



DETROIT – WASHINGTON D.C.

A faint, light blue world map is visible in the background, centered behind the main text. The map shows the outlines of the continents in a light blue color against a white background.

OESA Directed Buy Committee Report September 2014

Committee Report

- I. Background
- II. Survey
- III. Analysis of Existing Agreements
- IV. Draft Three Party Agreement
- V. RASIC
- VI. Next Steps

I. Background

**Directed Buy ... Directed Supply ...
Single Source**

**... for this committee,
these situations were the focus ...**

I. Background

- Directed buy situations are a source of frustration for OESA members
- Several OESA members inquired about the possibility of an exploratory committee
- Tier I and II suppliers confronted many issues in managing these types of situations
- Committee was formed to examine the issues and explore possible solutions

I. Background

Directed Supply Committee

- Formed in late 2012
- Organized by Legal Issues Council
- Includes CPO, warranty, legal and sales
- 28 member companies on committee
- Honigman serving as committee member and antitrust counsel

I. Background

Original Committee Mandate:

- Analyze any existing directed supply agreements
- In one form or another, Ford, GM and Chrysler have agreements
- Asian and European OEMs do not
- Develop a “checklist” for considerations when entering a directed supply relationship. Intended users of checklist could be:
 - The OEMs
 - Tier I's
 - Tier II's
- Create a framework for directed buy agreements
- Conduct survey of OESA members

I. Background

Emergence of Guiding Principles:

- Survey galvanized the Committee to propose an approach to the directed buy dilemma
- Committee members worked to understand the issues from the vantage point of all constituents
- End product is a “work in process” and not intended to resolve all problems
- Committee members’ approach reflects “balanced view”
- Committee’s goal was to (i) create awareness of issues; (ii) develop a common understanding; and (iii) identify challenges inherent in directed buy practice
- Today is step one

Committee Report

I. Background

II. Survey

III. Analysis of Existing Agreements

IV. Draft Three Party Agreement

V. RASIC

VI. Next Steps

II. Survey

- OESA conducted the Survey in 2013
- The Survey said...

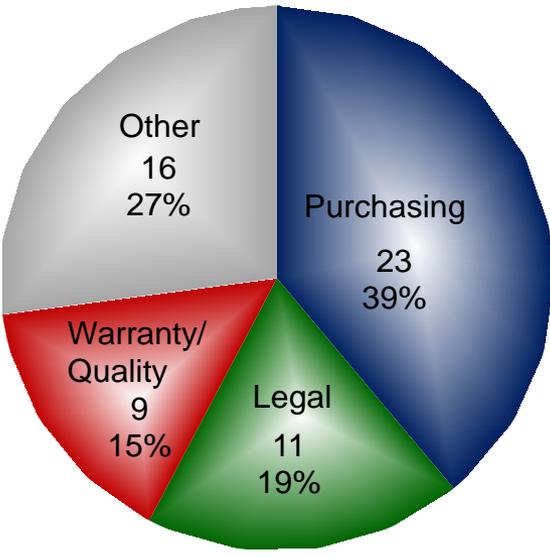
Directed Supply Survey Results 65 Supplier Responses

Original Equipment Suppliers Association
Date: February 19 – March 4, 2013

62 Survey Respondents

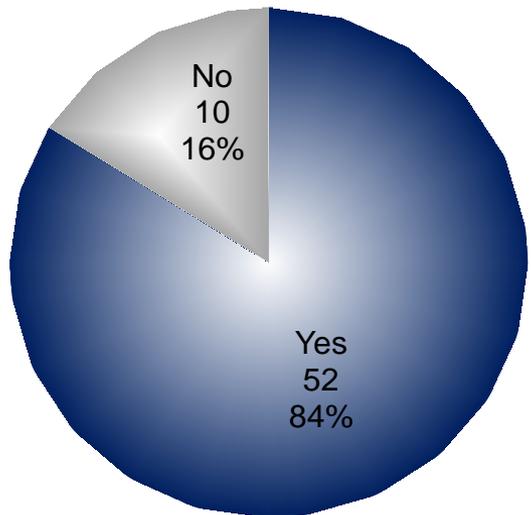
Respondent Demographics

Indicate from what perspective you will answer this survey.



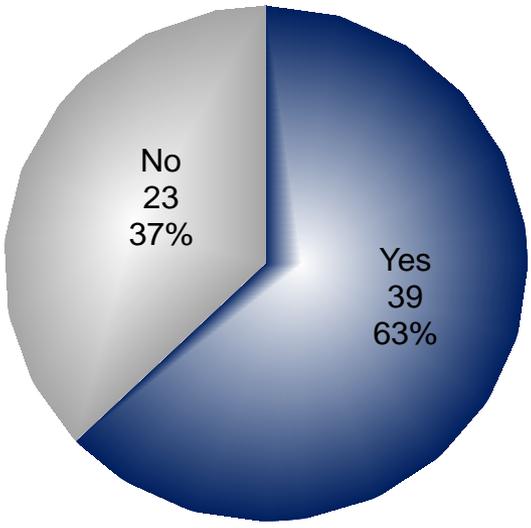
59 respondents

Does your company have OEM directed supply agreements or purchasing transactions with lower tier suppliers (arrangements may be formal or informal)?



62 respondents

Is your company a Tier II that is considered a directed supplier by one or more Tier I customers?



