

# TERMS AND CONDITIONS

**1. Acceptance.** These terms and conditions (“Terms and Conditions”) and the documents referred to herein govern all purchase orders (“Purchase Orders”) for products (“Products”) and/or services (“Services”) that are issued by Dana Incorporated or one of its subsidiaries (“Dana”) to the supplier (“Supplier”) identified on each Purchase Order. Dana and Supplier will be referred to collectively as the “Parties,” and each individually, as a “Party.” Supplier’s acknowledgement of, or fulfillment of any part of, the Purchase Order, or any other conduct by Supplier which recognizes the existence of a contract pertaining to the subject matter of the Purchase Order, will constitute acceptance (“Acceptance”) by Supplier of the Purchase Order, these Terms and Conditions and the documents referred to herein (collectively, the “Agreement”). Dana objects to any terms proposed in Supplier’s proposal, sales note, acknowledgment or other form of acceptance of Dana’s offer which add to, vary from, or conflict with the Agreement. Any such proposed terms will be null and void. If a Purchase Order has been issued by Dana in response to an offer by Supplier, and if the terms in the Purchase Order, these Terms and Conditions or the documents referred to herein add to, vary from or conflict with any terms of Supplier’s offer, then the issuance of the Purchase Order by Dana will constitute an acceptance of Supplier’s offer, subject to the express condition that Supplier assents to the additional, different and conflicting terms in the Purchase Order, these Terms and Conditions and the documents referred to herein and acknowledges that such terms constitute the entire agreement between Supplier and Dana with respect to the subject matter of Supplier’s offer. Supplier will be deemed to have so assented and acknowledged unless Supplier notifies Dana to the contrary in a writing signed by Supplier’s authorized representative within 10 days of Dana’s issuance of the Purchase Order.

**2. Term.** The Agreement will begin upon Supplier’s Acceptance (“Effective Date”) and will expire upon the latest expiration date provided for in the Purchase Order (the “Term”). Each 12-month period commencing as of the Effective Date is a “Contract Year.”

### **3. Products and Services**

a. The Products and Services to be provided by Supplier are identified in the Purchase Order. In some cases (typically production Products), Dana will issue a production release (“Release”) to specify the quantities needed and delivery times and dates.

b. A Purchase Order and/or Release will only become a binding commitment upon Dana to purchase the specified Products if the Purchase Order and/or Release is not cancelled by Dana seven days before the ship date set forth in the Purchase Order and/or Release.

c. Dana may purchase Products and Services from other sources or reduce quantities acquired from Supplier

in its sole discretion and irrespective of the course of dealing between the Parties.

**4. Competitiveness.** During the Term, Supplier will be and remain competitive in terms of price, delivery, quality, technology and service. If Dana provides Supplier with written notice along with specific information as to the nature of any Supplier non-competitiveness, then Supplier will promptly remedy its non-competitiveness, no later than 15 days after receipt of such notice. In the event that Supplier fails or chooses not to remedy its non-competitiveness, as determined by Dana in its sole discretion, Dana may terminate the Agreement, in whole or in part, pursuant to Section 33.a (For Cause) of these Terms and Conditions.

### **5. Prices, Currency, Invoicing and Payment Terms.**

a. Prices. The prices for the Products and Services (“Prices”) are set forth in the Purchase Order, and unless otherwise stated in the Purchase Order, the Prices include all applicable federal, state, local and provincial taxes, tariffs or duties, other than sales, value added or similar turnover taxes or charges. Supplier will separately identify on its invoices any sales, value added or similar turnover taxes or charges that Supplier is required to pay or collect from Dana. The Prices constitute the full and complete compensation for the Products and Services, and include compensation for all material, labor, fees, fringe benefits, insurance, profit, overhead and taxes (except sales, value added or similar turnover taxes or charges, if any) in connection with the sale of the Products and the provision of the Services. Except as otherwise provided herein or in the Purchase Order, Supplier may not increase the Prices under any circumstances without the prior written consent of an authorized representative of Dana.

b. Currency. Dana will pay Supplier in the currency specified in the Purchase Order or, if none is specified, in the currency determined by Dana in its sole discretion. Currency adjustments for sale of Products or Services to locations outside of the local country will be made only upon written agreement of the Parties.

c. Invoicing. Supplier will promptly submit correct and complete invoices or other agreed billing communications with appropriate supporting documentation and other information reasonably required by Dana. Dana may withhold payment until a correct and complete invoice or other required information is received and verified. Supplier will issue invoices to Dana on a monthly basis, unless otherwise agreed by the Parties. Supplier’s submission of an invoice constitutes a certification that (a) the quantities and amounts of delivered Products and Services contained on such invoice are true and accurate and that such Products and Services have been delivered in accordance with the terms and conditions of the Agreement, and (b) the invoice is submitted by a representative of Supplier authorized to legally bind Supplier. No invoices

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will be submitted to Dana by Supplier until after the Products and Services that are the subject of such invoice have been provided to Dana. However, any Products or Services that are expressly stated in the Agreement as prepaid or paid in advance will be excluded from the foregoing limitation to the extent, but only to the extent, expressly set forth in the Agreement.

d. Payment Terms. Unless expressed otherwise on the face of the Purchase Order, Dana will pay, via electronic transfer of funds, all undisputed and properly documented invoices on Dana's next regularly scheduled payment date that occurs 90 days following date of invoice, but not earlier than 90 days from delivery of Products or Services. If Dana is legally required to pay in a shorter time period, then Dana will pay all undisputed and properly documented invoices within the maximum period of time allowed by law. Payment will not constitute acceptance of any defective or Non-Conforming Products. All amounts due to Supplier will be considered net of any indebtedness of Supplier and its affiliates to Dana. Dana will have the right to setoff against or recoup from any amounts due to Supplier and its affiliates under the Agreement or any other transactions between Dana and Supplier and its affiliates.

**6. Packing and Shipment.** Supplier will, without any extra charges for handling, packing or delivery, properly pack and ship the Products in strict conformity with any instructions that Dana may provide. If Dana has not provided packing or shipping instructions, Supplier will pack and ship Products in accordance with industry best practices. Supplier will furnish all shipping documents required by Dana, and plainly mark Dana's name and the identity of the delivery destination on all packages and associated documents. If Dana's count or weight differs from Supplier's count or weight, Dana's count or weight will be considered conclusive. If Supplier is required to use returnable packaging provided by Dana, Supplier will be responsible for cleaning and returning the returnable packaging. If returnable packaging is not available, Supplier may use expendable packaging and Dana will reimburse Supplier for the reasonable costs of such expendable packaging, provided such costs are duly documented in the corresponding receipts and invoices.

