



TERMS AND CONDITIONS OF SALE

1. The Agreement. All sales by FLEXFAB, LLC and affiliates (the “Seller”) to the purchaser of Goods (the “Buyer”) shall be governed by the following terms and conditions of sale. The agreement between Seller and Buyer with respect to the sale of Goods described in the Seller’s quote (the “Goods”) shall consist only of the terms appearing herein and in the Seller’s quote or proposal and any attachments, exhibits and supplements (the “Contract”) together with any terms mutually agreed to in writing hereafter by Seller and Buyer. Buyer’s issuance of a purchase order constitutes its acknowledgment that Seller’s quote is the first document exchanged, containing the essential elements of, and therefore constitutes an offer. Seller objects to and shall not otherwise be bound by any additional or different terms, whether printed or otherwise, in Buyer’s purchase order or in any other communication from Buyer to Seller. The Contract shall be for the benefit of Seller and Buyer and not for the benefit of any other person. Prior courses of dealing, trade usage and verbal agreements not reduced to a writing signed by Seller, to the extent they differ from, modify, add to or detract from the Contract, shall not be binding on Seller. There are no agreements, promises or understandings, either verbal or written that are not fully expressed herein. No statements, recommendations, or assistance by either party has been relied upon by either party or shall constitute a waiver by either party of the provisions hereof.

2. No Implied Acceptance. Notwithstanding any contrary provision in Buyer’s purchase order, no action by Seller such as delivery of Goods, the rendering of services or the commencement of work on Goods to be specially manufactured for Buyer, will be deemed an acceptance by Seller of terms different than those contained in this Contract, whether contained on the Purchase Order or not..

3. Termination or Modification. The Contract may be modified or terminated only upon Seller’s written consent. If all or part of the Contract is terminated, Buyer, in the absence of contrary written agreement with Seller, shall purchase completed Goods at the Contract price and work-in-progress and raw materials (including sub-suppliers’ finished goods, work-in-progress and raw materials) at Seller’s actual cost. Upon termination, Buyer shall also pay in full any tooling that has been amortized in the piece price.

4. Terms of Payment. Payment terms are net thirty (30) days from the date of shipment unless otherwise agreed to in writing. Payments shall be made to Seller at the address specified in the invoice. Pro rata payments shall become due, as shipments are made. If any shipment is delayed by Seller at the request of Buyer, payment shall become due on the date when Seller is prepared to make shipment. Prices are Ex Works Seller’s (including Seller's affiliate's, as applicable) Dock Incoterms 2010 unless otherwise agreed to in the Contract. Payment terms for tooling shall be mutually agreed upon by Buyer and Seller. Unless Seller consents in writing, Buyer may not setoff or deduct amounts owed to Buyer by Seller, Seller’s affiliates or others. When any payment is not paid on or before its due date, Buyer agrees to pay a late charge on the sum outstanding, from the due date for receipt of payment to the actual date of receipt of payment, at a rate of one and one half percent (1.5%) per month on the unpaid balance. If a payment is not paid on or before its due date, Buyer agrees that Seller may also cease performance under any and all of Buyer’s purchase orders whether or not related to the late payment. Whenever, in the judgment of Seller, the financial condition of the Buyer does not justify the continuation of production or shipment on the specified terms of payment, the Seller may require full or partial payment in advance. Seller shall have a security interest in all tools, molds, and dies and other property of Buyer, which come into the possession of Seller, as security for all sums owing from Buyer to Seller from time to time.

5. Delivery. Goods will be delivered Ex Works Seller’s (including Seller's affiliate's, as applicable) Dock Incoterms 2010 with title transferring simultaneously (“Delivery”). Buyer shall provide Seller with a minimum of no less than quoted lead time. Delivery dates are not guaranteed but are estimated on the basis of receipt by Seller of all information to be furnished by Buyer. Seller shall, in good faith, endeavor to meet estimated delivery dates. Seller shall not be responsible for claims for error in quantity, weight or number not made within ten (10) days after Delivery of Goods. If Goods are not ready for delivery in time to meet Buyer’s shipping schedules, the party causing the delay will be responsible for additional costs of any resulting expedited or other special transportation. Buyer shall be responsible for any additional costs incurred by Seller to meet any increases in quantity above Order within quoted lead time. Buyer will also be responsible for additional costs of expedited or other special transportation that Buyer may request for reasons other than a delay caused by Seller.

