

## 1. The Contract.

**1.1 Offer and Acceptance.** Each purchase order Buyer issues ("**Purchase Order**") to the seller identified on the Purchase Order ("**Seller**") is Buyer's offer to purchase the products ("**Products**") and services ("**Services**") identified in that Purchase Order. Seller will be deemed to have accepted a Purchase Order as issued (1) if Seller fails to object to the Purchase Order in writing within 3 business days after receipt, or (2) if Seller has begun or later begins performance under the Purchase Order, or (3) if Seller acknowledges to Buyer in writing its acceptance of the Purchase Order. Upon acceptance, the Purchase Order, which includes and is governed by these General Terms and Conditions ("**Terms**") and any other documents specifically incorporated by reference in the Purchase Order or separately agreed to in writing by Buyer and Seller, such as specifications, drawings, requirements of Buyer's customer, or quality requirements, will become a binding contract between Buyer and Seller (collectively, the "**Contract**"). Any proposal for additional or different terms, or any attempt by Seller to vary in any degree any of the terms of the Contract in Seller's acceptance is hereby rejected. Any proposal for additional or different terms shall not operate as a written objection to the purchase order unless the variance is in the terms of the description, quantity, price, or delivery schedule of the goods. Any attempt by Seller to vary in any degree any of the terms of the Contract in the Seller's acceptance of the Purchase Order shall not operate as a rejection of the Purchase Order but shall be deemed a material alteration thereof, and this offer shall be deemed accepted by Seller without the additional or different terms. If the Purchase Order shall be deemed an acceptance of a prior offer by Seller, such acceptance is limited to the terms contained or incorporated in the Purchase Order, including without limitation, these

Terms. Additional or different terms or any attempt by Seller to vary in any degree any of the terms of the Purchase Order shall be deemed material and are rejected. "Buyer" is IZZY+, unless otherwise stated on the Purchase Order.

### 1.2 Changes.

(a) Buyer may, from time to time and upon notice to Seller, make reasonable changes to the drawings, specifications, materials, packaging, testing, quantity, time or method of delivery or shipment, or similar requirements prescribed in the Contract, including without limitation any changes required by Buyer's customer. Seller may request in writing, together with appropriate supporting documentation, an equitable adjustment to the Contract prices and times for performance as a result of Buyer's changes. Seller shall provide any additional documentation requested by Buyer in connection with Seller's request for such adjustment. Any proposed adjustment to Contract price or times for performance shall not be effective unless agreed to in writing by authorized representatives of both Buyer and Seller.

(b) Seller will not make any changes relating to the Products, including, without limitation, to the Product contents, design, specifications, processing, including manufacturing or assembly processes, packing, marking, shipping, price or date or place of delivery, except at Buyer's written instruction or with Buyer's written approval. Examples of such prohibited changes include, without limitation, changing (i) any suppliers of Services, raw materials or goods used by Seller in connection with Seller's performance under a Purchase Order; (ii) the location of Seller's facility, or the location of the facility of any of Seller's suppliers, if such change in location would in any way impact the Products, Services, raw materials or goods used by Seller in connection with Seller's

performance under a Purchase Order; (iii) the price of any Products or Services covered by a Purchase Order; (iv) the nature, type or quality of any Services, raw materials or goods used by Seller or its suppliers in connection with a Purchase Order; (v) the fit, form, function, appearance or performance of any Products covered by a Purchase Order; or (vi) the production method, process, software, or any production equipment used in the production or provision of, or as part of, any Products or Services supplied pursuant to a Purchase Order. Any changes by Seller to any Purchase Order, or to the Products or Services covered by the Purchase Order, without the prior written approval of an authorized representative of Buyer shall constitute a breach of the Purchase Order.

**1.3 Other Changes.** Except for the changes described in Section 1, neither party may make any changes to the Contract during its term (as described in Section 12.1) without the prior written agreement of Buyer and Seller's authorized representatives.

## **2. Products and Services.**

### **2.1 Quantity.**

(a) Quantities and delivery schedules will be specified in the Purchase Order. Buyer may return over-shipments to Seller at Seller's expense.

(b) Seller accepts the risk associated with lead times of various raw materials and/or components if they are beyond those provided in Purchase Orders. Seller agrees to 100% on-time delivery of Products in the quantities and at the times specified by the relevant Purchase Order. Buyer may change the rate of scheduled shipments or direct temporary suspension of scheduled shipments, neither of which entitles Seller to modify the price for Products. Buyer is not obligated to accept early

deliveries, late deliveries, partial deliveries or excess deliveries.

(c) Unless otherwise agreed to in writing by Buyer, the risk of loss passes from Seller to Buyer upon delivery to Buyer's transportation carrier (or if shipment is by Seller or common carrier, then upon delivery to Buyer's designated facility), but title passes to Buyer only upon acceptance by Buyer at Buyer's facility where the Products are to be used.

(d) To assure the timely delivery of Products meeting Buyer's requirements and to avoid any unforeseen delays, Seller will, upon written request from Buyer, manufacture Products in excess of Buyer's current Purchase Orders to serve as a reserve for shipment, at such inventory reserve levels as may be set by Buyer from time to time. Until such reserve products are purchased by Buyer from Seller, they shall remain the property of Seller, and shall be held by Seller at its sole risk and expense.

