



Mainstay Terms and Conditions – Conditional Warranty

1. TERMS AND CONDITIONS OF SALE

Customer's ("Customer") acceptance of any offer to sell is limited to these terms and conditions. No additional, different, or inconsistent terms and conditions shall become part of the contract between Mainstay and Customer unless expressly accepted in writing by Mainstay. Mainstay's acceptance of any offer to purchase is expressly conditioned on Customer's acceptance of all terms and conditions as stated herein, including any terms in addition to, or inconsistent with, those contained in Customer's offer. Acceptance of any of Mainstay's products or services shall in all events constitute such assent. Purchase orders from Customer are only to be used for designating products or services ordered, respective quantities and delivery dates; all other terms therein shall be deemed objected to, rejected by and non-binding on Mainstay.

2. INVOICING

Upon delivery (as defined below), Mainstay shall promptly issue to Customer an invoice, dated and numbered, for all products for which such delivery was made or services performed (an "Invoice"). Each Invoice shall include: (1) the applicable purchase order reference number, (2) the Customer's location scheduled to receive the products, (3) the price of such products and/or services, (4) applicable freight costs and (5) applicable taxes, duties and fees (including without limitation any goods and services tax, sales tax, import duty and customs brokerage fees); however, the price stated on the Invoice does not include Federal excise tax unless specifically noted. All prices are in U.S. dollars.

3. PAYMENT

Payment shall be made by Customer net 30 days from the date of the Invoice. A service charge of the lesser of 1.5% per month, or the maximum rate permitted by applicable law, will be added to past due amounts. Customer agrees to pay all costs and expenses of Mainstay associated with collection of any past due amounts, including reasonable attorney's fees. In addition, Mainstay reserves the right to hold further shipments of products or performance of services until said past due amounts are paid in full to Mainstay and to seek any other remedies available under law. Payment of an Invoice by Customer shall not be delayed for any reason or contingent upon Customer's receipt of any payment from or action by another party. In the event Customer shall become insolvent or makes a general assignment for the benefit of creditors, or files or has filed against it a petition of bankruptcy or for reorganization, or pursues any other remedy under law related to the relief of debtors, or in the event a receiver be appointed of Customer's property or business, Mainstay may, at its sole discretion, immediately and without notice terminate its performance under any open Invoices and treat the Customer as in default. Customer hereby grants Mainstay a purchase money security interest in the products until Mainstay has been paid in full.



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4. CHANGES, RESCHEDULES AND CANCELLATIONS

Customer may request to modify the specifications of products or services purchased herein, to change the original delivery dates or to cancel all or part of an order. No such requested modification or cancellation shall become part of the contract unless accepted by both Customer and Mainstay in a written amendment to the applicable purchase order. Acceptance of any such request for change or cancellation shall be at Mainstay's discretion, and shall be upon such terms and conditions as Mainstay may require, including, without limitation, cancellation fees up to the full price of Mainstay's products and services payable by the Customer. Mainstay may discontinue or change any products or services at any time, and its only obligation shall be to deliver the products or services pursuant to accepted purchase orders.

5. DELIVERY

Unless otherwise provided on the face of an Invoice, delivery shall be made by the method preferred by Customer, if indicated. Regardless of the method of shipment, title and risk of loss shall pass to Customer upon delivery. As used herein, "delivery" shall mean the date on which the product is accepted by the common carrier for shipment, regardless of whether such product is purchased without installation, installed at Mainstay's location or installed at Customer's body or chassis supplier or at an alternate location of Customer; provided, however, that in the event Mainstay installs the product into Customer's vehicle and subsequently delivers such vehicle directly to Customer, "delivery" shall mean the date on which such vehicle is delivered to Customer. Any delivery dates shown on an Invoice are approximate only and Mainstay shall have no liability for delays in delivery. If Customer causes or requests a shipment delay, or if Mainstay ships or delivers any products erroneously as a result of inaccurate, incomplete or misleading information supplied by Customer or its agents or employees, storage and all other additional costs and risks shall be borne solely by Customer. Claims for products damaged or lost in transit should be made by Customer to the carrier, as Mainstay's responsibility ceases upon delivery.

6. INSPECTION OF PRODUCTS

Customer shall promptly inspect the product(s) upon arrival at their destination. Claims for omissions or shortages must be reported to Mainstay in writing within 10 days of receipt of the shipment by Customer or its representative; if such claims are not made within such time period, any claims by Customer for omissions or shortages shall be deemed waived. Customer shall have 5 days following receipt of the shipment by Customer or its representative to inspect the product(s) for damage (other than from shipping), defect or nonconformance. For any damaged, defective or nonconforming products, Mainstay will repair or replace, at its option and expense, the product(s) proved to be damaged, defective or nonconforming (using new or refurbished parts) within the Warranty Period (as defined below) and under and subject to the conditions of the warranty set forth above, or Mainstay may choose to refund the net sales price paid by Customer in lieu of such repair or replacement. Products that are returned to Mainstay shall be shipped at the risk and expense of Customer, freight prepaid. No claims may be made by Customer after expiration of the Warranty Period. Nothing in



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this Section 6 shall affect or modify the transfer of title and risk of loss to Customer upon delivery in accordance with Section 5.

