



Providing the absolute best in custom CNC Machined parts

DaVinci Machining Terms and Conditions of Sales

This document sets forth the terms and conditions of all sales by Jericho Services, LLC, D.B.A. DaVinci Machining (Seller) to each customer (Customer or Buyer).

1. APPLICABILITY

1.1 Buyer acknowledges and incorporates this document into Buyer's purchase order, over-the-counter order, change order, order approval and any other transaction by which Buyer agrees to purchase goods or services from Seller. Under no circumstances shall the Buyers Terms and Conditions prevail over this agreement.

1.2 The terms and conditions set forth herein apply unless otherwise provided in writing and signed by Seller.

2. PRICES AND TERMS

2.1 All prices provided by the Seller (including estimates and contract prices) are subject to changes in the market price for the material specified in the purchase order, and changes in other direct costs incurred by the Seller in manufacturing customer's order. Direct costs include but are not limited to costs of purchase and delivery of material, shipping, storing, processing, insuring, subcontractor costs or other events acts that incur cost to the Seller. Seller's price shall be increased by an amount equal to any increase in Seller's direct costs between the date of Seller's acceptance of Buyer's order and the Delivery date of Buyer's order.

2.2 Re-orders for parts previously ordered are considered as placed under this document. The price for all reorders will be the same as the original order, unless Seller determines that a price change is needed and the parties agree on a new price, in which event, Seller will prepare and deliver a new Quotation and

Lead Time Estimation to the Buyer; the Buyer will return a HAND SIGNED copy accepting the price change via FAX, e-mail, or any other delivery method the Buyer chooses within 5 business days of receipt of the new Quotation and Lead Time Estimation.

2.3 Any change in the quantity, drawings, specifications, manufacturing or delivery schedule or other material terms of Buyer's order may result in a change of price (see paragraph 8 below). Modifications, changes, additions, cancellations or suspensions will not be binding upon the Seller unless accepted by an authorized agent of Seller IN WRITING upon terms approved by Seller.

2.4 Specification or drawing changes are subject to price revisions and any adjustments necessary to cover material procured and processed and labor expended prior to receipt by the Seller of revised specifications, priced at the rate in Buyer's original order, or if none, at Seller's usual and customary rate. Any change order is covered under the terms of this document to the same extent as Buyer's original order.

3. SHIPMENTS

3.1 Sales terms are FOB Seller's plant. The Seller will select the carrier unless the Buyer designates an acceptable specific carrier on its purchase order. If the Buyer designates a specific carrier on its purchase order but the Seller's standard packaging will not satisfy the requirements of such carrier, the Seller shall have the authority to select a qualified alternate carrier without obtaining the Buyer's prior approval. The Seller reserves the right to arrange shipment in lots. Upon shipment of lots, the Seller shall have the right to immediately invoice the Buyer for the goods shipped and the entire order. Stated shipment dates are estimates based on manufacturing load at time of quote and are subject to change when an order is accepted by the Seller and again when the Seller receives all information necessary to permit the Seller to proceed with work immediately and without interruption.

3.2 Should the Buyer request that the Seller hold all or any part of an order past the scheduled shipment date, the Seller may immediately invoice the Buyer

for the entire order. At the time the Buyer asks the Seller hold the order (all or part) past the original shipment date, the Seller's delivery obligations will be deemed satisfied and all title and risk of loss or damage to Buyer's order shall pass to Buyer; nonetheless, no bailment shall be created and Buyer's delay in accepting delivery of Buyer's order shall be deemed a change in Buyer's order and terms of sale, for which Seller may charge a reasonable additional price.

3.3 Should Buyer request Seller to hold Buyer's goods for any purpose, Buyer acknowledges that no bailment is created and such possession of Buyer's goods is strictly incidental to the Seller's performance and sale of the items being sold to Buyer. This provision applies to goods manufactured by Seller for Buyer and Buyer's goods provided to Seller for any reason.

