

ALL FLEX SOLUTIONS, INC.

TERMS AND CONDITIONS

1. Certain Definitions

- (a) **“Buyer”** means the business entity purchasing products from Seller as specifically identified on the Order Acknowledgement for the Products.
- (b) **“Seller”** means All Flex Solutions, Inc., a Delaware corporation.
- (c) Seller and Buyer are referred to individually as a **“Party”** and collectively the **“Parties”**.
- (d) **“Order Acknowledgement”** means the document issued by Seller to Buyer titled **Order Acknowledgement** that confirms, among other things, receipt of Buyer’s purchase order, the identification and address of Buyer, the type and quantity of Products to be sold, Seller’s contact information, and a reference to, and acceptance by Buyer, of these Terms and Conditions.
- (e) **“Products”** means Seller’s products that are being purchased by Buyer as specifically identified on the face of an Order Acknowledgement.
- (f) **“Terms”** means these Terms and Conditions.

2. Applicability and Acceptance

The accompanying acknowledgement (the **“Order Acknowledgement”**, together with these Terms (the **“Agreement”**)) comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. UNDER NO CIRCUMSTANCES WILL SELLER BE BOUND BY ANY TERMS AND CONDITIONS PROPOSED BY BUYER (**“Buyer Terms”**), whether included on a purchase order, written response to an Order Acknowledgement, response to a proposal, request or otherwise, whether tendered before or after the Order Acknowledgement, and whether Buyer Terms contain any terms additional to, or different from these Terms. ANY AND ALL BUYER TERMS ARE HEREBY REJECTED AND WILL NOT BECOME PART OF THE AGREEMENT BETWEEN THE PARTIES. Fulfillment of Buyer’s order does not constitute acceptance of any Buyer Terms and does not serve to modify or amend these Terms. Acceptance of shipment of Products is acceptance by Buyer of these Terms and Conditions.

3. Delivery.

- (a) The Products will be delivered within a reasonable time after issuance of Seller’s Order Acknowledgement. Any dates set forth on a purchase order or other documentation are predicated on conditions existing at the time of issuance and are not a promise or guarantee. Seller will take reasonable steps to meet established delivery dates, but will not be responsible for any loss or damage of any kind or nature whatsoever caused by any delay in delivery, irrespective of the cause of such delay. Seller will not be liable for any delays, loss or damage in transit.
- (b) Unless otherwise agreed in writing by the parties, Seller will deliver the Products to Buyer’s address listed on the Order Acknowledgement (the **“Delivery Point”**) using Seller’s standard methods for packaging and shipping such Products. Buyer will be responsible for all loading costs and will provide equipment and labor reasonably suited for receipt of the Products at the Delivery Point.
- (c) Seller, in its sole discretion, without liability or penalty, may make partial shipments of Products to Buyer. Each shipment will constitute a separate sale, and Buyer will pay for the Products shipped whether such shipment is in whole or partial fulfillment of Buyer’s purchase order.

4. Inspection and Rejection.

Buyer will inspect and accept or reject Products purchased from Seller within 10 calendar days after delivery to the Delivery Point (the “**Rejection Period**”). All Products delivered will be conclusively deemed accepted by Buyer and in conformance with specifications unless rejection is made or a specific objection or notice of non-conformity is given to Seller in writing within the Rejection Period. All non-conforming Products rejected by Buyer must be returned to Seller in the condition delivered to Buyer and to the location designated by Seller. Seller will accept responsibility for line rejects for a period of up to 6 months, provided that Seller confirms that reject is the responsibility of the Seller. All claims regarding inspection or rejection shall be subject to the terms of section 10 below.

5. Shipping Terms.

Unless otherwise indicated on the face of the Order Acknowledgement or otherwise agreed in writing by Seller, delivery shall be EXW.

6. Title and Risk of Loss.

Title and risk of loss passes to Buyer upon delivery of the Products at the Delivery Point. As collateral security for the payment of the purchase price of the Products, Buyer hereby grants to Seller a lien on and a security interest in and to all of the right, title and interest of Buyer in, to and under the Products, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase money security interest under the Minnesota Uniform Commercial Code.

