Terms and Conditions

These Terms and Conditions (the "**Terms**") apply to all sales of Products and/or Services provided by Highway Safety, LLC ("**Company**") to Customer. Company expressly rejects any different or additional terms or conditions contained in any documents submitted by Customer. All orders are conditioned on Company approving credit to the customer. Credit holds will be put in place if any payment is overdue and you will be a pre-paid customer.

Section 1 - Definitions

When used in these Terms, a quote, an order, a purchase order or order acknowledgement, the following defined terms shall have the following meanings:

"**Agreement**" means these Terms, the Quote (including any specifications incorporated therein) and any related Purchase Order concerning sale of the Products to Customer.

"**Delivery Date**" means the date set forth in the Agreement identifying when the Product must arrive to the destination point named in the Agreement. The Delivery Date may be amended with the agreement of both Parties.

"**Customer**" means the entity identified in the Quote or Purchase Order that is purchasing or procuring the Product or Service.

"**Engineering Exceptions**" means the qualifications or clarifications submitted with Company's Quote or otherwise provided to the Customer concerning technical, manufacturing, and engineering requirements. Engineering Exceptions are a material term of the Agreement between Company and Customer and Customer's agreement that such Engineering Exceptions are part of the Agreement is an express condition to Company's willingness to undertake the provision of Products and/or Services.

"**Party**" or "**Parties**" means either Customer or Company in the singular or plural as the context dictates.

"**Price Adjustment Policy**" means the automatic adjustment of the Price when certain indices move upward or downward as set forth on Exhibit A hereto.

"**Product**" means the manufactured equipment, structures, materials, goods, and other product offerings (other than Services) that Company sells to Customer.

"**Purchase Order**" means the written document or electronic authorization signed by an authorized representative of Customer and accepted by Company.

"**Quote**" means the document sent by Company to Customer that identifies the material terms of the offer to sell the Products or Services, including the Price, delivery terms and other material considerations.

"**Services**" means consulting services, professional services, and/or engineering services provided in connection with the provision of the Products.

"**Specifications**" means the technical and/or engineering standards listed in the Quote or the Agreement as modified by any Engineering Exceptions.

"**Standard Cancellation Charges**" means the amount(s) calculated in accordance with Exhibit B in the event Customer cancels one or more Products ordered after the Effective Date.

Section 2 - Pricing, Engineering, and Delivery Date

(a) **Effectiveness**. This Agreement is effective on the later to occur of (i) Customer signing these Terms and any then-valid Quote, and/or issuance of a Purchase Order that conforms to the Price and delivery date of the Quote and (ii) Company's acceptance thereof (the "**Effective Date**").

(b) **Pricing**. Pricing for the Products and/or Services is set forth in the Purchase Order and includes all materials, labor, and engineering (if required). Unless otherwise agreed in writing between Company and Customer, pricing is subject to adjustment, as follows: (i) Products that are not scheduled for delivery within three (3) months of the Effective Date of the Agreement shall be subject to automatic adjustment pursuant to the Price Adjustment Policy and (ii) sales, excise, value added or similar taxes required to be charged by law shall be added to the invoice and paid by Customer.

(c) **Review of Specifications**. The Parties agree to promptly review all submittals, final engineering drawings, and calculations applicable to the Products and/or Services and bring to the other Party's attention any issues regarding interpretation or areas that require clarification. Except where Customer has otherwise indicated particular Specifications applicable to the Products and/or Services Company's standard Specifications will be controlling.

(d) **Delivery Date**. Unless otherwise established in the Quote and/or Purchase Order, as promptly as reasonably possible following the Effective Date, Company and Customer will agree to an acceptable Delivery Date. The Delivery Date may be altered by Agreement of the Parties, or as otherwise set forth in this Agreement. Provided that Company notifies Customer twenty-one (21) days or more in advance of a change in Delivery Date, Company shall not be liable to Customer for standby costs, field construction crew time, equipment down time, or other charges arising from Customer's field installation contractor. In the event Owner fails to timely provide information, reviews, or responses to Company's questions, comments, and/or engineering submittals, Company's delivery dates and milestones (if any) will be equitably extended.

