

**FLUXTROL INCORPORATED**  
**TERMS AND CONDITIONS OF SALE**

**1.Offer.** These Terms and Conditions apply to all goods and/or services (“Products”) sold and/or performed by Fluxtrol Incorporated (“Seller”) and are incorporated into each and every Quotation issued by Seller. The Quotation constitutes Seller’s offer to the purchaser identified in the Quotation (“Purchaser”) to sell the Products identified in the Quotation and otherwise to enter into the agreement the Quotation describes and the Quotation shall be the complete and exclusive statement of such offer and agreement.

**2.Acceptance.** A contract is formed when Purchaser accepts the Quotation by written acknowledgement or by the issuance to Seller of a purchase order or other acceptance document for the Products. Acceptance is expressly limited to these Terms and Conditions and the terms and conditions expressly referenced on the face of the Quotation. Notwithstanding any contrary provision in Purchaser’s purchase order or other acceptance document, delivery of Products or commencement of production by Seller shall not constitute acceptance of Purchaser’s terms and conditions to the extent any such terms or conditions are inconsistent with or in addition to the terms and conditions contained in the Quotation.

**3.Adjustments.** Seller reserves the right to equitably adjust the price and delivery terms of the Quotation in the event of, and as a condition to, any changes in the specifications or other requirements for Products, the scope of any work covered by the Quotation or any related purchase order or the estimated annual volumes of Products.

**4.Shipping and Delivery.** All sales of Products are F.O.B. Seller’s plant unless otherwise specified in the Quotation. Responsibility of Seller shall cease upon delivery to and receipt of the Products by a common carrier at which point Purchaser will bear all risk of loss for the Products. Premium shipping expenses and/or other related expenses necessary to meet Purchaser’s accelerated delivery schedules shall be the responsibility of Purchaser. Deliveries of orders placed by Purchaser may be changed, deferred or canceled only upon specific agreement in writing by Seller and Seller may condition such agreement upon Purchaser’s assumption of liability and payment to Seller for: (a) all completed work at the order price; (b) a sum equal to the costs of work in process including costs accrued for labor and material, (c) any amount for which Seller is liable by reason of commitments made by Seller to its suppliers, and (d) any other loss, cost or expense of Seller as a result of such change, deferment or cancellation.

**5.Payment Terms.** Unless otherwise expressly stated in the Quotation, all accounts are payable in U.S. currency thirty (30) days from the date of Seller’s invoice. Credit and delivery of Products shall be subject to Seller’s approval. In the event Purchaser defaults under its payment terms or Seller otherwise deems itself insecure for any reason, Seller may, without notice, cancel all credit available to Purchaser, require that any invoices outstanding be immediately due and payable in full, and refuse to make any further credit advances. Purchaser is prohibited from and shall not setoff against or recoup from any invoiced amounts due or to become due from Purchaser or its affiliates any amounts due or to become due to Seller or its affiliates, whether arising under the Quotation, any related purchase order or under any other agreement.

**6.Prices.** Unless otherwise expressly stated in the Quotation, prices for Products specified in the Quotation do not include storage, handling, packaging or transportation charges or any applicable federal, state, local or foreign duties or taxes. Seller reserves the right to increase Product prices in the event of increases in its raw material or component costs or other costs or expenses arising after the date of the Quotation. No price reductions shall apply unless specifically agreed to in writing by Seller.

**7.Warranty.** Seller warrants that at the time of delivery to Purchaser the Products will be free from defects in material and workmanship and will conform to the specifications, designs and/or drawings that are a part of the Quotation. Any claim for defective materials, defective manufacture, shortage in count, or any other claim with respect to the Products shall be presented to Seller by Purchaser in writing within thirty (30) days from the date of receipt of the Products by Purchaser. Failure by Purchaser to provide Seller with written notice of any defect or shortage in count within such thirty (30) day time period shall be deemed an absolute and unconditional waiver of Purchaser’s claim for such defects or shortage in count. Seller, at its election, will make an allowance, repair, or replace such quantity of the Products as shall prove to be defective or short in count. Purchaser shall hold and make available for inspection and testing by Seller all Products claimed by Purchaser

to be defective. Any claim for defective material or workmanship must be verified by Seller and, in such a case, Seller's liability shall be limited to the replacement or repair, at Seller's election, of such part of the Product in question as Seller may determine is defective after receipt by Seller of full payment by Purchaser of the purchase price for such Products.

