

C & S Auto Parts Limited o/a Collins Auto Parts

Standard Terms and Conditions, Effective as of November 29, 2011

These Collins Standard Terms and Conditions ("Terms & Conditions") apply to all customer accounts and are referenced in the C.O.D. Account Application or Credit Account Application completed by the customer.

In these Terms & Conditions:

"C.O.D. Account" - any Customer account opened by way of the Cash on Delivery (C.O.D.) Account Application;

"Credit Account" - means any Customer account opened by way of a Credit Account Application;

"C.O.D. Account Application" - means the C & S Auto Parts Limited pro-forma application for a Customer account where no credit or payment terms are extended by Collins to the customer;

"Credit Account Application" - means the C & S Auto Parts Limited pro-forma application for a customer account with commercial credit;

"Credit Limit" means the amount of credit extended to the Customer under the Credit Account Application;

"Customer" means the applicant stated on the C.O.D. Account Application or on the Credit Account Application;

"Collins" means any business owned and operated by C & S Auto Parts Limited;

"Goods" means the goods supplied to the customer by Collins from time to time;

"HST" means Harmonized Sales Tax and includes any value added tax, consumption tax or other tax that may replace the HST in the future;

1. EXTENSION OF CREDIT

1.1 The information provided in the Credit Account Application is for the purpose of establishing a commercial credit account with Collins.

1.2 Credit will not be extended to the Customer until such time as the Customer receives notification from Collins:

- (a) that Collins has accepted the Credit Account Application;
- (b) of the amount of the approved Credit Limit; and
- (c) of any other terms and conditions upon which Collins' acceptance of the Credit Account Application is made.

1.3 Collins reserves the right at any time and from time to time to increase or decrease or cancel the Credit Limit, in which event, such increase, decrease or cancellation will take effect immediately.

1.4 Collins reserves the right at any time in its sole discretion to require a personal guarantor to provide a continuing guarantee under the Credit Account Application.

1.5 Credit may be withdrawn without notice should the Credit Limit be exceeded.

1.6 Collins may refuse to extend credit to the Customer at any time in its sole discretion, with or without notice.

2. PRICE & PAYMENT

2.1 Subject to any valid quote given by Collins and to any price shown on an invoice, prices are subject to alteration without prior notice to the Customer.

2.2 All Customers ordering Goods under a C.O.D. Account must pay for the Goods by cash, cheque or credit card prior to taking delivery of them.

- (a) In the event the Customer provides Collins with an NSF cheque, the Customer will be charged a fee of \$25.00 + HST and Collins may, at its sole discretion, require that the Customer pay for Goods by cash or credit card only.

2.3 In relation to Goods supplied to the Customer under a Credit Account:

- (a) The Customer must pay all accounts issued by Collins by the due date, being net 30 days from the date of the invoice, and acknowledges that if the account becomes overdue, credit may be suspended until such accounts are paid;
- (b) Customers with a Credit Account may pay account balances by: (i) cheque mailed to Collins' Scarborough office location: C & S Auto Parts Limited o/a Collins Auto Parts, 151 Nugget Avenue, Scarborough, Ontario M1S 3B1, (ii) Visa, MasterCard or American Express, (iii) Online through the Customer's financial institution website (for information on paying your bill online, call Collins' office manager at (416) 754-8540).
- (c) Collins may at its sole discretion charge interest on overdue account balances at the rate of 24% per annum. Such interest will be calculated from the due date of payment until the date that payment is made in full.
- (d) Payment in full must be made within 30 days of the invoice date unless otherwise agreed in writing.
- (e) Any account that remains unpaid for more than 30 days past the invoice date may be placed into the collections

process and legal proceedings may be commenced to enforce payment of the invoice.

- (f) Any account that remains unpaid for 60 days from the date of the invoice may be provided Goods by Collins on a C.O.D. basis only and the Customer's credit limit will be reduced to zero.
- (g) Any account that remains unpaid for 90 days past the invoice date may be placed on hold indefinitely.

3. DEFAULT OF PAYMENT

3.1 Notwithstanding any agreement between Collins and the Customer in relation to the terms of payment for the Goods, all amounts owing by the Customer to Collins (including amounts owing but not due) will become immediately due and payable upon any of the following events:

- (a) A breach by the Customer of these Terms & Conditions;
- (b) The appointment of an administrator, a receiver, receiver and manager, liquidator, trustee in bankruptcy to the Customer or any of its assets; or
- (c) Any event which in the reasonable opinion of Collins would adversely affect the ability of the Customer to make payment when due of any amount owing to Collins.

3.2 Upon default by the Customer, without prejudice to any other rights of Collins deriving hereunder or from the common law to recover damages or terminate for breach, Collins shall thereafter be entitled to cancel the Credit Limit without notice and/or to retake possession of the Goods.

3.3 Collins shall not be liable for any costs, losses, damages or expenses suffered by the Customer by reason of the retaking of possession of the Goods by Collins.

