

**BORGWARNER (insert BorgWarner legal entity name as defined in quotation) (“SELLER”)**  
**GENERAL TERMS AND CONDITIONS OF SALE-**  
**GLOBAL (ENGLISH)**  
**(12/15/2010)**

THE FOLLOWING TERMS AND CONDITIONS SHALL BE THE ONLY TERMS AND CONDITIONS THAT WILL APPLY TO THIS QUOTATION AND THE SALE OF PRODUCTS BY SELLER:

1. **Acceptance.** Any of the following acts shall constitute Buyer's acceptance of this Quotation and all terms and conditions herein: (a) Seller's receipt of this Quotation signed by Buyer or other written indication of acceptance, (b) Buyer directs Seller to commence any of the work or services identified in this Quotation; or (c) Buyer accepts delivery of any of the products identified in this Quotation. Upon acceptance, this Quotation shall become a valid and binding agreement between Buyer and Seller. Any additional or different terms and conditions contained in any pre-Quotation documents are nullified and shall have no binding effect with respect to any purchases of products made pursuant to this Quotation. Seller specifically rejects any attempt by Buyer to include different or additional terms of sale at any time and only Seller's signed consent will bind it to any different or additional terms hereinafter transmitted in any form by the Buyer.

2. **Delivery/Risk of Loss/ Security Interest:** Prices are FCA (Seller's Premises) Incoterms® 2010. Title to products will transfer at Seller's dock and all orders are subject to approval and final acceptance by Seller. Delivery of the products to a carrier properly addressed for transmission to the Buyer or its designated agent shall constitute delivery to the Buyer, who shall thereupon assume and bear all risk of loss or damage from any cause whatsoever. Any claim for loss or damage in transit must be prosecuted by the Buyer. If Buyer provides no carrier or routing instructions, the Seller shall have absolute discretion as to mode and routing of shipments. Buyer hereby grants Seller a security interest in the goods sold hereunder, securing Buyer's obligation of payment therefor. Buyer shall bear all import/export clearance responsibilities, Customs duties, personal property taxes and similar charges assessable or assessed on Products after title and risk of loss pass to Buyer. Buyer agrees that it will not export or reexport or otherwise transfer any products or technical data provided hereunder to any country, person, entity or end-user subject to U.S. export restrictions. Buyer specifically agrees not to export or reexport any products or technical data provided hereunder (i) to any country or party to which the United States has at the time of the transfer embargoed or restricted the export or reexport of the relevant products or services; (ii) to any end-user who the Buyer knows will utilize any of the products or technical data in the design, development or production of nuclear, chemical or biological weapons; or (iii) to any end-user who has been prohibited from participating in U.S. export transactions by any federal agency of the U.S. government. Buyer agrees that the Seller may periodically request, and Buyer shall provide, written certification that Buyer has complied with all export control laws and trade sanctions including U.S. export control laws and trade sanctions. Any violation of this Section, as determined solely by the Seller, shall be deemed a material breach of this Agreement. Seller reserves the right to refuse to enter into or perform any order, and to cancel any order, placed under this Agreement if Seller in its sole discretion determines that the entry into such order or the performance of the transaction to which such order relates would violate any applicable law or regulation of

the United States, or any other government. Buyer also agrees that any such refusal or cancellation by Seller will not constitute a breach of any obligation under this Agreement and hereby waives any and all claim against Seller for any loss, cost or expense, including consequential damages, that Buyer may incur by virtue of such refusal or cancellation. If any sales, use, value-added or similar taxes, whether federal, state, local or foreign, are lawfully imposed on Seller in connection with sales of products to Buyer under this Agreement or Order, Buyer shall pay the full amount thereof to Seller in addition to and concurrently with payment for the related products, but no discount with respect to such taxes shall be permitted to, or taken by, Buyer. Each party shall be responsible for and bear any income or similar taxes assessed against it by reason of its receipt of moneys or value pursuant to this Agreement or Order.

3. **Price/Taxes:** The prices quoted on the reverse side hereof are firm for ninety (90) days from the date quoted, subject to change thereafter on seven (7) days written notice. Except where otherwise prohibited by law, all privilege, personal property, excise, sales, duties, levies, use and other taxes, which Seller may be required to pay or collect, shall be in addition to the price stated and shall be paid by Buyer. Prices do not include transportation charges, unless otherwise provided on the reverse side hereof. Prices quoted hereunder are subject to increase sufficient to compensate for any tax, duty or levy hereafter imposed by any governmental authority, or for any increase in price for the manufacture of the products ordered herein as a result of any change in the cost of raw materials.

