

DEMGY PACIFIC, LLC TERMS & CONDITIONS OF SALE

1. **ACCEPTANCE.** No terms and conditions other than the terms and conditions contained herein shall be binding upon Demgy Pacific, LLC (Seller) unless accepted in writing by Seller. All terms and conditions contained in any other oral or written communication which are different from or in addition to the terms and conditions herein are hereby rejected and this document is the complete and exclusive statement of the terms, save for purchase orders submitted by Buyer for the purchase of the items contemplated herein which are consistent with this document and which are accepted by Seller.
2. **DURATION AND APPROVAL.** Quotations are only effective for sixty (60) days from the date of issuance of the quotation, unless waived by the Seller in writing. No order shall become a contract of sale binding the Seller until acknowledged and accepted by the Seller in writing.
3. **WARRANTY.** Unless otherwise provided herein, Seller warrants that all goods sold hereunder shall conform to those specifications provided by Buyer and accepted by Seller in writing (the "Warranty"). SELLER MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, AS TO MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR ANY OTHER MATTER WITH RESPECT TO THE GOODS. In the event that it is determined that the Warranty has been breached, the liability of Seller and the remedies available to Buyer will be limited to the repair or replacement of the product by Seller or the return of the purchase price of such product, as determined by Seller in its sole discretion. SUBJECT TO THE FOREGOING LIMITATIONS, SELLER'S LIABILITY FOR ANY OTHER CLAIM RELATING TO THE PRODUCTS, WHETHER BASED ON BREACH OF CONTRACT, NEGLIGENCE, PRODUCT LIABILITY OR OTHERWISE, SHALL NOT EXCEED THE PURCHASE PRICE OF THE PRODUCT. IN ADDITION, NEITHER PARTY SHALL BE LIABLE FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, INDIRECT OR CONSEQUENTIAL DAMAGES WHATSOEVER, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS SAVINGS, BUSINESS INTERRUPTION OR LOSS OF ANTICIPATED BENEFITS, ARISING OUT OF THE USE OR INABILITY TO USE THE SERVICES AND/OR PRODUCT(S), EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
4. **DELIVERIES; QUANTITIES.** Unless otherwise specified, Buyer will accept overruns or run shortages not to exceed 10% of quantity ordered. Delivery schedules will be computed from the date Buyer's order is approved or in the case of special items, from the date Seller received complete information necessary to proceed with design and manufacture of Goods. Quoted deliveries are based on workload at the time of quotation and may change at any time. Seller is not responsible for any damages growing out of or owing to any delay in delivery. Claims for damage, shortage or errors in shipping must be reported within two (2) days following delivery to Buyer. Buyer shall have thirty (30) days from the date Buyer receives any products to inspect such products and services for defects and nonconformance which are not due to damage, shortage or errors in shipping and notify Seller, in writing, of any defects, nonconformance or rejection of such products. After such thirty (30) day period, Buyer shall be deemed to have irrevocably accepted the products, if not previously accepted. Seller shall have no responsibility for cost of repair, replacement, or inspection of any parts by Buyer, unless Seller's written consent has been obtained. Material certifications will be submitted with part shipments if requested by Buyer.

Unless otherwise specified, all shipments are shipped F.O.B. Origin. The risk of loss of product shall pass to Buyer no later than Seller's delivery of product to a carrier at Seller's point.

