

COTTA TRANSMISSION COMPANY, LLC
VERSION 1.03
TERMS AND CONDITIONS OF SALE

1. Agreement.

1.1. Subject to the terms and conditions set forth herein ("Terms of Sale"), Cotta Transmission Company, LLC ("Cotta") agrees to sell or provide such goods, products, parts, accessories and/or services, including any applicable documentation with respect thereto (collectively, "Goods"), as are identified and/or described in Cotta's sales quotations, sales order acknowledgements, change orders and/or invoices (collectively, "Sales Order Documentation") issued by Cotta to its customer identified in any such Sales Order Documentation ("Buyer").

1.2. These Terms of Sale shall become binding upon Cotta and Buyer upon the earlier of (i) Cotta's issuance of a sales order acknowledgement to Buyer or (ii) Cotta's shipment of Goods to Buyer, whether in whole or in part.

1.3. The Terms of Sale are expressly limited to the terms and conditions set forth herein unless expressly modified with reference hereto in any of the Sales Order Documentation.

1.4. Any acceptance of Sales Order Documentation is limited to acceptance of the express terms of the offer contained in these Terms of Sale. Any additional or different terms proposed by Buyer or any attempt by Buyer to vary in any degree any of the these Terms of Sale in Buyer's acceptance are hereby objected to and rejected, and (i) such additional or different terms shall not operate as a rejection of this offer unless such variances are in the terms of the description, quantity, price or delivery schedule of the goods or services, (ii) such additional or different terms shall be deemed to materially alter these Terms of Sale, and (iii) these Terms of Sale shall be deemed accepted by you without such additional or different terms. If you have made a prior offer with respect to the goods or services identified in this Sales Order Documentation, Cotta's acceptance of your offer is expressly conditional upon Buyer's assent to the terms contained herein.

1.5. These Terms of Sale and the Sales Order Documentation into which these Terms of Sale have been incorporated contain the entire agreement of the parties ("Agreement") and all proposals, negotiations, representations or agreements made or entered into prior to or contemporaneously herewith, whether oral or in writing, are expressly superseded.

2. Prices, Taxes and Clearances.

2.1. Prices are FOB Cotta's plant of manufacture unless otherwise specified in writing by the parties. Prices are stated in United States Dollars and payment shall be made in United States currency. Prices do not include sales, use, excise or any similar taxes. Any tax or other governmental charge upon the production, sale, shipment, or use of the Goods which Cotta is required to pay or collect from Buyer shall be paid by Buyer to Cotta unless Buyer furnishes Cotta with a tax exemption certificate acceptable to the applicable taxing authority. Buyer shall be responsible for obtaining any necessary governmental clearances, including any import and/or foreign exchange license, which may be required by the federal, any state or any foreign government, or any subdivision or agency of any thereof.

3. Payment.

3.1. Payment of the purchase price for the Goods (including any applicable sales or use tax) is, unless otherwise indicated, due and payable thirty (30) days from the date of invoice with respect thereto. Thereafter, the unpaid balance of the total purchase price shall bear interest at the rate of one and one-half percent (1.5%) per month (or the maximum rate allowed by applicable laws applied to the unpaid purchase price) until paid in full.

3.2. Invoices shall be dated as of the date of shipment. However, if, in the opinion of Cotta, the financial responsibility of Buyer becomes impaired or unsatisfactory prior to payment in full with respect to the amounts due Cotta under the Agreement, Buyer shall, if required by Cotta to do so, make cash payments or furnish satisfactory security before any further deliveries are made. Failure or refusal by Buyer to comply with the requirements that Cotta may impose upon Buyer in accordance with the foregoing shall entitle Cotta to suspend deliveries under the Agreement during such failure or refusal or, alternatively, to terminate the Agreement. Any such action by Cotta shall not in any way prejudice Cotta's claim for damages or Buyer's obligations to pay for Cotta's Goods already delivered.