### **7. Specifications, Changes and Process Improvements.**

a. Production Specifications. Supplier will manufacture all Products in strict conformance with the terms of the Agreement, including any specifications provided by Dana or its customers.

b. Changes. Dana may at any time make changes to Product drawings, specifications, materials, quality requirements, time or method of delivery or shipment, packaging, testing, quantity and related items by written notice to Supplier. Any request or claim by Supplier for a Price adjustment as a result of such changes must be asserted in

writing within 10 days from the date of receipt by Supplier of Dana's notification of any change. If Dana determines that an adjustment is appropriate, the Parties will negotiate in good faith an equitable adjustment to the Prices (increase or decrease), a change in shipping or delivery terms, or other appropriate adjustment. All engineering, manufacturing or process changes and improvements, whether initiated by Dana or by Supplier, must be processed in accordance with Dana's product change request process as set forth in Dana's Supplier Quality Manual, which is available at [www.dana.com](http://www.dana.com) under the "Suppliers" link or other locations Dana may designate ("Supplier Quality Manual"). The Supplier Quality Manual is incorporated in these Terms and Conditions by this reference.

c. Supplier-Initiated Process Improvements. Supplier will not make any improvements in the design, process, quality requirements, packaging and/or shipping of a Product without the prior written consent of Dana. In the event Supplier makes a Dana-approved improvement in the design, process, quality requirements, packaging and/or shipping of a Product, the result of which reduces the delivered cost of the Product to Dana, the savings (net of any reasonable costs incurred by Supplier or Dana to accommodate such change) will be shared equally between the Parties.

d. Dana-Initiated Process Improvements. In the event Dana initiates an improvement in the design, process, quality requirements, packaging and/or shipping of a Product (including any changes to the Supplier Quality Manual or Dana's inspection standards), the result of which reduces the delivered cost of the Product to Dana, the savings (net of any reasonable costs incurred by Supplier or Dana to accommodate such change) will be enjoyed exclusively by Dana.

### **8. Delivery, Title, Risk of Loss, and Logistics.**

a. Delivery, Title and Risk of Loss. All deliveries of Products and Services must be made in accordance with the delivery schedule in the Purchase Order or as otherwise directed by Dana. Supplier will deliver all Products in the quantities and at the time and place specified in the Purchase Order or Release. Quantity and time are of the essence in making all deliveries of Products and Services to Dana. All Products will be priced and delivered FCA Supplier's facility (Incoterms 2010), unless otherwise agreed in writing by the Parties. Title for the Products will pass to Dana upon receipt of the Products by Dana at its receiving location. If the importation of the Products results in the assessment of a countervailing duty on Dana as the importer, Supplier will reimburse such countervailing duty to Dana, provided such reimbursement is permitted under applicable Law.

b. Delivery Delays. If Supplier fails to meet the delivery schedule in the applicable Purchase Order or Release and such delay is not excused pursuant to these Terms and Conditions, then Dana may procure replacement products and

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services from an alternate source, and Supplier will be liable for payment for such replacement products and services from the alternate source. Dana will continue to pay Supplier the applicable Prices for the Products being replaced by the replacement products and services.

c. Logistics. Unless otherwise agreed by the Parties, Dana will be responsible for selecting the method of transportation and the carrier to be used by Supplier and will negotiate the freight rates and other terms and conditions with the carrier. Unless otherwise agreed by the Parties, Dana will be responsible for all payments to the carrier selected by Dana. Notwithstanding the foregoing, if the acts or omissions of Supplier (or any individual or entity acting under the direction or control of Supplier) result or are likely to result in a failure by Supplier to meet the delivery schedule, Supplier will select a premium freight option and ship the affected Products to Dana as quickly as possible, all at Supplier's sole expense.

d. Changes in Landed Costs. If during the Term, Dana experiences a material increase in its landed costs for the Products, such as increases in import duties or carrier rates, Dana may provide Supplier with written notice of such event and request a renegotiation of the Prices for the applicable Products. Upon such request, the Parties will renegotiate the Prices related to the applicable Products in good faith. In the event the Parties fail to mutually agree to renegotiated Prices within 30 days of Dana's notice, Dana may terminate the Agreement, in whole or in part, pursuant to Section 33.a (For Cause) of these Terms and Conditions.

### 9. Supplier Managed Inventory.

a. If requested by Dana, Supplier will develop and initiate, subject to Dana's review and approval, a plan for establishing and maintaining a supplier managed inventory program including the use of Kan Ban just-in-time production techniques where components and sub-assemblies are produced based upon notification by Dana.

b. Supplier covenants that it will not sell, assemble or manufacture or contract to sell, assemble, or manufacture any products, including the Products, to other parties in quantities and/or on a production schedule that could impair or impede Supplier's ability to meet its obligations to Dana under the Agreement. Supplier undertakes to maintain an inventory of raw materials, or to obtain raw materials from its suppliers, in such quantities as are necessary to meet its obligations to Dana under the Agreement. If Supplier (a) is unable to obtain sufficient quantities of raw materials to deliver the products it is obligated to deliver to all of its customers, including the Products, or (b) is prevented from fulfilling its obligations to deliver and sell Products under the Agreement (such as in the event of an Excusable Delay), Supplier will give first priority in the allocation of available supplies of raw materials and its finished products to fulfilling its obligations to

Dana under the Agreement. Supplier represents that it has not entered into, and covenants that it will not enter into, any contract or other arrangement with any customer that is inconsistent with the covenants set forth in this Section 9.b.

**10. Supplier Facilities.** Supplier will produce, distribute and/or supply the Products only at Supplier's facilities identified in the Purchase Order, or if none are specified, then only at Supplier's facilities in existence as of the Effective Date (the "Supplying Facilities"). Supplier may not change the Supplying Facilities used for the production of the Products or change any process used in the production of the Products without Dana's advance written consent.

**11. Trade Credits, Country of Origin.** Transferrable credits or benefits associated with the Products purchased under the Agreement, including trade credits, export credits, customs drawbacks, rights to the refund of duties, tax and fee rebates and the like (collectively, "Trade Credits") relating to the Agreement will belong to Dana, unless prohibited by applicable Law. Supplier will provide Dana with all information and records relating to the Products and any other information or cooperation necessary for Dana to (1) receive the Trade Credits, (2) fulfill any customs obligations, origin marking or labeling requirements, and certification or local content reporting requirements, (3) claim preferential duty treatment under applicable trade preference regimes, (4) participate in any duty deferral or free trade zone programs of the country of import, and (5) establish the country of origin and value of the Products, including affidavits of manufacture and, if applicable, NAFTA certificates of origin.

### 12. Export Licenses, Security.

a. Licenses. Supplier will obtain all export licenses and authorizations and pay all export taxes, tariffs, duties, and fees associated with the manufacturing and provision of the Products and Services, unless otherwise agreed in writing, in which case Supplier will provide all information and records necessary to enable Dana to obtain such export licenses or authorizations.

b. Security. If Supplier is shipping Products into a country from a location outside of such country, then Supplier accepts responsibility for, and will implement security measures, to ensure the safe and secure transportation of goods throughout the supply chain, and will adhere to all applicable security requirements (including factory and shipping container security) required under applicable law.

**13. Labor Contracts.** Supplier will notify Dana of the expiration date for any current labor contract of Supplier, or that of its subcontractors, that has not been extended or replaced at least six months before the expiration of such contract. Dana may thereafter direct Supplier in writing to manufacture and supply additional inventory of Products, specifying the

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quantities of Products required and any packaging and storage requirements. Supplier will use commercially reasonable efforts to comply with Dana's written directions prior to expiration of the current labor contract and until the current labor contract has been extended or a new contract completed. Supplier is responsible for carrying costs and any additional costs of manufacture. For the purposes of clarity, neither the expiration of any labor contract nor the occurrence of any labor dispute, strike, walk-out or similar occurrence will relieve Supplier of its obligations to perform under the Agreement.

### 14. Product Inspections

a. Upon receipt of the Products by Dana, Dana may, but is not obligated to, perform receipt inspections to confirm that the Products conform to the requirements set forth in the Agreement. Dana's acceptance of Products will not be deemed evidence that Products conform to such requirements, nor will payment by Dana for Products prior to inspection constitute acceptance thereof, or remove Supplier's responsibility for Non-Conforming Products.

b. Dana may reject any Product that it has determined as a result of a receipt inspection does not conform to the requirements set forth in the Agreement.

