



## **1. GENERAL**

A. Seller's prices are based on these sales terms and ( i ) this document, together with any additional writings signed by Seller, represent a final, complete and exclusive statement of the agreement between the parties and may not be modified, supplemented, explained or waived by parol evidence. Buyer's purchase order, a course of dealing, Seller's performance or delivery, or in any other way except in writing signed by an authorized representative of Seller, and (ii) these terms are intended to cover all activity of Seller and Buyer hereunder, including sales and use of products parts and all related matters (references to products include parts). Any references by Seller to Buyer's specifications and similar requirements are only to describe the products covered hereby, and no warranties or other terms therein shall have any force or effect. Catalogues, circulars and similar pamphlets of the Seller are issued for general information purposes only and shall not be deemed to modify the provisions hereof.

B. The agreement formed hereby and the language herein shall be construed and enforced under the Uniform Commercial Code as in effect in the State of Seller's head office on the date hereof.

## **2. TAXES**

Any sales, use or other similar type taxes imposed on this sale or on this transaction are not included in the price. Such taxes shall be billed separately to the Buyer. Seller will accept a valid exemption certificate from the Buyer if applicable; however, if an exemption certificate previously accepted is not recognized by the governmental taxing authority involved and the Seller is required to pay the tax covered by such exemption certificate.

## **3. PERFORMANCE, INSPECTION AND ACCEPTANCE**

A. All products shall be finally inspected and accepted within ten (10) days after receipt at point of delivery. All claims whatsoever by Buyer (including claims for shortages) excepting only those provided for under the WARRANTY AND LIMITATION OF LIABILITY AND PATENTS Clauses hereof must be asserted in writing by Buyer within said ten (10) day period or they are waived. If this contract involves partial performances, all claims must be asserted within said ten (10) day period for each partial performance. There shall be no revocation of acceptance. Rejection may be only for defects substantially impairing the value of products and Buyer's remedy for lesser defects shall be those provided for under the WARRANTY AND LIMITATION OF LIABILITY Clause.

B. Seller shall not be responsible for nonperformance or delays in performance occasioned by any causes beyond Seller's reasonable control, including, but not limited to labor difficulties, delays of vendors or carriers, fires, governmental actions and material shortages. Any delays so occasioned shall affect a corresponding extension of Seller's performance dates which are, in any event, understood to be approximate. In no event shall Buyer be entitled to incidental or consequential damages for late performance or failure to perform.

C. If Buyer wrongfully rejects or revokes acceptance of items tendered under this agreement, or fails to make a payment due on or before delivery, or repudiates this agreement, Seller shall have a right to recover damages as stated herein. Upon recovery of the damages, the items involved shall become the property of the Buyer. If



payment is not made upon demand and default occurs, Buyer promises to pay all costs and expenses of collection and reasonable attorney's fees incurred by Seller hereof on account of such collection, whether or not suit is filed thereon. In any action brought under or arising out of this transaction, the Buyer, including its successors or assigns, hereby consents to the jurisdiction of any competent court within the State of Oklahoma, and consent to service or process by any means authorized by Illinois law.

D. Seller reserves the right to modify product details not affecting application or strength, if necessary to facilitate manufacture.

E. If Buyer fails to pay any invoice beyond terms herein stated, Seller reserves the right to charge interest at the maximum rate allowable under the law.

#### **4. TITLE AND RISK OF LOSS**

Full risk of loss (including transportation delays and losses) shall pass to the Buyer upon delivery of products to the F.O.B. point. However, Seller retains title, for security purposes only, to all products until paid for in full in cash and Seller may, at Seller's option, repossess the same, upon Buyer's default in payment hereunder, and charge buyer with any deficiency.

#### **5. WARRANTY AND LIMITATION OF LIABILITY**

A. Seller warrants that its products and parts, when shipped, will meet all applicable specification (unless otherwise noted in writing) and other specific product requirements (including those of performance) if any, of the agreement, will be of good quality, and will be free from defects in material and workmanship. All claims for defective products or parts under this warranty must be made in writing immediately upon discovery and, in any event, within one (1) year from shipment of the applicable item. Defective items must be held for Seller's inspection and returned to the original F.O.B. point upon request. THE FOREGOING IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES WHATSOEVER, EXPRESS, IMPLIED AND STATUTORY, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS.

B. Upon Buyer's submission of a claim as provided above and its substantiation, Seller shall at its option either ( i ) repair or replace its product or part at the original F.O.B. point of delivery or (ii) refund an equitable portion of the purchase price.

