

## JERPBAK-BAYLESS COMPANY'S TERMS AND CONDITIONS

The following terms and conditions form part of the sale of goods from Jerpbak-Bayless Company ("Seller"), and its successors, assigns, or designees, to customer ("Buyer"), and forms an integral part of any quotation and/or blanket purchase agreement by and between Seller and Buyer (the "Agreement") and each purchase order and/or purchase acknowledgment issued thereunder.

**ALL SALES FINAL: SELLER MANUFACTURES CUSTOM PRODUCTS. SELLER DOES NOT STOCK INVENTORY. ALL ORDERS ARE MADE AT THE TIME OF SALE AND BUILT TO ORDER. ALL SALES ARE FINAL.**

**TERMS AND CONDITIONS OF SALE.** Seller hereby agrees to sell the goods described on the Agreement (collectively, the "Goods") to the Buyer, upon and subject to the terms and conditions set forth in the Agreement and herein (collectively, the "Terms"). The order of Goods by Buyer from Seller shall constitute an effective acceptance of and be limited to the Terms. The Terms constitute the full and final expression of the contract for the sale of the Goods to Buyer, and supersedes all prior quotations, purchase orders, correspondence or communications whether written or oral between Seller and Buyer. Any proposal for additional or different terms or conditions or any attempt by Buyer to vary in any degree the Terms is objected to and rejected. Buyer acknowledges and agrees that any purchase orders or other documents related to the transaction covered by the Agreement and issued by Buyer or its agents, are issued solely to identify the periodic quantity and timing of Goods to be manufactured and released under the Agreement and Seller specifically objects to, and shall not be bound by, any other terms or conditions thereof which are not specifically set forth herein. Buyer further acknowledges and agrees that shipment by Seller to Buyer is not an acceptance of the terms and conditions of any purchase order or other document issued by Buyer or its agents, except for the terms identifying the periodic quantity and timing of Goods to be manufactured and released under the Agreement. Buyer shall be bound by the Agreement when it sends a purchase order or otherwise indicates acceptance of this Agreement, or when it accepts delivery from Seller of the Goods.

**SALES CONTRACT:** Any contract for the sale of Goods by Seller to Buyer shall be subject to these terms and conditions and shall not be effective until accepted by Seller at its home office in Solon, Ohio.

**QUOTATIONS:** All prices quoted by Seller in the Agreement are based upon the costs and conditions existing on the date of the quotation shall be good for a period of thirty (30) days from the effective date of the Agreement, and thereafter are subject to change by Seller, in its sole discretion. Quoted prices do not include sales, use, excise, or similar taxes or assessments, which shall be the sole obligation of Buyer, unless Seller expressly agrees otherwise. Stenographical and clerical errors are subject to correction.

**CREDIT:** Accounts will be opened only on approved credit.

**TERMS OF PAYMENT:** Payment for the Goods by Buyer shall not be subject to any right of set-off and shall be paid in full no later than fifteen (15) days after Seller invoices Buyer for the Goods. In the event Seller offers Buyer payment terms in writing other than those set forth herein, payment shall be made in accordance with such specific terms. The parties agree that all payments not received when due shall bear interest at 1.5% per month.

**CURRENCY:** All invoices for Goods delivered under this Agreement are payable only in U.S. dollars.

**CANCELLATION:** Buyer may cancel or defer an order or delivery of Goods hereunder only upon the condition that Buyer immediately makes payment to Seller for all work completed at the unit price and for all work in process, raw materials acquired, materials in transit, unamortized tooling, handling, overhead, production, and outside costs at Seller's cost therefor. Seller may cancel or defer all or any part of an order or delivery of Goods hereunder or under the Agreement if Buyer repudiates or breaches any of the Terms.

