

# Federal Screw Works

## Terms and Conditions of Sale

### 1. Parties

As used herein, “Buyer” means the purchaser of “Goods” produced by Federal Screw Works whose name is identified as the purchasing entity on the face of a Federal Screw Works quotation and on Buyer’s Purchase Order. As used herein “Seller” means Federal Screw Works and the manufacturing division that produces and delivers Goods under these terms.

#### *1.1 Quotation*

Unless stated otherwise in a writing signed by Seller, all sales between Buyer and Seller will incorporate these terms and conditions of sale and the terms contained in the quotation provided by Seller to Buyer (collectively “the Terms”) including but not limited to pricing, volume requirements, delivery and payment terms. A written quotation is an offer to sell. Buyer shall be deemed to have accepted these Terms including Buyer’s quotation and an agreement shall be formed by any of the following (a) signing and returning to Seller a copy of any quotation; (b) sending to Seller a written acknowledgement of the quotation; (c) placing a purchase order or giving instructions to Seller respecting manufacture, assortment, or delivery of the Goods (including but not limited to instructions to bill and hold following receipt of any quotation; (d) failing to cancel a pending purchase order within 10 days after receiving these Terms; (e) accepting delivery of all or any part of the Goods covered by any quotation or these Terms; (f) paying for all or any part of the Goods covered by any quotation or these Terms; or (g) indicating in some other manner Buyer’s acceptance of these Terms.

#### *1.2 Specific Exclusion*

Seller objects to all terms proposed by Buyer. Unless stated otherwise in a writing signed by Seller, these Terms are the only terms that govern.

### 2. Product and Service Requirements

#### *2.1 Acceptance / Releases*

As an acceptance of these Terms, Buyer agrees to provide Seller with Purchase Orders that provide Seller with either: (a) a specific quantity or; (b) a Purchase Order which identifies the quantity “as released.” Purchase Orders from Buyer containing non-specific quantities shall have a regular production schedule or material release communicated by Buyer to Seller sent

on a regular basis identifying the quantities and dates of delivery required by Buyer. On a monthly basis, Buyer will provide Seller with a rolling two month forecast of its anticipated purchases of the Goods, from Seller. Buyer authorizes Seller to rely on these forecasts, and agrees that: (a) the first three weeks of each forecast are firm with respect to finished goods; and (b) the first six weeks of each forecast are firm with respect to raw material. For clarity, "firm" means that Buyer is committed to purchasing from Seller. If Buyer terminates for any reason: 1) Buyer must purchase the finished goods and raw material that is within the firm schedule at the time of termination; and 2) if any raw material remains that cannot be used by Seller for other requirements, Buyer must purchase the average six weeks of raw material requirements beyond the firm schedule.

Seller shall not be responsible for late deliveries or expedited freight costs for shipments to Buyer when the quantity is increased within the six week period prior to the delivery date.

### *2.2 Past Production Model Service Requirements*

Seller agrees to provide past production service parts for a period of up to fifteen years, or the numbers of years Seller provided production requirements to buyer, whichever is less, beyond the last date of shipment of production parts. Seller agrees to provide past production service parts for a period of three years at the production price, after which Seller may re-price to reflect cost realities and profit associated with producing service quantities utilizing production equipment. Seller will provide all reasonable documentation to support price changes for service production.

### **3. Termination**

Unless otherwise agreed to in writing by Seller, Seller rejects any expiration or duration dates stated in any purchase orders or any other document forwarded by Buyer to Seller, and reserves the right to terminate any contract after giving four months' notice.

### **4. Payment**

Unless specifically agreed to in writing by Seller, payment terms are net 30. Payment terms and billing are in effect from date of shipment from Seller's facilities.

### **5. Risk of Loss and Title**

Goods shall be delivered F.O.B. Seller's dock. Whether or not Seller prepays shipping charges, risk of loss passes to Buyer upon tender of the Goods to a carrier. Seller's breach of the agreement shall not affect the passing of the risk of loss to Buyer notwithstanding any provision of law to the contrary. Notwithstanding the transfer of the risk of loss, title to the Goods shall remain with Seller until Buyer pays for the Goods in full.

## **6. Technology, Innovation and Tooling**

Buyer agrees that all technology, methods of manufacture and tool design are the exclusive property of Seller. Any innovation, improvement or method developed by Seller whether patented or not shall remain the exclusive property of the Seller. Buyer shall not cause any proprietary or trade secret, tool design or method used by Seller to be disclosed to any party without the expressed written authorization of the Seller.

