

**KOSTAL OF AMERICA, INC.**

**GENERAL TERMS AND CONDITIONS OF SALE**

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**KOSTAL OF AMERICA, INC.**  
("Seller")

**GENERAL TERMS AND CONDITIONS OF SALE**

**1. General Application, Formation, Choice of Law and Jurisdiction.** These General Terms and Conditions of Sale ("General Terms") apply to all proposals and quotations submitted by Seller, to all purchase orders received by Seller, and to all sales of goods and services sold by Seller, except as otherwise specifically provided in a document issued by Seller. Any services to be provided by Seller, whether or not they are otherwise ancillary to and part of a sale of goods (as separate units or included as part of an installation), shall be considered ancillary to a sale of goods and the UCC shall apply to all goods and services to be provided by Seller ("Goods"). A written quotation issued by Seller is an offer to sell. Buyer shall be deemed to have accepted the provisions of these General Terms and an agreement shall be formed by any of the following: (a) signing and returning to Seller a copy of any quotation; (b) sending to Seller a written acknowledgment of the quotation; (c) placing a purchase order or giving instructions to Seller respecting manufacture, assortment, or delivery of the Goods (including instructions to bill and hold) following receipt of any quotation; (d) failing to cancel a pending purchase order within ten days after receiving these General Terms; (e) accepting delivery of all or any part of the Goods; (f) paying for all or any part of the Goods; or (g) indicating in some other manner Buyer's acceptance of these General Terms. All sales by Seller consist only of these General Terms and those in other documents which are referred to herein or are attached hereto or in a document provided or signed or issued by Seller and referencing the transaction (all of which constitute the "Agreement"). Seller objects to all terms proposed by Buyer. THE AGREEMENT SHALL BE GOVERNED, CONSTRUED AND ENFORCED UNDER THE LAWS OF THE STATE OF MICHIGAN INCLUDING THE UNIFORM COMMERCIAL CODE IN FORCE ON THE INITIAL DATE OF THE AGREEMENT ("UCC"), EXCEPT AS PROVIDED HEREIN. The U.N. Convention on the International Sales of Goods shall not apply. THE COURTS OF MICHIGAN SHALL HAVE EXCLUSIVE JURISDICTION OVER THE PARTIES AND THE CLAIMS ARISING UNDER OR RELATED TO THE AGREEMENT, UNLESS WAIVED IN A WRITING SIGNED BY SELLER AND SUBJECT TO ANY RIGHT OF ARBITRATION WHICH MAY BE PROVIDED BY THE AGREEMENT. The parties stipulate to the convenience of Michigan courts in general, and Oakland Circuit Court in particular, as to all litigation. If Buyer does not maintain a registered office or agent in the United States, Buyer hereby irrevocably appoints the Secretary of State of the state whose law applies and/or CT Corporation as Buyer's agent to receive process in any proceeding arising under or related to this Agreement. Any declaration of unenforceability of a provision shall be as narrow as possible and shall not affect the enforceability of the other provisions. A tribunal with jurisdiction shall reform a provision of the Agreement, at the request of Seller, to the extent minimally required for enforcement.

**2. Integration and Modification.**

A. Complete Integration. The Agreement is a final, complete and exclusive statement of the Agreement of the parties related to the Goods. An order or an amendment submitted by Buyer orally or in a purchase order or other writing (whether or not it contains terms or conditions modifying, adding to, repugnant to or inconsistent with these General Terms ), may be accepted, approved or filled by Seller, but any resulting contract and the liabilities or obligations of Seller shall be determined solely by the Agreement, and (unless Seller otherwise advises Buyer in writing) notice is hereby given that Seller objects to any such terms or conditions in Buyer's purchase order or other document or communication. Seller shall not be deemed to have in any way enlarged or modified its liabilities or obligations under the Agreement by filling such order or by failing to further object to Buyer's terms or conditions.

B. Modification. SELLER IS WILLING TO NEGOTIATE WRITTEN CHANGES TO THESE GENERAL TERMS SIGNED BY SELLER, BUT SELLER RESERVES THE RIGHT TO MAKE AN ADJUSTMENT IN THE PRICE OF THE GOODS TO COVER SELLER'S ESTIMATED COST OF SUCH CHANGES. No modifications, limitations, waivers or discharge of the Agreement or any of its terms shall bind Seller unless in a writing signed by Seller's authorized employee at its home office. Notwithstanding

anything to the contrary in this Agreement, no modifications, limitation, waiver or discharge of any provision of the Agreement shall affect Buyer's liabilities to Seller accrued prior thereto. Seller may correct unilaterally mathematical and typographical errors in the Agreement. Typed provisions of the Agreement take precedence over printed provisions. A course of performance, course of dealing, or custom in the trade shall not modify or waive any right of Seller.

C. Parties. The Agreement is only for the benefit of the parties, except all disclaimers and limitations applicable to Seller shall be also for the benefit of Seller's affiliates, agents, employees, contractors, and suppliers. If any other provisions of the Agreement are determined to apply to third parties, all other provisions including limitations, waivers, and disclaimers shall also apply.

D. Quotations. Goods quoted to Buyer are subject to prior sale or other commitment.

E. Resale. Buyer may not resell the Goods under any brand name other than the Seller's.

F. Acknowledgments. Buyer and Seller acknowledge that: (i) they are merchants in respect to the Goods produced by Seller; (ii) they have had an opportunity to review the Agreement; and (iii) the provisions of the Agreement are reasonable when considered as a whole.

G. Directed Source Supplies. Buyer may direct Seller to obtain components or services from third parties ("Directed Source Supplies") for use in the provision of the Goods. Seller shall not be responsible to Buyer for any warranty or other claims arising from Directed Source Supplies or from the failure of the third party to timely provide Directed Source Supplies.

**3. Authority of Seller's Agents.** No agent, employee or representative of Seller has authority to bind Seller to any affirmation, waiver, representation or warranty concerning the Goods, not contained in the Agreement. An affirmation, waiver, representation or warranty shall not be deemed to be part of the basis of the Agreement and shall not be enforceable, unless it is expressly included within the Agreement, it is not a part of the basis of the Agreement.

