



## **SUPPLIER GENERAL TERMS AND CONDITIONS**

This agreement is between a RealTruck Group, Inc. ("RTG") Company (as identified in the applicable purchase orders) herein referred to as the "Buyer" and the party to the purchase orders issued by Buyer (the "Purchase Order(s)" and having an address as specified on the Purchase Orders, hereinafter referred to as "Seller." Both Buyer and Seller (the "Parties") agree to these terms and conditions for all Purchase Orders given by Buyer to Seller at any time.

### **1. ACCEPTANCE:**

Each Purchase Order and Purchase Order revision issued by Buyer is an offer (the "Offer") to Seller for the purchase of goods and/or services, that includes and is governed by these General Terms and Conditions, the RealTruck Group, Inc. Supplier Code of Conduct, the terms contained in any addendum or supplement issued by Buyer and accepted by Seller (whether such acceptance is in accordance with the following or otherwise), any supplier manual provided or made available by Buyer to Seller, and any other documents incorporated by reference in this Order or in these General Terms and Conditions (collectively, the "Terms," Purchase Order and Terms together, the "Contract"). Seller has read and understands these Terms and agrees that Seller's written acceptance or commencement of any part of the work or services under any Purchase Order shall constitute Seller's acceptance of Buyer's Offer and these Terms. All terms and conditions proposed by Seller that are different from or in addition to these Terms, including, but not limited to, terms and conditions contained in any quotation or acceptance by Seller, are expressly objected to and rejected by Buyer. Any such proposal or attempted variance by Seller shall not operate as a rejection of this Offer if Seller accepts Buyer's Offer by any means provided for under these Terms or applicable law, the Offer shall be deemed accepted by Seller without any additional or different terms or variations whatsoever. Buyer's issuance of a Purchase Order does not constitute an acceptance of any prior offer or proposal by Seller, and any reference in the Purchase Order or the Terms to any such prior offer or proposal (including any quotation issued by Seller whether or not such quotation purports to contain Seller's terms of sale, if any) is solely to incorporate the description or specifications of the goods and/or services contained in such offer or proposal, but only to the extent that such description or specifications are not directly in conflict with Buyer's description and specifications contained in the Contract.

### **2. QUANTITY AND DURATION:**

The quantity applicable to each Purchase Order, and the duration applicable to each Purchase Order, shall be as specified on the face of the Purchase Order. The quantity specified may be for up to one hundred percent (100%) of Buyer's requirements for the goods. Seller further acknowledges and agrees that Seller is obligated to provide goods to Buyer in the quantity specified in any release issued by Buyer. To the extent that Buyer issues separate releases for specific quantities under a Purchase Order, each release will specify a firm quantity of goods and/or a firm quantity of raw materials/components that Buyer will be responsible for in the event of termination. Releases may include projections or estimates for future quantities, but releases are only binding upon Buyer for, and Buyer will have no obligation or liability beyond, the firm quantity specified in the release. Seller acknowledges and agrees to accept the risk associated with the lead times of the various components if they are beyond the firm release quantities provided by Buyer.

### **3. SHIPPING AND BILLING:**

Seller agrees: (a) to properly pack, mark and ship goods in accordance with the requirements of Buyer, the involved carriers, and, if applicable, the country of destination; (b) to route shipments in accordance with Buyer's instructions; (c) to make no charge for handling, packaging, storage or transportation of goods, unless otherwise stated as an item on the Purchase Orders; (d) to provide with each shipment packing slips with Buyer's contract and/or release number and date of shipment marked thereon; (e) to properly mark each package with a label/tag according to Buyer's instructions; (f) to promptly forward the original bill of lading or other shipping receipt for each shipment in accordance with Buyer's instructions. Seller will include on bills of lading or other shipping receipts the correct tariff classification code as identified under the Harmonized Tariff System of the United State ("HTSUS") and the correct Export Classification Control Number ("ECCN"), where applicable, and identify all of the goods shipped in accordance with Buyer's instructions and the carrier's requirements. The marks on each package and identification of the goods on packing slips, bills of lading and invoices (when required) shall be sufficient to enable Buyer and any U.S. or foreign customs officials to easily identify the goods purchased. The terms of payment specified by Buyer on the Purchase

Orders shall control and may not be contradicted by any differing payment terms set forth on any invoices rendered by Seller to Buyer. Unless otherwise specified by Buyer in writing, the terms of sale for all such shipments shall be Delivery Duty Paid ("DDP") as defined under INCOTERMS 2010. Buyer may withhold payment pending receipt of evidence, in such form and detail as Buyer may direct, of the absence of any liens, encumbrances and claims on the goods or services provided by Seller to Buyer.

#### **4. DELIVERY SCHEDULES:**

Time is of the essence, and deliveries shall be made both in quantities and at times specified in Buyer's schedules. Buyer shall not be required to make payment for goods delivered to Buyer that are in excess of quantities specified in Buyer's delivery schedules. Buyer may change the rate of scheduled shipments or direct temporary suspension of scheduled shipments, neither of which shall entitle Seller to a modification of the price for goods or services covered by the Purchase Orders. Where quantities and/or delivery schedules are not specified, Seller shall deliver goods in such quantities and times as Buyer may direct in subsequent releases. At Buyer's option (but not as Buyer's exclusive remedy): (a) a charge of up to \$5000 may be levied against Seller for each part number that does not meet the prescribed delivery date on the Purchase Orders; and (b) subject to the provisions of these Terms, a charge of \$25,000 per day may be levied against Seller if any late delivery results in a line down situation at Buyer's business.

#### **5. PREMIUM SHIPMENTS:**

If Seller's acts or omissions result in Seller's failure to meet Buyer's delivery requirements and Buyer requires a more expeditious method of transportation for the goods than the transportation method originally specified by Buyer, Seller shall ship the goods as expeditiously as possible using the more expeditious method directed by Buyer, all at Seller's sole expense. In the event that Seller refuses to use a more expeditious method as directed by Buyer, Buyer may, at its option, arrange for such shipping methods as Buyer deems necessary to meet the delivery requirements and recover all related expenses.

