



SHYFT
GROUP

STANDARD TERMS AND CONDITIONS

THE SHYFT GROUP USA, INC



SHYFT Group
Standard Terms and Conditions
Commercial Subcontracts / Purchase Orders

1. DEFINITIONS

The following terms shall have the meanings set forth below:

- (a) "Contract" means the instrument of contracting, such as "PO", "Purchase Order", or other such type designation, including all referenced documents, exhibits and attachments. If these terms and conditions are incorporated into a "master" agreement that provides for releases, (in the form of a Purchase Order or other such document) the term "Contract" shall also mean the Release document for the Work to be performed.
- (b) "Buyer" means The Shyft Group, acting through its companies, or business units, as identified on the face of the Contract. If a subsidiary or affiliate of Buyer is identified on the face of the Contract than "Buyer" means that subsidiary, or affiliate.
- (c) "Buyer Procurement Representative" means a person authorized by Buyer's cognizant procurement organization to administer and/or execute this Contract.
- (d) "PO" or "Purchase Order" as used in any document constituting a part of this Contract shall mean this Contract.
- (e) "Seller" means the Party identified on the face of the Contract with whom Buyer is contracting.
- (f) "Work" means all required articles, materials, supplies, goods, and services constituting the subject matter of this Contract.

2. ACCEPTANCE OF CONTRACT/TERMS AND CONDITIONS

- (a) The Work shall comply with all drawings and specifications referred to in Buyer's request for quote. If Buyer's request for quote refers to Seller's drawings or specifications for the Work, Seller agrees to notify Buyer of any changes to its drawings and specifications 60 days prior to implementation of any such change in order to assess the impact of the change.
- (b) This Contract is the sole and entire agreement of the Parties with respect to the Work and integrates, merges, and supersedes any prior offers, negotiations, representations, warranties, agreements and communications whether written or verbal concerning the subject matter hereof. This contract prevails over any of Seller's general terms and conditions of sale or any other Seller document.
- (c) Seller's acknowledgment, acceptance of payment, or commencement of performance, shall constitute Seller's unqualified acceptance of this Contract. The Contract is not binding until Seller starts to perform in accordance with the Contract. Buyer may withdraw the Contract at any time prior to acceptance.
- (d) The Contract expressly limits Seller's acceptance to the terms hereof. Additional or differing terms or conditions proposed by Seller or included in Seller's acknowledgment hereof are hereby objected to by Buyer and have no effect unless expressly accepted in writing by Buyer.
- (e) Seller agrees to indemnify, save harmless and defend Buyer and its directors, officers, employees, agents, successors, and assigns from and against any and all liabilities, claims, losses, damages, fines, penalties, forfeitures, and the costs and expenses incident thereto (including costs of defense, settlement, and reasonable attorney's fees) which it or they may hereafter incur, become responsible for, or pay out as a result of, or arising out of, Seller's negligence, willful misconduct or breach of the Contract. Seller shall include this clause in all subcontracts at any tier, involving the performance of this Contract.
- (f) Buyer is not obligated to any minimum purchase or future purchase obligations under this Contract.

3. APPLICABLE LAWS

- (a) This Contract shall be governed by and construed in accordance with the law of the State of Michigan excluding its choice of law rules. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Contract.
- (b) Seller represents that each chemical substance constituting or contained in Work sold or otherwise transferred to Buyer hereunder is on the list of chemical substances compiled and published by the Administrator of the Environmental Protection Administration pursuant to the Toxic Substances Control Act (15 U.S.C. Sec. 2601 et seq.) as amended.
- (c) Seller shall provide to Buyer with each delivery any Material Safety Data Sheet applicable to the Work in conformance with and containing such information as required by the Occupational Safety and Health Act of 1970 and regulations promulgated thereunder, or its State approved counterpart.
- (d) Laws and regulations including, but not limited to, Title 49, United States Code, Chapter 301 and Related Uncodified Provisions and Canada Motor Vehicle Safety Act may be applicable to Work used in motor vehicles.

