

Bender, Inc. ("Bender")
Terms and Conditions of Purchase

1. Controlling Provisions

Generally: These terms and conditions govern the parties' duties, obligations and relationship with respect to each purchase order ("Order") submitted by BENDER to vendor ("Vendor") for the goods and/or services described in the Order (the "Products"). These terms and conditions apply in addition to any descriptions, specifications, prices, or other items set forth in the Order itself (as used herein, the "Terms and Conditions" shall refer to, collectively, these terms and conditions and those contained in the Order).

These Terms and Conditions constitute an offer by BENDER to purchase Products from Vendor. Vendor's acceptance of this offer is limited to the Terms and Conditions. BENDER expressly rejects any additional, different or varying terms proposed by Vendor, except additional warranties by Vendor, regardless of whether such terms would materially alter these Terms and Conditions. **THESE TERMS AND CONDITIONS CONSTITUTE THE FINAL WRITTEN EXPRESSION OF THE TERMS BETWEEN BENDER AND VENDOR REGARDING THE PRODUCTS AND IS THE COMPLETE AND EXCLUSIVE STATEMENT OF THOSE TERMS. ANY TERMS, CONDITIONS, NEGOTIATIONS OR UNDERSTANDINGS BETWEEN THE PARTIES THAT ARE NOT CONTAINED HEREIN SHALL HAVE NO FORCE OR EFFECT UNLESS IN WRITING AND SIGNED BY BENDER, EXPRESSLY STATING BENDER'S INTENT TO MODIFY THESE TERMS AND CONDITIONS.**

Acceptance: Vendor shall be deemed to have made an unqualified acceptance of these Terms and Conditions upon their earliest of: (a) BENDER's receipt of these Terms and Conditions, signed by Vendor; (b) Vendor's acknowledgment of these Terms and Conditions or any Order submitted by BENDER from time to time; (c) Vendor's commencement of manufacture or delivery of the Products; (d) Vendor's acceptance of any payment from BENDER; (e) Vendor's failure to object to these Terms and Conditions within two (2) days of receipt; or (f) any other event constituting acceptance under applicable law.

Governing Law; Venue; and Jurisdiction: The Terms and Conditions shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania. BENDER and Vendor each (a) submit to the jurisdiction of any state court of the Commonwealth of Pennsylvania or federal court sitting in the Commonwealth of Pennsylvania with respect to any legal action or proceeding arising out of or relating to an Order; (b) agree that any claims with respect to such action or proceeding shall be heard or determined only in any such court; (c) agree not to bring any action or proceeding arising out of or relating to an Order in any other court; and (d) waive any defense of inconvenient forum to the maintenance of any action or proceeding so brought.

Severability; Waiver: BENDER and Vendor agree that if any part or provision of the Terms and Conditions is held void or invalid, the remaining provisions shall remain in full force and effect. The failure of either party to insist, in any one or more instances, upon performance of any term, covenant or condition of the Terms and Conditions shall not be construed as a waiver or relinquishment of any right granted hereunder or of the future performance of such term, covenant or condition.

2. Termination, Suspension or Modifications of Purchase Order

Termination and Suspension for Convenience: BENDER may suspend or terminate an Order, at any time, for its convenience, in whole or in part, by any reasonable manner. If BENDER terminates an Order for convenience, Vendor's sole claim shall be for the costs it reasonably incurred fulfilling the Order prior to the termination, with due allowance for the salvage value of the Products after BENDER has had an opportunity to recommend disposition and audit Vendor's costs.

If BENDER suspends an Order, Vendor shall promptly suspend further performance of the Order to the extent specified, and during the suspension period, properly care for and protect all work in progress and materials Vendor has on hand for performance of the Order. BENDER may withdraw the suspension at any time, at which time Vendor shall resume diligent performance of the work. If Vendor believes that any suspension or withdrawal of suspension justifies modifying the Order price, Vendor shall make a written request to BENDER for the modification, and in that request, substantiate Vendor's increased costs with invoices and/or other documents satisfactory to BENDER. Upon BENDER's verification and approval of such additional costs, BENDER and Vendor shall agree upon an adjustment in the Order price based upon such costs as full settlement to Vendor for the suspension and withdrawal of suspension. Any claim by Vendor for an adjustment pursuant to this section shall be deemed waived unless made in writing within fifteen (15) days from the date that BENDER notifies Vendor of the suspension or withdrawal of suspension. **IN NO EVENT SHALL**

VENDOR BE ENTITLED TO ANY PROSPECTIVE PROFITS OR ANY DAMAGES DUE TO TERMINATION, SUSPENSION OR WITHDRAWALS OF SUSPENSION.

