

**MUSASHI  
TERMS AND CONDITIONS OF SALE**

This Agreement sets forth the terms and conditions governing the relationship for the sale of products (Product(s)) by Musashi North America, Inc. (Musashi) to \_\_\_\_\_  
\_\_\_\_\_ (Customer) and is effective as of this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**1. ACCEPTANCE**

THE TERMS AND CONDITIONS OF SALE CONTAINED HEREIN APPLY TO ALL QUOTATIONS MADE AND PURCHASE ORDERS ACCEPTED BY MUSASHI FOR THE PURCHASE AND SALE OF PRODUCTS. SOME OF THE TERMS AND CONDITIONS SET OUT HERE MAY DIFFER FROM THOSE IN CUSTOMER'S PURCHASE ORDER AND SOME MAY BE NEW. THE CUSTOMER'S ACCEPTANCE IS CONDITIONAL ON CUSTOMER'S ASSENT TO THE TERMS SET OUT HERE IN LIEU OF THOSE IN CUSTOMER'S PURCHASE ORDER OR ELSEWHERE. CUSTOMER'S ACCEPTANCE OF THE PRODUCTS FROM MUSASHI SHALL CONSTITUTE THE AGREEMENT BY CUSTOMER TO AMENDING ANY TERMS OR CONDITIONS SET FORTH IN ANY PRIOR AGREEMENT BETWEEN THE PARTIES TO CONFORM WITH THE TERMS OF THIS AGREEMENT. MUSASHI'S FAILURE TO OBJECT TO PROVISIONS CONTAINED IN ANY COMMUNICATION FROM CUSTOMER SHALL NOT BE DEEMED A WAIVER OF THE PROVISIONS OF THESE TERMS AND CONDITIONS. ANY CHANGES IN THE TERMS CONTAINED HEREIN MUST SPECIFICALLY BE AGREED TO IN WRITING BY AN AUTHORIZED OFFICIAL OF MUSASHI BEFORE BECOMING BINDING ON EITHER MUSASHI OR CUSTOMER.

## **2. SPECIFICATIONS**

(a) During the term of this Agreement, Customer agrees to purchase from Musashi, and Musashi agrees to manufacture and sell to Customer, such quantities of Products described in Purchase Orders (as defined below) and in compliance with the specifications provided by Customer to Musashi, as may be ordered from time to time pursuant to Purchase Orders issued by Customer to Musashi. As used herein, the term "Purchase Order" means a purchase order for Products issued by Customer to Musashi, and/or a "release" or similar order or instruction to ship Products issued against or based upon a blanket purchase order issued by Customer to Musashi.

(b) All pre-production specifications and requirements must be clearly communicated to Musashi in writing in accordance with the lead times set forth in Musashi's quotation. All design specifications provided to Musashi must contain written approval by Customer. The lead time to provide prototype products shall commence on the date Musashi receives the Customer's prototype purchase order. Customer may at any time in a writing delivered to Musashi change drawings, specifications, materials, packaging, time and place of delivery or method of transportation. Upon the occurrence of any such change, Musashi shall communicate the lead time necessary for the production of the products as revised by Customer and the revised lead time shall apply to all future purchase orders. If any such change increases the cost or time required for Musashi's performance hereunder, Customer shall be responsible for any increase in cost or labor required to conform to the change in drawings, specifications, materials, packaging or transportation.

### **3. PRICES**

(a) Unless otherwise expressly stated in writing, the price stated is inclusive of all discounts and productivity improvements, but exclusive of: (i) packaging; (ii) delivery and carriage charges; and (iii) value added tax and any other taxes and duties, which taxes shall be paid by the Customer at the rate and in the manner prescribed by applicable law from time to time.

(b) Musashi may adjust the price stated to take account of any changes, including but not limited to: (i) any change in Product specifications made at the request of Customer and agreed to in writing by Musashi; (ii) any delay caused by the Customer; (iii) any increase in raw material costs; (iv) any changes in volumes; or (v) any other changes in assumptions from the quoted levels.

