

MASTER TERMS DIRECT PURCHASING  
(v. November 2015)

MERCEDES-BENZ U.S. INTERNATIONAL, INC.

MASTER TERMS DIRECT PURCHASING

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## **AGREEMENT**

These Master Terms Direct Purchasing for the supply of automotive systems, components, and/or parts ("Master Terms") by and between Mercedes-Benz U.S. International, Inc. ("MBUSI"), an Alabama corporation and affiliate of Daimler AG, Stuttgart, Germany ("DAG"), having its principal office and place of business at 1 Mercedes Drive, Vance, Alabama 35490, and the Supplier:

In consideration of the mutual promises contained herein, the parties agree to the following contractual terms:

### **SECTION 1: Definitions**

1.1 As used in herein and elsewhere in the Contract Documents, unless expressly provided otherwise, the following terms shall have the meanings given below:

- (a) "Affiliated Persons": means Supplier's officers, directors, employees, or agents, or any of its stockholders, principals or owners acting on its behalf or in its interests.
- (b) "Agreement": The entire agreement between MBUSI and the Supplier represented by the Contract Documents, which may be modified, amended, supplemented or restated from time to time.
- (c) "Amortized Supplier Equipment": Any machinery, equipment, materials, molds, gauges, fixtures, patterns, dies, jigs, specifications, models, tools, tooling, handling systems, and aids or other equipment developed or used for the manufacturing of any Products, owned by Supplier, identified by MBUSI, and the cost of which is amortized as part of the part price.
- (d) "Applicable Laws": means the U.S. Foreign Corrupt Practices Act and German anti-corruption laws, without regard to their jurisdictional limitations, U.S. and German export control laws to the extent applicable the goods and or information which are subject of this Agreement, and all other laws, regulations, rules, orders, decrees or other directives carrying the force of law applicable to any activities engaged in by Supplier or any of its Affiliated Persons in connection with this Agreement, in each case as the same may be amended from time to time.
- (e) "Bailment Agreement": Shall mean the agreement for Supplier to accept possession of the MBUSI Owned Equipment on the terms and conditions of Section 6.3 below.
- (f) "Bailment Term": The term in which the provisions of Section 6.3 apply to the MBUSI Owned Equipment and MBUSI Intellectual Property, as applicable, which becomes effective as set forth in Section 6.3(a) and which terminates upon the expiration or

earlier termination of the Agreement, unless otherwise set forth in Section 6.3 with respect to a particular item of MBUSI Owned Equipment.

(g) "Chain of Supply List": A list maintained by Supplier pursuant to Section 4.8 hereof that indicates the name and address of all Lower Tier suppliers (including, without limitation, Directed Lower Tier suppliers) that supply goods and services to Supplier or another Lower Tier in connection with Supplier's obligations under the Agreement.

(h) "Contract Documents": The written documents which govern the contractual relationship between MBUSI and Supplier and its affiliated parties, which include (a) the Master Terms Direct Purchasing (this document); (b) all referenced attachments to Master Terms Direct Purchasing including, without limitation, the current version of MBUSI's Quality Manual; (c) the Source Package; (d) the Purchase Contract(s) issued during the term of this Agreement; and (e) the Development Agreement (if any), each of which shall be considered an integral part of any Purchase Contract issued by MBUSI. In case of inconsistencies, the Contract Documents shall prevail over each other in the priority listed in the preceding sentence of this paragraph, unless otherwise specified herein.

(i) "Cost Breakdowns": The breakdown of the costs of the Services that is submitted by Supplier in its quote to Daimler in accordance with the Source Package.

(j) "DAG": Daimler AG, having its principal office and place of business in Stuttgart, Germany, and the ultimate corporate parent of MBUSI.

(k) "Daimler": DAG, including any of its subsidiaries or affiliates.

(l) "Daimler Specifications": The technical specifications and requirements set forth in the Source Package, as amended, modified, or updated from time to time by Daimler.

(m) "Developer": means the person or entity, which may also be one in the same as Supplier or an affiliate of Supplier, engaged by Daimler initially to develop the Product to a specified quality gate under the Development Agreement and/or Source Package.

(n) "Development Agreement": The agreement executed by the Developer and Daimler regarding the development of the Product, which may be assigned to Supplier (or an affiliate of Supplier) by Daimler to provide for the completion of development of the Product to production readiness.

(o) "Directed Lower Tier": A Lower Tier supplier with whom MBUSI has directed that Supplier engage for a portion of the supply of Product and Services as set forth herein.

(p) "EDI": The electronic data interchange system described in Section 12 hereof.

(q) "Equipment Database": The electronic database maintained by MBUSI containing a list of certain inventory and equipment to be purchased by Supplier in the course of

Supplier's performance of the Services under the Agreement, as the same may be amended, modified and updated from time to time.

(r) "F.O.B.": Free on board as defined in the Uniform Commercial Code, as enacted in the State of Alabama, as further set forth in Section 12.3(a) hereof.

(s) "Force Majeure Event": Any default or delay of performance under the Agreement which is (a) beyond the control of Supplier, and (b) not occasioned by the fault or negligence of Supplier, and (c) which results from wars or other acts of a public enemy, restrictions, prohibitions, priorities, or allocations imposed by any governmental authority (other than an order of court relating to, or based upon, insolvency proceedings), freight embargoes, fires, floods, tornados, or other unusually severe weather, earthquakes, epidemics, acts of God, or other natural or governmental causes, which shall not, however, include (x) non-performance by any Lower Tier suppliers, including without limitation, a Directed Lower Tier, Supplier's sub-suppliers or affiliates for reasons other than a Force Majeure Event applying to such Lower Tier suppliers, sub-suppliers or affiliates, and which also shall not include (y) any strike, lockout, shortage of labor, lack of or inability to obtain raw materials, fuel or supplies (unless caused solely by governmental restriction), or (z) any other labor or industrial disturbance; and further provided that delays caused by or associated with computer programs or computer related dates do not constitute a cause beyond the control or without the fault or negligence of Supplier.

(t) "Government Entity": means a government or any department, agency or instrumentality thereof (including any company or other entity controlled by a government), a political party or a public international organization.

(u) "Government Official": means any officeholder, employee or other official (including any immediate family member thereof) of a Government Entity, any person acting in an official capacity for a Government Entity or any candidate for political office.

(v) "Higher Tier": A supplier of MBUSI supplying parts for the Vehicle with which MBUSI has entered or intends to enter into a written supply agreement similar to the Agreement, to the extent such supplier receives other parts intended for the Vehicle from one or more other supplier(s).

(w) "Lower Tier": A supplier supplying parts or services for the Vehicle, to the extent such supplier supplies parts intended for the Vehicle to one or more other supplier(s), whether another Lower Tier supplier or a Higher Tier supplier.

(x) "Lower Tier Acknowledgment and Waiver:" An acknowledgment and waiver that shall be executed by all Lower Tier suppliers of Supplier (including, without limitation, Directed Lower Tiers) in accordance with the terms of Section 38 herein, and pursuant to which each Lower Tier acknowledges certain rights of MBUSI under the Agreement.

- (y) “Marked Part”: A part which bears a Daimler trademark or an identifying mark specified by Daimler, or a part peculiar to the Daimler design.
- (z) “MBUSA”: Mercedes-Benz USA, LLC.
- (aa) “MBUSI”: Mercedes-Benz U. S. International, Inc.
- (bb) “MBUSI Intellectual Property”: Rights to inventions, ideas, improvements, or discoveries, processes, composition of materials, designs, specifications, software, mask works, or other technical information involving the Services, Product and/or Service Parts, MBUSI Owned Equipment, including, without limitation, all rights to patents, trademarks, copyrights, or legally protected trade secrets pertaining thereto and renewals thereof, whether or not incorporated into the Product, Service Parts and/or MBUSI Owned Equipment, but excluding Supplier Intellectual Property.
- (cc) “MBUSI Owned Equipment”: Any molds, machinery, equipment, materials, gauges, fixtures, patterns, dies, jigs, specifications, models, tools, tooling, handling systems, and aids or other equipment developed or used for the manufacturing of any Products and/or Service Parts that have been or are to be fully paid for by MBUSI, including, without limitation, the equipment specified in the Equipment Database.
- (dd) “MBUSI Owned Equipment Approval Date”: The date on which MBUSI in its sole discretion accepts the applicable MBUSI Owned Equipment through its pre-production approval process (PPAP) and such MBUSI Owned Equipment has received final off-tool sample approval by MBUSI in its sole discretion.
- (ee) “MBUSI Owned Equipment Title Transfer Date”: The date on which both of the following have occurred: (1) the applicable MBUSI Owned Equipment has completed PPAP yellow/yellow, and (2) MBUSI has made eighty percent (80%) payment for such MBUSI Owned Equipment in accordance with Section 6 herein.
- (ff) “Model Year”: The annual vehicle production period for MBUSI, which commences approximately on August 1 of the calendar year preceding the Model Year designation.
- (gg) “NAFTA”: The North American Free Trade Agreement.
- (hh) “Parties”: MBUSI and Supplier, collectively.
- (ii) “Party”: MBUSI and Supplier, individually.
- (jj) “Product”: The product(s) to be supplied by Supplier to MBUSI or a Higher Tier in accordance with the Agreement, as described by the Specifications and the Scope of Work, as may be amended from time to time by mutual agreement reduced to writing or in accordance with the Source Package.

(kk) "Project": The successful development of the Vehicle by Daimler and successful implementation by MBUSI.

(ll) "Proprietary Information": Any and all technical information, ideas, specifications, drawings, designs, manufacturing data, records, computer programs, and program documentation (including without limitation any patented or unpatented knowledge or information concerning either Party's products, production, or other methods, processes, scheduling, sources of supply, customers, marketing or otherwise) disclosed by one Party to the other Party to the Agreement, pursuant to or in connection with the Project.

(mm) "Purchase Contract": An order for the supply of specific Product, Service Parts, MBUSI Owned Equipment or other goods or services issued by MBUSI to Supplier pursuant to the Agreement, which may be in printed form mailed to Supplier, or, at the discretion of MBUSI, by telecopier, or by means of the MBUSI electronic data interchange system.

(nn) "Recall Campaign": A systematic effort by Daimler to locate certain Product and/or Service Parts installed in vehicles and believed by Daimler possibly to be in breach of Supplier's warranty, or not to comply with laws, regulations, orders, or other governmental requirements, in order to replace, correct, or check such Product and/or Service Parts.

(oo) "Scope of Work": The general description of Services to be provided by Supplier pursuant to the Agreement and the Contract Documents, which is attached to the Development Agreement and/or the Purchase Contract.

(pp) "Services": shall collectively refer to all products supplied and/or services rendered by Supplier (including the supply of the Products, Service Parts and acquisition of MBUSI Owned Equipment) pursuant to the Agreement.

(qq) "Service Parts": Replacement parts for the Product, or any part thereof, which are used by Daimler or its distributors in connection with maintenance or servicing of the Vehicle.

(rr) "Source Package": Commercial Requirements/Source Package and request for quote delivered to Supplier by Daimler.

(ss) "Specifications": Collectively, the Daimler Specifications and the Supplier Specifications, as may be amended from time to time by mutual agreement reduced to writing or in accordance with the Source Package.

(tt) "Subcontractor": means any properly qualified individual, firm, association, or corporation undertaking the performance of any part of the Services under the terms of the Contract Documents by virtue of an agreement between itself and the Supplier with the written approval of MBUSI.



(uu) "Supplier": The legal entity which has agreed to supply the Product to MBUSI in accordance with the Contract Documents or the legal entity which has agreed to supply products and services to a Higher Tier and who has agreed, by way of acceptance of a Purchase Contract, or otherwise, to be bound by the Contract Documents.

(vv) "Supplier Intellectual Property": Rights to inventions, ideas, improvements, or discoveries, processes, composition of materials, designs, specifications, software, mask works, or other technical information, including, without limitation, all rights to patents, trademarks, copyrights, or legally protected trade secrets and renewals thereof, to the extent that such were in Supplier's possession prior to any discussions with or Supplier's receipt of any materials from Daimler, as evidenced by Supplier's written documentation.

(ww) "Supplier MBUSI Equipment": Any machinery, equipment, materials, molds, gauges, fixtures, patterns, dies, jigs, specifications, models, tools, tooling, handling systems, and aids or other equipment developed or used for the manufacturing of any Products, other than Amortized Supplier Equipment and MBUSI Owned Equipment, owned by Supplier and identified by MBUSI.

(xx) "Supplier Specifications": Drawings, technical specifications and/or engineering plans developed and submitted by Supplier to Daimler or a Higher Tier in accordance with Source Package.

(yy) "System": The design and manufacturing of all Vehicle parts which a Higher Tier supplies to MBUSI and/or another Higher Tier.

(zz) "Vehicle": The vehicle or vehicles for which MBUSI uses the Supplier as the source of the Product and/or Service Parts pursuant to the Agreement.

## **SECTION 2: Contract Documents**

2.1 The contractual relationship between MBUSI and Supplier shall be governed by the Agreement and in case of inconsistencies, the Contract Documents shall prevail over each other in the priority listed in Section 1.1(h) above. The Contract Documents are, by this reference, incorporated into and made a part of the Agreement.

2.2 The Contract Documents are in English and/or German. In the event a document exists in both languages, the version which was first made shall be binding, unless the Parties later designate a version in the other language as the "Original." Consistent with the designation by Daimler of English as its official language, the Parties shall use their best efforts to use English in their documentation wherever possible and appropriate, provided that this shall not compromise the accuracy of the communications between the Parties.

2.3 The terms and conditions of these Master Terms Direct Purchasing and the Contract Documents shall be deemed to have been accepted by Supplier upon the first to occur of (a)

written, telecopied, or electronic data acceptance thereof by Supplier, whether through MBUSI's Supplier Portal or otherwise, (b) Supplier's submission of a bid or quote in response to the Source Package or (c) Supplier's first shipment or other commencement of performance under a Purchase Contract.

### **SECTION 3: Requirements and Exclusivity**

3.1 MBUSI intends to use the Product in the Vehicle, and, subject to the terms of the Agreement, intends to purchase from Supplier a certain amount, as determined by MBUSI in its sole discretion, of the demand requirements for the Product and/or Service Parts, which MBUSI has for the Vehicle production at its Tuscaloosa County, Alabama facility, provided that Supplier (a) complies with the terms of the Agreement, and (b) shall conclude with MBUSI, in due time, the Purchase Contracts issued by MBUSI pursuant to the Agreement. Notwithstanding the foregoing, MBUSI may purchase any Product or Service Parts from another supplier or directly from a Lower Tier supplier, sub-supplier or component supplier who manufactured such part. MBUSI's decision to purchase some or all of the Service Parts from another supplier or directly from a Lower Tier supplier or sub-supplier does not relieve Supplier from its obligations under the Agreement.

3.2 Supplier shall deliver the Product to MBUSI for the Vehicle, shall conclude with MBUSI, in due time, the Purchase Contracts, and shall supply to MBUSI 100% of MBUSI orders for the Product and related Service Parts, as the case may be.

3.3 Unless otherwise specified in the Development Agreement, if the Product and/or related Service Parts therefor, as the case may be, (1) were developed by or on behalf of Daimler, or if (2) Daimler paid for the respective development costs, or if (3) Daimler paid for the respective costs of the tooling therefor, then the delivery of such Product and of the relevant parts, including Service Parts, shall be made by Supplier exclusively to MBUSI or its designee and the supplier shall not be permitted to supply the Contractual System or parts thereof to third parties, including but not limited to the independent aftermarket, neither in its own name nor in the name of MBUSI, its Affiliates or any other brand owned or delivered to by MBUSI. In the case of a Product and/or Service Parts specifically developed or manufactured for the Vehicle and procured by Supplier from its Lower Tier sub-suppliers, Supplier shall preserve in its contracts with Lower Tier sub-suppliers exclusivity rights in order that Supplier can warrant its full compliance with its exclusivity obligation to MBUSI, if any.

3.4 Supplier shall not sell, transfer, or lend to any entity except MBUSI, or otherwise make use of a Product or Service Parts identified with marks, trade names, or trademarks held by MBUSI or Daimler, or otherwise packaged or contained in wrappings or containers so identified.

3.5 Supplier is obligated to label all parts with a registered Daimler trademark. The parts must be labeled in accordance with MBN 10435. The labels may be visible (stamped, shaped, lasered, etc.) or adhesive labels. A manufacturer's trademark may be affixed if desired, but the manufacturer's trademark may not be larger than the Daimler trademark. Other manufacturer's information, especially the article number of the manufacturer, is not permitted. Any deviations

from this labeling requirement (e.g. due to technical necessities) require MBUSI's prior written approval.

#### **SECTION 4: Production by Supplier**

4.1 MBUSI shall advise Supplier in due time regarding its volume plans for the Product. MBUSI's volume plans are estimates and forecasts and are non-binding on MBUSI and are provided for informational purposes only. Any variation (increase or decrease) in volume projections shall have no impact on Supplier's continuing obligation to provide MBUSI's actual demand requirements for the Products to MBUSI. Any variation or deviation from any volume projection shall in no way constitute a basis for Supplier to cease production or refuse to perform its obligations under this Agreement to supply MBUSI with its demand requirements for the Product or as a basis for Supplier to demand any increase in price. Supplier shall produce the Product consistent with the Specifications. MBUSI will provide Supplier with MBUSI's actual requirements and delivery times for the Product.

4.2 Supplier shall take all necessary actions to be able to produce and supply to MBUSI the Product and/or Service Parts as contemplated by the Agreement. Supplier should be able to support MBUSI peak daily production volumes by operating its facilities not more than two (2) shifts, nine (9) hours each per day, five (5) days per week.

4.3 Supplier shall comply with the quality standards and quality assurance procedures for the manufacture of the Product and/or Service Parts as set forth in the Source Package and Quality Manual-MBUSI referenced as Attachment 3 (as may be amended from time to time), and shall implement quality plans and procedures in accordance therewith. MBUSI or its representatives shall have access, as it may deem reasonable, to Supplier's manufacturing facilities to determine whether proper compliance with such standards and procedures is being followed.

4.4 Provided instructions have been given to Supplier in a timely manner, Supplier shall affix on the Product and Service Parts Daimler's trademark as instructed by MBUSI, in a size and a location as agreed to by Supplier, which agreement shall not be unreasonably withheld.

4.5 Supplier shall maintain documentation regarding the design and manufacture of the Product and/or Service Parts according to the instructions given by MBUSI for at least 20 years from the date on which the Product and/or Service Parts cease to be manufactured by Supplier for MBUSI and used in the Vehicle, or such shorter time period as MBUSI may determine from time to time.

4.6 If and to the extent Supplier supplies part or all of the Product or Service Parts to one or more other suppliers of MBUSI for the purpose of supplying MBUSI with production or Service Parts for the Vehicle, then Supplier shall be considered the "Lower Tier" supplier, and such other suppliers the "Higher Tier" supplier. Each Lower Tier shall duly cooperate with the Higher Tier and shall fully comply with the requirements of such Higher Tier, in addition to the terms of this Agreement. MBUSI is a third party beneficiary of Supplier's contracts with its Lower Tier supplier's. In the event that any Lower Tier is a Directed Lower Tier, such Directed Lower Tier

shall remain obligated to MBUSI for the production of Products in accordance with these Master terms Direct Purchasing, regardless of any termination of the contract between such Directed Lower Tier and the Higher Tier.

4.7 If Supplier is a Higher Tier, it shall (a) be responsible for the System, and (b) inform MBUSI and relevant Lower Tiers immediately of any problem which Supplier cannot promptly resolve and propose to MBUSI proper remedies for such problem.

4.8 Supplier shall develop, maintain and provide to MBUSI a Chain of Supply List, and Supplier shall update its Chain of Supply List on an annual basis, or more frequently, if requested by MBUSI.

4.9 Under no circumstances shall Supplier at any time modify the Product or Service Parts without the prior written approval of MBUSI, which MBUSI may withhold in its discretion, if such modification affects the Specifications, the measurements, functioning, or serviceability of other components and parts, or of the Vehicle as a whole. All other modifications are also subject to the prior written approval of MBUSI, although any such approval shall not be unreasonably withheld. MBUSI may require any design change or modification of the Product, if such change or modification is due to legal requirements, manufacturability, marketing needs, and/or stylistic considerations. MBUSI may request any other design changes or modifications to the Product subject to Supplier's consent, which shall not be unreasonably withheld. Supplier undertakes to keep any cost resulting from any design change or modifications, such as cost incurred because of tooling adaptations and any obsolescence charge, to a minimum. Supplier shall document all changes in cost in the detailed format required by MBUSI and in accordance with the Agreement. Furthermore, with respect to design changes or modifications due to legal requirements, manufacturability, marketing needs, and/or stylistic considerations, Supplier commits that the Product shall remain competitive. The comparison basis for minimum cost and competitiveness shall be quotations submitted to MBUSI by competitors of the Supplier for the Product, or an alternate product fitting the same purpose with the incorporation of the design change proposed by MBUSI. Supplier acknowledges that its obligations and commitments under this Section 4.9 are of a material nature.

4.10 To the extent that Supplier utilizes any affiliates, subsidiaries or other related person for purposes of fulfilling its obligations under this Agreement or any of such affiliates, subsidiaries or other related persons provide or supply Products, Service Parts, or any components thereof, Supplier agrees that each and every provision of this Agreement shall be binding upon all such affiliates, subsidiaries or other related persons, and Supplier represents and warrants to MBUSI that it has the express authority to bind all such affiliates, subsidiaries or other related persons to this Agreement.

## **SECTION 5: Payment for Null Series (B-Phase) and Production Trial Parts (PT1-PT-3)**

### 5.1 General Principles.

MBUSI distinguishes between “plannable start-up costs” (see Section 5.2) and “non-plannable start-up costs” or “additional material costs” (see Section 5.3).

MBUSI provides the necessary information on the project-specific start up process as part of the request for bids.

5.2 Plannable Start-up Costs. Between the points in time when (1) parts are produced using series production tools and (2) full capacity, cost increases may occur in the Supplier's production process. These costs are considered plannable start-up costs, and can be calculated at an early stage based on the specified start up unit numbers and deadlines.

