

# STANDARD TERMS AND CONDITIONS OF PURCHASE ORDERS

(effective March, 2011)

**1. ORDER:** Buyer's order for the purchase of any goods or services (the "Items") shall be expressly limited to the written purchase order issued by Buyer and the standard terms and conditions set forth herein. Any additional or different terms proposed by Seller are rejected unless specifically agreed to by Buyer in writing. Seller may accept the order by either: (i) written acknowledgement sent to Buyer or (ii) Seller's supply of the Items and Buyer's acceptance of the Items shall also give rise to an agreement on the terms and conditions stated herein. Buyer may modify these standard terms and conditions by posting the revised terms and conditions on Buyer's website or by sending directly to Seller.

**2. PRICES:** Unless otherwise agreed in writing, prices shall be as stated in Buyer's purchase order. The prices stated on the face of the purchase order include, and Seller therefore assumes and agrees to pay, any and all federal, state and/or local taxes applicable to the manufacture, transportation and sale of the Items by Seller to Buyer. The prices also include the packaging and crating and transportation charges to Buyer's facility. No charges will be allowed for transportation, packaging, packing or containers unless specifically stated.

Seller represents that the prices charged for the Items covered by the order are the lowest prices charged by Seller to buyers of the same class as Buyer under conditions similar to those specified in the order and that prices comply with applicable government regulations in effect at the time of quotation, sale, and delivery. Seller agrees that any price reduction made in the Items covered by the order subsequent to its placement but prior to payment will be applicable to Buyer's order. Buyer shall have the right to perform financial audits of Seller's books and records to verify the cost and pricing of the Items. Buyer reserves the right to market test any Item being supplied and terminate for cause under Section 6 if Seller is not cost competitive. Service parts will be produced for at least ten years after the end of a program at the last production price.

**3. DELIVERY:** Time is of the essence. Buyer may refuse to accept all or any part of Items which are not received by the time specified, or if no delivery date is fixed, within a reasonable time. Seller shall be responsible for shipment to Buyer's facility, unless otherwise agreed in writing. A packing list shall accompany each shipment. Seller shall send Buyer an original invoice and one duplicate with bill of lading inserted for each shipment. Invoices shall bear a number corresponding to Buyer's purchase order number. Invoices must be received by the Buyer not later than the time the Items ordered arrive at Buyer's facility. All shipments must be packaged and must conform with Buyer's packaging approval so as to permit efficient handling and to provide protection in shipment, and if tendered to a common carrier for delivery, must also conform to the packaging requirements applicable to such carrier. Damage to any articles resulting from improper packaging will be charged to Seller. Weekend, holiday and after hours deliveries may be required by Buyer based on production demands of its customer. Seller will be liable for expedited delivery expense if delivery is not timely made by normal means.

**4. WARRANTIES:** Seller warrants: (i) that the Items conform in all respects with the description, standards and specifications furnished or specified by Buyer and also with any catalogue, manual, or brochure of the Seller; (ii) the Items conform in all respects to any models, samples, drawings or other description presented to Buyer by Seller in connection with such Items, or submitted by Buyer to Seller in connection with such Items; (iii) that the Items are merchantable, fit for the purposes for which such Items are intended, free from defects of workmanship and materials; (iv) that Seller has good title to such Items and (v) that Seller has and will in the future comply with all applicable federal, state and local laws, rules and regulations. These express warranties shall not limit those warranties which are implied by applicable law and Seller may not disclaim such implied warranties.

Seller will comply with all requirements set forth in Buyer's Supplier Quality Manual. Seller may access the latest version of the Manual on Buyer's website or request a written copy from Buyer. Seller agrees to comply with any customer requirements that Buyer is subject to which relate to the Items. Seller shall indemnify and defend Buyer for all claims and expenses that are in any way related to issues with the Items provided by Seller including, but not limited to, product liability claims and recalls and costs of sorting, testing and inspection.

