



**Standard Form  
Terms and Conditions of Sale  
Rev. 2017-10-31**

Dear Customer,

Thank you for visiting our website and for reviewing our Standard Form Terms and Conditions of Sale. We value our relationship with you and appreciate your attention to our contractual requirements.

Your compliance with the attached Terms and Conditions of Sale is a necessary part of our ability to meet your requirements and is an integral part of our contractual relationship with you.

We look forward to working together with you to achieve a mutually successful business relationship.

Sincerely,

Precision Resource, Inc.



Standard Form  
Terms and Conditions of Sale  
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**1. DEFINITIONS.** “Goods” means production parts manufactured by PR. “Products” means the Tooling, equipment, molds, Goods and/or other articles covered by a Purchase Order (an “Order”) issued by the customer named in the Order (the “Customer”) to the Precision Resource division or subsidiary appearing on the Order (“PR”). “Contract Tooling” means any tools or molds designed and built by PR and delivered to the Customer for the Customer’s use in producing its own products. “Production Tooling” means any tools or molds designed and built by PR for PR’s use in the production of Goods for sale to the Customer, whether owned by PR or Customer. “Tooling” means both Contract Tooling and Production Tooling.

**2. ENTIRE AGREEMENT, ACCEPTANCE, MODIFICATION.**

(a) Unless otherwise agreed to in writing by PR, the Terms and Conditions contained herein, together with any terms on PR’s Quotation (except as may be later modified by a Sales Order Acknowledgement) or Sales Order Acknowledgement, and all terms and conditions contained in PR’s Electronic Communications Terms and Conditions and PR’s Code of Business Conduct (each available at [www.precisionresource.com](http://www.precisionresource.com)), together constitute PR’s entire offer to sell the Products to the Customer (“Offer to Sell”), constitute the entire agreement between PR and the Customer with respect to the subject matter thereof, and supersede all prior or contemporaneous communications and agreements. For avoidance of doubt, it is the intent of the parties that Section 2-207 of the Uniform Commercial Code concerning the Battle of the Forms shall not apply to the performance of any Order by PR or Customer or to the sale of Goods from PR to Customer. In addition, it is the intent of the parties that provisions of neither the Uniform Commercial Code nor the United Nations Convention on Contracts for the International Sale of Goods shall form any part of the contract between the parties, except as provided in Section 20. These Terms and Conditions shall apply to all orders and releases, including any amendments or modifications thereto, and are the exclusive terms governing the relationship of the parties. PR is not willing to contract with Customer except in accordance with PR’s Offer to Sell. *Without limitation on the foregoing, Customer’s acceptance of PR’s Offer to Sell and PR’s performance of the Order (in whole or in part) are expressly limited to, and conditioned upon, Customer’s acceptance of PR’s Offer to Sell, which may not be changed or waived except in a writing signed by both parties. Without limitation on any other means by which Customer may signify its acceptance of PR’s Offer to Sell, Customer’s performance hereunder, in whole or in part; acceptance of any PPAP submission relating to Goods or Tooling; acceptance of Tooling concepts or designs; issuance of releases or delivery schedules; acceptance of any Products; payment for any Products; or any other conduct recognizing the existence of a contract or business relationship with PR, constitutes Customer’s unconditional acceptance of PR’s Offer to Sell.*

(b) Without limitation on the foregoing, PR's performance on an Order shall not be considered acceptance of any counter-offer or terms provided by Customer, and PR will not be bound by, hereby objects to, and rejects, any additional provision or any provision at variance with these Terms and Conditions or any other part of PR's Offer to Sell that may appear in Customer's purchase order, standard terms and conditions, acknowledgments, form agreements, supplier or quality manuals, notices, online bidding platforms, or in any other document or communication from Customer to PR, or any updates or amendments thereto, whether PR has been notified of such provisions, or however such provision may be communicated or referenced (including any provisions contained on Customer's website, EDI platforms, electronic mail, or any other medium), and whether appearing in hard copy, electronic, or graphic form, or with respect to any online bids or online quote packages that purport to require acceptance of terms and conditions in order to access the bid or quote documents. No email, EDI, on-line access to bids or quote packages, or website communications or exchanges shall constitute a modification of, or objection to, these Terms and Conditions or any other part of PR's Offer to Sell.

### **3. PRICES; TAXES.**

(a) Unless otherwise agreed to in writing by PR, the prices quoted or acknowledged by PR do not include any federal, provincial, state or local excise, sales, use, value added, gross receipts or other taxes, customs or import duties or any other charges, duties, fees, costs or expenses. Customer will pay the full amount of any such taxes, duties or charges now or hereafter imposed by law upon, with respect to, or measured by, the manufacture, sale, shipment, use or price of any Product sold or manufactured hereunder. Prices quoted or acknowledged herein are based on: (i) PR's costs of Tooling, equipment, material, energy and labor as of the time of Quotation; (ii) the volumes specified on the Order and information received from the Customer prior to issuing the Sales Order Acknowledgement; (iii) the manufacturing process described in PR's PPAP submission (including all subcontracted processes), or if there is no PPAP submission, PR's then current manufacturing process (including all subcontracted processes), and (iv) Customer's acceptance of these Terms and Conditions, including particularly the provisions relating to price, warranty and indemnification.

