

STANDARD TERMS AND CONDITIONS OF SALE

All sales by F&B MFG LLC ("Seller") to the party to whom this Seller's Acknowledgement or quotation is addressed ("Purchaser") are subject to the following terms and conditions contained on the face hereof. Where terms on the face hereof conflict with the following terms and conditions, the terms and conditions on the face hereof shall control. If these Terms and Conditions are separately sent to Purchaser, these Terms and Conditions shall apply to all transactions between Seller and Purchaser unless superseded by new Terms and conditions delivered by Seller or by the express terms and conditions contained in Seller's sales order or acknowledgment.

1. Acceptance. All purchase orders are accepted by Seller at its General Offices in Phoenix, AZ. This Seller's Acknowledgement shall not be binding on Seller unless executed by an authorized signatory of Seller. Seller's acceptance of any purchase order it receives is expressly limited to the exact terms contained in this Seller's Acknowledgment. Additional or different terms contained in Purchaser's offer or any attempt by Purchaser to vary any of the terms of this Seller's Acknowledgement shall be rejected but such proposal shall not operate as a rejection of Purchaser's offer unless such variations are in term of the description, quantity, price or delivery schedule of the goods or services to be provided hereunder, in which case such additional or different terms shall be deemed material and such offer shall be deemed accepted without said additional or different terms or attempted variations. Acceptance by Seller of any purchase order containing terms additional to or different from the terms contained in this Seller's Acknowledgement or containing modifications of the terms contained in the Acknowledgement shall not be deemed as assent to those additional, different or modified terms. Purchaser's receipt of Seller's Acknowledgement without prompt written objection thereto, or Purchaser's acceptance of all or any part of the goods or services ordered from Seller, shall constitute assent by Purchaser to the terms contained in this Seller's Acknowledgement. If this Seller's Acknowledgement is deemed an offer as aforesaid, any proposal by the Purchaser for additional or different terms or any attempt by Purchaser to vary any of the terms of this Seller's Acknowledgement in Purchaser's purchase order is hereby objected to and rejected; provided, however, that any such proposal by Purchaser shall not operate as a rejection of Seller's offer unless it contains variances in the term of the description, quantity, price or delivery of the goods or services to be provided hereunder, in which case any such proposal shall be deemed material, and this Seller's Acknowledgment be deemed accepted without said additional or different terms or attempted variations.
2. Payment Terms. Except as agreed on seller's quote or acceptance, the full amount billed or contracted for is due and payable thirty (30) days from delivery of the goods or performance of services. A finance charge computed at the periodic rate of one and one-half percent (1.5%) per month (which is an annual rate of eighteen percent (18%) on the unpaid balance will be made on accounts not paid when due, and Purchaser agrees to pay such charges and pay attorney's fees if action is brought to collect from Purchaser. Samples submitted shall be deemed approved and accepted if written notice of rejection is not received within thirty (30) days after date of submittal. Purchaser agrees that Seller shall have a possessory lien on all tools and other property of Purchaser which is in Seller's possession for the total amount owing by Purchaser to Seller for all tooling and other work and for all parts, materials and services of all kinds supplied or rendered by Seller to Purchaser, which lien shall be enforceable in the manner provided in the Uniform Commercial Code.
3. Taxes. Any tax which the Seller may be required to pay or collect through assessment or otherwise, under any existing or future law upon or with respect to the sale, purchase, delivery, transportation, storage, processing, use or consumption of any goods or services described herein, including without limitation, taxes upon or measured by receipt from sales or services (but excluding taxes based upon the income of Seller), shall be for the account of Purchaser and be added to the price of such goods or services. Purchaser shall promptly pay the amount thereof to Seller upon demand buy may in lieu of such payment, furnish to seller evidence of the issuance of tax exemptions certificates acceptable to the appropriate taxing authorities.
4. Prices. Except as otherwise provided, all price quotations are valid for thirty (30) days. Prices are based on cost prevailing on the date of quotations and, therefore are subject to change at any time to reflect increased costs. Prices are quoted on samples, blueprints, or drawings on hand, and any modification thereof subjects this quotation to adjustment. This quotation is based on the continuous production of the quantity herein specified, smaller runs subject to increase in price. If higher quantity level is desired by Purchaser, Seller will render a quotation based upon the revised requirements set forth by Purchaser.
