



Automotive Industry Outlook:

Navigating Supply Chain Disruption in a Time
of Industry Transformation

February 2022

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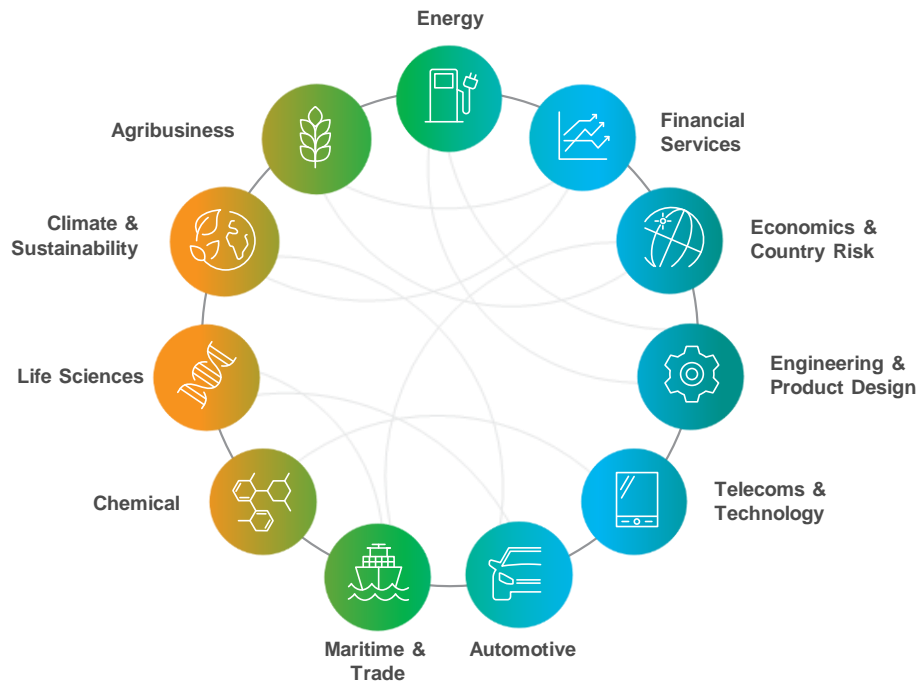
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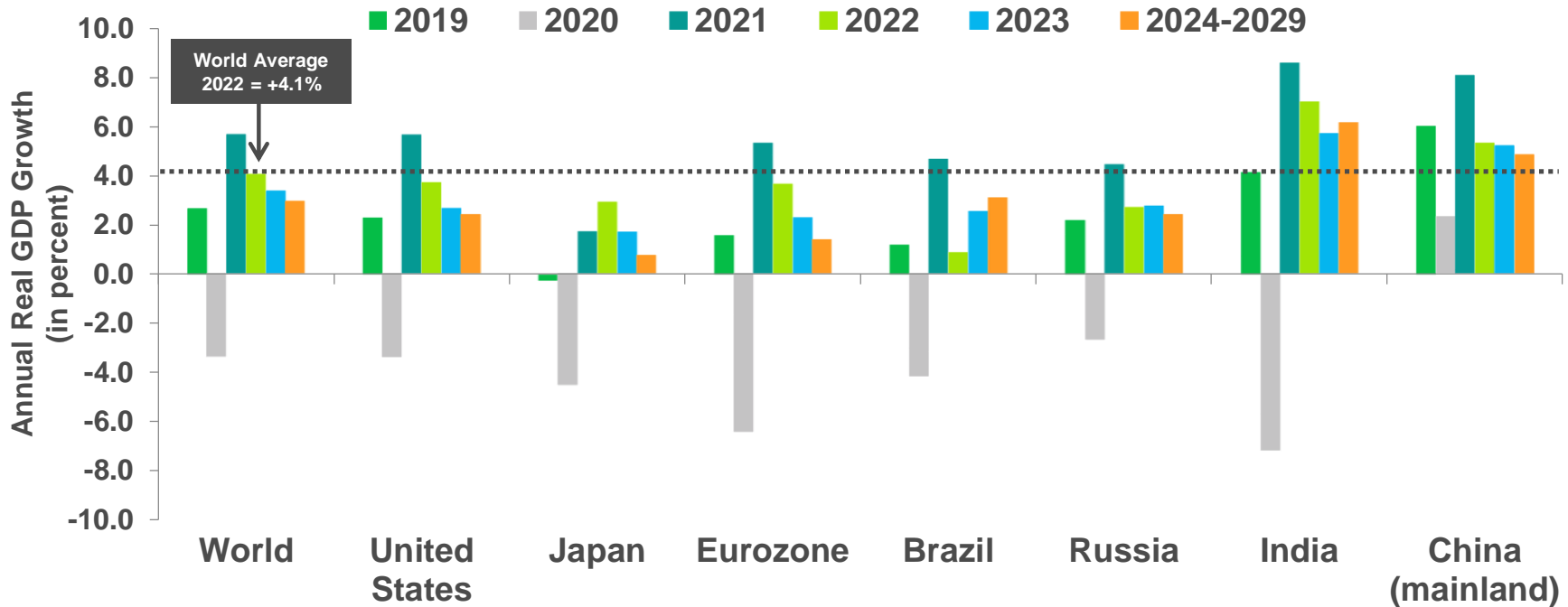
Addressing Strategic Challenges with Interconnected Capabilities

<p>50,000+ customers in over 140 countries</p>	<p>80% of the Fortune Global 500</p>
<p>94/100 largest US corporates</p>	<p>\$4B annual revenue NYSE: INFO</p>



World Economic Growth

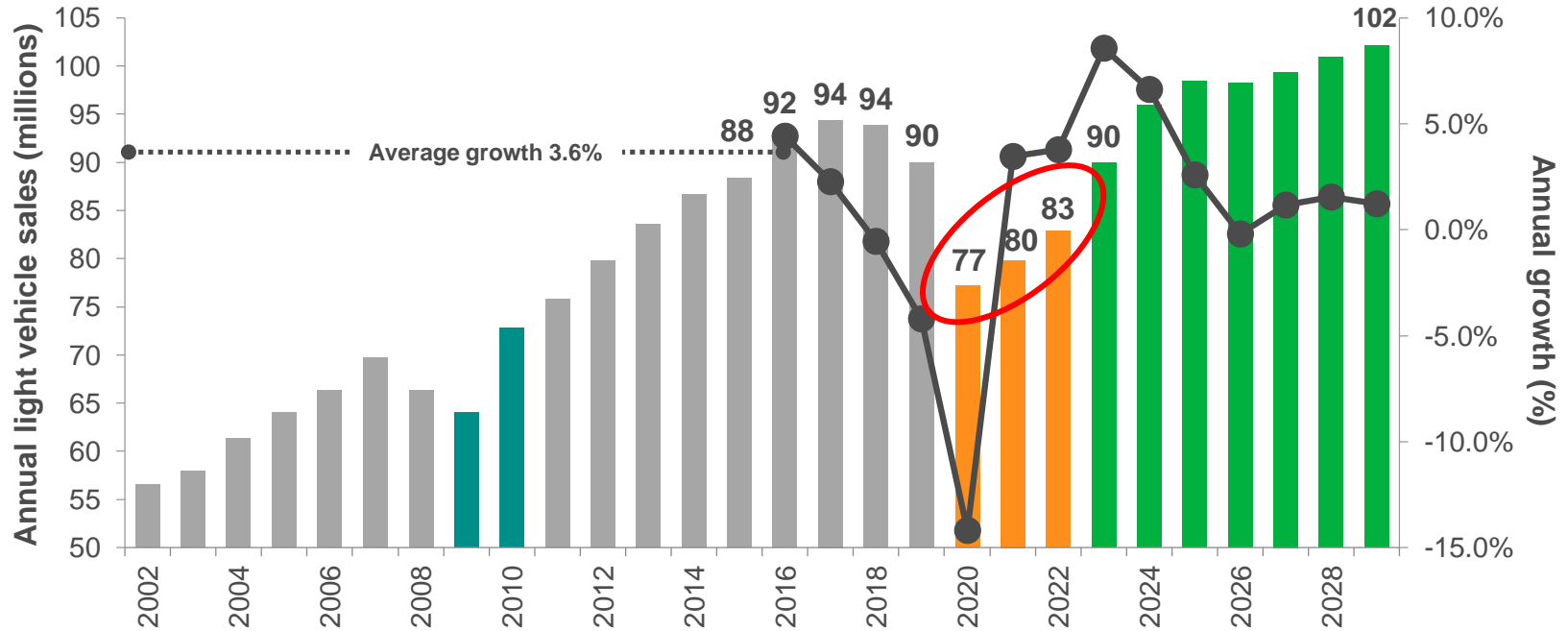
Growth Slows as Rising Inflation, Supply Shortages and Declining Fiscal Stimulus Depress Outlook



Source: IHS Markit Data Insight

Global Light Vehicle Sales

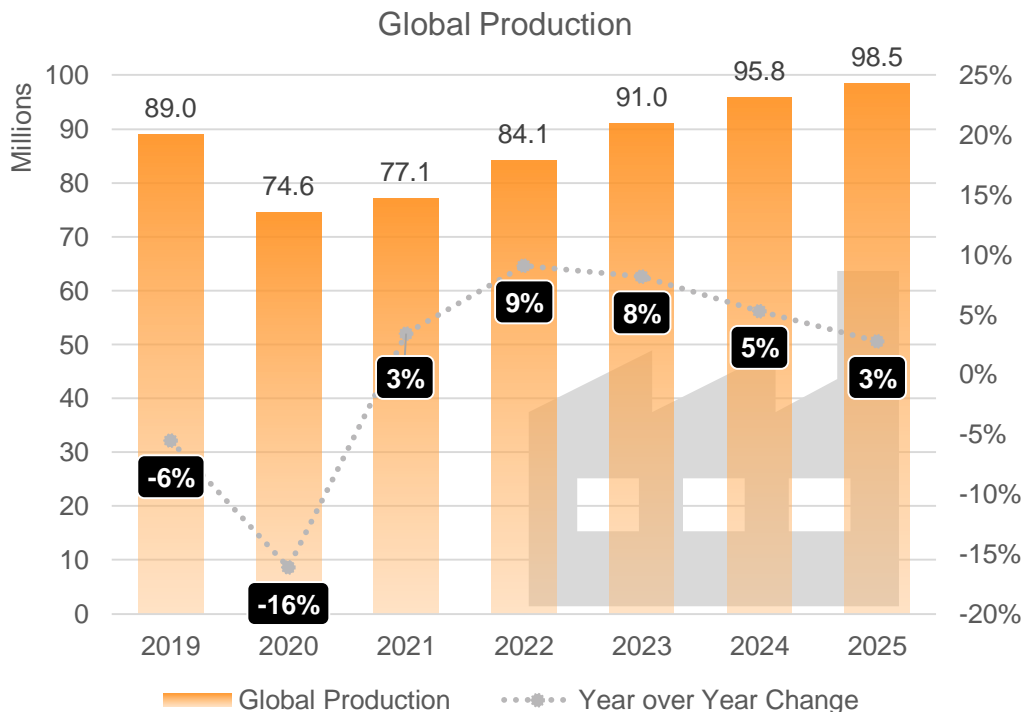
Supply Chain Disruptions Dramatically Alter Recovery Cadence; Expectations Reset Longer-Term



Source: IHS Markit Light Vehicle Sales Forecasts

Global Light Vehicle Production Overview

2021 Closing Stronger as Relief from Malaysian ‘hang-over’ Plays Out; 2022 Raised on Better Short-Term Supply in Some Markets but Visibility Remains Limited

