



Universal Metal Products, Inc.
29980 Lakeland Boulevard
Cleveland, OH 44092
440.943.3040

Terms & Conditions of Sale

- 1. GENERAL.** Universal Metal Products, Inc. (“Seller”) provides the following Standard Terms and Conditions of Sale (“Terms and Conditions”), which apply to all quotations or order confirmations (“Sales Quotes”) and sales of products or goods made by Seller. By placing an order with Seller, customer, owner, or its agent (“Buyer”) affirmatively accepts and assents to Seller’s applicable Sales Quote relating to the products and these Terms and Conditions. NO MODIFICATION OR WAIVER OF THESE TERMS AND CONDITIONS SHALL BIND SELLER UNLESS IN WRITING AND SIGNED AND ACCEPTED BY AN OFFICER OF SELLER. SELLER WILL NOT ACCEPT AND OBJECTS TO ANY TERMS AND CONDITIONS OR OTHER WRITING IN BUYER’S PURCHASE ORDER OR ELSEWHERE WHICH ARE DIFFERENT FROM OR ADDITIONAL TO THESE TERMS AND CONDITIONS. NO TERM OR CONDITION ON BUYER’S PURCHASE ORDER OR ELSEWHERE, EXPRESSLY INCLUDING ANY EFFORT TO NEGATE THESE TERMS AND CONDITIONS SHALL BE EFFECTIVE OR BINDING AGAINST SELLER. THE SALES QUOTE SHALL CONSTITUTE WRITTEN NOTICE SIGNED BY SELLER OF OBJECTION TO AND REJECTION OF ANY TERM OR CONDITION IN BUYER’S PURCHASE ORDER, CONTRACT, INVITATION TO QUOTE, RELEASE, OR OTHER DOCUMENT SUBMITTED BY BUYER THAT IS INCONSISTENT THE SALES QUOTE. In the event of any conflict or inconsistency between these Terms and Conditions and any terms or conditions set forth in a Sales Quote, the terms of the Sales Quote shall prevail. Unless expressly stated or acknowledged in the Sales Quote, none of the Sales Quote, these Terms and Conditions or any acceptance of, or fulfilments under, a blanket purchase order by Seller, or any other course of dealing between Seller and Buyer will be construed to create a requirements contract of Buyer.
- 2. DELIVERY; TRANSFER OF TITLE.** Unless specified otherwise in a Sales Quote, all deliveries will be made Ex Works (as defined in Incoterms®2020) at Seller’s facility identified in the Sale Quote. Title and risk of loss or damage to the products will pass from Seller to Buyer when the products are made available at Seller’s facility for pickup by a carrier or Buyer. Unless specified otherwise in a Sales Quote, Buyer will continue to bear the risk of loss or damage to the products during loading and shipping. If Buyer requests special arrangements regarding the manner of shipment and the shipping route, Seller may, in its sole discretion, take such requests into consideration, subject to Buyer paying for any and all additional costs arising as a result of such requests. In all cases, however, title to the products still transfers to Buyer upon Seller’s delivery to Buyer (which shall never be later than receipt by the first carrier for transport to Buyer).
- 3. PRICING.** Each Sales Quote includes a detailed breakdown of costs and Buyer accepts such breakdown. Unit prices quoted or confirmed in a Sales Quote are based on raw material cost (including surcharges) and other factors as called out in Sales Quote detail. Any changes in raw material cost from those original assumptions (including with respect to any taxes or tariffs added to any costs of raw materials that occurs after any price is quoted or confirmed) are subject to (a) raw material surcharges, (b) revised unit selling prices based on the following formula: [(original base material cost) – (new base material cost)] * part gross weight + original selling price, or (c) both. Prices quoted or acknowledged shall also be



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subject to the addition of any tax or tariff imposed by any present or future law, federal, state or local, upon the sale of products covered by this quotation. Sales Quote(s) will automatically expire thirty (30) days from the date issued and are subject to earlier termination by notice within that period. The price set forth in Seller's Sales Quote covers the production of parts in quantities at least equal to 90% of the annual estimates units (EAUs) quoted or acknowledged in the Sales Quote, and Seller reserves the right to modify such price if Buyer does not order within such quantities during any such period. Seller may further propose increases to the price for each product if Seller experiences new and extraordinary costs or significant increases to existing costs that were not included or contemplated in the original Sales Quote. If Buyer does not accept such price increases, Seller may, by written notice to Buyer, cease producing and selling the products under any open orders (other than for firm deliveries of specific quantities Seller has accepted to deliver within three months after providing such notice). There shall be a minimum order charge of not less than \$500.00 on each item shipped unless otherwise specified in writing by Seller.

