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## **TERMS AND CONDITIONS OF SALE PRODUCTS AND SERVICES**

### **DEFINITIONS**

In these conditions the "Seller" means Paragon Manufacturing Corp and "Purchaser" (Buyer) named means the firm or individual person by whom Merchandise is to be purchased and/or Services are to be rendered to and all permitted assignees thereof, (collectively known as the "Parties."). The Seller agrees to sell and the Buyer agrees to purchase Merchandise or Services under the conditions set forth herein, all of which the buyer has read, understands and to which the Buyer agrees.

### **THE CONTRACT**

All Orders must be in writing and accepted subject to these Terms and Conditions of Sale. No Terms and Conditions put forward by the Buyer and no representations, warranties, guarantees or other statements not contained in Seller's quotations or Acknowledgment of Order nor otherwise expressly agreed in writing by Seller shall be binding on Seller. The Contract shall become effective only upon the date of acceptance of Buyer's order on Seller's Acknowledgement of Order form. If the details of the Merchandise described in Seller's quotations differ from those set out in the Acknowledgment of Order Form the latter shall apply. No alteration or variation to the Contract shall apply unless agreed to in writing by both the Seller and Buyer.

### **TERMS**

Payment for all Merchandise and Services is due and shall be paid according to the terms appearing on the face of the Seller's invoice or purchase order confirmation from Seller. In the absence of payment terms, the term shall be fixed at 2% 10 NET 30 days on approved credit. Unless specifically stated otherwise on the invoice or order confirmation. Prices do not include shipping, city, county, state, Federal or other taxes imposed on Merchandise and Services. All such taxes shall be added to the price and paid by Buyer as applicable. Unless otherwise specifically stated on the invoice, the invoice amount and all taxes shall be paid in U.S. funds, in full, when due. Any amount not paid in full by the due date shall be subject to accruing interest at 12% APR (annual percentage rate) until the past due amount is paid in full. Any fees and/or charges incurred by the Seller when a payment made by check is determined by the receiving bank to be NSF (Non Sufficient Funds) will be paid by the Buyer. An additional charge of up to 3.5% may be added to the invoice when the Buyer chooses to pay via credit card. Payments in the form of check, credit card, ACH and wire transfer with terms of OUR (remitter pays all fees) are accepted.

### **INCREASES IN COST**

If Seller's cost performance is increased after the date of this contract due to events which are beyond the reasonable control of the Seller, and are otherwise unavoidable, the Buyer agrees to compensate the Seller for these increased costs. The Buyer shall bear the burden of any new or increased tax, freight, tariff or duty charges which may be levied after the date of the quotation or contract is in effect.

### **CHANGE/DEVIATION REQUEST**

Any changes or deviations requested or required by Buyer of any Merchandise after Seller's acceptance of Buyer's purchase order shall be agreed upon between both parties in writing and Buyer will issue a revised purchase order or send written approval of said change(s). In the event that an agreement concerning changes cannot be reached then such purchase order shall, at the option of either party, be cancelled by written notice, and Buyer shall pay Seller for all expenses incurred in relation to the purchase order.

### **PRODUCTION PLANNING**

The Buyer will work with the Seller to maintain levels of production manufacturing capability and flexibility that is consistent with the Buyer's business requirements. Unless otherwise agreed, Buyer shall compensate Seller for any costs incurred by Seller for fixtures, tooling, or test equipment in exclusive support of the Buyer's production requirements. The costs associated shall, by mutual agreement of the Parties be charged to the Buyer as a separately billable non-recurring charge for which the Buyer shall issue a separate Purchase Order to Seller.

