

AFTERMARKET HPP PARTS, LLC (dba HPP Advisors)

OFFER OF SALE

1. Goods Subject to Sale.

- A. The goods subject to this sale (hereinafter "Goods") shall be limited to those types and quantities of goods described in Seller's quotation and/or Seller's acknowledgment.
- B. Unless specifically noted in Seller's quotation and/or Seller's acknowledgment the Goods subject to this sale do not include, and Buyer assumes responsibility for: (1) guarding and/or safety equipment or devices used with the Goods or by Buyer's employees or any third parties in handling or working with the Goods; or (2) manuals, placards or instructions as to the proper use and/or installation of the Goods.

2. Seller's Quotation.

- A. Seller's quotation constitutes an offer for the sale of Goods (as defined above) and is based upon all of the terms and conditions contained herein.
- B. Any purchase order or other form of acceptance issued by Buyer in response to a quotation by Seller shall result in a contract for the purchase of the Goods at the price quoted in Seller's quotation. The resulting contract shall include all of the terms set forth in the quotation (including these terms and conditions) and any of Seller's subsequent documents signed by Seller (collectively, "Seller's Terms").
- C. Any purchase order or similar document issued by Buyer other than in response to a quotation shall not result in a contract until Seller has accepted the order in writing via email. Any such acceptance will be conditional upon Buyer's assent to these terms and conditions, as well as any other terms set forth in Seller's acceptance document or other of Seller's documents signed by Seller (collectively, "Seller's Terms"), and no contract will arise if no such assent is given by Buyer.
- D. Seller hereby objects to any terms contained in any of Buyer's documents which are different from or additional to Seller's Terms. Unless Buyer shall have set forth each objection to Seller's Terms in a separate writing signed and dated by Buyer and delivered to Seller within ten days after receipt of Seller's Terms, Buyer shall be deemed to have accepted Seller's Terms. Buyer's issuance of a purchase order or other document which in effect rejects some or all of Seller's Terms by virtue of Buyer's standard form language shall not be sufficient objection. Seller's execution of Buyer's standard form acknowledgment or other document shall constitute only an

acknowledgment of receipt thereof, and shall not be construed as an acceptance of any of the terms herein.

- E. Seller reserves the right to withdraw or modify any and all quotations at any time prior to receipt of a written acceptance from Buyer. In the event that Seller issues more than one quotation pertaining to the same Goods, the quotation latest in time shall control and all prior quotations shall be deemed withdrawn. Withdrawal of any quotation shall not reinstate the terms of any prior quotation, however a subsequent quotation may modify a prior quotation, preserving the prior quotation to the extent specifically indicated on the face of the subsequent quotation form.
- F. Seller's quotation is not and shall not be considered a firm offer.

3. **Prices:**

Prices published or quoted by Seller are subject to change without prior notification. All prices are based on U.S. dollars, Ex Works, Seller's facilities, Dowagiac, Michigan, or at another named place. Prices do not include any taxes (sales, excise, use, etc) or any export or import duties imposed by any country which may be applicable to the sale of the goods. Such charges or taxes, if applicable, will be paid by Buyer, and Buyer hereby expressly agrees to indemnify and hold Seller harmless from any claim, loss, damage, liability or expense with regard to the payment of any such taxes or charges.

4. **Errors:**

Seller reserves the right to correct any typographical or clerical errors which may be present in prices, specifications, quotations or acknowledgments.

5. **Terms of Payment:**

- A. Unless other terms of payment are specified in Seller's quotation and/or other contract documents, payment shall be made in full at Seller's main offices in Dowagiac, Michigan, U.S.A., or at another point designated by Seller. All sales are contingent upon credit approval and full payment for all purchases is due within thirty (30) days from the date of invoice or shipment, whichever occurs first. Buyer hereby agrees to make such payment in full without any deduction for claim of set-off or recoupment on account of this contract or any other contract or matter between the parties.
- B. If shipment is delayed by Buyer, payment shall become due 30 days from the date Seller has notified Buyer that it is ready to ship. If production by Seller is delayed by Buyer, partial payment is to be made based on the contract price and a percentage of completion at the time of notification of delay. Should Buyer delay payment beyond the date on which it is due, interest

may be charged on the unpaid balance at the rate of 1 1/2% per month, or at the maximum rate allowed by applicable state laws, whichever is less.

