

# AA GEAR & MANUFACTURING

## STANDARD TERMS & CONDITIONS OF SALE

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All goods (the “**Goods**”) that are sold by AA Gear & Manufacturing (the “**Seller**”) to any person (the “**Buyer**”), and any services (the “**Services**”, and all items so serviced, together with the Goods, the “**Products**”) provided by the Seller to the Buyer, are governed by and subject to these Standard Terms & Conditions (these “**Terms**”), unless otherwise specifically provided in a document executed by the Seller, including, but not limited to: (a) all proposals and quotations submitted by the Seller to the Buyer, (b) all purchase orders received by the Seller, and (c) all goods and services sold by the Seller.

1. **ENTIRE AGREEMENT.** Except as otherwise agreed to by the Seller in writing, the terms and conditions set forth herein, together with the Seller’s quotation, order acknowledgement, or a separate written and signed agreement, as applicable, shall constitute the complete and final agreement between the Seller and the Buyer (hereinafter, this “**Agreement**”), superseding completely any prior oral or written communications.

2. **OFFERS TO SELL; ACCEPTANCE.** A written quotation issued by the Seller is an offer to sell. The Buyer accepts the provisions of these Terms by accepting the offer in any of the following ways: (a) signing and returning to the Seller a copy of any quotation; (b) sending to the Seller a written acknowledgment of the quotation; (c) placing a purchase order or giving instructions to the Seller respecting manufacture, assortment, or delivery of the goods which will then become the Products (including instructions to bill and hold) following receipt of any quotation; (d) failing to cancel a pending purchase order within 10 days after being bound by these Standard Terms & Conditions of Sale; (e) accepting delivery of all or any part of the Products; (f) paying for all or any part of the Products; or (g) indicating in some other manner the Buyer’s acceptance of these Terms. Any irreconcilable conflict between these Terms and any terms in the Seller’s quotation, order acknowledgement, or the separate written and signed agreement shall be resolved in favor of the quotation, order acknowledgement, or the separate written and signed agreement. The Seller’s acceptance of the Buyer’s purchase order or commencement of performance shall not constitute acceptance of any of the Buyer’s terms and conditions. **TERMS ADDITIONAL TO OR DIFFERENT FROM THESE TERMS, INCLUDING BUT NOT LIMITED TO, TERMS CONTAINED IN THE BUYER’S PURCHASE ORDER OR THE BUYER’S STANDARD TERMS AND CONDITIONS OF PURCHASE, ARE DEEMED MATERIAL AND HEREBY REJECTED UNLESS OTHERWISE ACCEPTED BY THE SELLER IN A SEPARATE WRITING EXECUTED BY THE SELLER.** The Seller may commence performance in reliance upon the Buyer’s acceptance of these terms and conditions, and the Seller will not be obligated to fulfill an order or request for the Products or Services unless the Seller affirmatively acknowledges the order. **THE BUYER AND THE SELLER AGREE THAT THESE TERMS ARE ACCEPTED IN GOOD FAITH BY BOTH PARTIES AS THE CONTROLLING AND FINAL TERMS AND CONDITIONS FOR ALL SALES BY THE SELLER TO THE BUYER.**

3. **NO WARRANTY.** EXCEPT AS EXPRESSLY SET FORTH IN THE SELLER’S QUOTATION, ORDER ACKNOWLEDGEMENT OR A SEPARATE WRITTEN AGREEMENT SIGNED BY AN AUTHORIZED AGENT OF THE SELLER, THE SELLER MAKES NO WARRANTIES, EXPRESS OR

**IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. ALL SUCH WARRANTIES ARE EXPRESSLY DISCLAIMED. AT THE SELLER'S DISCRETION, THE BUYER'S SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO THE CONFORMANCE OF ANY PRODUCTS FURNISHED BY THE SELLER UNDER THIS AGREEMENT SHALL BE LIMITED TO EITHER: (A) REPLACEMENT OF SUCH PRODUCTS AT THE POINT OF SHIPMENT FROM THE SELLER'S FACILITY, OR (B) REPAYMENT OF OR CREDIT AGAINST THE PURCHASE PRICE OF SUCH PRODUCTS UPON THEIR AUTHORIZED RETURN.** In the event the Seller has authorized the Buyer to scrap all or any portion of the Products, the scrap allowance is to be credited to the Seller. The employees and representatives of the Seller are not authorized to make any statement or representation as to the Products inconsistent with this Agreement and no such statements made will be binding upon the Seller or be grounds for any claim.

