

## TERMS AND CONDITIONS

1. **Acceptance:** This purchase order becomes a contract subject to the terms and conditions set forth herein when accepted by acknowledgement or commencement of performance by Seller. Acceptance is limited to these terms and conditions and no addition to or change in the terms and conditions hereof shall be valid or binding on the parties unless agreed to in writing by Buyer. The failure of Buyer to actively reject, either orally or in writing, any additional conflicting or contradictory term contained in any subsequent document or communication between Buyers or Seller relating to the transactions referred to in this purchase order shall not constitute an assent to such terms and conditions.
2. **Prices:** In the event Buyer shall have failed to include in this purchase order the price at which Buyer shall purchase the goods which are the subject of this purchase order, the price shall be deemed to be the last price paid by Buyer to Seller for the same goods, or the prevailing market price, whichever is lower.
3. **Payment Terms:** All payments under this purchase order are due 2/10 Net 45 days unless otherwise noted.
4. **Shipping Instructions:** Unless this purchase order states otherwise, all goods will be shipped freight prepaid, F.O.B. destination, and no charges will be allowed for packing, crating, carrier's charges, or cartage. Each case shall be marked by Seller with a separate case number, name of shipper, ship to location, contents of case, designated weights and volumes, and Buyer's specification number, when applicable. All invoices or bills of lading shall respectively display this purchase order number and shipper's case numbers. All original bills of lading or express receipts shall be, upon shipment, immediately sent to Buyer. Buyer reserves the right to reject any C.O.D. shipments. Seller shall not send goods on a sight draft basis; if so sent, without Buyer's prior written approval such goods shall not be accepted by Buyer. When goods are received improperly marked or routed and Buyer is put to extra expense to deliver such goods to the proper destination, Seller agrees to assume and pay such extra expense.
5. **Invoices:** All invoices shall contain the number of this purchase order. Any payment terms on such invoices that are in conflict with this purchase order shall not be applicable.
6. **Delivery:** Buyer may cancel all or any part of this purchase order if deliveries are not made by the day specified on this purchase order, or if no date is specified, if deliveries are not made promptly. Deliveries shall be made in the quantities and at the times specified herein and Buyer shall have no liability for payment for goods delivered to Buyer which are in excess of the quantities specified herein. Furthermore, Buyer has all the rights available under the Uniform Commercial Code, including the right to cancel all or any part of an order if the goods shipped do not fully meet the specifications set out herein or hereto.
7. **Excusable Delays:** Neither Seller nor Buyer shall be liable for any damage arising out of any delay or circumstances beyond their reasonable control and without either party's fault or negligence, including but not limited to, strikes, fires, war subcontractor default, and acts of God, provided that Seller notifies Buyer within ten

(10) Days of any such occurrence, and makes all reasonable efforts to obtain supplies or services from other sources in order to deliver the goods specified herein on the dates herein or hereto delineated. Notwithstanding the provisions of this section 7, in the event the front of this purchase order or any schedule exhibit attachment or addendum hereto provides for penalties for late delivery, the provisions of this section 7 shall not be applicable with respect to such penalties.

**8. Indemnity:** Seller shall defend, indemnify, and hold Buyer, its affiliates, employees, agents, customers, successors and assigns harmless from and against any and all claims, liabilities, losses, damages, and costs, including without limitation reasonable attorneys' fees, export customs fees, and court costs for which Buyer might become liable, as a result of Seller's performance, or lack thereof, of this purchase order, or Buyer's or its customers use of goods delivered hereunder by Seller, including without limitation (i) any defect or hazard presented by the goods or any negligence on the part of Seller, its agents, employees, or subcontractors, (ii) any recall, inspection, testing, replacement, or correction of goods or any parts or equipment in which the goods are incorporated, when such recall, inspection, test, replacement, or correction results from or is related to, in whole or in part, any defect or unsatisfactory performance of any of the goods or efforts to discover same, whether required by governmental authorities or otherwise, and (iii) if Seller is required by the terms of this purchase order to perform any work on Buyer's premises, damages or injuries to persons or property, including Buyer's employees and property, that occur as a result of the fault or negligence of Seller, its agents, employees, or subcontractors. For purposes of the foregoing indemnity, Seller hereby waives any immunity to which Seller may be entitled under worker's compensation laws, and assumes potential liability for actions brought by Seller's own employees.