**CAD FILES AND DRAWINGS:** Programs are created for Seller's machines from the CAD solid model files supplied to us by Buyer. It is presumed that Buyer will supply accurate CAD models and drawing files to Seller. Seller shall not be liable or responsible for errors in CAD models and/or drawing files supplied by Buyer. Additionally, and unless specifically quoted, Seller is not responsible for verifying the CAD model files against the drawing files. Buyer simply specifying that the drawing file or the model file takes precedence over the other files is not an acceptable solution since both files need to match in order for Seller to properly perform. If errors in Buyer supplied CAD files are discovered while Goods are in-process, additional charges will be incurred on a "time and material" basis as needed to correct the errors. Buyer will be advised of any extra charges and a purchase order or P.O. revision will be required to cover the

charges *before* work can resume. If errors in the CAD model and/or drawing files are found after the parts are completed, Buyer shall be obligated to buy the Goods at the quoted price.

**CUSTOMER DELAYS AND/OR HOLDS:** The Goods are being produced on high-cost, high-volume machinery and equipment, and it is very costly for a machine to sit idle while waiting on information from Buyer. In the event of delays or holds caused by inaccurate or incomplete information provided by Buyer, it will be necessary to pass additional charges onto Buyer. In some cases, depending on the length of delay, it may be necessary to pull Buyer's job out of the machine, in which case additional setup charges will be incurred. Work will not proceed on the project and a new delivery date will not be established until we receive a purchase order or P.O. revision for any such additional charges.

**NON-RECURRING ENGINEERING (NRE) CHARGES:** Whether quoted separately or amortized into the unit price, Seller always incurs NRE costs, including fixturing, engineering, programming, tooling, and set-ups. Each quotation will include NRE charges based on the information that Seller has been provided at the time of quotation. If at any point it becomes obvious that the scope of the project has exceeded what was included for NRE costs, it will be brought to the Buyer's attention and a resolution as to how to handle potential extra costs will be determined before proceeding any further.

**TERMINATION:** In the event of a breach by Buyer, Seller may terminate the Agreement without liability to Buyer upon giving ten (10) days' written notice of termination. Further, Seller may immediately terminate the Agreement without liability to Buyer by delivering written notice to Buyer upon the occurrence of any of the following events: (a) Buyer becomes insolvent or unable to pay its debts as they become due; (b) Buyer applies for or consents to the appointment of a receiver, trustee, liquidator, or custodian; (c) Buyer makes a general assignment for the benefit of creditors; (d) Buyer is adjudicated bankrupt or insolvent; (e) Buyer commences a voluntary case under any applicable bankruptcy law or files a voluntary petition or answer seeking reorganization, an arrangement with creditors or an order for relief; or (f) Buyer dissolves. If this Agreement is terminated by Seller pursuant to this paragraph, Seller shall be entitled to reasonable reimbursement for any labor, material, or other expenses incurred in connection with the Agreement, plus a reasonable amount of overhead.

**PACKAGING AND PACKING:** Seller shall use its standard and customary methods of packaging for the delivery and shipment of the Goods. If Buyer supplies Seller with packaging and packing materials for the Goods, such standards and customs shall include the use of Buyer supplied packaging and packing material, unless otherwise specified in a writing between Buyer and Seller. Buyer shall bear the cost of any and all packaging and packing for the Goods.

**DELIVERIES:** Seller shall use all reasonable means to fill orders placed under the Agreement within the time requested and/or promised. Seller does not assume responsibility and shall not be liable for any damages resulting from or attributable to any delays in filling or delivering any Good for causes beyond his control, including an accident to or breakdown of Seller's equipment, labor disputes, embargoes, acts of God, supplier delays, government restrictions, riot, or carrier delays.

**SHIPMENT:** All Goods shall be shipped to Buyer F.O.B. shipping point (i.e., Seller's place of business at 34150 Solon Road, Solon, Ohio 44139). Seller's liability for delivery ceases upon making delivery of Goods to the carrier, acting as Buyer's agent, at the shipping point. In ordering Goods under the Agreement, Buyer should state explicitly the method of shipment preferred and, in the absence of explicit shipping directions, Seller may use its discretion. Shipments will be made at cost to the Buyer and freight charges will be included on the invoice. Buyer shall pay all transportation costs of the Goods. Seller may make partial delivery at Seller's sole discretion. Seller shall endeavor to meet the shipping and delivery dates specified by Buyer; provided, however, if Seller is unable to meet such dates, Buyer shall have no claim against Seller for any losses or damages resulting from any such delay in delivery.

