

# TERMS AND CONDITIONS

Effective 1-January-2013

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 Motek-TEAM Industries, Inc. (“Motek-TEAM”) to the supplier (“Supplier”) identified on each Purchase Order. 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”). Motek-TEAM objects to any terms proposed in Supplier’s proposal, sales note, acknowledgment or other form of acceptance of Motek-TEAM’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 Motek-TEAM in response to an offer by Supplier, and if the terms in the Purchase Order differ from these Terms and Conditions or the documents referred to herein add to, or vary from or conflict with any terms of Supplier’s offer, then the issuance of the Purchase Order by Motek-TEAM 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 Motek-TEAM with respect to the subject matter of Supplier’s offer. Supplier will be deemed to have so assented and acknowledged unless Supplier notifies Motek-TEAM to the contrary in a writing signed by Supplier’s authorized representative within 10 days of Motek-TEAM’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”).  
**Products.**
  - a. The Products to be provided by Supplier are identified in the Purchase Order.
  - b. A Purchase Order will only become a binding commitment upon Motek-TEAM to purchase the specified Products if the Purchase Order is not cancelled by Motek-TEAM seven days before the ship date set forth in the Purchase Order.
  - c. Motek-TEAM may buy Products from other sources or reduce quantities acquired from Supplier in its sole discretion and irrespective of the course of dealing between the Parties.
3. **Competitiveness.** During the Term, Supplier will be competitive in terms of delivery, quality, technology and service and will provide Motek-TEAM with the best prices it offers to any other customer purchasing a comparable volume and mix of products. Supplier will reduce its Prices at any time during the Term to maintain this competitiveness, effective as of the date that the Prices became non-competitive. If Motek-TEAM 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 Motek-TEAM in its sole discretion, Motek-TEAM may terminate the Agreement, in whole or in part, pursuant to Section 34.a (For Cause) of these Terms and Conditions.
4. **Prices, Invoicing and Payment Terms.**
  - a. Prices. The prices for the Products (Prices ) are set forth in the Purchase Order, and 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 Motek-TEAM. 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.
  - b. Invoicing. Supplier will promptly submit correct and complete invoices or other agreed billing communications with appropriate supporting documentation and other information reasonably required by Motek-TEAM, and Motek-TEAM may withhold payment until a correct and complete invoice or other required information is received and verified. Supplier’s submission of an invoice constitutes a certification that (a) the quantities and amounts of delivered Products contained on such invoice are true and accurate and that such Products 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 will be delivered to Motek-TEAM until after the Products and Services that are the subject of such invoice have been provided to Motek-TEAM.
  - c. Payment Terms. Motek-TEAM will pay all undisputed and properly documented invoices in accordance with the Net 60 day payment terms or as established on the purchase order by Motek-TEAM. Payment will be made via

Payment Visa, paper check or ACH, as agreed by the Parties. 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 Motek-TEAM and Motek-TEAM will have the right to set-off against or recoup from any amounts due to Supplier and its affiliates under the Agreement or any other transactions between Motek-TEAM and Supplier and its affiliates. Supplier will not invoice Motek-TEAM, and Motek-TEAM will not be obligated to pay, any amounts that are not properly invoiced within 90 days after the end of the month in which such amounts should have been invoiced.

**5. 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 Motek-TEAM may provide. If Motek-TEAM 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 Motek-TEAM, and plainly mark Motek-TEAM's name and the identity of the delivery destination on all packages and associated documents. If Motek-TEAM's count or weight differs from Supplier's count or weight, Motek-TEAM's count or weight will be considered conclusive. If Supplier is required to use Motek-TEAM's returnable packaging, Supplier will be responsible for cleaning and returning the returnable packaging. If returnable packaging is not available, Supplier may use expendable packaging and Motek-TEAM will reimburse Supplier for the reasonable costs of such expendable packaging.

