

ACME MANUFACTURING COMPANY
ACME STANDARD TERMS AND CONDITIONS OF SALE
ATTACHMENT "A"

1. **Parties.** "Seller" means Acme Manufacturing Company. The goods and/or services covered by Seller's proposal (the "Proposal") are referred to as the "Products," which term includes all equipment, parts, portions, items, attachments, repairs, replacements, and substitutions thereof. The party to whom the Proposal is directed is referred to as "Purchaser."

2. **Acceptance.** This Proposal is void unless signed and returned by Purchaser within sixty (60) days from the date hereof. This Proposal is subject to change upon notice to Purchaser and, if signed and returned by Purchaser, shall constitute an order on the part of Purchaser (the "Order"), but not become binding on the part of Seller until it is approved and accepted by Seller at its office in Auburn Hills, Michigan 48326 U.S.A.

3. **Agreement/Amendment.** The term "Agreement" refers to and includes the Proposal/Order, these Standard Terms and Conditions of Sale (which include Seller's Service Policy and Procedure and Seller's Field Service Rates, as in effect from time-to-time, each of which are available on Seller's website (www.acmemfg.com) and incorporated herein by reference), and all other documents specifically (and by a written instrument) made a part of the Agreement by Seller. The Agreement is the entire agreement between the parties with respect to the Products and no statement or agreements, oral or written, made before or at the signing of this contract shall vary or modify the written terms hereof, and neither party shall claim any amendment, modification or release from any provision hereof unless such change is in writing signed by the other party and specifically stating it as an amendment to this Agreement. No modification or addition to this Agreement shall be effected by the acknowledgment or acceptance by Seller of a purchase order, acknowledgment, release or other forms submitted by Purchaser

containing additional or different terms or conditions, and Seller hereby gives Purchaser notice of the rejection of such additional terms and conditions.

4. **Warranties and Limitation of Liability.** Seller warrants that the Products manufactured by Seller shall be free from defects in material and workmanship on the date of shipment and shall perform to the specifications agreed to in this Agreement for a period of twelve (12) months after the date of shipment, normal wear and tear excepted; provided that Seller only warrants that the finish and production of parts processed by the Products will meet such specifications if Purchaser uses the media recommended by Seller; and provided further that Seller's performance warranty provided herein shall only apply if the actual parts processed by the Products are identical to the samples that were provided by Purchaser to Seller at the time the Proposal was quoted. In addition, Seller is not responsible for media life or cost since these are expendable items, which are produced beyond the control of Seller. With respect to the Occupational Safety and Health Act of 1970 (OSHA), Seller warrants that the Products, construction and design supplied by Seller will comply with OSHA regulations and standards, as written and interpreted on the date of the Agreement. Seller shall not be liable for any failure to so comply which results from the use or maintenance of the Products, from alterations of the Products by persons other than Seller, from absence of Products or accessories available to Purchaser, but omitted at Purchaser's direction, from design or instructions furnished by Purchaser's direction, from design or instructions furnished by Purchaser or his agents or from violations caused by combining Seller's Products with any equipment or system(s) furnished by others, including Purchaser. In the event that any Product fails to meet the foregoing warranties,

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Seller will repair or replace the affected Product, at Seller's discretion, and such repair or replacement will constitute Seller's sole obligation and Buyer's sole remedy for breach of the foregoing warranties. THE ABOVE WARRANTIES ARE GIVEN IN LIEU OF ALL OTHER WARRANTIES EITHER EXPRESSED OR IMPLIED. SELLER DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL SELLER BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE OR INDIRECT LOSSES OR DAMAGES ATTRIBUTABLE TO THE SALE OF THE PRODUCTS UNDER THIS AGREEMENT OR ANY OTHER MATTER ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT REGARDLESS OF WHETHER SUCH CLAIM IS BASED ON BREACH OF CONTRACT, BREACH OF WARRANTY, TORT, STRICT LIABILITY OR ANY OTHER THEORY OF LAW OR EQUITY. SELLER'S LIABILITY FOR DAMAGES UNDER THIS AGREEMENT OR OTHERWISE SHALL IN NO EVENT EXCEED THAT PART OF THE PURCHASE PRICE APPLICABLE TO THE PRODUCTS WITH RESPECT TO WHICH SUCH DAMAGES ARE CLAIMED. Purchaser must give Seller written notice of any claim of breach of warranty within 10 days after the occurrence of the event upon which such claim is founded; the failure of Purchaser to give such written notice shall be a waiver of all claims. The above warranties extend only to Purchaser and only to Products manufactured by Seller. Any parts of Products that are purchased by Seller for inclusion in the Products are not covered under this warranty. Such parts shall have the warranty as provided by such supplier and Seller will pass through such warranty to Purchaser.

