

## TERMS OF USE

Please note that accepting these new Terms of Use does not negate your company's current contract with Motion.

### 1. Acceptance of the Terms of Use.

By accessing or using the Motion Industries website and/or the mobile application, offered by Motion Industries, Inc. ("**Motion Industries**," "**we**," "**us**" or "**our**") at [www.motion.com](http://www.motion.com) and all associated pages and services (collectively referred to as our "**Website**") and/or through the mobile application that you have downloaded, including all software therein (the "**Mobile Application**"), the Mobile Application and Website collectively referred to as the "**Services**", you (the "**User**", "**your**" or "**you**") confirm that you have read, understand and agree to be bound by these terms of use ("**Terms of Use**"). Please read the Terms of Use carefully and print a copy for your records.

IF YOU ARE UNWILLING TO BE BOUND BY THESE TERMS OF USE, DO NOT ACCESS OR USE THE SERVICES.

**PLEASE BE AWARE THAT SECTION 16 OF THESE TERMS OF SERVICE, BELOW, CONTAINS PROVISIONS THAT GOVERN HOW CLAIMS THAT YOU AND MOTION INDUSTRIES HAVE AGAINST EACH OTHER ARE RESOLVED. IN PARTICULAR, IT CONTAINS AN ARBITRATION AGREEMENT WHICH WILL, WITH LIMITED EXCEPTIONS, REQUIRE YOU TO SUBMIT CLAIMS THAT YOU HAVE AGAINST MOTION INDUSTRIES TO BINDING AND FINAL ARBITRATION. UNLESS YOU OPT OUT OF THE ARBITRATION AGREEMENT IN SECTION 16 OF THESE TERMS: (i) YOU WILL ONLY BE PERMITTED TO PURSUE CLAIMS AND SEEK RELIEF AGAINST MOTION INDUSTRIES ON AN INDIVIDUAL BASIS, NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY CLASS OR REPRESENTATIVE ACTION OR PROCEEDING; AND (ii) YOU ARE WAIVING YOUR RIGHT TO SEEK RELIEF IN A COURT OF LAW AND TO HAVE A JURY TRIAL ON YOUR CLAIMS. THE ARBITRATION PROVISIONS SET FORTH IN SECTION 16 OF THESE TERMS COULD AFFECT YOUR RIGHT TO PARTICIPATE IN PENDING CLASS ACTION LITIGATION. PLEASE SEE SECTION 16 FOR MORE INFORMATION REGARDING THESE ARBITRATION PROVISIONS, INCLUDING THE ARBITRATION PROVISIONS' IMPACT ON THE PENDING CLASS LITIGATION AND HOW TO OPT OUT OF ARBITRATION. THE TERMS OF SERVICE LIMIT THE REMEDIES THAT MAY BE AVAILABLE TO YOU IN THE EVENT OF A DISPUTE.**

### 2. Changes to these Terms of Use.

By accessing our Services, you acknowledge that we have the right to revise and amend these Terms of Use without prior notice. Your continued use of the Services following our posting of any such changes will mean that you accept such changes. Notwithstanding the foregoing, We may notify you at the email address provided to us or by a posting in the Mobile Application or Website in the event that we make any material changes to these Terms of Use, and you may have to agree to or reject the updated Terms of Use at that time, in order to continue using the Services.

### 3. The Services are For Use by Individuals 18 Years of Age and Older.

The Services are intended solely to be accessed by natural persons who are eighteen (18) years of age or older, and any registration by, use of, or access to the Services by any person under 18 is unauthorized and in violation of these Terms of Use. We may terminate your use of the Services without notice if we believe you are less than 18 years old. By using the Services, you represent and warrant that, you are a natural person, you are 18 or older, and that you agree to and will abide by all of the terms and conditions of these Terms of Use.

### 4. Product-Specific Terms; Terms of Purchase and Return Policy.

Motion Industries may make certain products available for purchase under these Terms of Use (the "**Product**" or "**Products**"). By accepting this Terms of Use, you agree to pay all applicable fees due for purchases you make on or through the Services. We hope that you enjoy your purchase and if you are dissatisfied at any time, please reach out to us and we will try to make it right. Please note that all fees due and/or purchases made through the Services are non-refundable.

*Product Prices and Shipment Terms.* All prices are F.O.B. shipping point unless otherwise specified. Product dimensions and/or quantities are subject to change. Quoted prices are subject to addition for federal, state or local taxes, and subject to change if Products are not shipped within 10 days. Otherwise, prices in effect at time of shipment will prevail. It is your obligation to provide evidence of sales tax exemption to Motion Industries. Notwithstanding the foregoing, in the event that sales tax is determined to be due upon any purchase, you acknowledge and agree that you will be responsible for paying the amount of such tax to Motion Industries for payment to the appropriate taxing authorities.