C. The foregoing is Seller's only obligation and Buyer's only remedy for breach of warranty, and except for gross negligence, willful misconduct, and remedies permitted under the PERFORMANCE, INSPECTION AND ACCEPTANCE and the PATENTS Clause hereof, the foregoing is Buyer's only remedy hereunder by way of breach of contract, tort or otherwise, in no event shall Buyer be entitled to incidental or consequential damages. Any action for breach of this agreement must be commenced within two (2) years after the cause of action has accrued.

D. BUYER FURTHER ACKNOWLEDGES THAT IT HAS CONTROL OVER THE INSTALLATION, MAINTENANCE AND OPERATION OF THE EQUIPMENT IDENTIFIED IN THIS SALES AGREEMENT, AND ACCORDINGLY AGREES: ( i ) TO PROPERLY TRAIN AND SUPERVISE ITS EMPLOYEES, AGENTS AND OPERATORS IN THE OPERATION AND



MAINTENANCE OF THE EQUIPMENT; ( ii ) TO DISCLOSE TO AND TO HAVE AVAILABLE TO ITS EMPLOYEES, AGENTS AND OPERATORS A COPY OF THE MAINTENANCE, SAFETY INSTRUCTIONS AND WARNINGS PROVIDED BY SELLER; (iii) NOT TO MODIFY, ALTER OR MISUSE THE EQUIPMENT; AND (iv) TO ACCEPT ALL RESPONSIBILITY AND LIABILITY FOR INJURY TO PERSON OR PROPERTY ARISING FROM THE REMOVAL OF SAFETY EQUIPMENT AND WARNINGS OR FROM BUYER'S DECISION NOT TO PURCHASE SAFETY EQUIPMENT RECOMMENDED BY SELLER OR ITS DISTRIBUTOR.

## **6. PATENTS**

Seller agrees to assume the defense of any suit for infringement of any United States patents brought against Buyer to the extent such suit charges infringement of an apparatus or product claim, by Seller's product in and of itself provided ( i ) said product is built entirely to Seller's design, (ii) Buyer notifies Seller in writing of the filing of such suit within ten (10) days after the service of process thereof, and (iii) Seller is given complete control of the defense of such suit, including the right to defend, settle and make changes in the product for the purpose of avoiding infringement. Seller assumes no responsibility for charges of infringement of any process or method claims, unless infringement of such claims is the result of following specific instructions furnished by Seller.

## **7. SPECIAL TOOLING**

Notwithstanding any tool, die or pattern charges or amortization in connection herewith, all special tooling and related items shall be and remain the property of Seller.

## **8. FEDERAL AND STATE LAWS**

Any clause required to be included in a contract of this type by any applicable and valid Federal, State or local law or administrative rules or regulation or order having the effect of law shall be determined to be incorporated herein.

## **9. INDEMNITY**

Seller agrees to manufacture according to Seller's specifications. Buyer shall keep, save protect and indemnify Seller, its affiliates and their respective officers harmless from any actions, expenses or damages which relate to the sale or use of the product by Customer unless such claim arises solely as a result of Seller's negligence. Seller will indemnify Buyer solely in the case of such negligence. Any prior terms/agreements relating to indemnity of any nature or for any purpose are superseded by this clause.

## **10. INSURANCE**

During the term of this order and for a period of not less than 10 years after delivery, each party shall, at its own expense, maintain and carry insurance in full force and effect, general liability and product liability insurance with limits not less than \$1,000,000 per occurrence (and \$2,000,000 aggregate) and other types of insurance typically carried in the industry. This insurance shall be with a carrier(s) with Best Insurance Guide rating of at least A- or comparable rating with similar rating agency. Neither party shall provide to the other



party any form of additional insurance. Any prior terms relating to insurance including but not limited to subrogation, primary status, and additional insured status shall be superseded by this clause.

#### **11. CANCELTATION TERMS**

10% of total net value of order will be owed to Autoquip if order is cancelled by the customer after receipt of Purchase Order and after the approval drawings have been started but before any manufacturing or purchasing of materials have begun. 80% of total net value of order will be paid to Autoquip if order is cancelled after the beginning of manufacture/purchasing and 2 weeks before promised shipment date.

#### **12. REMITTANCE INFORMATION**

Autoquip Corporation 37659 Eagle Way Chicago, Illinois 60678-1376