

Terms and Conditions

Seller's Terms and Conditions

- 1. PRICES.** All prices quoted are subject to change, without notice, at any time prior to Seller's acceptance of Buyer's purchase order, to prices prevailing at time of acceptance. If there is a delay in completion of shipment of said order, due to any change requested by Buyer as a result of any delay on Buyer's part in furnishing information required for completion of the order, the price agreed upon at the time of acceptance of order is subject to change. Prices are FOB Carrier's merchandise at Seller's factory and are exclusive of all taxes – federal, state or local, which shall be paid by Buyer. There will be added to the quoted price any sales or other tax or duty Seller pays or is required to collect or pay upon sale of merchandise quoted. If such amount is not included for the merchandise or merchandise quoted. If such amount is not included in invoice for the merchandise, it may be invoiced separately later.
- 2. TERMS OF PAYMENT.** The terms of payment are provided on the face of this invoice. A finance charge of 1.5% per month will be added to all invoices not paid within specified terms.
- 3. CREDIT.** All sales are subject to the approval of Seller's credit department.
- 4. DELIVERY.** If an estimate of time of shipment or delivery has been made in a proposal, it is to be understood that it is approximate only and will begin to run on the date of Seller's acceptance of Buyer's purchase order and receipt of all specifications; except that in the case of special items considered to be non-standard by Seller, it will begin to run on the date which Seller received complete information necessary to design and manufacture. All estimated shipping dates are subject to delays caused by Seller provided testing material, civil insurrection, war, fire, strikes, labor stoppages, acts of God, shortages of fuel, energy or materials, the failure of suppliers or subcontractors who satisfactorily meet scheduled deliveries, the establishment of any priority systems by the U.S.A. or its agencies, or any other factor or cause beyond Seller's control, none of which factors or cause shall give rise to any liability on Seller's part whatsoever, including loss of use or for any indirect or consequential damages.
- 5. STORAGE.** In the event that Buyer is unable to accept delivery of merchandise at the time of completion and/or shipment. Seller shall invoice Buyer for the full purchase price as if shipment had been made and: (1) if Seller is able to store such merchandise in its own facilities, Buyer will pay Seller reasonable handling and storage charges for the period of such storage; (2) if Seller is unable to store such merchandise in its own facilities. Seller reserves the right to arrange handling and storage in a suitable bonded warehouse for Buyer at Buyer's expense. In cases where handling and storage becomes necessary per above, it will be the responsibility of Buyer to notify Seller when shipment is to be made.
- 6. WARRANTIES.** All goods sold by Seller are warranted to be free from defects in material and workmanship. Seller shall not be liable for incidental or consequential losses, damages or expenses, directly or indirectly arising from the sale, handling or use of the goods, or from any other cause relating thereto, and Seller's election, to the repayment of, or crediting Buyer with, an amount equal to the purchase price of goods, whether such goods are for breach of warranty of negligence. This warranty shall not apply to any Seller product which shall have been; (a) repaired or altered other than by Seller or its authorized or approved service personnel; (b) subjected to physical or electrical abuse Or misuse, or (c) operated in any manner inconsistent with the applicable Seller instructions for use.
- 7. CLAIMS-NOTICE OF DEFECTS.** Seller will give consideration to settlement of Buyer's claims, but in no event shall Seller be liable on any claims unless written notice of the claim is received by Seller within the following limitations; for shortages in weight and count. 15 days after delivery, and for all other claims. 15 days after discovery of defect or 12 months after delivery whichever is earlier. Buyer shall afford Seller prompt and reasonable opportunity to inspect all material as to which any claim is made. If Seller and Buyer are unable to reach settlement of claim relating to material covered, hereby. Buyer must institute legal action against Seller within one year after such claim Arises and thereafter all such claims shall be barred notwithstanding any statutory period limitations.
- 8. RISK OF LOSS.** Delivery shall occur and risk of loss shall pass to Buyer upon delivery of the material to a carrier at the point of shipment. Transportation shall be at Buyer's sole risk and expense, and any claim for loss or damage in transit shall be against the carrier only.
- 9. DISPUTES.** This agreement is deemed to be entered into in Illinois and to be an Illinois contract and shall be governed by and construed in accordance with the laws of the commonwealth of Illinois. Seller and Buyer specifically agree that any legal action brought relating to goods purchased or relating to this contract will be brought and tried in Illinois. Buyer hereby waives all objections to venue, and Buyer consents too service of process by certified mail addressed to the same address as that address designated for the delivery of the goods purchased hereunder.
- 10. LIABILITY OR RESPONSIBILITY.** CATS Auto Repair assumes no liability or responsibility for any acts, misuse of product, advertising, violations of any local, state or federal regulations or laws violated by the Buyer. Buyer assumes all responsibility for his/her acts and is responsible for researching local, state or federal regulations relating to the sale or use of Seller's products.
- 11. WAIVER.** The failure of either party hereto at any time to require performance by the other party of any of its obligations hereunder shall in no way affect the full right to require such performance at any time thereafter. The waiver by either party hereto of any remedy with respect to a breach of any provision hereof shall not be taken as a