#### **6. CHANGES:**

Buyer reserves the right, at any time, to direct changes, or cause Seller to make changes, to drawings and specifications of the goods or to otherwise change the scope of the work covered by any Purchase Order, including work with respect to such matters as inspection, testing or quality control, and Seller agrees to promptly make such changes. Any difference in price or time for performance resulting from such changes shall be equitably adjusted by Buyer after receipt of documentation in such form and detail as Buyer may direct. Failure of the Parties to agree on the amount of, or need for, an equitable adjustment shall not constitute grounds for Seller to suspend or terminate performance of its obligations under the Contract. Seller may not make any change in design, processing, packing, shipping, or place of delivery without Buyer's written approval. Any changes to any Purchase Order or these Terms shall be made only in accordance with the applicable requirements set forth in these Terms.

#### **7. SELLER QUALITY AND DEVELOPMENT; INSPECTION:**

Seller agrees to participate in Buyer's supplier quality and development program(s) and to comply with all quality requirements and procedures specified by Buyer, as revised from time to time. In addition, Buyer shall have the right to enter Seller's facility at reasonable times to inspect all relevant documents, records, materials, equipment, tooling and goods in the possession or under the control of Seller relating to any of Seller's obligations under this Purchase Order or any other Purchase Order. Buyer's inspection of the goods, whether during manufacture, prior to delivery or within a reasonable time after delivery, shall not constitute acceptance of any work-in-process or finished goods, nor shall it constitute Buyer's approval of Buyer's manufacturing practices or procedures.

#### **8. NONCONFORMING GOODS:**

Seller acknowledges that Buyer will not perform incoming inspections of the goods, and waives any rights to require Buyer to conduct such inspections. To the extent Buyer rejects goods as nonconforming, the quantities under any Purchase Orders will automatically be reduced, unless Buyer otherwise notifies Seller. Seller will not replace quantities so reduced until directed to by Buyer under a new purchase order or schedule from Buyer. Nonconforming goods will be held by Buyer in accordance with Seller's instructions at Seller's risk. Seller's failure to provide written instructions within 10 days, or such shorter period as may be commercially reasonable under the circumstances, after notice of nonconformity shall entitle Buyer, at Buyer's option, to charge Seller for storage and handling or to dispose of the goods (at Seller's expense) without liability to Buyer. Payment for nonconforming goods shall not constitute an acceptance of them, nor shall it limit or impair Buyer's right to seek any legal or equitable remedy related to the nonconforming goods, or relieve Seller from responsibility for latent or obvious defects.

#### **9. FORCE MAJEURE:**

Any delay or failure of either party to perform its obligations shall be excused if Seller is unable to produce, sell or deliver, or Buyer is unable to accept delivery, buy or use, the goods or services covered by a Purchase Order, as the result of an event or occurrence beyond the reasonable control of the party and without its fault or negligence, including,

but not limited to, acts of God, actions by any governmental authority (whether valid or invalid and including, without limitation, the imposition of boycotts, economic sanctions, embargos, export control laws, and other restrictive trade measures), fires, floods, windstorms, explosions, riots, natural disasters, wars, sabotage, or court injunction or order; provided that written notice of such delay (including the anticipated duration of the delay) shall be given by the affected party to the other party as soon as possible after the event or occurrence (but in no event more than 10 days thereafter). During the period of such delay or failure to perform by Seller, Buyer, at its option, may purchase goods and services from other sources and reduce its schedules to Seller by such quantities, without liability to Seller, or have Seller provide the goods and services from other sources in quantities and at times requested by Buyer (unless prohibited by economic sanctions, export control laws, or other applicable laws), and at the price set forth in the existing Purchase Orders. In addition, Seller at its expense shall take such actions as are necessary to ensure the supply of goods and services to Buyer for a period of at least 30 days during any anticipated labor disruption or resulting from the expiration of Seller's labor contract(s). If requested by Buyer, Seller shall, within 5 days, provide adequate assurances that the delay shall not exceed 30 days. If the delay lasts more than 30 days or Seller does not provide adequate assurance that the delay will cease within 30 days, Buyer may immediately terminate all obligations to Seller, including under any Purchase Orders, without liability.

#### **10. WARRANTY:**

- a. In addition to Seller's customer warranties, any express warranties set forth in the Contract, any statutory warranties or any warranties implied by law, Seller expressly warrants, represents guarantees and acknowledges that the goods covered by any Purchase Order and/or otherwise delivered to Buyer: (i) shall strictly conform with all specifications, drawings, statements on containers or labels, descriptions and samples furnished to or by Buyer, and all industry standards, laws and regulations in force in countries where such goods are to be sold; (ii) shall be free from defects in design, material and workmanship and shall be new and of the highest quality; (iii) shall be free and clear of all liens, claims or other encumbrances, and that Seller is conveying good title to Buyer; (iv) shall be merchantable, of good material and workmanship, free from defects, and safe, (v) have been selected, designed, manufactured and assembled by Seller based upon, and will be fit and sufficient for, the particular purposes intended by Buyer, which purposes Seller acknowledges are known to it; (vi) shall be adequately contained, packaged, marked and labeled; (vii) in the case of services, all services performed on behalf of Buyer shall be performed in a competent, workmanlike manner; and (viii) the goods shall be manufactured in accordance with all applicable federal, state, and local laws, regulations, industry standards or other standards, labeling, transporting, licensing approval or certification requirements in the United States or any other country where the goods will be sold or used.
- b. The warranty period shall be the longer of: (a) any warranty specified in any Purchase Orders; (b) any warranty offered by Seller in writing or verbally, related to the goods specified in the Purchase Orders; (c) any warranty period specified by law; (d) the warranty period given by Seller to its other customers for goods of like nature to those set forth on the Purchase Orders or otherwise delivered to Buyer; (e) a period of three years from date of sale by Buyer, to its end customer, of such goods supplied by Seller; or the applicable warranty period offered to retail purchasers for the goods, or the end product into which the goods are incorporated.
- c. Notwithstanding the foregoing, Seller agrees to waive the expiration of the warranty period in the event there are failures or defects discovered after the warranty period of a significant nature or in a significant portion of the goods, or a defect is discovered which, in Buyer's reasonable opinion, constitutes a threat of damage to property or to the health and safety of any person.
- d. In the event that Buyer, or its end customer, voluntarily or pursuant to a government mandate, makes an offer to owners of vehicles (or other finished products) on which the goods, or any parts, components or systems incorporating the goods, are installed to provide remedial action to address a defect or condition that relates to motor vehicle safety or reliability or the failure of the vehicle to comply with any applicable law, safety standard or guideline, whether in connection with a recall campaign or other customer satisfaction or corrective service action (a "Remedial Action"), the warranty period shall continue for such time period as may be dictated by Buyer's end customer or the federal, state, local or foreign government where the goods are used or provided and Seller shall fully comply with the requirements of the Contract. Notwithstanding the expiration of the warranty period, Seller shall nonetheless be liable for cost and damages associated with any Remedial Action to the extent that such Remedial Action is based upon a reasonable determination (including by use of statistical analysis or other sampling methodology) that the goods fail to conform to the warranties set forth in the Contract. Where applicable, Seller shall pay all reasonable expenses associated with determining whether a Remedial Action involving the goods is necessary. Buyer and Seller agree that any Remedial Action involving the goods shall be treated separately and distinctly from similar Remedial Actions of other goods of Seller; provided that such separate and distinct treatment is lawful and Seller shall in no event fail to provide

