

**Pedders USA, LL**  
**TERMS AND CONDITIONS OF SALE**

These terms and conditions (these "Terms") apply to all sales of inventory by Pedders USA, LLC, a Nevada limited liability company ("Seller"). Each person or entity who purchases inventory from Seller (a "Buyer") shall be bound by these Terms, whether or not these Terms are attached to any other documentation related to such purchase, as all sales of inventory by Seller are conditional upon Buyer's agreement with these Terms. If these Terms are tendered to Buyer, electronically or otherwise, before Buyer tenders a purchase order or similar document to Seller, these Terms are in lieu of any terms later submitted by Buyer and Seller rejects all additional or different terms and conditions of Buyer, whether confirmatory or otherwise. If Seller tenders these terms after the tender by Buyer of other terms, whether as part of a purchase order or otherwise, then Seller's acceptance of any offer by Buyer associated with Buyer's terms is expressly conditioned upon Buyer's acceptance of these Terms exclusively and to the exclusion of any proffered Buyer terms or conditions, regardless of whether these Terms contain any terms additional to, or different from, any terms proffered by Buyer. Buyer's performance, or acceptance of, or payment for, any products from Seller will constitute Buyer's acceptance of these Terms exclusively. These Terms, together with any associated description of the products and quantity and price terms that are the subject of the purchase and sale transaction under these Terms constitute a "Supply Agreement."

1. **Description of Products.** Seller agrees to sell, and Buyer agrees to purchase, the products described as part of the Supply Agreement.
2. **Prices; Minimum Quantities.** Prices in Seller's price list are subject to change without notice and are not binding on Seller with respect to orders received after they have changed. [INSERT LANGUAGE REGARDING BINDING CHANGE PROCESS?] The prices of the products and/or services supplied by Seller are as stated in the Supply Agreement. Except as otherwise stated in a Supply Agreement, all pricing is FOB (UCC 2-319) domestically or EXW (Incoterms 2000) internationally, in either case Seller's facility or such other location as Seller specifies in a Supply Agreement. The prices for certain products offered by Seller are based on Buyer purchasing a stated minimum order quantity and/or minimum shipment quantity of those products. Where Buyer orders a product that is subject to a minimum order quantity and the quantity ordered does not meet that minimum order quantity, Seller reserves the right to adjust the price or ship the minimum order quantity at Seller's discretion.
3. **Taxes and Fees.** All prices are exclusive of sales, use, excise, customs, export, import, commodity and/or any other taxes. Buyer will pay all such taxes and any license fees or other charges incidental to the sale of products. Buyer will, at Seller's request, provide to Seller reasonable proof of payment by Buyer of such taxes, fees, and assessments. If Seller is required to prepay any taxes on behalf of Buyer, Buyer will promptly reimburse Seller for all such taxes paid.
4. **Payment Terms.** Seller will invoice upon shipment. Payment terms are net 30 days from date of shipment. If Buyer fails to timely pay any invoiced amount, Buyer will pay to Seller late fees of the greater of (a) 1.5% of the past due amount per month or part thereof during which the amount is past due, and (b) \$25.00, in each case as liquidated damages. Buyer will pay any invoice issued by Seller without discount, setoff, or reduction. All trading accounts are subject to prior and ongoing approval of Seller's credit department in accordance with Seller's credit policies and practices in effect from time to time. Seller may revise the amount of credit or terms of payment at any time for any reason in accordance with such policies and practices, and if Buyer at any time no longer qualifies for credit, all sales will be made on a cash in advance or COD basis. If Buyer fails to make payment when due or defaults in any other way, Seller may, at its option, without limiting any of its other rights or remedies available under these Terms or applicable law, and until Buyer's account is current: (1) withdraw credit and suspend or cancel performance under any or all Supply Agreements, (2) suspend performance, (3) reschedule shipment and/or (4) place all sales to Buyer on a cash in advance or COD basis. Seller may invoice separately for each shipment and, in any case, Buyer will pay for each shipment as invoiced without regard for other shipments.
