



(1) CONTRACT FORMATION AND ACCEPTANCE

(a) Buyer has read, understands and accepts the General Terms and Conditions for Services ("Ts&Cs") and all orders placed by Buyer shall be based exclusively on these Ts&Cs and shall form an integral part of all contracts for the delivery of services offered by Motorcar Parts of America, Inc. d/b/a D&V Electronics USA., a New York corporation and D&V Electronics Ltd., a company organized under the laws of British Columbia, Canada (collectively, "D&V"). These Ts&Cs apply to both the quotation(s) issued by D&V to the Buyer and the Purchase Order(s) generated by Buyer to D&V, which collectively are referred to as the "Contract."

(b) Additional or differing terms or conditions proposed by Buyer or included in Buyer's Purchase Order or attachments thereto are hereby objected to by D&V and shall have no effect and not part of this Contract unless expressly accepted in writing by D&V. No modification or waiver of these Ts&Cs, Quotation or the Purchase Order shall bind D&V or Buyer unless written, signed, and accepted by authorized representatives of both D&V and Buyer. **BUYER'S SUBMISSION OF ITEMS FOR TEST SHALL CONSTITUTE BUYER'S UNQUALIFIED WITHDRAWAL OF ALL PRIOR AND CURRENT OBJECTIONS TO, AND ACCEPTANCE, WITHOUT ADDITIONS OR CHANGES, OF THE PRICES, TERMS AND CONDITIONS CONTAINED IN D&V'S QUOTATION, UNLESS D&V HAS EXPLICITLY AGREED TO OTHER PRICES, TERMS OR CONDITIONS IN A SIGNED WRITING.**

(c) D&V Quotations are offered for acceptance within thirty (30) calendar days from the date printed on the face of the Quotation unless a longer time period is specified in the Quotation. The Quotation is withdrawn if not formally accepted by one of the means indicated above, within the designated period. No other form of acceptance is valid or will be recognized or accepted. D&V's acceptance of any Purchase Order is contingent upon D&V's continuing approval of Buyer's credit. D&V is under no obligation to enter a Purchase Order acknowledgement and may rescind the Quotation at any time prior to Buyer's unqualified acceptance.

(2) PACKING AND SHIPPING:

All equipment and products will be suitably prepared, packed and marked for shipment by Buyer to D&V *via* FOB D&V. No extra charges will apply for packing, cartage or anything else unless stated in the Purchase Order.



(3) PRICES:

The prices contained in the Quotation are predicated upon the use of these Ts&Cs. The use of different or additional terms and conditions may result in higher prices. When a Quotation involves multiple items, the Quotation is non-severable. If the Quotation is made prior to receipt and review by D&V of all applicable specifications and proposed contract documents, prices quoted are subject to revision once missing documents are received. All pricing details are budgetary in nature, and may not be utilized as a basis for pricing similar, repeat, or subsequent orders. Services under the Purchase Order must be filled at the price included therein. If no price is shown, D&V must notify Buyer of the price and obtain Buyer's written acceptance of the price before D&V provides service under the Purchase Order. The prices for procedures and reports include one (1) revision; additional revisions will be separately priced. As set forth more fully in Section 5(a), freight related charges are not included in the pricing, unless otherwise specified in the Quotation. All prices quoted are exclusive of taxes, unless otherwise specified in the Quotation.

(4) D&V'S OBLIGATIONS AND RIGHTS:

(a) D&V agrees to perform the services quoted in compliance with procedures and specifications furnished by Buyer and specifically incorporated into the accepted Purchase Order. In any event or instance not covered by the Buyer's specifications, or a failure of Buyer to timely respond to inquiries by D&V, D&V reserves the right to perform services in accordance with its standard practices at a time set by D&V. D&V shall not be responsible for errors or omissions, or consequential effects of such errors or omissions, due to the Buyer's supplied or approved procedures, specifications, or other supplied information. D&V shall not be responsible for incompatibility of the Buyer's supplied or approved materials, specifications, or test specimens.