**6. Specifications, Changes.**

- a. *Production Specifications.* Supplier will manufacture all Products in strict conformance with the terms of the Agreement, including any specifications provided by Motek-TEAM or its customers.
- b. *Changes.* Motek-TEAM 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 Motek-TEAM's notification of any change. If Motek-TEAM 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 changes, whether initiated by Motek-TEAM or by Supplier, must be processed in accordance with Motek-TEAM's product change request process as set forth in Motek-TEAM's Supplier Quality Manual ("Supplier Quality Manual"), which is available at or other locations Motek-TEAM may designate ("Supplier Quality Manual"). The Supplier Quality Manual is incorporated in these Terms and Conditions by this reference.

**7. Delivery, Title, Risk of Loss, and Logistics.**

- a. *Delivery, Title and Risk of Loss.* All deliveries of Products must be made in accordance with the delivery schedule in the Purchase Order or as otherwise directed by Motek-TEAM. Time is of the essence in making all deliveries of Products to Motek-TEAM. Supplier will deliver all Products in the quantities and at the time and place specified in the Purchase Order. All Products will be priced and delivered FCA Supplier's facility (Incoterms 2010) with carrier to be designated by Motek-TEAM, unless otherwise agreed in writing by the Parties. Title for the Products will pass to Motek-TEAM upon receipt of the Products by the carrier selected by Motek-TEAM. If the importation of the Products results in the assessment of a countervailing duty on Motek-TEAM as the importer, Supplier will reimburse such countervailing duty to Motek-TEAM, provided such reimbursement is permitted under applicable Law.
- b. *Logistics.* Unless otherwise agreed by the Parties, Motek-TEAM 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, Motek-TEAM will be responsible for all payments to the carrier selected by Motek-TEAM. Notwithstanding the foregoing, if the acts or omissions of Supplier (or any individual or entity acting under the direct 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 Motek-TEAM as quickly as possible, all at Supplier's sole expense.
- c. *Changes in Landed Costs.* If during the Term, Motek-TEAM experiences a material increase in its landed costs for the Products, such as increases in import duties or carrier rates, Motek-TEAM 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 re-negotiated Prices within 30 days of Motek-TEAM's notice, Motek-TEAM may terminate the Agreement, in whole or in part, pursuant to Section 34.a (For Cause) of these Terms and Conditions.

**8. Process Improvements and Supplier Managed Inventory.**

- a. Supplier will not make any change in the design, process, quality requirements, packaging and/or shipping of a Product without the prior written consent of Motek-TEAM. In the event Supplier makes a Motek-TEAM-approved change 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 Motek-TEAM, the savings (net of any reasonable costs incurred by Supplier or Motek-TEAM to accommodate such change) will be shared equally between the Parties.
  - b. In the event Motek-TEAM initiates a change in the design, process, quality requirements, packaging and/or shipping of a Product (including any changes to the Supplier Quality Manual or Motek-TEAM's inspection standards), the result of which reduces the delivered cost of the Product to Motek-TEAM, the savings (net of any reasonable costs incurred by Supplier or Motek-TEAM to accommodate such change) will be enjoyed exclusively by Motek-TEAM.
  - c. If requested by Motek-TEAM, Supplier will develop and initiate, subject to Motek-TEAM's review and approval, a plan for establishing and maintaining a supplier managed inventory program including the use of kanban just-in-time production techniques where components and sub-assemblies are produced based upon notification of Motek-TEAM demand.
  - d. 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 Motek-TEAM 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 Motek-TEAM 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 Motek-TEAM 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.d](#).
- 9. Supplier Facilities.** Supplier will produce Products only at Supplier's manufacturing facilities identified in the Purchase Order, or if none are specified, then only at Supplier's manufacturing facilities in existence as of the Effective Date (the "Manufacturing Facilities"). Supplier may not, without the express written consent of Motek-TEAM, change, consolidate, eliminate or add to the Manufacturing Facilities.
- 10. 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 Motek-TEAM, unless prohibited by applicable Law. Supplier will provide Motek-TEAM with all information and records relating to the Products and any other information or cooperation necessary for Motek-TEAM 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 NAFTA certificate of origin.
- 11. Export Licenses, Security.**
- a. Licenses. Supplier will obtain all export licenses and authorizations and pay all export taxes, 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 Motek-TEAM to obtain such export licenses or authorizations.
  - b. Security. If Supplier is shipping Products into the United States from locations outside the United States, 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 the Customs-Trade Partnership Act Against Terrorism ("C-TPAT") sponsored by the United States Customs and Border Protection Agency.
- 12. Labor Contracts.** Supplier will notify Motek-TEAM of the expiration date for any current labor contract that has not been extended or replaced at least six months before the expiration of such contract. Motek-TEAM may thereafter direct Supplier in writing to manufacture additional inventory of Products, specifying the quantities of Products required and any packaging and storage requirements. Supplier will use commercially reasonable efforts to comply with Motek-TEAM'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.

