



Terms and Conditions of Equipment Sale

1. General: The Terms and Conditions of Sale outlined herein shall apply to the sale by Club Car, LLC (“**Company**”) of the products, equipment and parts described more fully in the accompanying invoicing or documentation (collectively, “**Equipment**”), unless otherwise agreed to in writing by the Company. Company hereby gives notice of Company’s objection to any additional or different terms included in any purchase order or other form submitted by Purchaser of the Equipment (“**Purchaser**”). Such additional or different terms shall not be included in this contract unless otherwise agreed to in writing by Company. Company’s proceeding with any work shall be in accordance with the terms and conditions outlined herein. Company will comply with applicable laws and regulations as they may apply to the manufacture of the Equipment. Purchaser shall comply with all applicable laws, rules, regulations and orders relating to Purchaser’s activities hereunder, including Purchaser’s use, distribution and/or sale of the Equipment; and at all times accurately represent the condition, features and performance of the Equipment and any other products manufactured, supplied or approved by Company. Hereinafter, Company and Purchaser may be collectively referred to as “**the Parties**.”

2. Title and Risk of Loss: Title and risk of loss or damage to the Equipment shall pass to Purchaser upon tender of delivery FOB Company facility (INCOTERMS 2010) unless otherwise agreed upon, in writing, by the Parties hereto, except that a security interest in the Equipment shall remain in favor of Company, regardless of the mode of attachment to realty or other property, until full payment has been made thereto. Purchaser agrees upon request to all things and acts necessary to perfect and maintain such security interest and shall protect Company’s interest by adequately insuring the Equipment against loss or damage from any cause wherein Company shall be named as an additional insured.

3. Delivery and Delays/ Force Majeure: Delivery dates shall be interpreted as estimated and in no event shall such dates be construed as falling within the meaning of “*time is of the essence*.” Company shall not be liable for any loss or delay due to war, terrorism, riots, fire, flood, strikes, or other labor difficulty, acts of civil or military authority including governmental laws, order, priorities or regulations, acts of Purchaser, embargo, car shortage, damage or delay in transportation, inability to obtain necessary labor or materials from usual sources or other causes beyond the reasonable control of Company. In the event of delay in performance due to any such cause, the date of delivery or time for completion will be adjusted to reflect the actual length of time lost by reason of such delay. Purchaser’s receipt of Equipment shall constitute a waiver of any claims for delay.

4. Taxes: The price for the Equipment does not include any present or future Federal, state, or local property, license, privilege, sale, use, excise, gross receipts or other like taxes or assessments which may be applicable to or result from this transaction, or any services performed in connection therewith. Such taxes will be itemized separately to Purchaser, who shall make prompt payment to Company. Company will accept a valid exemption certificate from Purchaser, if applicable. If such exemption certificate is not recognized by the relevant government taxing authority, Purchaser agrees to promptly reimburse Company for any associated taxes paid by Company as a result thereof, including any interest or penalty assessed against Company.

5. Set Offs: Neither Purchaser nor any affiliated company nor permitted assignee of such shall have the right to claim compensation or to set off against any amounts which become payable to Company under this contract or otherwise.

6. Patents: Company shall defend any suit or proceeding brought against Purchaser and shall pay any adverse judgment entered therein if such suit or proceeding is based solely upon a claim that the use of the Equipment manufactured by Company, and furnished under this contract, constitutes infringement of any patent of the United States of America; provided, Company is promptly notified in writing and given the authority, information and assistance by Purchaser for defense of same. Company may, at Company’s option, procure for Purchaser the right to continue to use said Equipment, modify said Equipment so that said Equipment becomes non-infringing, replace the same with non-infringing equipment, or remove the infringing Equipment and refund the purchase price. The Company shall have no liability whatsoever with respect to patents for inventions including more than the Equipment furnished hereunder, or patents for methods and processes to be carried out with the aid of the Equipment. The foregoing states the entire liability of Company with regard to patent infringement.

7. Warranty for New Equipment: Company warrants that new Equipment manufactured by Company and delivered hereunder will be free of defects in material and workmanship for the periods of time specified in the applicable limited warranty statements of Company for such Equipment, each of which is hereby incorporated herein by reference. Unless otherwise specified in writing by Company, aftermarket accessories will be free of defects in material and workmanship for six (6) months from the date of shipment and service parts will be sold “AS-IS”.

8. Warranty for Used Equipment: To the extent that Purchaser is not the original purchaser of Equipment, COMPANY HEREBY REVOKES THE BATTERY PORTION OF THE ORIGINAL MANUFACTURER WARRANTY FOR EQUIPMENT WITH A MODEL YEAR MORE THAN ONE (1) YEAR OLDER THAN THE CURRENT EQUIPMENT MODEL YEAR, REGARDLESS OF ANY LANGUAGE TO THE CONTRARY CONTAINED WITHIN SUCH LIMITED WARRANTY STATEMENT OR ELSEWHERE, AND SUCH WARRANTY IS HEREBY MADE NULL AND VOID. ALL USED EQUIPMENT IS SOLD “AS-IS, WHERE-IS, WITH ALL FAULTS.” PURCHASER SHALL COMMUNICATE THIS CANCELLATION OF THE ORIGINAL MANUFACTURER’S WARRANTY TO PURCHASER’S CUSTOMERS IN ADVANCE OF THE SALE OF THE EQUIPMENT. Notwithstanding the preceding sentence, if the applicable sales invoice accompanying this contract affirmatively and definitively denotes that the Equipment is covered by a warranty, that warranty shall be

Company’s standard pre-printed limited Remanufactured warranty in effect at the time of sale, a copy of which is available upon request (the “**Applicable Warranty Statement**”). All such warranty statements (as they may be modified or updated from time to time by Company) are hereby incorporated by reference.

