



GENERAL TERMS AND CONDITIONS

These General Terms and Conditions shall apply to all purchase orders issued by The Pep Boys – Manny, Moe & Jack (“Customer”), unless otherwise provided in the purchase order or in another written agreement between the parties under which the purchase order is issued.

1. **BINDING EFFECT; ACCEPTANCE.** The accompanying purchase order and all subsequent purchase orders delivered by Customer to Vendor (each, an “order”) shall be governed by these terms and conditions, unless otherwise agreed to by Customer in writing. Each order constitutes an offer by Customer to Vendor, and shall become a binding contract when accepted by Vendor or when Vendor begins performance under the purchase order. Each order is issued subject to Vendor’s acceptance of all of these terms and conditions and may be accepted only upon and subject to all such terms and conditions. No change of any kind to these terms and conditions which is made by Vendor on the face of any order, on an invoice or otherwise in connection with any order, shall be binding upon Customer, or shall be deemed to modify or otherwise affect any of these terms and conditions, unless such change is accepted in writing by an officer of Customer. No “customs or usages” of any trade or business shall apply.

2. **SHIPPING AND PACKAGING; RISK OF LOSS.** Unless otherwise provided in the order, all merchandise, material, goods, and related content (“Goods”) indicated in the order shall be delivered F.O.B. Customer’s destination, with Vendor responsible for all freight, shipping and insurance charges. All items shall be packed by Vendor in suitable containers for protection in shipment and storage. Vendor shall provide all Safety Data Sheets (SDS) and SKU detail information, including a listing of all hazardous material and any materials subject to California Proposition 65. Vendor shall bear all risks of loss in delivery of all Goods to the destination designated by Customer, regardless of whether Customer or Vendor pays freight charges and regardless of the specific shipping terms. Vendor acknowledges that the risk of loss with respect to any Goods shall not pass to Customer until the Goods have been delivered in full conformity with these terms and the terms of the applicable purchase order.

3. **DELIVERY; DELAYS; Fill Rate.** Vendor shall make deliveries to fulfill requirements of Customer in accordance with schedules issued to Vendor by Customer, or at dates indicated in the order. Time is of the essence with respect to Vendor’s fulfillment of the order and Customer’s receipt of Goods. If the Goods are not delivered within the applicable time period, Customer reserves the right, without liability and in addition to all of its other rights and remedies at law or in equity, to cancel the order and to purchase substitute material or goods from Vendor or a third party, with Vendor being responsible for all costs of cover or to apply a charge back. Vendor to meet fill rate as identified below:

Fill Rate: Vendor must ship at the following fill rates per order by the due date specified on the order:
New application Parts – 95%
Retail Products -95%
Rebuilders Core Dependent - 92%
Tires – 65%

If Vendor fails to meet the applicable fill rate(s), Customer will apply a charge-back equal to 5% of the order cost of the items not shipped, with a minimum of \$100.

4. **INSPECTION.** All Goods shall be subject to inspection and approval by Customer within ten (10) business days after receipt, notwithstanding any payment therefor, and may be rejected in whole or in part, as if it had never been accepted, if the Goods are not in full compliance with these terms or Customer’s purchase order, as determined by Customer in its sole discretion (“Nonconforming Goods”). Customer may, at its option (a) reject Nonconforming Goods (including entire lots of Goods) for a refund plus any inspection, test, shipping, handling, and transportation charges incurred by Customer; or (b) require prompt correction or replacement of such Nonconforming Goods on Customer’s written instruction; or (c) retain such Nonconforming Goods. In each case the exercise by Customer of any other rights available to it under applicable law shall not be limited.

5. **INVOICES; PAYMENT; SET-OFF.** All invoices from Vendor to Customer shall be in duplicate and shall specify as separate line items: (a) the prices for the Goods; (b) all applicable taxes; (c) all applicable insurance costs and charges; (d) all applicable transportation costs and charges; and (e) any other charges. Unless otherwise provided in the order, payment shall be made to Vendor within 60 days following delivery of the entire order or receipt of Vendor’s invoices therefor, whichever is later. Customer shall be entitled to set-off any amounts owing from Vendor to Customer against any amounts payable by Customer to Vendor. Any payment of an invoice by Customer is not an acceptance of any such terms on the invoice or any nonconformity in the Goods covered by the invoice.