**9. Insurance:** Seller represents that it carries current policies of insurance adequate to meet all States' statutory Worker's Compensation requirements, as well as Public and Product Liability and Property Damage insurance coverage adequate to meet Buyer's requirements. Before commencing work under this purchase order, Seller agrees to furnish certificates of insurance showing that Seller has such Worker's Compensation, Public and Product Liability, and Property Damage insurance coverage in amounts and with insurance carriers acceptable to Buyer. Said certificates must set forth the amount of coverage, number of policy, date of expiration and a provision giving Buyer ten (10) days prior written notice of cancellation. The purchase of such insurance coverage or furnishing of the aforesaid certificates shall not in any manner limit Seller's liability hereunder or in any way modify Seller's obligation to Buyer.

**10. Warranties:** Seller specifically warrants that the goods supplied and services performed under this purchase order: (a) are of first class quality and material; (b) conform to applicable standards including specifications or drawings set out herein or hereto and are merchantable fit for the particular purpose for which such goods are to be employed, free from defects in materials and workmanship; and (c) shall conform to any other express warranties Seller may have made to Buyer. Seller's warranties hereunder shall also extend to any third party ultimately using any goods supplied by Seller hereunder whether such party is a customer of Buyer or not. If Seller is responsible for the design of the goods supplied hereunder, Seller warrants that all items delivered under this purchase order will be suitable for use by Buyer, including installation by Buyer in its ultimate products. Buyer's written approval of designs furnished by Seller shall not relieve Seller of its obligations under this warranty and all

other defenses of lack of reliance are hereby expressly waived by the Seller. Seller shall be liable for all damages both to Buyer and any third party as a result of any breach of warranty of any goods covered by this purchase order. All warranties made herein by Seller shall be in addition to any other warranties customarily made by Seller of its products and any implied warranties available by law. Buyer shall have the right to all Buyer's remedies and Seller's warranties to the fullest extent provided under the Uniform Commercial Code in effect in the State of Maine. Any disclaimer of these express warranties, of any implied warranties of merchantability or fitness for a particular purpose, or other contractual obligations, or limitations of remedies for breach of warranties by Seller shall be ineffective.

UNLESS AGREED OTHERWISE BY BUYER, SELLER'S WARRANTY SHALL EXTEND FOR A MINIMUM PERIOD OF EIGHTEEN (18) MONTHS FROM RECEIPT BY BUYER, BUT AT LEAST TWELVE (12) MONTHS AFTER THE GOODS DELIVERED ARE APPLIED TO THEIR INTENDED USE OR SELLER'S STANDARD WARRANTY WHICHEVER IS LONGER.

11. **Disclosure of Information:** All technical and/or business information disclosed in any form by Buyer to Seller is confidential and proprietary to Buyer ("Confidential Information"). Buyer shall at all times have title to such Confidential Information and Seller shall use it only in connection with this purchase order and it shall not use any such Confidential Information for its own account or for the account of any third party. Seller shall, upon Buyer's request or upon completion of this purchase order, promptly return all specifications, drawings, blueprints or other tangible items embodying such Confidential Information to Buyer and shall not retain any copies thereof. Seller shall use its best efforts not to disclose any Confidential Information to any third party, without Buyer's prior written consent, for a period of ten (10) years after the last delivery of goods hereunder to Buyer. Seller's obligations of non-disclosure hereunder shall not be applicable to Confidential Information which Seller demonstrates is: (i) information divulged to Seller by a third party which such third party acquired such information from an entity or person not a party hereto and which such party is not bound by obligations of confidentiality, or (ii) information in the public domain which is in such domain through no fault of Seller. In addition, Seller may disclose Confidential Information to the extent required to be divulged to a duly constituted government entity, or person, by order of a court of competent jurisdiction, provided however, that in such event Seller will timely provide Buyer prompt written notice of any such order to Buyer the opportunity to timely seek a protective order with respect to such disclosure.

12. **Risk of Loss:** Regardless of F.O.B point, Seller shall bear all risk of loss, injury, or destruction of goods ordered hereunder which occur prior to receipt and acceptance by Buyer and to any goods ordered and rejected by Buyer.

13. **Buyer's Liabilities:** In no event shall Buyer's total liability for any breach or alleged breach of this purchase order exceed the total, or extended price or prices shown on this purchase order, nor shall Buyer be liable for any incidental or consequential damages resulting from any such breach or alleged breach.

