

## Terms and Conditions of Purchase

**1. Acceptance.** This order is accepted by the party to whom this purchase order is directed (“Seller”) by promptly forwarding to Proformance Manufacturing, Inc. (“Buyer”) its written acceptance within ten (10) days of the order’s date, or by commencement of performance by Seller. Acceptance is limited to the terms and conditions of this order. This order, with any attachments, constitutes the entire agreement of the parties. No waiver or modification or additions to the terms of this order shall be valid unless in writing and signed by the parties.

**2. Prices.** Buyer shall not be billed at prices higher than those stated on the front of this order if prices are so stated. Unless otherwise provided on the face of the Purchase Order to which these terms and conditions are attached, the price stated includes all charges for packing, hauling, storage and transportation to point of delivery and Seller will pay all delivery charges in excess of any delivery charge Buyer has agreed to pay. The price stated includes all taxes except state or local sales or use tax or similar taxes which Seller is required by law to collect from Buyer. Such taxes, if any, shall be separately stated in Seller’s invoice and paid by Buyer unless an exemption is available. Seller agrees that any price reduction made with respect to the items covered by this order subsequent to its placement but prior to payment will be applicable to this order.

**3. Delivery.** Substitutions will not be accepted without the written approval of Buyer. The order must be shipped complete by date requested. When more than one shipment is made against any order, indicate “Final Shipping” on shipping papers and invoice accompanying the last shipment in the order. Seller shall not ship excess quantities without Buyer’s prior approval. Except as otherwise provided herein, Buyer shall not be obligated to accept untimely, excess or under shipments and such shipments in whole or in part may, at Buyer’s option, be returned to Seller, or held for disposition at Seller’s expense and risk. The invoice shall describe the items and state the purchase order number.

**4. Warranties.** Seller warrants that the items and services covered hereunder will conform to applicable specifications, instructions, drawings, data and samples will be merchantable, of good material and workmanship, free from defects and will be fit and sufficient for the purpose intended. These warranties shall be in addition to all other warranties, express, implied or statutory. Payment for, inspection of, or receipt of articles or services shall not constitute a waiver of any breach of warranty.

**5. Inspection and Tests.** All goods ordered hereunder will be subject to inspection and test by Buyer to the extent practicable at all times and places, including the period of manufacture and in any event prior to acceptance. Seller agrees to permit reasonable access to Seller’s facilities at all reasonable times and after advance reasonable notice for inspection of goods by Buyer’s agents or employees and will provide all tools, facilities and assistance reasonably necessary for such inspection at no additional cost to Buyer. Such goods will be subject to final inspection and acceptance by Buyer after delivery to Buyer. It is expressly agreed that inspections and/or payments prior to delivery will not constitute final acceptance. If the goods delivered do not meet the specifications or otherwise do not conform with the requirements of this order, Buyer shall have the right to reject such goods. Goods which have been delivered and rejected in whole or in part may, at Buyer’s option, be returned to Seller or held for disposition at Seller’s risk and expense.

**6. Buyer’s Property.** Title to and the right of immediate possession of any property, including without limitation, patterns, tools, jigs, dies, equipment or material furnished or paid for by Buyer shall remain in Buyer. No articles made therefrom shall be furnished by Seller to any other party without Buyer’s prior written consent. Seller shall keep adequate records of such property which shall be made available to Buyer upon request, and shall store, protect, preserve, repair and maintain such property in accordance with sound industrial practice, all at Seller’s expense. Unless otherwise agreed to by Buyer, Seller shall insure Buyer’s interest in such property against loss or damage by reason of fire (including extended coverage), riot or civil commotion. Copies of certificates of such insurance will be furnished to Buyer on demand.

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In the event that Buyer's property becomes lost or damaged to any extent from any cause while in Seller's possession, Seller agrees to indemnify Buyer or replace such property, at Seller's expense, in accordance with Buyer's request. At the completion of the goods requested by Buyer in this order for which Buyer's property was required, Seller shall request disposition instructions for all such property, or the remainder thereof, whether in its original form or in semi-processed form. Seller agrees to make such property available to Buyer at Buyer's request, in the manner requested by Buyer including preparation, packing and shipping as directed. Expenses for preparation for shipment will be for Seller's account and shipment shall be made F.O.B. Seller's plant.

**7. Drawings and Specification Review.** If during the term of this order, Buyer's representatives review drawings, specifications, or other data developed by Seller in connection with the order and make suggestions or comments or approve such documents and data, such action is only an expression of opinion by Buyer and shall not serve to relieve Seller of any responsibility for the reliability, quality, rate of output, cost, delivery, performance or any other requirements of this order.

