



## Terms and Conditions

MOONBIKES MOTORS, INC.

North America

Effective September 1, 2021

Those Terms and Conditions (the "Agreement") are a legal agreement by and between MOONBIKES MOTORS, INC., a Delaware Corporation ("MOONBIKES MOTORS") with an office address at 1434 Spruce Street, Boulder, CO 80302, USA, and the party listed in the MOONBIKES MOTORS Purchase Order as customer/buyer ("Customer" or "you"), for the purchase and use of the MOONBIKES MOTORS Electric Snow- bikes product(s) as listed in the Purchase Order, with accompanying accessories and as the case may be any accompanying written materials provided by MOONBIKES MOTORS (the "Documentation") (referred to individually and collectively as the "Product(s)") and as the case may be, at your option, any ancillary assembly or customization services that may be provided to you by MOONBIKES MOTORS. By completing and/or signing this Agreement with MOONBIKES MOTORS, or clicking "I Agree" on an electronic version of this agreement, Customer acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

### 1. Scope.

This Agreement sets forth the terms and conditions under which MOONBIKES MOTORS may sell the Product(s) to Customer and Customer may purchase from MOONBIKES MOTORS and use the Products, together with all applicable terms related to the MOONBIKES MOTORS limited warranty and as the case may be assembly or customization services, provided said services have been ordered in the attached Purchase Order in the Purchase Order.

### 2. MOONBIKES MOTORS Product Sale and Purchase.

2.1 All sales are final, unless specifically subject to a trial period as identified in the Purchase Order.

2.2 Customer shall order Products and services under this Agreement by submitting completed purchase orders on the form provided by MOONBIKES MOTORS ("Purchase Order") only.

2.3 MOONBIKES MOTORS shall sell to the Customer and Customer shall purchase from MOONBIKES MOTORS the Electric Snow-Bikes Products set forth in the Purchase Order in the quantities and at the prices stated in the Purchase Order. Unless otherwise stated in the Purchase Order, the Buyer shall pay all taxes and third-party expenses, including freight and shipping costs, imposed on, in connection with, or measured by the transaction contemplated by this Agreement in addition to the prices set forth on the Purchase Order.

### 3. Price.

3.1 Subject to Product availability, Customer's specific requests and the terms of this Agreement, Customer shall be entitled to purchase Products and services at the prices set forth in the Purchase Order form, which is hereby incorporated and made part of this Agreement. Prices otherwise Listed by MOONBIKES MOTORS outside of this Agreement may vary at all times, at the sole discretion of MOONBIKES MOTORS and without notice, and shall not affect the prices agreed to by the Parties herein.

3.2 All quoted prices by MOONBIKES MOTORS may expire in accordance with the quote term provided by MOONBIKES MOTORS in said quote form, which shall not exceed 2 Months in all instances. Therefore, only the Accepted Purchase Order shall govern pricing, payment and product description.

3.3 Unless specifically set forth otherwise, all prices exclude transportation, insurance, customs, federal, state, local, excise, value-added, use, sales, property (ad valorem) and similar taxes or duties now in force or hereafter enacted, as well as services, repairs, maintenance, product assembly, and any additional product or equipment which may be required (eg. Helmet and Snow-Bikes accessories), all of which shall be the Customer's responsibility. Notwithstanding the foregoing, some of the foregoing items may be set forth in and included specifically in the Purchase Order.

3.4 Customer shall be responsible to pay all taxes, fees or charges of any nature whatsoever imposed by any governmental authority on, or measured by, the transaction between Customer and MOONBIKES MOTORS, including applicable Sales Taxes. If MOONBIKES MOTORS is required to collect the foregoing, such amounts will be separately stated on the invoice, and must be paid by Customer unless Customer provides MOONBIKES MOTORS with a valid tax exemption certificate authorized by the appropriate taxing authority. When applicable, Customer agrees to provide MOONBIKES MOTORS with a valid resale certificate for the Products purchased for resale.



3.5 In the case of an existing reservation agreement, the amount of deposit will be considered as down payment and deducted from subtotal of invoice.

#### **4. Payment and Invoices.**

4.1 The Payment Terms, and as the case may be agreed installments of the purchase Price of the Product(s), shall be as described and set forth in the Purchase Order.