14. **Settlement:** All settlements will be based on Buyer's weights or counts.

**15. Taxes:** Seller shall collect and remit all taxes in effect on the date hereof that arise out of the sale to Buyer of goods and/or services provided hereunder, unless agreed otherwise. In the case of new taxes or increased rates or the repeal of taxes of the reduction of rates, the price of the goods shall be adjusted accordingly; provided that, in the event of new and increased taxes, Buyer must be notified immediately in writing and shall have the right to cancel this purchase order.

**16. Inspection and Quality Control:** All goods furnished under this purchase order by Seller shall be subject to inspection and tests by Buyer, or representatives of any third party purchasing Buyer's product in which said goods will be used, prior to acceptance. Acceptance of the goods shall take place at the time when such goods have been delivered to Buyer and have passed Buyer's or such third party's inspection and tests, for which a reasonable time, but not less than 90 days after delivery, will be permitted. Seller shall provide and maintain inspection and quality control systems, acceptable to Buyer, covering the goods furnished hereunder.

Records of all inspection work by both Buyer and Seller shall be kept intact and made available upon request to the other party. In addition, if a special production run is made for Buyer then the first goods produced under this purchase order shall be subject to first article acceptance by Buyer, prior to further fabrication.

Acceptance by Buyer of the first article shall not be considered acceptance of all subsequent goods. Defective goods not in accordance with Buyer's specification set out herein or hereto, will be held by Buyer for Seller's instructions and at Seller's risk. If Seller directs Buyer, Buyer shall return such defective or nonconforming goods to Seller at Seller's risk and expense. No goods returned as defective or nonconforming shall be replaced without a new or updated order and schedule.

Payment for goods on this purchase order, prior to inspection, shall not constitute an acceptance thereof, nor shall acceptance be deemed a waiver of Seller's liability and responsibility for later defects or non-conformance.

**a** Seller must notify Buyer if/when nonconforming material has been manufactured and/or shipped against this purchase order.

**b** Seller must obtain Buyer approval for nonconforming product disposition.

**c** Seller must notify Buyer of changes in product and/or processes, changes to its suppliers, changes of manufacturing facility location and, where required, obtain Buyer written approval for such changes.

**d** Seller must retain and keep all relevant quality documents, inspection records, certificates of conformance for a minimum of 10 years. Full traceability of product/processes must be maintained for all product processed on this purchase order.

**e** Buyer, its customers and any pertinent regulatory authorities have the right of access to suppliers' applicable facilities involved in the manufacture of products to pertinent purchase orders and all applicable records.

**f** Seller insures that Foreign Object Damage prevention techniques and processes must be incorporated into the manufacture of all materials.

**g** Material and/or parts furnished must be free from mercury contamination. Mercury bearing instruments and equipment which might cause mercury contamination may not be used in the manufacture, fabrication, and assembly or testing of any material furnished under this order/contract.

**h** Counterfeit Part Procurement: Buyer requires Seller to procure material exclusively by utilization of OCMs/OEMs or their authorized distributors in the procurement of materials used to manufacture goods for Buyer. Buyer requires Seller to have a counterfeit part prevention strategy in place to mitigate the introduction of counterfeit parts into their processes. Buyer reserves the right to perform audit functions to confirm processes are in place for compliance.

**i** It is the responsibility of the Seller to have the latest specifications/revision levels on hand and in use. i.e. (plating specs, NDT procedures etc.).

**j** All Purchase Order notes, specs, requirements must be flowed down to any sub-tier used to process this Purchase Order.

**k** Buyer, Buyer's customer and/or industry standards provide all product specifications and requirements, therefore design and development control is not applicable. This non-applicability does not affect the vendor responsibility to provide product that fully meet all specifications and requirements provided on purchase order(s), RFQs or additional documents.

**l** If applicable, the use of statistical techniques to establish product acceptance and any related inspection plans for acceptance including product sampling must be approved by Buyer's designated Quality Department in advance.

**17. Change in Specifications:** Buyer reserves the right at any time to suspend this purchase order or make changes in drawings and specifications as to any goods covered by this purchase order. If price or time for performance of this purchase order is impacted by such changes, this purchase order may be equitably adjusted accordingly, as agreed to in writing by Buyer.

