



## STANDARD TERMS AND CONDITIONS OF SALE

### 1. Scope and application

The terms and conditions of sale contained herein apply to all quotations made, customer ("buyer") purchase orders accepted, and acknowledgements issued by Dexter Research Center, Inc. ("seller"). These terms and conditions may in some instances differ from or conflict with some of the terms and conditions affixed to the form of purchase order submitted by buyer and/or otherwise specified by the buyer. Therefore, buyer agrees that its submission of a purchase order to seller shall constitute acceptance by buyer of all of the terms and conditions herein. That seller's acceptance of the buyers order is made expressly conditional on and in reliance on buyer's acceptance of these terms and conditions. And that in so far as the terms and conditions herein conflict with or differ from any terms and conditions of buyers order, these terms and conditions shall govern and shall supersede any prior communications between seller & buyer (including any purchase order or other writing), irrespective of whether the buyer accepts these conditions by a written acknowledgement. By implication or by acceptance and payment for goods ordered hereunder, buyer further agrees that seller's failure to object to provisions contained in any communication from buyer shall not be deemed a waiver of the provisions hereof and shall not be deemed to change or modify any of the terms and conditions herein. And seller hereby objects to and rejects any terms of buyer's order, which are contrary to the terms contained herein. Any changes in the terms and conditions of sale contained herein must specifically be agreed to in writing by an authorized officer of seller before they shall become binding on seller.

**All orders, offers, agreements, and contracts must be approved and accepted by the seller in writing at its home office in Dexter, Michigan, U.S.A.**

### 2. Prices

Prices and other terms quoted by seller are subject to change without notice after (30) thirty days from the date of quotation. All prices and terms are subject to adjustment on account of specifications, quantities, shipment arrangements or other terms and conditions, which are not a part of the original quotation.

### 3. Terms and method of payment

If seller elects to extend credit to buyer, terms of payment shall be net (30) days from the date of invoice. If buyer fails to make payment for goods delivered as herein provided or if in sellers sole judgment buyers financial condition or other circumstances do not warrant shipment on the terms originally specified in any contracts made hereunder. Seller may at any time limit or cancel the credit of buyer as to time and amount and may demand payment in cash before delivery of any part of the goods. On any order which credit is not extended by seller, payment upon shipment or delivery shall be made at sellers election, as follows: cash on delivery of order (in whole or part), or irrevocable letter of credit in a format acceptable to seller, with all costs of collection, including reasonable attorney fees for the account of buyer. The net invoice price shall be payable in U.S. funds on a U.S. bank. Pro rate payments are due from buyer as shipments are made by seller.

### 4. Taxes

All prices are exclusive of any present or future sales, use, revenue, or excise tax, import or export duty (including brokerage fees) or other tax applicable to the products covered by the order or the manufacture or sale thereof. Such taxes when applicable shall be added to the invoice and shall be paid by buyer unless buyer provides seller with a proper tax exemption certificate.

### 5. Title and shipment: risk of loss

The goods shall be shipped, fob seller's plant, and title thereto and risk of loss or damage in transit or otherwise shall pass to buyer upon seller's delivery of the goods to a common carrier (designated by buyer, or if none is designated, selected by seller) for shipment to buyer (provided, however, that seller shall retain a security interest in any goods shipped hereunder until payment therefore in full by buyer). All shipping dates in any quotations, orders or acknowledgements are approximate and while seller shall use reasonable efforts to conform thereto. Seller shall have no liability for its failure or inability for any reason whatsoever, to ship any goods within the shipping dates or scheduled specified in any quote, order or acknowledgement. Seller reserves the right to ship products in installments and the contract shall be reversible as to such installment, except as provided in paragraph 15. Seller will not be liable for any costs incurred by buyer in procuring alternate or replacement of goods, or for any special, incidental or consequential damages suffered or incurred by buyer (i) in the event of a delay in shipment of products or (ii) in the event of non-delivery for any reason.

### 6. Acceptance

Buyer shall accept or reject products included in each shipment within (30) days of receipt by buyer. If buyer fails to notify seller in writing of its rejection and the reasons therefore within such time period. Buyer will be deemed to have accepted such shipment. In the event lot acceptance procedures have been agreed to in writing, products rejected by buyer on that basis will be returned only on seller's authorization. For all orders using buyer-furnished materials, shipment by seller of a quantity of products within (5%) five percent of the quantity ordered shall constitute delivery in full but buyer shall pay only

for the actual quantity of products shipped. Notwithstanding the foregoing any claims for short shipments not submitted within (60) sixty days after of seller's date invoice are waived by buyer.

