



Spartan Motors Chassis, Inc.
Standard Terms and Conditions
Commercial Subcontracts / Purchase Orders

1. DEFINITIONS

The following terms shall have the meanings set forth below:

- (a) "Contract" means the instrument of contracting, such as "PO", "Purchase Order, or other such type designation, including all referenced documents, exhibits and attachments. If these terms and conditions are incorporated into a "master" agreement that provides for releases, (in the form of a Purchase Order or other such document) the term "Contract" shall also mean the Release document for the Work to be performed.
- (b) "Buyer" means Spartan Motors Chassis, Inc., acting through its companies, or business units, as identified on the face of the Contract. If a subsidiary or affiliate of Buyer is identified on the face of the Contract than "Buyer" means that subsidiary, or affiliate.
- (c) "Buyer Procurement Representative" means a person authorized by Buyer's cognizant procurement organization to administer and/or execute this Contract.
- (d) "PO" or "Purchase Order" as used in any document constituting a part of this Contract shall mean this Contract.
- (e) "Seller" means the Party identified on the face of the Contract with whom Buyer is contracting.
- (f) "Work" means all required articles, materials, supplies, goods, and services constituting the subject matter of this Contract.

2. ACCEPTANCE OF CONTRACT/TERMS AND CONDITIONS

- (a) The Work shall comply with all drawings and specifications referred to in Buyer's request for quote. If Buyer's request for quote refers to Seller's drawings or specifications for the Work, Seller agrees to notify Buyer of any changes to its drawings and specifications 60 days prior to implementation of any such change in order to assess the impact of the change.
- (b) This Contract integrates, merges, and supersedes any prior offers, negotiations, and agreements concerning the subject matter hereof and constitutes the entire agreement between the Parties
- (c) Seller's acknowledgment, acceptance of payment, or commencement of performance, shall constitute Seller's unqualified acceptance of this Contract.
- (d) Additional or differing terms or conditions proposed by Seller or included in Seller's acknowledgment hereof are hereby objected to by Buyer and have no effect unless expressly accepted in writing by Buyer.
- (e) Seller agrees to indemnify, save harmless and defend Buyer and its directors, officers, employees, agents, successors, and assigns from and against any and all liabilities, claims, losses, damages, fines, penalties, forfeitures, and the costs and expenses incident thereto (including costs of defense, settlement, and reasonable attorney's fees) which it or they may hereafter incur, become responsible for, or pay out as a result of, or arising out of, Seller's breach of any of its duties addressed in this clause. Seller shall include this clause in all subcontracts at any tier, involving the performance of this Contract.

3. APPLICABLE LAWS

- (a) This Contract shall be governed by and construed in accordance with the law of the State of Michigan excluding its choice of law rules. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Contract.
- (b) Seller represents that each chemical substance constituting or contained in Work sold or otherwise transferred to Buyer hereunder is on the list of chemical substances compiled and published by the Administrator of the Environmental Protection Administration pursuant to the Toxic Substances Control Act (15 U.S.C. Sec. 2601 et seq.) as amended.
- (c) Seller shall provide to Buyer with each delivery any Material Safety Data Sheet applicable to the Work in conformance with and containing such information as required by the Occupational Safety and Health Act of 1970 and regulations promulgated thereunder, or its State approved counterpart.

4. COMPLIANCE WITH LAWS

- (a) Seller agrees to comply with all applicable laws, orders, rules, regulations and ordinances.

5. ASSIGNMENT

Any assignment of Seller's contract rights or delegation of duties shall be void, unless prior written consent is given by Buyer. However, Seller may assign rights to be paid amounts due, or to become due, to a financing institution if Buyer is promptly furnished a signed copy of such assignment reasonably in advance of the due date for payment of any such amounts. Amounts assigned to an assignee shall be subject to setoffs or recoupment for any present or future claims of Buyer against Seller. Buyer shall have the right to make settlements and/or adjustments in price without notice to the assignee.

