier to restore full competitiveness of the Goods or Services. Upon receiving that notice, Supplier will promptly prepare a catalogue of actions that Supplier will take in order to restore the competitiveness of the Goods or Services, and will furnish ATC with that catalogue, together with a corrected offer. By means of that corrected offer, Supplier must restore competitiveness of the Goods or Services within the period of time set by ATC. **The obligation to maintain competitiveness is a material contractual obligation.** In the event that obligation is breached, ATC may demand adjustment or terminate the agreement in whole or in part for cause.

9. Prices / Transfer of Risk and Transport / Invoicing / Payment

- 9.1. **Each price set forth in the Purchase Order is a fixed price and represents the total price for the manufacturing and delivery of Goods or Services under the Purchase Order. Supplier may not adjust prices or invoice additional costs of any nature whatsoever without first receiving the express written consent of ATC.**

The agreed prices do not include applicable sales tax that shall be added from time to time.

- 9.2. The parties may, as they see fit, enter into special agreements regarding delivery, including agreements to deliver via a consignment warehouse or the use of an advanced shipping notification process.

- 9.3. Invoicing:

9.3.1. Supplier shall invoice ATC upon delivery of the Goods, or regularly during the performance of the Services. Invoices and packing lists must be sent to locations identified by ATC. For shipments that will cross national borders, Supplier must provide the required documentation to parties identified by ATC no later than the time of shipment.

9.3.2. ATC may reject any invoice that does not show the complete Purchase Order number, Release number, and/or any other numbers necessary to identify the contract under which the Goods were manufactured and delivered or the Services provided. If such a rejection occurs, the date of ATC's receipt of a corrected invoice is the relevant date for determining when payment is due.

- 9.3.3. ATC shall make payment for conforming Goods or Services at the price stated in the Agreement. Unless otherwise stated in the Purchase Order, payment terms shall be NET 60, with the 60-day or other period commencing after 100% fulfillment of the Purchase Order. Unless otherwise stated, all payments are in U.S. dollars and include all storage, handling, packing, freight, insurance, taxes, duties, and any other charge of any nature. Supplier represents and warrants that the prices charged to ATC shall be no less favorable than those that Supplier extends to its most-favored customers for like goods and services.
- 9.3.4. ATC's liability for any of the Goods is limited to the price for those Goods shown on the Purchase Order or Release.
- 9.4. In the event of acceptance of an early delivery, the payment terms above shall apply as if the delivery were made on the date set forth in the Purchase Order or Release. Payment shall be made via bank transfer, via check or—where agreed—via credit note procedure, as well as subject to invoice verification.
- 9.5. In the event of defective deliveries, ATC is entitled to withhold payment in proportion to the defect until the defect is resolved.
- 9.6. Without the prior written consent of ATC, Supplier is not entitled to assign to, or have collected by, third parties any of Supplier's claims against ATC. If Supplier assigns Supplier's claims against ATC to a third party without ATC's prior written consent, ATC may at its choice discharge its obligation either towards Supplier or towards the third party.

10. Packing List Requirements

- 10.1. A packing list is required with all deliveries of Goods.
- 10.2. The packing list must include Supplier's name, ATC part number, product description, quantity ordered, quantity shipped, and packing list number.
- 10.3. Failure to provide a packing list with the required information can result in a penalty of 10% of the value of the shipment.

11. Notice of Defects

- 11.1. ATC is not required to perform incoming inspections of any Goods or Services and Supplier waives any right to require ATC to conduct any such inspection. Payment will not constitute acceptance of nonconforming Goods or Services. Any inspection by ATC or its customer does not constitute acceptance of the Goods or Services or a waiver of strict performance and does not relieve Supplier of any liability or warranty for the Goods or Services.
- 11.2. Any payment made prior to the detection of defects or the acceptance of Goods or Services or any other release does not constitute acknowledgement of the Goods or Services being free from defects and does not release Supplier from the warranty.

12. Warranty Claims

- 12.1. Unless agreed otherwise, Supplier warrants that the delivered Goods or Services are free from defects pursuant to law and the following provisions:
 - 12.1.1. Supplier warrants that all Goods (and as applicable, all Services):
 - (1) conform to the Specifications and other requirements for the Goods;
 - (2) are free from any defect in design, production and material;
 - (3) are of merchantable quality; and
 - (4) are fit for the particular purpose for which they are purchased.

