

**KAUTEX CORPORATION,  
CANADA,  
PURCHASE ORDER TERMS  
AND CONDITIONS**

**1. OFFER; ACCEPTANCE; EXCLUSIVE TERMS:**

- A. Each purchase order, and similar communications or writings intended by Kautex Corporation (collectively “Kautex”) to purchase goods or services, together with these Terms and Conditions (collectively, “Order”) is an offer by Kautex or its applicable affiliate or subsidiary to the party to whom such Order is addressed and such party’s applicable affiliates and subsidiaries (“Seller”) to enter into the agreement it describes and it shall be the complete and exclusive statement of such offer and agreement. An Order does not constitute an acceptance by Kautex of any offer or proposal by Seller, whether in Seller’s quotation, acknowledgement, invoice or otherwise. In the event that any Seller quotation or proposal is held to be an offer, that offer is expressly rejected and is replaced in its entirety by the offer made up of the Order. A contract is formed when seller accepts the offer of Kautex. Each Order shall be deemed accepted upon the terms and conditions of such Order by Seller by shipment of goods, performance of services, commencement of work on goods, written acknowledgement, or any other conduct of Seller that recognizes the existence of a contract pertaining to the subject matter hereof. Acceptance is expressly limited to these Terms and Conditions and such terms and conditions as are otherwise expressly referenced on the face of the Order. No purported acceptance of any Order on terms and conditions which modify, supersede, supplement or otherwise alter these Terms and Conditions shall be binding upon Kautex and such terms and conditions shall be deemed rejected and replaced by these Terms and conditions unless Seller’s proffered terms or conditions are accepted in a physically-signed writing by an authorized officer of Kautex (a “Signed Writing”) notwithstanding Kautex’s acceptance of or payment for any shipment of goods or similar act of Kautex. In the event of a conflict between the Order and any prior or contemporaneous agreement or document exchanged between Kautex and Seller, the Order governs. Kautex may from time to time administer purchasing for its affiliates and subsidiaries and issue Orders containing the Kautex logo, but identifying a different company within the Kautex group. Seller acknowledges and agrees that no such Order shall constitute or be interpreted to represent an Order of Kautex or a guaranty by Kautex of any obligations or liabilities of said company identified on the Order or be used by Supplier to advance the position that such company is doing business in the jurisdiction in which the Order is issued.
- B. In addition, the current edition of the Kautex Global Supplier Manual (“GSM”) and all manuals and policies referred to therein are incorporated by reference. The edition of the GSM posted and in effect on the official Kautex web site at the time of acceptance of any Order shall apply to that Order. The official Kautex web site is located at <http://www.kautex.com>. In the event of a conflict between the GSM and these Terms and Conditions, these Terms and Conditions shall govern. Kautex may modify the GSM from time to time by posting notice of such modification through links provided on the official Kautex web site at least 10 days prior to any such modification becoming effective. Seller periodically shall review the Kautex website and the GSM posted there. Seller’s continued performance under the Order without providing written notice to Kautex detailing Seller’s objection to any modified or new GSM prior to the effective date of such modified or new GSM shall be subject to and will constitute Seller’s acceptance of such modified or new GSM.



- C. The Terms and Conditions and the GSM that are applicable to each Order are the Terms and Conditions that are in effect on the Issue Date shown on the later of the Order or any Order amendment applicable to such Order, unless otherwise provided in section 1(B) above.
- D. No exception to, deviation from, or waiver of these Terms and Conditions shall be valid or binding on Kautex unless specified on the face of an order or Order amendment or made in a Signed Writing.

**2. DELIVERY; QUANTITY; DURATION:**

- A. The quantity applicable to each Order and its duration are specified on the face of the Order. The quantity specified may be for up to one hundred percent (100%) of Kautex's requirements for the goods or services described therein (collectively, "Goods"). For all "Program Orders" or "Blanket Orders" or requirements contract Orders, Kautex shall issue a release ("Release") to specify the quantities needed, delivery locations, and dates. Seller acknowledges and agrees that, notwithstanding anything in any Order to the contrary, Seller is obligated to provide Goods to Kautex in at least the quantity and for at least the period specified in any Release. A Release will specify a firm quantity of Goods and/or a firm quantity of raw materials/components that Kautex will be responsible for in the event of termination. Releases may include projections ("Projections"), but Releases are only binding upon Kautex for, and Kautex will have no obligation or liability beyond, the quantity specified as firm in the Release. Seller acknowledges and agrees to accept the risk associated with the lead times of the various components if they are beyond the firm Release quantities provided by Kautex.
- B. Unless the Order specifically provides that Seller shall produce one hundred percent (100%) of Kautex's requirements for the Goods, Kautex shall have the right to obtain a portion of such Goods from another third party source or from Kautex's internal sources.
- C. Unless stated otherwise on the face of an Order, the duration of each Order shall be the life of the program(s) into which the Goods ultimately are incorporated, plus applicable service and replacement parts requirements. Kautex and Seller acknowledge, however, that this subsection does not affect or otherwise change the Kautex's right of termination, and that Kautex is under no obligation to purchase any Goods covered by such Order unless and until a release has been issued under such Order
- D. Deliveries shall be made both in quantities and at times specified on the Order or on Releases furnished by Kautex. Time and quantity of delivery are of the essence. Seller shall adhere to shipping directions specified on the Order or Releases. Kautex shall not be required to make payment for Goods delivered to Kautex that are in excess of firm quantities and delivery schedules specified in Releases. Kautex may change the rate of scheduled shipments or direct temporary suspension of scheduled shipments, neither of which shall entitle Seller to a modification of the price of Goods covered by any Order. With each delivery, Seller shall be deemed to have made the representations, warranties and covenants with respect to its financial and operating condition.
- E. Seller agrees to participate in Kautex's Electronic Receipts System ("ERS") unless otherwise agreed in writing. Seller also agrees that it is Seller's responsibility to monitor ERS on a periodic basis, and to notify Kautex of any discrepancies between Seller's shipping records and Kautex's receipt records within two (2) weeks. Seller also acknowledges that it is Seller's responsibility to provide Kautex with sufficient documentation to enable Kautex to reconcile any such discrepancies.

Except as may be otherwise provided in a purchase order, the Seller shall pay, out of the purchase price, all federal, state, provincial and local taxes and any duties applicable to provision of the Goods.

- F. Premium shipping expenses and/or other related expenses necessary to meet delivery schedules set forth in Releases shall be Seller's sole responsibility, unless the delay or expense was solely the result of Kautex's



negligence and Seller provides Kautex with notice of any claim against Kautex within ten (10) days after the occurrence of the alleged negligent action of Kautex giving rise to such claim.

