



## TERMS AND CONDITIONS OF SALE

All sales of Goods and Services by Tooling Systems Group, Inc. (“**Seller**”) are made subject to and on the following terms and conditions found within these Terms and Conditions of Sale. In these Terms and Conditions of Sale, the buyer named in Seller’s quotations or acknowledgments shall be referred to below as the “**Buyer**”, any goods sold by Seller to the Buyer are referred to below as “**Goods**” and any services sold by Seller to the Buyer are called “**Services**.”

- 1. Complete and Final Agreement.** Buyer’s assent to these Terms and Conditions of Sale shall be conclusively presumed upon Seller’s acceptance of a purchase order, Buyer’s acceptance of all or any part of the Goods ordered or payment for all or any of the Goods ordered. Seller objects to and will not agree to any terms that are additional to or different from these Terms and Conditions of Sale. Terms and conditions that are printed on a purchase order, contained in a purchase order, incorporated into a purchase order or other form prepared by Buyer which are additional to, in conflict with or inconsistent with these Terms and Conditions of Sale shall be considered to be inapplicable, null and void and shall have no force or effect. These Terms and Conditions of Sale control the contract between the Buyer and Seller and shall automatically become a part of the contract. If Buyer objects to any of the provisions of these Terms and Conditions of Sale, Buyer must bring such objection to the attention of Seller in a writing separate from any purchase order, terms and conditions incorporated into a purchase order or other printed form of Buyer, which shall be deemed to be proposals for different terms and conditions that may be accepted only in writing signed by an authorized representative of Seller. Except as otherwise agreed to by Seller in writing, the terms and conditions set forth in these Terms and Conditions of Sale, together with the applicable Seller quotation or order acknowledgment or accepted purchase order, shall constitute the complete and final agreement between Seller and Buyer, superseding completely any prior oral or written communications. Terms or conditions contained in any document issued by buyer which in any manner purport to alter, modify, change, suspend, or add to any term or condition contained in these Terms and Conditions of Sale shall be deemed excluded from such Buyer document and waived by Buyer. Seller and Buyer expressly agree that Seller may modify these Terms and Conditions of Sale from time to time, and such modifications shall be binding upon Buyer. Seller may commence performance in reliance upon Buyer’s acceptance of these Terms and Conditions of Sale. All orders are subject to the approval of Seller.
- 2. Purchase Price.** Prices quoted are firm for fifteen (15) days from the date of quotation by Seller, with the exception that Seller reserves the right to extend this time period on an as need basis. The purchase price shall be stated on the applicable Seller quotation or order acknowledgement or on the accepted purchase order or as calculated in accordance with

*Tooling Systems Group, Inc. - Terms and Conditions of Sale*

any pricing mechanism contained therein or used in Seller's normal course of business. However, if Seller announces an industry surcharge, such surcharge shall become effective for Goods scheduled for shipment beginning on the date of the Seller's announcement of such surcharge. Unless specified in Seller's quotation or order acknowledgment, the price quotations and/or Seller's price does not include shipping and/or transportation costs.