IN NO EVENT SHALL THE SELLER BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, ECONOMIC, PUNITIVE, OR EXEMPLARY DAMAGES RESULTING FROM DELAYED SHIPMENTS.

4. DELIVERY IN INSTALLMENTS

4.1 Buyer may request delivery in installments at any time. If Buyer requests delivery in installments any time after initial acceptance of Buyer's order by Seller, §3.2 applies. The Seller reserves the right to run the total order quantity at one time when an order is placed for scheduled release.

4.2 Buyer may inspect and reject specially manufactured goods not conforming in material respects to Buyer's order. Seller may manufacture units in excess of Buyer's order to accommodate the possibility of such rejection(s). Buyer may, but is not required, to purchase such excess production on the same terms and conditions applicable to ordered goods. Seller shall be given a reasonable time to repair or manufacture replacement items for any rightfully rejected items by Buyer.

5. DELAY

5.1 The Seller shall not be liable for delays in performance hereof arising from any cause not within the Seller's reasonable control, including but not limited

to, accidents to, or breakdowns to, mechanical failure of plant machinery or equipment arising from any cause whatsoever, strikes or other labor troubles, labor shortage, fire, flood, wars, acts of the public enemy, acts of God, priorities, allocation, limitations, or other acts required or requested by Federal, State, or Local government or any sub-divisions, bureau or agency thereof, or failure of sources of supply of material.

5.2 In the event of delay or failure of performance not excused under the foregoing subdivisions, the Seller's liability shall not exceed that portion of the invoice price represented by the quantity of the material delayed or not shipped. In no event shall the Seller be liable for any consequential damages, incidental or special damages.

6. LIMITED WARRANTY

6.1 Subject to Buyer's compliance with the terms of the Buyer's order and this document, Seller warrants to the Buyer and the Buyer only, that the products manufactured and/or sold by Seller to Buyer conform in all material respects to Buyer's written specifications and drawings provided to Seller. THIS LIMITED WARRANTY IS SUBJECT TO THE REMAINING TERMS OF THIS DOCUMENT. THIS LIMITED WARRANTY APPLIES ONLY TO GOODS PAID FOR BY BUYER IN ACCORD WITH BUYER'S AGREEMENT; ALL OTHER GOODS PROVIDED TO BUYER BY SELLER ARE PROVIDED AS IS, WITH ALL FAULTS AND WITHOUT WARRANTY, INCLUDING MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE.

6.2 This Warranty and the sales agreement to which it applies is limited to the Buyer and creates no rights or claims in favor of persons not a direct party to the sale.

THIS LIMITED WARRANTY IS THE EXCLUSIVE WARRANTY OF SELLER AND IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR ANY OTHER WARRANTY.

7. LIMITATIONS ON BUYER'S REMEDIES

7.1 Buyer's remedy for Seller breach of the order, the terms and conditions set forth here or any other obligation owed by Seller to Buyer covered by this instrument is limited to the right to cancel Buyer's order and receive a refund of the price paid by Buyer up to the date of Buyer's cancellation. Buyer shall have no claim for consequential, incidental, benefit of the bargain, cover, indemnity or other damages of any kind, nature or description against Seller, all such claims being waived as a material part of the consideration under Buyer's order.

7.2 Buyer acknowledges that the essential purpose of Seller's warranty under §6 above is limited to assuring Buyer that Buyer shall receive ordered items in conformity with the drawings and specifications provided or receive a refund of Buyer's price paid, if any. Buyer acknowledges that Buyer has no obligation to disclose to Seller Buyer's purpose in purchasing items from Seller, and any gratuitous disclosure Buyer may make is not verified by Seller, and is not a part of this agreement. Buyer acknowledges that Buyer has not bargained for nor received any agreement by Seller relating Buyer's post delivery use of the items described in Buyer's order, and that any such agreement would substantially increase the cost to Buyer. Buyer further acknowledges that Buyer is free, at any time, to procure substitute items from any other source; provided however, that such right does not give rise to a claim against Seller for cover nor shall such procurement by Buyer affect Seller's rights under this document.