7. WARRANTY

The following warranty is, to the maximum extent permitted by law, the sole and exclusive warranty and is expressly in lieu of any other warranties, remedies and conditions by operation of law or otherwise, whether oral or written, or expressed or implied, including any implied warranty of merchantability and fitness or fitness for any particular purpose or use. This warranty is made by Mainstay solely to the original Customer, is not transferable or assignable by the original Customer and is conditional upon proper installation (if applicable), operation and use by Customer. Mainstay warrants the products to be delivered pursuant to any purchase order between Mainstay and Customer to be free of defects in design, materials and workmanship under normal use and service. The defect must be verifiable by Mainstay. If no defect can be shown, the warranty claim can be rejected by Mainstay. Mainstay does not warrant that the standards and specifications specified in Mainstay's quotation are appropriate for Customer's intended use. The warranty period (the "Warranty Period") is exclusively twelve (12) months from the in-service date of the product, unless invalidated by considerations set forth in other portions of these Standard Terms and Conditions and Warranty.

THE REMEDIES SET FORTH HEREIN ARE EXCLUSIVE. UNDER NO CIRCUMSTANCES, AND IN NO EVENT, WILL MAINSTAY, INCLUDING ANY OF ITS DIRECT OR INDIRECT SUBSIDIARIES OR AFFILIATES, BE LIABLE TO CUSTOMER OR ANY OTHER PERSON OR ENTITY FOR PERSONAL INJURY OR PROPERTY DAMAGE OR ANY OTHER LOSS, DAMAGE, COST OF REPAIRS OR INCIDENTAL, PUNITIVE, SPECIAL, CONSEQUENTIAL, DIRECT, INDIRECT, EXEMPLARY, COMPENSATORY OR LIQUIDATED DAMAGES OF ANY KIND, INCLUDING WITHOUT LIMITATION COSTS, LOST REVENUES OR LOST PROFITS, WHETHER BASED UPON WARRANTY, CONTRACT, STRICT LIABILITY, NEGLIGENCE, TORT LIABILITY, OR ANY OTHER CAUSE OF ACTION ARISING IN CONNECTION WITH THE DELIVERY, DESIGN, MANUFACTURE, SALE, TRANSPORTATION, INSTALLATION, USE, FAILURE, REPAIR OR REPLACEMENT OF ANY PRODUCTS SOLD BY MAINSTAY OR ANY OTHER CAUSE WHATSOEVER. BY ACCEPTING DELIVERY OF THE PRODUCT(S) SOLD TO CUSTOMER, CUSTOMER HEREBY (1) ACCEPTS THIS LIMITATION OF REMEDIES AS REASONABLE AND ENFORCEABLE AND (2) EXPRESSLY ACKNOWLEDGES AND AGREES THAT MAINSTAY'S (INCLUDING ITS DIRECT OR INDIRECT SUBSIDIARIES AND AFFILIATES) AGGREGATE LIABILITY, IF ANY, SHALL BE LIMITED TO, AT MAINSTAY'S OPTION, THE COST OF REPAIR OR REPLACEMENT OF THE APPLICABLE PRODUCT, OR, IN LIEU OF SUCH REPAIR OR REPLACEMENT AT MAINSTAY'S OPTION, A REFUND OF THE NET SALES PRICE OF THE APPLICABLE PRODUCT. NO ADDITIONAL ALLOWANCE SHALL BE MADE FOR THE LABOR OR EXPENSE OF REPAIRING OR REPLACING PRODUCTS OR WORKMANSHIP OR DAMAGE RESULTING FROM THE SAME. EXCEPT AS EXPRESSLY SET FORTH HEREIN, ALL PRODUCTS AND/OR SERVICES



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PROVIDED BY MAINSTAY ARE PROVIDED “AS IS,” “WHERE IS” AND “WITH ALL FAULTS.”

The warranty does not apply if Customer caused or contributed to the product failure by any of the following: improper handling, use or operation, abuse or misuse, misapplication, negligence, neglect, corrosion, heat, fire, acts of nature, improper maintenance, lack of reasonable and necessary maintenance, or installations, repairs or modifications made or attempted by anyone other than Mainstay or its authorized service representative (as designated in writing).