### **4. PAYMENT**

Unless otherwise set forth on the face hereof payment terms are net 30 days from date of invoice. Customer agrees that it shall not be entitled to any set off or recoupment for non-conforming Products or any other reason unless specifically authorized by Musashi in writing. Musashi reserves a purchase money security interest in the Products delivered until all of Musashi's claims have been paid. Musashi may change these credit terms if Customer's financial condition changes. Each shipment shall be considered a separate and independent transaction.

### **5. DELIVERY**

Musashi will use its best efforts to make deliveries in the quantity and at the times specified in each Purchase Order. Delivery will be FCA Musashi's location and will occur when the Products are ready for pickup by the carrier. In the absence of specific instructions, Musashi will select a carrier. Musashi will pack, mark, and prepare Products for shipping in accordance with

written instructions provided to Musashi by customer. Absent written instructions from Customer, Musashi will pack, mark, and prepare Products for shipping in accordance with its standard practices. Musashi does not assume any liability for the shipment. Customer will be responsible for all packaging, transportation, and insurance charges, including those associated with warranty repairs. Delivery dates set forth on the purchase order are estimates only. Musashi will use its best efforts to deliver in accordance with these dates but will not be responsible for failure to deliver as estimated.

## **6. INSPECTION**

Within 30 days after delivery, Customer will inspect the Products and give written notice of rejection to Musashi detailing the manner in which any Products do not conform to the specifications. Upon receiving authorization and shipping instructions from Musashi, Customer may return rejected Products. If Customer retains the Products after their delivery without giving Musashi such notice within the designated period, Customer will be deemed to have irrevocably accepted the Products. Customer's inspection and acceptance tests shall not exceed the inspection and test procedures customary in the industry for the Products and shall be at the Customer's expense. Musashi may charge to customer any costs resulting from the testing, handling, and disposition of any Products returned by Customer which are found by Musashi to be conforming. Customer's exclusive remedy if any Products are returned shall be to receive replacement Products. Any replacement Products will be available for shipment in accordance with the lead times applicable to the Products.

## **7. WARRANTY**

Musashi warrants to Customer that the Products will conform with Customer's drawings and specifications and be free from defects in material and workmanship under normal use and service for a period of one year from date of invoice. Customer's exclusive remedy for breach of this warranty is that Musashi will either (i) repair or replace, at its option, any Product which fails during the warranty period because of such defect (if Customer promptly reported the failure to Musashi in writing) or, (ii) if Musashi is unable to repair or replace, Musashi will refund the purchase price of the Product upon its return to Musashi. This warranty does not apply to any Product which has been subjected to misuse, abnormal service or handling, or which has been altered or modified in design or construction, or which has been serviced or repaired by anyone other than Musashi. Misuse includes the use of a Product in any application other than the one identified for the initial specifications for the Products. The warranties set forth herein are in lieu of, and exclusive of, all other warranties, express or implied. ALL EXPRESS AND IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR USE AND FITNESS FOR A PARTICULAR PURPOSE ARE SPECIFICALLY EXCLUDED.

## **8. PATENTS AND COPYRIGHTS**

If notified promptly in writing of any action (and all prior related claims) brought against Customer alleging that Customer's use of the Products infringes a United States patent or copyright, Musashi will defend that action at its expense and will pay the costs and damages awarded against Customer in the action, provided that Musashi shall have sole control of the defense and all negotiations for settlement or compromise. If a final injunction is obtained in such action against Customer's use of the Products or if in Musashi's opinion the Products are likely to

become the subject of a claim of infringement, Musashi will at its option and expense either procure for Customer the right to continue using the Products, replace or modify the Products so that they become non-infringing or grant Customer a credit for the infringing Products and accept their return. Musashi will not have any liability to Customer and Customer will defend and hold Musashi harmless if the alleged infringement is based upon use or sale of the Products in combination with other products or devices which are not made by Musashi or use of the Products for other than their intended purpose. Customer will defend and hold Musashi harmless against any expense, judgment or loss for alleged infringement of any patents, copyrights or trademarks which result from compliance with Customer's designs, specifications or instructions. No costs or expenses shall be incurred for the account of Musashi without its prior written consent. Musashi's total liability to Customer as a result of compliance with this provision will not exceed the sum paid to Musashi by Customer for the allegedly infringing Products. The foregoing states the entire liability of Musashi for alleged infringement of patents and copyrights by the Products, any part of them or by their operation.

