

PACON MFG, INC. TERMS AND CONDITIONS OF SALE

- 1. General.** Pacon Mfg., Inc. ("Seller") and the buyer named on the Seller's Acknowledgement of Buyer's order ("Buyer") for Seller's materials, goods and/or products (the "Goods") agree that the following terms and conditions shall apply to Buyer's order and to Buyer's subsequent orders. Buyer's order, Seller's Acknowledgement, these terms and conditions and referenced technical information shall collectively be deemed Buyer's and Seller's "Agreement" with respect to such Goods. In the event of a conflict among the terms contained in Buyer's order, Seller's Acknowledgement, these Terms and Conditions and referenced technical information, such documents shall govern in the following descending order of precedence: Seller's Acknowledgement, these Terms and Conditions, referenced technical information agreed to by Seller and lastly Buyer's order. Any attempt by Buyer to waive, modify or supplement these Terms and Conditions are rejected and without any force or effect. Each of Buyer's subsidiaries and/or affiliates purchasing from Seller agree to be and will be jointly and severally liable to Seller for all their purchases from Seller, but the provisions of these Terms and Conditions and any transactions between Buyer and Seller are for the sole benefit of Buyer and Seller and confer no rights, benefits or claims upon any other person or entity not a party to such transactions.
- 2. Acceptance.** Upon Buyer's receipt of shipment, Buyer shall immediately inspect the Goods. Unless Buyer provides Seller with written notice of any claim of wrong type or quantity of Goods within three (3) business days after receipt of shipment, such Goods shall be deemed finally inspected, checked and accepted by Buyer as to type and quantity. If Buyer makes use of the Goods at any time after their receipt without notifying Seller of any patent defect therein, Buyer shall be deemed to have accepted the Goods without condition or qualification. Further processing or assembly of rejected parts, materials, etc., by or on the behalf of Buyer shall constitute acceptance of the Goods and a waiver of any liability on Seller's part.
- 3. Returns.** All returns must be authorized in advance and made pursuant to a Seller return authorization. Returns will only be authorized for wrong or defective Goods – sales of conforming Goods are final. Upon Seller's authorization, the rejected Goods shall be shipped to Seller from any domestic U.S. point of origin as instructed by Seller and at Seller's expense. Buyer shall handle and package Goods to prevent damage prior to and during transit to Seller. Returned Goods must be found defective by Seller in exactly the manner claimed by Buyer in its return authorization request and with no other damage. With respect to such returned Goods, Seller may, at its sole option, repair such Goods or obtain conforming Goods for Buyer at no additional cost to Buyer and ship them to Buyer EX WORKS, or credit Buyer with the cost of the returned Goods. Buyer expressly agrees that its sole and exclusive remedy against the Seller is set forth in the immediately preceding sentence, and that this exclusive remedy shall not be deemed to have failed of its essential purpose so long as the Seller is willing and able to repair or replace defective Goods in the prescribed manner or refund the purchase price or give Buyer an allowance thereof.
- 4. Prices.** All quotations are subject to change without notice. Prices shall be set forth in Seller's Acknowledgement and shall be EX WORKS unless otherwise specifically set forth thereon. Pricing is subject to change without notice to adjust for sudden, material cost changes for metal finishing or precious metal plating (gold, silver, nickel, tin). Prices stated in an Agreement are subject to change with concurrent notice in the event of (i) Buyer's alterations to referenced technical information, quantities or delivery schedules; (ii) delays in receiving customer furnished materials and shipping containers/packaging (iii) unforeseen material increases in the cost of fuel, power, raw materials, precious metals, metal finishing, other subcontracted processing or labor, and/or (iv) foreign or domestic legislation enacted by any level of government, including tax legislation, which increases the cost of producing, warehousing or selling the Goods purchased hereunder. If, in Seller's opinion, the financial condition of the Buyer at any time does not justify continuance of production or shipment on the terms of payment specified, Seller may require full or partial payment in advance.
- 5. Change Orders.** Should Seller determine that a change is necessary or desirable to the referenced technical information of the Goods to be provided pursuant to the Agreement, then Seller shall notify Buyer promptly in writing of their request for such change, and both parties shall work together in accommodating the requested change. Such change shall be documented and will be made part of this Agreement as an addendum. Buyer shall pay the cost for such change, if any, including for resulting costs of any associated delay. Notwithstanding the aforementioned, Buyer shall have no obligation to accept any recommended change from Seller, and Seller shall not otherwise recommend any change to the Goods, that are not either necessary or for the benefit of the Buyer.
- 6. Terms of Payment.** Payment, in U.S. Dollars, is due thirty days (Net 30) upon shipment accompanied by Seller's invoice unless otherwise specifically set forth on Seller's Acknowledgement. Credit card orders will be charged by Seller upon work completion. Seller reserves the right to apply payments or other credits to Buyer receivables in Seller's sole discretion. Buyer agrees to return, upon demand by Seller, any merchandise for which payment has not been timely tendered. Buyer agrees to pay a delinquency charge of 1-1/2% per month (pro-rated for partial months) or if such rate shall exceed the maximum rate allowed by applicable law, then a delinquency charge calculated at such maximum rate on the outstanding balance not paid when due, from the date such balances were due until payment with respect thereof is made in full.

