

SMW AUTOMOTIVE CORPORATION
TERMS & CONDITIONS OF PURCHASE

1. **DEFINITIONS:** The following terms shall have the meanings hereinafter subscribed to them for all purposes under the Purchase Order identified on the face of this document (the "Order") as well as these Terms & Conditions Of Purchase (collectively the "Terms"): (a) the word "Buyer" shall mean SMW Automotive Corporation, a Michigan corporation; (b) the word "Buyer's Plant" shall mean Buyer's facility identified on the face of this Order; (c) the word 'Seller' shall mean the person or entity identified on the face of this Order and to whom this Order is addressed; (d) the word 'Products' shall mean all or any of the goods and/or services to be provided by the Seller to the Buyer pursuant to this Order; (e) the word 'Seller Document' shall mean any invoice, acknowledgment, quotation, proposal, invoice, bill of lading or other document issued by the Seller in connection with this Order; (f) the word 'Party' shall mean either or both Buyer and/or Seller as the context implies; and (g) the word 'Parties' shall mean both the Buyer and Seller.

2. **ACCEPTANCE OF ORDER:** Unless otherwise provided herein, it is understood and agreed that the written acceptance by Seller of this Purchase Order (the 'Order'), or the furnishing of any of the Products specified in this Order, or the commencement of any work or the performance of any services hereunder by Seller (including, without limitation, the commencement of any work or the performance of any service with respect to samples or prototypes), shall constitute acceptance by Seller of this Order and of all these Terms and that such acceptance by Seller is expressly limited to the Order and these Terms. **ANY TERMS OR CONDITIONS PROPOSED BY THE SELLER WHICH ARE DIFFERENT FROM, IN ADDITION TO, OR IN CONFLICT WITH, ANY OF THESE TERMS ARE UNACCEPTABLE TO THE BUYER, ARE EXPRESSLY REJECTED BY THE BUYER AND SHALL NOT BECOME A PART OF THE ORDER AND THESE TERMS UNLESS OTHERWISE EXPRESSLY AGREED IN WRITING BY BOTH OF THE PARTIES, WHICH WRITING MUST BE SIGNED BY AUTHORIZED REPRESENTATIVES OF THE PARTIES, WHICH IN THE CASE OF BUYER SHALL BE ITS PRESIDENT.**

3. **NON-ASSIGNMENT:** Seller shall not delegate in any manner to any other person the performance of any work or the supplying of any services under this Order without prior written approval of the Buyer. Seller may assign monies due and to become due under this Order provided however that Buyer shall be entitled to assert against the assignee thereof all rights, claims, and defenses of every type (including, without limitation, rights of setoff, recoupment, and counterclaim), which Buyer could assert against Seller, whether acquired prior or subsequent to such assignment.

4. RISK OF LOSS & ACCEPTANCE OF PRODUCTS: The title to and risk of loss of all of the Products subject to the Order shall remain with Seller until delivery and acceptance of the Products at Buyer's Plant. Payment for the Products shall not constitute acceptance, and all Products shall be subject to Buyer's inspection and rejection. Neither payment nor acceptance of the Products shall constitute an acknowledgment of the absence of a breach of warranty or limit any of Buyer's rights hereunder. All Products shall be subject to inspection and test at Buyer's or Seller's location, or both. If in any case, the Products fail to meet the requirements of this Order or samples approved by the Buyer, the Buyer shall have the right to reject or retain and correct such supplies.

5. NON-CONFORMING PRODUCTS: To the extent Buyer rejects any Products as defective or non-conforming, such Products shall be held by Buyer for collection or disposition in accordance with the Seller's instructions and at Seller's sole risk. Seller's failure, refusal and/or neglect to provide written instructions relative to the collection or disposition of defective and non-conforming Products within five (5) business days following the transmittal of a notice of defect or non-conformity by Buyer to Seller, or such shorter period as may be commercially reasonable under the circumstances, shall entitle Buyer to assess the Seller a storage charge for such Products or to dispose of the Products without any liability by Buyer to Seller. Seller will immediately, upon receipt of written instructions by Buyer, replace all rejected, defective and non-conforming Products, including without limitation, Products damaged because of unsatisfactory packing and/or handling by Seller. Rejected, defective and non-conforming Products shall not be re-submitted for acceptance without concurrent notice of their prior rejection and the reason(s) therefor. Payment by Buyer to Seller for non-conforming Products shall not: (a) constitute an acceptance thereof; (b) limit or impair Buyer's legal or equitable remedies; or (c) otherwise relieve Seller of its responsibility for latent defects. If requested by Buyer, Seller will enter into a separate agreement for the administration or processing of warranty chargebacks for non-conforming goods.