- G. Notwithstanding any agreement concerning payment of freight expenses, delivery shall not have occurred and the risk of loss shall not have shifted to Kautex until the Goods have been delivered to Kautex's applicable facility and have been accepted at that facility.
3. **SHIPPING INSTRUCTIONS:** Seller agrees to prepare and properly pack, box or crate Goods for shipment so as to prevent damage in transit, to comply with Kautex's shipping instructions and/or routings, and to describe the Goods on the bill of lading in conformity with appropriate freight classifications. Any additional charges resulting from failure to comply with this provision, including incidental and consequential damages, shall be charged to Seller. Each container must be marked to identify contents and quantities without opening. Packing lists and certifications, when applicable, must accompany each shipment and must have only one (1) purchase order per Seller packing sheet. The location of the packing list must be clearly marked on the container. When multiple containers are used, the packing list will show the items in each container. Multiple containers will be numbered consecutively, for example, 1 of 4, 2 of 4, etc. Kautex's purchase order number and plant location must appear on all invoices, packing sheets, delivery tickets, shipping orders and bills of lading. If Kautex requires or requests Seller to apply Kautex-specified, computer-scannable bar codes on the packing sheets and/or Goods containers, then Seller agrees to do so, free of charge.
4. **INVOICING AND PAYMENT:** Individual invoices showing purchase order number and purchase order item number (and/or any other information required by Kautex) must be issued by Seller for each shipment made pursuant to each Order in the format specified by Kautex. Unless otherwise specified by Kautex three (3) copies of each invoice must be rendered with prices and extensions. Invoices shall be mailed within three (3) days after shipping date. Invoice date shall not precede shipment date. Rejections, delays in delivery or delivery in advance of required delivery date, and/or invoices and/or shipping documentation, errors and/or omissions will be considered just cause for withholding payment without loss of cash discount privilege(s). Unless otherwise specified, the price set forth in each Order shall include all charges for Seller's packing and crating, for insurance in transit and for transport and delivery to Kautex's facilities. Kautex shall have no obligation to pay any invoices received by Kautex more than six months after Seller is required to submit such invoices.
5. **PAYMENT TERMS:** Kautex and Seller agree to payment terms of 2<sup>nd</sup> Day 2<sup>nd</sup> Month net average for domestic product Sellers and net average 90 days for international Sellers; provided that Kautex reserves the right to alter these terms upon thirty (30) day prior written notice. Any discount terms must be agreed to, in writing, by both parties. Product tooling shall be paid 90 days after Customer program approval. Capital payment terms will be paid 90 days after commissioning.
6. **INSPECTION:**
- A. Seller agrees to inspect and test all Goods and monitor all services furnished in performance of each Order to insure compliance with the specifications and other requirements of each Order. Seller agrees to permit inspection, monitoring and testing by Kautex or its agents of its equipment used in the production of the Goods and of all Goods, raw materials and services furnished in performance of each Order during manufacture or production, while being performed and at all reasonable times. All Goods shall be received subject to Kautex's inspection and acceptance or rejection. Inspection or testing of, or payment for, any Goods or services shall not constitute acceptance of them. Acceptance by Kautex does not relieve Seller of liability for latent defects, negligence, fraud or such gross error or defects as amount to fraud. Kautex shall have the right to reject any Goods and refuse any services found not to be in compliance with the specifications or other requirements of the Order. The obligations of this paragraph shall survive the cancellation, termination or completion of the Order.

- B. Kautex, at its option, may reject and return at Seller's risk and expense, or retain and correct, Goods received pursuant to any Order that fail to conform to the requirements of the Order even if the nonconformity does not become apparent to Kautex until the manufacturing, processing or assembly stage or later. To the extent Kautex rejects Goods as nonconforming, the quantities under the Order will not be reduced by the quantity of nonconforming Goods unless Kautex otherwise notifies Seller in writing. Seller shall replace nonconforming Goods with conforming Goods unless otherwise notified in writing by Kautex, including, without limitation by way of a termination notice from Kautex. Nonconforming Goods will be held by Kautex for disposition in accordance with Seller's written instructions at Seller's risk. Seller's failure to provide written instructions within ten (10) days (or such shorter period as may be commercially reasonable under the circumstances) after notice of nonconformity shall entitle Kautex, at Kautex's option, to charge Seller for storage and handling, or to dispose of the Goods without any liability of Kautex to Seller. Seller shall reimburse Kautex for (a) any amounts paid by Kautex on account of the purchase price of any rejected nonconforming Goods, and (b) any costs incurred by Kautex in connection with the nonconforming Goods, including, but not limited to inspection, sorting, testing, evaluations, storage or rework, within ten (10) days after a debit memo for the costs has been issued by Kautex. Payment by Kautex for nonconforming Goods shall not constitute an acceptance, limit or impair Kautex's right to assert any legal or equitable remedy, or relieve Seller's responsibility for latent defects.
- C. Nothing in the Order or these Terms and Conditions shall relieve Seller from the obligations of testing, inspection, and quality control. Kautex has the right to inspect, within ten (10) days of written request to Kautex, all supporting documents relating to Seller's quality system, such as Seller's CpK data, quality data, through-put data, and similar data.

## 7. **WARRANTY:**

- A. "Warranty Period" shall mean the longer of the following time periods: (i) 18 months from the day of first use of the goods or services by Kautex or acceptance by Kautex, whichever occurs later; (ii) the period provided under applicable law; or (iii) if the goods or services are utilized in new vehicles, the Warranty Period will continue for the same period as the new vehicle warranty period offered to retail purchasers in the country in which the vehicle is sold. For goods or services purchased by Kautex as service and replacement parts, the Warranty Period will be the greater of twelve months from delivery to Kautex's customer or the remainder of the warranty period on the vehicle on which the part is installed as a service or replacement part. Seller may contact Kautex's representative for information regarding those countries in which vehicles incorporating goods or services purchased from Seller will be sold.
- B. In the event that Kautex or its Customer voluntarily or pursuant to a government mandate, makes an offer to owners of vehicles (or other finished products) on which the goods, or any parts, components or systems incorporating the goods, are installed to provide remedial action to address a defect or condition that relates to motor vehicle safety or the failure of the vehicle to comply with any applicable law, safety standard or guideline, whether in connection with a recall campaign or other customer satisfaction or corrective service action (a "Remedial Action"), the Warranty Period shall continue for such time period as may be dictated by Kautex's Customer or the federal, state, local or foreign government where the goods are used or provided and Seller shall fully comply with the requirements of this Order.
- C. Notwithstanding the expiration of the Warranty Period, Seller shall nonetheless be liable for cost and damages associated with the conduct of any Remedial Action to the extent that such Remedial Action is based upon a reasonable determination (including by use of statistical analysis or other sampling methodology) that the goods fail to conform to the warranties set forth in the Order. Where applicable, Seller shall pay all reasonable expenses associated with determining whether a Remedial Action is necessary. Kautex and Seller agree that any Remedial Action involving goods for Kautex shall be treated separately and distinctly from similar Remedial Actions of other goods of Seller; provided that such separate and distinct treatment is lawful and Seller shall in no event fail to provide at least the same

protection to Kautex on such goods as Seller provides to its other customers in connection with such similar Remedial Actions.