5. Credit. All orders are subject to the approval of Seller's Credit Department, and Seller may at any time refuse to make shipment or delivery if Purchaser fails to fulfill the terms and conditions of payment or fails to provide security satisfactory to Seller's Credit Department. Seller reserves right to refuse or cancel credit and require full payment prior to shipment. If in Seller's opinion the financial condition of Purchaser at any time does not justify continuation of production or shipment on the terms of payment specified, Seller may require full or partial payment in advance or such further assurance as Seller shall reasonably require to justify such continued production or shipment.
6. Default in Payment and Bankruptcy of Purchaser. If Purchaser fails to make payments on any agreement between Purchaser and Seller in accordance with Seller's terms, Seller, in addition to any other remedies available to it, may, at its option, (a) defer further shipments until such payments are made and satisfactory credit arrangements are reestablished, (b) cancel the unshipped balance of any order or (c) take any other action available under applicable law. In the event of any proceedings, voluntary or involuntary, in bankruptcy or insolvency by or against Purchaser, the inability of Purchaser to pay its debts as they become due, or in the event of the appointment, with or without Purchaser's consent, of an assignee for the benefit of creditors or of a receiver, then Seller shall be entitled, in its sole discretion, to cancel the unshipped balance of any order without any liability.
7. Transportation Charges. All prices, quotations, shipments and deliveries by Seller are F.O.B. Seller's plant and risk of loss passes to Purchaser once goods are tendered for such delivery. All transportation and other charges are for the account of Purchaser, including any increase or decrease in such charges prior to shipment.
8. Method of Shipment. Method and route of shipment is at Seller's discretion, unless Purchaser supplies explicit instructions which are subsequently accepted by Seller in writing. Seller does not assume responsibility for any damage directly or indirectly resulting from delays in delivery. When parts are broken or damaged in transit from Seller to purchaser, it is the responsibility of Purchaser to file a claim with the carrier for said breakage or damage. If the method of shipment specified by Purchaser is deemed by Seller to be unavailable or otherwise unsatisfactory, Seller reserves right to use an alternate method or route or both whether or not at a higher cost to Purchaser. Seller shall promptly notify Purchaser of any such change. The risk of loss or damage to the goods shipped shall pass to the Purchaser when the goods are delivered to the carrier for shipment and Purchaser shall be responsible for insuring such goods thereafter.
9. Producing or Shipping Point. Seller reserves right to produce and ship all or any part of the goods specified in any order from any of its plants or facilities.
10. Force Majeure. Purchaser as a result of such delay when such delay is occasioned by causes beyond Seller's control. Such causes shall include but are not limited to an act of God or the public enemy, fire, explosion, flood, unusually severe weather, drought, war, riots, sabotage, vandalism, accident, embargo, government priority, government action or failure of the government to act when action is required, requisition or allocation or other action of any governmental authority, interruption of or delay in transportation, inadequacy or shortage or failure of supply of material or equipment, breakdowns, non-scheduled shutdowns for repairs, plant accidents, labor shortage, strikes, labor trouble, or by compliance with any order or request of the United States Government or any officer, department, agency, instrumentality or committee thereof. It is understood and agreed that economic conditions affecting the ability or desirability of the performance of this agreement by either party shall not be deemed to constitute "force majeure" circumstances as contemplated by this paragraph 10. The Seller shall have the right to cancel the entire agreement with the Purchaser or any part thereof in the event of the happening of any such cause beyond the Seller's control without any resulting liability.
11. Good Delivery. Shipments made by Seller within a reasonable time after the specified date of delivery shall constitute a good delivery. No right of cancellation shall accrue to Purchaser based on such a delivery.

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12. Permissible Variations. Shipped by Seller shall be within the limits and sizes published by Seller, subject, however, to Seller's right to ship overages or underage's in accordance with Seller's standard practices and goods shipped by Seller will be subject to standard variations provided such variations are non-functional or are not material in nature.