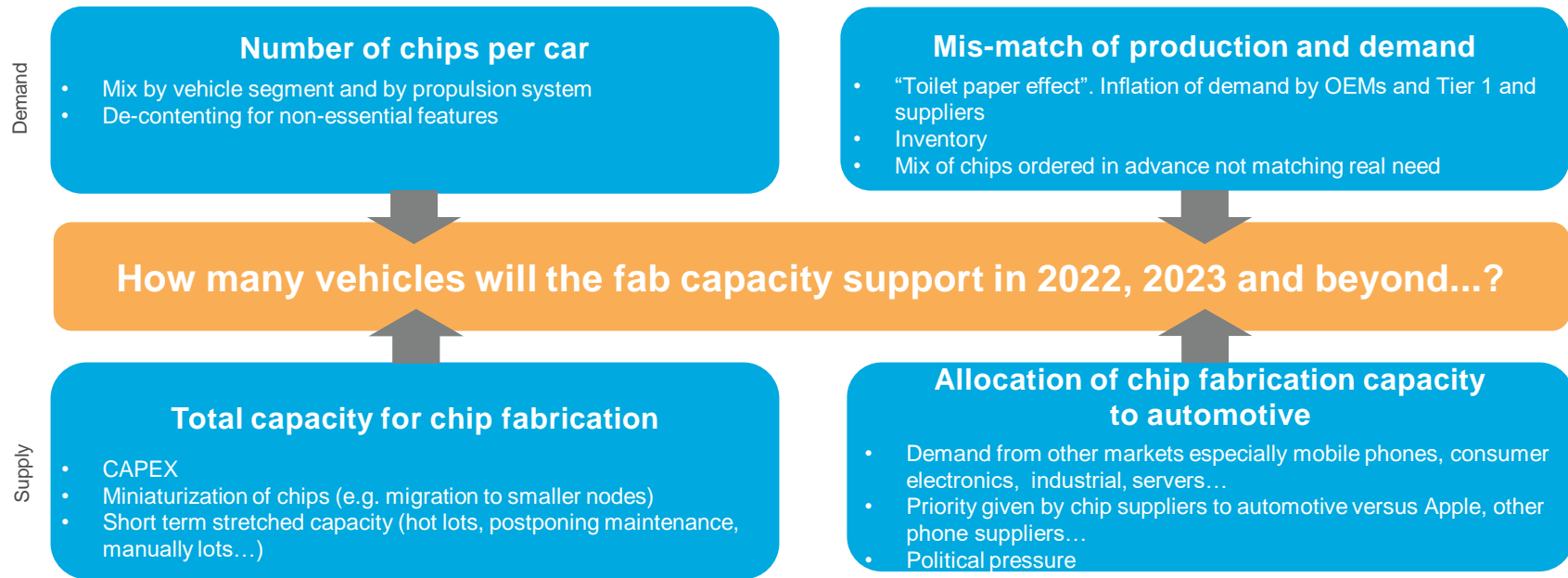


- ▲ Malaysian operational capacity restored in late-September, one month earlier than expected
- ▲ TSMC making commitments to automotive along with Apple and overall capacity expected to increase in 2022
- ▲ Chip surplus that built up while back-end operations struggled is helping lift short term activity; evident in late year actuals
- ▼ ‘Incomplete’ vehicle activity clouding the outlook, difficult to determine true vehicle run rates
- ▼ Malaysia hit by floods in late December, effects emerging—expect disruption across Q1 see Toyota announcements, others expected to be hit
- ▼ Mid-term: heightened demand within the supply chain from non-automotive sectors will continue to compete with automotive chip requirements.
- ▼ Further, semiconductor content levels - “chips per vehicle” - have increased steadily and are expected to face further upward pressure given the ongoing shift toward increased vehicle electrification, ADAS content
- ▼ Lead times not showing any signs of coming down
- ▼ Supply chain remains fragile, easily disrupted by new waves of COVID-19 infections and other emerging risks

Semiconductor Outlook: It's Complicated

Analog Chip Supply will Determine How Many Vehicles will be Built in the Near-Term

Factors Influencing Automotive Chip Supply



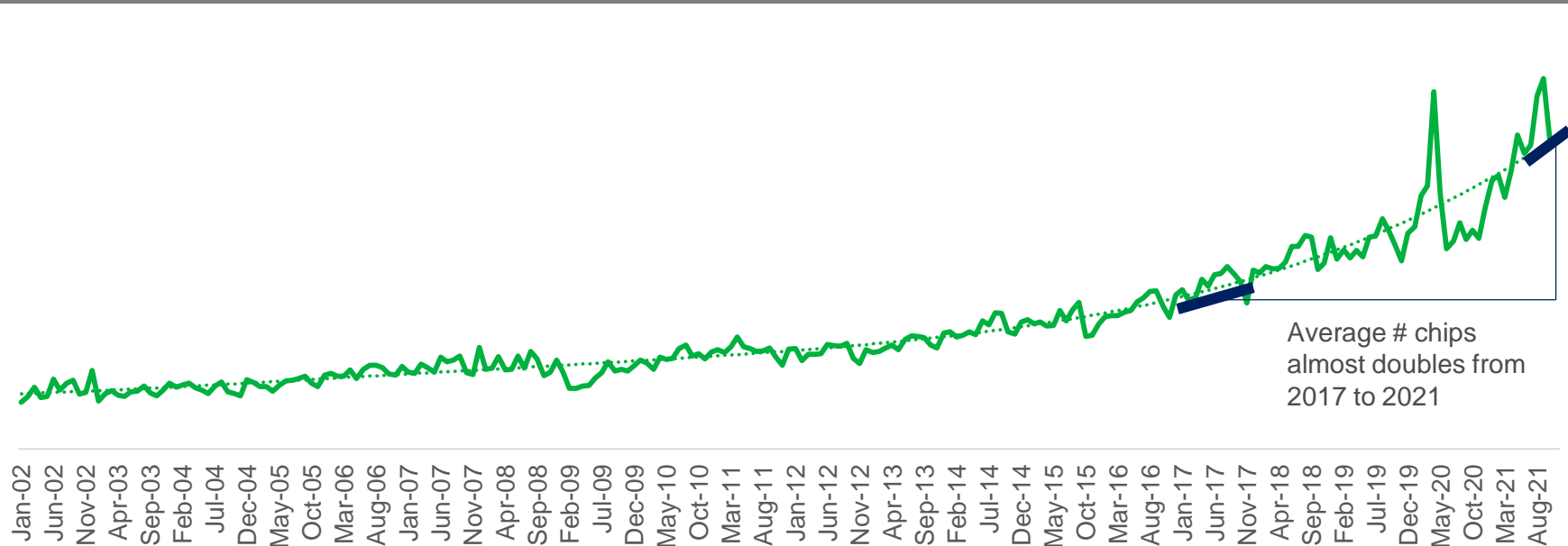
Source: IHS Markit

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Semiconductor Outlook: It's Complicated

Why Could the Industry Barely Produce Enough Chips for 75M Vehicles in 2021 When There was No Issue Supplying Chips for 95M Vehicles in 2017?

Average Number of Automotive Chips per Car (actuals from January 2002 to November 2021)



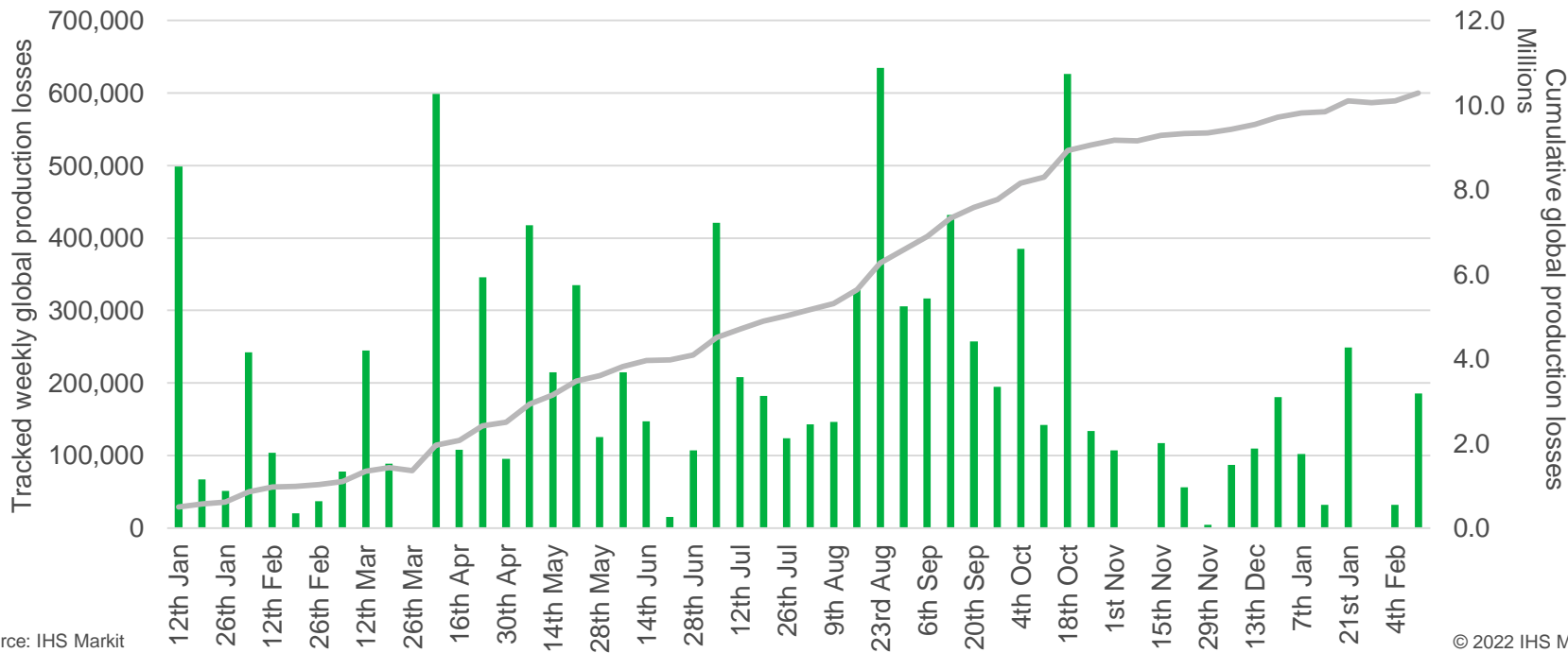
Note: Monthly automotive specific actuals reported by WSTS divided by IHS Markit monthly Light Vehicle production.

Source: IHS Markit Light Vehicle Production, WSTS (Jan 2022)

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Global Production Overview

Weekly Tracking, Visible Disruption Easing as OEMs Plan for Constraints; Recent Uptick in Unplanned Downtime Focused on Japan Demonstrates Risk Remains Significant



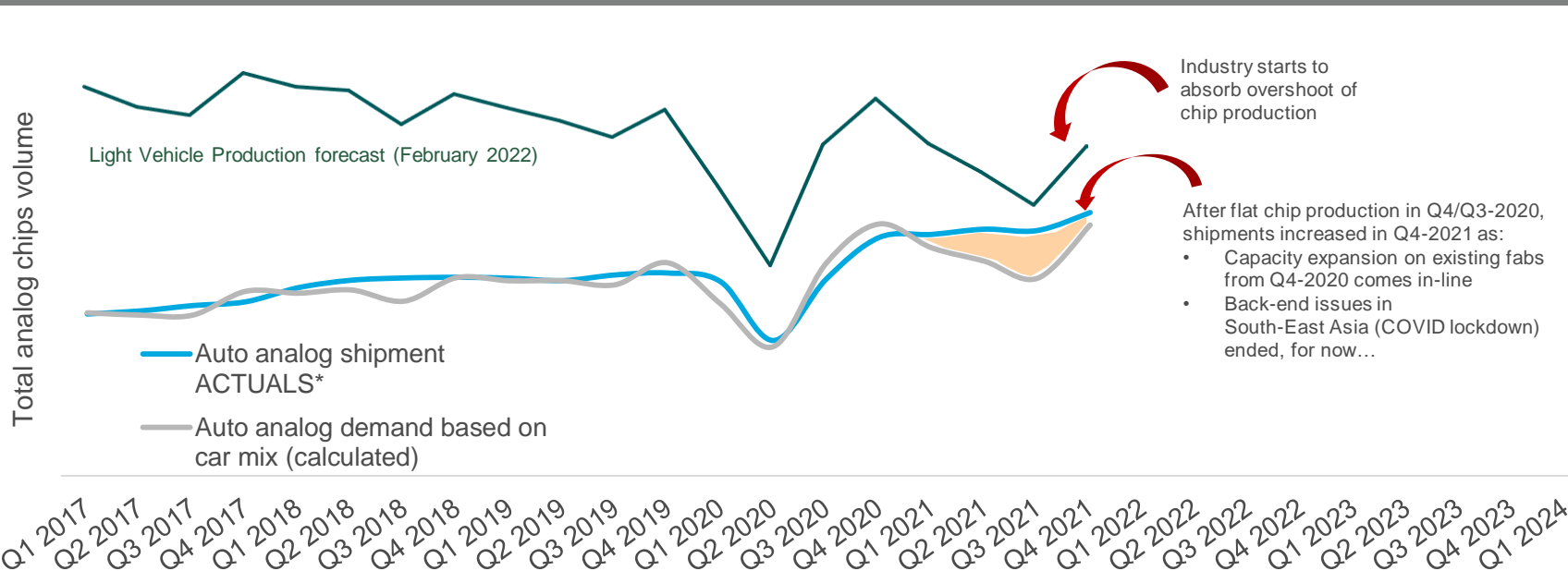
Source: IHS Markit

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Global Production Overview

Vehicle Outlook Raised on Short-Term Surplus and Increase in Available Chip Capacity

