



## TERMS AND CONDITIONS OF SALE

**General.** The following terms and conditions of sale ("Contract") shall be the final, complete and exclusive Contract for sale between VAG USA, LLC named on the Purchase Order or Acknowledgment ("Seller") and the entity to which Seller is providing Products or Services under the Contract ("Buyer") and supersedes all other communications in regard to the Products, whether written or oral. Any terms and conditions in any documents previously exchanged between Buyer and Seller that vary with, are inconsistent or add to these terms are hereby objected to and are not binding upon Seller without express written consent, even though there may have been acknowledgment, work has commenced, or the order has shipped. This Contract may only be amended in a writing signed by both parties. To the extent this Contract is construed as an acceptance of the Buyer's offer, this acceptance is expressly conditioned on the Buyer's assent to any additional or different terms contained in this Contract. When used herein the term "Standard Product" refers to a product that is standard product, currently in stock, and inventoried by Seller and identified as returnable. The term "Product" refers to both Standard Product and Non-standard or Non-Stocked Product, and the term "Services" refers to repair, installation or maintenance of Products by Seller.

**Price.** Quotations are valid for thirty (30) days unless extended in writing by Seller. Prices quoted will be firm for orders accepted at the factory within thirty (30) days, where material is released and scheduled by Seller for shipment within thirty (30) days after the date of order entry; otherwise, Seller reserves the right to apply prices in effect at the time of shipment. Additional charges may be made to cover any extra, unforeseen or unusual cost elements, including without limitation, overtime work authorized by Buyer, special packing, engineering, special certificates determined after quality review, or documentation. All orders are subject to acceptance by Seller and credit approval. Prices do not include sales, use, excise, VAT, GST, and all similar taxes. Total prices on invoices may differ slightly, as price records for electronic calculation may either be on a "list and discount" or on a net basis.

**Packaging, Shipment and Delivery.** Seller will decide how to pack and ship unless specific written instructions are given by Buyer and accepted by Seller. If required, special export packaging that includes extra packaging, fully crated, with corrosion protection and heat-treated lumber can be included for an additional 3% of order value (\$300 minimum fee). Such packaging will not be provided by Seller unless requested in writing by Buyer. Unless otherwise expressly agreed to in writing by Seller, all shipments are Ex Works (International Incoterms 2010) or FOB (U.S. UCC), Seller shipping point at which point title also transfers. Buyer shall pay all delivery costs and charges. If the Buyer asserts a claim against the transportation company, Seller will cooperate in attempting to resolve such claim. Delivery dates are approximate, not guaranteed, and are subject to prior sale. Goods are deemed delivered on the day the shipment is made available to the carrier. Any order request outside of normal lead times will be charged as follows: same day Standard Product –no charge; all other Products –15% of order value (\$100 minimum fee), plus any other applicable charges and costs. Emergency after-hours fee of \$250 will be charged in addition to fees set forth above.

**Force Majeure.** Seller shall not be liable for delays in delivery due to circumstances beyond its reasonable control, including, but not limited to: (a) acts of God; (b) flood, fire, earthquake or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest; (d) government order or law; (e) actions, embargoes, or blockades in effect on or after the date of this Contract; (f) action by any governmental authority; (g) national or regional emergency; (h) strikes, labor stoppages or slowdowns, or other industrial disturbances; (i) shortage of adequate power or transportation facilities; (j) delay in obtaining licenses; or (k) unavailability or reduced availability of supply at Seller's usual source.

**Cancellation and Revision Charges.** There is no charge for cancellation of a Standard Product order if received by Seller in writing prior to shipment. All other Product will incur a \$100 minimum cancellation charge. Additional charges may apply (up to 100% of the value of the Contract) based on stage of order completion when cancellation or revision is requested. Such charges may include, but are not limited to, materials ordered, engineering, drawing, or manufacturing development time. Reschedules may not be made unless written notification is received and accepted at the manufacturing location more than 90 days prior to the latest acknowledged shipping date, and then only upon terms which will indemnify Seller against loss. Buyer delays may result in extra costs to Buyer.

