

## **Bendix Spicer Foundation Brake LLC Terms and Conditions of Sale**

1. **Terms:** These terms and conditions shall exclusively govern the sale of products by Bendix Spicer Foundation Brake LLC (“Seller”) to buyer (“Buyer”). These terms and conditions take precedence over Buyer’s additional, supplemental, different, or conflicting terms and conditions, whether from Buyer’s purchase order or otherwise, all of which are deemed material alterations and hereby objected to and rejected by Seller. Neither Seller’s commencement of performance or delivery shall be construed as acceptance of Buyer’s additional, supplemental, different, or conflicting terms and conditions. Buyer’s placing its order for the products with Seller, or taking any other action evidencing its acceptance of the benefit of the agreement, constitutes Buyer’s acceptance of the terms and conditions contained 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 Controls:** Buyer shall comply with all applicable international, federal, state, and local laws and regulations in connection with its purchase and use of Seller’s products and in performing its obligations hereunder. Without limiting the generality of the foregoing, Buyer acknowledges that Seller’s products are subject to U.S. export controls and economic sanctions laws and regulations, including, but not limited to, Export Administration Regulations, Export Administration Act, the Arms Export Control Act, International Emergency Economic Powers Act, Trading with the Enemy Act, International Traffic in Arms Regulations, and regulations promulgated by the U.S. Department of the Treasury’s Office of Foreign Assets Control. Specifically, Buyer acknowledges that the export, re-export, or retransfer of Seller’s products to another country or to a different end user or end use may require a license or other authorization from the Government of the United States. Such licenses or other authorizations may impose further restrictions on the export, re-export, or retransfer of Seller’s products. U.S. laws and regulations also restrict transactions involving Seller’s products to countries or persons subject to U.S. sanctions or embargoes. Persons subject to U.S. sanctions or embargoes include, but are not limited to, individuals or entities identified on or in the U.S. Department of Commerce’s Denied Persons List, Unverified List, or Entity List; the U.S. Department of State’s Nonproliferation Sanctions determinations or Debarred List; or the U.S. Department of the Treasury’s Specially Designated Nationals List. Sanctioned/embargoed countries and persons are subject to change without notice. Buyer represents and warrants that it is in compliance with and agrees to comply with all applicable U.S. export controls and economic sanctions laws and regulations. Unless otherwise specified in this order, it is the sole responsibility of Buyer to apply for and obtain any necessary licenses or other authorizations prior to any direct or indirect export, re-export, import, or retransfer of Seller’s products or any other transaction related to Seller’s products. Seller makes no warranty that any such licenses or other authorizations will

be granted, and shall have no liability for Buyer's inability to obtain such licenses or other authorization or for any violation by Buyer of any applicable export controls, import controls, and/or economic sanctions laws and regulations. Notwithstanding any other provision herein, Seller shall have the right to terminate this agreement immediately upon the determination by Seller, in Seller's sole discretion, that Buyer has breached, intends to breach, or is likely to breach any of the provisions in this section.

4. **Force Majeure:** Seller shall be excused from delays in delivery and performance of any 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. currency. In the event payments are not made in a timely manner, Seller may, in addition to all other remedies provided at law, at its option and in any combination, and to the extent permitted by applicable law: (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; or (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) charge Buyer for all expenses, including reasonable attorneys' fees, incurred by Seller in the collection of past due amounts. Buyer hereby grants Seller a first-lien security interest in all products sold to Buyer by Seller until all such products are fully paid for, and Buyer will execute and deliver to Seller such instruments as Seller requests to perfect such security interest. Buyer is prohibited from setting off any 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. **Limited Warranty:** The products sold by Seller to Buyer under this order are warranted as to their materials and workmanship during the applicable published product limited warranty coverage period as published by Seller from time to time. This limited warranty does not apply to issues or damage caused by abuse, misuse, road debris, accidents, improper installation, or use application, or alterations, maintenance, repair, or service performed by Buyer or any third party without Seller's prior written approval. This warranty also does not apply to the extent that any alleged issue is the result of Buyer's Articles (as hereinafter defined) or specifications or for the products. Buyer must promptly notify Seller in writing of any products alleged to be in breach of Seller's limited warranty. Unless otherwise directed by Seller, products claimed to be in breach of Seller's limited warranty must be returned freight prepaid and insured to Seller within thirty (30) days after the date any issue is first discovered by Buyer. Seller will inspect the returned product and make the final determination as to whether the product is covered under the terms of its limited warranty. When a warranty claim is allowed, Seller's responsibility is limited, at Seller's option, to repair or replace the product. **THIS WARRANTY IS IN LIEU OF AND EXCLUDES ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ARISING BY OPERATION OF LAW OR OTHERWISE, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF**

MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. AT NO TIME WILL SELLER BE LIABLE TO BUYER OR ANY THIRD PARTY 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 or 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. All drawings, designs, specifications, reports, photographs and other data belonging to Seller ("Intellectual Property") relating to any order from Buyer or any products sold to Buyer by Seller, 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 requested by Buyer:** No change shall be made in drawings and specifications related to the 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 products. 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. Buyer is solely responsible for the accuracy, completeness, and quality of any Articles furnished in connection with the products.

**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 size.

**16. Design Changes; Modifications:** Seller reserves the right to make changes in design or additions to or improvement in any of its products. 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. No waiver by either party with respect to any breach or default or of any right or remedy shall be binding unless made in writing and signed by the party making the waiver.

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.

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