Automotive Analog Chip Actuals vs. Theoretical Demand Based on Vehicle Production Volume and Mix

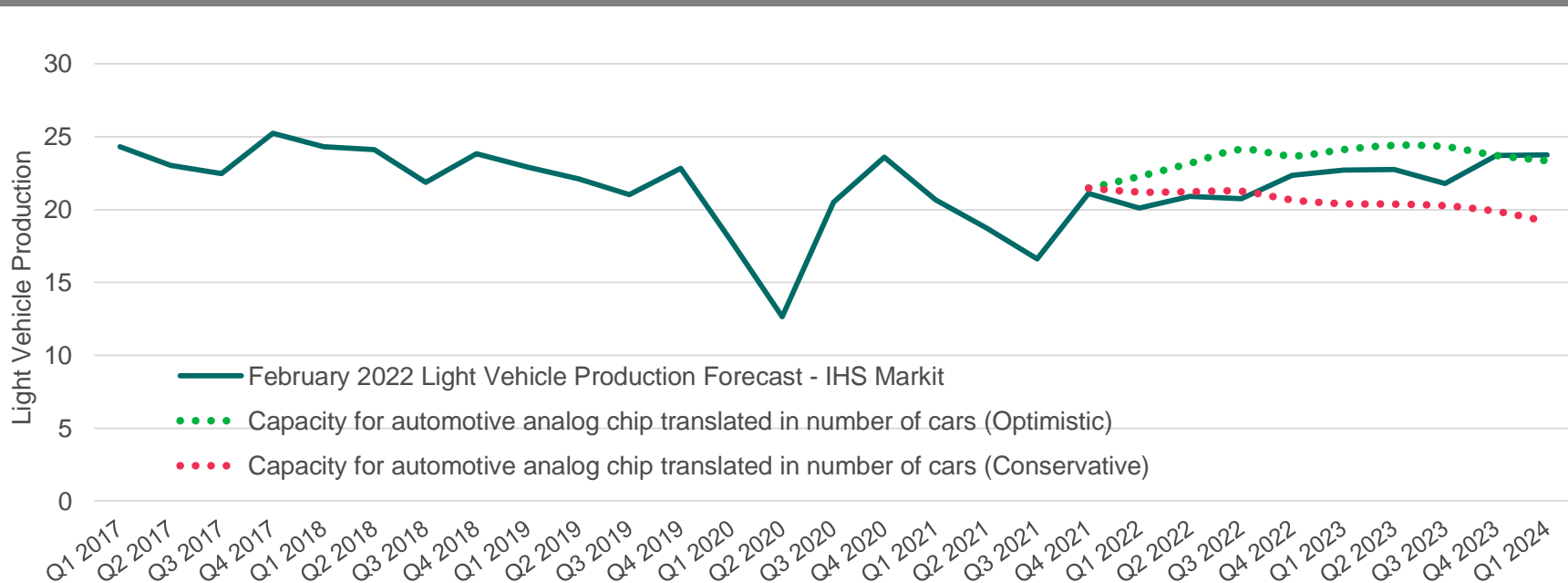


Note: *Actuals from WSTS through November 2021, December 2021 extrapolated
 Source: IHS Markit

Global Production Overview

Output Constrained by Chip Supply through 2024; Risk of Supply Tightening Again at End of 2023

Ceiling for Vehicle Production Based on Constraints on Automotive Analog Chip Capacity

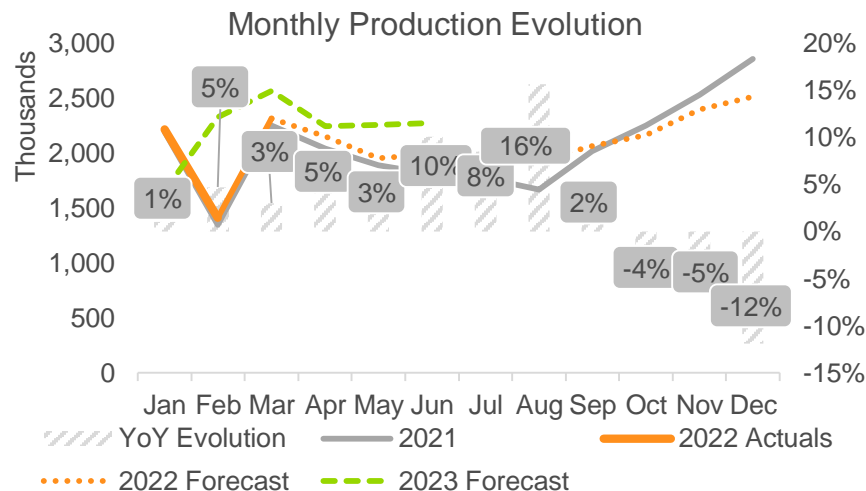
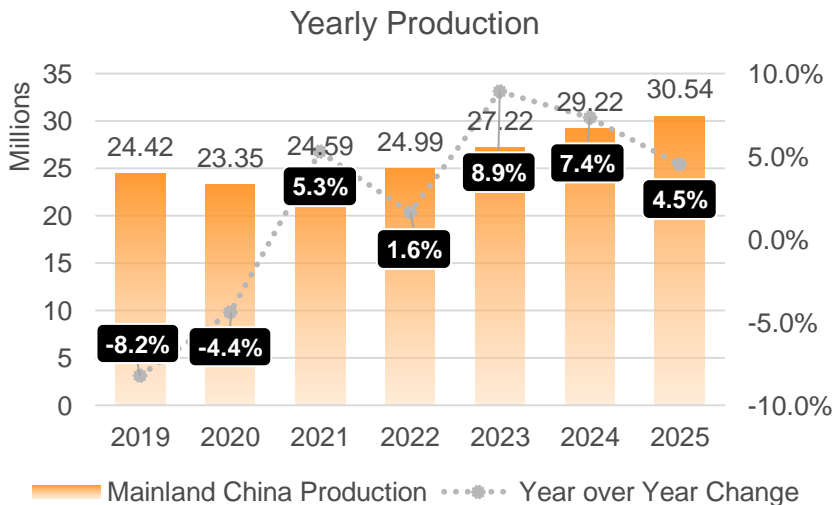


Source: IHS Markit

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Mainland China Production Overview

Mixed Developments; Strong Demand Fundamentals Tempered by Supply Chain Disruption Full-year Outlook is Raised but Some OEMs More Exposed to Longer Running Semiconductor Shortages



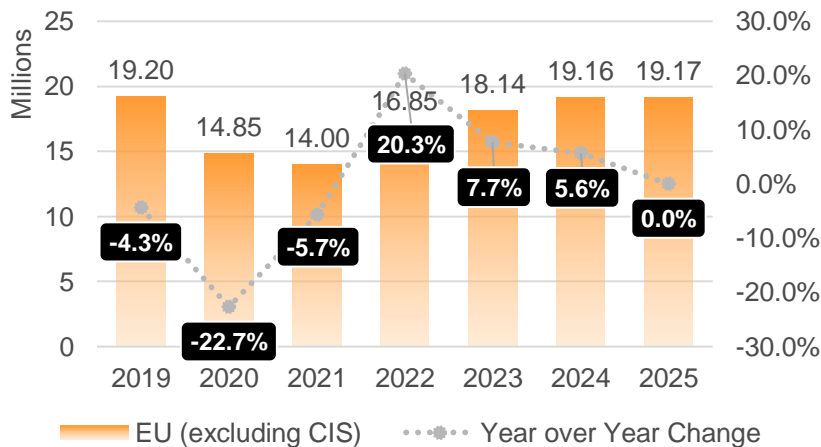
- ▲ Mainland China auto production outperformed our initial estimates again in December, achieving 2.85m units with a year-on-year rebound of 6.6%.
- ▲ NEV growth was a major driver for the 2021 industrial rebound, totaling 3.4m units in 2021, leading to a market penetration rate of over 15%.
- ▲ Total light vehicle production in mainland China increased by 5.3% year-on-year, achieving 24.6m units for 2021.

- ▼ Even as chip shortage will improve, partially-built vehicle completion brings pay-back effect in 2022, leading to a y-o-y reduction in Q4 particularly.
- ▼ After Lunar New Year holidays, risk of COVID outbreak increases and social containment could be expanded under the zero-tolerance policy.
- ▼ Risks on the path of economic recovery remain over the next few years, such as stagnate domestic consumption, fragile supply chains, risks in the financial sector and COVID-19 variant outbreaks.

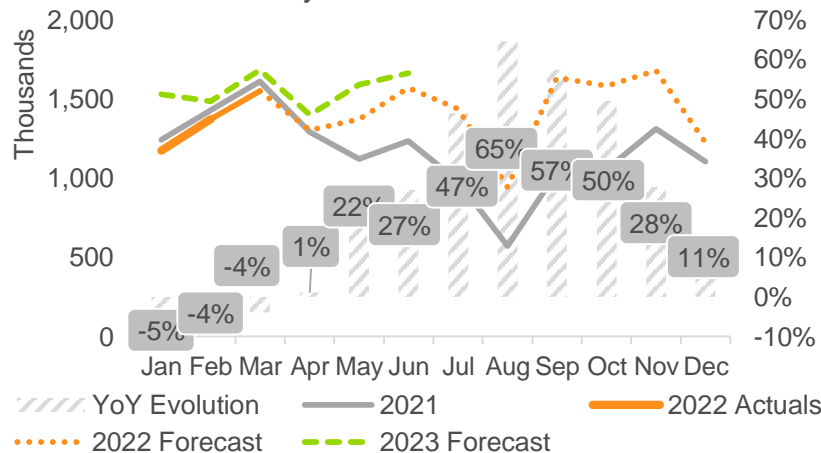
Europe* (excluding CIS) Production Overview

