

## PURCHASING TERMS AND CONDITIONS

These Purchasing Terms and Conditions (these “Terms”) are by and between Nifco America Corporation, on behalf of itself and its subsidiaries and affiliates (collectively, “Nifco”), and each party providing the Product (defined below) to Nifco pursuant to any Purchase Order (defined below) (individually, a “Supplier”).

**These Terms apply when referenced by Nifco’s Purchase Order or other documentation.**

### 1. Background information.

**1.1** Nifco is in the business of designing, manufacturing, and supplying plastic automotive components.

**1.2** Nifco wants to engage Supplier to supply to Nifco certain product (the “Product”) and to perform such services necessary and related to the supply of the Product (the “Services”). All references to the Product in these Terms shall include the related Services.

**1.3** Supplier wants to supply such Product to Nifco.

### 2. Agreement.

**2.1 Acceptance.** The parties do not intend for these Terms to be signed, but instead Supplier shall be deemed to have accepted these Terms by performance. Supplier’s commencement of work on the Product shall constitute performance and Supplier’s acceptance of these Terms. Written or electronic acknowledgment, including, but not limited to, submission of a conforming invoice, a shipping notification, or any other documentation, shall constitute an agreement between the parties.

**2.2 No Other Terms.** Each Purchase Order issued by Nifco is exclusively governed by these Terms. Any additional or different terms, whether contained in Supplier’s forms or otherwise presented by Supplier at any time, are hereby rejected, unless in writing and signed by Nifco. If Nifco has already received an offer from Supplier, Nifco hereby rejects Supplier’s offer and makes a counteroffer in the form of these Terms. Any reference to a Purchase Order shall include these Terms.

**2.3 No Requirements/Output Contract.** Nifco may buy the Product from other sources and reduce quantities of the Product acquired from Supplier irrespective of the course of dealing between the parties. The Purchase Order does not constitute a requirements or output contract unless specifically designated as such on the Purchase Order.

**3. Nifco Requirements.** Supplier shall comply with Nifco’s manufacturing, design, and quality specifications and requirements, as the same may be provided and modified by Nifco from time to time (collectively, the “Nifco Requirements”).

**4. Customer Terms.** Supplier acknowledges that the Product will be sold (or incorporated into goods that will be sold), by Nifco to an original equipment manufacturer or a tiered supplier (each, a “Customer”). Supplier shall do all things necessary to enable Nifco to comply with (a) the applicable terms of agreement between Nifco and the Customer and (b) all Customer requirements (the “Customer Terms”). If there is a conflict between provisions in the Customer Terms and these

Terms, Nifco may designate, by written notice to Supplier, which provision controls.

**5. Access.**

**5.1 Access to Supplier's Premises.** Nifco and its authorized representatives may, from time to time and on reasonable, advance notice, access Supplier's premises during normal business hours to verify, validate, and monitor Supplier's performance or ability to perform pursuant to these Terms.

**5.2 Access to Supplier's Financial Information.** Nifco and its authorized representatives may, from time to time and on reasonable, advance notice, obtain from Supplier financial and business records related to Supplier's performance under these Terms ("Supplier Financial Information"). Supplier Financial Information provided to Nifco shall be protected as Confidential Information (defined below).

**6. Sale of Product.**

**6.1 Purchase Order.** Nifco shall buy the Product from Supplier, and Supplier shall manufacture and sell the Product to Nifco, at the Price (defined below) and in the quantities set forth in the purchase order issued by Nifco to Supplier (the "Purchase Order").

**6.2 Ordering Process; Releases.** Nifco may generate releases which project target quantities; provided, however, such releases shall not be deemed a firm commitment or guarantee that a certain quantity of the Product will be purchased by Nifco. Rather, such releases will be effective only as forecasts and will be superseded in their entirety by the issuance of updated releases.

**6.3 Unique Nifco Product.** Supplier is prohibited from manufacturing or selling any Product that is unique to Nifco ("Unique Nifco Product") for or to any third party at any time. Unique Nifco Product shall not include (i) the Product that Nifco and Supplier mutually agree in writing to be "off the shelf" product of Supplier or (ii) any other Product which Nifco has consented to in writing as eligible for resale to third parties.

