



TERMS AND CONDITIONS OF SALE

All sales of goods and services by Competition Engineering, Inc. (“**Seller**”) are made subject to and on the following terms and conditions found within these Terms and Conditions of Sale. In these Terms and Conditions of Sale, the buyer named in Seller’s quotations or acknowledgments shall be referred to below as the “**Buyer**”, any goods sold by Seller to the Buyer are referred to below as “**goods**” and any services sold by Seller to the Buyer are called “**services**.”

- 1. Entire Agreement.** Buyer’s assent to these Terms and Conditions of Sale shall be conclusively presumed upon Seller’s acceptance of a purchase order, Buyer’s acceptance of all or any part of the goods ordered or payment for all or any of the goods ordered. Seller objects to and will not agree to any terms that are additional to or different from these Terms and Conditions of Sale. Terms and conditions that are printed on a purchase order, contained in a purchase order, incorporated into a purchase order or other form prepared by Buyer or which Buyer may in its usual course of business require Seller to electronically accept which are additional to, in conflict with or inconsistent with these Terms and Conditions of Sale shall be considered to be inapplicable, null and void and shall have no force or effect. These Terms and Conditions of Sale control the contract between the Buyer and Seller and shall automatically become a part of the contract. Seller and Buyer agree that the purported acceptance of any of Buyer’s terms and conditions by Seller, if any, either electronically or otherwise, that is required prior to viewing or receiving a purchase order will not be enforced and shall be considered to be inapplicable, null and void and shall have no force or effect. If Buyer objects to any of the provisions of these Terms and Conditions of Sale, Buyer must bring such objection to the attention of Seller in a writing separate from any purchase order or other printed form of Buyer, which shall be deemed to be proposals for different terms and conditions that may be accepted only in writing signed by an authorized representative of Seller. All orders are subject to the approval of Seller. Except as otherwise agreed to by Seller in writing, these Terms and Conditions of Sale, together with the applicable Seller quotation or order acknowledgment or accepted purchase order, shall constitute the complete and final agreement between Seller and Buyer, superseding completely any prior oral or written communications. Terms or conditions contained in any document issued by Buyer which in any manner purport to alter, modify, change, suspend, or add to any term or condition contained in these Terms and Conditions of Sale shall be deemed excluded from such Buyer document and waived by Buyer. Seller and Buyer expressly agree that Seller may modify these Terms and Conditions of Sale from time to time, and such modifications shall be binding upon Buyer. Seller may commence performance in reliance upon Buyer’s acceptance of these Terms and Conditions of Sale.
- 2. Purchase Price.** Prices quoted are firm for thirty (30) days from the date of quotation by Seller, with the exception that Seller reserves the right to extend this time period on an as need basis.

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The purchase price shall be stated on the applicable Seller quotation or order acknowledgement or on the accepted purchase order or as calculated in accordance with any pricing mechanism contained therein or used in Seller's normal course of business. However, if Seller announces an industry surcharge, such surcharge shall become effective for goods scheduled for shipment beginning on the date of the Seller's announcement of such surcharge. If Buyer requests and Seller agrees to any changes in Buyer's order after its receipt by Seller, Buyer shall pay all charges reasonably assessed by Seller with respect to those changes. Seller has the right to increase its prices at any time upon notice to Buyer to reflect any unusual or unforeseen increase in Seller's costs, including, but not limited to, an increase in the cost of materials. Buyer may not offset or recoup any claim against amounts due Seller.