4. COMPLIANCE WITH LAWS

- (a) Seller agrees to comply with all applicable laws, orders, rules, regulations and ordinances. Seller hereby represents, warrants and covenants to the Buyer that Seller (a) has and will maintain all licenses, permits, etc., that it needs to perform the Work, (b) will comply with export and import laws of all countries involved in the Work, (c) assumes all responsibility for shipments requiring government import clearance, and (d) that Buyer may terminate if any government authority imposes any duties or sanctions on goods.
- (b) Seller acknowledges and understands that Buyer, as a public company that files reports with the United States Securities and Exchange Commission ("SEC"), is subject to Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 and the rules and regulations of the SEC thereunder (together, the "Conflict Minerals Law"). Under the Conflict Minerals Law, Seller will be required to submit reports and disclose on its website (a) whether any Conflict Minerals (as defined in subparagraph (c) below) necessary to the functionality or production of the Buyer's products originated from the Democratic Republic of the Congo ("DRC") or any adjoining country; and (b) if any Conflict Minerals did originate in the DRC or an adjoining country, the due diligence measures taken by Buyer to identify the source of the Conflict Minerals used in its products.
- (c) Seller shall cooperate with Buyer from time to time, at Seller's expense, to perform a reasonable due diligence investigation of the origin of Conflict Minerals contained in products, parts, or materials delivered to Buyer under this Agreement ("Products"), to enable Buyer to comply with its disclosure and reporting obligations under the Conflict Minerals Law. Such due diligence may include but may not be limited to (i) assisting Buyer in conducting a "reasonable country of origin inquiry" on such Conflict Minerals; (ii) completing and submitting to Buyer such questionnaires or templates relating to the origin of Conflict Minerals contained in Products, as Buyer shall request; (iii) requiring Seller's vendors or suppliers of products, parts, or materials contained in Products to complete and submit to Buyer such questionnaires or templates, and to require their direct and indirect vendors of products, parts, or materials contained in Products to complete such questionnaires or templates; (iv) providing Buyer with such written representations or certifications as Buyer shall request indicating (A) the facility at which such Conflict Minerals were processed; (B) whether such Conflict Minerals originated in the DRC or adjoining countries or were obtained from recycled or scrap sources; (C) if such Conflict Minerals originated in the DRC or adjoining countries, what efforts were used to determine, with the greatest possible specificity, the mine or location of origin of the Conflict Minerals; and (D) Seller's reasonable belief as to whether any such Conflict Minerals directly or indirectly finance or benefit "armed groups" (as defined in the Conflict Minerals Law) in the DRC or adjoining countries

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and the basis of such belief; and (v) Seller hereby represents and warrants to Buyer that no Conflict Minerals will be contained in or necessary to the functionality or production of any of the products, parts, or materials delivered to Buyer under this Agreement. Seller shall provide Buyer with such documents, information, and other evidence of the accuracy of the foregoing representation and warranty as Buyer shall from time to time request. Seller agrees to immediately inform Buyer in writing if it learns or has reason to believe that the foregoing representation and warranty is untrue with respect to any products, parts, or materials that have been delivered to Buyer hereunder.

5. ASSIGNMENT

Any assignment of Seller's contract rights or delegation of duties, including change of control of the Seller through acquisition or merger, shall be void, unless prior written consent is given by Buyer. However, Seller may assign rights to be paid amounts due, or to become due, to a financing institution if Buyer is promptly furnished a signed copy of such assignment reasonably in advance of the due date for payment of any such amounts. Amounts assigned to an assignee shall be subject to setoffs or recoupment for any present or future claims of Buyer against Seller. Buyer shall have the right to make settlements and/or adjustments in price without notice to the assignee.

