

 Custom Fabricating & Repair Inc.	Purchasing Terms	SOP #	5.10.005
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GENERAL TERMS

1. ACCEPTANCE – Seller’s (a) execution of this Purchase Order or any release or revision related hereto (collectively “Order”), (b) commencement of work, on the goods, materials and/or services to be purchased hereunder (“G/S”), or (c) shipment of the goods covered hereunder, whichever occurs first, shall be deemed Seller’s acceptance of this Order. Seller’s acceptance is limited to acceptance of the express terms of this Order and does not include any additional or different terms proposed by Seller or any attempt by Seller to vary the terms hereof. Any additional or different terms in the Seller’s form are hereby deemed to be material alterations and notice of abjection to them and rejection of them is hereby given.

2. COMPLETION – Time is of the essence for the Order. If the G/S are not delivered by the date required by Buyer, Buyer may, without liability and in addition to its other rights: (a) terminate or reschedule this Order by notice to Seller effective upon receipt as to goods not yet shipped and/or services not yet rendered; and/or (b) substitute G/S elsewhere and charge Seller for costs incurred, which may include, without limitation, all or part of the price for substitute G/S, delivery charges, direct, indirect and consequential damages.

3. SHIPMENT/RISK OF LOSS/RECORDS – Seller shall prepare and pack for shipment, all goods in accordance with good commercial practices and carriers’ requirements to ensure safe delivery and free from damage, and to secure the lowest transportation rates. Buyer will not pay charges for packing, crating, shipping or delivery, unless otherwise stated herein. If Seller must ship in a more expensive manner than specified herein to comply with Buyer’s required delivery date, Seller shall pay all increased costs, unless Buyer solely causes the necessity for and agrees in writing to pay the increased costs. Seller shall mark each container of goods with the Order number, and shall include a packing sheet listing this Order number in each package, single unit of LTL shipment, or truckload shipment, and, if applicable any necessary component parts and assembly instructions. Seller shall be responsible and bear the risk of loss or damage for the goods covered by this Order until they are delivered at the designated delivery point and accepted by Buyer, regardless of the point of inspection for transfer of title. Seller shall maintain manufacturing and shipment records for at least two (2) years from the date of Seller’s shipment.

4. WARRANTIES/COMPLIANCE WITH LAWS – Seller expressly warrants and covenants to Buyer, its successors, assigns, customers, and users of Buyer’s products, that all G/S shall: (a) conform to all samples submitted by Seller to Buyer; (b) conform to the terms of this Order and/or all applicable drawings, standards, specifications, performance criteria and any other description requested, furnished or adopted by Buyer; (c) be new, unless otherwise set forth herein; (d) be free from defects in material and workmanship; (e) be merchantable, safe and appropriate for the purpose for which G/S if this kind are normally used; (f) together with their packaging, labeling and accompanying materials be properly contained, packaged, marked and labeled; (g) be fit for the particular purpose for which Buyer intends to use the G/S which purpose Seller acknowledges has been disclosed to Seller; (h) be of the highest quality unless otherwise specified herein; (i) not infringe the rights of any third parties; (j) if applicable with respect to

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ingredients, when processed in accordance with Buyer's standard manufacturing processes, produce high quality finished product(s) that conform with Buyer's standards, specifications and sensory attributes; and (k) with respect to services, be performed diligently in a good and workmanlike manner to the highest professional standards. In addition, Seller shall comply and the G/S shall comply and/or be applicable to performance hereunder by or on behalf of Seller. Seller further warrants and covenants that no liens, encumbrances, security interests, or other third-party claims shall attach to real or personal property owned or leased by Buyer in relation to Seller's performance hereunder and the Seller has all right, title and interest in the goods to grant to Buyer the rights and licenses contained herein.