- 12.1.2. If Goods are reasonably determined to fail to conform with the warranties set forth in the Purchase Order, including these incorporated Terms (“Defective Goods”), ATC, in its sole discretion, may: (1) request that Supplier, at Supplier’s own risk and expense, rework such Defective Goods or replace such Defective Goods with Goods that conform to the Purchase Order; or (2) if the Defective Goods are already in the production process of ATC or its customer, at Supplier’s cost and expense, have the Defective Goods replaced or reworked by ATC, ATC’s customer, or a third party. If the Defective Goods have already been installed in a product and delivered to ATC’s customer and ATC does not receive the Defective Goods from its customer for inspection, Supplier agrees to accept the determination of ATC’s customer or its agents or contractors (e.g. dealer) as a reasonable determination that the Goods are defective.
- 12.1.3. If Services are reasonably determined to fail to conform with the warranties set forth in the Purchase Order, including these incorporated Terms (“Defective Services”), ATC, in its sole discretion, may (1) request that Supplier, at Supplier’s own risk and expense, re-perform such Services so that they conform to the Purchase Order; or (2) at Supplier’s cost and expense, have the Defective Services re-performed by ATC, ATC’s customer, or a third party.
- 12.1.4. Supplier shall reimburse ATC for all direct and indirect costs incurred by ATC or charged to ATC by its customer in connection with the delivery of a Defective Goods or Services (including without limitation costs for transport, examination, handling, sorting, mantling/dismantling, material, and work).
- 12.2. The warranty period for delivered Goods is 36 months. The warranty period in each case is calculated from the initial registration of the end product (vehicle or machine) or, for Goods for retrofitting purposes, from the assembly of the ATC product. The maximum warranty period in both cases shall be no longer than 60 months from delivery of the Goods.
- 12.3. The warranty period for performed Services is 36 months, calculated from the date of the completion of the performance of each Service.
-

- 12.4. Nothing in this section waives or alters ATC's rights with respect to any claims for damages or costs according to any applicable statutes or laws, including any claims under product liability laws.

13. Recall and Other Field Actions

If ATC or the manufacturer of the vehicles (or any other end products) into which the Goods or products, components, or systems containing the Goods have been assembled performs a recall, any other field- or garage-action, or a customer service campaign, either upon its own initiative or upon the decision of any public authority (hereinafter collectively referred to as a "Recall"), Supplier shall be liable to ATC for any and all damages in connection with the Recall to the extent that the Recall results from the delivery of Defective Goods or from any other breach of the Purchase Order (including these incorporated Terms) by Supplier.

14. Liability

- 14.1. Supplier shall be liable to ATC as specifically set forth in these Terms for any breach of the Purchase Order, and in accordance with any applicable statutory provisions.
- 14.2. If any third party asserts any claim against ATC under liability without fault that arises from the delivery or performance of Supplier and that the third party could also assert against Supplier, Supplier shall indemnify ATC internally to the extent to which Supplier would be directly liable to the third party.

14.3. Indemnification:

14.3.1. Supplier shall indemnify and hold harmless ATC and its affiliated companies, their directors, officers, employees, invitees, agents, and customers (“Indemnitees”) from and against all liability, demands, claims, losses, costs, actions, judgments, fines, penalties, damages and expenses, including reasonable attorney or other professional fees (collectively, “Liabilities”) incurred by ATC or its affiliated companies by reason of or on account of any breach of this Purchase Order, warranty claims, product recall claims, product liability claims, injuries to persons, including death, or damage to property caused by Supplier, its employees, agents, subcontractors, or in any way attributable to the performance of Supplier, its employees, agents, or invitees; provided, however, that Supplier’s obligation to indemnify ATC shall not apply to any liabilities solely arising from ATC’s negligence. Supplier waives the application of the doctrine of comparative negligence and other doctrines that may otherwise allocate the liability covered by Supplier’s indemnity. This indemnification obligation shall be in addition to Supplier’s warranty obligations.