6. CHANGES

- (a) The Buyer Procurement Representative may at any time, by written notice, and without notice to sureties or assignees, make changes within the general scope of this Contract in any one or more of the following: (i) drawings, designs or specifications; (ii) method of shipping or packing; (iii) place of inspection, acceptance, performance, or point of delivery; (iv) delivery schedule; (v) description of services to be performed; and (vi) time of performance (i.e., hours of the day, days of the week, etc.). Changes may only be made in writing by the Buyer Procurement Representative. No change is binding upon the Buyer unless it is in writing, specifically states what it changes, and is signed by the Buyer Procurement Representative.
- (b) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of this Contract, Buyer shall make an equitable adjustment in the Contract price and/or delivery schedule, and modify the Contract accordingly.
- (c) Any claim for an equitable adjustment by Seller must be submitted in writing to Buyer within thirty (30) days from the date of notice of the change, unless the Parties agree in writing to a longer period. Buyer may audit any of Seller's books and records in connection with any equitable adjustment proposal.
- (d) Failure to agree to any adjustment shall be resolved in accordance with the "Disputes" clause of this Contract. However, nothing contained in this "Changes" clause shall excuse Seller from proceeding without delay in the performance of this Contract as changed.

7. CONTRACT DIRECTION

- (a) Only the Buyer Procurement Representative has authority to change this Contract. Such changes must be in writing.
- (b) Buyer engineering and technical personnel may from time to time render assistance or give technical advice or discuss or effect an exchange of information with Seller's personnel concerning the Work hereunder. Such actions shall not be deemed to be a change under the "Changes" clause of this Contract and shall not be the basis for equitable adjustment.
- (c) Except as otherwise provided herein, all notices to be furnished by the Seller shall be sent to the Buyer Procurement Representative.

8. DEFAULT

- (a) Termination is in addition to any other remedies provided under this Contract, at law, or in equity. Buyer, by written notice, may terminate this Contract for default, in whole or in part, if Seller fails to comply with any of the terms of this Contract, fails to make progress as to endanger performance of this Contract, fails to provide adequate assurance of future performance, or in the event of Seller's insolvency, bankruptcy or receivership. Seller shall have five (5) days (or such longer period as Buyer may authorize in writing) to cure any such failure after receipt of notice from Buyer. Default involving delivery schedule delays shall not be subject to the cure provision.
- (b) Buyer shall not be liable for any Work not accepted; however, Buyer may require Seller to deliver to Buyer any supplies and materials, manufacturing materials, and manufacturing drawings that Seller has specifically produced or acquired for the terminated portion of this Contract. Buyer and Seller shall agree on the amount of payment for these other deliverables.
- (c) In the event of termination, in whole or in part, Buyer may acquire, under terms Buyer considers appropriate, supplies or services similar to those terminated, and the Seller will be liable to Buyer for any excess costs of those supplies or services, including any incidental costs Buyer incurs through re-procurement.
- (d) Seller shall continue all Work not terminated.
- (e) If after termination under paragraph (a), it is later determined that Seller was not in default, such termination shall be deemed a Termination for Convenience.
- (f) The Supplier is liable for all direct, incidental and consequential damages, losses, costs, and expenses incurred by the Buyer resulting from the failure of the Supplier to deliver conforming Goods or to comply with the shipping and delivery or other requirements of the Buyer, even if the Supplier has cured the failure. These include costs associated with the off lining of vehicles or the Goods, interruptions or delays in production, reduced line-speeds, and plant shutdowns.

9. DISPUTES

All disputes under this Contract which are not disposed of by mutual agreement may be settled at Buyer's sole discretion either by submitting the claim to (i) a court of competent jurisdiction in the State of Michigan, whose state and federal courts the Parties agree to be bound by and no action shall be filed in the courts of any other state or (ii) binding arbitration, before a single arbitrator, in the State of Michigan, in accordance with the Commercial Arbitration Rules of the American Arbitration Association; and judgment upon the arbitrator's award may be entered in any court having jurisdiction thereof. Until final resolution of any dispute hereunder, Seller shall diligently proceed with the performance of this Contract as directed by Buyer.

10. EXTRAS

Work shall not be supplied in excess of quantities specified in the Contract. Seller assumes all risk associated with excess work and Buyer may reject or accept at Buyer's choice. Seller shall be liable for handling charges and return shipment costs for any excess quantities.

11. PROPERTY

- (a) Buyer may provide to Seller property owned by either Buyer or its customer (Furnished Property). Furnished Property shall be used only for the performance of this Contract.
- (b) Title to Furnished Property shall remain in Buyer or its customer. Seller shall clearly mark (if not so marked) all Furnished Property to show its ownership.
- (c) Except for reasonable wear and tear, Seller shall be responsible for, and shall promptly notify Buyer of, any loss or damage. Without additional charge, Seller shall manage, maintain, and preserve Furnished Property in accordance with good commercial practice.