(b) Buyer agrees that D&V's sole obligation is to perform services in a professional and workman-like manner, exercising a reasonable degree of care consistent with engineering and testing services industry standard practices, and report the results in accordance with applicable specifications and instructions received from Buyer's authorized representatives. D&V's standard report delivery is through electronic transfer, unless an alternative delivery method is specified. D&V does not render opinions as to the suitability of any item tested or provided for any particular intended purposes.

(c) Nothing herein shall limit D&V's other rights as set forth elsewhere herein, or at law or in equity.



(5) BUYER'S OBLIGATIONS AND RIGHTS:

(a) Buyer shall, at its own cost and expense and set forth in more detail below, make available to D&V any and all equipment, related technical information, articles, materials, supplies, fixtures, special tooling, drawings, test plan, and data (collectively, the "Buyer's Property") in one (1) lot and in correct and operating condition in order for D&V to perform the assessment services agreed upon. Any Buyer supplied technical support labor must be available on a date specified and agreed to by D&V. Buyer is responsible for all freight charges, freight insurance, duties, customs brokerage fees, transit taxes and export/import filings for transfer of freight inbound or outbound, unless specific exemptions to this requirement are specified in the Quotation. Freight outbound from D&V to Buyer shall be FOB D&V's Dock. Freight inbound from Buyer to D&V shall be FOB D&V's Dock.

(b) D&V may dispose of any of the Buyer's Property in the event it remains unclaimed within forty-five (45) calendar days after D&V provides written notice to Buyer to remove such items from D&V's facility. Buyer-supplied equipment at D&V's facilities shall be subject to additional charges for disposal, storage, transportation, and other charges, to the extent applicable, where Buyer does not remove the property from D&V's facility, or provide timely disposition instructions following written notice to remove such items.

(c) Buyer shall identify items, materials or information which are subject to control by any export regulations, and shall identify any items or materials where export sensitive information can be obtained by casual inspection of the items or material (i.e., no disassembly or touch). Buyer agrees to cooperate with D&V by providing any information required under the Arms Control Export Act, the Export Administration Act, the International Traffic in Arms Regulations (ITAR), the Export Administration Regulations, or other export control laws and regulations.

(d) Any reports or data provided as deliverable items are "works made for hire" and are the exclusive property of the Buyer and may be reproduced, distributed or sold by the Buyer without limitation, excepting that such reports and data shall be reproduced, distributed or sold only in their entirety, and with all markings intact. Any misuse or fraudulent misrepresentation of the reports or data, or the information contained therein, is the exclusive liability of the Buyer, their successors and assigns.

(e) D&V may at times, and from time-to-time, notify Buyer, in writing, that unusual or excessive hazards exist in the Buyer's supplied procedures or specifications, or of dangers to excessively high value items. In such instances, the notification shall be deemed to be a formal notification of the



hazard, and Buyer agrees to provide a full waiver of all liability for any damage to Buyer's Property, if so requested by D&V.

(g) Nothing stated herein shall limit the Buyer's other rights as set forth elsewhere herein, or at law or in equity.

(6) TOOLING AND SETUPS:

Where applicable, tooling and setups quoted by D&V reflect costs and special designs to adapt or modify D&V's proprietary test equipment or fixtures or Buyer's Property, and neither D&V's tooling nor D&V's setups will be released from the D&V's facility. All right, title and interest to D&V's fixtures, special tooling drawings, design and related data is, and shall remain, the property of D&V, except where the fixtures, tooling, drawings, design and related data are specifically identified as deliverable items in the accepted Order. D&V may incorporate proprietary information, intellectual property, or trade secrets of D&V in such deliverable items or data. Where such information is incorporated into deliverable items, Buyer shall protect such items or data in accordance with the confidentiality provisions of these terms and conditions rendering the same degree of care as Buyer uses to protect its own confidential information, but no less than a reasonable degree of care.