**Patents.** Seller will defend and indemnify Buyer against claims by a non-affiliated third party of infringement of United States patents issued at the time of sale to Buyer; provided such claims are based exclusively on infringement by Products designed and manufactured by Seller and not based on the use of the Products in combination with products manufactured or designed by Buyer or others. Seller must be promptly notified in writing, tendered the defense and be allowed to obtain a license for Buyer or substitute a non-infringing equivalent product. In no event will Seller's total liability to Buyer exceed the purchase price of the Product.

**Product Safety and Safety Devices.** Products designed and manufactured by Seller are capable of being used in a safe manner, but Seller does not warrant their safety under all circumstances. Products are provided with only those safety devices identified herein. IT IS BUYER'S RESPONSIBILITY TO FURNISH THE APPROPRIATE GUARDS AND TO INSTALL AND USE THE PRODUCTS IN A SAFE MANNER IN COMPLIANCE WITH APPLICABLE HEALTH AND SAFETY REGULATIONS AND LAWS AND GENERAL STANDARDS OF REASONABLE CARE. IF BUYER FAILS TO DO SO, BUYER SHALL INDEMNIFY, DEFEND AND HOLD SELLER HARMLESS FROM ANY LOSS, COST, EXPENSE, DAMAGE, ACTION OR CAUSE OF ACTION ARISING FROM ALLEGATIONS OF SUCH FAILURE.

**Designs, Dimensions and Weights.** Due to normal Product changes, the designs, dimensions, materials, components and weights shown in printed and electronic catalogs are subject to variation and for estimate purposes only. Seller makes no representations with regard to the designs, dimensions, materials, components or weights advertised. Should Buyer require exact Product specifications, Buyer must make a written request for additional information or certification from Seller.

**Manufacturing Devices and Technical Information.** Unless otherwise expressly agreed to in writing by Seller, all manufacturing devices, design data and other technical information relating to an order shall remain Seller's property. All new intellectual property conceived or created by Seller in the performance of this Contract, whether alone or with any contribution from Buyer, shall be owned exclusively by Seller. Buyer's patterns/tooling in Seller's possession are held at Buyer's risk and not covered by Seller's insurance.

**Warranty.** For a period of one year from the date of shipment and provided payments for the Products have been made by Buyer to Seller, Seller warrants to Buyer that its Products: (i) substantially conform to Seller's published specifications and (ii) are free from defects in material or workmanship. Specific products may have a warranty period greater than one year. Any Services provided by Seller are warranted to be performed in a good and workmanlike manner. Should a warranted Product or any Services fail to conform to these warranties, Buyer must notify Seller in writing no later than thirty (30) days after discovery of the alleged failing. Seller will, at its discretion and at no charge to the Buyer: (i) repair the Product or Services; (ii) replace the Product or any Services; or (iii) offer a full refund of that portion of the purchase price allocable to the non-conforming Product or Services. Warranty repair or replacement by Seller shall not extend or renew the applicable warranty period. Buyer shall obtain Seller's agreement on the specifications of any tests it plans to conduct to determine whether a non-conformance exists. Buyer shall bear the costs of access for Seller's remedial warranty efforts (including removal and replacement of systems, structures or other parts of Buyer's facility), de-installation, decontamination and re-installation. THE FOREGOING WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. This warranty allocates the risks of Product failure between Seller and Buyer. This allocation is recognized by both parties and is reflected in the price of the goods. Buyer acknowledges that it has read this Contract, understands it, and agrees to and is bound by its terms.

**What is Not Covered by Warranty.** No representative of Seller has authority to waive, alter, vary or add to the terms hereof without prior written approval of an officer of Seller. Seller's warranty does not apply to: (i) dynamic vibrations imposed by the drive system in which such Products are installed unless the nature of such vibrations has been defined and accepted in writing by Company as a condition of operation; (ii) improper or unauthorized repair, installation or maintenance of the Products by a party other than Seller; (iii) use for purposes other than those for which designed, or other abuse, negligence, misuse, or normal wear and tear; (iv) unauthorized attachments, modifications or disassembly; (v) damage during shipping; or (vi) Products purchased from unauthorized distributors, resellers or internet sites. Buyer's care in selection, adequate testing at time of installation and proper installation, operation and maintenance of all Products is required for adequate performance.

