

BEHR AMERICA, INC.

**PRODUCTION PURCHASING
GENERAL TERMS AND CONDITIONS**

EFFECTIVE DATE: JULY, 2011

BEHR AMERICA, INC. GENERAL PURCHASING TERMS AND CONDITIONS

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BEHR AMERICA, INC PRODUCTION PURCHASING GENERAL TERMS AND CONDITIONS

1 The Supplies and Parties Covered by the Order.

- 1.1 **Supplies.** These General Terms and Conditions (“Terms”) apply to the purchase of the goods and/or services (“Supplies”) from Seller, as defined in §1.2, identified in a purchase order issued by Behr to Seller.
- 1.2 **Parties.** Behr, as used in these Terms, means the buyer identified on the face of the purchase order, which may be Behr America, Inc., Behr Dayton Thermal Products, LLC, Behr Climate Systems, Inc., Behr Heat Transfer Systems, Inc., Behr Mexico S.de R.L. de C.V. and Behr America Service Parts, LLC. Seller is identified on the face of the purchase order.

2 The Terms of the Order

- 2.1 **Terms of the Order.** The Order consists of the following documents, which are sometimes referred to collectively as the Terms of the Order: (i) Behr’s purchase order; (ii) these Terms; (iii) all other documents specifically incorporated into the Order; (iv) applicable Customer Requirements (as defined in §14); (v) Material Releases (as defined in §3.1) to Seller Pursuant to Behr’s Purchase Order; (vi) Exhibits and other documents attached to the Order; and (vii) applicable Behr policies, standards and guidelines (collectively, “Behr Policies”), as revised by Behr from time to time, including, by way of example and not limitation, Behr’s quality requirements, logistics requirements, packaging requirements, and tool specifications. Behr Policies are available in the download center found by clicking the Supplier link at www.behrgroup.com. Seller is responsible for keeping current regarding the terms of Behr’s Policies. The parties will interpret each term of the Order so that all of the provisions have given as full effect as possible. In the event of a conflict between the Terms, the order of precedence shall be the purchase order first, applicable Customer Requirements, second; and these General Terms and Conditions, third. Customer means any entity to which Behr, directly or indirectly, sells Supplies, or sells any goods or services into which Supplies are incorporated, including any original equipment manufacturer and any upper tier supplier to an original equipment manufacturer.
- 2.2 **Seller Acceptance.** The Order is an offer by Behr to purchase the Supplies from the Seller on the terms of the Order. The contract is formed when the Seller accepts the offer from Behr. This occurs upon the earlier of: (a) the Seller beginning work or performance; or (b) the Seller notifying Behr of its acceptance of the offer. It is Behr’s expectation that Seller will accept the Order in writing. However, written acceptance is not necessary for acceptance and contract formation. The Order does not constitute an acceptance of any offer or proposal made by Seller. Seller acknowledges that: (i) a request for quotation or similar document issued by Behr is not an offer by Behr; and (ii) any response by Seller to a request for quotation or similar document issued by Behr is not an offer by Seller. If this Order is found to be an acceptance of any prior offer or proposal by Seller, such acceptance shall be limited to the Terms of the Order.
- 2.3 **Seller’s Terms Rejected.** Any additional or different terms proposed by Seller are expressly rejected by Behr and are not part of the Order. The Order is limited to and conditional upon Seller’s acceptance of these terms exclusively. However, additional or different terms proposed by Seller shall not operate as a rejection of this Order if Seller commences work or otherwise accepts Behr’s offer, in which case this Order shall be deemed accepted by Seller without any additional or different terms.

- 2.4 Entire Agreement. The Order is the entire agreement between the parties respecting the Supplies and supersedes any prior agreements, prior orders, quotations, proposals, negotiations or understandings of the parties respecting the Supplies, whether written or oral. No modification shall be effective unless in writing and signed by Behr's authorized purchasing representative

3 Quantity; Blanket Orders; Material Releases.

- 3.1 Releases. Unless specified differently in the Order, Seller shall deliver Supplies in strict conformance with the dates, times, quantities and delivery locations determined by Behr and identified as firm orders in releases, manifests, broadcasts or similar releases ("Material Releases"). Time, quantities and location are of the essence under the Order and Seller agrees to 100% on-time delivery of the quantities and at the times specified by Behr. Any information in a Material Release that is not identified as a firm order shall be subject to §3.5.
- 3.2 Capacity. By accepting the Order, Seller warrants that it can manufacture or produce up to 120% of any production capacity requirements specified in a request for quotation or otherwise, or as agreed by Behr in writing, without the imposition of overtime charges or other surcharges. If Behr's requirements exceed 120% of such capacity requirements, then Seller shall promptly propose a plan for satisfying such increased requirements, which plan shall be implemented upon Behr's agreement. The accepted plan shall be considered a "change" in accordance with Section 9.
- 3.3 Resources. Seller is responsible for obtaining and maintaining all raw materials, inventories, other resources and for manufacturing Supplies necessary to meet Behr's delivery requirements. Behr shall have no purchase or other obligations with respect to raw materials or other inventory committed or purchased or Supplies manufactured beyond those identified as firm orders in Material Releases.
- 3.4 Blanket Orders. If the Order does not specify a fixed quantity, or states zero, "blanket," "per release" or similar term, the Order is a Blanket Order ("Blanket Order"). If the Order is a Blanket Order, then Behr shall purchase the percentage of Behr's requirements for the Supplies specified in the Order or, if no percentage is specified, 100%. Behr is not required to purchase Supplies exclusively from Seller unless the Order expressly states so or it is a Blanket Order for 100% requirements. However, a Blanket Order does not prohibit Behr from purchasing and using parts from other suppliers for purposes of: (i) trial production testing or similar purposes; and/or (ii) protecting against actual or potential shortages or disruptions in supply from Seller, as determined in Behr's reasonable discretion.
- 3.5 Forecasts. Seller acknowledges that any estimates or forecasts of production volumes or length of program, whether issued before or during the term of the Order and whether from Behr or its customer, are for informational purposes only, are subject to change from time to time and shall not be binding upon Behr. Inclusion of any estimates or forecasts of length of program shall not modify the duration of the Order as set forth in §15.1. Seller bears all risks with respect to such changes or with respect to any discrepancies between such estimates or forecasts and the actual production volumes or length of program.
- 3.6 EDI. Behr may require Seller to participate in electronic data interchange ("EDI") or similar inventory management program, at Seller's expense, for notification of Material Releases, shipping confirmation and other information. Behr may require Seller to utilize any other Behr designated electronic communication system for payment, logistics, quality or other purpose. Seller agrees that any Behr

designated communication system satisfies any legal requirement for a writing or signature.