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- (d) At Buyer's request, and/or upon completion of this Contract the Seller shall submit, in an acceptable form, inventory lists of Furnished Property and shall deliver or make such other disposal as may be directed by Buyer.
 - (e) Material made in accordance with Buyer's specifications and drawings shall not be furnished or quoted to any other person or concern without Buyer's written consent.
 - (f) Any invention or similar intellectual property first made or conceived by Seller in the performance of this Contract or which is derived from or based on the use of confidential information supplied by Buyer shall be considered as being a "work made for hire" and shall be and become the property of Buyer; and Seller shall execute such documents necessary to perfect Buyer's title thereto.
- 12. GRATUITIES/KICKBACKS**
No gratuities (in the form of entertainment, gifts or otherwise) or kickbacks shall be offered or given by Seller, to any employee of Buyer with a view toward securing favorable treatment as a supplier.
- 13. INDEPENDENT CONTRACTOR RELATIONSHIP**
- (a) Seller is an independent contractor in all its operations and activities hereunder. The employees used by Seller to perform Work under this Contract shall be Seller's employees exclusively without any relation whatsoever to Buyer.
 - (b) Seller shall be responsible for any costs or expenses including attorneys' fees, all expenses of litigation and/or settlement, and court costs, arising from any act or omission of Seller, its officers, employees, agents, suppliers, or subcontractors at any tier, in the performance of any of its obligations under this Contract.
 - (c) Neither Party has the authority to bind the other Party.
- 14. INFORMATION OF BUYER**
Information, including but not limited to technical and business information, provided by Buyer to Seller remains the property of Buyer. Seller agrees to comply with the terms of Buyer's Mutual Confidentiality and Non-Disclosure Agreement.
- 15. INFORMATION OF SELLER**
Seller shall not provide any proprietary information to Buyer without prior execution by Buyer of a Proprietary Information Agreement or amendment to this Contract providing for the same.
- 16. INSPECTION AND ACCEPTANCE**
- (a) Notwithstanding (i) payment; (ii) passage of title; (iii) prior inspection or test, or (iv) execution of an acceptance document, Buyer and its customer may inspect all Work prior to acceptance or rejection at reasonable times and places, including, when practicable, during manufacture and before shipment. Seller shall provide all information, facilities, and assistance necessary for safe and convenient inspection without additional charge. Buyer may reject all or any portion of the Work if it determines the Work is nonconforming or defective
 - (b) No such inspection shall relieve Seller of its obligations to furnish all Work in accordance with the requirements of this Contract. Buyer's final inspection and acceptance shall be at destination unless otherwise designated by Buyer.
 - (c) Seller shall provide and maintain a test and inspection system acceptable to Buyer and its customers, if required.
 - (d) If Buyer rejects any portion of the Work, Buyer may; (i) accept all or part of such Work at an equitable price reduction; (ii) reject such Work; or (iii) make, or have a third party make all repairs, modifications, or replacements necessary to enable such Work to comply in all respects with Contract requirements. Seller shall be liable to Buyer for any cost Buyer incurred to ensure such compliance.
 - (e) Seller shall not re-tender rejected Work without disclosing the corrective action taken.
- 17. INSURANCE/INDEMNIFICATION**
- (a) In the event that Seller, its employees, agents, or subcontractors enter the site(s) of Buyer or its customers for any reason in connection with this Contract then Seller and its subcontractors shall procure and maintain worker's compensation, comprehensive general liability, bodily injury and property damage insurance in reasonable amounts, and such other insurance as Buyer may require. In addition, Seller and its subcontractors shall comply with all site requirements. Seller shall indemnify and hold harmless Buyer, its officers, employees, and agents from any losses, costs, claims, causes of action, damages, liabilities, and expenses, including attorneys' fees, all expenses of litigation and/or settlement, and court costs, by reason of property damage or loss or personal injury to any person caused in whole or in part by the actions or omissions of Seller, its officers, employees, agents, suppliers, or subcontractors. Seller shall provide Buyer thirty (30) days advance written notice prior to the effective date of any cancellation or change in the term or coverage of any of Seller's required insurance. If requested, Seller shall send a "Certificate of Insurance" showing Seller's compliance with these requirements. Seller shall name Buyer as an additional insured for the duration of this Contract. Insurance maintained pursuant to this clause shall be considered primary as respects the interest of Buyer and is not contributory with any insurance which Buyer may carry. "Subcontractor" as used in this clause shall include Seller's subcontractors at any tier.
 - (b) Seller shall without limitation as to time indemnify and save Buyer harmless from all claims which may be asserted against property covered hereunder, including without limitation mechanic's liens or claims arising under Worker's compensation or Occupational Disease laws and from all claims from injury to persons or property arising out of or related to such property unless the same are caused solely and directly by Buyer negligence.
 - (c) Seller will indemnify and hold Buyer and its directors, officers and employees ("representatives") harmless (and defend Buyer and its representatives if it requests) as to any claims, liabilities, losses, damages and expenses (including, without limitation, actual attorneys' fees and other legal expenses) brought against or incurred by Buyer or its representatives because of any breach by Seller of any of its warranties to, or agreements with, Buyer or any death, injury or damage to any person or property alleged to have been caused by the components or Seller's manufacture of the components.
 - (d) Seller warrants materials furnished pursuant to this Contract shall be free from asbestos containing materials.
- 18. INTELLECTUAL PROPERTY**
Subparagraph (a) is NOT applicable for commercial off-the-shelf purchases unless such off-the-shelf Work is modified or redesigned pursuant to this Contract.
- (a) Seller agrees that Buyer shall be the owner of all inventions, technology, designs, works of authorship, mask works, technical information, computer software, business information and other information conceived, developed or otherwise generated in the performance of this Contract by or on behalf of Seller. Seller hereby assigns and agrees to assign all right, title, and interest in the foregoing to Buyer, including without limitation all copyrights, patent rights and other intellectual property rights therein and further agrees to execute, at Buyer's request and expense, all documentation necessary to perfect title therein in Buyer. Seller agrees that it