(7) SCHEDULES:

The estimated schedule and pricing in the Quotation are based upon D&V's current commitments at the time the Quotation is issued, D&V's standard business hours (eight (8) hours per day, Monday through Friday) and D&V's acceptance of the Buyer's supplied documents and materials. Firm schedules will be acknowledged the D&V from time to time. Due to the uncertain nature of testing services, ALL WORK SCHEDULE DATES AND TEST DURATIONS ARE APPROXIMATE and are stated in business days. Performance of services is subject to delays caused by acts of God, labor difficulties, shutdowns, pandemic, epidemic, the availability of utilities or materials, equipment uptime, terrorist attacks, earthquake, fire, unforeseen engineering problems, government regulations, priorities, preemption, severe weather or other causes or circumstances beyond D&V's reasonable control (collectively, "Force Majeure Events"). D&V shall not be liable for any damages arising from delay in the performance of services, if such delay is due to a Force Majeure Event. Furthermore, any Force Majeure Event shall not constitute a cause for termination of the Purchase Order but shall extend D&V's time to perform on a business-day for business-day basis for a period equal to the duration of the delay.



(8) CHANGE ORDERS, INTERRUPTIONS, AND SUSPENSION AND TERMINATION:

(a) Change Orders. D&V is not obligated to perform any additional services not specified in the Quotation or Purchase Order, including, but not limited to, repeat testing. If D&V agrees to perform additional services requested by Buyer's change to the accepted Quotation or Purchase Order (the "Change Order"), D&V's price and schedule shall be equitably adjusted for the additional work commensurate with the changed requirements, the status of D&V's work in process at the time of the receipt of the Buyer's Change Order, and D&V's written acceptance of the changed or added work. In accordance with D&V's corporate policy, D&V cannot proceed with disputed work.

(b) Interruptions, Delays and Standby Charges. If for any reason beyond D&V's control, the original test program is interrupted at Buyer's direction, or is interrupted or delayed due to: (i) a failure or malfunction of items under test; (ii) a failure or malfunction of Buyer's support equipment; (iii) additional services (e.g., repeat tests) necessitated by specimen failure, standby charges will accrue until resumption or termination of testing is directed by Buyer in writing. Unless otherwise stated in the Quotation, standby charges will begin to accrue, in whole business day increments, four (4) business hours (at Buyer's notified location) after D&V's notification (by telephone, e-mail and/or in-person) to Buyer of the interruption or delay, and will accrue at the average daily rate, per business day, of the delayed line items. D&V will use best efforts to mitigate such stand-by charges. Re-setup charges may apply at resumption of testing. Rescheduling shall be at the discretion of the D&V.

(c) Suspension and Termination. In the event Buyer fails to properly or timely fulfill any of its duties and obligations towards D&V, D&V shall be entitled to suspend the Contract between the Parties, or to terminate the Contract, in whole or in part, without any liabilities or penalties. Upon termination, all accounts receivable by D&V from Buyer shall become payable forthwith.

(9) LIMITATIONS OF LIABILITY:

(a) **General:** IN NO EVENT SHALL D&V BE LIABLE IN CONTRACT, IN TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES WHATSOEVER INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS OR REVENUE, LOSS OF USE OF EQUIPMENT, COST OF CAPITAL, COST OF TEMPORARY EQUIPMENT, OVERTIME, BUSINESS INTERRUPTION, SPOILAGE OF GOODS, CLAIMS OF CUSTOMERS OR OTHER ECONOMIC HARM, HOWEVER CAUSED AND UNDER WHATEVER THEORY OF LIABILITY, EVEN IF BUYER HAS BEEN



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Issued by: Sales Department

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ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. BUYER SHALL BEAR ALL LIABILITY AND RESPONSIBILITY FOR THE ACTS, ERRORS OR OMISSIONS OF ITS OFFICERS, DIRECTORS, MANAGERS, EMPLOYEES, SUBCONTRACTORS, ASSIGNS, SUCCESSORS, REPRESENTATIVES OR AGENTS COMMITTED WITHIN THE SCOPE OF THEIR EMPLOYMENT OR FIDUCIARY DUTY. BUYER SHALL MAINTAIN INSURANCE IN REASONABLE AND RESPONSIBLE AMOUNTS FOR SUCH LIABILITIES,

(b) **Indemnification:** Except for as set forth in Section 11(d) below, to the fullest extent permitted by law, Buyer will defend, indemnify and hold harmless D&V, its officers, directors, shareholders, partners, agents, employees, representatives, successors and assigns (collectively, "Indemnitees") from and against all claims, demands, obligations, judgments, recoveries, settlement fees, losses, damages, expenses and liabilities (including, but not limited to, attorneys' fees, court costs and costs of collection) resulting from injury to or death of persons (including employees of D&V or the Indemnitees), and from damage to or loss of third party property (collectively, "Indemnified Events") caused by, or arising in whole or in part out of, the negligent acts or omissions or willful misconduct of the Buyer (or its officers, employees or agents) in connection with providing the services under this Contract.