4 Shipping and Delivery

- 4.1 Delivery Terms. Delivery terms are specified on the face of the Order. If Behr does not specify any terms in the Order otherwise, then, Seller must deliver the Supplies Free Carrier (FCA), supplier's dock.
- 4.2 Behr Requirements. Seller will properly pack, mark, and ship Supplies (and provide related documentation) according to Behr's requirements provided in the Order including use of specified carrier or method of transportation, point of destination, and shipping on Saturdays and holidays.
- 4.2.1 Seller shall comply with the requirements of the involved carriers and the country of destination. Seller shall assure delivery free of damage and deterioration. All labeling, marking and packaging shall be at Seller's expense, unless expressly agreed otherwise in the Order.
- 4.2.2 Seller will promptly provide Behr with the characteristics and quantity of all ingredients (and any changes in the ingredients) of the Supplies in the form requested by Behr.
- 4.2.3 All shipment of goods to Behr must include two packing slips. For Supplies shipped via truck, Seller shall enclose one packing slip (or packing slips sets in the case of multiple item shipments) in an envelope and attach the second packing slip to the bill of lading and deliver it to Behr's receiving department upon delivery of the Supplies.
- 4.2.4 Behr has no obligation to pay any invoices if Seller fails to meet the requirements stated above and if Seller fails to provide the following information on invoices and packing slips: (i) Behr-assigned supplier code; (ii) purchase order number; (iii) part number; (iv) the release number on Blanket Orders; (v) the "Ship-to" address; Behr-assigned plant location code; (vi) invoice-to address; and (vii) whether containers used are "returnable" or "non-returnable", in addition to all other invoice requirements of this Order .
- 4.2.5 Seller certifies that it will ship or make available the Supplies, as pertinent to the shipping terms, from the location stated in the Order. Behr must provide advance written notice approval for any proposed change in the location. Behr shall review any proposed change for its effect on transit time, freight costs, packaging methods, and other significant impacts on Behr. Seller shall be responsible for all increased transportation and other costs unless expressly agreed by Behr.
- 4.3 Delay in Delivery. If Seller, for any reason, does not comply with Behr's delivery schedule or any other requirement of a Material Release or Order, Behr may, in its sole discretion: (a) approve a revised delivery schedule; (b) require expedited or premium shipment of any of the Supplies; or (c) cover, and adjust any quantity requirement under the Order accordingly. Seller shall be liable for all excess costs and for all other direct, consequential, and incidental damages incurred by Behr as a result of Seller's failure including: (i) additional transportation costs; (ii) the cost of any production disruption; and (iii) the cost of obtaining goods from an alternate source. Behr's rights under this section are at Seller's sole expense, at Behr's sole discretion and in addition to and without prejudice to any other right or remedy available to Behr.

4.4 Title and Risk of Loss.

4.4.1 Except for Tooling (as defined in § 18.1), and unless otherwise specified, Behr shall take title to all Supplies upon the earlier of: (i) delivery and acceptance of the Supplies at Behr's plant; or (ii) payment by Behr of all or part of the purchase price of identified Supplies. Supplies shall be deemed identified upon fabrication unless the Supplies are part of Seller's standard stock and sold to persons in addition to Behr, in which case identification occurs when the Supplies are marked or otherwise designated by Seller as relating to the Order.

4.4.2 If the Supplies are Tooling, Behr shall take title upon fabrication or acquisition by the Seller, regardless of payment. Taking title will not relieve Behr of its obligation to pay for the Tooling in accordance with the Order.

4.4.3 Seller shall comply with Behr's Property requirements (as defined in §16) with respect to any Supplies to which Behr has title but which are in the custody or control of Seller or Seller's suppliers, contractors or agents.

4.5 Country of Origin. Upon request, Seller shall promptly furnish to Behr all certificates of origin or domestic value-added and all other information relating to the costs and places of origin of the Supplies as may be required by Behr to comply fully with all customs, tariffs and other applicable Laws (as defined in §25). Seller shall comply with all such Laws and warrants that any such information that is supplied to Behr is true and that all sales covered by the Order will be made at not less than fair value under the anti-dumping laws of the countries to which the Supplies are exported.

4.6 Hazardous Materials. Seller agrees to comply with all Laws, as defined below, relating to any hazardous or restricted material that is an ingredient or part of the Supplies. Seller will give Behr sufficient warning in writing, including appropriate labels, containers, packing, handling, disposal and recycling instructions, material safety data sheets and certificates of analysis, of any such materials.

5 **Price and Payment**

5.1 Price. The Supplies purchase price is stated on the face of the purchase order. Unless otherwise stated in the Order, the purchase price: (i) is a firm fixed price for the duration of the Order 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; (ii) is inclusive of all federal, state, provincial, and local taxes and any duties applicable to provision of the Supplies; and (iii) is inclusive of all storage, handling, packaging and all other expenses and charges of Seller. Seller recognizes that it assumes all risks with respect to cost changes and variances in volumes and program length.

5.2 Payment Notice. Unless otherwise stated in the Order, payment notices, whether electronic or paper copy, shall be issued on or after delivery of the Supplies to Behr and payment shall be deemed to occur upon issuance of payment by Behr. All payment shall be made in U.S. dollars unless otherwise agreed. Seller shall, at its expense, comply with Behr's instructions and policies with respect to the form, content and method for submission of invoices.

5.3 Payment Terms. Behr shall pay invoices for Supplies that are properly presented, and not subject to dispute, as stated on the Order. If the payment date is not a business day, payment shall be due

the next business day thereafter. Behr shall have no obligation to pay any invoice that is not properly presented in accordance with the requirements of the Order, including §§4.1 and 5.2, or which Behr disputes. In that event, the applicable payment period shall begin when the invoice is properly presented or the dispute is resolved. In the event of dispute, the parties will work together to resolve the disputed claim. Behr may recover any amount due by Seller to Behr by setoff, in accordance with §5.6. Any amounts owed to Behr shall be paid net thirty (30) days from the date of invoice or demand.

- 5.4 Directed Supplier. If the Customer directed, recommended, or requested that Seller be the source from whom Behr is to obtain the Supplies: (i) Behr will pay Seller for the Supplies only after and to the extent of, and in proportion to, Behr's actual receipt of payment from the Customer for those goods into which the Supplies and/or the Services are incorporated; (ii) any lengthening of the Customer's payment terms to Behr for those goods into which the Supplies and/or Services are incorporated will automatically lengthen the payment terms as between Behr and Seller by the same amount of time; and (iii) within three (3) business days of any change in price, specifications or other terms negotiated or proposed between Seller and the Customer, Seller shall notify Behr in writing and immediately adjust its invoices to reflect any price reduction, provided that no change will be binding on Behr without Behr's specific written consent.
- 5.5 Best Price. The Seller warrants that the prices for the Supplies sold to Behr are no less favorable than those that the Seller currently extends to any other of its customers for the same or similar Supplies in similar quantities. If the Seller reduces its prices to third parties during the term of the purchase order for the same or similar Supplies in similar quantities, the Seller will correspondingly reduce the prices charged to Behr.
- 5.6 Set Off. In addition to any right of setoff or recoupment provided by law, Behr shall be entitled at any time to set off or recoup against sums payable by Behr to Seller or any of its affiliates any amounts for which Behr determines in good faith the Seller or any of its affiliates is liable for under any Order or other agreements. Behr may do so without notice to the Seller.
- 5.7 Payment Not Acceptance. Payment for Supplies shall not constitute acceptance of Supplies, nor will it limit or affect any rights or remedies of Behr.
- 5.8 Credits. Credits or benefits resulting from the Order, including trade credits, export credits or the refund of duties, taxes, or fees, belong to Behr. Seller will provide all information and certificates, including NAFTA Certificates of Origin, necessary to permit Behr, or its Customers, to receive these benefits or credits.
- 5.9 Direct Dealing. Seller shall not sell (or otherwise supply) the Supplies or any other product substantially similar as the Supplies to any Behr Customer and/or competitor unless Seller has obtained Behr's expressed written consent. Further, Seller shall not solicit or sell Supplies and/or Service Parts to aftermarket suppliers or to end users. This provision does not apply to Supplies that are part of Seller's standard stock.

6 Competitiveness.

Seller agrees to be competitive in price, quality, capacity, delivery and timeliness (collectively defined as "Competitive"). Seller agrees that Behr shall be allowed to audit Seller, as described in §13, so as to verify Seller's Competitiveness. In the event Behr makes a good faith determination that Seller is not Competitive, Seller shall provide a remediation plan acceptable to Behr in its reasonable discretion within

fifteen (15) business days. If Seller fails to provide or comply with an acceptable remediation plan, Behr may at its option terminate the Order for Cause as defined in §15.2.2.

