

AUTO TECHNOLOGY COMPANY.
TERMS AND CONDITIONS OF SALE

PLEASE NOTE: Placing an order with Auto Technology Company. ("Seller") constitutes an acknowledgement that you ("Buyer") have read and agree to the following Terms and Conditions of Sale:

1. **Scope:** The terms and conditions of sale contained herein ("Terms") shall apply to all quotations and offers made by Seller and all purchase orders accepted by Seller. These Terms apply to all sales made by Seller except to the extent that these Terms conflict with a separate written sales agreement entered into between Seller and Buyer that makes specific reference to each provision of these Terms that is being superseded by such sales agreement and such sales agreement is signed by a duly authorized officer of Seller (a "Sales Agreement"). A Buyer's purchase order is not a Sales Agreement. These Terms apply in lieu of any course of dealing between Seller and Buyer or usage of trade in the industry. These Terms may in some instances conflict with some of the terms and conditions affixed to the purchase order or other procurement document issued from Buyer. In such case, these Terms shall govern, and acceptance of Buyer's order is conditioned upon Buyer's acceptance of these Terms, irrespective of whether Buyer accepts these Terms by written acknowledgement, by implication, or acceptance and payment of products ordered. Seller's failure to object to provisions contained in any communication from Buyer shall not be deemed to be a waiver of these Terms in any respect; and any such provisions are hereby objected to. Buyer will be deemed to have assented to these Terms if any part of the products and/or services are shipped or provided, or an invoice is presented in connection with the said products and/or services.

2. **Price, Taxes and Quotations:** Any order that can be canceled and rescheduled pursuant to paragraph 6(a) of these Terms is subject to a potential price change immediately. All prices are exclusive of any present or future sales, revenue or excise tax, value added tax, turnover tax, import duty (including brokerage fees) or other tax applicable to the manufacture or sale of any product. Such taxes, when applicable, shall be paid by Buyer unless Buyer provides a proper tax exemption certificate. If Buyer claims exemption from any sales, use or other tax imposed by any taxing authority, Buyer shall indemnify and hold Seller harmless from and against any such tax, together with any interest or penalties thereon, which may be assessed if the items or the transaction are held to be taxable. Unless otherwise agreed in a Sales Agreement, prices quoted by the Seller are those current at the date of quotation and shall be subject to variation by the Seller. Any quote by the Seller to the Buyer is good for only thirty days from issuance. Notwithstanding the foregoing, the Seller may modify the quote prior to the expiration of such thirty-day period to reflect material changes in the Seller's raw materials costs. All accepted orders are subject to price increases due to increased labor, material, and vendor costs of the Seller if the Buyer shall delay the commencement of construction of the products or delivery of the products for more than 90 days.

3. **Delivery:** Unless otherwise set forth in a Sales Agreement, delivery of the products shall be fob Seller's plant. Any delivery dates shown are approximate only, and Seller shall have no liability for any delays in delivery. Seller may deliver products in one or more consignments and invoice each consignment separately. Seller reserves the right to ship product in advance of the agreed shipping date. In the event that Seller shall have given Buyer notice that product is ready to ship and in the further event that Buyer shall delay shipment, Seller shall have the right to charge storage fees at the going rate for cold storage in Seller's industry. Unless otherwise provided in a Sales Agreement, delivery time is not of the essence.

4. **Payment:** Unless otherwise specified in a Sales Agreement, payment terms shall be as set forth in Seller's quote; provided, however, that notwithstanding the Seller's quote, Seller will have the right to invoice upon giving notice to Buyer that the product is ready to ship. Buyer agrees to pay interest on any unpaid balance at a rate of five percentage points above the annual Federal Funds rate as specified in the Wall Street Journal on the day the balance becomes due. Unless otherwise set forth in a Sales Agreement all payments are to be made in United States dollars. For contracts outside the United States, Seller may require payment to be secured by an irrevocable letter of credit or a bank guarantee acceptable to Seller. Where payment is made by letter of credit, all costs of collection shall be for Buyer's account. In the event that Seller is required to bring legal action to collect delinquent accounts, Buyer agrees to pay the Seller's attorney fees and costs of such action. No assignment or

delegation of the Buyer's indebtedness to the Seller shall be binding on the Seller and the Buyer shall be and remain primarily and unconditionally liable to the Seller for such indebtedness until it is paid in full.

