

INDIRECT PURCHASING TERMS AND CONDITIONS

PURPOSE AND USE. These Terms and Conditions (the “Terms”) apply to the purchase of items by Buyer. The Products or Services, as applicable, may be more fully described in the Specifications (defined below). Changes to these Terms are not part of the Agreement (defined below) unless Buyer expressly agreed to them in writing. Section 3 describes how the Parties may enter into a binding contract for the Products or Services.

1. CERTAIN DEFINED TERMS.

- 1.1 “Affiliate” of an entity means any other entity that directly or indirectly, through one or more intermediaries, Controls, is Controlled by, or is under common Control with such entity.
- 1.2 “Buyer” means the above BorgWarner entity or the BorgWarner Affiliate, as identified in the applicable Order Document.
- 1.3 “Control” (and with the terms “Controlled by” and “under common Control with”) means, with respect to any person or entity, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of another person or entity, whether through the ownership of voting securities, by contract, or otherwise.
- 1.4 “Highly-Sensitive Personal Information” means information provided to Supplier by or at the direction of Buyer that includes an (i) individual’s government-issued identification number (including social security number, driver’s license number or state-issued number); (ii) financial account number, credit card number, debit card number, credit report information, with or without any required security code, access code, personal identification number or password, that would permit access to an individual’s financial account; or (iii) biometric or health data.
- 1.5 “Indirect Purchasing” means all purchases made by Buyer that are not materials or components incorporated directly into Buyer’s finished production parts.
- 1.6 “Intellectual Property” means all intellectual property rights and industrial property rights and assets, and all rights, interests and protections that are associated with, similar to, or required for the exercise of, any of the foregoing, however arising, under the law of any jurisdiction throughout the world, whether registered or unregistered, including, but not limited to, rights in and/or to:
 - (a) Works of authorship, expressions, designs and design registrations, whether or not subject to copyright, including, but not limited to, copyrights, author, performer, moral and neighboring rights, and all registrations, applications for registration and renewals of such copyrights;
 - (b) Discoveries, trade secrets, business and technical information and know-how, databases, data collections, and confidential information;
 - (c) Processes, machines, manufactures, or compositions of matter, designs and/or any new and useful improvement of any of the foregoing, including, but not limited to, patents (including all reissues, divisionals, provisionals, continuations, and continuations-in-part, re-examinations, renewals, substitutions, and extensions thereof), patent applications, and other patent rights and any other government-issued indicia of invention ownership (including, but not limited to, inventor’s certificates, petty patents, and patent utility models);
 - (d) Software and firmware, including, but not limited to, data files, source code, object code, application programming interfaces, architecture, files, records, schematics, computerized databases and other related specifications and documentation;

- (e) Trademarks, service marks, trade names, brand names, logos, trade dress, design rights, and other similar designations of source, sponsorship, association or origin, together with the goodwill connected with the use of and symbolized by, and all registrations, applications and renewals for, any of the foregoing; and
- (f) Internet domain names, whether or not trademarks, registered in any top-level domain by any authorized private registrar or governmental authority, web addresses, web pages, websites and related content, accounts with social media companies and the content found thereon and related thereto, and URLs.
- 1.7 “Laws” means applicable country, federal, provincial, state, local, and foreign laws, regulations and other legal requirements, including but not limited to the U.S. Federal Occupational Safety and Health Act of 1970, the U.S. Federal Hazardous Substances Act, the U.S. Transportation Safety Act of 1974, the U.S. Hazardous Materials Transportation Act, the U.S. Clean Air Act, the U.S. Toxic Substances Control Act, the U.S. Clean Water Act, the U.S. Resource Conservation and Recovery Act, Sections 6,7, and 12 of the U.S. Fair Labor Standards Act, the U.S. Foreign Corrupt Practices Act (“FCPA”), the United Kingdom Anti-Bribery Act of 2010 (“Bribery Act”), all supply chain due diligence laws, and such amendments to such laws and regulations and policies, orders, permits, licenses and governmental approvals promulgated or issued thereunder. “Data Protection Laws” means applicable country, federal, provincial, state, local, and foreign laws, regulations, and other requirements, including but not limited to Section 5 of the U.S. Federal Trade Commission Act, the California Consumer Privacy Act/California Privacy Rights Act (“CCPA/CPRA”), the Virginia Consumer Data Protection Act (“VCDPA”), the Colorado Privacy Act (“CPA”), the Utah Consumer Privacy Act (“UTCPA”), and the Connecticut Data Protection Act (“CDPA”); the EU General Data Protection Regulation, the Brazil Law Concerning the Protection of Personal Information (“LGPD”), the Canada Personal Information Protection and Electronic Documents Act (“PIPEDA”), the Mexico Federal Law on the Protection of Personal Data held by Private Parties (“LPDP”); and other similar laws, regulations, and other requirements.
- 1.8 “Losses” means all loss, cost, liability, damage, penalty, fine, judgment, claim or expense (including reasonable attorneys’ fees and cost of in-house counsel and investigation costs).
- 1.9 “Order Document” means a document executed and delivered by the Parties for the purchase and/or provision of Products and/or Services under these Indirect Purchasing Terms and Conditions for Indirect Purchasing, including a purchase order or statement of work, whether so styled or otherwise.
- 1.10 “Party” means Buyer or Supplier, as applicable.
- 1.11 “Personal Information” means information provided to Supplier by or at the direction of Buyer, or to which access was provided to Supplier by or at the direction of Buyer, in the course of Supplier’s performance under this Agreement that: (i) identifies or can be used to identify an individual (including, without limitation, names, signatures, addresses, telephone numbers, e-mail addresses and other unique identifiers); or (ii) can be used to authenticate an individual (including, without limitation, employee identification numbers, government-issued identification numbers, passwords or PINs, financial account numbers, credit report information, biometric or health data, answers to security questions and other personal identifiers); in case of both subclauses (i) and (ii), including, without limitation, all Highly-Sensitive Personal Information.
- 1.12 “Products” means goods identified in any applicable Order Document.
- 1.13 “Purchase Price” means the price for the Products and/or Services to be paid by Buyer to Supplier as set forth in the applicable Order Document.