8. CHANGE ORDERS

8.1 Buyer agrees that current and up to date written drawings and specifications must be supplied at time of Quotation and Lead Time estimate. In the event that the Buyer desires to change a drawing or specification for an item, Buyer shall submit such change order in writing to Seller and Seller must acknowledge and approve the change in writing before being bound by the change, including any adjustment in the price. Seller may issue a new Quotation and Lead Time Estimate upon receipt of any change and any delivery time set

forth in the original Lead Time Estimate is suspended pending agreement on the new written drawings and specifications, lead time and price. Seller shall have no liability to Buyer absent compliance with this paragraph, and all items manufactured and delivered by Seller in conformity with a previously approved Quotation and Lead Time Estimate shall be purchased by Buyer upon the terms set forth therein.

8.2 The Seller shall have no liability to Buyer for damaged, broken, defective or unusable items manufactured for the Buyer if the Buyer is responsible for any or all of the damage, breaks, defects or un-usability of the manufactured parts. If Buyer designates a source for any material, part or component to be included in items to be manufactured by Seller, Buyer assumes full responsibility for the conformity of such material, part or component to Buyer's drawings and specifications and Seller shall have no liability to Buyer, including but not limited to any resulting failure of Seller's manufactured item to fail to conform to Buyer's drawings and specifications caused in whole or part thereby.

8.3 Buyer warrants to Seller that any design, drawing, specification or order Buyer may deliver to Seller may be lawfully manufactured by Seller and that Buyer has the right to order such item(s). Buyer warrants that no item ordered from Seller, and Seller's manufacture and sale of such item to Buyer or others at Buyer's direction, shall violate any patent, copyright, trade mark or trade name, any contractual provision of which Buyer is aware or the confidential and trade secret information of any person, whether or not a party to this agreement. Buyer shall indemnify Seller for any claim, demand, suit, or liability of any kind asserted against Seller by any persons (including both natural and artificial entities of every kind) asserting intellectual property or related rights in any item ordered by Buyer, including claims for damages, equitable relief and attorney fees for the defense of such claims.

9. INSPECTION

9.1 Prior to shipment but not during the manufacturing process, The Buyer shall have the right and shall be given the opportunity to inspect (i.e., to examine,

measure or weigh an item for the purpose of determining the item's compliance with the Buyer's written drawings and specifications furnished to Seller) the subject items at the Sellers' place of manufacturer. This inspection will take place at an agreed upon time between the Buyer and the Seller and under conditions that shall not reveal any operations, equipment, manufacturing processes or other confidential information of Seller, whether or not related to Buyer's order.

9.2 Buyer shall complete Buyer's inspection not later than 5 business days following delivery of the items from Seller to Buyer. Buyer may have the items inspected by a third party at Buyer's sole expense, but such third party inspection is also subject to the terms of this Agreement and Buyer shall provide such third party inspector with a copy hereof and obtain such inspector's written agreement with the terms hereof. Buyer's failure to comply with this requirement to obtain such inspector's written agreement shall not result in a waiver of Seller's rights.

9.3 If Buyer rejects an item as failing to conform to Buyer's drawings and specifications, then Buyer shall notify the Seller in writing, describe any claimed defects with as much particularity as the circumstances permit, and provide the item(s) to Seller for Seller's inspection. If the parties agree that an item materially fails to meet Buyer's drawings and specifications, Seller shall be allowed a reasonable time to cure the defects, either by repairing the defective item or manufacturing a new item, provided Buyer is not prejudiced by such delay. If Buyer is prejudiced by such delay, or the item is not repaired or replaced by Seller within a reasonable time, then Buyer may cancel the order, return the defective items and receive a refund of any sums paid to Seller for the defective item. This remedy is Buyer's exclusive remedy and Buyer waives any other remedy provided by law.

9.4 If Buyer rejects an item as failing to conform to Buyer's written drawings and specifications and, upon inspection thereof by Seller, the parties do not agree that the item fails to materially comply with Buyer's written drawings and specifications, the parties shall conduct a joint inspection at Seller's plant and confer. If no agreement is reached, the Seller may enforce the Buyer's Order (including the terms hereof) and Buyer may defend such claim based upon

Buyer's claim of non-conformity, subject to the terms of Buyer's order and this document.