**FORWARDERS:** Buyer agrees to schedule forwarders to pick up orders for Goods within two business days from the completion date provided by Seller, and orders for Goods not picked-up within such period shall be charged \$25 per day for additional handling and product storage.

**WARRANTIES: SELLER REPRESENTS AND WARRANTS THAT IT SHALL MANUFACTURE THE GOODS CONSISTENT WITH BUYER'S SPECIFICATIONS. OTHERWISE, SELLER NEITHER MAKES OR HAS MADE NO AFFIRMATION OF FACT NOR MAKES OR HAS MADE NO PROMISE RELATING TO THE GOODS BEING SOLD AND DELIVERED UNDER THE AGREEMENT THAT HAVE BECOME A BASIS OF THE BARGAIN MADE OR THAT CREATE, AMOUNT TO, HAVE CREATED, OR HAVE AMOUNTED TO AN EXPRESS WARRANTY THAT THE**

**GOODS WOULD CONFORM TO ANY AFFIRMATION OR PROMISE. SELLER IS NOT LIABLE FOR NORMAL MANUFACTURING DEFECTS OR FOR CUSTOMARY VARIATIONS FROM QUANTITIES OR SPECIFICATIONS, UNLESS EXPRESSLY STATED HEREIN. EXCEPT FOR ANY REPRESENTATIONS OR WARRANTIES EXPRESSLY STATED HEREIN OR IN OTHER EXPRESS WRITINGS FROM SELLER, SELLER EXPRESSLY DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES OF ANY KIND (WHETHER ARISING BY IMPLICATION OR BY OPERATION OF LAW) WITH RESPECT TO THE GOODS, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OR REPRESENTATIONS AS TO MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE.**

**WARRANTIES VOID:** ALL EXPRESS WARRANTIES (WHETHER LOCATED HEREIN OR IN OTHER EXPRESS WRITINGS FROM SELLER) AND IMPLIED WARRANTIES COVERING ANY PRODUCT OR GOOD SOLD BY SELLER (THE "WARRANTIES") SHALL BE VOID AND OF NO EFFECT IF: (A) THE PRODUCT OR GOOD IS ALTERED, BENT, DEFACED, MODIFIED, OR CHANGED BY BUYER OR ANY THIRD PARTY; (B) THE PRODUCT OR GOOD LOSES ITS CE CERTIFIED DESIGNATION DUE TO ANY ACTION OR INACTION BY BUYER OR ANY THIRD PARTY; (C) THE PRODUCT OR GOOD IS DAMAGED BY MISUSE, IMPROPER MAINTENANCE, OR TAMPERING BY BUYER OR ANY THIRD PARTY; (D) THE PRODUCT'S OR GOOD'S WARRANTY PERIOD EXPIRES; (E) THE PRODUCT OR GOOD IS USED OUTSIDE OR IN EXCESS OF ITS INTENDED PURPOSE OR DESIGN; (F) THE PRODUCT OR GOOD IS DAMAGED DUE TO ENVIRONMENTAL CONDITIONS THAT ARE NOT IN CONFORMANCE WITH THE PRODUCT'S OR GOOD'S SPECIFICATIONS; (G) THE PRODUCT OR GOOD IS DAMAGED DUE TO CONNECTING PERIPHERALS, ADDITIONAL EQUIPMENT, OR ACCESSORIES OTHER THAN THOSE RECOMMENDED IN THE PRODUCT'S OR GOOD'S SPECIFICATIONS; (H) THE PRODUCT OR GOOD IS DAMAGED BY UNNATURAL CAUSES, SUCH AS ANIMALS, LIGHTNING, ABNORMAL VOLTAGE, FIRE, NATURAL DISASTER, WATER OR OTHER LIQUID EXPOSURE; (I) THE PRODUCT OR GOOD IS NOT STORED OR HANDLED APPROPRIATELY; (J) THE PRODUCT OR GOOD IS DAMAGED DUE TO NORMAL AND ORDINARY WEAR AND TEAR; OR (K) THE DAMAGE TO THE PRODUCT OR GOOD IS NOT REPORTED TO SELLER WITHIN TEN (10) DAYS OF DISCOVERY.

