

**TOYOTA TERMS AND CONDITIONS**

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## TOYOTA TERMS AND CONDITIONS

### 1. GENERAL.

(a) These Terms and Conditions (“Terms”) are a part of a Purchase Order or Price Confirmation (the “Order”) between (i) either Toyota Motor Engineering & Manufacturing North America, Inc. (both individually and, as applicable, as designated agent for one or more NAMCs) (“TEMA”) or one of the North American Manufacturing Companies (individually or by TEMA as its designated agent) (“NAMC”) (TEMA and NAMC are collectively referred to herein as “Toyota”) and (ii) Supplier (as identified by name on the Order as “Supplier”) providing for the purchase and sale, performance and/or installation of Items.

(b) An Order is made subject to these Terms and to the terms of any document referred to on the front side, the reverse side, or the additional attached pages of the Order, including without limitation, the “Other Documents” (as that term is defined in *Section 1.1*). An Order, these Terms and the Other Documents, if any, are referred to collectively herein as the “Contract Documents.” The parties to the Contract Documents may incorporate other documents by reference (including but not limited to other Contract Documents), which documents shall render full legal effect to and shall form part of the Contract Documents as though such other documents were transcribed verbatim. All such incorporated Contract Documents are expressly incorporated into these Terms by reference as if fully set forth in these Terms. The effective date of these Terms (the “Effective Date”) shall be the date of the applicable Order as set by Toyota.

(c) The parties do not intend for the Terms to be signed, but instead intend for the agreements between the parties to be accepted by the performance of Supplier for Toyota. Supplier’s commencement of work for Toyota and its continuing and ongoing performance under these Terms and any Contract Documents shall constitute Supplier’s acceptance of the Terms and the applicable Contract Documents, respectively. Submission of a Conforming Invoice (defined below) by Supplier (or submission of any advance shipping notification, evidence of shipment of Items, other documentation concerning a Supplier Payable or any other documentation which demonstrates that Supplier is performing its commercial relationship with Toyota, all of the foregoing as acceptable to Toyota in its sole discretion, and whether such notification, evidence or document is transmitted to Toyota electronically or otherwise but which can be reduced to writing ) will constitute an independent written acknowledgement of the agreement between the parties regarding the sale of Items to Toyota. Under no circumstances shall the Contract Documents include any terms and conditions proposed by Supplier (“Supplier Terms”), whether included on a Supplier invoice or written acceptance of an Order or otherwise, unless such Supplier Terms are expressly acknowledged in writing executed by an appropriate person on behalf of TEMA.

(d) Unless otherwise defined, the term “Items” shall, from time to time, include any and all of the following provided or performed by or on behalf of Supplier: (i) all raw materials, items, equipment, general stores, spare parts, goods, personal property, software and other intellectual property, (ii) all machinery, equipment and related items identified in or related to the Order; (iii) all labor, materials, equipment, software, spare parts and services provided by Supplier in connection with or reasonably related to the sale or performance of Items to Toyota and/or the installation, testing, calibration, operating trials and repair of any Items; (iv) all specifications, plans, drawings, standards, project schedules, accessions and additions relating to any Items (collectively “Toyota Specifications”); (v) any and all aspects of Supplier performance under any of the Contract Documents and any and all services rendered by Supplier in performing any Order (collectively, “Supplier Performance”); (vi) all price specifications and pricing data; (vii) all Custom Items; and (viii) all Installation Activities.

(e) Supplier acknowledges that in conjunction with the Order, TEMA (as determined by TEMA in its sole discretion) is acting either on its own behalf, or as applicable, as agent for (i) one or more of the following legal entities, (ii) such other legal entities as may subsequently be formed as additional NAMCs and (iii) such other affiliates of Toyota Motor Corporation as may be designated by TEMA from time to time: Toyota Motor Manufacturing, Kentucky, Inc., Toyota Motor Manufacturing, Indiana, Inc., Toyota Motor Manufacturing, West Virginia, Inc., Toyota Motor Manufacturing Canada Inc., Toyota Motor Manufacturing, Alabama, Inc., Toyota Motor Manufacturing de Baja California, S. de R.L. de C.V. (“TMMBC”), Toyota Motor Manufacturing, Texas, Inc., Canadian Autoparts Toyota, Inc., New United Motor Manufacturing, Inc., Bodine Aluminum, Inc., TABC, Inc., Catalytic Component Products, Inc., Toyota Motor Manufacturing, Mississippi, Inc., and affiliates and/or related entities of TEMA (collectively referred to as “NAMCs” and each individually as a “NAMC”). TEMA and

the applicable NAMC shall jointly and severally be entitled to the benefits of, and to enforce the terms of, the Contract Documents, as third party beneficiaries and Supplier acknowledges the rights of these parties under the Contract Documents.

(f) The agency relationship between TEMA and any NAMC is pursuant to such other documents as the parties may deem appropriate from time to time (collectively, the “Agency Agreements”). Pursuant to such agreements, TEMA has both express and apparent authority to act on behalf of the applicable NAMC as its principal in conjunction with all Contract Documents. Further, from time to time, and as set forth in the applicable Agency Agreements, a designated NAMC may act as agent for TEMA from time to time. Pursuant to such agreements, and in such circumstances, the applicable NAMC has both express and apparent authority to act on behalf of TEMA as its principal in conjunction with all Contract Documents. Finally, and from time to time, a NAMC may act on its own behalf notwithstanding the agency relationship created with TEMA, and TEMA may act on its own behalf notwithstanding the agency created with any NAMC. As designated by TEMA or TMMBC, as applicable, in their sole discretion, or as circumstances require for the reasonable interpretation of any Contract Documents, all as determined by TEMA or TMMBC in their sole discretion, “Toyota” shall mean: (i) TEMA in its individual capacity; (ii) TMMBC in its individual capacity; (iii) TEMA as agent for the applicable NAMC (which includes TMMBC); (iv) the applicable NAMC; (v) the applicable NAMC as agent for TEMA; and/or (vi) both TEMA and the applicable NAMC or NAMCs.

**1.1 Other Documents.** The parties may use “Other Documents” to supplement the Terms with respect to the Items, such Other Documents to be amendments to the Terms. Other Documents as expressly designated by Toyota (i) may pre-date the Order or be dated and agreed to after the date of the Order, (ii) may be pre-printed, form documents, manuals, specifications, data sheets or similar documents, (iii) need not be executed by the parties to become an Other Document and (iv) include, without limitation, releases, manifests, price confirmations, electronic data interfaces (“EDIs”), Toyota generated receipts and other documents which supplement the Terms as they relate to such matters as pricing, quantity and delivery, as well as any Request for Bid, Scope of Work, any Letter of Intent between the parties, and all drawings, diagrams, prints and specifications. Upon designation as Other Documents by Toyota, all such Other Documents are deemed incorporated by reference into the Terms. Supplier expressly acknowledges receipt of all Other Documents, and further expressly acknowledges that Other Documents may be provided to Supplier from time to time during the term of the Contract Documents. Other Documents are not independent contractual agreements between Supplier and Toyota, but shall constitute additional terms either for or to the Contract Documents. To the extent Other Documents are intended by the parties to be part of the Terms, any such documents shall be deemed Other Documents only if designated as Other Documents by Toyota in such written form as Toyota may designate in its sole discretion.

**1.2 Order of Precedence.** In the event of a conflict between these Terms and the provisions of an Order and/or the Other Documents, the provisions of an Order shall control over the Terms and the provisions of any Other Document shall control over an Order.

## **2. GENERAL TERMS AND CONDITIONS.**

### **2.1 Quantity; Description; Price; Quality.**

**(a) General.** Quantity, description, price and payment terms for all Items to be purchased by Toyota and supplied by Supplier shall be as designated in the Order, as provided in these Terms, or in one or more other Contract Documents as designated by Toyota (irrespective of whether it is attached to or separate from the Order). Items will not be deleted from or added to the Contract Documents, except by written amendment signed by Toyota and Supplier. By written instructions issued to Supplier by an authorized representative of Toyota, Toyota may from time to time make changes, request Required Changes, issue additional instructions, require additional Items, or cancel Items ordered hereunder. If any such change causes an increase or decrease in the cost of or the time required for the performance of this Order, an equitable adjustment shall be made in the price and/or Delivery Schedule, as applicable, and this Order shall be modified accordingly by written instrument signed by authorized representatives of Supplier and Toyota. Toyota may buy or acquire Items from other sources or reduce quantities purchased or acquired from Supplier irrespective of the course of dealing between the parties. Any Order shall not be a requirements or output contract unless designated in writing by Toyota.

**(b) Price.** Toyota reserves the right to modify the price for Items at any time and from time to time. Prices for Items shall be based on such bid quotes, requisitions, change orders or other price agreements as have been approved by Toyota in its sole discretion, and shall include the cost at current market rates of labor and materials furnished by Supplier in conjunction with any Installation Activities, plus reasonable allowance for overhead and profit. Supplier certifies that the prices specified in any Order are as low as or lower than prices quoted by Supplier to any other customer purchasing the same type and/or quantity of Items as Toyota. In the event that the published prices of Supplier for the Items covered by this Order are reduced below the prices specified in any Order, or if Supplier provides or agrees to provide the type and/or quantity of Items covered by any Order to any other customer for a price lower than that specified in this Order, Toyota shall receive the benefits of such reduction and shall pay the price or prices specified decreased by the amount of such reduction.

**(c) Conformity with Toyota and Supplier Specifications.** The Items supplied to Toyota shall generally be of good quality, free from any faults and defects, in conformance with this Order and with all requirements, Toyota Specifications and Supplier Specifications as set forth in the Contract Documents.

**(d) Waiver.** To the extent that the furnishing of the Items constitutes improvements to real property and to the extent permitted under applicable law, Supplier waives the application of any statute that would require that any part of the price for the Items designated as retainage be set aside, placed in escrow or otherwise be paid to or become the property of Supplier in any manner except as set forth herein.

**(e) No Liens.** All Items are owned by Supplier free and clear of any and all liens, security interests and encumbrances and will be sold and delivered to Toyota free and clear of any and all liens, security interests and encumbrances. Supplier shall keep the Items free of all mechanic's and materialmen's liens, claims and encumbrances. Supplier agrees that final payment shall not become due and payable to Supplier until Supplier shall deliver to Toyota satisfactory releases, satisfactions or waivers of all mechanic's and materialmen's liens, claims and encumbrances connected with performance under this Order if requested to do so by Toyota. Final payment to Supplier shall not relieve Supplier of its obligation to discharge any lien filed before or after Supplier is paid for Items under this Order. Where less than the entire price is to be paid prior to delivery, title shall pass to Toyota with delivery. Supplier hereby disclaims any security interest, mechanic's lien or other lien right whether statutory or otherwise in favor of Supplier in and to all Items purchased from Supplier pursuant hereto which shall come into Toyota's control or actual or constructive possession prior to full payment of the price by Toyota.

## **2.2 Payment Terms.**

### **(a) Definitions.**

(1) "Accelerated Payment Terms" shall mean such policies and procedures as set forth in the EIPP System whereby payment of some or all of the eligible Supplier Payables is made by Toyota on an accelerated and graduated schedule (where increments are measured in days from the date of a Conforming Invoice). As part of the Accelerated Payment Terms, Toyota shall be entitled to and be paid a Toyota Fee for any accelerated payment of Supplier Payables, the fee amount to be graduated based on the length of time from the date of a Conforming Invoice to the date of payment of a Supplier Payable, all as provided for in the Toyota Fee schedule set out in the EIPP System.

(2) "Authorized Representative" means any representative or employee Supplier authorizes to act on its behalf in connection with the EIPP System, as determined by the records maintained by Toyota.

(3) "Conforming Invoice" shall mean such invoice or other documentation from Supplier prepared in conformity with all Toyota purchasing and accounting policies and procedures as designated by Toyota from time to time, duly presented and properly received in the applicable Toyota accounting systems, for Items and/or Services provided by Supplier in conformity with applicable purchase orders or releases from Toyota.

(4) "Default Payment Terms" shall mean as of the applicable Effective Date for a Supplier and notwithstanding any other provisions of Terms to the contrary, one of the optional EIPP Payment

Terms provided in the EIPP System and available to Supplier under the EIPP System, including but not limited to Standard Payment Terms and Accelerated Payment Terms.

(5) “EIPP Payment Terms” shall mean the payment options available to a Supplier for the timing of payment of Conforming Invoices by TOYOTA, and shall include but not be limited to Standard Payment Terms and Accelerated Payment Terms.

(6) “EIPP System Documents” shall mean the EIPP System and the manuals, statements forms and other documents designated by Toyota as part of the EIPP System (as the same may be modified from time to time).

(7) “Program Administrator” shall mean one or more team members designated by Toyota to manage the EIPP System.

(8) “Standard Payment Terms” shall mean for accrued Supplier Payables due with respect to Items and/or Services provided to a Toyota by that Supplier, unless otherwise designated in writing by TOYOTA, 45 days following the date of any Conforming Invoice from Supplier.

**(b) EIPP System Set up.** Supplier will enroll in the Xign Basic Payment Service Network (the “Xign Network”), or such other system as requested by Toyota, and submit electronic invoices for accounts payables owed to Supplier (“Supplier Payables”) through the Electronic Invoice Presentment and Payment system (the “EIPP System”) described below for actual processing of payments by Toyota. As of the Effective Date (defined below) for activation of Supplier in the EIPP System, Supplier will (i) designate Default Payment Terms (defined below) for payment of its Supplier Payables, (ii) begin to use the EIPP System for invoicing some or all of its Supplier Payables and (iii) have its Supplier Payables paid through the EIPP System, whether pursuant to its Default Payment Terms or such other payment terms, including but not limited to Accelerated Payment Terms (defined below) as provided for in the EIPP System.

**(c) EIPP Terms and Conditions.**

**(1) General.** Toyota reserves the right at any time to add, delete or modify the terms, conditions, use or functionality of the EIPP System upon notice to Supplier delivered as provided for in the Terms. Supplier acknowledges by its use of the EIPP System that it is offered to Supplier solely as an accommodation by Toyota. Use of the EIPP System shall not create or be deemed to create an obligation on the part of Toyota to maintain or continue the EIPP System, and Supplier recognizes that the EIPP System may be terminated at any time by Toyota, in whole or in part, for any reason, irrespective of the impact to Supplier.

**(2) Authorized Representatives.** Supplier agrees that access to the Xign Network, the EIPP System or any other components of either system shall be restricted to Authorized Representatives (as defined below) for Supplier, and that Toyota, the Toyota’s Accounting and Finance Group and the Program Administrator may conclusively rely on all information provided to it or them by any Authorized Representative in conjunction with or as part of the use of the EIPP System, all without need for any other action or verification of the actual or apparent authority of any Authorized Representative. Supplier will be strictly liable for all acts or omissions of such Authorized Representatives in violation of the provisions of the Terms or the EIPP System. For purposes of the Terms, “Authorized Representative” means any representative or employee Supplier authorizes to act on its behalf in connection with the EIPP System, as determined by the records maintained by Toyota.

**(3) Disputes.** To the extent any conflict or dispute arises concerning the use of the EIPP System the Program Administrator will first attempt to resolve the conflict by consulting with the Supplier. In the event a resolution cannot be reached, Toyota shall resolve the dispute in the reasonable exercise of its discretion.

**(4) Security.** Supplier, through its Authorized Representative, agrees to comply with all security requirements (collectively “Security Requirements”) established by Toyota for the EIPP System to limit, discourage and prevent unauthorized use of the Xign Network and the EIPP System. Authorized Representative is responsible (i) to authorize any other Supplier representative to use the EIPP System, (ii) to administer and monitor

all passwords, user identifications and other access to the EIPP System, all in conformity with Security Requirements and (iii) to instruct any such Supplier representative regarding the policies and procedures for the EIPP System, including all confidentiality requirements. Supplier is strictly liable to Toyota for all unauthorized use of the EIPP System by Supplier, including any Authorized Representative, or any other party other than any party affiliated with Toyota. Supplier will immediately notify Toyota of any unauthorized use of the EIPP System, or any other breach of security.

**(d) Use of EIPP System and Payment Obligation of Toyota.**

(1) **Manuals.** As part of the EIPP System Documents, Toyota has developed practices and procedures contained in one or more written or electronic policy and procedure manuals (collectively, the “EIPP Manual”). Supplier agrees to use the EIPP System only in strict compliance with the EIPP Manual, as the same may be updated and modified from time to time, the Xign Network and all other applicable EIPP System Documents. Supplier acknowledges that some of the EIPP System Documents are separate documents, with attachments, and that it is Supplier’s responsibility to utilize the current and complete set of such documents.