### 15. Product Warranty, Non-Conforming Products and Recall.

a. Product Warranties. Supplier represents, warrants and covenants that for the period specified in the Purchase Order or for a period coterminous with the warranty extended by Dana to Dana's customers, whichever is longer, that all Products furnished to Dana by Supplier under the Agreement will (i) be new; (ii) be delivered with good title, free and clear of any security interest, claim, demand, lien or any other encumbrance; (iii) be free from defects in design (even if the design has been approved by Dana), material and workmanship; (iv) be merchantable and fit for their intended purpose(s); (v) in conformity with all specifications, drawings, samples and performance requirements or other descriptions furnished by Dana or Dana's customer(s); (vi) comply with all applicable Laws, and (vii) not misappropriate any trade secret or infringe, violate, trespass or in any other manner contravene or constitute the unauthorized use of any patent, trademark, copyright or other intellectual property right. In addition to the foregoing representations, warranties and covenants, Supplier will pass through or assign to Dana the rights Supplier obtains from the manufacturers and/or vendors of the Products, raw material or components (including warranty rights), all to the extent that such rights are assignable. These warranties are in addition to any warranties implied or provided for by Law or otherwise made by Supplier and will survive acceptance and payment by Dana.

b. Non-Conforming Products. Without limiting Dana's other remedies pursuant to this Agreement or applicable law, if a Product does not conform to the warranties in Section 15.a (each, a "Non-Conforming Product"), then Dana may exercise any of the remedies below with respect to such Product:

i. Return Product. Dana may elect to return the Non-Conforming Product to Supplier. Supplier may not substitute the Non-Conforming Product without Dana having first issued a new Purchase Order. In this case, Supplier shall return to Dana the Price paid for the Non-Conforming Product, and pay Dana all losses and damages suffered by Dana as a consequence of the above.

ii. Replace Product. Dana may elect to return the Non-Conforming Product to Supplier and have Supplier, at its cost and as directed by Dana, replace the returned Non-Conforming Product with a replacement Product, such replacement Product to be delivered to the Dana in accordance with all instructions provided by Dana in writing.

iii. Remedial Work. If Dana determines that it is necessary to repair a Non-Conforming Product, which will include performing such additional work (including the cost of any materials) as is necessary to make such Non-Conforming Product fully conforming (the "Remedial Work"), then Dana may elect to (a) perform the Remedial Work itself, (b) have a third party perform the Remedial Work or (c) have Supplier perform the Remedial Work. In the case of (a) or (b), the cost of such Remedial Work will be, at Dana's option, offset against the amounts otherwise due Supplier for such Non-Conforming Product or reimbursed separately by Supplier within 30 days of Dana's request. In the case of (c), such Remedial Work will be performed at Supplier's sole cost and expense.

iv. Defend Title; Remove Encumbrances. If a Product has a defective title or is not free and clear of all security interests, claims, demands, liens or any other encumbrances, then Dana may elect to have Supplier, at Supplier's sole cost and expense, defend the title thereto and, if requested in writing by Dana, Supplier will promptly cause any security interest, claim, demand, lien or other encumbrance to be removed by discharging such encumbrance or posting a bond therefor. If Supplier fails to cause any such security interest, claim, demand, lien or other encumbrance to be removed by discharge or posting a bond within two days after Dana requests such removal, then Dana, at Dana's option, may either (a) cause the removal of such security interest, claim, demand, lien or other encumbrance by bonding, in which case Supplier will be liable to Dana for the expenses thereby incurred, including any payments made in discharging the security interest, claim, demand, lien or other encumbrance, or (b)

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revoke its acceptance of such Product, in which case Supplier will promptly refund any compensation Supplier received from Dana in connection with such Products together with all costs incurred by Dana in connection with such revocation. For the avoidance of doubt, all repaired or replaced Products will be subject to the warranties set forth in Section 15.a.

c. Recall. In the event that Dana determines that any Products furnished by Supplier create or contribute to any voluntary or government-mandated recall, service campaign or similar program initiated by Dana, or its customers (“Recall”), Supplier will be responsible for all costs and damages resulting from such Recall, including costs of notification, costs of repair and/or replacement, penalties, fines and buy backs, as well as shipping, labor and administrative costs, based upon Dana’s good faith allocation of responsibility for the Recall. This Section will not limit Supplier’s responsibility under any other provision of the Agreement.

**16. Rejected Products.** In the event Dana rejects Products pursuant to Sections 14 or 15, Supplier will reduce the quantity of Products under the Purchase Order or Release by the same amount as the quantity of rejected Non-Conforming Products; and, Dana will have no obligation to pay Supplier for such rejected Products. If Dana has already paid for the rejected Products, then Supplier will promptly refund to Dana all amounts paid by Dana for such Products. The Products rejected by Dana will be held by Dana at Supplier’s risk. Supplier will be responsible for all costs of return for the rejected Products. Supplier’s failure to provide instructions to Dana within 10 days (or such shorter period as may be commercially reasonable under the circumstances) after notice of rejection to Supplier by Dana, will entitle Dana to charge Supplier for storage and handling and to dispose of the applicable rejected Products without liability to Dana.

**17. Services.** Supplier represents and warrants that the Services will: (i) be performed in a good and workmanlike manner and in accordance with best professional standards, (ii) be performed in accordance with all applicable Laws; (iii) be performed by persons who have employment authorization to perform the Services in accordance with applicable immigration laws; (iv) conform to all requirements, as set forth in the Purchase Order; and (v) not misappropriate any trade secret or infringe, violate, trespass or in any other manner contravene or constitute the unauthorized use of any patent, trademark, copyright or other intellectual property right. If Dana determines that Supplier is in breach of its warranty obligations under this Section and it is necessary to re-perform or correct the Services (“Remedial Services”), then Dana may elect to a) perform the Remedial Services itself, b) have a third party perform the Remedial Services, or c) have the Supplier perform the Remedial Services. In the case of (a) or (b), the cost of such Remedial Services will be offset against the amounts otherwise due Supplier for such Services or

reimbursed separately by Supplier within thirty days following the date of receipt by Supplier of Dana’s request. In the case of (c), such Remedial Services will be performed at Supplier’s sole cost and expense.

### **18. Insurance and Indemnification.**

a. Insurance. During the Term, Supplier will maintain, at its own expense, the following insurance coverages with minimum limits as stated:

i. Workers Compensation:

(1) Statutory limits, including Employers’ Liability limits, of not less than \$1,000,000.

(2) For all other employees, employee insurance or benefits that are usual and customary and/or required in the employee’s country of employment or domicile, whichever is applicable. Such insurance or benefit may be provided through a non-government sponsored program or social welfare program or private insurance as is usual and customary and/or required in the employee’s country of employment or domicile, whichever is applicable.

ii. Commercial General Liability: not less than \$5,000,000 limits (including products/completed operations, contractual liability, personal injury, and advertising injury) applying to bodily injury or property damage per occurrence. This coverage will not contain an exclusion for liability arising out of professional services. The coverage will apply on a worldwide basis regardless of where the event that creates the liability occurs or where the suit or claim for the liability is brought. Coverage can be provided under primary and/or excess policies. If such coverage is written on a claims made basis (that is, policies that provide cover for claims made during the term of the policy), the retrospective date must be no later than the Effective Date and such coverage will be maintained for five years after the termination of the Agreement.

iii. Where applicable, Automobile Liability: \$5,000,000 limits covering use of owned, non-owned, and hired vehicles applying to bodily injury or property damage per accident wherein such vehicles will be used in connection with the Agreement.

iv. Where applicable, all risk property coverage (including transit/cargo) for property, whether or not owned by Dana, which is being supplied under the Agreement and which is in the care, custody, or control of the Supplier or the Supplier’s agents or contractors until such time Dana has possession.

