

Bendix Spicer Foundation Brake LLC Terms and Conditions of Sale

1. Acceptance; Applicable Terms and Conditions: Buyer's purchase order is accepted by Bendix Spicer Foundation Brake LLC ("Seller") and expressly conditioned upon the applicability of Seller's terms and conditions only, and any terms or conditions stated by Buyer are herewith rejected and shall not be binding on Seller unless such terms or conditions are expressly accepted in writing by Seller. Acknowledgement of this order by Seller or commencement of any performance by Seller pursuant to this order shall constitute Buyer's acceptance of Seller's terms and conditions including the prices set forth herein.

2. Delivery; Shipments: Delivery shall be accomplished FOB Seller's plant for domestic U.S. shipments. In the event Seller prepays the transportation charges, and if required by Seller, Buyer shall be obligated to reimburse Seller upon receipt of an invoice for such charges. Seller shall use its best efforts to deliver the products ordered herein within the time specified on the face of this order or if no time is specified within the Seller's normal lead time necessary for the Seller to deliver the products sold hereunder. Title and risk of loss, damage or destruction of goods shall pass to Buyer upon delivery of the products at the FOB point. Notwithstanding the foregoing, and unless otherwise communicated to Buyer by Seller in writing, terms of delivery for international shipments is EXWORKS (Incoterms 2000:5), and the title to, beneficial ownership of, and risk or loss on the goods will pass to Buyer at Seller's facility upon transfer of the goods to Buyer's carrier. The term "Free on Board" or other commercial abbreviation, if used on any document related to an export sale, will be inapplicable to the time when or the place where the ownership of, and risk of loss for, the goods is transferred from Seller to Buyer.

3. Export and Import Licenses: Unless otherwise specified in this order, the Buyer shall be responsible for obtaining any required import licenses.

4. Force Majeure: Seller shall be excused from delays in delivery and performance of other contractual obligations under this order caused by acts or omissions that are beyond the control and without the fault or negligence of Seller, including but not limited to Government embargoes, blockages, seizure or freeze of assets, delays or refusals to grant an export or import license or the suspension or revocation thereof, or any other acts of any Government; fires, floods, severe weather conditions, or any other acts of God; quarantines; labor strikes or lockouts; riots; strife; insurrections; civil disobedience; war; material shortages or delays in deliveries to Seller by third parties. In the event of the existence of any force majeure circumstances, the period of time for delivery, payment terms and payments under any letters of credit shall be extended for a period of time equal to the period of delay. If the force majeure circumstances extend for six (6) months, Seller may, at its option, terminate this order without penalty and without being deemed in default or in breach thereof.

5. Payments: All payments shall be made in accordance with the written terms of this order. All payments shall be made in readily available funds, and such payment shall be in U.S. or Canadian currency as required and communicated to Buyer by Seller. In the event payments are not made in a timely manner, Seller may, in addition to all other remedies provided at law, either: (1) declare Buyer's performance in breach and terminate this order for default; (2) withhold future shipments until delinquent payments are made; (3) deliver future shipments on a cash with order or cash in advance basis even after

the delinquency is cured; (4) charge interest on the delinquency at a rate of 1.5% per month or the maximum rate permitted by law, if lower, for each month or part thereof of delinquency in payment plus applicable storage charges, or inventory carrying charges, or (5) combine any of the above rights and remedies as is practicable and permitted by law. Buyer is prohibited from setting off any and all monies owed under this order from any other sums, whether liquidated or not, that are or may be due Buyer, which arise out of a different transaction with Seller, its divisions, subsidiaries or affiliates.

6. **Warranty:** Seller warrants to Buyer that products sold by Seller under this order will be free of defective materials and workmanship during the applicable published product warranty coverage period as published by Seller from time to time. This warranty does not include defects or damage caused by abuse, misuse, road debris, accidents or improper installation, use application, maintenance or service. Products claimed to be defective should be returned freight prepaid to Seller within thirty (30) days after the date any defect is first discovered. Seller will inspect the product and make the final determination as to whether the product is covered under the terms of this warranty. When a warranty claim is allowed, Seller's responsibility is limited, at Seller's option, to repair or replace the defective product. THIS WARRANTY IS IN LIEU OF AND EXCLUDES ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, ARISING BY OPERATION OF LAW OR OTHERWISE, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. AT NO TIME WILL SELLER BE LIABLE TO BUYER FOR SPECIAL, INDIRECT, INCIDENTAL, LIQUIDATED OR CONSEQUENTIAL DAMAGES UNDER THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO, COSTS INCURRED FOR SERVICE CALL, TOWING OR VEHICLE DOWNTIME.

7. **Inspection:** Buyer shall inspect and accept any products delivered pursuant to this order with thirty (30) days after receipt of such products. In the event the products do not conform to any applicable drawings, designs or specifications, Buyer shall promptly notify Seller of such nonconformance in writing. Seller shall have a reasonable opportunity to repair or replace the nonconforming product at its option. Buyer shall be deemed to have accepted any products delivered hereunder and to have waived any such nonconformance in the event such a written notification is not received by the Seller within sixty (60) days after receipt of such products.

8. **Insolvency:** Seller may terminate for default the whole or any part of this order in the event of the suspension of Buyer's business, insolvency of Buyer, the institution by Buyer or others of bankruptcy, reorganization, receivership, arrangement, liquidation on similar proceedings involving or affecting Buyer, or any assignment for the benefit of creditors.