#### **4. Prices, Payment and Risk of Loss.**

A. Prices. Prices contained in Seller's published price lists, if any, are subject to change without notice. Prices contained in individual written quotations or proposals are firm only for a period stated therein and otherwise for 30 days from the date of the quotation. After the firm price period, the prices are subject to change, and Buyer should inquire of Seller as to their validity and request a written confirmation or revision. Prices do not include taxes and Buyer shall pay all applicable sales or other taxes levied with respect to Goods (and replacements) and the Agreement, unless exempt therefrom. All prices are in United States dollars and must be paid in U.S. dollars at the location specified in Seller's invoice. Buyer shall pay all government fees levied on the installation and inspection of the Goods. Buyer shall pay upon receipt of all invoices rendered by Seller for any such items Seller may pay.

B. Risk of Loss and Title. The Agreement is for a shipment contract and the Goods shall be delivered F.O.B. Seller's dock. Whether or not Seller prepays shipping charges, risk of loss passes to Buyer upon tender of the Goods to a carrier. Seller's breach of the Agreement shall not affect the passing of the risk of loss to Buyer notwithstanding any provision of law to the contrary. Notwithstanding the transfer of the risk of loss, title to the Goods shall remain with Seller until Buyer pays for the Goods in full.

C. Price Adjustments. If any delay in delivery beyond the date of delivery scheduled at the time of entry of the order is requested or otherwise caused by Buyer, Seller shall adjust the price under the provisions of this subsection. Prices reflect expected inflation and are firm for Goods to be delivered within six months from timely receipt of a timely order. For those Goods to be delivered after six months from an order, adjustments in prices may be made by Seller based on changes in the Bureau of Labor's National Wholesale Price Index for Commodity Group Industrial Commodities. The Index changes utilized

for calculation will be those between the sixth month from order date and the month preceding actual delivery, reduced by any projected inflation specifically itemized in the quotation upon which the order is based.

D. Changes at Buyer's Request. Seller may unilaterally increase prices to cover increased costs (plus reasonable overhead and profit) of design, materials, manufacturing and other performance by Seller, required by changes requested by Buyer to the Goods, schedule or any other performance by Seller after the date of any quotation. Seller is not obligated to perform any such changes, but shall be compensated for them if Seller complies with such requested changes.

E. Shipping and Packaging. Except as otherwise provided in the Agreement, Seller shall not be responsible for any freight, transportation, insurance, shipping, storage, handling, demurrage or similar charges arising out of the performance of the Agreement. If such charges are specifically included in the price, any increase in rates for such services becoming effective after the date the price is quoted to Buyer shall be added to the price. All Goods shall be packed for shipment by Seller in accordance with its standard practices. It is Buyer's responsibility whether or not Seller arranges shipping to determine whether additional packaging procedures and materials are appropriate for the shipment of Goods. Buyer shall pay Seller for the additional procedures and materials. Buyer shall pay Seller for additional handling charges for small, expedited or other shipments outside Seller's normal and ordinary course of business.

F. Payment Demand and Acceleration. If, at any time, reasonable grounds for insecurity arise with respect to Buyer's performance of its payment or other obligations hereunder, Seller may demand immediate payment in full or a documentary letter of credit approved by a U.S. bank acceptable to Seller or other financial security for such payment or other obligations. In addition, all amounts owed by Buyer to Seller shall be accelerated and payable immediately if Buyer fails to make any payment on time and as otherwise required or if Buyer sells or transfers the line of business for which the Goods are purchased or is a participant in a merger or other reorganization.

G. Export/Import Fees. All export and import permits and licenses and the payment of all export and import duties and customs fees shall be the responsibility of Seller, if Seller is obligated by the Agreement to deliver the Goods within the United States. All export and import duties, fees, permits, licenses, etc. for Goods to be delivered outside of the United States shall be the responsibility of Buyer.

H. Invoices. Invoices may be rendered separately for each shipment (including any early shipment) made by Seller. Buyer shall pay all invoices net 30 days after the date of shipment. Seller may change any payment term in the Agreement to Buyer on seven days' written notice.

I. Installments. Seller may elect to deliver the Goods in installments. Each installment of Goods to be delivered is to be considered as a separate sale, and Buyer shall pay timely the price for each installment which is delivered. Any Goods indicated as back-ordered now or in the future shall be considered an installment delivery. A failure to pay for an installment within the time for payment is a material anticipatory breach of other installments by Buyer.

J. Carrying Charge. All amounts not paid to Seller when due shall incur a carrying charge of 1.5% per month to the extent allowed by law and otherwise at the highest written contract rate allowed by law.

K. Buyer's Cooperation. All amounts due on installation or other event which requires the action or cooperation of Buyer which Buyer fails to supply timely shall become due upon such failure.

L. Letters of Credit. If the Agreement permits or requires the use of a letter of credit, the letter of credit must be a documentary letter of credit assignable, irrevocable, confirmed by a United States bank with a payment office in Michigan acceptable to Seller, payable in installments, and require payment to Seller on submission of Seller's invoice and a bill of lading. Buyer shall pay all costs related to the letter of credit.

M. Right of Offset. Seller may offset or recoup any amounts owed by Seller or an affiliate of Seller to Buyer or an affiliate of Buyer against any amounts owed by Buyer or an affiliate of Buyer to Seller or an affiliate of Seller. Buyer waives any right of offset or recoupment and shall pay all amounts owed to Seller when due regardless of any claim of Buyer regarding warranties or other issues arising under contract, tort, statute or otherwise. Payment of such amounts under written protest shall not constitute a waiver by Buyer of its claims.

N. Allocation of Payments. Seller may allocate payments from Buyer among outstanding invoices in Seller's discretion.

O. Samples. Samples of Goods and sample test reports will be provided by Seller only upon Seller's consent and at prices established by Seller or written agreement with Buyer.

P. Retention. If retention of any portion of the price is permitted under the Agreement, it shall be paid upon the earlier of written acceptance of the Goods and 30 days from substantial completion of Seller's obligations.