Termination for Cause: If Vendor is adjudged bankrupt, is insolvent or makes a general assignment for the benefit of its creditors, or if Vendor does not correct any failure of Vendor to comply with the Terms and Conditions within ten (10) days after BENDER notifies Vendor in writing of such failure, BENDER may terminate an Order by written notice to Vendor. In the event of such termination, BENDER may fulfil the Order by such means as BENDER selects, and Vendor shall be responsible for any additional costs incurred by BENDER in so doing. If BENDER owes Vendor payment for Products that were delivered prior to the termination for cause, BENDER may withhold from such payment amounts sufficient to cover any costs and/or damages that BENDER incurs because of the termination for cause.

Modification: Notwithstanding Section 1, above, BENDER can modify an Order by notifying the Vendor in writing. If the modification changes or affects the price or delivery date for the Products, BENDER and Vendor shall agree in writing to an equitable adjustment to reflect the effect of the modification. Vendor shall not suspend performance of an Order while BENDER and Vendor negotiate the equitable adjustment. Any claim by Vendor for an adjustment pursuant to this section shall be deemed waived unless made in writing within thirty (30) days from the date that BENDER notifies Vendor of the modification. Vendor cannot modify an Order unless BENDER first approves the modification in writing.

3. Delivery; Time is of the Essence

Delivery: Unless otherwise specified by the Order, Vendor shall deliver the Products F.O.B. the facility named by BENDER. Title to and risk of loss of Products shall remain with Vendor until delivery to the F.O.B point. Vendor shall pack, mark and ship Products in accordance with BENDER's specifications communicated from time to time. Vendor shall deliver all relevant and required material certifications and compliance documents (including but not limited to testing data/results, ROHS/REACH, CofC documents) and safety data sheets with the Delivery of the Products and in addition, Vendor shall send all relevant material certifications and safety data sheets to BENDER in electronic form to purchasing@bender-us.com. Vendor shall also package Products so as to prevent damage or deterioration and shall comply with all applicable packaging laws. Vendor shall include with each shipment such documents as BENDER may require from time to time, including, without limitation, a packing slip showing BENDER's purchase order number, item numbers and sufficient other particulars to identify the Products, certificates of analysis and a Bill of Lading showing quantities delivered by lot number (collectively, the "Delivery Documents"). BENDER's count shall be accepted as final on all shipments not accompanied by packing lists. BENDER will not pay any charges for any containers, packaging, boxing, crating, marking, delivery, transportation, storage or other charges unless otherwise specified herein. BENDER shall have the right at any time to specify the carrier and/or the method of transportation to be employed in conveying the Products, upon proper adjustment being made to cover any difference in transportation cost agreed upon herein. Deliveries are to be made only in quantities and at times specified in schedules furnished by BENDER. BENDER may from time to time change delivery schedules, and any delivery forecasts provided by BENDER are estimates only and are nonbinding. Vendor agrees to supply BENDER's requirements for Products. Nothing herein shall be deemed to restrict BENDER from procuring Products from alternate sources.

Time is of the Essence: Vendor recognizes and acknowledges that BENDER's business model depends on receiving Products on time, and, therefore, agrees that time is of the essence with respect to delivery of Products. Notwithstanding anything contained herein to the contrary, Vendor agrees that in the event of a late delivery, BENDER reserves the right to pay Vendor as follows: (a) if the delivery is more than ten (10) days late but less than thirty (30) days late, BENDER's account with Vendor shall be paid within sixty (60) days after receipt of invoice or shipment, whichever is received later; and (b) if the delivery is thirty (30) days or more late, BENDER's account with Vendor shall be paid within one hundred and eighty (180) days after receipt of invoice or shipment, whichever is received later. BENDER additionally reserves the right to terminate any Order if the delivery is thirty (30) days or more past due, which termination shall be treated as a termination for cause in accordance with Section 2, above.

