

# Supplier Terms & Conditions

**Last Update: March 15, 2012**

These terms and conditions will apply to all Purchase Orders (which term shall include all purchase orders and all releases against blanket purchase orders and these Terms and Conditions) issued by Wolverine Advanced Materials, LLC or its subsidiaries as Buyer to you as the Seller for goods or services.

## **1. OFFER; ACCEPTANCE:**

A Purchase Order is an offer by Buyer to Seller to enter into a contract for the sales of the goods or services described therein. A Purchase Order shall be deemed to have been accepted by Seller and constitute a binding contract upon the earlier of (i) the date of Seller's signed acknowledgment of a Purchase Order, or (ii) the date Seller commences work under such Purchase Order, regardless of whether Seller ever signs or returns a copy of the Purchase Order, Buyer may revoke its offer or terminate a Purchase Order without liability to Seller at any time before Buyer receives actual notice of Seller's acceptance.

## **2. PURCHASE ORDER AND TERMS & CONDITIONS GOVERN:**

A Purchase Order, including these Terms and Conditions, will be complete and exclusive statement of the contract between Buyer and Seller. Buyer rejects and additional or inconsistent terms in any offer, counter-offer, or other document from seller. Seller agrees that any such additional or inconsistent terms shall have no force and effect. It is the parties' intent that a Purchase Order, including these Terms and Conditions, shall exclusively govern the relationship of the parties with respect to its subject matter. Without limiting the generality of the foregoing, Buyer may accept conforming or nonconforming goods tendered by Seller and such action shall not modify the applicable Purchase Order, including these Terms and Conditions, regardless of whether any document from Seller states that acceptance of such goods constitutes acceptance of additional or inconsistent terms proposed by Seller.

## **3. BLANKET PURCHASE ORDERS:**

If a Purchase Order states that it is a "blanket" order or does not specify delivery dates (in either case referred to herein as a "Blanket Order"), then Seller shall procure materials and manufacture and/or assemble and ship products only as authorized by and in accordance with shipping releases issued from Buyer from time to time. The quantities shown on a Blanket Order shall only be estimates of annual requirements and shall not constitute a minimum order from Buyer unless the Purchase Order expressly so states on its face. Seller shall supply up to 150% of the annual quantities shown on a Blanket Order upon request of Buyer through shipping releases. A purchase Order shall not obligate Buyer to purchase a particular quantity or percentage of its requirements of the subject product or service from Seller, or prohibit Buyer from purchasing the same or similar parts from other suppliers, unless the Purchase Order expressly so states on its face..

## **4. TIME OF THE ESSENCE:**

Seller agrees that time is of the essence. Seller further agrees that if Seller fails to deliver conforming goods or services pursuant to the schedule(s) set forth in a Purchase Order, Buyer may obtain substitute or replacement goods or services without notice to Seller and thereafter reject any late goods or services tendered by Seller, even if conforming, and/or elect to terminate the Purchase Order by written notice to Seller. Seller shall be responsible for all general, consequential, and incidental damages incurred by Buyer as a result of Seller's failure to meet delivery schedules with conforming goods,

including, but not limited to, the cost of any line shutdown, the cost of obtaining goods from an alternate source and/or expedited or premium freight or transportation costs. Buyer's actions in obtaining substitute or replacement products shall not constitute an election or remedies, nor shall it in any way limit the rights and remedies of Buyer under the Purchase Order for breach by Seller.

## **5. PRICE:**

Seller shall supply goods or services indicated in Purchase Order at the prices provided therein for the period specified in the Purchase Order, or if no period is specified, for the period for which Buyer produces the product for which Buyer uses the goods or services covered by the Purchase Order, unless earlier terminated pursuant to the provisions of the Purchase Order. Prices shown on the Purchase Order are not subject to increase unless agreed in writing by Buyer. Seller shall promptly notify Buyer of any reduction in Seller's cost of producing the goods or providing the service under a Purchase Order from Seller's cost as of the date of the Purchase Order, including the amount of cost reduction per unit. Seller certifies that the prices in a Purchase Order are not higher than the prices being charged to other customers purchasing similar goods in similar quantities at this time. If Seller's quoted prices to other customers for goods or services similar to those sold under a Purchase Order in similar quantities are reduced (whether in the form of a price reduction, close-out, rebate, allowance, or free or reduced price other goods or services), Seller agrees that the price to Buyer for goods or services covered by such Purchase Order will be reduced accordingly, and that Buyer will be billed at such reduced prices, retroactive to the first reduction to another customer. If a price is not shown on the face of a Purchase Order, the price shall be that of the last previous order given by Buyer to Seller, subject to the provisions of this section.

