

Pontiac Coil, Inc.
Standard Terms of Sale

Enforceability of Terms

These Terms of Sale represent the entire agreement between Pontiac Coil and Buyer for purchase orders placed by Buyer unless superceded by a further agreement signed by both parties. Pontiac Coil will not be obligated to provide product to Buyer until Pontiac Coil accepts a purchase order(s) from Buyer in writing. Any additional or different terms in any Buyer purchase order or other written communication will have no legal effect unless such terms are acknowledged in writing by Pontiac Coil. Additional terms in Pontiac Coil's quotation may supercede specific terms in these Terms of Sale. In issuing a purchase order to Pontiac Coil, Buyer agrees to be bound by these Terms of Sale.

Purchase Orders/Forecasts

Buyer authorizes Pontiac Coil to Purchase materials, including long lead time and unique components, to fulfill purchase orders and forecasts, based on material lead times and pricing considerations. Pontiac Coil will not be liable for Buyer's commitments or production arrangements in excess of the amounts set forth in Buyer's purchase order(s) and forecasts or in advance of the delivery dates specified in such purchase order(s).

Delivery

Pontiac Coil will use its best efforts to meet Buyer's delivery requirements. Pontiac Coil will not be liable for any costs or expenses which might be incurred by Buyer as a result of a delay in delivery due to labor disputes, acts of God or purchased component shortages. Products will be shipped EXW Pontiac Coil's plant. Pontiac Coil transfers title and risk of loss to the products upon delivery to the carrier at Pontiac Coil's dock.

Changes

Any changes to orders placed by Buyer, other than rescheduling, cancellation, or engineering changes, must be accepted in writing by Pontiac Coil. Pontiac Coil will notify Buyer of the impact on product price and delivery schedules, if any, affected by such changes. For engineering changes initiated by Buyer, Buyer will be responsible for the costs associated with such implementation and processing fees, including, if applicable, obsolete inventory.

Prices and Payment

Prices are based on the quantities listed on a line item basis in the body of the quote and on the volumes specified in this letter. Should the minimum usage be other than specified, Pontiac Coil reserves the right to renegotiate the piece price based on the new volumes. Buyer will pay any taxes, duties, or other governmental levies and charges unless evidence of exempted status is provided. Buyer agrees to carry adequate insurance until such time as the products are paid for in full. All prices refer to U.S. dollars. Payments are due net thirty (30) days from the date of invoice. Pontiac Coil may apply a late payment charge not to exceed 1.5% per month in accordance with applicable laws. Buyer will pay all invoices in full and will not offset any amounts Pontiac Coil may owe or be deemed to owe Buyer without Pontiac Coil's written approval.

Cancellation

In the event of cancellation of any order or reduction of forecast, Buyer is responsible for the cost of all components and raw material acquired, pursuant to the purchase orders and forecasts, including long lead time items and unique components, by Pontiac Coil on Buyer's behalf which Pontiac Coil is unable to mitigate. Such amounts shall include any restocking fees Pontiac Coil may be required to pay to any suppliers. Buyer is also responsible for payment of all work in process, finished product, unamortized tooling, unamortized engineering/development cost, custom capital and any line stoppage and cancellation charges.

Intellectual Property Responsibilities

For Pontiac Coil standard product, if a third party claims that a product provided by Pontiac Coil infringes a patent or copyright in any country where Pontiac Coil sells similar products, Pontiac Coil will defend Buyer against the claim at Pontiac Coil's expense. In this regard, Pontiac Coil will pay all costs, damages and legal fees that a court finally awards provided that Buyer: i) promptly notifies Pontiac Coil in writing of the claim; and ii) cooperates with Pontiac Coil and allows Pontiac Coil to control the defense and any related settlement negotiations.

For Pontiac Coil standard product, if such claim is made, Buyer agrees to permit Pontiac Coil to enable Buyer to continue to use the product(s) or to modify or replace the product(s). If Pontiac Coil determines that none of these alternatives is reasonably available, Buyer agrees to return the product(s) to Pontiac Coil upon Pontiac Coil's written request. Pontiac Coil will then provide a credit equal to the net purchase price paid by Buyer for the product(s). The foregoing represents Pontiac Coil's entire obligation to Buyer regarding any claim of infringement.

Pontiac Coil has no obligations to Buyer regarding any claim based on infringement to the extent such infringement is based on: i) any product or portion thereof in compliance with Buyer's specifications or according to Buyer's design; ii) any product prototypes; iii) the combination with other products or devices not furnished by Pontiac Coil; iv) any modifications to products made by Buyer; or v) the rendering of any service or the use of any method of manufacture at the request of Buyer.

For product designed according to Buyer specifications or instructions, Buyer will defend Pontiac Coil against any claim at Buyer's expense. In this regard, Buyer will pay all costs, damages, and legal fees that a court finally awards provided that Pontiac Coil promptly notifies Buyer in writing of the claim. Pontiac Coil has the right to retain counsel and participate at Pontiac Coil's expense in the defense of any such claim.

Nothing contained herein will be deemed to grant to Buyer either directly or by implication, estoppel or otherwise, any license or other right under any patents, patent applications, or non-patent rights owned by or licensed to Pontiac Coil or its subsidiaries or affiliates.

Ownership of Proprietary Information

Unless the Pontiac Coil quotation provides otherwise, Pontiac Coil will own the design of the product(s) and processes and all other proprietary rights associated with the product(s) and processes which are developed by Pontiac Coil.