**DEFECTIVE GOODS:** If a Good does not conform to any express warranty issued by Seller and the warranty is not excluded by the foregoing paragraph, then Buyer must promptly notify Seller. If Seller determines that the Good does not comply with an express warranty provided by Seller, Seller, in its sole discretion, shall either repair, replace, credit or complete the order with the limitations as set forth herein. **SUCH REPAIR, REPLACEMENT, CREDIT, OR ORDER COMPLETION ARE THE ONLY REMEDIES OF BUYER FOR ANY BREACH OF WARRANTY PROVIDED BY SELLER.**

**CLAIMS UPON DELIVERY:** If any Goods delivered hereunder are noticeably defective at the time such Goods are shipped to Buyer, Buyer must notify Seller within ten (10) days of receipt of shipment of the Goods or the Goods shall be deemed accepted by Buyer and in full satisfaction of any and all warranties therefor. If such claim is sustained and the Goods furnished are not as ordered, Seller, in its sole discretion, shall either repair, replace, credit or complete the order with the limitations as set forth herein. **SUCH REPAIR, REPLACEMENT, CREDIT, OR ORDER COMPLETION ARE THE ONLY REMEDIES OF BUYER FOR THE DELIVERY OF ANY GOODS HEREUNDER THAT ARE NOT AS ORDERED.**

**RETURNED GOODS:** Except for Goods returned to Seller pursuant to the two (2) immediately preceding paragraphs, Buyer shall not return any Goods to Seller. No shipments of returned goods shall be made without providing prompt written notice to Seller and obtaining Seller's prior written authorization. Seller shall pay the freight charges of authorized returns, but reserves the right to specify the type and routing of the carrier. All returned Goods must be securely packed by Buyer to reach Seller without damage. Any returns received without Seller's written authorization shall be immediately returned to Buyer, at Buyer's expense, and Buyer shall be invoiced for any handling and/or freight charges incurred by Seller.

**CHANGES, MODIFICATIONS, WAIVER:** No change in specifications, drawings, or delivery for the Goods may be made without the prior written consent of Seller. These Terms may be modified only in writing signed by a designated officer of Seller.

**INDEMNIFICATION:** To the maximum extent allowed by law, Buyer shall defend, indemnify, and hold Seller, and Seller's employees and agents harmless from and against all sums, costs, liabilities, losses, obligations, suits, actions, damages, back charges, penalties, fines, interest and other expenses (including, without limitation, reasonable

attorneys' fees) that Seller may incur or be obligated to pay as a result of: (i) Buyer's negligence, use, ownership, maintenance, transfer, transportation, resale, distribution, or disposal of any of the Goods; (ii) any infringement or alleged infringement of the industrial or intellectual property rights (including, without limitation, patent rights and copyrights) of others arising from Buyer's plans, specifications (including, without limitation, Buyer's trademarks and brand names), or production of the Goods; (iii) Buyer's violation or alleged violation of any federal, state, county, or local laws or regulations, including, without limitation, the laws and regulations governing product safety, labeling, packaging, and labor practices; and, (iv) Buyer's breach of the Agreement including, but not limited to, Buyer's non-payment of any amount due hereunder.

