



1. Acceptance of Order.

Seller is ODU AUTOMOTIVE, Inc. These Terms and Conditions (“Terms”) shall be binding for any order (“Order”) placed by Buyer. If Buyer objects to one or more of the terms herein, such objection must be in writing and received by and accepted by Seller in writing prior to the commencement of performance by Seller. Any of Buyer’s conditions which are contrary to these Terms shall only be valid when accepted in advance in writing by Seller. If any terms on the face of Seller’s Purchase Order, Invoice or Order Confirmation differ from or add to these printed terms, the face terms on such Seller’s Purchase Order, Invoice or Order Confirmation shall take precedence over these printed Terms. Any purchase order or other written form of Buyer shall be construed as an offer and shall not become an effective binding part of these Terms, unless signed by an authorized officer of Seller, together with a written agreement that it is incorporated into these Terms. Any alteration, variance, or waiver of these Terms requires the written approval of an authorized officer of Seller.

2. Shipment and Delivery.

FOB Seller’s Shipping Point San Diego, California. “FOB Seller’s Shipping Point San Diego California” means that Seller shall arrange delivery with a common carrier (“Shipper”) but Buyer shall be solely responsible for all costs and expenses of delivery from Seller’s Shipping Point San Diego, California and all insurance costs. “F.O.B.” means that title and right of possession passes upon delivery to Shipper or payment in full to Seller, whichever occurs last. Shipping dates and/or delivery dates are quoted based on conditions prevailing on the date of the quotations and are subject to reasonable rescheduling. The time of delivery shall be deemed to have been complied with when the product has been shipped or delivered into the custody of Shipper at the designated site before expiration of the time of delivery. Seller need not ship or deliver as quoted if Buyer has not met its payment or other contractual obligations. Seller reserves the right to make delivery in installments. All such installments shall be separately invoiced and paid for when due, without regard to subsequent deliveries. Delay in delivery of any installment shall not relieve Buyer of its obligation to accept and pay for any remaining deliveries.

Seller shall not be liable for delays due to causes beyond its reasonable control or due to acts of Buyer, acts of God, changes in local, State or Federal Laws, fires, strikes, floods, epidemics, quarantine restrictions, terrorism, riot or other civil unrest, war, acts of violence, freight embargoes, delays in transportation, shortages of fuel or similar circumstances to any of the above (collectively, “*Force Majeure Events*”).

In the event of delay or anticipated delay, from any cause, including any Force Majeure Events, Seller shall notify Buyer in writing of the delay or anticipated delay. In no event shall Buyer be entitled to any damages as a result of delays in delivery or late delivery.

Buyer shall have up to thirty (30) days after receipt to inspect the product. Unless Seller is notified in writing to the contrary during this period, delivered items shall be presumed to be accepted. Claims for shipment defects or damages or shortages shall be waived unless made within fifteen (15) days of receipt of the product by Buyer.

If delivery is delayed by Buyer, product held for Buyer shall be subject to storage charges and shall be at the sole risk and expense of Buyer.

3. Price.

List prices are subject to change without notice. Prices quoted by Seller are valid for thirty (30) days from date of quotation or as otherwise extended in writing by Seller, and must be accepted in writing within this time. After expiration of this period, Seller may, at its discretion extend time of quotation or make a revised quotation. Prices quoted are contingent upon acceptance of delivery by the Buyer of all products subject to the Order within six (6) months. Seller reserves the right to correct clerical or typographical errors at any time, even after acceptance. Unless otherwise specified in writing, all prices are in United States dollars (“USD”) FOB Seller’s Shipping Point San Diego, CA and exclusive of any applicable Federal, State and local taxes, customs and duties. Buyer shall be solely responsible for compliance with any laws, rules, ordinances and regulations regarding the product, including, without limitation, any export laws (all of the above collectively, “Laws”). Buyer shall promptly pay any taxes which Seller or its agents may be required to pay or collect, under any existing or future Law (including, without limitation, any sales taxes) and all of which taxes are paid for the account of Buyer. California sales tax shall be added to shipments made within California unless a valid resale certificate has been filed with Seller or its agents.

4. Payments.

Unless otherwise specified in writing, Seller’s standard payment terms are net thirty (30) days from date of invoice. Based on Seller’s commercially reasonable judgment, if Buyer’s financial condition at the time the product is ready for shipment does not justify the payment terms specified, Seller reserves the right to change the payment terms to require full or partial payment in advance, or to ship the product Cash on Delivery (COD) or any combination thereof. Payment shall be made if unimportant parts are missing, which do not prevent the prod-

uct from being used, or if subsequent work on the product is found to be necessary. If Buyer does not make payments when due, it shall without formal notice be liable to pay interest on overdue amounts from the due date, at a rate of one and one-half percent (1.5%) per month or the maximum amount allowable by Law, whichever is less. Payment of such interest does not release Buyer from its obligation to make payments on the agreed dates.

Buyer shall not, at any time, be entitled to set off any amount owed by Seller to Buyer against any amount payable by Buyer to Seller.