4. Prices; Payment; Responsible Party

Prices: If a price is not stated on the face of the Order, the Products shall be billed at the price last quoted, or the prevailing market price, whichever is lower. The Order must not be filled at a higher price than last quoted or charged without BENDER's prior written authorization. Prices shall not increase without BENDER's prior written consent, which BENDER may withhold in its sole discretion. BENDER requires (30) days prior notice of any/price increases. All orders received and accepted by BENDER prior to the effective date of the price increase for shipment within thirty (30) days of such effective date will be billed at the prices in effect at the time of acceptance of the order; provided, however, that if Vendor notifies BENDER in writing prior to the effective date of such price increase that it quoted the original price in an outstanding bid submitted prior to receipt of BENDER's amended Price Lists, any order relating to such bid accepted by BENDER prior to the effective date of such price increase for shipment within ninety

(90) days of such effective date will be billed at the prices in effect at the time of acceptance. All other shipments after thirty (30) days (or ninety days, if applicable) of such effective date shall be billed at the prices set forth in the amended Price List. **Price increase will not go into effect until after written consent to the price increase has been submitted by Bender.** Unless otherwise specified on the Order, the prices charged to BENDER include any applicable federal, state and local taxes, charges or duties. No additional charges or fees of any kind or nature, including taxes, shipping or packaging charges, travel or other out of pocket expenses, customs, duties or other fees or assessments, will be allowed unless specifically agreed to by BENDER in writing or on the Order. BENDER requires a minimum of (30) days prior notice of any price increase. Vendor shall use its best commercial efforts to limit increases hereunder as much as possible. Price increases shall only be based on actual increases in raw material, manufacturing or packaging costs and Vendor agrees to provide backup documentation acceptable to Bender in its sole discretion for all increases. The back-up documentation must provide a justification for the increase with indication of increase of material cost via the relative Price Index and/or the increase of manufacturing and/or labor costs. Bender reserves the right to audit any back-up documentation regarding a price increase. Such audit may be performed by Bender or a third party selected by Bender and Vendor agrees to cooperate and to provide any reasonably requested documents. In the event that an audit shows that a price increase was not justified, then Vendor agrees to be responsible for the cost of the audit and for reversing the increase and refunding any overpayments.

In the event that costs for material, manufacturing and/or labor decrease by three percent (3%) or more, then such savings shall be passed on to Bender. If the aforementioned audit discloses that said cost decreases occurred and were not passed on to Bender, then Vendor agrees to decrease the costs of Products accordingly. If Bender discovers in an audit that such decreases were not passed on to Bender, then Vendor shall be responsible for the cost of the audit and for adjusting the price and for refunding any overpayments.

Payment: Unless otherwise stated on the face hereof, BENDER's account with Vendor shall be paid within thirty (30) days after receipt of invoice or shipment, whichever is received later, except where cash discounts apply or other terms are specified and specifically agreed to in writing by BENDER. BENDER's obligation to pay within thirty (30) days is subject to BENDER's receipt of the goods. BENDER will complete early remittance payments when discounts are applied by Vendor. BENDER reserves the right of setoff of any amounts due Vendor on the Terms and Conditions against any amount due BENDER from Vendor on any transaction. BENDER's acceptance of or payment for the Products or any other action or inaction shall neither (a) relieve Vendor from any of its obligations and warranties; nor (b) constitute a waiver of BENDER's rights and claims. Invoices must include (a) BENDER's request for quotation number; and (b) terms and full description of the Product shipped. Invoices must be sent to ach.payables@bender-us.com.

Responsible Party: Vendor hereby acknowledges and agrees that BENDER is solely responsible for the payment of all invoices, and, in the event of nonpayment, that Vendor's remedies lie solely against BENDER.