4. Risk of Loss, Title and Shipment.

4.1. Risk of damage, destruction or loss, and title to the Goods, passes to Buyer upon delivery to the designated carrier, and upon such delivery no damage, destruction or loss of the Goods shall release Buyer from its obligations and liabilities to Cotta under the Agreement. The purchase price for the products is F.O.B. first point of shipment unless otherwise agreed to in writing" Cotta will ship in accordance with instructions supplied by Buyer, but if Buyer fails to furnish such instructions, Cotta will select what is, in its opinion, the most satisfactory manner of shipping and will designate the carrier to be used for the shipment. Freight charges will be prepaid by Cotta and invoiced back to Buyer. Unless otherwise mutually agreed, shipping dates are approximate and based upon prompt receipt of all necessary information. Any prepayment by Cotta of freight charges shall be for the account of Buyer and shall be paid by Buyer with the total purchase price for the Goods.

5. Force Majeure.

5.1. If Cotta is unable to perform or prevented from performing under this Agreement due, directly or indirectly, to acts of God, fires, floods, strikes or other labor disputes, accidents, machinery or equipment breakdowns, acts of sabotage or terrorism, riots, wars, inability to obtain raw materials, components, fuel or supplies, delay in transportation or lack of transportation facilities, pandemic medical event, or any restrictions or delays imposed by or caused by policies of any federal, state, foreign or other governmental legislation, rules, regulations or orders or by any cause beyond Cotta's reasonable control, Cotta's performance shall be excused (each such event being a "Force Majeure Event"). In the event of any such delay or failure, the Agreement shall not terminate and the time for performance shall be extended for a period of time equal to the time lost by reason of the Force Majeure Event.

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6. Cancellation.

6.1. Notwithstanding anything to the contrary contained in this Purchase Order or the Terms and Conditions, Buyer may only cancel this Purchase Order with Cotta's consent and upon payment to Cotta of the full purchase price for all Goods ordered by Buyer, together with all, fees, costs and expenses (including attorneys' fees, costs and expenses) incurred by Cotta in connection with Buyer's cancellation of this Purchase Order, including, without limitation, the costs incurred by Cotta with respect to special dies, tools, patterns and fixtures, labor and other costs and expenses in connection with Cotta's performance under this Purchase Order. Upon Buyer's request and after the payment by Buyer of all cancellation charges to be paid hereunder, Cotta shall make available for shipment to Buyer (which shipment shall be subject to the Terms and Conditions) all completed and partially completed Goods produced pursuant to this Purchase Order, provided, however, Cotta may, at its sole discretion, accept any cancellation on a no charge basis, retaining in its possession any materials acquired for the processing of the canceled order.

7. Inspection and Acceptance. Upon delivery of the Goods to Buyer's designated shipping destination, Buyer shall promptly inspect the Goods for conformance to the Agreement. Any claim for shortage must be made in writing and received by Cotta within ten (10) days after Buyer's receipt of the Goods along with documentation supporting the claim. **All other claims, including claims for alleged defective products, to the extent they are not disclaimed by Cotta under Section 8 hereof, must be made by Buyer in writing and received by Cotta within the applicable time period specified in Section 8.2 below.** All claims not made in writing, whether or not received by Cotta within the applicable time period specified in Section 8.2 below, shall be deemed waived.

8. Limited Warranties and Limitations Upon Damages and Remedies.

8.1. (i) COTTA MAKES TO BUYER THE FOLLOWING SOLE AND EXCLUSIVE WARRANTIES:

- (A) AT THE TIME OF SHIPMENT BY COTTA, THE GOODS SOLD OR PROVIDED UNDER THE AGREEMENT THAT ARE MANUFACTURED BY COTTA CONFORM TO THE DESCRIPTION AND SPECIFICATIONS SET FORTH IN THE APPLICABLE SALES ORDER DOCUMENTATION; AND
- (B) AT THE TIME OF SHIPMENT BY COTTA, THE GOODS SOLD OR PROVIDED UNDER THE AGREEMENT THAT ARE MANUFACTURED BY COTTA ARE FREE FROM DEFECTS IN MATERIAL AND WORKMANSHIP UNDER NORMAL USE AND CORRECT APPLICATION.

