



**VOLKSWAGEN GROUP OF AMERICA  
CHATTANOOGA OPERATIONS, LLC**

**NON-PRODUCTION STANDARD TERMS AND CONDITIONS**

*Effective September 1, 2014*

# VOLKSWAGEN GROUP OF AMERICA CHATTANOOGA OPERATIONS, LLC

## NON-PRODUCTION STANDARD TERMS AND CONDITIONS

*September 1, 2014*

Unless otherwise specifically detailed in writing and signed by the parties hereto (sometimes referred to herein as a “Party” and collectively as “Parties”), the following Non-Production Standard Terms & Conditions (“Terms”) apply to all contracts, agreements, Purchase Orders, SOWs, formal Change Orders, and business relations of any kind (collectively referenced herein as an “Order”), between Volkswagen Group of America Chattanooga Operations, LLC (“VWLLC”) and its suppliers (each, a “Supplier”). These Terms apply to Orders for Goods, Services and/or Goods and Services, as the case may be.

### **1 Definitions; General Obligations**

- 1.1 Defined Terms. In addition to the defined terms as otherwise contained in this document and associated Orders, the following terms shall have the meanings herein specified unless the context otherwise requires. Defined terms herein shall include in the singular number, the plural, and in the plural, the singular.
  - 1.1.1 “Affiliate” shall mean, with respect to any Person, any other Person directly or indirectly controlling (including without limitation all employees, directors and officers of such Person), controlled or under direct or indirect common control with such Person. A Person shall be deemed to control an entity if such Person possesses, directly or indirectly, the power to direct or cause direction of the management and policies of such entity, whether through the ownership of voting securities, by contract or otherwise. The foregoing notwithstanding, a Subcontractor of Supplier is considered an Affiliate and shall be subject to all of the obligations of Supplier stated herein.
  - 1.1.2 “Business Day” shall mean any day on which VWLLC is open for business. Unless otherwise stated, any references to a number of “days” shall mean calendar days.
  - 1.1.3 “Business Owner” shall mean that person who a Party may designate in an SOW or Purchase Order who has responsibility for the project as defined in the SOW or other Order documents and who has authority to direct the project, agree to and sign Change Orders, and is the main point of contact for the Party. In the absence of a specific designation, the person who signs the SOW or Purchase Order shall be the Business Owner.
  - 1.1.4 “Facility” shall mean any building or facility to the extent owned, leased or otherwise controlled by a Party where any obligation under the Order is to be performed.
  - 1.1.5 “Goods” shall mean collectively or individually, the products, software, equipment, supplies and any other goods which VWLLC may purchase from Supplier under the Purchase Order.
  - 1.1.6 “Person” shall mean any individual or joint venture, partnership, corporation or other business or legal entity.
  - 1.1.7 “Order” shall mean all contracts, agreements, Purchase Orders, SOWs, formal Change Orders, and business relations of any kind between VWLLC and Supplier.
  - 1.1.8 “Personnel” shall mean the officers, directors, agents and employees of any Party.
  - 1.1.8 “Purchase Order(s)” shall mean any written, electronic or other order(s) issued by VWLLC to Supplier under the Order for the specific purchase of Goods or Services, including those orders issued by VWLLC to Supplier through VWLLC’s Order Hub.

- 1.1.9 “Services” shall mean, collectively or individually, the services and tasks which Supplier will provide or render for or on behalf of VWLLC under the Order.
- 1.1.10 “SOW(s)” shall mean a statement of work entered into between the Parties and which shall set forth in detail the unique purchase requirements pursuant to which the Goods and/or Services shall be produced and rendered including without limitation the specifications, technical requirements, project milestones, delivery dates and charges for the Goods and Services. SOWs may also contain service level agreements and other terms and conditions.
- 1.1.11 “Third Person” shall mean a Person, including its employees, contractors or agents that is not a Party to the Order.

## **2 Offer; Acceptance; Exclusive Terms**

- 2.1 General. Each Order incorporates by reference and is governed by these Terms. Each Purchase Order or revision thereof issued by VWLLC is an offer to the Supplier identified on the Purchase Order for the purchase of Goods and/or Services. When accepted, a Purchase Order supersedes all prior agreements, purchase orders, quotations, proposals and other communications regarding the Goods and/or Services covered by the Purchase Order, except that a prior agreement signed by an authorized representative of VWLLC (e.g. the Order, an RFQ or Non-Disclosure Agreement) will continue to apply. Supplier accepts a Purchase Order, including these Terms, and forms a contract by doing any of the following: (a) commencing any work under the Purchase Order; (b) accepting the Purchase Order in writing; or (c) any other conduct that recognizes the existence of a contract with respect to the subject matter of the Purchase Order. The Purchase Order does not constitute an acceptance of any offer or proposal made by Supplier. Any reference in the Purchase Order to any offer or proposal made by Supplier is solely to incorporate the description or specifications of Goods and/or Services in the prior proposal, but only to the extent that the description or specifications do not conflict with the description and specifications in the Purchase Order. Any additional or different terms proposed by Supplier, whether in Supplier’s quotation, acknowledgement, invoice or otherwise, shall be deemed a material alteration of these Terms, and are hereby objected to and rejected by VWLLC; provided, that any such proposal or attempted variance shall not operate as a rejection of the Purchase Order if Supplier accepts VWLLC’s offer by commencement of work, shipment of the Goods, acceptance of the Order in writing or by other means acceptable to VWLLC, in which case the Purchase Order shall be deemed accepted by Supplier without any additional or different terms or variations. **Each Purchase Order is limited to and conditional upon Supplier’s acceptance of these Terms exclusively.** An Order and these Terms, and any attachments thereto, shall be considered the complete agreement between VWLLC and Supplier with respect to the subject matter hereof and shall supersede any prior or contemporaneous agreements relating thereto. Any modification of these Terms must be expressly stated in the Order. Each Order can be modified only in accordance with Section 3. In the event of a conflict, a signed agreement shall take precedence over a Purchase Order, and a Purchase Order shall take precedence over these Terms. References herein to “including” shall be deemed to mean “including, but not limited to,” or “including, without limitation” or such similar meaning.
- 2.2 Cooperation. Each Party will reasonably cooperate with the other Party in connection with its obligations under the Order. Such cooperation will include (i) cooperating with and coordinating work, schedules and other performance obligations with other suppliers and/or Subcontractors who are also performing work at the Facility and (ii) informing the other Party of all management decisions, conditions or other occurrences that the Party reasonably expects to have a material effect on the obligations required to be performed by that Party under the Order, including without limitation providing written notice to VWLLC of any condition or occurrence which Supplier reasonably believes may affect Supplier's, VWLLC's or any Subcontractor's schedules.
- 2.3 Conduct; Safety; Removal. While at a VWLLC Facility, Supplier shall be responsible for its Personnel, Subcontractors and Affiliates. Supplier and its Personnel, Subcontractors and Affiliates will conduct themselves (including attire) in a business-like and professional manner and will comply with VWLLC’s reasonable requests, rules and regulations, including with respect to personal conduct, safety, including the

wearing of protective clothing or gear if applicable, parking, building access, identification badges, and security rules and regulations, of which Supplier has been notified in writing or of which Supplier should reasonably be aware. VWLLC may, upon giving written notice to Supplier, require Supplier to reassign, replace or remove any individual or Subcontractor performing services under the Order when VWLLC determines that the performance of such individual or Subcontractor is such that it has an adverse impact on VWLLC. Supplier will, on receipt of such written notice, begin diligent efforts to address VWLLC's concerns. If Supplier has not, in VWLLC's reasonable determination, addressed VWLLC's concerns within five (5) working days from date of written notice by resolving the issue or providing an action plan with respect thereto, Supplier will reassign, replace or remove such individual or Subcontractor and complete such reassignment, replacement or removal as soon as practicable at no cost to VWLLC. In addition, VWLLC may, on giving written notice to Supplier, and at no cost to VWLLC, require the immediate removal of any individual or Subcontractor who has violated any safety or security rules or regulations, or any other policies or procedures, of which VWLLC has made Supplier aware, or violated any laws or regulations in the course of performing services under the Order or breached any of the provisions of the Order and/or these Terms. Supplier represents and warrants that it is aware of and will abide by VWLLC drug and alcohol testing requirements and that it is in full compliance therewith. Supplier agrees to maintain the highest standards of moral, legal and ethical conduct and to safeguard and promote the reputation of VWLLC and its products. Supplier shall refrain, and shall ensure that its Personnel and Affiliates, and Subcontractors, refrain, from making any negative comments about VWLLC throughout the term of the relevant Order and for a period of no less than twelve months after the expiration of the Order. Supplier shall take all appropriate measures to verify that all Personnel performing services at a VWLLC Facility are legally eligible to work in the United States and Tennessee and/or any other state in which such Personnel perform services. Supplier shall complete, execute and maintain all forms and documentation, including a federal Form I-9, for all Personnel performing services at a VWLLC Facility. Supplier shall not knowingly or intentionally direct or allow any of its Personnel to enter a VWLLC Facility or to perform any services of any nature who is not legally eligible to work in the United States and Tennessee and /or any other state in which such Personnel may enter a VWLLC Facility or perform services. Upon VWLLC's request and subject to applicable law, Supplier shall make available to VWLLC the employment, qualification and training records and documentation of its Personnel, including Form I-9 and other records and documentation regarding the eligibility of Supplier's Personnel to work in the United States and Tennessee and/or any other state in which such Personnel perform services. If Supplier provides Services at a VWLLC Facility, Supplier will examine the Facility to determine whether the Facility is safe for the Services and will advise VWLLC promptly of any situation it deems to be unsafe. Supplier shall be solely responsible for, and VWLLC shall have no liability for, any loss, expense, damage or claim arising out of, or in connection with, the performance of Services at a VWLLC Facility.

#### 2.4 Subcontractors.

- 2.4.1 Subject to the terms of this Section 2.4, Supplier may engage Subcontractors to produce the Goods and perform the Services associated with the Order or other obligations to be performed by Supplier under the Order, provided that Supplier will remain fully responsible for the work, activities and other obligations of its Subcontractors and will insure that its Subcontractors perform the Work as authorized by and pursuant to their respective engagements with Supplier. Prior to engaging a Subcontractor, Supplier will notify VWLLC in writing and provide any information that VWLLC may reasonably request regarding such Subcontractor. If VWLLC does not object within thirty (30) days after receiving written notice and all requested information, Supplier may engage such Subcontractor. Supplier represents and warrants that any Subcontractor shall be subject to all of Supplier's obligations, responsibilities and warranties under the relevant Order, and that Supplier will ensure the compliance of all Subcontractors with the terms of the Order for which the Subcontractor has been engaged (including these Terms and ensuring that all Subcontractors comply with the insurance requirements and Personnel documentation and other work eligibility and qualification provisions set forth in these Terms). VWLLC reserves the right to check at any time the qualifications and performance of any Personnel of Supplier or its Subcontractors. For purposes of these Terms, "Subcontractor" refers to an independent Third Person of any tier engaged, either directly by VWLLC or indirectly through another independent Third Person, to produce Goods and/or perform Services associated with the Order or other obligations to be performed by Supplier under the Order.

