



micro**PRECISION**
Components Inc.

Terms of Sale

1. **QUANTITY.** Seller reserves the right, regardless of any agreed upon delivery schedule, to produce the entire quantity of the Buyer's firm order at one time and Buyer will be obligated to pay for the entire order quantity produced. Buyer agrees that Seller may ship an aggregate quantity that varies (more or less) by not more than 10% of the aggregate quantity specified in Buyer's firm order ("Permitted Variation") in satisfaction of its obligations hereunder. The contract price will be ratably adjusted for the actual amount of goods shipped, within the Permitted Variation.

2. **DELIVERY.** Deliveries shall be F.O.B. Seller's loading dock, with Seller responsible for loading onto the collecting vehicle, unless otherwise specified herein. Risk of loss shall pass to Buyer upon Seller's tender of the goods to the initial carrier. If the goods are to be exported from the United States, the goods will be cleared for export but the goods will not be cleared for import at the named port of destination and Buyer will be responsible for all formalities, duties, taxes and other charges upon importation. In the absence of specific shipping instructions from Buyer, Seller reserves the right to ship in any way Seller deems expedient without recourse for any additional transportation or handling costs incurred by Buyer. Seller reserves the right to make partial deliveries. Buyer agrees that variations of not more than 2% between the quantity indicated on Seller's shipping documents and the quantity counted by Buyer will not result in adjustments, either up or down, to the amount invoiced by Seller, which will be based upon the Seller's count. Count discrepancies greater than this threshold must be substantiated by Buyer.

3. **CHANGES IN DELIVERY DATES.** If shipment is delayed at the request of Buyer or because of Buyer's carrier's inability to receive the goods, such goods shall be stored at Buyer's risk and expense and Seller shall have the right to bill Buyer the full contract price plus storage charges any time thereafter and Buyer shall pay such amounts within ten (10) days after the date of such invoice.

Buyer may, at its discretion, change the delivery schedule up to a maximum of 2 times but always for delivery within 30 days of the original scheduled delivery date. In any event, the order must be completely shipped within 1 year from date of the original order, unless otherwise agreed upon.

4. **INSPECTION.** Buyer shall make an examination and test of any goods delivered hereunder promptly upon its receipt. Buyer's failure to give written notice of any claim within ten (10) days after receipt of such goods shall constitute Buyer's unqualified acceptance of such goods and a waiver by Buyer of all claims with respect thereto including any right to revoke acceptance.

5. **RETURNS.** Returns of goods following statistical inspections are acceptable, provided that the inspection parameters to be used by Buyer have been approved by Seller and a written authorization of return has been issued by Seller to Buyer.

6. CONTRACT PRICE. Unless otherwise specified herein, the contract price is stated in U.S. Dollars, F.O.B. Seller's loading dock, and does not include any charge for import clearance or transportation. Any sales, use, excise, property, duty and other taxes applicable to this transaction and the goods and services furnished hereunder are not included in the contract price therefor and shall be paid by Buyer when due. If Seller pays any such amounts, Buyer shall reimburse Seller therefor upon demand.

7. ADDITIONAL SERVICES. Buyer agrees to pay at Seller's then current standard rate for any services that are requested by Buyer (that are not directly associated with production) such as engineering, research and development, secondary process research and development, etc.

8. PAYMENT TERMS. Terms of payment are net 30 days, in U.S. Dollars and any balance unpaid after such time shall bear interest at the annual rate of 18% for each day the balance due remains unpaid. Should Buyer not make timely payment to Seller of any amount owed to Seller, Seller may decline to make any shipment or perform any work except upon receipt of payment or upon terms and conditions or security satisfactory to Seller.

9. CHANGES IN PRICE. The contract price will be adjusted to reflect any actual increase in Seller's costs of obtaining the goods that are due to incomplete specifications being provided by Buyer or changes made by Buyer in drawings or specifications or Buyer's requested modifications to the terms contained herein.

10. WARRANTIES. Seller warrants that the goods sold hereunder shall conform to the specifications that are incorporated into this contract and in effect at the date of shipment.

11. LIMITATIONS OF WARRANTIES. Notwithstanding the foregoing, Seller will not be responsible for normal manufacturing defects nor for customary variations from specifications. Seller makes no warranty with respect to any engineering (or other) suggestions provided by or on behalf Seller with respect to the specifications for the product, raw materials or manufacturing processes, once those specifications are approved by Buyer prior to production.

This warranty is terminated and Seller shall not be liable to Buyer or any other person for any damage, injury or loss arising out of the use of the goods, whether by reason of any defect in the goods or in the services furnished hereunder or otherwise if, prior to such damage, injury or loss, the goods are (1) damaged, misused, improperly tested, improperly stored or improperly processed following delivery; (2) altered or modified without Seller's written consent. Moreover, Seller takes no responsibility for defects of any sort which occur as a result of inexact or inaccurate information received from Buyer, natural wear, excessive wear or other reasons beyond Seller's control.

