CUSTOMER TERMS AND CONDITIONS OF SALE

APPLICABILITY. These Customer Terms and Conditions of Sale ("Terms") represent the final and complete understanding of the parties and are the only terms and conditions which govern the sale of the goods ("Goods") by Trackmobile LLC ("Seller") to buyer ("Buyer") and supersed all other terms and conditions, oral or written, and all other communications between the parties suggesting additional or different terms; provided, however, if a written contract signed by both parties is in existence covering the sale of the Goods covered hereby, the terms and conditions of said contract shall prevail.

1. ENTIRETY. These Terms may only be amended or modified in a writing which specifically states that it amends these Terms and is signed by an authorized representative of each party. Acceptance is expressly limited to these Terms. Any proposal for additional or different terms or any attempt by Buyer to vary these Terms is hereby deemed material and is objected to and rejected. No terms of any document or form submitted by Buyer shall be effective to alter or add to these Terms. The earlier of Buyer’s submission of a purchase order or receipt of any of the Goods or Seller’s commencement of performance shall constitute acceptance of these Terms.

2. PRICES. Prices quoted are based on the price at the time of quotation and are subject to change without notice. Clerical errors are subject to correction without liability.

3. TAXES. Prices do not include any sales, use, excise, privilege, or other taxes or assessments ("Taxes") now or hereafter imposed or levied by or under the authority of any federal, state, or local law, rule, or regulation (collectively, "Law") concerning the Goods or the manufacture or sale thereof. If Seller pays any Taxes, Buyer shall, upon demand, immediately reimburse Seller for such amounts.

4. TERMS. All orders are subject to acceptance in writing by Seller. Unless agreed by Seller in writing, all payments are to be prepaid. No discounts shall be taken unless expressly allowed in writing by Seller. All amounts due to Seller from Buyer shall be paid without abatement, deduction, or setoff. Invoices not paid when due are subject to a late payment service charge of the lesser of 1.5% per month or the highest rate permitted by Law, calculated daily and compounded monthly. If Buyer fails to make any payment when due, Buyer shall be liable for all costs and expenses related to collection of past due amounts, including, without limitation, attorneys’ fees and costs. If, in Seller’s judgment, the financial condition of Buyer does not justify continuance on the then terms of payment, Seller may require full or partial payment in advance or otherwise adjust the terms including ceasing to supply Buyer.

5. FREIGHT. Unless agreed by Seller in writing, all shipments shall be F.O.B. origin. Risk of loss or damage to Goods shall pass to Buyer upon being made available at the F.O.B. point.

6. DELIVERY. Seller may, in its sole discretion, without liability or penalty, make partial shipments of Goods to Buyer. Seller shall not be liable for any claim, Loss, expense, or damage of any kind whatsoever for delays, loss or damage in transit.

7. INSPECTION. Buyer shall inspect the Goods upon arrival and notify Seller in writing within 3 days of any claims that the Goods do not conform to Seller’s warranty for such Goods. Failure to give such written notice during such period will constitute satisfactory shipment by Seller and irrevocable acceptance by Buyer of all Goods.

8. CHANGES. Changes in specifications or designs relating to any products, changes in delivery schedules or rescues or cancellations of orders are not permitted unless Seller has accepted same in writing, has determined the additional charge to be made, if any, and the same has been paid by the Buyer.

9. RETURNS. Goods may not be returned without prior written authorization by Seller and compliance with Seller’s return policies and procedures.

10. STORAGE. If, because of Buyer’s inability to take delivery, the Goods are not shipped, stopped in transit or returned, Seller may store them for Buyer at Buyer’s expense and risk and risk of loss shall pass to Buyer when the Goods are placed in storage and such date shall be the date of shipment for purposes of beginning the warranty and payment periods.

11. LIMITED WARRANTIES. Seller warrants the Goods in accordance with its express written limited warranty covering the Goods in effect at the time of purchase. THIS IS SELLER’S ONLY WARRANTY AND PROVIDES BUYER’S SOLE REMEDIES. SELLER MAKES NO OTHER EXPRESS WARRANTIES AND HEREBY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE. Any claims not made during the warranty period are deemed waived by Buyer. Seller’s warranty does not attach to Goods or parts not manufactured by Seller. Seller will pass on to Buyer the warranty, if any, it receives from the manufacturer of such Goods or part, but only to the extent allowed by such manufacturer.

12. LIMITATIONS. IN NO EVENT SHALL SELLER’S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THESE TERMS OR THE GOODS, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNT PAID TO SELLER FOR THE PORTION OF THE GOODS WITH RESPECT TO WHICH SUCH LIABILITY IS CLAIMED. Any contract created between the Seller and Buyer is subject to the specific conditions that (a) Seller is not obligated to provide insurance or indemnify Buyer, and (b) there are no flow-downs from any person or entity including the federal government that become part of the contract. IN NO EVENT SHALL SELLER BE LIABLE TO BUYER OR ANY OTHER PERSON OR ENTITY FOR LOSS OF USE, REVENUE OR PROFIT OR FOR INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, PUNITIVE OR SPECIAL DAMAGES OR ANY OTHER LOSSES OR EXPENSES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

13. INDEMNIFICATION. Buyer shall defend, indemnify and hold Seller, its affiliates and their respective officers, directors, members, managers, representatives, agents and employees harmless from and against all claims, suits, demands, losses, liabilities, damages (including injury and death) and expenses (including reasonable attorneys’ fees) (collectively, “Losses”), arising out of or relating to: (a) Buyer’s or its agents provided specifications, design, structure, operation, material or method of making Goods including ("Buyer’s
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