



# TERMS AND CONDITIONS OF SALE

## 1. Acceptance and Modification

This document constitutes an offer or counteroffer (an "Offer") by Ultra Manufacturing Limited ("Seller") to sell the products and/or services described herein (the "Products") to purchaser ("Purchaser"), subject to and in accordance with these terms and conditions and attachments to this document (the "Terms and Conditions"). This document is not an acceptance of any offer or counteroffer made or purchase order submitted by Purchaser, and this Offer and any contract arising out of this Offer (collectively, the "Contract") are each expressly conditioned upon Purchaser's assent to all of the Terms and Conditions. Seller's acceptance of any order is subject to Purchaser's assent to all of the Terms and Conditions set forth in Seller's acknowledgement, and Purchaser's assent to these Terms and Conditions shall be presumed from Purchaser's receipt of Seller's acknowledgement, or from Purchaser's acceptance of all or any part of the Products ordered. Purchaser acknowledges agreement with these Terms of Sale by placement of an order to purchase Products from the Seller or its acceptance of all or any part of the Products called for in a purchase order. If a purchase order or other correspondence contains terms or conditions contrary to the terms and conditions contained in Seller's acknowledgement, Seller's acceptance of any order shall not be construed as assent to any additional terms and conditions, nor will that constitute a waiver by Seller of any of the Terms and Conditions nor an acceptance of any such additional provisions. The Contract constitutes the entire understanding between the parties with respect to the subject matter of the contract and supersedes any prior discussions, negotiations, agreements and understandings. Modifications to the Contract can be made only by a writing signed by an authorized representative of each party.

## 2. Termination

Neither the Contract nor any related order may be cancelled or altered by Purchaser except upon terms and conditions acceptable to Seller, as evidenced in writing by Seller's authorized representative. In the event of such a cancellation by Purchaser has been approved by Seller, Purchaser shall pay to Seller:

- (a) the agreed unit prices for completed Products (or components or units of components thereof) under the Contract or any related order;
- (b) all other costs incurred by Seller prior to cancellation directly connected with work under the Contract or any related order;
- (c) all other costs incurred by Seller associated with the cancellation of the Contract or any related order, including, without limitation, cancellation charges under subcontracts, charges for packing, removal to storage and/or restocking; plus
- (d) 15% of the sum of (a), (b) and (c). Until Seller has received all of the foregoing cancellation charges, all cancelled Products shall remain the sole and exclusive property of Seller, regardless of the state of completion of such Products.

## 3. Price Shipment and Payment Terms

Unless otherwise quoted, prices shall be those in effect at the time of shipment which shall be made F.O.B. shipping point and Purchaser shall bear all risk of loss or damage in transit and any further cost

and responsibility thereafter for claims, delivery, and, if applicable, placement and storage. Purchaser acknowledges and agrees that prices of the Products are not fixed, and are subject to change by Seller based on, among other things, currency fluctuations, or increases in Seller's cost of raw materials, component parts, or labor. Payment terms are Net 30 days from delivery to Purchaser. In addition, a monthly service charge of 1.5% per month will be added to past due invoices at the Seller's discretion. Unless other terms are specified in the attachments to this document, all payments shall be made in the local currency where the Products are manufactured or produced by Seller. Prices shown do not include sales or other taxes imposed on the sale of the Products. Any and all manufacturer's, occupation, use, sales, excise, GST or value added tax; duty; custom; inspection or testing fee; or other tax, fee or charge of any nature whatsoever imposed by any governmental authority (whether domestic or foreign, or federal, state or local) based on or measured by the transaction between Seller and Purchaser (other than income taxes imposed on Seller) shall be added to the price of Products, invoiced separately, and paid by Purchaser in addition to the prices quoted or invoiced. Purchaser agrees to reimburse Seller for any such tax or provide Seller with acceptable tax exemption certificate. If a dispute arises between the parties concerning Purchaser's alleged right to setoff or recoupment against Seller or its affiliates, the parties shall negotiate in good faith to resolve such dispute. Notwithstanding the foregoing, Purchaser acknowledges and agrees that payments owed to Seller for Products supplied under this Contract are not subject to any setoff or recoupment by Purchaser unless and until Seller agrees in writing to such setoff or recoupment, and that Purchaser shall not exercise its right to setoff or recoupment in connection with any disputed, contingent, or unliquidated claim.

#### **4. Warranty**

4.1 Seller warrants for a period of two (2) years from the date of delivery that:

- (a) the Products delivered hereunder meet such specifications as may have been expressly agreed to herein;
- (b) the sale of the Products delivered hereunder will not infringe the claims of any United States patent covering the Products themselves, but Seller does not warrant against infringement by reason the use thereof in combination with other products or in the operation of any process; and
- (c) the Products shall be free from defects in material and workmanship.