THE FOREGOING WARRANTIES ARE EXCLUSIVE AND SELLER MAKES NO OTHER WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE PRODUCTS INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. SELLER SPECIFICALLY, BUT NOT BY WAY OF LIMITATION, DISCLAIMS ANY AND ALL LIABILITY FOR THE USE OR PERFORMANCE OF THE PRODUCTS IN THE APPLICATION(S) SELECTED BY PURCHASER AND PURCHASER'S CUSTOMERS. SELLER FURTHER DISCLAIMS ANY AND ALL LIABILITY FOR PRODUCTS THAT ARE FURTHER PROCESSED BY PURCHASER OR ANY THIRD PARTY OR IN ANY WAY CHANGED BY PURCHASER OR ANY THIRD PARTY FROM THE PRODUCTS DELIVERED BY SELLER.

**8.Termination.** In the event that either party fails to perform any of its obligations under the Quotation or any related purchase order and fails to cure such breach within ten (10) days after receipt of written notice from the other party specifying such breach, the non-breaching party may at its option immediately terminate the Quotation and/or any related purchase orders. Upon any such termination by either party, (a) Seller shall be relieved of any further obligation to Purchaser (including, without limitation, any obligation with respect to production, delivery or transition of supply), (b) Purchaser shall be liable to Seller for the immediate payment of amounts then billed to date by Seller to Purchaser, (c) Purchaser shall purchase and pay Seller immediately for all raw materials, components, work in process and finished goods acquired or produced by Seller in connection with the Quotation and/or any related purchase orders, and (d) Purchaser shall immediately reimburse Seller for all claims of Seller and Seller's subcontractors for unamortized investments involved in preparing to produce or provide or producing or providing Products and for all other loss, cost or expense of Seller as a result of the termination of the Quotation or any related purchase order.

**9.Liability Limitation.** Specific performance shall not be available to Purchaser as a remedy in connection with Seller's providing of the Products. Monetary damages against Seller shall be limited to the dollar amount charged to Purchaser for the most recent order placed by Purchaser and accepted by Seller for any of the Products alleged to be the cause of any loss or damage, whether founded in contract, tort (including negligence), strict liability or otherwise, arising out of, or resulting from, (a) any order placed by Purchaser and accepted by Seller or Seller's performance or breach, or (b) the design, manufacture, delivery, sale, repair, replacement or use of any such Products. IN NO EVENT SHALL SELLER BE LIABLE TO PURCHASER FOR ANY SPECIAL, INDIRECT, EXEMPLARY, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, LOSS OF ANTICIPATED PROFITS, LOSS OF USE, LOSS OF REVENUE AND COST OF CAPITAL) ARISING OUT OF OR RELATING TO THE QUOTATION, ANY RELATED PURCHASE ORDER, OR THE PRODUCTS. ANY AGREEMENT VARYING OR EXTENDING THE REMEDIES SPECIFICALLY STATED HEREIN WILL BE BINDING ON SELLER ONLY WHEN SPECIFICALLY AGREED TO IN WRITING BY SELLER.

**10.Proprietary Materials.** Seller shall have and retain all rights, title and interest, including all intellectual property rights, in and to all Products and associated materials, including, without limitation, all related reports, specifications, drawings, designs, computer programs and any other property, tangible or intangible, furnished by Seller in connection with or under the Quotation or any related purchase order ("Proprietary Materials"). No Proprietary Materials created by Seller in connection with or pursuant to the Quotation or any related purchase order shall be considered "works made for hire" as that term is used in connection with the U.S. Copyright Act.

