

# **Standard Terms and Conditions of Purchase for the Automotive Technology of Kautex Inc., Kautex of Georgia Inc., CWC Textron (a Division of Textron Inc.), Kautex Corporation and Kautex Textron de Mexico, S. de R. L. de C.V.**

## **1. Applicability and Scope**

- 1.1 These Standard Terms and Conditions of Purchase (these “Terms”) are the main terms which govern the purchase of products, parts, components, systems and other product materials (“Goods”) and services (“Services”) by Kautex Inc., Kautex of Georgia Inc., Kautex Corporation and Kautex Textron, S. de R.L. de C.V. (“Kautex”) from supplier (“Supplier”) (“Kautex” and “Supplier” together referred to herein as the “Parties”) named on a Kautex Purchase Order, as defined below, and the related performance by Supplier. These Terms, a Master Sourcing Agreement (“MSA”) in case of serial delivery of Goods (see also Section 2.7(i) below), the GSM (as defined below), and the Purchase Order (collectively, the “Delivery Contract”) comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral.
- 1.2 Any terms and conditions of Supplier, including Supplier’s General Terms and Conditions of Sale and Delivery, or other deviating terms of Supplier (“Deviating Terms”), shall not be applicable unless they have been explicitly accepted by Kautex in writing. These Terms shall also apply in all cases in which Kautex accepts deliveries by Supplier, whereby any Deviating Terms shall be considered rejected and disregarded (regardless of whether Kautex is aware of them or not). All references or notices by Supplier concerning the application of Deviating Terms are hereby expressly rejected. These Terms shall also apply to all future transactions with Supplier.
- 1.3 In addition to these Terms, and unless otherwise agreed to by Kautex and Supplier in writing, the Kautex **Global Supplier Manual (“GSM”)**, including its annexes and related documents in the most recent version, in place on the date of

issuance of the relevant Purchase Order by Kautex; the GSM is available at [www.kautex.com](http://www.kautex.com), shall also apply.

## **2. Orders**

2.1 Inquiries by Kautex to Supplier concerning Goods and Services, the terms of their delivery or requests by Kautex for quotations are in no manner binding on Kautex.

2.2 Supplier shall be legally bound to supply Goods or to provide Services based on any of the following (each a “Purchase Order”):

(i) For the serial delivery of Goods, through a Schedule to the MSA (“S2MSA”), in accordance with and under the relevant “MSA”, duly executed by Kautex and Supplier (as possibly specified further by a Blanket Order and/or Blanket Order Releases as defined and provided below at 2.3); and

(ii) For all other Goods, including tools and prototypes, and for the provision of Services through Single Purchase Orders by Kautex whereby Kautex is accepting the Supplier’s previous offer to sell Goods or to provide Services, as further defined below at 2.4.

2.3 If the S2MSA, or any specific order issued in accordance thereof, does not specify the quantities of Goods, or specifies the quantities as “blanket order”, “as released”, “as scheduled”, “as directed”, “subject to Kautex’s production releases” or in another similar fashion (a “Blanket Order”), then, in consideration for ten U.S. dollars (U.S.\$10.00), the payment of which shall be made by Kautex upon the termination of this Delivery Contract, Supplier grants to Kautex an irrevocable option for as long as the Blanket Order is in place to purchase the Goods in such quantities and on such delivery dates and times as indicated in automatically generated delivery or shipping releases, authorizations, manifests, broadcasts or similar written instructions issued or transmitted by Kautex to Supplier from time to time in reference to such Blanket Order (each a “Blanket Order Release”), and Supplier shall deliver such quantities on such dates and times, at the price and on the other terms specified in the Blanket Order Release in connection with the underlying Blanket Order; provided that Kautex shall purchase no less than

one piece or unit of each of the Goods or the Services and no more than one hundred percent (100%) of Kautex's requirements for the Goods or the Services, as applicable. All references to the "Purchase Order" shall include any Blanket Order and Blanket Order Release.

2.4 Each Purchase Order issued by Kautex for Goods to be supplied other than by way of serial supply ("Single Purchase Order") constitutes Kautex's acceptance of Supplier's previous offer for the sale of Goods and/or Services, and includes and is governed by the terms of the Delivery Contract.

2.5 Purchase Orders are only binding if they are in writing. No signature on a Blanket Order or a Purchase Order by Kautex is required. A Purchase Order shall be deemed to be in writing if transmission of such Purchase Order is by fax or E-mail. If Supplier objects, Supplier's objections are deemed waived if Supplier subsequently commences work on the Goods, or upon shipment of the Goods or performance of the Services without an express written modification made by Kautex. Any Purchase Order is limited to and conditional upon Supplier's acceptance of the Terms and the Delivery Contract.

2.6 Oral or telephone orders (including instant messaging or SMS) are not binding and do not create a contractual relationship under any circumstances. Oral agreements between the parties hereto must be confirmed by Kautex in writing for these to be enforceable. Similarly, any changes to the Delivery Contract (subject to the provisions in Section 8) and side agreements shall require written form to become effective.

2.7 In the event of a conflict between the S2MSA (including any Blanket Order) or a Single Purchase Order and the MSA (if applicable), these Terms, and the GSM, the terms of these documents shall apply in the following order:

- (i) For each Delivery Contract entered into pursuant to Clause 2.2(i) for the delivery of serial Goods
  - S2MSA (including Blanket Order) and/or possible Updates of an S2MSA
  - MSA

- The Terms, and
  - GSM
- (ii) For each Delivery Contract entered into pursuant to Clause 2.2(ii) for the delivery of other deliverables
- Single Purchase Order
  - The Terms, and
  - GSM

### **3. Production and Material Releases and Forecasts**

- 3.1 Supplier shall manufacture and deliver (and Kautex is obliged to accept) those Goods stated in the column “Production Release” in any Blanket Order Release. However, Kautex is under no circumstances obliged to accept delivery of Goods that are not listed in the relevant Production Release column of each applicable Blanket Order Release.
- 3.2 Supplier may buy raw materials and/or work in progress pursuant to the relevant information in the column “Material Release” in any Blanket Order Release. Where no information on the Material Release is to be found in a Blanket Order Release, the following shall apply: for eight (8) weeks in the event of negotiated sea shipment and otherwise for four (4) weeks, in each case as of the date of the Blanket Order Release.

If Kautex does not issue Blanket Order Releases with enough Goods in the Production Release column to cover the materials in the Material Release column, Kautex shall reimburse Supplier for the proven costs of purchasing the raw materials and/or semi-finished products requested in the Material Release column of the applicable Blanket Order Release, provided it is proven that they cannot be used otherwise by Supplier within a reasonable period. Kautex is also entitled to demand the delivery of these raw materials and/or semi-finished products, in Kautex’s discretion.

- 3.3 Kautex shall send a non-binding forecast of the anticipated Material Releases and Production Releases (“Forecast”) for the following months in each Blanket Order Release. Supplier is obliged to keep sufficient production and delivery capacities on hand to satisfy these Forecasts; Supplier must accept and be able to satisfy all of the received Blanket Order Releases on the basis of these Forecasts, including a possible additional weekly delivery volume of +15% in each case.
- 3.4 Should Supplier establish upon receiving and duly reviewing a Blanket Order Release that it is unable to meet the stated amounts in the Production Release column, Material Release column and/or Forecast (including a possible additional weekly delivery volume of +15%) of the anticipated future Blanket Order Releases, it shall notify Kautex without undue delay in writing (but by no later than within one business day after its receipt). If Supplier does not notify Kautex accordingly, the amounts in the Production Release column, the Material Release column and the Forecasts in a Blanket Order Release shall be considered a warranty that Supplier can manufacture or produce or provide the stated quantity of the Goods or the Services without the imposition of overtime charges or other surcharges.
- 3.5 A forecast submitted in accordance with clause 3.3 shall continue to be in effect until Kautex submits a revised forecast.

