

## **WARRANTY INFORMATION**

### **LIMITED WARRANTY PRODUCT UPDATES TERMS/CONDITIONS AND END USER LICENSE AGREEMENT FOR DIABLOSPORT TUNING PRODUCTS**

#### **LIMITED WARRANTY**

DiabloSport tuning products and accessories are covered by a limited one-year warranty that covers certain defects in workmanship and materials, as set forth below.

#### **Who may use this Limited Warranty?**

DiabloSport, LLC located at 1080 South Depot Drive, Ogden, UT 84404 (“**DiabloSport**,” “**we**,” “**us**,” and “**our**”) extend this limited warranty only to the original purchaser of the DiabloSport product in the United States and Canada (“**you**”). This limited warranty does not extend to any subsequent owner or other transferee of the product.

#### **What does this Limited Warranty cover and for how long?**

This limited warranty covers defects in materials and workmanship of DiabloSport tuning products and accessories (the “**Product**”) for a period of one (**1**) year from the date of original purchase (the “**Warranty Period**”). The Warranty Period is not extended if we repair or replace the product. We may change the availability of this limited warranty at our discretion, but any changes will not be retroactive. Removal of serial numbers or other alteration of Product will void this limited warranty.

All Products returned for a warranty claim must be accompanied by a return materials authorization (RMA) number and shipped to DiabloSport at your expense. The returned Product must be accompanied with a copy of the original purchase receipt and your (the original purchaser’s) contact information. Product must have been purchased directly from DiabloSport, Holley Performance Products, Inc., or an Authorized DiabloSport Dealer in order to be covered by this limited warranty.

#### **What is NOT Covered?**

This limited warranty does not cover the intellectual property and proprietary information associated with any Product, including but not limited to software and firmware, regardless of form or medium, together with any improvements, modifications, derivative works, updates, or upgrades.

This limited warranty also does not cover Products that are damaged due to any one or more of the following: (a) storage; (b) improper installation or improper use; (c) failure to follow the Product instructions; (d) modifications or alterations; (e) repair or service of the Product by anyone other than DiabloSport; (f) normal wear and tear; (g) external causes such as accidents, abuse, misuse, theft, use in a manner contrary to Product instructions, or other actions or events beyond DiabloSport’s control; (h) damage to vehicle caused by the use of the Product.

Note that product for which DiabloSport has created one or more updates is not and shall not be deemed defective for purposes of this limited warranty or otherwise and will instead be subject to the terms and conditions set forth in the “**Product Updates**” information below.

### **What will DiabloSport do?**

If there is a defect in the material or workmanship of the Product, DiabloSport will, in its sole discretion, choose either to repair the defective Product or replace it with a comparable, new Product, without charge for the repair or the replacement Product. Your remedies under this limited warranty are strictly limited to the repair or replacement of the defective Product. You must pay the cost of shipping the product back to DiabloSport and for any labor or other costs, including any additional parts, associated with removing the allegedly defective Product and with the installation of the repaired or replacement Product.

### **How do I start the warranty claim process?**

To initiate the return process under this limited warranty if you purchased the Product directly from DiabloSport, please choose one of the following options:

- email us at [rma@diablosport.com](mailto:rma@diablosport.com) for complete product return instructions and to request a Return Materials Authorization (RMA) number

Please be prepared to return the allegedly defective product to us, along with a copy of the original dated purchase receipt. We reserve the right to reject a warranty claim if you cannot establish date of purchase.

To initiate the return process under this limited warranty if you purchased the Product from an authorized DiabloSport distributor or dealer, please contact the distributor or dealer.

All Product returned for alleged defect(s) under this limited warranty must have the reason(s) for which it is being returned clearly labeled on the box or given to a DiabloSport customer service representative at the time the RMA is issued.

Final warranty determination is at DiabloSport's sole discretion.

### **LIMITATION OF LIABILITY**

**The remedies described above (repair or replacement of the Product) are your sole and exclusive remedies and our entire liability for any breach of this limited warranty. Our liability shall under no circumstances exceed the actual amount paid by you for the defective product, nor shall we under any circumstances be liable for any consequential, incidental, special or punitive damages or losses, whether direct or indirect.**

**Some states do not allow the exclusion or limitation of incidental or consequential damages, so the above limitation or exclusion may not apply to you. Also this limited warranty gives you specific legal rights, and you may also have other rights which vary under state or provincial laws.**

**We limit the duration and remedies of all implied warranties, including without limitation the warranties of merchantability and fitness for a particular purpose, to the duration of this express limited warranty.**

### **PRODUCT UPDATES**

DiabloSport will post the latest Products and Product updates on our website at [www.diablosport.com](http://www.diablosport.com).

We encourage you to keep your purchased Product up-to-date with the latest release(s) applicable to your vehicle and tuner. You are solely responsible for any and all damage caused to your vehicle or to any third-party caused by your use of an outdated Product (that is, one that been replaced or updated in whole or in part by a new Product).

If you purchased a DiabloSport Product for which an update has been posted online, the following terms and conditions apply:

(a) If you send us a Product for updating that is internet updateable or remotely updateable, we will charge you labor and handling fees.

(b) If you send us a Product for updating that is not internet updateable or remotely updateable, we will not charge you labor and handling fees.

(c) In all cases, shipping charges may apply.

(d) All Products returned for update purposes must have a corresponding DiabloSport RMA number for processing.