### 13. Product Inspections.

- a. Upon receipt of the Products by Motek-TEAM, Motek-TEAM may, but is not obligated to, perform receipt inspections to confirm that the Products conform to the requirements set forth in the Agreement. Motek-TEAM's acceptance of Products will not be deemed evidence that Products conform to such requirements, nor will payment by Motek-TEAM for Products prior to inspection constitute acceptance thereof, or remove Supplier's responsibility for Non-Conforming Products.
- b. Motek-TEAM may reject any Product that Motek-TEAM has determined as a result of a receipt inspection does not conform to the requirements set forth in the Agreement.

### 14. 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 Motek-TEAM to Motek-TEAM's customers, whichever is longer, that all Products furnished to Motek-TEAM 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 Motek-TEAM), 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 Motek-TEAM or Motek-TEAM's customer(s); (vi) comply with all applicable Laws of the countries in which the Products into which the Products are to be installed, are to be sold; 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. 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 Motek-TEAM.
- b. Non-Conforming Products. If a Product does not conform to the warranties in Section 15.a (each, a "Non-Conforming Product"), then Motek-TEAM will have the following remedies with respect to such Product:
  - i. Return Product. Motek-TEAM may elect to return the Non-Conforming Product to Supplier for credit.
  - ii. Replace Product. Motek-TEAM may elect to return the Non-Conforming Product to Supplier and have Supplier, at its cost and as directed by Motek-TEAM, replace the returned Non-Conforming Product with a replacement Product, such replacement Product to be delivered to the Motek-TEAM in accordance with all instructions provided by Motek-TEAM in writing.
  - iii. Remedial Work. If Motek-TEAM 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 Motek-TEAM 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 offset against the amounts otherwise due Supplier for such Non-Conforming Product or reimbursed separately by Supplier within 30 days of Motek-TEAM'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 Motek-TEAM may elect to have Supplier, at Supplier's sole cost and expense, defend the title thereto and, if requested in writing by Motek-TEAM, 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 Motek-TEAM requests such removal, then Motek-TEAM, at Motek-TEAM'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 Motek-TEAM for the expenses thereby incurred, including any payments made in discharging the security interest, claim, demand, lien or other encumbrance, or (b) revoke its acceptance of such Product, in which case Supplier will promptly refund any compensation Supplier received from Motek-TEAM in connection with such Products together with all costs incurred by Motek-TEAM in connection with such revocation.
- c. Recall. In the event that Motek-TEAM determines that any Products furnished by Supplier create or contribute to any voluntary or government-mandated recall, service campaign or similar program initiated by Motek-TEAM 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 Motek-TEAM's allocation of responsibility for the Recall. This Section will not limit Supplier's responsibility under any other provision of the Agreement.

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

**16. 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, rules, regulations, and orders of any governmental (including any regulatory or quasi-regulatory) body or agency; (iii) be performed by persons who have employment authorization to perform the Services in accordance with applicable immigration laws; and (iv) conform to all requirements, as set forth in the Purchase Order.

**17. Insurance and Indemnification.**

a. *Insurance.* During the Term, Supplier will maintain, at its own expense, the following insurance coverages, and supplier agrees to furnish on request an insurance certificate in the following limits:

i. Workers Compensation: statutory limits (for U.S. citizens and foreign nationals working in the U.S. or its territories and entitled to state workers' compensation insurance or benefits) for the state(s) in which the work is to be performed. Commercial General Liability: not less than \$500,000 limit (including products/completed operations, contractual liability, personal injury, and advertising injury) applying to bodily injury or property damage per occurrence, and \$1,000,000 aggregate liability. 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.