THIS WARRANTY DOES NOT INCLUDE ACCESSORIES, PARTS OR EQUIPMENT SOLD HEREUNDER THAT ARE

MANUFACTURED BY SOMEONE OTHER THAN COTTA.

(ii) SURVIVAL PERIODS:

(a) AS TO NEW GEAR BOXES AND/OR TRANSMISSIONS MANUFACTURED BY COTTA AND SOLD TO BUYER, COTTA'S WARRANTIES IN SECTION 8.1 SHALL TERMINATE UPON THE EARLIER OF (X) ONE THOUSAND FIVE HUNDRED (1,500) HOURS OF USAGE OR (Y) ONE (1) YEAR FROM THE DATE OF SHIPMENT THEREOF TO BUYER;

(b) AS TO NEW PARTS MANUFACTURED BY COTTA AND SOLD BY COTTA TO BUYER, COTTA'S WARRANTIES IN SECTION 8.1 SHALL TERMINATE UPON THE EARLIER OF (X) SEVEN HUNDRED FIFTY (750) HOURS OF USAGE OR (Y) SIX (6) MONTHS FROM THE DATE OF SHIPMENT THEREOF TO BUYER;

(c) AS TO GEAR BOXES AND/OR TRANSMISSIONS THAT HAVE BEEN REBUILT OR REPAIRED BY COTTA AND SOLD TO BUYER AS A REBUILT OR REPAIRED UNIT, COTTA'S WARRANTIES IN SECTION 8.1 SHALL TERMINATE UPON THE EARLIER OF (X) SEVEN HUNDRED FIFTY (750) HOURS OF USAGE OR (Y) SIX (6) MONTHS FROM THE DATE OF SHIPMENT THEREOF TO BUYER; AND

(d) AS TO GEAR BOXES, TRANSMISSIONS AND/OR PARTS THAT ARE REPAIRED OR REPLACED BY COTTA PURSUANT TO SECTION 8.2 BELOW (COLLECTIVELY, "WARRANTY REPLACEMENT/REPAIRED GOODS"), SUCH WARRANTY REPLACEMENT/REPAIRED GOODS SHALL ASSUME THE IDENTITY, FOR WARRANTY PURPOSES, OF THE GEAR BOX, TRANSMISSION OR PART REPLACED AND, ACCORDINGLY, NOTICE OF A CLAIM OF BREACH OF WARRANTY MUST BE RECEIVED BY COTTA WITHIN THE TIME PERIOD APPLICABLE TO THE ORIGINAL GEAR BOX, TRANSMISSION OR PART SO REPAIRED OR REPLACED.

8.2. EVERY CLAIM BY BUYER AGAINST COTTA FOR BREACH OF WARRANTY WITH RESPECT TO THE GOODS SHALL BE DEEMED WAIVED BY BUYER UNLESS WRITTEN NOTICE THEREOF IS RECEIVED BY COTTA WITHIN FIFTEEN (15) DAYS AFTER DISCOVERY.

8.3. THE EXPRESS WARRANTIES SET FORTH HEREIN ARE THE ONLY WARRANTIES APPLICABLE TO THE SALE OF GOODS BY COTTA TO BUYER PURSUANT TO THE AGREEMENT, AND THEY EXCLUDE ALL OTHER EXPRESS, ORAL OR WRITTEN WARRANTIES, AS WELL AS ANY WARRANTIES IMPLIED BY LAW, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS

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FOR A PARTICULAR PURPOSE, NOTWITHSTANDING ANY DISCLOSURE TO COTTA OF THE INTENDED USE OF THE GOODS. The agents, dealers or employees of Cotta are not authorized to make modifications to Section 8.1 or to make additional warranties that are binding on Cotta. Accordingly, statements by such individuals, whether oral or written, do not constitute warranties and should not be relied upon.

