

AGREEMENT ON THE TERMS AND CONDITIONS OF SALE AND EXCHANGE

ABX Material Services, Inc. ("ABX SERVICES") offers to furnish, exchange and/or sell to the undersigned buyer ("Buyer") certain parts and equipment ("Parts") requested from ABX SERVICES now and from time to time by Buyer subject to the following terms and conditions and no others (this "Agreement"). Any modification of this Agreement must be made in writing and must be signed by both parties.

1. Warranty; Limitation of Liability. PARTS SOLD AND EXCHANGED BY ABX SERVICES TO BUYER ARE SOLD AND EXCHANGED WITHOUT ANY GUARANTEE OR WARRANTY WHATSOEVER BY ABX SERVICES EXCEPT THAT ABX SERVICES WARRANTS THAT IT HAS GOOD TITLE. ALL PARTS ARE SOLD AND EXCHANGED "AS IS" BY ABX SERVICES, AND ABX SERVICES EXPRESSLY DISCLAIMS ALL OTHER REPRESENTATIONS AND WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, NOR DOES ABX SERVICES REPRESENT THAT THE PARTS ARE SUITABLE FOR USE IN ANY CAPACITY. THE LIMIT OF ABX SERVICES' LIABILITY FOR ANY CLAIMED DEFECT IN ANY PARTS, WHETHER IN CONTRACT, TORT, STRICT LIABILITY OR OTHER FORM OF ACTION THAT ARISES SHALL BE THE PURCHASE PAID BY BUYER TO ABX SERVICES FOR THE PART(S) AND IN NO EVENT SHALL ABX SERVICES BE LIABLE FOR ANY SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES. WITHOUT LIMITING THE FOREGOING, ABX SERVICES AGREES TO USE ALL REASONABLE EFFORTS TO CONFER UPON CUSTOMER ALL PASS THROUGH WARRANTIES, IF ANY, FROM THE MANUFACTURER, SUPPLIER, OR MAINTENANCE FACILITY OF SUCH PARTS.

2. Indemnity. To the fullest extent permitted by law, Buyer will indemnify, defend and hold harmless ABX SERVICES, its parents, subsidiaries, affiliates, and each of their directors, officers, employees and agents from and against any and all claims, damages, losses, liabilities, judgments, costs, fines and expenses of any kind, including but not limited to interest, court costs and reasonable attorney's fees that arise out of or result from the use or handling of the Parts, including but not limited to injury to or death of any person and damage to or destruction of any property, real or personal ("Loss"). This Section will apply regardless of whether any Loss arises out of or relates to the negligence of, or was caused in part by ABX SERVICES, except to the extent a Loss results from the gross negligence or willful misconduct of ABX SERVICES, its directors, officers, employees or agents. In no event will ABX SERVICES be liable for any special, indirect or consequential damages, including lost revenues or profits or loss of use of equipment, aircraft or facilities arising out of or in connection with sale, use or handling of the Parts and Buyer's obligation to indemnify ABX SERVICES will extend to such liabilities regardless of the party asserting such liabilities. This Section will not be construed to negate, abridge or otherwise reduce any other right or obligation of indemnity that would otherwise exist as to any party or person described in this Section. Buyer's obligations under this Section will not be limited in any way by the amount or type of damages, compensation or benefits paid or payable by Buyer under Workers' Compensation Acts, disability benefits acts or other employee benefits laws or regulations. The indemnification obligations of this Section will survive termination or expiration of this Agreement. ABX SERVICES will promptly notify Buyer of any claim made or suit brought within the scope of this Section and Buyer has the right to assume and conduct the defense or to effect any settlement at its expense.

3. Intellectual Infringement. ABX SERVICES expressly disclaims and Buyer agrees that since ABX SERVICES is not the manufacturer. ABX SERVICES shall have no liability whatsoever with respect to any claims of copyright and patent infringement, as well as for any alleged unfair competition claim that results from similarity in design, trademark, or appearance of the Parts furnished hereunder.

4. Delivery. ABX SERVICES is not obligated to make delivery by any specified date, but will always use reasonable efforts to make delivery within the time requested. All deliveries shall be made F.O.B. ABX SERVICES' facility in Wilmington, Ohio and the costs of packing and shipping the Part(s) is not included in the quoted price and is the responsibility of Buyer.

5. Prices; Taxes; Payment Terms. Prices for Parts do not include transportation charges, additional delivery charges and fees for Part(s) ordered, delivered or purchased outside of normal business hours, which are Monday through Friday 8:30 am to 5:30 pm exclusive of holidays, insurance charges, duties, sales, use, value added, property, gross receipts, franchise, excise or any other taxes imposed by any taxing jurisdiction as a result of the sale of Parts to Buyer. If freight insurance was requested, then the cost will be added to the freight charges. Payment terms are cash-on-delivery (C.O.D.), unless Buyer has secured written approval from ABX SERVICES to make payment thirty (30) days net from date of invoice; ABX SERVICES may withdraw such approval at any time. All payments shall be made directly to ABX SERVICES in U.S. dollars, and Buyer shall comply with applicable monetary and exchange control regulations to the extent required to make all payments in accordance with these requirements. A late charge of 1.5% per month will be charged on all accounts thirty (30) days past due. Buyer shall bear all collection costs, including reasonable attorneys' fees, in the event it becomes necessary to enforce payment.

