SNAINC1C

**PURCHASED TOOLING AGREEMENT**

This agreement sets forth the terms and conditions that will govern the Tooling Agreement (“Agreement”) with ***[supplier name]*** (“Supplier”) and Snap-on Logistics, a subsidiary of Snap-on Incorporated, having its principal place of business at 2801 80th Street, Kenosha, Wisconsin, 53143, USA (“Snap-on”).

|  |  |  |
| --- | --- | --- |
| Action | Responsible Party | Location |
| Tooling Manufacturer |  |  |
| Production Part Supplier |  |  |
| Tool Design (responsibility) |  |  |

# SUPPLIER CODE OF BUSINESS CONDUCT

Guided by our core beliefs and values as laid out in the “Who We Are” statement, Snap-on’s commitment to integrity and social responsibility extends to its worldwide supply base. Snap-on expects all suppliers to, and Supplier will, regardless of location, conduct business to Snap-on standards and adhere to the Supplier Code of Business Conduct, which is hereby incorporated into the terms and conditions of this Agreement.

# DESCRIPTION OF TOOLING

Supplier hereby agrees to design, manufacture, sell to Snap-on or it’s assignee, construct and install (if required) Tooling. “Tooling” may be any tooling, dies, test and assembly fixtures, gauges, jigs, patterns, casting patterns, cavities, molds, and documentation (including engineering specifications and test reports) described in this Agreement, together with any accessions, attachments, parts, accessories, substitutions, replacements and appurtenances thereto. Snap-on hereby agrees to purchase the Tooling as specified below:

1. Description of Tooling\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
2. Snap-on part numbers\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

# TOOLING RUNOFF (IF REQUIRED)

The Tooling will be ready for runoff in accordance with the Statement of Work (**Exhibit A**) no later than ***[mm/dd/yyyy].***  For each week that the Tooling is late, Snap-on will deduct 1% of the total purchase price from the final invoice.

# TOOLING DELIVERY

The Tooling will be delivered to ***[LOCATION]*** no later than ***[mm/dd/yyyy].***  For each week that the Tooling is late, Snap-on will deduct 1% of the total purchase price from the final invoice. If the Tooling is subject to a runoff at the Supplier’s location, the delivery will be ***[X days/weeks]*** after the runoff is completed.

Snap-on shall have the right, at no additional charge, to postpone the delivery of the Tooling (or any component thereof) for a period of up to one hundred twenty (120) days. In the event of such a postponement, Snap-on shall have the right to commensurately delay its payment(s) due to the delay of shipment.

# TOOLING COST AND PAYMENT

Tooling costs are based on Supplier’s pricing quotation dated ***[mm/dd/yyyy]***. Snap-on Payment terms are 40% either (i) with receipt of Bailment Agreement (as discussed in Section 6), if applicable, or (ii) upon delivery of purchase order to Supplier, 25% after runoff or delivery of equipment, 25% after completion of part PPAP (production part approval process), 10% 60 Calendar days after start of production, if PPAP criteria continue to be met. The final 2 payments are non-negotiable.

# BAILMENT AGREEMENT

If Snap-on will not be taking possession of Tooling upon completion, Tooling payments made by Snap-on will be covered by a Bailment Agreement. Tooling paid for by Snap-on is solely owned by Snap-on and will be conspicuously and permanently marked as Snap-on property. Upon notice, all Tooling will be made available for inspection or shipment to another location at Snap-on’s direction. No payments will be made until Bailment Agreement (**Exhibit B**) is returned to the buyer. Supplier is a bailee-at-will of the Tooling and Snap-on shall have the right to take possession of the Tooling at any time and for any reason.