**6.4 Item Number.** Supplier shall use the item number set forth on the Purchase Order to identify the Product.

**7. Price; Price Adjustments.**

**7.1 Price.** The price to be paid for the Product ("Price") shall be as set forth on the Purchase Order. Except as otherwise provided in these Terms, no modification to the Price is effective without the prior written consent of both parties. The Price is effective as of the date on the Purchase Order.

**7.2 Price Adjustment Process.**

**(a) Annual Price Review.** As part of the ongoing, ordinary course of business between the parties, the Price shall be reviewed annually and adjusted as agreed to by the parties in writing. The effective date and duration of such adjusted Price shall be as set forth in such writing.

**(b) Pricing for Raw Material.** Supplier shall provide Nifco at least 30 days' advance written notice of any request for adjustment in Price due to the cost of raw material. The

request shall include documentary evidence that the proposed adjustment corresponds exclusively to the cost of raw material.

**8. Payment.**

**8.1 Payment Terms.** Supplier shall issue an invoice to Nifco in accordance with Nifco's requirements. Except as expressly stated on the Purchase Order, Nifco shall pay all properly invoiced amounts due to Supplier within 45 days of Nifco's receipt of such invoice, except for any amounts disputed by Nifco in good faith.

**8.2 Disputed Amount.** If an invoice dispute arises, Nifco shall deliver a written statement to Supplier listing all disputed items and a reasonably detailed description of each. The parties shall seek to resolve such dispute expeditiously and in good faith. Supplier shall continue performing its obligations under the applicable Purchase Order notwithstanding any such dispute. All invoices in dispute shall be put on hold until such dispute has been resolved to the satisfaction of both parties.

**8.3 Applicable Currency.** All payments due Supplier will be paid in United States Dollars unless otherwise designated on the Purchase Order.

**8.4 Payment Processes and Procedures.** Supplier shall comply with all of Nifco's payment requirements, processes, and procedures as may be designated by Nifco from time to time, including, without limitation, any vendor payment set up, bank account information, and payment change request.

**8.5 Set-Off; Recoupment.** Nifco shall have the right to set off against or recoup from any payment or other obligation owed to Supplier, in whole or in part, any amounts due to Nifco from Supplier or its affiliates or subsidiaries. Nifco will provide Supplier with a statement describing any offset or recoupment taken.

**8.6 Audit Rights.** Nifco may, at its expense and upon prior reasonable request during regular business hours, inspect Supplier's facility and audit Supplier's books, records, and other documents as necessary to verify compliance with these Terms.

**9. Delivery.**

**9.1 General Delivery Terms.** Delivery terms and schedules shall be as designated on the Purchase Order. Nifco may change delivery terms and delivery schedules or direct temporary suspension of scheduled deliveries (each, a "Delivery Change"). Supplier agrees to honor all instructions from Nifco concerning a Delivery Change. Nifco shall reimburse Supplier for reasonable costs incurred as a result of any Delivery Change. Delivery Changes shall not entitle Supplier to a modification of the Price for the Product affected by such change.

**9.2 Transfer of Title; Risk of Loss.** Unless otherwise provided in the Purchase Order, delivery shall be made FOB destination, as defined in the Uniform Commercial Code. Title and risk of loss shall pass to Nifco upon delivery of the Product to the delivery location designated on the Purchase Order.

**9.3 Time is of the Essence.** Time is of the essence in making all Product deliveries to Nifco. If

Supplier's acts or omissions result or are likely to result in a failure by Supplier to meet Nifco's delivery requirements, Supplier shall select a premium freight option and ship the Product at issue to Nifco as quickly as possible, all at Supplier's expense. Nifco may charge Supplier administrative fees for any late shipments.

**9.4 Packaging.** Supplier shall properly pack, mark, and ship the Product in accordance with the requirements established by Nifco from time to time and communicated to Supplier.

**9.5 Documentation.** Supplier shall include all documentation reasonably requested by Nifco from time to time with each shipment, including without limitation, the proper packing memorandum and Certificates of Analysis. Supplier shall mark the Purchase Order number on all packages, bills of lading, invoices, and other documents.

