

PARAGON D&E COMPANY
TERMS AND CONDITIONS OF SALE

1. **The Agreement.** The agreement between Seller and Buyer (the "Contract") with respect to the sale of tooling described on the other side hereof (the "Goods") shall consist only of the terms appearing hereon and on the other side hereof together with any terms mutually agreed to in writing hereafter by Seller and Buyer. Seller objects to and shall not otherwise be bound by any additional or different terms, whether printed or otherwise, in Buyer's purchase order or in any other communication from Buyer to Seller. The contract shall be for the benefit of Seller and Buyer and not for the benefit of any other person. Prior courses of dealing, trade usage and verbal agreements not reduced to a writing signed by Seller, to the extent they differ from, modify, add to or detract from the contract, shall not be binding on Seller. There are no agreements, promises or understandings, either verbal or written, that are not fully expressed herein. No statements, recommendations, or assistance by either party has been relied upon by either party or shall constitute a waiver by either party of the provisions hereof. Buyer's issuance of a purchase order constitutes its acknowledgment that Seller's quote is the first document exchanged, containing the essential elements of, and therefore constitutes an offer.

2. **No Implied Acceptance.** Notwithstanding any contrary provision in Buyer's purchase order, no action by Seller such as delivery of Goods, the rendering of services or the commencement of work on Goods to be specially manufactured for Buyer, will be deemed an acceptance by Seller of any purchase order from Buyer with terms different than those contained in this Contract

3. **Termination or Modification.** The contract may be modified or terminated only upon Seller's written consent. If all or part of the sales contract is terminated, Buyer, in the absence of contrary written agreement with Seller, shall pay termination charges based upon expenses and costs incurred in the production of the Goods to the date such termination is accepted by Seller plus a reasonable profit, except that any Goods completed on or prior to Seller's acceptance of such termination shall be accepted and paid for in full by Buyer.

4. **Terms of Payment.** Payment terms are net cash thirty (30) days from the date of the initial mold tryout unless otherwise provided in the contract. Prices are F.O.B. Seller's shipping point unless otherwise stated in the contract. Seller is entitled to perform periodic credit reviews of Buyer. Whenever, in the judgment of Seller, the financial condition of the Buyer does not justify the continuation of production or shipment on the specified terms of payment, the Seller may require full or partial payment in advance unless otherwise agreed to in writing by both Buyer and Seller. Seller shall have a security interest in all tools, molds, and dies of Buyer, which come into the possession of Seller, as security for all sums owing from Buyer to Seller from time to time.

5. **Buyer's Failure to Make Payment.** All amounts not paid when due shall incur a late charge of 1-1/2% per month to the extent allowed by law and otherwise at the highest contract rate allowed by law.

6. **Delivery.** Delivery dates are estimated on the basis of immediate receipt by Seller of all information to be furnished by Buyer and the absence of delays, direct or indirect, resulting from or contributed to by circumstances beyond Seller's reasonable control. Seller shall in good faith endeavor to meet estimated delivery dates. Seller shall not be liable for any damages or losses arising out of or resulting from any delay of any kind whatsoever, unless there is specific written agreement between the Seller and the Buyer to the contrary. Seller shall not be obligated to obtain insurance or to prepay transportation costs, unless it has agreed to be responsible for said costs. Seller will attempt to follow Buyer's shipping instructions, but may make reasonable changes thereto. Breach of this Contract shall have no effect upon this provision controlling the risk of loss.

7. **Risk of Loss.** Buyer assumes all risk of loss of Goods upon delivery by Seller to carrier.