(b) Prices are subject to change upon notice to Customer for any reason, including without limitation in the event of: (i) tooling, equipment, labor, fuel, energy or raw material cost increases or surcharges, including any increased costs charged to PR by its subcontractors, (ii) a reduction in the volumes below those communicated to PR by the Customer, or (iii) any added operations or change to PR's or its subcontractors' manufacturing, service or inspection process in order to meet customer requirements.

### **4. PAYMENT.**

(a) Unless otherwise specified on PR's Sales Order Acknowledgement, subject to PR's rights hereunder or otherwise, payment is due within thirty (30) days after the date of invoice as long as additional releases of Goods are outstanding or anticipated. Unless otherwise specified on PR's Sales Order Acknowledgement, all payments are to be made in United States dollars. Any failure of PR to insist upon such payment terms or any course of dealing inconsistent with such payment terms shall not constitute a waiver or

modification of this provision. Customer acknowledges and agrees that payment within the credit terms established between PR and Customer is intended as a substantially contemporaneous exchange for new value within the meaning of Section 547(c)(1) of the United States Bankruptcy Code since such credit terms are provided only under the understanding that PR will provide new value to Customer in filling currently outstanding or anticipated releases.

(b) Notwithstanding the foregoing or any payment terms otherwise agreed to by PR, PR is under no obligation to provide credit to Customer, and PR reserves the right to restrict or alter the terms of payment or to require payment at or prior to time of shipment for any reason or no reason, but specifically in the event that: (i) limited or no additional releases of Goods are outstanding or anticipated, (ii) Customer fails or refuses to provide the information requested by PR under Section 17, or (iii) in PR's sole judgment, Customer's financial condition, creditworthiness or other circumstances do not provide PR with adequate assurance of performance or otherwise do not warrant shipment on the terms originally specified in the contract. If any payment is not received by PR in full on or before the due date thereof, including any new due date occasioned by PR's altering of payment terms, or if Customer fails or refuses to pay any increased price upon notice thereof as provided for in Section 3, then Customer's account will be deemed delinquent and the balance due will thereafter bear interest from and after such due date or the effective date of such price increase at the rate of one percent (1%) per month.

(c) PR reserves the right, without any liability whatsoever to Customer or any other person or entity, to suspend performance, refuse to accept additional releases or orders, stop delivery of Products in transit, seize Goods held on consignment, decline to deliver except for cash, and/or modify payment terms whenever Customer's account is delinquent (as described above) or PR has reason to doubt Customer's financial condition or ability to pay. *Customer will defend, indemnify and hold PR harmless from any and all claims, costs, expenses, losses and damages (including reasonable attorney and professional fees and costs) brought, incurred by, or threatened against PR as a result of its exercise of any of the foregoing remedies.*

## **5. PACKING; SHIPPING; DELIVERY OF PRODUCTS.**

(a) To the extent that Customer has provided packing specifications to PR, PR will comply with such specifications. *PR is not responsible for any loss, cost, or expense for damaged Products as a result of the manner of packing, except to the extent that PR materially failed to comply with Customer's specifications, or if no specifications were provided, to the extent of PR's negligence in packing the Products, and such failure or negligence was the sole cause of such damage, loss, cost or expense.*

(b) To the extent that Customer has provided containers for packing the Products and has made them available for use, PR will use such containers. *PR is not responsible for any damage, loss, cost or expense associated with the use or handling of such containers, except to the extent PR's negligence in packing the Products was the sole cause of such damage, loss, cost or expense.*

(c) If PR fails to make shipment or delivery when due or fails to make sufficient progress with respect to the manufacture of the Products so that timely shipment or delivery is in

jeopardy, Customer's sole and exclusive remedy shall be that PR use and pay for expedited delivery.

(d) Unless a carrier or route is specified on the Order, PR may select a carrier and route of its choice.

(e) Unless otherwise agreed to in writing, all Products are shipped F.O.B. PR's location. Customer is solely responsible for all shipping and delivery charges. Any shipment or delivery date specified on PR's Sales Order Acknowledgement will be the date of shipment from PR's plant. Delivery of Goods is contingent on PR receiving, with the Order, complete and detailed current specifications (including any prints or drawings) satisfactory for production with sufficient lead time for PR to perform the Order.

(f) Subject to the purchase money security interest granted under Section 6, title to, and risk of loss of, each Product purchased hereunder will pass to Customer, and delivery will be deemed to be complete, upon transfer of the Products to a carrier for shipment at PR's location or the Products otherwise leave the possession or control of PR.

(g) Unless otherwise agreed to by PR in writing, Customer agrees to accept overrun or underrun quantities not exceeding fifteen percent (15%) of the quantities of Goods ordered.

**6. SECURITY INTEREST.** Customer hereby grants PR a purchase money security interest in each Product sold to Customer, as well as all proceeds arising from the sale of such Products and any products into which the Goods are incorporated. Customer hereby authorizes PR to file financing statements, send notices to third parties, and take such other steps as are necessary or desirable in order for PR to perfect and maintain the first priority of its security interest. PR shall retain title and possession to all Production Tooling until Customer has paid the full purchase price for such Production Tooling.