**9.6 MSDS; SOC Reports; Environmental Reports.** Prior to shipment of any Product, Supplier shall provide Nifco (i) all Material Safety Data Sheets ("MSDS") and Substance of Concern-Free Reports ("SOC Reports") that are related, directly or indirectly, to the Product and (ii) such other documentation as Nifco may request that relates to environmental or similar matters (collectively, "Environmental Reports"). Supplier shall promptly furnish to Nifco any modifications, amendments, or supplements to the MSDS, SOC Reports, and Environmental Reports.

**9.7 Emergency Shipments.** Nifco may, from time to time, require emergency shipments of the Product for production or service requirements. Supplier will use its best efforts to deliver such Product within the timeframe required. If Nifco requires Supplier to make emergency shipments, Nifco shall reimburse Supplier for reasonable costs incurred as a result of such emergency shipment.

**9.8 Overshipments; Undershipments.** Nifco will have no obligation to purchase the Product delivered to Nifco that exceeds the quantity specified in the applicable Purchase Order. If Nifco elects to keep any excess Product, the quantity of the Product under the applicable Purchase Order will be increased by the same amount of the Product as the quantity of overshipments. Nifco may reject any excess Product and such rejected Product shall be returned to Supplier at Supplier's risk and expense. In case of undershipments of the Product, Supplier shall, at Nifco's request, immediately and at its cost, ship to Nifco the additional Product needed to complete Nifco's requirements. Alternatively, Nifco may elect to have the quantity of the Product under the applicable Purchase Order reduced by the same amount of the Product as the quantity of any undershipments.

## **10. Delay.**

**10.1 Notification.** If at any time Supplier has reason to believe that any Product will not be made in conformity with the applicable delivery schedule or deadline, Supplier shall immediately notify Nifco, identifying the cause of the anticipated delay, and make commercially reasonable efforts to deliver the Product to Nifco under existing conditions.

**10.2 Right to Acquire Substitute Product.** In the event of any delay, Nifco shall have the right to acquire substitute or replacement Product from an alternate source and modify the Purchase Order accordingly.

**10.3 Force Majeure.** Neither party shall be liable to the other for any delay or failure in performing its obligations under the applicable Purchase Order to the extent that such delay or failure is caused by an event or circumstance that is beyond the reasonable control of that party, without such party's fault or negligence, and which by its nature could not have been foreseen by such party or, if it could have been foreseen, was unavoidable (a "Force Majeure Event"); provided that written notice of such delay (including the anticipated duration thereof) is given to the other party within 10 days of the occurrence of such event. Force Majeure Events include, but are not limited to, acts of God or the public enemy, government restrictions, floods, fire, earthquakes, explosion, epidemic, war, terrorism, invasion, hostilities, and riots. Supplier's economic hardship or changes in market conditions are not considered a Force Majeure Event. Supplier shall use all diligent efforts to end the failure or delay of its performance, ensure that the effects of any Force Majeure Event are minimized, and resume performance under the Purchase Order. During the period of such delay or failure to perform by Supplier, the provisions of Section 10.2 shall apply.

**10.4 Labor and Supply Problems Not Force Majeure.** Notwithstanding anything in this Section 10 to the contrary, no delay or failure of Supplier to perform its obligations shall be excused if and to the extent that it is caused by (i) labor problems of Supplier, its subcontractors, or its suppliers or (ii) the inability of Supplier, its subcontractors, or its suppliers to obtain power, materials, labor, equipment, or transportation.

## **11. Inspection; Nonconforming Product.**

**11.1 Inspection.** All Product will be received subject to Nifco's acceptance or rejection. Nifco has the right to inspect the Product within a reasonable period of time after the date of delivery and to inform Supplier of Nifco's rejection of any nonconforming Product. Payment by Nifco for the Product shall not constitute its acceptance thereof, nor shall such payment relieve Supplier's responsibility for any nonconforming Product. Nifco may, at its option, inspect all or a sample of the Product, and reject all or any portion of the Product if it determines the Product is nonconforming or defective. Supplier shall provide Nifco such information and product reasonably necessary to assist Nifco with such inspection. For example, if Supplier is shipping colorant, Supplier shall submit color chips with each shipment.