## **3. Delivery.**

**3.1 Packing and Shipment.** Buyer may specify the method of transportation and the type and number of packing slips and other documents to be provided with each shipment. Seller will pack and ship Products in accordance with Buyer's instructions, including labeling and hazardous materials instructions. If Buyer has not provided packing or shipping instructions, Seller will pack and ship Products in accordance with sound commercial practices. If Seller is required to use Buyer's returnable packaging, Seller will be responsible for cleaning and returning the returnable packaging. If returnable packaging is not available, Seller may use expendable packaging and Buyer will reimburse Seller for the reasonable costs of expendable packaging.

**3.2 Delivery Schedules.** Seller will deliver Products and Services in strict accordance with the Purchase Orders. Unless otherwise stated

in the Contract, Products will be delivered domestically Freight Collect, Seller's dock and internationally FCA Free Carrier, named port of export, Incoterms 2010. If Products are not ready for delivery in time to meet Buyer's delivery schedules, the party causing the delay will be responsible for additional costs of any resulting expedited or other special transportation.

#### **4. Inspection.**

Buyer or its direct or indirect customers may, upon reasonable advance notice to Seller, conduct audits, inspections or testing at Seller's production facility for the purpose of verifying Seller's performance under the Contract, including compliance with all quality, cost or delivery requirements. Seller will ensure that the terms of its contracts with its subcontractors provide Buyer and its customers with all of the rights specified in this Section. Buyer is not required to inspect Products delivered or Services performed, and no inspection or failure to inspect will reduce or alter Seller's obligations under the Contract.

#### **5. Taxes.**

Unless otherwise stated in the Contract, the Contract price includes all applicable federal, state, provincial, and local taxes other than sales, value added, or similar turnover taxes or charges, which must be shown separately on Seller's invoice for each shipment.

Notwithstanding the foregoing, the Products purchased under the Purchase Order are identified as industrial processing or resale and may be exempt from sales taxes. In such case, the tax identification number and/or other exemption information are stated in the Purchase Order, the applicable Country Supplement or are otherwise provided by Buyer.

#### **6. Payment.**

Payment terms are net 45 days or as set forth in the Contract. Seller will promptly submit correct and complete invoices or other agreed billing communications with appropriate supporting documentation and other information reasonably required by Buyer after delivery of Products and performance of Services, and Buyer may withhold payment until a correct and complete invoice or other required information is received and verified. Seller will accept payment by check or other cash equivalent, including electronic funds transfer. Buyer will pay Seller in the currency specified in the Contract or, if none is specified, in the currency of Seller's shipping or service location. Buyer may setoff or deduct from sums owed to Seller under the Contract those sums owed by Seller to Buyer in accordance with Section 22.

#### **7. Product Warranties.**

##### **7.1 Seller's Warranties.**

(a) Seller expressly warrants and guarantees to Buyer, to Buyer's successors, assigns and customers, and to users of Buyer's Products, that all Products delivered or provided to Buyer will: (i) be worldclass, competitive Products in terms of price, quality, delivery and technology, and conform to the specifications, standards, drawings, samples, descriptions and revisions as furnished to or by Buyer; (ii) conform to all applicable laws, orders, regulations and standards in countries where the Products or other products incorporating the Products are to be sold; (iii) be merchantable and free of defects, including without limitation defects in design (to the extent designed by Seller or any of its subcontractors, agents or suppliers, even if the design has been approved by Buyer), materials and workmanship; (iv) be selected, designed (to the extent designed by Seller or any of its subcontractors, agents or suppliers, even if the design has been approved by Buyer), manufactured and assembled by Seller based

upon Buyer's stated use and be fit and sufficient for the purposes intended by Buyer, and (v) be free of all liens, claims and encumbrances whatsoever. Seller further expressly warrants that, unless otherwise expressly stated in the Order, the Products are manufactured entirely with new materials, none of the Products are, in whole or in part, governmental or commercial surplus or used, remanufactured, reconditioned or of such age or condition so as to impair their fitness, usefulness or safety, and the Products are free from latent defects or conditions that would give rise to a defect regardless of whether the defect or condition was known or discoverable during the warranty period. These warranties are intended to provide Buyer with protection from any and all warranty claims brought against Buyer by customers, including customer-required warranties relating to the Products or any products into which such Products are incorporated. Without limiting the warranties provided herein, Seller shall be bound by all such customer-required warranties which are hereby incorporated by reference as if expressly stated herein. The foregoing warranties are in addition to those available to Buyer by law.

(b) The warranty period is the longest of: (i) three years from the date Buyer accepts the Products; (ii) the warranty period provided by applicable law

(c) For all Services, Seller further warrants that its work will be performed in a professional and workmanlike manner, consistent with all standards and specifications agreed on with Buyer and otherwise consistent with industry standards.

(d) Seller will immediately notify Buyer in writing when it becomes aware of any ingredient, component, design or defect in Products that is or may become harmful to persons or property.

(e) Buyer's approval of any design, drawing, material, process or specifications will not relieve Seller of any of the warranties set forth in this Section.

(f) The following communications shall each constitute notice of a breach of warranty under a Purchase Order: (i) any communication specifying a defect, default, claim of defect or other problem or quality issue of the Products provided under the Purchase Order; (ii) any communication to Seller claiming that the Products are in breach of any warranty or that Seller is in default under the Purchase Order; and (iii) a termination notice from Buyer. Any such claim by Buyer of breach may only be rescinded in writing by an authorized representative of Buyer.

(g) To mitigate its damages, Buyer may fully defend any claim from any Customer that any Products supplied by Seller are defective, in breach of warranty, or otherwise did not meet applicable legal or contractual requirements. Seller and Buyer agree that this defense is in the interest of both Seller and Buyer. Seller waives the right to argue that the fact that Buyer took any such position in any way limits Buyer's right to assert a claim against Seller by Buyer for breach of warranty, contribution, indemnification or other claim that may arise from or be related to the subject matter of any of the foregoing.

