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## BRADLEYS' MOTORS - GENERAL TERMS AND CONDITIONS

**1. SUMMARY.** These General Terms & Conditions are between Bradleys' Inc. ("Bradleys' ") and all persons purchasing services from Bradleys' ("Buyer"). The purpose of these General Terms & Conditions is to set forth the general terms and conditions that will apply to all services performed by Bradleys' for the Buyer and all products sold by Bradleys' to the Buyer. Specific terms and conditions on which such services and products will be provided may be set forth on separate agreements. (Written proposals, quotations, estimates, etc., hereafter "Proposal"). The provisions of these General Terms & Conditions are expressly incorporated into each of these Proposals and govern all the understanding and agreements, including but not limited to, Proposals between the parties unless otherwise expressly set forth in a Proposal. In the event of a specific conflict between the provisions of these General Terms & Conditions and the express provisions of any Proposal, the Terms and Conditions of the Proposal shall control, except for Section 5.0, "Limited Warranty Statement", which shall be controlled by these General Terms and Conditions, unless amended in writing and signed by authorized personnel of Bradleys'.

**2. SCOPE.** The goods and/or services provided by Bradleys' Inc. Services pursuant to the Proposal shall be limited exclusively to those goods and/or services expressly identified therein. Bradleys' Inc. shall not be responsible and/or liable for the failure to provide any other goods and/or services.

**3. PRICE.** The prices quoted in the attached Proposal shall remain firm for a period of thirty (30) days from the date of the Proposal. Quotations provided are priced based on Buyer's purchase of the entire scope of services identified therein. If more or less than the entire scope of services identified in the Proposal are ordered by Buyer, prices may vary. Prices quoted by Bradleys' Inc. are exclusive of all taxes (except taxes levied on Bradleys' Inc. income) including federal, state and local use, sales, property or similar taxes, and Buyer shall pay all such taxes in full or shall reimburse Bradleys' Inc. for any such taxes paid by Bradleys' Inc.

**4. PAYMENT TERMS.** Bradleys' Inc. invoices shall be paid by Buyer within thirty (30) days of the date of invoice. A late charge equivalent to the lesser of 3% per month (26% per annum) or the maximum rate allowed by law will be assessed on all unpaid invoices or invoices not paid in accordance herewith. Buyer shall reimburse Bradleys' Inc. any and all expenses, regardless of their nature or type, related in any way to Bradleys' Inc.,' collection of invoices not paid in accordance herewith. These expenses shall include, but are not limited to, any attorney fees incurred by Bradleys' Inc. in the enforcement of this agreement or any term thereof.

**5. STORAGE.** If Buyer's equipment is not picked up or shipped after notification has been made to the Buyer or its agent that it is ready for shipping Bradleys' may store the equipment at the Buyer's risk and expense. The Buyer shall pay all handling, transportation, storage and insurance cost at the prevailing commercial rates.

If no storage payment terms are reached within 30 days of notification the Buyer forfeits all rights to the equipment which at that time Bradley's may dispose of the equipment in any way deemed necessary.

**6. WARRANTY DISCLAIMER AND LIMITATION STATEMENT.**

**BRADLEYS' MAKES NO EXPRESS OR IMPLIED WARRANTIES INCLUDING WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR PARTICULAR PURPOSE ON EQUIPMENT OR DEVICES OBTAINED FROM OR SERVICED BY BRADLEYS'. THE WARRANTIES, IF ANY, WITH RESPECT TO ANY PRODUCTS SOLD OR SERVICED BY BRADLEYS' ARE ONLY THE MANUFACTURER'S AND NOT BRADLEYS', EXCEPT AS SPECIFICALLY PROVIDED BELOW. BRADLEYS' OBLIGATIONS TO HAVE PROVIDED PRODUCTS OR SERVICES AS DESCRIBED IN THE APPLICABLE PROPOSAL THEREFORE, AND THE MANUFACTURER'S WARRANTIES REFERRED TO ABOVE, AND THE SPECIFIC WARRANTIES SET FORTH BELOW ARE SOLE AND EXCLUSIVE WARRANTIES GIVEN TO BUYER WITH RESPECT TO PRODUCTS OR SERVICES BY BRADLEYS' AND ARE IN LIEU OF ALL OTHER WARRANTIES. THERE ARE NO WARRANTIES WITH RESPECT TO PRODUCTS OR SERVICES SOLD BY BRADLEYS' OTHER THAN THOSE WARRANTIES.**

**THE SOLE AND EXCLUSIVE REMEDY FOR BREACH OF ANY WARRANTY HEREUNDER (SHALL BE LIMITED TO REPAIR, CORRECTION OR REPLACEMENT OF THE DEFECTIVE GOODS, OR REFUND OF THE PURCHASE PRICE THEREFOR AS PROVIDED IN SECTION 7. SELLER SHALL NOT BE LIABLE FOR DAMAGES CAUSED BY DELAY IN PERFORMANCE AND THE REMEDIES OF BUYER SET FORTH IN THESE TERMS AND CONDITIONS ARE EXCLUSIVE. IN NO EVENT, REGARDLESS OF THE FORM OF THE CLAIM OR CAUSE OF ACTION (WHETHER BASED IN CONTRACT, INFRINGEMENT, NEGLIGENCE, STRICT LIABILITY, OTHER TORT OR OTHERWISE), SHALL SELLER'S LIABILITY TO BUYER AND/OR ITS CUSTOMERS EXCEED THE PRICE PAID BY BUYER FOR THE SPECIFIC GOODS SUPPLIED BY SELLER GIVING RISE TO THE CLAIM OR CAUSE OF ACTION. BUYER AGREES THAT IN NO EVENT SHALL SELLER'S LIABILITY TO BUYER EXTEND TO INCLUDE INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES. The term "consequential damages" shall include, but not be limited to, loss of anticipated profits, business interruption, loss of use, revenue, reputation and data, costs incurred, including without limitation, for capital, fuel, power and loss or damage to property or equipment.**