waiver of a remedy with respect to any succeeding breach of such provision or any breach of other provision.

12. **SEVER ABILITY.** The parties agree that each provision contained in these Terms and Conditions of Sale shall be treated as a separate and independent clause, and the unenforceability of any on clause shall no way impair the enforceability of any of the other clauses herein. Moreover, if one or more of the provisions contained in these Terms and Conditions of Sale shall for any reason be held to be excessively broad as to scope, activity or subject so as to be unenforceable at all, such provision or Provisions shall be construed by the appropriate judicial body by limiting and reducing it or them, so as to be enforceable to the extend compatible with the applicable law.

13. **MODIFCATION.** The Terms and Conditions of Sale set forth herein may be excepted only in accordance with their terms. They may not be modified except by written agreement

referring specifically to these Terms and Conditions of Sale and signed by a duly authorized representative of Seller. Any provisions of Buyer's purchase order which are inconsistent with the

foregoing shall be of no force and effect. Seller shall have agreed to a modification of these Terms and Conditions of the Sale in the manner set forth herein.

Thank you for your business! We look forward to serving you in the future!

Please check your order – any/all discrepancies must be reported within ten (10) days of receipt of merchandise.

Consult your State and Local concerning refrigerants.

No refund on refrigerant without a receipt or after 30 days. No Exception!

No refund without receipt or after 30 days. No Exception!

All returns are subject to a restocking fee of 20%. No Exceptions!

Any refused shipments will be charged for shipping, restocking fee and processing fee – unless prior approval has been granted by CATS Auto Repair's office manager.

Private Label Seller's Terms and Conditions

1. **Acceptance.** The following terms and conditions of sale are applicable to all sales of Products or Services, and all quotations, order acknowledgements, and invoices from CATS Auto Repair, Inc. ("Seller") and to all Purchase Orders from Seller's customers ("Purchasers") with respect to CATS Auto Repair, Inc. and are the only terms and conditions applicable to the sale of Seller's Products or Services, except those relating solely to quantities, shipping instructions or descriptions of the products set forth in the Purchaser's Purchase Orders (collectively "Purchase Order Terms"). Purchase Orders, if accepted by Seller are accepted subject to the terms and conditions set forth herein. SELLER HEREBY REJECTS ANY ADDITIONAL OR DIFFERENT TERMS OR CONDITIONS PROPOSED BY PURCHASER, WHETHER OR NOT CONTAINED IN ANY OF PURCHASER'S BUSINESS FORMS OR ON PURCHASER'S WEBSITE, AND SUCH ADDITIONAL OR DIFFERENT TERMS AND CONDITIONS SHALL BE VOID AND OF NO EFFECT UNLESS IN WRITING SPECIFICALLY AGREED TO BY SELLER SPECIFICALLY REFERRING TO AND AGREEING TO THE CHANGE. Purchaser's acceptance of Products or Services ("Products or Services") called for in said Purchase Order or by placing an order with CATS Auto Repair, Inc. shall constitute its acceptance of the following terms and conditions of sale (these "Terms and Conditions"). Any changes to these terms and conditions must be in writing clearly identifying the change and signed by the Seller.

