



PURCHASE ORDER TERMS & CONDITIONS

1. APPLICABILITY OF TERMS & CONDITIONS

- a. These Graham Stamping Company Inc., ("Seller"; located at 1700 Broadway Road, Hermitage, Pa 16148) Terms & Conditions are applicable to all sales of products to Buyers. Sales of products to any and all Buyers shall be governed by these Term & Conditions and the Purchase Order, which is hereby incorporated by reference as if set forth at length, completed by said Buyer. Each and Every Purchase Order revision, if any, shall be governed by these Term & Conditions and the Purchase Order and revision, which is hereby incorporated by reference as if set forth at length.
- b. These Terms & Conditions are the only terms and conditions applying to the purchase of products by Buyer.
- c. Buyer shall not be deemed to have waived any of these Term & Conditions if Buyer fails to object to the provisions appearing herein or incorporated by reference.

2. ACCEPTANCE ENTIRE AGREEMENT-MODIFICATION

- a. Buyer accepts these Terms & Conditions and a legally binding agreement shall be formed between Buyer and Seller when any one of the following occurs:
 - i. Seller commences manufacturing product for Buyer pursuant to any Purchase Order or Purchase Order revision;
 - ii. Seller purchases any material, die, part, and/or machinery whatsoever for manufacturing product pursuant to any Purchase Order or Purchase Order revision that Seller would not otherwise purchase in the normal course of business (this sub-provision shall also be triggered if Seller purchase a material, die, part, and/or machinery Seller would otherwise purchase in the normal course of business if such material, die, part, and/or machinery is purchased in a larger quantity than Seller would otherwise buy in the normal course of business);
 - iii. Seller performs any other conduct that recognizes the existence of a contract between Buyer and Seller with respect to the subject matter of the Purchase Order or Purchase Order revision.
- b. Sellers offer to sell products to Buyer is expressly conditioned upon Seller's acceptance of these Terms & Conditions. Any additional terms or conditions proposed by Buyer are unacceptable to Seller and are hereby **expressly rejected** and will not become part of the contract between Buyer and Seller unless otherwise stated in a writing signed by Buyer's and Seller's authorized representatives.

3. TIME PERIOD

- a. Subject to Seller's termination rights, the agreement between Buyer and Seller is for the time period required to manufacture and ship the product units purchased by Buyer under the Purchase Order and any revision as further evidence therein.

4. MODIFICATION OF THIS AGREEMENT

- a. No modification or waiver of these Terms & Conditions shall be binding on Seller unless made in writing and signed by the Seller's and Buyer's authorized representatives. No additional terms

{R1078741.1 }





and conditions shall be binding on Seller unless made in writing and signed by the Seller's and Buyer's authorized representatives.

5. PACKING, SHIPPING, AND RISK OF LOSS

- a. Seller represents and warrants that all products will be suitably prepared for shipment and packed in accordance with Buyer's specifications as further detailed in Buyer's Purchase Order and any revision thereof.
- b. Buyer has the right to specify the shipment carrier and/or method of transportation, and agrees to compensate Seller for the excess cost of any specific shipment method over and above what Seller has quoted to Buyer as the usual cost of shipping the purchased products. Buyer shall not have to pay additional costs of shipping if, through Seller's fault, a shipment of purchased products must be shipped by an expedited transportation method to meet delivery deadlines.
- c. Buyer agrees that any contrary provisions of UCC Sections 2-509 and 2-510 or other provisions of the UCC or other applicable Law shall not apply to the P.O.
- d. Buyer shall expressly communicate to Seller in writing the delivery location to where purchased products shall be shipped by Seller.
- e. Title to and risk of loss of purchased products shall pass to Buyer upon Seller's delivery of goods to the shipment carrier transporting the purchased products to Buyer. Any rightful rejection or revocation of acceptance of any purchased products by Buyer shall not shift the title and risk of loss of such purchased products, wherever located, back to Seller until the purchased products have physically returned to 1700 Broadway Road, Hermitage, Pa 16148.
- f. Seller shall be allowed to charge for boxing, packaging and/or cartage unless agreed upon in writing Signed by Buyer's and Seller's authorized agent or set forth specifically in Buyer's Purchase Order.
- g. Seller represents and warrants that all containers, pallets, drums, carboys or like packaging materials will be in good condition, clean, and adequate for the purpose intended and if they are to be returned, must be shipped by Buyer.
- h. Any further impositions that Seller agreed to pay under a Purchase Order shall be separately identified on Buyer's Purchase Order.