**7.2 Non-Conforming** Buyer's inspection of the Products, whether during manufacture, prior to delivery, or within a reasonable time after delivery, does not constitute acceptance of any work-in-process or finished goods. Buyer's acceptance, inspection, or failure to inspect does not relieve Seller of any of its responsibilities or warranties. Nothing in the Purchase Order releases Seller from the obligation of testing, inspection and quality control. If defective Supplies are shipped to and rejected by Buyer, the quantities under the

Purchase Order will be reduced unless Buyer otherwise notifies Seller. Seller will not replace reduced quantities without Buyer authorization. In addition to other remedies available to Buyer: (i) Seller agrees to accept return of defective or nonconforming Products, at Seller's risk and expense, at full invoice price, plus transportation charges, and to replace defective or non-conforming Products as Buyer deems necessary; (ii) Buyer may have Products that fail to meet the requirements of the Purchase Order corrected, at Seller's expense, at any time prior to shipment from Buyer's plant; and/or (iii) Seller will reimburse Buyer for all expenses that result from any rejection or correction of defective or non-conforming Products. Seller will document corrective actions within a commercially reasonable period after receipt of a defective or non-conforming sample and will take whatever measures necessary to correct the defect or non-conformance. Payment for defective or non-conforming Products is not an acceptance of such Products, does not limit or impair Buyer's right to assert any legal or equitable remedy, and does not relieve Seller's responsibility for latent defects.

**7.3 Recalls, Alerts, Field Campaigns or other OEM Notification.** This Section 7.3 applies to any voluntary or government-mandated action by Buyer, or its direct or indirect customers, to conduct any recall or field service campaign, or remedy an alleged (a "Recall"). Except as otherwise stated in the Contract, Seller will be liable for costs and damages resulting from a Recall if the Recall results in whole or in part from a failure of the Products to conform to the warranties in Section 7.1 (a). If Seller is liable for a Recall, the extent of Seller's liability will be negotiated on a case-by-case basis based on (1) a good faith allocation of responsibility for the Recall, (2) the reasonableness of the costs and damages incurred, and (3) other relevant factors. As a condition precedent to Seller's liability, Buyer must (i) notify Seller as soon as

practicable after Buyer learns that a Recall being considered implicates the Products; (ii) provide Seller with such written performance evaluations, accident reports, and results of engineering investigations, relating to the potential Recall in Buyer's possession, other than documentation and records which are subject to legal privilege; (iii) provide Seller a reasonable opportunity to participate in inquiries and discussions among Buyer, its customer, and governmental agencies regarding the need for and scope of the Recall; and (iv) consult with Seller about the most cost-effective method of modifying or replacing systems or component parts, including the Products, in order to remedy the alleged defect or non-compliance.

## **8. Product Liability.**

**8.1 Indemnification.** Seller will defend, indemnify and hold harmless Buyer and Buyer's customers, dealers and end-users of the Products sold by Buyer (or the products in which they are incorporated) and all of their respective agents, customers, invitees, subsidiaries, affiliates, successors and assigns ("Indemnified Parties"), against all damages, losses, claims, liabilities and expenses (including reasonable attorneys' and other professional fees, settlements and judgments) ("**Losses**") incurred or suffered by any of them and arising out of or resulting from any (i) defective design in the Products (if designed by Seller) (ii) defect in the material, workmanship or manufacture of Products or provision of Services; (iii) delivery of non-conforming Products or Services; (iv) negligent wrongful acts or omissions of Seller or Seller's agents, employees or subcontractors; or (v) breach or failure by Seller to comply with any of Seller's representations or other terms and conditions of a Purchase Order (including any part of Terms). Without limitation of the foregoing, any Indemnified Party shall be entitled to indemnification for any Losses

arising out of injury or death to persons, property damage, economic loss, the cost of any Recall campaigns, Customer field service actions or other corrective service actions that, in Buyer's or customer's reasonable judgment, are required because of nonconformities in some or all of the Products provided by Seller hereunder, and including interim set-offs or charges (such as interim field service action cost recovery debits) by customers attributable to Products. This Section 8 will not apply to the extent that the injury, loss, or damage results from (1) Buyer's specification of materials in the Products, (2) Buyer's design of the Products, or (3) any alteration or improper repair, maintenance, or handling of the Products, or installation of the Products by anyone other than Seller or Seller's direct or indirect customers. Seller's obligation to defend and indemnify under this Section will apply regardless of whether the claim arises in tort, negligence, contract, warranty, strict liability or otherwise except for claims that arise as a result of the sole negligence of Buyer. Buyer has the right to be represented by and actively participate through its own counsel in the defense and resolution of any indemnification matters, at Seller's expense. The indemnification obligations of Seller set forth in this Agreement, including this Section, are independent of and in addition to any insurance and warranty obligations of Seller. If Seller performs any work on Buyer's or customer's premises or utilizes the property of Buyer or customer, whether on or off Buyer's or customer's premises: (i) Seller will examine the premises to determine whether they are safe for the requested work and will advise Buyer promptly of any situation it deems to be unsafe; (ii) Seller's employees, contractors, and agents will comply with all laws and regulations that apply to the premises and may be removed from Buyer's premises at Buyer's discretion; (iii) Seller's employees, contractors, and agents will

not possess, use, sell, transfer or be under the influence of alcohol or unauthorized, illegal, or controlled drugs or substances on the premises; and (iv) Seller will indemnify and hold Buyer and customer, and their respective agents, successors and assigns, harmless from and against any liability, claims, demands or expenses (including reasonable attorneys' and other professional fees, settlements and judgments) for damages to the property of or personal injuries (including death) to Buyer, customers, their respective employees or agents, or any other person or entity to the extent arising from or in connection with Seller's work on the premises or Seller's use of Buyer's or customer's property, except for any liability, claim or demand arising out of the sole negligence of Buyer.