7. Credit Concerns; Security Interest. The Seller reserves the right to decline to make shipment whenever, for any reason, there is doubt as to Buyer's financial responsibility and Seller shall not in such event be liable for breach or nonperformance of this contract in whole or in part. To secure prompt payment of the purchase price for the Goods shipped against future payment, Buyer hereby grants to Seller a purchase money security interest in the goods purchased from Seller and all proceeds thereof (the "Collateral"). Buyer agrees to execute and deliver to Seller such UCC financing statements, together with any and all other documents, and shall take such other action, as may be reasonably required to perfect Seller's security interest in the Collateral.

8. Taxes. Any sales, use or similar taxes, export charges, fees or other levies, taxes or surcharges now or hereafter imposed in connection with the production, sale, delivery, use or proceeds of the goods herein specified (except for taxes on Seller's net income) shall be payable by Buyer, and if such taxes or fees are paid or are required to be paid by Seller, the amount thereof shall be added to and become part of the price payable by Buyer hereunder, unless Buyer provides Seller with a valid tax exemption certificate.

9. Export Law. Certain of Seller's goods and services are subject to export control laws, regulations and administrative policies. Buyer represents and warrants that it is not designated on, associated with, or a subsidiary or affiliate of any party, person or entity on any of the restricted party lists maintained by the federal government of the United States including, but not limited to, the Specially Designated Nationals and Blocked Persons List maintained by the Office of Foreign Assets Control ("OFAC") of the U.S. Treasury Department, the Denied Persons List or the Unverified List maintained by the U.S. Department of Commerce Bureau of Industry and Security ("BIS"), the Debarred Parties List maintained by the U.S. Department of State's Directorate of Defense Trade Controls (the "DDTC") or the Nonproliferation Sanctions list. Buyer shall comply with all applicable U.S. economic sanctions and export control laws and regulations, including without limitation, the regulations administered by OFAC, the Export Administration Regulations administered by BIS, and the International Traffic in Arms Regulations administered by DDTC. Diversion contrary to U.S. law is prohibited. Buyer understands that a license, written approval or other authorization may be required from BIS, OFAC, the DDTC or other U.S. government agency(ies) prior to the export or reexport of goods or services from the U.S. Buyer further understands that it is unlawful to export, reexport or transfer, or to attempt to export, re-export or transfer certain goods or services to the parties, persons or entities on the foregoing lists.

10. Packaging. Buyer is responsible for packaging. Prices stated include Seller's standard commercial packaging in pallets, bulk or individual cartons acceptable to commercial carrier. Special customer packaging will be furnished only when specified in Seller's Acknowledgement, and the cost thereof shall be borne by Buyer.

