

**West Michigan Flocking & Assembly, LLC**

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**Terms and Conditions of Sale**

(Revised as of August 29, 2014)

**These general terms and conditions apply to all proposals, quotations, acknowledgments, and invoices submitted by West Michigan Flocking & Assembly, LLC (“Seller”) to its customer or potential customer (“Buyer”) for the sale of products and/or services (“Products”), to all related purchase orders, revisions, order releases and/or similar documents received by Seller for the purchase of Products, and to all Products sold by Seller.**

**SELLER'S QUOTATIONS ARE EXPRESSLY MADE CONDITIONAL ON BUYER'S ASSENT TO THE ADDITIONAL OR DIFFERENT TERMS SET FORTH BELOW WHICH REPRESENT THE SOLE AND EXCLUSIVE TERMS AND CONDITIONS UPON WHICH SELLER OFFERS TO SELL PRODUCTS TO BUYER.**

**Seller's quotation, including (1) these terms and conditions, and (2) any documents (such as drawings or other specifications) expressly and to the extent incorporated by reference in the quotation, are referred to herein as the "Agreement." The Agreement also includes any amendments made from time to time by the parties – but these terms and conditions of sale shall not be amended, modified or rescinded, and no amendment, modification or rescission of the terms and conditions set forth herein will be binding upon Seller, unless such amendment, modification or rescission is agreed to in writing, makes express reference to amending these terms and conditions, and is signed by an Authorized Representative of Seller (see Section 25 below).**

**Buyer's acceptance of the Agreement is limited to acceptance of the terms and conditions set forth herein. Any proposal for additional or different terms or any attempt by Buyer to vary in any degree any of the terms of the Agreement in Buyer's acceptance are hereby objected to and rejected by Seller. (See Section 25 below.) THE TERMS OF THE AGREEMENT ARE EXCLUSIVE.**

**1. Prices**

A) Seller's published prices, if any, are subject to change without notice. Prices contained in individual written quotations or proposals are firm only for thirty (30) days from the date of the quotation or proposal; thereafter, they are subject to change, and Buyer should inquire as to their validity and request written confirmation or revision. All prices are in United States dollars. Seller imposes minimum order amounts, minimum set up fees, and additional charges for all pre-production and sample Products and any Products that require hand masking; Buyer should inquire as to those additional charges before placing any order.

B) Unless otherwise expressly provided by Seller in the Agreement, prices do not include sales, excise, use, value-added or other similar taxes now in effect or hereafter levied, transportation charges (such as freight, insurance, shipping, storage, handling, demurrage or similar charges), engineering documentation, packaging (ordinary or special), marketing or testing, and Buyer shall pay all such charges, including applicable sales or other taxes levied with respect to Products and the Agreement (unless exempt therefrom), as well as any government fees levied on the inspection and/or installation of the Products, upon receipt of the related invoice from Seller and in accordance with the Agreement. In the event that the Agreement expressly provides that any of the foregoing charges are specifically included in the price, any charges attributable to increases in applicable rates after the date such price is quoted to Buyer shall be added to the price.

C) In the event Buyer requests changes to Products after the date of quotation, Seller may unilaterally increase prices to cover increased costs (plus reasonable overhead and profit) associated with the changes, including without limitation increased costs of design, materials, and/or manufacturing. Notwithstanding the foregoing, Seller shall be under no obligation to honor such requested changes.

D) Where applicable, Seller may add to the price, and Buyer agrees to pay, for the price of additional Products, or portions of Products, made necessary by incomplete or inaccurate information supplied by Buyer. Notwithstanding anything in the Agreement to the contrary, Seller also may add to the price to recover any adverse material economics or currency fluctuations incurred by Seller during the term of the Agreement.

## **2. Payment**

A) Invoices may be rendered separately for each shipment (or provision of services), including any early shipment, made by Seller, and payment will be due net thirty (30) days after the date of shipment (or provision of services) or the date of the invoice, whichever is earlier, unless a different period is stated elsewhere in the Agreement. Buyer shall be liable for the price of all Products substantially conforming to the Agreement, notwithstanding that Buyer may not have accepted or may have revoked acceptance of same. Buyer shall not be entitled to deduct, counterclaim or set off against the price of Products, or against any other amount owing under the Agreement including under any invoice, any claim or alleged claim arising out of the Agreement or any other transaction with Seller.

B) In the event the Products are tooling (except mold tooling), equipment, dies, fixtures, jigs, returnable containers, or similar items, payment for sixty percent (60%) of the quoted price must be paid at the time of the order and all remaining amounts must be paid immediately upon completion and prior to shipment of the Products to Buyer. With regard to Products that are mold tooling, payment for sixty percent (60%) of the quoted price must be paid at the time of the order, twenty percent (20%) of the quoted price must be paid prior to Seller's delivery of sample parts to Buyer, and all remaining amounts must be paid immediately upon completion and prior to shipment of the Products to Buyer.

C) If payment is not received by the due date, a service charge will be added at the rate of 2% per month (or the maximum legal amount, if less) to the unpaid invoices from the due date thereof.