# WARRANTY AND QUALITY

1. Tooling Warranty. Supplier warrants that all Tooling will be fit for the purposes intended and of first-class quality upon delivery and during the Warranty Period. Supplier shall replace, repair or make good without cost to Snap-on any Tooling defects or faults arising within the Warranty Period or within such longer period of time as may be prescribed by law or by terms of any applicable warranty provided by Supplier. The “Warranty Period” shall be three (3) years starting on the date that Snap-on approves the PPAP (acceptance not to be unreasonably delayed or withheld). Acceptance or use of goods by Snap-on shall not constitute a waiver of any claim under this warranty. Supplier's liability under this Section 7a shall extend to all damages proximately caused by the breach of any of the foregoing warranties or guarantees.
2. Snap-on May Repair. Snap-on shall have the right to repair any and all defects, if Supplier has previously authorized such action or, if in Snap-on's reasonable commercial judgment, Supplier is able to make the repair. If Snap-on elects to take this action, it may deduct from the direct and incidental costs incurred in remedying the breach of warranty from any amounts due Supplier. Should Snap-on deduct costs from future payments, upon Supplier's request, Snap-on will provide documentation of such costs. Snap-on's action to cure any warranty breach shall not relieve Supplier of any obligations under this Agreement or under any applicable provisions of the Uniform Commercial Code except to the extent that Snap-on's repair effort shall have directly caused further defects in the Tooling.
3. Notice of Defects. Snap-on will provide a written report of defects in the Tooling. Upon receipt of such notice, Supplier shall promptly notify the Snap-on Representative of Supplier’s plan to repair the Tooling. Supplier shall complete the repair/Services without undue delay and cost.

# DEVELOPMENT

Snap-on, and/or jointly developed, designs and specifications are considered Snap-on’s confidential and trade secret information and are owned by Snap-on. Supplier shall sell the Tooling exclusively to Snap-on and shall not be sold to any third parties without Snap-on’s prior written consent.

# DRAWING RELEASE AND CHANGES TO SPECIFICATIONS

* 1. Drawing Release. Raw materials may be purchased upon Snap-on’s initial purchase order placement. No fabrication should be done on Tooling until an authorized buyer from Snap-on (the “Snap-on Representative”) provides a released drawing or a written approval to proceed with a pre-release drawing.
  2. Change Orders. By issuance of a written change order to the Supplier from the Snap-on Representative, Snap-on may, at any time during the term of this Agreement and without invalidating the Agreement, make changes in, additions or deletions to the part drawings. It is understood that any such changes shall be made by Supplier. Such Change Orders shall be incorporated into the Specifications. If such change increases or decreases the cost of or time for performing the Services hereunder, an equitable adjustment may be made in the payment to the Supplier and/or the time for performance after Snap-on’s written approval.

# TOOLING TERMINATION AND DISCONTINUANCE OBLIGATIONS

Either party shall have the right to immediately terminate this Agreement if: (a) the other party breaches this Agreement and does not completely remedy a curable breach within thirty (30) days after receiving notification from the other party; (b) upon written notice to the other party that such party committed an incurable breach; (c) the other party becomes insolvent or bankrupt, files for reorganization or a receiver or trustee is appointed; or (d) the other party merges, is acquired or effects a substantial change in asset, ownership or management. In any event, Snap-on shall have the right to terminate this Agreement for convenience, without cause, effective upon written notice. Supplier shall cease production immediately upon receipt of notice of termination from Snap-on for any undelivered Tooling. Upon termination by Snap-on for convenience, Supplier shall provide Snap-on with a detailed invoice showing costs for non-industry standard materials. Snap-on will pay undisputed invoice within sixty (60) days and shall have the option to have all non-industry standard material delivered to a location of Snap-on’s choosing and at Snap-on’s expense. Snap-on shall have the right, with appropriate documentation, to set-off any payments due Supplier against claims against the Supplier by a third party. Upon termination or discontinuance of tooling obligations, Supplier and Snap-on shall complete a Tooling Discontinuance and Destruction Agreement attached as **Exhibit C**.

