

**TOTAL QUALITY MACHINING  
TERMS AND CONDITIONS OF PURCHASE  
(Effective September 6, 2011)**

Unless otherwise stated below, all purchase orders of Total Quality Machining (“Buyer”), including those transmitted electronically, are subject to the following terms and conditions of purchase (the “Terms”). As used in these Terms, “Seller” means the name of the vendor specified in the order. “Goods” and/or “Services” refer to the goods or services to be purchased by Buyer from Seller as described on the Order. The “Order” refers to Buyer’s purchase order, including these Terms and “Contract” refers to any contract formed pursuant to an Order.

**1. Agreement.** If the order is stated on its face to be an offer to purchase, but is in legal effect an acceptance of a prior offer by Seller, then Buyer’s acceptance is conditional upon Seller’s assent to all terms herein that are additional or different from the terms of Seller’s offer. If the order is stated on its face to be an acceptance of an offer by Seller, then Buyer’s acceptance is not conditional. By signing and returning a copy of the order or by shipping the goods or performing the services, Seller agrees to all of the terms stated herein. Buyer objects to any different or additional terms of Seller.

**2. Price and Payment.** Unless Buyer agrees otherwise, all prices stated in Buyer’s order are fixed and include all costs such as customs costs, insurance, and packaging costs (except for packaging provided by Buyer). Seller warrants that the prices for the goods are not less favorable than those currently extended to any other customer for the same or like goods under conditions similar to those specified in Buyer’s order. In the event Seller establishes or offers a lower price for the sale of such goods in such quantities, Seller agrees to reduce the prices hereof correspondingly. Unless Buyer agrees otherwise in writing, Buyer shall not be required to pay any sales, use, or other taxes arising because of Buyer’s purchase from Seller. Seller must pay any and all taxes collected from Buyer to the proper governing agencies. Such taxes, if any, shall be separately stated in Seller’s invoice. If Seller fails to pay any such tax, Seller will be responsible for the tax and all penalties and interest charges levied against Buyer due to the failure to pay the tax. Buyer shall not be required to pay any late charge, interest, finance charge or similar charge.

Regardless of FOB terms of sale, title to and risk of loss shall pass and acceptance of the goods shall take place when such goods have been delivered to Buyer’s specified destination and have passed Buyer’s inspection and tests. If Buyer pays any part of the purchase price of the goods before delivery to Buyer, (1) title, but not risk of loss, of the goods will pass to Seller upon payment, (2) Seller will have a security interest in the goods pending complete payment of the purchase price, (3) Seller will sign and deliver to Buyer appropriate financing statements to evidence that security interest, and (4) Seller may file a photocopy of these Terms and Conditions of Purchase as a financing statement.

Buyer’s payment of the purchase price does not indicate its acceptance of the goods or services. Unless other payment terms are agreed upon, payment shall generally be made within thirty (30) days or under 15<sup>th</sup> prox terms from the latest of (a) the scheduled date for delivery or performance, (b) the actual date of delivery of conforming goods or performance of conforming services, (c) the date of Seller’s invoice, and, (d) in the case of capital equipment, completion of Buyer’s final inspection and acceptance after installation, and acceptance after installation.

**3. Delivery.** Seller shall deliver goods to the place specified in Buyer’s order in accordance with the terms of the Uniform Commercial Code. Time of delivery or performance is of the essence, and Buyer’s stated delivery or performance date cannot be extended for any reason, including delays in manufacture or shipment that Seller cannot control, except with Buyer’s written approval. Seller shall immediately notify Buyer in writing if Seller is unable to comply with Buyer’s stated delivery or performance date. If Buyer is responsible for clearing goods through customs, Seller shall provide all necessary documents on time and shall indemnify Buyer for all costs and expenses resulting from Seller’s delay.