4. **AUTHORITY OF SELLER'S AGENTS AND REPRESENTATIVES.** The President of the Seller is the only agent or representative of the Seller who may properly authorize any changes to these Terms. Except for the President, no agent, employee, or representative of the Seller has authority to bind the Seller to any affirmation, waiver, representation or warranty not contained in this Agreement concerning the Products. Unless contained in a writing signed by the authorized agent of the Seller, an affirmation, waiver, representation, or warranty that is not expressly contained in this Terms will not be deemed part of this Agreement and will not be enforceable.

5. **DELIVERY.** Delivery dates are approximate. The failure to meet an indicated delivery date will not constitute a breach of this Agreement. In no event shall the Seller be liable for any claims for labor or for any special, indirect, incidental, or consequential damages including, but not limited to, demurrage charges, cost of shipment, downtime, lost profits (whether direct or indirect), lost sales, or any other damages resulting from delay in delivery. If the Seller's production or delivery is delayed, the Seller may allocate production and delivery among its customers in a manner it deems reasonable. The Seller reserves the right to change or re-designate any product source listed in this Agreement. **ACCEPTANCE OF THE PRODUCTS BY THE BUYER UPON DELIVERY SHALL CONSTITUTE A WAIVER BY THE BUYER OF ANY CLAIM FOR DAMAGES ON ACCOUNT OF DELAY IN DELIVERY OR PERFORMANCE.**

6. **SHIPMENT AND RISK OF LOSS.** Unless otherwise agreed, the Buyer bears all costs and risks involved in taking the Products from the Seller's premises to the desired destination -- the Seller's obligation is to make the Products available at the Seller's premises. Unless otherwise agreed, the Seller may, in its sole discretion, select the shipping method, the carrier and the applicable freight charges. If the Buyer desires to pick up the Products at the Seller's facility, the Buyer must contact the Seller to arrange a mutually convenient time for pick up. The Buyer shall indemnify and hold harmless the Seller from and against any claims, damages or liabilities suffered by the Seller resulting from any acts or omissions of carrier. Title to the Products and risk of loss to the Products shall pass to the Buyer at the point of shipment from the Seller's facility, whether freight prepaid or freight collect to destination, regardless of which party selects the carrier and arranges the freight charges or particulars of shipment. Risk of loss for damage or delay in transit shall be borne by the Buyer. The Buyer shall file and pursue any claims directly with the carrier related to loss, damage or delay in transit, and the

Buyer shall not assert such claims against the Seller or deduct from amounts owing to the Seller.

7. **RELEASE OF GOODS FOR SHIPMENT.** The Buyer must release the Products for shipment within ten (10) days after the Seller notifies the Buyer that those items are ready for shipment. After such ten-day period, the Buyer will pay a holding charge determined in good faith by the Seller and/or the Seller may ship the Products to the Buyer without further notification. The Buyer agrees to accept delivery of all shipped Products and to pay the applicable price. The Seller has the right to sell or scrap any Products without notice to the Buyer if the Buyer has not released the Products for shipment within thirty (30) days after the Seller notifies the Buyer that the Products are ready for shipment, and the Buyer shall be responsible for any difference between the agreed purchase price and the sale price or the scrap allowance. With respect to any order of a single item of a truckload or less, the Buyer must release the entire order for shipment at one time or pay the additional charges required by the Seller.