62 respondents

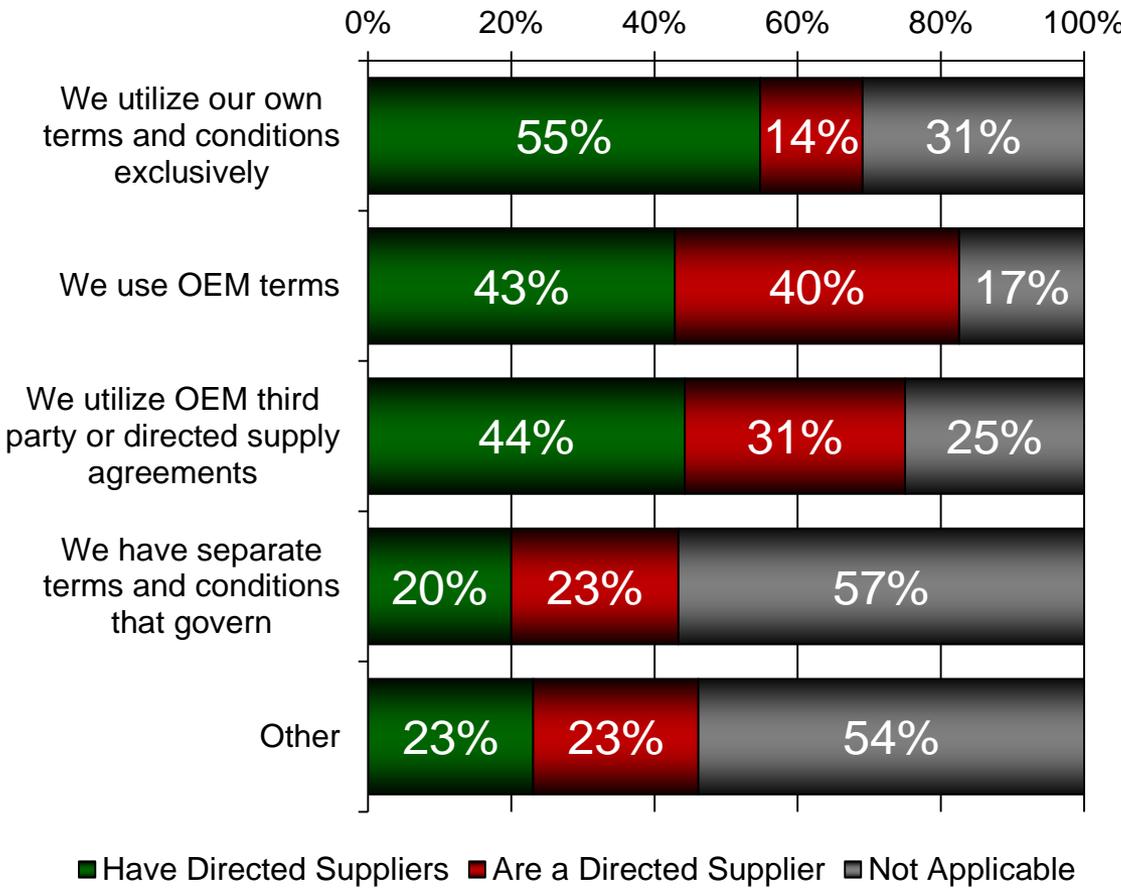


Directed Supply Base

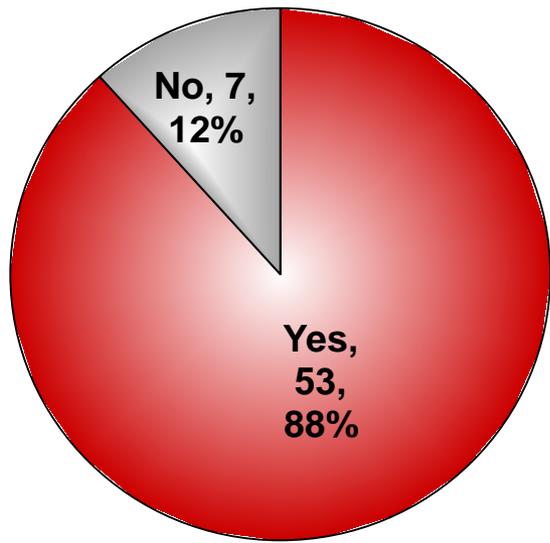
	Estimated Average	Number of respondents
If you have directed suppliers, estimate how many directed or single source suppliers (as identified by the OEM customer) that you have.	20	52
If you have directed suppliers, approximately what percentage of your material cost do these directed supply arrangements represent?	16%	52
If you are a directed supplier, estimate how many Tier I customers you have for whom you are a directed supplier.	10 customers	47



Indicate what types of commercial contracts govern the majority of the supply chain relationships under each type of relationship you have?



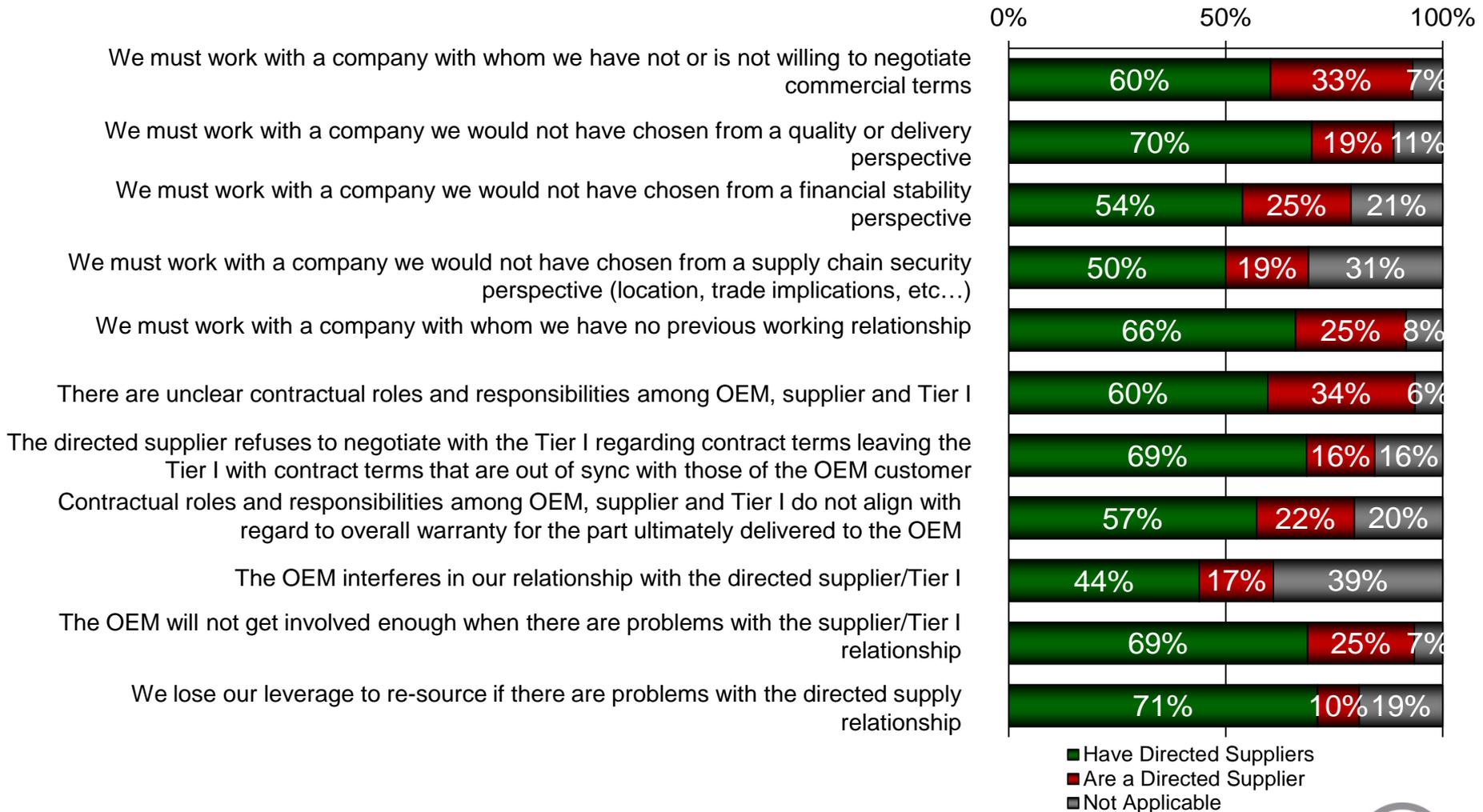
Do you consider directed supply relationships to be problematic due to the nature of the directed supply arrangement?



