



1290 North Miller Street

Anaheim, California 92806

Phone: (714) 666-1557 Fax: (714) 666-1756

TERMS AND CONDITIONS

- 1. DEFINITIONS.** The term "CMI" means California Manufacturing, Inc. or "Seller". The term "Buyer" means the individual, corporation, or other legal entity submitting an order to CMI as identified on the Sales Order Acknowledgment. The term "Terms" means these Terms and Conditions. The term "Purchase Order" or "Order" means Buyer's expressed desire, whether written or oral, to purchase Goods from CMI. The term "Goods" means all of the products, materials, and related services that the Buyer desires to purchase from CMI. The sales of the Goods that are subject of this Order will be governed by and subject to (a) CMI's quotation, order acknowledgment, or a separate written agreement signed by an authorized representative of CMI, as applicable, and (b) these Terms and Conditions, whether or not they are specifically referenced in or incorporated by CMI's quotation, order acknowledgment, or a separate written and signed agreement. Any irreconcilable conflict between these Terms and Conditions and any terms in CMI's quotation, order acknowledgment, or separate written and signed agreement shall be resolved in favor of these Terms and Conditions. CMI's acceptance of Buyer's purchase order or commencement of performance shall not constitute acceptance of any Buyer's terms and conditions. **TERMS ADDITIONAL TO OR DIFFERENT FROM THESE TERMS AND CONDITIONS, INCLUDING BUT NOT LIMITED TO TERMS CONTAINED IN BUYER'S PURCHASE ORDER OR BUYER'S STANDARD TERMS AND CONDITIONS OF PURCHASE, ARE DEEMED MATERIAL AND HEREBY REJECTED UNLESS OTHERWISE ACCEPTED BY CMI IN WRITING.**
- 2. BUYER'S ASSENT TO THESE TERMS AND CONDITIONS.** Buyer's assent to these terms and conditions shall be conclusively presumed from Buyer's (1) receipt of CMI's order acknowledgment without written objection sent to CMI within five (5) days after receipt of the order acknowledgment, (2) instructions to CMI to being work or ship any of the Goods after receipt of CMI's order acknowledgment, (3) acceptance of or payment for all or any part of the Goods, or (4) taking any other action evidencing Buyer's acceptance of the benefits of the agreement between the parties. CMI may commence performance in reliance upon Buyer's acceptance of these terms and conditions, and CMI will not be obligated to fulfill an order or request for the Goods unless CMI affirmatively acknowledges the order. **BUYER AND CMI AGREE THAT THESE TERMS AND CONDITIONS ARE ACCEPTED IN GOOD FAITH BY BOTH PARTIES AS THE CONTROLLING AND FINAL TERMS AND CONDITIONS.**
- 3. ENTIRE AGREEMENT.** Except as otherwise agreed to by CMI in writing, the terms and conditions set forth herein, together with CMI's quotation, order acknowledgment, or a separate written and signed agreement, as applicable, shall constitute the complete and final agreement between CMI and Buyer (hereinafter, this "Agreement"), superseding completely any prior oral or written communications.
- 4. PRICE.** The purchase price of the Goods shall be as stated in CMI's quotation, order acknowledgment, or separate written agreement signed by an authorized representative of CMI, as applicable. Unless agreed by CMI in writing, the purchase price does not include shipment costs. If the Goods are shipped freight prepaid, the charge for the freight shall be added to the invoice. Prices are based on and assume Buyer's compliance with the terms and conditions of this Agreement, including a promise by Buyer to purchase a particular mix of goods, a certain quantity of goods, or a certain percentage of Buyer's requirements for the goods. CMI may adjust prices, in its sole discretion, if the circumstances does not coincide with the forgoing assumptions. In addition, CMI may at any time adjust prices based on changes to energy costs, raw material costs, labor costs and exchange rates.
- 5. IDEMNIFICATION.** Buyer agrees to indemnify, defend and hold harmless CMI, its directors, officers, employees, agents, successors and assigns from and against any and all damages, losses, expenses, costs (including, without limitation, reasonable attorney's and accountant's fees), claims, suits, actions, judgments or other liability asserted against or incurred by CMI arising out of (a) Buyer's breach of its obligations hereunder, (b) Buyer's negligence or misconduct, or (c) Buyer's misuse or misapplication of the Goods or damage to the Goods caused by Buyer or its employees, agents or customers.