11. Delivery; Shipping; Delays. Delivery of the Goods are EX WORKS. Seller's invoice and packing slip constitute written confirmation of delivery; written reconfirmations of delivery are available at \$30.00 per reconfirmation. Unless expressly specified to the contrary in Seller's Acknowledgement, Goods in stock will be shipped immediately, and Goods not in stock will be shipped as soon as possible. Seller may ship when the Goods or a convenient quantity thereof are ready, regardless of any later shipment date. Seller reserves the right to overship or undership Goods by up to twenty (20%) percent. Seller reserves the right to provide credit instead of completing short deliveries. However, all shipping dates are approximate, and are based upon current availability of materials, present production schedules, and prompt receipt of all necessary technical information, customer furnished materials and shipping containers/packaging. Seller will not be liable for any damage, loss, fault, or expenses arising out of delays in shipment or other nonperformance of this Agreement caused by or imposed by: (a) strikes, fires, disasters, riots, pandemics, acts of God, (b) acts of Buyer, (c) shortages of labor, fuel, power, materials, supplies, transportation, or manufacturing facilities, (d) governmental action (including shelter in place orders, restrictions on public interaction or curtailment of transportation systems), (e) unforeseeable subcontractor or supplier delay including, but not limited to unforeseeable failure by subcontractor or supplier to make timely delivery, or (f) any other unforeseeable cause of condition beyond Seller's reasonable control. In the event of any such delay or nonperformance, Seller may, at its option, and without liability, cancel all or any portion of this Agreement and/or extend any date upon which any performance hereunder is due. Seller shall not be responsible for insuring shipments unless specifically requested by Buyer and any insurance so requested shall be at Buyer's expense and valuation.

12. Termination, Cancellation and Changes. All Goods are custom-made, and agreements cannot be terminated, cancelled or modified, or shipment deferred after Seller's Acknowledgement, except within three (3) business days following delivery of the Acknowledgment or with Seller's written consent and subject to reasonable charges for expenses incurred and work executed by Seller or its suppliers. Buyer shall be obligated to accept any portion of the Goods shipped or delivered by Seller pending Seller's written approval of cancellation.

13. Warranties; Limitation of Liability. *IN LIEU OF ANY OTHER WARRANTY, SELLER WARRANTS ONLY THAT (a) TITLE TO PRODUCTS PURCHASED FROM SELLER WILL PASS ONCE THE PURCHASE PRICE IS PAID IN FULL IN ACCORDANCE WITH THESE TERMS AND CONDITIONS; and (b) THE GOODS WILL BE MADE IN ACCORDANCE WITH THE AGREED-TO SPECIFICATIONS AND REASONABLE EFFORTS WILL BE TAKEN BY THE SELLER TO USE THE AGREED-TO MATERIALS AND PROCESSES. SELLER MAKES MAKE NO WARRANTIES, EXPRESSED OR IMPLIED, OF PERFORMANCE, WORKMANSHIP, QUALITY, DURABILITY, INTERCHANGABILITY, SUITABILITY, OR NON-INFRINGEMENT. ANY LIABILITY FOR CONSEQUENTIAL, SPECIAL, INDIRECT OR INCIDENTAL DAMAGES IS EXPRESSLY DISCLAIMED. SELLER DISCLAIMS ANY LIABILITY FOR CLAIMS ARISING OUT OF IMPROPER PRODUCT DESIGN, PRODUCT MISUSE, IMPROPER PRODUCT SELECTION, IMPROPER INSTALLATION, PRODUCT MODIFICATION, MISREPAIR OR MISAPPLICATION.* Seller's warranty in clause (b) above does not apply (i) where technical information

provided Seller by Buyer or a third party is incomplete, inconsistent, outdated or erroneous; and (ii) to electroplating and metal finishing of blind holes, which is performed by Seller's subcontractor on a commercially reasonable efforts basis only. Seller's liability is limited to, and in any event will not exceed, a refund or credit for the price billed or paid for improper merchandise. Any claim of Buyer against Seller of any nature whatsoever must be asserted within one calendar year of the first transaction related to such claim. Warranties are void outside of the United States of America.

GOODS WHICH MAY BE SOLD BY SELLER BUT WHICH ARE NOT MANUFACTURED BY SELLER ARE NOT WARRANTED BY SELLER, BUT ARE SOLD ONLY WITH THE WARRANTIES, IF ANY, OF THE MANUFACTURERS THEREOF. Seller shall use commercially reasonable efforts to have such manufacturer's warranties extended to Buyer.

