

## TERMS OF SALE AND WARRANTY

**GENERAL** - The terms and conditions of this document shall constitute the entire Agreement for the purchase and sale of the products to Purchaser. Acceptance is made expressly conditional upon Purchaser's assent to these terms, which may differ from, vary or be in addition to, the terms in Purchaser's purchase order or request for quotation. Any varying differing or additional terms and conditions contained in the Purchaser's purchase order, request for quotation or elsewhere shall not be binding upon Labonte MotorSports, LLC (the "Seller").

### **DISCLAIMER OF WARRANTIES AND LIMITATIONS OF LIABILITY**

(a) SELLER EXPRESSLY DISCLAIMS ALL WARRANTIES EXPRESS OR IMPLIED. INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

(b) Seller hereby assigns to Purchaser any rights it may have under any warranty extended by a third party governing a product or component sold by Seller to Purchaser. Materials manufactured by others and resold by Seller do not carry any additional warranty by Seller.

(c) Seller shall not be liable under any circumstances for consequential, incidental, indirect or remote damages. No claim by Purchaser hereunder, whether relating to goods delivered or for non-delivery, shall be greater than the purchase price of the goods in respect to which such claim is made.

(d) Any "custom conversion" or adaptation hereunder is pursuant to the Purchasers specific request, and the Seller shall bear no risk of loss resulting therefrom.

(e) Purchaser is solely responsible for the design, selection and application of fabricated equipment, products, components and materials purchased from Seller. Any drawings, specifications, or information prepared by or furnished by Seller are for reference purposes only, and Seller makes no warranty or representations concerning the accuracy of such materials or information.

(f) The foregoing limitations on Seller's liability shall also be the absolute limit of Seller's liability for negligence or defect in the manufacture, installation or other action with respect to the articles sold hereunder.

(g) Any fabricated product or fabricated part thereof covered by this quotation which, under normal operating conditions on the part of the Purchaser proves defective in material or workmanship within one (1) year from the date of shipment by Seller, as determined by an inspection by Seller, will be replaced or repaired, at Sellers option, at Seller's facility, free of charge provided that Purchaser promptly sends to Seller notice of the defect and establishes that the product has been properly installed, maintained and operated within the limit of rated and normal usage. Components purchased by Seller are warranted by and in accordance with the individual manufacturer's warranties, if any, not those of Seller. If an article is claimed to be defective in material or workmanship or not to conform to specifications, Seller, on written notice, shall at Seller's option either examine the article at its site or issue authorization for return to Seller. In the event such article is returned to Seller, Purchaser shall be solely responsible for all costs and expenses associated with such shipment and Purchaser shall bear risks of loss or damage to goods while in transit.

### **PURCHASER'S USE AND OCCUPATIONAL SAFETY AND HEALTH ACT (OSHA)**

(a) It is Purchaser's responsibility to provide all proper dies, devices, tools and means that may be necessary to effectively protect all personnel from all bodily injury which otherwise may result from the method of particular use, operation, set-up or service of the Seller's products. If supplied or required, the operator's manual or machine manual, all applicable Safety Standards, OSHA regulations, other sources and other applicable regulations should be consulted to protect personnel.

(b) The proposed equipment or goods may not be used without all recommended or included safety devices.

**SPECIFICATIONS** - Equipment quoted shall not be subject to any other specifications, which are not stated on the face of the quotation and in the manufacturer's catalog. Voltage, phase, frequency and power limitations must be specified by Purchaser.