- 3. Payment Terms.** Unless otherwise stipulated by Seller or restricted by applicable law, payment shall be due in thirty (30) days after shipment of the Goods or performance of the Services, except that if at any time Seller determines that Buyer's financial condition does not justify a sale on credit or if Buyer shall at any time be in default in any indebtedness or obligation owing to Seller, then Seller may require advance payment or may ship C.O.D., and may withhold shipments on orders being shipped in installments. Any payment not made when due shall accrue a late charge of 1-1/2% per month. Payment must be made at the address and/or financial institution set forth in Seller's quotation or order acknowledgement or as otherwise directed by Seller. If Buyer requests and Seller agrees to any changes in Buyer's order after its receipt by Seller, Buyer shall pay all charges reasonably assessed by Seller with respect to those changes. Seller has the right to increase its prices at any time upon notice to Buyer to reflect any unusual or unforeseen increase in Seller's costs, including, but not limited to, an increase in the cost of materials. Buyer may not offset or recoup any claim against amounts due Seller. If Buyer fails to make payment in full or in part or refuses to pay any applicable price increases or surcharges, Seller shall have the right to: (1) immediately suspend performance and cancel the unfinished portion of all acknowledged orders, or (2) to proceed with the order, given an extension of time for performance as necessitated by the temporary suspension. Seller shall have the right to enforce payment of the full purchase price, including any price increase or surcharge, for Goods and/or Services already delivered or in process. Seller shall have the right to employ an attorney to collect the due balance and Buyer agrees to pay all collection costs incurred by Seller, including Seller's attorney's fees. Unless otherwise agreed in s writing signed by Buyer and Seller, all payments shall be in U.S. Dollars.
- 4. Delivery and Risk of Loss.** Unless Seller agrees otherwise, Seller shall deliver the Goods F.O.B. (Uniform Commercial Code term) Seller's facility. In either case, risk of loss of the Goods shall pass to Buyer upon identification of the Goods to the contract between Buyer and Seller. Shipping, delivery and performance dates are estimates only, calculated from the date of receipt of Buyer's order and complete drawings, specifications, designs, samples and other information reasonably requested by Seller to manufacture the Goods and perform the Services, and time is not of the essence. Seller shall not incur any liability, direct or indirect, nor shall any order be canceled because or as a result of any delays in meeting such dates or schedules. Seller reserves the right to recalculate any projected shipping, delivery or performance dates upon receipt of Buyer's order. Seller may ship all the Goods at one time or in portions from time to time. Seller shall have the right to determine the method of shipment and routing of the Goods, unless otherwise stated in Seller's quotation or acknowledgment.

- 5. Transportation Charges.** Unless specified in Seller's quotation or order acknowledgment, the price quotations and/or Seller's price does not include shipping and/or transportation costs. Except as otherwise agreed, delivery and/or transportation prices are computed by adding the cost of transportation to destination, including all applicable transportation rates, surcharges, fees and tolls together with any taxes paid by the Seller.
- 6. Tryout and Sample Parts.** A sufficient quantity of tryout material may be required for development and tryout. This material may be used up in tryout. Buyer shall assume all responsibility for providing tryout material. The tryout material supplied by Buyer must meet all required specifications. Any costs associated with non-conforming tryout material supplied by Buyer shall be the responsibility and liability of Buyer. Buyer agrees to provide an adequate amount of tryout stock for tryout development. Seller shall have no responsibility and/or obligation to return tryout stock to Buyer. Any tryout material provided by the Buyer is considered to be representative of standard production material.
- 7. Inspection and Testing.** Purchaser shall have the right to inspect such goods and to reject any or all of said goods which are in Purchaser's judgment defective or nonconforming. Goods rejected and goods supplied in excess of quantities called for herein may be returned to Seller at its expense and, in addition to Purchaser's other rights. Purchaser may charge Seller all expenses of unpacking, examining, repacking and reshipping such goods. In the event Purchaser receives goods whose defects or nonconformity is not apparent on examination. Purchaser reserves the right to require replacement as well as payment of damages, Nothing contained in this purchase order shall relieve in any way the Seller from the obligation of testing, inspection and quality control. In addition, the Seller agrees to flow down to sub-tier Suppliers the applicable requirements in the purchasing documents, including key characteristics where required.
- 8. Sellers Responsibility.** Dimensional and/or performance deviations from specifications may cause malfunction of equipment and such deviations shall void Seller's warranty provided below. Buyer is responsible for transport of all sample parts. **Assignment and Subcontracting.** No part of this order may be assigned or subcontracted without the prior written approval of the Buyer.  
The Seller will:
- Notify the buyer of delivered nonconforming product, nonconforming product in transit or suspect product.
  - Obtain approval from the buyer for nonconforming product disposition.
  - Notify the Buyer of changes to product, processes, suppliers, and facilities
  - Flow down all requirements related to the contract to subcontractors.
  - Follow record retention requirements as specified by the Buyer
  - Provide right of access to the Buyer, their customer and regulatory authorities to the applicable areas of all facilities, at any level of the supply chain, involved in the order and to all applicable records.
- 9. Purchasing Information.** Purchasing information will identify the identification and revision status of specifications, drawings, process requirements, inspection/verification

instructions and other technical data. The Buyer will identify requirements for design, test, inspection, verification (including production process verification), use of statistical techniques for product acceptance, and related instructions for acceptance by the Buyer, and applicable critical items and key characteristics, and the requirements for test specimens (e.g., production method, storage conditions) for design approval, inspection/verification, and investigation or auditing.