Plannable start-up costs include:

– Production	set-up and idle capacity costs, assembly and testing expenses, rejects, supplements for smaller quantities, parts labeling – E-status and Q-status, and costs for bank-build of parts
– Logistics	transportation, storage, container, handling and repackaging costs, special orders with a process deviating from that of the delivery call-up
– Samples	<p>supplies for color meetings, design-stage workshops, process acceptance samples tests, initial sample inspection with sample inspection report/initial sample inspection report (SIR/ISIR).</p> <p>The components required for color meetings are to be supplied in every trim color. Detailed planning will be communicated by the MBUSI Quality Department to Supplier not less than 12 weeks before the color meeting begins. Supplier must ensure on-time delivery of the components. The initial samples received from the Supplier for the production and process approval procedure (PPA) are plannable start-up costs, and therefore will be supplied free of additional charge. The number of initial samples required will be agreed to by Buyer and Supplier.</p> <p>Sample parts to be supplied following a design change must be taken into consideration in the change tender via eÄM.</p> <p>Supplier shall cover the delivery costs to send parts for the B-Phase/Null Series to Sindelfingen, Germany, or to Vance, Alabama, whichever is applicable.</p>

As a rule, the plannable start-up costs, including those listed above, are covered by the series price. If there are justifiable individual cases in which the plannable start-up costs are not covered by the series production price, the Supplier shall specify any such additional costs in detail at the time it submits its tender. Start-up costs specified once the order has been placed cannot be considered.

Plannable start-up costs up to QG A/I are only paid to the Supplier if approved in writing by MBUSI.

### 5.3 Additional Material Costs (AMC=MMK, Non Plannable Material Start Up Costs).

If, through no fault of Supplier, design changes or significant changes to MBUSI's non-binding requirement estimates are required for deliveries once parts are produced using series production tools, the start-up costs that are not plannable when the tender is submitted may be separately remunerated by MBUSI within an appropriate framework.

Supplier must identify and justify the non-plannable components within the framework of the MMK inquiry by MBUSI. Completed forms should be sent to MBUSI Finance & Controlling by email as directed by MBUSI. Supplier should include in the email subject line the Supplier name, production period (B phase, PT1, PT2 or PT3), part number and part description. Forms must be completed and submitted to MBUSI within four weeks after the end of each production period.

AMC Forms are found at the MBUSI Supplier Communication Guide (Finance Product/Tool Controlling – Communication to Suppliers).

Additional material costs may include, but are not limited to, the following:

- Additional staff costs incurred by Supplier
- Reworking
- Special carriage costs
- Scrapping costs

MMKs shall only be paid to the Supplier up to full capacity subject to approval by MBUSI.

### 5.4 Series Production Price

The series price becomes valid for Supplier's deliveries at the point in time when parts are produced using series production tools. This applies regardless of the purpose and place of delivery. With the series prices (total prices) valid at this point in time, all costs (e.g. set-up, measurement, packaging, shipping, handling) are covered, up to and including delivery, to the places of delivery defined by MBUSI. Any plannable start-up costs must be considered in the series price. The applicable deadlines can be found in the document "Excerpt from the Process Master Plan for Suppliers".

### 5.5 Allocation of Flash and OTP Processors.

As a series solution: costs should be considered into the series production price.

If, within the framework of target price definition and assignment, a flash/OTP solution is agreed as the series solution, the Supplier must cost this into the series price.

As an intermediate solution as of the point in time when parts are produced using series production tools up to and including PRO 2 or PT 2: specified as start-up costs.

The MDS process states that the provision of electric and electronic components for PRO 3 or PT 3 from mask processor must be ensured by the Supplier, i.e. the use of flash/OTP processors for part provisioning prior to PRO 3 or PT 3 must be specified as plannable start-up costs by the Supplier.

As an intermediate solution as of PRO 3 or PT3: remuneration as MMK.

These must be treated as the aforementioned additional material costs requiring approval.

## **SECTION 6: MBUSI Owned Equipment**

### **6.1 Supplier Acquisition of MBUSI Owned Equipment.**

(a) Supplier shall acquire all MBUSI Owned Equipment as listed in Equipment Database pursuant to Purchase Contracts issued by MBUSI to Supplier in accordance with Section 10 hereof. Supplier shall also acquire any MBUSI Owned Equipment subsequently determined to be necessary for the manufacturing of any Products and/or Service Parts pursuant to additional Purchase Contracts issued to Supplier by MBUSI, whether or not such MBUSI Owned Equipment is reflected in the Equipment Database. Supplier shall invoice MBUSI for the MBUSI Owned Equipment in accordance with the provisions of Section 10 hereof, as may be modified by Section 6.2 below.

(b) Supplier shall be responsible for any and all sales and use tax, leasing tax, excise tax, property tax, duty, fee or any other charge attributable to the MBUSI Owned Equipment. Supplier's responsibilities for said taxes and charges are set forth in Section 26 below.

### **6.2 Purchase of MBUSI Owned Equipment.**

(a) For each item of MBUSI Owned Equipment, effective as of the applicable MBUSI Owned Equipment Title Transfer Date, Supplier, for and in consideration of the MBUSI Equipment purchase price, SELLS, GRANTS, BARGAINS, CONVEYS, ASSIGNS, TRANSFERS AND DELIVERS to MBUSI and its successors and assigns, all right, title and interest in and to such MBUSI Owned Equipment as collectively identified in the Tool Tracking Sheet. Supplier warrants that at such time, it will be and is the sole and exclusive owner of, and will have and has good and marketable title to the MBUSI Owned Equipment being conveyed to MBUSI, free and clear of all liens, liabilities, security interests, leasehold interests and encumbrances of any nature whatsoever.

(b) It is expressly understood that, notwithstanding anything to the contrary contained in the Agreement, title to the applicable MBUSI Owned Equipment shall not pass until the MBUSI Owned Equipment Title Transfer Date, which may or may not be the same day as the MBUSI Owned Equipment Approval Date.

(c) The purchase price for any MBUSI Owned Equipment shall be equal to the sum of all prices reflected in the Purchase Contracts and change orders (if any) issued by MBUSI therefor. MBUSI shall pay eighty percent of the purchase price for the MBUSI Owned Equipment upon the occurrence of the following: (i) MBUSI accepts the applicable MBUSI Owned Equipment through PPAP yellow/yellow; (ii) Supplier submits a proper invoice; (iii) if requested by MBUSI, Supplier confirms transfer of ownership in accordance with these Master Terms by execution and delivery of a Bill of Sale in the form of Attachment 6 or otherwise as requested by MBUSI (it is understood and agreed that title to the MBUSI Owned Equipment will pass to MBUSI at the MBUSI Owned Equipment Title Transfer Date as set forth 6.2(a) regardless of the execution of any Bill of Sale and that the execution of a Bill of Sale, if requested by MBUSI is only further evidence of such title transfer); and (iv) Supplier provides MBUSI with all PPAP yellow filed. Final payment will not be made by MBUSI until the MBUSI Owned Equipment Approval Date. Any payment obligation of MBUSI shall be subject to the receipt of a proper invoice from Supplier. Except as modified by this Section 6.2, all Purchase Contracts and invoices shall be issued and paid in accordance with Section 10 below. Notwithstanding the foregoing, the terms for payment for MBUSI Owned Equipment shall be as set forth in the version of the Master Terms Direct Purchasing which were in effect on the date of issuance of the Purchase Contract for the applicable MBUSI Owned Equipment.

(d) Upon transfer of title to the MBUSI Owned Equipment to MBUSI, unless otherwise expressly stated in the Agreement, Supplier will retain possession of the MBUSI Owned Equipment pursuant to Section 6.3 below.

(e) For the avoidance of doubt, it is expressly understood that all MBUSI Owned Equipment will be sold to MBUSI pursuant to the terms and conditions of this Section 6.2 upon the applicable MBUSI Owned Equipment Title Transfer Date.

### 6.3 License and Bailment of MBUSI Owned Equipment.

(a) Supplier shall retain possession after the sale of the MBUSI Owned Equipment to MBUSI on a license and bailment basis in accordance with this Section 6.3 and the applicable terms of the Agreement. The applicable Bailment Term and the provisions of this Section 6.3 shall become effective as to any individual item of MBUSI Owned Equipment upon the possession by Supplier, regardless of whether MBUSI has paid the purchase price of such MBUSI Owned Equipment on or before such date. To the extent owned by MBUSI in accordance with Section 15 herein, the Bailment Term and provisions of this Section 6.3 shall become effective as to the MBUSI Intellectual Property immediately.

(b) During the Bailment Term, Supplier agrees to accept possession of all of the MBUSI Owned Equipment purchased by MBUSI on a bailment basis. Supplier shall possess and use the MBUSI Owned Equipment strictly in accordance with the terms and conditions set forth herein.



(c) MBUSI hereby grants Supplier a limited right and license to use the MBUSI Owned Equipment solely for the manufacture of the Product and Service Parts during the Bailment Term and in accordance with the terms hereof.

(d) The Bailment Term shall continue until the expiration of the Agreement, or on any earlier date as the Agreement may be terminated in accordance with its terms and provisions.

(e) *Ownership.*

(i) Nothing in the Agreement or this Section 6.3 shall constitute a transfer or agreement to transfer by MBUSI or any other entity of any title to any MBUSI Owned Equipment or MBUSI Intellectual Property. Regardless of the fact that additional work may be performed by Supplier on the MBUSI Owned Equipment, after the MBUSI Owned Equipment Title Transfer Date, MBUSI shall have sole and exclusive ownership of all right, title, and interest in and to the MBUSI Owned Equipment, and Supplier shall have no right or property interest therein except as expressly granted hereby. MBUSI shall retain a precautionary security interest in the MBUSI Owned Equipment and the MBUSI Intellectual Property to secure Supplier's obligations during the Bailment Term. The MBUSI Owned Equipment shall be kept at the address(es) specified in the Equipment Database or on the applicable Purchase Contracts until such time as a written consent to a change of location is obtained from MBUSI. If the MBUSI Owned Equipment is to be attached to real estate, Supplier shall furnish MBUSI with a disclaimer or disclaimers of any interest in the MBUSI Owned Equipment signed by all entities having an interest in the real estate. Supplier shall maintain the MBUSI Owned Equipment so that, if attached to real estate, the MBUSI Owned Equipment may be removed without damage to the real estate. In the event that MBUSI Owned Equipment will be kept at locations other than Supplier's plant, each Lower Tier that owns and/or operates such other locations must execute a Lower Tier Acknowledgment and Waiver in accordance with the provisions of Section 38, and Supplier must procure all such fully executed Lower Tier Acknowledgment and Waiver documents prior to transferring any MBUSI Owned Equipment to any such outside location.

(ii) During the Bailment Term, the MBUSI Owned Equipment shall at all times remain the property of MBUSI, and Supplier shall have no right or property interest therein but only the right to use the same under the Agreement. MBUSI may display notice of its ownership by affixing to the MBUSI Owned Equipment an identifying plate, stencil, or other indicia of ownership. Such notice shall bear the legend, "Property of Mercedes-Benz U.S. International, Inc., MBUSI", or any other legend which MBUSI shall notify to Supplier from time to time. Supplier shall not remove, alter or deface MBUSI's ownership plates, tags, or identification on or in the MBUSI Owned Equipment during the Bailment Term.

(iii) The MBUSI Intellectual Property and tangible embodiments thereof shall at all times remain the property of MBUSI and Supplier shall have no right or property interest therein but only the right to use the same under the Agreement.

(f) The MBUSI Owned Equipment shall be used only in the lawful business of the Supplier. Supplier, without the written consent of MBUSI, shall not remove the MBUSI Owned Equipment from such location nor part with possession or control thereof. MBUSI shall have the right to inspect the MBUSI Owned Equipment at any time and place as designated by MBUSI.

(g) At the expiration of the Bailment Term, Supplier shall, in the event that Supplier is not in default and is in compliance with all the terms and conditions of the Agreement, have the right to purchase the MBUSI Owned Equipment on an AS-IS-WHERE-IS basis for the fair market value, scrap value, or a mutually agreed price to be paid to MBUSI by Supplier on that date. In addition, whether or not Supplier is in default at such time, MBUSI shall have the option to require Supplier to purchase the MBUSI Owned Equipment at the expiration hereof on an AS-IS-WHERE-IS basis for the sum of \$1.00, to be paid to MBUSI by Supplier on that date. Unless all the conditions of the Agreement have been fulfilled by Supplier by such date, and the purchase price for the MBUSI Owned Equipment paid, the right to purchase the MBUSI Owned Equipment hereby granted shall be waived and forfeited. Notwithstanding anything herein to the contrary, Supplier shall not have the right to purchase the MBUSI Intellectual Property upon the expiration of the Bailment Term or the Agreement.

(h) The obligations of Supplier under the Agreement (including, without limitation, this Section 6.3) shall continue in force and effect regardless of the inability of Supplier to use the MBUSI Owned Equipment or the MBUSI Intellectual Property for any reason whatsoever, including but not limited to, a Force Majeure Event.

(i) Supplier shall maintain the MBUSI Owned Equipment, shall pay all license fees, assessments and taxes, including, without limitation, personal property taxes, for the MBUSI Owned Equipment and, unless otherwise instructed by MBUSI, shall provide annual written proof of the payment of personal property taxes. Unless otherwise instructed by MBUSI, Supplier shall fully insure the MBUSI Owned Equipment and the insurance policy shall be in form and in an amount equivalent to the current replacement value and reasonably acceptable to MBUSI, and shall name MBUSI as an additional insured. In addition, Supplier shall purchase insurance in an amount reasonable under the circumstances to cover the liability of MBUSI for public liability and property damage which in any event shall not be less than \$1,000,000 per occurrence. The insurance policies and proceeds shall be the sole property of MBUSI. Supplier shall deliver to MBUSI, not less than five days prior to the scheduled delivery date of the MBUSI Owned Equipment, the policies of insurance or duplicates thereof or other evidence satisfactory to MBUSI of such insurance coverage. Each insurer shall agree by endorsement upon the policy or policies issued by it, that it shall give MBUSI 30 days prior written notice of the effective date of any alteration or cancellation. If Supplier fails to obtain such

insurance, MBUSI shall have the right to obtain insurance at Supplier's expense. In the event Supplier fails to preserve and maintain the MBUSI Owned Equipment, discharge all taxes, liens, or charges, pay all costs and expenses, or procure and maintain insurance as provided herein, MBUSI may take whatever steps are necessary to carry out these requirements. All advances by MBUSI shall be repayable by Supplier to MBUSI on demand, together with interest thereon at the highest legal contract rate until paid.

(j) Upon expiration or termination of the Agreement, Supplier shall, at its sole cost (unless Supplier exercises its option to purchase the MBUSI Owned Equipment or MBUSI requires Supplier to purchase the MBUSI Owned Equipment) immediately return the MBUSI Owned Equipment to MBUSI in the same condition as received, reasonable wear, tear and depreciation resulting from proper use thereof alone excepted. Furthermore, at such time, Supplier shall, at its sole cost, immediately return all tangible embodiments of MBUSI Intellectual Property in any medium whatsoever.

(k) Without limiting MBUSI's other rights and remedies pursuant to the Agreement, law or otherwise, during the Bailment Term, MBUSI may enter any premises where the MBUSI Owned Equipment is located for the purpose of inspection and may remove the MBUSI Owned Equipment forthwith, without notice to Supplier, if, in MBUSI's opinion, the MBUSI Owned Equipment is being improperly used or maintained.

(l) Supplier has selected and/or approved both the MBUSI Owned Equipment of the type and quality described and the supplier from whom the MBUSI Owned Equipment has been purchased. It is understood and agreed that Supplier, in its underlying agreement or agreements with any supplier of the MBUSI Owned Equipment, shall require that all warranties by such suppliers at all times run in favor of both MBUSI and Supplier, irrespective of whether MBUSI or Supplier was the original purchaser of the MBUSI Owned Equipment from such supplier, or the actual owner thereof, from time to time. Supplier shall also be responsible throughout the term hereof for the enforcement of, and maintaining the right of enforcement of, all warranties, agreements or representations, if any, which may be made by the supplier to Supplier or MBUSI; however, MBUSI MAKES NO WARRANTY, DIRECTLY OR INDIRECTLY, EXPRESS OR IMPLIED, AS TO THE MBUSI OWNED EQUIPMENT OR ANY PART THEREOF, AS TO ITS DESIGN, QUALITY, CAPACITY, DURABILITY, CONDITION, MERCHANTABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE, EXCEPT THAT MBUSI WARRANTS THAT IT SHALL HAVE TITLE TO EACH ITEM OF MBUSI OWNED EQUIPMENT AT THE TIME OF DELIVERY THEREOF. ANY DELAY IN DELIVERY SHALL NOT AFFECT THIS SECTION 6.3 OR OTHERWISE AFFECT THE AGREEMENT IN ANY WAY. NO DEFECT IN OR UNFITNESS OF THE MBUSI OWNED EQUIPMENT SHALL RELIEVE SUPPLIER OF ANY OBLIGATION UNDER THIS SECTION 6.3 OR OTHERWISE UNDER THE AGREEMENT. MBUSI SHALL IN NO WAY BE RESPONSIBLE OR LIABLE FOR DAMAGES (WHETHER CONSEQUENTIAL, INDIRECT, SPECIAL OR OTHERWISE), ARISING OUT OF THE DELIVERY, USE, PERFORMANCE OR CONDITION OF THE MBUSI OWNED EQUIPMENT. Supplier understands and agrees that neither the supplier nor any salesman or other agent of the supplier is an agent of MBUSI. No salesman or agent of the supplier is authorized to waive or alter any term or condition of

the Agreement or this Section 6.3, and no representation as to the MBUSI Owned Equipment or any other matter by the supplier shall in any way affect Supplier's duty to perform its obligations as set forth in the Agreement and this Section 6.3. Supplier acknowledges that MBUSI has made no representation or warranty of any kind, nature or description, express or implied, with respect to the MBUSI Owned Equipment.

(m) Risk of Loss.

(i) During the Bailment Term, Supplier assumes the entire risk of loss, theft, or damage to the MBUSI Owned Equipment, whether or not covered by insurance, and no such loss, theft, or damage shall relieve Supplier of its obligations hereunder except as otherwise specifically set forth in the Agreement. This Section 6.3(m) is in addition to and is not intended to limit any other obligations of Supplier set forth in the Agreement with respect to risk of loss, theft or damage to the MBUSI Owned Equipment.

(ii) In the event of loss, theft or damage to the MBUSI Owned Equipment in whole or in part, Supplier shall promptly so notify MBUSI and, at MBUSI's option, shall: (a) restore the MBUSI Owned Equipment to good condition and working order; or (b) replace the MBUSI Owned Equipment with like MBUSI Owned Equipment in good condition and working order and furnish MBUSI with necessary documents to vest good and marketable title thereto in MBUSI; or (c) if MBUSI determines that any item of MBUSI Owned Equipment is beyond repair, pay to MBUSI, within ten (10) days of such notification, the loss value thereof, which shall be an amount equal to the value of the item of MBUSI Owned Equipment on the date of loss, and upon such payment this Section 6.3 shall terminate with respect to the item of MBUSI Owned Equipment so paid for and Supplier shall thereupon become the owner thereof.

(iii) The obligations of Supplier pursuant to Section 6.3(m)(ii) shall be offset to the extent that any insurance proceeds are received by MBUSI with respect to the subject MBUSI Owned Equipment.

(n) Neither MBUSI, nor any successor or its assigns, shall have any obligation to install, erect, test, adjust or service the MBUSI Owned Equipment. Supplier, at its own cost and expense, shall: (a) pay all charges in connection with the delivery, installation and operation of the MBUSI Owned Equipment; (b) comply with all laws, ordinances, regulations, requirements, and rules with respect to the use, maintenance, and operation of the MBUSI Owned Equipment; (c) take good and proper care of the MBUSI Owned Equipment and make all repairs and replacements necessary to maintain, preserve, and keep the MBUSI Owned Equipment in good condition and working order. Supplier shall not make any alterations, additions, or improvements to the MBUSI Owned Equipment without the prior written consent of MBUSI. All repairs, replacements, parts, devices, accessories, and improvements of whatsoever kind or nature furnished or affixed to the MBUSI Owned Equipment shall belong to and become part of the property of MBUSI.

(o) *Precautionary Security Interest.*

(i) Upon the commencement of the Bailment Term, Supplier hereby creates and grants to MBUSI a purchase money security interest in the MBUSI Owned Equipment, together with all replacements thereof and all attachments and accessories new or hereafter installed therein or affixed thereto, in order to secure Supplier's obligations as provided herein and all additional indebtedness, costs, obligations and expenses of Supplier provided in the Agreement. In addition to all remedies provided herein to MBUSI, upon Supplier's default, MBUSI may exercise its rights of enforcement and shall have all remedies under the Uniform Commercial Code applicable in such jurisdiction as may be required by law with respect to the MBUSI Owned Equipment bailed under this Section 6.3. It is understood that the above security interest has been granted in an excess of caution in the event that the Bailment Agreement should be construed by a court of competent jurisdiction as an installment sale. Accordingly, provisions of this Section 6.3(o) shall not lessen or restrict, but shall be in addition to, all other obligations of MBUSI under the Agreement.

(ii) Supplier shall take every possible step to ensure that the interests of MBUSI in the MBUSI Owned Equipment is fully secured, respected, and is enforceable by MBUSI at any time. This obligation includes, but is not limited to, cooperating in the filing of appropriate Uniform Commercial Code financing statements, including protective filings, and/or such other documents, if any, as may be necessary or desirable in order to perfect valid and enforceable rights for MBUSI in the MBUSI Owned Equipment all of which MBUSI is hereby authorized to file. MBUSI shall also have title to replacements, which shall automatically become part of the MBUSI Owned Equipment. In furtherance thereof, Supplier shall notify MBUSI immediately in writing of Supplier's receipt of each item of MBUSI Owned Equipment in order to allow MBUSI to timely file the respective financing statement.

(iii) MBUSI, as secured party under the Uniform Commercial Code, may file financing statements without the signature of Supplier as debtor. THIS SECTION 6.3 IS A BAILMENT AGREEMENT; ANY FILING IS SOLELY PRECAUTIONARY.