**8.2 Procedure.** Buyer will notify Seller promptly after Buyer becomes aware of the basis for a claim for indemnification under this Section 8. At the request of Buyer, Seller will cooperate with Buyer to determine the root cause of a defect in or failure of the Products (and related systems and components). Seller may examine and test all available Products and related systems and components that are subject to a third-party claim. Buyer will endeavor to include Seller in settlement discussions where indemnity has been or will be sought from Seller.

## **9. Compliance with Laws.**

(a) Seller, and any Products supplied by Seller, will comply with all applicable laws, including rules, regulations, orders, conventions, ordinances and standards, including without limitation (i) in relation to the manufacture, labeling, transport, import, export, licensing, approval or certification of the Products, and (ii) laws relating to environmental matters, anti-corruption, hiring, wages, hours and conditions of employment, subcontractor selection, discrimination, and occupational

health or safety. The Purchase Order incorporates by reference all clauses required by these laws.

(b) All materials used by Seller in the Products or in their manufacture will satisfy current governmental and safety constraints on restricted, toxic and hazardous materials as well as environmental, electrical and electromagnetic considerations that apply to the country of manufacture, sale or destination.

(c) Seller and its employees and contractors will abide by Buyer's Ethics Policy (available at [izzyplus.com](http://izzyplus.com) under Supplier Standards Manual) or Seller's own equivalent ethics policy.

(d) Seller agrees that all components obtained by Seller for IZZY+ Products shall be obtained from sources located in known conflict free zones, and to provide all information requested by IZZY+ relating to the source of such components.

## **10. Intellectual Property Rights.**

**10.1 *Buyer's Intellectual Property.*** Buyer does not transfer to Seller any patent, trade secret, trademark, service mark, copyright, mask work, or other intellectual property right ("Intellectual Property Right") of Buyer in information, documents, or property that Buyer makes available to Seller under the Contract, other than the right to use Buyer's Intellectual Property Rights to produce and supply Products and Services to Buyer.

**10.2 *Seller's Intellectual Property.*** Except where an existing agreement states otherwise, Seller does not transfer to Buyer any Intellectual Property Rights of Seller related to the Products or Services or incorporated in Buyer's Property, other than the right to incorporate Products purchased from Seller in furniture and component parts and to sell those parts to the public. If the Contract is terminated by Buyer pursuant to Section 12 or Section 13 or by

Buyer or Seller pursuant to Section 16, Seller grants to Buyer a non-exclusive right and license to use Seller's Intellectual Property Rights during the Contract term that would have applied had it not been earlier terminated, and subject to Section 14, to obtain the Products and Services or similar products and services from alternate sources and to sublicense Seller's Intellectual Property to such alternate sources for such purposes. There will be no fee for this license if (1) Buyer terminates the Contract for Seller's Default, or (2) Seller or Buyer terminates the Contract pursuant to Section 16. Otherwise, the parties will negotiate a reasonable fee for use of Seller's Intellectual Property Rights.

## **10.3 Infringement.**

(a) Subject to Section 10.3(b), Seller will indemnify and defend Buyer and its customers against claims, liabilities, losses, damages, costs, and expenses, including reasonable legal fees, arising out of the actual or alleged infringement by the Products of a third-party Intellectual Property Right (1) in the United States, the European Union, or Japan, and (2) in another jurisdiction if Seller is or becomes aware of the actual or alleged infringement in that other jurisdiction at any time after the Purchase Order is issued and fails to disclose it to Buyer within 10 days after becoming aware of such infringement. If a claim under this Section 10.3 results, or is likely to result, in an injunction or other order that would prevent Seller from supplying or Buyer from using Products for their intended purpose, then upon the demand of Buyer, Seller will, at Seller's expense and Buyer's option, either (i) secure a license of the Intellectual Property Right that permits Seller to continue supplying the Products to Buyer, or (ii) modify the Products so that they become noninfringing, so long as the modification does not materially alter the operation or performance of the Products, or (iii) replace the

Products with noninfringing but practically equivalent Products.

(b) Seller will have no liability under this Section 10.3 if and to the extent that a claim of infringement is based on (1) a Product modification made by Buyer or a third party, or (2) a Product modification made by Seller at Buyer's request, unless Seller knows of or should have known of that such modification could result in actual infringement or alleged infringement.

## **11. Property.**

### **11.1 Buyer's Property.**

(a) Buyer will own the tooling, jigs, dies, gauges, fixtures, molds, patterns, supplies, materials, and other equipment and property used by Seller to manufacture, store, and transport Products or provide Services ("Property") if (1) the Property is so designated in the Contract, or (2) Buyer or its customer has provided or paid for, or agreed to pay for, the Property ("Buyer's Property"). Seller will assign to Buyer contract rights or claims in which Seller has an interest with respect to Buyer's Property and execute bills of sale, financing statements, or other documents reasonably requested by Buyer to evidence its or its customer's ownership of Buyer's Property. Seller will indemnify and defend Buyer against claims or liens adverse to Buyer's or its customer's ownership of Buyer's Property except those that result from the acts or omissions of Buyer or its customer. Seller will hold Buyer's Property on a bailment basis and will be responsible for loss or damage to Buyer's Property while in its possession or control. To the extent permitted by law, Seller waives any lien or similar right it may have with respect to Buyer's Property. Buyer will be responsible for personal property taxes assessed against Buyer's Property.