**10. Taxes and Duties.** Unless specified in Seller's quotation or order acknowledgment, the price quotations and/or Seller's price does not include any privilege, occupation, personal property, value-added, sales, excise, use or other taxes, or any tariffs or customs duties, and Buyer shall be liable for all such taxes and duties, whether or not Seller invoiced Buyer for them.

**11. Unavoidable Delay; Limitation of Liability for Delivery Delay.** If Seller is not able to finish and deliver the Goods to Buyer, or to perform the Services, on time because of anything Seller cannot control, including but not limited to casualty, labor trouble/disturbances, unavailability/shortage of necessary materials/supplies or transportation, Buyer's failure to approve production samples or provide Seller with necessary information, fire, flood, governmental act or regulation, riot, terrorist act, equipment or power failure, unscheduled maintenance, accident, weather conditions, acts of environmental agencies, act of God or any cause beyond Seller's control, then the estimated delivery or performance time shall be extended accordingly, and Seller shall not be liable to Buyer for any damages caused by the delay. Delivery dates are approximate. In no event shall Seller be liable for labor or for any special, indirect, incidental, or consequential damages, including but not limited to, demurrage charges, cost of shipment, downtime, lost profits, lost sales, or any other damages resulting from the delay in delivery. Acceptance of Goods by the Buyer shall constitute a waiver by Buyer of any claim for damages on account of delivery delay.

**12. Changes and Configuration Management.** Seller shall have the right to make changes in its equipment, processes and methods of production of the Goods or performance of the Services, but Seller will not make any changes in operational or dimensional specifications that Buyer submits. Stenographical and clerical errors in quotations are subject to correction.

**13. Records Retention.** The supplier shall maintain all records required by the customer. Unless notified, the supplier shall maintain the required records for the life of the product plus one year. All records must remain legible and readily retrievable at the request of the customer.

**14. Limited Warranty, Liability and Claim Policy.**

- a. **Limited Warranty; Exclusive Remedy.** EXCEPT AS EXPRESSLY SET FORTH IN SELLER'S QUOTATION OR ORDER ACKNOWLEDGEMENT, SELLER MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AND SELLER ACCEPTS NO RESPONSIBILITY, RISK OR LIABILITY TO BUYER OR OTHERS CONCERNING, RELATING TO OR ARISING OUT OF: (A) THE

MERCHANTABILITY OR OTHERWISE OF THE GOODS SOLD HEREUNDER; (B) THE FITNESS OR OTHERWISE FOR BUYER'S PURPOSES OF THE GOODS SOLD HEREUNDER; OR (C) THE PERFORMANCE, NON-PERFORMANCE, FAILURE, EFFICACY, LENGTH OF LIFE OF OR ANY DEFECT IN THE WHOLE OR ANY PART OR PARTS OF ANY GOODS MANUFACTURED OR FABRICATED FROM OR INCORPORATING OR OTHERWISE USING THE GOODS SOLD HEREUNDER.