**8. Drawings and Data.** Seller shall keep confidential all information, drawings, specifications, or data furnished by Buyer, or prepared by Seller specifically in connection with the performance of this order, and shall not divulge or use such information, drawings, specifications or data for the benefit of any other party. Except as required for the efficient performance of this order, Seller shall not make copies or permit copies to be made without the prior written consent of Buyer. Seller shall not use, either directly or indirectly, any such data or any information derived therefrom for any purpose other than to perform this order without obtaining Buyer's written consent.

**9. Use of Information.** Seller agrees that all information heretofore or hereafter furnished or disclosed to Buyer by Seller in connection with the placing or filling of this order is furnished or disclosed as a part of the consideration for this order that such information is not, unless otherwise agreed to by Buyer in writing to be treated as confidential or proprietary, and that Seller shall assert no claims (other than for patent infringement) by reason of the use or disclosure of such information by Buyer, its assigns or its customers.

**10. Tooling.** Unless otherwise specified in this order, all tooling and/or all other articles required for the performance hereof shall be furnished by Seller shall be maintained in good condition and replaced when necessary at Seller's expense.

**11. Termination.** Buyer may terminate the performance of the work under this order in whole at any time, or from time to time in part, by written notice to Seller. Upon receipt of such notice, Seller shall, unless the notice directs otherwise, immediately discontinue all work and the placing of all orders for materials, facilities and supplies in connection with the performance of this order and shall proceed to cancel promptly all existing orders and terminate all subcontracts insofar as such orders or subcontracts are chargeable to this order. Upon the termination of work under this order, full and complete settlement of all claims of Seller with respect to the terminated work shall be made as follows: (i) as compensation to Seller for such termination, unless such termination is for the default of Seller, Buyer shall pay Seller the percentage of the total order price corresponding to the proportion of the amount of work completed on the date of termination to the total work to be done as Seller's full compensation for the work completed under this order; and (ii) upon Buyer's payment to Seller in accordance with this paragraph, title to all equipment, materials, work-in-progress, finished products, plans, drawings, specifications, information, special tooling and other things for which Seller has paid shall vest in Buyer.

Nothing contained in this paragraph shall be construed to limit or affect any remedies which Buyer may have as a result of a default by Seller.

**12. Default – Cancellation.** Buyer reserves the right, by written notice of default, to cancel this order, without liability to Buyer, in the event of the happening of any of the following: insolvency of Seller, the

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filing of a voluntary petition in bankruptcy by Seller, the filing of an involuntary petition to have Seller declared bankrupt, the appointment of a Receiver or Trustee for Seller, or the execution by Seller of an assignment for the benefit of creditors. If Seller fails to perform as specified herein, or if Seller breaches any of the terms hereof, Buyer reserves the right, without any liability to Buyer, upon giving Seller written notice, to (i) cancel this order in whole or in part, by written notice to Seller and Seller shall be liable to Buyer for all damages, losses and liability incurred by Buyer directly or indirectly resulting from Seller's breach, or (ii) obtain the goods ordered herein from another source with any excess cost resulting therefrom, chargeable to Seller, if such deficiencies are not remedied. The remedies herein provided shall be cumulative and in addition to any other remedies provided at law or in equity.

**13. Force Majeure.** Neither Buyer or Seller shall be liable for defaults or delays due to Acts of God or the public enemy, acts or demands of any Government or any Governmental agency, strikes, fires, floods, accidents, or other unforeseeable causes beyond its control and not due to its fault or negligence. Each party shall notify the other in writing of the cause of such delay within five (5) days after the beginning thereof.

**14. Compliance with Laws.** Seller agrees to fully observe and comply with all applicable federal, state and local laws, rules, regulations and orders pertaining to the production and sale of the goods ordered, and, upon request Seller shall furnish Buyer certificates of compliance with such laws, rules, regulations and orders.

**15. Government Contracts.** If it is indicated on the face hereof or Seller is otherwise informed that this order is placed, directly or indirectly, under a contract of the U.S. Government or any State or other governmental authority, then all terms and conditions required by law, regulation or by the Government Contract with respect to this order are incorporated herein by reference. To the extent that the terms and conditions of this order are inconsistent with any such required terms and conditions, then the required terms and conditions shall prevail and be binding on both Buyer and Seller. Seller agrees, upon request, to furnish Buyer with a certificate or certificates in such form as Buyer may require certifying that Seller is in compliance with all such terms and conditions as well as any applicable law or regulation. The Equal Opportunity Clause in Section 202 Executive Order No. 12466, amended, relative to Equal Employment Opportunity, and the implementing rules and regulations of the Office of Federal Contract Compliance, and Section 503 of the Rehabilitation Act, are incorporated herein by specific references.