**11.Confidentiality.** Purchaser shall maintain the confidentiality of all technical, business or financial information of Seller or its customers ("Confidential Information") in the same manner in which it protects its own confidential information of like kind, but in no event shall Purchaser take less than reasonable precautions to prevent the unauthorized disclosure, publication, dissemination or use of the Confidential Information. Upon termination of the Quotation and all related purchase orders, Purchaser shall return the Confidential Information and shall not use the Confidential Information for its own, or any third party's, benefit.

**12. Assignment.** The Quotation and/or all related purchase orders shall not be assigned in whole or in part by either party without the prior written consent of the other party, except that Seller may assign its rights, liabilities and obligations arising out of the Quotation and/or any related purchase order to any parent, subsidiary, affiliate or any corporation with which Seller may merge or consolidate or to which Seller may sell, transfer or assign all or substantially all of its assets or that portion of its business to which the Quotation and/or any related purchase order pertains without prior consent of Purchaser.

**13. Export and Import Licenses.** Purchaser shall be solely responsible for required compliance with the export and import laws of the United States of America and those of any other jurisdiction or country that may be applicable. Seller has no obligation to furnish or obtain any export or import license or similar authorization and is not in any way responsible for the issuance or continuance in force of any such license or authorization.

**14. Excusable Delay.** Seller shall not be liable for any delay or failure to perform if such delay or failure to perform is caused by circumstances beyond its reasonable control, including without limitation acts of God or public authority, riots or other public disturbances, labor disputes of any kind, power failures, failure of Purchaser to provide required information, failure of Purchaser to provide adequate containers, or the change in cost or availability of raw materials, components or services based on market conditions, supplier actions or contract disputes. During any such delay or failure to perform by Seller, Seller's obligations under the Quotation and any related purchase order shall be suspended and Seller shall not have any obligation to provide Purchaser with Products from other sources or to pay or reimburse Purchaser for any additional costs to Purchaser of obtaining substitute Products. Seller may, during any period of shortage due to any of the above circumstances allocate its available supply of Products among itself and its customers in any manner that Seller deems fair and reasonable in its sole discretion.

**15. Excess Order Quantities.** Seller shall not be liable for failure to perform where Purchaser requires, in any calendar week, more than 120% of the stated capacity of the tooling provided and Purchaser agrees to reimburse Seller for overtime costs incurred due to Purchaser requiring more than 100% of the stated tooling capacity in any calendar week, unless otherwise specifically agreed in a Signed Writing by a Vice President of Seller.

**16. Waiver.** Waiver by Seller of any of the terms or conditions of the Quotation shall be effective only if in writing and signed by Seller, and shall not constitute a waiver of such terms as to any subsequent events or conditions, whether similar or dissimilar. No course of dealing or custom in the trade shall constitute a modification or waiver by Seller of any right.

**17. Survival.** These Terms and Conditions shall survive and continue in full force and effect following the expiration, cancellation or termination of a Quotation and any related purchase order.

**18. Entire Agreement.** The Quotation, including these Terms and Conditions and any other attachments, exhibits or supplements specifically referenced in the Quotation, constitutes the entire agreement between Seller and Purchaser with respect to the matters contained in the Quotation and supersedes all prior oral or written representations and agreements. Except as otherwise provided in these Terms and Conditions, the Quotation may only be modified by a written agreement signed by Seller.

**19. Governing Law; Jurisdiction; Venue.** Each Quotation shall be governed by the internal laws of the State of Michigan without regard to any applicable conflict of laws provisions. The United Nations Convention on the International Sale of Goods is expressly excluded. Purchaser consents to the exclusive jurisdiction of the appropriate federal court in the U.S. District Court for the Eastern District of Michigan, Southern Division or of the state courts in Oakland County, Michigan for any legal or equitable action or proceeding arising out of, or in connection with, each Quotation. Purchaser specifically waives any and all objections to venue in such courts.