



VOLKSWAGEN GROUP CANADA INC.

NON-PRODUCTION STANDARD PURCHASE TERMS AND CONDITIONS

Effective April 1, 2023

Last revised March 31, 2023

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 Purchase Terms & Conditions and any appendices related thereto (“Terms”) apply to contracts, agreements, Purchase Orders, SOWs, Change Orders (collectively referenced herein as an “Order”), between Volkswagen Group Canada Inc. (“VGCA”) and a supplier to VGCA(each, a “Supplier”). These Terms apply to Orders for Goods, Services and/or Goods and Services, as the case may be.

1 Definitions

- 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, controlled or under direct or indirect common control with such Person (including without limitation all employees, directors and officers of 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 VGCA 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 VGCA may purchase from Supplier pursuant to the Purchase Order.
- 1.1.6 “Negotiation Minutes” shall mean the negotiation minutes between VGCA and Supplier regarding the Goods and/or Services which are the subject of the Purchase Order.
- 1.1.7 “Order” shall mean all contracts, agreements, Purchase Orders, SOWs, and Change Orders between VGCA and Supplier.
- 1.1.8 “Person” shall mean any individual or joint venture, partnership, corporation or other business or legal entity.
- 1.1.9 “Personnel” shall mean the officers, directors, agents and employees of any Party.
- 1.1.10 “Purchase Order(s)” shall mean any written order(s) issued by VGCA to Supplier under the Order for the purchase of Goods and/or Services, including those orders issued by VGCA to Supplier through VGCA’s Order Hub.
- 1.1.11 “RFQ” shall mean a request for quote issued by VGCA to Supplier in respect of the Goods and/or Services.
- 1.1.11 “Services” shall mean, collectively or individually, the services and tasks which VGCA may purchase from Supplier pursuant to the Purchase Order.
- 1.1.12 “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.
- 1.1.14 "**Subcontractor**" refers to an independent Third Person of any tier engaged by Supplier, directly by VGCA 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.
- 1.1.13 “Supplier’s Proposal” shall mean the Supplier’s proposal in response to the RFQ issued by VGCA in relation to the Goods and/or Services associated with the Order, as applicable.

1.1.14 “Third Person” shall mean a Person, including its employees, contractors or agents that is not a Party to the Order.

2 Interpretation; Offer; Acceptance; Exclusive Terms

2.1 Interpretation

2.1.1 Each Order is comprised of the following documents, all of which are hereby incorporated by reference into and form part of an Order:

- (a) these Terms;
- (b) SOW;
- (c) Purchase Order;
- (d) Negotiation Minutes; and
- (e) the Supplier’s Proposal, as applicable;

2.1.2 In the event of any ambiguities, conflicts or inconsistencies between or among any of the provisions of an Order, the provisions shall govern in the following order of precedence with each taking precedence over those listed subsequently:

- (a) any provision establishing a higher standard of safety, reliability, durability, performance or service shall take precedence over a provision establishing a lower standard of safety, reliability, durability, performance or service;
- (b) specifications and/or technical requirements, as applicable;
- (c) the provisions of amendments in writing to an Order signed by the Parties and Change Orders shall govern and take precedence only over those specific provisions of the Order expressly amended thereby;
- (d) Negotiation Minutes;
- (e) the Terms;
- (f) SOWs;
- (g) a Purchase Order; and
- (h) the Supplier’s Proposal, as applicable;

2.1.3 Each Purchase Order issued by VGCA 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 VGCA (e.g. the Order, an RFQ or Non-Disclosure Agreement) will continue to apply. The Purchase Order does not constitute an acceptance of any offer, quotation or proposal made by Supplier. Any reference in the Purchase Order to any offer, quotation or proposal made by Supplier is solely to incorporate the description or specifications of the 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, offer, proposal, acknowledgement, invoice or otherwise, shall be deemed a material alteration of these Terms, and are hereby objected to and rejected by VGCA; provided, that any such proposal or attempted variance shall not operate as a rejection of the Purchase Order if Supplier accepts VGCA’s Order by commencement of work, ships the Goods and/or performs the Services or accepts the Order in writing or by other means acceptable to VGCA, 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, Negotiation Minutes, and any attachments thereto, shall be considered the complete agreement between VGCA and Supplier with respect to the subject matter thereof 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 Article 3. References herein to “including” shall be deemed to mean “including, but not limited to,” or “including, without limitation” or such similar meaning.