# FREIGHT AND DELIVERY TERMS

* 1. Tooling will be delivered to [***Insert Supplier Name and Address]***
  2. Freight. Supplier will pay all freight. Except to the extent that loss or damage arises out of or results from the negligence or willful misconduct of Snap-on, Supplier shall bear the risk of loss or damage to any Tooling until (1) delivery of the Tooling at the destination specified in Section 11.a. or otherwise directed by the Snap-on Representative in writing and (2) acceptance by Snap-on has occurred, After delivery and acceptance, Snap-on shall bear the risk of loss or damage to the Tooling, except to the extent that loss or damage arises out of or results from the negligence or willful misconduct of Supplier, its agents or subcontractors. Unless otherwise specified herein, title to the Tooling furnished by Supplier shall vest in Snap-on when the Tooling has been delivered at the location designated pursuant to this Agreement and the Services after delivery have been completed and accepted by Snap-on's representative.
  3. Delivery Delays—Premium Transportation. If shipment of the Tooling is delayed less than fifteen (15) calendar days after the Delivery Date for any reason (Force Majeure delays excluded), Snap-on shall have the option to expedite the shipment of the Tooling by employing premium transportation such as, but not limited to, exclusive-use van or air freight. Supplier hereby agrees to bear such premium costs should Snap-on elect to use such premium transportation in an effort to recover the time lost due to Supplier's late shipment. Furthermore, Supplier will use its best efforts to assist Snap-on in the routing or rerouting of the shipment.
  4. Delivery Delays—Irreparable Fifteen (15) Days after Delivery Date. If shipment of the Tooling is delayed for any reason (excluding Force Majeure delays) in excess of fifteen (15) calendar days after the Delivery Date, the delay shall be considered an irreparable delay and an incurable breach of Supplier under this Agreement. Should Snap-on choose to excuse the delay, it must do so in a writing which shall identify a new delivery date. If Snap-on exercises its right to identify a new delivery, it does not forfeit any rights or remedies it may have under this Agreement or the law.
  5. Delivery Notice. Supplier shall notify Snap-on by fax or email of a pending shipment hereunder seven (7) calendar days prior to actual shipment. On the day of actual shipment, Supplier shall confirm shipment by fax or email notification which shall include, without limitation: the carrier's name, the waybill number, number of pieces, weight (by piece and total), progressive bill number and destination.
  6. Packing. Supplier will ship the Tooling in a manner consistent with general industry practice. Should it be necessary to ship the Tooling in a disassembled state, Supplier shall ship the Tooling in the largest units possible consistent with expedient transportation of the Tooling.

# TOOLING INFORMATION AND DRAWINGS

1. Supplier shall provide to Snap-on complete and accurate information and data for the Tooling (“Tooling Information”). Tooling Information shall include, but not be limited to, operation manuals, maintenance manuals, certification requirements, applications and safety information.
2. No later than the date of shipment and before final payment to Supplier, Supplier agrees to supply complete drawings and other items necessary for the routine maintenance of the Tooling.

# MUTUAL CONFIDENTIALITY AGREEMENT

# This Agreement and its terms and conditions are confidential and governed by the provisions of the attached Mutual Confidentiality Agreement (“MCA”), which is hereby incorporated into this Agreement. The MCA will remain in effect during the term of this Agreement regardless of any expiration date stated in such MCA.

# CONDITIONS OF PURCHASE

# All Snap-on Tooling purchases and Services from Supplier are subject to and governed by this Agreement, including the MCA.

1. **TAXES, FEES, DUTIES**

Supplier shall be responsible for all taxes, fees and duties of any type levied or imposed by any governmental body or quasi-governmental body in Supplier's country of manufacture.

# ANTI-CORRUPTION COMPLIANCE

Supplier will comply at all times with applicable laws, regulations, orders, judicial decision, conventions and international financial institution rules regarding corruption, bribery, ethical business conduct, money laundering, political contributions, gifts and gratuities, or lawful expenses to public officials and private persons, agency relationships, commissions, lobbying, books and records and financial controls (“Anti-Corruption Laws”). The Anti-Corruption Laws include, without limitation, the Foreign Corrupt Practices Act, a law of the United States of America and the United Kingdom Bribery Act, a law of the United Kingdom.

Supplier is aware that Snap-on may be sanctioned under the Anti-Corruption Laws in the event Supplier, directly or indirectly offers, promises or makes payments to government officials or others for the purpose of influencing decisions favorable to Snap-on.