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v. Where applicable, Commercial Crime coverage to include property of others.

vi. Any other insurance coverage Dana deems appropriate for the Products or Services under the Agreement.

vii. Umbrella/Excess Liability: \$5,000,000 per occurrence applying over the primary commercial general liability, auto liability, or employer's liability coverages.

Any coverages required under the Agreement will be written or endorsed so that they are primary coverages and not excess or contributory to any coverages maintained by Dana. In addition, the coverages will be written with insurance carriers having a minimum AM Best Rating A-X or equivalent depending on the local insurance practice. As of the Effective Date and upon each subsequent renewal of its insurance coverages, Supplier will furnish Dana with certificates of insurance evidencing the required coverages and stating any deductibles or self-insured retentions. In the event of cancellation or non-renewal of any required insurance coverages, Supplier or its insurer will give Dana 30 days prior written notice of such. Supplier will name Dana as an additional insured on all policies specified above, with the exception of workers' compensation insurance policies.

Supplier's obligations under this Section 18.a will in no way limit or diminish its indemnification obligations or liability for claims covered under the Agreement.

b. Indemnification by Supplier. Supplier agrees to defend, indemnify, and hold harmless Dana, its affiliates and customers, and each of their respective current and former directors, employees, subcontractors, successors and assigns (the "Dana Indemnitees") from and against any and all liabilities, damages, fines, penalties, costs, claims, demands and expenses (including reasonable attorneys' fees and experts' fees and expenses) arising out of, incidental to or resulting from Supplier's performance of the Agreement, including:

i. any breach by Supplier of any of its representations, warranties, covenants or obligations set forth in the Agreement;

ii. any negligent, fraudulent or willful act or omission by Supplier or its directors, employees, subcontractors, agents or assigns;

iii. any security interests, claims, demands, liens or any other encumbrances adverse to Dana's or its customer's ownership of the Products, Dana Tooling or other property of Dana;

iv. Supplier's failure to comply with Section 26 (Legal Compliance and Business Conduct);

v. all claims made by employees of Supplier or any of its affiliates or subcontractors; or

vi. all claims for personal injuries, death or damage to tangible or intangible personal or real property, including claims of any employee of Dana (or its subcontractors or customers), to the extent caused by acts or omissions of Supplier or any of its affiliates or subcontractors.

c. Indemnification Procedures. The Dana Indemnitee will promptly notify Supplier of any such claim or action with respect to which it seeks indemnity under this Section 18 and will reasonably cooperate with Supplier in the defense of such claim or action, at the Supplier's expense. Supplier will have the right to conduct the defense of any such claim or action and all negotiations for its settlement or compromise, except that the Dana Indemnitee may in its sole discretion participate in the defense of any such claim or action at the Dana Indemnitee's expense. Notwithstanding the foregoing, Supplier may not, without the Dana Indemnitee's prior written consent, settle, compromise or consent to the entry of any judgment in any such commenced or threatened claim or action, unless such settlement, compromise or consent: (i) includes an unconditional release of the relevant indemnified parties from all liability arising out of such commenced or threatened claim or action; and (ii) is solely monetary in nature and does not include a statement as to, or an admission of, fault, culpability or failure to act by or on behalf of any Dana Indemnitee or otherwise adversely affect any Dana Indemnitee.

d. Election of Remedy. If any Product or Service provided by Supplier under the Agreement is held to constitute, or in Supplier's reasonable judgment is likely to constitute, the misappropriation of any trade secret or the infringement, violation or trespass of, or in any other manner contravene or constitute the unauthorized use of, any patent, trademark, copyright or other intellectual property right, Supplier will, in addition to its indemnity obligations and without limiting any other remedies available to Dana at law or in equity, at its expense, and after consultation with Dana regarding Dana's preference in such event, either: (a) procure the right for the Dana Indemnitees to continue using such Product or Service; (b) replace such Product or Service with a non-infringing or non-misappropriating equivalent, provided that such replacement does not result in a degradation of the functionality, performance or quality of the Product or Service; (c) modify such Product or Service, or have such Product or Service modified, to make it non-infringing or non-misappropriating, provided that such modification does not result in a degradation of the functionality, performance or quality of the Product or Service; or (d) create a feasible workaround that would not have any adverse impact on Dana or its customers or result in a degradation of the functionality, performance or quality of the Product or Service.

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### 19. Intellectual Property.

a. Dana's Intellectual Property. The Parties acknowledge that the Agreement does not transfer to Supplier any patent, trade secret, trademark, service mark, copyright, mask work or other intellectual property right (collectively, "Intellectual Property Rights") of Dana or Dana's customers that Dana makes available to Supplier, or to which Supplier has access to, under the Agreement, other than the right to use the Intellectual Property Rights strictly and solely in conjunction with Supplier's manufacture, supply and/or repair of any Products for Dana.

b. Supplier's Intellectual Property. Supplier hereby grants to Dana and its affiliates a perpetual, paid-up, royalty-free, non-exclusive, worldwide, irrevocable license to all Supplier's Intellectual Property Rights subsisting or embodied in or used in connection with the Products and work product of Services, with a right to grant sublicenses to others, to make, have made, use, distribute, have distributed, combine with product, have combined with products, offer to sell, sell, repair, reconstruct or rebuild, and have repaired, reconstructed or rebuilt, products including the Products and products similar or identical to the Products.

c. Software License. If any Product requires Software utilization, then Supplier shall grant to Dana a perpetual, irrevocable, nonexclusive, worldwide, royalty-free, fully-paid, transferable and assignable license to use the Software and all related materials (the "Documentation"). An unlimited number of Dana's affiliates' employees, agents, contractors, consultants and third-party service providers are authorized to exercise the rights granted to Dana under this section. Supplier will provide Dana with contact information for Software support. Supplier represents and warrants that the Software will meet all Product warranties described herein and be free from programming errors. If the Software fails to conform to the foregoing warranty, Supplier shall promptly repair or replace the nonconforming Software. Supplier further represents, warrants and covenants that the Software is and will remain virus free and will not include any Trojan horses, trap doors, lockouts, interrupt mechanisms or similar disabling software or code that can damage, disable, corrupt, interfere with or delete any element of the Software or the Product. "Software" means any operating system software and any other software installed on, associated with, or delivered with the Product, including but not limited to, any updates, upgrades, patches, new versions, new releases, bug fixes, technological improvements and enhancements to such Software.

### 20. Notices.

Whenever one Party is required or permitted to give notice to the other Party under the Agreement, such notice will be in writing unless otherwise expressly provided herein and will be deemed given when delivered by hand, one day after being

given to an express courier with a reliable system for tracking delivery, or five days after the day of mailing, when mailed by registered or certified mail, return receipt requested, postage prepaid, or when sent if delivered by electronic mail. Legal notifications, including notifications regarding termination and proposed amendments to the Agreement, will be sent to the address set forth in the Purchase Order or such other address as the Party has designated. Operational notices, including notifications regarding changes to the specifications for the Products, may be sent via email or other written means to the applicable representative of a Party.