9. Warranty Generally: EXCEPT FOR THE FOREGOING WARRANTIES CONTAINED IN THE APPLICABLE SECTION 7, 8, OR 9 HEREOF (IF ANY) AND THE WARRANTY OF CLEAR AND MARKETABLE TITLE, COMPANY MAKES NO OTHER REPRESENTATIONS, CONDITIONS OR WARRANTIES EXPRESS OR IMPLIED AND ALL IMPLIED WARRANTIES, INCLUDING THOSE RELATING TO MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE HEREBY DISCLAIMED.

Purchaser shall be obligated to promptly report any failure to conform to the applicable warranty to Company in writing within the applicable warranty period, whereupon Company shall, at Company’s option, correct such nonconformity by suitable repair to such Equipment or furnish a replacement part FOB point of shipment, provided Purchaser has stored, installed, maintained, and operated such Equipment in accordance with reasonable industry practices and has complied with specific recommendations and the operator manual(s) of Company. Company shall not be liable for any repairs, replacements, or adjustments to the Equipment or any costs of labor performed by Purchaser or others without Company’s prior written approval.

The effects of corrosion, erosion, and normal wear and tear are specifically excluded from Company’s warranty. Performance warranties, if any, are limited to those specifically stated within Company’s proposal. Unless responsibility for meeting such performance warranties is limited to specified shop or field tests, Company’s obligation shall be to correct in the manner and for the period of time provided in the applicable warranty.

Correction by Company of nonconformities whether patent or latent, in the manner and for the period of time provided above, shall constitute fulfillment of all liabilities of Company for such nonconformities, whether based on contract, warranty, negligence, indemnity, strict liability or otherwise with respect to or arising out of such Equipment.

10. Operation: Purchaser shall not operate Equipment which is considered to be defective, without first notifying Company in writing of Purchaser’s intention to do so. Any such use of Equipment will be at Purchaser’s sole risk and liability.

11. Compliance with Laws: Company strongly recommends against unauthorized modifications to the Equipment. If Purchaser, nevertheless, decides to change, alter, or modify the Equipment, Purchaser shall, at a minimum, inform Purchaser’s customers and potential customers that modifications have been made to the Equipment, the extent of those modifications, and the risks inherent with those changes. In addition, Purchaser shall comply with all applicable laws, industry standards, rules, regulations and orders relating in any way to Purchaser’s activities hereunder, including Purchaser’s use and/or sale of the Equipment; and at all times accurately represent the condition, features and performance of the Equipment and any other product manufactured by Company.

12. Limitation of Liability: THE REMEDIES OF PURCHASER SET FORTH HEREIN ARE EXCLUSIVE. THE TOTAL LIABILITY OF COMPANY WITH RESPECT TO THIS CONTRACT OR THE EQUIPMENT (AND SERVICES FURNISHED HEREUNDER, IF ANY), OR FROM THE MANUFACTURE, SALE, DELIVERY, INSTALLATION, REPAIR OR TECHNICAL DIRECTION COVERED BY OR FURNISHED UNDER THIS CONTRACT, WHETHER BASED ON CONTRACT, WARRANTY, NEGLIGENCE, INDEMNITY, STRICT LIABILITY OR OTHERWISE, SHALL NOT EXCEED THE PURCHASE PRICE OF THE UNIT OF EQUIPMENT UPON WHICH SUCH LIABILITY IS BASED. COMPANY AND ITS SUPPLIERS SHALL IN NO EVENT BE LIABLE TO PURCHASER, ANY SUCCESSORS IN INTEREST OR ANY BENEFICIARY OR ASSIGNEE OF THIS CONTRACT FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL OR PUNITIVE DAMAGES ARISING OUT OF THIS CONTRACT OR ANY BREACH THEREOF, OR ANY DEFECT IN, OR FAILURE OF, OR MALFUNCTION OF THE EQUIPMENT HEREUNDER, WHETHER BASED UPON LOSS OF USE, LOST PROFITS OR REVENUE, INTEREST, LOST GOODWILL, WORK STOPPAGE, IMPAIRMENT OF OTHER GOODS, LOSS BY REASON OR SHUTDOWN OR NON-OPERATION, INCREASED EXPENSES OF OPERATION OR CLAIMS OF PURCHASER (OR CUSTOMERS OF PURCHASER) FOR SERVICE INTERRUPTION, WHETHER OR NOT SUCH LOSS OR DAMAGE IS BASED ON CONTRACT, WARRANTY, NEGLIGENCE, INDEMNITY, STRICT LIABILITY OR OTHERWISE.

13. Miscellaneous: The rights and obligations of the Parties shall be governed by the laws of the State of Georgia excluding the State of Georgia’s conflicts of law principals. The United Nations Convention on contracts for the international Sale of Goods shall not apply to this contract. Except for Company’s right to receive all or any portion of the payment due from Purchaser under this contract, neither party shall assign or transfer this contract without the prior written consent of the other party. Company shall not be bound by any contract or any modification thereto until approved in writing by an officer of Company. The contract, when so approved, shall supersede all previous communications, either oral or written, with respect to the subject matter thereof. This contract contains the entire agreement among the parties hereto regarding the subject matter contained herein. All prior negotiations and discussions (whether in writing or made orally) by and between the parties which are not set forth in this Agreement or incorporated herein are merged into this Agreement and have no force or effect separate and apart from this Agreement.