

Terms and Conditions of Sale

Revised 11/28/06

The following are the Terms and Conditions respecting the Quotation set forth above by Acme Alliance, LLC ("Acme") for the benefit of ("Buyer") respecting the sale of Material (as defined in the Quotation). The above Quotation and the following Terms and Conditions shall constitute the entire contract between Acme and Buyer respecting the sale of Material on other than an Acme-Managed Inventory basis. The offer embodied in the Quotation and the following Terms and Conditions is expressly conditioned on Buyer's acceptance of the exact terms of such offer. No additional, different or conflicting terms shall be incorporated into the agreement between Acme and Buyer, and in the event any provisions of a Buyer purchase order or other document conflict with the Quotation or the following Terms and Conditions, the Quotation and/or the Terms and Conditions shall prevail.

Duration of Quotation The Quotation set forth above shall be valid for sixty (60) days from the date of the Quotation.

Production Lead Time At the time of Quotation, Acme shall provide Buyer with a Production Lead Time (effective for regular production after tooling and first-article approvals are complete) in days by part number. Acme may modify such Production Lead Time at any time thereafter, but shall do so upon thirty days notice to Buyer.

Delivery of Material Subject to any event of force majeure (i.e. causes which are beyond the reasonable control of Acme, including, but not limited to, acts of God, acts of civil or military authority, fires, epidemics, floods, earthquakes, riots, wars, sabotage, labor shortages or disputes, and actions by governmental bodies), Acme covenants to deliver on the delivery date Material pursuant to Buyer purchase orders delivered pursuant to these Terms and Conditions.

Delivery and Risk of Loss Acme fulfills its obligations to deliver Material hereunder when the Material has been handed over, into the charge of a carrier named by Buyer. Notwithstanding any contrary provision contained herein or any other document, delivery shall occur and risk of loss shall pass to Buyer on the date Material is tendered from Acme into the charge of a carrier. Acme shall provide proof of delivery to Buyer upon the request of Buyer. Acme shall provide reasonable assistance at no charge in any proceeding Buyer may bring against a carrier or insurer for mis-delivery of Material, or in transit loss or damage to Material.

Order Fulfillment Acme shall ship Material complete unless instructed otherwise; although Buyer agrees to accept and pay for any shipment of Material including not less than ninety percent (90%) nor more than one hundred and ten percent (110%) of the units of Material ordered under the subject purchase order.

Price; Other Costs The price of Material shall be the price for Material set forth in the Quotation subject to adjustment as follows:

a. Metal Surcharge - an increase or decrease equal to (i) the difference between (A) the price of metal as of the 15th day of the month preceding the calendar quarter immediately preceding the shipment date of the Material in question (i.e. Price of metal on March 15th, as reflected by the American Metals Market Index or a comparable index for foreign locations, for shipments in April, May, June) and (B) the price of metal as of the shipment date of the subject Buyer purchase order, multiplied by (ii) the ounces of metal times 1.08 (for dress factor) in the unit of Material in question (after removal of sprue and flash but before machining).

b. Energy Surcharge - an increase equal to the product of (i) the sum equal to the excess (if any) between Acme's cost in the calendar month immediately preceding the shipment date of the Material in question for electricity, oil and gas and Acme's average monthly cost for electricity, oil and gas for the immediately preceding twenty-four (24) months (only if the current monthly cost exceeds the 24 month average by 10%) and (ii) the percentage of the total production of Acme (or, as applicable, its suppliers) represented by Buyer based on one decatherm per thirty-five pounds of castings produced by Acme (or, as applicable, its suppliers).

c. Overtime - Acme quotations and prices herein contemplate production performed during normal business shifts, five days per week. Requests for order quantities exceeding production capacity shall be subject to a surcharge for unscheduled overtime/shifts. Buyer may request, at any time, the anticipated hourly production rate standard for the Material.

Transportation, Taxes, and Duties Duties, federal excise, state or local taxes (all taxes whatsoever, of any nation or jurisdictions) will be payable by the Buyer unless specifically stated otherwise in this quotation. Acme agrees to honor any tax exemption certificates provided by the Buyer. Unless specifically stated otherwise in this quotation, Buyer shall be liable for any and all other charges of all types incurred after Material is tendered by Acme into the charge of a carrier FOB shipping point, including, without limitation, transportation charges, insurance, taxes, fees, duties, customs and official charges of any kind whatsoever, incurred by Acme or Buyer with respect to the sale of Material.

Payment Terms Terms are cash-in-advance until such time Acme determines that the Buyer is eligible for open terms. If such determination is made, terms are net 30 days from date of product shipment. Delinquent invoices will carry interest at the rate of 1 ½% per month on the entire unpaid balance. Acme reserves the right to discontinue shipment of Material when delinquent invoices exist. Payments on Tool orders are 1/3 down payment at time of purchase order, 1/3 due net 10 days from shipment of Material samples to buyer, and 1/3 due with PPAP submittal.

