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 Member of the Network of Leading Law Firms

## NOTICE TO DEALERS

### **Re: Updated Vehicle Purchase Order/Lease Order Form**

Enclosed herewith please find the template form for our most recently updated Vehicle Purchase Order/Lease Order form. You will note that Paragraph 7 (front) and Paragraph 15 (back) require customers to bring any claims against the dealership within 365 days of the delivery of the vehicle being purchased or leased.

While you may add graphics and the name of the dealership to the Purchase Order, please do not make any changes to the font, format or language of the document, as such changes may negate its legal effectiveness.

If you have any questions regarding this Notice, please do not hesitate to contact us.

Very truly yours,

COLOMBO & COLOMBO

Dealer Practice Group

*Charles A. LeFevre (Chair)*  
*Lawrence F. Raniszkeski*  
*Eric R. Bowden*

*John P. Hartwig*  
*Michael J. O'Shaughnessy*  
*Alycia Pallach Wesley*

November, 2008

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Practice Areas: Automotive, Business, Estate Planning, Family, Labor, Litigation and Real Estate

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## ADDITIONAL TERMS AND CONDITIONS

The Order on the reverse side includes the following terms and conditions:

1. **DEFINITIONS AND RELATIONSHIP:** As used in this Order, the term "Manufacturer" means the Company that manufactured the Vehicle or chassis. The Dealer is not the agent of Manufacturer. Dealer and Buyer are the only parties to this Order. Reference to Manufacturer is for the purpose of explaining generally certain contractual relationships between Dealer and Manufacturer regarding new vehicles.
2. **PRICE CHANGES:** Manufacturer has reserved the right to change the price to Dealer of new vehicles without notice. In the event the price to Dealer of new vehicles of the series and body type ordered here is changed by manufacturer prior to delivery of the Vehicle ordered by Buyer, Dealer reserves the right to change the total delivered price of the Vehicle to Buyer or lease terms accordingly. If such total delivered price or lease term is increased by Dealer, Buyer may, if dissatisfied, cancel this Order. In which event, if a Vehicle has been traded in as a part of the consideration for the new Vehicle, it shall be returned to Buyer upon payment of a reasonable charge for storage and repairs (if any) or, if the trade-in Vehicle has been previously sold by Dealer, the amount received from the sale, less a selling commission of 15% and any expenses incurred in storing, insuring, conditioning or advertising the trade-in Vehicle for sale will be returned to Buyer.
3. **TRADE-IN REAPPRAISAL:** If a Vehicle to be traded in as a part of the down payment for the Vehicle ordered by Buyer is not delivered to Dealer until delivery to Buyer of the ordered Vehicle, the trade-in Vehicle will be reappraised at that time and such reappraised value will determine the allowance made for the trade-in Vehicle. If the reappraised value is lower than the original trade-in allowance shown on the front of this Order, Buyer may, if dissatisfied, cancel this Order, provided, however, that the right to cancel must be exercised prior to both the delivery to Buyer of the Vehicle ordered and the surrender of the trade-in Vehicle to Dealer.
4. **EVIDENCE OF TITLE FOR TRADE-IN:** Buyer agrees to deliver to Dealer evidence of unrestricted title to any Vehicle traded in as a part of the down payment for the Vehicle ordered. Buyer warrants and represents that any trade-in Vehicle to be Buyer's property free and clear of all liens and encumbrances except as otherwise noted on the front of this Order. Buyer warrants and represents that the vehicle was not in a prior accident or incurred any frame damage nor is it a municipal, salvage, damaged, rebuilt or flood vehicle. The Buyer further warrants and represents that the odometer of the Vehicle traded in as part of the vehicle order was not altered or tampered with prior to its transfer to the Dealer.