### 21. Confidentiality and Information Security.

#### a. Confidentiality

i. Each Party agrees that all information provided to the other for the purpose of doing business with each other is confidential and proprietary information ("Confidential Information"). In the case of Dana, Confidential Information includes: (i) Dana's, its affiliates' and customers' specifications, designs, drawings, documents, correspondence, data and other materials related to the Products; (ii) all information concerning the operations, affairs and business of Dana, its affiliates and customers; (iii) Dana Tooling; (iv) the Intellectual Property Rights of Dana; and (v) the terms of the Agreement.

ii. Each Party agrees to hold the other Party's Confidential Information in confidence and restrict access to and disclosure of the Confidential Information of the other Party only to those directors, officers, advisors, employees, agents and contractors of the receiving Party (including, in the case of Dana, its affiliates and customers) who have a need to know the Confidential Information. Neither Party will disclose or transfer the other Party's Confidential Information directly or indirectly, to any other person, firm, corporation or entity without the prior written consent of the other Party. The Confidential Information shall be deemed as a "trade/industrial secret" for purposes of the Industrial Property Law, to the extent such Confidential Information complies with the requirements provided in the Industrial Property Law to be considered as an "industrial/trade secret".

iii. In the event of any unauthorized use or disclosure of any Confidential Information by the receiving Party, the receiving Party will give prompt notice of the disclosure to the disclosing Party, and will remedy any unauthorized use or disclosure of any Confidential Information.

iv. A Party's Confidential Information will not include information that (i) is or becomes generally available to the public within the industry to which such information relates other than from unauthorized disclosures in violation of the Agreement, (ii) is lawfully obtained by the receiving Party from a third party which had no obligation of confidentiality to the

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disclosing Party with respect thereto, (iii) is independently developed by the receiving Party without use of the disclosing Party's Confidential Information, or (iv) is approved by the disclosing Party for disclosure.

v. Supplier will deliver at no additional charge the Confidential Information of Dana and all copies thereof to Dana promptly upon the expiration or termination of this Supply Agreement or at any other time upon Dana's written request (or, at Dana's option, will certify, through its general counsel, that Dana's Confidential Information and all copies have been securely destroyed).

vi. Supplier acknowledges and agrees that the actual or threatened breach of this Section would cause irreparable harm to Dana, for which money damages would not be a sufficient remedy or difficult to ascertain, entitling Dana to preliminary and permanent injunctive relief, without the necessity of posting any bond, in addition to any other equitable relief or remedies that may be available.

### b. *Information Security.*

i. "Dana Data" means (i) all data and information generated, provided or submitted by, or caused to be generated, provided or submitted by, Dana in connection with this Agreement; (ii) all data and information regarding Dana's business collected, generated or submitted by, or caused to be generated, provided or submitted by, Supplier, its employees, subcontractors or Affiliates; (iii) all such data and information processed or stored, or then provided to or for Dana, as part of this Agreement, including data contained in forms, reports and other similar documents provided by Supplier, its employees, subcontractors or Affiliates as part of this Agreement.

ii. *Safeguards.* Supplier will establish an information security program with respect to Dana Data which: (i) ensures the security and confidentiality of such Dana Data; (ii) protects against any anticipated threats or hazards to the security or integrity of such Dana Data and Supplier's systems that process or store Dana Data, and (iii) protects against any unauthorized use of or access to such Dana Data and such Supplier systems. All of the foregoing shall comply with applicable Law, shall be no less rigorous than those maintained by Supplier for its own data and information of a similar nature, and in no event shall such safeguards and procedures be less than what is standard in the industry for the applicable Services. At a minimum, and without limiting the generality of the foregoing, Supplier's safeguards for the protection of Dana Data shall include: (1) appropriately securing business facilities, data centers, paper files, servers, back-up systems and computing equipment, including, but not limited to, all mobile devices and other equipment with information storage capability; (2) implementing network, device application, database and platform security; (3) securing information transmission,

storage and disposal; (4) implementing authentication and access controls within media, applications, operating systems and equipment; (5) encrypting any sensitive Dana Data (as identified by Dana) stored on any mobile media or transmitted over public or wireless networks; (6) physically or logically segregating Dana Data from information of Supplier or its other Third Parties so that it is not commingled with any other types of information; (7) implementing appropriate personnel security and integrity procedures and practices, including, but not limited to, conducting background checks consistent with applicable law; and (8) providing appropriate information security training to Supplier's personnel.

iii. *IT Security Assessment.* Upon request by Dana, Supplier will perform an information technology security assessment ("IT Security Assessment"), which must, at a minimum, include a review of Supplier's information security program described above, including: (i) external computer networks, (ii) internal computer networks (including wireless networks), (iii) information security architecture, (iv) physical security, and (v) Internet accessible applications. Supplier shall submit to Dana within 30 days following the completion of each IT Security Assessment: (1) a summary of the findings, and (2) a plan to cure promptly (and, in any case, within 30 days) any deficiencies identified in such IT Security Assessment, which Supplier shall implement in accordance with its terms.

iv. *IT Questionnaires.* Upon request, Supplier shall respond to information technology security questionnaires provided by Dana. Supplier's responses and warrants that its responses to such questionnaires shall be complete and correct.

v. *Information Security Breaches.* Supplier will notify Dana of any actual or reasonably suspected (a) unauthorized, accidental or unlawful access to, or acquisition, use, loss, disclosure, modification, corruption or processing of, of any Dana Data, or (b) interference with a process, a function or data on a Dana's, its affiliate's or third party's information system that adversely impacts Dana's business (a "Security Breach") promptly and, in any event, not later than 24 hours after it becomes aware of such circumstances. Supplier's notice will detail the effect on Dana, if known, of the Security Breach, the nature of the Security Breach, and the corrective actions taken or to be taken by Supplier. Supplier shall promptly take all necessary and advisable corrective actions, and shall cooperate fully with Dana in all reasonable and lawful efforts to prevent, mitigate or rectify such Security Breach.

**22. Quality.** Supplier will promote continuous quality improvement in the manufacture, production and distribution of the Products. Supplier will comply with the quality assurance processes, inspections and standards specified by Dana for suppliers providing goods or services similar in nature to the Products. These standards include the "ISO/TS 16949 Quality System Requirements" and any other quality standards and procedures set forth in the Supplier Quality Manual. All cost



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reductions achieved as a result of such efforts will serve to reduce the total Price for the Products. Supplier will further comply with all mandatory quality standards, product certification and other quality related requirements under applicable Law.

### 23. Service Requirements

a. Current-Model Service Requirements. If requested by Dana, Supplier will supply the Products to Dana for Dana's new-model and current-model service requirements at the then-current Prices under the Agreement. Supplier will supply the Products at such times and in such quantities as are necessary to allow Dana to fulfill its new-model and current-model service requirements.

b. Past-Model Service Requirements. If requested by Dana, Supplier will supply the Products to Dana for Dana's past-model service requirements for a period of 15 years after the end of production of the Products, or for the period required by Dana's customers, whichever is longer (the "Past-Model Period"). Supplier will supply the Products at such times and in such quantities as are necessary to allow Dana to fulfill its past-model service requirements. For a period of three years following original production of the Products, the Prices for Past-Model Service Products will be those in place at the end of production of the Products for Dana's current-model service requirements. Thereafter, the Parties will negotiate, in good faith, the prices, quantities, and delivery terms for the supply of Products, including for the period beyond the Past-Model Period, based on the availability and cost of needed materials, supplies, and skilled workers, and the additional costs for equipment setup, packaging, shipping and handling.