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will maintain and disclose to Buyer written records of, and otherwise provide Buyer with full access to, the subject matter covered by this clause and that all such subject matter will be deemed information of Buyer and subject to the protection provisions of the clause entitled "Information of Buyer". Seller agrees to assist Buyer, at Buyer's request and expense, in every reasonable way, in obtaining, maintaining, and enforcing patent and other intellectual property protection on the subject matter covered by this clause.

- (b) Seller warrants that the Work performed and delivered under this Contract will not infringe or otherwise violate the intellectual property rights of any third party in the United States or any foreign country. Seller agrees to defend, indemnify and hold harmless Buyer and its customers from and against any claims, damages, losses, costs and expenses, including reasonable attorneys' fees, arising out of any action by a third party that is based upon a claim that the Work performed or delivered under this Contract infringes or otherwise violates the intellectual property rights of any person or entity.

19. NEW MATERIALS

The Work to be delivered hereunder shall consist of new materials, not used, or reconditioned, remanufactured or of such age as to impair its usefulness or safety.

20. OFFSET CREDIT/COOPERATION

All offset or countertrade credit value resulting from this Contract shall accrue solely to the benefit of Buyer. Seller agrees to cooperate with Buyer in the fulfillment of any foreign offset/countertrade obligations.

21. PACKING AND SHIPMENT

- (a) Unless otherwise specified, all Work is to be packed in accordance with good commercial practice. Prices set forth in this Order include all charges for Seller's packaging, crating, handling, storage and for transportation to Buyer's dock unless noted on the Buyer purchase order.

- (b) A complete packing list shall be enclosed with all shipments. Seller shall mark containers or packages with necessary lifting, loading, and shipping information, including the Buyer Contract number, item number, dates of shipment, and the names and addresses of consignor and consignee. Bills of lading shall include this Contract number. No merchandise will be accepted without a valid Buyer purchase order.

- (c) Unless otherwise specified, delivery shall be F.O.B. Buyer's dock.