5. **TAXES.** Any tax imposed by any present or future law on the sale of the articles and/or services covered hereby shall be added to the amount to be paid by Buyer therefore.
6. **CANCELLATION.** Orders are not subject to cancellation, modification or deferment of shipment unless agreed to in writing by Seller. Any cancellation, modification or deferment of shipment request must be submitted by Buyer in writing to Seller and will not be deemed accepted until Buyer has agreed to pay for all losses and costs of Seller.
7. **PART DATA.** Buyer is responsible for supplying electronic part files in a format acceptable to Seller, as well as dimensioned part prints for inspection purposes. If dimensioned part prints are not available, Buyer assumes responsibility for part inspection. Unless otherwise specified, industry accepted standard tolerances will be applied. Buyer represents and warrants that the products, their specifications and their sale or use do not and will not infringe any intellectual property rights of any third party, including, but not limited to, any trade secret, trademark, copyright or patent.
8. **DESIGN CHANGES.** Seller will not be bound to accept part design changes into its production unless it has given express written consent to such changes prior to any sampling of the part. Seller reserves the right to requote prices in the event of Buyer changes in design and/or specifications prior to acceptance for production. Buyer agrees to pay Seller for tooling modifications required by such changes at Seller's then prevailing shop rate. Part design changes suggested by Seller and accepted by Buyer shall be incorporated into Buyer's part drawings and Buyer shall have no responsibility as to fit or function of parts manufactured in accordance with the modified design.
9. **TOOLING.** Molds and tools will be stored by Seller for Buyer's exclusive use in accordance with Buyer's orders. Except for normal production maintenance, Buyer shall be exclusively responsible for repair or replacement of molds and fixtures.

Tooling is to be specially made and manufactured for the Buyer, and therefore, Demgy Pacific shall have the right to recover the full purchase price of the tooling if the Buyer rejects delivery, revokes acceptance, fails to make payment(s), repudiates or in any way breaches this agreement.

Title to the tool(s), die(s), molds(s), equipment and accessories, including all component parts thereof, which constitute the subject matter hereof, shall remain in the Seller until full payment by the Buyer of the purchase price to the Seller, and Seller shall have the right to recover possession of such of them as may be in the possession of the Buyer or its agents or sub-contractors. However, risk of loss caused by whatever reason shall pass to the Buyer upon delivery to the carrier. Upon such delivery, in case of loss, in whole or in part, the Buyer shall be obligated to the Seller for the entire balance of the purchase price.

Buyer hereby waives and agrees to hold harmless from any liability or claim, costs or judgements which might arise out of the storage of Buyer's molds and tools. It shall be the sole and exclusive duty of Buyer to procure and maintain such casualty or other insurance coverage as it deems necessary to protect its molds and tools and other materials while in the possession of Seller.

All inactive tooling will be stored for a minimum of two years. Before scrapping an inactive tool, Demgy Pacific will send a letter of scrap authorization to the buyer. If no reply is received from buyer within three months, tooling will be deemed obsolete and will be scrapped.

10. PRICE AND PAYMENT. Terms are net thirty (30) days unless otherwise noted. Seller reserves the right at any time to suspend, limit or otherwise modify the terms of such credit whenever, in Seller's opinion, Buyer's financial condition so warrants (including requiring Buyer to make cash payment or provide other security prior to or upon tender by Seller of delivery of products). A monthly charge of one and one half percent (1.5%) (or the highest rate allowed under applicable law) on all sums outstanding will be added to each past due amount and Seller shall be entitled to all costs of collection (including reasonable attorneys' fees). Seller shall have a possessory lien against Buyer tooling and/or molded parts and/or materials as security for the failure of Buyer to pay any balance due to Seller for any invoiced tooling, molded parts, or specially purchased materials.
11. WAIVER. The waiver by Seller of any term or condition of this agreement in any one instance, or the acceptance of a partial, single, or delayed payment or performance of any term or condition required in this agreement shall not operate as a continuing waiver or a waiver of any subsequent breach thereof.
12. MISCELLANEOUS. This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois (regardless of the laws that might be applicable under principles of conflicts of laws). The parties hereby irrevocably consent to the exclusive jurisdiction of the courts of the State of Illinois in Cook County, and the United States District Court for the Northern District of Illinois. Buyer acknowledges Seller's right to a molder's lien with respect to amounts due hereunder as provided by applicable law. Neither party shall be in default of its obligations hereunder to the extent that its performance is delayed or prevented by causes beyond its reasonable control, including but not limited to acts of God, civil disorders, acts of any civil or military authority, judicial action, terrorist acts, natural disasters, shortage of raw materials and strikes and other labor problems or shortages.