



SUPPLIER WARRANTY AGREEMENT

This Warranty Agreement ("Warranty Agreement") is by and between BERGSTROM INC., an Illinois corporation ("Bergstrom"), and _____, ("Supplier"). "Bergstrom" shall include the following Bergstrom divisions and subsidiaries: Bergstrom Climate Systems, Bergstrom Aftermarket Parts, Bergstrom Aftermarket Systems, Bergstrom China, Dirna Bergstrom and Bergstrom UK.

1. TERM AND APPLICABILITY

- 1.1.** The provisions of this Warranty Agreement shall apply to all Products (as defined in Section 1.3 below) sold by Supplier to Bergstrom during the Term of this Warranty Agreement.
- 1.2.** This Warranty Agreement shall become effective when both Parties have signed it (the "Effective Date"). The Term of this Warranty Agreement shall be from the Effective Date until this Warranty Agreement is terminated by either Party by written notice to the other Party given at least one hundred and eighty (180) days prior to the effective date of such termination, or until it is superseded and replaced by a new Warranty Agreement signed by both Parties.
- 1.3.** For purposes of this Agreement, the term "Products" shall refer to all products sold by Supplier to Bergstrom during the Term of this Agreement. Products are considered sold during the Term of this Agreement if sold by Supplier pursuant to a purchase order or release placed by Bergstrom with Supplier during the Term of the Agreement that includes delivery dates for the Products that occur within the Term.
- 1.4.** The provisions of this Warranty Agreement constitute the sole and exclusive warranties and remedies for the Products, and supersede and replace any and all provisions relating to warranties, remedies and liability for Products contained in any other document previously or subsequently exchanged by Supplier and Bergstrom (including without limitation requests for quotation, quotations, purchase orders, order acknowledgements, packing slips and invoices).
- 1.5.** Provisions related to warranties, remedies and liability with respect to the Products may not be amended, modified or supplemented in any way except through a written agreement, signed by both parties, and which acknowledges that it modifies this Warranty Agreement.

2. WARRANTY

- 2.1.** Supplier warrants to Bergstrom (and any customer of Bergstrom that purchases the Products or equipment from Bergstrom incorporating the Products) that each of the Products will:
 - a.** Conform to the specifications, quality requirements, and performance standards as specified by Bergstrom;
 - b.** Be free from defects in design, materials, manufacture and workmanship;
 - c.** Be merchantable and fit for the purpose for which it is generally intended and/or for any particular purpose specified by Bergstrom;



- d. Comply with all current safety standards (including labeling requirements, if Supplier is required to provide labels), and contain adequate warnings (if necessary to use the Products safely or otherwise required by Bergstrom);
 - e. Comply with all applicable federal, state, and local statutes, laws, ordinances, and refutations (including, without limitation, environmental, occupational and safety standards and rules);
- 2.2. The warranty set forth above shall commence from the date of delivery of the Product, or the vehicle or equipment in which the Product is incorporated, to the original end user (the “in-service date”) and will continue for a period of three (3) years or for a term coterminous with the warranty extended to the end user by Bergstrom’s customers, whichever is longer. Notwithstanding the foregoing, for Products sold as service parts, the warranty shall commence from the date of installation of the Product and will continue for a period of one (1) year.
- 2.3. In the event that after the applicable warranty period has expired, defects of the same or similar nature have been discovered in a statistically significant portion of the Products, Supplier shall negotiate with Bergstrom in good faith regarding the appropriate amount of reimbursement to Bergstrom from Supplier for these expenses on a case-by case basis.

3. **REIMBURSEMENT FOR WARRANTY CLAIMS**

- 3.1. **Reimbursable Warranty Costs.** Subject to the warranty terms above, if any Products fail to conform to Supplier’s warranties as set forth in Section 2.1 above or otherwise suffers from a failure for which Supplier is responsible, Supplier will reimburse Bergstrom for all claims costs that Bergstrom is responsible to pay to our customers associated with the work necessary to service, repair, modify or replace the Products and any other vehicle component or material damaged by the Products(“Warranty Work”) including, but not limited to, the following costs:
- a. **Material.**
 - (i) All replacement Product, part and material costs associated with the warranty claim, which shall include dealer mark-up and handling costs. (ii) The cost of replacement consumables, such as oil, grease, antifreeze, etc. required to perform Warranty Work.
 - b. **Labor.** All labor costs associated with the Warranty Work, which shall be based upon the amount of actual labor hours required to perform the Warranty Work, or, if jointly agreed in writing by the Parties prior to the submission of the warranty claim, the appropriate Standard Repair Time, multiplied by the dealer or service center’s specified labor rate.
 - c. **Towing.** Towing charges to the nearest authorized repair facility.
 - d. **Freight.** Freight charges associated with the delivery of replacement parts and return of the failed Product(s) to Bergstrom and to the Supplier if required for inspection.
 - e. **Other Costs.** All reasonable costs associated with any Field Change, Safety Recall or Product Improvement Program or Campaign with respect to the Products pursuant to Section 4.2, or any negotiated reimbursement costs for Product failures outside the warranty term pursuant to Section 4.3.



