

WISECO TERMS AND CONDITIONS OF SALE

1. **Parties.** [Wiseco Performance Products], will be referred to as "Seller," and the company purchasing as indicated on the front hereof will be referred to as "Purchaser". All materials, goods, or work described on the front hereof, regardless of type, will be referred to as "Products".

2. **Terms and Conditions.** Seller's assent to contract is expressly conditional on Purchaser's acceptance of these Terms and Conditions. Notice is hereby given of Seller's objection to any Terms and Conditions in addition to or different from those herein, including without limitation any terms or conditions contained within any written acceptance, order confirmation, purchase order or similar document related to this transaction that may be issued by Purchaser. In the event Purchaser issues a purchase order or orders covering the items contained in this Agreement, such purchase order will operate as Purchaser's acceptance of this offer, but the parties hereby agree that any terms and conditions attached to such purchase order or orders shall have no legal effect, nor shall they be binding upon Seller. Deviation from these Terms and Conditions, including terms and conditions in addition to or different than those contained herein, can only take place by written instrument signed by one of Seller's officers.

3. **Price Adjustments; Payments.** The prices stated herein do not include any sales, use, or other taxes unless so stated specifically. Such taxes will be added to invoice prices in those instances in which Seller is required to collect them from Purchaser; provided, however, that if Seller does not collect any such taxes and is later asked by or required to pay the same to any taxing authority, Purchaser will make such payment to Seller or, if requested by Seller, directly to the taxing authority. At Seller's option, prices may be adjusted to reflect any increase in Seller's costs resulting from state, federal or local legislation, price increases from Seller's suppliers, or any change in the rate, charge, or classification of any carrier.

Unless otherwise specified by Seller, all prices are F.O.B. Seller's facility in Mentor, Ohio (Seller's Facility), and payment will be net/cash 30 days from date of invoice. Invoices unpaid and past due may be subject to a service charge on the unpaid balance at an interest rate equal to the lesser of 18% per annum or the maximum allowable interest rate under applicable law, and Purchaser shall be responsible and liable for all expenses incurred by Seller in collection, including reasonable attorneys' fees.

4. **Delivery Dates; Title and Risk; Shipment.** All delivery dates are approximate, and Seller shall not be responsible for any damages of any kind resulting from any delay. Regardless of the manner of shipment, title to any products and risk of loss or damage thereto shall pass to Purchaser upon tender to the carrier at Seller's Facility, except in those instances in which delivery may be made by Seller's vehicles. Unless otherwise stated herein, Purchaser may exercise its judgment in choosing the carrier and means of delivery. No deferment of shipment at Purchaser's request beyond the respective dates indicated will be made except on terms that will indemnify, defend and save Seller harmless against all loss and additional expense, including, but not limited to demurrage, handling, storage and insurance charges.

5. **Warranty. WISECO PISTON COMPANY, INC., LIMITED PISTON WARRANTY.** WISECO warrants this product will be free from defects in material and workmanship for thirty (30) days following date of original purchase. If the product is found by WISECO to be defective, such products will, at WISECO'S option, be replaced or repaired at cost to WISECO. All products alleged by Purchaser to be defective must be returned to WISECO, postage prepaid, within thirty (30) days warranty period.

This limited warranty does not cover labor or other costs or expenses incidental to the repair and/or replacement of products or parts.

This limited warranty does not apply to any product which has been used in a hi-performance application, or racing, or is subject to misuse, mishandling, misapplication, neglect (including but not limited to improper maintenance), accident, improper installation, modification (including but not limited to use of unauthorized parts or attachments), or adjustment or repair performed by anyone other than WISECO.

The parties hereto expressly agree that the purchaser's sole and exclusive remedy against WISECO shall be for the repair or replacement of the defective product as provided in this limited warranty. This exclusive remedy shall not be deemed to have failed of its essential purpose so long as WISECO is willing and able to repair or replace defective goods.

