

## **PURCHASE ORDER TERMS AND CONDITIONS**

This Purchase Order is subject to the following terms and conditions.

**1. OFFER, ACCEPTANCE, MODIFICATION.** Written acceptance of this Purchase Order, or commencement of performance of any work or services pursuant to this Purchase Order, will constitute acceptance of this Purchase Order. Such acceptance is limited to these terms and conditions. All terms and conditions proposed by Seller that are different from or in addition to this Purchase Order are expressly rejected by Buyer. No purported verbal agreement or other understanding that attempts in any way to modify the conditions of the agreement resulting from this Purchase Order will be binding upon Buyer. Buyer may make modifications, updates or revisions to these Purchase Order terms and conditions from time to time. If it does so, the Buyer will provide the Seller with written notice to this effect. The written notice will include the date on which the modifications, updates or revisions will become effective.

**2. PRICE.** This Purchase Order must not be filled at prices higher than those specified on the Purchase Order, unless otherwise agreed to in writing by the Buyer. The price specified on this Purchase Order includes all subcontracting costs associated with this Purchase Order. Buyer will have no responsibility for any increased costs incurred by Seller in connection with any raw materials or subcontractors, unless such additional costs have been negotiated and agreed to in advance and in writing by Buyer.

- Seller warrants that the prices specified in this Purchase Order are no less favorable than prices given by Seller to any other customer for like merchandise (after consideration of all discounts, rebates and allowances). If Seller quotes a lower price to anyone or accepts payment of a lower price from anyone during the life of this contract, that lower price will prevail with respect to any quantity undelivered under this Purchase Order. If Buyer is quoted a lower price by someone other than Seller, and Seller does not wish to meet the lower price, Buyer may purchase any undelivered quantity under this Purchase Order at the lower price, thereby canceling this Purchase Order with no further liability to Seller for such undelivered quantity.
- The prices specified on this Purchase Order include all federal, state and local taxes that Seller is required by law to collect from Buyer and from which Seller cannot obtain an exemption. Such taxes shall be separately stated on Seller's invoices and shall be paid by Buyer, unless an exemption is available.
- Unless otherwise agreed to in writing by the Buyer, the price specified on this Purchase Order includes all charges for packing, cartage, storage, drayage, and transportation to the F.O.B. point. Seller shall pay all delivery charges in excess of that Buyer has agreed to pay.
- Seller warrants that the prices will comply with applicable government law and regulations.

**3. SHIPPING AND PACKING.** All shipments must be accompanied by a packing slip, which describes the articles, states the Purchase Order number, and shows the shipment's destination. Seller agrees to promptly forward the original bill of lading or other shipping receipt for each shipment in accordance with Buyer's instructions. No charges will be allowed for packing, crating, and transportation unless stated in this Purchase Order.

- Equipment shipped under this Purchase Order must be shipped without oil or any other fluids and must comply with all Buyer's specifications concerning compliance with local, state, and federal environmental regulations, including, but not limited to, those dealing with air pollution control, wastewater control, chemical usage, and employee exposure. Seller shall bear all liability for spillage if the shipment does not so comply.

**4. DELIVERY – RISK OF LOSS.** Deliveries must be made both in quantities and at times specified on the face of this Purchase Order or in Buyer's schedules and time is of the essence. Buyer will not be required to make payment for goods delivered to Buyer that are in excess of quantities specified in Buyer's delivery schedule on this Purchase Order or in written releases issued by Buyer. Buyer may reject any deliveries made more than two weeks after or before the specified delivery date.

- If Seller fails to meet the agreed upon delivery requirements for reasons other than those specified in paragraph 12 below, and Buyer requires a more expeditious method of transportation for the goods than the transportation method originally specified, Seller shall ship the goods as expeditiously as possible at Seller's expense and invoice Buyer for the amount that Buyer would have paid for normal shipment.
- Unless provided otherwise in this Purchase Order, all goods must be sold F.O.B destination. Seller shall be responsible for and bear the risk of any loss or damage to the goods until received by the Buyer.