5. **BUYER DEFAULT:** Unless this Order is canceled by Buyer in accordance with the provisions of Paragraphs 2 or 3 above, Dealer has the right, upon failure or refusal of Buyer to accept delivery of the Vehicle ordered and to comply with the terms of this Order, to retain, as liquidated damages, any cash deposit made by Buyer and, in the event a vehicle has been traded in as a part of the down payment for the Vehicle ordered, to sell such trade-in vehicle and reimburse itself from the proceeds of such sale for the expenses specified in Paragraph 2 above and for such other expenses and losses as Dealer may incur or suffer as a result of such failure or refusal by Buyer.
6. **DESIGN CHANGES:** Manufacturer has reserved the right to change the design of any new Vehicle, chassis, accessory or part at any time without notice and without obligation to make the same or any similar change upon any Vehicle, chassis, accessory or part previously purchased by or shipped to Dealer or being manufactured or sold in accordance with Dealer's orders. In the event of any such change by Manufacturer, Dealer has no obligation to Buyer to make the same or any similar change in any Vehicle, chassis, accessory or part covered by this Order, either before or after delivery to Buyer.
7. **DELIVERY LIABILITY LIMITATION:** Dealer will not be liable for failure to deliver or delay in delivering the Vehicle where such failure or delay is due, in whole or in part, to any cause beyond the control or without the fault or negligence of Dealer. Buyer agrees that Buyer is not entitled to recover from Dealer any consequential damages; damages to property; damages for the loss of use of the Vehicle; loss of time; loss of profits or income; or any other incidental damages which may result from failure to deliver or delay in delivery of the Vehicle where such failure or delay is due, in whole or in part, to any cause beyond the control or without the fault or negligence of Dealer including, but not limited to, Manufacturer's failure to produce or deliver the Vehicle.
8. **TAXES:** The Total Taxable Price for the Vehicle ordered does not include sales, use, excise or other taxes (Federal, State or Local). Buyer assumes and agrees to pay, unless prohibited by law, any such taxes imposed on or applicable to the transaction covered by this Order, regardless of which party may have primary tax liability.
9. **INSURANCE UNAVAILABILITY:** If a charge for either credit life or accident and health insurance is included in any installment sales contract signed by the parties in conjunction with this Order, and, if such insurance is either wholly or partially unavailable to Buyer, the charge or applicable portion for such wholly or partially unavailable insurance will be deducted from the Total Time Balance and credited to Buyer. However, such whole or partial unavailability, will not affect the rest of this Order, this Order and any installment sales contract or lease executed in conjunction with this Order remaining in full force and effect.
10. **WARRANTY DISCLAIMER:**
  - A. **IN THE EVENT THE VEHICLE IS EITHER A NEW VEHICLE, DEMONSTRATOR OR A USED VEHICLE STILL SUBJECT TO A MANUFACTURER'S WARRANTY, DEALER EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS AND IMPLIED (INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE) ON THE VEHICLE. FURTHER, DEALER NEITHER MAKES NOR AUTHORIZES ANY OTHER PERSON TO MAKE ON DEALER'S BEHALF, ANY WARRANTY IN CONJUNCTION WITH THE SALE OF THE VEHICLE. AS TO ANY MANUFACTURER'S WARRANTY EXTENDED TO BUYER BY MANUFACTURER, DEALER SPECIFICALLY DISCLAIMS ANY LIABILITY THEREUNDER, SUCH MANUFACTURER'S WARRANTY BEING BETWEEN BUYER AND MANUFACTURER ONLY.**
  - B. **UNLESS A SEPARATE WRITTEN INSTRUMENT SHOWING THE TERMS OF ANY DEALER WARRANTY OR SERVICE CONTRACT IS FURNISHED BY DEALER TO BUYER, THIS VEHICLE IS SOLD OR LEASED "AS IS," AND THE DEALER DISCLAIMS ALL WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**
  - C. **IN THE EVENT THE VEHICLE IS A USED VEHICLE, THE INFORMATION YOU SEE ON THE WINDOW FORM FOR THIS VEHICLE IS PART OF THIS CONTRACT, INFORMATION ON THE WINDOW FORM OVERRIDES ANY CONTRARY PROVISIONS IN THIS ORDER.**
11. **DAMAGE DISCLOSURE:**