13. LIMITED WARRANTY SELLER MAKES NO WARRANTIES EXPRESSED OR IMPLIED, INCLUDING BUT NOT BY WAY OF LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY AND ANY IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, ON ANY ORDER EXCEPT THAT SELLER WARRANTS TITLE TO ALL GOODS FURNISHED BY SELLER AND EXCEPT THAT ALL GOODS DESCRIBED ON SELLER'S ACKNOWLEDGEMENT OF PURCHASER'S PURCHASE ORDER WILL BE MANUFACTURED IN ACCORDANCE WITH THE SPECIFICATIONS, IF ANY, SET FORTH IN SAID PURCHASE ORDER AND EXPRESSLY ACCEPTED IN SELLER'S ACKNOWLEDGEMENT SUBJECT TO SELLER'S STANDARD MANUFACTURING VARIATIONS AND PRACTICES. THE FOREGOING WARRANTIES ARE THE SOLE AND EXCLUSIVE WARRANTIES APPLICABLE TO THE GOODS DELIVERED UNDER THIS AGREEMENT AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY, ARE HEREBY EXPRESSLY DISCLAIMED AND NEGATED. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, PURCHASER ACKNOWLEDGES THAT ANY EXPOSED PARTS AND MATERIALS MAY RUST OVER TIME.
14. Damaged Goods. If any goods should arrive at Purchaser's destination in a damaged condition or should a shortage occur, Purchaser shall immediately report the damage or shortage to the delivering carrier and to Seller. Any loss or shortage occasioned by damage or otherwise occurring in transit will be for account of Purchaser.
15. Claims. Claims respecting the condition of goods, compliance with specifications or any other matter affecting goods shipped to Purchaser must be made promptly, and, unless otherwise agreed to in writing by Seller, in no event later than twenty-one (21) days after receipt of the goods by Purchaser. Purchaser shall set aside, protect and hold such goods without further processing until Seller has an opportunity to inspect and advise of the disposition, if any, to be made of such goods. In no event shall any goods be returned, reworked or scrapped by Purchaser without the express written authorization of Seller.
16. LIMITATION OF PURCHASER'S REMEDIES: EXCLUSIVE OF DAMAGES. PURCHASER'S REMEDIES WITH RESPECT TO ANY CLAIM ARISING OUT OF ANY ORDER OR SELLER'S PERFORMANCE IN CONNECTION THEREWITH, INCLUDING WITHOUT LIMITATION, ANY CLAIM ARISING OUT OF ANY RECALL, DEFECT OR ALLEGED DEFECT IN ANY GOODS OR SERVICES FURNISHED BY SELLER, SHALL BE LIMITED EXCLUSIVELY TO THE RIGHT OF REPAIR OR REPLACEMENT OF SUCH GOODS OR SERVICES OR TO REPAYMENT OF THE PURCHASE PRICE THEREFOR IN THE SELLER'S DISCRETION WITHOUT IN ANY WAY LIMITING THE GENERALITY OF THE FOREGOING, IN NO EVENT SHALL SELLER BE LIABLE FOR ANY CONSEQUENTIAL OR INCIDENTAL DAMAGES (INCLUDING, WITHOUT LIMITATION, ANY LOSS OF ANTICIPATED PROFITS) INCURRED BY PURCHASER WITH RESPECT TO ANY GOODS OR SERVICES FURNISHED BY SELLER. WITHOUT LIMITING THE GENERALITY OF PARAGRAPH 16 HEREOF, THE PROVISIONS OF THIS PARAGRAPH 16 IS A MATERIAL TERM OF THIS TRANSACTION?
17. Quality Assurance. Seller shall have no obligation to ensure that any goods or services purchased from Seller meet any special quality assurance specifications and/or other requirements unless such specifications and/or other requirements are set forth in Purchaser's purchase order or separately provided in writing to Seller and, in either case, expressly accepted in this Seller's Acknowledgment and Purchaser represents that goods which it purchases from Seller will not be applied by Purchaser or resold by Purchaser for application to, any critical end use, unless the appropriate specification and/or other requirement for such end use is set forth in Purchaser's purchase order and is expressly accepted in a separate writing by Seller. In the event that any such goods or any services supplied by Seller in connection therewith are applied to a critical end use without the appropriate specification and/or other requirement therefor having been set forth in Purchaser's purchase order and expressly accepted in a separate writing by Seller, Purchaser shall indemnify and hold Seller harmless against any and all damages or claims for damages made by any person for any injury, fatal or nonfatal, to any person or for any damage to the property of any person incident to or arising out of such application, including, without limitation, any loss resulting from radioactive, toxic, explosive, or other hazardous properties of source material, special nuclear material, or by-product material as such terms are defined in the Atomic Energy Act of 1954 or any law amendatory thereof or regulations adopted pursuant thereto.
