

ECLIPSE MOLD, INC.- TOOLING TERMS AND CONDITIONS

I. Acceptance. No terms and conditions other than the terms and conditions contained herein (the "Agreement") shall be binding upon Seller unless accepted by it in writing signed by Eclipse Mold, Inc. (the "Seller"). All terms and conditions contained in any other oral or written communication which are different from or in addition to the terms and conditions herein are hereby rejected and this document is the complete and exclusive statement of the terms, save for purchase orders ("PO") submitted by Buyer for the purchase of new tooling (the "Tooling") which are consistent with this document and which are accepted by Seller and any inconsistent or contrary terms therein are hereby expressly rejected.

II. Price and Payment. Terms are as follows, unless otherwise indicated in a writing signed by Seller: non-refundable deposit of 33% at acceptance of PO, 33% upon delivery of sample parts and before delivery of the Tooling, and remaining 34% via a wire or ACH issued at time of accepted PO in a form acceptable to Seller solely conditioned upon completion of Good Shots or sixty (60) days after delivery of Tooling, whichever is earlier. "Good Shots" shall mean the Tooling, in Seller's reasonably exercised sole discretion, produced items meeting the specifications on a test run. Seller reserves the right at any time to suspend, limit or otherwise modify the terms of such credit whenever, in Seller's opinion, Buyer's financial condition so warrants (including requiring Buyer to make cash payment or provide other security prior to or upon tender by Seller of delivery of the Tooling). A monthly charge of one and one half percent (1.5%) (or the highest rate allowed under applicable law) on all sums outstanding will be added to each past due amount and Seller shall be entitled to all costs of collection (including reasonable attorneys' fees). Unless otherwise agreed to in writing by Seller, all prices quoted are exclusive of transportation and insurance costs, duties, and all taxes including, but not limited to, federal, state, provincial and local sales, excise value added goods and services taxes and any other taxes. If Buyer cancels the PO prior to completion of the Tooling by Seller, Buyer shall be liable to Seller for, (a) the order price for all goods or services which have been completed and not previously paid for, and (b) the actual costs of work-in-process and raw materials incurred by Seller in furnishing the goods or services to the extent such costs are reasonable in amount and are properly allocable or apportionable to the terminated portion of the PO and (c) a reasonable termination charge consisting of 20% the PO reflecting the lost opportunity and work declined by Seller in reliance upon the PO.

III. Shipment and Inspection. If the Tooling is not retained by Seller for use in manufacturing parts by Seller for Buyer, the subject to any contrary terms contained in a PO which are expressly accepted by Seller in writing, all Tooling is shipped F.O.B. Seller's facility and Buyer shall be responsible for arranging for and paying the carrier. Risk of loss and title shall pass to Buyer upon delivery to Buyer's carrier or upon full payment of the Tooling by Buyer. The cost of any special packing or handling required by Buyer or the nature of the Tooling shall be borne by Buyer. Buyer shall have twenty (20) days from the date Buyer receives the Tooling to inspect for any defects and nonconformance which are discoverable upon a reasonable visual inspection and notify Seller, in writing, of any defects, nonconformance, or its rejection of such Tooling.

IV. Representations. Buyer represents and warrants that: (a) the Tooling, the items it produces, their specifications, their design, and their sale or use do not and will not infringe any intellectual property rights of any third party, including, but not limited to, any trade secret, trademark, copyright or patent (except to the extent designed by Seller), and (b) the marketing, sale, distribution, and use of the Tooling and the items it produces by Buyer comply and will comply with applicable laws and regulations.

V. Warranty. The exclusive and limited warranty provided by Seller hereunder is that the Tooling will conform to the specifications, supplied

CAD data, and any samples provided by Buyer and accepted in writing by Seller, and shall perform up to the guaranteed shot count included on the Tooling quote or PO (the "Warranty"). OTHER THAN THE WARRANTY, SELLER MAKES NO WARRANTY WITH RESPECT TO THE TOOLING, AND THE BUYER AND SELLER HEREBY DISCLAIM ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. If the Tooling is not used by Seller to manufacture parts on a production basis, or upon delivery of the Tooling to Buyer, the Warranty applies only to the extent that any nonconforming Tooling has been properly handled, stored, used, installed and/or maintained. Any claim that the Tooling does not conform to the Warranty must be made in writing to Seller within one year of payment, completion, or delivery of the Tooling, whichever date is earlier.