Q. Exchange Rate. Goods ordered under the Agreement which are procured by Seller from sources outside the United States are priced on the rate of exchange as quoted in the Wall Street Journal in force at the date of Seller's quotation (or Agreement if there is no quotation) or the time of the quotation. If the rate of exchange between the United States dollar and the currency of the country from which the Goods or portions thereof are procured by Seller varies between such date and shipment of the Goods, the price of the Goods shall be increased as of the beginning of the following calendar year accordingly to compensate Seller for such variation in the rate of exchange.

## 5. Delivery.

A. Shipping Dates. Shipping dates are estimates based on Seller's present engineering and manufacturing capacity and scheduling, and may be revised by Seller upon receipt or scheduling of Buyer's order. All shipping dates are approximate and shall be computed from the date of entry of the order on Seller's books. All shipping dates are further subject to Seller's prompt receipt from Buyer of a written purchase order or acceptance, letter of credit, down payment and other conditions as specified in the Agreement, and of all drawings, information and approvals convenient or necessary to provide the Goods and/or to grant any credit terms in the Agreement.

B. Method and Cost of Shipment. Seller shall deliver the Goods by tendering the Goods on its docks for placement in the possession of a carrier and, without liability, shall make such contract for their transportation as Seller decides having regard for the nature of the Goods and other circumstances. Seller will generally follow Buyer's shipping instructions, but may make reasonable changes thereto without liability and at Buyer's cost. On Buyer's request, Seller shall obtain and send to Buyer documents necessary to enable Buyer to obtain insurance. Seller is not responsible to prepay transportation or insurance costs. Buyer shall pay all handling and other charges incidental to transportation. Buyer is responsible for making any claim against the carrier and other handlers of the Goods after delivery to Buyer as provided above.

## **6. Delay of Shipment or Performance Excused for Various Reasons.**

A. Delayed Shipment. If shipment of any Goods or other performance by Seller is delayed at the request of or due to the fault of Buyer, Seller may at its option hold the Goods at the place of manufacture or elsewhere at the risk and expense of Buyer from the time it is ready for shipment. In the event of any such delay in shipment, full and final payment for Goods shall be due and payable 30 days after Buyer is notified that the Goods are ready for shipment. If Seller is unwilling to accommodate Buyer by holding such Goods, Buyer shall accept shipment immediately.

B. Delayed or Failed Delivery. All inspection, delivery and other dates for Seller's performance are estimates only. In addition, Seller shall not be in default because of its delay or failure to deliver or perform under the Agreement resulting, in whole or in part, from: (i) any foreign or domestic embargoes, seizures, acts of God, insurrections, war, or the adoption or enactment of any law, ordinance, regulation, ruling or order; (ii) shortages of raw materials or labor; (iii) the lack of usual means of transportation, fires, floods, explosions, strikes or other work actions, or any other accidents, contingencies, or events, at Seller's or its supplier's plant or elsewhere (whether or not beyond Seller's control) which directly or indirectly interfere with, or render substantially more burdensome, Seller's production, delivery, or performance; (iv) delays by Buyer in inspecting and acceptance, in furnishing requested specifications, materials, tooling or information, in making payments, or otherwise; (v) failure of Seller's suppliers to perform. If one or more deliveries hereunder is delayed by reason of any one or more of such occurrences for a period of 30 days, Seller may, at its option, terminate the Agreement as to the undelivered goods or waive such delay and establish a new delivery schedule.

C. Supply Allocation. Whenever Seller's supply of the Goods, materials or means of production is insufficient to meet the estimated delivery schedule or in the event of any occurrence mentioned above in Subsections A and B, Seller, in its sole discretion, may allocate its supply to its own use or other customers.

D. Effect. This Section shall be effective even as to events described in Subsections A, B and C which exist on the date of a quotation or of contract formation.

E. Storage. If Buyer requests storage of Goods prior to final delivery, Seller will attempt to provide or arrange such storage, but a reasonable charge for storage as computed by Seller plus all expenditures incurred for space, insurance, and handling will be charged to Buyer. Invoices for Products stored at Buyer's request will be provided at the beginning of the storage period and periodically thereafter, and payment will be due net 30 days from the date of invoice.

## **7. Inspection, Testing and Rejection.**

A. Testing. If the Agreement expressly provides for Buyer's inspection and/or acceptance of the Goods, Seller's standard test procedures conducted by Seller's representative shall be the criteria for inspection and/or acceptance, unless other specific procedures have been specified in the Agreement. On request, Seller will quote to Buyer additional charges required to conduct any additional procedures requested by Buyer which may be acceptable to Seller.

B. Rejection. All manuals, drawings, specifications, technical documentation, samples, prototypes and Goods shall be deemed approved and/or accepted by Buyer if Buyer does not provide a written objection and/or rejection within seven days of receipt or other reasonable time established by Seller. Buyer shall have seven days after receipt of the item to inspect and either accept or provide notice of objection and/or rejection. If it is rejected, notice must be given to Seller so that it will arrive no later than ten days after receipt of the item by Buyer. Failure to so act shall constitute an irrevocable acceptance by Buyer of the item. Any objection and/or rejection by Buyer must be in writing and state with specificity all defects and non-conformities upon which Buyer will rely to support its rejection. ALL DEFECTS AND NON-CONFORMITIES WHICH ARE NOT SO SPECIFIED ARE WAIVED. Buyer may reject the Goods only for material non-conformities and all non-material non-conformities shall be resolved under the express warranty. If Buyer rejects any tender of the Goods and if requested by Seller, Buyer shall return them to



Seller, express, collect, within three days after such request. A failure to so return shall constitute an irrevocable acceptance. No attempted revocation of acceptance shall be effective, and Buyer shall be limited to any available remedies specifically provided in the Agreement. There shall be no limitation on the period of time in which Seller may cure any non-conformity or breach, provided it continues to make reasonable efforts to cure.

C. Inspectors. If the Agreement requires, or Seller requests in writing, inspection or testing prior to shipment, and upon notification by Seller that the Goods are ready for inspection or testing, Buyer shall provide at the place of manufacture, at its own expense, one or more qualified and authorized employees to inspect and/or test the Goods, check the Goods for general compliance with the Agreement, and authorize shipment. If Buyer fails to do so within seven days, then Seller may, in its own discretion, determine that Buyer has waived the right of inspection, testing and/or acceptance prior to shipment and ship the Goods. Correction of defects or non-conformities, which would likely have been discovered by Buyer's inspection and/or testing and are otherwise covered by Seller's warranty, will be at Buyer's expense.