**CONFIDENTIALTY, PROPRIETARY PROPERTY, TRADE SECRETS, & KNOW-HOW:** The Agreement (including the quotations set forth therein), along with all accompanying information, including documentation, drawings, data, software, and prototypes are the confidential and proprietary intellectual property of Seller and may not be used in any manner, which may be deemed detrimental to Seller. Disclosure of such information, including prototypes, to third parties is expressly prohibited without prior written permission from Seller. Buyer agrees not to reverse engineer, produce, or otherwise copy any of Seller's Goods delivered under the Agreement. All documentation, including manuals, specifications, drawings, and accompanying information, is the confidential and proprietary property of Seller and may not be used in any manner without the prior written approval of Seller. Seller will at no time directly or indirectly reproduce, disclose, advertise, publish or otherwise make known: (a) the fact that Seller and Buyer have entered into the Agreement or that Seller has contracted to or has furnished Goods to Buyer; or (b) any information, design, specification, idea, concept, plan, copy, formula, drawing, process, procedure, performance characteristics or other confidential information which has been or will be disclosed to Seller in connection with the Goods or their evaluation, study, design, production, testing, installation or performance, or received in performing the Agreement (collectively, the "Information"). Unless otherwise provided in writing by Seller, all property of any description, including, without limitation, tools, equipment, machinery, materials, drawings, and manufacturing aides, used in the performance of the Agreement or the production of the Goods shall belong to Seller. This paragraph is referred to herein as the "Confidentiality Paragraph".

**INTELLECTUAL PROPERTY:** Buyer agrees to respect and not infringe Seller's intellectual property, including patents, copyrights, trade secrets, know-how, and trademarks. Buyer agrees not to initiate or support any litigation challenging Seller's intellectual property. Buyer agrees not to file any patent application or copyright on any of Seller's equipment or products.

**LIMITED LIABILITY:** Seller shall not be liable to Buyer, whether arising under contract, tort (including negligence), strict liability, or otherwise, for loss of anticipated profits, loss by reason of plant shutdown, non-operation or increased expense of operation, cost of money, loss of use of equipment, capital or revenue, or for any indirect, special, incidental or consequential loss or damage. Seller's maximum liability to Buyer, whether arising from breach of contract, tort (including negligence), damage to Buyer provided raw materials, strict liability, breach of warranty or otherwise shall not exceed the aggregate purchase price actually paid by Buyer to Seller for the Goods (some states do not allow the exclusion or limitation of incidental or consequential damages, so the above limitation or exclusion may not apply under limited circumstances). Seller will not be responsible for any patent or copyright infringement by Buyer in the use of the Goods provided by Seller.

**DISPUTE RESOLUTION; MEDIATION:** Except for any actual or threatened breach of the Confidentiality Paragraph, for which the parties may refer immediately to the courts selected herein below as having exclusive jurisdiction, the parties agree to seek mediation in the event of any dispute between the parties as to the construction, interpretation, or enforceability of any provision of the Agreement or the Terms as to their rights, duties, or obligations thereunder or hereunder. The parties agree that such mediation shall be conducted in Cuyahoga County, Ohio by a mutually agreed upon mediator. Mediation must occur within 60 days of the date either party first notifies the other party in writing of its good faith intent to have the dispute mediated. The mediation process shall not end and neither party may pursue other available remedies before the expiration of the 60-day mediation period, unless both parties agree in writing to waive mediation. Unless the 60-day mediation period has already expired, the filing by one party of a complaint against the other party, in a court of law or similar body, regarding a dispute along with proper service shall constitute written notice of the dispute and shall start the mediation period if it has not already begun. Until the mediation period ends, the party being sued is not required to file an answer or other responsive pleading and formal discovery is not permitted to begin. The parties agree to equally share the cost of mediation, except attorneys' fees and other costs incurred solely by one party. However, a party found to have breached this provision by not mediating in good faith must pay the other party's court costs and reasonable attorneys' fees.

**JURISDICTION AND VENUE:** The parties irrevocably submit and agree to the exclusive jurisdiction of the state and federal courts located within Cuyahoga County, State of Ohio, for the purpose of enforcing an award of arbitration or seeking a temporary restraining order, injunctive relief, or other equitable relief to enforce any covenant under the Agreement or preserve the status quo of the Agreement, irrevocably agree that all such actions or proceedings shall be litigated in such courts, and waive any objection which they may have based on improper venue or forum *non conveniens* to the conduct of any proceeding in any such court.

