

## **[SBU LEGAL NAME] GENERAL TERMS AND CONDITIONS OF SALE**

1. **Sale of Products/Scope.** The sale of products or services (collectively, "Products") from **[SBU LEGAL NAME]**, its subsidiaries and divisions (collectively, "Seller") to buyer, its subsidiaries and divisions, and any entity controlling, controlled by, or under common control with it (collectively, "Buyer") will be governed by these general terms and conditions of sale (the "Terms"). The Terms are the only agreement binding on Seller and the Terms expressly supercede and exclude the application of Buyer's general terms of purchase as well as any documents, quotations, or any other agreements, whether in writing or oral, issued previously, now or in the future by Buyer in relation to the Products, unless specifically agreed upon in writing by Seller. No course of dealing or usage of trade is applicable unless expressly incorporated in the Terms. Any clerical error may be corrected by Seller. Buyer's written acknowledgment, issuance of purchase order, acceptance of an offer of sale by Seller, delivery of Products or payment for the Products, whichever occurs first, is acceptance of these Terms. Any proposal for additional or different terms or any attempt by Buyer to vary in any degree any of the Terms is rejected. All such proposals are considered a material alteration of the Terms, and the additional and different terms will not become a part of the contract between the parties.
  
2. **Price/Payment.**
  - (a) The purchase price for the Products will be the price for the Products in effect at the time of shipment, unless otherwise agreed upon in writing by the parties. Seller may change prices without notice. Prices contained in Seller issued quotations or proposals expire 30 days from the date of quotation and are subject to change or termination by notice during this period. The changed quotations or proposals will expire 30 days from the date of change.
  
  - (b) Buyer will pay for all taxes, excises or other charges (except taxes on or measured by net income) that Seller may be required to pay to any government (foreign, national, state or local) with respect to the production, sale or transportation of any Products. Unless otherwise agreed to in writing by Seller, Buyer will pay all freight, storage, handling, packaging, insurance or similar charges.
  
  - (c) Seller may require Buyer to pay a deposit or provide an irrevocable letter of credit in favor of Seller in an amount determined by Seller and from a bank approved by Seller payable on presentation of commercial invoice, packing list or a bill of lading indicating delivery to carrier.
  
  - (d) Unless otherwise noted in these terms and conditions, invoices are payable within 30 days from date of invoice, subject to credit approval. All amounts due to Seller may be accelerated immediately upon Buyer's failure to pay invoices as required and shipments of Products may be suspended or cancelled. Interest will be charged by Seller at 18% per month or the highest rate allowable by law (whichever is higher).
  
  - (e) Buyer agrees to indemnify and hold harmless Seller from any and all legal fees and costs which may be required to collect any overdue balances.

- (f) Seller may offset or recoup any amounts owed by Seller to Buyer against any amounts owed by Buyer to Seller. Buyer waives all right of offset and will pay all amounts owed to Seller regardless of any claim asserted by Buyer.
  - (g) Seller may change payment terms at any time, in its sole discretion.
3. **Capacity.** Seller may provide Buyer with estimates or forecasts of its capacity for the manufacture or delivery of Products. Buyer acknowledges that any estimates or forecasts are provided for estimation of output only and, like any other forward looking projections, are based on a number of economic and business factors, variables and assumptions, some or all of which may change over time. Seller makes no representation, warranty, guaranty or commitment, express or implied, regarding any estimates or forecasts provided to Buyer, including the accuracy or completeness of the estimates or forecasts.
4. **Allocation.** In no event shall Seller be required to sell a greater number of Products than it shall have available or allocated for such purposes. If Seller is unable to supply the total demands for any of the Products, Seller shall have the right to allocate its available supply among its customers in such manner as Seller shall deem to be fair and equitable. In not event shall Seller be obligated to purchase Products from others in order to enable it to deliver Products to Buyer.
5. **Technical Information.**
- (a) All specifications, drawings, schematics, tests, designs, inventions, engineering notices, financial information, technical data, samples, prototypes, models and/or equipment (“Technical Information”) supplied by Seller , directly or indirectly, will remain Seller’s ’ property and will be held in confidence by Buyer. Technical Information will not be reproduced, used or disclosed to others by Buyer without Seller’s prior written consent, and will be returned to Seller upon demand or upon completion by Seller of its obligations under the Terms. Buyer will disclose Technical Information only to those employees of Buyer having a need-to-know and bound by obligations of confidentiality equivalent to those contained in this Section 5.
  - (b) Any information that Buyer discloses to Seller with respect to the design, manufacture, sale, or use of Products is disclosed as part of the consideration for these Terms, and Buyer will not assert any claim against Seller by reason of Seller’s use of such information, which is not limited in any manner.
  - (c) Seller will own all right, title and interest in any idea, invention, concept, discovery, work of authorship, patent, copyright, trademark, trade secret, know-how or other intellectual property of the Products under these Terms developed by Buyer or Seller whether or not Seller charges for the design, concept, invention or other intellectual property.
  - (d) Buyer will assist Seller in perfecting its right, title and interest and will execute and deliver all documents reasonably requested by Seller in order to perfect,

register or enforce the same. Seller will reimburse any associated costs incurred by Buyer in providing such assistance.