## **9. CANCELLATION AND RESCHEDULING**

All quantities related to a purchase order must be released and shipment scheduled no more than 12 months from the date of the purchase order. Musashi may cancel an order or any portion immediately in the event of Customer's default or a material adverse change in Customer's financial condition without affecting Musashi's rights and remedies. Except as otherwise provided herein, orders accepted by Musashi are firm and non-cancellable. Musashi may cancel any outstanding obligations to Customer for Products identified in a Purchase Order upon 90 days written notice.

## **10. CONTINGENCIES**

Musashi shall not be responsible for any failure to perform due to unforeseen circumstances or due to causes beyond Musashi's reasonable control. Examples of such causes include, but are not limited to, acts of God, war, riot, embargoes, acts of civil or military authorities, fire, floods, accidents, strikes or shortages of transportation facilities, fuel, energy, labor or materials. Musashi may defer delivery for a period equal to the delay caused by such contingency in the event of shortages for any reason whatsoever. Musashi may allocate production among its customers.

## **11. LIMITATION OF LIABILITY; INSURANCE**

(a) Liability of Musashi to Customer, if any, under this contract for breach of contract or warranty, negligence or otherwise shall in no event exceed the total contract price specified less the purchase price of any items delivered and accepted hereunder. In no event shall Musashi be liable to Customer or others for special, incidental, or consequential damages for breach of any of the provisions of this contract, including without limitation, provisions regarding warranties, guaranties, indemnities, and patent infringement, or based upon any claims, demands, settlements, or lawsuits arising from or in connection with the Products sold hereunder. Such damages include, but are not limited to, costs of removal and reinstallation of items, loss of good will, loss of profits, or loss of use. Customer assumes all liability for any and all damages arising from or in connection with, the use or misuse of the Product by Customer, its employees, or others.

(b) To the extent Customer's agents, employees or subcontractors enter upon premises occupied by or under the control of Musashi in the course of the performance of this Agreement, Customer will take reasonable steps to prevent any injury to persons or property arising out of the acts or omission of such agent's employees or subcontractors and will be responsible for any and

all claims for injury or damage asserted by any agent, employee or subcontractor, except to the extent that any such injury or damages is due solely and directly to Musashi's gross negligence. Customer agrees to reimburse, indemnify, defend at its expense, and hold harmless Musashi, its officers, employees, agents, successors, and assigns from and against any and all losses, expenses, and liabilities (including incidental and consequential damages, court costs and attorney fees) arising out of (1) any act or omission of Customer, its agents, employees, or subcontractors and (2) any claim asserted in relation to Products provided by Musashi after the Products have been accepted by Customer as set forth in this Agreement. Customer's obligation to indemnify Musashi will apply regardless of whether the claim arises in tort, negligence, contract, warranty, strict liability or otherwise, except as provided in this Agreement. Customer will maintain i) public liability and property damage insurance, including contractual liability (both general and vehicle) in amounts sufficient to cover obligations set forth above, and ii) workers' compensation and employer's liability insurance covering employees engaging in performance of all Purchase Orders for claims arising under any applicable workers' compensation or occupational disease laws. At Musashi's request, the Customer will furnish certificates evidencing such insurance which will expressly provide that no expiration, termination, or modification will take place without 30 days' written notice to Musashi.

(c) In the performance of this Agreement and the Purchase Orders, Customer shall fully comply with all applicable laws. Customer agrees to reimburse, indemnify, defend at its expense, and hold harmless Musashi, its officers, employees, agents, successors, and assigns, from and against any and all losses, expenses, and liabilities (including incidental and consequential damages, court costs and attorney fees) arising out of any liability resulting from Customer's failure to so comply.