## **7. CHANGES; CANCELLATIONS; EXTRA WORK.**

(a) No order that has been accepted by PR may be changed or cancelled by Customer (in whole or in part) unless PR agrees to such change or cancellation in writing or such cancellation is due to breach by PR as provided below. Changes may result in a delay in the scheduled delivery date and a change in price. Any change in price or delivery will be as agreed to by Customer and PR.

(b) Upon any cancellation (in whole or in part) of an Order including any cancellation for breach, Customer will pay all costs and expenses (including overhead and administrative expenses) incurred by PR on the Order up to the effective date of cancellation, including the acceptance and payment for all inventory on hand, including safety stock, finished goods, goods on consignment, work in process and raw material, plus any costs or expenses related to material commitments in support of the Order that cannot be cancelled without penalty or subject to minimum order quantities. With respect to work in process, Customer will either pay the full sales value for such work in process or authorize PR to complete the manufacture of such work in process and pay the full sales value as finished goods. With respect to raw material, Customer will either pay PR's full cost of such raw material or authorize PR to complete the manufacture of such raw material and pay the full sales value as finished goods.

(c) Either party has the right to terminate an Order at any time for any reason upon one hundred twenty (120) days' notice to the other party, or upon thirty (30) days' notice with opportunity to cure in the event of breach by the other party, in each case subject to the payment of cancellation charges as provided above.

(d) PR may cancel an Order immediately upon notice in the event of the institution of proceedings relating to insolvency, bankruptcy, reorganization, arrangement or liquidation by Customer, or if Customer shall make an assignment for the benefit of creditors.

(e) Extra charges will be made for work performed by PR (including additional sorting, inspection or testing) if the same is required by Customer or required to meet specification but is not included in PR's Quotation or Sales Order Acknowledgement or is not included in Customer's specifications upon which PR's Quotation or Sales Order Acknowledgement was submitted; *provided that* no such charge shall be made if the extra work is due to PR's breach.

(f) Unless otherwise stated in PR's Sales Order Acknowledgement, the term of the Order shall be of an indefinite duration, subject to cancellation under Section 7(c).

## **8. TOOLING; MOLDS.**

(a) Subject to the security interest granted under Section 6, Tooling will be deemed delivered to Customer and title will pass to Customer upon its payment of the full invoiced purchase price of such Tooling (or full amortized price in the event that PR agrees to amortize the price of Production Tooling in the piece price of parts made with the Production Tooling), unless otherwise agreed to by PR in writing. Customer will have no right of possession to the Tooling until such payment in full has been received by PR. Furthermore, in the event that PR files for protection under Chapter 11 of the US Bankruptcy Code or similar provisions under the laws governing the insolvency and bankruptcy of companies in the jurisdiction in which a PR subsidiary or division is located, Customer acknowledges that it may not recover possession of the Tooling without first obtaining relief from the automatic stay provisions of the Bankruptcy Code or similar provisions under the laws governing the insolvency and bankruptcy of companies in the jurisdiction in which a PR subsidiary or division is located.

(b) Subject to the provisions of these Terms and Conditions, and provided that Customer has fully paid for the Production Tooling, upon Customer's cancellation of an Order and request for possession of its Production Tooling, PR will deliver such Production Tooling to Customer in accordance with Customer's instructions, at Customer's sole cost and expense. PR will cooperate with Customer with respect to such delivery and provide such other assistance as Customer may reasonably request in connection with such delivery.

(c) PR will make reasonable and customary repairs, at its expense, necessary to keep the Production Tooling in working order, wear and tear excepted, during the useful life of the Production Tooling (as determined by PR in its sole discretion) or until the date that is one year after the last production order submitted by Customer, whichever period is shorter (the "Maintenance Period"). Any major repairs, replacement Production Tooling, repairs due to wear and tear, and repairs after the expiration of the Maintenance Period

shall be at Customer's expense; *provided that* any such repairs or replacement Production Tooling was not caused by PR's gross negligence in maintaining such Production Tooling. If PR agrees to perpetual tooling on its Sales Order Acknowledgement, PR will maintain such Production Tooling (including major repairs, replacement Production Tooling, and repairs due to wear and tear) at its expense for the duration of the Maintenance Period. Upon expiration of the Maintenance Period, Customer will have the option to either: (i) take possession of the Production Tooling, in which case PR will no longer be responsible for storage or maintenance of the Production Tooling or any cost associated therewith, or (ii) pay PR the full amount of its costs for: (x) any required storage of, or maintenance on, the Production Tooling, or (y) if determined by PR to be necessary, replacement of the Production Tooling or any component thereof. If Customer does not choose either option within three (3) months after written notice from PR, PR shall have the right to destroy the Production Tooling, or otherwise dispose of such Production Tooling, in PR's sole discretion without liability therefor to Customer or any third party.

(d) It is the Customer's responsibility to provide PR with its Contract Tooling standards and specifications, including shrink factor and steel safe requirements. Using such Customer information, PR will submit a design for the Contract Tooling for the Customer's approval. Upon Customer's approval, PR will build the Contract Tooling in accordance with the approved design. PR will also perform a maximum of two (2) rounds of steel safe adjustments after Customer's first trial of the Contract Tooling. To the extent that the Customer does not provide, or provides incomplete, shrink factor, steel safe requirements or other standards, specifications and requirements, if requested by the Customer, PR will develop shrink factor and steel safe requirements for an additional charge.