## **7. Warranty**

There are no express warranties other than those contained in this agreement and they are not assignable. Seller is manufacturing product for Buyer utilizing designs and specifications provided by Buyer. Seller warrants to Buyer that the Goods manufactured by Buyer shall be free from defects in materials and workmanship, excluding design, at the time of delivery, and shall repair or replace goods that fail solely due to manufacturing defects in materials and workmanship which are discovered within the period of 12 months from delivery date to Buyer. Buyer's available remedy for a breach of warranty is limited to repair and replacement only. SELLER DISCLAIMS ALL IMPLIED WARRANTIES AND SIMILAR OBLIGATIONS (OTHER THAN GOOD TITLE) INCLUDING BUT NOT LIMITED TO THOSE OF FITNESS FOR A PARTICULAR PURPOSE, WHETHER OTHERWISE ARISING BY LAW, CUSTOM, USAGE, TRADE PRACTICE, COURSE OF DEALING, OR COURSE OF PERFORMANCE. Buyer will hold Seller harmless for any claim of defect in design, fitness for a particular purpose or patent infringement and will indemnify Seller for any damages or loss and Seller's actual attorney fees and costs arising out of such claims of defect or patent infringement.

## **8. Governing Law and Forum Selection**

The Agreement shall be governed, construed and enforced under the laws of the State of Michigan including the Uniform Commercial Code. The U.N. Convention on the International Sales of Goods shall not apply. The parties stipulate to the convenience of Michigan courts in general, and the Macomb County Circuit Court in particular, as to all litigation. The Macomb County Circuit Court shall have exclusive jurisdiction over the parties and the claims arising under or related to the Agreement, unless waived in a writing signed by both parties.

## **9.0 Force Majeure.**

Any delay or failure of either Buyer or Seller to perform its obligations under this quotation, or subsequent order, will be excused if and to the extent that it is caused by an event or

occurrence beyond the reasonable control of the affected party and without its fault or negligence, including but not limited to: acts of God; restrictions, prohibitions, priorities or allocations imposed or actions taken by a governmental authority; embargoes; fires; explosions; natural disasters; riots; wars; terrorism, sabotage; inability to obtain power; or court injunction or order.

## **9. Limitations of Actions**

A proceeding by Buyer for breach or any other right against Seller arising from or in connection with these Terms cannot be filed or maintained by Buyer unless: (i) it is commenced within one year after the cause of action has accrued; (ii) Buyer has given timely written notice to Seller of the details of its claim and allowed Seller reasonable opportunity to cure and; (iii) Buyer pays all amounts due to Seller or deposits the unpaid portion of the purchase price with the tribunal pending final adjudication. An action for breach of warranty or other provision of the agreement shall accrue no later than shipment of the Goods to Buyer whether or not installation or other post shipment services are required under this agreement.

## **10. Remedies and Limitation of Seller's Liability**

Defective or non-conforming goods or parts thereof discovered within the 12 month warranty period shall be repaired, or replaced by Seller without any additional charge and shipped to Buyer, F.O.B. Seller's plant, for reinstallation by Buyer at its cost, subject to the Terms hereof. The warranty obligation of Seller is limited to the repair or replacement at Seller's plant of any part of the Goods which Buyer shall, within the warranty period, return to Seller, with transportation charges prepaid by Buyer, and which Seller shall determine upon examination to be defective or not in conformity with the express warranties contained herein. Goods cannot be defective or non-conforming if Seller cannot duplicate the alleged failure. If the alleged failure can be duplicated by Seller, Seller will discuss the potential causes with Buyer, and then determine whether the failure is due to a nonconformity or defect attributable to Seller. In lieu of repair or replacement, if Seller elects, Seller may, upon return of such goods and making a determination of nonconformity or defect, keep the goods and refund the purchase price. Seller may provide such repairs itself or through its third party contractors. UNDER NO CIRCUMSTANCES SHALL SELLER BE LIABLE FOR EXEMPLARY, PUNITIVE, SPECIAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES, INCLUDING BUT NOT LIMITED TO: LOSS PROFITS OR REVENUES; INCREASED COSTS; DAMAGE TO EQUIPMENT, TOOLING PREMISES OR WORK-IN-PROCESS; COST OF CAPITAL; COST OF PURCHASED POWER; SUBSTITUTE OR ADDITIONAL EQUIPMENT, FACILITIES OR SERVICES, PRODUCTION INTERRUPTION OR START-UP; OR THE CLAIMS OF THIRD PARTIES AGAINST BUYER FOR SUCH DAMAGES. Buyer's monetary damages are limited to the purchase price of the goods. These limitations shall be enforced regardless of whether Seller has defaulted in its warranty or other obligations or the limited warranty is held

to fail of its essential purpose. Buyer waives any causes of action or theories of liability including, but not limited to, those arising under contract, tort, strict liability, product liability statutes, or otherwise, except as specifically provided by the UCC as modified and limited herein. The replacement or repair of goods by Seller does not give rise to any new warranty, and the warranty period provided herein shall not be extended by the length of any period from the date the defective or non-conforming goods are received by Seller until the date the repaired or replacement goods are delivered to Buyer.

## **11. Indemnification**

Buyer shall indemnify Seller from any and all third party claims, damages and expenses (including actually attorney fees) under theories of tort, product liability, negligence (ordinary or gross), warranty, contract, statute or otherwise arising out of the use, storage, sale processing, or other disposition of the Goods, supplies or materials used in connection with the Goods, or parts manufactured with the Goods, if the action or inaction of Buyer or its employees, customers or agents, or Buyer's design specifications, were a cause of injuries or damages giving rise to claims against Seller.