(b) Seller will (1) at its expense maintain Buyer's Property in good condition and repair, normal

wear and tear excepted, throughout the useful life of Buyer's Property, including service life; (2) use Buyer's Property only for the manufacture, storage, and transport of Products for Buyer unless Buyer otherwise approves in advance in writing; (3) at Buyer's request and expense, mark Buyer's Property as belonging to Buyer or its customer; and (4) not remove Buyer's Property (other than shipping containers and the like) from Seller's premises without Buyer's written approval. All replacement parts, additions, improvements, and accessories to Buyer's Property will become part of Buyer's Property unless they can be removed without damaging Buyer's Property.

(c) Buyer will pay for Buyer's Property that it is required to purchase at the amount specified in the Contract or, if no amount is specified in the Contract, at (1) Seller's actual cost of the Buyer's Property, if manufactured by a third party, or (2) Seller's actual cost of purchased materials, components, and services plus Seller's actual cost of labor and overhead allocable to the Buyer's Property, if manufactured by Seller. Unless otherwise stated in the Contract, final payment for Buyer's Property is due Net 45 days after approval by Buyer of the Seller's PPAP (Production Part Approval Process).

(d) Subject to Section 11.1(e), Seller will immediately release to Buyer upon request, and Buyer may retake immediate possession of, Buyer's Property and other property of Buyer or its customers at any time, with or without cause and without payment of any kind unless otherwise provided in the Contract. Seller will release the requested Property and other property to Buyer, properly packed in a manner that protects Buyer's Property, and marked in accordance with the requirements of Buyer's carrier. If the release or recovery of Buyer's Property or other property renders Seller unable to produce a Product, the release or



recovery will be deemed a termination of the Contract with respect to that Product pursuant to Section 12 or 13, as applicable.

(e) Seller's obligation to release and allow Buyer possession of Buyer's Property under Section 11.1(d) shall be conditioned on payment by Buyer of all amounts owed for Buyer's Property under Section 11.1(c), except that if Buyer and Seller dispute the amount owed under Section 11.1(c), Seller shall release and allow Buyer possession of Buyer's Property upon payment by Buyer of the undisputed portion of the amount claimed by Seller to be owed. Seller's relinquishment of possession shall not prejudice any claim or right to payment of Seller for the disputed amounts.

**11.2 Seller's Property.** Seller will own all Property that is not Buyer's Property ("Seller's Property"). Seller will at its expense furnish, maintain in good condition, and replace when necessary Seller's Property needed to perform the Contract. Seller will insure Seller's Property with full fire and extended coverage insurance for its replacement value. While a Contract for Products remains in effect, Buyer may purchase Seller's Property used exclusively to produce those Products and not needed by Seller to produce Products or products for other customers, for a purchase price equal to the lesser of fair market value or Seller's unamortized acquisition cost.

**11.3 Tooling; Capital Equipment.** With respect to orders for tooling: (a) Seller will provide to Buyer, as requested, access to Seller's premises and all documentation relating to the tooling, prior and subsequent to payment, to inspect work performed and to verify charges submitted by Seller against a Purchase Order. For any tooling or parts thereof that Seller obtains from any third party, Seller will provide Buyer with such access and documentation to the ultimate production source. Seller will have ten (10) days from the date Buyer notifies Seller

of Buyer's intention to audit Seller to provide the requested access and copies of requested documentation for Buyer's exclusive use and records. Any information submitted following such ten (10) day period will not be considered by Buyer. The price set forth in the Purchase Order will be adjusted to credit Buyer in the amount, if any, by which the price exceeds Seller's actual cost as verified. If Seller's primary business is to fabricate tooling, Seller will be permitted a reasonable profit percentage as indicated by the Purchase Order. In the absence of a mutually-accepted profit percentage Buyer will determine a reasonable profit percentage following the completion of its audit. Seller will invoice Buyer for (and Buyer will only be obligated to pay) the lower of Seller's actual cost plus such profit percentage or the amount set forth in the Purchase Order. Buyer's audit to verify actual costs will include without limitation, at Buyer's option, copies of Seller's cancelled checks and bank statements and any other information necessary for Buyer to confirm the existence or absence of rebates, credits or discounts provided to Seller by any third party relating to such tooling. If Seller does not provide such access and documentation, Buyer may determine in its reasonable discretion an appropriate adjustment based on information available to Buyer, including estimated costs, and Seller shall be responsible for Buyer's costs in determining such estimated costs. Seller will not disclose to any third party, except for its attorneys and professional advisors who are required to maintain confidentiality, the results of such tooling audits or any adjustments made by Buyer to the prices and amounts payable to Seller as a result of such audit. Seller will retain (and cause its tooling sub-suppliers to retain) all cost records for a period of three years after receiving final payment of the charges. All tools are to be made to Buyer's specifications (or, where directed by Buyer, those of Buyer's

