

BUTZEL LONG

New Ford Motor Company Production Purchasing Global Terms and Conditions (eff. date 7/1/21) Change Analysis

New §	Old §	Section Heading	Change	H/M/L
Section 1: What is Covered				
1.01	1.01	Goods and Services	<ul style="list-style-type: none"> • “Buyer” means Ford Motor Company or any Ford Motor Company Related Company identified on the purchase order. • Scope is expanded to include “Tech Products,” in addition to Goods and Services <ul style="list-style-type: none"> ○ “Tech Products” means “Software, Software as a Service, Buyer Data and Supplied Data” <ul style="list-style-type: none"> ▪ “Software” means software application, Commercial Software, Developed Software, and respective updated and enhanced versions, support and maintenance. ▪ “Software as a Service (SaaS)” means all products, support, updates and enhancements which are available from Supplier in accordance with the Purchase Order. ▪ “Buyer Data” means “all data and information which is collected, transmitted, stored, processed, derived from or used by, or on behalf of, or relating to, Buyer,” ▪ “Supplied Data means: “any data or metadata, [] that is related to Supplier’s production, delivery, logistics, quality, volume or similar business information regarding the Goods and Tech Products.” <ul style="list-style-type: none"> ◇ <i>Tech Products and its subparts appear extensively throughout the new Terms, with important implications, especially for warranty, licensing and IP ownership. Specific applications are discussed below</i> 	High
Section 7: Duration of the Production Purchase Order				
7.01	8.01	Initial Term	<ul style="list-style-type: none"> • “Initial Term” of the PO begins on the Effective Date (a/k/a “Document Release Date”) of the PO and expires on June 30 of the next year. <ul style="list-style-type: none"> ○ <i>If PO issue date is after July 1, Initial Term will be less than 12 months</i> 	Low
Section 9: Payment and Taxes				
9.01	10.01	Payment Terms	<ul style="list-style-type: none"> • Payment Terms now determined in the “Payment Schedule Supplier Guide” <ul style="list-style-type: none"> ○ <i>It is important to review the referenced document in order to understand your obligations.</i> 	Moderate
9.02	10.02	Currency	<ul style="list-style-type: none"> • Payment will be made in: (i) the currency of the place of manufacture, or, if Ford chooses, (ii) the “Autocurrency Overview and Operating Policy Supplier Guide” <ul style="list-style-type: none"> ○ <i>It is important to review the referenced document in order to understand your obligations.</i> • Ford may unilaterally change existing POs to currency of place of manufacture. 	High
9.04	None	Income Taxes	<ul style="list-style-type: none"> • If Ford is required to withhold taxes based on Supplier’s revenue or income, Ford will offset and remit the withholding 	Low
Section 11: Quality Assurance				
11.01	12.01	Compliance with Buyer’s [Quality Assurance] Programs	<ul style="list-style-type: none"> • ASPICE and ASPICE assessment rating compliance required 	Moderate