**11.2 Rejected Product.** If Nifco rejects any portion of the Product, Nifco has the right, effective upon written notice to Supplier, to: (i) rescind the applicable Purchase Order in its entirety; (ii) accept the Product at a reasonably reduced price; or (iii) require replacement of the rejected Product. Nifco shall issue a new Purchase Order for any replacement Product and revise or cancel the Purchase Order for the rejected Product. Supplier shall, at its expense, promptly replace the nonconforming Product and pay for all related expenses, including, but not limited to, transportation charges for the return of the defective Product and the delivery of replacement Product. If Supplier fails to timely deliver replacement Product, Nifco may terminate the applicable Purchase Order for cause, purchase replacement goods from a third party, and charge Supplier for the cost thereof. In addition, upon Nifco's request, Nifco and Supplier shall negotiate in good faith to reasonably allocate the costs incurred as a result of the nonconforming Product. Any inspection or other action by Nifco under this Section shall not reduce or otherwise affect Supplier's obligations under these Terms.

- 11.3 Remedial Work.** Notwithstanding Section 11.2 above, if Nifco determines that it is necessary to repair any rejected items, which shall include, but not be limited to, performing such additional work (including the cost of any materials) as is necessary to make such rejected items fully conforming (the "Remedial Work"), then Nifco may elect, at Supplier's cost and expense, to (i) perform the Remedial Work itself, (ii) have a third party perform the Remedial Work, or (iii) have Supplier perform the Remedial Work.
- 12. Changes to Product.**
- 12.1 Required Changes.** Nifco may at any time direct engineering, design or other changes (collectively, "Required Changes"), and Supplier agrees to make such Required Changes as directed by Nifco. Required Changes may extend to drawings and specifications for the Product and the scope of work covered by the applicable Purchase Order, including such matters as inspection, testing, quality control, and other matters ancillary to the production of the Product. Any Required Changes shall be evidenced by a new or revised Purchase Order.
- 12.2 Adjustments for Required Changes.** If Required Changes have or will result in a material increase or decrease in the cost of and/or the time for performance by Supplier, Supplier may notify Nifco of such and the parties shall negotiate in good faith a reasonable allocation of such costs and other equitable adjustment between the parties. Any adjustment shall be evidenced by a new or revised Purchase Order.
- 13. Service Parts.** Except as otherwise agreed to in writing by the parties, Supplier shall manufacture, produce, and supply to Nifco the service parts for the Product for a period of 20 years after current production of a particular vehicle model or specific part concludes, or such time period as otherwise required by the Customer (a "Service Part"). The Service Part shall be supplied to Nifco at the standard production piece price or such other price as may be agreed to by the parties, all as set forth on the Purchase Order.
- 14. Compliance with Applicable Laws.** Supplier shall comply with (and all the Product shall comply with) all applicable laws, regulations, and ordinances. Supplier has and shall maintain in effect all the licenses, permissions, authorizations, consents, and permits that it needs to carry out its obligations under each Purchase Order or these Terms. To the extent applicable, Supplier shall comply with all export and import laws of all countries involved in the sale of the Product under the Purchase Order. Supplier assumes all responsibility for shipments of the Product requiring any government import clearance.
- 15. Property of the Parties.**
- 15.1 Supplier Property.** Supplier shall at its expense furnish, maintain, keep in good condition, and replace when necessary or prudent, all machinery, equipment, jigs, fixtures, test gauges, molds, patterns, transportation equipment, and other items (for any party, "Property" and for Supplier, "Supplier Property") necessary to produce the Product in conformity with the Nifco Requirements. The cost of changes to Supplier Property required from time to time, whether for Required Changes or otherwise, shall be paid by Supplier.
- 15.2 Nifco Property.** All Property of Nifco or its Customers ("Nifco Property") furnished to Supplier shall remain the property of Nifco and, as applicable, be deemed a bailment. Supplier shall bear the risk of loss for any damage to Nifco Property. At Supplier's

expense, Nifco Property shall be stored and maintained apart from Supplier's Property. Nifco Property shall not be used by Supplier for any purpose other than performance of these Terms. Nifco Property shall not be removed from Supplier's premises without the prior written approval of Nifco. Nifco reserves the right to inspect all Nifco Property, and records relating to the property, at reasonable times and on reasonable notice to Supplier.