60 respondents



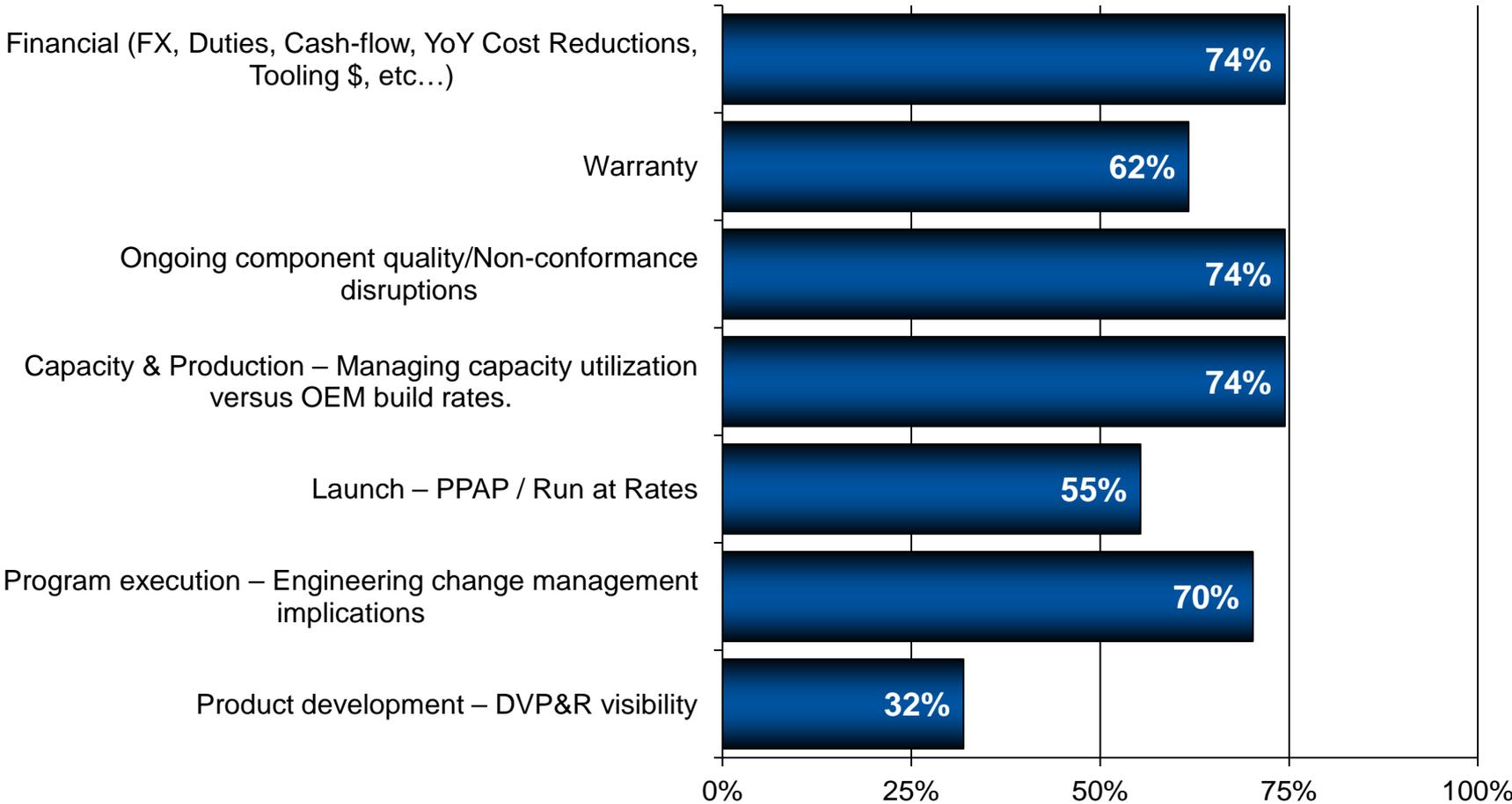
If yes, indicate where you have commercial issues under each type of relationship you have?



53 respondents



In what areas does your company experience operational issues related to direct supply?



57 respondents



Committee Report

I. Background

II. Survey

III. Analysis of Existing Agreements

IV. Draft Three Party Agreement

V. RASIC

VI. Next Steps

III. Analysis of Existing Agreements

Analysis of Existing Agreements

The Results

III. Analysis of Existing Agreements

General observations:

- **Ford:**
 - Most comprehensive
 - Thoughtful examination of the issues
 - Three party agreement
- **Chrysler:**
 - Utilizes two separate agreements
 - First agreement between Chrysler and Tier I
 - Second agreement between Chrysler and Tier II
 - No agreement among all three
- **General Motors:**
 - “Nomination letter” sent to Tier I and II supplier
 - Least comprehensive and not well defined

III. Analysis of Existing Agreements

- Analyzed agreements for treatment of certain commercial issues
- Issues of import to Tier I and directed suppliers
 - Warranty Issues
 - Allocation of Warranty Costs
 - Debiting/Crediting of Warranty Costs
 - Assignment Provisions

III. Analysis of Existing Agreements

Warranty issue treatment in Ford agreement

- Tier II directly responsible to Ford for “functionality” of the component, i.e., conformity, quality, warranty and recalls
- Tier I supplier is specifically released from this liability, but retains responsibility for assembly and “interface”
- Tier II can be design-responsible if the Tier II designed the component
- Specifically provides for Ford’s right to recover directly from Tier II for warranty issues

III. Analysis of Existing Agreements

- Suppliers prefer a comprehensive approach to directed buy relationship
- Ford agreement is helpful, but too complex for practical application
- Goal is a simple and straight-forward agreement that addresses certain commercial issues upfront
- Clear allocation of responsibilities and liabilities avoids many issues that arise under directed buy relationships at later date

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IV. Draft Three Party Agreement

Create a framework for directed buy agreements

- Potential use among OEMs, Tier I and Tier II
- Framework language to broker internal supplier conversations among purchasing, sales, legal, commercial, warranty and others all of whom require shared understanding of the risk and challenges
- OEM perspective might also be helpful in this instance

IV. Draft Three Party Agreement

Initial Impressions

- Not all OEMs would be willing to enter into such an agreement, but some may entertain the notion
- Tool for issue spotting for purchasing, sales and engineering
- Provisions are designed to resolve the tensions among the parties by taking into account all parties' legitimate concerns
- Essential to contractually commit all three parties; among other goals, it facilitates coordination and cooperation
- Risk mitigation for the Tier I and II is a key consideration

IV. Draft Three Party Agreement

- **Terms and Conditions**
 - Effectiveness; Term
- **Agreements / Priority**
 - OEM Purchase Orders
 - Tier I Purchase Orders
 - Tier II Purchase Orders
 - RASIC
 - Other Agreements
- **Directed Component Pricing**
- **Supplier Performance / Quality**
 - Pre-Launch Activities
 - Disputes
- **Termination**
 - OEM Purchase Orders
 - Tier I Purchase Orders
- **Unrecovered Claims**
- **Dispute Resolution Process**
 - Meeting Period
 - Elevation
- Arbitration
- Injunctive Relief
- **Cooperation**
- **General Terms**
 - Notices
 - Entire Agreement
 - Authority
 - Successors and Assigns; Third-Party Beneficiaries
 - Waiver; Modification
 - Severability; Counterparts
 - Governing Law
- **Jury Trial Waiver**

IV. Draft Three Party Agreement

Principles:

- Flow down of OEM terms, in recognition of commercial realities and leverage
- Because OEM will insist on maintaining control; agreement requires OEM to exert influence to resolve certain issues
- Any “deal” the Tier I obtains must flow to the Tier II (such as preferable payment terms)
- Tier I should not be caught between Tier II and OEM if a dispute arises (e.g. pricing, warranty, etc.)