## **6. CHANGES:**

(a) Buyer shall have the right, by written notice, to suspend work or make changes from time to time in the goods or services to be provided by Seller under a Purchase Order, or the delivery thereof. Unless subject to subsection (b) below, if such changes cause an increase or decrease in the cost of performance of a Purchase Order, an equitable adjustment shall be negotiated promptly and in good faith by the parties, and the Purchase Order shall be modified in writing accordingly. Any claim by Seller for adjustment under this section must be asserted in writing within twenty (20) days from the date of receipt by Seller of notification of the change or suspension, and shall be followed as soon as practicable with a specification of the amount claimed with supporting cost figures.

Seller may not make any changes to a Purchase Order without the express written consent of Buyer. (b) Following the occurrence of an event, circumstance or condition beyond the reasonable control of Buyer, such as acts of God, actions by any government authority, actions by a customer, strike, work slowdown or other labor unrest, fires, floods, windstorms, explosions, riots, natural disasters, wars, or sabotage, Buyer shall have the right, by written notice, to suspend work or make changes in delivery schedules for the goods or services to be provided by Seller under a Purchase Order, without liability to Seller. If the suspension or any material change in delivery schedule lasts more than thirty (30) days, Seller may cancel the subject Purchase Order without liability by written notice to Buyer given within two (2) days after the expiration of such 30 day period.

## **7. QUANTITIES:**

Seller shall supply goods or services indicated in a Purchase Order in the quantities provided therein for the period specified in the Purchase Order, or if no period is specified, for the period for which Buyer produces the product for which Buyer uses the goods or services covered by the Purchase Order, unless earlier terminated pursuant to the provisions of the Purchase Order. Buyer shall have no obligation to accept over shipments. In the event of an over shipment Buyer may, at its option (i) retain goods shipped in excess of the quantities stated in the Purchase Order, at the price set forth in such Purchase Order, or (ii) return such items to Seller at Seller's expense.

## **8. TERMINATION:**

a) A Purchase Order may be terminated by Buyer at any time without liability upon three months prior written notice to Seller. (b) Buyer may by written notice to Seller terminate a Purchase Order in whole or in part at any time at Buyer's convenience. Such termination shall not constitute a default by Buyer. In such event, Seller shall (i) immediately stop all work on such Purchase Order, and (ii) upon request by Buyer, transfer title and deliver all finished goods, work in process and/or raw materials which Seller produced or acquired in connection with such Purchase Order. In the event of a termination for convenience by Buyer (but not termination after default by Seller), Seller shall be reimbursed for (i) the Purchase Order price for all finished goods or performed services which conform to the Purchase Order and are delivered to Buyer, and (ii) Seller's reasonable actual cost of work in process or raw materials which Seller produced or acquired in connection with such Purchase Order and which Seller cannot reasonably use in its operations within 90 days after the date of termination. Seller shall finish any claim for reimbursement of costs within 30 days after termination or any such claim shall be deemed to have been waived. Buyer shall have the right to audit Seller's books and records to verify any such claim. If Buyer's audit discloses a discrepancy in Seller's claim of more than 10%, then Seller shall reimburse Buyer for all costs incurred in connection with such audit. (c)

Following a default by Seller under any contractual obligation to Buyer, including but not limited to a failure to deliver conforming goods on time or any delivery of nonconforming goods, Buyer may by written notice to Seller terminate all Purchase Orders with Seller.

Such termination shall be in addition to, not in lieu of, any and all other remedies available to Buyer for such default. (d) Buyer's obligation to Seller on termination, if any, shall be limited to the express provisions of this section. Without limiting the generality of the foregoing, Buyer shall not be liable for any lost profits or incidental or consequential damages. (e) Seller's obligations under the warranty, intellectual property, and confidentiality provision of a Purchase Order, and all of Buyer's rights and remedies for any breach of a Purchase Order, shall survive any termination.