D. Testing Facilities. Buyer shall provide, at its cost and risk of loss, all materials, fixtures, tooling and other items necessary for any inspection and/or testing required by the Agreement or requested by Seller. If Buyer fails to supply such items within the time required, Seller may supply them at Buyer's expense or test by such means as available at the place of manufacturer. Equipment, parts and materials furnished by Buyer for testing and/or inspection will be returned to Buyer at Buyer's cost, unless Buyer authorizes their disposal. If the Goods include the necessary fixtures and tooling, the inspection and/or testing at the place of manufacture may be performed on production or other equipment similar to, but other than, that identified to the Agreement.

E. Delivery Shortages. Any claim by Buyer for shortages in any delivery must be in writing with satisfactory written evidence delivered to Seller within seven days of receipt.

F. Expenses. Any expense incurred by Buyer in the inspection or testing of the Goods shall be paid by Buyer, whether or not the Goods have been rejected as defective or non-conforming or the Goods have been accepted and a warranty claim has been made for correction of a defect or non-conformity.

## **8. Installation**

A. General. All Goods shall be assembled and installed by and at the expense of Buyer. Seller may furnish, upon request and without additional cost or liability to Seller, written instructions for installing, maintaining, and operating the Goods. At Buyer's request and cost, Seller may furnish personnel and equipment to assist in the installation and/or startup of the Goods. Buyer shall pay Seller its prevailing per diem rates for such personnel and equipment plus reasonable transportation, food, lodging and other travel expenses. Buyer shall have competent supervisory, maintenance and operating personnel present when Seller's personnel are performing such services.

B. Assumption of Risk. Buyer assumes all risks of using the Goods alone and in connection with other equipment. Seller has no responsibility to determine the adequacy of the foundation, utilities, skills of Buyer's staff, or any other matter.

C. Assessment. Seller may assist Buyer or others in a survey or other assessment of the site or project ("Assessment") for installation of the Goods. Seller shall not be responsible for the completion or accuracy of an Assessment regardless of Seller's participation. Seller may rely on the Assessment without further investigation. Buyer shall pay Seller its prevailing per diem rates for personnel and equipment used in the Assessment plus reasonable transportation, food, lodging and other travel expenses.

D. Assembly and Installation. At Buyer's request and cost, Seller may furnish personnel and equipment to assist in the installation of the Goods. Buyer shall pay Seller its prevailing per diem rates for such personnel and equipment plus reasonable transportation, food, lodging and other travel

expenses. Buyer shall have competent supervisory, maintenance and operating personnel present when Seller's personnel are performing such services. Buyer shall fully prepare the site and related equipment and utilities for installation of the Goods. Buyer shall provide electrical connections, installation heat and electricity, safe working space, space for Seller's trailer and work area, 24-hour access to the site, all permits, and provide a compatible labor work site for Seller's activities. Buyer shall provide builder's risk insurance during installation for all Goods provided by Seller. Buyer shall provide the ambient conditions necessary for proper operations of the Goods.

E. Risks. Buyer assumes all risk of using the Goods in its location and in connection with other equipment or improvements. Seller has no responsibility to determine the adequacy of the building structure, infrastructure, utilities, ceiling systems, skills of Buyer's staff, or other matters, relating to the installation of the Goods.

F. Foundation. If a standard foundation drawing is supplied by Seller, it includes only plan and elevation views. Due to many variations in soil type, adjacent equipment, workmanship, foundation depth, etc., any foundation drawing is a suggestion only. The foundation (whether or not constructed with Seller's drawing) is not warranted by Seller, and Seller shall not be responsible for any defects in the foundation or consequences or related structure items which may result from an inadequate foundation.

9. Software License. Seller grants Buyer, for its internal use to the end user of the final product in which the Goods are installed only, a nonexclusive perpetual license ("License") of all user manuals, software programs, firmware and storage media ("Software") which is owned by Seller and provided by Seller in conjunction with the Goods with which the Software is provided, for the sole purpose of the operation of the Goods. The License terminates automatically if Buyer is in default of its obligations. Buyer shall not make any effort to obtain or reproduce the Software's source code. Title and all ownership rights to the Software remain with Seller, its licensors, or its suppliers. The Software is the proprietary information and trade secret of the Seller or its licensors, whether or not any portion thereof is or may be validly copyrighted or patented. The License may not be assigned nor transferred by Buyer except as a part of a transfer of the Goods without the written consent of Seller which may be withheld. The Software is provided for Buyer's internal use only, and Buyer shall maintain the confidential nature of the Software and related materials and protect them against disclosure or improper use. Buyer shall pay all taxes based on the Software or use of the Software, however designated or levied, except those based on Seller's net income. These provisions take precedence over any government procurement policy, regulation or contract clause relating to rights in computer software. All disclaimers and limitations applicable to the Goods apply to the License and Software.

## 10. General Express Warranties.

A. General. Seller warrants to Buyer only, subject to the disclaimers and limitations of the Agreement that Goods to the extent manufactured by Seller] shall be free from defects [in materials and workmanship, excluding Customer supplied design requirements at the time of delivery which are discovered and reported to Seller during the Discovery Period. The "Discovery Period" for Goods sold for installation during production of a new vehicle is the initial warranty period provided to the first end user. If the Goods are sold for other than installation during production of a new vehicle, the Discovery Period shall be 90 days of purchase by the retailer, purchaser or intended user. Because the Goods may be subject to a wide variety of use, installation, maintenance and cleaning, the warranty is only against such defects and not against any other failures such as, but not limited to, those due to normal wear and tear, normal maintenance and unknown causes. Perishable items are excluded from this warranty against defects.

B. Nonmaterial Changes. Seller warrants to Buyer only that the Goods will be as described in the Agreement in all material respects, subject to the limitations stated herein and Seller's published and internal standards; however, Seller retains the right to change the dimensions, composition, design, performance, color and appearance of the Goods without liability if, in its judgment, the change is nonmaterial. Seller may, in its discretion, also rely on any generally accepted industry standards.