(e) Without obtaining the prior written consent of Seller, Buyer will not advertise or publish the fact that Buyer has purchased Products from Seller, or use any trademarks or trade names of Seller in Buyer's advertising or promotional materials. Buyer may not resell the Products under any brand name other than Seller's. In the event of Buyer's breach of this provision, Seller will have the right, among all other remedies, to cancel the undelivered portion of any Products and accelerate immediately all amounts due to Seller prior to cancellation.

(f) Buyer will indemnify Seller from all expenses and damages (including legal fees) related to a breach of this paragraph 5.

6. **Licenses**. In the absence of a separate license agreement between Buyer and Seller, the following apply:

(a) Title to all licensed Products or portion of Products (software, manuals, firmware, storage media or otherwise) (collectively, "Licensed Products") remains with Seller. Buyer agrees not to reverse engineer, disassemble, decompile, or modify any Licensed Product and Buyer irrevocably grants to Seller all right, title and interest in any modifications to a Licensed Product.

(b) Seller grants Buyer a non-exclusive license for internal use and to make one back-up copy for archival purposes only, provided that copyright notices and other proprietary legends remain on such copy.

(c) For Licensed Products imbedded in Products, Seller grants Buyer a non-exclusive right to use such Licensed Products in conjunction with the Product.

(d) If Buyer is in default of any of the terms and conditions of these Terms, the rights granted in this paragraph 6 will terminate immediately without notice of any kind. Upon termination, Buyer will return to Seller all Licensed Products that are subject to return.

7. **Changes to Products**. At its sole discretion, Seller may make changes to the Products in accordance with Buyer's instructions or requirements or as Seller deems necessary, including changes to the design, color, performance, dimensions and compositions of the Products.

8. **Packaging and Delivery**.

(a) Buyer must not alter or distort, in part or in full, the packaging, markings, numbers, or consistency of the Products as they exist at the time of delivery, or sell the Products in other than their original, unaltered packaging or use those which may have been altered or distorted in any way.

(b) Without prejudice to the above, Buyer is responsible for ensuring that the Products comply with the rules and standards governing the labeling and marking of products in force in the country of import.

(c) All export and import permits and licenses and the payment of all export and import duties and customs fees will be the responsibility of Seller, if Seller is delivering the Products within the United States. All export and import duties, fees, permits, licenses, etc. for Products delivered outside of the United States will be the responsibility of Buyer.

(d) Products will be delivered F.O.B. Seller's facility.

(e) Seller may elect to deliver the Product in installments. Each installment will be considered a separate sale and Buyer will pay for each installment in accordance with these Terms.

(f) Risk of loss passes to Buyer upon the provision of the Products to the carrier regardless of the payment of shipping charges.

(g) Seller will attempt to fill and ship all orders to Buyer at the requested time of delivery, subject to Seller's choice of transport and further subject to Seller's present engineering and manufacturing capacity and scheduling. Seller may revise delivery schedules at any time without liability and at Buyer's cost.

9. **Security Interest.** In addition to any security interest that may be granted under law, Buyer agrees to register a security interest in the Products, proceeds and goods from the Products with the governing authority to secure all obligations of Buyer to Seller, whether or not arising under the Terms. Seller may file a financing statement and at Seller's request, Buyer will sign financing statements if necessary, evidencing the security interest. Buyer will provide a landlord's waiver of any lien rights at the premises to which the Products will be installed. In case of a default by Buyer, Seller, as the appointed agent of Buyer, may peaceably enter the premises of the Buyer and others and take other actions to repossess or render inoperable all Products in which it has a security interest. Products are considered strictly personal property. Buyer will maintain the Products in a segregated area and not co-mingle any Products which are not fully paid. Buyer will not sell, exchange, transfer, convey, mortgage, pledge, hypothecate, or grant a security interest in unpaid Products and will advise Seller immediately in writing of any damage to, change in location of, or seizure of, any unpaid Products. Buyer will insure such Products for damage or loss (including theft) in an amount not less than replacement value.