at least the same protection to Buyer on such goods as Seller provides to its other customers in connection with such similar Remedial Actions.

- e. If Seller breaches any of the foregoing warranties, Buyer shall have the right, in addition to exercising all other rights Buyer may have under the Contract, Uniform Commercial Code and any other applicable statutes or law, to take the following actions, at Buyer's option: (i) retain the defective goods in whole or in part with an appropriate adjustment in the price for the goods; (ii) require Seller to repair or replace the defective goods in whole or in part at Seller's sole expense, including all shipping, transportation, and installation costs; (iii) correct or replace the defective goods with similar items and recover the total cost relating thereto from Seller, including the cost of product recalls; or (iv) reject the defective goods.
- f. These warranties shall survive inspection, test, delivery, acceptance, use and payment by Buyer and shall inure to the benefit of Buyer, its successors, assigns, customers, and the users of Buyer's goods and services. These warranties may not be limited or disclaimed. Payment for goods or services by Buyer will not constitute acceptance of the goods/services or a waiver of any warranty claim.

#### **11. INGREDIENTS DISCLOSURE; SPECIAL WARNINGS AND INSTRUCTIONS:**

If requested by Buyer, Seller shall promptly furnish to Buyer in such form and detail as Buyer may direct: (a) a list of all ingredients, specifications, assembly and wiring diagrams and component part descriptions related to the goods provided by Seller to Buyer; (b) the quantities of each of the foregoing; and (c) information concerning any changes in or additions to any of the foregoing. Prior to and with the shipment of the goods, Seller agrees to furnish to Buyer sufficient warning and notice in writing (including appropriate labels on the goods, containers and packing) of any hazardous material that is an ingredient or a part of any of the goods, together with such special handling instructions as may be necessary to advise carriers, Buyer, and their respective employees of how to exercise that measure of care and precaution that will best prevent bodily injury or property damage in the handling, transportation, processing, use or disposal of the goods, containers and packing shipped to Buyer. Seller shall also comply with all applicable laws regarding any warning labels or other alerts which must be given to either Buyer or any end user of the goods supplied by Seller to Buyer.

#### **12. INSOLVENCY:**

Buyer may immediately terminate its Purchase Orders and other agreements with Seller without liability to Buyer in any of the following or any other comparable events: (a) insolvency of Seller; (b) filing of a voluntary petition in bankruptcy by Seller; (c) filing of any involuntary petition in bankruptcy against Seller; (d) appointment of a receiver or trustee over Seller or the assets of Seller; or (e) execution of an assignment for the benefit of creditors by Seller, provided that such petition, appointment or assignment is not vacated or nullified within 15 days of such event. Seller shall reimburse Buyer for all costs incurred by Buyer in connection with any of the foregoing, including, but not limited to, all attorneys' and other professional fees, expert witness fees and costs.

#### **13. TERMINATION FOR BREACH OR NONPERFORMANCE; SALE OF ASSETS OR CHANGE IN CONTROL:**

- a. Buyer reserves the right to terminate all or any part of its agreements with Seller, including under any Purchase Orders, without liability to Buyer, if Seller: (i) repudiates, threatens to breach or breaches any of the terms of any Purchase Order or other agreement with Buyer, including Seller's warranties; (ii) fails to perform services or deliver goods as specified by Buyer; (iii) fails to make progress so as to endanger timely and proper completion of services or delivery of goods; and does not correct such failure or breach within 10 days (or such shorter period of time if required under the circumstances) after receipt of written notice from Buyer specifying such failure or breach; (iv) violates any applicable forced labor, human trafficking, anti-corruption, or international trade laws, including, but not limited to, those referenced in the provisions of these Terms governing Compliance With Laws and/or the RealTruck Group, inc. Supplier Code of Conduct; or (v) if Seller fails to provide Buyer with adequate and reasonable assurance of Seller's ability to perform timely any of Seller's obligations under any Purchase Order, including, without limitation, delivery of goods; (vi) if Buyer terminates for breach any other Purchase Order issued by Buyer to Seller in accordance with the terms of such Purchase Order (whether or not such other Purchase Order is related to the Purchase Order); or (vii) if Seller fails to remain competitive with respect to price, quality, delivery, technology, payment terms, or customer support. In the event of a termination under this Subpart a, Buyer shall be entitled to recover from Seller, among other things, all costs incurred by Buyer in purchasing substitute goods or services from an alternative supplier. Additionally, in the event that an act of termination by Buyer under this Subpart a is determined to be improper for any reason, the damages available to Seller shall be limited to the damages that Seller would have been entitled to receive if Buyer had terminated for convenience pursuant to these Terms.