#### **7. Warranty: remedy: limitation of liability**

Seller warrants that any of its products furnished hereunder will for a period of one (1) year from date of shipment be free from failure due to defects in materials and workmanship under normal use and service and will conform to seller's applicable standard written specifications (or, if appropriate, to specifications accepted in writing by seller). Seller is sole obligation hereunder and buyer's sole remedy for breach of seller's afore said warranty shall be at seller's option either, (a) crediting buyer for purchase price of or (b) repairing or replacing any products (i) for which written notice of nonconformity is received within one (1) year after shipment (ii) which upon seller's authorization are returned to seller's factory of origin, freight charges prepaid, and (iii) which, after examination are determined to seller's satisfaction to be nonconforming. Any such repair or replacement shall not extend the period within which such warranty can be asserted as to any original goods or as to any repaired or replacement goods. This warranty shall not apply to products which seller determines have by buyer or another been subjected to operating and/or environmental conditions in excess of the maximum values therefore in the applicable specifications or otherwise have been subjected to misuse, neglect, improper installation, repair, abuse accident, alterations or damage. Any modifications beyond these either (i) defined in seller's manuals or drawings or (ii) specifically authorized by seller, invalidate the above warranty.

**Any products designated as "developmental" (R&D) or "experimental" are excluded from the foregoing warranty. And no warranty whatsoever shall apply to such products.**

The above warranty is for the benefit of and may be asserted by buyer only and not directly or indirectly by buyer's customers or users of buyer's products and is expressly seller's only warranty. In lieu of all other warranties, express, implied, or statutory seller hereby disclaims and buyer hereby waives any and all other warranties of any nature whatsoever, including any warranty fitness for a particular purpose or of merchantability or any warranties arising from course of dealing or usage of the trade and all other obligations or liabilities on the seller's part, including, but not limited to, labor cost incident to the replacement of any defective product within warranty. Seller neither assumes nor authorizes any other person to assume for seller any other liabilities in connection with the sale of any products. Seller makes no warranty as to experimental or developmental products sold hereunder and no warranties as to items not manufactured by seller but included in a product sold hereunder. Seller shall not be liable for any consequential, incidental or special damages of any kind (including therein, but not by way of limitation, damages for any loss of use or profit by buyer or any other person, or for any other similar or dissimilar collateral or consequential damages). Whether or not occasioned by seller's negligence, which may result from or in connection with the manufacture or sale of products or services rendered by seller hereunder, or from any failure or nonperformance by seller in connection therewith.

#### **8. Liability for injury**

Buyer shall indemnify and hold seller harmless against any and all injury, death, damage, and loss to persons or property resulting from or arising out of any application or use of goods furnished by seller pursuant hereto.

#### **9. Tooling and fixtures**

Unless separately agreed in writing, no right to any mask or any other tooling is included in the purchase price to buyer for the products.

The seller means of manufacture and title to fixtures and tools required for performance of that contract are property interests of the seller unless otherwise separately agreed in writing. Invoices covering setup, fixtures, or tools (for whose cost buyer is responsible) do not convey any title or interest therein to the buyer unless otherwise separately agreed in writing. The parties agree that all setups, fixtures, and tools remain the property of seller upon completion of performance of the contract and identical or similar goods may be manufactured, used and sold by seller to others without any obligation or liability to buyer.

Seller shall not be liable for ordinary wear and tear to tools for the products furnished by the buyer.

#### **10. Material furnished by buyer**

The seller does not assume any responsibility for and shall not be liable for any loss or damage from any cause to parts or tooling owned by buyer or other material delivered into the seller's custody for processing or in use manufacture. Seller is under no obligation to insure parts, tooling or other material furnished by buyer or goods in process of shipment to buyer. Insurance may be obtained by seller for buyer, at current commercial rates, upon buyer's request and upon reimbursement by buyer of seller's costs in doing so.

#### **11. Patents**

The buyer shall defend and indemnify the seller harmless against any damage, expense or loss resulting from infringement of patents, trademarks, or other proprietary rights of third parties arising from seller's compliance with buyer's designs or specifications or instructions. Buyer will defend, at its own expenses, any suit or claim that may be instituted against the seller for alleged infringement of united states or foreign patents, trademarks or other proprietary rights by virtue of the application, sale or use of goods furnished pursuant hereto, except for any infringement resulting

from detail designs provided or developed by seller. Buyer shall indemnify and hold seller harmless against all costs and damages arising out of such alleged infringement or litigation resulting from application or use of goods furnished hereunder.