6. CHANGES

- (a) The Buyer Procurement Representative may at any time, by written notice, and without notice to sureties or assignees, make changes within the general scope of this Contract in any one or more of the following: (i) drawings, designs or specifications; (ii) method of shipping or packing; (iii) place of inspection, acceptance, performance, or point of delivery; (iv) delivery schedule; (v) description of services to be performed; and (vi) time of performance (i.e., hours of the day, days of the week, etc.). Changes may only be made in writing by the Buyer Procurement Representative.
- (b) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of this Contract, Buyer shall make an equitable adjustment in the Contract price and/or delivery schedule, and modify the Contract accordingly.
- (c) Any claim for an equitable adjustment by Seller must be submitted in writing to Buyer within thirty (30) days from the date of notice of the change, unless the Parties agree in writing to a longer period. Buyer may audit any of Seller's books and records in connection with any equitable adjustment proposal.
- (d) Failure to agree to any adjustment shall be resolved in accordance with the "Disputes" clause of this Contract. However, nothing contained in this "Changes" clause shall excuse Seller from proceeding without delay in the performance of this Contract as changed.

7. CONTRACT DIRECTION

- (a) Only the Buyer Procurement Representative has authority to change this Contract. Such changes must be in writing.
- (b) Buyer engineering and technical personnel may from time to time render assistance or give technical advice or discuss or effect an exchange of information with Seller's personnel concerning the Work hereunder. Such actions shall not be deemed to be a change under the "Changes" clause of this Contract and shall not be the basis for equitable adjustment.
- (c) Except as otherwise provided herein, all notices to be furnished by the Seller shall be sent to the Buyer Procurement Representative.

8. DEFAULT

- (a) Buyer, by written notice, may terminate this Contract for default, in whole or in part, if Seller fails to comply with any of the terms of this Contract, fails to make progress as to endanger performance of this Contract, or fails to provide adequate assurance of future