4. **Buyer changes and Delays:** Buyer shall pay Seller for all work required as a result of any Buyer changes in quantity, time, testing, packaging, materials, dimensions, drawings, specifications and delivery terms. Buyer shall pay Seller an equitable adjustment to the sales price under this Order and times for performance for all work required as a result of any Buyer changes to this Order. Any Buyer changes must be in writing signed by Buyer's authorized representative, and Buyer will not unreasonably withhold or delay consent to a proposed Seller change. If Buyer requests or otherwise causes delay in the manufacture, assembly or shipment of the goods contemplated herein, Buyer shall pay Seller for all costs, expenses and damages incurred by Seller as a result thereof, including, but not limited to, any incidental and consequential damages; handling and storage expenses.

5. **Payment Terms:** Net 30 days cash in U.S. funds (unless otherwise agreed to in writing by Seller) including payments for partial shipments. If the balance due is not paid as provided herein, Seller may charge the maximum interest rate as may be provided by law, which fee shall be added to the outstanding balance due. Unless prior arrangements have been made, a stop shipment order may be issued if payment is not received on a timely basis. Buyer also agrees to pay Seller for all reasonable costs and expenses incurred in collecting amounts due and outstanding, including reasonable attorneys' fees. Payment for the goods and services purchased hereunder shall not be subject to set-off, debit or recoupment.

6. **Delivery dates:** Delivery dates are estimated and not guaranteed. Delivery lead times after receipt of order are noted on the reverse side. Changes to delivery schedules within six (6) weeks of delivery date require prior written approval by Seller. If quantities or delivery schedules are not specified in this Order, they will be as reasonably

determined by Buyer and stated in Buyer's firm releases issued to Seller from time to time. It is expressly understood that there shall be no deferred delivery or cancellation without Seller's written consent. Buyer agrees to pay Seller all charges to change, expedite or cancel all or any part of this Order. Seller shall not be responsible for any delay in delivery for any unforeseen circumstances, or by circumstances beyond Seller's control, including, without limitation, government acts, fires, floods, strikes or other labor problems or shortage, embargo, transportation delays, accidents, war, weather conditions, inability to secure raw material. In such circumstances, Seller may terminate this Agreement, at Seller's option, and without liability therefor. Buyer acknowledges and agrees that if the order cannot be shipped complete, partial shipment will be made and shipment of balance will be as soon as practicable.

**7. Packing and Packaging:** Seller will pack and ship Products in accordance with Buyer's instructions, including labeling and hazardous materials instructions. If Buyer has not provided packing or shipping instructions, Seller will pack and ship Products in accordance with sound commercial practices. If Seller is required to use Buyer's returnable packaging, Seller will be responsible for cleaning and returning the returnable packaging. If Buyer's returnable packaging is not available, Seller may use expendable packaging and Buyer will reimburse Seller for the reasonable costs of expendable packaging.

**8. Overruns and Underruns:** Seller may ship quantities up to 10% less or more than the quantities ordered and deliveries within such limitations will be deemed complete deliveries. Buyer shall accept and pay for excess quantities within such limitations.

**9. Inspection and Warranty:** Buyer shall inspect or test the Products sold hereunder for any defect or non-conformity within 3 days after delivery. Buyer must give Seller written notice of any defect within five (5) days of said inspection in order for Buyer to reject any Products sold hereunder. Buyer will be barred with respect to rejection or any other remedy unless Buyer timely notifies Seller and holds the goods for Seller's inspection. After acceptance of the Product, Buyer shall give notice of any defects as provided herein this Section 9.

Seller warrants that the Products manufactured will be in accordance with the specifications on the reverse side hereof and/or attached hereto and will be of good quality material and workmanship under normal use and service. This Warranty shall extend for a period of twelve (12) months from the date of delivery to Buyer. Seller's sole liability for warranty claims hereunder shall be to repair or provide a replacement Product, or allow a credit, at Seller's sole option, for any non-conforming part. Seller shall have no liability to Buyer or any other third party for any indirect, incidental or consequential damages, including but not limited to lost profits, income or opportunity, damage to or loss of property; damages incurred in installation, repair or replacement; loss of use; losses resulting from or related to downtime of Products; the cost of replacement transportation; the cost of substitute products; or claims of Buyer or Buyer's customers for such damages, howsoever caused, and whether based on warranty, contract and/or tort (including negligence, strict liability or otherwise). Replaced parts will be warranted in time only through the remaining period of this Warranty. Seller shall not be obligated to repair or replace any non-conforming part unless it receives notice from Buyer, in writing, within 14 days of discovery of a defect. Buyer shall be barred from any