5. Inspection, Acceptance & Rejection

All Products are subject to BENDER's inspection during manufacture and/or after delivery. Following installation of the Products by Bender or its agent and after conducting test runs, BENDER shall have the right to reject Products if the Products do not meet the quality standards furnished or adopted by BENDER. If BENDER rejects any Products, Vendor shall, within seven (7) working days from the date of rejection, at BENDER's option, replace such Products or provide BENDER with full credit therefore. Alternatively, BENDER may replace the Products and invoice Vendor for the additional costs BENDER incurs. Any Products rejected by BENDER shall be held at Vendor's risk and subject to Vendor's instructions or, at BENDER's option, returned at Vendor's expense. Vendor shall bear all shipping costs, the risk of in-transit loss and damage for replacement Products. Vendor's failure to deliver the Products of the quality, in the quantity, and within the time specified shall, at BENDER's option, relieve BENDER of any obligation to accept delivery of and pay for such Goods.

6. Vendor's Warranties

Vendor expressly warrants to BENDER, to BENDER's customers, and to the ultimate recipient and/or user that for the life of the Products (a) the Products (including Products sold to BENDER but manufactured by others) and all material, packaging and work covered by the Terms and Conditions will (i) conform to the drawings, calculations, depictions, specifications, diagrams, samples or other descriptions furnished or adopted by BENDER; (ii) conform to all representations of and specifications provided by Vendor; (iii) meet or exceed the quality standards furnished or adopted by BENDER; (iv) be merchantable, of good material and workmanship and fit and sufficient for the purposes intended; (v) be new, free from defects in material and workmanship; (b) the use and/or sale, alone or in combination, of the Products will not infringe or violate any United States or foreign letters patent, or any right in or to any patented invention or idea, or a trademark or copyright; (c) the Products and their production, storage, pricing, delivery and sale hereunder are in compliance with foreign, federal, state and local laws applicable thereto, including, without limitation, all

packaging and labeling laws, including but not limited to California Proposition 65; (d) Vendor is conveying good title to the Products, free and clear of any liens or encumbrances; (e) all Products, or any part thereof, shall: (i) be in full compliance with all applicable federal, state and local laws, rules and regulations (collectively, the "Laws"); (ii) be manufactured, produced, transported, stored, shipped and delivered in accordance with all Laws and any applicable specifications or policies communicated by BENDER to Vendor from time to time; (iii) not be adulterated or misbranded within the meaning of any Law; and (f) Vendor will notify BENDER in writing immediately of any dangers that Vendor becomes aware of in connection with the Product.

Vendor acknowledges that it has knowledge of BENDER's intended use and warrants that all Products that have been manufactured by Vendor based on BENDER's use and will be fit and sufficient for the particular purposes intended by BENDER. Any Products not in accordance with the foregoing warranties or any special warranty shall be deemed to be defective and may be rejected by BENDER. BENDER's approval of Vendor's specifications shall not relieve Vendor of any of its warranty obligations. The provisions of this Section shall survive acceptance of the Products by BENDER and shall not be deemed waived by reason of BENDER's inspection, acceptance or payment. Vendor will maintain a quality assurance system, which is adequate in BENDER's judgment to detect and prevent shipment of nonconforming Products. In the event of any recall affecting the Products, Vendor shall indemnify BENDER and the BENDER Parties (as defined below) in accordance with Section 9. BENDER shall have the right to control the recall process and Vendor shall fully cooperate with BENDER in connection with the recall.

7. Breach of Warranty

In the event that Vendor breaches any of the warranties contained in Section 6, above, in addition to the Vendor's obligation to indemnify BENDER as set forth in Section 9, Vendor acknowledges that, if the breach causes BENDER to deliver Products to its customers either late or below BENDER's standards, BENDER will incur lost profits and other damages for which Vendor is liable. Without limiting the foregoing, Vendor shall promptly and at its sole cost replace or repair any Products failing to conform to the warranties set forth herein or at BENDER's request issue a full refund for any Products that BENDER, in its sole discretion, decides to return. Replacement Products or repaired Products shall be subject to the same warranty as provided above. If Product is held to constitute an infringement of a third party right, Vendor shall, at its expense, either procure for BENDER the right to use said Product or replace same with a substantially equal but not infringing Product, or modify it so that it becomes substantially equal but not infringing.