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V. RASIC

- Create a checklist of directed buy relationship considerations
- Checklist intended to function as either “talking points” or to facilitate communication
- Developed for use with all three audiences

V. RASIC

	CUSTOMER	TIER I	TIER II
Define requirements for Component Parts and Directed Components			
Determine specifications for Component Parts and Directed Components			
Contract with Tier I			
Contract with Directed Tier II			
Quality associated with goods provided to Customer			
Quality associated with/for Directed Components provided to Tier I			
Warranty associated with goods provided to Customer			
Warranty associated with/for Directed Components provided to Tier I			
Product Liability associated with goods provided to Customer			
Product Liability associated with Directed Components provided to Tier I			
Test / Validate goods provided to Customer			
Test / Validate Directed Components provided to Tier I			
Provide Logistics & Scheduling for goods provided to Customer			
Provide Logistics & Scheduling for Directed Components provided to Tier I			
Pay Tier I			

V. RASIC

	CUSTOMER	TIER I	TIER II
Pay Tier II			
Meet APQP requirements on Tier I's Component Parts			
Meet APQP requirements on Tier II's Directed Components			
Complete and submit PPAP package on Tier I's Component Parts			
Complete and submit PPAP package on Tier II's Directed Components			
Meet Run @ Rate requirements on Tier I's Component Parts			
Meet Run @ Rate requirements on Tier II's Directed Components			
Design & Develop Packaging associated with Directed Components provided to Tier I			
Coordinate Customer's Engineering Change			
Support Build and Launch at Assembly Plant			

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VI. Next Steps

It was also agreed that OESA needs to raise awareness in the industry overall of these issues as part of the committee activity, and open constructive dialogue with the OEMs.

Clearly the cost, risk and complexity added into the supply chain are creating problems that can become amplified in the supply chain over time.

Addressing the issues upfront by clarifying responsibilities, roles, expectations and relationships will serve to minimize downstream risk to the OEM and tier suppliers.



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Summary of Comparison of Direct Agreement Provisions Among OEMs

March 11, 2013

Provision	Ford Motor Company	Chrysler Group LLC	General Motors LLC
Parties to the Agreement	Three-way Multi-Party Agreement (“MPA”) among Ford, Tier1 Supplier and Tier2 Supplier for Triangular Directed Sourcing	Two Agreement Structure-First Agreement between Chrysler and Tier1 Supplier and Second Agreement between Chrysler and Tier2 Supplier	GM issues a form of Nomination letter to Tier2 Supplier pursuant to which GM advises Tier2 supplier that it has been selected as a Tier2 Supplier on a specific program. The Nomination Letter is between GM and Tier2 Supplier.
Issuance of Purchase Orders	<p>Ford issues a purchase order direct to Tier1 Supplier, not Tier2 Supplier. Ford may enter into Warranty Share or Technical Agreements directly with Tier 2 Supplier.</p> <p>Tier1 Supplier issues its purchase order to Tier2 Supplier</p> <p>Tooling purchase orders are either issued directly to Tier 2 Supplier or to Tier1 Supplier, at Ford’s election.</p>	<p>Agreement between Chrysler and Tier1 Supplier provides that Chrysler will issue a purchase order to Tier1 Supplier for the assembly. It further provides that Tier1 will be responsible for establishing and maintaining the supply relationship with Tier2 as necessary to meet Tier1 obligations under Chrysler/Tier1 purchase order.</p> <p>Agreement between Chrysler and Tier2 Supplier provides that Tier 2 will supply the parts to Tier1 in accordance with the agreement and Exhibit A supplemental terms.</p>	GM Nomination Letter states that Tier2 Supplier will enter into a contract with Tier1 Supplier for the supply of components that contains terms “substantially similar” as the GM general terms and conditions of purchasing. GM Nomination Letter also references a RASIC Chart. The RASIC Chart specifies the respective obligations and responsibilities of GM, Tier1 Supplier and Tier2 Supplier.
Warranty	<p>MPA provides that Tier2 Supplier is “directly and contractually” responsible to Ford for “Functionality” of the component, which includes conformity, quality, warranty, recalls, field service actions and infringement claims. Tier1 is specifically released from this responsibility, but retains responsibility for the Assembly and the “Interface” between the Assembly and the component.</p> <p>MPA further provides that if Tier2 Supplier designed the specifications for the component, then Tier2 Supplier is responsible for all of the above as the same pertain to design-related claims.</p> <p>The MSA then references specific provisions of the Ford Global Terms from which the Tier1 Supplier is released and the Tier2 Supplier assumes direct responsibility (i.e., delivery, infringement, warranty, recalls and</p>	<p>First Agreement between Chrysler and Tier1 Supplier sets forth explicitly that Tier1 is responsible under the terms of the Chrysler PO for all product warranty claims, regardless of whether the defect/deformity emanates from the Tier2 Supplier. If Tier1 Supplier receives defective parts from Tier2 Supplier, must notify Chrysler. Chrysler will issue NCT ticket and Tier1 Supplier is responsible for any Chrysler-instituted debits on account of the defective parts.</p> <p>Second Agreement between Chrysler and Tier2 Supplier contains an express warranty provision in which Tier2 Supplier warrants to Chrysler that the components (i) comply with specifications and (ii) are free from defects in material and workmanship. If Tier2 Supplier designed the components, Tier2 Supplier also warrants that the goods are fit for the particular purpose for which they are intended. Second Agreement</p>	N/A; GM Nomination Letter references the warranty provisions of the GM general terms. Presumably, warranty provisions are as also set forth in the PO between the Tier1 and Tier2 Suppliers.

Provision	Ford Motor Company	Chrysler Group LLC	General Motors LLC
	indemnification)	provides a title warranty in favor of Tier1 Supplier.	
Allocation of Warranty Costs	<p>MSA provides that Tier1 and Tier2 should undertake a process to agree on and allocate responsibility for the claims. If the Parties disagree concerning allocation of responsibility for warranty claims, then Ford will determine (i) allocation of operation and financial costs and (ii) extend of corrective action and responsibility therefor.</p> <p>MSA explicitly provides that the process will consider Tier1 costs incurred as a result of nonconformance of Tier2 component and vice versa.</p>	<p>First Agreement between Chrysler and Tier1 does not contain any allocation of warranty cost provisions.</p> <p>Second Agreement between Chrysler and Tier2 Supplier provides that Chrysler will debit Tier1 Supplier for any claims and the apportionment of liability, if any, must occur between Tier1 and Tier2 Supplier according to the separate agreements between Tier 1 and Tier2 Suppliers.</p>	N/A
Debiting/Crediting for Warranty Costs	<p>MSA provides that Ford may recover against the Tier 2 by debiting Ford's accounts payable to Tier2 (or any affiliated company of Tier2) as if Tier2 were Ford's Tier1 Supplier. Alternatively, Tier2 Supplier must pay Ford directly for any claims.</p> <p>Exception here is Plant QRs for which the MSA provides that Ford will continue to debit the Tier1 and Tier1 may, in turn, debit the Tier2 for any Plant QRs. If there is a deficit and Tier1 cannot collect from Tier2, Ford will pay or credit Tier1 for any such deficiency relating to a Plant QR.</p>	N/A	Although not specific to warranty costs, the GM Nomination Letter specifically references GM's setoff rights and states that GM may set off directly against Tier2 Supplier and/or its affiliates and subsidiaries for claims that GM has against Tier1 Supplier and its subsidiaries and affiliates.

