

PLAN COVERAGE

In the event of a Mechanical Breakdown of a covered part, WE agree to pay the reasonable Costs to repair or replace the hereinafter described parts of the Covered Vehicle, for the amount of such Costs in excess of the Deductible, subject to the terms and conditions, and limitations herein.

DEFINITIONS

1. "Covered Vehicle" means the vehicle described in the Declarations.
2. "Mechanical Breakdown" or "Failure" is an event which results in the inability of a covered part to perform the function(s) for which it was designed due to an inherent material failure. Neither damage nor wear shall be taken to constitute Mechanical Breakdown or Failure. A Covered Part has failed when it can no longer perform the function for which it was designed solely because of its condition and not because of the action, inaction, or failure of any non-covered parts.
3. "Effective Miles" means the mileage reading of the Covered Vehicle's odometer at the time of purchase of this agreement.
4. "Cost" means the usual and reasonable charges for parts and labor to replace the components covered. These charges shall not exceed the manufacturer's suggested retail price (MSRP) for parts and labor allowances derived from nationally recognized labor time publications.
5. "Effective Date" means the date the vehicle was purchased from the dealer.
6. The "Expiration Mileage" is the mileage reading on a continuously operational odometer at which point the vehicle is no longer covered under the terms of this agreement.
7. The "Expiration Date" is the first day the vehicle is no longer eligible for coverage under this agreement.
8. "Deductible" means the amount that shall be deducted from the Cost of the covered repair for each repair visit.
9. Throughout this agreement, "You" and "Your" mean the customer named as the service agreement holder in the Declarations. "We", "Us" and "Our" refer to the provider or obligor, First Assurance Warranty, Inc. ("FAWI").

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SECTION 1 - WHAT THIS AGREEMENT COVERS

The SmartBuy Program provides coverage on certain parts of your vehicle, depending on the mileage of your vehicle at purchase.

A) VEHICLE CHECKLIST

Vehicles purchased with a SmartBuy Program are provided with a 150-Point Pre-Owned Vehicle Checklist (or similar checklist provided by the vehicle's manufacturer in connection with a Certified Pre-Owned Warranty) that will disclose, with respect to each "point" on the checklist, whether the item was "Inspected, Meets Standard", "Service Completed" or will remain unrepaired as an "Inspected, Service Available". Notwithstanding anything below, the SmartBuy Program only covers items indicated on the checklist as "Inspected, Meets Standard" or "Service Completed", and does not cover items indicated as "Inspected, Service Available".

B) POWERTRAIN

ENGINE: All internal lubricated parts; Cylinder block (excluding freeze plugs); Cylinder heads; Flywheel/Flexplate; Harmonic balancer; Manifolds, Intake and Exhaust; Oil pan; Oil pump; Seals and gaskets (Covered parts only); Timing belt; Timing chain; Timing chain cover; Timing gears/sprock ets; Turbo/Supercharger; Valve covers.

COOLING AND FUEL: Diesel fuel injection pump; Diesel nozzles; Diesel vacuum pump; Fuel injectors (excludes clogged injectors); Fuel pump; Seals and gaskets (Covered parts only); Thermostat; Thermostat housing; Throttle body assembly; Water pump; Water pump housing

TRANSMISSION: Transmission case and all internal parts; Seals and gaskets (Covered parts only); Torque convertor; Transmission control unit/module; Transmission mounts; Transfer case and all internal parts; Vacuum modulator.

DRIVETRAIN: Automatic front locking hubs; Axle shafts; Axle shaft bearings; Axle supports; CV joints; Differential and all internal parts; Drive axle housing and all internal parts; Drive shaft; Final drive housing and all internal parts; Hub bearings; Locking rings; Propeller shafts; Seals and gaskets (Covered parts only); U-joints; Wheel bearings, front and rear.

C) PLATINUM

WE will pay YOU or a licensed repairer the Cost, in excess of the Deductible, to remedy any mechanical failure except as excluded in Section 7, "WHAT THIS AGREEMENT DOES NOT COVER."

SECTION 2 - WHERE TO GO FOR SERVICE

To obtain service under the SmartBuy Program, the vehicle must be brought, promptly upon discovery of a defect in material or workmanship, to the issuing dealership during normal business hours. The SmartBuy Program does not cover the cost of repairs at any other facility.

SECTION 3 - RENTAL CAR ALLOWANCE

You will be reimbursed up to Thirty-Five (\$35) Dollars per day for a maximum of five (5) days, immediately effective when Your vehicle is accepted for a covered repair. Rental benefits, per incident, end at the maximum allowed days or when the repair is completed, whichever comes first. All rental reimbursements are for base rental charges incurred at a licensed rental car agency or authorized dealer. Taxes and additional fees are not included.