#### **4. Prices and Terms of Payment, Reservation of Title**

- 4.1 The binding prices and payment terms are set out in the S2MSA/Blanket Orders or in Single Purchase Orders. The prices are fixed prices and constitute the total price for manufacturing and delivering Goods and performing Services. VAT (or other similar tax, including but not limited to Goods and Services Tax levied under the *Excise Tax Act* (Canada) which shall be deemed for purposes hereof to be VAT) in the statutory amount is not included in the price and shall be charged separately, if applicable.
- 4.2 In particular, the price includes delivery to the Delivery Address, as defined below, as well as packaging, freight, insurance, duties, fees and applicable taxes

(other than VAT) and other costs of this nature, unless otherwise specifically provided in the S2MSA/Blanket Order or in the Single Purchase Order.

- 4.3 The invoiced amount may be paid, at Kautex's sole discretion, within 14 days with a discount of 2 %, or within 90 days net, provided no other payment term is negotiated between the Parties in writing. These payment periods shall commence on the date of the receipt of a valid invoice, but not before the completed delivery of the Goods to Kautex. If the payment date falls on a weekend or holiday, payment shall be made on the next business day. The fees incurred for international payment transactions shall be borne by Supplier.
- 4.4 Kautex shall render payment through bank transfer. Any evaluated receipt settlement process to balance accounts payable (debiting/crediting method) must be agreed to separately between the Parties in writing in order to apply.
- 4.5 If no evaluated receipt settlement process has been agreed with Supplier, invoices must include the Purchase Order number and product code. Supplier shall be solely responsible for all of the consequences resulting from the failure to comply with this obligation, provided it is at fault.
- 4.6 Invoices for tools that remain at Supplier (and which are not already owned by Kautex) must additionally indicate the location of the tools on the invoice. Invoices for the delivery of tools will not be recognized and will be rejected by Kautex if the stated VAT deviates from the actual statutory VAT or the stated amount of VAT was not provided in the local currency

Supplier must immediately correct and reissue the invoices that do not meet the requirements set out above. The last sentence in clause 4.5 shall apply accordingly.

- 4.7 Supplier is not entitled to assign its rights to be paid any amount by Kautex or have such amounts collected by third parties without the prior written consent of Kautex. Supplier does not have the right to adjust prices or charge additional costs of any kind without the prior express written consent of Kautex. A late delivery of Goods, late invoicing and the delivery of defective Goods shall entitle Kautex to withhold payment accordingly.

- 4.8 Upon the full payment of the purchase price, title to the Goods shall pass to Kautex.
- 4.9 In addition to any right of set-off or recoupment provided by law, all amounts due to Supplier and its subsidiaries and affiliates shall be considered net of indebtedness or obligations of Supplier and its subsidiaries and affiliates to Kautex, and Kautex may set-off against or recoup from any amounts due or to become due from Supplier and its subsidiaries and affiliates to Kautex however and whenever arising. Kautex may do so without notice to Supplier or its subsidiaries or affiliates. The set-off of Supplier's claims against Kautex is only permitted in the case of uncontested or finally adjudicated claims. If any obligations of Supplier or its subsidiaries or affiliates to Kautex are disputed, contingent or unliquidated, including warranty claims made before final determination of cause, Kautex may defer payment of amounts due until such obligations are resolved.

Supplier may only avail itself of its right of retention in relation to Kautex if Supplier's counterclaim on which it bases its right of retention is based on the same contract and is uncontested or has been finally adjudicated.

- 4.10 Kautex shall inform Supplier if Kautex should be presented with the more favorable offer by a third party during the term of an S2MSA or a Blanket Order for the delivery of Goods that are the subject matter of such S2MSA or Blanket Order or of similar parts in comparable volumes, particularly with respect to price, rebates, technology, quality, payment terms, delivery period or other terms. The Parties shall then use their best efforts to reestablish Supplier's competitiveness. Should Supplier be unable to offer Kautex the same terms despite such efforts or should the Parties be unable to come to an agreement on an adjustment of Supplier's prices within a reasonable period, Kautex shall be entitled to terminate the relevant S2MSA or Blanket Order without complying with a notice period.
- 4.11 In the event of a payment or invoice dispute, Supplier shall continue performing its obligations under this Delivery Contract notwithstanding any such dispute.

## **5. Delivery and Transfer of Risk**

- 5.1 Supplier shall deliver all Goods to the address specified in the S2MSA/Blanket Order or in the Single Purchase Order (the “Delivery Address”) during Kautex's normal business hours or as otherwise instructed by Kautex. Delivery (including the transfer of risk) shall be made DAP (Incoterms 2010) to the stated Delivery Address.
- 5.2 All Goods must be properly packed, labeled and shipped in compliance with all applicable laws, industry standards and the care customary to the industry. Supplier shall pack all goods for shipment according to Kautex's instructions or, if there are no instructions, in a manner sufficient to ensure that the Goods are delivered in undamaged condition. Supplier must provide Kautex prior written notice if it requires Kautex to return any packaging material. Any return of such packaging material shall be made at Supplier's risk of loss and expense.
- 5.3 Supplier is obliged to enclose the relevant consignment notices in the deliveries. The consignment notices must contain the Kautex order number, part number and the supplier number, as well as the information required in the GSM. In addition, any requested certificates (*e.g.*, quality certificates) must be enclosed. If these requirements are not met, Supplier must bear the expense of any delays.
- Should Supplier deliver Goods with missing or the wrong consignment notices, labels, or Advance Shipping Notes (ASN) or are delivered with the wrong or damaged packaging on grounds for which Supplier is responsible, Supplier shall pay Kautex an amount equal to USD \$250.00 (the “Section 5.3 Liquidated Damages”). The parties intend that the Section 5.3 Liquidated Damages constitute compensation, and not a penalty. The parties acknowledge and agree that Kautex's harm caused by Supplier for a breach of this Section 5.3 would be impossible or very difficult to accurately estimate at the time of contract, and that the Section 5.3 Liquidated Damages are a genuine and reasonable pre-estimate of the anticipated or actual harm that might arise from Supplier’s breach of this Section 5.3.
- 5.4 Supplier must label the Goods, prototypes, tools, packing materials and packaging in accordance with Kautex's instructions and otherwise in accordance with the applicable laws and the standards of the automotive industry. Provided noth-



ing to the contrary has been negotiated, labels must be in the form of barcodes or in another form determined by Kautex or required by law.

- 5.5 Supplier must duly provide Kautex with all of the documents (particularly customs certificates, certificates of origin and customs reimbursement documents) required under the applicable customs regulations without undue delay and in full. To the extent additional official documents for the export or import of the Goods are required to use the Goods in accordance with their specifications, Supplier agrees to provide these documents to Kautex or to procure them without undue delay. Without limitation it is Supplier's responsibility to provide correct tariff classification of Goods. If Kautex incurs any cost or loss as a result of inaccurate tariff classification, such costs or losses shall be paid by Supplier to Kautex.

