



## Terms & Conditions

### 1. Scope

The terms and conditions of sale contained herein apply to all quotations made and purchase orders entered into by the Seller. These terms and conditions supersede and replace any terms and conditions attached to Buyer's order and Seller's acceptance is expressly conditional upon Buyer's acceptance of these terms and conditions. No waiver, alteration or modification of any of the provisions hereof shall be binding unless in writing, signed by a duly authorized representative of the Seller. In the event of a conflict between the provisions on the face of the acknowledgment or quotation which is annexed and made a part hereof, and these terms and conditions, then the terms and conditions on the face of the acknowledgment or quotation shall govern.

### 2. Acceptance of Order

All orders must be approved and accepted in writing by Seller at its office in Camarillo, California. The validity of this order, as well as its interpretation, operation and effect shall be determined exclusively by the principles of law of the State of California.

### 3. Prices

Seller's prices do not include sales, use excise, personal property or similar taxes. Consequently, in addition to the prices specified herein, the amount of any present or future sales, use, excise, personal property or other similar tax applicable to the sale or use of the equipment hereunder shall be paid by the Buyer, or in lieu thereof, the Buyer shall provide Seller with a tax-exemption certificate acceptable to the taxing authorities.

Should these Terms and Conditions accompany a quotation, the quotation will remain open for a period of thirty (30) days from the date of the quotation or for such other period of time as may be specified in the quotation; provided, however, that in the event the cost of material increases prior to acceptance of a purchase order by Seller, the amount of such increase will be added to the quoted prices.

### 4. Terms of Payment

Invoices are due and payable net thirty (30) days from the date of invoice. Failure to make any payment due under the terms of this agreement shall constitute a material breach. If, in the judgment of the Seller, the financial condition of the Buyer at any time does not justify continuation of production or shipment on the terms of payment originally specified, the Seller may require full or partial payment in advance and, in the event of the bankruptcy or insolvency of the Buyer or in the event any proceeding is brought by or against the Buyer under the bankruptcy or insolvency laws the Seller shall be entitled to cancel any order then outstanding and shall receive reimbursement for its cancellation charges which include, but are not limited to, all costs, direct and indirect for labor, materials, tools, overhead and a profit equal to that which Seller would be entitled had the order not been canceled.

The Buyer shall have no right to delay the manufacture or shipment of the articles which are the subject of this order without prior written consent of the Seller. In the event that such delay is agreed to in writing by the Seller at the request of the Buyer, payments shall then be made by the Buyer for (1) materials purchased to complete this order plus (2) the percentage of completion multiplied by the full purchase price of the order less the cost of materials purchased. In the event

that the delay extends beyond ninety (90) days from the date of the order, and there is a price increase, Buyer agrees to pay such increased price for articles shipped thereafter.

Each shipment shall be considered a separate and independent transaction, and payment therefore shall be made accordingly. If shipments are delayed at the request of Buyer, payments shall become due on the date when Seller is prepared to make shipment. Products held for Buyer shall be at the risk and expense of the Buyer. Buyer grants Seller a purchase money security interest in all articles under this agreement until such time as full purchase price is paid.

Seller reserves the right to charge and Buyer agrees to pay, interest on all overdue amounts at the rate of 1.5% per month or part thereof during which any balance due Seller remains unpaid. All costs of collection of unpaid amounts due Seller, including, but not limited to, court costs and attorneys fees shall be borne by Buyer.

## **5. Delivery**

Shipping dates are approximate only and subject to change. Unless otherwise specified in this agreement, delivery shall be FOB Seller's plant, Camarillo, California, and the method of shipment and carrier shall be selected by the Seller unless the Buyer shall have specified in writing a method of shipment and carrier ten (10) days prior to scheduled shipment.

In all cases, Buyer assumes risk of loss or of damage to goods in transit and it shall be Buyer's responsibility to file claim with the carrier. If the Buyer desires insurance or valuation greater than the minimum on the shipment, he shall so notify the Seller in writing ten (10) days prior to the scheduled shipment and the cost thereof shall be an additional charge to the Buyer. If no such notice is received, shipment shall be made without insurance and at minimum valuation.

## **6. Excusable Delay**

The Seller shall not be liable for delays in delivery or failure to manufacture or deliver due to causes beyond the Seller's reasonable control, including, but not limited to, acts of God, acts of the Buyer, acts of civil or military authority, priorities, fires, strikes, floods, epidemics, war, riot, delays in transportation or car shortages, obtaining necessary labor, materials, components or manufacturing facilities.

## **7. Acceptance of Goods**

Buyer shall inspect the goods delivered hereunder immediately upon their arrival and shall within five (5) days of their arrival give written notice to Seller of any claim that the goods do not conform with the terms of the contract.

If Buyer fails to give notice, the goods shall be deemed to conform, and Buyer shall be bound to accept and pay for the goods in accordance with the terms of the contract. Buyer expressly waives any rights he may have to revoke acceptance after such five (5) day period.