(e) PR warrants that it will build the Contract Tooling in accordance with the approved design. **EXCEPT AS PROVIDED IN THE IMMEDIATELY PRECEDING SENTENCE, PR PROVIDES NO WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO TOOLING, AND ANY ADDITIONAL WARRANTIES ARE HEREBY EXPRESSLY DISCLAIMED.** In the event of any breach by PR of its warranty for Contract Tooling, PR will, at its option, either repair or replace the non-conforming Contract Tooling *or* issue a credit or refund to Customer no greater than the amount of the purchase price for the non-conforming Contract Tooling. **EXCEPT AS PROVIDED IN THE IMMEDIATELY PRECEDING SENTENCE, PR SHALL NOT BE LIABLE TO CUSTOMER OR ANY OTHER PERSON OR ENTITY FOR: (i) ANY CLAIM, HOWEVER ARISING, INCLUDING ANY CLAIM CONNECTED TO OR ARISING OUT OF THE MANUFACTURE, USE, SALE, DELIVERY, TRANSPORTATION, STORAGE, MAINTENANCE, OR PERFORMANCE OF TOOLING, (ii) ANY CLAIM THAT THE CONTRACT TOOLING DID NOT MEET ANY REQUIREMENTS, SPECIFICATIONS OR STANDARDS OF CUSTOMER EXCEPT TO THE EXTENT THAT SUCH REQUIREMENTS, SPECIFICATIONS OR STANDARDS ARE EXPRESSLY INCLUDED AS PART OF THE APPROVED DESIGN, OR (iii) ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, PUNITIVE, OR OTHER SPECIAL DAMAGES WITH RESPECT TO TOOLING, ALL OF WHICH CLAIMS AND DAMAGES ARE HEREBY EXPRESSLY DISCLAIMED.** Customer shall not be liable to PR for any consequential, indirect, incidental, punitive, or other special damages with

respect to any Claim arising solely out of the fact of Customer's ownership of Production Tooling.

(f) Upon completion of Production Tooling, a reasonable number of tool-made samples may be submitted for Customer's inspection and approval. Subject to the provisions of Section 10, such samples will be conclusively presumed to be acceptable unless a detailed written report, rejecting the parts and specifying the objections, has been furnished to PR within twenty (20) calendar days after delivery of the samples to Customer.

(g) Except to the extent furnished by the Customer to PR, PR retains ownership of all Tooling designs, including all drawings, concepts, ideas, and inventions, in any medium, and all such items shall be considered confidential information of PR. Further, PR retains ownership of all machinery, equipment, gauges, fixtures or other property used in the manufacture of the Goods.

**9. INSPECTION.** Customer will inspect all Products promptly upon receipt thereof and will notify PR of any objections to such Products within thirty (30) calendar days after receipt thereof. If Customer does not so object or refuses the opportunity to inspect the Products, Customer will be deemed to have accepted the Products as conforming to warranty and otherwise meeting its requirements.

#### **10. LIMITED WARRANTY - GOODS.**

(a) Subject to the limitations described herein, PR warrants that the Goods and their packaging will conform, when delivered to a carrier for shipment, to the specifications as set forth on the latest revision level of the part print agreed to in writing by the parties, updating the part print contained in the PPAP submitted by PR and approved by Customer, subject to the limitations set forth in these Terms and Conditions and any exceptions noted on the Sales Order Acknowledgement or any changes to such specifications agreed to in writing by PR (the "Specification"). The foregoing warranty extends to Customer only and not to any other person or entity including, but not limited to, any end-users, consumers or manufacturers of products into which the Goods are incorporated; and Customer shall not make any representations to the contrary.

(b) Notwithstanding anything to the contrary contained herein:

(i) to the extent included in the Specification, material, equipment, accessories, parts and components that are not manufactured by PR are warranted only by, and to the extent of, the warranty provided by the original manufacturer, if any;

(ii) this warranty does not extend to rust or rust-related issues if caused by the Customer's storage of the Goods or the packing specified by Customer, and does not extend to rust or rust-related issues for any reason ninety (90) days after the date of delivery by PR;

(iii) this warranty does not extend to cosmetic or immaterial issues that do not affect part functionality;

(iv) secondary operations or processes (such as plating, heat treating, grinding, deburring, broaching, etc.) not performed by PR are not warranted by PR and Customer agrees to be bound to the extent of the warranty or certification provided by the sub-contractor providing the service;



(v) this warranty does not extend to any Goods that have been subjected to: improper installation or storage (including storage for long periods of time or in humid places where rust can develop); improper maintenance; repairs or alterations not authorized or performed by PR; accident, damage, abuse or misuse; abnormal or unusual operating conditions or applications; operating conditions or applications above the rated capacity of the Goods; or a purpose or application in any way different from that for which they were designed;

(vi) this warranty does not extend to Customer's design, and Customer acknowledges that PR has not approved the design nor participated in the creation of the design, and Customer further agrees that it shall be a complete defense to any Claim against PR that PR conformed to Specification;

(vii) this warranty does not extend to Goods or lots that have passed inspection or testing performed by Customer or a third party on Customer's behalf;

(viii) PR provides no warranty or guarantee with respect to price; and

(ix) Customer shall have the burden of proving that PR did not conform to Specification, is in breach, or has otherwise committed an act or omission pursuant to which Customer has a remedy against PR and that any such non-conformance, breach, act or omission caused Customer to incur loss, damage, cost or expense.