5. BUYER'S RIGHTS – Buyer's inspection, testing, payment or use of the G/S shall not constitute acceptance thereof and shall not affect Seller's obligations and warranties set forth herein, which shall survive Buyer's inspection, testing, acceptance and/or use. Nothing contained herein shall relieve Seller in any way from its obligations to test, inspect, and control the quality of the G/S. Buyer may reject or revoke acceptance of any G/S that are, in Buyer's judgment, defective and/or do not conform to the terms of this Order ("non-conforming G/S") at any time. In addition to any other rights available to Buyer, upon Buyer's rejection or revocation of acceptance of G/S or Seller's failure to meet the terms of this Order in whole or in part, Buyer shall, in its sole discretion, direct Seller to, at Seller's sole cost and expense; (a) refund to Buyer the price of such G/S as well as any costs incurred by Buyer in relation thereto; (b) upon written replacement order from Buyer, replace or correct any such G/S at no additional cost to Buyer within (7) days of Buyer's demand; or (c) credit Buyer's account with an amount equal to the amount paid for such G/S as well as any costs incurred by Buyer in relation thereto Buyer may also choose to replace any non-conforming G/S from any other source, and Seller will reimburse Buyer for any incremental cost incurred to Buyer in connection therewith. If applicable, the costs to be reimbursed by Seller hereunder with respect to non-conforming G/S may include without limitation, all costs (including labor) to DE install equipment, acquire and/or install equipment and/or programs and to provide installation, training and product documentation required for Seller to correct any defect or nonconformity. In addition, Buyer may, at Seller's risk, return to Seller non-conforming goods and/or goods supplied in excess of quantities ordered and may charge Seller for all expenses related thereto including, without limitation, expenses for packing, inspection, shipment, insurance, materials and labor. If Seller fails to take any of the corrective action described herein, Buyer, upon notice to Seller, may take such action and charge Seller for associated costs incurred by Buyer in relation thereto Buyer's count as to the quantity of goods delivered shall be accepted as final and conclusive on all shipments that are not accompanied by a packing slip indicating the quantity delivered. Unless specified otherwise, all G/S delivered hereunder shall not be in excess of the quantity ordered.

6. PRICE WARRANTY/FREIGHT CHARGES/SET OFF - Seller warrants that the prices for the G/S are complete and not less favorable than those currently extended to Seller's other customers of similar account size for similar quantities of the same or similar G/S. If Seller offers better prices for the G/S to other customers of similar account size during the term of the order. Seller will reduce Buyer's prices correspondingly. If Seller uses published freight charges, Seller shall credit

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to Buyer any decrease in the charges. If Buyer has a claim against Seller resulting from this Order or any other transaction, Buyer may deduct or set off disputed amounts from Seller's claims for amounts due.

7. **PRICE** – The price set forth in this Order is firm and is the total amount due from Buyer for the G/S, including, without limitation, duties, taxes or any other charges agreed upon by Buyer, subject to adjust for any rebates or credits described herein. Buyer shall not be responsible for any amount above the total amount expressly stated in this Order. Without Buyer's prior consent, Seller shall not add any charges, including, without limitation, charges for shipping, packaging, labeling, storage, drayage, insurance, boxing, crating, duties or taxes. To the extent no price or prices are set forth herein. Seller's price shall be the lowest market price prevailing at time of either the quotation or shipment, whichever price is lower, and in no event may this Order be filled at prices higher than those last previously quoted or charged to Buyer without Buyer's written consent in the case of a limit order, the price stated in this Order shall not represent a binding financial commitment of Buyer for the full amount stated on such Order, Buyer shall only be responsible for the cost of actual G/S rendered to Buyer.

8. **CHANGES** – Buyer may, at any time prior to delivery, change the specifications for the G/S and delivery thereof, Seller will accept any changes, provided that if a change increases or decreases the cost or time required for performance, the parties will equitably adjust and modify the terms hereof in writing accordingly. Seller shall inform Buyer in advance of any material change, intentional or otherwise, to the G/S including, without limitation, changes in composition, quality specifications manufacturing processes, labeling, functionality, safety, manufacturing locations, and any suppliers or subcontractors. Upon notice of any change, Buyer may cancel this Order under the terms set forth in Paragraph 15. Any revisions to this Order, price or otherwise, must be in writing and approved by Buyer.

9. **INDEPENDENT CONTRACTOR** – Seller agrees that it, its employees and subcontractors, are performing services as independent contractors and not as Buyer's employees, regardless of where they perform services.