Provision	Ford Motor Company	Chrysler Group LLC	General Motors LLC
Assignment of Rights	MSA contains a provision that Tier1 Supplier will assign, transfer or sell its claim against Tier2 to Ford in consideration of Ford's payment of claim to Tier1.	<p>First Agreement between Chrysler and Tier1 Supplier provides that Chrysler may take an assignment of any claims that Tier1 Supplier has against Tier2 Supplier under separate agreements between Tier1 and Tier2 Suppliers. First Agreement further provides that any such assignment does not abrogate the Tier1 Supplier's duties under its PO with Chrysler.</p> <p>Second Agreement between Chrysler and Tier2 Supplier provides for the assignment described above and the Tier2 Supplier's consent. It further provides that the Tier2 Supplier may not pursue any claims Tier2 Supplier has against Tier1 Supplier directly against Chrysler.</p>	N/A
Indemnification	MSA does not contain a specific indemnification provision; rather, the indemnification provisions of the underlying purchase orders would govern and control.	<p>First Agreement between Chrysler and Tier1 Supplier does not contain an express indemnification provision.</p> <p>Second Agreement between Chrysler and Tier 2 Supplier contains several indemnification provisions—Tier2 Supplier indemnifies Chrysler for intellectual property infringement claims, breaches of Tier2's supply obligations to Tier1, any claims by Tier1 Supplier against Chrysler arising on account of Tier2 Supplier's material breach of the Tier1/Tier2 agreement, and injury or death of a person and physical damage to property relating to performance of Tier2's obligations to Tier1 Supplier, whether or not occurring on Chrysler's property.</p>	N/A

Provision	Ford Motor Company	Chrysler Group LLC	General Motors LLC
Pricing	MSA specifically provides that pricing for Tier2 parts will be negotiated between Ford and the Tier2 Supplier. Also contains provisions addressing the treatment of pricing and retroactive true-up payments between Tier1 and Tier2 Supplier. Lastly, contains an express provision that Tier2 pricing negotiated between Tier2 and Ford will not be impacted between productivity and related negotiations between Ford and Tier1.	Neither First nor Second Agreements address specifically any issues of pricing.	GM Nomination Letter states that pricing will be fixed and no fluctuations for material, burden, labor, etc. and as set forth in the PO between Tier1 Supplier and Tier2 Supplier.
Capacity	MSA does not contain a specific statement relating to Capacity.	Second Agreement between Chrysler and Tier2 Supplier provides that Tier2 Supplier will keep Chrysler apprised w/r/t capacity issues and operate within capacity. If Tier2 Supplier cannot meet any increases in component part production from Chrysler, then Tier2 Supplier agrees to resolve increase in capacity needs by working with Chrysler for additional tooling and/or equipment.	N/A
Term and Termination	<p>MSA provides for certain termination rights as provided in Ford's global terms, provided, that Ford may change Tier1 Suppliers and, if requested, Tier2 Supplier will begin to supply the parts to new Tier1 Supplier on the same terms.</p> <p>MSA also provides that Ford reserves the right to terminate the Tier2 Supplier's participation in the MSA with or without terminating the MSA, and, in either case, without terminating the Ford/Tier1 PO.</p> <p>MSA contains various terms and conditions addressing termination liabilities in</p>	<p>First Agreement between Chrysler and Tier1 Supplier provides that it is effective for earlier of (i) termination of the Chrysler POs or (ii) the life of the applicable vehicle program. Also provides for termination rights relating to Tier1 and Tier2 insolvency-related events. Lastly, provides that Tier1 Supplier may not terminate its purchase order with Tier2 other than "for cause" absent Chrysler's prior written consent.</p> <p>Second Agreement between Chrysler and Tier2 provides that it terminates upon expiration of all POs (i.e., Chrysler/Tier1 Supplier POs). Also provides that Chrysler may terminate Tier2 upon certain insolvency-related events affecting Tier1</p>	N/A

Provision	Ford Motor Company	Chrysler Group LLC	General Motors LLC
	accordance with global terms and also certain provisions dealing with the handling of costs incurred by Tier1 Supplier on account of the termination.	or Tier2 Supplier.	
Audit Rights	MSA provides the same audit rights as in the Ford global terms. Tier2 specifically acknowledges that it is subject to the same audit rights as provided in the Ford global terms.	<p>First Agreement between Chrysler and Tier1 does not contain any express audit right provision.</p> <p>Second Agreement between Chrysler and Tier2 provides for an express right of Chrysler to audit Tier2's books and records.</p>	N/A
Governing Law	MSA provides that it will be governed by the same terms as the Ford global terms.	First and Second Agreements provide for Michigan law to apply (other than in cases where Chrysler Canada is the party to the PO, in which case Ontario law applies) and exclusive jurisdiction in the federal and state courts for Oakland County Michigan.	N/A



Original Equipment Suppliers Association

Form of Directed Buy Agreement

August 2014

The Original Equipment Suppliers Association

www.oesa.org

248.952.6401

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OESA FORM OF DIRECTED BUY AGREEMENT

Introductory Comments

In normal business situations, buyers and sellers of component parts are free to determine with whom and on what terms they will do business. The so called "directed buy" arrangements utilized by OEMs alter this dynamic because OEMs, on account of various commercial considerations, "direct" the Tier One to do business with the Tier Two as a condition of award of OEM business to the Tier One. As a result, the Tier One is required to do business with the Tier Two selected by the OEM on business terms that are negotiated between the OEM and the Tier Two directly. The Tier One neither participates in nor has a say in either the selection of the Tier Two or the commercial terms on which the Tier One will purchase parts from the Tier Two. Because of the direct negotiation of the arrangement between the OEM and the Tier Two, there are a number of business issues that arise in the administration of this arrangement over the life of a parts program.

The commercial complexities inherent in the directed buy relationship, together with the lack of agreements currently in use by OEMs that provide for a clear allocation of responsibility, result in the potential for disagreement, confusion, and friction among all three parties. The Directed Buy Committee of the OESA has explored many of the issues that arise in the context of administering a three party arrangement among the OEMs, Tier One and Tier Two suppliers. The product of this exercise is the following form of Directed Buy Agreement that attempts to examine the issues and provide for a possible approach in allocating clear responsibility for the major issues that arise in this situation. The drafters considered the needs and interests of each of the parties, and attempted to apply basic concepts of fairness and good faith to navigate the challenges of these three party relationships. There is no one correct approach that fits all situations. As a result, this work product is intended merely as one possible approach to educate, create awareness and suggest possible solutions to the difficulties presented for all parties by the directed buy relationship. It is OESA's goal to provide a tool for suppliers involved in these supply situations which will attempt to clarify and address up front the roles and responsibilities of each of the parties involved so as to diminish the prospect for disputes in the future. OESA does not, however, endorse this particular agreement as the "model agreement" for directed buy situations and each party involved must take into account its unique commercial situation and determine its individual approach.