ii. Where applicable, all risk property coverage (including transit/cargo) for property, whether or not owned by Motek-TEAM, 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 Motek-TEAM has possession.

iii. Any other insurance coverage Motek-TEAM deems appropriate for the Products or Services under the Agreement.

b. *Indemnification by Supplier.* Supplier further agrees to indemnify and save Motek-TEAM harmless from any and all losses, liabilities, damages, claims, demands, suits, actions, proceedings, subrogations and expenses, including court costs and reasonable attorney fees, related in any way to this order, or the services performed or items delivered under this order, except for items manufactured entirely to Motek-TEAM's specifications, which are claimed or made by any person, firm, association or corporation, including employees, workers, servants or agents of Supplier and his subcontractors arising from any cause or for any reason whatsoever. Supplier further agrees, upon receipt of notification, to promptly assume full responsibility for the defense of any and all such suits, actions, or proceedings which may be brought against Supplier or against Motek-TEAM. In the event Motek-TEAM's machinery or equipment is used by Supplier in the performance of any work that might be required under this order, such machinery or equipment shall be considered as being under the sole custody and control of Supplier during the period of such use by Supplier.

**18. Limitation of Liability. EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, IN NO EVENT WILL MOTEK-TEAM, ITS AFFILIATES OR CUSTOMERS BE LIABLE TO SUPPLIER OR TO ANY THIRD PARTY, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), WARRANTY OR OTHERWISE, FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES (INCLUDING DAMAGES FOR LOSS OF PROFITS, BUSINESS INTERRUPTION, LOSS OF PROGRAMS OR INFORMATION, AND THE LIKE) ARISING OUT OF OR RELATING TO THE AGREEMENT. MOTEK-TEAM, INCLUDING ITS AFFILIATES AND CUSTOMERS, TOTAL AGGREGATE LIABILITY TO SUPPLIER AND TO ANY THIRD PARTY UNDER THE AGREEMENT FOR DIRECT DAMAGES WILL NOT EXCEED THE AMOUNTS PAID TO SUPPLIER BY MOTEK-TEAM FOR**

**THE PRODUCT(S) TO WHICH SUPPLIER'S CLAIM RELATES. FOR THE AVOIDANCE OF DOUBT, ANY FINES OR PENALTIES ASSESSED AGAINST MOTEK-TEAM UNDER APPLICABLE LAW ARISING OUT OF SUPPLIER'S BREACH OF THE AGREEMENT ARE DIRECT DAMAGES.**

**19. Intellectual Property.**

- a. *Motek-TEAM'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 Motek-TEAM or Motek-TEAM's customers that Motek-TEAM 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 Motek-TEAM.
- b. *Suppliers Intellectual Property.* Supplier hereby grants to Motek-TEAM 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, with a right to grant sublicenses to others, to make, have made, use, 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.

**20. Notices.** All notices and communications relating to the Agreement will be in writing 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 United States mail or registered or certified mail, return receipt requested, postage prepaid, addressed to the address set forth in the Purchase Order or such other address as the party has designated.

**21. Confidentiality.**

- a. 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 Motek-TEAM, Confidential Information includes: (i) Motek-TEAM'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 Motek-TEAM, its affiliates and customers; (iii) Motek-TEAM Tooling; (iv) the Intellectual Property Rights of Motek-TEAM; and (v) the terms of the Agreement.
- b. 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 Motek-TEAM, 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.
- c. 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.
- d. 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 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.
- e. Supplier will deliver the Confidential Information of Motek-TEAM and all copies thereof to Motek-TEAM promptly upon the expiration or termination of this Supply Agreement or at any other time upon Motek-TEAM's written request (or, at Motek-TEAM's option, will certify, through its general counsel, that Motek-TEAM's Confidential Information and all copies have been securely destroyed).
- f. Supplier acknowledges and agrees that the actual or threatened breach of this Section would cause irreparable harm to Motek-TEAM, for which money damages would not be a sufficient remedy or difficult to ascertain, entitling Motek-TEAM 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.

**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 Motek-

TEAM 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 reductions achieved as a result of such efforts will serve to reduce the total Price for the Products.