- 3. Payment Terms.** Unless otherwise stipulated by Seller or restricted by applicable law, payment shall be due in thirty (30) days after shipment of the goods or performance of the services, except that if at any time Seller determines that Buyer's financial condition does not justify a sale on credit or if Buyer shall at any time be in default in any indebtedness or obligation owing to Seller, then Seller may require advance payment or may ship C.O.D., and may withhold shipments on orders being shipped in installments. Any payment not made when due shall accrue a late charge of 1-1/2% per month. Payment must be made at the address and/or financial institution set forth in Seller's quotation or order acknowledgement or as otherwise directed by Seller. If Buyer fails to make payment in full or in part or refuses to pay any applicable price increases or surcharges, Seller shall have the right to: (1) immediately suspend performance and cancel the unfinished portion of all acknowledged orders, or (2) to proceed with the order, given an extension of time for performance as necessitated by the temporary suspension. Seller shall have the right to enforce payment of the full purchase price, including any price increase or surcharge, for goods and/or services already delivered or in process. Seller shall have the right to employ an attorney to collect the due balance and Buyer agrees to pay all collection costs incurred by Seller, including Seller's attorney's fees. Unless otherwise agreed in a writing signed by Buyer and Seller, all payments shall be in U.S. Dollars.
- 4. Delivery and Risk of Loss.** Unless Seller agrees otherwise in writing, Seller shall deliver the goods EXW (Incoterms 2000) Seller's facility from which the goods will be shipped, except that if Seller's facility and Buyer's facility are both located in the United States, then Seller shall deliver the goods F.O.B. (Uniform Commercial Code term) Seller's facility. In either case, risk of loss of the goods shall pass to Buyer upon identification of the goods to the contract between Buyer and Seller. Shipping, delivery and performance dates are estimates only, calculated from the date of receipt of Buyer's order and complete drawings, specifications, designs, samples and other information reasonably requested by Seller to manufacture the goods and perform the services, and time is not of the essence. Seller shall not incur any liability, direct or indirect, nor shall any order be canceled because or as a result of any delays in meeting such dates or schedules. Seller reserves the right to recalculate any projected shipping, delivery or performance dates upon receipt of Buyer's order. Seller may ship all the goods at one time or in portions from time to time. Seller shall have the right to determine the method of shipment and routing of the goods, unless otherwise stated in Seller's quotation or acknowledgment. Seller shall not be responsible or liable for a delay in the delivery of goods to Buyer that is due to a late delivery by Buyer of critical items needed for the design, fabrication and manufacture of the goods by Seller, including, but not limited to, try out material, checking fixtures, design and quality information. Any delivery date identified in Seller's Quotation or otherwise agreed upon by Seller and Buyer shall automatically be null and void and/or automatically amended to a later date in time if Buyer fails to timely and properly provide Seller with all required technical data and specifications and

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other requested information, including approval drawings, special documentation or special components, if applicable, in accordance with the schedule set forth in Seller's Quotation or otherwise agreed upon by Seller and Buyer.

5. **Transportation Charges.** Unless specified in Seller's quotation or order acknowledgment, the price quotations and/or Seller's price does not include shipping and/or transportation costs. Except as otherwise agreed, delivery and/or transportation prices are computed by adding the cost of transportation to destination, including all applicable transportation rates, surcharges, fees and tolls together with any taxes paid by the Seller.
6. **Purchase of Components; Tryout and Sample Parts.** Buyer agrees that upon Buyer's approval of the 50% design level of the goods that it automatically authorizes Seller to purchase key components necessary to fabricate and manufacture the goods to be supplied by Seller. Buyer agrees to provide all of the tryout material in a sufficient and adequate amount of tryout stock for tryout development of the goods. The tryout material may be used up in the tryout process. Any tryout material provided by the Buyer is considered to be representative of standard production material. Dimensional and/or performance deviations from specifications may cause malfunction of equipment and such deviations shall void Seller's warranty provided below. Unless specified in Seller's quotation, order acknowledgment or some other written agreement signed by Seller, Buyer is responsible for transport of all sample parts. Any costs associated with non-conforming tryout material supplied by Buyer shall be the responsibility and liability of Buyer. Seller shall have no responsibility and/or obligation to return tryout stock to Buyer.
7. **Taxes and Duties.** Unless specified in Seller's quotation, order acknowledgment or some other written agreement signed by Seller, the price quotations and/or Seller's price does not include any privilege, occupation, personal property, value-added, sales, excise, use or other taxes, or any tariffs or customs duties, and Buyer shall be liable for all such taxes and duties, whether or not Seller invoiced Buyer for them.
8. **Unavoidable Delay; Limitation of Liability for Delivery Delay.** If Seller is not able to finish and deliver the goods to Buyer, or to perform the services, on time because of anything Seller cannot control, including but not limited to casualty, labor trouble/disturbances, unavailability/shortage of necessary materials/supplies or transportation, Buyer's failure to approve production samples or provide Seller with necessary information, fire, flood, governmental act or regulation, riot, terrorist act, equipment or power failure, unscheduled maintenance, accident, weather conditions, acts of environmental agencies, act of God or any cause beyond Seller's control, 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. Delivery dates are approximate. In no event shall Seller be liable for labor or for any special, indirect, incidental, or consequential damages, including but not limited to, demurrage charges, cost of shipment, downtime, lost profits, lost sales, or any other damages resulting from the delay in delivery. Acceptance of goods by the Buyer shall constitute a waiver by Buyer of any claim for damages on account of delivery delay.
9. **Changes.** Seller shall have the right to make design or engineering changes in its parts, equipment, processes and methods of production of the goods or performance of the services, but Seller will not make any changes in operational or dimensional specifications that Buyer submits. Stenographical and clerical errors in quotations are subject to correction.

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10. Limited Warranty and Liability.