6. DELIVERY

- a. Seller represents and warrants that it will use commercially reasonable efforts to deliver purchased products to Buyer at the times specified in Buyer's Purchase Order, unless Seller promptly notifies Buyer otherwise. Failure by Seller to deliver purchased products on time will not constitute a breach of Buyer's Purchase Order unless delivered sixty (60) days or more late.
- b. Seller shall not be responsible for any additional cost, expense, loss or damage Buyer may sustain as a result of any delivery delay unless such delay is sixty (60) days or more.
- c. If, for any reason, Seller is compelled to use material other than what is required by the Purchase Order, Seller shall promptly notify Buyer in writing and Buyer shall then have the option to cancel the Purchase Order without penalty to Seller or Buyer may agree in writing to the modification.

7. INSPECTION AND REJECTION

- a. Buyer shall have the reasonable right and opportunity to inspect and test all supplies, processing methods, special tooling, materials, workmanship and final product ordered under

{R1078741.1 }



Buyer's Purchase Order to the extent practicable at all times and places, including during the periods of manufacture.

- b. Buyer shall be deemed to have accepted any purchased products after the expiration of a reasonable period of time for inspection after delivery which period of time shall not be less than thirty (30) days after delivery of purchased products to Buyer. Buyer shall not, thereafter, reject or revoke acceptance of nonconforming purchased products.
- c. Seller acknowledges and agrees that Buyer may inspect any commercial lot of purchased products consisting of numerous units of the same product by inspecting only a reasonable sampling of such units.
- d. **Right to Cure.** If any purchased products delivered are nonconforming in materials or workmanship pursuant to Buyer's Purchase Order, Buyer shall have the right, notwithstanding payment or any prior inspection or test, either to reject or revoke acceptance of such nonconforming purchased products and to require that Seller to promptly replace or correct any such nonconforming purchased products at Seller's expense without voiding Buyer's Purchase Order upon written notification to Seller that the purchased products are nonconforming.

8. WARRANTY

- a. Seller represents and warrants that all purchased products: (i) will conform in all respects to the Purchase Order unless Buyer and Seller otherwise agree; (ii) will be properly labeled to disclose all materials used therein and will include all necessary instructions or recommendations relating to the handling, assembly, use and storage of the purchased products; (iii) will be free of lead paint and other chemicals and substances prohibited, restricted or limited by any applicable Law ("Restricted Substances") unless Seller specifically discloses to Buyer in writing the presence and quantity of such Restricted Substances and Buyer agrees in writing to accept the purchased products with such Restricted Substances; (iv) will be manufactured in compliance with all applicable Laws, including all Laws regarding slavery and human trafficking of the country or countries in which Supplier does business; (v) will be merchantable, of good quality and workmanship, free from defects and fit for the purposes intended; (vi) will not be manufactured in whole or in part by any sub-contractor unless approved in writing in advance by Buyer; and (vii) will not infringe the patent, trademark, copyright, trade dress or other intellectual property rights of any person; and (i) imported product will be properly marked with the country of origin as required by local customs law.

9. CERTIFICATION

- a. Upon Buyer's written request, Seller warrants that it will provide all appropriate certification(s) that the purchased products comply with Buyer's Purchase Order specifications.

10. INDEMNITY

- a. Buyer will indemnify and save harmless Seller, its employees, representatives, agents, officers, directors, affiliated companies, and invitees from and against all liability, demands, claims, loss, cost, damage and expense by reason or on account of property damage, death and personal injury of whatsoever nature or kind arising out of, as a result of, or in connection with the performance of this order which is occasioned by the actions or omissions of Buyer or its

{R1078741.1 }



affiliates, officers, directors, employees, representatives, and/or agents. Buyer hereby represents and warrants that it will maintain and carry liability insurance which includes but is not limited to employer's liability, workmen's compensation, general liability, public liability, property damage liability, product liability, completed operations liability, liability for claims made by government agencies, claims arising out of allegations of Buyer infringing upon the intellectual property rights of third parties, and contractual liability in appropriate amounts as set forth in Buyer's Purchase Order and if no amounts are set forth, then in amounts acceptable to and approved by Seller but in no event shall such amounts be less than minimum statutory requirements, if any, of the jurisdiction where Buyer's headquarters is located. Buyer will, if requested by Seller, furnish certificates of insurance indicating the foregoing coverage.

