



**CUSTOM MANUFACTURING
& ENGINEERING™, INC.**

Custom Manufacturing & Engineering, Inc.™ Terms and Conditions

TERMS AND CONDITIONS OF PURCHASE EFFECTIVE DATE:

1. Definitions: The following terms shall have the meanings set forth below:
 - (a) “Contract,” means the instrument of contracting, (e.g., PO, Order, or other such designation), including all referenced documents, exhibits, and attachments. If these terms and conditions are incorporated into a master agreement that provides for releases (in the form of a Purchase Order or other such document), the term “Contract” shall also mean the release document for the Work to be performed.
 - (b) “CME” means Custom Manufacturing & Engineering, Incorporated or any entity to which CME assigns all rights and obligations as a result of transfer, sale, or merger of some or substantially all of the company’s assets.
 - (c) “CME Procurement Representative” means the person authorized by CME’s cognizant procurement organization to administer this Contract.
 - (d) “PO” or “Purchase Order” as used in any document constituting a part of this Contract shall mean this Contract.
 - (e) “Seller” means the Party identified on the title page of the Contract or Purchase Order, with whom CME is contracting.
 - (f) “Buyer” means Custom Manufacturing & Engineering, Incorporated.
 - (g) “Work” or “product” means all required articles, materials, supplies, goods, and services constituting the subject matter of this Contract.
2. Formation of Contract and Terms and Conditions
 - (a) This Contract is CME's offer to Seller. Seller’s signature on the Contract, acknowledgment, acceptance of payment, or commencement of performance, shall constitute Seller’s unqualified acceptance of this Contract. Seller’s acceptance of this Contract creates a binding Contract between CME and Seller, which shall be governed by the provisions of this Contract.
 - (b) Additional or differing terms or conditions proposed by Seller or included in Seller’s acknowledgment hereof are hereby objected by CME and have no effect unless accepted in writing by CME.
3. Notice Clauses: The preferred points of contact with respect to the transmission of purchase orders or changes hereunder are:

CME Procurement Department
2904 44th Avenue North
St. Petersburg, FL 33714
Fax: (727) 541-8822



Each party may change its designation by written notice to the other. All cancellations should first be sent to the CME Procurement Department with a copy being sent to the CME Legal Department at the same address above. Any changes to the Terms & Conditions must be in writing; signed and dated by the CME Legal Department. Terms & Conditions cannot be orally modified, even if relied upon or stated by representative in CME Procurement Department.

4. Timely Performance
 - (a) Time is of the essence in this Contract. Seller's timely performance is a critical element of this Contract.
 - (b) Unless advance shipment has been authorized in writing by CME, CME may store, at Seller's expense, or return, shipping charges collect, and all Work received in advance of the scheduled delivery date.
 - (c) If Seller becomes aware of difficulty in performing the Work, Seller shall promptly notify CME, in writing, giving pertinent details. This notification shall not change any delivery schedule.
 - (d) In the event of a termination for convenience or change, no claim will be allowed for any manufacture or procurement in advance of Seller's normal flow time unless CME has given prior written consent.
5. Delivery schedule: Seller shall follow the delivery schedule shown on this order and shall not make deliveries later or substantially earlier than dates shown. If items are shipped substantially in advance of schedule delivery dates, Buyer may return them at Seller's expense. If Seller exercises due care by taking all reasonable steps to protect items prior to event, Seller shall not be liable for delays in delivery due to Acts of God. If Seller does not adhere to the delivery schedule, Buyer may either agree to a revise delivery schedule or terminate this order without liability to Buyer. Seller shall notify Buyer promptly of any delays or of any actual or potential labor dispute, which is delaying or threatens to delay the timely performance of this purchase order. Such notice shall include all relevant information with respect to such dispute. Unless otherwise specified, all international sales are DDP¹ CME (2904 44th Avenue North, St. Petersburg, Florida 33714); all domestic (United States and its territories) sales are FOB CME (2904 44th Avenue North, St. Petersburg, Florida 33714).
6. Packing and shipping all items shall be suitably prepared and packed for shipment. Buyer will not allow extra charges for packing, cartage or anything else unless stated in this order. Seller shall mark the number of this order on each container and enclose a packing slip with the order number in each container. Seller shall mail invoices, shipping documents, and copy of packing slip to CME Accounts Payable.
 - (a) All transportation costs and shipping damage incurred while submitting parts for shipment or repair and/or replacement are the responsibility of Seller. Any damage during shipping of work to CME on initial purchase or for repair and/or replacement through the freight delivery company is not the responsibility of CME. Seller shall at its own cost repair and/or replace product or work which was damaged while being shipped to CME.
7. Inspection: Seller agrees to permit the Buyer's inspectors to have access to the Seller's plant at all reasonable times for the purpose of inspecting any items set forth on this order or work in process for production of such items. All items are subject to final inspection and approval at Buyer's plant or other