D) Any remittances received by a bank or other depository of Seller in connection with the Agreement will be received by such bank or other depository solely as a clearing agency. Such receiving bank or depository has no authority to determine whether or not the amount remitted constitutes payment in full. Remittances marked to indicate "payment in full" or other similar expressions may be deposited by such bank or depository notwithstanding such markings and such deposit shall not indicate Seller's acceptance of the remittance as payment in full and shall not otherwise be treated as an election by, or an impairment of any of the rights of, Seller unless expressly agreed in writing by Seller.

E) Seller may elect to deliver the Products in installments, with each installment being considered a separate sale and invoiced as such, and Buyer shall timely pay each invoice. Any Products indicated at any time as back-ordered shall be considered an installment delivery.

F) Seller shall have the right to stop delivery or performance of any work on the Product if Buyer is in arrears with payment. A failure to pay for an installment within the time for payment is an anticipatory material breach of other installments by Buyer.

G) All amounts due on installation or other event which requires the action or cooperation of Buyer which Buyer fails to perform or supply timely shall become due upon such failure.

H) Seller may offset or recoup any amounts owed by Seller or any affiliate of Seller to Buyer or an affiliate of Buyer against any amounts owed by Buyer or an affiliate of Buyer to Seller or an affiliate of Seller. Buyer waives any right of offset or recoupment and shall pay all amounts owed to Seller when due regardless of any claim of Buyer regarding warranties or other issues.

### 3. **Credit**

A) Seller may, at any time and in its sole discretion, limit or cancel the credit of Buyer as to time and amounts, and as a consequence, may demand payment in cash before delivery of any unfilled portion of the Agreement, and may demand assurance of Buyer's due performance including without limitation demanding that one or more deposits, letters of credit or other assurance be provided by Buyer. Upon making such demand, Seller may suspend production, shipment and/or deliveries until Buyer has provided such assurance. If, within the period stated in such demand, but in no event longer than 30 days, Buyer fails to agree and comply with the different terms of payment, and/or fails to give adequate assurance of due performance, Seller may, in its sole discretion and without any requirement to do so, (i) by notice to Buyer, treat the failure or refusal as a repudiation by Buyer of the portion of the Agreement not then fully performed, whereupon Seller may cancel all further deliveries and any amounts unpaid hereunder shall immediately become due and payable, or (ii) make shipment under reservation of a security interest and demand payment against tender of documents of title.

B) Buyer hereby represents to Seller that Buyer is solvent, that it has all requisite power and authority to enter into the Agreement, that the execution, delivery and performance of the Agreement does and will not conflict with or result in a breach of any contract to which it is a party or by which its assets may be bound, and that no other person other than Seller has or will have a security interest in the Products covered by the Agreement until performance in full by Buyer of its obligations under the Agreement. Buyer further agrees that each acceptance of

delivery of the Products sold under the Agreement shall constitute the remaking of each of these representations at that time.

C) If the Agreement permits or requires the use of a letter of credit, the letter of credit shall be assignable, irrevocable, confirmed by a United States bank acceptable to Seller, payable in installments, and require payment to Seller on submission of Seller's invoice and a bill of lading.

#### **4. Packaging; Delivery; Force Majeure**

A) The Agreement shall be a shipment contract, and the Products shall be delivered F.O.B. Seller's designated facility, unless otherwise provided in the Agreement. Whether or not Seller prepays shipping charges, title to each shipment of the Products sold hereunder and risk of loss thereon shall pass to Buyer when Seller or its agent delivers such shipment to a common carrier or licensed trucker consigned to Buyer or his agent, but such shipment shall remain subject to Seller's rights of stoppage in transit, rights of reclamation and other legal rights of Seller. Seller's breach of the Agreement shall not affect the passing of the risk of loss to Buyer notwithstanding any provision of law to the contrary.

B) If the Agreement involves a blanket order or an order where Buyer does not state a quantity at the time of the Agreement, and Buyer's orders are less than 80% or more than 120% of the quantity estimated for any given period, then there shall be an equitable adjustment in the purchase price, delivery times, and other terms to compensate Seller for its additional costs including without limitation overtime, amortization of capital equipment, shift premiums, subcontracting, and idle facilities.

C) Where a shipping/delivery/completion date is specified by Seller, that date reflects Seller's best estimate for the probable time required for completion of Buyer's order, based on Seller's then-current engineering and manufacturing capacity and scheduling. All shipping or completion dates are approximate and shall be computed from the date of entry of the order on Seller's books. All shipping/delivery/completion dates are further subject to Seller's prompt receipt from Buyer of all drawings, information, and approvals necessary to provide the Products and satisfaction of any other conditions under the Agreement, including without limitation Buyer's delivery of Supplied Materials. Seller will use reasonable and diligent efforts to effect shipment on or before the date indicated. **Seller requires at least ten (10) business days from receipt of any Directed or Supplied Materials (see Section 11) to complete Buyer's order.**

D) Seller shall put the Products in the possession of a carrier and, without liability, make such contract for their transportation as Seller decides having regard for the nature of the Products and other circumstances. On Buyer's request, Seller shall obtain and deliver to Buyer documents necessary to enable Buyer to obtain insurance. Seller is not responsible to prepay transportation or insurance costs. Buyer shall pay all handling and other charges incidental to transportation. Seller will generally follow Buyer's shipping instructions, but may make reasonable changes thereto without liability and at Buyer's cost.

