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## General Terms and Conditions for Prototype and Production Components / Systems

### I. The Contract.

I.1 Offer and Acceptance. Each purchase requisition that Romeo Power issues ("Purchase Order") is Romeo Power's offer to purchase the goods and services (collectively, "Products") identified in that Purchase Order. Seller will be deemed to have accepted a Purchase Order as issued (I) if Seller fails to object to it in writing within 10 business days after receipt and has begun or later begins performance under the Purchase Order, or (2) if Seller acknowledges in writing its acceptance of the Purchase Order. Upon acceptance, the Purchase Order together with these General Terms and Conditions ("General Terms") and any other documents specifically incorporated in the Purchase Order or separately agreed to in writing, such as specifications, drawings, requirements of Romeo Power's customer, or quality requirements, will become a binding contract between Romeo Power and Seller (collectively, the "Contract"). If within 10 days Seller objects to a Purchase Order or proposes alternate or additional terms, the Purchase Order will become a Contract only if and when Romeo Power and Seller mutually agree in writing, or Seller commences or continues performance under the Purchase Order. Specific terms and conditions on the Purchase Order and the other documents comprising the Contract will take priority over any inconsistent provision in these General Terms.

### I.2 Changes.

(a) Romeo Power reserves the right to change the Products, including the design, specifications, engineering level, materials, packaging, testing requirements, shipping date, or time or place of delivery. Seller will promptly make any such change.

(b) Seller will not make any change to the Products or Tiered suppliers except at Romeo Power's written instruction or with Romeo Power's written approval. If Seller learns of a possible change to the Products that may reduce costs, improve quality, or otherwise be beneficial to Romeo Power, Seller will inform Romeo Power of the possible change.

(c) If a change to Products is approved by Romeo Power pursuant to Section I.2(b) above, Seller will within 7 business days prior to making a change notify Romeo Power in writing if a change directed or approved by Romeo Power will affect cost or timing and provide substantiation of its claim. If Romeo Power determines that an adjustment is appropriate, Romeo Power and Seller will negotiate in good faith on an equitable price adjustment (up or down), a change in shipping or delivery terms, or other appropriate adjustment.

### 2. Products and Services.

2.1 Quantity. If quantities or delivery schedules are not specified in the Contract, they will be as reasonably determined by Romeo Power and stated in Romeo Power's firm releases issued to Seller from time to time. Romeo Power may return over-shippments to Seller at Seller's expense. Unless otherwise specifically stated in the Contract, the Contract is not exclusive and Romeo Power may purchase similar products and services from third parties, subject to Section 10.4, unless

the Purchase Order expressly states that it is exclusive, 100% requirements, or similar term.

2.2 Current-Model Service Requirements. During the term of a Contract, Seller will make Products covered by the Contract available to Romeo Power for Romeo Power's current-model service requirements at the then-current production prices under the Contract plus any additional costs for special packaging, shipping and handling, and other related services.

2.3 Past-Model Service Requirements. During the 10 year period after Romeo Power completes current product purchases, Seller will sell Products to Romeo Power to fulfill Romeo Power's past product service and replacement parts requirements. Unless otherwise agreed to by Romeo Power, the price(s) during the first 3 years of this period will be those in effect at the conclusion of current product purchases. For the remainder of this period, the price(s) for goods will be as agreed to by the parties. If the Products are systems or modules, Seller will sell each component or part of the Product for service or replacement purposes under Sections 2.2 and 2.3 at an equitable price that reflects the cost of the component or part less assembly costs, plus a markup commensurate with that on the related Product and any actual cost differential for packaging.

2.4 Romeo Power and Industry Standards and Policies. Seller will conform to all quality control and other standards and inspection systems as may be established or directed by Romeo Power for the Products. These include without limitation quality control policies, ISO/TS quality systems, OHSAS 18001 health and safety certification and ISO 14001 environmental certification including registration, and GADSL / RoHS. Seller will also participate in Romeo Power's supplier quality and development programs and adhere to the guidelines within the Romeo Power Supplier Handbook. For Products used in vehicle manufacturing, Seller agrees to meet the full requirements of industry Production Part Approval Processes (PPAP).

Level 3 PPAP is required for all Products on Romeo's EV Battery Packs unless:

a) The parts supplied to Romeo Power are in production on another automotive vehicle platform and have a prior Level 3 PPAP (currently 100% production tooled / 100% production process). In this case a copy of the PSW is required and Romeo Power reserves the right to request further proof of documentation and / or data by Romeo Power SQA.

b) The Products are interim. In this case, and in lieu of a Level 3 submission, a 100% inspection of all Products, material certifications for each Product, and a control plan is required with EVERY shipment to Romeo Power. Failure to supply this information will result in the rejection of Seller's Products.

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c) This purchase is direct from a distributor<sup>1</sup> in which case a Level I PSW (Part Submission Warrant) or equivalent certificate of conformance is required.

PPAP Requirements apply to first shipments of new parts. If Seller has obtained PPAP approval from Romeo Power, no further PPAP submissions are necessary unless:

- a) There is a design change (Romeo Power or Seller driven)
- b) Production facility or tooling move
- c) Change of tier 2 or 3 supplier, design, or manufacturing facility

Refer to the Romeo Power Supplier Handbook for further details on PPAP submission.

If there is conflict between any part of the above programs or standards and an express provision of these General Terms, these General Terms will control. To the extent any of the standards, policies or systems cited above are amended, supplemented or replaced, Seller's obligations under the Contract will be automatically amended to the same extent.

### 3. Delivery.

3.1 Packing and Shipment. Romeo Power may specify the method of transportation and the type and number of packing slips and other documents to be provided with each shipment. Seller will pack and ship Products in accordance with Romeo Power's instructions, including labeling and hazardous materials instructions. If Romeo Power has not provided packing or shipping instructions, Seller will pack and ship Products in accordance with sound commercial practices. If Seller is required to use Romeo Power's returnable packaging, Seller will be responsible for cleaning and returning the returnable packaging. If returnable packaging is not available, Seller may use expendable packaging and Romeo Power will reimburse Seller for the reasonable costs of expendable packaging.

3.2 Delivery Schedules. Seller will deliver Products in strict accordance with the Contract terms. Unless otherwise stated in the Contract, Products will be delivered F.O.B. to a named point (Incoterms) and title will transfer upon receipt of the Products by Romeo Power or its hired freight carrier. If Products are not made ready by Seller for delivery in time to meet Romeo Power's delivery schedules, the party causing the delay will be responsible for additional costs of any resulting expedited or other special transportation.

### 4. Reserved.

### 5. Taxes.

Unless otherwise stated in the Contract, the Contract price includes all applicable federal, state, provincial, and local taxes other than sales, value added, or similar turnover taxes or charges. Seller will separately invoice Romeo Power for any sales, value added, or similar turnover taxes or charges that Seller is required by law to pay or collect from Romeo Power.

