

New Nissan North America Purchase Order Terms and Conditions (eff. date 10/1/2023) Change Analysis

New §	Old §	Heading	Change	Priority
Section 1: Definitions				
1.1	1.1	Agreement	<ul style="list-style-type: none"> • “Agreement” means these Purchase Order Terms and Conditions and all Purchase Orders, Generic Documents, and Specific Documents <ul style="list-style-type: none"> ○ “Generic Documents” means documents that are generic to all suppliers and available to all suppliers on the Nissan Supplier Portal ○ “Specific Documents” means documents specific to Supplier and/or a Part (including, without limitation, contracting documents, notices, releases, specifications, and drawings) that are generated or provided (or otherwise approved in writing) by or on behalf of Nissan to supplement these Nissan PO Terms and Conditions and further define the relationship between the parties, together with all documents incorporated by reference therein ○ Each Generic or Specific Document may be amended <ul style="list-style-type: none"> ▪ <i>“Generic” and “Specific” Documents are new and newly defined terms.</i> ▪ <i>The Terms also newly define as well as “Ancillary” and Legacy” Documents (see § 29.3, below). Although Nissan presumably intends that both Ancillary and Legacy Documents be part of the Agreement, it does not clearly or expressly state that.</i> 	M
1.1	1.1	Ancillary Document	<ul style="list-style-type: none"> • “Ancillary Document” means a document mutually negotiated and executed by the Parties and identifying itself as an Ancillary Document 	L
1.1	1.1	Delivery	<ul style="list-style-type: none"> • “Delivery” occurs when the “delivery is validly accomplished under the INCOTERMS® 2020 set forth in the Purchase Order. Those INCOTERMS shall, in principle, be either <ul style="list-style-type: none"> ○ (1) FCA, in which case delivery occurs when the Parts are loaded onto a truck or other vehicle scheduled by and under the control of Nissan; or ○ (2) DDP, in which case delivery occurs when the Parts are delivered by Supplier to a Nissan dock or other location under Nissan’s control.” 	L
Section 2: The Terms of the Agreement				
2.1	2.1	The Terms of the Agreement	<ul style="list-style-type: none"> • Acceptance occurs on “commencement of work, performance of services, engineering, design, production, manufacture or shipment of Parts, or other indication of agreement, whichever occurs first (the “PO Effective Date”). • Nissan’s PO is the offer to the Supplier. • Any Supplier terms are proposals that are rejected by Nissan • Unless a fixed quantity is specified in the PO, it is a requirements contract. • All references to terms of sale are governed by INCOTERMS® 2020, as the same may be modified, amended, or replaced from time to time. 	M
Section 4: Release and Delivery of Parts				

¹ Changes are from the 2003 Nissan Terms. The Analysis is summary of material changes, not a summary of the complete 2023 Terms. *Butzel commentary is italicized.*

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4.1	4.1	Release and Delivery	<ul style="list-style-type: none"> Nissan will communicate its delivery date and quantity requirements to Supplier through periodic written releases Nissan’s forecasts or estimates are non-binding, for planning purposes only and subject to change. 	L
4.2	4.2	Release and Delivery	<ul style="list-style-type: none"> Supplier will be responsible for consequential damages due to incomplete or delayed delivery, as reasonably calculated by Nissan. 	L
4.5	NEW	Release and Delivery	<ul style="list-style-type: none"> On request, Supplier will timely and provide country of origin certification for all Parts supplied to Nissan regardless of whether preferential origin or tariff treatment applies, including, without limitation, applicable Free Trade Agreements, including the United States-Mexico-Canada Agreement, Generalized System of Preferences, Average Fuel Economy and Labeling and export compliance. Nissan or its agents shall provide Supplier with all information, documents and/or support being necessary for Supplier to fulfill its obligations under this section. If Supplier is not able to obtain any certificate due to circumstances beyond Supplier’s control, Supplier will immediately inform Nissan or its designated agents. In this case Supplier shall not be liable for being unable to fulfill its obligations. 	L
Section 5: Receipt and Inspection of the Goods				
5.1	5.1	Receipt and Inspection	<ul style="list-style-type: none"> Nissan may reject any Parts that are damaged by Supplier prior to Delivery 	L
Section 6: Packaging, Marking and Shipping				
6.1	6.1	Packaging, Marking and Shipping	<ul style="list-style-type: none"> Shipping terms will be specified in the PO 	M

