

## SUPPLIER ALERT: CHRYSLER UPDATES ITS TERMS AND CONDITIONS

Recently, Chrysler published a new version, dated December 2014, of its Production And Mopar Purchasing Terms And Conditions (“New Terms”).<sup>[1]</sup> The New Terms are not retroactive and apply only to the NAFTA region. To assist the supplier community with identifying and understanding the importance of the changes the chart below identifies, by subject matter, each change and provides a ranking (High, Med, Low) as to the significance of the change.

<u>Subject Matter</u>	<u>2010 Chrysler Terms<sup>1</sup></u>	<u>2014 Chrysler Terms<sup>2</sup></u>	<u>Differences</u>	<u>Impact (H/M/L)</u>
Contract Formation and Amendment	1	1 Agreement	<ul style="list-style-type: none"> <li>Chrysler has created a new Supplier Portal.               <ul style="list-style-type: none"> <li>Supplier must have an active login to access the Chrysler Supplier Portal.</li> </ul> </li> </ul>	L
Changes	1	1 Agreement	<ul style="list-style-type: none"> <li>Order may only be modified by Chrysler’s issuance of an amended Order to “Seller.” The old terms previously said “Buyer.” This modification was made to correct an error in the prior terms.</li> </ul>	L
	4		<ul style="list-style-type: none"> <li>The word “change” was replaced by the word “charge” to clarify that Chrysler has the sole discretion to accept additional capital investment expenditures related to volume changes</li> </ul>	L
Releases and Delivery	3	3 Delivery	<ul style="list-style-type: none"> <li>Delivery times are no longer required to be stated in the Order, but can be stated on a release, broadcast or written requirement.               <ul style="list-style-type: none"> <li>Supplier must review each release, broadcast or other writing to insure compliance with delivery term.</li> </ul> </li> </ul>	M
			<ul style="list-style-type: none"> <li>Supplier is required to make reasonable “preparations for the delivery of goods and/or services...”, as opposed to the prior terms which required the Supplier to make “commercially reasonable progress in preparing for the delivery of goods and/or services...”</li> </ul>	L
			<ul style="list-style-type: none"> <li>Broadcast is defined to mean “an electronic communication which indicates the parts requirements for the Chrysler assembly plants.”</li> </ul>	L
			<ul style="list-style-type: none"> <li>For Pay as Built (PAB) or sequencers, the broadcast is the P/N sequence. For Modular Pay as Built (MPAB), the broadcast is the collection of part numbers required to be built into the assembly as well as the sequence.</li> </ul>	L

<sup>1</sup> Chrysler “Production and Mopar Purchasing General Terms and Conditions,” dated September 2010.

<sup>2</sup> Chrysler “Production and Mopar Purchasing General Terms and Conditions,” effective a/o 12/1/2014

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Inspections and Non-Conforming Parts; Supplier Quality	6	6 Inspection and Rejections; Quality	<ul style="list-style-type: none"> <li>In addition to complying with ISO/TS 16949 and the Chrysler Group LLC Customer Specification Requirements for use with ISO/TS 16949, the Seller must now also comply with the Process Planning &amp; Audit manual and any other document specified in the Quality Management System and on the Chrysler Supplier Portal.</li> <li>In the event of a 3CPR on “suspect materials,” Supplier must hire the 3CPR Provider identified by Chrysler. Within 24 hours, Supplier must provide a fully funded minimum of \$5,000 (USD or CAD) for projects in the U.S. or Canada and \$2,000 USD for projects in Mexico. Supplier is to bear the full cost of the 3CPR project (previously Chrysler bore ½ the cost), unless Supplier disputes the charges. Chrysler will review and, in its discretion, determine whether there should be an allocation of responsibility. <ul style="list-style-type: none"> <li>If Supplier disputes responsibility for the “suspect materials” it should inform Chrysler in a commercially reasonable period of time.</li> <li>“Suspect materials” is an undefined term.</li> </ul> </li> </ul>	M  M
Service Parts	13	13 Parts; Service	<ul style="list-style-type: none"> <li>Seller is required to make and sell “subcomponents (i.e. serviceable components to support service operations) for the goods covered in the Order” for 10 years, unless Chrysler has identified the goods as “safety items” during the source package process – in which case the requirement is 15 years, or for such other period as agreed by the parties.</li> <li>Neither Seller nor its sub-suppliers may sell any obsolete or surplus goods covered in the Order to third parties without Chrysler’s written consent. <ul style="list-style-type: none"> <li>Note: This section uses inconsistent terminology. At times referring to “sub-components” and other times “goods.”</li> </ul> </li> <li>Chrysler has no obligation to change minimum quantities, lead times or similar commercial terms during the Service Part Coverage Period</li> <li>The sale of any remanufactured or kitted goods to any third party must be at the same price the Supplier sells them to Chrysler. Chrysler’s consent is required.</li> <li>Seller must comply with all Mopar APQP policies and project requirements including utilizing a third party APQP provider.</li> </ul>	M
Taxes	40	41 Taxes	<ul style="list-style-type: none"> <li>Numerous new U.S. State “direct payment permit numbers” and Canadian provincial vendor numbers</li> <li>New invoice requirements re Canadian QST/HST taxes</li> </ul>	L
Default and Remedies <i>Other Remedies</i>	n/a	23(c) Remedies	<ul style="list-style-type: none"> <li>New subpart (c), permits Chrysler to engage, or require Seller to engage, at Seller’s expense, a third party to remediate “actual or threatened recurring non-performance concerning capacity or quality,” on 14 days written notice</li> </ul>	H