10. **INDEMNIFICATION** – Seller, its parents and affiliates, shall defend, indemnify and hold buyer and Buyer's officers, employees, agents, servants, and other vendors (harmless against any and all damages, claims, liabilities, settlement amounts, losses, costs, royalties, charges, consequential damages, and expenses (including litigation expenses, attorney's fees, and punitive damages) whether direct or indirect, and whether to persons or to property (each a claim), arising out of or resulting in any way from: (a) any known or unknown defect in the G/S; (b) the breach of any term hereof; (c) any act or omission, including, without limitation, any default hereunder, by Seller, its agents, employees or subcontractors; or (d) alleged patent, copyright, trademark, trade dress, trade secret or other intellectual property right infringement or alleged unfair competition resulting from similarity in design, trademark or appearance of the G/S. In addition, Seller hereby assumes all responsibility and liability for any and all damage, loss or injury of any kind or nature whatsoever to persons or property caused by or resulting from

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the performance of the work provided for hereunder, or in connection therewith. If any claim is bought or threatened against Buyer under the terms hereof, at Seller's expense. Seller shall, upon notice from Buyer, assume the defense thereof and pay any and all costs, charges, attorney's fees and other expenses, and any and all judgments that may be incurred or obtained against Buyer. Buyer may be represented by actively participate through its own counsel with respect to any claim. If any judgment or lien is placed upon or obtained against Buyer's property as a result of any claim, Seller will at once cause the same to be dissolved and discharged by giving bond or otherwise Seller shall maintain insurance coverage sufficient to satisfy its indemnification obligations hereunder. All of the Seller's insurance policies shall contain provisions stating that the Seller and the Seller's Insurance Carriers waive all rights of recovery and subrogation against the Buyer and Buyer's Insurance Carriers.

11. **INSURANCE** – Seller will secure and keep in force during the term of the Order, at its sole cost and expense, the following types of insurance: (a) worker's compensation statutory insurance as required by the state or states in which Seller or its subcontractors perform this Order; (b) employers' liability coverage with limits of at least \$1,000,000, and \$2,000,000 aggregate limit for each accident; (c) commercial general liability ("CGL") insurance (including coverage for premises, operations, broad form property damage, products completed operations, independent contractors, contractual liability covering this Order as an "insured contract," independent contractor's liability, personal/advertising injury, and work performed for Seller by others) with limits of at least \$1,000,000 for bodily injury and property damage; (d) business automobile liability insurance on an occurrence basis with limits of at least \$1,000,000 combined single limit for bodily injury and property damage, for assets owned, non-owned, leased, hired or borrowed vehicles; and (e) excess liability insurance on an occurrence basis with respect to each of the employer's liability, CGL, and business automobile liability policies described above, in an umbrella form, with limits of at least \$5,000,000 per occurrence. Buyer shall be named as additional insured with respect to all liability coverages, except statutory workers' compensation. The insurance policies described above must be written by an insurance company that is authorized to do business in the state(s) where Seller performs hereunder and that has an AM Best rating of A- or better. Within fifteen (15) calendar days of executing this Order, Seller will delivery to Buyer a certificate of insurance for all coverage required in this paragraph. All such certificates and policies shall include a provision whereby Buyer will be given thirty (30) days advance written notice of the insurer's intention to cancel or materially alter such policies. The insurance procured by Seller hereunder shall be primary insurance, and neither excess over not contributing with any other insurance maintained by Buyer.

12. **CONFIDENTIALTY/PUBLICITY** – Seller, its employees, agents and representatives, shall consider and Buyer's "confidential information," all non-public information provided by Buyer, all specifications or other documents prepared by Seller in connection herewith, the fact that Buyer has contracted to purchase G/S from Seller, and all other non-public information relating to this Order. Without Buyer's prior written consent, Seller shall not; (a) disclose or use confidential information for any purpose other than performing this Order; (b) announce, publicize or discuss with third parties the subject matter of this Order; (c) include buyer's name

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or trademarks in any marketing materials; or (d) disclose that Buyer is Seller's customer. The foregoing provisions shall be subject to the terms of any written agreement executed by the parties relating specifically to confidentiality, non-disclosure and/or publicity.