- b. Buyer may terminate its agreements and Purchase Orders with Seller upon giving at least 60 days' notice to Seller, without liability to Buyer, if Seller (i) sells, or offers to sell, a material portion of its assets, or (ii) sells or exchanges, or offers to sell or exchange, or causes to be sold or exchanged more than 20% of Seller's stock or other ownership interest (or another amount that effects a change in the control of Seller). Seller shall notify Buyer promptly in writing in the event of the earlier of (i) the entrance into an agreement, or (ii) the occurrence of an event, described above in this Subpart b. In the event that an act of termination by Buyer under this Subpart b is determined to be improper for any reason, the damages available to Seller shall be limited to the damages that Seller would have been entitled to receive if Buyer had terminated for convenience pursuant to these Terms.

#### **14. TERMINATION FOR CONVENIENCE:**

In addition to any other rights of Buyer to terminate hereunder or under any Purchase Orders, Buyer may, at its option, immediately terminate all or any part of its agreements with Seller, including under any Purchase Orders, at any time and for any reason, by giving notice to Seller. Upon such termination, Buyer shall pay to Seller only the following amounts, when due, as Seller's sole remedy: (a) the contract price for all conforming goods and services that have been delivered in accordance with the Purchase Orders and these Terms; and (b) the actual costs of work-in-process and raw materials incurred by Seller in furnishing the goods or services under the terminated Purchase Orders or other agreements, to the extent such costs are reasonable in amount and are properly allocable or apportionable under generally accepted accounting principles to the terminated portion of the agreements and Purchase Orders; less, however: (a) the sum of the reasonable value or cost (whichever is higher) of any goods or materials used or sold by Seller with Buyer's written consent; (b) the cost of any damaged or destroyed goods or material; and (c) any other offsets Buyer may have against Seller. Buyer will make no payments for finished goods, services, work-in-process or raw materials fabricated or procured by Seller in amounts in excess of those authorized in firm delivery releases nor for any undelivered goods that are in Seller's standard stock or that are readily marketable. Payments made under this Paragraph shall not exceed the aggregate price payable by Buyer for finished goods or services that would be produced or performed by Seller under delivery or release schedules outstanding at the date of termination. Except as provided in this Paragraph, Buyer shall not be liable for and shall not be required to make payments to Seller, directly or on account of claims by Seller's subcontractors, for loss of anticipated profit, unabsorbed overhead, interest on claims, product development and engineering costs, facilities and equipment rearrangement costs or rental, unamortized depreciation costs, capital expenditures or other investments, general and administrative burden charges or any other damages of any type or nature. Within 10 days from the effective date of termination, Seller shall submit a comprehensive termination claim to Buyer, with sufficient supporting data to permit Buyer's audit, and shall thereafter promptly furnish such supplemental and supporting information as Buyer shall request. Buyer or its agents shall have the right to audit and examine all books, records, facilities, work, material, inventories and other items relating to any termination claim of Seller. If no claim is submitted within the 10 day period, then any claims of Seller against Buyer shall be deemed waived and released.

#### **15. INTELLECTUAL PROPERTY:**

- a. In addition to Seller's customer warranties, any express warranties set forth in the Contract, any statutory warranties or any warranties implied by law, Seller expressly warrants, represents guarantees and acknowledges that the goods covered by any Purchase Order and/or otherwise delivered to Buyer do not, and are not claimed to, violate any patent, trademark or copyright, and may be properly imported into the United States or any other country;
- b. All work product, including, but not limited to, any idea, invention, concept, design, prototype, product configuration, process, technique, procedure, system, plan, model, program, software or code, data, specification, drawings, diagram, flow chart, documentation, or the like that are created in the course of performing any Purchase Order, and any associated intellectual property rights therein, are the sole and exclusive property of Buyer. Seller agrees that all works of authorship created by Seller in connection with each Purchase Order are "works made for hire" on behalf of Buyer and that term is used in connection with the U.S. Copyright Act. For avoidance of doubt, each party retains all intellectual property to which such party held rights prior to the date of this Contract. The term "intellectual property" as used herein means all patents, patent applications, patentable subject matter, copyrights, copyrightable subject matter, work of authorship, derivative works, trademark, trade name, trade dress, trade secrets, know-how, and any other subject matter, material, or information that is considered by Buyer to be proprietary or confidential and/or that otherwise qualifies for protection under any law providing or creating intellectual property rights, including the Uniform Trade Secrets Act. Seller hereby assigns to Buyer ownership of all right, title, and interest in the work product and any associated intellectual property, and further agrees to cooperate with Buyer and to assist in the preparation and execution of all documents relating to any effort by or on behalf of Buyer to apply for, obtain,

maintain, transfer, or enforce any intellectual property right related to the Supplies at the request and expense of Buyer.

- c. Seller will defend, hold harmless and indemnify Buyer, its successors and customers against any claims of infringement (including patent, trademark, copyright, industrial design right, or other proprietary right, or misuse or misappropriation of trade secret) and resulting damages and expenses (including attorney's and other professional fees) arising in any way in relation to the goods or services provided by Seller to Buyer, including such claims where Seller has provided only part of the goods or services; and Seller expressly waives any claim against Buyer that such infringement arose out of compliance with Buyer's specifications.
- d. Seller is solely and exclusively responsible for any costs, losses, fines, or penalties (including attorney's fees) resulting from the seizure, re-export, or destruction of counterfeit (or allegedly counterfeit goods) by U.S. Customs & Border Protection ("CBP") or other customers authorities.
- e. Seller hereby agrees that (i) Buyer or Buyer's subcontractor has the right to repair, reconstruct, or rebuild the specific goods delivered without payment of any royalty to Seller; (ii) parts manufactured based on Buyer's drawings and/or specifications may not be used for Seller's own use or sold to third parties without Buyer's express written authorization; and (iii) to the extent that Seller is providing Buyer with any copyrightable works, the works shall be considered "works made for hire;" and to the extent that the works do not qualify as "works made for hire," Seller hereby assigns to Buyer all right, title and interest in all copyrights and moral rights therein.