6. COMPLIANCE WITH LAWS: Seller hereby agrees and covenants: (a) to comply with all applicable federal, state and local laws, rules, regulations and ordinances in connection with the manufacture, sale, delivery and use of the Products, and, upon request, Seller will submit to Buyer evidence of such compliance.

7. PACKING, MARKETING, AND SHIPPING: All Products shall be properly packed, marked and shipped in accordance with the requirements of the common carrier transporting such supplies and in a manner which will permit the securing of the lowest transportation rates, in addition to the common carrier requirements, and shall be delivered to Buyer's Plant unless otherwise expressly requested on this Order. Seller shall mark each package with the number noted on the face of this Order and as otherwise specified by the Buyer and each packing slip and invoice shall bear the applicable Order number.. Seller shall route shipments in accordance with Buyer's instructions. Seller shall reimburse Buyer for all expenses incurred by Buyer as a result of improper

packing, marketing or routing. Any transportation charges paid by Seller with respect to which Seller is entitled to a reimbursement under this Order shall be added to Seller's invoice as a separate item and the receipt freight bill shall be attached thereto. Unless otherwise provided in this Order, no charge shall be made by the Seller for packaging, containers, crating, boxing, bundling, dunnage, handling or storage.

8. TAXES-SALES-USE-DELIVERY: Except as otherwise provided herein and unless prohibited by statute, Seller agrees to pay any and all applicable Federal, State, and Local sales, transportation, excise or other tax which may be imposed upon the Products ordered hereunder or by reason of their sale and delivery to Buyer.

9. DELIVERY: Time and rate of deliveries shall be of the essence of this Order. Buyer reserves the right to cancel this Order or reject Products delivered hereunder upon a default by Seller in the time, rate or manner of delivery and to refuse shipments made in advance of the scheduled deliveries provided in this Order.

10. PREMIUM SHIPMENTS: If because of failure of Seller to meet the delivery requirements of this Order, Buyer finds it necessary to require shipment of any of the supplies covered by this Order by a method of transportation other than the method originally specified by Buyer, Seller shall pay the cost, if any, by which the cost of the most expeditious method of transportation exceeds the cost of the method of transportation originally specified unless such failure is due to causes beyond the control and without the fault or negligence of Seller.

11. QUALITY & WARRANTY: The Seller must be QS9000 or ISO TS16949 Certified when required. Seller represents and warrants that the Products covered by this Order will: (a) conform to the specifications, drawings, samples, or other descriptions furnished or specified by Buyer; (b) be merchantable; (c) be fit and sufficient for the particular purpose(s) intended by Buyer or Buyer's customer; (d) be of good material and workmanship; and (d) be free from defects. The warranties and remedies provided for in these Terms shall be in addition to those implied by or available at law or in equity and shall exist notwithstanding the acceptance by Buyer of all or part of the Products with respect to which such warranties and remedies are applicable. These warranties shall survive acceptance and payment, and shall run to the Buyer, its successors, assigns, customers and the user of its products and shall not be deemed to be exclusive.

12. INDEMNIFICATION: Seller agrees to indemnify, defend and hold harmless the Buyer, its affiliates, customers and each other party, to which Products are provided, and each of their shareholders directors, officers, employers and agents, on demand, from and/or against any and all claims, demands, actions, causes of actions, suits, costs, fees, penalties, damages (consequential, incidental and otherwise), attorney's fees and all other liabilities and obligations whatsoever (collectively the 'Losses') arising out of or relating to: (a) personal injuries, damages or death to any natural person or damage to any property (including but not specifically limited

to; injuries, death or damages to the Seller, its agents, servants, employees, and/or property) or any spill, discharge or emissions, hazardous wastes or substances which relates to, in whole or in part: (i) any manufacturing design or other defect, failure to warn, improper handling, improper operating installation instructions or other act or omission of Seller with respect to any of the Products, or (ii) the performance by Seller of any services, whether on property of Buyer, Seller or any third party; (b) any breach of warranty made by or on behalf of Seller with respect to the Products or otherwise any claim of a third party relating to any Products or their quality; (c) any breach of this Order or any other agreement between Buyer and Seller; (d) any recall campaign in which Buyer or any customer participates in connection with inclusion of the Products in goods sold by Buyer, and/or; (e) patent or copyright infringement claims against goods or services provided by Seller even if they are made to Buyer's specifications. To the maximum extent permitted by applicable law, Seller's indemnification shall be applicable even as in losses caused in whole or in part by an indemnitee's negligence, but shall not apply to the extent that losses are clearly shown to have resulted solely and directly from the gross negligence or willful misconduct of such indemnitee. Buyer may at its option participate in the defense of any third party claim with its own counsel, at Seller's expense.