14. Title and Risk of Loss. Title to any Goods sold and risk of loss of such Goods passes to Buyer EX WORKS.

15. Intellectual Property.

(a) Confidentiality. Buyer and Seller acknowledge and agree that certain information exchanged between them pursuant to this Agreement will be confidential. "Confidential Information" includes all written or tangible information disclosed by Buyer to Seller or to Seller by Buyer marked as "Confidential" or "Proprietary" at the time of disclosure. "Confidential Information" also includes all information disclosed in any other manner that is indicated as "Confidential" or "Proprietary" at the time of disclosure and is thereafter summarized and marked as "Confidential" or "Proprietary" in a writing delivered to the receiving party within thirty (30) days of the initial disclosure. Seller's custom methods, fixturing and tooling shall be treated as Seller's trade secrets – i.e., showing Goods to a competitor to attract a bid or produce a knock-off violates Buyer's obligation of confidentiality. Confidential Information of the disclosing party will not be disclosed by the receiving party to any third party, except to its Affiliates who are bound by like obligations of confidentiality and non-use, and will not be used by the receiving party for purposes other than those contemplated by this Agreement, unless or until:

- (i) such information becomes publicly known through no fault of the receiving party; or
- (ii) such information was already publicly known or in the receiving party's possession prior to the disclosure of said information to the receiving party; or
- (iii) such information is subsequently disclosed to the receiving party by a third party who is not under any obligation of confidentiality with respect thereto to the disclosing party; or
- (iv) such information is subsequently developed by an employee or agent of the receiving party without actual knowledge of the disclosing party's disclosure; or
- (v) such information is approved for disclosure by prior written consent of the disclosing party; or
- (vi) such information is required to be disclosed by applicable laws, regulations, or court order, provided that the disclosing party gives the disclosing party prompt notice of any such requirement and cooperates with the disclosing party in attempting to limit such disclosure.

The obligations of confidentiality and non-use of this Section will remain in effect for a period of three (3) years from the date of disclosure. For the purpose of this Agreement, "Affiliate" means any entity that directly or indirectly controls, is controlled by, or is under common control with a party. A party is deemed to control another entity if it owns directly or indirectly greater than fifty percent (50%) of the outstanding voting security, capital stock, or other comparable equity or ownership interest of such entity, or exercises equivalent influence over such entity.

(b) Proprietary Rights. All Goods produced for Buyer by Seller will, upon payment therefore, be the exclusive property of Buyer. Seller shall own all tooling, including any fixtures, purchased by or on behalf of Buyer and used to fabricate Goods in accordance with this Agreement, including without limitation any special tools, racks and fixtures required for Seller's production of the Goods designated and built by Seller shall be and remain Seller's property whether or not Buyer is charged for time and/or material in connection herewith. Any Seller proprietary or confidential information or other intellectual property rights existing prior to Buyer's order that are used to produce or included in the Goods will remain the exclusive property of Seller. To the extent that Seller incorporates any Seller Confidential Information into the Goods, Seller hereby grants to Buyer and its Affiliates an irrevocable, perpetual, worldwide, royalty-free, non-exclusive license to use such Seller Confidential Information.

(c) Indemnification. Buyer shall indemnify and hold Seller harmless against any claims against, or losses or damages incurred by, Seller and arising from Seller's use of third party intellectual property supplied to it by Buyer or whose use by Seller was requested by Buyer.

16. Miscellaneous Agreement Policies.

(a) Step Files. Buyer is expected to provide technical information in step file format. Failure to provide step files may subject Buyer to additional fees or new pricing and delivery schedule changes. Step files have controlling authority over drawings or other technical information unless otherwise explicitly set forth on Seller's Acknowledgement.

(b) Customer Furnished Material. Where Buyer desires Seller to use materials and/or shipping containers/packaging provided by Buyer ("CFM"), Seller shall not be responsible for any incremental costs related to the shipping, storage or use thereof. Seller is not required to return or replace scrapped CFM. Non-conforming CFM (damaged, visibly defective, latently defective, contaminated, incorrectly sized) shall subject Buyer to additional fees or new pricing and delivery schedule changes.

(c) Certificates. Subcontracted processing Certificates of Conformance, test reports, First Article Inspection Reports (FAIR) or other dimensional reports must be requested by Buyer at time of quotation and explicitly set forth on Seller's Acknowledgement, otherwise additional fees or price changes may apply or the certificate or report may be unavailable. Seller shall not be liable for the accuracy or completeness of any ROHS, REACH, Conflict Metals or export document disclosure required by Buyer.