While Seller will actively participate in ongoing cost reduction initiatives, any formal cost reduction programs or requirements of Buyer must be disclosed to Seller at the time of quotation and will not be honored unless included and acknowledged in an applicable Sale Quote. In no event, however, will any cost reduction goals or terms include costs Seller incurs in connection with any third-party finishing process or other outside services necessary to complete the production of the product (whether or not Buyer directed the use of such third party).

4. PAYMENT TERMS. Unless specified otherwise in a Sales Quote, all payments (except for charges for tools and dies, which are set forth in Section 14 of these Terms and Conditions) are due net 30 days from date of invoice. Seller reserves that right to apply a service charge of one and one-half percent per month (but subject to a \$10.00 minimum) to unpaid balances which are past due. Buyer's failure to make payment when due will be a material breach of the order, Sales Quote and these Terms and Conditions. Seller, at its sole option and without incurring any liability, may suspend its performance until such time as the overdue payment is made or Seller receives assurances, adequate in Seller's opinion, that the payment will be promptly made.
5. CREDIT. Acceptance of Buyer's order by Seller is subject to verification of Buyer's creditworthiness. If at any time in the Seller's opinion the Buyer's credit is unsatisfactory, Seller shall have the right to demand adequate assurance of Buyer's ability to pay and payment in advance before making any further shipment. If Buyer fails to provide such credit assurances or make such payment in advance, or fails to make payment when due, or shall breach any provision of these Terms and Conditions, Seller at its option, may treat failure as a repudiation of the portion of the order not yet fulfilled and shall have the right to terminate any such agreement for the sale of future products by giving notice of its intention to do so.



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6. PAYMENT DISPUTES. All disputes as to the amount(s) invoiced hereunder shall be made, in writing to the following address: 29980 Lakeland Boulevard, Cleveland, OH 44092. Payments which are intended by Buyer to represent "payment in full" for the products sold, and which are less than the amount shown on the invoice as being due, shall be sent to the above address. If any "payment in full" check is not made to the above address then, pursuant to Ohio Revised Code Section 1303.40 the acceptance of said check will not act as a discharge of the remaining balance due Seller.
7. DELIVERY REQUIREMENTS. Buyer will honor all estimated annual units (EAUs), economic run quantity (ERQs) and minimum order quantities (MOQs) in a Sales Quote, and will not require Seller to produce any product in unreasonable quantities in relation to these metrics. Seller is not obligated to supply against any order by Buyer of more than 110% of any applicable EAU on an annual basis. Unless Seller otherwise agrees in writing (e.g., pursuant to monthly forecasts with sufficient advance notice), all orders, releases or other manners in which Seller agrees that Buyer may schedule deliveries of products will be reasonably level-loaded to the EAU. Buyer may not seek delivery of product in which Seller does not have at least eight weeks lead time to produce the products; provided, however, Buyer may, by mutual agreement with Seller, use a monthly forecast tool that functionally provides Seller such a lead-time; provided, further, Buyer has also committed to a binding period for such orders in the forecast that is acceptable to Seller.
8. CANCELLATION OF ORDERS AND NON-DEFECTIVE RETURNS. Buyer may not cancel or terminate any orders, or the binding portion any order (which may be included in a forecast) that either (a) has established a firm delivery date or (b) that covers the products due to be delivered within the next four weeks of the last forecast shared with Seller prior to notification of such cancellation. In connection with any such cancellation or termination of Buyer's order, Buyer will also reimburse Seller for costs of all raw material, work-in-process and other direct unamortized costs of Seller relating to a product or a program that Seller cannot apply to another program; provided such costs were reasonably incurred based on the applicable lead times for raw material orders and production that have been established between Seller and Buyer. Buyer acknowledges the lead-time for raw material purchases typically will range between three to five months prior to the expected delivery date (but could be longer based on supply and demand), and the lead-time to start production for a product requires Seller to commence conversion of raw materials eight (8) weeks prior to expected delivery date. Upon any cancellation of an order or a program, Seller will have no obligation to provide further support to Buyer to produce any products.