*Partial Shipment.* Motion Industries reserves the right to make delivery in installments for any Products purchased hereunder. All such installments shall be separately invoiced and paid for when due, without regard to subsequent deliveries. Delay in delivery of any installment shall not relieve you of the obligations to accept and pay for remaining deliveries.

*Product Delivery Delays.* Motion Industries shall not be liable for any failure or delay in manufacture, shipment or delivery of Products resulting from any cause beyond Motion Industries' control, including, but not limited to, provisions of law or governmental regulations, accident, explosion, fire, windstorm, flood or other casualty, strike, lockout, or other labor difficulty, riot, war, terrorist acts, pandemic, epidemic, insurrection, shortage of or inability to secure labor, raw materials, production or transportation facilities. Shipping dates are approximate and are based on conditions at the time of quotation. Motion Industries shall not be liable for failure or delay in performance due to prior sale of Products. In the event of such delay, there will be no termination and the date of delivery shall be extended for a period equal to the time lost by reason of the delay.

*Payment Terms for Purchases Made Through the Services.* Unless otherwise agreed in writing by an authorized officer of Motion Industries, terms of payment are 1% discount for payment by the 25th of the month for invoices dated from the 1st through the 15th of the same month, and payment by the 10th of the next month for invoices dated from the 16th to the end of the month. Otherwise, net payment is due within thirty (30) days of invoice date. U.S. Postal Service post mark shall be determinative. Discounts are not available for payment by credit card or for cash purchases.

*Failure to Remit Payment.* Should your financial responsibility or ability to pay at any time become unsatisfactory to Motion Industries, Motion Industries shall have the right to require payment for any shipment hereunder in advance or, in the alternative, the provision of satisfactory

security. If you fail to make payment in accordance with the terms of these Terms of Use or fail to comply with any provision hereof, Motion Industries may at its option, in addition to any other remedies, cancel any unshipped portion of an order and other pending orders. You shall remain liable for all unpaid accounts. In the event you fail to make payment in accordance with the terms of these Terms of Use, the account shall be deemed to be delinquent and a late charge of one and one-half percent (1.5%) per month will be assessed on the unpaid balance. You agree to pay all collection costs and expenses, including reasonable attorneys' fees, incurred by Motion Industries in collecting or attempting to collect such account.

Motion Industries is a subsidiary of Genuine Parts Company. In the event you owe any past due indebtedness to Motion Industries, or any other operating unit (including all divisions or subsidiaries) of Genuine Parts Company, then any amounts that such operating unit owes to you may be offset against such indebtedness and the Genuine Parts Company unit shall be obligated to pay to you only the net amount after application of such setoff.

*Debit Memos and Billing Disputes.* You acknowledge Motion Industries' right to issue a debit memo to remedy any disputes related to pricing, quantities delivered, freight charges or any other discrepancy. You have 90 days from receipt to respond to the debit memo. Any dispute or disallowance should be emailed to [ap.corporate@motion-ind.com](mailto:ap.corporate@motion-ind.com). If the debit has not been disputed within the 90 days, you must honor the debit, and you agree that you will waive any right to dispute said debit memo, regardless as to the validity of the claims.

You agree to attempt to reconcile all charges, invoices, costs, expenses or other amounts due from Motion Industries in writing within 180 days of the date of the initial invoice or 180 days after the transaction or occurrence at issue, whichever is earlier. You further agree that if you do not bring said charges, invoices, costs, expenses or other amounts due from Motion Industries to Motion Industries' attention in writing within said time frame, you agree that you thereby waive any rights associated with said claims, regardless as to the validity of the claims.

*Cancellation of Orders; Returns.* No order may be canceled or changed in whole or in part without the prior written consent of Motion Industries. Shipment of Products cannot be extended beyond the original shipping date specified without Motion Industries' written consent. No Products will be accepted for return without a Motion Industries approved Return Goods Authorization ("RGA"). All returns are subject to a restocking charge. Special ordered or modified Products are not returnable under any circumstances.

*Fabrication.* In the event that the sale involves the fabrication of any Products by Motion Industries, including without limitation conveyance, automation, and fluid power Products, you shall be solely responsible for the applicable specifications for such fabrication.

*Nuclear or Other Hazardous Activity.* Unless specifically acknowledged and agreed in writing by a duly authorized officer of Motion Industries, Products sold hereunder may not be used in connection with any nuclear facility or any other hazardous activity, including without limitation, military, aerospace, missile or other critical application. You agree to indemnify and hold Motion Industries harmless from any liability that results from your use of the Product in any manner that is inconsistent with this paragraph.