¹ Incoterm as defined by the most recent release and/or publication by the International Chamber of Commerce (ICC).



place as designated by Buyer. Such inspection shall be made within a reasonable time. After delivery, irrespective of the date of payment, Buyer may return rejected items at Seller's expense. Seller shall not replace items returned as defective unless so directed by Buyer in writing.

8. Changes: Buyer may make changes in the drawings, specifications, quantities, delivery schedules, or methods of shipment or packaging on any item at any time. If such changes result in delay or an increase or decrease in expense to Seller an equitable adjustment of price and delivery schedule will be made. Any claims for adjustment under this paragraph shall be conclusively deemed waived unless asserted in writing within 30 days of receipt of change notice by Seller. Changes by Seller in prices, delivery dates or the Buyer in writing must approve other terms and conditions of this purchase.
9. Prices as specified in this order are those agreed upon and are not subject to increase, unless specifically authorized by a written amendment to this order.
10. Payments, Taxes, and Duties
 - (a) Unless otherwise provided, terms of payment shall be net forty-five (45) days from the latest of the following: (i) CME's receipt of the Seller's proper invoice; (ii) Scheduled delivery date of the Work; or (iii) Actual delivery of the Work. CME shall have a right of setoff against payments due or at issue under this Contract or any other Contract between the Parties.
 - (b) Payment shall be deemed to have been made as of the date of CME's mailed payment or electronic funds transfer.
 - (c) Unless otherwise specified, prices include all applicable federal, state, and local taxes and/or similar fees imposed by any government, all of which shall be listed separately on the invoice. Prices shall not include any taxes, impositions, charges or exactions for which CME has furnished a valid exemption certificate or other evidence of exemption.
 - (d) All taxes, assessments and similar charges levied with respect to or upon any such products or Work owned by CME while in Seller's possession or control, and for which no exemption is available, shall be borne by Seller.
 - (e) The prices stated in the contract are firm, fixed prices in United States dollars.
11. Extras: Work shall not be supplied in excess of quantities specified in the Contract. Seller shall be liable for handling charges and return shipment costs for any excess quantities.
12. Parts Obsolescence: CME may desire to place additional orders for items purchased hereunder. Seller shall provide CME with a Last Time Buy Notice at least twelve (12) months prior to any action to discontinue any item purchased under this Contract.
13. Drawings, specifications and technical information drawings, specifications, photographs and other engineering and manufacturing information supplied by the Buyer shall remain Buyer's property shall not be Photostatted or otherwise duplicated without Buyer's written consent and shall be returned to Buyer upon completion or order or upon demand. Any information which Seller may disclose to Buyer with respect to the design manufacture or sale or use of the items covered by this order shall be deemed to have disclosed as part of the consideration for this order and Seller shall not assert any claim against Buyer by reason of Buyer's use thereof. Any drawings, and technical information drawings, specifications, photographs and other engineering and manufacturing information supplied by the Seller to create or



fulfill Contract shall be consider “Works for hire” and shall be part of the consideration for this order and Seller shall not assert any claim against Buyer regarding use or ownership thereof.