18. Cancellation. Orders cannot be cancelled without cause by Purchaser without the express written consent of the Seller. Should Purchaser cancel an order without cause, Purchaser shall reimburse Seller against all loss occasioned by such cancellation, including loss of anticipatory profits and liability for commitments made by Seller relating to this Purchase Order and shall purchase any existing inventory and work in process which Seller has in its possession to fulfill Seller's existing orders for Purchaser at the time of cancellation. As used herein, "cause" shall mean a material breach of Seller's duties and obligations hereunder and the failure to cure such breach after Purchaser notifies Seller of such breach and affords Seller a reasonable time to cure same.
19. Confidentiality and Publicity. Purchaser shall consider all information furnished by seller to be confidential and shall not disclose any such information to any person, firm or corporation, other than Purchaser's or Seller's employees, subcontractors or government inspectors, unless authorized to do so by Seller in writing. Purchaser shall not disclose in any manner to third parties, including, without limitation to, advertising or publishing concerns, Seller's identity or the identity of any subsidiaries or affiliates of Seller. Unless otherwise agreed to in writing, no commercial, financial or technical information disclosed in any manner or at any time by Purchaser to Seller shall be deemed secret or confidential and Purchaser shall have no rights against Seller with respect thereto except such rights as may exist under patent laws.
20. Tooling. If and to the extent this Purchase Order relates to the purchase of tools, jigs, die fixtures, equipment, drawings and specifications (collectively, "Tooling") or specifically requires tooling for completion by Seller, then Seller shall at all times be and remain the owner of such tooling. If this Purchase Order requires the development of such tooling, then the price quoted by Seller is based on an agreed minimum production of parts from such tooling and, in the event Purchaser does not ultimately purchase such quantity of parts, an equitable adjustment in the purchase price for products shall be made to reflect such lower quantity and Seller's unamortized cost of the tooling so produced. Seller's price quotation is based upon estimated usage of tooling but no representations or warranties are made by Seller that the tooling so built will ultimately be capable of producing product in accordance with such anticipated usage. Purchaser agrees to pay for changes in tooling made necessary by changes in specification accepted by Seller, such changes to be made at Purchaser's risk. Parts produced from Purchaser's supplied tooling cannot be guaranteed or warranted by Seller. Purchaser supplied tooling is not insured and Seller should not be responsible or liable for any loss or damage thereto or for any materials or warranted equipment owned or furnished by Purchaser. Purchaser shall be solely responsible for insuring such Purchaser supplied tooling and Purchaser waives any claim or right of subrogation it may have against Seller arising out of Seller's failure to insure such tooling. Seller reserves the right to charge Purchaser the reasonable cost and expenses of refurbishing any tooling if so required by Seller to fulfill this Purchase Order. When a period of at least one (1) year no orders are received for parts to be produced from Purchaser supplied tooling, Seller may notify Purchaser in writing at Purchaser's last known address in Seller's files that disposition must be made of such Purchaser supplied tooling. If return notice is not received within thirty (30) days, such Purchaser supplied tooling shall become the property of Seller or, at Seller's option. Seller may return such tooling to Purchaser at Purchaser's expense. If Purchaser wishes Seller to retain possession of the inactive tooling, a storage charge may be applied.

21. Prototypes. If this Purchase Order relates to the production of a prototype by Seller for or on behalf of Purchaser, (a) such prototypes will be manufactured in accordance with Purchaser's specifications including material selection and (b) actual product produced by Seller may vary from such prototype in a non-material and non-functional manner. Seller's sole liability in the event it is unsuccessful in producing a prototype in accordance with Purchaser's specifications shall be limited to the purchase price paid by Purchaser with respect thereto.