14.3.2. Within a reasonable time of becoming aware of any actual or potential Liabilities, ATC shall notify Supplier. Supplier, at ATC’s option and at Supplier’s expense, will undertake defense of such actual or potential Liabilities through counsel approved by ATC. Before settlement is made of the actual or potential Liabilities, and if the terms of such settlement could materially adversely affect ATC, including any term that admits the existence of a defect in Goods or Services or a failure of ATC to fully and faithfully perform its obligations, Supplier must first obtain written authorization from ATC. In the alternative, ATC may elect to undertake defense of such Liabilities to the extent it is asserted against ATC, and Supplier shall reimburse ATC on a monthly basis for all expenses, attorney and other professional fees, and other costs incurred by ATC.

14.4. Supplier Financial and Operational Condition:

- 14.4.1. Supplier represents and warrants to ATC as of the date of each Purchase Order (which representations and warranties shall be deemed repeated as of the date of Supplier's acceptance of each Release under the Purchase Order and at the time of each delivery under the Purchase Order) that: (1) it is not insolvent and is paying all debts as they become due; (2) it is in compliance with all of its loan covenants and other material obligations, not to exceed quantities in firm production releases; and (3) all financial information provided by Supplier to ATC concerning Supplier is fairly stated in accordance with Generally Accepted Accounting Principles in the United States of America, or Other Comprehensive Basis of Accounting, which basis is clearly stated, and that such financial information presents a true and fair view of the financial condition and results of operations as of Supplier as of the date issued and as of the date supplied to ATC.
- 14.4.2. Upon ATC's request, Supplier shall provide copies of its quarterly and/or annual financial statements, Supplier shall permit ATC or its its representatives to review Supplier's accounting and other records concerning compliance with each Purchase Order and Supplier's overall financial condition, and Supplier also shall provide ATC with full and complete access to all such accounting and other records for such purpose. Supplier agrees that, if Supplier experiences any delivery or operational problems, ATC may, but is not required to, designate a representative to be present in Supplier's applicable facility to observe Supplier's operations. Supplier agrees that, if ATC provides to Supplier any accommodations (financial or other, including providing designated representatives as set forth above) that are necessary for Supplier to fulfill its obligations under any Purchase Order, Supplier shall reimburse ATC for all costs, including attorney fees, accounting fees and other professional fees, incurred by ATC in connection with such accommodation, and shall grant a right of access to ATC to use Supplier's premises, machinery, equipment and other property necessary for the production of Goods covered by such Purchase Order (and a lien to secure the access right) under an access and security agreement. Additionally, Supplier agrees to
-

provide prompt written notice to ATC of any impending or threatened insolvency of the Supplier.

- 14.5. **Limitations on ATC's Liability:** In no event shall ATC be liable to Supplier for anticipated profits or for special, incidental, or consequential damages. ATC's liability for a claim of any kind or for any loss or damage arising out of or in connection with or resulting from each Purchase Order, the Goods, the Services, or any other agreement between ATC and Supplier is limited to any amounts due Supplier pursuant a termination claim under section 23.

15. Insurance

Supplier shall purchase and maintain comprehensive general liability insurance with extended product liability with the coverage for assembly and disassembly costs and recall insurance of motor vehicles with an appropriate limit of indemnity, at least \$5,000,000 per occurrence. Supplier shall provide ATC with evidence of such insurance, regarding both the objects of insurance coverage and the limits of indemnity, by means of an annual written confirmation of the insurer, without special request. Any further claims for damages shall remain unaffected.

16. Proprietary Rights / Rights of Use

- 16.1. Supplier represents that the use of the Goods (or, as applicable, the Services) as intended by ATC does not infringe any domestic or foreign patents, utility models, copyrights, or other intellectual property rights ("Proprietary Rights") of any third party. Supplier shall indemnify ATC from and against all legal disputes, damage, claims or demands arising out of the actual or alleged infringement of Proprietary Rights by the use or the sale of the Goods.
- 16.2. Where the use of the Goods or Services by ATC requires Proprietary Rights of Supplier, Supplier grants ATC free of charge the world-wide, irrevocable right to use, sell, repair, or copy Goods (or, as applicable, Services) that have been delivered under a Purchase Order, either directly or through third parties.