- 1.14 “Release” is a written document that will include rolling non-binding forecasts, authorizations, manifests, broadcasts, firm orders, scheduling agreements, delivery schedules/call offs, and any other written communication whereby Buyer communicates to Supplier its necessary Product quantities and delivery dates.
- 1.15 “Services” means the services identified in an Order Document and/or Specifications.
- 1.16 “Specifications” means all Buyer-approved specifications written instructions, manuals, all drawings including the component drawings, specification sheets, statements of work, Supplier Manual, samples and such other technical details, data or proprietary information referred to in these Indirect Purchasing Terms and Conditions for Indirect Purchasing and/or one or more Order Documents.
- 1.17 “Supplier” means the entity from which Buyer purchases Products or Services under an Order Document.
- 1.18 “Viral License” means any license that requires, as a condition of use, modification and/or distribution of materials, that other materials used, combined, or distributed with the initial materials be (a) disclosed or distributed in source code or similar form, (b) licensed for the purpose of making derivative works, or (c) redistributable at no charge. The term includes, but is not limited to, the GNU General Public License, the GNU Lesser General Public License, a Mozilla Public License, or similar license.

2. **AGREEMENT FOR INDIRECT PURCHASING.**

- 2.1 The parties’ “Agreement” that governs the supply relationship is comprised of (a) these Indirect Purchasing Terms and Conditions for Indirect Purchasing, (b) such Order Documents as the Parties execute and deliver, (c) the Specifications, if applicable, (c) the then-current BorgWarner Supplier Manual located at <https://www.borgwarner.com/suppliers>, (d) the then-current BorgWarner Supplier Code of Conduct located at <https://www.borgwarner.com/suppliers>, and (e) any other framework agreement, master agreement, scheduling agreement, or written document agreed to in writing by Buyer and Supplier with respect to the Products or Services that in connection with these Indirect Purchasing Terms and Conditions for Indirect Purchasing.
- 2.2 Supplier’s acceptance of any Order Document is limited to the specific terms of the Order Document. Any additions, modifications, or different terms proposed by Supplier, including any standard terms or forms that Supplier may use or submit to Buyer, are material and expressly rejected and are not part of the Agreement unless specifically agreed to in writing signed by an authorized representative of Buyer. Any reference on the face of the Order Document to Supplier’s quotation or other prior communication does not imply acceptance of any term, condition or instruction in the quotation, but is solely to incorporate the description or specifications of the Products or Services to be supplied to Buyer, and only then to the extent that such description or specifications are not in conflict with the Specifications.
- 2.3 In the event of any conflict between any of the documents that comprise the Agreement, the following priority shall be applied: (a) the Release (excluding references to the Terms), (b) the Order Document (excluding reference to the Terms), (c) the Terms, (d) the BorgWarner Supplier Manual, and (e) the BorgWarner Supplier Code of Conduct.
- 2.4 These Indirect Purchasing Terms and Conditions and the other documents above will apply for so long as any executory obligation exists under any Order Document. If the Parties execute and deliver one or more Order Documents after a time during which no executory

obligation exists under any Order Document, the Agreement will consist of the above documents and the new Order Document(s).

