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| <b>Interstate/McBee</b><br>4901 Lakeside Ave., Cleveland, Oh 44114-3996<br>Telephone (216)-881-0015 Fax (216)-881-0805 | <b>Title</b>                                   |                            |
|  | TERMS & CONDITIONS FOR<br>INTERSTATE-MCBEE LLC |                            |
|  | Page 1 of 2                                    | <b>CONTROLLED DOCUMENT</b> |

**TERMS AND CONDITIONS**

**1. Controlling Provisions:** No terms and conditions other than the terms and conditions contained herein shall be binding upon Interstate-McBee, LLC. ("Seller") unless accepted by it in a writing signed by an officer of Seller. All terms and conditions contained in any prior oral or written communication, including, without limitation, Buyer's purchase order, which are different from or in addition to the terms and conditions herein are hereby rejected and shall not be binding on Seller, whether or not they would materially alter this document, and Seller hereby objects thereto. All prior proposals, negotiations and representations, if any, are merged herein. Buyer will be deemed to have assented to all terms and conditions contained herein if any part of the goods described herein are shipped or an invoice is presented in connection with said goods.

**2. Terms:** Buyer agrees to pay for goods purchased from Seller ("Products") according to Seller's payment terms. Buyer grants Seller a purchase money security interest in the Products until such time as Seller is fully paid and authorizes Seller to file such financing statements as Seller deems necessary to perfect and protect Seller's security interest. Clerical errors or obvious errors or omissions are subject to correction.

**3. Inspection And Acceptance; Returns:** Claims for damage, shortage or errors in shipping must be reported within five (5) business days following delivery to Buyer. Buyer must submit requests for return on Seller's form and receive authorization to obtain credit for returned Products. All returned Products must be in saleable condition, in their original packaging, and returned to Seller shipper freight prepaid with risk of loss on the Buyer until received by Seller. A 15% restocking fee and any freight paid by Seller will be deducted from the purchased price. Items which were "special ordered" or have been obsoleted may not be returned.

**4. Changes:** Seller reserves the right to make process and design changes in the Products which do not adversely affect fit or function without prior approval of or notification to Buyer. Buyer may request changes in process or design of the Products only if Buyer agrees to accept such changes in delivery or prices which are, in Seller's judgment, reasonably necessitated thereby. Should Buyer request changes which are, in Seller's judgment, beyond the ability of Seller to produce or delivery within the schedule or for the price proposed by Buyer, Seller shall have the right to reject or cancel Buyer's order, and, if Production on the order has commenced or expenses have been incurred or commitments made as a consequence thereof, Buyer shall pay reasonable charges based on Seller's costs and commitments.

**5. Shipment; Delivery; Risk of Loss:** Unless otherwise expressly agreed to in writing, the method of packing and shipment of the Products sold hereunder shall be at the discretion of the Seller. Seller will make a good faith effort to complete delivery of the Products as indicated by Seller in writing, but Seller assumes no responsibility or liability and will accept no back charge for loss or damage due to delay or inability to deliver, whether or not such loss or damage was made known to Seller, including, but not limited to, delay caused by acts of God, war, labor difficulties, accidents, inability to obtain materials, delays of carriers, contractors or suppliers or any other causes of any kind whatever beyond the control of Seller. Under no circumstances shall Seller be liable for any special, consequential, incidental, indirect, or liquidated damages, losses, or expense (whether or not based on negligence) arising directly or indirectly from delays or failure to give notice of delay. If a delivery is delayed as a result of any action or inaction of Buyer, Seller may invoice Buyer for the Products as of the scheduled delivery date and may charge Buyer for warehousing and other expenses incurred because of the delay. All Products are shipped F.O.B., point of shipment. Risk of loss shall transfer to the Buyer upon first tender of goods to Buyer, Buyer's representative, or common carrier. The cost of any special packing or special handling caused by Buyer's requirements or requests shall be added to the amount of the order. Claims for Products damaged or lost in transit should be made by Buyer to the carrier, as Seller's responsibility ceases upon tender of goods to Buyer, Buyer's representative or common carrier.

**6. Prices - Adjustments:** All prices quoted or agreed to by Seller apply only to Products scheduled for shipment no more than twelve (12) months from the date of receipt of Buyer's order by Seller. Seller reserves the right to increase its prices for later releases and shipments upon thirty (30) days notice. Buyer shall have fifteen (15) days from the date of such notice to cancel its order, without charge, with respect to any Products not scheduled for shipment prior to the effective date of the price increase. All costs of shipping the Products to Buyer, including without limitation, freight, insurance (for either Buyer's or Seller's benefit) and special packing or handling, shall be in addition to the stated prices and shall be paid by Buyer. Payment of all sums invoiced to Buyer shall be in U.S. currency. Seller shall be entitled to interest on all unpaid sums from the due date at the rate of 1 1/2% per month or the maximum rate permitted by law, whichever is lower.

**7. Taxes:** In addition to the stated prices, Buyer shall pay Seller the amount of any excise, sales, use or other taxes incident to the sale of Products hereunder for which Seller may be liable or which Seller is required by Law to collect unless Buyer provides a proper tax exemption certificate.

**8. Prototype Products:** All prototypes, samples and/or test vehicles provided by Seller are not for sale but are consigned to Buyer solely for evaluation and testing and shall at all times remain the property of Seller. Buyer will use, evaluate and test such prototypes, samples and/or test vehicles only according to mutually agreed upon protocols and procedures. Buyer will provide Seller with copies of all test results, including the conditions under which each test was conducted, as well as the data generated and any conclusions or interpretations drawn from tests. Buyer will not (a) disassemble, analyze, or have analyzed any prototypes, samples and/or test vehicles, or any portion thereof, or (b) make any attempt to reverse engineer any prototypes, samples and/or test vehicles. Upon termination of Buyer's tests or earlier request by Seller, Buyer will return all prototypes, samples and/or test vehicles to Seller.