**5. INVOICING.** Seller shall promptly render after delivery of goods or performance of services, correct and complete invoices to Buyer and to accept payment by check or, at Buyer's discretion, other cash equivalent (including purchase cards or electronic transfer of funds). Payment shall be due on the 2nd day of the 2nd month following the date Buyer receives the goods or services, except as may otherwise be agreed by the parties in writing. Buyer may withhold payment pending receipt of evidence, in such form and detail as Buyer may direct, of the absence of any liens, encumbrances, and claims on the goods or services provided under this Purchase Order. Buyer may set off any amount owed by Seller or any of its affiliated companies to Buyer, against any amount owed by Buyer to Seller under this Purchase Order.

- Seller agrees, as a condition of payment, to attach to or stamp on each invoice issued pursuant to this Purchase Order the following statement: "We certify that these goods were produced in compliance with all applicable requirements of Sections 6, 7, and 12 of the Fair Labor Standards Act, as amended, and of regulations and Purchase Orders of the United States Department of Labor issued under Section 14 thereof."

**6. WARRANTIES OF SELLER.** Seller expressly warrants that all goods or services covered by this Purchase Order (i) conform to the Purchase Order, specifications, drawings, samples, and descriptions furnished to or by the Buyer, (ii) are merchantable, of good material and workmanship, and free from defect, and (iii) are fit and sufficient for the particular purpose intended by Buyer. If Seller has participated in the design of the item or approved the design, Seller also warrants that the items are free from defects in design. All goods and services are subject to Buyer's inspection. Payment for, inspection of, or receipt of goods or services will not constitute acceptance of the goods or a waiver of any breach of warranty.

**7. REJECTION OF GOODS.** Nonconforming or defective goods may be returned to the Seller for, at the Buyer's option, full credit or replacement with new goods at the Seller's risk and expense, including all expenses for labor and materials in dealing with or removing the defective parts, all charges for handling, sorting, packaging and transportation both ways. No replacement of nonconforming goods may be made except as authorized by a replacement Purchase Order signed by Buyer.

**8. CHANGES.** Buyer at any time in writing may make changes in the drawings, designs and specifications of the goods or otherwise change the scope of the work covered by this Purchase Order, including work with respect to such matters as drawings, designs, specifications, inspection, testing or quality control, the method of packing and shipping, the place of delivery, shipping instructions, and quantity or delivery schedules. Seller agrees to promptly make such changes. If such changes affect the cost or time required for performance, and if Seller makes claim for adjustment in writing within fourteen (14) days of receipt of notification of change, an equitable adjustment shall be made by the parties, and this Purchase Order will be modified accordingly. Otherwise, such claim for equitable adjustment is waived and the Purchase Order will be deemed to be modified. Seller shall diligently continue performance of the Purchase Order, as changed, pending agreement on the amount of an equitable adjustment. Nothing contained in this Purchase Order shall relieve or excuse Seller from proceeding without delay in performing this Purchase Order as changed. Seller must not make any change in design, processing, packing, shipping, or place of delivery without Buyer's written approval.

**9. TERMINATION FOR BANKRUPTCY.** Buyer may immediately terminate this Purchase Order without liability upon the happening of any of the following or any other comparable event: (i) insolvency of the Seller; (ii) filing of a voluntary or involuntary petition in bankruptcy by or against Seller; (iii) appointment of a receiver or trustee for Seller; (iv) any accommodation by Buyer, financial or otherwise, not contemplated by this Purchase Order, that are necessary for Seller to meet its obligations under this Purchase Order; or (v) execution of an assignment for the benefit of creditors by Seller, provided that such petition, appointment, or assignment is not vacated or nullified within fifteen (15) days after such event. Seller shall reimburse Buyer for all costs Buyer incurs in connection with any of the foregoing whether or not this Purchase Order is terminated, including, but not limited to, all attorneys' or other professional fees.