Supplier acknowledges that no officer or other major decision maker of Supplier, now or during the term of this Agreement, is, or will become, an official of any government agency or a corporation owned by a governmental unit where Supplier does business without prior written notice to Snap-on. Supplier further acknowledges that Snap-on may withhold payment if Snap-on has reason to believe the Supplier is in breach of this Anti-Corruption Compliance provision. Snap-on shall have the right to audit the Supplier’s records in order to satisfy itself that no breach of this provision has occurred.

# INDEMNIFICATION; INSURANCE

a) Supplier will indemnify, defend upon request, and hold harmless Snap-on (“Snap-on” in this Section 17 shall refer to Snap-on Incorporated and its subsidiaries), from any and all Claims (i) resulting from injury or death to any person or damage to any property arising directly or indirectly due to Tooling not meeting the Specifications; (ii) asserted in any governmental proceeding or action with respect to the Tooling not meeting the Specifications; (iii) on account of any actual or alleged infringement or other violation of patent or other proprietary rights arising out of the manufacture, use or sale of Tooling not meeting the Specifications; or (iv) resulting from Supplier’s breach of this Agreement. This indemnity and defense obligation applies to all Claims, regardless of nature and designation, whether based on breach of contract, breach of warranty, strict liability, product liability, negligence or any other tort or theory of liability. It includes indemnity for (a) all damages of any kind, including punitive or exemplary damages, and (b) any costs and expenses, including attorney’s fees, incurred by Snap-on while assisting in or presenting any defense or investigating or re-mediating any conditions. It also includes but is not limited to any Claim that Snap-on was at fault or not inspecting or testing the Tooling or not analyzing the design or make up of the Tooling (not provided by Snap-on) or for negligently inspecting, testing or analyzing the Tooling. This indemnity and defense is in addition to the warranty and remedy obligations of Supplier.  “Claim” or “Claims” includes claims, lawsuits, and liabilities, notice of property damage or personal injury and losses of any kind. Snap-on may, at its sole discretion and at its own expense, be represented by and actively participate through its own counsel in any such proceedings.

b) If Supplier refuses or fails to indemnify and/or defend Snap-on as required under this Agreement, Snap-on may defend itself and make decisions regarding strategy, including settlement, that it deems appropriate without limiting its right to pursue a claim against Supplier for indemnification.  Supplier will be responsible for all costs, expenses and liabilities incurred by Snap-on in such event.

c) Supplier will insure the Tooling during manufacturing up through delivery and will maintain: (i) property insurance against loss, theft and damages in an amount greater than the full replacement value of the Tooling, or part thereof; and (ii) occurrence-based commercial general liability insurance, vendor’s coverage and contractual indemnity coverage in an amount not less than $2,000,000. Both policies shall name Snap-on and its parent as additional insured, be issued by insurers with an A.M. Best’s Rating of at least “A- VII” and that are otherwise acceptable to Snap-on, and provides coverage for bodily injury, death and property damage liability with “each occurrence”.  Supplier’s liability is not limited by the limits of such insurance policies. Supplier will furnish Snap-on with certificates of insurance annually.  All policies of insurance procured or maintained hereunder (a) shall provide that coverage thereunder shall not be terminated, cancelled or non-renewed without at least thirty (30) days’ written notice to Snap-on, and (b) shall be primary and non-contributory to any insurance carried by Snap-on or its parent.

1. **SUPPLIER AUDIT AND FACILITY ACCESS**

Supplier will allow Snap-on access to Supplier’s facilities upon reasonable notice while the Tooling is at Supplier’s location. Upon Snap-on’s reasonable request, Supplier will provide Snap-on with certain financial statements and documentation.

# SNAP-ON FACILITIES

Supplier may visit a Snap-on facility in the course of meeting its obligations under this Agreement. Supplier assumes responsibility and liability for its agent’s, representative’s and employee’s actions while at Snap-on facilities. Supplier’s agents, representatives and employees will follow all Snap-on safety instructions and use reasonable care while at a Snap-on facility. Supplier releases Snap-on from any liability and waives all claims against Snap-on, whether for property damage, personal injury or death, arising out of any visit to a Snap-on facility except to the extent caused by Snap-on’s gross negligence or willful misconduct.

