



Custom Manufacturing & Engineering™ (CME™) Terms and Conditions

TERMS AND CONDITIONS OF SALES EFFECTIVE DATE AS OF DATE OF PURCHASE:

1. Definitions: The following terms shall have the meanings set forth below:
 - (a) “Contract,” means the instrument of contracting, (e.g., Sales Order, SO, 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 Sales 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, Inc. 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 Sales Representative” means the person authorized by CME to administer this Contract.
 - (d) “SO” or “Sales Order” as used in any document constituting a part of this Contract or Sales Order shall mean this Contract.
 - (e) “Seller” means CME.
 - (f) “Buyer” means the Party identified on the title page of the Contract or Sales Order, with whom CME is contracting.
 - (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 Buyer. Buyer’s signature on the Contract, acknowledgment, acceptance of payment terms, or commencement of performance shall constitute Buyer’s unqualified acceptance of this Contract. Buyer’s acceptance of this Contract creates a binding Contract between CME and Buyer, which shall be governed by the provisions of this Contract.
 - (b) Additional or differing terms or conditions proposed by Buyer or included in Buyer’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 sales orders or changes hereunder are:

CME Contracts 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 Contracts Department with a copy being sent to the CME Legal Department at the same address above. Any changes to the Terms and Conditions must be in writing, signed and dated by the CME Legal Department. Terms and Conditions cannot be orally modified, even if relied upon or stated by a representative in the CME Contracts Department.

4. Timely Performance:
- (a) Time is of the essence in this Contract. Buyer's timely performance is a critical element of this Contract.
 - (b) Time is defined as business days, excluding Federal holidays.
5. Priority Rating: If so identified, this Contract is a "rated order," certified for national defense use, and the Buyer shall follow all the requirements of the Defense Priorities and Allocation System Regulation (15 C.F.R. Part 700). All DO rated orders have equal priority with each other and take preference over unrated orders. All DX rated orders have equal priority with each other and take preference over DO rated orders and unrated orders. (For resolution of conflicts among rated orders of equal priority, see section 700.14(c).)
6. Delivery Schedule: 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. 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 sales 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).
7. Packing and shipping all items shall be suitably prepared and packed for shipment. Seller shall enclose a packing slip with the order number in each container. Seller shall mail, email or facsimile invoices, shipping documents, and copy of packing slip to Buyer's Accounts Payable.
- (a) All transportation costs and shipping damage incurred while submitting parts for shipment or repair and/or replacement are the responsibility of the Seller. Any damage during shipping of work to Buyer on initial purchase or for repair and/or replacement through the freight delivery company is not the responsibility of CME.
8. Prices as specified in this order are those agreed upon and future orders may be subject to increase.

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



9. Payments, Taxes, and Duties:
 - (a) Unless otherwise provided, terms of payment shall be in full prior to shipment.
 - (b) Payment shall be deemed to have been made as of the date of Buyer's mailed payment or electronic funds transfer.
 - (c) Prices do not 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 Buyer has furnished a valid exemption certificate or other evidence of exemption.
 - (d) The prices stated in the contract are firm, fixed prices in United States dollars.
10. Patent Indemnity: To the extent the subject items are not manufactured pursuant to design specified by Buyer, Seller shall indemnify and hold Buyer and its 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 its 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.
11. With respect to inventions which Seller may make in the performance of this sales order, inventions shall remain the property of Seller.
12. 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. Seller does not warranty product later given, re-sold, leased, lent, or integrated into another product to follow on Buyer's.
13. New Materials: The Work to be delivered hereunder shall consist of new materials, as defined in FAR 52.211-5 (not used, reconditioned, remanufactured, or of such age as to impair usefulness or safety).
14. 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, or use of Seller's products regardless whether due to any negligence by Buyer or Seller.
15. Buyer acknowledges that tampering with, opening, or otherwise altering Seller's products (most which use electricity) may result in damage to person or property. Buyer agrees to indemnify and save harmless Seller, 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, or use of Seller's products regardless whether due to any negligence by Buyer or Seller.
16. Stop Work Orders: Buyer may, at any time by written order, require Seller to suspend, delay, interrupt for the period of time that Buyer determines is appropriate, and/or stop all or any part of the work under this



sales order and/or contract. Immediately upon receipt of such stop work order, Seller shall comply with its terms and take all reasonable steps 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.

17. The laws of the state of Florida shall govern the rights and duties of the parties to this contract.
18. Buyer agrees that Buyer will, at times, adhere to the highest standards of business ethics. Buyer shall, at all times, carefully comply with all applicable rules, laws, and regulations, including without limitation those pertaining to entertainment or providing gratuities.
19. 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 States 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.
20. Attorneys' fees: Buyer shall pay to CME any expense, including, but not limited to, reasonable attorneys' fees and guideline 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.
21. 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 and 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.



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- (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 Sales 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.
22. Non-solicitation of Employees: For a period of two years or the duration of the contract, 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.
23. 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.
24. Gratuities and Kickbacks:
- (a) No gratuities (in the form of entertainment, gifts, or otherwise) or kickbacks shall be offered or given by Buyer to any employee of CME with a view toward securing favorable treatment as a 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).
25. Precedence: Any inconsistencies in this Contract shall be resolved in accordance with the following (in descending order of precedence): (1) face of the Sales 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 representations or certifications, corporate Non-Disclosure Agreements and/or Teaming Agreements, sector, or blanket agreements; (3) these Terms and Conditions; (4) other documents, exhibits, or attachments; and (5) Statement of Work.
26. Entire Agreement: This Agreement or any signed Non-Disclosure Agreement, signed prior to or subsequently to the issue of a Contract or these Terms and 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.
27. 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 measurements.
28. Survivability:



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

- (a) 5, 7, 10, 11, 15, 19-22, 24-26 (including the Non-disclosure or Proprietary Information Agreements), and 28-30.

29. 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 Buyer 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.

30. 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 by 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) CME agrees to notify Buyer if export control laws or regulations restrict any deliverable Work under this Contract.



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- (f) CME shall immediately notify the Buyer Representative if CME is listed in any Denied Parties List or if CME's export privileges are otherwise denied, suspended, or revoked in whole or in part by any U.S. Government entity or agency. CME will provide Buyer with all data Buyer may need to apply for and obtain an Export License or applicable License Exception to receive shipment of Seller's product if permission is needed by US Government. e.g.) Buyer shall be solely responsible for any import restrictions, licenses, fees, taxes, or tariffs in which may be applicable to the country of import or other import expense.