22. Technical Assistance and Advice Seller's warranty shall not be enlarged assistance, technical advice facilities, service or recommendations made by Seller in connection with Purchaser's purchases of the goods hereunder. Said technical services, advice, assistance or recommendations made by Seller or any representative of Seller concerning any use or application of any goods furnished hereunder is believed to be reliable, but SELLER MAKES NO WARRANTY, EXPRESS OR IMPLIED, AND THE SAME ARE HEREBY EXPRESSLY DISCLAIMED as to the same and the results to be obtained. Purchaser assumes all responsibility for loss or damage resulting from the use of any such goods. And no obligation or liability shall arise out of Seller's rendering of technical assigns, customers and users of its products from and against any and all losses, expenses, claims, suits and liabilities (including incidental and consequential
23. Indemnification Purchaser agrees to indemnify, save harmless and defend Seller from and against any and all liability for loss, damage or injury to person or property in any manner arising out of or incident to the performance of this Seller's Acknowledgement or Quotation by Purchaser or its servants, employees, agents, or representatives. Without limiting the generality of the forgoing, Purchaser will indemnify and hold harmless Seller, its officers, employees, agents, successors, damages and court costs and attorney's fees) arising as a result of any claim that the manufacture, use, sale or resale of goods delivered by Seller in accordance with Purchaser's specifications or designs infringes on any patent, utility model, industry design, copyright or other intellectual property rights in any country. Without limiting the generality of paragraph 16 hereof, in the case of any claim of infringement or the sale of products is enjoined, Seller shall have no obligation to procure for Purchaser the right to continue using such products or to replace same with equivalent non-infringing products or to modify the products so they become non-infringing.
24. Setoffs. Purchaser shall make no deduction or setoff for any claim arising out of or from this transaction or any other with Seller nor shall Purchaser take a discount, credit or allowance without Seller's written consent.
25. Assignment. Purchaser shall not assign any order or any interest therein without the written consent of Seller. Any such actual or attempted assignment without Seller's prior written consent shall entitle Seller to cancel such order upon written notice to Purchaser.
26. Termination. Seller may terminate any order or any part thereof for any reason at Seller's convenience upon written notice to Purchaser. Upon such termination, Purchaser agrees to waive all claims for damages including, without limitation, any loss of anticipated profits, and to accept as its sole remedy for termination the reasonable additional costs of obtaining substitute goods of the same quantity and quality, provide that in no event shall such cost exceed the price of the order or part thereof so terminated as stated on Seller's acknowledgment. Any claim for adjustment not asserted within sixty (60) days from the date of such termination shall be deemed to have been waived by Purchaser.
27. Allocation of Risk. Purchaser acknowledges that this Seller's Acknowledgement allocates risks with respect to goods and/or services sold to Purchaser hereunder and this risk allocation is reflected in the prices to be paid by Purchaser for said goods and/or services purchased hereunder. Purchaser warrants that it has read this provision, understands it and is bound by its terms.
28. Packaging. Seller will use all reasonable means to comply with any packaging, loading or bracing requirements specified in any order. Seller will charge for compliance with Purchaser's special requirements in accordance with Seller's price list for extras in effect at time of shipment. If no packaging, loading or bracing requirements are specified by Purchaser, Seller shall comply with the minimum requirements customarily applied by Seller of the method of transportation used for such goods.
29. Entire Agreement. This Seller's Acknowledgement and any other documents referred to on the face hereof constitute the entire agreement between Seller and Purchaser.
30. Modification. No addition to or modification of the terms and conditions of this Seller's Acknowledgement shall be binding on Seller unless specifically agreed to by seller in writing.
31. Waiver. Seller's failure to insist on performance of any of the terms or conditions of this Seller's Acknowledgment or Quotation to exercise any right or privilege or Seller's waiver of any beach hereunder shall not thereafter waive any other terms, conditions, or privileges, whether of the same or similar type.
32. Governing Law. This Seller's Acknowledgment or Quotation shall be governed by and interpreted in accordance with the laws of the State of Illinois. Manufacture, shipment and delivery are subject to any prohibition, restriction, priority, allocation, regulation or condition imposed by or on behalf of the United States of America or any other governmental body with appropriate jurisdiction which may prevent or interfere with fulfillment of any order.
33. Re-orders. Re-orders, if accepted by Seller, are considered as placed under the same terms and conditions as Purchaser's previous order, when such order are not placed pursuant to a formal written proposal and acceptance.
34. Disclosure. Seller shall have the right to disclosure of the identity of Purchaser and the nature of the work Seller is performing on Purchaser's behalf to Seller's customers and prospective customers and in any promotional materials provided such disclosure does not contain any confidential and proprietary