

## TERMS AND CONDITIONS

The following Terms and Conditions will govern the sale by Radius Track Corporation ("Seller") of any goods and/or services to the designated purchaser ("Buyer"). This offer expressly limits Buyer's acceptance to the terms and conditions stated herein or on the face of any Seller Purchase Order and in any attachments. All additional, inconsistent or conflicting terms proposed by the Buyer in Buyer's order or in any other communication submitted to Seller by Buyer are hereby rejected and will be of no force or effect, unless such conditions or terms are accepted in writing by the Seller. These Terms and Conditions, any attachments and applicable modifications, constitutes the entire agreement of the parties for the applicable transactions identified therein, and is binding on the Buyer and the Seller and their successors or assigns.

**SCOPE** - The term and conditions of sale contained herein apply to all quotations made, and purchase orders submitted to and accepted, by the Seller. Seller's acceptance of Buyer's order is expressly conditioned upon Buyer's consent to the terms and conditions contained herein, which shall govern, irrespective of any terms and conditions that may be affixed to or contained in Buyer's form or order blank and/or specified by Buyer. The terms and conditions contained herein shall be deemed accepted by the Buyer either by written acknowledgment or by acceptance of delivery by Buyer of the goods ordered from seller unless Seller receives written notice of rejection of the terms or conditions contained herein prior to acceptance of delivery by Buyer. The acceptance of those goods shall constitute assent to the term and conditions contained herein. Seller's failure to object to any provisions contained in any communication from Buyer shall not be deemed a waiver of the provisions of this acceptance. Any changes in the terms and conditions of sale contained herein must be specifically agreed to in writing by the President of the Seller before becoming binding on either the Seller or the Buyer. All orders or contracts must be approved and accepted by the President of the Seller at its home office. The said terms and conditions of sale shall be applicable whether they are attached or enclosed with the products to be sold or sold hereunder. Prices quoted for the items described above and acknowledged hereby are not subject to audit, price revision, or price redetermination by the Buyer.

**STANDARD OF CARE** – Services provided by the Seller under this Agreement will be performed in a manner consistent with the degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances.

**PRICING AND PAYMENT** - Invoices for services and material delivered under this order are payable only in U.S. Dollars. Payment by credit card will incur a 3.95% service fee. These terms of payment are subject, nevertheless, at all times to the approval of Seller's President, and in case of doubt arising as to Buyer's financial responsibility, shipment may be suspended until satisfactory assurance of Buyer's responsibility is received.

Estimated prices and fees provided by Seller to Buyer are approximations and are not guaranteed. Estimates are based on information provided from the Buyer regarding project requirements, and actual costs may change once all project elements are finalized or negotiated. Prior to any changes of cost, Seller will take reasonable efforts to notify Buyer; provided, that such notification shall not allow for the termination or cancellation of this agreement. The cost of the work covered by this agreement, and payable by Buyer, shall mean and include all costs reasonably and necessarily incurred by Seller in the proper performance of the work, including increases in costs arising from, but not limited to, increases in costs of materials, shortages of materials or supplies, increases in taxes, tariffs, or other fees, and other increases in costs beyond the control of Seller.

Unless otherwise provided herein, invoices will be prepared in accordance with Seller's standard invoicing practices then in effect and will be submitted to Buyer each month and at the end of completion of the work on the project. Payment of invoices is due in full 30 days after the date of the invoice, unless otherwise noted within billing schedule. Progress billing schedule supersedes payment terms identified above. If payment is received in more than 30 days after the date of invoice, a Service Fee of 1 1/2 % per month (18% per annum) shall be assessed. In the event collection procedures are required by Seller, the Buyer shall pay all costs of collection, whether or not legal proceedings are instituted, including but not limited to collection fees, attorney fees, court costs incurred by Seller and all accrued interest.