7. Price.

Buyer shall purchase the Products from Seller at the price(s) (the “**Prices(s)**”) set forth on the Order Acknowledgement. Unless otherwise indicated on the Order Acknowledgement, or otherwise agreed in writing by Seller, prices do not include any cost for freight, any costs or charges for insurance or any applicable sales, use, transfer, excise or other taxes, tariffs or customs duties, all of which are the responsibility of Buyer whether paid by Seller or Buyer. Any transportation charges are due and payable to Seller on the date of shipment.

8. Terms of Payment.

- (a) Buyer shall pay all invoiced amounts due to Seller within 30 calendar days from the date of Seller’s invoice unless otherwise agreed in writing by Seller.
- (b) Buyer shall reimburse Seller for all costs incurred in collecting any late payments or interest, including, without limitation, attorneys’ fees. In addition to all other remedies available under these Terms or at law (which Seller does not waive by the exercise of any rights hereunder), Seller will be entitled to suspend the delivery of any Products if Buyer fails to pay any amounts when due hereunder and such failure continues for 10 calendar days following written notice thereof.

9. Cancellation. Purchase of Products may not be cancelled or modified by Buyer, in whole or in part, after Seller’s acceptance of an order, except with Seller’s prior written consent. Should Buyer attempt to cancel its order, it is liable to Seller for all costs incurred by Seller in connection with the order, plus expected margin, and damages running to Seller as a result of cancellation.

10. Limited Warranty.

- (a) Seller warrants that all Products purchased by Buyer will conform to applicable Product specifications (drawings, statements of work, or similar written documents expressly adopted by Seller) at the time of delivery to Buyer.

- (b) **EXCEPT FOR THE WARRANTY SET FORTH IN SECTION 10(a), SELLER MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE PRODUCTS, INCLUDING, BUT NOT LIMITED TO, ANY (i) WARRANTY OF MERCHANTABILITY; (ii) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (iii) WARRANTY OF TITLE; OR (iv) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE. IT IS THE SOLE RESPONSIBILITY OF BUYER TO DETERMINE THE ADEQUACY OF ALL PRODUCTS PURCHASED BY BUYER FOR ANY SPECIFIC, INTENDED OR OTHER PURPOSE, APPLICATION OR USE OF THE PRODUCTS.**
- (c) Products manufactured by a third party (a “**Third Party Product**”) may constitute, contain, be contained in, incorporated into, attached to or packaged together with, the Products. Third Party Products are not covered by the warranty in Section 10(a). For the avoidance of doubt, **SELLER MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO ANY THIRD-PARTY PRODUCT, INCLUDING ANY (i) WARRANTY OF MERCHANTABILITY; (ii) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (iii) WARRANTY OF TITLE; OR (iv) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.**
- (d) Seller will not be liable for a breach of the warranty set forth in Section 10(a) unless: (i) Buyer gives written notice of the defect, reasonably described, to Seller within 10 calendar days of the time when Buyer discovers or should have discovered the defect; (ii) Seller is given a reasonable opportunity after receiving the notice to examine such Products and Buyer (if requested to do so by Seller) returns such Products to Seller’s place of business at Seller’s cost for the examination to take place there; and (iii) Seller reasonably verifies Buyer’s claim that the Products are defective.
- (e) Seller will not be liable for a breach of the warranty set forth in Section 10(a) if: (i) Buyer makes any further use of such Products after giving such notice; (ii) the defect arises because Buyer failed to follow Seller’s oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Products; or (iii) Buyer alters or repairs such Products without the prior written consent of Seller.
- (f) Subject to Sections 10(d) and 10(e), above, with respect to any such Products during the Warranty Period, Seller shall, in its sole discretion, either: (i) repair or replace such Products (or the defective part) or (ii) credit or refund the price of such Products at the pro rata contract rate provided that, if Seller so requests, Buyer shall, at Seller’s expense, return such Products to Seller.
- (g) **THE REMEDIES SET FORTH IN SECTION 10(f) WILL BE THE BUYER’S SOLE AND EXCLUSIVE REMEDY AND SELLER’S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTY SET FORTH IN SECTION 10(a).**

11. Limitation of Liability.

IN NO EVENT WILL SELLER BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE, OR PROFIT, LOSS OF DATA, DIMINUTION IN VALUE, OR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES, WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

12. Compliance with Law.

Buyer shall comply with all applicable laws, regulations and ordinances. Buyer shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under this Agreement. Buyer shall comply with all export and import laws of all countries involved in the sale of the Products under this Agreement or any resale of the Products by Buyer. Buyer assumes all responsibility for shipments of Products requiring any government import clearance. Seller may terminate this Agreement if any governmental authority imposes antidumping or countervailing duties or any other penalties on the Products.