12. EXCLUSIONS OF WARRANTIES. THE WARRANTIES STATED IN SECTION 10 ARE GIVEN IN PLACE OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR OTHERWISE. NO PROMISE OR AFFIRMATION OF FACT MADE BY ANY AGENT OR REPRESENTATIVE OF SELLER SHALL CONSTITUTE A WARRANTY BY SELLER OR GIVE RISE TO ANY LIABILITY OR OBLIGATION. Buyer is solely responsible for determining whether the goods are fit for a particular purpose and suitable for its method of operation.

13. LIMITATION OF REMEDIES. Seller's obligation with respect to the quality of the goods or services furnished hereunder, regardless of the form of action, whether for breach of warranty or contract, or negligence or otherwise, shall be strictly and exclusively limited to the repair or replacement, F.O.B. Buyer's loading dock, of any goods or the correction of any such services that Seller determines on

inspection to have been defective at the date of shipment, or if Seller determines that such repair, replacement or correction is not feasible, to a refund of the purchase price upon return of the goods to Seller.

No claim against Seller for any defect in the goods or the services furnished hereunder, whether for breach of warranty or contract, or for negligence or otherwise shall be valid or enforceable unless Buyer's written notice thereof is received by Seller within ninety (90) days from the date of shipment or ten (10) days from the date of discovery of the defect, whichever is earlier, and Buyer shall cease using the goods from the time of discovery of such defect until Seller has had a reasonable time to inspect the same and remedy any defect that the Seller determines to be covered by the warranty provided in this contract.

IN NO EVENT WHATSOEVER, SHALL SELLER BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF REVENUES, LOST PROFITS, INCREASED EXPENSES AND/OR ANY COSTS ASSOCIATED WITH PRODUCT RECALLS, LINE-DOWN SITUATIONS OR OTHER RAMIFICATIONS CAUSED BY FAILURE OF ANY PRODUCT IN WHICH THE GOODS ARE INCORPORATED, EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, EXCEPT AS PROVIDED IN SECTION 14 ENTITLED "PATENTS." Buyer and Seller expressly agree that this limitation of liability is intended as a complete allocation between the parties of the risk of any claim of any kind arising from or in any way related to the goods or services furnished hereunder and that this allocation is reflected in the price of the goods and services sold by Seller to Buyer.

Seller's liability for damages to Buyer for any cause of action whatsoever, except as otherwise stated in this section, and regardless of the form of action, whether in contract or tort including negligence, shall be limited to the amount paid by Buyer to Seller hereunder for the specific goods that caused the damages or that are the subject matter of, or are directly related to, the cause of action. The foregoing limitation will not apply to the liability of Seller provided for in Section 14 entitled "Patents."

No action, regardless of form, arising out of this contract, may be brought against Seller for breach of warranty or contract, or for negligence or otherwise more than one hundred eighty (180) days after such cause of action accrues.

14. PATENTS. Seller agrees that it will, at its own expense, defend and hold Buyer harmless in any suit or proceeding brought against Buyer insofar as the same is based on a claim that the goods furnished hereunder, when used in the manner and for the purpose for which said goods are manufactured and sold, constitute an infringement of any existing U.S. Letters Patent, provided that Buyer gives Seller prompt written notice thereof, permits Seller through its counsel to defend and settle the same, and gives Seller all necessary information, assistance and authority to enable Seller to do so. In case such use of said goods is held to constitute infringement and such use is enjoined, Seller shall, at its own expense and at its own option, either: (i) procure for Buyer the right to continue using said goods; (ii) replace the same with non-infringing goods; (iii) modify said goods so as to become non-infringing; or (iv) remove said goods and refund the purchase price thereof. The foregoing states the entire liability of Seller to Buyer for patent infringement by the goods furnished hereunder and is in lieu of any other warranty relating to infringement.

The foregoing provision of this Section shall not apply to any goods, materials or components specified by Buyer, manufactured to Buyer's design, modified by Buyer or at Buyer's request, nor to any goods

having non-infringing uses that are used by Buyer in an infringing manner. As to such goods, Seller assumes no liability for patent infringement and Buyer agrees that it will, at its own expense, defend and hold Seller harmless in any suit or proceeding brought against Seller insofar as the same is based on a claim that use of such goods constitutes an infringement of any existing U.S. Letters Patent, providing that Seller gives Buyer prompt written notice thereof, permits Buyer through its counsel to defend and settle the same, and gives Buyer all necessary information, assistance and authority to enable it to do so.

15. FORCE MAJEURE. Seller shall not be liable for any loss or damage because of non-performance, delays in delivery or nondelivery occasioned by labor disputes, damage to Seller's facilities, acts of God, failure of Seller's suppliers, manufacturers or subcontractors to meet scheduled deliveries or any similar or dissimilar cause beyond Seller's reasonable control or making Seller's performance hereunder commercially impracticable.