3.4 The Customer will pay and indemnify Collins for all damages incurred by Collins, including all legal or other professional costs and outlays incurred by Collins on a solicitor and own client basis, incurred by Collins as a result of the Customer's breach of these Terms & Conditions, including those incurred in the event that it becomes necessary to commence legal proceedings to recover any amount due and owing pursuant to these Terms & Conditions.

4. PRIVACY

4.1 The Customer acknowledges that if Collins considers it relevant when assessing the Customer's Credit Account Application, Collins will obtain from a credit reporting agency a credit report containing personal credit information about the Customer in relation to commercial credit provided by Collins.

4.2 The Customer acknowledges and agrees that Collins is entitled to give to this credit reporting agency personal information concerning and relating to this Credit Account Application.

4.3 If Collins considers it relevant to collecting overdue payments in respect of commercial credit provided to the Customer, the Customer agrees to Collins receiving from a credit reporting agency a credit report containing personal information about the Customer in relation to collecting overdue payments.

4.4 The Customer agrees that any trade insurer with whom Collins may have or contemplates having arrangements in relation to the insurance of its trade debtors may obtain the Customer's credit report from a credit reporting agency to assess the provision of insurance to Collins in relation to the Customer's application for commercial credit with Collins.

4.5 The Customer agrees that Collins may give to and seek from any credit providers, bank references or trade referees named in the Credit Account Application, and any credit providers that may be named in a credit report issued by a credit reporting agency, information about the Customer's credit arrangements. The Customer understands that the information can include any information about the Customer's creditworthiness, credit standing, credit history or credit capacity that credit providers are permitted to give or to receive from each other.

4.6 Collins Auto Parts adheres to all applicable privacy legislation.

5. ORDERS

5.1 Any purchase of or any order placed for Goods by the Customer is deemed to incorporate these Terms & Conditions without variation, unless any such variation is consented to by Collins in writing.

5.2 No order shall be binding upon Collins until accepted by Collins.

5.3 All sales made to the Customer on credit shall be subject to the Customer's Credit Account Application being accepted by Collins.

5.4 Collins reserves the right to supply, in full or in part only, any order for Goods.

6. TITLE & SECURITY INTEREST

This provision applies to all C.O.D. Accounts and Credit Accounts.

6.1 It is the intention of Collins and agreed by the Customer that the property in the Goods shall not pass until:

- (a) The Customer has paid all amounts owing for the particular Goods; and
- (b) The Customer has met all other obligations due by the Customer to Collins in respect of all contracts between Collins and the Customer and that the Goods shall be kept separate until Collins has received payment and all other of the obligations of the Customer are met.

6.2 It is further agreed that:

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- (a) Until such time as ownership of the Goods shall pass from Collins to the Customer Collins may give notice in writing to the Customer to return the Goods or any of them to Collins. Upon such notice the rights of the Customer to obtain ownership or any other interest in the Goods shall cease;
- (b) If the Customer fails to return the Goods to Collins then Collins or Collins' agent may enter upon land and premises owned, occupied or used by the Customer, or any other premises as the invitee of the Customer, where Goods are situated and take possession of the Goods without being responsible for any damage thereby caused;
- (c) The Customer is only a bailee of the Goods and until such time as Collins has received payment in full for the Goods then the Customer shall hold any proceeds from the sale or disposal of the Goods on trust for Collins;
- (d) The Customer shall not deal with the money of Collins in any way which may be adverse to Collins;
- (e) Receipt by Collins of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognized and until then Collins' ownership of rights in respect of the Goods shall continue;
- (f) The Customer shall not charge the Goods in any way nor grant nor otherwise give any interest in the goods while they remain the property of Collins;
- (g) Collins may require payment of the amount owing or the balance of the amount owing due together with any other amounts due from the Customer to Collins arising out of these Terms & Conditions and Collins may take any lawful steps necessary to recover all monies owed by the Customer.

6.3 Collins hereby reserves a purchase money security interest in each unit of Goods sold or to be sold hereunder and in the proceeds thereof, if Customer shall have sold or leased a unit(s) to another party prior to Customer paying Collins the purchase price for such unit(s) as set forth herein, in the amount of such unit's purchase price. These interests will be satisfied by payment in full. A copy of the C.O.D. Account Application or Credit Account Application together with these Terms & Conditions may be filed with the appropriate authorities at any time after the signature by the Customer as a financing statement in order to perfect Collins' security interest. On the request of Collins, Customer shall execute financing statement(s) and any other instruments Collins requires to perfect a security interest in the Goods for its purchase price. Title to the Goods shall pass to Customer upon receipt by the Company of payment in full for all amounts due for such units of Goods.

7. DELIVERY

7.1 The Customer is deemed responsible for the Goods and accepts all risk of loss related to the Goods at the time of physical taking of the Goods by the Customer or by a carrier when that carrier is engaged by any person other than Collins.

7.2 The Customer shall accept delivery of the Goods at their nominated delivery address.

7.3 The date for delivery is an estimate only and may be subject to change. Collins will not be liable for any loss or damage incurred by or occasioned to the Customer as a result of delayed delivery.