**10. TERMINATION FOR CONVENIENCE.** In addition to any other rights of Buyer to cancel or terminate this Purchase Order, Buyer may terminate all or any part of this Purchase Order at any time and for any reason by giving written notice to Seller. Upon receipt of such notice, Seller shall immediately stop work on this Purchase Order or the terminated portion thereof, and notify any subcontractors to do likewise. Buyer shall pay to Seller the Purchase Order price for all goods or services that have been completed in accordance with this Purchase Order and not previously paid for. Where articles or materials are to be specifically manufactured for Buyer hereunder and where Seller is not in default, an equitable adjustment shall be made to cover Seller's actual cost, excluding profit, for work-in-process and raw materials as of the date of termination to the extent such costs are reasonable in amount and are properly allocable or apportionable under generally accepted accounting principles to the terminated portion of this Purchase Order. Buyer will not be liable for any charges or expenses incurred by Seller in advance of the normal lead time necessary to meet scheduled delivery dates nor for any expenses, charges

or liability incurred subsequent to the giving of notice of cancellation. Buyer will make no payments for finished goods, work-in-process, or raw materials in amounts in excess of those authorized by Buyer or for any undelivered goods which are in Seller's standard stock or which are readily marketable. Seller must submit any claim to Buyer within thirty (30) days after the date of termination or that claim will be waived. Payments made to Seller under this Paragraph 10 represent the sole responsibility of Buyer in case of cancellation of the Purchase Order and Seller agrees not to charge any other costs, expenses or fees to Buyer nor will Buyer be liable for any other costs, expenses or fees arising out of the cancellation or termination of the Purchase Order under this Paragraph 10.

**11. TERMINATION FOR DEFAULT.** In addition to any other remedies or rights afforded by law, Buyer reserves the right to cancel all or any part of this Purchase Order, for default of Seller, if Seller: (i) repudiates or breaches any of the terms of this Purchase Order, including Seller's warranties; (ii) fails to perform services or deliver goods as specified by Buyer; or (iii) fails to make progress so as to endanger timely and proper completion of services or delivery of goods, and does not correct such failure or breach within ten (10) days after receipt of written notice from Buyer specifying such failure or breach. If Buyer terminates its purchase obligations pursuant to this paragraph, Buyer will have no obligations to Seller in respect of the terminated portion of this Purchase Order and Buyer's liability will be limited to the delivered portion of this Purchase Order at the rate specified on the face hereof. Buyer will be entitled to recover all damages or losses attributable to such repudiation, breach, or failure by Seller.

**12. EXCUSABLE DELAYS.** Neither party will be liable for a failure to perform that arises from causes or events beyond its reasonable control and without its fault or negligence, including but not limited to acts of God or the public enemy, actions by any domestic or foreign governmental authority (whether valid or invalid), fires, riots, wars, sabotage, acts of terrorism, labor problems (including lockout strikes and slowdowns), or inability to obtain materials. The affected party shall give written notice of such delay, including the anticipated duration thereof, to the other party within ten (10) days of the beginning of the delay. If Seller is the affected party, Seller shall take all reasonable action, including, but not limited to, utilizing temporary production facilities or a temporary workplace, or moving existing tooling to third party production facilities in order to ensure that the supply of product meets the requirements of this Purchase Order. During the period of such delay or failure to perform by Seller, Buyer may purchase goods from other sources and reduce its schedule to Seller by such quantities without any liability. If requested by Buyer, Seller shall, within ten (10) days of such request, provide adequate assurances that the delay will not exceed thirty (30) days. If the delay lasts more than thirty (30) days or Seller does not provide adequate assurances that the delay will cease within thirty (30) days, Buyer may immediately cancel this Purchase Order without liability.

**13, LABOR DISPUTES.** Seller shall provide at least four months' written notice to Buyer prior to the scheduled expiration of any current labor contract. If requested by the Buyer, Seller shall establish, at Seller's expense, a 30-day inventory of finished goods, at a site mutually agreed upon with Buyer, before the expiration of any such labor contract. Seller shall notify Buyer immediately of any actual or potential labor dispute delaying or threatening to delay the timely performance of any open purchase order.