### **FORCE MAJEURE**

Seller shall provide notice, as soon as practically possible, in the event of non-fulfillment or delayed performance of all or part of any contract for the sale of Merchandise, due, directly or indirectly, to any Act of God, civil commotion, sabotage, Government orders, rules, restrictions, regulations, epidemics/pandemics of any source, fire, flood, explosions, war, strikes, labor disputes, power or equipment failure, transportation delays, loss or damage of Merchandise in transit, Seller's inability to ship Merchandise due to the failure of any third party to supply Seller with necessary components, or any other casualties, contingencies, occurrences or conditions whatsoever beyond the reasonable control of the Seller (collectively, a "Force Majeure Event"). Following such notice, Seller shall have an additional period of time, up to 60 (sixty) days, to fulfill contractual performance. If the Seller is unable to fulfill performance within this period due to the Force Majeure then either party shall have the option to perform or cancel the contract or any unfulfilled portion thereof, at no penalty or cost to the Seller.

### **INVENTORY MANAGEMENT**

Unless otherwise agreed between the Parties, Seller shall purchase and maintain component inventory per Buyer's BOM (bill of material) requirements. In the event that the Buyer required components become obsolete or if there is a decrease in requested quantity, for any reason, during the course of production. Buyer will be responsible to

immediately reimburse Seller for the full cost of acquiring the components and all related shipping/freight costs, taxes, duties and tariffs regardless of whether there is a signed NCNR (non-cancelable/non-returnable) in place. If Buyer requests temporary storage of obsolete/extra components at the Seller's facility and the Seller agrees, a separate contract will be implemented listing the actual inventory and the start/end date for the storage. A storage fee will be assessed and due immediately upon signing the contract. Buyer will also be required to procure and maintain insurance on the stored product and provide Seller with proof of such policy. If the Buyer does not wish to incur further cost for on-site storage of obsolete/extra components, the Buyer is responsible for the immediate removal of any and all owned obsolete/extra inventory at Buyer's sole cost.

### **PACKAGING AND DELIVERY**

Prices are based on Seller's standard packaging methods. Seller reserves the right of packaging Merchandise on pallets, bulk boxing and/or individual boxes. Packaging will be standard commercial package product and acceptable to commercial carriers. Custom packaging and labeling is available and will be furnished at the Buyer's written request and the cost thereof shall be borne by the Buyer. Seller will make every reasonable effort to deliver Merchandise by the delivery date specified on the purchase order from Seller. And will promptly notify the Buyer when a delivery is not expected to be timely. If Buyer fails to take delivery promptly of tendered goods any cost, loss or damage arising from such failure shall be at the Buyer's expense. Seller may then (but shall not be bound to) take actions at the Buyer's expense to store, protect and insure the Merchandise. If Seller performs any services for Buyer, including but not limited to, payment of drayage, freight, duty, tariff or insurance, such services shall be performed as an agent for Buyer and will be invoiced accordingly. Unless otherwise specified in the purchase order confirmation, all goods shall be delivered F.O.B. Everett, Washington.

### **CLAIMS**

Buyer or its agent shall inspect the goods and/or test the Merchandise upon receipt. Buyer waives the right to assert a claim against the Seller arising from any non-conformity which would have been observable to reasonable inspection and/or testing at the time of delivery, unless Seller is advised in writing of such non-conformity with 72 (seventy-two) hours of receipt of such Merchandise by the Buyer. Should any of the Merchandise fail materially to conform to the specifications and descriptions in Seller's confirmation of Buyer's purchase order, then the Merchandise claimed to be non-conforming by the Buyer shall be set aside and held by buyer without further processing until such time the Seller has had an opportunity to inspect and advise of the disposition, if any, to be made of such Merchandise. No Merchandise claimed to be non-conforming will be returned, reworked or scrapped by Buyer without express written authorization of Seller. In the event of a confirmed non-conformity Buyer's sole and exclusive remedy will be limited to the repair or replacement of any non-conforming Merchandise or to the repayment or credit of the portion of the purchase price by Buyer attributed to the non-conforming Merchandise. Under no circumstances shall Seller be under any other liability and in particular shall not be liable for any consequential, incidental, punitive or indirect losses including lost profits incurred by Buyer.