- 2.4.2 Subcontractor Reviews. At VWLLC's request, the Parties will review the performance of any Subcontractor. Matters discussed at such reviews may include without limitation any work performed by a Subcontractor. If VWLLC determines that the performance of the Subcontractor, including any of its Personnel, does not conform to the Order or is otherwise unacceptable, VWLLC may, without liability, remove or terminate or require the removal or termination of such Subcontractor or Personnel. If VWLLC removes or terminates, or requires the removal or termination, of any Subcontractor or Personnel, Supplier shall ensure that any replacement Subcontractor or Personnel will perform the Services of the removed Subcontractor or Personnel at the same price.
- 2.5 Travel Expenses. All travel undertaken by Supplier, its Personnel or Subcontractors pursuant to the Order shall be at Supplier's expense.

### **3 Change Orders**

- 3.1 General. All changes to the Order, including to an SOW or a Purchase Order, ("Change(s)") shall be made through the change order process described in this Article 3. The Parties agree that (i) no Change which is reasonably expected to affect the function or performance of any Goods or Services will be implemented without prior consultation between the Parties; and (ii) all approved Changes will be formalized in a change order ("Change Order") executed by both Parties.
- 3.2 Requests for Changes. All requests for Changes by a Party will be communicated in writing by that Party's Business Owner to the other Party's Business Owner. Any request for Changes will include a detailed description of the Change requested, the projected schedule and timing for the Change and the priority of the Change.
- 3.3 Change Documentation. Within five (5) Business Days after receiving a request from VWLLC for a Change, Supplier will prepare and provide to VWLLC a document summarizing the effect, if any, of the proposed Change on (i) the scope of the Goods or Services; (ii) Supplier's and VWLLC's obligations under the Order; and (iii) the budget or price for the Change. In addition, Supplier will inform VWLLC in such document regarding any other business impact Supplier believes to be relevant to VWLLC's evaluation of the proposed Change. Within ten (10) Business Days after receiving such information, VWLLC will confirm or withdraw the request for the Change. In the event that Supplier initiates the request for Change, it shall submit to VWLLC along with its request the information set forth in clauses 3.3 (i), (ii) and (iii) above. VWLLC shall have ten (10) Business Days after receipt of the request for Change to approve or reject the request.
- 3.4 Change Process. All Changes shall be requested using the following process:
- a) Party will specify the Change.
  - b) Supplier will provide the applicable quotes, providing one (1) quote if the Change amount is less than \$10,000, three (3) quotes if the Change amount is between \$10,001 and \$70,000, and a Request for Proposal/Quote if the Change amount is greater than \$70,000.
  - c) Supplier submits Change Documentation to VWLLC for review.
  - d) VWLLC either approves or rejects the quote and provides meeting minutes and issues a Change Order or revised Purchase Order.
  - e) Upon approval by VWLLC, Supplier accepts the Changes and executes and accepts the Change Order or revised Purchase Order upon approval

### **4 Goods and Services**

- 4.1 Goods and Services. VWLLC may, during the Term of the Order, purchase the Goods and Services as described in the applicable Order. Except as may be otherwise expressly negotiated and stated in the Order, VWLLC shall have no obligation to purchase all of its requirements for the Goods and Services from Supplier and in the absence of an express declaration to that effect, the Order shall not be deemed to be a requirements contract. Supplier shall produce the Goods and perform the Services as ordered by VWLLC in accordance with the Order and shall, unless otherwise provided in the Order, provide and pay

for labor, materials, equipment, tools, utilities, transportation, and other facilities and services necessary for proper execution of Supplier's obligations under the Order, whether temporary or permanent and whether or not incorporated or to be incorporated into the Goods and Services. Supplier shall follow all written instructions from VWLLC. VWLLC shall not be responsible for verbal instructions given by any other Persons or for Supplier's interpretations of the Terms and/or other Purchase Order, SOW or other part of the Order. Supplier shall keep the Goods and Services, as well as VWLLC's Facility and any other property leased or owned by VWLLC, free and clear of any and all liens, encumbrances and claims arising out of or relating to the Order.

- 4.2 Ordering. VWLLC may, during the Term of the Order, order additional or incremental Goods and Services from Supplier under the Order by issuing to Supplier a signed Change Order or Purchase Order. Each Change Order or Purchase Order shall specify the description, quantity, purchase prices and fees, special requirements, if any, delivery dates, shipping terms and any additional terms as mutually agreed upon between the Parties for the Goods and/or Services ordered by VWLLC from Supplier (collectively, the "Order Terms"). Supplier shall not fabricate or ship any Goods or provide any Services except to the extent authorized in VWLLC's written Orders.
- 4.3 Shipping, Risk of Loss and Title. Except as otherwise stated in the Order, VWLLC requires that Supplier ship Goods DDP VWLLC's designated Facility. Shipping, including carriage, shall be arranged by Supplier. Except as otherwise stated in the Order, Incoterms 2010 shall apply to all shipments. Notwithstanding anything to the contrary, unless specified in the Order, title and risk of loss or damage to the Goods shall pass to VWLLC upon delivery, without prejudice to VWLLC's rights to reject or return Goods pursuant to the Terms.
- 4.4 Packing. VWLLC will hold Supplier responsible for, and Supplier represents and warrants that Goods shall be properly, safely and carefully packed, prepared, secured and stowed for shipment, including loading, unloading, handling, storing, carrying, keeping, caring for, protecting and transporting the Goods, from the point of shipment until they reach and are accepted by VWLLC at its final destination, whether on or off vehicles, in temporary storage, or not in Supplier's physical care, custody and control. Supplier represents and warrants that it will select transportation methods and carriers using reasonable care. Drivers are to be legally licensed and professionally trained in the handling, loading, unloading and transport of Goods. Any additional freight, cartage or other cost incurred, directly or indirectly, resulting from Supplier's failure to observe the conditions set forth in these Terms shall be charged to Supplier's account. Without any limitation or waiver of any rights, VWLLC may require Supplier, at Supplier's expense, to ship Goods express, by air or by any special method if Supplier fails to meet the delivery requirements of the Order. Damaged Goods will be returned to Supplier at Supplier's expense.
- 4.5 Acceptance of Goods and Services. Except as otherwise stated in the Order, acceptance by VWLLC of Goods or Services shall occur when the Goods have been satisfactorily delivered, inspected, and installed, or the Services have been fully performed, and the Goods and Services meet all applicable performance criteria set forth in the Order. VWLLC shall inspect and notify Supplier in writing within a reasonable time from the date the Goods and Services have been received, whether VWLLC has rejected the Goods or Services (the "Acceptance Period"). VWLLC's payment of any invoice shall not be deemed to be acceptance of the Goods or Services, and its acceptance of the Goods or Services shall not be construed as evidence that the Goods or Services do, in fact, conform in all respects with the Goods and Services requirements set forth in the Order, or as a waiver of Supplier's warranty obligations as contained herein.
- 4.6 Customs Related Matters. Credits or benefits resulting from the Order, including trade credits, export credits or the refund of duties (including duty drawback), taxes or fees, belong to VWLLC. Supplier, as identified in the Purchase Order, will provide all information and certificates (including FTA certificates NAFTA Certificates of Origin) necessary to permit VWLLC to receive these benefits or credits. Supplier agrees to notify VWLLC of any Goods or Services which are subject to United States or any other country's import or export laws and to fulfill any customs- or FTA or NAFTA-related obligations, origin marking or labeling requirements, and local content origin requirements. Supplier shall notify VWLLC in writing of any Goods subject to U.S. export laws and regulations, including any changes to local, state or FTA or NAFTA content, which in each case are subject to VWLLC approval. Export licenses or

authorizations necessary for the export of Goods are Supplier's responsibility unless otherwise stated in the Order, in which case Supplier will provide the information necessary to enable VWLLC to obtain the licenses or authorizations. Supplier will promptly notify VWLLC in writing of any material or components used by Supplier in filling the Order that Supplier purchases in a country other than the country in which the Goods are delivered. Supplier will furnish any documentation and information necessary to establish the country of origin or to comply with the applicable country's rules of origin requirements. Supplier will promptly advise VWLLC of any material or components imported into the country of origin and any duty included in the Goods' purchase price. If Goods are manufactured in a country other than the country in which Goods are delivered, Supplier will mark Goods "Made in [country of origin]." Supplier will provide to VWLLC and the appropriate governmental agency the documentation necessary to determine the admissibility and the effect of entry of Goods into the country in which Goods are delivered. This will include supporting documentation required by Customs and Border Protection and any other governmental agencies, including, without limitation, the United States Department of Transportation (DOT), Environmental Protection Agency (EPA), and Food and Drug Administration (FDA). Supplier warrants that any information that is supplied to VWLLC about the import or export of Goods is true and that all sales covered by the Order will be made at not less than fair value under the anti-dumping laws of the countries to which the Goods are exported. To the extent any Goods covered by the Order are to be imported into the United States of America, Supplier shall comply with all applicable recommendations or requirements of the Bureau of Customs and Border Protection's Customs-Trade Partnership Against Terrorism ("C-TPAT") initiative. Upon request, Supplier shall certify in writing its compliance with the C-TPAT initiative and shall provide any supporting documentation requested by VWLLC and/or the Bureau of Customs and Border Protection.

