

Terms & Conditions

For purposes of these Terms and Conditions (“Terms and Conditions”), Metal Powder Products, Inc. and any of its direct or indirect subsidiaries, as applicable, shall each be referred to as “Seller”, and the party with which the respective Seller contracts shall be referred to as “Buyer.”

1. ACCEPTANCE: If these Terms and Conditions differ in any way from the terms and conditions of Buyer’s order, these Terms and Conditions will be construed as a “COUNTEROFFER”, and Seller rejects any additional, different or inconsistent terms in Buyer’s terms and conditions. The Terms and Conditions contained herein will be the complete and exclusive statement of terms of the agreement between the parties with respect to the sale and delivery of any goods or services by Seller to Buyer. All prior communications, representations, negotiations and promises with respect to this sale are deemed to be merged herein. Buyer’s acceptance of the goods sold hereunder will constitute Buyer’s acceptance of the Terms and Conditions herein. No addition to or modification of any of these Terms and Conditions will be effective unless made in writing and signed by Seller.

2. CANCELLATION: Buyer may cancel orders only with Seller’s prior written consent and upon terms which will indemnify Seller against loss and upon payment to Seller of reasonable and proper cancellation charges.

3. CHANGES: Changes in the specifications must be made in writing and will be accepted by Seller upon Buyer’s acceptance of additional costs for time and material involved. Changes in scheduled shipments will require written approval by Seller and Buyer’s assumption of additional costs resulting therefrom. Subject to Seller’s written consent, any request for a decrease in scheduled quantities must be received by Seller in writing at least ninety (90) days prior to the scheduled delivery date; thereafter, no reduction in quantity will be permitted and payment in full must be made for the full quantity scheduled.

4. RETURN OF PRODUCTS FOR CREDIT: No products may be returned by Buyer without the prior written consent of Seller. Requests for product returns must be made within six (6) months from the date of purchase. No products that have been made to the specifications of Buyer will be accepted for return. Returned products must be in saleable condition. For approved returns, Seller will issue Buyer a credit at the lower of the current price or the purchase price paid for the product, less a 10% handling charge. Buyer is responsible for the cost of shipping the products to Seller.

5. FORCE MAJEURE: Seller shall not be liable for any delays or defaults hereunder due to any cause beyond the Seller’s control, including but not limited to fires, floods, strikes or other labor disputes, accidents, acts of sabotage, riots, acts of Buyer, precedence or priorities granted at the request or for the benefit, directly or indirectly, of the federal or any state government or any subdivision or agency thereof, delays in transportation or lack of transportation facilities, inability to secure materials, components, fuel or labor, restrictions imposed by federal, state or other governmental legislation or rules or regulations thereof, or other causes beyond its reasonable control. Whether or not any delay or default by Seller is so excusable, Seller shall not be liable for any damages of any kind whatsoever, whether direct, indirect, incidental, special or consequential, including without limitation loss of sales, loss of profits, loss of good will, increased costs or expenses, or any obligations or liabilities of Buyer to its customers or to third parties, resulting, directly or indirectly, from Seller’s delay in delivery of products. If Seller in its sole discretion determines that Seller’s performance hereunder would result in a loss to Seller on this sale as computed under Seller’s normal accounting procedures because of causes beyond Seller’s control, then the Seller may terminate this agreement in whole or part without liability for any delay in the delivery of, or failure to deliver, the goods sold hereunder.

6. ERRORS: Seller reserves the right to correct clerical errors and omissions.

7. SELLING PRICE: Unless otherwise expressly agreed in a writing signed by an authorized representative of Seller, the price for the products shall be Seller’s price in effect for such products on the date of shipment. Seller reserves the right to make temporary or permanent adjustments to the selling price for increases in costs from such items as raw materials, energy, and process gases. Buyer shall be given reasonable notice of the timing for these adjustments.

8. PAYMENT TERMS: All production parts are F.O.B. Seller’s plant and are net thirty (30) days from date of invoice. Invoices for tooling services are due and payable upon approval of tooling proof samples. If Buyer fails to make payments when due, Seller reserves the right to withhold further shipments until such payments are made or, at its option, cancel the unshipped balance. Pro rata payments shall become due as shipments are made. If shipments are delayed by Buyer, payments shall become due on the date when Seller is prepared to make shipment. If the work to be performed hereunder is delayed by Buyer, payments shall be made based on the purchase price and the percentage of completion. Shipments held for Buyer shall be at the risk and expense of Buyer. If the financial condition of Buyer at any time does not, in the judgment of Seller, justify continuance of the work to be performed, Seller may require full or partial payment in advance or shall be entitled to cancel any order then outstanding and shall receive reimbursement for its reasonable and proper cancellation charges. Buyer shall pay Seller a late

charge on all past due amounts at a rate equal to the maximum rate permitted by applicable Indiana law. The rights of Seller contained in this Section are in addition to all rights available to Seller at law or in equity.