(iv) Supplier shall execute and deliver to MBUSI, upon MBUSI's request, such instruments and assurances as MBUSI deems necessary for the confirmation or perfection of this Section 6.3 and MBUSI's rights hereunder. In furtherance thereof, MBUSI may file a financing statement with respect thereto as to give notice to any interested parties. Any such filing or recording shall not be deemed evidence of any intent to create a security interest under the Uniform Commercial Code or other applicable law as required in such jurisdiction.

(p) Supplier shall indemnify MBUSI against and hold MBUSI harmless from any and all claims, actions, damages, costs, including reasonable attorney's fees, obligations, liabilities, and liens (including any of the foregoing arising or accrued without MBUSI's fault or negligence, or under the doctrine of "strict liability") arising out of the manufacture, purchase, bailment, use, possession, selection, storage, delivery or return, operation, maintenance, renting, control or other disposition of the MBUSI Owned

Equipment, or in any way connected therewith (including this Section 6.3). Upon institution of any action against MBUSI for any claim, action, damages, obligations, liability, or lien, Supplier shall assume full responsibility for the defense thereof. The provisions of this Section 6.3(p) shall survive termination of the Agreement.

(q) Supplier represents that the MBUSI Owned Equipment is being bailed for business purposes, and agrees that under no circumstances shall any portion of the Bailment Agreement be deemed or construed as a consumer contract.

(r) The Bailment Agreement shall be subject to all other terms of the Agreement, including, without limitation, applicable default, remedy and confidentiality provisions contained herein.

(s) Without the consent of MBUSI, which may be withheld by MBUSI in its sole discretion, Supplier may not pledge, mortgage, hypothecate, sell, encumber, sublet or lend the MBUSI Owned Equipment or permit it to be used by anyone other than Supplier or its employees.

(t) Notwithstanding the provisions of Section 34 below, MBUSI may assign its rights under this Section 6.3, the MBUSI Owned Equipment and the MBUSI Intellectual Property without notice to or consent of Supplier. On any such assignment, the assignee shall succeed to all of MBUSI's rights in respect thereto. The assignee's rights shall be free from all claims, defenses, setoffs or counterclaims that Supplier may be entitled to assert against MBUSI. Such assignment shall relieve MBUSI of its obligations to Supplier hereunder and shall be construed as being an assumption of such obligations to Supplier hereunder and shall be construed as being an assumption of such obligations by the assignee. In addition, MBUSI may mortgage or otherwise encumber the MBUSI Owned Equipment and MBUSI Intellectual Property, or both, in whole or in part, without notice to or consent of Supplier. The rights of Supplier under the Bailment Agreement shall be subordinated to any security agreement or mortgage now existing or hereafter executed concerning any of the MBUSI Owned Equipment or MBUSI Intellectual Property. Supplier agrees to execute and deliver to MBUSI promptly upon request an appropriate estoppel certificate to any secured party or mortgage of any of the MBUSI Owned Equipment or MBUSI Intellectual Property. If Supplier is given notice of such assignment, it shall acknowledge receipt thereof in writing. Each such assignee, secured party, and/or mortgage for security shall have all of the rights, but not all of the obligations, of MBUSI under this Section 6.3. Supplier shall not assert against MBUSI's assignee, secured party, and/or mortgage, or against any of their respective successors in interest, any defense, counterclaim, or offset that Supplier may have against MBUSI.

6.4 MBUSI is not responsible for any repairs, service, or defects in the MBUSI Owned Equipment or the operation thereof. Supplier agrees that all such risks are to be borne by Supplier at its sole risk and expense, since Supplier itself has made its own selection of the MBUSI Owned Equipment based upon its own judgment. Supplier releases any and all claims whatsoever against MBUSI for any defect or deficiency in the MBUSI Owned Equipment.

6.5 All patterns, tools, dies or other material furnished by MBUSI to Supplier, or which are specifically paid for by MBUSI, and any replacements thereof or anything affixed or attached thereto, whether or not such items constitute MBUSI Owned Equipment or MBUSI Intellectual Property (or tangible embodiments thereof) (a) shall be and remain the personal property of MBUSI; (b) shall be plainly marked or otherwise adequately identified by Supplier as "property of Mercedes-Benz U. S. International, Inc.," if reasonably possible; and (c) shall be safely stored separate and apart from Supplier's property. Supplier shall not substitute any property for such property, and shall not use such property except for filling the Purchase Contracts issued by MBUSI. While in the custody or control of Supplier, such property shall be held at Supplier's risk. Supplier shall keep such tooling or property in its possession and/or control in good condition, fully covered by insurance, free of liens or encumbrances, and shall replace such tooling or property when lost, damaged, or destroyed. All MBUSI tooling or property shall be transferred as MBUSI may direct at any time, in which event Supplier shall immediately prepare such property for shipment and shall deliver such property to MBUSI or its assignee in the same condition as originally received, reasonable wear and tear excepted.

6.6 Supplier shall, at the appropriate time, make a competitive offer for purchase by MBUSI of special tools for the repair of the Product and/or Service Parts.

6.7 Without limitation to any other provision herein, Supplier is solely responsible for all maintenance and upkeep necessary to keep the MBUSI Owned Equipment, Amortized Supplier Equipment and Supplier MBUSI Equipment in good working order and condition to fulfill Supplier's obligations under the Agreement. In addition, in the event that any MBUSI Owned Equipment, Amortized Supplier Equipment or Supplier MBUSI Equipment should wear out, fail and/or need replacing during the term of the Agreement, Supplier shall be solely responsible for manufacturing or replacing such MBUSI Owned Equipment, Amortized Supplier Equipment or Supplier MBUSI Equipment, as the case may be, in order for Supplier to fulfill its obligations under the Agreement, but in any event in accordance with the terms of the Agreement.

6.8 Amortized Supplier Equipment.

(a) Upon full amortization of the Amortized Supplier Equipment in the series production price, MBUSI shall have the option, in its sole discretion, to purchase the fully amortized Amortized Supplier Equipment for the purchase price of \$1.00. In the event MBUSI elects to purchase such Amortized Supplier Equipment, it shall be subject to the bailment and license terms of Section 6.3 herein.

(b) Upon termination or earlier expiration of the Agreement, with respect to fixtures and gauges, MBUSI shall have the option to purchase from Supplier any or all of the fixtures and gauges for an amount equal to the lesser of (a) the amount owing at the time of termination based upon the piece price for such fixtures and gauges, amortized over the useful life of the Vehicle, or (2) the fair market value of the fixtures and gauges.

## SECTION 7: Trade, Labeling Requirements and Customs

7.1 Country of Origin Marking. All Products and Service Parts supplied by Supplier to MBUSI shall comply with any country of origin marking requirements, including, without limitation, those in effect in the United States, Canada, and Mexico, as set forth in the NAFTA and in applicable regulations of the customs administrations in all jurisdictions. Such compliance is to include required marking of all containers in which Products and Service Parts are supplied to MBUSI. Upon the request of MBUSI, Supplier shall provide MBUSI with such country of origin certification as shall be requested by MBUSI.

7.2 Drawback. MBUSI shall own all rights to drawback of customs duties paid or payable on products supplied by Supplier to MBUSI and all rights to drawback of customs duties paid or payable on materials and components used in manufacturing such products. These rights of MBUSI shall include rights to all types of drawback, including substitution drawback. Supplier shall provide MBUSI all information and documentation necessary for MBUSI to claim and obtain drawback, including, but not limited to, entry information, waivers of Supplier's or sub-suppliers' drawback rights, certificates of manufacture, and certificates of delivery. Supplier shall take all necessary steps within its control to allow MBUSI or its designated agent to obtain such drawback and reasonably assist MBUSI or its designated agent in these efforts.

7.3 Products Supplied to MBUSI from Outside the United States, Delivery Duty Paid (DDP). Where so designated according to the transportation code stated in the Purchase Contract, Supplier shall serve as importer of record and be responsible for the filing with the U.S. Customs Service of all entry documentation and the payment of all customs duties, fees, and charges, including, but not limited to, antidumping duties, countervailing duties, temporary duties, special duties, marking duties, penalties, liquidated damages, and storage charges. Products subject to this procedure shall be delivered duty paid (DDP) to MBUSI dock at destination. Supplier shall assume all responsibilities and liabilities arising under U.S. Customs laws and regulations for import shipments subject to this procedure.

7.4 Products Supplied to MBUSI from Outside the United States, Delivery Duty Unpaid (DDU). Where so designated according to the transportation code stated in the Purchase Contract, Supplier shall deliver Product to MBUSI on a delivery duty unpaid (DDU) basis. For products supplied subject to this procedure, Supplier shall arrange for the filing with the U.S. Customs Service of all in-bond entry documentation and shall assume all responsibility and liability arising from the use of in-bond customs procedures for the transportation of the product to MBUSI, including, but not limited to, any liability arising from the breach of any obligation or condition of such in-bond customs procedures. Such liability for the breach of any such obligation or condition of in-bond customs procedures shall include, but not be limited to, penalties, liquidated damages, customs duties (including, but not limited to, antidumping duties, countervailing duties, temporary duties, special duties, and marking duties), fees and storage charges.

7.5 Customs Duties and Brokers' Fees. Supplier shall obtain prior approval of MBUSI before utilizing the services of any broker. The responsibility for customs duty and customs brokers'



fees shall be determined in accordance with the transportation code stated in any Purchase Contract. If MBUSI is responsible for customs duties, it shall be responsible for normal duties only. Supplier shall be responsible for any special duties, including, but not limited to, marking, anti-dumping, and countervailing duties, to the extent permitted under the law of the country of importation. Supplier shall provide MBUSI or the appropriate governmental authority all documentation and information required by law or regulation or otherwise necessary to determine the proper minimum duty to be paid upon the importation of the goods into any country or to obtain any refunds or drawbacks of duties paid.

7.6 Import or Export Licenses. Supplier shall advise MBUSI if the importation or exportation of the Product requires an import or export license. Supplier shall assist MBUSI in obtaining any such license unless Supplier is providing the Product DDP, in which case the Supplier shall obtain the license for the importation of the Product.

7.7 Documentation. Supplier shall provide to MBUSI and the appropriate governmental agency the documentation necessary to determine the admissibility and the effect of entry of the Product into the country in which the Product is delivered to MBUSI. Supplier warrants that the information regarding the import or export of the Product supplied to MBUSI is and shall be true and correct in every respect and that all sales covered by any Purchase Contract shall be made at not less than fair value under the anti-dumping laws of any countries to which the Product is exported.

7.8 Packaging. Supplier shall ensure that all Products supplied by Supplier to MBUSI, and all containers and other shipping and packaging materials used with such Products, comply with all applicable laws and regulations, including, but not limited to, laws and regulations addressing the transportation and labeling of hazardous materials.

7.9 TSCA Certification. Consistent with Section 36.2 of the Agreement, Supplier shall ensure that all Products supplied by Supplier to MBUSI comply with all applicable requirements of the Toxic Substances Control Act ("TSCA") and regulations thereunder. Any chemical parts must be accompanied by a TSCA certification. The invoice of all Products supplied by Supplier to MBUSI and consisting of a chemical substance, whether imported in bulk or as part of a mixture, shall contain the appropriate certification concerning TSCA compliance that is set forth in section 12.121 of the regulations of the U.S. Customs Service (19 C.F.R. § 12.121). Where a Supplier supplies to MBUSI a Product consisting of or containing a chemical substance or mixture as part of an article supplied to MBUSI, Supplier shall ensure that such Product complies with any applicable requirements of the TSCA. The invoice of such Product supplied by Supplier shall contain the appropriate certification concerning TSCA compliance that is set forth in section 12.121 of the regulations of the U.S. Customs Service (19 C.F.R. § 12.121) if reporting of the importation of such Product is required by a rule or order issued under the authority of the TSCA.

7.10 American Automobile Labeling Act. Supplier shall furnish to MBUSI all information and data necessary or requested by MBUSI to enable MBUSI to comply with its obligations under the American Automobile Labeling Act.

7.11 United States Customs-Trade Partnership Against Terrorism (C-TPAT).

(a) MBUSI participates in the U.S. Department of Homeland Security (DHS) Customs and Border Protection (CBP) Customs-Trade Partnership Against Terrorism (C-TPAT) program. C-TPAT is a government-business initiative to build cooperative relationships that strengthen and improve overall international supply chain and U.S. border security.

(b) Supplier is encouraged to ensure shipments made in connection with this Agreement are conveyed through transportation providers that are certified under the U.S. CBP C-TPAT program.

(c) Upon request, Supplier shall provide to MBUSI reasonable evidence of compliance with this clause.

(d) Supplier shall include paragraphs (b) and (c) of this clause, or equivalent provisions, in any subcontracts involving shipments related to this Agreement.

**SECTION 8: Supplier's Selling Prices**

8.1 The price(s) for the Product and/or Service Parts supplied to MBUSI shall be based upon the agreed price(s) in the respective Purchase Contracts issued under the Agreement, subject only to those adjustments set forth in Section 9 below, and shall each be broken down to at least the level of detail shown in the Cost Breakdowns. Without limiting any other provision of the Agreement, the price includes preparation of the Product and/or Service Parts to be fit for transportation, packaging and racks with appropriate shipping dunnage, unless otherwise specifically excluded.

8.2 Notwithstanding any other term of the Agreement, the Contract Documents or any Purchase Contract issued pursuant to the Agreement, title to and risk of loss of the Product and/or Service Parts shall remain with the Supplier until the Product and/or Service Parts have been delivered and unloaded at the MBUSI dock at destination, regardless of any conflicting delivery or price term, and regardless of which Party pays the cost of transportation to the destination specified by MBUSI.

**SECTION 9: Price Adjustments**

9.1 Pricing Firm. Except as specifically provided in this Section 9, the prices as agreed upon between MBUSI and Supplier and set forth in the initial Purchase Contract for Products and/or Service Parts, as provided in Section 8.1, shall be firm for the Term of this Agreement. There shall be no change to the price for any Products and/or Service Parts absent written agreement between the Parties and the issuance of a Purchase Contract by MBUSI reflecting a new price, subject to the then current Master Terms Direct Purchasing. There is no requirement or obligation for any annual price adjustment, and the price set forth in the most recent Purchase Contract shall control until such time as any new pricing is agreed upon and reflected in a newly issued Purchase Contract. There will be no price adjustment resulting from Supplier's inability

to accurately anticipate costs or Supplier's inability to generate a profit from the sale of the Products and Service Parts to MBUSI.

9.2 Interruption of Supply. If there is any dispute or disagreement regarding pricing, Supplier shall continue to perform its obligations under this Agreement in accordance with the most recent price agreed upon and set forth in a Purchase Contract.

9.3 Costs Savings. With respect to pricing and price adjustments, Supplier shall, at all times, comply with the cost provisions set forth in the Source Package, and the price of the Product shall be that which is set forth in the applicable Purchase Contract(s).

9.4 Adjustments for Annual Improvements. The prices for the Product and Service Parts shall be reduced annually in accordance with the future productivity commercial piece price reductions submitted with Supplier's quote in accordance with the provisions of the Source Package. This annual productivity reduction will be taken off the Purchase Contract price for the life of the Product.

9.5 Adjustments for Design Changes.

(a) If MBUSI initiates a change in design of the Product or Service Parts (including specifications for materials therefor), which results in increased or decreased costs to the Supplier, the pertinent prices shall be adjusted to reflect the increases and/or decreases in the Supplier's cost structure outlined in the pertinent Cost Breakdowns. Supplier shall work closely with MBUSI to ensure that incremental tooling charges, if any, are kept to a minimum.

(b) If the Supplier initiates a change in the design of the Product or Service Parts and MBUSI approves such design change which results in increased costs, the pertinent price shall be adjusted to reflect the increase and/or decrease in the Supplier's cost structure as set forth in the pertinent Cost Breakdowns provided that the net result is an increase in the overall cost, the price will be adjusted only if and to the extent such increase was included in Supplier's proposal for modification. If the result of such change is a net decrease in cost, the price for the pertinent Product or Service Parts shall reflect such reduced cost level.

(c) Notwithstanding the aforementioned price adjustments for design changes, the prices for the Product and Service Parts shall not be adjusted if the design change was necessary for the Supplier to meet the then current specifications and any mutually agreed validation requirements.

#### 9.6 Adjustments for Cost Savings.

(a) Either party may make proposals for the improvement of any manufacturing process, design, and any other process. If such proposal is to be implemented, the Supplier shall do so as soon as possible. Beginning with the effective date of the implementation, the pertinent prices shall be decreased by an amount equal to the agreed upon percentage of the achieved cost savings.

(b) Supplier undertakes to strive to achieve lower cost levels, and Supplier will pass on to MBUSI the cost savings which have been achieved in accordance with such optimization of the calculation items. To the extent legally permissible, Supplier will also be prepared to participate in cooperative buying activities with other companies purchasing material from the same suppliers to benefit from the most competitive material purchase prices.

(c) Cost savings will become effective as they are achieved and will be fully reflected in reduced prices immediately. The Parties will together review on a regular basis the status of cost improvements.

9.7 Pricing: Service Parts. Service Parts shall be sold by Supplier to MBUSI at the then applicable selling prices according to the breakdown described in the Cost Breakdowns, including preparation for transportation, packaging, and appropriate transport equipment. MBUSI may, at its option, request Supplier to supply general distributors of the Vehicle directly with Service Parts at the same prices available to MBUSI, plus documented additional logistic cost, and Supplier shall comply with such request, accepting corresponding Purchase Contracts from the relevant general distributors. Service Parts prices include Service Parts documentation in English and German consisting of two sets each which shall be amended from time to time as required by and submitted to MBUSI.

Three (3) Year Policy At the completion of series production, the price for the spare parts shall be calculated from the most recent applicable series production price plus the costs actually incurred by the Supplier for special packaging. This price shall be fixed for a period of three (3) years from the end of series production. The parties agree to renegotiate the new prices for the provision of spare parts no later than three (3) months prior to the end of the three (3) year period. Until a new price has been mutually agreed, the most recently agreed price shall apply. The parties agree to negotiate in good faith on the agreement of a new price following this three (3) year period.

#### 9.8 Pricing: Most Favorable Costs; Self-Invoicing; and Taxes

(a) Notwithstanding the agreements on price in the Purchase Contracts issued under the Agreement and in the Cost Breakdowns, in the event the Products or Service Parts, if permitted by the Agreement, are not exclusively delivered to MBUSI, then the actual price to be paid by MBUSI shall in no event be higher than prices paid by any other customer of Supplier for the Products or Service Parts.

(b) Settlement of payments by MBUSI shall be in accordance with MBUSI practices, as adopted from time to time, which may include self-invoicing according to final Vehicle clearance at the end of the MBUSI assembly line.

(c) Taxes paid by MBUSI with respect to MBUSI Owned Equipment shall constitute a downward adjustment to the price to be paid to Supplier by MBUSI.

9.9 Obsolescence. If, after MBUSI has issued a Purchase Contract for any Product or Service Part, such Product, Service Part, or component thereof, subject to the order becomes obsolete, whether by reason of a design change, raw material change, or otherwise and MBUSI agrees that such Product, Service Part, or component thereof is no longer acceptable in connection with the Purchase Contract, Supplier shall have a period of 30 days after acknowledgement in writing by MBUSI of such obsolescence to submit to MBUSI an obsolescence charge for the cost of materials on hand and documented third party expenses incurred by Supplier in connection with such obsolete Product, Service Part or component. The obsolescence charge shall take into account the then current value (whether scrap or otherwise) of the obsolete Products, Exchange Products, service parts or components. After such 30 day period, Supplier waives any claim for an obsolescence charge. MBUSI is not responsible for any Products, Service Part, component, raw materials or other third party expenses incurred by Supplier which are not part of an issued Purchase Contract from MBUSI.

## **SECTION 10: Purchase Contracts and Invoicing**

10.1 The purchase of Product or Service Parts shall be made pursuant to the Agreement through the issuance by MBUSI to Supplier of Purchase Contracts, in forms adopted by MBUSI from time to time for such purpose. Acceptance of each Purchase Contract is expressly limited to the terms of the Agreement and the Contract Documents. Additionally, Supplier shall acquire the MBUSI Owned Equipment pursuant to the Agreement through the issuance by MBUSI to Supplier of Purchase Contracts. Except as otherwise specifically provided herein, the Contract Documents may not be modified, superseded, or altered except by written agreement, by telecopied agreement, or by electronic data agreement signed or issued by an authorized representative of MBUSI, notwithstanding any terms which may now or in the future appear on any quotations, sales orders, acknowledgments, invoices, or other forms issued by Supplier, whether printed, by telecopy, or by electronic data interchange. THE CONTRACT DOCUMENTS SHALL CONTROL IN THE EVENT OF ANY CONFLICT WITH THE TERMS OF ANY QUOTATION, SALES ORDER, ACKNOWLEDGMENT, INVOICE, OR OTHER FORM ISSUED BY SUPPLIER, WHETHER PRINTED, BY TELECOPY, OR BY ELECTRONIC DATA INTERCHANGE, AND REGARDLESS OF THE MEANS BY WHICH SUPPLIER EFFECTS ACCEPTANCE OF THE PURCHASE CONTRACT. This provision shall be deemed to be incorporated into each Purchase Contract issued under the Agreement.

10.2 Supplier is obligated to accept each Purchase Contract issued in accordance with the Contract Documents. Each Purchase Contract shall be deemed to have been accepted by Supplier upon the first to occur of (a) written, telecopied, or electronic data acceptance thereof by Supplier, (b) Supplier's submission of a bid or quote in response to the Source Package; or (c)

Supplier's first shipment or other commencement of performance under the Purchase Contract by Supplier.

10.3 Supplier shall notify MBUSI in writing upon receipt of any Purchase Contract if Product or Service Parts sold hereunder are subject to laws or regulations relating to hazardous or toxic substances; or when disposed of, to regulations governing hazardous waste, or to any other environmental or safety and health regulations. Supplier shall furnish all appropriate shipping certification and instructions for shipping, safety, handling, exposure, and disposal (including, without limitation, material safety data sheets) in a form sufficiently clear for use by MBUSI's non-technical personnel and sufficiently specific to identify all action which the user must take concerning the material.