**14. PATTERNS, TOOLS, AND EQUIPMENT.** Buyer will have title to and the right of immediate possession of any pattern, tools, jigs, dies, equipment or materials furnished or paid for by Buyer, and Seller must not use such tooling while in its possession for any work other than that of Buyer. If Seller purchases such tooling with Buyer's funds or is reimbursed by Buyer, Seller shall execute a Bill of Sale and any and all other documents necessary to transfer title free and clear of any liens to Buyer. While in Seller's possession, such property will be held by Seller as a bailee and must be maintained in good and usable condition at no further cost to Buyer. Seller shall maintain and administer a program for the maintenance, repair and preservation of such property, and appropriate identification of its ownership in accordance with sound industrial practice. When requested, Seller shall furnish inventory schedules on the property, or return the property to Buyer in the condition in which it was received, except for reasonable wear and tear and consumption in the normal performance of work for Buyer. Any material furnished by Seller and paid for by or charged to Buyer will be owned by Buyer and held by Seller as a bailee and Seller shall assume the risk for any damage or loss thereto. Seller shall indemnify and hold Buyer, its agents and employees, harmless against all claims, demands, liabilities, costs and expenses, based upon or arising out of the use, storage or handling of the equipment and/or tooling until returned to Buyer's possession. Seller shall sign, or hereby authorizes Buyer to sign on its behalf, any documents deemed reasonably necessary by Buyer, to be filed with Federal, State or local officials to record Buyer's title and interest in any patterns, tools, jigs, dies, equipment or materials furnished or paid for by Buyer.

**15. NON-DISCLOSURE OF INFORMATION, DESIGNS AND DATA.** Seller shall keep confidential the features of any equipment, tooling, patterns, designs, drawings, processes, engineering and business data and other technical and proprietary information (without limitation), furnished by Buyer and use such items only in production of supplies under Purchase Orders from Buyer, unless Buyer's written consent is first obtained. Upon termination or completion of this Purchase Order, Seller shall return all such items to Buyer or make other disposition, as directed by Buyer.

**16. INTELLECTUAL PROPERTY.** Seller warrants that any materials, supplies or other goods furnished by Seller or its affiliates to Buyer will not infringe any United States or foreign patent, trademark, copyright, or mask work right by reason of their manufacture, use or sale, and will not misuse or misappropriate any trade secret.

- Seller shall (i) indemnify, defend, and hold harmless Buyer, its agents, employees, successors and customers against all such claims, demands, losses, suits, damages, liabilities and expenses (including reasonable attorneys' fees) arising out of any suit, claim or action for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark, copyright, or mask work right by reason of the manufacture, use, or sale of the goods or services Purchase Ordered, including infringement arising out of compliance with specifications furnished by Buyer, or for actual or alleged misuse or misappropriation of a trade secret resulting directly or indirectly from Seller's actions; (ii) waive any claim against Buyer under the Uniform Commercial Code or otherwise, including any copyright or mask work right infringement or the like, including claims arising out of compliance with specifications furnished by Buyer; and (iii) grant to Buyer a worldwide, non-exclusive, royalty-free, irrevocable license to repair and have

repaired, to reconstruct and have reconstructed, the goods ordered by this Purchase Order. Seller assigns to Buyer all right, title and interest in and to all trademarks, copyrights and mask work rights in any material created for Buyer under this Purchase Order.

**17. INDEMNIFICATION AND INSURANCE.** Seller shall indemnify, defend, and hold harmless Buyer, its agents, employees, customers, and users of its and their products against any and all suits, actions or proceedings, at law or in equity, and from any and all claims, demands, losses, judgments, damages, costs, expenses, or liabilities, including reasonable attorneys' fees, resulting from the death or injury to any person or damage to any property arising out of or in any way connected with the performance of this contract by Seller or the goods provided hereunder, or with respect to matters and allegations that the goods are defective, unfit or unsafe, or that the goods do not meet applicable laws or regulations, even if the loss results from the, concurrent or partial negligence of Buyer. At Buyer's request, Seller shall defend such claims or suits at Seller's expense by reputable counsel satisfactory to Buyer.

- Seller shall, at its expense, maintain insurance coverage in amounts satisfactory to Buyer for Workers' Compensation, Employer's Liability and Comprehensive General Bodily Injury and Property Damage. Seller shall furnish Buyer with certificates setting forth the amounts of coverage, policy number(s) and expiration date(s).

**18. TECHNICAL INFORMATION.** Seller agrees not to assert any claim (other than a claim for patent infringement) with respect to any technical information that Seller has disclosed or may hereafter disclose to Buyer in connection with the goods or services covered by this Purchase Order.