(e) **Ownership of Drawings and Intellectual Property**. Company owns all drawings, specifications and technical information prepared by Company and routinely used in Company's continued business operations ("**Company**

Intellectual Property"). Customer owns all drawings, specifications, and information provided to Company ("**Customer Intellectual Property**"). To the extent integrated into Products or Services provided under this Agreement, Company grants Customer a fully paid, non-exclusive, world-wide, royalty free license to Company Intellectual Property, and Customer shall be permitted to use, re-produce, copy, and distribute Company's drawings and technical information for purposes of upkeep, maintenance, construction, re-construction, additions to, or expansion of the Customer's project, plant, or facility or other area where the Product is installed. For the avoidance of doubt, the foregoing license does not extend to the Customer's manufacture, directly or indirectly, of products based on Company Intellectual Property.

Section 3 - Delivery and Risk of Loss

(a) **Risk of Loss**. Company will bear the risk of loss regarding the Product from the Effective Date until delivery as specified in (b) below.

(b) **Point of Delivery**. Delivery and freight responsibility will be set forth in the Quote or Purchase Order. If responsibility is not specified, delivery and freight will be F.O.B. shipping point. Where the Agreement specifies delivery and freight as FOB destination, the destination point shall be on paved or hard surface state or local maintained roads.

(c) **Proof of Delivery**. A delivery ticket or bill of lading acknowledged or signed by the Customer will be conclusive proof of delivery and transfer of the risk of loss and title to the Customer. Upon delivery, Customer will have a reasonable period of time to inspect the Product for overages, shorts, and defects, and if the Product is not rejected within twenty (20) days of delivery, then Customer is deemed to accept the Product for purposes of delivery and for purposes of overages and shortages of Products, and such deemed acceptance may not be revoked. No delivery, receipt, or inspection by Customer will alter, amend, or diminish any of Customer's warranty rights.

Section 4 - Invoicing, Payment, and Cancellation

(a) **Invoicing**. Company will submit invoices (i) after shipment of all Products, where all Products are shipped in the same month, (ii) monthly, if Products are shipped across multiple months, and/or (iii) where materials are specially fabricated or purchased in connection with a Quote or Purchase Order, those materials will be invoiced upon receipt in Company's yard. Invoices are due and payable within thirty (30) days after receipt. Invoices not paid within thirty (30) days accrue interest at the rate of one percent (1%) per month until paid in full, and Company will hold any scheduled future deliveries under this, or any subsequent Agreement, until Customer's account is brought current. Customer shall not be entitled to withhold any invoiced amount as retainage.

(b) **Cancellation, Refusal of Shipment, and Storage**. Customer shall have the right to cancel all or a portion of this Agreement at any time by delivering notice in writing to Company, provided, however, that upon such cancellation Customer will pay to Company the Standard Cancellation Charges for all Products cancelled. If Customer refuses shipment or does not allow shipment within twenty (20) days after the Products have been manufactured (or within twenty days after the Delivery Date), then Customer shall pay Company a storage fee equal to one percent (1%) per month of the value of Products stored for each month Company stores the Products on Customer's behalf. Notwithstanding invoicing and risk of loss provisions otherwise set forth in these Terms, stored Products will be invoiced (and complete payment for stored Products will be due) and risk of loss passes to Customer immediately where Company places Products into storage in accordance with this Section 4(b).

(c) **Grant of Security Interest**. Customer grants to Company a purchase money security interest in the Product delivered to the extent Customer has not paid the Price for the Product delivered, and consents to Company filing financing statements or other lien or U.C.C. documents to perfect Company's lien rights.

Section 5 - Warranty

(a) **Products Warranty**.