- a. **Goods.** If any goods provided by Seller proves to be defective within 1 year (“**Warranty Period**”) after Seller manufactures it, and if Buyer returns the item to Seller within the Warranty Period (either F.O.B. (Uniform Commercial Code term) Seller’s plant in Marne, Michigan or, if the goods have been exported from the United States, DDP (Incoterms 2000) Seller’s plant in Marne, Michigan), and Buyer provides written details of the alleged defect to Seller and provided Seller a reasonable opportunity to investigate the alleged defect claim, then Seller shall, at Seller’s option, either repair or replace the defective item, at Seller’s expense, or refund the purchase price for the defective goods. 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 (1) the reasonable costs of repair or replacement by a third party or (2) that part of the purchase price of the defective goods that shall have been paid by Buyer. Buyer shall not have repairs or replacements completed by a third party without giving Seller at least thirty (30) days prior written notice, during which time Seller may repair or replace the alleged defective item. An item shall be considered “**defective**” if Seller finds and determines that it is defective in materials or workmanship and if the defect materially impairs the value of the goods to Buyer, except that the goods will not be defective if they conform to industry accepted tolerances or Buyer’s specifications or the goods are used for applications not specified in Seller’s quotation for the goods. This paragraph sets forth Buyer’s sole and exclusive remedies for any defect in the goods. Seller does not warrant the workmanship of others who have performed work on or used the goods.
- b. **Services.** If a service proves to be defective (as defined below) within 1 year after Seller performs the service and if, in the case of a service involving Seller’s processing of goods furnished by Buyer, Buyer returns the goods to Seller within that period (either F.O.B. Seller’s facility in Marne, Michigan or, if the goods have been exported from the United States, DDP (Incoterms 2000) Seller’s facility in Marne, Michigan), then Seller shall, at its option, either re-perform the service, at Seller’s expense, or refund to Buyer the price that Buyer paid to Seller for that part of the service that was defective and shall reimburse Buyer for reasonable freight charges incurred in returning the goods to Seller. A service shall be considered “**defective**” if it is found by Seller to have failed to meet the standards in Seller’s industry and if that failure materially impairs the value of the services to Buyer, except that if (1) Buyer shall have approved or furnished to Seller specifications for the services, then the services shall not be considered defective to the extent they conform to the specifications, (2) the services will not be defective if they conform to industry accepted tolerances, and (3) Seller makes no warranty as to Services that were not completed by Seller for any reason. This paragraph sets forth Buyer’s sole and exclusive remedy for any defect in the services.
- c. **Limited Warranty; Exclusive Remedy.** EXCEPT AS EXPRESSLY SET FORTH IN SELLER’S QUOTATION OR ORDER ACKNOWLEDGEMENT AND THESE TERMS AND CONDITIONS OF SALE, SELLER MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AND SELLER ACCEPTS NO RESPONSIBILITY, RISK OR LIABILITY TO BUYER OR OTHERS CONCERNING, RELATING TO OR ARISING OUT OF: (A) THE MERCHANTABILITY OR OTHERWISE OF THE GOODS SOLD HEREUNDER; (B) THE FITNESS OR OTHERWISE FOR BUYER’S PURPOSES OF THE GOODS SOLD HEREUNDER; OR (C) THE PERFORMANCE, NON-

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PERFORMANCE, FAILURE, EFFICACY, LENGTH OF LIFE OF OR ANY DEFECT IN THE WHOLE OR ANY PART OR PARTS OF ANY GOODS MANUFACTURED OR FABRICATED FROM OR INCORPORATING OR OTHERWISE USING THE GOODS SOLD HEREUNDER.

d. Limitations of Liability.

- i. Seller's liability, whether in contract, in tort, under warranty, in negligence, or otherwise, shall not exceed the purchase price of the goods against which claim is made, and under no circumstances shall seller be liable for any special, indirect, incidental or consequential damages including, but not limited to, demurrage charges, costs of shipment, downtime, lost profits, or lost sales. Seller's liability hereunder shall be limited to either: (1) the obligation to repair or replace, at seller's discretion, only those portions of goods proven to have failed to meet in material respect the specifications on the seller's quotation or order acknowledgement at the time of shipment from the seller's facility, or (2) repayment of or credit against the purchase price of such goods (including transportation charges forming part of the invoice price). Seller and buyer expressly agree to this allocation of risk and the price stated for the goods is consideration in limiting seller's liability.