6. Installment Deliveries as Separate Sales. Each installment of Goods to be delivered pursuant to this Contract is to be considered as a separate sale and Buyer shall be liable to pay the agreed price for each such installment without regard to any failure to deliver other installments, and Seller’s breach or default in the delivery of any installment shall not give Buyer the right to refuse to receive any other installments.

7. Risk of Loss. Buyer assumes all risk of loss of Goods upon Delivery by Seller to carrier. Seller agrees to package the Goods, put them in the possession of a carrier, make appropriate arrangements for their transportation, and obtain and deliver documents necessary to enable Buyer to obtain possession of the Goods. Seller shall not be obligated to obtain insurance or to prepay transportation costs unless it has agreed to be responsible for said costs in writing. Buyer agrees to pay all loading, unloading and other charges incidental to transportation, including damage to Goods during freight. Seller will use reasonable efforts to follow Buyer's shipping instructions, but may make reasonable changes thereto with notice to Buyer. Breach of this Contract shall have no effect upon this provision controlling the risk of loss.

8. Limited Warranties. Seller warrants the Goods will be free from defects of material and workmanship. SELLER MAKES NO OTHER WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, BY OPERATION OF LAW OR OTHERWISE, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ALL OF WHICH ARE HEREBY SPECIFICALLY DISCLAIMED. IN PARTICULAR, BUT WITHOUT LIMITING THE GENERALITY OF THE FOREGOING EXCLUSION, (i) IF THE GOODS ARE MADE ACCORDING TO THE BUYER'S SPECIFICATIONS, SELLER DOES NOT WARRANT ADEQUACY OF SUCH SPECIFICATIONS OR THAT THE GOODS WILL PERFORM IN ACCORDANCE WITH SUCH SPECIFICATIONS, (ii) IF ANY GOODS FURNISHED HEREUNDER ARE MADE BY ANY SUPPLIER OTHER THAN SELLER, SELLER DOES NOT PROVIDE ANY WARRANTY WITH RESPECT TO SUCH GOODS, (iii) SELLER DOES NOT WARRANT THAT THE GOODS ARE IN COMPLIANCE WITH THE LAWS OF ANY COUNTRY, AND (IV) SELLER DOES NOT WARRANT DESIGN, DESIGN PERFORMANCE, DURABILITY OR SYSTEM INTEGRATION OF THE MODULES, ASSEMBLIES OR ANY COMPONENTS THEREOF. Seller's sole obligation under the foregoing warranties will be limited to either, at Seller's option, replacing or repairing defective Goods or refunding the purchase price paid for such Goods previously paid by Buyer, and Buyer's exclusive remedy for breach of any such warranties will be enforcement of such obligation of Seller. These warranties will not extend to Goods subjected to misuse, abuse, neglect, damage accident or improper installation or maintenance or which have been altered or repaired by anyone other than Seller or its authorized representative. Seller shall be responsible for processing warranty claims for defective Goods pursuant to this Contract only for a period of ninety (90) days after shipment.

9. Remedies and Limitation of Liability. In the event Buyer claims Seller has breached any of its obligations under the Contract, whether of warranty or otherwise, Seller may request the return of Goods and tender to Buyer the purchase price previously paid by Buyer, and in such event, Seller shall have no further obligation under the Contract except to refund such purchase price upon redelivery of the Goods. No Goods may be returned without Seller's written request. If Seller requests the return of the Goods, the Goods will be redelivered to Seller at Buyer's expense by lowest cost mode of transportation unless otherwise authorized in writing by Seller. Seller reserves the right to inspect any claimed defect, repair defective Goods or install replacement parts, and perform any adjustment incident to satisfactory operation of the Goods.