4. WARRANTY ADMINISTRATION

- 4.1.** Bergstrom shall endeavor to submit any warranty claims involving the Products received from its Customers to Suppliers within thirty (30) days of its receipt of such claims and supporting information from its Customer.
- 4.2.** Bergstrom settles most warranty claims with its customers without parts being returned based on the claim detail provided and any responsibility ratio ascertained for the failed parts (i.e. the failure rate established by analysis of a subset of actual parts returned), and it is Bergstrom's expectation that Supplier will do the same. Supplier should therefore endeavor to process, approve, and reimburse warranty claims based solely on information provided to Supplier by Bergstrom, which in most cases should be sufficient for Supplier to make a warranty coverage determination. In the event the claim is insufficient to make a coverage determination, Supplier may request additional information from Bergstrom, including photos or video of the Product, and Bergstrom shall endeavor to provide such information if available to Bergstrom or accessible from Bergstrom's Customer.
- 4.3.** Products for which warranty claims have been submitted will only be returned to the Supplier if the Product is available for return by Bergstrom or Bergstrom's customer, and if requested in writing by the Supplier within five (5) days after receiving the claim notification from Bergstrom. Returned product(s) shipping costs are the responsibility of the Supplier.
- 4.4.** If the Supplier disputes its responsibility for a warranty claim, it must do so in writing within twenty (20) days of notice of such claim and provide details to support the denial. Supplier's failure to dispute the claim in writing within this twenty (20) day period will be deemed as an acceptance of the claim. At its discretion, if the Products were returned to Supplier for investigation, Bergstrom may request the disputed Product(s) be returned to Bergstrom, along with any test results for further evaluation by Bergstrom.
- 4.5.** Unless the Supplier has timely disputed the claim in writing, Supplier will issue credit to Bergstrom's account within thirty (30) days of the earlier to occur: (a) the date when such claim is presented by Bergstrom to Supplier or (b) the date the failed Product is returned to the Supplier. If the Supplier does not issue credit within the thirty (30) day timeframe, Bergstrom shall have the right to debit the Supplier for the warranty reimbursement costs set forth in Section 3.

5. PRODUCT FAILURE INVESTIGATION PROCEDURES

- 5.1.** If Bergstrom becomes aware of an unusually high number of warranty claims associated with the Products, or a statistically significant rate of failures in the Products or the equipment in which the Products are incorporated that are reasonably suspected to be the result of a defect in or other nonconformity of Supplier's Product(s), Bergstrom will notify the Supplier and Supplier shall participate in Product Reviews. Failed product(s) shall only be returned in connection with Product reviews if the Product is available for return by Bergstrom or Bergstrom's customer and if requested in writing by the Supplier within five (5) days after receiving notice of its obligation to



participate in a Product Review. Returned product(s) shipping costs shall remain the responsibility of the Supplier.

- 5.2. If a failure is determined to be the result of a defect in or other nonconformity of Supplier's Product(s), Supplier shall lead further investigation efforts, root cause analysis and corrective action implementation, if requested by Bergstrom. In connection with these activities, Supplier shall use the Bergstrom SCAR / 8D format or a similar format used by Supplier if approved by Bergstrom, and shall provide its complete failure analysis and proposed corrective action to Bergstrom, along with all investigative documents and materials, within 15 days of the date it received notice from Bergstrom.
- 5.3. If Products are in the possession of Supplier in connection with its obligation to conduct an investigation and root cause analysis, Supplier will return such Product(s) to Bergstrom, along with any test results for further evaluation by Bergstrom, upon Bergstrom's request. Such Products should not be discarded absent written notice to and written approval from Bergstrom.

6. FIELD ACTIONS, RECALLS, AND OTHER SPECIAL CASES

- 6.1. In the event that a Product(s) fails at an extraordinary rate and/or that such failures result in the issuance of an authorized Field Action or Change, Safety Recall or Product Improvement Program or Campaign, Supplier shall reimburse Bergstrom for all reasonable costs and expenses incurred by Bergstrom in connection with the Field Change, Safety Recall or Product Improvement Program or Campaign, in addition to the Product warranty reimbursement as specified in Section 3 above.
- 6.2. If Bergstrom is required to reimburse a Customer for Product failures beyond the warranty period or terms, or otherwise agrees to reimburse a Customer beyond the warranty period or terms in order to show good will and maintain customer satisfaction, Supplier shall negotiate in good faith with Bergstrom regarding the appropriate amount of reimbursement for these costs from Supplier to Bergstrom on a case-by-case basis.