#### *Environmental and Safety-Related Terms for the Products.*

- Material Safety Data Sheets (MSDS). Motion Industries provides MSDS that are prepared by its manufacturers. MSDS are not prepared by Motion Industries. Current MSDS will be provided to you in connection with a purchase of a Product when required by law or regulation.
- Dangerous Goods/Hazardous Materials. Certain types of Products may contain Volatile Organic Compounds, Ozone Depleting Substances, Mercury or other chemicals subject to restrictions by state and/or federal law and regulation. Motion Industries does not guarantee that any Product is in compliance with such restrictive state and/or federal law and regulation, and assumes no responsibility for how Products containing such restricted substances shall be used, installed or resold by you. You assume sole responsibility for compliance with all applicable state and/or federal law and regulation concerning such affected Products. Motion Industries will reasonably cooperate with you with respect to the handling, shipping or other disposition of affected Products.
- Shipping. You acknowledge and agree that hazardous materials require special handling, labeling and packaging. Carrier surcharges may also apply. You agree to pay for all shipping, handling labeling and packaging charges associated with the shipping of hazardous materials. Motion Industries is not responsible for, nor is it to be considered the "offeror" for, any further shipment or transshipment made by you or on your behalf by any mode of transportation. You assume full responsibility for compliance with all state and/or federal rules and regulations governing the Product's further transportation by ground, air or water in domestic and/or international commerce.

*Export.* You acknowledge and agree that you assume all responsibility and liability for compliance with all U.S. and international laws, treaties and customs rules and regulations applicable to the export of Products by you.

*California Purchasers.* The following is a notice to residents of California regarding Proposition 65

California's Proposition 65 entitles California consumers to special warnings for products that contain chemicals known to the State of California to cause cancer and birth defects or other reproductive harm if those products expose consumers to such chemicals above certain threshold levels.

WARNING: Some Products offer through our Services from time to time may contain chemicals that are known to the State of California to cause cancer and birth defects or other reproductive harm and may be included on the Prop 65 chemical list. If you need additional information to make your purchase of Products, please email us at: [hazmatcompliance@motion.com](mailto:hazmatcompliance@motion.com) and we will respond as soon as possible to provide you with the information we possess about the materials within our Products.

For more information on Proposition 65, please visit <http://oehha.ca.gov/prop65/background/p65plain.html>. To learn more on lead-related FAQs, visit <http://www.atsdr.cdc.gov/toxfaqs/tf.asp?id=93&tid=22>

The California Transparency in Supply Chains Act of 2010 requires retailers and manufacturers doing business in California with sales of a certain amount to disclose measures used to track possible slavery and human trafficking in their supply chains.

## 5. Services Use Restrictions.

Without our prior written consent, you may not:

- Use any automated means to access this Services or collect any information from the Services (including, without limitation, robots, spiders, scripts, or other automatic devices or programs);
- Frame the Services in any manner, utilize framing techniques to enclose any content or other proprietary information, place pop-up windows over any Services' pages, or otherwise affect the display of any pages on the Services;
- Engage in the practices of "screen scraping," "database scraping" or any other activity with the purpose of obtaining content or other information;
- Use the Services in any manner that violates applicable law or that could alter, damage, disable, overburden, or impair the Services or interfere with any other party's use and enjoyment of the Services; or
- Access, use or monitor our Services for benchmarking or any competitive purposes.

We may terminate or disable your access to these Services for any reason, with or without cause, including if we believe that you have violated or acted inconsistently with these Terms of Use.

## 6. User Representations.

Parts of the Services may be accessed only by registering for an account and creating a password. Keep your password secure. You are responsible for the activities on your account. You represent, warrant, and agree that no materials of any kind submitted through your account or otherwise posted or shared by you through the Services will violate or infringe upon the rights of any third party, including without limitation any copyright, trademark, patent, privacy, publicity, or other personal or intellectual property rights; or contain libelous, defamatory, or otherwise unlawful material. You will notify us promptly if you discover any unauthorized use of your account. We are not responsible for any losses resulting from unauthorized use of your account.

In addition, you agree not to use the Services to:

- Except where authorized by us, register for more than one User account, register or operate a User account on behalf of or for the benefit of any person who is not eligible to register for or operate a User account in their own name;
- Impersonate any person or entity, or falsely state or otherwise misrepresent yourself, your age, or your affiliation with or authority to act on behalf of any person or entity;
- Upload, post, transmit, share, store, or otherwise make publicly available through the Services any private information of any third party, including, without limitation, addresses, phone numbers, email addresses, Social Security numbers, and credit card numbers, unless expressly authorized to do so by that third party;
- Upload, post, transmit, share, or otherwise make available any material that contains software viruses or any other computer code, files, or programs designed to interrupt, destroy, or limit the functionality of the Services; or Use or attempt to use another's account without authorization from that person, or create a false identity through the Services.