4.2 Unless stated otherwise in the Purchase Order, all MOONBIKES MOTORS invoices are payable in full on or before the due date indicated on the invoice, without exception together with all fees and charges borne by the Customer. MOONBIKES MOTORS may allow a payment in several installments if and only if indicated in the Purchase Order.

4.3 Payment shall be made by credit card, direct deposit or wire transfer using the wiring instructions provided by MOONBIKES MOTORS in the Purchase Order and/or appearing on the invoice. Payment by Check or Credit Card may be authorized on a case-by-case basis, at the sole discretion of MOONBIKES MOTORS. A convenience fee of 3% may apply for selected payment means (for example credit card transaction or other online payment methods), at the sole discretion of MOONBIKES MOTORS.

4.4 In the event of a late payment, any payment received shall be charged first against accrued interest and indemnities and then to the principal invoice amount.

4.5 In case of non-payment or late payment on the due date of an invoice, all other pending invoices of a Customer, even those not yet due, may become due immediately, at the sole discretion of MOONBIKES MOTORS.

4.6 Past-due invoices may be subject to a monthly charge equal to the higher of three percent interest (3.00%) per month, or the highest rate of interest permitted by law, with a minimum penalty of \$250.00. If any invoice remains unpaid after Thirty (30) days from the invoice date, notwithstanding any agreement or course of dealing between MOONBIKES MOTORS and Customer, (i) all subsequent orders will be accepted only on a C.O.D. or cash-with-order basis until satisfactory credit is re-established at MOONBIKES MOTORS's sole discretion, and (ii) MOONBIKES MOTORS may suspend shipment of any Product ordered until all outstanding invoices are paid. All overdue accounts are also subject to collection charges, including without limitation, attorney's fees and court costs.

4.7 Any unpaid balance by the Customer authorizes MOONBIKES MOTORS to suspend, without prior notice and without notification, any delivery and/or subsequent service until full payment. The parties agree that the due and prompt payment of invoices and agreed installments is to be regarded as a material obligation on the part of the Customer. As the case may be, any applicable limited warranty provided by MOONBIKES MOTORS will also be automatically suspended, without any extension of the warranty term and period.

4.8 Invoices are validly issued to the address and/or email address provided in the Purchase Order. In the event of a change of address, email or contact information, Customer shall promptly notify in writing MOONBIKES MOTORS.

#### **5. Shipping, Delivery, Delays, Risk of Loss and optional Installation services.**

5.1 MOONBIKES MOTORS will ship its Product(s) by the method it deems most advantageous using standard commercial packaging. Customer agrees to pay all transportation charges and costs associated with shipment of the Product, including any packaging requested or required under the circumstances, as determined by MOONBIKES MOTORS.

5.2 MOONBIKES MOTORS will use commercially reasonable efforts to deliver the Products by the estimated delivery date, indicated in the Purchase Order, which is given for information purposes only, if any; however, shipment of Products is subject to availability, and MOONBIKES MOTORS EXPRESSLY DISCLAIMS LIABILITY FOR ANY FAILURE TO MEET SUCH DELIVERY DATES.

5.3 The receipt and/or inspection and/or use of the Product by the Customer shall be deemed approval of the actual delivery time. In the event of a late delivery, Customer may notify in writing MOONBIKES MOTORS of the same. If no delivery has occurred within 60 business days past that first late delivery notice, Customer's exclusive recourse may then be to notify MOONBIKES MOTORS that this Agreement and related Purchase Order is canceled and terminated, effective upon receipt of that termination notice, provided however that no Product has been shipped already by MOONBIKES MOTORS.

5.4 MOONBIKES MOTORS will always try to procure its best efforts to accommodate its Customers, but there may be some instances or situations where due to unforeseen circumstances, beyond MOONBIKES MOTORS's control or because of an event of force majeure, MOONBIKES MOTORS may have to extend the delivery period, suspend its execution of the Purchase Order or terminate the Agreement with the Customer, without any liability for any compensation in damages. MOONBIKES MOTORS will procure its best commercial efforts to diligently notify its Customers of any such event or delay. In the event of such cancellation



of this Agreement and its related sale of Product, MOONBIKES MOTORS shall refund to Customer all monies received by and paid to MOONBIKES MOTORS.

