



## Edmunds Terms and Conditions

The Edmunds Manufacturing Company (“Edmunds”) offers, and accepts orders for, products (“Products”) and/or services (“Services”) only pursuant to the terms and conditions set forth below (collectively, “Terms”). Any offer for the sale of Products and/or Services is expressly conditioned on these Terms being incorporated into the contract for sale. The words “Edmunds,” “Seller,” “us” “we” and “our” refer to Edmunds (as above defined); the words “you,” “your” and “Customer” refer to the purchaser of Products and/or Services. Each of Edmunds and Customer is a “Party”; both are the “Parties.”

### 1. Price / Orders:

All prices are in US dollars and are valid for 30 days from the date of quotation unless otherwise indicated in writing.

Prices do not include applicable taxes. Customer is responsible for paying all applicable sales taxes and other taxes calculated on the price of goods sold.

Final acceptance of a purchase order for Products occurs when Edmunds transmits to Customer an order acknowledgement. Order cancellations must be requested in writing by the Customer and are only possible if manufacture of an ordered Product has not yet begun. Orders for special-order and/or non-stock Products cannot be canceled.

Unless otherwise agreed in writing by Edmunds and Customer, quoted prices for Edmunds Custom Design & Build Products include the Products themselves and only the following:

- a. A set of electronic drawing files delivered electronically or on commercially-standard media (at Edmunds’ option) prepared per commercially-accepted drawing standards plus 1 reduced-size hard copy of ladder and logic electrical drawings. The drawings are confidential and proprietary to Edmunds and are licensed to Customer solely for use of the Products.
- b. One instruction and maintenance manual provided in a commercially-standard format (*e.g.*, Microsoft Word).
- c. Training at Edmunds’ Farmington, Connecticut facility consisting of Edmunds personnel providing a hands-on training seminar for set-up, operation, and maintenance of Products. Customer shall identify and schedule personnel responsible for operating the Products to attend this training (for optimum effectiveness we recommend group size not to exceed (5) trainees).
- d. Unlimited phone contact during Edmunds’ regular business hours to answer questions and assist in troubleshooting problems for the duration of any applicable warranty period (*See* Section 8 below).
- f. Edmunds standard components, and paint colors.

### 2. Confidentiality of Proposals:

The conceptual and technical information contained in an Edmunds quote/proposal is confidential and the sole and exclusive intellectual property of Edmunds. This information, as well as any other technical and proprietary information contained in a quote, proposal or related documents or drawings, is provided for the sole and exclusive review of the Customer to which the proposal is sent. Customer shall not allow any third party to gain knowledge of any technical, conceptual, or proprietary information contained in a proposal or subsequent order without the express prior written permission of Edmunds. If Customer rejects the proposal, the same shall be returned to



Edmunds, and Customer shall delete beyond recovery all copies of the proposal and certify such destruction to Edmunds.

### **3. Runoff, Testing and Acceptance:**

As used in this Agreement, “part(s)” shall refer to parts supplied by or to the Customer which are measured by the Product(s); “components” shall refer to portions of the Products.

Where Edmunds and Customer have agreed that Product acceptance testing will occur, Customer shall supply at its own cost sample parts 6 weeks prior to scheduled shipment. Testing will determine whether the Products conform to any specifications agreed by Edmunds and Customer in writing.

Primary acceptance is to be at Edmunds Gages, Farmington, Connecticut. Edmunds will notify Customer in writing that Products are ready for acceptance testing. Customer shall ensure that qualified personnel with authority to accept the Products participate in the runoff within 14 days of the notice unless the Parties agree otherwise in writing.

Unless otherwise agreed in writing, acceptance testing will verify to a 15% AIAG GR&R per as calculated by the EPIC-CAG, using the “X-Bar and R (ARM) - percent of tolerance” method (calculated at 5.15 sigma) on direct measured checks, and 20% on calculated features (taper, roundness, and etcetera), performed with study worthy clean, dry, temperature stable production parts or the setting masters..

If the Products conform to the foregoing acceptance criteria (or the other criteria agreed in writing) based on the test at the Edmunds facility, Customer shall execute a form constituting preliminary acceptance / authorization to ship in a commercially-reasonable form provided by Edmunds (such form, the “Shipment Authorization”). Notwithstanding the foregoing, if Customer does not conduct acceptance testing at the Edmunds Facility within fourteen (14) days of being notified that the Products are ready for acceptance testing (or such other period as the Parties may have agreed in writing), the Products will be deemed to have passed such acceptance testing and Edmunds shall be deemed to have been given a Shipment Authorization.