- D. Notwithstanding the foregoing, Seller agrees to waive the expiration of the Warranty Period in the event there are failures or defects discovered after the Warranty Period of a significant nature or in a significant portion of the goods, or a defect is discovered which, in Kautex's opinion, constitutes a threat of damage to property or to the health and safety of any person.
- E. Seller expressly warrants that all Goods covered by an Order will conform to all specifications, standards, drawings, samples or descriptions furnished to or by Kautex, and all industry standards, laws and regulations in force in countries where Goods or vehicles equipped with such Goods are to be sold. Seller also expressly warrants that all Goods will be merchantable, of good material and workmanship and free from defects. In addition, Seller acknowledges that Seller knows of Kautex's intended use and expressly warrants that all Goods covered by each Order will be fit and sufficient for the particular purpose intended by Kautex.
- F. Seller expressly warrants that, for all Goods under the Order, Seller shall convey good title to Kautex, free and clear of all liens, claims or other encumbrances.
- G. All warranties are intended to provide Kautex with protection from any and all warranty claims brought against Kautex by its Customer. This includes, but is not limited to, meeting any Customer-required warranties relating to the Goods in question or products into which the Goods are incorporated. All such Customer-required warranties are incorporated by reference.
- H. The following communications shall each constitute notice of breach of warranty under the Order: (i) any communication specifying a defect, default, claim of defect or other problem or quality issue with Goods sold under the Order; (ii) any communication to Seller claiming that Seller's Goods are in breach of any warranty or that Seller is in default under the Order; and (iii) a termination notice from Kautex. Any such claim of breach by Kautex may only be rescinded in writing by an authorized member of Kautex's Legal Department.
- I. To mitigate its damages, Kautex may fully defend any claim from any Customer that any Goods supplied by Seller are defective, in breach of warranty, or otherwise did not meet applicable legal or contractual requirements because such Customer may attempt to hold Kautex responsible for problems caused in whole or in part by Seller. Seller and Kautex agree that this defense is in the interest of both Seller and Kautex. Seller hereby waives the right to argue that the fact that Kautex took any such position in any way limits Kautex's right to assert a claim against Seller by Kautex for breach of warranty, contribution, indemnification or other claim that may arise from or be related to the subject matter of any of the foregoing.
- J. In the event that Seller wishes to participate in any of the negotiations with Kautex's Customer regarding any of the foregoing or any related litigation or defense of any such claim, then in each case that Seller receives notice of default or claim of breach, Seller shall give Kautex prompt notice of its request to participate in accordance with the terms of this Order, which notice shall describe with particularity the details of the alleged default or breach.

**8. CHANGES:**

- A. Kautex reserves the right at any time to direct changes, or cause Seller to make changes, to the Goods under any Order or Order amendment, including, but not limited to, changes in the design (including drawings and specifications), processing, methods of packaging and shipping and the date or place of delivery of the Goods covered by the Order or to otherwise change the scope of the work covered by the Order including

work with respect to such matters as inspection, testing or quality control, and Seller agrees to promptly make such changes. Any such changes shall be deemed not to affect the time for performance or cost under the Order unless (i) Seller provides Kautex with written notice of a claim for adjustment to time for performance or cost within ten (10) days after Kautex's notice to Seller of the change and (ii) after auditing such claim, Kautex determines that an adjustment (up or down) is appropriate. Any such claim by Seller for adjustment to time for performance or cost under an Order must be solely and directly the result of the change directed by Kautex and any notice of such claim shall be effective only if accompanied by all relevant information sufficient for Kautex to verify such claim. In addition, Kautex shall have the right to audit all relevant records, facilities, work or materials of Seller to verify any claim Seller shall consider and advise Kautex of the impact of a design change on the system in which the Goods covered by the Order are used. Nothing in this Section shall excuse Seller from proceeding with the Order as changed.

- B. Without the prior approval of Kautex on the face of an Order amendment or in a Signed Writing, Seller shall not make any changes to any Order or the Goods covered by the Order, including, without limitation, changing (i) any third party supplier to Seller of services, raw materials or goods used by Seller in connection with its performance under the Order, (ii) the facility from which Seller or such supplier operates, (iii) the price of any of the Goods covered by the Order, (iv) the nature, type or quality of any services, raw materials or goods used by Seller or its suppliers in connection with the Order; (v) the fit, form, function, appearance, performance of any Goods covered by the Order; or (vi) the production method, or any process or software used in the production or provision of any Goods under the Order. Any changes by Seller to any Order or the Goods covered by the Order without the prior approval by Kautex on the face of an Order amendment or in a Signed Writing shall constitute a breach of the Order.

9. **INFRINGEMENT INDEMNIFICATION:** Seller agrees that it will, at its own expense, including payment of costs and solicitor (s) fees and disbursements, defend any claims, charges or lawsuits instituted by any party against Kautex or its customers arising out of, in connection with or related to alleged misuse, misappropriation or infringement of any patent, trademark, copyright or other right relating to Goods or services furnished to Kautex in the performance of each Order, or relating to, resulting from or arising out of the receipt of such services or use of such Goods in combination with other Goods as is recommended by Seller. Seller further agrees to indemnify and hold harmless Kautex and all persons claiming under Kautex in respect of any claims, demands, liabilities, losses, judgments, awards, fines, settlements, court costs, solicitor (s) fees, and expenses incurred by reason of such claims, charges or lawsuits. Seller shall notify Kautex in writing of each such notice or claim of which Seller has knowledge. Seller shall, at its own expense, either procure for Kautex the right to continue using the article, apparatus, material, part, device, process or method or, if the performance thereof will not be adversely affected, replace same with anon-infringing substitute or modify it so it becomes non-infringing, or remove it and refund the purchase price, transportation and installation costs thereof. The obligations of this paragraph shall survive the cancellation, termination, or completion of each Order.

10. **NOTICE OF DELAYS:** Whenever Seller has knowledge that any actual or potential occurrence is delaying or threatens to delay the timely performance of any Order, Seller shall immediately give notice thereof to Kautex, including all relevant information with respect thereto. Delivery delays caused by such occurrence shall be governed by the paragraph of this schedule entitled "DELIVERY" (and paragraph 12, Force Majeure, if and to the extent applicable).

11. **COMPLIANCE WITH LAWS:** Seller agrees to comply with all applicable local, state, foreign and federal laws, orders, directives and regulations at any time in effect, including, but not limited to, those found in the *Human Rights Code* (Ontario), the *Canadian Human Rights Act* (Canada), the *Employment Standards Act* (Ontario) and other applicable health and safety, and labour and employment laws. If Seller fails to comply with the provisions of this paragraph, Kautex may, by written notice to Seller, terminate any Order as upon a default in accordance with the "Termination for Default" paragraphs of this Order in addition to any other rights or remedies provided by law.

**12. FORCE MAJEURE:**

- A. Any delay or failure of either party to perform its obligations shall be excused if it is caused by an extraordinary event beyond the control of the nonperforming party and without the nonperforming party's fault or negligence, such as acts of God, fires, floods, windstorms, explosions, riots, natural disasters, wars and sabotage. Written notice of such delay, including the anticipated duration of the delay, must be given by the nonperforming party within two (2) days of the event. During the period of any delay or failure to perform by Seller, Kautex, at its option, may purchase goods from other sources and reduce its schedules to Seller by such quantities, without liability to Kautex, or cause Seller to provide the goods from other sources in quantities and at times requested by Kautex and at the price set forth in this Order. If requested by Kautex, Seller shall, within five (5) days of such request, provide adequate assurance that the delay will not exceed such period of time as Kautex deems appropriate. If the delay lasts more than the time period specified by Kautex, or Seller does not provide adequate assurance that the delay will cease within such time period, Kautex may, among its other remedies, immediately cancel this Order without liability.
- B. If Force Majeure continues for longer than five (5) calendar days, then Kautex, at its sole option, may terminate any Order in whole or in part without any obligation or liability except that Kautex is still responsible for payment for Goods or services which have been delivered to and accepted by Kautex prior to the Force Majeure notice receipt.
- C. Kautex may cancel any Order at any time prior to delivery or performance if its business is interrupted for reasons beyond Kautex's reasonable control. Kautex shall give prompt notice of such cancellation to Seller.
- D. Seller acknowledges and agrees that the following will not excuse performance by Seller under theories of force majeure, commercial impracticability or otherwise and Seller expressly assumes these risks: (i) change in cost or availability of materials, components or services based on market conditions, supplier actions or contract disputes; (ii) failure of Seller's internal business systems related to the proper processing of date information that results in any defect or failure in products or services, deliveries, or any other aspect of performance by Seller or its subcontractors. Seller acknowledges that it is its responsibility to secure a stable and dependable supply chain in order to meet its obligation hereunder. If Seller and its affiliates operate out of more than one location, Seller shall shift production to an unaffected location and allocate production among its customers so as to minimize disruption to Kautex and Kautex's customers. Such shifting of production shall not affect the prices charged for the Goods.