E) Buyer shall timely furnish to Seller any necessary packaging materials needed to ship the Products (including without limitation, those that incorporate Supplied Materials) to Buyer and to protect the Products from any and all damages while in transit from Seller to Buyer. Alternatively, in the event Buyer does not provide packaging, Products shall be packaged and

labeled in accordance with standard packaging and labeling of Seller. Identification of all packages shall be with the standard labels of Seller. Identification of all packages shall be with Seller's part number. All packaging or labeling (normal or special) shall be an additional charge to Buyer. Any Products damaged while in transit from Seller to Buyer are the sole responsibility of Buyer.

F) Buyer assumes responsibility for compliance with all U.S. federal, state, and local laws governing exports from the United States in connection with the sale and use of the Products covered by the Agreement, and/or any subsequent re-export of such Products. All export and import duties, fees, permits, licenses, etc. for Products to be delivered outside of the United States shall be the responsibility of Buyer.

G) If shipment of any Products or other performance by Seller is delayed at the request of or due to the fault of Buyer, Seller may at its option hold the Products at the place of manufacture at the risk and expense (including without limitation any logistics expenses) of Buyer from the time the Products are ready for shipment. In the event of any such delay to shipment, full and final payment for an item shall be due and payable thirty (30) days after Buyer is notified that the item is ready for shipment and an invoice issued for such Products. If Seller is unwilling to accommodate the Buyer by holding such item, then Buyer agrees to accept shipment immediately. Delivery rescheduled at Buyer's request, if agreed to by Seller, is subject to an additional charge of 2% per day of the selling price if the rescheduled shipment date occurs more than five (5) business days immediately preceding the then-current scheduled delivery date, which will be invoiced at the time of shipment.

H) All inspection, delivery, and other dates for Seller's performance are estimates only. In addition, Seller shall not be in default or liable, directly or indirectly, because of Seller's delay or failure to deliver or perform arising or resulting, in whole or in part, from (i) any cause beyond Seller's control or beyond the control of Seller's suppliers or contractors, including but not limited to embargo, governmental regulation, seizures, acts of God, insurrections, war, the adoption of any law, ordinance, regulation, late receipt of order having full manufacturing details, ruling or order, or inability or delay in obtaining materials, (ii) the lack of usual means or transportation, fires, floods, explosions, strikes, labor disputes or any other accidents, contingencies, or events, at Seller's or its supplier's plant or elsewhere (whether or not beyond Seller's control) which directly or indirectly interfere with, or render substantially more burdensome, Seller's production, delivery, or performance, or (iii) delays by Buyer in inspecting and acceptance, in furnishing requested specifications, materials (including Supplied Materials), tooling or information, in making payments, or otherwise. In the event of any such delay or failure in performance, Seller shall have such additional time within which to perform its obligations under the Agreement as may reasonably be necessary under the circumstances; and Seller also shall have the right, to the extent necessary in Seller's reasonable judgment, to apportion fairly, among itself and its various customers in such manner as Seller may consider equitable, Products then available for delivery. If, as a result of any such contingency, Seller is unable to perform under the Agreement in whole or in part, then, to the extent that it is unable to perform, the Agreement shall be deemed terminated without liability to either party, but shall remain in effect as to the unaffected portion of the Agreement, if any. This Section shall be effective even as to circumstances that exist at the time of quotation or as of the date of the Agreement.

## 5. Acceptance

A) Buyer shall accept any tender of Products that substantially conform to the description of the Products set forth in the Agreement. Seller's standard test procedures conducted by Seller's representative shall be the criteria for inspection and/or acceptance, unless other specific procedures have been specified in the Agreement. On request, Seller will quote to Buyer additional charges required to conduct any additional procedures requested by Buyer which may be acceptable to Seller, and all charges will be subject to a sixteen percent (16%) administrative fee.

B) Buyer shall be deemed to have accepted drawings, specifications, technical documentation, samples, prototypes and Products unless Buyer gives Seller notice in writing stating with specificity all defects and nonconformities upon which Buyer will rely to support its rejection: (i) in the case of defects discoverable through inspection, within 7 days after receipt of the item or (ii) in the case of defects not discoverable through inspection, within 30 days or other reasonable time established by Seller after receipt of the item. Failure to so act shall constitute an irrevocable acceptance by Buyer of the item. ALL DEFECTS AND NON-CONFORMITIES WHICH ARE NOT SPECIFIED ARE WAIVED. If Buyer rejects any tender of the Products or other items and if requested by Seller, Buyer shall return them to Seller, pursuant to Seller's direction. In the case of Buyer acceptance of non-conforming Products, Buyer shall immediately notify Seller whether or not Buyer will continue to accept similarly non-conforming Products and failure to do so shall constitute a waiver by Buyer of specification requirements for said Products. In any event, when any Products shall have been altered from their original state, Buyer shall be deemed to have accepted such Products. Buyer's acceptance of Products tendered under the Agreement shall be final and irrevocable. No attempted revocation of acceptance shall be effective, and Buyer shall be limited to the remedies specifically provided in the Agreement.