**FIELD ENGINEER SERVICES/INSTALLATION** - Unless otherwise specifically indicated, the quoted prices DO NOT include the services of Seller's field engineer to supervise the installation of equipment and instruct the operator in its proper use,

### **PROPERTY AND PATENT RIGHTS**

(a) Seller retains for itself any and all property rights, including but not limited to all patent, copyright, and trade secret rights, to the Software Materials and to all designs, engineering details, documentation, and other data pertaining to any equipment designed in connection herewith and to all right of discovery, invention of patent rights arising out of the work done in connection herewith. Purchaser expressly agrees that it will not assert any property rights herein, except the right for itself and subsequent owners to use the equipment

(b) Purchaser acknowledges that the Software Materials constitute valuable trade secrets of Seller and are unpublished works on which Seller, or Seller's vendor, holds the safe and exclusive copyright. Purchaser agrees to maintain and protect the confidentiality of these trade secrets and agrees not to disclose them or use them for any purpose not contemplated by this Agreement. Purchaser agrees to formulate and adopt appropriate safeguards in light of its own operating activities, to insure protection of the confidentiality of these trade secrets. Purchaser shall immediately notify Seller of any information which comes to its attention which indicates that there has been any loss of confidentiality of Seller's trade secret information.

**DELAYS** - Seller shall not be liable for damages or delays in performance due to circumstances beyond its reasonable control, including without limiting the generality of the foregoing, any priority system established by any agency of the United States Government, acts of God, accidents, strikes, insurrections, war, shortage of materials, lack of transportation and failure of performance of subcontractors or suppliers for similar reasons. Failure of Seller to perform for these reasons shall not be grounds for Purchaser's cancellation of its order but the delivery date shall be extended accordingly.

### **MISCELLANEOUS**

(a) This Agreement may not be assigned or otherwise transferred by Purchaser without the prior written consent of Seller, and any such prior written consent shall be null and void and of no force or effect whatsoever.

(b) Seller's failure to insist, in one or more instances, upon the performance of any term hereunder shall not be construed as a waiver or relinquishment of its right to such performance or the future performance of such term and Purchasers obligation with respect thereto shall continue in full force and effect

(c) Any notice or other communication required or permitted hereunder shall be sufficiently given if sent in writing by registered or certified mail, postage prepaid, to the other party thereto at its respective address contained herein.

Seller's address is 8187 Commerce Dr. Loves Park, IL 61111. Any such notice, if so mailed, shall be deemed to have been received on the third business day following such mailing. Either party hereto may change its address for notice purposes by written notice to the other party.

(d) The invalidity, in whole or in part, of any provision of this Agreement shall not affect the validity or enforceability of any other of its provisions.

### **INDEMNIFICATION**

(a) Purchaser agrees to defend, indemnify and hold harmless the Seller, its parent and affiliates, and their officers, agents and employees, against all claims, losses, expense and causes of action of every kind, made or asserted by any third party arising out of, or in connection with this Agreement or the article(s) sold hereunder.

(b) Purchaser agrees to indemnify Seller for all costs incurred by Seller, including legal fees and court costs, as a result of any claim brought against Seller arising from Purchaser's conduct, including, but not limited to, Purchaser's misuse of the product or, for any custom-designed product, design decisions or product choices made by Purchaser.

### **WAIVERS**

(a) Purchaser hereby waives, for itself and for any and all persons who may assert a claim or lien in Purchaser's place or stead, whether by subrogation or otherwise, any and all liens or claims of lien against the Seller for payments made by Purchaser's Workman's Compensation insurance carrier to Purchaser's employees for injuries alleged to have been caused by any article sold hereunder.

(b) Purchaser hereby waives, for itself and for any and all persons who may assert a claim or lien in Purchaser's place or stead, whether by subrogation or otherwise, any and all claims against Seller for contribution or for indemnity, whether such claims arise under contract, statute, common law, or otherwise.

**TAXES** - All applicable federal, state or local sales, use, occupational, excise, export, import or like taxes now in force or enacted in the future are the responsibility of the Purchaser and shall be in addition to the price or prices stated on the reverse side of this document Unless otherwise specifically stated, Seller shall have the right to invoice separately any such tax as may be imposed at a later time. Applicable tax exemption certificates must accompany any order to which the same applies.