For purposes of this document, the three parties are referred to as the "OEM" "Tier One" and "Tier Two". The "Tier One" and "Tier Two" suppliers are collectively referred to in this agreement as "Suppliers". The Component Parts supplied by Tier Two are referred to as "Directed Components". The Component Parts supplied by Tier One are referred to as "Component Parts".

USE OF THE DRAFT FORM IS ENTIRELY VOLUNTARY. Buyers and sellers are always free to negotiate whatever terms or conditions they wish in any specific situation. Each buyer and seller should independently decide whether the terms and conditions offered in the form are appropriate for the company and the transaction. Under no circumstances should buyers or sellers discuss with their competitors the specific terms and conditions they should adopt in particular negotiations, or agree collectively not to deal with a company refusing to adhere to specific terms and conditions. The decision to use or not to use any part of the form in any negotiation should be made unilaterally.

Background

A. Tier One has agreed to supply the OEM with its requirements of Component Parts in accordance with the terms of this Agreement and the OEM Purchase Orders (defined below).

B. As a condition of OEM's award to Tier One of the OEM Purchase Order for the supply of Component Parts, OEM has directed Tier One to purchase from Tier Two its requirements of Directed Components.

C. OEM has selected Tier Two to supply the Directed Components on account of Tier Two's **[insert OEM rationale for selection of Tier Two]** and has negotiated directly with Tier Two certain commercial terms on which Tier Two will supply to Tier One the Directed Components.

D. OEM is satisfied that Tier Two is capable of fulfilling all prelaunch, launch and postlaunch responsibilities in respect to the Directed Components.

E. In accordance with the OEM agreement with Tier Two (in a separate nomination letter attached as **Exhibit A**) and Tier One (in a separate notification letter attached as **Exhibit B**) [(together, the "**Directed Buy Letters**")], and in accordance with the terms of this Agreement, the Directed Buy Letters, and the Tier One Purchase Orders (defined below), Tier Two has agreed to supply Tier One and Tier One, at the direction of OEM has agreed to purchase, the requirements of certain Directed Components.

F. OEM, Tier One, and Tier Two are entering into this Agreement to document the parties' agreement with respect to their commercial relationships, including, without limitation, the Directed Components' and Component Parts' pricing, quality, and performance.

The parties, therefore, agree as follows:

1. **Terms and Conditions.**
 - 1.1 Effectiveness; Term. This Agreement will be effective upon the parties' delivery of their respective signatures to this Agreement (the "**Effective Date**"). Except as otherwise provided in this Agreement or the parties' subsequent mutual agreement, the Agreement's term expires on the earlier of when the OEM Purchase Orders (as defined below) (a) expire or (b) are terminated in accordance with their terms by OEM (the "**Term**"). If the OEM cancels or otherwise terminates the vehicle program to which the Component Parts relate, then this Agreement will also expire and the parties' rights and obligations, if any, will be governed by the terms of the OEM Purchase Orders and the Tier One Purchase Orders, respectively. Obligations under this Agreement which arise during the Term, or any obligations expressly stated to survive its expiration or termination, will be unaffected by the expiration of this Agreement.
2. **Agreements Priority.**
 - 2.1 OEM Purchase Orders. OEM will issue to Tier One, one or more purchase orders consistent with the terms of this Agreement and the Directed Buy Letters under which Tier One will manufacture and supply OEM with OEM's requirements of Component Parts (the "**OEM Purchase Orders**"). Except as may be otherwise agreed in writing between OEM and Tier One, Tier One will accept the OEM Purchase Orders in accordance with their terms.
 - 2.2 Tier One Purchase Orders. Tier One will issue to Tier Two one or more purchase orders consistent with the terms of this Agreement and the Directed Buy Letters

under which Tier Two will manufacture and supply Tier One with Tier One's requirements of Directed Components to fulfill Tier One's requirements of Component Parts for OEM (the "**Tier One Purchase Orders**"). Tier Two will accept the Tier One Purchase Orders. OEM's General Terms and Conditions of Purchase (the "**GTC**"), attached as **Exhibit C**, will apply to the Tier One Purchase Orders as though the GTC were incorporated into and form a part of the Tier One Purchase Orders, with Tier One as the "Buyer" and Tier Two as the "Seller." Further, the GTC will control to the extent of any conflict between the GTC and the terms of the Tier One Purchase Orders. The Tier One Purchase Orders will have the same payment terms as set forth in the OEM Purchase Orders.

2.3 **Tier Two Purchase Order.** Unless the Tier Two Directed Buy Letter expressly provides to the contrary, Tier Two will be directly liable to OEM under the provisions of OEM's GTC as though OEM were the "Buyer" and Tier Two were the "Seller" of the Directed Buy Component under the GTC. Except as otherwise agreed, the Tier Two is directly responsible to OEM as if Tier Two were an original party to such GTC with OEM.

2.4 **RASIC.** The RASIC charts attached to this Agreement as **Exhibit D** are incorporated into this Agreement and are binding on the parties. The parties' respective obligations are set forth in the RASIC chart.

2.5 **Other Agreements.** Except as provided in section 2.4, to the extent of any conflict between this Agreement and any agreements between OEM and Tier One (including the OEM Purchase Orders), or Tier One and Tier Two (including the Tier One Purchase Orders), this Agreement's terms control.

3. **Directed Component Pricing.** The initial price for each Directed Component will be as agreed between OEM and Tier Two (as amended from time to time, the "**Directed Component Pricing**"). The Directed Component Pricing will be reflected in the Tier One Purchase Order.

Thereafter, OEM and Tier Two may from time to time negotiate increases or decreases in the Directed Component Pricing. OEM will provide Tier One with at least [] days' written notice of a change in Directed Component Pricing and will issue to Tier One amended OEM Purchase Orders with a price that has been adjusted in an amount equal to the increase or decrease in the Directed Component Pricing. Upon receipt of amended OEM Purchase Orders, Tier One, in turn, will issue to Tier Two amended Tier One Purchase Orders that reflect the amended Directed Component Pricing. In the event of any overpayments/underpayments on account of amended Directed Component Pricing, OEM will resolve any such overpayment/underpayment issues within [] days of receipt of written notification from Tier One and/or Tier Two, as applicable, identifying in reasonable detail the nature of the dispute concerning Directed Component Pricing. Notwithstanding anything to the contrary contained in this Agreement or the Tier One Purchase Orders, Tier Two agrees that it may not resort to remedies under this Agreement or applicable law, including, without limitation, suspending performance on account of issues arising out of or relating to Directed Component Pricing.

