

## DRACHE USA, INC. GENERAL TERMS AND CONDITIONS OF SALE OF GOODS

Notwithstanding any other provision to the contrary, the following terms and conditions shall apply to any sale of Goods by DRACHE USA, INC. ("Seller" or the "Company"). Any purchase order covering the sale of Seller product shall be governed by these Terms and Conditions of Sales and other written provisions mutually agreed upon, if any. Any oral understandings are expressly excluded. Seller shall not be deemed to have waived these Terms and Conditions of Sale if it fails to object to provisions appearing on, incorporated by reference in, or attached to Customer's purchase order form which provisions are hereby expressly rejected. Customer's silence or acceptance or use of product constitutes its acceptance of these Terms and Conditions of Sale. No modification or addition to these Terms and Conditions of Sale shall be effective unless agreed in writing and signed by an authorized representative of Seller. Customer shall not be obligated to buy any Goods from Seller, and Seller shall not be obligated to sell any product to Customer. In the event Customer orders product from Seller and Seller delivers product to Customer, the Terms and Conditions contained in this document shall apply to all such sales and transactions.

### STANDARD TERMS AND CONDITIONS OF SALE

**1. Prices:** All quoted prices in effect on the purchase order date (unless quoted otherwise) or date of completion if shipment is deferred on Customer's instructions, are Free On Board (F.O.B.) point of shipment unless specified, and are subject to change without notice. Prices do not include sales, use, excise, or other taxes. Any such tax that Company is required by law to collect, will be added to the invoice price. All prices are based on the quantities quoted and any change in the quantities may affect the price. No discount will be allowed unless specifically agreed to in writing by Company. Until the purchase price and all other sums due pursuant hereto are paid in full, Customer grants Company and Company retains a security in the Goods described on the face hereof (the "Goods") and in all proceeds of the Goods.

**2. Delivery Date:** All scheduled delivery dates are estimates based on a normal workload and all deliveries are subject to change without liability to the Company. Delivery of ten percent more, or less, of the quantity of product ordered shall constitute fulfillment of the order. Unless expressly specified to the contrary, all shipping dates are based upon current availability of materials, present production schedules and prompt receipt of all necessary information. Seller will not be liable for any damages, loss, fault, expense or freight charges arising out of delays in shipment or other non-performance of this agreement caused by or imposed by (a) strikes, fires, disasters, riots, acts of God, (b) acts of Customer, (c) shortages of labor, fuel power, materials, supplies, transportation, or manufacturing facilities (d) government action, (e) subcontractor delay, or (f) an agreement to extend any date upon which any performance is due.

### 3. Limited Warranty:

A. Company warrants that it will convey good title to the Goods to be supplied hereunder and that such Goods will be free from material defects in material and workmanship except:

- i. when Goods have been modified following delivery and/or subject to improper handling, storage, installation, operation, or maintenance;
- ii. when an item is purchased by Company as a component part of the Goods, except to the extent to which such item or items are covered by the warranty, if any, of the original manufacturer;
- iii. when an item which is a component part of the product has been furnished by Customer; and
- iv. no warranty of a component part shall extend beyond the warranty period of the device in which such component part is incorporated.

B. Seller will transfer to Customer any product warranties and indemnities authorized by the manufacturer, including any transferable warranties and indemnities for intellectual property infringement. Seller warrants to Customer that Goods purchased hereunder will conform to the applicable manufacturer's specifications for such products and that any value-added work performed by Seller on such Goods will conform to applicable Customer's specifications. If Seller breaches this warranty, Customer's remedy is limited to (at Seller's election) (1) refund of Customer's purchase price for such Goods (without interest), (2) repair of such Goods, or (3) replacement of such Goods; provided that such Goods must be returned to Seller, along with acceptable evidence of purchase, within 20 days from date of delivery, transportation charges prepaid. No warranty will apply if the Goods have been subject to misuse, static discharge, neglect, accident or modification, or has been soldered. **SAVE AS EXPRESSLY PROVIDED IN THESE TERMS AND CONDITIONS, ALL IMPLIED WARRANTIES, TERMS AND CONDITIONS (WHETHER STATUTORY OR OTHERWISE) ARE EXCLUDED TO THE FULLEST EXTENT PERMITTED BY LAW. IN PARTICULAR, SELLER MAKES NO WARRANTY RESPECTING THE MERCHANTABILITY OF THE GOODS OR THEIR SUITABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS AND WARRANTIES AGAINST LATENT DEFECTS.**

**4. Limitation of Liability. CUSTOMER SHALL NOT BE ENTITLED TO, AND SELLER SHALL NOT BE LIABLE FOR, LOSS OF PROFITS OR REVENUE, PROMOTIONAL OR MANUFACTURING EXPENSES, OVERHEADS, BUSINESS INTERRUPTION COST, LOSS OF DATA, REMOVAL OR REINSTALLATION COSTS, INJURY TO REPUTATION OR LOSS OF CUSTOMERS, PUNITIVE DAMAGES, IPR INFRINGEMENT, LOSS OF CONTRACTS OR ORDERS OR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY NATURE.**