7. TECHNICAL SUPPORT

7.1. Supplier agrees to provide Bergstrom with the following technical support at no cost to Bergstrom at Bergstrom's request:

- a. Product and service related training for Bergstrom, Bergstrom's customers, and authorized dealer personnel.
- b. Name, address, email address and phone number of the designated Supplier representative(s) responsible for (a) Warranty; (b) Quality; (c) Technical Support; (d) Aftermarket Service Support. Supplier agrees to notify Bergstrom promptly of any changes to above personnel.
- c. Description(s) of common failure modes for the Products, along with supporting documentation, including but not limited to other warranty claims or failures on the Products received by Supplier from other customers.



8. DISPUTE RESOLUTION PROCEDURES

- 8.1.** If a dispute or controversy regarding the interpretation of this Warranty Agreement or any right or obligation under this Agreement arises between the Parties and cannot otherwise be resolved on an informal basis between the organizations, the Parties agree it shall be resolved solely by means of the procedures set forth in this Section. Such procedures constitute legally binding obligations that are an essential provision of this Warranty Agreement. If either Party fails to observe the procedures of this Section, the other Party may bring an action for specific performance of these procedures in any court of competent jurisdiction authorized by this Agreement.
- 8.2. Executive Resolution:** The Parties shall endeavor to resolve in good faith any disputes or conflicts arising from or relating to the subject matter of this Warranty Agreement informally between them. If the Parties are unable to resolve such disputes or conflicts despite such good faith efforts, the Parties agree that either Party may then submit such dispute for resolution to the Executives. For purposes of this Section, "Executives" refers to the individual holding the title of Division President on behalf of Bergstrom (including any designee of that individual), and the individual holding the title of [INSERT TITLE], or any equivalent title, on behalf of Supplier (including designee of that individual). If the Executives are unable to resolve such dispute within thirty (30) days after such dispute is submitted to them for resolution, either Party may refer the dispute for mediation as set forth in Section 8.3 below.
- 8.3. Mediation:** If the Parties are unable to resolve a dispute arising out of or relating to this Warranty Agreement through the Executive negotiation procedures set forth in Section 8.2 above, either Party may then submit such dispute for confidential mediation to a JAMS mediator or other mediator agreed upon by the Parties. The location of the mediation shall be in Chicago, Illinois, unless both Parties agree in writing to a different location. The cost of the mediator shall be borne equally by the Parties.
- 8.4. Legal Proceedings / Litigation.** If the Parties have not resolved the dispute within forty-five (45) days after the appointment of a mediator, or within such other time as may be agreed to by the Parties in writing, either Party may initiate legal action subject to the provisions set forth in Sections 8.5 and 8.6 below. In all cases, Supplier shall provide Bergstrom at least thirty (30) days advance written notice of its intent to initiate any legal action.
- 8.5. Forum Selection.** Unless Bergstrom exercises its right to arbitration set forth in Section 8.6 below, any dispute arising out of or relating to this Warranty Agreement not settled by the Parties through the negotiation or mediation procedures set forth above shall be subject to the exclusive venue and jurisdiction of the United States District Court for the Northern District of Illinois (Chicago or Rockford), or the Winnebago County Circuit Court. Supplier irrevocably waives any objection to jurisdiction or venue of any action instituted hereunder and shall not assert any defense based on lack of jurisdiction or venue or based upon the doctrine of forum non conveniens. Supplier further irrevocably waives personal service of process and consents to process being served in any suit, action or proceeding in connection with this Warranty Agreement by mailing a copy thereof via registered or certified mail to Supplier at the address for Supplier set forth in this Warranty Agreement. Should Supplier's address change following execution of this Agreement, notice of the new address for purposes of this provision shall be provided to Bergstrom in writing within ten (10) days.