- 2.1.4 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; (c) ships the Goods and/or performs the Services; or (d) any other conduct that recognizes the existence of a contract with respect to the subject matter of the Purchase Order.
- 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 VGCA of any condition or occurrence which Supplier reasonably believes may affect Supplier's, VGCA's or any Subcontractor's schedules.
- 2.3 Conduct; Safety; Removal. While at a VGCA Facility, Supplier shall be responsible for its Personnel, Subcontractors and Affiliates. Supplier and its Personnel, Subcontractors and Affiliates will conduct themselves (including wearing attire acceptable to VGCA) in a safe, business-like and professional manner and will comply with VGCA'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. VGCA shall further have the right to require, at Supplier's expense, health, safety, or other testing to prove, in writing, the fitness of Supplier's employees to enter into VGCA's premises. VGCA may, upon giving written notice to Supplier, require Supplier to reassign, replace or remove any individual or Subcontractor performing services under the Order when VGCA determines that the performance of such individual or Subcontractor is such that it may have an adverse impact on VGCA. Supplier will, on receipt of such written notice, begin diligent efforts to address VGCA's concerns. If Supplier has not, in VGCA's reasonable determination, addressed VGCA'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 VGCA. In addition, VGCA may, on giving written notice to Supplier, and at no cost to VGCA, 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 VGCA 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 agrees to maintain the highest standards of moral, legal and ethical conduct and to safeguard and promote the reputation of VGCA and its products. Supplier shall refrain, and shall ensure that its Personnel and Affiliates, and Subcontractors, refrain from making any negative comments about VGCA 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 VGCA Facility are legally eligible to work in Canada and any province or territory in which such Personnel perform services. Supplier shall complete, execute, and maintain all legally required forms and documentation for all Personnel performing services at a VGCA Facility. Supplier shall not knowingly or intentionally direct or allow any of its Personnel to enter a VGCA Facility or to perform any services of any nature who is not legally eligible to work in Canada and any province or territory in which such Personnel may enter a VGCA Facility or perform services. Upon VGCA's request and subject to applicable law, Supplier shall make available to VGCA the employment, qualification and training records and documentation of its Personnel, including records and documentation regarding the eligibility of Supplier's Personnel to work in Canada and any province or territory in which such Personnel perform services. If Supplier provides Services at a VGCA Facility, Supplier will examine the Facility to determine whether the Facility is safe for the Services and will advise VGCA promptly of any situation it deems to be unsafe. Supplier shall be solely responsible for, and VGCA shall have no liability for, any loss, expense, damage or claim arising out of, or in connection with, the performance of Services at a VGCA 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 VGCA in writing and provide any information that VGCA may reasonably request regarding such Subcontractor. If VGCA 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). VGCA 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,
- 2.4.2 Subcontractor Reviews. At VGCA'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 VGCA determines that the performance of the Subcontractor, including any of its personnel, does not conform to the Order or is otherwise unacceptable, VGCA may, without liability, require the removal or termination of such Subcontractor or its personnel. If VGCA removes or terminates, or requires the removal or termination, of any Subcontractor or its personnel, Supplier shall ensure that any replacement Subcontractor or its personnel will perform the Services of the removed Subcontractor or its personnel at the same Charges and pursuant to the same terms as set out in the applicable Order.
- 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. Any addition, reduction, substitution, omission, modification, deletion, removal or other changes to the Order, including to a SOW or a Purchase Order, or the Goods or Services related thereto, ("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, Charges 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 (including reasons for proposing the Change), the projected schedule and timing for the Change and the priority of the Change.
- 3.3 Change Documentation. Within five (5) Business Days of either Party delivering a request for a Change in accordance with Section 3.2, Supplier shall prepare and deliver to VGCA notice of the effect, if any, of the proposed Change on:
- a) the scope of the Goods or Services;
 - b) Supplier's and VGCA's obligations under the Order;
 - c) the Charges, including the budget, price or fees associated with the Change and any costs or cost savings to VGCA;
 - d) the impact to the schedule for the delivery of the Goods or Services; and
 - e) any other reasonably foreseeable implications of the Change which may be relevant to VGCA's evaluation of the proposed Change.

Within ten (10) Business Days after receiving such information, VGCA will: (i) approve the Change; (ii) withdraw any request for the Change; (iii) reject Supplier's request for Change; or (iv) request further particulars or documents from Supplier as it may reasonably require to evaluate the Change request or information delivered by Supplier. If VGCA does not do any of the foregoing within ten (10) Business Days, then VGCA shall be deemed to have rejected or withdrawn the request for Change, as applicable. Upon approval by VGCA of the Change, the Parties shall enter into a Change Order in respect of the Change.

4 Goods and Services

- 4.1 Goods and Services. VGCA 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 and in the absence of an express declaration to that effect, VGCA shall have no obligation to purchase any particular quantity of Goods and/or require any particular Services from Supplier. Supplier shall produce the Goods and perform the Services as ordered by VGCA in accordance with the Order and shall, unless otherwise provided in the Order, provide and pay for labour, 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 VGCA. VGCA 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 VGCA's Facility and any other property leased or owned by VGCA, free and clear of any and all liens, encumbrances and claims arising out of or relating to the Order.
- 4.2 Ordering. Each Purchase Order shall specify the description, quantity, Charges, 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 VGCA from Supplier (collectively, the "Order Terms"). VGCA may, during the Term of the Order, order additional or incremental Goods and Services from Supplier under the Order pursuant to and in accordance with Article 3. Supplier shall not fabricate or ship any Goods or provide any Services except to the extent authorized in VGCA's written Orders.
- 4.3 Shipping, Risk of Loss and Title. Except as otherwise stated in the Order, VGCA requires that Supplier ship Goods delivery duty paid ("DDP") to VGCA'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 VGCA upon delivery, without prejudice to VGCA's rights to reject or return Goods pursuant to the Terms.
- 4.4 Packing. VGCA will hold Supplier responsible for, and Supplier represents and warrants that Goods shall be properly, safely and carefully packed, prepared, stored, 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 VGCA at their 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, storage 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, VGCA 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 VGCA 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. VGCA shall inspect and notify Supplier in writing within a reasonable time