9.5 In the event that the Seller concludes that such parts do not meet specifications and parts have not been shipped, the Seller will contact the Buyer within 5 business days after Seller determines the item materially fails to meet the drawings and specifications. The Buyer may then either accept the item as manufactured or resort to the process set forth in §7.3 above

10. GOVERNING LAW

All contracts between buyer and seller shall be governed by or construed in accordance with the applicable laws of the state of Florida. Venue for any action or litigation arising under or related to this document and/or Buyer's order shall be brought exclusively in a court of competent jurisdiction in Pinellas County, Florida or, if in the federal judicial system, in the US District Court, Middle District of Florida, Tampa Division.

11. RISK OF LOSS

Identification of the products sold herein occurs at such time as the Seller places said products in the hands of the carrier for delivery as herein provided for. Upon identification, risk of loss passes to the Buyer and Title remains with the Seller until the Seller receives payment for said products.

12. INDEMNIFICATION

12.1 The Buyer shall indemnify and hold the Seller harmless (including damages, costs and attorney fees) from and against any liability, damage, loss, expense, claim or judgment (hereinafter cumulatively referred to as claims) arising from injury (including death) to any person, any claims arising in contract or tort or damage to any property resulting from Buyer's resale, repair, replacement, use or misuse of any item delivered by Seller to Buyer. This indemnity includes claims by any contractor of Buyer or Seller, as well as claims asserted by third parties, as well as claims based in whole or part on conduct (negligent or otherwise) of Seller. If requested by the Seller, the Buyer at its own

expense shall defend any such claim, charge, suit, or proceeding, regardless of whether the Seller or the Buyer directs the defense thereof, and the Buyer shall pay any amounts payable in settlement or compromise of any such claim, suit or action, or awarded following trial, together with attorney fees and costs incurred by Seller in defense of any third party claim.

12.2 Buyer further agrees to indemnify and hold Seller harmless from any claim arising from Buyer's breach of any term in this document or Buyer's order.

13. CANCELLATION

All work for The Buyer will be started once a purchase order or other similar document is delivered by Buyer to Seller and accepted by Seller in writing. Cancellation by The Buyer after a purchase order has been accepted by Seller shall be sent with a **HAND SIGNATURE** within 2 Business days of the Purchase order date. Upon cancellation, The Buyer agrees to pay a cancellation fee not to exceed 15% of the total cost of the original purchase order. Should an order be cancelled by The Buyer after the 2 day cancellation period The Buyer agrees to pay for all work done up to the point of cancellation and for all material purchased and not used for Buyer's order.

14. PAYMENT

14.1 All Buyers are to supply a credit reference sheet with references that can be verified. Seller is authorized to pull buyer's credit report. All invoices will be billed to the Buyer on net 30 day terms, or as stated on Buyer's invoices. The Buyer's financial responsibility is at all times subject to approval by the Seller, and the Seller may at any time require payment in advanced or satisfactory security or guarantee that invoices will be promptly paid when due.

14.2 If payment is not made when due, interest will be charged on any overdue accounts at a 1.5% per month rate. The Buyer will have a period of 30 days from the date of the invoice to make payment.

14.3 Buyer grants to Seller a security interest in all items sold to Buyer by Seller until full payment is made. Seller may enforce Seller's security interest by

all means provided by law. Buyer's incorporation of Seller's items into other parts of Buyer shall not preclude Seller from obtaining Seller's items.

15. TOOLS AND FIXTURES

15.1 Any process, concept, design, invention or other thing subject to patent, copyright or other intellectual property rights discovered or developed by Seller in performing Seller's agreement with Buyer shall be the sole and separate property of Seller. All tooling will be included in the cost of the Buyer's projects and the Seller retains ownership to any tooling purchased for jobs. All Fixtures, tooling, models created by Seller and other property created by Seller will remain the sole property of the Seller.

