

## PURCHASE ORDER CONDITIONS OF ACCEPTANCE

**I. Acceptance.** This Purchase Order is the offer of Extreme Tool and Engineering, Inc. dba Westfall Technik ("Buyer"), to the vendor set forth on the face hereof ("Vendor") to purchase goods. Conclusive evidence of Vendor's acceptance of Buyer's offer shall be Vendor's commencement of performance or informing Buyer of commencement of performance or Vendor's acknowledgement of this order by returning a copy hereof. Upon acceptance, this Purchase Order shall be the complete and exclusive statement of the terms and conditions of the agreement between Vendor and Buyer. No variation, modification or addition to this Purchase Order, whether contained in Vendor's acknowledgment form, standard terms and conditions or otherwise, shall be effective without the prior written consent of Buyer's authorized representative.

**II. Delivery.** The goods shall be F.O.B. Buyer's receiving dock, unless Vendor is otherwise notified in writing by Buyer. Deliveries shall be made in the quantities and at the times specified in this Purchase Order or in supplementary schedules furnished by Buyer from time to time. Time is of the essence in delivery of all goods. If any delivery is not made at the specified time, Buyer shall have the right to cancel this Purchase Order, or any portion thereof, without liability to the Vendor. Buyer reserves the right to refuse deliveries made in advance of the delivery schedule or in excess of prescribed quantities and may return them to Vendor at Vendor's risk and expense. Acceptance of late deliveries by Buyer shall not be deemed a waiver of Buyer's right to hold the Vendor liable for any loss or damage resulting therefrom and shall not modify Vendor's obligation to make future deliveries in accordance with the delivery schedule. If Buyer agrees to accept deliveries after the scheduled delivery date, Buyer shall have the right to direct Vendor to ship by the most expeditious means, and the total cost of such expedited shipment shall be borne by Vendor.

**III. Packing and Transportation.** Vendor shall be responsible for the safe and adequate packing of the goods in conformity with the requirements of Buyer or the carrier. No additional charges shall be made for packing, boxing, marking, shipping, or storage unless authorized in this Purchase Order or a separate writing signed by Buyer. Unless specified in this Purchase Order, Buyer will not accept a C.O.D. shipment. The risk of any loss, damage or destruction to the goods described in this Purchase Order shall be borne by Vendor until the goods are received and accepted by Buyer. Title to the goods passes to Buyer upon final acceptance after inspection.

**IV. Inspection.** All goods are subject to final inspection and acceptance after delivery. Payment for goods shall not constitute acceptance. If the goods are defective or do not conform with the requirements of this Purchase Order, Buyer reserves the right, without liability and in addition to its other rights and remedies, to (i) cancel this Purchase Order as to such goods; (ii) reject such goods and require delivery of conforming replacement goods; or (iii) accept such goods at an equitable reduction in price and allowance for the damages and expenses associated with or resulting from such nonconformity. Vendor shall provide Buyer with documentation outlining Vendor's procedures for the replacement of rejected goods. Rejected goods will be held at Vendor's risk for a reasonable time and will be returned or disposed of in accordance with Vendor's instructions and at Vendor's expense. Final acceptance shall be conclusive except with respect to latent defects, fraud or such gross mistakes as amount to fraud, or with respect to Buyer's warranty rights. All services provided under this Purchase Order shall be performed to Buyer's sole satisfaction and Buyer's acceptance of any such services shall not impair, limit or compromise its rights and remedies under Sections VI and VII.

**V. Invoice and Payment.** Vendor will promptly invoice Buyer for goods. Buyer will have no obligation to pay Vendor for any goods unless (a) Buyer has accepted such goods; and (b) Buyer has received from Vendor an undisputed invoice (including the order number) for such goods in a form acceptable to Buyer within 120 days of Buyer's acceptance of such goods. Payment of the purchase price shall be made within sixty (60) days of Buyer's receipt of Vendor's invoice. Unless otherwise indicated herein, the price on the face hereof shall include all costs, fees and expenses for packaging, duties, transportation, delivery, taxes (sales, use or excise) or insurance. Buyer shall have the right to set-off against any amounts due under this Purchase Order amounts due by Buyer to Vendor for any reason.

**VI. Warranty.** Vendor warrants that all goods and services furnished pursuant to this Purchase Order shall (i) be free from defects in material and workmanship; (ii) be free from defects in design (except to the extent the design is furnished by Buyer); (iii) conform to the drawings, specifications, samples or other descriptions applicable thereto (the "Specifications"); (iv) be fit for their intended purpose; (v) Vendors shall transfer valid title, free and clear of all security interests, liens, claims and other encumbrances, and (vi) conform with all other requirements of this Purchase Order (the "Warranty"). Without Buyer's prior written consent, no materials may be substituted for those set forth in the Specifications. Vendor warrants that the goods described in this Purchase Order will be designed, produced, handled, sold and distributed in compliance with all applicable federal, state and local laws and regulations, including, but not limited to, laws and regulations regarding fair labor standards, workers' compensation, the environment or hazardous materials, customs and public contracts.