**4. Excess, Installment, and Early Deliveries.** If Seller delivers more goods than Buyer ordered, Buyer shall not have to pay for the excess. Unless Buyer agrees otherwise in writing, Seller shall deliver all of

the goods in a single delivery and not in installments. Buyer's acceptance of a delivery containing less than the required quantity shall not relieve Seller of its obligation to deliver the balance of the ordered goods at the price and on the other terms specified in the order. If Seller delivers the goods more than ten (10) working days before the scheduled delivery date, Buyer may, at Seller's expense and risk, either store them or return them to Seller. Buyer's acceptance of an early delivery shall not change the payment terms.

**5. Warranties.** Seller warrants that the goods will be merchantable, of good material and workmanship, and fit for the purposes for which Buyer intends them and that any services covered by the order will be of good, workmanlike quality, free from faults and defects. Seller also warrants that the goods and services conform to any samples, drawings, specifications, or standards that are referred to on the face of the order or that Buyer has otherwise specified or to which Buyer has agreed. Seller warrants that the goods, and their manufacture and sale, will comply with all applicable federal, state and/or local laws and regulations, including, without limitation, the Fair Labor Standards Act. Seller warrants that the goods shall be free from all liens and encumbrances and shall not infringe upon or violate any patent, copyright, trademark, tradename or, without limitation, any other rights belonging to others. If Buyer requests it, Seller shall give Buyer certificates of compliance with applicable laws and regulations. Seller also warrants and agrees that Seller has not offered or given, and will not offer or give, to any of Buyer's employees any gratuity or thing of value. Seller's warranties extend to future performance of the goods and services and survive inspection, tests, acceptance, and payment.

**6. Claims.** Seller shall indemnify and hold Buyer harmless (and defend Buyer if Buyer requests) as to any claims, liabilities, and expenses brought against Buyer or incurred by Buyer because of (a) any breach by Seller or any of its warranties to, or agreements with Buyer, (b) any claim of unfair competition or patent, trademark, or copyright infringement relating to the goods or any services, or (c) any death, injury, or damage to any person or property alleged to have been caused by the goods or services.

**7. Inspection.** Buyer's employees may enter Seller's premises at any reasonable time to inspect and test the goods, Seller's process of manufacture of them, and any materials, components, or work-in-process that is to be used in their manufacture. Upon Buyer's request, Seller shall provide Buyer with specific information, in such detail as Buyer may reasonably request, as to the location and method of manufacturing or assembly of goods. Seller shall provide Buyer with written notice of any change in the location or manufacturing or assembly of goods and Seller shall be fully responsible for all costs and/or delays resulting from such changes.

**8. Shut Down.** If a material part of Buyer's business is shut down, permanently or temporarily, because of anything Buyer cannot reasonably control (such as casualty or labor dispute or disruption), Buyer may cancel this order without liability except as to conforming goods delivered to Buyer or conforming services performed for Buyer before Buyer cancels.

**9. Changes.** Buyer may at any time, by written notice to Seller, change the (a) specifications of the goods or services, (b) time and place of delivery or performance, (c) method of packing or shipment, and/or (d) quantity of the goods or extent of the services. If this causes a change in Seller's cost or time of performance, an equitable adjustment shall be made in the price or time for delivery or performance, or both, if Seller gives Buyer a written request for an adjustment within 20 days after Buyer notifies Seller of the change.

**10. Termination at Buyer's Option.** Buyer may terminate any contract formed pursuant to an Order, in whole or in part, at any time by written notice to Seller stating the extent and effective date of termination. Buyer reserves the right, by written notice, to cancel any order without liability to Buyer in the event of (1) insolvency of Seller; (2) filing of a voluntary petition of bankruptcy by Seller; (3) filing of an involuntary petition to have Seller declared bankrupt; (4) the appointment of a receiver or trustee for Seller. Upon receipt thereof, Seller shall, unless otherwise directed by Buyer, stop work and acquisition of materials in connection with the order and protect property in Seller's possession in which Buyer has or may acquire an interest. Not later than thirty (30) days from the effective date of termination, Seller may submit to Buyer its claim, if any, for reasonable compensation for termination. Buyer shall have the right to audit and