7 Inspection; Non-Conforming Supplies

- 7.1 Behr may inspect and evaluate all Supplies, Tooling, material used to manufacture Supplies, and all services at times and places designated by Behr, upon reasonable notice to the Seller.
- 7.2 Rejection. Notwithstanding payment or any prior inspection, Behr may revoke acceptance, reject or require correction and/or return to Seller, at Seller's expense and risk of loss, any Supplies that are defective or non-conforming. If defective or non-conforming Supplies are rejected by Behr, the quantities under the Order will be reduced unless Behr otherwise notifies Seller, and Seller will not replace reduced quantities without a new Order or Material Release from Behr.
- 7.3 Corrective Action. Promptly upon learning of defective or non-conforming Supplies, Seller will develop, document, and implement corrective actions in accordance with all applicable quality control policies and standards of Behr and its Customers and subject to Behr's approval. Seller shall provide the corrective action plan to Behr and promptly notify Behr of test results, plan progress and any other material events pertinent to the corrective action plan. If Behr determines that Seller is unable to satisfy its responsibilities with respect to a corrective action plan, then Behr (or its designee) may perform all or part of these responsibilities at Seller's expense and without tests or contract with a third party to perform the tests. The costs of these tests shall be borne by the Seller and shall not relieve Seller of any obligation under the Order. Seller will also immediately notify Behr in writing when it becomes aware of any ingredient, component, design or defect in the Supplies that is or may become harmful to persons or property.
- 7.4 Return and Replacement If Supplies are rejected, subject to corrective action or otherwise non-conforming, Seller shall, without prejudice to any other right or remedy of Behr, at Behr's sole discretion and at Seller's sole expense:
 - 7.4.1 accept return of the Supplies to Seller at full invoice price, plus transportation charges;
 - 7.4.2 replace the Supplies with conforming Supplies; and/or
 - 7.4.3 correct at any time prior to shipment from Behr's plant Supplies that fail to meet the requirements of the Order.
- 7.5 Customer Warranty and Liability Claims. Seller understands that Behr may be subject to: (i) warranty, liability and other claims from its Customer; (ii) participation in Customer quality and warranty programs, including cost-sharing programs, and related obligations (collectively "Customer Warranty Programs"). This section addresses procedures and obligations that apply when the Customer Warranty Programs are related in whole or in part to the Supplies. This section supplements, not supersedes, Seller's obligations under other provisions of the Terms and does not limit Behr's rights under those other provisions.
 - 7.5.1 If the Supplies contain defects that result in warranty and/or liability claims, the Seller shall carry out tests to establish the cause of these defects and shall document them in a suitable form. Behr shall agree to the test extent and depth taking into account its Customer's demands. The Supplier shall immediately notify Behr about the test results. Behr and Seller shall agree to a corrective

plan and implementation dates.

7.5.1.1 The Seller shall carry out regular checks regarding the effectiveness of the corrective action and shall inform Behr accordingly.

7.5.1.2 If the Seller is unable to carry out its own tests, Behr shall perform these tests or arrange for contract with a third party to perform the tests. The costs of these tests shall be borne by the Seller.

7.5.2 If Behr incurs liability under a Customer Warranty Program related in whole or in part to the Supplies, the Customer's determination of liability shall be conclusive with respect to Seller's liability to Behr. If the liability relates in part to the Supplies and in part to other causes, the Behr liability to the Customer shall be equitably allocated. For purposes of this §7.5, "liability" shall include, in addition to a payment to Customer, the replacement of parts, participation in other remediation activities, and all other costs related to such liability.

7.5.3 Behr and the Seller, or the appropriate representative, shall settle, invoice and remunerate the warranty and/or liability claims. Behr may debit Seller's account with the invoiced amount. In the event that a debit is not possible, the payment terms for warranty claims are as follows: (a) net thirty (30) days on claims with no parts to return; and (b) net forty-five (45) days from part ship date on claims requiring inspection.

7.5.4 The warranty term for Supplies installed in automobiles, trucks, and commercial vehicles shall be the greater of: (i) five years for cars, three (3) years for trucks, and three (3) years for commercial vehicles; (ii) the warranty period provided by applicable law, or (iii) the warranty period offered by Behr or its Customer to end-users for the products into which the Supplies are incorporated. It is the Seller's responsibility to understand the Customer(s) policies and procedures for which Behr uses the Supplies and the warranty term of those customers. The warranty term shall commence at the date of initial start-up of the vehicle by the end user.

7.6 Warranty for Zero Mileage Defects. This Section describes certain procedures and obligations that will typically apply to zero mileage defects, as defined below. This Section supplements, not supersedes, Seller's obligations pursuant to other provisions of the Terms and does not limit Behr's right to modify the procedures or apply different procedures in a particular circumstance

7.6.1 Zero mileage defects are defects that are discovered:

7.6.1.1 with respect to incoming Supplies;

7.6.1.2 during further processing of semi-finished products;

7.6.1.3 on the assembly line or during function tests after assembly at Behr;

7.6.1.4 on the assembly line or during function tests after assembly at Behr's Customer; and

7.6.1.5 up until the delivery of the vehicle in question by Behr's Customer to the end user.

7.6.2 Behr shall prepare a list of costs incurred to manage these defects. If the defect is not repairable, Behr shall return the defective Supplies to the Seller and shall debit the costs incurred to manage these defects. These costs shall also include the flat-rate charges invoiced by Behr's customer

for removal and installation, as well as any other incidental costs (for example transportation, customs, duties, handling charges, packing costs, etc.). If the Seller is able to remedy the defect through repair, the Seller will adhere to Behr and/or Behr's Customer's time requirements for completion set by Behr or Behr's Customer(s). The Seller shall pay any additional costs incurred by Behr or Behr's Customer due to the delay in repair, including 'line down' charges.

7.6.3 Behr may send the Seller zero mileage Supplies with defects caused by Behr for repair. The Seller may include the agreed costs for repair in its invoice for goods. When returning the repaired Supplies, the Seller will send them to Behr as specially marked Supplies to agreed standards.

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

7.7.1 any amounts charged by Customer(s) to Behr including flat-rate charges;

7.7.2 all costs of containment, sorting, repair, replacement, cure, cover, or any other costs incurred by Behr, determined in such manner and in such amount as reasonably determined by Behr; and

7.7.3 all costs of any recall campaign, corrective service action, or other voluntary or involuntary action in which Behr or its Customer participates in connection with inclusion of Supplies sold by Seller.

8 Standards and Policies

8.1 Seller will conform to all quality control and other standards and inspection systems as established or directed by Behr and its Customer for goods and services similar to the Supplies. These include without limitation quality control policies, ISO 9001:2000 or ISO/TS 16949:2002 quality certification, OHSAS 18001 health and safety certification and ISO 14001 environmental certification including registration. Seller will also participate in Behr's supplier quality and development programs as directed by Behr. For Supplies used in motor vehicle manufacturing, Seller agrees to meet the full requirements of industry Production Part Approval Processes (PPAP) as specified by Behr and its Customer(s) and agrees to present this information to Behr upon request, at the level requested. If there is conflict between any provision of the above programs or standards and an express provision of these Terms, these Terms will control.

8.2 To the extent any of the standards, policies or systems cited above are modified, supplemented or replaced, Seller's obligations under this Order shall automatically be amended.

9 Changes

9.1 Behr Changes. Behr reserves the right to change the Order, or the Supplies, including the design, specifications, engineering level, materials, packaging, testing requirements, shipping date, or time or place of delivery. Subject to §9.2, Seller will make any such change within the time specified by Behr or, if not specified, promptly.