All product supplied by Seller is considered "special, non-cancelable, non-returnable." Cancellations and rescheduled purchase orders with less than 30 days advance notice of the originally requested delivery date are expressly prohibited without prior written approval of Seller. No return products will be accepted for credit unless permission to return such products is first secured from Seller.



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9. WARRANTY

a. General. Excepted as may otherwise be limited in this Section 9 or elsewhere in these Terms and Conditions, Seller warrants only that all products manufactured by Seller, when sold by Seller, shall be (i) free and clear of all liens and encumbrances (except any lien to replevin the product granted by law), (ii) be produced in accordance with the with designs, plans, drawings and specifications provided or approved by Buyer and (iii) will be free from defects in material and workmanship; provided, however, that warranties in subsection (ii) and (iii) above, shall be limited to products found to be defective within a period of one year from initial use or fifteen (15) months from the date of shipment, whichever expires first (“Warranty Period”). Notwithstanding anything to the contrary, (I) with respect to any product in which the specifications do not require Seller to apply a coating or oil finish to the product, the Warranty Period with respect to any claim for any corrosion of the product, shall be 30 days after delivery of the product to Buyer; (II) the warranty does not cover Buyer furnished/specified equipment and/or Buyer furnished materials or when Buyer instructs Seller to purchase material from a specified vendor or group of vendors; and (III) any products not produced by Seller and sold to Buyer (i.e., resale products) shall carry only the warranty offered by the original manufacturer and no warranty by Seller.

b. Exclusive Remedy. The sole and exclusive remedy of Buyer for any liability of Seller of any kind, including (i) warranty, express or implied whether contained in these Terms and Conditions, or in any terms additional or supplemental hereto, (ii) contract, (iii) negligence, (iv) tort, or (v) otherwise, is limited to Seller’s repair or replacement of the defective product and reimbursement of shipping costs to the point of manufacture that were initially borne by Buyer, or, at Seller’ option to refund to Buyer the money paid to Seller for such products. In each case, the determination of whether or not a product is defect shall be determined solely by Seller after an examination of the proposed defective product. Blemishes or other markings not affecting performance shall not be considered defective. In no event shall Seller incur any obligation to repair or replace products which are determined by Seller to be defective due to customer misuse, a defect in the design of the product for which Seller is not responsible or due to use not in accordance with specified operating conditions and operating and maintenance instructions. Seller retains the option to witness the operation of the products to verify operating conditions. Seller shall not incur any obligation hereunder with respect to products which are repaired or modified in any way by Buyer without Seller’s prior written approval.

c. Return Process. Seller will have no obligation to remedy defects unless, within the Warranty Period and the scope of the warranty provided in these Terms and



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Conditions, Buyer gives Seller written notice of its claim and returns the defective products after receipt of shipping instructions from Seller to return such products. Buyer will ship the products to Seller, freight prepaid, and Seller will return the products to Buyer, freight collect. All products returned for repair or replacement pursuant to this section are to be packaged in accordance with the instructions received. Seller is not responsible for products damaged in transit. All claims for damage resulting from shipping must be made against the carrier.

d. Other Limitations. If Buyer requires product to be free of any foreign material it must request Seller to perform a special sorting at the time of the initial quotation that Seller incorporates into the Sales Order, and unless such has been done, Seller shall not be responsible for any sorting charges or any consequential damages as a result of foreign material determined by Seller to be a cause of bulk processing operations (as it is recognized in the metal stamping industry and by the Precision Metal Forming Association that even after employing the best methods known, foreign material may occur as it is inherent in bulk processing during the heat treating and metal finishing operations). Seller reserves the right to have qualified product returned to be inspected and/or sorted in house. Unless Seller agrees in writing, Seller is not responsible for the cost of any sorting or other inspection conducted by Buyer (or a third-party retained by Buyer). Seller shall accept no other charges relating to defects of products, unless approved in advance by written agreement.

e. Disclaimer of Other Warranties. EXCEPT FOR THE EXPRESS WARRANTY STATED HEREIN, SELLER DISCLAIMS ALL OTHER WARRANTIES WITH RESPECT TO THE PRODUCTS, INCLUDING ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE.