10.4 MBUSI shall have the right at any time to change any Purchase Contract (whether by adjustment order or otherwise) as to specifications, delivery, packaging, or means of shipment. If any such change is expected to result in either additional or reduced cost to Supplier, Supplier shall immediately inform MBUSI of such fact and Supplier and MBUSI shall agree upon an adjustment in the price or other terms of the Purchase Contract to reflect the change. Any obsolescence charge must be made by Supplier within 30 days as set forth in Section 9.7 above.

10.5 When deliveries are specified to be in accordance with written releases issued by MBUSI, Supplier shall not fabricate or assemble any Product, nor procure required materials, nor ship any supplies, except to the extent authorized by such written releases or provisions of a Purchase Contract specifying minimum fabrication or delivery quantities.

10.6 Separate invoices shall be issued by Supplier for deliveries of the Product and/or Service Parts within thirty (30) days of delivery to the MBUSI dock at destination, unloaded. Invoices shall be issued by Supplier for MBUSI Owned Equipment in accordance with Section 6.2(c) hereof. Delay in receiving invoices, as well as errors and omissions on invoices, shall be considered just cause for withholding payment without losing cash discount privileges. Subject to Section 6.2(c) above, payment terms are as specified by MBUSI from time to time either (a) net 30 days after MBUSI's receipt of the Product and/or Service Parts, or Services, and proper invoice, or (b) net 25th day (approximate) of the month following the month of receipt of the Product and/or Service Parts, or Services, and proper invoice. Each invoice shall specify the Purchase Contract to which it relates. The medium of payment shall be expressed in United States currency.

## **SECTION 11: Liens**

11.1 Waiver and Release of Liens. To the full extent permitted by applicable law, Supplier hereby waives and releases any and all rights of mechanic's lien, materialmen's lien, laborer's lien and similar rights for payment for Product, Service Parts, MBUSI Owned Equipment or other Services, labor, equipment, or materials furnished by Supplier in performance of the Agreement and granted by law to persons supplying materials, equipment, services and other things of value to improve or modify land or structures thereon, which Supplier may have against MBUSI's premises or property belonging to MBUSI or its agents. Supplier shall indemnify and save

harmless MBUSI and its employees, agents and assigns from and against all laborers', mechanics' or materialmen's liens, or any other lien, claim (including, without limitation, attorneys' fees), charge, or encumbrance, of whatever kind upon the Product, Service Parts, MBUSI Owned Equipment, MBUSI's plant in Vance, Alabama, any property of MBUSI and/or any monies retained by MBUSI or due or to become due from MBUSI to Supplier, arising out of the Services performed by Supplier or by its Lower Tier suppliers or their vendors or Lower Tier suppliers and/or out of the Product, Service Parts, MBUSI Owned Equipment, or other materials, Services or equipment furnished by Supplier or by its Lower Tier suppliers or any of their respective employees, agents, or Lower Tier suppliers under or in connection with the Agreement or in connection with the Product and/or Service Parts.

11.2 Supplier to Keep all Property Free and Clear of Liens. Without limitation and in addition to any other provision in the Agreement, Supplier shall at all times promptly pay for all Services, materials, equipment and labor used or furnished by Supplier in the performance of its obligations under the Agreement and shall at its expense keep all property belonging to MBUSI, including, without limitation, the MBUSI Owned Equipment, free and clear of any and all of the above-mentioned liens and rights of lien arising out of Product or Service Parts or other Services, labor, equipment or materials furnished by Supplier or its employees, materialmen or Lower Tier suppliers in the performance of the Agreement. If Supplier fails to release and discharge any such claim of lien against the property of MBUSI arising out of performance of the Agreement within five (5) working days after receipt of written notice from MBUSI to remove such claim of lien, MBUSI may, at its option, discharge or release the claim of lien or otherwise deal with the lien claimant, and Supplier shall pay MBUSI any and all costs and expenses of MBUSI in so doing, including reasonable attorneys' fees incurred by MBUSI.

## **SECTION 12: Shipment, Packing, and Marking**

12.1 Time and quantity are of the essence in all of the Contract Documents, including, without limitation, each Purchase Contract.

12.2 Shipment. Supplier shall comply with all of MBUSI's logistics directives, as amended from time to time, which shall include, but not be limited to, the provisions set forth in this Section 12.2. MBUSI reserves the right to alter the agreed upon logistics requirements set forth herein. The costs set forth herein are binding until MBUSI elects a change on the logistics requirements. Any additional costs associated with any subsequent logistics requirements shall be agreed upon in the context of change management. Any claims for damages that may arise from a change in logistics requirements are precluded.

(a) Parts Ordering System.

(i) Supplier shall meet MBUSI's just-in-time delivery requirements. MBUSI's parts ordering release system is designed to allow a material flow system that will support a guideline of two (2) hours line side stock. This is based on the pull system which supports low cost/low inventory, just in time material requirements.

(ii) Net requirements will be generated for every part in the six-month horizon with the following conditions existing:

- (A) New RANS (New receipt authorizations);
- (B) Released RANS (Open receipt authorizations); and
- (C) Future Planning (Daily and monthly planning volumes).

(iii) MBUSI will issue a Vendor Material Release Document once a week or daily. This is used for three (3) purposes:

- (A) Provide suppliers and carriers with short and long term demand plans;
- (B) Provide suppliers and carriers with RANS for items to ship; and
- (C) To update suppliers on RANS not yet received by MBUSI.

(iv) The material release will be transmitted by Electronic Data Interchange (EDI) by data set 830. This should be acknowledged by a Functional Acknowledgment (997).

(b) Inventory Control.

(i) The Advance Shipping Notice (ASN) information must be transmitted via EDI within fifteen (15) minutes after a shipment has departed. A RAN cannot be split; therefore, all shipments must be for complete RANS. A Receiving Discrepancy Report (RDR) will be issued whenever the ASN information differs from the actual material received. It is the Supplier's responsibility to arrange and pay for emergency material shipment if required.

(ii) If the MBUSI Quality Assurance Department determines that a Supplier has shipped defective material, the material will be shipped back collect and the material and handling costs will be charged back to the Supplier. If replacement material is required, a new RAN will be issued and premium freight will be the responsibility of the Supplier.



(iii) Supplier Performance Tracking (SPT) will monitor the performance of delivering parts based on the following:

- (A) Delivery of parts on time;
- (B) Receipt of timely and accurate ASNs;
- (C) Receipt of complete RAN quantities on time;
- (D) Proper documentation with shipments;
- (E) Proper identification and labeling of parts; and
- (F) Customer service issues.

(c) Broadcast System. Sequenced Suppliers must have a system that is able to receive an FTP file over the phone line every 3.0 minutes on average. The system must be able to cross reference from BC code to MBUSI part number, and have a degree of maintainability that will allow the Supplier to maintain the BC code/part number relationship. As a Vehicle is lifted to the assembly shop, the broadcast message is sent. Suppliers are responsible for verifying that broadcast data is received, maintaining inventory consistent with demand and relaying any problems to MBUSI immediately.

(d) Electronic Data Interchange (EDI).

(A) MBUSI is using the Auto Industry Actions Group (AIAG) version 3050 sub-set of the American National Standard Institute (ANSI) Accredited Standard Committee (ASC) X12 Electronic Data Interchange (EDI) standards. Supplier shall implement an EDI communication system with MBUSI that enables it to comply with MBUSI's EDI requirements and the eDocs Terms of Use attached hereto as Attachment 4.

(B) When required by MBUSI and pursuant to eDocs Terms of Use attached hereto, Supplier shall use the EDI and eDocs system as the means of communication under the Agreement.

(C) Supplier shall identify an administrator for both the EDI system and the eDocs system. Only the administrator named by the Supplier and registered in MBUSI's portal shall be entitled to enable or to deactivate EDI and eDocs users for Supplier at any time.

(D) Even in the absence of electronic signatures, the parties agree that the orders, decisions and commitments communicated by them over the EDI system and the eDocs system shall be binding and shall be considered legally valid. Offers and acceptances submitted electronically via the EDI system and the eDocs system shall be legally binding upon the Supplier. Decisions and

commitments communicated by one of Supplier's registered users shall constitute binding confirmation of the acceptance of orders or sales agreements. Supplier shall only grant employees and agents entitled to submit legally binding declarations of intent authorized status to make those declarations via the EDI system and the eDocs system. The user IDs and passwords created for the EDI system and the eDocs system shall only be accessible to Supplier's agents and employees who are able to submit declarations of intent, offers and acceptances that are legally binding on Supplier. Supplier shall, and shall cause its employee and agents to keep such IDs and passwords confidential. In the event Supplier terminates its relationship with an employee or agent who has knowledge of such an ID or password, Supplier shall immediately terminate that ID and/or password.

(E) Every process communicated via the EDI system and the eDocs system, and particularly offers, acceptances and communications regarding the Services shall be recorded and stored along with the identification of the user creating it. This record shall be used exclusively as evidence of the content and the fact that a party submitted a legally binding offer, acceptance or declaration of intent.

(e) CAD; Data Exchange.

(i) CAD World.

(A) To ensure the technical processes, it is necessary to guarantee data availability, data archiving and the exchange of Product descriptive CAD data within the development department EBS of MBUSI and to the external partners.

(B) The objective is to ensure the availability, usability and transparency of the necessary CAD data along the respective process chains. This is required as basis for the realization of a digital mockup (DMU).

(C) The CATIA Native Format is obligatory for the development processes (i.e., data platform). This format must correspond to the current CATIA version used in Daimler Development in the MB-Passenger-Car Division.

(D) The release of CAD data takes place exclusively via the CATIA Native Format.

(E) For release, the part must be described through space geometry (skins or exact solids). Information which is not included in the space geometry shall be documented in the derived drawing which belongs to the release.

Development Guidelines are available on the Engineering Portal described in Section 12.2(e)(ii)(A) below.

(ii) Data Exchange.

(A) *Engineering Portal.* Exchanging of CAD (product design) data is handled through the engineering portal, found on the internet at <https://engineering.daimler.com>. Guidelines and standards are also available at this site, as well as links to many related sites, both internal and external to Daimler. To gain access to the engineering portal, Supplier will use its internet-connected browser to connect to the website listed above. Supplier must click on the “Apply for Authorization” link to be prompted for information to apply for an engineering portal (EngP) user-ID and password. The process for data exchange depends on whether Supplier has an Odette (OFTP) connection (which applies in most cases to Suppliers whose product engineering is located in Europe), and procedures for each are set forth below.

(B) *Suppliers with Odette Connections.* If Supplier has an OFTP connection to Daimler, Supplier will exchange data with Daimler using **SWANdirect**, which allows, for example, direct access to the Daimler Geometry Information System. Details on this connection and contact information can be found at: <https://engineering.daimler.com/pub/e/dataexchange.htm>.

(C) *Suppliers without Odette Connections.* If Supplier does not have a direct OFTP connection, Supplier must do its data exchange via SWAN Web, which is a secure, web-based system that allows Supplier to upload data and download data sent to Supplier using a PC and an internet browser. Supplier will need to have java 1.5.0 installed on the PC, which can be found at <http://java.sun.com/downloads/>. The following steps should be taken to obtain SWAN Web access:

(1) Supplier should apply for its EngP User ID in accordance with Section 12(e)(ii)(A) above, which password should end in “.dc”.

(2) After obtaining its EngP User ID, Supplier must send an email to [swanweb.sender@daimler.com](mailto:swanweb.sender@daimler.com), which email should include the new EngP User ID and request SWAN Web access.

(3) If Supplier already has a SWAN Web contract in place, Supplier’s EngP User ID will be added to its SWAN Web account. If Supplier is new to the SWAN Web program, Supplier will receive a contract form to fill out and send in according to the instructions, and such contract must be received in original paper form, signed in ink. Upon receipt and processing of the contract, Supplier’s SWAN Web account will be established.

(4) Once Supplier’s SWAN Web account is created, the SWAN Web support team will send Supplier a digital certificate to install into Supplier’s browser, along with instructions as to such installation. Once the digital certificate is installed, Supplier should be able to pick up its data at <https://engineering-swan.daimler.com>. Supplier will not be able to reach this link without the digital certificate.

(f) Delivery Requirements.

(i) Delivery times specified are times of delivery of the Product and Service Parts at the MBUSI designated place of delivery or destination.

(ii) Supplier agrees to take all actions necessary and appropriate to ensure that its Product, Service Parts, or Services are received by MBUSI as required by the Agreement and by any Purchase Contract issued under the Agreement. Supplier shall inform MBUSI promptly of any occurrence which shall or is reasonably expected to result in any delivery at a time or in a quantity not specified in the Purchase Contract. Supplier shall also advise MBUSI of corrective measures which Supplier is taking to minimize the effect of such an occurrence.

(iii) If Supplier at any time requires or intends to change the location from which Supplier shall ship the Product or Service Parts, Supplier must provide advance notice to MBUSI in order that MBUSI may evaluate the proposed change and negotiate, as necessary, regarding its effect on transit times, packaging methods, logistics costs, or other provisions or implications. If Supplier does not notify MBUSI of any increased transportation charges in advance of a change in shipping point, Supplier shall be responsible for such increased costs.

(iv) In the event of tendered delivery not in compliance with the times and quantities specified in the Purchase Contract, unless caused by a Force Majeure Event: (A) Supplier shall ship the Product or Service Parts at the earliest possible moment and by the fastest practical means, but without any increase in any shipping costs to MBUSI, unless MBUSI has given notice of cancellation as to the late Product and Service Parts, and (B) all charges and expenses, including production changes, additional labor, additional transportation charges, and cover resulting from the failure of Supplier to make delivery in compliance with the times and quantities specified in the Purchase Contract shall be borne and paid by Supplier.

12.3 Transportation.

(a) Shipping and Routing Instructions. MBUSI may specify the carrier and/or method of transportation. Shipment shall be routed in accordance with MBUSI instructions, and, unless otherwise specified by MBUSI, shipment shall be delivered FOB MBUSI dock at destination, freight collect at 1 Mercedes Drive, Vance, Alabama 35490. Supplier shall comply with all of MBUSI transportation routing instructions, including, but not limited to, mode of transportation, utilization of assigned carrier, and identification of the shipping point. MBUSI may at any time, and from time to time, change shipping schedules previously furnished to the Supplier, or direct temporary suspension of scheduled shipments. Supplier shall be responsible for all excess costs incurred because of its failure to comply with the MBUSI transportation instructions.

(b) Transportation Concept. MBUSI's transportation philosophy follows the general concept of frequent deliveries, with the frequency generally determined by Supplier's shipping location, volume and the cost of both the Product and transportation.

(i) In the case where MBUSI directly pays the carrier, Supplier must not include any transportation cost in the part piece price. In the case where Supplier selects and pays the carrier, Supplier shall identify as a separate line item the cost of transportation in the piece price. This cost will be determined by allocating the actual cost per shipment against the actual volume required by the part divided by the total volume of the shipment. Assume a minimum of two deliveries per day, one per shift. Suppliers on dedicated MBUSI routes must be capable of shipping 24 hours per day. Supplier must originally quote both of these methods.

(ii) In all instances in which Supplier provides the transportation, the following conditions must be met:

(A) Supplier is responsible for obtaining a delivery window time from MBUSI;

(B) Deliveries are to be made within the specified window time;

(C) Supplier is responsible for determining and guaranteeing the carrier's transit time;

(D) Supplier's returnable containers are to be reloaded at the time of delivery;

(E) MBUSI will not make allowances for early or late deliveries;

(F) Material release information will have to be supplied to the carrier by the Supplier;

(G) The carrier must have a minimum of \$5 million automotive liability insurance and a minimum of \$2 million general liability insurance. MBUSI is to be named as additional insured; and

(H) The carrier must have a minimum of \$500,000 all-risk transit insurance.

(iii) When Supplier is at fault for a specific mistake, it will be its responsibility to arrange and pay for expedited shipments to MBUSI. It is strongly recommended that Supplier use one of MBUSI's core carriers.

#### 12.4 Packing and Marking.

(a) Bill of Lading (BOL) and Packing Slips. A BOL represents an agreement between Supplier and carrier that the freight pallet quantity is correct and that the material is damage free for pickup. A signed BOL represents the carrier's liability for pallet quantity and that the material was in good shipping condition when they picked it up. Whereas the supplier is liable that the individual part quantity is correct and the material is in good shipping condition. If the carrier is not allowed on Supplier's dock, the carrier is to mark on all of the BOLs Shipper Load & Count (SL&C); therefore Supplier is responsible for the entire load (shortage and damage due to staging the material). Supplier shall pack and mark the Product and Service Parts and make shipments (including shipping on Saturdays and holidays, when requested) in accordance with MBUSI instructions, meet carrier requirements, and assure delivery free of damage or deterioration. MBUSI reserves the right to require packing slips for shipments of Product and Service Parts. If required, all shipments of Product and Service Parts to the MBUSI plant must include two packing slips, or four packing slips in the case of shipments directed to a consolidation point. Whenever shipment is made by truck, Supplier shall enclose one of the packing slips (or packing slip sets in the case of multiple item shipments) in an envelope, and Supplier shall record written instructions on the BOL directing the delivering driver to deliver the envelope to the MBUSI traffic representative upon arrival at the MBUSI plant.

(b) Delays in Invoice Payment. MBUSI shall not be responsible for delays in the payment of the invoices if the following requirements are not met: Invoices, packing slips, and bills of lading must bear the MBUSI-assigned supplier code, Purchase Contract number, part number, Supplier's identification number, the requisition number on quantity buys or the release number on blanket orders, the "Ship-to" address, MBUSI assigned plant location code, "invoice-to" address, and whether containers used are "returnable" or "non-returnable."

(c) Reimbursable Expenses and Rate Differentials. Supplier agrees to reimburse MBUSI for all expenses incurred by MBUSI as a result of improper packing, marking, or routing. If Supplier fails to ship the Product or Service Parts using the MBUSI designated carrier and route, Supplier shall be liable for any rate differential for non-compliance.

(d) Count and Charges. The MBUSI count shall be accepted as final on all shipments. Unless otherwise expressly agreed in writing by MBUSI, no charge shall be made by Supplier for containers, crating, boxing, bundling, dunnage, drayage, or storage.

(e) Returnable Packaging.

(i) In order to minimize waste and cost, a system of returnable containers shall be put in place. Returnable containers include modular or unit load containers such as plastic totes, structural foam bulk knock down bins, plastic pallets, and unique containers such as racks, wire mesh baskets, carts and thermoformed tray packs. It is the responsibility of Supplier to handle all prototype and final packaging development, which includes interior designs to preserve part quality, racking systems, unique containers and all associated testing requirements. Final packaging approval by MBUSI

Logistics is required before any orders are placed or containers are sent to MBUSI. MBUSI reserves the right to reject or refuse the use of any packaging supplier. Suppliers can refer to the packaging guidelines located in the Supplier Communication Guide for a detailed description of the above information.

(ii) Returnable packaging is purchased, owned, maintained and 100% paid by Supplier. It is Supplier's responsibility to ensure that all returnable containers are free of debris that would impact the quality of the material being packaged prior to loading with MBUSI parts. Costs for the packaging shall be quoted as a separate line item included in the piece price. Supplier will only be reimbursed for packaging pertaining to the Logistics circulation as agreed to by MBUSI Packaging Group. The cost for additional packaging required for equipment optimization, external processes, etc. will be borne by Supplier even if the packaging is identical to the production packaging. Supplier will only be reimbursed the amount quoted by the MBUSI preferred packaging supplier if such quote is available. Supplier is required to submit to the responsible MBUSI Packaging Specialist proof of order and receipt of all packaging including dunnage by part number. Supplier must provide quotations when requested by MBUSI. Asset determination shall be agreed upon between Supplier and MBUSI. Suppliers are required to maintain, clean, repair and replace packaging (including interiors) as required. Initial purchases should anticipate loss and maintenance for the program life cycle. The cost to store excess or repair material will be borne by Supplier. Supplier will be responsible to conform to the packaging specifications provided by MBUSI. Packaging is being paid for by MBUSI through piece price. MBUSI has the option to take ownership of the total fleet of returnable containers at the price of \$1.00 upon termination of the Agreement.

(f) Expendable Packaging. Expendable containers should be kept as a back-up for emergency situations only. It shall represent the returnable container in size and part quantity. Expandable packs must include telescopic lids and have hand holes if necessary. Shipping of parts in back up containers requires prior approval from MBUSI. The cost to store and furnish expendable back up packaging will be borne by the Supplier.

(g) Labeling. All containers require two shipping labels on adjacent sides. It is the responsibility of Supplier to provide bar coded labels that meet customer and AIAG standards. All labels are to be constructed of a coated thermal transfer or direct thermal paper material and printed using thermal transfer, laser, or direct thermal. Dot matrix labels will not be accepted. There are twelve required data areas for each label: Part Number, ZGS (Engineering Change Level), Q-Level, Part Quantity, Supplier Number, RAN Number, Staging Area, Lineside Location, Part Description, Storage Location, Dock, and Serial Number. Additionally, there is a "Special Data Area" available for uses not required by this document.

12.5 Location of Suppliers. Unless otherwise agreed upon in writing by MBUSI, just in time Suppliers shall be located within 30 miles of MBUSI's assembly plant in Vance, Alabama, and MBUSI approval of any production/sequencing location is required. Supplier represents and

agrees that it can and will carry out its obligations under this Agreement without investing any amount for the acquisition of any real property, buildings, equipment, installation, furnishings, or supplies which are not easily or reasonably utilized in other activities in which the Supplier is normally involved, and without employing specially-trained personnel unless they can be fully utilized in other activities in which the Supplier is normally involved.

### **SECTION 13: Inspection and Rejection**

13.1 MBUSI may inspect and evaluate all Product or Service Parts (including all MBUSI Owned Equipment, Amortized Supplier Equipment and Supplier MBUSI Equipment and all other tooling and material used in their manufacture), and all Services at times and places designated by MBUSI. All Product or Service Parts received are subject, at the option of MBUSI, to inspection by MBUSI subsequent to arrival at the MBUSI premises or subsequent to the delivery date specified in the Purchase Contract, whichever occurs later. Payment by MBUSI for any Product or Service Parts does not indicate or constitute acceptance and neither inspection nor payment shall relieve Supplier of its responsibility to furnish conforming goods.

