

PENN AUTOMOTIVE, INC. TERMS AND CONDITIONS OF PURCHASE

1. PARTIES As used herein "Buyer" refers to the party who issued this purchase order. "Seller" refers to the party to whom this purchase order is addressed.
 2. PURCHASE ORDER This purchase order (which shall be deemed to include the purchase order form, instructions, drawings, related plans, specifications, regulations, data, notes, engineering notices and other documents, to the extent incorporated herein by reference, and these Terms and Conditions of Purchase) (hereinafter, collectively, the "Purchase Order") contains the complete and entire agreement between Buyer and Seller and supersedes any and all other communications or agreements, whether written or oral, between the parties hereto relating to the subject matter hereof. Notwithstanding any language to the contrary contained herein, if Buyer and Seller have mutually signed and entered into a long term agreement, then the terms of that long term agreement will continue in force and any terms herein will be disregarded; provided that if the terms of such long term agreement are silent on a specific issue, these Terms and Conditions of Purchase shall apply to such issue. Seller shall promptly bring any discrepancies or questions to Buyer's attention and shall defer to Buyer's decisions, instructions and/or interpretation, which shall be in Buyer's sole discretion.
 3. ACCEPTANCE This Purchase Order may be accepted only on the exact terms and conditions set forth herein. In the event that Seller, without executing an acknowledgment copy hereof and returning it to Buyer, proceeds to deliver to Buyer any of the goods ordered herein or renders for Buyer any of the services ordered herein, Buyer shall have the option to refuse acceptance of such goods or services and not be obligated therefor or to accept said goods and services at the price and on the terms and conditions contained in this Purchase Order. Seller shall be bound by all of the terms and conditions of this Purchase Order when it executes and returns an acknowledgment copy to Buyer, or at the option of Buyer when Seller delivers to Buyer any of the goods ordered herein or renders for Buyer any of the services ordered herein. Seller assumes all risks of performance in accordance with the provisions hereof and certifies that it has made all inquiries, examinations and investigations and possesses the facilities and capabilities required for performance within any time limit specified in this Purchase Order. No usage of trade or course of dealing shall serve to alter or supplement the terms and conditions herein stated. Any terms or conditions proposed by Seller that are inconsistent with or in addition to the terms and conditions herein contained are expressly rejected and shall be void and of no effect. No waiver, alteration or modification of the terms and conditions herein will be binding unless in writing and signed by an authorized representative of Buyer.
 4. SHIPPING, DELIVERIES AND QUANTITIES Shipments to Buyer must be accompanied by packing slips. All packaging must be numbered and the same numbers shown on packing slips, bills of lading and invoices. Seller will pack goods at Seller's expense and arrange for shipment so that damage-free delivery is made to Buyer. Unless otherwise specified on the front of this Purchase Order, delivery shall be made F.O.B. Buyer's facility at the address shown on this Purchase Order. Seller assumes all risks for failure to ship in accordance with the routing instructions set forth on this Purchase Order. Time is of the essence in this Purchase Order, and if delivery of goods or rendering of services is not completed by the time promised, Buyer reserves the right, without liability, in addition to its other rights and remedies, to cancel this Purchase Order by notice effective when received by Seller as to stated goods not yet shipped or services not yet rendered, and to purchase substitute goods or services elsewhere and charge Seller with any damages incurred, whether special, direct, indirect, incidental or consequential. Unless otherwise expressly stated on the front of this Purchase Order, the specific quantity ordered herein must be delivered in full and may not be changed without Buyer's prior written consent. Any unauthorized quantity shipped is subject to rejection and return at Seller's expense. Goods delivered in advance of schedule, without Buyer's consent, may at Buyer's option (a) be returned at Seller's risk and expense for redelivery at the scheduled time, or (b) have payment therefor withheld until the date payment would otherwise have been due.
 5. RISK OF LOSS Seller assumes the following risks, in addition to all other risks Seller assumes by law or pursuant to the express terms of this Purchase Order: (a) all risks of loss or damage to goods until their delivery to and acceptance by Buyer; and (b) in the event goods are rejected by Buyer or Buyer revokes its acceptance of goods, all risks of loss or damage shall be deemed to rest with Seller.