14. Buyer’s Property: All tools, dies, jigs, patterns, equipment or material and other items purchased, furnished charged to or paid by Buyer, and any replacement thereof, shall remain the property of Buyer. Such property shall be plainly marked “Property of CME” and shall be safely stored apart from other property. Seller shall not substitute other property for Buyer’s property and shall not use such property except in filling Buyer’s orders. Seller shall hold such property at its own risk and upon Buyer’s written request, shall re-deliver the property to Buyer in the same condition as originally received by Seller. Reasonable wear and tear excepted.
15. No articles furnished hereunder, or tools for producing the same, which have been specially designed for or by Buyer, shall be duplicated for others without the written consent of Buyer.
16. Patent Indemnity: To the extent the subject items are not manufactured pursuant to design specified my Buyer, Seller shall indemnify and hold Buyer and it’s agents and customers harmless from any loss, damage, or liability for infringement of United States patent right with respect to such items and shall at it’s own expense defend any action in which such infringement is alleged with respect to the manufacture. Sale or use of such items delivered hereunder; provided Seller is duly notified as to suits against Buyer, and provided further Seller’s indemnity as to use shall not apply to any infringement arising out of use in combination with other items where such infringement would not occurred from the normal use for which the article was designed.
17. With respect to inventions which Seller may make in the performance of this purchase order, Seller hereby grants to Buyer and its subsidiaries a permanent, paid up and irrevocable license both to the United States and foreign countries, to make, use and sell, and to have others make use and sell devices or material incorporating or made through use of such inventions. If, however, such inventions result from research and development work performed by Seller for which Buyer pays Seller, either directly or indirectly, Seller agrees to assign to Buyer rights, title and interest in, and to such inventions and to assist Buyer, at Buyer’s expense, in securing United States and foreign patents with respect thereto.
18. Seller warrants that all goods and work covered by this order will conform to the drawings and specification, samples or other description furnished by the Buyer, and will be fit for the purpose intended. Merchantable of good material and workmanship and free from defect and this warranty shall run to the Buyer, its successors, assigns, customers, and the user of this product. None of the provisions or remedies herein are in lieu of any claims for damages Buyer may have at law or equity under the Florida Uniform Commercial Code or otherwise. For the breach of any contracts or warranties with Buyer, which are specifically reserved by Buyer.
19. Assignment and set off: Seller shall not assign this order or any right hereunder without Buyer’s written consent, which shall not be unreasonable withheld. Buyer may set off against payable to any person under this order any claim or charge it may have against Seller.
20. Subcontracts: Seller shall not without the written approval of the Buyer, make any contract with any other person for furnishing any of the completed or substantially completed items covered by this order.
21. In the event that Seller is required to enter premises owned, leased, occupied by or under the control of Buyer during the performance of services hereunder or during delivery of articles herein contemplated, Seller agrees to indemnify and save harmless Buyer, its officers, employees and agents from all costs, loss, expense, damages, claims, suits, or liability resulting from injury, including death, to person or property arising from or in any manner growing out of the performance of such services and/or delivery, regardless



whether due to any negligence by Buyer or Seller. Whether arising out of the actions of Seller or its subcontractors, or their respective employees, and Seller agrees to maintain and require its subcontractors, to maintain (i) public liability and property damage insurance in reasonable amounts to cover the obligations set forth above and (ii) proper workmen's compensation insurance covering all employees engaged in the performance of such services and/or delivery.

22. If Seller becomes insolvent, or makes an assignment for the benefit of its creditors, or if a petition in bankruptcy is filed by or with respect to Seller, Buyer may, by notice in writing, terminate this order without liability to Buyer, except for items already delivered. Buyer may terminate this order at any time by notice in writing to Seller in such later event, Buyer shall pay such cancellation charges as may be agreed upon. In the event of failure to reach such agreement, Buyer will be liable for such sum as may be lawfully be owing to Seller on account of such termination. Buyer may terminate upon written notice, if Seller fails to make delivery so as to endanger performance of this order and Seller would pay additional costs engendered thereto. The provisions of this paragraph shall not limit or affect the right of the Buyer to terminate this order by default of the Seller.
23. Stop Work Orders: CME may, at any time by written order, require Seller to suspend, delay, interrupt for the period of time that CME determines is appropriate, and/or stop all or any part of the work under this purchase order and/or contract. Immediately upon receipt of such stop work order, Seller shall comply with its terms and take all reasonable stops to minimize the incurrence of costs allocable to the work stoppage. To the extent the stop work order is canceled, Seller shall resume work. If a stop work order is the sole and exclusive cause of a material change in cost or delivery, an adjustment shall be made in price (excluding profit) or the delivery schedule, or both and this order modified accordingly; provided, however, that no adjustment in price or delivery shall be made under this Article if, (i) the work would have been otherwise interrupted or delayed, or (ii) such adjustment is available or expressly excluded under any other provision of this order. No claim for adjustment shall be allowed unless submitted to Buyer in writing in a specified amount within twenty (20) days after work is terminated or the stop work order is canceled, whichever occurs first.
24. The laws of the state of Florida shall govern the rights and duties of the parties to this contract.
25. Seller shall fully comply with all applicable federal, state, or local laws, rules, regulations or ordinances and shall hold Buyer harmless or all liability resulting from failure of such compliance.
26. Seller agrees that Seller will, at times, adhere to the highest standards of business ethics. Seller shall at all times, carefully, comply with all applicable rules, laws and regulations, including without limitation those pertaining to entertainment or providing gratuities. Seller personnel on-site at Buyer's facilities shall conform to certain rules of conduct that Buyer may have in effect.
27. Venue and Jurisdiction: Venue for adjudication of claims, which are not permitted by law to be resolved by arbitration under this Agreement shall not be contested and Parties waive any right to contest such. Venue shall be any state court of competent jurisdiction located in Hillsborough County, Florida; and if the jurisdictional prerequisites exist, the United State District Court for the Middle District of Florida shall have sole and exclusive jurisdiction and venue to hear any dispute arising under or concerning this Agreement.
28. Attorneys' fees: Seller shall pay to CME any expense, including but not limited to reasonable attorneys' fees and taxable costs incurred in the enforcement of any provision of this Contract (through to execution of judgment) which are not covered for by Contract (including, but not limited to, the enforcement of the Intellectual Property Rights) or permitted by law to be settled by binding arbitration.