6. **Cancellation/Modification:**

After Seller has sent acknowledgment of Buyer's purchase order to Buyer or begun preparations for production of the Goods, Buyer will have no right of cancellation or modification of all or any part of the order without written approval of Seller. If written approval of modification is given, Buyer shall be responsible to Seller for, and hereby agrees to pay, all costs incurred by Seller as a result of the modification. If written approval of cancellation is given, Buyer shall be responsible to Seller for, and hereby agrees to pay, all costs incurred by Seller as of the effective date of cancellation, plus a cancellation fee equal to 15% of the total price set forth in the contract. Should Goods already have been shipped prior to the request for cancellation, Seller has the option to accept or refuse return of the Goods. If return is accepted, Buyer must return all Goods to the location designated by Seller, freight prepaid. The return will be subject to a restocking charge of 15% of the total price set forth in the order. In addition, if any or all of the Goods are in an unsalable condition, Buyer shall be charged for those Goods at the contract rate.

7. **Shipment and Delivery:**

- A. Any shipment date stated in Seller's quotation and/or other contract documents is approximate only and does not constitute any guarantee of shipment on any particular date. Time shall not be of the essence of the contract.
- B. Notwithstanding the reservation of title by Seller, risk of loss or damage to all Goods shall pass from Seller to Buyer upon delivery by Seller to the possession of the carrier. When Ex Works destination is specified, there shall be truck-load delivery only, with removal the obligation of Buyer. Unless other arrangements are made by Buyer at Buyer's expense, Buyer agrees to the standard valuation and/or released rate set forth in the carrier's standard rate schedule. Any claims for loss or damage after possession by the carrier will be solely between Buyer and the carrier. Seller will provide reasonable assistance to Buyer in filing loss or damage claims.

8. **Delays and Storage:**

- A. Seller shall not be responsible to Buyer or any third party for any damages resulting from failure or delay in manufacturing or shipping due to any cause beyond the reasonable control of Seller, including, but not limited to, the requirements of any statute, act, ordinance, regulation, order or instruction of any governmental body; acts of God; acts of civil or military authority; fire; flood; strikes or other labor disputes; embargoes, war, riot or civil disturbance; delays in transportation; inability of Seller to obtain necessary labor; lack of utilities or utility service;

unavailability of energy sources; or inability to obtain materials, supplies, components or other goods and/or services from third parties.

- B. If shipment by Seller is delayed or extended by Buyer, Buyer shall arrange for and notify Seller of the place or places to which Seller shall ship the Goods covered by the order, for warehousing or storage at Buyer's expense. All risk of loss or damage to the Goods shall be borne by Buyer. If Buyer is unwilling or unable to promptly arrange for warehousing or storage facilities, Seller may do so instead of Buyer and at Buyer's expense. Buyer hereby agrees to pay any and all storage charges so incurred. Storage services rendered by seller in any of seller's facilities shall be charged at the rate of \$3.00 dollars per square foot per month, and off-site storage arranged by Seller shall be charged at the rate invoiced Seller for such storage.

9. **Warranty:**

Seller's Goods are warranted against defects in material or workmanship for a period of one (1) year from the date of shipment, unless otherwise contractually modified. Seller's Fittings offer a 8,000 cycle warranty provide the Buyer completes the online warranty. Seller's liability under this warranty is limited to the repair or replacement, at the option of the Seller, of the products or parts thereof covered by this warranty. Seller's obligation under this warranty shall not arise unless written notice of a warranty claim is made to Seller. Seller may require that the product in question be delivered for inspection, freight prepaid, at Seller's facility in Fairview, Pennsylvania, or some other location designated by Seller. THE REPAIR OR REPLACEMENT WARRANTY HEREIN SET FORTH IS THE EXCLUSIVE WARRANTY GIVEN BY SELLER FOR ITS GOODS. THIS WARRANTY IS GIVEN IN LIEU OF ANY OTHER WARRANTIES, WHETHER WRITTEN OR ORAL, EXPRESS OR IMPLIED. ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE ARE HEREBY EXPRESSLY EXCLUDED BY SELLER. SELLER NEITHER ASSUMES, NOR DOES IT AUTHORIZE ANY OTHER PERSON TO ASSUME ON ITS BEHALF, ANY OTHER LIABILITY IN CONNECTION WITH THE SALE OF ITS GOODS.

