



## LOKEN IMPORTS LLC DBA: FULMER POWER SPORTS

### Company Terms and Conditions of Purchase

**Introduction.** Seller and FULMER (collectively referred to as the "Parties") acknowledge the following mutually beneficial goals and objectives in entering into this Order: (i) to ensure a reliable and timely supply of goods covered by the Order; (ii) to implement common or complementary processes to place orders, ship, receive and make payments for goods; (iii) to identify, contain and resolve promptly and fairly any issues as to timeliness and quality of goods delivered; and (iv) collaboratively to identify opportunities and implement cost savings measures related to the goods covered by the Order and the processes of creating, shipping, receiving, and Seller's using of those goods, all in accordance with applicable law and the specific terms and conditions of the Order. This statement of these shared goals and objectives is intended to be a general introduction to the Order and is not intended to expand or limit the scope of the Parties' obligations or alter the plain meaning of this Order's terms and conditions as set forth hereinafter. However, to the extent the terms and conditions of this Order are unclear or ambiguous, such terms and conditions are to be construed so as to be consistent with the goals and objectives set forth herein.

1. **AGREEMENT.** Seller agrees to sell and deliver the goods or services specified in FULMER's Order in ACCORDANCE WITH THESE GENERAL TERMS AND CONDITIONS CONTAINED IN THE ORDER, INCLUDING THE SUPPLEMENTAL CLAUSES REFERENCED IN THE ORDER, AND ANY DOCUMENTS SPECIFICALLY INCORPORATED IN THE ORDER, all of which constitute the entire and final agreement of the Parties and cancels and supersedes any prior or contemporaneous negotiation, agreements, or information provided to Seller as background in any Request for Proposal. The supplemental clauses referenced herein are as published on the date of the Order or on the date of any amendment to the Order.

By accepting the Order, Seller acknowledges having actual knowledge of the text of the referenced clauses and documents. FULMER'S ORDER EXPRESSLY LIMITS ACCEPTANCE TO THE TERMS OF THE ORDER AND ANY ADDITIONAL OR DIFFERENT TERMS, WHETHER CONTAINED IN SELLER'S FORMS OR OTHERWISE PRESENTED BY SELLER AT ANY TIME, ARE REJECTED UNLESS EXPRESSLY AGREED TO IN WRITING BY FULMER BY INCORPORATION IN THE ORDER. "Order" as used in these General Terms and Conditions means a purchase order transmitted electronically to Seller by FULMER or delivered to Seller in a paper format. The Order may only be modified by FULMER issuance of an amended Order to Seller.

2. **ACCEPTANCE.** This Order constitutes FULMER offer to Seller and is not binding on FULMER until accepted by Seller. Seller accepts this Order: (a) if Seller acknowledges in writing (including any electronic communication) its acceptance of the Order, (b) if Seller performs any work or renders any services related to goods to be specially manufactured for FULMER pursuant to the Order after Seller's receipt of the Order; or (c) if Seller delivers any of the goods or provides any of the services. SELLER SPECIFICALLY WAIVES ANY REQUIREMENT FOR SIGNED ACCEPTANCE OF THE ORDER, AND SELLER AND FULMER EACH WAIVE ANY DEFENSE TO THE VALIDITY AND ENFORCEABILITY OF THE ORDER ARISING FROM THE ELECTRONIC SUBMISSION OF THE ORDER TO SELLER AND SELLER'S ACCEPTANCE OF THE ORDER IN ACCORDANCE WITH THIS CLAUSE 2.
3. **DELIVERY.** Time is of the essence. Delivery must be effected within the time specified in the Order, or in accordance with FULMER's releases, broadcasts, and/or written requirements; provided, however, in the event FULMER's releases, broadcasts, or written requirements request a delivery outside of Seller's stated lead time (as set forth in the Order), FULMER and Seller will agree on a

delivery time as proximate to FULMER'S original request as is commercially reasonable. If Seller fails to make deliveries or perform services at the agreed time, all damages suffered by FULMER as a result of Seller's non-performance, including but not limited to any premium transportation or other costs incurred by FULMER in its efforts to mitigate the impact of Seller's late performance on its operations, will be at Seller's expense.

