



**INFINITY ENGINEERED PRODUCTS  
STANDARD TERMS AND CONDITIONS OF SALE**

Unless otherwise agreed to in writing, the following provisions apply to all Infinity Engineered Products ("Infinity") sales:

1. **SCOPE:** These terms and conditions of sale (these "**Terms**") are the only terms which govern the sale of the goods ("**Goods**") to the entity listed on Infinity's invoice ("**Buyer**"). Buyer's payment for or the receipt or use of the Goods shall operate as acceptance of all the terms and conditions specified herein. Additional, inconsistent or different terms in any order, purchase order, acknowledgement or communication submitted by Buyer, or any attempt by Buyer to vary in any degree any of these Terms, whether Infinity has executed any such document, shall be deemed material and are hereby objected to and rejected by Infinity.
2. **ORDER:** All orders received from Buyer are subject to review and acceptance by Infinity, unless Infinity's quotation specifies that it is a bid in response to an invitation for bids in which event the order or award shall constitute acceptance of the bid in accordance with the bid terms. Accepted orders are final and cannot be cancelled by Buyer, except with Infinity's written consent.
3. **DELIVERY:**
  - a. **Shipping Dates:** Any shipping or delivery dates are approximate only and are subject to change. Infinity shall not be liable for any delay beyond its control including without limitation fire, flood, Act of God, strike, labor unrest, epidemics, disease outbreak and/or any resulting quarantine restrictions, strikes, labor stoppages, shortage of material or transportation, failure of equipment, war, riot, civil insurrection, terrorism, or act of any governmental authority. In the event that Infinity is unable, due to any such occurrence or otherwise, to fulfill its total commitments to all customers, Buyer agrees to accept as full and complete performance by Infinity, deliveries in accordance with such plan or proration as Infinity may adopt.
  - b. **Shipment:** All shipments shall be made FOB, shipping point and prices do not include transportation charges.
  - c. **Packaging:** Infinity will provide commercial packaging adequate, under normal conditions, to protect the goods in shipment and identify the contents.
  - d. **Routing:** All goods will be shipped via the most direct and economical means of transportation under the circumstances, as deemed by Infinity, it is sole and absolute discretion.
  - e. **Title and Risk of Loss:** Title and risk of loss will pass to Buyer upon Infinity making the product available for shipment at the designated shipping point.
  - f. **Quantity Variance:** Infinity reserves the right to ship and Buyer agrees to accept an under-or over-run of any quantity up to and including 5% of the quantity ordered.
  - g. **Claims:** Claims for loss or damage to Goods in transit must be entered and prosecuted by the Buyer with the freight carrier.
  - h. **Inspection and Rejection of Nonconforming Goods:** Buyer will be deemed to have accepted the Goods unless it notifies Infinity in writing of any Nonconforming Goods within thirty (30) days of receipt and furnishes such written evidence or other documentation as required by Infinity. "Nonconforming Goods" means only the following: (i) Goods shipped is different than identified in Buyer's purchase order; or (ii) Good's label or packaging incorrectly identifies its contents. If Buyer timely notifies Infinity of any Nonconforming Goods, Infinity shall, in its sole discretion, (i) replace such Nonconforming Goods with conforming Goods, or (ii) credit or refund the price for such Nonconforming Goods. Buyer shall ship, at its expense and risk of loss, the Nonconforming Goods back to Infinity. Buyer acknowledges and agrees that the remedies set forth in Section 3(h) are Buyer's exclusive remedies for the delivery of Nonconforming Goods. Buyer may not return any Goods for any reason without Infinity's prior written approval.
4. **PRICE AND PAYMENT:**
  - a. **Price:** Buyer shall purchase the Goods at the price mutually agreed to by the parties.
  - b. **Taxes:** Federal Manufacturers' Excise Tax on automotive products, where applicable, is included in quoted price, unless otherwise noted. State and local sales, use and similar taxes are not included in price and will be billed separately unless a valid exemption certificate is furnished by Buyer.
  - c. **Payment:** All amounts are payable net 30 days and in US dollars. Infinity may demand payment in advance of shipment if, in its opinion, the credit or financial condition of Buyer is, or is about to become, impaired. Buyer shall pay interest on all late payments at the lesser of the rate of 1.5% per month or the highest rate permissible under

applicable law, calculated daily and compounded monthly. Buyer shall reimburse Infinity for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees. In addition to all other remedies available under these Terms or at law (which Infinity does not waive by the exercise of any rights hereunder), Infinity shall be entitled to suspend the delivery of any Goods if Buyer fails to pay any amounts when due hereunder.

