

ACME MANUFACTURING COMPANY
STANDARD TERMS AND CONDITIONS OF PURCHASE

(Last Revised November 2023)

1. **Parties.** “Buyer” means Acme Manufacturing Company, a Michigan corporation. The party with which the Purchase Order is placed is referred to as “Seller.” The goods and/or services covered by Buyer’s purchase order (the “Purchase Order”) are referred to as the “Products,” which term includes all parts, portions, items, attachments, repairs, replacements, and substitutions thereof.

2. **Agreement Acceptance.** The term “Agreement” refers to and includes the face of the Purchase Order document, these Standard Terms and Conditions and all other documents specifically (and by a written instrument) made a part of the Agreement by Buyer. The Agreement is the entire agreement between the parties with respect to the Products and no statement or agreements, oral or written, made before or at the signing of this Agreement, shall vary or modify the written terms hereof, and neither party shall claim any amendment, modification, or release from any provisions hereof unless such change is in writing signed by an authorized representative of the other party and specifically states that it is an amendment to this Agreement. Seller agrees that Seller’s written acceptance of the Agreement or the commencement of any work or service under the Agreement constitutes Seller’s acceptance of this Agreement, the Purchase Order and these Standard Terms and Conditions. All terms and conditions proposed by Seller, whether written or oral, which are different from or in addition to these terms and conditions are expressly rejected by Buyer and shall not become part of the Agreement. For the avoidance of doubt, the terms and conditions set forth herein prevail over any of Seller’s general terms and conditions of sale, regardless of whether or when Seller has submitted its sales confirmation or such terms. This Agreement expressly limits Seller’s acceptance to the terms of this Agreement, and fulfillment of or other performance under the Purchase Order constitutes acceptance of this Agreement.

3. **Delivery.** Time is of the essence. Seller shall deliver the Products, including the provision of any services to be provided as part of the Products, in the quantities and on the dates specified in the Purchase Order or as otherwise agreed in writing by the parties. If Seller fails to make deliveries or perform services at the agreed upon time, all damages suffered by Buyer and any premium transportation or other costs required to meet the specified delivery schedule will be at the expense of Seller.

4. **Invoices and Payment Terms; Set Off.** Seller shall issue an invoice to Buyer on or any time after the completion of delivery and only in accordance with the terms of this Agreement. Any cash discount period offered by Seller will begin on the later of (A) the date Buyer receives the Products or (B) the date Buyer receives an invoice with respect thereto. All payments hereunder shall be made in United States dollars. Buyer shall pay all properly invoiced amounts due to Seller within the time period set forth in the Purchase Order, except for any amounts disputed by Buyer in good faith. Without prejudice to any other right or remedy it may have, Buyer reserves the right to set off at any time any amount owing to it by Seller, whether under this Agreement or any other agreement between Seller and Buyer or its affiliates, against any amount payable by Buyer to Seller. The parties shall seek to resolve all such disputes expeditiously and in good faith. Seller shall continue performing its obligations under this Agreement notwithstanding any such dispute. Seller shall pay all taxes out of the purchase price, including without limitation, all federal, state, local and foreign taxes applicable to the provision of the Products, unless otherwise stated in the Purchase Order.

5. **Packing and Shipment; Risk of Loss.** Seller shall (A) pack and mark the Products in accordance with Buyer’s instructions, or if no instructions are provided, in a manner sufficient to ensure that the Products are delivered in

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undamaged, conforming condition; and (B) shall secure delivery free of damage and deterioration. Seller is responsible for the Products and shall bear all risk of loss until delivery to Buyer at the designated delivery point. Unless otherwise specified in the Purchase Order, the purchase price payable hereunder shall include all charges and expenses for shipping (including containers, packing and crating) and transportation to the delivery point.

6. **Quantities.** The specific quantity of Products set forth in the Purchase Order must be delivered in full and not be changed without Buyer's prior consent in writing. Buyer may reject any unauthorized quantity of Products and return such rejected Products to Seller at Seller's sole risk of loss and expense.