4. **PACKING, MARKING AND SHIPMENT.** (a) Seller will pack and mark goods and make shipments (including shipping on Saturdays and holidays, when requested) in accordance with FULMER'S instructions, comply with all carrier requirements and assure delivery free of damage and deterioration. Seller is responsible for the goods until delivery at the designated delivery point in the Order. (b) FULMER may specify the carrier and/or method of transportation and Seller will process shipping documents and route shipments of the goods from the delivery point accordingly. Seller will comply with all of FULMER'S transportation routing instructions, including, but not limited to, mode of transportation, utilization of assigned carrier and identification of the shipping point. Seller will be responsible for all excess costs incurred because of its failure to comply with FULMER'S transportation instructions or delivery requirements/schedules.
  
5. **INSPECTION AND REJECTIONS; QUALITY.** FULMER may, in its sole discretion, inspect, evaluate, and test all goods, and all services at times and places designated by FULMER. Seller will perform inspections as designated by FULMER and Seller will make inspection systems, procedures and records available to FULMER upon request. Notwithstanding payment or any prior inspection of goods, FULMER may revoke acceptance, reject or require correction and return the goods to Seller (at Seller's expense and risk of loss) regarding any goods delivered or services rendered that do not conform to applicable requirements. The Order is issued for the goods specifically identified in the Order and any substitution of material, without FULMER'S prior written approval, will be a breach of the Order. Without limiting its remedies, after providing notice to Seller, FULMER may (a) replace or correct any non-conforming goods or services and charge or debit Seller the cost of such replacement or correction, (b) cancel the Order for default and/or (c) commence arbitration or other legal action to recover damages suffered by FULMER.
  
6. **GENERAL WARRANTY.** (a) Seller warrants that the goods will (i) comply with all performance standards and product characteristics, including without limitation specifications, drawings, descriptions or samples, furnished and/or specified by FULMER, (ii) be merchantable, and (iii) be free from defects in material and workmanship. Seller further warrants that to the extent that Seller designs any goods, or FULMER relies on Seller's expertise in any aspect of the design of the goods communicated by Seller to FULMER, those goods will be fit and sufficient for the purposes intended. The warranty term will be coterminous with the warranty extended to FULMER'S customers by FULMER on the date of the Order, or any other date agreed upon by FULMER and Seller in the Order. (b) Seller's liability for FULMER'S expense of reimbursing warranty claims made by FULMER'S customers due to Seller's breach of Clause 6(a) hereof or any warranties implied by law on the date of the Order or on the date of any amendment to the Order. (c) Seller further warrants that FULMER will receive good title upon delivery of goods, under this Order, free and clear of all liens and encumbrances and that all goods, will be free from any actual or claimed patent, copyright or trademark infringement. (d) These warranties are in addition to any warranties implied by law or otherwise made by Seller and will survive acceptance and payment by FULMER.
  
7. **PRICES.** The prices stated in this Order are firm and are not subject to adjustment for changes in volume, changes in the price of raw materials or labor, changes in currency valuation, or for any other reason, unless (a) a clause specifically incorporated in the Order (with FULMER'S written consent) expressly provides that the prices will be adjusted on a particular basis, and then only to the extent

specified in that clause, or (b) a document specifically incorporated in the Order (with FULMER's written consent) expressly provides that the prices will be adjusted on a particular basis, and then only to the extent specified in that document.

**8. INSURANCE AND INDEMNIFICATION.**

(a) Insurance. Seller will obtain and continuously maintain (i) statutory worker's compensation insurance, (ii) employer's liability insurance, (iii) commercial general liability insurance, including contractual liability and products and completed operations liability, (iv) automobile liability insurance, including owned, hired and non-owned liability, (v) crime insurance, including employee theft, and (vi) all-risk property insurance covering Seller's property, and all FULMER property, raw materials and finished products, while in Seller's possession or in Seller's care, custody and control, all in amounts and coverages sufficient to cover all claims hereunder. Unless FULMER instructs otherwise in writing, coverage for specific above-referenced categories of insurance will be not less than the following: \$1,000,000 in employer's liability insurance; \$5,000,000 in commercial general liability insurance; and \$5,000,000 in automobile liability insurance. Such policies will name FULMER as an additional insured thereunder; be primary and not excess over or contributory with any other valid, applicable, and collectible insurance in force for or maintained by FULMER; and provide that the insurer will give FULMER thirty days prior written notice of cancellation or material change in coverage. Seller waives, and Seller will cause its insurers to waive, any right of subrogation or other recovery against FULMER or its subsidiaries, including their respective employees, officers, directors, agents or representatives. FULMER may require Seller to furnish evidence of the foregoing insurance, but FULMER'S failure to request evidence of insurance will in no event relieve Seller of its obligation under this Clause 8. Seller will be financially responsible for any of Seller's premiums, deductibles, retentions, self-insurance, co-insurance, uninsured amounts, or any amounts in excess of policy limits. Seller may satisfy the insurance requirements under this Clause 8 through a combination of self-insurance and catastrophic excess insurance.