## **8. Tooling and Tools**

The terms "Tooling" and "Tools" shall include all items such as molds, dies, forms, jigs, mandrels, fixtures and other special equipment, except machinery, which are required to produce the goods. Tooling charges are quoted as a partial charge of the total tooling cost for tool usage and set up. All tools shall remain the property of Seller. Seller agrees to maintain such tools in good working order, normal wear and tear excepted, for a period of two (2) years following last usage. Seller's responsibility with respect to tooling is limited to proper design, proper handling in manufacturing and storage, and adequate insurance.

Buyer will be responsible for (a) costs resulting from alterations of tools requested by Buyer or alterations necessary to complete the order and (b) costs for additional tools or tooling incurred

when Buyer requires faster delivery and/or a greater volume of units than that for which the original tools were designed.

## **9. Patents**

If the articles which are the subject hereof are to be produced according to Buyer's specifications, Buyer agrees to indemnify Seller against, and hold harmless from all judgments, decrees, costs and expenses including fees resulting from any alleged infringements of any United States or foreign letters patent.

If this order calls for delivery of Seller's standard products, without modifications, Seller agrees (I) to assume the defense of any suit brought against Buyer for infringement of United States Letters Patent arising solely from use and/or sale of said standard products; (ii) to defray the expense of such defense; and (iii) to indemnify Buyer against any money damages and/or costs awarded in such suit; provided: (1) that Seller be given exclusive control of the defense of such suit and all negotiations relative to the settlement thereof and, (2) that Buyer promptly inform Seller in writing of any claim with respect to which Seller assumes responsibility hereunder. Buyer agrees that the foregoing shall constitute the entire liability of Seller or patent infringement.

## **10. Packaging**

Seller will provide commercial packaging adequate, under normal conditions, to protect the goods in shipment and to identify the contents. Any special packaging agreed to by Seller will be done at Buyer's expense.

## **11. Designs, Specifications, Material Furnished by the Buyer**

Seller assumes no responsibility for the performance of products manufactured to Buyer's design or specifications or for defects in raw material, parts, or sub-assemblies furnished by the Buyer or his agents.

## **12. Warranty**

Seller warrants that all items will be delivered free from defects in material and workmanship and in conformance with contractual requirements. Seller makes no other warranties, express or implied and specifically NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

## **13. Limitation of Liability**

The Seller's exclusive liability for breach of warranty shall be limited to repairing or replacing at the Seller's option items returned to Seller's plant at Buyer's expense within one year of the date of delivery. The Seller's liability on any claim of any kind, including negligence, for loss or damage arising out of, connected with or resulting from this order, or from the performance or breach thereof or from the manufacture, sale, delivery, resale, repair or use of any item or services covered by or furnished under this order shall in no case exceed the price allocable to the item or service or part thereof which gives rise to the claim and in the event Seller fails to manufacture or deliver items other than standard products that appear in Seller's catalog. Seller's exclusive liability and Buyer's exclusive remedy shall be release of the Buyer from the obligation to pay the purchase price. IN NO EVENT SHALL THE SELLER BE LIABLE FOR SPECIAL OR CONSEQUENTIAL DAMAGES.

## **14. User Advisories**

Buyer will take all appropriate measures to advise users and operators of the products delivered hereunder of all potential dangers to persons or property, which may be occasioned by such use.

Buyer will indemnify and hold Seller harmless from all claims of any kind for injuries to persons and property arising from use of the products delivered hereunder. Buyer will, at its sole cost, carry liability insurance adequate to protect Buyer and Seller against such claims.

#### **15. Assignment**

Except as herein expressly provided to the contrary, the provisions of this agreement are for the benefit of the parties to the agreement and not for the benefit of any other party. Any assignment of this order or any rights hereunder by the Buyer without written consent of the Seller shall be void.

#### **16. Disputes**

Any claim, controversy or dispute concerning questions of fact or law arising out of or relating to this order shall be decided by the authorized representative of the Seller. The decision of the Seller shall be final and conclusive unless within thirty (30) days of receipt of such copy the Buyer mails or otherwise furnishes to the American Arbitration Association copy to the Seller a written demand for arbitration. The claim, controversy or dispute shall then be arbitrated pursuant to the rules of the American Arbitration Association. In the disposition of the dispute hereunder, the arbitrator(s) shall be guided by the laws of the State of California except where this order is accepted under a contract or subcontract from a department or agency of the U.S. Government in which case the arbitrator(s) shall be guided by the law applicable to contracts with the United States as a party (Government contracts). The decision of the arbitrator(s) shall be final and conclusive upon the parties (unless determined by a court of competent jurisdiction to have been fraudulent, capricious or arbitrary or so grossly erroneous as necessary to imply bad faith or not supported by substantial evidence). Judgment upon an award rendered by the arbitrator(s) may be entered in any court of competent jurisdiction.

Any such arbitration shall be held at such places as the parties shall agree upon and in the absence of such agreement, in the city of Camarillo, California. Costs and expenses of the arbitration shall be borne equally by the parties unless otherwise provided by the arbitrator(s).