## 7. Information Posted through the Services; Third Party Offerings and Websites.

As between us and you, all content made available on or through the Services, whether uploaded, published, or displayed by us, including designs, text, graphics, pictures, video, information, software, music, sound and other files, and their selection and arrangement, except as provided in Section 10 (App Store) is the property of Motion Industries (collectively the "**Motion Industries Content**"). To the best of our knowledge, we use only content that we own or have permission to use. No Motion Industries Content may be modified, copied, distributed, framed, reproduced, republished, downloaded, displayed, posted, transmitted, or sold in any form or by any means, in whole or in part, without the owner's prior written permission. Unless explicitly stated herein, nothing in these Terms of Use shall be construed as conferring any license to intellectual property rights, whether by estoppel, implication, or otherwise.

The Services provide you with the ability to upload photos and certain images. If you elect to upload any image, text and/or photo ("Your Photo(s)"), you represent and warrant to Motion Industries that you have obtained, and shall maintain throughout the term of Motion Industries' use of Your Photos, all right, title, licenses, permissions and consents necessary to permit Motion Industries to freely use, publish, display and otherwise disseminate or commercialize Your Photos in Motion Industries' sole discretion. You are solely responsible for the information that you post on or through the Services and your conduct regarding the Services. By posting information to or through the Services, you agree to (a) provide accurate, current, and complete information; (b) maintain the security of your password and identification, to the extent you are provided a password and identification; (c) promptly notify us of any changes to information or circumstances that could affect your eligibility to continue using the Services; and (d) be fully responsible for all use of your account and for any actions that take place using your account.

You hereby grant to Motion Industries an irrevocable, perpetual, non-exclusive, worldwide, royalty-free, transferable and sublicensable (through multiple tiers) right and license in and to Your Photos, to display, commercialize, publicly perform, publish, transfer, disseminate and otherwise use Your Photos in Motion Industries' sole discretion, including without limitation, on or through the Services.

Additionally, you represent and warrant that you will not upload, and Your Photo(s) will not contain, any lude, vulgar, illegal, infringing, harmful, offensive, libelous, pornographic or threatening images or text. Your Photo(s) may not include the image or likeness of any minor.

You acknowledge and agree that Motion Industries may delete or remove Your Photos in Motion Industries' sole discretion and Motion Industries shall have no obligation to store or backup Your Photos.

You will defend, indemnify and hold Motion Industries harmless from any claims, losses, damages and/or suits arising out of or resulting from:  
(i) Your Photos and/or (ii) any breach of the above representations and warranties.

The Services may provide access to payment processing that is hosted and provided by third party service providers. As made available to you, third party service providers have additional terms and conditions that are different than these terms. To the extent not restricted by law or applicable agreements with third parties, Motion Industries is not responsible or liable for any third party acts or omissions or services they may provide you.

The Services may contain links to third-party websites and services, and/or display advertisements for third parties (collectively, “**Third-Party Links & Ads**”). Where the Services contain links to Third-Party Links & Ads, these links are provided for your information and convenience only. We have no control over the contents of those sites or resources. Motion Industries does not review, approve, endorse or make any promises with respect to Third-Party Links & Ads. You use all Third-Party Links & Ads at your own risk, and should apply a suitable level of caution and discretion in doing so. When you click on any of the Third-Party Links & Ads, the applicable third party’s terms and policies apply, not these Terms of Use.

Accordingly, we are not responsible for the practices employed by third-party websites or services linked to or from our Services, including the information or content contained in such third-party websites or services, and these Terms of Use do not apply to them. Privacy notices on such linked websites may be different from our Privacy Policy. Your browsing and interaction with any third-party website or service, including those that have a link on or through our Services, are subject to that third-party’s own rules, terms and privacy notices. You access such linked websites at your own risk.

## **8. Consent to be Contacted.**

To the extent required by applicable law, we ensure we make the proper disclosures and obtain consumer consent when collecting your contact information.

## **9. Intellectual Property**

### *Trademarks*

The “Motion Industries” name and all associated graphics, logos, designs, page headers, button icons, scripts, and service names are registered trademarks, trademarks, or trade dress in the United States. Motion Industries’ trademarks and trade dress may not be used, including as part of trademarks or as part of domain names, in connection with any product or service in any manner that is likely to cause confusion and may not be copied, imitated, or used, in whole or in part, without the prior written permission of Motion Industries.

