

## TERMS AND CONDITIONS OF SALE AGREEMENT WITH GREAT LAKES POWDER COATING, LLC, D/B/A GLPC FAB

### 1. *Application.*

These Terms and Conditions of Sale Agreement hereinafter referred to as "Agreement" with Great Lakes Powder Coating, LLC, d/b/a GLPC Fab hereinafter referred to as GLPC Fab define the relationship of "Buyer" and GLPC Fab, hereinafter referred to as "Seller" and apply to all sales of powder coating services, materials, products and goods (individually and collectively, "Products and Services") by Seller to Buyer pursuant to any and all purchase orders, work orders, requisition orders, specifications, quotes, invoices or estimates and any other document, whether expressed verbally, in written form or electronic commerce, relating to the sale or the provision of Products and Services with the express exception of design and 3-D design services which is exclusively governed by GLPC Fab's 3-D Design Contract.

Buyer acknowledges and agrees that the terms of this Agreement are incorporated in, and are a part of any and all purchase orders, work orders, requisition orders, specifications, quotes, invoices or estimates and any other document, whether expressed verbally, in written form or electronic commerce, relating to the sale or the provision of Products and Services with the express exception of design and 3-D design services which shall be governed by GLPC Fab's 3-D Design Contract.

### 2. *Quotation Expiration.*

Written quotations are valid for a period of 30 days unless otherwise noted by Seller. Seller shall have the right to withdraw any quote that has not been accepted by Buyer within the 30-day time period. Acceptance of Seller's quotation must be in writing, delivered by fax, US Mail or E-mail to Seller at the facsimile number, physical address or E-mail address set forth on Seller's web page [www.glpcfab.com](http://www.glpcfab.com)

### 3. *Pricing.*

Prices for Products and Services, and other related information shown in any Seller or manufacturer product publication, including but not limited to catalogs, brochures, and websites, are subject to change without notice. Prices do not include related freight charges, export charges or fees, use tax, sales tax, excise tax, value-added tax, or similar taxes, or charges of any nature whatsoever imposed by any governmental authority unless otherwise expressly noted by Seller.

### 4. *Approved Credit.*

All sales of Products and Services by Seller to Buyer are expressly contingent on Seller's approval of, and extension of credit to Buyer upon Seller's receipt of written and/or electronic proof of acceptable credit from three sources.

### 5. *Taxes.*

Prices quoted do not include (and Buyer shall be responsible for and/or pay) all taxes and fees of any kind that may be levied or imposed on either party by federal, state, municipal, or other governmental authorities in connection with the sale or delivery of the Products and Services by Seller with the exception of Seller's income tax obligations arising out of the sale of the Products and Services.

### 6. *Terms of Payment.*

Unless otherwise specifically agreed in writing by Seller, the total price is due and payable to Seller, without setoff or other deductions or charges, net 30 days of the date on Seller's invoice.

Any amounts due from Buyer to Seller that are unpaid on or after 30 days of Seller's invoice will bear interest at the rate of **10%** per month or the maximum rate permitted by law, whichever is less. The accrual or payment of any interest as provided above will not constitute a waiver by Seller of any rights and/or remedies in connection with a default by Buyer. Buyer will pay all court costs, attorney fees, and other costs incurred by Seller in collecting past-due amounts, including interest.

If shipment or delivery of Products and Services is delayed by or at the request of Buyer, payment will remain due in full 30 days from the date on Seller's invoice. In such event, Seller may impose, and Buyer shall pay, storage charges and other incidental expenses incurred by Seller as a result of the delay in addition to any interest on late payments as described above. All such storage charges shall be paid by Buyer within 30 days of the date of each written or electronic notification of each storage charge delivered by Seller to Buyer, to be billed in increments of 30 days or less at the sole discretion of Seller.

7. *Limited Warranty—Disclaimer of Warranties.*

The sole remedy available to Buyer with respect to defects in any Products sold by Seller will be against the manufacturer under any applicable manufacturer's warranty to the extent available to Buyer. TO THE EXTENT THE MANUFACTURER WARRANTY IS NOT TRANSFERABLE TO BUYER, SELLER MAKES NO WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO OR IN ANY WAY RELATING TO THE PRODUCTS, WHETHER BASED ON BREACH OF WARRANTY OR CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

If Product is resold by Buyer, Buyer will include in its agreement for resale provisions that limit recoveries in accordance with this Agreement. In case of Buyer's failure to include in any agreement for resale the terms providing for such limitations, Buyer will indemnify, defend and hold Seller harmless against any claim, liability, loss, cost, damage, or expense (including reasonable attorney fees and court costs) arising out of, related to, or resulting from the failure to include in its agreement provisions that limit recoveries in accordance with this Agreement. Buyer's obligation to defend Seller shall require Buyer to pay all reasonable attorney fees and costs required to an attorney selected by Seller.