9.2 Prices and Costs. Seller may request a price adjustment, limited to the actual and reasonable costs

incurred or to be incurred as a result of the change. Seller shall use its best efforts to minimize such costs. Any request for price modification shall be submitted within ten (10) days of the change notification (or earlier, if reasonably requested by Behr) and shall be supported by all pertinent documentation and analyses. Behr shall have the right to verify any request. Seller shall promptly provide all documents and information necessary or requested to verify the request. If Behr and Seller are unable to agree on a price adjustment, then Behr shall determine the price adjustment, if any, in its reasonable discretion. Unless directed otherwise by Behr in writing, if Seller requests a price modification, it shall not implement the change until the request is resolved in accordance with this section.

- 9.3 **Engineering Changes.** Seller will process all engineering changes, whether Behr or Seller initiates the changes, pursuant to Behr's practices in effect at the time of the change using Behr's product change request/notification system. Seller will promptly implement all Behr approved engineering changes to the part specification as Behr directs. Behr and Seller will base price changes or cost reimbursements, if any, for Behr approved engineering changes solely on the design cost variance from the superseded design and Seller must substantiate the price changes with appropriate documentation satisfactory to Behr. If Behr and Seller are unable to agree on a price adjustment or reimbursement amount then Behr shall determine the price adjustment or reimbursement amount, if any, in its reasonable discretion.
- 9.4 **Seller Changes.** Seller will not make any change to the Supplies except at Behr's written instruction or with Behr's written approval. Seller shall use its best efforts to identify possible changes to the Supplies that may reduce costs, improve quality, or otherwise be beneficial to Behr, and shall inform Behr of the possible change with sufficient detail for Behr to assess the advisability of the change.

10 Service Parts

- 10.1 Seller will sell and supply Behr with its requirements for service, aftermarket and warranty purposes ("Service Parts") for fifteen (15) years following the end of production or any other period specified by Behr. While the applicable vehicle remains in production, the price of Service Parts will be the price specified in the then current Order. During the first five (5) years following production, the price of Service Parts will be the price specified in the last production Order. Thereafter, the price of Service Parts will be the price specified in the last production Order plus or minus: (i) any changes in the cost of materials since the end of the applicable production program, plus (ii) a set-up charge reflecting the actual cost of preparation for the part production run, plus (iii) any additional costs actually incurred for special packaging, all subject to adequate documentation and substantiation. If the parties are unable to agree on Service Part pricing, then Behr shall determine the price in its reasonable discretion.
- 10.2 If the Supplies are systems or modules, Seller will sell each component or part for service or replacement purposes at a price that does not, in the aggregate, exceed the system or module price specified in the Order, less assembly costs, plus or minus any adjustments permitted under §10.1, actual cost differential for packaging.

11 Warranties

- 11.1 In addition to any other express and implied warranties provided by law or otherwise, Seller warrants to Behr, its Customer(s) and their respective successors and assigns that the Supplies shall:

11.1.1 be new and conform to this Order in all respects;

11.1.2 conform to all specifications, drawings, samples and other descriptions furnished or

specified by Behr or otherwise part of the Order;

- 11.1.3 be free from all defects in design, to the extent designed by Seller, workmanship and materials and be of highest quality and workmanship;
 - 11.1.4 be selected, designed, to the extent designed by Seller, manufactured and assembled by Seller based upon Behr's stated use and be fit and sufficient for the purposes intended by Behr;
 - 11.1.5 be fit and sufficient for the purpose for which Behr intends to use the Supplies; and
 - 11.1.6 conform to all applicable Laws, as defined in §25, in countries where the Supplies, or goods into which the Supplies are incorporated, are to be sold, including without limitation, in the case of Supplies 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.
- 11.2 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 Behr and otherwise consistent with industry standards.
- 11.3 Seller also warrants that title to all of the Supplies shall be vested in Behr free and clear of any and all liens and encumbrances of any nature and free from any actual or claimed patent, copyright or trademark infringement.
- 11.4 All warranties of Seller extend to future performance of the Supplies and are not modified, waived or discharged by delivery, inspection, tests, acceptance and payment. Behr'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.
- 11.5 The warranty period is the longest of: (i) five (5) years from the date Behr accepts the Supplies, (ii) the warranty period provided by applicable law, or (iii) the warranty period offered by Behr or its Customer to end-users for the products into which the Supplies are incorporated. All applicable warranties are warranties of future performance.
- 11.6 Seller will ensure that the terms of its contracts with its subcontractors and employees are consistent with the terms of this section.

12 Indemnification

- 12.1 Seller agrees to indemnify, defend and hold harmless Behr, its affiliates, Customers, dealers and users of the products sold by Behr, 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, damages, consequential and otherwise, including settlement costs and expenses, attorneys' fees and all other liabilities and obligations whatsoever ("Losses"), arising out of any third party claim or action which, in whole or in part, arises from or relates to any actual or alleged:

12.1.1 Defect or non-conformity in the Supplies;

- 12.1.2 Noncompliance by Seller with any of its representations, warranties or obligations under the Order;
 - 12.1.3 Negligence or fault of the Seller in connection with the design or manufacture of the Supplies;
 - 12.1.4 Any repair or recall campaign, corrective service action, or other voluntary or involuntary action in which Behr or any Customer participates with respect to the Supplies or products into which the Supplies are incorporated, including labor and administrative costs;
 - 12.1.5 Any spill, discharge or emission of hazardous wastes or substances which relates, in whole or in part, to the Supplies;
 - 12.1.6 Infringement, including claims of direct or contributory infringement or inducement to infringe, of any Intellectual Property Right (as defined in §19.1) relating to Supplies provided by Seller, even if they are made to Behr's specifications;
 - 12.1.7 damages to the property of or personal injuries to Behr, its Customer, their respective agents, or any other person or entity to the extent arising from or in connection with Seller's work on the premises or Seller's use of Behr's or Customer's property; and
 - 12.1.8 Challenge to the Behr's sole right, title and interest in the Tooling (as defined in §18.1), or right to possession of the Tooling, brought by any third party, including toolmakers, subcontractors, and lending institutions.
- 12.2 If Seller is obligated to indemnify under this section, then Behr may participate, at its option, in the defense of any claim with its own counsel, at Seller's expense.
- 12.3 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 shall 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 paragraph shall 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.

13 Inspection and Audit

- 13.1 Inspection of Facility. Behr may enter Seller's facility at any time to inspect the facility, Supplies, materials, and any of Behr's property related to the Order. Seller shall provide, without additional charge, access to all facilities and other assistance. Behr's inspection does not constitute acceptance of any work-in-process or finished goods and does not relieve Seller of any of its responsibilities or warranties.
- 13.2 Audit. Upon reasonable notice to Seller, either Behr, its Customers, or a third party designee, may audit Seller's production facility, Supplies and any other Behr property, including all pertinent documents, data and other information, related to the Order at facility for the purpose of verifying Seller's costs and its compliance with its obligations under the Order. Seller shall provide, without

additional charge, all reasonable facilities and assistance during normal business hours.