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5. **Changes to Orders.** After the date of the Order, Purchaser may request that Seller make changes to the original specifications provided by Purchaser. Seller reserves the right to submit additional charges resulting from Purchaser's proposed changes for approval and acceptance by Purchaser before incorporating any change(s) into the original specifications. Seller shall provide Purchaser with a notice of any price adjustments due to any changes to the original specifications.

6. **Payment Terms.** Unless otherwise provided in Seller's Proposal or in the Order, all amounts payable hereunder shall be paid in United States dollars at the location indicated on Seller's invoice. Unless otherwise specified in the Order, payment terms for service parts will be net thirty (30) days. Payment terms for other Products will be as set forth in the Proposal. Purchaser shall pay to Seller late fees of one and one-half percent (1.5%) per month if payment is not received by Seller within thirty (30) days of the date of Seller's invoice. After any payment is fourteen (14) days past due, Seller may, after giving seven (7) days written notice, suspend all services and withhold all Products, materials, reports, data, drawings, and service without any further liability until all past due amounts are paid in full.

7. **Changes in Price Impacted by Law.** If the present or future interpretation or the future imposition of any law, governmental decree, order, regulation, or ruling under any existing or future legislation shall prevent Seller from increasing the price or revising the price as herein provided, or shall nullify or reduce said price specified herein, Seller and Purchaser shall promptly meet to determine if mutually agreeable changes can be made in this Agreement to cause it to conform with such law, decree, order, regulation, or ruling. If mutually agreeable changes cannot be effected within sixty (60) days after such meeting, Seller shall have the right to

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terminate this Agreement by written notice of such termination to Purchaser without any liability to Purchaser and Purchaser shall pay the same costs as set forth in Section 20 that would be applicable if Purchaser had cancelled the Agreement.

8. **Taxes.** If Seller is required to pay federal, state, local or other taxes, excises or charges, or increases thereof upon the production, sale or transportation of the Product sold hereunder not now included in the price specified herein, Purchaser shall reimburse Seller for the same.

9. **Title/ Risk of Loss.** Title to and risk of loss of all Products sold hereunder shall pass to Purchaser upon Seller's delivery to carrier at point of shipment whether or not Seller pays all or any part of the freight. Unless otherwise expressly provided in the Proposal or in the Order or invoice, Purchaser shall reimburse Seller for all charges and expenses for containers, packing and crating, and transportation to the delivery point. Purchaser assumes all risks and liability for results arising out of unloading, discharge, storage, handling and use of the Product, or arising out of compliance or non-compliance with federal, state, municipal or local laws and regulations with reference thereto. Seller shall have no liability for the failure of discharge or unloading equipment or materials used by Purchaser, whether or not supplied by Seller.

10. **Delivery/ Storage.** Seller will use commercially reasonable efforts to ship the Products by the shipping dates requested by Purchaser or to notify Purchaser if deliveries will be delayed beyond those dates; however, such delivery dates are estimates and non-binding commitments of Seller and Seller shall not be liable to Purchaser or Purchaser's customers for incidental, indirect, punitive, special or consequential damages of any type resulting from any such delay. If Purchaser refuses to schedule a time to accept a shipment of Products within ten (10) days

from Seller's notice that the Products are ready for shipment, Seller may charge Purchaser reasonable storage charges for any delay in the shipment of such Products.

11. **Returns.** No Products shall be returned for credit without the prior written permission and shipping instructions from Seller.

12. **Special Requirements.** Unless otherwise provided in Seller's Proposal or the Order, prices do not include costs to conform to any special site specifications, machine operation or safety requirements, machine operation or safety requirements established by either governmental codes or Purchaser's requirements. The costs for any such special requirements shall be separately quoted to Purchaser upon request.

13. **Standards.** Seller's Products being offered in the Proposal have been designed with an overview toward the U.S. governmental standards. Many of these regulations vary with the conditions under which the Products are to be used. Due to the lack of specific definitions, Seller does not accept responsibility for compliance with governmental standards, other than as expressly provided in Section 4. The costs for any Product revisions that are required to conform to governmental standards shall be separately quoted to Purchaser upon request.

14. **Intellectual Property.**

- a. Seller shall continue to own all of its intellectual property that is created or provided by Seller and incorporated into the Products being purchased by Purchaser under this Agreement. Seller warrants that it owns or has the right to use such intellectual property in the manufacturing and sale of the Products and that such intellectual property does not infringe upon any intellectual property rights of third parties. Seller shall indemnify, defend and hold Purchaser harmless

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from any judgments, settlements, costs, expenses, fees, penalties, damages or other loss, including costs of investigation, litigation and reasonable attorney's fees, related to any infringement claim against Purchaser based on the purchase, use or resale by Purchaser of the Products purchased under this Agreement.