action for breach of warranty, contract or otherwise, unless Buyer timely notifies Seller as provided herein. Specifically excluded from this Warranty are: (i) design defects or defects or damage caused by improper installation, neglect, improper maintenance, handling or operation of the Products by Buyer or any third party; (ii) Products considered by Seller to be prototype, development or pre-production; (iii) Products that have been subject to damage attributable to or caused by misuse, abuse, or vandalism or any transit related damage; acts of God or insurrection; normal wear and tear; foreign object entry; any part not supplied by Seller; any repair, maintenance or service by anyone other than Seller's factory-authorized service provider; or any other acts that are beyond Seller's reasonable control. Further, this Warranty shall not apply if Buyer or any third party attempts to repair or replace the defective part without Seller's written authorization. Seller expressly disclaims any and all warranties relative to the foregoing circumstances. Any auxiliary equipment sold hereunder and not manufactured by Seller carries only such warranty as given by the manufacturer thereof and which is hereby assigned to Buyer without recourse to Seller. **THIS IS SELLER'S SOLE WARRANTY AND IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTY OF MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE.**

10. **Samples:** Unless Seller otherwise agrees in writing, samples and/or Prototypes are for examination and test purposes only and as such are not covered by Seller's warranty.

11. **Patents and Trademarks:** Buyer shall defend and protect Seller in any action, civil or criminal, brought against Seller by any third party, for the unfair competition or for infringement of any domestic or foreign patent, design patent, trademark, copyright, or for any other claim arising out of the manufacture and sale by Seller of any goods which have been manufactured to specifications furnished by Buyer and/or arising out of the reproduction by Seller of the products of any design mark, or emblem furnished or designated by Buyer. Buyer further agrees to hold Seller harmless from all expense, judgment, damages or loss resulting therefrom. The supply of goods to Buyer by Seller shall not cause, vest or establish any right or license in Buyer under any patent or patent application now or hereafter owned or controlled by Seller to make or have made such goods.

12. **Indemnification:** To the fullest extent permitted by law, Buyer expressly agrees to indemnify and hold harmless Seller, its affiliates, officers, directors, employees, agents, attorneys, successors and assigns ("Indemnified Parties"), and defend the indemnified parties from and against any and all claims, liability, lawsuits, losses, costs, expenses or damages (including reasonable attorneys' fees) of any kind or nature whatsoever claimed by any person or entity, including employees, servants or agents of Buyer, including without limitation claims for personal injury (including death) or property damage, whether such claims are premised on contract, tort or otherwise, including strict liability, which arise out of or result from, or are in any way connected with any of the work contemplated by this Agreement and/or products sold hereunder, or if Seller's employees are injured on Buyer's premises in connection with this Agreement, except to the extent of Seller's willful or gross misconduct.

13. **Special Tooling:** All special tooling required to produce the goods shall remain the property of the Seller unless specific arrangements are made otherwise. In such case, Seller's responsibility in connection with special tooling is limited to proper handling in manufacture and storage and adequate insurance. The Buyer is responsible for costs resulting from (a) requested alterations, (b) major repairs or replacement caused by normal wear; and (c) requests for shorter lead times and/or increased rate of delivery.

14. **Limitation of Liability:** Seller's aggregate liability for any and all claims arising out of this Agreement or the services and/or products sold herein, whether based upon contract, tort, warranty, negligence, indemnity or any other claim, shall be limited to the total compensation received by Seller under the Agreement or Order during the year prior to the event creating such liability under the Agreement or Order AND IN NO EVENT SHALL SELLER BE LIABLE FOR LOST PROFITS OR INCOME, LIQUIDATED, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES.

15. **Force Majeure:** Neither party shall be liable for a failure to perform that arises from causes or events beyond its reasonable control and without its fault or negligence, including but not limited to, acts of God or the public enemy, actions by any domestic or foreign governmental authority (whether valid or invalid), fires, riots, wars, sabotage, acts of terrorism, labor problems (including lockout strikes and slowdowns), or inability to obtain materials or cross country borders. The affected party shall give written notice of such delay to the other party within 10 days of the beginning of the delay.

16 **Termination:** If Buyer terminates this Order or Agreement for any reason or if Buyer cancels any Program for the manufacture of Products purchased hereunder, Buyer will (1) purchase completed Products at the Contract price and work-in-process and raw materials at Seller's actual cost, in each case to the extent reasonable and authorized in Buyer's firm releases, and (2) reimburse Seller for reasonable costs actually incurred by Seller as a result of the early termination, including the cost to store the items to be purchased and relocate production to an alternate source and the cost of unreimbursed and unamortized research and development costs, tooling, engineering costs, capital equipment, Seller's property, supplies and that are unique to the Products and any other reasonable costs and expenses of Seller expended in furtherance of this Agreement or Order.