13. **ASSINGMENT/SUBCONTRACTING** – Seller shall not assign nor subcontracted any part of this Order without Buyer's prior written consent. If Seller subcontracts any part of this order, Seller shall bind each of its subcontractors by this Order's terms and conditions; provided however that nothing contained in any subcontract shall create, nor be represented to create, a contractual relationship between any subcontractor and Buyer. The Order shall be binding upon and insure to all benefit of the parties respective successors and assigns.

14. **TERMINATION FOR CONVENIENCE** – Upon notice to Seller, Buyer may terminate this Order or any part hereof, at any time prior to any delivery hereunder, solely for its convenience, and in such case Buyer will only pay Seller an amount equal to a percentage of the Order price reflecting the amount of work performed or goods delivered prior to Seller's receipt of Buyer's notice, plus Seller's actual direct costs resulting from the termination. Buyer shall not pay Seller for work performed after Seller's receipt of the notice of termination, not for any costs that Seller could have reasonably avoided. Upon receipt of Buyer's notice, Seller shall immediately stop and cause all suppliers and subcontractors to stop all performance hereunder.

15. **TERMINATION FOR CAUSE** – In addition to Buyer's other rights and without liability, upon notice to Seller, Buyer may terminate this Order, or any parts hereof, for cause in the event of any default by Seller of the terms or conditions of this Order. Include, without limitation, no delivery, late delivery, delivery of nonconforming or defective goods, and/or Seller's failure to provide Buyer, upon request, with reasonable assurance of future performance. Buyer may also terminate for cause hereunder if Seller becomes insolvent, is adjudicated bankrupt, files a voluntary petition in bankruptcy, makes an assignment for the benefit of creditors, or seeks protection from creditors under any applicable laws. Upon receipt of Buyer's notice, Seller shall immediately stop and cause all suppliers and subcontractors to stop all performance hereunder. If applicable, and upon Buyer's request, Seller shall ship to Buyer, at Buyer's expense, all inventories or materials held for use hereunder.

16. **LIMITATION ON BUYER'S LIABILITY/STATUE OF LIMITATIONS** – Buyer shall not be liable for anticipated profits, special, indirect, punitive, incidental or consequential damages, or penalties of any kind Buyer's liability on any claim arising out of, in connection with, or resulting from this Order from performance if breach hereof shall in no case exceed the price allocable to the G/S or unit thereof giving rise to the claim. Seller must commence any action against Buyer arising from this Order within one (1) year from date the cause of action accrues.

17. **GOVERNING LAW/DISPUTE RESOLUTION** – The Order shall be deemed a contract for the sale of goods under the Uniform Commercial Code and be governed and interpreted by the laws of the state where Buyer's corporate headquarters is located, without regard to its conflict of law's provisions. Venue and jurisdiction for any action based on this Order shall rest exclusively in the

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county where Buyer's corporate headquarters is located. The parties shall attempt to resolve all disputes promptly by negotiation between executives with authority to settle the dispute. If not so resolved, the parties agree that prior to attempting to resolve the dispute by arbitration or litigation; they will attempt to settle the dispute by mediation in the county where Buyer's corporate headquarters is located.

18. **WAIVER/SEVERABILITY** – Neither buyer's failure to insist on performance of any of the terms herein, nor its failure to exercise any right or privilege, nor its waiver of any breach hereunder, shall be deemed a waiver of any terms, conditions, privileges, or breaches by Seller under this Order, whether of the same or similar type if one or more of the terms hereof are deemed void or unenforceable by law, then all other provisions shall continue in full force and effect.

19. **ENTIRE AGREEMENT** – Except as provided herein or as otherwise agreed upon by the parties in a separate agreement relating to the subject matter hereof, this Order and any documents referenced herein constitute the entire agreement between the parties regarding this Order and replace any contemporaneous oral or written communications between the parties related hereto. This Order may not be modified by any document issued by Seller or by the parties course of dealing, custom or usage but only by a writing approved by both parties in the case of conflict with this Order, the terms of such mutually approved writing will prevail.