- b. Purchaser shall continue to own all of its intellectual property that is created or provided by Purchaser and incorporated into the Products. Purchaser warrants that it owns or has the right to use such intellectual property in the manufacturing, purchase, use and resale of the Products and that such intellectual property does not infringe upon any intellectual property rights of third parties. Purchaser grants to Seller the limited right to use Purchaser's intellectual property that it provides to Seller solely for the purpose of Seller's manufacture and sale to Purchaser of the Products sold to Purchaser under this Agreement. Purchaser shall indemnify, defend and hold Seller harmless from any judgments, settlements, costs, expenses, fees, penalties, damages or other loss, including costs of investigation, litigation and reasonable attorney's fees, related to any infringement claim against Seller based on the use of Purchaser's intellectual property in the manufacturing and sale of the Products sold under this Agreement.

15. User Manuals/Safety Data Sheets. Purchaser acknowledges that Seller has furnished to Purchaser certain user manuals and/or data safety sheets, including warnings and safety and health information concerning

the Products sold hereunder. Purchaser agrees to disseminate such information so as to give warning of possible hazards to persons whom Purchaser can reasonably foresee may be exposed to such hazards, including, but not limited to, Purchaser's employees, agents, contractors and customers. If Purchaser fails to disseminate such warnings and information, Purchaser agrees to indemnify, defend and hold Seller harmless against any and all liability arising out of or in any way connected with such failure, including but not limited to liability for injury, sickness, death and property damage.

16. Force Majeure. Seller shall not be liable for damages for delay in delivery or failure of performance arising out of causes beyond its control and without its fault or negligence, including but not limited to, acts of God or of the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, labor disputes, freight embargoes, and unusually severe weather. If a delay in delivery or failure to perform is caused by the delay or failure to perform of a subcontractor of Seller and if such default arises out of causes beyond the control of both Seller and the subcontractor, and without the fault or negligence of either of them, Seller shall not be liable to Purchaser for damages.

17. Allocation. In the event of Seller's inability for any reason to supply the total demands for Products, Seller shall distribute its available supply of raw materials and/or finished goods among itself, for its own manufacturing uses, its customers and Purchaser in such manner as Seller deems practicable. Purchaser agrees to accept, as full and complete performance by Seller, deliveries in accordance with such determination as Seller may make. In no event shall Seller be required to purchase material or product from third persons in the

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event Seller invokes one of the above mentioned clauses, nor will Seller be liable for any cost increases suffered by Purchaser in purchasing product from a third party.

18. **Indemnification.** Unless Products sold hereunder fail to meet the express warranties set forth in Section 4 above, Purchaser shall indemnify, defend and hold Seller harmless from all claims, demands, actions, cause of action, suits, judgments, settlements, costs, expenses, fees, penalties, damages or other loss, including costs of investigation, litigation and reasonable attorney's fees, arising out of Purchaser's selection, use, maintenance, alteration, design, sale and further processing of the Products sold hereunder.

19. **Cancellation by Purchaser.** Orders based on this Proposal, if accepted by Seller, are subject to the right of cancellation by Purchaser by notice in writing to Seller, effective as of the date of receipt of same, provided, however that:

- a. Purchaser will pay Seller in full for all work scheduled for completion within thirty (30) days after effective date of cancellation and will accept shipments thereof.
- b. Purchaser will pay Seller its full cost plus twenty-five (25) percent of all work in process and raw materials or supplies used or for which commitments have been made by Seller in connection with such order.

20. **Termination by Seller.** Upon seven (7) days written notice to Purchaser, Seller shall have the right to terminate this Agreement for material breach or if any payment due

hereunder is fourteen (14) days past due. If such material breach or payment failure is not cured within such seven-day period, then Purchaser shall be liable for any damages incurred by Purchaser by reason of the breach or payment delay that resulted in such termination.

21. **No Waiver.** No waiver of any breach of any provision of this Agreement will constitute a waiver of any other breach or a waiver of such provision.

22. **Governing Law; Venue.** This Agreement shall be construed according to the laws of the State of Michigan as if fully performed thereunder. The parties expressly exclude the applicability of the United Nations Convention on Contracts for the International Sale of Goods, if the same would otherwise apply here. All disputes arising hereunder will be exclusively resolved through binding arbitration proceeding conducted in accordance with the Rules of Commercial Arbitration of the American Arbitration Association ("AAA"), before an arbitrator chosen in accordance with such rules. The arbitration proceeding will be conducted in English and will take place in Oakland County, Michigan, and each party hereby waives any argument as to the convenience of such venue. The decision of the arbitrator will be final and binding upon the parties and shall not be subject to appeal. The decision of the arbitrator may be enforced in any court of competent jurisdiction.

23. **No Assignment.** This Agreement may not be assigned (including by operation of law) or subcontracted by Purchaser without Seller's prior written consent.