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6.5	NEW	Packaging, Marking and Shipping	<ul style="list-style-type: none"> • Supplier must adopt the Best Practices security standards of this program Customs-Trade Partnership Against Terrorism (C-TPAT) program. • Supplier will inform Nissan of Supplier’s C-TPAT status using SVI monitoring via the C-TPAT Portal. • AEO (Authorized Economic Operator), OEA (Authorized Economic Operator for Mexico) or other supply chain security certification should be advised via email to C-TPAT@nissan-usa.com. • If Supplier is not a C-TPAT (or other security program) participant, then Supplier will take reasonable measures as to ensure the physical integrity and security of all shipments to or Nissan against the unauthorized introduction of harmful or dangerous materials, drugs, contraband, weapons, weapons of mass destruction or unauthorized personnel in transportation conveyances or containers. • Integrity and security measures may include, but are not limited to: <ul style="list-style-type: none"> ○ (a) Maintaining secure handling of proprietary information digital or otherwise, and physical cargo chain of custody; ○ (b) Securing (sealing and/or locking) all containers, trailers and conveyances ensuring seal/physical integrity of cargo inbound and outbound from all facilities domestic and international; ○ (c) Security of all facilities, conveyances and systems; restrictions on access of unauthorized personnel; ○ (d) Personnel background screening (to include criminal); ○ (e) Written procedures and work instructions to protect the security and integrity of all shipments; and ○ (f) Annual training of C-TPAT Best Practices to responsible personnel. • Supplier shall take reasonable and necessary measures to cooperate with any Nissan supply chain security assessments to ensure that security measures are in place and are followed throughout Supplier’s supply chain. 	H
Section 9: Warranties				
9.1	9.1	Warranties	<ul style="list-style-type: none"> • Supplier no longer warrants fitness for purpose or compliance with implied warranties <ul style="list-style-type: none"> ○ <i>This removal is very favorable to Suppliers</i> 	H
9.2	9.2	Warranties	<ul style="list-style-type: none"> • Supplier must reimburse Nissan Affiliates, as well as Nissan, for warranty costs. 	M
Section 10: Quality Assurance				
10	10	Quality Assurances	<ul style="list-style-type: none"> • Supplier must notify Nissan of defects in manufacture or performance. (Previously, notice only required for defects in design) 	H
Section 11: Recall and Reimbursement				
11	11	Recall and Reimbursement	<ul style="list-style-type: none"> • Supplier will reimburse Nissan and its Affiliates, to the extent attributable to Supplier, for all costs incurred by Nissan or its Affiliates. <ul style="list-style-type: none"> ○ For recall purposes, Nissan’s dealer costs are based on applicable statutorily calculated dealer rates for parts and labor, ○ Recall costs include costs of notification 	M