(i) Company warrants for a period of 12 months after installation, or 18 months after delivery, whichever occurs first, (the "**Warranty Period**") that the Product will: (a) conform to the Specifications and any other operating or technical requirements expressly set forth in the Agreement; (b) be of good materials and workmanship, and comply with the general industry standards and quality applicable to the Product; and (c) be delivered with good, exclusive and marketable title (the "**Products Warranty**"). The Products Warranty does not cover, and expressly excludes, any event or condition caused by Customer's improper installation, misuse, or modification of the Products, or failure to follow Company's installation/maintenance guidelines.

(ii) If Customer provides written notice to Company within the Warranty Period of a Product's alleged failure to comply with the Products Warranty, and provided the Products are defective, Company will repair, reconfigure, or replace the Product to render the Product in compliance with the warranty terms and conditions. Company will not be responsible for any costs required for disassembly or removal, and reinstallation of other constructed or in place equipment or costs to access the Product. Company will pay for any shipping and handling costs required to return the Product to a repair facility if the repair cannot be performed on-site, Customer is responsible for making the Product requiring repair work available for pick up on a paved, state or local maintained road.

(b) **Services Warranty**. Company warrants that the Services performed under this Agreement will be performed with the applicable standard of care required of professional services of the kind provided hereunder for a period of twelve (12) months from completion (the "**Services Warranty**"). If during such period, Customer provides written notice to Company that the Services fail to meet the Services Warranty, Company will re-perform the Services free of charge to the Customer until the Services comply and are in conformance with the above

Services warranty of Section 5(b). Company will not be responsible for damages to other property, goods, or equipment caused by Services failing to meet the above Services Warranty.

(c) **Exclusive Remedy**. Notwithstanding any provision of this Agreement to the contrary or remedy provided at law, Customer's exclusive remedy, and Company's sole obligation in the event of a (i) breach of the Products Warranty and any other claim that a Product is defective is the repair (or replacement when repair is not possible) of the Product and (ii) the breach of the Services Warranty and any other claim that the Services are incorrect, incomplete, or defective is the reperformance or correction of the Services that fail to meet the warranty requirements of this Section 5. If in lieu of exercising its exclusive remedies in this Section 5(c), Customer elects to repair any defective or nonconforming Products or reperform or correct any defective or nonconforming Services, Customer elects to do so at its own cost and at its own risk.

(d) **Operating Conditions**. Designs provided by Company for the Product(s) are based on the information provided by the Customer related to operating conditions, design criteria, environmental conditions, wind and loading conditions, and local loading, soil, and weather conditions. Company has not made an independent investigation of these conditions and information, as such Company does not warranty or guarantee that the Product will function or not sustain damage if the Product is exposed to operating conditions in excess of the operating conditions provided for in the Specifications. Company disclaims any liability for damages or warranty claims to the extent caused by excessive wind loading, snow or ice loading, aeolian vibration, or any other type of damages caused by operation in environments or loading conditions in excess of the loading provided for in the Specifications. Company is entitled to rely on Customer-furnished information without independent verification and is not liable for defects arising from errors in the Customer-furnished information.

(e) **THE WARRANTIES SET FORTH IN THIS SECTION 5 CONTITUTE THE EXCLUSIVE WARRANTIES PROVIDED BY COMPANY IN CONNECTION WITH THE PRODUCTS AND/OR SERVICES. COMPANY DISCLAIMS ANY IMPLIED WARRANTIES PROVIDED BY THE UNIFORM COMMERCIAL CODE OR APPLICABLE STATE OR LOCAL LAW INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR ANY WARRANTY OF DESIGN OR SERVICE LIFE, EXCEPT AS SET FORTH ABOVE.**

Section 6 - Cancellation, Default, Termination and Delay

(a) **Delay**. If Customer wants to delay the Delivery Date of some, or all, of the Products, Customer shall request a delay charge from Company and shall pay the delay charges as agreed to by the Parties. In connection with any such requested delay, Company shall be entitled to an equitable adjustment in the Purchase Order price, with such adjustment based on the Price Adjustment Policy, cost and availability of storage, and any other applicable conditions.