customers). Any exception to such specifications must be stated in writing on the Purchase Order or otherwise in a signed writing by Buyer. To the extent the Purchase Order expressly states that it is for “tooling” and unless otherwise stated in the Purchase Order, freight terms are DDP Buyer’s facility – Freight Collect, and Seller should not prepay or add freight charges. (b) To the extent permitted by applicable law, any payments made by Buyer for Buyer-owned tooling are expressly intended by Buyer to be held in trust for the benefit of any subcontractor(s) used by Seller to produce the Buyer-owned tooling that are covered by such payments and Seller agrees to hold such payments as trustee in express trust for such subcontractor(s) until Seller has paid the subcontractor(s) in full for the Buyer-owned tooling. Seller acknowledges and agrees that such subcontractor is an intended third party beneficiary of the terms of this Section relating to the express trust and as such, such tooling subcontractor shall have the right to enforce these terms of this Section directly against Seller in subcontractor's own name. Seller agrees that Buyer has no obligation to Seller or Seller's tooling subcontractor under this Section other than making the payment to Seller in accordance with a tooling Purchase Order. In the event Seller's tooling subcontractor brings an action against Seller under this section, Seller agrees that it will not join Buyer in any such action.

## **12. Term and Termination.**

**12.1 Generally.** Subject to Buyer’s termination rights, the Contract formed by the Purchase Order is binding on the parties for the length of the product life and both Buyer and Seller acknowledge the risk of the program production volume being different than estimated or program life being extended or canceled. Notwithstanding the foregoing, if an expiration date is stated in the Purchase Order

or a Contract, the term of the Purchase Order will continue until that date. Unless specifically waived in writing by an authorized representative of Buyer, Seller’s obligations with respect to service and replacement parts will survive the termination or expiration of the Purchase Order.

**12.2 Termination by Buyer for Convenience.** The Buyer may terminate the Contract, in whole or in part upon 60 days’ prior written notice to Seller. The Seller has no right to terminate the Contract except in the event of a Default of Buyer which is not cured prior to such termination.

**12.3 Amounts Payable to Supplier.** If Buyer terminates a Contract before the end of its specified term (other than for Seller’s Default under Section 13 or following notice from Seller of an Excusable Event under Section 16), Buyer agrees to purchase completed Products at the Contract price and work-in-process and raw materials at Seller’s actual cost, in each case to the extent consistent with Buyer’s current material authorization, including the cost to store the items to be purchased and relocate production to an alternate source. Buyer will not be responsible for any capital purchased by Seller related to the Contract.

## **13. Default.**

**13.1 Events of Default.** Time is of the essence and, subject to Section 16, either party will be in “Default” under the Contract if it (1) in the case of Seller, delays delivery or fails to deliver Products in strict accordance with the delivery schedules, and such failure is not cured within 24 hours of receipt of written notice of such delay or failure, (2) fails to remain competitive and fails to become competitive within 30 calendar days after receipt of notice from Buyer which indicates in reasonable detail those areas of performance, including but not limited to, delivery, quality, technology or pricing, which

form the basis for Buyer's assertion that Seller has failed to remain competitive, (3) fails to perform any other obligation under the Contract and, if the nonperformance can be cured, fails to cure the nonperformance within 15 business days after written notice from the other party specifying the nonperformance, (4) admits in writing its inability to pay its debts as they become due, commences a bankruptcy, insolvency, receivership, or similar proceeding, or makes a general assignment for the benefit of creditors, (5) becomes a debtor in a bankruptcy, insolvency, receivership, or similar proceeding commenced by a third party that is not dismissed within 30 days after commencement, or (6) fails to provide adequate assurance of performance under the Contract within three business days after written demand by the other party.

**13.2 Remedies.** (a) Subject to Sections 7 and 8 (which provide the exclusive remedies for breach of warranty, Recalls, and products liability) and to the limitations in this Section 13.2, either party may exercise the remedies provided in this Section 13.2, which are cumulative and are in addition to all other rights and remedies available elsewhere in the Contract or by law.

(b) Upon the occurrence of a Default and while that Default is continuing, the non-defaulting party may terminate the Contract by notice to the defaulting party. If Seller is in Default, Buyer's damages will include the reasonable costs actually incurred to relocate the work to an alternate source, and Buyer may purchase completed Products at the Contract price and work-in-process and raw materials at Seller's actual cost, and Seller shall be required to provide the Transition Services set forth in Section 14, at no cost to Buyer. If Buyer is in Default, Seller's damages will be limited to the Contract price for completed Products and Services and the actual cost of work-in-process

and raw materials authorized by Releases (which will become Buyer's property upon payment in full).

(c) If Seller does not release or deliver Buyer's Property or other property of Buyer or its customers in accordance with Section 11.1(d), Buyer may at Seller's cost (1) obtain an immediate court order for possession, and (2) enter Seller's premises, with or without legal process, and take immediate possession of Buyer's Property and the other property. To the extent permitted by law, Seller waives any right to object to Buyer's repossession of Buyer's Property and the other property in a bankruptcy or other proceeding.

(d) EXCEPT AS OTHERWISE EXPRESSLY AUTHORIZED IN THE CONTRACT, ALL INDIRECT, SPECIAL, CONSEQUENTIAL (INCLUDING LOST PROFITS OR MARKET SHARE OR DAMAGE TO BRAND VALUE), INCIDENTAL, PUNITIVE, AND EXEMPLARY DAMAGES, WHETHER OR NOT FORESEEABLE, ARE EXCLUDED UNDER THESE TERMS TO THE EXTENT PERMITTED BY APPLICABLE LAW.