5. **Shipments.** Seller will ship FOB (UCC 2-319) domestically or EXW (Incoterms 2000) internationally, in either case Seller's facility or such other location as Seller specifies in a Supply Agreement. Seller may select the freight carrier, and Buyer accepts carrier selection by Seller unless Buyer timely specifies in writing an alternative carrier reasonably acceptable to Seller. Shipping and/or delivery dates are estimates only and are subject to change. Time is not of the essence of Seller's obligations and Buyer is not entitled to reject an otherwise conforming tender made within a reasonable time. Any claims against Seller for shortages or non-conformance that could, with due diligence, be discovered by inspection upon receipt must be made within 10 days after receipt. Seller will package the products in accordance with Seller's standard practice. Seller may make deliveries in installments with appropriate partial invoicing issued for each such installment. Each shipment of products to be delivered is a separate sale and Buyer will pay the price for each shipment without regard for any failure to deliver, or non-conformity of, any previous or subsequent shipment. Seller's breach or default in the delivery of any particular shipment will not permit Buyer the right to refuse to receive any other shipment. Any failure by Buyer to pay for any shipment within the time stated for payment is an anticipatory material breach with regard to other shipments.
6. **Security Interest.** Buyer hereby grants a security interest in all goods sold by Seller to Buyer, whether or not yet paid for, and all products and proceeds thereof, to secure any and all of Buyer's obligations to Seller, and agrees that Seller may take any and all reasonable actions, including the filing of one or more financing statements under the Uniform Commercial Code and providing notice to secured parties of record, to perfect and protect such security interest. Upon the occurrence of a default by Buyer in the payment or performance of any such obligations, including without limitation any payment default under any Supply Agreement, Seller shall be entitled to repossess all such goods and exercise the rights and remedies of a secured party upon default as set forth in the Uniform Commercial Code.
7. **Termination; Default.** Either party may, without prejudice to its other rights or remedies, terminate a Supply Agreement by notice to the other party if: (1) the other party files a petition in bankruptcy or assignment generally for the benefit of creditors or initiates, or has initiated against it, any similar proceeding under any law with respect to creditor's rights, adjustment of debts, or similar law, becomes insolvent, becomes, or admits that it is, unable to pay its debts generally as they become due, or has a third-party manager or receiver appointed over any of its assets or (2) the other party defaults under any Supply Agreement or these Terms and does not remedy the default within 30 days (10 days in the case of payment defaults) following notice by the aggrieved party. In such circumstances, Seller may terminate any Supply Agreement as to unshipped portions of the products, and Buyer will remain liable for shipped products. If Seller elects to continue to make shipments after Buyer has defaulted or failed to provide adequate assurances of performance, no action by Seller shall constitute a waiver of any default by Buyer or in any way affect Seller's remedies for any such default.
8. **Product Changes.** Seller or Seller's supplier may, at any time and without notice to the Buyer, change the product(s) in any way that does not adversely affect the form, fit or function of the product(s) in any material respect. If Seller's supplier changes a product in a manner that makes such product unsuitable for Buyer or Buyer's customers, Buyer may cancel any outstanding purchase orders for such product not yet shipped. If Seller's supplier discontinues any product, Seller shall be relieved from any responsibility to purchase or ship any replacement or substitute product and all outstanding purchase orders for such discontinued product shall be deemed cancelled without any liability on the part of Seller.
9. **Technical Assistance.** Except as provided for in a separate signed agreement or as expressly stated in a Supply Agreement, Seller will not be required to provide technical advice, facilities, or service in connection with any Supply Agreement or the products supplied.
10. **Assignment.** Seller may assign any right under any Supply Agreement, and Seller may subcontract the performance of any obligation of Seller under any Supply Agreement provided that Seller remains primarily liable for the performance of the obligation. Buyer may not assign any right or obligation under any Supply Agreement.