9. **WARRANTY:** Seller warrants, for a period of thirty (30) days after first use, that its products sold hereunder will comply with the specifications for such products provided by Buyer and agreed to by Seller in writing, provided that such products have not been altered or repaired after shipment to Buyer. If Buyer is a manufacturer and incorporates Seller's products as a component, the warranty period will commence upon the shipment of the assembly by Buyer or twelve (12) months after the first shipment of the products by Seller, whichever is earlier. Every claim for a breach of warranty shall be deemed waived by the Buyer unless made in writing within ninety (90) days after the receipt by Buyer of the goods to which such claim relates, or, if the goods are to be stocked for resale, within ninety (90) days after the date of shipment from Buyer to Buyer's customer. In the event of any nonconformity or defect in a product, provided Buyer complies with the terms of this section, Seller shall, at its option, (1) repair or replace any nonconforming or defective product at no charge to Buyer, or (2) refund the purchase price for such product paid by Buyer. Products manufactured by others but furnished by Seller are not covered by this warranty and are limited to the original manufacturer's warranty, if any. EXCEPT FOR THE FOREGOING, SELLER EXPRESSLY DISCLAIMS ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED OR STATUTORY, WITH RESPECT TO THE PRODUCTS, INCLUDING WITHOUT LIMITATION ANY WARRANTY AS TO THE MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE GOODS SOLD HEREUNDER. SELLER'S ENTIRE AND EXCLUSIVE LIABILITY FOR DEFECTIVE PRODUCTS, WHETHER FOUNDED ON WARRANTY, NEGLIGENCE OR OTHERWISE, AND BUYER'S EXCLUSIVE AND SOLE REMEDY FOR DEFECTIVE PRODUCTS IS LIMITED TO REPAIR, REPLACEMENT, OR REFUND. Buyer acknowledges that it alone has determined that the goods purchased hereunder will suitably meet the requirements of its intended use, it is expressly understood that any technical advice furnished by Seller with respect to the use of its goods or services is given without charge, and Seller assumes no obligation or liability for the advice given or results obtained, all such advice being given and accepted at Buyer's risk.

10. **NO DESIGN RESPONSIBILITY.** Seller makes no representations or warranties that its products are designed to meet any general or specific design requirements that Buyer may have. Buyer alone is responsible for ensuring that the products meet Buyer's design requirements. By purchasing the products, Buyer represents and warrants that it has reviewed all information from Seller about the products that the Buyer deems sufficient to determine the suitability of the products for Buyer's use. Buyer alone is responsible for informing Seller of any design or design changes necessary to render the products suitable for Buyer's use. If Buyer determines that any design changes are needed to render the products suitable for its use, Buyer shall send to Seller specifications and other information sufficient to enable Seller to manufacture the products to Buyer's specifications. Buyer shall defend, indemnify, and hold Seller harmless from any claims, liabilities, or damages, including actual attorneys' fees, relating, in whole or in part, to the design of the products purchased by Buyer.

11. **LIMITATIONS ON LIABILITY:** Buyer releases Seller from any and all liability for negligence by Seller with respect to any activity engaged in by Seller with regard to the goods sold hereunder and from any and all liability imposed upon manufacturers or sellers of goods under section 402A of the Restatement of Torts, 2nd, or under any similar legal theory. SELLER'S LIABILITY HEREUNDER SHALL NOT EXCEED THE PURCHASE PRICE OF THE PRODUCTS SOLD HEREUNDER, AND IN NO EVENT SHALL SELLER BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION, ANY DAMAGE OR INJURY TO PERSON OR PROPERTY, LOSS OF BUSINESS OR PROFITS, INCREASED COSTS, OR INJURY TO REPUTATION. No legal proceedings will be brought for any breach of this contract more than one year after the accrual of the cause of action thereof.

12. **TAXES AND OTHER CHARGES:** Buyer will pay, or reimburse Seller if Seller pays, any and all taxes or tariffs or other similar charges imposed upon or measured by the sales contemplated herein or the purchase price payable hereunder.

13. **QUANTITIES SHIPPED:** Weights and quantities shown hereon are estimated. It is understood and agreed that an "over or under allowance" for quantities shipped are made to within ten percent (10%).

14. **SHIPPING:** Unless otherwise agreed by Seller in writing, goods shall be bulk packed in accordance with good commercial practice. In the absence of specific shipping instructions from Buyer, Seller shall use its discretion in using a shipping service. If the sale hereunder is other than F.O.B. Seller's plant, shipping charges are based upon the freight charges now in effect; in the event of an increase or decrease in applicable freight charges before the goods are shipped, such change in freight will be for Buyer's account.