### 6. Payment.

6.1 Price. The purchase price of the Products is on the Purchase Order. Unless otherwise stated in the Contract, the purchase price: (a) is a firm fixed price for the duration of the Contract and not subject to increase for any reason, including increased raw material costs, increased labor or other manufacturing costs, increased development costs, or changes in volumes or program length from those estimated or expected even if there is a requirements Contract; (b) is inclusive of all taxes as provided in Section 5 and any duties applicable to provision of the Products; and (c) is inclusive of all storage, handling, packaging and all other expenses and charges of Seller.

6.2 Invoices. Unless otherwise stated in the Contract, invoices will be issued on or after delivery of the Products to Romeo Power and payment will be deemed to occur upon mailing of a check to Seller. All payment will be made in the currency of the country of origin unless otherwise agreed. Seller will, at its expense, comply with Romeo Power's instructions and policies with respect to the form, content and method for submission of invoices.

6.3 Payment Terms. Unless otherwise stated in the Contract, Romeo Power will pay invoices for Products which are properly presented and not subject to dispute, 60 days from the receipt of the Products with required support. If the payment date is not a business day, payment will be due the next business day thereafter.

6.4 Best Price. The Seller warrants that the prices for the Products sold to Romeo Power are no less favorable than those that the Seller currently extends to any other customer for the same or similar Products in similar quantities. If the Seller reduces its prices to third parties on the same or similar products during the term of the purchase order for the Products, the Seller will correspondingly reduce the prices charged to Romeo Power.

6.5 Set Off. In addition to any right of setoff or recoupment provided by law, Romeo Power will be entitled at any time to set off or recoup against sums payable by Romeo Power or any of its affiliates to Seller or any of its affiliates any amounts for which Romeo Power determines in good faith the Seller or any of its affiliates is liable to it or any of its affiliates. Romeo Power will consult with Seller prior to any such set off or recoupment.

<sup>1</sup> Distributor: The point of purchase has no assembly or manufacturing content or direct influence of manufacturing operations (i.e. catalog, off-the-shelf purchased items, and non made-to-spec parts).

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6.6 Payment Not Acceptance. Payment for Products will not constitute acceptance of non-conforming Products, nor will it limit or affect any rights or remedies of Romeo Power.

6.7 Credits. Credits or benefits resulting from the Contract, including trade credits, export credits or the refund of duties, taxes, or fees, belong to Romeo Power. Seller will provide all information and certificates (including NAFTA Certificates of Origin) necessary to permit Romeo Power to receive these benefits or credits.

7. Product Warranties.

7.1 Seller's Warranties.

(a) Products. In addition to any other express and implied warranties provided by law or otherwise, Seller warrants to Romeo Power and its respective successors and assigns that the Product will:

- be new and conform to the Contract in all respects;
- conform to all specifications, drawings, PPAP submissions, samples and other descriptions furnished by Romeo Power or otherwise part of the Contract;
- be merchantable, free from all defects in design (to the extent designed by Seller), workmanship and materials and be of highest quality and workmanship;
- be selected, designed (to the extent designed by Seller), manufactured and assembled by Seller based upon Romeo Power's stated use and be fit and sufficient for the purposes intended by Romeo Power; and
- conform to all applicable laws (as defined in Section 23.10) in countries where the Product (or goods into which the Product are incorporated) are to be sold, including without limitation, in the case of Product used in connection with the manufacture of motor vehicles, the National Traffic and Motor Vehicle Safety Act, United States motor vehicle safety standards and European Union Directive 2000/53/EC.

(b) Services. For all services, Seller further warrants that its work will be performed in a professional and workmanlike manner, consistent with all standards and specifications agreed on with Romeo Power and otherwise consistent with industry standards.

(c) No Liens. Seller also warrants that title to all of Products will be vested in Romeo Power free and clear of any and all liens and encumbrances of any nature.

(d) Future Performance. All warranties of Seller extend to future performance of the Product and are not modified, waived or discharged by delivery, inspection, tests, acceptance and payment. Romeo Power's approval of any design, drawing, material, process or specifications will not relieve Seller of these warranties. Seller waives any right to notice of breach.

(e) Warranty Period. The warranty period for Products used in new products is the longest of: four years from the date Romeo

Power accepts the Product, the warranty period provided by applicable law, or the warranty period offered by Romeo Power or its Customer to end-users (four years from date of purchase or 50,000 miles in the case of EV Battery Packs) for the products into which the Product are incorporated. For Products used to fulfill service its current product service requirements and past product service and replacement requirements, the duration of Seller's warranty period shall be the greater of: 12 months from the date of delivery to Romeo Power's customer, or the remainder of the warranty period offered by Romeo Power to end-users for the products into which the Products are incorporated.

(f) Other Warranties. The warranties set forth herein are in addition to any warranties express or implied by law or equity, or otherwise made by the Seller, and shall survive acceptance and payment by Romeo Power and the termination or expiration of the Contract.

(g) Application of Warranties. Seller agrees that the warranties set forth herein, and otherwise made, express or implied, by law or equity, extend to all Products, notwithstanding the fact that such Products may be produced by any of Seller's own suppliers, including, without limitation, Directed Suppliers, as that term is defined herein, and, therefore, such warranties shall not be disclaimed or otherwise limited in any way due to the fact that any Products have been produced by one of Seller's own suppliers, including, without limitation, Directed Suppliers.

7.2 Rejection. If defective or non-conforming Products are rejected by Romeo Power, the quantities under the Purchase Order will be reduced unless Romeo Power otherwise notifies Seller, and Seller will not replace reduced quantities without a new Purchase Order from Romeo Power. Following rejection, Seller will, without prejudice to any other right or remedy of Romeo Power, at Romeo Power's sole discretion and at Seller's sole expense:

- accept return of the Products to Seller at full invoice price, plus transportation charges; or
- replace the Products with conforming Products; and
- correct at any time prior to shipment from Romeo Power's plant Products that fail to meet the requirements of the Purchase Order.

7.3 Romeo Power Losses. Seller is liable for all direct, incidental and consequential damages, losses, costs, and expenses incurred by Romeo Power resulting from Seller's failure to deliver conforming and non-defective Products or to comply with the shipping and delivery or other requirements of Romeo Power, even if the Seller has cured the failure. This includes but is not limited to compensating Romeo Power for:

- any amounts charged by customer(s) to Romeo Power;
- all costs of containment, sorting, repair, replacement, cure, cover, or any other costs incurred by Romeo Power, determined in such manner and in such amount as reasonably determined by Romeo Power; and

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- all costs of any recall campaign, corrective service action, or other voluntary or involuntary action in which Romeo Power or any Customer participates in connection with inclusion of Products in goods sold by Romeo Power.