(c) *Except for the foregoing warranty, PR makes no representations, warranties or promises, whether express or implied, at law or in equity, with respect to the Goods or their characteristics, quality or performance. Without limitation on the foregoing statement:*

(i) PR expressly disclaims all other warranties, including the implied warranties of merchantability, fitness for a particular purpose, course of dealing, and usage of trade; any warranty against or concerning patent or other intellectual property infringement; and any warranty regarding defects in materials, workmanship or design;

(ii) except for the description of the Goods contained in the Specification, no oral or written description of the products now or hereafter made by PR, any affirmation of fact or promise now or hereafter made by PR, or any sample or model provided to Customer, will create any warranty, express or implied, in addition to or different from that provided herein; and

(iii) under no circumstances will PR be liable or bound under any representation, warranty or promise, express or implied, made by Customer or any other person or entity.

(d) In order to initiate a valid warranty claim, Customer must: (i) provide PR with written notice specifying in reasonable detail the non-conformity immediately upon discovery thereof or of a reasonable suspicion of a non-conformity, (ii) identify the particular PR lots alleged to contain defective or nonconforming Goods, and (iii) deliver to PR, in quantities specified by PR, the Goods claimed to be non-conforming within sixty (60) calendar days after delivery of such Goods to Customer. Such Goods will be delivered at Customer's risk, as received by Customer with no additional work performed

or any alteration or modification. *Any action to enforce the warranty provided hereunder must be commenced within one year after shipment of the Goods claimed to be non-conforming, unless a lesser warranty period is allowed or prescribed by law in which case such lesser period shall apply.* Any action commenced after the applicable warranty period shall be considered null and void. Except as required by law, a new warranty period will not be established for any repaired or replaced Goods, and such repaired or replaced Goods will remain under warranty only to the extent of, and for the remainder of, the original warranty.

(e) PR reserves the right to correct errors in its Goods. Clerical errors are subject to correction at any time.

## **11. REMEDIES; LIMITATION ON LIABILITY.**

(a) In the event of breach by PR of the warranty set forth in Section 10, PR will, at its option, either repair or replace the non-conforming Goods *or* issue a credit or refund to Customer no greater than the amount of the purchase price for the non-conforming Goods. Notwithstanding the foregoing, PR's liability shall be limited as provided in the remaining provisions of this Section 11. Such limits of liability are an integral part of Seller's Offer to Sell and, without such limits of liability, Seller is not willing to enter into a contract with Customer.

(b) In the event of breach by PR of the warranty set forth in Section 5, Customer's sole and exclusive remedy shall be as set forth in Section 5.

(c) Under no circumstances, whether with regard to any claim for breach of warranty or contract, personal injury, property damage, product liability, field action, recall, corrective service, negligence, strict liability or any other claim whatsoever, whether in law or equity (a "Claim"), will PR be liable for any loss, damage, cost or expense to Customer or any other person or entity arising out of or related to, in whole or in part:

(i) any defect in the design, drawings, blueprints, or specifications (including the Specifications) provided to PR by Customer, Customer's customer, or any other person;

(ii) any Claim that Goods incorporating material provided by Customer is defective, in whole or in part, on account of defects in Customer's material, or any claim that Customer's product is defective except to the extent that such defect is solely as a result of PR's failure to comply with Specification;

(iii) any Claim due (in whole or in part) to a defect caused, or breach of warranty by, any supplier of PR or original manufacturer, except to the extent of any applicable warranty of such supplier or original manufacturer as provided under Section 10(b)(i); *provided that* PR's liability for any such defect or breach shall be no greater than the amount received by PR from such supplier or original manufacturer as indemnification for such Claim;

(iv) any defect in any Goods if such defect was contained in any sample or model provided by PR to Customer that was approved by Customer in writing and that ought to have been revealed to Customer upon its examination of the sample or model;

- (v) any defect in any Goods if such Good or Goods were inspected and accepted by Customer as provided by Section 9;
- (vi) Customer's failure to timely notify PR of a non-conformity or Customer's failure to adequately identify and track or control affected lots of non-conforming Goods after receipt from PR;
- (vii) Customer or any other person or entity's failure to maintain adequate lot control or otherwise control and contain any quality problem;
- (viii) any failure of performance of the Goods as long as the primary cause of such failure was not PR's breach of the limited warranty provided in Section 10;
- (ix) any Claim that the Goods, or any item into which the Goods are a component or part, infringe any product or intellectual property of a third party;
- (x) any quality control, inspection, root cause analysis, or corrective actions taken by Customer;
- (xi) any warranty Claims by any person or entity other than Customer or any Claims by Customer for indemnity as a result of such third party Claims;
- (xii) any administrative, legal or professional fees or expenses associated with the negotiation, litigation, arbitration or settlement of any dispute with respect to the matters contemplated hereby;
- (xiii) any recall campaign or similar corrective action instituted by Customer or Customer's customer without the written approval of PR;
- (xiv) any failure to comply with the laws of any jurisdiction outside of the state or province in which the PR division supplying the Goods is located or any laws of any jurisdiction unrelated to the manufacture and sale of the Goods;
- (xv) the negligence, action or omission of any other party, including contributory negligence; or
- (xvi) any Claim for which Customer has received, or is able to receive, compensation under its policies of insurance, except to the extent not covered by such insurance.