1. **WAIVER OF JURY**

EACH OF THE PARTIES HERETO IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

1. **GOVERNING LAW**

This Agreement shall be construed and interpreted in accordance with, and the rights and obligations of the parties hereto shall be governed by the provisions of the Uniform Commercial Code and the laws of the State of Wisconsin, USA and not the United Nations Convention on Contracts for the International Sale of Goods. This Agreement shall be executed in the English language, which shall be the original and shall control in the event of any difference between the English text of this Agreement and any translation hereof. The parties submit to the exclusive jurisdiction of the state and federal district courts of Wisconsin, Eastern District, venued in Milwaukee County, Wisconsin, or the Circuit court of Milwaukee County, if there is no federal jurisdiction. The parties expressly consent to the jurisdiction and the venue of such courts. The parties waive their right to any claim of inconvenient forum.

1. **ASSIGNMENT AND NOTICES**
2. Neither party will assign, subcontract or delegate any rights or obligations contained in this Agreement without the other party's prior written consent, which consent will not be unreasonably withheld. In the event of Supplier’s change of name, ownership, or sale, merger or acquisition or other disposition in whole or in part, including the filing by, or against Supplier of any bankruptcy proceeding, Supplier shall promptly notify Snap-on in writing of such changes, actions and proceedings.
3. All notices shall be sent via certified mail, to the attention of the Supplier or Snap-on Representative listed below at the addresses provided herein. Such notice(s) shall be effective three (3) business days after confirmed receipt of the notice.

Notices given by Snap-on shall be sent to Notices given by Supplier shall be sent to Snap-on

*[Name of authorized representative]* ATTN: *[Name of authorized representative]*

*[designation of title] [designation of title]*

*[address of authorized representative] [address of authorized representative]*

# MODIFICATION

No modification of this Agreement shall be binding upon either party unless it is in writing, and is signed by an authorized representative of each party.

1. **RELATIONSHIP OF PARTIES**

The Supplier and Snap-on are independent contractors, and are not partners, joint ventures, employees or agents. Neither party shall have the authority to act, make representations, or make commitments on behalf of the other party.

1. **FORCE MAJEURE**

Neither Snap-on nor Supplier shall not be liable for any delay in or impairment of performance resulting in whole or in part from acts of God, acts of war, acts of terrorism (whether actual or threatened), governmental decrees or controls, insurrections, epidemics, quarantines, shortages, communication or power failures, fire, accident, explosion, obtain permits and licenses, supplies or raw materials, severe weather conditions or catastrophic.

# COUNTERPARTS

### This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall be considered one and the same Agreement. All references herein to Articles and Sections shall be deemed references to such parts of this Agreement, unless the context shall otherwise require. All references to singular or plural shall include the other as the context may require.

1. **SURVIVAL**

The warranties, guarantees, indemnities confidentiality obligations and representations contained herein shall survive the cancellation, expiration, or termination of this Agreement.

1. **WAIVER**

Snap-on’s failure to enforce any term of this Agreement shall not be interpreted to mean that Snap-on waived its right to enforce any term of this Agreement in the future and also shall not be interpreted to be a waiver of the provision itself.

The person signing this Agreement is duly authorized and agrees to the terms and conditions of this Agreement.

Snap-on: ***[supplier name]* Snap-on Logistics Company**

Subsidiary of Snap-on Incorporated

By: By:

Title: Title:

Date: Date:

**Required signed documents: Reference document:**

-Mutual Confidentiality Agreement -Supplier Code of Business Conduct

**Exhibits:**

- Statement of Work, **Exhibit A**

-Bailment Agreement, **Exhibit B**

-Tool Discontinuance and Destruction Agreement, **Exhibit C**

**EXHIBIT A**

SNAINC1C

**STATEMENT OF WORK**

**(Note: The Statement of Work is an optional part of the tooling agreement. It should be used when there are runoff or performance requirements for the tooling. This would mainly be if the tooling was going to be used in a Snap-on plant, or if it was being bought from a third party to run at one of our suppliers plants. Substantial thought should be given to how agreement will be reached on when the project is complete and the supplier paid. All parts in parenthesis are instructional and should be removed in the final version).**

1. **SNAP-ON REPRESENTATIVES:**

(List of all Snap-on Personnel authorized to issue change notices for the project).