Buyer will be in default under this Agreement if it (1) fails to perform any obligation under this Agreement and, if the non-performance can be cured, fails to cure the non-performance within 15 business days after notice from Seller specifying the non-performance, (2) admits in writing its inability to pay its debts as they become due, commences a bankruptcy, insolvency, receivership, or similar proceeding, or makes a general assignment for the benefit of creditors, (3) becomes a debtor in a bankruptcy, insolvency, receivership, or similar proceeding commenced by a third party that is not dismissed within 30 days after commencement, (4) fails to provide adequate assurance of performance under this Agreement within three business days after written demand by the other party.

If Buyer is in default under this Agreement or Order, Seller may recover damages resulting from the default, including (i) the Contract price for completed Products and Services and the cost of work-in-process and raw materials, and (ii) the cost of

unreimbursed and unamortized research and development, capital equipment, Seller's property, and supplies that are unique to the Products.

Seller may immediately terminate this Agreement or Order without liability to Buyer if any accommodation by any other third party, financial or otherwise, not contemplated by this Agreement or Order, is made and is necessary for Buyer to meet its obligations to Seller under this Agreement or Order. Buyer will reimburse Seller for all costs Seller incurs in connection with this Section 16 whether or not this Agreement or Order is terminated, including, but not limited to, all attorney or other professional fees. In addition, Seller may terminate this Agreement or Order upon giving at least 60 days notice to Buyer, without liability to Buyer, if Buyer (i) sells, or offers to sell, a material portion of its assets or (ii) sells or exchanges, or offers to sell or exchange, or causes to be sold or exchanged, a sufficient amount of its stock or other equity interests that effects a change in the control of Buyer or (iii) executes, or otherwise becomes subject to, a voting or other agreement or trust that effects a change in the control of Buyer.

**17. Governing Law, Fees, Venue and Statute of Limitations:** This Agreement has been made in and is governed by the substantive laws, exclusive of choice of law provisions, of the state where Seller's Quotation was issued as shown by the address of the Seller on the reverse side hereof. Both parties agree that the forum and venue for any legal action or proceeding concerning this Agreement will lie in the appropriate federal or state courts in the State of Michigan and specifically waives any and all objections to such jurisdiction and venue. Buyer consents that such Michigan courts have personal jurisdiction over Buyer with respect to any such action. Buyer shall pay Seller's reasonable attorneys fees, expenses and costs incurred in enforcing any of the provisions of this Agreement. Any legal action by Buyer which alleges breach of warranty or other breach, default or tortious act by Seller, must be brought by any Buyer, or any other person making a claim under this Agreement, within 2 years after the date of receipt of the product(s) sold herein, or one year after such person could reasonably have discovered the basis for the action, whichever comes first.

**18. Assignment:** Neither party may assign this Agreement, in whole or in part, without the prior written consent of the other party, which consent shall not be unreasonably withheld. This Agreement shall be binding upon the parties hereto, their employees, beneficiaries, agents, successors, heirs, and assigns. Any attempted assignment or subcontracting by either party without the required consent will not relieve that party of its duties or obligations under this Agreement or its responsibility for non-performance or default by its assignee or subcontractor. If Buyer requires Seller to subcontract all or a portion of its duties or obligations under this Agreement to a designated subcontractor, Seller will not be responsible for a breach of this Agreement caused by that subcontractor's failure to meet its warranty, delivery, or other contractual obligations.

**19. Relationship of the Parties:** Buyer and Seller are independent contractors, and nothing in this Agreement makes either party the agent or legal representative of the other party for any purpose. Neither party has authority to assume or to create any obligation on behalf of the other party.

20. **No Waiver by Seller:** Any failure by Seller to enforce strict performance of any provision of this Agreement will not constitute a waiver of Seller's right to subsequently enforce such provision or any other provision of this Agreement.

21. **Seller's Rights:** The rights and remedies reserved by Seller herein shall be cumulative and additional to all other rights and remedies to Seller in law or equity.

22. **Integrated Agreement:** The terms and conditions herein are intended by Seller and Buyer as a final expression and as a complete and exclusive statement of the terms of this Agreement. This Agreement supercedes all prior negotiations, representations or agreements, either written or oral. This Agreement may not be modified, cancelled, or rescinded, except by the written agreement of the Seller and Buyer's payment to Seller for all resulting losses and/or expenses incurred.

23. **Unenforceable Terms:** If any provision of this Agreement is invalid or unenforceable under any statute, regulation, ordinance, executive order or other rule of law, such provision will be deemed reformed or deleted, as the case may be, but only to the extent necessary to comply with such statute, regulation, ordinance, order or rule, and the remaining provisions of this Agreement will remain in full force and effect.