5. Passage of Title.

The title and right of possession to the product remains with Seller until the full contract price (including, if any, deferred payments and any interest charges) has been paid to Seller. Buyer agrees to perform all acts necessary to protect and maintain this title and right. Passage or non-passage of title shall not affect risk of loss.

6. Risk of Loss.

Buyer bears the risk of loss or damage to the product from the time that Seller delivers to Shipper and during all transportation and delivery of the product to the site designated by Buyer.

7. Warranty And Damages Limitation.

Seller warrants that the product delivered will be free from defects in material and workmanship for a period of twelve (12) months from the date of shipment, and if the product is designed by Seller, free from defects in design for a period of twelve (12) months from the date of shipment. Repairs performed under this warranty shall be warranted for the remainder of the original warranty period. Buyer shall report any claimed defect in writing to Seller upon discovery and in any event, within the warranty period. No product shall be returned to Seller or its agents without written authorization by Seller or its agents. Upon receipt by Seller of any claim, Seller or its agents shall be given a reasonable opportunity to inspect such product and determine (in its sole discretion) if the product is defective. Seller, at its sole discretion, shall promptly repair or replace the product at the original delivery point of shipment. Buyer shall be solely responsible for any shipping charges for return of any product to Seller's Shipping Point San Diego, CA and shipment of any repaired or replaced product from Seller's Shipping Point San Diego, CA to the destination point of Buyer. If Buyer repairs or replaces product without Seller's prior written approval, Seller is relieved of obligation to Buyer under this section with respect to such product. The product shall not be deemed defective by reason of normal wear and tear and this limited warranty shall not apply to (i) product where the product has been subjected to mishandling, misuse, abuse, alteration, damage, neglect or improper or inadequate storage, maintenance, repair or installation, (ii) product that has been subjected to unauthorized or improper repair, installation, assembly, processing or otherwise that alters physical or electrical

properties, (iii) damage due to operation of the product other than as per the specifications or use with other components, materials or equipment for which it is not intended, (iv) any defect, malfunction or failure caused by accidents, unauthorized repair, improper installation or removal of component parts, or use of the product with components or equipment for which it is not intended or (v) any act of God (such as floods, hurricanes, earthquakes or fires). No employee, agent, dealer or other person is authorized to give any warranties on behalf of Seller or its agents or to assume for Seller or its agents any other liability in connection with any of its products, except in writing and signed by an authorized officer of Seller. No other express warranty is given and no affirmation of Seller, by words or action, will constitute a warranty. THE FOREGOING WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS OR SUITABILITY FOR A PARTICULAR PURPOSE WHICH ARE HEREBY EXPRESSLY WAIVED TO THE FULLEST EXTENT PERMITTED BY LAW. There are no warranties which extend beyond the description on the face hereof. Seller or its agents make no representation that the goods comply with any present or future federal, state, or local regulation or ordinance. The use of Seller's product should be in accordance with the provisions of the National Electric Code, UL and/or other industry or military standards that are pertinent to the particular end use of the product. Installation or use not in accordance with these codes and standards could be hazardous, and Buyer hereby agrees to indemnify Seller against any and all claims as further set forth in Section 11 below, which arise or are in connection with the use or installation of product not in accordance with the above-referenced codes and standards.

8. Limitation Of All Remedies.

In no event will Seller be liable for any special, incidental, punitive, indirect or consequential damages based on breach of warranty, breach of contract, negligence, strict liability, tort, product liability, or any other legal theory to the fullest extent permitted by law, even if Seller has been advised of the possibility of such damages. Buyer expressly agrees that Seller's sole maximum liability for damages for any cause whatsoever shall be limited to the total price received by Seller for the product and when Buyer accepts the product, Buyer is precluded from seeking any other damages against Seller.

9. Allocation of Risks.

This agreement allocates the risks of product failure between Seller and Buyer. This allocation is recognized by both parties and is reflected in the price of the product. Buyer acknowledges that it has read this agreement, understands it and is bound by its terms.

10. Termination for Default.

Either party may terminate this Order or work under this Order in whole

or in part (i) immediately by written notice if the other party commits a material breach of any one or more of its terms and fails to cure such default within thirty (30) days after the non-breaching party gives written notice of such breach, or (ii) upon five (5) days advance written notice if either party becomes insolvent, enters voluntary or involuntary bankruptcy or receivership proceedings or makes an assignment for the benefit of creditors.

11. Indemnification.

Buyer agrees to indemnify, defend and hold harmless Seller and its officers, directors, shareholders, employees, independent contractors, agents, representatives, successors and assigns (collectively, “**Seller Indemnitees**”), from any and all actions, causes of action, claims, demands, losses, obligations, liabilities, damages, recoveries, settlements, deficiencies, costs and expenses (including, without limitation, interest, penalties, accounting fees, attorneys’ fees and expert witness fees) incurred by Seller Indemnitees, known or unknown, contingent or otherwise, directly or indirectly related to or arising from any of the following: (a) Buyer’s breach of these Terms; (b) possession or use of the product by Buyer or any third party (or both); (c) any alteration, change or mishandling of the product by Buyer or any customer of Buyer (or both); (d) the failure to use Seller’s product in accordance with the provisions of the National Electric Code, UL and/or other industry or military standards that are pertinent to the particular end use of the product; or (e) Buyer’s violation of any Laws or the rights of any third party. This indemnity will survive the termination or expiration of these Terms. This indemnity will not apply to any such loss, claim or damage caused solely by the intentional misconduct of Seller.