10. LICENSE OF BUYER'S INTELLECTUAL PROPERTY. Buyer represents and warrants to Seller that it owns or has the use and has the right license any and all of its inventions (whether the subject of a patent, patent application, or not), tooling, designs, specifications, drawings, plans, instructions and all other information and materials necessary for Seller to produce the products in accordance with Buyer's specifications and drawings ("Buyer's Intellectual Property") and no such use of Buyer's Intellectual Property by Seller shall infringe on any third party's patent, copyright or trademark rights, or cause a misappropriation of a third party's trade secrets. Buyer grants to Seller a royalty free license to use such Buyer's Intellectual Property for purposes of producing and supplying products under these Terms and Conditions.

11. INDEMNIFICATION BY BUYER. Buyer shall indemnify and hold harmless Seller, its affiliates, officers, shareholder, owner, employees and agents ("Seller Indemnified Parties") from any and all third-party claims, damages, losses, claims, amounts paid in settlement and expenses,



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including actual attorney fees (“Losses”) incurred by any of the Seller Indemnified Parties under theories of tort, product liability, negligence (ordinary or gross), warranty, contract, statute or otherwise that arise out of (a) any breach by Buyer of its obligations under these Terms and Conditions or (b) any action or inaction of Buyer or its employees, customers or agents if such action or inaction was a cause of injuries or damages giving rise Losses. THIS INDEMNITY INCLUDES BUYER’S OBLIGATION TO INDEMNIFY SELLER INDEMNIFIED PARTIES AGAINST ALL LOSSES ARISING FROM ANY INFRINGEMENT OF ANY PATENT, COPYRIGHT, DESIGN, TRADEMARK OR OTHER INDUSTRIAL OR INTELLECTUAL PROPERTY RIGHTS OF ANY OTHER PERSON WHICH RESULTS FROM SELLER’S USE OF ANY OF BUYER’S INTELLECTUAL PROPERTY AS PERMITTED UNDER THESE TERMS AND CONDITIONS, UNLESS AND TO THE EXTENT SELLER HAS EXPRESSLY AGREED TO UNDERTAKE DESIGN RESPONSIBILITY OF A PRODUCT IN A SALES QUOTE OR ANOTHER WRITING SIGNED BY A CORPORATE OFFICER OF SELLER, AND THEN SUCH INDEMNITY WILL BE LIMITED TO EXCLUDE ONLY THE DESIGN RESPONSIBILITY.

12. INDEMNIFICATION BY SELLER. Except as otherwise limited by these Terms and Conditions (including limitations set forth in Section 9), Seller shall indemnify and hold harmless Buyer, its affiliates, officers, shareholder, owner, employees and agents (“Buyer Indemnified Parties”) from any and all Losses incurred by any of the Buyer Indemnified Parties under theories of tort, product liability, negligence (ordinary or gross), warranty, contract, statute or otherwise that arise out of (a) any breach by Buyer of its obligations under these Terms and Conditions or (b) any action or inaction of Buyer or its employees, customers or agents if such action or inaction was a cause of injuries or damages giving rise to claims against any Seller Indemnified Parties. Except with respect the other limitations provided below, Seller shall also indemnify and hold harmless the Buyer Indemnified Parties from and against any and all other Losses resulting from any infringement of any patent, trademark, copyright, trade secret or other intellectual, industrial or proprietary right of at third party that occurs in connection with producing the product; provided, however, that (y) if Buyer provided the design (or approved the design), material, part or component for a product (or directed Seller to use such material, part or component), Seller will have no liability or obligation for any infringement or unauthorized use of any patent, copyright, trade secret or other intellectual, industrial or proprietary right to the extent attributable to compliance with such design or use of such material, part or component in the product and (z) Seller will have no liability or obligation for any infringement or unauthorized use of any patent, copyright, trade secret or other intellectual, industrial or proprietary right to the extent attributable to: (i) a change, alteration or modification to a product made by anyone other than Seller, unless in accordance with directions or instructions provided by or with the authorization or approval of Seller or (ii) the particular purpose or application for which a product is used or the use of a product was an item not provided by Seller.