- 13.3 Financial Review. Upon reasonable notice to Seller, and in Behr's sole discretion, Behr or a third party designated by Behr may review the financial condition of Seller and its affiliate. Seller will fully cooperate in such review and will promptly provide copies of or access to requested documents, including without limitation financial records and statements, forecasts, business plans, banking contracts and loan documents, Seller will arrange meetings at Behr's request, during normal business hours, with a Behr representative and Seller's financial representatives who have knowledge about the audit information. Behr and any designated third party will keep confidential any nonpublic information about Seller obtained in a financial review and use such information only for purposes of the review, except as needed to enforce the Order. Seller shall provide Behr with prompt notice of any potential bankruptcy proceedings of Seller and/or Seller's affiliate companies or if it's financial condition creates a material risk regarding Seller's ability to perform its obligations under the Order.
- 13.4 Change of Control. Behr may terminate this Order, in whole or in part, in the event of a Change of Control of Seller. For the purposes of this Order, a "Change of Control" includes: (i) any sale, lease or exchange of a substantial portion of Seller's assets used in connection with Seller's performance of its obligations under this Order; (ii) any sale or exchange of a sufficient number of shares of Seller, or of any affiliate that controls Seller, to effect a change in management of Seller; or (iii) the execution of a voting or other agreement of control in respect of Seller, or of any affiliate that controls Seller. Seller shall notify Behr in writing within ten (10) days of any change of control of Seller, and Behr may terminate this Order for Cause in accordance with §15.2.2 by giving written notice to Seller at any time up to sixty (60) days after Behr's receipt of Seller's notice of change of control.

14 Customer Requirements

- 14.1 As directed by Behr in writing, Seller agrees to comply with the applicable terms of any agreements between Behr and its Customer(s) ("Customer Terms"). If there is any conflict between the provisions of the Customer Terms and any provisions of this Order, Buyer shall have the right to have the provisions of the Customer Terms prevail to the extent necessary or desirable to resolve such conflict. Seller represents that it is familiar with all applicable Customer Terms.
- 14.2 In the event that Behr's Customer files or a third party files against Behr's Customer a petition in bankruptcy or insolvency and, in the course of such proceeding, Behr permits a reduction in the price(s) paid to Behr for products incorporating the Supplies, the price paid to Seller for the Supplies from and after the date of such reduction will be automatically adjusted proportionally by the same percentage as the price paid to Behr by its Customer, and the Order will otherwise remain in effect without modification.
- 14.3 If Behr's Customer directed, recommended, requested, suggested or otherwise identified Seller as a source of the Supplies: (a) Behr will pay Seller for the Supplies only following and to the extent of Behr's actual receipt of payment from that Customer for those goods in which the specific Supplies are incorporated; (b) within three (3) business days of any change in price, specifications or other terms negotiated or proposed between Seller and the Customer, Seller will notify Behr in writing and will immediately adjust its invoices to reflect any price reduction, provided that no change will be binding on Behr without Behr's specific written consent.

15 Duration and Termination of the Order

- 15.1 Duration. The Order shall be effective on the date Behr states in the Order, or if no date is specified,

when issued by Behr. Unless terminated earlier in accordance with the Terms of the Order:

15.1.1 The Order shall expire on the date specified in the Order. The expiration date is not extended by an amendment or revision to an Order that does not expressly modify the expiration date.

15.1.2 The Order will automatically renew for successive one-year periods after the initial term unless Seller provides written notice at least 180 days prior to the end of the current term of its decision to not renew the Order.

15.1.3 For purpose of this Order “termination” includes cancellation or any other act or circumstance that ends the Order, except for expiration.

15.2 Termination by Behr. In addition to any other rights of Behr to terminate the Order, Behr may terminate the Order in whole or in part by written notice (a “Termination Notice”), as follows:

15.2.1 For convenience, effective three (3) days following delivery of the Termination Notice or upon such other date specified by the Behr in writing.

15.2.2 For Cause, including but not limited to Default, as defined herein, and any provision of the Order providing for termination for Cause, effective upon delivery of the Termination Notice or upon such other date specified by Behr in writing (“Cause”). Seller shall be in Default if it (i) breaches any warranty or other Terms of the Order; (ii) repudiates, breaches or threatens to breach any of the terms of the Order; (iii) fails to deliver, or threatens not to deliver, Supplies in connection with the Order; (iv) fails to make progress or to meet reasonable quality requirements so as to endanger timely and proper performance of the Order; (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 Behr, financial or otherwise, in order to meet its obligations under the Order; or (vii) at any time in Behr’s sole judgment Seller's financial or other condition or progress on this Order endangers timely performance.

15.2.3 If for any reason a termination for Cause is found to be wrongful, then the termination shall automatically be a termination for convenience.

15.2.4 Termination by Behr shall not relieve Seller of any liability under the Order.

15.3 Termination by Seller. Seller may terminate this agreement only for material non-payment of the purchase price for Supplies that are thirty (30) or more days past due and material in amount, and then only if: (i) Seller first provides Behr written notice specifying the amounts past due and Seller’s intent to terminate the Order if the past due amount is not paid; and (ii) Behr, within thirty (30) days of such notice, does not either: (x) pay the past due amounts; or (y) notify Seller that Behr is disputing the amount Seller claims is unpaid. Seller shall terminate under this section by delivering a Termination Notice to Behr. Seller may not terminate the Order for any reason except as permitted under this section. Seller may not suspend performance of the Order for any reason.

15.4 Seller’s Obligations Following Termination.

Following delivery of a Notice of Termination, Seller shall, unless otherwise directed by Behr and subject to its obligation to provide Transition Support (as defined in §15.8):

15.4.1 terminate promptly all work under this Order and transfer title and deliver to Behr all finished work completed prior to receipt of the Notice of Termination;

15.4.2 transfer title and deliver to Behr all conforming work in process, parts and materials that Seller produced or acquired in accordance with the Order and that Seller cannot use in producing goods for itself or for others, provided that Behr shall have the right, but not the obligation, to purchase work in process, parts and materials in excess of the amounts authorized under §3.3; and

15.4.3 take actions reasonably necessary to protect property in Seller's possession in which Behr has an interest until Seller receives disposal instructions from Behr.

15.5 Behr's Obligations Following Termination. Subject to §15.7.2, Behr shall pay to Seller in connection with termination only the following amounts, without duplication, in complete and final satisfaction of any liabilities relating to this Order:

15.5.1 The purchase price for all conforming Supplies received by Behr prior to Notice of Termination or delivered following Notice of Termination pursuant to §15.4.1, §15.8 or at the written direction of Behr;

15.5.2 Any amounts owed for Transition Support pursuant to §15.8.3.

15.5.3 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 Behr under §15.4, but not to exceed the Order price of the Supplies had Seller completed the work, and not to exceed the amounts necessary to satisfy Seller's obligations for firm orders, as defined in §3.1, unless Behr agrees in writing to a longer lead time; (ii) carrying out its obligation under §15.4.3; and (iii) any other costs or allowances that Behr, in its sole discretion, may elect to pay.

15.6 Behr's Obligations Following Expiration. If the Order expires, Behr shall pay to Seller, in complete and final satisfaction of any liabilities relating to the Order, only the purchase price for all conforming Supplies received by Behr prior to expiration and, if applicable, any amounts owed for Transition Support pursuant to §15.8.3.

15.7 Limitations on Behr's Obligations Following Termination or Expiration.

15.7.1 Behr's obligations under §15.5 are conditioned upon Seller's furnishing to Behr, within thirty (30) days after the date of termination (or such shorter period as may be required by Behr's Customer), a termination claim, which will consist exclusively of the items of Behr's obligation to Seller that are expressly permitted by this section. Behr may audit Seller's records before or after payment to verify amounts requested in Seller's termination claim. If the parties fail to agree upon the amount due Seller for its termination claim, Behr shall determine the amount in its reasonable discretion.

15.7.2 Behr shall not be obligated to make any payment for Supplies, work-in-process, parts or raw materials inventory: (i) in excess of those for which Behr was obligated to pay pursuant to §3.3; or (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.

15.7.3 In the event of a termination of this Order by Behr as a result of Behr ceasing to be a supplier to the Customer for the product in respect of which Behr issued this Order, Behr shall only be obligated to compensate Seller for any costs under §15.5.3 to the extent that the Customer reimburses Behr for such costs.

15.7.4 Behr 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 Order, except as otherwise expressly agreed in a separate Order issued by Behr.