B) If the Agreement requires, or Seller requests in writing, inspection or testing, Buyer shall provide at the place of manufacture at its own expense, one or more qualified and authorized employees to inspect and/or test the Products, check them for general compliance with the Agreement, and authorize shipment. If Buyer fails to do so within seven (7) days, then Seller may, in its own discretion, determine that Buyer has waived the right of inspection, testing, and/or acceptance prior to shipment of the Products. Correction of defects or non-conformities, which would likely have been discovered by Buyer's inspection and/or testing and otherwise covered by Seller's warranty, will be at Buyer's expense. Buyer also shall provide, at its cost and risk of loss, all materials, fixtures, tooling, and other items necessary for any inspection and/or testing required by the Agreement or requested by Seller. If Buyer fails to supply such items within the time required, Seller may supply them at Buyer's expense. Equipment, parts and materials furnished by Buyer for Seller's testing and/or inspection will be returned to Buyer at Buyer's cost, unless Buyer authorizes their disposal. If the Products include the necessary fixtures and tooling, the inspection and/or testing at the place of manufacture may be performed on equipment similar to but other than that identified to the Agreement.

C) Any expense incurred by Buyer in the inspection or testing of Products shall be paid by Buyer, whether or not the Products have been rejected as defective or non-confirming or the Products have been accepted and a warranty claim has been made for correction of a defect or non-conformity.

D) Any claim by Buyer for shortages in any delivery must be in writing with satisfactory evidence delivered to Seller within thirty (30) days of receipt. Carriers are responsible for Products lost or damaged in transit. In the case of loss or damage to Products in transit, Buyer shall immediately notify the carrier or its agent in writing of such loss or damage and shall do all things necessary to assert and prosecute a claim against the carrier for such loss or damage.

E) Seller may charge Buyer a restocking charge equal to twenty-five percent (25%) of the invoice price of returned Products. Returned Products must be returned to Seller in the original packaging and Buyer must first obtain a written consent from Seller to return the Products. Seller may offset the restocking charge against any amounts Seller owes to Buyer.

## **6. General Express Warranties**

A) Seller warrants to Buyer only, subject to the limitations and disclaimers of the Agreement (including without limitation Excluded Claims set forth in Section 7), that the Products, exclusive of any Directed or Supplied Materials contained therein: (i) at the time of their delivery by Seller, will conform to the applicable drawings and specifications for the Products (exclusive of Directed or Supplied Materials) identified in the Agreement in all material respects (as they may thereafter be amended or modified in accordance with the Agreement); (ii) shall be free from manufacturing defects in materials and workmanship under normal use and service; and (iii) will be free and clear of all liens, encumbrances, and other claims except for Seller's reservation of a security interest in the Products prior to receipt of payment in full. The warranty period for Products is twelve months from the date of delivery or if only services, is ninety days from the last date of the service. Products that are supplied by other vendors and which are resold by Seller hereunder without alteration or change and that portion of the Products that constitute Directed or Supplied Materials shall only have the warranty furnished by said vendor, which, to the extent possible, Seller passes on to Buyer. Seller retains the right to change the dimensions, composition, design, performance, color and appearance of the Products without liability if, in its judgment, the change is non-material. Products that are manufactured by Seller may include new parts or serviceable used parts that are functionally equivalent to new parts. Seller may, in its discretion, also rely on any generally accepted industry standards.

B) Seller's warranties are conditioned upon (i) installation, maintenance and normal use in conformity with instructions furnished by Seller from time to time, if any; and (ii) the Products not having been subjected to misuse, neglect, or accident, or to alteration, improper installation, repair or improper testing in any respect which, in the judgment of Seller, adversely affects the condition or operation of the Products.

## **7. Express Warranties Relating to Patents, Other Intellectual Property Rights**

A) Seller will indemnify Buyer against and defend all suits and pay all damages and costs finally adjudicated against Buyer for infringement of United States patents by Products (exclusive of Directed or Supplied Materials) purchased under the Agreement; provided that Buyer will promptly notify Seller in writing of any claim asserted and suit or action brought against Buyer alleging that the Products purchased under the Agreement infringe one or more United States patents, and provide Seller with assistance and information requested by Seller for its defense. Seller shall defend with its counsel or other counsel of its choice and shall have the sole right, without consultation with Buyer, to take all action Seller deems appropriate to

prosecute or settle such claims. Notwithstanding the foregoing, Seller shall have the right, in its sole discretion and at its expense, either (i) to procure for Buyer the right to continue using such Products, (ii) to replace such Products with non-infringing products and services of at least equal function and quality, (iii) to modify such Products so that they become non-infringing, or (iv) request the return of such Products and refund the purchase price less an allowance for depreciation and shipping costs thereof.

B) Notwithstanding anything in this Agreement to the contrary, no warranty or indemnity obligation of Seller under the Agreement shall extend to (i) Products that are supplied by other vendors and which are resold by Seller hereunder without alteration or change and that portion of the Products that constitute Directed or Supplied Materials shall only have the warranty furnished by said vendor, which, to the extent possible, Seller passes on to Buyer; (ii) Directed Materials or Supplied Materials, (iii) claims, suits, or actions for infringement based upon any design or specification provided by Buyer, and (iv) the use of any Products in combination with apparatuses, circuits or devices not furnished by Seller or upon the use of any such combination, or based upon the application or use to which such Products are put, including any application or process performed or facilitated by such Products (collectively, "Excluded Claims"). Buyer shall not be entitled to indemnification or contribution from Seller with respect to any Excluded Claims, and Buyer will indemnify Seller against and defend all suits and pay all damages and costs awarded against Seller arising out of any such Excluded Claims. In addition, Buyer will indemnify Seller against and defend all suits and pay all damages and costs awarded against Buyer with respect to claims of infringement for Products manufactured wholly or partially to Buyer's design or specifications.