- 16.3. If standard user software is the subject of a Purchase Order, the right of use pursuant to section 16.2 shall apply and be freely transferable. Supplier shall be obliged to provide ATC with the required software. Further payment for multiple use shall be explicitly excluded. Supplier represents that the software is free from any virus or similar defect.
- 16.4. If a Purchase Order contains development work paid for by ATC, either by means of a unique payment or through the price of the parts, any and all results of that development work, including any Proprietary Rights, are the exclusive property of ATC.

17. Product Labeling

- 17.1. Supplier will label the Goods as specified by ATC or as agreed.
- 17.2. Any Goods bearing a trademark proprietary to ATC or provided with corresponding equipment or packed in ATC original packaging may be delivered by Supplier solely to ATC or to a third party designated by ATC. Any further right to use the trademark shall not be granted to Supplier. If correspondingly marked Goods are rejected as defective, Supplier shall disable them at Supplier's cost.
- 17.3. In the event of a violation of any of the obligations in this section, ATC is entitled to cancel the order without notice, and Supplier will surrender that which Supplier gained from the violation as compensation of the damage incurred to ATC.

18. Provided Property

- 18.1. All tools, templates, matrices, measures, devices, forms, samples, and related software, drawings, and any other related documentation ("Tools"), equipment or material, if (1) provided to Supplier by ATC or its customer and (2) paid for directly or through amortization (including, but not limited to installment payments) by ATC, as well as any and all replacements, additions, attachments, accessories, and maintenance ("Provided Property"), are the property of ATC or its customer, unless agreed otherwise, and shall be let to Supplier on a loan basis.

- 18.2. Supplier may use the Provided Property solely for the production of Goods or Services pursuant to a Purchase Order with ATC. Supplier may not use the Provided Property for any other purpose or permit others to use it, unless with prior written consent of ATC.
- 18.3. Provided Property shall be marked clearly as property of ATC or its customer, and shall be stored safely and separately from Supplier's property. Supplier shall at Supplier's own cost maintain the Provided Property in good condition and replace it if necessary. Supplier shall bear the risk of loss and damage of the Provided Property as long as the Provided Property is in the possession or under the control of Supplier. Supplier shall at Supplier's cost insure the Provided Property in the event of loss to an amount equal to the replacement costs that would have to be paid to ATC or its customer. Supplier hereby assigns all claims for payment against the insurer to ATC, and ATC accepts this assignment. Supplier shall treat the Provided Property carefully and safely and shall hold ATC harmless for any claim, liability, costs or damage arising from or in connection with the assembly, use, safekeeping, or repair of the Provided Property. ATC or its customer is entitled to enter Supplier's premises during regular business hours and to inspect the Provided Property and any records relating thereto.
- 18.4. Supplier agrees that ATC shall have the right to remove the Provided Property or request its surrender at any time and without any reason and without any payment. Upon such request by ATC, Supplier shall immediately surrender the Provided Property and prepare it for shipping or deliver it to ATC or its customer. ATC will reimburse Supplier for reasonable delivery costs. Supplier shall have no right of retention with respect to Provided Property, neither from outstanding payment demands nor for any other reason.

- 18.5. Supplier affirmatively waives any lien, whether based in statute or common law, that Supplier might otherwise have on any Goods or Provided Property for work done thereon or otherwise. Supplier assigns to ATC any claims against third parties with respect to Provided Property. Upon request, Supplier will immediately deliver such property at ATC's option F.O.B. ATC's premises (CIF ATC Plant/Delivered ATC Plant), properly packed and marked in accordance with the requirements of the carrier and ATC. Supplier will cooperate with ATC's removal of Provided Property from Supplier's premises. Supplier's cooperation with delivery and removal of ATC's property is not contingent on final payment.

19. Delivery of Spare Parts

For Goods that will be incorporated into products for vehicles, Supplier shall ensure satisfaction of ATC's spare parts requirements for 15 years after the end of production. During this 15-year period, the price shall be the price set forth on the most recent production Purchase Order, plus additional costs for packaging and processing to which ATC agrees. If requested by ATC, Supplier shall provide servicing literature and other materials at no extra cost in order to support the spare parts sales activities of ATC.

