

## **TOOLING TERMS AND CONDITIONS**

### **1. SCOPE AND DEFINITIONS.**

(a) These "Tooling Terms and Conditions" shall apply to all purchase orders for Tooling and shall be construed, to the extent possible, as a supplement to and consistent with the General Terms and Conditions. In the event of an inconsistency between them, the Tooling Terms and Conditions shall control as to all Tooling.

(b) Capitalized terms used in these Tooling Terms and Conditions, but not defined, shall have the meanings given to such terms in the General Terms and Conditions. "Tooling" means any die, jig, fixture, mold, pattern, template, gage, testing device, supplies, materials or other items that are purchased by Buyer or specially constructed for Buyer's use or by Buyer's outside suppliers and which has a normal physical life of one year or more. "Supplier" means any entity or individual responsible to provide goods or services to Buyer and which makes use of Tooling, in whole or in part, to do so.

### **2. OWNERSHIP AND MAINTENANCE**

(a) Supplier is required to design and manufacture Tooling that meets all applicable specifications and drawings provided by Buyer and which will last for the anticipated life of the part it was designed and manufactured to produce, including post-production Service Parts.

(b) All Tooling which Buyer furnishes, either directly or indirectly, to Supplier or which Buyer buys from, or gives reimbursement to, Supplier in whole or in part (collectively, "Buyer's Property") shall be the property of Buyer and be held by Supplier on a bailment basis. Title to all replacement parts, additions, improvements and accessories purchased by Supplier will vest in Buyer immediately upon attachment to or incorporation into Buyer's Property. Models, unique computer software and prints for Buyer's Property are considered part of the Tooling and are also the property of the Buyer.

(c) Supplier disclaims and waives any lien, security interest, or similar such claim that Supplier might otherwise have in Buyer's Property to the fullest extent permitted by applicable law.

(d) While Buyer's Property is in Supplier's possession, Supplier bears the risk of loss as to it and, among other things, Supplier shall be responsible for the cost of repairing or replacing Buyer's Property if it is stolen, damaged or destroyed regardless of cause or fault. Supplier shall (a) regularly inspect, maintain in good condition, and repair Buyer's Property at Supplier's own expense, (b) use Buyer's Property only for the benefit of Buyer, (c) not commingle Buyer's Property with the property of Supplier or with that of a third person, (d) not sell, lend, rent, encumber, pledge, lease, transfer or dispose of Buyer's Property without Buyer's prior written consent, and (e) not assert, or permit any person claiming an interest through Supplier to assert any claims of ownership to or any other interest in Buyer's Property.

(e) Buyer will have the right to enter Supplier's premises at all reasonable times to inspect Buyer's Property.

(f) Supplier will insure Supplier's Tooling and Buyer's Property with fire and extended

coverage insurance for its full replacement value.

(g) Supplier grants Buyer an irrevocable option to take possession of, and title to, all or part of Supplier's Tooling that is not Buyer's Property that is specially designed for the production of goods for or by Buyer, in which event Buyer will, within 45 days following delivery of such Supplier's Tooling to Buyer, pay to Supplier the lower of (i) the net book value of such Supplier's Tooling (i.e., actual cost less amortization) or (ii) then current fair market value of such Supplier's Tooling, in each case less any amounts that Buyer has previously paid to Supplier on account of such Supplier's Tooling. Buyer's right to exercise the foregoing option is not conditioned on Supplier's breach or Buyer's termination of any underlying Contract or upon payment of any other amounts due under any underlying Contract.

### **3. PRICE AND PAYMENT**

(a) The price for any Tooling to be paid for by Buyer shall be the price set forth in the Tooling Purchase Order. Unless otherwise agreed to in writing signed by Buyer, the price is a fixed price, and is not subject to increase for any reason, including, without limitation, increased raw material costs, increased labor or other manufacturing or supply costs, increased development costs, inflation, changes in foreign exchange rates, changes in the availability of materials or supplies or any other reason.

(b) Unless otherwise agreed to in writing between the Parties, the price set forth in the Tooling Purchase Order shall be paid to Supplier only after the following conditions have been fulfilled:

- (i) The Tooling has been fabricated or acquired by the Supplier;
- (ii) Samples acceptable to Buyer have been produced from such Tooling and which meet all PPAP specifications;
- (iii) The Part Submission Warrant (PSW) for all applicable parts have been appropriately approved;
- (iv) An invoice for tooling has been submitted setting forth payment terms of 45 or more days from PSW; and
- (v) Any other condition set forth in the applicable Tooling Purchase Order has been met.

### **4. TOOL MARKING; TOOL POSSESSION**

(a) Supplier shall ensure that Tooling can be readily identified and located at the Supplier location.

(b) To the extent that space permits and functionality is not negatively affected, the Tooling shall be etched or tagged with the part number(s) provided by Buyer and also specify that the Tooling that is Buyer's Property is owned by Buyer. No markings that indicate that the Supplier has a lien or other interest in the Tooling are permitted. If requested, Supplier shall provide to Buyer photographic evidence of compliance with this paragraph.

(c) Supplier must retain Tooling for a period of 15 years after end of production and, after such period of time, return, transfer to another location or, if agreed to by Buyer, sell for scrap and remit the proceeds to Buyer.

(d) Buyer has the right at any time, with or without reason and without payment of any

kind, to take possession of Tooling owned by Buyer or Tooling owned by a customer of Buyer and for which Buyer has been given authority from such customer to possess such Tooling. Upon Buyer's request and in accordance with Buyer's instructions, such Tooling will be immediately released to Buyer or delivered to Buyer by Supplier either (i) at Supplier's plant properly packed and marked in accordance with the requirements of the carrier selected by Buyer to transport such Buyer's Property or (ii) to any location Buyer designates, in which event Buyer will pay Supplier the reasonable costs of delivering Tooling to the location Buyer designates. If Supplier does not release and deliver any such Tooling, Supplier agrees that Buyer is entitled to a court order, without notice and without the posting of any bond, requiring that immediate possession of such Tooling be given to Buyer.

#### **5. DISCLAIMER OF WARRANTIES**

Supplier acknowledges and agrees that Buyer has not made and does not make any warranty or representation whatsoever, either express or implied, as to the fitness, condition, merchantability, design or operation of Buyer's Tooling or its fitness for any particular purpose. Buyer shall not be liable to Supplier for any loss, damage, injury or expense of any kind or nature caused, directly or indirectly, by Buyer's Tooling, including, without limitation, the use or maintenance thereof or by any interruption of service or for any loss of business.

#### **6. INDEMNIFICATION**

Supplier will defend, hold harmless and indemnify Buyer, Buyer's affiliates and Buyer's customers, and their employees and agents (collectively, "Buyer Indemnified Parties") from and against any and all claims, judgments, fines, costs (including attorney and other professional fees and disbursements), losses, liabilities and damages, including any special, incidental, consequential, punitive and exemplary damages that any Buyer Indemnified Party may suffer or sustain or be in any way subjected to on account of: (a) Seller's failure to perform its obligations under the General Terms and Conditions, the Tooling Terms and Conditions or applicable law; and (a) any third-party claims or demands to recover for personal injury or death, property damage or economic loss caused by any of the Tooling supplied by Supplier.

#### **7. ASSIGNMENT AND CHANGE IN CONTROL**

Buyer may assign its rights and obligations under this Contract without Seller's prior written consent. Seller may not assign, subcontract or delegate any rights or obligations as to Buyer without the prior written consent from an authorized employee of Buyer.