(b) Indemnification. Seller will defend, indemnify, and hold FULMER and its subsidiaries, including their respective employees, officers, directors, agents or representatives harmless against all claims, suits, actions or proceedings ("Claims") and pay (i) all liabilities, losses, damages (including without limitation judgments, amounts paid in settlement and other recoveries), (ii) fees and expenses (including without limitation fees of counsel and experts) and (iii) other costs (collectively, "Expenses") in connection with any breach or nonperformance by Seller of the Order, or for injury or death of any person and damage or loss of any property allegedly or actually resulting from or arising out of any act, omission or negligent work of Seller or its employees, agents, or subcontractors in connection with performing the Order, either on FULMER'S property or in the course of their employment (including without limitation, Expenses arising out of, or in connection with any.

**9. CHANGES.** (a) FULMER may, at any time, make changes in the Order including, without limitation, changes to the term of the Order. Any claim by Seller for a change in price adjustment based on costs actually incurred, or to be incurred, as a result of the change must be asserted in writing within ten (10) days from date of receipt by Seller of FULMER'S notification of any change. FULMER will have the right to verify all claims hereunder by auditing relevant records, facilities, work or materials of Seller. Seller agrees to proceed with the Order as changed under this Clause 9. (b) Seller certifies the location(s) from which it will ship the goods covered by the Order are as specified in the Order. If Seller at any time intends to change such location(s), Seller must notify FULMER prior to the change so that the effect of such change can be evaluated, and negotiated as necessary, for its effect on transit time, packaging methods, and any other significant impact on FULMER.

**10. PAYMENT; FULMER'S COMMITMENTS; CLAIMS ADJUSTMENT.** (a) Payment terms are as set forth in the Order. Seller will promptly submit correct and complete invoices or other agreed billing communications with appropriate supporting documentation and other information reasonably required by FULMER (collectively, the "Invoice") after delivery of goods and performance of services, and the payment period set forth in the Order will not commence until FULMER has received a correct

and complete Invoice which meets all of FULMER'S applicable requirements. FULMER will use commercially reasonable efforts to assist Seller in correcting any invoice that has been rejected as incomplete or otherwise incorrect. (b) FULMER is committed to paying Seller the amounts which are due to Seller pursuant to the terms of the Order and these General Terms and Conditions. (c) FULMER may at any time and without notice deduct, set-off, or recoup Seller's claims for money due or to become due from FULMER against any claims that FULMER has or may have arising out of this or any other transaction between FULMER and Seller. (d) Upon Seller's request, FULMER will substantiate the basis for any deduction, set-off, or recoupment within fifteen (15) days of such request or within such other period as may be agreed upon by the Parties.