6. **FORCE MAJEURE.** CMI shall not be responsible for cancellation or delay in delivery or performance resulting, in whole or in part, from causes beyond its reasonable control, including, but not limited to: acts of God; acts or omissions of Buyer; strikers or other labor disturbances regardless of whether or not CMI is capable of settling such strike or disturbance; accidents; shortages of labor, materials, fuel or power; fires; priorities required, requested, or granted for the benefit of the national or local government; restrictions imposed by national or local legislation or regulations; or any cause, whether similar to dissimilar to those enumerated in this section, including without limitation cease of production/operation by the company due to economic hardship, which is beyond the control of CMI.
7. **WARRANTIES.** Goods are warranted for labor defects that don't conform to the requirements of the supplied technical data found on the drawings for a period of 90 days from the date of invoice or until parts are installed in the next assembly. No goods shall be returned to CMI without CMI issuing a written Returned Material Authorization number. EXCEPT FOR THE WARRANTY SET FORTH HEREIN, SELLER MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; OR (c) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESSED OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE. THE REMEDIES SET FORTH IN THIS SECTION SHALL BE THE BUYER'S SOLE AND EXCLUSIVE REMEDY AND SELLER'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTY SET FORTH IN THIS SECTION.
8. **LIMITATION OF LIABILITY.** SELLER'S EXCLUSIVE LIABILITY AND BUYER'S EXCLUSIVE REMEDY FOR THE BREACH OF ANY WARRANTIES HEREIN SHALL BE THE SELLER'S SOLE OPTION TO EITHER (i) REPLACE NON-CONFORMING GOODS AT THE ORIGINAL POINT OF DELIVERY; (ii) TO REPAIR NON-CONFORMING GOODS; OR (iii) TO REFUND THE BUYER'S PURCHASE PRICE FOR THE NON-CONFORMING GOODS. WHICHEVER OPTION SELLER SELECTS, SELLER'S LIABILITY FOR ANY LOSS OR DAMAGE ARISING OUT OF OR RESULTING FROM IN ANY WAY CONNECTED WITH THIS ORDER SHALL NOT EXCEED BUYER'S PURCHASE PRICE FOR THE PARTICULAR GOOD UPON WHICH SUCH LIABILITY IS BASED, REGARDLESS OF WHETHER SUCH LIABILITY ARISES IN CONTRACT (INCLUDING, BUT NOT LIMITED TO FAILURE OR DELAY IN PERFORMANCE OR DELIVERY DUE TO ANY CAUSE WHATSOEVER), TORT (INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE OR STRICT LIABILITY) OR OTHER. IN NO EVENT SHALL SELLER BE LIABLE TO BUYER FOR LOSS OF PROFITS OR REVENUE OR FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR PUNITIVE DAMAGES, REGARDLESS OF PRIOR DEALINGS. ANY CLAIM BY BUYER SHALL BE WAIVED UNLESS PRESENTED IN WRITING TO SELLER WITHIN 60 DAYS FORM THE DATE OF DELIVERY OR WITHIN SUCH OTHER TIME PERIOD AS SELLER MAY HAVE PROVIDED IN WRITITNG. CMI DISCLAIMS ALL LIABILITY FOR AND IS NOT RESPONSIBLE FOR ANY DAMAGES OR COSTS THAT MAY RESULT FROM IMPROPER INSTALLATION OF ITS GOODS.
9. **NON-CONFORMING GOODS.** No claim for damages for non-conforming Goods will be allowed unless Buyer provides CMI with written notice of the claim within sixty (60) days of the date of the Goods being delivered to Buyer. To assert such a claim, Buyer must (a) at CMI's request, return to CMI 100% or, if agreed by CMI, a lesser but still statistically relevant percentage of the Goods claimed to be non-conforming, and (b) provide reasonable evidence to support the claim, including, if requested by CMI, results of diagnostic tests, evaluations and investigations performed by Buyer or Buyer's customer. Goods for which damages are claimed shall not be returned, repaired, or discarded without CMI's prior written consent. If requested by CMI, the non-conforming Goods must be returned to CMI at Buyer's expense within ten (10) days of CMI's request. No goods shall be returned to CMI without CMI issuing a written Returned Material Authorization number. No claims, rejections or returns for non-conforming Goods will be permitted unless Buyer cooperates in full with CMI's technical personnel to determine the cause of the non-conformance.
10. **PAYMENT.** Payment terms are Net 30 days, FOB Anaheim, California. CMI will establish a credit limit and periodically evaluate account status. Buyer agrees to pay amount shown on invoices within the 30-day period. Unpaid amounts beyond 90 days from invoice date shall be considered delinquent. Any payment not made when due shall be subject to interest to be paid by Buyer at the lesser of 1.5% per month or the highest rate permissible under applicable law. Accounts with unpaid amounts exceeding 60 days from the invoice date shall be subject to credit hold and/or termination. In addition to the late charge, Buyer agrees to pay all out-of-pocket collection expenses incurred by CMI (including any attorney's fees and other costs) in any legal process collection fee requirement should Buyer fail to make timely payments. In addition, CMI reserves the right to fee assessment for returned checks covering administrative