#### **16. CONFIDENTIALITY AND NONDISCLOSURE:**

- a. The protections provided for in this Paragraph shall be treated as supplementing the terms of any separate confidentiality or non-disclosure agreement between Buyer and Seller. Nothing contained in these Terms shall be construed as abrogating any protections to which Buyer otherwise may be entitled under the terms of another agreement governing confidentiality and nondisclosure.
- b. As used in these Terms, "Confidential Information" shall mean any and all technical and business information provided by Buyer (or its affiliates) to Seller, including but not limited to (i) patent and patent applications, (ii) trade secrets, and (iii) proprietary information of Buyer or its business partners — ideas, techniques, sketches, drawings, works of authorship, models, inventions, know-how processes, apparatuses, equipment, algorithms, software programs, software source documents, and formulas related to the current, future, and proposed products and services, and including without limitation, their respective information concerning research, experimental work, development, design details and specifications, engineering, financial information, procurement requirements, purchasing, manufacturing, customer lists, investors, employees, business and contractual relationships, business forecasts, sales and merchandising, marketing plans, and information Buyer provides regarding third parties.
- c. Seller agrees that at all times and notwithstanding any termination or expiration of this Agreement it will hold in strict confidence and not disclose to any third party Confidential Information of the Buyer, except as approved in writing by Buyer, and will use the Confidential Information for no purpose other than performance of its contractual obligations to Buyer. Seller shall only permit access to Confidential Information to those of its employees or authorized representatives having a need to know and who have signed confidentiality agreements or are otherwise bound by confidentiality obligations at least as restrictive as those contained therein. Seller may not modify, reverse engineer, decompile, create other works from the intellectual property or sensitive information of Buyer, or disassemble any software programs contained in the Confidential Information without the prior written consent of Buyer
- d. Seller shall immediately notify Buyer in writing upon discovery of any loss or unauthorized disclosure of the Confidential Information.
- e. Upon written request of Buyer, Seller shall promptly return all documents and other tangible materials representing Buyer's Confidential Information and all copies thereof.
- f. Seller recognizes and agrees that nothing contained in this Agreement shall be construed as granting any property rights, by license or otherwise, to any Confidential Information disclosed pursuant to this Agreement, or to any invention or any patent, copyright, trademark, or other intellectual property right that has issued or

that my issue, based on such Confidential Information. Seller shall not make, have made, use or sell for any purpose any product or other item using, incorporating or derived from the Confidential Information.

- g. Seller acknowledges that a breach of this Paragraph will cause irreparable damage to Buyer and hereby agrees that Buyer shall be entitled to seek injunctive relief, as well as such further relief as Buyer may be entitled by law, equity, or contract.
- h. Seller's obligations under this Paragraph will survive termination or expiration of the Contract. Seller's obligations under this Paragraph shall terminate only when Seller can demonstrate that the Confidential Information in question: (i) was in the public domain at the time it was communicated to the Seller; (ii) entered the public domain subsequent to the time it was communicated to the Seller through no fault of the Seller; (iii) was in the Seller's possession free of any obligation of confidence at the time it was communicated to the Seller; (iv) was rightfully communicated to the Seller free of any obligation of confidence subsequent to the time it was communicated to the Seller; or (v) it was developed by employees or agents of the Seller independently of and without reference to any information communicated to the Seller.
- i. In the event that the Seller is compelled by law, court order, or mandatory request from another government body to disclose Confidential Information, Seller shall promptly inform Buyer in writing of such an event and provide Buyer a reasonable opportunity to resist communication of the Confidential Information, and, to cooperate with Buyer in seeking a protective order or other appropriate measure to ensure limited disclosure of the Confidential Information.

#### **17. INDEMNIFICATION:**

Seller shall indemnify and hold Buyer and its affiliated companies, their directors, officers, employees, invitees, agents and customers, ("Indemnitees") harmless from and against any liability, claims, losses, actions, judgments, demands and expenses, including attorneys' and other professional fees and costs (collectively, "Liabilities") incurred by Indemnitees by reason of or on account of any breach of contract, warranty claims, product recall claims, product liability claims, injuries to persons, including death, or damage to property caused by Seller, its employees, agents, subcontractors, or in any way attributable to the performance of Seller, its employees, agents, or invitees; except for such liability, claim, or demand arising solely out of the negligence of Buyer. Seller shall also indemnify and hold Buyer harmless from and against any liability, claims, demands and expenses (including attorneys' fees and other professional fees and costs) for damages, fines, or penalties asserted against Buyer (whether civil or criminal) by any governmental authority or third party relating to any of the goods supplied by Seller to Buyer, whether such liability, claims, demands and expenses relate to personal injury, damage, destruction, infringement, violation of applicable laws (including, without limitation, any laws enumerated in the provisions of these Terms regarding Compliance With Laws), respectively), or any other tort, contract, administrative, or criminal claim, whether deemed intentional, negligent, or otherwise. With respect to Buyer's right to indemnification hereunder, Buyer shall have the right to engage counsel of Buyer's choosing, and have Seller pay all of such counsel's costs and expenses, including all expert witness fees, arbitration fees, mediation fees, facilitation fees and any other costs of the dispute resolution process, including all litigation costs.

#### **18. INSURANCE:**

- a. Seller shall maintain insurance coverage with carriers acceptable to Buyer and in the amounts set forth in the Special Terms set forth herein. Upon request, Seller shall: (1) furnish to Buyer either a certificate showing compliance with these insurance requirements or certified copies of all insurance policies; and/or (2) include Buyer as an additional insured party on all insurance policies.. The certificates shall provide that Buyer will receive 30 days' prior written notice from the insurer of any termination or reduction in the amount or scope of coverage. Seller's furnishing of certificates of insurance or purchase of insurance shall not release Seller of its obligations or liabilities under this Contract. Seller shall provide Buyer with written notice regarding any change in insurance coverage, including changes which have not yet taken effect, within 10 days of Seller's knowledge of such change.
- b. **Special Term U.S. Insurance** - For purposes of this Agreement, the insurance coverages required under Subpart a of this Paragraph ("Insurance") are as follows: (a) Workers' Compensation: statutory limits for the state(s) in which the contract is to be performed (or evidence of authority to self-insure); (b) Employer's Liability: \$500,000 each accident for bodily injury by accident and \$500,000 each employee for bodily injury by disease; (c) Commercial General Liability covering liability arising from premises, operations, independent contractors, products/completed operations, personal injury and advertising injury, and liability assumed under an insured contract: \$5,000,000 each occurrence; and (d) Automobile Liability (including owned, non-owned and hired vehicles): \$5,000,000 each accident.