**7.4 Corrective Action.** Promptly upon learning of defective or non-conforming Products, Seller will develop, document and implement corrective actions in accordance with all applicable quality control policies and standards of Romeo Power. Seller will immediately notify Romeo Power in writing when it becomes aware of any ingredient, component, design or defect in the Products that is or may become harmful to persons or property.

**8. Product Liability.**

**8.1 Indemnification.** Seller agrees to indemnify, defend and hold harmless, reimburse and compensate Romeo Power, its affiliates, customers and users of the products sold by Romeo Power (or the products in which they are incorporated) and all of their respective agents, successors and assigns, and each of their shareholders, directors, officers, employers and agents, on demand, (collectively "Indemnified Parties") from and against any and all costs, fees, penalties, expenses, damages (consequential and otherwise), attorneys' fees and all other liabilities and obligations whatsoever ("Losses"), arising out of any third party claim of Romeo Power or any other demand, requirement, or source of exposure to liability or potential liability, which, in whole or in part, arises from or relates to any actual or alleged:

- defect or non-conformity in the Products;
- noncompliance by Seller with any of its representations, warranties or obligations under the Contract;
- negligence or fault of the Seller in connection with the design or manufacture of the Products.
- recall campaign, corrective service action, or other voluntary or involuntary action in which Romeo Power participates with respect to the Products or products into which the Products are incorporated;
- any spill, discharge or emission of hazardous wastes or substances which relates, in whole or in part, to the Products;
- infringement (including claims of direct or contributory infringement or inducement to infringe) of any Intellectual Property Right relating to Products provided by Seller, even if they are made to Romeo Power's specifications;
- damages to the property of or personal injuries to Romeo Power, its customers, their respective agents, or any other person or entity to the extent arising from or in connection with Seller's work on Romeo Power's premises or Seller's use of Romeo Power's property; or
- challenge to Romeo Power's sole right, title and interest in the Tooling (as defined below), or right to possession of the Tooling, brought by any third party, including toolmakers, subcontractors, and lending institutions.

**8.2 Romeo Power Participation.** If Seller is obligated to indemnify under this section, then Romeo Power may at its option participate in the defense of any claim with its own counsel, at Seller's expense.

**8.3 Limitations.** To the maximum extent permitted by applicable law, Seller's obligation under this Section will apply even as to Losses caused in whole or in part by an Indemnified Party's negligence, but Seller's indemnification will not apply to the extent that Losses resulted solely and directly from the negligence or willful misconduct of such Indemnified Party. Seller's obligation to defend and indemnify under this Section will also apply regardless of whether the claim arises in tort, negligence, contract, warranty, strict liability or otherwise. The indemnification obligation under this Section will not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the benefit of Seller under Workers' Compensation Acts, occupational disease acts, disability benefits acts or other employee benefits acts.

**9. Compliance with Laws.**

Seller will comply with applicable laws, rules and regulations of the country where the Products are manufactured or the Services are performed. Seller will provide Romeo Power with material safety data sheets regarding the Products and, upon Romeo Power's request, will provide Romeo Power with other information reasonably required in order to comply with applicable laws.

**10. Intellectual Property Rights.**

**10.1 Warranty.** Seller warrants that the Products and the sale and/or use thereof (before or after incorporation into products during manufacture) do not and will not infringe any Intellectual Property Rights. "Intellectual Property Rights" means any right arising under U.S. or foreign law relating to patent, trademark, copyright, moral, industrial design right or misuse or misappropriation of trade secrets.

**10.2 Ownership.** If Seller, or any person employed by or working under the direction of Seller, in the performance of the Contract conceives or first reduces to practice: (i) any invention or any experimental, development or research activities, including engineering related thereto, whether or not patentable, (ii) any reduction to practice of any subject matter, application or discovery which could be patented or copyrighted, or (iii) any improvement in the design of the Products or any alternative or improved method of accomplishing the objectives of this Contract (collectively, Inventions), such Inventions will be owned by Romeo Power and be deemed confidential and proprietary property of Romeo Power, whether such Inventions or any portions thereof can be copyrighted or patented or not. Seller will immediately disclose all Inventions to Romeo Power and will cooperate (and cause its employees to cooperate) in executing any documents and taking any other actions necessary or convenient to patent, copyright, assign to Romeo Power or otherwise perfect or protect such Inventions for the benefit of Romeo Power.

**10.3 Products for Third Parties.** Seller will not manufacture or provide, or offer to manufacture or provide, any goods or services that are based in whole or in part upon Inventions,

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confidential or proprietary information of Romeo Power or intellectual property of Romeo Power, whether for its own purposes (other than to satisfy its obligations under this Contract), or any other third parties, without Romeo Power's prior written consent.

**10.4 License to Romeo Power.** Seller hereby grants to Romeo Power, its subsidiaries and affiliates, and their respective successors and assigns, and Romeo Power hereby accepts, a non-exclusive, irrevocable, royalty-free, fully paid up worldwide license, including the right to sublicense to others in connection with providing the Products to Romeo Power, under: (i) any Intellectual Property Rights owned or controlled by Seller or its affiliates, and relating to the Products, to make, have made, repair, reconstruct, rebuild, relocate, use, sell and import the Products, and (ii) any works of authorship fixed in any tangible medium of expression (including drawings, prints, manuals and specifications) furnished by Seller in the course of Seller's activity under this Contract, to reproduce, distribute and display such works and to prepare derivative works based thereon, subject to the other provisions of the Contract (all items in clauses (i) and (ii) above, collectively, "Seller's Intellectual Property", and such license in respect thereof, the "License"). Seller acknowledges and understands that the License will be effective from the first date of delivery of the Products under this Contract and extend for so long as Romeo Power produces the Product. The License is intended to be subject to 11 USC Section 365(n), as an executory agreement under which Romeo Power has license rights to Seller's Intellectual Property, and is supplementary to any other rights of Romeo Power under this Contract and any other agreement with Seller.

**10.5 Seller Employees.** Seller will ensure that the terms of its contracts with its subcontractors and employees are consistent with the terms of this Section.

## **II. Property.**

### **II.1 Romeo Power's Property.**

(a) Romeo Power will own the tooling, jigs, dies, gauges, fixtures, molds, patterns, supplies, materials, and other equipment and property used by Seller to manufacture, store, and transport Products or provide Services ("Property") if (i) the Property is so designated in the Contract, or (ii) Romeo Power has provided or paid for the Property ("Romeo Power's Property"). Seller will assign to Romeo Power contract rights or claims in which Seller has an interest with respect to Romeo Power's Property and execute bills of sale, financing statements, or other documents reasonably requested by Romeo Power to evidence its ownership of Romeo Power's Property. Seller will indemnify and defend Romeo Power against claims or liens adverse to Romeo Power's ownership of Romeo Power's Property except those that result from the acts or omissions of Romeo Power. Seller will hold Romeo Power's Property on a bailment basis and will be responsible for loss or damage to Romeo Power's Property while in its possession or control. To the extent permitted by law, Seller waives any lien or similar right it may have with respect to Romeo Power's Property. Romeo Power is responsible for personal property taxes assessed against Romeo Power's Property.