**13. TERMINATION AND SETTLEMENT:**

- A. Kautex's Right to Terminate for Default. Kautex reserves the right to terminate immediately all or any part of each Order, without any liability of Kautex to Seller, in the event of any default by Seller. The following are causes, among others, allowing Kautex to terminate the Order: (i) if Seller repudiates, breaches or threatens to breach any of the terms of the Order including, without limitation, Seller's warranties and Qualified Seller provisions; (ii) if Seller fails to perform or deliver Goods as specified by Kautex; (iii) if Seller fails to provide Kautex with adequate and reasonable assurance of Seller's ability to perform timely any of Seller's obligations under any Order, including, without limitation, delivery of Goods; (iv) if Kautex terminates for breach any other Order issued by Kautex to Seller in accordance with the terms of such Order (whether or not such other Order is related to the Order); or (v) if Seller fails to remain competitive with respect to price, quality, delivery, technology, or customer support for the Goods.

- B. Kautex's Right to Terminate for Convenience.**
- (i) In addition to any other right of Kautex to terminate each Order, Kautex may at its option, immediately terminate all or any part of the Order at any time and for any reason by giving written notice to Seller.
  - (ii) Upon receipt of notice of termination under this subparagraph B, Seller, unless otherwise directed in writing by Kautex, shall (i) terminate immediately all work under the Order; (ii) transfer title and deliver to Kautex the usable and merchantable finished Goods, work in process, and raw materials/components that Seller produced or acquired in accordance with firm Release amounts under the Order and which Seller cannot use in producing goods for itself or for others; (iii) settle all claims by subcontractors approved by Kautex on the face of an Order or Order amendment for reasonable actual costs that are rendered unrecoverable by such termination; (iv) take actions reasonably necessary to protect property in Seller's possession in which Kautex has an interest and (v) upon Kautex's request, cooperate with Kautex in effecting the resourcing of the Goods covered by the Order to an alternative supplier designated by Kautex.
  - (iii) Upon termination of any Order by Kautex under this under this subparagraph B, Kautex shall pay to Seller the following amounts without duplication: (i) the Order price for all finished and completed Goods that conform to the requirements of the Order and not previously paid for; (ii) Seller's reasonable actual cost of the usable and merchantable work in process and raw materials/components transferred to Kautex in accordance with subparagraph B(2)(ii) hereof; (iii) Seller's reasonable actual cost of settling claims for the obligations Seller would have had to the subcontractors approved by Kautex on the face of an Order or Order amendment or in a Signed Writing in the absence of termination, and (iv) Seller's reasonable actual cost of carrying out its obligations under subparagraphs B(2)(iv) and B(2)(v). Kautex shall not be liable for and shall not be required to make payments to Seller, directly or on account of claims by Seller's subcontracts, for any other 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, general and administrative burden charges resulting from termination of the Order or otherwise. Notwithstanding anything to the contrary, Kautex's obligation to Seller upon termination under this subparagraph B shall not exceed the obligation Kautex would have had to Seller in the absence of termination.
  - (iv) Within thirty (30) days after the effective date of termination under this subparagraph B, Seller shall furnish to Kautex its termination claim, together with all supporting data which shall consist exclusively of the items of Kautex's obligation to Seller that are listed in subparagraph B(iii). Kautex may audit Seller's records before or after payment to verify amounts requested in Seller's termination claim.
- C. No Termination Right by Seller.** Because Kautex's commitments to its Customers are made in reliance on Seller's commitments under each Order, Seller has no right to terminate any Order.
- D. Transition of Supply.** Upon the expiration or earlier termination of any Order for whatever reason, Seller agrees to take such action as may be reasonably required by Kautex to accomplish the transition from Seller to an alternative seller, including, without limitation the actions set forth below. The term "alternative seller" expressly includes, but is not limited to, a Kautex-owned facility.
- (i) Seller shall provide all notices necessary or desirable for Kautex to resource the Order to an alternative seller.
  - (ii) Seller shall provide a sufficient bank of Goods covered by the Order to ensure that the transition to any alternative seller chosen by Kautex will proceed smoothly. Unless otherwise specified by Kautex on the face of an Order amendment or in a Signed Writing, a six week parts bank will be deemed sufficient to accomplish the transition. Such "six week parts bank" will be calculated using the Orders of Kautex from the six weeks immediately prior to Seller's notice of termination not including any temporary interruptions, plant or industry shutdowns or other reduced schedules.



- (iii) Seller shall return to Kautex all Kautex's Property and any other property furnished by or belonging to Kautex or any of Kautex's Customers in as good as condition as when received by Seller, reasonable wear and tear excepted.
- (iv) Seller shall, at Kautex's option, (i) assign to Kautex any or all supply contracts or orders for raw material or components relating to the Order, (ii) sell to Kautex, at Seller's cost any or all inventory and work in process relating to the Order and (iii) sell to Kautex at the unamortized portion of the cost of such items, less any amounts Kautex previously has paid to Seller for the cost of such items, any or all Seller's Property relating to the Order.

**14. PRICES:**

- A. Prices charged for Goods listed on the Order are not subject to increase, including specifically any increase based upon changes in raw material or component pricing, labor or overhead, unless specifically agreed to by Kautex on the face of an Order amendment or in a Signed Writing.
- B. Seller represents that the price charged to Kautex for Goods is at least as low as the price charged by Seller to Kautex of a class similar to Kautex under conditions similar to those specified in the Order and that all prices comply with all applicable governmental laws and regulations in effect at the time of quotation, sale and delivery. Seller agrees that any price reduction implemented by Seller for any Goods or related charges will apply to all shipments of such Goods under the Order or any Order amendment from and after Seller's implementation of the price reduction. If Seller offers a lower price for the same or similar goods or services to any other customer during the term of an Order, then to the extent permitted by law, Seller will immediately offer Kautex the same price for the goods or services on the same terms and conditions as was offered to the other customer.
- C. Seller shall ensure that the price charged to Kautex for Goods remains competitive with the price for similar goods available to Kautex from other sellers.
- D. Seller agrees to participate in Kautex's cost savings and productivity programs and initiatives and to implement Seller's own cost savings and productivity programs and initiatives to reduce Seller's costs.

**15. INDEMNITY:** Notwithstanding anything contained in Seller's warranty to the contrary, and to the fullest extent permitted by law, Seller agrees to indemnify, save harmless and defend Kautex and its affiliated companies, their directors, officers, employees, agents and customers ("Indemnitees") from and against any loss, liabilities, costs, expenses, suits, actions, claims and all other obligations and proceedings, including without limitation all judgments rendered against, and all fines and penalties imposed upon, Indemnitees and all attorney's fees and any other cost of litigation ("Liabilities") arising out of a breach of this Order, warranty claims, product recall claims, product liability claims, injuries to persons, including death, or damage to property caused by Seller, its employees, agents, subcontractors, or in any way attributable to the performance of Seller, including without limitation, breach of contract, breach of warranty or product liability; provided, however, that Seller's obligation to indemnify Kautex shall not apply to any liabilities solely arising from Kautex's negligence. Seller waives the application of the doctrine of comparative negligence and other doctrines that may otherwise allocate the liability covered by Seller's indemnity. This indemnification obligation shall be in addition to Seller's warranty obligations.