7. **Price.** If the Purchase Order does not include the purchase price for the Products, Seller shall invoice Buyer for the Products at the lower of (A) the price last quoted or invoiced at, or (B) the prevailing market price. Seller shall not invoice Buyer for the Products at a price higher than last quoted or charged or without Buyer's prior written consent. Seller warrants that the prices quoted are the lowest prices at which these or similar Products and quantities are sold by Seller to all other customers. If Seller reduces or offers to reduce the price for the Products for any other customer between the placement of the Purchase Order and delivery of the Products, Seller shall promptly notify Buyer of, and Buyer will be entitled to receive, such price reduction. In the event that Buyer receives an offer from a competing supplier to supply the Products in comparable quantities and with the same or better quality, Buyer shall notify Seller of the existence and terms of the competing offer and Seller shall have thirty (30) days within which to either match the competing offer or release Buyer from its remaining obligations to purchase Products under this Agreement.

8. **Warranty.** In addition to any other express or implied warranties provided by law or otherwise, Seller expressly warrants each of the following:

(A) All the Products covered by this Agreement shall:

- i. strictly conform with the terms of this Agreement and any related description or specifications provided to Seller by Buyer;
- ii. be of the highest quality, materials and workmanship, and free from defects in workmanship, material and design; and
- iii. be merchantable and fit for the purpose for which intended, Seller acknowledging that it knows of Buyer's intended use of the Products.

(B) The Products purchased hereunder do not infringe any letters patent, trademarks, or copyrights granted by the United States or any foreign country and the Products do not otherwise infringe upon any intellectual property rights of any third party.

(C) Title to all Products shall be vested in Buyer free and clear of any and all liens and encumbrances of any nature and kind.

Each of the warranties set forth herein shall survive delivery indefinitely, and shall not be deemed waived by inspection, tests, acceptance, payment for use or processing of the Products. Any deviations from this Agreement or specifications furnished hereunder, or any other exceptions or alterations must be approved in writing by an authorized representative of Buyer.

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9. **Indemnification.** Seller shall defend, indemnify and hold Buyer, its affiliates, customers and each other third party to which Products are provided, and each of their shareholders, members, directors, managers, officers, employees and agents, harmless against all claims, demands, actions, causes of action, suits, judgments, settlements, costs, fees, penalties, damages, attorneys' fees and all other liabilities and obligations whatsoever (collectively, the "Losses") allegedly or actually resulting from or arising out of (A) any defect in the Products purchased herein; (B) any act, omission or negligent work of Seller or its employees, agents or subcontractors in connection with performing this Agreement, either on Buyer's property or in the course of their employment or engagement with Seller; (C) any breach of warranty under this Agreement; (D) any failure of Seller or Seller's employees, agents and subcontractors to comply with any applicable governmental regulations and/or statutes; (E) any breach of this Agreement or any other agreement between Seller and Buyer or its affiliates; (F) any recall campaign or warranty sharing program in which Buyer, any customer of Buyer or any third party participates in connection with any of the Products; and (G) any patent, trademark, copyright, trade secret or other infringement claims against Buyer or the Products. This indemnification shall continue indefinitely notwithstanding any delivery, inspection, tests, acceptance, payment for or use or processing of the Products.

10. **Insurance.** Seller, at its own expense, shall maintain and carry in full force and effect such public liability insurance, including products liability, completed operations, contractors liability and protective liability, automobile liability insurance (including non-owned automobile liability) and workers' compensation, and employer's liability insurance with financially sound and reputable insurers as will adequately protect Buyer against any Losses with respect to the Products or this Agreement.

Upon request, Seller shall provide certificates of insurance evidencing such insurance signed by an authorized representative of the insurer and shall name Buyer as an additional insured. Seller's insurance coverage shall be primary and non-contributory. Seller shall provide at least ten (10) days' prior written notice to Buyer prior to effecting any material change in or cancellation of Seller's insurance policies.