Material Requirements

If the purchase order lead time does not provide Pontiac Coil with enough lead time for the purchase of identified long lead parts, Buyer and Pontiac Coil will execute a Forecast Ordering Agreement allowing Pontiac Coil to place orders for identified long lead parts with Buyer approval. All parts purchased or placed on order under the Forecast Ordering Agreement become the responsibility of Buyer. If non cancelable, non returnable approvals are required by suppliers and approved by Buyer, Buyer shall be responsible for the liability of such material in the event Buyer no longer needs such parts.

Warranty

Pontiac Coil warrants that the product(s) manufactured by Pontiac Coil will be free from defects in workmanship for twelve (12) months or the period as specified in Pontiac Coil's quotation or proposal and commencing from date of shipment, provided that Buyer notifies Pontiac Coil in writing within thirty (30) days after discovery of the defect or returns the defective product to Pontiac Coil no longer than ten (10) days following the last day of the warranty period. All products require a Return Material Authorization (RMA) from Pontiac Coil prior to their return. Buyer must place a buy back or replacement purchase order, matching the corresponding RMA part number and quantity, to receive authorization to return products to Pontiac Coil. Buyer will ship the product to Pontiac Coil freight prepaid and Pontiac Coil will return the product freight prepaid. Pontiac Coil will, at Pontiac Coil's option, repair or replace the defective product or give Buyer a credit based on the price paid for the product. All repaired or replaced products will be subject to these Terms of Sale.

Prototypes and pre-production/pilot products are provided on an "AS IS" basis without warranty of any kind.

Pontiac Coil reserves the right to apply a No Defect Found (NDF) charge for product returned and found not to be defective.

This warranty will have no legal effect if the product is misused, damaged, modified, placed in an unsuitable physical or operating environment, maintained improperly, or caused to fail by a product not provided by Pontiac Coil.

This warranty does not include defects as a result of, but not limited to, Buyer supplied design, test data, and diagnostics, or defects which are attributed to lack of design margin or errors in Buyer's specifications or bills of materials.

THIS WARRANTY REPLACES ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING BUT NOT LIMITED TO, THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. ALL SUCH OTHER WARRANTIES ARE EXPRESSLY DISCLAIMED. IN NO EVENT WILL PONTIAC COIL BE LIABLE FOR ANY SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, INTERRUPTION OF PRODUCTION, ADMINISTRATIVE EXPENSES OR OVERHEAD, OR LOSS OF PROFITS, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

Limitation of Liability

Circumstances may arise where Buyer is entitled to recover damages from Pontiac Coil. In each such instance and for any cause of action, Pontiac Coil is liable for no more than direct damages up to the price paid for the product(s) which is the subject of the claim.

Confidentiality

Buyer will keep all information and documentation furnished by Pontiac Coil hereunder (including drawings, specifications and other documents prepared by Pontiac Coil for Buyer) confidential and will not disclose any such information or documents to any other person, or use such information or documentation itself for any purpose. These confidentiality and non-use obligations will be superseded by any separate confidentiality agreement signed by both Pontiac Coil and Buyer.

Utilization of Products

For Pontiac Coil standard product Buyer represents that the product(s) provided by Pontiac Coil will be: i) incorporated into and made part of Buyer's products; ii) combined with Buyer's products for sale or lease as a Buyer system; or iii) sold or leased in incidental additional quantities for sale or lease directly to a third party for installation in a Buyer system.

Service Parts

Pontiac Coil will supply past model service requirements as required by Buyer as long as tooling is operational and components are available. In the event of a component becoming obsolete, Buyer agrees to offer an all time buy or to pay for all recertification costs for a replacement.

Purchased Parts

Pontiac Coil reserves the right to renegotiate pricing based upon changes in the costs of purchased parts whether chosen by Buyer or Pontiac Coil.

General

Neither Buyer nor Pontiac Coil will be responsible for failure to meet obligations due to causes beyond their reasonable control.

Buyer agrees to comply with all applicable export control laws and regulations and hereby gives its assurance that products are not intended to be shipped directly or indirectly to prohibited countries. Buyer is responsible for obtaining any government documents and approvals prior to any export of product(s).

This agreement will not prevent Pontiac Coil or its affiliates from marketing, acquiring, manufacturing or developing materials, products, or services that are similar to or competitive to those of Buyer.

Neither Buyer nor Pontiac Coil may bring an action more than two (2) years after the cause of action arose. The prevailing party in a legal action will be reimbursed by the other party for its expenses, including reasonable legal fees.

Any rights or obligations which by their nature continue will remain in effect until they are completed.

Should any products provided to Buyer be for the U.S. Government, Buyer is solely and exclusively responsible for compliance with all statutes and regulations governing sales to the U.S. Government.

No waiver of any breach of any provisions constitutes a waiver of any other or subsequent breach.

Neither party may assign this agreement in whole or in part without the prior written consent of the other party.

The laws of the State of Michigan govern this agreement exclusive of any provisions of the United Nations Convention on the International Sale of Goods and without regard to principles of conflicts of law.

If any provision of these Terms of Sale is determined to be unenforceable for any reason, the remaining terms shall continue in full force and effect.

Buyer consents to Pontiac Coil advertising the fact that Pontiac Coil is providing product to Buyer on Pontiac Coil's Web site, in marketing materials and otherwise so long as such advertisement does not disclose any specific terms of the relationship.