8. **DELAYS AND CANCELLATIONS BY BUYER.** Delay and cancellation costs include all labor, materials, overhead, general and administrative costs, restocking charges, surcharges levied on material by outside suppliers, sub-vendor cancellation charges, excess inventory charges, value of storage space, inventory tax charges, banking and finance charges, scrapping and disposal fees, and other harm, costs and charges incurred directly or indirectly by the Seller in connection with a delay or cancellation of an order for the Products or Services. The “**Firm Order Period**” is determined according to, as applicable, the quotation, order acknowledgement or separate written and signed agreement. If there is no quotation, order acknowledgement or separate written and signed agreement, or if none of those items specifies the Firm Order Period, the Firm Order Period will be determined according to the Seller’s then current cancellation and order book management policy. If a Firm Order Period cannot be determined in any of the preceding methods, the entire order will be considered to be within the Firm Order Period. The Buyer is not entitled, without the Seller’s prior written consent, which may be withheld or conditioned in the Seller’s sole discretion, to cancel or delay a delivery of the Products or Services for all or any part of an order within the Firm Order Period. The Seller may treat as a cancellation any proposed delay greater than sixty (60) days. If the Seller consents to the cancellation or delay, the Buyer shall pay a cancellation or delay charge in an amount determined in the Seller’s sole discretion to reflect all applicable costs, including, at a minimum, a storage charge, inventory carrying costs, financing costs associated with the finished Products, work in process and raw materials, and costs of inactive labor, from the original request date until the time of delivery or performance. In the case of cancellation, the charge may also include, at the Seller’s sole discretion, a reasonable and equitable profit for the Seller. If the Seller’s work on an order requires material from the Buyer or a third party selected by the Buyer, and the Seller does not timely receive material that strictly conforms to the Seller’s requirements, including chemical composition, physical properties and dimensions, the Seller may delay performance of or cancel the order without liability, and the Buyer shall compensate the Seller for all costs, including for costs incurred and time expended working on non-conforming material.

9. **SPECIFICATIONS.** The material specifications, quality requirements, or any other aspect of the Products or their manufacture (the “**Product Specifications**”) are controlled by the

Seller's quotation, order acknowledgement, or separate written and signed agreement. If any of the Product Specifications in the Seller's quotation, order acknowledgement, or separate written and signed agreement differ materially from the Product Specifications requested by the Buyer, the Seller may, in its sole discretion, require that the Buyer provide a written acknowledgment and acceptance of the Product Specifications in the Seller's quotation, order acknowledgement, or separate written and signed agreement prior to the manufacture or delivery of the Products. The Buyer is not entitled, without the Seller's prior written consent, which may be granted or withheld in the Seller's sole discretion, to make any changes to Product Specifications in the Seller's quotation, order acknowledgement, or separate written and signed agreement. If the Seller consents to the change, the Seller may condition its consent on the Buyer's agreement to price adjustments and other compensating payments satisfactory to the Seller. In addition to all other remedies available to it under applicable law, the Seller may refuse to comply with any change to which the Seller has not given its prior written consent.

10. **USER'S RESPONSIBILITY FOR SAFETY.** The Buyer or other end-user is responsible for providing all proper dies, devices, tools, training, and means that may be necessary to effectively protect all personnel from serious bodily injury which otherwise may result from the method of particular installation, use, operation, setup, or service of the Products. Buyer must comply with instructions furnished by the Seller and all governmental safety standards applicable to the Buyer's or such other end-user's use of the Products. The Seller reasonably believes that the Products will be in substantial compliance with the general requirements of governmental regulations directly associated with safety concerning the Products. Products designed, manufactured or provided by the Seller are capable of being used in a safe manner, but the Seller cannot, and does not, guarantee their safety under all circumstances. **THE BUYER 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.**

11. **ORIGINAL EQUIPMENT PRODUCTION.** If this Agreement concerns Products for original equipment production: (a) the Seller is not required to supply for the "life-of-program," but instead only for the time specified in this Agreement or, if no time is specified, at the Seller's sole discretion; and (b) the Seller is not required to supply service parts. The Seller is only required to supply service parts if the Buyer advises the Seller of those requirements, complete with a detailed release schedule, and the Seller agrees in writing to supply the service parts.

12. **GOVERNMENT CONTRACTS.** If the Buyer is purchasing the Products for a government contract or sub-contract, the Buyer shall promptly notify the Seller of that fact and of any contractual terms from the government procurement laws and regulations that the Buyer is obligated to include in its contracts for such Products or Services. No government procurement provisions will be included in this Agreement unless agreed to in a writing signed by an authorized agent of the Seller.

13. **PURCHASE PRICE.** The purchase price of the Products or Services shall be as stated in the Seller's quotation, order acknowledgement, or separate written agreement signed by an authorized agent of the Seller, as applicable. Unless agreed by the Seller in writing, the purchase price does not include shipment costs. If the Products are shipped freight prepaid, the

charge for freight shall be added to the invoice. Prices are based on and assume the Buyer's compliance with all of the terms and conditions of this Agreement, including a promise by the Buyer to purchase a particular mix of goods, a certain quantity of goods, or a certain percentage of the Buyer's requirements for the goods. The Seller may adjust prices, in its sole discretion, if the circumstances do not coincide with the forgoing assumptions. In addition, the Seller may at any time adjust prices based on changes to energy costs, raw material costs, labor costs and exchange rates.