11. **Cancellation for Breach.** Buyer reserves the right to cancel all or any part of the undelivered or unaccepted portion of the Purchase Order, without any liability to Seller, if (A) Seller does not deliver the Products (including the provision of any services included therein) in the quantities or at the time and location specified in the Purchase Order or otherwise agreed by Buyer and Seller, time being of the essence for this Agreement; (B) Seller breaches any of the terms or conditions hereof including, without limitation, the warranties of Seller; or (C) Seller fails to provide to Buyer, upon request, with reasonable assurance of future performance. Seller shall be liable for any damages incurred by Buyer by reason of the default which resulted in such cancellation, and Seller shall indemnify Buyer against any losses, claims, damages, and costs and expenses directly attributable to such default, including, without limitation, in accordance with Buyer's back charges policy or any premium transportation or other costs required to meet the specified delivery schedule.

12. **Cancellation for Convenience.** In addition to any other rights of Buyer to cancel or terminate the Agreement, Buyer may at its option, immediately terminate all or any part of the Agreement at any time and for any reason by giving ten (10) days' written notice to Seller. Upon receipt of notice of termination, Seller unless otherwise directed by Buyer, shall (A) terminate promptly all work under this Agreement; (B) transfer title and deliver to Buyer the finished work, the work in process,

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and the parts and materials which Seller produced or acquired in accordance with this Agreement and which Seller cannot use in producing goods for itself or for others; (C) settle all claims by subcontractors, if any, for actual costs that are rendered unrecoverable by such termination; and (D) take actions reasonably necessary to protect property in Seller's possession in which Buyer has an interest. Upon termination by Buyer under this Section 12, Buyer shall pay to Seller the following amounts without duplication: (i) the purchase price for all finished Products, work and completed services which conform to the requirements of this Agreement and not previously paid for; (ii) Seller's reasonable cost of the work in process and parts and materials transferred to Buyer in accordance with this Section 12; and (iii) Seller's reasonable costs of settling the claims of the obligations Seller would have had to the subcontractors in the absence of termination. Buyer's obligation upon termination under this Section 12 shall not exceed the total purchase price under the Purchase Order, as reduced by payments made prior to the termination.

13. Inspection; Rejection and Acceptance. Buyer shall have the right to inspect the Products on or after the date of delivery thereof. Buyer, at its sole option, may inspect all or a sample of the Products, and may reject all or any portion of the Products if it determines the Products are nonconforming or defective. If Buyer rejects any portion of the Products, Buyer may, effective upon written notice to Seller: (A) rescind this Agreement in whole or in part; (B) accept the Products at a reasonably reduced price; or (c) require replacement of the rejected Products. If Buyer requires replacement of the Products, Seller shall, at its expense, promptly replace the nonconforming or defective Products and pay for all related expenses, including, but not limited to, transportation charges for the return of the nonconforming or defective Products and the delivery of replacement Products. If Seller fails to timely deliver replacement Products, Buyer

may replace them with goods from a third party and charge Seller the cost thereof and cancel this Agreement for breach pursuant to Section 11. Any inspection or other action by Buyer under this Section 13 shall not reduce or otherwise affect Seller's obligations under this Agreement, and Buyer shall have the right to conduct further inspections after Seller has carried out its remedial actions. Payment for Products under this Agreement prior to inspection shall not constitute acceptance thereof and is without prejudice to any and all claims that Buyer may have against Seller.

14. Changes. Buyer may, at any time, make changes in the Purchase Order. Any claim by Seller for a price adjustment resulting from such change must be asserted in writing within thirty (30) days from date of receipt by Seller of Buyer's notification of any change. Buyer will have the right to verify all claims hereunder by auditing relevant records of Seller. Seller shall promptly proceed with the Purchase Order as changed under this Section 14.

15. Claims Adjustment. Buyer may, at any time and without notice, deduct or set off Seller's claims for money due or to become due from Buyer against any claims that Buyer has or may have arising out of this or any other transaction between Seller and Buyer or its affiliates.

16. Drawback Rights. This Agreement includes all related customs duty and import drawback rights, if any, which Seller may transfer to Buyer. Seller will inform Buyer promptly of any such rights and will supply documents as may be required to obtain such drawback.