Limited Material Warranty Except as otherwise provided below, Acme warrants that each unit of the Material sold by Acme to Buyer shall be (i) free from defects in material and workmanship for a period of ninety (90) days from the date such unit of Material is shipped by Acme. EXCEPT FOR THE WARRANTIES EXPRESSLY SET FORTH HEREIN THE MATERIAL ARE BEING SOLD HEREUNDER "AS IS" AND NEITHER ACME NOR ITS AFFILIATES, EMPLOYEES OR AGENTS MAKE ANY OTHER EXPRESS OR IMPLIED (INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE) WARRANTIES AS TO THE QUALITY OF THE MATERIAL TO BUYER, CUSTOMERS OF BUYER OR THE END USERS OF MATERIAL PURCHASED BY BUYER UNDER THIS AGREEMENT. NOTWITHSTANDING ANYTHING CONTAINED IN THIS AGREEMENT TO THE CONTRARY, ACME SHALL NOT BE LIABLE FOR ANY INCIDENTAL DAMAGES, CONSEQUENTIAL DAMAGES, SPECIAL DAMAGES, EXEMPLARY DAMAGES, OR LOST PROFITS, OR ANY OTHER SPECIAL, INCIDENTAL OR CONSEQUENTIAL LOSS, ARISING FROM OR RELATED TO THE MATERIAL OR THIS AGREEMENT. All warranties shall survive inspection, acceptance and payment.

Sole Remedy for Defective Material Any claim by Buyer of a defect with respect to Material must be reported and such unit of Material returned to Acme (carrier and method determined by Acme) with a written Return Authorization number issued and authorized by Acme all within ninety (90) days after such unit of Material is shipped by Acme. Such defective unit of Material properly returned shall be replaced with, in the complete discretion of Acme, either a credit equal to the price of such unit of Material or a unit of Material which shall be subject to the same warranty set forth above. The remedy set forth in this paragraph shall constitute Buyer's sole remedy in the event of a defective unit of Material.

Misuse Acme will under no circumstances have any obligations whatsoever for Material defects caused by damage in transit, accident, negligence, abuse, misuse, alteration or modification, unsuitable operation or application, installation of attachments or accessories, or connection to products of the Buyer or any person.

Warranties Other Than to Buyer The warranties set forth herein are granted only to Buyer and are not applicable, or transferable, to any reseller, customer of Buyer, end user or any Person.

Intellectual Property Indemnity Buyer agrees to indemnify Acme, its affiliates, successors, assigns, agents and customers against all loss, damage, or liability of whatever nature, including attorneys' fees and other legal costs and expenses, which may be incurred on account of any suit, claim, judgment or demand arising out of infringement or alleged infringement of any third party's patent, copyright, trademark or other intellectual property rights in the manufacture, use, sale or other disposition of any Material supplied hereunder.

Standard Production Quantity (SPQ) and Set-up Charges Each component shall be assigned an SPQ at the time of quotation. Components not assigned an SPQ specifically shall have an SPQ of 3,000 pieces. Orders for an amount less than the SPQ shall be subject to a set-up charge. The set-up charge can be included in the Material piece part price for a given order if the Buyer wishes to have the charge so applied, by dividing the set-up charge by the number of pieces in the order. A single order with a NON-CANCELLABLE stipulation will permit the Buyer to take the Material over a 90 day period with scheduled releases if the Buyer wishes to avoid said setup by purchasing a quantity greater than the SPQ.

Samples Acme shall provide samples to Buyer for new product development. Said samples are included in Tooling prices as well as quoted engineering fees. In the case of stampings and extrusions, Buyer will receive two production samples per die. In the case of sand or plaster castings, one sample per mold, and die castings five per cavity. Samples will be accompanied by a dimensional layout report. CPK reports are extra and a quotation will be furnished upon request. Cosmetic specifications shall be provided by Buyer in advance and in writing before Acme agrees to cosmetic specification in sample submission. Engineering changes made by buyer shall result in additional charges for sample submission. Additional samples beyond the Acme commitment are subject to additional charges, and such charges shall not necessarily match the production quotation prices. Samples submitted by Acme that involve the re-location of existing production offshore or otherwise shall be paid for by Buyer.

Purchase Orders Buyer may order Material through:

- a. Discrete Purchase Orders – orders shall cover a specific period of time and a specific and firm quantity of Material as identified on the purchase order; or
- b. Blanket Purchase Orders – orders shall cover a specific period of time as identified on the blanket purchase order. Material sold pursuant to a blanket purchase order shall be effected through Releases by Buyer thereunder which shall specify by week the number of units of Material to be shipped by Acme and the delivery date. If a Releases schedule is not received by Acme from the Buyer, the blanket purchase order will be deemed a discrete purchase order.