20. Confidentiality

- 20.1. The parties shall treat as trade secrets any and all nonobvious commercial and technical information of which they obtain knowledge by reason of the business relationship created by the Purchase Order. This information includes commercial terms and practices, payment practices, drawings, models, templates, samples, or similar items. This information may not be disclosed to, shared with, or otherwise made available to unauthorized third parties. The reproduction of any such item shall only be permitted within the scope of operational requirements and within the scope of copyright, patent, trademark, or trade secret law. Before Supplier may share any of this information with any third party, it must obtain the signed, written authorization of ATC.

- 20.2. If Supplier wishes to share any of the information described in section 19.1 with any subsupplier, Supplier must first: (1) provide notice to ATC of its intent to share information, including the information to be shared, the intended recipient, and the purpose for the sharing, at least five business days before the sharing may take place; and (2) obtain a written agreement signed by the intended subsupplier that provides at least as much protection for the shared information as is provided by these Terms. If, before such information is shared, ATC objects to the sharing, Supplier shall not share that information with the intended recipient.
- 20.3. Supplier may only use the business relationship for advertising purposes with the prior written consent of ATC.

21. Reservation of Title

Upon full and complete payment by ATC, title in the delivered Goods shall pass to ATC. Any prolonged or extended reservation of title by Supplier shall be excluded.

22. Tools of Supplier

- 22.1. Supplier grants ATC the irrevocable option to acquire possession of and title to any tools that are necessary for, and specific to, the production of the Goods (“Necessary Tools”), against payment of their present value, after deduction of any amounts already paid to Supplier by ATC or amortized via the purchase price of the Goods. Such option shall not exist where Supplier needs the Necessary Tools in order to manufacture Supplier’s other standard products.
- 22.2. Supplier will provide ATC with any technical information required by ATC in order to install, assemble or otherwise use the Necessary Tools. Technical Information shall include design drawings, component drawings and installation drawings, and other technical documentation, test logs and results, data or any other information relating to Goods and tools. Subject to Supplier’s patent and proprietary rights, technical information may be used and published by ATC without any limitation. Design or production information that is subject to any intellectual property right of Supplier may be used by ATC only for its own purposes.

23. Set-Off Clause

ATC is entitled to offset any claim, whether due or not due, present or future, that ATC may have against Supplier or to offset against any such claim that Supplier may have against any of the ATC Companies.

24. Right of the Contractual Partners to Cancel and/or Terminate / Duty to Inform

24.1. ATC may terminate all or any part of a Purchase Order at any time and for any reason by giving 30 days' written notice to Supplier.

24.2. In the event that ATC's customer terminates its order with ATC for any reason, ATC may terminate all or any part of a Purchase Order by giving written notice to Supplier. A notice period of 30 days or of any other length is not required—the termination may be immediate.

24.3. ATC reserves the right to terminate immediately all or any part of each Purchase Order, without any liability to Supplier, in the event of any default or breach of the Purchase Order by Supplier. The following are causes, among others, allowing ATC to terminate the Purchase Order for default or breach:

24.3.1. if Supplier repudiates, breaches or threatens to breach any of the terms of the Purchase Order including, without limitation, Supplier's warranties;

24.3.2. if Supplier fails to perform or deliver Goods or perform Services as specified by ATC;

24.3.3. if Supplier fails to provide ATC with adequate and reasonable assurance of Supplier's ability to perform timely any of Supplier's obligations under any Purchase Order or Release, including, without limitation, delivery of Goods or performance of Services;

- 24.3.4. if ATC terminates for breach any other Purchase Order issued by ATC to Supplier in accordance with the terms of such Purchase Order (whether or not such other Purchase Order is related to this Purchase Order); or
 - 24.3.5. if Supplier, after being provided with the notice described in Section 8, fails to remain competitive with respect to price, quality, delivery, technology, payment terms, or customer support.
- 24.4. In addition to its other remedies, ATC may, at its option, terminate this purchase order without any liability to Supplier for a change of control of Supplier. A change of control of Supplier includes:
- 24.4.1. the sale, lease or exchange of a substantial portion of Supplier's assets used for the production of Goods, or the entrance into an agreement by Supplier regarding the same;
 - 24.4.2. the sale or exchange of more than 20% of Supplier's stock or other ownership interest (or of such other amount as would result in a change of control of Supplier), or the entrance into an agreement regarding the same;
 - 24.4.3. the execution of a voting or other agreement providing a person or entity with control of Supplier or control of more than 20% of Supplier's stock or other ownership interest (or of such other amount as would result in a change of control of Supplier).