6. **PRICES.** The prices herein stated in the order are firm and not subject to adjustment upwards or other modifications. Vendor represents and covenants that the prices of the Goods covered by the order are not in excess of Vendor’s lowest prices in effect at the date of shipment for comparable items. Vendor represents, warrants, and covenants that the prices and all components thereof, including without limitation all discounts, credit terms, rebates, reductions and additions of any type, as well as all forms of payments, allowances, credits, services, facilities, and commissions, that Vendor provides to Customer comply with all applicable laws and regulations, including without limitation all sections of the Robinson-Patman Act, 15 U.S.C. § 13 et seq.

7. **TAXES.** Prices are inclusive of all Taxes (as defined below) imposed by any governmental authority on any amounts payable by Customer. Vendor’s invoices shall state all applicable Taxes, if any, imposed by a governmental authority and with a proper breakdown between taxable and non-taxable Goods. Vendor shall reimburse Customer for any claims by any jurisdiction relating to Taxes paid by Customer to Vendor, and for any penalties, fines, additions to Tax, or interest thereon imposed as a result of Vendor’s failure to timely remit the Tax payment to the appropriate governmental authority in each respective jurisdiction. Vendor shall also reimburse Customer for any claims made by a taxing jurisdiction or governmental authority for penalties, fines, additions to Tax, and the amount of interest thereon imposed regarding Vendor’s failure to invoice Customer for the correct amount of Tax. As used in these terms, “Taxes” means any and all sales, use, gross receipts, environmental, ad valorem, or excise tax, and any other taxes, fees, tariffs, duties, or charges of any kind imposed by any governmental authority on any amounts payable by Customer; exclusive, however, of any taxes, assessments, or other levies imposed on Vendor’s income or capital (including leased or purchased property, equipment, or software), any franchise taxes, any taxes in lieu of net income taxes and any other direct taxes imposed on Vendor.

8. **RETURNS; RECALLS.** If Customer, Vendor, or any governmental authority determines that any Goods sold to Customer are defective or do not conform to all of the warranties set forth in Section 9 (“Defective”) and a recall campaign is necessary, Vendor shall implement such recall campaign. Vendor shall be responsible for complying with all legal requirements and for all costs relating to the recall. Customer shall return Defective Goods to Vendor or destroy such Goods, as determined by Customer, at Vendor’s sole cost and risk. Without prejudice to any of rights under applicable law, if a recall campaign is implemented, at Customer’s option and Vendor’s sole cost, Vendor shall promptly either repair or replace, or credit or refund all amounts paid for, all such Defective Goods. The foregoing will apply even if any product warranty applicable to the Goods has expired. Customer shall provide reasonable assistance in such recall, provided that Vendor shall pay all of Customer’s recall-related expenses,

including handling charges. Where applicable, Vendor shall pay all reasonable costs and expenses associated with determining whether a recall campaign is necessary.

9. **WARRANTIES.** In addition to all other express, implied, or statutory warranties, including Vendor's standard warranty, Vendor represents, warrants and covenants that: (a) the Goods shall be new product (unless expressly identified as used or reconditioned in the purchase order); merchantable; fit for their particular purpose and intended use; and free from defects in material, workmanship and design; (b) Vendor has the rights, as the creator of and/or an authorized distributor of the Goods, to grant the rights granted to Customer hereunder; (c) Vendor's distribution of the Goods to Customer, and the marketing, sale, distribution, and use of the Goods by Customer and Customer's customers does not and shall not infringe upon any patent, trademark, trade dress, copyright, or other intellectual property rights of any third party; (d) the Goods may be introduced lawfully into interstate and intrastate commerce, and do and shall conform to any specification or description contained in the purchase order or Vendor's literature or samples, and that all Goods that are electrical goods shall bear the approval of the Underwriters Laboratories; (e) Customer will receive good and valid title to the Goods, free and clear of all encumbrances and liens of any kind, and there is no claim or action against Vendor that may interfere with Customer's marketing, sale, or use of the Goods; (f) Vendor is in compliance with the provisions of all federal, state, and local laws and regulations (and those of Puerto Rico) that are applicable to the Goods, including its sale and distribution by Vendor (including, but not limited to those relating to volatile organic compound limitations and consumer product restrictions), packaging, labeling, and registration, and the use and sale by Customer and its customers of the Goods, including any and all component parts, shall not cause them to be in violation of any such law or regulation (with respect to California's Proposition 65, the Goods shall either be exempt from any warning requirement under Proposition 65, or be labeled so that the sale of the Goods by Customer shall not cause Customer to be in violation of Proposition 65); (g) all of the information provided by Vendor to Customer with respect to the Goods, including any and all component parts, shall be true and correct, and Vendor shall maintain sufficient substantiation for Customer to publish and use the same in compliance with the provisions of all federal, state and local laws and regulations (and those of Puerto Rico). Such representations and warranties shall be in addition to any standard warranty given to Customer by Vendor. Such representations and warranties shall remain in effect as to each and all of the Goods for a period of one year after the Goods are delivered or are applied to a use for which they were intended, whichever is later. The foregoing period shall be deemed to be extended for such greater period of time as may be specified in Vendor's standard warranty or service guarantee. Vendor shall furnish to Customer copies of Vendor's standard warranty and service guarantee applicable to the Goods.