BUTZEL LONG

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11.02	None	Chronic Supplier Improvement Process	<ul style="list-style-type: none"> • If Supplier fails to meet Ford’s standards, Ford may “request” that Supplier enter the CSIP process (defined in the CSIP Handbook), at Supplier’s expense <ul style="list-style-type: none"> ○ <i>It is important to review the referenced document in order to understand your obligations.</i> 	High
11.03	None	Launch Supplier	<ul style="list-style-type: none"> • Launch Supplier must comply with GPDS Supplier Engagement Process requirements <ul style="list-style-type: none"> ○ <i>“Launch Supplier” is not defined and is not used anywhere else in the new Terms</i> 	Moderate
Section 12: Shipping, Packaging and Delivery				
12.01	13.01	Supplier Guides	<ul style="list-style-type: none"> • Supplier’s requirements for packing, marking, labeling and shipping are now found in a Supplier Guide. <ul style="list-style-type: none"> ○ <i>Supplier Guides is the new label for what was previously labelled “Web Guides.”</i> ○ <i>Whether the requirements stated in the Supplier Guide are different from those previously stated in the Web-Guides must be reviewed</i> 	Low
12.03	None	Returnables	<ul style="list-style-type: none"> • New term • Supplier is responsible for the repair and replacement of all Returnable Containers (excluding normal wear and tear) and must insure them against loss or damage. • Supplier is responsible for labor and all other costs of dismantling, staging and loading Returnable Containers to Buyer. 	Moderate
Section 14: Using the Buyer’s Intellectual Property and Tooling				
14.02	15.02	Parts Branding Directive	<ul style="list-style-type: none"> • The details of Ford’s Parts Branding Directive are now found in the Ford Parts Brand Protection Supplier Guide. Previously located in the Vehicle Parts Branding Web-Guide. <ul style="list-style-type: none"> ○ <i>Whether the requirements stated in the Supplier Guide have changed should be reviewed</i> 	Moderate
14.03	None	Work for Hire	<ul style="list-style-type: none"> • New term • Any work of authorship created by Supplier or Supplier’s employees under a Purchase Order is considered as a “work made for hire” • All copyrights under such works of authorship belong to Ford by operation of law • If any of the work of authorship does not qualify as a “work made for hire” than Supplier assigns to Buyer all right, title and interest. If Supplier has failed to previously secure interest in all copyright and moral rights, then it must obtain them now and assign all to Buyer. 	High
Section 16: Confidentiality				
16.01(b)	17.01(b)	Buyer Confidential Information	<ul style="list-style-type: none"> • Buyer Confidential now also includes “Buyer Data” and “any other information that would reasonably be regarded as being of a confidential nature.” 	Moderate
16.06	17.06	Effective Date of Buyer’s Obligations	<ul style="list-style-type: none"> • Ford’s obligations under Section 16 apply to Supplier Confidential Information disclosed to Ford on or after January 1, 2021. 	Low

BUTZEL LONG

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		Section 17 Efficiency Initiatives		
17.01	18.01	: Supplier Participation	<ul style="list-style-type: none"> • Section Name change. Previously called “TVM And Warranty Reduction Programs” • Suppliers are required to participate in Ford’s cost savings, warranty reduction, and other efficiency initiatives. <ul style="list-style-type: none"> ○ <i>The prior terms required participation only when requested by Ford.</i> • Supplier must inform Ford in writing of any necessary or possible change to the Goods or Services that may reduce cost, improve quality, or is otherwise beneficial to Ford or its customers. Ford must approve all changes • Supplier agrees that the cost savings will be passed on to Ford. 	High
		Section 19: Software and SAAS Products		
19.01	None	Software and SaaS	<ul style="list-style-type: none"> • Certain software and SaaS Products will remain the intellectual property of the Supplier including: (1) commercial off-the-shelf software and its derivatives; (2) software made as a service and its derivatives; (3) patents, copyrights, industrial design and proprietary rights that are not developed specifically for Ford <ul style="list-style-type: none"> ○ <i>This term allows for protection of elements of code and other parts of a Supplier’s software library</i> • The Supplier grants Ford a “permanent, paid-up, non-exclusive, worldwide” license that is limited to the “use, repair, modification, or sale” for any software or SaaS <ul style="list-style-type: none"> ○ <i>Provides a broad license to modify the software and SaaS products or to perform a Ford driven “repair”</i> • The Global Terms will supersede any EULA, click-through terms, or consent that is used in association with Goods or Tech Products 	High
19.02	None	Software: Confidentiality	<ul style="list-style-type: none"> • New term • Confidentiality of Software and SaaS products is governed by Section 16 	Moderate
19.03	None	Software: General	<ul style="list-style-type: none"> • New term • Goods and Tech Products include support, updates and enhancements in accord with the Purchase Order or, if the Purchase Order is silent, “support services, including updates and enhancements, which it makes generally available.” <ul style="list-style-type: none"> ○ <i>Support services, including updates and “enhancements” to software is required and the P.O. should be reviewed to determine potential scope and duration</i> • In the case that a Supplier ceases to provide maintenance and support, files a petition for bankruptcy or is subject to an involuntary petition, the Supplier will grant Ford a license to use and modify the source code. The Supplier will then provide the source code and related technical documents to Ford in order to continue the use of the software or SaaS. • Ford can export all Buyer Data or request the Supplier to provide a copy of all Buyer Data in an agreed format 	High