**19. SELLER'S PROPERTY:**

Unless otherwise agreed to by Buyer, Seller, at its expense, shall furnish, keep in good condition, and replace when necessary all machinery, equipment, tools, jigs, dies, gauges, fixtures, molds, patterns and other items ("Seller's Property") necessary for the production of the goods. The cost of changes to Seller's Property necessary to make design and specification changes authorized by Buyer shall be governed by a separate Purchase Order between Buyer and Seller; otherwise no such costs may be imposed on Buyer. Seller shall insure Seller's Property with full fire and extended coverage insurance for its replacement value. Seller grants Buyer an irrevocable option to take possession of and/or title to Seller's Property that is special for the production of the goods upon payment to Seller of its net book value less any amounts that Buyer has previously paid to Seller for the cost of such items; provided, however, that this option shall not apply if Seller's Property is used to produce goods that are the standard stock of Seller or if a substantial quantity of like goods are being sold by Seller to others.

**20. BUYER'S PROPERTY:**

- a. All supplies, materials, tools, jigs, dies, gauges, fixtures, molds, patterns, equipment and other items furnished by Buyer, either directly or indirectly, to Seller to perform Seller's obligations to Buyer, or for which Seller has been reimbursed by Buyer, shall be and remain the property of Buyer and held by Seller on a bailment basis ("Buyer's Property"). Seller shall bear the risk of loss of and damage to Buyer's Property. Buyer's Property shall at all times be properly housed and maintained by Seller, at its expense, shall not be used by Seller for any purpose other than the performance of Seller's obligations to Buyer; shall be deemed to be personalty; shall be conspicuously marked by Seller as the property of Buyer; shall not be commingled with the property of Seller or with that of a third person; and shall not be moved from Seller's premises without Buyer's prior written approval. Unless otherwise agreed to in writing by Buyer, Seller at its own expense shall keep the Buyer's Property in good condition and repair, including repair necessitated by wear and tear and other usage by Seller. In the event that it becomes necessary, as determined by either Buyer or Seller, to replace the Buyer's Property due to normal use by the Seller, or otherwise, said replacement of Buyer's Property shall be at the sole expense of the Seller and said replacement Buyer's Property shall remain the property of the Buyer. Buyer shall have the right to enter Seller's premises at all reasonable times to inspect Buyer's Property and Seller's records with respect thereto. Upon the request of Buyer, Buyer's Property shall be immediately released to Buyer or delivered to Buyer by Seller, either (i) F.O.B. transport equipment at Seller's plant, properly packed and marked in accordance with the requirements of the carrier selected by Buyer to transport Buyer's Property, or (ii) to any location designated by Buyer, in which event Buyer shall pay to Seller the reasonable costs of delivering such Buyer's Property to such location. When permitted by law, Seller waives any lien or other rights that Seller might otherwise have on any of Buyer's Property for work performed on Buyer's Property or otherwise.
- b. Seller acknowledges and agrees that (i) Buyer may not be the manufacturer of the Buyer's Property nor the manufacturer's agent nor a dealer therein; (ii) Buyer is bailing the Buyer's Property to Seller for Seller's benefit; and (iii) Seller has inspected the Buyer's Property and is satisfied that the Buyer's Property is suitable and fit for its purposes, and (iv) BUYER HAS NOT MADE AND DOES NOT MAKE ANY WARRANTY OR REPRESENTATION WHATSOEVER, EITHER EXPRESS OR IMPLIED, AS TO THE FITNESS, CONDITION, MERCHANTABILITY, DESIGN OR OPERATION OF THE BUYER'S PROPERTY OR ITS FITNESS FOR ANY PARTICULAR PURPOSE. Buyer shall not be liable to Seller for any loss, damage, injury or expense of any kind or nature caused, directly or indirectly, by the Buyer's Property, including, without limitation, its use or maintenance, or its repair, service or adjustment, or by any interruption of service or for any loss of business whatsoever or howsoever caused, including, without limitation any anticipatory damages, loss of profits or any other indirect, special or consequential damages.
- c. Seller authorizes Buyer to file a UCC-1 financing statement or similar document with the appropriate filing authority to give notice of Buyer's ownership interest in the Buyer's Property. Failure to file a financing statement will not alter or amend Buyer's ownership rights to the Buyer's Property. Upon request, Seller shall provide Buyer with a written inventory of all Buyer's Property.

**21. SERVICE AND REPLACEMENT PARTS:**

Seller will sell to Buyer goods necessary for it to fulfil its current model service and replacement parts requirements at the price(s) set forth the applicable Purchase Orders. If the goods are systems or modules, Seller will sell the components or parts that comprise the system or module at price(s) that shall not, in the aggregate, exceed the price of the system or module less assembly costs. During the 15 year period after Buyer completes current model purchases, Seller will sell goods to Buyer to fulfil Buyer's past model service and replacement parts requirements. Unless otherwise agreed to by Buyer, the price(s) during the first 3 years of this period shall be those in effect at the conclusion of current model purchases. For the remainder of this period, the price(s) for goods shall be as agreed to by the Parties. When



requested by Buyer, Seller shall make service literature and other materials available at no additional charge to support Buyer's service part sales activities.

## **22. REMEDIES:**

The rights and remedies reserved to Buyer in this Contract shall be cumulative with, and additional to, all other or further remedies provided in law or equity. Without limiting the foregoing, should any goods fail to conform to the warranties set forth in these Terms or under applicable law, Buyer shall notify Seller and Seller shall, if requested by Buyer, reimburse Buyer for all incidental and consequential damages caused by such nonconforming goods, including, but not limited to, costs, expenses and losses incurred by Buyer (including all legal fees, expert fees and other costs): (a) in inspecting, sorting, repairing or replacing such nonconforming goods; (b) resulting from production interruptions; (c) conducting recall campaigns or other corrective service actions; and (d) claims for personal injury (including death) or property damage caused by such nonconforming goods. If requested by Buyer, Seller will enter into a separate agreement for the administration or processing of warranty chargebacks for nonconforming goods.