- b. Limitations of Liability.** SELLER'S LIABILITY, WHETHER IN CONTRACT, IN TORT, UNDER WARRANTY, IN NEGLIGENCE, OR OTHERWISE, SHALL NOT EXCEED THE PURCHASE PRICE OF THE GOODS AGAINST WHICH CLAIM IS MADE, AND UNDER NO CIRCUMSTANCES SHALL SELLER BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES INCLUDING, BUT NOT LIMITED TO, DEMURRAGE CHARGES, COSTS OF SHIPMENT, DOWNTIME, LOST PROFITS, OR LOST SALES. SELLER'S LIABILITY HEREUNDER SHALL BE LIMITED TO EITHER: (1) THE OBLIGATION TO REPAIR OR REPLACE, AT SELLER'S DISCRETION, ONLY THOSE PORTIONS OF GOODS PROVEN TO HAVE FAILED TO MEET IN MATERIAL RESPECT THE SPECIFICATIONS ON THE SELLER'S QUOTATION OR ORDER ACKNOWLEDGEMENT AT THE TIME OF SHIPMENT FROM THE SELLER'S FACILITY, OR (2) REPAYMENT OF OR CREDIT AGAINST THE PURCHASE PRICE OF SUCH GOODS (INCLUDING TRANSPORTATION CHARGES FORMING PART OF THE INVOICE PRICE). SELLER AND BUYER EXPRESSLY AGREE TO THIS ALLOCATION OF RISK AND THE PRICE STATED FOR THE GOODS IS CONSIDERATION IN LIMITING SELLER'S LIABILITY.
- c. Claims by Buyer.** THE BUYER HEREBY AGREES THAT THE PROVISIONS OF TSG'S CLAIMS MANAGEMENT POLICY AVAILABLE AT [[toolingsystemsgroup.com](http://toolingsystemsgroup.com)] SHALL GOVERN ALL CLAIMS SUBMITTED TO THE SELLER BY THE BUYER IN CONNECTION WITH THE GOODS SOLD HEREUNDER, SUBJECT TO THE TERMS SET OUT HEREIN AND SELLER'S APPLICABLE QUOTATION, ORDER ACKNOWLEDGMENT OR ACCEPTED PURCHASE ORDER.
- 15. Solvency and Statutory Rights.** Buyer represents that Buyer is solvent. Nothing contained in Seller's Quotation and these Terms and Conditions of Sale shall be construed as a waiver or modification of the Seller's statutory rights, including statutory lien rights under the Michigan Special Tools Lien Act and/or the Michigan Mold Lien Act, which lien rights Seller will exercise if payment by the Buyer is not made promptly and pursuant to the Terms and Conditions of Sale.

- 16. Permits and Compliance.** Seller is not responsible for obtaining any permit, inspection or license that is required for installation or operation of the Goods or performance of the Services.
- 17. Safety Features.** Buyer shall install and operate the Goods and any equipment on which Seller has performed the Services properly and according to Seller's operating instructions and shall not remove or change any safety device, warning or operating instructions that Seller placed on the Goods or other equipment. Buyer is responsible for providing the necessary training necessary to properly, safely and effectively run and maintain the Goods, components, equipment or machinery provided by Seller.
- 18. Proper Maintenance.** Buyer agrees to properly and adequately maintain and care the Goods supplied by Seller. Buyer's failure to properly and adequately maintain and care for the Goods supplied by Seller will nullify and void any and all warranty provided by Seller on the Goods.
- 19. Components of Another Product.** If any of the Goods constitute parts or components that are to be incorporated or installed in a product that is manufactured or assembled by or for Buyer, or if the Services are performed on any components that are to be incorporated or installed in a such a product, then (1) Buyer shall obtain, or cause the end-user of the product to obtain, all permits, inspections and licenses required for installation or operation of the product, (2) Buyer shall cause the product to conform to all applicable laws, ordinances, regulations, codes and standards and (3) Buyer shall place on the product all safety devices and warnings, and shall furnish to its buyer all operating instructions, that are necessary or desirable to prevent any death, personal injury or property damage from being caused by any use or operation of the product.
- 20. Intellectual Property and Confidentiality.** All inventions (whether or not patentable), devices, technologies, ideas, improvements, processes, systems, software and other works and matters that Seller creates or develops in the course of Seller's design, development or manufacture of the Goods or performance of the Services and all drawings and specifications that Seller provides to Buyer ("**Intellectual Property**") shall be Seller's sole property, and Buyer assigns, and agrees to assign, to Seller all right, title and interest that Buyer now has or in the future acquires in the Intellectual Property. Buyer shall not disclose or use any of the Intellectual Property or any information about Seller's business, operations or activities, except to the extent necessary for Buyer to use the Goods or Services. Any pricing information provided by Seller to Buyer is proprietary to Seller and shall be held in confidence by Buyer, shall only be used by Buyer in connection with this sale, and shall not be used for any other purposes or disclosed to third parties without Seller's prior written consent. Buyer shall be liable for any loss to Seller or commercial gain by others from unauthorized use of confidential information occasioned by Buyer's failure to comply with this provision.
- 21. Cancellation.** No accepted purchase order for the Seller's Goods and Services may be cancelled for any reason, in whole or in part, without Seller's prior written approval. In the