2. **Quotes.** Quotes are only valid in writing and for thirty (30) days from the date of the quote unless otherwise set forth in Seller's quote. All quotes by Seller are subject to change or withdrawal without prior notice to Purchaser unless otherwise specifically stated in the quote. Quotes are made subject to approval by Seller of Purchaser's credit. Seller shall have no obligation to sell or deliver Products or Services covered by Seller's quote unless and until Seller issues an order acknowledgement form or upon the shipment of Products or commencement of Services by the Seller.

3. **Prices.** Prices are in U.S. Dollars and are subject to change without notice. If a raw material, component, or service provider raises its prices, or imposes a surcharge on Seller, Seller reserves the right to increase prices and/or surcharge Purchaser and Purchaser agrees to accept such price increase or surcharge until the term of such price increase or surcharge or until the termination of the contract to which these terms and conditions apply is reached. Time of payment is of the essence. All orders are accepted subject to Seller's price in effect at the time of shipment.

4. **Terms of Payment.** The inspection rights granted to Purchaser will not affect or alter the payment terms or the timing of Purchaser's payment obligations. Under no circumstances will Purchaser have a right of set-off. Seller shall have the right to off-set its payables against its receivables related to goods or services purchased from the Seller. Unless otherwise expressly agreed to by Seller in Seller's quote, terms of payment are ½ upon Purchase Order and Balance prior to shipping. If terms are granted, at Seller's discretion, terms of payment are thirty (30) days net from the date of Seller's invoice. No discount shall be allowed on transportation charges. Purchaser agrees to pay interest on overdue invoices at the rate of 1 1/2% per month, but not higher than the highest rate permitted by law. If Purchaser fails to make any payment as required, Purchaser agrees to indemnify Seller for all costs and expenses, including reasonable attorney fees, court costs, and associated expenses incurred by the Seller.

5. **Credit Approval.** All shipments to be made hereunder shall at all times be subject to the approval of Seller's credit department. Seller may invoice Purchaser and recover for each shipment made pursuant to these Terms and Conditions as a separate transaction without regard to any other order or agreement with Seller, or if, in Seller's sole judgment, the financial responsibility of Purchaser is or becomes unsatisfactory, then Seller may, at its option and without prejudice to any of its other remedies, (a) defer or decline to make any shipments hereunder except upon receipt of satisfactory security or cash payments in advance, and /or (b) terminate all Purchase Orders of Purchaser.

6. **Cancellation.** Seller reserves the right to cancel any Purchase Orders or releases there under, or terminate any agreement relating to purchase of Seller's Products or Services on not less than thirty (30) days notice. Once Seller has either accepted a Purchase Order or has begun taking actions with respect to such Purchase Order, such Purchase order cannot be canceled, terminated or modified by Purchaser in whole or in part except with Seller's consent in writing and then only upon terms and conditions to be agreed upon which shall include protection of Seller against all losses. If Purchaser nonetheless repudiates the contract or notifies Seller to proceed no further therewith, Seller shall have the right to deliver all finished goods and goods in process, and Buyer agrees to accept same and to pay to Seller the contract price for all finished goods plus reimbursement, including lost profits, for unfinished goods.

7. Inspection / Non-conforming Shipments. Seller grants Purchaser the right to inspect Products for a period of ten (10) business days immediately following delivery ("Inspection Period"). Purchaser must notify Seller of any Products that do not conform to the terms applicable to their sale within the inspection period, and afford Seller a reasonable opportunity to inspect such Products and cure any nonconformity. If Purchaser fails to provide Seller with notice of nonconformity within the Inspection Period, Purchaser shall be deemed to have accepted the Products. Purchaser will have no right to return any Product without Seller's prior written authorization. Any return authorized by Seller must be made in accordance with Seller's return policies then in effect and must be accompanied by a Returned Goods Authorization ("RGA") from Seller. Purchaser will be responsible for all costs and expenses associated with any returns of Products and will bear the risk of loss or damage of such Products, unless Seller agrees otherwise in writing or determines that the Products do not conform to the applicable terms of sale. Seller, in its sole discretion may reject any return of Product not approved by Seller in Accordance with this paragraph or otherwise not returned in accordance with Seller's then current return policies.