### 24. Tooling.

a. Ownership. As between Dana and Supplier, all tooling, dies, jigs, fixtures, drawings, molds, patterns, templates, gauges, supplies, materials and the like ("Tooling") that Dana provides to Supplier or pays Supplier (either directly or through amortization of costs in the Product Price) to make or buy for use in performing the Agreement ("Dana Tooling") are the sole personal property of Dana. Supplier will hold the Dana Tooling on a bailment basis and will be responsible for loss or damage to the Dana Tooling while in its possession, custody or control. Supplier will not remove Dana Tooling (other than shipping containers and the like) from the Manufacturing Facilities without Dana's prior written approval. All replacement parts, additions, improvements, and accessories to the Dana Tooling will become part of the Dana Tooling unless they can be removed without damaging the Dana Tooling. Supplier will provide Dana with a list and condition of all Dana Tooling in its possession upon request.

b. Payment. With respect to any Dana Tooling that is not provided to Supplier by Dana, Dana will not be

obligated to pay for such Dana Tooling until Supplier has provided Dana with an itemized list and adequate cost records for the same and Dana has accepted the Dana Tooling through an approved "Parts Submission Warrant" or other Dana process. If Supplier fails to provide adequate cost records, Dana will not be obligated to pay more than the fair market value for the Dana Tooling, regardless of the charges levied with respect to or on it.

c. Supplier's Obligations Related to Dana Tooling. Supplier will label the Dana Tooling in accordance with Dana's instructions, and as further specified in the Supplier Quality Manual, to permit accurate identification and will segregate it from the Supplier Tooling. At Supplier's cost and expense, Supplier will repair and maintain the Dana Tooling, and keep it in good working condition. If a Party determines that replacement of any Dana Tooling is necessary for any reason, including normal wear and tear, then the Parties will confer regarding the timing, process and payment for such replacement. Supplier will only replace Dana Tooling upon the prior written approval of Dana. Supplier will use the Dana Tooling exclusively to produce, store and transport the Products for Dana and for no other purpose. Upon expiration or termination of the Agreement, in whole or in part, Supplier will hold the applicable Dana Tooling and any operation sheets, process data, or other information necessary to show its use, at no charge, pending receipt of Dana's instructions regarding its disposition.

d. Release of Dana Tooling. Supplier will immediately release to Dana upon request and Dana may retake immediate possession of, the Dana Tooling and other property of Dana or its customers at any time, with or without cause and without payment of any kind. Supplier will release the requested Dana Tooling and other property to Dana, and Supplier will properly pack, mark and deliver such Dana Tooling and other property to Dana in accordance with the requirements of Dana or Dana's carrier, as applicable. If Supplier does not release or deliver the Dana Tooling or other property of Dana or its customers in accordance with this Section, Dana may at Supplier's cost obtain an immediate court order for possession without notice and without posting a bond. The Parties agree that Dana shall be entitled to pursue any action permitted by the applicable Law to recover possession of the Dana Tooling as well as other property of Dana or its clients, and Supplier shall reimburse Dana and its clients all costs and expenses they may have incurred in said process.

e. Supplier's Tooling. Supplier will own all Tooling that is not Dana's Tooling ("Supplier's Tooling"). Supplier will at its expense furnish, maintain in good condition, and replace when necessary Supplier's Tooling needed to perform its obligations under the Agreement. Dana may purchase Supplier's Tooling used exclusively to produce the Products and not needed by Supplier to produce the Products or products for other customers, for a purchase price equal to the

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greater of the fair market value for such Supplier Tooling or Supplier's unamortized acquisition cost.

f. Security Interest. Supplier hereby grants Dana and Dana's customers, as applicable, a security interest in the Dana Tooling and all accessories and attachments thereto, substitutes and replacements therefore and proceeds therefrom, and authorizes Dana or Dana's customers, as applicable, and their agents, on Dana's behalf and as its attorneys-in-fact, to prepare, sign and file such financing statements and amendments thereto and similar documents, or equivalent documents in accordance with the Laws of the jurisdiction in which the Dana Tooling is located, as they deem necessary to evidence or protect their security interests. Supplier expressly waives the benefit of any Law which would otherwise entitle it to assert a lien over the Dana Tooling, and, except with respect to the security interests created in favor of Dana and its customers pursuant to this Section, Supplier will keep the Dana Tooling free of all security interests, claims, demands, liens or any other encumbrances.

**25. Scrap.** All scrap recovered from raw material that is provided by Dana or on Dana's behalf or that is generated during the manufacture of the Products ("Scrap") is the sole personal property of Dana. Accordingly, Dana may, at its discretion, advise Supplier at any time that it desires to take possession of the Scrap or have it processed by Supplier or a third party. Upon Dana's direction, Supplier will cause the relevant Scrap to be handled per Dana's instructions. At no time during the manufacture of the Products will Supplier commingle Scrap with scrap generated from production activities performed by Supplier on behalf of its other customers.

### **26. Legal Compliance and Business Conduct.**

a. Supplier represents, warrants and covenants that it will perform its obligations under the Agreement in compliance with, and will show evidence of compliance with, all applicable laws (including those arising under common law), statutes, codes, rules, regulations, reporting or licensing requirements, ordinances and other pronouncement having the effect of law of the local country, any other country or any state, county, city, province or other political subdivision, including those promulgated, interpreted or enforced by any governmental or regulatory authority (collectively, "Laws"). Supplier will provide Dana with any information reasonably required in order for Dana, its affiliates and their respective customers to comply with all Laws. Supplier also represents, warrants and covenants that it has reviewed and will abide by Dana's Supplier's Business Conduct Guide, available at [www.dana.com](http://www.dana.com) under the "Suppliers" link or other locations Dana may designate (the "Supplier's Business Conduct Guide"). The Supplier's Business Conduct Guide is incorporated in these Terms and Conditions by this reference.

b. Export and Foreign Trade Control Laws. Supplier agrees that it and its subcontractors will comply with all applicable export control and sanctions laws and regulations.

c. Environmental Reports. Prior to the shipment of any Products, Supplier will provide Dana with (i) any and all material safety data sheets that are related, directly or indirectly, to the Products (or products used in subassemblies or in the manufacture or production of the Products), and (ii) such other documentation as Dana may request from time to time that is prepared pursuant to any applicable Law and any and all Dana requirements relating to environmental or similar matters. Supplier will promptly notify Dana of any changes to such documentation.

d. Fines. Any fines, penalties or legal costs incurred by Supplier or its agents or employees for noncompliance with this Section 26 will not be reimbursed by Dana, but will be the sole responsibility of Supplier or its agents or employees.

