

Lightning Manufacturing Group, LLC Terms and Conditions of Sale

1. Governing Terms - THESE TERMS AND CONDITIONS ("Terms and Conditions") GOVERN ALL SALES OF GOODS OR SERVICES BY LIGHTNING MANUFACTURING GROUP, LLC, A MICHIGAN LIMITED LIABILITY COMPANY ("SELLER"), TO BUYER. SELLER AGREES TO SUPPLY THE ORDERED GOODS OR SERVICES ONLY UPON THE TERMS AND CONDITIONS CONTAINED HEREIN. SELLER'S ACCEPTANCE OF BUYER'S ORDER AND AGREEMENT TO DELIVER THE ORDERED GOODS IS EXPRESSLY MADE CONDITIONAL ON BUYER'S ACCEPTANCE OF SELLER'S TERMS AND CONDITIONS SET FORTH BELOW. IN THE EVENT BUYER'S PURCHASE ORDER INCLUDES TERMS AND CONDITIONS THAT DIFFER FROM OR ARE IN ADDITION TO THE FOLLOWING, SUCH TERMS AND CONDITIONS ARE EXPRESSLY REJECTED BY SELLER AND ARE NULL AND VOID.

2. Definitions - As used herein, "Buyer" refers to the party who submits a Purchase Order to Seller and "Purchase Order" means the purchase order, electronic order or any other order submitted by Buyer.

3. Confirmation - Buyer's submission of a Purchase Order to Seller and Seller's acceptance of same by means of an order acknowledgment acceptance shall constitute a firm contract on the terms stated in Seller's order acknowledgment acceptance and these Terms and Conditions. After order acknowledgment acceptance by Seller, Buyer's Purchase Orders may not be subject to cancellation by Buyer except with Seller's express written consent. Seller's order acknowledgment acceptance of Buyer's Purchase Order is not subject to any other terms and conditions unless such terms and conditions are set forth in an agreement signed by both Seller and Buyer that references and specifically amends these Terms and Conditions.

4. Prices; Payment - Prices are based on labor and material costs prevailing at the time of Seller's confirmation. Prices do not include, and Buyer is responsible for, any applicable sales, use, value-added, excise and like taxes and applicable fuel surcharges. If freight is not included on the Seller's Confirmation and the Seller is pre-paying and adding freight cost, the Seller will add the freight cost to the invoice and the Buyer is responsible for paying the freight cost on the invoice. All orders are subject to the approval of Seller's Credit Department. Payment of Seller's invoice is due within the payment terms approved by Seller's Credit Department. Seller may, at its option, impose finance, service and/or late charges on any past due invoice in an amount not greater than allowed by law and, if Buyer fails to pay according to these Terms and Conditions, Buyer shall be liable to Seller for reasonable attorneys' fees and related costs of collection. If Seller deems itself insecure with Buyer's ability to pay any invoice, Seller reserves the right to either withhold shipments or impose or revise Buyer's credit limits and/or payment terms.

5. Delivery; Title; Force Majeure - Unless otherwise specified in the confirmation, all deliveries of goods are FOB Seller and title and risk of loss will pass to Buyer upon shipment/departure Seller's facility. All delivery dates are approximate, and Seller shall

not be responsible for any damages of any kind resulting from any delay. Buyer agrees to accept partial or pro rata deliveries as full performance in the event Seller cannot fulfill an entire order. Seller shall not be liable for any default or delay in performance if caused directly or indirectly, by acts of God or a public enemy, governmental actions, riots, labor unrest, acts of terrorism, inability of manufacturer to obtain raw materials, the bankruptcy of any supplier or any other cause whatsoever beyond Seller's control. Orders below Seller's minimum order requirement may be subject to additional shipping and handling charges.

6. Limited Warranty - Seller warrants that for a period of thirty (30) days from the date of delivery, the goods will be free from material defects in workmanship and material. No warranty is effective if (i) the goods are not stored or handled appropriately, (ii) the defect resulted from damages occurring after delivery, (iii) the defect was not reported to Seller in writing within thirty (30) days after delivery, or (iv) the defect is observable at the time of delivery and is not reported upon delivery. THE FOREGOING WARRANTY IS EXCLUSIVE OF AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER WRITTEN, ORAL OR IMPLIED, INCLUDING ANY WARRANTY OF PERFORMANCE, NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND SUPERSEDES AND EXCLUDES ANY ORAL OR WRITTEN WARRANTIES OR REPRESENTATIONS, MADE OR IMPLIED IN ANY MANUAL, LITERATURE, ADVERTISING BROCHURE OR OTHER MATERIALS.

