

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

The following Terms and Conditions of Sale (the "Terms") supersede any other terms indicated on any other documents including but not limited to, catalogs (printed or electronic), transactional documents (invoices, acknowledgements, packing lists) and any other promotional literature. Unless otherwise stated below, the Terms apply to all sales of products by Total Quality Machining (the "Seller"). Such sales are made subject to the following Terms. The item or items being sold are referred to below as "goods" or "products," and the customer purchasing the goods or products is referred to as "Buyer."

1. **Agreement.** By placement of an order, and/or by acceptance of goods ordered, Buyer signifies agreement that no terms, conditions or warranties other than those stated in these Terms, and no agreement or understanding, oral or written, in any way purporting to modify these Terms, conditions and/or warranties, whether contained in Buyer's purchase order or elsewhere, shall be binding on Seller, unless made in writing and signed by an appropriate officer of Seller. Seller expressly objects to any terms inconsistent with those expressly stated herein.

2. **Pricing.** Published prices are subject to change without notice. Prices on scheduled shipments will be based upon the quantity released for each shipment. Quantity prices apply to the quantity of purchases of each specific part number. All quotes are valid for thirty (30) days. Published prices do not include taxes, handling or shipping charges that may apply. After any artwork, samples, or other designs or specifications have been approved by Buyer, any changes will be solely Buyer's expense.

3. **Payment Terms.** Unless Seller agrees otherwise in writing, businesses with approved credit ratings must make payment in full of the price within thirty (30) days after shipment or pick up. No early payment discounts or cash discounts apply. Visa, MasterCard, Discover and American Express are accepted. For all other Buyers payment is cash on delivery ("C.O.D.") without discount until proper credit ratings have been established. In the case of any special order or custom product, Seller may, at its discretion, require a deposit in an amount deemed sufficient by the Seller prior to the product being ordered. Any payment not made when due will accrue a late charge equal to one and one-half percent (1½%) per month. All checks that are returned for non-sufficient funds may be subject to a \$25.00 handling fee and will be presented to the bank a second time. Past due accounts may be placed on hold, causing shipments to be delayed, until account is current. At Seller's discretion, accounts which are past due over sixty (60) days may be subject to third party collection and forfeiture of open account privileges. Buyer shall pay Seller all costs incurred to collect any past due account from Buyer, including, but not limited to, all court costs and attorney's fees to the maximum extent permitted by law. Payment must be made at Seller's office located at 2265 Black Creek Road, Muskegon, Michigan 49444. All prices are in U.S. Dollars and payment should be made in U.S. Dollars. Any exchange rate charges will be billed to Buyer.

4. **Delivery and Risk of Loss.** Shipping dates are estimates only. Time is not of the essence. Seller may ship all the goods at one time or in installments from time to time. Seller will have the right to determine the method of shipment and routing of the goods unless otherwise mutually agreed upon by Buyer and Seller.

DOMESTIC ORDERS. Prices are quoted FOB Origin Muskegon, Michigan and risk of loss passes to Buyer upon delivery to the shipper. Shipping and handling charges are prepaid and added to commercial invoice. Orders may be shipped collect with customer's preferred carrier. All C.O.D. shipments will include a C.O.D. fee on each package in addition to the shipping and handling charge. Shipments will be insured according to value at Seller's discretion.

CANADIAN ORDERS. Prices are quoted EXW Origin Muskegon, Michigan and risk of loss passes to Buyer upon delivery to the shipper according to Incoterms 1990 in U.S. Dollars. Shipping and handling charges are prepaid and added to commercial invoice. Orders may be shipped collect with

customer's preferred carrier. Payments must be made in U.S. Dollars. Buyer is responsible for all brokerage fees, taxes and duties. No minimum purchase amount exists for Canadian orders.

