

## TERMS AND CONDITIONS

1. **COMMERCIAL TRANSACTION** Buyer acknowledges it is a merchant with bargaining power equal to Seller's bargaining power. Buyer agrees that the terms contained herein are commercially reasonable and conscionable.
2. **ACCEPTANCE OF TERMS** This acknowledgement contains the terms and conditions of the contract between Buyer and Seller. The transaction of business following receipt of this acknowledgement constitutes express acceptance of the terms herein. Terms contained in Buyer's purchase orders are expressly rejected and shall not bind Seller or affect or invalidate any terms contained herein. Terms and conditions herein shall not be modified except upon Seller's express written agreement. All orders are subject to acceptance by Seller.
3. **QUOTATIONS** Each quotation is based upon the completion of Buyers order. This price quotation shall not apply if Buyer orders an amount less than the original quoted quantity or if the requirements change. Alterations or modifications of the original quotation or specifications, including changes in quantity, material, design, or other features, must be communicated in writing by Buyer to Seller. Such changes may increase prices. Buyer shall be liable for and reimburse Seller for any and all work in process, accepted or not accepted, at the time of Seller's receipt of notice of changes. All prices are F.O.B. Seller's plant. Buyer shall arrange for transportation of goods. Buyer is responsible for goods after removal from Sellers facility. This quotation expires and is null and void sixty (60) days from the date of mailing.
4. **PAYMENT OF PURCHASE PRICE**
  - A. Purchase orders for tooling fixtures and jigs. See quote for actual terms.
  - B. Purchase orders for production of parts. Production unit pricing is based on a per order basis. Purchase price is due and owing thirty (30) days from the invoice date. Accounts thirty (30) days past due will be charged interest at a rate of 1.5% per month, 18% per annum unless the seller agrees, in writing, to vary these terms. Payment must be according to the above terms. Time is of the essence. If Buyer fails to follow the payment schedule(s) above or if Seller anticipates Buyer may be unable to perform hereunder, Seller may terminate this contract, defer, discontinue or suspend shipments, or demand adequate assurance of Buyer's performances.
5. **LIEN, RIGHT OF DETAINER AND RIGHT OF REPOSSESSION** Seller shall have a security interest and a lien on molds, tools, patterns, dies, parts, materials, or other goods in Seller's or Buyer's possession. Said security interest and lien shall be security for payment for any goods or services (including work-in-process and materials ordered for production for which Seller has not been paid (whether invoiced or not). If Buyer fails to pay the full purchase price of goods or molds, Seller shall have the right to repossess unpaid for goods. The value of goods is determined by Seller's choice of the raw material cost or the invoice price of the goods.
6. **MACHINED COMPONENTS:**
  - A. **PRODUCTION QUANTITIES** All shipments and orders are appropriate. As is commercially reasonable, shipments may vary ten percent (10%) more or less than ordered. This provision may not be altered except by Seller's express written agreement.
  - B. **PRODUCTION SAMPLES** The initial sample run shall establish acceptable standards for Buyer's order. Buyer shall provide sample approval prior to production runs. Absent written approval, Seller's written acknowledgement shall constitute sample approval.
  - C. **BUYER'S RESPONSIBILITY FOR SELECTION OF MATERIALS AND DESIGN** Selection of materials, design and usage shall be the sole responsibility of Buyer. Any suggestions or recommendations made by Seller regarding materials, design or usage shall be strictly gratis and shall not in any manner alter or diminish Buyer's exclusive responsibility and liability for selection of materials, design or usage. Seller makes no warranty of any kind, whether express or implied, regarding selection of materials, design or usage.
  - D. **RIGHT OF INSPECTION** Buyer has ten (10) days from the delivery of goods within which to inspect goods for reasonable conformity to preproduction samples. Written notice of nonconformity or rejection must be delivered to Seller within ten (10) days of delivery. Buyer acknowledges that perfect conformity is not possible. Conformity shall be determined by generally accepted inspection standards.
  - E. **INSERTS AND COMPONENTS** Inserts and component parts supplied by Buyer shall exceed by five percent (5%) the number required to fill the order, shall be delivered F.O.B. Seller's acceptance.
7. **TOOLING**
  - A. Tools, dies and molds are considered Buyer's property and shall be for Buyer's use only. Buyer is responsible for insuring Buyer's property.
  - B. Pricing subject to change, pending final specifications and review of final database.
  - C. Tooling lead time quoted is to deliver mold and begins once down payment and final databases have been received.
  - D. Unless otherwise agreed upon in writing, tooling payment terms are 50% due with purchase order, 40% due upon completion of mold, and 10% due upon mold approval not to exceed 60 days from shipment of mold.