from the date the Goods and Services have been received or performed, whether VGCA has rejected the Goods or Services (the “Acceptance Period”). VGCA’s payment of any invoice shall not be deemed to constitute 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 VGCA. Supplier, as identified in the Purchase Order, shall provide all information and certificates (including FTA certificates and United States-Mexico-Canada Agreement (“USMCA”) Certificates of Origin) necessary to permit VGCA to receive these benefits or credits. Supplier agrees to notify VGCA of any Goods or Services which are subject to Canada’s or any other country’s import or export laws and to fulfill any customs, FTA, or USMCA related obligations, origin marking, or labeling requirements, and content origin requirements. Supplier shall notify VGCA in writing of any Goods subject to Canadian export laws and regulations, including any changes to provincial/territorial or FTA or USMCA content, which in each case are subject to VGCA 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 shall provide the information necessary to enable VGCA to obtain the licenses or authorizations. Supplier shall promptly notify VGCA 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 shall 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 shall promptly advise VGCA 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 shall mark Goods “Made in [country of origin].” Supplier shall provide to VGCA 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 shall include supporting documentation required by Canada Border Services Agency and any other governmental agencies, including, without limitation, Transport Canada, Environment & Climate Change Canada, and Health Canada. Supplier warrants that any information that is supplied to VGCA 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 Canada, Supplier shall comply with all applicable recommendations or requirements of the Canada Border Services Agency’s Partners in Protection (“PIP”) program. Upon request, Supplier shall certify in writing its compliance with the PIP program and shall provide any supporting documentation requested by VGCA and/or the Canada Border Services Agency.
- 4.7 Time and Quantity of the Essence. Time and quantity are of the essence to VGCA. Time and quantity provisions of Order(s) generated in connection with these Terms shall be strictly observed. Supplier shall promptly notify VGCA 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 shall implement to comply with Supplier’s obligations under the Order. In such circumstances, VGCA may exercise any and all rights it may have pursuant to the Order. Alternatively, VGCA may, at its option, require Supplier to do all things necessary at no cost to VGCA (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. VGCA 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 that VGCA may have under these Terms or by law, in the event that Supplier is delayed in delivering the Goods and/or Services to VGCA, Supplier shall pay the daily liquidated damage amount for each day that the delivery of the Goods and/or Services is delayed in the amount of 0.2% of the total Charges of the Goods and/or Services, provided, however, that such liquidated damages shall not exceed, in the aggregate, 5% of the total Charges for the Goods and/or Services. If the liquidated damages owing by Supplier reach the aggregate limit of five percent (5%) of the total Charges for the Goods and/or Services, then any further delay by Supplier shall be a material breach of the

Agreement and VGCA 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 VGCA's exclusive remedy in the event of delay and that VGCA 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. VGCA, 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 VGCA, 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, VGCA shall have the right of access to any of Supplier's plants as may be necessary to allow VGCA 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 VGCA's design and manufacturing requirements and procedures and all other applicable laws and regulations. Supplier shall provide VGCA 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 Supply Chain Sustainability. In addition to complying with VGCA's other requirements, Supplier shall comply with Volkswagen Aktiengesellschaft's and its Affiliates' Code of Conduct for Business Partners. The Code of Conduct defines the expectations of VGCA and its Affiliates regarding environmental compliance, sustainable development, and conduct by business partners, including with respect to the added value of their products. Without limitation, child or forced labour are prohibited in the supply chain for the delivery of Goods or Services covered by an Order. The full text of the requirements can be found on vwgroupsupply.com under Cooperation -> Supply Chain Sustainability. When Supplier submits an offer and/or accepts an Order, Supplier confirms its awareness of, and agreement to comply with, the sustainable development requirements.

5 Charges and Payment

- 5.1 Charges. VGCA shall pay Supplier the purchase prices and/or service fees (collectively, the "Charges") for the Goods and/or Services set forth in the applicable SOWs and Purchase Orders. In addition to any right of setoff or recoupment provided by law, VGCA may set off and recoup against its accounts payable to Supplier any amounts (i) for which Supplier or Supplier's Affiliates is liable to VGCA under any Order or agreement with Supplier or Supplier's Affiliates; (ii) which are otherwise due and owing by Supplier to VGCA; or (iii) which are being disputed by VGCA pursuant to the Terms. Subject to Article 3, the Charges for the Goods or Services shall not exceed the amount specified in the Order. The Charges include all charges, including transportation (DDP), storage, drayage, demurrage, 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 VGCA is responsible under these Terms and properly invoiced by Supplier and VGCA will not accept any extras or additional charges unless specified in the Order or otherwise agreed by VGCA in writing or pursuant to and in accordance with Article 3. Supplier assumes the risk of events or causes affecting prices including without limitation foreign exchange rates, increases in raw material costs, inflation, increases in labour 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 VGCA in violation of this Section 5.1.
- 5.2 Taxes. VGCA shall not be liable for any federal, provincial/territorial, or foreign taxes unless separately stated in the Order and billed as a separate line item. Unless VGCA has furnished Supplier with an applicable exemption certificate, VGCA shall pay Supplier any applicable sales, excise or use taxes or other taxes imposed by any federal, provincial/territorial, 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 VGCA. VGCA shall be responsible for Value Added Taxes (“VAT”) with respect to the Goods and Services so long as Supplier identified the VAT as a separate line item in its quotation, and presented the VAT as a separate line item in its invoice. All other taxes for which VGCA is responsible under the Order shall be submitted in a separate invoice.