14. **PAYMENT TERMS.** Standard payment terms are net thirty (30) days, with no discount allowed. Interest will accrue on invoices unpaid after the net due date at the annual rate of 18% or the maximum legal contract interest rate, whichever is less.

15. **TAXES.** Prices do not include any taxes or other assessments. All taxes, duties, fees, assessments or other charges of any kind imposed by any federal, state, municipal or other governmental authority which the Seller is required to collect or pay with respect to the provision, production, sale or shipment of the Products or Services shall be the responsibility of the Buyer. The Buyer agrees to pay all such taxes and further agrees to reimburse the Seller for any such payments made by the Seller. The Buyer hereby affirms that it is purchasing the Products referenced herein for resale, and/or that the Buyer is not the end user of the Products, so as to be exempt from any otherwise applicable sales tax.

16. **FAILURE OF PAYMENT.** If the Buyer fails to make payment in full or in part when due or refuses to pay any applicable price increases or surcharges, the Seller shall have the right to: (a) immediately suspend performance and cancel the unfinished portion of any outstanding orders; (b) declare all unpaid amounts for the Products delivered immediately due and payable; and (c) withhold further deliveries. If the Seller elects to proceed with an order after the suspension of performance, the Seller shall have an extension of time for performance as is necessitated by the suspension. The Seller shall have the right to enforce payment of the full purchase price, including any price increase or surcharge, for Products already delivered or in process. The Buyer shall reimburse the Seller for all costs of collection, including reasonable attorney's fees, incurred as a result of the Buyer's failure to make payments when due.

17. **BUYER'S FINANCIAL CONDITION.** If requested by the Seller, the Buyer must supply a current financial statement, five trade references, and completed credit questionnaire. The Seller shall have the right, by written notice, to suspend performance, terminate this Agreement, cancel any order, modify any payment terms, or require full or partial payment or adequate assurance of performance from the Buyer, without liability to the Seller, in the event of a material adverse change in the Buyer's financial condition or if reasonable grounds for insecurity arise with respect to the Buyer's performance of this Agreement, evidence of which might include, among other things: (a) a default under any of the Buyer's financing agreements; (b) the Buyer's inability to obtain financing; (c) a reduction in the Buyer's credit rating by a recognized rating agency; (d) the Buyer's insolvency; (e) the filing of a bankruptcy by or against the Buyer (whether voluntary or involuntary); (f) the appointment of a receiver or trustee for the Buyer; (g) the execution by the Buyer of an assignment for the benefit of creditors; (h) the failure by the Buyer to make a payment to the Seller when due; or (i) any other event which raises reasonable doubts as to the Buyer's creditworthiness. The modifications the Seller may

make to payment terms include shortening the payment period, requiring advance payment, or requiring payment of cash on delivery. The Seller shall notify the Buyer in writing of any modifications to payment terms, which may be made retroactive to include amounts then accrued but unpaid. The Seller reserves the right to cancel the Buyer's credit at any time for any reason, without notice. The foregoing remedies are in addition to the Seller's other rights and remedies under this Agreement and under applicable law, including Section 2-609 of the Uniform Commercial Code.

18. **SECURITY INTEREST.** In addition to any security interest granted by the Uniform Commercial Code or other law, the Buyer grants a security interest to the Seller in all Products and documents related thereto and proceeds and products therefrom to secure all obligations of the Buyer to the Seller, whether or not arising under these Terms or this Agreement. The Seller may file a financing statement. Further, if requested by the Seller, the Buyer shall sign financing statements and other documents, evidencing and confirming such security interest. The Buyer grants the Seller an irrevocable power of attorney to file a financing statement in the Buyer's name if necessary or convenient to perfect the Seller's security interest. Until the Products are paid in full, the Buyer shall not change the location of any Products from the original delivery point without prior written notice to the Seller. In case of a default by the Buyer, the Buyer hereby irrevocably appoints the Seller as the Buyer's agent to obtain possession of the Products and any related documents. The Buyer shall immediately advise the Seller in writing of any damage to, change in location of, or seizure of, any of the Products the price of which have not been paid to the Seller.