8.4. If Cotta breaches the warranties set forth in Section 8.1 above, and written notice thereof is received by Cotta from Buyer within the applicable time period specified in Section 8.2 above, Buyer's sole and exclusive remedy and Cotta's only obligation shall be, as Cotta in its sole and exclusive judgment shall determine, the replacement of the nonconforming Goods, an adjustment to the purchase price for the nonconforming Goods or the repair of the nonconforming Goods. All transportation charges related to replacement or repair of Goods shipped to Cotta's plant or facility (or other place at Cotta's direction) shall be prepaid by Buyer. Cotta shall be responsible for reasonable transportation charges back to Buyer for Goods that have been replaced or repaired by Cotta. Any replacement Goods or repaired Goods shall be subject to these Terms and Conditions.

8.5. Cotta will not be liable for and is not (and shall not be) responsible for any indirect, special, incidental, consequential, punitive or exemplary damages under any circumstances, including, but not limited to, loss of income (business or personal), damage or loss (including any increased costs suffered or incurred by Buyer) resulting from Buyer's inability to use the Goods or Buyer's (or its customer's) inability to use any equipment, or any increased operating costs or loss of production or other costs incurred by Buyer (or any customer of Buyer) in removing, reinstating or repairing allegedly defective or nonconforming Goods, delay damages or any other such damages, whether arising from causes similar to or dissimilar to those enumerated (collectively, "Special Damages").

8.6. Cotta disclaims any liability for failure of performance or malfunction of the Goods supplied by Cotta pursuant to the Agreement which in Cotta's opinion is the direct or indirect result of any action or inaction by Buyer or any party other than Cotta (including, without limitation, any customer of Buyer or other user of the Goods) including, without limitation, abuse, neglect, accident, improper installation, modifications or repairs not made by Cotta, incorrect or inappropriate use or application, failure to maintain, unsuitability or incompatibility with other products or equipment not supplied by Cotta, or the presence of non-recommended fluids or other contaminants.

8.7. Cotta's warranties under Section 8.1 are void in the event that repairs or modifications of the Goods are made by anyone other than Cotta. Without limitation of the foregoing, Cotta assumes no responsibility for and shall

have no obligations to Buyer on account of defects in any materials furnished by, or any faulty workmanship provided by, any party other than Cotta.

8.8. Cotta reserves the right to improve its products through changes in design or material without being obligated to incorporate such changes into products of prior manufacture. Buyer cannot rely on any such changes as proof of insufficiency or inadequacy of prior designs of the Goods or material contained in the Goods.

8.9. If Buyer grants to an end user of the Goods (or any other customer of Buyer) any warranty that is greater in scope or time period than the warranty and claims period stated herein, Cotta shall not be liable beyond the scope of the limited warranty, the claim period, the damages and the remedies provided for under this Section 8.

8.10. Solely to the extent transferable, Cotta assigns and transfers to Buyer the original manufacturer's warranty on Goods sold hereunder that are not manufactured by Cotta.

8.11. Notwithstanding any provision hereof which may be or appear to be to the contrary, in no event whatsoever shall Cotta's liability in respect to any claim or action of any kind arising out of, in connection with, or resulting from the manufacture, sale, delivery, resale, use or repair of the Goods or component parts thereof or services rendered by Cotta pursuant to the Agreement, or any breach by Cotta of any term of the Agreement, exceed the price for the Goods or component part thereof or service which gives rise to such claim or action. Buyer assumes all other liability for any loss, damage or injury to persons or property arising out of, connected with or resulting from the use of the Goods, either alone or in combination with other products, including, without limitation, any "Special Damages" or any loss, damage or injury to Buyer (or to Buyer's employees or property or to the employees or property of any customer of Buyer or other user of the Goods) due to the acts or omissions of Buyer, its agents, employees or customers, in the installation, maintenance, use or operation of such Goods.