**5. INSPECTION:** Buyer shall have the right to inspect and test all Items, including supplies, special tooling, materials and workmanship to the extent practicable at all times and places, including during the period of manufacture. Seller shall also provide and maintain an adequate inspection system. If any Items delivered or services rendered hereunder are defective in material or workmanship (or otherwise not in conformity with the requirements of the order), Buyer shall have the right, notwithstanding payment or any prior inspection or test, either to reject and/or revoke acceptance and return said Items to require its correction and/or or recover damages in accordance with applicable law including Article 2 of the Uniform Commercial Code. Any work which is required shall be corrected by and at the expense of Seller promptly after notice. Property which is rejected or required to be corrected shall be removed (if permitted or required by Buyer) or corrected in place, by and at the expense of Seller promptly after notice. If the Seller fails promptly to remove such property which is requested to be removed or promptly to replace or correct such property if correction or replacement is requested, Buyer shall have the right to (i) replace or correct such Item and charge to Seller the increased cost occasioned by Buyer thereby, or (ii) effect a termination for cause. Seller assumes the risk of damage to or loss of and all handling and transportation costs for defective property delivered hereunder.

Buyer's inspection, discovery of any breach of warranty, failure to make an inspection or failure to discover any breach of warranty shall not waive any of Buyer's rights or remedies with respect to any breach of warranty by Seller whatsoever. Acceptance shall not remove or divert Buyer's rights or diminish Seller's responsibility for latent defects. Buyer shall have the right to debit any charges against amounts owed by Buyer to Seller. Any defective Items which are not sold to Buyer or are returned to Seller shall only be disposed of as scrap by Seller for material content.

**6. TERMINATION:** (a) Buyer may terminate an order without cause or for any reason whatsoever by written or electronic notice at any time. Buyer's only liability shall be with respect to those Items which are the subject of firm release orders submitted by Buyer and reasonable raw material and work in process expenses which Buyer directly authorized Seller to incur. In no case shall Seller have a claim for any other costs or expenses,

including lost profits, overhead, facilities, machinery, equipment or engineering design and development unless a separate written agreement has been entered into covering such items. Seller shall submit its termination claims within thirty (30) days after the notice of termination is given. The provisions contained in this section shall not limit or affect Buyer's right to terminate the order for cause.

(b) Buyer may terminate the order for cause if Seller fails to meet the quality and delivery requirements of Buyer, or otherwise fails to observe or comply with any of the other instructions, terms, conditions or warranties applicable to the order or fails to make progress so as to endanger performance of the order or in the event of any proceedings by or against Seller in bankruptcy or insolvency or proceedings for appointment of a receiver or trustee or an assignment for the benefit of creditors. In such event, Buyer may, in addition to any other right or remedy provided by the order or by law, terminate all or any part of the order by written or electronic notice to Seller without any liability of Buyer to Seller on account thereof. Buyer may require a financial statement from Seller at any time during the term of the order for the purpose of determining Seller's financial responsibility and failure to provide will be cause for termination.

**7. PRODUCTION ORDER:** If the order is designated a blanket parts order, it shall only be binding upon Buyer for Items designated to Seller in firm release orders to be submitted from time to time in the future. If no quantity is stated, the order is for all of Buyer's requirements of the Items while the order is in effect and Seller shall have the capacity to meet the peak volume demands of Buyer. Estimated volumes may be provided by Buyer for production programs, although Buyer does not commit to purchase the estimated quantity. Unless otherwise stated, blanket parts orders are for the life of the program subject to the provisions of these terms and conditions.

**8. INFRINGEMENT INDEMNITY:** Seller hereby agrees to defend, indemnify and hold Buyer, its successors, assigns, agents, customers, and users of the Items harmless from and against loss, damage or liability including costs and expenses which may be incurred on account of any suit, claim, judgment, or demand involving infringement or alleged infringement of any patents, trademarks, copyrights, trade secrets, licenses or other rights of third parties by the manufacture, use, sale and/or disposition of any Items supplied hereunder. If Buyer is providing specifications, Seller waives any rights it might have pursuant to Section 2-312 of the Uniform Commercial Code.