C. Warranty Requirements. Seller's warranties shall apply only if the Goods: (i) have been installed, maintained and used in conformity with instructions furnished by Seller from time to time, if any, and otherwise in conformity with the highest industry practices; (ii) have been subjected to normal use for the purpose for which the Goods were designed; (iii) have not been subjected to misuse, negligence or accident; (iv) have not been altered or repaired by persons other than Seller in any respect which, in the judgment of Seller, adversely affects the condition or operation of the Goods; and (v) have been fully paid for.

D. Records. Buyer shall create, maintain and make available to Seller, permanent records of the installation, maintenance, use and disposition of the Goods.

**11. Patent Warranties**. Seller disclaims any implied warranty of non-infringement. Seller shall defend and indemnify Buyer from any claim which asserts that the Goods or their inherent methods of operation, intrinsically, infringe any United States patent, except as to a claim based on Buyer's modifications and use of the Goods as a step in an overall process or as an element in an overall combination. Seller's obligation shall not apply to a claim based on the Goods or portions thereof specified, designed, or manufactured by Buyer. Buyer shall notify Seller promptly of any assertions of patent infringement and provide Seller with assistance and information requested by Seller for its defense, or shall have no further obligation to defend or indemnify. Seller shall defend with its counsel or other counsel of its choice and shall have the sole right, without consultation with Buyer, to take all action Seller deems appropriate to prosecute or settle such claims. Seller's exclusive obligation to indemnify as to the Goods declared to infringe is limited to the acquisition of a license, the replacement of the Goods with non-infringing goods, the modification of the Goods so that they are non-infringing, or the return of the purchase price and shipping costs in exchange for the Goods, as Seller may elect. This Section states Seller's entire and exclusive obligation regarding patent infringement and remedies therefor, and Buyer waives all other rights.

**12. Disclaimer and Limitation of Express Warranties**. There are no express warranties other than those contained in the Agreement and they are not assignable. Any representations as to performance and other matters, except as contained in the Agreement, were for illustrative purposes only and do not constitute a warranty. Whether or not the Goods are to be used exclusively by Buyer, there shall be no third party beneficiaries to the express warranties contained herein. Seller does not warrant any portion of the Goods not conceived, designed, developed or manufactured by Seller (whether or not specified by Buyer), but Seller shall assign to Buyer upon request all assignable warranties of Seller's suppliers related to such Goods. Seller is not responsible for any errors or omissions or for any loss or damage resulting from reliance on catalogues, brochures, price lists or other information provided to Buyer from Seller, including, without limitation, any descriptions, shipping specifications, illustrations, representations as to quality or capabilities, or any other information. Such information provided by Seller is intended for general information only. Seller does not warrant that it or the Goods are in compliance with any entity, organization or industry standards, guidelines or procedures unless specifically contained in the Agreement.

**13. Remedies and Limitation of Seller's Liability**

A. General. Defective or non-conforming Goods or parts thereof discovered during the express warranty period shall be repaired, or replaced by Seller without any additional charge and shipped to Buyer, FOB Seller's plant, for reinstallation by Buyer at its cost, subject to the terms hereof. The warranty obligation of Seller is limited to the repair or replacement at Seller's plant of any part of the Goods which Buyer shall, within the warranty period, return to Seller, with transportation charges prepaid by Buyer, and which Seller shall determine upon examination to be defective or not in conformity with the express warranties contained herein. Seller shall also reimburse Buyer for any costs incurred in the repair or replacement of defective Goods which had been installed during production of a new vehicle in an amount not to exceed three times the price paid by Buyer for the Goods that fail due to a defect covered by Seller's express warranty. Goods cannot be deemed defective or non-conforming if Seller cannot duplicate the alleged failure. If the alleged failure can be duplicated by Seller, Seller will discuss the potential causes with Buyer, and then determine whether the failure is due to a non-conformity or defect attributable to Seller. In lieu of repair or replacement, if Seller elects, Seller may, upon return of such Goods and making a determination of nonconformity or defect, keep the Goods and refund the purchase price. Seller may

provide such repairs itself or through its third party contractors Buyer's remedies shall be limited (even in the event of Seller's default of its warranty obligations or a failure of an item to meet its intended purpose) exclusively to those provided in this Section. UNDER NO CIRCUMSTANCES SHALL SELLER BE LIABLE FOR EXEMPLARY, PUNITIVE, SPECIAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES, INCLUDING BUT NOT LIMITED TO: LOSS PROFITS OR REVENUES; INCREASED COSTS; DAMAGE TO EQUIPMENT, TOOLING, PREMISES, OR WORK-IN-PROCESS; COST OF CAPITAL; COST OF PURCHASED POWER; SUBSTITUTE OR ADDITIONAL EQUIPMENT, FACILITIES OR SERVICES, PRODUCTION INTERRUPTION OR START-UP; OR THE CLAIMS OF THIRD PARTIES FOR SUCH DAMAGES. Each provision which provides for a limitation of liability, disclaimer of warranties, or exclusion or limitation of damages or remedy is severable and independent of each other and to be enforced as such. Buyer waives any causes of action or theories of liability including, but not limited to, those arising under contract, tort, strict liability, product liability statutes, or otherwise, except as specifically provided by the UCC as modified and limited herein. The replacement or repair of Goods by Seller does not give rise to any new warranty, and the warranty period provided for herein shall not be extended by the length of any period from the date the defective or non-conforming Goods are received by Seller until the date the repaired or replacement Goods are delivered to Buyer.

B. Buyer's Obligations. Buyer must contact Seller to request warranty coverage, a return authorization number, and other instructions relating to the return of Goods. If requested by Seller, Buyer shall issue a new purchase order or amendment to Seller for replacement parts, subject to Seller issuing a credit memo if Buyer's claim for warranty coverage is approved. Buyer must comply with Seller's return instructions (including return of the Goods) within 30 days or the claim shall be deemed conclusively to have been abandoned. Buyer is responsible for properly tagging, identifying and packing returned Goods. Goods returned without compliance with the above procedures shall be returned to the sender at sender's cost.