- 4.7 Time and Quantity of the Essence. Time and quantity are of the essence to VWLLC. Time and quantity provisions of Order(s) generated in connection with these Terms shall be strictly observed. Supplier will promptly notify VWLLC in writing of any and all events which could affect the obligation of Supplier to make deliveries of Goods and/or Services at specified times or in specified quantities and of corrective measures that Supplier will implement to comply with Supplier's obligations under the Order. In such circumstances, VWLLC may exercise any and all rights it may have pursuant to the Order. Alternatively, VWLLC may, at its option, require Supplier to do all things necessary at no cost to VWLLC (including without limitation working overtime or extra shifts, or shipping by premium means, all at Supplier's expense) to deliver or perform as committed. The fact that such notice is given, however, shall not affect or diminish any obligation of Supplier. VWLLC is not obligated to accept early deliveries, late deliveries, partial deliveries or excess deliveries. Any provision to the contrary herein notwithstanding, and in addition to any other remedies it may have under these Terms or by law, VWLLC shall be permitted to charge for each day a delivery is late liquidated damages in the amount of 0.2% of the total purchase price for the Goods or Services; provided, however, that such liquidated damages shall not exceed, in the aggregate, 5% of the total purchase price for the late Goods or Services. If the liquidated damages applicable to Supplier reach the aggregate limit of five percent (5%) of the total purchase price for the late Goods or Services, any further delay by Supplier shall be a material breach of the Agreement and VWLLC may pursue any of its rights or remedies at law or in equity, including without limitation terminating the Order, or any part thereof, for cause. Supplier acknowledges that these liquidated damages are reasonable, are not VWLLC's exclusive remedy in the event of delay and that VWLLC may pursue any and all rights and remedies it may have at law or in equity, including without limitation recovering liquidated damages in accordance with this Section, in the event of Supplier's delay. VWLLC, without cost or liability to Supplier, may reschedule delivery of the Goods or Services by giving timely written notice to Supplier.
- 4.8 Design and Manufacturing Procedures; Other Services. Supplier shall comply with the design and manufacturing requirements and procedures of VWLLC, including without limitation procedures relating to testing, safety, delivery, installation, scheduling, production and training. During the period Supplier is designing and/or manufacturing the Goods, and upon reasonable request, VWLLC shall have the right of access to any of Supplier's plants as may be necessary to allow VWLLC to review Supplier's progress and verify that the Goods are being designed and/or manufactured according to specifications and the production schedule and are otherwise in compliance with VWLLC's design and manufacturing requirements and procedures and all other applicable laws and regulations. Supplier shall provide VWLLC with appropriate technical assistance for the Goods, including without limitation redesign services if design

modifications are required by applicable law, on-site support and spare parts. Supplier's technical assistance obligations under this Section 4.8 shall survive the termination or expiration of the Order.

- 4.9 Sustainable Development Standards. In addition to complying with VWLLC's other requirements, Supplier may comply with VWLLC's and its Affiliates' sustainable development requirements with regard to relationships with business partners. The sustainable development requirements define the expectations of VWLLC and its Affiliates regarding sustainable development and conduct by business partners, including with respect to the added value of their products. The full text of the requirements can be found on [vwgroupsupply.com](http://vwgroupsupply.com) under Cooperation -> Sustainability. When Supplier submits an RFQ and/or accepts an Order, Supplier confirms its awareness of, and agreement to comply or not comply with, the sustainable development requirements.

## **5 Charges and Payment**

- 5.1 Charges. VWLLC shall pay Supplier the purchase prices and/or service fees (collectively, the "Charges") for the Goods and Services set forth in the applicable SOWs and Purchase Orders. In addition to any right of setoff or recoupment provided by law, VWLLC may set off and recoup against its accounts payable to Supplier any amounts for which Supplier or Supplier's Affiliates is liable to VWLLC under any order or agreement with Supplier or Supplier's Affiliates. VWLLC shall not be required to pay for the Goods or Services at prices higher than those specified in the Order. The Charges include all charges, including transportation (DDP), storage, drayage, insurance, boxing, packing, crating, carting, customs, duties imposed before passage of title, testing, installation, training and technical assistance, and all applicable taxes except sales, use and other such taxes imposed upon the sale or transfer of goods or services for which VWLLC is responsible under these Terms and properly invoiced by Supplier and VWLLC will not accept any extras or additional charges unless specified in the Order or otherwise agreed by VWLLC in writing. Supplier assumes the risk of events or causes affecting prices including without limitation foreign exchange rates, increases in raw material costs, inflation, increases in labor and other production and supply costs. Supplier represents that the Charges shall not exceed the prices charged to any other customer of Supplier for goods which are the same or substantially similar to the Goods, taking into account the quantities and terms of the Order. Moreover, Supplier agrees to refund any excess amounts charged by Supplier to VWLLC in violation of this Section 5.1.
- 5.2 Taxes. VWLLC shall not be liable for any Federal, state, local or foreign taxes unless separately stated in the Order and billed as a separate line item. Unless VWLLC has furnished Supplier with an applicable exemption certificate, VWLLC shall pay Supplier any applicable sales, excise or use taxes or other taxes imposed by any federal, state, local or foreign government which directly arise from the sale of the Goods or the rendering of the Services and which Supplier is responsible by law to collect from VWLLC. VWLLC will not be responsible under any circumstances for VAT taxes with respect to the Goods and Services. All taxes for which VWLLC is responsible under the Order shall be submitted in a separate invoice.

VWLLC shall not be responsible for any taxes based on Supplier's income or its business operations including without limitation employment taxes, income taxes or license taxes. Supplier agrees to provide VWLLC with documents that may be required to obtain any applicable exemption, credit, rebate, remission, refund, reduction or other relief from taxes or foreign tax credit. VWLLC is authorized to deduct or withhold from each payment to Supplier all taxes which VWLLC is required by law to deduct or withhold and to pay the amount withheld or deducted to the relevant tax authorities.

Supplier shall comply in a timely manner with all requirements imposed on Supplier by all applicable taxing statutes, including requirements in respect of registration, payment, collection, and remittance of taxes and provision to the taxing authorities of such deposits, guarantees or other forms of security as may be required by law or the administration thereof, and shall upon request provide VWLLC with written proof of such compliance. Supplier shall indemnify VWLLC for any amounts assessed against VWLLC arising from Supplier's failure to so comply.



- 5.3 Invoices and Payment. Supplier shall issue individual invoices for each Service delivered and each shipment of Goods delivered. Invoices must contain the Purchase Order number, if any, and description of Goods and/or Services. Except as otherwise stated in the Order, VWLLC shall pay the Charges set forth in non-disputed invoices based on a Net 60 day payment term. In the event of any delay in receiving an invoice, or any error or omissions in any invoice, VWLLC may withhold payment without losing its rights to applicable cash discounts. Except as otherwise stated in the Order, all payments will be in U.S. Dollars. Supplier agrees to accept payment by electronic funds transfer or by check mailed on or before the due date unless otherwise expressly agreed by VWLLC.
- 5.4 Disputed Invoices. Within 180 days of receipt of an invoice, VWLLC shall notify Supplier in writing of any disputed Charges.
- 5.5 Audits by VWLLC
- 5.5.1 Audits. At VWLLC's request, Supplier will allow VWLLC or its designated representatives to audit its or its Subcontractors' books, records and other information relating to the Order to the extent necessary to verify Supplier's compliance with completed and current Orders, including the accuracy of any Charges. Supplier will cooperate with and comply with all reasonable requests from VWLLC or its designated representatives in connection with such audit. Supplier shall maintain its books, records and other information relating to the Order for at least seven (7) years after the Termination Date.
- 5.5.2 Upon completion of any such audit, the Parties will review the audit report together and work in good faith to agree upon (1) any adjustment of Charges to VWLLC (including any reimbursement of any overpayment by VWLLC or reimbursement to Supplier for any underpayment by VWLLC); and (2) any appropriate adjustments to Supplier's billing practices. If any such audit discloses overpayments that in the aggregate equal one percent (1%) or more of the amounts that were actually due as shown by the audit, then Supplier will reimburse VWLLC for the costs of the audit.
- 5.5.3 Operational Audits. VWLLC may monitor Supplier's performance of its duties under the Order at any time during normal business hours, upon prior written or verbal notice to Supplier.
- 5.6 Payment and Performance Bonds
- Upon request by VWLLC, prior to the commencement of Services, and in any event before commencement of Services at VWLLC's Facilities, Supplier shall, with respect to the installation and other Services performed at VWLLC's Facility, furnish and pay the cost of a Performance Bond and a Labor and Material Payment Bond (collectively, "Payment Bond") in the amount of the value of the Services performed at VWLLC's Facility as security for the performance of such Services under the Order and the payment of all other obligations arising under the Order with respect to such Services. Such Payment Bond shall be for an amount satisfactory to VWLLC, shall be on a form approved by VWLLC, and shall be written by a surety company approved by VWLLC and licensed to do business in the State of Tennessee. Further, no later than seven (7) Business Days prior to the providing by Supplier of any Services at VWLLC's Facility, Supplier shall deliver to VWLLC the Payment Bond. VWLLC shall have the right to file of record the Payment Bond in the appropriate local office(s) in accordance with Tennessee's lien laws, and Supplier agrees that no Services shall commence prior to receiving written notice from VWLLC that such filing has occurred.

## **6 Confidentiality**

- 6.1 Confidential Information. "Confidential Information" shall mean any information typically regarded as confidential and proprietary that has been or may hereafter be disclosed or discovered in any form, whether in writing, orally, electronically, visually or otherwise, by either Party or its Personnel, Affiliates, consultants or advisors (each a "Representative") (collectively, a "Disclosing Party") to the other Party or its Representatives (collectively, a "Receiving Party") including all information relating generally or specifically to a Party's business, including without limitation patents, copyrights, inventions, designs, discoveries, improvements, formulae, product data, specifications and processes, trade secrets, customer lists and contacts, personal data and information, information on customer quantity and technical

requirements, product pricing information, geographic and sales data, technical or commercial information, and financial information, information related to mergers or acquisitions, software, software documentation, and information concerning business plans or business strategy that is supplied to or obtained by the other Party pursuant to or as a result of the Order and that is not generally known in the trade or industry. Each Party may use Confidential Information of the other Party only in connection with the performance of duties under the Order. Neither Party shall copy Confidential Information or disclose Confidential Information of the other Party to persons who do not need Confidential Information in order to perform its duties under the Order. Confidential Information will be returned to the Disclosing Party seeking to protect such information upon request of the Disclosing Party. Confidential Information does not include information that is generally known or available to the public prior to the date of the Order, information that becomes generally known or available to the public by publication or otherwise not due to any unauthorized act or omission of the Party not claiming the information to be confidential, or information that is not treated as confidential by the Party claiming the information to be confidential. Because the breach of either Party's confidentiality obligations may cause the other Party to suffer irreparable harm in an amount not easily ascertained, any such breach, whether threatened or actual, will give the non-breaching Party the right to obtain equitable relief to enjoin or restrain the disclosure or use of such Confidential Information. The provisions of this Section 6.1 will survive the termination of the relevant Order for the longer of five (5) years from the disclosure of the Confidential Information or three (3) years after the date of termination or expiration of the related Order; provided that each Party agrees to maintain indefinitely the confidentiality of any trade secret of the other Party which is disclosed or discovered during the term of the Order, provided that the trade secret has been specifically identified in writing as a trade secret. Notwithstanding anything to the contrary in these Terms, any confidentiality or non-disclosure agreement between the Parties that predates these Terms will remain in effect except as expressly set forth in these Terms, and to the extent of a conflict between the express terms of such an agreement and this Section, the terms of that agreement will control.