3. **PRICE.**

- 3.1 The Purchase Price specified in each applicable Order Document is firm unless otherwise stated in this Agreement. The Purchase Price includes all subcontracting costs associated with the Products and/or Services. Buyer will have no responsibility for any increased costs incurred by Supplier in connection with any raw materials or subcontractors unless such additional costs have been negotiated and agreed to in advance and in writing by Buyer. Supplier may not refuse to sell Products and/or Services to Buyer to force any modifications to the Purchase Price.
- 3.2 Unless prohibited by applicable law, Supplier warrants that the Purchase Price is no less favorable than prices given by Supplier to any other customer for like Products or services (after consideration of all discounts, rebates and allowances).
- 3.3 The Purchase Price includes all country, federal, state, local taxes, and VAT that Supplier is required by law to collect from Buyer and from which Supplier cannot obtain an exemption after Supplier has made all reasonable efforts to mitigate. Such taxes shall be separately stated on Supplier's invoices and shall be paid by Buyer, unless an exemption is available regardless of whether Supplier has obtained the exemption or not.
- 3.4 Unless otherwise stated in the applicable Order Document, no additional charges for packing, cartage, storage, drayage, and transportation will be included in the Purchase Price.
- 3.5 All expenses related to travel shall comply with BorgWarner's travel and expense policies.

4. **SHIPPING AND PACKING.** Supplier will pack, mark and ship Products as instructed by Buyer or the carriers and in accordance with any applicable Laws. All shipments of Products must be accompanied by a packing slip, which describes the articles, states the Order Document and/or purchase order number and shows the shipment's destination. Supplier shall promptly forward the original bill of lading or other shipping receipt for each shipment in accordance with Buyer's instructions. Products shipped under an Order Document must be shipped without oil or any other fluids. Supplier shall bear all liability if the shipment does not comply with the requirements of this Section.

5. **ORDERING OF PRODUCTS; PURCHASE ORDERS.** Where an Order Document covers Products, Buyer may order, and Supplier will supply, Products under purchase orders up to the quantities (however specified) stated in the Order Document.

6. **DELIVERY - RISK OF LOSS.**

- 6.1 Deliveries of Products must be made in quantities and at times specified in the applicable Order Document or a Release and time is of the essence. Each Release is an integral part of this Agreement, is governed by these Indirect Purchasing Terms and Conditions for Indirect Purchasing, and is not an independent contract. Buyer will not be required to pay for Products delivered to Buyer that are in excess of quantities specified in a Release. Buyer may reject any deliveries made more than two weeks after or before the specified delivery date.
- 6.2 If Supplier fails to have Products ready for shipment in time to meet Buyer's delivery schedules, Supplier will be responsible for any additional costs of premium or expeditious transportation of Products. Buyer may either arrange for expeditious shipment of the Products or require Supplier to ship the Products, and Supplier will pay or reimburse Buyer for the entire cost of such expeditious shipment.

6.3 Unless otherwise agreed in writing by the parties, all Products are sold Ex Works (Incoterms 2020) origin.

7. **INVOICING.**

7.1 After delivery of Products or performance of Services (or as otherwise provided in an Order Document), Supplier shall promptly render correct and complete invoices to Buyer and shall accept payment by check or, at Buyer's discretion, other cash equivalent (including purchase cards or electronic transfer of funds).

7.2 Supplier will comply with the requirements of the electronic payment system that Buyer may direct Supplier to use to receive payment. Supplier will be responsible for any breach of such electronic payment system caused by Supplier's access to the electronic payment system and, if payment is made or received via payment card, shall at all times remain in compliance with the Payment Card Industry Data Security Standard requirements. Supplier will inform the Buyer of any breach of Personal Information.

7.3 Payment terms are as set forth in the applicable Order Document. If an Order Document does not specify the payment terms, payment shall be due on the 60th day after the date upon which Buyer receives the invoice therefor. In case of applicable law requiring shorter payment terms than those set forth in this Agreement, the payment terms required by law shall apply. Buyer may withhold payment pending receipt of evidence, in such form and detail as Buyer reasonably directs, of the absence of any liens, encumbrances, and claims on the Products or Services.

7.4 All amounts due Supplier shall be considered net of indebtedness or obligations of Supplier to Buyer. Buyer may set off against or recoup from any amounts due or to become due to Supplier, any amounts due or to become due from Buyer. If Supplier's obligation to Buyer is disputed, contingent or unliquidated, Buyer may defer payment of all or a portion of the amount due to Supplier until such obligation is resolved. If Buyer reasonably feels itself insecure or at risk, Buyer may withhold and recoup a corresponding amount due Supplier to protect against such risk.

8. **WARRANTIES OF SELLER.**

8.1 Supplier expressly warrants that:

(a) All Products and Services will conform to the applicable Order Document and any Specifications;

(b) All Products are merchantable, of good material and workmanship, and free from defect in materials and design (to the extent the design is provided by Supplier, its subcontractors, Suppliers, or agents, even if the design is approved by Buyer);

(c) All Products conform to all applicable Laws;

(d) All Products are fit for the particular purpose set forth in the Specifications or, if no particular purpose is stated in the Specifications, the ordinary purpose for which such Products are used;

(e) All Products are free of all liens, claims, defects in title, and encumbrances, including claims of Intellectual Property infringement.