In the event Buyer claims Seller has breached any of its obligations under the Contract, whether of warranty or otherwise, and Seller has not delivered any Goods to Buyer, Seller may tender to Buyer the purchase price previously paid by Buyer for those Goods, and, in such event, Seller shall have no further obligation under the Contract except to refund such purchase price previously paid by Buyer. The remedies contained in this and the preceding paragraph shall constitute the sole recourse of Buyer against Seller for breach of any of Seller's obligations under the Contract, whether of warranty or otherwise. In no event shall Seller be liable for indirect, incidental, consequential, exemplary, punitive, or special damages, including without limitation, lost revenues, profits or recall expenses, nor shall Seller's liability on any claim for damages arising out of or connected with the Contract or the manufacture, sale, delivery or use of the Goods exceed the purchase price of the Goods previously paid by Buyer to Seller. Any warranty rights which Seller may have relating to any Goods provided by other suppliers will, unless contractually prohibited, be assigned to Buyer upon request. Seller shall not be liable for failure to perform its obligations under the Contract resulting directly or indirectly from circumstances beyond Seller's reasonable control.

In the event Seller claims Buyer has breached any of its obligations under the Contract, Seller may recover damages resulting from the default, including (i) the Contract price for completed Goods and Services and the cost of work-in-progress and raw materials and (ii) the cost of unreimbursed and unamortized research and development, capital equipment, property, and supplies that are unique to the Goods.

10. Excusable Delays and Force Majeure. Neither party will be liable for any delay in performance of this Contract or delivery of Goods when the delay is caused directly or indirectly by fire, flood, accident, riot, acts of God, war, governmental interference, strikes or other labor difficulties, shortage of labor, fuel, power, materials or supplies, transportation delays, failure of tooling or the repair, maintenance or rehabilitation of the tooling, or any other cause or causes whatsoever beyond its control. Additionally, Seller shall be given the opportunity to amend any submitted quotations upon the happening of the above events which result in raw material price increases.

11. Indemnification. Seller will indemnify and defend Buyer against third-party claims asserted against Buyer or its customers for bodily injury, death, or property damage, if and to the extent such injury, death or damage is directly attributable to Seller's defective design or manufacture of Goods. The parties will cooperate with each other to determine the root cause of a defect in or failure of the Goods and an equitable allocation of responsibility among all responsible parties. Seller may examine and test all available Goods that are subject to a third-party claim. Buyer will include Seller in settlement discussions where indemnity has been or will be sought from Seller, and Buyer may not settle or compromise any third-party claim that gives rise to an indemnification claim without Seller's prior written consent.

12. Patents. Seller does not transfer or license to Buyer any patent, trade secret, trademark, service mark, copyright, or other intellectual property right ("Intellectual Property Right") related to the Goods. Seller will indemnify and defend Buyer and its customers against claims, liabilities, losses, damages, costs and expenses, including reasonable legal fees, arising out of the actual infringement by the Goods of a third-party Intellectual Property Right. If a claim under this section results, or is likely to result, in an injunction or other order that would prevent Seller from supplying or Buyer from using Goods for their intended purpose, Seller will at its option and expense (i) secure a license of the Intellectual Property Right that permits Seller to continue supplying the Goods to Buyer, (ii) modify the Goods so that they become non-infringing, so long as the modification does not materially alter the operation or performance of the Goods, or (iii) replace the Goods with non-infringing but practically equivalent Goods. Seller shall have no liability under this section if and to the extent that a claim of infringement is based on (i) the Goods being modified by Buyer or a third party, (ii) the Goods being modified by Seller upon Buyer's request, (iii) use or interconnection by Buyer of the Goods in combination with other products not made or sourced by Seller, or (iv) Goods made to designs or specifications not provided by Seller.