9. **Intellectual Property:** Except as insofar as any order from Buyer calls for products or materials pursuant to Buyer's own drawings or specifications, Seller shall, with respect to any goods of Seller's design, indemnify Buyer from any and all damages and costs as finally determined by a court of competent jurisdiction in any suit for infringement of any United States or Canada patent only by reason of the sale or normal use of any goods sold to Buyer hereunder, and from reasonable expenses incurred by Buyer in defense of such suit if Seller does not undertake the defense thereof, provided that Buyer promptly notifies Seller of such suit and offers Seller either (1) full and exclusive control the defense of such suit when products of Seller only are involved therein, or (2) the right to participate in the defense of such suit when products other than those of Seller are also involved therein. Seller's liability hereunder shall be limited to the actual direct damages and costs computed solely on the value of any goods sold to Buyer hereunder as finally determined by a court of competent jurisdiction in a suit for infringement and to the reasonable out-of-pocket costs and expenses incurred by Buyer in defense of such suit if Seller does not undertake the defense thereof. In no event shall Seller be liable for indirect, special, incidental or

consequential damages or costs applicable thereto. The foregoing is in lieu of any other indemnity or warranty, express or implied, with respect to patents or any other intellectual property. Drawings, specifications, reports, photographs and other data belonging to Seller (“Intellectual Property”) relating to any order from Buyer, and all proprietary right and interest therein and the subject matter thereof, shall remain the property of Seller. Buyer agrees that it shall not use Seller’s Intellectual Property for the production or procurement of products, nor will Buyer disclose or make available Seller’s Intellectual Property to any third party, without Seller’s prior written consent.

10. **Taxes:** Unless otherwise specifically designated in this order, the prices stated herein do not include sums necessary to cover any taxes, duties or other charges, including but not limited to excise, inventory, sales or use taxes or import duties upon the production, sale, distribution, or delivery of products or furnishing of services hereunder. Any taxes, duties or other charges that are due and owing hereunder shall be paid by Buyer.

11. **Changes:** No change shall be made in drawings and specifications related to the subject products without the prior written consent of Seller. Upon Seller’s consent, Buyer, by written order, may make changes in drawings, specifications, delivery schedules, and shipment or packing of articles. If any such changes increase or decrease the cost of or the time required for Seller’s performance of any order, or otherwise affects any of the provisions contained herein, an equitable written adjustment shall be made in the price or delivery schedule, or both, and in such other provisions of any order as may be so affected. It is understood by each party hereto that the process stated herein is based upon straight-time labor cost, and any request of Buyer necessitating overtime expense shall be deemed a change under this provision.

12. **Tooling:** Unless otherwise agreed to by the parties in writing, all material, equipment, facilities and special tooling, which term includes but is not limited to jigs, dies, fixtures, modes, patterns, special tapes, special gages, special test equipment, other special equipment and manufacturing aids and replacements thereof (hereinafter referred to as “articles”) used in the manufacture of products covered by this order shall be and remain the property of Seller. Articles furnished by Buyer shall be and remain the property of Buyer with title to and right of possession in Buyer and such property shall be redelivered to Buyer in the same condition as originally received by Seller, except for reasonable wear and tear or the consumption of such property in accordance with this order.

13. **Fair Labor Standards Act:** Seller represents and warrants that all products and services will be manufactured or furnished by Seller in accordance with all applicable standards provisions and stipulations of the Fair Labor Standards Act of June 30, 1938 (29 USC 201-219) as amended.

14. **Prices:** Prices are subject to change with thirty (30) days’ notice given Buyer by the Seller. Price increases may also be the result of the inclusion of applicable taxes arising from the sale, delivery or use of Seller’s products and for which the Seller is responsible to any government authority unless authorized exemption certificates are supplied.

15. **Minimum Orders:** Seller reserves the right to establish minimum order size. Buyer will be advised of the applicable minimum order value.

16. **Design Changes; Modifications:** Seller reserves the right to make changes in design or additions to or improvement in any product manufactured prior thereto. Seller shall not be responsible for any modifications, machining, disassemblies, or other changes of any kind made by Buyer to the products after delivery from Seller.

17. **Assignment:** Buyer shall not transfer or assign in whole or in part this order or any rights or interests hereunder without the prior written consent of Seller.

18. **Confidentiality:** Buyer agrees that it shall not disclose or make available to any third party any data, pricing, drawings, intellectual property or other information pertaining to this order, which are proprietary to Seller, without obtaining Seller's prior written consent.

19. **Applicable Law; Severability:** The United Nations Convention on Contracts for the International Sale of Goods shall not apply to any order. Any and all matters of dispute between the parties hereto, whether arising from the order itself or from alleged extra facts prior to, during or subsequent to any order, including, without limitation, fraud, misrepresentation, negligence or any other alleged tort or contract violation, shall be governed by, and in accordance with, the laws of the State of Ohio, regardless of the legal theory upon which such matter is asserted. Any litigation will be brought exclusively in Cleveland, Ohio, and the parties consent to the jurisdiction of the state and federal courts located therein, submit to the jurisdiction thereof and waive the right to change venue. If any provision of the order is in violation of any Federal, State or local statutes or regulations of any countries having jurisdiction of this transaction, or is illegal for any reason, said provision shall be self deleting without affecting the validity of the remaining provisions.

20. **No Agency:** Buyer and Seller are independent contractors. Neither party is the agent or legal representative of the other party for any purpose, nor does either party have the authority to assume or to create any obligation on behalf of the other party.

21. **Waiver:** The failure of Seller to enforce any right or remedy provided hereunder or by law on a particular occasion will not be deemed a waiver of that right or remedy on a subsequent occasion or a waiver of any other right or remedy.

22. **Notices:** Any notice or other communication required or permitted hereunder must be in writing and will become effective on the date of actual receipt by the receiving party.