- 6.2 Restrictions on Use of Confidential Information.
  - 6.2.1 The Receiving Party will use at least the same degree of care, but no less than a reasonable degree of care, to avoid unauthorized disclosure or use of the Disclosing Party's Confidential Information as it employs with respect to its own Confidential Information, including taking reasonable measures to record who has access to Confidential Information.
  - 6.2.2 The Receiving Party may disclose Confidential Information only to its own Personnel and to its Representatives, Affiliates and Subcontractors who reasonably need to know it in order to meet the contractual obligations as contemplated by the Order. The Receiving Party will be responsible to the Disclosing Party for any violation by its Personnel, Representatives, Affiliates or Subcontractors. Supplier shall take reasonable steps to record who has access to Confidential Information, including by keeping written access logs. The Receiving Party shall, upon request, provide to the Disclosing Party the identities and names of the individuals to whom Confidential Information has been disclosed.
  - 6.2.3 The Receiving Party may not print or copy, in whole or in part, any documents or other media containing the Disclosing Party's Confidential Information, other than copies for its Personnel, Representatives, Affiliates or Subcontractors who are working on the matter, without the prior consent of the Disclosing Party. The Receiving Party shall keep a written record of who has received such prints or copies and, upon request, provide to the Disclosing Party the identities and names of such individuals.
  - 6.2.4 The Receiving Party may not use the Disclosing Party's Confidential Information for competing with the Disclosing Party, for its own benefit, or for any purpose not in furtherance of the Order.
  - 6.2.5 As promptly as practicable (and in any event within ten (10) days) after the earlier of the completion of the Receiving Party's obligations under, or the termination of, the Order, the Receiving Party will return or, with the consent of the Disclosing Party, destroy all of the Disclosing Party's Confidential Information, except for business records required by law to be retained by the Receiving Party, and upon request of the Disclosing Party shall deliver an affidavit signed by an officer of the Receiving Party attesting to the return and/or destruction of the Confidential Information.

- 6.2.6 If the Receiving Party is requested, as part of an administrative, judicial or other legal proceeding, to disclose any of the Disclosing Party's Confidential Information, the Receiving Party will, to the extent permitted by applicable law, notify the Disclosing Party in writing of such request as promptly as practicable (and in any event within five (5) Business Days after receiving the request) and cooperate with the Disclosing Party, at the Disclosing Party's expense, in seeking a protective order or similar confidential treatment for such Confidential Information.

## **7 Warranties and Certain Covenants**

### **7.1 By Supplier.**

- 7.1.1 **Goods Warranty.** Supplier warrants to VWLLC that (a) the Goods will be produced and delivered in strict accordance with the terms and requirements set forth in the Order, be free of defects in design, materials and workmanship, be merchantable and be fit and sufficient for the particular purpose intended by VWLLC and shall conform in all material respects to all applicable laws and regulations in force at the time the Goods are produced, (b) the documentation provided by Supplier shall be correct, free from defects and in sufficient detail to permit VWLLC to properly and safely operate and maintain the Goods, (c) the Goods shall perform in accordance with the performance requirements set forth in the Order, (d) that Supplier has the expertise and resources necessary to produce and deliver the Goods in accordance with the requirements and specifications (including timeframes) set forth in the Order, including without limitation the SOW, and (e) that Supplier is familiar with the condition of the Facility and other conditions under which the Goods will be used, including without limitation the prevailing weather conditions, and Supplier agrees that such conditions will not affect the use of the Goods in accordance with all the requirements and specifications (including timeframes) set forth in the Order (the "Goods Warranty"). Promptly after written notice of any defect or failure to comply is provided by VWLLC, Supplier shall, at VWLLC's option, either (i) replace, (ii) repair, or (iii) refund the purchase price for any Goods that do not conform to the Goods Warranty. VWLLC's acceptance of Goods, including those which have been repaired, replaced or modified, shall be evidenced by a written certification thereof. Goods repaired, replaced or modified shall be subject to all provisions of the Order to the same extent as items initially delivered, with any applicable warranty period beginning upon the completion of such repair, replacement or modification, which completion date shall be the date certified in writing by VWLLC which is at least six (6) weeks after the repaired, replaced or modified items have functioned properly without further defect. Any provision to the contrary in the Order notwithstanding, if Supplier fails to timely deliver the Goods, including without limitation the failure to promptly replace, repair, or modify a nonconforming Good, then VWLLC shall have the right, in addition to the right of termination under Section 12, to purchase replacement goods from a party other than Supplier and charge Supplier for any price differential for these cover purchases from the purchase price, as well as recover any and all damages to which VWLLC is entitled under law and equity, including without limitation breach of contract damages as well as any and all attorneys' fees and costs incurred as a result of Supplier's breach of its obligations.

- 7.1.2 **Services Warranty.** Supplier represents and warrants to VWLLC (a) that all Services will be performed in a prompt, professional and workmanlike manner in accordance with the requirements and specifications (including timeframes) set forth in the Order, including without limitation the SOW, and otherwise in accordance with industry standards and will conform in all material aspects with all applicable laws and regulations in force at the time the Services are performed, (b) that Supplier has the expertise and resources necessary to undertake and complete the Services in accordance with the requirements and specifications (including timeframes) set forth in the Order, including without limitation the SOW, and (c) that Supplier is familiar with the condition of the Facility and other conditions under which the Services will be performed, including without limitation the prevailing weather conditions, and Supplier agrees that such conditions will not affect the performance of all Services in accordance with all the requirements and specifications (including timeframes) set forth in the Order (collectively, "Services Warranty"). Promptly after written notice of any defect or failure to comply is provided by VWLLC, Supplier shall, at VWLLC's option, either (i) re-perform any Services, or (ii) refund the service fees for any Services that do not conform to the Services Warranty. VWLLC's acceptance of Services, including those which have been repaired, replaced or modified, shall be evidenced by a written certification thereof. Services re-performed shall be subject to

all provisions of the Order to the same extent as Services initially performed, with any applicable warranty period beginning upon the completion of such re-performance, which shall be the date certified in writing by VWLLC which is at least six (6) weeks after the re-performed or corrected Services have continued without further defect. Any provision to the contrary in the Order notwithstanding, if Supplier fails to timely re-perform a nonconforming Service, then VWLLC shall have the right, in addition to the right of termination under Section 12, to purchase replacement services from a party other than Supplier and charge Supplier for any price differential for these cover purchases from the purchase price, as well as recover any and all damages to which VWLLC is entitled under law and equity, including without limitation breach of contract damages as well as any and all attorneys' fees and costs incurred as a result of Supplier's breach of its obligations.

- 7.1.3 Warranty Period. Except as otherwise stated in the Order, the warranty period is the longer of (i) three (3) years from written acceptance by VWLLC, (ii) the warranty period specified by Supplier and Supplier's documentation relating to the Goods or Services, as the case may be, and (iii) the warranty period provided by applicable law.
- 7.2 Additional Warranties.
- 7.2.1 Supplier represents and warrants to VWLLC: (a) Supplier, and any Goods and Services supplied by Supplier, and its Personnel, Subcontractors and Affiliates, are in compliance and will comply with all applicable laws, including rules, regulations, orders, conventions, ordinances and standards, including without limitation (i) relating to the manufacture, labeling, transport, import, export, licensing, permitting, approval or certification of the Goods and Services, and (ii) relating to environmental matters, hiring, wages, hours and conditions of employment, immigration, worker documentation and permits, international prohibitions on slave, child, prisoner or any other form of forced, involuntary or illegal labor, Subcontractor selection, discrimination, occupational health or safety, motor vehicle safety and data and information security. An Order incorporates by reference all clauses required by these laws. (b) All materials used by Supplier in the Goods or in their manufacture will satisfy current governmental and safety constraints on restricted, toxic and hazardous materials as well as environmental, electrical and electromagnetic considerations that apply to the country of manufacture, sale or destination. Supplier shall furnish VWLLC, no later than the date the Goods are delivered, with a Material Safety Data Sheet for any Goods which are covered by the Occupational Safety and Health Act Hazard Communications Standard as contained in 29 C.F.R. § 1910.1200, and shall promptly provide updated MSDS documentation to reflect any changes in the compilation of the materials supplier. (c) Supplier shall furnish the weight and dimensions of each part in grams and millimeters, respectively, as well as in U.S. dimensions. (d) Supplier and its Personnel, Affiliates and Subcontractors will abide by the highest ethical standards. Neither Supplier nor any of its Subcontractors will utilize slave, child, prisoner or any other form of forced, involuntary or illegal labor, or engage in abusive worker treatment or corrupt business practices in the sale of Goods or provision of Services under these Terms. (e) Supplier and its Subcontractors are licensed, permitted and in compliance with all Tennessee and other laws with respect to licensing and permitting, including without limitation laws regarding the licensing and permitting of contractors and Subcontractors. (f) At VWLLC's request, Supplier shall certify Supplier's, its Personnel's, Subcontractors' and Affiliates' compliance with the foregoing.
- 7.2.2 Supplier represents and warrants to VWLLC that it is an equal opportunity employer and that it is in compliance with all applicable federal, state and local labor and employment laws, regulations and orders, including without limitation those laws, regulations and orders that address the payment of wages, harassment, discrimination in employment, and immigration. .
- 7.2.3 Supplier represents and warrants to VWLLC that (i) it has good and marketable title to the Goods, (ii) the Goods will be free from any liens, claims, encumbrances, and interests of third parties, including without limitation Supplier's vendors and Subcontractors and the intellectual property interests of any third party, and that all of Supplier's vendors and Subcontractors will have been paid to such extent as may be required by law or by Supplier's subcontracts or suborders and (iii) it has all requisite power and authority to transfer title to the Goods to VWLLC. If at any time the acts or omissions of Supplier or its Subcontractors

result in a claim or indebtedness against VWLLC or against Supplier or its Subcontractors, or lien rights against the Goods or any part thereof or against any Facility or other property of VWLLC, Supplier shall notify VWLLC in writing of such claim, indebtedness or lien rights and immediately pay such claim or indebtedness or cause such lien rights to be released and discharged by giving bond or otherwise at Supplier's expense, and otherwise indemnify, defend and hold harmless VWLLC from such claim, indebtedness or lien rights.