### 23. Service Requirements

- a. Current-Model Service Requirements. If requested by Motek-TEAM, Supplier will supply the Products to Motek-TEAM for Motek-TEAM’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 Motek-TEAM to fulfill its new-model and current-model service requirements.
- b. Past-Model Service Requirements. If requested by Motek-TEAM, Supplier will supply the Products to Motek-TEAM for Motek-TEAM’s past-model service requirements for a period of 5 years after the end of production of the Products for Motek-TEAM’s current-model service requirements, or for the period required by Motek-TEAM’s customers, whichever is longer (the “Past-Model Period”), at the Prices in place at the end of production of the Products for Motek-TEAM’s current-model service requirements. Supplier will supply the Products at such times and in such quantities as are necessary to allow Motek-TEAM to fulfill its past-model service requirements. The Parties will negotiate, in good faith, the prices, quantities, and delivery terms for the supply of Products 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 Motek-TEAM and Supplier, all tooling, dies, jigs, fixtures, drawings, molds, patterns, templates, gauges, supplies, materials and the like (“Tooling”) that Motek-TEAM 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 (“Motek-TEAM Tooling”) are the sole personal property of Motek-TEAM. Supplier will hold the Motek-TEAM Tooling on a bailment basis and will be responsible for loss or damage to the Motek-TEAM Tooling while in its possession, custody or control. Supplier will not remove Motek-TEAM Tooling (other than shipping containers and the like) from the Manufacturing Facilities without Motek-TEAM’s prior written approval. All replacement parts, additions, improvements, and accessories to the Motek-TEAM Tooling will become part of the Motek-TEAM Tooling unless they can be removed without damaging the Motek-TEAM Tooling. Supplier will provide Motek-TEAM with a list and condition of all Motek-TEAM Tooling in its possession upon request.
- b. Payment. With respect to any Motek-TEAM Tooling that is not provided to Supplier by Motek-TEAM, Motek-TEAM will not be obligated to pay for such Motek-TEAM Tooling until Supplier has provided Motek-TEAM with an itemized list and adequate cost records for the same and Motek-TEAM has accepted the Motek-TEAM Tooling through an approved “Parts Submission Warrant” or other Motek-TEAM process. If Supplier fails to provide adequate cost records, Motek-TEAM will not be obligated to pay more than the fair market value for the Motek-TEAM Tooling, regardless of the charges levied with respect to or on it.
- c. Suppliers Obligations Related to Motek-TEAM Tooling. Supplier will label the Motek-TEAM Tooling in accordance with Motek-TEAM’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 Motek-TEAM Tooling, and keep it in good working condition. If a party determines that replacement of any Motek-TEAM 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 Motek-TEAM Tooling upon the prior written approval of Motek-TEAM. Supplier will use the Motek-TEAM Tooling exclusively to produce, store and transport the Products for Motek-TEAM and for no other purpose. Upon expiration or termination of the Agreement, in whole or in part, Supplier will hold the applicable Motek-TEAM Tooling and any operation sheets, process data, or other information necessary to show its use, at no charge, pending receipt of Motek-TEAM’s instructions regarding its disposition.
- d. Release of Motek-TEAM Tooling. Supplier will immediately release to Motek-TEAM upon request, and Motek-TEAM may retake immediate possession of, the Motek-TEAM Tooling and other property of Motek-TEAM or its customers at any time, with or without cause and without payment of any kind. Supplier will release the requested Motek-TEAM Tooling and other property to Motek-TEAM, and Supplier will properly pack, mark and deliver such Motek-TEAM Tooling and other property to Motek-TEAM in accordance with the requirements of Motek-TEAM or Motek-TEAM’s carrier, as applicable. If Supplier does not release or deliver the Motek-TEAM Tooling or other property of Motek-TEAM or its customers in accordance with this Section, Motek-TEAM may at Supplier’s cost (1) obtain an immediate court order for possession without notice and without posting a bond, and (2) enter Supplier’s

premises, with or without legal process, and take immediate possession of the Motek-TEAM Tooling and the other property. To the extent permitted by Law, Supplier waives any right to object to Motek-TEAM's repossession of the Motek-TEAM Tooling and other property of Motek-TEAM in a bankruptcy or other proceeding.