13. MODIFICATION OF ORDER: This Order, these Terms, together with any written instruction issued hereunder, contain the complete and final agreement between Buyer and Seller and no agreement or other understanding in any way purporting to modify the terms and conditions hereof shall be binding upon Buyer unless otherwise agreed to by Buyer by written change order signed by the President of the Buyer on or subsequent to the date of this Order. Buyer may at any time, by written change notice signed by a person authorized by the Buyer, make changes in: (a) the drawings, designs, and/or specifications applicable to the supplies and or services covered by this Order; (b) the method of shipments and packing; and (c) the place of delivery. If any such changes affect the time for performance, the cost of manufacturing the Products or the cost of furnishing any services, Buyer shall make an equitable adjustment in the purchase price or the delivery schedule or both. Seller shall not make any changes in the design, composition and processing of any Products ordered hereunder without the prior written approval of the Buyer. Nothing contained in this clause shall relieve Seller from processing without delay the performance of this Order as changed.

14. CONTINGENCIES-SUSPENSIONS: To the extent that Buyer is providing any supplies to Seller for the manufacture or assembly of the Products, Buyer reserves the right to suspend shipments of supplies covered by this Order at any time where such suspension or cancellation is caused by embargoes, acts of civil or military authorities, act of public enemy, inability to secure transportation facilities, strikes, differences with workmen or other law, order, or regulation or other contingencies beyond the control of Buyer. Whenever an actual or potential labor dispute is delaying or threatening to delay performance of this Order, Seller shall immediately give notice written thereof to Buyer.

15. DEFAULT & TERMINATION FOR CAUSE: Seller shall be in default hereunder if: (a) Seller does not comply with the Order and these Terms in all respects; or (b) Seller makes an assignment for the benefit of

creditors, or proceedings in bankruptcy or insolvency are instituted by or against Seller; or (c) if Seller shall fail to continuously operate its business; or (d) if Seller shall fail to promptly correct and/or repair any non-conformities or defects in the Products; or (e) if at any time in the Buyer's sole judgment Seller's financial or other condition or progress on the Order shall be such as to endanger timely performance. Upon any default thereunder, in addition to all other remedies hereunder at law or in equity, Buyer may cancel and terminate all or any part of the Order without liability except to pay the contract price for Products delivered prior to notice of cancellation, purchase from a third party replacement Products and demand and recover from Seller any and all increased costs or other damages relating thereto, plus interest and attorneys fees, cost of suit, and other damages.

16. TERMINATION FOR CONVENIENCE: Performance of work under this Order may be terminated by Buyer at its option in whole or in part, at any time, and for any reason, by delivery or by mailing of a written notice of termination to the Seller. After a receipt of a notice of termination Seller shall, unless otherwise directed by Buyer, immediately terminate all work under this Order and shall, otherwise directed by Buyer: (a) terminate all orders and subcontracts relating to the performance of the work terminated by the notice of termination; (b) settle all claims arising out of such termination of orders and subcontracts; (c) transfer title and deliver to Buyer: (i) all completed work which conforms to the requirements of this Order and does not exceed, in quantity, the amount authorized for production by Buyer; and (ii) all reasonable quantities (but not in excess of amount authorized by Buyer of work in process and material produced or acquired in respect of the performance of the work terminated) which are of a type and quality suitable for producing Products which conform to the requirements of this Order and which cannot reasonably be used by Seller in producing Products for itself or for its other customers; (d) take all action necessary to protect property in Seller's possession in which Buyer has or may acquire an interest; (e) submit to Buyer promptly, but not later than thirty (30) days from the effective date of termination (fifteen (15) days in the case of partial termination), its termination claim; provided however, that in the event of failure of Seller to submit its termination claim within such period, Buyer may determine on the basis of information available to it, the amount if any, due Seller with respect to the termination and such determination shall be final. Upon termination by Buyer under this Paragraph, Buyer shall pay to Seller the following amounts without duplications: (A) the Order price for all Products and services which have been completed in accordance with this Order and not previously paid for; (B) the actual costs incurred by Seller in accordance with this Order to the extent such costs are reasonable in amount are allocable or apportionable under generally accepted accounting practices to the terminated portion of this Order including the actual cost of work in process and Products delivered to Buyer in accordance with the Order and including the actual cost of discharging liabilities which are so allocable or apportionable; and (C) the reasonable costs incurred by Seller in protecting property in its possession in which Buyer has or may acquire an interest. In no event shall any payments under this Paragraph exceed the aggregate price specified in this Order less payments otherwise made to Buyer or which are hereafter made to Buyer. Buyer shall have access to Seller's premises and records prior or subsequent to payment to verify charges supporting any termination claim. The provisions of this Paragraph shall not apply if this Order is canceled by Buyer based upon the default of Seller pursuant to Paragraph 17 above.