19. **SETOFF.** The Seller shall have the right to credit toward the payment of any monies that may become due the Buyer hereunder any amounts which may now or hereafter be owed to the Seller or any of its subsidiaries or affiliates. The Buyer shall pay the Seller's invoices without discount, set off or reduction for any reason, including asserted warranty claims or other claims of non-performance by the Seller.

20. **ACCORD AND SATISFACTION; CLAIMS.** Checks or payments, whether full or partial, received from or for the account of the Buyer, regardless of writings, legends or notations upon such checks or payments, or regardless of other writings, statements or documents, shall be applied by the Seller against the amount owing by the Buyer with full reservation of all the Seller's rights and without an accord and satisfaction of the Buyer's liability. All communications concerning disputed debts or other claims, including any instrument tendered as full satisfaction of a debt or claim, must be delivered to the authorized agent of the Seller. Only the authorized agent of the Seller may accept any amount less than full payment as the satisfaction of any debt owned by the Buyer to the Seller.

21. **NON-CONFORMING GOODS.** No claim for damages for non-conforming Products will be allowed unless the Buyer provides the Seller with written notice of the claim within sixty (60) days of the date the Products were delivered to the Buyer. To assert such a claim, the Buyer must: (a) at the Seller's request, return to the Seller 100% or, if agreed by the Seller, a lesser but still statistically relevant percentage of the Products claimed to be non-conforming; and (b) provide reasonable evidence to support the claim, including, if requested by the Seller, results of diagnostic tests, evaluations and investigations performed by the Buyer or the Buyer's customer.

Products for which damages are claimed shall not be returned, repaired, or discarded without the Seller's prior written consent. If requested by the Seller, the non-conforming Products must be returned to the Seller within ten (10) days of the Seller's request. No claims, rejections or returns for non-conforming Products will be permitted unless the Buyer cooperates in full with the Seller's technical personnel to determine the cause of the non-conformance.

22. **SHORTAGE OF GOODS OR DAMAGED GOODS.** Claims by the Buyer with respect to shortage of Products invoiced or for damaged Products must be made to the Seller in writing no later than sixty (60) days from the date the Products were delivered to the Buyer. All claims must be made only for substantial cause, must be in writing, and must specify the reason(s) for the claim. **THE FAILURE TO NOTIFY THE SELLER OF ANY CLAIM WITHIN THE TIME PERIOD SPECIFIED BY THIS SECTION SHALL CONSTITUTE A WAIVER OF AND BAR SUCH CLAIM. THE SELLER SHALL INCUR NO LIABILITY FOR SHORTAGE OR DAMAGE ALLEGED TO HAVE OCCURRED OR EXISTED AT OR PRIOR TO DELIVERY TO THE CARRIER UNLESS BUYER SHALL HAVE ENTERED FULL DETAILS THEREOF ON CARRIER'S DELIVERY RECEIPT WHICH MUST BE SIGNED BY THE CARRIER'S AGENT. THE SELLER MUST BE GIVEN AN OPPORTUNITY TO INVESTIGATE THE CLAIM BEFORE THE BUYER DISPOSES OF THE PRODUCTS. ANY DAMAGED PRODUCTS SHALL NOT BE RETURNED, REPAIRED OR DISCARDED WITHOUT THE SELLER'S WRITTEN PERMISSION.**

23. **TECHNICAL ADVICE.** The Seller assumes no obligation or liability for any technical advice furnished to the Buyer, including without limitation technical advice with respect to the use of the Products, all such technical advice being given and accepted at the Buyer's risk. The Seller will not be liable for any damages of any kind arising out of or relating to the use of or the inability to use the information provided, including but not limited to any special, indirect, incidental or consequential damages including, without limitation, demurrage charges, cost of shipment, downtime, lost profits (whether direct or indirect), or lost sales, whether foreseeable or not, and even if the Seller has been advised of the possibility of damages.

24. **INTELLECTUAL PROPERTY.** Nothing in this Agreement is to be construed as a grant or assignment of any license or other right to the Buyer of any of the Seller's or its affiliates' intellectual property rights, whether patent, trademark, trade secret, copyright or otherwise. All improvements and developments related to the Products or the efforts of the Seller and the Buyer will be owned exclusively by the Seller, and the Buyer shall reasonably cooperate with the Seller in confirming that result.