INTERNATIONAL ORDERS. International orders are defined as requiring both a "bill to" and "ship to" address outside the United States, excluding Canada and Puerto Rico. Minimum purchase order amount is \$25.00. Orders under \$500.00 will include a \$25.00 international processing fee. Prices are quoted EXW Origin Muskegon, Michigan and risk of loss passes to Buyer upon delivery to the shipper according to Incoterms 1990 in U.S. Dollars. Shipping and handling charges are prepaid and added to commercial invoice. Orders may be shipped collect with customer's preferred carrier. Payments must be made in U.S. Dollars in advance. Buyer is responsible for all brokerage fees, taxes and duties.

5. Taxes, Brokerage Fees, Duties. Seller's price does not include any privilege, occupation, personal property, value-added, sales, excise, use or other taxes, brokerage fees or duties and Buyer will be responsible for all such taxes, brokerage fees or duties, whether or not invoiced by Seller. Buyer is responsible for all applicable taxes or for providing a valid sales tax exemption certificate.

6. Unavoidable Delay. Seller shall not be responsible for any delay in or impairment of performance resulting in whole or in part from any force majeure event, including but not limited to Acts of God, labor disruptions, shortages, inability to procure product, supplies or raw materials, severe weather conditions, or any other circumstances or cause beyond the control of Seller in the conduct of its business. If Seller is unable to finish and ship the goods to Buyer on time due to any of the preceding situations, the estimated delivery time will be extended accordingly, and Seller will not be liable to Buyer for any damages caused by the delay

7. Returns. All standard catalog items maintained in our warehouse are shipped on a thirty (30) day trial basis. As long as the product is in new and resalable condition, as determined by Seller in its sole discretion, at the time of authorized return, Buyer may return the merchandise, freight prepaid, and Buyer will be issued a credit upon Seller's receipt of the same. Return items purchased by check may not be refunded for at least 14 days from original receipt allowing the original check to clear the bank. Return items purchased by credit card will be issued to the original credit card presented at the time purchase according to return policy. Returned items purchased on account will be credited to customer account. If there is an outstanding credit, the customer will need to contact Seller for refund. If credit is not applied or refund requested within one (1) year, any balance remaining will be subject to cancellation and Seller shall have no further liability except as required by applicable law.

All standard catalog item returns of products maintained in our warehouse in new and resalable condition past the thirty (30) day trial time period are subject to a minimum ten percent (10%) restocking charge. Custom made and/or reworked items are subject to a +/- ten percent (10%) quantity shipping variance unless quoted otherwise. Once custom made or reworked items are in process, the Order may not be cancelled. Special order or modified items may be returned only at the sole discretion of Seller who is permitted a reasonable time to inspect such items to determine whether it will accept the attempted return. Any returned special order or modified items accepted by Seller will be subject to a restocking charge which shall not be less than ten percent (10%), as determined from time to time by Seller. Custom made products are not returnable. All defective merchandise returns will be subject to inspection upon return to Seller.

Returns must be pre-approved by calling the Seller to obtain a Return Authorization Number. All returns must be made via United Parcel Service (UPS) with the shipping charges prepaid in full and with reference to Seller's shipper, invoice and return authorization number. In the case of returns from a foreign country, including Canada, Seller will not be responsible for any brokerage fees with may be incurred regardless of the reason for the return. Any discrepancies in Buyer's order (shortages, damages, wrong parts, etc...) must be brought to Seller's attention within thirty (30) days of receipt by Buyer.

8. LIMITED WARRANTY. Goods sold are warranted by Seller only to Buyers for resale, for use in business or original equipment manufacture against defect in workmanship or materials under normal use for six (6) months after date of original delivery ("Limited Warranty"). Seller, in its sole discretion, will

determine whether any product is defective. The acceptance by Seller of any product returned is not an admission that the product is defective, and if Seller determines the product is not covered by the Limited Warranty, the product will be returned to the Buyer at Buyer's expense. Only if the product is destroyed as a result of its defect or any defect in any product covered by the Limited Warranty and Seller is reasonably satisfied that the product was defective at the time of sale will Buyer be excused from providing Seller with the product at issue. In the event Seller determines any product to be defective, Buyer's **EXCLUSIVE REMEDY** will be, at Seller's option, the repair, replacement or return of the purchase price of the product.