C) THE FOREGOING SECTION EXPRESSES THE ENTIRE OBLIGATION AND LIABILITY OF SELLER WITH RESPECT TO INFRINGEMENT OF PATENTS BY SAID PRODUCTS.

## **8. Limitation of Warranties; Disclaimer of Implied Warranties**

A) THE LIMITED EXPRESS WARRANTIES IN THE AGREEMENT ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, AND SELLER DISCLAIMS ALL IMPLIED WARRANTIES INCLUDING BUT NOT LIMITED ANY IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, AND NON-INFRINGEMENT.

C) All descriptions, shipping specifications and illustrations of the Products in catalogues, brochures and price lists otherwise provided by Seller and not expressly and specifically incorporated in the Agreement were and are for general guidance only, and Seller is not responsible for any errors or omissions therein or for any loss or damage resulting from reliance thereon. Seller does not warrant that it or the Products are in compliance with any industry standards, guidelines, or procedures, or with the requirements of any safety or environmental code or regulation of any federal, state, municipality or other jurisdiction unless otherwise specifically provided in the Agreement. Buyer affirms that it has not relied upon Seller's skill or judgment to select or furnish Products for any particular purpose beyond the specific express warranties in the Agreement.

## **9. Limitation of Remedies and Seller's Liability**

A) Seller's responsibility, and the sole and exclusive remedy of Buyer under Buyer's warranties, is, at Seller's option and subject to the terms hereof, to repair, to replace (without any additional charge and shipped to Buyer FOB Seller's plant), or to keep the Products and refund/credit Buyer's account in the amount of the lesser of the purchase price of any defective or nonconforming Products that are returned or offered to be returned by Buyer to Seller (with transportation charges prepaid by Buyer) during the warranty period or the value of Buyer's services, whichever is less, provided that (i) Seller is promptly notified in writing with a detailed explanation of any alleged deficiencies upon discovery by Buyer that the Products fail to conform to the Agreement; and (ii) Seller's examination of the Products shall disclose to Seller's satisfaction that such Products are defective or nonconforming under the Agreement. Buyer's remedies shall be limited (even in the event of Seller's default of its warranty obligations) exclusively to those provided in this Section.

B) NOTWITHSTANDING ANYTHING SET FORTH IN THE AGREEMENT (INCLUDING ITS ATTACHMENTS), AND TO THE EXTENT PERMITTED BY LAW, IN NO EVENT SHALL SELLER BE RESPONSIBLE OR LIABLE TO BUYER FOR ANY LOSS OF USE, REVENUE OR ANTICIPATED PROFITS, OR FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, SPECIAL, CONTINGENT OR PUNITIVE DAMAGES IN CONNECTION WITH ANY BREACH OF WARRANTY OR OTHER BREACH OF SELLER'S OBLIGATIONS UNDER THE AGREEMENT (INCLUDING ANY ATTACHMENTS HERETO). SELLER'S AGGREGATE LIABILITY FOR ANY DAMAGES OR CLAIMS ARISING OUT OF OR RELATING TO ANY PRODUCTS HEREUNDER SHALL IN NO EVENT EXCEED THE LESSER OF (i) THE AMOUNT BUYER PAID FOR THE PRODUCT(S) GIVING RISE TO THE CLAIM OR DAMAGES, OR (ii) SELLER'S DIRECT LABOR COST INCURRED IN PROVIDING THE SERVICE VALUE TO BUYER. Buyer waives any causes of action or theories of liability including, but not limited to, those arising under contract, tort, strict liability, product liability, statutes, or otherwise, except as specifically provided by the UCC as modified and limited herein. The replacement or repair of Products by Seller does not give rise to any new warranty except the warranty period provided for in this Agreement shall be extended by the length of any period in which defective or non-conforming Products are in possession of Seller.

C) The Agreement is only for the benefit of the parties, except all disclaimers and limitations applicable to Seller and all indemnification to which Seller is entitled shall be also for the benefit of Seller's parent, subsidiary and affiliate companies (and their respective officers, directors, employees, agents, contractors, and suppliers). If any other provision of the Agreement is determined to apply to other parties, all other provisions including limitations, waivers and disclaimers shall also apply.

D) The Agreement covers the Products provided as samples or prototypes, whether or not provided without charge, except that they are provided with all faults and that all warranties provided in the Agreement are disclaimed. Samples and prototypes are provided only for evaluation by Buyer as examples of the type of Products available from Seller, and not as a representation that the quality or specifications of Products which may be supplied under a separate agreement for the sale of Products will be similar or as high. Samples and prototypes

may not be used in production or final assembly and must be returned to Seller upon Seller's request if they were provided without charge.