## **6. Delivery Dates and Delays in Delivery**

- 6.1 Supplier acknowledges that time is of the essence with respect to Supplier's obligations hereunder and the timely delivery of the Goods and Services. Supplier shall deliver the Goods in the quantities and on the date(s) specified in the S2MSA/Blanket Order or Blanket Order Release, in the Single Purchase Order or as otherwise agreed to between the Parties in writing ("Delivery Date").
- 6.2 In the event that Supplier fails to deliver the Goods in full on the Delivery Date, Kautex is entitled to terminate the S2MSA or any Purchase Order immediately upon written notice to Supplier and Supplier shall indemnify Kautex against any losses, claims, damages, and reasonable costs and expenses directly attributable to Supplier's failure to deliver the Goods on the Delivery Date.
- 6.3 Kautex is not obliged to accept deliveries at any date prior to the Delivery Date, deliveries of Goods in excess of the quantity of Goods ordered, or deliveries of less than the quantity of Goods ordered, in accordance with the relevant Purchase Order. Supplier shall bear the risk of the perishing of the Goods that have been delivered prior to the Delivery Date. Kautex is entitled to return excess Goods at Supplier's expense; Supplier must bear all packaging, processing, sorting and

transport costs. Kautex is entitled to store all of the Goods delivered prior to the applicable Delivery Dates or excess Goods at the risk and cost of Supplier.

If Kautex accepts deliveries at any date prior to the Delivery Date or deliveries of Goods in excess of the quantity of Goods ordered, Kautex is nevertheless not obliged to make payment (in accordance with clause 4.3) at an earlier date than it would have been if the deliveries had been made on the scheduled Delivery Date.

- 6.4 Should Supplier anticipate that it will be unable to meet the Delivery Date, regardless of the reason, it must so inform Kautex in writing without undue delay, stating the reason and suspected duration. Furthermore, Supplier must present to Kautex without undue delay an action plan for reestablishing its full ability to make delivery.
- 6.5 In the event of late deliveries on grounds for which Supplier bears responsibility, and notwithstanding all other rights of Kautex, Supplier shall pay Kautex an amount equal to USD \$250.00 (the "Section 6.5 Liquidated Damages"). The parties intend that the Section 6.5 Liquidated Damages constitute compensation, and not a penalty. The parties acknowledge and agree that Kautex's harm caused by Supplier for a breach of this Section 6.5 would be impossible or very difficult to accurately estimate at the time of contract, and that the Section 6.5 Liquidated Damages are a genuine and reasonable pre-estimate of the anticipated or actual harm that might arise from Supplier's breach of this Section 6.5.

## **7. Force Majeure, Emergency Strategy**

- 7.1 Disruptions in the delivery relationship due to events that are unforeseeable and unavoidable and outside of the area of control of a Party and for which the affected Party bears no responsibility such as force majeure, labor disputes (strike and lock-out), war, unrest, terrorist attacks or natural disasters shall release the Parties from their performance duties for the duration of the disruption and for a reasonable period thereafter, as well as for the scope of obligations undergone.
- 7.2 The events listed in Section 7.1, the threatened insolvency of Supplier's own suppliers and actual or threatened disruptions of the supply chain related to the provision of Goods or Services must be reported by Supplier telephone and email

- without undue delay (but no later than within ten (10) hours) following their occurrence to Kautex's Purchasing and Logistics (and additionally in each case to the Email address [emergencysupplier@kautex.textron.com](mailto:emergencysupplier@kautex.textron.com)) and the occurrence of each disruption must be proven upon Kautex's request. Supplier must disclose how long the disruption is expected to last in its estimation. Kautex shall treat this information as confidential but is entitled to disclose it to its own customers who could be affected by the disruption.
- 7.3 If the end of such disruption is not foreseeable or if the disruption continues for more than two (2) consecutive months, each Party shall have the right to rescind or terminate without notice the affected Delivery Contract (or its as yet unperformed parts).
- 7.4 Taking into account the special requirements of automotive manufacturers, it must be ensured that the supply of the Goods is maintained in the event of disruptions in Supplier's sphere of influence. Supplier thus undertakes to implement an emergency strategy, provided this is appropriate in light of foreseeable business disruptions, particularly in the areas of procurement, manufacturing, production and/or transport resulting in a delivery restriction (concerning delivery periods and volumes) or, if no such emergency strategy has been defined, to provide for its fastest possible development and introduction so that impacts on supplies can be avoided or at least limited to the greatest possible extent. Kautex must be allowed to inspect this emergency strategy at all times upon demand. Supplier must inform Kautex without undue delay of disruptions or other events which could cause a limitation of the deliveries.

## **8. Change Management**

- 8.1 Changes in Supplier's delivery obligation, including changes in volume, the type of shipment, packaging, delivery time or Delivery Address or changes in drawings or specifications, must be jointly agreed to by the Parties and set down in writing, whereby all of the resulting changes in costs or the amount of time which may be required to fulfill the contract, must be taken into account and included.

For technical changes, including, but not limited to, changes in the Kautex drawings or specifications, the following provisions of this Section 8 shall apply in addition.

- 8.2 Kautex may at any time - even during serial production - demand technical changes to the Goods, and Supplier agrees to implement such changes within the scope of what can be reasonably expected of it and in accordance with the following provisions. Supplier shall submit an offer for the resulting costs (both possible increases and possible decreases) as well as information on deadline shifts and consequences, effects of the changes on weight, function and quality without undue delay upon the receipt of the change request by Kautex. Supplier is obliged to keep the costs caused by the changes requested by Kautex as low as possible.
- 8.3 Supplier shall execute the requested changes as soon as the parties have reached an agreement on all of the costs increases or decreases, postponements and effects of the changes on weight, function and quality, the S2MSA is supplemented or amended as required (*e.g.*, through an update of the S2MSA) and Supplier has received a new Blanket Order and new Blanket Order Releases, as applicable, on this basis and the revisions reflected there.
- 8.4 Any claim seeking compensation from Kautex in connection with raw materials, semi-finished Goods or Goods which as a result of technical changes required by Kautex do no longer meet specifications pursuant to Purchase Orders issued by Kautex prior to the implementation of aforesaid technical changes, must be submitted within 15 days after the implementation date of such technical changes. The claim must include sufficient supporting data enabling Kautex to verify and substantiate the claim. Kautex (and its designated agents) have the right to examine and audit all pertinent items related to the claim, including books, records, facilities, work-in-process, raw materials and inventory. If necessary, Supplier may request an extension of the submission deadline, provided that it does so within the 15-day submission period.
- 8.5 If technical changes or deviations are reasonable in the view of Supplier – *e.g.*, due to more efficient production methods or to improve and increase the safety of the Goods or to adapt to technical progress – Supplier shall propose them to

Kautex; information on the effects on the price, Delivery Dates, etc. must be provided at the same time. Kautex shall review these change proposals without delay and shall not arbitrarily refuse their acceptance.

- 8.6 Supplier shall not execute any technical changes until such time as it has received Kautex's written approval, the S2MSA has been supplemented or amended (*e.g.*, by an update of the S2MSA) and Supplier has received a new Blanket Order and new Blanket Order Releases, as applicable.
- 8.7 Kautex's technical documents, drawings and plans must be examined by Supplier with regard to their completeness and correctness prior to the commencement of handling, processing or production. If, in the view of Supplier, they are incomplete or contain errors or defects, Supplier is obliged to promptly (but in any event prior to the start of processing or production) inform Kautex thereof in writing; all missing technical documents, drawings or plans must be requested in writing without undue delay. Kautex's technical documents, drawings and plans may not be disclosed to third parties and must be returned to Kautex as soon as it requests them, but by no later than upon the completion of the order.