event a cancellation is approved by Seller then, unless otherwise agreed, Buyer shall pay Seller (i) all costs, expenses and related damages Seller incurs in relation to the order and/or the cancellation of the order, and (ii) any shipping charges and other out of pocket expenses incurred by Seller in relation to the cancellation.

**22. Insecurity and Adequate Assurance.** If Seller ever believes in good faith that it has grounds for insecurity as to Buyer's performance under the contract, then Buyer shall provide adequate assurance of due performance within ten (10) days after Seller demands the assurance, which shall be considered to be a reasonable time. Buyer's failure to provide adequate assurance of due performance within ten (10) days after Seller demands the assurance do so shall be considered to be a repudiation by Buyer of the contract and of all other then-existing contracts that provide for Buyer to purchase Goods and/or Services from Seller ("**Outstanding Contracts**"). "Grounds for insecurity" include, without limitation, (1) Buyer's failure to make a payment to Seller or to perform another obligation under the contract or an Outstanding Contract, (2) Buyer's insolvency, (3) a deterioration in Buyer's financial condition after the contract was entered into and (4) Buyer's failure to provide financial statements and other financial information to Seller promptly upon Seller's request. "Adequate assurance of due performance" includes, without limitation, providing a letter of credit or comparable security for all obligations of Buyer that then exist or that will arise in the future under all Outstanding Contracts.

**23. Indemnity.** Buyer shall indemnify and hold harmless Seller with respect to all damages, losses, claims and expenses, including but not limited to consequential and incidental damages and attorney fees, that Seller incurs as a result of Buyer's breach of any of Buyer's obligations under these Terms and Conditions of Sale or any claimed unfair competition or patent, trademark or copyright infringement or any other claim resulting from Seller's manufacture of the Goods, or performance of the Services, to Buyer's specifications.

**24. Seller's Rights.** Seller has all rights and remedies given to Seller by applicable law, and Seller's rights and remedies are cumulative and may be exercised from time to time. A waiver by Seller of any right on one occasion will not be a waiver of any future exercise of that right. If Seller finds it necessary to commence any type of collections proceedings to collect balances due from the Buyer, including lien enforcement actions, the Buyer agrees to pay all costs of collections and all attorneys fees incurred by Seller.

**25. Governing Law and Language.** This agreement shall be considered to have been made in the State of Michigan, and it shall be governed by and interpreted according to Michigan law, excluding the United Nations Convention on Contracts for the International Sale of Goods. These Terms and Conditions of Sale shall be interpreted in the English language only. Either party may bring any action that arises out of or relates to this agreement in any federal or state court in Grand Rapids, Michigan, that has jurisdiction of the subject matter, and Buyer irrevocably consents that any such court shall have personal jurisdiction over Buyer and waives any objection that the court is an inconvenient forum. Any action that Buyer brings against Seller for breach of this agreement or for any other claim that

arises out of or relates to the Goods or their design, manufacture, sale or delivery or the Services must be brought within 1 year after the cause of action accrues.

**26. Entire Agreement; Amendment.** The terms on Seller's quotation or order acknowledgment and these Terms and Condition of Sale contain the entire agreement between Buyer and Seller. Any change in this agreement must be by a signed writing. This agreement is not assignable or transferable by either party, except to its successor, or to the transferee of all or substantially all the party's assets to which this contract relates.