(2) **EIPP Forms.** Supplier agrees that use of the EIPP System will be pursuant to one or more form EIPP System Documents designated by Toyota (collectively, “EIPP Forms”). EIPP Forms may be written documents or electronic forms, including but not limited to web-based documents or pages. Supplier agrees to request Accelerated Payments, consent to and authorize Toyota Fees, to resolve credit and accounting issues, and to otherwise use the EIPP System solely in conformity with, and using only, applicable EIPP Forms. Supplier will maintain copies (written or electronic, as applicable or otherwise requested by Toyota) of all EIPP Forms in conformity with a commercially reasonable document retention policy, and will from time to time grant Toyota reasonable access to such records for purposes of making copies of such records and for auditing the EIPP System. EIPP Forms shall be deemed Other Documents for purposes of the Terms.

(3) **Effective Date.** The effective date of the Terms (“Effective Date”) shall be the date of enrollment by Supplier as determined solely by the Program Administrator. The Effective Date may be a date which is different (earlier or later) from the actual calendar date of enrollment in the EIPP System by Supplier. Determination of the Effective Date by the Program Administrator shall be conclusive.

(4) **Liability to Toyota.** Supplier shall be fully and independently liable to Toyota for all amounts due to Toyota arising under or related to (i) Credits, (ii) overpayments or clerical errors regarding payment of Accelerated Payments, (iii) errors under or in any Payment Document, and (iv) all costs and expenses of Toyota arising out of or related to any breach by Supplier of any provisions of the EIPP System or the Terms (collectively, “Supplier Obligations”). All Supplier Obligations shall be due on demand by Toyota, irrespective of any other rights or remedies invoked or pursued by Toyota.

(5) **Audits.** Supplier agrees to fully cooperate with Onwer and the Program Administrator regarding the performance of any audits of the EIPP System. Supplier, at its expense, will make available to Toyota on reasonable terms and conditions all applicable Authorized Representatives, other personnel and all books and records needed to fully perform an audit. Copies of all audit reports will be made available to Supplier by Toyota.

**(e) Standard Payment Procedures.** At the time of enrollment by Supplier on the EIPP System, Supplier shall designate Default Payment Terms for its Supplier Payables. The Default Payment Terms may be changed from time to time by Supplier in conformity with the EIPP System.

(1) For each Conforming Invoice, Supplier will designate the type of EIPP Payment Terms it would like to have applied to such invoice (“Designated EIPP Payment Terms”). Supplier may elect different Designated EIPP Payment Terms for different invoices, or the same Designated EIPP Payment Terms for all invoices.

(2) The Program Administrator will approve all Conforming Invoices in conformity

with EIPP System procedures (any such approved Conforming Invoice an “Approved Invoice”). Until approved and designated as an Approved Invoice, the corresponding Supplier Payable will not be paid by Toyota and Toyota shall not have any obligation to make payment of any Conforming Invoice until it is an Approved Invoice.

(3) Toyota will use its best efforts to pay Approved Invoices in conformity with the Designated EIPP Payment Terms selected by Supplier for the applicable invoice or invoices. In the event for any reason (whether caused by Supplier, caused by or in the control of Toyota, or for any other reason) Toyota cannot (i) process an invoice as a Conforming Invoice or (ii) approve a Conforming Invoice as an Approved Invoice within the time necessary to pay the applicable invoice in conformity with the Designated EIPP Payment Terms (a “Delayed Invoice”), then as of the date of approval (if any) for any such Delayed Invoice, Toyota will pay the Delayed Invoice in conformity with the EIPP Payment Terms which are closest in time to the Designated EIPP Payment Terms requested by Supplier (“Revised EIPP Payment Terms”). In the event any such Revised EIPP Payment Terms are Accelerated Payment Terms which are different from the Accelerated Payment Terms requested by Supplier as Designated EIPP Payment Terms, Toyota shall be entitled to the Toyota Fee which corresponds to the Revised EIPP Payment Terms.

(4) At the sole discretion of the Program Administrator, in the event that payment of a Conforming Invoice, a Delayed Invoice or any other Supplier Payables cannot be processed in conformity with either Designated or Revised EIPP Payment Terms, payment will be made for such invoice or payable in conformity with either (i) Default Payment Terms for such Supplier or (ii) as an Ineligible Supplier Payable.

**(f) Payment Terms Outside of the EIPP System.** In the event Supplier is not enrolled in or otherwise participating in the EIPP System, all Supplier Payables due such Supplier shall be deemed “Ineligible Supplier Payables” unless and until such Supplier enrolls in and is using the EIPP System. Further, in the event a Supplier is enrolled in the EIPP System but upon the occurrence of an inability on the part of Toyota or Supplier to process and pay one or more Supplier Payables in and through the EIPP System, whether pursuant to Accelerated Payment Terms, Standard Payment Terms or otherwise, all applicable Supplier Payables due or to become due to such Supplier, at any time or from time to time, shall also be deemed Ineligible Supplier Payables. All Ineligible Supplier Payables will be paid on (i) or before the 25th day of the month following the month in which the invoices are received by Toyota (“net 25 prox.”) and (ii) otherwise in conformity with the payment provisions of the Terms.

**(g) Accelerated Payment Terms.** As of and after the Effective Date and in conformity with applicable policies and procedures of the EIPP System, a Supplier may elect as Designated EIPP Payment Terms to have some or all of the Supplier Payables due or to become due to Supplier paid pursuant to Accelerated Payment Terms.

(1) Supplier acknowledges as part of its use of the EIPP System that Toyota has no obligation to offer or continue to offer Accelerated Payment Terms to Suppliers as EIPP Payment Terms. Accelerated Payment Terms are offered to Supplier as EIPP Payment Terms on a permissive basis (at the election of Supplier) solely as an accommodation by Toyota. Use of the EIPP System and receipt of payments of invoices under Accelerated Payment Terms (“Accelerated Payments”) shall not create or be deemed an obligation on the part of Toyota to maintain or continue Accelerated Payments as an optional form of payment for Supplier Payables. Toyota may suspend or terminate Accelerated Payments at any time or from time to time, in whole or in part, irrespective of the impact to Supplier. Any suspension or termination of the EIPP System shall be on such terms and conditions as are set by the Program Administrator in its sole discretion. Further, the eligibility for and use of Accelerated Payments by some Suppliers shall not create or be deemed an obligation of Toyota to extend or offer Accelerated Payments to other Suppliers of Toyota.

(2) Accelerated Payment Terms and the corresponding Toyota Fees will be set by the Program Administrator and may be changed at any time and from time to time. The effective date of any change in the Accelerated Payment Terms and the corresponding Toyota Fees will be determined by the Program Administrator, and such determination will also determine which Supplier Payables are paid under the old or revised Accelerated Payment Terms, all in the sole discretion of the Program Administrator.

(3) The Program Administrator will promptly review any election by a Supplier for Accelerated Payments as Designated EIPP Payment Terms. Upon a determination of eligibility, the Program Administrator (i) may activate a Supplier for Accelerated Payments in conformity with the procedures of the EIPP System (an "Activation Date"). If a Supplier is denied use of Accelerated Payment Terms, from time to time and in whole or in part (as to some or all Conforming Invoices), Standard Payment Terms shall apply to the applicable Supplier Payables, all as more fully set forth in the procedures of the EIPP System.

(4) Toyota in its sole discretion may elect to temporarily suspend or terminate Accelerated Payments due to technical or other material problems with (i) the EIPP System, (ii) internal Toyota information systems, (iii) the internet, or the information systems of a Supplier or Suppliers, or (iv) for any other reason, irrespective of whether it is in the control of Toyota. If Accelerated Payments are suspended from time to time and in whole or in part, or terminated, Standard Payment Terms shall apply to the applicable Supplier Payables.

**(h) Toyota Fees.** Payment of Toyota Fees shall be as designated by the Program Administrator from time to time and Toyota Fees shall be deemed earned upon payment of the applicable Conforming Invoice or Delayed Invoice as an Accelerated Payment to a Supplier.

**(i) Set-Off; Credits.** Notwithstanding provisions of the Terms to the contrary, Toyota reserves the right to deduct any amounts due or to become due from Supplier to Toyota from any Supplier Payables or other amounts due or to become due from Toyota to Supplier. Supplier also agrees that amounts, if any, due Toyota as credits ("Credits") under the EIPP System will be obligations immediately due and owing to Toyota and Toyota may pay itself for such Credits immediately in the form of a setoff against any Supplier Payable, any such setoff or setoff procedure to be on the terms provided for in the EIPP System or as otherwise established by Toyota in its sole discretion. Except for instances of clerical error or wilful misconduct, the records (written or electronic) as maintained by Toyota shall control payment of all Supplier Payables and use of the EIPP System. All other provisions of the Terms concerning payment of accounts payable due by Toyota to Supplier, including but not limited to, the right of Toyota to make set-offs for claims against Supplier, shall also be applicable for purposes of the EIPP System.

**(j) Payment Obligation of Toyota.** Notwithstanding any other provisions of the Terms to the contrary, Toyota will have no obligation whatsoever to make any payment of a Supplier Payable or Ineligible Supplier Payable to a Supplier for Items and/or Services provided to Toyota (and irrespective of whether such Items and/or Services have been accepted by Toyota), whether pursuant to Standard Payment Terms, Accelerated Payment Terms, other EIPP Payment Terms, the provisions of Section 4.3 or any other legal or equitable basis for a recovery against Toyota, and whether such Items and/or Services were provided pursuant to a request for quote, a purchase order, release, or any other document or agreement from or involving Toyota, unless and until Toyota is in receipt of a Conforming Invoice with respect to the Items and/or Services in issue.

**2.3 Reconciliation.** Toyota may offset against any Regular Monthly Payment any amounts due to Toyota for undershipments, adjustments in invoices, credits, returns, price changes or any other similar quantity or price reconciliation arising out of or related to the purchase of Items by Toyota on a spot or continuous basis under the provisions of the Order or any Contract Document (a "Designated Offset"). Toyota will attempt to reconcile the timing and calculation of each Regular Monthly Payment to coincide with the corresponding Designated Offset, and will provide Supplier with an accounting of all calculations. To the extent the timing of payments and offsets cannot be aligned, it may be necessary from time to time for Toyota to maintain a credit or debit balance for Supplier. The amounts calculated by Toyota, and all records maintained by Toyota, shall be controlling except in the case of clerical or mathematical error.

**2.4 Delivery.** Deliveries of Items are to be made at the time and the place specified in the Order or in one or more other Contract Documents as designated by Toyota (irrespective of whether it is attached to or separate from the Order) ("Delivery Schedules"). Except as otherwise provided in the Contract Documents or these Terms, general delivery instructions shall be (i) for all Items to be delivered to or on behalf of Toyota in the United States or Canada, F.O.B. destination as specified in the Uniform Commercial Code, (ii) for all Items which originate other than in Mexico but which are delivered to or on behalf of Toyota in Mexico, Delivery Duty Unpaid ("DDU") as specified in the Incoterms 2000 of the International Chamber of Commerce (as the same may be amended from time

to time) and (iii) for all Items which originate in Mexico and which are delivered to or on behalf of Toyota in Mexico, Delivery Duty Paid (“DDP”) as specified in the Incoterms 2000 of the International Chamber of Commerce (as the same may be amended from time to time). Items are to be prepared and packed according to packaging specifications provided by Toyota (if no packaging specifications are provided in the Contract Documents, then packaging shall be in a commercially reasonable manner), and deliveries shall meet all the requirements and regulations of all carriers and applicable authorities, including for all deliveries to or on behalf of Toyota in Mexico, the Mexican Official Standards (“Normas Oficiales Mexicanas”) (the “NOMS”). For Items to be delivered to or on behalf of Toyota in Mexico or Canada, unless otherwise provided in the Contract Documents, Supplier shall be the Importer of Record. In the event returnable packaging is deemed by Toyota to be advisable or necessary for the delivery of Items (“Returnable Packaging”), Toyota and Supplier shall negotiate the terms and conditions for the design, construction, use, ownership and costs of any Returnable Packaging on terms acceptable to Toyota in the reasonable exercise of its discretion. The terms and conditions for such Returnable Packaging shall be set forth in a separate Order and paid for in accordance with the general payment terms as set forth in *Section 2.1(c)*.

**(a) Right of Return.** Supplier agrees to accept the return (a “Return”) of any Items sold within thirty (30) days from receipt by Toyota; freight prepaid, for refund of the price upon a determination by Toyota, in the reasonable exercise of its discretion, that the Items do not meet Supplier’s Warranties or otherwise are mechanically unsatisfactory or fail to meet Toyota Specifications or Supplier Specifications.

**(b) Change, Temporary Suspension; Requested Delay.** Toyota may change Delivery Schedules, or direct temporary suspension of scheduled shipments. If Toyota cannot meet its own Delivery Schedule, Supplier agrees to honor all instructions from Toyota concerning the method of shipping, routing, storage and packaging. Supplier further agrees to honor all instructions from TEMA concerning invoicing.

**(c) Shipments.** A shipping notice or a packing slip describing the contents of each package or container showing weight, quantity and order number, shall accompany shipment of Items. Shipment charges invoiced to Toyota or any third party shall be supported and accompanied by the original receipted bill of Supplier’s or such third party’s shipper. All prices quoted in the Order will include the cost of insurance and shipping unless otherwise agreed to. Supplier shall show Federal excise, state and or local taxes, and custom duties, if any, separately on its invoice. Supplier shall not substitute Items or ship more than the quantity ordered without express written authority from Toyota.

**(d) Overshipments; Undershipments.** TEMA will have no liability for payment of Items delivered to Toyota that exceed the quantities specified in the Delivery Schedules. Overshipments of any Items shall, if so requested by Toyota, be returned to Supplier at Supplier’s expense. Toyota reserves the right to reject Items. In case of undershipments of any Items, Supplier shall, if so requested by Toyota, immediately at its cost ship the additional Items needed to fully complete the Order to the destination and by the time designated by Toyota.

**(e) Invoices.** All invoices and/or shipping notices for Items shipped from or by Supplier must reference the Purchase Order or Price Confirmation number, amendment or release number, Toyota part number, Supplier’s part number where applicable, quantity of pieces in shipment, number of cartons or containers, Supplier’s name and number, and bill of lading number, before any payment will be made for Items by Toyota. Toyota reserves the right to return all invoices or related documents submitted incorrectly, and payment terms will be determined as of the date of the latest correct invoice or other document required by Toyota is received.

**2.5 Inspection Period.** All Items shall be received subject to Toyota’s acceptance or rejection on or before the end of the Inspection Period (defined below). Notwithstanding anything contained in these Terms to the contrary, and as part of the Inspection Period, Toyota shall have no less than a reasonable time after delivery of any Items or Custom Items, and after the performance of Installation Activities, to inspect such Items, Custom Items or Installation Activities before accepting or rejecting such Items, Custom Items or Installation Activities. Without limiting the foregoing, for those Items whose conformity with the Contract Documents cannot be ascertained until such Items are installed and/or tested and/or tuned and calibrated and/or used in trials in conjunction with other systems or assemblies as determined by Toyota, the Inspection Period shall include the time required after receipt by Toyota for such installation and/or testing and/or tuning and calibration and/or use in trials (collectively, the “Inspection Period”). Partial or total payment by Toyota for Items under the Order prior to the end of the Inspection Period shall not constitute its acceptance thereof, nor shall such payment remove Supplier’s responsibility for any

nonconforming Items. For the purposes hereof, Toyota's right to inspect the Items and Toyota's acceptance of the Items on the basis of inspection without rejection shall not be deemed to have lapsed or occurred, respectively, prior to the end of the Inspection Period. Inspection Period shall mean, absent language in the Order or Other Documents defining the Inspection Period, a reasonable period of time after receipt of such Items. Without limiting the foregoing, for those Items whose conformity with the Contract Documents cannot be ascertained until such Items are installed and/or tested and/or tuned and calibrated and/or used in trials in conjunction with other systems or assemblies as determined by Toyota, the Inspection Period shall include the time required after receipt by Toyota for such installation and/or testing and/or tuning and calibration and/or use in trials. Neither inspection nor failure to inspect by Toyota shall relieve Supplier of any obligations, representations or Supplier's Warranties. No payment for or acceptance of Items by Toyota shall constitute a waiver of any of the foregoing nor shall anything herein contained be construed to exclude or limit any of Seller's Warranties.