## **12. TERMINATION FOR CONVENIENCE.**

Musashi may terminate this Agreement and any or all Purchase Orders or any part thereof for its convenience by written notice to the Customer. Upon receipt of notice of termination, Musashi will immediately stop all work hereunder (or under the terminated Purchase Order(s) or portions thereof) and cause any of its suppliers or subcontractors to cease such work. In such event, Customer will pay Musashi for all Parts which are: i) ready for shipment in accordance with the applicable Purchase Order delivery schedule prior to Customer's receipt of the termination notice, ii) conformed to all requirements of this Agreement and the applicable Purchase Order, and iii) free and clear of all encumbrances. Customer will not pay for any terminated work after Customer's receipt of notice of termination, or for any other costs incurred by Musashi's suppliers or subcontractors which Musashi reasonably could have avoided.

## **13. TERMINATION FOR CAUSE.**

Musashi may terminate this Agreement and any or all Purchase Orders or any part thereof for cause in the event of a default by Customer. "Default" means: i) Customer's failure to comply with any of the terms and conditions of this Agreement or any Purchase Order, ii) Customer's failure to give Musashi, upon request, reasonable assurance of Customer's future performance, iii) insolvency, bankruptcy, liquidation, or dissolution of Customer, or iv) any other event which causes Musashi to reasonably doubt Customer's ability to render due performance hereunder.

## **14. DEFAULT; CANCELLATION.**

In the event of a Default, Musashi may, upon written notice to Customer but without further liability to Customer: i) waive all or any part of the Default, ii) agree in writing to any change in or modification of any Purchase Order as Musashi may in its judgment deem advisable, iii)

terminate this Agreement and/or any Purchase Order in whole or in part, and/or iv) exercise any other rights or remedies Musashi may have under applicable law. No waiver of a Default will constitute a waiver of any other Default by Customer. Customer's liability for Default shall include Musashi's incidental and consequential damages as well as any attorney fees incurred in connection with the Default.

**15. PROPRIETARY INFORMATION; CONFIDENTIALITY; ADVERTISING.**

(a) Customer shall treat all information furnished by Musashi hereunder (including drawings, specifications, technical presentations, or other documents prepared by Musashi for Customer in connection with the Purchase Orders to be confidential and shall not disclose any such information to any other person, or use such information for any purpose other than as identified by Customer, unless Customer obtains Musashi's prior written permission. Customer will not advertise or publish the fact that Musashi has contracted to provide Products to Customer, or disclose any information relating to any Purchase Order without Musashi's prior written permission.

(b) Unless otherwise agreed in writing, no information disclosed in any manner or at any time by Customer to Musashi will be deemed secret or confidential, and Customer will have no rights against Musashi with respect thereto except such right as may exist under patent laws.

**16. SEVERABILITY.**

Any provision of this Agreement or any Purchase Order which is finally determined by a court of law to be unenforceable or unlawful will be deemed severed from this Agreement or such Purchase Order, as applicable, and every other enforceable and lawful provision hereof shall remain in full force and effect.

**17. ASSIGNMENTS AND SUBCONTRACTING.**

No part of this Agreement or any Purchase Order may be assigned or subcontracted without the prior written approval of Musashi.

**18. NO THIRD-PARTY RIGHTS**

Except as expressly provided for in writing, no term, condition or right in or arising under the Agreement or Purchase Order gives or creates any third-party beneficiary rights or any other rights whether in law or equity to any person or entity.

**19. TOOLING, TITLE, IDENTIFICATION**

All right, title, and interest in and to any part of Tooling to be paid for by Customer ("Customer-owned Tooling") shall pass to Customer as soon as it is acquired or fabricated in accordance with a Purchase Order. During the term of a Purchase Order, all such Customer-owned Tooling in the possession of Musashi shall remain the property of Customer and shall not be deemed to be a fixture or a part of Musashi's real property. Musashi will (i) properly house and maintain such property on its premises, (ii) prominently mark it Property of Buyer, (iii) refrain from commingling it with the property of Seller or with that of a third party, and (iv) not move it to another location, without the prior written consent of Customer. In the case of an emergency, Musashi may move Customer-owned Tooling provided that it gives Customer notice that the Tooling has been moved and the location of the Tooling as soon as reasonably practicable. Customer remains responsible for insuring all Customer-owned Tooling. Customer shall indemnify Musashi against any claim related to the Customer-owned Tooling. To the extent permitted by law, Musashi waives its right to object to the repossession of the Customer-owned Tooling by Customer in the event Musashi is involved in bankruptcy proceedings. While in its possession, Musashi shall maintain the Customer-owned Tooling in first class condition and