## **9. PACKING, SHIPPING AND MARKING:**

Unless otherwise provided in a Purchase Order, Seller shall ship products in shipping containers supplied by Buyer, which shall remain the property of Buyer. Seller will pack each shipping container with the quantity of parts indicated in a Purchase Order. Seller will affix a bar code conforming to Buyer's requirements to each shipping container containing the information required by a Purchase Order.

## **10. COMPLIANCE WITH LAW:**

(a) Seller warrants that the goods to be furnished and/or services to be provided under any Purchase Order shall be manufactured, sold, and shipped in compliance with all applicable foreign, federal, state, and local laws and regulations. (b) Without limitation of the foregoing, Seller certifies that all equipment and materials delivered hereunder are in conformance with the latest OSHA requirements, comply with all applicable U.S. Department of Transportation regulations on hazardous materials, and any other pertinent federal, state, or local statutes, laws, rules or regulations with respect to hazardous materials. (c) Without limitation of the foregoing, Seller also specifically certifies that in the performance of this contract, it will strictly comply with the following while they are in effect, and any successor laws, regulations or executive orders in effect from time to time;

- Federal Fair Labor Standards Act (29 USC 201 et seq.)
- Employment of the Handicapped (29 USC 793 and 20 CFR 741.01 et seq.)
- Equal Employment Opportunity (Executive Orders 11246, 11758 and 12138)
- Socially and Economically Disadvantaged Small Business Concerns (PL95-507)

(d) Without limitation of the foregoing, for any goods shipped to European destinations, Seller will comply with the "European Agreement Concerning the International Carriage of Dangerous Goods."

## **11: DRAWINGS AND SPECIFICATIONS:**

The most recent drawings and specifications provided by Buyer to Seller prior to acceptance of a Purchase Order shall be incorporated by reference into such Purchase Order. In the event of any inconsistency between any provision of such drawings or specifications and the Purchase Order (prior to such incorporation), the Purchase Order (prior to such incorporation) shall prevail.

## **12. QUALITY CONTROL:**

Seller shall maintain manufacturing and process control plans with a minimum process capability of 1.67 CPK on all significant characteristics, and 1.33 CPK on all other machine specifications. Vendor shall maintain a QS-9000 certification (or any successor standard) from the Automotive Industry Action Group (or any successor organization) at all times.

## **13. INSPECTIONS; NONCONFORMING GOODS:**

Buyer shall have no obligation to inspect any goods supplied by Seller. If Buyer inspects any such goods and discovers any nonconforming goods, then thereafter Buyer shall be entitled to inspect each good supplied and Seller shall reimburse Buyer for all costs incurred in connection with such inspection program, including but not limited to the cost of sorting and warehousing nonconforming goods. Buyer, at its option and at Seller's expense, may, without prejudice to any other remedies available to Buyer, reject and return, or retain and correct, any goods that do not conform to the requirements of a Purchase Order even if the nonconformity is not discovered until the use of such goods or the manufacture of products made with such goods. Seller will reimburse Buyer for any and all costs incurred in connections with any nonconforming goods, including but not limited to the processing of rejects and/or cost of rework, obtaining conforming goods from an alternate source, any line shutdown, and rework or scrapping of any Buyer products which incorporate Seller's goods, and all costs and expenses incurred by Buyer from any of its customers which purchase Buyer products which incorporate Seller's goods, including but not limited to the cost of any recalls. Payment by Buyer for any goods delivered by Seller shall not constitute acceptance by Buyer thereof. Buyer's failure to inspect shall not relieve Seller of any liability or obligation. Buyer shall have the right to reject an entire lot or shipment if it discovers a piece in such lot or shipment that does not conform to the requirements of a Purchase Order. Buyer shall be entitled to work overtime in response to any nonconforming goods supplied by Seller and such overtime charges shall be included in Buyer's damages.

## **14. INSURANCE:**

(a) Seller shall, at its own cost and expense, maintain, and carry general liability, product liability, and property damage insurance. All insurance will be maintained in such amounts with such deductibles as are commonly carried by prudent businesses similarly situated or as is otherwise required by applicable law. (b) In the event that any property of Buyer (including, but not limited to, tooling) shall be held at Seller's place of business, Seller shall make Buyer an additional insured on such insurance policies for purposes of covering Buyer's property.

