

## CASCADE ENGINEERING, INC. - TERMS AND CONDITIONS OF SALE

**The Agreement.** All sales by Cascade Engineering, Inc. (the "Seller") shall be governed by the following terms and conditions of sale. The agreement between Seller and any party purchasing goods or services (the "goods") from the Seller (the "Buyer") 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. The contract is the entire agreement among the parties, and supersedes all prior and contemporaneous agreements between the parties, with respect to the subject matter of this contract. 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.

1. **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 any purchase order from Buyer with terms different or additional than those contained in this contract.

2. **Terms of Payment.** Payments are due from Buyer net thirty (30) days from date of Seller's invoice, unless otherwise provided in the contract. Payments shall be made to Seller at the address specified in the invoice, without any offset or deduction for any reason. Buyer waives all rights of offset and deduction. 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 based on the date when Seller is prepared to make shipment, and Seller may invoice based on such date. Prices are F.O.B. Seller's shipping point unless otherwise stated in the contract. Payment terms for tooling are one-third at the time of order, one-third upon production of first article, and one-third upon first article approval, unless otherwise agreed by Seller. 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 1.5% per month, or, if lower, the highest interest rate permitted by law, 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, Seller may require full or partial payment in advance or, in Seller's sole discretion, stop or delay production or shipment. Seller shall have a purchase money security interest in all goods purchased by Buyer, and 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. Buyer hereby conveys power of attorney to Seller for the sole purpose of executing documents necessary to perfect Seller's security interest in the goods/property and Buyer further agrees to execute and deliver any documents requested by Seller for the purpose of perfecting such security interest.

3. **Delivery.** Delivery dates are not guaranteed but are estimated on the basis of immediate receipt by Seller of all information to be furnished by Buyer, and all shipments are subject to Seller's production schedule. Seller may ship overages or underages to the extent of 10% of quantity ordered. Seller shall not be responsible for claims for error in quantity, weight or number not made within 10 days after Buyer's receipt of goods. 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. Seller shall not be liable for any delay in performance of this contract or delivery of goods, when and to the extent such failure or delay is caused by or results directly or indirectly by, including, without limitation, the following: (a) acts of God; (b) flood, fire, earthquake, explosion, epidemics, pandemics or quarantine; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order or law; (e) actions, embargoes or blockades in effect on or after the date of this Agreement; (f) changes in laws or regulations, or action by any governmental authority; (g) national or regional emergency; (h) strikes, labor stoppages or slowdowns or other industrial disturbances; (i) shortage of adequate materials, supplies, fuel, power or transportation facilities; (j) failure of tooling or the repair, maintenance or rehabilitation of the tooling; and (k) other events beyond its reasonable control. In the event Seller is delayed in performance by Buyer or at Buyer's request, Buyer will be responsible for any resulting increase in cost, including handling and insurance charges and storage charges, and Seller may invoice goods ready for shipment with payment to be made in accordance with the payment schedule as if the goods had been shipped. In the event delay is caused by Buyer's failure to furnish information necessary for Seller's performance, Seller may extend the shipment date for a reasonable time in proportion to the period of Buyer's delay. 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.

4. **Transportation; Risk of Loss.** 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. Buyer agrees to pay all loading, unloading and other charges incidental to transportation. Seller will attempt to follow Buyer's shipping instructions, but may make reasonable changes thereto. Whether or not Seller pays shipping charges, all risk of loss of goods shall pass to Buyer, and Buyer agrees to assume the same, upon delivery of the goods to a carrier. Breach of this contract shall have no effect upon this provision controlling the risk of loss.

5. **Limited Warranties and Remedies.** The goods sold under this contract shall have the limited warranties and remedies (in effect at the time of purchase), as posted on our website at [www.cascaden.com](http://www.cascaden.com).

6. **Limitation of Liability.** In no event shall Seller be liable for incidental, consequential 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 under this particular contract by Buyer to Seller.

