



## ENGINEERED MACHINED PRODUCTS, INC. TERMS AND CONDITIONS OF SALE

---

These Terms and Conditions, the provisions of any document referring to these Terms and Conditions, any attachments thereto, and any samples, drawings or specifications referred to therein, shall collectively constitute the "Purchase Order". This Purchase Order shall constitute our offer to purchase from You, the supplier (hereafter "You" or "Your"), the products and services ordered (the "Products"). Engineered Machined Products, Inc., including its subsidiaries (collectively hereafter "EMP") may revoke this offer at any time before Your acceptance, and after Your acceptance as provided in these Terms and Conditions. Upon acceptance, You agree to sell and deliver Products to EMP in accordance with this Purchase Order. You shall be deemed to have accepted this offer by sending EMP a written acknowledgement, by delivering any Product ordered, or by commencement of work on Products to be specifically manufactured for EMP. These Terms and Conditions shall apply to each and every delivery to EMP.

**YOUR ACCEPTANCE IS LIMITED TO THE ACCEPTANCE OF EMP'S TERMS AND CONDITIONS. EMP OBJECTS TO AND REJECTS THE PROVISIONS OF ANY ACKNOWLEDGMENT, ORDER, ACCEPTANCE OR INVOICE WHICH ARE INCONSISTENT WITH OR IN ADDITION TO THE PROVISIONS OF THIS PURCHASE ORDER. ANY SUCH ADDITIONAL TERMS AND CONDITIONS SHALL BE DEEMED A MATERIAL ALTERATION OF THIS PURCHASE ORDER. THIS PURCHASE ORDER SHALL BE THE COMPLETE AND EXCLUSIVE CONTRACT BETWEEN US WITH RESPECT TO THE PRODUCTS AND MAY BE MODIFIED ONLY IN WRITING AND SIGNED BY AN AUTHORIZED EMP REPRESENTATIVE AND YOU. NO PRIOR PROPOSALS, QUOTATIONS, STATEMENTS, FORECASTS, COURSE OF DEALING OR USAGE OF TRADE WILL BE PART OF THE CONTRACT BETWEEN US.**

1. Acceptance. If You propose additional or different terms which relate to the description, quantity, price or delivery schedule of the Products, Your proposal will be deemed a rejection of EMP's offer. In all other cases, Your proposal will be deemed a material alteration of EMP's terms, and EMP's terms will be deemed accepted by You without Your additional or different terms. ***If this Purchase Order is deemed an acceptance of Your prior offer, EMP's acceptance is expressly conditional on Your assent to EMP's terms and conditions.***

2. Order Changes.

(a) All quantities ordered are estimates only, unless noted as firm on the scheduled release, and may be revised as EMP's requirements change. EMP may at any time make changes in Product specifications, drawings, designs, delivery dates, shipping instructions or other terms of the Purchase Order. Such changes will be confirmed in writing by an authorized EMP representative. You must notify EMP within ten (10) days of said notice whether and to what extent such changes will affect price or time of delivery.

(b) The parties agree that, notwithstanding the prior or subsequent use by You of any order form, invoice, or other document containing printed terms or conditions, they are contracting solely on the basis of this order, which contains the entire understanding of the parties and is intended as a final expression of their agreement and a complete statement of the terms and conditions thereof, and may not be amended, modified or otherwise supplemented unless such amendments, modifications or supplements are in writing and signed by EMP's authorized representative. A provision contained in any order form, invoice or other document used by You (whether prior to or subsequent to the date of this order) which is inconsistent with this subparagraph will have no force or effect and will not be binding on EMP unless such provision is contained in an order form, invoice or other document dated subsequent to the date of this Purchase Order *and is specifically initialed by EMP's authorized representative.*

### 3. Delivery.

(a) Unless otherwise stated, TIME IS OF THE ESSENCE IN THIS PURCHASE ORDER. You acknowledge that You will make deliveries in the quantities and at the times specified herein or in releases issued hereunder. You will strive to achieve 100% on time delivery. EMP will not be responsible for expedited shipping charges unless prior written approval is obtained from EMP. Title to and the risk of loss of the Products shall pass to EMP upon the Products arrival at EMP's designated facility, unless otherwise agreed by the parties in writing.

