

HIGUCHI INTERNATIONAL CORPORATION
TERMS & CONDITIONS OF SALE – AUTOMOTIVE

1. **FORMATION OF THE CONTRACT.** THE SALE OF PRODUCTS AND SERVICES (TOGETHER, “PRODUCTS”) BY HIGUCHI INTERNATIONAL CORPORATION (D/B/A HIGUCHI MANUFACTURING AMERICA) (“HIGUCHI” OR “SELLER”) TO THE BUYER (“BUYER”), AND HIGUCHI'S ACCEPTANCE OF AN ORDER ISSUED BY BUYER, IS EXPRESSLY SUBJECT AND LIMITED TO BUYER’S ACCEPTANCE OF THE TERMS OF HIGUCHI’S QUOTATION AND THE TERMS AND CONDITIONS CONTAINED HEREIN (THE “AGREEMENT”). NO MODIFICATION OR WAIVER OF ANY OF THE TERMS AND CONDITIONS CONTAINED HEREIN AND NO ADDITIONAL OR DIFFERENT TERMS OR CONDITIONS PROPOSED BY BUYER IN ANY MANNER SHALL BE EFFECTIVE UNLESS AGREED TO IN WRITING SIGNED BY BOTH PARTIES. NO ORAL AGREEMENT, COURSE OF PERFORMANCE OR OTHER MEANS OTHER THAN SUCH WRITTEN AGREEMENT SIGNED BY BOTH PARTIES EXPRESSLY PROVIDING FOR SUCH WAIVER SHALL BE DEEMED TO WAIVE ANY THE TERMS OF THIS AGREEMENT. BUYER’S ACCEPTANCE OF THE PRODUCTS SOLD HEREUNDER SHALL CONSTITUTE BUYER’S ACCEPTANCE OF THE TERMS HEREOF. BUYER’S ACCEPTANCE OF THESE TERMS SHALL BE CONCLUSIVELY PRESUMED BY BUYER’S SIGNATURE ON THIS DOCUMENT, BY BUYER’S SUBMISSION OF A PURCHASE ORDER IN RESPONSE TO THIS DOCUMENT OR HIGUCHI’S QUOTE, OR BY BUYER’S ACCEPTANCE OF DELIVERY OF, OR PAYMENT FOR, THE PRODUCTS. ANY CONTRACT MADE FOR THE SALE OF GOODS OR SERVICES BY HIGUCHI IS EXPRESSLY CONDITIONAL ON BUYER’S ASSENT TO THE TERMS STATED IN THIS DOCUMENT. HIGUCHI OBJECTS TO ANY ADDITIONAL OR INCONSISTENT TERMS PROPOSED BY BUYER. THE PARTIES INTEND THAT THE UNIFORM COMMERCIAL CODE’S “BATTLE OF THE FORMS” NOT APPLY TO THEIR CONTRACT AND THAT THESE TERMS AND THOSE STATED IN HIGUCHI’S QUOTE ARE THE SOLE AND EXCLUSIVE TERMS OF THE PARTIES’ CONTRACT.

2. **PRICES AND TAXES.** Products will be invoiced upon shipment or start of services, as applicable. . All prices are subject to the shipping terms defined in Section 4 below. The prices are exclusive of any applicable National, Federal, State, Provincial, Regional or local taxes or assessments. Such taxes and assessments will be included in Higuchi’s invoice and paid by Buyer. All prices are subject to adjustment, at any time, by Higuchi. By way of example, and not limitation, prices may change due to changes in volume, the cost of any service input, the cost of raw material or labor or components, forecasts, economics, exchange rates or if the Buyer extends a program or part beyond the initial order term or initial estimated life of the program, as applicable. Such adjustment shall be retroactive if Buyer’s actual purchases fall short of the volume forecasts the prices were based on. Service parts will be charged a new price/rate and not at the mass production price/rate, and Buyer will purchase a new and full coil of steel to support the production of service parts and buy all parts produced from it.