13.2 Supplier shall provide and maintain a Supplier Quality Assurance System approved by MBUSI and which meets the MBUSI specifications. Supplier's plan shall be in compliance with the MBUSI Quality Manual and the Source Package. Supplier shall promptly comply with any revisions to such manual, or its successors. Supplier shall perform inspections as designated by MBUSI, and Supplier shall make inspection systems, procedures, and records available to MBUSI upon request.

13.3 Except and only to the extent replaced by a particular specification or Supplier Quality Assurance standard, the following shall apply to inspections of the Product and Service Parts or any shipment, partial shipment, or other unit (whether or not a commercial unit) thereof:

- (a) Inspection shall be in compliance with the terms and descriptions of the Purchase Contract and all Specifications applicable to the Product and Service Parts;
- (b) Notwithstanding payment or any prior inspection, MBUSI may revoke acceptance and reject the Product and Service Parts or require correction and return the Product and Service Parts to the Supplier (at Supplier's expense and risk of loss) if any Product and Service Parts delivered or Services rendered do not conform to applicable requirements;
- (c) If MBUSI requires correction or cure of any non-conforming or defective Product and Service Parts or delivery, MBUSI may instruct Supplier as to the means and methods of cure or cover. If such instructions are given, Supplier shall deliver (at the earliest possible moment and by the fastest practical means, but without any increase in shipping costs to MBUSI) conforming substitutes or replacements for each defective or non-conforming item or delivery of the Product and Service Parts. All defective or non-conforming Product and Service Parts shall be returned pursuant to Supplier's instructions at Supplier's expense, or, in the absence of such instructions within a reasonable time, may be disposed of by MBUSI;



(d) Without limiting its remedies, after notice to Supplier, MBUSI may (i) replace or correct any non-conforming Product and Service Parts or Services, and charge Supplier the cost of such replacement or correction, (ii) cancel the Purchase Contract for default under Section 22 of the Agreement; (iii) subject Supplier's account to a debit for the damages suffered by MBUSI, and/or (iv) cause the removal of Supplier as an approved MBUSI supplier; and

(e) No inspection, tests, approval, or acceptance of Product and Service Parts ordered shall relieve Supplier from liability for (i) defects or other failure to meet the requirements of the Purchase Contract, (ii) latent defects, or (iii) failure by Supplier to meet its warranty obligations hereunder.

#### **SECTION 14: Force Majeure Event**

14.1 Supplier shall not be liable for delays or defaults in furnishing the Product and Service Parts or Services hereunder, and MBUSI shall not be liable for failure to accept the Product and Service Parts or Services hereunder, if such delays or failure on the part of either Party are due to a Force Majeure Event. Upon the occurrence of a Force Majeure Event, the Supplier shall immediately notify MBUSI of the occurrence and MBUSI may suspend performance for as long as the Force Majeure Event continues.

14.2 In the event that Supplier discovers any fact which may, or could with the passage of time, result in a Force Majeure Event, Supplier (a) shall immediately advise MBUSI of such fact and (b) shall do everything possible to take all measures and precautions in order to reduce the effect of the Force Majeure Event upon the needs of MBUSI for the Product, Service Parts, and Services. In addition, at any time at the request of MBUSI, Supplier shall furnish to MBUSI (c) such information as MBUSI may request concerning matters the presence or absence of which could result in delays, and (d) assurance or contingency plans with respect to those matters.

14.3 Supplier expressly acknowledges that a strike, lockout, or any labor disturbance shall not be deemed a Force Majeure Event. Supplier shall notify MBUSI immediately of any actual or potential labor dispute delaying or threatening to delay timely performance of the Agreement, and shall include all relevant information to MBUSI. Supplier shall notify MBUSI in writing six (6) months in advance of the expiration of any current labor contract. Prior to the expiration of any labor contract of Supplier, Supplier shall establish, at its expense, a ninety (90) working day supply of Product and/or Service Parts in a neutral warehouse site which shall not be affected by the labor disturbance and which shall be located in the United States at least fifty (50) miles from Supplier's manufacturing locations. Such supply of Product and/or Service Parts shall be in place at least ten (10) working days prior to the expiration of any labor contract. Supplier shall do everything possible to remain in a position to perform under the Agreement in case of any strike, lockout, or any other labor disturbance affecting the due performance of the Agreement, including such events affecting any sub-supplier and/or any other third party.

14.4 MBUSI shall, without any obligation to Supplier, be entitled to obtain the Products, Service Parts, or Services from other sources for the duration of the inability of Supplier to

perform due to a delay in delivery, whether or not caused by a Force Majeure Event, and reduce the quantity of the Product, Service Parts, or Services specified in existing Purchase Contracts.

### **SECTION 15: MBUSI Intellectual Property/Work Product/Licensing**

15.1 Except as otherwise agreed in the Development Agreement or in the other Contract Documents:

(a) Supplier reserves and maintains exclusive rights to all Supplier Product Intellectual Property Rights, which shall be the sole and exclusive property of Supplier and shall be controlled exclusively by Supplier.

(b) MBUSI shall maintain exclusive rights to all MBUSI Intellectual Property, which shall be the sole and exclusive property of MBUSI and shall be controlled solely by MBUSI, except to the extent licensed herein.

(c) MBUSI hereby grants to Supplier a limited, nontransferable, nonexclusive right and license to use the MBUSI Intellectual Property. Supplier shall have the right to use the MBUSI Intellectual Property only to the extent necessary for Supplier to fulfill its obligations under the Agreement, and for no other purpose whatsoever. MBUSI also grants Supplier the right to sublicense the MBUSI Intellectual Property to its Lower Tier suppliers only to the extent necessary to fulfill their obligations to Supplier in furtherance of Supplier's obligations under the Agreement and subject to each sub-licensee's written agreement to comply with all of the terms of this license to Supplier, and provided that each sub-licensee shall not have the right to grant additional sublicenses to the MBUSI Intellectual Property. Upon termination or expiration of the Agreement for any reason, all licenses and sublicenses in MBUSI Intellectual Property granted pursuant to this Section 15.1(c) shall terminate effective as of the date of termination or expiration of the Agreement, or at the sole option of MBUSI, all sublicenses shall be assigned to MBUSI by Supplier.

(d) Work Product.

(i) The Services, the media in which the Services are rendered or embodied, and all products of the Services, including, without limitation, any MBUSI Intellectual Property (the "Work Product"), created by or arising in Supplier shall belong exclusively to MBUSI.

(ii) Supplier agrees that, to the extent possible, the Work Product is a "work made for hire" for MBUSI, as such term is defined in 17 U.S.C. § 101, and that all copyrights in such Work Product shall be, and are, owned solely, completely, and exclusively by MBUSI. If for any reason the Work Product does not constitute a "work made for hire," Supplier hereby assigns to MBUSI, all of Supplier's right, title, and interest in and to the Work Product, including all MBUSI Intellectual Property. Supplier agrees to execute all documents reasonably requested by MBUSI to further evidence the foregoing

assignment and to provide all reasonable assistance to MBUSI in perfecting or protecting MBUSI's rights in the Work Product.

(e) All materials which Supplier, its Lower Tier suppliers or their sub-suppliers prepare or develop specifically for MBUSI in the performance and completion of the Services hereunder, including documents, calculations, programs, financial or accounting information, maps, sketches, notices, reports, data, models and samples, and any and all inventions and copyrightable material contained therein, shall become the exclusive property of MBUSI, subject to Supplier's or its Lower Tier suppliers' rights to use the same to perform the Services under the Agreement. Supplier agrees to execute all documents and to take all steps requested by MBUSI, at MBUSI's expense, which MBUSI deems necessary or desirable to complete and perfect MBUSI's said ownership and MBUSI's property rights in said material.

15.2 Supplier represents and warrants that the Product and Service Parts sold hereunder shall not infringe upon any United States and/or foreign patent and/or any other third party intellectual property right. The Parties shall advise each other without undue delay when either Party becomes aware of any third party intellectual property claim or right, if any, affecting the use of the Product or Service Parts by MBUSI. As of the date of the Agreement, each Party represents and warrants to the other that neither Party has any actual knowledge of any such third party claim or right. The terms of this Section 15.2 shall survive the termination or expiration of the Agreement.

15.3 In the event of any third party intellectual property claims affecting the use of the Product or Service Parts by MBUSI and/or Daimler, (a) Supplier shall do everything possible to ensure that the Product or Service Parts shall be or remain available for the Vehicle; or (b) Supplier shall, at its expense, either procure for MBUSI and/or Daimler the right to continue using the Product or Service Parts; replace or modify the Product or Service Parts so that it becomes non-infringing; and refund to MBUSI and/or Daimler the full purchase price of the alleged infringing goods; and (c) to the extent restriction of such use cannot be avoided, Supplier shall, at its expense, indemnify and hold harmless MBUSI and/or Daimler from and against any and all loss, damage, expense, or liability (including reasonable legal fees and expenses) that may result by reason of any such infringement or alleged infringement. Additionally, should any ancillary services be provided as part of any transactions covered by the Agreement, and if such ancillary services are deemed to constitute an intellectual property right or process, then Supplier hereby conveys and grants to MBUSI and/or Daimler the exclusive right to such intellectual property right or rights. The terms of this Section 15.3 shall survive the termination or expiration of the Agreement.

15.4 In the absence of the prior written agreement of Supplier, MBUSI and/or Daimler to the contrary, all inventions, products, processes, apparatus, or designs, patentable or non-patentable, conceived, invented, or originated by either Party prior to the date hereof shall remain the property of that Party.

## SECTION 16: Warranties

16.1 Supplier shall abide by, and shall pay the full cost and expense arising from the breach of, any and all representations and warranties made by Supplier set forth in this Section 16. Supplier shall comply with and abide by the procedures and other terms and conditions set forth in the current version of the MBUSI Warranty Process, attached hereto as Attachment 7 (as may be amended from time to time).

16.2 Supplier warrants and represents to MBUSI that all Product and Service Parts (a) shall conform to the Specifications, drawings, samples, and other descriptions upon which any Purchase Contract issued under the Agreement is based, and shall be new, fit, and sufficient for the purposes intended; (b) shall be merchantable, and (c) shall be free from defects in material and workmanship in each case as extended by MBUSI or Daimler (or in agreement for the account of MBUSI or Daimler) to Vehicle purchasers or users, from time to time in the respective markets, for 48 months, unless applicable law requires the warranty period to be different. An Emission Warranty of 8 years in accordance with the applicable law will apply.

16.3 Supplier further warrants that, on delivery, MBUSI shall receive good title to the Product and Service Parts, free and clear of all liens and encumbrances.

16.4 The warranties set forth in Sections 16.2 and 16.3 above are in addition to any warranties express or implied by law or equity or otherwise made by Supplier, and shall survive acceptance and payment by MBUSI and termination of the Agreement.

16.5 Supplier acknowledges that the warranties set forth in this Section 16 extend to all Product or Service Parts, notwithstanding the fact that such Product and/or Service Parts may be produced by any of Supplier's Lower Tier suppliers, including, without limitation, Directed Lower Tier suppliers, and, therefore, the warranties and other provisions of this Section 16 shall not be disclaimed or otherwise limited in any way due to the fact that any Product or Service Parts have been produced by one of Supplier's Lower Tier suppliers, including, without limitation, Directed Lower Tier suppliers.

16.6 The warranties set forth in Sections 16.2, 16.3, 16.4 and 16.5 hereof (a) shall run to MBUSI, Daimler, their customers and users of their products; (b) shall be in compliance with all applicable laws and regulations as to form and content, and shall be furnished in copies and in a manner sufficient to permit MBUSI, Daimler, Suppliers, and retail sellers to comply with applicable laws and regulations; (c) shall not limit in any way other warranty or other representations of Supplier to MBUSI or Daimler; and (d) shall conform to warranty handling procedures adopted by MBUSI or Daimler, where appropriate.

16.7 Supplier has provided complete information concerning the handling, use, storage, and function of the Product and Service Parts, including descriptions, instructions, cautions, and warnings, if applicable, on actual or potential dangers in the use or misuse of the Product or Service Parts, necessary or advisable for MBUSI to provide to the users of the Product or Service Parts.

16.8 Supplier shall pay the full cost and expense of any warranty claim resulting from a defective or deficient part of any Product and/or Service Parts, as covered by the MBUSI/Daimler warranty to MBUSI in Sections 16.2, 16.3, 16.4 and 16.5 hereof, and in accordance with the current version of the MBUSI Warranty Process. MBUSI claims for reimbursement and corresponding payments by Supplier shall be processed in line with the scheme MBUSI has established from time to time in relation to its suppliers.

16.9 Supplier, at its expense, (including, without limitation, costs of removal, packing, transportation, and reinstallation), agrees to promptly replace or correct defects of any Product, Service Parts, or Services not conforming to the warranties herein, when notified of such nonconformity by MBUSI. In the event Supplier fails to promptly correct defects in, or replace, nonconforming Product or Service Parts, MBUSI, after reasonable notice to Supplier, may make such corrections or replace such Product, Service Parts, and Services, and charge Supplier for costs of materials, labor, transportation, or other costs incurred by MBUSI. In addition to any other remedies it may have, MBUSI may reject nonconforming Product and return it to Supplier at Supplier's expense; provided, however, that nonconforming Product or Service Parts may not be replaced without the written authorization of MBUSI.

16.10 Supplier shall comply and shall cause all Product and Service Parts to comply, with all applicable federal, state, and local laws, rules, regulations, orders, and association and other standards applicable to the manufacture, labeling, transportation, licensing, approval, or certification thereof. If applicable to the Product and Service Parts, Supplier shall certify in writing such compliance at the request of MBUSI. Supplier agrees to take all steps necessary to remove from the MBUSI facilities any materials provided under a Purchase Contract that do not comply with any federal, state, or local laws, rules, regulations, or standards relating to the environment or safety.

16.11 Whenever Supplier becomes aware that any component of the Product or Service Parts are or may become harmful to persons or property, or that the design or construction of the Product or Service Parts is defective in any manner which is or may become harmful to persons or property, Supplier shall immediately give notice thereof, including all relevant information with respect thereto, to MBUSI and Daimler.

16.12 Supplier has obtained, or shall obtain, any required approvals by any government or governmental agency for the sale or use of the Product or Service Parts, as applicable from time to time, and Supplier shall furnish MBUSI with copies or other satisfactory evidence of all such approvals. MBUSI, at its sole option, may obtain or assist Supplier in obtaining such approvals.

16.13 Supplier also warrants that no part of any Product, Service Parts, goods, or Services provided under the Agreement shall contain any traces of silicone (any of a large class of polymers of R<sub>2</sub>SiO where R is a hydrocarbon).

16.14 Supplier warrants that the prices for the articles sold to MBUSI hereunder are no less favorable than Supplier currently extends to any other customer for the same or similar Product, Service Parts, or Services in similar quantities. If Supplier reduces its prices to others for the

same or similar Product, Service Parts, or Services during the term of any Purchase Contract, Supplier shall reduce the prices to MBUSI for such Product, Service Parts, or Services to the same extent. Supplier warrants that prices shown on each Purchase Contract are complete, and that no additional charges of any type shall be added without the express written consent of MBUSI.

16.15 If Supplier sells any Product and/or Service Parts covered by any Purchase Contract to a third party for incorporation into an assembly which is to be sold to MBUSI, the price for such Product and/or Service Parts shall be no more than the price provided in the Purchase Contract, plus any additional costs actually incurred by Supplier in providing the Product and/or Service Parts to such third party.

16.16 The warranties and representations contained in this Section 16 are specifically for the benefit of MBUSI, DAG, and any entity claiming by or through MBUSI or DAG.

16.17 The MBUSI warranty claim has the following five (5) basic elements, which represent the total expense to the Vehicle incurred by the MBUSA retailer:

- (a) Labor: The standard repair time to replace or repair a failed part, based on the MBUSA Vehicle Time Guide, multiplied by the average labor rate.
- (b) Parts: Replacement parts purchased by the MBUSA retailer from the MBUSA/Parts Distribution Center or Daimler Global Logistics Center at landed cost.
- (c) Parts Handling: A parts handling charge for administration and handling of defective parts is paid to the MBUSA retailer.
- (d) Sublet: Repairs or services not provided by the MBUSA retailer (e.g., machine shop, paint shop, etc.).
- (e) Indirect Cost: Consequential damages, e.g., damage caused to other components as result of the defective part (e.g., heater core leak damages the interior). Consequential damages include also the cost for mobility (e.g., loaner cars).

### **SECTION 17: Product Liability**

17.1 Notwithstanding any other provision in the Agreement, Supplier shall indemnify and hold harmless MBUSI, Daimler, and any authorized distributor of the Vehicle against all claims, liabilities, losses and damages (including reasonable legal fees and expenses) asserted against or incurred by MBUSI, Daimler and/or any authorized distributor of the Vehicle, on the basis of product liability, including, without limitation, consequential damages and lost profits arising from a Recall Campaign, regardless of the legal ground therefor, to the extent a product liability claim relates to or arises out of a given or alleged defect in any Product and/or Service Parts.

### **SECTION 18: Service Parts**

18.1 MBUSI and/or its sales and service organization shall service the Product and Service Parts in the scope of its customer service. Supplier shall provide the necessary technical assistance as needed from time to time, commencing with a proposal for a remanufacture and replacement program for the Product and Service Parts. To the extent of exclusive delivery to MBUSI as provided for in Section 3.3 above, MBUSI/Daimler shall have exclusive rights for servicing the Product and distributing Service Parts therefor.

18.2 Supplier shall be obligated to supply MBUSI with Service Parts for the Product and the MBUSI service and warranty requirements for a period of fifteen (15) years after the termination or expiration of the Agreement, including any renewal term, or for such longer time as may be required by MBUSI after the final Purchase Contract has been filled. The price of the part for the MBUSI service requirements shall be the price provided in the applicable Purchase Contract, plus costs actually incurred for special packaging.

18.3 If any Service Part is no longer required for MBUSI's Vehicle production, then the price of the part for MBUSI service requirements shall be no greater than the last price stated in the applicable Purchase Contract for the part no longer required for Vehicle production for a period of three (3) years after end of production, plus any additional costs actually incurred by Supplier for special packaging. After the end of the three-year period Supplier must fully document any request for price adjustments due to the production of fewer units. Supplier will document all requests for price adjustments, including, but not limited to, machine productivity, scrap allowance, labor inefficiencies and excess raw material requirements, to MBUSI's reasonable satisfaction (Open-Book-Policy).

## **SECTION 19: Recall Campaign**

19.1 In the event MBUSI and/or Daimler determine that a Recall Campaign is necessary to remedy a breach of Supplier's warranty or to comply with law, regulations, orders, or other government requirements, the full cost and expense of such campaign shall be borne by Supplier, unless Supplier proves that there was no defect or deficiency in the Product and/or Service Parts, as the case may be.

## **SECTION 20: Status and Financial Reporting by Supplier/Bankruptcy**

20.1 In order to anticipate problems and minimize disruption, Supplier grants to MBUSI the right, at all reasonable times, to full and complete access to its books and records concerning the following: (a) Supplier's general financial solvency; (b) Supplier's ability to pay its debts as they come due; (c) all actual, threatened and asserted consensual liens, non-consensual liens and interests in or to any MBUSI Owned Equipment, Amortized Supplier Equipment, Supplier MBUSI Equipment, MBUSI Intellectual Property or Work Product (or tangible embodiments thereof) or any other personal property, real property, inventory, intellectual property, plat or equipment being used or intended to be used, in whole or in part, to produce Products, Service Parts, tools, dies and/or jigs for MBUSI; (d) any labor or employment issues that might result in the slowing or stoppage of Supplier's production of Products and/or Service Parts for MBUSI; (e) any action by any government, taxing authority or administrative agency that might result in the slowing or stoppage of Supplier's production of Products and/or Service Parts for MBUSI; and (f) anything else that might result in the slowing or stoppage of Supplier's production of Products and/or Service Parts for MBUSI. Supplier shall pay to MBUSI an audit fee, not to exceed \$10,000 annually, to the extent MBUSI pays a third-party to obtain or review some or all of this information. Moreover, Supplier shall require each of its Lower Tier sub-suppliers and their sub-suppliers (and so on) to grant MBUSI the same rights as set forth in this Section 20.1 of the Agreement, which shall be included in the Lower Tier Acknowledgment and Waiver in accordance with the provisions of Section 38 hereof. Supplier agrees to promptly provide its relevant financial information to MBUSI from time to time upon request utilizing MBUSI's Financial Quick Check form or other document as applicable.

20.2 If and when MBUSI so requests, Supplier shall immediately, upon notice from MBUSI, assume and assign its contracts with sub-suppliers to MBUSI or any other person or entity that MBUSI so designates. Further, Supplier shall not contest any motion by MBUSI to lift such stay in order that MBUSI may obtain possession and control of any sub-supplier special tooling and equipment in the possession of Supplier, if the special tooling and equipment is required to continue the performance of the Agreement by MBUSI as a third-party beneficiary of the sub-supplier contracts.

## **SECTION 21: Term of Agreement**

21.1 The Agreement shall enter into force on the earliest date of the following events to occur: (a) issuance by MBUSI of a Scope of Work to source the Product with the Supplier; or (b) issuance of any Purchase Contract for tooling and/or for any Product or Service Part and shall continue for the program production life of the Vehicle (plus an additional 15 years with respect to Service Parts, as provided in Section 18), unless earlier terminated in accordance with Section 22 below.



## SECTION 22: Remedies/Termination

22.1 MBUSI shall have all remedies available to it provided by each of contract (including, without limitation, the Agreement and all other Contract Documents), statute, common law and otherwise, and all of MBUSI's remedies are cumulative. The exercise of one remedy by MBUSI does not restrict the exercise of any other remedies by MBUSI.