 6. PRICES AND INVOICES Buyer shall not be obligated to pay any prices higher than stated on this Purchase Order unless authorized in writing by Buyer. Seller agrees that any price reduction made in merchandise covered by this Purchase Order subsequent to the placement of this Purchase Order will be applicable to this Purchase Order. No extra charge or charges for boxing, crating, freight or storage will be accepted with respect to this Purchase Order without the written approval of Buyer. All taxes with respect to this Purchase Order will be paid by Seller unless specifically stated otherwise on this Purchase Order. When the cost of tools involved in the manufacture of goods covered by this Purchase Order are included in the price per unit, such tools will become the property of Buyer upon completion of performance of this Purchase Order. Seller's cash discount period, if any, shall extend from the later of Buyer's receipt of the goods ordered hereunder and the date of invoice.
 7. WARRANTY By accepting this Purchase Order, Seller warrants that the goods and services to be furnished will be in full conformity with Buyer's specifications, drawings, data or other descriptions furnished or specified by Buyer, or with Seller's samples, if applicable, and that all goods furnished will be new, unless otherwise specified in this Purchase Order, fit for the use intended by Buyer, merchantable, of good material and workmanship and free from defect, and all services furnished will be performed in a skillful and workmanlike manner. All warranties, both express and implied, will survive acceptance and inspection of, and payment for, the furnished goods and/or services by Buyer. These warranties are in addition to any warranties of additional scope given to Buyer by Seller. All warranties of Seller, both express or implied, shall extend to, and be jointly and severally enforceable by, Buyer, its successors, assigns, customers and all third parties to whom any of the goods or services furnished may be sold or transferred, regardless of whether such goods or services remain in the same form or are owned by the enforcer of the warranty at the time of suit.
 8. SERVICE AND REPLACEMENT PARTS Seller will sell to Buyer goods necessary for Buyer to fulfill its current model service and replacement parts requirements at the price(s) set forth in this Purchase Order. If the goods are systems or modules, Seller will sell the components or parts that comprise the system or module at price(s) that shall not, in the aggregate, exceed the price of the system or module less assembly costs. During the fifteen (15) year period after Buyer completes current model purchases, Seller will sell goods to Buyer to fulfill Buyer's past model service and replacement parts requirements. Unless otherwise agreed to by Buyer, the price(s) during the first three (3) years of this period shall be those in effect at the conclusion of current model purchases. For the remainder of this period, the price(s) for goods shall be as agreed to by the parties. When requested by Buyer, Seller shall make service literature and other materials available at no additional charge to support Buyer's service part model purchases, and Seller will sell goods to Buyer to fulfill Buyer's past model service and replacement parts requirements. Unless otherwise agreed to by Buyer, the price(s) during the first 3 years of this period shall be those in effect at the conclusion of current model purchases. For the remainder of this period, the price(s) for goods shall be as agreed to by the parties. When requested by Buyer, Seller shall make service literature and other materials available at no additional charge to support Buyer's service part sales activities.
 9. INGREDIENTS DISCLOSURE; SPECIAL WARNINGS AND INSTRUCTIONS If requested by Buyer, Seller shall promptly furnish to Buyer in such form and detail as Buyer may direct: (a) a list of all ingredients in the goods; (b) the amount of all ingredients; and (c) information concerning any changes in or additions to such ingredients. Prior to and with the shipment of the goods, Seller agrees to furnish to Buyer sufficient warning and notice in writing (including appropriate labels on the goods, containers and packing) of any hazardous material that is an ingredient or a part of any of the goods, together with such special handling instructions as may be necessary to advise carriers, Buyer, and their respective employees of how to exercise that measure of care and precaution that will best prevent bodily injury or property damage in the handling, transportation, processing, use or disposal of the goods, containers and packing shipped to Buyer.