Supplier shall notify ATC promptly in writing in the event of the earlier of the entrance into an agreement or the occurrence of an event described in this section. In the event of a termination pursuant to this paragraph, ATC shall give Supplier written notice of the termination at least 30 days prior to the effective termination date.

- 24.5. ATC may immediately terminate each Purchase Order without any liability of ATC to Supplier upon the occurrence of any of the following or any other similar or comparable event (each, a "Supplier Insolvency"):
- 24.5.1. insolvency of Supplier;

- 24.5.2. Supplier's inability to promptly provide ATC with adequate and reasonable assurance of Supplier's financial capability to perform timely any of Supplier's obligations under any Purchase Order;
 - 24.5.3. filing of a voluntary petition in bankruptcy by Supplier;
 - 24.5.4. filing of an involuntary petition in bankruptcy against Supplier;
 - 24.5.5. appointment of a receiver or trustee for Supplier; or
 - 24.5.6. execution of an assignment for the benefit of creditors of Supplier.
- 24.6. Termination Claims:
- 24.6.1. Upon receipt of notice of termination, Supplier, unless otherwise directed in writing by ATC, shall (1) terminate immediately all work under the Purchase Order or Release; (2) transfer title and deliver to ATC the usable and merchantable finished Goods, work in process, and raw materials/components that Supplier produced or acquired in accordance with firm Release amounts under the Purchase Order and that Supplier cannot use in producing Goods for itself or for others; (3) settle all claims by subcontractors approved by ATC on the face of a Purchase Order or in a signed writing, if any, for reasonable actual costs that are rendered unrecoverable by such termination; (4) take actions reasonably necessary to protect property in Supplier's possession in which ATC has an interest; and (5) upon ATC's request, cooperate with ATC in effecting the resourcing of the Goods or Services covered by the Purchase Order to an alternative supplier designated by ATC.

- 24.6.2. Upon termination of any Purchase Order or Release by ATC for convenience or for change in control, ATC shall pay to Supplier the following amounts without duplication: (1) the Purchase Order price for all finished and completed Goods or provided Services that conform to the requirements of the Purchase Order and not previously paid for, provided that such Goods constitute 100% fulfillment of the related Purchase Order; (2) Supplier's reasonable actual cost of the usable and merchantable work in process and raw materials/components transferred to ATC in accordance with Section 24.6.1; (3) Supplier's reasonable actual cost of settling claims for Supplier's obligations (in the absence of termination) to the subcontractors approved by ATC on the face of a Purchase Order or in a signed writing; and (4) Seller's reasonable actual costs of carrying out its obligations under this section.
- 24.6.3. Upon termination for default, Supplier shall not be entitled to any further payments by ATC.
- 24.6.4. Except as expressly set forth in this Section 24, ATC shall not be liable for and shall not be required to make payments to Supplier, directly or on account of claims by Supplier's subcontractors, for any alleged losses or costs, whether denominated as loss of anticipated profit, unabsorbed overhead, interest on claims, product development and engineering costs, facilities and equipment rearrangement costs or rental, unamortized depreciation costs, ancillary exit charges (including, but not limited to, costs of riggers, warehousing, premium manufacturing costs, loading of trucks or other standard business procedures related to transitioning production to an alternative supplier), or general and administrative burden charges resulting from termination of the Purchase Order or otherwise. Notwithstanding anything to the contrary, ATC's obligation to Supplier upon termination shall not exceed the obligation ATC would have had to Supplier in the absence of termination.

24.6.5. Within 30 days after the effective date of termination for convenience or for change in control, Supplier shall furnish to ATC its termination claim, together with all supporting data that shall consist exclusively of the items of ATC's obligation to Supplier that are listed in this Section 24. ATC may audit Supplier's records before or after payment to verify amounts requested in Supplier's termination claim.