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- performance. Seller shall have five (5) days (or such longer period as Buyer may authorize in writing) to cure any such failure after receipt of notice from Buyer. Default involving delivery schedule delays shall not be subject to the cure provision.
- (b) Buyer shall not be liable for any Work not accepted; however, Buyer may require Seller to deliver to Buyer any supplies and materials, manufacturing materials, and manufacturing drawings that Seller has specifically produced or acquired for the terminated portion of this Contract. Buyer and Seller shall agree on the amount of payment for these other deliverables.
 - (c) In the event of termination, in whole or in part, Buyer may acquire, under terms Buyer considers appropriate, supplies or services similar to those terminated, and the Seller will be liable to Buyer for any excess costs of those supplies or services, including any incidental costs Buyer incurs through procurement.
 - (d) Seller shall continue all Work not terminated.
 - (e) If after termination under paragraph (a), it is later determined that Seller was not in default, such termination shall be deemed a Termination for Convenience.
- 9. DISPUTES**
All disputes under this Contract which are not disposed of by mutual agreement may be settled at Buyer's sole discretion either by submitting the claim to (i) a court of competent jurisdiction in the State of Michigan, whose state and federal courts the Parties agree to be bound by and no action shall be filed in the courts of any other state or (ii) binding arbitration, before a single arbitrator, in the State of Michigan, in accordance with the Commercial Arbitration Rules of the American Arbitration Association; and judgment upon the arbitrator's award may be entered in any court having jurisdiction thereof. Until final resolution of any dispute hereunder, Seller shall diligently proceed with the performance of this Contract as directed by Buyer.
- 10. EXTRAS**
Work shall not be supplied in excess of quantities specified in the Contract. Seller shall be liable for handling charges and return shipment costs for any excess quantities.
- 11. PROPERTY**
- (a) Buyer may provide to Seller property owned by either Buyer or its customer (Furnished Property). Furnished Property shall be used only for the performance of this Contract.
 - (b) Title to Furnished Property shall remain in Buyer or its customer. Seller shall clearly mark (if not so marked) all Furnished Property to show its ownership.
 - (c) Except for reasonable wear and tear, Seller shall be responsible for, and shall promptly notify Buyer of, any loss or damage. Without additional charge, Seller shall manage, maintain, and preserve Furnished Property in accordance with good commercial practice.
 - (d) At Buyer's request, and/or upon completion of this Contract the Seller shall submit, in an acceptable form, inventory lists of Furnished Property and shall deliver or make such other disposal as may be directed by Buyer.
 - (e) Material made in accordance with Buyer's specifications and drawings shall not be furnished or quoted to any other person or concern without Buyer's written consent.
 - (f) Any invention or similar intellectual property first made or conceived by Seller in the performance of this Contract or which is derived from or based on the use of confidential information supplied by Buyer shall be considered as being a "work made for hire" and shall be and become the property of Buyer; and Seller shall execute such documents necessary to perfect Buyer's title thereto.
- 12. GRATUITIES/KICKBACKS**
No gratuities (in the form of entertainment, gifts or otherwise) or kickbacks shall be offered or given by Seller, to any employee of Buyer with a view toward securing favorable treatment as a supplier.
- 13. INDEPENDENT CONTRACTOR RELATIONSHIP**
- (a) Seller is an independent contractor in all its operations and activities hereunder. The employees used by Seller to perform Work under this Contract shall be Seller's employees exclusively without any relation whatsoever to Buyer.
 - (b) Seller shall be responsible for any costs or expenses including attorneys' fees, all expenses of litigation and/or settlement, and court costs, arising from any act or omission of Seller, its officers, employees, agents, suppliers, or subcontractors at any tier, in the performance of any of its obligations under this Contract.
- 14. INFORMATION OF Buyer**
Information, including but not limited to technical and business information, provided by Buyer to Seller remains the property of Buyer. Seller agrees to comply with the terms of Buyer's Mutual Confidentiality and Non-Disclosure Agreement.
- 15. INFORMATION OF Seller**
Seller shall not provide any proprietary information to Buyer without prior execution by Buyer of a Proprietary Information Agreement or amendment to this Contract providing for the same.
- 16. INSPECTION AND ACCEPTANCE**
- (a) Notwithstanding (i) payment; (ii) passage of title; (iii) prior inspection or test, or (iv) execution of an acceptance document, Buyer and its customer may inspect all Work prior to acceptance or rejection at reasonable times and places, including, when practicable, during manufacture and before shipment. Seller shall provide all information, facilities, and assistance necessary for safe and convenient inspection without additional charge.
 - (b) No such inspection shall relieve Seller of its obligations to furnish all Work in accordance with the requirements of this Contract. Buyer's final inspection and acceptance shall be at destination unless otherwise designated by Buyer.
 - (c) Seller shall provide and maintain a test and inspection system acceptable to Buyer and its customers, if required.
 - (d) If Seller delivers non-conforming Work, Buyer may: (i) accept all or part of such Work at an equitable price reduction; (ii) reject such Work; or (iii) make, or have a third party make all repairs, modifications, or replacements necessary to enable such Work to comply in all respects with Contract requirements. Seller shall be liable to Buyer for any cost Buyer incurred to ensure such compliance.
 - (e) Seller shall not re-tender rejected Work without disclosing the corrective action taken.
- 17. INSURANCE/INDEMNIFICATION**
- (a) In the event that Seller, its employees, agents, or subcontractors enter the site(s) of Buyer or its customers for any reason in connection with this Contract then Seller and its subcontractors shall procure and maintain worker's compensation, comprehensive general liability, bodily injury and property damage insurance in reasonable amounts, and such other insurance as Buyer may require. In addition, Seller and its subcontractors shall comply with all site requirements. Seller shall indemnify and hold harmless Buyer, its officers, employees, and agents from any losses, costs, claims, causes of action, damages, liabilities, and expenses,



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including attorneys' fees, all expenses of litigation and/or settlement, and court costs, by reason of property damage or loss or personal injury to any person caused in whole or in part by the actions or omissions of Seller, its officers, employees, agents, suppliers, or subcontractors. Seller shall provide Buyer thirty (30) days advance written notice prior to the effective date of any cancellation or change in the term or coverage of any of Seller's required insurance. If requested, Seller shall send a "Certificate of Insurance" showing Seller's compliance with these requirements. Seller shall name Buyer as an additional insured for the duration of this Contract. Insurance maintained pursuant to this clause shall be considered primary as respects the interest of Buyer and is not contributory with any insurance which Buyer may carry. "Subcontractor" as used in this clause shall include Seller's subcontractors at any tier.

- (b) Seller shall without limitation as to time indemnify and save Buyer harmless from all claims which may be asserted against property covered hereunder, including without limitation mechanic's liens or claims arising under Worker's compensation or Occupational Disease laws and from all claims from injury to persons or property arising out of or related to such property unless the same are caused solely and directly by Buyer negligence.
- (c) Seller will indemnify and hold Buyer and its directors, officers and employees ("representatives") harmless (and defend Buyer and its representatives if it requests) as to any claims, liabilities, losses, damages and expenses (including, without limitation, actual attorneys' fees and other legal expenses) brought against or incurred by Buyer or its representatives because of any breach by Seller of any of its warranties to, or agreements with, Buyer or any death, injury or damage to any person or property alleged to have been caused by the components or Seller's manufacture of the components.
- (d) Seller warrants materials furnished pursuant to this Contract shall be free from asbestos containing materials.

