

TERMS & CONDITIONS OF SALE

14. **BUYER SUPPLIED MATERIAL & EQUIPMENT.** Seller and Buyer may mutually agree in writing for Buyer to provide materials and/or equipment (“Buyer Property”) to Seller. Buyer must provide a declared value (“Declared Value”) of Buyer Property on its Purchase Order. Buyer agrees that it shall maintain adequate Property Insurance that includes all-risk coverage covering Buyer Property in-transit and Buyer Property at other locations (including while at Seller’s facility). Except to the extent of Seller’s proven gross negligence, Buyer shall retain liability for loss or damage to all Buyer Property including while on Seller’s premises or within Seller’s care, custody, or control. Buyer hereby waives and forever releases Seller from any and all liability with respect to loss or damage to Buyer Property for any reason whatsoever other than Seller’s proven gross negligence and, in such event, Seller’s maximum liability (“Liability Limit”) shall not exceed the lower of the Declared Value or the Replacement Cost. Seller shall bear no responsibility or liability, financial or otherwise, that results from or is a consequence of incorrect Buyer Property and/or information including drawings, specifications or instructions.
- “Replacement Cost” means the total depreciated cost reasonably necessary to replace Buyer Property. As work is performed (Work in Progress), the Replacement Cost of Buyer Property may increase. “Work in Progress” includes materials, labor and burden and outside services performed (such as: coating, measuring, testing, etc.). Buyer assumes full responsibility for the cost of shipping, and liability and risk of loss or damage to Buyer Property while in transit. Incoming goods shall be inspected upon receipt by Seller, an inspection form will be generated and photographs will be taken to record condition of incoming Buyer Property. For outgoing shipment of Buyer Property and finished goods, Seller will arrange shipping with Buyer’s selected shipping company on Buyer’s account or Buyer will be billed by Seller for shipping costs. Buyer will be named consignee of goods and Buyer assumes full responsibility for the cost of shipping, liability and risk of loss or damage to Buyer Property while in transit. Buyer supplied crating and packaging must be designed to withstand the rigors of shipping.
- In the normal process of manufacturing, breakage and/or damage can occur with no obvious cause, negligence or fault. Breakage from causes such as concealed structural defects, stress fractures, thermal shock and others can occur regardless of the very best manufacturing practices. In the event of an unclear cause, Seller may perform a Root Cause Analysis to attempt to determine the cause of failure and percentage of financial liability to each party.
15. **INSURANCE.** Buyer, at its own cost and expense shall acquire and maintain, with insurance carriers having an AM Best rating of “A- VII” or better, sufficient insurance to adequately protect the respective interests of the Parties, but no less than the following minimum types and amounts of insurance on an occurrence basis: (i) commercial general liability insurance with minimum limits of \$1,000,000 per occurrence, \$1,000,000 products/completed operations aggregate and \$2,000,000 general aggregate, with coverage to include independent contractor, products/completed operations liability, contractual liability, personal injury, cross liability or severability of interests and broad form property damage, (ii) professional liability/errors & omissions insurance in the minimum limit of \$1,000,000 each claim and \$2,000,000 general aggregate to protect Buyer and (iii) statutory workers’ compensation insurance and employer’s liability insurance in the minimum amount of \$1,000,000 each employee by accident, \$1,000,000 each employee by disease and \$1,000,000 aggregate by disease with benefits afforded under the laws of the applicable state or country.