**7. BRADLEYS' LIMITED WARRANTY.** With respect to any products or services provided by Bradleys', subject to the following conditions, limitations and exclusions, Bradleys' warrants to Buyer for a period of 12 months from the date of such services that such services will be performed in a good and workmanlike manner, and that any parts and material furnished in connection with reconditioning or repair services will be free from defects in

material for such period. The terms, conditions and limitations of Bradleys' warranty cannot be waived or modified except by an instrument in writing executed by a duly authorized officer of Bradleys'. Bradleys' warranty shall apply only if (I) Buyer notifies Bradleys' in writing of the alleged defect within ten (10) business days of discovery; (II) Bradleys' receives from Buyer written notice of the alleged defect within the warranty period; and (III) the services, or parts and material furnished in connection with Bradleys' services, are covered by its warranty. Bradleys' shall have the option of requiring Buyer, at Buyer's sole risk and expense, to return the product with respect to which alleged defective services have been rendered, or alleged defective material or parts furnished, to Bradleys' premises for inspection. If Bradleys' determines that the services or parts or material are covered by its warranty, Bradleys', at its option, will repair or replace the applicable part or product at its facilities during normal business hours. Otherwise, Buyer's sole remedy for the breach of any warranty with respect to services performed by Bradleys', and parts and material furnished in connection with restoration or repair services, is limited to the money Bradleys' has actually received for the particular services, and parts and materials furnished in connection therewith, that Buyer claims to be inadequate.

This warranty does not extend to any losses or damages due to misuse, accident, abuse, neglect, normal wear and tear, negligence, unauthorized modification or alteration, use beyond rated capacity, unsuitable power sources or environmental conditions, improper installation, repair, handling, maintenance or application or any other cause not the fault of Buyer. Bradleys' shall not assume any responsibility for any loss, damage or liability arising by reason of the sale of or subsequent use of any product sold by Bradleys', or in connection with any service performed by Bradleys'.

**8. WAIVER, CHOICE OF LAW AND VENUE.** The failure of either party to assert any right hereunder or to insist upon compliance with any term or condition will not constitute a waiver of that right or excuse any subsequent non-performance of such term or condition by the other party. These General Terms & Conditions, any related Proposal(s) and any services provided thereunder by Bradleys' shall be construed and enforced in accordance with the laws the State of Texas, without regard to any conflict of law provisions. Venue for any dispute involving these Terms & Conditions, any Proposal(s) or any services provided by Bradleys' shall lie only in San Patricio County, Texas.

**9. BUYER'S DEFAULT.** If Buyer does not comply with these General Terms and Conditions or any related Proposal(s) Bradleys' will be entitled to recover all of its attorneys fees and court costs incurred in the process enforcing the applicable provisions, along with any and all other resulting economic damages that arise from Buyer's failure to comply.

**10. ASSIGNMENT; NO THIRD-PARTY BENEFIT.** Buyer shall not assign any order, or any interest therein, without prior written consent of Bradleys'. The provisions stated herein are for the sole benefit of the parties to the related Proposal(s), and confer no rights, benefits or claims upon any person or entity not a party hereto.

**11. MODIFICATION OF TERMS.** Bradleys' acceptance of any order is subject to Buyer's agreement to all of the terms and conditions set forth herein. Buyer's agreement to these terms and conditions shall be presumed from Buyer's receipt of Bradleys' acknowledgment, or from Buyer's acceptance of all or any part of the products ordered. No additions or modifications of Bradleys' terms and conditions by Buyer shall be binding upon Bradleys', unless agreed to in writing by an authorized representative of Bradleys'.

**12. INDEMNIFICATION:** Buyer shall indemnify, defend, protect and hold harmless Seller from and against any and all causes of actions, claims, demands, (including reasonable attorney's fees) of (i) injury to or death of any person and/or (ii) loss of or damage to property, and to the extent allegedly caused by the negligence or willful misconduct of Buyer, or its agents, contractors, subcontractors, servants, or the employees of any of these. Buyer shall not indemnify Seller from claims arising out of the negligence or willful misconduct of Seller, or its agents, contractors, subcontractors, servants, or the employees of any of these. Seller shall indemnify, defend, protect and hold harmless Buyer from and against any and all causes of actions, claims, demands, (including reasonable attorney's fees) of (i) injury to or death of any person and/or (ii) loss of or damage to property, and to the extent allegedly caused by the negligence or willful misconduct of Seller, or its agents, contractors, subcontractors, servants, or the employees of any of these. Seller shall not indemnify Buyer from claims arising out of the negligence or willful misconduct of Buyer, or its agents, contractors, subcontractors, servants, or the employees of any of these. This indemnification by either party shall not exceed the total amount of valid and collectible insurance proceeds paid by the indemnitor's insurers.

**13. CANCELLATION/REDUCTION CHARGE**

If the service job related to this quote is cancelled or reduced in scope by Customer less than 7 days prior to 8:00AM on the scheduled start date, a cancellation charge of 50% of the quoted price for the work cancelled or eliminated will be owed to Bradleys', Inc., by Customer. If the service job is canceled by Customer less than 48 hours prior to 8:00AM on the scheduled start date, the cancellation charge owed to Bradleys', Inc., by Customer will be the full price of the quoted price for the job or the work eliminated. Issuance of a Purchase Order based on this quote constitutes Customer's agreement to these cancellation terms.