**19. COMPLIANCE.** In providing goods or services under this Purchase Order, Seller will comply with any and all applicable federal, state, local, and foreign laws, regulations and other legal requirements, including but not limited to the Federal Occupational Safety and Health Act of 1970, the Federal Hazardous Substances Act, the Transportation Safety Act of 1974, the Hazardous Materials Transportation Act, the Clean Air Act, the Toxic Substances Control Act, the Clean Water Act, the Resource Conservation and Recovery Act and Sections 6,7, and 12 of the Fair Labor Standards Act, and such amendments to such laws and regulations and policies, orders, permits, licenses and governmental approvals promulgated or issued thereunder.

- Seller represents that it is in compliance with all federal laws and regulations relating to contracting with small and disadvantaged business concerns and to equal employment opportunity and affirmative action in the employment of minorities, women, individuals with disabilities, and certain veterans. All such laws and regulations are incorporated herein by reference and Seller agrees not to discriminate against any employee or applicant for employment because of age, race, color, religion, sex, national origin, veterans' status, or physical/mental disability that is not related to the performance of the specific position.
- Seller will indemnify, defend, and hold harmless Buyer, its agents, employees, customers, and users of its and their products against all suits, actions or proceedings, at law or in equity, and from all claims, demands, losses, judgments, damages, costs, expenses, or liabilities, including reasonable attorneys' fees, resulting from or arising out of any failure of Seller or Seller's employees, agents, and subcontractors to comply with any applicable laws and regulations.

- Seller agrees to provide all information necessary for Buyer to comply with all applicable laws and regulations, including, without limitation, related legal reporting obligations, in the country(ies) of destination. Seller agrees to provide all documentation and/or electronic transaction records to allow Buyer to meet customs related obligations, any local content/origin requirements, and to obtain all tariff and trade program duty avoidance(s) and/or refund benefits, where applicable. Seller further agrees to assume, and to indemnify Buyer against, all financial responsibility arising from Seller's failure to comply with these requirements and/or to supply Buyer with the information required to meet legal reporting obligations, including, without limitation, any fines, penalties, forfeitures, or counsel fees incurred or imposed as a result of actions taken by the importing country's government.
- **CUSTOMS-TRADE PARTNERSHIP AGAINST TERRORISM ("C-TPAT")**. Seller shall certify in writing that it is either a participating member of the C-TPAT program as promulgated by the U.S. Customs and Border Protection Bureau or that is in compliance with all applicable supply chain security recommendations or requirements of the C-TPAT program initiative (for more information go to [http://cbp.gov/xp/cgov/import/commercial\\_enforcement/ctpat/](http://cbp.gov/xp/cgov/import/commercial_enforcement/ctpat/)). Seller shall indemnify and hold buyer harmless from and against any liability, claims, demands or expenses (including attorneys' or other professional fees) arising from or relating to Seller's noncompliance.
- Seller shall use commercially reasonable efforts to ensure that all goods supplied to Buyer and the processes used to make them shall minimize life-cycle environmental impact, including minimizing waste generation, the use of energy and nonrenewable resources, and the emission of greenhouse gases; and shall maximize the use of recycled, recyclable, biodegradable and nontoxic materials.

**20. RIGHT TO AUDIT.** Buyer shall have the right, at any reasonable time, to send its authorized representatives to examine all of the Seller's documents and materials relating to Seller's obligations under this Purchase Order or relating to Seller's charges to Buyers. If requested by the Buyer, Seller will provide the Buyer, past, present and pro forma financial reports including, but not limited to, income statements, balance sheets, cash flow statements and supporting data for the Seller and any affiliate or subsidiary of Seller involved in producing, supplying, or financing the goods or any component part of the goods. The Buyer may use financial reports provided under this Section 20 only to assess the Seller's ongoing ability to perform its obligations under the Purchase Order and for no other purpose, unless the Seller agrees otherwise in writing. Seller shall maintain all pertinent books and records relating to this Purchase Order for a period of four (4) years after completion of delivery of products pursuant to this Purchase Order.