22.2 Notwithstanding any other provision of the Agreement, MBUSI may terminate the Agreement and/or any Purchase Contract issued under the Agreement at any time with or without cause in whole or in part by written notice, whereupon Supplier shall stop work on the date and to the extent specified in such notice, and terminate all orders and subcontracts that relate to the Agreement and/or the terminated Purchase Contract. In such case, MBUSI shall have no liability with respect to goods or components procured, or worked on, or supplies partially fabricated, in excess of the authority contained in this Section 22.2. Upon termination pursuant to this Section 22.2, Supplier shall submit all claims resulting from such termination within thirty days after receipt of the termination notice. MBUSI shall have the right to verify such claims by auditing the relevant records, facilities, work, or materials of Supplier and/or its subcontractors. MBUSI shall pay Supplier for finished work accepted by MBUSI, as well as for the documented cost to Supplier of work in process and raw materials allocable to the terminated work which are not in excess of any prior MBUSI authorization. Payment made under this Section 22.2 shall constitute the only liability of MBUSI for termination under the Agreement, with title and right of possession to all delivered goods and services vesting in MBUSI immediately upon tender of payment by MBUSI. The provisions of this Section 22.2 shall not apply to any cancellation by MBUSI for default by Supplier. In no event shall MBUSI be liable for prospective or anticipated profits by reason of such termination, and Supplier shall not assert any claim for loss of prospective or anticipatory profits or consequential damages under any circumstances.

22.3 If MBUSI has decided to cancel all activities with respect to the Project, MBUSI shall be liable to Supplier only for tooling costs incurred by Supplier up to the applicable maximum amount specified in the applicable Purchase Contracts issued for the respective tools.

22.4 Supplier acknowledges that, in entering into the Agreement, MBUSI shall become entirely dependent upon Supplier for the timely production of samples and prototypes of the Product, for the potential supply of the Product, for the potential supply of Service Parts relating to the Product, and for the production by MBUSI of the Vehicle in accordance with the schedules contemplated in the Agreement. Supplier further recognizes that failure to timely and fully perform its obligations hereunder may affect the viability of the Project, or the manufacturing of the Vehicle, and that MBUSI shall suffer substantial losses and damages which cannot be measured solely in monetary terms. Supplier, therefore, expressly agrees that MBUSI shall have the immediate right to compel specific performance of the Agreement by Supplier, or alternatively, to terminate the Agreement upon written notice to Supplier under Section 22.2 above, if Supplier (a) fails to meet any key milestone for the development of the Product and such failure continues for more than 10 days beyond such milestone date; (b) fails to deliver goods or perform services at the times specified herein; (c) fails to perform any other provision

hereof and fails to cure such failure within a period of 10 days after receipt of written notice from MBUSI specifying such failure; (d) ceases doing business as a going concern, admits in writing its inability to perform its obligations under the Agreement as and when due, becomes insolvent, makes an assignment in favor of creditors, or enters bankruptcy or dissolution proceedings; (e) is merged into another company and/or is expropriated or nationalized; or (f) furnishes any certificate, statement, representation or warranty that proves to be false in any material respect. In any such event, MBUSI may cancel the whole or any part of the Agreement without any liability, except for payment due for Product, Service Parts, or Services delivered and accepted. Upon such breach, MBUSI shall have the right, on notice to Supplier, to take title to and possession of all or any part of such work performed by Supplier under any Purchase Contract issued under the Agreement. In addition, in any such event MBUSI shall be entitled to recover from Supplier all losses, expenses, and damages, including attorney's fees, costs, and incidental and consequential damages which MBUSI may suffer as a result of such default by Supplier.

22.5 In the event Supplier fails to provide MBUSI with Product as defined herein that meets the Quality and Performance Standards set forth by MBUSI or otherwise, MBUSI may terminate the Agreement or seek any additional reasonable remedies for Supplier's continued failure to meet quality standards as expressed to Supplier in documents including, but not limited to, the Supplier Quality Assurance Manual.

22.6 If the Agreement is terminated by MBUSI or if Supplier is otherwise in default under the Agreement, or if MBUSI, in its exclusive judgment, determines that Supplier is unable or soon will be unable to deliver timely all of the Product and/or Service Parts needed by MBUSI, MBUSI may exercise all rights and remedies available under applicable law and under the Agreement, specifically including, without limitation, the right to take possession immediately (without the necessity of posting a bond) of all MBUSI Owned Equipment, Amortized Supplier Equipment, Supplier MBUSI Equipment and all tangible embodiments of MBUSI Intellectual Property or Work Product in any medium whatsoever and to remove the same from Supplier's premises or wherever the MBUSI Owned Equipment, Amortized Supplier Equipment, Supplier MBUSI Equipment or any tangible embodiment of MBUSI Intellectual Property or Work Product may be located. Supplier shall cooperate with and assist MBUSI in connection with its exercise of the foregoing rights and shall in no event seek to oppose or interfere with the exercise by MBUSI of such rights. To the extent Supplier MBUSI Equipment is multi-use equipment (i.e., used for more than the Services performed hereunder) and cannot be removed from Supplier's facility or wherever such Supplier MBUSI Equipment may be located, MBUSI shall have the right to use such Supplier MBUSI Equipment on the Supplier's premises or wherever such Supplier MBUSI Equipment is located. MBUSI shall have access, which access is hereby granted by Supplier, to all Lower Tiers and the right to direct, control and complete all work being performed by all Lower Tiers. In any such event, MBUSI shall be entitled to recover from Supplier all losses, expenses, and damages, including attorney's fees and costs and incidental and consequential damages which MBUSI may suffer as a result of such default by Supplier. In this regard, MBUSI's cost incurred in breaking down, packing, moving, and reassembling the MBUSI Owned Equipment, Amortized Supplier Equipment, Supplier MBUSI Equipment and/or tangible

embodiments of MBUSI Intellectual Property or Work Product in order that the MBUSI Owned Equipment may be used by MBUSI or its assignee shall constitute recoverable damages.

22.7 If the Agreement is terminated by MBUSI or if Supplier is otherwise in default under the Agreement, or if MBUSI, in its exclusive judgment, determines that Supplier is unable or soon will be unable to deliver timely all of the Product and/or Service Parts needed by MBUSI, then, to enable MBUSI to have an uninterrupted supply of Product and/or Service Parts from which to assemble and manufacture the Vehicle, Supplier hereby grants to MBUSI the right to operate or to have a third party operate one or more lines of production at Supplier's facilities to assemble and manufacture the Product and/or Service Parts that MBUSI needs to assemble and manufacture the Vehicle on a timely basis without interruption to MBUSI's production of the Vehicle. Supplier agrees that to manufacture the Product and/or Service Parts pursuant to this Section 22.7, it will provide MBUSI unfettered access to an entire production line or lines, which shall include, without limitation, access to equipment, employees, energy sources, raw materials, inventory, and the like (whether or not MBUSI has an interest in such items). MBUSI shall be entitled to an immediate court order granting MBUSI the operating rights set forth in this Section 22.7. MBUSI shall be entitled to operate such line or lines of production in its own name, or through a contractor or a court appointed receiver or trustee. MBUSI shall be responsible for paying all of the actual costs of running the line or lines of production (such as wages, raw materials, inventory costs and energy costs), and MBUSI may (but is not required to) pay such amounts directly to the party providing the labor, inventory, services or energy; provided, however, that in no event shall MBUSI be responsible for paying Supplier's routine costs or overhead. Furthermore, MBUSI may elect to set off any payments due pursuant to this Section 22.7 against those amounts owed by Supplier to MBUSI.

22.8 In order to enable MBUSI to continue with the manufacture of the Product and Service Parts in the event MBUSI takes possession of the MBUSI Owned Equipment, Amortized Supplier Equipment, Supplier MBUSI Equipment and/or tangible embodiments of MBUSI Intellectual Property or Work Product pursuant to any Section of the Agreement, Supplier shall ensure in its contracts with its sub-suppliers (including any Lower Tiers) that such contracts can be assigned to MBUSI. Furthermore, Supplier shall ensure in its contracts with sub-suppliers (including any Lower Tiers) that, in the event of termination under any Section of the Agreement, Supplier may take possession of the sub-supplier's special tooling and equipment and assign such special tooling and equipment to MBUSI as a third party beneficiary. To the extent the sub-supplier special tooling is multi-use equipment (i.e., used for more purposes than in connection with the Services provided hereunder) and cannot be removed from the sub-supplier's facility, Supplier shall ensure that Supplier and/or MBUSI shall have the right to use such sub-supplier special tooling and equipment on the sub-supplier's premises or wherever such sub-supplier special tooling and equipment is located.

22.9 MBUSI may at any time and without notice deduct or set-off or recoup Supplier's claims for money due or to become due from MBUSI or any affiliate of MBUSI (including, without limitation, Daimler and DAG) against any claims that MBUSI or any affiliate (including, without limitation, DAG) of MBUSI has or may have arising out of this or any other transaction. These rights of set-off and recoupment apply equally in any court proceeding, including a determination

of how much money Supplier might be owed on a bonded indebtedness. Moreover, to the extent that MBUSI has a set-off or recoupment claim or defense against Supplier, the amount of money subject to such claim or defense shall not be owed by MBUSI to Supplier.

22.10 All of MBUSI's remedies hereunder shall survive the termination of the Agreement. Moreover, to the extent provisions of the Agreement are intended to survive any expiration or termination of the Agreement, these provisions shall remain in effect accordingly.

22.11 All rights granted to MBUSI in this Section 22 shall be acknowledged by Supplier's Lower Tier sub-suppliers (and their sub-suppliers, and so on) pursuant to the Lower Tier Acknowledgement and Waiver required under Section 38 of the Agreement.

### **SECTION 23: Possession of MBUSI Owned Equipment**

23.1 At any point during the term of the Agreement, MBUSI shall have the right to immediate possession of any of the MBUSI Owned Equipment (regardless of whether fully paid for by MBUSI), Amortized Supplier Equipment, Supplier MBUSI Equipment and/or any tangible embodiment of MBUSI Intellectual Property or Work Product in any medium whatsoever, regardless of the location of such MBUSI Owned Equipment, Amortized Supplier Equipment, Supplier MBUSI Equipment and/or tangible embodiment of MBUSI Intellectual Property or Work Product, and to remove the same from Supplier's premises or wherever the MBUSI Owned Equipment, Amortized Supplier Equipment, Supplier MBUSI Equipment and/or tangible embodiment of MBUSI Intellectual Property or Work Product, as the case may be, may be located. To the extent Supplier MBUSI Equipment is multi-use equipment (i.e., used for more than the Services performed hereunder) and cannot be removed from Supplier's facility or wherever such Supplier MBUSI Equipment may be located, MBUSI shall have the right to use such Supplier MBUSI Equipment on the Supplier's premises or wherever such Supplier MBUSI Equipment is located. If demanded by Supplier, MBUSI will post a bond contemporaneously with MBUSI removing such MBUSI Owned Equipment, Amortized Supplier Equipment, Supplier MBUSI Equipment and/or tangible embodiment of MBUSI Intellectual Property or Work Product, but only if (i) the Agreement has not been terminated, (ii) Supplier is not in default hereunder, (ii) MBUSI, in its exclusive judgment, has not determined that Supplier is unable or soon will be unable to deliver timely all of the Product and/or Service Parts needed by MBUSI. The bond amount will be equal to the cost of the MBUSI Owned Equipment, Amortized Supplier Equipment, Supplier MBUSI Equipment and/or tangible embodiment of MBUSI Intellectual Property or Work Product, as evidenced by the purchase price paid by MBUSI pursuant to Section 6.2 above, less any amounts which may have already been paid for such MBUSI Owned Equipment, Amortized Supplier Equipment, Supplier MBUSI Equipment and/or tangible embodiment of MBUSI Intellectual Property or Work Product.

23.2 MBUSI's rights pursuant to Section 23.1 above shall be included in the Lower Tier Acknowledgment and Waiver contemplated by Section 38 hereof.

### **SECTION 24: Indemnity**

24.1 Supplier shall indemnify and hold harmless MBUSI against all claims, liabilities, losses, expenses, fees, and other damages in connection with (a) any breach by Supplier of the Agreement; (b) for injury or death of any person; (c) for any and all disposition of any and all wastes, hazardous and/or non-hazardous, generated as a result of any processing for prototype or pre-production trial or any other process or Product generated as a result of the relationship with MBUSI; and (d) for damage or loss of any property in each case allegedly or actually resulting from, or arising out of, any act, omission, or negligence of Supplier or its employees, agents, or subcontractors in connection with performing any aspect of the Agreement, including, without limitation, any claim or defect or alleged defect in the design, materials, manufacture or sale of the Product, Service Parts or Services, and/or any claim, damage or loss relating to computer programs or computer related dates, whether Supplier, its affiliates, employees, or agents are or are not negligent.

24.2 In the event that any claims, demands, or lawsuits are made or brought against MBUSI or Daimler relating to the Product or Service Parts in connection with Supplier Specifications or relating to the trade name, trademarks, copyrights or patents in connection with the manufacturing process, and/or based upon unfair competition by reason of sale or use of the Product or Service Parts by MBUSI or Daimler, Supplier shall indemnify and hold harmless MBUSI and Daimler against all actions brought against MBUSI or Daimler, pay all costs of any lawsuit, including reasonable legal fees and expenses, and indemnify and hold harmless MBUSI or Daimler for any cost incurred by MBUSI or Daimler in connection therewith.

24.3 If Supplier's work under any Purchase Contract issued under the Agreement involves operations by Supplier on the premises of MBUSI, Supplier shall take all necessary precautions to prevent the occurrence of any injury to person or property during the progress of such work and will, upon written request of the MBUSI Safety Department, provide information concerning its Experience Modification Rates (EMR), OSHA rates, a description of any serious or fatal injury to any of the employees within the preceding year, and a copy of its written Safety Plan. Supplier agrees to indemnify and hold harmless MBUSI against all liabilities, claims, or demands for injuries or damage to any property or person including, without limitation, any employees, agents, or representatives of Supplier, growing out of such performance, and to pay MBUSI's reasonable legal costs and expenses in connection therewith.

24.4 Supplier shall provide worker's compensation, comprehensive general liability, automobile, public liability, and property damage insurance in amounts and coverages sufficient to cover all claims hereunder, with insurers acceptable to MBUSI. Such policies shall name MBUSI as an additional insured thereunder and shall contain endorsements stating that the policies are primary and not excess over or contributory with any other valid, applicable, and collectible insurance in force for MBUSI. MBUSI may require Supplier to furnish evidence of the foregoing insurance, but failure to comply with these insurance requirements does not relieve Supplier of its liability and obligation under this Section 24.4.

24.5 Except as provided herein, in the event of any suit, claim, threatened claim, or notification of a claim which may be the subject of indemnification provided for in this Section

24, the Party receiving such notification shall provide prompt written notice thereof to the other Party.

24.6 The provisions of this Section 24 shall survive the termination or expiration of the Agreement.

## **SECTION 25: Confidentiality**

### 25.1 Confidentiality Obligations

(a) Any and all Proprietary Information which is disclosed by one Party (the “Disclosing Party”) to any other Party (the “Receiving Party”) pursuant to or in connection with the Project, shall be held in confidence by the Receiving Party as and to the extent provided herein, provided, however, that for purposes hereof, the Receiving Party in the case of MBUSI shall be deemed to include Daimler, and any other of its affiliated companies. However, notwithstanding the preceding, there is no obligation on the part of MBUSI to deem information provided by Supplier to be other than public and nonproprietary, or to take other than reasonable precautions concerning its confidentiality and/or disclosure, unless Supplier gives MBUSI and/or Daimler specific written notice of any such Proprietary Information (and of any license or other agreement relating to the use or dissemination thereof) embodied in the Product or Service Parts prior to delivery thereof.

(b) The Proprietary Information transmitted to Supplier by MBUSI in connection with the performance of any Purchase Contract is the property of MBUSI and may be covered by one or more MBUSI or Daimler patents, patent applications, or copyrights. Supplier shall handle all Proprietary Information in such a manner to ensure that it is not used for any purpose detrimental to the interests of MBUSI or Daimler. Supplier shall secure written approval from MBUSI before any Proprietary Information relating to any Purchase Contract (other than relating to Supplier’s own standard commercial items) are released to anyone other than those requiring the Proprietary Information for the performance of work under any Purchase Contract issued under the Agreement. Supplier shall (in the absence of a written mutual agreement for its use for other purposes) use the Proprietary Information only for the purpose of filling a Purchase Contract issued under the Agreement. If the Proprietary Information is in written, graphic, or other tangible form, it shall be returned to MBUSI promptly at its request.

### 25.2 Protection. Subject to Section 25.3 below:

(a) Proprietary Information shall be protected by the Receiving Party with the same degree of care as the Receiving Party uses to protect its own proprietary or confidential information.

(b) Proprietary Information may be used by the Receiving Party only for the purposes of the Agreement.

(c) Proprietary Information shall not be disclosed to others by the Receiving Party without the prior written consent of the Disclosing Party.

(d) Disclosure of Proprietary Information by one Party to the other shall not convey any rights in such Proprietary Information to the Receiving Party other than as expressly set forth in the Agreement.

(e) To the extent represented by or in samples, writings, drawings or other tangibles, Proprietary Information shall be returned to the Disclosing Party simultaneously with the termination under the Agreement or at any time upon demand.

25.3 Exceptions to Confidentiality Obligation. Nothing herein shall affect any Party's right to use or disclose to others any and all information which is now or subsequently:

(a) in the public domain other than as a result of any breach of any obligation under the Agreement by the Party seeking to use or disclose the information;

(b) known to the Receiving Party prior to its disclosure to the Receiving Party by the Disclosing Party, other than as a result of a breach of a duty of confidentiality owed to the Disclosing Party;

(c) disclosed to the Receiving Party by a third party without breach of a duty of confidentiality owed to the Disclosing Party and known to the Receiving Party; or required to be disclosed by applicable law, legal process, or in connection with any judicial process, arbitration or other proceedings between the Parties to the extent necessary for a Party to present fairly its position.

25.4 The confidentiality obligations set forth in this Section 25 and elsewhere in this Agreement shall survive the termination of this Agreement indefinitely.

## **SECTION 26: Taxes**

26.1 Product and Service Parts.

(a) Under no circumstances will sales, use or other taxes be added to the purchase price of Product or Service Parts. Pursuant to MBUSI's direct pay permit authority (Permit Number 456), Supplier shall not include any allowance or amount for sales and use tax payment in calculating any payments due, by application for payment, change order or otherwise in connection with the performance of the Agreement. Federal excise taxes charged to MBUSI shall be separately stated, or shall be indicated as being included in the unit price.

(b) Supplier shall pay any and all personal property taxes and/or ad valorem taxes assessed or otherwise levied against Product and Service Parts while in the hands of Supplier.

26.2 MBUSI Owned Equipment.

(a) As the user of the MBUSI Owned Equipment, Supplier shall pay sales or use tax upon its purchase of MBUSI Owned Equipment. Supplier will not be reimbursed for such sales or use tax and such cost shall not be included in the cost of the MBUSI Owned Equipment. Upon a request from MBUSI, Supplier shall provide proof of payment of sales and use tax arising upon Supplier's purchase of the MBUSI Owned Equipment. Supplier shall not charge or collect sales tax upon Supplier's sale of the MBUSI Owned Equipment to MBUSI.

(b) From and after the MBUSI Owned Equipment Title Transfer Date, MBUSI shall file all personal property tax returns with the appropriate taxing jurisdiction where the MBUSI Owned Equipment is located. From and after the MBUSI Owned Equipment Title Transfer Date, MBUSI will pay the personal property taxes arising on the MBUSI Owned Equipment and the cost associated with such payments of tax shall reduce MBUSI's price for Product and Service Parts as provided in Section 9.6(c).

**SECTION 27: Notices**

27.1 Unless advised otherwise in writing by the pertinent Party, any notice or other communications made or required to be made pursuant to the Agreement shall be in writing, must be in English (which is preferred, consistent with Section 2.2 of the Agreement) or German, and shall be addressed as follows:

As to MBUSI:	Mercedes-Benz U. S. International, Inc. 1 Mercedes Drive Vance, Alabama 35490 Attention: General Counsel
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As to Supplier:	Supplier's Most Current Address On File with MBUSI
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and shall be deemed duly given on the date received by the addressee.

**SECTION 28: Relationship**

28.1 Neither Supplier nor its subcontractors, or the employees or agents of them, shall be deemed to be MBUSI employees, or agents, it being understood that Supplier and its subcontractors are independent contractors for all purposes and at all times, and Supplier shall be wholly responsible for withholding or payment of all federal, state and local income and other payroll taxes with respect to its employees, including contributions from them, and as required by law.

**SECTION 29: Gratuities**



29.1 With respect to and in connection with the Agreement or otherwise with Supplier's relationship with MBUSI, Supplier shall desist and refrain from all practices which may lead to penal liability due to fraud or embezzlement, insolvency crimes, crimes in violation of competition, guaranteeing advantages, bribery, acceptance of bribes or other corruption crimes on the part of persons employed by Supplier or other third parties. MBUSI may, by notice to Supplier, immediately terminate the right of Supplier to proceed or continue under the Agreement if it is found that gratuities (in the form of entertainment, gifts, or otherwise), were offered or given by Supplier, or any agent or representative of Supplier, to any officer or employee of MBUSI for the purpose of securing the Agreement or securing favorable treatment with respect to the awarding, or the making of any determinations with respect to the performance of the Agreement. In the event the Agreement is terminated as provided in this Section 29.1, MBUSI shall be entitled to pursue the same remedies against Supplier as it could pursue in the event of a breach of the Agreement by Supplier. The rights and remedies of MBUSI provided in this or any other Section shall not be exclusive and are in addition to any other rights and remedies provided by law and equity or under the Agreement. The above notwithstanding, the Supplier is obliged to adhere to all laws and regulations applicable to both itself and the commercial relationship with MBUSI.

### **SECTION 30: Enforcement and Severability**

30.1 The rights and remedies herein reserved to MBUSI are cumulative and in addition to any other or further rights and remedies available at law or in equity. The failure of MBUSI at any time to enforce any of the provisions of the Agreement or any right with respect thereto, or to exercise any option herein provided, shall in no way be construed to be a waiver of such provisions, rights, or options or in any way to affect the validity of the Agreement. In the event that any one or more of the provisions contained herein shall for any reason be held to be invalid and/or unenforceable, such invalidity/unenforceability shall not affect any other provision of the Agreement. The Agreement shall then be construed as if such invalid/unenforceable provision(s) had never been contained herein and such invalid/unenforceable provision(s) shall be replaced with valid and enforceable provision(s), the commercial effect of which shall be as similar as possible to the invalid/unenforceable provision(s).