Without placing any limitations on the foregoing, Vendor specifically acknowledges and agrees that Customer will only accept Goods that are below any applicable emission standard and contains a percentage of volatile organic compounds or any other ingredients or constituents that are below the applicable limits, and that if Customer discovers that any Goods which exceed such applicable limits ("Non-Compliant Goods") have been delivered to Customer, Customer will immediately discontinue the use or sale of the Non-Compliant Goods, and all costs and expenses related to such discontinuance shall be borne by Vendor. Vendor shall notify Customer in writing within 10 days of execution hereof of any jurisdiction in which Goods are Non-Compliant Goods, and shall further notify Customer in writing within 10 days of becoming aware of any additional jurisdictions in which the Goods become Non-Compliant Goods or in which new or amended regulatory requirements exist.

In addition, Vendor represents, warrants, and covenants that (i) any Goods that are subject to regulation under the Clean Air Act ("CAA"), does not have the effect of bypassing, defeating or rendering inoperative any emissions-control device, (ii) any Goods that are regulated as Replacement Parts under the CAA and/or regulations enforced by the Environmental Protection Agency is functionally identical to the equivalent OEM part which it is replacing, or if the product is modified or is an add on part affecting emissions, emissions testing as required under the CAA has been completed and the Goods do not affect emissions; (iii) all Goods sold to Customer by the Vendor which are subject to regulation by the California Air Resources Board ("ARB") ("California Goods") are either (a) Replacement Parts as that term is defined by the statutes and regulations enforced by the California ARB (or any other state that has adopted the ARB standards) and therefore meets the original factory specifications for the equivalent OEM or (b) are a Legal Add-On or Modified Part as such terms are defined by the statutes and regulations enforced by the California ARB (or any other state that has adopted the ARB standards) that has been granted an exemption and is subject to an Executive Order issued by the California ARB.

10. **TITLE; PATENT, COPYRIGHT AND TRADEMARK PROTECTION.** Seller represents and warrants that Seller has good title to the Goods, free and clear of encumbrances of any kind. Seller further represents and warrants that the design and/or use of any or all goods and material delivered hereunder shall not infringe any patents, trademarks, copyrights or any other proprietary rights. Seller shall indemnify and hold Buyer harmless from any claim, liability or expense (including reasonable attorneys' fees) incurred as the result of any such infringement.

11. **PROPERTY.** All materials, tooling, models, patterns, drawings and other personal property belonging to Customer or furnished by Customer to Vendor ("Customer Property") shall be held by Vendor at its risk from loss or damage from all hazards. If Vendor is required to enter premises owned, leased, occupied or under the control of Customer during the delivery or installation of material or goods furnished by Vendor, Vendor agrees to indemnify and hold Customer and Indemnitees harmless, from any claim, liability or expense (including reasonable attorneys' fees) arising as a result of the delivery and/or installation of material or goods by Seller or its employees, contractors or subcontractors.

12. **INSURANCE.** Vendor represents and warrants that as of the date of the purchase order it has and shall continue to maintain for at least three (3) years Commercial General Liability insurance, with minimum liability limits of \$5 million per occurrence, \$10 million aggregate, and \$5 million products and completed/operations. Coverage shall include: Bodily Injury (including Death), Property Damage, Personal Injury and Advertising Injury, Products/Completed Operations, Blanket Contractual Liability, Independent Contractors. Seller shall also maintain and property damage insurance in reasonable limits covering its obligations set forth in Section 11 and shall maintain proper workers' compensation insurance covering all employees, contractors and subcontractors engaged in such delivery or installation.

