

PROSPECT FOUNDRY LLC, TERMS AND CONDITION OF SALE

1. **OFFER AND ACCEPTANCE:** Purchaser's order is accepted only on the following terms and conditions, and Seller's acceptance is expressly conditioned on Purchaser's assent to any different or additional terms contained herein. Prospect Foundry LLC ("Seller") objects to any different or additional terms contained in Purchaser's purchase order. No action by Seller shall be construed as acceptance of any additional or different terms in Purchaser's form. Purchaser shall be deemed to have accepted the terms hereof by signing and returning a copy hereof or by other written indication of acceptance, by accepting any whole or partial shipment of goods from Seller, or by making any whole or partial payment to Seller; provided that, the only effect thereof shall be to agree to these terms and conditions.
2. **PRICES AND TERMS:** All orders are subject to acceptance by Seller. Payment terms are subject to credit approval. Unless otherwise stated in writing, terms are net cash 30 days from invoice date - F.O.B. point of origin, and title and risk of loss pass to Buyer upon delivery to carrier at point of shipment. Seller will charge two percent (2%) interest per month (24% per annum) on all overdue balances. All payments must be made in United States dollars drawn on banks having their principal place of business in the United States. Seller may at any time require full or partial payment in advance. Clerical errors are subject to correction. Unless otherwise specified, quotations expire automatically 60 calendar days after the date issued. At any time before the Purchaser's acceptance of this offer, Prospect may change the price of the goods described herein by written notice to the customer. This offer based upon the Purchaser's specifications, drawings, and descriptions of tooling and casting weight for the goods, and Seller may, by written notice, change the price to the extent necessary to comply with the actual conditions. If Seller so elects to change the price, the Purchaser may cancel its order for the goods by giving Seller written notice of such cancellation within ten (10) days after receipt of Seller's notice. In any case, the Purchaser shall be responsible for Seller's costs. Upon Seller's acceptance of Purchaser's order as evidenced by Seller's formal acknowledgement, prices shall be fixed as stated in the quotation; provided, however that quoted pricing is subject to change without notice in metal price or energy surcharge between the date of quotation and date of shipment and any unshipped balances on purchase orders will be invoiced to and paid by Purchaser at prices in effect at the time of delivery.
3. **TAXES AND FEES:** All duties and taxes applicable to the sale of goods hereunder shall be paid by Purchaser, and the amount of any such taxes Seller is required to pay or collect will be invoiced to Purchaser unless Purchaser provides Seller with the appropriate evidence that Purchaser is exempt from the payment of such taxes. Purchaser shall also pay any collection fees and reasonable attorneys' fees incurred by Seller in enforcing this agreement and defending against any claim for breach of this agreement.
4. **PRODUCT SPECIFICATIONS, PRODUCTION ESTIMATES AND PERFORMANCE:** Working drawings or other materials provided by Seller are for informational purposes only, and are not binding on Seller except as expressly agreed to in writing. Seller is not responsible for variations existing between blueprints and pattern and core box equipment supplied by Purchaser. If requested by Purchaser, Seller will check pattern and core box equipment with blue prints at Purchaser's expense. Production data, where given, is an estimate only and is not guaranteed or warranted. Seller shall not be responsible for performance figures supplied by any third parties.
5. **PATTERNS AND TOOLING:** Purchaser shall supply patterns, core box equipment and gages in proper condition to produce the quantity and quality of castings agreed upon. Follow boards, core dryers and similar devices when required are to be furnished by the Purchaser. All patterns, core boxes and loose pieces thereof, shall be marked properly for identification. All repairs and changes necessary to place equipment in proper condition shall be the Purchaser's obligation. Any special treatment of castings, shall be set forth in detail in the purchase order, and shall be at Purchaser's expense. Rigging charges shall be paid by the Purchaser. All freight, drayage, crating and boxing charges on patterns shall be paid by the Purchaser. Seller shall not be responsible for damages to patterns in transit. Tooling is the property of the Purchaser; provided that any original design concepts, drawings, specifications, novel techniques, inventions, etc. made by Seller in connection with this agreement will remain the property of Seller. Seller does not carry insurance on tooling. Free storage is provided for active tooling, which is

