

## ODB STANDARD TERMS AND CONDITIONS OF SALE

All Sales by OLD DOMINION BRUSH COMPANY LLC ("ODB") are made on the following terms and conditions.

**1. AGREEMENT; CANCELLATION** This Agreement (as defined herein) is for the purchase of equipment and/or parts as identified and described in the applicable Electronic Build Sheet and Purchase Order ("Goods"). The Electronic Build Sheet and Purchase Order together with these Terms and Conditions are referred to herein as the "Agreement". This Agreement is not effective until the earlier of the following: (a) it is accepted by ODB's authorized representative or (b) the Goods are delivered to the Delivery Point. Upon Acceptance of this Agreement by ODB's authorized representative or the delivery of the Goods to the Delivery Point, this Agreement is a binding contract between Buyer and ODB. Prior to delivery to the Delivery Point agreed to herein, this Agreement may only be canceled by Buyer with the prior written consent of ODB's authorized representative and upon terms indemnifying ODB from all resulting losses and damages.

**2. INTERPRETATION** ODB objects to and will not agree to any terms that are additional to or different from the terms of this Agreement. Terms and Conditions which are additional to or in conflict with or inconsistent with this Agreement in a purchase order or other paper prepared by Buyer shall be considered by both Buyer and ODB to be inapplicable and shall have no force or effect. If Buyer has not otherwise agreed to these terms and conditions of sale, Buyer's acceptance of delivery of or payment for the Goods will constitute Buyer's acceptance of these terms and conditions.

**This Agreement supersedes any prior or contemporaneous negotiations, agreements, promises, representations, or other communications, whether oral or written between Buyer and ODB relating to the Goods and subject matter herein. This Agreement is the complete, final, and exclusive statement of the terms, conditions, and provisions of this Agreement between Buyer and ODB. No course of prior dealings between the parties and no usage of the trade shall be relevant to supplement or explain any terms in the Agreement. Any changes, modifications or additions to this Agreement are binding and enforceable only if made in writing and signed by both parties.**

**3. TITLE AND RISK OF LOSS** Delivery of Goods covered by this Agreement shall be set forth in the applicable Electronic Build Sheet and Purchase Order or dealer agreement; provided, however, if such Electronic Build Sheet and Purchase Order or dealer agreement does not state the delivery terms then delivery of the Goods shall be Ex Works Factory ("Delivery Point"). Title and risk of loss shall be borne by Buyer upon ODB's delivery at Delivery Point. The Buyer will assume risk of loss on Goods on which ODB prepays freight and then bills freight to the Buyer when the Goods are invoiced. The Buyer will assume the risk of loss on Goods on which it arranges freight and pays the freight carrier directly. In either situation, the Buyer is responsible for the freight costs, unless otherwise provided for in the order.

**4. NON-DELIVERY OR DELAY** ODB shall not be liable for any damages resulting from any delay or failure of delivery of Goods caused in whole or in part by circumstances beyond ODB's control.

**5. SECURITY AGREEMENT** Buyer grants to ODB a security interest in the Goods to secure Buyer's present and future obligations to ODB. At ODB's request, Buyer shall give ODB a signed financing statement reflecting the security interest. In the event Buyer defaults in the payment of any amounts due under this Agreement or in the performance of any other obligation, or if Buyer is the debtor in a proceeding in bankruptcy, receivership or insolvency, then ODB may declare the full amount under this Agreement immediately due and payable without notice or demand, and shall have all of the remedies of a secured party under the Uniform Commercial Code and any other applicable laws. ODB shall have the right to take possession of the Goods, and Buyer agrees upon ODB's request to make the Goods available to ODB at such place as ODB may designate.

**6. SURCHARGE** Buyer agrees that if the operating costs of ODB are affected as a result of significant regional or national economic fluctuations, ODB may add a surcharge to the price of the Goods to compensate for such cost variance.

**7. INSURANCE** From the time title and risk of loss for the Goods passes to Buyer until the purchase price for the Goods are fully paid, the Buyer agrees to keep the Goods insured against all loss or damage in an amount not less than the unpaid portion of the purchase price. Such insurance is to be payable to ODB as its interest may appear.