- ii. This warranty shall not apply to any alleged defect that results from 1) damage, physical abuse, vandalism, misuse, alterations, modifications, additions or repairs made without Seller's prior consent 2) improper type, quality, amount, and/or unsuitable lubrication used by Buyer on the goods, and 3) excessive electrical loads, exposure to water or corrosive liquids or other substances, exposure to excessive heat, or use other than as intended by Seller. It is Buyer's responsibility to provide the appropriate type, quality and/or amount of lubrication to adequately sustain the goods provided to Buyer by Seller. This warranty shall also not apply to any item provided and/or used in connection with the goods provided by Seller that Seller purchased from a component supplier. Also excluded from Seller's warranty is any warranty, except as to title, with respect to goods manufactured and/or designed to Buyer's specifications or services performed to Buyer's specifications, and the Buyer shall, at Buyer's own expense, (1) defend and hold harmless the Seller from and against any claim, suit or other expense which is asserted or brought against Seller by reason of its manufacture or sale of such goods or its performance of the services, and (2) pay to Seller any service charges on such goods or services. Notice of any defect must be given to Seller within 30 days of discovery by Buyer of the defect. **EXCEPT AS STATED IN THIS PARAGRAPH, SELLER DOES NOT MAKE ANY EXPRESS OR IMPLIED WARRANTY AS TO THE GOODS OR SERVICES, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE.** Buyer is solely responsible for determining the proper application and use of the goods. Seller shall not have any liability with respect to any and all improper and/or defective Buyer supplied equipment that is used in connection with the goods provided by Seller. It is Buyer's responsibility to provide suitable production "home line" environment and equipment that properly support and run the goods provided by Seller. Seller shall not have any

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tort or contractual liability to Buyer with respect to any of the goods or services and shall not be liable for consequential, incidental, special, exemplary, indirect or punitive damages that arise from any product defect, delay, non-delivery, recall operator neglect, misuse of goods or other breach, including but not limited to such damages arising out of personal injury, death, property damage, lost profits or other economic injury. Seller shall not be liable to Buyer or any other person in tort for any negligent design or manufacture of the products, or for the omission of any warning with respect thereto, or for the negligent performance of the services. Neither Buyer nor any other person may modify or expand this warranty, waive any of the limitations, or make any different or additional warranties with respect to the products. No statement to the contrary shall bind Seller unless made in a writing signed by an authorized officer of Seller. Buyer shall not have any right of rejection or of revocation of acceptance of the goods or services.

- 11. Solvency and Statutory Rights.** Buyer represents that Buyer is solvent. Seller retains title to the goods until the invoiced price is fully paid in immediately available funds. Seller retains and Buyer grants a security interest in the goods and all proceeds to secure payment of the price and all other indebtedness now and in the future owing by Buyer to Seller. Nothing contained in Seller's Quotation and these Terms and Conditions of Sale shall be construed as a waiver or modification of the Seller's statutory rights, including statutory lien rights under the Michigan Special Tools Lien Act or the Michigan Mold Lien Act, which lien rights Seller will exercise if payment by the Buyer is not made promptly and pursuant to the Terms and Conditions of Sale.
- 12. Permits, Standards and Certificates.** Seller is not responsible for obtaining any permit, inspection or license that is required for installation or operation of the goods or performance of the services. The material used by Seller is ordered, received and verified using vendor/supplier material specifications and certifications. Unless specified in Seller's quotation, order acknowledgment or some other written agreement signed by Seller, Seller does not make any promise or representation that the goods or materials from its vendors/suppliers will conform to any law, ordinance, regulation, code, certification or standard and Buyer agrees to accept any certification of goods received from Seller's vendor. Under no circumstances shall Seller be liable in any manner for a claim regarding the certification of goods or materials received from Seller's vendor/supplier.
- 13. Safety Features.** Buyer shall install and operate the goods and any equipment on which Seller has performed the services properly and according to Seller's operating instructions and shall not remove or change any safety device, warning or operating instructions that Seller placed on the goods or other equipment. Buyer is responsible for providing the necessary training necessary to properly, safely and effectively run and maintain the goods, components, equipment or machinery provided by Seller.
- 14. Proper Maintenance.** Buyer agrees to properly and adequately maintain and care the goods supplied by Seller. Buyer's failure to properly and adequately maintain and care for the goods supplied by Seller will nullify and void any and all warranty provided by Seller on the goods.
- 15. 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, or if the services are performed on any components that are to be incorporated or installed in a such a

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product, then (1) Buyer shall obtain, or cause the end-user of the product to obtain, all permits, inspections and licenses required for installation or operation of the product, (2) Buyer shall cause the product to conform to all applicable laws, ordinances, regulations, codes and standards and (3) Buyer shall place on the product all safety devices and warnings, and shall furnish to its buyer all operating instructions, that are necessary or desirable to prevent any death, personal injury or property damage from being caused by any use or operation of the product.