16. **LIMITED WARRANTY.** Unless expressly stated otherwise in writing by Seller, Seller warrants its Products for one (1) year from date of shipment to Buyer against defects in workmanship and material reported within such one (1) year period. Some Products require re-certification within a specified time from shipment to Buyer. If said Product is not re-certified within the specified time span, the warranty is void. Specifications provided by Seller are guidelines only and the particular use and application will determine the actual performance of Product. Seller’s liability under this warranty and Buyer’s sole remedy shall be limited to the replacement or repair or refund of price actually received by Seller for the Product at issue (depreciated), at Seller’s sole discretion, for any Product which Seller determines is defective. The warranty does not apply to any defect, malfunction or failure caused by repairs or modifications made by other than by, or without the consent of, Seller or if the Product has been subject to abuse, misuse, neglect, tampering, accident or damage by circumstances beyond Seller’s control, including without limitation, acts of God, war, acts of government, corrosion, power fluctuations, freeze-ups, labor disputes, differences with workmen, riots, explosions, vandalism, or malicious mischief. The warranty on component parts not manufactured by Seller is limited to that of the manufacturer thereof, if any. The foregoing warranties do not cover reimbursement for labor, transportation, removal, installation, or other expenses which may be incurred in connection with replacement or repair.
- OTHER THAN THE FOREGOING, SELLER MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE PRODUCTS, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; OR (c) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.
17. **EQUIPMENT.** Tooling, molds, fixtures, equipment and software (“Equipment”) developed by Seller for the purpose of manufacturing Buyer projects may contain Seller’s proprietary technology and is and shall remain Seller’s sole property. Although Buyer paid Equipment may be owned by the Buyer, it shall be held by Seller as confidential material and shall not be released to the Buyer. Equipment may be viewed and inspected by Buyer solely at Seller’s discretion.
18. **CONFIDENTIALITY.** Neither party shall disclose any information regarding any subject matter or proprietary technical information received from the other party, except to the extent that disclosure is required by law or is otherwise agreed to in writing by the parties. Any current and executed confidentiality and/or non-disclosure agreements that exist between Buyer and Seller shall supersede this section.
19. **INTELLECTUAL PROPERTY.** Each party owns or has a license to use its respective patents, copyrights, trademarks, design rights, trade secrets, know-how and other intellectual property and proprietary rights (“IP Rights”). Buyer represents, warrants and covenants that the purchase or use of Products furnished hereunder will not infringe or contribute to infringement of any IP Right, and shall defend, indemnify and hold the Seller harmless against any and all Claims which they may sustain or incur as arising from or relating to the Pre-existing IP or of a breach of this Section.
20. **INDEMNIFICATION.** Buyer shall defend, indemnify and hold Seller, its agents and employees harmless from and against all claims, suits, damages, expenses (including reasonable attorneys’ fees), including property damage and death or injury, arising out of or relating (i) provided specifications, structure, operation, material, or method of making Product, including, without limitation, any resulting violation of intellectual or proprietary rights, (ii) use, misuse or disposal of Product, (iii) violation of laws including US Export Laws, and (iv) breach of these Terms.
21. **LIMITATION OF LIABILITY.** Under no circumstances shall Seller be liable to Buyer or any other person or entity for incidental, consequential, exemplary, punitive or special damages or any other losses or expenses, including without limitation, for injuries or death to persons or damage to property, loss of profit or revenues, cost of substitute products, loss of use, downtime costs, or claims of Buyer’s customers even if Seller has been advised of the possibility of such damages. Seller’s maximum aggregate liability arising out of or relating to any Product purchased shall not exceed the Liability Limit.
22. **SECURITY INTEREST.** Buyer hereby grants to Seller a purchase money security interest in the Product, together with all additions and accessions to, substitutions for and replacements, products and cash and non-cash proceeds of all of the foregoing including proceeds of all insurance policies insuring the foregoing (collectively, the “Collateral”). Seller is authorized to file financing statements describing the Collateral and in such jurisdictions it deems appropriate without further consent from Buyer. Buyer shall pay Seller, upon demand, all costs and expenses incurred by Seller with respect to the administration, enforcement, collection or protection of its first position priority purchase money security interest and lien in and to the Collateral, the enforcement of any Claims against the Buyer or the exercise of any of its rights, remedies or privileges granted in the order, including reasonable attorneys’ fees.