8. Title/Risk of Loss/Delivery. Unless other arrangements are made in writing, Seller anticipates use of common carriers for transport of Products. All Products shall be shipped F.O.B. Seller's designated ShipTo address and shall become the property of Purchaser upon delivery to the carrier and receipt of full payment by Seller. Purchaser shall assume all risk and liability for loss, damage or destruction, as well as the result of any use or misuse by third parties who may acquire or use the Products illicitly after deliver to the carrier. Unless mutually agreed upon, shipping dates are approximate and are based upon prompt receipt of all necessary information. Seller reserves the right to ship items in a single or multiple shipments.

9. Damage. Purchaser shall notify Seller and the delivering carrier within fifteen (15) business days from date of receipt of Products, of any damage or shortage, and afford Seller a reasonable opportunity to inspect the products. Any loss occasioned by damage or shrinkage in transit will be for Purchaser's account and claims for such loss shall be made solely against the carrier.

10. Quantities. Unless otherwise agreed in writing, any variation in quantities shipped over or under the quantities offered (not to exceed 10%) shall constitute compliance with Purchaser's Order and the stated price per item will continue to apply.

11. Warranty. SELLER WARRANTS ONLY THAT THE PRODUCTS OR SERVICES SOLD HEREUNDER (A) WILL CONFORM TO THE DESCRIPTION, IF ANY, ON THE FACE HEREOF, (B) WILL BE CONVEYED FREE AND CLEAR OF ANY LIEN, SECURITY INTEREST OR ENCUMBRANCE CREATED BY SELLER OR ANY PARTY CLAIMING BY, THROUGH OR UNDER SELLER, AND (C) WILL BE FREE FROM SUBSTANTIAL DEFECTS IN MATERIAL AND WORKMANSHIP UNDER NORMAL USE GIVEN PROPER INSTALLATION AND MAINTENANCE FOR A PERIOD OF SIX (6) MONTHS FROM THE DATE OF DELIVERY TO THE CARRIER. SELLER SHALL HAVE THE RIGHT EITHER TO REPLACE OR REPAIR ANY DEFECTIVE PRODUCTS, TO REFUND THE PURCHASE PRICE UPON RETURN OF THE PRODUCTS OR TO GRANT A REASONABLE ALLOWANCE ON ACCOUNT OF SUCH DEFECTS, AND SELLER'S LIABILITY AND PURCHASER'S EXCLUSIVE REMEDY FOR DEFECTIVE PRODUCTS SHALL BE LIMITED SOLELY TO REPLACEMENT, REPAIR, REFUND OR ALLOWANCE AS SELLER MAY ELECT. SELLER SHALL BE GIVEN A REASONABLE OPPORTUNITY TO INVESTIGATE ALL CLAIMS AND NO PRODUCTS SHALL BE RETURNED TO SELLER UNTIL AFTER INSPECTION AND APPROVAL BY SELLER AND RECEIPT BY PURCHASER OF A RGA.

12. Disclaimer of Further Warranties. EXCEPT AS SET FORTH ABOVE, SELLER MAKES NO WARRANTY OR REPRESENTATIONS OF ANY KIND, EXPRESS OR IMPLIED (INCLUDING NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE) WITH RESPECT TO ITS PRODUCTS OR SERVICES.

13. Limitation of Liability and Remedies. SELLER SHALL NOT BE LIABLE, AND PURCHASER WAIVES ALL CLAIMS AGAINST SELLER, FOR INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, LOST PROFITS OR COMMERCIAL LOSSES, WHETHER OR NOT BASED UPON SELLER'S NEGLIGENCE OR BREACH OF WARRANTY OR STRICT LIABILITY IN TORT OR ANY OTHER CAUSE OF ACTION. SELLER WILL NOT BE LIABLE TO PURCHASER FOR ANY LOSS, DAMAGE OR INJURY TO PERSONS OR PROPERTY RESULTING FROM THE HANDLING STORAGE, TRANSPORTATION, RESALE, OR USE OF ITS PRODUCTS IN MANUFACTURING PROCESSES, OR IN COMBINATION WITH OTHER SUBSTANCES, OR OTHERWISE. IN NO EVENT WILL SELLER'S LIABILITY UNDER THESE TERMS AND CONDITIONS OR IN CONNECTION WITH THE SALE OF PRODUCTS BY SELLER EXCEED THE PURCHASE PRICE OF THE SPECIFIC PRODUCTS OR SERVICES AS TO WHICH THE CLAIM IS MADE.