(b) Seller will (i) at its expense maintain Romeo Power's Property in good condition and repair, normal wear and tear excepted, throughout the useful life of Romeo Power's Property, (ii) use Romeo Power's Property only for the manufacture, storage, and transport of Products for Romeo Power unless Romeo Power otherwise approves in writing, (iii) at Romeo Power's request and expense, mark Romeo Power's Property as belonging to Romeo Power or its customer, and (iv) not remove Romeo Power's Property (other than shipping containers and the like) from Seller's premises without Romeo Power's written approval. All replacement parts, additions, improvements, and accessories to Romeo Power's Property will become part of Romeo Power's Property.

(c) Romeo Power will pay for Romeo Power's Property that it is required to purchase at the amount specified in the Contract or, if no amount is specified in the Contract, at (i) Seller's actual cost of the Romeo Power's Property, if manufactured by a third party, or (ii) Seller's actual cost of purchased materials, components, and services plus Seller's actual cost of labor and overhead allocable to the Romeo Power's Property, if manufactured by Seller. Unless otherwise stated in the Contract, final payment for Romeo Power's Property will be due within 30 days of Romeo Power's PPAP (Production Part Approval Process) approval date.

(d) Seller will immediately release to Romeo Power upon request, and Romeo Power may retake immediate possession of, Romeo Power's Property and other property of Romeo Power at any time, with or without cause and without payment of any kind unless otherwise provided in the Contract. Seller will release the requested Romeo Power Property and other property to Romeo Power F.O.B. named location (Incoterms), properly packed and marked in accordance with the requirements of Romeo Power's carrier. If the release or recovery of Romeo Power's Property or other property renders Seller unable to produce a Product, the release or recovery will be deemed a termination of the Contract with respect to that Product pursuant to Sections 12 or 13, as applicable.

**II.2 Seller's Property.** Seller will own all Property that is not Romeo Power's Property ("Seller's Property"). Seller will at its expense furnish, maintain in good condition, and replace when necessary Seller's Property needed to perform the Contract. While a Contract for Products remains in effect, Romeo Power may purchase Seller's Property used exclusively to produce those Products and not needed by Seller to produce Products or products for other customers, for a purchase price equal to the greater of fair market value or Seller's unamortized acquisition cost. Seller shall release Seller's Property in accordance with Section 11.(d).

### **12. Duration and Termination of the Contract**

**12.1 Duration.** The Contract will be effective on the date specified in the Purchase Order, or if no date is specified, when issued by Romeo Power. Unless terminated earlier in accordance with the Terms of the Contract:

- The Contract expires on June 30<sup>th</sup> of the next calendar year ("Initial Term") (e.g., a Purchase Order is issued on July 1, 2010, the Initial Term will end on June 30, 2011. Similarly, the Initial Term of a Purchase Order issued on January 1, 2011 will expire on June 30, 2012).



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- The Purchase Order will renew automatically on July 1 for an additional 12 months, ending on the next June 30<sup>th</sup>, unless a notice of non-renewal has been provided under Section 12.2. This is the "Renewal Term." The Purchase Order will automatically be renewed each subsequent year for an additional Renewal Term of 12 months unless a notice of non-renewal has been provided under Section 12.2.

**12.2 Termination by Either Party.** Either party may elect not to renew the Purchase Order by providing a written notice (a "Termination Notice") to the other party to that effect. Romeo Power will provide its Termination Notice by May 1<sup>st</sup> of the year in which the Initial Term or Renewal Term (as applicable) is scheduled to expire. The Seller will do so sufficiently in advance of the scheduled expiration date to enable Romeo Power to resource the production of the Product in a timely and orderly manner, but in no case later than May 1<sup>st</sup> of the year in which the Initial Term or Renewal Term (as applicable) is scheduled to expire. In all cases, the Seller will consult with Romeo Power's production purchasing activity prior to giving its Termination Notice to ensure that it will be timely, and the parties will confirm in writing their agreement to the Seller's written notice period.

If the Seller elects not to renew, it will, if requested by Romeo Power: (a) work diligently with Romeo Power to identify an alternative source of supply that is acceptable to Romeo Power; and (b) identify the Seller's component-part and raw-material Sellers relating to the Products.

Romeo Power, at its option, may extend the term of the Purchase Order for up to four months beyond the scheduled June 30<sup>th</sup> expiration date of the Initial Term or Renewal Term (as applicable). This is the "Extended Term." If the Extended Term is implemented, the Purchaser Order will expire at the end of the Extended Term. Romeo Power will provide Seller with notice of any Extended Term on or before the June 1<sup>st</sup> before the Initial Term or Renewal Term is set to expire. The written notice will specify the Extended Term (up to four months) and include a volume projection of Romeo Power's needs. Prices in effect at the end of the Initial Term or Renewal Term and all other terms and conditions will remain in effect during the Extended Term. If a transition period longer than the Extended Term is required, Romeo Power and the Seller will negotiate in good faith the terms and conditions of any extension.

Romeo Power may also terminate for Default, effective upon delivery of a Termination Notice or upon such other date specified by Romeo Power in writing. Seller will be in Default if it (i) breaches any warranty or other Term of the Contract; (ii) repudiates, breaches or threatens to breach any of the terms of the Contract; (iii) fails to deliver, or threatens not to deliver, Products in connection with the Contract; (iv) fails to make progress or to meet reasonable quality requirements so as to endanger timely and proper performance of the Contract; (v) Seller makes an assignment for the benefit of creditors, or proceedings in bankruptcy or insolvency are instituted by or against Seller; (vi) Seller needs accommodations from Romeo Power, financial or otherwise, in

order to meet its obligations under the Contract; or (vii) at any time in Romeo Power's sole judgment Seller's financial or other condition or progress on this Contract will be such as to endanger timely performance.

Termination by Romeo Power will not relieve Seller of any liability under the Contract.

**12.3 Termination by Seller.** The Seller may terminate this agreement only for non-payment of the purchase price for Products which are 60 or more days past due and material in amount, and then only if: (i) Seller first provides Romeo Power written notice specifying the amounts past due and Seller's intent to terminate the Contract if the past due amount is not paid; and (ii) Romeo Power, within 60 days of such notice, does not either: (x) pay the past due amounts; or (y) notify Seller that the amount claimed to be unpaid are disputed by Romeo Power. Seller will terminate under this Section by delivering a Termination Notice to Romeo Power. Seller may not terminate or cancel the Contract for any reason except as permitted under this Section. Seller may not suspend performance of the Contract for any reason.

