



TERMS AND CONDITIONS OF SALE

1. **GENERAL.** The agreement between CAD ENTERPRISES, Inc. or its subsidiary ("Seller") and any third party ("Purchaser") with respect to the sale of any of Seller's products or services to Purchaser (the "Agreement") will consist only of (a) the terms and conditions contained herein, (b) Seller's written quotation delivered to Purchaser, (c) such other terms expressly agreed to by Seller and Purchaser in a writing signed by an authorized representative of each party, (d) Purchaser's purchase order terms specifying quantity, type, delivery date and shipping location of the products or services ordered, but no other terms of such purchase order. Seller OBJECTS IN ADVANCE TO THE INCLUSION OF ANY ADDITIONAL, INCONSISTENT OR DIFFERENT TERMS PROPOSED BY PURCHASER IN ANY OTHER DOCUMENT. THE INCLUSION OF SUCH TERMS BY PURCHASER WILL BE OF NO FORCE OR EFFECT, AND SUCH TERMS WILL NOT BE CONDITIONS OR ADDITIONAL TERMS TO THE AGREEMENT, AND Seller'S PROVIDING OF GOODS OR SERVICES WILL NOT BE DEEMED AN ACCEPTANCE OF SUCH TERMS. No course of prior dealings between the parties and no usage of the trade will be relevant to determine the meaning of the Agreement.
2. **PRICING AND PAYMENT.** Pricing is as set forth in Seller's written quotation. All prices include packaging in accordance with Seller's standard procedures. Charges for special packaging, crating or packing are the responsibility of Purchaser. Prices are subject to change and surcharges without notice in the event of unforeseen material and operating cost increases. Payment terms will be as set forth in Seller's quotation, acknowledgment or invoice, in accordance with its credit and collections policy and assessment of Purchaser's credit risk. Unless otherwise stated, payment will be due upon receipt. All payments shall be made in United States currency. Seller may at any time decline to ship, make delivery or perform work except upon receipt of cash payment, letter of credit, or security, or upon other terms and conditions satisfactory to Seller in accordance with its credit and collections policy and assessment of credit risk. All past due accounts will be subject to a 1.5% finance charge per month on the unpaid balance (an annual percentage rate of 18.0%). In the event Purchaser defaults in its payment obligations, Purchaser will be liable for Seller's costs of collection, including reasonable attorneys' fees.
3. **TAXES.** Taxes are not included in the Proposal or price. Any taxes which the Seller may be required to pay or collect, under any existing or future law, upon or with respect to the sale, purchase, delivery, storage, processing, use, consumption or transportation of any of the goods covered hereby, including taxes upon or measured by the receipts from the sale thereof, shall be for the account of Purchaser and Purchaser shall promptly pay to Seller the amount due upon Seller's demand.
4. **EXPIRATION OF OFFER AND ORDER CONFIRMATION.** Unless specified differently on the Proposal, the offer expires after thirty (30) days of the date of the Proposal. Due to changing market and backlog conditions, all quoted deliveries are subject to confirmation upon receipt of order. Quoted price is dependent upon raw material and market conditions at time of order and subject to revision at time of order.
5. **TITLE AND RISK OF LOSS.** All product sales will be made Ex Works "EXW" (INCOTERMS 2020 or its successor) Seller's U.S. manufacturing facility and title and risk of loss or damage to such product will pass to Purchaser upon tender of delivery thereof to the common carrier. Purchaser will have the right to specify the method of transportation for the products and the common carrier to be used. Absent such specification, Seller shall ship the products by a reliable common carrier of its own selection in order to meet the delivery schedule and invoice Purchaser for all applicable charges associated with such shipment. A security interest and right of possession to the products will remain in Seller, regardless of mode of attachment to realty or other property until full payment has been made therefore. Purchaser

agrees to do all acts necessary to perfect and maintain such security interest in Seller and shall adequately insure products against all loss or damage, with Seller being named as an additional insured.

