



PLOTZ MACHINE

a division of  THE GREAT LAKES TOWING COMPANY

This Agreement is entered into by and between The Great Lakes Towing Company (d/b/a/ Wm. Plotz Machine & Forge), a Delaware corporation (hereinafter "Plotz") and the party named on the Quote/Invoice (hereinafter "Buyer") as of the date shown on the Estimate/Invoice.

WHEREAS, Plotz is a parts manufacturer, refurbisher, and servicer, and Buyer wishes to have Plotz manufacture, refurbish and/or service products for Buyer's benefit;

NOW THEREFORE, in consideration of the mutual covenants contained herein and subject to the terms and conditions of this Agreement, the parties hereto agree as follows:

Section 1. Buyer agrees to purchase from Plotz the parts, products or services for a certain price and billing terms both of which are specified on the Quote or Invoice. The terms of the Quote or Invoice are in addition to the terms of this Agreement. Together, the Quote and this Agreement represent the entire agreement between Plotz and Buyer.

Section 2. Plotz will manufacture or refurbish parts and/or products and provide services based on (i) Buyer's specifications, (ii) a sample(s) provided by Buyer, (iii) drawing(s) drafted by Plotz, or (iv) any combination thereof. Plotz states and Buyer acknowledges that Plotz does not provide any engineering or metallurgical services. Buyer agrees that it is solely responsible for obtaining all engineering and metallurgical studies and/or reports. Buyer further agrees to indemnify and hold harmless Plotz, its agents, representatives, employees, officers, related companies, affiliates, successors, and assigns from any and all claims, demands, actions, damages, and liability, including attorney's fees and consequential and incidental damages, arising out of any injury or death to any person or damage to any property in any way connected with the parts and/or products manufactured, or refurbished, or services performed by Plotz. Buyer hereby agrees that it shall be solely responsible for and shall indemnify Plotz from any voluntary or involuntary recalls of any products which contain parts or products manufactured or refurbished by Plotz regardless of the reason of the recall.

Section 3. EXCEPT AS SPECIFICALLY STATED HEREIN, THERE ARE NO WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO ANY PARTS OR PRODUCTS MANUFACTURED OR REFINISHED BY PLOTZ, OR FOR SERVICES PERFORMED BY PLOTZ. PLOTZ EXPRESSLY EXCLUDES AND DISCLAIMS ANY IMPLIED WARRANTY OF MERCHANTABILITY AND ANY WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, APPLICATION OR USE, AND BUYER AGREES THAT THE GOODS ARE SOLD "AS IS." UNDER NO CIRCUMSTANCES WILL PLOTZ BE LIABLE FOR SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, WHETHER SUCH DAMAGES ARE SOUGHT IN CONTRACT, IN TORT (INCLUDING BUT NOT LIMITED TO NEGLIGENCE AND STRICT LIABILITY) OR OTHERWISE, AND PLOTZ'S LIABILITY SHALL IN NO EVENT EXCEED THE PURCHASE PRICE OF THE PARTS, PRODUCTS OR SERVICES PERFORMED ON WHICH SUCH LIABILITY IS BASED. BUYER ASSUMES ALL RISK AND LIABILITY FOR LOSS, DAMAGE OR INJURY TO PERSONS OR PROPERTY OF BUYER OR OTHERS ARISING OUT OF USE OR POSSESSION OF ANY PART OR PRODUCT SOLD HEREUNDER.

Plotz has no knowledge as to trademark or patent rights which third parties may claim in the goods covered by this Agreement. Consequently, Plotz makes no warranty whatsoever with respect to

the freedom of the goods covered by this Agreement from claims of infringement by third parties arising from trademark, patent, or other property rights in the goods. Buyer understands and agrees that Plotz does not warrant the goods free of the rightful claim of any third person by way of infringement or the like. Buyer further agrees to indemnify and defend Plotz, at Buyer's sole expense, against any claim of trademark or patent infringement arising out of any part or product sold under this Agreement and to hold Plotz harmless from any damages, costs, attorney's fees and expenses attributable to any such claim.

The use of any sample, model, or drawing during the negotiations leading to this Agreement serves merely to indicate the type of parts, products or services that will be tendered to the Buyer. The samples or models create no warranty that the parts, products or services will conform to the samples, models, or drawings.

Section 4. Buyer's exclusive remedy and Plotz's limit of liability for any and all losses or damages resulting from defective products or services or from any other cause shall be for the purchase price actually paid for the particular delivery with respect to which losses or damages are claimed. Plotz shall not be liable for prospective profits or special, indirect or consequential damages, nor shall any recovery of any kind against Plotz be greater in amount than the purchase price of the specific products or services sold and causing the alleged loss, damage or injury.

Section 5. Buyer agrees to pay all invoices within thirty (30) days of receipt and to pay a monthly finance charge of 1.5% (with a minimum charge of \$30.00) on invoices not paid within thirty (30) days. In the event that legal action is required to collect money due for products and services, Buyer shall pay all reasonable collection agency costs, attorney's fees and court costs incurred by the Plotz.

Section 6. This Agreement shall be governed by and shall be construed in accordance with the laws of the State of Ohio. In connection with any dispute between the parties under this Agreement, the parties hereby irrevocably submit to jurisdiction of the United States District Court, Northern District of Ohio, Eastern Division. Each party hereby waives and agrees not to assert, by way of motion, as a defense or otherwise in any such action any claim (a) that it is not subject to the jurisdiction of such court, (b) that the action is brought in an inconvenient forum, (c) that it is immune from any legal process with respect to itself or its property, (d) that the venue of the suit, action or other proceeding is improper, or (e) that this Agreement or the subject matter hereof may not be enforced in or by such courts. The obligations of the parties are performable and venue for any legal action arising out of this Agreement will lie in the Northern District of Ohio, Eastern Division.

Section 7. It is expressly understood and agreed by and between the parties hereto that this Agreement sets forth all the promises, representations, agreements, conditions and understandings relative to the transactions set forth herein, and that there are no promises, representations, agreements, conditions, or understandings, either oral or written, between them which have not been expressed herein. It is further understood and agreed that no subsequent alteration, amendment, change or addition to this Agreement shall be binding unless reduced in writing and signed by all parties.

Section 8. If any provision of this Agreement is declared void by statute, regulation or by judicial decision, or its application to certain circumstances is held to be invalid, illegal or contrary to public policy, such voided or unenforceable provision shall be severed and the remainder of the provisions in the Section and in this Agreement, and the application of the invalid provisions to circumstances other than those to which they have been declared invalid, shall not be affected thereby and shall continue to be in full force and effect.