IN NO EVENT WILL SELLER BE LIABLE OR RESPONSIBLE TO BUYER OR ANY OTHER PERSON OR ENTITY FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES, OR FOR EXPENSE OCCASIONED BY THE USE OF DEFECTIVE PRODUCTS OR RELATED TO SERVICES PROVIDED BY SELLER.

BUYER ASSUMES FULL RESPONSIBILITY THAT THE PRODUCTS PURCHASED UNDER THE AGREEMENT MEET THE SPECIFICATIONS AND/OR INTENDED USE OF BUYER, AND SELLER MAKES NO REPRESENTATION WITH RESPECT TO THEM.

8. *Delivery.*

Any delivery dates or other schedule of performance by Seller are approximations, and the sole obligation of Seller with respect to the schedule of delivery or performance will be to use commercially reasonable efforts to deliver the Products and Services, or otherwise to perform, consistent with the reasonable demands of its business. In any event, Seller will have no liability to Buyer or any other person or entity for delays in performance due to strikes or labor disputes of any type; accidents, fire, floods, acts of God, or actions by governmental authorities; acts, omissions, or delays of Buyer or any other third party; shortages of labor; or without limitation of the above, for any causes reasonably beyond the control of Seller.

9. *Title and Risk of Loss.*

Title to and risk of loss or damage to the Products will pass to Buyer on delivery by Seller F.O.B. (a) Seller's facility, (b) Seller's supplier's facility when Products are shipped directly from the manufacturer, or (c) as otherwise specifically indicated in the Agreement.

10. *Inspection and Acceptance.*

Buyer will have 15 days from the date of delivery to inspect any Products for defects and nonconformance and to notify Seller, in writing, of any defects, nonconformance, or rejection of the Products (other than defects or nonconformities due to damage, shortage, or errors in shipping that will be reported as set forth below). Upon receipt of written notice Seller shall have 15 days to inspect and if a defect and nonconformance is found by Seller to exist Seller shall have 30 days to cure the defect and nonconformance.

Claims for shipping damage, errors, or shortages must be made in writing to Seller immediately at the time of delivery upon receipt of shipment by E-mail and fax to the E-mail address and fax number identified on Seller's web page located at [www.glpfab.com](http://www.glpfab.com) After this period, Buyer will be deemed to have irrevocably accepted the Products, if not previously accepted. After acceptance, Buyer will have no right to reject the Products for any reason or revoke acceptance. Claims for damage due to shipping must be made by Buyer to the freight carrier, as it is agreed by Buyer that Seller has no liability for any such damage due to shipping.

11. *Cancellation or Termination.*

In the event of cancellation by Buyer of purchase orders, work orders, requisition orders, specifications, quotes, invoices or estimates relating to the sale or the provision of Products and Services, or in the event of default by Buyer that is not cured within 30 days after notice by Seller, Buyer will pay to Seller on demand all direct and indirect costs (including,

without limitation, all applicable restocking or cancellation charges, including reimbursement for direct costs assessed by the manufacturer) incurred directly or indirectly by Seller in connection with the Agreement, all as reasonably determined by Seller, plus any profit to be negotiated with Buyer.

#### *12. Changes.*

Seller reserves the right from time to time to correct any typographical or clerical errors, including errors in mathematical computation that may exist in any purchase orders, work orders, requisition orders, specifications, quotes, invoices or estimates relating to the sale or the provision of Products and Services by Seller to Buyer.

#### *13. Technical Support.*

Unless otherwise specifically provided on the quotation or invoice, the Agreement does not include any services of Seller in connection with 3D Design, installation, testing, or evaluation of any Products.

#### *14. Modifications and Waiver—Entire Agreement.*

Neither party has rights, warranties, nor conditions expressed or implied, statutory or otherwise, other than those contained in this Agreement. The Agreement contains the entire agreement between Seller and Buyer and can be modified or rescinded only by a writing signed by both parties. No waiver of any provision of the Agreement will be binding unless in writing signed by an authorized representative of the party against whom the waiver is asserted, and unless expressly made generally applicable, will apply only to the specific case for which the waiver is given. Failure of either party to insist on strict performance of this Agreement will not be construed as a waiver of any term or condition of the Agreement.

Any document submitted by Buyer to Seller confirming its intention to purchase Products and Services described in this Agreement or any purchase orders, work orders, requisition orders, specifications, quotes, invoices or estimates relating to the sale or the provision of Products and Services by Seller to Buyer shall be deemed to constitute a confirmation and acceptance of this Agreement, even if the document states terms in addition to or different from those in this Agreement.