### *Submissions*

You acknowledge and agree that any questions, comments, suggestions, ideas, feedback, or other information (“**Submissions**”), provided by you to us through the Services are non-confidential and shall become the sole property of Motion Industries. Motion Industries shall own exclusive rights, including all intellectual property rights, and shall be entitled to the unrestricted use and dissemination of these Submissions for any purpose, commercial or otherwise, without acknowledgment or compensation to you.

### *Copyright Complaints*

If you believe that any material on the Services infringes upon any copyright which you own or control, you may send a written notification of such infringement to our designated agent as set forth below:

Motion Industries, Inc.

- 1605 Alton Road, Birmingham, Alabama 35210 USA, ATTN: General Counsel or via telephone at (205) 956-1122

To meet the notice requirements under the Digital Millennium Copyright Act, the notification must be a written communication including the following:

A physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed;

Identification of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works, a representative list of such works at that site;

Identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit us to locate the material;

Information reasonably sufficient to permit us to contact the complaining party, such as an address, telephone number, and, if available, an electronic mail address at which the complaining party may be contacted;

A statement that the complaining party has a good-faith belief that use of the material in the manner complained of is not authorized by the copyright owner; and

A statement that the information in the notification is accurate, and under penalty of perjury, that the complaining party is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

## **10. Mobile App; App Store.**

If you have elected to download our App, we hereby grant you a limited, non-transferable, revocable license to use the object code of such software within the App on any mobile device that you own or control that such App is authorized to be operated on (as determined by us in our sole discretion) and is permitted by this Section 10. The App is licensed, not sold, to you for use only under the terms of this Terms of Use.

Motion Industries reserves all rights, title and interest not expressly granted to you. Nothing herein allows you to use the App on a device that you do not own or are not authorized to control.

Furthermore, with respect to any App accessed through or downloaded from an App Store such as Google Play® store or the Apple's® App Store® (an "**App Store Sourced Application**"), you will only use the App Store Sourced Application: (1) on a product that runs the operating system for which it was intended and (2) as permitted by the "Usage Rules" set forth in the corresponding App Store. Use of the App from a third party App Store is also subject to the provisions of this Section 10 (App Store). You acknowledge that these Terms of Use are between you and us and not with the owner or operator of the App Store Sourced Application ("**App Store Owner**"). As between the App Store Owner and us, we, and not the App Store Owner, are solely responsible for the Services, including the App, the content, maintenance, support services, and warranty, and addressing any claims relating thereto (e.g., product liability, legal compliance or intellectual property infringement). In order to use the App, you must have access to a wireless or cellular network, and you agree to pay all fees associated with such access. You also agree to pay all fees (if any) charged by the App Store Owner in connection with the Services, including the App. The following applies to any App Store Sourced Application:

Your use of the App Store Sourced Application must comply with the App Store's "Terms of Service" or equivalent terms.

You acknowledge that the App Store Owner has no obligation whatsoever to furnish any maintenance and support services with respect to the App Store Sourced Application.

In the event of any failure of the App Store Sourced Application to conform to any applicable warranty, you may notify the App Store Owner, and the App Store Owner will refund the purchase price for the App Store Sourced Application to you (if any) and to the maximum extent permitted by applicable law, the App Store Owner will have no other warranty obligation whatsoever with respect to the App Store Sourced Application. As between Motion Industries and the App Store Owner, any other claims, losses, liabilities, damages, costs or expenses attributable to any failure to conform to any warranty will be the sole responsibility of Motion Industries.

You and we acknowledge that, as between Motion Industries and the App Store Owner, the App Store Owner is not responsible for addressing any claims you have or any claims of any third party relating to the App Store Sourced Application or your possession and use of the App Store Sourced Application, including, but not limited to: (1) product liability claims; (2) any claim that the App Store Sourced Application fails to conform to any applicable legal or regulatory requirement; and (3) claims arising under consumer protection or similar legislation.

You and we acknowledge that, in the event of any third-party claim that the App Store Sourced Application or your possession and use of that App Store Sourced Application infringes that third party's intellectual property rights, as between Motion Industries and the App Store Owner, Motion Industries, not the App Store Owner, will be solely responsible for the investigation, defense, settlement and discharge of any such intellectual property infringement claim to the extent required by these Terms of Use.

You and we acknowledge and agree that the App Store Owner, and the App Store Owner's subsidiaries, are third-party beneficiaries of these Terms of Use as related to your license of the App Store Sourced Application, and that, upon your acceptance of these Terms of Use, the App Store Owner will have the right (and will be deemed to have accepted the right) to enforce the terms of these Terms of Use as related to your license of the App Store Sourced Application against you as a third-party beneficiary thereof.