6. **U.S. IMPORT & EXPORT REGULATIONS.** Purchaser shall pay all handling and other similar costs from Seller's facility, including the costs of freight, insurance, export clearances, import duties and taxes. Purchaser will be "exporter of record" with respect to any export from the United States of America and shall perform all compliance and logistics functions in connection therewith and shall also comply with all applicable laws, rules and regulations. Purchaser understands that Seller and/or the products or services are subject to laws and regulations of the United States of America that may require licensing or authorization for, or prohibit export, re-export or diversion of Seller's products or services to certain countries, and agrees it shall not knowingly assist or participate in any such export, re-export or diversion or other violation of applicable U. S. laws and regulations. Purchaser shall indemnify, defend, and hold Seller harmless from and against any loss, liability, or damage of any kind that Seller incurs in connection with a breach of this section.
7. **ACCEPTANCE OF PRODUCT.** All drawings, specifications, technical documentation, samples, prototypes and Products are approved and/or accepted by Purchaser if Purchaser does not provide Seller a written objection and/or rejection within 10 days of receipt or other reasonable time established in writing by Seller. Failure to provide written objection and/or rejection will constitute an irrevocable acceptance by the Purchaser of the Products. Any written objection and/or rejection must state with specificity all defects and non-conformities upon which Purchaser will rely to support its rejection of the Products. ALL DEFECTS AND NON-CONFORMITIES WHICH ARE NOT SPECIFIED ARE WAIVED BY PURCHASER. If Purchaser rejects the Products and, if requested by Seller, Purchaser will return them to Seller at Purchaser's cost, within three days, or Purchaser has irrevocably accepted the Products. No attempted revocation of acceptance will be effective, and Purchaser will be limited to any available remedies specifically provided in the Terms for breach of warranty. Seller has a reasonable period of time to cure any non-conformity.
8. **TERMINATION OR CANCELLATION.** These Terms are subject to Seller's revocation or cancellation at any time, without liability, provided that Seller completes all current orders in process at the time of cancellation. An order placed with and accepted by Seller cannot be delayed, canceled, suspended or extended except with Seller's written consent and upon written terms accepted by Seller that will reimburse Seller for and indemnify Seller against loss and provide Seller with an acceptable profit for its materials, time, labor, services, use of facilities and otherwise. Purchaser will be obligated to accept any goods shipped, tendered for delivery or delivered by Seller pursuant to the order prior to any agreed delay, cancellation, suspension or extension of the order. Any attempt by Purchaser to unilaterally revoke, delay or suspend acceptance for any reason whatever after it has agreed to delivery of or accepted any shipment will constitute a breach of the Agreement. For purposes of this paragraph, acceptance will be any waiver of inspection, use or possession of goods, payment of the invoice, or any indication of exclusive control exercised by Purchaser.
9. **DELIVERY AND DELAYS.** Seller shall use commercially reasonable efforts to deliver the products or services on or up to 30 days before the specified delivery date and will notify Purchaser whenever changes to the specified delivery date will not be achieved. In no event will Seller be liable for any damages or expenses caused by delays in delivery times.
10. **SELLER'S RIGHT TO CURE.** If products or services are tendered that do not fully comply with the provisions of the Agreement and those products or services are rejected by Purchaser, Seller will have the right to cure within a reasonable time after written notice thereof by substituting a conforming tender whether or not the time for performance has passed. Any rejection of products or services by Purchaser must be within 60 days from date of shipment.
11. **CLAIMS.** All products damaged during shipment and all claims relating thereto must be made with the freight carrier in accordance with such carrier's policies and procedures. Claims for products damaged

during shipment are not covered under the warranty provision stated herein and in no event will Seller be liable for such damaged products.