10. **Claims, Commencement of Action:**

Buyer shall promptly inspect all Products upon receipt. No claims for shortages will be allowed unless reported to Seller within five (5) business days of delivery. Buyer shall notify Seller of any alleged breach of warranty within (30) days after the date the non-conformance is or should have been discovered by Buyer. Any claim or action against Seller based upon breach of contract or any other theory, including tort, negligence, or otherwise must be commenced within twelve (12) months from the date of the alleged breach or other alleged event, without regard to the date of discovery.

11. **Limitation of Liability:**

IN NO CASE, WHETHER AS A RESULT OF BREACH OF CONTRACT, BREACH OF WARRANTY OR TORT (INCLUDING SELLER'S NEGLIGENCE OR STRICT LIABILITY) SHALL SELLER BE LIABLE FOR ANY DAMAGES OF ANY KIND, INCLUDING CONSEQUENTIAL OR INCIDENTAL DAMAGES SUCH AS, BUT NOT LIMITED TO, LOSS OF SALES, PROFIT, REVENUE OR GOOD WILL; LOSS OF USE OF GOODS OR ANY ASSOCIATED EQUIPMENT OR MATERIAL; COST OF CAPITAL; COST OF SUBSTITUTE PRODUCTS, FACILITIES OR SERVICES; DOWNTIME COSTS; ATTORNEYS' FEES; OR LOSSES OR CLAIMS OF CUSTOMERS OF BUYER FOR SUCH DAMAGES. BUYER, BY ACCEPTING THE GOODS, HEREBY AGREES TO INDEMNIFY AND HOLD SELLER HARMLESS FROM ANY AND ALL SUCH DAMAGES.

12. **Indemnity:**

BUYER AGREES TO DEFEND, INDEMNIFY AND HOLD SELLER HARMLESS FROM ANY AND ALL CLAIMS, LIABILITY, DAMAGES OR EXPENSES DUE TO PERSONAL INJURIES OR DEATH TO THE EMPLOYEES OF SELLER OR BUYER OR TO THIRD PARTIES, AND FROM PROPERTY DAMAGE, TO THE EXTENT OF THE BREACH OF CONTRACT, BREACH OF WARRANTY OR NEGLIGENCE OF BUYER OR THE STRICT LIABILITY OF BUYER CAUSED BY THE ACTS OR OMISSIONS OF BUYER

13. **Limitation of Actions:**

- A. Buyer or anyone claiming through Buyer must bring any action against Seller within one year from the date on which the act complained of occurs.
- B. Seller shall have a minimum of four years from the date when payment is due from Buyer to Seller to bring any action against Buyer.

14. **Confidentiality:**

No information received by Seller from Buyer or its customers shall be deemed to be confidential or held in confidence by Seller unless disclosure is made to Seller pursuant to a Confidentiality Agreement executed by authorized representatives of Seller and the person making the disclosure prior to the making of the disclosure.

15. **Loss to Buyer's Property:**

Any tools, patterns, materials, equipment or information furnished by Buyer or which are or become Buyer's property ("Buyer's Property"), will be considered obsolete and may be destroyed by Seller after two (2) consecutive years have elapsed without Buyer ordering the Products manufactured using Buyer's Property. Furthermore, Seller shall not be responsible for any loss or damage to Buyer's Property while it is in the Seller's possession or control.