immediately replace any items which are lost or destroyed or become worn out. All costs associated with the maintenance or replacement of Customer-owned Tooling shall be Customer's responsibility. Title to any modifications, changes or accessions to Customer-owned Tooling shall vest in Customer only when Customer has reimbursed Musashi for such modification, changes or accessions. Musashi shall keep such records in relation to the Customer-owned Tooling as Customer may reasonably require. None of the Customer-owned Tooling shall be used in the production, manufacture or design of any goods or materials except Customer's. Musashi shall not sell or otherwise dispose of any product using Customer-owned Tooling to any party other than Customer except where specifically authorized by Customer in writing. If the Customer-owned Tooling is not utilized to produce any parts for Customer for a period of one year, Musashi shall notify Customer and request instructions as to the disposition of the Customer-owned Tooling. If Customer fails to provide instructions as to the disposition of the Customer-owned Tooling within 60 days, then the Customer-owned property shall be deemed abandoned by Customer and Musashi has the authority to dispose of the Customer-owned Tooling as it deems appropriate in its sole discretion.

## **20. DISPUTE RESOLUTION**

The parties agree that any and all disputes arising out of this Agreement and any Purchase Order covered by this Agreement, including whether any provision of this Agreement has been breached, shall be handled in accordance with the provisions of this Section 20.

a) Negotiation. In the event of a dispute between the parties relating to this Agreement or a Purchase Order, the one raising the matter in dispute will notify the other in a written notice describing in sufficient detail the nature of the dispute. Each party will then appoint one or more representatives to resolve the dispute. These representatives will promptly meet and negotiate in

good faith to reach a fair and equitable settlement. At the end of 60 days, if no settlement has been reached, either party may end discussions and declare an impasse.

(b) Mediation. If an impasse is declared under Section 20(a), the parties will participate in confidential, non-binding mediation by a third-party mediator in good faith. The parties will promptly agree on the mediator and the cost of the mediator will be shared equally. The mediator has 90 days from the date of appointment to help resolve the dispute.

(c) Arbitration. If an impasse is not satisfactorily resolved via mediation, then it may be submitted for resolution by either party to a neutral arbitrator, to be selected by the parties from a list provided by the American Arbitration Association, with such resolution to be made pursuant to that organization's then-current Arbitration Rules and Mediation Procedures. The request will be made in a written notice provided within 30 days following the end of the Mediation period set forth in Section 20(b).

(d) Confidential Nature of Mediation/Arbitration. The parties further agree that, in the event a dispute arising out of this Agreement is submitted to mediation and/or arbitration, they will keep confidential both the fact mediation/arbitration has or will take place, and all facts related thereto. The only exception to this confidentiality requirement shall be in the event a party seeks judicial enforcement of a mediated settlement or arbitration award; in such instance, the existence of the settlement/award, and the contents thereof, may be disclosed to the Court under seal, without breaching this Agreement. Any settlement reached via mediation or award of an arbitrator shall be final and binding on all of the parties to this Agreement. Judgment upon any such settlement/award may be entered in any court of competent jurisdiction within the State of Michigan, or application may be made to any such court for a judicial acceptance of the settlement/award or any other order of enforcement deemed appropriate. The only exception to

this mediation/arbitration provision shall be that, in the event of a threatened or anticipatory breach of any provision of this Agreement, either party shall be entitled to seek injunctive relief from a court of competent jurisdiction to prevent such breach.

## **21. GENERAL**

This is the complete and exclusive statement of the agreement between the parties and supersedes all prior agreements and communications about the subject matter. Regardless of any disclosure made by Customer to Musashi of an ultimate destination of the Products, Customer will not export, directly or indirectly, any Product without first obtaining all required licenses from the appropriate government agencies. This agreement and all transactions under it shall be governed by the laws of the State of Michigan.