**16. GRATUITIES; POLICIES AND PROCEDURES:**

- A. If it is found that gratuities (in the form of entertainment, gifts or otherwise) are offered by Seller, or any agent or representative of Seller, to any employee of Kautex with a view toward securing favorable

treatment with respect to the awarding or performing of any Order, Kautex may, by written notice to Seller, terminate any or all Orders as upon a default in accordance with such Order in addition to any other rights or remedies provided by law.

- B. Seller, its employees, representatives, and agents shall comply with all of Kautex's rules, regulations, policies and procedures while on Kautex's premises or in the company of any Kautex's employees. If Seller, its employees, representatives, or agents violate Kautex's rules, regulations, policies, or procedures, Kautex may, by written notice to Seller, terminate any Order as upon a default in accordance with such Order in addition to any other rights or remedies provided by law.

**17. APPLICABLE LAW; JURISDICTION AND VENUE:**

- A. This Order shall be governed by, and construed and interpreted in accordance with, the internal laws of the Province of Ontario (including the federal laws of Canada applicable in the Province of Ontario) without regard to any applicable conflict of laws provisions. The United Nations Convention on the International Sale of Goods is expressly excluded.
- B. Except as otherwise provided in this paragraph in connection with actions by Kautex for injunctive or equitable relief, all disputes involving this Order shall be adjudicated exclusively in the Courts of the Province of Ontario. Seller specifically waives any and all objections to venue in such courts. In addition, with respect to actions by Kautex for injunctive or equitable relief, Seller also consents to the jurisdiction of the appropriate federal or provincial court for the jurisdiction in which: (i) Kautex's Property is located; or (ii) the injunctive or equitable relief would be carried out.

- 18. AMENDMENT BY LAW:** Each Order shall be deemed to contain all provisions required to be included by any applicable local, state federal or Provincial laws, orders, regulations or directives heretofore or hereafter promulgated without the subsequent amendment of such Order specifically incorporating such provisions.

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

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

- 21. OTHER ENVIRONMENTAL AND HEALTH AND SAFETY REQUIREMENTS:** Seller will take appropriate actions to provide a safe and healthy workplace and to protect local environmental quality at and near all facilities and operations where it will conduct activities to supply Products, materials or services under this Contract. For all Products and other materials sold or otherwise transferred to Kautex under this Contract containing hazardous materials, Seller shall provide all information that a U.S.

manufacturer or importer must provide to comply with the Hazard Communication Standard codified at 29 CFR 1910.1200, including complete Material Safety Data Sheets (OSHA Form 20) and labeling and similar Canadian legislation, rules and regulation, whether or not the standard applies to the activities of Seller. Seller further represents, warrants and certifies that Products were not manufactured with child, indentured, forced or prison labor.

22. **INSURANCE:** Seller shall maintain such insurance coverage as Kautex may reasonable require, including but not limited to complete first dollar coverage on all raw materials, work-in-process, and Goods destined for Kautex, with carriers acceptable to Kautex. Seller shall furnish to Kautex either a certificate showing compliance with these insurance requirements or certified copies of all insurance policies within 10 days of Kautex's written request. The certificate will provide that Kautex will receive 30 days' prior written notice from the insurer of any termination or reduction in the amount or scope of coverage. Seller's furnishing of certificates of insurance or purchase of insurance shall not release Seller of its obligations or liabilities under this contract.
23. **SELLER'S PROPERTY:** Unless otherwise agreed to by Kautex and Seller in a written agreement signed by both parties, Seller, at its expense: shall (i) furnish, (ii) keep in good condition, and (iii) replace when necessary all Seller's Property (hereinafter defined). Seller hereby grants Kautex an irrevocable option to purchase, free and clear of all liens, claims and other encumbrances, any or all of Seller's supplies, materials, molds, machinery, equipment, patterns, tools, dies, jigs, fixtures, blueprints, designs, specifications, drawings, photographic negatives and positives, art work, copy layout and other items necessary for the production of the Goods under any Order (collectively, "Seller's Property") that are specially designed or configured for manufacture or assembly of Goods under the Order upon Kautex's payment of the unamortized portion of the cost of such items of Seller's Property, less any amounts Kautex previously has paid to Seller for the cost of such Seller's Property. Seller shall permit Kautex to audit Seller's records to verify the amount due for any of Seller's Property. This option will not apply to any of Seller's Property that is used by Seller to produce a substantial quantity of like products for other customers of Seller which cannot readily be obtained by Seller's customer(s) from third parties unless, at Kautex's election upon exercise of the option, Seller assigns to Kautex and Kautex or its designee assumes Seller's obligation to produce such products for Seller's other customers using those items of Seller's Property during the period subsequent to the sale of Seller's Property to Kautex. Seller shall cooperate with Kautex's reasonable requests for information regarding any such obligations to Seller's other customer(s) and to effect such assignment and assumption. Kautex's right to exercise the option under this Section is not conditioned on a breach by Seller or Kautex's termination of the Order.
24. **KAUTEX'S PROPERTY:**
- A. The right, title and interest to all supplies, materials, tools, jigs, dies, gauges, fixtures, molds, patterns, equipment, designs, drawings, specifications, spare parts, trial parts, ancillary products, items owned by Kautex and other items furnished by Kautex or its customers ("Kautex's Property") to Seller for use in manufacturing the Goods, or for which Seller is reimbursed by Kautex or its customers, shall be and remain the property of Kautex and/or its customers. Seller shall bear the risk of loss of and damage to such Kautex's Property. Seller will (i) properly house and maintain the Kautex's Property on Seller's premises; (ii) not use the Kautex's Property for any purpose other than for performance under the Order; (iii) prominently mark the Kautex's Property as property of Kautex; (iv) refrain from commingling the Kautex's Property with the property of Seller or with that of a third party; (v) adequately insure the Kautex's Property against loss or damage, including but not limited to maintaining full fire and extended coverage insurance for replacement value and naming Kautex as an additional insured; (vi) take reasonable steps to ensure that the Kautex's Property does not become subject to any liens or other claims; and (vii) not move the Kautex's Property to another location whether owned by Seller or a third party, without the prior written consent of Kautex. Kautex will have the right to enter Seller's premises at reasonable times to inspect the Kautex's Property and Seller's records pertaining thereto. Seller expressly waives and releases, and agrees not to file or otherwise assert or prosecute or suffer to permit any statutory, equitable or other

liens, including but not limited to equitable or other liens, including but not limited to any molder liens, tool liens, builder liens and the like, that Seller has or might have on or in connection with the Kautex's Property for all work, including but not limited to, designing, manufacturing, improving, maintaining, servicing, using, assembling, fabricating or developing the Kautex's Property. Seller hereby agrees to indemnify, defend and hold Kautex harmless from and against any loss, liabilities, costs, expenses, suits, actions, claims and all other obligations and proceedings, including without limitation all attorney's fees and all other cost of litigation that are in any way related to releasing, terminating or otherwise removing all such liens placed on the Kautex's Property. Seller will assign to Kautex any claims Seller has against third parties with respect to Kautex's Property. Upon written request, Seller, at its expense and risk, shall immediately deliver the Kautex Property to the Kautex Plant properly packed and marked in accordance with the shippers and Kautex instructions. In all circumstances Seller will cooperate with Kautex's removal of the Kautex's Property from Seller's premises. Seller shall assume all risk of death or injury to persons or damage to property arising from use of the Kautex's Property. Unless otherwise agreed to in writing by Kautex, Seller at its own expense shall keep the Kautex's Property in good condition and repair, including repair necessitated by wear and tear and other usage by Seller. In the event that it becomes necessary, as determined by either Kautex or Seller, to replace the Kautex's Property due to normal use by the Seller, or otherwise, said replacement Kautex's Property shall be at the sole expense of the Seller and said replacement tools shall remain the property of the Kautex. Kautex does not guarantee the accuracy of any Kautex's Property or the availability or suitability of any supplies or material furnished by it. Seller assumes sole responsibility for inspecting, testing and approving all Kautex's Property or other materials supplied by Kautex prior to any use by Seller. Seller shall assume all risk of death or injury to persons or damage to property arising from use of the Kautex's Property or other materials supplied by Kautex and hereby agrees to indemnify Kautex against the same. Seller agrees that it will comply with obligations hereunder to release Kautex's Property notwithstanding any offsetting claim that it may have against Kautex.