(b) If Your deliveries fail to meet EMP's delivery schedule, EMP, in addition to its other rights, including the right to terminate the agreement, (i) may direct expedited routing and charge You for any excess costs incurred as a result and (ii) may charge You for any costs incurred by EMP and/or EMP's customers for production delays caused by Your failure to meet such schedules. Such costs may include, without limitation, any costs associated with purchasing alternative goods, inbound and outbound freight premiums, excess scrap, premium operational and overtime expense, and downtime charges. In the event of a partial failure of Your sources of supply for the Products purchased, You agree to first meet all of EMP's requirements hereunder prior to allocation among customers under Section 2-615 of the Uniform Commercial Code.

(c) If EMP has designated a specific carrier and You ship Products by an unauthorized method or carrier, You will pay any resulting increased freight costs. In the event any shipment is not made on the date and in the quantity set forth on the Purchase Order, EMP may: (i) return to You some or all of the Products in the shipment at Your risk and expense; (ii) purchase substitute Products elsewhere and charge You with any resulting loss or increase in costs; or (iii) direct You to make an expedited shipment of additional or replacement Products, with the difference in cost between any expedited routing and the Purchase Order routing to be paid by You. You agree to notify EMP immediately if You ever have reason to believe that any Product will not be delivered as ordered, or a shipment will not be made as scheduled.

(d) EMP will not be liable for Your commitments or production arrangements in excess of the amount or in advance of the time required under EMP's delivery schedule. Except to the extent authorized under this Purchase Order or, if applicable, EMP's release schedules, You will neither produce any Products, nor procure raw materials, nor ship any Products, except to the extent authorized by EMP's Purchase Order or written releases. Quantities noted as "planning" or words with similar meaning are for

Your planning purposes only and do not constitute a commitment by EMP to purchase such quantities.

#### 4. Inspection and Rejection.

(a) Products are subject to EMP's right of inspection and rejection. EMP's making of any payment to You does not constitute our acceptance of Products and EMP reserves its rights with respect to defects in Products. EMP may inspect the Products at any place of manufacture during production without waiving its right subsequently to reject or revoke acceptance for undiscovered or latent defects. EMP's failure to inspect and accept or reject Products will not relieve You from any of Your obligations. If any Products are found at any time not to conform with the requirements of the Purchase Order (or any applicable samples, drawings or specifications), or to be defective in design, material or workmanship, EMP may, at its option and Your expense, require You to inspect the Products, and remove, repair and/or replace non-conforming Products with conforming Products. If You fail to do so on a timely basis, EMP may elect to take one or more of those actions and charge You for all costs.

(b) EMP may, at its option, require prompt replacement or correction of rejected items or material at Your expense, including an equitable reduction in the price of this Purchase Order for rejected items or material. You shall not resubmit rejected items or material to EMP, without prior written approval. You shall identify resubmitted items or material as previously rejected. These rights are in addition to any other rights that EMP may have under the Purchase Order or applicable law.

5. Quality. You will maintain an inspection and quality system acceptable to EMP and in conformity with any drawings, specifications and data which are part of this Purchase Order and with any quality program of EMP described in materials referenced on the face of this Purchase Order and incorporated herein by such reference. You will maintain adequate authenticated inspection and test reports, affidavits, and certifications relating to the work performed under this Purchase Order for a commercially reasonable period of time after completion of this Purchase Order (no less than a minimum of five (5) years) or as otherwise specified by EMP, and make such records available to EMP upon request. You acknowledge that EMP may reduce its incoming inspection procedures in reliance upon Your maintenance of a quality system as required hereunder. No change to design, material, process, procedures, or practice is to be made by You without written authorization from EMP.

#### 6. Warranty.

(a) You represent and warrant that the Products will: (i) be owned by You and free of all liens, claims or encumbrances; (ii) conform strictly to all express or implied specifications, drawings, plans, instructions, samples or other descriptions; (iii) be fit and sufficient for the purpose(s) for which they were manufactured and sold; and (iv) be free from defects in design, material and workmanship, whether latent or otherwise.

(b) You represent and warrant that any service You may provide will be performed in a competent manner and be fit for any purpose for which You know or have reason to know EMP or its customers intend to use such service.

(c) You agree that these warranties: (i) survive the inspection, acceptance and use of the Products by EMP and its customers; (ii) are for the benefit of EMP and its successors, assigns, customers and users of its Products; and (iii) are in addition to any warranties and remedies to which EMP may otherwise agree or which are provided by law.

(d) EMP's specifications and requirements take precedence over industry standards. You will advise EMP in writing if EMP's specifications or requirements are not as extensive as industry standards.