**9. ASSIGNMENT:** Neither the order nor any rights or obligations created herein may be assigned by Seller nor may Seller subcontract the performance of its duties without Buyer's prior written consent. The terms and conditions of the order shall bind any permitted successors and assigns of Seller. Any consent by Buyer to assignment shall not release Seller from its liability or be deemed to waive Buyer's right to recoupment and/or set off of claims arising out of the order or any other transactions with Seller, its divisions, affiliates or subsidiaries or to settle or adjust matters with Seller without notice to permitted successors and assigns.

**10. CHANGES:** Buyer may at any time, by written notice, make changes in the specifications, designs or drawings, samples or other descriptions to which the Items are to conform, in methods of shipment and packaging, or place of delivery. If any such change causes an increase or decrease in the cost of, or the time required for, the performance of any part of the work under the order, whether changed or not changed by any

such order, an equitable adjustment shall be made in the price or delivery schedule, or both, and the order modified in writing accordingly. Any claim by Seller for an adjustment must be made in writing immediately upon receipt of any such notice, provided however, that Buyer may in its discretion, receive and act upon any such claim so made at any time prior to final payment under the order. Nothing in this clause shall excuse the Seller from proceeding without delay to perform the order as changed.

**11. PROPRIETARY RIGHTS:** Other than for the performance of Buyer's order, Seller shall not reproduce, use or disclose any data, specifications, designs, drawings, pricing or other information (including customer owned information) belonging to or supplied by or on behalf of Buyer to Seller. All manifestations of the foregoing shall be returned to Buyer upon completion of Seller's obligations and duties. Any information which Seller discloses to Buyer regarding or which is incorporated into the design, manufacture, sale or use of the Items shall be deemed disclosed as part of consideration paid for the Items and Buyer shall be entitled to reproduce, use and disclose the same under an irrevocable royalty-free license.

**12. BUYER'S PROPERTY:** All property used by Seller in connection with the order which is owned, furnished, charged to or paid for by Buyer or its customer, including but not limited to materials, tools, dies, jigs, molds, patterns, fixtures, equipment, drawings and other technical information, specifications, and any replacement thereof shall be and remain the property of Buyer subject to removal and inspection by Buyer at any time without cost or expense to Buyer and Buyer shall have free access to Seller's premises for the purpose of inspecting or removing such property. All such property shall be identified and marked as Buyer's property, used only for the order and adequately insured by Seller at its expense for Buyer's protection. Seller shall assume all liability for and maintain and repair such property and return the same to Buyer in its original condition, reasonable wear and tear excepted. Seller agrees not to claim any statutory, equitable or other liens on Buyer's property.

**13. GENERAL:** (a) The rights and remedies provided herein shall be cumulative and shall not be exclusive of but shall be in addition to any other rights remedies and benefits provided herein or allowed by applicable law. (b) Waiver by Buyer of a breach of any provision shall not be deemed a waiver of future compliance and such provision shall remain in full force and effect. (c) The order and the rights and obligations of the parties hereunder shall be governed by and construed pursuant to the laws of the State of Michigan without giving effect to conflicts of laws principles. The United Nations Convention for the International Sales of Goods shall not apply. (d) If Seller is located in the U.S.A., Seller consents to the exclusive jurisdiction of the federal and state courts in the State of Michigan to hear any dispute arising out of or in connection with the order and consents that any such action may be brought in the Circuit Court for the County of Macomb or the District Court for the 41A Judicial District. If Seller is located outside of the U.S.A., binding arbitration before one arbitrator under the rules of the American Arbitration Association shall be held in the State of Michigan in the English language. (e) The invalidity of any provision shall not invalidate the balance of the invalid provision or any other provision. (f) The order, including the terms and conditions on the face and those set forth herein, contains the complete and final agreement between Buyer and Seller and except as otherwise provided herein, no other proposed terms or agreement in any way modifying such terms and conditions will be binding on Buyer unless made in writing and signed by Buyer's authorized representative. The specific terms of any supply, distribution or other agreement shall control over these standard terms if there is any inconsistency.