Customer may repeat at its own facility the procedure used during acceptance testing at Edmunds promptly after receipt of same, but in no event more than two weeks after receipt. Final acceptance shall occur upon the earlier of: (a) Products passing such testing, or (b) such two weeks expiring without the Products failing testing (in either case, “Final Acceptance”)

### **4. Shipments:**

Unless otherwise agreed in writing, all orders for Products are Ex Works Edmunds manufacturing facility in Farmington, Connecticut USA.

Edmunds will select a commercially reasonable carrier of its choice to ship Products. The Customer is responsible for all freight charges, insurance premiums, duties and taxes.

Edmunds has no responsibility for damages to Products caused by a shipper. In the event of shipping damage, it is Buyer's responsibility to notify and file damage claims with the delivery company. The Customer should also timely inform Edmunds of any damage.



## **5. Payment Terms:**

All prices are quoted at a cash discount. If customer pays by credit card, the prices charged will not include the discount and customer will be charged a price that will be 3% higher than the quoted cash price.

Edmunds pricing excludes all taxes, VAT permits, export or import duties, and Edmunds shall have no responsibility for the payment of same.

Unless otherwise agreed by the Edmunds credit department and Customer in writing, the following times for payment shall apply:

**Catalog standard products** (those that can be purchased/specified from the catalog):

Net 30 days

**Custom design & build specials:**

20% of total price is due and payable upon placement of your order

30% of total price due and payable upon design approval, as indicated by your execution of an acceptance certificate, not to be unreasonably delayed, conditioned or withheld

40% of total price is due and payable upon acceptance (not to be unreasonably delayed, conditioned or withheld) of the Product(s) by your representative at our facility and before shipping, as indicated by your execution of a Shipment Authorization.

The final 10% payment is due and payable within 10 days after Final Acceptance of the Product(s) at your facility or 45 days from date of shipment, whichever is sooner.

All payments originating from outside the USA must be paid by wire transfer of funds (US DOLLARS ONLY) to our bank (details to be provided upon request) with all charges related to such transfer to be borne by the Buyer.

## **6. Lead Times/Delivery:**

Lead times are estimated from the quote date on quotes and calculated from the order date on orders.

Customer shall promptly (but in no event later than 5 days after receipt of a design or such other time period as customer and Edmunds shall agree in writing): approve a design when furnished by Edmunds or timely raise in writing any design deviations from agreed specifications so they can be addressed or corrected. Such delays or deviations may affect the original estimated delivery. Failure to timely raise objections to a design shall be deemed acceptance of the design.

Lead times are good faith estimates and can change as other orders are received. Edmunds is not responsible for any delays that may arise or for any damages that result from delayed or canceled shipments for any reason.

## **7. Credit Approval; Customer Responsibility for Payment:**

Edmunds has no obligation to sell Products or Services on credit and may decline to do so in its sole discretion. All orders sold on credit are subject to approval by Edmunds's Credit Department. Edmunds reserves a security interest in the Products until the Products have been paid for in full. You agree to sign and return any UCC financing statements, if requested by Edmunds, before a Product will be shipped.



It is the Customer's responsibility to make payments on time as agreed. If payment is not received as scheduled, you will be billed finance charges on the unpaid balance until the complete amount has been paid at the lower of: (a) one and one-half percent (1½%) per month; or (b) the highest finance charge permitted by law. These charges will be added to and become part of the purchase price. You are also responsible for any costs incurred by Edmunds in collecting the purchase price or enforcing its security interest, including without limitations, reasonable attorneys' fees and expenses.

Customer shall have no right to use Products that have not been fully paid for.

## **8. Warranties**

### **a. The Edmunds Warranty**

As an exclusive express warranty for Products, Edmunds warrants that Products, under designed and intended use as documented in the applicable quote, shall be free from defects in material and workmanship for a period of twelve (12) months from the date of shipment. Consumable components are specifically excluded from this warranty, including but not limited to, lamps, elastomers, seals, filter elements, air tooling, spare parts, and wear surfaces.

Buyer's sole and exclusive remedy against Edmunds and its distributors or sales representatives for a breach of the aforesaid Products warranty shall be the repair or replacement of defective, non-consumable components of the Products as provided herein.

As an exclusive express warranty for Services, Edmunds warrants that any Services will be performed in a workmanlike manner by personnel with appropriate training. Buyer's sole and exclusive remedy against Edmunds and its distributors or sales representatives for a breach of the aforesaid Services warranty is re-performance of the Services by Edmunds or service providers selected by Edmunds.