1. **COMPLETE DESCRIPTION OF TOOLING:**

(As complete a description of what we are buying as is possible and the parts to be run on it).

1. **DESCRIPTION OF TOOLING USE AND PERFORMANCE REQUIREMENTS:**

(As complete a description of what the tooling will do and be used for as possible, this should include a description of all functions the tooling must perform in order to be considered acceptable. This is the heart of the SOW. If there is no acceptance test, this is the list of requirements for payment. )

1. **TOOLING RUNOFF REQUIREMENTS:**

(List all requirements for machine runoff either at manufacturer of Snap-on)

1. **ACCEPTANCE TEST(if required):**

(A complete description of acceptance tests needed to qualify tooling for production.)

1. **SERVICES**

(List of all services to be provided as part of the purchase of the tooling. For instance, installation, startup, foundation work, etc.).

1. **TRAINING**

(A list of all training provided with the Tooling).

**EXHIBIT B**

**BAILMENT AGREEMENT**

ASSET/CONTROL #\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Property:** [insert description of property here] Business unit \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Purpose:** [insert description of purpose and location of where Property will be used here]

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_[insert name of legal entity]** (“SNAP-ON”) agrees to allow \_\_\_\_\_\_**\_\_\_\_\_\_\_\_\_\_[insert name of legal entity]** ("BORROWER") to use the Property (defined above) for the Purpose (defined above) and Borrower wishes to use the Property for the stated Purpose; therefore, the parties agree as follows:

**1. Limited Right to Use.** SNAP-ON is the owner of the equipment/tools further described above and as referred to herein as the “Property” and for the “Purpose” stated above. SNAP-ON hereby makes available for use to BORROWER, and BORROWER accepts such bailment from SNAP-ON, of the Property, subject to the terms and conditions of this Bailment (the “Bailment”) for a period of \_\_\_\_\_\_\_\_**[insert length of loan]**. Title to the Property shall remain vested in SNAP-ON and BORROWER will not (i) acquire any title or other interest in the Property, or any right, except the limited and conditional right to use the Property for the Purpose stated herein; (ii) permit any lien, encumbrance or security interest to attached to the Property; (iii) permit the Property to be subject to any interchange or pooling arrangement, or (iv) permit the Property to be used, operated by or to be in the possession of any person other than BORROWER. BORROWER agrees to execute any such documents as requested by SNAP-ON for the purpose of providing notice of BORROWER’S limited and conditional right to use the Property, including without limitation, UCC-1. BORROWER expressly grants SNAP-ON the right to file the UCC-1 electronically. THIS IS A BAILMENT WITHOUT PAYMENT FROM BORROWER TO SNAP-ON FOR THE LENDING.

**2. Installation/Shipping.** BORROWER shall pay all cost and expense incurred for the transportation of the Property to BORROWER’S facility at the address stated above and for any installation. BORROWER agrees to return the same to SNAP-ON in good condition, ordinary wear and tear excepted. SNAP-ON shall pay all transportation expenses incurred by the BORROWER to return the Property to a location identified by SNAP-ON as has or will be provided in the Tooling Discontinuance and Destruction Agreement.

**3. Maintenance/Risk of Loss.** BORROWER shall perform and pay for all maintenance and maintain a true and accurate log of all maintenance performed on the Property as required by any (i) operating procedures, manuals, service bulletins or other instructions provided by SNAP-ON; (ii) other applicable publications; and (iii) all applicable government directives, laws, rules and regulations, if any. BORROWER is responsible for and assumes risk for all loss or damage to or caused by the Property from whatever cause, including, without limitation, any loss, accident, injury to a person or property, foreign object damage, or other event, from the point of delivery of Property to BORROWER.