**CUSTOMER'S RECOVERY FROM SELLER FOR ANY CLAIM SHALL NOT EXCEED THE PURCHASE PRICE PAID FOR THE AFFECTED GOODS IRRESPECTIVE OF THE NATURE OF THE CLAIM WHETHER IN CONTRACT, TORT, WARRANTY, OR OTHERWISE. CUSTOMER WILL INDEMNIFY, DEFEND AND HOLD SELLER HARMLESS FROM ANY CLAIMS BASED ON (a) SELLER'S COMPLIANCE WITH CUSTOMER'S DESIGNS, SPECIFICATIONS, OR INSTRUCTIONS, (b) MODIFICATION OF ANY GOODS BY ANYONE OTHER THAN SELLER, or (c) USE IN COMBINATION WITH OTHER GOODS.**

**5. Indemnity:** Customer shall indemnify and hold Company harmless from and against all claims and causes of action for damages and expenses of every kind and character including costs of suit and reasonable attorney's fees asserted against Company, its agents, servants and employees arising out of or in any manner connected with the product or use of the product listed on the face hereof. This includes, but is not limited to, all claims and causes of action resulting from patent or trademark infringement, which are based, in whole or in part, from Goods manufactured to Customer's specifications.

**6. Terms of Payment:** Payment shall be made as directed by the Company and shall be due and payable as set forth on the face of Company's invoice. Service charges are payable on overdue invoices at an amount of 1.5% per month or the maximum legal rate, whichever is less. All orders and shipments shall at all times be subject to the approval of the Company's credit department. The Company reserves the right of declining to accept any order or make any shipment whenever, for any reason, there is doubt as to Customer's financial responsibility and Company shall not in such event be liable for breach or non-performance, in whole or part.

**7. Shipment:** Unless otherwise specified herein, all shipments are F.O.B. point of shipment Drache USA warehouse or designated third party warehouse. Company's responsibility terminates upon completion of Goods in good order and made available for delivery to a common carrier from Company's facility. The Goods, title thereto and any risk of loss, shall be considered transferred to the Customer upon availability for delivery to a common carrier. No claims for shortages, damages or failure in delivery, whether by common carrier, parcel post or otherwise, may be made by the Customer against the Company.

**8. Cancellations and Return of Goods:** No purchase order with respect to which Company has issued or indicated a sales confirmation may be cancelled or the manufacture of Goods there under suspended after the date of the sales confirmation without the sole and express written consent of Company. Upon cancellation or suspension at the request of the Customer, and acceptance by the Company, Customer shall reimburse the Company promptly for all expenditures incurred by Company, including, but not limited to, material used, labor and engineering services, a proportionate share of direct manufacturing, engineering, selling, general and administrative expenses, and profits which would have been earned under the purchase order. In addition, the Customer shall also reimburse Company for any extraordinary costs and other expenses attributable to such suspension or cancellation. No Goods shall be returned to Company (whether due to cancellation of a purchase order or for any other reason not the fault of the Company) without prior written authorization from Company. An inspection and restocking charge on all returned items will, at Company's option, be required. Any request to return Goods shall include, in addition to other information reasonably requested by Company, a full description of the Goods, the date of the purchase order and Company's invoice number.

**9. Invoice:** Where the Company does not issue either a quotation or a sales confirmation and ships Goods pursuant to Customer's purchase order, such sales shall be subject to these General Terms and Conditions. Any additional or different terms or conditions of sale set forth in the purchase order or other communication from Customer are objected to by Company and shall not be effective nor binding unless assented to in writing by an officer of the Company.

**10. Subsidiaries and Affiliates.** This order may be assigned to, performed by, and all rights hereunder against Customer may be enforced by, Company or by any one or more of the corporations subsidiary to or affiliated with Company, or in part by one or more of said subsidiary or affiliated corporation.

**11. Severability:** Each provision of these Term and Conditions is intended to be severable. If any term or provision hereof or any portion thereof, or the application thereof to any entity or circumstance shall be determined by a court of competent jurisdiction to be illegal or unenforceable for any reason whatsoever, such term, provision or application thereof shall be severed here from and shall not affect the validity of the remainder of these Terms and Conditions or the application of such term or provision to any other entity or circumstance.

**12. Default, Attorney's Fees:** Should Customer default on any obligation hereunder or become insolvent or make an assignment for the benefit of creditors or be subject to any reorganization or bankruptcy proceeding, or if Company shall deem it to be in its best interest to do so to protect it or the product against loss or damage or upon termination of this order for whatever cause or reason, then Company and its agents or representatives may, in addition to any other rights or remedies it may have under this order or at law or in equity, without notice or demand of liability or legal process, retain or otherwise repossess all or any part of the Goods thereof and/or items furnished by Company; and Customer expressly waives all further rights to possession of said product and all claims for injury suffered through or loss caused by retention or repossession. If Company shall retain/repossess the product or shall institute any proceeding to recover any moneys due hereunder or to recover possession of the product or any part thereof or to enforce any term or condition hereof, Customer shall pay Company's cost incurred therein including Company's attorney's fees and all costs of suit. Company's rights hereunder are cumulative and not alternative.