**12.4 Seller's Obligations Following Termination.** Following delivery of a Termination Notice, Seller will, unless otherwise directed by Romeo Power and subject to its obligation to provide Transition Support as provided in Section 12.8:

- terminate promptly all work under this Contract and transfer title and deliver to Romeo Power all finished work completed prior to receipt of the Notice of Termination;
- transfer title and deliver to Romeo Power all work in process, and the parts and materials which Seller produced or acquired in accordance with a Contract and which Seller cannot use in producing goods for itself or for others;
- verify/settle all claims by subcontractors for actual costs that are rendered unrecoverable by such termination and provided the recovery of materials in Seller's possession is ensured; and
- take actions reasonably necessary to protect property in Seller's possession in which Romeo Power has an interest until disposal instruction from Romeo Power has been received.

**12.5 Romeo Power's Obligations Following Termination.** Subject to Section 12.7, Romeo Power will pay to Seller in connection with Termination only the following amounts, without duplication, in complete and final satisfaction of any liabilities relating to the Contract:

- The purchase price for all conforming Products received by Romeo Power prior to Notice of Termination or delivered following Notice of Termination pursuant to Section 12.4, Section 12.8 or at the written direction of Romeo Power;
- Any amounts owed for Transition Support pursuant to Section 12.8.
- If terminated for any reason other than Default by Seller, Seller's reasonable actual cost of: (i) merchantable and useable work- in-process and the parts and materials transferred to Romeo Power under Section 12.4 above (but not to exceed the Contract price of the Products had the

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work been completed); (ii) settling claims under Section 12.4; and (iii) carrying out its obligation under Section 12.4.

**12.6 Romeo Power's Obligations Following Expiration.** If the Contract expires, Romeo Power will pay to Seller, in complete and final satisfaction of any liabilities relating to the Contract, only the purchase price for all conforming Products received by Romeo Power prior to expiration and, if applicable, any amounts owed for Transition Support pursuant to Section 12.8.

**12.7 Limitations on Romeo Power's Obligations Following Termination or Expiration.**

- Romeo Power's obligations under Section 12.5 are conditioned upon Seller's furnishing to Romeo Power, within one month after the date of termination, a termination claim, which will consist exclusively of the items of Romeo Power's obligation to Seller that are expressly permitted by this Section. Romeo Power may audit Seller's records before or after payment to verify amounts requested in Seller's termination claim.
- Romeo Power will not be obligated to make any payment for Products, work-in-process, parts or raw materials inventory: (i) in excess of those authorized or required under any Material Release, (ii) that are damaged or destroyed or that are not merchantable or useable; (iii) that are in Seller's standard stock or that are readily marketable; or (iv) that can be returned to Seller's suppliers or subcontractors for credit.
- Romeo Power will have no obligation for and will not be required to pay Seller, directly or on account of claims by Seller's subcontractors, for loss of anticipated profit, failure to realize anticipated production volumes, revenues or savings, unabsorbed overhead, interest on claims, product development and engineering costs, tooling, facilities and equipment rearrangement costs or rental, unamortized capital or depreciation costs, or general administrative burden charges from termination or expiration of the Contract, except as otherwise expressly agreed in a separate Contract issued by Romeo Power.

**12.8 Transition of Products Following Termination or Expiration.** Following expiration or termination of the Contract by either party for any reason (including termination by Seller) and notwithstanding any claimed or actual breach of any obligation by Romeo Power, Seller will cooperate in the transition of supply to a successor supplier, including the following, which will collectively be referred to as "Transition Support":

- Seller will continue production and delivery of all Products as ordered by Romeo Power, at the prices and other terms stated in the Contract, without premium or other condition, during the entire period reasonably needed by Romeo Power to complete the transition to the alternate supplier(s), such that Seller's action or inaction causes no interruption in Romeo Power's ability to obtain Products as needed;
- at no cost to Romeo Power, Seller will promptly provide all requested information and documentation regarding and access to Seller's manufacturing process, including on-site inspections,

bill-of-material data, tooling and process detail and samples of Products and components; and

- subject to Seller's actual capacity constraints, Seller will provide special overtime production, storage and/or management of extra inventory of Products, extraordinary packaging and transportation and other special services as expressly requested by Romeo Power in writing. If the transition occurs for reasons other than Seller's termination for Default, Romeo Power will, at the end of the transition period, pay the reasonable, actual cost of the assistance under this Section 12.8, provided that Seller has advised Romeo Power prior to incurring such amounts of its estimate of such costs. If the parties disagree on the cost of Transition Support, Romeo Power will pay the agreed portion to Seller without prejudice to Seller's right to seek to recover any disputed amounts.

**13. Default.**

**13.1 Events of Default.** Time is of the essence and, subject to Section 16, either party will be in "Default" under the Contract if it (a) fails to perform any obligation under the Contract and, if the non-performance can be cured, fails to cure the non-performance within 15 business days after notice from the other party specifying the non-performance, (b) admits in writing its inability to pay its debts as they become due, commences a bankruptcy, insolvency, receivership, or similar proceeding, or makes a general assignment for the benefit of creditors, (c) becomes a debtor in a bankruptcy, insolvency, receivership, or similar proceeding commenced by a third party that is not dismissed within 30 days after commencement, or (d) fails to provide adequate assurance of performance under the Contract within three business days after written demand by the other party.

**13.2 Remedies.** Subject to Section 13.3:

(a) Subject to Sections 7 and 8 (which provide the exclusive remedies for breach of warranty, Recalls, and products liability) and to the limitations in this Section 13.2, either party may exercise the remedies provided in this Section 13.2, which are cumulative and are in addition to all other rights and remedies available elsewhere in the Contract or by law.

(b) Either party may recover from the other party actual out-of-pocket damages or costs directly caused by the other party's breach of the Contract, regardless of whether the breach subsequently becomes a Default with the passage of time or giving of notice or both. All damages under this Section 13.2 will be reasonably determined based on the nature, type, price, and profitability of the Products or Services, industry practices, and the overall volume, scope, and profitability of other business relationships between Seller and Romeo Power.

(c) Upon the occurrence of a Default and while that Default is continuing, the non-defaulting party may terminate the Contract by notice to the defaulting party. If Seller is in Default, Romeo Power's damages will include the reasonable costs actually incurred to relocate the work to an alternate source, and Romeo Power may purchase completed Products at the Contract price and work-in-process and raw materials at Seller's actual cost. If Romeo Power is in Default, Seller's damages will include (i) the Contract price for completed

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Products and Services and the actual cost of work-in-process and raw materials (which will become Romeo Power's property upon payment in full), and (ii) the cost of unreimbursed and unamortized research and development, capital equipment, Property, and supplies that are unique to the Products.