**10. Indemnification** Buyer shall indemnify, defend and hold harmless Seller, and Seller's parent, subsidiary and affiliate companies, and their respective shareholders, officers, directors, employees, representatives and agents, from and against any and all third party claims, damages, and expenses (including reasonable attorney fees) under theories of tort, product liability, negligence (ordinary or gross), warranty, contract, statute or otherwise arising out of the use, storage, sale, processing or other disposition of the Products, supplies or materials (including without limitation Directed or Supplied Materials) used in connection with the Products, or parts manufactured with the Products, (1) if the action or inaction of Buyer or its employees, customers or agents, or Buyer's design specifications, were a material or proximate cause of injuries or damages giving rise to claims against Seller, and/or (2) if the claim asserted is inconsistent with the limitation of warranties, limitation of liability and/or limitation of remedies set forth in the Agreement.

**11. Directed Materials; Supplied Materials**

A) In the event the Products include components ("Directed Materials") Buyer directs Seller to purchase from a designated supplier ("Directed Supplier") to which Seller will apply flocking or which Seller will otherwise process before supplying to Buyer as Products, then notwithstanding the particular terms otherwise applicable to any other agreement: (i) Buyer will resolve all commercial issues (including pricing disputes), collection and/or insolvency risks of the Directed Supplier, warranty charges, product liability claims, recalls, intellectual property matters, and production interruptions arising from or relating to the Directed Supplier (except in each case to the extent caused by Seller) directly with Directed Supplier; (ii) Buyer will indemnify and hold harmless Seller for the matters set forth in subsection (i); and (iii) any debits claims by Buyer arising from or relating to the Directed Materials will be charged to Directed Supplier and not passed through Seller. In no event will the Directed Supplier have a right to receive payment from Seller for the Directed Materials except following, and in proportion to, Seller's actual receipt of payment from Buyer for the Directed Materials or, as applicable, the Products in which the Directed Materials are incorporated.

B) In the event the Products include components to be supplied by Buyer or its agents ("Supplied Materials") and to which Seller will apply flocking or which Seller will otherwise process before supplying to Buyer as Products, Buyer must deliver the Supplied Materials in accordance with Seller's mandatory lead time and inventory policies of which Seller will inform Buyer. In the event the Supplied Materials are delivered in violation of Seller's policies, Seller may refuse to permit delivery of all or some of the Supplied Materials. A lead time of ten (10) business days is generally required under Seller's mandatory production lead time policy.

C) Buyer agrees to pay the following surcharges associated with any Directed or Supplied Materials:

- (i) a hand masking surcharge in the event Seller determines in its reasonable discretion that hand masking is required, with the surcharge being at least three times the normal selling price for Products; provided, however, nothing herein shall require Seller to make any inspection of the Directed or Supplied Materials

or provide hand masking services and all hand masking services are provided by Seller without warranty of any kind;

- (ii) a warehousing surcharge in the event Seller permits Buyer to deliver Directed or Supplied Materials in excess of thirty (30) days of production requirements;
- (iii) a warehousing surcharge in the event Buyer requests and Seller agrees to hold more than fourteen (14) days of finished inventory of the Products; and
- (iv) a clean up surcharge in the amount of the actual time expended by Seller times its then-current labor and overhead rate, which shall never be less than \$58.00 per hour, to properly prepare the Directed or Supplied Materials should Seller elect to address mold release points, foreign contamination, or excess flash points; provided, however, nothing shall require Seller make any inspection of the Directed or Supplied Materials or provide clean services and all clean up services are provided by Seller without warranty of any kind.

D) Buyer shall have sole and complete responsibility for all Supplied Materials and shall at all times insure the Supplied Materials with full fire and extended coverage insurance. In the event the rate of scrap or work loss allowance is higher than two percent (2%) of the total of Supplied Materials processed by Seller each month, Buyer and Seller will work in good faith to identify the cause of the overage and to implement any reasonable, necessary systems and processes (at Buyer's cost) to reduce the scrap or work loss rates.

## **12. Cancellation and Breach**

A) Buyer may not cancel the Agreement unless agreed to by Seller in advance in writing. Buyer shall indemnify Seller for all expenses incurred, including without limitation equipment costs, engineering costs, labor costs and provisions of supplies and tools, as well as all direct and indirect consequences resulting from cancellation.

B) If Buyer fails, with or without cause, to furnish Seller with instructions for, or refuses to accept deliveries of, any of the Products sold under the Agreement, or is otherwise in default under or repudiates all or any part of the Agreement or any other agreement with Seller, or advises Seller that it will default in the performance of any of its obligations, or fails to pay when due any invoice under the Agreement or any other agreement with Seller, or if any action is started by or against Buyer seeking the appointment of a trustee or receiver or the entry of an order for debtor's relief for Buyer, then, in addition to any and all remedies allowed by law, Seller, without notice: (i) may bill and declare due and payable all undelivered Products under the Agreement and/or any other agreement between Seller and Buyer, (ii) may cease performance of its obligations and defer shipment under the Agreement and/or any other agreement between Buyer and Seller until such default, breach or repudiation is removed, (iii) may cancel any undelivered portions of the Products and/or any other agreement with Buyer in whole or in part, and/or (iv) may recover Products in transit or delivered, retrieve delivered Products, repossess all Products which may be stored by Seller for Buyer's account and otherwise enforce its remedies for Buyer's default. Buyer shall remain liable for all damages suffered or incurred by Seller in any such circumstances. Seller shall be awarded incidental damages including, without limitation, reasonable profits and costs such as actual reasonable attorney fees in any proceeding to enforce its remedies in which it obtains relief for damages or

injunctive relief. All rights granted to Seller in the Agreement and by law are cumulative, provided Seller shall be entitled to only a single full recovery.