3. **CHANGES.** Buyer may request in writing changes in the design, drawings, specifications and shipping instructions of Products. As promptly as practicable after receipt of such request, Higuchi shall advise Buyer in an amendment letter what amendments to the Agreement, if any, may be necessitated by such changes, including, without limitation, amendment of price,

specifications and shipment schedule. If such proposed amendments to the Agreement are accepted in writing by Buyer, Higuchi shall make the requested changes with respect to such Products as may be affected thereby. Absent such agreement, Higuchi shall have no obligation to implement Buyer's requested changes. Higuchi may at any time make such changes in design and construction of Products as shall constitute an improvement in the judgment of Higuchi. Higuchi may furnish suitable substitutes for materials unobtainable because of priorities or regulations established by governmental authority or nonavailability of materials from suppliers. After any engineering review conducted while the Agreement is in force and prior to its completion for purposes other than making changes referred to above, Higuchi may assume that its recommendations are accepted in the event that Buyer does not provide required decisions or objects within fifteen (15) days after submission of Higuchi's recommendations to Buyer.

4. SHIPMENT AND DELIVERY. All delivery dates are estimates only. Higuchi's only obligation with respect to delivery dates shall be to use reasonable efforts to meet same. If Buyer causes or requests delay in the shipment of products or the provision of services, Buyer shall pay Higuchi for all expenses and losses of Higuchi resulting therefrom. Delivery terms shall, unless otherwise specified in Higuchi's quotation, be as follows: (a) U.S. domestic shipping (i.e., shipments are from a U.S. location to a U.S. location), will be FOB (as commonly understood in U.S. domestic freight movement) the designated Higuchi facility; and (b) all other shipping will be FCA (as defined in Incoterms 2020) at the designated Higuchi facility. Title and risk of loss to the Products shall transfer upon completion of delivery of the Products per the applicable delivery term specified above. Unless otherwise instructed, Higuchi will ship via industry standard means for the applicable Products. Higuchi will not be liable for any delays, breakage, loss or damage after having made delivery in good order to the first transportation carrier. All claims for loss or damage in transit are to be made by Buyer directly to the transportation carrier and the appropriate insurance carrier retained by Buyer. No deductions of any kind from the invoice amount shall be made. Unless otherwise specified in Higuchi's quotation, standard packing for domestic shipment is included in the quoted price. When special domestic or export packing is requested, Buyer will be charged for any additional expenses. Shipments shall be deemed accepted by Buyer unless written notice of rejection is received by Higuchi within ten (10) days after receipt of the Products by Buyer. Under no circumstances will Higuchi be liable for expedited freight charges of any kind.

5. QUANTITY. Any claim by Buyer that Seller failed to deliver the agreed-upon quantity of goods must be submitted to Seller in writing within thirty (30) days after Buyer receives the goods. If Buyer fails to so notify Seller, it will be conclusively presumed that the proper quantity was delivered by Seller. Seller has no obligation to (a) maintain any inventory of spare or replacement parts with respect to any goods or services provided to Buyer, or (b) provide ongoing maintenance or service except as otherwise specifically provided in the description of Seller's warranty described herein.

6. FORCE MAJEURE. No party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations of Buyer to make payments to Higuchi hereunder), when and to the extent such failure or delay is caused by or results from acts beyond the impacted party's ("Impacted Party") control, including, without limitation, the following force majeure events ("Force Majeure Event(s)"): (a) acts of God; (b) flood, fire,

earthquake, pandemics and epidemics or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order, law, or actions; (e) embargoes or blockades in effect on or after the date of this Agreement; (f) national or regional emergency; (g) labor shortages, machine downtime, strikes, labor stoppages or slowdowns, or other industrial disturbances; (h) shortage of adequate power or transportation facilities; (i) inability to obtain raw material, components, and/or labor through normal means; and (j) other events beyond the control of the Impacted Party. The Impacted Party shall give notice of the Force Majeure Event to the other party, stating the period of time the occurrence is expected to continue. The Impacted Party shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause. In the event of Higuchi's inability to perform due to a Force Majeure Event, Buyer shall be entitled to reduce its purchase obligations towards Higuchi by the quantities purchased from other sources (at Buyer's sole cost), but shall not have the right to terminate this Agreement without Higuchi's prior written consent.