23. **COMPLIANCE.** Product furnished herein may not comply with all Federal, State, and local laws, regulations or ordinances unless expressly agreed to in writing. It is the Buyer’s sole responsibility to insure that Product is compliant and used in a safe manner.



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24. **EXPORT COMPLIANCE.** In order to ensure that both parties comply with the export control laws, it is the sole responsibility of Buyer to clearly mark and identify any controlled Technology or Technical Data contained in all communications, documents, specifications, structure, materials, instructions, software, designs provided by Buyer to Seller. Controlled Technology or Technical Data means any such information that falls under the jurisdiction of US Export Laws (collectively "Controlled Items"). US Export Laws include, but are not limited to: the Arms Export Control Act, the International Traffic in Arms Regulations, the Export Administration Act, the Export Administration Regulations and any other statute(s) or regulation(s) governing the sale, export, disclosure or exchange of any item by a U.S. Person with, or to, another country or a person who is a citizen of another country and all successor and supplemental laws and regulations to the above. The terms Technology and Technical Data shall have the meanings provided for in the US Export Laws. Buyer represents and warrants that all Technology and Technical Data provided by the Seller which are subject to US Export Laws will be stored, secured, transmitted and disposed of only as authorized by the US Export Laws. Buyer will either (i) represent and warrant that it is a U.S. Person as that term is defined in the US Export Laws, or (ii) if Buyer is a non-U.S. business entity, it must disclose to Seller in writing the country in which it is incorporated or otherwise organized to do business. Buyer must also disclose the citizenships and U.S. immigration status of all persons involved in any sales transaction(s), including any consignees or end users and end uses, as required by the U.S. Export Laws. If Buyer is a natural person, Buyer must disclose to Seller in writing all citizenships and U.S. immigration status. Buyer further covenants that it shall comply with any and all US Export Laws, and any license(s) issued thereunder in regard to the items provided by Seller pursuant to this sale.
25. **APPLICABLE LAW.** The laws of the State of California shall govern these Terms and the courts of the State of California, County of San Diego shall be the exclusive venue and jurisdiction.
26. **ARBITRATION.** Seller may, at Seller's sole option, require Buyer to arbitrate any controversy, claim or dispute arising out of or relating to these Terms or any other issue. If Seller chooses arbitration, such arbitration shall be conducted before the American Arbitration Association in the English language, and shall take place in San Diego, CA. One arbitrator shall preside, and there shall be no discovery rights in the event that the claims at issue do not exceed \$150,000. Otherwise, discovery shall be limited to (per Claimant side or Respondent side): 20 interrogatories, 25 document requests, 30 requests to admit, 12 hours of deposition time and each party may call no more than one expert to provide opinions and/or to testify. The arbitration shall be completed in no longer than 90 days after receipt of the initial demand by the respondent.
27. **GOVERNANCE.** Buyer and Seller each agree that these Terms shall govern and control with respect to all orders issued by Buyer to Seller, and no term, condition, warranty or representation appearing in any purchase order or other documentation of Buyer will govern unless agreed to in writing by Seller.
28. **SEVERABILITY.** In the event that any provision herein shall be found to be void or unenforceable, this shall not be construed to render any other provisions void or unenforceable, and all other provisions shall remain in full force and effect unless the provisions which are invalid or unenforceable shall substantially affect the rights or obligations granted to or undertaken by the parties.
29. **ENTIRETY.** The Order embodies the entire understanding between Buyer and Seller and there are no agreements, understandings, conditions, warranties, or representations, oral or written, express or implied, with reference to the subject matter hereof which are not merged herein. Any changes or revisions to these terms and conditions by Buyer must be authorized in writing by an authorized officer of Seller.
30. **MISCELLANEOUS.** These Terms may be modified by Seller from time to time. The headings are for convenience of reference only and are not intended to influence the construction of any provisions of the Order. Unless a particular context clearly provides otherwise, the word "including" will mean "including but not limited to".