**9. Warranty:** Seller's warranty on the Products is limited to the express written warranties contained in Seller's "Limited General Products Warranty" or "Limited Extended Warranty – Engine Parts (U.S.A. and Canada). Seller does not warrant any Product which has been subjected to abuse, misuse, neglect or accident, any Product which has been repaired or altered by other than Seller, nor, except as may be agreed to in a separate written agreement between Seller and Buyer, any prototype Product. THE FOREGOING WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, AS TO MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, DESCRIPTION, QUALITY PRODUCTIVENESS, OR OTHERWISE.

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| Rev: | Date:   | Procedure No.: | Approved By: |
| NONE | 3/31/08 | S-FOR-72-0214  | PAT ROACH    |

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**10. Tooling:** Unless the Buyer pays the full costs of special tooling and other equipment necessary to manufacture the Products, such tools and equipment shall remain the property of Seller. Seller may charge Buyer for the cost of maintenance and rework of such tools and equipment owned and provided by Buyer.

**11. Infringement:** Buyer shall indemnify, defend and hold harmless Seller, its officers, agents and employees against any expense, loss attorneys fees, costs, damage or liability arising out of all claims or actions for infringement of patents or copyrights, misappropriation of trade secrets or wrongful use of designs, trademarks or trade names based on Product designs or specifications supplied by Buyer.

**12. Proprietary Rights:** Sale of the Products to Buyer does not convey a license, implied or otherwise, under any patent in which Seller has an interest nor any right to any descriptive data, including but not limited to Seller's manufacturing drawings, secrets, processes or tooling.

**13. Cancellations:** Seller may, at its option, cancel Buyer's order if (a) Buyer's payments are in default or Buyer breaches any material provision hereof, (b) any cause specified in the Paragraph captioned "Excusable Delay" makes it commercially impracticable in Seller's judgment to deliver the Products within a reasonable time, or (c) Buyer becomes insolvent or the subject of a proceeding under any bankruptcy law. Such cancellation shall not prejudice Seller's right to any amounts then due to affect any other rights Seller may have under applicable provisions of controlling law. Buyer may cancel the remaining unfilled portion of its order upon written notice to Seller and upon payment of reasonable cancellation charges invoiced by Seller which may include the profit to be made on the canceled portion of the order and shall take into account the Products already produced or in process, the expenses already incurred and the commitments already made as a consequence of the order. In no event will the cancellation charges exceed the purchase price of the canceled Product.

**14. Product Liability:** Buyer shall indemnify and hold harmless Seller, its officers, agents and employees against all expense, loss, attorneys fees, costs, damage or liability arising from any claim or action for Product defect where the alleged defect relates to design, labeling or manufacture specifications supplied by Buyer. At the request of Seller, Buyer shall defend at its own expense all such claims or actions, provided that Seller shall be entitled at its election, to participate in such defense.

**15. Limitation of Liability:** Seller's liability for defective or nonconforming Products, whether based on breach of warranty, negligent manufacture or Product liability, is exclusively limited to repair or replacement, at Seller's election, of such Products. Seller assumes no risk and shall be subject to no liability for any damages or loss resulting from the specific use or application made of the Products. Seller's liability for any other claim, whether based on breach on contract, negligence, product liability or otherwise, relating to the Products shall not exceed the price paid for Buyer for such Products. IN NO EVENT WILL SELLER BE LIABLE FOR ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING LOSS OF USE, LOSS OF PROFIT AND CLAIMS OF THIRD PARTIES) HOWEVER CAUSED, WHETHER BY THE NEGLIGENCE OF SELLER OR OTHERWISE.

**16. Compliance With Laws; Government Contracts:** Seller warrants and certifies that it complies with all applicable statutes, rules, regulations and orders of the United States, including those pertaining to labor, wages, hours and other conditions of hiring and employment. If the Products are to be used in fulfilling a contract with the United States Government, Seller will comply with all mandatory requirements of such contract which are applicable to Seller provided that Seller has received written notice of such requirements from Buyer in Sufficient time to incorporate their impact into the price and delivery schedule for such Products. In addition, Seller may at its option adopt any provisions of DAR or other federal statutes or regulations which are applicable to available to Seller.

**17. Waiver; Assignment; Notices:** Failure by Seller to insist upon strict performance of any prevision hereof by Buyer shall not be deemed to be a waiver by Seller of its right or remedies, or a waiver by it of any subsequent default to Buyer. Buyer shall not assign any of its rights or obligations hereunder without the prior written consent of Seller. Any notices and other communications required or permitted to be given hereunder shall be in writing and shall be effective when delivered personally, the next business day after being sent by fax or e-mail (later confirmed in writing), or upon receipt of mailed.

**18. Severability; Entire Agreement:** In the event that one or more provisions hereof should be held to be unenforceable in any respect, this document shall be construed as if such unenforceable provision(s) had not been contained herein. These terms and conditions supersede all other representations, warranties undertakings of the parties with respect to the subject hereof and may not be modified except by a writing signed by an officer of Seller. If Buyer and Seller have executed an overriding agreement covering the sale of Products to which this document relates, the terms of said overriding agreement shall prevail over the terms stated herein to the extend of any conflict.

**19. Governing Law; Forum:** Seller agrees that Buyer's purchase of Products hereunder shall in all respects by governed by the laws of the State of Ohio without regard for principles governing the conflict of laws. Seller acknowledges that it is entering into a contract in Cleveland, Ohio, agrees that any judicial action with respect to the Products or these Terms and Conditions shall be brought, if at all, in the state or federal courts located in Cuyahoga County, Ohio having jurisdiction over the matter in controversy.

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