25. **CONFIDENTIALITY.** Any pricing or other sensitive commercial information provided by the Seller to the Buyer is proprietary to the Seller and shall be held in confidence by the Buyer, shall only be used by the Buyer in connection with this sale, and shall not be used for any other purposes or disclosed to third parties without the Seller's prior written consent. The Buyer shall be liable for any loss to the Seller or commercial gain by others from unauthorized use of confidential information occasioned by the Buyer's failure to comply with this provision.

26. **AUDIT.** Unless otherwise agreed to in writing by an authorized agent of the Seller, the Buyer shall have no right to audit any books or records of the Seller and the Buyer shall have no right to enter into any facility owned or controlled by the Seller.

27. **LIMITATION OF LIABILITY. THE SELLER'S LIABILITY, WHETHER IN CONTRACT,**

**IN TORT, UNDER WARRANTY, IN NEGLIGENCE, OR OTHERWISE, SHALL NOT EXCEED THE PURCHASE PRICE OF THE PRODUCTS OR SERVICES, AND UNDER NO CIRCUMSTANCES SHALL THE SELLER BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES INCLUDING, BUT NOT LIMITED TO, DEMURRAGE CHARGES, COSTS OF SHIPMENT, DOWNTIME, LOST PROFITS (WHETHER DIRECT OR INDIRECT), LOST SALES, DAMAGE TO EQUIPMENT, OR CLAIMS OF BUYER'S CUSTOMERS OR OTHER THIRD PARTIES FOR DAMAGES OR PENALTIES, WHETHER OR NOT BUYER IS LEGALLY OBLIGATED TO PAY THEM. THE SELLER'S LIABILITY HEREUNDER SHALL BE LIMITED TO EITHER: (A) THE OBLIGATION TO REPAIR OR REPLACE, AT THE SELLER'S SOLE DISCRETION, ONLY THOSE PORTIONS OF THE PRODUCTS PROVEN TO HAVE FAILED TO MEET IN MATERIAL RESPECT THE SPECIFICATIONS ON THE SELLER'S QUOTATION, ORDER ACKNOWLEDGEMENT, OR SEPARATE WRITTEN AND SIGNED AGREEMENT AT THE TIME OF SHIPMENT FROM THE SELLER'S FACILITY; OR (B) REPAYMENT OF OR CREDIT AGAINST THE PURCHASE PRICE OF THE PRODUCTS OR SERVICES. THE SELLER AND THE BUYER EXPRESSLY AGREE TO THIS ALLOCATION OF RISK AND THE PRICE STATED FOR THE PRODUCTS OR SERVICES IS CONSIDERATION FOR THE LIMITATION ON THE SELLER'S LIABILITY. THIS DISCLAIMER AND EXCLUSION WILL APPLY EVEN IF THE EXCLUSIVE REMEDY DESCRIBED IN THIS SECTION FAILS ITS ESSENTIAL PURPOSE.**

28. **INDEMNIFICATION.** The Buyer agrees to indemnify, defend and hold harmless the Seller, its directors, officers, employees, agents, successors and assigns from and against any and all damages, losses, expenses, costs (including without limitation reasonable attorney's and accountant's fees), claims, suits, actions, judgments or other liability asserted against or incurred by the Seller arising out of: (a) the Buyer's breach of its obligations hereunder; (b) the Buyer's negligence or misconduct; or (c) the Buyer's misuse or misapplication of the Products or damage to the Products caused by the Buyer or its employees, agents or customers.

29. **FORCE MAJEURE.** The Seller shall not be responsible for cancellation or delay in delivery or performance resulting, in whole or in part, from causes beyond its reasonable control, including, but not limited to: acts of God; acts of the Buyer; strikes or other labor disturbances regardless of whether or not the Seller is capable of settling such strike or disturbance; facility conditions; temporary or permanent mill or facility closures; equipment failure; inability to obtain fuel, material, or parts; war; acts of terrorism; sabotage; riot; delays in transportation; repairs to equipment; natural disasters; epidemics; floods; fires; action of governmental authorities (valid or invalid); severe weather conditions; accidents; explosions; failure of or inability to obtain power, raw materials, suppliers, labor, equipment or transportation; a court or administrative injunction or order; or any other contingency the non-occurrence of which was a basic assumption on which this Agreement was made.