- e. ***Suppliers Tooling.*** Supplier will own all Tooling that is not Motek-TEAM'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. Motek-TEAM 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 greater of the fair market value for such Supplier Tooling or Supplier's unamortized acquisition cost.
- f. ***Security Interest.*** Supplier hereby grants Motek-TEAM and Motek-TEAM's customers, as applicable, a security interest in the Motek-TEAM Tooling and all accessories and attachments thereto, substitutes and replacements therefore and proceeds therefrom, and authorizes Motek-TEAM or Motek-TEAM's customers, as applicable, and their agents, on Motek-TEAM's behalf and as its attorneys-in-fact, to prepare, sign and file such Uniform Commercial Code financing statements and amendments thereto and similar documents 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 Motek-TEAM Tooling, and, except with respect to the security interests created in favor of Motek-TEAM and its customers pursuant to this Section, Supplier will keep the Motek-TEAM 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 Motek-TEAM or on Motek-TEAM's behalf or that is generated during the manufacture of the Products ("Scrap") is the sole personal property of Motek-TEAM. Accordingly, Motek-TEAM 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 Motek-TEAM's direction, Supplier will cause the relevant Scrap to be handled per Motek-TEAM'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, Federal Acquisition Regulations.**

- 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 United States, any other country or any state, county, city, provincial or other political subdivision, including those promulgated, interpreted or enforced by any governmental or regulatory authority (collectively, "Laws"). Supplier will provide Motek-TEAM with any information reasonably required in order for Motek-TEAM, its affiliates and their respective customers to comply with all Laws. Supplier further represents, warrants and covenants, by way of example and not limitation that it will comply with all applicable provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the U.S. Secretary of Labor pertaining to Equal Employment Opportunity and Affirmative Action. Supplier also represents, warrants and covenants that it has reviewed and will abide by Motek-TEAM's "Supplier's Manual", available at <http://motekeng.com/> or other locations Motek-TEAM may designate. The Supplier's Business Conduct Guide is incorporated in these Terms and Conditions by this reference.
- b. ***Environmental Reports.*** Prior to the shipment of any Products, Supplier will provide Motek-TEAM 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 Motek-TEAM may request from time to time that is prepared pursuant to any applicable Law and any and all Motek-TEAM requirements relating to environmental or similar matters. Supplier will promptly notify Motek-TEAM of any changes to such documentation.
- c. ***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 Motek-TEAM, 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 an Excusable Delay occurs, the affected party will promptly notify the other party of the nature and anticipated duration of the delay or failure. Motek-TEAM will be entitled to terminate the Purchase Order if the Excusable Delay event persists or, in Motek-TEAM's reasonable opinion, is likely to persist long enough to jeopardize Motek-TEAM or any of Motek-TEAM's production. If Motek-TEAM determines that it must procure the Products from an alternate source during an Excusable Delay, the parties will discuss in good faith an equitable sharing of any excess cost incurred by Motek-TEAM in procuring the Products (or products similar thereto) from such alternate source.

- b. Labor Disputes, Bank. Supplier will notify Motek-TEAM of any actual or potential labor dispute delaying or threatening to delay timely performance of the Purchase Order. In such event, and at Motek-TEAM's request, Supplier will establish a sufficient supply of Products, as determined by Motek-TEAM in its sole discretion, to assure Motek-TEAM's on-going production.
- c. Contingency Plans. Unless Supplier has already submitted a contingency plan to Motek-TEAM that complies with the Agreement, no later than 30 days after the Effective Date, Supplier will prepare upon request a contingency plan 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 Motek-TEAM'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.

**28. Inspections and Audits.** Upon at least 48 hours prior notice (unless circumstances reasonably preclude such notice), Supplier will allow Motek-TEAM and its internal and external auditors, inspectors, regulators and other representatives that Motek-TEAM may designate from time to time (Motek-TEAM Auditors ) to perform audits and inspections of Supplier and its subcontractors and their respective facilities (Audits ), to: (i) verify the accuracy and completeness of Supplier's invoices and Charges, (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), and (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. Any Audit conducted pursuant to this Section will be at Motek-TEAM's sole cost and expense, except that if a financial Audit reveals that Supplier overcharged Motek-TEAM by five percent or more, Supplier will reimburse Motek-TEAM in full for its costs and expenses related to such Audit within 30 days of Motek-TEAM's request. No inspections or tests by the Motek-TEAM Auditors will relieve, reduce or alter Supplier's obligation to inspect and test the Products prior to delivery or any other obligation in the Agreement.