15. **TITLE:** Delivery of products to a carrier by Seller shall constitute transfer of title, ownership, possession and property in and to the products to Buyer at such point of delivery and such carrier shall thereafter be deemed to be acting for Buyer and Buyer shall thereafter bear all risk of loss of such products.

16. PATENTS: Seller shall not be liable for any claims for patent infringement arising out of the manufacture, sale or use of any products sold hereunder. With respect to products made in accordance with the designs, drawings, formulae or other specifications furnished by Buyer, Buyer shall indemnify and hold harmless Seller from and against any claim that the manufacture, use, or sale of any product manufactured or supplied hereunder infringes any patent or other intellectual property right and to pay any and all losses, damages and expenses of Seller in connection with any such claim. Any information, suggestions or ideas transmitted by Buyer to Seller in connection with performance hereunder are not to be regarded as secret or submitted in confidence except as may be otherwise provided in writing signed by a duly authorized representative of Seller, and Seller may freely incorporate such information, suggestions and ideas into its products.

17. OVERTIME WORK: The schedule of work to be performed pursuant to this acknowledgment is based on a work week of five (5) eight (8) hour days, Monday through Friday, exclusive of holidays. In the event Buyer desires to extend the work or to complete the work earlier than that specified, the lump sum price(s) shall be adjusted in Seller's discretion to reflect additional costs resulting from the change.

18. TOOLING: Since the charges made for dies and tools include only a portion of the costs therefor and do not include the cost of administration and engineering services, the initial invoicing of such charges does not convey the right to remove dies and tools from Seller's plant, without Seller's consent and compensation for these additional costs. Seller will store and maintain dies and tools for Buyer's exclusive use; provided, however, that Seller will not be obligated to maintain them beyond two years from the date of Buyer's last order. Buyer shall not be entitled to remove dies and tools from Seller's premises without the prior written consent of Seller, in Seller's sole discretion; if Seller consents to such removal, Buyer shall pay Seller an administrative and engineering charge. No standard components or adapters will be removed from Seller's premises under any circumstance. Seller does not insure such dies and tools, and therefore recommends that Buyer provide for such insurance, as Buyer deems necessary.

19. SAMPLES: On initial orders, unless otherwise requested by Buyer, samples will be submitted for approval before proceeding with production. Parts made according to approved samples will be deemed made in compliance with the warranty provided herein.

20. DISCONTINUING PRODUCTS; SPARE OR REPLACEMENT PARTS: Seller reserves the right to discontinue or modify any line or type of product at any time without liability, except to refund any sums already paid by Buyer for the undelivered portion of such products. Seller shall have no obligation to stock or supply replacements or parts for the products it sells.

21. RESALE OF GOODS SOLD HEREUNDER: In the event Buyer resells any of the goods sold to it hereunder, in whatever form, Buyer will include the following language in a conspicuous place in the agreement covering such resale: "Warranties by manufacturers and sellers of goods sold hereunder are limited to such written warranties as may be applicable to the individual items sold hereunder, which warranties are limited to repair or replacement of the goods or to the refund of the purchase price, at the manufacturer's or seller's option, within the time limit specified. Manufacturers and sellers make no warranties or representations, express or implied, by operation of law or otherwise, as to the merchantability or fitness for a particular purpose of the goods sold hereunder. Buyer releases manufacturers and sellers from any and all liability for negligence with respect to any activity engaged in by manufacturer or seller with regard to the goods sold hereunder and from any and all liability imposed upon manufacturers or sellers goods under section 402A of the Restatement of Torts, 2nd, or under any similar legal theory. Buyer acknowledges that it alone has determined that the goods purchased hereunder will suitably meet the requirements of their intended use. MANUFACTURERS AND SELLERS WILL NOT BE LIABLE FOR DIRECT, INDIRECT, CONSEQUENTIAL, INCIDENTAL, OR ANY OTHER DAMAGES OTHER THAN REPAIR OR REPLACEMENT OF DEFECTIVE GOODS OR REFUND OF THE PURCHASE PRICE FOR SUCH DEFECTIVE GOODS AT MANUFACTURER'S OR SELLER'S OPTION."

22. CREDIT: All sales are subject to the approval of Seller's Credit Department.

23. TERMINATION: Notwithstanding anything contained in these Terms and Conditions or elsewhere to the contrary, Seller shall be entitled to terminate its contractual relationship with Buyer upon reasonable written notice to Buyer.

24. WAIVERS: Waiver by Seller of a breach by Buyer of any provisions herein shall not be deemed a waiver of future compliance therewith, and such provisions, as well as all other provisions herein, shall remain in full force and effect.

25. GOVERNING LAW AND JURISDICTION: These Terms and Conditions, as well as the contractual relationship between Buyer and Seller contemplated herein, shall be governed by the internal law, and not the law of conflicts, of the State of

Indiana. Buyer and Seller agree to bring any action arising out of or relating to this relationship in a state or federal court in the State of Indiana.