8. **TAXES** Seller's prices do not include federal, state, local or any other taxes. Buyer shall promptly pay said tax upon Seller's written demand.
9. **BUYER'S CHANGE OF DELIVERY DATE** If Buyer changes or alters the date of product shipment or delivery after submission of a purchase order, Seller reserves the right to cancel the order or collect monies from Buyer sufficient to cover the cost of inventory purchased in contemplation of processing Buyer's order.
10. **CANCELLATION OF ORDERS** All cancellations must be in writing. Buyer shall be responsible for all work-in-process and/or completed up to Seller's receipt of Buyer's cancellation. Buyer's responsibility includes but is not limited to liability for work-in-process, materials received, production runs, restocking fees, tooling, shipping and any other costs incurred by Seller prior to receipt of cancellation, plus a fifteen percent (15%) surcharge on said costs. Buyer shall make payment pursuant to this provision within ten (10) days of cancellation.
11. **LIMITATION OF WARRANTIES AND REMEDIES SELLER EXCLUDES ALL WARRANTIES WHATSOEVER WITH REGARD TO GOODS PRODUCED FOR BUYER'S ORDER. SELLER EXPRESSLY EXCLUDES ALL IMPLIED WARRANTIES; INCLUDING ANY IMPLIED WARRANTY OR MERCHANTABILITY, IMPLIED WARRANTY OF FITNESS, IMPLIED WARRANTY OF DESIGN, AND ALL OTHER IMPLIED WARRANTIES. SELLER EXPRESSLY EXCLUDES ALL EXPRESS WARRANTIES EXCEPT AS STATED HEREUNDER. ALL GOODS ARE SOLD "AS IS." Buyer's sole remedy in any action at law based on performance hereunder (other than an action based on breach of a warranty, which warranties are expressly excluded) shall be limited to the repair or replacement of nonconforming goods or parts or, at Seller's option, a refund of the purchase price. IN NO EVENT SHALL SELLER BE RESPONSIBLE FOR ANY CONSEQUENTIAL OR ECONOMIC DAMAGES OR LOSS, LOST PROFITS OR CONSEQUENTIAL DAMAGES FOR PERSONAL INJURY, BUYER AGREES THAT THIS PROVISION IS CONSCIONABLE.**
12. **INDEMNIFICATION, HOLD HARMLESS** Buyer agrees to defend, indemnify and hold harmless the Seller, its employees, agents, representatives and subcontractors from and against any and all claims, suits, actions, losses, liabilities, damages, costs, attorney's fees and other expenses of any kind whatsoever arising out of or related to any product manufactured, designed or produced by Buyer and into which Buyer (or another party at Buyer's direction) incorporated or intended to incorporate the product manufactured by Seller. This provision shall apply to all claims and actions, whether based in strict liability, Buyer's or Seller's negligence, breach of implied or express warranty, infringement of patents or trademarks, or any other legal theory, Buyer agrees that said defense will be provided by counsel of Seller's choice.
13. **INSURANCE, RISK OF LOSS** Buyer shall purchase and maintain product liability and comprehensive general liability insurance to cover claims arising out of the use of products into which Buyer incorporated Seller's products. Said insurance shall extend to Seller and Seller's employees, agents, representatives and subcontractors. Seller's failure to require proof of said insurance shall not constitute a waiver of this requirement. Buyer is responsible for all risk of loss to molds, work in progress, and finished goods while in the possession of Seller or its agents or subcontractors.
14. **FORCE MAJEURE** Seller is not responsible for delays or nonperformance if the delay or nonperformance is caused by acts of God, floods, fires, explosions, storms, transportation difficulties, strikes, lockouts or other labor or industrial disturbances; wars; laws, rules, orders or actions of any courts, agency or other instrumentality of any government, reduction or unavailability of supplies, products or materials; failure of performance by raw material suppliers, tooling subcontractors, or any other subcontractor upon whom seller may rely; failure of presupposed conditions, commercial impracticability, or any other causes(s) beyond Seller's control. In the event of any condition listed or similar to those listed, Seller shall have the right to suspend delivery or allocate materials among customers in any manner which seller determines is reasonable.
15. **LAW** This contract shall be interpreted and governed by the laws of the State of Minnesota. Any disputes arising out of business conducted hereunder shall be venued in the district courts of the State of Minnesota.
16. **ENTIRE AGREEMENT** This document contains the entire agreement between the parties hereto. All prior or contemporaneous oral agreements between the Seller and Buyer are contained within this document. Any subsequent oral or written agreements between the parties shall not modify or alter the terms hereunder unless such changes are in writing and signed by the Seller.
17. **SEVERABILITY** The invalidity or unenforceability of any provision of this contract shall not affect the validity of any other provision.

CUSTOM MOLD & DESIGN / 22455 Everton Avenue North / Forest Lake, MN 55025 / (763) 535-2334 / Fax (763) 535-54271 www.custommold.net