15.2 All written (digital, hard copy or otherwise) content is protected and owned by Seller, including but not limited to: 3 dimensional and 2 dimensional model files digital prints created from in house models, emails, pictures, nc files, mcx files, pdf files, any file created on a computer, drawings by hand, prototype , assemblies, fixtures, tooling, special measuring tools, normal measuring tools, inspection tools, inspection fixtures, inspection procedures, disposal process, disposal procedures, or any hardcopies of the aforementioned and any other item of the aforementioned nature. Everything created and utilized by the Seller remains the sole property of the Seller.

16. INTELLECTUAL PROPERTY / PATENTS

16.1 Intellectual property rights shall include, without limitation, any and all rights arising under the laws or treaties of the of the United States, any state, territory or possession thereof, any other country or political subdivision or territory thereof, relating to patents, trademarks, copyrights or trade secrets.

16.2 BUYER shall retain all its intellectual property rights in Product Designs submitted to SELLER. Should SELLER make patentable improvements to Product Designs, SELLER grants BUYER a royalty free, worldwide non-exclusive license to commercialize Product Designs incorporating said patentable improvements

provided SELLER is manufacture of said Product Designs incorporating said patentable improvements. Proprietary manufacturing processes, design work and assembly techniques shall remain the intellectual property of SELLER absent a written agreement to the contrary.

16.3 BUYER herein releases and indemnifies SELLER from any and all liability for infringement of intellectual property rights relating to Project including, but not limited to, patent, trademark, copyright and trade secret. BUYER further agrees to indemnify and hold SELLER harmless in the event a claim is threatened or actually asserted which may incur liability for SELLER. SELLER has the right, in its sole discretion to cease design, production and/or delivery of articles subject to an infringement claim and shall have the right but not the obligation to interplead with a court of competent jurisdiction for the release and/or disposal of materials, tooling and/or inventory relating to said claim. BUYER agrees to hold SELLER harmless for the reasonable costs (attorney fees and court costs) of filing and prosecuting the interpleader action, including defending any counter or cross claims that may be filed against Seller in connection therewith.

16.4 The scope of indemnity under this section includes any damages asserted by any claimant or found to be due any claimant, attorneys fees claimed by the claimant, attorneys fees incurred by Seller and all costs.

16.5 For custom designs and/or modifications made by SELLER, BUYER forever releases, indemnifies (including attorney fees and costs) and holds harmless SELLER from any and all liability for infringement of intellectual property rights relating to Project asserted by any claimant, including, but not limited to, patent, trademark, copyright and trade secret.

17. SCHEDULED RELEASES

We the Seller reserve the right to run the total quantity at one time when an order is place for scheduled delivery in lots or segments. Therefore, no changes may be made by the buyer in design, quantity, or release dates without

prior written approval. Any changes or cancellations on a project by The Buyer will fall under section 13 of this document.

18. MISCELLANEOUS

18.1 This document, Buyer's order and any change orders approved by Seller shall constitute the entire agreement of the parties. No oral representations made by either party may alter or modify any part of this document or Buyer's order and any change, modification or alteration of this document or Buyer's order must be approved in writing by all parties; provided, however, that if either party requires a change and the time required for performance does not permit the preparation and execution of a formal change order, then such change shall be accomplished verbally with either party confirming such change by email or otherwise with 24 hours of such change.

18.2 In any litigation arising under or related to this document or Buyer's order, each party shall pay its own attorney fees and costs. All fee shifting procedures, rules of court and statutes are hereby waived by all parties to this agreement, to the extent permitted by law.

18.3 Seller's acceptance of any performance of this agreement by Buyer shall not be a waiver of Seller's rights if Buyer has defaulted on Buyer's obligations to Seller. No waiver by Seller of any right under this agreement shall be a waiver of any future or continuing rights of Seller.

No waiver, alteration, or modification of the terms and conditions above shall be binding unless in writing and signed by an authorized representative of the Seller.

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