25. General Provisions

- 25.1. Should any provisions of the Purchase Order, any Release, these Terms, or any other related or incorporated documents be found invalid, the validity of the remaining documents and Terms shall remain unaffected. The parties are obliged to replace the invalid provision by a provision that comes as closely as possible in terms of economic results to the invalid provision.
- 25.2. For the purposes of interpreting the Purchase Order, the place of performance shall be the ATC facility at which the Goods are to be delivered. In the event that the Goods are delivered somewhere other than a ATC facility, the place of performance shall be deemed to be the ATC facility in Oklahoma City, Oklahoma.
- 25.3. **Governing Law:** The Purchase Order, including these incorporated Terms, shall be governed by and construed in accordance with the laws of the State of Oklahoma. The provisions of the United Nations Convention on Contracts for the International Sale of Goods does not apply to the Purchase Order. Any conflict-of-laws or choice-of-law provisions or principles that would require application of the laws of a jurisdiction other than those of the State of Oklahoma are excluded.

- 25.4. **Jurisdiction:** Any action hereunder shall be subject to the exclusive jurisdiction of the state and federal courts having jurisdiction over Oklahoma City, Oklahoma, without giving effect to the principles thereof relating to conflicts or choice of law. The parties consent to the jurisdiction of these courts. The parties agree that any action filed in any other court may be transferred to one of these courts at the request of ATC. Further, if ATC seeks to transfer an action from any court to one of the state or federal courts having jurisdiction over Oklahoma City, Oklahoma, Supplier consents to the transfer and agrees not to oppose the transfer. The remainder of this section notwithstanding, ATC may bring a lawsuit in any court with jurisdiction over Supplier.
- 25.5. **Exclusive Venues:** The parties agree that the exclusive venues in which any dispute arising under or relating to the Purchase Order may be litigated are the courts identified in Section 25.4. The parties further agree that any lawsuit brought in any court other than those identified in Section 25.4 may be dismissed as improperly venued. The remainder of this section notwithstanding, ATC may bring a lawsuit in any court with jurisdiction over Supplier.
- 25.6. **Arbitration:**
- 25.6.1. The arbitration provisions of this section will be governed by the United States Federal Arbitration Act. If any of the arbitration provisions of this section are found to conflict with the Federal Arbitration Act, that provision shall be modified in order to comply with the Act. If any of the arbitration provisions of this section are determined to be ambiguous, the interpretation that is consistent with the Act shall govern.

- 25.6.2. At ATC's option, exercised by written notice any time before or within 30 days following the service of process in a legal action, any dispute regarding the Goods or Services, the Purchase Order, the validity of the Purchase Order or any of these Terms, or any other matter between the parties (other than requests for equitable or injunctive relief or specific performance) will be resolved by binding arbitration, conducted in the English language using a single arbitrator. Within 14 days of receiving such a notice, Supplier shall voluntarily dismiss any lawsuits pending against ATC with prejudice.
- 25.6.3. Any arbitration shall be conducted under the commercial arbitration rules of the American Arbitration Association ("AAA") and under Rules 26 through 37 of the U.S. Federal Rules of Civil Procedure.
- 25.6.4. Any arbitration shall be conducted in Oklahoma City, Oklahoma, or, unless otherwise agreed by the parties.
- 25.6.5. Any arbitration will take place before a single arbitrator who will be selected from an AAA list using the AAA-recommended selection method. The arbitrator will issue written findings of fact and conclusions of law.
- 25.6.6. Each party will bear equally the costs and expenses of AAA and of the arbitrator, and each party will bear its own costs and expenses—provided, however, (1) that the failure by one party to pay its share of arbitration fees constitutes a waiver of such party's claim or defense in the arbitration, and (2) that the arbitrator may award attorneys' fees and costs to the substantially prevailing party.
- 25.6.7. In no event will any party be awarded punitive or exemplary damages or any other damages not measured by the prevailing party's actual damages.

25.6.8. All arbitration proceedings shall be confidential, except to the extent that disclosure is necessary to enforce an arbitration award in a court of competent jurisdiction.

