

## TERMS AND CONDITIONS OF SALE

DADCO Canada Inc. ("DADCO" or "Seller"), and the firm or entity ("Purchaser") purchasing from DADCO the goods accompanying these terms (the "Goods"), acknowledge and agree that these Terms and Conditions (the "Terms"), any price list or schedule, quotation, written acknowledgement by DADCO, and invoice from DADCO to Purchaser and all documents incorporated by specific reference herein, constitute the complete and exclusive statement of the agreement between the parties governing the sale and purchase of the Goods by DADCO to Purchaser. Seller's acceptance of Purchaser's purchase order is expressly conditional on Purchaser's assent to all of DADCO's Terms, including those that are different from or additional to the terms and conditions of Purchaser's purchase order. Purchaser's acceptance of or payment for the Goods, whichever comes first, shall irrevocably constitute Purchaser's assent and agreement to these Terms in lieu of any terms and/or conditions proposed by Purchaser.

1. Payment. Purchaser shall make full payment to DADCO for the net amount of the invoice from DADCO to Purchaser within 30 days of the date of the invoice, without offset or deduction of any kind or nature whatsoever. Payment shall be made in Canadian Dollars and in immediately available funds. Any amount not timely paid shall bear interest at the rate equal to the lower of 18% per annum or the highest rate permitted by law. If payment is not timely made, or in DADCO's judgment (for any reason or no reason, in DADCO's sole discretion) credit should not be extended to Purchaser, DADCO shall have the right to impose such other or different payment terms including, but not limited to, requiring the posting of a letter of credit, payment (in full or in part) in advance of shipment, or such other security as DADCO may request. Purchaser acknowledges and agrees that DADCO has not agreed to extend credit to Purchaser in any amount, and that even if extended, that no assurance or promise has been made by DADCO that credit will continue to be extended. To secure Purchaser's obligations to DADCO, including but not limited to those under any specific purchase order, any credit previously granted or granted contemporaneously herewith, or in the future granted, Purchaser hereby grants to DADCO a security interest in the Goods, as well as all of Purchaser's accounts, accounts receivable, contract rights, chattel paper, all personal property, inventory, instruments, and general intangibles, and the proceeds thereof; and appoints DADCO and its duly authorized representatives as Purchaser's attorney in fact, and authorizes DADCO to execute and deliver all such instruments or documents as may be required to perfect or evidence the security interest granted herein (which appointment shall be deemed to be coupled with an interest and is irrevocable).

2. Shipment. All prices are F.O.B. DADCO's facility in Mississauga, Ontario. The method and route of shipment shall be at DADCO's discretion, unless the Purchaser provides express instructions to the contrary, and those instructions are accepted by DADCO. All shipments are insured at the expense of Purchaser, and made at Purchaser's risk. All risk of loss or damage in transit shall be borne by Purchaser. Identification of the Goods to the contract shall occur as each shipment is placed in the hands of the carrier. DADCO will use reasonable efforts to meet scheduled delivery dates but shall not be liable for any loss, costs or damages arising from and/or related to any delay in manufacturing or delivery. Notwithstanding delivery and the passage of the risk of loss or damage in transit to

Purchaser, title to the Goods shall not pass to Purchaser until Purchaser has paid DADCO the full payment due for the Goods, and all other goods sold by DADCO to Purchaser for which payment is then due.

3. Taxes. The amount of any present or future sales, revenue, excise, or other taxes or assessments, or governmental charges of any kind or nature whatsoever, applicable to the Goods or the sale of the Goods to Purchaser, shall be added to the purchase price and shall be paid by Purchaser, reduced only by any exemption evidenced by a tax exemption certificate issued by the appropriate taxing authority and provided to DADCO.

4. Corrections. Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by DADCO shall be subject to correction, and as corrected shall supercede the incorrect document. DADCO shall not be liable to Purchaser for any loss, costs or damages arising from or related to such error or omission or the correction thereof.

5. Liability for Delay. DADCO shall not be liable to Purchaser for any loss, costs or damages arising from and/or related to any failure of and/or delay in the delivery of the Goods forming the subject matter of any purchase order, regardless of the reason(s) for such failure or delay in delivery. DADCO shall not be liable to Purchaser for delays in performance or for non-performance due to acts of God; acts or omissions of Purchaser; war; fire; flood; weather; sabotage, strikes or labor disputes; civil disturbances, riots or terrorism; governmental requests, restrictions, allocations, laws, regulations, orders or actions; the unavailability of or delays in transportation, or the unavailability of or delays in the availability of raw materials or supplies; or any unforeseen circumstances or events or causes beyond DADCO's control.