11. **CUSTOMS; EXPORTS.** (a) Seller will promptly notify FULMER in writing of material or components used by Seller in filling this Order, which Seller purchases in a country other than the country in which the goods are delivered to FULMER and any duty included in the purchase price of the goods. Seller will furnish FULMER with any documentation and information necessary to establish the country of origin, comply with the destination country's rules of origin requirements, any special trade programs, and content reporting. (b) The rights to and benefits of any duty drawback, including rights developed by substitution and rights which may be acquired from Seller's suppliers and export credits, to the extent transferable to FULMER, are the property of FULMER. Seller will provide all documentation and information and take any necessary steps to obtain refunds or to drawback any duty, taxes or fees paid, and to receive export credits from, the government of the country of origin or export country. (c) The responsibility for customs duty and customs brokers' fees will be determined in accordance with the delivery point and transportation code stated in the Order. If FULMER is responsible for customs duties, it will be responsible for normal duties only. Seller will be responsible for any special duties, including but not limited to, marking, anti-dumping and countervailing duties, to the extent permitted under the law of the country of importation. (d) Seller will provide FULMER with all documentation and information required by law or regulation or otherwise necessary to determine admissibility, timely release, customs clearance and entry, and the proper minimum duty to be paid upon the importation of the goods into the destination country. (e) Seller will advise FULMER if the importation of the goods requires an import license and will assist FULMER in obtaining any such license. (f) Seller warrants that the information regarding the import or export of the goods supplied to FULMER is true and correct, and that all sales covered by this Order will be made at not less than fair value under the anti-dumping laws of the countries to which the goods are exported. (g) Seller must comply with all pertinent requirements of U.S. Customs and Border Protection's supply chain security program known as C-TPAT or a local security program recognized by U.S. Customs and C-TPAT. Seller must seal international shipments with a high security seal that meets C-TPAT standards. (h) Seller and FULMER recognize that export control regulations may limit or prohibit the transfer of items to foreign nationals, including foreign nationals in the United States. The goods, services and/or technical data (collectively "Items") delivered under this Order may be subject to U.S., foreign and other applicable export control laws and regulations (collectively "Export Control Laws"), including, but not limited to, the International Traffic in Arms Regulations or the Export Administration Regulations (collectively "U.S. Export Laws") and/or (Export Control List(s)). Seller and FULMER will comply with all U.S. and other country's applicable Export Control Laws and shall not export, re-export or transfer items without first obtaining all required licenses and approvals. Any penalty, fine, expense (including reasonable attorneys' fees) or liability incurred by FULMER as a result of violation(s) of U.S. or foreign export control laws and regulations, or this clause, by the Seller, will be promptly reimbursed by Seller. Items that are identified during the course of this Order will be handled in the following manner: (1) the sending party will notify the other party of the Item's export classification prior to any shipment or transmission; (2) the party receiving notice under (1) above shall have an opportunity to accept or reject the delivery of the Item prior to shipment or transfer by the sending party; (3) FULMER and Seller will make reasonable efforts to cooperate in obtaining required licensing and implementing required internal controls for the involved Items; (4) rejection of an Item will not constitute a breach of this agreement; and (5) FULMER and Seller will assess the impact of the Item's rejection to determine if the Order can continue. Any notice regarding export controls will be in writing

and sent to the FULMER. Compliance with these laws and regulations includes, but is not limited to, abiding by U.S. sanctions, embargoes and prohibitions on transactions with restricted parties. This includes, but is not limited to, the prohibition on the transfer of commodities, materials, software and technology (i.e., all Items) subject to this agreement, to U.S. sanctioned countries (e.g., Iran, Syria, North Korea, Sudan, and Cuba).