PROSPECT FOUNDRY LLC, TERMS AND CONDITION OF SALE (continued)

defined as one minimum volume production run per annum. Inactive tooling may be assessed a storage fee to be paid by the Purchaser or returned to Purchaser at Purchaser's expense and risk of loss. Seller will not be held responsible for damages to tooling. Any repairs to tooling will be made at the Purchaser's expense. Seller will notify the Purchaser of repairs to be charged to the Purchaser. If tooling is inactive for a period of three years or more, Seller may, by written notice to Purchaser at Purchaser's last known address, give Purchaser the option to have the tooling (1) returned to Purchaser at Purchaser's expense or (2) stored for a reasonable storage charge. If Purchaser does not elect one of the options described above, Seller may have title to the inactive tooling transferred by operation of law to Seller for the purpose of destroying or otherwise disposing of such inactive tooling.

6. **INSPECTION:** Seller will supply the Purchaser with one casting per pattern cavity as pre-production sample unless otherwise instructed by the Purchaser. Approved samples will be billed at the quoted price. If dimensional alterations are made to tooling, Seller will supply a new pre-production sample unless otherwise instructed by the Purchaser. Seller will perform layouts and certifications as required by the Purchaser; additional charges may apply. Purchaser will approve samples or take exceptions in writing. No goods will be produced without a purchase order from the Purchaser. Receipt of a purchase order constitutes approval of sample. If the goods are to be subject to acceptance tests before shipment, rejections must take place prior to shipment.

7. **DELIVERY:** The shipping date is estimated, and Seller shall not be responsible for failure to meet any estimated delivery date. All shipments normally will be made via the most economical means and routing consistent with service requirements and type of product involved. Unless otherwise instructed, Seller will select the means of transportation and the routing. Special production service to secure unusual deliveries not in accordance with original delivery instructions shall be given on written request and at Purchaser's expense. Seller shall retain, and Purchaser hereby grants to Seller, a security interest in any product sold by Seller hereunder until payment in full is received.

8. **OVERSHIPMENT/UNDERSHIPMENT:** Shipments of less than 10% over or under the quantity specified in this offer, any purchase order or any other document related hereto shall constitute complete performance and be deemed in conformance with such offer, purchase order or other document.

9. **WARRANTY:** Seller warrants that the goods manufactured hereunder will meet the Purchaser's specifications and will be free from defects in material and workmanship for a period of ninety (90) days following the date of shipment from Seller's plant. Notwithstanding the foregoing, if Purchase elects not to purchase VCI bags with the goods, Seller does not provide any warranty that such goods will be rust free. THERE ARE NO OTHER EXPRESS or implied WARRANTIES including without limitation any implied warranty that THE GOODS SHALL BE MERCHANTABLE OR FIT FOR ANY PARTICULAR PURPOSE INDICATED BY BUYER.

If any goods sold hereunder do not conform to the applicable certification or prove to be defective will be repaired or replaced, at Seller's option, free of charge, F.O.B. Seller's plant, provided that Purchaser sends notice of the defect within ninety (90) days with information and/or samples that document the goods have been rejected due to foundry defects and has applied within the rated limitations of the metal specified and within the general accepted limitations of cast products. THIS IS PURCHASER'S SOLE AND EXCLUSIVE REMEDY UNDER THIS CONTRACT. All material and equipment not manufactured by Seller, but included as purchased components and assemblies, shall receive only such warranty, if any, as given by the manufacturer thereof and which are assigned to Purchaser without recourse to Seller. Seller shall in no event be held liable for damages or delay caused by the defective materials, and no allowance will be given by Seller for repairs or alterations unless made pursuant to its written consent and approval. Seller is not responsible for machine work, welding or any other work done, inserts or chills furnished by Purchaser, labor charges or any other losses or damage caused by defective goods. Seller is not responsible for loss of or damage to pattern equipment by fire or other casualties beyond its control. It is the responsibility of the Purchaser to carry all forms of insurance that he deems necessary. When quotations involve the making of piece prices, weights as nearly definite as possible shall be established and agreed upon and quotations shall be subject to revisions on any variation from the established weights. Claims for error in weight or number must be made within ten (10) days after the receipt of goods. Seller reserves the right to accept or reject such claim in whole or in part. Seller shall