5.5 The risk of loss passes to the Customer on the receipt of the Products.

5.6 Any freight damages must be filed by Customer with the carrier within seven calendar (7) days of receipt of the Product. If Customer fails to notify MOONBIKES MOTORS of such damage within seven (7) days of receipt, the Product will be deemed to be received in good condition. Damaged Products may be returned for exchange/replacement, unless provided otherwise under the applicable MOONBIKES MOTORS warranty as set forth in this Agreement.

5.7 MOONBIKES MOTORS assembly services. Some of our Products may require minor assembly which do not require any technical skills, and proper assembly manual will be provided to Customer by MOONBIKES MOTORS with all sales covered hereunder. MOONBIKES MOTORS shall not be obligated to accept a request for assembly. Assembly services shall be quoted on a case-by-case basis and indicated on the Purchase Order with applicable rates in force at the time of the conclusion of the contract.

5.8 Each separate purchase and delivery of a single Product shall be treated as a distinct agreement between MOONBIKES MOTORS and Customer, even if all Products were referenced in one single Purchase Order. Therefore, any non-delivery of or issue related to a particular Product shall not affect and shall not exempt Customer from its payment obligations hereunder and under the Purchase Order relating to another Product delivered or scheduled to be delivered.

5.9 Customer shall, at its own expense, maintain in force appropriate insurance with reputable insurers, sufficient in coverage and amounts to secure its obligations, use of the Product(s) and potential risks and liabilities under this Agreement including any damage to the Products, to the Customer or to third party. Customer shall be responsible for its own insurance policy including payment of its related premiums, and any deductibles and/or retentions associated with said insurance coverage.

## **6. Defective Products, Parts or Product Replacement.**

6.1 In the unfortunate event that a Product delivered presents, at the time of the delivery and receipt by Customer, visible defects or is not in conformity with the Purchase Order, the Customer shall promptly notify in writing or by email MOONBIKES MOTORS -within seven (7) Business days from receipt of said Product; time being of the essence. Said notice shall clearly describe the apparent defects or nonconformity of the equipment (pictures shall be sent to MOONBIKES MOTORS as part of said notice) and shall be sent by registered letter sent within seven (7) Business days of delivery and receipt of Product by Customer or by email to [service@moonbikes.com](mailto:service@moonbikes.com) within the same time frame. Past that notice period, all Product shall have been deemed delivered, defect free and duly accepted by Customer, save for latent defects herein covered under the MOONBIKES MOTORS Limited Warranty.

6.2 MOONBIKES MOTORS's warranty against latent defects is limited to the warranty period as agreed between the parties in the Purchase Order and said warranty shall be strictly limited to the replacement cost of the defective part of the Product or at most, to the replacement cost of the entire Product, to the exclusion of any other damages, including among other things as further detailed in this Agreement, consequential or indirect damages and loss of use and/or loss of profits.

6.3 Any contributory negligence on the part of Customer, or its employees, representatives, agents or users, in the assembly process or product handling, shall entirely exclude MOONBIKES MOTORS's liability or responsibility hereunder.

6.4 No Product shall be returned to MOONBIKES MOTORS without prior written approval from MOONBIKES MOTORS (mail or email). Customer shall provide best efforts to keep original packaging during the Warranty period as all returns are to be made using the original packaging of the Product.

## **7. Contract Suspension and Termination.**

7.1 If Customer breaches the payment terms or any other contractual obligations or terms of this Agreement or becomes or appears to be insolvent (or threaten insolvency) or bankrupt, MOONBIKES MOTORS may at its sole discretion, upon prior notice and without prejudice to its other rights and remedies, either (i) suspend the performance of its obligations until such breach is entirely cured by Customer, or (ii) terminate the Agreement with Customer upon notice to Customer, without prejudice to its right to claim monetary damages.

7.2 In the event of a sale of multiple Products under one single Purchase Order, without prejudice to its other rights, MOONBIKES MOTORS shall have the option to either suspend or terminate the Agreement with Customer either (i) entirely or (ii) partially for one or more Product(s) separately.

## **8. Retention of Title.**



8.1 **The full ownership of and legal title to the Electric Snow-Bikes Products and their accessories supplied by MOONBIKES MOTORS to Customer under any Purchase Order, shall not pass to Customer unless and until full satisfying payment of the purchase price as indicated in the related Purchase Order by Customer.** Customer hereby grants to MOONBIKES MOTORS a security interest in the Products sold under this Agreement and any proceeds therefrom (including accounts receivable), until payment in full for the Products has been received by Customer.