14. Inventory. Except as provided in Sections 7 and 11 hereof, Seller will neither accept return of Product, nor be responsible for its destruction.

15. Technical Data. All physical properties, statements and recommendations are either based on tests or experience that Seller believes to be reliable, but they are not guaranteed.

16. Product Use/Labeling. Purchaser is solely responsible for determining whether any Product is fit for a particular purpose and suitable for Purchaser's method of application. Accordingly, and due to the nature and manner of use of Seller's Products, Seller is not responsible for the results or consequences of use, misuse or application of its Products by anyone. Purchaser is solely responsible for determining and using proper labeling, wording, warnings, and symbols for any/all Products including Federal, State and Local Regulations.

17. Tooling/Molds/Dies. Unless otherwise agreed in writing signed by Seller, all material, equipment, facilities, and special tooling, (which term includes but is not limited to tools, jigs, dies, fixtures, molds, patterns, special taps, special gauges, special test equipment, and manufacturing aids and replacements thereof), used in the manufacture of the Products covered by any Purchase Order shall remain the property of Seller. Any material, tooling or equipment furnished to Seller by Purchaser shall be and remain the personal property of the Purchaser with the title and right of possession remaining in Purchaser.

18. Taxes. Purchaser shall pay to Seller, in addition to the purchase price, the amount of all fees, duties, licenses, tariffs, and all sales, use, privilege, occupation, excise, or other taxes, federal, state, local or foreign, which Seller is required to pay or collect in connection with the Products or Services sold to Purchaser. Failure by the Seller to collect any such fees or taxes shall not affect Purchaser's obligations hereunder and Purchaser shall fully defend, indemnify and hold harmless Seller with respect to such tax obligations.

19. Ownership of Intellectual Property. All drawings, know-how designs, specifications, inventions, devices, developments, processes, copyrights and other information or Intellectual Property disclosed or otherwise provided to Purchaser by Seller and all rights therein (collectively, "Intellectual Property") will remain the property of the Seller and will be kept confidential by Purchaser in accordance with these terms and conditions. Purchaser shall have no claim to, nor ownership interest in, any Intellectual Property and such information, in whatever form and copies thereof, shall be promptly returned to Seller upon written request from Seller. Purchaser acknowledges that no license or rights of any sort are granted to Purchaser hereunder in respect of any Intellectual Property, other than the limited right to use the Seller's proprietary Products purchased from the Seller.

20. Confidential Information. All information furnished or made available by Seller to Purchaser in connection with the subject matter of these Terms and Conditions or of Purchaser's Purchase Order shall be held in confidence by the Purchaser. Purchaser agrees not to use such information or disclose such information which (a) at the time of disclosure was or thereafter becomes, generally available to the public by publication or otherwise through no breach by the Purchaser of any obligation herein, (b) the Purchaser can show by written records was in the Purchaser's possession prior to disclosure by Seller, or (c) is legally made available to the Purchaser, by or through a third party having no direct or indirect confidentiality obligation to Seller with respect to such information.

21. Infringement and Indemnification. (a) Except as set forth below, Seller agrees to defend, indemnify and hold the Purchaser harmless against any claims, costs, damages, liability and expenses resulting from actual patent, trademark, or copyright infringement, misappropriation of confidential information, or violation of any other Intellectual Property right, domestic or foreign, that may arise for the sale of seller's proprietary Product to the Purchaser as such pertains to the subject matter of these Terms and Conditions (provided that Product is not modified in any way by the Purchaser or any other party, and that the Product is used in the manner intended by the Seller). If a suit or claim results in any injunction or any other order that would prevent the Seller from supplying any part of Product falling under these Terms and Conditions, or if the result of such a suit or claim would, in the reasonable opinion of Seller, otherwise cause Seller to be unable to supply such parts or Products, Seller shall have the right, at its option, if it so chooses, to do one or more of the following: (i) secure an appropriate license to permit Seller to continue supplying said parts or Products to Purchaser; (ii) modify the appropriate part or Product so that it becomes non-infringing; (iii) replace the appropriate part or Product with a non-infringing but practically equivalent part or Product; or (iv) if the Seller may discontinue selling the part or Product without any further liability to the Purchaser.