 10. INSPECTION AND REJECTION The goods purchased by Buyer pursuant to this Purchase Order are subject to inspection and approval by Buyer at the place of delivery set forth on this Purchase Order. Notwithstanding any language to the contrary contained herein, Seller acknowledges that Buyer, in its sole and absolute discretion, shall determine whether or not to perform incoming inspections of goods, and Seller waives any rights to require Buyer to conduct such inspections. Buyer reserves the right to reject and refuse acceptance of any or all portions of the order which are not in accordance with: (i) the description of such goods set forth in this Purchase Order; (ii) Seller's samples (if any); (iii) Seller's express or implied warranties; and/or (iv) Buyer's standard of quality and workmanship. Any or all portions of the order not accepted will be returned to Seller at Seller's expense for a full credit or refund, or at the option of Buyer, Seller shall be required, at its sole risk and expense, to correct or replace such goods with conforming goods within such time as Buyer may require, provided, however, that such corrected or rejected goods shall not be converted or replaced by Seller without written authorization from Buyer. Any goods corrected, replaced, or repaired by Seller shall be subject to any warranties and other terms of this Purchase Order. If Seller fails to correct or replace any nonconforming goods promptly after notification and authorization from Buyer, Buyer may correct or replace such goods and charge Seller for the cost incurred by Buyer and/or set-off the cost hereunder at the sole discretion of Buyer. Payment for any goods ordered hereunder prior to inspection and approval shall not constitute acceptance thereof and is without prejudice to any and all claims that Buyer may have against Seller.
 11. GENERAL INDEMNITY To the fullest extent permitted by law, Seller shall indemnify, defend and hold harmless Buyer and its officers, directors, employees, agents, affiliates (and their officers, directors, employees, and agents), successors, assigns, customers and users of Buyer's products (collectively, the "Buyer Parties") of, from and against any and all claims, liabilities, losses, damages and expenses (including attorney's fees and related expenses) resulting from the fault or negligence of Seller arising out of or connected with the goods and services furnished under this Purchase Order. The rights and obligations contained in this clause shall survive termination, expiration, or completion of this Purchase Order. Seller agrees to promptly assume the defense and preparation for the defense and costs thereof of any suit or threatened suit brought against any of the Buyer Parties. Seller's indemnification obligations under this Purchase Order shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for Seller under any liability imposed by law, including, but not limited to workers' compensation acts, disability benefits, or other employee benefit acts.
 12. PATENTS Seller shall defend at its own expense all suits, actions or proceedings in which any of the Buyer Parties are made defendants for actual or alleged infringement of any U.S. or foreign letters patent, trademarks, trade secrets, confidential data or like rights, resulting from the use or sale of the goods purchased under this Purchase Order (except for infringement resulting solely from adherence by Seller to specifications or drawings created solely by Buyer, provided that Seller at no time had knowledge of any infringement or the like), and Seller further shall pay and discharge any and all judgments or decrees which may be rendered in any such suit, action or proceeding against any of the Buyer Parties, and shall otherwise indemnify and hold the Buyer Parties harmless of, from and against any and all damages, liabilities, losses or expenses (including attorney's fees and related expenses) resulting to, or incurred by, any of the Buyer Parties in any manner arising from any and all such claims, suits, actions or proceedings.
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13. TAXES Seller shall pay all sales and other taxes, however designated or levied, on the sale or use of the goods purchased pursuant to this Purchase Order, other than taxes based on Buyer's capital or net income.
 14. CUSTOMS; EXPORT CONTROLS Credits or benefits resulting or arising from this Purchase Order, including trade credits, export credits or the refund of duties, taxes or fees, shall belong to Buyer. Seller shall provide all information necessary (including written documentation and electronic transaction records) to permit Buyer to receive such benefits or credits, as well as to fulfill its customs related obligations, origin marking or labeling requirements and local content origin requirements, if any. Export licenses or authorizations necessary for the export of the goods shall be the responsibility of Seller unless otherwise indicated in this Purchase Order, in which event Seller shall provide such information as may be necessary to enable Buyer to obtain such licenses or authorization(s). Seller shall undertake such arrangements as necessary for the goods to be covered by any duty deferral or free trade zone program(s) of the country of import.
 15. SET OFF Buyer shall have the right at all times to set off any amount owing at any time from Seller to Buyer against any amount payable at any time in connection with this Purchase Order.