### **SECTION 31: Choice of Law, Jurisdiction, and Compliance with Laws**

31.1 The Agreement and all questions arising out of or in connection with the Agreement shall be governed by and construed in accordance with the laws of the State of Alabama as if entirely performed therein and without giving effect to its conflict of law rules.

31.2 Supplier agrees to litigate all claims and actions arising under or otherwise concerning the Agreement in an Alabama court of competent jurisdiction. MBUSI may initiate legal proceedings in any other court having jurisdiction over Supplier. SUPPLIER HEREBY WAIVES ANY RIGHT SUPPLIER MAY HAVE TO A JURY TRIAL ARISING FROM ANY DISPUTES RELATED IN ANY WAY TO THE AGREEMENT. SUPPLIER HEREBY CONSENTS TO JURISDICTION IN THE STATE OR FEDERAL COURTS OF ALABAMA AND WAIVES ANY OBJECTION TO *IN PERSONAM* JURISDICTION IN ANY COURT SITTING IN ALABAMA.

31.3 MBUSI, at its option, may also invoke binding and exclusive arbitration with respect to any dispute arising out of or relating to the Agreement, or the breach thereof, or any Purchase Contract issued hereunder. If such arbitration is invoked by MBUSI, the Supplier agrees to submit to such arbitration and to dismiss any legal proceedings relating to the subject matter of the arbitration. Any such arbitration will be administered by the American Arbitration Association under its Commercial Arbitration Rules and judgment upon the award rendered by the arbitrator may be entered by any court having jurisdiction. The arbitration will be conducted in the English language in the city of Birmingham, Alabama, in accordance with the United States Arbitration Act (as the Parties agree that the Agreement impacts or is related to interstate commerce). There shall be one arbitrator, who shall be selected by MBUSI from the American Arbitration Association's National Roster. The award of the arbitrator shall be accompanied by a statement of the reasons upon which the award is based. The arbitrator shall decide the dispute in accordance with the substantive law of the State of Alabama.

31.4 The Parties hereby confirm that they are aware of the Applicable Laws, and, in connection with the activities of the Parties related to this Agreement, Supplier hereby commits to strict compliance with such Applicable Laws and makes the following representations and warranties as of the date of this Agreement and for the duration of this Agreement in connection with its activities related to this Agreement:

(a) Supplier, for itself and on behalf of its Affiliated Persons, represents, warrants and covenants that:

(i) Supplier and its Affiliated Persons are solely responsible for complying, have to their best knowledge complied, and will comply, with Applicable Laws and have to their best knowledge not taken and will not take or fail to take any action, which act or omission would subject MBUSI or its affiliated companies to liability under Applicable Laws;

(ii) neither Supplier nor any of its Affiliated Persons has, to its or their best knowledge, offered, paid, given or loaned or promised to pay, give or loan, or will offer, pay, give or loan or promise to pay, give or loan, directly or indirectly, money or any other thing of value to or for the benefit of any Government Official, for the purposes of corruptly (a) influencing any act or decision of such Government Official in his official capacity, (b) inducing such Government Official to do or omit to do any act in violation of his lawful duty, (c) securing any improper advantage or (d) inducing such Government Official to use his influence with a Government Entity to affect or influence any act or decision of that Government Entity, in each instance to direct business to Supplier or MBUSI or its affiliated companies; and

(iii) in case Supplier or any of its Affiliated Persons is or will become a Government Entity or a Government Official whose official duties include decisions to direct business to Supplier, MBUSI or its affiliated companies or to supervise, or otherwise control or direct the actions of, Government Officials who are in a position to direct business to Supplier or MBUSI or its affiliated companies, Supplier or the

respective Affiliated Persons have to make sure, that conflicts of interest will be excluded and to inform MBUSI without undue delay about the measures taken.

(b) Supplier shall assist and cooperate fully with the efforts of MBUSI to comply with Applicable Laws. In particular, Supplier shall keep accurate books and records and Supplier shall immediately notify MBUSI of any information that bribes or other improper payments are being requested, made or offered in connection with this Agreement. Upon request of MBUSI, Supplier shall make those records which are necessary for MBUSI to verify Supplier's compliance with the Applicable Laws relating to this Agreement available to a sworn auditor who is obligated to observe secrecy and selected by MBUSI. If such auditor notices any failure by Supplier to comply with the Applicable Laws Supplier agrees that the auditor may disclose information relating to Supplier's failure to MBUSI and, to the extent required by a legal demand by a competent court of law or government body, to third parties.

(c) In no event will MBUSI be obligated to Supplier under or in connection with this Agreement to act or refrain from acting if MBUSI believes that such act or omission would cause MBUSI to be in violation of Applicable Laws. In no event will MBUSI be liable to Supplier for any act or omission which MBUSI believes is necessary to comply with Applicable Laws.

(d) If Supplier or any of its Affiliated Persons breaches any of the representations, warranties or covenants in this Section each of which is deemed to be material and continuously made throughout the term of this Agreement, then, in addition to any other rights MBUSI may have under this Agreement:

(i) MBUSI may declare a forfeit of any unpaid amounts owing to Supplier and will be entitled to repayment of any amounts paid or credited to Supplier, in each case, which are prohibited by Applicable Laws; and

(ii) MBUSI may immediately terminate this Agreement; and

(iii) Supplier shall, upon first written request by MBUSI, indemnify and hold harmless MBUSI in regard to any and all cost and claims brought forward against MBUSI arising out of any failure of Supplier to comply with its representations, warranties and covenants of this Section.

31.5 Supplier shall also adhere to the standards and requirements of Daimler regarding sustainability and environmental protection as specified in MBST 36/10.

31.6 The 1980 United Nations Convention on Contracts for the International Sale of Goods, to the extent it may be deemed to apply, shall not, pursuant to Article 6 thereof, apply to the Agreement or any transactions pursuant hereto.

31.7 To the extent Supplier procures components or parts for the Product or Service Parts from Mexico, trade benefits arising out of or in connection with sourcing in Mexico, pursuant to

the Mexican Decree for Development and Modernization of the Automobile Industry of December 11, 1989 (as amended and/or replaced by similar law), and its implementing regulations, shall accrue to the MBUSI Mexican affiliate, as identified by MBUSI from time to time. Supplier shall cause its Mexican suppliers to transfer such trade benefits to the MBUSI Mexican affiliate, and to meet all requirements to assure that the MBUSI Mexican affiliate may make use of such trade benefits.

### **SECTION 32: Immigration**

32.1 Supplier (i) shall at all times during the term of this Agreement comply, in all respects with all immigration laws, statutes, rules, codes, orders and regulations, including, without limitation, the Immigration Reform and Control Act of 1986, as amended, the Immigration and Nationality Act, as amended, and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, the Beason-Hammon Alabama Taxpayer and Citizen Protection Act, and all other applicable state or local laws, as amended, and any successor statutes, laws, rules and regulations thereto (collectively, the "Immigration Laws"), (ii) has properly maintained, and shall at all times during the term of this Agreement properly maintain, all records required by the Department of Homeland Security (the "DHS"), including, without limitation, the completion and maintenance of the Form I-9 for each of Supplier's employees located in the United States, and (iii) has responded, and shall at all times during the term of this Agreement respond, in a timely fashion to any inspection requests related to such I-9 Forms by DHS or by MBUSI. During the term of this Agreement, Supplier shall, and shall cause its directors, officers, managers, agents and employees to, fully cooperate in all respects with any audit, inquiry, inspection or investigation that may be conducted by the DHS of Supplier or any of its employees. All agreements and contracts between Supplier and its Subcontractors shall provide, and shall require the Subcontractors to cause all agreements and contracts with Sub-subcontractors to provide, that the Subcontractor or Sub-subcontractor, as the case may be, is subject to all of the terms and conditions of this Agreement, except to the extent expressly stated otherwise in the Contract Documents.

32.2 Supplier will not knowingly employ, hire for employment, or continue to employ any unauthorized aliens to perform any Services, and Supplier agrees to attest to such representation by a sworn affidavit in the form attached as Attachment 5. Supplier shall require each Subcontractor and Sub-Subcontractor to furnish to Supplier an affidavit similar to Attachment 5. Furthermore, Supplier will not knowingly allow any Subcontractors or Sub-Subcontractors to employ or continue to employ any unauthorized aliens to perform any Services. Prior to performing any Services, Supplier agrees to enroll and maintain enrollment in the federal work authorization program by the DHS commonly known as E-Verify or any subsequent replacement program (the "E-Verify program"), to provide to MBUSI evidence of Supplier's enrollment in the E-Verify program, and to utilize the E-Verify program during the performance of the Agreement in accordance with the applicable state and federal rules and regulations. Supplier will retain and make available for inspection by MBUSI, or any authorized governmental agency, at the Site (and if requested provide a copy to MBUSI), on the first day of employment or upon reasonable notice, a completed I-9 Employment Eligibility Verification Form and an E-Verify confirmation. Upon request, Supplier will provide to MBUSI any available copies

of associated employment eligibility, identity, and work authorization documentation for each person that Supplier employs on the Site. If Supplier receives actual knowledge of the unauthorized status of one of its Site employees, or if Supplier learns of facts that would lead a reasonable person to infer the unauthorized status of any Site employee, Supplier will immediately remove that employee from the Site, inform MBUSI, and shall require each Subcontractor and Sub-Subcontractor to act in a similar fashion with respect to such Subcontractor's or Sub-Subcontractor's employees.

32.3 Supplier shall indemnify, protect, defend and hold harmless MBUSI and its affiliates and its and their respective directors, stockholders, members, managers, officers, employees, agents, consultants, representatives, successors, transferees and assigns (collectively, the "MBUSI Indemnified Parties") from and against any and all damages arising from, relating to or associated with any actual or alleged actions or omissions of Supplier or its employees, agents, representatives, Subcontractors, or Sub-subcontractors, or any employees, agents, representatives or contractors of any of the foregoing, in connection with the performance of the Services hereunder.

32.4 Supplier represents and warrants that each employee and Subcontractor and Sub-Subcontractor employee will have evidence of appropriate immigration authorization to perform the Services at the MBUSI jobsite. On-site credentials will not be issued by MBUSI for any Supplier or Subcontractor or Sub-Subcontractor employee unless the employee meets these requirements. Suppliers who fail to present evidence of appropriate immigration authorization to MBUSI shall not be allowed to perform work at MBUSI in accordance with applicable laws and regulations. The Supplier shall remain responsible for any and all damages incurred for failing to meet the appropriate immigration requirements and failure to remedy will be a breach of contract. It is the responsibility of the Supplier to seek legal counsel and bear all costs for obtaining such immigration authorization for its employees and Subcontractors' and Sub-Subcontractors' employees prior to these employees' assignment to the MBUSI jobsite.

32.5 All indemnification obligations in Section 32 of this Agreement shall be enforced to the fullest extent permitted by applicable law for the MBUSI Indemnified Parties' benefit, regardless of the causes or alleged causes of the claims.

### **SECTION 33: Advertising**

33.1 Supplier shall not, without the prior written consent of Daimler, in any manner publish the fact that Supplier has furnished or contracted to furnish MBUSI with goods and/or services, or use the name or trademarks of Daimler, its products, or any of its associated companies in Supplier's advertising or other publication. Supplier shall not place its or any third parties' trademark or other designation on the part if the part is a Marked Part. Supplier shall sell Marked Parts, and similar goods, only to Daimler and shall not sell Marked Parts or similar goods to third parties without Daimler's prior written consent.

### **SECTION 34: Assignment**

34.1 Both parties acknowledge, understand, and agree that MBUSI, in entering into the Agreement, depends upon special trust, confidence, and an ongoing special and unique relationship between the Parties. Supplier hereby acknowledges that the Agreement, by reason of said special and unique relationship, may not be assumed, assigned, or delegated without the prior express written consent of MBUSI pursuant to 11 U.S.C. § 365 or any similar statute, state or federal, and hereby expressly waives any and all rights Supplier has under 11 U.S.C. § 365 to assume and assign the Agreement without the express written and prior consent of MBUSI. The Agreement, including any rights arising therefrom, may not be assigned or delegated, in whole or in part, by either Party, unless it has received the prior written consent by the other Party. Notwithstanding the foregoing, MBUSI may assign the Agreement in whole to any affiliated company that may pursue the Project in its stead.

34.2 The Agreement shall be binding and inure to the benefit of the Parties and, subject to Section 34.1 above, to their respective successors and assigns.

### **SECTION 35: Diversity**

35.1 MBUSI seeks to have a diverse supplier base and thus encourages Supplier to have a diverse workforce and diverse supplier base. This may be accomplished by Supplier using its best efforts to contract and sub-contract with business establishments which meet one or more of the following conditions: (i) a small business, as defined in Title 15, Section 632 of the United States Code and related regulations; (ii) a small business owned and controlled by socially disadvantaged individuals (that is, more than fifty percent (50%) of the business is owned and controlled by one or more socially and economically disadvantaged individuals and the management and daily business operations are controlled by one or more of such individuals); and (iii) a business that is more than fifty percent (50%) owned by a woman or women who also control and operate the business. Supplier shall inform MBUSI annually the percentage, based on a dollar value, of the content provided by its suppliers which meet one or more of the preceding conditions for the Product, Service Parts, or Services purchased hereunder, as well as the basis for claiming that such content was provided by a supplier which meets one or more of the preceding conditions.

35.2 MBUSI expects the Supplier to use its best efforts to achieve a total of at least five percent (5%) initial content in the Product to come from such businesses.

35.3 Supplier understands and agrees that the Agreement is between Supplier and MBUSI, but that DAG or other affiliates of DAG may act as an agent or representative of MBUSI for various purposes under this Agreement and the development and production of the Vehicle. DAG and such affiliates shall be third party beneficiaries under this Agreement.

## **SECTION 36: Pollution and Waste**

36.1 Supplier agrees to become certified to ISO 14000 no later than the start of production pursuant to this Agreement, or such other date upon which the Parties may mutually agree. Supplier agrees to provide MBUSI with annual proof of its ISO 14000 certification.

36.2 Supplier shall notify MBUSI in writing upon receipt of a Purchase Contract issued under the Agreement if goods sold thereunder are subject to laws or regulations relating to hazardous or toxic substances or, when disposed of, to regulations governing hazardous waste, or to any other environmental or safety and health regulations. Supplier shall furnish all appropriate shipping certification and instructions for shipping, safety, handling, exposure and disposal (including, without limitation, material safety data sheets and TSCA certification) in a form sufficiently clear for use by MBUSI's nontechnical personnel and sufficiently specific to identify all actions which the user must take concerning the material. Supplier is responsible for complying with the TSCA requirements in accordance Section 7.9 of the Agreement, and with MBUSI Purchasing procedures for chemicals and related parts in accordance with MBUSI's Chemical Approval & Hazard Communication Procedure attached hereto as [Attachment 1](#).

36.3 To the extent that Supplier is present on MBUSI premises, the Supplier must take all necessary measures to prevent the release of contaminants of all kinds, to prevent any discharge into sanitary sewer system drains, sinks, clean-outs, or sumps, to prevent any discharge into any storm sewer system drain on the MBUSI site, and to prevent any chemical spills and/or releases of any kind, including hydraulic oil line failures. The Supplier is required to comply with the Environmental Protection Plan-Supplier's Edition attached hereto as [Attachment 2](#).

## **SECTION 37: Captions**

37.1 The headings of each section of the Agreement are intended for ease of reference only and shall not be used to limit, interpret, or modify the provisions of the Agreement or the rights and obligations of the Parties.

## **SECTION 38: Acknowledgment**

38.1 Supplier shall require all of its Lower Tier suppliers, whether or not listed on Supplier's Chain of Supply List, to execute a Lower Tier Acknowledgment and Waiver in accordance with the provisions of this Section 38. Supplier shall deliver all fully executed acknowledgments to MBUSI to keep on file with Supplier's Chain of Supply List. MBUSI is specifically authorized by Supplier to directly engage, contact and communicate with all of Supplier's sub-suppliers, subcontractors and vendors regarding their performance and production of products and/or services for Supplier in connection with its performance under this Agreement.

38.2 In the Lower Tier Acknowledgement and Waiver required hereunder, each Lower Tier shall agree to and acknowledge the following:

(a) All of MBUSI's rights and remedies set forth in Sections 6.3, 6.4, 20, 22 and 23 of these Master Terms, and agree that MBUSI shall have all of the same rights and remedies against Lower Tier as those it has with respect to Supplier, which are set forth in those Sections.

(b) Except as otherwise set forth in the Development Agreement or other Contract Documents, MBUSI owns the MBUSI Intellectual Property and Work Product at all times during the term of the Agreement, and that MBUSI has granted Supplier a non-exclusive, non-transferable license to use such MBUSI Intellectual Property. However, MBUSI has agreed to permit Supplier to sub-license the MBUSI Intellectual Property to Lower Tier only to the extent necessary for Lower Tier to fulfill its obligations to Supplier in furtherance of Supplier's obligations under the Agreement. Lower Tier shall not grant any additional sublicense in and to the MBUSI Intellectual Property. Any sublicense in the MBUSI Intellectual Property shall automatically be revoked upon termination of the Agreement. Lower Tier agrees with and shall comply with the terms and restrictions of MBUSI's license of MBUSI Intellectual Property.

(c) A waiver by Lower Tier, substantially similar to the provisions of Section 11.1 herein, of mechanic's lien, materialmen's lien, laborer's lien and similar rights for payment.

(d) An obligation by Lower Tier, substantially similar to Supplier's obligation set forth in Section 11.2 herein, to keep property free and clear of liens.

### **SECTION 39: Integration Clause**

39.1 The Agreement is the exclusive, complete, and integrated statement of agreement between the Parties with respect to the subject matter hereof, and shall supersede all prior agreements, negotiations, representations, and proposals, whether written or oral, relating to the supply of Product or Service Parts. Except as otherwise permitted by the Agreement, no provision of the Agreement may be changed or modified except by agreement in writing signed by both Parties.

### **SECTION 40: Absolute Obligation to Supply**

40.1 By acceptance of a Purchase Contract, Supplier understands and agrees that its obligations under this Agreement are absolute, and at no time, may Supplier refuse to perform or stop shipment, even if MBUSI is in breach of this Agreement. Supplier is entitled to seek damages for any alleged breach by judicial process, in accordance with this Agreement, but Supplier must continue with performance under this Agreement at all time. The parties specifically acknowledge and agree that any actual or threatened cessation of performance by Supplier shall constitute bad faith on the part of Supplier.

### **REFERENCED ATTACHMENTS TO MASTER TERMS DIRECT PURCHASING**

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Attachment 1	CHEMICAL APPROVAL & HAZARD COMMUNICATION PROCEDURE - MBUSI
Attachment 2	ENVIRONMENTAL PROTECTION PLAN-SUPPLIER'S EDITION
Attachment 3	QUALITY MANUAL - MBUSI as amended and posted on MBUSI's electronic Supplier Portal.
Attachment 4	EDOCS TERMS OF USE
Attachment 5	IMMIGRATION AFFIDAVIT
Attachment 6	BILL OF SALE
Attachment 7	MBUSI WARRANTY PROCESS

ATTACHMENT 1

CHEMICAL APPROVAL & HAZARD COMMUNICATION PROCEDURE

See attached

ATTACHMENT 2  
ENVIRONMENTAL PROTECTION PLAN-SUPPLIER'S EDITION

See attached

ATTACHMENT 3  
QUALITY MANUAL - MBUSI

See attached

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ATTACHMENT 4  
EDOCS TERMS OF USE

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## EDOCs TERMS OF USE AGREEMENT

These terms of use applicable to the eDocs IT application available on the Daimler Supplier Portal for use by Mercedes Benz U.S. International, Inc. suppliers are agreed between

Name:

Address:

(referred to hereinafter as "Supplier")

And

Mercedes Benz U.S. International, Inc.  
1 Mercedes Drive  
Vance, Alabama 35490

(referred to hereinafter as "MBUSI")

Supplier and MBUSI referred to hereinafter as the "Parties"

### Preamble

The Parties are introducing eDocs with the intention of establishing paperless exchange of business correspondence in electronic form.

With the eDocs IT application operated by and on the premises of MBUSI, MBUSI provides the Supplier with direct access, via the internet, to purchasing documentation between the parties. For these purposes, purchasing documentation is defined in particular as inquiries, orders and sales agreements. Suppliers in eDocs use the same method to respond "online", by means of a secure data connection, to that documentation sent to them, with declarations of intent in the form of offers and confirmations of acceptance of an order or of a sale. eDocs also provides a binding means of electronic contracting, which, in practical terms, is equivalent to the conventional exchange of business documentation.

In view of the innovative nature of the application and in order to clarify the legal effect of those documents created using eDocs, the Parties have concluded the following agreement. Otherwise, all other underlying organizational and legal conditions remain unaffected by eDocs.

## 1. Access

The eDocs application is accessed by means of the Daimler Supplier Portal (<https://daimler.covisint.com>). This portal provides Suppliers with secure and standardized access to all of those applications authorized for the particular Supplier. The Supplier Portal provides for decentralized administration on the Supplier's premises. Only that administrator named by the Supplier and registered in the portal shall be entitled to enable or to deactivate new eDocs users for the Supplier at any time.

## 2. Binding Nature of Declarations Made

2.1 All purchasing documentation - in particular inquiries, orders and sales agreements - sent via eDocs to the Supplier's registered eDocs users shall be declarations of intent binding upon MBUSI in respect of the content as it is framed.

2.2 Documentation submitted electronically by the Supplier's registered eDocs users shall be binding upon the Supplier. Similarly, actuation of those functions available in eDocs by one of the Supplier's registered users shall constitute binding confirmation of the acceptance of orders or of sales agreements.

## 3. Data Security

3.1 MBUSI shall take reasonable technical and organizational measures so that:

- Only eDocs users registered for the Supplier by means of a valid user ID, in combination with the associated valid password, are able to gain access to eDocs and that data made available in eDocs is not accessible to third parties or available for manipulation by third parties;
- Secure access to eDocs is provided by means of the HTTPS protocol in use in particular;
- None of the electronic documents can be amended after they have been sent to the Supplier or to Daimler Supplier Portal in eDocs; and
- Only the Supplier's registered eDocs users are able to gain access to offers not yet submitted and in temporary storage and to internal processing notes in the fields designed for that purpose.