SECTION 4 - TOWING ALLOWANCE

You will be reimbursed up to One Hundred (\$100) Dollars if You vehicle needs to be towed due to the breakdown of a covered part.

SECTION 5 - VOIDING YOUR SERVICE AGREEMENT

The SmartBuy Program will be immediately voided and will not be reinstated under the following circumstances:

- The vehicle identification number (VIN) has been altered or removed.
- The odometer has been altered or the actual mileage cannot be determined.
- An insurer reports the vehicle as dismantled, fire/flood damage, junk, rebuilt, reconstructed, salvaged, or declared a loss.
- The vehicle has been used in racing, competitive events or livery cab or other commercial service.
- The vehicle has been stolen or exported from the United States.

SECTION 6 - GENERAL

1. THE TERMS AND CONDITIONS OUTLINED HEREIN REPRESENT THE FULL AND COMPLETE AGREEMENT BETWEEN THE PARTIES. NO ORAL REPRESENTATIONS OR STATEMENTS SHOULD BE RELIED UPON BY THE PURCHASER.
2. This service agreement applies only to Mechanical Breakdowns which occur during the time period or within the mileage period as indicated in the Declarations and while the vehicle is within the United States, its territories or possessions and Canada.
3. **We reserve the right to use a remanufactured or LKQ (Like kind and quality) part when replacing failed parts covered under this agreement. If You prefer to use an alternative part, You will be responsible for the difference in price.**
4. This agreement will be governed by the laws of the state of North Carolina.
5. No amendment, supplement, or waiver of any provision of this agreement will be binding against Us unless it is in writing and signed by one (1) of the authorized representatives at Our office.
6. The SmartBuy Program is not transferable.
7. Our rights to recover payment: If We make any payment under this agreement and You have a right to recover against another party, Your rights shall become Our rights and You shall do whatever is reasonably necessary to enable Us to enforce these rights. Our subrogation rights become effective after You are made whole.