7. **Indemnification.** Buyer shall indemnify Seller and its officers, employees, agents and representatives against, and hold the same harmless from, any and all liabilities, losses, damages, claims, costs and expenses, including reasonable attorney's fees (collectively "liabilities"), arising out of, connected with, or resulting from the goods, including but not limited to, the design, manufacturing, selection, delivery, possession, use or operation of the goods. Seller's entire liability for goods is limited as set forth in paragraph 5 above. Buyer shall indemnify Seller and its officers, employees, agents and

representatives against all liabilities involving alleged violation of patent rights relating to Buyer's specifications and/or the goods resulting from those specifications. Buyer shall bear the full and exclusive burden for all liabilities in any such instance.

8. **Tooling.** The risk of loss of Buyer's tools, molds, dies and secondary equipment ("tooling") in the possession of Seller belongs to 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 may dispose of any tooling at any time after one year after completion of the most recent production order requiring the use of such tooling, and Seller shall not be liable for the continued retention or availability of any such tooling after the expiration of such period. 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 as security for all sums owing from Buyer to Seller from time to time. Seller may retain possession of that tooling until all amounts owing to Seller by Buyer are paid.

9. **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, Seller may condition approval of any such change on agreement by Buyer to a price increase to recoup such cost increase, plus reasonable return.

10. **Cancellation/Reschedule of Purchase Orders.** Neither this contract nor any related purchase order may be terminated, cancelled or modified (in whole or in part) except with Seller's written consent. In the event of any termination or cancellation of all or part of this contract or any purchase order by Buyer, Buyer agrees to pay Seller for all reasonable and allocable materials, material management, labor, overhead and general and administrative costs and expenses incurred as a result of any such termination or cancellation, plus a reasonable profit hereby stipulated to be 10% of such costs and expenses on the payment terms set forth above. By way of illustration and not limitation, Seller's costs incurred by reason of Buyer's termination or 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, and other property and supplies of Seller needed to produce and which are unique to the goods. In the event of such termination or 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. In the event of any termination or cancellation, inventory carrying charges will be assessed at a rate of 2% per month on the value of such inventory until the relevant inventory is disposed of and paid for by Buyer. In the event of any reschedule of delivery of goods by Buyer (which requires Seller's written consent), (a) payment shall be due based on the date when Seller is prepared to make shipment, and Seller may invoice based on that date, and (b) inventory carrying charges will be assessed at a rate of 2% per month until such goods are shipped.

11. **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 person or 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 production or supply of goods under this contract shall remain the sole and exclusive property of 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 itself make or have any third party make any goods that use the technical information owned by Seller. Seller is and shall be the sole owner of any and all intellectual property, proprietary rights, work product and any other items (directly or indirectly), in whole or in part, resulting from, related to or otherwise made, originated, discovered, developed, reduced to practice or conceived by Seller or its affiliates or subcontractors in connection with performing under this contract.

12. **Arbitration; Governing Law.** Any and all actions concerning any dispute arising hereunder shall be filed and maintained only in the Circuit Court of Kent County, Michigan or the United States District Court for the Western District of Michigan. The parties specifically consent and submit to the jurisdiction and venue of such state or federal court, and waive any objections either may have based on improper venue or forum non conveniens to the conducting of any proceeding in any such court. The terms and conditions of this contract shall be governed, construed, interpreted and enforced in accordance with the domestic laws of the State of Michigan, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of Michigan or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Michigan. This contract shall not be subject to or governed by the United Nations Convention on Contracts for the International Sale of Goods.

13. **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.

14. **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 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 costs and expenses of Seller. Buyer hereby agrees to pay Seller such additional sums within 30 days of the date of Seller's invoice for payment.

15. **Service Parts.** Seller will not have any obligation to make goods available to Buyer for part model year service parts. However, notwithstanding the foregoing, if Seller agrees to make such service parts available to Buyer, 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.

16. **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.