Every process in eDocs, in particular confirmations and offers, shall be recorded and stored with the ID of the user creating it. This record shall be used exclusively as evidence of the content and of the fact that binding declarations of intent were actually submitted, in the event of differences of opinion arising between the Parties on such matters. Both Parties expressly agree to accept this evidence, even for the purposes of any possible legal dispute.

3.2 The Supplier shall take reasonable organizational measures so that:

- Only people entitled to submit binding declarations of intent in the Supplier's name using eDocs shall be granted authorized status for eDocs by the registered administrator in question;
- The user IDs and passwords created for eDocs are accessible only to those members of staff granted authorized status for eDocs by the administrator;
- Members of staff granted authorized status for eDocs undertake to observe confidentiality in their treatment of user IDs and of the associated passwords and not to disclose same to third parties;
- User IDs known to members of staff leaving the service of the Supplier or to members of staff, who, for other reasons, are to be denied access to eDocs, are deactivated automatically and without undue delay.

Supplier is solely responsible for all acts or omissions of any person who accesses the eDocs application or the Daimler Supplier Portal using an ID or password of any Supplier or other User, including compliance with these Terms of Use. Supplier must therefore take measures to maintain the confidentiality of those ID's and passwords and enforce those measures with all Users.

#### **4. Ownership and Protection of MBUSI Confidential Information**

4.1 Supplier and users will have access to a variety of confidential and proprietary information about MBUSI's business, including but not limited to the following types of information:

- Pricing, cost and other financial information, including but not limited to MBUSI's pricing for purchased parts or tools on Purchase Contracts or engineering or manufacturing change notices;
- Engineering, Design and Manufacturing information, including processes, data, transactions, current and future products and plans, volumes, capacity, transportation and delivery schedules; and
- Quality information, including MBUSI's parts approval process, defect reports and history; (collectively "MBUSI Confidential Information").

4.2 As between Supplier and MBUSI, all MBUSI Confidential Information, and including any and all data that MBUSI enters directly or indirectly into the eDocs application or the Daimler Supplier Portal ("Data") remains the property of MBUSI. MBUSI owns all right, title and interest,



including any and all copyrights, patents, trade secrets, trademarks, trade dress or any other proprietary right in the MBUSI Confidential Information and Data and in any derivative or improvement of any of it. If MBUSI requests, Supplier agrees to return to MBUSI, or destroy and give notice of destruction if requested, all copies of any MBUSI Confidential Information or Data in any form that Supplier may possess.

**4.3 COMPLIANCE WITH LAWS:** In connection with the activities of the Parties related to this Agreement, Supplier is obliged to desist from all practices which may lead to penal liability due to fraud or embezzlement, insolvency crimes, crimes in violation of competition, guaranteeing advantages, bribery, acceptance of bribes or other corruption crimes on the part of persons employed by the Supplier or other third parties. In the event of violation of the above, MBUSI has the right to immediately withdraw from or terminate all legal transactions existing with Supplier and the right to cancel all negotiations.

The above notwithstanding, Supplier is obliged to adhere to all laws and regulations applicable to both itself and the commercial relationship with MBUSI.

Supplier shall adhere to the standards and requirements of Daimler regarding sustainability and environmental protection as specified in the current version of Mercedes-Benz Special Terms 36.

## **5. Archiving and Retention Periods**

The Parties agree to continue to assume responsibility themselves for compliance with those statutory or other retention and archiving obligations relevant to commercial documentation. eDocs documents may be printed out or downloaded for use as supporting evidence.

## **6. Time and Scope of Use**

eDocs shall be used in business dealings between MBUSI and the Supplier once the Supplier's administrator has enabled the eDocs users.

## **7. Data Protection; Disclaimer of Warranties**

The personal information gathered in connection with the setting up of the eDocs application will be used exclusively for user administration and to ensure that the application is run properly and securely. This data will not be processed or used for any other purpose.

Disclaimer of Warranties

THE FUNCTIONALITY OF THE EDOCS SUPPLIER PORTAL AND ALL CONTENT IS PROVIDED TO YOU "AS IS", WITHOUT ANY WARRANTIES OF ANY TYPE, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, TITLE, AND NON-INFRINGEMENT. SUPPLIER AND ITS USERS USE THE EDOCS

PORTAL, GLOBUS AND THE INTERNET AND ALL CONTENT OF ANY TYPE ENTIRELY AT SUPPLIER'S OWN RISK.

Without limiting the foregoing, MBUSI expressly disclaims responsibility as follows:

a. Responsibility for Data Accuracy, Errors, Destruction or Delay – MBUSI is not responsible for (i) the accuracy of, or for any errors in, any content of the eDocs application or the Daimler Supplier Portal; (ii) any delay in the transmission of any content of the eDocs application or the Daimler Supplier Portal; (iii) the destruction of any content of the eDocs application or the Daimler Supplier Portal by anyone or any system, in each case, even if the error, delay or destruction, as applicable, harms Supplier or otherwise affects Supplier's ability to meet its obligations to MBUSI or any third party.

b. Responsibility for Security of the eDocs application or the Daimler Supplier Portal or of the Internet – MBUSI is not responsible for the security of, or for unauthorized access or use or other security violations by anyone, in each case, for either eDocs application or the Daimler Supplier Portal or the Internet, even if the security violation harms Supplier or otherwise affects Supplier's ability to meet its obligations to MBUSI or any third party.

c. Responsibility for Unavailability, Service Levels or Support of the eDocs application or the Daimler Supplier Portal or the Internet – MBUSI is not responsible for the availability of, or lack of availability of, or the speed or response time, or technical or other support in the event of malfunctions, delays or outages, in each case, for either eDocs application or the Daimler Supplier Portal or the Internet, even if the unavailability, speed or response time or lack of or deficient support harms Supplier or otherwise affects Supplier's ability to meet its obligations to MBUSI or any third party.

d. Responsibility for the business results that Supplier or its Users obtain from use or the inability to use the eDocs application or the Daimler Supplier Portal – MBUSI is not responsible for the business results that Supplier or its Users obtain when they use, or when they are unable to use, the eDocs application or the Daimler Supplier Portal.

## **8. Limitations of Liability**

MBUSI WILL HAVE NO LIABILITY FOR ANY DAMAGES OF ANY TYPE, INCLUDING DIRECT, INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING LOST PROFITS OR REVENUES, ARISING OUT OF ERRORS, THE LOSS OR DESTRUCTION OF DATA OR BUSINESS INTERRUPTION, EVEN IF MBUSI HAD REASON TO KNOW THE LIKELIHOOD OF SUCH DAMAGES AT THE TIME OF SUCH DAMAGES AT THE TIME OF CONTRACTING.

## 9. Term of the Agreement

This Agreement shall be valid for an indefinite period and shall enter into force when it is signed by both Parties. Either Party shall be entitled to terminate it upon 30 days' notice at any time, except that Supplier is not relieved of its obligations under these Terms of Use so long as any person with a Password or ID assigned to Supplier has access to the Daimler Supplier Portal, including the time it may take MBUSI or Daimler AG to deactivate all Passwords and ID's assigned to Supplier.

MBUSI may terminate Supplier's or any or all of its Users' access to Daimler Supplier Portal immediately and without prior notice for any reason and in MBUSI' sole discretion. In addition and outside the control of MBUSI, Daimler AG may terminate Supplier's or any or all of its Users' access to the Daimler Supplier Portal, with or without notice and with or without cause and MBUSI will have no responsibility or liability in connection with such termination.

## 10. Other Provisions

10.1 Written form shall be required for amendments and additions to this present eDocs Term of Use Agreement. Ancillary agreements in verbal or electronic form shall be invalid.

10.2 MBUSI reserves the right to modify these Terms of Use at any time. MBUSI will take reasonable measures to notify Supplier of any such modifications and provide Supplier with the opportunity to review such changes and accept or reject the new versions.

10.3 Should any provision of this present eDocs Terms of Use Agreement be or become invalid, this fact shall not affect the validity of the remaining provisions. However, the Parties shall replace the invalid provision with a valid provision whose effect comes as close as possible to the economic content of the original provision.

10.4 The present Agreement shall be governed by the law of the State of Alabama; application of the United Nations Convention on Contracts for the International Sale of Goods is excluded.

10.5 Any breach of the confidentiality provisions of these Terms of Use will result in irreparable harm to MBUSI. Supplier therefore agrees that MBUSI has the right to an injunction or other equitable relief to enforce these Terms of Use and any provision herein, without prejudice to any other rights and remedies that MBUSI may have.

**MERCEDES-BENZ U.S. INTERNATIONAL,  
INC.**

**SUPPLIER**

\_\_\_\_\_  
Signature / Date

\_\_\_\_\_  
Signature / Date

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Company

\_\_\_\_\_  
Company

ATTACHMENT 5

**IMMIGRATION AFFIDAVIT**

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ )

Before me, the undersigned Notary Public in and for said county and said state, personally appeared \_\_\_\_\_ (hereinafter called "Affiant"), an authorized representative of [Company Name], a \_\_\_\_\_ ("Company"), who is known to me, and who being first duly sworn by me, deposes and says as follows:

1. Affiant is of legal age and is a resident of \_\_\_\_\_.

2. Affiant, in his role as [Job Title] of the Company, has personal knowledge of the matters set forth in this Affidavit.

3. Company is enrolled in the federal work authorization program administered by the U.S. Department of Homeland Security known as the E-Verify program, as established by the documentation attached hereto.

4. Company will not knowingly employ, hire for employment, or continue to employ any unauthorized aliens.

5. Affiant has executed this Affidavit in Affiant's capacity as [Job Title] of Company.

**COMPANY**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Sworn to and subscribed before me

this \_\_\_\_ day of \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
Notary Public  
My commission expires: \_\_\_\_\_

[Notary Seal]

*[SEE ATTACHED DOCUMENTATION ESTABLISHING THAT COMPANY IS ENROLLED IN THE E-VERIFY PROGRAM]*

ATTACHMENT 6

BILL OF SALE

This bill of sale ("Bill of Sale"), dated \_\_\_\_\_, \_\_\_\_ by and between \_\_\_\_\_ ("Supplier") and Mercedes-Benz U.S. International, Inc. ("MBUSI").

KNOWN BY ALL PERSONS BY THESE PRESENTS:

That Supplier, for and in consideration of good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, has SOLD, GRANTED, BARGAINED, CONVEYED, ASSIGNED, TRANSFERRED AND DELIVERED and by these presents hereby SELLS, GRANTS, BARGAINS, CONVEYS, ASSIGNS, TRANSFERS AND DELIVERS to MBUSI and its successors and assigns, all right, title and interest in and to all of the MBUSI Owned Equipment as collectively identified in the Tool Tracking Sheet affixed hereto.

That Supplier does hereby WARRANT AND COVENANT that it is the sole and exclusive owner of, and has good and marketable title to the MBUSI Owned Equipment being conveyed pursuant to this Bill of Sale, free and clear of all liens, liabilities, security interests, leasehold interests and encumbrances of any nature whatsoever.

This Bill of Sale shall be binding upon and inure to the benefit of the Parties hereto and their successors and assigns. This Bill of Sale shall be governed by and construed in accordance with the laws of the State of Alabama, without regard to its conflict of laws principles.

IN WITNESS WHEREOF, Supplier has caused this Bill of Sale to be executed on this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ATTACHMENT 7  
MBUSI WARRANTY PROCESS

See attached

# **MBUSI Warranty Process**

## **Table of Contents**

- 1. Subject Matter of the Agreement**
- 2. Processing of Warranty Claims (standard recourse)**
- 3. Warranty Parts Testing (standard recourse)**
- 4. MBUSI Financial Recovery Process**



## **MBUSI Warranty Process**

### **1. Subject Matter of the Agreement**

#### **1.1 Scope**

This MBUSI Warranty Process sets forth the warranty process and procedures of Mercedes-Benz U.S. International, Inc. ("MBUSI") in the event that defective production material or defective spare parts are discovered or identified after the vehicles leave the respective production plant or the spare parts have been fitted or sold to customers.

#### **1.2 Other Rights and Agreements Unaffected**

The Master Terms Direct Purchasing ("MTDP") and any purchase agreement(s), purchase contract(s) and Purchase Contract(s) in effect between the Supplier and MBUSI (collectively with the MTDP, the "Supply Agreement") shall remain unaffected by this MBUSI Warranty Process. Especially all claims under the MTDP including but not limited to recalls, series damages or damages to other components shall remain unaffected by this MBUSI Warranty Process. Additionally, other statutory or contractual rights of MBUSI shall remain unaffected by this MBUSI Warranty Process.

#### **1.3 Ascertaining Defects**

Defects shall be ascertained by MBUSI. External organizations may be involved in the determination of whether damaged parts qualify as defective. MBUSI affiliates may be involved in the processing of quality defects.

#### **1.4 Handling of Procedures for Standard Recourse**

The settlement regulations for standard recovery described herein shall apply to defective deliveries if these defects occur during the applicable warranty period.

### **2. Processing of Warranty Claims (standard recourse)**

The settlement regulations for standard recourse apply to defective deliveries if these have not led to a recall, series damage or damage to other components.

#### **2.1 Warranty Claim Elements**

The MBUSI warranty claim consists of five (5) basic cost elements described in the MTDP (labor, dealer part price, parts handling, sublet and indirect costs) which when added together make up the total expense incurred by MBUSI.

Warranty costs = labor + dealer part price + parts handling + sublet + indirect costs

To simplify the chargeback procedure, average worldwide warranty costs are calculated on a part number basis.

## 2.2 Calculation of Recovery Volume

The recovery volume is calculated by multiplying the acceptance rate (AR), as calculated in accordance with Section 3.3, by the sum of warranty costs worldwide.

Recovery volume = AR x warranty costs of the supplier worldwide

## 2.3 Software-Related Failure

The costs of delivering defect-free software and the labor costs for updating software in the field will be expensed to the Supplier. An estimated labor cost will be calculated for all affected vehicles and this will be used to invoice the Supplier.

If improved software is not available in the market via standard MBUSI after sales tools, the Supplier will be responsible for the full cost of a claim where parts are exchanged to remedy defective software failures/symptoms.

## 3. Warranty Parts Testing (standard recourse)

The Quality Engineering Center located at 13470 International Parkway (Unit 3), Jacksonville, FL 32218 (the "QEC") shall be responsible for coordinating warranty parts testing.

### 3.1 Part Families

All quality defect inspection, acceptance rates and the determination of Supplier's cost contribution shall be based on part families. A part family is a set of part numbers representing similar parts from one Supplier for all MBUSI manufactured vehicles. If damaged parts with new item numbers are presented during the year or new spare part numbers arise within the warranty system, part families may be expanded or modified during the year.

The following parts shall be combined in one part family:

- Production part number and service part number
- Special (country) versions of a part, if there are no significant technical variations
- New improved versions replacing an older version of a part
- Parts that can be substituted interchangeably in a workshop repair

- Parts across model series for similar and technically comparable components.

### **3.2 Parts Return Volume**

In order to reduce the cost and time involved to process and analyze all returned parts, the Supplier will receive a random sample of parts from a reference market. The default reference market will be the U.S. market. These parts will be utilized to conduct defect inspection and determine the Supplier's contribution rate.

All parts sent to the Supplier by the QEC inspection stations and identified in the IT inspection systems (e.g. QEC-Tool) as a "part relevant for acceptance rate" are taken into account in establishing the acceptance rate. "Warranty goods" are all parts submitted to the Supplier for damaged part analysis originating from the reference market for which defects have arisen within the agreed period of limitation for warranty claims. All parts not considered warranty goods are "inspection goods."

After the Supplier has analyzed up to fifty (50) parts from one part family QEC can request to establish an acceptance rate with the Supplier for the related production range. Once the process of establishing of an acceptance rate has been started, QEC will stop sending further parts from this production range. If a Supplier dissents in writing and provides documentation supporting a different acceptance rate, QEC may resume shipment of parts.

If requested by QEC, the Supplier must analyze single parts from a production range and part family with an established acceptance rate agreement. This is required to discover new damage patterns and to detect potential long term failures. As this is not a random sample, it will not impact established acceptance rate.

If NAFTA manufactured parts are failing in markets other than the U.S., QEC can independently or upon the Supplier's request, facilitate collection of parts from Germany or other Mercedes-Benz markets. If this type of part is requested by the Supplier, all costs incurred will be expensed to the Supplier.

Parts not used for the inspection, technical analysis or remanufacture will be disposed immediately.

At the instruction of QEC or on request by the Supplier, inspection parts can be returned for damaged part analysis and forwarded to the Supplier for analysis.

### **3.3 Determination of Acceptance Rates (AR)**

AR's are related to a specific part family and production range and apply to all worldwide claims.

The AR is calculated from the number of defects accepted by the QEC from the random sample in relation to the number of defects contained in the random sample. Parts not analyzed in the

given time period or rejected parts not returned to QEC on time are regarded as accepted for the determination of the acceptance rate.

$AR = \frac{(\text{amount of defects accepted}) + (\text{amount of parts not analyzed in time}) + (\text{amount of rejected parts not returned in time})}{\text{Number of damaged parts analyzed}}$
---

AR negotiations may not exceed thirty (30) calendar days without the prior written consent of MBUSI or QEC. An acceptance rate will be imposed based on initial test results should the supplier fail to submit a signed Acceptance Rate Form within this time period.

### 3.4 Parts Testing

#### (a) Procedures

All parts testing must comply with the Mercedes-Benz *MBN10448 Field Failure Analysis and VDA Marketing & Service Field Failure Analysis Standards*. Suppliers must confirm receipt of parts using the IT systems provided by MBUSI (e.g., QEC-Tool and eSEP++) within two (2) working days of receiving the parts at the Supplier's facility. The Supplier must submit a VDA-compliant 8D report per defect profile following acceptance.

#### (b) Execution

The Supplier will have twenty-eight (28) calendar days from the receipt of parts in the QEC-Tool to perform testing and complete the Inspection Report. However, notwithstanding the foregoing, during new model launch and for breakdown parts, immobility cases and parts labeled "S" in the component drawing, the Supplier will have only ten (10) calendar days to perform testing and complete the inspection report. The Supplier should identify these parts accordingly in its inspection report.

In all cases, the Supplier must indicate in the QEC-Tool whether the part has been accepted or rejected. If the inspection result is not entered in the QEC-Tool within twenty-eight (28) calendar days, or ten (10) calendar days for launch, breakdown and other parts specified above, the parts on the inspection report will be considered as accepted defects. The inspection period may be extended by mutual agreement of the parties; however, an extension must be authorized in writing by QEC before the applicable inspection period has been exceeded.

#### (c) Rejected Parts

Rejected parts remain the property of MBUSI. The Supplier must return rejected parts to QEC within seven (7) calendar days from Supplier's notification of rejection, in the original condition. If the Supplier fails to meet these conditions, the parts will be regarded as accepted. Notwithstanding the foregoing, QEC and the Supplier may agree that parts rejected by the Supplier will be held in quarantine storage for up to ten (10) weeks and then scrapped and disposed of properly. A non-authorized use of the parts is not permitted.

**(d) Accepted Parts**

The Supplier has no duty to return or store parts that are accepted by the Supplier.

**3.5 Audits**

QEC can audit the Supplier's compliance, test procedures, and execution of the *MBN10448 Field Failure Analysis/VDA Marketing & Service Field Failure Analysis Standards* at any time. If out of standard conditions are observed during the audit, the AR for all related part families will be adjusted as outlined below:

**Degree of performance Increase of acceptance rate**

100% - 85%	none
84% - 80%	+ 3 percentage points
79%-70%	+ 10 percentage points
<70%	100% acceptance rate will apply

The AR will be increased and applied to all new AR's, all related parts tested before the audit and all parts tested until the analysis procedures and execution are within standard. This determination will be made by conducting a secondary (follow-up) audit.

**3.6 Test Equipment & Freight Costs**

The Supplier and MBUSI shall each bear their own costs associated with the inspection, including the costs of returning and making available the parts.

The freight costs associated with returning warranty parts from U.S. Dealers to the Supplier's NAFTA Test facilities will be paid by MBUSI.

Should a Supplier request sample parts from markets outside of the U.S., the freight costs associated with procuring the parts will be expensed to the Supplier.

If the Supplier demands additional returns of parts other than the sample, the Supplier shall bear the transportation and logistics costs incurred.

All parts not accepted by the Suppliers must be returned to the QEC at the Supplier's expense.

### **3.7 Product and Process Changes and Production Relocations**

In the event of product changes, process changes or production relocations that were not approved by MBUSI, the acceptance rate shall be deemed to be 100%, unless the Supplier proves that there is no causal connection with the occurrence of the defect. This provision shall apply to parts procured by the Supplier from sub-suppliers in the case of assemblies or multi-part deliveries.

### **3.8 No Trouble Found (“NTF”) Process**

If no defects or reasons for breakdown are found after performing the damaged part analysis, QEC and the Supplier agree to perform an NTF process pursuant to VDA volume standard “Damaged Part Analysis Field” and “MBN10448.”

The NTF process serves to find the cause of a problem not identified in a damaged part analysis. By arrangement with the Supplier, this procedure shall apply if it has not been possible to explain a customer complaint with a damaged part analysis by the Supplier.

### **3.9 Claims Despite Acceptance**

Neither MBUSI’s use and/or approval of submitted samples, nor Supplier’s compliance with test provisions shall affect MBUSI claims. MBUSI claims also shall remain unaffected if the defective goods or defective parts are manufactured or supplied by a sub-supplier.

## **4. MBUSI Financial Recovery Process**

Financial recovery is fundamentally based on the information contained in the Supplier Recovery System (“SRS”). In the SRS system the claim costs are noted in EUR and in the invoice itself in EUR and U.S. dollars. The calculation of the U.S. dollar amount is based on the daily exchange rate when the invoice was created. The debiting of the invoice amount is done in U.S. dollars. QEC will send a debit note to inform the Supplier of impending charge-backs. The Supplier will have fourteen (14) calendar days to dispute the charge. If a formal dispute is not received within fourteen (14) days, the amount will be debited on the Supplier account.

Charge-back notifications/statements will only be sent to Tier 1 Suppliers unless otherwise arranged with QEC.

The Supplier will be notified of any changes that have a financial impact before they are implemented.