4.2 SELLER MAKES NO WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR ANY OTHER EXPRESS OR IMPLIED WARRANTY, EXCEPT AS PROVIDED IN THIS SECTION 4. THE FOREGOING WARRANTIES ARE IN LIEU OF ALL OTHER EXPRESS AND IMPLIED WARRANTIES. SELLER EXPRESSLY DISCLAIMS AND EXCLUDES ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND ANY WARRANTY ARISING FROM USAGE OF TRADE OR COURSE OF DEALING.

4.3 Purchaser assumes all risk and liability resulting from the use of the Products, whether used singly or in combination with other products.

4.4 The warranty set forth in this Section 4 shall not apply in the event of defects or damages caused by:

- (i) failure of Purchaser to comply with any operational or maintenance to guidelines or requirements;
- (ii) physical abuse of the goods or any component or acts of vandalism by any persons other than Seller, its employees, agents, or subcontractors; or
- (iii) alterations, modifications, additions, or repairs made during the applicable warranty period by anyone other than Seller, its employees, agents or subcontractors.

#### **5. Patents, Trademarks and Copyrights**

5.1 Seller, at its own expense, shall defend or settle any suits that may be instituted by an unrelated third party against Purchaser to the extent such suits relate to infringement of any patent, trademark or copyright by Products manufactured by Seller pursuant to the Contract, if such infringement directly

arises out of the use of such Products, or components thereof, in Purchaser's business for any of the purposes for which the same were sold by Seller under the Contract, and provided that Purchaser shall

- (a) have made all payments then due under the Contract,
- (b) give Seller immediate notice in writing of any such suit,
- (c) transmit to Seller immediately upon receipt all processes and papers served upon Purchaser,
- (d) permit Seller through its counsel, either in the name of Purchaser or in the name of Seller, to defend such suits, and
- (e) give all needed information, assistance and authority to enable Seller to do so.

5.2 If Products sold to Purchaser under the Contract are held in and of themselves, by final court decision from which no appeal can be taken, to infringe any patent and their use is enjoined, or in the event of a settlement or compromise approved in writing by Seller that precludes future use of Products sold to Purchaser under the Contract, then Seller

- (i) shall pay any final and unappealable award of damages in such suit to the extent such damages are directly attributable to such infringement, and
- (ii) shall, at its own expense and at its sole option,
  - (A) procure for Purchaser the right to continue using such Products to the extent contemplated in the Contract,
  - (B) modify such Products to render them noninfringing,
  - (C) replace such Products with noninfringing Products, or
  - (D) refund the price paid by Purchaser for such Products after Purchaser's return of such Products to Seller.

This Section 5 states Seller's sole obligation and Purchaser's exclusive remedy with respect to patent, trademark or copyright infringement, provided that Seller's liability for patent, trademark and copyright infringement shall not exceed the price paid by Purchaser under the Contract. Purchaser shall indemnify and hold Seller harmless from and against all claims, demands and suits (including, without limitation, the cost of legal defense) arising out of any act of infringement not described in Section 5.

## **6. Delays**

No liability shall result from delay in performance or nonperformance, directly or indirectly caused by circumstances beyond the control of the party affected, including, but not limited to, Act of God, fire explosion, flood, war, act of or authorized by any government, accident, labor trouble or shortage, inability to obtain material, equipment or transportation, or failure of usual sources of supply or usual modes of transportation. Quantities so affected may be eliminated from the agreement, without liability, but the agreement shall remain otherwise unaffected. Seller shall have no obligation to purchase supplies of the Products specified herein to enable it to perform this Contract. It is further understood and agreed between Purchaser and Seller that if this Contract covers Products that must necessarily be manufactured especially for Purchaser and is suspended or terminated for any reason, Purchaser will take delivery of and make payment for such Products as have been completed and such as are in process on the date notice of suspension or termination is received by Seller; provided, that if Purchaser for any reason cannot accept delivery of such Products, it will make payment therefor as though delivery had been made and Seller will store such products for Purchaser's account and at Purchaser's expense. If for any reason Seller is unable to supply the total demand for Products, Seller may distribute its available supply among any or all purchasers, as well as departments and divisions of Seller, on such basis as it may deem fair and practical, without liability for any failure of performance which may result therefrom.

## **7. Security Agreement and Insurance**

7.1 To secure payment of the price payable under the Contract and performance of all of Purchaser's obligations under the Contract, Purchaser hereby:

- (a) grants to Seller a purchase money security interest in all Products; and

(b) authorizes Purchaser to file such financing statements and other documents, and agrees to execute such other documents and to do such other acts, as Seller may reasonably deem necessary or advisable to protect its rights in such Products.