## **15. WARRANTIES:**

Seller expressly warrants that all goods and services will be manufactured, provided, and transported in full and complete conformity and in compliance with all Purchase Order requirements, specifications, drawings, samples and other descriptions furnished or specified by Buyer. Seller further expressly warrants that all products will be merchantable, of good material and workmanship and free for defects. Provided only that Seller has not supplied the design for products sold hereunder, Seller expressly warrants that the design of said products shall be free from defects. Seller further warrants that all products will be fit and sufficient for the purposes intended by Buyer.

Seller represents and warrants that any goods or services supplied pursuant to a Purchase Order, and the sale by Buyer of products incorporating such goods or services, will not infringe on any present or future patent, copyright, trademark, service mark or other intellectual property right of any person. Seller agrees that all statements made by it to Buyer (including but not

limited to in any sales literature) constitute warranties upon which Buyer may rely. All warranties expressed herein are in addition to any other warranties provided at law, expressed or implied. Seller agrees that any and all potentially applicable implied warranties shall be available to Buyer.

## **16. REMEDIES:**

Buyer's remedies are cumulative and in addition to all remedies set forth herein or available to law. Buyer's remedies shall include, but not be limited to, incidental and consequential damages and the cost of any recall campaigns or other corrective actions. Buyer shall be entitled to set off any damages against amounts owing to Seller. Buyer's resort to any particular remedy, or its forbearance in exercising any remedy available to it, shall not constitute an election or waiver of remedy.

## **17. INDEMNIFICATION:**

Seller shall defend, indemnify, and hold harmless Buyer and Buyer's shareholders and affiliates and its and their respective directors, officers, employees and agents from any and all damages, liabilities, claims, losses, suits, legal actions, investigations, or any threat of shame, and any costs incurred in connection therewith (including but not limited to fees and expenses of lawyers and other professionals incurred in investigating or defending the same and any cost of a product recall) (collectively, "Damages") arising out of or related to any goods or services provided under a Purchase Order or any breach of a Purchase Order. In the event of any claim subject to indemnification hereunder (a "Claim"), Buyer may, at its sole option (i) tender such Claim to Seller to defend using lawyers and other professionals acceptable to Buyer in its discretion, or (ii) defend such Claim by counsel of Buyer's choosing and Seller shall reimburse Buyer for all costs of such defense, and in either case Seller shall indemnify and hold Buyer harmless from and against all damages arising out of or relating to such Claim. If Buyer tenders the defense of a Claim to Seller and Seller accepts such defense, then Seller shall be conclusively deemed to have agreed that such Claim is subject to indemnification hereunder and that Seller has no claim or counterclaim against Buyer, all of which shall be deemed to have been waived. If Seller assumes the defense of a Claim and thereafter fails to vigorously defend such Claim, Buyer shall have the right at its option to assume the defense of such Claim and Seller shall remain obligated to indemnify Buyer hereunder. If Seller assumes the defense of a Claim, it will not settle or comprise such Claim without the prior written consent of Buyer.

## **18. INTELLECTUAL PROPERTY & CONFIDENTIALITY:**

Any invention or intellectual property, including all drawings and/or computer files relating thereto, first made or conceived by Seller in the performance of this Purchase Order, or which is derived from or based on the use of information supplied by Buyer, shall be considered a "work made for hire" and shall be the sole property of Buyer. Seller agrees to execute such documents as Buyer deems necessary to perfect Buyer's title to the same. (b) Seller grants to Buyer a nonexclusive, worldwide, permanent, irrevocable, fully paid and royalty free license, with an unrestricted right to sublicense others, to use any patent, copyright, trademark or service mark or other intellectual property right of Seller, including but not limited to any such rights related to manufacturing processes, (i) to manufacture or have manufactured products of the type covered by a Purchase Order for use in products or assemblies produced by Buyer and to sell such products or assemblies, or (ii) to incorporate products supplied by Seller into products or assemblies produced by Buyer and to sell such products or assemblies. (c) At Buyer's request, Seller shall consult with Buyer and deliver to Buyer with all documentation, drawings and computer files regarding all information covered by the preceding sections (a) and (b). (d) Seller shall not acquire any rights in any patent, copyright, trademark, service mark or other intellectual property right of Buyer except for a nonexclusive nontransferable license to use any such intellectual property solely to produce products for Buyer pursuant to a Purchase Order. (e) All non-public information, regardless of whether identified as confidential or not, disclosed by Buyer to Seller or developed by Seller in connection with the goods and services supplied under or pursuant to a Purchase Order shall be maintained as strictly confidential by Seller. Seller agrees not to disclose any such information without the prior written consent of Buyer except as required by legal process. If Seller is required by legal process to disclose any such information, it shall immediately notify Buyer and use all available efforts to resist such disclosure or, if such resistance is unsuccessful, to obtain a protective order.