C) Seller shall not be liable for any action taken pursuant to a good faith exercise of any of its rights under the Agreement or law.

**13. Security Interest** In addition to any security interest granted by the UCC, Buyer hereby grants a security interest to Seller in all Products and documents related thereto and proceeds and products therefrom to secure all obligations of Buyer to Seller, whether or not arising under the Agreement. Buyer shall sign financing statements evidencing the security interest as reasonably requested by Seller, or Seller may file a copy of the Agreement or portion thereof as a financing statement. Buyer grants Seller an irrevocable power of attorney to sign Buyer's name to a financing statement if necessary or convenient to perfect Seller's security interest. Buyer shall provide a landlord's waiver of any lien rights at the premises to which the Products are to be installed. In case of a default by Buyer, Seller may peaceably enter the premises of Buyer and others to repossess or render inoperable all Products in which it has a security interest. In case of a default by Buyer, Buyer hereby irrevocably appoints Seller as its agent to obtain possession of the Products and documents related thereto. Buyer shall not sell, exchange, transfer, convey, mortgage, pledge, hypothecate, or grant a security interest in any Products or the proceeds thereof (including cash, accounts, contract rights, instruments and chattel paper) which are the subject to the Agreement if payment therefor shall not have been made in full to Seller.

**14. Property**

A) Buyer shall insure all materials, fixtures, tooling, and other property delivered to Seller, against all risks and waives subrogation in the event of loss of or damage to such property or personal injury arising from the use or storage of Buyer's property.

B) Buyer shall reimburse Seller for Seller's costs in the engineering, design, and testing, and acquisition or manufacture, maintenance, repair and replacement of equipment and tooling dedicated to the production of the Product. All designs, modifications, and adaptations of equipment and processes shall belong to Seller. Seller may, at its option, destroy any such equipment or tooling at any time after two years from the last order from Buyer for the Product, provided Seller first supplies Buyer with 30 days written notice and opportunity to purchase it for its fair value.

**15. Proprietary Information**

A) Unless otherwise agreed, Buyer acknowledges that any information disclosed to Seller is subject only to Buyer's patent rights, without any other restrictions on Seller's use, including reproduction, modification, disclosure or distribution of the information. Buyer agrees not to label any such information with a notice asserting that the information is proprietary or confidential to Buyer. In addition, Buyer agrees not to assert any claim (other than a claim for patent infringement) against Seller, Seller's customers, or their respective suppliers, with respect to any information that Buyer has disclosed or may disclose to Seller in connection with the Products.

B) All proposals, plans, specifications, models, tools, patterns, processes, fixtures, designs and other information furnished by Seller or Seller's parent, subsidiary or affiliate companies in bidding, negotiating and performing the Agreement, are proprietary to Seller and shall not be shown or disclosed to any other bidder, and shall not be shown or disclosed to any third party or used by Buyer except as may be necessary for the selection or use of the Products. Seller is not obligated to furnish detailed or shop working drawings, engineering calculations, computer programs, or other information for any Products or part thereof unless specifically required by the Agreement.

C) Any invention or other information, whether patentable or not, developed by Seller in the performance of the Agreement shall remain the property of Seller. Seller shall be under no obligation to refrain from using in its business any of Seller's proprietary information disclosed to Buyer under the Agreement.

**16. United States Government Regulations** Buyer shall not engage in any transaction with respect to the Products, by way of resale, lease, shipment, or otherwise, which violates any statute or regulation of the United States of America.

**17. Fair Labor Standards Act** Seller certifies that any Products produced in the United States shall be produced in compliance with all applicable requirements of Sections 6, 7 and 12 of the United States Fair Labor Standards Act, as amended, and of the regulations and orders of the United States Department of Labor issued under the Act. No other certifications or waivers regarding payments to Seller's suppliers or laborers are required.

**18. Time Period for Buyer Claim** Any proceeding by Buyer for breach of the Agreement or any other right against Seller arising from or in connection with payment by Buyer or the Agreement cannot be filed or maintained unless: (i) it is commenced within one (1) year after the cause for action has accrued; (ii) Buyer has given timely written notice to Seller of its claim as provided in this Agreement; and (iii) Buyer deposits any unpaid portion of the purchase price for Products with the tribunal pending final adjudication. An action shall accrue no later than shipment of the Products.

**19. Arbitration**

A) All controversies and claims arising out of or relating in any way to the Agreement, or any breach thereof, shall be settled solely by arbitration held in Van Buren or Allegan County, Michigan, in accordance with the Commercial Arbitration Rules of the American Arbitration Association, except (1) Seller may elect to institute, prior to formation of the arbitration panel, with an action for a claim and delivery, replevin, or similar relief to enforce its interests in the Products, and (2) either party may seek injunctive relief from a state court located in Van Buren or Allegan County, Michigan, or federal court in the Western District of Michigan, to enforce provisions of the Agreement relating to confidential information. Judgment upon any arbitration award may be entered and enforced in any court having proper jurisdiction. No demand for arbitration hereunder may be filed by Buyer as a claim or counterclaim if Buyer has not given timely written notice of its claim to Seller or if more than one year has expired from the date of

the cause of action accrued, as provided in the Agreement. The arbitrator(s) may enter an interim award that the Products be returned to Seller for appropriate disposition and the application of any proceeds to amounts owed to Seller.