## **9. Quality Management, Documentation**

- 9.1 Supplier must comply with the latest state of the art and comply with all quality standards and legal requirements which are applicable for the Goods. This also includes compliance with Kautex' Engineering Standards that apply for each product or product group. Supplier is particularly obliged to comply with the provisions in Parts D and F of the GSM.

To the extent Supplier has received drawings, samples or other documents from Kautex in relation to any Goods, it shall ensure that such Goods are produced in accordance with such drawings, samples or other documents. Changes to the Goods, an already released production process or its relocation to another site shall require the prior written consent of Kautex.

- 9.2 In particular, Supplier shall maintain a quality management system pursuant to IATF 16949:2016. Upon request of Supplier, an alternative quality management

system equivalent to the standards in the automotive industry according to VDA 6.1 or ISO 9001:2008 may be agreed to between the Parties.

If Supplier does not meet quality levels demanded by such a quality management system and does not correct such deficiencies within three months after notification of such defects by Kautex, Kautex shall be entitled to terminate the Delivery Contract forthwith without any further obligations in relation to Supplier and without prejudice to all other rights.

- 9.3 Supplier must be familiar with and comply with the governing statutory provisions of the following countries: the EU (at the time of entering into the Delivery Contract), the United Kingdom of Great Britain and Northern Ireland, the United States of America, Canada, Mexico, Japan, China, South Korea, Thailand, Morocco, Brazil and India.
- 9.4 The equivalent provisions of the VDA Terms or IATF 16949:2016 and ISO 9001:2008 in the versions applicable during the term of the Delivery Contract shall apply. In all other respects, the provisions of Part F of the GSM and the relevant Purchase Order shall apply.
- 9.5 Supplier agrees to analyze and review the specifications and drawings of the Goods prior to the conclusion of the S2MSA or the delivery of a binding offer for Goods and to advise Kautex without undue delay of possible errors, inconsistencies, etc. Upon request, Supplier shall participate in all quality and development programs by Kautex or the customers of Kautex.
- 9.6 Kautex may, upon reasonable advance notice, during normal business hours, make reasonable inspections at such intervals as Kautex deems necessary, of the facilities where Supplier produces or assembles the Goods. Supplier shall ensure that the same right of inspection is also provided to Kautex with Supplier's suppliers.
- 9.7 An inspection or audit under clause 9.6 shall not constitute acceptance of the Goods or a part of the Goods nor shall it release Supplier from the fulfillment of any express or implicit terms hereunder or under any applicable Purchase Order or Blanket Order Release.

In the event of development work or the start of series production, the release by Kautex shall not discharge Supplier from its product responsibility.

- 9.8 If Supplier intends to relocate its production facilities or its plant site, it must give Kautex reasonable advance written notice thereof; in so doing, it must deliver notification in writing to Kautex at least six (6) months prior to the start of the dismantling or relocation of production machinery and must pre-manufacture Goods in the necessary volume to allow Supplier to fulfill any outstanding supply obligations to Kautex. The plan for relocation must be delivered to Kautex by Supplier on the date of the relocation notification by way of a time schedule. Supplier must continually consult with Kautex on all of the effects on the production and delivery of the Goods and particularly organize a new initial sample of the Goods following the completion of such relocation.
- 9.9 All documents relevant to quality, including, but not limited to, release declarations, must be kept for a period of at least 15 years after the end of serial production for the relevant series (“EOP”) and delivered to Kautex upon demand. Supplier shall ensure that its sub-suppliers have equivalent duties.

In addition, Supplier must document the following in separate records with regard to the Goods that are specially labeled in the technical documents: (i) the dates, (ii) the nature of the audits and (iii) the names of the individuals who have conducted the audits for the purpose of confirming compliance with the requirements contained in the documentation and (iv) the results of the required quality audits. The corresponding audit documents must be kept 15 years after the EOP and delivered to Kautex upon demand. Supplier shall ensure that its suppliers have equivalent duties.

## **10. Incoming Goods Inspection**

Kautex shall only inspect the Goods delivered by Supplier upon receipt for any discrepancies in identity, quality or otherwise, and for visually discernible damage if and as soon as this is appropriate in accordance with proper business practice. Kautex may reject all or any portion of the Goods if it determines the Goods are nonconforming or defective. Kautex shall report any defects established dur-

ing this inspection to Supplier without undue delay. In all other respects, Supplier shall waive a further incoming goods inspection at Kautex.

Any inspection or other action by Kautex under this Section 10 shall not reduce or otherwise affect Supplier's obligations under the Delivery Contract, and Kautex shall have the right to conduct further inspections after Supplier has carried out its remedial actions.

Kautex shall report other defects which are not discovered by Kautex until processing or use of the delivered Goods in accordance with the terms hereof or any applicable Blanket Order or Blanket Order Release or of any Single Purchase Order to Supplier without undue delay upon the discovery of the defects. To such extent, Supplier shall waive the defense of the late notice of defect.

## **11. Defect Liability**

11.1 Supplier warrants that all of the Goods it delivers:

- (i) shall comply with the specifications, samples, drawings and other Kautex requirements,
- (ii) are free of defects (particularly in design, workmanship, production and material) even if the design has been approved by Kautex,
- (iii) are fit, sufficient and suitable for the purposes for which they were bought, provided Supplier is aware of such purposes, and
- (iv) are free and clear of all liens, claims, security interests or other encumbrances, in particular, Supplier warrants that it is transferring good title to Kautex.

These warranties (“Supplier’s Warranties”) survive any delivery, inspection, acceptance or payment of or for the Goods by Kautex and are cumulative and in addition to any other warranty provided by law or equity. Supplier’s Warranties shall be in addition to all other warranties available under applicable law.



- 11.2 Should Kautex discover Goods that do not comply with the requirements under clause 11.1 prior to production (handling and processing, installation or mounting) (“Defective Goods”), the following applies:

At the election of Kautex, Supplier must promptly deliver defect-free Goods (replacement parts) or remedy /repair the defects of the Defective Goods (together, “Subsequent Performance”). All sorting work or other remedial work that may be required shall be conducted by Supplier in coordination with Kautex on Kautex’s premises.

Supplier shall bear all of the costs and expenses incurred by itself or Kautex with respect to the delivery of Defective Goods [(including, but not limited to, the costs for sorting, transporting (including premium transportation costs), inspecting (including the expense of research and development) the causes of the defects, etc.)] and Subsequent Performance. These costs also include the costs of removing the Defective Goods and installing the newly delivered, defect-free Goods.

- 11.3 If a defect is discovered after the start of production, the provisions in clause 11.2 shall initially apply. In addition, the following applies:

- (i) If a defect is discovered before the Product is delivered by Kautex to its customer, Supplier shall additionally bear the costs for all remedial work (labor costs, costs of materials, cost for additionally required tools).
- (ii) If a defect is not discovered until after the Goods have already been delivered by Kautex to its customers or even to the latter’s end customer (*e.g.*, the consumer), Supplier shall additionally bear the portion of the incurred costs for taking them back and/or for Actions (as defined in clause 12 below) which correspond to Supplier’s contributory cause or contributory fault. Kautex shall inform Supplier as soon as such defects occur and shall inform it of the further action and the measures to be taken.

- 11.4 If the Subsequent Performance fails or cannot be reasonably provided or if Supplier does not commence it without undue delay, Kautex may rescind the affected Purchase Order without notice and send the Goods back to Supplier at Supplier’s risk and expense. Section 14.4 shall apply accordingly.