- B. Seller acknowledges and agrees that (i) Kautex is not the manufacturer of the Kautex's Property nor the manufacturer's agent nor a dealer therein; (ii) Kautex is bailing the Kautex's Property to Seller for Seller's benefit; and (iii) Seller has inspected the Kautex's Property and is satisfied that the Kautex's Property is suitable and fit for its purposes, and (iv) **KAUTEX HAS NOT MADE AND DOES NOT MAKE ANY WARRANTY OR REPRESENTATION WHATSOEVER, EITHER EXPRESS OR IMPLIED, AS TO THE FITNESS, CONDITION, MERCHANTABILITY, DESIGN OR OPERATION OF THE KAUTEX'S PROPERTY OR ITS FITNESS FOR ANY PARTICULAR PURPOSE.** Kautex will not be liable to Seller for any loss, damage, injury or expense of any kind or nature caused, directly or indirectly, by the Kautex's Property, including, without limitation, its use or maintenance, or its repair, service or adjustment, or by any interruption of service or for any loss of business whatsoever or howsoever caused, including, without limitation any anticipatory damages, loss of profits or any other indirect, special or consequential damages.
- C. Seller authorizes Kautex to file a UCC-1 financing statement or similar document with the appropriate filing authority to give notice of Kautex's ownership interest in the Kautex's Property. Failure to file a financing statement will not alter or amend Kautex's ownership rights to the Kautex's Property Seller shall provide Kautex, upon Kautex's request, with a written inventory of all Kautex's Property.
25. **KAUTEX'S RIGHTS OF ENTRY, RECLAMATION, AND INSPECTION:** Kautex shall have the right to enter Seller's facility during normal business hours or, in the event of a Seller shutdown, at reasonable times, to inspect the facility, Goods, materials and any property of Kautex covered by each Order and, without the necessity of a court order, may enter upon Seller's property and remove property belonging to Kautex or any Customer of Kautex, including, without limitation, Kautex's Property and other Goods, inventory or Seller's Property that has been or is agreed to be sold to Kautex under the Order. Kautex's inspection of the Goods, whether during manufacture, prior to delivery or within a reasonable time after delivery, shall not constitute acceptance of any work in process or finished Goods.
26. **CONFIDENTIAL OR PROPRIETARY INFORMATION:**

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

**27. DESIGN, WORK MADE FOR HIRE, INVENTIONS**

- A. Any work of authorship by Seller or its employees which is ordered or commissioned by Kautex or is a necessary part of the performance of Supplier under these Terms and Conditions will be considered a "work made for hire" and all copyrights for such work shall belong to Kautex.
- B. With respect to inventions which Supplier conceives or first reduces to practice in the course of Seller's activities under a purchase order, Seller grants Kautex a permanent, paid-up, non-exclusive world wide license with a right to sublicense others to make, have made, and use such patents as may be issued on such inventions.

**28. FOREIGN PURCHASES:**

- A. Unless specifically provided otherwise herein, Kautex shall be Importer of Record.
- B. If Seller is Importer of Record, Seller agrees that Kautex will not be a party to the importation of Products, that the transaction(s) represented by this Contract will be consummated subsequent to importation, and that Seller will neither cause nor permit Kautex's name to be shown as "importer of record" on any customs declaration. Upon request and where applicable, Seller will provide all commercial invoices in proper form to allow for entry and possible drawback. Seller will not disclose any information regarding Kautex contrary to export control laws and regulations of Canada.

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

30. **REPLACEMENT PARTS:** Seller shall provide replacement parts to Kautex and its affiliates for a period of 15 years after production, or at OEM requirements, whichever is greater. Seller shall continue to supply such parts past the 15-year period if Kautex or its affiliates order at least 100 parts per year. Nonproduction or obsolete parts shall be offered to Kautex or its affiliates for a lifetime buy at current production prices before Seller shall be allowed to discontinue. All other nonproduction parts shall be offered at production prices for five years after end of production. Thereafter, prices shall be negotiated based on Seller's actual cost of production plus any special packaging. Seller shall notify Kautex or its affiliates and receive written approval before scrapping any tooling used to make Kautex's replacement parts.
31. **SET-OFF AND RECOUPMENT:**
- A. In addition to any right of setoff or recoupment provided or allowed by law, all amounts due Seller, or any of its subsidiaries or affiliates shall be considered net of indebtedness or obligations of Seller, or any of its subsidiaries or affiliates to Kautex or any of its subsidiaries or affiliates, and Kautex or any of its subsidiaries or affiliates may setoff against or recoup from any amounts due or to become due from Seller, or any of its subsidiaries or affiliates to Kautex or any of its subsidiaries or affiliates however and whenever arising. In the event that Kautex or any of its subsidiaries or affiliates reasonably feels itself at risk, Kautex or any of its subsidiaries or affiliates may withhold and recoup a corresponding amount due Seller or any of its subsidiaries or affiliates to protect against such risk.
- B. An "affiliate" of a party means any other company that controls, is controlled by, or is under common control with such party. For purposes of this definition, the term "control" means the ownership, directly or indirectly, of twenty percent (20%) or more of the capital or equity of a company or the ability, by voting securities, contract or otherwise, to elect a majority of the board of directors or other governing body of such company.
- C. If an obligation of Seller or any of its subsidiaries or affiliates to Kautex or any of its subsidiaries or affiliates is disputed, contingent or unliquidated, Kautex or any of its subsidiaries or affiliates may defer payment of all or any portion of the amount due until such obligation is resolved. Without limiting the generality of the foregoing and by way of example only, in the event of a bankruptcy of Seller, if all of the Orders between Kautex and Seller have not been assumed, then Kautex may defer payment to Seller, via an administrative hold or otherwise, for Goods against potential rejection and other damages.
32. **TRADEMARKS:** The names and the trademarks of each party and its affiliates shall remain the sole and exclusive property of that party or its affiliates and shall not be used by the other party for any purpose whatsoever unless expressly authorized by the owning party.
33. **TESTING:** Testing of any kind of Products by Kautex, whether for performance or reliability, shall not negate, diminish or relieve Seller's obligation or responsibility under any warranty, express or implied, indemnification; hold harmless or other similar term or provision existing at law or under this Contract.
34. **QUALITY ASSURANCE:**
- A. Seller shall meet all quality requirements of Kautex and all quality requirements of Kautex's Customer, including, but not limited to, the applicable plans relating to TS 16949, ISO 14001 and the various OEM End of Life Vehicle ("ELV") reporting and other requirements.
- B. Seller agrees to participate in Kautex's quality and development program(s) and to comply with all quality requirements and procedures specified by Kautex, as revised from time to time. Based on Kautex's assessment of responsibility, Seller may be held responsible for any and all costs associated with quality issue investigation, containment and Remedial Actions on account of Goods provided by Seller to Kautex (including third party activities identified and initiated by Kautex). Seller is obligated to provide any and



all reasonable support requested by Kautex to address immediately and correct concerns regarding the quality of Goods provided. Seller shall provide additional resources, as necessary and as identified by Kautex, to support product development, process development, validation, production launch, or any issue that may jeopardize the success of the manufacture or assembly of any Goods or of the program.