BUTZEL LONG

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			<ul style="list-style-type: none"> • Ford has the right to copy the Goods and Technical product containing software in order to: understand the products, to backup or archive the software, and to install and run the software. <ul style="list-style-type: none"> ○ <i>It is unclear what “understanding” the product means and how broadly Ford will apply this term</i> • Ford has the right to modify Goods and Tech Products as long as the modifications are destroyed upon termination or expiration. 	
19.04	None	Software: Disaster Recovery and Business Continuity	<ul style="list-style-type: none"> • New term • Suppliers must maintain disaster recovery and business continuity plans and procedures to assure uninterrupted services related to software. <ul style="list-style-type: none"> ○ <i>Recovery and continuity planning should include robust response risks to software performance including functional safety, security and privacy considerations</i> 	High
Section 20: Data				
20.01	None	Data	<ul style="list-style-type: none"> • Ford owns all Buyer Data (defined above in § 1.01) <ul style="list-style-type: none"> ○ <i>Buyer Data is broadly defined and could potentially be used to convey ownership of Supplier intellectual property.</i> • Supplier has limited revocable license solely as needed to provide the Goods and Tech Products • Supplier prohibited from using de-identified, aggregated or anonymized data in a way that would make it identifiable 	High
20.02	None	Data Incident	<ul style="list-style-type: none"> • If Supplier breaches data protection obligations, it is responsible for all reasonable data notification response, including notification, forensics, credit protection and other mitigation. <ul style="list-style-type: none"> ○ <i>These mitigation steps can be very expensive. Adequate data protection governance, risk and compliance tools and procedures should be used and cyber insurance is highly recommended.</i> 	High
20.03	None	Supplied Data	<ul style="list-style-type: none"> • Supplier Data (defined above in §1.01) shall be provided to Ford on request. • Ford has right to use Supplied Data for analytics, operations and manufacturing • Ford has right to use Supplied Data with third parties <ul style="list-style-type: none"> ○ <i>Third Parties could include competitors</i> • Ford has right to merge Supplied Data. • Formatting and specifications of Supplied Data must comply with “Supplier Production Data Supplier Guide.” <ul style="list-style-type: none"> ○ <i>It is important to review the referenced document in order to understand your obligations.</i> 	High
20.04	None	Privacy	<ul style="list-style-type: none"> • Supplier must comply with “PII Supplement” <ul style="list-style-type: none"> ○ <i>It is important to review the referenced document in order to understand your obligations.</i> 	High
20.05	None	Cyber-Security	<ul style="list-style-type: none"> • Supplier must comply with “Information Security Supplement” <ul style="list-style-type: none"> ○ <i>It is important to review the referenced document in order to understand your obligations.</i> 	High
Section 21: Claims of Infringement				
21.01	21.01	Supplier Obligations	<ul style="list-style-type: none"> • Indemnity obligation expanded to include infringement arising from the marketing of Goods or Tech Products 	