**16. Product Safety and Indemnification.** Seller agrees to provide Material Safety Data Sheets with the shipment of all goods for which same are required and to indemnify and hold harmless Buyer, its successors and assigns, customers and users of its products against all suits at law or in equity and from all damages, claims and demands arising out of the death or injury, to any person or damage to any property alleged to have resulted from the goods hereby ordered, and, upon the tendering of any suit or claim to Seller, to defend the same at Seller's expense as to all costs, fees and damages. The foregoing indemnification shall apply whether Seller or Buyer defends such suit or claims and whether the death, injury or property damage is caused by the sole or concurrent negligence of Seller or otherwise.

**17. Patent Indemnification.** Unless Buyer has designed, or provided the design for, the applicable purchased item, Seller shall indemnify and save harmless Buyer, its successors, assigns, customers or users of its products, from and against all loss, liability and damage, including costs and expenses, resulting from any claim that the manufacture, use, sale or resale of any goods supplied under this order infringe any patent or patent rights, and Seller shall when notified, defend any action or claim of such infringement at its own expense.

**18. Assignment.** Neither this order nor any rights or obligations herein may be assigned by Seller nor may Seller delegate the performance of any of its duties hereunder without, in either case, Buyer's prior written consent.

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**19. Disputes, Binding Arbitration and Applicable Law.** In the event of any dispute which cannot be resolved by negotiation between the parties related to the interpretation of the Purchase Order of which these terms and conditions of purchase are a part or the enforcement of any provisions of the agreement for purchase and sale of the products or services which are ordered by Buyer pursuant to this Purchase Order, such dispute shall, at the written request of either party, be submitted to binding arbitration pursuant to the commercial arbitration rules and procedures of the American Arbitration Association before a single arbitrator within Riverside County, California. Seller shall reimburse Buyer's reasonable legal fees and expenses if Buyer prevails in such proceeding. The validity, interpretation and performance of these terms and conditions and the agreement of purchase and sale initiated by the Purchase Order to which these terms and conditions are attached shall be governed by the laws of the state of California.

**20. Competence.** All special processes must be performed by qualified and competent personnel.

**21. Verification.** When Buyer or its customer intends to perform verification at the Seller's premises, Buyer will first state the intended verification arrangements and the method of product release. This information will be communicated on the Buyer's RFQ, purchase order, or via another acceptable purchasing agreement.

**22. Traceability.** Unless the Seller is the original manufacturer of any and all materials, parts, components or alike of the product, the Seller must retain all information, including but not limited to name of original manufacturer, lot number, series, part or heat number, data code, required to identify the origin of such material part, component or alike. The original manufacturer's certificate of compliance must be retained by the Seller for a minimum of seven (7) years and be made available by the Seller upon Buyer's reasonable request.

**23. Suppliers of purchased parts, raw materials, and out-side processing, are required to notify buyer in the event of the following:**

A. Buyer shall be notified by the Supplier of any known nonconformance to workmanship or material in connection with parts or materials supplied, that does not meet engineering drawing or documents detailing materials supplied to buyer under contract or Purchase Order.

B. In the event that nonconforming materials are present, and the materials are deemed acceptable or useable by the Supplier, it is still the responsibility of the Supplier to inform Buyer so that a determination can be made for the use of said materials by Buyer.

C. Any changes to materials or workmanship made after the time of the original purchase order shall be reported to Buyer for approval prior to acceptance.

D. Buyer requires that supplier facilities be open for auditing and inspection of materials, processes, and records; including certificates of conformance, connected with products supplied to Buyer.

E. Buyer requires that all Suppliers require all Sub-tier Suppliers to meet the same requirements above. All Sub-tier Suppliers must be approved by Buyer via written consent.

F. Where a certificate of conformance is required by Buyer for materials or special processes; the Supplier shall retain all test data and a record of the source of certificate of conformance data on file for review by Buyer, not less than seven years. All records shall be readily accessible to Buyer upon request.

**24. AS9100 Supplier Flowdown Requirements.** For Suppliers providing parts, materials or services to meet AS9100 requirements, see QMF 46 AS9100 Supplier Flowdown Requirements.



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**25. ITAR/Export Requirements.** The Code of Federal Regulations 22 CFR International Traffic in Arms Parts 120 thru 130 apply to all items on this order that meet the requirements of 22 CFR 120. When the Proformance Manufacturing, Inc. Contract or Purchase Order defines that the product being purchased is for a military program or is being developed for a military program the supplier shall ensure they are in full compliance with ITAR requirements. The export, re-export, transfer of any documents to any other company, entity, person, or destination, or for any use or purpose other than that for which the documents were provided by Proformance Manufacturing, Inc., or our customer, is prohibited without prior written approval from Proformance Manufacturing, Inc., or our customer, and authorization under applicable export control laws. All documents are confidential and proprietary to Proformance Manufacturing, Inc. or our customer.