- 7.2.4 Supplier represents and warrants that (i) it has all requisite power and authority to execute, deliver, and perform its obligations under the Order, (ii) the execution, delivery and performance of the Order have been duly authorized and (iii) no approval, authorization, or consent of any governmental or regulatory authority is required to be obtained in order for it to enter into and perform its obligations under the Order.
- 7.2.5 Supplier represents and warrants to VWLLC that, in performing its obligations under the Order, (i) it will not employ or subcontract with any person who is a "Specially Designated National" ("SDN") as defined from time to time in regulations issued by the Office of Foreign Asset Control of the United States Department of the Treasury and (ii) Supplier is not an SDN.
- 7.3 Warranties Under Law. The foregoing warranties are in addition to any provided to VWLLC by applicable law.
- 7.4 Warranty Costs. All costs incurred in connection with performing any warranty obligation, including all travel expenses and daily allowances, shall be the obligation of Supplier and Supplier shall fulfill Supplier's warranty obligations without additional fees or charges of any kind to VWLLC, unless otherwise specified in the Order or otherwise agreed by VWLLC in writing.

## **8 Indemnification**

- 8.1 Indemnification by Supplier. All indemnification provisions in the Order are supplemental to and part of the indemnification provisions in this Article 8. To the fullest extent permitted by law, Supplier will, at its expense, indemnify, defend and hold harmless VWLLC and its Affiliates, agents and invitees and their respective Personnel, successors and assigns (each a "VWLLC Indemnitee"), from and against all damages, losses, claims, demands, liabilities and expenses (including reasonable attorneys' and other professional fees, settlements and judgments) (collectively, "Losses") claimed by any Third Person in any claim, demand, suit or proceeding in connection with any of the following:
  - 8.1.1 Any misrepresentation by Supplier or the breach by Supplier of its obligations or warranties to VWLLC under these Terms or the Order;
  - 8.1.2 The death or bodily or personal injury of, or other legally enforceable damage incurred by, any agent, employee, customer, business invitee, or business visitor or other person caused by the breach of contract, breach of warranty, negligence, misconduct or any other acts or omissions of Supplier or its Personnel or Subcontractors;
  - 8.1.3 The damage, loss or destruction of any real or personal property caused by the breach of contract, breach of warranty, negligence, misconduct or any other acts or omissions of Supplier or its Personnel or Subcontractors;
  - 8.1.4 Liens, encumbrances and payment and other claims relating in any manner to the Goods and Services which are asserted by Supplier, any Subcontractor, or anyone directly or indirectly engaged by any of them or for anyone for whose acts they may be responsible; VWLLC may withhold payment to satisfy such liens, encumbrances or payment and other claims and, upon the written request of VWLLC, Supplier shall bond off or otherwise satisfy any such liens, encumbrances and payment and other claims; and
  - 8.1.5 Claims by Supplier or its Personnel, Affiliates or Subcontractors relating to any benefits normally associated with employment at VWLLC, including insurance, pension, health, lease cars, compensation,

tax withholdings, Medicare, and social security, and any claims relating to Supplier's failure to comply with, including without limitation any claims made by or relating to:

- (a) Supplier's Personnel, Affiliates or Subcontractors;
- (b) the Wage and Hour Act;
- (c) the Fair Labor Standards Act;
- (d) the Retaliatory Employment Discrimination Act;
- (e) the Employment Retirement Income Security Act;
- (f) the Consolidated Omnibus Budget Reconciliation Act;
- (g) the Age Discrimination in Employment Act;
- (h) Title VII of the Civil Rights Act of 1964;
- (i) Section 1981 of the Civil Rights Act as amended;
- (j) the Americans With Disabilities Act;
- (k) the Family and Medical Leave Act;
- (l) the Immigration Control and Reform Act of 1986 and/or
- (m) any other applicable federal, state or local statutes, laws, ordinances, rules, regulations or orders pertaining to immigration, discrimination, wrongful discharge (actual or constructive), breach of express or implied contract, worker's compensation, compensation (including payroll, withholding, employment taxation, social security, unemployment compensation, minimum wage, overtime, unpaid wages, vacation and/or sick leave pay), intentional and/or negligent infliction of emotional distress, defamation, and/or any other cause of action.

8.2 Indemnification by Supplier with Respect to Intellectual Property.

8.2.1 Supplier will, at its expense, indemnify, defend and hold harmless the VWLLC Indemnitees from any Third-Person claims made against VWLLC or any of its Affiliates and their respective Personnel alleging that any Goods or Services infringe a Third Person's copyright, patent, trademark, trade secret or other intellectual property or proprietary right ("Intellectual Property Claim"). VWLLC shall notify Supplier promptly in writing and furnish Supplier with such information and assistance as Supplier may reasonably request to evaluate the Intellectual Property Claim. Supplier shall then, at its own expense and option, either (i) settle the Intellectual Property Claim, or (ii) procure for VWLLC and its Affiliates, as applicable, the right to use the alleged infringing Good or Service, or (iii) replace or modify the alleged infringing Good or Service in order to avoid the Intellectual Property Claim, or (iv) remove the alleged infringing Good or Service and refund the prices (including transportation costs) paid by VWLLC and its Affiliates, as applicable, to Supplier less a reasonable amount directly proportionate to VWLLC's, and its Affiliates', as applicable, actual usage of the infringing Good or Service, or (v) litigate the Intellectual Property Claim; provided, however, prior to Supplier taking any of the foregoing responses, the Parties shall meet to discuss the action or actions which Supplier proposes to take in response to the Intellectual Property Claim. If the Parties are unable to agree upon the action or actions to take in response to the Intellectual Property Claim, VWLLC may, at its sole option and without liability, elect to terminate the Order, or any part thereof, as to any alleged infringing Good or Service upon five (5) days prior written notice to Supplier. Regardless of Supplier's response to the Intellectual Property Claim or VWLLC's election to terminate the Order, or any part thereof, as to any alleged infringing Good or Service, Supplier shall remain obligated to defend the Intellectual Property Claim and to pay any final judgments awarded against Supplier and/or VWLLC and its Affiliates, as applicable, based upon the Intellectual Property Claim.

8.2.2 Supplier shall have no obligation to indemnify VWLLC against any Third-Person claims made against VWLLC or any of its Personnel or Affiliates if it is finally determined that liability is the sole result of (i) a modification made to a Good by VWLLC which has not been approved by Supplier or (ii) the use by VWLLC of a Good in combination with goods that are not provided to VWLLC by Supplier and which use is not contemplated by the Order and infringes the Third-Person's copyright, patent or trade secret.

8.3 Indemnification Procedures. The following procedures will apply to all claims for indemnification under this Article:

- 8.3.1 Promptly after receipt by VWLLC of written notice of the commencement or threatened commencement of any civil, criminal, administrative or investigative action or proceeding involving a claim for which a VWLLC Indemnitee may be entitled to indemnification, written notice of such claim will be conveyed to Supplier. However, the failure to so notify Supplier will not relieve that Party of its obligations under the Order.
- 8.3.2 The Indemnitees will have the right to determine who controls the defense in any negotiations or legal proceedings pertaining to a claim covered by this Article (notwithstanding that Supplier shall bear the cost of the defense for the Indemnitees). If the Indemnitees elect to control their own defense and permit Supplier to control its own defense, both Parties may select their own legal counsel and experts; however, to the maximum extent possible permitted by the circumstances and ethical considerations, counsel for Supplier and counsel for the Indemnitees will work together to avoid duplication of effort or expense, in attorney fees or otherwise. In addition, Supplier and the Indemnitees will make good faith efforts to coordinate their activities so as to take consistent positions in the course of negotiations or legal proceedings.
- 8.3.3 If Supplier controls the defense, Supplier shall timely provide to VWLLC all information with respect to such defense, compromise or settlement as VWLLC may request. Supplier shall not assume any position or take any action in connection with such defense, compromise or settlement that would impose an obligation of any kind (other than the obligations under Article 8 hereof) or restrict the actions of VWLLC, it being understood that Supplier would be acting solely on its own behalf, for its own account and at its own risk.
- 8.3.4 Supplier will obtain the prior approval, which approval will not be unreasonably delayed or withheld, from VWLLC in respect of any proposed settlement of any claims before entering into any settlement of such claims or ceasing to defend such claims.
- 8.3.5 If Supplier does not participate in the defense of a claim covered by this Section, the Indemnitees will have the right to defend the claim in such manner as they may deem appropriate, at Supplier's cost and expense. Supplier will promptly reimburse the Indemnitees for all such costs and expenses, demand for which may be made periodically.
- 8.3.6 Notwithstanding anything to the contrary in the Order, no limitations on damages or remedies set forth in the Order will apply to an Indemnifying Party's obligations to indemnify, defend and hold the Indemnitees harmless against Losses. Indemnity obligations shall survive the termination, cancellation or non-renewal of the Order. Supplier's obligation to indemnify, defend and hold harmless shall apply regardless of whether the claim arises in tort, negligence, contract, warranty, strict liability or otherwise except to the extent of (i) claims that arise solely as a result of the negligence or willful misconduct of VWLLC and (ii) Third-Person claims made against VWLLC or any of its Affiliates as set forth in Section 8.2.2 above. The indemnification obligations set forth in these Terms, including this Article, are independent of and in addition to any insurance and warranty obligations of Supplier.