(c) **Service Warranty:** D&V warrants that the "Services" provided hereunder shall conform to the specifications and express warranties set forth in these terms and conditions and the accepted Purchase Order, and that at the time of delivery: (i) D&V shall have the right to perform such Services; (ii) the Services and any resulting report or other deliverable shall be delivered upon due payment, free of encumbrances. Services performed by D&V will be performed in a professional and workman-like manner exercising a reasonable degree of care consistent with testing services industry standard practice. D&V will modify or correct any such Services that have not been so performed if written notice of any such failure is given to D&V within sixty (60) calendar days of the date of delivery of any final deliverable for such Services (the "Warranty Period"). No claim of any kind with respect to the conformance of the Services to the foregoing specifications (including any exceptions or waivers), whether or not based on negligence, warranty, strict liability or any other theory of law, will be greater than the D&V's price of the nonconforming Services in respect to which such claim is made. D&V shall be provided ample opportunity to re-perform the Services at its expense in the event of a warranty claim. If the D&V is unable to re-perform the services, Buyer and D&V shall mutually agree upon an equitable adjustment in price, which shall not exceed the D&V's price of the nonconforming Services. Notwithstanding the provisions of this Service Warranty



regarding non-conforming services, if Buyer should disagree, for any reason, with the results or conclusions of the service hereunder, and require additional work for verification, D&V shall be entitled to the cost of the additional work required to verify the results, where the results are subsequently so verified. D&V'S LIABILITY OF EVERY FORM AND TYPE, EXCEPTING THOSE LIABILITIES COVERED BY THE D&V'S PRODUCTS AND COMPLETED OPERATIONS INSURANCE, OR ANY PENDING OR UNRESOLVED WARRANTY CLAIMS ARISING DURING THE WARRANTY PERIOD, SHALL ABSOLUTELY AND COMPLETELY TERMINATE AT THE CONCLUSION OF THE SIXTY CALENDAR DAY WARRANTY PERIOD. The foregoing constitutes the Buyer's exclusive remedies and D&V's sole obligation with respect to any such claim. THERE ARE NO EXPRESS WARRANTIES BY D&V OTHER THAN THOSE SPECIFIED IN THIS PARAGRAPH. NO WARRANTIES BY D&V WILL BE IMPLIED OR OTHERWISE CREATED UNDER THE UNIFORM COMMERCIAL CODE OR ANY OTHER THEORY OF LAW, INCLUDING WITHOUT LIMITATION, WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

(10) TERMS OF PAYMENT:

As full consideration for D&V's satisfactory performance of services under the Purchase Order, Buyer shall pay D&V's undisputed invoice on a net thirty (30) calendar days basis following Buyer's receipt of D&V's invoice unless otherwise agreed to in writing. In the event Buyer fails to pay D&V's invoice in a timely manner D&V shall have the right to charge Buyer an applicable interest rate of the lesser of one percent (1.0%) per month or the maximum allowed by law. Payment of D&V's invoices by Buyer shall not be delayed by, or contingent upon, approval or payment by Buyer's customer or any other third party. Failure to make such payments when due shall entitle D&V to discontinue services without further notice and such failure may result in additional requirements or deposit requirements being imposed before work is resumed. In the event Buyer requests a reassessment due to the incompleteness or inadequacy shown by the assessment, or for any other reason, Buyer shall be charged separately for the costs thereof.

(11) NOTICES:

Notice shall be deemed effective when received or refused and sent via electronic communication and (i) certified or registered mail, return receipt requested, (ii) overnight courier, with verification of receipt; or (iii) U.S. mail at the address provided on the face of the Purchase Order.