### **27. Excusable Delays, Labor Disputes and Contingency Plans.**

a. Definition and Liability. Neither Party will be liable to the other Party for any delay in delivery or failure to perform caused by natural disasters, wars, acts of God, actions by governmental authorities, embargoes, acts of terrorism, court injunction or order, without its fault or negligence (an "Excusable Delay"). For the avoidance of doubt, an Excusable Delay does not include (i) acts or omissions of Supplier's subcontractors or suppliers (including price increases or the inability of Supplier to obtain necessary manufacturing inputs from its normal or customary sources), (ii) labor disputes of Supplier, its subcontractors or its suppliers, including lockouts, strikes or slowdowns, or (iii) failure to comply with applicable Law. If a Supplier Excusable Delay occurs, the Supplier will promptly notify Dana of the nature and anticipated duration of the delay or failure. Dana will be entitled to terminate the Purchase Order if the Excusable Delay event persists or, in Dana's reasonable opinion, is likely to persist long enough to jeopardize Dana or any of Dana's production. If Dana determines in good faith that an Excusable Delay prevents, hinders or delays Supplier's ability to perform under the Agreement for more than twenty-four (24) consecutive hours or more than thirty-six (36) hours in a thirty (30) day period, then Dana may procure replacement products and services from an alternate source, and Supplier will be liable for the difference in payment for such replacement products and services and the ordered Products or Services for so long as the delay in performance continues.

b. Labor Disputes. Supplier will notify Dana of any actual or potential labor dispute delaying or threatening to delay timely performance of the Purchase Order. In such event, and at Dana's request, Supplier will establish a sufficient supply

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of Products, as determined by Dana in its sole discretion, to assure Dana's on-going production.

c. Contingency Plans. Unless Supplier has already submitted a contingency plan to Dana that complies with the Agreement, no later than 30 days after the Effective Date, Supplier will prepare and submit for Dana's review and approval contingency plans to address any raw material shortage or supply interruption due to Excusable Delays. In addition, although not considered an Excusable Delay, Supplier will prepare and submit for Dana's review and approval contingency plans to address (i) the occurrence of strikes or other labor disturbances at the Manufacturing Facilities, (ii) any disruption in production at any of the Manufacturing Facilities or with Supplier's manufacturing equipment which will impair Supplier's ability to perform, and (iii) emergencies such as utility interruptions, labor shortages, key equipment failures and field returns. Supplier will test such contingency plans at least once every Contract Year to demonstrate to Dana's reasonable satisfaction that such plans operate as anticipated in practice. The Parties will meet from time to time and discuss any updates to such plans as may be necessary. If Supplier fails to prepare and maintain acceptable contingency plans or, if upon the occurrence of an Excusable Delay, Supplier fails to implement the applicable contingency plan, such Excusable Delay will not be excused under Section 27.a.

### **28. Inspections and Financial Disclosure.**

a. Upon at least 48 hours prior notice (unless circumstances reasonably preclude such notice), Supplier will allow Dana and its internal and external auditors, inspectors, regulators and other representatives that Dana may designate from time to time ("Dana Inspectors") to perform audits and inspections of Supplier and its subcontractors and their respective facilities ("Inspections") and books and records, to: (i) verify the accuracy and completeness of Supplier's invoices and Prices, (ii) examine, test and assess the Products and all tools, machinery, materials, processes and the like used in the manufacture of the Products, (iii) verify Supplier's competitiveness in accordance with Section 4 (Competitiveness); (iv) verify any adjustment claim made by Supplier in accordance with Section 7.b (Changes), (v) examine and inspect all pertinent records, documents and materials in the possession or under the control of Supplier relating to any of Supplier's obligations under the Agreement, and (vi) verify Supplier's compliance with, and on-going ability to perform, the Agreement. Any Inspection conducted pursuant to this Section will be at Dana's sole cost and expense, except that if a financial Inspection reveals that Supplier overcharged Dana by five percent or more, Supplier will reimburse Dana in full for its costs and expenses related to such Inspection within 30 days of Dana's request. No Inspections or tests by the Dana Inspectors will relieve, reduce or alter Supplier's obligation to inspect and test the Products prior to delivery or any other obligation in the Agreement.

b. Without limiting Supplier's obligations under Section 28.a above, Supplier will, within thirty days following completion of Supplier's fiscal year, or at other times upon request, provide Dana copies of the most current audited Financial Reports (a) for the Supplier; and, (b) for any related company of the Supplier involved in producing, supplying, or financing the Products. Financial Reports include income statements, balance sheets, cash flow statements and supporting data. Dana may use Financial Reports provided under this Section 28.b only to assess the Supplier's ongoing ability to perform its obligations under the Agreement and for no other purpose, unless the Supplier agrees otherwise in writing. Dana's confidentiality obligations under Section 21 expressly apply to Dana's receipt of Supplier Financial Reports.

c. If, based on the Financial Reports, Inspections, or Dana's risk matrix score of the Supplier, Dana reasonably concludes that Supplier is unable to adequately perform its obligations under the Agreement, then Dana may, at its discretion and with Supplier's cooperation, re-source some or all of its purchase of Products from Supplier to another source.

**29. Document Retention.** Supplier will maintain all records, books, documents and data relating to the Agreement in accordance with generally accepted accounting principles consistently applied, and will keep such information for (i) a period of seven years after termination or expiration of this Agreement, or (ii) the maximum period required by Law, whichever is greater. All such records, books, documents and data will be maintained in such form (for example, in paper or electronic form) as Supplier may reasonably determine.

### **30. Status of Parties.**

a. Supplier is an independent contractor and not an employee, agent, partner of, or a joint venture with, Dana and nothing in the Agreement makes either Party the agent or legal representative of the other Party for any purpose. Neither Party has authority to assume or to create any obligation on behalf of the other Party.

b. Supplier will furnish all personnel, materials and equipment necessary to perform its obligations under the Agreement. All personnel performing services under the Agreement will be Supplier's employees and under Supplier's exclusive direction and control at all times, and Supplier will be solely responsible for their compensation and benefits, social security and income tax withholding, unemployment and workers' compensation, and similar matters. Supplier will assure that its employees and permitted subcontractors observe Dana's security and safety rules at all times when they are on or about Dana's premises.

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**31. Assignment and Subcontracting.** Supplier will not subcontract, transfer or assign, in whole or in part, the Agreement or any of its obligations or rights thereunder without Dana's prior written consent and any attempted assignment without such consent will be void and unenforceable. For purposes of the Agreement, the affiliates of Supplier are considered subcontractors. In the event that Dana permits Supplier to subcontract any of its obligations under the Agreement, Supplier may not change subcontractors without Dana's advance written approval and such change must be made in accordance with any applicable Dana requirements and/or the Supplier Quality Manual. Supplier will remain primarily liable and obligated to Dana for the timely and proper performance of all of its obligations under the Agreement, even if such obligations are delegated to a Dana-approved subcontractor, and for the proper and timely performance and actions of any person or entity to which it delegates or subcontracts any such obligation. Dana may assign the Agreement, in whole or in part, or any of its rights and obligations under the Agreement without the consent of Supplier.

**32. Forced and Child Labor.** Supplier will comply with the following requirements: (a) the weekly and daily working schedules of Supplier's employees will comply with all applicable Laws, (b) Supplier will not compel any person to work involuntarily or under any threats or duress, and (c) all labor in Supplier's facilities used to furnish the Products must comply with the minimum age of employment requirements prescribed by the International Labor Organization conventions or applicable Law, whichever is higher.