#### **14. Transition of Supply.**

(a) In connection with Buyer's termination or nonrenewal of the Purchase Order, or Buyer's other decision to source the Products and/or the Services from any alternate supplier(s), Seller will cooperate with Buyer in the transition of the supply of Products and/or Services, including the following: (1) Seller will continue the production and delivery of all Products and Services as ordered by Buyer, at the prices and other terms stated in the Purchase Order, without premium or other condition, during the entire period reasonably needed by Buyer to complete the transition to alternate supplier(s), such that Seller's action or inaction causes no interruption in Buyer's ability to obtain the Products and/or Services as needed; (2) at no cost to Buyer, Seller will promptly provide all

requested information and documentation regarding and access to Seller's manufacturing process, including on-site inspections, bill-of-material data, tooling and process detail and samples of the Products and/or Services and components; and (3) subject to Seller's reasonable capacity constraints, Seller shall provide special overtime production, storage and/or management of extra inventory of the Products, extraordinary packaging and transportation and other special services (collectively "Transition Support") as expressly requested by Buyer in writing.

(b) If the transition of supply occurs for reasons other than Buyer's termination of the Purchase Order pursuant to Section 12.1 or Section 13, Buyer shall, at the end of the transition period, pay the reasonable, actual cost of Transition Support as requested by Buyer and incurred by Seller, provided that Buyer has approved Seller's estimate of such costs prior to Seller incurring such amounts.

#### **15. Confidential Information.**

Trade secrets, specifications, drawings, notes, instructions, engineering data and analyses, compositions of matter, financial data, and other technical and business data which are supplied or disclosed by Buyer or Seller in connection with the Contract, in each case that are marked or otherwise identified as confidential or where their confidential nature is apparent at the time of disclosure ("Confidential Information"), will be deemed confidential and proprietary to, and remain the sole property of, the disclosing party. The receiving party may not disclose Confidential Information or use Confidential Information for any purpose other than as contemplated under the Contract without, in each case, the prior written consent of the disclosing party. Confidential Information will not include information that (1) is or becomes generally available to the public other than as a result of a

violation of this Section 15 by the receiving party, (2) was obtained by the receiving party on a nonconfidential basis from a third party who had the apparent right to disclose it, (3) is known or independently developed by the receiving party prior to disclosure, or (4) is legally required to be disclosed. Buyer and Seller will each use the same degree of care to safeguard Confidential Information that it uses to protect its own confidential information from unauthorized access or disclosure (but not less than a reasonable degree of care). Upon request by the disclosing party, the receiving party will promptly return or destroy the original and all copies of Confidential Information received. Upon request of Buyer, Seller will be required to sign a separate non-disclosure agreement.

#### **16. Assignment and Subcontracting.**

Neither party may assign or subcontract its duties or responsibilities under the Contract without the prior written consent of the other party, which will not be unreasonably withheld or delayed. Unless otherwise stated in the consent, any assignment or subcontracting by either party, with or without the required consent, will not relieve that party of its duties or obligations under the Contract or its responsibility for non-performance or Default by its assignee or subcontractor.

#### **17. Excusable Non-Performance.**

A delay or failure by either party to perform its obligations under the Contract will be excused, and will not constitute a Default, only if caused by an Excusable Event. An "Excusable Event" is a cause or event beyond the reasonable control of a party that is not attributable to its fault or negligence and includes fire, flood, earthquake, and other extreme natural events, acts of God, riots, civil disorders, and war or acts of terrorism whether or not declared as such by a government. Notwithstanding the forgoing,

labor problems or other issues involving Seller's employees or its supplier's employees, availability of raw materials, component parts, changes in costs of materials, labor or other costs of Seller, or any other changes in commercial markets, commercial environment, the economy or other commercial factors generally shall not constitute an Excusable Event. In each case, the failure to perform must be beyond the reasonable control, and not attributable to the fault or negligence, of the party claiming the Excusable Event. The party unable to perform must give notice of the non-performance (including its anticipated duration) to the other party promptly after becoming aware that it has occurred or is reasonably likely to occur, followed by prompt notices of any material changes in the facts relative to its ability to perform and/or the anticipated duration of the non-performance. Seller and Buyer shall share information, confer, seek agreement and otherwise act cooperatively to avoid or mitigate the effects of the potential or actual excused nonperformance. If Seller is unable to perform for any reason, Buyer may purchase Products and Services from other sources and reduce its purchases from Seller accordingly without liability to Seller. Within three business days after written request by the other party, the non-performing party will provide adequate assurances that the non-performance will not exceed seven calendar days. If the nonperforming party does not provide those assurances, or if the non-performance exceeds seven calendar days, the other party may terminate the Contract by notice given to the non-performing party before performance resumes.

#### **18. Labor Contracts.**

Seller will notify Buyer of the contract expiration date at least six months before the expiration of a current labor contract that has

not been extended or replaced. Buyer may thereafter at Buyer's sole discretion direct Seller in writing to manufacture up to 90 days of additional inventory of Products, specifying the quantities of Products required and any packaging and storage requirements. Seller will comply with Buyer'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. By authorizing the additional inventory, Buyer commits to buy the entire quantity of conforming Products requested and produced. Seller is responsible for carrying costs and any additional costs of manufacture. Nothing in this Section shall be construed to relieve Seller of its obligations to supply Products under the Contract.