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

15.8.1 Seller will continue production and delivery of all Supplies as ordered by Behr, at the prices and other terms stated in the Order, without premium or other condition, during the entire period reasonably needed by Behr to complete the transition to the alternate supplier(s), such that Seller's action or inaction causes no interruption in Behr's ability to obtain Supplies as needed;

15.8.2 at no cost to Behr, Seller will promptly provide all requested information, documentation and access to Seller's manufacturing process, including on-site inspections, bill-of-material data, tooling and process detail and samples of Supplies and components; and

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

16 Behr's Property

16.1 Behr's Property means any tangible or intangible property to which Behr has title. Behr's Property includes:

16.1.1 Supplies, together with materials and components incorporated or to be incorporated in the Supplies;

16.1.2 all property which is furnished by Behr, either directly or indirectly to Seller to perform the

Order; or

16.1.3 Inventions, Intellectual Property and Proprietary Information of Behr, as specified in §§19 and 20;

16.1.4 Tooling and other property (including, by way of example, returnable packaging) that Behr has agreed in an Order to compensate Seller;

16.1.5 any modifications, repairs, refurbishments, and replacements of Behr's Property.

16.2 With respect to Behr's Property in the custody or control of Seller or Seller's suppliers, contractors or agents:

16.2.1 Seller shall use Behr Property only for the production of Supplies for Behr.

16.2.2 Seller at its own expense shall keep Behr Property: (i) in good working condition (i) housed, maintained, and free from damages including normal wear and tear; (ii) insured for the benefit of Behr at all times while in Seller's possession; and (iii) segregated from all other assets and labeled as being the property of Behr or its Customer.

16.2.3 Seller shall have only temporary possession as a bailee at will. Seller may not release, relocate or dispose of Behr's Property to any third party without the express written permission of Behr. Seller shall promptly notify Behr of the location of Behr's Property if located at any place other than Seller's facility.

16.2.4 Behr will have the right to enter Seller's premises to inspect Behr's Property and Seller's records regarding Behr's Property. Only Behr (or Behr's affiliates) has any right, title or interest in Behr's Property, except for Seller's limited right, subject to Behr's sole discretion, to use Behr's Property in the manufacture of Supplies. Seller agrees neither to create nor allow to exist any liens on Behr's Property and Seller agrees to immediately sign any UCC-1 forms or other documents reasonably required by Behr to perfect all rights granted herein. Seller grants to Behr a limited and irrevocable power of attorney, coupled with an interest, to execute and record on Seller's behalf any notice financing statements with respect to Behr's Property that Behr determines are reasonably necessary to reflect Behr's interest in Behr's Property.

16.2.5 Immediately upon Behr's request or upon any bankruptcy or insolvency filing, and without payment of any kind, the Seller will return Behr's Property, and will comply with Behr's instructions relating to its return, including but not limited to the method and location for its return. Seller is responsible for labor and other costs incidental to its return. Seller will cooperate with Behr and will provide Behr with access to all facilities at which Behr's Property is located. Seller expressly waives any right to additional notice or process relating to Behr's exercise of its rights under this section. Seller waives, to the extent permitted by law: (i) any lien or other rights that Seller might otherwise have on any of Behr's Property, including but not limited to molder's and tool builder's liens, regardless of whether Behr's Property has been fully paid for. and (ii) any objection to Behr's repossession and removal of Behr's Property for any or no reason, including bankruptcy or insolvency proceedings. Behr's right to delivery of Behr's Property shall not relieve Behr of its obligation, if any, to later pay any unpaid amounts;

17 Seller's Property

- 17.1 All items that are not Behr's Property and that are necessary or used for the production of Supplies are Seller's Property ("Seller's Property").
- 17.2 Seller, at its expense, will furnish, keep in good working condition capable of producing Supplies meeting all applicable specifications, and replace when necessary, all Seller's Property. Seller will insure Seller's Property with full fire and extended coverage insurance for its replacement value. If Seller uses Seller's Property to produce goods or services similar to Supplies for other customers, including aftermarket customers, such goods or services will not incorporate any of Behr's logos, trademarks, tradenames or part numbers. Seller will not disclose or imply in its marketing efforts that such goods or services are equivalent to those purchased by Behr.
- 17.3 Seller grants to Behr an irrevocable option to take possession of and title to Seller's Property that is special for the production of Supplies under the Order upon payment to Seller of its net book value less any amounts that Behr has previously paid to Seller for the cost of such items. This option does not apply if Seller's Property is used to produce goods that are the standard stock of Seller or if Seller is selling substantial quantities of like goods to others.

18 Tooling

- 18.1 Tooling includes prototype and production tools, fixtures, gauges, jigs, patterns, castings, cavity dies and molds, with all related software, and accessories ("Tooling").
- 18.2 Seller shall not purchase any Tooling for the account of Behr or charge Behr for any tooling except as authorized in an Order.
- 18.3 If Behr has agreed to compensate Seller for Tooling:
- 18.3.1 The price for Tooling set forth in the Order will be adjusted to credit Behr 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, Behr may determine in its reasonable discretion an appropriate adjustment. Seller will retain all cost records for a period of five (5) years after receiving final payment of the charges. Seller will provide to Behr, 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 Order. Seller shall adhere to Behr's procedure in effect at the time for submitting requests for reimbursements for Tooling costs.
- 18.3.2 The Seller shall be entitled to receive payment for Tooling 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.
- 18.3.3 Seller shall be entitled to receive payment only after and to the extent of, and in proportion to, Behr's actual receipt of such reimbursement or other payment from the Customer.
- 18.4 If Seller is responsible for fabricating or acquiring Tooling, such Tooling shall: (i) comply with any

specifications provided by Behr (or, where directed by Behr, those of its Customer); and (ii) be capable of producing Supplies that satisfy the 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. Time is of the essence for Seller's acquisition or fabrication of Tooling. Seller shall provide Tooling progress reports on Behr's request and shall promptly notify Behr in writing if it believes that the Tooling might not be completed by the completion date specified on the Order.

- 18.5 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 Behr 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 Behr; and (c) be solely responsible for payments to the toolmaker. Behr has no obligation to the Seller or subcontractor other than payment to the Seller of the Order price. If a subcontractor brings an action against the Seller for payment of the Tooling, the Seller will not join Behr in the action.
- 18.6 If the Seller intends to subcontract all or part of the manufacture of the Supplies to a third-party subcontractor and to locate Tooling on the subcontractor's premises, the Seller will: (a) provide Behr with written notice of the identity of the subcontractor and the location of the Tooling; (b) obtain the written permission of Behr in advance of the Seller's doing so; (c) inform the subcontractor in writing that it is a bailee-at-will, through the Seller, of Tooling owned by Behr; and (d) be solely responsible for payments to the subcontractor.

19 Intellectual Property

- 19.1 Seller warrants that the Supplies 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 Right" 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.
- 19.2 If Seller, or any person employed by or working under the direction of Seller, in the performance of the Order 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 Supplies or any alternative or improved method of accomplishing the objectives of this Order (collectively, "Inventions"), such Inventions shall be owned by Behr and be deemed confidential and proprietary property of Behr, whether or not such Inventions or any portions thereof can be copyrighted or patented or not. Seller shall immediately disclose all Inventions to Behr and shall cooperate, and cause its employees to cooperate, in executing any documents and taking any other actions necessary to patent, copyright, assign to Behr or otherwise perfect or protect such Inventions for the benefit of Behr.
- 19.3 Seller shall not manufacture or provide, or offer to manufacture or provide, any goods or services that are based in whole or in part upon Inventions, confidential or proprietary information of Behr or intellectual property of Behr, whether for its own purposes, except to satisfy its obligations under this Order, for the Customer or any other third parties, without Behr's prior written consent.
- 19.4 Seller hereby grants to Behr, its subsidiaries and affiliates, and their respective successors and assigns, and Behr 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 Supplies to Behr or the

Customer, under: (i) any Intellectual Property Rights owned or controlled by Seller or its affiliates, and relating to the Supplies, to make, have made, repair, reconstruct, rebuild, relocate, use, sell and import the Supplies, 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 Order, to reproduce, distribute and display such works and to prepare derivative works based thereon, subject to the other provisions of this Order (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 shall be effective from the first date of delivery of the Supplies under this Order and extend for so long as Behr has contractual obligations to the Customer. The License is intended to be subject to 11 USC Section 365(n), as an executory agreement under which Behr has license rights to Seller's Intellectual Property, and is supplementary to any other rights of Behr under this Order and any other agreement with Seller.