11. **Warranty.** Seller warrants solely to Buyer that each product supplied under these Terms will, for the lesser of (a) 24 months after shipment, and (b) the first 40,000 km driven by the vehicle in which the product is installed (the "Warranty Period"), conform to Seller's written specifications during normal use and/or operation. Seller's sole and exclusive obligation, and Buyer's sole remedy for failure of any product to conform to the above warranty is, at the option of Seller, repair or replacement of the non-conforming product or a refund of the monies paid by Buyer for the non-conforming product. Seller's liability does not include the cost of removal or installation of the non-conforming product. Buyer must notify Seller in writing during the Warranty Period of any failure by a product to conform to the above warranty. Buyer will pay for shipping of any non-conforming product to Seller and Seller will pay for return shipping to Buyer. Liability under this warranty will be reduced to the extent that: (1) the product is not maintained according to Seller's specifications, (2) the product fails, malfunctions, or is damaged as a result of improper handling, improper storage conditions (including, but not limited to, where applicable, temperature and humidity), installation, maintenance, removal, modification or repair, (3) the non-conformity is caused by casualty, abuse, or improper use, (4) the product is altered other than by Seller or with Seller's express written approval, (5) the product is installed, used, or configured other than as contemplated by the parties under the applicable Supply Agreement or at or in a place other than that contemplated by the parties under the applicable Supply Agreement, (6) the product is used, operated, or connected with a third-party good or software not expressly designated by Seller's documentation and specifications for the product, (7) any failure results from a design or specification supplied by Buyer.
12. **Product Returns.** Buyer may not return any product unless Seller approves in writing the return. Upon Seller's request, Buyer will provide to Seller samples of products alleged by Buyer to be eligible for return. All return documentation must contain Seller's Returned Materials Authorization ("RMA") number. Seller may refuse returned shipments not approved by Seller or not properly identified. The request for return approval must include serial number, part number, lot number, and date code (each as applicable), and full identification of products to be returned. Buyer must properly pack and ship any returned products and all returned products must be in substantially the same condition as when the same were shipped to Buyer. Buyer must ship any returned products FOB (UCC 2-319) domestically or DDP (Incoterms 2000) internationally, in either case, Seller's place of business. Where products are returned other than for failure of the products to conform to the Supply Agreement, Buyer will pay Seller's restocking fee.
13. **Disclaimers and Limitation of Liability.** EXCEPT AS EXPRESSLY DESCRIBED IN SECTION 11, ALL GOODS, SERVICES, AND/OR SOFTWARE DELIVERED UNDER ANY SUPPLY AGREEMENT ARE SUPPLIED "AS IS" AND WITH ALL FAULTS. SELLER MAKES NO OTHER REPRESENTATIONS OR WARRANTIES, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO ANY GOODS, SERVICES, AND/OR SOFTWARE AND EXPRESSLY DISCLAIMS ANY REPRESENTATION OR WARRANTY AS TO THEIR QUALITY, PERFORMANCE,

- MERCHANTABILITY, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE. NOTWITHSTANDING ANYTHING IN ANY SUPPLY AGREEMENT OR OTHERWISE TO THE CONTRARY, SELLER WILL NOT BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, LOSS OF REVENUE OR PROFITS) ARISING FROM OR CAUSED, DIRECTLY OR INDIRECTLY, BY THE USE OR SALE OF ANY GOOD, SERVICE, AND/OR SOFTWARE BY BUYER OR ANY CUSTOMER OR SUCCESSOR HOLDER (INCLUDING, BUT NOT LIMITED TO, ANY END USER) OF ANY GOOD, SERVICE, AND/OR SOFTWARE; BY THE PERFORMANCE OR FAILURE OF SELLER TO PERFORM UNDER THESE TERMS; BY ANY OTHER ACT OR OMISSION OF SELLER; OR BY ANY OTHER CAUSE. IN NO EVENT WILL SELLER'S TOTAL LIABILITY TO BUYER FOR ANY CLAIM EXCEED THE SUM PAID TO SELLER BY BUYER FOR THE GOODS, SERVICES, AND/OR SOFTWARE SUPPLIED UNDER THE SUPPLY AGREEMENT IN CONNECTION WITH WHICH THE CLAIM ARISES. NO ACTION MAY BE BROUGHT BY BUYER FOR ANY BREACH OF THESE TERMS MORE THAN ONE YEAR AFTER THE ACCRUAL OF SUCH CAUSE OF ACTION.