20. **MBE/WBE** – Seller agrees to use reasonable good faith efforts to employ and develop minority-owned business enterprises ("MBE") and women-owned business ("WBE") in connection with the G/S, and to provide Buyer with quarterly reports of all expenditures made by Seller with MBE/WBE suppliers in connection herewith.

21. **FORCE MAJEURE** - In the event of any act of God, war, labor dispute, boycott, act of terrorism, riot governmental act, strikes, fire, flood, accident or other casualty, or any other cause or condition beyond Buyer's reasonable control which interfered with Buyer's use of the G/S, buyer may, at its option, either cancel entirely or reschedule delivery of such portion of the G/S not yet received by Buyer.

22. **OWNERSHIP** – Any intellectual property created as a result of this Order, including, without limitation, creative materials, reports, documents, computer software, improvements, inventions or other work product ("intellectual property"), whether patentable, copyrightable, or not, shall be Buyer's sole and exclusive property. Seller will perform, at Buyer's request and expense, any act to vest title to any intellectual property in buyer, and will execute any and all documents required by Buyer to obtain legal protection for such intellectual property. Seller agrees that all intellectual property shall be "work for hire", and that if intellectual property shall not qualify as a "work for hire" then Seller hereby assigns to Buyer the copyright of that intellectual property. Seller expressly waives any rights of attribution, integrity and prior use that Seller may have in the intellectual property and such waiver shall apply to any and all uses of or changes to the intellectual property. Notwithstanding the foregoing, Buyer acknowledges

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that the G/S may include intellectual property owned by Seller or a third party (“Seller’s Materials”), provided however that Seller hereby grants Buyer a perpetual, non-exclusive, fully paid-up, royalty-free, license to use Seller’s materials in connection with the Buyer-owned portion of the G/S to the full extent that the Buyer-owned portion of the G/S may be used

23. SUPPLIES AND EQUIPMENT – All materials, supplies, or equipment furnished or paid for by the Buyer in connection with this Order shall remain Buyer’s property, shall be maintained by Seller in good condition. Shall be used by Seller only for Buyer, and shall be returned to Buyer or otherwise disposed of as directed by Buyer upon completion of this Order.

24. CONSUMER PROTECTION – Seller must fully disclose to Buyer the presence of any FDA-recognized allergenic ingredients used in connection with the G/S, and if applicable, adequately label such on the goods and/or packaging. If Seller becomes aware that any of the goods are or may become infested, adulterated, contaminated, or in violation of laws or regulations or are or may become harmful to persons or property whether the goods are used in the same mode as when delivered or whether the goods are used in the manufacture of, or become part of Buyer’s products, or that the design or construction of the goods is of may be defective in any manner, Seller shall immediately give notice to Buyer thereof, including all relevant information with respect thereto.

25. SELLER’S RISK – Seller shall be fully responsible for its employees, agents, officers, contractors and subcontractors, including, without limitation, all compensation and taxes related thereto. Seller shall carry on its work at its own risk until the same is fully completed and accepted, and shall, in case of any accident, destruction or injury to any goods or materials before final completion and acceptance, repair and replace the goods or materials so injured, damaged and destroyed at Seller’s expense and to Buyer’s satisfaction. When materials or equipment are furnished by others for Seller’s use, Seller shall receive, unload, store, handle, and be responsible therefore as though such materials or equipment were being furnished by the Seller hereunder. To the extent Seller is performed hereunder at Buyer’s premises, Seller and its subcontractors shall take all safety precautions and furnish and install all guards necessary for the prevention of accidents. Buyer shall not be responsible be held liable for any damage to person or property arising from the use, misuse, or failure of any rigging, blocking, scaffolding or other equipment used by Seller or any of its subcontractors, notwithstanding Buyer’s ownership, provision or loan of such equipment to Seller or any of its subcontractors.

26. LICENSE – To the extent the G/S involve licensing of software (and not the purchase) from Seller, Seller grants Buyer a nonexclusive worldwide, royalty-free, perpetual license to use the G/S in accordance with the terms of this Order.