- d. **Payments When Shipments are Delayed:** Where Buyer requests delay in shipment, Infinity shall have the option of billing for Goods when ready for shipment. If material is not ordered out within sixty (60) days after Goods are ready, Infinity will have the option of billing storage charges.

## 5. **LIMITED WARRANTY:**

- a. **Warranty:** Infinity warrants that the Goods will be free of defects in material and workmanship under normal use for the period of time described in Infinity's Warranty Claim Form located at [https://infinityairsprings.com/wp-content/uploads/2020/09/INFY\\_BulletinWarrantyAirSpring\\_2020\\_v2.pdf](https://infinityairsprings.com/wp-content/uploads/2020/09/INFY_BulletinWarrantyAirSpring_2020_v2.pdf).
- b. **Remedies:** Infinity's sole liability and Buyer's sole and exclusive remedy for breach of this limited warranty shall be the repair or replacement of such Goods by Seller or refund of the purchase price, at Seller's option and cost (but not including removal or installation) provided the Goods are found to be defective upon examination by an Infinity representative. In no event shall Infinity be liable for any special, indirect, incidental or consequential damages. Infinity's repair, replacement or refund shall be the exclusive remedy of Buyer for any breach of the foregoing warranty.
- c. **Exclusions:** Warranty satisfaction is available only if: (i) Infinity is provided prompt written notice of the warranty claim, (ii) Buyer is not in default of any of these Terms, (iii) the Goods are handled and used as prescribed in the documentation accompanying the Goods, and (iv) Infinity's examination discloses that any alleged defect has not been caused by; misuse; abuse; neglect; improper installation; operation, maintenance, repair, alteration or modification by other than Infinity; accident; or unusual deterioration or degradation of the Goods due to physical environment.
- d. **Disclaimer:** THE ABOVE WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES AND CONDITIONS, WHETHER EXPRESSED, IMPLIED OR STATUTORY AND INFINITY PROVIDES NO WARRANTIES, CONDITIONS, GUARANTEES, REPRESENTATIONS, OR REMEDIES EXCEPT AS SET FORTH IN THIS SECTION 5. TO THE FULLEST EXTENT PERMITTED BY LAW, INFINITY DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR ARISING FROM COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE.

6. **LIMITATION OF LIABILITY:** INFINITY WILL NOT BE LIABLE HEREUNDER FOR ANY SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION, LOSS OF USE, LOSS OF BUSINESS OR LOSS OF PROFIT 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. IF INFINITY IS FOUND TO BE LIABLE TO BUYER HEREUNDER, SUCH LIABILITY FOR ANY AND ALL CLAIMS UNDER THESE TERMS OR RELATED TO THE GOODS PROVIDED, INCLUDING CLAIMS BASED ON CONTRACT, NEGLIGENCE AND/OR STRICT LIABILITY WILL NOT EXCEED THE AGGREGATE AMOUNT OF THE LESSER OF (I) ONE HUNDRED THOUSAND (\$100,000) DOLLARS OR THE AMOUNT PAID BY PURCHSER FOR THE GOODS, REGARDLESS OF THE NUMBER OF CLAIMS THAT MAY ARISE DURING THE TERM HEREOF. ANY ACTION AGAINST INFINITY MUST BE BROUGHT WITHIN TWELVE (12) MONTHS AFTER THE CAUSE OF ACTION ACCRUES.

## 7. **PATENT INFRINGEMENT:**

- a. **Buyer Obligation:** In the event Goods furnished by Infinity are: (i) furnished according to Buyer's design or specifications or (ii) labeled or marked with a trademark or trade name requested by Buyer ("Buyer IP"), Buyer shall, at its own expense, defend Infinity and its officers, directors, shareholders, and employees, ("Infinity Indemnitees") from and against any and all allegations, threats, claims, suits, and proceedings brought by a third party arising from an allegation that Buyer IP infringes such third party's copyrights or trademarks, or misappropriates such third party's trade secrets; and shall indemnify and hold Infinity Indemnitees harmless from and against all liability, damages, fines, penalties and costs (including, without limitation, reasonable attorneys' fees) to the extent based upon such a claims.
- b. **Infinity Obligation:** As to any Goods manufactured according to a design or specification not furnished by Buyer, except as excluded herein, Infinity will defend any suit or proceeding brought against Buyer arising out of a claim that