C. Defense and Indemnification. Buyer shall defend and indemnify Seller from all liability for claims, damages, losses and expenses incurred: (i) as a result of the use or disclosure of Seller's confidential or proprietary information (except in the performance of the Agreement) by Buyer or its contractors; and (ii) as a result of the advice furnished by Seller to, and relied on by, Buyer's contractors to the extent the liability exceeds any liability as limited by the Agreement had the advice been furnished to, and relied on by, Buyer.

D. Prior Written Consent. Seller shall not be liable for any costs related to a recall, service campaign or similar action without its prior written consent and Seller's maximum obligation in any such action (including the provision of replacement Goods and all other costs) shall not exceed 2% of Seller's average annual sales to Buyer of the specific Good.

E. Scope of Liability. Under no circumstance shall Seller's liability exceed Buyer's uninsured loss. Buyer waives any right of subrogation. Buyer waives any right of indemnity or subrogation as to third party claims, in excess of any applicable insurance carried by Seller.

F. Substantial Compliance. Seller shall not be liable for any damages for breach of any provision with which it has substantially complied.

**14. Disclaimer of Implied Warranties.** SELLER DISCLAIMS ALL IMPLIED WARRANTIES AND SIMILAR OBLIGATIONS (OTHER THAN GOOD TITLE) INCLUDING BUT NOT LIMITED TO THOSE OF NON-INFRINGEMENT FOR BUYER PROVIDED DESIGN FITNESS FOR A PARTICULAR PURPOSE, AND MERCHANTABILITY, WHETHER OTHERWISE ARISING BY LAW, CUSTOM, USAGE, TRADE PRACTICE, COURSE OF DEALING, OR COURSE OF PERFORMANCE. There are no warranties which extend beyond those express warranties contained in the Agreement. Buyer affirms that it has not relied upon Seller's skill nor judgment to select or furnish the Goods for any particular purpose beyond the specific express warranties in the Agreement. Any design provided by Seller is based on information provided by Buyer. Seller may rely entirely on information provided by Buyer and is under no obligation to verify such information or take any action to obtain explanatory or supplemental information from Buyer or third parties. Buyer's approval of drawings and/or prototypes constitutes Buyer's acceptance and waiver of any

responsibility for a failure to consider information provided by Buyer. Any modifications of drawings, prototypes and other work of Seller after approval by Buyer shall be at Buyer's expense at Seller's normal rates for services and materials. Seller does not warrant the Goods will comply with the requirements of any safety or environmental code or regulation of any federal, state, municipality or other jurisdiction beyond the specific express warranties in the Agreement.

**15. Design, Parts, Service and Training Provided by Seller.** All design, application engineering, parts, labor, service, software and training, if any, provided by Seller or its agents and contractors (including those provided under purchase orders subsequent to the Agreement) related to the Goods (whether or not covered by warranty) are subject to all limitations and disclaimers of warranties and remedies provided in the Agreement. Buyer shall pay Seller for all non-warranty work in advance or upon such other terms as may be agreed. Seller may have access to the Goods during or after installation of the Goods. Seller is not under any duty to inspect the Goods for any defects or any improper use or modification of the Goods nor to correct or advise Buyer of any such condition, use or modification which is observed. Any notification which may be given is voluntary and subject to all limitations and disclaimers in the Agreement.

**16. Responsibility for Safety.**

A. Buyer's Obligations. Goods designed and manufactured by Seller are capable of being used in a safe manner, but Seller cannot guarantee their safety under all circumstances. BUYER MUST INSTALL AND USE THE GOODS IN A SAFE AND LAWFUL MANNER IN COMPLIANCE WITH APPLICABLE HEALTH, SAFETY, AND ENVIRONMENTAL REGULATIONS AND LAWS AND GENERAL INDUSTRY STANDARDS OF REASONABLE CARE. It is Buyer's or other user's responsibility to provide all proper dies, devices, tools, training, and means that may be necessary to effectively protect all personnel from serious bodily injury which otherwise may result from the method of particular installation, use, operation, setup, or service of the Goods. Buyer should comply with manuals furnished by Seller, ANSI Safety Standards, OSHA and similar state regulations, and other sources to insure the safe use of the Goods.

B. OSHA Compliance. Seller believes that the Goods will be in substantial compliance with the general requirements of federal OSHA regulations directly associated with operator safety and noise level control. The technical detail of the complete OSHA regulations and the existence of many other safety, environmental, and similar standards render it impracticable to provide any other compliance unless Buyer requests compliance with specific sections or paragraphs of OSHA or other standards and such standards are included in Seller's quotation. Because of changes which occur in OSHA, state codes, local codes and user safety and other programs, Seller must be advised by Buyer in writing if it desires specific modifications in the Goods required for compliance. A quotation will be submitted for such requested modifications.

**17. Indemnification.**

A. Third Parties. Buyer shall indemnify Seller from any and all third party claims, damages and expenses (including reasonable attorney fees) under theories of tort, product liability, negligence (ordinary or gross), warranty, contract, statute or otherwise arising out of the use, storage, sale, processing or other disposition of the Goods, supplies or materials used in connection with the Goods, or parts manufactured with the Goods, if the action or inaction of Buyer or its employees, customers or agents, or Buyer's design specifications, were a material or proximate cause of injuries or damages giving rise to claims against Seller.

B. Buyer's Indemnity for Unsafe Use. Buyer shall use and shall require its employees to use all safety devices and guards furnished with or intended to be used with the Goods, and to follow proper safe operating procedures in accordance with general industry standards and as set forth in manuals and instruction information furnished by Seller. If Buyer fails to comply with the obligations set forth in this subsection, Buyer shall indemnify and save Seller from any liability or obligation incurred by Seller to persons injured directly or indirectly in connection with the operation of the Goods and all warranties of Seller shall become automatically void. Buyer shall notify Seller promptly, and in any event within 30 days, of any

accident or malfunction involving Goods which results in personal injury or damage to property and shall cooperate fully with Seller in investigating to determine the cause of such accident or malfunction, including allowing Seller access to the Goods and Buyer's reports regarding the Goods for Seller's inspection. If Buyer fails to provide such notice and cooperation to Seller, Buyer shall indemnify Seller from any claims arising from such accident or malfunction whether or not the Goods are non-conforming or defective.