IN ADDITION, NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN OR IN ANY OTHER DOCUMENT OR AGREEMENT BETWEEN THE PARTIES, EXCEPT AS OTHERWISE AGREED TO BY PR IN WRITING, PR'S LIABILITY FOR ANY REASON OR ANY CLAIM (AS DEFINED ABOVE), INCLUDING WITHOUT LIMITATION ANY CLAIMS IN ANY WAY RELATED TO THE GOODS OR THEIR MANUFACTURE, SALE, PACKING, OWNERSHIP, DELIVERY OR USE, , PR'S PERFORMANCE OR BREACH, OR ANY CLAIMS FOR INDEMNIFICATION, INFRINGEMENT, PERSONAL INJURY OR PROPERTY DAMAGE, WHETHER IN CONTRACT, WARRANTY, NEGLIGENCE, TORT, STRICT LIABILITY OR OTHERWISE, WILL NOT, UNDER ANY CIRCUMSTANCES, EXCEED THE SUM OBTAINED BY MULTIPLYING THE PURCHASE PRICE OF THE GOODS SUBJECT TO THE CLAIM BY THE QUANTITY OF DEFECTIVE GOODS OR INCLUDE ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR OTHER SPECIAL DAMAGES, INCLUDING BUT NOT LIMITED TO, LOSS OF PROFITS OR REVENUE, LOSS OF USE OF THE PRODUCTS, LABOR CHARGES, LINE-

DOWN CHARGES OR CLAIMS FOR PRODUCTION INTERRUPTION, DELAYS, OR CLAIMS OF CUSTOMER'S CUSTOMERS OR OTHER THIRD PARTIES. FURTHER, AND WITHOUT LIMITING THE FOREGOING, UNDER NO CIRCUMSTANCES SHALL PR'S LIABILITY UNDER ANY CLAIMS FOR PERSONAL INJURY, PROPERTY DAMAGE, PRODUCT LIABILITY, OR RECALL EXTEND BEYOND PR'S INSURANCE COVERAGE AVAILABLE FOR SUCH CLAIMS. Any liability of PR hereunder shall extend only to the PR division supplying the Goods and not to any other divisions, subsidiaries, parent companies or affiliates of Precision Resource.

(d) Customer shall have no right of setoff with respect to any claims against PR, nor shall Customer have any right of specific performance or injunctive relief with respect to any claim against PR (including any claim to force PR to ship or to accept releases) unless agreed to by PR in writing. In the event of any breach by Customer or a dispute between Customer and PR, PR reserves the right, without any liability whatsoever to Customer or any other person or entity, to suspend performance, refuse to accept additional releases or orders, or stop delivery of Products in transit.

(e) The foregoing constitutes a limitation on PR's legal liability, but does not preclude PR from engaging in good faith negotiations with Customer regarding the resolution of any claim made by Customer; *provided that* no such negotiations, including any offer to settle by PR, shall constitute a waiver of the provisions hereof, an admission of liability, or acceptance of any other terms and conditions governing the sale of the Goods.

**12. INDEMNIFICATION.** Customer will indemnify, defend and hold PR and each other division, subsidiary, parent company and affiliate of Precision Resource and each of its and their officers, directors, shareholders, employees, representatives and agents harmless from and against any Claims, demands, liabilities, damages, losses, costs and expenses (including but not limited to reasonable legal and other professional fees and court costs) resulting from or connected with: (i) any Claim (whether incurred or threatened) regarding any of the matters excluded by the warranty provided in Section 10 or the limitation of liability provided in Section 11, (ii) any amounts due and payable by Customer under Section 3, (iii) any interest due, or the exercise of any remedies, under Section 4 (including any Claim giving rise to Customer's obligation to indemnify as described in Section 4(c)), (iv) PR's enforcement of any of its rights under these Terms and Conditions, (v) any shipping or delivery charges payable under Section 5, (vi) breach by Customer (including any of its employees, agents, representatives, affiliates and subsidiaries) of the provisions of Sections 13 or 16; (vii) any Claim that the design, manufacture, use, distribution, sale, or delivery of the Products infringes or violates the Intellectual Property rights of others, (viii) any Claim for personal injury or property damage caused by Customer or its employees, agents, or representatives while on PR's premises, except to the extent caused by the negligence of PR, (ix) any personal injury or property damage arising out of or connected to the performance by PR of services at Customer's location, including any injury to PR's employees, agents or representatives, except to the extent caused by the negligence of PR or such employees, agents or representatives, or (x) any other Claim or liability (whether incurred or threatened) with respect to the manufacture, sale, use, or delivery of the Products, or injury to person or property caused thereby, other than a Claim for breach of the limited warranty provided

in Section 10 or any third party Claim that does not involve Customer or its property, products or services.

### **13. INTELLECTUAL PROPERTY.**

(a) Each party shall retain sole and exclusive ownership of its own Intellectual Property and neither party shall Claim any right to the other's Intellectual Property. Without limit on the generality of the foregoing, neither Customer nor any third party is granted a license or any other right to any of PR's Intellectual Property or any right to use PR's Intellectual Property for any reason other than to purchase products from PR and incorporate them into Customer's own products.