(d) If Seller does not release or deliver Romeo Power's Property or other property of Romeo Power in accordance with Section II.(d), Romeo Power may at Seller's cost (i) obtain an immediate court order for possession without notice and without posting a bond, and (ii) enter Seller's premises, with or without legal process, and take immediate possession of Romeo Power's Property and the other property. To the extent permitted by law, Seller waives any right to object to Romeo Power's repossession of Romeo Power's Property and the other property in a bankruptcy or other proceeding.

(e) EXCEPT AS OTHERWISE EXPRESSLY AUTHORIZED IN THE CONTRACT, ALL INDIRECT, SPECIAL, CONSEQUENTIAL (INCLUDING LOST PROFITS OR MARKET SHARE OR DAMAGE TO BRAND VALUE), INCIDENTAL, PUNITIVE, AND EXEMPLARY DAMAGES, WHETHER OR NOT FORESEEABLE, ARE EXCLUDED UNDER THESE GENERAL TERMS TO THE EXTENT PERMITTED BY APPLICABLE LAW.

#### 14. Confidential Information.

Trade secrets, specifications, drawings, notes, instructions, engineering data and analyses, compositions of matter, financial data, and other technical and business data which are supplied or disclosed by Romeo Power or Seller in connection with the Contract, in each case that are marked or otherwise identified as confidential or where their confidential nature is apparent at the time of disclosure ("Confidential Information"), will be deemed confidential and proprietary to, and remain the sole property of, the disclosing party. The receiving party may not disclose Confidential Information or use Confidential Information for any purpose other than as contemplated under the Contract without in each case the written consent of the disclosing party. Confidential Information will not include information that (a) is or becomes generally available to the public other than as a result of a violation of this Section 14 by the receiving party, (b) was obtained by the receiving party on a non-confidential basis from a third party who had the apparent right to disclose it, or (c) is legally required to be disclosed. Romeo Power and Seller will each use the same degree of care to safeguard Confidential Information that it uses to protect its own confidential information from unauthorized access or disclosure (but not less than a reasonable degree of care). Upon request by the disclosing party, the receiving party will promptly return or destroy the original and all copies of Confidential Information received.

#### 15. Assignment and Subcontracting.

This Purchase Order is issued to the Seller, in reliance upon its personal performance of the duties imposed. Without prior written consent of Romeo Power, Seller may not: (a) assign the Contract or delegate the performance of its duties hereunder; or (b) assign any accounts receivable from Romeo Power to third parties. Seller will ensure that the terms of its contracts with its sub-suppliers and sub-contractors provide Romeo Power with all of the rights specified in the Contract, including

but not limited to Sections 8, 10.4, 11, 12.4, 12.5, 13.2, 14, 22, and 23. Any subcontracting, assignment or delegation does not relieve Seller of any responsibility under this Contract. In addition, without requiring Seller's consent or meeting any other condition, (i) Romeo Power is permitted to collaterally assign and grant a security interest in any or all of its rights, benefits or remedies under the Contract Documents to any or all of its lenders and other creditors (including the United States Department of Energy or any agent acting for its benefit and the benefit of other secured parties) pursuant to the terms of any applicable security agreements entered into by Romeo Power in favor of such lenders or creditors and (ii) in connection with exercising their rights and remedies under such security agreements, such lenders or other creditors may cause Romeo Power's rights, benefits or remedies under the Contract Documents to be transferred and assigned outright to themselves or to any third party provided that the applicable transferees or assignees under this clause (ii) assume all of Romeo Power's obligations under the Contract.

#### 16. Excusable Non-Performance.

A delay or failure by either party to perform its obligations under the Contract will be excused, and will not constitute a Default, only if (a) caused by an event or occurrence beyond the reasonable control of that party and without its fault or negligence, including a labor dispute, and (b) the party unable to perform gives notice of the non-performance (including its anticipated duration) to the other party promptly after becoming aware that it has occurred or will occur. If Seller is unable to perform for any reason, Romeo Power may purchase Products and Services from other sources and reduce its purchases from Seller accordingly without liability to Seller. Within three business days after written request by the other party, the non-performing party will provide adequate assurances that the non-performance will not exceed 30 days. If the non-performing party does not provide those assurances, or if the non-performance exceeds 30 days, the other party may terminate the Contract by notice given to the non-performing party before performance resumes.

#### 17. Labor Contracts.

Seller will notify Romeo Power of the contract expiration date at least six months before the expiration of a current labor contract that has not been extended or replaced. Romeo Power may thereafter direct Seller in writing to manufacture up to 30 days of additional inventory of Products, specifying the quantities of Products required and any packaging and storage requirements. Seller will use commercially reasonable efforts to comply with Romeo Power's written directions prior to expiration of the current labor contract and until the current labor contract has been extended or a new contract completed. By authorizing the additional inventory, Romeo Power commits to buy the entire quantity of conforming Products requested and produced. Seller is responsible for carrying costs and any additional costs of manufacture.

18. Customs. As specified in Section 6.7, transferable credits or benefits associated with Products purchased, including trade credits, export credits, or rights to the refund



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of duties, taxes, or fees, belong to Romeo Power unless otherwise prohibited by applicable law. Seller will provide Romeo Power with all information and records relating to the Products necessary for Romeo Power to (a) receive these benefits, credits, and rights, (b) fulfill any customs obligations, origin marking or labeling requirements, and certification or local content reporting requirements, (c) claim preferential duty treatment under applicable trade preference regimes, and (d) participate in any duty deferral or free trade zone programs of the country of import. Seller will obtain all export licenses and authorizations and pay all export taxes, duties, and fees unless otherwise stated in the Contract, in which case Seller will provide all information and records necessary to enable Romeo Power to obtain those export licenses or authorizations.

**19. Insurance.**

Prior to commencing work on Romeo Power's premises or utilizing Romeo Power's equipment (including Romeo Power's Property), Seller will maintain and upon request furnish to Romeo Power a certificate evidencing (a) general liability insurance with coverage limits reasonably acceptable to Romeo Power and naming Romeo Power as an additional insured, (b) all risk property perils insurance covering the full replacement value of Romeo Power's equipment while in Seller's care, custody, or control and naming Romeo Power as loss payee, and (c) worker's compensation insurance as required by applicable law.

**20. Dispute Resolution.**

**20.1 Negotiation and Mediation.** Romeo Power and Seller will first endeavor to resolve through good faith negotiations any dispute arising under the Contract. If a dispute cannot be resolved through good faith negotiations within a reasonable time, either party may request non-binding mediation by a mediator approved by both parties or, absent that approval, by the National Center for Dispute Resolution, to be conducted in San Francisco, California.