VGCA 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 VGCA with documents that shall be required to obtain any applicable exemption, credit, rebate, remission, refund, reduction or other relief from taxes or foreign tax credit. VGCA is authorized to deduct or withhold from each payment to Supplier all taxes which VGCA 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 VGCA with written proof of such compliance. Supplier shall indemnify, defend, and hold harmless VGCA for any amounts assessed against VGCA 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, VGCA 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, VGCA may withhold payment without losing its rights to applicable cash discounts. Except as otherwise stated in the Order, all payments will be in Canadian Dollars. Supplier agrees to accept payment by electronic funds transfer or by cheque mailed on or before the due date unless otherwise expressly agreed by VGCA.
- 5.4 Disputed Invoices. Within 180 days of receipt of an invoice, VGCA shall notify Supplier in writing of any disputed Charges.
- 5.5 Audits by VGCA
 - 5.5.1 Audits. At VGCA’s request, Supplier will allow VGCA 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 VGCA 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 VGCA (including any reimbursement of any overpayment by VGCA or reimbursement to Supplier for any underpayment by VGCA); 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 VGCA for the costs of the audit.
 - 5.5.3 Operational Audits. VGCA 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.

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.
- 6.3 To the extent that Supplier shares "Personal Information" (as defined in the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5) with VGCA, Supplier will do so in compliance with applicable law, including providing appropriate notice (including notice regarding the sharing of Personal Information with third parties) and obtaining consent if required; or, if Supplier is not the first party collector of such Personal Information, ensuring that suppliers of such data have provided appropriate notices and obtained any required consents to share such data. Supplier agrees to make available, upon request, information to demonstrate compliance, including a copy of the compliant notices or consents.

7 Warranties and Certain Covenants

7.1 By Supplier.

- 7.1.1 **Goods Warranty.** Supplier warrants to VGCA 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 VGCA 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 VGCA 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 VGCA, Supplier shall, at VGCA's option, do any of the following with respect to the Goods that do not conform to the Goods Warranty: (i) replace the Good(s), (ii) repair the Good(s), or (iii) refund the purchase price for such Good(s) within the time periods for delivery of the Goods specified in the Order. VGCA's acceptance of Goods, including those which have been repaired, replaced or modified, shall be evidenced by a written confirmation 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 confirmed in writing by VGCA 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 VGCA 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 VGCA is entitled under law and equity, including without damages, legal costs (on a full indemnity basis) and costs incurred as a result of Supplier's breach of its obligations.
- 7.1.2 **Services Warranty.** Supplier represents and warrants to VGCA (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 VGCA, Supplier shall, at VGCA’s option, do any of the following with respect to the Services that do not conform to the Services Warranty: (i) re-perform any Services, or (ii) refund the service fees for any Services. VGCA’s acceptance of Services, including those which have been repaired, replaced or modified, shall be evidenced by a written confirmation 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. Any provision to the contrary in the Order notwithstanding, if Supplier fails to timely re-perform a nonconforming Service, then VGCA 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 differential in fees charged by the replacement supplier in relation to the replacement services, as well as recover any and all damages to which VGCA is entitled under law and equity, including without limitation damages, legal costs (on a full indemnity basis) 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 VGCA in accordance with Section 7.1.1; (ii) the warranty period specified by Supplier and Supplier’s documentation relating to the Goods or Services, as the case may be; and (iii) any warranty period provided by applicable law.

7.2 Additional Warranties.

- 7.2.1 Supplier represents and warrants to VGCA: (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 labour, 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, or hazardous materials as well as any and all environmental, electrical, and electromagnetic considerations that apply to the country of manufacture, sale, or destination. Supplier shall furnish VGCA, no later than the date the Goods are delivered, with a Safety Data Sheet (“SDS”) for any Goods which are covered by the Workplace Hazardous Materials Information System as described in the *Hazardous Products Act*, RSC 1985, c H-3, and the *Hazardous Products Regulations*, SOR/2015-17, and shall promptly provide updated SDS documentation to reflect any changes in the compilation of any materials supplied. (c) Supplier shall furnish the weight and dimensions of each part in grams and millimeters, respectively. (d) Supplier and its Personnel, Affiliates and Subcontractors will abide by the highest ethical standards. Supplier agrees to comply with all federal and provincial/territorial laws and regulations pertaining to product content and warning labels, including without limitation the *Canadian Environmental Protection Act*, SC 1999, c 33, and European Union Directive 2000/53/EC. Neither Supplier nor any of its Subcontractors will utilize slave, child, prisoner or any other form of forced, involuntary or illegal labour, 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 laws of the Province of Ontario with respect to licensing and permitting, including without limitation laws regarding the licensing and permitting of contractors and Subcontractors. (f) At VGCA’s request, Supplier shall certify Supplier’s, its Personnel’s, Subcontractors’ and Affiliates’ compliance with the foregoing.

