

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 and delivery of products described on the other side hereof or otherwise attached to these Terms and Conditions of Sale (the "Goods") shall consist only of the terms appearing hereon and on the other side hereof or otherwise attached hereto, 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. Buyer's (a) issuance of a purchase order, (b) confirmation that Seller is to ship products (including, without limitation, by email or other electronic communication) or (c) acceptance of any product shipped by Seller shall constitute Buyer's acceptance of these Terms and Conditions of Sale.

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 Contract is terminated, Buyer, in the absence of contrary written agreement with Seller, shall pay termination charges equal to the 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 invoice 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 or may, in Seller's sole discretion, stop or delay production or shipment.

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 or otherwise at the highest contract rate allowed by law. Additionally, Buyer shall be liable for all attorney fees and other costs in connection with collection of any account.

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 Seller and 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.

7. **Inspection.** Buyer shall inspect each shipment of Goods immediately upon arrival at the shipment destination. All Goods in any such shipment shall be deemed to be conforming and accepted by Buyer unless Buyer notifies Seller in writing of any non-conformity or defect in some or all of such Goods within fifteen (15) days of such arrival, in which case Buyer shall return such subject Goods to Seller, if requested, and Seller may, in its discretion, determine that such Goods are in fact conforming or not or whether they are in fact defective or not and, if applicable, whether to exchange, repair or provide Buyer with a refund or credit for the purchase price of such subject Goods.

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

9. **Limited Warranties.** Seller warrants that, for a period of twelve (12) months from the date of shipment, any Goods delivered to Buyer hereunder shall be free of defective material and workmanship, provided that Buyer provides written notice to Seller within thirty (30) days after discovery of such defect but in no event later than twelve (12) months from the date of its shipment. Seller will respond to the notice as soon as practicable and investigate the extent of the claim to determine the appropriate corrective actions. Materials or other goods sold under this Agreement but not manufactured by Seller are not warranted by Seller, but are sold only with the express warranty, if any, of the manufacturer of such material or other good and only to the extent transferable. EXCEPT AS STATED ABOVE, SELLER MAKES NO WARRANTIES OR REPRESENTATIONS, EXPRESSED OR IMPLIED, BY OPERATION OF LAW OR OTHERWISE, AS TO THE MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR OTHER CONDITION OF ANY GOODS. 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 are limited to, at Seller's option, repairing or replacing the defective workmanship, or providing a refund or credit to Buyer for the purchase price of the Goods, and Buyer's exclusive remedy for breach of any warranties will be enforcement of such obligation of Seller. These warranties do not extend to Goods which (a) have been disassembled, repaired or altered by anyone other than Seller or its authorized service representative; (b) have been subjected to misuse, misapplication, negligence, accidents, damage, abuse, improper storage or abnormal use or service; (c) have been operated or installed in a manner contrary to Seller's printed instructions; (d) have been installed in an incorrect or improper application; or (e) have been subject to other than normal wear and tear.

10. **Limitation of Liability.** In no event shall Seller be liable for any lost profits, special, incidental or consequential damages nor

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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.

11. **Nuclear; Indemnity.** To the extent that any Goods will be used directly or indirectly in connection with a NQA1 nuclear application, Buyer shall be solely responsible for and shall indemnify and hold Seller and its employees, agents and representatives and suppliers harmless from any and all loss, liability, damages, claims, penalties, fines and expenses of any kind, including attorney fees, for personal injuries, including death, or damage to any real or personal property caused by or related to any nuclear incident, nuclear energy hazard or other similarly unusual or unduly hazardous risk, whether or not such incident, hazard or risk is caused by anyone's, including Seller's or any other indemnitee's, fault or negligence. Buyer shall obtain indemnification as contemplated by the United States Atomic Energy Act and any other federal, state or local law, rule or regulation and, to the extent legally permitted, the same is incorporated herein for the benefit of Seller. Buyer shall obtain all-risk nuclear liability insurance in such form and amount as meets the financial protection requirements imposed by the above. Buyer shall maintain such indemnification and insurance with such coverage and limits and for such time as required by the above.

12. **Change in or Cancellation of Purchase Orders.** In the event of any change in or 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 change or 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.

13. **Security.** Upon issuance of a purchase order, Buyer grants Seller a security interest in the Goods and the proceeds thereof and any tools, molds, and dies of Buyer that come into the possession of Seller. The security interest shall be a continuing security interest to secure payment under this Contract until paid in full. This security interest shall be governed and constructed in accordance with the Michigan Uniform Commercial Code. If requested by Seller, Buyer shall sign and deliver to Seller financing statements in such form as Seller may request, and Seller may file the same, in order to perfect Seller's security interest hereunder.

14. **Intellectual Property.** Buyer acknowledges that Seller and its suppliers have acquired various patents, trademarks, trade secrets and other intellectual property with respect to the Goods, and that matters relating to the manufacture, sale and delivery of Goods is confidential information and constitute the intellectual property rights of Seller and its suppliers. No right, title or interest in such intellectual property rights shall pass to Buyer under this Contract, and Buyer shall receive such confidential information in confidence and trust, shall not use or duplicate the same, in whole or in part, and shall not reveal the same to any other person or entity.

15. **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.

16. **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.

17. **Governing Law; Jurisdiction.** 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 accrual of the cause of action. Any and all actions or proceedings arising out of or related to the Agreement shall be instituted exclusively in the Circuit Court of Kent County, Michigan or the federal District Court for the Western District of Michigan. The parties specifically consent and submit to the jurisdiction and venue of such state or federal court, and irrevocably waive any objections either may have based on improper venue or *forum non conveniens* to the conducting of any proceeding in any such court.

18. **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.

19. **Safety Features.** At Buyer's request, Seller may incorporate safety features into some or all of the Goods or provide handling instructions or other similar items. Notwithstanding the foregoing, the parties acknowledge and agree that:

- Buyer is solely responsible for the design of the Goods (including with respect to safety features and compliance with laws) and the use and handling of the Goods (and instructions related thereto).
- Seller is merely adhering to Buyer's requests and direction with respect to the design of the Goods (including with respect to any safety features) and the use and handling of the Goods (and any instructions related thereto), and does not have full information as to how Buyer intends to use the Goods.
- Seller does not have expertise related to the design of the Goods (including with respect to safety features) or the use and handling of the Goods (or instructions related thereto) and accepts no responsibility for any of the foregoing.
- Seller has no responsibility and makes no representations or warranties with respect to the design of the Goods (including with respect to safety features or compliance with laws) or the use and handling of the Goods (or instructions related thereto).

Buyer agrees to indemnify and hold Seller harmless from and against any claims, suits, losses, damages, costs and expenses incurred by Seller related in any way to the design or safety of the Goods or any handling instructions related thereto.