8.2 Therefore, until said payment in full of the purchase price, a Product may not under any circumstances be pledged, collateralized, leased, subleased **or resold** to any third-party buyer. Such transaction shall be deemed void *ab initio*.

8.3 As provided in this Agreement, all designs and intellectual property (Trademark, copyright and patented technology of the parts of and related to the Snow Bikes) of the Products shall remain proprietary to MOONBIKES MOTORS and/or its affiliates and licensors at all times and shall not be transferred or passed with the property title on the MOONBIKES MOTORS Product. All Products are sold by MOONBIKES MOTORS subject to the condition that the related sales do not convey any Intellectual property rights or copyright transfer or under any patent claim covering complete Product, or any assembly, combination, method or process in which any such Product is assembled for Customer. MOONBIKES MOTORS and its affiliates and parent company, Moonbikes Motors SAS reserve all rights under such patent or Intellectual Property claims.

## 9. Assignment.

9.1 Without the prior written consent of MOONBIKES MOTORS, Customer shall not assign any rights and/or obligations under this Agreement. If consent to an assignment is granted by MOONBIKES MOTORS to Customer, the client-assignee undertakes to pay jointly and severally with the assignor any sum due to MOONBIKES MOTORS.

9.2 All contracts, rights and obligation hereunder shall be freely assignable by MOONBIKES MOTORS. As the case may be, Customer shall execute any necessary documentation and follow any reasonable guidance requested by MOONBIKES MOTORS necessary to facilitate said assignment.

## 10. Use of MOONBIKES MOTORS Products.

10.1 **MOONBIKES MOTORS is providing the Product for its intended use as an Electric Snow-Bike only and Customer may therefore not use the Product for any other purpose. Customer acknowledges and agrees that the use of snowmobiles in general may be dangerous, which may result in property damage, personal injury and/or fatal injury and that Customer freely and voluntarily assumes all risks and hazards that may result of my operating the snowmobile.** Additionally, Customer acknowledges that combining, operating, or using the Snow- Bike Product with any non-MOONBIKES MOTORS-provided parts/products ("Non-MOONBIKES MOTORS Products") may potentially degrade or damage the Product or the Non-MOONBIKES MOTORS products with which the Product is combined with. MOONBIKES MOTORS shall not be responsible or liable for any damage to persons or property or degradation arising directly or indirectly from such combination.

10.2 **Customer shall use the Product in a normal and gentle manner and in accordance with the MOONBIKES MOTORS's Documentation, safety guidance and/or operating instructions;** MOONBIKES MOTORS shall not be responsible or liable for any damage to persons or property or degradation arising directly or indirectly from such misuse.

10.3 MOONBIKES MOTORS reserves the right to make changes in the design or specifications of any Products at any time without incurring any obligation to make equivalent changes in previously manufactured, sold or shipped Products.

10.4 Customer assumes sole responsibility for the selection of the Product to achieve Customer's intended commercial use and for the actual commercial satisfaction obtained from such Product. Customer also acknowledges that Colors of the Product as they appear on Customer Mobile device or computer screen may also slightly defer from the actual Color of the Product.

10.5 Customer acknowledges and agree to use the Product as follows and understands that any breach of the following may result in a denial of the MOONBIKES MOTORS Limited Warranty:

**(i) Customer shall use the Product in a normal and gentle manner and in accordance with the MOONBIKES MOTORS's Documentation, safety guidance and/or operating instructions;**

**(ii) Customer shall keep the Product in good working order and give MOONBIKES MOTORS timely notice of any defective use or issues encountered;**



(iii) Customer shall exclusively use MOONBIKES MOTORS's own or approved repair service in connection with the maintenance and repair of the Product.

#### **11. Product Resale and Continuation of these Terms and Conditions.**

11.1 Customer hereby acknowledges and agrees that the present Agreement, to the exception of the Limited Warranty provisions shall continue to apply to any third-party transferee of the Product and Customer shall indemnify and hold MOONBIKES MOTORS and its affiliates harmless from any potential related claims from Customer's own transferee, clients or end users.