the use or resale of the Goods sold hereunder by Infinity infringes any U.S. patent, copyright or trademark and will pay all costs and damages finally awarded or agreed upon by Infinity that are directly related thereto not to exceed the price paid Infinity for the Goods held to infringe. If, in any such suit, an injunction is issued against the further use of the Goods or any part thereof, Infinity at its option and expense will either: (i) procure for Buyer the right to continue using such Goods, (ii) replace the same with non-infringing goods, (iii) modify the Goods to make them non-infringing, or (iv) if (i)-(iii) are not commercially practicable, refund to Buyer the purchase price of the affected Goods in exchange for their return. Seller will have no obligation to defend or for any other liability with respect to any suit or proceeding to the extent based on or arising out of: (v) a design, specification or configuration of Buyer, (vi) modification of the Goods by someone other than Infinity, (vii) the use of the Goods in an environment or in a way not specified by Infinity, or (ix) the use of the Goods in combination with other equipment, goods or materials not supplied by Infinity. THIS SECTION 7(b) STATES THE SOLE AND EXCLUSIVE LIABILITY OF INFINITY, ITS AFFILIATES AND SUPPLIERS FOR ANY THIRD PARTY CLAIMS OF INFRINGEMENT, AND BUYER'S SOLE AND EXCLUSIVE REMEDY FOR SUCH CLAIMS.

- c. **Procedure:** Infinity's infringement obligation is expressly conditioned on: (i) Buyer promptly notifying Infinity in writing of any such claim and any suit or proceeding, (ii) at Infinity's expense, Buyer giving Infinity the sole right to defend, settle and control the defense of the suit or proceeding, (iii) Buyer providing all necessary information and assistance for such defense or settlement, and (iv) Buyer taking no position adverse to Infinity in connection with such claim.
8. **EXPORT CONTROL:** Goods supplied hereunder may be subject to various export laws and regulations. Buyer will at all times adhere to the U.S. export laws and regulations and will not export or re-export any technical data, Goods, or other products received pursuant to these Terms unless authorized by U.S. export laws and regulations and will adhere to ethical business practices, including but not limited to the Foreign Corrupt Practices Act, and applicable law regarding ethical supply chain and/or procurement practices.
9. **SAMPLES:** In the event samples are furnished to Buyer, Infinity will not assume any liability in connection with the furnishing or use thereof, and such samples are provided AS-IS and with no warranty.
10. **SPECIAL TOOLING:** All Special Tooling required to produce the Goods shall remain the property of Infinity unless specific arrangements are otherwise made. The term "Special Tooling" shall include such items as molds, dies, forms, jigs, mandrels, fixtures, and other special equipment, except machinery that is required to produce the Goods. Buyer is responsible for any costs to modify or replace the Special Tooling required to produce the Goods.
11. **GENERAL PROVISIONS:**
  - a. **Entire Agreement:** These Terms state the entire agreement between the parties concerning Goods contained herein and supersedes all prior proposals or agreements whether oral or written with respect thereto.
  - b. **Modification:** No alteration, waiver or modification of any provision of these Terms will be effective unless it is in writing, expressly indicates that it modifies these Terms and is signed by the duly authorized representative of both parties.
  - c. **Waiver:** Failure of either party hereto to insist upon strict conformance with any of the terms or conditions contained herein will not be deemed a waiver of a party's right to require strict conformance therewith at any subsequent time, or compliance with any other provision hereof.
  - d. **Severability:** If any term or provision of these Terms are invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of these Terms or invalidate or render unenforceable such term or provision in any other jurisdiction.
  - e. **Governing Law:** All matters arising out of or relating to this Agreement is governed by and construed in accordance with the internal laws of the State of Ohio without giving effect to any choice or conflict of law provision or rule.
  - f. **Jurisdiction:** Any legal suit, action or proceeding arising out of or relating to these Terms shall be instituted in the federal courts of the United States of America or the courts of the State of Ohio in each case located in the City of Cleveland and Buyer irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding.
  - g. **Assignment:** Buyer may not assign these Terms without Infinity's prior written consent.
  - h. **Relationship:** The relationship between the parties is that of independent contractors. Nothing contained in these Terms shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.