6. Warranty and Limitations on Liability. DADCO shall replace or, at its option, repair any Goods or parts thereof that are determined by DADCO to be defective in material or workmanship within one year from date of shipment. The obligation to replace or repair such Goods shall be F.O.B. Mississauga, Ontario, and in no event shall DADCO be liable for the costs or expense of removal of the Goods if they are installed, for the costs of transportation of the Goods to DADCO, or for any consequential or special damages arising from and/or related to any Goods determined to be defective in material or workmanship. **DADCO'S WARRANTY SET FORTH HEREIN IS EXPRESSLY MADE IN LIEU OF ANY AND ALL OTHER WARRANTIES AND IS LIMITED TO THAT SET FORTH ABOVE AND, EXCEPT AS EXPRESSLY PROVIDED FOR HEREIN, DOES NOT INCLUDE ANY EXPRESS, IMPLIED OR STATUTORY WARRANTIES OF FITNESS FOR USE, MERCHANTABILITY AND/OR FITNESS FOR A PARTICULAR PURPOSE AND/OR COMPATIBILITY WITH ANY PURCHASER SYSTEM(S) OR TOOL(S), ALL OF WHICH POTENTIAL WARRANTIES ARE EXPRESSLY DISCLAIMED. NO WAIVER, ALTERATION OR MODIFICATION OF THE FOREGOING SHALL BE VALID OR ENFORCEABLE UNLESS MADE IN WRITING SUBSEQUENT TO THE DATE HEREOF, AND SIGNED BY AN AUTHORIZED EXECUTIVE OFFICER OF DADCO. DADCO SHALL NOT, IN ANY EVENT, BE LIABLE FOR ANY INCIDENTAL, CONTINGENT, SPECIAL, PUNITIVE, EXEMPLARY, CONSEQUENTIAL OR OTHER DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS, REVENUE OR USAGE, COST OF SUBSTITUTE GOODS, ADDITIONAL COSTS INCURRED BY PURCHASER, OR CLAIMS OF PURCHASER'S CUSTOMERS OR THIRD PARTIES. THE REMEDY DESCRIBED HEREIN IS THE SOLE AND EXCLUSIVE REMEDY OF PURCHASER, AND**

**DADCO'S SOLE OBLIGATION, WHETHER IN CONTRACT, TORT OR OTHERWISE, ARISING FROM AND/OR RELATING TO THE MANUFACTURE, SALE OR USE OF THE GOODS COVERED BY THESE TERMS.**

7. Cancellation. Once a purchase order is placed with and accepted by DADCO, it may be cancelled only with DADCO's express written consent and upon such terms as may be acceptable to DADCO in its sole discretion, including those that compensate DADCO for any costs or loss arising from such cancellation. DADCO may, in addition, cancel any purchase order without liability of any kind or nature whatsoever to Purchaser if DADCO is, for any reason (including but not limited to any export controls or event of force majeure), unable to sell or prohibited from selling to Purchaser the Goods forming the subject matter of any purchase order.

8. Returned Goods. Goods purchased from DADCO or delivered to Purchaser may not be returned to DADCO absent DADCO's express prior written consent. Only unused Goods currently being manufactured, which have been invoiced to Purchaser within ninety (90) days prior to the request for return, will be considered eligible for return. Goods accepted for return shall be accepted for credit only against future orders, and the agreed value of such returned Goods (less a re-stocking charge as shall be determined by DADCO) shall not be used by Purchaser as a credit against other indebtedness due to DADCO, whether for similar or dissimilar goods. Goods built to order shall not be eligible for return under any circumstances. The cost of return of the Goods shall be borne exclusively by Purchaser.

9. Governing Terms. The parties acknowledge and agree that these Terms shall be the exclusive terms and conditions governing the sale and purchase of Goods by DADCO to Purchaser, and that any terms and conditions set forth or contained in any purchase order, requisition or similar document submitted or tendered by Purchaser shall not be of any force or effect, nor bind the parties unless DADCO agrees to such additional, conflicting or differing terms in a writing signed by an authorized executive officer of DADCO subsequent to the date hereof.

10. Arbitration. Any and all disputes and/or claims by Purchaser against DADCO arising from and/or relating to the purchase by Purchaser of any Goods from DADCO shall be resolved by binding arbitration before a single arbitrator. Unless otherwise agreed by the parties in writing, arbitration of such dispute(s) shall be conducted in accordance with the provisions of the *Arbitration Act, 1991* (Ontario), and shall take place only in the City of Mississauga, Ontario in the English language. The arbitrator may award attorneys' fees and expenses to the prevailing party in any arbitration proceeding, and the costs and expenses of the arbitration shall be allocated among the parties in the discretion of the arbitrator. Judgment upon the award, if any, rendered by the arbitrator may be confirmed and entered as a final judgment by any court having jurisdiction thereof; the parties irrevocably submit to the personal jurisdiction of the courts of Canada and the Province of Ontario in any action or other legal proceeding to enforce any award made by the arbitrator. Equitable remedies shall be available in any arbitration. Any award shall be subject to the limitations of liability set forth in these Terms.

11. Compliance with Canadian Export Laws. Purchaser understands that the Goods may from time-to-time be restricted by the Canadian Government from export to certain countries and Purchaser agrees that it will not sell or re-export the Goods and shall take all steps reasonably necessary to prevent Purchaser and any of its agents, representatives or any other person from selling, exporting or re-exporting the Goods or any tools into which

the Goods may be installed in any manner which will cause DADCO and/or Purchaser to violate any of the export control laws or regulations of Canada or in any other applicable jurisdiction. In the event that DADCO and/or Purchaser is prohibited from exporting any of the Goods by virtue of any export control laws or regulation, DADCO shall not be liable to Purchaser for any loss or damage whatsoever.