BUTZEL LONG

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			<ul style="list-style-type: none"> ○ <i>Addition of marketing could include claims related to advertising substantiation, deceptive advertising and other Federal Trade Commission claims.</i> 	
21.03	21.03	Adjustment of Supplier's Financial Responsibility	<ul style="list-style-type: none"> ● Supplier may cure infringement by replacing or modifying the goods or Tech Products at Supplier's expense, provided that: (i) Ford approves and (ii) Supplier confirms in writing that it achieves the substantive results of the original ● Alternatively, Supplier may procure a license that cures the alleged infringement. 	Moderate
Section 22: Warranty				
22.01(d)	None	Error States	<ul style="list-style-type: none"> ● Warranty that Goods will be free of "Error States" <ul style="list-style-type: none"> ○ Error States = Goods that do not function for their intended use, resulting in a warranty claim. 	High
22.01(i)	None	Tech Products	<ul style="list-style-type: none"> ● Tech Products Warranties: <ul style="list-style-type: none"> ○ Supplier has right to license Tech Products ○ Supplier is compliant with any free or open-source licenses ○ Tech products do not include "Copyleft Materials" (i.e., licenses that require that materials be disclosed or distributed in source code, permit making derivative works, or be distributed at no charge). <ul style="list-style-type: none"> ▪ <i>Supplier must understand source of all elements of its software library and rights granted under each license</i> 	High
22.01(j)	None	Supplied Data	<ul style="list-style-type: none"> ● Supplied Data Warranty <ul style="list-style-type: none"> ○ Supplied Data = "any data or metadata, . . . that is related to Supplier's production, delivery, logistics, quality, volume or similar business information regarding the Goods and Tech Products. ○ Supplier warrants that Supplied Data: <ul style="list-style-type: none"> ▪ is timely and accurate ▪ lawfully licensed from data provider, with all necessary rights; ▪ complies with privacy and security laws ○ <i>Depending on the application, Supplier may need to understand fully Ford's use of the data and jurisdictional limits in order to assess possible implications of privacy and security laws</i> 	High
22.01(k)	None	Supplier Warranty: Services	<ul style="list-style-type: none"> ● Services will be provided by appropriately qualified and trained personnel, in a professional manner with due care and diligence to such high standard of quality as it is reasonable for Buyer to expect in the circumstances. 	Moderate
Section 23: Recalls and Other Field Service Actions				
23.03	23.03	Field Service Actions	<ul style="list-style-type: none"> ● Ford not required to provide notice prior to launching Field Service Action <ul style="list-style-type: none"> ○ <i>Old terms required notice</i> 	Low
23.04	23.04	Supplier Liability for Costs	<ul style="list-style-type: none"> ● If Ford gives extended warranty as part of a Field Service Action, Supplier is liable for those costs. <ul style="list-style-type: none"> ○ <i>Prior terms only applied if government mandated recall.</i> 	High
Section 32: Audit Rights and Financial Information				

BUTZEL LONG

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32.01(a) and (d)	32.01	Supplier Records and Facilities	<ul style="list-style-type: none"> • “Tech Products” has been added to the list of information that Ford may examine. • Ford’s right to View and Audit Supplier’s compliance now includes a review and audit of Supplier’s obligations or actions under the following provisions Software (Section 19), Data (Section 20), Confidentiality (Section 16), Set-Off (Section 10), Social and Environmental Responsibility (Section 36, and Protection of Supply (Section 37). 	Moderate
None	32.02		<ul style="list-style-type: none"> • Section 32.02, Subcontractor Records and Facilities, has been deleted 	Low
Section 33: Service Parts				
33.01	33.01	Supply Obligation	<ul style="list-style-type: none"> • Allows Ford to elect to utilize Authorized Third Parties to fulfill supplier obligations as defined in the FCSD Supplier Parts Guide-Global. <ul style="list-style-type: none"> ○ Authorized Third Parties includes Packagers, Kitters, Re-manufacturers, Stampers or contracted procurement service providers • Supplier must provide any legal and/or material compliance documentation required by Ford to sell or import the parts. • Ford will purchase the Service and Component Parts directly from the Supplier manufacturing site where the Goods are produced unless agreed in writing by Ford. 	Moderate
33.02	33.02	Price for Service Parts	<ul style="list-style-type: none"> • The price for Service Parts will be no greater than the price specified in the Production Purchase Order for the Goods used in production, less Production Commercial Adjustment, plus Service Commercial Adjustments. <ul style="list-style-type: none"> ○ “Production Commercial Adjustments” means “Production Part cost to cover supplier expenses that are unique to Production supply or amortized over an agreed-upon schedule (volume); this includes but is not limited to: ED&T, ILVS, production packaging, supplier-paid duties/taxes” <ul style="list-style-type: none"> ▪ <i>In other words, expenses to be amortized in the price of production parts will not be amortized for service parts</i> ○ Service Commercial Adjustments” means adjustment made to a Service Part cost or Component Part cost to cover supplier expenses that are unique to Service Part or Component Part supply. <ul style="list-style-type: none"> ▪ <i>Prior terms set the price for Service Parts as no greater than the price specified in the Production Purchase Order for the Goods used in production plus the actual net cost differential for required unique packaging, shipping and handling. Prior adjustments are similar, but not identical to, “Service Commercial Adjustments”</i> 	Moderate
33.03	33.03, 33.05, 33.06 and 33.07	Price for Component Parts	<ul style="list-style-type: none"> • Term was completely rewritten, expanded and includes old §§33.05, 33.06, and 33.07 • A price change can be requested by either Ford or Supplier in the following situations: <ul style="list-style-type: none"> ○ If the Buyer believes a change in pricing is warranted for applicable Service Parts or Component Parts resulting from Buyers Efficiency Initiatives. ○ Supplier will maintain the last Purchase Order price on file while the Goods were in serial production for the greater of either 3 years or the applicable warranty period for the Goods 	High