costs and bank charges.

11. **CONFIDENTIALITY.** The parties undertake to maintain in confidence and not disclose or use (for any other purposes than for the proper fulfillment of the Agreement), during and after the term of the Agreement, all terms and conditions contained in the Agreement, any confidential or proprietary information regarding provided by the other, including but not limited to, technical and/or commercial information relating to its business, employees, contractors, clients, facilities, products, computer programs, samples of any kind, documentation, concepts, ideas, business plans, data and all other confidential information, including without limitation, proprietary rights however acquired (hereinafter “Confidential Information”). Provided, however, the parties may provide a copy of this Agreement to their financial and legal advisors on a “need to know” basis only. Further, notwithstanding anything herein to the contrary, neither party hereto shall have liability to the other with regard to any Confidential Information which the disclosing party can prove was disclosed pursuant to the order or requirement of a court, administrative agency, or other governmental body. This clause shall survive the termination of the Agreement by either party.
12. **GOVERNING LAW, VENUE AND WAIVER OF JURY TRIAL:** THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA. ALL DISPUTES HEREUNDER, WHICH EXCEED \$10,000 IN VALUE, SHALL BE SUBMITTED TO BINDING ARBITRATION IN THE COUNTY OF ORANGE, CALIFORNIA BEFORE ADR SERVICES, INC. FOR DISPUTES EXCEEDING \$10,000, THE PARTIES EXPRESSLY WAIVE THEIR RIGHT TO A JURY TRIAL. ALL DISPUTES IN AMOUNTS LESS THAN \$10,000 SHALL BE SUBMITTED TO SMALL CLAIMS COURT IN THE COUNTY OF LOS ANGELES, CALIFORNIA.
13. **NOTICE:** Any notice required or otherwise given pursuant to this Agreement shall be in writing and mailed certified return receipt requested, postage prepaid, or delivered by overnight delivery service at the following address: 1290 North Miller Street, Anaheim, CA 92806.
14. **PREVAILING PARTY ATTORNEYS’ FEES.** In the event of any legal action by the parties arising out of this Agreement, or the relationship between the parties hereto, the prevailing party shall be entitled to reimbursement of its reasonable attorneys’ fees and costs, in addition to all other relief.