7. **PAYMENT TERMS.** Unless otherwise specified in Higuchi's quotation, terms of payment are net thirty (30) days from date of invoice, with no discount allowed for early payment. Buyer must pay the full stated invoice price within thirty (30) days of the invoice date, regardless of when Buyer needs or uses the Products that are the subject of the invoice Higuchi reserves the right to alter or suspend credit terms, require C.O.D. or advance payment, whenever Higuchi has reasonable doubt as to Buyer's creditworthiness or willingness to pay. If Buyer becomes delinquent in payment or refuses to accept C.O.D. shipments, Higuchi shall have the right, in addition to all other available rights and remedies, to cancel any or all Buyer orders, withhold further deliveries, and declare all unpaid amounts for Products previously delivered immediately due and payable. Amounts past due shall be subject to an interest charge of 1.5% per month. Payments must be made at Higuchi's offices identified on the quotation. All costs and expenses incurred by Higuchi as a result of non-payment or delinquent payment by Buyer, including collection costs, interest, and reasonable attorneys' fees, shall be paid by Buyer. Buyer may request duplicate or additional copies of invoices at a charge of \$150 per request.

8. **SECURITY INTEREST.** Buyer hereby grants to Higuchi a continuing security interest in all Products furnished or to be furnished by Higuchi to Buyer, together with all tooling, parts, attachments, accessories, dies or appurtenances to such goods, all substitutions, improvements and replacements of such goods, all additions to such goods, and all proceeds of such goods and any of the foregoing. The continuing security interest described in this paragraph may be in the form of a purchase money security interest, a moldbuilder's or special toolbuilder's lien pursuant to state law, or any other lien allowed by law. The form of such security interest shall be determined by Higuchi in its sole discretion.

9. **PERFECTION OF SECURITY INTEREST.** Higuchi authorizes Seller to cause all financing statements or other instruments in respect of the security interest granted hereby, including without limitation all Uniform Commercial Code or other state law financing statements, to be filed and recorded or re-filed and re-recorded. Buyer agrees to execute, or otherwise authenticate, and hereby does authenticate, and deliver any statement, instrument or other document requested by Seller for such purpose. Buyer further agrees that it shall execute, or otherwise authenticate, and hereby does authenticate, and deliver to Higuchi upon Higuchi's request such further instruments, assurances and other documents as Higuchi deems necessary or advisable for the confirmation of perfection of Higuchi's rights hereunder. Buyer authorizes

Higuchi to file any such instrument or other document, including without limitation, any Uniform Commercial Code, Moldbuilder's Lien Act, and Special Tool Builder's Lien Act financing statements, without Buyer's signature and, if the signature of Buyer is required thereon, Buyer irrevocably appoints Higuchi as Buyer's attorney-in-fact to execute and file any such statement or other instrument in the name and on behalf of Buyer.

10. LIMITED WARRANTY AND DISCLAIMER.

10.1 Unless stated otherwise in Higuchi's quotation, Higuchi warrants to the original Buyer that the Products will conform to the agreed-upon specifications and will be free of defects in, material and workmanship. Unless otherwise specified in Higuchi's quotation, the warranty shall be for a period of 12 months after the date of delivery of the Product. This warranty does not extend to future performance, nor does it cover any assemblies or parts not manufactured by Higuchi. The determination of whether a defect exists shall be made solely by Higuchi. Buyer shall not return any goods to Higuchi until Higuchi has been provided a reasonable opportunity to inspect and sample the goods at the Buyer's premises to determine whether a defect exists and whether the goods should be repaired or replaced. Any shipping cost for returning defective goods shall be paid by Higuchi. Any goods returned to Higuchi shall be subject to a reasonable charge to cover Higuchi's cost of handling, restocking, and reconditioning the goods to return them to saleable condition.