PROSPECT FOUNDRY LLC, TERMS AND CONDITION OF SALE (continued)

not be liable in any manner for loss or damage by reason of the manufacture and sale to the Purchaser of any patented device or parts thereof made in accordance with drawings, designs, models or patterns furnished by the Purchaser. The provisions in the specification hereto attached are descriptive unless expressly stated as warranties.

This warranty is valid only if the goods have been subjected to normal use of the purpose for which the goods were designed; have not been subject to misuse, negligence or accident; and have not been modified, altered or repaired by persons other than the Seller or Seller's designees in any respect which in the judgment of Seller affects the condition or operation of the Products. Seller neither assumes nor authorizes any employee, distributor, representative, agent or other person to assume for Seller any other liability in connection with the sale or use of the products sold and there are no oral agreements or warranties collateral to or affecting this agreement.

EXCLUSIVE REMEDY; LIMITATION OF DAMAGES: Seller's total liability and Purchaser's exclusive remedy under this agreement shall be limited solely to repair or replacement, at Seller's option, of any product or part of a product which has been proven to be nonconforming. Any such product or part shall be, if requested by Seller, returned freight prepaid to Seller's facility for inspection. Seller is not responsible for providing labor or the cost of labor for the removal of the defective part or parts and the installation of any replacement part or parts. Replacement parts shall be warranted for the balance of the original warranty. Even if the repair or replacement remedy shall be deemed to have failed of its essential purpose under Sec. 2-719 of the Uniform Commercial Code, SELLER SHALL HAVE NO LIABILITY TO PURCHASER OR TO ANY THIRD PARTY FOR DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION LOST PROFITS, MACHINING OR LABOR COSTS, DAMAGE TO OTHER EQUIPMENT OR LIABILITY OR INJURY TO A THIRD PARTY, ARISING FROM THE SALE, USE OR INSTALLATION OF THE PRODUCTS, FROM THE PRODUCTS BEING INCORPORATED INTO OR BECOMING A COMPONENT OF ANOTHER PRODUCT OR FROM ANY OTHER CAUSE WHATSOEVER, WHETHER BASED ON WARRANTY (EXPRESS OR IMPLIED) OR OTHERWISE BASED ON CONTRACT, TORT, NEGLIGENCE OR ANY OTHER THEORY OF LIABILITY. Purchaser shall make any claim hereunder promptly after discovery of a potential defect and within the warranty period. All claims shall be submitted to Seller and shall identify the original job or invoice number for the affected product. Failure to notify Seller within ninety (90) days after receipt of the product that it is non-conforming in any respect shall be a waiver of any claim with respect to such non-conformance.

10. **CANCELLATION:** Following acceptance by Seller, an order may not be cancelled without written consent by Seller. Seller may cancel an order (1) if Purchaser breaches any of its obligations hereunder, or (2) if at any time the Purchaser becomes bankrupt, insolvent makes an assignment for the benefit of creditors or undergoes a significant change in ownership or a change in control. No cancellation, modification, suspension, or delay in shipment of Purchaser's order will be accepted on terms that will not fully indemnify and reimburse Seller against loss. Such indemnity shall include recovery of all direct costs incurred, including normal indirect and overhead charges, and a normal profit of fifteen percent (15%). No change proposed by Buyer in any terms and conditions shall be valid or binding upon Seller unless approved in writing by Seller's duly authorized personnel. Any and all work that can be completed with ten (10) days from date of notification shall be completed, shipped and paid in full.