## **9 Liability Limitation; Force Majeure**

- 9.1 Excluded Damages. VWLLC shall not be liable for, and Supplier hereby waives any right to, any special, indirect, incidental, consequential or punitive damages, including lost profits, lost fees, lost business, loss of use, costs associated with business interruptions or like damages (the "Excluded Damages"), whether based upon contract, tort or any other legal theory, resulting from or in any way connected with the performance by either Party of their respective covenants and agreements under the Order. VWLLC shall not be liable to Supplier for the Excluded Damages, whether foreseeable or not, and even if VWLLC has been advised or otherwise has knowledge of the possibility of the Excluded Damages.
- 9.2 Force Majeure. Except for Services relating to business continuity and/or recovery of data, any delay or failure of either Party to perform its obligations will be excused if and to the extent the Party is unable to perform due to an event or occurrence beyond its reasonable control and without its fault or negligence, such as: acts of God; restrictions, prohibitions, priorities or allocations imposed or actions taken by a

governmental authority (whether valid or invalid); embargoes; fires; floods; earthquakes; explosions; natural disasters; riots; wars; sabotage; inability to obtain power; or court injunction or order. Supplier shall use its best efforts to reduce the effects of such events on Supplier's performance of its obligations. Supplier's inability to perform as a result of, or delays caused by, Supplier's insolvency or lack of financial resources is deemed to be within Supplier's control. The change in cost or availability of materials or components based on market conditions, supplier actions, or contract disputes or any labor strike or other labor disruption applicable to a Party or any of its subcontractors or suppliers, will not excuse such Party's performance (under theories of force majeure, commercial impracticability or otherwise), and each Party assumes these risks. As soon as possible (but no more than one full business day) after the occurrence, the affected Party will provide written notice describing such delay, including any corrective measures which the affected Party will implement to cure such delay, and assuring the other Party of the anticipated duration of the delay and the time that the delay will be cured. During a delay or failure to perform by Supplier, VWLLC may at its option: (a) purchase Goods from other sources and reduce its schedules to Supplier by such quantities, without liability to Supplier; (b) require Supplier to deliver to VWLLC in accordance with the terms of the Order all finished goods, work in process and parts and materials produced or acquired for work under the Order; and/or (c) have Supplier provide Goods from other sources in quantities and at a time requested by VWLLC and at the price set forth in the Order. In addition, Supplier at its expense will take all necessary actions to ensure the supply of Goods to VWLLC for a period of at least thirty (30) days during any anticipated labor disruption or resulting from the expiration of Supplier's labor contracts. If delay on the part of Supplier lasts longer than thirty (30) days, VWLLC may terminate the Order without liability and Supplier shall reimburse VWLLC for costs associated with the termination.

## **10 Insurance**

- 10.1 Supplier will maintain in force, and cause its Subcontractors to maintain in force, at its own expense, insurance of the type and in the amounts set forth below:
  - 10.1.1 Property All Risk insurance to cover Goods in transit, in warehouse or in storage whether on vehicles or in Facility(s) controlled or operated by Supplier or its Subcontractor or any other Third Person: Minimum limit of \$5,000,000 to cover full replacement cost of Goods including additional storage, clean-up costs, salvage, security, expediting or additional transportation fees. VWLLC will be added as loss payee and additional insured with respect to its interest in the Goods;
  - 10.1.2 Statutory workers' compensation insurance in accordance with the legal requirements of each country, state, territory, or locality exercising jurisdiction over the Personnel of Supplier and/or Subcontractor performing Services in such country, state, territory, or locality;
  - 10.1.3 Employer's liability insurance with a minimum limit in an amount not less than \$1,000,000 per accident, covering bodily injury by accident, and \$1,000,000 per policy covering bodily injury by disease, including death;
  - 10.1.4 Comprehensive commercial general liability insurance (written on an occurrence basis and including contractual liability and products and completed operations liability insurance) in an amount not less than \$5,000,000 per occurrence, general aggregate, products and completed operations aggregate. VWLLC and its Personnel shall be named as additional insureds as respect to its interest in the Goods.
  - 10.1.5 Comprehensive automobile liability insurance for owned, hired or non-owned vehicles with a combined single limit in an amount not less than \$5,000,000 per accident for bodily injury and property damage liability. VWLLC and its Personnel shall be named as additional insureds.
  - 10.1.6 Professional Liability or Errors and Omissions liability insurance to cover Losses due to Supplier's errors or omissions in the performance or failure to perform its professional Services obligations or responsibilities under the Order, with a per claim limit in an amount not less than the greater of \$2,000,000 and the value of the applicable Purchase Order(s) and the greater of \$2,000,000 or the value of the applicable Purchase Order(s) in the annual aggregate;



- 10.1.7 Employee fidelity bond with Third Person liability endorsement or VWLLC added as loss payee in an amount not less than \$500,000;
- 10.1.8 Umbrella/excess liability (written on an occurrence basis) in an amount not less than the greater of \$10,000,000 or the value of the applicable Purchase Order, as applicable, per occurrence. VWLLC and its Personnel shall be named as additional insureds; and
- 10.1.9 Insurance coverage with respect to information and data protection security, cyber liability and similar matters with respect to information security in amounts not less than \$5,000,000.
- 10.2 All policies described above will be written by insurance companies rated at least A-:VII by A.M. Best's rating service or equivalent. The required insurance will provide primary and non-contributory coverage to VWLLC for claims arising out of or in connection with the Order.
- 10.3 Supplier, for itself and its Subcontractors, including their respective insurance carriers, hereby agrees to waive any right of subrogation and have no right of recovery from VWLLC, its Personnel or its insurers. Supplier, for itself and on behalf of its Subcontractors, warrants that their respective insurance carriers grant them the right to agree to such advance waivers of subrogation. Supplier represents that required types and amounts of insurance will necessarily be adequate to respond to all exposures to Losses. The required limits of insurance shall not be deemed as a limitation or maximum liability with respect to the indemnity obligations as set forth under the Order or these Terms. Supplier agrees to be financially responsible for its and its Subcontractors' respective deductibles, retentions, self-insurance or co-insurance obligations, or claims or Losses in excess of the required insurance coverage limits.
- 10.4 Insurance Documentation. On or before the Effective Date of the Order, and annually thereafter upon expiration, Supplier, and if applicable its Subcontractor, will furnish to VWLLC certificates of insurance and other appropriate documentation (including endorsements as required to bind the insurers) evidencing all coverage referenced in this Article. Such certificates or other documentation will include a provision under which the applicable insurer will give at least thirty (30) days' written notice to VWLLC before limits or scopes of coverage are materially altered or insurance is cancelled or non-renewed. Supplier also will require by contract that each Subcontractor furnish such certificates and other appropriate documentation to VWLLC and that the certificates or other appropriate documentation include a provision under which the applicable insurer will give at least thirty (30) days' written notice to VWLLC before limits or scopes of coverage are materially altered or insurance is cancelled or non-renewed. Without limiting any of the rights and remedies available to VWLLC, it shall be a condition precedent to VWLLC's obligation to pay Supplier that Supplier shall have timely provided the certificates or certified copies of insurance policies as required herein. In addition, Supplier will promptly advise VWLLC in writing if it becomes aware that required limits or scopes of coverage are materially altered or that required insurance is cancelled or non-renewed.
- 10.5 If requested by VWLLC and if eligible, Supplier agrees to enroll in any Owner Controlled Insurance Program ("OCIP") and obtain and maintain the coverages required in the OCIP and any additional coverages required herein. Supplier shall comply with all other terms and conditions relating to the OCIP pursuant to any contract, SOW, Purchase Order or other document which is part of the Order. All insurance premiums and costs shall be paid by Supplier.

## **11 Intellectual Property**

- 11.1 Intellectual Property Representations. Supplier hereby represents and warrants to VWLLC that it owns all rights in (or has obtained all rights necessary to license or otherwise furnish to VWLLC) the Goods and Services (including software, microcode, and other intellectual property of any sort) provided to VWLLC under the Order. VWLLC hereby represents and warrants to Supplier that it owns all rights in (or has obtained all rights necessary to license or otherwise furnish to Supplier) all materials furnished by VWLLC to Supplier and which Supplier uses in connection with its production of the Goods or the rendering of the Services including without limitation any artwork or files furnished by VWLLC to Supplier.

- 11.2 Intellectual Property Covenant. Each Party shall retain all right, title and interest in and to all of its intellectual property and other proprietary information including without limitation trademarks, copyrights, writings, icons, layouts, original artwork and original practice, including any modifications, enhancements and/or other derivative works of such Party's intellectual property or other proprietary information that may arise as a result of the Order or the production of the Goods. All intellectual property and other proprietary information now or hereafter (i) owned by VWLLC, (ii) acquired by Supplier under this Order for which VWLLC has agreed to reimburse or has reimbursed Supplier, or (iii) furnished by VWLLC to Supplier in connection with the production of the Goods or the performance of the Services under the Order (the "VWLLC Intellectual Property") shall remain VWLLC's exclusive property and may only be used by Supplier in the performance of its duties under the Order.
- 11.3 Intellectual Property Rights. Except to the extent otherwise provided in the Order:
- 11.3.1 All "Work Product" (as defined below) shall be the exclusive property of VWLLC. Each Work Product shall be deemed to be a work-made-for-hire under the copyright laws of the United States. To the extent that any Work Product does not constitute a work-made-for-hire, Supplier and its Subcontractor(s) hereby assign to VWLLC, and its Affiliates as directed by VWLLC, at the time of creation, all right, title, and interest in and to Work Product, including any and all copyrights, patents, trade secrets, trademarks and other proprietary rights it may have. Supplier shall, during and after the term of the Order, assist VWLLC in every reasonable way to secure, maintain and defend for the benefit VWLLC all copyrights, patents, trade secrets, trademarks, or other intellectual property or proprietary rights in and to the Work Product, including without limitation the completion of any paperwork reasonably requested by VWLLC.
- 11.3.2 To the extent necessary for VWLLC to operate or use the Work Product, Supplier (and to the extent necessary, its Subcontractor(s)) shall and hereby do grant to VWLLC a royalty-free, worldwide, perpetual, irrevocable license (with the right to sublicense to any Affiliate) to use, copy and distribute, and create or develop derivatives or improvements of, any Supplier Tools.
- 11.4 Definitions. For purposes of the Order,
- 11.4.1 "Work Product" means everything delivered to VWLLC or its customer or client by Supplier under the Order (other than Supplier Tools), including without limitation all notes, reports, documentation, computer programs in object code and fully-commented source code form, or other literary works; all graphical works; all inventions, formulae, designs, processes, devices and any improvements on any of them; and any and all software, code, tools, materials, or other information arising or resulting from or developed by Supplier in the performance of Services under the Order.
- 11.4.2 "Supplier Tools" means any and all original works of authorship, inventions, designs, methodologies, processes, concepts or know-how created, owned or licensed by Supplier prior to commencing work for the benefit of VWLLC, and identified in the Order in sufficient detail to distinguish it from Work Product developed under the Order. Supplier Tools includes all derivatives of or improvements on any Supplier Tools, whether interim copies or works, works in progress or final versions of any such items.
- 11.4.3 Names and Trademarks. Neither Party shall acquire, by reason of the Order, any right, title or interest in or to the other Party's names, trade names or trademarks.

## **12 Term of the Order and Termination**

- 12.1 Term of the Order. Except as otherwise expressly stated in the Order, the term of the Order will begin on the date it is issued (the "Effective Date") and end on the day which is 180 days after all Goods have been delivered and Services have been performed (the "Termination Date"), unless extended or earlier terminated in accordance with these Terms.