- 8.6. Right of Arbitration.** Notwithstanding Sections 8.4 and 8.5 above, Bergstrom shall have the sole right to initiate binding arbitration in lieu of legal action. In the event Bergstrom or Supplier has already initiated legal action, Bergstrom may, at its sole option, elect to have the dispute resolved through binding arbitration instead, provided Bergstrom submits notice of this election in writing to Supplier within sixty (60) days following the date service of process was initially served by one Party on the other in the legal proceeding.
- 8.7. Arbitration.** In the event Bergstrom elects to proceed with arbitration to resolve the dispute, the arbitration shall be administered by JAMS or any other arbitration provider agreed in writing by the parties in accordance with the arbitrator provider's rules in effect at the time of the arbitration proceeding, except as they may be modified herein or by mutual agreement of the Parties. The arbitration shall be heard and decided by a single arbitrator and the location of the arbitration shall be Chicago, Illinois unless both Parties agree in writing to a different location. Supplier irrevocably submits to the jurisdiction of the arbitrator and waives any objection to the arbitration, including any defense that Supplier is not subject personally to the jurisdiction of such arbitrator, that such arbitration is brought in an inconvenient forum or that such venue is improper. Each Party shall be responsible for its own expenses in connection therewith. The arbitration award shall be final and binding, and judgment over the award may be entered by any court having jurisdiction thereof or having jurisdiction over the relevant Party and its assets.

9. GENERAL

- 9.1. Entire Agreement:** This Warranty Agreement constitutes the complete and exclusive statement of the agreement between Bergstrom and Supplier regarding the subject matter herein and supersedes all prior proposals, prior agreements and other prior representations by, or communications or negotiations between the Parties, whether oral or written, concerning the subject matter of this Warranty Agreement. No amendment or modification of this Warranty Agreement is binding unless it is in writing and signed by authorized representatives of both Parties.
- 9.2. Order of Precedence and Inapplicability of Conflicting Terms and Conditions.** This Warranty Agreement and the provisions contained herein shall prevail over any conflicting terms and conditions of purchase issued by Bergstrom with its purchase order or release, or any terms and conditions of sale issued by Supplier in connection with the supply of the Products that may otherwise apply. Any such terms or conditions accompanying Bergstrom's purchase and Supplier's sale of Products covered by this Warranty Agreement that are inconsistent with this Warranty Agreement are rejected by Bergstrom and shall not apply except through a written agreement, signed by both parties that acknowledges modification of this Warranty Agreement pursuant to Section 1.5 above. Bergstrom's failure to separately object to any provision contained in any of Supplier's terms and conditions of sale shall not be deemed a waiver of this Warranty Agreement.
- 9.3. Notices.** Any written notices by Supplier to Bergstrom with respect to any warranty claim made under this Warranty Agreement shall be sent to Bergstrom's general warranty email address (warranty@bergstrominc.com), or to any individual holding the title of Warranty Manager or a substantially equivalent title on behalf of Bergstrom. All other written notices required to be provided by Supplier to Bergstrom under this Warranty Agreement shall be hand-delivered or



delivered via a reputable overnight courier, prepaid for overnight delivery, with a copy provided via email, to the addresses set forth below:

Bergstrom, Inc.
2390 Blackhawk Rd
P. O. Box 6007
Rockford, IL 61125
Attention: [Warranty Manager]

With email copy to: *Paul Von Driska, VP, Government Affairs & Legal,*
pvondriska@bergstrominc.com

- 9.4. Governing Law.** This Warranty Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Illinois, and the Uniform Commercial Code, as adopted by Illinois, without regard to conflict of laws principles. Supplier hereby submits to personal jurisdiction and venue of the United States District Court for the District of Illinois, and the Winnebago County Circuit Court. The Parties agree the United Nations Convention on Contracts for the International Sale of Goods, and any amendments thereto, does not apply to this Warranty Agreement. The Parties further agree that with respect to the construction and interpretation of the terms of this Warranty Agreement, the rule of construction that a document is to be construed most strictly against the party who prepared the same shall not apply.
- 9.5. Survival.** In the event of any amendment to this Warranty Agreement, termination of this Warranty Agreement, or the Parties' execution of a new Warranty Agreement superseding this Warranty Agreement, the Parties agree that the warranties for Products sold by Supplier and delivered to Bergstrom within the Term of this Warranty Agreement and any other rights and obligations set forth herein with respect to those Products shall survive, continue in effect, and be binding upon the Parties.
- 9.6. Severability.** If any provision of this Warranty Agreement is determined to be invalid, illegal or unenforceable, the remaining provisions of this Warranty Agreement remain in full force and effect so long as the essential terms and conditions of this Warranty Agreement reflect the original intent of the Parties and remain valid, legal and enforceable.
- 9.7. Remedies.** Unless stated otherwise, all remedies provided for in this Warranty Agreement are to be cumulative and in addition to, and not in lieu of, any other remedies available at law, in equity or otherwise.



IN WITNESS WHEREOF, the parties have executed this Supplier Warranty Agreement as of the day and year written below.

SUPPLIER

BERGSTOM Inc.

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____