You represent and warrant that (1) you are not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a "terrorist supporting" country; and (2) you are not listed on any U.S. Government list of prohibited or restricted parties.

Without limiting any other terms in these Terms of Use, you must comply with all applicable third-party terms of agreement when using the App Store Sourced Application.

## **11. Notice to California Residents.**

Under California Civil Code Section 1789.3, you may contact the Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs in writing at 1625 N. Market Blvd., Suite S-202, Sacramento, California 95834, or by telephone at (800) 952-5210 in order to resolve a complaint regarding the service or to receive further information regarding use of the service.

## **12. Limited Product Warranty; Product and Services Disclaimers.**

*Products, Specifically.* Motion Industries warrants that for a period of ninety (90) days from the date of the invoice or the delivery of the Products, whichever is sooner, the Products covered hereby materially conform to the written specifications on the face of the purchase order, if any; provided, however, Product dimensions and/or quantities are subject to change. All other warranties are excluded, whether express or implied, by operation of law or otherwise, including but not limited to all implied warranties of merchantability or fitness for a particular purpose.

Motion Industries shall not be liable for incidental or consequential damages directly or indirectly arising or resulting from the breach of any of the terms hereof or from the sale, handling or use of the Products sold. Motion Industries' liability hereunder for breach of the Product warranty set forth above, is expressly limited at the option of Motion Industries: (a) to replace any Products found to be defective or not to conform to the specifications set forth herein, (b) to the repair such defective Products, or (c) to the refund or credit to you the price of such Products.

Motion Industries is a distributor, and not a manufacturer of products. Accordingly, any warranty of quality, merchantability or fitness for a particular purpose is that of the manufacturer only and not that of Motion Industries. Should the Product fail to meet any manufacturer's warranty, then upon your notification thereof to Motion Industries and substantiation that the Product has been stored, installed, maintained and operated in accordance with manufacturer's recommendations and standard industry practice, Motion Industries shall assist you in obtaining suitable repair or replacement, or other remedy, as provided in the applicable manufacturer's warranty. You acknowledge and agree that you shall have no recourse with respect to any non-conforming Product except where the applicable manufacturer offers a warranty or recourse for any non-conforming Product, in which case you shall pursue any claim directly with the manufacturer and not Motion Industries.

*Services.* We reserve the right to change any and all content within the Services and any service offered through the Services at any time without notice.

We provide the Services “AS IS” and assume no responsibility for any failure to provide the Services to you. The Services may be temporarily unavailable from time to time for maintenance or other reasons. We may discontinue the Services or any goods or services available through the Services at any time and for any reason. We are not responsible for any problems or technical malfunction of any telephone or cable network or lines, servers or providers, computer equipment, software, failure of email, or technical problems or traffic congestion on the Internet or on or through the Services, including injury or damage to Users or to any other person’s devices related to or resulting from use of the Services.

Under no circumstances will we be responsible for any loss or damage, including any loss or damage to any user data, financial damages, lost profits, loss of business, or personal injury or death, resulting from anyone’s use of the Services. YOU AGREE THAT YOUR USE OF THE SERVICES AND PRODUCTS IS AT YOUR OWN RISK, and that we **EXPRESSLY DISCLAIM ALL WARRANTIES, TERMS AND CONDITIONS, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES, TERMS AND CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT OF THIRD PARTY RIGHTS AND SATISFACTORY QUALITY.**

### 13. Limitation of Certain Damage Types.

EXCEPT IN JURISDICTIONS WHERE SUCH PROVISIONS ARE RESTRICTED OR PROHIBITED, IN NO EVENT WILL MOTION INDUSTRIES OR ANY OF ITS DIRECTORS, EMPLOYEES, OR AGENTS BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, SPECIAL, OR PUNITIVE DAMAGES, INCLUDING FOR ANY LOST PROFITS OR LOST DATA ARISING FROM YOUR USE OF THE SERVICES OR ANY OF CONTENT OR OTHER MATERIALS ON OR ACCESSED THROUGH THE SERVICES, EVEN IF ANY OF US IS AWARE OF OR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

### 14. Limitation of Liability Amount.

TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW, OUR LIABILITY TO YOU FOR ANY CAUSE WHATSOEVER, AND REGARDLESS OF THE FORM OF THE ACTION, WILL AT ALL TIMES BE LIMITED TO THE GREATER OF THE AMOUNT PAID BY YOU TO US FOR THE SERVICES OR PRODUCT AT ISSUE IN THE THREE MONTHS PRIOR TO THE EVENT GIVING RISE TO THE CLAIM AND \$20. YOU ACKNOWLEDGE THAT IF NO FEES ARE PAID TO US FOR A SERVICE OR PRODUCT, YOU SHALL BE LIMITED TO, AT MOST, INJUNCTIVE RELIEF ONLY, UNLESS OTHERWISE PROHIBITED BY APPLICABLE LAW, AND SHALL NOT BE ENTITLED TO ANY OTHER DAMAGES, REGARDLESS OF THE CAUSE OF ACTION.