## 7. Indemnification.

(a) You agree to defend, indemnify and hold EMP, its shareholders, directors, officers, employees, agents, successors, assigns, and customers harmless from and against any and all claims (including without limitation claims for infringement of intellectual property, breach of contract, death or injury to a person or an injury to property, or other tort claims), liabilities, damages (whether direct, indirect, incidental, or consequential) and expenses (including court costs and reasonable attorneys' fees) arising out of or relating to the breach by You of any covenant, representation or warranty, or from any act or omission of You or Your agents, employees or subcontractors. EMP will notify You of any such claim, suit or proceeding and will reasonably assist You (at Your expense) in the defense of the same.

(b) To the extent Your agents, employees or subcontractors enter upon premises occupied or under the control of EMP or any of its customers or suppliers in the course of performance under this Purchase Order, You will take reasonable steps to prevent any injury to persons or property arising out of acts or omissions of such agents, employees, or subcontractors. Except to the extent that any such injury or damage is due solely and directly to EMP's negligence, You agree to defend, indemnify and hold EMP, its shareholders, directors, officers, employees, agents, successors, assigns, and customers harmless from and against any and all claims (including without limitation claims for infringement of intellectual property, breach of contract, death or injury to a person or an injury to property, or other tort claims), liabilities, damages (whether direct, indirect, incidental, or consequential) and expenses (including court costs and reasonable attorneys' fees) arising out of or relating to the breach by You of any covenant, representation or warranty, or from any act or omission of You or Your agents, employees or subcontractors.

8. Payments. If an invoice is issued in accordance with the requirements of this Purchase Order, unless agreed in writing otherwise, EMP will pay the invoice within the time period specified in this Purchase Order. Under no circumstances will EMP pay late fees, interest, carrying or other charges.

9. Insurance. You agree to maintain such public liability insurance (including without limitation workers compensation, employer's liability, comprehensive general liability, product liability and property damage insurance) as will adequately protect EMP in the event of any liability arising under this Purchase Order and, upon EMP's request, You will provide EMP with evidence of such insurance.

## 10. Force Majeure.

(a) If, due to forces beyond its control, EMP determines to alter EMP's delivery schedule to delay delivery, the provisions of this paragraph will control. You will hold any such delayed Products at the direction of EMP and will deliver them when the cause affecting the delay has been removed. Any delay or failure of either You or EMP to perform its obligations hereunder shall be excused if, and to the extent caused by an event or occurrence beyond the reasonable control of the party and without its fault or negligence, such as by way of example and not by limitation, acts of God, actions by state or federal governmental authority (whether valid or invalid) fires, floods, windstorms, explosions, riots, natural disasters, wars, or court injunction or order.

(b) During the period of such delay or failure to perform by You, You shall provide EMP with prompt written notice of such delay (including a description of the cause of the event or circumstance, an estimate of the duration of the delay and a statement regarding the remedial steps that are being undertaken to resume performance and Your interim allocation plans, if any, for the supply of Products during the delay). During such period EMP may, at its option, purchase goods from other sources and reduce its schedules to You by such quantities, without liability to You, or have You provide the Products from other sources in the quantities and at the delivery times requested by EMP and at the price set forth in the Purchase Order.

(c) In addition, at least ten (10) days prior to the expiration of any labor contract You are party to, You (at Your expense) will establish at least a thirty (30) working day supply of Products in a neutral warehouse at a location reasonably acceptable to EMP. If requested by EMP, You shall, within ten (10) days of the request, provide adequate assurances that any delay shall not exceed thirty (30) days. If the delay lasts more than thirty (30) days or You do not provide adequate assurances that any delay will cease within thirty (30) days, EMP may immediately cancel the Purchase Order without liability.

## 11. Termination Provisions.

(a) Termination for Convenience. EMP may terminate this Purchase Order or any part of it for its convenience by written notice to You. In such event, You shall immediately cease all work and terminate all orders and contracts, and EMP shall be liable to You only for Your reasonable actual costs as a direct result of the termination which may not be recovered or mitigated (e.g. purchased materials and labor costs incurred prior to receipt of notice of termination). You will notify EMP in writing of such costs within thirty (30) days of termination. Notwithstanding the foregoing, in the event this Purchase Order relates to EMP's purchase of equipment (as that term is defined under Article 9 of the Uniform Commercial Code), EMP's obligation to pay You will be limited to: (i) the lesser of Your actual cost for direct labor and other expenses directly and reasonably incurred pursuant to this Purchase Order prior to receipt of notice of termination or the percentage of the original purchase price as the work done by You prior to the receipt of notice of termination bears to the entire work covered by this Purchase Order; (ii) less any previous payments. Except as provided in this paragraph 10, EMP will not be liable for and will not be required to make payments to You, directly or on account of claims by Your subcontractors, for loss of anticipated profits, unabsorbed profits, unabsorbed overhead, interest on claims, product development and engineering costs, facilities and equipment rearrangement costs or rental, unamortized depreciation costs, or general and administrative burden charges from the termination of