**8. TAXES** Prices for the Goods specified in the Agreement are exclusive of taxes of any kind, including, but not limited to all local, state, and federal taxes. Buyer agrees to pay such taxes directly or to reimburse ODB for such taxes.

**9. INSPECTION AND ACCEPTANCE** Buyer agrees it shall inspect the Goods immediately upon receipt and shall notify ODB in writing of any non-conformity or defect within ten (10) days after receipt. Buyer further agrees that failure to give such notice or putting the Goods to commercial use shall constitute acceptance. Acceptance shall be final and Buyer waives the right to revoke acceptance for any reason, whether or not known by Buyer at the time of such acceptance. Giving the ten (10) day written notice by Buyer shall automatically cause the provisions of Section 10 to apply and govern the rights, obligations, and liabilities of Buyer and ODB with respect to such nonconformity or defect.

**10. WARRANTY** ODB warrants to the original Buyer that the Goods will be free from defects in materials and workmanship under normal use and operating conditions subject to the conditions and exclusions stated below. No representative, agent or dealer of ODB or any other person is authorized to modify, expand or extend this warranty in any manner or make any representation on ODB's behalf in connection with the sale of any Good covered by this warranty. The warranty period is as agreed to by the parties in the applicable warranty documentation provided to Buyer and starts with the start-up in-service date. Buyer agrees and acknowledges that it was provided a copy and has read the warranty applicable to the Goods.

### 10.a. EXCLUSIONS

**This warranty shall not apply to:**

1. Any Good which has been subject to misuse, neglect, modification, alteration, accident or lack of normal maintenance or service
2. Fire damage
3. **Labor, unless provided by an authorized ODB dealer**

### 10.b. REMANUFACTURED PARTS

ODB reserves the right to use remanufactured parts, when available, for warranty replacement parts. The remanufactured component has the same warranty as if it was new.

### 10.c. BUYER'S EXCLUSIVE REMEDY

The exclusive remedy of the Buyer in the event a Good does not conform to this Warranty shall be repair or replacement of the Good (at the option of ODB) without charge to the Buyer at such other locations as may be designated by ODB. ODB shall have sole discretion to determine whether and to what extent the Good is defective in material or workmanship. The acceptance by ODB of any Good returned is not an admission that the Good is defective and if ODB determines the Good is not covered by this Warranty, the Good may be returned to the Buyer at Buyer's expense.

### 10.d. DISCLAIMER OF WARRANTY

THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES EXPRESS OR IMPLIED. ODB MAKES NO OTHER WARRANTIES REGARDING THE GOODS AND IN PARTICULAR, MAKES NO IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WHICH ARE EXPRESSLY DISCLAIMED.

### 10.e. LIMITATION OF DAMAGES

**ODB shall not be liable for any incidental or consequential damages, directly or by subrogation, including but not limited to any claims for fire damage, lost profits, downtime or loss of use in the event the Good is defective.**

**11. ORAL REPRESENTATION** No agent, employee, or representative of ODB has any authority to expand ODB obligations by any affirmation, representative or warranty concerning the Goods sold under this Agreement beyond those specifically included with this written Agreement.

**12. APPLICABLE LAW AND JURISDICTION** ODB and Buyer have made this Agreement in the State of Virginia, and it will be governed by and interpreted according to Virginia law whenever a term defined by the Uniform Commercial Code is used in the Agreement. The proper jurisdiction and venue of any action or proceeding arising out of this Agreement shall be in the courts of the State of Virginia, County of Henrico, or in the United States District Court that encompasses Richmond, Virginia or Henrico County, Virginia. Buyer agrees to personal jurisdiction by said courts in Virginia and waives any objection to personal jurisdiction. The parties agree that the prevailing party in any dispute arising out of this Agreement shall be entitled to recover its reasonable attorney's fees and costs from the other party. Any action for breach of this Agreement, including Terms and Conditions, must be commenced within two (2) years after the cause of action has accrued.

**13. WAIVER** No waiver by ODB of any default by Buyer shall be effective, unless in writing, nor operate as a waiver of any other default. ODB shall not lose any right because it has not exercised it in the past.

**14. SEVERABILITY** If any provision of this Agreement is invalid or unenforceable under any law, the provision shall be ineffective to that extent, but the remaining provisions shall be unaffected.