13. **INDEMNIFICATION.** Vendor shall indemnify, defend and hold harmless Icahn Automotive Group LLC and its direct and indirect subsidiaries and affiliates, and their respective officers, directors, agents and employees (collectively "Indemnitees"), from and against any and all losses, damages, claims, judgments, awards, liabilities, and expenses (including attorneys' fees and costs, enhanced and/or punitive awards, and the fees and costs of enforcing any right to indemnification under this Agreement, and the fees and costs of pursuing any insurance provider) (collectively, "Losses") which result in whole or in part from (a) any actual or alleged defect (whether latent or patent) in any Goods, and/or (b) the failure of the Goods to comply with the warranties in Section 9 above and/or any other express, implied, or statutory warranties, and/or (c) any claim that the Goods infringe any patent, copyright, trade secret, trademark, trade dress, product configuration, industrial design, mask work, other intellectual property right, or other proprietary right; and/or (d) any recall under Section 8, and/or (e) any bodily injury, death of any person or damage to real or tangible personal property caused by any actual or alleged defect in the Goods, or by the negligent or more culpable acts or omissions of Vendor or its personnel, in each case regardless of whether any demand for payment is made to Vendor and/or any lawsuit is actually filed against Customer, and/or (f) any failure by Vendor or its personnel to comply with any applicable laws, regulations, or ordinances; and/or (g) any Taxes (and any penalties, fines, additions to Tax, or interest) imposed upon Customer as a result of Vendor's failure to comply with its obligations under Section 7; and/or (h) any act or omission by Vendor or its personnel, without regard to whether it is a breach of these terms. Except for Vendor's indemnification obligations or a breach of Vendor's confidentiality obligations, in no event shall either party be liable to the other for any special, consequential, indirect, incidental or punitive damages, including, without limitation, lost profits or lost revenues, even if advised of the possibility of such damages.

14. **CONFIDENTIALITY.** Vendor acknowledges that all transactions and communications in connection with an order, and all information provided by Customer to or

obtained by Vendor (including without limitation information relating to Customer's finances, business strategies, pricing, and marketing plans) and the fact and terms of this Agreement and any other agreement with Customer, whether or not marked as confidential) are confidential and proprietary to Customer ("Confidential Information"). Vendor shall hold such Confidential Information in strict confidence, shall use it solely for purposes of fulfilling its obligations under these terms, and shall not disclose it to any third party (other than agents, accountants and attorneys who have a need to know such information). Vendor shall limit internal distribution of this Agreement within its organization to those individuals whose duties justify the need to know such information. Vendor may disclose this Agreement as required by a valid order issued by a court or administrative agency or by applicable law provided that Vendor shall provide prompt notice of the request so that Customer may seek an appropriate protective order.

15. **ASSIGNMENT.** Vendor may not assign this order or any obligations hereunder without the prior written consent of Customer. Any attempted assignment without such consent shall be considered null and void. Customer may assign the applicable purchase order to a successor to all or part of Customer's business, whether by sale of assets, merger or otherwise.

16. **FORCE MAJEURE.** The time for performance by Customer or Vendor of any term or provision of the order shall be deemed extended by time lost due to delays resulting from acts of God, strikes, civil riots, floods, unavailability of material or labor, restrictions by governmental authorities or any other cause (except for financial condition or lack of funds) not within the reasonable control of Customer or Vendor, as the case may be.

17. **VENDOR COMPLIANCE.** Vendor agrees to meet and/or exceed the established criteria included in the Customer Transport and Shipping Manual and the Vendor Compliance Manual that are published on the website located at http://info.pepboys.com/schain/materials_and_goods_terms_and_conditions.htm.

18. **GENERAL PROVISIONS.** The failure of Customer to insist upon the strict performance by Vendor of any of the terms and conditions of the order shall not be deemed a waiver of any such term or condition. The order (including these terms and conditions) constitutes the entire agreement between Vendor and Customer with respect to the sale and purchase of the material and goods described or identified herein. If any provision of these terms and conditions are determined to be invalid or unenforceable by a court of competent jurisdiction, the remaining provisions shall nonetheless be binding and enforceable. All matters relating to or arising out of this order (whether sounding in contract, tort or otherwise) will be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania, without giving effect to any choice of law or conflict of law provision or rule (whether of the Commonwealth of Pennsylvania or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the Commonwealth of Pennsylvania. Any claims or disputes between the parties that relate to this Agreement or the purchase and sale of Goods shall be brought exclusively in the federal and state courts located in Philadelphia, Pennsylvania, and the parties consent irrevocably to jurisdiction and venue in those courts. **VENDOR HEREBY WAIVES ANY RIGHT TO A JURY TRIAL IN CONNECTION WITH ANY SUCH CLAIMS OR DISPUTES.**