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			<ul style="list-style-type: none"> ○ Supplier shall notify Nissan within twenty-four (24) hours after becoming aware that a decision has been made (by Supplier, a customer of Supplier, or a government authority) to conduct a recall or service campaign or similar program relating to (i) the Parts; or(ii) products substantially similar to the Parts, including retail parts or accessories. 	
Section 12: Indemnification				
12.2	NEW	Indemnification	<ul style="list-style-type: none"> • Supplier’s indemnity obligations are not barred by the negligence of Indemnitees, • “Indemnitees” means “Nissan and its dealers, its Affiliates and their dealers, and their respective officers, directors and employees. • Supplier will extend to the full amount of fault attributable to Supplier <ul style="list-style-type: none"> ○ This is true even if Indemnitees were also negligent. • Parties agree that Supplier may be required to indemnify Indemnitees for fault assigned to or alleged against Indemnitees in a proceeding commenced by a third party. • Supplier’s absence from a legal proceeding in connection with the negligence or the Supplier’s inability to apportion fault to Supplier will not alter Supplier’s obligations to Indemnitees. 	M
Section 15: Intellectual Property Rights				
15.2	15.2	Intellectual Property Rights	<ul style="list-style-type: none"> • On Nissan’s request either during the Term or on Termination, Supplier must grant to Nissan a perpetual, paid-up, royalty-free, non-exclusive, world-wide irrevocable license right to Supplier’s Intellectual Property subsisting or embodied in or used in connection with the Acceptance Drawings , excluding Background Patents 	H
15.3	15.3	Intellectual Property Rights	<ul style="list-style-type: none"> • On Nissan’s request either during the Term or on Termination, Supplier must grant to Nissan’s license right to Supplier’s Intellectual Property not covered by Section 15.2 on terms to be agreed upon. 	H
Section 18: Tooling				
18.2	18.2	Tooling	<ul style="list-style-type: none"> • Supplier must prevent liens on Tools 	L
Section 18A: Insurance				
18A.1	18.A.1	Insurance	<ul style="list-style-type: none"> • Nissan must be named as loss-payee on Property policy • Each policy must waive subrogation 	M
Section 18B: Assurance of Performance				
18B	18B	Assurance of Performance	<ul style="list-style-type: none"> • 2023 terms delete requirement that Supplier must post a large bond in response to a demand for assurances. 	M
Section 19: Service Parts				
19.2	19.2	Service Parts	<ul style="list-style-type: none"> • Past model service parts prices based on “good faith negotiations.” 	H
Section 22: Confidentiality				
22.4(1)	22.4(1)	Confidentiality	<ul style="list-style-type: none"> • Nissan’s right to disclose Supplier’s Confidential Technical Information to a competitor of Supplier is “limited”. <ul style="list-style-type: none"> ○ <i>No explanation of how disclosure to competitors is limited.</i> 	M
22.6	NEW	Confidentiality	<ul style="list-style-type: none"> • Supplier’s cyber security obligations to protect Nissan Confidential Information and continuity of supply include: 	M

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			<ul style="list-style-type: none"> ○ Having cyber-security programs “consistent with the highest industry standards.” ○ Responding to and giving notice of any suspected or actual cyber-security incident ○ Assisting Nissan in investigating and remediating an incident ○ Obtaining a 3rd party cyber-security audit ○ Indemnifying Nissan for any losses from a cyber-security incident <ul style="list-style-type: none"> ▪ <i>Indemnity appears to be strict liability.</i> 	
Section 23B: Financial Information				
23B	NEW	Financial Information	<ul style="list-style-type: none"> • Public companies are exempt from audit requirements of 23A, except in connection with (change in circumstances” that results in Supplier becoming a non-public company.as defined in § 25 	M
Section 24: Facility Inspections				
24	24	Facility Inspection	<ul style="list-style-type: none"> • Nissan Inspection rights expanded to include supply chain security 	M
Section 26: Term				
26	26	Term	<ul style="list-style-type: none"> • Term is specified in PO. • Nissan has right to extend a shorter term to life of the program 	H
Section 27: Termination				
27.3(1)	NEW	Termination	<ul style="list-style-type: none"> • If Nissan elects to cancel an expired or terminated PO, Supplier shall immediately cease work, but Nissan may elect to have Supplier complete the PO <ul style="list-style-type: none"> ○ <i>The meaning of this provision is very unclear</i> 	M
Section 28: Waiver and Remedies				
28	28	Waiver and Remedies	<ul style="list-style-type: none"> • Supplier agrees that Nissan is entitled to emergency (injunctive) relief and specific performance if Supplier fails to fulfill releases or threatens to do so. 	M
Section 29.2: Entire Agreement				
29.2	NEW	Entire Agreement	<ul style="list-style-type: none"> • Nissan may unilaterally “update” the Terms at any time, thereby change the Terms without Supplier Agreement. <ul style="list-style-type: none"> ○ <i>There is no express limitation on the subject matter or significance of the change. Arguably Nissan’s right is constrained by the duty of good faith.</i> 	H
29.3	29.3	Entire Agreement	<ul style="list-style-type: none"> • If there is inconsistency between the various documents that comprise the Agreement, the order of priority is (1) Ancillary Documents; (2) Legacy Documents; (3) Terms; (4) Specific Documents; and (5) Generic Documents. • “Legacy Document” means a valid, pre-existing Master Purchase Agreement or any amendment thereto, • “Ancillary Document” means each other document mutually negotiated and executed by the Parties and identifying itself as an Ancillary Document 	M
Section 33: Force Majeure				
33	33	Force Majeure	<ul style="list-style-type: none"> • Force Majeure applies if performance becomes “impossible or impracticable” <ul style="list-style-type: none"> ○ <i>“Impossible or impractical” is a lower bar than most force majeure provisions, that is, in theory force majeure will apply more often under the Nissan Terms than many other OEM terms.</i> 	H