- (d) Material (by part number and/or description) is expected to be on Buyer's dock on the due date. "On-time" is defined as one (1) day early to zero (0) days late from the due date and quantities specified on the purchase order. All orders will be considered late if received after the due date on the purchase order and will be expedited to Buyer at supplier's expense and via best method available. All orders may be returned and considered early if material arrives before the defined "On-time" period above; all additional logistics and handling costs will be the responsibility of the Seller. Any exceptions to this definition must be agreed upon in advance in writing from an authorized agent from the Buyer's Materials or Purchasing representative.

- (e) Normal receiving hours are listed on the Buyer supplier web site <http://www.theshyftgroup.com/company-overview/supplier-info/> or contact your Materials representative (517-543-6400) for information. Any deliveries made outside of this delivery window must be scheduled in advance with the Buyer Materials group.

- (f) If seller uses their own shipper to deliver the Work, (own or third party) title to the Work, risk of loss or damage passes to Buyer upon delivery to Buyer's dock.

- (g) If Buyer uses their own shipper to deliver the Work, (own or third party) title to the Work, risk of loss or damage passes to Buyer at Seller's dock.

- (h) If product is lost or damaged during transportation and upon delivery to Buyer, Seller agrees to work and collaborate with Buyer and Carrier and provide any requests for documentation or pictures to demonstrate that product was not damaged before loading to the Carrier.

22. PAYMENTS, TAXES, AND DUTIES

- (a) Unless Buyer disputes an invoice in good faith or as otherwise provided, terms of payment shall be **2% 20 days, Net 60 days** from the latest of the following: (i) Buyer's receipt of the Seller's proper invoice; (ii) scheduled delivery date of the Work; or (iii) actual delivery of the Work. Buyer shall have a right of setoff against payments due or at issue under this Contract or any other contract between the Parties. All invoices must be mailed to the Buyer Accounts Payables department; Seller's invoices are not to be used as packing slips nor are they to be sent with the material.

- (b) Payment shall be deemed to have been made as of the date of mailing Buyer's payment or electronic funds transfer.

- (c) Unless otherwise specified, prices include all applicable federal, state and local taxes, duties, tariffs, and similar fees imposed by any government, all of which shall be listed separately on the invoice.

- (d) **A minimum of ninety (90) days notification in writing to the Buyer Purchasing department is required prior to any requested price increases and explanation/justification for the request is also to be provided. Price adjustments are not to be implemented without Buyer Procurement Representative's written approval.**

23. PRECEDENCE

Any inconsistencies in this Contract shall be resolved in accordance with the following descending order of precedence: (1) Face of the Purchase Order, Release document or Schedule, (which shall include continuation sheets), as applicable, including any Special terms and conditions; (2) Any master-type agreement (such as corporate, sector or blanket agreements); (3) these General Provisions; and (4) Statement of Work.

24. QUALITY CONTROL SYSTEM

When quoting the subject part number(s), supplier quotation shall meet the part number drawing and performance specifications as provided. Supplier is also required to meet the requirements detailed in the current posted revision of the Buyers Supplier Quality Manual. The Supplier Quality Manual can be located on the Buyer website or is available through your Buyer Supplier Quality Representative. Questions or requests can also be routed to this email account: supplier.quality@theshyftgroup.com. Suppliers are expected to maintain a quality system in compliance with ISO 9001:2008 or equivalent.

25. RELEASE OF INFORMATION

Except as required by law, no public release of any information, or confirmation or denial of same, with respect to this Contract or the subject matter hereof, will be made by Seller without the prior written approval of Buyer.

26. SEVERABILITY

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Each paragraph and provision of this Contract is severable, and if one or more paragraphs or provisions are declared invalid, the remaining provisions of this Contract will remain in full force and effect.

27. STOP WORK ORDER

- (a) Seller shall stop Work for up to ninety (90) days in accordance with the terms of any written notice received from Buyer, or for such longer period of time as the Parties may agree and shall take all reasonable steps to minimize the incurrence of costs allocable to the Work covered by this Contract during the period of Work stoppage.
- (b) Within such period, Buyer shall either terminate or continue the Work by written order to Seller. In the event of a continuation, an equitable adjustment in accordance with the principles of the "Changes" clause shall be made to the price, delivery schedule, or other provision affected by the Work stoppage, if applicable, provided that the claim for equitable adjustment is made within thirty (30) days after such continuation.

