

Customer Terms & Conditions

United States

All sales of products by A & B MACHINING, INC., a Michigan corporation (“**Seller**”) are made on the following terms and conditions (the “**Terms of Sale**”). In these Terms of Sale, any products or product materials sold by Seller to the buyer named in Seller’s quotation, buyer’s purchase order, or Seller’s acknowledgment (“**Buyer**”) are referred to as “**goods**.” In consideration of Seller agreeing to provide goods to the Buyer, the Buyer agrees as follows:

1. **Formation of Contract.** These Terms of Sale, together with the terms and conditions of any other credit application, quotation, confirmation, acknowledgement, and/or invoice prepared by Seller, constitute the agreement between the parties (the “**Contract**”). Buyer agrees to each and every term contained in the Contract as a precondition to Seller’s performance. Any term or condition in any purchase order or other form or document issued by Buyer, regardless of the materiality of the term or condition, that differs from or is contrary to the terms and conditions contained in the Contract are objected to and excluded unless expressly agreed to in a written acknowledgment issued by Seller. No other terms or conditions not set forth in the Contract shall apply unless expressly agreed to in a written acknowledgment issued by Seller.
2. **Prices.** Prices will be as stated in Seller’s quotation, acknowledgement, and/or invoice, and are subject to change without notice. Prices do not include (i) any applicable sales, use, excise or other tax, or charges of any nature whatsoever imposed by any governmental authority, or (ii) freight related charges or the cost of non-returnable pallets, separators, tops, wire-bound boxes or any other special containers. Such items may be invoiced separately or separately itemized in an invoice.
3. **Quotations.** Quoted terms shall remain in effect for thirty (30) days or such other time as is stated on Seller’s quotation. Seller’s quotations require Seller’s interpretation of the materials required by the plans or specifications provided by Buyer or Buyer’s representatives. Seller makes no representations or warranties as to the accuracy or appropriateness of Seller’s quotation. Typographical and clerical errors in quotations, including errors in mathematical computation, are subject to unilateral correction by the Seller. Buyer shall be solely responsible for determining the materials and quantities required for a particular project or order. Seller’s quotation is based on various business factors and considerations and may not be used by any other contractor or any other person or entity without Seller’s written consent. All orders placed pursuant to a quotation are subject to approval by Seller and will not be binding upon the Seller unless and until they are accepted in writing by an authorized representative of Seller.
4. **Payment Terms.** Unless otherwise specified in Seller’s quotation or acknowledgment, payment in full of the price is due at the location, and in the method, designated by Seller thirty (30) days after shipment of the goods, without setoff, discount, or other deductions or charges, as evidenced by Seller’s signed or unsigned delivery tickets or delivery records. Any payment that is not made when it is due shall accrue a finance charge of 1-1/2% per month or the maximum rate permitted by law, whichever is less. The accrual or payment of any interest as provided above is cumulative and will not constitute a waiver or election by Seller of any rights and remedies in connection with a default by Buyer. If

the shipment of goods is delayed by or at the request of Buyer, payment will remain due in full thirty (30) days from the date of Seller's invoice. In such event, Seller may impose, and Buyer shall pay, storage charges and other incidental expenses incurred by Seller as a result of the delay, in addition to any interest on late payments as described above and any other remedies to which Seller may be entitled. Seller may require payment in advance or withhold future deliveries upon any late payment or reasonable uncertainty as to Buyer's ability to pay. Seller may change its quoted prices upon an unusual or unforeseen increase in Seller's costs. Buyer agrees not to send Seller payments marked "paid in full", "without recourse", or similar language. If Buyer sends such a payment, Seller may accept it without losing any of Seller's rights and Buyer will remain obligated to pay any further amount owed to Seller.