(b) "Intellectual Property" means a party's: (i) know-how, trade secrets, ideas, processes, methods, procedures, instructions, concepts, drawings, designs, prototypes, inventions, specifications and technical information owned or developed by that party; and (ii) any registered patents, trademarks or copyrights, including applications therefor, and any rights to same acquired by use, in each case relating to a party's business, operations, products and property, regardless of form or format, and any notes, graphs, charts, visual aids, studies, documents or communications containing or referring to any of the foregoing. In addition, PR's Intellectual Property includes (iii) all work flows, bills of material, PPAPs, FMEAs, samples, control plans, audits, work instructions, and quality or production data; (iv) all quotations, cost break-downs, sales order acknowledgements, data and information prepared for or disclosed to Customer in connection with an Order; and (v) any of the foregoing used or developed by PR in connection with the quotation, production and supply of Products to Customer, including anything derived from information received from Customer.

**14. FORCE MAJEURE.** PR will not be liable for its failure to perform hereunder due to any contingency beyond its reasonable control, including without limitation, acts of God, fire, flood, inability to obtain material at reasonable prices, equipment or transportation, governmental laws or regulation, accidents, labor disputes or shortages, or other similar matters. In the event of a force majeure event, PR will notify Customer and will attempt to minimize the duration of any impact on its ability to perform under an Order due to such force majeure event.

### **15. INSURANCE.**

(a) Customer will procure and maintain, at its sole cost and expense, adequate insurance covering the Products while in transit to the Customer's location. Upon Customer's written request, PR may agree to procure such insurance at Customer's sole cost and expense. At PR's request, Customer will add PR as an additional insured under such insurance policy and provide PR with a certificate evidencing such insurance.

(b) Customer shall procure and maintain sufficient levels of insurance coverage relating to General Liability, Workers' Compensation, Recall, Product Liability, Extended Risk, Property and Casualty, Employer's Liability or any other insurance customary for its line of business, all of which insurance shall be primary over any policy of insurance held by PR. All such policies of insurance shall name PR as an additional insured and contain a waiver of subrogation by the insurer against PR.

(c) Customer is solely responsible for insuring Tooling regardless of its location.

(d) PR shall not be required to obtain any insurance additional or supplementary to the insurance coverage it already maintains.

## **16. CONFIDENTIALITY.**

(a) Any Confidential Information disclosed by PR to Customer shall be kept confidential by Customer and shall not be disclosed to any person or entity or used by Customer for any purpose other than in furtherance of the business relationship between PR and Customer. Under no circumstances shall Customer share any of PR's Confidential Information with any competitor of PR or use it in connection with procuring or producing fineblanked parts other than parts purchased from PR under this Order.

(b) "Confidential Information" means all non-public or proprietary information concerning PR or its customers and suppliers and any of their respective subsidiaries or affiliates disclosed by PR to Customer, regardless of whether such information is in written, oral, graphic, electronic or other form. Without limit on the foregoing, Confidential Information includes but is not limited to: (i) PR's Intellectual Property, (ii) the identity, products, services, pricing or specifications of PR's customers or suppliers, (iii) any other business, technical or financial information, costs or pricing, or other information of a sensitive nature relating to the business, operations, ownership, products or property of PR, its customers and suppliers, and its and their respective subsidiaries and affiliates, (iv) any information that is marked confidential by PR or identified as confidential if given orally, (v) any information learned by Customer or its employees, agents, representatives, or advisers upon a visit to any facility of PR or its subsidiaries or affiliates, and (vi) any information that, by its nature, would be reasonably considered confidential information even if not marked or identified as confidential.

(c) Customer acknowledges and agrees that money damages to PR would not be a sufficient remedy for any breach of the above-mentioned confidentiality provisions and that PR shall be entitled to equitable relief, including injunction and specific performance, as a remedy for any such breach. Such remedies shall not be deemed to be PR's exclusive remedies for a breach of this Agreement but shall be in addition to all other penalties available at law or equity to PR (without bond and without the necessity of showing actual monetary damages).

(d) The above provisions regarding confidentiality shall be in addition to, and not replaced by, the provisions contained in any confidentiality or nondisclosure agreement existing between Customer and PR. To the extent of any conflict between the terms of such agreement and the above provisions, the above provisions shall control.

## **17. FINANCIAL INFORMATION.**

(a) In order that PR may make a reasonable determination as to the financial health and creditworthiness of Customer, upon PR's request at any time, Customer shall provide such financial information as PR shall reasonably request, which information PR shall not disclose to any third party other than its advisors who need to see such information in order to advise PR as to Customer's financial health.

(b) Subject to Section 16, PR may, but is under no obligation to, provide such financial information to Customer as PR determines it is willing to provide in PR's sole and absolute discretion.

**18. WAIVER.** Neither the failure nor any delay on the part of PR to exercise any right, remedy, power or privilege under this Agreement, nor any course of dealing at variance therewith, will operate as a waiver thereof in any later instance. No waiver by PR will be effective unless it is in writing and is signed by an authorized officer of PR.

**19. ASSIGNMENT.** PR may assign this Order and any release to any other division, subsidiary, parent company or affiliate that it deems in its reasonable discretion is capable of fulfilling this order.