**21. ETHICAL CONDUCT.** Seller's employees shall comply with the BorgWarner Supplier Code of Conduct articulated within the BorgWarner Supplier Manual. Compliance with these standards is a mandatory component of Buyer's purchase contracts worldwide and must also apply to Seller subcontractors. Both the BorgWarner Supplier Code of Conduct and the BorgWarner Supplier Manual are incorporated by reference as part of this Purchase Order and are binding on the Seller.

**22. QUALITY CONTROL.** Seller shall maintain adequate and consistent quality control inspection and testing to assure that goods will consistently conform to specified requirements, and shall, at Buyer's request, furnish substantiated results of quality control

inspections and testing in accordance with the BorgWarner Supplier Manual. Seller shall notify us in writing before changing any way processes used in production or our specified requirements of goods ordered by us under this Purchase Order.. Buyer's specified requirements used in production must not be changed without Buyer's prior written consent and in accordance with the BorgWarner Supplier Manual.

**23. SERVICES AT BUYER'S OTHER LOCATIONS.** If labor or services in connection with this Purchase Order are performed at any locations occupied or under control of Buyer or other party, Seller agrees to indemnify and hold harmless Buyer, its agents, employees, customers, and users of its and their products against all suits, actions or proceedings, at law or in equity, and from all claims, demands, losses, judgments, damages, costs, expenses, or liabilities, including reasonable attorneys' fees, arising out of or related to the labor and services to be provided, whether or not related to the conduct of Buyer, its employees or agents.

**24. REPLACEMENT PARTS.** Seller shall, in the case of goods requiring servicing, stock replacement parts sufficient to meet Buyer's needs for a period of not less than fifteen (15) years after the last shipment of any goods. Seller shall make replacement parts available to Buyer at competitive prices not exceeding those charged to other comparable customers of Seller.

**25. MISCELLANEOUS.** This Purchase Order, together with any attachments, exhibits, manuals, or supplements specifically referenced herein, and any written, existing "Supplier Confidentiality Agreement" (a.k.a. "Supplier Agreement", "Supplier Security Agreement") or the like entered into between Buyer and Seller, constitutes the entire agreement between Seller and Buyer with respect to the matter it contains and supersedes all prior oral or written representations and agreements.

- Seller may not assign or delegate its obligations under this Purchase Order without Buyer's prior written consent.
- This Purchase Order includes all related customs duty and import drawback rights, if any, including rights developed by substitution and rights that may be acquired from Seller's supplier(s) which Seller can transfer to Buyer. Seller shall inform Buyer of the existence of any such rights and upon request to supply such documents as may be required to obtain such drawback.
- The failure of either party at any time to require performance by the other party of any provision of this Purchase Order will in no way affect the right to require such performance at any time thereafter, nor will the waiver of either party of a breach of any provision of this Purchase Order constitute a waiver of any succeeding breach of the same or any other provision.
- Seller and Buyer are independent contracting parties and nothing in this Purchase Order will make either party the agent or legal representative of the other for any purpose, nor does it grant either party any authority to assume or to create any obligation on behalf of or in the name of the other.
- This Purchase Order is to be construed according to the law of the State of Michigan, without regard to its conflicts of law principles. The United Nations Convention on Contracts for the International Sale of Goods will not apply. Seller agrees that the forum and venue for any legal action or proceeding concerning this Purchase Order will lie in the appropriate federal or state courts in the State of

Michigan and specifically waives any and all objections to such jurisdiction and venue.

- If any term of this Purchase Order is invalid or unenforceable under any statute, regulation, ordinance, executive Purchase Order, or other rule of law, that term will be deemed reformed or deleted, but only to the extent necessary to comply with such statute, regulation, ordinance, Purchase Order or rule, and the remaining provisions of this Purchase Order will remain fully in effect.
- The rights and remedies reserved to Buyer in this Purchase Order will be cumulative and additional to all other remedies available to Buyer in law or equity.
- Seller's covenants, representations and warranties under this Purchase Order will survive any delivery, inspection, payment or acceptance and any completion, termination or cancellation of this Purchase Order.
- If this Purchase Order covers goods or services for Buyer's use in the performance of any contract, sub-contract, or purchase order in which the United States Government, or any agency or department thereof, is the principal contractor, then the additional terms and conditions set forth in Supplement A to this Purchase Order will apply.

Rev. 4/16/09