Risk to Volumes Remain as Supply Shortages are Highly Unpredictable

Yearly Production



Monthly Production Evolution



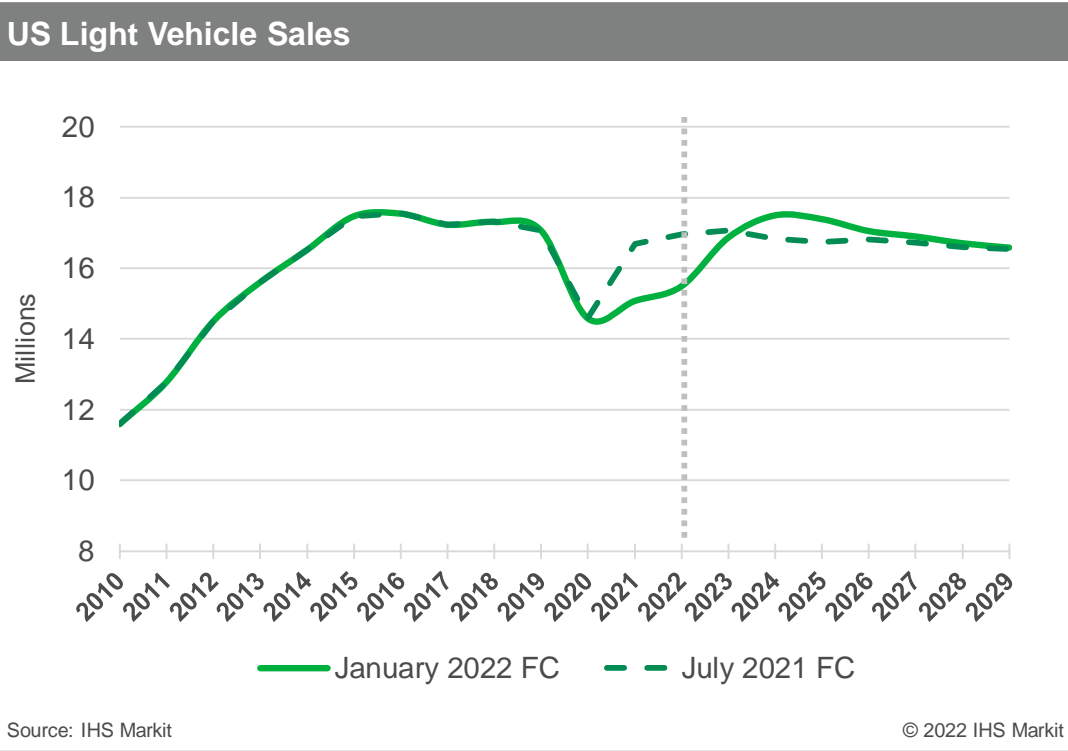
- ▲ The expected sequential improvements have materialized: Q4-2021 was 34% higher than Q3-2021.
- ▲ Inventories have started to go up in Q4-2021, after two consecutive quarters of decline.
- ▲ Q1-2022 is promising with a strong start in January, as a catch-up from the holiday closures and also likely from the Malaysia-related disruptions.

- ▼ The supply shortage will continue through 2022 and production is expected to remain 12% below its level of 2019
- ▼ Supply chain remains at risk of further failures.
- ▼ CAFE targets will remain a huge challenge in 2022, as overall volumes improve.

Note: *Europe = EU27 + UK, Turkey and Serbia. Not including Commonwealth of Independent States

US: Light Vehicle Sales Outlook

Short-Term Supply Constraints Shift Outlook and Generate Pent-up Demand for 2023/2024



Source: IHS Markit

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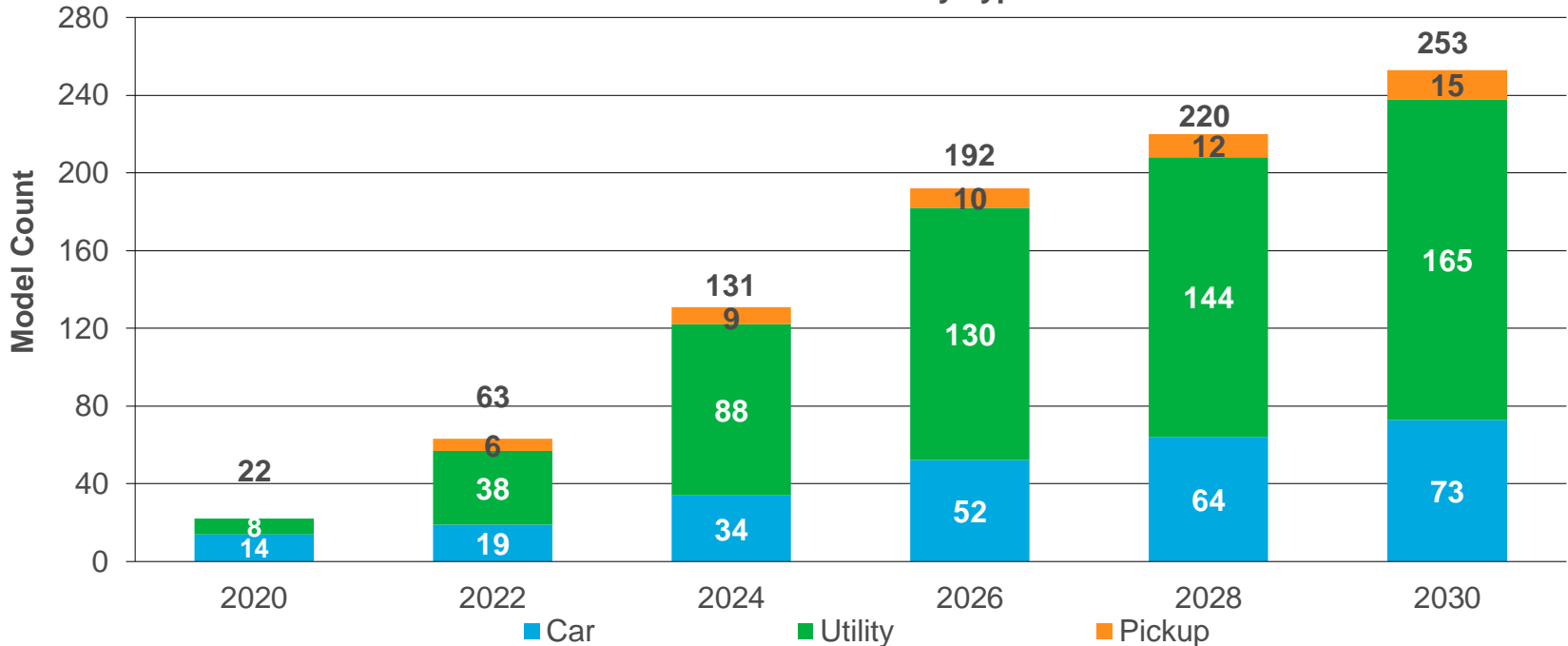
Economic issues

- US consumer outlook remains positive, though recovery is skewed and inflation/pricing is a concern
- Inventory and production constraints impact sales in the near-term
- Longer term pressure on OEM profitability
- Opportunities to find right customer based on vehicle age and scrappage
- Launches to accelerate, mix increasingly attractive
- Vehicle development costs rising
 - Regulatory compliance
 - Consumer contenting
- Market attractive from consumer perspective, risk shifting to lenders
 - Low interest rate environment, for now...

US: Battery Electric Vehicle Model Count

BEV Tidal Wave is Approaching Fast; ICE vs. BEV Co-existence Presents Challenges & Opportunities

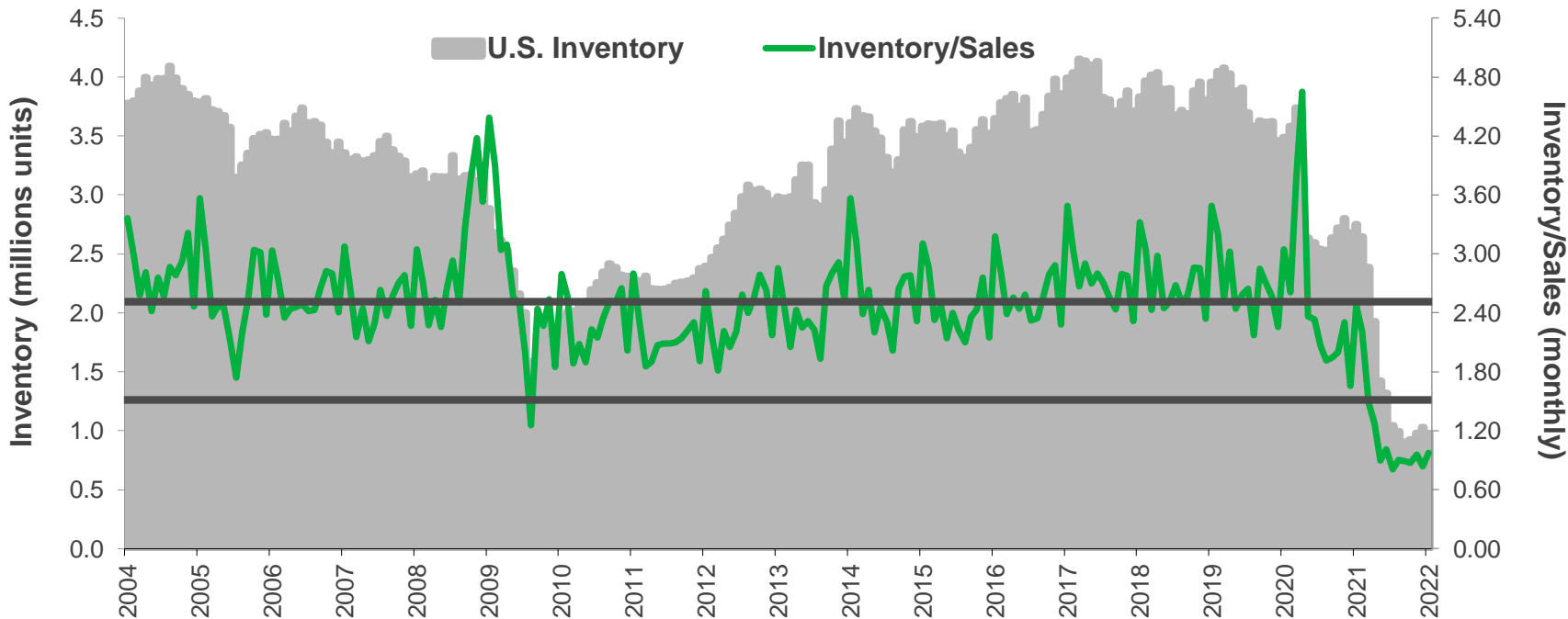
U.S. BEV Model Count by Type



Source: IHS Markit Light Sales Based Powertrain Forecast – H2-2021

Near-Term Outlook

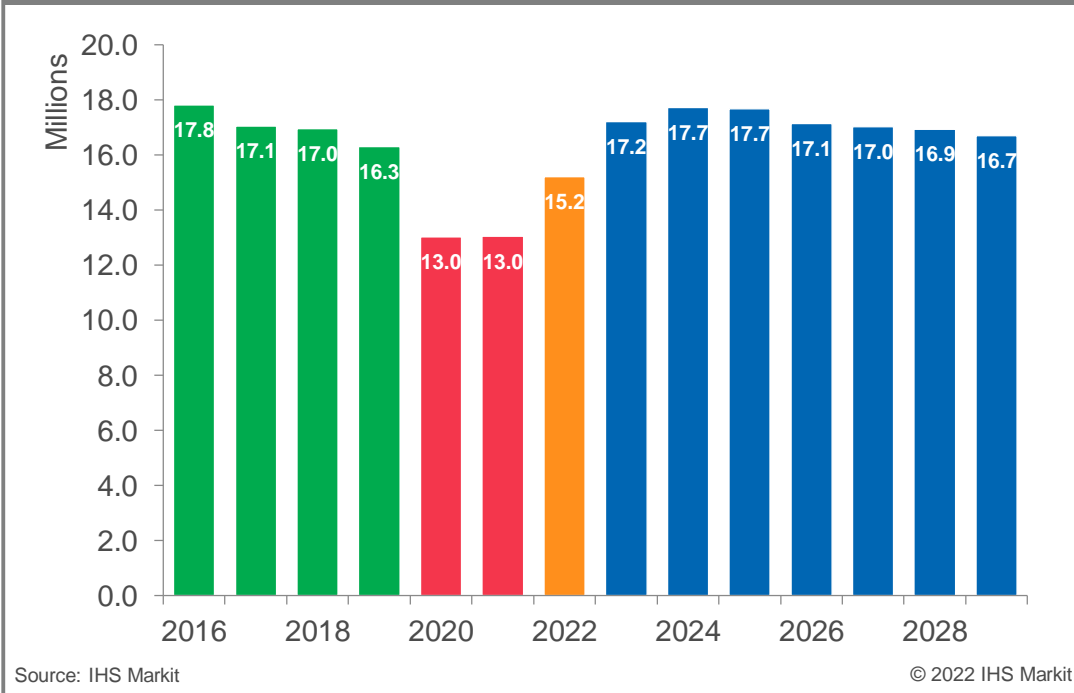
Inventories Have Collapsed Due to COVID Impacts & Supply Chain Disruption