THIS LIMITED WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THOSE OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE NOT EXPRESSLY SET FORTH HEREIN. ANY PRODUCT WHICH MAY BE SOLD BY WISECO BUT WHICH IS NOT MANUFACTURED BY WISECO IS NOT WARRANTED BY WISECO, BUT IS SOLD ONLY WITH THE WARRANTIES, IF ANY, OF THE MANUFACTURERS THEREOF.

WISECO'S liability (whether under the theories of breach of contract or warranty, negligence or strict liability) for its products shall be limited to repairing or replacing parts found by WISECO to be defective, or at WISECO'S option, to refund the purchase price of such product. In no event shall WISECO be liable for incidental or consequential damages arising out of or in connection with the product. Consequential damages shall include, without limitation, loss of use, income or profit, or losses sustained as the result of injury (including death) to any person, or loss of or damage to property.

Any claim by purchaser regarding this product shall be deemed waived by the purchaser unless submitted in writing to WISECO within the earlier of (i) fifteen (15) days following the date Purchaser discovered, or by reasonable inspection should have discovered, any claimed breach of this limited warranty, or (ii) thirty (30) days following the date of original purchase. Any cause of action for breach of this limited warranty shall be brought within six months from the date the alleged breach was discovered or should have been discovered, whichever occurs first.

This limited warranty gives you specific legal rights, and you may also have other rights which vary from state to state.

Return any defective Wiseco product directly to Wiseco for warranty consideration.

All defective claims to Wiseco Piston, Inc. should include the following information:

1. Call Wiseco for RMA (Return Materials Authorization) number at 800-321-1364 or 440-951-6600.
2. The possible defective product being returned should be labeled with the Wiseco part number.
3. Include a copy of invoice, name, and address of supplier for proof of purchase.
4. A brief description of product issue.
5. Wiseco reserves the right to request additional engine related products in order to evaluate a claim.

If the product issue is found to be valid by Wiseco, the Wiseco Customer Service department will advise the distributor as to the amount of responsibility for the claim and will settle all claims directly with the distributor.

SHIP RETURNS "PRE PAID" TO *(Include RMA# on the box & packing list):*

- Wiseco Piston Company, Inc. • 7201 Industrial Park Blvd. • Mentor, Ohio 44060-5396
- In Canada: Wiseco Piston Canada, Inc. • 948 Keyes Drive, PO Box 1513 • Woodstock, ONT. N4S 0A7

6. **Claims; Commencement of Actions.** Purchaser shall promptly inspect all Products upon delivery. No claims for shortages will be allowed unless such shortages are reported to Seller within 10 days after delivery. No other claims against Seller will be allowed unless asserted in writing within 60 days after delivery or, in the case of an alleged breach of warranty, within 60 days after the date within the warranty period on which the defect is or should have been discovered by Purchaser.

Any action based upon breach of this contract or upon any other claim arising out of this sale (other than an action by Seller for any amount due to Seller by Purchaser) must be commenced within one year from the date of the tender of delivery by Seller or, in the case of a cause of action based upon an alleged breach of warranty, within one year from the date within the warranty period on which the defect is or should have been discovered by Purchaser. Seller and Purchaser agree to submit any dispute arising from the performance or failure to perform under this Agreement to binding arbitration under the commercial arbitration rules of the American Arbitration Association. The arbitrator shall have the power to award damages but shall not in any case award exemplary or punitive damages. The decision of the arbitrator may be entered into judgment in any court of competent jurisdiction.

7. **LIMITATION OF LIABILITY.** IN NO EVENT SHALL SELLER BE LIABLE TO PURCHASER FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF, OR AS THE RESULT OF, THE SALE, DELIVERY, NON-DELIVERY, SERVICING, USE OR LOSS OF USE OF THE PRODUCTS OR ANY PART THEREOF, OR FOR ANY CHARGES OR EXPENSES OF ANY NATURE INCURRED WITHOUT SELLER'S WRITTEN CONSENT, EVEN THOUGH SELLER HAS BEEN NEGLIGENT. IN NO EVENT SHALL SELLER'S LIABILITY UNDER ANY CLAIM MADE BY PURCHASER EXCEED THE PURCHASE PRICE OF THE PRODUCTS IN RESPECT OF WHICH DAMAGES ARE CLAIMED.