This contract is entire and non-severable, notwithstanding the fact that separate shipments and payments may be made hereunder. In the event shipments are delayed by the Buyer, payments shall become due on the date when the Seller is prepared to make shipment. In the event the work covered by the purchase order is delayed by the Buyer, payments shall be based on the purchase price and the percentage of completion. Products held for the Buyer shall be so held at the risk and expense of the Buyer. The Seller reserves the right to ship to its order and make collection by sight draft with bill of lading attached. Seller reserves the right to suspend credit at any time when in its sole judgment the financial condition of the Buyer warrants such action. At such time, without

releasing Buyer of its obligation to accept goods hereunder, Seller may thereupon require that Buyer pay his account in full and pay cash on all future deliveries as a condition to such deliveries and treat failure to do so as a breach of this entire contract, terms of credit hereunder to the contrary notwithstanding.

**TRANSPORTATION** (if applicable) - All goods sold hereunder may be tendered by a single delivery or by delivering in lots at Seller's discretion. All products not specifically designated otherwise are sold F.O.B. shipping point, Seller's plant; and the cost of transportation thereof shall be borne by the Buyer. Seller's title passes to Buyer and Seller's liability as to delivery ceases upon making delivery of material purchased hereunder to carrier at shipping point in good condition with the carrier acting as Buyer's agent. All claims for damages must be filed with the carrier. Unless specific instructions from Buyer specify the method of shipment or carrier to be used, the Seller will exercise its own discretion. Buyer shall bear all risk of loss or damage to the goods upon Seller's delivery of the goods to the carrier. Provided, that notwithstanding the foregoing, risk of loss shall pass to Buyer upon Buyer's request to hold delivery of any goods as described below.

**DELIVERY** (if applicable) - Shipping dates are approximate and based upon prompt receipt from Buyer of all information necessary to arrive at mutually agreeable delivery schedules. In no event shall Seller be liable for any re-procurement costs or for damages caused by delay or non-delivery due to causes beyond its control, including but not limited to acts of God, acts of civil or military authority, priorities, fires, strikes, lockouts, slowdowns, factory or labor conditions, and manufactures inability due to causes beyond the Seller's control to obtain necessary labor, materials, or manufacturing facilities or any other causes similar or dissimilar beyond Seller's control. In the event of any such delay the date of delivery shall be deferred for a period equal to the time lost by reason of the delay. If Buyer requests that Seller hold delivery or store ready-to-deliver goods beyond such time as Seller is prepared to make delivery, and if Seller is willing to so hold delivery, the contract sum/price shall be increased by the amount of Seller's costs of storage or increased costs incurred as a result of such storage, including but not limited to extra handling and storage fees and rental or use fees for storage space or vehicle storage space. Notwithstanding the foregoing, Buyer acknowledges and agrees that, due to space and shipment constraints, Seller shall not be obligated to hold or store product on behalf of Buyer, and Seller shall accept and not refuse delivery.

**WARRANTY AND LIMITATION OF LIABILITY** (if applicable) - Seller warrants to the original purchaser of its goods that the goods shall be free from defects in materials and workmanship during the 90-day period running from the date of shipment. Seller's obligations under this warranty are specifically limited to replacing or repairing the goods that are shown by Seller's examination to be in a defective condition attributable to Seller. To qualify for this limited warranty, Buyer must return the goods to Seller, within a reasonable time after discovery of the defect, and within the 90-day period. Seller will examine the goods. If Seller determines that there is a defect attributable to it, it will correct the problem within a reasonable time. If the goods are covered by this limited warranty, Seller will assume the expenses of repair. If any defect attributable to Seller under this limited warranty cannot be reasonably cured by repair or replacement, Seller may elect to refund to you the purchase price of the goods, less reasonable depreciation, in complete discharge of its obligations under this limited warranty. If Seller makes this election, Buyer shall return the goods to Seller free and clear of any liens or encumbrances. This is a limited warranty. Either the original purchaser of the goods nor any person to whom they are transferred is entitled to recover from Seller any consequential or incidental damages for injury to person and/or property resulting from any defective goods manufactured by Seller or from Seller's breach of this contract. It is agreed and understood that the price stated for the goods is in part consideration for limiting Seller's liability. Seller shall have no obligation under this limited warranty if the goods are, or have been, misused or neglected or if there have been accidents to the goods or if it has been repaired or altered by someone else. Seller may provide to Buyer data relating to the goods sold and the application of the goods to Buyer's purposes. Any information is for general use only in order to enable Buyer to make its own independent determination as to the suitability of the goods for Buyer's intended application. Seller does not represent or warrant to Buyer the suitability of the goods for Buyer's intended use. This is Buyer's decision alone. SELLER EXPRESSLY DISCLAIMS WITH RESPECT TO THE GOODS ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND ALL IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE. THERE IS NO WARRANTY OF ANY NATURE MADE BY SELLER BEYOND THAT STATED IN THIS DOCUMENT.