**20. GOVERNING LAW; VENUE.**

(a) If the PR division manufacturing the Products is located within the United States, then this contract and the sale of goods contemplated hereby has been made in, and will be construed and enforced in accordance with the laws of, the State of Connecticut without regard to its principles of conflicts of laws. If the PR division manufacturing the Products is located outside of the United States, then this contract has been made in and will be construed and enforced in accordance with the laws of the jurisdiction in which such PR division is located, without regard to its principles of conflicts of laws. The Uniform Commercial Code expressly does not apply to the contract formed between the parties. The United Nations Convention for the International Sale of Goods (“CISG”), except as modified by these Terms and Conditions, shall apply to the contract formed between the parties if the PR division manufacturing the Products and Customer are located in different countries. Except as provided herein or under applicable law, in the event of a discrepancy between these Terms and Conditions and the CISG or other applicable law, these terms and conditions shall apply. Notwithstanding the application of any law, the warranty and liability of PR shall be exclusively governed by these Terms and Conditions and the provisions regarding PR’s warranty and liability herein shall not be excluded, “knocked-out” or modified by any court or arbitrator attempting to resolve a dispute regarding the application of these Terms and Conditions.

(b) Except as provided below, the exclusive venue for any litigation regarding this contract and the sales of good contemplated hereby shall be in the State of Connecticut if the PR division manufacturing the Products is located within the United States, and shall otherwise be in the location wherever the PR division manufacturing the Products is located. Customer consents to the exclusive jurisdiction of the state, provincial and federal courts of the relevant jurisdiction specified above for any actions, suits or other proceedings arising out of, or related to, the enforcement of either party’s rights hereunder and agrees not to commence any action, suit or proceeding in any other court and hereby irrevocably and unconditionally waive any objection to the laying of venue in any such court. Notwithstanding the foregoing, PR shall have the right to commence any action, suit or proceeding in any such jurisdiction, whether in the State of Connecticut or wherever the PR division manufacturing Products is located, where it has or can acquire jurisdiction and Customer hereby irrevocably and unconditionally waives any objection to the laying of venue in any such courts.

(c) Notwithstanding the foregoing paragraph (b), if the PR division manufacturing the Products is located in China, then any dispute between the parties will be resolved through arbitration by the China International Economic and Trade Arbitration Commission (“CIETEC”) in Shanghai according to the Rules of Arbitration of CIETEC,

except as such rules are modified by these terms and conditions. The arbitral award shall be final and binding upon both parties. The language of such arbitration shall be in English.

(d) Notwithstanding the foregoing, if the PR division manufacturing the Products is located in Slovenia, when assessing the content of the contract, following provisions of the Slovenian Obligations Code, as modified by these terms and conditions, shall apply: 461 (inspection of thing and patent defects), 462 (latent defects), 466 (contractual restriction or exclusion of seller's liability for material defects, provided that it is understood that Seller is not in a predominant position and that Customer is a sophisticated entity with full knowledge of its legal rights), 468 (buyer's rights, except that Seller's liability shall remain limited as provided in these terms and conditions), 470 (when buyer may withdraw from contract), and 480 (loss of rights).

**21. SURVIVABILITY.** The provisions of Sections 1, 2, 6-16, and 18-25 will survive the expiration or termination of this contract.

**22. SEVERABILITY.** In case any one or more of the provisions or parts of a provision contained herein are, for any reason, held to be invalid, illegal or unenforceable in any respect in any jurisdiction, such invalidity, illegality or unenforceability will not affect any other provision or part of a provision hereof or any other jurisdiction, but these Terms and Conditions will be reformed and construed in any such jurisdiction as if such invalid or illegal or unenforceable provision or part of a provision had never been contained herein and such provision or part will be reformed so that it would be valid, legal and enforceable to the maximum extent permitted in such jurisdiction.

**23. CONSTRUCTION.** The section headings contained herein are inserted for convenience only and will not affect in any way the meaning or interpretation of these Terms and Conditions. The word "including" will mean "including without limitation."

**24. INDEPENDENT CONTRACTORS.** Customer and PR are independent contracting parties and nothing in the Order or PR's Offer to Sell will make either party the employee, partner, joint venturer, agent or legal representative of the other for any purpose. Neither the Order, nor the Offer to Sell, grants either party any authority to assume or to create any obligation on behalf of or in the name of the other. Each party understands that the other manufactures products for sale to a wide variety of customers and that nothing in these Terms and Conditions precludes either party from selling its products to customers or competitors of the other.

**25. LANGUAGE.** The parties acknowledge that it is their wish that these terms and all documents relating thereto be in the English language only / *Les parties aux présents reconnaissent avoir voulu que cette convention ainsi que tous les documents qui s'y rattachent soient rédigés en langue anglaise seulement / Las partes reconocen que es su deseo que estos términos y todos los documentos que se relacionan estén en el idioma inglés solamente.* 双方认可·这些条款和与之相关的所有文档只以英文为准。

Notwithstanding the foregoing, if the PR division manufacturing the Products is located in Slovenia, then the Terms and Conditions in the Slovenian language shall apply also. In the case of a discrepancy between the Slovenian version and the English version of this Terms and Conditions, the English version shall control.