#### **19. Customs.**

Transferable credits or benefits associated with Products purchased, including trade credits, export credits, or rights to the refund of duties, taxes, or fees, belong to Buyer unless otherwise prohibited by applicable law. Seller will provide Buyer with all information and records relating to the Products necessary for Buyer to (1) receive these benefits, credits, and rights, (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, and (4) participate in any duty deferral or free trade zone programs of the country of import. Seller will obtain all export licenses and authorizations and pay all export taxes, duties, and fees unless otherwise stated in the Contract, in which case Seller will provide all information and records necessary to enable Buyer to obtain those export licenses or authorizations. Specific details will be defined and listed in the contract using International Commercial Terms (INCOTERMS) as identified by the International Chamber of

Commerce 2010 revisions, referred to herein as “Incoterms 2010”, and include the specific “Named Place” where needed.

## **20. Insurance.**

Prior to commencing work on Buyer’s premises or utilizing Buyer’s property (including Buyer’s Property), Seller will maintain and upon request furnish to Buyer a certificate evidencing (1) general liability insurance with coverage limits reasonably acceptable to Buyer and naming Buyer as an additional insured, (2) all risk property perils insurance covering the full replacement value of Buyer’s Property while in Seller’s care, custody, or control and naming Buyer as loss payee, (3) product liability insurance, and (4) worker’s compensation insurance as required by applicable law. The existence of insurance does not release Seller of its obligations or liabilities under a Purchase Order.

## **21. Dispute Resolution.**

Buyer and Seller will first endeavor to resolve through good faith negotiations any dispute arising under the Contract. If a dispute cannot be resolved through good faith negotiations within a reasonable time, either party may pursue any available legal action as it determines appropriate. Nothing contained herein shall act to prohibit, impair or delay Buyer undertaking any legal action to seek immediate injunctive relief as may be available to Buyer.

## **22. Miscellaneous.**

**22.1 Advertising.** During and after the term of the Contract, Seller will not advertise or otherwise disclose its relationship with Buyer or Buyer’s customers without Buyer’s prior written consent, except as may be required to perform the Contract or as required by law.

**22.2 Audit Rights.** Seller will maintain records as necessary to support amounts charged to Buyer under the Contract in accordance with Seller’s document retention policies. Buyer and its representatives may audit Seller’s records of transactions completed prior to the audit date, to the extent needed to verify the quantities shipped and that the prices charged match the Contract prices. Any audit will be conducted at Buyer’s expense (but will be reimbursed by Seller if the audit uncovers material errors in the amounts charged), at reasonable times, and at Seller’s usual place of business.

**22.3 Electronic Communication.** Seller will comply with the method of electronic communication specified by Buyer in Buyer’s request for quotation and confirmed in the Contract, or as stated in Supplier’s Standards Manual, including requirements for electronic funds transfer, purchase order transmission, electronic signature, and communication.

**22.4 Relationship of the Parties.** Buyer and Seller are independent contractors, and nothing in the Contract 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.

**22.5 Waiver.** The failure of either party to enforce any right or remedy provided in the Contract or by law on a particular occasion will not be deemed a waiver of that right or remedy on a subsequent occasion or a waiver of any other right or remedy.

**22.6 Entire Agreement** (a) The Contract constitutes the entire agreement between Seller and Buyer with respect to its subject matter, and supersedes all prior oral and written representations and agreements by the parties with respect to the subject matter of the Contract. Except as authorized in Section 1, no subsequent terms, conditions, understandings,

or agreements purporting to modify the terms of the Contract will be binding unless in writing and signed by both parties.

(b) New purchase orders, purchase order revisions/amendments, once accepted by Seller as provided in Section 1.1, will be governed by the Terms (as may be revised from time to time) that are posted on Buyer's website at: [izzyplus.com](http://izzyplus.com) (link is in Supplier Standards Manual), as of the date of acceptance.

(c) Buyer's Website may also contain specific additional requirements for certain items covered by the Purchase Order, including labeling, packaging, shipping, delivery and quality specifications, procedures, directions and/or instructions. Any such requirements shall be deemed to form part of the Contract. Buyer may periodically update such requirements by posting revisions thereto on Buyer's Website. In the event of any inconsistency between the Contract and Buyer's Website, the terms of the Contract shall prevail, unless the requirements specified on Buyer's Website expressly provide otherwise.

**22.7 Severability.** A finding that any provision of the Contract is invalid or unenforceable in any jurisdiction will not affect the validity or enforceability of any other provision of the Contract or the validity or enforceability of that provision in any other jurisdiction.

**22.8 Interpretation.** When used in these Terms, "including" means "including without limitation" and terms defined in the singular include the plural and vice versa.

**22.9 Notices.** Any notice or other communication required or permitted in the Contract must be in writing and will become effective on the date of actual receipt if the date of actual receipt is a business day or on the next business day if the date of actual receipt is not a business day.

**22.10 Governing Law.** Unless otherwise agreed in writing, the Contract will be governed by and interpreted according to the internal laws of Michigan. The United Nations Convention on Contracts for the International Sale of Goods will not apply to the Contract. The exclusive venue of any dispute relating to this Agreement shall be in the state or federal courts within Ottawa County, Michigan, and the parties hereby irrevocably consent to the jurisdiction of such courts.

**23. Set-Off; Recoupment.** In addition to any right of setoff or recoupment provided by law, all amounts due or to become due to Seller will be considered net of indebtedness of Seller and its affiliates or subsidiaries to Buyer and its affiliates or subsidiaries. Buyer will have the right to set off against or to recoup from any payment or other obligation owed to Seller, in whole or in part, any amounts due to Buyer or its affiliates or subsidiaries from Seller or its affiliates or subsidiaries. Buyer will provide Seller with a statement describing any offset or recoupment taken by Buyer.