### **PAYMENT TERMS, UNLESS OTHERWISE STATED ON REVERSE SIDE**

(a) As determined by Seller's credit department.

(b) F.O.B. Shipping Point and Purchaser assumes all risk and liability for loss, damage, or destruction after delivery of the product to the carrier.

(c) For any payment made more than thirty (30) days past invoice date, Purchaser agrees to pay interest on the unpaid balance at the rate of 1.5% (18% per annum) or the maximum allowed bylaw if less than 1.5% (18% per annum) plus any costs of collection and any costs associated with the purchase money security interest, including filing fees, legal fees and court costs.

**TITLE** - Title shall pass to Purchaser upon delivery of the product to the carrier, Purchaser assumes all risk and liability for loss, damage, or destruction after delivery of the product to the carrier.

**RETURNS** - Return of any merchandise must be authorized in writing by Seller, have Seller's "authorized material return" number and be accompanied by a copy of original packing slip verifying shipment from Seller's plant or warehouse. Any request to return goods must be made within ten (10) days from the receipt of the goods by Purchaser. Returned goods must be in first class saleable condition, in their original container, shipment prepaid. Subject to the limitations of Seller's Warranty, if goods are returned because of an error acknowledged by Seller, Seller will remedy any such error without expense to the Purchaser. Components, systems and Software Materials designed to meet Purchasers unique requirements or specifications are not returnable. Nonstandard or used material shall not be subject to return. Unless otherwise expressly agreed, an order for equivalent value must accompany returned merchandise and an such merchandise is accepted for credit only after factory inspection. A Purchaser returning merchandise must pay transportation charges and bear risks of loss or damage to goods while in transit

**RE-STOCKING CHARGES** - A minimum 15% of net billing will apply for material returned due to customer error.

**CANCELLATION** - In the event Purchaser requests Seller to stop work or cancel the order or any part thereof, cancellation charges shall be paid to Seller as follows:

(a) Any and all work that is complete or scheduled for completion within thirty (30) days of the date of notification in writing to stop work or to cancel shall be invoiced and paid in full.

(b) For work in process, other than covered by Item (a) above, and any materials and supplies procured, or for which definite commitments have been made by Seller in connection with Purchaser's order, the Purchaser shall pay the actual costs and overhead expenses determined in accordance with Seller's normal accounting practices, plus a minimum of fifteen (15%) percent, upon invoicing.

(c) Purchaser shall promptly instruct Seller as to the disposition of the product and the latter shall, if requested, hold the product for Purchaser's account. All costs of storage, insurance, hauling, boxing or other costs in connection therewith shall be borne by the Purchaser.

**DRAWINGS** - Drawings will be provided by Seller only upon special request of Purchaser and subsequent approval of Seller.

(a) Seller may provide reproducible copies of specification sheets, which list all assemblies and components. Pertinent assembly drawings will be included in the instruction manual.

(b) Seller may provide original layout drawings, complete fixture drawings and lubrication diagrams with related information.

**COMPLETE AGREEMENT** - This agreement constitutes the entire Agreement between the parties and cancels and supersedes any previous agreements and price quotations, if any, between the parties. Except as otherwise provided herein, this Agreement may be amended or modified only by a written instrument signed by Purchaser and Seller.

**APPLICABLE LAW** - This Agreement, and all rights and obligations hereunder, including matters of construction, validity and performance, shall be governed by the laws of the State of Illinois. THE JURISDICTION AND VENUE OF ANY LEGAL PROCEEDINGS FOR THE RESOLUTION OF DISPUTES ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY SALE BY LABONTE MOTORSPORTS TO PURCHASER SHALL BE IN THE FEDERAL OR STATE COURTS SITTING IN WINNEBAGO COUNTY, ILLINOIS. PURCHASER HEREBY SUBMITS TO THE JURISDICTION OF ALL SUCH FEDERAL AND STATE COURTS SITTING IN WINNEBAGO COUNTY, ILLINOIS.