#### **12. Customization.**

For Customized Snow Bikes Products only. The Customer undertakes to provide MOONBIKES MOTORS with all necessary information for customizing the Product. These elements must comply with all technical specifications detailed in the Documentation provided by MOONBIKES MOTORS. The colors as they appear on virtual renderings or online catalogues may be different from the real actual Product colors. MOONBIKES MOTORS shall retain all copyrights and Intellectual Property Rights on any Product design. Any Product customization services rendered by MOONBIKES MOTORS shall not be treated as a work made for hire.

#### **13. WARRANTY INFORMATION.**

**13.1 BY PURCHASING, RESELLING OR USING THE MOONBIKES MOTORS PRODUCTS, CUSTOMER IS AGREEING TO BE BOUND BY THE TERMS OF THE FOLLOWING:**

- **2 YEARS OR 1500 KM (932 MILES) LIMITED WARRANTY FOR THE SNOW BIKE, EXCLUDING WEARING PARTS (TRACK, SLIDES, CARBIDE, SKI, BRAKE PADS AND DISC, SHOCK ABSORBERS) AND BATTERY, FROM THE DATE OF DELIVERY OF THE PRODUCT TO THE CUSTOMER**
- **1 YEAR LIMITED WARRANTY FOR THE BATTERY FROM THE DATE OF DELIVERY OF THE PRODUCT TO THE CUSTOMER**

**13.2 THIS WARRANTY GIVES CUSTOMER SPECIFIC LEGAL RIGHTS, AND CUSTOMER MAY HAVE OTHER RIGHTS THAT VARY FROM STATE TO STATE. OTHER THAN AS PERMITTED BY LAW, MOONBIKES MOTORS DOES NOT INTEND TO EXCLUDE, LIMIT OR SUSPEND OTHER RIGHTS CUSTOMER MAY HAVE, INCLUDING THOSE THAT MAY ARISE FROM THE NONCONFORMITY OF A SALES CONTRACT.**

**13.3 MOONBIKES MOTORS warrants the Products against latent defects in materials and workmanship when used normally, in conformity with this Agreement and in accordance with the MOONBIKES MOTORS Documentation for a period of TWO (2) YEARS or 1500 km (932 miles) for the snow bike ; ONE (1) YEAR for the battery ; from the date of delivery of the Product by Customer as listed in the related Purchase Order ("Warranty Period").**

**13.4 During the Warranty Period, the MOONBIKES MOTORS Limited Warranty shall be limited to the following procedure and services:**

**(i)** Within fourteen (14) Business Days from the date an incident or damage occurs, time being of the essence, Customer shall contact MOONBIKES MOTORS via email [service@moonbikes.com](mailto:service@moonbikes.com); MOONBIKES MOTORS shall first assist the Customer with a diagnosis and identification of the nature of issue regarding the defective Product, if any.

**(ii)** After MOONBIKES MOTORS shall have diagnosed and established that the issue described by Customer regarding the defective Product is actually covered by this MOONBIKES MOTORS Limited Warranty, then MOONBIKES MOTORS, at its expense, within 30 (thirty) business days -excluding shipping delays-, and at its sole discretion, may either (i) replace the defective part of the Product with a new one, or (ii) replace the entire defective Product with a new Product, at MOONBIKES MOTORS discretion; without any other compensation to Customer.

**(iii) WARRANTY LIMITATIONS SUBJECT TO APPLICABLE US CONSUMER LAW. TO THE EXTENT PERMITTED BY LAW, THIS WARRANTY AND THE REMEDIES SET FORTH IN THIS SECTION ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, REMEDIES AND CONDITIONS, WHETHER ORAL, WRITTEN, STATUTORY, EXPRESS OR IMPLIED. MOONBIKES MOTORS DISCLAIMS ALL STATUTORY AND IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND OTHER WARRANTIES AGAINST HIDDEN OR LATENT DEFECTS NOT COVERED HEREIN, TO THE EXTENT PERMITTED BY LAW. IN SO FAR AS SUCH WARRANTIES CANNOT BE DISCLAIMED, MOONBIKES MOTORS LIMITS THE DURATION AND REMEDIES OF SUCH**