North American Light Vehicle Production

Restoring Growth

North American Light Vehicle Production



Short-term

- Supply chain, labor and logistics issues continue to impact production recovery
- **Component shortages, labor availability, raw material pricing, etc. result in continued near-term volatility and risk**
- Demand outpaces supply
- Inventory depletion and restocking (eventually)
- Strong product cadence amid issues

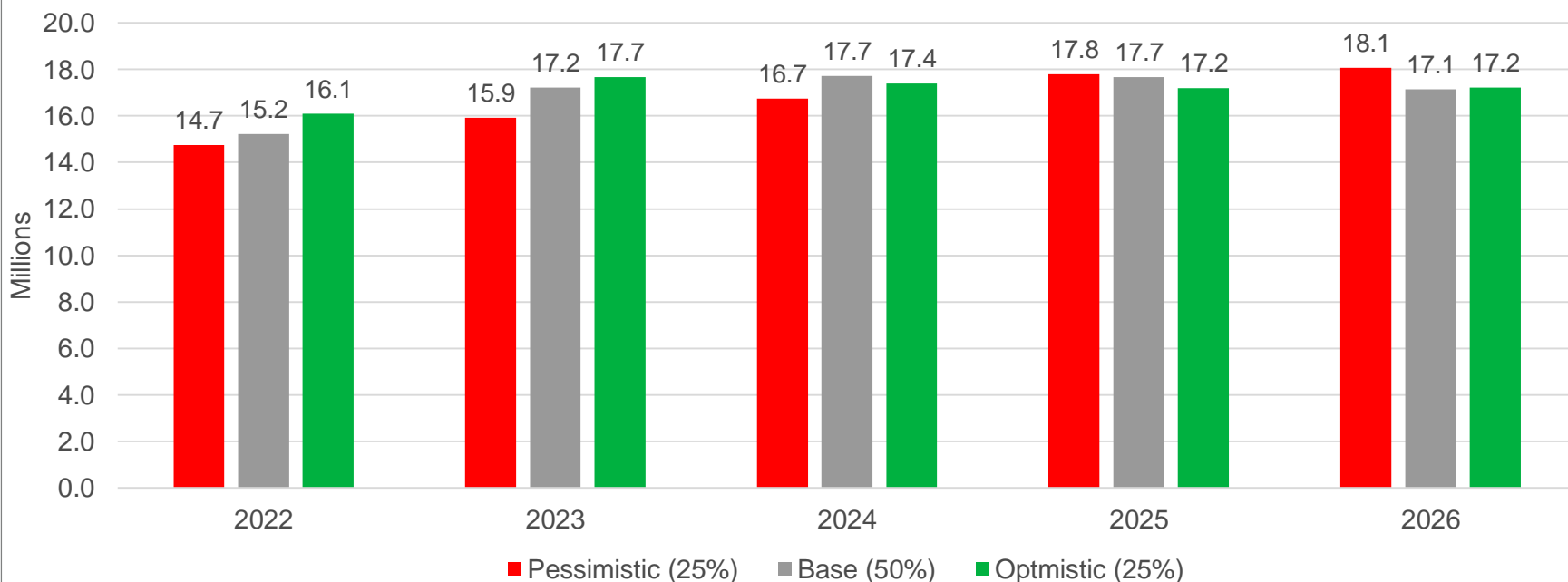
Long-term

- Supply chain normalization
- Production stabilizers:
 - Capacity expansion and maximization
 - BEV implications; demand, redundancy, policy actions
 - Growth in regionalization
 - Phase two Mexico developments
- Life-cycle pressures; risk hedge

North American Light Vehicle Production Scenarios

Near-Term Outlook Remains Vulnerable to Supply Chain Pressures and Other Shocks; Upside Potential Governed by Ability to Overcome Key Component Constraints and Accelerate Recovery

North America Light Vehicle Production Scenarios

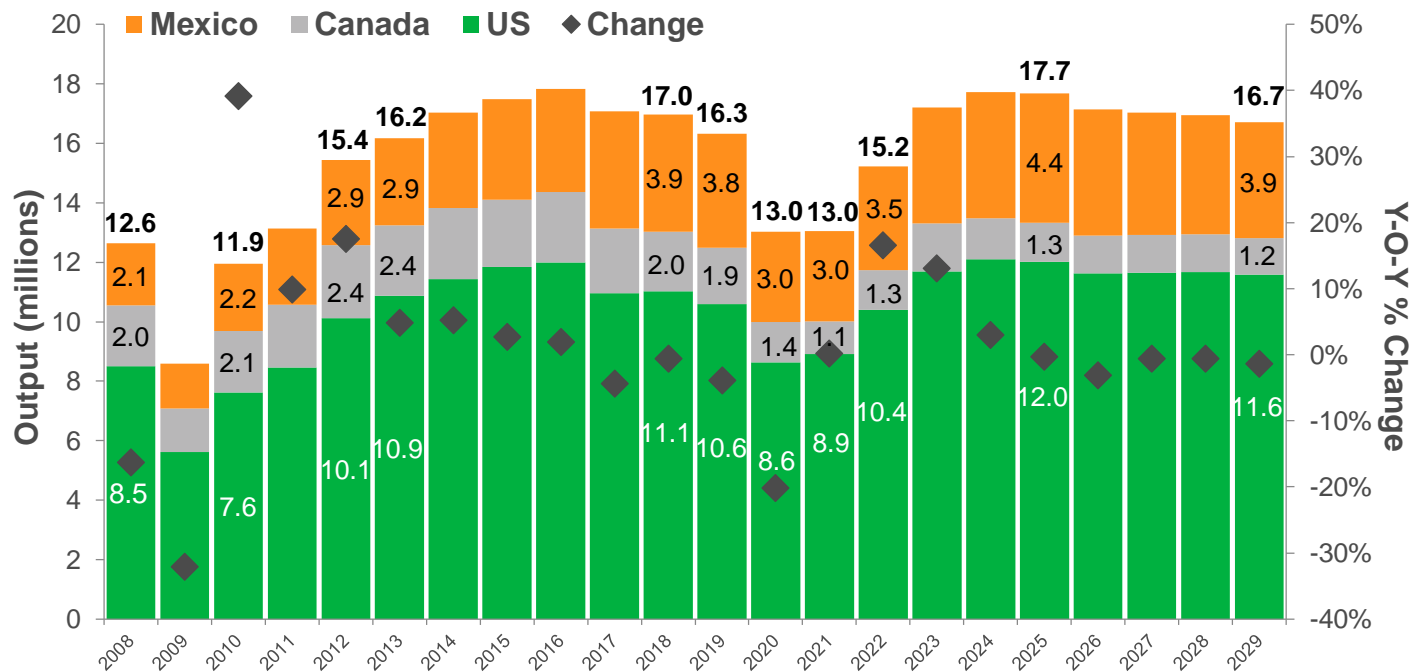


Source: IHS Markit


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Production Outlook


North American Light Vehicle Production by Country




2019 – 2029



+86,000
CAGR = +0.2%



-663,000
CAGR = -4.7%

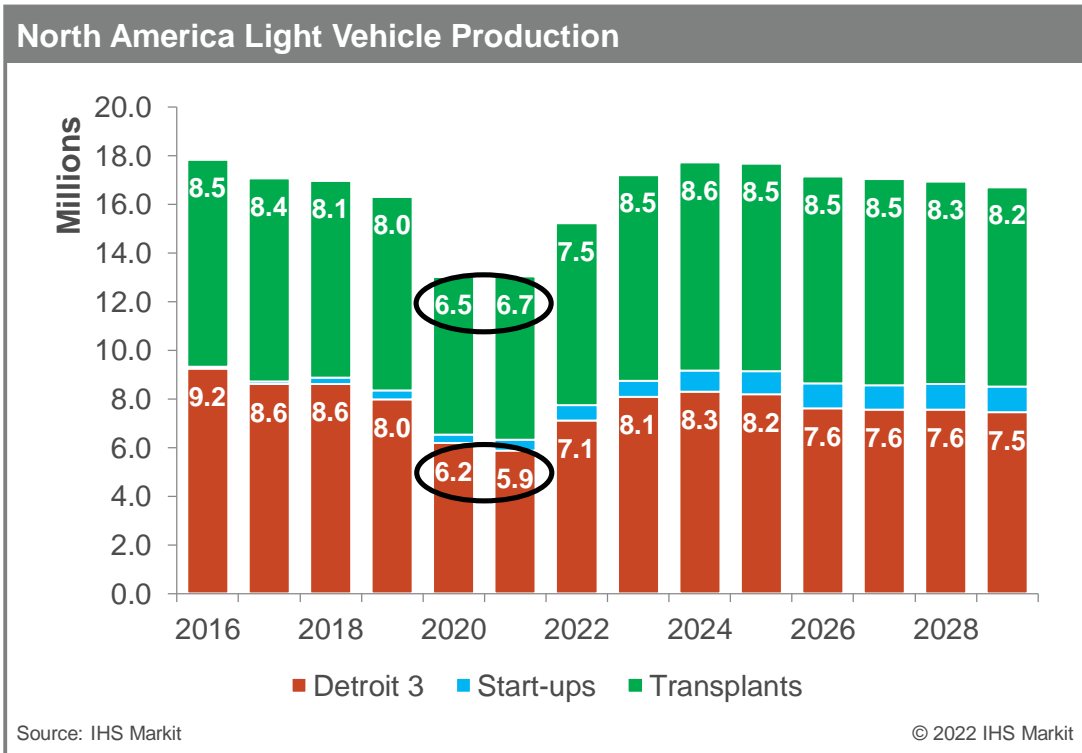


+979,000
CAGR = +1.0%

Source: IHS Markit Light Vehicle Production Forecast

North American Light Vehicle Production

COVID-19 Impacts Everyone (Some More than Others), yet Customer Mix Continues to Shift



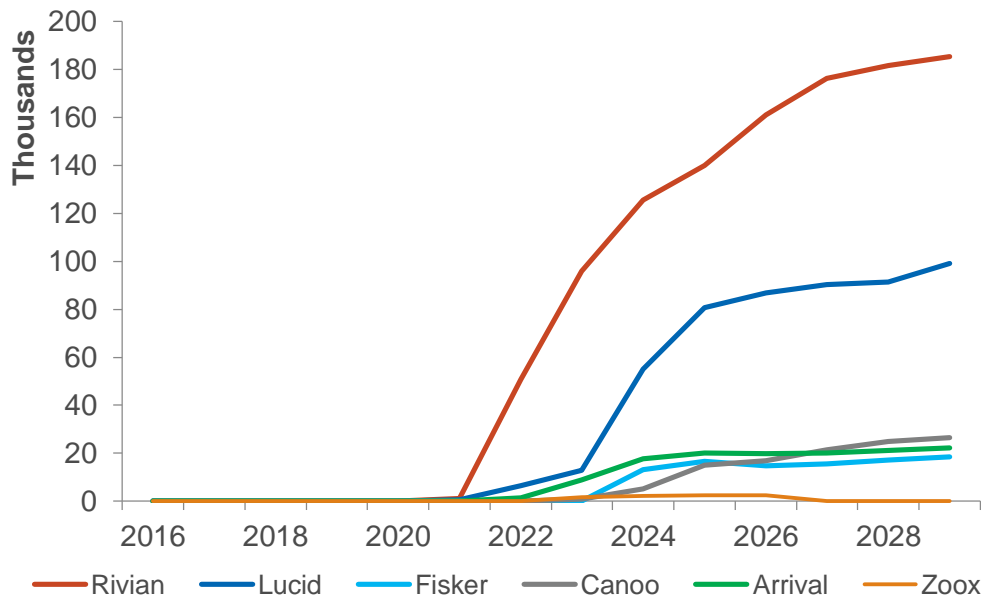
Divergent trajectories – 2019 to 2029

- **Domestics**
 - -534K units or -6.7%
 - Increasing shift to trucks and BEVs
 - Deteriorating ICE platform scale
 - More closely tied to US sales
 - Build where you sell
- **Transplants**
 - +237K units or +3.0%
 - Localization
 - Capacity expansion
 - Global sourcing and increasing exports
- **Start-ups**
 - +700K units or +191.5%
 - Tesla largest component, although offshoring is slowing growth
 - Monitoring other start-ups