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

**16. Confidential Information.** Unless otherwise agreed to by the parties in writing, neither party may disclose to a third party any non-public, confidential, and proprietary information, including, but not limited to, specifications, samples, formulas, plans, documents, data, business operations, customer lists, pricing, discounts, or rebates, disclosed by one party to the other party, in oral, visual, written, electronic, or other tangible or intangible form, whether or not marked, designated, or identified as "confidential" (collectively, "Confidential Information"), other than as required for a party to fulfill its obligations under these Terms. Information will not be considered Confidential Information if it (i) is or becomes available in the public domain through no wrongful act of the receiving party; (ii) is already in the receiving party's possession prior to the performance hereunder without an obligation of confidentiality; (iii) is rightfully disclosed to the receiving party by a third party without an obligation of confidentiality; (iv) is independently developed by the receiving party; or (v) is required to be disclosed pursuant to a final non-appealable court or regulatory order served on the receiving party, provided that the receiving party gives the disclosing party prompt notice of such order. This nondisclosure obligation shall survive the termination, expiration, or cancellation of these Terms.

**17. Intellectual Property.**

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

**17.2 Nifco Intellectual Property.** Nifco does not transfer to Supplier any Intellectual Property of Nifco other than the limited right to use such Intellectual Property of Nifco strictly and solely in conjunction with Supplier's manufacture, supply, or repair of any Product.

**17.3 Supplier Intellectual Property.** Supplier does not transfer to Nifco any Intellectual Property of Supplier other than the rights to use such Intellectual Property of Supplier in conjunction with the manufacture of the Product by Supplier.

**17.4 Work for Hire.** Nifco shall exclusively own all rights in ideas, inventions, works of

authorship, strategies, plans, and data created in or resulting from Supplier's performance under these Terms and each Purchase Order, including all Intellectual Property rights. All such Intellectual Property that is protectable by copyright will be considered work(s) made for hire for Nifco (as the phrase "work(s) made for hire" is defined in the U.S. Copyright Act (17 U.S.C. § 101)) or Supplier will give Nifco "first owner" status related to the work(s) under local copyright law where the work(s) was created. If by operation of law any such Intellectual Property is not owned in its entirety by Nifco automatically upon creation, then Supplier agrees to transfer and assign to Nifco, and hereby transfers and assigns to Nifco, the entire right, title, and interest throughout the world to such Intellectual Property. Supplier further agrees to enter into and execute any documents that may be required to transfer or assign ownership in and to any such Intellectual Property to Nifco.

- 17.5 Infringement.** Supplier shall, at its expense, defend, indemnify, and hold Nifco, its subsidiaries, affiliates, successors, assigns, directors, officers, employees, agents, and customers ("Nifco Indemnitees") harmless from and against any and all loss, injury, death, damage, liability, claim, deficiency, action, judgment, interest, award, penalty, fine, cost, or expense, including reasonable attorney and professional fees and costs, and the cost of enforcing any right to indemnification under these Terms (collectively, "Losses") arising out of or occurring in connection with any claim that Nifco's or any Nifco Indemnitees' use or possession of the Product infringes or misappropriates the patent, copyright, trade secret, or other Intellectual Property right of any third party. In no event shall Supplier enter into any settlement without Nifco's or the Nifco Indemnitees prior written consent.
- 18. Independent Contractor Status.** The relationship of the parties is that of independent contractors. Nothing contained in these Terms or any Purchase Order shall be construed as creating any agency, partnership, joint venture, or other form of joint enterprise, employment, or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.
- 19. Nifco's Rules, Regulations, Policies and Procedures.** To the extent Supplier is on Nifco's premises, Supplier shall comply with all rules, regulations, and policies of Nifco that Nifco provides to Supplier.
- 20. Insurance.** Supplier shall, at its own expense, maintain and carry insurance in effect with financially sound and reputable insurers of the type and in such amounts as adequate for all risks in accordance with sound and prudent business practices including, without limitation, (a) workers' compensation and employers' liability, (b) general liability, which shall include contractual liability, (c) automobile liability, and (d) professional liability. Upon Nifco's request, Supplier shall provide Nifco with a certificate of insurance from Supplier's insurer evidencing the insurance coverage specified in these Terms.
- 21. Warranty; Quality Assurance; Claims.**
- 21.1 Product Warranties.** Supplier expressly warrants to Nifco that each Product will, for the reasonable life of the Product, (i) be free from any defects in workmanship, material, and design; (ii) conform to the Nifco Requirements and all applicable laws; (iii) be fit for its intended purpose and operate as intended; (iv) be merchantable; (v) be free and clear of all liens, security interests, or other encumbrances; (vi) not infringe or misappropriate any third