In these and other urgent cases, particularly to avert imminent danger or avoid greater damage, or when it is not possible for Kautex to inform Supplier of the defect and give it a short period to remedy the defect, Kautex may remedy the defect itself or have the defect remedied by a third party.

11.5 In all other respects, the applicable law shall apply in supplement, particularly with respect to the right of Kautex to a reduction, damage compensation (particularly for the dismantling and installation costs) and compensation for expenses.

11.6 Supplier's Warranties are available to, and for the benefit of, Kautex, its subsidiaries and affiliates, their respective successors and assigns, Kautex's customers and users of products containing the Goods or the Services. Supplier's Warranties shall extend to future performance of the Goods. The warranty period for Goods, other than Tooling (as defined below), shall be fifty-four (54) months in each case as of the installation on the vehicle into which the Part was installed, but a maximum of sixty (60) months after the delivery to Kautex.

The warranty period for Tooling shall be thirty-six (36) months after delivery to Kautex.

11.7 The warranty period for Services shall be the greater of (i) five (5) years or (ii) the applicable statutory limitation periods. For Services, the provisions in a joint development agreement between Kautex and Supplier shall apply.

## **12. Recall and Field Campaigns**

To the extent a recall, an owner notification program, any field or service campaign or any other corrective action ("Action") in respect of a Good or a product incorporating a Good: (i) is required in fulfillment of a law, regulation, order or other governmental requirement or as a safety measure to avoid personal injury or death; or (ii) is to take place due to a decision of Kautex or Kautex's customer, Kautex shall where practicable and reasonable inform Supplier of the content and scope of the Action to be conducted and shall give Supplier the opportunity to comment on the proposed Action before that Action is implemented. All other contractual and/or statutory remedies and/or claims by Kautex against Supplier (particularly claims in recourse) shall remain unaffected by this Section 12.

### **13. Liability, Product Liability**

13.1 Supplier shall defend, indemnify and hold harmless Kautex, its subsidiaries, affiliates, successors or assigns and their respective directors, officers, shareholders and employees (collectively, “Indemnitees”) against any and all loss, injury, death, damage, liability, claim, deficiency, action, judgment, interest, award, penalty, fine, cost or expense, including reasonable attorney and professional fees and costs, and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers (collectively, “Losses”) arising out of or occurring in connection with the Goods and Services purchased from Supplier or Supplier's negligence, willful misconduct or breach of the Delivery Contract. Supplier shall not enter into any settlement without Kautex's prior written consent. Where there is contributory cause or contributory fault on the part of Kautex, Supplier may claim such contributory fault or contributory cause in relation to Kautex. In the relation between Kautex and Supplier, their respective share in the damage compensation payments shall be governed by their share in the contributory fault.

Supplier's obligations also include the costs incurred by Kautex for legal assistance or which are incurred in connection with the defense against product liability claims. Should Kautex be subject to special rules governing the burden of proof in relation to the injured party, these rules on the burden of proof shall also apply in Kautex's relationship to Supplier, provided the circumstances to be proven are not attributable to Kautex's area of responsibility.

13.2 Should performance by Supplier or its subcontractors also include work on the business site of Kautex or a Kautex customer, Supplier shall take all required precautionary measures during the course of the work to avoid personal injury and property damage. Supplier shall compensate and indemnify Kautex and any Indemnitee for all damage caused by Supplier's work on the business site, unless Supplier bears no fault. Supplier shall oblige its subcontractors accordingly.

In addition, Supplier must comply with the house rules established by Kautex (*e.g.*, the Contractor Safety Global Policy, the Guideline on Third-party Company

Coordination or other, comparable documents) which will be provided to Supplier upon request.

- 13.3 Supplier remains fully responsible for the actions, inactions, and performance of all obligations performed by its subcontractors, representatives and sub-suppliers to the same extent as if such actions, inactions or obligations were made or performed by Supplier.

#### **14. Tooling, Tools, Free Issue Materials**

- 14.1 All parts, raw materials, tools, compression rolls, equipment, jigs, fixtures, materials (dies, templates, measuring instruments, forms) or other machines or items (including replacements, add-ons, accessories) (“Tooling”) provided by Kautex or purchased by Supplier at Kautex's expense (and whose procurement costs are reimbursed by Kautex or have been included in the prices to be paid for the Goods and have been fully paid) (“Kautex Tooling”), shall be the sole property of Kautex. All rights shall also remain with Kautex for all drafts, samples, drawings, specifications, templates, blueprints, stereotype plates, films, data, models or other information and documents (“Documents”) whether prepared by Supplier, Kautex or jointly. Supplier shall not use the Kautex Tooling and Documents for the production or design of parts for third customers without the prior written consent of Kautex.
- 14.2 Deadlines regarding Tooling, such as PPAP, SOP, etc., are binding. Supplier shall reimburse Kautex for all incurred damages caused by Supplier's failure to meet the agreed deadlines.
- 14.3 Supplier shall have possession of the Kautex Tooling and the Documents as a bailee and shall keep them separate and segregated from any other property of other parties and shall clearly mark them as Kautex's property. Supplier shall bear the risk for the Kautex Tooling and Documents for as long as they are located in the possession or control of Supplier. They shall not be removed from Supplier's business premises without the written instructions of Kautex, save for the purpose of fulfilling the terms of contract. Supplier shall also conduct the maintenance work that may be required in the normal intervals at its own ex-

- pense until the expiration of the duty to replace parts (15 years under EOP). Supplier must report damage or problems to Kautex without undue delay.
- 14.4 Supplier grants Kautex an irrevocable option to take possession of and title to the Tooling supplied by Supplier at its own expense (“Supplier Tooling”) that is special for the production of the Goods, upon payment of their present value less the amounts Kautex has already paid to Supplier or which are amortized through the Goods price; provided, however, that this option shall not apply if Supplier Tooling is used to produce goods that are the standard stock of Supplier, if a substantial quantity of similar goods are being sold by Supplier to others or if Supplier needs Supplier's Tooling to manufacture and deliver the Goods under a valid (particularly if not terminated) contractual delivery duty (or on the basis of an S2MSA or a Purchase Order) to Kautex. If Kautex exercises this right, Supplier shall provide Kautex with all of the technical information and safety instructions for use which Kautex requires to install, assemble and otherwise use the Necessary Tools.
- 14.5 Kautex shall retain title to Kautex Tooling. The handling/processing, conversion or installation or the transformation of the Kautex Tooling by Supplier shall be on behalf of Kautex. If the Kautex Tooling is processed with other items which are not the property of Kautex, Kautex shall acquire co-ownership in the new product in the ratio of the value of the Kautex Tooling (purchase price plus VAT) to the other processed items at the time of processing.
- 14.6 If the Kautex Tooling provided by Kautex is indivisibly attached to or mixed with other items which are not the property of Kautex, Kautex shall acquire co-ownership in the new product in the ratio of the value of the Kautex Tooling (purchase price plus VAT) to the other attached or mixed items at the time of attachment or mixing. If the attachment or mixing happens in such manner that Supplier's items are deemed to be the main item, it is agreed that the Supplier shall transfer proportionate co-ownership to Kautex; Supplier shall store and keep the sole or co-owned property of Kautex on behalf of Kautex.
- 14.7 A detailed description of the Tooling including identification number, location and picture shall be sent to Kautex as soon as such information is available, *e.g.*,

the purchase order for the Tooling is issued, the Tooling is completed or delivered to Supplier (if applicable).