16. Resale of Finished Goods. On any resale of the goods, Buyer shall contractually limit its buyer's rights and remedies against both Buyer and Seller to the same extent as Buyer's rights and remedies are limited under these Terms and Conditions of Sale.

17. Right to Dispose of Goods or Seller's Property Left With Seller. Goods or Seller's property left with Seller shall be considered abandoned by Buyer if not removed from Seller's location after Seller's written request to Buyer. Buyer shall have fifteen (15) days after receipt of Seller's written request to remove any and all goods or other property at Seller's location. If goods or property are not removed after notice and thereby abandoned then Seller shall have the right to keep the goods or property for its own use or to sell or dispose of the goods or property.

18. 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 or performance of the services 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, except to the extent necessary for Buyer to use the goods or services. Any pricing information provided by Seller to Buyer is proprietary to Seller and shall be held in confidence by Buyer, shall only be used by Buyer in connection with this sale, and shall not be used for any other purposes or disclosed to third parties without Seller's prior written consent. Buyer shall be liable for any loss to Seller or commercial gain by others from unauthorized use of confidential information occasioned by Buyer's failure to comply with this provision.

19. Cancellation. No accepted purchase order for the Seller's goods and services may be cancelled for any reason, in whole or in part, without Seller's prior written approval. In the event a cancellation is approved by Seller then, unless otherwise agreed, Buyer shall pay Seller (i) all costs, expenses and related damages Seller incurs in relation to the order and/or the cancellation of the order, and (ii) any shipping charges and other out of pocket expenses incurred by Seller in relation to the cancellation (collectively, the "Cancellation Charges). If Buyer delays or puts on hold a purchase order for the Seller's goods for any reason for 60 days or more, Seller shall have the right to deem the purchase order cancelled and provide Buyer written notice that the purchase order has been deemed cancelled and a demand payment of its Cancellation Charges. Buyer must pay the Cancellation Charges within 30 days of the written notice on demand or otherwise be held to be in breach of the contract.

20. Insecurity and Adequate Assurance. If Seller ever believes in good faith that it has grounds for insecurity as to Buyer's performance under 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 provide adequate assurance of due

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performance within ten (10) days after Seller demands the assurance do so shall be considered to be a repudiation by Buyer of the contract and of all other then-existing contracts that provide for Buyer to purchase goods and/or services from Seller (“**Outstanding Contracts**”). “Grounds for insecurity” include, without limitation, (1) Buyer’s failure to make a payment to Seller or to perform another obligation under the contract or an Outstanding Contract, (2) Buyer’s insolvency, (3) a deterioration in Buyer’s financial condition after the contract was entered into and (4) 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.

21. Indemnity. Buyer shall indemnify and hold harmless Seller with respect to all damages, losses, claims and expenses, including but not limited to consequential and incidental damages and attorney fees, that Seller incurs as a result of Buyer’s breach of any of Buyer’s obligations under these Terms and Conditions of Sale or any claimed unfair competition or patent, trademark or copyright infringement or any other claim resulting from Seller’s manufacture of the goods, or performance of the services, to Buyer’s specifications.

22. Seller’s Rights. Seller has all rights and remedies given to Seller by applicable law, and Seller’s rights and remedies are cumulative and may be exercised from time to time. A waiver by Seller of any right on one occasion will not be a waiver of any future exercise of that right. If Seller finds it necessary to commence any type of collections proceedings to collect balances due from the Buyer, including lien enforcement actions, the Buyer agrees to pay all costs of collections and all attorneys fees incurred by Seller.

23. Governing Law; Time For Bringing Action. This agreement shall be considered to have been made in the State of Michigan, and it shall be governed by and interpreted according to Michigan law, excluding the United Nations Convention on Contracts for the International Sale of Goods. This agreement shall be interpreted in the English language only. Either party may bring any action that arises out of or relates to this agreement in any federal or state court in Grand Rapids, 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. Any action that Buyer brings against Seller for breach of this agreement or for any other claim that arises out of or relates to the goods or their design, manufacture, sale or delivery or the services must be brought within 1 year after the cause of action accrues.

24. Complete Agreement; Amendment. The terms on Seller’s quotation or order acknowledgment and these Terms and Condition of Sale contain the entire agreement between Buyer and Seller. Any change in this agreement must be by a signed writing. This agreement is not assignable or transferable by either party, except to its successor, or to the transferee of all or substantially all the party’s assets to which this contract relates.

Agreed to and acknowledged by Buyer:

BUYER’S NOTICE ADDRESS:

Attention: _____

BUYER:

By: _____

Print Name:

Title of Authorized Agent:

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