party's patent or other Intellectual Property rights; and (vii) be free and clear of all liens and other encumbrances. These warranties shall (a) extend to the future performance of the Product, (b) survive Supplier's delivery of the Product, Nifco's receipt, inspection, acceptance, use, and payment for the Product, and the termination or expiration of these Terms, and (c) may not be limited or disclaimed by Supplier. Nifco's approval of Supplier's designs, materials, processes, drawings, specifications, or similar requirements will not be construed to relieve Supplier of or limit any warranties. Any applicable statute of limitations on Nifco's claims for breach of warranty begins no earlier than the date on which Nifco discovers the breach.

- 21.2 Warranty Period.** The warranties in this Section 21 shall extend as required by the Customer and Customer Terms.
- 21.3 Conformity with Quality Standards.** Supplier agrees that its warranties for quality include its express warranty that all the Product shall comply strictly and completely with all of the Nifco Requirements related to quality and additional quality assurance procedures for the Product as separately prescribed by Nifco, including without limitation, the Nifco Supplier Quality Assurance Manual, (collectively, the "Quality Standards"). Customer shall determine whether the Quality Standards are being met. Nifco shall, in accordance with the Quality Standards, provide, maintain, and enforce all measures necessary to secure the quality of the Product and the manufacturing processes thereof, including, but not limited to, quality control standards, inspection standards, and specifications.
- 21.4 Evidence of Supplier's Quality Assurance; Testing.** Upon Nifco's request, Supplier shall deliver to Nifco data, records, and other materials to evidence Supplier's testing, inspection, and analysis of field quality data as provided by Nifco and such other quality assurance actions as will validate compliance with all Quality Standards. Nifco may, upon prior notice and during normal business hours, (i) inspect the Product including any work in process and (ii) conduct quality control measures and tests at Supplier's or any subcontractor's premises. Without cost to Nifco, Supplier shall provide facilities and assistance for Nifco's inspections, tests and measures. Nifco shall not be liable for any reduction in value of samples used, nor shall any Product rejected be submitted to Nifco.
- 22. Recall.** If Nifco or a Customer issues, or a U.S. or foreign governmental agency (an "Agency") issues an order requiring Nifco or the Customer to issue a recall, replace, repair, or make refunds with respect to the Product or of any goods that incorporate the Product (a "Recall"), Supplier shall fully cooperate and assist Nifco with any such Recall. Nifco and Supplier shall negotiate in good faith to reasonably allocate the costs of complying with or contesting any such Recall. Supplier shall indemnify and hold Nifco harmless from all costs and expenses incurred as a result of the Recall to the extent attributable to Supplier. If an Agency initiates any inquiry or investigation relating to the Product, Supplier shall notify Nifco immediately and take all steps necessary to resolve the matter without exposing Nifco to additional liability or risk.
- 23. Indemnification.** Supplier shall defend, indemnify, and hold harmless the Nifco Indemnitees from and against all Losses arising out of or occurring in connection with any party claims about: (i) a material breach or non-fulfillment of any representation, warranty, or covenant set forth in these Terms; (ii) Supplier's failure to materially comply with any applicable law; (iii) Supplier's gross negligence or willful misconduct in connection with Supplier's performance under these Terms, (iv)

any bodily injury, death of any person, or damage to real or tangible personal property caused by the acts or omissions of Supplier, or (v) Supplier's Intellectual Property used in the design or production of the Product, or that is embodied in the Product, infringes any Intellectual Property rights of a third party. Supplier shall not enter into any settlement without Nifco's or the Nifco Indemnitees' prior written consent.