- 12.2 Termination Without Cause. VWLLC may terminate the Order at any time after the Effective Date without cause upon 30 days' prior written notice to Supplier. Upon receipt of written notice of termination, and unless otherwise directed by VWLLC, Supplier will comply with the requirements of Section 12.5. Upon termination by VWLLC under this Section, VWLLC will be obligated to pay only the following without duplication: (i) the Order price for all finished Goods and Services in the quantities ordered by VWLLC that conform to the Order and are delivered to and accepted by VWLLC for which Supplier has not been paid and (ii) Supplier's reasonable actual cost of carrying out its obligation under Section 12.5(d). VWLLC shall pay for Supplier's reasonable actual cost of merchantable and usable work-in-process, as well as any parts and materials, which VWLLC requests be transferred to it under Section 12.5(b). Notwithstanding any other provision herein, VWLLC will have no obligation for and will not be required to pay Supplier, directly or on account of claims by Subcontractors, for lost profits, lost fees, lost business, loss of use, costs associated with business interruptions, unabsorbed overhead, interest on claims, product development or engineering costs, facilities or equipment rearrangement costs or rental, unamortized capital or depreciation costs, finished goods, work-in-process or raw materials that Supplier fabricates or procures in amounts exceeding those authorized in the Order, or general administrative burden charges from termination of the Order, except as otherwise expressly stated in a separate Order issued by VWLLC. VWLLC's obligation for any Supplier claims related to termination will not exceed the obligation VWLLC would have had to Supplier in the absence of termination. Supplier will furnish to VWLLC, within one month after the date of termination, its termination claim, which will consist exclusively of the claims eligible for reimbursement by VWLLC to Supplier that are expressly permitted by this Section. VWLLC may audit Supplier's records before or after payment to verify amounts requested in Supplier's termination claim.
- 12.3 Termination for Cause. Either Party (the "Non-Defaulting Party") may terminate the Order if the other Party (the "Defaulting Party") breaches any of its material duties or material obligations under the Order or these Terms, by delivering to the Defaulting Party a written default notice (the "Default Notice"). The Default Notice shall specify (i) the default(s) in reasonable detail, (ii) the action necessary to cure the default(s), and (iii) the cure period within which the Defaulting Party must cure the default(s), which cure period shall not be less than thirty (30) days for a payment default, and ten (10) days for a performance default (the "Cure Period"). If the Defaulting Party cures the default(s) within the applicable Cure Period to the reasonable satisfaction of the Non-Defaulting Party, the Non-Defaulting Party will rescind the Default Notice. If the Defaulting Party does not cure the default(s) during the applicable Cure Period, at the option of the Non-Defaulting Party, the Order will terminate as of the close of business on the last day of the applicable Cure Period or on such later date as determined by the Non-Defaulting Party. Upon written notice of termination by VWLLC, Supplier shall promptly return all amounts previously paid to Supplier by VWLLC for the Goods (if any) and, in addition to any other damages, VWLLC shall be entitled to, and Supplier shall pay to VWLLC, damages equal to (i) all costs incurred by VWLLC in connection with the manufacturing of the Goods for the Order, including without limitation training, systems programming, site preparation, cost of supplies and facilities, excepting only such costs as are included in the price of substitute goods obtained from any other manufacturer and, (ii) the difference in price between the Goods to be delivered hereunder and substitute goods.
- 12.4 Termination for Insolvency
- 12.4.1 VWLLC may terminate the Order if Supplier (i) provides VWLLC grounds for insecurity, (ii) files for bankruptcy; (iii) becomes or is declared insolvent or is the subject of any proceedings related to its liquidation, insolvency or the appointment of a receiver or similar officer for it; (iv) makes an assignment for the benefit of all or substantially all of its creditors; (v) is unable to pay its debts generally as they come due; or (vi) enters into an agreement for the composition, extension or readjustment of substantially all of its obligations, by giving written notice to Supplier of its intention to terminate the Order as of a date specified in the written notice, which date will not be less than ten (10) days after the date of the written notice, during which time Supplier may cure such default by causing any such proceeding to be terminated or dismissed, or by providing VWLLC with verification of solvency or otherwise of its ability to perform its obligations hereunder. If Supplier fails to cause such proceeding to be terminated or dismissed or otherwise to provide VWLLC with the information set forth above, the Order will terminate on the date set forth in the written notice.

## 12.5 Termination Obligations

Upon receipt of written notice of termination, and unless otherwise directed by VWLLC, Supplier will at no additional cost to VWLLC: (a) promptly terminate all work under the Order on the effective date of termination; (b) transfer title and deliver to VWLLC the finished Goods, the work in process, the parts and materials that Supplier reasonably produced or acquired according to quantities ordered by VWLLC and that Supplier cannot use in producing goods for itself or for others, together with all information and materials related to or otherwise used in connection with the Order, including without limitation packaging, documents, standards, databases, specifications, drawings, manufacturing processes or any other items of value (collectively, "VWLLC's Property"); (c) prior to allocating any amounts received by VWLLC to any other source, Supplier shall upon termination for any reason, first verify and settle any claims by Subcontractors for actual costs incurred directly as a result of the termination; (d) take actions reasonably necessary to protect property in Supplier's possession in which VWLLC has an interest until disposal instruction from VWLLC has been received; and (e) cooperate with VWLLC and its designees and provide the Services reasonably requested by VWLLC or its designees to allow VWLLC's business operations to continue without material interruption or adverse effect, including with respect to VWLLC's new supplier. Effective immediately upon termination and without further notice or legal action, VWLLC may enter Supplier's premises and take possession of all of VWLLC's Property. VWLLC may direct that VWLLC's Property be immediately released to VWLLC or delivered by Supplier to VWLLC in accordance with Article 4. VWLLC shall have no liability with respect to any of VWLLC's Property until such property is in the actual possession of VWLLC.

## 12.6 Transition Assistance

In addition to the Termination Obligations set forth in Section 12.5, upon expiration or termination of the Order for any reason, Supplier shall, at VWLLC's request and at no additional cost to VWLLC, provide transition assistance services as reasonably requested by VWLLC for a period of up to ninety (90) days after the Termination Date (the "Transition Assistance Period"). During the Transition Assistance Period, Supplier shall provide transition assistance services at rates to be agreed upon by the Parties in order to facilitate the orderly transfer of responsibility for the Goods and Services then being provided by Supplier to VWLLC or its designees.

12.7 Survival of Certain Provisions. The provisions of the Order and these Terms that by their nature should survive any termination of the Order, including without limitation Sections 6 through 11, and will survive such termination.

## 13 Miscellaneous

13.1 Publicity. Neither Party will use the other Party's name, trademarks or service marks or refer to the other Party directly or indirectly in any media release, public announcement or public disclosure relating to the Order or its subject matter to the extent the materials in such media release, announcement or disclosure have not previously been made publicly available without obtaining specific written consent from the other Party for each such use or release, which consent may be withheld at the Party's sole discretion. This restriction includes, but is not limited to, any promotional or marketing materials, customer lists or business presentations (but not including any announcement intended solely for internal distribution by a Party or any disclosure required by legal, accounting or regulatory requirements beyond the reasonable control of a Party).

13.2 Notices. All consents, written notices, requests, demands, and other communications to be given or delivered under the Order will be in writing (including wire, telefax, e-mail or other electronic means) and will be deemed given (i) when delivered personally; (ii) on the second Business Day when sent by a nationally recognized overnight courier; (iii) on the third Business Day after being mailed by certified mail, return receipt requested; and (iv) if sent via wire, telefax, e-mail or other electronic means, upon receipt if properly confirmed. All written notices to VWLLC shall be sent to Volkswagen Group of America Chattanooga Operations, LLC, 8001 Volkswagen Drive, Chattanooga, Tennessee 37416, to the attention of

the named Business Owner, with a copy to the office of the Corporate Counsel at the same address and a copy to the office of the General Counsel at 8001 Volkswagen Drive, Chattanooga, Tennessee 37416. All written notices to Supplier shall be sent to its address as set forth on the Order. Either Party may, upon written notice to the other Party, change its notice address under the Order.

- 13.3 Assignment. An Order will be binding upon and inure to the benefit of each Party and its successors and permitted assigns, but neither the Order nor any of the rights, interests or obligations under the Order may be assigned or delegated by either Party without the prior consent of the other Party; provided that VWLLC may assign or delegate the Order to an Affiliate without the prior consent of Supplier. A transaction that includes a sale of a substantial portion of Supplier's assets used for the production of Goods or the provision of Services or a merger, sale or exchange of stock or other equity interests or other transaction that would result in a change in control of Supplier shall constitute an assignment that requires the prior written consent of VWLLC.
- 13.4 No Exclusivity. Nothing about the Order shall prevent VWLLC from securing similar or competing services or goods from a third party.
- 13.5 Relationship of the Parties. Supplier, in furnishing Goods and Services to VWLLC under the Order, is acting only as an independent contractor. Except as otherwise stated in the Order, Supplier does not undertake to perform any obligation of VWLLC, whether regulatory or contractual, or to assume any responsibility for VWLLC's business or operations, and Supplier has the sole right and obligation to supervise, manage, contract, direct, procure, perform or cause to be performed, all work to be performed by Supplier. In no event will VWLLC be deemed to be an employer or co-employer of any Personnel of Supplier and the Order may not otherwise be construed to create a partnership or joint venture relationship between the Parties.
- 13.6 Restriction on Hiring. Supplier agrees not to hire or solicit for hire any employee or subcontractor of VWLLC during the Term of the Order and for a period of one year after the termination or expiration of the Order; provided, however, that the foregoing restriction shall not apply to the extent that such employee may answer a public advertisement for an open position.
- 13.7 Approvals and Similar Actions. Where agreement, approval, acceptance, consent or similar action by Supplier is required by any provision of the Order, such action will not be unreasonably delayed or withheld. If governmental approval of the sale or use of the Goods and/or Services in any state is required by any law, court order or regulation, Supplier, at its expense, will obtain such approval in sufficient time to permit the sale or use of the Goods and/or Services in such state in accordance with VWLLC's schedule, and will furnish an authenticated copy of each such approval to VWLLC.
- 13.8 Modification; Waiver. Except as stated in Article 3, the Order may be modified only by a written instrument duly executed by the Parties. No delay or omission by either Party to exercise any right or power under the Order will impair such right or power or be construed to be a waiver of the right or power. A waiver by either Party of any of the obligations to be performed by the other Party or any breach thereof will not be construed to be a waiver of any succeeding breach thereof or of any other obligation contained in the Order.
- 13.9 No Third-Party Beneficiaries. Each Order is for the sole benefit of the Parties and is not intended to, and shall not, confer any rights or benefits on any Third Person.
- 13.10 These Terms may be amended from time to time. Amendments will be posted on Volkswagen's Supplier Portal website at [www.vwgroupsupply.com](http://www.vwgroupsupply.com) and will be effective the day of posting. No other notice will be given and Supplier has the obligation to check the website for any such amendments.
- 13.11 Severability. If any term of the Order is invalid or unenforceable under any statute, regulation, ordinance, executive order or other rule of law, the term will be deemed reformed or deleted, as the case may be, but only to the extent necessary to comply with applicable law. The remaining provisions of the Order will remain in full force and effect.