Start-ups

Risk vs. Reward from A to Z Amid Speculative Investment

North America Production



Source: IHS Markit

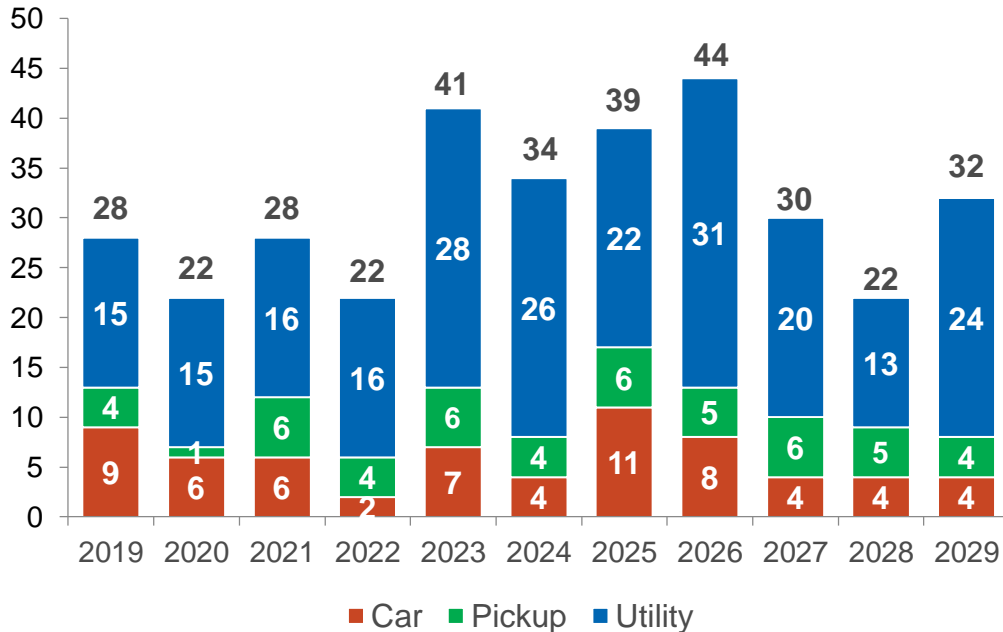
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- **Arrival**
 - Commercial focus; deals with UPS, Uber
 - Low volume micro-factories; 10k units
 - High automation and use of composites
- **Canoo**
 - Significant changes to business
- **Fisker**
 - Partnering with Foxconn
- **Lucid Motors**
 - Luxury, performance focus
 - Expansive product plans to 2030
- **Rivian**
 - Premium, off-road focus
 - Partnerships: Amazon, Ford
- **Zoox**
 - Company ecosystem with L5 EV/AV

North America Light Vehicle Production Launches by Vehicle Type

Capital Needs Intensify with New Launch Activity; Timing Shifts Due to COVID-19 & BEV Activity

North America Light Vehicle Production Launches



Source: IHS Markit

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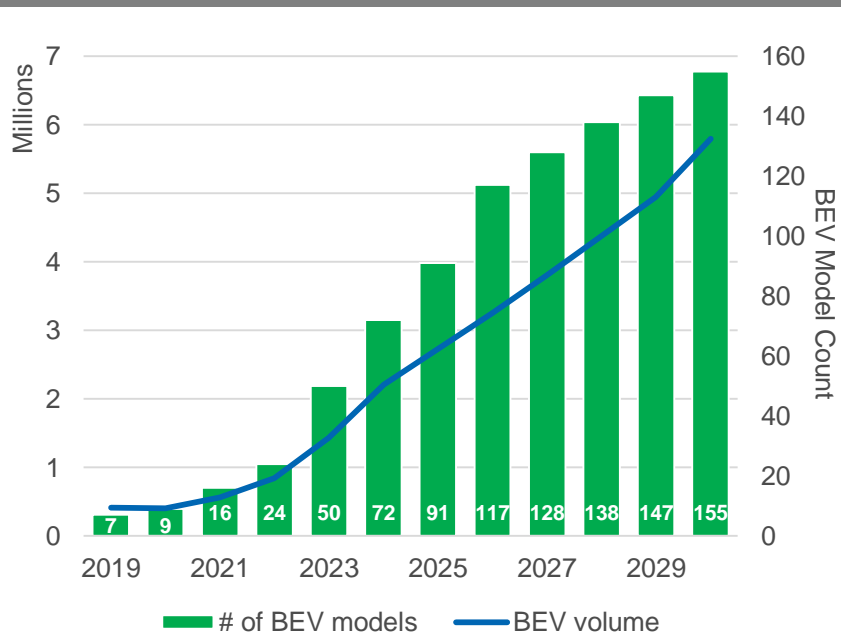
Volatility Extends to Launch Timings

- Launches remain vulnerable to delay, reprioritization, rescoping or even cancellation
- If possible, OEMs will review portfolios to extend current vehicles – potentially integrating new minor/moderate facelifts to extend the lifecycles
- Utility vehicle expansion continues
 - Competition weighs on leaders
 - Splintering segmentation with pricing/margin/volume pressure
- BEV activity
 - 95+ all-new nameplates
 - 34% or 5.8 million units of North American production by 2030
 - Product redundancy: ICE to BEV
 - Another 100 more BEVs as import or part of multi-energy nameplates
- Legacy programs as a hedge

North American Production

Tail Wagging the Dog, More BEVs than Consumers to Start

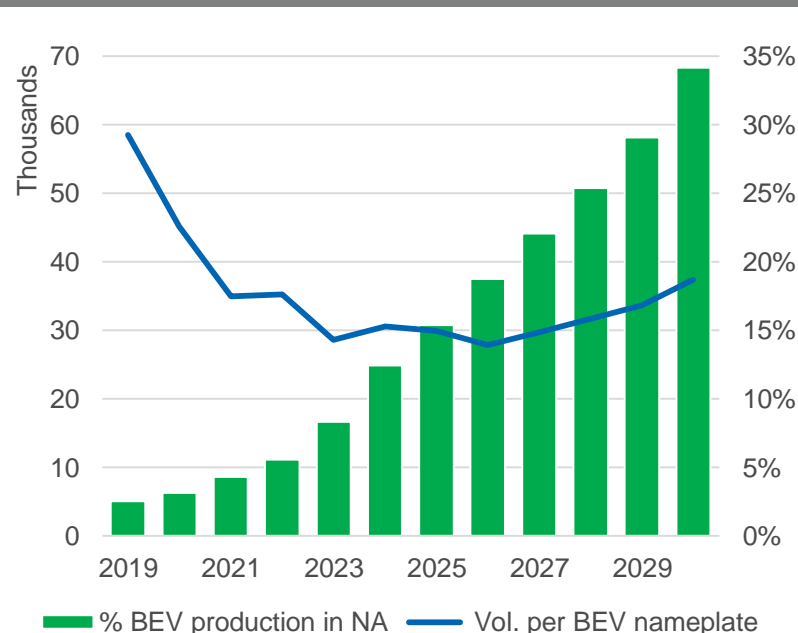
Battery Electric Vehicle Production and Model Count



Source: IHS Markit

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BEV Share of Production and Volume per Nameplate



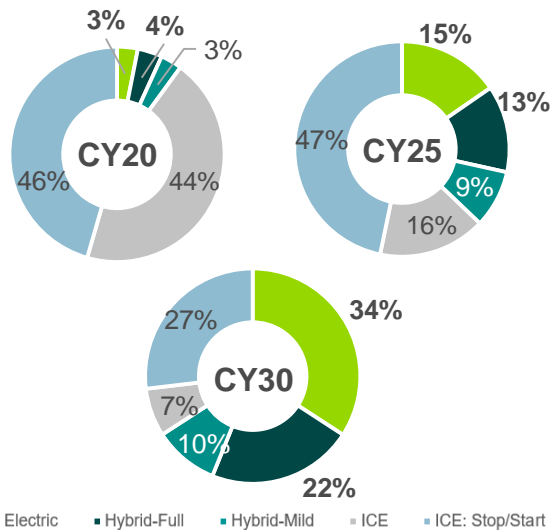
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Powertrain Technology Outlook

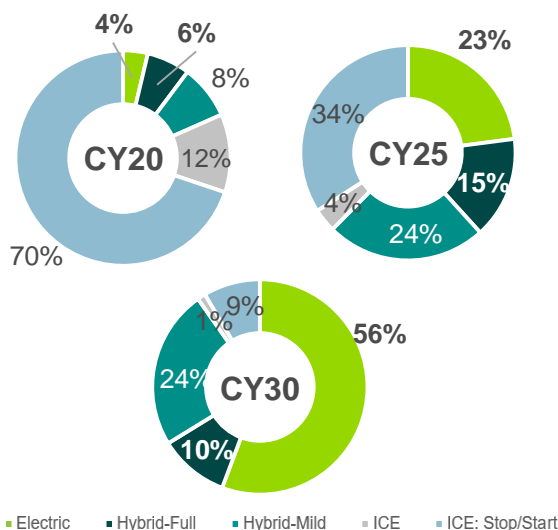
Regional Preferences and Incentives Result in a Varied Propulsion Mix; Watch the Model Count!

North America



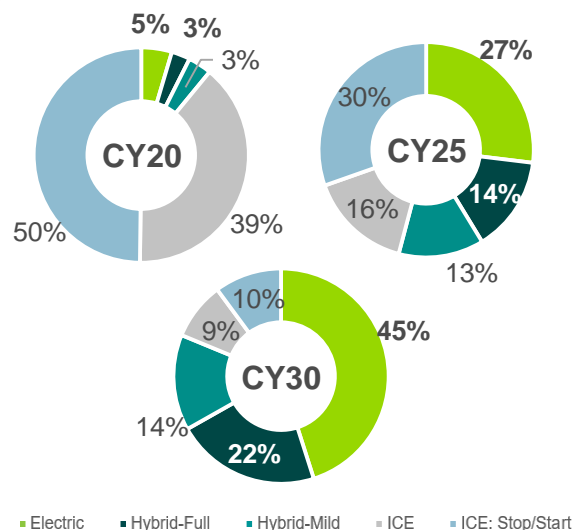
- Biden plan taking shape: ~40 mpg fleetwide by 2026; 40-50% BEV goal by 2030.
- PHEV and HEV production mix reduced in mid-term, improved outlook for BEV.

Europe



- Propulsion forecast intact as relief not expected for CO₂ compliance; BEV upside.
- “Fit for 55”: Tougher target reduction of 55% in 2030 from 2021 level; **100%** reduction in 2035.

Greater China



- Extended NEV subsidies/exemptions weaken pre-buy in 2020 & boost demand in 2021.
- NEV subsidies come under increasing pressure; China to focus on tightening regs.

Summary

- Volatility remains heightened impacting near-term outlook as exogenous events pressure the market; component shortages, labor availability and raw material pricing remain key concerns; supplier distress needs to be monitored
- Beyond the current cycle, growth rates will decline as core themes persist: electrification, safety, autonomy and new mobility
- Scale will be more important than ever to meet these challenges – automakers, suppliers and other industry stakeholders will need to evolve in order to survive and thrive
- A combination of consolidation and collaboration will be necessary as the industry navigates what is becoming a time of transformational change; increased localization of supply chains creates additional opportunities

Thank You!