(b) **Termination by Customer**. In the event that Company breaches any material term of the Agreement, Company shall have thirty (30) days from the receipt of Customer's written notice to cure such alleged breach, or such longer period to cure as may be agreed by the Parties. If Company does not cure the breach within thirty (30) days or such longer period as may be agreed, Customer shall be entitled: (i) to suspend its performance under the Agreement; and (ii) to terminate the Agreement. On termination by Customer due to Company's default, Customer shall pay for the Services performed, Products delivered, and Products currently in production at Company's facilities at the date of termination, offset against the direct cost of any claims, damages, and charges due and owing to Customer. Customer and Company must agree on the amount to be offset before any such offset will be applied. Alternatively, Customer may cancel all, or any portion of the Products ordered pursuant to Section 4(b).

(c) **Termination by Company**. Company may immediately terminate this Agreement for default by Customer, if Customer fails to pay any amount due and owing to Company within thirty (30) days of the due date. In the event that Customer breaches any other material term of the Agreement, Customer shall have thirty (30) days from the receipt of Company's written notice to cure such alleged breach, or such longer period to cure as may be agreed by the Parties. If Customer does not cure the breach within thirty (30) days or such longer period as may be agreed, Company shall be entitled: (i) to suspend its performance under the Agreement; and (ii) to collect the Standard Cancellation Charge and all other amounts due and owing from Customer to Company.

(d) **Excusable Delay**. Neither Party shall have any liability or be considered to be in breach or default of its obligations under the Agreement to the extent that performance of such obligations (other than an obligation to make any payments) is delayed or prevented, directly or indirectly, due to: (i) causes beyond its reasonable control; or (ii) acts of God, act (or failures to act) of governmental authorities or third parties not engaged by either Party, fires, severe weather conditions, ice storms, snow storms, earthquakes, strikes or other labor disturbances, floods, war (declared or undeclared), epidemics or pandemics of a nationalized character, civil unrest, riot, delays or strikes in transportation; or (iii) where Company is unable to obtain necessary materials, components, or services due to causes beyond its reasonable control (each, an "**Excusable Delay**"). The Party claiming Excusable Delay shall give notice thereof to the other Party and shall use all reasonable efforts to remedy the cause or causes constituting the Excusable Delay, keeping the other Party reasonably informed. The Party claiming Excusable Delay shall notify the other Party, as soon as practicable, of any revised Delivery Date or Service resumption date.

Section 7 - Indemnification, Insurance, and Limitation of Damages

(a) **Indemnification by Company**. Company shall defend, indemnify and hold harmless Customer and its subsidiaries,

affiliates, directors, officers and employees from and against all claims, demands, losses, damages, liabilities, and attorneys' fees and expenses for: (i) any personal injuries, death or property damages claimed by third parties to the extent the damages are caused by a defective Product; (ii) any personal injuries, death, or property damages claimed by third parties to the extent caused by any negligent act or omission of Company or its employees in the performance of the Services, including any claim arising out of Company's failure to comply with applicable laws, rules, regulations or orders; and (iii) any claim of infringement of any intellectual property or patent rights (or any other property right or claim that Company misappropriated a third party's rightful ownership) of a third party to the extent arising out of the incorporation of Company Intellectual Property into the Product. Indemnity claims asserted by the Customer arising out of any Purchase Order or Agreement must be asserted within one year after delivery of the Product(s) giving rise to the claim of indemnity.

