

TOOLING TECHNOLOGY, LLC
TERMS AND CONDITIONS OF SALE

1. Sale and Purchase. Tooling Technology, LLC (the “Seller”) and the customer (the “Customer”) identified on the credit application, quote, order acknowledgment, or other similar document (the “Primary Document”) to which these Terms and Conditions of Sale (“Terms and Conditions”) are referenced, contemplate the sale of products, services, or a combination thereof from Seller to Customer (the “Products”), subject to the Primary Document and these Terms and Conditions (collectively, the “Agreement”). If the Primary Document is a credit application, the Agreement also includes the transaction-specific terms of the quote or order acknowledgment between Seller and Customer, which transaction-specific terms are also deemed part of the Primary Document. No terms and conditions submitted to Seller shall be effective, and Seller hereby objects to any such terms and conditions.

2. Purchase Price. As consideration for the sale of the Products, Customer shall pay Seller the purchase price identified on the Primary Document (the “Purchase Price”).

3. Payment of Purchase Price and Other Charges; Credit Terms. Credit terms extended to Customer are at all times subject to the discretion of Seller, and Seller may at any time require payment in full, in advance of or after the sale of the Product. Unless other arrangements are already in place, the Purchase Price and other charges owing Seller under the Agreement shall be payable within 30 days from the date of Seller’s invoice. Amounts owing to Seller but unpaid after the date those amounts were due shall accrue a service charge of 2.5% per month, compounded monthly.

4. Delivery and Performance. The delivery of the Product (and performance of services) will be scheduled by mutual agreement between the parties. Seller shall not be liable for delays in delivery or performance provided it is using good faith efforts to perform its obligations. Seller also shall not be responsible for any delays in delivery due in whole or in part to circumstances not within its control. Any claim of shortage must be made to Seller no later than 48 hours after Customer’s receipt of the Product.

5. Risk of Loss. Risk of loss for damage to the Product shall pass to Customer FOB Seller’s manufacturing or distribution facility.

6. Taxes. The Purchase Price provided for in the Primary Document is exclusive of any sales or other taxes with respect to the purchase of the Product by Customer, and Customer shall be solely responsible for payment of all such taxes.

7. Warranty Disclaimers. **SELLER WARRANTS THAT IT WILL REPAIR OR REPLACE, AT SELLER’S ELECTION, ANY PRODUCT THAT DOES NOT CONFORM TO THE SPECIFICATIONS IDENTIFIED ON THE PRIMARY DOCUMENT, PROVIDED THAT SELLER IS NOTIFIED OF A BREACH NO LATER THAN NINETY (90) DAYS FOLLOWING CUSTOMER’S RECEIPT OF THE PRODUCT. REPLACEMENT OR REPAIR ARE THE SOLE REMEDIES FOR BREACH OF SELLER’S WARRANTY. OTHER THAN THAT WARRANTY, THE PRODUCT IS BEING SOLD TO CUSTOMER “AS IS,” AND SELLER HEREBY DISCLAIMS ANY AND ALL EXPRESS AND IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**

8. Disclaimer of Consequential Damages; Limitations on Remedies. **SELLER HEREBY DISCLAIMS ANY AND ALL CONSEQUENTIAL AND INCIDENTAL DAMAGES ARISING OUT OF OR RELATING TO THE AGREEMENT, INCLUDING BUT NOT LIMITED TO LOSS OF USE, DOWNTIME, LOST PROFITS, COVER, RECALL COSTS, LOSS OF GOODWILL, FREIGHT EXPENSES, INDEPENDENT CONTRACTOR EXPENSES, AND EMPLOYEE WAGES AND BENEFITS. IN NO EVENT SHALL SELLER’S LIABILITY TO CUSTOMER OR ANY THIRD PARTY, ARISING OUT OF OR RELATING TO THE PRODUCT OR THE AGREEMENT,**

WHETHER FOR BREACH OF WARRANTY, BREACH OF CONTRACT, OR ARISING IN TORT OR OTHERWISE, EXCEED THE AMOUNT OF THE PURCHASE PRICE FOR THE PRODUCT TO WHICH THE CLAIM RELATES, OR \$500, WHICHEVER IS THE GREATER AMOUNT.

9. Statute of Limitations. No claim or cause of action may be brought against Seller for breach of the Agreement, breach of warranty, or any claim arising in contract, tort or otherwise, more than one (1) year following accrual of that claim or cause of action.

10. Default; Remedies; Security Agreement. Customer shall be in default under the Agreement for failure to timely pay the Purchase Price or to perform any other obligation of Customer under the Agreement, or if Customer is subject to any bankruptcy or receivership proceeding or makes an assignment for the benefit of creditors. In the event of default, Seller shall have all rights and remedies available to it at law or in equity. Customer further grants to Seller a purchase money security interest in the Product, in order to secure all obligations of Customer under this Agreement. Customer authorizes Seller to file UCC financing statements reflecting its interest in the Product. In the event Seller takes any action to enforce the Agreement, Customer agrees to immediately reimburse to Seller, on demand, all attorney fees, court costs, and other expenses incurred in connection with such enforcement. Customer shall be considered in default under the Agreement in the event Customer is in breach of or default under any other agreement between Seller and Customer.

11. Governing Law, Exclusive Jurisdiction. The Agreement shall be governed by, construed, and enforced in the accordance with the laws of the State of Ohio, without reference to conflict of law principles. Any claim, cause or action, or dispute arising out of or relating to the Agreement shall be subject to the exclusive jurisdiction of state courts of competent jurisdiction in Shelby County, Ohio, unless federal courts would have exclusive jurisdiction, in which case exclusive jurisdiction shall be in the District Court for the Southern District of Ohio. The parties hereby consent to jurisdiction and venue in accordance with this Section 11.

12. No Reliance on Assistance; Modifications and Installation. Any advice or recommendations made to Customer by Seller relating to the Product cannot be relied upon by Customer, Seller shall not be liable therefor, and Customer assumes the risk of acting on any such advice or recommendations. Seller makes no representation or warranty: (i) that any Product will perform in connection with any product or installation not supplied by Seller; (ii) as to any Product that is modified; or (iii) as to any Product that is not installed in strict accordance with installation procedures of Seller. Customer agrees to indemnify, defend, and hold Seller and its affiliates and their respective members, managers, officers, directors, employees, and agents harmless, from and against any claims, causes of action, damages, losses and costs (including attorney fees) arising out of or relating to any matter or circumstance for which Seller is not liable as a result of the application of this Section 12.

13. No Assignment. Customer may not assign any rights or delegate any duties arising out of or relating to the Agreement without the prior written consent of Seller. Any attempted assignment or delegation without such consent shall be void and of no effect.

14. No Waiver. No waiver of any breach of the Agreement shall be deemed effective unless in a writing signed by the waiving party, and shall not be deemed a waiver of any other breach, or a waiver of the same breach that continues beyond the agreed-upon waiver period.

15. Entire Agreement; Amendments. The Agreement constitutes the entire agreement between the parties with respect to the matters contemplated therein, and supersedes any prior or contemporaneous agreements, understandings, and negotiations. The Agreement may only be amended or modified by a writing signed by Seller and Customer.