8. **Limited Warranties.** Seller warrants that Goods will be of a kind and built within the tolerances as specified in the Buyer's written mold build standards on file with Seller and free from defects of workmanship on the part of Seller for one year following the initial mold tryout, however, Seller does not warrant material or components supplied by others. (In the event of material or component failure or nonconformance, Seller will cooperate with the Buyer to achieve the fullest possible benefit from the original warranty provided by the supplier.) EXCEPT AS STATED ABOVE, SELLER MAKES NO WARRANTIES OR REPRESENTATIONS, EXPRESSED OR IMPLIED, BY OPERATION OF LAW OR OTHERWISE, AS TO THE MERCHANTABILITY OR FITNESS OF THE GOODS FOR A PARTICULAR PURPOSE. IN PARTICULAR, BUT WITHOUT LIMITING THE

GENERALITY OF THE FOREGOING EXCLUSION, IF THE GOODS ARE MADE ACCORDING TO BUYER'S SPECIFICATIONS, SELLER DOES NOT WARRANT ADEQUACY OF SUCH SPECIFICATIONS OR THAT THE GOODS WILL PERFORM IN ACCORDANCE WITH SUCH SPECIFICATIONS. Seller's sole obligation under the foregoing warranties will be limited to either, at Seller's option, repairing or replacing the defective workmanship, or refunding the purchase price of the Goods to the Buyer, and Buyer's exclusive remedy for breach of any warranties will be enforcement of such obligation of Seller. These warranties will not extend to Goods subjected to misuse, neglect, accident or improper installation or maintenance or which have been altered or repaired by anyone other than Seller or its authorized representatives. In the event Buyer claims Seller has breached any of its obligations under the warranties, Buyer shall notify Seller of the breach and subsequently provide to Seller a written statement specifying the nature of the breach within thirty days of discovery, but in no event later than one year after the initial mold tryout. Seller will respond to the notification as soon as practicable and investigate the extent of the claim to determine the appropriate corrective actions.

9. **Limitation of Liability.** In no event shall Seller be liable for any incidental or consequential damages nor shall Seller's liability on any claim for damages arising out of or connected with the contract or the manufacture, sale, delivery or use of the Goods exceed the purchase price of the Goods theretofore paid by Buyer to Seller.

10. **Cancellation of Purchase Orders.** In the event of any cancellation of all or part of any purchase order by Buyer, Buyer agrees to pay Seller for all reasonable and allocable materials, material management, labor, overhead and general and administrative costs and expenses incurred as a result of any such cancellation, plus a reasonable profit hereby stipulated to be ten percent (10%) of such costs and expenses within thirty (30) days from the date of Seller's invoice setting forth such costs and expenses.

11. **Security.** Upon issuance of an order, Buyer grants Seller a security interest in the Goods. The security interest shall be a continuing security interest to secure payment until paid in full. This security interest shall be governed and constructed in accordance with the Uniform Commercial Code. In addition, Seller has the right to file financing statements to evidence this security interest and/or pursuant to the Michigan Moldbuilder's Lien Statute and/or the Michigan Special Tools Lien Act, as applicable

12. **Patents.** Buyer shall defend, protect and hold harmless Seller against all suits at law or in equity and from all damages, claims, and demands for actual or alleged infringement of any United States or foreign patent or trademark by Goods made to Buyer's specifications, blueprints, or designs.

13. **Taxes.** Sales, use, occupation, excise and other taxes upon the production, sale or use of the Goods are not included in the price and such taxes or any costs in connections therewith, wherever levied and whether imposed before or after payment of invoice, shall be paid by Buyer.

14. **Governing Law.** The formation and performance of the contract shall be governed by the internal laws of the State of Michigan without regard to conflicts of laws principles. Any action for breach of the contract, including any breach of warranty, must be commenced within one (1) year after the cause of action has accrued.

15. **Changes.** Changes in the work to be performed under the contract may be made only if Buyer submits written instructions for such changes and if Seller accepts those changes in writing. If any such approved changes in drawings, materials, quantities, dates of performance or design of the part, units, tools, or fixtures, in Seller's sole judgment, increase Seller's costs, Seller may condition approval so any such change on agreement by Buyer to a price increase to recoup such cost increase, plus a reasonable return.

16. **Excusable Delays.** Notwithstanding anything to the contrary, Seller will not be liable to Buyer or any other person or entity for any failure to deliver the Goods to Buyer as provided in the contract when such failure is due to any strike, picket line, boycott effort, fire, flood, freeze, accident, war, revolution, riot, insurrection, act of God, act of any government (or instrumentality, division, agency, body or department thereof), act of any public enemy, act of terrorism, scarcity of gasoline or other fuel or vital products, inability to obtain materials or labor or other event which is beyond Seller's reasonable control.