7. Limitation of Liability - SELLER'S LIABILITY TO BUYER ON ANY CLAIM OF ANY KIND, INCLUDING NEGLIGENCE, WITH RESPECT TO THE GOODS OR SERVICES DELIVERED HEREUNDER, SHALL IN NO CASE EXCEED THE PURCHASE PRICE OF THE GOODS OR SERVICES OR PART THEREOF THAT GIVES RISE TO THE CLAIM. IN NO EVENT SHALL SELLER BE LIABLE TO BUYER FOR ANY LOST PROFITS, SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF, OR AS A RESULT OF, THE SALE, DELIVERY, NON-DELIVERY, SERVICING, USE OR LOSS OF USE OF THE GOODS OR ANY PART THEREOF, OR FOR ANY CHARGES OR EXPENSES OF ANY NATURE INCURRED, EVEN THOUGH SELLER MAY HAVE BEEN NEGLIGENT.

8. Indemnification - To the maximum extent allowed by law, Buyer must defend and indemnify Seller, its employees, officers, directors and agents against all sums, costs, liabilities, losses, obligations, suits, actions, damages, penalties, fines, interest and other expenses (including investigation expenses and attorneys' fees) that Seller, its agents, officers, directors or employees may incur or be obligated to pay as a result of (i) Buyer's negligence or willful misconduct; (ii) use, ownership, modification, maintenance, transfer, transportation or disposal of the goods; (iii) any infringement or alleged infringement of the intellectual property rights of others arising from Buyer's plans, specifications (including Buyer's trademarks and brand names) or production of the goods ordered by Buyer; and (iv) Buyer's violation or alleged violation of any federal, state, county or local laws or regulation, including without limitation, the laws and regulations governing product

safety, labeling, packaging and labor practices. Buyer hereby waives and releases Seller from all rights of contribution or indemnity to which it may otherwise be entitled.

9. Returns - Returns must be approved by Seller in writing and are subject to restocking and transportation fees. Any returned goods must be in resalable condition, unopened and with the sale receipt or invoice. Custom orders or specialty goods may not be returned.

10. Infringement - Buyer agrees it will not copy, nor permit anyone else to copy, any goods or parts thereof, or any pattern, formulation, plan, drawing, specification, instruction or depiction thereof, without written approval of Seller, and that it will not knowingly, directly or indirectly, violate or infringe upon or contest the validity of any patent, trademark, license or other right of Seller pertaining to any of said goods.

11. Security Interest - To secure payment for all sums due hereunder or otherwise, Seller shall retain a security interest in all goods and equipment delivered hereunder and these Terms and Conditions shall be deemed a security agreement under the Uniform Commercial Code. Buyer authorizes Seller as its attorney-in-fact to execute and file on Buyer's behalf all documents Seller deems necessary to perfect such security interest.

12. Confidential Information; Use of Name - Buyer shall not use or disclose any of Seller's trade secrets or confidential information, whether or not designated as such, except as required in connection with the use or resale of the goods. Buyer may not use any name, logo or trademark of Seller or its affiliates without the prior written consent of Seller or its applicable affiliate.

13. Miscellaneous -

A. The invalidity or unenforceability of any provision of these Terms and Conditions shall not affect the validity or enforceability of remaining provisions, and these Terms and Conditions shall be construed in all respects as if any invalid or unenforceable provision is reduced in scope to the maximum enforceable level.

B. No failure or delay on the part of any party in exercising any right, power or privilege under these Terms and Conditions shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege under these Terms and Conditions preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

C. The rights and remedies provided in these Terms and Conditions are cumulative and not exclusive of any rights or remedies provided by law.

D. These Terms and Conditions is being executed and delivered and is intended to be performed in the State of Michigan and shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the laws of the State of Michigan without regard to conflict of laws rules.