11. PRICES & TAXES

- a. For all purchases of products, (i) Buyer shall not be billed at prices higher than those stated in Buyer's Purchase Order unless acts of god or government cause materials for Buyer's purchase to increase by twenty-five (25%) or more within the time period between Buyer's execution of Buyer's Purchase Order and Seller's actions to consummate that Purchase Order as detailed in Section 2 of these Terms & Conditions.
- b. If no price is shown on Buyer's Purchase Order, Seller shall notify Buyer or Buyer's authorized agent of the price and Buyer must accept such price in writing prior to Seller consummating the Purchase Order.
- c. Unless otherwise specified on Buyer's Purchase Order the price stated shall include all charges for packing, hauling, storage and transportation Free Carrier (FCA) Buyer's dock.
- d. Except as otherwise required by federal or state Laws, Seller agrees to pay any federal, state or local tax, value added tax, use tax, duties, import fees or other taxes or assessments which may be imposed upon the purchased products. These taxes shall be included in the price stated to Buyer.
- e. All prices on Buyer's Purchase Order are in United States Dollars even if Buyer is located outside of the United States. Buyer and Seller shall agree on the rate of exchange at the time that Buyer executes Buyer's Purchase Order. If the parties fail to agree, Seller shall have the benefit of the higher exchange rate and it shall be the agreed upon exchange rate.
- f. All taxes applicable to Buyer and paid by Seller will be included in and shown separately on the invoice to Buyer.

12. PAYMENT

- a. All payments for purchased products are due no later than thirty (30) days after receipt of invoice from Seller unless other arrangements have been made between Buyer and Seller in writing signed by Seller.
- b. Unless other payment terms have been agreed to in writing, payment terms are ½% discount 10th - 25th net 30.

13. EVENTS OF DEFAULT

- a. Seller shall be deemed to be in default in the event of: (i) delay in or failure of delivery of purchased products by sixty (60) or more days; (ii) delivery of purchased products that are nonconforming in any other way and Seller fails to cure such nonconformity; (iii) breach of





warranty; and (iv) breach of any provision of Buyer's Purchase Order and/or these Terms & Conditions.

- b. Buyer shall be deemed to be in default in the event of: (i) failure to pay the purchase price for purchased goods pursuant to Section 12 of these Term & Conditions; (ii) refusal to accept conforming purchased products when delivered; (iii) refusal to accept conforming purchased products in cure of Seller's delivery of nonconforming purchased products pursuant to Section 7.

14. PLATING & HEAT TREATING OF PURCHASED PRODUCTS, WHEN APPLICABLE

- a. For any order requiring electroplating, anodizing, heat treating, and/or metal finishing, the order will be subject to the standard National Association of Metal Finishers (AKA. Automation Finishing, AFI/BQF) Terms and Conditions in addition to the Terms and Conditions enumerated herein at length. To avoid any misunderstanding, a defect rate up to 5000 parts per million on any goods requiring electroplating, anodizing, and/or metal finishing shall be considered commercially reasonable and ordinary under the Terms & Conditions and any Purchase Order. A defect rate up to 5000 parts per million shall not be grounds for returning goods or terminating the Purchaser Order and will not constitute an Event of Default under Section 13 of these Terms & Conditions.

15. REPLACEMENT TOOLING AND DIES

- a. For any Purchase Order requiring Seller to purchase new tooling and/or dies, in the event that such tooling and/or dies accumulate more than 10 million strike in the course of producing purchased products for Buyer; Seller reserves the right to charge Buyer for the refurbishment of said tools and/or dies at a rate not to exceed 25% of the tool's and/or die's original purchase price.
- b. Seller shall notify Buyer of this refurbishment cost in writing.

16. BUYER'S REMEDIES UPON DEFAULT

- a. Upon default by Seller, Buyer will be entitled to recover its costs of cover, lost sales and profits, other incidental and consequential damages, and will be entitled to all other rights and remedies available under Buyer's Purchase Order, the UCC and at law and in equity and may (but will not be obliged) to do any or all of the following: (i) reject or revoke acceptance of any or all of the purchased products if such products are nonconforming and return them to Seller at Seller's own risk and expense; (ii) require Seller to repair or replace rejected nonconforming purchased products, or to provide a full refund of the price of the rejected nonconforming purchased products; (iii) and/or immediately terminate Buyer's Purchase Order without obligation or liability whatsoever with respect to purchased products not yet delivered to Buyer at the time of such termination. Buyer's decision to pursue any remedy shall not deemed to be an election not to pursue any other remedy at the same time or any other time. In all cases, Buyer shall not be entitled to recovery of its attorney's fees and expenses.