5. **Delivery and Risk of Loss.** Unless otherwise agreed in writing, Seller shall deliver the goods F.O.B. Seller's facility. Any delivery dates or other schedule of performance by Seller are approximations, and the sole obligation of Seller with respect to the schedule of delivery or performance will be to use reasonable commercial efforts to meet scheduled shipping, delivery and performance, but time is not of the essence. Seller may ship all the goods at one time or in portions from time to time. Seller shall have the right, but not the obligation, to determine the method of shipment and routing of the goods, unless otherwise stated in Seller's quotation or acknowledgment. Buyer or its carrier shall be responsible for supervising the loading and unloading of goods and for securing all loads for safe transport, and shall indemnify and hold Seller harmless from any liability for personal injury, death, property damage, or other loss resulting from the loading, transport, delivery or unloading of the goods.
6. **Unavoidable Delay.** If Seller is not able to finish and deliver the goods to Buyer on time because of anything Seller cannot control (including, without limitation, typical "*force majeure*" events such as casualty, labor trouble, accidents, unavailability or delays of supplies or transportation, or Buyer's failure to approve production samples), then the estimated delivery or performance time shall be extended accordingly, and Seller shall not be liable to Buyer for any damages caused by the delay.
7. **Defects; Limited Warranty; Remedies.** Buyer agrees to inspect the goods immediately upon receipt of such goods from Seller. If any item of goods that is manufactured by Seller and is not subject to alteration, improper installation, abuse or misuse proves to be defective (as defined below) within five (5) days following the date of shipment and prior to installation (in the case of a patent defect) or thirty (30) days following the date of shipment (in the case of a latent defect), and if Buyer gives written notice to Seller of such defect within that period and does not alter, improperly install, abuse, or misuse the goods, then Seller shall, at Seller's sole option, either repair or replace the defective item, at Seller's expense. Seller will have no liability for any claims arising from use that is not in accordance with Seller's instructions and specifications. Similarly, Seller will have no liability for any claims arising from goods that have been altered, improperly installed, abused, or misused by any person other than Seller. Seller shall not be responsible for the expense of locating or removing any defective goods or re-installing any repaired or replacement goods. Notice of a breach of Seller's warranty must be made in writing addressed to Seller, setting forth sufficient details to permit identification by Seller of the claimed defect. Samples should accompany such notification. If Buyer alters, improperly installs, abuses, or misuses the goods or fails to notify Seller within the applicable

warranty period following shipment of the goods, then any claim for breach of warranty shall be conclusively deemed to have been waived by Buyer with respect to the alleged defect. In the event of a defect in any goods constituting a breach of the warranty provided herein, Buyer must comply with Seller's instructions for the disposition of the defective goods. Buyer will not have any warranty claim unless it has timely provided to Seller return of the defective goods, transportation prepaid (if required by Seller), and proof that the goods were not altered, improperly installed, abused, or misused. No goods shall be returned to Seller without Seller's prior consent. The acceptance of any goods returned to Seller shall not be deemed an admission that the goods are defective or in breach of any warranty, and if Seller determines that the goods are not defective, Seller may return them to Buyer at Buyer's expense.

If Seller fails to repair or replace any defective item within a reasonable time, then Seller shall be liable to Buyer for the lesser of (i) the reasonable costs of repair or replacement by a third party, or (ii) that part of the purchase price of the defective goods that Buyer shall have paid, but Buyer shall not obtain repair or replacement by a third party without giving Seller at least fifteen (15) days prior written notice, during which time Seller may repair or replace the defective item. An item shall be considered "defective" only if it is found by Seller to have been defective in materials or workmanship and if the defect materially impairs the value of the goods, except that the goods shall not be defective to the extent that (i) they conform with drawings of or specifications for or a sample of goods that have been approved by Buyer, (ii) they are inspected and not rejected by Seller, (iii) they conform with goods, testing results, dimensional layouts or manufacturing methods that have been submitted and approved by Buyer, (iv) they are improperly installed and such improper installation causes the claimed defect or damage, or (v) they are damaged due to the method or length of storage or in the course of installation. Seller does not warrant the workmanship of others who have performed work on or installed the goods. If Buyer's representative agrees, either orally or in writing, to a change in or waiver of the specifications for any item of goods, then such goods shall not be considered defective to the extent they conform to the specifications as so changed or waived. This Section sets forth Buyer's sole and exclusive remedies for any defect in the goods. Neither Buyer nor any other person may modify or expand the warranty provided herein, waive any of the limitations, or make any different or additional warranties with respect to the goods. Any statements to the contrary are hereby rendered null and void unless made in a writing signed by an authorized officer of Seller. Except as stated herein, Buyer shall not have any right of rejection or revocation of acceptance of goods.