**4. Disclaimer.** BORROWER acknowledges an opportunity to review the Property bailed, and ACCEPTS THE SAME "AS IS," "WITH ALL FAULTS" and WITHOUT WARRANTY, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY EXPRESS WARRANTY AS TO THE CONDITIONAL OF THE PROPERTY AND ANY IMPLIED WARRANTY AS TO MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT. SNAP-ON SHALL NOT BE LIABLE FOR ANY DAMAGES ARISING OUT OF OR RELATED TO THIS BAILMENT, INCLUDING WITHOUT LIMITATION, ANY INCIDENTAL DAMAGES, CONSEQUENTIAL DAMAGES, SPECIAL DAMAGES, INDIRECT DAMAGES, LOSS OF PROFITS, LOSS OF REVENUES OR LOSS OF USE, EVEN IF INFORMED OF THE POSSIBILITY OF SAID DAMAGES. BORROWER HAS ASCERTAINED THAT THE BAILED PROPERTY IS FIT FOR THE PURPOSE THAT BORROWER DESIRES TO USE THE BAILED PROPERTY. TO THE EXTENT PERMITTED BY APPLICABLE LAW, THESE LIMITATIONS AND EXCLUSIONS WILL APPLY REGARDLESS OF WHETHER LIABILITY ARISES FROM BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING BUT NOT LIMITED TO NEGLIGENCE), BY OPERATION OF LAW, OR OTHERWISE.

**5. Indemnification.** The BORROWER agrees to indemnify and hold SNAP-ON, its affiliates and their respective officers, directors, shareholders and employees (“Indemnified Persons”) harmless from all liabilities, damages, penalties, claims, actions, suits, costs and expenses of every kind and nature incurred by or asserted against an Indemnified Person in any way relating to or arising out of the possession, use condition, transportation or return of any Property unless due to the sole negligence of SNAP-ON.

**6. Insurance.** The BORROWER shall at all times maintain insurance coverage for all insurable perils, including without limitation, personal injury, death, property damage, theft, fire or other loss or damage, on the Property bailed herein in a minimum amount ofOne Million Dollars ($1,000,000.00), and SNAP-ON shall be named as additional insured thereon. The certificate of insurance shall be provided to SNAP-ON upon execution of this Agreement, but before the issuance of a P.O.

**7. Termination.** Ether party may terminate this Bailment at any time upon written notice to the other party. Such termination shall not prejudice any remedy SNAP-ON may have in law or otherwise. Upon termination of this Bailment, BORROWER shall immediately return the PROPERTY to SNAP-ON at an address provided by SNAP-ON or as otherwise provided in the Tooling Discontinuance and Destruction Agreement.

**8. Assignment.** This Bailment may not be assigned by BORROWER without the prior written consent of SNAP-ON.

**9. Applicable Law.** This Bailment shall be governed by the law of the State of Wisconsin. Any suit must be brought in the State of Wisconsin, Circuit Court of Kenosha County or in the Federal Court of the Eastern District of Wisconsin. BORROWER irrevocably consents to personal and exclusive jurisdiction and forum set forth above and agrees to be bound by any judgment and order rendered by said court.

**10. Severability.** If any provision of this Bailment is determined to be illegal, invalid or unenforceable by a court of competent jurisdiction, then the validity and enforceability of the remaining provision of this Agreement will not be affected and, in lieu of such illegal, invalid or unenforceable provision, there will be added as part of this Bailment one or more provision as similar in terms as may be legal, valid and enforceable under applicable law.

**11. Waiver.** The failure of either party to enforce at any time any of the provision of this Agreement will not be constructed to be a continuing waiver of any provision hereunder nor will any such failure prejudice the right of such party to take any action in the future to enforce any provision hereunder.

**12. Entire Agreement.** This Bailment contains the entire agreement between the parties with respect to the bailment of the Property and supersedes any prior representations or agreements, oral or written, and all other communications between the parties relating to the subject matter hereof. This Bailment will not be varied except by an instrument in writing subsequently executed by an authorized representatives of each party.