inspect Seller's books, records, and any other documents relating to any such termination claim. If the parties cannot agree within a reasonable time upon the amount of fair compensation for the termination, Buyer shall pay to Seller the following amounts without duplication: (a) the purchase order price for goods or services completed in accordance with the provisions of the purchase order but not previously paid for, and (b) the actual costs incurred by Seller and properly allocable or apportionable under recognized cost accounting practices to the terminated portion of the order, but not to exceed the contract price for the terminated portion of the order, less any other payments made by the Buyer in respect thereof. These amounts shall be payable upon delivery to Buyer of any completed goods. Termination under this paragraph shall not impair Seller's obligations under Paragraphs 5, 6, 11, 12, 13, and 19 of these Terms.

**11. Buyer's Rights.** Buyer may, at its option, (a) return non-conforming goods to Seller, at Seller's risk and expense, and require Seller either to give Buyer full credit against the price, or promptly to repair or replace the goods at Seller's risk and expense; or (b) retain the goods and set-off losses against any amount due Seller; or repair or replace the goods and charge Seller with the expense.

If at any time Seller defaults in the performance of any of Seller's obligations to Buyer, or Seller repudiates any contract formed pursuant to the order, then Buyer may terminate any contract formed pursuant to the order, in whole or in part, and Seller, to the extent demanded by Buyer, shall immediately deliver to Buyer all finished and unfinished, work-in-process, and raw materials acquired for use in the manufacture or processing of the goods. Payment of part or all of the purchase price by Buyer shall not be a precondition to Seller's obligation to make the delivery. After Buyer's damages for Seller's breach or repudiation (including, without limitation, any cost of "cover" or of completing the manufacture or processing of the goods) are determined, Buyer shall pay to Seller any excess of the purchase price over Buyer's damages. Termination by Buyer under this paragraph will not impair Seller's obligations under Paragraphs 5, 6, 12, 13, and 18 of these Terms.

In addition to Buyer's rights set out in these Terms, Buyer has all of the other rights and remedies that the law gives to buyers, including the right to recover incidental and consequential damages resulting from any breach by Seller. Buyer shall not lose any right for lack of exercise. Buyer shall have the full period of statute of limitations to bring any action arising out of Buyer's agreement with Seller. Seller agrees that Buyer shall have at least two (2) years from the time it discovers a breach to notify Seller of the breach.

**12. Furnished Items.** Any drawings, specifications, and other information and any tooling or other property that Buyer may furnish to, or acquire from Seller in connection with Seller's manufacture of the goods or performance of the services ("Furnished Items") remain Buyer's property. Seller shall maintain in good condition any Furnished Items and identify the Furnished Items as property of Buyer; not commingle the Furnished Items with property of Seller or third parties; allow Buyer to inspect and examine the Furnished Items at any time; and return the Furnished Items to Buyer immediately after the manufacture of the goods or performance of the service ordered. All Furnished Items are confidential, and Seller shall not furnish any of the Furnished Items, or disclose their contents, to any third party (including any of its suppliers) or use any Furnished Items in the manufacture or sale of products to, or in the performance of services for, any third party without Buyer's prior written consent.

**13. Insurance.** Seller shall maintain, at Seller's own expense, insurance coverage (including but not limited to, Workers Compensation, Employers's Liability, Automobile Liability, Commercial General Liability) that will fully protect both Seller and Buyer from any and all claims and liabilities of any kind or nature for property damage, personal injury, death, and economic damage, to any person, that shall arise from the goods or their use for the performance of the services or any activities connected therewith. If services are covered by an order, Seller shall maintain employee's liability and compensation insurance that will protect Buyer from any and all claims and liabilities under any applicable worker's compensation or occupational safety and health laws. Such policies shall be occurrence policies, not claims-made policies. All insurance required by this paragraph shall be in such amounts and coverages, and shall be issued by such insurers, as to be satisfactory to Buyer. Upon request by Buyer at any time, Seller shall furnish Buyer with certificates evidencing this Insurance. Buyer shall be named as an additional insured on an endorsement acceptable to Buyer.