In carrying out any Services, Supplier will ensure that the best technical practices, skills, procedures, care, and judgment will be employed.

8.2 All Products and Services are subject to Buyer's inspection. Payment for, inspection of, or receipt of, Products or Services will not constitute acceptance of the Products or Services or

a waiver of any breach of warranty. All warranties contained in this Agreement run, and all remedies shall be available to, Buyer and its Affiliates and all such warranties will survive any delivery, inspection, acceptance, or payment by Buyer. Supplier hereby waives the objection of delayed of notification of defects.

8.3 If Products have the ability to connect to the internet or other network, the following additional terms apply to the Products. Supplier warrants that the Products are equipped with reasonable security features that are designed to protect the Products against unauthorized access to or modification of the Product and any information collected, contained or transmitted by the Product ("Data"), including:

- (a) Pre-programmed unique passwords or requiring end users to change the default username and set a new password before the Product is activated;
- (b) Secure storage of any credentials using industry standard trusted storage mechanisms;
- (c) Ensuring Products are securely updateable in a manner that does not impact the Product functionality, such as through remote means;
- (d) Ensuring that the Products have the ability to enable Buyer to comply with the Data Protection Laws, as and if applicable;
- (e) Ensuring that the Products employ administrative, physical, and technical safeguards to protect individual Personal Information that are no less rigorous than accepted industry standards;
- (f) Ensuring the manner in which Personal Information will be collected, accessed, used, stored, processed, disposed of, and disclosed comply with applicable Data Protection Laws;
- (g) All necessary security updates and patches to the Product on an ongoing basis; and
- (h) Otherwise ensuring Products comply with all applicable laws, rules, regulations and industry best practices related to the Product or any Data.

8.4 Supplier further warrants that, except as otherwise provided in an Order Document, Supplier will not have access to any Personal Information or Highly-Sensitive Personal Information from any Product. If such access become possible, Supplier shall be deemed to be a processor or subprocessor of Buyer, and Supplier and Buyer will enter into a Data Protection Addendum as and if applicable.

9. **REJECTION OF PRODUCTS.** In addition to any other rights specifically provided elsewhere in this Agreement, if Products do not conform to this Agreement, Buyer may: (a) reject the non-conforming or defective Products, (b) require Supplier, at Supplier's risk and expense (including applicable shipping, labor, and materials costs), to either repair or replace the nonconforming Products, and/or (c) require Supplier to implement at Supplier's expense, containment, inspection, sorting, and other quality assurance procedures. If, after reasonable notice, Supplier fails to promptly repair or replace nonconforming or defective Products or Services, Buyer may repair or replace the nonconforming or defective Products or services and charge all related costs to Supplier without voiding the warranties in this Agreement and without Buyer waiving any other rights or remedies.

10. **INTELLECTUAL PROPERTY.**

10.1 Buyer does not transfer to Supplier any of Buyer's Intellectual Property in information, documents, or property that Buyer makes available to Supplier. Supplier may, however, use Buyer's Intellectual Property for the limited purpose of producing and supplying the Products and Services to Buyer. If this Agreement requires that Supplier develop works of original

authorship, ideas, inventions, know-how, processes, compilations of information, or other Intellectual Property (“Proprietary Materials”) and such development is paid for by Buyer, then all Intellectual Property in such Proprietary Materials is owned by Buyer (the “Developed Intellectual Property”). To the extent that the preceding sentence does not convey all right, title and interest in and to the Developed Intellectual Property to Buyer, Supplier shall assign and does hereby assign to Buyer, Supplier’s entire right, title and interest in and to all Developed Intellectual Property. If applicable Law prohibits the assignment of Developed Intellectual Property to Buyer, Supplier shall grant and hereby grants Buyer and its Affiliates a perpetual, global, fully paid, non-exclusive license to the Developed Intellectual Property. Supplier shall promptly notify Buyer of any Developed Intellectual Property, providing such detail and information as is reasonably necessary. Supplier shall take all action and execute all documents necessary to perfect Buyer’s ownership of all Developed Intellectual Property, as Buyer may request from time to time. Buyer shall retain all rights to current and future modifications made by either Party to the Developed Intellectual Property. Upon termination of this Agreement or upon request by Buyer at any time, Supplier shall deliver to Buyer all tangible Developed Intellectual Property and any copies then in Supplier’s possession or under Supplier’s control.

10.2 Supplier shall indemnify, defend, and hold harmless Buyer and its Affiliates, and each of their respective direct or indirect equityholders, members, managers, directors, officers, employees, and agents (each an “Indemnitee”) from and against Losses arising out of any third-party claim, suit, or cause of action alleging that any Product and/or Service, and/or the possession or use thereof by any Indemnitee, infringed upon, violates, or misappropriates any Intellectual Property of a third party. At Buyer’s sole discretion, if the Products or Services are alleged to infringe or their use is enjoined, Supplier will at its expense: (i) modify the Products or Services to be non-infringing; (ii) obtain for Buyer a right or license to continue using the Products or Services; or (iii) procure and deliver to Buyer alternate Products or services that meet the requirements of this Agreement so that Buyer has the right to use and to sell products with alternate Products or services.