10. **Acceptance of Products.** All drawings, specifications, technical documentation, samples, prototypes and Products are approved and/or accepted by Buyer if Buyer does not provide Seller a written objection and/or rejection within 10 days of receipt or other reasonable time established in writing by Seller. Failure to provide written objection and/or rejection will constitute an irrevocable acceptance by the Buyer of the Products. Any written objection and/or rejection must state with specificity all defects and non-conformities upon which Buyer will rely to support its rejection of the Products. ALL DEFECTS AND NON-CONFORMITIES WHICH ARE NOT SPECIFIED ARE WAIVED BY BUYER. If Buyer rejects the Products and, if requested by Seller, Buyer will return them to Seller at Buyer's cost, within three days, or Buyer has irrevocably accepted the Products. No attempted revocation of acceptance will be effective, and Buyer will be limited to any available remedies specifically provided in the Terms for

breach of warranty. Seller has a reasonable period of time to cure any non-conformity.

11. **Responsibility for Safety/Compliance.** Seller has ensured that the Products meet and comply with reasonable standards of safety and if applicable, have advised Buyer regarding the proper installation, use, and the dangers of misuse, unauthorized alterations or use in conjunction with other products not contemplated by Seller. It is Buyer's or other user's responsibility to provide all proper devices, tools, training, and means that may be necessary to protect effectively all personnel from serious bodily injury that otherwise may result from the method of particular installation, use, operation, setup, or service of the Products in compliance with Seller's instructions and warnings. BUYER (OR USER) MUST INSTALL AND USE THE PRODUCTS IN A SAFE AND LAWFUL MANNER IN COMPLIANCE WITH APPLICABLE HEALTH, SAFETY AND ENVIRONMENTAL REGULATIONS AND LAWS AND GENERAL INDUSTRY STANDARDS OF REASONABLE CARE. Buyer will not engage in any transaction with respect to the Products, by way of resale, lease, shipment, use, or otherwise, which violates any federal, state or local law or regulation or regulations from the country in which the Products are imported.
  
12. **Express Warranty.** Subject to the limitations in these Terms, Seller warrants to Buyer only, and not Buyer's customers or any other third parties, that the Products will be free from significant operational defects in material and workmanship for a period of 60 days from the date of sale as shown on the invoice. Seller warrants that the Products will not infringe any patent covering the Products themselves, excluding portions specified, designed, or manufactured by Buyer (the two foregoing sentences collectively, the "Warranty"). However, Seller does not warrant against infringement by reason of the use of such Products in combination with other articles or materials or in any overall process or combination and Buyer assumes all responsibility for determining whether relevant patents exist covering such use, together with all risk and liability arising out of infringement of any such patents. Seller's liability is limited to replacing or repairing the Products, at Seller's discretion. A Warranty replacement or repair of a claimed defective Product shall not have the effect of extending this Warranty period. The Warranty is valid only if Buyer (a) notifies Seller in writing within 30 days from discovery of any alleged nonconformity; (b) the Products are returned to Seller for inspection and testing; (c) Seller's inspection discloses to its satisfaction that any alleged nonconformance are material and have not been caused by misuse, neglect, wear and tear, improper installation, unsuitable storage, repair, alteration, or accident; and (d) the Products were installed, maintained and used in accordance with Seller instructions, if any.
  
13. **Disclaimer of Warranties.** Seller is not responsible for any errors or omissions or for any loss or damage resulting from reliance on catalogues, brochures, price lists or other information provided to Buyer from Seller, including descriptions, shipping specifications, technical advice, illustrations, representations as to quality or capabilities (whether oral or in writing), or any other information unless otherwise set forth in these Terms. THE WARRANTIES IN THIS AGREEMENT ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED (OTHER THAN THE WARRANTY OF TITLE AS PROVIDED BY THE UNIFORM

COMMERCIAL CODE IN EFFECT IN MICHIGAN ), INCLUDING WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, SAID WARRANTIES BEING EXPRESSLY DISCLAIMED. UNDER NO CIRCUMSTANCES SHALL SELLER BE HELD RESPONSIBLE FOR THE PERFORMANCE OF PRODUCTS TO STANDARDS SPECIFIC TO THE COUNTRY OF IMPORT UNLESS SUCH COUNTRY IS SPECIFICALLY NOTED ON A WRITTEN DOCUMENT FROM BUYER TO SELLER AND SUCH DOCUMENT WAS ACCEPTED IN WRITING BY SELLER.