8. **Contingencies.** Seller shall not be liable for any default or delay in performance if caused, directly or indirectly, by acts of God; war; force of arms; fire; the elements; riot; labor disputes; picketing or other labor controversies; sabotage; civil commotion; accidents; any governmental action, prohibition or regulation; delay in transportation facilities; shortages or breakdown of or inability to obtain or non-arrival of any labor, material or equipment used in the manufacture of the Products; failure of any party to perform any contract with Seller relative to the production of the Products; or from any cause whatsoever beyond Seller's control, whether or not such cause be similar to dissimilar to those enumerated. Seller shall promptly notify Purchaser of the happening of any such contingency and of the contemplated effect thereof on the manufacture and delivery of the Products.

9. **Loss to Purchaser's Property; Patent, Trademark, or Copyright Infringement, Etc.** Seller shall not be liable for, and shall have no duty to provide insurance against, any damage or loss to any goods or materials of Purchaser that are used by Seller in connection with this order. Where any Product is manufactured from patterns, plans, drawings, or specifications furnished by Purchaser, Purchaser shall indemnify, defend and save Seller harmless from all loss, damage, and expense arising out of any suit or claim against Seller for infringement of any patent, trademark, or copyright because of Seller's manufacture of such Product or because of the use or sale of such Product by any person. Upon Seller's request, Purchaser shall appear in and assume the defense of the litigation.

10. **Sellers' Specifications, Technical Data, Etc.** Any specifications, drawings, plans, notes, instructions, engineering notices, technical data or other documents disclosed and/or furnished to Purchaser by Seller shall be deemed to be incorporated herein by reference the same as if fully set forth. Seller shall at all times retain title to all such documents. Purchaser shall hold such documents in confidence and not disclose them to any party other than Seller or a party duly authorized by Seller. Upon Seller's request, Purchaser shall promptly return to Seller all such documents and copies thereof.

11. **Purchaser's Obligation; Rights of Seller.** To secure payment of all sums due hereunder or otherwise, Seller shall retain a security interest in the goods delivered hereunder and this contract shall be deemed a Security Agreement under the Uniform Commercial Code. Purchaser authorizes Seller as its attorney to execute and file on Purchaser's behalf all documents Seller deems necessary to perfect such security interest. If Seller shall at any time doubt Purchaser's financial responsibility, Seller may demand adequate assurance of due performance or decline to make any further shipments except upon receipt of cash payment in advance of security. If Seller demands adequate assurance of due performance and the same is not forthcoming within 10 days after the date of Seller's demand, Seller may, at its option, (i) continue to defer further shipments under this order and/or any other order from Purchaser that has been accepted by Seller until adequate assurance is received, or (ii) cancel this order and/or any other orders from Purchaser that have been accepted by Seller and recover damages. If Purchaser fails in any way to fulfill the terms and conditions on the front or the back hereof, Seller may defer further shipments until such default is corrected or cancel this order and recover damages. Seller shall have a security interest in, and lien upon, any property of Purchaser in Seller's possession as security for the payment of any amounts owing to Seller by Purchaser. In the event Seller institutes a legal proceeding against Purchaser to collect any monies due Seller hereunder, or if Seller successfully defends any lawsuit instituted by Purchaser, whether based on contract, tort or any other legal theory of recovery, then Seller shall be entitled to recover its costs and expenses, including reasonable attorney's fees, from Purchaser.

12. **Liability or Responsibility.** Seller assumes no liability or responsibility for any acts, misuse of product, advertising, violations of any local, state or federal regulations or laws violated by Purchaser. Purchaser assumes all responsibility for its acts and is responsible for researching local, state or federal regulations relating to the sale or use of Seller's products.