BUTZEL LONG

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			<ul style="list-style-type: none"> ○ If Supplier believes a change in pricing (up or down) is warranted for applicable past model Service Parts or Components Parts, subject to 33.04(c), limited to significant and ongoing changes in component or raw material costs, or manufacturing costs, it may file a price change request. (1) Price changes need to mutually agreed upon for actual manufacturing cost changes; (2) Mutually agreed price changes will be implemented when all Supplier-caused backorders are resolved; and (3) Supplier will provide invoice, published prices, evidence of efforts to mitigate increase, and other information to substantiate the requested change. The parties will negotiate in good faith. ● Where there is a price change for serial production goods, Ford will simultaneously change the price of the corresponding Service Parts and Component Service Parts 	
33.05	33.08	Prices for Byer's Related Companies and/or Approved Third Parties	<ul style="list-style-type: none"> ● In addition to the prices of Service Parts and Components Parts supplied to Buyer also applying to Service Parts and Component Parts supplied to the Buyer's Related Companies the new provision also requires that the price also apply to those supplied to Buyer's Approved Third Parties, 	High
33.06	33.09, 33.10 and 33.11	15 Year Past model Year Supply Obligation	<ul style="list-style-type: none"> ● Previously the 15-year supply requirement was only "if requested by the Buyer" ● It is mandatory under the new terms. "Supplier will supply" the service parts for up to 15 years (or longer in some circumstances). <ul style="list-style-type: none"> ○ <i>Note: Section 33.10 and 33.11 were deleted from the new terms. Together they required the Buyer and the Supplier to negotiate, in good faith, for the supply of the Service Parts and Components Parts beyond the applicable time period in 33.09 and permitted Supplier to elect not to supply the parts upon 3 months' notice and transition assistance and continued supply for 6 months.</i> 	High
Section 34: Tooling and Other Property of the Buyer				
34.01	34.01	General Application	<ul style="list-style-type: none"> ● Returnable containers removed from scope of provision 	Low
34.17	34.17	Restrictions on Use of Tooling	<ul style="list-style-type: none"> ● All Tooling may be used solely to make Goods, including "any additional tools made from Buyer drawings paid for outside of the Buyer's Tooling Order." <ul style="list-style-type: none"> ○ <i>Final clause new</i> 	Low
Section 35: Compliance with Laws				
35.01	36.01	General Obligations	<ul style="list-style-type: none"> ● In addition to the Supplier complying with all applicable Government Requirements, the Supplier, the Goods and Tech Products must also comply with all applicable laws, rules, regulations, orders, conventions, ordinances, or standards of the country destination or use of the Goods, or which relate to the manufacture, labeling, transportation, importation, licensing, approval or certification of the Goods and Tech Productions... 	Moderate
35.02	None	Trade Controls	<ul style="list-style-type: none"> ● New Term ● Supplier, the Goods and Tech Products must comply with all U.S. and other applicable laws, statutes, regulations, codes and executive orders relating to export controls, sanctions and anti-boycott as 	High