30. **STATUTE OF LIMITATIONS.** THE BUYER AND THE SELLER AGREE THAT, UNLESS OTHERWISE SPECIFIED IN THIS AGREEMENT, ANY ACTION, REGARDLESS OF FORM, ARISING OUT OF THIS AGREEMENT OR THE SALE OF THE PRODUCTS OR SERVICES MUST BE BROUGHT WITHIN ONE (1) YEAR AFTER THE DATE ON WHICH THE PRODUCTS IN QUESTION WERE DELIVERED TO THE BUYER OR THE DATE ON WHICH THE EVENT GIVING RISE TO THE ACTION OCCURRED, WHICHEVER IS EARLIER.

31. **GOVERNING LAW; FORUM SELECTION.** This Agreement shall be governed by,



construed, and enforced in accordance with the laws of the State of Michigan, without regard to conflict of laws principles. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement. The Buyer, acting for itself and its successors and assigns, hereby expressly and irrevocably consents to the exclusive jurisdiction of the state and federal courts having authority over the territory of Livingston County, Michigan, for any litigation which may arise out of or be related to this Agreement or the purchase or use of the Products or Services. Any action brought in any such court may not be transferred or removed to any other court. The Buyer waives any objection based upon *forum non conveniens* or any objection to venue of any such action.

32. **DISPUTE RESOLUTION.** The Buyer and the Seller will attempt in good faith to resolve promptly any dispute arising out of or relating to this Agreement or the breach thereof. If a dispute should arise, **THE BUYER AND THE SELLER AGREE TO SUBMIT THE DISPUTE TO MEDIATION. THE BUYER AND THE SELLER FURTHER AGREE THAT THEIR PARTICIPATION IN MEDIATION IS A CONDITION PRECEDENT TO ANY PARTY PURSUING ANY OTHER AVAILABLE REMEDY IN RELATION TO THE DISPUTE.** Mediation involves no formal court procedures or rules of evidence, and the mediator does not have the power to render a binding decision or force an agreement on the parties. The Buyer and the Seller agree that the entire mediation procedure will be confidential. The Buyer or the Seller must give written notice of their desire to commence mediation, and a mediation session must take place within forty-five (45) days after the date such notice is given. The mediation shall be attended by representatives of each party with authority to resolve the dispute, and counsel for the parties shall not attend the mediation unless otherwise agreed to by the parties. The Buyer and the Seller will jointly appoint a mutually acceptable and neutral mediator. If the Buyer and the Seller are unable to agree upon the appointment of a mediator within seven (7) days after notice of desire to mediate is given, the Buyer or the Seller may apply to the American Arbitration Association for appointment of a mediator. The mediation shall be held in Howell, Michigan. The Buyer and the Seller agree that the expenses of mediation shall be borne equally by both parties. The Buyer and the Seller agree that arbitration will not be used to settle a dispute arising out of or relating to this Agreement or the breach thereof.

33. **NO WAIVER.** The failure of the Seller to enforce any of the provisions of this Agreement shall not be construed as a waiver of the Seller's right to enforce each and every provision hereof. The Seller reserves the right to enforce these terms and conditions at any time and none shall be deemed waived unless such waiver is in writing signed by an authorized agent of the Seller. The Seller's rights and remedies set forth in this Agreement are in addition to all legal and equitable rights and remedies available to the Seller.

34. **ASSIGNMENT OR DELEGATION; NO THIRD PARTY RIGHTS.** The Buyer shall not assign or delegate any or all of its rights or obligations under this Agreement without the prior written consent of the Seller, and any attempt to do so will be ineffective. This Agreement is for the sole and exclusive benefit of the parties hereto and their permitted successors and assigns. Nothing expressed or referred to in this Agreement will be construed to give any other person any legal or equitable right, remedy or claim under or with respect this Agreement.

35. **INDEPENDENT PARTIES.** The Seller and the Buyer are independent parties and

nothing in this Agreement shall make either party an agent, partner, joint venturer, or legal representative of the other.

36. **SEVERABILITY.** If any provision or part of a provision of this agreement is declared invalid, illegal, or unenforceable under applicable law, the affected provision will be considered omitted or modified to conform to applicable law. The validity, legality, and enforceability of all other remaining provisions or parts of provisions will remain in full force and effect.