VI. Limitation of Liability. In the event that it is determined that the Warranty has been breached, the liability of Seller and the remedies available to Buyer will be limited to the repair or replacement of the Tooling by Seller or the return of the purchase price of such Tooling, as determined by Seller in its sole discretion. SUBJECT TO THE FOREGOING LIMITATIONS, SELLER'S LIABILITY FOR ANY OTHER CLAIM RELATING TO THE TOOLING OR ANY SERVICE PROVIDED BY IT TO BUYER, WHETHER BASED ON BREACH OF CONTRACT, NEGLIGENCE, PRODUCT LIABILITY OR OTHERWISE, SHALL NOT EXCEED THE PURCHASE PRICE OF THE TOOLING. IN ADDITION, NEITHER PARTY SHALL BE LIABLE FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, INDIRECT OR CONSEQUENTIAL DAMAGES WHATSOEVER, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS SAVINGS, BUSINESS INTERRUPTION OR LOSS OF ANTICIPATED BENEFITS, ARISING OUT OF THE USE OR INABILITY TO USE THE SERVICES AND/OR TOOLING, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

VII. Indemnification. Buyer shall indemnify and hold Seller and its affiliates, shareholders, members, directors, officers, employees and agents ("Indemnified Parties") harmless from and against any loss, liability, damage or expense, including reasonable attorneys' fees ("Losses"), such parties may incur as a result or, arising out of or by reason of any breach or noncompliance of this Agreement, including its representations set forth in Section IV. Buyer shall further hold Seller Indemnified Parties harmless from and against Losses resulting from or relating to Buyer's or its customers' use, marketing, distribution, or sale of the items produced from the Tooling.

VIII. Improvements. Any and all Improvements shall be the exclusive property of Seller and Buyer agrees to perform all actions necessary or desirable to vest and confirm ownership of Improvements in Seller. "Improvements" shall mean any inventions, developments, enhancements, adaptations and advancements, whether or not patented or patentable, derived from, associated with or relating to the manufacture and production of the Tooling, any component thereof, or any production process, technique or procedure which may be discovered, developed, invented or acquired by Seller in whole or in part arising from Seller's manufacture and production of the Tooling.]

IX. Nonsolicitation Covenant. Buyer shall not directly or indirectly, individually or in concert with any other person or entity, or through a corporation, partnership, limited liability company or other entity do any of the following during the period Seller is producing Tooling for, providing services to, or doing business with Buyer and for one (1) year following termination of Seller's production of Tooling, provision of services, or business relationship with Buyer (whichever is later): (a) induce or attempt to induce any employee or agent of Seller to leave

Seller's employ, or (b) employ (or engage to act, directly or indirectly, as an independent contractor or agent) any employee, contractor or agent of Seller.

X. Lead Time. Delivery lead time will be communicated at the time of order confirmation. Lead times are dependent on receiving fully surfaced usable math data, machine availability, machine capacity, and material availability.

XI. Miscellaneous. This Agreement shall be governed by and construed in accordance with the laws of the State of Michigan (regardless of the laws that might be applicable under principles of conflicts of laws) as to all matters, including, but not limited to, matters of validity, construction, effect and performance. The parties hereby irrevocably consent to the exclusive jurisdiction of the state and federal courts presiding over Macomb County, Michigan, and waive any contention that any such court is an improper venue for enforceability of this Agreement. Buyer acknowledges Seller's right to a mold maker, mold builder or similar lien with respect to amounts due hereunder as provided by applicable law, and to file all necessary paperwork in support of such liens. The failure of Seller to insist upon performance of any provision or to exercise any right or privilege granted to Seller in this Agreement shall not be construed as waiving such provision or privilege. The invalidity of any terms or provisions hereof shall not affect the validity of the remaining terms or provisions, and this Agreement shall be construed as if such invalid terms or provisions had been omitted. Neither party shall be in default of its obligations hereunder to the extent that its performance is delayed or prevented by causes beyond its reasonable control, including but not limited to acts of God, civil disorders, acts of any civil or military authority, stat at home orders, pandemics, judicial action, terrorist acts, natural disasters, shortage of raw materials and strikes and other labor problems or shortages.