**INFORMATION PROVIDED BY OTHERS** - All orders are accepted with the understanding that the parts or material furnished will be in accordance with the Buyer's order. The Buyer recognizes that it is impossible for the Seller to assure the accuracy, completeness and sufficiency of such information, either because it is impossible to verify, or because of errors and omissions which may have occurred in assembling the information the Buyer is providing. Seller has no liability to Buyer for any errors in such blueprints, specifications or instructions, and Buyer shall accept delivery of and pay for all goods furnished by Seller in accordance with such blueprints, specifications and instructions, regardless of whether or not the goods are suitable for Buyer's use. In addition, the Buyer

agrees, to the fullest extent permitted by law, to indemnify and hold Seller (including its officers, directors, shareholders, employees, agents, and Seller's consultants and affiliated companies, and any of them) harmless from and against any and all claims, losses, costs or damages of any nature whatsoever for injury or loss arising or allegedly arising from errors, omissions or inaccuracies in documents or other information provided by the Buyer to the Seller.

**LIMITATIONS AS TO DESIGN AND ENGINEERING.** Buyer acknowledges and agrees that Seller merely engages in fabrication of products, and is not an architect or engineer. Any recommendations or input by Seller relating to the design, engineering, drawings, or specifications are intended as suggestions only for the consideration of Buyer. Buyer understands that Seller may, on behalf of Buyer, utilize the services of engineering or other consultants in the preparation or review of plans, blueprints, specifications, or instructions for use in the fabrication of Buyer's order, and that such preparation or review is subject to the foregoing provisions regarding information provided by others. Such recommendations and input from the Seller or its engineers or consultants shall be independently reviewed, evaluated and, if accepted and approved by Buyer, Buyer shall be responsible for the confirmation of compliance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities and incorporation of such recommendations and input into the order, and compliance with Buyer's specific needs and uses. Seller makes no representations or warranties as to its recommendations or input relating to engineering, design, or drawings and specifications. Buyer agrees that it will not sell, license or (except on its own projects) otherwise permit the use of such plans, blueprints, drawings or specifications. Seller shall have no responsibility to Buyer incident to Buyer's use of such plans, blueprints, drawings, or specifications; and, Buyer agrees to indemnify and hold Seller and Seller's consultants and engineers harmless from and against any claims, damages, expenses (including reasonable attorneys' fees and costs of defense) and judgments against Seller which result directly from Buyer's use of such plans, blueprints, drawings, or specifications. The provisions of this section shall further apply to any derivative uses (including substitutions or modifications) by or from Buyer's use of such plans, blueprints, drawings, or specifications, or arising from the products delivered by Seller hereunder.

**TOLERANCES** - All tolerances, including quantity tolerances, shall be in accordance with Seller's standards

**DELAYS** – If Seller is delayed at any time in the commencement or progress of the work or products ordered by (1) an act or neglect of the Buyer, the owner/end-user of the goods or services ordered, Buyer's ultimate general contractor or any person or entity on whose behalf Buyer is placing an order, a separate contractor or designer (defined as other contractors or design or engineering professionals retained by any of the foregoing persons), or of an employee or agent of any of them (collectively, the "Buyer/Owner Representatives"), or (2) by changes ordered in the work or products, then in any such case the contract/fabrication/delivery time shall be extended for such reasonable time as Seller may determine given Seller's production schedule, and the contract sum/price shall be increased by the amount of Seller's reasonable costs of shutdown, delay and start-up, or increased costs incurred as a result of such delays. Buyer agrees, for itself and the Buyer/Owner Representatives, that it shall provide such reviews and approvals within the time limits and deadlines required by Seller, and that the time limits established by Seller's schedule provided to Buyer and approved by Buyer shall not be exceeded. Buyer agrees that, in the event that Buyer exceeds any time periods as provided herein, or requests that Seller delay the production or delivery of work or products, a 5% increase in the contract sum per month of delay (prorated as to any partial month) shall be deemed reasonable, but shall not necessarily be a maximum as provided herein.