  - A. **NEW VEHICLE, DEMONSTRATOR, EXECUTIVE OR MANUFACTURER'S VEHICLE OR PROGRAM VEHICLE:** Damage to a new vehicle (including to all mechanical components, electrical components, sheet metal, paint, trim or other appearance items) may occur either at the factory during assembly, while the vehicle is being transported to Dealer, or while in Dealer's possession awaiting sale. Normally, any damage which occurs during assembly is detected and corrected at the factory during the inspection process. Damage which has been repaired by the Manufacturer prior to delivery to Dealer, since generally unknown to Dealer, will not be disclosed. This Dealer follows the Michigan law which sets forth the following damage disclosure for a new motor vehicle, demonstrator, executive or manufacturer's vehicle or program vehicle:  
Any damage which Dealer has corrected by replacing glass, tires, wheels, bumpers, audio equipment, and in-dash components with the original Manufacturer's parts and material will not be disclosed. All other repairs made after delivery by the Manufacturer of the Vehicle, known by the dealer which exceed in the aggregate five (5%) percent of the Manufacturer's Suggested Retail Price of the Vehicle (as measured by a claim reimbursement, if any, made by the Dealer to the Manufacturer for repairs) will be disclosed to Buyer. Further, any damage or repair of Seven Hundred Fifty (\$750.00) Dollars or more in surface coating repairs or corrosion protection restoration, or the combination thereof, will be disclosed to the Buyer.
  - B. **USED VEHICLES:** Since a used Vehicle has been subject to use and possibly to body and mechanical damages, the Vehicle may have been subject to repairs for mechanical reasons or to enhance appearance for sale. Such repairs may include body bumping and painting of the Vehicle. Since (i) Buyer has the right to inspect the Vehicle, (ii) Dealer generally lacks knowledge of all prior repairs, and (iii) there is uncertainty as to what may be deemed material to Buyer, Dealer makes no representations as to former damage, if any.
12. **ODOMETER DISCLAIMER:** The mileage shown on the odometer of the Vehicle sold or leased is believed by Dealer to be the actual mileage of the Vehicle unless otherwise disclosed. However, Dealer makes no warranties or representations as to the actual mileage that the Vehicle has been driven, and expressly disclaims any liability for damages which may be asserted by Buyer or Buyer's transferees or assigns in the event the mileage shown is incorrect.
13. **COLOR OR EQUIPMENT CHANGE:** If the Vehicle ordered is received by Dealer with a different color or equipment, Buyer will be notified. If Dealer and Buyer reach an agreement as to purchase or lease of the Vehicle, a new Order shall be completed by Dealer and Buyer covering the Vehicle received and the new Order will take the place of this Order and this Order will be null and void.
14. **OTHER DOCUMENTS:** The Buyer, before or at the time of delivery of the Vehicle, will sign such other documents as may be required by the terms and conditions of payment indicated on the front of this Order.
15. **LIMITATIONS ON TIME PERIOD IN WHICH BUYER CAN FILE A LAWSUIT AGAINST THE DEALER:** Buyer agrees that any claim or lawsuit arising out of the purchase or lease of a vehicle against the Dealer must be filed no more than 365 days after the date of the delivery of the vehicle. While Buyer understands that the statute of limitations for claims arising out of the purchase or lease of the vehicle may be longer than 365 days, Buyer agrees to be bound by the 365 period of limitations as set forth herein, and BUYER WAIVES ANY STATUTE OF LIMITATIONS TO THE CONTRARY.
16. **SAVINGS CLAUSE, GOVERNING LAW AND VENUE:** Any provisions of this Order prohibited by Michigan or Federal Law will be ineffective to the extent of such prohibition but shall not invalidate the remaining provisions of this Order. This Order shall be governed by the laws of the state of Michigan and Buyer agrees that the state court of the county in which the Dealer is located shall be the court of exclusive jurisdiction and venue with respect to any disputes arising from or related to this Order.