NOTHING IN THESE TERMS SHALL LIMIT OR EXCLUDE OUR LIABILITY FOR: (i) DEATH OR PERSONAL INJURY RESULTING FROM OUR WILLFUL MISCONDUCT; (ii) FRAUD OR FRAUDULENT MISREPRESENTATIONS; OR (iii) ANY OTHER LIABILITY THAT CANNOT BE EXCLUDED BY APPLICABLE LAW.

### 15. Disputes, Governing Law, Venue, and Jurisdiction.

By using the Services, you agree that these Terms of Use shall be governed by the laws of the State of Delaware without regard to its conflict of law provisions.

For any cause of action initiated against Motion Industries relating to these Terms of Use, you and Motion Industries agree to submit to the exclusive and personal jurisdiction of the courts located in Delaware.

Our failure to exercise or enforce any right or provision of these Terms of Use shall not constitute a waiver of that right or provision. If any provision of these Terms of Use is found by a court of competent jurisdiction to be invalid, then we nevertheless agree that the court should endeavor to give effect to the intentions reflected in the provision, and the other provisions of these Terms of Use shall remain in full force and effect. The language of these Terms of Use shall be construed as to its fair meaning and not strictly for or against any party.

### 16. Arbitration Agreement & Dispute Resolution

Please read this Arbitration Agreement carefully. It is part of your contract with Motion Industries and affects your rights. It contains procedures for MANDATORY BINDING ARBITRATION AND A CLASS ACTION WAIVER.

**Scope of Arbitration Agreement (“Arbitration Agreement”).** You acknowledge and agree that any dispute or claim relating in any way to your access or use of the Services or to any other aspect of your relationship with Motion Industries will be resolved by binding arbitration, rather than in court, except that (1) you may assert claims in small claims court if your claims qualify, so long as the matter remains in such court and advances only on an individual (non-class, non-representative) basis; and (2) you or Motion Industries may seek equitable relief in court for infringement or other misuse of intellectual property rights (such as trademarks, trade dress, domain names, trade secrets, copyrights, and patents). This Arbitration Agreement shall apply, without limitation, to all claims that arose before this or any prior agreement. **NOW OR IN THE FUTURE, THERE MAY BE LAWSUITS AGAINST MOTION INDUSTRIES ALLEGING CLASS, COLLECTIVE, AND/OR REPRESENTATIVE CLAIMS. SUCH CLAIMS, IF SUCCESSFUL, COULD RESULT IN SOME MONETARY RECOVERY TO YOU. THE EXISTENCE OF SUCH CLASS, COLLECTIVE, AND/OR REPRESENTATIVE LAWSUITS DOES NOT MEAN THAT SUCH LAWSUITS WILL ULTIMATELY SUCCEED. BUT IF YOU AGREE TO ARBITRATION WITH MOTION INDUSTRIES, YOU ARE AGREEING IN ADVANCE THAT YOU WILL NOT PARTICIPATE IN OR SEEK TO RECOVERY MONETARY OR OTHER RELIEF UNDER SUCH CLASS, COLLECTIVE, AND/OR REPRESENTATIVE LAWSUITS. INSTEAD, BY AGREEING TO ARBITRATION, YOU MAY BRING YOUR CLAIMS AGAINST MOTION INDUSTRIES IN AN INDIVIDUAL ARBITRATION PROCEEDING. IF SUCCESSFUL ON SUCH CLAIMS, YOU COULD BE AWARDED MONEY OR OTHER RELIEF BY AN ARBITRATOR.**

**Arbitration Rules and Forum.** This Arbitration Agreement is governed by the Federal Arbitration Act in all respects. To begin an arbitration proceeding, you must send a letter requesting arbitration and describing your claim to our registered agent at: Motion Industries, 1605 Alton Road, Birmingham, Alabama 35210, United States of America, Attention: General Counsel. The arbitration will be conducted by the American Arbitration Association (“AAA”) under its rules, including the AAA’s Supplementary Procedures for Consumer-Related Disputes. The AAA’s rules are available at [www.adr.org](http://www.adr.org) or by calling the AAA at 1-800-778-7879. Payment of all filing, administration, and arbitration fees will be governed by the AAA’s rules. We will reimburse those fees for claims totaling less than \$10,000 unless the arbitrator determines the claims are frivolous. Likewise, Motion Industries will not seek attorneys’ fees and costs in arbitration unless the arbitrator determines the claims are frivolous. If the AAA is not available to arbitrate, the parties will select an alternative arbitral forum.