**20.2 Arbitration.** If mediation fails to resolve the dispute within 30 days after the first mediation session, either party may submit the dispute to binding arbitration by notice to the other party. The arbitration proceedings will be conducted, and a single arbitrator will be selected, in accordance with the rules of the National Center for Dispute Resolution or other rules approved by the parties, and will be governed by the United States Arbitration Act, 9 U.S.C. Sections 1-16, and this Section 20. The arbitration will be conducted at an agreed location or at a location selected by the arbitrator if the parties are unable to agree. The arbitrator will issue a written opinion setting forth the basis for the arbitrator's decision, which may include an award of legal fees and costs. The arbitrator's award will be final and non-appealable absent fraud or manifest error, and judgment on the arbitrator's award may be entered in any court having jurisdiction. While arbitration proceedings are pending, the parties will continue to perform their obligations under the Contract without setoff for any matters being contested in the arbitration proceedings.

**20.3 Litigation.** The parties have selected binding arbitration as the sole means to resolve a dispute between them over monetary claims that cannot be resolved through mediation.

Either party may pursue through litigation claims that also involve third parties who have not consented to arbitration, claims in litigation commenced by third parties, and claims for injunctive or other non-monetary relief.

**21. Tooling.**

**21.1 Authorized Purchase.** Seller will not purchase any jigs, tooling, patterns, gauges, fixtures and related data related to the production or providing of Products for the account of Romeo Power or charge Romeo Power for any tooling except as authorized in a Purchase Order.

**21.2 Payment.** If Romeo Power has agreed to compensate Seller for Tooling:

- The price for Tooling set forth in the Purchase Order will be adjusted to credit Romeo Power in the amount, if any, by which the price exceeds Seller's actual cost as verified. If Seller does not provide such access and documentation, Romeo Power may determine in its reasonable discretion an appropriate adjustment. Seller will retain all cost records for a period of two years after receiving final payment of the charges. Seller will provide to Romeo Power, as requested, access to Seller's premises and all documentation relating to the Tooling prior and subsequent to payment, to inspect work performed and to verify charges submitted by Seller against the Purchase Order.
- The Seller will be entitled to receive final installment of payment only after it is completed. Tooling is not complete until Seller, at its own expense, has successfully completed all required testing (including, for Tooling used in connection with motor vehicle parts production, completion of the PPAP process) and has submitted all necessary documentation to the satisfaction of Romeo Power.

**21.3 Seller's Responsibilities.** If Seller is responsible for fabricating or acquiring Tooling, such Tooling will: (a) comply with any specifications provided by Romeo Power (or directed by Romeo Power); (b) be capable of producing Products that satisfy the Purchase Order, including meeting any volume requirements or estimates provided to Seller during the life of the product as well as satisfying the requirements for Service Parts; (c) be clearly and permanently marked as Romeo Power property according to Romeo Power's direction. Time is of the essence for Seller's acquisition or fabrication of Tooling. Seller will provide Tooling progress reports on Romeo Power's request and will promptly notify Romeo Power in writing if it believes that the Tooling might not be completed by the completion date specified on the Purchase Order.

**21.4 Sub-Contracting.** If all or part of the fabrication, modification, repair or refurbishment of Tooling will be subcontracted to a third-party toolmaker, the Seller will: (a) give Romeo Power advance written notice of the identity of the toolmaker and the location of the Tooling; (b) inform the toolmaker in writing that it is a bailee-at-will, through the Seller, of Tooling owned by Romeo Power; (c) be solely responsible for payments to the toolmaker; and (d) include in its purchase order for Tooling a waiver of toolmaker liens.

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Romeo Power has no obligation to the Seller or subcontractor other than payment to the Seller of the Purchase Order price.

**21.5 Notice and Approval.** If the Seller intends to subcontract all or part of the manufacture of the Products to a third-party subcontractor and to locate Tooling on the subcontractor's premises, the Seller will: (a) provide Romeo Power in with written notice of the identity of the subcontractor and the location of the Tooling; (b) obtain the prior written permission of Romeo Power; (c) inform the subcontractor in writing that it is a bailee-at-will, through the Seller, of Tooling owned by Romeo Power; and (d) be solely responsible for payments to the subcontractor; and (e) include in its purchase order to the third party a waiver of third party's liens. If a subcontractor brings an action against the Seller for payment of the Tooling, the Seller will not join Romeo Power in the action and shall defend and indemnify Romeo Power if it is joined by the third party in any action.

**21.6 Directed Suppliers.** The Contract may include the designation of a third party as a supplier to the Seller of parts or services to be included in the Products ("Directed Supplier"). Such description does not relieve the Seller of any of its obligations under the Contract except that if the description in the Contract includes the price the Seller is to pay the Designated Supplier, the Seller shall not be responsible for negotiating or resolving any disputes with the Designated Supplier related to pricing.

**21.7 Romeo Power's Rights of Possession, Equitable Relief.** Except as set forth herein, Seller will have no interest in the Tooling paid for or to be paid for by Romeo Power except as an at-will bailee, Romeo Power has the right to the sole, unencumbered, unqualified, and absolute possession of the Tooling at any time as elected by Romeo Power. In furtherance of this right, Romeo Power, in its sole discretion, may at any time (a) request Seller to remove the Tooling, in which case Seller shall immediately prepare it for shipment and redeliver it to the location specified by Romeo Power, freight prepaid, in the same condition as originally received by Seller, reasonable wear and tear excepted, provided, however, that Romeo Power will reimburse Seller to the extent such freight cost exceeds the cost of shipping the Tooling from Seller's plant where the Tooling is located to the nearest Romeo Power manufacturing plant; and/or (b) exercise its unconditional right of entry, which Seller hereby gives to Romeo Power, to inspect at and remove the Tooling from the premises at which the Tooling is located without liability in trespass for such entry. Any failure by Seller to perform its obligations under this Section beyond the value of the Tooling itself or for which an event of such failure or threatened failure for any reason whatsoever, and in addition to any other remedy to which Romeo Power may be entitled, Romeo Power shall be entitled to institute and prosecute proceedings in a court of competent jurisdiction to obtain temporary and/or permanent injunctive or other equitable relief to enforce any provision hereof without the necessity of posting bond or proof of action injury or damage.

**21.8 Insurance and Risk of Loss.** Seller, at its expense, shall procure insurance with reputable and financially responsible insurance companies to insure the Tooling at all times in amounts equal to its full insurable replacement value, with loss payable to Romeo Power. While in Seller's possession or

control, the Tooling is at Seller's risk of loss, excepting only reasonable wear and use. Seller shall provide a certificate or other evidence of insurance at Owner's request.