## **23. IMPORTS, EXPORTS, AND RESTRICTIVE TRADE MEASURES**

Seller (including its subsidiaries, affiliates, and agents) shall comply with all applicable customs, export control, and related requirements in the United States and the other jurisdictions where it operates, and shall maintain effective policies and procedures to that effect. Any credits or benefits resulting or arising from the Parties' agreements, including under any Purchase Orders, including trade credits, export credits or the refund of duties, taxes or fees, shall belong to Buyer. Seller shall provide all information necessary (including written documentation, electronic transaction records, certificates of origin and the correct HTSUS tariff codes) to permit Buyer to receive such benefits or credits, as well as to fulfil its customs-related obligations, including country of origin marking, import valuation, tariff classification, product labeling requirements, and local or regional content requirements arising under national customs laws or Free Trade Agreements ("FTAs"), whenever applicable. Where applicable, Seller shall undertake such arrangements as necessary for the goods to be covered by any duty deferral or free trade zone program(s) of the country of import. Additionally, Seller shall be exclusively responsible for obtaining any export licenses or other authorizations necessary for the export of the goods unless otherwise required by applicable law or indicated in writing by the Parties, in which event Seller shall provide any information that Buyer or the relevant governmental authorities may deem necessary to enable Buyer to obtain such licenses or authorization(s).

## **24. SETOFF/RECOUPMENT:**

In addition to any right of setoff or recoupment provided by law, all amounts due to Seller shall be considered net of indebtedness of Seller and its affiliates/subsidiaries to Buyer and its affiliates/subsidiaries; and Buyer shall have the right to setoff against or to recoup from any amounts due to Seller and its affiliates/subsidiaries from Buyer and its affiliates/subsidiaries. If an obligation of Seller or any of its subsidiaries or affiliates to Buyer or any of its subsidiaries or affiliates is disputed, contingent or unliquidated, Buyer or any of its subsidiaries or affiliates may defer payment of all or any portion of the amount due until such obligation is resolved. Without limiting the generality of the foregoing and by way of example only, in the event of a bankruptcy of Seller, if all of the Purchase Orders between Buyer and Seller have not been assumed, then Buyer may defer payment to Seller, via an administrative hold or otherwise, for goods against potential rejection and other damages.

## **25. NO ADVERTISING:**

Seller shall not, without first obtaining the written consent of Buyer, in any manner advertise or publish the fact that Seller has contracted to furnish Buyer with any goods or services, or use any trademarks or trade names of Buyer in Seller's advertising or promotional materials.

## **26. COMPLIANCE WITH LAWS; SUPPLIER CODE OF CONDUCT:**

- a. **GENERAL.** Seller, and any goods or services supplied by Seller, shall comply with all applicable laws, rules, regulations, orders, conventions, ordinances and standards of the country(ies) of destination or that relate to the manufacture, labeling, transportation, importation, exportation, licensing, approval or certification of the goods or services, including, but not limited to, those relating to environmental matters, wages, hours and conditions of employment, subcontractor selection, discrimination, occupational health/safety, motor vehicle safety, anti-bribery and anti-corruption, and trade laws.
- b. **FORCED LABOR AND HUMAN TRAFFICKING.** Seller further represents that neither it nor any of its subcontractors or suppliers will employ slave labor, prison labor, child labor, labor from persons subject to human trafficking, or any other form of forced or involuntary labor in the supply of goods or provision of services to Buyer. At Buyer's request, Seller shall certify in writing its compliance with the foregoing. Buyer reserves the right to termination all or any part of its agreements with Seller, including under any Purchase Orders, without liability to Buyer, if Seller or any of its subcontractors or suppliers engagement in any of the

aforementioned activities. Seller shall indemnify and hold Buyer harmless from and against any government inquiries or enforcement actions, liability claims, demands or expenses (including attorneys' or other professional fees and costs) arising from or relating to Seller's non-compliance including, but not limited to, those arising under U.S. customs laws, U.S. government contracting laws, and anti-slavery and human trafficking legislation in the United Kingdom and other foreign jurisdictions.

- c. **ANTI-CORRUPTION AND INTERNATIONAL TRADE.** Buyer reserves the right to terminate all or any part of its agreements with Seller, including under any Purchase Orders, without liability to Buyer, if Seller violates or is reasonably suspected of violating: (a) the Foreign Corrupt Practices Act ("FCPA") or other applicable laws prohibiting bribery and other corrupt transactions; (b) the U.S. Bank Secrecy Act as amended by the USA PATRIOT Act and other applicable Anti-Money Laundering ("AML") laws; (c) the U.S. Export Administration Regulations ("EAR"), the U.S. International Traffic in Arms Regulations ("ITAR"), U.S. Anti-Boycott Regulations, and other applicable export control laws; (d) the various U.S. economic sanctions programs administered by the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC") and the U.S. Department of State; and (e) any laws of similar effect applicable in the jurisdictions where Seller conducts business, including, but not limited to, those enumerated elsewhere in these Terms. Seller shall indemnify and hold Buyer harmless from and against any government inquiries or enforcement actions, liability claims, demands or expenses (including attorneys' or other professional fees and costs) arising from or relating to Seller's non-compliance.
- d. **SUPPLIER CODE OF CONDUCT.** At least annually, Seller shall certify that it is in compliance with the RealTruck Group, Inc. Supplier Code of Conduct, posted for viewing at <https://realtruck.com/supplier-code-of-conduct>, as amended from time to time without obligation of further notice to Seller. Seller shall post the RealTruck Group, Inc. Supplier Code of Conduct in all facilities that supply any RealTruck Group, Inc. entity and shall provide necessary management and employee training to ensure compliance.