Further exclusions from the Limited Warranty are as follows:

- a. Any defects that appear after the warranty period are excluded from this Limited Warranty.
- b. Seller makes no warranty on products for which another manufacturer or seller furnishes a separate warranty – such products are sold **AS IS**.
- c. Seller makes no warranty with respect to designs, logos, trademarks and/or other specifications provided by the Buyer in regards to infringement or any other claims.
- d. The Limited Warranty does not apply to defects caused by cleaning, repairs, lubrication, calibrations, maintenance or replacements because of (a) improper repairs, misapplication, abuse, improper installation, improper operation, unauthorized alteration or modification, misuse or lack of proper maintenance by the Buyer, its employees and agents or (b) abnormal conditions of temperature, moisture, dirt, corrosive matter, and similar conditions.
- e. There will be no obligation to repair or replace products that by their nature are expendable.
- f. The Limited Warranty does not apply to damage caused by weather or disaster such as fire, wind, or flood, or an unsuitable installation location, or defects from labor or materials furnished by persons other than Seller, its employees and agents.
- g. Seller neither assumes nor authorizes any person to assume for it any other liability in connection with the sale of products.
- h. Repairs or replacements under this Limited Warranty are warranted as described and limited in this Limited Warranty but only for the remainder of the original warranty period.
- i. The Limited Warranty is effective only if and so long as the Buyer complies with all payment obligations to Seller. Failure to meet payment obligations voids all warranties and does not extend the Limited Warranty period when payment is made.
- j. Seller assumes no obligation or liability for advice or assistance given or results obtained in connection with goods sold hereunder. All such advice or assistance is given and accepted solely at the Buyer's risk. Any decision as to use or installation of goods hereunder is that of the Buyer.
- k. **No Warranty to Consumers.** Seller makes no warranties to those defined as "Consumers" in the Magnuson-Moss Warranty-Federal Trade Commission Improvement Act. Products may be warranted to "Consumers" by the manufacturer of the product. Copies of such manufacturers' warranties may be supplied with the product, or are available from the manufacturer. Seller may also supply manufacturers' sales literature to customers. Seller, however, assumes no liability for the content of such manufacturers' warranties or literature.
- l. **Limitation of Liability.** Buyer's sole and exclusive remedy against Seller will be for the repair, replacement or return of purchase price of the defective products(s) as provided above. No other remedy (including, but not limited to, incidental or consequential damages for lost profits, lost sales, injury to persons or property, or any other incidental or consequential loss) will be available to Buyer. Seller's liability to Buyer will not exceed the purchase price under any circumstances.
- m. To the best of Seller's knowledge, manufacturers of products sold by Seller comply with Federal Occupational Safety and Health Act ("OSHA") design standards of any items shown in this catalog as meeting specific OSHA standards. Actual use, however, determines whether all OSHA requirements have been met; thus, the ultimate responsibility for OSHA compliance rests with the end user. Accordingly, Seller does not warrant or represent that merchandise sold complies with any law, including, but not limited to, OSHA, the Walsh-Healey Public Contracts Act, and/or regulations promulgated there under.
- n. **THIS WARRANTY IS IN LIEU OF ANY OTHER WARRANTY, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

9. **Advice.** Seller assumes no obligation or liability for advice or assistance given or results obtained in connection with any goods sold. All such advice or assistance if given and accepted at Buyer's risk. Any decision as to the use or installation of Product sold hereunder is that of the Buyer.

10. **Solvency and Security Interest.** Buyer represents that Buyer is solvent. Seller reserves the right by written notice to cancel any order or require full or partial payment or adequate assurance of performance from Buyer without liability to Seller in the event of: (i) Buyer's insolvency, (ii) the filing of a voluntary petition in bankruptcy by Buyer, (iii) the appointment of a receiver or trustee for Buyer, or (iv) the execution by Buyer of an assignment for the benefit of creditors. Seller reserves the right to suspend its performance until payment or adequate assurance of performance has been received. Seller also reserves the right to cancel Buyer's credit at any time for any reason. Seller retains a security interest in the goods to secure payment of the price and all other indebtedness now and in the future owing by Buyer to Seller. At Seller's request, Buyer will sign and deliver to Seller a financing statement evidencing this security interest.