8. **Changes.** Seller shall have the right to make design or engineering changes in its parts, equipment, processes and methods of manufacture, but Seller will not, without Buyer's approval, make a change in operational or dimensional specifications submitted by Buyer and agreed to by Seller.
9. **Limitations.** EXCEPT AS STATED IN SECTION 7, BUYER PURCHASES ALL GOODS "AS IS" AND SELLER DOES NOT MAKE ANY OTHER WARRANTY AND DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED AS TO THE GOODS AND, IN PARTICULAR, DOES NOT MAKE ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, AND BUYER IS SOLELY RESPONSIBLE FOR DETERMINING THE PROPER

APPLICATION AND USE OF THE GOODS. Seller's warranty applies only to goods that it manufactures. All other goods are sold AS IS, without warranty; provided, however, that Seller assigns to Buyer any warranties provided by third party manufacturers of such goods, to the extent that they are assignable. Buyer must take reasonable steps to mitigate any loss and, regardless of any other obligation Seller may otherwise have to the Buyer, Seller is not responsible for any losses that Buyer failed to reasonably mitigate. Seller shall not have any tort liability to Buyer or any other person with respect to any of the goods. SELLER SHALL NOT BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL, EXEMPLARY, INDIRECT OR PUNITIVE DAMAGES ARISING FROM ANY PRODUCT DEFECT, DELAY, NONDELIVERY, RECALL OR OTHER BREACH. If goods are sold by Buyer, Buyer will include in its agreement for resale provisions that limit recoveries in accordance with these Terms of Sale. In case of Buyer's failure to include in any agreement for resale the Terms of Sale providing for such limitations, Buyer will indemnify and hold Seller harmless against any liability, loss, cost, damage, or expense (including reasonable attorney fees) arising out of or resulting from the failure.

10. **Solvency and Security Interest.** Buyer represents and warrants that Buyer is solvent. Buyer grants and Seller retains a security interest in the goods (and any proceeds thereof) to secure payment of the price and all other indebtedness that Buyer now and in the future owes to Seller, and Seller will have all rights of a secured party under the Uniform Commercial Code with respect to the goods. Buyer hereby authorizes Seller to create and file a financing statement to perfect its interest in the Goods. Buyer agrees to execute and deliver such other documents as requested by Seller to create, perfect, preserve or enforce such security interest, and appoints Seller as its attorney-in-fact with authority, at Seller's option, to take actions as Seller deems reasonable in the circumstance to perfect the above security interest in any one or more jurisdictions. Buyer shall pay (or reimburse Seller) for any and all applicable filing fees.
11. **Resale.** On any resale of the goods, Buyer shall contractually limit its own customers' rights and remedies against both Buyer and Seller to the same extent as these Terms of Sale and Buyer shall indemnify, defend, and hold Seller harmless from any claims exceeding Seller's liability under these Terms of Sale.
12. **Quantities.** Buyer agrees to inspect the quantity of goods immediately upon receipt of such goods from Seller. Any claim by Buyer that Seller failed to deliver the agreed-upon quantity of goods must be submitted to Seller in writing upon the receipt and immediate inspection of the goods. If Buyer fails to do so, then it shall be conclusively presumed that the quantity provided in the packing list was delivered and any claim to the contrary shall be irrevocably waived.
13. **Permits and Compliance.** Seller is not responsible for obtaining any permits, inspections or licenses required for use, installation or operation of the goods. Seller does not make a representation or promise that the goods will conform to a law, ordinance, regulation, code or standard. Buyer will be responsible for compliance with any and all federal, state, or local laws or regulations respecting safety or respecting use of the goods and shall indemnify and hold Seller harmless from and against any and all claims of violations of laws or regulations or other claims of personal injury or property damage directly or indirectly related to the installation, maintenance, or operation of the goods.