8. Confidential Information

All information and material, including but not limited to drawings, sketches, designs, calculations, proprietary information, prototypes, financial information, configurations and any other documentation, whether oral, written or in any form whatsoever that may be disclosed by one party to the other in the course of fulfilling an Order is considered confidential and proprietary and will not be used by the receiving party other than as necessary to fulfill the Order. The receiving party will protect such information from disclosure to third parties and hold it as confidential using the same degree of care as the receiving party uses to protect its own confidential or proprietary material of like importance, but in no event less than a reasonable degree of care. Each party agrees that it shall be responsible for providing that each person who accesses the disclosing party's confidential information on the receiving party's behalf complies with the confidentiality obligations contained herein. These obligations will continue for a period of four (4) years following any termination of the Order for any reason; provided, however, that with respect to any confidential information that constitutes a trade secret, these obligations shall continue for so long as such information remains a trade secret. The obligations under this Section will not cover any information that is disclosed to a third party by the disclosing party without restrictions on disclosure, any information that has been or is developed independently by the receiving party without violations of obligations of confidentiality, any information that falls into the public domain without fault of the receiving party from a third party without restriction, or any information that is rightly in the possession of the receiving party at the time of disclosure by the disclosing party. Notwithstanding the foregoing restrictions, the receiving party may disclose any information to the extent required by an order of any court or governmental authority, but only after the disclosing party has been so notified and has had the opportunity, if possible, to obtain reasonable protection for such information in connection with such disclosure. Vendor shall not advertise or publish the fact that BENDER has contracted to purchase Product from Vendor, nor shall Vendor disclose any other information relating to an Order without BENDER's written permission.

9. Indemnification and Insurance

Indemnification: Vendor hereby releases and agrees to promptly defend, indemnify and hold BENDER and its shareholders, members, directors, managers, officers, agents, employees, affiliates, customers, successors and assigns (collectively, the "BENDER Parties") harmless from and against all liabilities, losses, claims, court costs, incidental and consequential damages, attorneys' fees and other expenses, whether known or unknown, that arise out of or relate to (a) any negligent actions or omissions of or by Vendor, its employees, subcontractors or agents under or related to the Order;

(b) any failure of Vendor or any of its employees, subcontractors or agents to observe or comply with any of Vendor's duties or obligations under the Terms and Conditions; (c) any alleged defects in the Products; (d) any inadequate disclosures, labels, packaging, warnings or instructions; (e) the alleged violation of any statute, ordinance or other law, order, rule or regulation; (f) any alleged unfair competition resulting from similarity of design, trademark, use or appearance of the Products; (g) bodily injuries, deaths or property damage caused by negligent or wrongful act or omission of Vendor, or any employee or agent of Vendor; (h) any breach of warranty set forth herein or any special warranty and (i) any recalls involving Products. **IN NO EVENT SHALL BENDER BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL, INDIRECT OR PUNITIVE DAMAGES ARISING IN RELATION TO THESE TERMS AND CONDITIONS OR THE PARTIES' RELATIONSHIP, AND VENDOR AGREES TO INDEMNIFY AND HOLD BENDER HARMLESS THEREFROM. BENDER AND VENDOR HEREBY AGREE THAT THIS INDEMNIFICATION PROVISION SHOULD BE ENFORCED TO GREATEST EXTENT ALLOWED BY LAW.**

Insurance: Vendor shall, at its own expense, maintain in effect insurance with respect to its performance hereunder and the Products with such coverages and in such amounts as BENDER may require in writing from time to time and, at a minimum, as may be commercially reasonable. All insurance policies shall be issued by insurance companies reasonably acceptable to BENDER. Vendor shall cause the issuer of each insurance policy to issue a certificate of insurance naming BENDER as an additional named insured, and containing an agreement by the insured that the policy shall not be terminated or modified without at least thirty (30) days' prior written notice to BENDER, and Vendor shall, at BENDER's request, deliver each such certificate to BENDER. Vendor's compliance with these insurance requirements shall not relieve Vendor from liability under these indemnification provisions. Vendor shall indemnify BENDER and the BENDER Parties for any loss suffered due to Vendor's failure to obtain or maintain the insurance required by this Section.

10. Records

For a period of at least two (2) years from the date of shipment, Vendor shall retain complete records relating to the manufacture, production, storage, shipment, transportation, and sale of Products related to any Order, and upon request will make these records available to BENDER or its agent.