**GOVERNING LAW:** The parties acknowledge that the transaction that is the subject matter of the Agreement bears a reasonable relation to the State of Ohio and agree that the Agreement and their rights and duties hereunder shall be governed, construed, and enforced in accordance with the laws of the State of Ohio. The parties specifically intend that Uniform Commercial Code as enacted in the State of Ohio, as amended (Ohio Revised Code Chapter 13), shall govern and control all aspects of the Agreement and its interpretation and that all the definitions contained in those statutes will be applicable to the Agreement, except when this Agreement specifically provides otherwise.

**ATTORNEYS' FEES:** In the event of any controversy, claim or action being filed between the parties respecting the Agreement or the Terms, the prevailing party shall be entitled to recover all expenses, costs, damages, and reasonable attorneys' fees, whether or not such controversy was litigated or prosecuted to judgment.

**FORCE MAJEURE.** Seller shall not be liable or responsible in damages to Buyer for any delay or failure to perform any obligation or condition under the Agreement due to any event or occurrence beyond the reasonable control of Seller, including, without limitation, acts of God, fires, explosions or other casualty, lockouts or other industrial disturbances, material shortages, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, arrests and restraints of government and of people, civil disturbances, and the binding order of any court or governmental authority.

**SUCCESSION AND ASSIGNMENT.** The Agreement, and the rights, benefits, duties, and obligations of the parties thereunder, shall inure to the benefit of and be binding upon the parties hereto and upon their respective assigns and successors in interest. Buyer may not assign, delegate, or otherwise transfer any of its rights or obligations hereunder without the prior written consent of Seller.

**SEVERABILITY:** The terms and provisions of this Agreement are hereby declared to be severable, so that if any terms, provisions, or parts hereof are held invalid, void, or otherwise unenforceable, the remainder of this Agreement and application of such terms, provisions, or parts to other circumstances shall not be affected thereby.

**NOTICES:** Any notice required or permitted under this Agreement shall be deemed given when hand delivered; when deposited in United States certified mail, return receipt requested; or when sent by a nationally recognized courier service, return receipt requested, addressed as follows: (i) to Seller, at 34150 Solon Road, Solon, Ohio 44139; and (ii) to Buyer, at its last known business address. The parties may from time to time change the address to which notices are to be given by written notice to the other party.

**MISCELLANEOUS:** The parties are independent contracting parties and nothing in the Agreement shall make either party the agent or legal representative of the other for any purpose whatsoever, nor does it grant to either party any authority to assume or to create any obligation on behalf or in the name of the other. No waiver of any breach or condition of this Agreement shall be deemed to be a waiver of any other or subsequent breach or condition, whether of like or different nature.

**BATTLE OF THE FORMS NOT APPLICABLE:** The parties agree and it is their intent that the battle of the forms Section 2-207 of the Uniform Commercial Code shall not apply to the Agreement, the Terms, or to any purchase order, invoice or acceptance form of Seller relating to the Agreement or the Terms. It is the parties' intent that the Terms shall exclusively control the relationship of the parties, and in the event of any inconsistency between any purchase order, invoice, acceptance form, or other writing sent by Seller to Buyer and the Terms, the Terms shall govern and control.

**ALL OTHER OFFERS ARE REJECTED.** All of Buyer's previous terms and offers are hereby rejected by Seller, including Buyer's quotation that may have been previously provided, with the exception of any performance guarantees regarding the Goods that have been agreed to in writing by the parties and in Seller's description of the Goods in its quotation or offer. Such written performance guarantees and Seller's Goods descriptions are hereby incorporated by reference. No other proposal, purchase order, invoice, order confirmation, acceptance, quote, nor any electronic click-wrap, terms of use or similar online consent or acceptance language accompanying or set forth by Buyer associated with any Goods purchase, shall be deemed to amend the Terms and any such contradictory or additional terms shall be ineffective. Buyer's acceptance of any portion of the Goods shall constitute acceptance of the Terms by Buyer.