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

**30. Status of Parties.**

- a. Supplier is an independent contractor and not an employee, agent, partner of, or a joint venturer with, Motek-TEAM 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 observe Motek-TEAM's security and safety rules at all times when they are on or about Motek-TEAM's premises.

**31. Assignment and Subcontracting.** Supplier will not subcontract or assign, in whole or in part, the Agreement or any of its obligations or rights thereunder without Motek-TEAM'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 Motek-TEAM permits Supplier to subcontract any of its obligations under the Agreement, Supplier may not change subcontractors without Motek-TEAM's advance written approval and such change must be made in accordance with any applicable Motek-TEAM requirements and/or the Supplier Quality Manual. Supplier will remain primarily liable and obligated to Motek-TEAM for the timely and proper performance of all of its

obligations under the Agreement, even if such obligations are delegated to a Motek-TEAM-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. Motek-TEAM may assign the Agreement, in whole or in part, or any of its rights and obligations under the Agreement without the consent of Supplier. Any subcontractor utilized by supplier in performing obligations under this agreement shall be provided terms and conditions that are consistent with the terms and conditions of this agreement.

### **32. 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 15 day period, then the non-breaching party may immediately terminate without further notice.
- b. *For Insolvency.* Motek-TEAM 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.* Motek-TEAM may, at its option, terminate the Agreement, in whole or in part, for convenience on 90 days written notice to Supplier. Upon such termination, Motek-TEAM's sole liability and Supplier's sole and exclusive remedy will be for Motek-TEAM to pay to Supplier the following amounts without duplication: (i) the Prices for all Products 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. Unless otherwise agreed in writing, Motek-TEAM 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.
- d. *For Change of Control.* Motek-TEAM may terminate the Agreement, in whole or in part, without liability to Supplier upon 30 days written notice to Supplier if a change of control of Supplier occurs, or if Supplier acquires or merges with a competitor of Motek-TEAM. 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 in the shares of Supplier; or (iii) the execution of a voting or other agreement of control. Supplier will provide Motek-TEAM with written notice of a change of control within 10 days after the change of control has become effective.

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

- a. upon Motek-TEAM's request, continue to supply the Products for such time as is necessary, as determined by Motek-TEAM it is sole discretion, for Motek-TEAM to transition its purchase of the Products to an alternate supplier;
- b. upon Motek-TEAM's request, assist Motek-TEAM in locating an alternative source for the Products and Services and in moving production to the alternate source selected by Motek-TEAM;
- c. take all actions necessary to protect any of Motek-TEAM'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 Motek-TEAM has agreed to acquire from Supplier and return to Motek-TEAM the Motek-TEAM Tooling and other property of Motek-TEAM; and
- e. provide any other termination assistance reasonably requested by Motek-TEAM.

### **34. Electronic Communication.** Supplier will comply with any method of electronic communication specified by Motek-

TEAM, including requirements for electronic funds transfer, electronic signature and communications.

- 35. 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. 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.
- 36. Waiver, Severability, Amendment.** 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.
- 37. 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 the Account Representatives. In the event that any dispute cannot be resolved through negotiation, then either party may pursue litigation in accordance with Section 41 (Governing Law, Remedies, and Construction).
- 38. Governing Law, Remedies, and Construction.** The Agreement will be governed and enforced in accordance with the laws of the State of Minnesota **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 (Warranty, Non-Conforming Products and Recall), Section 16 (Insurance, Indemnification and Liability), Section 22 (Confidentiality), Section 24 (Service Requirements), Section 35 (Termination Assistance), Section 41 (Governing Law, Remedies, and Construction) and Section 43 (Survival).
- 39. Binding Effect.** The Agreement will be binding on the parties and their respective successors and any duly authorized assigns. Supplier warrants to Motek-TEAM and Motek-TEAM 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.