11. OPEN SOURCE MATERIALS AND VIRAL LICENSES.

11.1 Supplier represents and warrants that no good, service, or software provided by Supplier under this Agreement, or the possession or use thereof by Buyer or any Buyer Affiliate or user as contemplated by this Agreement, will result in any Buyer, Buyer Affiliate, or Buyer User work of authorship or other materials becoming subject to any Viral License.

11.2 No inclusion of any “open source” or similar materials in, or with, any good, service, or software provided by Supplier under this Agreement will reduce or otherwise affect any representation, warranty, or covenant of Supplier with respect to such good, service, or software, even if Supplier provides with such good, service, or software a license or other materials with disclaimers with respect to warranties with respect to the goods, service, or software.

12. TERMINATION.

12.1 Buyer may terminate all or any part of this Agreement, without liability to Supplier if Supplier: (a) repudiates or breaches any of the terms of this Agreement, including Supplier’s warranties; or (b) fails to perform Services or deliver Products in accordance with the requirements of this Agreement; and does not correct such failure or breach within 30 days after Buyer gives notice specifying such failure or breach. Any such termination is not an exclusive remedy.

- 12.2 Buyer may immediately terminate this Agreement without liability upon the happening of any of the following or any other comparable event: (a) insolvency of the Supplier; (b) filing of a voluntary or involuntary petition in bankruptcy by or against Supplier; (c) appointment of a receiver or trustee for Supplier; or (d) execution of a general assignment for the benefit of creditors by Supplier, provided that such petition, appointment, or assignment is not vacated or nullified within 15 days after such event. Supplier shall reimburse Buyer for all Losses Buyer incurs in connection with any of the foregoing whether or not the Agreement is terminated.
- 12.3 In addition to any other rights of Buyer to terminate this Agreement, Buyer may terminate all or any part of a Order Document at any time and for any reason by giving written notice to Supplier. Upon receipt of such notice, Supplier will immediately stop work on the applicable Order Document or the terminated portion thereof and notify any subcontractors to stop work. Buyer will pay to Supplier the Purchase Price for all Products or Services that have been completed in accordance with the Order Document prior to the effective date of termination. Where articles or materials are to be specifically manufactured for Buyer and where Supplier is not in default, an equitable adjustment shall be made to cover Supplier's actual cost, excluding profit, for work-in-process and raw materials as of the effective date of termination, to the extent such costs are reasonable in amount and are properly allocable or apportionable under generally accepted accounting principles to the terminated portion of the Order Document. Buyer will not be liable for any charges or expenses incurred by Supplier that are not consistent with Buyer's Releases, nor for any expenses, charges or liability incurred after the effective date of termination. Buyer will make no payments for finished Products, work-in-process, or raw materials in amounts in excess of those authorized by Buyer in a Release or for any undelivered Products that are in Supplier's standard stock or that are readily marketable. Supplier must submit any claim to Buyer within 30 days after the date of termination or that claim will be waived. Payments made to Supplier under this Section represent the sole responsibility of Buyer in case of termination of an Order Document.
- 12.4 In connection with the expiration or termination of an Agreement, Statement of Work, Order Document, or Purchase Order, in whole or in part, Supplier will cooperate in the transition of supply. Supplier will continue production and delivery of all Products and Services as ordered by Buyer, at the previously agreed prices and terms during the entire period Buyer reasonably needs to complete the transition to alternate Supplier(s). Supplier shall, as required by Buyer, facilitate the orderly winding down of the provision of Products and Services or transition of the same to a third party, including cooperating with Buyer in the development of a transition plan and third-party personnel training. If transition of supply occurs for reasons other than Supplier's termination or breach, Buyer will, at the end of the transition period, pay the reasonable, actual cost of transition support as requested and incurred, provided that Supplier has advised Buyer prior to incurring such amounts of its estimate of such costs. If the Parties disagree on the cost of transition Support, Buyer will pay the agreed portion to Supplier and pay the disputed portion into third-party escrow for disbursement after the dispute has been resolved.