17. Confidentiality and Proprietary Rights. All non-public, confidential or proprietary information of Buyer, including but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, business

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operations, and other information transmitted to Seller by Buyer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated, or otherwise identified as “confidential,” in connection with the performance of this Agreement (collectively, the “Data”) are, and shall remain, the property of Buyer and are confidential and solely for the use of performing this Agreement and may not be disclosed or copied unless authorized in advance by Buyer in writing. Seller shall hold all Data in strictest confidence and shall not disclose or permit disclosure to others, or use for any purpose other than the purpose of the Agreement, any Data. Seller shall protect Buyer’s Data using the same degree of care with which it protects its own confidential and proprietary information, but in no event less than reasonable care. Upon Buyer’s request, Seller shall promptly return or destroy all documents and other materials containing the Data received from Buyer. Buyer shall be entitled to injunctive or other equitable relief for any violation of this Section 17. This Section 17 does not apply to information that is: (A) in the public domain other than as a result of any disclosure resulting from an act or omission by Seller or any of its representatives or affiliates; (B) lawfully known to Seller at the time of disclosure on a non-confidential basis; or (C) rightfully obtained by Seller on a non-confidential basis from a third party, provided that such third party is not known to Seller or such of its representatives or affiliates, after due inquiry, to be subject to any contractual, legal, fiduciary or other obligation of confidentiality with respect to such information. Seller’s obligations under this Section 17 shall survive the expiration or termination of the Agreement.

18. **Force Majeure.** Any delay or failure of either party to perform its obligations under this Agreement will be excused to the extent and for so long as, the delay or failure was caused directly by an event beyond such party’s control, without such party’s fault or negligence and that

by its nature could not have been foreseen by such party or, if it could have been foreseen, was unavoidable, including but not limited to, (A) acts of God; (B) flood, fire, earthquake, epidemics, pandemics, quarantine restrictions, or explosion; (C) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (D) federal, state, local, or foreign government order, law, or actions; (E) embargoes or blockades in effect on or after the date of this Agreement; (F) national or regional emergency; (G) strikes, labor stoppages or slowdowns, or other industrial disturbances; (H) telecommunication breakdowns, power outages or shortages, inadequate transportation services, or inability or delay in obtaining supplies of adequate or suitable materials; and (I) other events beyond the reasonable control of such Party (each a “Force Majeure Event”). A party shall give the other party prompt written notice of any event or circumstance that is reasonably likely to result in a Force Majeure Event and the anticipated duration of such Force Majeure Event. A party shall use its best efforts to end the Force Majeure Event, ensure that the effects of any Force Majeure Event are minimized, and resume full performance under this Agreement. During any Force Majeure Event, Buyer may, at its option (a) purchase Products from other sources and reduce the quantities under any Purchase Order by such quantities without liability to Seller, or (b) require Seller to deliver to Buyer all finished Products, work in process or parts and materials produced or acquired for work under any Purchase Order. If the delay lasts more than 30 days, Buyer may immediately terminate any Purchase Order without any liability to Seller.

19. **Allocation.** In the event of Seller’s inability for any reason to supply the total demands for Product, Seller shall distribute its available supply among Buyer and all other purchasers, as well as departments and divisions of the Seller, on a percentage basis that is no less favorable than is provided to any other purchaser or

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internal user without liability for any failure to perform this Agreement which may result therefrom.

20. Compliance with Law. In providing Products hereunder, Seller shall comply with any and all applicable federal, state, local, and foreign laws, regulations and ordinances, including, but not limited to, (i) Executive Order 11246, as amended, and its implementing regulations, including the equal opportunity clause set forth in Section 202 of such order and 41 C.F.R. § 60.1.4(a), and (ii) the affirmative action clauses of the Rehabilitation Act of 1973 at 41 C.F.R. § 60-741.4, and the Vietnam Era Readjustment Act of 1974 at 41 C.F.R. § 60-2504, which are incorporated herein by reference. Seller shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under this Agreement.

21. Use of Buyer's Name. Seller shall not use Buyer's name whether by including reference to Buyer in any list of customers advertising that its services or products are used by Buyer or otherwise, without Buyer's prior written consent by an authorized representative.