**2.6 Rejected or Nonconforming Items.** If any Item or shipment of Items is rejected as nonconforming by Toyota (for failure to meet Toyota Specifications or Supplier Specifications or any other reason) as of or before the end of the Inspection Period ("Rejected Items"), Supplier shall, at its cost and as directed by Toyota (i) accept a Return of such Item or Items, (ii) repair such Rejected Items, which work shall include, but shall not be limited to, performing such additional work as is necessary to make such Rejected Items fully conforming ("the Remedial Work"), or (iii) replace the Rejected Items with new Items, such replacement Items to be delivered in accordance with any and all instructions provided by Toyota and to include at Supplier's cost any required installation (including removal of the Rejected Item). Remedial Work shall also include any action required to be taken by Supplier to cause the Installation Activities to comply with the terms of the Contract Documents.

**(a) Right to Perform Remedial Work.** If Toyota determines in its sole discretion that Remedial Work is necessary for the repair of any Rejected Items, then Toyota may elect to either perform the Remedial Work itself or to have a third party perform the Remedial Work, in which case the cost of such Remedial Work shall be offset against the amounts otherwise due to Supplier for such Rejected Items or charged separately by TEMA to Supplier pursuant to one or more Other Documents. Further, Toyota may require that the Remedial Work be performed on the Toyota's premises by Supplier, in which case the Toyota shall provide Supplier with reasonable access to its premises and otherwise assist Supplier with such arrangements as are necessary to perform the Remedial Work. With respect to any Rejected Items to be repaired, Toyota will not be deemed to have accepted such Items unless and until the Rejected Items are fully repaired to the requirements of the Contract Documents and are independently accepted in writing by Toyota following such Remedial Work.

**(b) Suppliers Use of Temporary Employees/Third Party to Perform Remedial Work.** Supplier may use temporary employees and/or a third party to perform Remedial Work only with Toyota's prior written consent. At all times, such temporary employees and/or third party shall be independent contractors of Supplier, and not employees of Toyota. Temporary employees and third parties, as well as regular employees of Supplier, shall comply with all of the Toyota's practices, policies, and procedures when on the Toyota's facilities to perform Remedial Work, and Toyota may exercise supervisory control, if necessary, to ensure compliance with such practices, policies and procedures. Unless Toyota exercises its right to supervise, it is Supplier's responsibility to supervise temporary employees and third parties performing work on the Toyota's premises.

**(c) Removal of Rejected Items.** Rejected Items, if not required to be repaired as provided by this Section 2.6, shall be removed by Supplier at its cost from the premises immediately after notification, and, if not so removed by Supplier, such Rejected Items may be disposed of or stored by Toyota at Supplier's expense.

**2.7 NAMC and TEMA as Inspecting Agent.** A NAMC may, when so requested or directed by TEMA, act as TEMA's or TMMBC's agent for purposes of inspection under these Terms. TEMA may, when so requested or directed by TMMBC, act as TMMBC's agent for purposes of inspection under these Terms.

## **2.8 Delay.**

**(a) Notification of Delay; Substitute Items.** If at any time Supplier has reason to believe that deliveries of any Items may not be made in accordance with the Delivery Schedules, Supplier shall immediately notify Toyota, setting forth the cause for the anticipated delay. Any oral communication shall be immediately confirmed in writing. If Supplier's shipment is delayed, Supplier shall, at its cost (unless excused in Section 2.7(b)),

send Items at such time and in such manner as instructed by Toyota. In the event of any delay not excused under *Section 2.8(b)*, Toyota shall have the right to immediately acquire substitute or replacement Items from one or more alternate sources and, in such event, there may be a proportionate reduction of the quantity of Items required from Supplier, or a termination of the Order, as appropriate. In the event of termination, any funds previously paid by or on behalf of Toyota shall be promptly returned to Toyota.

**(b) Force Majeure.** Except as otherwise provided in *Section 2.8(c)*, any delay or failure of Supplier to perform its obligations hereunder shall be excused if and to the extent that it is caused by an event or occurrence beyond Supplier's reasonable control and without its fault or negligence, such as, by way of example and not by way of limitation, acts of God, actions by any government authority (whether valid or invalid), fires, floods, windstorms, explosions, riots, natural disasters, wars, sabotage, acts of terrorism or court injunction or order; provided that written notice of such delay (including the anticipated duration of the delay) shall be given by Supplier to Toyota within ten (10) days of the occurrence of such event. During the period of such delay or failure to perform by Supplier, the provisions of *Section 2.7(a)* shall apply. If requested by Toyota, Supplier shall, within ten (10) days of such request, provide adequate assurances that the delay shall not exceed thirty (30) days. If the delay lasts more than thirty (30) days or if Supplier does not provide adequate assurances that the delay will cease within thirty (30) days, Toyota may immediately terminate the Order and any funds previously paid by or on behalf of Toyota shall be promptly returned to Toyota.

**(c) Labor and Supply Problems Not Force Majeure.** Notwithstanding anything in this *Section 2.8* to the contrary, no delay or failure of Supplier to perform its obligations hereunder shall be excused if and to the extent that it is caused by labor problems of Supplier, its Subcontractors and/or its suppliers such as, by way of example and not by way of limitation, lockouts, strikes and slowdowns or the inability of Supplier, its Subcontractors and/or its suppliers to obtain power, material(s), labor, equipment or transportation.

**3. CUSTOM ITEMS.** As used herein, a Custom Item is an Item not carried by Supplier in its inventory in the ordinary course of its business and/or manufactured or adapted specifically for Toyota pursuant to the Contract Documents. The terms of this *Section 3* shall apply to Custom Items. All items shall be deemed to be Custom Items unless it is otherwise provided in the Contract Documents.

### **3.1 Inspection.**

**(a) Additional Right to Inspect.** Toyota shall have the right, during the Inspection Period, to inspect Supplier's premises, and in the event a Custom Item or a material component thereof is manufactured by a third party vendor (the "Subcontractor"), Supplier shall secure oral or written (if requested by Toyota) consent from the Subcontractor for Toyota to inspect Subcontractor's premises.

**(b) Segregation and Identification of Custom Items.** As and when determined to be appropriate by Toyota, a Custom Item shall be segregated and identified as the property of Toyota, by the affixing of such labels and/or other means as Toyota deems appropriate.

### **3.2 On-Time Completion.**

**(a) Completion Target Date.** The schedule (the "Production Timetable") for completion of Custom Items shall be as set forth in the Contract Documents (the "Completion Target Date"). Supplier is solely responsible for having Custom Items completed prior to the Completion Target Date, irrespective of any additional cost or expense incurred. For purposes of meeting the Completion Target Date, *Section 2.7* shall apply to both Supplier and any Subcontractor utilized by Supplier.

**(b) Rescheduling.** Toyota may either shorten or extend the Production Timetable. If such rescheduling occurs and results in a shorter Production Timetable, Toyota will negotiate in good faith with Supplier, the premiums, if any, to be paid to Supplier, which will be evidenced by a revised Order or other amendment to the Contract Documents, as applicable.

**(c) Cancellation.** If Toyota reasonably concludes, in its sole discretion, that a delay in meeting the Production Timetable will extend more than thirty (30) days or cause Supplier and/or Subcontractor to miss the

Completion Target Date, then Toyota has the right to immediately cancel the Order.

**3.3 Third Party Beneficiary Status.** In the event a Custom Item, or any component thereof, is acquired by Supplier from a Subcontractor, Toyota shall have the rights of a third party beneficiary under, and with respect to, any contract or agreement between Supplier and Subcontractor regarding such Custom Item or portion thereof (“Subcontract”) and appropriate language to such effect shall be included in such Subcontract.

**3.4 Encumbrances.** In the event of any pledge or encumbrance of any amounts due to Supplier and/or Subcontractor under an Order for Custom Items (an “Encumbrance”), any such Encumbrance and any secured party’s rights in and to such interest shall at all time be subject and inferior to Toyota’s rights hereunder, including, but not limited to, Toyota’s right to cancel and/or set-off, compromise and/or settle the Subcontract, pay to Subcontractor amounts otherwise due to Supplier in connection with any independent agreement with Subcontractor or an assumption of the Subcontract and all other provisions of *Section 3*.

**3.5 Payment and Related Rights.**

**(a) Generally.** The provisions of *Section 2* shall apply to all Custom Items. In addition, in making payment for any Custom Items, Supplier agrees that any and all partial payments shall be progress payments and not create an account debtor relationship between Toyota and Supplier. In the event of payments made by Toyota to Supplier for or in relation to any Subcontract, Supplier agrees to immediately pay to the applicable Subcontractor all amounts then due to such Subcontractor from such funds, without deduction or set-off, and to treat any such payment as segregated funds to the extent of any such amounts due Subcontractor.

**(b) Set-off.** Prior to or as part of any payment to Supplier, Toyota reserves the right to set-off against any amount owed Supplier (i) any amount(s) owed by Supplier to any Subcontractor in respect of any Custom Item, (ii) the amount of any claims of Toyota against Supplier and/or Subcontractor arising out of or related to their performance in respect of any Custom Item, (iii) the amount of any damages to Toyota arising out of or related to any default by Supplier or Subcontractor with respect to these Terms, any Contract Documents or Subcontract, and/or (iv) any amount owed to any third party, including government authorities, whether by or on behalf of Supplier or any Subcontractor, which arise under or are related to any Subcontract or Custom Item.

**(c) Direct Dealings with Subcontractor.** At any time and from time to time, Toyota reserves the right to deal directly with any Subcontractor, including but not limited to the following actions:

**(1)** to assume the Subcontract (to the exclusion of Supplier) or to contract independently with Subcontractor for the completion of any Custom Item;

**(2)** to make payments to Subcontractor in respect of any Custom Item, any such amount to be set-off against any amounts due to Supplier;

**(3)** if Subcontractor completes the Custom Item and is paid in full for such work by Toyota (inclusive of amounts already paid to Subcontractor by Supplier), such payment to Subcontractor shall fully satisfy and discharge any additional amounts due to Supplier by Toyota, irrespective of the original agreed-upon price or the actual amount paid to Subcontractor;

**(4)** if Subcontractor completes the Custom Item and is paid by Toyota an amount (inclusive of amounts already paid to Subcontractor by Supplier) which in the aggregate is more than the original agreed-upon price for such Custom Item (due, in whole or in part, to Supplier’s Default under these Terms and in order to complete the Custom Item), then, in such events, Toyota shall have a claim against Supplier for the difference between the amount paid and the prior agreed-upon price.

**(d) Joint Payment.** As part of any payment to Supplier, Toyota reserves the right to make any such payment (in whole or in part) jointly payable to Supplier and any applicable Subcontractor and/or third party in order to assure Toyota that payment is made by Supplier to such party in a timely manner and in the required amount. Supplier agrees, on request, to provide Toyota with information (including access to its records) to ascertain and verify both amounts paid to and amounts owed to Subcontractors and/or third parties. Supplier also

agrees that Toyota may, at any reasonable time, audit Supplier's compliance with these Terms with respect to payment to Subcontractors and/or third parties for Custom Items.

#### **4. CONTINUING TERMS AND CONDITIONS.**

**4.1 Required Changes.** If at any time or from time to time Toyota requires engineering, design or other changes ("Required Changes"), such Required Changes shall be evidenced by one or more engineering change orders, requests for design and development of parts, drawings, or other similar documentation, and all Required Changes shall be made strictly in conformity with such engineering change orders, which shall become part of the Contract Documents. If the Required Changes substantially affect the cost to produce or to deliver the Items, Toyota and Supplier will mutually agree, after good faith negotiations, upon a reasonable allocation of the price adjustment to be made, if any. If parties cannot mutually agree, or if Toyota reasonably deems it necessary to implement without consultation, such Required Changes shall be evidenced by other Contract Documents as provided by Toyota. Toyota shall reimburse Supplier for reasonable additional costs associated with Required Changes, including inventory and obsolete Items, tooling and related equipment costs. The decision regarding what costs are to be reimbursed and in what amounts shall be determined jointly by Toyota and Supplier after good faith negotiations.

#### **4.2 Compliance with Requirements; Laws.**

**(a) Compliance with Manufacturing and Legal Requirements; Applicable Laws.** In performing this Order and with respect to all Items provided to Toyota and all Installation Activities and other Supplier Performance, Supplier and its employees, agents, Subcontractors and representatives shall comply with (i) all applicable Toyota policies, procedures, environmental and other guidelines, manuals and other requirements, as amended from time to time ("Manufacturing Requirements"), and (ii) all applicable state, federal, provincial and local laws (including all applicable NOMS), statutes, rules, regulations and ordinances, and all conventions and standards (collectively, "Laws"), as amended from time to time, of each and all countries ("Applicable Countries") where the Items are to be manufactured or delivered, or Supplier Performance is to occur, or that relate in any way to the manufacture, labeling, transportation, importation, exportation, licensing, certification or approval of Items, including but not limited to Laws relating to environmental matters, import and export, duties and customs, wages, hours and conditions of employment, occupational safety, discrimination, sexual harassment, immigration, health and safety, Subcontractor selection and motor vehicle safety ("Legal Requirements; collectively with Manufacturing Requirements the "Manufacturing and Legal Requirements"). Upon request by Toyota, Supplier shall certify to Toyota in writing that all Manufacturing and Legal Requirements have been performed and completed and shall provide Toyota with copies of applicable certifications, permits, approvals, and any other documentation that evidences that the Items satisfy Manufacturing and Legal Requirements. In addition, Toyota shall have the right of access to Supplier's premises to monitor both compliance with Manufacturing and Legal Requirements, and performance of the Contract Documents. Supplier shall indemnify and hold Toyota harmless from any liability, claims, demands or expenses (including attorney's fees) arising from or related to Supplier's noncompliance with Manufacturing and Legal Requirements. Manufacturing and Legal Requirements shall include, but not be limited to, the North American Free Trade Agreement and the North American Free Trade Agreement Implementation Act (collectively, "NAFTA"). Supplier shall provide to Toyota originals or copies, as required of, any test reports used to obtain Manufacturing and Legal Requirements as soon as they are available or as otherwise required by law.

As part of the Manufacturing and Legal Requirements, Supplier will assist Toyota and assume joint responsibility for providing proper safety devices and notices, equipment and other means which may be necessary or desirable, to adequately safeguard the operator from harm for any particular use, operation, or set up of any Items and to adequately safeguard all Items to conform with all federal, state, and local government safety standards including, but not limited to the OSHA and all industry safety standards. Supplier hereby acknowledges that it has a duty to investigate and assist Toyota in implementing such devices and precautions and to obtain manufacturer instruction manuals and materials for such Manufacturing and Legal Requirements.

Toyota agrees to provide Supplier with a list of Applicable Countries and to share with Supplier data and information pertaining to any Applicable Country that is in Toyota's possession and control; provided, however, Toyota shall have no affirmative obligation to obtain and deliver to Supplier any data or other information that may be required for Supplier to comply with this *Section 4.2*.

**(b) Ingredients.** Prior to the shipment of any Item, Supplier will provide Toyota with any and all Material Safety Data Sheets (“MSDS”) and Environmental Data Sheets (“EDS”) that are related, directly or indirectly, to the Items and that are prepared pursuant to applicable Manufacturing and Legal Requirements. Supplier's obligation to provide the MSDS and EDS shall be a continuing obligation of Supplier, and Supplier agrees to promptly furnish to Toyota any modifications, amendments or supplements to the MSDS or EDS. For all Items to be delivered to or on behalf of Toyota in Mexico, Supplier will provide Toyota with any and all applicable MSDS and EDS translated to Spanish, or otherwise provide Toyota with such documents in English and Spanish, or in accordance with such other instructions as Toyota may designate from time to time. Further, Supplier agrees to promptly inform Toyota of any changes in materials or ingredients in Items, and to promptly furnish Toyota with updated or new MSDS and EDS relating, directly or indirectly, to the Items. Following Toyota’s review of the MSDS and EDS and if requested by Toyota, Supplier shall provide Toyota with any other information it requests concerning the ingredients or materials in the Items. Supplier agrees to notify Toyota immediately upon obtaining any information or indications that Items supplied by or to be supplied by Supplier have hazardous characteristics, regardless of the information provided in the MSDS and EDS. Supplier also agrees to provide Toyota with any other ingredient information related, directly or indirectly, to the Items that is required to be provided by Supplier under any Manufacturing and Legal Requirements.

**(c) Environmental Activity and Requirements.** In connection with the manufacture, sale or delivery of Items, or any Supplier Performance, Supplier shall not under any circumstances cause or permit the use, storage, holding, generation, handling, transportation, discharge, emission or release of any Hazardous Substance, waste, pollutant, contaminant or other substance in violation of any Environmental Requirement or in such manner as to necessitate environmental remediation, “Environmental Requirements” includes all applicable Laws (as the same may be amended from time to time) regulating, related to or imposing liability or a standard of conduct concerning the environment or any hazardous substance or environmental activity including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. § 9601 et seq. (“CERCLA”). “Hazardous Substance” shall include any substance which is a “hazardous substance” (as defined in CERCLA), or any other substance or material defined, designated, classified or considered as hazardous or toxic waste, hazardous or toxic material or hazardous, toxic, radioactive or dangerous substance under any environmental requirement and petroleum in any form.