Except as provided in the preceding paragraph, seller shall defend any suit or proceeding brought against buyer insofar as such suit or proceeding is based solely on a claim that the product or any part thereof manufactured

By seller and furnished hereof, and not used in combination with other products whether or not furnished hereunder, constitutes an infringement of any patent duly issued by the United States to any other persons. If notified promptly by buyer of the commencement of any such suit or proceeding, and given authority, information and assistance at seller's expense, necessary for the defense thereof, seller shall pay all damages and costs finally awarded therein against buyer or agreed upon in any settlement thereof. In the event buyer's use of said product or part thereof is enjoined in such suit or proceeding, seller shall at its own expense and option either (i) procure for buyer the right to continue using said product; or (ii) replace same with non-infringing product; or (iii) modify it to become non-infringing; or (iv) remove said product and refund to buyer the purchase price and transportation and installation costs thereof. The foregoing sets forth the entire liability of seller to buyer for patent infringement by said products or any part thereof, and seller shall have no obligation in respect thereof except as set forth above.

## **12. Confidential information**

No information shall be deemed to be given or received in confidence by either party unless and to the extent it is covered by a separate written agreement.

## **13. Force majeure**

Seller shall not be liable for non-performance or delays in performance hereunder caused by acts of god, wars, riots, strikes or other labor disturbances, fires, shortage of labor materials, transportation delay, governmental restrictions, regulations and orders, embargoes, or other causes beyond its reasonable control. Seller shall notify buyer in writing of any such event or circumstance within a reasonable period after it learns of the same.

## **14. Termination for convenience**

Buyer may terminate its order for its convenience, and in such event, products in the possession or control of seller, whether or not standard, which has been screened to buyer specifications, shall be considered as delivered to the buyer. The quantity of products delivered and deemed delivered shall be paid for by the buyer at a unit price equal to seller's standard catalog price for such quantity, or if no such price exists, then a comparable price for equivalent products (but no event less than the order price for finished products) non-standard products which are in the work-in-process inventory shall be paid for by buyer at a price based on the percentage of completion of such inventory applied to the order price for finished goods. In addition to the above, Buyer shall also promptly pay to seller (i) all costs, expenses and other amounts paid by seller in settling and paying claims (including claims for cancellation charges) arising out of the termination of work under seller's subcontracts or under orders for materials or services relating to the products being made hereunder for buyer. (ii) Reasonable costs of settlement including accounting, legal and clerical costs, and (iii) twenty percent (20%) of the total purchase price for the products ordered hereunder (to reimburse seller for its direct and indirect costs of production, administration expenses, and lost profits).

## **15. Termination for default**

Buyer's order may be terminated in whole or in part on written notice by buyer because of seller's failure, not excused pursuant to paragraph 13 or other provisions hereof to deliver products in accordance with terms hereof. In such event, buyer, as its sole remedy, may recover from seller as damages the difference between the cost of procuring replacement goods and the contract price for the goods to be produced hereunder, less expenses saved in consequence of seller's breach, but in no event shall buyer's recovery exceed ten percent (10%) of the product price of buyer's purchase order applied to the quantity of products unconditionally released by buyer but remaining unshipped. Any such claim by buyer must be asserted within writing within thirty (30) days period following the date of buyer's notice of termination. Seller shall not in any circumstances be liable for any incidental or consequential damages, including, but limited to, cost of labor, re-qualification, delay, loss of profits, or good will. In any event, seller shall be effective only upon seller's failure to correct any failure to perform hereunder with a reasonable period of time (which shall not be less than forty-five (45) days after receipt by seller of written notice from buyer specifying in detail the nature of seller's failure to perform)

## **16. Applicable law**

The validity, performance and construction of this contract shall be governed by the laws of the state of Michigan.

## **17. Modifications**

These terms and conditions constitute the entire agreement between the parties relating to the sale of the products covered hereby, and no addition to or modification of any provision hereof. By way of changes to the drawings, designs, specifications or delivery schedules or otherwise shall be binding upon seller unless made in writing and signed by a duly authorized officer of seller at its home office.