**Limitations of Liability.** NOTWITHSTANDING ANY PROVISION OF THIS CONTRACT OR THE LAW, IT IS EXPRESSLY AGREED THAT SELLER'S TOTAL LIABILITY FOR ANY DAMAGES, COSTS OR EXPENSES ARISING OUT OF OR RELATED TO THIS CONTRACT OR ITS PRODUCTS OR SERVICES, WHETHER BASED IN CONTRACT, WARRANTY, INDEMNITY, TORT/EXTRA-CONTRACTUAL LIABILITY (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE IS LIMITED TO THE REPAIR OR REPLACEMENT OF THE PRODUCT OR SERVICES OR, AT SELLER'S OPTION, A RETURN OF AN AMOUNT THAT SHALL NOT EXCEED THE AMOUNT OF THE PURCHASE PRICE ACTUALLY PAID TO SELLER. UNDER NO CIRCUMSTANCES WILL SELLER, ITS OFFICERS, DIRECTORS, EMPLOYEES OR ASSIGNS BE LIABLE FOR ANY OTHER REMEDY, LOSS, COST, DAMAGE OR EXPENSE WHETHER DIRECT OR INDIRECT. IN NO EVENT WHATSOEVER SHALL SELLER BE LIABLE FOR ANY CONSEQUENTIAL, LIQUIDATED, EXEMPLARY OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO, LOSS OF USE, INCOME, PROFIT, OR PRODUCTION; INCREASED COST OF OPERATION; SPOILAGE OR DAMAGE TO MATERIAL; OR CHANGE OUT COSTS. BUYER SHALL INDEMNIFY, DEFEND AND HOLD SELLER HARMLESS FROM ANY LOSS, COST, EXPENSE, DAMAGE, OR CAUSE OF ACTION TO OR BY A THIRD PARTY, THE ALLEGED DAMAGES FOR WHICH EXCEEDS THESE LIMITATIONS OF LIABILITY.

**Terms of Payment.** Terms of payment, unless agreed otherwise in writing, are thirty (30) days net from date of invoice, without set-off for any payment from Seller not due under this Contract. Seller reserves the right to charge interest at the rate of 1.5% per month or the highest rate allowed by law, whichever is lower, for all amounts more than thirty (30) days past due. Buyer agrees to pay all fees and costs associated with Seller's collection efforts (including reasonable attorney's fees) on any unpaid amounts more than sixty (60) days past due.

**Compliance with Law.** Seller's obligations under this Contract are conditioned upon Buyer's compliance with all export laws of the United States and other applicable trade control laws and regulations with regard to the exportation of the Products and any technical data associated therewith. Buyer shall not re-export, divert or direct Products other than in and to the ultimate country of destination declared by Buyer and specified as the country of ultimate destination on Seller's invoice.

**Time and Place for Commencing Suit.** Any action by Buyer for breach of any of the terms of this Contract by Seller must be commenced within six (6) months of the alleged breach. The parties consent to the exclusive jurisdiction and venue of the federal and state courts located in Pittsburgh, Pennsylvania in any action arising out of or relating to this Contract or the Products. Each of the parties hereby irrevocably waives any objection to the laying of venue in Pittsburgh, Pennsylvania. THE PARTIES HEREBY IRREVOCABLY WAIVE, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY AND ALL RIGHTS UNDER FEDERAL AND/OR STATE LAW TO A TRIAL BY JURY WITH RESPECT TO ANY MATTER ARISING OUT OF OR RELATING TO THIS CONTRACT.

**Legal Construction.** The laws of the Commonwealth of Pennsylvania shall apply to all matters arising out of or relating to this Contract, without giving effect to the conflict of law's provisions thereof to the extent such principles or rules would require or permit the application of the laws of any jurisdiction other than those of the Commonwealth of Pennsylvania. The failure of Seller to insist upon strict performance of any of the terms and conditions stated herein shall not be considered a continuing waiver of any such term or condition or of any of Seller's rights. The headings in this Contract are informational and do not modify the agreement. The parties expressly agree to exclude the application of the U.N. Convention on the International Sale of Goods.