## **WARRANTY**

Seller warrants that the Merchandise shall be free from any encumbrances and will conform to the agreed upon specification, subject to standard manufacturing variances. Although employees of Seller are available for consultation concerning the selection of components and required specifications, they are not authorized to warrant the suitability of any components for any particular use or application, and it is Buyer's responsibility to determine whether the Merchandise meets local legal requirements, the specifications of Buyer's customers, and are suitable for Buyer's purpose. Seller assumes no responsibility for the adequacy, performance of engineering, designs or specifications furnished by Buyer.

## **CREDIT**

If Seller makes a demand for assurance of performance or payment and Buyer fails to provide reasonably adequate assurance within 10 (ten) days of notice, then Seller (without liability to Seller), may refuse, change, or withdraw extension of credit terms at any time, and may demand cash payment upon delivery or payment prior to shipment of the Merchandise. If Buyer fails to comply with such changes, Seller may, on written notice to Buyer, terminate the order, and in the event of such termination Buyer shall compensate Seller for any commitments and costs Seller had incurred on behalf of the Buyer in connection with the order or termination thereof.

## **SECURITY INTEREST**

Buyer hereby grants Seller a security interest in all Merchandise, whether or not it has been incorporated into other goods, and in all proceeds and products thereof, including without limitation cash, instruments, documents, letter of credit rights, accounts, payment intangibles and general intangibles, to secure the payment and performance of all obligations now or hereafter owing by Buyer to Seller, and such security interest shall remain valid and enforceable unless and until Buyer makes full payment to Seller for the Merchandise. Until payment is made in full, Seller shall be entitled to enter any premises to inspect the Merchandise and if Buyer fails to make due payments for said Merchandise, to retake and re-claim the Merchandise in accordance with all provisions found in the Uniform Commercial Code (UCC). Upon Seller request Buyer shall insure the Merchandise for its full insurable value and shall name the Seller as the loss payee with respect to the Merchandise, as its interests may appear.

## **PROPRIETARY INFORMATION**

Buyer agrees and acknowledges as follows; (a) Confidential information and any and all patents, copyrights, and exclusive processes are the sole property of Seller and/or its assigns; (b) Buyer's use of confidential information and processes shall at all times be only for Seller's benefit; (c) at all times, Buyer agrees to keep in confidence and trust all confidential information and processes, and not to use or disclose to any third party any confidential information or anything related to it without Seller's prior written consent; (d) Buyer agrees to return all confidential information and any physical property (samples, documents, loaned equipment, and any and all other physical property, whether or not pertaining to confidential information) to Seller immediately upon Seller's request. Confidential information is to be construed broadly and includes, but is not limited to, all

of the following related to the Seller of the Merchandise: business methods, recorded data, supply sources, lists and information, pricing, designs, samples, drawings, ideas and proposals, inventions, internal know-how, materials and related documentation, products, techniques, contacts and relationships, trade secrets and the like, all whether in preliminary or final form and in or on any media whatsoever, that is created, conceived, placed into practice, developed, discovered, invented or made, whether before or during the application of this Agreement.

### **CHOICE OF LAW**

Each contract for the sale of Merchandise hereunder shall be governed by and interpreted in accordance with the laws of the State of Washington which are in force on the date of this Agreement. In the event that the Buyer fails to perform any of its obligations, Seller shall be entitled to all legal and equitable remedies including those specified herein and under the Uniform Commercial Code (UCC).