(b) Purchaser agrees to defend, indemnify and hold Seller harmless against any claims, costs, damages, liability and expenses resulting from actual or alleged patent, trademark, or copyright infringement, misappropriation of confidential information, or violation of any other Intellectual Property right, domestic or foreign, that may arise from the making using or selling of any part or Product or using any process that is designed or specified by the Purchaser.

(c) If any claim is made by a third party on the basis of which indemnification may be sought under this paragraph, the party entitled to indemnification (the "Indemnifying Party") promptly after the Indemnified Party has actual notice of such claim. The indemnifying Party shall have the right to defend and/or settle such claim at its expense provided that it does so diligently and in good faith. The Indemnified Party shall cooperate with such defense and/or settlement and shall have the right to participate in (but not to control) such defense and/or settlement at its expense. No settlement shall be entered into unless the Indemnified Party shall be released from all liability for such claim.

22. Force Majeure. Seller shall not be liable for failure to perform or delay in performance or delivery of any Products or Services due to (a) fires, floods, strikes, or other labor disputes, accidents, sabotage, terrorism, war, riots, acts of precedence or priorities granted at the request or for the benefit, directly or indirectly, of any federal, state, or local government or any subdivision or agency thereof, delays in transportation or lack of transportation facilities, restrictions imposed by federal, state or local laws, rules, or regulations; or (b) any other cause beyond the reasonable control of Seller. In the event of the occurrence of any of the foregoing, the time for performance shall be extended for such time as may be reasonably necessary to enable Seller to perform. Seller may, during any period of shortage due to any of the above circumstances, allocate its available supply of Products or Services among itself and its Purchasers in such a manner as Seller, in its judgment, deems fair and equitable.

23. Assignment and Delegation. No assignment of any rights or interest or delegation of any obligation or duty of Purchaser under these terms and conditions, Seller's quotes, order acknowledgement, or invoice, or Purchaser's Purchase Order may be made without prior written consent of the Seller. Any attempted assignment or delegation will be wholly void and totally ineffective for all purposes.

24. Integration Clause. These Terms and Conditions constitute the terms and conditions to the contract of sale and purchase between Seller and Purchaser with respect to the Products covered by these Terms and Conditions, and supersedes any prior agreements, understandings, representations and quotes with respect thereto. No modification hereof shall be of any force or effect unless in writing and signed by the party claiming to be bound thereby.

25. Waiver. No failure of Seller to insist upon strict compliance by Purchaser with these terms and conditions or to exercise any right accruing from any default of Purchaser shall impair Seller's rights in case Purchaser's default continues or in case of any subsequent default by Purchaser. Waiver by Seller of any breach by Purchaser of these Terms and Conditions shall not be construed as a waiver of any other existing or future breach.

26. Limitation of Actions. Notwithstanding any contrary statute of limitations, any cause of action for any alleged breach of these terms and conditions by Seller shall be barred unless commenced by Purchaser within one (1) year from the accrual of such cause or action.

27. Litigation Costs. If any litigation or arbitration is commenced between Seller and Purchaser concerning any provision of these Terms and Conditions, the party prevailing in the litigation or arbitration is entitled, in addition to such other relief that is granted, to a reasonable sum as and for their attorney's fees in such litigation or arbitration, provided that if each party prevails in part, such fees shall be allocated in such manner as the court or arbitrator shall determine to be equitable in view of the relative merits and amounts of the parties' claims.

28. Choice of Laws. Any dispute arising out of or related to these Terms and Conditions shall be governed by and construed according to the laws of the State of Illinois and litigated exclusively in a state or federal court located in Peoria or Tazewell County, Illinois. The parties hereby agree to the exclusive jurisdiction and venue of such courts.

29. Jury Waiver. The parties hereto expressly release and waive any and all rights to a jury trial and consent to have any dispute heard solely by a Court of competent jurisdiction.

30. Severability. If any provision herein shall be held to be unlawful or unenforceable, the remaining provisions herein shall remain in full force and effect.