11. **INDEMNIFICATION:** The Purchaser shall indemnify and defend Seller and hold Seller harmless from any and all claims, demands, actions, proceedings, liabilities, losses, costs, and expenses, including reasonable attorneys' fees, arising in connection with (i) personal injury or property damage arising out of or claimed to be connected to the use of the goods sold hereunder, (ii) Purchaser's specifications and/or design of products sold hereunder or with the incorporation of the products into Purchaser's products and the use thereof. It is specifically understood that the Purchaser shall indemnify and defend Seller and hold Seller harmless from claims that Seller was itself negligent or otherwise at fault, proximately causing any injury or damage. The Purchaser further agrees that at Seller's request the Purchaser will provide Seller with a certificate of insurance identifying Seller as an additional insured with respect to the liability assumed under this paragraph. In addition, the Purchaser shall, at its own expense, indemnify and defend Seller and hold Seller harmless from and against any and all claims, loss, costs and expenses of

PROSPECT FOUNDRY LLC, TERMS AND CONDITION OF SALE (continued)

any kind (including attorney's fees) arising out of any assertion that any goods manufactured by Seller according to the Purchaser's drawings, designs or other specifications infringe on any patent, copyright or other proprietary rights of others.

12. **FORCE MAJEURE:** Seller shall not be liable for any failure to manufacture or deliver, or for any delay in the manufacture or delivery of, any goods sold hereunder if such failure or delay is caused by acts of God; fire; storm; strikes; blackouts; labor difficulties; riots; inability to obtain materials, equipment, labor or transportation; governmental restrictions; or any similar cause over which Prospect is unable to exercise control.

13. **CHOICE OF LAW:** This contract shall be construed in accordance with the laws of the State of Minnesota. Any action for breach of this contract must be commenced within one (1) year after the cause of action has occurred pursuant to the procedures set forth below.

14. **ARBITRATION:** Any dispute between the parties arising out of or in connection with this agreement that cannot be settled amicably among the parties within thirty (30) days of a written notice of a dispute to the other party shall be finally resolved by arbitration, if either party makes a demand for arbitration, by an arbitrator mutually selected by the parties, or if they are unable to agree on an arbitrator within twenty (20) days after a demand for arbitration, the arbitrator shall be selected by the American Arbitration Association ("AAA") or its equivalent. Unless Seller shall request that the dispute be resolved by a single arbitrator, disputes subject to arbitration hereunder and involving a claim of \$10,000 or more shall be resolved by a panel of three independent impartial arbitrators, one each to be selected by Seller and the Purchaser and the third (who shall be Chairman) to be selected by the first two arbitrators. Arbitration proceedings shall be conducted in Minneapolis, Minnesota, in the English language, pursuant to the rules of the AAA for commercial disputes. Any party shall have the right to review, prior to the submission of its case to the arbitration panel, any and all documents in the possession of the other party which relate to such other party's performance under, or the conduct of its activities in connection with, this agreement, except those documents which contain trade secrets or proprietary information. The arbitration panel shall apply the laws of the State of Minnesota to resolve disputes arising hereunder.

15. **GENERAL:** The foregoing comprises Seller's and Purchaser's entire agreement and constitutes a final written expression of all the terms of the agreement between Seller and the Purchaser, and is a complete and exclusive statement of those terms. Any and all representations, promises, warranties or statements by Seller's agents or employees that differ in any way from the terms of this written agreement shall be given no force or effect. On any order placed pursuant hereto, the above provisions entirely supersede any prior oral or written correspondence, quotation or agreement. There are no agreements between Seller and the Purchaser in respect to the goods quoted herein except as set forth in writing and expressly made a part of this agreement. Acceptance of this proposal is limited to the terms, conditions, specifications and prices set forth herein or attached hereto and any additional terms conditions, specifications and /or prices are rejected unless expressly agreed to in writing by Seller. If any provision of this agreement is held to be invalid or unenforceable, the remainder of this agreement shall not be affected thereby. No waiver or modification of any of the provisions hereof shall be binding upon Seller unless in writing and signed by an authorized representative of Seller.