(b) **Indemnification by Customer**. Customer shall defend, indemnify and hold harmless Company and its subsidiaries, affiliates, directors, officers and employees from and against all claims, demands, losses, damages, liabilities, and attorneys' fees and expenses arising out of or relating to: (i) any personal injuries, death or property damages claimed by third parties to the extent the damages are caused by negligent acts, errors, or omissions of the Customer, or its employees, agents, officers, or on site installation contractors (including their employees, agents, officers, and subcontractors of any tier); (ii) any claim that the Customer directed design, choice of equipment, or Customer provided equipment or goods infringe on any intellectual property rights or patent rights of third parties.

(c) **Insurance**. Each of Party shall obtain, and shall provide to the other Party certificates evidencing the following insurance coverage: (i) worker's compensation insurance with statutory limits and employer's liability insurance with limits of at least $1,000,000; (ii) commercial general liability insurance having a limit of at least $2,000,000 per occurrence for bodily injury and property damage; (iii) comprehensive automobile liability insurance having a limit of at least $1,000,000 per occurrence for bodily injury and property damage, including but not limited to coverage for owned, hired and non-owned automobiles and contractual liability and (iv) Errors and Omissions Insurance in the amount of $1,000,000. This insurance shall have an AM Best rating of A-VII or higher, the commercial general liability and automobile liability insurance will name the other Party, and its officers, directors, and employees as additional insured through an automatic blanket endorsement following the terms and limits contained in this subsection and will also include waivers of any right of subrogation of the insurers against the other Party, its officers, directors, and employees.

(d) **Waiver of Certain Damages**. Except for the Standard Cancellation Charges, Company and Customer each waive, relinquish and discharge the other Party and its officers, shareholders, employees, directors, agents, and assigns all claims for consequential, special, or indirect damages, which include, but are not limited to punitive damages, claims for loss of profits or lost opportunities, claims for lost income, lost financing, or increased financing costs, increased costs or lost efficiency/impact costs, downtime or standby time, loss of use, or any other claims or costs that are speculative in nature, howsoever described. This waiver applies to any and all claims regardless of the basis of legal liability or theory of recovery, and whether the claims arise from contract, tort, law, or equity.

(e) **Limitation of Liability**. Each Party's liability pursuant to this Agreement for damages, claims, breaches, torts, or other damages shall not exceed the Price of the Purchase Order.

Section 8 -Miscellaneous Provisions

(a) **Entire Agreement**. This Agreement shall be binding upon and shall inure to the benefit of the Parties, shall constitute the entire agreement and understanding between the Parties, and shall supersede all prior negotiations, proposals, and representations, whether written or oral.

(b) **Confidentiality**. Each Party shall keep confidential and not disclose to any person or entity any information that the other Party designates in writing as being confidential.

(c) **Assignment and Delegation**. Company may assign this Agreement in a sale of all or substantially all of its assets or as part of a corporate reorganization or restructuring where a parent or Owner of Company assumes substantially all of Company's assets. Any attempted assignment, or delegation without the other Party's prior written consent shall be void. The terms and conditions of the Agreement shall be binding upon and inure to the benefit of any and all successors and/or assigns of the Parties.

(d) **Dispute Resolution**. Any claim or controversy arising out of or relating to the Agreement or the breach of the Agreement shall be settled, if possible, by negotiation. Either Party may, by providing written notice, cause the matter to be referred to a meeting of appropriate higher management of the Parties. Such meeting shall be held within ten (10) business days following the giving of the written notice. If the matter is not resolved within twenty (20) business days after the date of the notice referring the matter to appropriate higher management, or such later date as may be unanimously agreed upon, then the dispute will be resolved by binding arbitration in the state of Texas, the location to be Fort Worth or Dallas. The arbitration shall be conducted under the Commercial Arbitration Rules of the American Arbitration Association then in effect, and judgment may be entered on the award by any court of competent jurisdiction. Each party shall be entitled to a reasonable amount of prehearing discovery as allowed by the Arbitrator; provided that the discovery period shall not exceed 90 days and each party shall only be allowed to take three fact depositions. In any arbitration, the substantially prevailing Party shall be entitled to recover from the other Party all of its reasonable attorney fees, expert fees, and costs. This Agreement and any controversy relating to the Agreement shall be governed by the laws of the State of Texas excluding its conflict of law principles. Each party knowingly, intentionally, and voluntarily waives its right to trial before a judge or jury and consent to this arbitration provision. Notwithstanding the foregoing, if Company is not paid timely and is forced to bring legal action to collect overdue invoices, it shall be entitled to file such legal action in any federal, state,