Notwithstanding Seller’s obligations to indemnify for Losses relating to infringement or unauthorized use, if a product is held (or, in Seller’s reasonable opinion, is likely to be held) to



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infringe or make unauthorized use of any patent, trademark, copyright, trade secret or other intellectual, industrial or proprietary right, or the use of a product is enjoined on the basis that it infringes or makes unauthorized use of any patent, trademark, copyright, trade secret or other intellectual, industrial or proprietary right, at the request of Buyer, Seller shall, at its sole cost, expense, liability and risk:

- a. use commercially reasonable efforts to procure for Buyer the perpetual right to use such product without infringing or making unauthorized use of any patent, trademark, copyright, trade secret or other intellectual, industrial or proprietary right;
- b. use commercially reasonable efforts to replace such product with a substitute product reasonably acceptable to Buyer that does not infringe or make unauthorized use of any patent, trademark, copyright, trade secret or other intellectual, industrial or proprietary right;
- c. use commercially reasonable efforts to modify such product in a manner reasonably acceptable to Buyer so that it does not infringe or make unauthorized use of any patent, trademark, copyright, trade secret or other intellectual, industrial or proprietary right; or
- d. if, in Seller's sole opinion, none of the actions described in clause (a), (b) or (c) are commercially reasonable, then Seller may terminate all agreement as to all or any part of the products that have not been delivered, and upon the exercise of such right by Seller, neither party shall have any future liability or obligation with respect to the products under any agreements terminated under this subsection.

13. LIMITATION OF LIABILITY. NOTWITHSTANDING ANYTHING IN THESE TERMS AND CONDITIONS TO THE CONTRARY, IN NO EVENT SHALL SELLER BE LIABLE TO BUYER OR TO ANY THIRD PARTY FOR INDIRECT, SPECIAL, EXEMPLARY, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OR LOST PROFITS ARISING OUT OF OR CONNECTED IN ANY WAY WITH THIS AGREEMENT OR RESULTING FROM USE OF THE PRODUCTS REGARDLESS OF THE GROUNDS WHICH GIVE RISE TO THE CLAIM.

14. TOOLING. Unless negotiated individually and in writing with Seller, all payment terms for tooling and dies that will be owned by Buyer are due as follows: 1/3 due net 10 days from issuance of purchase order date, 1/3 net 10 days after the design of the tool or die is completed, and 1/3 due net 10 days after Production Part Approval Process ("PPAP") approval or within 30 days after PPAP submission, whichever occurs first. Tooling charges must be paid in full prior to delivery of any products. Additionally, no payment discounts are applicable for amounts paid on tooling. Insurance coverage on Buyer owned tooling will be furnished for a period of one year from the date of last order for parts after which tools and dies will be disposed of.



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15. COMPLIANCE WITH LABOR LAWS. Seller represents that its operations are in compliance with all applicable requirements of sections 6, 7 and 12 of the Fair Labor Standards Act as amended, and the regulations and orders of the United States department of labor issued under section 14 thereof.
16. FORCE MAJEURE. Seller shall not be liable or responsible to Buyer, nor be deemed to have defaulted or breached these Terms and Conditions, for any failure or delay in fulfilling or performing any of these Terms and Conditions when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of Seller including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic, lockouts, strikes or other labor disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, materials or telecommunication breakdown or power outage.
17. AMENDMENTS AND MODIFICATIONS. Seller reserves the right to amend and modify these Terms and Conditions of Sale from time to time, and if Buyer places an order, issues a release, updates a forecast with binding deliveries or otherwise updates an order quantity after amended or modified Terms and Conditions become effective, then Buyer will have agreed to such amended or modified Terms and Conditions.
18. ENTIRE AGREEMENT. These Terms and Conditions and any applicable Sales Quote, constitute the entire agreement between Seller and Buyer relating to the subject matter hereof, and supersedes all prior and contemporaneous discussions, understandings and related agreements to this subject matter.
19. GOVERNING LAW AND JURISDICTION. Any order submitted by Buyer for products to be purchased from Seller shall be subject to and governed by the internal contract and procedural laws of the state of Ohio without regard to any conflict of law provision. Any dispute with reference hereto shall be resolved in a court having jurisdiction over residents of Lake County, Ohio and Buyer irrevocably consents to the personal jurisdiction of such court.
20. WAIVER. No waiver by Seller of a breach of any provision hereof shall constitute a waiver of any other breach of such provision or any other provision.