### **4.3 Furnished Materials.**

**(a) Toyota Property.** All layouts, models, tools, gauges, designs, sketches, drawings, blueprints, patterns, dies, specifications, engineering data, technical or proprietary information, special appliances, other equipment or material, and any reproductions and replacements furnished to Supplier by Toyota (“Toyota Property”), or for which Supplier has been reimbursed by Toyota, shall be and remain Toyota Property and, as applicable, be deemed a bailment. Supplier shall bear the risk of loss of and damage to all Toyota Property. All Toyota Property shall be used solely by Supplier to perform under the Contract Documents, and shall not be moved from Supplier’s premises or possession without the prior written consent of Toyota.

**(b) Identification of Toyota Property; Labeling.** At Supplier's expense and risk, Toyota Property shall be marked by Supplier as "PROPERTY OF [INSERT APPLICABLE TOYOTA].", or as otherwise directed by TEMA or any other Toyota, stored and maintained, at Supplier’s expense, apart from Supplier's property and in good condition, and subject to inspection by any Toyota on demand. Supplier shall not substitute any property for Toyota Property, nor use Toyota Property for any purpose except performing pursuant to the Contract Documents.

**(c) Return of Property.** Upon the request of Toyota, all Toyota Property shall be immediately released to Toyota or delivered by Supplier to Toyota or its designee, properly packaged and marked in accordance with instructions from Toyota, utilizing the carrier designated by Toyota, and delivered to the location designated by Toyota. Toyota will reimburse Supplier for the actual and necessary costs of any such transportation and delivery to a designated location. Supplier waives any lien or other rights it may have against or in any Toyota Property for work performed on any such property or otherwise. When any Toyota Property is no longer reasonably necessary for Supplier to perform under the Contract Documents, Supplier shall return all such Toyota Property to Toyota at Supplier’s expense. Toyota Property shall be returned to Toyota at Supplier’s expense upon demand, unless consumed or otherwise disposed of with Toyota’s prior written consent.

**4.4 Non-Disclosure Agreement.** Supplier agrees to execute upon request by Toyota, a non-disclosure agreement in a form satisfactory to Toyota, which agreement shall relate to any confidential or proprietary data or information to be disclosed by Toyota to Supplier. Notwithstanding the absence of such request, the following terms shall apply to Confidential Information:

(a) Confidential Information shall be defined as: (i) any information provided to Supplier by Toyota, any affiliate or related corporation of Toyota or any third party, or discovered or otherwise observed by Supplier relating to any operations of Toyota, or any affiliate or related corporation of Toyota, including, without limitation, information relating to products and products in development; and (ii) all documents, records, data compilations, computerized records, statements, drawings, plans, specifications, interviews, opinions or other information to which Supplier may be provided access by Toyota, any affiliate or related entity of Toyota or any third party as a result of the provision of the Items.

(b) The term "Confidential Information" shall not include information that: (i) is or becomes available in the public domain through no wrongful act of Supplier; (ii) is already in Supplier's possession prior to the commencement of performance hereunder without an obligation of confidentiality; (iii) is independently developed by Supplier; (iv) is required to be disclosed pursuant to any final and non-appealable order of a court or agency of competent jurisdiction served on Supplier, provided that Supplier gives Toyota written notice within two (2) days of receipt of such order and at least thirty (30) days prior to the production or disclosure of any such Confidential Information; or (v) is required to be filed with any public agency as part of obtaining permits or approvals required for performance hereunder.

**(c) Use of Confidential Information.**

(1) Except as otherwise authorized in writing by Toyota, all Confidential Information shall be deemed confidential, and without the prior written consent of Toyota, Supplier shall not, nor shall Supplier permit any related parties, or any other person under the respective control of Supplier, to (i) communicate, disclose, divulge, reveal or otherwise make known any Confidential Information to any person or entity not a party to a Confidentiality Agreement with Toyota; or (ii) use any Confidential Information for any purpose which may adversely affect Toyota, or any respective business, operations or other business conducted by any of its affiliates or related companies.

(2) Supplier shall take all reasonable care to keep the Confidential Information confidential and expressly require, through appropriate legal documents, each of its directors, officers, staff members, other employees, representatives, independent contractors, Subcontractors agents and suppliers exposed to any of the Confidential Information to keep all Confidential Information confidential. Supplier shall limit the use and circulation of the Confidential Information within its organization to the maximum extent possible.

(3) Immediately at Toyota's request, Supplier shall return all Confidential Information to Toyota.

(d) The obligations to maintain secrecy and confidentiality set forth herein shall continue indefinitely and shall survive the termination of the Order. Notwithstanding anything to the contrary herein, any party to these Terms (and any employee, representative, or other agent of any such party) may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of the transaction and all materials of any kind (including opinions or other tax analyses) that are provided to it relating to such tax treatment and tax structure (but no other details regarding non-tax matters covered by these Terms, including, without limitation, the identities of the parties).

(e) Neither party hereto may disclose to any third party the subject matter, or the terms and conditions of this Agreement unless otherwise agreed upon by the parties hereto or unless and to the extent required by applicable Laws.

(f) Supplier acknowledges that the restrictions contained in this *Section 4.4* are necessary to protect the legitimate interests of Toyota, its affiliates and related corporations and that any violation thereof would

result in irreparable harm and injury to Toyota, its affiliates and related corporations. In the event of a breach or threatened breach by Supplier of any provision of this *Section 4.4*, Supplier agrees that Toyota will be entitled to injunctive relief restraining Supplier from such breach or threatened breach and to any other legal or equitable remedies available to Toyota.

**4.5 *Toyotasupplier.com.*** It is agreed by Supplier that in connection with these Terms Toyota may use electronic purchase orders (“EPOs”), price confirmations and other electronic forms (collectively, with EPOs, the “Electronic Forms”) as part of its internet network operated as *toyotasupplier.com* to supplement or replace written Contract Documents (collectively, “Toyota Written Forms”) used with these Terms. From time to time, Electronic Forms will supplement Toyota Written Forms, or Electronic Forms may replace Toyota Written Forms entirely. Toyota reserves the right to set policies and procedures, from time to time, for the transition to, and implementation of, Electronic Forms, and such policies and procedures will be modifications to these Terms and all applicable Contract Documents as posted on *toyotasupplier.com*. All policies and procedures for *toyotasupplier.com* will become effective as of the date established by Toyota. By using *toyotasupplier.com*, Supplier agrees to and accepts any and all terms and conditions set forth on such Internet site, either in place of or in addition to these Terms and all Contract Documents and other Toyota Written Forms. Toyota reserves the right at any time to add, delete or modify the functionality of *toyotasupplier.com* upon notice, delivered by regular mail, by e-mail, or by an on-screen alert on the *toyotasupplier.com* site. Toyota also reserves the right to terminate Supplier’s enrollment in, and use of, the *toyotasupplier.com* at any time.

## **5. GENERAL COVENANTS, RIGHTS AND REMEDIES OF PARTIES.**

**5.1 *Independent Contractor.*** Supplier's relationship to Toyota hereunder is solely that of an independent contractor. Neither Supplier, nor its agents, representatives, independent contractors, Subcontractors or employees shall be considered employees of Toyota. Supplier agrees to indemnify and protect Toyota against all liability, claims or demands for injuries or damages to any person or property arising out of the performance of the Contract Documents by Supplier or its employees, agents or representatives, or employees, agents or representatives of its Subcontractors or suppliers.

**5.2 *Insurance.*** Supplier shall, at its own cost and expense, maintain and carry in full force and effect general liability, general automotive liability, public liability, builder’s risk, workers' compensation liability, property damage (fire, casualty and theft) insurance and any other insurance required under the Contract Documents or as it may be applicable in the United States, Canada or Mexico (as applicable). All insurance shall be maintained in such amounts and with such deductibles as are commonly carried by prudent businesses similarly situated or as is otherwise required by applicable law. Supplier’s insurance shall insure against any liability for loss, injury, damage or claims caused by or arising out of or in connection with the operation of Supplier's business including injury to or death of Supplier's employees, agents, or any other persons and damage to or destruction of public or private property. Upon request, Supplier shall provide to Toyota proof of insurance, and if necessary for Supplier’s employee(s) to be on Toyota’s property for any reason, including, but not limited to the performance of Remedial Work, proof of insurance shall be provided before such employee(s) may enter the property. In the event of any Installation Activities or any other Supplier Performance where Supplier will be required by Toyota to maintain general liability and other insurances with respect to such activities or performance, Supplier will at the request of Toyota participate in, and obtain applicable insurance from, an Owner Controlled Insurance Plan to insure against general liability and property damage risks during such Installation Activities or other Supplier Performance, all on such terms and conditions as required by Toyota.

### **5.2 *Warranty; Quality Assurance; Claims.***

**(a) *Express Warranties.*** Supplier expressly warrants that all Items, Remedial Work and/or Installation Activities will be manufactured, provided and transported to Toyota in full and complete conformity with the Contract Documents, including without limitation all specifications, drawings, and samples or other descriptions furnished or specified by Toyota (“Toyota Specifications”), all specifications, drawings, and samples or other descriptions furnished or specified by Supplier (“Supplier Specifications”) but only to the extent not superseded by Toyota Specifications, and all Manufacturing and Legal Requirements. Further, Supplier expressly warrants that all Items and Remedial Work and/or Installation Activities will be merchantable, of good material and workmanship and free from defects. If Toyota does not provide the design for Items, Supplier expressly warrants

that the design shall be free from defects. Supplier expressly warrants that all Items will be fit and sufficient for the purposes intended by Toyota (collectively, "Supplier's Warranties"). For any Items which contain patented, trademarked or copyrighted components which are otherwise the subject of intellectual property rights held by third parties, Supplier further warrants that it has all rights to such intellectual property sufficient to permit its full and complete performance hereunder and afford Toyota all of the benefits provided for herein. To the extent that Remedial Work and/or Installation Activities are required by the Contract Documents, such Remedial Work and/or Installation Activities will be performed in a good and workmanlike manner utilizing personnel with skill levels appropriate to the task and in full and complete accordance with the Contract Documents.

**(b) Remedies.** Both prior to and after the end of the Inspection Period, Toyota's remedies shall include, but shall not be limited to, requiring Supplier, at its cost, (i) to accept a Return of such Item(s), (ii) to perform the Remedial Work and/or (iii) to provide replacement Items which fully comply with the requirements of the Contract Documents and all Toyota Specifications and Supplier Specifications.

### **5.3 Taxes, Duty.**

**(a) Generally.** TEMA and any Toyota shall not be liable for any Federal, state, provincial or local taxes unless separately stated in the Order or an Other Document and billed as a separate item. No sales/use tax shall be added to the price of Items under these Terms when an exemption is indicated in the Order or an appropriate Other Document. Supplier agrees to provide Toyota with such documents as may be required to obtain any applicable benefits related to NAFTA, including without limitation, certificates of origin. Toyota reserves, at its sole option, to direct entry of all Supplier shipments in bond to a foreign-trade zone or subzone instead of a consumption entry. In the absence of contrary instructions, Supplier should arrange for a consumption entry prior to sale to Toyota. Supplier shall cooperate with Toyota to file such forms, provide such documents and do all things reasonably necessary at Toyota's request to enable Toyota to claim any exemption, credit, rebate, remission, refund, reduction or other relief from taxes, customs duty or duties under any applicable legislation or treaty or claim a foreign tax credit.

**(b) Excise Tax (Canada).** Where Supplier is required to collect from Toyota the goods and services tax levied pursuant to the *Excise Tax Act* (Canada) or any similar tax, Supplier shall provide to Toyota such documentation as is prescribed by the Input Tax Credit Information (GST/HST) Regulations to the *Excise Tax Act* (Canada), any successor provision thereto or any similar provision of any other taxing statute and as is required in order for Toyota to claim a credit, rebate, refund or any other form of relief in respect of such tax.

**(c) Non-Resident Contract Rules (Canada).** Supplier shall comply in a timely manner with the requirements imposed on Supplier by all applicable taxing statutes, including requirements in respect of registration, payment, collection and remittance of taxes and provision to the applicable taxing authority of such deposits, guarantees or other forms of securities as may be required by law or the administration thereof, including but not limited to payment of the goods and services tax ("GST") pursuant to the *Excise Tax Act* (Canada) and any other tax or duty imposed on the Importer of Record, and shall upon request provide Toyota with written proof of such compliance. Supplier shall indemnify Toyota for any amounts assessed against Toyota arising from Supplier's failure to so comply.

**(d) Withholding.** Toyota shall deduct or withhold from each payment to Supplier all taxes which Toyota is required by law or by the administration thereof to deduct or withhold, shall pay the amount withheld or deducted to the relevant governmental authority in accordance with applicable law, and provide to Supplier a copy of the receipt of payment issued by the authority.

**5.4 Advertising.** Without Toyota's prior written consent, Supplier shall not use or permit use of the words "Toyota Motor Engineering & Manufacturing North America, Inc.", "Toyota", "TEMA", or any similar word or trademark of TEMA, TMC, or any of the Toyota Parties in the description or marketing of products produced by Supplier, nor shall Supplier advertise or publish that Supplier has contracted to furnish Items pursuant to the Order.

### **5.5 Patents; Copyrights.**

**(a) Supplier's Design.** If a Toyota does not provide the entire design for Items, by accepting

these Terms, Supplier agrees to defend, indemnify, protect and save harmless Toyota against all suits at law or in equity and from all losses, damages, claims and demands arising out of actual or alleged infringement of any intellectual property right including, without limitation, any patent, trademark, industrial design right, copyright, or other proprietary right, or misuse or misappropriation of trade secret arising in any way or related to the use or sale of Items or Remedial Work, including without limitation where Supplier has only provided part of the Items or such Items are incorporated into other Items.

**(b) *Toyota's Design.*** If Toyota provides the entire design for Items, by accepting these Terms, Toyota agrees to defend, indemnify, protect and save harmless Supplier against all suits at law or in equity and from all losses, damages, claims and demands arising out of actual or alleged infringement of any intellectual property right including, without limitation, any patent, trademark, industrial design right, copyright, or other proprietary right, or misuse or misappropriation of trade secret arising in any way or related to the use or sale of Items or Remedial Work.

**(c) *Mutually Developed Design or Proprietary Product.*** If a design or other proprietary product is mutually developed, the parties agree that control of the use of such information or proprietary product shall be governed by a joint agreement, to be mutually agreed upon by the parties. The parties further agree that no commercial development of any mutually developed design or other proprietary product shall occur without first entering into a mutually acceptable agreement between the parties, which allows Toyota to recoup costs incurred in the development of such design or proprietary product.

**(d) *Claims.*** Supplier agrees that Toyota or its designee has the right to perform Remedial Work or otherwise repair or rebuild any Items without payment of any royalty or other amount to Supplier. Seller further agrees that Toyota may allow other Toyota Parties or their designees (including third parties) to use designs and other intellectual property of Supplier for the production or repair of Items when such production or repair is deemed necessary by Toyota to maintain production of Items, all without the consent of Supplier and without the payment of any royalty or other amount to Supplier.

**(e) *Work Made for Hire.*** Any work of authorship created by Supplier or its employees which is ordered or commissioned by Toyota, or is a necessary part of the performance of Supplier under the Contract Documents, will be considered a work made for hire and all intellectual or industrial property rights for such work shall belong to Toyota. To the extent that any such work or authorship does not qualify as a work made for hire, Supplier assigns all right title and interest in all copyrights and moral rights in such work or authorship to Toyota. Except as expressly authorized by Toyota, neither Supplier nor its officers, directors, agents, independent contractors, subcontractors or employees shall have the authority to apply for the ownership or registration of any work product nor shall they be authorized to use Toyota's intellectual property or industrial property except during the term of this Agreement in connection with performance of Supplier under the contract Documents. Supplier agrees to provide all assistance reasonably requested by Toyota in the establishment, preservation and enforcement of its intellectual property or industrial rights, such assistance to be provided at Toyota's expense, but without additional compensation to Supplier. Further, Supplier confirms that it has obtained or will obtain from each and every individual working for Supplier a waiver in favor of Toyota, any and all moral rights arising under the *Copyright Act* (Canada) as amended (or any successor legislation) or at common law that such individual, as author of any work of authorship, has with respect to any copyrighted or copyrightable portion of such work prepared by such individual including, without limitation, the right to attribution of authorship, the right to restrain any distortion, mutilation or other modification of such work, and the right to prohibit any use of such work in association with a product, service, cause or institution that might be prejudicial to such individual's honor or reputation.