29. Disputes

- (a) Any dispute, controversy, or claim arising out of or relating to this Contract or default, termination, or invalidity hereof, shall be settled by arbitration under the rules of the American Arbitration Association. The place of the binding arbitration shall be Hillsborough County, Florida. The language to be used in the arbitral proceedings shall be English. Judgment of the arbitrators shall be final and non-appealable and may be entered in any court having jurisdiction or application may be made to such court for a judicial acceptance of the award and an order of the enforcement. Each Party shall bear its own expenses of the arbitration, but the fees and costs of the arbitrators shall be borne equally between the Parties participating in the arbitration.
- (b) Consistent with the expedited nature of arbitration, each party will, upon the written request of the other party, promptly provide the requesting party with copies of documents relevant to the issues raised by any claim or counterclaim. Any dispute regarding discovery, or the relevance or scope thereof, shall be determined by the arbitrators, whose determination shall be conclusive. All discovery shall be completed within thirty (30) days following the appointment of the arbitrators.
- (c) No action at law or in equity may be commenced by Seller under or arising from this Contract unless it is brought within one year after the accrual of the cause of action upon which the claim is based, regardless of whether Seller knew or should have known of the accrual of any such cause of action.
- (d) Until final resolution of any dispute hereunder, Seller shall diligently proceed, unless a Stop Work order has been issued, with the performance of this Contract as directed by the CME Procurement Representative.
- (e) Notwithstanding the foregoing, in the event of a breach or threatened breach by Seller under the *Intellectual Property* provisions of this Contract and/or Purchase Order or any Non-disclosure Agreement (or variation there-from concerning the protection of intellectual property), CME at its option forego arbitration under this provision and seek immediate judicial and equitable remedies, including, but not limited to, injunctive relief or specific performance.

30. With prior reasonable advance notice, the Buyer, their customer(s) and pertinent regulatory authorities, shall have access to all the Seller's/contractor's facilities and subcontractor's facilities at any tier utilized in the performance of this contract and the right to examine any directly pertinent books, documents, papers and records of the contract and their subcontractors relating to this contract.

31. Non-solicitation of employees: For a period of two years or the duration of the program, whichever may be longer, after the date hereof, no party shall solicit for hire, or hire as a result of such solicitation any employee, except with the other party's express written permission. The terms "solicit" and "solicitation" shall not include any general solicitation not specifically directed to the other party's employees.

32. Independent Contractor Relationship

- (a) Seller is an independent contractor in all its operations and activities hereunder. The employees used by Seller to perform Work under this Contract shall be Seller's employees exclusively, without any relation whatsoever to CME, and shall not be entitled to participate in or receive any of CME's employee benefits.



- (b) Seller shall be responsible for all losses, costs, claims, causes of action, damages, liabilities, and expenses, including attorneys' fees, all expenses of litigation and settlement, and court costs, arising from any act or omission of Seller, its officers, employees, agents, suppliers, or subcontractors at any tier, relating in any way to or affecting the performance of any of its obligations under this Contract.

33. Gratuities and Kickbacks

- (a) No gratuities (in the form of entertainment, gifts, or otherwise) or kickbacks shall be offered or given by Seller to any employee of CME with a view toward securing favorable treatment as a supplier/customer.
- (b) By accepting this Contract, Seller certifies and represents that it has not made or solicited and will not make or solicit kickbacks in violation of FAR 52.203-7 or the Anti-Kickback Act of 1986 (41 USC 5158).

34. Precedence: Any inconsistencies in this Contract shall be resolved in accordance with the following (in descending order of precedence): (1) face of the Purchase Order or Contract, release document or schedule (which may include continuation sheets), as applicable, including any special terms and conditions; (2) any master agreement, such as corporate, sector, or blanket agreements; (3) these Terms & Conditions; and (4) Statement of Work.