- 13.12 **Governing Law.** An Order will be governed by the laws of the State of Tennessee and the United States of America. The provisions of the United Nations Convention on Contracts for the International Sale of Goods, and any conflict-of-laws provisions that would require application of another choice of law are excluded. The arbitration provisions herein, including their enforceability, will be further governed as set forth in Section 13.13.
- 13.13 **Resolution of Claims and Disputes**
- 13.13.1 The Parties agree to resolve all claims and disputes ("Claims") in accordance with this Section 13.13. For purposes of the Order, a Claim includes any demand, assertion, request or other claim made with respect to any matter arising out of or related to the Goods, Services and/or the Order. Claims must be made by written notice specifying the existence and nature of the claim provided within a reasonable time following the occurrence of the event giving rise to the Claim. The responsibility to substantiate Claims shall rest with the Party making the Claim.
- (a) **Initial Meeting.** Not less than ten (10) days following receipt of such notice, the Parties shall meet and attempt to resolve such Claim at the field level (the "Initial Meeting") through discussions between both parties' respective field representatives (the "Representatives").
  - (b) **Second Meeting.** If the Representatives cannot resolve the Claim within thirty (30) days after the Initial Meeting, then, upon the request of either Party, the Parties' managers, supervisors, or other designated executives (the "Executives") shall meet again and attempt to resolve such Claim (the "Second Meeting").
  - (c) **Meeting Procedures.** At least three (3) Business Days prior to any meetings between the Parties, including the Representatives, the Parties shall exchange any relevant information that will assist the Parties in resolving the Claim. Either Party may elect to be accompanied at any meeting by an attorney provided that the Party intending to be accompanied by an attorney shall give the other Party at least five (5) days' notice of such intention.
  - (d) **Mediation.** If the Claim is not resolved not within fourteen (14) days after the Second Meeting, the Parties shall submit the Claim to non-binding mediation. If the Parties cannot agree on a mediator, the Parties shall submit the Claim to the American Arbitration Association ("AAA") for mediation administered in accordance with the Commercial Arbitration Rules and Mediation Procedures of the AAA ("AAA Rules") then in effect. Not less than seven (7) days after the selection of the mediator, the Parties and the mediator shall participate in a pre-mediation conference to determine the time and place of the mediation. All fees and expenses of the mediator shall be shared equally by the Parties and each Party shall submit to the mediator such information or position papers as the mediator may request to assist in resolving the Claim. The Parties (i) will not attempt to subpoena or otherwise use as a witness any person who serves as a mediator and (ii) will assert no claims against the mediator as a result of the mediation
- 13.13.2 **Arbitration.** All Claims not settled or resolved by the Parties in accordance with the settlement and mediation procedures set forth herein shall be resolved by binding arbitration and each Party shall act in accordance with the AAA Rules and in accordance with these Terms. Notwithstanding any other provision herein to the contrary, if a Claim is not settled or resolved within one hundred and twenty (120) days after the Initial Meeting, either Party may submit the Claim to binding arbitration in accordance with the AAA Rules and in accordance with these Terms.
- 13.13.3 **Equitable Relief.** Notwithstanding any other provision herein to the contrary, either Party may, with respect to a Claim, apply to a court for equitable relief, including a temporary restraining order, preliminary injunction or other interlocutory or relief, provided that such application for equitable relief will not delay or adversely affect in any material respect the date set by VWLLC for completion of the project. The Arbitration Panel (as defined below) shall have the authority to modify any court order granting such

interlocutory relief and such court order shall remain in full force and effect until so modified. Any such court or Arbitration Panel order may be enforced in any court having jurisdiction thereof. Any court relief sought under this Section shall be brought in and subject to the exclusive venue and jurisdiction of the courts of Hamilton County, Tennessee or the U.S. District Court for the Eastern District of Tennessee, as applicable, provided that VWLLC may elect to seek such relief against Supplier in any court having jurisdiction over Supplier.

- 13.13.4 Continuing Obligations. In the event of any dispute arising by or between the Parties, each Party shall continue to perform as required under the Contract notwithstanding the existence of such dispute. In the event of such a dispute, VWLLC shall continue to pay the Supplier as provided in the Agreement, excepting only such amount as may be disputed.
- 13.13.5 Arbitration Proceedings. The arbitration provisions under the Agreement, including their enforceability, shall be governed by the Federal Arbitration Act or the Tennessee Uniform Arbitration Act, as applicable ("Arbitration Acts"). All arbitration proceedings shall be conducted in Hamilton County, Tennessee, USA in the English language in accordance with the AAA Rules.
- 13.13.6 Arbitrator Qualifications. Unless the Parties otherwise agree in writing, the arbitration shall be conducted using a panel of three (3) arbitrators ("Arbitration Panel") who are selected by the Parties in accordance with the AAA Rules from the AAA National Commercial Panel and who are practicing attorneys who have experience with respect to equipment and supplies transactions for large manufacturing facilities. If the procedures of the AAA Rules do not result in the selection by the Parties of a panel of three (3) arbitrators, then each Party shall appoint to the Arbitration Panel one (1) neutral arbitrator who meets the required qualifications, and the two (2) neutral arbitrators selected by the Parties shall appoint a third neutral arbitrator who meets such qualifications. If either Party does not appoint a neutral arbitrator within two (2) weeks of being notified that it is required to do so, the AAA will appoint an arbitrator for such Party.
- 13.13.7 Arbitration Award. The Arbitration Panel shall issue a written, reasoned award stating the bases of the award and including detailed findings of fact and conclusions of law. The award rendered by the Arbitration Panel shall be final, and judgment may be entered upon it and enforced without prejudice to the rights of either Party to seek vacation of the award in accordance with the Arbitration Acts in any court having jurisdiction thereof.
- 13.13.8 Arbitration Fees and Expenses; Attorneys' Fees. Fees and expenses in connection with the arbitration, including without limitation reasonable attorneys' fees and dispute resolution costs, in addition to any other damages or other amounts to which it may be entitled, shall be awarded to the prevailing party. The failure by one Party to pay its share of arbitration fees and expenses in accordance with the AAA Rules shall constitute a waiver of such Party's Claim or defense in the arbitration.
- 13.13.9 Confidentiality. All arbitration proceedings and other information and matters relating to the arbitration shall be confidential, except to the extent that disclosure is necessary to enforce an arbitration award in a court of competent jurisdiction; provided that any such disclosure shall be to the most limited extent possible to accomplish such enforcement of the award and either Party may seek a protective order in connection therewith. The Parties agree to maintain such confidentiality.
- 13.13.10 Statute of Limitations. In no event shall a demand for mediation or arbitration be made after the date when institution of legal or equitable proceedings based on such Claim would be barred by applicable statutes of limitations or repose.
- 13.13.11 Waiver of Joinder Objection. Supplier waives all objections to joinder of Supplier as a party to any mediation, arbitration or litigation related to the Order in which VWLLC is joined with respect to which Supplier's conduct, Goods or Services have some relationship. Supplier also agrees to include in all contracts used or prepared by Supplier similar waivers on behalf of any and all individuals or entities with whom Supplier enters into a contract. Such contracts in which Supplier must include similar waivers include without limitation, contracts between Supplier and any individual or entity having a direct contract

with Supplier for any Goods or Services relating to the Order, and any general and supplemental conditions applicable to such contracts.

- 13.13.12 Joinder. Either Party may include by joinder individuals or entities in accordance with the AAA Rules.
- 13.14 Entire Agreement. Except as otherwise expressly stated in a writing signed by both Parties, the Order, together with the attachments, exhibits, specifications, meeting minutes, supplements or other terms of VWLLC specifically referenced therein, and these Terms, constitute the final, entire, and exclusive agreement between the Parties with respect to the subject matter hereof.
- 13.15 Waiver of Jury Trial. VWLLC AND SUPPLIER ACKNOWLEDGE THAT THE RIGHT TO TRIAL BY JURY IS A CONSTITUTIONAL ONE, BUT THAT IT MAY BE WAIVED. EACH OF VWLLC AND SUPPLIER, AFTER CONSULTING (OR HAVING THE OPPORTUNITY TO CONSULT) WITH COUNSEL OF ITS CHOICE, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT TO TRIAL BY JURY IN ANY ACTION OR OTHER LEGAL PROCEEDING ARISING OUT OF OR RELATING TO ANY ORDER OR OTHER DOCUMENT PERTAINING TO ANY ORDER.
- 13.16 Claims by Supplier. Any legal action or arbitration proceeding by Supplier under any Order must be commenced no later than one (1) year after the breach or other event giving rise to Supplier's claim occurs, or Supplier becomes aware of the existence (or facts and circumstances giving rise to the existence) of such claim, whichever occurs first.
- 13.17 Battle of the Forms Not Applicable. The Parties have agreed and it is their intent that the battle of the forms described in Section 2-207 of the Uniform Commercial Code shall not apply to these Terms or to any invoice or acceptance form of Supplier relating to these Terms. It is the Parties' intent that these Terms shall exclusively control the relationship of the Parties, and in the event of any inconsistency between any invoice or acceptance form sent by Supplier to VWLLC and these Terms, these Terms shall control.
- 13.18 Remedies Cumulative. All rights and remedies set forth in these Terms are in addition to rights and remedies available to VWLLC at law or in equity. Each of the rights and remedies reserved to VWLLC in these Terms shall be cumulative and the assertion of VWLLC of any right or remedy shall not preclude the assertion by VWLLC of any other rights or the seeking of any other remedies. All costs incurred in connection with any remedy, including all travel expenses and daily allowances as well as any and all attorneys' fees and costs incurred by VWLLC as a result of Supplier's breach of its obligations, shall be the obligation of Supplier. Supplier shall not have any right of setoff.
- 13.19 Supplemental Terms and Conditions. VWLLC may issue supplemental terms and conditions to address special or additional requirements.
- 13.20 Interpretation. Supplier and VWLLC agree that the Order, including these Terms, was negotiated by the Parties with the benefit of legal representation, and any rule of construction or interpretation otherwise requiring provisions to be construed or interpreted against any Party as having been drafted by it will not apply.

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