**(f) *Inventions.*** With respect to inventions which Supplier conceives or first reduces to practice in the course of Supplier's activities under an Order and which are used to manufacture, produce or deliver the Item, Supplier grants to Toyota a permanent, paid-up, nonexclusive, worldwide license, with a right to sublicense others, to make, have made, use, have used manufactures, composites and machines, and use and have used processes, covered by patents on such inventions.

**(g) *License.*** With respect to any intellectual property, including software, contained in and which forms a part of the Items manufactured or supplied to any Toyota, or any intellectual property necessary to repair or

modify the Item, Supplier grants to Toyota a nonexclusive, fully paid-up, perpetual, irrevocable, worldwide license, with rights to grant sublicenses to any other Toyota, to any of its Confidential Information, copyrights, patents, licenses, or other intellectual property which it owns, controls or licenses, but only for use by Toyota in connection with the use and operation of the Item and making repairs or modifications to, or making spare parts for, the Items.

**5.6 Breach; Default.** The following events shall constitute a default (a “Default”) under the Contract Documents: (a) if Supplier fails to perform or deliver Items as specified by Toyota, (b) if Toyota determines in its sole discretion that Items are not of sufficient quality; (c) if Supplier does not make scheduled deliveries as specified in the Delivery Schedules; (d) if Toyota reasonably determines that Supplier has failed to make progress in securing timely performance of its work hereunder and Supplier does not correct such failure within thirty (30) days after the date of a written notice from TEMA specifying such failure; (e) if Supplier repudiates or breaches any of the terms hereof, including, but not limited to, Supplier's Warranties; (f) if Toyota determines in its sole discretion that there is a substantial adverse change in the business or financial condition of Supplier, including without limitation the filing by Supplier of a voluntary petition in bankruptcy or the filing against Supplier of an involuntary petition in bankruptcy which is not dismissed within thirty (30) after its filing; or (g) if Toyota determines in its sole discretion that Supplier has failed to make adequate plans to eliminate foreseeable risks to its ongoing performance of the Contract Documents, such as (by way of example), transportation interruptions, material shortages, and similar risks.

### **5.7 Remedies.**

**(a) Generally.** Upon the occurrence of a Default by Supplier, Toyota shall be entitled to exercise any or all of the following remedies: (i) canceling and terminating the Order and any and all other Contract Documents, which cancellation shall be effective immediately on the date of the notice of the cancellation; (ii) if requested, having all Toyota Property and technical information immediately returned to the applicable Toyota, such return to be at Supplier's cost and expense; (iii) bringing suit to seek all rights and remedies to which it may be entitled, including all damages, under the Uniform Commercial Code ("UCC") or other similar legislation, including personal property security legislation as a buyer of goods; (iv) demand that Supplier provide Toyota with Remedial Work and/or replacement Items in conformity with the Contract Documents; and (v) set-off against any amounts owed to or held by Supplier and costs incurred in Toyota's exercise of its rights under the Contract Documents prior to or as a result of Supplier's Default.

**(b) Damages; Additional Remedies.** Toyota shall also be entitled to any or all of the following remedies for damages, such remedies to be in addition to all other remedies Toyota may be entitled to under *Section 5.8(a)*, the UCC, or other similar legislation as a buyer of goods. On rejection or revocation of acceptance by Toyota, or upon the occurrence of a Default by Supplier, Toyota shall have a security interest in Items in its possession or control which shall secure a claim by Toyota for (i) any payments made to Supplier with respect to such Items and (ii) any expenses reasonably incurred in their inspection, receipt, transportation, care and custody and may hold such Items. In all instances provided for under the UCC or other similar legislation as a buyer of goods, Toyota shall be entitled to recover from Supplier, and Supplier shall reimburse Toyota for, any and all actual, incidental and consequential damages of Toyota resulting from Supplier's Default, including but not limited to, costs, expenses and losses of Toyota resulting from (i) production interruptions, (ii) conducting recall or other corrective service actions, (iii) inspecting, transporting, sorting, repairing or replacing defective or nonconforming Items and (iv) claims or personal injury or property damage caused by such Default.

**(c) Sale of Assets; Change of Control.** In addition to all other remedies, Toyota may terminate an Order and all Contract Documents upon thirty (30) days notice to Supplier, without liability to Supplier, if Supplier (i) sells, or offers to sell, a material portion of its assets, or (ii) sells or exchanges, or offers to sell or exchange, or causes to be sold or exchanged, an amount of its capital stock or other equity interests to effect a change in control of Supplier.

**(d) No Election.** The remedies reserved in these Terms shall be cumulative and additional to any other or further remedies elsewhere in these Terms and provided by law or equity. Resort to any remedy by Toyota, as provided in these Terms or otherwise, shall not be deemed an election of remedies or a waiver of any breach or Default by Supplier.

**(e) Additional Remedies for Custom Items.** With respect to Custom Items, Toyota shall also be

entitled to one or more of the following remedies for damages, such remedies to be in addition to all damages remedies Toyota may be entitled to under *Section 5.8(a)* and *(b)*, the UCC, or personal property security legislation as a buyer of goods, (i) upon demand, Supplier shall grant Toyota access to its premises to allow Toyota to pursue its remedies; (ii) purchase any and all Items, work in process, raw materials, and inventory from Supplier for its fair market value, and offsetting the price of such purchases against any damages that Supplier may owe to Toyota under the Contract Documents; (iii) deal directly with any applicable Subcontractor, including, but not limited to the following actions, to assume the Subcontract or to contract independently with Subcontractor for completion of the Custom Item, to make payments to Subcontractor; all amounts paid to Subcontractor shall be credited against any amounts still due and owing to Supplier, if Subcontractor completes the Custom Item and is paid in full for such work by Toyota, the payment to Subcontractor shall fully satisfy and discharge any additional amounts due to Supplier, irrespective of the original agreed-upon price or the actual amount paid to Subcontractor, and if Subcontractor completes the Custom Item due to Supplier's Default and in order to complete the Custom Item is required to pay an amount in excess of the original agreed-upon price, Toyota shall have a claim against Supplier for such differential in price; and (iv) upon any breach, cancellation or termination, Supplier shall, immediately stop production and/or use of any Custom Item, assemble and segregate Toyota's Custom Items from any other property, including the removal of Custom Items from presses or other machinery, allow Toyota to immediately take possession of the Custom Item, which includes the right to enter onto Supplier's premises or to require Supplier to pack and ship the Custom Item, at Supplier's expense, to a destination selected by Toyota, and indemnify and hold harmless Toyota from any Subcontractor or other third party claim, including any claim arising out of any state or provincial mechanic's lien or other applicable lien statute.

*(f) Taxes.* If Toyota receives from Supplier any payment in respect of a Default by Supplier where the payment is subject to a GST or is deemed by the *Excise Tax Act* (Canada) to be inclusive of GST or is subject to any other tax, including, but not limited to, the Mexican Value Added Tax Law, Supplier shall pay to Toyota, in addition to the payment, an amount equal to the Goods and Services Tax or other tax payable in connection with the payment and such additional amount.

**5.8 Term and Termination.** Toyota reserves the right to terminate these Terms and all Contract Documents (in whole or in part) at any time in its sole discretion. The term of these Terms and all Contract Documents shall be for the duration (as determined solely by Toyota) of the intended performance by Supplier with respect to Items and Installation Activities, but at the sole discretion of Toyota, may be designated as having a term which is month to month, effective as of the month in which such designation is made by Toyota. If the Terms and all Contract Documents are designated, as month-to-month, they shall automatically renew as of the first of each month. Termination of these terms shall be effective as of the last day of the month in which any written notice of termination is given by Toyota, except as to such Items or Supplier Performance as may be designated by Toyota in its sole discretion.

**5.10 Repair by Toyota; Spare Parts.** Upon Supplier's failure to perform Remedial Work, or as otherwise determined by Toyota to be necessary or convenient from time to time, Toyota may maintain, repair and/or replace the Items, or components thereof (including without limitation any patented components), manufacture, purchase or otherwise obtain and substitute on the Items or components thereof (including without limitation any patented components), such spare parts as Toyota deems appropriate.

**5.11 Furnishing Specifications, Plans and Drawings.** Upon the request of Toyota, Supplier shall provide to TEMA all specifications, plans and drawings relevant to the Items, all of which may be utilized for the foregoing purposes. If any Item contains one or more patented components, such component(s) shall be conspicuously labeled on such drawings. Such labeling shall include the patent number, date of issue and country of origin.

**6. ANTI-HARASSMENT ENFORCEMENT.** This *Section 6* shall be applicable when Supplier is required under the Contract Documents to provide or perform Installation Activities or other services on Toyota's premises. Additional provisions of this *Section 6* shall be applicable to such Services (collectively, the "Services Provisions"). As used in this *Section 6*, the term "Supplier" shall also include any third party, including subcontractors and materialmen, at any tier level, performing the Services pursuant to the Order. The Service Provisions are intended to be complimentary with the Terms. Nonetheless, in the event of a conflict between the Terms and remaining provisions herein, the Services Provisions shall control.

**6.1 Compliance with Toyota Policies.** Supplier's employees and agents shall comply with all Toyota policies while on the Toyota's premises (the "Premises"). Supplier shall provide its employees and agents with adequate orientation (subject to the Toyota's review and approval) to introduce its employees and agents to the role and function of Supplier and its employees and agents assigned to the Toyota and to explain the Toyota's policies, rules and regulations.

**6.2 Supplier's Duty to Provide an Anti-harassment Policy.** Supplier shall establish an anti-harassment policy which is clearly and regularly communicated to all of its employees that are assigned to work on the Premises. Supplier's policy must specifically reference a zero-tolerance policy toward harassment, provide and explain the sanctions for harassment and clearly warn against retaliation against victims and witnesses all of which shall be in compliance with local law. Supplier's policy must also include a procedure designed to resolve harassment complaints and through which its employees may bring complaints of harassment to the attention of Supplier's management. Supplier's complaint procedure must be designed to encourage victims of harassment to come forward while reasonably protecting their confidentiality. Supplier's policy must not require a victim to first complain to his or her immediate supervisor but must provide alternative channels for bringing complaints. Supplier further agrees and warrants that it will train all of its employees assigned to work on the Premises about this policy and maintain this policy in written form in a manner that is accessible to all employees it assigns to work on the Premises.

**6.3 Supplier's Duty to Train Its Employees.** Supplier agrees to provide training to all of its employees it assigns to work on the Premises regarding the Toyota's Sexual Harassment and General Harassment policies and procedures ("the Toyota's Policies"). Toyota will provide copies of their human rights standard and the supplier agrees to train it to their employees who are assigned to work on the Premises.

**6.4 Alleged Harassment by a Toyota Employee.** In the event that any of Supplier's employees assigned to work on the Premises believes that he or she has been, or is being, harassed by a the Toyota employee (including sexual harassment), Supplier's employee shall have the right to report such conduct directly to the Toyota as outlined in the Toyota's Policies. IT IS SUPPLIER'S OBLIGATION TO ADVISE ITS EMPLOYEES OF THIS RIGHT WHEN IT CONDUCTS THE TRAINING OUTLINED IN SECTION 6.2, ABOVE.

**6.5 Mutual Duty to Provide Notice of Complaints.** Supplier agrees to notify the Toyota's Human Resources Employee Section immediately of any complaint of harassment by any of its employees assigned to work on the Premises or against any Toyota employee. Toyota also agrees to immediately notify Supplier of any complaint of harassment by any of its employees regarding any of Supplier's employees.

**6.6 Supplier's Duty to Promptly Investigate and Remedy Complaints.** Supplier agrees that in the event any of its employees that it assigns to work on the Premises are found to be in violation of the Toyota's Policies or are otherwise improperly involved in a complaint of harassment Supplier will promptly investigate and remedy the situation in accordance with the Toyota's advice and consent. Supplier further agrees that this remedy may include, but is not limited to, the Toyota's refusal to permit Supplier's employee or employees to continue to work on the Premises.

**6.7 Supplier's Duty to Defend and Indemnify.** Supplier agrees to protect, indemnify, hold harmless and defend the Toyota, its parent, subsidiary and related companies and their respective officers, directors, employees and agents from and against all claims, suits, actions, damages, losses and expenses (including, without limitation, reasonable attorneys fees and costs of litigation) in any manner resulting from or arising directly or indirectly from or out of the activities of Supplier, its employees, agents and/or subcontractors in connection with its performance under the order and these Terms, including, without limitation, any and all claims, suits, actions (whether such claims, suits or actions are deemed to be with or without merit), liabilities or damages of any nature whatsoever, arising directly or indirectly from or in connection with Supplier's failure to provide and/or train its employees regarding Supplier's anti-harassment policy; Supplier's failure to train its employees regarding the Toyota's Policies including specifically Supplier's employees right to report any alleged harassment by a Toyota employee directly to the Toyota; Supplier's failure to notify the Toyota management of any complaint of harassment by any of its employees assigned to work on the Premises; or Supplier's failure to promptly investigate and remedy any complaint that its employees are in violation of the Toyota's Policies.

**6.8 *Supplier's Employees Not Deemed Employees of the Toyota.*** Supplier's employees shall at no time be considered employees or agents of the Toyota. The Toyota may request that Supplier remove or cause to be removed, any employee(s) from the Premises and Supplier shall immediately comply.

## **7. MISCELLANEOUS.**

**7.1 *Governing Law; Choice of Forum.*** For all Items to be delivered to or on behalf of Toyota in the United States or Canada, and for all Items which originate other than in Mexico but which are delivered to or on behalf of Toyota in Mexico, the Contract Documents shall be enforced and construed in accordance with and governed by the laws of the Commonwealth of Kentucky without regard to its conflict of laws rules and without application of the United Nations Convention for the International Sale of Goods. For all Items which originate in Mexico and which are delivered to or on behalf of Toyota in Mexico, the Contract Documents are to be construed according to the laws of Mexico (and applicable state or province), without regard to its conflict of laws rules and without application of the United Nations Convention for the International Sale of Goods and any conflict of law provisions that would require application of another choice of law. Any action or proceeding by Toyota against Supplier may be brought by Toyota in any court having jurisdiction over Supplier, or at the option of Toyota, in the courts having jurisdiction over Toyota, in which event Supplier consents to jurisdiction and service of process in accordance with applicable procedures. Any action or proceeding by Supplier against Toyota may be brought by Supplier only in the courts having jurisdiction over the location of Toyota from which the Order is issued.

**7.2 *Assignment; Subcontracts.*** Supplier may not assign its rights or obligations hereunder without Toyota's prior written consent. Except for supplies proprietary to Supplier and parts and supplies normally purchased by Supplier, no work may be subcontracted without Toyota's prior written consent.

**7.3 *Notices.*** Notices required under the Contract Documents must be in writing and, must be sent by one of the following means: regular mail, a nationally recognized overnight courier service or telefax. Notices sent to Toyota must be sent only to the address designated by the Toyota, and must refer to the Order. Notices sent to Supplier must be sent to such address and to the attention of such department or individual as is maintained in Toyota's files concerning notices to or Supplier's contact person.

**7.4 *Battle of the Forms Not Applicable.*** The parties hereto have agreed and it is their intent that the battle of the forms section of UCC §2-207 shall not apply to the Contract Documents or to any invoice or acceptance form of Supplier relating to the Contract Documents. The parties intend that the Contract Documents shall exclusively control the relationship of the parties with respect to all Items being purchased pursuant to the Order, and in the event of any inconsistency between any invoice or acceptance form sent by Supplier to Toyota and the Contract Documents, the Contract Documents shall control.

**7.5 *Entire Agreement.*** The Contract Documents constitute the entire agreement between the parties and supersede any and all other agreements, representations, and understandings of the parties, if any, whether oral or in writing.

**7.6 *Survival.*** Any provisions of the Contract Documents 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 and shall inure to the benefit of and be binding upon Supplier and TEMA and their respective successors and assigns.