11. **Permits and Compliance.** Seller is not responsible for obtaining any permits, inspections or licenses required for installation or operation of the goods. Seller makes no representation that the goods will conform to any federal, state or local laws, ordinances, regulations, codes, or standards.

12. **Safety Features.** Buyer will install and operate the goods properly and according to Seller's operating instructions and will not remove or change any safety devices, warnings or operating instructions placed on the goods by the Seller.

13. **Components of Another Product.** If any of the goods constitute parts or components to be incorporated or installed in a product manufactured or assembled by or for Buyer: (1) Buyer will obtain, or cause the end-user of the product to obtain, all permits, inspections and licenses required for installation or operation of the product, (2) Buyer will cause the product to conform to all applicable laws, ordinances, regulations, codes and standards and (3) Buyer will place on the product all safety devices and warnings, and will furnish to its buyer all operating instructions, that will be necessary or desirable to prevent any death, personal injury or property damage from being caused by any use or operation of the product.

14. **Indemnity.** Buyer will indemnify and hold harmless Seller from and against all damages, losses, claims, and expenses, including attorney fees, incurred by Seller as a result of: (a) incorporation of the product into another product, (b) any breach by Buyer of any of its obligations under these terms of sale or (c) any claimed unfair competition or patent, trademark or copyright infringement or any other claim resulting from Seller's manufacture of goods to Buyer's specifications.

15. **Seller's Rights.** Seller has all rights and remedies given to sellers by applicable law, and Seller's rights and remedies are cumulative and may be exercised from time to time. No waiver by Seller of any right on one occasion will constitute a waiver of any future exercise of that right.

16. **Time for Bringing Action.** Any action by Buyer against Seller for breach of these Terms, the Order, or Contract or for any other claim arising out of or relating to the goods or their design, manufacture, sale or delivery must be brought within one (1) year after the cause of action accrues.

17. **Applicable Law.** This agreement between Seller and Buyer will be considered to have been made in the State of Michigan, and it will be governed by and interpreted according to Michigan law. Any action arising out of or relating to this agreement may be brought in any state court in Muskegon, Michigan or federal court in Grand Rapids, Michigan, having jurisdiction of the subject matter, and Buyer irrevocably consents that any such court will have personal jurisdiction over Buyer and waives any objection that the court is an inconvenient forum.

18. **Federal Government Buyers.** While all products listed on GSA Advantage!® meet the requirements of the Trade Agreements Act, as implemented by FAR Part 25, other products may not meet these requirements. Seller will advise Buyer properly identifying themselves as Authorized Schedule Purchasers at the time of purchase whether an item is "TAA-compliant". Buyers seeking to purchase non-TAA items

will be given the opportunity to purchase an alternative item, or to purchase the non-TAA item through an “open market” purchase instead of through the schedule. Federal Buyers are advised the open market purchases are NOT GSA Schedule purchases. By purchasing any item on the open market, Buyer represents that it has authority to make such purchase and has complied with all applicable procurement regulations.

19. **Severability.** If any portion of these Terms is found to be invalid or unenforceable by a court of competent jurisdiction, the applicable term(s) shall be redefined, or a new enforceable term provided, such that the intent of Seller and Buyer in agreeing to the provisions of these Terms and Conditions shall be enforceable to the fullest extent of the applicable laws.

20. **Complete Agreement; Amendment.** No terms or conditions, other than those stated herein and no agreement or understanding, oral or written in any way purporting to modify these terms and conditions, whether contained in Buyer's purchase order, Seller's acknowledgement, shipping forms, or elsewhere, will be binding on Seller unless made in writing and signed by an officer of the Company. Trade usage will neither be applicable or relevant to this agreement, nor be used in any manner whatsoever to explain, qualify or supplement any of the provisions herein.