14. **Limitation of Remedies/Time for Action.** THE REMEDIES SET FORTH IN THESE TERMS WILL BE EXCLUSIVE. SELLER WILL NOT BE LIABLE FOR ANY CLAIMS OF ANY KIND GREATER IN AMOUNT THAN THE PURCHASE PRICE OF THE PRODUCTS FROM WHICH THE CLAIMS ARE MADE. IN NO EVENT WILL SELLER BE LIABLE FOR COSTS ASSOCIATED WITH THE PURCHASE OF SUBSTITUTE GOODS BY THE BUYER OR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES. Without limiting the generality of the foregoing, Buyer assumes all risk and liability for the results obtained by the use of any Products delivered hereunder in combination with other articles or materials or in the practice of any process, whether in terms of operating costs, general effectiveness, success or failure, and regardless of any oral or written statements made by Seller, by way of technical advice or otherwise, with respect to the use of such Products. Any proceeding by Buyer for breach of the Terms cannot be filed or maintained unless it is commenced within one year after the cause has accrued, Buyer has provided written notice to Seller as provided in these Terms and Buyer has paid in full all amounts owing to Seller under these Terms.
15. **Indemnification.** Buyer shall defend and indemnify Seller from all losses, damages, costs or expenses of any kind (including legal fees) incurred as a result of, or arising from: (a) Buyer's breach of these Terms (including, the use or disclosure of Seller's' Technical Information in violation of Section 5); (b) patent infringement based on Buyer's use of the Products in an overall process or as an element in an overall combination; (d) Buyer's alteration, processing, modification, assembly or reassembly of the Products, supplies or materials used in connection with the Products, or parts manufactured with the Products, (e) negligence of Buyer.
16. **Termination.** These Terms are subject to Seller's' revocation or cancellation at any time, without liability, provided that Seller completes all current orders in process at the time of cancellation. Buyer may cancel its order for Products prior to its completion by immediate payment to Seller of Seller's' cost of manufacture and liquidated damages (including labor, engineering, materials, Tooling, equipment time, overhead) computed using Seller's' standard internal costing procedures, plus 15% of the sales price for the Products. Cost of manufacture includes all materials or services that Seller has ordered and that cannot be canceled and all costs incurred in canceling such orders. Seller may retain without cost all materials and partially completed Products on cancelled orders.
17. **Applicable Law and Jurisdiction.** These Terms will be governed by the laws of the State of Michigan without regard to rules pertaining to conflicts of law. The federal, state and local courts located in the State of Michigan will have exclusive

jurisdiction for any disputes relating to these Terms. The United Nations Convention on Contracts for the International Sale of Goods will not apply to these Terms. If any provision is or becomes invalid or unenforceable under any law, the remaining provisions will be in full force and effect as written.

**18. Dispute Resolution.** The parties will attempt to resolve any dispute involving the interpretation, performance or no-performance, or enforceability of these Terms by prompt good faith negotiations and, if no settlement can be achieved within 30 days from the date of commencement of negotiation by parties, both parties party may submit the dispute to litigation in accordance with Article 17 hereof.

**19. Miscellaneous Provisions.**

A. **Assignment.** Buyer will not assign, in whole or in part, these Terms or delegate the performance of its duties without the written consent of Seller. Any assignment or delegation without the previous written consent of Seller, at the option of Seller, will cancel any outstanding purchase orders. Any consent by Seller to an assignment will not waive Seller's' right to recoupment from Buyer and/or its assigns for any claim arising out of these Terms. If Seller agrees to the assignment of the Terms, in whole or in part, Buyer will remain solely liable to Seller for the adherence of the assignee to these Terms.

B. **Buyer's Property.** 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 such property.

C. **Force Majeure.** Any delay or failure of either party to perform its obligations will be excused if caused by an extraordinary event or occurrence beyond the control of the nonperforming party and without the nonperforming party's fault or negligence, such as acts of God, fires, floods, windstorms, explosions, riots, natural disasters, wars, terrorist attacks, sabotage, strikes, shortages of labor or material, vendor failures, transportation embargoes or acts of any governmental or governmental agency. In the event of such a delay, delivery will be deferred for a period of time equal to the time lost due to the delay. Seller will notify Buyer in writing within a reasonable time of any such event. In no event will Seller be liable for late deliveries.

D. **Modification and Waiver.** No modification or waiver of the Terms will be binding upon Seller unless approved in writing by one of Seller's' authorized representatives, or will be affected by the delivery of Product or the acknowledgment or acceptance of purchase order forms, invoices, shipping papers or other documents containing other or different terms whether or not signed by an authorized representative of Seller.