any Purchase Order for EMP's convenience. EMP will not pay for any work done after Your receipt of notice of termination, nor for any costs incurred by Your suppliers or subcontractors which You could reasonably have avoided.

(b) Termination for Default. If You default, EMP may terminate all or any part of the Purchase Order without liability to You by giving notice to You. A "Default" will occur if, or in the event of, You: (i) fail to perform within the time period specified in the Purchase Order; (ii) You fail to comply with any of the terms and conditions of this Purchase Order; (iii) You fail to make progress as to endanger performance of this Purchase Order; (iv) You become insolvent, file a petition for bankruptcy, liquidation or dissolution; or (v) any other event which causes reasonable doubt as to Your ability to render due performance hereunder. If, after termination for Default, it is determined that You were not in Default, the rights and obligations of the parties will be the same as if the termination was for EMP's convenience.

(c) Remedies for Default. In the event of Default, EMP may, upon written notice to You but without further liability to You, (i) waive all or any part of the Default; (ii) agree in writing to any change in or modification of this Purchase Order as EMP may in its judgment deem advisable; (iii) cancel this Purchase Order in its entirety; (iv) purchase Products in substitution for those to be supplied by You hereunder and charge You for any excess cost resulting therefrom; and/or (v) exercise any other rights or remedies EMP may have under applicable law. Your liability for Default will include EMP's incidental and consequential damages. You will reimburse EMP for attorneys' and other professional fees and court costs incurred by EMP in connection with any Default by You or any action by EMP to enforce its rights under this Purchase Order.

12. Setoff. EMP may setoff any amount owed to it from You or any of Your affiliates against any amount payable at any time by EMP to You.

### 13. EMP's Property.

(a) All supplies, materials, tools, jigs, dies, gauges, fixtures, molds, patterns, equipment and other items furnished by EMP to You to perform this Purchase Order, or for which You have been reimbursed by EMP, or for which EMP has agreed to reimburse You, will be and remain the property of EMP and held by You on a bailment basis ("EMP's Property") and will be marked or tagged by You as such. EMP's Property will include 3D models and other data used to produce EMP's Property. You will bear the risk of loss of and damage to EMP's Property. EMP's Property will not be used by You for any purpose other than the performance of this Purchase Order; will not be commingled with Your property or with that of a third party; and will not be moved from Your premises or altered without EMP's prior written consent. You will keep accurate records of EMP's Property, which records will be made available to EMP upon request, and will store, protect, preserve, repair and maintain EMP's Property in accordance with sound industry practice, all at Your expense. Any of EMP's Property repaired, rebuilt, modified, or replaced by You will remain the property of EMP, regardless of whether EMP has reimbursed You for such repair, rebuild, modification, or replacement. EMP will have the right to enter Your premises at reasonable times to inspect EMP's Property. To the extent permitted by law, You waive any lien or other rights You might otherwise have on EMP's Property for work performed on such property or otherwise.

(b) Your obligations to release or deliver EMP's Property shall not be the subject to any set off or counterclaim arising from this or any other transaction with You except that if EMP agreed to amortize the purchase price of EMP's Property in a written amortization schedule, EMP will pay the unamortized balance of such purchase price contemporaneously with the release or delivery of such item of EMP's Property. To the extent that EMP's Property is in the possession or control of a subcontractor or supplier to You, You will cause such party to release such property to EMP in accordance with this paragraph.

#### 14. Your Property.

(a) Unless otherwise specified in this Purchase Order, You, at Your own expense, will furnish, keep in good condition, and replace when necessary all machinery, equipment, tools, jigs, dies, gauges, fixtures, molds, patterns, and other items ("Your Property") necessary for the production of the Products. You will insure Your Property with full fire and extended coverage for its full replacement value.

(b) You grant to EMP an irrevocable option to take possession of and title to any of Your Property that is special for the production of Products upon EMP's payment to You of the net book value of such property less any amounts that EMP has previously paid to You for the cost of such items; provided, however, that this option will not apply to any item of Your Property that is used to produce a substantial quantity of Products for other customers of Yours.