13. **Improper Use and Indemnity.** Purchaser shall indemnify, defend, and hold Seller harmless from any claim, liability, damages, lawsuits, and costs (including reasonable attorney's fees), whether for personal injury, property damage or other, brought by or incurred by Purchaser, Purchaser's employees, or any other person, arising out of improper selection, improper application or other misuse of products purchased by Purchaser from Seller.

14. **Cancellations.** After acceptance by Seller, orders shall not be subject to cancellation by Purchaser except with Seller's prior written consent and upon terms that will indemnify, defend and save Seller harmless against all direct, incidental and consequential loss or damage.

15. **Limitation on Assignment.** Purchaser may not assign its rights or obligations under this Agreement without the prior written consent of Seller. Any purported assignment of such rights or obligations without such consent shall be void.

16. **Export.** If the Products are to be exported, this order is subject to Seller's ability to obtain export licenses and other necessary papers within a reasonable period. Purchaser will furnish all Consular and Custom declarations and will accept and bear all responsibility or penalties resulting from errors and omissions thereon. Purchaser shall not re-export the Products or any goods or items that incorporate the Products if the re-export would violate United States export laws.

17. **Equal Opportunity Clause.** This clause applies only in the event that the Products are to be used in whole or in part for the performance of government contracts and where dollar value of said Products exceeds, or may in any one year exceed \$10,000:

"In connection with the performance of work under this contract, the contractor (subcontractor) agrees not to discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The aforesaid provision shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor (subcontractor) agrees to post hereafter in conspicuous places, available for employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause."

"The provisions of the Equal Opportunity Clause, as promulgated by Executive Order 11246 dated "September 24, 1965, as amended, are incorporated herein by reference."

18. **Other Rights or Remedies.** Except as otherwise provided herein, any rights or remedies granted hereunder to Seller shall be in addition to, and not in lieu of, any other rights or remedies at law or in equity.

19. **Entire Agreement.** This Agreement contains the entire agreement between Purchaser and Seller and constitutes the final, complete and exclusive expression of the terms of the agreement. All prior or contemporaneous written or oral agreements or negotiations with respect to the subject matter are herein merged. No acknowledgement by Seller of, or reference by Seller to, or

performance by Seller under, an order of Purchaser shall be deemed to be an acceptance by Seller of any such additional or contrary terms or conditions.

20. **Waiver and Severability.** No waiver of any breach of any provision of this order shall constitute a waiver of any prior, concurrent or subsequent breach of the same or any other provision. In the event that any provision hereof shall violate any applicable statute, ordinance, or rule of law, such provision shall be ineffective to the extent of such violation without invalidating any other provision hereof.

21. **Governing Law.** This Agreement and the sale and delivery of all Products hereunder shall be deemed to have taken place in and shall be governed and construed in accordance with the laws of the State of Ohio, as applicable to contracts executed and wholly performed therein and without regard to its conflicts of laws principles. Any claim arising from this Agreement shall be exclusively venued in Lake County, Ohio.

22. **Product Return Policy.** Wiseco allows customer returns of “shelf stock” products for up to 30 days from date of purchase for full refund excluding the cost of shipping. (Custom and “Build to Order” products do not apply). Returned products and packaging must be in “new” condition in order to be eligible for a refund and subject to Wiseco’s final approval.

All product returns to Wiseco Performance Products should include the following information:

1. Call Wiseco for RMA (Return Materials Authorization) number at 800-321-1364 or 440-951-6600.
2. Include a copy of invoice, name, and address.
3. Brief description for why product is being returned.

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- Wiseco Piston Company, Inc. • 7201 Industrial Park Blvd. • Mentor, Ohio 44060-5396
- In Canada: Wiseco Piston Canada, Inc. • 948 Keyes Drive, PO Box 1513 • Woodstock, ONT. N4S 0A7