12. Severability. If any part of these Terms are held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions shall remain in full force and effect and in no way be affected, impaired, or invalidated.

13. Notices. Any notice, demand, or request given hereunder shall be in writing and addressed to the addressee at the principal office or facsimile transmission as follows: **If To DADCO:** DADCO Canada Inc, 2530 Meadowpine Blvd., Mississauga, Ontario L5N 6C4 Attn: President; Telephone: (905) 567-9100 Facsimile: (905) 567-8900. **If To Purchaser:** at the address to which invoices are sent by DADCO to Purchaser. Any demand, notice or other communication delivered in person shall be conclusively deemed to have been given on the day of actual delivery thereof; if given by registered and/or certified mail, return receipt requested, on the 2nd Business Day following the deposit thereof in Canadian or international mail, postage fully prepaid thereon; and if tendered to an overnight delivery service, on the first business day following delivery or the refusal of delivery, or if unable to deliver, on the second attempt to deliver. If the party giving any demand, notice or other communications knows or ought reasonably to know of any difficulties with the postal system which might affect the delivery of mail, any such demand, notice or other communication shall not be mailed but shall be delivered in person or by overnight delivery.

14. Entire Agreement. These Terms constitute the full and complete agreement of the parties hereto in connection with the subject matter hereof. Except as expressly provided herein, any and all other prior or contemporaneous letters, requests for quotation, quotes, purchase orders, bills of lading, agreements, understandings, representations, warranties, statements and/or contracts, whether written or oral, entered into between the parties with respect to the specific Goods in the shipment accompanied by these Terms are merged herein and shall be of no further force and effect unless specifically preserved herein or, by the terms of such agreement(s), survive the expiration and/or earlier termination of those agreement(s); provided, however, that (a) the obligations of Purchaser under all other shipments are intended to and shall survive these Terms; and (b) these Terms are not intended, and shall not be asserted or construed to relieve Purchaser of any obligations to DADCO existing as of the date hereof or arising in the future. Neither these Terms nor any of the provisions may be waived, modified, amended, discharged or terminated except by an instrument in writing signed by the party against whom enforcement is sought, and then only to the extent set forth in that instrument.

15. Assignment. These Terms and/or any purchase order to which they are related shall not be assignable or transferable in any manner whatsoever by Purchaser without the prior written consent of DADCO, which consent may be withheld and/or delayed by DADCO for any reason (or for no reason) in DADCO's sole discretion. DADCO may assign its rights and obligations, in whole or in part, under these terms or any purchase order to any person, firm or entity without the consent of or notice to Purchaser.

16. Governing Law. These Terms and the sale of Goods by DADCO to Purchaser shall be deemed made in the Province of Ontario and every matter arising therefrom or incident thereto shall be interpreted, construed and enforced in accordance with the laws of the

Province of Ontario and the laws of Canada applicable therein without regard to principles of conflict of laws. Purchaser hereby submits to the personal jurisdiction of the courts of the Province of Ontario and the courts of Canada, as applicable, and Purchaser waives any objections that Purchaser may now or in the future have regarding the jurisdiction or venue of such courts. Any suit by Purchaser permitted hereunder or under applicable law may be brought only in the courts of the Province of Ontario and the courts of Canada, as applicable. No lawsuit or other legal action brought elsewhere shall be deemed to have been brought before a competent forum because DADCO files, before or subsequent to the filing of such an action, its counterclaim or seeks a setoff in the same forum. DADCO may bring suit or seek relief in any court or forum of competent jurisdiction, as DADCO in its sole discretion determines is necessary to obtain or effect complete relief. Purchaser understands that the courts of the Province of Ontario and the courts of Canada, as applicable, are the most convenient forums to resolve any possible disputes arising out of or relating to these Terms, either directly or indirectly, and Purchaser therefore waives any right to seek dismissal, abatement, abstention or postponement of the proceedings before the courts of the Province of Ontario and the courts of Canada, as applicable, for the reasons of inconvenience. Process in any action or proceeding between the parties may be served on any party anywhere in the world. DADCO may also bring suit or seek relief in any court or forum of competent jurisdiction if DADCO, within or without the courts of the Province of Ontario and the courts of Canada, as applicable, and as DADCO in its sole discretion determines is necessary to obtain or effect complete relief.

17. Captions. Captions to the sections and subsections of these Terms have been inserted as a matter of convenience and for reference only and shall not control or affect the meaning or construction of any of the terms hereof.

18. Publicity. These Terms, and the prices charged by DADCO to Purchaser, are confidential. Neither party shall engage in any type of publicity in any way connected with these Terms or any purchase order without the other party's prior written approval, which approval shall not be unreasonably withheld or delayed. However, approval to disclose is hereby given by both parties to the extent required for compliance with any governmental rule, regulation, court order or other legal requirement. In the event of any disclosure, the publishing party shall furnish a copy of such disclosure to the other party.