BUTZEL LONG

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			<p>described in Buyer’s Export Control and Sanctions Compliance Supplier Guide, which Buyer may update from time to time</p> <ul style="list-style-type: none"> • If Buyer requests, Supplier must certify in writing its compliance • Supplier must strictly comply with this provision or Buyer may terminate a Purchase Order 	
35.04	None	Competition Laws	<ul style="list-style-type: none"> • New Term • Requires Supplier to comply with all Competition Laws 	Low
Section 36: Social and Environmental Responsibility				
36.02	37.02	Supplier Code of Conduct	<ul style="list-style-type: none"> • Supplier “Code of Conduct” replaces and expands “Code of Basic Working Conditions” • Code of Conduct includes internationally recognized standards and Ford internal policies • Applies to the supply of all Goods and covers topics related to social and environmental responsibility, including the responsible sourcing of materials 	Moderate
New	37.06	Supply Chain Inclusivity and Diversity	<ul style="list-style-type: none"> • Supplier is to actively attempt to establish and maintain a diverse and inclusive supply chain. • Supplier is to report quarterly the dollar value of the content provided by its diverse businesses, as it pertains to the supplier’s business with Ford. 	Moderate
Section 38: Resolving Disputes				
38.01	39.01	Negotiations	<ul style="list-style-type: none"> • Negotiations efforts are mandated, but may be terminated by either party on 14 days <ul style="list-style-type: none"> ○ Prior terms set 60-day minimum period and a somewhat more elaborate process 	Low
38.02	39.02	Mediation	<ul style="list-style-type: none"> • Non-binding mediation is optional after conclusion of negotiations • Mediation period not to exceed 90 days 	Low
38.03	39.03	Arbitration	<ul style="list-style-type: none"> • If dispute is unresolved through negotiation or (if chosen) mediation, Ford may require arbitration of disputes relating to quality, quantities, delivery, payments, warranty, indemnification, any kind of field service action, shipping, packaging and and/or actions under Sections 10 (setoff), 11 (quality assurance), 12 (shipping packaging and delivery), 13 (non-conforming goods, 14 (use of Ford’s IP or Tooling), 22 (warranty), 23 (recalls, and 25 (Indemnity by Supplier) <ul style="list-style-type: none"> ○ <i>Ford may compel Supplier to arbitrate the vast majority of meaningful disputes.</i> ○ <i>Ford is not required to arbitrate any disputes; it may choose litigation, but the Supplier may not litigate if Ford prefers arbitration</i> <ul style="list-style-type: none"> ▪ <i>Prior terms did not allow Ford to require arbitration</i> • For other unresolved disputes, either party may ask the other in writing to arbitrate. <ul style="list-style-type: none"> ○ <i>In other words, for these disputes, arbitration is optional, not mandatory</i> • 15 days to respond to arbitration request. <ul style="list-style-type: none"> ○ <i>Not clear what happens if arbitration request is ignored.</i> 	High
38.04	98.04	Litigation	<ul style="list-style-type: none"> • Disputes that are not arbitrated may be litigated • If both Ford US and non-US Ford entities are parties to dispute, litigation must be filed in US 	Low

BUTZEL LONG

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			<ul style="list-style-type: none"> ○ <i>Prior terms did not address possibility</i> 	
38.05	39.05	Location of litigation	<ul style="list-style-type: none"> ● If litigation is with Ford US, it must be filed either in federal court in Detroit or state court in Oakland or Wayne County. ○ <i>Prior terms did not include Wayne County.</i> 	Low
38.07	39.07	Governing Law	<ul style="list-style-type: none"> ● If both Ford US and non-US Ford entities are parties to dispute, US law will apply ○ <i>Prior terms did not address possibility</i> 	Low
38.08	39.08	Effect on Buyer's Rights	<ul style="list-style-type: none"> ● Ford may immediately (without negotiation, mediation, arbitration or litigation) exercise rights under Sections 11 (setoff) and 23 (preliminary setoff of field service action costs), seek injunctive or similar relief and "exercise [] any of its rights or remedies under the Purchase Order or applicable law" ○ <i>Meaning of last quoted language is unclear</i> 	Moderate
38.09	None	Anticompetitive Practices	<ul style="list-style-type: none"> ● If Supplier pleads guilty to violating, or a court or regulator finds that Supplier has violated, the antitrust laws with respect to a commodity sold to Ford, Supplier must: (1) produce to Ford within 4 weeks all documents it has produced to any government authority and (2) participate in binding arbitration. ● If the arbitrator finds a violation affecting Ford, Supplier must pay Ford 15% of the purchase price of any Ford goods affected by the violation (trebled, if US law was violated) ● The 15% payment is a minimum; Ford may pursue additional damages. ● This provision supersedes all of the other dispute resolution provisions (e.g., mediation) <ul style="list-style-type: none"> ○ <i>This new provision is clearly a direct outgrowth of the Auto Parts Antitrust litigation</i> ○ <i>The new provision puts the wrongdoing supplier in an extraordinarily difficult position.</i> 	High
39-47	40 - 48		<ul style="list-style-type: none"> ● NO MATERIAL CHANGES 	Low