**7.7 *Alternative Dispute Resolution.*** Subject to Toyota's right to seek injunctive relief under *Section 4.4*, in the event of a dispute concerning contractual causes arising from the Contract Documents or the parties' obligations hereunder, TEMA and any applicable Toyota and Supplier shall endeavor to settle the dispute through good faith negotiations. Only if the dispute cannot be resolved through good faith negotiations, either party has the right to request non-binding mediation. Any such mediation shall take place in Covington, Kentucky. If mediation fails to resolve the dispute, the parties agree to submit the matter in dispute to binding arbitration. Written notice of the intent to submit a matter to arbitration shall be given by the party requesting same. The arbitration proceedings shall be conducted in accordance with the International Institute for Conflict Prevention & Resolution Non-Administered Arbitration Rules & Commentary or, if the parties so agree, the relevant rules of another arbitration organization. In any case, regardless of any rules of the selected arbitration organization to the contrary, only one

arbitrator shall be used to decide the outcome of the arbitration. Such arbitration shall be held in Boone County, Kentucky, or if the parties agree upon another location, that other location. The prevailing party shall be entitled to an award of attorney's fees. The United States Arbitration Act, 9 U.S.C. §§ 1-16, shall govern the arbitration and judgment upon the arbitrator's award may be entered in any court having jurisdiction over such matter.

**8. PROVISIONS RELATING TO INSTALLATION.** The purchase and sale of the Items by Toyota from Supplier may, to the extent identified in any Contract Documents, provide for the installation and/or testing of the Items on the premises of Toyota (collectively, the "Installation Activities"). Toyota may also contract for Installation Activities to be performed by Supplier or third parties pursuant to third party contracts ("Installation Contracts"). Installation Activities and Installation Contracts may include such other provisions and requirements as Toyota may require. In addition to the above terms and conditions, when Installation Activities are provided for in the Contract Documents or in Installation Contracts, which incorporate these Terms, the additional provisions of this *Section 8* and the following provisions of *Sections 9 through 19* shall be applicable to such Installation Activities (collectively, the "Installation Provisions"). For purposes of all Installation Provisions, the following rules of construction shall apply. The term "Subcontractor," in addition to any other definition provided for in these Terms, shall also include Subcontractor or any third-party sub-contractor or materialman performing any Installation Activities (or related activities) for or on behalf of Supplier. The term "Supplier," in addition to any other definition provided for in these Terms, and where the context requires an expanded definition in conjunction with the applicable provisions of these Terms (as determined by Toyota in its sole discretion), such term shall also include any applicable Subcontractor even where only the term "Supplier" is used. The Installation Provisions are intended to be complementary with the remaining provisions herein. Nonetheless, in the event of a conflict between the Installation Provisions and the remaining provisions herein, the Installation Provisions shall control. As used in the Installation Provisions, the term Toyota shall always include TEMA, TMMBC (as applicable) and any NAMC upon whose property the Installation Activities or Supplier Performance are to occur.

**9. TOYOTA'S OPERATIONS.** Toyota may during the period of the Installation Activities elect to commence or continue its operations on the premises. To this end Supplier shall cooperate with Toyota as to performance of the Installation Activities. To avoid interference with Toyota's operations, Supplier shall perform the Installation Activities at hours and in such manner and at such times as to suit Toyota's convenience and all costs in connection therewith shall be included in the Supplier's base bid. Toyota will not pay, entertain, or recognize any claims by Supplier or others for increased compensation based on delay, lack of access, or other problems caused, in whole or in part, by Toyota's commencement or continuation of work on the premises during the Installation Activities. Without in any manner limiting the foregoing, Supplier acknowledges, and will require its Subcontractors to acknowledge, that unforeseen delays may arise as a result of (a) Toyota's actions in ensuring the uninterrupted continuance of its manufacturing or other operations, or (b) the actions of Toyota or third parties taken in connection with work taking place concurrently on the premises. Supplier assumes the risk of such delays and has factored the possibility of such delays into its pricing as reflected in the Contract Documents.

## **10. LAW, ORDINANCES AND REGULATIONS.**

**10.1 Generally.** In addition to its obligations under *Section 4.2*, in connection with the Installation Activities, Supplier shall comply with all Manufacturing and Legal Requirements.

**10.2 Equal Opportunity.** Supplier shall have a policy to ensure equal opportunity without regard to race, color, national origin, sex, religion, handicap, or status as a disabled or Vietnam veteran, and otherwise comply with all Toyota policies and procedures regarding employment opportunities, as the same may be amended and modified from time to time. Supplier shall provide, on request of Toyota, written certification of its ongoing compliance with all employment opportunity and other Laws, as well as originals or copies of all documentation of its compliance with any such laws.

**10.3 Environmental Activity and Requirements.** Supplier shall not under any circumstances cause or permit, in connection with the Installation Activities, the use, storage, holding, generation, handling, transportation, discharge, emission or release of any Hazardous Substance, waste, pollutant, contaminant or other substance in violation of any Environmental Requirement or in such manner as to necessitate environmental remediation. "Environmental Requirements" include all applicable Laws (as the same may be amended from time to time) regulating, related to or imposing liability or a standard of conduct concerning the environment or any hazardous

substance or environmental activity including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. § 9601 *et seq.* ("CERCLA"). "Hazardous Substance" shall include any substance which is a "hazardous substance" (as defined in CERCLA), or any other substance or material defined, designated, classified or considered as hazardous or toxic waste, hazardous or toxic material, or hazardous, toxic, radioactive or dangerous substance under any environmental requirement and petroleum in any form.

**10.4 Registrations; Licenses.** Supplier shall maintain and shall cause its Subcontractors to maintain, all registrations and licenses required by applicable Laws and shall provide, on request of Toyota, written copies of such licenses and registrations.

## **11. REGULATION AND USE OF TOYOTA'S FACILITIES.**

**11.1 Toyota's Rules, Regulations and Programs.** Supplier and all Subcontractors and their employees shall be subject to and shall conform to Toyota's rules, regulations, policies, procedures and programs while supplying Items and/or Services to Toyota. Without limiting the foregoing, by executing the Contract Documents, Supplier acknowledges receipt of, and shall comply with, Toyota-generated manuals including, without limitation, the following: (a) safety/security; (b) environmental management; and (c) supplier diversity.

**11.2 Identification Badges.** Identification badges will be required for all of Supplier's and Subcontractor's employees to limit the use of Toyota's premises. Supplier shall cooperate with Toyota in setting up this identification system.

**11.3 General Rules; Safety Precautions; Project Safety Rules.** Without limiting Supplier's obligation to comply with the Safety/Security Manual referred to in *Section 11.1(a)*, Supplier agrees as follows:

(a) Supplier shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with performing the Installation Activities. Supplier shall coordinate and direct the safety activities of its Subcontractors so the Installation Activities are subject to unified safety precautions.

(b) Supplier and all its Subcontractors will comply with Toyota's project safety rules as may be adopted and amended from time by Toyota, at Toyota's sole discretion, during the Installation Activities. Supplier acknowledges receipt of a copy of Toyota's current project safety rules. Toyota will provide written notice to Supplier of any amendments to its project safety rules.

## **12. SUPPLIER'S LIABILITY AND INDEMNITY OF TOYOTA.**

**12.1 Assumption of Risks.** Supplier assumes all risks of injuries, death, sickness or disease to persons or damage to property used or employed on or in connection with Installation Activities, and all risks of injuries, death, sickness or disease to persons or damage to property wherever located, resulting from any action, omission or operation under the Contract Documents or in connection with the Installation Activities.

**12.2 Indemnity.** Supplier shall indemnify, hold harmless and defend Toyota and their employees, agents, servants and representatives from and against any and all claims, damages, losses, liabilities and expenses, including reasonable attorney's fees and costs, of whatever nature, attributable to injury, sickness, disease or death, or to injury or destruction of property, including the Items, including loss of use resulting therefrom, directly or indirectly, caused by or arising out of any action, omission or operation under the Contract Documents or in connection with the Installation Activities (whether on or off Toyota's property or premises) attributable in whole or in part to Supplier or any Subcontractor, any of their respective employees, agents, servants and representatives, or any other person, including Toyota, their employees, agents, servants and representatives; provided, however, that Supplier shall not be required to indemnify Toyota or their employees, agents, servants and representatives hereunder for any such claims, damages, losses and liabilities, caused solely and exclusively by the negligence of Toyota, their employees, agents, servants and representatives where such indemnification is contrary to law. It is the intent of the parties that Supplier shall indemnify Toyota, and their employees, agents, servants and representatives to the fullest extent permitted by law. Without in any manner limiting the generality of the foregoing indemnity, the Supplier further agrees as follows:

(a) If corrective work is required or fines or legal costs are assessed against Toyota by a government agency due to non-compliance by Supplier with any laws, regulations, Environmental Requirements or breach of any duty contained in the Contract Documents, or if the work of Supplier or the work at the site of the Installation Activities, or any part thereof, is stopped by order of a governmental agency due to the Supplier's non-compliance with any such laws, regulations or environmental requirements, or if any Toyota incurs any loss or liability due to any breach or Default by Supplier of its obligations, Supplier will indemnify and hold harmless Toyota against any and all losses, liabilities, damages, claims, costs and reasonable attorney's fees and costs suffered or incurred on account of the failure of Supplier to comply therewith.

(b) Should Toyota be joined as a party in any action or proceeding arising out of the violation or an alleged violation of the Federal Wage and Hour Law in the performance of the Contract Documents, Supplier, or any Subcontractor violating or alleged to have violated such law, or using or introducing goods manufactured or alleged to have been manufactured in violation of the law, shall defend and hold harmless Toyota in any such action or proceeding and pay and defray any damage, expense and cost of any description by reasons thereof, including reasonable attorneys fees and costs.

**12.3 Notice of Occurrences.** In the event of any accident or occurrence resulting in injury, death, sickness or disease to persons or damage to property, Supplier shall immediately notify Toyota of the accident or occurrence and shall submit a written report within three (3) calendar days.

**12.4 Limitations Not Applicable.** In claims against any person or entity indemnified under this *Section 12* by an employee of Supplier, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this *Section 12* shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for Supplier or a Subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

**12.5 Identification of Claims.** Prior to any final payment under the Contract Documents Supplier shall identify in writing to Toyota any outstanding claims, actual or threatened, known to Supplier or by any Subcontractor at any tier, including but not limited to any claim for equitable adjustment or equitable compensation based on purported delay, acceleration, or other changes (or refusal to change) in scheduling, deadlines, or milestones; lack of access; stacking of trades; impact claims, labor inefficiencies; loss of productivity; or any conduct or omissions of Toyota. For any claims except those based solely on Toyota's conduct or omissions, and for any and all claims not specifically identified by Supplier to Toyota as provided herein, Supplier shall indemnify, hold harmless, and defend Toyota and its employees, agents, servants, and representatives from and against any and all such claims, damages, losses, liabilities, and expenses, including reasonable attorney's fees and costs, of whatever nature, arising from or purporting to arise from the conduct or omissions of Toyota. This indemnification shall not be exclusive of any other right of indemnification, contribution, setoff, credit, or apportionment Toyota may otherwise have.

**12.6 Payment of Costs.** Supplier shall pay all costs, damages, losses, liabilities, and expenses incurred by Toyota in the enforcement of this Agreement, including reasonable attorney's fees.

### **13. SALVAGE AND REMOVAL OF EXISTING WORK AND EQUIPMENT.**

**13.1 Removal of Structures, Materials, Equipment.** Unless otherwise specified in the Contract Documents, Supplier shall remove at its expense existing structures, materials and equipment as may be necessary to permit the proper installation of the Items. All cutting, repairing or patching in connection with these removals shall be performed without additional cost to Toyota.

**13.2 Ownership of Items Removed.** Unless otherwise specified in the Contract Documents, all equipment and materials removed from existing buildings shall remain the property of Toyota and be deemed Toyota Property. Supplier shall protect these materials and equipment from damage and loss until Supplier has afforded Toyota the reasonable opportunity for the inspection and storage of the materials and equipment and the execution of the Installation Activities, following which Supplier shall deliver the materials and equipment to a storage area designated by Toyota.

**13.3 Removal from Premises.** No material or equipment may be taken from the premises without first securing a properly executed property pass from Toyota. Boxes, cartons, or similar items, are subject to inspection by Toyota.

#### **14. COOPERATION.**

**14.1 Generally.** Supplier agrees that anything necessary on its part and on the part of its Subcontractors to eliminate interferences and to make possible the work of other trades is to be done as part of the Contract Documents and at Supplier's expense, including the use of Toyota's facilities and utilities, and shall be done in such a manner and at such times as to avoid interference with Toyota's operations.

(a) Supplier and its Subcontractors shall afford Toyota and other Suppliers reasonable opportunity for the introduction and storage of their materials and equipment and the execution of their work.

(b) Each Supplier and its Subcontractors when requested by Toyota shall cease work at any particular location and transfer their employees to other locations, and execute such portions of the Work as required to enable others to carry on their work without delay.

**14.2 Coordination on Site.** Supplier shall work with other parties on the same site at the same time. The coordination between Supplier and the other contractors shall be done by Toyota.

**15. SUPPLIER'S APPLICATIONS FOR PAYMENT.** To the extent determined necessary by Toyota to be protected against the filing of mechanic's or similar liens by Supplier or a Subcontractor, Supplier's applications for payment shall be accompanied by the Supplier's sworn statement indicating the status of payments to laborers to the date of the invoice, and setting forth the amounts due each Subcontractor as of the date of the Supplier's invoice. Such lien waivers shall expressly reference that the release applies to any retainage withheld. Lien waivers may also be required from persons furnishing labor, materials, machinery, equipment or supplies to Subcontractors, along with any other person or entity that would be entitled to claim a lien upon Toyota's premises as a result of the Installation Activities.

#### **16. COMPLETION OF INSTALLATION ACTIVITIES UPON DEFAULT OF SUPPLIER.**

**16.1 Assistance with Installation.** Should Supplier in the opinion of Toyota, at any time during the performance of the Installation Activities, (a) neglect or refuse to supply a sufficiency of properly skilled workmen or of materials of proper quality, (b) fail in any respect to prosecute the Installation Activities with promptness and diligence, (c) fail to perform any terms and conditions of the Contract Documents, (d) fail to perform the Installation Activities in conformity with the Contract Documents, or (e) become insolvent, file a voluntary petition of bankruptcy or be subject to an involuntary petition of bankruptcy; then Toyota may, in addition to requiring the performance of Remedial Work after giving written notice to Supplier, provide any necessary labor, materials or equipment required to assist Supplier in the completion of the Installation Activities and deduct the cost thereof from any monies due or thereafter due to Supplier under the Contract Documents.

**16.2 Termination of Supplier.** In addition to the rights set forth in *Section 16.1* and upon the occurrence of a Default, for the purpose of completing the Installation Activities, Toyota may terminate the contractual obligation of Supplier for the Installation Activities and enter upon the premises and take possession of all materials, tools and equipment, and to request any other person or persons to finish the Installation Activities on a fixed sum contract basis, cost plus percentage of cost, cost plus fixed fee basis or a combination thereof. In case of discontinuance of the services of Supplier, neither Supplier nor its surety (if any) shall be entitled to receive any further payment under the Contract Documents until the Installation Activities are finished. If the unpaid balance of the amount to be paid under the Contract Documents shall exceed the costs and expenses incurred by Toyota in finishing the Installation Activities and any costs, damages or losses, including reasonable attorney's fees and costs, arising from the default of Supplier, the excess shall be paid by Toyota to Supplier and/or its surety. If the costs and expenses and any costs, damages or losses, including reasonable attorney's fees and costs arising from the default of Supplier shall exceed the unpaid balance of the Contract Documents, Supplier shall pay the difference to Toyota.

**17. LABOR HARMONY.** It is understood and agreed by Toyota and Supplier that the maintenance of labor harmony

on the site of the Installation Activities is of mutual importance to the creation and continuation of the Contract Documents. Accordingly, Supplier agrees that in the event that the Installation Activities are delayed, disrupted or interfered with either by a labor dispute between Supplier and his employees, between his Subcontractors and their employees, or by any union representing employees of Supplier or any of his Subcontractors, Toyota shall have the absolute right to terminate the Contract Documents upon forty-eight hours written notice to Supplier and Toyota shall have the rights available, upon such termination, as provided in the Contract Documents.

**18. DISCHARGE OF LIENS.** In the event any mechanics' or materialmen's lien is filed or continued against any property of Toyota for services or labor performed or materials, machinery and equipment furnished in connection with the Contract Documents by Supplier or any third party performing services on behalf of Supplier, Supplier agrees to take any and all steps necessary and proper for the release and discharge or bonding of such lien in the manner required or permitted by the laws of the applicable jurisdiction on receipt of demand from Toyota, and in default of performing such obligation, agrees to reimburse Toyota, on demand, for all monies paid by Toyota in the releasing, satisfying and discharging of such liens, including reasonable attorneys' fees and court costs as disbursements.