B) Upon the filing of a demand for arbitration by Seller or Buyer, Buyer shall deposit with the arbitrator(s) any unpaid balance of the purchase price for any Products and any other unpaid amount under the Agreement to be held in an interest bearing account. If such deposit is not made, the arbitrator(s) shall enter a final award against Buyer in the amount of the unpaid purchase price and other amounts owed by Buyer to Seller under the Agreement. The arbitrator(s) shall be bound by the terms of the Agreement, shall not apply principles of equity or allow any claims not permitted by the Agreement, may only award or grant to the parties such remedies as a court of competent jurisdiction could award or grant within the locality where the arbitration takes place and which are authorized (and not excluded or otherwise limited under the Agreement), and may not award consequential or punitive damages. The arbitrator(s) may include the arbitration fees in an award.

## **20. Applicable Law, Jurisdiction and Venue**

A) The Agreement shall be governed, construed and enforced under the law of the State of Michigan including the uniform commercial code ("UCC") in force on the initial date of the Agreement, without regard to its conflict of law rules and except as provided herein. The U.N. Convention on the International Sale of Products shall not apply. Any services to be provided hereunder, whether or not they are otherwise ancillary to and part of a sale of Products (whether as separate units or included in a construction project), shall be considered ancillary to a sale of Products and the UCC shall apply to all products and services to be provided hereunder.

B) Subject to the provisions of Section 19 above regarding arbitration, state courts in Van Buren or Allegan County, Michigan and federal courts in the Western District of Michigan shall have exclusive jurisdiction over the parties and the claims arising under the Agreement. Neither party shall assert any objection to such jurisdiction or that venue in any such court is inconvenient or otherwise improper except to the extent relevant to enforcing the provisions of Section 19. Buyer and Seller consent to service of process by personal delivery or by postage prepaid, certified U.S. mail, mailed to the address of such party set forth in the Agreement.

**21. Assignment** The Agreement and Buyer's rights and obligations hereunder may not be assigned, pledged, hypothecated, or otherwise transferred by Buyer except with the prior written approval of Seller, which shall not be unreasonably withheld or delayed. Any assignment attempted by Buyer shall be void and ineffective for all purposes unless made in conformity with this Section. Seller may freely assign any and all rights and obligations it has under the Agreement and may subcontract performance of any aspect of the Agreement.

**22. Relationship** The relationship between Buyer and Seller is solely that of a vendor and vendee. Buyer is not an agent of Seller and has no authority to act on behalf of Seller, accept service or process, to create obligations of any kind or bind Seller in any respect.

**23. Conflict** To the extent any express terms set forth in Seller's quotation to which these Terms and Conditions are attached or in which they are incorporated by reference are inconsistent with these Terms and Conditions, the express terms set forth in Seller's quotation shall control (to the extent, and only to the extent, of such inconsistency).

**24. Waiver** Waiver by Seller of any provision of the Agreement or of a breach by Buyer of any provision of the Agreement shall not be deemed a waiver of future compliance with the Agreement and such provision, as well as all other provisions of the Agreement, shall remain in full force and effect.

**25. Amendment or Modification**

A) The Agreement is the complete and exclusive statement of the agreement of the parties and supersedes any and all previous quotations and/or agreements relating to the Products.

B) No amendments, modifications, supplements, limitations, waivers or discharges of the Agreement or any of its terms shall bind Seller unless in writing and signed by the President of Seller ("Authorized Representative of Seller"), making express reference to amending the Agreement.

C) Notwithstanding anything to the contrary in the Agreement, no modification, limitation, waiver or discharge of any provision of the Agreement shall affect Buyer's liabilities to Seller accrued prior thereto, unless otherwise set forth in a writing that expressly amends the Agreement retroactively and is signed by the Authorized Representative of Seller.

D) Orders submitted in any Buyer's purchase order or other writing (whether or not it contains terms or conditions modifying, adding to, repugnant to, or inconsistent with the terms and conditions of the Agreement), may be accepted, approved, or filled by Seller, but any resulting contract and the liabilities or obligations of Seller shall be determined solely by the Agreement, and (unless Seller otherwise advises Buyer in writing signed by an Authorized Representative of Seller) notice is hereby given that Seller objects to any such terms or conditions in Buyer's purchase order or other writing. Seller shall not be deemed to have in any way enlarged or modified its liabilities or obligations under the Agreement by filling such purchase orders or by failing to further object to Buyer's terms or conditions.

**26. Heading and Definitions** The heading and definitions in the Agreement are inserted for convenience only and shall not constitute a part hereof.

**27. Severability** If any provision of the Agreement shall be held to be unenforceable or invalid, such provision shall be ineffective to the extent of such prohibition or invalidity, and the balance of the Agreement shall be interpreted as if such provision were so excluded. Any declaration of unenforceability of a provision shall be as narrow as possible.

**28. Interpretation** Any interpretation of the Agreement shall be construed consistently by and against both parties, and shall not be construed against the draftsperson hereof. Buyer and Seller acknowledge that they are merchants in respect to the Products, they have had an

opportunity to review the Agreement, and the provisions of the Agreement are reasonable when considered as a whole.

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