- C. Seller must assure that its overall equipment (shared and specific) and plant capacity are adequate to meet Kautex's needs. Ongoing capacity analysis must account for at least: scrap variation, downtime, maintenance, and other Customer requirements. Each production process must successfully complete a Run-at-Rate. The Run-at-Rate must demonstrate that Seller's production process can produce in less than 24 hours at least one day's quantity of acceptable quality Goods to satisfy Seller's Capacity Planning Volume ("CPV"). Kautex is not obligated to pay Seller any incremental costs as long as the Release, quantities do not exceed Seller's CPV. The requirement for capacity and the CPV is not a volume, program or other commitment by Kautex.
  - D. Seller is responsible for all sub-tier providers of goods or services. Seller must maintain adequate development, validation, launch, and ongoing supervision to assure all Goods provided to Kautex conform to all specifications, standards, drawings, samples and descriptions, including, without limitation, as to quality, performance, fit, form, function and appearance, under the Order.
  - E. For all Goods, in addition to any other applicable warranties, Seller shall provide the warranties specified in this Order.
35. **MATERIAL MANUFACTURED BY KAUTEX:** Equipment and services provided by Kautex or its affiliates shall be used when the product is suitable for the application.
36. **INCORPORATED DOCUMENTS:** All documents attached to an Order are incorporated therein by reference and made a part of the Order as if fully set forth herein.
37. **LIMITATION OF DAMAGES:** In no event shall Kautex be liable to Seller for anticipated profits or for special, incidental or consequential damages. This limitation of liability provision applies notwithstanding the type of the Order (including, without limitation, Spot-buy Orders, Blanket Orders or requirements contract Orders). Kautex'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 Order, the Goods or any other agreement between Kautex and Seller is the Reasonable Obsolescence, if any, created by the event giving rise to the claim. Kautex and Seller agree that "Reasonable Obsolescence" means the following amounts without duplication: (i) the Order price for all finished and completed Goods that are authorized under outstanding firm Releases, conform to the requirements of the Order, and have not been previously paid for; (ii) Seller's reasonable actual cost of the usable and merchantable work in process and raw materials/components transferred to Kautex in accordance with the termination and that are covered by outstanding firm Releases from Kautex; and (iii) Seller's reasonable actual cost of settling claims for the obligations Seller would have had to the subcontractors approved in a Signed Writing in the absence of termination limited to the amount of the firm quantities of Goods and raw materials/components specified in Releases issued by Kautex that are currently outstanding. Kautex shall not be liable for and shall not be required to make payments to Seller, directly or on account of claims by Seller's subcontractors, for any other alleged losses or costs, whether denominated as loss of anticipated profit, recoupment of investment, unabsorbed overhead, interest on claims, product development and engineering costs, facilities and equipment rearrangement costs or rental, unamortized depreciation costs, general and administrative burden charges resulting from termination of the Order or otherwise. Notwithstanding anything to the contrary, Kautex's obligation to Seller upon termination of any Order shall not exceed the obligation Kautex would have had to Seller in the absence of termination of such Order.
38. **REMEDIES FOR BREACH BY SELLER:**

- A. The rights and remedies reserved to Kautex in each Order, including, without limitation, the rights of entry, reclamation and inspection, shall be cumulative with, and additional to, all other or further remedies provided in law or equity. A waiver by Kautex of any right or remedy shall not affect any rights or remedies subsequently arising under the same or similar clauses. The failure of the Kautex to insist upon the performance of any term or condition of this Order, or to exercise any right hereunder shall not be construed as a waiver of the future performance of any such term or condition or the exercise in the future of any such right. Without limiting the generality of the foregoing, should any Goods fail to conform to the warranties set forth herein or should Seller fail to comply with the terms of this Order, Kautex shall notify Seller and Seller shall, if requested by Kautex, reimburse Kautex for any special, incidental and consequential damages caused by nonconforming Goods, including, but not limited to, costs, expenses and losses incurred by Kautex (a) in inspecting, sorting, testing, repairing or replacing such nonconforming Goods; (b) resulting from production interruptions, (c) in conducting Remedial Actions, and (d) in connection with claims for personal injury (including death) or property damage caused by such nonconforming Goods. If requested by Kautex, Seller shall, without charge to Kautex, administer and process warranty charge-backs for nonconforming Goods in accordance with Kautex's directions. Seller acknowledges and agrees that money damages would not be a sufficient remedy for any actual, anticipatory or threatened breach of any Order by Seller with respect to its delivery of Goods to Kautex and that, in addition to all other rights and remedies which Kautex may have, Kautex shall be entitled to specific performance and temporary, preliminary and permanent injunctive or other equitable relief as a remedy for any such breach, without proof of actual damages and without bond or other security being required
- B. Notwithstanding the foregoing, Seller acknowledges that shutting down a Customer's plant creates issues for which money damages are not a sufficient remedy. While the cost of a plant shutdown may easily generate substantial costs, the damages to Kautex's relationship with Kautex's Customer through potential loss of business, and other damages which are equally difficult to calculate, are far worse. Because of these risks, in the event of a breach or threatened breach by Seller of any of the representations, warranties or covenants of Seller (including without limitation, any commitment related to being a Qualified Seller), Kautex may, without notice to Seller, resource the production of Goods from Seller to another supplier or dual source any of the Goods covered hereby (i.e., have another supplier produce or be prepared to produce Goods being produced by Seller), to protect Kautex and its Customers. This process of moving business may take a considerable amount of time and Seller understands that, given the risks posed by the possible shutdown of Kautex's Customer, Kautex is justified in initiating and transferring business without prior notice to Seller.
- C. Seller understands that the resourcing of business during a program, while not desirable, is a part of the automotive business and is an acknowledged risk to Seller in the industry. Even the risk of Seller's financial or operational uncertainty, in light of the huge risks to Kautex and Kautex's Customer, is an example of a justified reason to move production, without notice, and that any incidental or related activity by Kautex is understandable and reasonable.
- D. Notwithstanding anything to the contrary contained in any Order, Kautex does not release any claim against Seller that is based in whole or in part on any fraud or duress in connection with the Order or any breach or anticipatory breach of the Order or any other Order between Kautex and Seller (even if that Order relates to other products).