## 27. TRANSITION OF SUPPLY:

- a. Upon the expiration or earlier termination of any Purchase Order for whatever reason, Seller agrees to take all actions necessary in order to ensure that there is no interruption in the supply of goods to Buyer. Among other things, Seller agrees to take such actions as may be reasonably required by Buyer to accomplish the transition from Seller to an alternative seller, including without limitation the following:
- b. Seller shall provide all notices necessary or desirable for Buyer to resource the Purchase Order to an alternative seller.
- c. Seller hereby agrees that Buyer may disclose and use Seller's drawings and specifications in furtherance of a transition to an alternative seller.
- d. Seller shall provide a sufficient bank of goods to ensure that the transition to any alternative seller chosen by Buyer will proceed smoothly, as reasonably determined by the Buyer. At the Buyer's request, the Seller shall assure proper storage for the bank of goods, and deliver goods per standard releases from the Buyer.
- e. Seller shall provide to Buyer all tooling and any other property furnished by or belonging to Buyer or any of Buyer's customers in as good a condition as when received by Seller, reasonable wear and tear excepted. Buyer and the alternative seller reserve the right to access and actively participate during the disconnect or disassemble process for the Buyer property. The location, time and date of the exit shall be mutually agreeable between the Buyer and Seller.
- f. Seller shall, at Buyer's option: (i) assign to Buyer any or all supply contracts or Purchase Orders for raw material or components relating to the Purchase Order; (ii) sell to Buyer, at Seller's cost any or all perishable tooling and inventory relating to the Purchase Order; and/or (iii) sell to Buyer any of Seller's property relating to the Purchase Order, at a price equal to the unamortized portion of the cost of such items less any amounts Buyer previously has paid to Seller for the cost of such items. Seller shall provide documentation supporting the original cost of any unamortized items.
- g. The term "alternative seller" expressly includes, but is not limited to, a Buyer owned facility.

## **28. LIMITATIONS ON BUYER'S LIABILITY:**

In no event shall Buyer be liable to Seller for anticipated profits or for special, incidental or consequential damages. Without limiting the foregoing, the parties further agree that with respect to all other claims, Seller's damages shall be limited to the lesser of: (i) the value of products purchased by Buyer from Seller in the three months immediately preceding the alleged breach; or (ii) \$100,000.

## **29. NO IMPLIED WAIVER:**

The failure of either Party at any time to require performance by the other Party shall in no way affect the right to require such performance at any time thereafter, nor shall the waiver of either Party of a breach of any provision of this contract constitute a waiver of any succeeding breach of the same or any other provision.

## **30. NON-ASSIGNMENT:**

Unless otherwise specifically prohibited by applicable law, Seller may not assign or delegate its rights or obligations under this Contract without Buyer's prior written consent. Any consent by Buyer to an assignment shall not be deemed to waive Buyer's right to recoupment from Seller and/or its assigns for any claim arising out of this Contract.

## **31. RELATIONSHIP OF PARTIES:**

Seller and Buyer are independent contracting parties and nothing in this Contract shall make either Party the agent or legal representative of the other for any purpose whatsoever, nor does it grant either Party any authority to assume or to create any obligation on behalf of or in the name of the other.

## **32. GOVERNING LAW; JURISDICTION:**

- a. For purposes of this Paragraph, including all Subparts thereto, Buyer's location shall be the location identified in these Terms for the specific Buyer entity that issued the applicable purchase order.
- b. These Terms, and the terms of any Purchase Orders and other agreements of the Parties, shall be governed and construed according to the laws of the country (and state/province, if applicable) where Buyer is located, excluding the provisions of the United Nations Convention on Contracts for the International Sale of Goods and any conflict of law provisions that would require application of another choice of law.
- c. Any action or proceedings by Buyer against Seller may be brought by Buyer in any state or federal court(s) having jurisdiction over Seller or, at Buyer's option, in the court(s) having jurisdiction over Buyer's location, in which event Seller consents to jurisdiction, venue and service of process in such court(s) in accordance with applicable procedures. Any actions or proceedings by Seller against Buyer shall be brought by Seller exclusively in the state or federal court(s) of the country (and state/province, if applicable) where Buyer is located, based on the address of Buyer on the applicable Purchase Orders.
- d. Notwithstanding the provisions of Subpart c to this Paragraph, any dispute between Buyer and a Seller which both has its headquarters outside of the United States and exclusively manufactures the goods supplied to Buyer outside of the United States shall be resolved by binding arbitration administered by the International Center for Dispute Resolution ("ICDR") according to applicable rules and procedures thereof. Unless otherwise agreed by the parties: (i) the dispute will be decided by a single arbitrator; (ii) the arbitration will be conducted in English; and (iii) the place of arbitration shall be New York, New York. All of the arbitration submissions, documents, proceedings, and awards should be held strictly confidential by all parties and participants except as needed to enforce an arbitration award. The arbitration award shall be deemed enforceable and may be enforced in any court(s) having jurisdiction over the party against whom the award is entered. The parties further acknowledge and agree that a claim for specific performance, injunctive, or other equitable relief shall be exempted from this arbitration provision and subject to suit in accordance with the requirements of Subpart c to this Paragraph.
- e. In the event that Buyer is faced with the potential for irreparable harm, Buyer may seek injunctive relief from the court(s) otherwise having jurisdiction over the dispute pursuant to Subpart c of this Paragraph, in which event Seller consents to jurisdiction, venue and service of process in such court(s) in accordance with applicable procedures.

## **33. SEVERABILITY:**

If any term(s) of these Terms or any Purchase Order is invalid or unenforceable under any statute, regulation, ordinance, executive order or other rule of law, such term(s) shall be deemed reformed or deleted, as the case may

be, but only to the extent necessary to comply with such statute, regulation, ordinance, order or rule, and the remaining provisions shall remain in full force and effect.

**34. ENTIRE AGREEMENT:**

These Terms, coupled with the terms of any Purchase Orders, constitutes the entire agreement between Seller and Buyer with respect to the matters contained therein and supersede all prior oral or written representations and agreements. These Terms may only be modified by an amendment issued by Buyer.