12. **BANKRUPTCY OR INSOLVENCY BY PURCHASER.** If any proceedings are instituted by or against Purchaser under any insolvency or bankruptcy act or a receiver be appointed or ordered to dispose of Purchaser's business or property or if Purchaser makes an assignment or conveyance for the benefit of creditors or if the contract resulting from acceptance of this offer be breached by Purchaser, thereupon and forthwith, all right, title and interest in and to such goods shall automatically revert to and remain in Seller.
13. **NON-ASSIGNMENT.** Purchaser shall not assign this contract without Seller's written consent. Any such attempt at assignment without such written consent of Seller shall be wholly void for all purposes.
14. **NO SET-OFF.** Purchaser will have no rights of set-off against any amounts that become payable to Seller under the Agreement or otherwise.
15. **INTELLECTUAL PROPERTY.** Unless expressly agreed otherwise by Seller in writing, Seller retains all ownership, license and other rights to all patents, trademarks, copyrights, trade secrets and other intellectual property rights related to the products and services, and, except for the right to use the products and services that are the subject of the Agreement, Purchaser obtains no rights to use any such intellectual property. Seller agrees to defend any suit or proceeding brought against Purchaser to the extent such suit or proceeding is based upon a claim that the use of the standard catalog products provided by Seller infringes any patent of the United States of America, provided Seller is promptly notified in writing and given authority, information and assistance for defense of same. Seller shall, at its option, (a) procure for Purchaser the right to continue to use such products, (b) modify such products so that they become non-infringing, (c) replace such products with non- infringing products, or (d) remove such products and refund the purchase price. The foregoing will not be construed to include any agreement by Seller to accept any liability whatsoever in respect to patents for inventions including more than the standard catalog products furnished hereunder, or in respect of patents for methods and processes to be carried out with the aid of such products. The provision of products or services by Seller does not convey any license, by implication, estoppel, or otherwise, under patent claims covering combinations of such products or services with other devices or elements. The foregoing states the entire liability of Seller with regard to patent infringement. Notwithstanding these provisions, Purchaser shall hold Seller harmless against any expense or loss resulting from infringement of patents or trademarks arising from compliance with Purchaser's designs or specifications or instructions."
16. **WARRANTIES.** Seller's sole warranty is against defects in materials and workmanship for 12 months after date of shipment of product. The foregoing warranty is exclusive, and in lieu of all other warranties (whether written, oral or implied) including the warranty of merchantability and the warranty of fitness for a particular purpose. Seller's liability is limited to replacing or repairing the Products, at Seller's discretion. The Warranty is valid only if Purchaser (a) notifies Seller in writing within 30 days from discovery of any alleged nonconformity; (b) the Products are returned transportation prepaid to Seller for inspection and testing; (c) Seller's inspection discloses to its satisfaction that any alleged nonconformance are material and have not been caused by misuse, abnormal usage, neglect, wear and tear, improper installation, unsuitable storage or maintenance, damage due to environmental and natural elements, repair, alteration, or accident; and (d) the Products were installed, maintained and used as intended. Failures in Products made from Purchaser furnished materials or castings by Purchaser designated casting facilities, including latent defects, are not Supplier liability. Cost incurred due to poor castings as a result of Purchaser furnished material, Purchaser designated Suppliers, and/or Purchaser owned tooling will need to be reimbursed by the Purchaser.
17. **LIMITATION OF REMEDIES / TIME FOR ACTION.** The remedies set forth in these terms will be exclusive. Seller will not be liable for any claims of any kind greater in amount than the purchase price of the products or services from which the claims are made. In no event will Seller be liable for costs

associated with the purchase of substitute goods by the Purchaser or for any special, indirect, incidental, consequential, or punitive damages. Without limiting the generality of the foregoing, Purchaser assumes all risk and liability for the results obtained by the use of any Products delivered hereunder in combination with other articles or materials or in the practice of any process, whether in terms of operating costs, general effectiveness, success or failure, and regardless of any oral or written statements made by Seller, by way of technical advice or otherwise, with respect to the use of such Products. Any proceeding by Purchaser for breach of the Terms cannot be filed or maintained unless it is commenced within one year after the cause has accrued, Purchaser has provided written notice to Seller as provided in these Terms and Purchaser has paid in full all amounts owing to Seller under these Terms.