28. SURVIVABILITY

If this Contract expires, is completed, or is terminated, Seller shall not be relieved of those obligations contained in the following provisions:

Applicable Laws
 Independent Contractor Relationship
 Information of Buyer
 Insurance/Indemnification
 Intellectual Property
 Release of Information
 Warranty

29. TERMINATION FOR CONVENIENCE

- (a) For specially performed Work: Buyer may terminate part or the entirety of this Contract for its convenience by giving written notice to Seller. Buyer's only obligation shall be to pay Seller a percentage of the price reflecting the percentage of the Work performed prior to the notice of termination, plus reasonable charges that Seller can demonstrate to the satisfaction of Buyer, using generally accepted accounting principles, have resulted from the termination. Seller shall not be paid for any Work performed or costs incurred which reasonably could have been avoided. Buyer may audit any of Seller's books and records in connection with any termination claim.
- (b) In no event shall Buyer be liable for lost or anticipated profits, or unabsorbed indirect costs or overhead, or for any sum in excess of the total Contract price. Seller's termination claim shall be submitted within forty five (45) days from the effective date of the termination.
- (c) For other than specially performed Work: Buyer may terminate part or all of this Contract for its convenience by giving written notice to Seller and Buyer's only obligation to Seller shall be payment of a mutually agreed-upon restocking or service charge.
- (d) In either case, Seller shall continue all Work not terminated.

30. OBSOLETE PRODUCT SUBMISSION TO BUYER

Buyer agrees to reimburse without duplication the supplier for Finished Goods, Work in Process (WIP) inventory and "unique" Raw Material as defined below. Buyer is responsible for raw material and/or components that cannot be re-used (re-worked) in other vendor supplied product and can only be used for a specific Buyer part or application (to be reviewed and approved by Buyer). The timing below is based on the start date of when a requirement (Purchase Order or validated forecast) is removed or deleted by Buyer.

Finished Goods	4 weeks or Standard Lot (Order) Size as defined by the Buyer Materials Group
WIP (Work In Process)	4 weeks or Standard Lot (Order) Size as defined by the Buyer Materials Group
Raw Material	8 weeks or Standard Lot (Order) Size as defined by the Buyer Materials Group ("Unique" is defined as those items that cannot be used in any other application by the seller)

The supplier will be responsible to submit detailed and documented claims within 45 days after the requirements/forecasts are deleted from the schedule and it is agreed upon by both parties that the part number(s) does not have any pending requirements. The supplier will assist to review options for product re-work or to re-sell any items that are identified as "usable" for other applications in order to minimize the financial impact on the Seller and Buyer. The final decision to purchase, scrap, re-sell, etc. will be determined solely by Buyer. (Any claims not submitted by the seller within 45 days after order/forecast is deleted will be reviewed at Buyer discretion but may not be processed.)

31. TIMELY PERFORMANCE

- (a) Seller's timely performance is a critical element of this Contract. Time is of the essence.
- (b) Unless advance shipment has been authorized in writing by Buyer, Buyer may store at Seller's expense, or return, shipping charges collect, all Work received in advance of the scheduled delivery date.
- (c) If Seller becomes aware of difficulty in performing the Work, Seller shall timely notify Buyer, in writing, giving pertinent details. This notification shall not change any delivery schedule.
- (d) In the event of a termination for convenience or change, no claim will be allowed for any manufacture or procurement in advance of Seller's normal flow time unless there has been prior written consent by Buyer.

32. WAIVER, APPROVAL, AND REMEDIES

- (a) Failure by Buyer to enforce any of the provision(s) of this Contract shall not be construed as a waiver of the requirement(s) of such provision(s), or as a waiver of the right of Buyer thereafter to enforce each and every such provision(s).
- (b) Buyer's approval of documents shall not relieve Seller from complying with any requirements of this Contract.
- (c) The rights and remedies of Buyer in this Contract are cumulative and in addition to any other rights and remedies provided by law or in equity.