**21.9 Indemnification and Release.** Except as otherwise prohibited by applicable law, Seller shall defend, indemnify and hold Romeo Power harmless from all claims, actions, causes of action, suits, damages, losses, and expenses of any nature, including but not limited to, attorneys' fees, arising out of the possession, storage, installation, maintenance, use, or control of the Tooling by Seller, its employees, or any subsidiary, subcontractor, or other person, including but not limited to, damages to the Tooling or other property of Romeo Power or the property of others and injuries or death to persons. Seller waives any and all statutory and/or constitutional immunity to which, but for this waiver, it might be entitled in compliance with the workers' compensation laws of the jurisdictions in which Seller is located or under any other employee benefit statutes or similar laws of any jurisdiction.

**21.10 Non-Disclosure.** The Tooling and any Confidential Information associated therewith and all intellectual property rights embodied therein, are and shall continue to be treated as confidential and proprietary to Romeo Power, and shall be used by Seller so as to prevent disclosure, and are and shall be subject to all patent, proprietary, or other property rights of Romeo Power, including without limitation, the rights afforded Romeo Power pursuant to any trade secret statutes or similar laws of any jurisdiction. Without Romeo Power's prior written consent, Seller will not disclose, transfer, or loan the Tooling associated therewith to any subsidiary, affiliate, subcontractor, or other person.

**21.11 Waiver of Liens.** As a continuing condition of Seller's possession or use of the Tooling, Seller shall ensure that no third party obtains any lien or other right in the Tooling and hereby waives and relinquishes, and agrees to obtain from any third parties who might claim any such lien (including without limitation mechanic's liens) or right, their written waiver and relinquishment of all rights, if any, to any lien or other right of retention whatsoever with respect to the Tooling. To the extent that any common law or statutory provision should be deemed applicable to the Tooling and should confer upon or create in favor of Seller any lien, right, or remedy, whether for work performed on or goods produced with or raw materials ordered in connection with the Tooling, Seller hereby irrevocably waives and relinquishes, for itself and its successors and assigns, any and all such liens, rights, and remedies, agreeing that its rights and remedies are solely as set forth in the General Terms. The provisions of this Section are a bargained consideration essential to Romeo Power's agreement and to Seller's possession of the Tooling.

**21.12 License to Use Tooling Information for Limited Purposes.** Romeo Power hereby grants to Seller a limited, non-exclusive, and non-transferable license to utilize intellectual property relating to the Tooling, whether or not patented or patentable, including without limitation, all designs, drawings, schematics, and blueprints, and any modifications, deviations, improvements, or adaptations thereof, whether by Romeo Power, Seller or third party designee (individually and collectively the "Proprietary Materials"), solely for the purposes of manufacturing and using the Tooling solely for the benefit pursuant to Romeo Power Contracts or other written

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agreements to which Romeo Power is signatory and for no other purpose whatsoever. Seller acknowledges Romeo Power's proprietary ownership of each of the Proprietary materials. If Romeo Power consents to Seller's disclosure, transfer, or loan of the Tooling or any information (including without limitation, any Proprietary materials associated therewith and all intellectual property rights embodied thereon) associated therewith to any subsidiary, subcontractor, or other person, such consent shall be contingent, in Romeo Power's sole discretion, upon Romeo Power's grant to such third party of a limited, non-exclusive, and non-transferable license in the Proprietary Materials, or Seller's grant, with Romeo Power's permission, to such third party of a limited, non-exclusive, and non-transferable sublicense in the Proprietary Materials. Upon demand by Romeo Power and/or upon possession of the Tooling by Romeo Power, or its designee, whichever first occurs, Seller will return to Romeo Power all originals of all materials embodying the Proprietary Materials, in whatever medium or format, and all copies of such originals.

21.13 Option to Purchase. Seller shall obtain, maintain, and own all Tooling which Romeo Power has not paid for or agreed to pay for ("Seller's Tooling"). Seller grants Romeo Power the right to purchase Seller's Tooling at any time for an amount equal to the lesser of the unamortized or otherwise expended cost of Seller's Tooling as shown in Seller's records used for filing its federal income tax returns or Seller's cost amortized over five years.

## 22. Limitation of Liability

Romeo Power's sole liability under the Purchase Order (including its termination, expiration or cancellation) is to pay for the Products in accordance with these General Terms and to pay the specific termination related amounts described in Sections 12.5 and 12.8. In no event will Romeo Power be liable for anticipated profits, interest, penalties or incidental, consequential, punitive, multiple, or exemplary damages or liabilities in connection with the Contract, whether for breach of contract, late payment, property damage, personal injury, illness, or death or otherwise.

## 23. Miscellaneous

23.1 Advertising. During and after the term of the Contract, Seller will not advertise or otherwise disclose its relationship with Romeo Power without Romeo Power's prior written consent, except as may be required to perform the Contract or as required by law.

23.2 Audit Rights. Seller will maintain records as necessary to support amounts charged to Romeo Power under the Contract in accordance with Seller's document retention policies. Romeo Power and its representatives may audit Seller's records of transactions completed within one year prior to the audit date, to the extent needed to verify the quantities shipped and that the prices charged match the Contract prices. Any audit will be conducted at Romeo Power's expense (but will be reimbursed by Seller if the audit uncovers material errors in the amounts charged), at reasonable times, and at Seller's usual place of business.

23.3 Electronic Communication. Seller will comply with the method of electronic communication specified by Romeo Power in Romeo Power's request for quotation and confirmed in the Contract, including requirements for electronic funds transfer, purchase order transmission, electronic signature, and communication. Seller will also make commercially reasonable efforts to comply with any modification to Romeo Power's specified method of electronic communication after the date of the Contract, subject to Section 1.2.

23.4 Relationship of the Parties. Romeo Power and Seller are independent contractors, and nothing in the Contract makes either party the agent or legal representative of the other party for any purpose. Neither party has authority to assume or create any obligation on behalf of the other party.

23.5 Waiver. The failure of either party to enforce any right or remedy provided in the Contract or by law on a particular occasion will not be deemed a waiver of that right or remedy on a subsequent occasion or a waiver of any other right or remedy.

23.6 Entire Agreement. The Contract constitutes the entire agreement between the parties with respect to its subject matter, and supersedes all prior oral or written representations or agreements by the parties with respect to the subject matter of the Contract, including Romeo Power's request for quotation and Seller's quotation unless specifically incorporated in the Contract. Except as authorized in Section 1.2, no subsequent terms, conditions, understandings, or agreements purporting to modify the terms of the Contract will be binding unless in writing and signed by both parties.

23.7 Severability. A finding that any provision of the Contract is invalid or unenforceable in any jurisdiction will not affect the validity or enforceability of any other provision of the Contract or the validity or enforceability of that provision in any other jurisdiction.

23.8 Interpretation. When used in these General Terms, "including" means "including without limitation" and terms defined in the singular include the plural and vice versa.

23.9 Notices. Any notice or other communication required or permitted in the Contract must be in writing and will be effective on the date of actual receipt if the date of actual receipt is a business day or on the next business day if the date of actual receipt is not a business day.