17. SELLER'S REMEDIES UPON DEFAULT

- a. Upon default by Buyer, Seller will be entitled to recover its costs of cover, lost sales and profits, other incidental and consequential damages, and will be entitled to all other rights and remedies available under Buyer's Purchase Order, the UCC and at law and in equity and may (but will not be obliged) to do any or all of the following: immediately terminate Buyer's

{R1078741.1 }





Purchase Order without obligation or liability whatsoever with respect to purchased products not yet delivered to Buyer at the time of such termination. Seller's decision to pursue any remedy shall not be deemed to be an election not to pursue any other remedy at the same time or any other time. In all cases, Seller shall be entitled to recovery of its reasonable attorney's fees and expenses.

18. CONFLICTS

- a. To the extent that there are conflicts between these Terms & Conditions and any accompanying Purchase Order, the conflicts shall be resolved in favor of the these Terms & Conditions without including the terms and conditions of Buyer's Purchase Order with the exception of essential terms such as identification of purchased products, price, quantity, and delivery date which shall be controlled by the Purchase Order.

19. MISCELLANEOUS

- a. Except to the extent Buyer's Purchase Order may be referred to or incorporated by reference in any separate agreement between Buyer and Seller, the Purchase Order, any revision thereof, and these Terms & Conditions constitute the complete understanding and contract between Seller and Buyer with respect to the subject matter hereof. No alterations or variations of the terms of this Agreement shall be valid unless made in writing, dated, and signed by both Parties. **This contract cancels and supersedes all prior and/or contemporaneous agreements and understandings not embodied herein.** This contract shall be binding and inure to the benefit of the parties and their personal representatives, successors and assigns. The parties agree that they will comply with any and all applicable laws. No provision of this Agreement may be modified, waived, amended, or changed, except by mutual agreement, in writing signed by a duly authorized representative of each of these parties.
- b. Seller shall not be bound by any purported rescission or modification of such contract, and shall not be deemed to have waived any provision of or default under such contract, unless rescission, modification or waiver is set forth in writing signed by an authorized representative of Seller.
- c. THESE TERMS & CONDITIONS AND ANY PURCHASE ORDER SHALL NOT BE GOVERNED BY THE PROVISIONS OF THE 1980 UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS, AND THE PARTIES HEREBY DISCLAIM APPLICATION THEREOF.
- d. No waiver of any provision of or default under such contract in any particular instance shall be deemed or construed a waiver of any other provision or default, whether similar or otherwise, in any other instance.
- e. All provisions of these Terms & Conditions providing for any act or activity or forbearance following fulfillment of the Purchase Order shall survive fulfillment of the Purchase Order until such time as the provisions have been fulfilled or satisfied or until the period of time which is included in such provisions specifically or by reference or pursuant to the applicable statute of limitations has expired.
- f. The parties are independent contractors. Seller is an independent contractor manufacturing the purchased products for Buyer. Nothing in Buyer's Purchase Order or these Terms & Conditions or in the activities contemplated by the parties hereunder will be deemed to create an agency,

{R1078741.1 }





partnership, employment or joint venture relationship between the parties or any of their subcontractors or representatives.

- g. Buyer may assign this agreement with the signed written consent of Seller.
- h. If any provision of the Purchase Order and these Terms & Conditions is held invalid by any court in a final decision from which no appeal can be taken, such provision shall be deemed modified to eliminate the invalid element and as so modified, such provision shall be deemed a part of Buyer's Purchase Order and these Terms & Conditions. The invalidity of any provision of the Purchase Order and these Terms & Conditions shall not affect the force and validity of the remaining provisions.
- i. The contract between the parties shall be governed in all respects by and interpreted in accordance with the Laws of the United States and internal Laws of the Commonwealth of Pennsylvania without application of conflict of law principles.
- j. Any and all disputes between the parties shall be prosecuted solely and exclusively in the appropriate federal or state courts located in Pennsylvania, and Buyer specifically consents to personal jurisdiction of those courts and waives all defenses based on inconvenient forum.