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Labor Disputes	7	7 Labor Disputes	<ul style="list-style-type: none"> <li>• Seller must disclose if its work force is represented by a union and update the information in the Supplier Portal.</li> <li>• Seller must notify Chrysler of any change in union related status, such as contract ratification or extension, within 24-hours of occurrence (or such other time as may be commercially practicable).</li> <li>• Prior to the expiration of any labor contract, Seller must establish a 40 working day supply of goods in a neutral warehouse site located in a NAFTA nation, unless MPAB and Sequenced Part Delivery, where a back-up bank of goods cannot be provided, then Seller must submit a written plan to Chrysler Purchasing two weeks prior to the labor contract expiration detailing how Seller plans to continue production.</li> </ul>	L  L H
Intellectual Property <i>Seller's Information</i>	20	20 Financial Reporting	<ul style="list-style-type: none"> <li>• Chrysler obligation to treat seller financial information disclosed as part of mandatory financial reporting modified to allow Chrysler to disclose information to Chrysler parent, subsidiaries or affiliates "excepting any such present or future entities which, in their core business, are Tier 1 automotive suppliers and/or direct competitors of Seller"</li> </ul>	M
Intellectual Property <i>Buyer's Information</i>	17	17 Information Disclosed; Data Rights; Trademarks	<ul style="list-style-type: none"> <li>• On Chrysler request or at end of Order, Seller obligated to destroy, return or remove Chrysler trademark from all Chrysler Data and/or items bearing Chrysler trademark, all as directed by Chrysler. <ul style="list-style-type: none"> <li>◦ <i>Removal of trademark is new obligation. Other obligations are carryover from 2010 terms.</i></li> </ul> </li> </ul>	L
Audit Rights	29	29 Right to Audit	<ul style="list-style-type: none"> <li>• New right to audit "chemical data in connection with Seller's obligations under Clause 28 hereof." See discussion of §28 below.</li> <li>• Other changes stylistic only</li> </ul>	M
Import and Export	15	15 Customs; Exports	<ul style="list-style-type: none"> <li>• Subpart (a) adds Seller obligation to advise Chrysler of any content reporting requirements of destination country</li> <li>• Subpart (e) eliminates obligation to advise Chrysler of the need for an export license. Now import license only</li> <li>• New subpart (g) adds extensive requirements re compliance with C-TPAT program or "a local security program recognized by U.S. customs and C-TPAT. Seller must: <ul style="list-style-type: none"> <li>◦ complete annual Chrysler survey re compliance</li> <li>◦ use C-TPAT compliant high security seal for all international shipments</li> <li>◦ comply with all U.S. and foreign "Export Control Laws (as defined in provision)</li> <li>◦ reimburse Chrysler for fines, penalties and other expenses caused by Seller's non-compliance with Export Control Laws</li> <li>◦ comply with detailed protocol re shipment and handling of restricted Items.</li> </ul> </li> </ul>	M  L H

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Compliance with Laws	24	24 Required Compliance	<ul style="list-style-type: none"> <li>Subpart (a) adds requirement to comply with “global” laws.</li> <li>Subpart (a) adds new Seller obligation to “provide and maintain an Environmental Management System that complies with ISO 14001”</li> <li>New subpart (b) requires Seller to:               <ul style="list-style-type: none"> <li>comply with “Environmental requirements” that apply to “Hazardous Materials, both as defined in the provision.</li> <li>Indemnify Chrysler for non-compliance</li> <li>Certify compliance with any obligation to register goods “on an official inventory maintained by the pertinent governmental jurisdiction”</li> <li>Notify Chrysler of any use restrictions, reporting requirements or other restrictions regarding those goods.</li> </ul> </li> <li>Other changes stylistic only.</li> </ul>	H
	28	28 Compliance With Applicable Requirements; Formula And Information Disclosure	<ul style="list-style-type: none"> <li>New requirement to comply with Chrysler requirements regarding “labeling, processing, registration, notification, prohibition, use, disposal or recyclability”</li> <li>New requirement to comply with Chrysler requirements regarding Conflict Mineral disclosures and other content and origin requirements.</li> <li>New requirement to provide, on Chrysler’s request, “a list of the countries of origin for each ingredient contained in the goods.”</li> </ul>	H
Insurance	11	11 Insurance and Indemnification	<ul style="list-style-type: none"> <li>Unless agreed otherwise by Chrysler, Seller’s insurance coverage shall not be less than the following: \$1,000,000 in employer’s liability insurance; \$5,000,000 in commercial general liability insurance; and \$5,000,000 in automobile liability insurance.</li> </ul>	H
Computer Network Access	N/A	40 Chrysler Computer Network; Access Confidentiality	<ul style="list-style-type: none"> <li>Newly added section</li> <li>Chrysler grants network access only for employees with a need for access.</li> <li>Seller must notify employees of access restrictions</li> <li>Chrysler does not grant any IP rights to Seller by allowing network access</li> <li>Chrysler may terminate access at will. Seller must return all data and information derived from the data following termination of access</li> <li>Seller must inform Chrysler if it “suspects” that the network has been wrongfully accessed or data wrongfully disclosed.</li> <li>Seller must indemnify Chrysler for wrongful disclosure</li> <li>Chrysler disclaims all liability from accessing the network</li> </ul>	M

For further information on Chrysler’s New Terms, Butzel Long’s Automotive Industry Team is available to assist you: Sheldon Klein (248-258-1414) Cynthia Haffey (313-983-7434) Dan Rustmann (313-225-7067)