10.2 Seller's obligation under its warranty is limited to Seller's repair or replacement, at Seller's sole discretion, of those Product that do not satisfy this warranty, provided that written notice of the defect is given to Seller by Buyer within thirty (30) days after the defect is discovered, but not later than twelve (12) months after delivery of the goods to Buyer. If Buyer approved a sample or drawings of, or specifications for, the Products, then the Products shall not be defective to the extent that they conform to the sample, drawings, or specifications.

10.3 In the event of (a) improper installation or misuse of the Products, (b) use of Products outside of Higuchi approved applications, specified environments or installation conditions, (c) use of Products for racing or testing applications, (d) failure to maintain Products in accordance with applicable maintenance instructions, or (e) alteration or damage caused to the Product, or similar circumstances, no warranty shall apply and Higuchi shall not be liable for such products or any damage caused by such products.

10.4 THIS LIMITED WARRANTY IS THE SOLE AND EXCLUSIVE REMEDY OF BUYER AGAINST HIGUCHI. THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES EXPRESS OR IMPLIED INCLUDING OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL HIGUCHI BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. UNDER NO CIRCUMSTANCES WILL HIGUCHI'S AGGREGATE LIABILITY TO BUYER OR ANY PARTY IN CONNECTION WITH THE

PRODUCTS EXCEED THE PURCHASE PRICE OF THE DEFECTIVE PRODUCT(S) AT ISSUE.

11. PROTOTYPE WARRANTY. Notwithstanding anything to the contrary herein, prototype components are for use only in product testing/evaluation by qualified Buyer representatives in an appropriate test environment. **Prototype components are provided “AS IS” and all warranties are expressly excluded.** Higuchi shall have no liability for claims related to the prototype components. Buyer shall indemnify and hold Higuchi harmless from claims related to the prototype components.

12. SPECIAL TOOLING. Special tooling which is separately negotiated for and fully paid for by Buyer as a separate item on an order shall become the property of Buyer upon payment in full. During its use at Higuchi’s facility, such special tooling shall be held for the exclusive use of Buyer (except that Higuchi may use such special tooling for the supply of Products to the aftermarket organizations of Higuchi, and its affiliates) and shall be maintained in accordance with Higuchi’s usual practice. Buyer shall bear the risk of ordinary wear and tear, or loss or damage other than such caused by Higuchi. At the request of Buyer and to the extent practicable, special tooling shall be identified by appropriate markings. Prices for special tooling do not include transportation costs, storage beyond completion of the purchase order, or costs of marking or packaging. Unless Higuchi elects to continue to use special tooling for the aftermarket as described above, Higuchi will not be responsible for special tooling after completion of the purchase order and Buyer shall remove all special tooling within 30 days after such completion. If Buyer fails to do so Higuchi may, at Buyer’s expense and without any liability towards Buyer, dispose of such in a manner it deems fit. Higuchi shall have a lien on the special tooling to secure all outstanding obligations of Buyer. If Buyer chooses to remove special tooling for any reason, Buyer shall be completely responsible for and pay all related costs.

13. TERMINATION/CANCELLATION.

13.1 Either party may terminate this Agreement: (a) upon breach of any material term of this Agreement by the other party which is not remedied within 30 days after notice of such breach; or (b) if a party becomes insolvent or makes an assignment for the benefit of creditors, or such party institutes any voluntary proceeding under bankruptcy, reorganization, arrangement, readjustment of debt or insolvency law of any jurisdiction or for the appointment of a receiver or trustee in respect to any of the party’s property, then termination shall be automatic and immediate; *however*, in the event any such proceeding is initiated by a third party against such party, termination shall be automatic if the such proceeding is not dismissed or cured by the party within thirty (30) days after the filing thereof. Additionally, Higuchi may terminate this Agreement (a) if Buyer is late on any payment due to Higuchi by more than five (5) days; or (b) for its own convenience upon thirty (30) days written notice to Buyer, in either case without liability to Buyer of any kind.