14. **Indemnification.** Buyer will defend, indemnify, and hold harmless Seller and its employees, officers, directors, agents, affiliates, successors and assigns from and against any and all claims, suits, actions, demands, damages, losses, liabilities, penalties, fines, costs and expenses (including, without limitation, attorneys' fees) whatsoever that are incurred by or made against any indemnitee that arise out of or result from (i) the acts, omissions, negligence or misconduct of Buyer, (ii) any claim by any successor holder (including, but not limited to, any end user) of any of the products, or any other person or entity, related to the products sold by Seller, or the purchase, installation, or use of such products, or any undertakings, acts or omissions relating to such products, to the extent such claim is not based upon a breach of an express warranty of Seller, or (iii) any Buyer breach of any obligation in Section 17.
  15. **Confidentiality.** Buyer will, notwithstanding that any Supply Agreement may have terminated, keep in confidence and prevent the disclosure to any person all information and data disclosed to it by Seller that is marked confidential or by its nature ought to be considered confidential, including, but not limited to, quotes, business plans, technological techniques, prints, inventions, and research and development. Notwithstanding the foregoing, Buyer will not be liable for disclosure of any confidential information if the same: (i) is or becomes readily ascertainable by the public by proper means without breach by Buyer of any obligation to Seller of confidentiality; (ii) is disclosed with the prior written approval of Seller; or (iii) becomes known to Buyer from a source other than Seller without breach of these Terms by Buyer or breach by the source of any obligation of confidentiality. Seller will have no obligation of confidentiality or non-use with respect to information that Seller receives from buyer unless such obligations are established in a separate written confidentiality agreement signed by Seller.
  16. **Intellectual Property.** Except as expressly and particularly set forth in a separate written agreement signed by Seller, Buyer will obtain no right whatsoever in any copyright, patent, trademark, trade secret, mask work, or other intellectual property right of Seller or Seller's supplier, or that Seller or Seller's supplier creates, originates, discovers, or reduces to practice, or in which Seller or Seller's supplier acquires author or other rights, whether in consequence of these Terms, any Supply Agreement, any transaction or dealing between Seller and Buyer, or otherwise. Seller reserves all such rights to itself.
  17. **Export Controls.** Unless an appropriate license, exemption or similar authorization has been duly obtained, Buyer shall not, nor shall Buyer authorize or permit its employees, agents, successors or assigns to, export or re-export any products to any country identified as a prohibited destination by any applicable laws or regulations. Furthermore, Buyer hereby agrees to undertake and perform all "denied party screening" or similar obligations imposed by or arising under applicable laws or regulations. Buyer agrees and acknowledges that, to the extent applicable, these commodities, technology and/or software will be/were exported from the United States or other country of origin solely in accordance with the United States Export Administration Regulations or other export regulations applicable in the jurisdiction of origin. Any diversion contrary to U.S. or other applicable law is prohibited.
  18. **End-of-Life Disposition.** Buyer will, or will require Buyer's successor owner of the product(s) to, at Buyer's or the successor's own expense, properly dispose of the products according to any applicable law.
  19. **Governing Law; Jurisdiction; Venue; Severability.** These Terms and all Supply Agreements will be governed by and construed in accordance with the laws of the State of Michigan without regard for their conflict of law rules. The United Nations Convention on Contracts for the International Sale of Goods will not apply to these Terms or any Supply Agreement. Any action or claim arising out of or related to these Terms or any Supply Agreement may be brought only in the courts of the State of Michigan sitting in Ottawa County or the United States District Court for the Western District of Michigan and Seller and Buyer each irrevocably consent to the jurisdiction of, and venue in, such courts. If any provision of any Supply Agreement is illegal or unenforceable such provision will be reformed to, insofar as is possible, permit it to confirm with applicable law and, in any case, the remaining provisions will continue in full force and effect.