**18. Security Interest.** In addition to any security interest granted by the UCC or other law, Buyer hereby grants a security interest to Seller in all Goods and documents related thereto and proceeds and products therefrom to secure all obligations of Buyer to Seller, whether or not arising under the Agreement. Seller may file a financing statement and at Seller's request, Buyer shall sign financing statements and other documents, evidencing and confirming the security interest. Buyer grants Seller an irrevocable power of attorney to sign Buyer's name to a financing statement if necessary or convenient to perfect Seller's security interest. Buyer shall not change the location of any Goods from the original delivery point without prior written notice to Seller. Buyer shall provide a lien waiver from all third parties to whom the Goods may be delivered. Buyer shall provide a landlord's waiver of any lien rights at the premises to which the Goods are to be installed. In case of a default by Buyer, Seller may peaceably enter the premises of Buyer and others and take other actions to repossess or render inoperable all Goods in which it has a security interest. In case of a default by Buyer, Buyer hereby irrevocably appoints Seller as its agent to obtain possession of the Goods and documents related thereto. Seller may install and activate procedures or devices to make the Goods or Software non-operative upon Buyer's default. The Goods shall be and remain strictly personal property whether or not affixed or attached on permanent foundation or affixed or attached to building or structure. Title shall not transfer to Buyer until the Goods shall be paid in full. Buyer shall maintain the Goods in a segregated area and not co-mingle any Goods which are not fully paid. Buyer shall not sell, exchange, transfer, convey, mortgage, pledge, hypothecate or grant a security interest in any Goods which are subject to the Agreement if payment therefor shall not have been made in full to Seller. Buyer shall immediately advise Seller in writing of any damage to, change in location of, or seizure of, any of the Goods the price of which has not been paid to Seller.

**19. Proprietary Information.**

A. Buyer's Rights to Confidentiality. Buyer acknowledges that any information disclosed to Seller has not and will not be considered by Buyer to be confidential or a trade secret unless clearly and conspicuously noted on the disclosure, or in some other writing delivered to Seller at or prior to the time of the disclosure.

B. Seller's Rights to Confidentiality. All proposals, plans and other information furnished by Seller in bidding, negotiating and performing the Agreement, are confidential and the property of Seller, whether or not marked "Confidential", and shall not be shown or disclosed to any other bidder, and shall not be shown or disclosed to any other third party or used by Buyer except as may be necessary for the selection or use of the Goods.

C. Patentable Features. Any design, invention or other information developed by Seller in the performance of the Agreement shall remain the property of Seller, whether or not Seller charges for design, research, development, testing, or similar services. Any patentable features developed by Seller shall be the property of Seller and Seller shall be under no obligation to refrain from using in its business any information, manufacturing processes or unpatented disclosures which may pass to it from Buyer in the performance of the Agreement, except as provided in Subsection A.

D. Drawings and Calculations. Seller is not obligated to furnish detailed or shop working drawings, engineering calculations, computer programs, or other information for any Goods or part thereof.

E. Buyer's Obligations. Buyer shall treat as confidential any business proposal from Seller and all technology which shall be made available, directly or indirectly to Buyer by Seller and by Seller's licensors, including but not limited to drawings, schematics, specifications, bills of material, test results, analysis, recommendations, models, and designs, and Buyer shall use such proposal and

technology only to evaluate its business relationship with Seller and to enable Buyer to perform under the Agreement. Buyer shall not disclose, or authorize or instruct Seller to disclose, any confidential or proprietary information of Seller to any third party that is not bound by contract to at least the same duty of confidentiality to Seller as is Buyer. In addition, only those employees and contractors of Buyer having a need-to-know and bound by contract by the same confidentiality provisions as Buyer may be given access to such technology. Buyer shall maintain, for Seller's inspection, written records which shall include the names and address of such employees and contractors granted such access. Buyer shall indemnify Seller from all expenses and damages related to the improper use or disclosure by Buyer or its employees and contractors. Business proposals and technology of Seller may be protected by patent, copyright, trademark and other law. No license or other right to business proposals or technology is granted to Buyer.

F. **Restrictions on Other Purchases by Buyer.** Buyer shall not purchase from any supplier of Seller any Goods or components thereof which have been purchased by Buyer from Seller until two years after the last purchase of such Goods or components from Seller, unless Seller is otherwise notified in writing by Buyer.

**20. Buyer's Property.** Buyer shall insure all materials, fixtures, tooling and other property delivered to Seller against all risks and waives subrogation in the event of loss of or damage to such property or personal injury arising from the use or storage of such property.

**21. Solvency of Buyer.** Buyer represents that it is solvent and able to pay the price for the Goods and that all financial and business information given to Seller is correct. If Buyer becomes insolvent before delivery of the Goods, it shall notify Seller. Acceptance of delivery shall be a reaffirmation at delivery of Buyer's solvency, and that there has not been a material adverse change in such information.

**22. United States Government Regulations.** Buyer shall not engage in any transaction with respect to the Goods, by way of resale, lease, shipment or otherwise, which violates any statute or regulation of the United States of America.

**23. Fair Labor Standards Act.** Seller certifies that any Goods produced in the United States shall be produced in compliance with all applicable requirements of Sections 6, 7 and 12 of the U.S. Fair Labor Standards Act, as amended, and of the regulations and orders of the U.S. Department of Labor issued under Section 14 thereof. No other certifications or waivers regarding payments to Seller's suppliers or laborers are required.

**24. Breach.**

A. **Default.** If Buyer defaults in the performance of its obligations, if Buyer advises Seller that it will default in the performance of its obligations, or if any action is started by or against Buyer seeking the appointment of a trustee or receiver or the entry of an order for debtor's relief for Buyer, Seller may cease performance of its obligations, recover the Goods in transit or delivered, disable delivered Goods, and otherwise enforce its remedies for Buyer's default.

B. **Compensation.** Seller shall be awarded interest, consequential and incidental damages and costs (such as interest and actual reasonable attorney fees) in any proceeding to enforce its remedies in which it obtains relief or damages or in which it prevails in the defense of any action by Buyer.

C. **Security.** Seller may require that Buyer post security for any or all amounts to be paid if Seller has a good faith doubt as to Buyer's ability to make prompt payment. If such security is not posted, Seller shall have the right to cease performance of its obligations and enforce its remedies for Buyer's default.