35. Entire Agreement: This Agreement or any signed Non-disclosure Agreement, signed prior to or subsequently to the issue of a Contract or these Terms & Conditions (or variation there-from concerning the protection of intellectual property) contain the entire understanding between the Parties relative to the protection of Proprietary Information to be exchanged between the parties, and supersedes all prior oral and collateral communications, reports, and understandings between the Parties with respect to such purpose. No change, modification, alteration, or addition to any provision hereof shall be binding unless in writing and signed by authorized representatives of the Parties. This Agreement shall apply in lieu of and notwithstanding any specific legend or statement associated with any Proprietary Information or material exchanged, and the duties of the Parties shall be determined exclusively by this Agreement. If any portion of this Agreement is held to be invalid, such decision shall not affect the validity of the remaining portions.

36. Language and Standards: All reports, correspondence, drawings, notices, markings, and other communications shall be in the English language. The English version of the Contract shall prevail. Unless otherwise provided in writing, all documentation and work shall use the units of U.S. standard weights and measures.

37. Survivability

If this Contract expires, is completed, or is terminated for default or convenience, Seller shall not be relieved of those obligations contained in this Contract for the following provisions:

- (a) Applicable Laws, Clause No. 24; Export Control, Clause No. 39; Independent Contractor Relationship, Clause No. 32; Information of CME, Clauses No. 13, 14, 15, 16, 17, 18; Insurance or Entry on CME Property, Clause No. 21; Warranty, Clause No. 18; Non-Solicitation of Employees, Clause no. 31; Venue and Jurisdiction, Clause No. 27; Attorneys' Fees, Clause No. 29.



38. Waiver, Approval, and Remedies

- (a) Failure by CME to enforce any provisions of this Contract shall not be construed as a waiver of the requirements of such provisions, or as a waiver of the right of CME thereafter to enforce each and every such provision.
- (b) CME's approval of documents shall not relieve Seller from complying with any requirements of this Contract.
- (c) The rights and remedies of CME in this Contract are in addition to any other rights and remedies of this Contract.

39. Export Control Compliance for Foreign Persons

- (a) Seller agrees to comply fully with all applicable U.S. export control laws.
- (b) The subject Work of this Contract (together including data, services, and hardware provided hereunder, hereinafter "Controlled Technology") may be controlled for export purposes under the International Traffic in Arms Regulations (ITAR) controlled by the U.S. Department of State or the Export Administration Regulations ("EAR") controlled by the U.S. Department of Commerce. ITAR controlled technology may not be exported without prior written authorization and certain EAR technology requires a prior license depending upon its categorization, destination, end-user and end-use. Seller shall obtain the authority of either an Export License or an applicable License Exception before permitting the export of any information, technical data, technology, services, software, equipment, or the direct product thereof, generated by or delivered to Seller under this Contract. Seller shall obtain the authority of either an Export License or an applicable License Exception before assigning any foreign persons or foreign sources to perform work under this Contract or before permitting any foreign persons or foreign sources to have access to any information, technical data, technology, services, software, equipment, or the direct product thereof, generated by or delivered Seller under this Contract. "Foreign person" is any person who is not a citizen or national of the United States and includes individuals, foreign corporations, international organizations, and foreign governments. "Foreign source" includes vendors, subcontractors, and suppliers owned and controlled by a foreign person.
- (c) Seller hereby certifies that all Seller employees who have access to the Controlled Technology are U.S. citizens, have a valid green card or, have been granted political asylum or refugee status in accordance with 8 U.S.C. 1324b(a)(3). Any non-citizens who do not meet one of these criteria have been authorized under export licenses to perform their work hereunder.
- (d) Seller further certifies that all Seller employees assigned to work on this Contract are U.S. citizens, U.S. Permanent Residents, non-immigrants authorized to work in the U.S. or non-immigrants who have been granted political asylum or refugee status in accordance with 8 U.S.C. 1324b(a)(3).
- (e) Seller agrees to notify CME if export control laws or regulations restrict any deliverable Work under this Contract.
- (f) Seller shall immediately notify the CME Procurement Representative if Seller is listed in any Denied Parties List or if Seller's export privileges are otherwise denied, suspended, or revoked in whole or in part by any U.S. Government entity or agency. At CME's request, Seller will provide CME with all data CME may need to apply for and obtain an Export License or applicable License Exception.