### **b. Exclusions:**

The Edmunds Products Warranty set forth in Section 8.A.a shall not apply to any claims, loss or damage arising from:

- Customer's failure to use or maintain the Products in accordance with Edmunds instructions, including without limitation the instruction and maintenance manual;
- Customer's failure to use clean electricity at the proper voltage with surge and power fluctuation protection;
- Use of the Products for purposes other than for what they were designed and intended;
- Use of the Products with improper process variables such as unclean parts;
- Use of the Products with substitutes for Edmunds components not authorized by Edmunds in writing;
- Use of the Products by negligent operators;
- Use of the Products with grossly out-of-tolerance parts;
- Use of the Products with insufficient treatment of the incoming air supply (such as improper filtering and moisture separation);
- Any Product that has been subjected to misuse, abuse, neglect or improper storage, handling, maintenance, or modifications or repairs by any party other than Edmunds;
- Use outside of the operating limits for which such Products are offered and sold;



- Components that are manufactured by persons or entities other than Edmunds, even if installed in, on, or with the Products, or integrated in a system with the Products. Such components shall carry the standard warranty/guarantee of the manufacturer thereof, if any, as Customer's exclusive warranty.

The Edmunds Services warranty does not cover service trips that are deemed problem-related issues due to Customer's process variables that negatively affect the performance of Products. This might include uncleanliness of parts, grossly out-of-tolerance parts, and incorrect parts introduced to the gage or similar issues unrelated to intended use.

Repairs required to remove foreign material from any of the measurement circuits inserted at the customers facility will not be covered under the terms of any warranty.

All tests performed on Buyer's manufactured products are performed pursuant to the Buyer's specifications for its manufactured products, and by performing such tests Edmunds Gages shall not warrant or assume any liability for defects in such manufactured products, measurement data, or measurement specifications.

Service trips that are performed outside of Edmunds scope of warranty responsibility will be billed at our prevailing per day rate including travel-related expenses at cost.

### **c. Customer Responsibilities Under the Warranty**

It is the Customer's responsibility to notify Edmunds immediately when a Product is found defective during the Warranty repair / replacement period. Customer shall communicate in good faith with Edmunds to determine the nature of the defect. Edmunds will in its sole discretion (acting reasonably) determine the scope of its obligations, including: (a) whether the alleged Product defect is covered by the warranty; (b) whether the Product should be returned to Edmunds to determine whether the warranty applies; and/or (2) whether Edmunds will perform repairs at Customer's location.

Customer shall not return a Product to Edmunds without a prior return authorization. It is Customer's responsibility to pay for return shipments and to ensure that any Products are securely packaged for return shipment.

If a Customer wants to purchase Services not required to be provided by the aforesaid warranty, the same will be provided at Edmunds' then-standard rates and prices and Customer shall prepay for such Services.

### **9. DISCLAIMER OF OTHER WARRANTIES:**

THE WARRANTIES SET FORTH IN SECTION 8.A ABOVE ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WHICH ARE EXCLUDED.

### **10. Work and Safety Regulation; Indemnification:**

The Customer is responsible for knowing, understanding and complying with the work and safety laws and regulations governing use of the Products, and Edmunds does not assume responsibility or liability for your performance or compliance with those laws and regulations. The Customer assumes all risk of and shall indemnify and hold harmless to the fullest extent permitted by law, Edmunds, and any of its board, officers, employees, parents, subsidiaries, affiliates or agents from and against any liability arising from any misuse, abuse, modification or repair of the Products by you, your employees or agents, or your customers after delivery, including without limitation, any injury, disability or death of workers or employees. BUYER'S OBLIGATION HEREUNDER IS IN



NO WAY LIMITED BY ANY PROTECTION AFFORDED IT UNDER WORKERS' COMPENSATION ACTS, DISABILITY BENEFITS ACTS, OR OTHER EMPLOYEE BENEFITS ACTS.

**11. LIMITATION OF LIABILITY:**

**THE LIABILITY OF EDMUNDS AND ITS BOARD, OFFICERS, EMPLOYEES, PARENTS, SUBSIDIARIES, AFFILIATES OR AGENTS FOR ANY LOSS OR DAMAGE ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM THE PERFORMANCE OR BREACH OF THE TERMS HEREOF, OR FROM THE DESIGN, MANUFACTURE, SALE, DELIVERY, RESALE, INSTALLATION, TECHNICAL DIRECTION OF INSTALLATION, INSPECTION, REPAIR, OPERATION OR USE OF ANY PRODUCTS OR SERVICES SOLD OR PROVIDED BY EDMUNDS TO THE CUSTOMER, SHALL IN NO CASE EXCEED, IN THE AGGREGATE, THE PRICE PAID BY THE CUSTOMER FOR THE PARTICULAR PRODUCTS OR SERVICES THAT GIVE RISE TO THE CLAIM, LESS ANY DAMAGES PREVIOUSLY PAID BY EDMUNDS TO CUSTOMER RELATED TO SUCH PRODUCTS OR SERVICES.**