5. Non-conforming Delivery and Risk of Loss: Buyer shall notify Seller in writing of any visible defects, quantity shortages or incorrect product shipments within seven (7) days of receipt of the shipment. Failure to notify Seller of such matters in such manner and within such period shall be deemed an unqualified waiver of any right to return products on the foregoing bases, subject to Buyer's rights under paragraph 7 of these Terms. Seller shall retain a security interest in the products until Buyer's final payment to Seller for the products. Risk of loss and title shall pass to Buyer as soon as the products have been placed with a carrier or other transport agent.

6. Order Cancellation:

(a) Buyer's Cancellation: In view of the nature of Seller's products and Seller's production schedules, Buyer's orders may not be canceled once Seller has commenced fulfillment of Buyer's order ("Commencement"). Buyer may cancel any order for convenience prior to Commencement, subject to an order cancellation fee in an amount equal to twenty-five percent (25%) of the contract price for the canceled product.

(b) Seller's Cancellation: Seller shall have the right to cancel any unfilled order without notice to Buyer in the event that Buyer becomes insolvent, adjudicated bankrupt, petitions for or consents to any relief under any bankruptcy reorganization statute, or becomes unable to meet Buyer's financial obligations in the normal course of business. Any order that can be canceled by Buyer pursuant to paragraph 6(a) of these Terms may be canceled by Seller if notice is given to Buyer prior to Commencement.

7. Warranty:

(a) For Third Party Products: The Seller makes no warranty whatsoever with respect to products sold hereunder that were manufactured by any third party and re-sold by Seller, either separately or as incorporated into any product sold by Seller. In each such instance, Buyer's sole and exclusive warranty, if any, is that provided by the manufacturer of the products.

(b) For the Seller's Products: Except as specified below, Seller warrants that the products sold hereunder and which were manufactured by Seller shall be free from defects in material and workmanship and shall conform to Seller's published specifications or other specifications accepted in a writing signed by a duly authorized officer of Seller for a period of one (1) year from the date of shipment of new products, and thirty (30) days from the date of shipment for used products. The foregoing warranty does not apply to any products that have been subject to misuse, neglect, accident or modification, or which have been altered such that they are not capable of being tested under normal test conditions. Seller shall make the final determination as to whether its products are defective. Seller's sole obligation for products failing to comply with the foregoing warranty shall be, at Seller's option, to either ship conforming parts to Buyer for installation by Buyer or for Seller's personnel to come to Buyer's facility to effect any repair or replace any non-conforming parts where, within fourteen (14) days prior to the expiration of the warranty period (a) Seller has received written notice of any nonconformity, and (b) Seller has determined that the product is nonconforming and that such nonconformity is not the result of improper installation, repair or other misuse. THIS WARRANTY AND THE STATED REMEDIES ARE EXCLUSIVE AND MADE EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED, OR ARISING BY OPERATION OF LAW, TRADE USAGE, COURSE OF DEALING, OR OTHERWISE, INCLUDING BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR PURPOSE; ALL OF WHICH ARE HEREBY DISCLAIMED. SELLER DOES NOT ASSUME OR AUTHORIZE ANY OTHER PERSON TO ASSUME FOR SELLER ANY OTHER LIABILITY IN CONNECTION WITH SELLER'S PRODUCTS. Buyer will pass the foregoing warranty to any third-party purchaser of Seller's products.

(c) For Buyer's Designs: NOTWITHSTANDING THE FOREGOING, THERE ARE NO WARRANTIES WHATSOEVER ON ITEMS BUILT OR ACQUIRED, WHOLLY OR PARTIALLY, TO BUYER'S DESIGNS OR SPECIFICATIONS.