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Section 35: Governing Law				
35	35	Governing Law	<ul style="list-style-type: none"> Applicability of Tennessee law expanded to include any matter “arising out of or related to” the Agreement,. 	L
Section 36: Jurisdiction				
36.1	36.1	Jurisdiction	<ul style="list-style-type: none"> Litigation is subject to the ADR provisions of Section 43 Expressly allows for litigation only in state or federal court presiding in Williamston County Tennessee. 	M
Section 38: Hazardous Substances				
38.1	38.1	Hazardous Substances	<ul style="list-style-type: none"> In addition to prior duty to furnish MSDS complying with OSHA and state law analogs, new duty to: <ul style="list-style-type: none"> properly label Parts in accordance with those with those laws. Furnish “any other information” Nissan requires to comply with its obligations re hazardous substances. 	M
38.2	NEW	Hazardous Substances	<ul style="list-style-type: none"> Supplier must ensure compliance with the Toxic Substances Control Act 	M
Section 40: Compliance with Law and Corporate Social Responsibility				
40.1	40	Compliance	<ul style="list-style-type: none"> Section 40 and its subparts is virtually completely re-written and greatly expanded from 2003 version Supplier must, and must “ensure” that its entire supply chain will comply with all Applicable Laws <ul style="list-style-type: none"> See Section 40.4 re supply chain obligations Obligations re supply chain responsibility apply to each of the subparts of Section 40. 	H
40.2	NEW	Compliance	<ul style="list-style-type: none"> Supplier must comply with the “Core Values” of the United Nations Global Compact regarding Human Rights, Labor Standards, Environment, and Anti-corruption 	H
40.3	NEW	Compliance	<ul style="list-style-type: none"> Supplier must establish and maintain internal controls to comply with Section 40.1 and 40.2 obligation Supplier must notify Nissan of any apparent or threatened breach of Supplier’s Section 40 obligations 	H
40.4	NEW	Compliance	<ul style="list-style-type: none"> “Supplier must use reasonable efforts to ensure that its suppliers relating to the Parts comply” with Section 40 obligations 	H
40.5	NEW	Compliance	<ul style="list-style-type: none"> Supplier must investigate, remediate and inform Nissan of any breach of Section 40 obligations. 	H
40.6	NEW	Compliance	<ul style="list-style-type: none"> Nissan may disqualify Suppliers in breach of Section 40 obligations from future bidding opportunities, in addition to all other remedies. 	M
40.7	NEW	Compliance	<ul style="list-style-type: none"> Supplier shall indemnify Nissan for losses arising from breach of Section 40. 	H
40.8	NEW	Compliance	<ul style="list-style-type: none"> Nissan may terminate any PO for a Section 40 breach which significantly undermines the brand image or goodwill of Nissan and its products. 	H
40.9	NEW	Compliance	<ul style="list-style-type: none"> Remedies for breach of Section 40 are cumulative and non-exclusive. 	H
40.10	40	Compliance	<ul style="list-style-type: none"> Supplier warrants compliance with all Applicable Laws Supplier must Supplier must provide Nissan with a certificate of compliance with the Uyghur Forced Labor Prevention Act (UFLPA) Supplier must provide Nissan with a “Component Supply Chain Chart” 	H