 16. CHANGES Buyer reserves the right to change, from time to time and without notice to any sureties or assignees, specifications, designs, requirements, testing, packing, destinations or delivery schedules set forth on this Purchase Order or otherwise. Changes or modifications by Seller are only binding when in writing and signed by Buyer's authorized personnel. No increase in price will be effective against Buyer unless specified in a written amendment to this Purchase Order signed by Buyer's authorized personnel, and no such increase in price shall take effect until the later of the date six (6) months after such amendment is signed by Buyer or the effective date (if any) specified in such amendment.
 17. FORCE MAJEURE Fires, unusually severe weather, accidents, labor disturbances, terrorist acts, war conditions, governmental acts, laws or regulations, cessation of operation of Buyer's plant for any reason, or other causes beyond the control of the parties rendering Seller unable to deliver or Buyer unable to receive the goods covered by this Purchase Order, will permit Buyer at its option to extend the time for performance or cancel this Purchase Order by written notice to Seller without liability of Buyer to Seller for such cancellation. Seller shall immediately give notice to Buyer whenever any actual or potential event delays or threatens to delay Seller's timely performance of this Purchase Order.
 18. CONFIDENTIAL AND PROPRIETARY INFORMATION; NON-CIRCUMVENTION Any and all drawings, specifications and data furnished by Buyer to Seller hereunder shall remain the property of Buyer and shall be used by Seller only as and to the extent required for the performance of this Purchase Order, unless Buyer shall otherwise approve in writing. All such information shall be deemed confidential information of Buyer. Upon completion of work by Seller under this Purchase Order, Seller shall promptly return to Buyer any and all drawings, specifications and other data furnished by Buyer in connection herewith, together with all copies or reprints then in Seller's possession and control, and Seller shall thereafter make no further use, either directly or indirectly, of any such drawings, specifications or data or any information derived therefrom, nor disclose any of the same to any third party, without Buyer's prior written consent. Seller will not, without first obtaining the written consent of Buyer, in any manner advertise or publish the fact that Seller has contracted to furnish Buyer the goods and services ordered hereunder and breach of this provision will entitle Buyer to cancel without liability. Seller will not furnish to any third party any parts, equipment or products made according to Buyer's designs or specifications and covered by this Purchase Order. Seller agrees that, during the period covered by this Purchase Order and for a period of three (3) years thereafter, no attempt will be made by Seller to directly or indirectly sell products provided to Buyer to Buyer's competitors or otherwise circumvent Buyer's established customer relationships and supply arrangements. Seller acknowledges that a breach of its obligations under this Section 18 would cause irreparable harm to Buyer for which monetary damages alone would not be an adequate remedy. In the event of any breach or threatened breach, Buyer shall be entitled to appropriate equitable relief, including injunction and specific performance, in addition to any other rights and remedies available to Buyer at law or in equity.
 19. CANCELLATION In addition to any rights of Buyer to cancel this Purchase Order as otherwise contained herein, Buyer also reserves the right to cancel this Purchase Order in whole or in part at any time for its convenience. In the event and to the extent that Buyer cancels this Purchase Order under this Section 19, Buyer will reimburse Seller for Seller's reasonable and necessary out-of-pocket expenses incurred directly incident to this Purchase Order up to the date of cancellation. Other than as set forth in this Section 19, Buyer shall not as a result of its cancellation incur any costs or liability, including but not limited to any loss of profits by Seller. Any costs or liability attributable to Buyer under this Section 19 shall only apply if and to the extent that Buyer cancels this Purchase Order under Section 19 and shall not apply if and to the extent that Buyer cancels under another Section of this Purchase Order.
 20. LIMITATION OF LIABILITY In no event shall Buyer be liable under this Purchase Order to Seller or any third party for any special, indirect, incidental or consequential damages, including but not limited to lost profits.