or county court of the State of Texas, and Customer consents to the jurisdiction of any such court. In such an action to collect any unpaid amount, Company shall be entitled to the award, and Customer shall pay, all of Company's attorney's fees, court costs, together with any pre- and post-judgment interest that may be awarded by the court.

(e) **Remedies**. The remedies in the Agreement are exclusive. No delay in exercising or failure to exercise a right or remedy shall impair that or any other right or remedy or be construed as a waiver of any default.

(f) **Headings**. The headings used in this Agreement are for reference only and do not define, limit, or otherwise affect the meaning of any provisions hereof.

(g) **Severability**. If any provision of this Agreement is finally determined to be invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, or enforceability of the remainder of this Agreement will not in any way be affected or impaired and such court shall have the authority to modify such invalid, illegal, or unenforceable provision to the extent necessary to render such provision valid, legal, or enforceable, preserving the intent of the parties to the greatest extent possible.

(h) **Waiver**. The failure by any party to this Agreement to insist upon strict performance of any provision of this Agreement will not constitute a waiver of that provision. The waiver of any provision of this Agreement shall only be effective if made in writing signed by the authorized representatives of Company and Customer and shall not operate or be construed to waive any future omission or breach of, or compliance with, any other provision of this Agreement.

(i) **Order of Precedence**. The documents are listed in their order of priority and in the event of a conflict govern in descending order, (i) taking precedence over (v): (i) the Quote, (ii) these Terms; (iii) the Purchase Order (iv) any exhibit(s), schedule(s), or other proposal(s) incorporated into the Agreement, as applicable, and (v) the Specifications. Company's acceptance of any Purchase Order is conditioned on Customer's assent to these Terms. Additional or different terms contained in Customer's authorizing document, order, or reference in an electronic authorization or acknowledgement proposal or other form of acceptance are expressly rejected and shall not become a part of the Agreement unless expressly agreed to in writing and signed by the Parties.

(j) **Survival**. Provisions of the Agreement providing for indemnification or limitation of or protection against liability shall survive the termination, cancellation, or expiration of the Agreement, except as specifically limited in this Agreement.

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EXHIBIT A

PRICE ADJUSTMENT POLICY

Pricing reflected in the accompanying terms and conditions, Purchase Order, or other contract document is only firm if (a) the validity period of Company's quotation has not expired and (b) Company has received from Customer all information necessary to proceed with the production of the Products. In the event that (a) design inputs, engineering, approvals, information, drawings, and/or delivery dates have not been finalized, (b) Customer later delays the furnishing of information required for Company to proceed with the production of the Products, or (c) or Customer makes any substantive change to the materials, loads, calculations, structure design or delivery schedule, the delivery dates and Pricing shall be subject to an equitable adjustment for changes in Company's underlying production schedule and cost of performance, including, but not limited to, increased material cost, storage, preservation, and expediting.

EXHIBIT B

STANDARD CANCELLATION CHARGES

Upon cancellation of any Products, Customer shall be responsible for payment for those Products in accordance with the table below. Cancellation charges listed next to each project milestone are applicable until that milestone has been completed.

Project Milestone	**Cancellation Charge** (as a Percentage of the Purchase Order/Quote)
Final engineering calculations through drawing print approval submission	10%
Material order has been placed with Company's supplier(s) in order to meet production schedule and Customer's delivery date	50%
Start of manufacturing	70%
Any cancellation after 10% or more of manufacturing process has commenced	100%