18. INTELLECTUAL PROPERTY

Subparagraph (a) is NOT applicable for commercial off-the-shelf purchases unless such off-the-shelf Work is modified or redesigned pursuant to this Contract.

- (a) Seller agrees that Buyer shall be the owner of all inventions, technology, designs, works of authorship, mask works, technical information, computer software, business information and other information conceived, developed or otherwise generated in the performance of this Contract by or on behalf of Seller. Seller hereby assigns and agrees to assign all right, title, and interest in the foregoing to Buyer, including without limitation all copyrights, patent rights and other intellectual property rights therein and further agrees to execute, at Buyer' request and expense, all documentation necessary to perfect title therein in Buyer. Seller agrees that it will maintain and disclose to Buyer written records of, and otherwise provide Buyer with full access to, the subject matter covered by this clause and that all such subject matter will be deemed information of Buyer and subject to the protection provisions of the clause entitled "Information of Buyer". Seller agrees to assist Buyer, at Buyer's request and expense, in every reasonable way, in obtaining, maintaining, and enforcing patent and other intellectual property protection on the subject matter covered by this clause.
- (b) Seller warrants that the Work performed and delivered under this Contract will not infringe or otherwise violate the intellectual property rights of any third party in the United States or any foreign country. Seller agrees to defend, indemnify and hold harmless Buyer and its customers from and against any claims, damages, losses, costs and expenses, including reasonable attorneys' fees, arising out of any action by a third party that is based upon a claim that the Work performed or delivered under this Contract infringes or otherwise violates the intellectual property rights of any person or entity.

19. NEW MATERIALS

The Work to be delivered hereunder shall consist of new materials, not used, or reconditioned, remanufactured or of such age as to impair its usefulness or safety.

20. OFFSET CREDIT/COOPERATION

All offset or countertrade credit value resulting from this Contract shall accrue solely to the benefit of Buyer. Seller agrees to cooperate with Buyer in the fulfillment of any foreign offset/countertrade obligations.

21. PACKING AND SHIPMENT

- (a) Unless otherwise specified, all Work is to be packed in accordance with good commercial practice. Prices set forth in this Order include all charges for Seller's packaging, crating, handling, storage and for transportation to F.O.B. point unless noted on the Buyer purchase order.
- (b) A complete packing list shall be enclosed with all shipments. Seller shall mark containers or packages with necessary lifting, loading, and shipping information, including the Buyer Contract number, item number, dates of shipment, and the names and addresses of consignor and consignee. Bills of lading shall include this Contract number. No merchandise will be accepted without a valid Buyer purchase order.
- (c) Unless otherwise specified, delivery shall be FOB Place of Shipment.
- (d) Material (by part number and/or description) is expected to be on Buyer's dock on the due date. "On-time" is defined as two (2) days early to zero (0) days late from the due date and quantities specified on the purchase order. All orders will be considered late if received after the due date on the purchase order and will be expedited to Buyer at supplier's expense and via best method available. All orders may be returned and considered early if material arrives before the defined "On-time" period above; all additional logistics and handling costs will be the responsibility of the Seller.
- (e) Normal receiving hours are listed on the Buyer supplier web site <http://www.spartanchassis.com/info/supplier/supplier.asp> or contact your Materials representative (517-543-6400) for information. Any deliveries made outside of this delivery window must be scheduled in advance with the Buyer Materials group.

22. PAYMENTS, TAXES, AND DUTIES

- (a) Unless otherwise provided, terms of payment shall be net thirty (30) days from the latest of the following: (i) Buyer's receipt of the Seller's proper invoice; (ii) scheduled delivery date of the Work; or (iii) actual delivery of the Work. Buyer shall have a right of setoff against payments due or at issue under this Contract or any other contract between the Parties. All invoices must be mailed to the Buyer Accounts Payables department; Seller's invoices are not to be used as packing slips nor are they to be sent with the material.
- (b) Payment shall be deemed to have been made as of the date of mailing Buyer's payment or electronic funds transfer.
- (c) Unless otherwise specified, prices include all applicable federal, state and local taxes, duties, tariffs, and similar fees imposed by any government, all of which shall be listed separately on the invoice.