**19. PROVISIONS APPLICABLE TO CERTAIN JURISDICTIONS.** It is understood and agreed that the following provisions are incorporated into these Terms and into the Contract Documents to be applicable where (i) the Items are to be installed and/or Installation Activities are to be performed in the designated state or country, or (ii) any other aspect of Supplier Performance under any of the Contract Documents which is required by the applicable Laws of any of the following states or countries to be controlled by the Laws of such state or country. To the extent the following provisions are in conflict with any other provisions of these Terms, the following provisions shall control.

**19.1 Alabama.** The following additional provisions shall apply when Supplier Performance is to occur in Alabama:

**(a) Supplier Compliance with Licensing Requirements.** Supplier shall comply with the requirements of Section 34-8-1 et seq., of the Code of Alabama (1975), including, but not limited to the following:

**(1)** Pursuant to Section 34-8-6(b) of the Code of Alabama (1975), every person, firm, or corporation licensed pursuant to Alabama Code Chapter 34 shall include his or her license number in all construction contracts, subcontracts, bids and proposals.

**(2)** Pursuant to Section 34-8-7(a)(5) of the Code of Alabama (1975), every Subcontractor shall be licensed with the Alabama Board of Licensure prior to beginning work on the Items.

**(b) Rejection of Bids for Non-Compliance.** Section 8-4-8(b) of the Code of Alabama (1975), requires that all bids that do not contain the current license number of the General Contractor submitting the bid must be rejected by the Toyota.

**(c) Subcontractor Compliance.** Supplier shall maintain and shall cause its Subcontractors to maintain, all registrations and licenses required by the authorities having jurisdiction over the Items and shall furnish Toyota with evidence of same.

**(d) Tax Abatement Requirements.** The following are the procedures for qualifying purchases of construction-related material and equipment for sales tax abatements granted to Toyota Motor Manufacturing, Alabama, Inc. ("TMMAL") by The Industrial Development Board of the City of Huntsville. It is imperative that these procedures are followed and that all purchases of construction-related materials for the Items are tax exempt:

**(1)** Each Supplier or Subcontractor purchasing tangible personal property for the Items must submit to the Alabama Department of Revenue an application for Sales and Use Tax Certificate of Exemption for an Industrial or Research Project. The Department will subsequently issue to the Supplier or Subcontractor (herein referred to as the "certificate holder") a certificate of exemption (Form STE-2).

**(2)** A prime contractor applying for a Form STE-2 must submit with its application

written confirmation from TMMAL that it is authorized to make purchases of tangible personal property to be incorporated into the Items.

(3) A Supplier or Subcontractor applying for a Form STE-2 must submit with its application written confirmation from TMMAL or the prime contractor that it is authorized to make purchases of tangible personal property to be incorporated into the Items.

(4) Upon receipt of Form STE-2, the certificate holder must copy, complete, and provide the certificate to each vendor as documentation for the tax exempt status of the certificate holder's qualifying purchases of tangible personal property. The following information should also be provided by the certificate holder on the certificate copy given to the vendor: (i) name and address of the vendor to whom the certificate copy is provided; (ii) date the certificate is provided, and (iii) certificate holder's signature and title.

(5) A certificate holder regularly making tax exempt purchases may furnish a properly executed certificate to the seller specifying that all tangible personal property subsequently purchased will be for the purpose shown on the certificate and thus be relieved of the burden of executing a separate certificate for each individual tax-exempt purchase as long as the tangible personal property qualifies for the abatement.

(6) The certificate holder must maintain a list of all vendors to whom a copy of the exemption certificate is furnished. The list must be maintained in the certificate holder's records for purposes of inspection by the Alabama Department of Revenue and should contain the name, address and type of business of each vendor to whom the certificate holder provided a copy of the certificate.

(7) Certificate holders are responsible for reporting and remitting nonabatable sales and use taxes due on all purchases for which they use the certificate to purchase property without the payment of tax to the vendor or supplier.

(8) The certificate holder must notify the Department immediately upon any change in name or mailing address.

(9) The certificate holder must return the certificate to the Department after the Items has been placed in service.

(10) The certificate of exemption may only be used by the person or entity to which it is issued by the Department.

(11) Supplier and each Subcontractor must obtain a certificate of exemption before making purchases for the Items and must use the certificate in accordance with the procedures outlined above in order to insure that all purchases of property qualify for the abatement of taxes.

(e) Supplier acknowledges and agrees that for purposes of this Agreement, it is providing materials to be included in automobiles which will be sold in interstate commerce.

**19.2 Arizona.** The following additional provisions shall apply when Supplier Performance is to occur in Arizona: None.

**19.3 British Columbia, Canada.** The following additional provisions shall apply when Supplier Performance is to occur in British Columbia, Canada:

(a) **Supplier Liability to Pay Taxes.** Supplier shall comply in a timely manner with the requirements imposed on Supplier by all applicable taxing statutes, including requirements in respect of registration, payment, collection and remittance of taxes and provision to the applicable taxing authority of such deposits, guarantees or other forms of securities as may be required by law or the administration thereof, including, but not limited to payment of the goods and services tax ("GST") pursuant to the *Excise Tax Act* (Canada) and any other tax or duty imposed on the Importer of Record, and shall, upon request, provide Toyota with written proof of such compliance. Supplier shall indemnify Toyota for any amounts assessed against Toyota arising from Supplier's

failure to so comply.

**(b) GST Tax.** Where required by law, there shall be added to each amount to be paid by Toyota to Supplier hereunder all applicable GST or any similar tax. Supplier shall provide to Toyota such documentation as is prescribed by the *Input Tax Credit Information (GST/HST) Regulations* to the *Excise Tax Act* (Canada), any successor or similar provision thereto and as is required in order for Toyota to claim an input tax credit or refund in respect of such tax. Supplier shall cooperate with Toyota to file such forms, provide such documents and do all things reasonably necessary at Toyota's request to enable Toyota to claim any exemption, credit, rebate, remission, refund, reduction or other relief from taxes, customs duty or duties under any applicable legislation or treaty or claim a foreign tax credit.

**(c) Indemnity Payment.** If an indemnity payment made by Supplier to Toyota is subject to GST or is deemed by the *Excise Tax Act* (Canada) to be inclusive of GST, or is subject to any other tax, Supplier shall pay to Toyota, in addition to the indemnity payment, an amount equal to the GST or other tax payable in connection with the indemnity payment and such additional amount.

**(d) Non-Resident Supplier.** For Canadian projects, Toyota shall deduct or withhold from each payment to Supplier all taxes which Toyota is required by law or by the administration thereof to deduct or withhold, shall pay the amount withheld or deducted to the relevant governmental authority in accordance with applicable law, and provide to Supplier a copy of the receipt of payment issued by that authority.

**(e) Builders Lien Act (British Columbia).** In the performance of its obligations under this Agreement, the Supplier shall comply with the provisions of the *Builders Lien Act* (British Columbia) or any successor legislation, as amended from time to time. Without limiting the generality of the foregoing, in making an application for partial or final payment, the Supplier shall be required to submit to Toyota a sworn statement, in a form satisfactory to Toyota, that all accounts for labour, subcontractors, products, materials and other indebtedness which may have been incurred by the Supplier in the performance of its obligations under this Agreement and for which Toyota may in any way be held responsible have been paid in full. In addition, the Supplier shall use its best efforts to ensure that no claim of lien shall be filed in respect of any work performed or products or material supplied by the Supplier (collectively, the "Work") and if a claim of lien shall be filed in respect of the Work, the Supplier shall take all necessary steps to have the claim of lien cancelled and discharged from the place of Work within 15 days of the date that the Supplier receives notice of such lien from Toyota, and the Supplier shall indemnify and save harmless Toyota from any and all loss, cost, expense, damage, and liability in respect of such claim of lien. Toyota in addition to any right or remedy, shall have the right, but shall not be obliged, to discharge any claim of lien from the place of Work by paying the amount claimed to be due or by procuring a discharge of such lien by deposit in the appropriate court, and in any such event Toyota shall be entitled, if it so acts, to expedite the prosecution of any action for the enforcement of such claim of lien by the lien claimant and to pay the amount of the judgment, if any, in favor of the lien claimant with interest and costs. In any such event the Supplier shall forthwith pay to and reimburse Toyota for all money expended by Toyota and all costs and expenses incurred by Toyota.

**(f) Alternative Dispute Resolution.** Subject to either party's right to seek injunctive relief, in the event of a dispute concerning contractual causes arising from this Agreement, the parties shall endeavor in good faith to settle the dispute through negotiation. If the dispute cannot be resolved through negotiation, or another mutually agreeable dispute resolution mechanism, either of the parties has the right to request non-binding mediation. If mediation fails to resolve the dispute, the parties agree to submit the matter in dispute to binding arbitration. Written notice of the intent to submit a matter to arbitration shall be given by the party requesting the same. The arbitration proceedings shall be conducted in accordance with the National Arbitration Rules of the ADR Institute of Canada, Inc. or, if the parties so agree, the relevant rules of another arbitration entity or organization agreed upon by the parties. In any case, regardless of any rules of the selected arbitration organization to the contrary, only one (1) arbitrator shall be used to decide the outcome of the arbitration. Such arbitration shall be held in the city of Vancouver, British Columbia, Canada, or if the parties agree upon another location, that other location. The prevailing party shall be entitled to an award of legal fees. The arbitration shall be governed by the Arbitration Act, (British Columbia), as may be amended from time to time, and judgment upon the arbitrator's award may be entered in any court having jurisdiction over such matter.

**(g) Governing Law; Choice of Forum.** This Agreement shall be governed and construed in all respects in accordance with the laws of the Province of British Columbia, Canada as they apply to a contract entered into and performed in British Columbia, Canada, without regard to its conflict of law rules. The parties agree that neither shall commence any litigation against the other except in a court located in the city of Vancouver, British Columbia, Canada. Each party consents to jurisdiction over it by and exclusive venue in such a court.

**(h) Compliance with Applicable Immigration Laws and Policies.** Supplier acknowledges and agrees that it shall be responsible for complying with the *Immigration and Refugee Protection Act of Canada* with respect to its employees. If Toyota becomes aware of any information, which, based upon a reasonable interpretation of such events or information, supports the conclusion that Supplier may be out of compliance with applicable immigration laws, Supplier shall, at the option of Toyota: (a) provide written certification that Supplier is in compliance with all applicable immigration laws; and/or (b) upon prior notice, allow for an independent auditor, selected and paid for by Toyota, to conduct a full review and/or audit of records relating to the *Immigration and Refugee Protection Act of Canada*. If the audit discloses one or more failures of Supplier's compliance with the *Immigration and Refugee Protection Act of Canada*, Supplier agrees to assume responsibility for all cost associated with the audit. Furthermore, such disclosure, or Supplier's failure to otherwise adhere to the terms of this provision may, at Toyota's sole discretion, be deemed a material breach and be grounds for immediate termination of this Agreement and any Contract Demand. Supplier agrees to indemnify and hold Toyota harmless from and against any and all claims, demands and actions and any liabilities, damages or expenses resulting therefrom, including court costs and reasonable legal fees, arising out of or relating to noncompliance with this provision by Supplier, its permitted Subcontractors, or their respective agents or representatives.

**(i) Employee Relations Training.** All of Supplier's employees and agents assigned to provide services pursuant to this Agreement shall have been trained and be provided on-going training in employee relations, equal opportunity and other employment laws, including, without limitation, the *British Columbia Human Rights Code* and any corresponding or similar laws.

**19.4 California.** The following additional provisions shall apply when Supplier Performance is to occur in California:

**(a) INDEMNIFICATION BY SUPPLIER.** IN ANY AND ALL INSTANCES UNDER THE CONTRACT DOCUMENTS WHERE SUPPLIER IS REQUIRED TO INDEMNIFY OR HOLD TOYOTA AND/OR OTHER INDEMNITIES HARMLESS, INCLUDING, WITHOUT LIMITATION, SECTION 12 HEREOF, SUCH OBLIGATION OF SUPPLIER SHALL APPLY REGARDLESS OF WHETHER OR NOT THE CLAIM, DAMAGE, LOSS, LIABILITY OR EXPENSE THAT IS THE SUBJECT OF SUCH OBLIGATION IS CAUSED IN PART BY THE NEGLIGENCE OR OTHER ACT OR OMISSION OF TOYOTA OR ANY OTHER PARTY INDEMNIFIED OR HELD HARMLESS BY SUPPLIER.

**(b) Equal Opportunity.** Section 10.2 of these Terms is hereby amended and restated as follows: "Supplier shall have a policy to ensure equal opportunity without regard to race, color, national origin, sex, religion, handicap, marital status, gender, ancestry, medical condition, sexual orientation or status as a disabled or Vietnam veteran, shall use commercially reasonable efforts to cause its subcontractors to have substantially similar policy, and shall otherwise comply with all Toyota policies and procedures regarding employment opportunities, as the same may be amended and modified from time to time. Supplier shall provide, on request of Toyota, written certification of its ongoing compliance with all employment opportunity and other Laws, as well as originals or copies of all documentation of its compliance with any such laws."

**(c) Environmental Activity and Requirements.** Section 9.3 of these Terms is hereby modified to add the following laws to the definition of "Environmental Requirements": "Sections 25023.2, 25115, 25117, 25122.7, 25140, 25249.8(a), 25281, 25316, 25501, 25501.1, 25800 et seq, 39655 or 44321 of the California Health and Safety Code, portions of Chapter 11 of Title 22 of the California Code of Regulations which list or define "Hazardous Waste," "Extremely Hazardous Waster," or "Acutely Hazardous Waster," and the California Occupational Safety and Health Act, California Labor Code §§ 6300 et seq."

**(d) Retainage.** Toyota may withhold any retention amount provided in the Contract Documents for up to forty-five (45) days after the date of completion, as such term is defined in Section 3260 of the California

Civil Code; provided that Toyota may continue to withhold 150% of any disputed amount until the dispute is resolved. Toyota and Supplier agree that the retainage shall be subject to all other provisions of Section 3260 of the California Civil Code.

(e) **Lien Waivers.** Section 18 of these Terms is hereby modified to require that the forms of waiver of mechanic's lien identified therein shall be substantially consistent with the applicable forms set forth in Section 3262(d)(1)-(4) of the California Civil Code.

**19.5 Indiana.** The following additional provisions shall apply when Supplier Performance is to occur in Indiana: none.

**19.6 Kentucky.** The following additional provisions shall apply when Supplier Performance is to occur in Kentucky: Supplier expressly waives the application of KRS § 371.160 to any retainage withheld by Toyota under the Contract Documents.

**19.7 Mexico.** The following additional provisions shall apply when Supplier Performance is to occur in Mexico.

(a) **Arbitration.** All disputes arising out of or in connection with this Agreement shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules. The arbitration, including the rendering of the arbitral award, will take place in Mexico City, Mexico and the arbitration shall be conducted in English. The prevailing party shall be entitled to an award of attorney's fees.

(b) **Additional Representations and Warranties of Supplier.** The following are special representations and warranties that are made (i) by any Supplier who is duly organized and in operation pursuant to the laws of Mexico, and (ii) by any other Supplier who is qualified to do business in Mexico and whose performance under any of the Contract Documents will be performed in Mexico. These representations and warranties shall be continuing and shall be updated in writing by Supplier from time to time as needed to remain accurate and in full force and effect, or as requested by TEMA.

(1) Supplier is a Mexican company, duly organized and in operation pursuant to the laws of Mexico, as set forth in a duly recorded public instrument which has been duly registered with the appropriate Public Registry of Property and Commerce (the "Public Instrument"). An authenticated copy of the Public Instrument has been furnished to TEMA, as recorded. Supplier has granted ample powers and authority to enter into these Terms and other Contract Documents, powers that have not been amended, restricted or revoked as of the Effective Date of these Terms, as set forth in the Public Instrument.

(2) The acceptance by performance (or otherwise) of these Terms and all Contract Documents by Supplier is within Supplier's corporate purpose.

(3) Supplier will take all necessary steps to maintain sufficient economic resources and capital to comply with all of its labor obligations with its employees including, but not limited to, fringe benefits and any other applicable legal benefits ("Employee Obligations"). Supplier will also take the necessary steps in order to be certain that any Subcontractor or other parties (as approved by TEMA), which perform with or on behalf of Supplier under these Terms or any other Contract Documents also complies with all of its Employee Obligations.

**19.8 Michigan.** The following additional provisions shall apply when Supplier Performance is to occur in Michigan: None.

**19.9 Mississippi.** The following additional provisions shall apply when Supplier performance is to occur in Mississippi:

(a) **Supplier Licensing Requirements.** Supplier shall comply with the requirements of *Miss. Code Ann. 31-3-1, et seq.*, if and to the extent that such statutory provisions are applicable to Supplier's performance of the Installation Activities.