SECTION 7 - EXCLUSIONS, WHAT THIS AGREEMENT DOES NOT COVER

1. UNLESS REQUIRED IN CONNECTION WITH THE REPAIR OF A COVERED PART, WE WILL NOT BE LIABLE UNDER THIS AGREEMENT FOR THE FOLLOWING MAINTENANCE-RELATED COSTS: ENGINE TUNE UP; SUSPENSION ALIGNMENT; WHEEL BALANCING; FILTERS; LUBRICANTS; FLUIDS; BELTS AND HOSES; WINDSHIELD WIPER BLADES; A/C RECHARGES; BATTERY AND CABLES; SPARK PLUGS AND WIRES; GLOW PLUGS; BRAKE PADS, LININGS, SHOES, ROTORS OR DRUMS; MANUAL CLUTCH DISC LINING; MANUAL CLUTCH PRESSURE PLATE, THROW OUT BEARING/PILOT BEARING; ANY MAINTENANCE SERVICE OR PART REQUIRED OR RECOMMENDED BY THE MANUFACTURER. (NOTE: IF YOU HAVE ELECTED A MAINTENANCE OPTION, SOME OF THE ABOVE MAY BE ELIGIBLE FOR COVERAGE.)
2. IN ADDITION, WE WILL NOT BE LIABLE UNDER THIS AGREEMENT FOR ANY BODY, CHASSIS OR TRIM ELEMENTS. THIS INCLUDES, BUT IS NOT LIMITED TO THE FOLLOWING: SHEET METAL; CHASSIS FRAME; CROSS MEMBERS; BODY RAILS; BODY PANELS; BUMPERS; GLASS; CARPET; DOOR HANDLES; LATCHES; WEATHER STRIPPING; LENSES; SEALED BEAMS; LIGHT BULBS; TIRES; CONVERTIBLE OR VINYL TOPS; MOLDINGS; BRIGHT METAL; UPHOLSTERY; PAINT; HINGES; AIR OR WATER LEAKS; WIND NOISE; EXHAUST SYSTEM INCLUDING CATALYTIC CONVERTOR; ODORS; SQUEAKS OR RATTLES.
3. THIS AGREEMENT DOES NOT COVER EXTERNALLY CAUSED DAMAGE TO YOUR VEHICLE. THIS INCLUDES BUT IS NOT LIMITED TO ANY OF THE FOLLOWING:
 - A) FAILURE TO MAINTAIN YOUR VEHICLE AS REQUIRED OR RECOMMENDED BY THE MANUFACTURER. THIS INCLUDES DAMAGE CAUSED BY IMPROPER LEVELS OF OIL, COOLANT OR OTHER FLUIDS AS WELL AS CONTAMINATION OF OIL, FLUIDS OR FUELS.
 - B) DAMAGE CAUSED BY COLLISION, FIRE, VANDALISM, THEFT, RIOT OR EXPLOSION.
 - C) DAMAGE CAUSED BY NATURE, THE ENVIRONMENT OR POLLUTION, INCLUDING AIRBORNE FALLOUT, HAIL, LIGHTNING, SALT, FREEZING, CORROSION, WINDSTORM, FLOOD, ICE, SNOW, EARTHQUAKE, ACID RAIN OR TREE SAP.
 - D) DAMAGE CAUSED BY MISUSE, ABUSE, NEGLIGENCE, ALTERATIONS OR MODIFICATIONS MADE TO YOUR VEHICLE.
 - E) DAMAGE CAUSED BY OFF-ROAD USE, RACING OR OTHER COMPETITIVE DRIVING.
 - F) DAMAGE CAUSED BY CONTINUING TO DRIVE THE VEHICLE WHILE IT IS OVERHEATING OR FOLLOWING ANY OTHER APPARENT FAILURE.
 - G) DAMAGE CAUSED BY TOWING UNLESS YOUR VEHICLE IS EQUIPPED FOR THIS AS RECOMMENDED BY THE MANUFACTURER OR TOWING OUTSIDE THE LIMITS OF YOUR VEHICLE.
 - H) FAILURE CAUSED BY IMPROPERLY PERFORMED REPAIR WORK.
 - I) DAMAGE CAUSED TO A COVERED PART BY THE FAILURE OF A NON-COVERED PART.
 - J) DAMAGE CAUSED BY SLUDGE, CARBONIZATION, OIL STARVATION, OR THE CONDITION OF WATER INTRUSION COMMONLY KNOWN AS HYDROLOCK.
 - K) BURNT VALVES, WORN RINGS, THE CORRECTION OF OIL CONSUMPTION OR ENGINE COMPRESSION, ANY REPAIRS FOR REDUCTION IN ENGINE EFFICIENCY THAT MUST BE PERFORMED ON YOUR VEHICLE.
4. THIS AGREEMENT RESTRICTS CERTAIN VEHICLES FROM COVERAGE. THESE INCLUDE THE FOLLOWING:
 - A) VEHICLES WHICH HAVE BEEN MODIFIED FOR PERFORMANCE, INCLUDING SALEEN AND ROUSH MODIFIED VEHICLES, AS WELL AS THE INSTALLATION OF SUCH ALTERATIONS AS LIFT KITS, OVERSIZED TIRES AND AFTERMARKET WHEELS.
 - B) TAXIS, LIMOUSINES OR OTHER LIVERY VEHICLES.
 - C) EMERGENCY VEHICLES SUCH AS POLICE, FIRE, AMBULANCE, TOW TRUCK OR ANY VEHICLE EQUIPPED WITH A SNOW PLOW.
 - D) VEHICLES WHICH HAVE BEEN TOTALED OR WHOSE MANUFACTURER'S WARRANTY HAS BEEN VOIDED OR VEHICLE WITH BRANDED OR SALVAGED TITLES.
5. FINALLY, THIS AGREEMENT DOES NOT COVER THE FOLLOWING:
 - A) REPAIR OR REPLACEMENT OF PARTS NOT AUTHORIZED BY US. THIS INCLUDES REIMBURSEMENT FOR THE REPAIR OR REPLACEMENT OF OTHERWISE COVERED PARTS WHEN PERFORMED OR AUTHORIZED BY YOU.
 - B) REPAIRS OR PARTS NOT SPECIFIED IN THE COVERAGE YOU SELECTED.
 - C) REPAIRS PERFORMED BY ANYONE OTHER THAN AN ASE CERTIFIED MECHANIC OR THE EQUIVALENT.
 - D) ANY LOSS WHICH OCCURS WHEN AN ODOMETER IS INOPERATIVE WHETHER FROM FAILURE, DISCONNECTION OR ALTERATION WHILE OWNED BY YOU, OR WHEN AN EXACT DETERMINATION OF MILEAGE IS UNAVAILABLE.
 - E) HAZARDOUS WASTE DISPOSAL CHARGES, SHOP SUPPLIES, STORAGE CHARGES, CORE CHARGES OR FREIGHT/SHIPPING CHARGES.
 - F) FAILURE CAUSED BY A CONDITION THAT EXISTED PRIOR TO THE PURCHASE OF THE AGREEMENT.
 - G) ANY LOSS TO AN OTHERWISE COVERED PART WHILE UNDER THE MANUFACTURER'S OR REPAIRER'S RECALL, PROGRAM, CAMPAIGN, WARRANTY AND/OR GUARANTEE OR IF THE MANUFACTURER OR REPAIRER DENIES COVERAGE FOR ANY REASON WHILE UNDER ITS RECALL, PROGRAM, CAMPAIGN, WARRANTY AND/OR GUARANTEE.
 - H) REPAIR OR REPLACEMENT OF NAVIGATIONAL ENTERTAINMENT OR COMMUNICATION EQUIPMENT THAT NO LONGER PERFORMS ITS FUNCTIONS DUE TO CHANGES IN TECHNOLOGY.