19.5 Seller will ensure that the terms of its contracts with its subcontractors and employees are consistent with the terms of this section.

20 Proprietary Information

20.1 Any information or knowledge that Behr may have disclosed or may hereafter disclose to Seller in connection with this Order (including but not limited to the terms of the Order) and any and all services to be rendered and/or work to be performed pursuant to this Order is and shall be deemed confidential and Proprietary Information of Behr ("Proprietary Information"). Seller shall not, without authorization in writing from Behr, use (except as necessary to the performance of the Order), communicate or disclose the confidential and Proprietary Information of Behr or use such information for any purpose other than to perform its obligations under the Order. Seller agrees to safeguard the confidential and Proprietary Information of Behr by using reasonable efforts, consistent with those used in the protection of its own Proprietary Information of a similar nature, to prevent its disclosure to third parties. Seller agrees to cause its employees, "contractors", officers, directors, agents and representatives to be bound by and comply with the foregoing restrictions regarding the use or disclosure of such confidential and Proprietary Information. Seller further agrees not to assert any claims with respect to any technical information that Seller shall have disclosed or may hereafter disclose to Behr in connection with the Supplies.

20.2 The restrictions and obligations of §20.1 will not apply to information that: (a) is already publicly known at the time of its disclosure by Behr; (b) after disclosure by Behr becomes publicly known through no fault of Seller; or (c) Seller can establish by written documentation was properly in its possession prior to disclosure by Behr or was independently developed by Seller without use of or reference to Behr's information. Notwithstanding anything to the contrary in these Terms, any confidentiality or non-disclosure agreement between the parties that predates the Order will remain in effect except as expressly modified by the Order, and to the extent of a conflict between the express terms of such an agreement and this Section, the terms of that agreement will control.

20.3 All documents containing Proprietary Information relating to the Supplies produced or acquired by Seller under the Order will belong to Behr. All drawings, know-how, and confidential information supplied to Seller by Behr and all rights therein will remain the property of Behr and will be kept confidential by Seller in accordance with § 20.1 above.

20.4 Seller shall, within five (5) business days of Behr's request or the expiration or termination of this Order, return all confidential and Proprietary Information (including all copies, notes and/or extracts

thereof).

21 Insurance; Waiver of Liens

- 21.1 Seller agrees to furnish to Behr promptly upon request a certificate from its insurance brokers or agent showing that it carries adequate workers' compensation, and comprehensive general liability insurance coverage, including contractual liability insurance applicable to this Order, product liability, automobile, public liability, and property damage insurance in amounts and coverage sufficient to cover all claims hereunder. The certificate must show the amount of coverage, policy number, and date of expiration and must require the broker or agent to give Behr thirty (30) days prior written notice of any lapse or cancellation of any policy. Behr shall also be shown as an additional insured on all such insurance policies, including the comprehensive general liability policy, and contain endorsements stating that the policies are primary and not excess over or contributory with any other valid, applicable, and collectible insurance in force for Behr. Behr may require Seller to furnish evidence of any insurance policy, but failure to comply with these requirements will not relieve Seller of its liability and obligation under this section.
- 21.2 If Seller is self-insured for workers compensation coverage, it will, if requested by Behr, provide the applicable state certificate establishing such status to Behr. Seller hereby waives all mechanics' liens and claims and agrees that none shall be filed or maintained against Behr's premises on account of any Supplies and shall cause all its subcontractors, materialmen and suppliers (and subcontractors of such parties) to provide similar waivers and agreements in form satisfactory to Behr.

22 Excusable Delay.

- 22.1 Any delay or failure of either party to perform its obligations will be excused if and to the extent that the party is unable to perform due to an event or occurrence beyond its reasonable control and without its fault or negligence, such as: acts of God; restrictions, prohibitions, priorities or allocations imposed or actions taken by a governmental authority; embargoes; fires; explosions; natural disasters; riots; wars; sabotage; or court injunction or order (collectively "Excusable Delay"). However, in no event will the Seller's performance be excused by: (i) the change in cost or availability of materials, components or services based on market conditions, supplier failure or inability to perform (unless the failure or inability is caused by an event or occurrence that would itself be an Excusable Delay); (ii) contract disputes; (iii) Seller's or a Seller's financial distress; (iv) any labor strike or other labor disruption applicable to Seller or to any of its subcontractors or suppliers; or (iv) Seller's failure to comply with applicable law or to take actions reasonably necessary to schedule performance in anticipation of any customs, export-import and/or Government requirement for which there is public notice.
- 22.2 Seller shall immediately give written notice to Behr of any event or occurrence that threatens to delay or actually delays Seller's performance under this Order. Such notice shall include all relevant information with respect to such threat, including the possible duration and impact of a delay.
- 22.3 Seller, at its expense, shall use its best efforts to mitigate any adverse effects or costs to Behr due to any actual or potential delay, including: (i) the implementation of a production contingency plan; (ii) upon Behr's express written authorization, increasing Seller's inventory of Supplies to a level sufficient to sustain deliveries during such delay; and (iii) modifying the Supplies, suppliers, production processes or other resources to allow the continuation or resumption of production.
- 22.4 During any Excusable Delay or failure to perform by Seller, Behr may at its option and at Seller's

expense: (i) purchase Supplies from other sources and reduce its schedules to Seller by such quantities, without liability to Seller; (ii) require Seller to deliver to Behr at Behr's expense all finished goods, work in process and parts and materials produced or acquired for work under the Order; (iii) have Seller provide Supplies from other sources in quantities and at a time requested by Behr and at the price set forth in the Order; and/or (iv) if the Excusable Delay results in a failure or delay to perform that has lasted for more than thirty (30) days, terminate the Order, in whole or in part, for Cause, in accordance with §15.2.2

22.5 Seller shall timely notify Behr of any actual or potential labor dispute. Seller shall provide Behr with six (6) months notice prior to the expiration of any current labor contract, applicable to Seller or to any of its subcontractors or suppliers. Seller at its expense will take all necessary actions to ensure a forty (40) working day supply of Supplies in a neutral warehouse site to be located in the United States at least fifty (50) miles from Seller's manufacturing locations during any anticipated labor disruption or prior to the expiration of any labor contract. Seller shall have this supply of Supplies warehoused at least ten (10) working days prior to the expiration of any such contract or anticipated dispute.

23 Behr's Liability

23.1 Behr's sole liability under the Order (including its termination or expiration) is to pay for the Supplies in accordance with §5.3 and to pay the specific termination related amounts described in §§15.5 and 15.8.

23.2 In no event shall Behr be liable for anticipated profits, whether direct or indirect, interest, penalties or incidental, consequential, punitive, multiple, or exemplary damages or liabilities in connection with this Order, whether for breach of contract, late payment, property damage, personal injury, illness, or death or otherwise.