E. In the event of legal proceedings on or concerning these Terms and Conditions, each party to these Terms and Conditions consents to the personal jurisdiction of the courts of the state of Michigan with respect to any claims, defenses, counterclaims, cross claims or third party claims and to forgo the personal jurisdiction of all forums other than those in the state of Michigan. The parties further stipulate that venue is most convenient, proper and appropriate for a Michigan state court action in the County of Ottawa and for a federal court action in the United States District Court for the Western District of Michigan and to forego venue in all forums other than those in Ottawa County Michigan and the United States District Court for the Western District of Michigan.

F. These Terms and Conditions may be executed in two or more counterparts, each of which shall be deemed an original but all of which shall constitute one instrument.

G. These Terms and Conditions shall not be assigned by Buyer without prior written consent of Seller which consent may be withheld by Seller in its sole discretion.

H. These Terms and Conditions shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns. Buyer agrees to assume responsibility for, and Buyer hereby unconditionally guarantees payment of, as provided herein, all purchases made by Buyer, its subsidiaries and affiliates.

I. This constitutes the entire agreement and understanding between the parties with respect to the subject matter of these Terms and Conditions, and any prior discussions, negotiations, understandings, representations and agreements between the parties pertaining to this subject matter are merged in these Terms and Conditions.

J. These Terms and Conditions may be amended only in a writing executed by all parties. No modifications shall be binding upon the Seller unless in writing signed by Seller's duly authorized representative. No modification of the confirmation of these Terms and Conditions will be effected by the acknowledgment or acceptance of other shipping instruction forms or any other document containing terms and conditions at variance with or in addition to these Terms and Conditions, all such varying or additional terms being deemed invalid.

K. The parties agree that each party has had the opportunity to participate in the drafting or modification of these Terms and Conditions, that it accurately reflects the intent and understanding of each party, and that it should not be construed against a party because that party may have had a greater role in the drafting of any provision.

L. The parties agree that signatures on these Terms and Conditions, as well as any other documents to be executed under these Terms and Conditions, may be delivered by facsimile or electronically in lieu of an original signature, and the parties agree to treat facsimile or electronic signatures as original signatures and agree to be bound by this provision. A copy of the signature of any party will be immediately binding on that party on its receipt by the other party by facsimile or electronic mail and will have the same effect as an original signature.

M. The statute of limitations applicable to all claims by Buyer against Seller shall be six (6) months from the date the claim accrues.

N. Seller shall not be deemed to be in default or responsible for delays or failures in performance resulting from acts of God, acts of war or civil disturbance, terrorism, epidemics, governmental action or inaction, fires, earthquakes, unavailability of labor, materials, power, or communication, or other causes beyond Seller's reasonable control.

O. Any notice, request, demand, waiver, consent, approval or other communication required to be given pursuant to these Terms and Conditions (each, a "Notice") shall be in writing and shall be deemed given: (i) upon delivery, if by hand; (ii) after two (2) business days, if sent by express mail or air courier; (iii) upon transmission, if sent by facsimile (provided that a confirmation copy is sent in the manner provided in clause (ii) of this subsection within thirty-six (36) hours after such transmission); (iv) upon transmission by fax or email if the respondent acknowledges receipt via fax or email. All Notices are to be given or made to the parties at the addresses appearing on the first page hereof, or to such other address as any party may designate by a Notice given in accordance with the provisions of this subsection.

P. If any dispute arises out of or relating to these Terms and Conditions, its performance, or alleged breach, which cannot be resolved by mutual agreement, such dispute shall be submitted to binding arbitration before a single arbitrator under the applicable rules and procedures of the American Arbitration Association (AAA) and except that:

- (1) the AAA shall only be obligated to submit one list of proposed arbitrators;
- (2) in the event the parties do not agree upon an arbitrator within the allowable period, the AAA shall be empowered to select the arbitrator;
- (3) the arbitration shall be conducted in Kent County, Michigan;
- (4) each party shall initially pay its own attorney fees and costs except that AAA and arbitrator costs shall be born equally by the parties; however, in the event either party partially or fully prevails, the arbitrator shall award to such prevailing party all of its costs and reasonable attorneys' fees; and

(5) the arbitrator shall not have the power or authority to alter, change, amend, or modify any of the provisions of these Terms and Conditions.

A judgment may enter on the arbitration award in any court with jurisdiction.

The foregoing Terms and Conditions are agreed to and accepted by the parties.