6. Claims Procedures and Limits; Returns. If any Parts should arrive at Buyer's destination in a damaged condition or should a shortage occur, then Buyer shall report the damage or shortage to the delivering carrier and to ABX SERVICES within ten (10) days after receipt of Parts. Any loss or shortage occasioned by damage in transit, or otherwise occurring, will be for account of Buyer. Any claims for other errors, deficiencies or imperfections must be made to ABX SERVICES within thirty (30) days after receipt by Buyer of the Parts. A restocking charge of twenty-five percent (25%) or twenty-five dollars (\$25.00), whichever is greater, will apply to each returned Part.

7. Title. Title to all Parts shall remain with ABX SERVICES until such time as ABX SERVICES receives payment in full. ABX SERVICES shall have a first priority security interest in the Parts for any portion of the purchase price and/or repair price not paid and shall retain this

interest until Buyer has paid the full purchase price and/or repair price. Additional security or lien interest(s), if any, in the Parts are subordinate to ABX SERVICES' first priority security interest until Buyer has paid in full.

8. **Force Majeure.** ABX SERVICES shall not be liable for any delay in delivery due to: (a) fires, floods, strikes, or other labor disputes, accidents to machinery, acts of sabotage, riots, precedence or priorities granted at the request or for the benefit, directly or indirectly, of the federal or any state government or any subdivision or agency thereof, delays in transportation or lack of transportation facilities, restrictions imposed by federal or state legislation or rules or regulations; or (b) any cause beyond the control of ABX SERVICES.

9. **Entire Agreement.** This Agreement constitutes the entire agreement between Buyer and ABX SERVICES for the Parts. Any other agreements, understandings, conditions or representations, whether oral or written, are not binding upon ABX SERVICES unless in writing and signed by a duly authorized corporate officer of ABX SERVICES. To the extent this Agreement is inconsistent with any general sales agreement between Buyer and ABX SERVICES, which by its terms is applicable this transaction, the terms of the general sales agreement will govern. All terms of this Agreement that are not in conflict with the general sales agreement will remain in full force and effect.

10. **Severability.** Should it be determined by any court of competent jurisdiction that any provision of this Agreement is invalid, void, or unenforceable for any reason, such provision will be severed and the remaining provisions shall continue in full force and effect without being impaired or invalidated, all to the end that the manifest intention of the parties shall be effectuated.

11. **Buyer's Representation.** Buyer represents and warrants that: (a) it has not offered to any of ABX SERVICES' employees or members of such employee's family, any gift, gratuity, or compensation in any form; (b) it has disclosed to ABX SERVICES the names of all employees of ABX SERVICES (or their family members) that are employed by, or have any ownership interest in, Buyer; (c) there is no understanding or agreement, express or implied, for the acquisition of any ownership interest in Buyer by such employees (or their family members) that has not been previously disclosed to ABX SERVICES; and (d) it will not employ any of ABX SERVICES' employees or persons who have been employed by ABX SERVICES in any preceding twelve (12) month period (or their family members) unless approved in advance by ABX SERVICES. Buyer will be liable for any and all damages resulting from Buyer's breach of this provision. This provision will survive the termination of this Agreement, regardless of cause, for a period of one (1) year after the delivery of all Parts hereunder.

12. **Governing Law and Jurisdiction.** This Agreement will be governed by and construed in accordance with the laws of the State of Ohio (without regard to Ohio conflicts of law principles). Buyer and ABX SERVICES each irrevocably submits to the jurisdiction of, and agrees that any action, suit or proceeding arising out of or relating to this transaction, its validity or performance, must be brought and litigated in the Common Pleas Court sitting in Clinton County, Ohio, and waives any defense to any such suit being brought in such court based on such suit being brought in an inconvenient forum.

13. **Counterparts.** This Agreement may be signed in one or more counterparts, each of which will be a duplicate of the original, but all counterparts taken together are duplicates of one and the same Agreement.

14. **Nondiscrimination.** ABX SERVICES is an equal opportunity employer and complies with the provisions of federal, state and local laws relating to nondiscrimination in employment and facilities, including, without limitation, the provisions of paragraph 1 through 7 of Part 11 of Executive Order 11246 as amended by Executive Order 11375 and the provisions of 41 CFR Chapter 1, Section 1 through 12803.10.

The undersigned is authorized to sign and agrees to be bound by all the terms and conditions contained in this Agreement.

By

Print Name

Company

Date



STEC-B
Rev. 3/15/04

Sales and Use Tax Blanket Exemption Certificate

The purchaser hereby claims exception or exemption on all purchases of tangible personal property and selected services made under this certificate from:

ABX Material Services
1111 Airport, Bldg. 2065A
Wilmington, Ohio 45177

(vendor's name)

and certifies that the claim is based upon the purchaser's proposed use of the items or services, the activity of the purchase, or both, as shown hereon:

FOR RESALE

Purchaser must state a valid reason for claiming exception or exemption.

Purchaser's name

Street address

City, state, ZIP code

Signature

Title

Date signed

Vendor's license number, if any

Vendors of motor vehicles, titled watercraft and titled outboard motors may use this certificate to purchase these items under the "resale" exception. Otherwise, purchaser must comply with either rule 5703-9-10 or 5703-9-25 of the Administrative Code.

This certificate cannot be used by construction contractors to purchase material for incorporation into real property under an exempt construction contract. Construction contractors must comply with rule 5703-9-14 of the Administrative Code.