13. **EXCUSABLE DELAYS**. Any delay or failure by a Party to fulfill its obligations under this Agreement will not be deemed a breach to the extent that Excusable Delay causes the failure or delay. "Excusable Delay" means acts of God, unavailability of electric power or other utilities, fire, flood, earthquake, tornado, explosions, riot, war, acts of terrorism, embargoes, government actions issued in an emergency, including those that prevent a Party from exercising control over its facility, and any similar circumstance beyond the reasonable control of a Party and without such Party's fault or negligence. Raw material shortages, labor shortages, or system failures are

not Excusable Delays, unless directly caused by an event that constitutes Excusable Delay. The Party impacted by an Excusable Delay must make all reasonable efforts and incur all reasonable costs to mitigate the effect of the Excusable Delay. In no event, however, will Supplier's inability to perform as a result of any of the following constitute Excusable Delay: (a) Supplier's insolvency or financial condition; (b) change in cost or availability of raw materials or components based on market conditions; (c) change in cost or availability of a method of transportation; (d) changes in, or implementation of new government regulations, taxes or incentives; (e) failure to obtain permits, licenses or other government approvals; (f) failure to use available substitute services, alternate sources, work-around plans or other means by which the requirements of a buyer of products or services substantively similar to the Products or Services would be satisfied; or (g) labor disruptions, strikes, lockouts and slowdowns affecting a Supplier's facility or a Supplier's sub-Supplier's facility. If the non-performing Party cannot provide adequate assurances that the Excusable Delay will last less than 30 calendar days, or if the non-performance exceeds 30 calendar days, the other Party may terminate this Agreement by notice given to non-performing Party before performance resumes without liability.

14. **CONFIDENTIALITY.**

14.1 **"Confidential Information" Defined.** "Confidential Information" of a Party means any information belonging to, or held by, the Party, whether fixed in a tangible medium or otherwise, that is:

- (a) Not readily ascertainable by proper means by the public; and
- (b) The subject of commercially reasonable efforts by the Party under the circumstances keep it from becoming readily ascertainable by proper means by the public.

14.2 **Confidentiality Generally.** Each Party, as a receiving Party, will do the following things with regard to the Confidential Information of the other Party.

- (a) Prevent the disclosure of the Confidential Information by the receiving Party and each of the receiving Party's employees, agents, and/or professionals to any third party other than as permitted under this Agreement.
- (b) Use, and permit the use of, the Confidential Information only for the Purpose.
- (c) Disclose the Confidential Information only to such of the receiving Party's employees, agents, and professionals as have a bona fide need to possess or know the Confidential Information in the course of accomplishing, or advising the disclosing Party with regard to, the Purpose.
- (d) Cause each employee, agent, or professional to whom the receiving Party discloses the Confidential Information to be bound by an obligation of confidentiality that is at least as rigorous as the obligations contained in this Agreement. Each professional, such as a lawyer or an accountant, retained by the receiving Party in a professional-client relationship will be deemed under an adequate obligation of confidentiality for the purposes of this Agreement so long as the law recognizes an obligation of confidence actionable by the receiving Party under law without a separate contractual obligation.
- (e) Return or destroy all written or other tangible copies of Confidential Information in the receiving Party's possession or direct or indirect control, including all extracts and copies thereof, within a reasonable time after, and in accordance with, the disclosing Party's request.

14.3 **Exceptions to Confidentiality and Non-Use.** Nothing in this Agreement will prevent the receiving Party from disclosing or using Confidential Information of the disclosing Party to the extent that:

- (a) It is or becomes readily ascertainable by proper means by the public without any breach of a confidentiality obligation of the receiving Party;
- (b) It is received from a third party that is not under an obligation of confidentiality of which the receiving Party knew or had reason to know;
- (c) It was independently developed by the receiving Party without use of the disclosing Party's Confidential Information; or
- (d) It is required by law to be disclosed, provided that the receiving Party, to the extent not prohibited by law:
 - (i) Provides to the disclosing Party as much notice as is practicable under the circumstances of such requirement prior to disclosure; and
 - (ii) Provides to the disclosing Party, at the disclosing Party's expense, such reasonable assistance as the disclosing Party requests in seeking confidential treatment, protective orders, nondisclosure, and/or similar measures.

14.4 Injunctive Relief. Because unauthorized use or disclosure of Confidential Information might result in immediate and irreparable injury to the disclosing Party for which monetary damages might not be adequate, in the event that the receiving Party or any officer, director, employee, agent, professional, or subcontractor of the receiving Party uses or discloses Confidential Information or, in the disclosing Party's reasonable opinion, any such person is likely to use or disclose Confidential Information in breach of the receiving Party's obligations under this Agreement, the disclosing Party will be entitled to seek equitable relief, including temporary and permanent injunctive relief and specific performance. The rights in this Section are in addition to any other rights of the disclosing Party under this Agreement, at law, or in equity.

14.5 Duration of Obligations. The obligations under this Agreement will continue after disclosure of each item of Confidential Information for the longer of:

- (a) The time during which the Confidential Information remains a trade secret (as that term is defined in the Uniform Trade Secrets Act) of the disclosing Party; or
- (b) Five years after initial disclosure of that item of Confidential Information.