15. Governing Law. In the performance of this Purchase Order, You will fully comply with all applicable laws and will hold EMP harmless from any liability resulting from Your failure to so comply. This Purchase Order will be governed by the laws of the State of Michigan, and the Convention on Contracts for the International Sale of Goods shall not apply. The parties hereby stipulate irrevocably that they submit to the personal jurisdiction of the state or federal courts in Michigan. All disputes between the parties, including, but not limited to, all disputes arising from or related to this Purchase Order, shall be litigated in the state or federal courts of Michigan. You shall, in accordance with Section 7 of these Terms and Conditions entitled "Indemnification", indemnify and hold EMP harmless against any liability on account of any failure of You to so comply.

16. Foreign Purchases. Unless otherwise agreed, You shall be the importer of record. If You are the importer of record, EMP will not be a party to the importation, EMP's name will not appear as importer of record on any document, and the transactions contemplated hereunder will be consummated after importation occurs. At EMP's request, You will state the country of origin on Products, packaging or Your invoices, and provide acceptable documentation establishing country of origin, including without limitation, certificates of origin for Products subject to the NAFTA preferential duty provisions. If for any reason EMP is the importer of record, You represent and warrant that all sales made under this Purchase Order will be at not less than fair value under the United States Anti-Dumping Law.

#### 17. Intellectual Property.

(a) No rights are granted to You under any of EMP's patents, copyrights, trade secrets or other property rights except as may be expressly agreed by us. You will not use or incorporate into Products any intellectual property of others with out their written

permission. Without limiting Your indemnity with respect to intellectual property, if the use of a Product or any part thereof is enjoined by a court, You will, at our option and Your expense, either procure for us the right to continue using the Product or part, replace the same with a non-infringing equivalent, or remove the Product, refund the purchase price and reimburse EMP for any related costs incurred.

(b) No specification with respect to any part of this Purchase Order constitutes a warranty, express or implied, against claims for infringement of patents, copyrights, or trademarks, and EMP is not responsible to You for or on account of such a claim or liability. You warrant that the items or material purchased under this Purchase Order do not infringe upon or constitute an unauthorized use of any patent, trade secret or other intellectual property right of any person or entity and You agree to save harmless, indemnify, defend, and protect EMP, its successors, assigns, customers, and users of the Products against any claim or demand based upon such infringement.

18. Publicity. You may not, without EMP's prior written consent, advertise or publish the fact that we have contracted to purchase Products or services from You, disclose information relating to this Purchase Order, or use our name or trademarks, or the names or trademarks of any of our affiliates or customers.

19. Remedies. EMP's liability on any claim of any kind for any loss or damage arising out of or in connection with or resulting from this Purchase Order or from the performance or breach thereof shall in no case exceed the price allocable to the firm release for Products which gives rise to the claim. EMP shall retain the right to avail itself of any remedy available at law or in equity including, but not limited, to include incidental and consequential damages.

20. Waiver and Invalidity. Any waiver or renunciation of a claim or right arising out of a breach of this Purchase Order must be in a writing and signed by the injured party. Any failure to enforce any provision of this Purchase Order may not be construed as a waiver of such provision or any other provision nor of the right to enforce such provision. The invalidity, in whole or part, of any provision hereof shall not affect the remainder of the provisions.

21. Copyright. You hereby grant to EMP an irrevocable, royalty-free, non-exclusive license to reproduce or otherwise use all copyrightable material furnished under this Purchase Order.

22. Severability. If any provision of this Purchase Order shall under any circumstances be deemed invalid or inoperative, this Purchase Order shall be construed with the invalid or inoperative provision(s) deleted, and the rights and obligations of the parties shall be construed and enforced accordingly.

23. Assignment. You may not assign any right or delegate any duty hereunder without EMP's prior written permission. Any attempted assignment or delegation by You will be void.

24. Independent Contractor. You will be considered an independent contractor for all purposes, and shall not be deemed to be our agent, employee or subcontractor under any circumstance.



25. Headings. The headings on these Terms and Conditions are for Your convenience only and may not be used in the interpretation thereof.

**EMP RESERVES THE RIGHT TO MODIFY THESE TERMS AND CONDITIONS AT ANY TIME. THESE TERMS AND CONDITIONS ARE AVAILABLE ON EMP'S WEBSITE AT <http://www.emp-corp.com>.**