11. BENDER-FURNISHED PROPERTY.

Vendor will not disclose to any other party, or use, sell, reproduce, reverse engineer, copy or appropriate, any material, tooling, dies, drawing, designs, and other property or data furnished by BENDER ("BENDER-Furnished Property"), nor will Vendor use the same to produce or manufacture more Articles than are required hereunder. All BENDER-Furnished Property is being provided for use on an as-is basis, and BENDER makes no representations or warranties with respect thereto, whether express or implied. Title to BENDER-Furnished Property will remain with BENDER at all times. BENDER shall have no obligation to furnish any BENDER-Furnished Property, and Vendor shall be solely responsible for obtaining and maintaining the tools and equipment necessary for the fulfillment of its obligations hereunder, including all repair and replacement costs associated therewith. Vendor will bear the risk of loss or damage to all BENDER-Furnished Property unless such loss or damage is solely, directly and proximately caused by BENDER. All BENDER-Furnished Property, together with spoiled and surplus materials, will be returned to BENDER at termination or completion of this Agreement or upon BENDER's demand, whichever occurs first, unless BENDER otherwise directs. All designs, sketches, patterns, dies, tools, equipment, special appliances, computer programs, plans, documents, models, interfaces, data and configurations ("Equipment") paid for directly or indirectly (including as part of the purchase price, whether or not specifically itemized) by BENDER shall be BENDER-Furnished Property and subject to the terms of this provision. As to any Equipment purchased, furnished or used by Vendor in its performance of its obligations under this Agreement which does not become BENDER-Furnished Property under the terms of this Section, BENDER has the option, at any time and from time to time, to purchase from Vendor some or all of such Equipment, and upon the exercise of such option BENDER shall become the owner and entitled to possession of the same. The purchase price shall be limited to the initial cost of such Equipment less any accumulated depreciation. Vendor shall not sell or otherwise dispose of any such Equipment without the prior written consent of BENDER.

12. Independent Contractor

Vendor is and shall remain an independent contractor and neither Vendor nor any of its employees or agents shall be considered an employee of BENDER. Neither Vendor nor any of its employees or agents are authorized to incur any obligations or make any promises or representations on BENDER's behalf.

13. Force Majeure

Neither party shall be responsible for default hereunder where such has been caused by an act of God, war, major disaster, terrorism, third-party criminal acts, insurrection, riot, flood, earthquake, fire, labor disturbance, operation of statutes, laws, rules or rulings of any court or government, or any other cause beyond a party's control.

14. Notices

Each notice, request, demand, or other communication (“Notice”) by either party to the other pursuant to the Terms and Conditions shall be in writing, and, except for routine documentation and correspondence, shall be (a) personally delivered; (b) sent by an overnight commercial courier, charges prepaid; or (c) sent by facsimile or email (but such electronic communication must be either (i) acknowledged by the recipient; or (ii) confirmed by sending a copy thereof to the other party by overnight commercial courier no later than the following business day), addressed to the principal office of the receiving party (attention: President) set forth on the Order or to such other address as such party shall have communicated to the other party in accordance with this Section. Any Notice shall be deemed to have been given when personally delivered, on the first business day after sending when sent by facsimile or email (or when acknowledged by the recipient if sooner), or on the first business day following the date of sending by overnight commercial courier.

15. Assignment

Vendor may not assign any of its rights or subcontract or otherwise delegate any of its duties under the Terms and Conditions to any third party without the prior written consent of BENDER. BENDER may, without Vendor’s consent, assign the Terms and Conditions (a) to any of its subsidiaries, parents or affiliates, (b) upon merger with or into any other corporation; or (c) to any party obtaining all or substantially all of the assets of BENDER. Notwithstanding the foregoing, the Terms and Conditions shall be binding upon and inure to the benefit of the parties and their successors and permitted assigns. Any attempted assignment in violation of this Section shall be void and of no effect.

16. Survival

All obligations prior to the termination of the Terms and Conditions and all provisions of these Terms and Conditions allocating responsibility or liability between BENDER and Vendor shall survive termination of the Terms and Conditions.

17. BENDER's Remedies Cumulative

BENDER' remedies specified herein are cumulative and not exclusive of any other remedies available to BENDER.