All agreements, contracts and sales between Seller and Buyer will be solely under the terms and conditions of this Agreement, and Seller objects to any and all additional or different terms contained in any document submitted to Seller by Buyer. Any execution by Seller of any other document submitted by Buyer in connection with the purchase of Products and Services does not constitute acceptance of or agreement to any terms and conditions in addition to or different from those contained in this Agreement but will constitute only acknowledgment of receipt of the document. In addition, notwithstanding any terms contained in any documents submitted by Buyer in connection with the purchase of Products and Services described under this Agreement, the acceptance of delivery by Buyer of Products and Services described in this Agreement will constitute a course of conduct constituting Buyer's agreement to the terms and conditions of this Agreement, to the exclusion of any additional or different terms and conditions.

#### *15. Compliance with Laws.*

Buyer will be responsible for compliance with any and all federal, state, or local laws or regulations respecting safety or respecting use of any Products and shall indemnify, defend and hold Seller harmless from and against any and all claims, lawsuits or causes of action for or concerning alleged violations of laws or regulations or other claims of personal injury or property damage directly or indirectly related to the installation, maintenance, possession, use or operation of the Products. Buyer's obligation to defend Seller shall require that Buyer pay all reasonable attorney fees and costs to an attorney selected and retained by Seller.

#### *16. Export Control.*

Products supplied by Seller may be subject to various export laws and regulations. It is the responsibility of the exporter to comply with all laws and regulations. Notwithstanding any other provision to the contrary, if federal, state, or local law requires export authorization for the export or re-export of any Products or associated technology, no delivery can be made until export authorization is obtained, regardless of any otherwise promised delivery date. If any required export authorization is denied, Seller and Seller's supplier will be relieved of any further obligation relative to the sale and delivery of the Products subject to denial without liability of any kind relative to Buyer or any other party. Seller will not comply with boycott-related requests except to the extent permitted by federal law and then only at Seller's discretion.

In the event Buyer's sale or shipment of any product, device or equipment containing any Products sold by Seller to Buyer may be subject to various export laws and regulations. It is the responsibility of the Buyer to comply with all laws and

regulations. Notwithstanding any other provision to the contrary, even if export authorization is denied or delayed Buyer shall pay Seller for the Products within 30 days of the date of Seller's invoice.

17. *Governing Law.*

The Agreement will be governed by and construed in accordance with the laws of the State of Michigan.

18. *Venue.*

Any and all lawsuits filed by Buyer or Seller arising from or related to any claim, demand or cause of action concerning or related to the Products and Services, payment for the Products and Services, alleged defect or nonconformance of the Products and Services, and/or any alleged breach of this Agreement wherein the damages are alleged to be in excess of \$25,000 exclusive of interest, costs and attorney fees shall be filed and litigated exclusively in the Oakland County Circuit Court in the City of Pontiac, County of Oakland, State of Michigan, unless the lawsuit is removed to the United States District Court for the Eastern District of Michigan by Seller. Furthermore, any and all lawsuits filed by Buyer or Seller arising from or related to any claim, demand or cause of action concerning or related to the Products and Services, payment for the Product, alleged defect or nonconformance of the Products and Services, and/or any alleged breach of this Agreement wherein the damages are alleged to be less than \$25,000 exclusive of interest, costs and attorney fees shall be filed and litigated exclusively in the 52-1 District Court in the City of Novi, County of Oakland, State of Michigan.

19. *Limitation on Damages and Claims*

Buyer hereby acknowledges and agrees that by signing any quotations, purchase orders, work orders, invoices, requisitions, or shipping instructions, it hereby agrees that it waives any and all claims or causes of action it may have against Seller for any and all damages available under the statutory or common law of the United States of America or any State therein except those damages available to it under this Agreement and the law of the State of Michigan.

Buyer hereby acknowledges and agrees that by signing or accepting any quotations, purchase orders, work orders, invoices, requisitions, or shipping instructions, it hereby agrees that it waives any and all claims or causes of action it may have against Seller for any and all damages available under applicable Michigan law in excess of the amount Buyer is contractually obligated to pay Seller pursuant to the terms and conditions of this Agreement.

20. *Indemnification*

Buyer agrees that it shall fully indemnify, defend and hold Seller harmless from any and all claims, demands or causes of action made or filed against Seller by any person or entity for any and all economic, non-economic, exemplary or punitive damages as well as costs, interest and attorney fees arising from or related to Buyer's use, sale, possession or control of the Product. In defending Seller pursuant to the terms of this paragraph Buyer agrees it shall pay for an attorney of Seller's sole choice retained to defend any claim or lawsuit that may be made against Seller.

21. *Limitation of Actions*

Buyer hereby acknowledges and agrees that any and all causes of action that it may file against Seller shall be filed in either the Oakland County Circuit Court or the 52-1 District Court as required by paragraph 18 of this Agreement within 12 months of the date of the delivery by Seller to Buyer of the Products and Services that form the basis of the cause of action or said cause of action shall be forever waived and barred. Buyer also acknowledges and agrees that this 12 month limitation period shall be enforced to the exclusion of any other statute of limitation or repose set forth in the statutory and common laws of the United States of America or any of its several states including but not limited to the State of Michigan.