**13. Notice.** Any notice required in the Bailment shall be provided to the parties at the addresses below, or at the address provided to the other party in writing from time to time. Notice shall be deemed give upon personal delivery to the other person or seven days after notice has been mailed via certified mail.

Date: **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** Date:**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

SNAP-ON BORROWER

(Insert entity name) (Insert entity name)

\_\_\_\_\_\_\_(state where entity was formed)

Address: Address:

Fax: Fax:

|  |  |  |
| --- | --- | --- |
| BY:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |  | BY:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

Print Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Print Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Title:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**EXHIBIT C**

SNAINC1C

**TOOLING DISCONTINUANCE AND DESTRUCTION AGREEMENT**

This form should be used whenever parts are being discontinued and tooling owned by Snap-on incorporated and located at a suppliers location is being scrapped.

This agreement sets forth the terms and conditions that will govern the Tooling Discontinuance and Destruction of tooling located at ***[supplier name and address]*** (“Supplier”).

**AUTHORIZATION**

I Authorize the Supplier to either move or destroy the tooling and parts as indicated in sections 2 and 3 and listed in Exhibit A. (Should be signed by Product Management or Promo Manager).

# DESCRIPTION OF TOOLING

This agreement covers all the tooling and parts listed in Exhibit A.

# TOOLING DISPOSITION (CHOSE ONE OF THE FOLLOWING)

\_\_\_The Tooling will be delivered to ***[LOCATION]*** no later than ***[mm/dd/yyyy].***

\_\_\_The Tooling should be destroyed no later than ***[mm/dd/yyyy].***

# PARTS DISPOSITION (CHOSE ONE OF THE FOLLOWING)

\_\_\_The parts associated with the tooling will be delivered to ***[LOCATION]*** no later than ***[mm/dd/yyyy].***

\_\_\_The parts associated with the tooling should be destroyed no later than ***[mm/dd/yyyy].***

# COST

Costs of discontinuance and destruction will be the responsibility of the supplier. Value of the scrap steel or other materials will be refunded to Snap-on upon request.

# FREIGHT AND DELIVERY TERMS

* 1. This is applicable if tooling is being shipped to an alternate location.
  2. Freight. Supplier should ship all Tooling, Parts, and Materials per Snap-on’s freight policy.
  3. Packing. Supplier will ship the Tooling in a manner consistent with general industry practice. Should it be necessary to ship the Tooling in a disassembled state, Supplier shall ship the Tooling in the largest units possible consistent with expedient transportation of the tooling.

# CERTIIFCATE OF DESTRUCTION

Supplier shall provide to Snap-on a certificate of destruction from a third party to prove all tooling and parts have been destroyed.

# MUTUAL CONFIDENTIALITY AGREEMENT

# This Agreement and its terms and conditions are confidential and governed by the provisions of the attached Mutual Confidentiality Agreement (“MCA”), which is hereby incorporated into this Agreement. The MCA will remain in effect during the term of this Agreement regardless of any expiration date stated in such MCA.

1. **RELATIONSHIP OF PARTIES**

The Supplier and Snap-on are independent contractors, and are not partners, joint ventures, employees or agents. Neither party shall have the authority to act, make representations, or make commitments on behalf of the other party.

# COUNTERPARTS

### This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall be considered one and the same Agreement. All references herein to Articles and Sections shall be deemed references to such parts of this Agreement, unless the context shall otherwise require. All references to singular or plural shall include the other as the context may require.

The person signing this Agreement is duly authorized and agrees to the terms and conditions of this Agreement.

Snap-on:

***[supplier name]* Snap-on Logistics Company**

Subsidiary of Snap-on Incorporated

By: By:

Title: Title:

Date: Date:

NOTE: The certificate of destruction should be returned with the signed copy of the agreement as an attachment. **EXHIBIT A**

**LIST OF TOOLING COVERED BY THE AGREEMENT**

**LIST OF PARTS COVERED BY THE AGREEMENT**