(d) Limited Liability: IN NO EVENT SHALL SELLER BE LIABLE FOR PERSONAL INJURY OR PROPERTY DAMAGE OR ANY OTHER LOSS, DAMAGE, COST OF REPAIR OR RE-WORK, OR ANY INCIDENTAL, PUNITIVE, CONSEQUENTIAL OR SPECIAL DAMAGES OF ANY KIND OR NATURE WHATSOEVER, INCLUDING BUT NOT LIMITED TO LOST PROFITS ARISING FROM OR IN ANY WAY CONNECTED WITH THIS AGREEMENT OR ITEMS SOLD HEREUNDER, WHETHER ALLEGED TO ARISE FROM BREACH OF CONTRACT, EXPRESS OR IMPLIED WARRANTY, OR IN TORT, INCLUDING WITHOUT LIMITATION, NEGLIGENCE, FAILURE TO WARN OR STRICT LIABILITY. If Seller has any liability for breach of contract, breach of any implied condition, warranty or representation, Seller's aggregate liability to the Buyer shall be limited in respect of any occurrence or series of occurrences to the contractual value of the products or services that are the subject of the contract.

(e) Recommendations: Buyer acknowledges that Seller does not make and specifically negates, renounces and disclaims any representation, warranty and/or guaranty of any kind or character, express or implied, with respect to (a) products sold, their use, design, application or operation, (b) the maintenance or other expenses to be incurred in connection with the products, (c) the engineering, design, fabrication work or any other work or service (whether gratuitous or for payment) supplied by Seller and/or its agents, suppliers and employees, or (d) the accuracy or reliability of any information, designs or documents furnished to Buyer. Seller neither assumes nor authorizes any person to assume for it any other obligation in connection with the sale of its products and/or rendering of its services. Any recommendation made by Seller concerning the use, design, application or operation of the products shall not be construed as representations or warranties, express or implied. Seller's failure to make recommendations or give advice to Buyer shall not impose any liability upon Seller.

(f) Matters Voiding Warranty. Any warranty of Seller shall be null and void upon the occurrence of any of the following: (1) Buyer fails to use the products as instructed or for their intended use; (2) Buyer modifies the products in any respect; (3) Buyer repairs or attempts to repair the products using non-factory supplied parts in any repair; or (4) Buyer improperly repairs the products regardless of the source of the parts used.

8. Special Tooling: A tooling charge may be imposed for any special tooling including, without limitation, dies, fixtures, molds and patterns acquired to manufacture items sold pursuant to this contract. Such special tooling shall be and remain Seller's property notwithstanding payment of any charges by Buyer with respect to such special tooling. In no event will Buyer acquire any interest in apparatus belonging to Seller which is utilized in the manufacture of the items sold hereunder, even if such apparatus has been specially converted or adapted for such manufacture and notwithstanding any charges paid by Buyer with respect to such apparatus. Unless otherwise set forth in a Sales Agreement, Seller shall have the right to alter, discard or otherwise dispose of any special tooling or other property in Seller's sole discretion at any time.

9. Buyer's Property: Any designs, tools, patterns, materials, drawings, confidential information or equipment furnished by Buyer, or any other items which become Buyer's property, may be considered obsolete and may be destroyed by Seller after two (2) consecutive years have elapsed without Buyer placing an order for the items which are manufactured using such property. Seller shall not be responsible for any loss or damage to such property while it is in Seller's possession or control.

10. Indemnity for Infringement of Intellectual Property Rights:

(a) By Seller: Seller shall have no liability for infringement of any patents, trademarks, copyrights, trade dress, trade secrets or similar rights except as provided in this paragraph. Seller will defend and indemnify Buyer against allegations of infringement of U.S. patents, U.S. trademarks, copyrights, trade dress and trade secrets (hereinafter

“Intellectual Property Rights”). Except as set forth below, Seller will defend at its expense and will pay the cost of any settlement or damages awarded in an action brought against Buyer based on an allegation that an item sold pursuant to this contract infringes the Intellectual Property Rights of a third party. Seller’s obligation to defend and indemnify Buyer is contingent on Buyer notifying Seller in writing within ten (10) days after Buyer becomes aware of such allegations of infringement, and Seller having the sole control over the defense of any allegations or actions including all negotiations for settlement or compromises. If an item sold hereunder is subject to a claim that it infringes the Intellectual Property Rights of a third party, Seller may, at its sole expense and option, procure for Buyer the right to continue using said item, or replace or modify said item so as to make it non-infringing, or offer to accept return of said item and return the purchase price less a reasonable allowance for depreciation. Notwithstanding the foregoing, Seller shall have no liability for, or obligation to indemnify Buyer for, claims of infringement based on information provided by Buyer, or directed to items delivered hereunder for which the designs are specified in whole or part by Buyer, or infringements resulting from the modification, combination or use in a system of any item sold hereunder. The foregoing provisions of this paragraph shall constitute Seller’s sole and exclusive liability and Buyer’s sole and exclusive remedy for infringement of Intellectual Property Rights.