(12) CONFIDENTIAL AND PROPRIETARY INFORMATION:

(a) The respective proprietary knowledge of Buyer and D&V, as well as all other confidential commercial and operational information of Buyer and D&V shall be treated as confidential information by both Parties (the "Confidential Information"). Both Parties shall take all necessary measures to protect the Confidential Information from unauthorized access, unauthorized release, copying, transmission or unauthorized use of the Information of the other Party using the same care as they would for their own confidential information, but not less than a reasonable degree of care. Information that is already publicly available prior to or following its transmission to either Party shall not be subject to these provisions.

(b) Both Parties shall use reasonable care to ensure that employees and third parties receiving access to the Confidential Information are subject to the same requirements of confidentiality as identified above.

(c) The Parties shall immediately notify each other in the event that either Party receives any court, government or other official and binding demand for the release of the Confidential Information, where such notice is not prohibited by the court or the government agency.

(d) Buyer and D&V agree to indemnify each other against any liability caused by either Party's infringement of any letters patent, trade secrets, copyrights, confidential information or proprietary information in the specifications, information or goods provided by one Party to the other.

(e) The duties and obligations set forth in this article shall continue in effect for a period of three (3) years after the termination of this agreement but may be superseded by any separate Non-Disclosure Agreement or Proprietary Information Agreement executed by mutual consent of the Parties.

(13) APPLICABLE LAW AND REGULATIONS:

(a) The Contract between Buyer and D&V shall be governed under the laws of the State of New York, without regard to conflict of law provisions.

(b) Both Parties shall comply with all federal, state and local laws and regulations applicable to any services delivered or provided to Buyer, including all applicable federal, state, or local environmental,



health or product safety laws, regulations or other legal requirements relating to the presence or use of chemicals or other materials in goods/materials. D&V certifies that it is in compliance with any applicable requirements of the Fair Labor Standard Act of 1938, as amended (FLSA), and all applicable federal, state and local laws and regulations governing wages, hours and conditions of labor.

(14) DISPUTES:

(a) Any dispute between the Parties relating to this agreement between Buyer and D&V that cannot be resolved with reasonable promptness shall be referred to each Party's senior manager in an effort to obtain prompt resolution. If such dispute cannot be disposed of by mutual agreement following good faith negotiations within a period of thirty (30) days from the notification of a dispute then the Parties shall submit such dispute to binding arbitration before a mutually acceptable arbitrator in the County of Los Angeles, State of California, in accordance with the Commercial Arbitration Rules of the American Arbitration Association. Buyer and D&V agree not to pursue any suit, action or judicial proceeding against the other arising out of, or connected with this Contract, or the performance thereof in any jurisdiction. In any dispute resolved by the aforementioned methods, the prevailing Party shall be entitled to all reasonable attorney's fees and costs.

(b) Buyer acknowledges that it has read these Ts&Cs, and has had the opportunity to clarify these terms and conditions with D&V, and is satisfied that it reflects the intent of the Parties.

(c) These Ts&Cs shall not be construed against the drafter.

(15) NON-ASSIGNMENT:

Buyer may not assign its rights or delegate its duties and obligations under this Contract without D&V's prior written consent. Any direct or indirect change in control of Buyer resulting from a merger, consolidation, stock transfer, asset sale or similar transaction shall be deemed an assignment or delegation for purposes of this Contract that requires D&V's prior written consent.

(16) RELATIONSHIP OF PARTIES:

D&V will act solely as an independent contractor. Nothing contained herein will be construed to create the relationship of principal and agent, employer and employee, partner or joint ventures.



(17) SEVERABILITY:

If any provisions of these Ts&Cs are held invalid by any law and/or regulation, all other provisions hereof shall continue in full force and effect. A waiver of any provision of these Ts&Cs shall not constitute a waiver of any other provision. Any failure of D&V or Buyer to enforce a provision of these Ts&Cs shall not constitute a waiver of any other provision of these Ts&Cs and all other provisions shall remain in full force and effect.

(18) INTEGRATION:

The Quotation, Purchase Order and Ts&Cs constitute the entire agreement between Buyer and D&V with respect to the matters contained in this Contract and supersedes all prior oral and/or written representations and agreements.

(19) HEADINGS:

The headings contained herein are for the convenience of the reader and they are not intended to be all-inclusive, nor shall they be considered for any other purpose in construing these Ts&Cs.