33. LIMITATION OF LIABILITY

Buyer shall not be liable for any indirect damages including incidental, consequential, punitive, or exemplary damages, or lost profits.

34. WARRANTY

- (a) Seller warrants that all Work furnished pursuant to this Contract shall strictly conform to applicable specifications, drawings, samples, and descriptions, and other requirements of this Contract and be free from defects in design, material and workmanship. Seller further warrants and implies that the Work performed hereunder is merchantable and fit for use for the particular purpose described in this Contract and will be free and clear of all liens and not infringe on any third party intellectual property rights. Seller agrees to comply

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with the terms of Buyer's Warranty Agreement. Buyer will make determinations on safety related defects that may involve Work supplied by Seller. When such Work is determined to be the cause of a safety related defect, Seller shall supply replacement, non-defective Work at no cost to Buyer. Seller agrees to cooperate with Buyer in making such determinations. Seller agrees to promptly notify Buyer Procurement Representative and Buyer Quality Representative of any safety related defects or non-compliance notices it files, or plans to file, with a federal agency.

- (b) **Remedies:** In addition to all of Buyer's other remedies under applicable law, Supplier will, at Buyer's request, issue credit, replace or repair a defective component at Supplier's expense (including, but not limited to, the expense of parts and labor) and will be liable to Buyer for all of Buyer's incidental and consequential damages as negotiated in a case-by-case basis. Buyer reserves the right to refuse replacement parts at no charge from the Supplier and require Cash/Credit for the part(s) value.
- (c) Supplier will process payment for failed components and associated costs within 30 days from the RMA (Return Material Authorization) issuance or Buyer will debit Supplier after 45 days from the RMA issuance date.

35. FORCE MAJEURE

Seller shall not be liable for a reasonable delay or default in furnishing Products hereunder and Buyer shall not be liable for failure to perform any of its obligations hereunder, to the extent that such delays or defaults or defaults on the part of Seller or such failure on the part of Buyer, are due to causes beyond their reasonable control (and not due to labor problems or Seller's negligence or financial difficulties) including without limitation acts of God, fire, flood, storm, national emergency or war, provided that either party has given the other prompt notice of the commencement of the occurrence that caused the failure and shall continue to tender partial performance of the Purchase Order if possible. Notwithstanding the foregoing, in the event any delay in delivery by Seller caused by a force majeure event will, in Buyer's opinion, cause a delay in delivery to Buyer's customers, Buyer shall have the option to terminate all or a portion of this Purchase Order in order to obtain the Products elsewhere, without liability to Buyer on account thereof.

36. INTERNAL REVENUE CODE

- (a) Buyer is a manufacturer or producer of articles enumerated in chapter 32 of the Internal Revenue Code and holds Certificate of Registry number 38-750265A issued by the District Director of Internal Revenue at Detroit, Michigan. We certify that the item(s) specified on the face of this order are intended for use in the manufacture of, or as a component part of, or as a service part for an article manufactured by them.
- (b) It is understood for all purposes of chapter 32 of the Internal Revenue Code that Buyer shall be considered the Manufacturer of these items and will be responsible for payment of tax on resale or use for any taxable purpose.
- (c) We further state that we are aware of the penalties for fraudulent use of this certificate; namely revocation of the privilege of making future tax free purchases, a fine up to \$10,000 or imprisonment for up to 5 years (or both), together with cost of prosecution.

37. SALES OR USE TAX EXEMPTION CERTIFICATE

We hereby certify that Buyer is a manufacturer doing business in the State of Michigan, and that the goods, services, or rentals specified on the face of this order are intended for use in industrial processing. Furthermore, should any goods, service, or rentals purchased under this certificate become taxable through a change in their intended use, or should a state tax audit reveal that this certificate was erroneously applied, Buyer agrees to pay to the seller or directly to the State any taxes found owing.

38. SERVICE PARTS REQUIREMENTS

Seller will provide to the Buyer Service Parts Group via email (apainvgrp@theshyftgroup.com) the following information primarily for initial purchases: parts, component breakdown, suggested stocking lists, product illustrations and contact person for Aftermarket Sales support. Seller will offer support to help trouble-shoot and to remedy field issues being experienced by the Buyer and its customer base.