  20. **Use of Products.** Buyer shall use, and require its assigns, employees, contractors, and agents to use, all available safety precautions, in addition to any specifically set forth in any manuals, material safety data sheets, technical data sheets, instruction sheets, if any, furnished by Seller (or available from Seller's suppliers) relating to Seller's products. All such items posted on Seller's web site as of the date hereof shall be deemed to have been provided to Buyer and all such items posted to such site after the date hereof shall be deemed to be provided to Seller when actually viewed by or on behalf of Seller or, if later, on the tenth (10<sup>th</sup>) day after they were posted to such site. If Buyer fails to strictly observe each and every one of the obligations set forth in this Section 20 or if Buyer's use of any of Seller's products is in violation of any standard or rule of the American National Standards Institute or Occupational Health and Safety Act, or other applicable workplace law, regulation, or standard, Buyer will indemnify, defend, and hold harmless Seller and Seller and its employees, officers, directors, agents, affiliates, successors and assigns from and against any and all claims, demands, damages, actions, and causes of action, as well as any and all liability, loss, or expense of any kind, including reasonable attorneys' fees arising from, connected with or in any way pertaining to any such failure by Buyer.
  21. **Notification.** Buyer shall notify Seller promptly, and in any event within 30 days, after any accident or failure involving Seller's products that results in personal injury or damage to property and shall cooperate fully with Seller in investigating and determining causes of such accident or failure.
  22. **Attorneys' Fees and Costs.** Buyer will pay Seller's reasonable attorneys' fees and other costs and expenses for any and all amendments to these terms or to any Supply Agreement and for each and every legal or equitable action undertaken by Seller to enforce these Terms or the provisions of any Supply Agreement.
  23. **Errors.** Any and all typographical or clerical errors made by Seller in these Terms, in Seller's quotations or communications, or any Supply Agreement are subject to correction by Seller.
  24. **Force Majeure.** Seller will not be liable for failure to deliver, or for delay in delivery of, the products to the extent arising out of or related to causes beyond its reasonable control, including, without limitation, acts of God or of the public enemy, acts of any governmental authority, fires, floods, other casualties, severe weather, epidemics, quarantine restrictions, strikes, labor disputes or shortages of labor, embargoes, wars, riots, civil commotion, shortage of rail cars or semi-trailers and trailers, delays in transit or inability to secure necessary parts or materials (whether at all or at commercially reasonable prices). In no event will Seller be liable for any loss or damage, including in particular, direct, incidental, indirect, special, punitive or consequential damages (including loss of profits) due to any failure to deliver or delay in delivery. If Seller is wholly or partially unable to perform because of any cause beyond its reasonable control, Seller may allocate production and deliveries among Seller's customers or may terminate the Supply Agreement without any further liability to Buyer.
  25. **Remedies Cumulative.** All rights and remedies of Seller under these Terms and any Supply Agreement are cumulative. No pursuit or receipt by Seller of any particular remedy will constitute an exclusive election of remedies and Seller will have the benefit of all remedies available at law, in equity, or otherwise.
  26. **Cross-Default.** Any default by Buyer under any other agreement to which Seller or any Seller affiliate is a party will be a default by Buyer under these Terms and of each Supply Agreement. Such other agreements may, where applicable, be (but are not limited to), distributor or similar agreements.
  27. **Third Parties.** Except for the third-party indemnitees under the indemnification obligations contained in these Terms (each of whom is an express third-party beneficiary of such indemnification obligations), there are no third-party beneficiaries of any right or obligation under these Terms or any Supply Agreement.
  28. **Third-Party Terms.** Under no circumstances will Seller be obliged or liable to Buyer or to any third party with respect to any representation, warranty, covenant, duty, or liability to any third party, whether as part of a "directed sourcing" arrangement or otherwise. Without limiting the foregoing, Seller expressly disclaims and rejects any obligation of any kind to comply with any terms or conditions of Buyer's direct or indirect customer(s), regardless of any obligation to such persons taken on by, and/or imposed upon, Buyer and regardless of whether Seller is aware of any such requirement upon Buyer. Seller will be liable to any third party, if at all, solely according to such separately negotiated, written, and signed agreement, if any, as Seller actually negotiates and executes with such third party.
  29. **Entire Agreement.** These Terms, together with any specific terms contained in any Supply Agreement, any separate written and signed distributor agreement, and any separate written confidentiality agreement between the parties, embody the entire agreement between the parties with regard to the subject matter hereof and thereof and supersede all other prior agreements between the parties with regard to such subject matter. Neither these Terms nor any Supply Agreement may be modified, except in writing and signed by the party against whom enforcement is sought.