**24. Advertising.** Without Nifco's prior written consent, Supplier shall not use or permit use of (a) the name "Nifco" or any similar word or trademark of Nifco, (b) the Customer's name or any similar word or trademark, or (c) any reference to the Product in the description or marketing of any product produced by Supplier, nor shall Supplier advertise or publish that Supplier has contracted to furnish the Product pursuant to these Terms.

**25. Duty and Tax.** Nifco shall not be liable for any federal, state, provincial or local duties or taxes unless separately stated on a Purchase Order and billed to Nifco as a separate item. No sales/use tax shall be added to the Price under these Terms when an exemption is indicated on the face of the appropriate Purchase Order. Supplier shall provide Nifco with such documents as may be required to obtain any applicable benefits or credits relating to or arising from these Terms, including trade credits, export credits, or the refund of duties, taxes, or fees available to Nifco. Supplier shall provide Nifco all information requested by Nifco to allow Nifco to receive such benefits and credits, as well as fulfill any custom obligations, local content obligations, or other requirements.

**26. Term; Termination.**

**26.1 Term.** The term shall be as set forth on the Purchase Order, unless otherwise terminated in accordance with these Terms.

**26.2 Nifco's Right to Terminate for Convenience.** Nifco may terminate a Purchase Order at any time and for any reason by giving written notice to Supplier. Termination will be effective as provided for in Nifco's notice.

**26.3 Nifco's Right to Terminate for Cause.** Nifco may terminate a Purchase Order, by providing written notice to Supplier, if any one of the following events occurs:

(a) Supplier repudiates or threatens to repudiate any of its obligations under the Purchase Order;

(b) Supplier is in breach of, or threatens to breach, any representation, warranty, or covenant of Supplier under the Purchase Order and either the breach cannot be cured or, if the breach can be cured, it is not cured by Supplier within a commercially reasonable period of time (in no case exceeding 30 days) after Supplier's receipt of written notice of the breach; or

(c) Supplier (i) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due, (ii) files or has filed against it a petition for voluntary or involuntary bankruptcy, (iii) makes or seeks to make a general assignment for the benefit of its creditors, or (iv) applies for or has appointed a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

**26.4 Supplier's Right to Terminate for Cause.** Supplier may terminate the Purchase Order, by providing written notice to Nifco, if any one of the following events occurs:

- (a) If Nifco is in breach of any representation, warranty, or covenant under the Purchase Order, and either the breach cannot be cured or, if the breach can be cured, it is not cured within a commercially reasonable period of time (in no case exceeding 30 days) after Nifco's receipt of written notice of the breach; or
- (b) Nifco (i) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due, (ii) files or has filed against it, a petition for voluntary or involuntary bankruptcy, (iii) makes or seeks to make a general assignment for the benefit of its creditors, or (iv) applies for or has appointed a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

**26.5 Effect of Expiration or Termination.**

- (a) Supplier's Obligations. Immediately upon termination, Supplier shall, unless otherwise directed by Nifco, (a) promptly terminate all performance under the Purchase Order and (b) deliver to Nifco all finished Product completed.
- (b) Additional Obligations. Upon the expiration or earlier termination of the Purchase Order, each party shall:
  - (i) Return to the other party all documents and tangible materials containing the other party's Confidential Information.
  - (ii) Permanently erase all the other party's Confidential Information from its computer systems.
  - (iii) Upon the other party's written request, certify in writing that it has complied with the requirements of this Section.