13. Termination; Remedies.

In addition to any remedies that may be provided under these Terms, Seller may terminate this Agreement with immediate effect upon written notice to Buyer, if Buyer: (i) fails to pay any amount when due under this Agreement and such failure continues for 10 calendar days after Buyer's receipt of written notice of nonpayment; (ii) has not otherwise performed or complied with any of these Terms, in whole or in part; or (iii) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors. Exercise by Seller of any remedy provided under this Agreement will be without prejudice to any other rights which Seller may have against Buyer hereunder or under applicable law. All remedies provided herein will be cumulative and in addition to any other remedies provided by law or in equity. Buyer liability for termination will include costs plus expected margin.

14. Waiver.

No waiver by Seller of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Seller. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

15. Confidential Information.

If the parties have separately executed a non-disclosure/confidentiality agreement, the terms of that agreement prevail to the extent they conflict with any provision in this section. All non-public, confidential or proprietary information of Seller, including but not limited to specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by Seller to Buyer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential" in connection with this Agreement is confidential, solely for the use of performing this Agreement and may not be disclosed or copied unless authorized in advance by Seller in writing. Upon Seller's request, Buyer shall promptly return or destroy all documents and other materials received from Seller. Seller will be entitled to injunctive relief for any violation

of this Section and Buyer shall provide written confirmation of such return or destruction. This Section does not apply to information that is: (a) in the public domain other than through violation of any confidentiality obligation; (b) known to Buyer at the time of disclosure other than through violation of any confidentiality obligation; or (c) rightfully obtained by Buyer on a non-confidential basis from a third party. This confidentiality obligation survives the termination of this Agreement between Seller and Buyer.

16. Tooling.

All hard tooling (Artworks, Dies, Stencils, Electrical Fixtures, and Forming Fixtures) shall remain in the possession of Seller for 5 years after the date of the last Order Acknowledgement between the Parties. After the 5-years' term, all tooling shall be returned to Buyer.

17. Force Majeure.

Seller will not be liable or responsible to Buyer, nor be deemed to have defaulted or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement 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, governmentally-declared public health emergency, 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.

18. Assignment.

Buyer shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Seller. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Buyer of any of its obligations under this Agreement.

19. Relationship of the Parties.

Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the Parties, and neither Party will have authority to contract for or bind the other Party in any manner whatsoever.

20. No Third-Party Beneficiaries.

This Agreement is for the sole benefit of the Parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or will confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms.

21. Governing Law.

All matters arising out of or relating to this Agreement is governed by and construed in accordance with the internal laws of the State of Minnesota without giving effect to any choice or conflict of law provision or rule (whether of the State of Minnesota or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of Minnesota.

22. Jurisdiction.

Any legal suit, action or proceeding arising out of or relating to this Agreement shall be instituted in the federal courts of the United States of America or the courts of the State of Minnesota in each case located in the City of Minneapolis and County of Hennepin, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding. The parties expressly and hereby agree to waive any right to a jury for all disputes that are in any way related

to or arise out of this Agreement.

23. Notices.

All notices, requests, consents, claims, demands, waivers and other communications hereunder (each, a “**Notice**”) shall be in writing and addressed to the parties at the addresses set forth on the face of the Order Acknowledgement or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (a) upon receipt of the receiving Party, and (b) if the Party giving the Notice has complied with the requirements of this Section.

24. Amendment and Modification.

These Terms and the Order Acknowledgement are the only terms that govern the sale of the Products by Seller to Buyer. These Terms may only be amended or modified by a writing that is signed by an authorized representative of each Party that specifically states that it amends these Terms.

25. Severability.

If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.