24 Limitation on Assignment and Subcontracting

24.1 This Order is issued to the Seller, in reliance upon its personal performance of the duties imposed. Without prior written consent of Behr, Seller may not: (i) assign this Order or delegate the performance of its duties hereunder; or (ii) assign any accounts receivable from Behr to third parties.

24.2 Seller will ensure that the terms of its contracts with its suppliers and contractors provide Behr and its Customer with all of the rights specified in this Order.

24.3 Any subcontracting, assignment or delegation does not relieve Seller of any responsibility under this Order.

25 Compliance with Laws

Seller agrees to comply with all applicable laws, rules, regulations, ordinances or other requirements of any national, state, provincial, local, multi-national or international body (collectively "Laws") relating to the manufacture, sale, delivery and use of the Supplies or otherwise relating to the Order. Upon request, Seller will submit to Behr evidence of such compliance.

26 Special Situations

26.1 In addition to its indemnity obligations under §12.1.7, if Seller performs any work on Behr's or Customer's premises or utilizes the property of Behr or its Customer, whether on or off Behr's or

Customer's premises, (i) Seller will examine the premises to determine whether they are safe for the requested services and will advise Behr promptly of any situation it deems to be unsafe; (ii) Seller's employees, contractors, and agents will comply with all regulations that apply to the premises and may be removed from Behr's premises at Behr's discretion; and (iii) Seller's employees, contractors, and agents will not possess, use, sell, transfer or be under the influence of alcohol or unauthorized, illegal, or controlled drugs or substances on the premises.

26.2 If the Order includes the removal, moving or installation of production equipment, the following clauses apply:

26.2.1 Seller agrees that it has inspected the equipment and the site from which it is to be removed or where it will be installed, and that the price includes everything necessary to complete the work, including without limitation the cost of providing access and egress, relocating other equipment, power lines and other utilities, preparing a proper foundation to receive the machinery, and all special permits and equipment required to accomplish the move. If any of the foregoing are to be furnished by Behr, such items shall have been clearly and specifically identified on the face of the Order. With respect to items or services furnished by Behr, including without limitation foundations or lifting or moving equipment, Seller agrees to inspect same before use thereof and to be fully and completely responsible for the adequacy thereof.

26.2.2 Seller or its mover shall provide insurance against any harm to Behr or its employees, Sellers or the mover's employees, or the public arising out of its activities hereunder. The minimum combined single limit of such insurance is to be \$5,000,000, written by an insurer reasonably acceptable to Behr. In addition, Seller shall maintain broad form property damage liability insurance covering the activities described in this paragraph. All policies shall name Behr as an additional insured.

27 Remedies

27.1 The rights and remedies reserved to Behr in the Order will be cumulative with and in addition to all other legal or equitable remedies.

27.2 In any action brought by Behr to enforce Seller's obligations in connection with the production or delivery of Supplies or transition support, or for possession of property, the parties agree that Behr does not have an adequate remedy at law and Behr is entitled to an immediate order for specific performance of Seller's obligations (including related temporary and preliminary injunctive relief).

27.3 Behr shall recover actual and reasonable attorney's fees (including the cost of in-house counsel) in any action arising out of this Order, unless Seller is the prevailing party.

28 Notices

28.1 All notices under this Order shall be in writing and, unless otherwise expressly stated in this Order:

28.1.1 Shall be transmitted in any of the following ways: (i) mailing by certified mail, return receipt requested, with first-class postage prepaid; (ii) mailing by recognized overnight service utilizing receipts, delivery charges prepaid; (iii) fax where an electronic proof of transmission is generated at the time of sending; (iv) email, subject to proof of transmission; or (v) Behr's electronic system for communication with its suppliers. A copy

of any notice to Behr must be sent attention Behr Legal Department.

- 28.1.2 Shall be effective for (i) above upon five (5) days after posting; for (ii), above upon one (1) business day following deposit; or for (iii), (iv) or (v) above on the date of transmission.

29 Diversity Initiative

29.1 Behr encourages its Sellers to use diverse suppliers.

29.2 A diverse supplier is a business establishment, which meets one or more of the following conditions: (i) a small business, as defined in Title 15, Section 632 of the United States Code and related regulations; (ii) a small business owned and controlled by socially disadvantaged individuals (at least 51 percent of the business is owned and controlled by one or more socially and economically disadvantaged individuals and the management and daily business operations are controlled by one or more such individuals); and (iii) a business that is at least 51 percent owned by a woman or women who also control and operate the business. Upon Behr's request, Seller will inform Behr annually the percentage, based on dollar value, of the content provided by diverse suppliers of the part purchased hereunder as well as the basis for claiming that such content was provided by a diverse supplier.

30 Miscellaneous

30.1 Jurisdiction and Applicable Law.

30.1.1 This Order shall be interpreted and enforced in accordance with the local, domestic laws of the State of Michigan without regard to its conflicts of law provisions, as if Behr and the Seller entirely performed all transactions between them in the State of Michigan and of the United States of America, exclusive of their choice of law rules. The parties expressly consent to the sole and exclusive jurisdiction and venue, to the maximum extent permitted under the law, of the State courts located in Oakland County, Michigan or the federal courts in the Eastern District of Michigan, Southern Division, for all lawsuits brought by either party arising out of or related to this Order.

30.1.2 The parties expressly agree that the United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Order or any agreement or dispute between the parties.

30.2 Waiver. Either party's failure to insist on the performance by the other party of any term or failure to exercise any right or remedy reserved in this Order, or either party's waiver of any breach or default hereunder by the other party shall not, thereafter, waive any other terms, conditions, rights, remedies, breaches or defaults, whether of the same or a similar type or not.

30.3 Severability. If any provision of this Order, or portion of any provision, is declared or found to be unenforceable, the balance of this Order or such provision shall be interpreted and enforced to the greatest extent possible as if the unenforceable provision or portion had never been a part hereof. In particular, if any interest rate provided for herein is higher than that permitted by applicable law it shall automatically be amended to the highest legal rate.

30.4 Survival. The obligations of Seller to Behr survive termination of the Order, except as otherwise

provided in the Order.

- 30.5 Interpretation. No provision may be construed against Behr as the drafting party. Section headings are for convenience or reference only, and do not affect the meaning of the Order.
- 30.6 No Publicity. Seller will not advertise, publish or disclose to any third party (other than to Seller's professional advisors on a confidential and need-to-know basis) in any manner the fact that Seller has contracted to furnish Behr the Supplies covered by the Order or any terms of the Order (including prices), or use any trademarks or trade names of Behr in any press release, advertising or promotional materials, without first obtaining Behr's written consent.
- 30.7 Relationship of Parties. Seller and Behr are independent contracting parties and nothing in the Order will make either party the employee, agent or legal representative of the other for any purpose. The Order does not grant either party any authority to assume or to create any obligation on behalf of or in the name of the other. Seller will be solely responsible for all employment and income taxes, insurance premiums, charges and other expenses it incurs in connection with its performance of the Order, except as expressly provided in a written agreement signed by Behr. All employees and agents of Seller or its respective contractors are employees or agents solely of Seller or such contractors, and not of Behr, and are not entitled to employee benefits or other rights accorded to Behr's employees. Behr is not responsible for any obligation with respect to employees or agents of Seller or its contractors.
- 30.8 Conflict of Interest. Seller represents and warrants that its performance of the Order will not in any way conflict with any continuing interests or obligations of Seller or its employees or contractors. Seller further warrants that while the Order is in effect, Seller and those of its employees and contractors participating in the performance of the Order will refrain from any activities that could reasonably be expected to present a conflict of interest with respect to Seller's relationship with Behr or its performance of the Order.

IN WITNESS WHEREOF, we acknowledge receipt of and accept the Order without exception.

(Name of Seller)

By: _____

Title: _____

Date: _____