**13. Blanket Orders:** Blanket orders placed with the Company are for the term of one year unless alternative terms are agreed upon in writing by the seller. Any product not consumed by the buyer within the one year term will be shipped to the buyer and billed in accordance with original order payment terms.

**14. Force Majeure:** Company is not liable for failure to fulfill its obligations for any accepted order or for delays in delivery due to causes beyond Company's reasonable control including, but not limited to, acts of God, natural or artificial disaster, riot, war, strike, delay by carrier, shortage of product, acts or omissions of other parties, acts or omissions of civil or military authority, Government priorities, changes in law, material shortages, fire, strikes, floods, epidemics, quarantine restrictions, acts of terrorism, delays in transportation or inability to obtain labor, materials or Goods through its regular sources, which shall be considered as an event of force majeure excusing Company from performance and barring remedies for non-performance. In an event of force majeure condition, the Company's time for performance shall be extended for a period equal to the time lost as a consequence of the force majeure condition without subjecting Company to any liability or penalty. Company may, at its option, cancel the remaining performance, without any liability or penalty, by giving notice of such cancellation to the Customer.

**15. Patents.** Company agrees to indemnify Customer, its successors and assigns, against all judgments, decrees and cost (except where the Goods sold hereunder are machines, in which event, against court assessed damages and costs) resulting from infringement of any United States Letters Patent covering (a) standard commercial compositions offered for sale generally by Company at the time of acceptance by it of this order, or (b) standard commercial forms, shapes or construction supplied hereunder. Customer agrees, for the Goods delivered under this order, to indemnify Company, its successors and assigns, against all judgments, decrees and costs resulting from infringement of any United States Letter Patent to the extent that such infringement arises from designs, specifications or instructions furnished or expressly or implicitly required by Customer and different from the matters embraced by (a) and (b) of the preceding sentence. Neither party shall be entitled to indemnification under this clause as to any claim of infringement concerning which it does not give to the other party prompt notice in writing upon learning thereof and full opportunity, at the expense of such other party, to defend and dispose of such claim of infringement. The sale of the Goods covered by this order shall not grant to Customer any right or license of any kind under any patent owned or controlled by Company or under which Company is licensed, but the foregoing shall not be understood to limit in any way the right of Customer to use and sell such Goods, in the event that such Goods as sold hereunder are covered by any such patent.

**16. Equipment.**

A. Any equipment (including jigs, dies, moulds and tools) which Company constructs or acquires for use exclusively in the production of Goods for Customer shall be and remain Company's property and in Company's possession and control, and any charges by Company therefor shall be for the use of such equipment only. All such equipment will be used exclusively for the manufacture of Goods for Customer. When for two (2) consecutive years no Customer orders have been accepted by Company for goods to be made with any such equipment Company may make such use or disposition thereof as Company desires without liability to Customer.

B. Any materials or equipment owned or furnished by Customer will be handled and stored by Company with the same degree of care Company would employ in the handling and storage of its own property. The costs of maintenance and insurance of such property shall be borne by Customer. If Customer fails to remove such equipment or materials within 30 days of such notice, Drache may make such use of disposition of said equipment or materials as it desires without liability to Customer. Company shall be entitled to a right of retention of Customer's equipment and materials in any event as long as Customer has not duly fulfilled its contractual obligations in full.

**17. Miscellaneous:**

a. None of the Standard Terms and Conditions of Sale herein may be added to, modified, superseded or otherwise altered except by a written instrument, signed by an officer of the Company. Each shipment received by Customer from the Company shall be deemed to be upon the Terms and Conditions herein set forth, except as they may be added to, modified, superseded or otherwise modified as provided above, notwithstanding Customer's act of accepting or paying for the Goods or similar act of Customer.

b. Any typographical or clerical error herein is subject to correction.

c. This document and the sale of the Goods described herein shall be construed in accordance with the laws of the State of North Carolina. Venue for any disputes arising hereunder shall be the courts located in Guilford County, NC.

d. The submission of a quotation by Company in response to Customer's request does not constitute an expression of acceptance of any Term or Condition which may have been set forth in Customer's request. The terms and conditions of sale set forth herein are the only terms and conditions applicable to the sale of the Goods described on the face hereof notwithstanding prior or, post-sale, references.

e. Company will not be liable for any losses or delays resulting from fire, flood, storm, strikes or other circumstances beyond its control, which affect its operations or the operations of its suppliers.

f. Company shall have the right to charge a service fee for reissuing invoices due to unauthorized discounts taken by Customer.

*End*