## **19. SAMPLES:**

Seller will supply a reasonable quantity of samples of any part free of charge in accordance with Buyer's quality standard QS-9000 and/or its applicable supplements.

## **20. BAILED PROPERTY:**

Seller bears all responsibility for loss of and/or damage to any property owned by Buyer and possessed by Seller ("Bailed Property"), including responsibility for loss and damage which occur despite Seller's exercise of reasonable care, but excluding normal wear and tear. Seller will (i) properly house and maintain such Bailed Property on Seller's premises, (ii) prominently mark it property of Buyer, (iii) refrain from commingling it with the property of Seller or with that of a third party, and (iv) adequately insure such Bailed Property against loss or damage. Buyer will have the right to enter Seller's premises at reasonable times to inspect such Bailed Property and Seller's records pertaining thereto. Seller waives any lien which Seller might otherwise have on any Bailed Property for work done thereon or otherwise. Seller shall indemnify Buyer against any claim adverse to Buyer's ownership of any Bailed Property, except as such claims may result from any acts or omissions of Buyer. Seller waives its right to object to the repossession of any Bailed Property by Buyer in the event Seller is involved in bankruptcy or other insolvency proceedings. Seller hereby assigns to Buyer any claims Seller has against third parties with respect to Bailed Property.

Upon request by Buyer, Seller immediately will deliver any Bailed Property DDP (International Chamber of Commerce Incoterms 1990) to Buyer's facility, properly packed and marked in accordance with the requirements of the carrier and Buyer.

## **21. REPLACEMENT PARTS:**

At Buyer's request during the ten year period following completion of a Purchase Order, Seller will sell to Buyer parts covered by such Purchase Order in amounts as are necessary for Buyer to fulfill service and replacement obligations to its customer(s), at the price specified in such Purchase Order plus any actual cost differential from Seller's cost of performance at completion of the Purchase Order.

## **22. SALES AND USE TAXES:**

Seller will not charge to Buyer any sales or use taxes on any goods or services. Buyer will use all goods or services for resale or in industrial processing or manufacturing or will attach them to taxable goods for sale.

## **23. CHOICE OF LAW & VENUE:**

(a) The parties agree that any Purchase Order and the contract created hereby shall be construed according to the laws of the State of Michigan. (b) Seller agrees that any action brought by Seller to enforce any Purchase Order, or with respect to the interpretation thereof, shall be brought exclusively in the state court of general jurisdiction with jurisdiction over Buyer's principal place of doing business, and at that such court shall have exclusive venue over any such dispute, and Seller submits to the jurisdiction of such court in any action brought by Buyer.

## **24. MISCELLANEOUS:**

(a) Seller may not assign its right or obligations hereunder without the express written consent of Buyer. A "Change of Control" of Seller (as defined below), a merger in which the Seller is not the surviving entity, or a consolidation to which the Seller is a constituent, shall constitute an attempted assignment of a Purchase Order by Seller. As used herein, a "Change of Control" shall occur if a person or group of persons acting in concert who do not as of the date of a Purchase Order directly or indirectly control more than 50% of the voting power of Seller subsequently acquires such control. Buyer may assign its rights under a Purchase Order. (b) A Purchase Order shall constitute the entire agreement between the parties with respect to