**IN NO EVENT SHALL EDMUNDS OR ITS BOARD, OFFICERS, EMPLOYEES, PARENTS, SUBSIDIARIES, AFFILIATES OR AGENTS HAVE ANY LIABILITY FOR EXEMPLARY, INCIDENTAL, CONSEQUENTIAL OR LOST PROFITS DAMAGES, INCLUDING BUT NOT LIMITED TO DAMAGES FOR DELAY, LOST SALES, LOST PROFITS, LOST OPPORTUNITIES, LOST MARKET GROWTH OR LOSS OF FUTURE MARKET SHARE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.**

**THE LIMITATIONS OF LIABILITY SET FORTH IN THIS SECTION 11 SHALL OPERATE ON ANY CLAIM(S) OF ANY KIND (INCLUDING, BUT NOT LIMITED TO, CLAIMS FOR INJURY TO PERSONS OR PROPERTY), WHETHER BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER LEGAL THEORY, EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.**

**12. Limitation of Actions:**

No action for breach of any term of this contract or any other duty of Edmunds with respect to the Product(s) may be commenced more than one (1) year after delivery of the Product(s) to the Customer.

**13. Force Majeure.**

Edmunds is not liable for nor shall it be in breach of or default under these terms for any delay or failure to perform as a result of any causes or conditions beyond its reasonable control, including by not limited to fire, explosion, flood, storm or other acts of God, war, embargo, strike, riot, or the intervention of any government authority. If a force majeure event occurs, Edmunds shall give the Customer prompt written notice and use commercially reasonable efforts to minimize the event's impact.

**14. Assignment:**

Except in the case of a corporate restructuring in which this Agreement is assigned to an Affiliate of a Party, neither Party shall have the power to assign or delegate these Terms, including any right or obligation hereunder, without the prior written consent of the other Party, which shall not be unreasonably withheld. These Terms shall be binding on each Party's successors and permitted assigns.

**15. Final Written Agreement; Written Amendments Only:**

These Terms supersede all prior discussions and agreements, and represents the entire agreement, between the Parties with respect to the subject matter hereof. No amendment to these Terms shall be valid unless in writing and signed, on paper (not via assent in electronic mail), by an authorized representative of each Party.





**16. Governing Law; Disputes:**

This contract and all matters concerning, arising out of or relating to its subject matter shall be governed by the laws of the State of Connecticut, excluding the State's conflict of law principles. This contract excludes application of the 1980 United Nations Convention on Contracts for the International Sale of Goods. Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association (AAA) in accordance with its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. Arbitration shall be held in the Hartford, Connecticut office of the AAA.

**17. Miscellaneous:**

Should any provision of these Terms be held to be void, invalid, unenforceable or illegal by a court, the validity and enforceability of the other provisions shall not be affected thereby and the Parties consent to judicial modification of the affected provision to the least extent necessary to approximate its original intent. Failure of either Party to enforce any provision of these Terms shall not constitute or be considered as a waiver of such provision or of the right to enforce that or other provisions. The headings and captions contained in this Terms of Use are inserted for convenience only and shall not constitute a part thereof. All notices required or otherwise given under these terms must be in writing, and will be considered as having been given by one Party to the other Party upon the latter Party's receipt of the notice. The Parties do not intend, nor shall any clause be interpreted, to create under these Terms any obligations of either Party in favor of, or benefits to, or rights in, any third party.

**18. Resellers, Manufacturer's Representatives.**

Where the Products or Services are sold by a reseller or manufacturer's representative (together, "Representative"), all the terms and conditions herein shall be binding upon the person or entity that ultimately purchases the Products or Services (as such ultimate purchaser is disclosed to Edmunds in writing), and any intermediate seller shall lose all rights as a "Customer." Resellers or manufacturer's representatives shall ensure that these terms and conditions are provided to such ultimate purchaser before delivery of the Products or Services. The Representative shall defend, indemnify, and hold harmless Edmunds and its employees, officers, affiliates, successors and assigns (the "Edmunds Indemnified Parties") against any claim made by an ultimate customer that: (a) seeks to obtain relief against the Edmunds Indemnified Parties that would not be permitted to be obtained by a Customer under these terms and conditions; and (b) arises from such ultimate customer's claim not to be bound by these terms and conditions because it was not provided with a copy of these terms and conditions.