(b) **Subcontractor Compliance.** Supplier shall ensure that all of its subcontractors secure and maintain all registrations and licenses required by the authorities having jurisdiction over the Installation Activities, including but not limited to a current certificate of responsibility issued by the Mississippi State Board of Contractors to the extent required for the particular subcontractor.

(c) **Stop Payment Notices.** In the event Supplier receives a Stop Payment Notice pursuant to *Miss. Code Ann. § 85-7-181*, Supplier shall take any and all necessary steps to secure the release of the Stop Payment Notice within five (5) business days. In the event Supplier fails to do so, Toyota may take whatever action it deems necessary or appropriate to secure the release of the Stop Payment Notice, including but not limited to payment of the amount claimed to be due. Toyota shall be entitled to deduct from the amounts due to Supplier under the Contract Documents any and all costs and expense incurred in securing the release of the Stop Payment Notice, including but not limited to the amount paid to secure such release and attorneys fees and expenses incurred in the process.

(d) **Payment to Subcontractors.** Supplier shall comply with *Miss. Code Ann. § 87-7-5* in making payments to its subcontractors and suppliers with respect to the Installation Activities.

(e) **Indemnification by Supplier.** In any and all instances under the Contract Documents where Supplier is required to indemnify or hold Toyota and/or other indemnitees harmless, including without limitation Section 12 hereof, Supplier shall have no obligation to indemnify or hold harmless any person from that person's own negligence to the extent that *Miss. Code Ann. § 31-5-41* is applicable and would render such an obligation void and unenforceable.

**19.10 Missouri.** The following additional provisions shall apply when Supplier Performance is to occur in Missouri: None.

**19.11 Ontario, Canada.** The following additional provisions shall apply when Supplier Performance is to occur in Ontario, Canada.

(a) **Supplier Liability to Pay Taxes.** Supplier shall comply in a timely manner with the requirements imposed on Supplier by all applicable taxing statutes, including requirements in respect of registration, payment, collection and remittance of taxes and provision to the applicable taxing authority of such deposits, guarantees or other forms of securities as may be required by law or the administration thereof, including, but not limited to payment of the GST and any other tax or duty imposed on the Importer of Record, and shall, upon request, provide Toyota with written proof of such compliance. Supplier shall indemnify Toyota for any amounts assessed against Toyota arising from Supplier's failure to so comply.

(b) **Retail Sales Tax.** Any Supplier that is a "non-resident contractor" as defined for purposes of the *Retail Sales Act* (Ontario) shall comply with the requirements of subsection 39(3) of such Act or any successor provision thereto regarding the deposit of sums with, or the provision of a guarantee bond to, the Minister of Finance of Ontario, shall obtain from the Minister a certificate that such requirements have been satisfied, and shall provide a duplicate copy of such certificate to Toyota. Unless such duplicate copy has been provided to Toyota, Toyota shall deduct from each payment made to Supplier all amounts required by the said Act to be deducted, and shall remit such amounts to the said Minister.

(c) **GST Tax.** Where required by law, there shall be added to each amount to be paid by Toyota to Supplier hereunder all applicable GST or any similar tax. Supplier shall provide to Toyota such documentation as is prescribed by the *Input Tax Credit Information (GST/HST) Regulations* to the *Excise Tax Act* (Canada), any successor or similar provision thereto and as is required in order for Toyota to claim an input tax credit or refund in respect of such tax. Supplier shall cooperate with Toyota to file such forms, provide such documents and do all things reasonably necessary at Toyota's request to enable Toyota to claim any exemption, credit, rebate, remission, refund, reduction or other relief from taxes, customs duty or duties under any applicable legislation or treaty or claim a foreign tax credit.

(d) **Indemnity Payment.** If an indemnity payment made by Supplier to Toyota is subject to GST

or is deemed by the *Excise Tax Act* (Canada) to be inclusive of GST, or is subject to any other tax, Supplier shall pay to Toyota, in addition to the indemnity payment, an amount equal to the GST or other tax payable in connection with the indemnity payment and such additional amount.

**(e) *Non-Resident Supplier.*** For Canadian projects, Toyota shall deduct or withhold from each payment to Supplier all taxes which Toyota is required by law or by the administration thereof to deduct or withhold, shall pay the amount withheld or deducted to the relevant governmental authority in accordance with applicable law, and provide to Supplier a copy of the receipt of payment issued by that authority.

**(f) *Construction Lien Act (Ontario).*** The requirements for lien waivers are subject to applicable lien legislation to the location of the Work. Where lien waivers are not permitted, the Supplier shall be required, in making an application for partial and final payment, to provide statutory declarations declaring that payment has been made in full to the Supplier's Subcontractors in a form satisfactory to the Toyota.

**(g) *Alternative Dispute Resolution.*** Subject to either party's right to seek injunctive relief, in the event of a dispute concerning contractual causes arising from this Agreement, the parties shall endeavor in good faith to settle the dispute through negotiation. If the dispute cannot be resolved through negotiation, or another mutually agreeable dispute resolution mechanism, either of the parties has the right to request non-binding mediation. If mediation fails to resolve the dispute, the parties agree to submit the matter in dispute to binding arbitration. Written notice of the intent to submit a matter to arbitration shall be given by the party requesting the same. The arbitration proceedings shall be conducted in accordance with the National Arbitration Rules of the ADR Institute of Canada, Inc. or, if the parties so agree, the relevant rules of another arbitration entity or organization agreed upon by the parties. In any case, regardless of any rules of the selected arbitration organization to the contrary, only one (1) arbitrator shall be used to decide the outcome of the arbitration. Such arbitration shall be held in the city of Toronto, Ontario, Canada, or if the parties agree upon another location, that other location. The prevailing party shall be entitled to an award of legal fees. The arbitration shall be governed by the Arbitration Act, 1991 (Ontario), as may be amended from time to time, and judgment upon the arbitrator's award may be entered in any court having jurisdiction over such matter.

**(h) *Governing Law; Choice of Forum.*** This Agreement shall be governed and construed in all respects in accordance with the laws of the Province of Ontario, Canada as they apply to a contract entered into and performed in Ontario, Canada, without regard to its conflict of law rules. The parties agree that neither shall commence any litigation against the other except in a court located in the city of Toronto, Ontario, Canada. Each party consents to jurisdiction over it by and exclusive venue in such a court.

**(i) *Compliance with Applicable Immigration Laws and Policies.*** Supplier acknowledges and agrees that it shall be responsible for complying with the *Immigration and Refugee Protection Act of Canada* with respect to its employees. If Toyota becomes aware of any information, which, based upon a reasonable interpretation of such events or information, supports the conclusion that Supplier may be out of compliance with applicable immigration laws, Supplier shall, at the option of Toyota: (a) provide written certification that Supplier is in compliance with all applicable immigration laws; and/or (b) upon prior notice, allow for an independent auditor, selected and paid for by Toyota, to conduct a full review and/or audit of records relating to the *Immigration and Refugee Protection Act of Canada*. If the audit discloses one or more failures of Supplier's compliance with the *Immigration and Refugee Protection Act of Canada*, Supplier agrees to assume responsibility for all cost associated with the audit. Furthermore, such disclosure, or Supplier's failure to otherwise adhere to the terms of this provision may, at Toyota's sole discretion, be deemed a material breach and be grounds for immediate termination of this Agreement and any Contract Demand. Supplier agrees to indemnify and hold Toyota harmless from and against any and all claims, demands and actions and any liabilities, damages or expenses resulting therefrom, including court costs and reasonable legal fees, arising out of or relating to noncompliance with this provision by Supplier, its permitted Subcontractors, or their respective agents or representatives.

**(j) *Employee Relations Training.*** All of Supplier's employees and agents assigned to provide services pursuant to this Agreement shall have been trained and be provided on-going training in employee relations, equal opportunity and other employment laws, including, without limitation, the *Ontario Human Rights Code* and any corresponding or similar laws.

**19.12 Texas.** The following additional provisions shall apply when Supplier Performance is to occur in Texas:

**(a) INDEMNIFICATION BY SUPPLIER. THESE CONTRACT DOCUMENTS CONTAIN SPECIFIC PROVISIONS AND OBLIGATIONS OF INDEMNITY, WHICH ARE SET FORTH IN SECTION 12 HEREOF. IN ANY AND ALL INSTANCES UNDER THE CONTRACT DOCUMENTS WHERE SUPPLIER IS REQUIRED TO INDEMNIFY OR HOLD TOYOTA AND/OR OTHER INDEMNITEES HARMLESS, INCLUDING, WITHOUT LIMITATION SECTION 12 HEREOF, SUCH OBLIGATION BY SUPPLIER SHALL APPLY REGARDLESS OF WHETHER OR NOT THE CLAIM, DAMAGE, LOSS, LIABILITY OR EXPENSE THAT IS THE SUBJECT OF SUCH OBLIGATION IS CAUSED IN PART BY THE NEGLIGENCE OR OTHER ACT OR OMISSION OF TOYOTA OR ANY OTHER PARTY INDEMNIFIED OR HELD HARMLESS BY SUPPLIER.**

**(b) Supplier's Payment Bond.** If the Contract Documents require that Supplier furnish a payment bond (or if Toyota otherwise requires that Supplier furnish a payment bond), Supplier shall, at the option and election of Toyota, furnish such bond in the form contemplated by Subchapter I of Chapter 53 of the Texas Property Code. In such event, Supplier shall be responsible for complying with and satisfying the provisions of Section 53.202 and 53.203 of the Texas Property Code.

**(c) Supplier's Indemnity Bond.** In the event any mechanic's or materialman's lien is filed or attempted to be filed against the Items or Toyota's property, Supplier shall, at the option and election of Toyota furnish a bond to indemnify against liens in the form contemplated by Subchapter H of Chapter 53 of the Texas Property Code. In such event, Supplier shall be responsible for complying with and satisfying the provisions of Sections 53.172, 53.173 and 53.174 of the Texas Property Code.

**(d) Retainage.** Sums otherwise payable to Supplier in connection with the Items shall be subject to ten percent (10%) retainage pursuant to Section 53.101 of the Texas Property Code. Such sums shall be retained by Toyota during the progress of the Supplier's Performance and for thirty (30) days after the Supplier's Performance is completed. The foregoing retainage shall be withheld under each application for payment, against both the original contract sum and against change order amounts increasing the contract sum

**(e) Waivers of Lien.** Partial or progress waivers of lien executed by Supplier or any Subcontractors during the Supplier's Performance on the Items required by the Contract Documents shall not be required to release claims to statutory retainage under Section 53.101 of the Texas Property Code until such retainage is actually due and paid or payable. The forms of the waivers shall be required by Toyota.

**(f) Affidavit of Commencement/Affidavit of Completion.** Supplier shall, at the option and election of Toyota, assist (and to the extent required, join) Toyota in preparing and filing an Affidavit of Commencement as defined under Section 53.124 of the Texas Property Code and/or an Affidavit of Completion under Section 53.106 of the Texas Property Code.

**(g) Toyota's Right to Apply Monies.** In the event a Subcontractor of Supplier notifies Toyota of non-payment by Supplier and attempts to assert a claim against the Toyota, Toyota shall have the right to withhold from payment to Supplier the amount so claimed and make payment thereof by joint check or directly to such Subcontractor if the claim is not disputed by Supplier as required by Section 53.083 of the Texas Property Code.

**(h) Acceleration.** Toyota shall have the right to direct that Supplier's Performance be accelerated by means of overtime, additional crews, additional shifts or resequencing notwithstanding that Supplier's Performance is progressing without delay in accordance with the established schedule. Supplier agrees to perform in such manner on the basis of the reimbursement of direct cost (i.e., premium portion of overtime pay, additional crew, shift or equipment cost and such other items of cost requested in advance by Supplier and approved by Toyota, which approval will not be unreasonably withheld) plus a fee in an amount and at a rate otherwise applicable to changes in Supplier's Performance under the Contract Documents. Supplier expressly waives any other compensation therefore unless otherwise agreed to by Toyota in writing in advance of performing the accelerated work. In the event of any acceleration requested pursuant to this Section, Supplier shall provide promptly a plan setting forth its recommendations for the most effective and economical means of accomplishing

such acceleration, which shall be subject to the review and approval of Toyota.

**(i) Sales Tax.**

(1) Notwithstanding any provision in these Terms to the contrary, these Terms are intended to be treated as a “separated contract” for Texas sales and use tax purposes pursuant to Title 34, Section 3.291(a)(6) of the Texas Administrative Code (a “Separated Contract”). Pursuant thereto, the Contract Sum shall be divided into a separately stated agreed contract price for incorporated materials and a separately stated agreed contract price for skill and labor. Incorporated materials are tangible personal property that becomes a part of the real property plus any additional charges directly attributable to the incorporated materials. Each contract entered into by Supplier with a subcontractor that provides skill and labor in addition to materials will be structured as a Separated Contract. Under a Separated Contract, the incorporated materials are treated as sold by the subcontractors to the Supplier and by the Supplier to the Toyota.

(2) The Supplier and each subcontractor will acquire its materials to be incorporated into the real property by preparing and issuing its own Texas Resale certificate and delivering that certificate to its suppliers. The supplier will also prepare and issue its Texas Resale certificate to each subcontractor. The Supplier and each subcontractor shall be treated as buying and not reselling, and the Contract Sum includes sales and use tax on those unincorporated materials, supplies, tools and equipment consumed or used by Supplier or its subcontractors to perform the Work and includes sales and use tax on rental charges for equipment used by the Supplier and its subcontractors. If Supplier pays sales or use taxes in violation of this Section (i), then the Toyota shall not be obligated to reimburse Supplier for such tax.

(3) The Toyota will obtain a direct payment permit for the payment of any sales or use tax in the State of Texas and will issue a “Texas Direct Payment Sales Tax Permit” to Supplier and Supplier will not collect any state or local sales or use tax in the State of Texas from Toyota. Supplier will provide Toyota with sufficient information and backup material to enable Toyota to properly determine its sales and use tax liability. In the event that Toyota decides to appeal any assessment, then Supplier will cooperate with and allow Toyota to appeal such assessment and will provide Toyota with such documents or materials as may be required in relation thereof and, if necessary, to allow Toyota to appeal the assessment in the name of Supplier. All costs of such appeal shall be borne by Toyota.

(4) Each application for payment shall state separate amounts for incorporated materials and skill and labor. The material amounts shown on each application shall not include any mark up. Allowed overhead and profit shall be included in the overhead and profit column of the application for payment. Each of such applications for payments is hereby incorporated into these Terms by reference.

(5) Change orders including, but not limited to, incorporated materials, will be separated for Texas Sales and use Tax Purposes, in accordance with Section (i).

**(j) Precedence.** The foregoing provisions of this Section 19 shall have priority and take precedence over any other conflicting or inconsistent provision of the Contract Documents.

**19.13 West Virginia.** The following additional provisions shall apply when Supplier Performance is to occur in West Virginia:

**(a) Payment Bond for Wages.** Supplier shall at all times post and maintain any payment bond for wages required by the West Virginia Payment and Collection Act (W.Va. Code § 21-5-1, et seq.) and shall furnish Toyota with evidence of same upon request.

**(b) Withholding from Final Payment.** Notwithstanding anything herein to the contrary, Toyota shall, if required by W.Va. Code § 11-10-11(b)(1) and (2), withhold six (6) percent of the Contract Sum from the Supplier at the time of final payment until receipt of a tax certificate as required by law.

**(c) Worker's Compensation Fund.** Prior to commencing work, Supplier shall furnish to Toyota Certificates of Good Standing from the West Virginia Worker's Compensation Fund for itself and for all

Subcontractors. Following commencement of the Work, Supplier shall furnish, and shall cause its Subcontractors to furnish, quarterly updates confirming such continued good standing.

*(d) Supplier's License.* The Contract Documents shall include, as required by law, the Supplier's West Virginia Supplier's License Number. Supplier shall further cause all subcontracts to contain the Subcontractor's West Virginia Contractor's License Number.

**SUPPLIER ACKNOWLEDGES AND AGREES THAT ITS PERFORMANCE IS MADE SUBJECT TO THESE TERMS AND THE TERMS AND PROVISIONS OF ALL OTHER CONTRACT DOCUMENTS, ALL OF WHICH ARE HEREBY INCORPORATED BY REFERENCE, NOTWITHSTANDING THAT SOME OF THESE TERMS AND PROVISIONS ARE CONTAINED IN DOCUMENTS WHICH ARE NOT ATTACHED TO THESE TERMS.**