13.2 Buyer shall not cancel the Agreement or any part thereof except in the event that the vehicle program for which the Products are provided is canceled prior to the agreed upon end of program duration. In the event Buyer (a) cancels the program after business award but before the agreed upon end of program duration, or (b) wrongfully terminates the Agreement, then Buyer shall reimburse Higuchi for its cancellation charges, including but not limited to unrecoverable investment in capital equipment, Higuchi paid tooling, engineering costs, and material

obsolescence (in addition to other amounts due and legal remedies available to Higuchi). Buyer's payment shall be made in one lump sum without thirty (30) days of demand by Higuchi.

14. LICENSE REGARDING PRODUCTS. Buyer grants to Seller an irrevocable nonexclusive license to produce Products pursuant to any specifications provided by Buyer. Buyer warrants that it has the authority to grant this license to Seller, and that neither the granting of this license nor Seller's manufacture and sale of Products produced according to Buyer's specifications will violate any agreement to which Buyer is subject, any patent or other intellectual property right to any party, or any applicable law.

15. GOVERNMENT CONTRACTS. If Products are purchased under a government contract or sub-contract, Buyer shall promptly notify Higuchi of the provisions of any government procurement laws and regulations which are required to be included in the contract covering the Products ordered. If compliance with such provisions increases Higuchi's costs or liability, Higuchi shall be entitled, at its option, to adjust the prices accordingly, request separate payment of the additional costs, or terminate this Agreement with Buyer being responsible for all costs incurred by Higuchi.

16. CONFIDENTIAL INFORMATION. Any and all information concerning the Products or the transaction covered hereunder which Higuchi discloses to Buyer, or which Buyer otherwise obtains knowledge of hereunder, remains the exclusive property of Higuchi and shall not be disclosed by Buyer to third parties without Higuchi's express written consent. Buyer shall have no right whatsoever to such information other than to use it for evaluation for the purpose of the transaction covered hereunder. Higuchi will not disclose information submitted to it by Buyer which is confidential and proprietary to Buyer and clearly designated as such without Buyer's consent.

17. BUYER'S DEFAULT. Buyer is in default if any of the following occurs: (a) Buyer breaches, repudiates, or threatens to breach any term in the contract evidenced by this document or in any other agreement between Buyer and Seller, including but not limited to a failure to pay all sums when due; (b) Insolvency of Buyer or filing a voluntary or involuntary petition in bankruptcy with respect to Buyer; (c) appointment of a receiver or trustee for Buyer; (d) Buyer's credit becomes impaired or Buyer does not pay any amount owed when due; (e) Buyer fails or refuses to furnish to Seller such information and assurances as Seller may reasonably request about Buyer's financial condition; (f) execution of an assignment for the benefit of creditors of Buyer; (g) Buyer breaches any term of this Agreement.

18. HIGUCHI'S REMEDIES. In the event of Buyer's default, Seller may exercise any remedies available under applicable law, including but not limited to the following remedies: (a) Seller may require payment in advance, including acceleration of all amounts outstanding; (b) Seller may ship goods only via C.O.D.; (c) Seller may suspend performance or cancel all or any part of the balance of any contract with the Buyer; (d) Seller may reduce any unpaid debt of Buyer by enforcing its security interest, created hereby, in all goods (and proceeds therefrom) furnished by Seller to Buyer; (e) Seller may take any other steps necessary or desirable to secure Seller fully with respect to Buyer's payment for goods and services furnished or to be furnished by Seller to Buyer; and (f) Buyer shall reimburse Seller for all damages suffered due to Buyer's breach,

including but not limited to incidental, consequential, and other damages, as well as lost profits, reasonable attorney fees, and court costs.

These remedies shall be cumulative and in addition to any other remedies allowed to Seller under applicable law. No waiver by Seller of any breach or remedy shall be a waiver of any other breach or remedy.

19. INDEMNIFICATION. Buyer shall indemnify, defend, and hold Seller, its agents and employees harmless from all claims, liabilities, and expenses, including but not limited to actual attorney fees, sustained by Seller or its agents or employees that are caused by any action or omission of Buyer or its employees, agents, contractors, or representatives. Additionally, Buyer shall indemnify, defend, and hold Seller, its agents and employees harmless from all claims, liabilities, and expenses, including but not limited to actual attorney fees, arising out of any claim of infringement of a patent, copyright, trademark, trade name, or other proprietary right, or claim of unfair trade or of unfair competition in connection with the manufacture, sale, or use of the goods sold to Buyer, except to the extent that any claim, liability, or expense arises solely from specifications developed by Seller.