13. Tooling. Buyer's tools, molds, fixtures, gauges, dies, etc. ("Tooling") in the possession of Seller are at the risk of Buyer, and Seller does not undertake to insure such property. Seller will be responsible for normal maintenance of all tooling necessary to produce the Goods. Buyer, however, will be responsible for major repairs, rehabilitation and replacement of its tooling. Seller will return tooling to Buyer upon request via Ex Works Seller's (including Seller's affiliate's, as applicable) Dock. Notwithstanding any return of its tooling to Buyer, Buyer shall acquire no interest in any proprietary design and/or processing information evident in the tooling used by Seller to produce the Goods for Buyer. Buyer's tooling which is used to produce the Goods that are the subject of this Contract shall not be removed from Seller's possession unless Seller fails to deliver parts complying with mutually agreed upon specifications and delivery schedules, and fails to make reasonable progress toward compliance after written notice from Buyer. In addition, Buyer grants Seller a security interest in all Buyer owned tooling held by Seller. Seller may retain possession of that tooling until all amounts owing to Seller by Buyer are paid.

14. Changes. Changes in the work to be performed under the Contract may be made only if Buyer submits written instructions for such changes and if Seller accepts those changes in writing. If any such approved changes in drawings, materials, quantities, dates of performance or design of the part, units, tools, or fixtures, in Seller's sole judgment, increase Seller's costs or result in the scrapping of current inventory thus rendering it unusable, Seller may condition approval of any such change or scrap on agreement by Buyer to a price increase to recoup such cost increase.

15. Cancellation/Reschedule of Purchase Orders.

A. Unless otherwise agreed upon in writing, in the event of any cancellation of all or part of any purchase order by Buyer, Buyer agrees to pay Seller for all reasonable and allocable materials, tooling, material management, labor, overhead and general and administrative costs and expenses incurred as a result of any such cancellation within thirty (30) days from the date of Seller's invoice setting forth such costs and expenses. By way of illustration and not limitation, Seller's costs incurred by reason of Buyer's cancellation may include the storage costs for the items to be purchased, and costs associated with relocating the production to an alternate source, as well as the costs of unreimbursed and/or unamortized research and development costs, capital equipment, raw materials and other property and supplies of Seller needed to produce and which are unique to the Goods.

B. In the event of such cancellation and upon receipt of payment as described above, all completed Goods, assemblies in process, components and any tooling, and equipment owned by Buyer and furnished to Seller under this Contract shall be returned to Buyer in accordance with instructions specified by Buyer.

C. In the event of any cancellation, inventory carrying charges will be assessed at a rate of two percent (2%) per month on the value of such inventory until the relevant inventory is disposed of and/or paid for by Buyer.

D. In the event of any reschedule of delivery of Goods by Buyer for a period of more than two (2) weeks, inventory carrying charges will be assessed at a rate of two percent (2%) per month until such Goods are shipped.

16. Service Goods. Seller will make comparable Goods available to Buyer for service parts for up to five (5) years following the end of production for the Goods. The parties will negotiate in good faith the price, quantity and delivery terms for service parts taking into account the availability and costs of necessary materials, supplies, labor, and other costs for equipment set up, packaging and similar factors.

17. Disclosure and Use of Technical Information. Any technical information disclosed by either Buyer or Seller to the other during the term of this Contract is proprietary to each and may not be used by the other or disclosed by the other to any other entity without the written consent of the owner of the technical information. Any technical information owned or developed by Seller, including but not limited to, patents, trademarks, copyrights, know-how and proprietary information, and used for the supply of Goods under this Contract shall remain the sole and exclusive property of Seller and no express license with respect thereto shall be given other than in a writing signed by Seller. Except as authorized in writing by and on terms acceptable to Seller, Buyer shall have no right to disclose any technical information to any third party or to have any third party make any Goods that use the technical information owned by Seller.