### **DEFAULT REMEDIES**

Upon the occurrence of any one or more of the following events, Seller shall have the right, at Seller's option, in any order, to cancel and terminate any contract for the sale of Merchandise without cost or liability to Seller and/ or sell the undelivered portion of the Merchandise elsewhere and charge Buyer with the difference between the net price for which the Merchandise sold and the price recorded on the Buyer Purchase Order and/or declare due and payable all sums owing to Seller whereupon all sums shall become immediately due and payable and Seller may exercise any and all rights and remedies of a secured party under the UCC. (a) Buyer's insolvency or inability to meet its obligations as they become due; (b) filing of a voluntary or involuntary petition of bankruptcy by or against Buyer; (c) institution of legal proceedings against Buyer by creditors or stockholders; (d) Appointment of a receiver to Buyer by any court of competent jurisdiction; (e) Buyer's failure to conform or comply with any term or condition in this contract or any order, including Buyer's failure to pay any sum owing to Seller when due; (f) any warranty made by Buyer is or becomes unenforceable or incorrect; or (g) Buyer fails to give adequate assurances of performance within 10 (ten) days of written demand from Seller. In the event of any such termination or cancellation by Buyer, Buyer shall compensate Seller for any commitments and costs Seller has incurred in connection with such contract or termination thereof. Any security interest in favor of Seller shall survive such termination until all sums owing to Seller are paid in full.

### **MODIFICATIONS/WAIVERS**

No modification or waiver of any term or condition herein shall be effective unless presented in writing and signed by Seller. Seller may accept or reject any modifications or waivers at its sole discretion and if the proposed modification or waiver is rejected, then Buyer shall continue to be bound by the purchase order confirmation, the invoice and the Terms and Conditions herein.

### **BUYER'S INDEMNITY**

Buyer shall, except in case of Seller's gross negligence or intentional misconduct, indemnify, defend and hold Seller and its agents and employee's harmless from and

against any and all liabilities, obligations, losses, damages , penalties, claims, actions, suits, costs, expenses (including but not limited to, attorneys fees) imposed on, or incurred or sustained by or asserted against Seller by any person, persons or entities whatsoever, based on or arising from the purchase, sale or use of Merchandise. Buyer shall make no shipment contrary to U.S. law, and shall indemnify Seller against all costs, penalties, fees and fines resulting from such actions.

### **EXPORT STATEMENT**

Seller's merchandise is subject to U.S. Export Control Laws and may be subject to export or import regulations of other countries. Buyer agrees to comply with all such regulations and acknowledges that it has the responsibility to obtain any and all licenses to export and re-export the Merchandise or any parts thereof.

### **ARBITRATION**

Any dispute, difference, controversy or claim related or arising out of any contract for the sale of Merchandise hereunder of a breach thereof, which cannot be resolved within a period of 90 (ninety) days after the issue is acknowledged by both parties shall be resolved by arbitration conducted in the English language in or near Seattle, Washington and administered by American Arbitration Association (AAA) or Judicial Arbitration and Mediation Services (JAMS). There shall be a single arbitrator appointed by the chosen arbitration service. The prevailing party in any such proceeding shall be entitled to an award of its reasonable attorney's fees and other related costs incurred. The arbitrator's decision shall be final and binding upon the parties and the award made by the arbitrator may be filed in any court of competent jurisdiction and execution thereof.

### **COLLECTION: ATTORNEY'S FEES**

Buyer shall pay all costs of the collection of any delinquent sum, including compensation made to any collection agency, and any reasonable attorneys' fees, costs and expenses incurred in any collection attempt and/or bankruptcy proceeding.

### **SOLVENCY**

Buyer warrants that it is solvent within any and all meaning or definition of the United States Bankruptcy Code and the UCC.

### **GENERAL**

The terms and conditions set forth herein constitute the entire contract between the Seller and Buyer, relating to the sale of Merchandise, acceptance is limited to the terms set forth in these terms and conditions and no additional or different terms proposed by the Buyer shall become a part of the contract between Seller and Buyer unless Seller expressly agrees in writing. This contract prevails over any and all inconsistent terms proposed by Buyer in any purchase order issued by Buyer or otherwise. Acceptance of Buyer's order by Seller is expressly made conditional on Buyer's assent to these terms and conditions of sale, evidenced either by Buyer's written acknowledgment or by conduct that recognizes the existence of a contract with respect to the Merchandise described in Seller's purchase order confirmation or invoice.