7.4 On written request of the Customer, Collins may, but is not required to, act as the Customer's agent to arrange freight and insurance on the Goods between Collins' warehouse and the Customer's nominated delivery address, service providers for which will be selected at Collins' sole discretion. Any charges therein will be itemized separately on the Customer's invoice.

7.5 Collins is not liable for non-delivery of the Goods, Goods lost in transit or Goods damaged in transit if: (a) the Customer arranges the pickup and delivery of the purchased Goods, (b) Collins acts as agent to the Customer as set out in section 7.5 above, or (c) when the manufacturer or supplier arranges direct shipment of the Goods from the manufacturer or supplier to the Customer.

8. REPRESENTATIONS

8.1 Collins gives no express warranty in relation to the supply of Goods and the Customer acknowledges that it has not relied on any representation or warranty made by, on behalf of, Collins in relation to the Goods or their supply.

8.2 Although Collins' Returns Policy permits Customer to return Goods claimed to be defective under certain circumstances, Collins makes no representations or warranties of any kind with respect to the Goods. Collins hereby disclaims all representations, conditions and warranties, express or implied, as to the goods, including but not limited to any implied warranty of merchantability or fitness for a particular purpose. Collins will not be liable for any damage, loss, cost or expense for breach of warranty. The right to return defective Goods, as described in Collins's Returns Policy, or other written documentation provided or made available by Collins to

Customer, shall constitute Collins' sole liability and Customer's exclusive remedy in connection with any claim of any kind relating to the quality, condition or performance of any Goods, whether such claim is based upon principles of contract, warranty, negligence or other tort, breach of any statutory duty, principles of indemnity or contribution, or otherwise.

8.3 Collins shall not be liable under any circumstance for any special, consequential, incidental or exemplary damages arising out of or in any way connected with the goods or otherwise, including but not limited to damages for lost profits, loss of use or any damages or sums paid by customer to third parties, even if Collins has been advised of the possibility of such damages. The foregoing limitation of liability shall apply whether any claim is based upon principles of contract, warranty, negligence, or other tort, breach of any statutory duty, principles of indemnity or contribution, the failure of any limited or exclusive remedy to achieve its essential purpose, or otherwise.

8.4 Collins, its employees, agents or subcontractors, shall not be liable to customer or any other party for any loss, damage, or injury which results from the use or application by customer or any other party of goods and/or services delivered to customer. In no event shall Collins be liable to customer or any other party for loss, damage, or injury of any kind or nature arising out of or in connection with these terms and conditions in excess of the net purchase price of the goods and/or services actually delivered to and paid for by customer hereunder.

8.5 Nothing in this clause shall derogate from the Customer's rights under any manufacturer's warranty given in relation to the Goods.

9. WARRANTIES

9.1 The Customer agrees that it does not rely on the skill or judgment of Collins in relation to the suitability of or any of the Goods for a particular purpose unless that purpose has been indicated to Collins and Collins has in writing acknowledged that the Goods will be fit for that particular purpose.

9.2 No warranty claims will be considered for Goods that have been modified by the Customer or fitted to modified or non-standard vehicles.

9.3 Collins makes no express or implied warranty beyond those stated in these Terms & Conditions or otherwise published in specific warranty documents from time to time.

9.4 All conditions and warranties implied by statute or common law are to the extent permitted by law expressly excluded.

10. RETURN OF GOODS

10.1 Notification of any faulty or defective Goods must be made to Collins within ninety (90) days of sale or delivery, after which the Goods are not eligible for return except where the return is pursuant to a manufacturer's extended warranty. The original invoice number and date must be quoted and Goods returned freight prepaid.

10.2 Any goods returned more than seven (7) days from the purchase date may, at the sole discretion of Collins, be subject to a handling charge.

10.3 Any Goods returned are subject to the Collins Returns Policy and the Customer agrees to comply with the Collins Returns Policy, which is available online at www.collinsautoparts.com.

10.4 The Customer acknowledges and agrees that any Goods returned to Collins that were specifically obtained by Collins at the request of the Customer and that are not a Collins stock item will be charged a restocking fee.

10.5 The Customer may not return Goods to Collins that have been altered or modified.

11. HST

11.1 Collins will charge to the Customer any HST payable on the Goods.

11.2 The Customer will pay the HST inclusive price to Collins.

11.3 Collins will provide an invoice, or any other document that may be required by law, for the Goods, to the Customer.

12. GENERAL

12.1 The agreement between the Customer and Collins shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein. The Parties hereby irrevocably attorn to the non-exclusive jurisdiction of the courts of Ontario with respect to any matter arising under or related to the agreement between the Customer and Collins.

12.3 Collins may from time to time amend these Terms & Conditions. Notification of such amendments published on the Collins website shall be deemed to be sufficient to bind the Customer to such amended Terms & Conditions for all orders received by Collins after such notification. These Terms & Conditions are available online at www.collinsautoparts.com.

14 FORCE MAJEURE

14.1 Collins is not liable for failure to perform this contract so long as its performance is prevented or delayed because of circumstances outside of Collins' control.