## **27. Miscellaneous**

**27.1 No Waiver.** No waiver by any party of any of the provisions of these Terms or a Purchase Order shall be effective unless explicitly set forth in writing and signed by the party so waiving. No failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from these Terms or a Purchase Order shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

**27.2 Supremacy Clause.** In the event of an inconsistencies or ambiguities between these Terms and any Purchase Order, the Purchase Order shall control. Throughout these Terms, unless the context requires otherwise, reference to these Terms shall also include the Purchase Order.

**27.3 Governing Law; Forum.** These Terms and the rights and obligations under these Terms shall

be governed by the laws of the State of Ohio, without regard to its conflict of laws rules. Any legal suit, action, or proceeding arising out of or relating to these Terms shall be instituted in the federal courts of the United States of America or the courts of the State of Ohio in each case located in Franklin County, Ohio, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding. The provisions of the United Nations Convention on Contracts for the International Sale of Goods shall not apply to these Terms.

- 27.4 Assignment; Subcontracts.** Supplier shall not assign, transfer, subcontract, or delegate any of its rights or obligations under the Purchase Order without the prior written consent of Nifco. Any purported assignment or delegation in violation of this Section shall be null and void. No assignment or delegation shall relieve the Supplier of any of its obligations under these Terms. Nifco may at any time assign, transfer, or subcontract any of its rights or obligations under the Purchase Order without Supplier's consent.
- 27.5 Notices.** All notices, requests, consents, claims, demands, waivers, and other communications required under these Terms shall be in English, in writing, and, if given to Nifco, addressed to 8015 Dove Parkway, Canal Winchester, Ohio 43110, Attn: Chief Financial Officer. All communications shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage prepaid). A communication shall be effective only (a) upon receipt by the receiving party and (b) if the party giving the communication has complied with the requirements of this Section.
- 27.6 Further Assurances.** Upon Nifco's reasonable request, Supplier shall, at its sole cost and expense, execute and deliver all such further documents and instruments, and take all such further acts, necessary to give full effect to these Terms.
- 27.7 Remedies.** Each party acknowledges that any breach of these Terms will cause irreparable harm and injury to the other party for which money damages would be an inadequate remedy and that, in addition to remedies at law, each party is entitled to equitable relief as a remedy for any breach. Each party waives any claim or defense that the other party has an adequate remedy at law in any proceeding. Nothing in these Terms shall limit the equitable or available remedies at law.
- 27.8 Successors and Assigns.** These Terms are binding on and for the sole benefit of the parties and their respective successors and permitted assigns. Nothing in these Terms, express or implied, confers on any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of these Terms.
- 27.9 Battle of the Forms Not Applicable.** The parties have agreed, and it is their intent that the battle of the forms Section of §2-207 of the Uniform Commercial Code shall not apply to these Terms or to any invoice or acceptance form of Supplier relating to these Terms. It is the parties' intent that these Terms shall exclusively control the relationship of the parties, and in the event of any inconsistency between any invoice or acceptance form sent by Supplier and these Terms, these Terms shall control.
- 27.10 Entire Agreement.** These Terms, as updated from time to time on Nifco's website, together

with all applicable Purchase Orders constitute the entire agreement between the parties, and supersede all prior and contemporaneous agreements, representations, and understandings of the parties as of the effective date. In the event of any inconsistencies or ambiguities between these Terms and any Purchase Order, unless otherwise agreed to by the parties in writing, the Purchase Order shall control.

**27.11 Amendment.** Nifco may modify these Terms from time to time by posting revised terms to Nifco's website at (Insert Link). The revised terms shall apply to all Purchase Orders issued on or after the effective date of such terms.

**27.12 Survival.** Any provision of these Terms which by their nature extend beyond the expiration, termination, or cancellation of these Terms shall remain in full force and effect until fulfilled and/or performed.

**27.13 English Language.** The parties acknowledge that it is their wish that these Terms and all documents, information, and reports to be delivered under or supplied in connection with these Terms shall be in the English language.

**27.14 Severability.** If any Section of these Terms is invalid, illegal, or unenforceable, that Section is severed from these Terms and the remaining Sections in these Terms remain in effect.

**27.15 Headings.** The headings in these Terms are for reference only and do not affect the interpretation of these Terms.