- 7.2.2 Global Affairs Canada Compliance. Supplier warrants that it is currently in compliance with, and shall at all times during the Term of this Order remain in compliance with, the acts and that Global Affairs Canada enforces (including listed persons under the *United Nations Act*, RSC 1985, c U-2, and the Consolidated Canadian Autonomous Sanctions List, each a “Listed Person”), and any statute, executive order, or other governmental action relating thereto. In addition, Supplier shall confirm that its suppliers, sub-suppliers, and sub-sub suppliers are also in compliance with these requirements and shall remain so during the Term of this Agreement, so that no component or sub-component of an item purchased by VGCA from Supplier is in violation of the acts and regulations that Global Affairs Canada enforces.
- 7.2.3 Supplier represents and warrants to VGCA that it is an equal opportunity employer and that it is in compliance with all applicable federal, and provincial/territorial labour 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.
- 7.2.4 Supplier represents and warrants to VGCA that (i) it has good and marketable title to the Goods, (ii) the Goods will be free from any liens, claims, charges, hypothecs, encumbrances, security interest of any kind whatsoever 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 VGCA. If at any time the acts or omissions of Supplier or its Subcontractors result in a claim or indebtedness against VGCA or against Supplier or its Subcontractors, or lien rights against the Goods or any part thereof or against any Facility or other property of VGCA is filed by or through Supplier or Subcontractor, Supplier shall notify VGCA in writing of such claim, indebtedness or lien rights and immediately pay such claim or indebtedness to be paid or cause such lien rights to be removed or discharged or otherwise at Supplier's expense within 10 Business Days, and otherwise indemnify, defend and hold harmless VGCA from such claim, indebtedness or lien rights. If Supplier fails to comply with this Section 7.2.4 then VGCA may, without prejudice to any right or remedy that VGCA may have, take such steps or proceedings, including payment, settlements or compromise of any claim or payment into court, as VGCA reasonably determines is necessary to procure release of any such claim, indebtedness or lien, and all payments and costs, including legal fees and disbursements incurred by VGCA will be paid by Supplier to VGCA or may be deducted from any amount due or thereafter becoming due to Supplier, unless the claim, indebtedness or lien was a direct result of a breach of the Order by VGCA.
- 7.2.5 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.
- 7.2.6 Supplier represents and warrants to VGCA that, in performing its obligations under the Order, (i) it will not employ or subcontract with any person who is a Listed Person under the *United Nations Act*, RSC 1985, c U-2, or the Consolidated Canadian Autonomous Sanctions List, and (ii) Supplier is not a Listed Person.
- 7.3 Warranties Under Law. The foregoing warranties are in addition to any provided to VGCA 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 VGCA, unless otherwise specified in the Order or otherwise agreed by VGCA 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 shall, at its

expense, indemnify, defend and hold harmless VGCA and its Affiliates, agents, and invitees and their respective Personnel, successors and assigns (each a “VGCA Indemnitee”), in full against all loss, liability, damages, fines, penalties, deficiencies, fees, costs and expenses, legal costs (on a full indemnity basis), settlements, professional fees, expert fees, and judgments arising from and relating to any claims, actions, or lawsuits (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 VGCA 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 or through Supplier, any Subcontractor, or anyone directly or indirectly engaged by any of them or for anyone for whose acts they may be responsible;
 - 8.1.5 Claims by Supplier or its Personnel, Affiliates or Subcontractors relating to any benefits normally associated with employment at VGCA, including insurance, pension, health, lease cars, compensation, tax withholdings, and social security, and any claims relating to Supplier's failure to comply with any applicable federal or provincial/territorial 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 insurance, 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 shall, at its expense, indemnify, defend, and hold harmless the VGCA Indemnitees from any Third-Person claims made against VGCA or any of its Affiliates and their respective Personnel in full against all loss, liability, damages, costs and expenses, including legal costs (on a full indemnity basis), settlements, professional fees, expert fees, and judgments arising from any claims, actions, or lawsuits 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”). VGCA 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 VGCA 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 VGCA and its Affiliates, as applicable, to Supplier less a reasonable amount directly proportionate to VGCA'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, VGCA 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 VGCA'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 VGCA and its Affiliates, as applicable, based upon the Intellectual Property Claim.