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			<ul style="list-style-type: none"> If requested Supplier must supply extensive information and documentation (collectively “Supply Chain Information” of compliance with the UFLPA and the “U.S. Customs and Border Protection’s Operational Guidance for Importers” Supplier warrants accuracy of Supply Chain Information Nissan may audit Supplier’s Supply Chain Information Supplier must notify Nissan of any supply chain changes affecting Supply Chain Information If Parts are subject to Export Administration Regulations (“EAR”), Supplier must Notify Nissan prior to shipment and provide cryptographic specifications. 	
40.11	NEW	Compliance	<ul style="list-style-type: none"> Supplier must comply with export control requirements and “take any action necessary” to ensure that Supplier and Nissan are complaint with US law. Supplier must ensure compliance by “subsidiaries, contractors, suppliers, service providers, agents, carriers, and freight forwarders” Supplier must not export “Product / Technical Information” where prohibited by US Law without required government authorization. 	H
Section 43: Alternative Dispute Resolution				
43.1	NEW	ADR	<ul style="list-style-type: none"> If there is a dispute, the party raising the dispute must notify the other in writing. The parties will then negotiate in good faith, but either party may terminate negotiations on 14 days’ notice. 	H
43.2	NEW	ADR	<ul style="list-style-type: none"> Following termination of negotiations, either party may, by written notice, initiate non-binding mediation under AAA Rules, to occur in Tennessee. Mediation may last not more than 90 days Mediation costs will be split equally. 	H
43.3	NEW	ADR	<ul style="list-style-type: none"> If a dispute is not resolved through negotiation or (if elected) mediation, either party may request in writing arbitration, to which the other party may accept or reject within 15 days. However, Nissan may require arbitration of disputes relating to quality, quantities, delivery, payments, warranty, indemnification, offsets, any kind of field service action, or other actions under Articles 4 (Release and Delivery), 5 (Receipt and Inspection), 6 (Packaging, Marking and Shipping), 9 (Warranties), 10 (Quality Assurance), 11 (Recall and Reimbursement), 12 (Indemnification), 15 (Intellectual Property Rights), or 16 (Infringement). <ul style="list-style-type: none"> <i>Given the scope of these provisions, Nissan has the right to require arbitration of most disputes</i> Arbitration will be in Nashville Tennessee under AAA Rules with a panel of three arbitrators, one selected by each party and the third selected by the other two arbitrators. 	H
43.4	NEW	ADR	<ul style="list-style-type: none"> Either Party may go to Court to seek “provisional relief,” e.g., a preliminary injunction.” The lawsuit must be brought in the state or federal court presiding in Williamson County Tennessee Neither party may object to jurisdiction, venue or removal 	H
43.5	NEW	ADR	<ul style="list-style-type: none"> Any unresolved dispute not arbitrated under § 40.3 may be litigated in in the state or federal court presiding in Williamson County Tennessee 	M

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43.6	NEW	ADR	<ul style="list-style-type: none"> The ADR process does not prevent Nissan from exercising its set-off rights under Section 7, its recall remedy rights under Section 11, or “any of its rights or remedies under this Agreement or applicable law” 	H
43.7	NEW	ADR	<ul style="list-style-type: none"> Each party shall continue to perform during the pendency of a dispute <ul style="list-style-type: none"> § 43,6 may largely eviscerate this provision with respect to Nissan 	H
Section 44: Safety and Security Issues				
44	46	Safety and Security Issues	<ul style="list-style-type: none"> If Supplier is working at a Nissan facility, it will comply with Nissan Contractor Safety Manual and Nissan’s Security Policies and Procedures 	L
Section 45: Records Management Program				
45	47	Records Management Program	<ul style="list-style-type: none"> If Supplier possesses Nissan confidential or proprietary Records or has been designated by Nissan as a “Custodian of Record,” it must comply with Nissan Record Management Policies and Procedures and Record Retention Schedules. Supplier Personnel with access to such Records shall participate in annual Records Management Training. 	M