## **15. Provision of Spare Parts**

- 15.1 Supplier agrees to warrant the supply of spare parts for the intended life of the products for which the Goods are to be used or in which the Goods are to be incorporated into (“Product”). Supplier warrants the supply of such spare parts for 15 years after the end of the supply of serial parts (EOP). Supplier shall thus also ensure the availability of the Tooling for such period (cf. clause 14.3). All warranties and rights extended to Kautex with respect to Goods shall apply to spare parts.
- 15.2 During the supply of Goods under serial production, the price for the spare parts shall be equivalent to the price set down in the current or last Purchase Order from time to time. As of the fourth (4<sup>th</sup>) year after EOP, each price shall be individually agreed between the Parties on the basis of the prices applicable at EOP, taking into account any of Supplier's incurred additional costs for the manufacture of the spare parts.
- 15.3 In good time prior to the expiration of the 15-year minimum period for the provision of spare parts, Supplier shall grant Kautex the opportunity to submit a final order for its long-term requirements.
- 15.4 For deliverables that are not included in a Product for a vehicle (particularly for Tooling), Supplier shall warrant the uninterrupted provision of spare parts at fair market prices for the duration of at least fifteen (15) years as of the date of delivery.
- 15.5 Tooling for Goods or for spare parts may not be scrapped, sold or otherwise disposed of even after the expiration of the 15-year minimum period included in Section 15.1, unless Kautex has given its express written consent (either in advance or after the fact). Supplier shall contact Kautex in this regard at least 12 months prior to any such intended action.

## **16. Intellectual Property Rights**

- 16.1 Supplier warrants that the Goods shall not infringe any trademark, company, name, patent, utility model, design model, trade dress or design rights or copyrights of Kautex or any third parties (Kautex and such third parties deferred to herein as “Indemnitees” or an “Indemnatee”) (including applications for such intellectual property proprietary rights) (“Intellectual Property Rights”) worldwide, including, but not limited to, in Supplier's country of origin and in the Federal Republic of Germany, the member states of the European Union (at the time of entering into the Delivery Contract), the United Kingdom, the United States of America, Canada, China, Japan, South Korea, Brazil, Mexico, Thailand, Morocco and India. Supplier shall defend, indemnify, and hold harmless, any Indemnatee for any claims of third parties under such actual or alleged infringements of Intellectual Property Rights and bear any and all Losses, costs and expenses any Indemnatee may incur in this regard, including, but not limited to, the costs of the prosecution of and defense against rights on the one hand and the costs resulting from compliance with a possible cease and desist obligation on the other, arising out of or in connection with any claim that Indemnatee's use or possession of the Goods or use of the Services infringes or misappropriates any Intellectual Property Rights. In no event shall Supplier enter into any settlement without Kautex's prior written consent.
- 16.2 The Parties are obliged to inform one another without undue delay of the risks of infringement and alleged cases of infringement of which they become aware and to mutually counteract the equivalent claims of infringement within the scope of what can be reasonably expected of them.
- 16.3 The limitation period for claims under this Section 16 shall be three (3) years from the termination or expiration of this Delivery Contract.

## **17. Commission Development**

To the extent Supplier provides Services to the development of Goods or Tooling (“Development Services”) to Kautex, whose costs are either paid separately by Kautex and/or which are reimbursed through the prices payable for the Goods, the following applies:

- 17.1 Supplier represents and warrants that the Services do not and shall not infringe or misappropriate any Intellectual Property Rights; Section 16 shall apply to Development Services.
- 17.2 The ownership of rights to all of the products resulting from the Development Services (including all inventions, know-how, test and development reports, suggestions, ideas, drafts, designs, proposals, samples, models, etc.) achieved by Supplier under the scope of this Delivery Contract (“Work Products”), shall inure to the benefit and title of Kautex upon their creation. Work Products shall be considered “works made for hire”, and to the extent that such works do not qualify as “works made for hire”, Supplier hereby assigns to Kautex all right, title, and interest therein.
- 17.3 To the extent the Work Products can be protected as intellectual property, Kautex is particularly entitled, at its own discretion, to register, pursue, assign and discontinue at any time Intellectual Property Rights in its own name.
- 17.4 Supplier shall claim, without limitation, the inventions made by its employees and subcontractors when performing any Delivery Contract that are capable of protection as intellectual property by notice to the inventor; the right to the invention must be transferred to Kautex without undue delay.
- 17.5 To the extent the Work Products are protected by Supplier’s copyrights, Supplier shall grant Kautex and the related companies of Kautex the exclusive, gratuitous, irrevocable, non-transferrable, perpetual, territorially and substantively unlimited right to freely use and exploit this Work Product in any manner. To the extent the Work Products are created in the form of software, the rights of use and exploitation shall be limited to the object code. Kautex may demand the delivery at any time, even during the execution of the development project.
- 17.6 Supplier (and its related companies) is and remains the owner of the inventions made prior to the commencement of the cooperation and of the intellectual property rights registered or granted to them, as well as of the copyrights, utility models and know-how existing prior to the cooperation (“Existing Intellectual Property Rights”).



17.7 To the extent Existing Intellectual Property Rights are required for the exploitation or further development of the Work Products, Kautex shall receive a perpetual and territorially unlimited, royalty free, non-exclusive, sub-licensable and irrevocable right of use with the right to issue sublicenses.

17.8 To the extent Supplier involves its suppliers and subcontractors under the scope of its performance, it is obliged to ensure through appropriate contractual arrangements that Kautex receives the ownership rights and rights of use in accordance with the provisions of this Section 17.

## **18. Electronic Communications, International Material Data System (IMDS)**

18.1 Kautex establishes various Electronic Data Interchange (“EDI”) requirements in order to manage its supply chains. Supplier accordingly has to implement these EDI requirements. The capability of exchanging standard messages via traditional EDI methods or web based EDI is essential for the exchange of Advanced Shipping Notes and Blanket Order Releases, invoices and consignment notices. Due to technology improvements and changes, these EDI requirements will probably evolve and change over the time of the supply relationship. Supplier, therefore, is obliged to establish and constantly maintain an electronic communication system which will enable Supplier to participate to the extent required by Kautex in the relevant EDI system. Supplier must be able at any time to handle the EDI formats employed in various regions such as VDA, EDIFACT and ANSI.

18.2 Supplier will provide to Kautex during the development phase, the material data stipulated in the International Material Data System (“IMDS”) in electronic format and/or obtain such material data – as the case may be – from its suppliers and enter such material data into the IMDS. In case of any “build to print” arrangements (i.e. in cases in which Supplier is not required to undertake any product development) Supplier shall fulfill this requirement immediately after the conclusion of the S2MSA. Supplier’s suppliers of assembled components are also responsible for the prompt provision of all IMDS relevant material data for their products. Supplier acknowledges that:

- (i) IMDS data is part of Kautex release procedure;
  - (ii) Missing IMDS data will result in ISR /PPAP rejection;
  - (iii) Supplier shall inform Kautex about the IMDS-Identification-No.
    - (a) Kautex-Identification-No. and Customer No. must be defined in Part No.
    - (b) Part description must be identical to ISR/PPAP/PSW
- 18.3 If such material data are not provided and/or not entered into the IMDS by the Supplier on time as required pursuant Clause 18.2 Kautex shall be entitled to terminate the relevant Purchase Order without any notice period.

Details are provided for in the GSM, section.