D. **Cumulative Rights and Limitations.** All rights granted to Seller and all limitations in favor of Seller in the Agreement and by law are cumulative, provided Seller shall be entitled to only a single full recovery.

E. Good Faith. Seller shall not be liable for any action taken pursuant to a good faith exercise of any of its rights under the Agreement or law.

F. Waiver. Seller's failure or delay in enforcement of any provision shall not constitute a waiver of a default or of the provision itself.

**25. Consequential, Incidental, and Other Damages**. BUYER AND THIRD PARTIES SHALL NOT BE ENTITLED TO ANY CONSEQUENTIAL, PUNITIVE, EXEMPLARY OR INCIDENTAL DAMAGES, AS DEFINED IN THE UCC OR OTHERWISE. This limitation shall be enforced regardless of whether Seller has defaulted in its warranty or other obligations or the limited warranty is held to fail of its essential purpose. Any legal inability to limit or restrict the right of Buyer or a third party to such damages shall not affect the right of Seller to indemnification hereunder, and under no circumstance shall Buyer recover more than the purchase price. UNDER NO CIRCUMSTANCES SHALL SELLER'S LIABILITY FOR CLAIMS FOR NON-DELIVERY OR OTHER NON-PERFORMANCE, DEFECTIVE PERFORMANCE, NON-CONFORMING GOODS, DEFECTIVE GOODS OR OTHERWISE EXCEED THE AMOUNT RECEIVED BY SELLER FOR THE PERFORMANCE OR SHIPMENT WHICH CONTAINED THE NON-CONFORMING GOODS, DEFECTIVE GOODS OR SUCH OTHER EVENT GIVING RISE TO THE CLAIM.

**26. Claims**. COMMUNICATIONS CONCERNING DISPUTED DEBTS OR OTHER CLAIMS, INCLUDING AN INSTRUMENT TENDERED AS FULL SATISFACTION OF A DEBT OR MUST BE DELIVERED TO THE PRESIDENT OF SELLER.

**27. Force Majeure**. Seller shall not be responsible for any delay or failure in any performance due, without limitation, to acts of God, war, warlike conditions, blockade, embargoes, riots, governmental restriction, labor disturbances, unavailability of anticipated usual means of supplies, transportation or loading facilities, wrecks, epidemics, quarantine, fire, flood, earthquake, explosion, any unforeseen change in circumstances, or any other causes beyond the reasonable control of the party providing notice.

**28. Commercial Activity; Absence of Immunity**. Buyer represents it is subject to civil and commercial law with respect to its obligations and the making and performance by it of the Agreement constitute private and commercial acts rather than public or governmental acts. Buyer represents that it and its property are not entitled to immunity on the grounds of sovereignty or otherwise from the jurisdiction of any court or from any action, suit, set-off or proceeding, or service of process in connection otherwise, arising under the Agreement.

**29. Limitations of Actions**. A proceeding by Buyer for breach of the Agreement or any other right against Seller arising from or in connection with the Agreement cannot be filed nor maintained by Buyer unless: (i) it is commenced within one year after the cause of action has accrued; (ii) Buyer has given timely written notice to Seller of the details of its claim as provided herein; and (iii) Buyer pays all amounts due to Seller or deposits the unpaid portion of the purchase price with the tribunal pending final adjudication. An action for breach of warranty or any other provision of the Agreement shall accrue no later than shipment of the Goods to Buyer whether or not installation or other post shipment services are required by the Agreement.

**30. Arbitration**. At Seller's election, all controversies and claims arising out of or relating to the Agreement, or the breach thereof, shall be settled solely by arbitration held in Detroit, Michigan, in accordance with the Commercial Arbitration Rules of the American Arbitration Association, provided Seller may also elect to institute, prior to formation of the arbitration panel, an action for a claim and delivery or replevin action to enforce its security or other interests in the Goods. If the controversy or claim involves a common issue of fact or law in another arbitration procedure involving the same or different parties, Seller consents to a joinder of all relevant proceedings if requested by Buyer. The arbitrator(s) may enter an interim award that the Goods be returned to Seller for appropriate disposition and the application of any proceeds to amounts owed to Seller. Judgment upon any arbitration award may be entered in any court of record having jurisdiction thereon. No demand for arbitration hereunder may be filed by Buyer as a claim or counterclaim if Buyer has not given timely written notice of its claim to Seller or if more than one year has expired from the date the cause of action accrued, as provided in the Agreement. Upon the filing of a



demand for arbitration by Seller or Buyer, Buyer shall deposit with the arbitration body or the arbitrator(s) the unpaid balance of the purchase price to be held in an interest bearing account. If such deposit is not made, the arbitrator(s) shall enter a final award against Buyer in the amount of the unpaid purchase price and other amounts owed by Buyer to Seller under the Agreement. The arbitrator(s) shall be bound by the terms of the Agreement and shall not apply any principles of *ex aequo et bono* nor allow any claims not specifically permitted by the Agreement. The arbitrator(s) may include the fees of the arbitration tribunal and arbitrators in an award. The arbitration proceedings and the award shall be confidential.

**31. Currency.** The choice of currency expressed in this Agreement and the place of payment are essential terms and there are no equivalent terms. Any money judgment rendered under this Agreement shall be converted in any enforcement action in a jurisdiction in which the currency expressed shall be converted into the currency of the enforcing jurisdiction at the current New York rate of exchange as published in the *Wall Street Journal* on the date of entry of the original judgment.

**32. Severability.** Any provision found to be unenforceable by a final unappealed order entered by the court or tribunal shall be severed from this Agreement. Such severance shall be as narrow as possible and shall not affect the remainder of this Agreement in such action and other actions, unless the court or tribunal shall also find, on the request of Seller that without such provision as originally written, the Agreement is not likely to meet the reasonably commercial expectations of the parties and in such case, the court or tribunal shall enter an equitable judgment of rescission, termination or reformation of this Agreement as necessary to reach an equitable result.

**33. Assignment.** No right or interest in the Agreement may be assigned by Buyer without the prior written consent of the Seller. Any assignment attempted by Buyer shall be void and ineffective for all purposes unless made in conformity with this Section.

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