- 8.2.2 Supplier shall have no obligation to indemnify VGCA against any Third-Person claims made against VGCA 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 VGCA which has not been approved by Supplier or (ii) the use by VGCA of a Good in combination with goods that are not provided to VGCA 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 VGCA of written notice of the commencement or threatened commencement of any action, suit, proceeding, judgment, claim made involving a claim for which a VGCA 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 VGCA 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 VGCA Indemnitees). If the VGCA 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 VGCA Indemnitees will work together to avoid duplication of effort or expense, in legal costs or otherwise. In addition, Supplier and the VGCA 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 VGCA Indemnitees all information with respect to such defense, compromise or settlement as VGCA Indemnitees may request. Supplier shall not assume any position or take any action in connection with such defense, compromise or settlement (including without limitation any admission of liability) that would impose an obligation of any kind (other than the obligations under Article 8 hereof) or restrict the actions of VGCA Indemnitees, 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 No admission of liability nor any settlement, compromise or termination of any actions, suits, proceedings, judgments, claims made or threatened will be made by Supplier without the prior written consent of the VGCA Indemnitee, such consents not to be unreasonably withheld or delayed.
- 8.3.5 If Supplier does not participate in the defense of a claim covered by this Section, the VGCA 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 to VGCA all such costs and expense incurred by the VGCA Indemnitees, demand for which may be made periodically, and such amounts shall become due and owing by Supplier to VGCA.
- 8.3.6 Notwithstanding anything to the contrary in the Order, no limitations on damages or remedies set forth in the Order shall apply to Supplier's obligations to indemnify, defend and hold the VGCA 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 VGCA and (ii) Third-Person claims made against VGCA 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. VGCA shall not be liable for, and Supplier hereby waives any right to, any special, contingent, exemplary, indirect, incidental, consequential or punitive damages, including lost or anticipated loss of profits, fees, business, use, revenue, production, contracts, business reputation, opportunities or 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 obligations, covenants and agreements under the Order. VGCA shall not be liable to Supplier for the Excluded Damages, whether foreseeable or not, and even if VGCA 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; 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 or Subcontractor’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 labour strike or other labour disruption applicable to a Party or any of its subcontractors or suppliers, including Subcontractors, shall 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, VGCA may unilaterally by written notice to Supplier and without liability to Supplier: (a) purchase Goods from other sources and reduce the quantity of the Goods delivered by Supplier; (b) require Supplier to deliver to VGCA 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 VGCA and at the purchase price set forth in the Order. In addition, Supplier at its expense will take all necessary actions to ensure the supply of Goods to VGCA for a period of at least thirty (30) days during any anticipated labour disruption or resulting from the expiration of Supplier’s labour contracts. If delay on the part of Supplier lasts longer than thirty (30) days, VGCA may terminate the Order without liability and Supplier shall reimburse VGCA for costs associated with the termination.

10 Insurance

- 10.1 Supplier shall 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. VGCA 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, province or territory exercising jurisdiction over the Personnel of Supplier and/or Subcontractor performing Services in such country, province or territory ;
- 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. VGCA 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. VGCA 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 VGCA 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. VGCA 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 VGCA 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 VGCA, 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 VGCA 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 VGCA 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 VGCA 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 VGCA 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 VGCA, it shall be a condition precedent to VGCA'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 VGCA 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.

11 Intellectual Property

- 11.1 Intellectual Property Representations. Supplier hereby represents and warrants to VGCA that it owns all rights in (or has obtained all rights necessary to license or otherwise furnish to VGCA) the Goods and Services (including software, microcode, and other intellectual property of any sort) provided to VGCA under the Order. VGCA 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 VGCA 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 VGCA 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 VGCA, (ii) acquired by Supplier under this Order for which VGCA has agreed to reimburse or has reimbursed Supplier, or (iii) furnished by VGCA to Supplier in connection with the production of the Goods or the performance of the Services under the Order (the "VGCA Intellectual Property") shall remain VGCA'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 VGCA. Supplier hereby assigns to VGCA all copyright, patents, trade secrets, trademarks and other proprietary rights in and to the Work Product, waives all moral rights it may possess in the Work Product under the *Copyright Act (Canada)*, any applicable law or otherwise, and shall obtain waivers of such moral rights from any authors thereto. Supplier shall, during and after the Term of the Order, assist VGCA in every reasonable way to secure, maintain and defend for the benefit of VGCA 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 VGCA.
- 11.3.2 To the extent necessary for VGCA to operate or use the Work Product, Supplier (and to the extent necessary, its Subcontractor(s)) shall and hereby do grant to VGCA a royalty-free, fee-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 VGCA or its customer or client by Supplier under the Order (other than Supplier Tools) and any information or data of any kind created, generated or produced based on or relating to the use or development of the Goods and/or Services, including without limitation all notes, reports, documentation, data, 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 VGCA, 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 (the “Term”).
- 12.2 Termination Without Cause. VGCA 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 VGCA, Supplier will comply with the requirements of Section 12.5. Upon termination by VGCA under this Section, VGCA will be obligated to pay only the following without duplication: (i) the Charges for all finished Goods and Services in the quantities ordered by VGCA that conform to the Order and are performed, delivered and accepted by VGCA for which Supplier has not been paid and (ii) Supplier’s reasonable actual cost of carrying out its obligation under Section 12.5(d). VGCA shall pay for Supplier’s reasonable actual cost of merchantable and usable work-in-process, as well as any parts and materials, which VGCA requests be transferred to it under Section 12.5(b). Notwithstanding any other provision herein, VGCA will have no obligation for and will not be required to pay Supplier, directly or on account of claims by Subcontractors, for Excluded Damages and including 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 VGCA. VGCA’s obligation for any Supplier claims related to termination will not exceed the Charges. Supplier will furnish to VGCA, within one month after the date of termination, its termination claim, which will consist exclusively of the claims eligible for reimbursement by VGCA to Supplier that are expressly permitted by this Section. VGCA 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 VGCA, Supplier shall promptly return all amounts previously paid to Supplier by VGCA for the Goods (if any) and, in addition to any other damages, VGCA shall be entitled to, and Supplier shall pay to VGCA, damages equal to (i) all costs incurred by VGCA 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.
- 12.3.1 If VGCA terminates the Order as a result of Section 12.3, Supplier shall be deemed to have breached its material duties or obligations in relation to every other Order such that VGCA may, in its discretion, terminate any, or all, Orders in accordance with these Terms, but without the requirement to provide the Supplier with a further opportunity to remedy the breach of its material duties or obligations.
- 12.4 Termination for Insolvency
- 12.4.1 VGCA may terminate the Order if Supplier (i) admits in writing its inability to pay its debts generally as they become due, (ii) is the subject of a bankruptcy or insolvency proceeding; (iii) has been determined by