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- (b) Unless advance shipment has been authorized in writing by Buyer, Buyer may store at Seller's expense, or return, shipping charges collect, all Work received in advance of the scheduled delivery date.
 - (c) If Seller becomes aware of difficulty in performing the Work, Seller shall timely notify Buyer, in writing, giving pertinent details. This notification shall not change any delivery schedule.
 - (d) In the event of a termination for convenience or change, no claim will be allowed for any manufacture or procurement in advance of Seller's normal flow time unless there has been prior written consent by Buyer.
- 32. WAIVER, APPROVAL, AND REMEDIES**
- (a) Failure by Buyer to enforce any of the provision(s) of this Contract shall not be construed as a waiver of the requirement(s) of such provision(s), or as a waiver of the right of Buyer thereafter to enforce each and every such provision(s).
 - (b) Buyer's approval of documents shall not relieve Seller from complying with any requirements of this Contract.
 - (c) The rights and remedies of Buyer in this Contract are cumulative and in addition to any other rights and remedies provided by law or in equity.
- 33. LIMITATION OF LIABILITY**
Buyer shall not be liable for any indirect damages including incidental, consequential, punitive, or exemplary damages, or lost profits.
- 34. WARRANTY**
Seller warrants that all Work furnished pursuant to this Contract shall strictly conform to applicable specifications, drawings, samples, and descriptions, and other requirements of this Contract and be free from defects in design, material and workmanship. Seller further warrants and implies that the Work performed hereunder is merchantable and fit for use for the particular purpose described in this Contract. Seller agrees to comply with the terms of Buyer's Warranty Agreement.
- 35. FORCE MAJEURE**
Seller shall not be liable for a reasonable delay or default in furnishing Products hereunder and Buyer shall not be liable for failure to perform any of its obligations hereunder, to the extent that such delays or defaults or defaults on the part of Seller or such failure on the part of Buyer, are due to causes beyond their reasonable control (and not due to labor problems or Seller's negligence or financial difficulties) including without limitation acts of God, fire, flood, storm, national emergency or war, provided that either party has given the other prompt notice of the commencement of the occurrence that caused the failure and shall continue to tender partial performance of the Purchase Order if possible. Notwithstanding the foregoing, in the event any delay in delivery by Seller caused by a force majeure event will, in Buyer's opinion, cause a delay in delivery to Buyer's customers, Buyer shall have the option to terminate all or a portion of this Purchase Order in order to obtain the Products elsewhere, without liability to Buyer on account thereof.
- 36. INTERNAL REVENUE CODE**
- (a) Buyer is a manufacturer or producer of articles enumerated in chapter 32 of the Internal Revenue Code and holds Certificate of Registry number 38-750265A issued by the District Director of Internal Revenue at Detroit, Michigan. We certify that the item(s) specified on the face of this order are intended for use in the manufacture of, or as a component part of, or as a service part for an article manufactured by them.
 - (b) It is understood for all purposes of chapter 32 of the Internal Revenue Code that Buyer shall be considered the Manufacturer of these items and will be responsible for payment of tax on resale or use for any taxable purpose.
 - (c) We further state that we are aware of the penalties for fraudulent use of this certificate; namely revocation of the privilege of making future tax free purchases, a fine up to \$10,000 or imprisonment for up to 5 years (or both), together with cost of prosecution.
- 37. SALES OR USE TAX EXEMPTION CERTIFICATE**
We hereby certify that Buyer is a manufacturer doing business in the State of Michigan, and that the goods, services, or rentals specified on the face of this order are intended for use in industrial processing. Furthermore, should any goods, service, or rentals purchased under this certificate become taxable through a change in their intended use, or should a state tax audit reveal that this certificate was erroneously applied, Buyer agrees to pay to the seller or directly to the State any taxes found owing.
- 38. SERVICE PARTS REQUIREMENTS**
Seller will provide to the Buyer Service Parts Group via email (epcgroup@spartanchassis.com) the following information primarily for initial purchases: parts, component breakdown, suggested stocking lists, product illustrations and contact person for Aftermarket Sales support.