**WARRANTIES TO THE DURATION OF THIS EXPRESS WARRANTY AND, AT MOONBIKES MOTORS 'S OPTION, THE REPAIR OR REPLACEMENT SERVICES DESCRIBED HEREIN. SOME STATES OR JURISDICTION MAY NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY (OR CONDITION) MAY LAST, SO THE LIMITATION DESCRIBED ABOVE MAY NOT APPLY TO CUSTOMER.**

### **13.5. WARRANTY EXCLUSIONS**

13.5.1 There may be instance where the MOONBIKES MOTORS Limited Warranty shall not apply or where MOONBIKES MOTORS may decline coverage:

- (i) to consumable parts, that are designed to diminish over time, or cosmetic damages (normal wear and tear or otherwise due to the normal aging of the Product), including but not limited to scratches and dents unless failure has occurred due to a defect in materials or workmanship; excluded parts are: brakes (discs and pads), track, shock absorbers, slides, sprocket, carbide, ski and any other part that can be considered consumable.
- (ii) to Product damage caused by a negligent Product use, abuse, misuse (misuse shall mean any use not respecting the Documentation), fire, accident or other external cause;
- (iii) to Product when the Limited Warranty has been exercised by Customer after the fourteen (14) Business Day mandatory notice period, from the date an incident, failure, error or malfunction occurs, time being of the essence;
- (iv) to Product damage caused by a relocation or transportation or Product that have been resold to a third party;
- (v) to Product that have not been paid entirely for and/or to Product whose Customer is in breach of any of the terms and conditions of this Agreement, including but not limited to a default of payment as defined herein or in a Purchase Order;
- (vi) to Product whose repair or maintenance has not followed the technical recommendations provided by MOONBIKES MOTORS or has received an intervention not authorized by MOONBIKES MOTORS on all or part of the electrical power system.
- (vii) to Product whose usage is not in accordance and in strict compliance with instructions and Documentation;
- (viii) to a Battery whose handling, charging and storage conditions have not followed the technical recommendations provided by MOONBIKES MOTORS.

13.5.2 For any reason whatsoever and as the case may be, if after due examination of an alleged defective Product, MOONBIKES MOTORS concludes that the so-called issue, damage or malfunction results from one or more of the Warranty Exclusions, as listed above, then at its sole reasonable discretion, MOONBIKES MOTORS, may decide to charge Customer for the actual reasonable costs of the technical intervention including but not limited to transportation cost.

**13.6 Product Return Procedure.** Customer may only return the assembled Product for warranty repair or return only the defective part if instructed by MOONBIKES MOTORS. Before returning any of the foregoing for repair or replacement, Customer shall notify MOONBIKES MOTORS via email at [service@moonbikes.com](mailto:service@moonbikes.com). Returns for repair should be accompanied by a letter stating the nature of the problem, if applicable the serial and/or model numbers and the Customer's name, email and telephone number.

**13.7 Warranty and Non-Warranty Costs.** Unless stated or agreed otherwise, Shipment costs for warranty repairs or replacements shall be paid by the Customer. No credit or reimbursement shall be allowed for work performed by the Customer. Any Product that is not defective shall be returned to Customer at Customer's expense, and testing and handling expense shall also be borne by Customer. Out-of-warranty repairs will be invoiced at the then-current MOONBIKES MOTORS hourly service rate plus the cost of needed parts.

### **14.LIMITATION OF LIABILITY.**

**NOTWITHSTANDING ANYTHING TO THE CONTRARY AND SUBJECT TO THE SPECIFIC PROVISIONS OF THIS AGREEMENT, MOONBIKES MOTORS, ITS AFFILIATES, PARENT COMPANY, DIRECTORS, OFFICERS, AGENTS, EMPLOYEES AND SUPPLIERS WILL NOT BE LIABLE (i) WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT, UNDER ANY CONTRACT, NEGLIGENCE, RISK OF LOSS, BODILY INJURY OR DEATH, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY FOR ANY AMOUNTS IN EXCESS, IN THE AGGREGATE, OF THE PRICE ACTUALLY PAID BY CUSTOMER FOR THE RELATED PRODUCT HEREUNDER; and/or (ii) FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY, RELIANCE OR CONSEQUENTIAL DAMAGES INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS OR REVENUES, LOSS OF BUSINESS; LOSS OF OPPORTUNITY; LOSS OF GOODWILL; LOSS OF REPUTATION; COST OF PROCUREMENT OF SUBSTITUTE GOODS, TECHNOLOGY OR SERVICES; LOSS, INACCURACY, OR**