17. INFORMATION DISCLOSED BY SELLER: All technical information disclosed heretofore or hereafter by Seller to Buyer in connection with Products or services supplied under or pursuant to this Order are disclosed or will be disclosed on a non confidential basis unless otherwise expressly agreed in writing. Seller agrees not to assert any claims with respect to any technical information which Seller shall have disclosed or may hereafter disclose to Buyer in connection with the goods or services covered by the Order.

18. GUARANTEED LOWEST PRICE: Seller represents that the price charged for Products or services covered by this Order is the lowest price charged by Seller to buyers of a class similar to Buyer under conditions similar to those specified in this Order. Any price reductions made in Products covered by this Order subsequent to placement of this Order will be applicable to this Order with respect to deliveries after effective date of such price reduction to any customer of the same class.

19. NO PRICE ADJUSTMENT: The purchase price(s) for the Products identified in the Order may not be adjusted in any manner without the advance written consent of the Buyer, which the Buyer shall have no obligation to provide. The Buyer shall not be liable or responsible for the payment of any price increases, adjustments, or surcharges whatsoever, unless expressly identified in the Order.

20. PATENTS: Seller warrants that the Products specified herein (and their sale or use, alone or in combination, according to Seller's specifications or recommendations if any) will not infringe any United States or foreign patents; and agrees to indemnify and hold harmless Buyer and any one selling or using any of Buyer's goods against all judgments, decrees, costs and expenses resulting from any alleged infringement and agrees that Seller shall upon request of Buyer and at Seller's own expense, defend or assist in the defense of any action which may be brought against Buyer or those selling or using any of Buyer's goods of which the Products are a part by reason of any such alleged infringement.

21. DISCLOSURE OF INGREDIENTS, SPECIAL WARNINGS & 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, assemblies and/or components incorporated in the Products; (b) the amount(s) of one or more ingredients; and (c) other information concerning any changes in or additions to such ingredients, assemblies and/or components as Buyer may reasonably request. Seller shall furnish to Buyer sufficient warning and written notification (including all appropriate labels on the Products and/or shipping containers) as to any hazardous material which is an ingredient or part of the Products, together with special handling instructions as may be necessary to advise the carrier(s), Buyer and their respective personnel as to how to exercise that measure of care and precaution which shall best prevent bodily injury or property damage in the handling, transportation, processing, use and disposal of the Products containing any such hazardous materials.

22. CONFIDENTIALITY & PROPRIETARY INFORMATION: Any information or knowledge which Buyer may have disclosed, or may hereafter disclose, to Seller in connection with the Order, Buyer's Request For Quotation,

Buyer's Statement of Requirements, other commercial or technical information disclosed by Buyer to Seller, or which Seller should reasonably know is confidential or proprietary by its nature, shall be deemed to constitute confidential and/or proprietary information of the Buyer and shall not be disclosed by Seller to any third party without Buyer's prior written approval. Seller shall not utilize Buyer's specifications, plans, designs or drawings to provide quotations upon the same or similar parts for any third parties without the written consent of Buyer. Upon Seller's acceptance of an Order for the provision of goods or services to Buyer, Seller will not provide substantially similar goods or services to any third party without the written consent of the Buyer, for so long as the Order remains in effect and a period of three (3) months thereafter. Seller shall only disclose the confidential and/or proprietary information of the Buyer to those employees of Seller who have a need to know same and who are subject to confidentiality agreements which restrict such employees from disclosing any of the confidential and/or proprietary information of the Buyer.

23. MISCELLANEOUS: Buyer shall have the right at any time to set-off any amount owing by Seller to Buyer against any amount due and owing to Seller under this Order. The individual rights and remedies reserved herein shall be cumulative and additional to any other or further remedies provided in law or equity or in this Order. Failure of Buyer to insist upon a strict performance of any provisions of this Order shall not constitute a waiver of such provision or waiver of any default. The terms, provisions, representations and warranties contained in this Order shall survive the delivery of the products ordered herein and the payment of the purchase price. If any provision or provisions of this Order shall be held to be invalid, illegal, or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. This Order shall be construed and governed according to the laws of the State of Michigan. The parties hereby unconditionally and irrevocably: (a) submit to the jurisdiction of the Oakland County, Michigan, Circuit Court (hereinafter the 'Court'), in connection with any action arising out of this Order; (b) agree that all claims in any such action may be decided by the Court; and (c) waive, to the fullest extent that they may effectively do so, the defenses of: (i) lack of subject matter jurisdiction of such Court; (ii) the absence of personal jurisdiction by such Court over the parties; and (iii) forum non-conveniens.