15. INDEMNIFICATION AND INSURANCE.

15.1 Supplier will indemnify, defend, and hold harmless the Indemnitees and users of its and their products against any and all Losses that arise out of: (a) personal injury, death, or damage to any property in any way connected with Supplier's performance of this Agreement or the Products and/or Services or (b) the performance of any service or work by Supplier or its employees, agents, representatives and subcontractors on Buyer's premises or the use of Buyer's property, except to the extent such liability arises out of the gross negligence or willful misconduct of Buyer. At Buyer's request, Supplier shall defend such claims or suits at Supplier's expense by reputable counsel satisfactory to Buyer. Buyer will have the right to control the defense of any claim made against Buyer. This indemnity will survive acceptance of the Products or completion of the Services, the expiration of the warranty covering the Products or Services, and any expiration or termination of this Agreement.

15.2 Supplier shall, at its expense, maintain insurance at the following minimum levels: (1) general liability insurance with coverage limits of at least \$2,000,000, (2) all risk property perils insurance of at least \$2,000,000 covering property while in Supplier's care, custody, or control and naming Buyer as loss payee, and (3) worker's compensation insurance as required by applicable law. Supplier will maintain an umbrella policy coverage with a limit of

at least \$2,000,000. All insurance will be primary and non-contributory to any insurance coverage purchased by Buyer. Supplier releases Buyer, Buyer's agents and employees, on behalf of Supplier and its insurers, from any claims (or rights of subrogation for such claims) to the extent such claims are insured against whether or not such insurance is required by Buyer. All liability insurance will name Buyer as an additional insured and will have a waiver by the insurer of subrogation vis-à-vis Buyer. Upon Buyer's request, Supplier shall furnish Buyer with certificates setting forth the amounts of coverage, policy number(s) and expiration date(s).

16. COMPLIANCE.

- 16.1 Supplier will comply with applicable Laws in connection with the supply of the Products or Services to Buyer. Upon request by Buyer, Supplier shall certify in writing, from time to time, its compliance with applicable Laws.
- 16.2 Supplier represents that it complies with applicable Laws relating to contracting with small and disadvantaged business concerns and to equal employment opportunity and affirmative action in the employment of minorities, women, individuals with disabilities, and certain veterans. Consistent with applicable Laws, Supplier agrees not to discriminate against any employee or applicant for employment because of age, race, color, religion, sex, national origin, veterans' status, or any other protected category.
- 16.3 Supplier shall, at Buyer's request, provide information necessary for Buyer to comply with all applicable Laws, including, without limitation, related legal reporting obligations, in the country(ies) of destination. Supplier shall provide all documentation and/or electronic transaction records to allow Buyer to meet customs related obligations, any local content and origin requirements, and to obtain all tariff and trade program duty avoidance(s) and/or refund benefits. The rights to, and benefits of, any (1) duty drawback, including rights developed by substitution and rights that may be acquired from Supplier's suppliers and (2) export credits, to the extent transferable to Buyer, are the property of Buyer. Supplier will inform Buyer of such rights and Supplier will provide all documentation and information and take any necessary steps to obtain refunds or drawback of any duty, taxes or fees paid, and to receive export credits from, the government of the country of origin or export country. Supplier will provide Buyer with all documentation and information required by applicable Laws necessary to determine admissibility, timely release, customs clearance, and entry of the Products into the destination country. Supplier will advise Buyer if the importation or exportation of the Products requires an import or export license and will assist Buyer in obtaining any such license, but will not be required to incur any costs without reimbursement by Buyer. Supplier warrants that the information regarding the import or export of the Products is true and correct, and that all sales covered by an Order Document will be made at no less than fair value under the anti-dumping laws of the countries to which the Products are exported.
- 16.4 Supplier shall use commercially reasonable efforts to ensure that all Products and the processes used to make them minimize life-cycle environmental impact, including minimizing waste generation, the use of energy and nonrenewable resources, and the emission of greenhouse gases. Supplier shall maximize the use of recycled, recyclable, biodegradable and nontoxic materials.
- 16.5 Supplier must periodically submit to reasonable sustainability assessments by Buyer and/or, at Buyer's request, by an independent third party, to verify compliance with Buyer's sustainability requirements.

- 16.6 Supplier represents that it does not, and shall not, utilize slave, prisoner, child, or any other form of forced or involuntary labor, as defined by applicable Law, in connection with the supply of Products or Services to Buyer under the terms of this Agreement.
- 16.7 Supplier shall certify in writing that it is either a participating member of the Customs-Trade partnership Against Terrorism ("C-TPAT") Program as promulgated by the U.S. Customs and Border Protection Bureau or that it is in compliance with all applicable supply chain security recommendations or requirements of the C-TPAT program initiative (for more information go to <https://www.cbp.gov/border-security/ports-entry/cargo-security/CTPAT>). Supplier shall indemnify and hold Buyer harmless from and against any Losses arising from or relating to Supplier's noncompliance with this section.
- 16.8 Supplier will, and will ensure that its subcontractors will, not take any action that could be reasonably expected to render Buyer liable for a violation of the FCPA, the Bribery Act, and any other similar Law that prohibits the offering, giving or promising to offer or give, directly or indirectly, money or anything of value to any official of a government, governmental entity or agency, political party or instrumentality to assist Supplier or Buyer in obtaining or retaining business or to gain an unfair business advantage.
- 16.9 Supplier shall pass down appropriate standards comparable but not necessarily identical to those in this Section to its suppliers and sub-suppliers.