9. *Compliance with Law.* Cotta represents that Goods delivered or services performed by Cotta pursuant to the Agreement will comply with the Fair Labor Standards Act of 1938, as amended.

10. *Federal Contract Requirements.* In the event the Agreement is subject to any of the following requirements related to federal contracts, Cotta represents that its performance hereunder is in compliance with: (i) Executive Order 11246, including section 202; (ii) The Vietnam Era Veterans Readjustment Assistance Act of 1974; (iii) applicable worker's compensation requirements; and (iv) The Rehabilitation Act of 1973.

11. *Indemnification; Intellectual Property.* In the event any Goods to be furnished under the Agreement are to be made in

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accordance with drawings, samples or manufacturing specifications designated by Buyer, Buyer agrees to hold Cotta harmless from any and all damages, costs and expenses relating to any claim arising from the design, manufacture or use of such Goods or arising from a claim that such Goods furnished to Buyer by Cotta, or the use thereof, infringes upon any intellectual property rights, including, without limitation, Letters Patent or trade secrets, foreign or domestic, and Buyer agrees at its own expense to undertake the defense of any suit against Cotta brought upon such claim or claims. In the event any Goods to be furnished under the Agreement are solely the design of Cotta, Cotta agrees (subject to the last sentence of this Section) to hold harmless Buyer and its customers against damage awarded by a court of final jurisdiction in any suit or suits for the infringement of any intellectual property rights or the violation of any trade secrets by reason of the sale or use of such Goods furnished by Cotta under the Agreement. Buyer agrees to notify Cotta as soon as practicable of any charge or suit alleging any such infringement or violation, and agrees that the foregoing agreement by Cotta to indemnify shall not apply unless Cotta shall have been so notified and given the opportunity to take over the defense thereof, and further, such agreement to indemnify shall not apply if (i) the claimed infringement is settled without the consent of Cotta unless required by a final unappealable decree of a court of competent jurisdiction, or (ii) the infringement or violation results from the use of any Goods delivered pursuant to the Agreement in combination with a product not delivered thereunder where such infringement or violation would not have occurred from the use of the Goods alone delivered pursuant to the Agreement. Notwithstanding the foregoing, any obligation on Cotta's part to indemnify Buyer under this Section 13 shall be limited solely in amount as provided for in Section 8.3(viii) above.

12. Proprietary Rights Reservations. All information of every kind and nature (except for such information as may be established to be in the public domain or which Buyer may establish to be the property of Buyer) related to the design, engineering, production, process, method, device, technique, formulas, plans, diagrams, drawings, compilations, patterns, tools, dies or fixtures in connection with or related to any component, device, material or other goods, products or services manufactured, provided or delivered pursuant to the Agreement are property of Cotta. Such information has been developed at great expense to Cotta and may contain trade secrets of Cotta. Buyer shall not reproduce, disclose, distribute or utilize same without Cotta's prior express written consent (which consent may be granted or denied in Cotta's sole discretion) or as required by judicial or governmental action and Buyer shall exercise reasonable care to hold such information in confidence.

13. Return Authorization. Except as permitted under Section 8 or in this Section, Buyer may not return any Goods delivered pursuant to the Agreement. Buyer may, with the prior consent of Cotta (which consent may be granted or denied in Cotta's sole discretion), **but only if Buyer is provided with an RG Number from Cotta**, and in conformity with shipping instructions provided by Cotta, return Goods delivered to Buyer that are free from any damage whatsoever and in fair saleable condition; provided, however, that Buyer agrees to pay to Cotta a restocking

charge equal to thirty-five percent (35%) of the purchase price of such Goods together with any transportation, taxes and/or rework charges incurred by Cotta in connection with the return of such Goods, if Buyer has not theretofore paid the full purchase price for such returned Goods or if Buyer has paid the full purchase price for such returned Goods, Cotta shall issue a refund less such restocking charge.