18. Export Restrictions. Buyer will not resell or otherwise distribute the Goods in any foreign territory where applicable laws would not provide the protections to Seller and the Goods intended under this Contract, or where there is a significant risk that the Goods would fall into the public domain. Buyer will comply with all applicable export and re-export control laws, rules, and regulations. Specifically, Buyer covenants that it shall not, directly or indirectly, sell, export, re-export, transfer, divert, or otherwise dispose of any products, software, or technology (including products derived from or based on such technology) received from Seller under this Contract to any destination, entity, or person prohibited by the laws or regulations of the United States, without obtaining prior authorization from the competent government authorities as required by those laws, rules, and regulations. Buyer will indemnify, to the fullest extent permitted by law, Seller from and against any fines or penalties that may arise as a result of Buyer's breach of this provision. This export control clause shall survive termination or cancellation of this Contract.

19. Disputes. This Contract shall be governed by and interpreted under the laws of the State of Michigan, without regard to its conflicts of laws principles. The parties will first endeavor to resolve through good faith negotiations any dispute arising under this Contract. However, if a dispute cannot be resolved within a reasonable time through good faith negotiations, the parties agree that any claim or dispute between them or against any agent, employee, successor, or assign of the other, whether related to this Contract or otherwise, and any claim or dispute related to this Contract or the relationship or duties contemplated under this Contract, including the validity of this arbitration clause, shall be resolved by binding arbitration in the English language administered by the JAMS International Arbitration Rules then in effect. The arbitration proceeding shall take place in Grand Rapids, Michigan. Notwithstanding any other choice of law by the parties contained in this Contract or elsewhere, the parties' agreement to arbitrate shall be governed by the Federal Arbitration Act, (9 U.S.C. Sections 1-16). Any award of the arbitrator(s) may be entered as a judgment in any court having jurisdiction.

20. Taxes. Sales, use, occupation, excise and other taxes upon the production, sale or use of the Goods are not included in the price and such taxes or any costs in connection therewith, wherever levied and whether imposed before or after payment of invoice, shall be paid by Buyer.

21. Minimum Purchase Requirements. Buyer hereby acknowledges and agrees that the prices set forth in this Contract are contingent upon Buyer's agreement to purchase the total quantities set forth in the Buyer's request for quote/proposal. If Buyer fails to purchase at least ninety percent (90%) of the quantities of Goods contained in its request for quote/proposal, Buyer agrees that the pricing on the Goods delivered to Buyer shall be adjusted retroactively to reflect the impact of lower volume on material pricing, labor efficiencies and other cost and expenses of Seller. Buyer hereby agrees to pay Seller such additional sums within thirty (30) days of the date of Seller's invoice for payment.

22. Assignment and Delegation. No right or interest in this Contract shall be delegated or assigned by Buyer without the written permission of Seller. Any attempt at assignment or delegation shall be void unless made in conformity with this paragraph. Buyer warrants that it is purchasing for its own account and not as an agent.

23. Relationship of the Parties. Buyer and Seller are independent contractors, and nothing in the Contract makes either party the agent or legal representative of the other party for any purpose. Neither party has authority to assume or to create any obligation on behalf of the other party. Each party has participated in negotiating and drafting this Contract, and it is to be

construed as if the parties had drafted it jointly, as opposed to being construed against a party because it was responsible for drafting one or more provisions of this Contract.

24. Waiver. The failure of either party to enforce any right or remedy provided in the Contract or by law on a particular occasion will not be deemed a waiver of that right or remedy on a subsequent occasion or a waiver of any other right or remedy.

25. Entire Agreement. The Contract constitutes the entire agreement between the parties with respect to its subject matter, and supersedes all prior oral or written representations or agreement by the parties with respect to the subject matter of the Contract, including Buyer's request for quotation and Seller's quotation unless specifically incorporated in the Contract. No subsequent terms, conditions, understandings or agreements purporting to modify the terms of the Contract will be binding unless in writing and signed by both parties.

26. Severability. A finding that any provision of the Contract is invalid or unenforceable will not render the entire Contract invalid or unenforceable.