**Arbitrator Powers.** The arbitrator, and not any federal, state, or local court or agency, shall have exclusive authority to resolve any dispute relating to the interpretation, applicability, enforceability or formation of this Arbitration Agreement including, but not limited to any claim that all or any part of this Arbitration Agreement is void or voidable. The arbitration will decide the rights and liabilities, if any, of you and Motion Industries. The dispute will not be consolidated with any other matters or joined with any other cases or parties. The arbitrator will have the authority to grant motions dispositive of all or part of any claim or dispute. The arbitrator will have the authority to award monetary damages and to grant any non-monetary remedy or relief available to an individual under applicable law, the arbitral forum's rules, and these Terms of Use. The arbitrator will issue a written award and statement of decision describing the essential findings and conclusions on which the award is based, including the calculation of any damages awarded. The arbitrator has the same authority to award relief on an individual basis that a judge in a court of law would have. The award of the arbitrator is final and binding on you and Motion Industries.

**Waiver of Jury Trial.** YOU AND MOTION INDUSTRIES EACH KNOWINGLY AND VOLUNTARILY WAIVE ANY CONSTITUTIONAL AND STATUTORY RIGHTS TO SUE IN COURT AND RECEIVE A JUDGE OR JURY TRIAL. You and Motion Industries are instead electing to have claims and disputes resolved by arbitration. An arbitrator can award on an individual basis the same damages and relief as a court and must follow these Terms of Use as a court would. However, there is no judge or jury in arbitration, and court review of an arbitration award is limited. In any litigation between you and Motion Industries over whether to vacate or enforce an arbitration award, you and Motion Industries waive all rights to a jury trial, and elect instead to have a judge resolve the dispute.

**Waiver of Class or Consolidated Actions.** ALL CLAIMS AND DISPUTES WITHIN THE SCOPE OF THIS ARBITRATION AGREEMENT MUST BE ARBITRATED ON AN INDIVIDUAL BASIS AND NOT ON A CLASS BASIS. CLAIMS OF MORE THAN ONE CUSTOMER OR USER CANNOT BE ARBITRATED OR LITIGATED JOINTLY OR CONSOLIDATED WITH THOSE OF ANY OTHER CUSTOMER OR USER. If, however, this waiver of class or consolidated actions is deemed invalid or unenforceable, neither you nor Motion Industries is entitled to arbitration. Instead, all claims and disputes will then be resolved in a court as set forth in Section 15 (Disputes, Governing Law, Venue and Jurisdiction) above.

**Opt Out.** You may opt out of this Arbitration Agreement. If you do so, neither you nor Motion Industries can force the other to arbitrate. To opt out, you must notify Motion Industries in writing no later than 30 days after first becoming subject to this Arbitration Agreement. Your notice must include your name and address, your Motion Industries username (if any), the email address you used to set up your Motion Industries account (if you have one), and an unequivocal statement that you want to opt out of this Arbitration Agreement. You must send your opt-out notice to: Motion Industries, 1605 Alton Road, Birmingham, Alabama 35210 United States of America, ATTN: General Counsel. If you opt out of this Arbitration Agreement, all other parts of these Terms of Use will continue to apply to you. Opting out of this Arbitration Agreement has no effect on any previous, other, or future arbitration agreements that you may have with us.

**Exclusive Venue.** To the extent the parties are permitted under these Terms of Use to initiate litigation in a court, both you and Motion Industries agree that all claims and disputes arising out of or relating to these Terms of Use will be litigated exclusively in the applicable state or federal courts located in the State of Delaware.

## 17. Indemnity.

To the maximum extent permitted by law, you agree to indemnify and hold us, our subsidiaries and affiliates, and each of their directors, officers, agents, contractors, partners, and employees, harmless from and against any loss, liability, claim, demand, damages, costs (including attorneys' fees), and expenses, arising out of or in connection with your use of the Services or any violation of these Terms of Use.

PLEASE PRINT A COPY OF THIS AGREEMENT FOR YOUR RECORDS AND PLEASE CHECK BACK FREQUENTLY FOR ANY CHANGES TO THIS AGREEMENT.

## 18. No Agency.

Nothing herein shall be construed as creating any partnership, employment, agency or joint venture relationship between the parties with respect to the subject matter set forth herein.

## 19. Survival.

The following Sections survive the termination of these Terms of Use: 4 and 7 through 19.