18. **INDEMNIFICATION.** Purchaser hereby releases and agrees to indemnify, defend and hold Seller harmless from and against any and all direct and indirect claims, actions, causes of action, liabilities, losses, suits, demands, damages, costs or expenses of any kind, including legal fees, incurred as a result of, or arising from: (a) Purchaser's or any of its directors, officers, employees, affiliates, representatives, agents, successors or assigns ("Purchaser's Parties") misrepresentation or breach of these Terms or violation of law (including, the use or disclosure of Seller's Technical Information in violation of Section 5); (b) patent infringement based on Purchaser's use of the Products in an overall process or as an element in an overall combination; (c) Purchaser's alteration, processing, modification, assembly or reassembly of the Products, supplies or materials used in connection with the Products, or parts manufactured with the Products, or due to Purchaser's improper installation, application or use of the Products (d) any damage to or destruction of property, or injury to or death caused, or alleged to have been caused, in whole or in part, by any intentional, reckless, negligent or other act (or failure to act) of Purchaser or any of Purchaser's Parties. Prior to settling any claim, Purchaser will give Seller an opportunity to participate in the defense and/or settlement. Purchaser agrees not to settle any claim without Seller's written consent. In the event of any recall affecting the Products, Seller shall have the right to control the recall process, and Purchaser agrees to fully cooperate with Seller.
19. **FORCE MAJEURE.** Seller will not be liable for delays in delivery or failure to manufacture or deliver due to (a) causes beyond its reasonable control, (b) acts of God, acts of Purchaser, acts of civil or military authority, priorities, fires, strikes, floods, epidemics, quarantine restrictions, war, riot, delays in transportation or vehicle shortages, (c) uncontrollable inability to obtain necessary labor, materials, components, utilities or manufacturing facilities, (d) government policy, regulation, rule or law, or (e) any other commercial impracticability. Any such delays will effect a corresponding extension of Seller's performance dates.
20. **NO THIRD PARTY BENEFICIARIES.** There are no third party beneficiaries of the Agreement. Without limiting the generality of the foregoing, Purchaser's Purchasers will have no rights against Seller with respect to the Agreement.
21. **GOVERNING LAW.** This transaction is to be construed according to the laws of the State of Arizona. Purchaser hereby consents to the exclusive jurisdiction of the courts of the State of Arizona and the United States District Court for the District of Arizona for purposes of any suit, action or other proceeding arising out of this transaction.
22. **SEVERABILITY, WAIVER, REMEDIES.** A holding that any term or condition of the Agreement is void or unenforceable will not render void or unenforceable any other terms or conditions. No waiver of any term or condition of the Agreement will be effective unless the waiver is in writing signed by an authorized representative of the party to be charged. The failure of either party to enforce at any time or for any period of time any of the provisions of the Agreement will not be construed to be a waiver of such provisions nor the right of such party thereafter to enforce each and every such provision. The rights and remedies provided in the Agreement will not be exclusive and are in addition to any other rights and remedies provided by law.

23. **DISPUTE RESOLUTION.** The parties will attempt to resolve any dispute involving the interpretation, performance or no-performance, or enforceability of these Terms by prompt good faith negotiations and, if such negotiations fail, will consider alternative dispute resolution procedures before resorting to litigation.
24. **SELLER AS AN INDEPENDENT CONTRACTOR.** Seller is acting as an independent contractor and nothing in the Agreement will be deemed to create a partnership, joint venture or similar relationship between the parties. Neither party may bind, nor represent itself as having the authority to bind, the other party. Each party will be responsible for all compensation and benefits payable to its employees and contractors, and all tax obligations with respect thereto. Neither party will not be deemed to be a co-employer of the other party's employees.
25. **CONSTRUCTION.** The section headings contained in these terms and conditions are for convenience only and will not constitute a part of these terms and conditions for any other purpose and will not limit or affect any of the provisions hereof. The word "including" is deemed to be "including without limitation." Neither Seller nor Purchaser will be deemed the drafter of the Agreement and its terms will be construed in accordance with their fair meaning and not strictly for or against either party.