20. NO BUYER SET-OFF OR AUDIT RIGHTS. Buyer is not entitled to set-off any amounts due or allegedly due from Higuchi to Buyer from its debts towards Higuchi. Unless Seller shall provide its prior written consent, which may be withheld by Seller in its sole discretion, Buyer shall not, under any circumstances, have the right to conduct any audit or review of Seller's corporate books, records or financial information.

21. ASSIGNMENT. Buyer shall be entitled to assign its rights or obligations hereunder without the other party's prior written consent. A corporate reorganization, which does not result in a change of control or beneficial owner, shall not be deemed an assignment.

22. RELATIONSHIP OF THE PARTIES. Buyer and Higuchi are independent contracting parties. Nothing hereunder or in the course of performance of this agreement shall grant either party the authority to create or assume an obligation on behalf or in the name of the other party or shall be deemed to create the relationship of joint venture, partnership, association or employment between the parties.

23. SEVERABILITY. In the event that any provision of this Agreement shall by a court be declared void or unenforceable, the validity of any other provisions and of the entire Agreement shall not be affected thereby.

24. APPLICABLE LAW; ARBITRATION. This Agreement and all disputes between the parties arising out of or related to this Agreement shall be governed by the laws of the State of Michigan without giving effect to any choice or conflict of law provision or rule (whether of the State of Michigan or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of Michigan. The United Nations Convention on the International Sale of Goods shall not apply. The parties agree to submit all such disputes to binding arbitration which shall be held in the metropolitan area of San Antonio, Texas, in accordance with the rules of the American Arbitration Association ("AAA") pertaining to commercial arbitration. Within 30 days after either party has notified the other in writing that it is submitting a dispute to

arbitration, three arbitrators shall be appointed in accordance with said rules. Neither party shall be allowed to object to an arbitrator appointed by the other party. The arbitrators shall have no authority to award punitive damages or any other damages excluded herein. The arbitration award shall be final and binding, and it may be entered in and enforced by any court of competent jurisdiction. The party prevailing in the arbitration or any other legal proceedings shall be entitled to recover its costs including reasonable attorney's fees incurred due to the arbitration or other legal proceedings.

25. GENERAL.

25.1 Buyer warrants that it is and will remain in compliance with all federal, state and local laws, regulations and ordinances relating to Buyer's ability to perform its obligations under this agreement.

25.2 Higuchi will be entitled to set-off any liability of Buyer under the Agreement or any other contract with Higuchi and any Higuchi affiliate, against any liability Higuchi or any Higuchi Affiliate to Buyer or any affiliate of Buyer.

25.3 Higuchi and Buyer are contracting solely on the basis of orders expressly agreed by Higuchi, including these Terms and Conditions, which contain the entire understanding of the parties and is intended as a final expression of their Agreement and a complete statement of the terms thereof, and may not be amended, modified or otherwise supplemented unless such amendments, modifications or supplements are in writing and signed by a Higuchi authorized representative. Higuchi's quotation and these terms all of the terms of the agreement between Seller and Buyer with regard to its subject matter and supersedes all prior oral or written representations, agreements, and other communications between Seller and Buyer.

25.4 Any action by Buyer against Seller for breach of Seller's obligations hereunder or for any other claim arising out of or relating to the Products or their design, manufacture, sale or delivery must be brought within one (1) year after the cause of action accrues.

25.5 Higuchi, and Higuchi only, shall be entitled to recover its actual attorneys' fees and all costs in any proceeding in connection with this Agreement or the Products.

26. VALIDITY OF QUOTATION. Any quotations issued subject to the terms contained herein shall be valid for 30 days from the date of issuance unless otherwise stated in Higuchi's quotation.