4. **Supplier Performance / Quality.**

4.1 **Prelaunch Activities.** The OEM will provide to each of Tier One and Tier Two its standard process and procedures for prelaunch and launch activities relating to the Component Parts. Tier One and Tier Two agree to reasonably cooperate with (a) the OEM in taking those actions necessary to facilitate achieving the OEM's launch timeline for the Component Parts and (b) with each other in order to perform those responsibilities necessary to achieve the timely launch of the Component Parts.

4.2 **Disputes.** If a dispute arises between the Tier One and Tier Two regarding the degree to which a performance issue is allocable to Tier One or Tier Two, either Supplier may submit the dispute to OEM for a determination. OEM will timely issue its written determination allocating responsibility for the performance issue between the Suppliers. If either Supplier

disagrees with OEM's determination, it may invoke the dispute resolution procedure set forth in section 7 below. Tier One will provide to OEM all of the Tier Two performance data that it collects, which must be sufficient to allow OEM to evaluate the degree to which a performance issue is attributable to either Tier One or Tier Two.

5. **Termination.**

5.1 **OEM Purchase Orders.** OEM will not terminate the OEM Purchase Orders except in accordance with the terms of the OEM Purchase Orders and this Agreement.

(A) If the OEM Purchase Orders are terminated by OEM for convenience:

(1) Tier One will be entitled to recover from OEM any amounts to which it is entitled under the OEM Purchase Orders.

(2) Tier One will terminate the Tier One Purchase Orders in accordance with their respective terms and Tier Two will be entitled to recover from Tier One any amounts to which it is entitled under the Tier One Purchase Orders.

(3) If Tier Two is unable to recover from Tier One all amounts it is owed as a result of the termination for convenience, OEM will be liable to Tier Two under the terms of section 6.

(B) If the OEM Purchase Orders are terminated by OEM on account of any other reason under the OEM Purchase Orders, including a breach by Tier One:

(1) Tier One may terminate the Tier One Purchase Orders in accordance with their

respective terms and Tier Two will be entitled to recover from Tier One any amounts to which it is entitled under the Tier One Purchase Orders.

(2) If Tier Two is unable to recover from Tier One all amounts it is owed as a result of the termination, OEM will be liable to Tier Two under the terms of section 6.

5.2 **Tier One Purchase Orders.** Tier One will not terminate the Tier One Purchase Orders and OEM will not direct Tier One to terminate the Tier One Purchase Orders, except in accordance with the terms of the Tier One Purchase Orders and this Agreement. Tier One will not terminate the Tier One Purchase Orders without OEM's prior written consent, which consent will not be unreasonably withheld, conditioned, or delayed.

(A) Subject to subsection 5.2(D), if the Tier One Purchase Orders are terminated for convenience by Tier One, Tier Two will be entitled to recover from Tier One any amounts to which it is entitled under the Tier One Purchase Orders.

(B) If the Tier One Purchase Orders are terminated by Tier One for any other reason, including a breach by Tier Two:

(1) Tier One will be entitled to recover from Tier Two any amounts to which it is entitled under the Tier One Purchase Orders.

(2) If Tier One is unable to recover from Tier Two all amounts it is owed as a result of the termination, OEM will be liable to Tier

- Two under the terms of section 6.
- (C) If the Tier One Purchase Orders are breached by Tier One and Tier Two seeks to terminate or suspend performance under the Tier One Purchase Orders:
- (1) Tier Two will provide written notice to OEM and seek OEM's consent (which consent will not be unreasonably withheld, conditioned, or delayed), and reasonably cooperate with OEM and Tier One in reaching a mutually acceptable resolution.
 - (2) Tier Two will be entitled to recover from Tier One any amounts to which it is entitled under the Tier One Purchase Orders.
 - (3) If Tier Two is unable to recover from Tier One all amounts it is owed as a result of the termination, OEM will be liable to Tier Two under the terms of section 6.
- (D) If the Tier One Purchase Orders are terminated at the direction of OEM or if OEM directs Tier One to resource to a specific new Directed Components' source (the "**Replacement Tier Two**"):
- (1) Tier Two will be entitled to recover from OEM or Tier One any amounts it is entitled to recover from Tier One under the Tier One Purchase Orders. If Tier Two recovers from Tier One, OEM will be obligated to reimburse Tier One the amount of the recovery.
- (2) OEM and Tier One will negotiate in good faith the allocation of costs including, without limitation, validation costs, building a bank, and/or tooling moves incurred by Tier One in transitioning supply to the Replacement Tier Two, including amounts Tier One is obligated to pay Tier Two under the Tier One Purchase Orders arising from their termination and validation costs, bank build, etc. Disputes regarding such allocation of costs will be resolved in accordance with the dispute resolution process set forth in section 7.
- 6. Unrecovered Claims.**
- 6.1 If Tier One is responsible to OEM under the OEM Purchase Orders for a performance issue that is caused by Tier Two's performance, but despite its reasonable efforts Tier One cannot recover from Tier Two any portion of Tier One's liability to OEM, OEM will reimburse Tier One for the unrecovered portion and OEM will have the right to recover the unrecovered portion of Tier One's claim from Tier Two.
 - 6.2 If, despite reasonable efforts, Tier Two is unable to recover from Tier One all amounts it is owed under subsections 5.1(A)(2), 5.1(B)(1) or 5.2(C)(2), OEM will reimburse Tier Two the unrecovered portion and OEM will have the right to recover the unrecovered portion of Tier Two's claim from Tier One.
 - 6.3 If, despite reasonable efforts, Tier One is unable to recover from Tier Two all amounts it is owed under subsection 5.2(B)(2), OEM will reimburse Tier One for the unrecovered portion and OEM will have the right to recover the unrecovered portion of Tier One's claim from Tier Two.

6.4 In all cases under sections 6.1, 6.2 and 6.3, the Supplier seeking recovery from OEM must (i) exercise any rights of setoff, recoupment, or deduction it may have against the other Supplier, (ii) provide OEM with evidence reasonably sufficient to demonstrate to OEM that the other Supplier is actually liable on the claim, (iii) transfer the claims against the other Supplier to OEM free of any third party interests, claims, or encumbrances, and (iv) reasonably cooperate with and assist OEM as needed in pursuit of any claim by OEM under this section 6.

6.5 Each Supplier acknowledges and consents to OEM's pursuit of any claims against it under this section 6, including, without limitation, OEM's exercise of its setoff, recoupment or deduction rights, whether arising either under the OEM Purchase Orders or applicable law.

7. **Dispute Resolution Process.** If a dispute arises between or among any of the parties under this Agreement and cannot otherwise be resolved on an informal basis, the following procedure will apply:

7.1 **Meeting Period.** For a period of ____ days from the date any party invokes this procedure by written notice to each of the other parties (the "**Meeting Period**"), a representative of each party will meet and confer, in person or by telephone, in good faith, and attempt to resolve the dispute.

7.2 **Elevation.** If, at the end of the Meeting Period, the parties are unable to resolve the dispute, unless the parties agree in writing to extend the Meeting Period or one party declines to participate, the matter will be elevated to a representative of each party's senior management, and the parties will attempt to resolve the dispute for an additional ____ days.