**18. Material Furnished by Buyer:** Unless otherwise herein agreed, Seller at its own expense shall furnish, keep in good condition and replace when necessary all dies, tools, gauges, fixtures, patterns, etc. ("Tooling"), necessary for the production of the goods ordered. The cost of changes in the aforementioned items necessary to effect design or specification changes ordered by Buyer shall be paid for by Buyer. Buyer has the option, however, to take possession of and title to such Tooling that is special for the production of goods covered by this purchase order. Buyer shall pay to Seller the unamortized cost thereof, provided, however, that this option shall not apply if the goods hereby ordered are standard products of Seller, or if substantial quantities of like goods are being sold by Seller to others. Any Tooling paid for by Buyer shall be the property of, and title shall vest in Buyer. Seller shall return all Tooling paid for by Buyer upon Buyer's request and Seller shall keep said Tooling free from all liens and encumbrances, insuring such Tooling against loss or destruction.

**19. Patents:** By accepting this purchase order, Seller agrees to indemnify, defend, and hold harmless Buyer, its affiliates, employees, agents, customers, successors and assigns from and against all suits and from all liabilities, damages, and claims, including reasonable attorneys' fees, for actual or alleged infringement of, or inducement to infringe, any domestic or foreign patent, trademark, copyright, or mask work by reason of

the possession, manufacture, use, or sale of the goods ordered.

**20. Liens:** Seller shall promptly pay all laborers, subcontractors, and material men engaged in connection with the provision of goods and/or services, and if any shall file liens against any property of Buyer, Seller shall promptly obtain a release of any such lien or post at its cost a bond indemnifying Buyer against all loss by reason of such lien. Buyer shall have the right, prior to making any payment under this purchase order, to require Seller to deliver lien waivers duly executed by Seller on each of its subcontractors and material men for all goods delivered or services completed prior to such payment. Seller shall provide, if requested by Buyer, material and payment bonds covering the goods and/or services in amounts not less than one hundred percent (100%) of the price stated in this purchase order, satisfactory in form and substance to Buyer.

**21. Advertising:** Seller shall not, without first obtaining the written consent of Buyer, in any manner, advertise or publish the fact that Seller has contracted to furnish Buyer the goods herein ordered. If Seller fails to observe this provision, Buyer shall have the right to terminate the contract resulting from Seller's acceptance of this purchase order without any obligation to accept deliveries after the date of termination or make further payments, except for goods delivered to Buyer prior to termination.

**22. Cancellation: Bankruptcy:** Buyer reserves the right to cancel all or any part of the goods covered by this purchase order and obtain the cancelled goods from another source, regardless of whether any or all of the goods have been accepted, if Seller does not make deliveries as specified in the schedules or so fails to make such progress that endangers (in the sole reasonable opinion of Buyer) delivery in accordance with the delivery schedules herein or hereto, and Seller does not correct such failure within ten (10) days after receipt of written notice from Buyer specifying such failure, or if Seller breaches any of the terms herein, including the warranties of Seller. Seller shall be liable to Buyer for any increased costs incurred as a result. Upon such cancellation, Seller shall immediately return to Buyer any price paid for the goods cancelled. In any event, Seller shall be liable for all damages suffered by Buyer in connection with such breach, including consequential damages reasonably foreseeable by Seller or of which Seller was apprised by Buyer. If Seller ceases to conduct its operations in the normal course of business (including inability to meet its obligations as they mature) or if any proceeding under the bankruptcy or insolvency laws is brought by or against Seller, or a receiver for Seller is appointed or applied for, or an assignment for the benefit of creditors is made by Seller, Buyer may terminate this purchase order without liability except for deliveries previously made or for goods covered by this purchase order then completed and subsequently delivered in accordance with the terms of this purchase order.

**23. Government Approval:** If the goods covered by this purchase order require approval for the sale and/or use thereof by any State statute or regulation, Seller certifies it has or will prior to sale obtain an approval for their sale and/or use from the appropriate agency of each of such States, and promptly upon request Seller will submit to Buyer a copy of each such approval for sale and/or use.

**24. Time of the Essence:** The dates and times specified herein are of the essence, and Seller hereby represents that it is capable of delivery on the dates and at the times specified herein.