14. **Components of Another Product.** If any of the goods constitute parts or components that are to be incorporated or installed in a product that is manufactured or assembled by or for Buyer, then (a) Buyer shall obtain, or cause the end-user of the product to obtain, all permits, inspections and licenses that are required for installation or operation of the product, (b) Buyer shall cause the product to conform to all applicable laws, ordinances, regulations, codes and standards and (c) Buyer shall place on the product all safety devices and warnings, and shall furnish to its customer all operating instructions, that are necessary or desirable to prevent death, personal injury or property damage from being caused by use or operation of the product.
15. **Safety Features.** Buyer shall install and operate the goods properly and according to Seller's instructions, if any, and shall not remove or change any safety device, warning or instruction that Seller placed on or included with the goods.
16. **Tooling.** Unless Seller and Buyer expressly agree otherwise, tooling used by Seller in the manufacture of the goods will be Seller's sole and exclusive property. If Seller and Buyer expressly agree that tooling will be owned by the Buyer, then Seller will impose and Buyer must pay a separately-identified charge for tooling to be used in the manufacture of the goods, and, upon payment in full for such tooling, the tooling shall be the property of Buyer, subject to the following: (a) risk of loss of the tooling shall at all times remain with Buyer; (b) Seller retains a security interest in the tooling to secure all obligations that Buyer at any time owes to Seller; (c) Buyer shall not have any right to possess the tooling as long as Seller has any outstanding obligation to sell to Buyer goods whose manufacture requires use of the tooling; (d) Buyer shall reimburse Seller on demand for all costs of modifications of the tooling that are made reasonably necessary by changes in the specifications for the goods; and (e) upon Seller's demand, Buyer shall immediately remove the tooling from Seller's premises, at Buyer's expense, and if Buyer fails to do so within ten (10) days after that demand, then Seller may use, possess, destroy or otherwise dispose of the tooling, without further notice or liability to Buyer.
17. **Support.** Unless otherwise specifically provided in a quotation, acknowledgment, or invoice, authorized by Seller, the Contract does not include any services of Seller in connection with the installation of the goods.
18. **Cancellation; Returns.** (a) Buyer does not have any right to cancel its agreement to buy the goods from Seller. If, however, Seller agrees in writing to permit cancellation, then Buyer shall immediately pay to Seller a cancellation charge in an amount equal to the purchase price (including any tooling charge) less allowances (in amounts that Seller determines in its sole discretion) for (1) the realizable value to Seller of any standard components that Seller purchased or ordered before cancellation, (2) the realizable scrap value to Seller of the remaining material and tooling that Seller purchased, fabricated or ordered before cancellation and (3) any direct labor costs that Seller saved by reason of the cancellation.
 - (b) Buyer may not return any custom or labeled goods. All other resaleable and undamaged goods are subject to return only for credit and only with Seller's prior written consent. Seller may condition a return on Buyer providing certain information and paying a restocking fee.
 - (c) If Buyer fails to pay or perform any indebtedness or obligation that Buyer at any time owes to Seller, then Seller may consider Buyer's failure to be an anticipatory repudiation

of any or all outstanding contracts that provide for Seller to sell goods to Buyer, and Seller may, without liability to Buyer, cancel any or all of those outstanding contracts.