17. RIGHT TO AUDIT.

- 17.1 Buyer may, at any reasonable time, send its authorized representatives to examine the Supplier's documents and materials relating to Supplier's obligations under this Agreement or relating to Supplier's charges to Buyer. At Buyer's request, Supplier will provide the Buyer with past, present and pro forma financial reports including, but not limited to, income statements, balance sheets, cash flow statements and supporting data for the Supplier and any Affiliate of Supplier involved in producing, supplying, or financing the Products, Services, or any component part of the Products or Services.
- 17.2 The Buyer may use financial reports provided under this Section only to assess the Supplier's ongoing ability to perform its obligations under this Agreement and for no other purpose, unless the Supplier agrees in writing. Supplier shall maintain all pertinent books and records relating to this Agreement for a period of four (4) years after completion of delivery of products pursuant to this Agreement.

18. **ETHICAL CONDUCT.** Supplier will, and will cause its employees, agents, and subcontractors to, comply with the BorgWarner Supplier Code of Conduct and BorgWarner Supplier Manual. Compliance with these standards is a mandatory component of Buyer's purchase contracts worldwide and applies to Supplier's subcontractors.

19. **NON-SOLICITATION.** Supplier will not solicit for employment or other retention any individual who is or was an employee or individual contractor of Buyer during the year prior to the date upon which such person is hired or otherwise retained.

20. MISCELLANEOUS.

- 20.1 The Agreement constitutes the entire agreement between Supplier and Buyer with respect to the matter it contains and supersedes all prior oral or written representations and agreements.
- 20.2 Supplier may not assign its rights or delegate its obligations, in whole or in part, under this Agreement without Buyer's prior written consent. The sale of a controlling interest in Supplier's outstanding voting securities, or a merger or combination involving Supplier that

changes the voting control of Supplier or in which Supplier is not the surviving corporation, shall be deemed an assignment of this Agreement requiring Buyer's consent.

- 20.3 IN NO EVENT SHALL BUYER BE LIABLE TO SELLER FOR ANTICIPATED OR LOST PROFITS, INTEREST, PENALTIES, OR INCIDENTAL, CONSEQUENTIAL, PUNITIVE, MULTIPLE, OR EXEMPLARY DAMAGES OR LIABILITIES IN CONNECTION WITH THIS CONTRACT, WHETHER FOR BREACH OF CONTRACT, TORT LIABILITY, LATE PAYMENT, PROPERTY DAMAGE, PERSONAL INJURY, ILLNESS, OR DEATH OR OTHERWISE. NOTHING IN THIS AGREEMENT SHALL EXCLUDE OR LIMIT THE LIABILITY OF BUYER FOR DEATH OR PERSONAL INJURY CAUSED BY BUYER'S NEGLIGENCE.
- 20.4 The failure of either Party to enforce any right or remedy provided in this Agreement or by Law will not be deemed a waiver of that right or remedy on a subsequent occasion or a waiver of any other right or remedy. No extension of time for performance of any obligation or act by either Party will be deemed an extension of time for the performance of any other obligation or act.
- 20.5 Supplier and Buyer are independent contracting parties and nothing in this Agreement will make either Party the agent or legal representative of the other for any purpose, nor does it grant either Party any authority to assume or to create any obligation on behalf of or in the name of the other Party.
- 20.6 If any term of this Agreement is invalid or unenforceable under any Law, that term will be deemed modified or deleted as reasonably determined by Buyer, but only to the extent necessary to comply with such Law, and the remaining provisions of this Agreement will remain fully in effect.
- 20.7 The rights and remedies reserved to Buyer in this Agreement will be cumulative and additional to all other remedies available to Buyer in law or equity.
- 20.8 Supplier's covenants, representations, and warranties under this Agreement will survive any delivery, inspection, payment or acceptance and any completion or termination of this Agreement.
- 20.9 No rule of law that requires that language be construed against the party that drafted the language will have any effect upon the construction or enforcement of this Agreement.
- 20.10 The Agreement and any dispute related hereto shall be construed and governed by the laws of Germany, without regard to its conflicts of Laws principles. The United Nations Convention on Contracts for the International Sale of Products will not apply. Supplier agrees that the forum and venue for any legal action or proceeding concerning this Agreement and the Purchase Order will lie exclusively in the commercial courts of Frankfurt am Main and specifically waives any and all objections to such jurisdiction and venue.

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