16. Security Interest:

To secure payment of all sums due from Buyer, Seller retains a security interest in all Products delivered to Buyer and, Buyer's acceptance of these Terms is deemed to be a Security Agreement under the Uniform Commercial Code. Buyer authorizes Seller as its attorney to execute and file on Buyer's behalf all documents Seller deems necessary to perfect Seller's security interest.

17. User Responsibility:

Buyer, through its own analysis and testing, is solely responsible for making the final selection of the Products and assuring that all performance, endurance, maintenance, safety and warning requirements of the application of the Products are met. Buyer must analyze all aspects of the application and follow applicable industry standards, specifications, and any technical information provided with the Quote or the Products. If Seller provides options of or for Products based upon data or specifications provided by Buyer, Buyer is responsible for determining that such data and specifications are suitable and sufficient for all applications and reasonably foreseeable uses of the Products. In the event Buyer is not the end-user of the Products, Buyer will ensure such end-user complies with this paragraph.

18. Collection Costs, Attorneys' Fees:

Notwithstanding Paragraph 11 hereof, Buyer agrees that in the event suit is instituted by Seller to recover possession of any Goods sold, to enforce any of these terms and conditions, or to collect any sums of money, damages or costs from the Buyer hereunder or any sum of money for the use or rental of the Goods, Buyer shall pay all actual costs of collection and reasonable attorneys' fees incurred by Seller in such suit or suits. In the event that Buyer brings any action against Seller arising from the sale or use of Seller's Goods and Buyer fails to prevail in such action, Buyer hereby agrees to reimburse Seller for any attorneys' fees and costs related to such litigation.

19. Limitations on Assignment:

Except as provided to the contrary hereunder, Seller or Buyer may assign any contract resulting from one or more quotations and/or acknowledgments, with the other party's written consent, which shall not be unreasonably withheld. Any assignment of such contract by Buyer, if approved by Seller, shall not relieve Buyer of Buyer's duties to Seller hereunder.

20. Force Majeure:

Seller is not liable for delay or failure to perform any of its obligations by reason of events or circumstances beyond its reasonable control. Such circumstances include without limitation: accidents, labor disputes or stoppages, government acts or orders, acts of nature, pandemics, epidemics, other widespread illness, or public health emergency, delays or failures in delivery from carriers or suppliers, shortages of materials, war (whether declared or not) or the serious threat of same, riots, rebellions, acts of terrorism, fire or any reason whether similar to the foregoing or

otherwise. Seller will resume performance as soon as practicable after the event of force majeure has been removed. All delivery dates affected by force majeure shall be tolled for the duration of such force majeure and rescheduled for mutually agreed dates as soon as practicable after the force majeure condition ceases to exist. Force majeure shall not include financial distress, insolvency, bankruptcy, or other similar conditions affecting one of the parties, affiliates and/or subcontractors.

21. **Governing Law:**

The validity, performance and all matters relating to the interpretation and effect of a contract resulting from any one or more quotations and/or acknowledgments shall be governed by the laws of the Commonwealth of Pennsylvania, U.S.A. Any litigation arising here from or relating hereto shall be brought and decided exclusively in the state or federal courts located in Erie County, Pennsylvania. Buyer and Seller hereby agree to submit to the personal jurisdiction of such courts for these matters.

22. **Waiver:**

Failure of Seller to require Buyer's performance of any of these Terms and Conditions or waiver by Seller of any breach by Buyer of any of these Terms and Conditions shall not prevent subsequent enforcement of such term and/or condition, nor shall it be deemed a waiver of any subsequent breach thereof.

23. **Entire Agreement:**

The terms of a quotation and/or acknowledgment (including any specifications or other documents incorporated by reference therein) and these Terms and Conditions will constitute the entire understanding and agreement between Buyer and Seller concerning the subject matter hereof. Any representation, promise, course of dealing or trade usage not contained herein will not be binding on either party. No modification, amendment, rescission, waiver or other change of any resulting agreement or any part thereof shall be binding upon Seller unless consented to in writing by Seller's authorized representative in Dowagiac, Michigan, U.S.A. If any term or condition set forth in a quotation and/or acknowledgment is declared null and void, the remaining terms and conditions shall nevertheless remain applicable.