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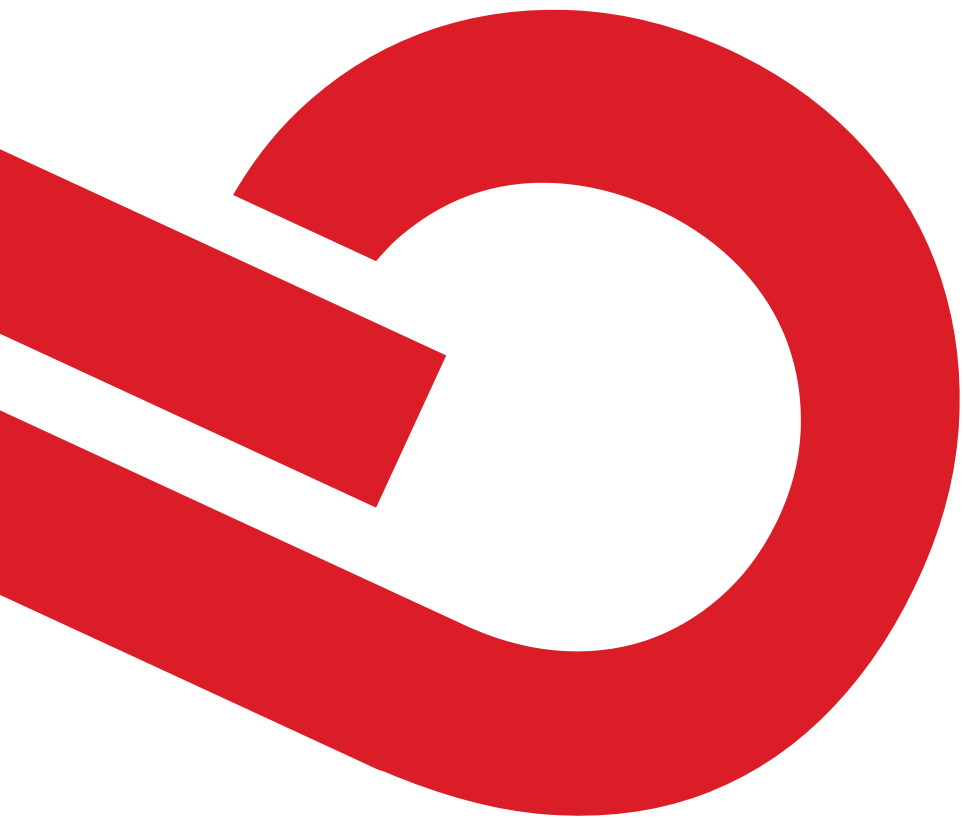
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SUPPLY CHAIN CONTRACTING

STELLANTIS AND FCA
TERMS & CONDITIONS

NATIONAL ASSOCIATION FOR SURFACE
FINISHING (NASF) - MI CHAPTER

February 23, 2022 (virtual)

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Presenter



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- Handles supply chain disputes, IP, warranty and product liability litigation, and contracting
- Member of the firm's Automotive Industry Group

Roadmap

1. The CONTRACT: Definition, Duration & Acceptance
2. The TERMS: Price, Warranty & Supply Obligations
3. Contracting BEST PRACTICES & Strategies
4. Q & A

Case study: FCA/Stellantis 2022 Terms & Conditions (T&Cs)



1

THE CONTRACT

The Contract scope, Acceptance & Amendments



WHAT CONSTITUTES THE “CONTRACT”?

What Constitutes the “Contract?”

- A.
 - RFQ/Quote
 - Sourcing letter
 - Purchase Order(s)
 - Correspondence/E-mails
 - **Terms and Conditions**
- B.
 - Other Documents incorporated by reference
 - Drawings
 - Specs
 - Standards
 - Quality assurance manuals
 - Packaging guidelines
 - etc.
- C.
 - Changes over time
 - New Pos
 - Terms on Buyer’s website
 - Different versions of Terms apply to different PO’s, depending on date

Two Sets of T&Cs, Plus PO, Source Pkg, Policies and “Other” Documents

- Global Terms define the parties’ agreement as a “**Contract**” which includes **Two sets of terms**
 - **Global Terms** and
 - **North American Terms and Conditions** (sometimes “Exhibit A Terms”).
- Both sets of terms must be read together to understand all Contract obligations and rights.
 - Contract includes the **Purchase Order**, **all attachments** or **incorporated documents** to any of those documents, including but not limited to the **Source Package** and the **Policies**. {Global Terms, Definitions, p. 1 and §1(a)}
- North American Terms = Master Agreement
Purchase Orders = Final Agreement

Case study: FCA/Stellantis 2022 T&Cs

FCA Has Right To Unilaterally Extend POs For An Indefinite Period

- The “Term” (duration) of any Purchase Order is stated on the Purchase Order. {NA Terms, §35(b)}, but **if not stated** or has an end date of “9999” it is deemed have a duration through the **life of the program** (“LOP”). {NA Terms, §35(b)}
- FCA has the **unilateral right to extend the LOP** “from time to time.” {NA Terms, §35(b)}
- FCA has the right to unilaterally extend a Purchase Order for **commodity, generic or multiple vehicle program goods** across multiple vehicle programs. The duration of those Purchase Order is the **date of the termination of the last vehicle program** that uses those Goods. {NA Terms, §35(b)}
- FCA may extend any Term (one or more times), at its sole option, for one or more **additional vehicle programs** either by notifying Seller of the extension or by FCA **issuing a release for some or all of the goods** identified on the Purchase Order for a future vehicle program. {NA Terms, §35(b)}

Case study: FCA/Stellantis 2022 T&Cs



**HOW DOES A
SUPPLIER **ACCEPT**
AND / OR REJECT
THE CONTRACT?**

Contract Formation

- Acceptance

- By express **acceptance OR PERFORMANCE** See e.g. (Stellantis) FCA 2017 Terms, §2

2. ACCEPTANCE. This Order constitutes FCA US's offer to Seller and is not binding on FCA US until accepted by Seller. Seller accepts this Order: (a) if Seller acknowledges in writing (including any electronic communication) its acceptance of the Order, (b) if Seller performs any work or renders any services related to goods to be specially manufactured for FCA US pursuant to the Order after Seller's receipt of the Order; or (c) if Seller delivers any of the goods or provides any of

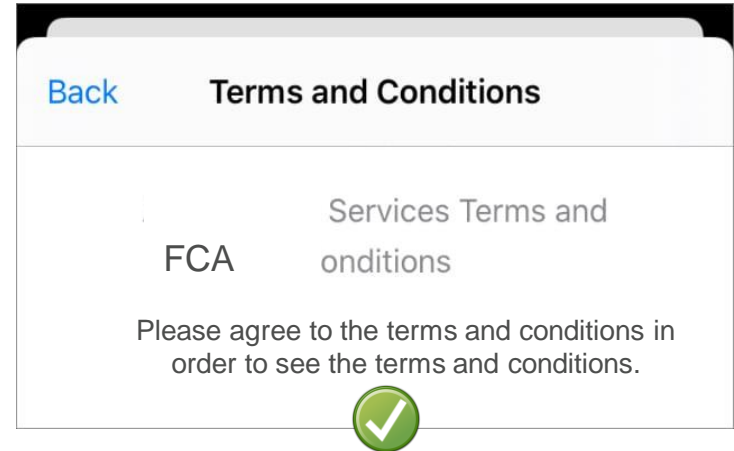
- Acceptance **often occurs without intent**

- Rejection – Waived if not timely. See e.g. Honda 2012 Terms

2.3 An Order will be deemed to have been accepted by Seller upon the first to occur of the following: (a) Seller's first shipment or other tender of performance under the Order, (b) written acceptance by Seller, (c) acceptance by Seller via an electronic transmission sent in accordance with EDI or other electronic communication standards and procedures, or (d) Seller's failure to deliver written objection to Buyer's Order within eight (8) days of Seller's receipt thereof (or such shorter period as may be specified in the Order or any Specification).

Two New Forms of Acceptance

- In addition to previous forms of acceptance (in writing, or performance of any work or services) acceptance will now also occur if the Seller **clicks “Accept”** in the supplier portal or the **ordering of any component** of a good. {NA Terms, §1(a)}
- New NA Terms contain an ALL-CAPS acknowledgment that “SELLER SPECIFICALLY **WAIVES ANY REQUIREMENT OF SIGNED ACCEPTANCE** OF THE GENERAL TERMS AND OF A PURCHASE ORDER AND WAIVE ANY DEFENSE” **to challenge the validity** of same. {NA Terms, §1(a)}



Case study: FCA/Stellantis 2022 T&Cs

Multiple Provisions Stating FCA's Rejection of Seller's Terms and Conditions

- Seller may not offer terms or conditions that are different. {NA Terms, §1(b)}
- Seller's terms are deemed material and are rejected. Acceptance is expressly limited to the terms on FCA's Purchase Order. {NA Terms, §1(b)}
- If FCA's Purchase Order is determined to be a response to Seller's offer, acceptance is expressly conditioned on Seller's assent to FCA's NA Terms. {NA Terms, §1(d)}
- Any information, term, or condition inserted by Seller into the Source Package, Supplier Portal, RFQ response, or any other document is rejected by FCA and is not part of the contract. {NA Terms, §1(c)}

Case study: FCA/Stellantis 2022 T&Cs



**CAN THERE BE
AMENDMENTS TO
THE CONTRACT?**

Changes to Contract over Time

- Generally, **No**, not without new offer and acceptance of amendment.
- But remember, PO's are part of Contract. Seller then can accept new POs subject to new PO terms.
- Supplier bound by the Terms on Buyer's website at time of Issuance of PO (and possibly PO updates)
- Different versions of Terms apply to different PO's, depending on date of issue
- In analyzing dispute, determine when PO issued and what version of Terms applies

FCA May Unilaterally Amend The NA Terms At Any Time

- FCA capitalizes on amendment capability
- Section 1(a)(v) refers to Section 39(d) which allows FCA to **unilaterally amend the NA Terms at any time by publishing them in the supplier portal.**
 - The amended terms will then **apply to all Purchase Order accepted on or after the date of such amendment and to all releases** issued by FCA after the date of the amendment **under existing Purchase Orders.** {NA Terms, §39(d)}
- Other Amendment rights already discussed: (i) **FCA has the right to make changes to the Contract Term**; and (ii) **FCA has the right to amend the Policies at any time**, creating new contractual obligations for Seller. If the Policies conflict with any other contract documents, the Policies will govern. {NA Terms, §1(g)}

Case study: FCA/Stellantis 2022 T&Cs



2

- **THE TERMS OF A CONTRACT**

**Prices & Payment and
Warranty & Default**



PRICE & PAYMENT

Fixed Price For “Life Of Program”

- Usually Buyer Volume Estimates not Binding; Pricing usually fixed for LOP
- Consider price adjustment formula
 - Consider key volatile cost variables:
 - Raw materials, energy, currency, volumes, etc
 - Define mechanics (triggers, formulas)
 - Make it arithmetic/Automatic
 - Tie to correct index
 - If no index, tie to cost at time of quote
 - Determine adjustment frequency (monthly, quarterly, semi-annually, annually)
- Consider limiting fixed price duration

Changes to Price and Payment Terms

- Seller must **pass on to FCA** all direct or indirect cost decreases {NA §8}
- **90 Day** payment terms {NA 4d}
- Seller **cannot mark up** the cost of any tooling {NA §9a(v)}
- Seller **may not factor, sell or assign** receivables {NA §13a}

Case study: FCA/Stellantis 2022 T&Cs

Requesting Price Increases

- Most Buyer's U.S. terms do not allow price increases
- But, many suppliers still request them
- More buyers allowing price increase requests now than ever previously, mainly due to supplier desperation and aggression
 - Be prepared to document and support cost increases and demonstrate reasonable mitigation efforts (transparency likely required)
 - If claiming distress, be prepared to disclose financials
 - Be persistent but use best business judgment

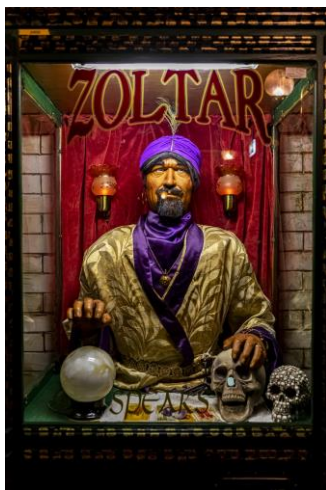


WARRANTY, DEFAULT & INDEMNITY

Warranty/Indemnity

- Seek to warrant only what you provide
 - Disclaim design warranty on build to spec
 - Disclaim fitness for a particular purpose
- Seek proportionate, fault-based liability
 - “to the extent of”
- Seek damage limitation? (unlikely but possible)

FCA believes Suppliers can predict the Future



“[A]ll future events are deemed foreseeable by Seller, Seller assumes such events will occur, and Seller assumes the risk of the occurrence or non-occurrence of all future events.”