19. **Insecurity and Adequate Assurance.** If Seller ever believes in good faith that it has grounds for insecurity as to Buyer's performance under any contract between Buyer and Seller to purchase goods (including but not limited to the Contract), then Buyer shall provide adequate assurance of due performance within ten (10) days after Seller demands the assurance, which shall be considered to be a reasonable time. Buyer's failure to do so shall be considered to be a repudiation by Buyer of all then-existing contracts (including but not limited to the Contract), that provide for Buyer to purchase goods and/or services from Seller ("**Outstanding Contracts**"). "Grounds for insecurity" include, without limitation: (a) Buyer's failure to make a payment to Seller or to perform another obligation under any one or more Outstanding Contracts, (b) Buyer's insolvency, (c) a deterioration in Buyer's financial condition after an Outstanding Contract was entered into, or (d) Buyer's failure to provide financial statements and other financial information to Seller promptly upon Seller's request. "Adequate assurance of due performance" includes, without limitation, providing a letter of credit or comparable security for all obligations of Buyer that then exist or that will arise in the future under all Outstanding Contracts.
20. **Intellectual Property and Confidentiality.** All inventions (whether or not patentable), devices, technologies, ideas, improvements, processes, systems, software and other works and matters that Seller creates or develops in the course of Seller's design, development or manufacture of the goods and all drawings and specifications that Seller provides to Buyer ("**Intellectual Property**") shall be Seller's sole property, and Buyer assigns, and agrees to assign, to Seller all right, title and interest that Buyer now has or in the future acquires in the Intellectual Property. Buyer shall not disclose or use any of the Intellectual Property or any information about Seller's business, operations or activities, or any quotation or acknowledgment except to the extent necessary for Buyer to use the goods.
21. **Indemnity.** Buyer shall indemnify and hold harmless Seller with respect to all damages, losses, claims and expenses, including but not limited to attorney fees, that Seller incurs as a result of (a) Buyer's breach of any of Buyer's obligations under these Terms of Sale, including but not limited to the Seller's collection of past-due amounts, (b) Buyer's use or installation of the goods or (c) any claimed unfair competition or patent, trademark or copyright infringement or any other claim resulting from Seller's manufacture of the goods to Buyer's specifications or design. Seller shall indemnify and hold harmless Buyer with respect to all damages, losses, claims and expenses, including but not limited to attorney fees, that Buyer incurs as a result of Seller's breach of any of Seller's obligations under these Terms of Sale.
22. **Seller's Rights.** Seller has all rights and remedies that applicable law gives to sellers. Seller's rights and remedies are cumulative and not alternatives, and Seller may exercise one or more of them from time to time. Seller shall not be deemed to have waived any right unless such waiver is express and written. Further, Seller's waiver of any right on any occasion shall not be a waiver of any future exercise of that right or of any other rights.
23. **Time For Bringing Action.** Any action that Buyer brings against Seller for breach of the Contract or for any other claim that arises out of or relates to the goods or their design,

manufacture, sale or delivery must be brought within one (1) year after the cause of action accrues or such shorter time as provided in the Contract.

24. **Applicable Law.** The Contract between Seller and Buyer shall be considered to have been made in the State of Michigan, and it shall be governed by and interpreted according to Michigan law. Either party may bring any action that arises out of or relates to the Contract in any federal or state court in Ottawa or Kent County, Michigan that has jurisdiction of the subject matter, and Buyer irrevocably consents that any such court shall have personal jurisdiction over Buyer and waives any objection that the court is an inconvenient forum.
25. **Complete Agreement; Amendment.** If Buyer has not otherwise agreed to these Terms of Sale, then Buyer's acceptance of, delivery of, or payment for, the goods shall constitute Buyer's agreement to these Terms of Sale. The Contract will not be amended or supplemented by additional or inconsistent terms contained in a purchase order or another standard form. The terms on Seller's quotation and acknowledgment and these standard Terms of Sale contain the entire agreement between Buyer and Seller. Any change in the Contract must be by a writing signed by an authorized officer of Seller.