Cancellations or Modifications In the event the Buyer requests a decrease or cancellation of any purchase order:

- a. Discrete Purchase Orders are firm and non-cancellable, unless such cancellation/modification is made before the commencement of the Production Lead Time period (see exception for set-up charges above). In the event the Product requires component material purchases, the Buyer will additionally be liable for twelve (12) weeks of said components irrespective of the Production Lead Time. Requests to delay shipments for Discrete Purchase Orders (said request being within the Production Lead Time) will be permitted only once and in no event shall the new delivery be scheduled for more than thirty days beyond the original delivery date. Requests to receive Material before the agreed upon delivery date will be accommodated to the best of Acme's ability and said deliveries may be subject to an expedite charge. Any changes to a Discrete Purchase Order by Buyer must be provided in writing (or e-mail) and confirmed/accepted by Acme in writing (e-mail).
- b. Blanket Purchase Orders (or Releases against said Blanket Purchase Order) may be decreased or cancelled by Buyer by providing written notice to Acme, obtaining Acme's written confirmation if such cancellation or modification occurs before the commencement of the Production Lead Time. In the event the Product requires component material purchases, the Buyer will additionally be liable for twelve (12) weeks of said components irrespective of the Production Lead Time. Requests to delay shipments for Blanket Purchase Orders or Releases against such Blanket Purchase Order (said request being within the Production Lead Time) will be permitted only once and in no event shall the delivery be scheduled for more than thirty days beyond the original delivery date. Requests to receive Material before the agreed upon delivery date will be accommodated to the best of Acme's ability and said deliveries may be subject to an expedite charge.

Acme-Managed Inventory In the event the material which is the subject of the Quotation is to be purchased, in whole or in part, on the basis of an Acme commitment to maintain a minimum inventory level, then said inventory calculation method and Buyer liability for said inventory shall be determined in a separate Acme-Managed Inventory agreement which shall govern in all respects such Material inventory.

Buyer-Supplied Items Materials, inserts or component parts supplied by the Buyer must be furnished in a quantity or amount reasonably in excess of that required to fill the order and must be delivered FOB Acme's plant. Acme will have no liability or responsibility for damage to Tools, Material, or other goods, nor for any other consequential damages, caused by defective items supplied by Buyer.

Prototypes Prototype Material will be placed on Discrete Orders and cannot be cancelled. No quantity reductions or delayed shipments are permitted.

Material Sourcing Acme determines the locations that Material will be produced, assembled, and warehoused.

Tools Molds, dies, and other tooling and equipment (collectively "Tools"), can be provided to Acme, or a purchase order can be placed with Acme to provide Tools. Changes in Tools made necessary by changes in specifications already accepted by Acme will be at the Buyer's expense. Risk of loss and liability for Tools owned by the Buyer will remain with Buyer, even when Tools are located on Acme's premises. When for a period of thirty-six (36) consecutive months, no orders are received for Material to be made from such Tools, Acme may send written notification to the Buyer requesting to dispose of, retain for future use, or return the Tools to the Buyer. If the Tools are to be retained, Buyer agrees to pay an annual storage fee of \$600 per year per Tool. If no written response is received from the Buyer within ninety (90) days of notification, the Tools will be disposed of by Acme as permitted by the Illinois Dies and Molds Ownership Act of 1997.

Rapid Tool Program Production Tools are available under most circumstances on an expedited basis. Such expedited services are subject to an additional charge.

Tool Maintenance Replacement of Tools due to normal wear and tear will be the responsibility of the Buyer. Repairs of Tools due to excessive wear and tear or poor condition of the Tool will be the responsibility of the Buyer.

Inherited Tools Any costs to repair or make ready for use Buyer Tools transferred from another production facility will be the responsibility of the Buyer. Acme reserves the right to re-quote any production for Material on inherited Tools upon physical examination of said Tools, whether they are seen before or after submission of a quotation.

No Tools Warranty Except as otherwise provided below under "Tool Warranty on Shots", ACME NOR ITS AFFILIATES, EMPLOYEES OR AGENTS MAKE ANY OTHER EXPRESS OR IMPLIED (INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE) WARRANTIES AS TO THE QUALITY OF THE TOOLS TO BUYER, CUSTOMERS OF BUYER OR THE END USERS OF TOOLS PURCHASED BY BUYER UNDER THIS AGREEMENT. NOTWITHSTANDING ANYTHING CONTAINED IN THIS AGREEMENT TO THE CONTRARY, ACME SHALL NOT BE LIABLE FOR ANY INCIDENTAL DAMAGES, CONSEQUENTIAL DAMAGES, SPECIAL DAMAGES, EXEMPLARY DAMAGES, OR LOST PROFITS, OR ANY OTHER SPECIAL, INCIDENTAL OR CONSEQUENTIAL LOSS, ARISING FROM OR RELATED TO TOOLS OR THIS AGREEMENT.

Tool Warranty on Shots Each Buyer Tool, other than an inherited Tool, will have the option of carrying a warranty for the number of shots to be obtained on the die during production. Such warranty will be included as a separate warranty agreement and mutually agreed upon by Buyer and Acme.

Tool Amortization and Perpetual Tool Replacement Programs Acme offers the opportunity for Buyers to include production tooling in Material unit prices over a fixed period of time or production quantity. Acme also offers the Buyer the ability to purchase the first Tool and incorporate future replacement Tools in Material unit prices over a fixed period of time or production quantity. Such programs shall be offered as a separate agreement and mutually agreed upon by Buyer and Acme.