37. **INTERNATIONAL TRADE.** The Seller makes no representation with respect to the country of origin, qualification for duty preference or similar program, specific Harmonized Tariff Schedule Number, export jurisdiction, U.S. Munitions List category, Export Control Classification Number, or export authority of any good. The Seller retains all of its duty drawback rights, and any attempt by the Buyer to transfer any such rights will be void. The Buyer shall not, itself or by any freight forwarder, customs broker or other agent or third party under the Buyer's direction or control, designate the Seller as the U.S. Principal Party in Interest (as defined in the U.S. Foreign Trade Regulations, 15 CFR Part 30) or file the Electronic Export Information with U.S. Bureau of Census ("**EEI**"), unless otherwise agreed in writing by an authorized agent of the Seller. If the Buyer files an EEI without the prior written consent required by the preceding sentence, then: (a) the EEI will be considered to have been made without the Seller's authority or permission, and any false statements to the government will be considered to have been made by the Buyer or its agent, as applicable; (b) any affected transaction will be considered to be a routed export transaction, such that the Buyer or its agent will be considered the U.S. Principal Party in Interest and exporter of record (as defined by the Foreign Trade Regulations and the Export Administration Regulations) for those transactions; (c) the Buyer shall assume all of the responsibilities of the exporter of record for any such transactions; and (d) the Seller will have no responsibility as the exporter of record. The Buyer represents that it is not, and to the best of the Buyer's knowledge, its customers, its customers' end-users and its agents are not, subject to any U.S. or other government sanction or restriction that would prohibit the sale or export by the Seller of the Products or Services. Upon the Seller's request, the Buyer shall provide all end-user and end-use information of which it is aware or which it could obtain with commercially reasonable efforts. The Buyer shall comply strictly with all applicable U.S. export laws and regulations, and the Buyer shall assist the Seller in complying and documenting compliance with any applicable U.S. export laws, regulations and executive orders. Regardless of any statements on the Buyer's purchase order or other documents to the contrary, the Seller shall not be the importer of record (as that term is defined by U.S. law at 19 USC 1484, or equivalent provision of non-U.S. law) with respect to a transaction governed by this Agreement, unless otherwise agreed in writing by an authorized agent of the Seller.

38. **PROPERTY AND FACILITIES.** The Buyer is considered the owner of all specifically identified tooling, dies and similar items that the Buyer owns and places in the Seller's possession for the purpose of manufacturing the Products or providing the Services (the "**Buyer Tooling**"). The Buyer is responsible for paying for any necessary replacements of and repairs to the Buyer Tooling. The Seller assumes no obligation or liability with respect to the Buyer Tooling or any other property of the Buyer to which the Seller is not taking title, including

tangible personal property of the Buyer upon which the Seller will be performing Services (the “**Buyer Property**”). The Seller agrees to take commercially reasonable steps to label, protect, insure and take other actions with respect to managing and safeguarding the Buyer Tooling and the Buyer Property. Casting and forging tooling may be owned by the third-party provider of such tooling (the “**Third-Party Tooling**”) based upon the agreements for such Third-Party Tooling. The Buyer shall be responsible for any expenses of maintenance and replacement of Third-Party Tooling. The Buyer acquires no interest in the Third-Party Tooling, notwithstanding any charges, amortizations or other costs included in the pricing or otherwise paid by the Buyer in relation to the Third-Party Tooling. The Seller is considered the owner of all tooling, dies and similar items used by the Seller in connection with the Products and Services (including any replacements for the Buyer Tooling not paid for by the Buyer) other than the Buyer Tooling and the Third-Party Tooling (the “**Seller Tooling**”). The Buyer acquires no interest in the Seller Tooling, notwithstanding any charges, amortizations or other costs included in the pricing or otherwise paid by the Buyer in relation to the Seller Tooling.

39. **TRACEABILITY.** If the Buyer and the Seller agree the Seller will provide traceability on Products returned to the Seller, the Seller’s obligation with respect to such Products: (a) is limited by the accuracy and completeness of the information provided by the Buyer with respect to the returned Products; and (b) will terminate if the return was not authorized in advance by the Seller.

40. **MODIFICATION.** No modification or waiver of these Terms in this Agreement will be binding on the Seller unless clearly expressed in writing and signed by an authorized agent of the Seller. This paragraph excludes, among other things, purported modifications and waivers by oral agreement, course of performance, and usage of trade. The Seller and the Buyer expressly agree that the Seller may modify these terms and conditions from time to time, and such modifications shall be binding upon the Buyer.

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**AS OF DECEMBER 17, 2013**