12. **USE OF FULMER'S NAME.** Seller will not, without the prior written consent of FULMER, in any manner publish the fact that Seller has furnished or contracted to furnish FULMER goods and/or services, or use the name or trademarks of FULMER, its products, or any of its affiliated companies in Seller's advertising or other publication. Seller will not place its, or any third party's trademark or other designation on the good if the good bears a FULMER trademark or an identifying mark specified by FULMER, or if the good is peculiar to FULMER'S design (a "Marked Good"). Seller warrants that (i) it will sell each Marked Good, and similar goods, only to FULMER and (ii) it will not sell any Marked Good or similar goods to third parties without FULMER'S prior written consent. Seller acknowledges that any sale by Seller of a Marked Good in violation of this Clause 12 is a willful violation of FULMER'S trademark rights. Any goods manufactured by Seller based on FULMER'S drawings, specifications, or other information disclosed to Seller by FULMER in connection with the Order may not be used for Seller's own use or sold to any third parties without FULMER's prior express written authorization.
13. **INFORMATION DISCLOSED; DATA RIGHTS; TRADEMARKS.** (a) "FULMER Data" means (i) all information and data that FULMER makes available to Seller in connection with the performance of the Order, including without limitation performance standards, product characteristics, specifications, drawings, descriptions, samples, designs, manufacturing data and other information, and (ii) any and all data (excluding Seller-provided data regarding its internal costs of producing goods or services that it provides to FULMER under the Order) that is entered into or processed by Seller directly or indirectly using any system that Seller owns or controls directly or indirectly for the purpose of performing Seller's obligations under the Order; provided, however, with respect to any and all data encompassed by any intellectual property conceived, developed, or acquired by Seller in the course of performing work under the Order, the rights to such data (whether ownership or license) shall be determined by the rights to the intellectual property of which such data is a part as set forth in the applicable supplemental clause or clauses referenced in the Order. (b) FULMER owns and retains all of its right, title and interest in FULMER Data, including any FULMER patents, patent applications, copyrights, trade secrets, trademarks, trade dress, and any other proprietary rights in FULMER Data, and in any derivative or improvement of any FULMER Data made by FULMER or by Seller as Work Product. Unless expressly provided in the Order or otherwise agreed to in a writing signed by FULMER, no rights or license is granted under the Order to use FULMER Data other than the right for Seller to use FULMER Data as required to perform Seller's obligations under this Order. Seller will not use or disclose FULMER Data for any other purpose. Seller will handle all FULMER Data in such a manner to insure that it is not used for any purpose detrimental to the interests of FULMER. Seller may not disclose FULMER Data to any third party without FULMER'S prior written consent. Seller agrees to immediately discontinue any use of FULMER Data and/or items bearing designated FULMER-owned trademarks or logos upon FULMER'S request or at the termination of the Order and agrees to do one or more of the following at FULMER'S option: (1) destroy any such item and present to FULMER an affidavit of destruction; (2) return to FULMER any such item; or (3) remove and destroy any FULMER-owned trademark or logo from any such item and present to FULMER an affidavit of removal and destruction. (c) Any rights that Seller may have to disclose, manufacture, use or distribute goods or services developed under or related to this Order in each case are subject to Seller's obligations concerning FULMER Data set forth in this Clause 13.
14. **PATENTS; NONINFRINGEMENT WARRANTY AND INDEMNITY.** No rights are granted to Seller under any FULMER patents except as may be necessary to fulfill Seller's obligations under the Order. Seller represents and warrants that any good or service provided under the Order or any work product resulting from any services performed by Seller under the Order ("Work Product"), including use of any Work Product for its intended purpose or making, having made, selling, offering to sell, importing, or using any good made by using the Work Product for its intended

purpose, will not infringe any Intellectual Property of any third party. Seller agrees to investigate, defend, indemnify and hold harmless FULMER, its affiliated companies, their respective customers, distributors and dealers, and their respective customers, against any and all Claims made against any of them that any good or service or any Work Product, including use of any Work Product for its intended purpose or making, having made, selling, offering to sell, importing, or using any good made by using the Work Product for its intended purpose, infringes any Intellectual Property of any third party. Seller will pay all Expenses that are incurred or sustained by reason of any such Claim.

15. **ASSIGNMENT.** The Order may not be assigned or delegated, in whole or in part, without FULMER'S prior written consent, including, but not limited to, the subcontracting of work to be performed hereunder or the transfer of FULMER Tooling to third parties for the performance of work hereunder, and any attempted assignment or delegation in violation of this Clause 15 will be void and of no legal effect.
16. **CANCELLATION FOR DEFAULT.** (a) FULMER may cancel the whole or part of this Order without liability, except for payment due for goods and services delivered and accepted, and may exercise any of its legal rights, including without limitation its remedies under Clause 17 of these General Terms and Conditions, upon the occurrence of any of the following specified events (each an "Event of Default"):
- (1) Seller fails to timely deliver goods or perform services and Seller fails to give FULMER a remediation plan within one day of FULMER's notice to Seller of such failure, obtain FULMER's acceptance of such plan, and perform such plan to FULMER's satisfaction; or
  - (2) Seller violates any other provision in, fails to meet any other requirements contained in, or fails to perform any other provision under the Order at the time specified therein and to the extent such other failure is capable of being cured, fails to so cure such failure within thirty (30) days after such Event of Default; or
  - (3) Seller (i) becomes insolvent or generally fails to pay, or admits in writing its inability to pay, its debts as they become due, or (ii) voluntarily commences any proceeding or files any petition under any bankruptcy, insolvency or similar law or seeking dissolution, liquidation or reorganization or the appointment of a receiver, trustee, custodian, conservator or liquidator for itself or a substantial portion of its property, assets or business or (iii) takes corporate action for the purpose of effecting any of the foregoing in (i) or (ii) above; an order for relief is entered in a case under the Bankruptcy Code in which Seller is a debtor; or involuntary proceedings are or an involuntary petition is commenced or filed against Seller under any bankruptcy, insolvency or similar law, unless any such petition is dismissed within forty-five (45) days; or
  - (4) Seller repudiates the Order (absent a legal right to do so,) in writing, including via e- mail, takes any action evidencing its intention not to perform (including threatening non- delivery of goods), or omits to take any action required to be performed by Seller, which is necessary for Seller to timely deliver goods and services under the Order; or
  - (5) Seller fails to pay any trade payables or other accounts payable owed to FULMER, or its subsidiaries or affiliates, incurred in the ordinary course of such Seller's business that are not reasonably disputed and have been outstanding for more than sixty (60) days after the date such payable is due.
- (b) Seller may terminate this Order due to FULMER'S material breach of the Order that is not remedied within thirty (30) days of Seller's notice to FULMER of the material breach.
- (c) Upon Seller's receipt of any notice of termination under this Clause 16, Seller will stop work on the date and to the extent specified in such notice and terminate all orders and subcontracts that relate to the terminated Order or the applicable terminated portion thereof.