25.6.9. The award of the arbitrator will be enforceable in any court of competent jurisdiction, provided that either party may appeal to the appropriate court as identified in Section 25.4 for correction of any clear error of fact or law by the arbitrator (provided that the appealing party must first post an appropriate bond and that the prevailing party in any such action will be entitled to its attorneys' fees and costs). A judgment of the appropriate court may be rendered upon the award made pursuant to these Terms.

26. US C-TPAT (U.S. Customs Service's Customs Trade Partnership Against Terrorism)

For Goods to be imported in the United States, Supplier shall accept, implement, and comply with all applicable recommendations or requirements of the United States Customs Service's Customs Trade Partnership Against Terrorism ("C-TPAT") initiative:

http://www.cbp.gov/xp/cgov/import/commercial_enforcement/ctpat/

At ATC's or the Customs Service's request, Supplier shall certify in writing its acceptance, implementation and compliance with the C-TPAT and any accompanying recommendation and guidelines. Supplier shall indemnify and hold ATC harmless from and against any liability, claims, demands or expenses (including attorney or other professional fees) arising from or relating to Supplier's not accepting, implementing or complying with C-TPAT.

27. Federal Contracts / Fair Labor Standards

To the extent required by law, the following clauses relating to contracts with the U.S. Government are incorporated into and made applicable to all Purchase Orders: (1) the Equal Opportunity clause, 41 CFR 60-1.4; (2) the Affirmative Action for Disabled Veterans & Veterans of the Vietnam Era clause, 41 CFR 60-250.4; (3) the Affirmative Action for Handicapped Workers clause, 41 CFR 60-741.4; (4) Executive Order 13201; and (5) FAR regulations. Supplier hereby agrees to comply with all applicable requirements of sections 6.7 and 12 of the Fair Labor Standards Act, 29 USC §§ 201 *et seq.* in the performance of work under any purchase order, and with all applicable regulations and orders issued under section 14 thereof.

28. Compliance with Laws and Certifications / Toxic Substances / OSHA

28.1. Supplier shall comply with all applicable laws, rules, regulations, orders, conventions, or standards enacted by the United States of America that regulate the manufacture, labeling, transportation, licensing, approval, or certification of products or services, including but not limited to, those relating to environmental matters, data protection and privacy, wages, hours and conditions of employment, subcontractor selection, discrimination, occupational health/safety, and motor vehicle safety, and each Purchase Order shall be deemed to incorporate by reference all the clauses required by the provisions of said laws, Purchase Orders, rules, regulations, and ordinances. Among other things, Supplier agrees to comply with the Occupational Safety & Health Act, 29 U.S.C. §§ 651 *et seq.* and the Toxic Substance Control Act, 15 U.S.C. §§2601 *et seq.*

- 28.2. All purchased materials used in manufacture of the Goods shall satisfy current governmental and safety constraints on restricted, toxic, and hazardous materials as well as environmental, electrical, and electromagnetic considerations applicable to the country of manufacture and sale. Prior to shipment, Supplier will furnish applicable Material Safety Data Sheets as well as information on the safe use and hazards associated with use of the Goods. Supplier must be in compliance with ISO14001, TS16949 and ELV or their successors, as amended from time to time. Supplier further represents and warrants that neither it nor any of its subcontractors will utilize child, slave, prisoner or any other form of forced or involuntary labor, or engage in corrupt business practices, in the supply of the Goods under this Purchase Order. At ATC's request, Supplier shall certify in writing its compliance with the foregoing.
- 28.3. Supplier shall indemnify and hold ATC harmless from and against any liability claims, demands or expenses (including, without limitation, attorney or other professional fees) arising out of or in connection with Supplier's noncompliance with the provisions of this section.

29. Notices

Whenever the Order or its incorporated Terms requires the giving of written notice to Buyer or Supplier, such notice shall be mailed via certified or registered mail, return receipt requested, and proper postage prepaid (along with a courtesy copy by email), to the following addresses—

As to Buyer: Attn: Director of Procurement
 ATC Drivetrain LLC
 9901 West Reno Avenue
 Oklahoma City, Oklahoma 731
 procurement@atcdt.com

As to Supplier: Supplier's most current address on file with Buyer

—and shall be deemed duly given on the date the mailed notice is received by the addressee.