**25. Compliance with Laws:** Seller warrants that it shall fully comply with, and that all goods shall comply with and have been designed, manufactured, sold, and delivered in strict compliance with, all applicable Federal, State and local laws, orders and regulations, including, without limitation, the Fair Labor Standards Act of 1938, as amended, and the regulations and orders of the United States Department of Labor issued under Section 14 thereof, the Consumer Product Safety Act, the Occupational Safety Act, the Occupational Safety and Health Act, and the appropriate state of manufacture labor safety regulations. The provisions of Section 202 of Executive Order 11246, as amended, replaced or superseded from time to time, are expressly made a part hereof by reference and Seller agrees to comply therewith and not to discriminate against any employee or applicant for employment because of reasons prohibited by law. Seller shall supply Buyer from time to time with certificates, documents or information in such form, as may be required by any applicable law, order or regulation as Buyer may deem necessary or appropriate to establish Seller's compliance with such applicable laws, orders or regulations. Seller shall defend, indemnify, and hold Buyer, its affiliates, employees, agents, customers, successors and assigns harmless from and against any and all claims, liabilities, losses, damages, and costs, including without limitation reasonable attorneys' fees, resulting from the failure of Seller to comply as required by this section.

**26. Industrial Rights:** If Seller performs or has performed research, design or development work or activity the cost of which is, either directly or indirectly, included in the price of this purchase order, then any and all inventions and discoveries and information and data generated by Seller in the performance of any work or activity under or related to this purchase order shall be and remain the sole and exclusive property of Buyer. Seller agrees to disclose such inventions, discoveries, information and data promptly to Buyer and to give all assistance, and to cause its employees to give all assistance necessary to secure full title in such inventions, discoveries, information and data to Buyer. Seller further agrees to, and to cause its employees to, execute all papers and render such other assistance as is necessary for Buyer to secure, at its expense and option, letters patents covering such inventions and discoveries in countries throughout the world selected by Buyer. Seller further agrees not to use such inventions, discoveries, information and data for any purpose except as directed in writing by Buyer and further agrees not to disclose, and to cause its employees not to disclose, same to any person or entity without Buyer's express written consent.

**27. Assignment; Right of Setoff:** Seller shall not assign all or any part of this purchase order, nor delegate any duties, nor assign any rights or claims under this purchase order without Buyer's prior written consent, and any such attempted delegation or assignment shall be voidable, at the option of Buyer. All claims for monies due or to become due from Buyer shall be subject to deduction by Buyer for any setoff or counterclaim arising out of this or any other transaction between the parties hereto, regardless of when such set-off or counterclaim arose and whether it arose before or after any assignment by Seller.

**28. Independent Parties:** Seller and Buyer are independent parties. Seller may not act on behalf of Buyer or as an agent or other representative of Buyer.

**29. Remedies:** The remedies herein reserved shall be cumulative, and additional to any other or further remedies provided in law or equity. No waiver of a breach of any provision of this purchase order shall constitute a waiver of any other breach, or of such provision.

30. **Severability**: If any provision of this purchase order should be found by a court of competent jurisdiction to be invalid, the remaining provisions of this purchase order shall survive and be construed in a manner consistent with the intent of this purchase order. Any provision of this purchase order susceptible to a construction which would render it invalid or unenforceable, shall, if possible, be construed so as to render it valid and enforceable.

31. **Construction and Definitions**: The singular form of expression shall include the plural, or vice versa, in any place in which context may require. The term “goods” as used herein shall mean materials, supplies, services or work as any such item may be described on the front of this purchase order.

32. **Survival**: In addition to any other provision hereof whose context may so require, the provisions contained in sections 8, 9, 10, 11, 13, 19, 20, 25, 26, and 27 hereto, and this provision, shall survive any termination or completion of this purchase order.

33. **Entire Agreement**: This purchase order, and the exhibits and/or schedules attached hereto, constitute the entire agreement and understanding between the parties hereto and shall apply to and bind the parties, their respective successors and permitted assigns. All prior negotiations are merged herein and no representations have been made by either of the parties except as expressly contained herein. Except where otherwise specifically provided, this purchase order shall not be amended or modified in any respect unless by a writing specifically referring to this purchase order and signed by Buyer and by a duly authorized officer or agent of Seller. In the event the terms and/or provisions of any acceptance or acknowledgments given or issued or on Seller’s website, pursuant to this purchase order, by Seller, are in conflict with the terms and/or provisions of this purchase order, the terms and/or provisions hereof shall be controlling.

*For more information, please contact:*

**Maine Machine Products Company – Purchasing Department**

207-739-634