**CORRUPTION OF DATA OR INTERRUPTION OF USE; OR ANY MATTER BEYOND ITS REASONABLE CONTROL. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. SOME STATES OR JURISDICTION MAY LIMIT THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY OR MAY BE LIMITED TO SOME CUSTOMERS.**

#### **15. General Provisions.**

**15.1 Relationship of the Parties.** Nothing contained herein shall be deemed to create any association, partnership, joint venture or relationship of principal and agent or master and servant or employer and employee between the parties hereto or any affiliates or subsidiaries thereof, or to provide either party with the right, power or authority, whether express or implied, to create any duty or obligation on behalf of the other party, other than as stated in this Agreement.

**15.2 Notices.** Any notice or other communication required or permitted by this Agreement or by law to be served on or given to any party shall be in writing and shall be deemed served and given when personally delivered to the party to whom it is directed, or in lieu of such personal service, (a) three days after deposit in the United States mail, postage prepaid, registered or certified, return receipt requested, or (b) the next business day following transmission by fax or e-mail, sent in each case to the addresses set forth in the Purchase Order. A mandatory copy of any legal complaint addressed to MOONBIKES MOTORS shall also be sent to: MOONBIKES MOTORS, INC., C/O Peyrot & Associates PC., 62 William Street, 8<sup>th</sup> floor, New York, NY 10005.

**15.3 Assignment.** This Agreement is personal to Customer. Customer shall not assign or otherwise transfer any rights or delegate any duties under this Agreement without the prior written consent of MOONBIKES MOTORS. Any attempted assignment, transfer or delegation without such consent shall be null and void.

**15.4 Force Majeure.** MOONBIKES MOTORS shall not be in breach of its obligations hereunder if performance of such obligations is prevented, delayed or made impracticable by any cause beyond the reasonable control of MOONBIKES MOTORS, including without limitation, acts or omissions of Customer, acts of God or government, natural disasters or storms, fire, political strife, labor disputes, terrorism, failure or delay of transportation, default by suppliers or unavailability of parts.

**15.5 Governing Law.** This Agreement shall be governed by and interpreted in accordance with the internal laws of the State of Delaware without regard to its conflict of law's provisions. Any litigation between the parties concerning these terms and conditions shall be brought in the courts of the State of Colorado, and Customer consents to such courts having personal jurisdiction and that venue is proper in either of such courts.

**15.6 Attorney's Fees.** If any litigation is brought to enforce, or arises out of, this Agreement or any term, clause, or provision hereof the prevailing party shall be awarded its reasonable attorneys' fees together with expenses and costs incurred with such litigation, including necessary fees, costs, and expenses for services rendered, as well as subsequent to judgment in obtaining execution thereof.

**15.7 Interpretation.** The titles of the sections of this Agreement are for convenience only and shall not affect the interpretation or construction of any section. The language used in this Agreement shall be deemed to be the language chosen by the parties hereto to express their mutual agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be applied in the construction or interpretation of this Agreement. The words "include" and "including" and variations thereof are not terms of limitation, but rather shall be deemed to be followed by the words "without limitation."

**15.8 Waiver.** Failure to exercise any right will not operate as a waiver of that right, power, or privilege. A waiver of any of the terms of this Agreement, or any breach or default hereunder, shall not be deemed or construed as a waiver of such terms for the future or any subsequent breach or default, whether or not of the same or similar nature.

**15.9 Entire Agreement; Severability; Modification; Electronic Signatures.** This Agreement, including the Warranty provisions and any other policies or Documentation or Purchase Order referenced herein, represents the entire agreement between MOONBIKES MOTORS and Customer as parties with respect to the subject matter hereof and all other negotiations, understandings and agreements relating thereto, whether written or oral, including but not limited to all requests for proposal, proposals, payments or other forms, are nullified and superseded hereby. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement. This Agreement may only be modified, amended, or supplemented in a written document signed by authorized signatories of both parties subsequent to the date of execution of this Agreement. The parties acknowledge and agree that this Agreement may be executed by electronic signature, which shall be considered as an original signature for all purposes and shall have the same force and effect as an original signature.



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