(d) If a Court of competent jurisdiction determines that any purported termination by FULMER under this Clause 16 was made without legally sufficient cause, then the purported termination will be a termination subject to Clause 17 of these General Terms and Conditions, and Seller's remedies, if any, will be limited to those set forth in Clause 17.

**17. TERMINATION AT FULMER'S OPTION.** (a) Upon giving Seller written notice of termination at FULMER'S option, FULMER may terminate this Order in whole or in part at any time, and for any business reason; provided, however, FULMER may not terminate the Order pursuant to this Clause 17 for Seller's cost competitive deficiencies unless Seller has had notice and opportunity to cure such deficiencies. (b) Upon Seller's receipt of any notice of termination at FULMER'S option, Seller will, within fifteen (15) days thereafter (during which time FULMER will review any request by Seller for reconsideration of the termination notice, but FULMER will be under no obligation to change its decision), stop work at such time and to the extent specified in such notice, terminate all orders and subcontracts that relate to the terminated Order or the applicable terminated portion thereof, and cooperate reasonably with FULMER in wind- down related functions. Within sixty (60) days after the effective date of such termination, Seller will submit all claims resulting from such termination. Seller may not include in its claim (i) selling, general or administrative costs, (ii) interest costs or the cost of capital, (iii) lost profit or lost opportunity costs, (iv) fixed overhead absorption, (v) capital equipment, (vi) facility costs, (vii) plant modification costs, (viii) labor assignment costs, including without limitation severance costs or labor inefficiencies, (ix) training costs, and (x) other costs related to obtaining the Order. In the case of tooling for which FULMER has issued an Order that has not been completed, Seller's claim may include substantiated actual costs incurred for direct labor, direct material, and applied factory overhead, but must be reduced by the amount of the scrap value of the not yet completed tooling. FULMER will have the right to verify such claims by auditing the relevant records, facilities, work or materials of Seller and/or its subcontractors. FULMER will pay Seller for finished work accepted by FULMER as well as for the documented cost to Seller of work in process and raw material allocable to the terminated work which is not in excess of any prior FULMER authorization. Payment of a valid claim made under this Clause 17 will constitute FULMER'S only liability for termination hereunder with title and right of possession to all delivered goods and services vesting in FULMER immediately upon FULMER's tender of such payment. The provisions of this Clause 17 will not apply to any cancellation by FULMER for default by Seller or for any other cause recognized by law or specified by this Order. If a dispute arises regarding the amount of such costs to which Seller is entitled hereunder, then the dispute will be finally resolved in accordance with Clause 21 below, and, to the extent that the termination is only a partial termination of the Order, FULMER will not be in material breach of the Order for failing to pay the amount of costs claimed by Seller prior to conclusion of an adjudication pursuant to Clause 21 hereof.