7.3 **Arbitration.** If the parties are unable to resolve the dispute at a business level pursuant to sections 7.1 and 7.2 and unless the parties agree in writing to further extend discussions at a business level, any controversy or claim arising out of or

relating to this Agreement (each, a "**Dispute**") will be settled by arbitration administered by the American Arbitration Association under its *Commercial Arbitration Rules*, and judgment on the award rendered by the arbitrator may be entered in any Michigan court or any other court of competent jurisdiction. The arbitrator(s) shall decide whether the parties have agreed to arbitrate and whether this binding arbitration section covers the particular Dispute between the parties. Notwithstanding the foregoing, the term "Dispute" does not include any dispute or controversy about the validity or enforceability of this binding arbitration provision or any part thereof; all such disputes or controversies are for a court and not an arbitrator to decide. However, any dispute or controversy that concerns the validity or enforceability of this Agreement as a whole is for the arbitrator, not a court to decide. Any arbitration proceeding must be instituted, with respect to any Dispute, within two (2) years after the date the incident giving rise thereto occurred, whether or not any damage was sustained or capable of ascertainment or either party knew of such incident. Failure to institute an arbitration proceeding within such period will constitute an absolute bar and waiver to the institution of any proceeding, whether arbitration or a court proceeding, with respect to such Dispute. The decision of the arbitrator shall be final and binding and may not be appealed or otherwise challenged by any party. Each party shall bear its own costs and expenses and an equal share of the arbitrators' and administrative fees of arbitration. Except as may be required by law, neither a party nor an arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both parties.

7.4 **Injunctive Relief.** As a supplement to arbitration any party, at its option, may obtain in any court of competent jurisdiction any injunctive relief, including temporary restraining orders and

preliminary injunctions, against conduct or threatened conduct for which no adequate remedy at law may be available or which may cause the party irreparable harm.

8. Cooperation. Each party agrees to cooperate fully with the other parties and to take all additional actions that may be necessary to give full force and effect to this Agreement.

9. General Terms.

9.1 Notices. All notices, requests, and other communications that are required or may be given under this Agreement must be in writing and addressed as set forth in the OEM Purchase Order or Tier One Purchase Order, as applicable.

9.2 Entire Agreement. This Agreement and any schedules, exhibits, or other documents executed in connection with this Agreement, together with any agreements expressly incorporated into this Agreement and all recitals in this Agreement (which recitals are incorporated as covenants of the parties), constitute the entire understanding of the parties in connection with the subject matter of this Agreement. This Agreement supersedes and constitutes a merger of all prior proposals, negotiations, representations, understandings, commitments, and agreements, whether oral or written, with regard to the subject matter and provisions of this Agreement.

9.3 Authority. Each of the representatives executing this Agreement on behalf of the parties represents and warrants that he or she possesses the corporate power and authority to execute this Agreement on behalf of the respective parties and that this Agreement has been duly authorized by the parties. Each of the parties represents and warrants that the execution and delivery by that party of this Agreement, or compliance or performance by that party with any of the provisions of this Agreement will not conflict with, or result in any violation or breach of, or default (with or without notice or lapse of time, or both) under any provision of the certificate of incorporation

and bylaws or comparable organizational documents of that party, any material contract of that party, any order applicable to that party, or any applicable law, in each case, in existence as of the Effective Date.

9.4 Successors and Assigns; Third Party Beneficiaries. This Agreement and all of the parties' obligations are binding upon their respective successors and assigns, and together with the rights and remedies of the parties under this Agreement, inure to the benefit of the parties and their respective successors and assigns. The Suppliers may not assign or transfer any right or obligation under this Agreement without the prior written consent of OEM. The parties agree that this Agreement is intended to benefit solely the parties to this Agreement and is not intended for the benefit of any third parties.

9.5 Waiver; Modification. No delay or failure of any party to exercise any right, power, or privilege will affect the right, power, or privilege, nor will any single or partial exercise preclude any further exercise, nor the exercise of any other right, power, or privilege. This Agreement may not be modified, altered, or amended except by an agreement in writing signed by all parties.

9.6 Severability; Counterparts. Should any provision of this Agreement be held invalid or unenforceable, the remainder of this Agreement will not be affected. This Agreement may be executed in any number of duplicate originals or counterparts, and each duplicate original or counterpart will be deemed an original and taken together will be one and the same instrument. The parties agree that their respective signatures may be electronically delivered, and that such electronic transmissions will be treated as originals for all purposes.

9.7 Governing Law. This Agreement will be governed by and construed in accordance with the law governing the OEM Purchase Orders, without regard to its conflict of law principles.

10. Jury Trial Waiver. In the event any relief is sought from a court, the parties acknowledge that the right to trial by jury is a constitutional right, but that this right may be waived. The parties each waive all rights to a trial by jury of all disputes arising out of or in relation to this Agreement or any other agreements between the

parties executed in connection with this Agreement. No party will be deemed to have relinquished the benefit of this jury trial waiver unless the relinquishment is in a written instrument signed by the party to which the relinquishment will be charged.

The following pages should follow:

1. Signature Page
2. Exhibit A: Directed Buy Nomination Letter
3. Exhibit B: Directed Buy Notification Letter
4. Exhibit C: General Terms and Conditions of Purchase
5. Exhibit D: RASIC Charts (see following page)

Exhibit D: Directed Buy Responsibility Matrix or RASIC Chart

	<u>CUSTOMER</u>	<u>TIER ONE</u>	<u>TIER TWO</u>
Define requirements for Component Parts and Directed Components ¹			
Determine specifications for Component Parts and Directed Components			
Contract w/ Tier One ²			
Contract with Directed Tier Two ³			
Quality associated with goods provided to Customer ⁴			
Quality associated with for Directed Components provided to Tier One			
Warranty associated with goods provided to Customer			
Warranty associated with for Directed Components provided to Tier One ⁵			
Product Liability associated with goods provided to Customer ⁶			
Product Liability associated with Directed Components provided to Tier One			
Test / Validate goods provided to Customer			
Test / Validate Directed Components provided to Tier One			
Provide Logistics & Scheduling for goods provided to Customer			
Provide Logistics & Scheduling for Directed Components provided to Tier One			
Pay Tier One			
Pay Tier Two			
Meet APQP requirements on Tier One's Component			

¹Requirements may include other obligations related to the component such as packaging

² Including but not limited to OEM terms and conditions

³ Needs to be some negotiation between Customer and Tier Two

⁴ Tier One should have no responsibility to Customer for Directed Components

⁵ Tier One should have no responsibility to Customer for Directed Components

⁶ Tier One should have no responsibility to Customer for Directed Components

Parts			
Meet APQP requirements on Tier Two's Directed Components			
Complete and submit PPAP package on Tier One's Component Parts			
Complete and submit PPAP package on Tier Two's Directed Components			
Meet Run @ Rate requirements on Tier One's Component Parts			
Meet Run @ Rate requirements on Tier Two's Directed Components			
Design & Develop Packaging associated with Directed Components provided to Tier One			
Coordinate Customer's Engineering Change			
Support Build and Launch at Assembly Plant			

Legend: R: Responsible A: Approve S: Support

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