In the event Purchaser breaches the terms or conditions of the Contract, including, but not limited to, any past due balances, together with interest, costs, and attorney fees are permitted herein, Seller shall have all the rights and remedies of a secured creditor under the Uniform Commercial Code. Seller is hereby granted a power of attorney on behalf of Purchaser to execute all appropriate documents (including financing statements) to perfect and record such security interest

7.2 Until Seller has received full payment of the price payable under the Contract, Purchaser shall maintain insurance covering all Products in such amounts and against such risks as is customary by companies engaged in the same or similar business and similarly located, naming Ultra Manufacturing Limited and its subsidiaries and affiliates as insured or coinsured, and shall, upon Seller's request, furnish evidence of such insurance satisfactory to Seller.

## **8. Limitation of Remedies and Limitation of Liability**

8.1 Seller shall be given reasonable and prompt opportunity to examine any claim of defect by the Purchaser. Failure to give written notice of claim within five (5) days from date of delivery, or the date fixed for delivery (in the case of nondelivery), shall constitute a waiver by Purchaser of all claims in respect of such Products. Products shall not be returned to Seller without Seller's prior permission, and then only in the manner prescribed by Seller.

8.2 Purchaser agrees that its sole and exclusive remedy against the Seller shall be limited to either repair or replacement of the goods or a refund of the purchase price at Seller's option. This exclusive remedy shall not be deemed to have failed of its essential purpose so long as Seller is willing to repair or replace the defective goods or services and, in any event, Seller's liability for any damages due to Purchaser shall be limited to the purchase price of the goods or services at issue in the claim. Notwithstanding the foregoing, the Seller shall have the option of replacing or correcting defects or otherwise crediting Purchaser for all or a reasonable portion of the amount of the purchase price of the goods or services at issue.

8.3 SELLER SHALL NOT BE LIABLE FOR ANY LOSS, DAMAGE, OR INJURY RESULTING FROM DELAY IN DELIVERY OR INSTALLATION OF THE GOODS OR FOR ANY FAILURE TO PERFORM WHICH IS DUE TO CIRCUMSTANCES BEYOND ITS CONTROL.

8.4 THE MAXIMUM LIABILITY, IF ANY, OF SELLER FOR ALL DAMAGES, INCLUDING WITHOUT LIMITATION CONTRACT DAMAGES AND DAMAGES FOR INJURIES TO PERSONS OR PROPERTY, WHETHER ARISING FROM SELLER'S BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, OR OTHER TORT, IS LIMITED TO AN AMOUNT NOT TO EXCEED THE PURCHASE PRICE OF THE PRODUCTS AT ISSUE IN THE CLAIM.

8.5 IN NO EVENT SHALL SELLER BE LIABLE TO PURCHASER FOR ANY INCIDENTAL, INDIRECT, CONSEQUENTIAL, OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION LOST REVENUES AND PROFITS AND/OR MONETARY REQUESTS RELATING TO RECALL EXPENSES AND REPAIRS TO PROPERTY INCLUDING THIRD-PARTY CLAIMS.

8.6 NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE CONTRACT, SELLER SHALL NOT BE RESPONSIBLE FOR, AND SHALL INCUR NO LIABILITY WITH RESPECT TO, ANY INFORMATION SUPPLIED BY PURCHASER OR ANY OF ITS SUBCONTRACTORS AND ANY DESIGN OR ENGINEERING DRAWINGS, REGARDLESS OF WHETHER SUCH DRAWINGS ARE REVIEWED BY SELLER.

## **9. Drawings; Other Design Data**

9.1 All sketches, models and samples submitted by Seller shall remain the property of Seller and shall be treated as confidential information of Seller unless Seller has indicated a contrary intent in writing. All specifications, drawings, designs, data, information, ideas, methods, patterns and/or inventions made, conceived, developed or acquired by Seller in connection with the Contract or any related order shall vest in and inure to Seller's full benefit, notwithstanding any charges therefor that may have been or may be imposed by Seller, and shall not be disclosed to third parties without Seller's prior written consent. This obligation shall continue so long as any Purchase Order for Products related to or using such technical information or data is in effect and for a period of two years thereafter. This obligation will not apply to information that is or becomes publicly known through no fault of Purchaser.

9.2 Any property of Purchaser placed in Seller's custody for performance of the Contract is not covered by insurance, and no risk is assumed by Seller in the event of loss or damage to such property by fire, water, burglary, theft, civil disorder or any event beyond Seller's control.

## **10. Inspection**

Purchaser or its authorized agents shall have the right to visit Seller's workshops to inspect progress and construction of the Products during normal business hours upon three (3) days' prior written notice, provided that Purchaser and such agents shall abide by any applicable rules that Seller may have in effect or hereafter put into effect at such workshops, including, without limitation, rules relating to workers, safety, use of cameras, security and confidentiality procedures or requirements, designated entrances, hours of work and the handling of equipment or materials.