14. **Indemnity.** Seller agrees to protect, defend, indemnify and hold harmless Buyer, and its Related Parties, from and against any and all claims, actions, demands, liabilities, losses, cost and expense, including attorney fees, (1) arising out of any actual or alleged injury to or death of any person, or damage to any property, or any other damage to any property, or any other damage or loss, by whomsoever suffered, including Seller's or Buyer's agents or employees, resulting or claimed to result, directly or indirectly, from the purchase, shipment, storage, delivery, sale, use, servicing or other handling of the goods sold hereunder, without regard to whether such loss, damage, injury or liability is contributed to or caused by negligence of Buyer or its agents or employees; or (2) arising out of Seller's violation of federal, State, or local statute, regulation, or requirement related to any authorization of Seller's personnel to work in the United States; or (3) resulting from the actual or alleged breach of any of Seller's warranties or other covenants herein; or (4) resulting from any actual or alleged trademark, patent or copyright infringement or trade secret misappropriation related to the goods sold hereunder.

15. **Work on Premises.** If performance of services by Seller involves operations by its employees or subcontractors on the premises of Buyer, (a) Seller shall at all times enforce strict discipline and maintain good order among all persons engaged in the service and shall cause them to comply with all fire prevention and safety rules and regulations in force at the premises, and (b) Seller shall keep the premises free from accumulation of waste materials and rubbish caused by performance of the services and upon completion shall promptly remove all of Seller's equipment and surplus materials. Seller agrees to fully comply with the requirements of the Immigration Reform and Control Act and all related authority, including but not limited to required Form I-9 completion, re-verification and retention. Seller acknowledges and understands that no employment relationship has been established between its personnel and Buyer. Seller agrees to fully comply with all rules, regulations and determinations of OSHA and MIOSHA insofar as they pertain to Seller's labor or services to be rendered to Buyer.

16. **Services.** If an order covers services: (a) Seller is an independent contractor, and neither Seller nor any of Seller's employees or agents shall be considered agents or employees of Buyer, and (b) Seller shall furnish, at Seller's expense, all labor, materials, equipment, transportation, facilities, and other items necessary to perform the services.

17. **Material Safety Data Sheets.** Upon the initial purchase of goods containing hazardous materials (as defined by federal and/or state law), Seller shall send a Material Safety Data Sheet ("MSDS") to Buyer. The MSDS must be on a form approved by the Occupational Safety and Health Administration. Seller shall also send Buyer all revisions to any MSDS previously supplied.

18. **Other Terms.** Seller shall not have and hereby waives, any security interest in or lien (including any statutory lien) upon any Furnished Items or the goods. Seller may not delegate any of its obligations under an order without Buyer's written consent. Buyer may deduct from, and set off against, any amounts at any time owing to Seller under an order any damages or other amounts then owing to Buyer by Seller. If at any time Buyer has reasonable grounds for insecurity as to Seller's performance, Seller shall provide adequate assurance of performance within ten (10) days after demand by Buyer, which is agreed to be a reasonable time.

19. **Applicable Law.** The Order and the Contract shall be governed by, and interpreted according to, Michigan law. Any federal or state court in Muskegon County or Kent County, Michigan, at Buyer's choice, may handle an action based upon or arising out of the Order or the Contract, and Seller irrevocably consents that the court shall have personal jurisdiction over Seller and waives an objection that the court is an inconvenient forum.

20. **Complete Agreement.** Seller has not made any promises or representations to Buyer, and Buyer has not made any to Seller, that are not in these Terms, the Order or Contract. Any change in, or waiver of, any provisions of these Terms, the Order, or Contract must be in writing, signed by Buyer.