

# Terms and Conditions of Sale

## Boltaron Performance Products, LLC

### Acceptance

Acceptance of Purchaser's order is conditioned upon Purchaser's agreement to all of these Terms and Conditions of Sale. Seller objects to any terms and conditions set forth in Purchaser's purchase order that are different from, or in addition to, these Terms and Conditions of Sale. Purchaser's acceptance of delivery of the products described on the face hereof shall constitute the acceptance of all these Terms and Conditions of Sale. Any inconsistent or additional terms contained in the Purchaser's purchase order are hereby rejected unless expressly accepted in writing by the Seller within ten (10) days after its receipt of such purchase order at the Seller's principal office.

### Freight Terms

Freight terms are as shown on the Order Acknowledgment. Any prepaid shipments will be made at Seller's option, cheapest way. Unless the products are shipped "F.O.B. Shipping Point", title to and risk of loss of the products will pass to Purchaser upon Seller's delivery to the delivery point. Purchaser assumes all risks and liability for results arising out of Purchaser's unloading, discharge, storage, handling and use of the products, or arising out of Purchaser's compliance or non-compliance with federal, state, municipal or local laws and regulations with reference thereto.

### Contingencies

Seller shall not be liable in damage for, nor demand to be in default by reason of, any failure to deliver or delay in delivery due to any cause beyond its reasonable control, including but not limited to, delays caused by fire, the elements, war, labor difficulties, interruptions or shortage of transportation, inability to obtain supplies or any other cause that interferes with Seller's production facilities or those of its sources of supply. Each order is made subject to all present and future government laws, orders, regulations or restrictions affecting or limiting the supply of materials or the production or delivery of materials or products. During any period in which any of the contingencies described above exists, Seller will allocate deliveries of its products among its customers in any manner which it determines, in its sole discretion, to be fair and reasonable.

### Prices

The prices on this order are subject to change at any time. Regardless of the date of the receipt of the order, prices to be invoiced shall be those in effect on the date of the shipment. If any price increases are made after an order is placed and shipment is made, Purchaser has the option to cancel any pending order, or unshipped portion thereof, to which increased prices are applicable, provided the Purchaser sends written notice of said cancellation to Seller within five days after notice of said increase is received by Purchaser. However, the Purchaser shall not have the right to cancel when a price increase is caused solely by taxes, excises, duties or levies, or when the order involved covers a special item of manufacture and the Purchaser has been notified of a price increase prior to the date that Seller starts production of such item. Unless otherwise provided on the face of this Acknowledgment, Purchaser is responsible for the payment of any federal, state, or local sales, use, ad valorem, excise or other taxes, duties, levies or charges assessed or assessable with respect to the sale, use or transportation of the products.

### Cancellation

Orders cannot be altered, modified, or cancelled, without the written approval of the Seller, except as provided above with respect to price increases on pending or unshipped orders.

Seller may at any time alter or suspend credit, refuse shipment or cancel orders, when in its opinion the Purchaser's financial condition or the state of the Purchaser's account warrants it, or when delivery is delayed because of any act or omission of the Purchaser or the Purchaser is delinquent in payment of amounts owed to Seller.

If Purchaser cancels an order for any reason, Seller reserves the right, in addition to whatever rights Seller may otherwise have, to charge the Purchaser for all material and supplies, either in process or in stock, purchased or made by Seller before the start of production of the order.

### Assignment

This contract is not assignable or transferable by Purchaser in whole or part without the prior written consent of Seller.

### Modifications

No statement or agreements, oral or written, made before or at the time this agreement is entered into shall vary or modify the written terms hereof, and neither party shall claim any amendment, modification or release from any provision hereof unless such change is in a writing signed by the other party which specifically states that it is an amendment to these Terms and Conditions of Sale.

### Product Warranty

Seller warrants material and/or merchandise manufactured by and sold as Seller's "first grade (class A) material" to be free from defects in material and workmanship. The products covered by the order acknowledgement will be conveyed to Purchaser with good title, free from any lawful lien or encumbrance.

THE FOREGOING EXPRESS WARRANTIES ARE THE SOLE AND EXCLUSIVE WARRANTIES MADE BY SELLER TO PURCHASER WITH RESPECT TO THE PRODUCTS COVERED BY THE ORDER ACKNOWLEDGEMENT. ALL OTHER EXPRESS OR IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND WARRANTIES CONCERNING NON-INFRINGEMENT, ARE DISCLAIMED AND EXCLUDED FROM THE SALE OF THE PRODUCTS COVERED BY THE ACKNOWLEDGEMENT.

SELLER WILL NOT BE LIABLE TO PURCHASER FOR CONSEQUENTIAL, PUNITIVE, SPECIAL, EXEMPLARY OR INCIDENTAL DAMAGES, REGARDLESS OF WHETHER SUCH DAMAGES ARE CLAIMED UNDER THEORIES OF CONTRACT OR TORT. PURCHASER'S EXCLUSIVE REMEDY FOR CLAIMS (INCLUDING CLAIMS FOR BREACH OF WARRANTY, NEGLIGENCE AND STRICT LIABILITY) IS LIMITED TO THE REPLACEMENT OF THE NON-CONFORMING PRODUCTS OR, AT SELLER'S ELECTION, THE REFUND OF THE PURCHASE PRICE OF THE NON-CONFORMING PRODUCTS.

Purchaser assumes all responsibility and liability for results and consequences of use by Purchaser, or by others, of the products covered by the Acknowledgment, including use of such products in combination with other substances or products. Purchaser assumes sole responsibility to determine the suitability of the products covered by the Acknowledgment for the Purchaser's particular purposes or applications.

Seller will not accept any claims for adjustment under this warranty or any request for return of material and/or merchandise or issuance of credit on any material and/or merchandise unless such claims are received by Seller in writing within thirty (30) days following shipment of such material and/or merchandise to Purchaser.

No credit, claim or adjustment will be allowed by Seller on material which has been cut or processed in any manner. No credit or claim for material and/or merchandise returned to Seller will be allowed unless Seller's sales representative has approved such return in writing after his inspection of the material and/or merchandise in question. Seller will pay transportation charges to the destination it designates on all material and/or merchandise so approved for return.

No employee, agent or representative of the Seller has authority to make any warranty, representation, promise other than the express warranties stated herein.

### Applicable Law

These Terms and Conditions of Sale and any contract between the Seller and the Purchaser shall be construed in accordance with and shall be governed by the laws of the State of Ohio, excluding any such laws pertaining to conflicts of law.

### Special Notes

No salesperson, agent, or employee of Seller has authority to make any representation, promise or agreement inconsistent with provisions hereof.

Overrun or underrun of ten percent (10%) shall be deemed to constitute the fulfillment of all orders.

All of these Terms and Conditions of Sale will apply unless otherwise noted on the Order Acknowledgment.