**FORCE MAJEURE** – Seller is not responsible for delays caused by factors beyond Seller's reasonable control, including but not limited to delays because of strikes, lockouts, work slowdowns or stoppages, pandemic or epidemic, accidents, acts of God, failure of any governmental or other regulatory authority to act in a timely manner, failure of Buyer or Buyer/Owner Representatives to furnish timely information or approve or disapprove of Seller's services or work product promptly, delays caused by faulty performance of the Buyer, Buyer/Owner representatives, or by contractors of any level, or delays in the delivery or availability of materials, supplies, or labor arising out of any of the foregoing. When such delays beyond Seller's reasonable control occur, the Buyer agrees the Seller is not responsible for damages, nor shall Seller be deemed in default of this Agreement.

**PATENTS** - The Buyer shall hold the Seller harmless against any expense or loss resulting from infringement of patents or trademarks arising from compliance with Buyer's designs or specifications or instructions. The sale of products by the Seller does not convey any license, by implication, estoppel, or otherwise, under patent claims covering combinations of said products with other devices or elements.

**TAXES** - Buyer agrees to pay such taxes, excises, and otherwise as may be levied by the Federal Government or the State or any political subdivision thereof, upon the manufacture, sale and use of the product being sold hereunder.

**CANCELLATION** - If payments required hereunder are in default, Seller reserves the right to treat such failure to make timely payments as a breach of this entire contract and withhold further shipments and/or at its option to either cancel the order, or demand that the entire amount under the contract be paid upon tender of all goods ordered hereunder or require Buyer to pay his account in full and pay cash on all future deliveries as a condition to such deliveries and treat failure to do as a breach of this entire contract. Seller additionally reserves the right to cancel the order if prevailing conditions beyond the control of Seller from any cause whatsoever make it impossible or impractical to make the shipments. In case of such cancellation, Seller shall incur no liabilities. In the event of cancellation by Buyer for any reason whatsoever, but excluding default by Seller, then in addition to all other charges and damages, Buyer will be required to pay a cancellation fee which will be determined by Seller based on the purchase price and percentage of completion at the time of cancellation. If partial shipments have been made, unit prices for delivered items shall be adjusted to reflect the unit price related to the lesser quantity actually delivered.

**ASSIGNMENT** – Neither party to this Agreement shall transfer, sublet or assign rights under or interest in this Agreement (including but not limited to monies that are due or monies that may be due) without the prior written consent of the other party.

**CLAIMS** - Buyer must raise in writing to Seller within 90 days of the date of the invoice any claim or dispute it believes it has against Seller. If Buyer fails to comply with this requirement, it will be precluded from raising the claim or dispute against Seller.

**GENERAL TERMS** - No waiver of a breach of any provision hereof shall constitute a waiver of any breach or of such provision. Failure to object to provisions contained in any communication from Buyer shall not be deemed a waiver of the provisions of the acknowledgment of order which shall constitute the entire contract between Buyer and Seller. It is specifically agreed that any purchase order or notice of release which may be issued by Buyer shall in no way constitute a modification hereof. This agreement shall be governed by the laws of the State of Minnesota, without regard to its conflict of law's provisions. If any of this agreement is contrary to, prohibited by, or deemed invalid under applicable laws or regulations of any such jurisdiction in which it is sought to be enforced, then such provision to that extent shall be deemed inapplicable and deemed omitted but shall not invalidate the remaining provisions hereof. This agreement may be modified only by a writing duly signed by both parties hereto. All oral representations and prior negotiations are merged herein and shall be of no force and effect. The terms and conditions of this agreement present the entire agreement and understanding of the parties hereto and supersede all previous agreements between them. In the event Seller is required to enforce any provision of this agreement, Buyer shall pay all costs of such enforcement, whether legal proceedings are instituted, including but not limited to attorney fees, expenses and court costs.