22. On-Site Review. During the period Seller is manufacturing the Products, Buyer shall have the right of access to any of Seller's or Seller's subcontractors plants at all reasonable times.

23. Buyer's Property. All drawings, patterns, designs, supplies, materials, molds, fixtures, equipment, tools, jigs, dies and other items furnished by Buyer, either directly or indirectly, to Seller, or for which Seller has been reimbursed by Buyer (the "Buyer's Property") shall be and remain the property of Buyer. Seller shall bear the risk of loss and damage to Buyer's Property. Buyer's Property shall at all times be properly used, stored and maintained by Seller, shall not be comingled with the property of Seller or with that of any third party, and shall

not be moved from Seller's premises without Buyer's prior written consent. Buyer's Property shall be used exclusively in the filling of Purchase Orders from Buyer, and shall not be used for production of larger quantities than those specified, or in the production, manufacture or design of any other article for any other person, without Buyer's prior written consent. Buyer shall have the right to enter onto Seller's premises at all reasonable times to inspect Buyer's Property and Seller's records with respect thereto. Upon the request of Buyer, Buyer's Property shall be immediately released to Buyer or delivered to Buyer by Seller at Seller's expense. To the maximum extent permitted by law, Seller waives any lien or other rights that Seller might otherwise have with respect to any of Buyer's Property for work performed on or with such Buyer's Property or otherwise.

24. Service and Replacement Parts. For a period conterminous with the required service and replacement part period of Buyer's customers, Seller will send to Buyer the Products necessary to fulfill Buyer's replacement requirements for such Products. Buyer and Seller shall negotiate in good faith to agree on prices for such service and replacement parts during such time period.

25. Remedies. The rights and remedies herein reserved to Buyer are cumulative and in addition to any other or further rights and remedies available to Buyer at law or in equity.

26. No Waiver. No waiver by Buyer of any of the provisions of this Agreement or any breach thereof is effective unless explicitly set forth in writing and signed by an authorized representative of Buyer. No failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement operates or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power, or privilege hereunder precludes any

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other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

27. Relationship of the Parties. The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture, or other form of joint enterprise, employment, or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

28. Notices. All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a “Notice”) shall be in writing and addressed to the parties at the addresses set forth on the face of the Purchase Order or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), email (with confirmation of transmission), or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (A) upon receipt of the receiving party, and (B) if the party giving the Notice has complied with the requirements of this Section 28.

29. Severability. If any term or provision of this Agreement is found to be invalid, illegal, or unenforceable by a court of competent jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

30. Survival. Provisions of this Agreement which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Agreement including, but not limited to, the following provisions:

Section 8 (Warranty), Section 9 (Indemnification), Section 17 (Confidentiality and Proprietary Rights), Section 20 (Compliance with Law), Section 21 (Use of Buyer’s Name), Section 23 (Buyer’s Property), Section 24 (Service and Replacement Parts), Section 30 (Survival), and Section 31 (Governing Law; Arbitration).

31. Governing Law; Arbitration. This Agreement shall be construed according to the laws of the State of Michigan as if fully performed thereunder and without regard to its conflict of laws principles. The parties expressly exclude the applicability of the United Nations Convention on Contracts for the International Sale of Goods, if the same would otherwise apply here. All disputes arising hereunder will be exclusively resolved through a binding arbitration proceeding conducted in accordance with the Rules of Commercial Arbitration of the American Arbitration Association, before an arbitrator chosen in accordance with such rules. The arbitration proceeding will be conducted in English and will take place in Oakland County, Michigan, and each party hereby waives any argument as to the convenience of such venue. The decision of the arbitrator will be final and binding upon the parties and shall not be subject to appeal. The decision of the arbitrator may be enforced in any court of competent jurisdiction..

32. No Assignment. This Seller shall not assign, transfer, delegate, or subcontract any of its rights or obligations under this Agreement, whether by operation of law or otherwise, without the prior written consent of Buyer, and any purported assignment or delegation in violation of this Section 32 shall be null and void. No assignment or delegation shall relieve Seller of any of its obligations hereunder.