(b) **By Buyer:** If a claim is based on information provided by Buyer or if the design for an item delivered hereunder is specified in whole or in part by Buyer, then Buyer shall defend and indemnify Seller against all costs, expenses or judgments resulting from any claim that such item infringes any Intellectual Property Rights of any third party.

11. Confidential Information: Except as required by law, neither Seller nor Buyer shall use (except for purposes connected with the performance of its obligations hereunder), divulge or communicate to any third party any information of the other that it reasonably knows to be confidential.

12. Force Majeure: Seller does not assume the risk of, and shall not be liable for delay or failure to perform any of Seller’s obligations by reason of, circumstances beyond Seller’s reasonable control (hereinafter “Events of Force Majeure”). Events of Force Majeure shall include without limitation accidents, acts of God, strikes or labor disputes, acts, laws, rules or regulations of any government or government agency, fires, floods, delays or failures in delivery of carriers or suppliers, shortages of materials and any other cause beyond Seller’s control.

13. Assignment and Subcontracting: Seller shall be entitled at all times to assign its rights under the contract (in whole or in part) or to subcontract any part of the work or services to be provided under the contract as Seller shall deem necessary or desirable.

14. Notices: Any notice hereunder shall be deemed to have been given if sent by prepaid first class mail to the party concerned at its last known address. Notice to Seller shall be to Seller’s corporate offices located at 220026 Progress Drive, Strongsville, Ohio 44149.

15. Waiver: Failure by Seller to exercise or enforce its rights hereunder shall not be deemed to be a waiver of any such right or operate so as to bar the exercise or enforcement thereof at any time or times thereafter, or constitute a waiver of any such right in the future.

16. Set-off: Buyer shall not be entitled to set-off any amount due Buyer against any amount due Seller in connection with this transaction.

17. Governing Law: This Agreement shall be governed in all respects by the laws of the State of Ohio.

18. Jurisdiction and Venue: Any civil action arising out of this agreement, or the sale of the items sold hereunder or the services rendered pursuant hereto, shall be instituted in the courts of competent jurisdiction sitting in Cuyahoga County, Ohio, which shall be the exclusive venue; and Seller and Buyer specifically submit

themselves to the jurisdiction of such courts and expressly waive any defense of lack of jurisdiction or improper venue with respect to any action instituted in such courts.

19. Limitation of Actions: No action arising out of this agreement, or the sale of the items sold hereunder or the services rendered pursuant hereto, may be brought against Seller more than thirteen months after the earlier of the invoice date or the date the cause of action accrues.

20. Entire Agreement: These Terms, together with any amendment or modification set forth in a Sales Agreement, shall constitute the entire agreement and understanding of Seller and Buyer concerning the items sold and the services provided, and there are no oral or other representations or agreements which pertain thereto.

Please contact AUTO TECHNOLOGY if you would like AUTO TECHNOLOGY to service your equipment, calibrate gauges, or supply replacement parts.

RESTOCKING:

Equipment returned (only with the SELLER'S approval) to the SELLER for restocking shall be subject to credit at invoice value, less a minimum of 15% of the purchase price and only after inspection and approval by the SELLER. Items returned for restocking are to be shipped on a pre-paid basis by the BUYER, unless otherwise authorized in writing, and are to be approved by the SELLER prior to their return.

PROCEDURE FOR RETURNING GOODS:

The following procedure shall apply when it is necessary to return a product for repair, refurbishing, or restocking:

- 1) Contact the Sales Coordinator or other authorized equipment personnel for approval.

- 2) After receiving approval, forward the returned goods with a packing slip to
Auto Technology U.S.A., 20026 Progress Drive, Strongsville, Ohio 44136
(440) 572-7800 or 1-800-443-8336

All returns must be approved and are subject to inspection by Auto Technology prior to their acceptance. Auto Technology will not be responsible for any damages incurred as a result of the return of such goods. Returns are to be made strictly on a pre-paid basis, unless otherwise authorized