**18. REMEDIES.** (a) Upon the occurrence of any Event of Default, FULMER will have the right to cancel or terminate in whole or part the Order, take possession of and title to all or any part of any work performed by Seller under this Order upon written notice to Seller, and take any other action permitted under applicable law. FULMER will also have the right to take immediate possession of any and all of FULMER tooling at any time without payments of any kind to Seller. Should FULMER elect to exercise such right, Seller must cooperate with FULMER in FULMER'S taking possession of FULMER'S tooling, including allowing access to Seller's facilities. (b) If FULMER exercises its right to terminate or cancel the Order in whole for the occurrence of an Event of Default by Seller, then:

i. Seller grants to FULMER a non-exclusive, world-wide, paid-up, irrevocable license under any intellectual property of Seller that is incorporated into or used to make or design the goods or Work Product, to make, have made, sell, offer for sale, import or export or modify such goods or Work Product. The license granted to FULMER under this Clause 18(a)(i) will remain in effect for the life of the applicable vehicle program(s) in which such goods or Work Product are utilized (now or in the future), including any service parts therefor;

ii. In addition, upon written request from FULMER, Seller will provide the following for such goods or Work Product: (A) any design aides, including without limitation, any

computer aided design data and design aides, (B) specifications, (C) bills of material, (D) Seller information for any purchased components used in such goods or Work Product, and (E) manufacturing process information regarding such goods or Work Product; and

- iii. To the extent FULMER may have paid for prototype tooling for the goods or Work Product under a separate purchase order or other agreement, then in order to ensure that FULMER could make full beneficial use of the rights provided in this Clause 18, Seller will provide the following for such goods and Work Product: (a) any prototype tools (e.g. dies and molds), including without limitation, any computer aided design data for such prototype tools, and (b) in each case as applicable, the specifications, bills of material, Seller information for any purchased components used in such prototype tools, and manufacturing process information regarding such prototype tools.

(c) In addition to all other rights and remedies, FULMER may, upon fourteen (14) days' written notice to Seller of actual or threatened recurring non-performance concerning capacity or quality, engage (or require that Seller engage) a third party acceptable to FULMER for the purpose of supporting Seller's remediation of such capacity or quality deficiencies. Seller will pay all costs associated with such remediation efforts, and will reimburse FULMER for any reasonable costs incurred by FULMER hereunder, which may be recovered by means of FULMER'S rights of setoff, recoupment, or deduction.

(d) FULMER'S rights and remedies herein reserved to FULMER are cumulative and in addition to any other rights and remedies available at law or equity. No waiver of any breach of (i) any provision of this Order, or (ii) any agreed-upon cure remediation plan arising under these General Terms and Conditions, will constitute a waiver of any other breach or a waiver of such provision.

#### **19. DISPUTE RESOLUTION; GOVERNING LAW.**

(a) The Order and all transactions between FULMER and Seller will be governed by and construed in accordance with the laws of Wisconsin as if entirely performed therein. The 1980 United Nations Convention on Contracts for the International Sale of Goods is not intended to and does not apply to the Order or any transactions pursuant hereto, and FULMER and Seller specifically waive its application to the Order or any transactions pursuant hereto.

(b) For all disputes arising out of the Order, Seller irrevocably consents to the personal jurisdiction of the state and federal courts in and for Brown County, Wisconsin, USA, and irrevocably waives any claim it may have that any proceedings brought in such courts have been brought in an inconvenient forum. Any suit regarding or relating to this Order may only be brought in the state or federal court in and for Brown County, Wisconsin, USA, which are the exclusive venue for any such suit.

**20. ELECTRONIC COMMUNICATION.** FULMER may prescribe any aspect of electronic communication between Seller and FULMER, and Seller will follow each of FULMER'S prescriptions regarding any of those aspects.

**21. SURVIVAL.** The provisions of these General Terms and Conditions of the Order intended by their terms to survive termination, cancellation or expiration of the Order will survive any termination, cancellation or expiration of the Order.

**22. NOTICE.** Notices must be in writing. E-mail notification will be sufficient and acceptable written notice. Any e-mail notice sent will be deemed to have been received on the second business day after such notice was sent (if not first rejected by automatic response). Any written notice sent using

any other manner will be deemed to have been received upon the earlier of (i) actual receipt by the party to whom the notice is directed, and (ii) the second business day after delivery, in the case of U.S. and Canadian deliveries, or the fifth business day after delivery for all other deliveries. Any notice to FULMER must be sent to its head of Production Purchasing.

23. **SEVERABILITY.** If any term of the Order is invalid or unenforceable under any law, regulation, executive order or other rule of law, such term will be deemed to be reformed or deleted, as the case may be, but only to the extent necessary to comply with such law, regulation, order or rule, and the remaining provisions of the Order will remain in full force and effect.
24. **TAXES.** The goods purchased hereunder are for resale or for an exempt purpose and are exempt from state and local sales or use taxes.