

Counterfeit Goods

- a. In addition to Seller's other warranties, Seller warrants the Goods delivered pursuant to this Order shall: (i) be new; (ii) be and only contain materials obtained directly from an Original Material Manufacturer (OMM), Original Component Manufacturer (OCM) or Original Equipment Manufacturer (OEM), (collectively, hereinafter, the Original Manufacturer (OM)) or a source with the express written authority of the OM or current design activity, including an authorized aftermarket manufacturer; and (iii) not be and not contain Counterfeit Items. In addition to other remedies available to 3M, if Seller delivers Goods to 3M that do not conform to the forgoing warranty, at 3M's election, Seller shall bear the expense of remedial costs including repair, rework, and corrective action.
- b. "Counterfeit Item" includes, but is not limited to, raw materials, parts, components or assemblies that are or contain an unlawful or unauthorized reproduction, substitution, or alteration that has been knowingly mismarked, misidentified, or otherwise misrepresented to be an authentic, unmodified material, part, component or assembly from the OM, or the authorized OM reseller or distributor. Unlawful or unauthorized substitution includes used material represented as new, or the false identification of grade, serial number, lot number, date code, or performance characteristics. If the item is an electronic part, the term also includes unlawful or unauthorized embedded software or firmware.
- c. This section (c) is only applicable to the extent Seller is acting as, or obtaining Goods from, one or more Brokers. A "Broker" is a supplier that is not authorized to sell or distribute the Goods by the OM, and shall include, without limitation, broker-distributors, independent distributors, non-authorized distributors, non-franchised distributors, non-authorized suppliers or non-authorized resellers. In addition to the requirements set forth in sections (a) and (b) above, Seller warrants that it will only act as a Broker in obtaining or delivering Goods pursuant to an Order if 3M provides prior written approval to do so. If Seller acts as a Broker in connection with Goods delivered pursuant to an Order, Seller shall implement an internal Counterfeit Item control process for Goods delivered pursuant to an Order in accordance with the standards or instructions set forth in 3M's specifications or other provisions incorporated into an Order, or, if no additional 3M standards, instructions or provisions are included, in accordance with the version of SAE International Standard AS5553A Counterfeit Electronic Parts; Avoidance, Detection, Mitigation and Disposition ("AS5553A") in effect as of the Order date. 3M shall have the right to audit Seller's process and to require changes in it to meet 3M's customers' anti-counterfeit requirements. When requested by 3M, Seller shall provide documentation that authenticates traceability of all materials used in Goods to the applicable OM, including all supply chain intermediaries.
- d. If a Good delivered is discovered to be a Counterfeit Item or suspected to be a Counterfeit Item:
 - i. Seller shall notify 3M immediately.
 - ii. 3M shall have the right to impound the Good for further investigation of its authenticity. 3M's investigation may include the participation of third parties or governmental investigative agencies as required by law, by 3M's customer, or by 3M, in its sole discretion. Seller shall cooperate in good faith with any investigation conducted by 3M, including, but not limited to, Seller's cooperation with respect to the maintenance and disclosure of all design, development, manufacturing, and traceability records with respect to the Good delivered to 3M by Seller. Upon 3M's request, Seller shall provide to 3M certificates of conformance with respect to the Good under investigation. 3M shall not be required to return the Good to Seller. 3M shall not be liable for payment to Seller of the price of any suspect Counterfeit Items under investigation. At 3M's direction, Seller shall hold in place or impound any pending shipments until 3M completes its investigation.
 - iii. 3M shall have a right to conduct destructive examinations to verify the authenticity of any Good delivered under an Order. 3M shall not be liable to Seller for the price of any Good destroyed by examination if the Good is later found to be a Counterfeit Item.
 - iv. 3M shall have the right to permanently impound Goods determined, in 3M's sole discretion, to be Counterfeit Items. 3M shall not be liable for payment to Seller for the price of any Goods

permanently impounded. If 3M concludes, in its sole discretion, that a Good is a suspect Counterfeit Item or a confirmed Counterfeit Item, 3M may file a Government-Industry Data Exchange Program (GIDEP) report announcing its findings. 3M also may provide notification to a government customer or government contractor or subcontractor. Prior to filing a GIDEP report, or making such customer report, 3M shall make a reasonable effort under the circumstances to present its findings to Seller for Seller's response. In addition, 3M shall have the right to disclose its findings publicly or to third parties. 3M's findings shall be the sole property of 3M. Seller waives all claims, remedies, and causes of action, whether legal or equitable, arising from or related to any such report.

- e. Seller shall include the substance of sections (a), (b), (c), and (d) above and this section (e) in lower tier subcontracts and supplier agreements for procurement of Goods or items, materials or components used in Goods for delivery to 3M. In any case where Seller is aware or becomes informed that a supplier to it refuses to accept flow down of these terms and conditions, Seller shall promptly notify 3M and seek its guidance.