## **12. Proprietary Information**

### *12.1 Buyer's Rights to Confidentiality*

Buyer acknowledges that any information disclosed to Seller has not and will not be considered by Buyer to be confidential or a trade secret unless clearly and conspicuously noted on the disclosure, or in some other writing delivered to Seller at or prior to the time of the disclosure. Buyer shall treat as confidential any business proposal from Seller and all technology which shall be made available, directly or indirectly to Buyer by Seller and by Seller's licensors, including but not limited to drawings, schematics, specifications, bills of material, test results, analysis, recommendations, models, and designs, and Buyer shall use such proposal and technology only to evaluate its business relationship with Seller and to enable Buyer to perform under the agreement. Buyer shall not disclose, or authorize or instruct Seller to disclose, any confidential or proprietary information of Seller to any third party that is not bound by contract to at least the same duty of confidentiality to Seller as is Buyer. In addition, only those employees and contractors of Buyer having a need-to-know and bound by contract by the same confidentiality provisions as Buyer may be given access to such technology. Buyer shall maintain, for Seller's inspection, written records which shall include the names and address of such employees and contractors granted such access. Buyer shall indemnify Seller from all expenses and damages related to the improper use or disclosure by Buyer or its employees and contractors. Business proposals and technology of Seller may be protected by patent,

copyright, trademark and / or other law. No license or right to business proposals or technology is granted to Buyer under any circumstances.

#### *12.2 Seller's Rights to Confidentiality*

All proposals, plans and other information furnished by Seller in bidding, negotiating and performing the agreement, are confidential and the property of Seller, whether or not marked "Confidential," and shall not be shown or disclosed to any other bidder, and shall not be shown or disclosed to any other bidder, and shall not be shown or disclosed to any other third party or used by Buyer except as may be necessary for selection or use of the goods.

#### *12.3 Patentable Features*

Any design, invention or other information developed by Seller in the performance of the agreement shall remain the property of Seller, whether or not Seller charges for the design, research, development, testing, or similar services. Any patentable features developed by Seller shall be the property of Seller and Seller shall be under no obligation to refrain from using in its business any information, manufacturing processes or unpatented disclosures which may pass to it from Buyer in the performance of the agreement except as provided in 13.1.

#### *12.4 Intellectual Property*

The term "Intellectual Property" shall include without limitation all of the following: (i) inventions, discoveries, patents, patent applications and all related continuations, divisional, reissue, utility model, design patents, applications and registrations thereof, certifications of invention; (ii) works, copyrights, registrations and application for registration thereof; (iii) computer software programs, data and documentation; (iv) trade secrets, confidential information, know-how, techniques, designs, prototypes, enhancements, improvements, work-in progress, research and development information; and (v) all other proprietary rights related to the foregoing. Any Intellectual Property owned or licensed by Seller and used by Seller in connection with the performance of its obligations hereunder shall remain the exclusive property of Seller and its licensors, as the case may be. Nothing in this agreement shall be deemed to grant Buyer any license or any other rights in such Intellectual Property.

### **13. Buyer's Property**

Buyer shall insure all materials, fixtures, tooling and other property delivered to Seller against all risks and waives subrogation in the event of loss of or damage to such property or personal injury arising from the use or storage of such property.

## **14. Breach and Cancellation**

*14.1 Default* If Buyer defaults in the performance of its obligations, if Buyer advises Seller that it will default in the performance of its obligations, or if any action is started by or against Buyer seeking the appointment of a trustee or receiver or the entry of an order for debtor's relief for Buyer, Seller may cease performance of its obligations, recover the goods in transit or delivered, disabled delivered goods, and otherwise enforce its remedies for Buyer's default.

*14.2 Compensation* Seller shall be awarded interest, consequential and incidental damages and costs (such as interest and actual attorney fees) in any proceeding to enforce its remedies and / or rights under the Terms in which it obtains relief or damages or which it prevails in the defense of any action by Buyer.

*14.3 Waiver* Seller's failure or delay in enforcement of any provision shall not constitute a waiver of a breach or of the provision itself.

## **15. Severability**

Any provision found to be unenforceable by a final unappealed order entered by the court or tribunal shall be severed from this agreement. Such severance shall be as narrow as possible and shall not affect the remainder of this agreement in such action and other actions, unless the court or tribunal shall also find, on the request of Seller that without such provision as originally written, the agreement is not likely to meet the reasonably commercial expectations of the parties and in such case, the court or tribunal shall enter an equitable judgment or rescission, termination or reformation of this agreement as necessary to reach an equitable result.

## **16. Assignment**

No right or interest in the agreement may be assigned by Buyer without the prior written consent of the Seller. Any assignment by Buyer shall be void and ineffective for all purposes unless Buyer obtains written consent from Seller.

## **17. Complete Integration**

This is a final, fully-integrated agreement that states the parties' entire agreement. The agreement replaces any prior or contemporaneous warranties, representations, assurances, promises or agreements regarding the same subjects discussed above. The agreement may only be supplemented or amended in a writing signed by both parties.