14. Uniform Commercial Code; Cotta's Security Interest. Until the entire purchase price for the Goods (as set forth in invoices from time to time issued to Buyer by Cotta) has been fully paid, Cotta shall have, to secure payment thereof, a continuing senior purchase money security interest in the Goods and proceeds therefrom. Upon a default under these Terms and Conditions, Cotta shall have all of the rights and remedies of a secured party under the Uniform Commercial Code as from time to time in effect in the State of Wisconsin.

15. Default.

15.1. The occurrence of any of the following events shall constitute Buyer's default under the Agreement: (i) Buyer's failure to make timely payment of any sum owing to Cotta under the Agreement; (ii) institution of any proceedings by or against Buyer under any bankruptcy, insolvency or similar law; (iii) appointment or application for a receiver for Buyer; (iv) an assignment by Buyer for the benefit of creditors; (v) failure of Buyer to furnish Cotta, upon Cotta's request, with a written representation reaffirming Buyer's solvency (it being understood that the Agreement constitutes a representation by Buyer that it is solvent); or (vi) Cotta deems itself insecure with respect to performance by Buyer under the Agreement.

15.2. Upon Buyer's default hereunder, Cotta may, upon written notice to Buyer, cancel any remaining obligations of Cotta under the Agreement, in which case, at Cotta's option:

(i) Buyer shall pay for all Goods delivered and for all Goods completed or in process pursuant to the Agreement;

(ii) With respect to any Goods for which Cotta has not received full payment, Cotta may stop delivery, retake (or retain) possession of such Goods wherever located (all without notice, demand or legal process) and retain, lease or resell (at public or private auction or otherwise) such Goods without accounting to Buyer and any payments received by Cotta from Buyer may be retained.

(iii) Cotta may declare any outstanding balance immediately due and owing and collect same from Buyer without further notice or demand, together with interest at the maximum rate permitted by law; and/or

(iv) Refuse to deliver any Goods except on a cash basis.

16. Miscellaneous.

16.1. Cotta shall be an independent contractor with respect to Buyer in the performance of the Agreement. Neither party

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hereto, nor any respective agent of either party, shall be regarded as an agent or employee of the other. The Agreement shall not be construed to be a joint venture between the parties.

16.2. No waiver by Cotta of any default shall be deemed a waiver of any subsequent default unless the same shall be signed in writing by Cotta.

16.3. If any provision of the Agreement is held to be invalid under applicable law, such invalidity shall not affect the remaining provisions of the Agreement.

16.4. The provisions of the Agreement shall be binding upon and inure to the benefit of the respective representatives, successors and assigns of the parties hereto, including, without limitation, a debtor-in-possession; provided, however, that no interest herein may be assigned by Buyer without the prior written consent of Cotta.

16.5. No waiver, alteration or modification of the terms and conditions hereof shall be valid or binding upon Cotta unless made in writing and signed by Cotta.

16.6. This Agreement shall, for all purposes, be governed by and construed under the laws of the State of Wisconsin as applied to agreements between Wisconsin residents entered into and to be performed entirely within the State of Wisconsin. Without limitation of the foregoing, Buyer irrevocably agrees that all actions or proceedings in any way, manner or respect arising out of or from, or relating to, the Agreement shall be litigated only in Wisconsin state courts having situs in Rock County, Wisconsin or in the United States District Court for the Western District of Wisconsin. Buyer consents and submits to the jurisdiction of any local, state or federal court located within said county and state, and waives any and all objections to jurisdiction that Buyer may have under the laws of the State of Wisconsin or the United States, including any claim or objection that any such court is an inconvenient forum. Further, Buyer hereby waives, to the fullest extent permitted by law, all rights to have any dispute or claim arising under the Agreement litigated before a jury.