12. Standards and Changes.

Except for written specifications of Buyer which are expressly agreed to in writing by an authorized officer of Seller in advance, products ordered shall be produced in accordance with Seller’s standard practices. Buyer may make reasonable changes in the character or quantity of the product, or in the manner or time of performance of this Order if communicated to Seller in writing signed by a duly authorized representative of Buyer and accepted by a duly authorized representative of Seller in writing in advance. An equitable adjustment in the price and time for performance will be mutually agreed to by the parties in writing, acting in good faith, if such changes result in a decrease or increase in the Seller’s cost or time of performance. Seller may, without Buyer’s approval, make changes to the product that do not affect form, fit or function.

13. Confidentiality; Proprietary Information.

Unless otherwise expressly agreed by the parties in a contemporaneous or subsequent writing to the contrary, all drawings, documents, designs, specifications, information, data, prototypes, samples, software and other items supplied or disclosed by either party in performance of this Order shall be the confidential and proprietary information of Seller. Buyer shall hold all such information in confidence and use it solely as strictly necessary to utilize the product and shall not use such information for any other purpose, and shall not reproduce, distribute or disclose such confidential information to any third party without Seller’s prior written consent, and shall only disclose such confidential information to employees and independent contractors who may require use of such confidential information in the performance of their duties but only if such employees and independent contractors agree to keep such information confidential and are bound by confidentiality obligations at least as strict as set forth in this paragraph. The confidentiality obligations of Buyer survive termination or expiration of these Terms. Any non-disclosure agreement signed by the parties is hereby incorporated by reference and made a part of these Terms.

14. Federal Acquisition Regulations & Flow Down Clauses.

If this is a government related Order and Buyer has specifically noted Federal Acquisition Regulation (FAR) clauses in (or as an attachment to) Buyer’s Order, such FAR clauses that are mandatory are incorporated by this reference as if set out fully herein, except the word “Buyer” shall be substituted for the words “Contracting Officer” and the term “Seller” shall be substituted for “Contractor” wherever such words appear. Notwithstanding the above, no other provisions of Buyer’s purchase order shall be applicable and any of Buyer’s terms or conditions which are contrary to these Terms shall only be valid when accepted in advance in writing by Seller.

15. Relationship of Parties.

Seller and Buyer are independent contracting parties and nothing in these Terms shall make either party the agent, joint venturer or legal representative of the other for any purpose whatsoever, nor does it grant either party any authority to assume or to create any obligation on behalf of or in the name of the other.

16. No Implied Waiver.

The failure of either party at any time to require performance by the other party or make any election under any provision of these Terms shall in no way affect the party’s right to require such performance or make such election at any time thereafter, nor shall the waiver of either party of a breach of any provision of these Terms constitute a waiver of any succeeding breach of the same or any other provision.

17. Entire Agreement.

These Terms and the Seller’s Purchase Order, Sales Order Confirmation, Invoice or other quotations and order confirmations of Seller under which they have been deemed applicable supersede all prior and contemporaneous communications, understandings and agreements of Buyer and Seller (whether written or oral).

18. Modification/Severability/Further Assurances.

These Terms may not be modified or amended in any way unless such modification or amendment is in writing and signed by an authorized officer of each Seller and Buyer. If any provision of these Terms is determined by a court of competent jurisdiction to be invalid under any applicable law, the portion deemed to be invalid will be deemed omitted, and the remainder of these Terms shall remain enforceable. The parties agree to execute any further documents and provide any requested assurance reasonably necessary for the parties to effectuate the purpose of these Terms.

19. Attorneys' Fees.

In the event of a claim, suit or controversy, including without limitation, a suit to collect payment or an action for declaratory relief, the prevailing party in such action or proceeding shall be entitled to recover its court costs and reasonable out-of-pocket expenses not limited

to taxable costs, including, but not limited to, phone calls, photocopies, expert witness, travel, etc., and reasonable attorneys' fees to be fixed by the court. The court shall determine the party that is the "prevailing party," whether or not the dispute or controversy proceeds to final judgment. Such recovery shall include court costs, out-of-pocket expenses and attorneys' fees on appeal, if any.

20. Governing Law; Jurisdiction; Venue.

This agreement is entered into in Ventura County, California and shall in all respects be construed and governed by the laws of the State of California. Buyer and Seller agree and accept that any legal action or proceeding with respect to this agreement shall be brought in the Federal or state courts for the State of California, County of Ventura, and the parties expressly waive any objection to personal jurisdiction, venue or *forum non conveniens*.