Other Exclusions (including but not limited to):

Towing, freight for parts shipments, parts and labor markup in excess of Mainstay approved guidelines, taxes of any kind except where mandated by law, miscellaneous shop supplies and / or fees.

Standard Terms and Conditions and Warranty: In no event shall Mainstay’s responsibility extend to any equipment, apparatus or product that Mainstay has not manufactured or supplied to Customer. The warranty shall not be enlarged, nor shall any obligation or liability of Mainstay be created, by Mainstay providing technical advice, facilities or service in connection with any product. Unless otherwise authorized in writing by Mainstay, warranty repairs to any product must be performed by Mainstay or its authorized service representative (as designated in writing). If Mainstay authorizes a product to be repaired within the Warranty Period at a location other than the plant of manufacture, or if a product is repaired (with Mainstay’s previous written authorization) locally in lieu of replacement, the warranty is limited to the actual repair cost and shall in no event exceed the net sales price paid by Customer for such product. If a product is repaired locally without Mainstay’s previous written authorization, such product is not covered by the warranty. The warranty claim for a locally repaired part will be valid only when accompanied by a copy of the local repair invoice and prior authorization by Mainstay. Replacement parts furnished under the terms of the warranty are warranted only for the remainder of the product’s original Warranty Period.

CAUTION: Repairs, installation or modifications of any Mainstay product not performed by Mainstay or its authorized service representative (as designated in writing) could lead to products being misapplied, installed incorrectly or misused.

WARNING: The improper use, installation, inadequate maintenance or care of some products could result in severe burns, asphyxiation, other injuries and even death. Some products contain extremely flammable gases that can be ignited by heat, sparks or flames, and are capable, when mixed with air, of explosion.

8. PROPRIETARY

Any copies of or confidential information concerning either party, including such party’s products, services, drawings, specifications, processes, and intellectual property, which may be provided to the other party (the “Recipient”) as a result of the purchase order



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between Mainstay and Customer are proprietary to and remain the exclusive property of such party and may not be used or disclosed by the Recipient without written consent of such party. Customer further agrees not to reverse engineer, disassemble, or decompile any tangible objects of Mainstay which embody such information. Sale of any product does not include the sale or transfer of any of Mainstay's intellectual property rights.

9. CONFIDENTIALITY

Mainstay's quotation (including the price of any product) shall be kept strictly confidential by Customer.

10. ACTS OF GOD

Mainstay shall not be liable for failure to perform any of Mainstay's obligations due to circumstances beyond the reasonable control of Mainstay. This includes, without limitation, accidents, acts of God, strikes or labor disputes, laws or regulations of any government or government agency, fires, floods, military operations, acts of terrorism, delays or failures in delivery of carriers or suppliers, shortages of materials, or any other cause beyond Mainstay's control. The occurrence of any contingency beyond Mainstay's reasonable control shall not constitute cause for cancellation of a purchase order but shall extend Mainstay's time to perform the required service for a period equal to the duration of such contingency.

11. ENTIRE AGREEMENT

The terms and conditions set forth herein, together with any amendments, modifications, and any different terms or conditions expressly accepted by Mainstay in writing, shall constitute the entire agreement concerning products or services. There are no oral or other representations or agreements.

12. GOVERNING LAW

These Standard Terms and Conditions and Warranty shall be governed by the laws of the State of South Carolina without regards to the conflicts of law provisions thereof.

13. ASSIGNMENT

Customer may not assign these Standard Terms and Conditions and Warranty, in whole or in part, without Mainstay's prior written consent. These Standard Terms and Conditions and Warranty shall be binding upon and insure to the benefit of the parties' respective successors and permitted assigns.

14. ENFORCEABILITY

If any provision of these Standard Terms and Conditions and Warranty is held by a court of competent jurisdiction to be invalid or unenforceable for any reason, the remaining provisions will continue in full force and effect without being impaired or invalidated in any way and such court will replace such invalid or unenforceable provision with a valid and enforceable provision that will achieve, to the extent possible, the same economic, business and other purposes of the valid or unenforceable provision.



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15. THIRD PARTIES

Nothing contained in these Standard Terms and Conditions and Warranty, express or implied, is intended to confer upon any other person or entity any benefits, rights or remedies, including the rights of a third-party beneficiary.

16. WAIVER OF RIGHTS

Failure of either party to insist on performance of any provision in these Standard Terms and Conditions and Warranty or any purchase order shall not be construed as a waiver of that provision or a waiver of Mainstay's or Customer's right to require compliance with such provision in any later instance.

17. UPDATES; APPLICABILITY

These Standard Terms and Conditions may be updated from time to time by Mainstay. The Standard Terms and Conditions applicable to the products and services purchased by Customer shall be the updated Standard Terms and Conditions applicable on the date of payment by Customer.