## **19. Compliance with the Laws, Safety Environmental Protection, Hazardous Substances**

- 19.1 Supplier must comply with all applicable federal, state, provincial or municipal laws, rules, provisions or orders and industry standards concerning the Goods and Services as well as during the performance of this Delivery Contract. When performing its contractual duties it must particularly comply with all statutory and governmental rules regarding environmental protection and product safety and employment provisions. In particular, it shall maintain an environmental management system according to ISO 14001:2015 (or set up such system within six (6) months of the first Purchase Order). This shall apply for all countries in which Supplier does business, as well as for the countries to which the Goods are delivered (namely to the Kautex plants) and for the countries to which the Product is delivered.
- 19.2 For Goods and materials, as well as for procedures such as transport, testing, processing, distribution, packaging, labeling, storage, treatment, manufacture and disposal that must comply with laws, rules, regulations, provisions or orders, requirements of regulatory authorities, codes of practice and industry standards ("Laws") due to their composition and impact on the environment, Supplier shall comply and ensure that all such Goods, materials and procedures comply with

the Laws of the countries in which Supplier does business, as well as of the countries where the Goods, materials and procedures are manufactured or carried out, imported, delivered, distributed or used (including countries hosting Kautex plants and the countries to which the final product is delivered).

- 19.3 Supplier shall in particular ensure that the Goods, materials and procedures (in 19.2 above) comply, with the applicable Laws on hazardous goods and substances. In particular, Supplier shall ensure that only specially trained and where appropriate licensed or registered personnel with appropriate protective equipment handle, transport, distribute and in any way deal or work with or use hazardous goods and substances and that only licensed devices, carriers, containers and facilities are used to handle, transport, distribute and in any way deal or work with or use such hazardous goods and substances. Supplier is obliged to provide Kautex and all others who handle, transport, distribute or in any way deal or work with or use the Goods, materials and procedures an overview and material safety data sheets of all hazardous goods and substances it used to perform the Delivery Contracts.
- 19.4 Supplier shall ensure that the requirements of the EU Chemicals Regulation REACH (Regulation (EC) No. 1907/2006, OJ. EU of 18.12.2006) and any implementing legislation and codes of practice or regulatory guidance – hereinafter referred to as "REACH" are met, particularly the requirements of timely preregistration and registration. Kautex is in no way obliged to conduct or meet any such requirements (including the (pre-) registration).

Supplier is aware that the Goods may not be used if the REACH and other applicable Laws are not fully and properly met. Details are provided in the GSM.

- 19.5 Supplier is responsible for obtaining, and will obtain, all necessary consents, approvals, registrations, permissions, authorisations, licences or other regulatory requirements pursuant to all Laws relevant to the Goods, materials and procedures and will bear all costs and expenses associated with, and comply at all times with, those.

- 19.6 If Supplier has entered into an arrangement with a third party regarding the Goods, Services or deliveries or if it has otherwise engaged in conduct constituting an unlawful restriction of competition within the meaning of the applicable anti-trust provisions, Supplier must pay an amount equal to 8 % of the net billing amount of the scope of delivery affected by this anti-trust violation (the “Section 19.6 Liquidated Damages”) to Kautex. The parties intend that the Section 19.6 Liquidated Damages constitute compensation, and not a penalty. The parties acknowledge and agree that Kautex's harm caused by Supplier for a breach of this Section 19.6 would be impossible or very difficult to accurately estimate at the time of contract, and that the Section 19.6 Liquidated Damages are a genuine and reasonable pre-estimate of the anticipated or actual harm that might arise from Supplier’s breach of this Section 19.6. This obligation shall survive the termination or fulfillment of this Delivery Contract. Other or additional contractual or statutory claims by Kautex with respect to a breach of any applicable anti-trust statutory provision shall remain unaffected by this Section 19.6; in particular, Kautex may claim greater damages upon no less than corresponding proof of damage in excess of the pre-estimate set out herein.
- 19.7 Supplier will fully indemnify Kautex for all consequences, including, but not limited to, Kautex's damage and the claims of third parties against Kautex resulting from Supplier's culpable failure to comply with or fulfill the foregoing provisions of this Section 19 or Part C of the GSM fully or on time.
- 19.8 Supplier shall comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption, including but not limited to the *Foreign Corrupt Practices Act* and the *Corruption of Foreign Public Official Act* (Canada), and shall promptly report to Kautex any request or demand for any undue financial or other advantage of any kind received by Supplier in connection with the performance of this Delivery Contract.
- 19.9 Supplier shall obtain, and at all times during the term of this Delivery Contract, maintain, all necessary licenses and consents applicable to its obligations herein. Supplier shall ensure that all persons, whether employees, agents, subcontractors, or anyone acting for or on behalf of the Supplier, are properly licensed, certi-

fied or accredited as required by applicable law and are suitably skilled, experienced and qualified to perform.

## **20. Suspension/Cancellation/Rescission of Orders/Contract**

Provided the Parties have entered into a Purchase Order, the following provisions shall apply concerning their term and termination:

- 20.1 Unless otherwise provided in the Delivery Contract, the Delivery Contract is limited to the length of the production life of the applicable original equipment manufacturer (“OEM”) vehicle program for which Kautex intends to incorporate the Goods or Services; provided, however, Supplier’s obligations with respect to spare parts in Section 15 above shall survive termination or expiration of this Delivery Contract.
- 20.2 Each Party has the right to terminate the Delivery Contract without notice for cause. Cause shall include, but is not limited to, the following cases:
- (i) for Kautex in the event that a customer of Kautex terminates on any grounds whatsoever the contract for the delivery of the products for which Kautex needs Supplier's Goods;
  - (ii) for Kautex in the event that Supplier stops payment or is repeatedly in default of payment in relation to its own suppliers or employees;
  - (iii) insolvency proceedings concerning the assets of a Party are initiated or rejected due to the lack of assets or one of the Parties is liquidated;
  - (iv) the occurrence of a significant deterioration of the asset situation of a Party (which leads to a threat of the fulfillment of its obligations to the Party);
  - (v) the breach of major contractual duties; in the event of a breach which can be remedied, however, not until after the Party not at fault has demanded in writing that the other Party remedy the breach, warned it of the threatened termination for cause and given it a reasonable period of grace of at least four weeks which has expired to no effect;

- (vi) a Party comes under the control of a competitor of the other party due to a change in its owners or shareholders.
- 20.3 In the event of a breach by Supplier against the duties under Section 18 and against the duty not to commit or refrain from action which may result in criminal liability for fraud or embezzlement, insolvency crimes, competition crimes, the grant of undue advantages or corruption by the individual employed by Supplier or other third parties, Kautex shall be entitled to a right to suspend or terminate all existing legal transactions with Supplier without notice and/or to break off all negotiations, without prejudice to the rights in Section 18.
- 20.4 In the event of the cancellation or other termination of this Delivery Contract, Supplier must return to all items provided by Kautex, including all drawings and other documents, machines, appliances and tools.

## **21. Confidentiality**

- 21.1 From time to time during the term of this Delivery Contract, either party (as the “Disclosing Party”) may disclose or make available to the other Party (as the “Receiving Party”) information about its business affairs, products, services, confidential intellectual property, trade secrets, third-party confidential information and other sensitive or proprietary information, whether orally or in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as “confidential” (collectively, “Confidential Information”). The Receiving Party shall: (A) protect and safeguard the confidentiality of the Disclosing Party's Confidential Information with at least the same degree of care as the Receiving Party would protect its own Confidential Information, but in no event with less than a commercially reasonable degree of care; (B) not use the Disclosing Party's Confidential Information, or permit it to be accessed or used, for any purpose other than to exercise its rights or perform its obligations under this Delivery Contract; and (C) not disclose any such Confidential Information to any person or entity, except to the Receiving Party's representatives who need to know the Confidential Information to assist the Receiving Party, or act on its behalf, to exercise its rights or perform its obligations under the Delivery Contract.