To request updating service, email us at [rma@diablosport.com](mailto:rma@diablosport.com) for complete instructions and to request a Return Materials Authorization (RMA) Number.

#### END USER LICENSE AGREEMENT

This End User License Agreement (this “**Agreement**”) is an agreement between you, the purchaser (“**You**” or the “**Purchaser**”) of either a DiabloSport software module (the “**Module**”), a DiabloSport hand-held computer unit (the “**Unit**”), or DiabloSport “tunes” via a DiabloSport Tuning License (a “**Tuning License**”), and DiabloSport, LLC (“**DiabloSport**”). The Module, the Unit, and the Tuning License are referred to collectively herein as the “**Product.**”

1. Acknowledgment and Acceptance of Agreement. If you do not agree to the terms and conditions of this Agreement, do not use the Product. Instead, promptly contact the distributor from which you purchased the Product in writing, requesting a refund of the purchase price. Any use of the Product by you will constitute your agreement to the terms and conditions contained herein.
2. Grant of License. On the terms and subject to the conditions of this Agreement, DiabloSport hereby grants the Purchaser a non-exclusive, non-transferable, limited license to use the Product IP (as defined below) solely (a) for the Product use described in the product materials, and (b) as pertains to a Tuning License, on one vehicle at a time. This limited license allows you to use the Module and the Unit in connection with multiple vehicles simultaneously but in order to do so you must purchase a Tuning License for each such vehicle. Each individual Tuning License entitles you to the right under this Agreement to install and use the DiabloSport “tunes” associated with the Tuning License on a single vehicle at any one time, so a Tuning License must be released/removed from the vehicle on which it is being used before subsequently being used on another vehicle. All rights not expressly granted to the Purchaser in this Agreement are reserved to DiabloSport. Except for the limited license set forth in this Paragraph 2, no right, title, interest or license to the Product IP or any other trademark, service mark, logo or any other intellectual property of DiabloSport is granted to the Purchaser by this Agreement.

DiabloSport shall retain all right, title, and interest in and to the Product IP. For purposes of this Agreement, **“Product IP”** means all or any portion of DiabloSport’s intellectual property and proprietary information associated with any Product, including but not limited to software and firmware, regardless of form or medium, the DiabloSport “tune(s),” and any and all improvements, modifications, derivative works, updates, or upgrades thereof.

3. License Restrictions. Without limiting the provisions of Paragraph 2 of this Agreement, Purchaser shall not and shall not permit any third-party to, directly or indirectly (a) use the Product IP for any purpose other than its intended use or the purpose for which it was designed; (b) sell, resell, rent, lease, transfer, sublicense, distribute, redistribute, copy, reproduce, modify or share the Product IP; (c) translate, reverse engineer, decompile, disassemble, or otherwise attempt to discover the source code or other trade secrets of DiabloSport; (d) make any modification, adaption, improvement, enhancement, or derivative work of or to the Product IP; or (e) remove, alter, or obscure any proprietary or source notice (including logos or copyright notices) of DiabloSport or its suppliers on or in any part of the Product. The Product IP and all rights therein are and shall remain the exclusive property of DiabloSport.
4. Disclaimers. The Product IP is included with the Product with no warranties of any kind, express or implied. The Product is not endorsed by the manufacturer of your vehicle and there is no affiliation between DiabloSport and the manufacturer of your vehicle. Installation of the Product in your vehicle or use of the Product with your vehicle may limit or void your rights under any warranty provided by the manufacturer of your vehicle, and DiabloSport assumes no responsibility or liability in such event. The DiabloSport Limited Warranty, which is incorporated by reference herein, sets forth DiabloSport’s sole liability in connection with the Product. The Products are not legal for sale or use on any pollution controlled motor vehicles. In California, the Products are not legal for use on pollution controlled vehicles, and may only be used in racing vehicles which are never used upon a highway.
5. Termination of License. Product IP is subject to change or withdrawal at any time without notice to the Purchaser. DiabloSport reserves the right to terminate the license granted under this Agreement for any or no reason at any time without notice to the Purchaser. In addition, if the Purchaser violates any provision of this Agreement, the license granted under this Agreement shall automatically terminate and the Purchaser shall immediately stop using the Product IP and remove all copies of any software or firmware embodying the Product IP from any vehicle, computer, server, or other device.
6. Indemnification. The Purchaser shall indemnify, defend and hold harmless DiabloSport and DiabloSport’s employees, officers, directors, affiliates, parents, distributors and dealers from and against any claim arising out of or related to the Product, including but not limited to the Product IP, and its installation, use or service.
7. Governing Law; Venue. This Agreement shall be governed by the laws of the State of Florida, excluding application of Florida’s conflicts of law rules. The U.N. Convention on Contracts for the International Sale of Goods shall not apply to this Agreement. Any action or proceeding arising in whole or in part out of this Agreement shall be brought in a state or federal court in Palm Beach County, Florida, and the parties hereby submit to the exclusive jurisdiction of such courts.

8. Severability. If any part of this Agreement is found to be void or unenforceable, then the rest shall remain in full force and effect.
9. Entire Agreement. This Agreement, together with the DiabloSport Limited Warranty, the Product Updates Terms/Conditions, and other written material provided by DiabloSport with the Product, constitutes the entire agreement between DiabloSport and the Purchaser and supercedes any and all prior agreements between DiabloSport and the Purchaser concerning the Product, including any oral representations or warranties.