 21. TOOLS All tools, dies or other equipment furnished to Seller by Buyer, or specifically paid for by Buyer as well as those tools whose cost is amortized in the unit cost of the part shall be the property of Buyer, and it is understood and agreed that these tools may be inspected and/or removed by the Buyer at any time Buyer desires to do so without additional cost. These tools shall be used only for making products or materials sold to Buyer. Seller shall bear any taxes assessed against tools and full costs of preparing and crating tools for shipment upon completion of orders, if Buyer instructs shipment. Insurance shall be carried by Seller for the full value of tools and paid by the Seller. Tools must be kept free of liens and encumbrances at all times without expense to Buyer.
 22. Liens Seller, for itself and on behalf of its subcontractors, materialmen and employees and for all other persons performing any labor or furnishing any materials hereunder, hereby waives the right to file mechanics' or any other liens for or on account of the labor performed or materials furnished hereunder, and agrees that it shall, upon request of Buyer, and as a condition precedent to final payment, deliver to Buyer a satisfactory release of all liens arising hereunder.
 23. Insurance During the performance of any work hereunder, Seller and all of its subcontractors shall be considered independent contractors and shall effect and maintain liability, property damage and worker's compensation insurance policies. All such insurance policies shall designate Buyer and its officers, directors, employees and agents as an additional insured and shall be primary and required to respond and pay prior to any other available insurance coverage. All such insurance coverage shall be with companies and in amounts satisfactory to Buyer, and Seller shall, before the performance of any work required hereunder, furnish Buyer with satisfactory evidence of such insurance. Should Seller fail to provide or maintain any of the above insurance coverages, Seller shall indemnify, defend and hold harmless the Buyer Parties of, from and against any claim, loss, damage, liability or expense (including attorney's fees and related expenses) even if such claim arises in whole or in part, or is alleged to arise in whole or in part from the negligence any of the Buyer Parties, to the full extent that such losses would not have been incurred by the Buyer Parties if the Seller had provided for and maintained the insurance coverages set forth herein.
 24. ASSIGNMENT Seller may not assign or delegate rights or duties under this Purchase Order without Buyer's prior written consent, and any such proposed assignment or delegation shall be void and of no effect.
 25. GENERAL CONDITIONS (a) No delay or failure on the part of Buyer in exercising any right or remedy under this Purchase Order, and no partial or single exercise thereof, shall constitute a waiver of such right or remedy or of any other right or remedy. If Seller fails to comply with any delivery date herein, any attempts by Buyer to expedite Seller's delivery shall not be deemed a waiver of Seller's default or an extension of such delivery date. (b) If any term of this Purchase Order or the application thereof shall be illegal, such illegality shall not affect any other term or condition herein, and such other terms and conditions shall continue in full force and effect. (c) All rights and remedies of Buyer under this Purchase Order shall be cumulative and not exclusive, and shall be in addition to all other rights in law or equity, whether set forth herein or not. (d) The headings herein are inserted for convenience of reference only and shall not be construed to limit or affect the provisions contained herein. (e) Any notice required under this Purchase Order shall be in writing and shall be delivered to the addresses of the parties set forth herein.
 26. CONTRACT This Purchase Order shall be governed by and enforced and construed in accordance with the law of the State of Delaware without application of conflict of laws principles. Seller irrevocably consents to the exclusive jurisdiction and venue of the courts of New Castle County, Delaware in all matters arising out of or relating to this Purchase Order, and Seller further irrevocably consents to service of process at Seller's address set forth herein.
 27. COMPLIANCE WITH LAWS Seller shall comply with any and all federal (including, but not limited to, the Toxic Substances Control Act, PL 94-469), state, foreign, local, and municipal regulations, ordinances, statutes, rules, laws, constitutional provisions and orders applicable to Seller's performance under this Purchase Order.
 28. EQUAL EMPLOYMENT OPPORTUNITY There are incorporated in this Purchase Order the provisions of Executive Order 11246 (as amended) of the President of the United States on Equal Employment Opportunity and the Rules and Regulations issued pursuant thereto with which the Seller represents that it will comply, unless exempted.
 29. SAFETY STANDARDS Seller agrees to comply with the safety standards of the U.S. Occupational Safety and Health Administration and any other applicable Federal or State law or standard related to safety and to hold the Buyer Parties harmless for any non-compliance.