- 21.2 Confidential Information shall not include information that, at the time of disclosure: (i) is or becomes generally available to and known by the public other than as a result of, directly or indirectly, any breach of this Section 21 by the Receiving Party; (ii) is or becomes available to the Receiving Party on a non-confidential basis from a third-party source, provided that such third party is not and was not prohibited from disclosing such Confidential Information; (iii) was known by or in the possession of the Receiving Party before being disclosed by or on behalf of the Disclosing Party; (iv) was or is independently developed by the Receiving Party without reference to or use, in whole or in part, of any of the Disclosing Party's Confidential Information; or (v) is required to be disclosed under applicable federal, state or local law, regulation or a valid order issued by a court or governmental agency of competent jurisdiction.
- 21.3 Supplier agrees to oblige its sub-supplier to comply with the same scope of non-disclosure duties. Supplier may use the information disclosed to it by Kautex exclusively for the use for which it was intended.
- 21.4 The non-disclosure duty shall survive the termination or expiration of this Delivery Contract for a period of five (5) years. On the expiration or termination of the Delivery Contract, Supplier agrees to return all received Confidential Information to Kautex, provided it in tangible form or has been stored on electronic storage media. The satisfaction of these duties under the two last sentences must be confirmed in writing to Kautex by Supplier upon Kautex's request. In addition to all other remedies available at law, the Disclosing Party may seek equitable relief (including injunctive relief) against the Receiving Party and its representatives to prevent the breach or threatened breach of this Section 21 and to secure its enforcement. The expiration of this Delivery Contract for any reason shall not impact, negate, diminish or cancel any provision of applicable law related to the protection of trade secrets.
- 21.5 Each Party acknowledges that damages alone would not be an adequate remedy in the event of a breach by the other Party of the provisions of this Clause 21. Accordingly, it is agreed that either Party will be entitled, without proof of special damages, to seek and will seek an injunction or other interim remedy for any

threatened or actual breach of this Clause 21, without prejudice to any other right and remedy which that Party may have.

## **22. Miscellaneous Provisions**

- 22.1 Should a provision of these Terms prove to be invalid, illegal or unenforceable, such provision shall be deemed to be modified or limited to the extent required to make it into a valid, legal and enforceable provision. If such change or limitation is not possible, the invalidity of one or several provisions shall not affect the validity of the remaining provisions or the validity of the Delivery Contract.
- 22.2 Supplier may not use one or several subcontractors to perform the delivery contract or parts thereof without the prior written approval of Kautex.
- 22.3 No waiver by Kautex of any of the provisions of this Delivery Contract is effective unless explicitly set forth in writing and signed by Kautex. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Delivery Contract operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.
- 22.4 The relationship between the parties is that of independent contractors. Nothing contained in this Delivery Contract shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties or its representatives, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.
- 22.5 This Delivery Contract is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Delivery Contract.



22.6 Provisions of these Terms which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Delivery Contract including, but not limited to, Sections 19, 21 and 23.

**23. Dispute Resolution (Governing law, Venue)**

23.1 If the location of the Kautex entity from which a Purchase Order is issued is in the United States of America, this Delivery Contract shall be interpreted and enforced in accordance with the local, domestic laws of the State of Michigan and of the United States of America, exclusive of the choice of law rules thereof.

If the location of the Kautex entity from which a Purchase Order is issued is in Canada, this Delivery Contract shall be interpreted and enforced in accordance with the local, domestic laws of the Province of Ontario and the federal laws of Canada, exclusive of the choice of law rules thereof.

If the location of the Kautex entity from which a Purchase Order is issued is in Mexico, this Delivery Contract shall be interpreted and enforced in accordance with the local, domestic laws of the Mexico, exclusive of the choice of law rules thereof.

If the location of Buyer from which this Order issued is other than as set forth above and is not in Europe, this Order shall be interpreted and enforced in accordance with the local, domestic laws of the State of Michigan and of the United States of America, exclusive of the choice of law rules thereof.

For greater certainty, the United Nations Convention on Contracts for the International Sale of Goods shall not apply to these Terms or any Purchase Order.

23.2 If the location of the Kautex entity from which a Purchase Order is issued is in the United States of America, any legal suit, action or proceeding arising out of or relating to this Delivery Contract shall be instituted in the courts of the State of Michigan, in each case located in the county of Wayne and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding.

If the location of the Kautex entity from which a Purchase Order is issued is in Canada, any legal suit, action or proceeding arising out of or relating to this Delivery Contract shall be instituted in the courts of the Province of Ontario and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding.

If the location of the Kautex entity from which a Purchase Order is issued is in Mexico, any legal suit, action or proceeding arising out of or relating to this Delivery Contract shall be subject to final and binding arbitration before one (1) independent and neutral arbitrator located in New York City, New York, United States of America. Such arbitration shall be initiated by filing a request for arbitration with the American Arbitration Association (“AAA”). The arbitration, subject to the terms of this Delivery Contract, shall be conducted pursuant to the Rules of Arbitration of the AAA effective at the time the request for arbitration is filed. The prevailing party, as determined by the arbitrators, shall be entitled to all fees and costs associated with the arbitration, which shall include any arbitrator fees, administrative fees, out-of-pocket expenses, and attorneys’ fees. If fees and costs are awarded, the application for such fees and costs shall be presented to the arbitrators for approval. The arbitrator shall have power and authority to award any remedy or judgment that could be awarded by a court of law in the applicable jurisdiction. The award rendered by arbitration shall be final and binding upon the parties and judgment upon the award may be entered in any court of competent jurisdiction.

- 23.3 All notices, requests, consents, claims, demands, waivers and other communications hereunder (each, a “Notice”) shall be in writing and addressed to the parties at the addresses set forth on the face of the Purchase Order or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Delivery Contract, a Notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section 23.3.

23.4 The place of performance for all duties under a contract is the location of Kautex to which the Goods are delivered or the Services are rendered as stated in the Purchase Order.

#### **24. Notice**

Each Party shall deliver all notices, requests, consents, claims, demands, waivers and other formal legally relevant communications under the Delivery Contract (each, a "Notice") in writing and addressed to the other Party at the addresses set forth on the S2MSA (or to such other address that may be designated by the receiving party from time to time in accordance with this section). Each Party shall deliver all Notices by personal delivery, nationally recognized overnight courier (with all fees prepaid), facsimile (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (a) upon receipt by the receiving party and (b) if the party giving the Notice has complied with the requirements of this Section.

#### **25. Service of Process**

Each of the Parties hereto irrevocably consents to the service of any and all process in any suit, action or proceeding arising out of or relating to this Delivery Contract by service in person or by internationally recognized courier (such as FedEx or DHL) to, or by mailing of copies of such process by certified or registered mail (or any substantially similar form of mail) to, such Party at such Party's address specified in Section 24.

#### **26. Jury Waiver**

EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THE DELIVER CONTRACT. EACH PARTY HERETO (I) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH PARTY WOULD NOT, IN THE EVENT OF ANY ACTION, SUIT OR PRO-



CEEDING, SEEK TO ENFORCE THE FOREGOING WAIVER AND (II) ACKNOWLEDGES THAT IT AND THE OTHER PARTY HERETO HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVER AND CERTIFICATIONS IN THIS SECTION.