## **11. Changes; Engineering Reviews**

Purchaser may request in writing changes in the design, drawings, specifications and shipping instructions of Products. As promptly as practicable after receipt of such request, Seller shall advise Purchaser in an amendment letter what amendments to the Contract, if any, may be necessitated by such changes, including, without limitation, amendment of price, specifications and shipment schedule. If such proposed amendments to the Contract are accepted in writing by Purchaser, Seller shall make the requested changes with respect to such Products as may be affected thereby. Seller may at any time make such changes in design and construction of Products as shall constitute an improvement in the judgment of Seller. Seller may furnish suitable substitutes for materials unobtainable because of priorities or regulations established by governmental authority or non availability of materials from suppliers. Any such changes in or substitutes of materials or components that were specifically identified in the specifications or Seller's quotation require notice to and the consent of Purchaser, which consent shall not be unreasonably withheld or delayed and shall be presumed unless Purchaser objects within ten (10) days of notice of the change or substitution. After any engineering review conducted while the Contract is in force and prior to its completion for purposes other than making changes referred to above, Seller may assume that its recommendations are accepted in the event that Purchaser does not provide required decisions or objects within fifteen (15) days after submission of Seller's recommendations to Purchaser.

## **12. Export Packaging and Documents**

Prices include Seller's standard commercial export packaging, which will vary depending on whether shipment is made by air or ship. Purchaser shall bear any additional expenses required to satisfy Purchaser's specifications. Packages will be marked in accordance with Purchaser's instructions, and Seller shall furnish complete packing lists and such other information that Purchaser will have advised Seller may be necessary to enable Purchaser's agent to prepare documents required for export shipment. For customs and duty purposes, Purchaser shall supply Seller with all necessary information and assistance that is required for proper classification of the Products and each shipment to secure the most

expeditious clearance of each shipment. No shipping devices may be returned to Seller unless such return is accepted in advance by Seller in writing and unless all return freight is prepaid by Purchaser.

### **13. Miscellaneous**

13.1 Whenever possible, each provision of this Contract shall be interpreted in such a way as to be effective and valid under applicable law. Any provision hereof that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction, and the parties shall substitute therefor an enforceable provision that achieves the same business purpose as the provision that is prohibited or unenforceable.

13.2 THIS CONTRACT SHALL BE GOVERNED BY AND CONSTRUED ACCORDING TO THE INTERNAL LAWS OF THE PROVINCE OF ONTARIO AND, ADDITIONALLY, WITH RESPECT TO PRODUCTS DELIVERED OUTSIDE CANADA, CANADA (WITHOUT REFERENCE TO PRINCIPLES OF CONFLICTS OF LAWS). THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL NOT BE GOVERNED BY THE 1980 U.N. CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS.

13.3 Seller and Purchaser specifically agree that any action brought by Seller or Purchaser to enforce any of the provisions of this Offer or the Contract shall be brought, heard and determined exclusively in an Ontario Provincial Court. The parties stipulate that the referenced venues are convenient. Each of Seller and Purchaser waives personal service of any and all process upon it in any such action, and consents to all such service of process made by mail or by messenger directed to it at the address specified in this Offer or the Contract. Seller and Purchaser acknowledge that all directions issued by the forum court, including, without limitation, all injunctions and other decrees, shall be binding and enforceable in all jurisdictions and countries.

13.4 This Offer and the Contract shall be construed and interpreted in accordance with the English language only, which language will be controlling in all respects. No translation, if any, of this Offer or the Contract shall have any force or effect in the interpretation of this Offer or the Contract or in the determination of the intent of Seller or Purchaser. All support, technical, descriptive or other information provided by Seller to Purchaser regarding Products shall be in the English language only.

13.5 Seller's failure to exercise a right or remedy or Seller's acceptance of a partial or delinquent payment shall not be deemed to be a waiver of any of Seller's rights or Purchaser's obligations under this Contract, and shall not constitute a waiver of Seller's right to declare an immediate or a subsequent default.

13.6 No assignment of this contract or of any right or obligation under this contract shall be made by Purchaser without the prior written consent of Seller. In the event of a proper assignment, the contract shall be binding upon and inure to the benefit of the Purchaser's successors and assigns.

13.7 In the event of Seller's enforcement of any term or condition in the Contract, Purchaser shall be liable to Seller for all costs, including attorneys' fees, incurred by Seller in enforcing the Contract and in collecting any sums owed by Purchaser to Seller.

13.8 In its relationship with Seller, Purchaser is an independent contractor. Nothing in this Contract shall be construed such that Purchaser shall be considered an employee, agent or partner of Seller. This Contract shall not confer any rights or remedies upon any third-party, other than the parties to this Contract and their respective successors and permitted assigns.