{NA §20g}

Case study: FCA/Stellantis 2022 T&Cs

Stellantis/FCA Goods Warranties

Old Terms

Seller warrants that the goods or services will

- comply with all performance standards and product characteristics, including without limitation specifications, drawings, descriptions or samples, furnished and/or specified by FCA US,
- be merchantable, and
- be free from defects in material and workmanship. Seller further warrants that to the extent that Seller designs any goods, or FCA US relies on Seller's expertise in any aspect of the design of the goods communicated by Seller to FCA US, those goods will be fit and sufficient for the purposes intended.

New N.A. Terms

Seller represents, warrants and covenants, now and throughout the duration of the Contract and any survival periods, that:

- all goods and Tools will strictly comply with, conform to, and operate in accordance with: all performance, quality, and safety standards and characteristics furnished and/or specified by FCA, including Specifications, drawings, PPAP submissions, descriptions, samples, change notices, and all requirements included in the applicable Source Package;
- the goods and all Tools will be merchantable and fit and safe for the particular purpose(s) and use(s) specified or contemplated by FCA; Seller acknowledges that it knows of and understands FCA's purpose and use for each good;
- all goods and all Tools will be provided in an efficient and cost effective manner, using qualified personnel with suitable training, experience, and education;
- Seller is in compliance with and will continue to comply with all Laws and all Policies;
- All goods, Tooling, fixtures, work product, and equipment shall conform to all industry standards and Laws in force in countries to which the goods are exported and/or sold;
- Seller's price for each good is competitive;
- FCA's possession, use, and sale of the goods and the Tools will not violate any Laws;
- Seller has the full right and authority to enter into each Purchase Order, to provide the goods, to perform all of its obligations under each Purchase Order, and to grant all of the rights granted in the Contract;
- Seller, all Seller Affiliates, and all Seller Suppliers shall conduct themselves at all times, whether or not in connection with a Purchase Order, in a manner that is not prejudicial or harmful to FCA's interests, products, services, image, goodwill, or reputation (as interpreted by FCA);
- the execution and performance of the Contract and each Purchase Order does not violate the terms of any existing agreement to which Seller is a party or is otherwise bound;
- Seller has obtained, or will obtain, any and all required approvals by any government or governmental agency with respect to the supply, manufacturer, sale, or resale of any good;
- the goods, Tooling, fixtures, work product, and equipment will be free from defects in design, material, and workmanship and be of the highest quality; FCA will rely on Seller's expertise in the design of the goods; goods, Tooling, fixtures, work product, and equipment will be free from any and all design defects and fit and sufficient for the purposes intended by FCA;
- the goods, Tooling, fixtures, work product, and equipment shall be free of all malware, viruses and all other malicious code, disabling code, or code that causes either the good or any product into which the good is incorporated to perform in an unintended manner;
- all information, documents, and data provided by, through, or on behalf of Seller, and the same provided by Seller Suppliers, shall be true and correct and not omit information, documents, or data to make the provided information, documents, or data in any way misleading;
- Seller has performed and will perform all testing necessary or appropriate to ensure that the goods are not defective in any way; and
- Seller has implemented systems and procedures to identify and retain defective goods.

Case study: FCA/Stellantis 2022 T&Cs

New Warranties

- Seller warrants
 - The goods will be fit for any **purpose contemplated** by FCA (whether or not communicated), even if Seller is not design responsible {NA §7a(iii)}
 - It (and its lower tier suppliers) will **do nothing harmful** to FCA's interests “as interpreted by FCA.” {NA §7a(xi)}
 - The **design** will be defect free, even if Seller is not design responsible {NA §7a(xiv)}
 - The goods will comply with all current and future **Laws and Policies** {NA §7a(vi) and (ix)}
 - It has performed all necessary **testing** (whether or not specified by FCA) {NA §7a(xviii)}
 - Its **price** will be competitive {NA §7a(viii)}
 - Its performance will be **efficient and cost-effective** {NA §7a(iii)}

Case study: FCA/Stellantis 2022 T&Cs

Greater Warranty Exposure

- **Warranty Duration** {NA §7a} is significantly expanded to the longer of:
 - 2 years from the delivery of the last good under the PO;
 - The longest customer warranty period;
 - The period set by FCA
- **Statute of Limitations**: 8 years from when FCA had actual knowledge of its claim {NA §7a}
 - Tied to waiver of UCC 2-607(3) rights {NA §5c}
 - Contrary to UCC 2-725(2)
- Seller must bring any claim within 1 year {NA §23b}

Case study: FCA/Stellantis 2022 T&Cs

Greater Indemnity Obligations

- Seller must indemnify FCA's "suppliers, dealers and distributors" {NA §10b}
- FCA may seek indemnity for "direct" claims,
 - i.e., FCA losses that do not arise out of claims raised by third parties {NA §10b}
- The recoverable losses are extended to "soft" losses,
 - such as "lost business" and "lost opportunity" {NA §10b}
- Buyer's incorrect instructions or specs are **not a defense** {NA §10b}



3



BEST PRACTICES

**Negotiating, Documenting, and
Mitigating**



NEGOTIATING

Leverage Makes A Difference



- **Knowledge of terms/law**
- **Preparedness**
- Product uniqueness
- Exit opportunities
- Historical relationship

Develop Strategy Early

- Review RFQ, Terms, All Attachments, Refs
- WHAT IS OUR UNIQUE SITUATION?
- What Demands to Ask?
- What must I have (or **walk away**)
- What would I like to have?
- **Performance equals acceptance under most U.S. terms, so get it right early**



DOCUMENTING

Document the Deal

- Document all agreements in clear writing
- Use crystal clear, plain language (eliminate subjectivity/ambiguity)
- Reject “agreements to agree”
- Create paper trail:
 - Dates
 - Mark up engineering documents
 - Send emails
- Strive for actual side agreements

Document any and all Changes

- PO must incorporate side agreements
 - **Understand “Merger Clause”**
- Reject non-conforming PO's/Paper File
- Watch PO renewals for conformance
- MAINTAIN ORGANIZED PROJECT/PART FILES



MITIGATING

Reject Head in Sand Approach



- Flag issues
 - including shortcomings in customer specs, and resolve up front
- Consider additional tests and potential alternative design recommendations to suggest to customer
- Minimize assumptions/ask questions
- Close loop on open issues (paper the file, and maintain it)

Mitigating “Force Majeure”

- “force majeure” is a French term meaning “superior force” (aka Act of God)
- More modern term is **“Excusable Delay”**
 - Examples: natural disaster, war, embargo, maybe pandemic, maybe explosion, maybe strike, etc.
- May serve as an excuse for delayed performance of contract



- **Plan** (know supply chain)
- **Review contracts**
- **Give notice ASAP**
- Implement Risk Mitigation Plan
- **Communicate Frequently**
 - In House, Upstream & Downstream
 - Expectations
 - Alternatives
 - Costs
- Explore Insurance
- Single coordinator, w/ team backup
- **Document good faith Efforts**

ALWAYS PRACTICE THOUGHTFUL COMMUNICATIONS

- **Minimize internal writing** – meet or call whenever possible
 - be concise; do not include irrelevant info
 - avoid negative words and phrases
 - If you propose a cause or solution, find a way to test
 - Think before writing and edit before sending
- Express caveats regarding unknown or undisclosed information

APPLIES ALL DOCUMENTS

- Internal and External Emails/SMR, notes, calendars, DM's, Data (from all devices)
- Engineering and Design Documents
 - FMEA's (Failure Mode and Effects Analysis)
 - Algorithms Creation/Decisional Documents
 - Change Management Documents
 - PPAP Documents
 - Test Reports and Analysis ALL Root Cause / Failure Analysis Documents
- Sales and Marketing Reports and Sourcing Decisions
- Project Management Tracking Tools



4

■

Q&A

Q. [Insert Question Here]

A. "It depends."

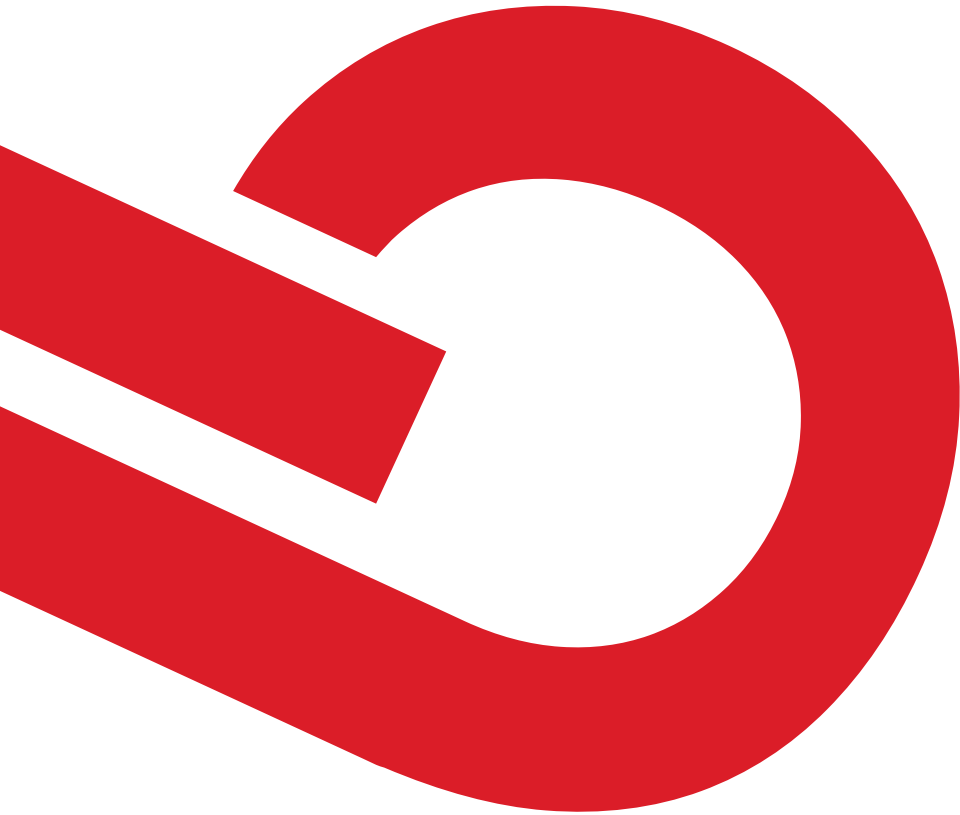
SIGNIFICANT CHANGES TO STELLANTIS AND FCA TERMS AND CONDITIONS

Butzel Stellantis/FCA New Terms Analysis Team

- Cynthia Haffey, Sheldon Klein, Daniel Rustmann, Jennifer Dukarski, James Bruno, David Devine, and Everardo Tapia

See the full Butzel Change Analysis:

<https://www.butzel.com/resources-alerts-Stellantis-New-Terms-Summary-of-Significant-Changes.html>



THANK YOU!



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