its subject matter, and shall supersede all prior and contemporaneous agreements, representations, and understanding of the parties with respect to its subject matter. (c) The failure of Buyer to insist upon strict adherence to any provision of a Purchase Order shall not be considered a waiver or deprive Buyer of the right thereafter to insist upon strict adherence to that term or any other term of the Purchase Order. Any waiver of any provision of a Purchase Order by Buyer must be in writing signed by an authorized officer of Buyer. (d) In any action or proceeding brought by Buyer to enforce any provision of a Purchase Order, if Buyer prevails it shall be entitled to recover the reasonable costs and expenses incurred by it in connection with that action or proceeding (including, but not limited to, attorney's fees). (e) Neither party shall be deemed the drafter of a Purchase Order and it shall not be construed or interpreted in favor of or against either party. (f) Caption headings are for the convenience of the parties only and shall not be used to construe or interpret these Terms and Conditions. (g) If any provision of a Purchase Order shall be found by a court of competent jurisdiction to be unenforceable in any respect, then (i) the court shall revise such provision the least amount necessary in order to make it enforceable, and (ii) the enforceability of any other provision of the Purchase Order shall not be affected thereby.

## **SUPPLEMENTAL PROVISIONS APPLICABLE TO TOOLING**

### **25. TOOLING ORDER:**

If Buyer issues a Purchase Order for tools, dies, fixtures, molds or patterns ("Tooling"), Seller will design and fabricate, rework, or acquire from such sources as Buyer has given prior approval, and install the Tooling described in such Purchase Order, subject to the terms and conditions contained herein.

### **26. SAMPLE, STATUS:**

Seller shall, at its own expense manufacture a reasonable number of sample parts on the Tooling for inspection and/or testing by Buyer to ensure the capability of the Tooling to produce parts which meet Buyer's quality standard QS-9000. Without limiting Seller's warranty obligations hereunder, the Tooling shall be designed and fabricated to be sufficiently durable to support the manufacture of all production and service requirements through the production lifetime of the part and also permit the production of Buyer's subsequent service-only requirements. Buyer may request Seller to furnish semimonthly (or more frequently at Buyer's option) status reports on the construction and acquisition of the Tooling. Each status report shall identify the Tooling, identify the subcontractors working on the Tooling, and designate the percentage of completion of work. Seller will notify Buyer immediately upon becoming aware that the Tooling may not be completed by the completion date specified on the Tooling Purchase Order and Seller shall furnish to Buyer a schedule of the actions that Seller will take, at Seller's expense, to achieve completion on the specified completion date.

### **27. TITLE, IDENTIFICATION:**

All right, title and interest in and to any part of the Tooling shall pass to Buyer as soon as it is acquired or fabricated in accordance with a Tooling Purchase Order. All Tooling in the possession of Seller shall be deemed to be Bailed Property. While in its possession, Seller, at Seller's expense, shall maintain the Tooling in first class condition and immediately replace any items which are lost or destroyed or become worn out. All repaired or replaced Tooling shall be the property of Buyer. Repair of the Tooling, including ordinary wear and tear, is Seller's responsibility. None of the Tooling shall be removed from Seller's premises without Buyer's written consent.

Seller shall keep such records in relation to the Tooling as Buyer may reasonably require. None of the Tooling shall be used in the production, manufacture or design of any goods or materials except to the order of buyer. Seller shall not sell or otherwise dispose of any product using Buyer's Tooling to any party other than Buyer except where specifically authorized by Buyer in writing. Seller's responsibility shall continue beyond the expiry date or termination of the related parts Purchase

Order. Seller shall store all Tooling free of charge for a period of two years after the expiry date or termination of the related parts Purchase Order. If the Tooling is not utilized to produce any parts for Buyer for a period of two years after the expiry date or termination of the related parts Purchase Order, Seller shall so notify Buyer and request instructions as to the disposition of the Tooling. If Seller subcontracts all or any portion of the manufacture of the Tooling, Seller shall so notify Buyer in advance and obtain for Buyer all of the rights contained in this section from each such subcontractor used by Seller.

## **28. TOOLING INVOICES, PAYMENT:**

(a) Payment for Tooling will not be due until completion (including installation at Seller's facility). The Tooling will not be deemed to be completed until the necessary samples have been produced, submitted and approved by Buyer. Payment for Tooling will be made in accordance with Buyer's standard payment terms unless stated otherwise on the Tooling Purchase Order. (b) If a Tooling Purchase Order designates that it is noncompetitively placed or based on affordable targets, Buyer's payment shall be no more than the specified maximum, if any, for (i) Seller's actual costs for purchased materials and services (including purchased Tooling and portions thereof), and (ii) Seller's actual cost for direct labor and overhead. Seller shall establish and maintain a reasonable accounting system that enables ready identification of Seller's costs.