17. Costs of Collection; Attorneys' Fees. If, at any time or times, Seller incurs legal expenses or other costs of expenses in connection with: (a) any litigation, contest, suit, dispute, proceeding or action in any way relating to the Goods (including the Goods as Collateral): (b) any attempt by Seller to enforce any rights of Seller against Buyer or any other person which may be obligated to Seller hereunder, or (c) any attempt to inspect, verify, protect, preserve, restore, collect, sell, liquidate or dispose of the Collateral; then, in any such event, the expenses and costs (including attorneys' fees) relating to any of the foregoing events or actions shall be payable by Buyer on demand to Seller and shall be considered additional obligations hereunder secured by the Collateral. In the event Seller submits collection of an unpaid account to a third-party collection firm, Buyer agrees to pay Seller, and Seller reserves the right to impose, a documentation fee to reimburse Seller for (i) costs associated with requesting payment of the account, and (ii) costs associated with preparing such account for submission to collection specialists; the minimum amount of such documentation fee, per account to be submitted to a collection specialist, is \$800.

18. Disputes, Delivery Deemed Conclusive, Governing Law, Jurisdiction. In the event of any dispute, the books and records of Seller shall be conclusive as to the amount and price of goods, due date, delivery date, and terms and conditions. Seller and Buyer agree that (a) all matters related to any Agreement shall be governed and controlled by the internal laws of the State of California, (ii) the rights and obligations of the parties hereto shall not be governed by the United Nations Convention of Contracts for the International Sale of Goods or the United Nations Convention on the Limitation Period in the International Sale of Goods (except as necessary to interpret EX WORKS), and (c) any local, state or federal courts having their situs within or deemed, for jurisdictional purposes only, to have authority over, either the County of Alameda in the State of California shall have exclusive jurisdiction over all matters arising from the Agreement and the parties hereby consent to such jurisdiction.

19. No Waiver. Forbearance or failure of Seller to enforce any of the terms and conditions stated herein, or to exercise any right accruing from default of Buyer, shall not affect or impair Seller's rights arising from such defaults; nor shall forbearance or failure be deemed a waiver of Seller's rights in case of any subsequent default of Buyer.

20. Severability. If any provision of this Agreement is unenforceable or invalid, this Agreement shall be interpreted and enforced to the greatest extent possible as if the unenforceable provision or portion had never been a part hereof.

21. Assignment. This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of Buyer and Seller.

22. Alternative Dispute Resolution. Any dispute or claim arising from or relating to this Agreement or performance under it shall first be addressed amicably through discussions between Buyer and Seller attempting in good faith to negotiate a resolution thereof; provided, however, that either Buyer or Seller may seek injunctive relief from a court of proper jurisdiction where appropriate in order to maintain the status quo while this procedure is being followed. If the parties fail to resolve any dispute arising under this Agreement, either party may seek arbitration as follows: (a) by written notice to the other party, submitting the dispute to binding arbitration, in accordance with the then current Expedited Commercial Arbitration Rules under the American Arbitration Association ("AAA"), each party to bear equally the costs of the arbitration; (b) if the parties are not successful in resolving the dispute through self-help or one of the parties refuses to participate in arbitration, the dispute shall be resolved by litigation; (c) any claim submitted to arbitration must be governed by the Expedited Commercial Rules of the AAA; (d) the locale of any arbitration will be in Alameda County, California, or as otherwise agreed to by the parties in writing; (e) the arbitration panel will consist of a single arbitrator, selected pursuant to the rules of the AAA; (f) the language of the arbitration must be in English; (g) any arbitration award must state the arbitrator's material findings of fact and conclusions of law; (h) a party may seek preliminary injunctive or other equitable relief from any court of competent jurisdiction to preserve the status quo pending establishment of an arbitration panel, and (i) a prevailing party in litigation to require arbitration or to obtain preliminary relief pending establishment of an arbitration panel, in arbitration, or in litigation to confirm or enforce an arbitration award will be entitled to recover is reasonable attorney's fees and costs.

23. Entire Agreement. Upon Seller's acceptance of Buyer's order, the terms and provision set forth herein shall constitute the entire agreement between Buyer and Seller and no statement, correspondence, sample or other terms shall modify of effect terms hereof.