a court of competent jurisdiction or regulator to be insolvent or unable to meet its obligations to pay its debts as they generally become due, (iv) makes a general assignment for the benefit of creditors or a receiver is appointed because of Supplier's insolvency; (v) is wound up, liquidated or ceases to carry on business; or (vi) is unable to pay its debts generally as they come due, 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, or by providing VGCA with verification of solvency or otherwise of its ability to perform its obligations hereunder. If Supplier fails to cure such default or otherwise to provide VGCA 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 VGCA, Supplier will at no additional cost to VGCA: (a) promptly terminate all work under the Order on the effective date of termination; (b) transfer title and deliver to VGCA the finished Goods, the work in process, the parts and materials that Supplier reasonably produced or acquired according to quantities ordered by VGCA 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, "VGCA's Property"); (c) prior to allocating any amounts received by VGCA 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 VGCA has an interest until disposal instruction from VGCA has been received; and (e) cooperate with VGCA and its designees and provide the Services reasonably requested by VGCA or its designees to allow VGCA's business operations to continue without material interruption or adverse effect, including with respect to VGCA's new supplier. Effective immediately upon termination and without further notice or legal action, VGCA may enter Supplier's premises and take possession of all of VGCA's Property. VGCA may direct that VGCA's Property be immediately released to VGCA or delivered by Supplier to VGCA in accordance with Article 4. VGCA shall have no liability with respect to any of VGCA's Property until such property is in the actual possession of VGCA.

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 VGCA's request and subject to these Terms, provide transition assistance services as reasonably requested by VGCA for a period of up to ninety (90) days after the Termination Date (the "Transition Assistance Period") and such transition assistance services shall be included in the Charges for the Goods and/or Services and shall be at no additional cost to VGCA, unless otherwise set out in the Negotiation Minutes. During the Transition Assistance Period, Supplier shall provide transition assistance in order to facilitate the orderly transfer of responsibility for the Goods and Services then being provided by Supplier to VGCA or its designees.

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

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 VGCA shall be sent to Volkswagen Group Canada Inc., 777 Bayly Street West, Ajax, ON, Canada, L1S 7G7, to the attention of the named Business Owner, with a copy to the office of the General Counsel at the same address. 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 enure 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 VGCA 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 VGCA.
- 13.4 No Exclusivity. Nothing about the Order shall prevent VGCA 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 VGCA 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 VGCA, whether regulatory or contractual, or to assume any responsibility for VGCA'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 Goods and Services and related works. In no event will VGCA 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, joint venture, a legal entity or an agency relationship between the Parties. No Party shall have the authority or right, nor shall any Party hold itself out as having the authority or right, to assume, create or undertake any obligation of any kind whatsoever, on behalf of or in the name of the other Party without the express written consent of that other Party.
- 13.6 Restriction on Hiring. Supplier agrees not to directly or indirectly solicit or recruit any employee, officer or subcontractor of VGCA 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 an Order, such action will not be unreasonably delayed or withheld. If any governmental or regulatory approval of the sale or use of the Goods and/or Services is required by any applicable 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 accordance with VGCA's schedule, and will furnish an authenticated copy of each such approval to VGCA.
- 13.8 Modification; Waiver. Except as stated in Article 3, the Order may be modified, supplemented, amended, restated or replaced only by written agreement duly executed by the Parties. A waiver of any breach of an Order or the failure of any Party to enforce or require performance by any Party of any of the provisions of the an Order will not be construed to be a waiver of such provision, affect the validity of the an Order or any of its parts, or prejudice the right of any Party to enforce each and every provision of an Order. A waiver, or consent to depart from, the requirements of any provision of an Order is effective only if it is in

writing and signed by an authorized signatory of the Party against whom enforcement thereof is sought, and only in the specific instance and for the specific purpose for which it has been given.