**33. Termination.**

a. *For Cause.* Either Party may terminate the Agreement, in whole or in part, without liability to the other Party if the other Party repudiates or breaches any of the terms of the Agreement, including any of the representations, covenants or warranties as set forth herein, or fails to make progress so as to ensure timely and proper performance. In such case, the non-breaching Party will first give written notice of the condition to the other Party specifying the failure or breach, and the other Party will have 15 days (or such shorter period of time if commercially reasonable under the circumstances) after receipt of written notice to correct or remedy the breach. If the condition is not corrected or remedied within such period, then the non-breaching Party may immediately terminate without further notice.

b. *For Insolvency.* Dana may immediately terminate the Agreement, in whole or in part, without liability to Supplier in any of the following or any other comparable events: (i) insolvency of Supplier; (ii) filing of a voluntary petition in bankruptcy by Supplier; (iii) filing of any involuntary petition in bankruptcy against Supplier; (iv) appointment of a receiver or trustee for Supplier; or (v)

execution of an assignment for the benefit of creditors by Supplier, provided that such petition appointment or assignment is not vacated or nullified within 15 days of such event.

c. *For Convenience.* Dana may, at its option, terminate the Agreement, in whole or in part, for convenience on 30 days written notice to Supplier. Upon such termination, Dana's sole liability and Supplier's sole and exclusive remedy will be for Dana to pay to Supplier the following amounts without duplication: (i) the Prices for all Products and/or Services that have been completed and delivered in accordance with the Agreement and not previously paid for, and (ii) the actual costs of work-in-process and raw materials incurred by Supplier in furnishing the Products to the extent such costs are reasonable in amount and properly allocable and apportionable under generally accepted accounting principles to the terminated portion of the Agreement. Unless otherwise agreed in writing, Dana will make no payment for finished Products, work-in-process or raw materials (fabricated or procured) that are in excess of the Purchase Order, for any Products that are standard stock items and readily marketable, for any Products, work-in-process or raw materials that can be used for other customers, for claims by Supplier's subcontractors, lost profits, unabsorbed overhead, interest on claims, product development or engineering costs, unamortized depreciation costs or general and administrative costs. Within 30 days after the effective date of the termination, Supplier will submit a comprehensive termination claim with sufficient supporting data to enable Dana to evaluate the claim.

d. *For Change of Control.* Dana may terminate the Agreement, in whole or in part, without liability to Supplier upon 30 days written notice to Supplier if a direct or indirect change of control of Supplier occurs, or if Supplier acquires or merges with a competitor of Dana. A change of control includes: (i) the sale, lease or exchange of a substantial portion of the Supplier's assets used for the production of the Products; (ii) the sale or exchange of a controlling interest, or 50% or more, in the equity of Supplier or any direct or indirect parent entity of Supplier; or (iii) the execution of a voting or other agreement of control with respect to supplier or any direct or indirect parent entity of Supplier. Supplier will provide Dana with written notice of a change of control within 10 days after the change of control has become effective.

**34. Termination Assistance.** In the event of expiration or a termination of the Agreement, in whole or in part, for any reason, Supplier will, at no additional cost:

a. upon Dana's request, continue to supply the Products for such time as is necessary, as determined by Dana it is sole discretion, for Dana to transition its purchase of the Products to an alternate supplier;

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b. upon Dana's request, assist Dana in locating an alternative source for the Products and Services and in moving production to the alternate source selected by Dana;

c. take all actions necessary to protect any of Dana's property in the possession of Supplier, its subcontractors or suppliers;

d. transfer title and possession of the Products, Supplier Tooling, work-in-process and raw materials that Dana has agreed to acquire from Supplier and return to Dana the Dana Tooling and other property of Dana; and

e. provide any other termination assistance reasonably requested by Dana.

**35. Advertising.** During and after the Term, Supplier will not advertise or otherwise disclose its relationship with Dana or Dana's customers without Dana's prior written consent, except as may be required to perform the Agreement or as required by Law.

**36. Electronic Communication.** Supplier will comply with any method of electronic communication specified by Dana, including requirements for electronic funds transfer, purchase order transmission, production Releases, electronic signature and communications.

**37. Complete Agreement, Priority, Amendments.** The Agreement constitutes the entire agreement with respect to the subject matter of the Purchase Order, and supersedes all prior oral or written representations or agreements by the Parties, except as expressly identified in the Agreement. All terms and conditions contained in Supplier's quotations, sales forms, invoices, order acknowledgements, purchase orders or any other acceptance forms, and any Supplier documents posted on Internet web sites, that conflict with the Terms and Conditions of the Agreement will not be effective or binding on either Party. This Agreement will exclusively control the Parties' relationship with respect to the subject matter hereof. In the event of any inconsistency or conflict between these Terms and Conditions, the Purchase Order or other documents incorporated by reference that cannot be reconciled, the order of priority will be as follows: these Terms and Conditions, followed by the Purchase Order and then followed by documents incorporated by reference. No amendments, subsequent terms, conditions, understandings or agreements purporting to modify the terms of the Agreement will be binding unless in writing and signed by the authorized representatives of both Parties.

**38. Waiver and Severability.** The failure of either Party at any time to exercise any of its rights under the Agreement will not be deemed to be a waiver of those rights or any other rights under the Agreement. If any portion of the Agreement is or becomes invalid under any applicable Law, such portion will

be deemed stricken and the rest of the Agreement will remain in full force and effect.

**39. Dispute Resolution.** Prior to pursuing any legal remedy against the other, an aggrieved Party will notify the other in writing of the dispute and will promptly pursue negotiations in good faith through dialogue between authorized representatives. In the event that any dispute cannot be resolved through negotiation, then either Party may pursue litigation in accordance with Section 40 (Governing Law, Venue and Remedies). Notwithstanding the foregoing, nothing in the Agreement shall limit the right of either Party to apply to a court or other tribunal having jurisdiction to: (i) seek provisional, temporary or preliminary injunctive relief in response to an actual or threatened breach of the Agreement, or otherwise so as to avoid irreparable damage or maintain the status quo, until the dispute is resolved; or (ii) take any other action to resolve a dispute, if the action is specifically agreed to in writing by the Parties.

### **40. Governing Law, Venue and Remedies.**

a. Governing Law. The Agreement will be governed and enforced in accordance with the applicable laws of Mexico. The United Nations Convention on Contracts for the International Sale of Goods will not apply to the Agreement.

b. Venue. Any and all controversies arising from or related to the Agreement shall be resolved before the competent courts of Mexico City, Mexico, and the Parties hereby waive any other forum or jurisdiction they may be entitled to due to their present or future domiciles or for any other reason whatsoever.

c. Remedies. The Parties' remedies in the Agreement are cumulative and are in addition to any other remedies available to them at law or in equity.

**41. Interpretation and Construction.** Interpretation of the Agreement will be governed by the following rules of construction: (a) words in the singular will be held to include the plural and vice versa and words of one gender will be held to include the other gender as the context requires, (b) the word "including" and words of similar import will mean "including, without limitation," (c) provisions will apply, when appropriate, to successive events and transactions, and (d) the headings contained in the Agreement are for reference purposes only and will not affect in any way the meaning or interpretation of the Agreement. The Parties agree that the usual rules of contract construction construing ambiguities against the drafter will not apply as the Parties are of equal sophistication and bargaining power. Thus, all terms will be given their plain meaning.

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**42. Survival.** Any provision of the Agreement which, by its nature, would survive termination or expiration of the Agreement will survive any such termination or expiration of the Agreement, including Section 15 (Product Warranty, Non-Conforming Products and Recall), Section 18 (Insurance and Indemnification), Section 21 (Confidentiality and Information Security), Section 23 (Service Requirements), Section 34 (Termination Assistance), Section 40 (Governing Law, Venue and Remedies), and Section 42 (Survival).

**43. Binding Effect.** The Agreement will be binding on the Parties and their respective successors and any duly authorized assigns. Supplier warrants to Dana and Dana warrants to Supplier that it is under no contractual or other legal obligations, constraints or disabilities that would prevent it from performing the Agreement or limit its performance under the Agreement.