16. CONFIDENTIALITY. Buyer shall not use or disclose, nor permit any other person to use or disclose, any data, specifications, the names of Seller's manufacturers, any proprietary machining techniques or other information about the goods or services furnished to Buyer by Seller hereunder, in the course of Seller's performance hereunder or pursuant to any request by Buyer for a proposal or quotation from Seller. Buyer agrees that until the goods to be furnished hereunder have been delivered and for a period of thirty (30) months thereafter, Buyer will not, directly or indirectly, purchase the same or similar goods from the manufacturer used by Seller to source the goods without Seller's prior written consent.

17. TOOLING. Tooling charges, if any, are in addition to the contract price for the goods. Tooling charges are to be paid with the first invoice. All tooling, jigs, dies, fixtures, molds, patterns and other equipment used or useful in connection with the production of the goods remains the property of Seller and will remain at Seller's site notwithstanding Buyer's payment of a tooling charge.

All intellectual property rights, patent rights, copyrights or mask rights in Seller's drawings, other documents, models, designs, samples and trade secrets are reserved to Seller and they shall be neither used nor transmitted to any party by Buyer without Seller's prior consent.

18. INDEMNIFICATION – SAFE OPERATION. Buyer shall comply with applicable federal, state or local safety and health requirements with respect to the products incorporating the goods provided to Buyer by Seller hereunder. Buyer shall immediately give Seller written notice of Buyer's receipt of any notice of any defect in the design, manufacture or in-use performance of the goods, or of any personal injury, death or property damage arising out of the use of the goods and cease using such goods until Seller has had a reasonable time to inspect the same. Buyer shall cooperate with Seller in investigating any such accident, malfunction, or damage.

As used in the Agreement, the term "Buyer's Products Liability" means any third party action brought for or on account of personal injury, death or property damage caused by or resulting from the manufacture, construction, design, formulation, development of standards, processing, assembly, testing, listing, certifying, warning, instructing, marketing, advertising, packaging or labeling of any products incorporating the goods provided to Buyer by Seller hereunder.

Buyer shall indemnify and hold Seller harmless from and against all Buyer's Product Liability claims asserted against Seller, except, if Buyer has complied with each and every obligation in this Section 18,

for those Buyer's Product Liability claims or portions thereof, arising from the negligence or willful misconduct of Seller, and provided further that Seller gives Buyer prompt written notice thereof, permits Buyer through its counsel to defend and settle the same, and gives Buyer all necessary information, assistance and authority to enable Buyer to do so.

19. INSURANCE. Buyer shall at its own expense keep the goods insured against any loss or damage to them after tender of delivery, said insurance to be payable to Seller and Buyer as their interests may appear. Buyer shall deliver to Seller at Seller's request the policies or evidence of insurance satisfactory in form and content to Seller.

20. CHANGES – CANCELLATION.

A. Seller reserves the right to change or cancel this contract because of any circumstance requiring allocation of production or delivery, or because such change or cancellation is deemed by it necessary to comply with applicable laws, ordinances, regulations, directives or administrative actions or necessary for the improvement or proper manufacture of the goods.

B. Seller reserves the right to make any changes in materials, design, or formulation of the goods which it determines to be appropriate provided only that any such change will not adversely affect the functionality of the goods as described in the specifications that are incorporated into this contract.

C. In the event Buyer requires a design change during the manufacturing process (including but not limited to a change in dimensions, raw materials, or other quality or packaging specifications), Buyer will be responsible for Seller's resulting costs, including but not limited to all setup costs, any new tooling needed to produce a new design, the inventory of raw materials, complete or in process pieces as of the date of effective notice of the new design change. Seller also reserves the right to adjust the production price based upon new design requirements.

D. Buyer may cancel any order or part thereof that has been accepted by Seller by written notice given to Seller provided that Buyer bears the cost of raw materials, of goods either finished or at intermediate manufacturing stages, the charges involved in research work and tooling and a cancellation charge of 25% of the contract price of such goods.

21. MISCELLANEOUS

A. Buyer and Seller intend this document to be the final expression of their agreement and as a complete and exclusive statement thereof. All prior representations, conversations or preliminary negotiations shall be deemed to be merged into this contract. No agreement or other understanding in any way purporting to amend or modify the terms and conditions hereof shall be binding upon Seller unless made in writing and signed by Seller's authorized representative.

B. This contract shall be governed by the internal laws of New York State, including, without limitation, the Uniform Commercial Code as in force in New York State on the date hereof without regard to principles of conflicts of law.

C. This contract and the rights and obligations of Buyer hereunder shall not be assignable by Buyer, either by act of Buyer or by operation of law without the prior written consent of Seller.