- 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 Severability. Any provision of the Order which is, becomes, or is declared illegal, invalid, ineffective or unenforceable under the governing law of the Order shall be severed from the Order and shall not affect or impair the remaining provisions of the Order.
- 13.11 Governing Law. The Order shall be governed and construed under the laws of the Province of Ontario and the federal laws of Canada and shall be treated in all respects as an Ontario contract, without regard to conflicts of laws principles. Subject to Article 13.12, the Parties hereby irrevocably attorn to the exclusive jurisdiction of the courts of the Province of Ontario and all courts competent to hear appeals therefrom. 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.
- 13.12 Resolution of Claims and Disputes
- 13.12.1 The Parties agree to resolve all claims and disputes related to an Order ("Claims") in accordance with this Section 13.12. 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 "Party Representatives").
- (b) Second Meeting. If the Party 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 Party 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 legal representative provided that the Party intending to be accompanied by a legal representative shall give the other Party at least five (5) days' notice of such intention.
- (d) Mediation. If the Claim is not resolved 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 ADR Institute of Ontario ("ADR") for mediation administered in accordance with the National Mediation Rules and the ADRI Arbitration Rules of the ADR (collectively, the "ADR 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.
- 13.12.2 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 ADR 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 ADR Rules and in accordance with these Terms.

- 13.12.3 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 VGCA 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 the Province of Ontario, provided that VGCA may elect to seek such relief against Supplier in any court having jurisdiction over Supplier.
- 13.12.4 Continuing Obligations. In the event of any dispute arising by or between the Parties, each Party shall continue to perform as required under the Order notwithstanding the existence of such dispute. In the event of such a dispute, VGCA shall continue to pay the Supplier as provided in the Order, excepting only such amount as may be disputed.
- 13.12.5 Arbitration Proceedings. The arbitration provisions under the Agreement, including their enforceability, shall be governed by the Arbitration Act, 1991, SO 1991, c 17("Arbitration Act"). All arbitration proceedings shall be conducted in Toronto, Ontario, Canada in the English language in accordance with the ADR Rules.
- 13.12.6 Arbitrator Qualifications. Unless the Parties otherwise agree in writing, the arbitration shall be conducted using a panel of three (3) arbitrators ("Arbitration Panel") who have experience with respect to equipment and supplies transactions for large manufacturing facilities. 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 ADR will appoint an arbitrator for such Party.
- 13.12.7 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.
- 13.12.8 Arbitration Fees and Expenses; Legal Fees. Fees and expenses in connection with the arbitration, including without limitation reasonable legal 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 ADR Rules shall constitute a waiver of such Party's Claim or defense in the arbitration.
- 13.12.9 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.
- 13.12.10 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 statutes of limitations.

- 13.12.12 Joinder. Either Party may include by joinder individuals or entities in accordance with the ADR Rules.
- 13.13 Entire Agreement. Except as otherwise expressly stated in a writing signed by both Parties, the Order, together with SOW, Purchase Order, Negotiation Minutes, Change Order (as applicable), Supplier's Proposal (as applicable) and any attachments, exhibits, specifications and/or technical requirements, supplements or other terms of VGCA specifically referenced therein or related thereto, and these Terms, constitute the final, entire, and exclusive agreement between the Parties with respect to the subject matter hereof.
- 13.14 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.
- 13.15 Remedies Cumulative. All rights, powers and remedies set forth in these Terms or an Order are cumulative and in addition to and without prejudice to any right, power or remedy available to VGCA under the Terms, an Order or at law or in equity. All costs incurred in connection with any remedy, including all travel expenses and daily allowances as well as any and all legal fees and costs incurred by VGCA as a result of Supplier's breach of its obligations, shall be the obligation of Supplier. Supplier shall not have any right of setoff.
- 13.16 Supplemental Terms and Conditions. VGCA may issue supplemental terms and conditions to address special or additional requirements.
- 13.17 Interpretation. Supplier and VGCA 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. The tables of contents, headings, marginal notes and references to them in the Terms or an Order are for convenience of reference only, shall not constitute a part of the Terms or an Order, and shall not be taken into consideration in the interpretation of, or affect the meaning of, the Terms or an Order. In an Order, a reference to Section "X" will mean "Section X" of the Terms, unless followed by a reference to another specific document.
- 13.18 Further Assurances. Each Party shall do all things, from time to time, and execute all further documents necessary to give full effect to the Terms and the Order.
- 13.19 Compliance with Law: Each Party shall observe and comply with all applicable laws, regulations, court order or judgments, ordinances, codes and regulations of government agencies and authorities, including federal, provincial/territorial, and state/local bodies having jurisdiction over such Party in which such Party operates or the conduct of the services delivered by such Party.
- 13.20 Counterparts. Any documents related to this Order may be executed by the Parties in any number of counterparts and may be executed and delivered originally, by electronic signature or transmission in Portable Document Format ("**PDF**") and each such electronic copy or PDF copy, which is so executed and delivered, will be deemed to be an original, and all of which taken together will constitute one and the same instrument.

End of Document