39. **LABOR:** Seller shall notify Kautex in writing at least ninety (90) days prior to the termination or expiration of its labor contract(s). If Seller is unable to supply Goods to Kautex due to a labor disruption or expiration of Seller's labor contract(s), then the Seller shall at its sole expense take any actions necessary to ensure the supply of Goods to Kautex for a period of at least thirty (30) days from the commencement of disruption of the expiration of the labor contract(s). If requested by the Kautex, Seller shall, within ten (10) days, provide adequate assurances that the delay shall not exceed thirty (30) days. If the delay lasts more than thirty (30) days or Seller does not provide adequate assurance that the delay will cease within thirty (30) days, Kautex may immediately terminate this Order without liability. Notwithstanding, Seller's performance under any circumstances shall not be excused by a labor dispute or inability to obtain material.
40. **INGREDIENTS/TOXIC SUBSTANCES:**
- A. For Goods that may contain potentially hazardous and/or restricted materials, if requested by Kautex, Seller shall promptly furnish to Kautex in whatever form and detail Kautex requests (i) a list of all potentially hazardous ingredients in the Goods, (ii) the quantity of one or more such ingredients, and (iii) information concerning any changes in or additions to such ingredients. Before shipping the Goods, Seller agrees to furnish to Kautex sufficient warning and notice in writing (including appropriate labels on the Goods, containers and packing) of any hazardous material that is an ingredient or a part of any of the Goods, together with such special handling instructions necessary to advise the involved carriers, Kautex, and their respective employees how to exercise that measure of care and precaution that will best prevent bodily injury or property damage in the handling, transportation, processing, use or disposal of the Goods, containers and packing shipped to Kautex. Seller shall comply with all applicable federal, state, local and foreign laws and regulations pertaining to product and warning labels. If Goods are shipped by Seller to European destinations, before shipments are made, Seller shall notify Kautex of the "Classification of Dangerous Goods" as required by the European Agreement concerning the "International Carriage of Dangerous Goods."
- B. Any packaging made of wood (including pallets) must conform to the international softwood standards. In the event Seller fails to comply with such standards, Seller shall be liable for all related replacement and transportation costs.
41. **ELECTRONIC COMMUNICATIONS AND ELECTRONIC SIGNATURES:** Seller shall comply with any method of electronic communication specified by Kautex, including requirements for electronic funds transfer purchase order transmission, production Releases, electronic signature, and communication.
42. **VOLUME AND DURATION PROJECTIONS:** From time to time and in connection with quotations, requisitions and Orders, Kautex may provide Seller with estimates, forecasts or projections of its future volume or quantity requirements for the Goods and/or the term of a program ("Projections"). Projections, unlike a Release for a firm quantity, are not binding on Kautex. They also are not evidence of a requirements contract. Seller acknowledges that Projections, like any other forward looking projections, are based on a number of economic and business factors, variables and assumptions, some or all of which may change over time, and may or may not be accurate at the time they were made or later. Kautex makes no representation, warranty, guaranty or commitment of any kind or nature, express or implied, regarding any Projections or other estimate, forecast or projection provided to Seller, including as to its accuracy or completeness. Seller accepts that Projections may not be accurate and that actual volume or duration could be less than or greater than the projections. Seller acknowledges that this risk, and possible reward, is an aspect of the automotive industry.
43. **SELLER FINANCIAL AND OPERATIONAL CONDITION:**
- A. Seller represents and warrants to Kautex as of the date of each Order (which representations and warranties shall be deemed repeated as of the date of Seller's acceptance of each Release under the Order and at the

time of each delivery under the Order) that it is not insolvent and is paying all debts as they become due; that it is in compliance with all loan covenants and other obligations; that all financial information provided by Seller to Kautex concerning Seller is true and accurate; that such financial information fairly represents Seller's financial condition; and that all financial statements of Seller have been prepared in accordance with generally accepted accounting principles, uniformly and consistently applied.

- B. Seller shall permit Kautex and its representatives to review Seller's books and records concerning compliance with each Order and Seller's overall financial condition and agrees to provide Kautex with full and complete access to all such books and records for such purpose upon Kautex's request. Seller agrees that, if Seller experiences any delivery or operational problems, Kautex may, but is not required to, designate a representative to be present in Seller's applicable facility to observe Seller's operations. Seller agrees that, if Kautex provides to Seller any accommodations (financial or other) that are necessary for Seller to fulfill its obligations under any Order, Seller shall reimburse Kautex for all costs, including attorneys' and other professionals' fees, incurred by Kautex in connection with such accommodation and shall grant a right of access to Kautex to use Seller's premises, machinery, equipment and other property necessary for the production of Goods covered by such Order (and a lien to secure the access right) under an access and security agreement.
- C. Seller will provide Kautex with its financial statements (audited, if available; if not audited, then verified by the Seller's Chief Financial Officer) prepared in accordance with US GAAP within 90 days following the close of each of its fiscal years. When requested by Kautex, Seller will provide quarterly financial statements prepared in accordance with US GAAP and certified as true and correct by Seller's chief financial officer within 45 days following the close of each of the first three quarters of its fiscal year.
44. **SELLER INSOLVENCY:** Kautex may immediately terminate each Order without any liability of Kautex to Seller upon the occurrence of any of the following or any other similar or comparable event (each, a "Seller Insolvency"): (i) insolvency of Seller; (ii) Seller's inability to promptly provide Kautex with adequate and reasonable assurance of Seller's financial capability to perform timely any of Seller's obligations under any Order; (iii) filing of a voluntary petition in bankruptcy by Seller; (iv) filing of an involuntary petition in bankruptcy against Seller; (v) appointment of a receiver or trustee for Seller; or (vi) execution of an assignment for the benefit of creditors of Seller.
45. **NOTICES :** All notices, claims and other communications to Kautex required or permitted under the Order shall be made in writing and sent by certified or registered mail, return receipt requested and proper postage prepaid to the following address and shall be effective only upon receipt by Kautex in the form set forth in this Section:

Kautex Corporation  
2701 Kautex Dr.  
WINDSOR, Ontario  
N8W 5B1  
Attn: Vice President Operations

Seller's failure to provide any notice, claim or other communication to Kautex in the manner and within the time periods specified in the Order shall constitute a waiver by Seller of any and all rights and remedies that otherwise would have been available to Seller upon making such notice, claim or other communication.

46. **LIMITATION ON CLAIMS FROM SELLER:** Any action by Seller under any Order must be commenced within one (1) year after the breach or other event giving rise to Seller's claim occurs, regardless of Seller's lack of knowledge of the breach or other event giving rise to such claim.



47. **RELATIONSHIP OF PARTIES:** Seller and Kautex are independent contracting parties and nothing in the Order or these Terms and Conditions shall make either party the agent or legal representative of the other for any purpose whatsoever, nor does it grant either party any authority to assume or to create any obligation on behalf of or in the name of the other.
48. **SEVERABILITY:** If any term(s) of the Order is invalid or unenforceable under any statute, regulation, ordinance, executive order or other rule of law, such term(s) shall be deemed reformed or deleted, as the case may be, but only to the extent necessary to comply with such statute, regulation, ordinance, order or rule, and the remaining provisions of the Order shall remain in full force and effect.
49. **ENTIRE AGREEMENT; MODIFICATION:** The Order, together with attachments, exhibits or supplements specifically referenced in the Order, constitutes the entire agreement between Seller and Kautex with respect to the matters contained in the Order and supersedes all prior oral or written representations and agreements. Kautex may modify the Terms and Conditions, at any time, by posting notice of such modified Terms and Conditions through links provided on the Kautex web site at [www.kautex.de](http://www.kautex.de) under Seller Information at least ten (10) days prior to any modified Terms and Conditions becoming effective. Seller shall review the Kautex website and the Terms and Conditions periodically. Seller's continued performance under the Order without providing written notice to Kautex detailing Seller's objection to any modified Terms and Conditions prior to the effective date of such modified Terms and Conditions will be subject to and will constitute Seller's acceptance of such modified Terms and Conditions. Except as provided in the preceding sentences or as otherwise provided in these Terms and Conditions, the Order may only be modified by an Order amendment or a Signed Writing.
50. **PRODUCTION PART APPROVAL REQUIREMENTS:** With respect to Orders for production parts, Seller agrees to meet the full requirements identified in the industry production part approval process manual and agrees to present this information and data relating thereto to Kautex upon request, regardless of the authorized submission level, at PPAP Level No. 3 or its current equivalent unless otherwise authorized by Kautex on the face of an Order or Order amendment or in a Signed Writing.