- I) REPAIR OR REPLACEMENT TO NON-FACTORY INSTALLED EQUIPMENT (SUCH AS, BUT NOT LIMITED TO, CELLULAR PHONES, THEFT DETERRENT SYSTEMS, AIR CONDITIONING COMPONENTS, ETC.).
- J) ANY LOSS IF MORE THAN ONE (1) WARRANTY OR INSURANCE AGREEMENT CAN BE APPLIED TO A BREAKDOWN. OUR RESPONSIBILITY UNDER THIS AGREEMENT SHALL NOT EXTEND TO ANY PART OF THE REPAIRS, REPLACEMENT, LOSS OR DAMAGE THAT IS RECOVERABLE UNDER ANY OTHER COVERAGE.

SECTION 8 - ARBITRATION

Any claim or dispute arising under the FAWI SmartBuy Program or otherwise under this agreement, whether in contract, tort, statute or otherwise (including the interpretation and scope of this Agreement and the arbitrability of the claim or dispute), between you and FAWI (together with FAWI's affiliates and any of their respective directors, officers, managers, employees, agents, successors or assigns), shall, at your or FAWI's election, be resolved by neutral, binding arbitration and not by a court action, unless otherwise provided herein. Any claim or dispute is to be arbitrated by a single arbitrator on an individual basis, and not as a class action, in accordance with the rules of the American Arbitration Association, 35 Madison Avenue, Floor 10, New York, NY 10017-4605 (www.adr.org), unless all parties to the arbitration agree otherwise.

Arbitrators shall be attorneys or retired judges and shall be selected pursuant to the applicable rules. The arbitrator shall apply governing substantive law in making an award. The arbitration hearing shall be conducted in the federal district in which you reside. FAWI will pay any fees that the arbitrator determines that FAWI must pay in order to make this Section 11 enforceable. Each party shall be responsible for its own attorney, expert and other fees, unless awarded by the arbitrator under applicable law. The arbitrator's award shall be final and binding on all parties, except that in the event the arbitrator's award for a party is \$0 or against a party in excess of \$100,000, or includes an award of injunctive relief against a party, that party may request a new arbitration under the rules of the arbitration organization by a three-party panel. If any provision under this Section 11, other than waivers of class action rights, is deemed or found to be unenforceable for any reason, the remainder shall remain enforceable. The appealing party requesting new arbitration shall be responsible for the filing fee and other arbitration costs subject to a final determination by the arbitrators of a fair apportionment of costs. This Section 11, and any arbitration conducted hereunder, shall be governed by the Federal Arbitration Act (9 U.S.C. § 1, et seq.).

You and FAWI retain any rights to self-help remedies, such as repossession. You and FAWI further retain the right to seek individual remedies in small claims court for individual claims or disputes (as opposed to a class claim) so long as the amount in controversy is \$2,500.00 or less. Neither you nor FAWI waives the right to arbitrate by using self-help remedies or filing suit. Any court having jurisdiction may enter judgment on the arbitrator's award. This clause shall survive any termination, payoff or transfer of this contract.

EITHER YOU OR MODERN MAY CHOOSE TO HAVE ANY DISPUTE BETWEEN US DECIDED BY ARBITRATION AND NOT IN COURT OR BY JURY TRIAL. IF A DISPUTE IS ARBITRATED, YOU WILL GIVE UP YOUR RIGHT TO PARTICIPATE AS A CLASS REPRESENTATIVE OR A CLASS MEMBER ON ANY CLASS CLAIM YOU MAY HAVE AGAINST US INCLUDING ANY RIGHT TO CLASS ARBITRATION OR ANY CONSOLIDATION OF INDIVIDUAL ARBITRATIONS. DISCOVERY AND RIGHTS TO APPEAL IN ARBITRATION ARE GENERALLY MORE LIMITED THAN IN A LAWSUIT, AND OTHER RIGHTS THAT YOU AND WE WOULD HAVE IN COURT MAY NOT BE AVAILABLE IN ARBITRATION.