**VII. Remedies.** In the event of breach of Warranty, Buyer may, at its option, without waiving its right to damages, either return for credit or require prompt correction or replacement of the defective or nonconforming goods on terms satisfactory to Buyer. All returns hereunder shall be at Vendor's expense. The remedies herein reserved shall be cumulative and additional to any other or further remedies provided in law or equity. No waiver of a breach of any provision of this contract resulting from this Purchase Order shall constitute a waiver of any other breach or of such provision. Vendor acknowledges that it is aware of the fact that its failure to comply with the terms and conditions of this Purchase Order may cause Buyer to suffer special, incidental and/or consequential damages as a result of downtime, lost sales, lost profits, or the breach of other contractual arrangements. Vendor shall indemnify and hold Buyer, its officers, directors, employees, shareholders, affiliates, agents and other representatives (collectively the "Indemnitees") harmless from any loss, liability, damage or expense, including reasonable attorneys' fees, the Indemnitees may incur as a result of, arising out of or by reason of any misrepresentation, breach of warranty or representation, or nonfulfillment/failure to perform on the part of Vendor hereunder.

**VIII. Observation/Inspections Rights.** Buyer and its representatives shall have the right at any time during Vendor's normal business hours to inspect any tooling and related equipment in the possession of Vendor, to observe the manufacturing or processing procedures for the goods covered by this Purchase Order and to review all inspection reports and quality control documentation and procedures of Vendor as it deems necessary to determine whether the goods comply with the warranty or other terms and conditions of this Purchase Order.

**IX. Insurance.** Vendor shall maintain and carry liability insurance written on an occurrence basis which includes comprehensive general liability insurance, including contractual liability coverage and products liability and recall insurance in an amount of no less than \$1,000,000. In no event shall such amounts be less than minimum statutory requirements, if any. All insurance coverage shall be valid until the expiration of the limitation period applicable to damage claims hereunder and Buyer will receive thirty (30) days prior written notice from the insurer of any termination or reduction in the amount or scope of coverage. Buyer shall be named as an additional insured and Seller will, if requested by Buyer, furnish certificates of insurance indicating the foregoing coverage.

**X. Modification/Cancellation.** Buyer reserves the right to make changes in packing, destination, Specifications, designs and the delivery schedule at any time. Vendor shall immediately notify Buyer of any increases or decreases in costs caused by such changes and an equitable adjustment of prices or other terms shall be agreed upon in a written amendment to this Purchase Order. Buyer reserves the right to cancel this Purchase Order, in whole or in part, due to (i) Vendor's suspension of business, insolvency, the filing of a voluntary or involuntary petition in bankruptcy, assignment for the benefit of creditors, the appointment of a receiver for Vendor's property; (ii) Buyer's reasonable belief that Vendor will be unable to perform its obligations as set forth in this Purchase Order; (iii) a failure to deliver in a timely fashion pursuant to Section II; or (iv) a failure to conform to the Warranty. Cancellation by Buyer shall be free of liability other than accepted goods for which payment has not been made. In the event of such cancellation and without prejudice to any other rights or remedies at law or equity or provided for in this Purchase Order, Buyer has the right to: (a) refuse to accept delivery of material or performance of work; (b) return to Vendor any materials already accepted, recover any payments made for the same and for freight, storage, handling, and other expenses incurred, and be relieved of

liability for any future payments to Vendor; (c) recover any payments made to Vendor for undelivered or returned materials or work to be performed; and/or (d) purchase elsewhere and charge Vendor with any resultant losses.

**XI. Confidentiality.** Vendor acknowledges that it will acquire information and knowledge respecting the confidential affairs of Buyer in various phases of its business. Vendor agrees to forever keep secret and retain in the strictest confidence all confidential matters of Buyer, including without limitation, intellectual property (including patents, copyrights, trademarks, processes, designs, patterns and know-how) pricing policies, corporate strategies, customer information, production information, purchasing requirements, specifications and all other business affairs of the Buyer and not to disclose any such confidential matter to anyone outside Buyer, whether during or after the term of this Purchase Order and its performance hereunder (collectively, "Confidential Information"). Vendor agrees to deliver promptly to Buyer upon its request, all of Buyer's memoranda, notes, records, drawings, plans and other documents (and all copies thereof) relating to Buyer, which Vendor may then possess or have under its control. Vendor agrees that a breach of the confidentiality covenant may cause irreparable damage to Buyer, the extent of which may be difficult to ascertain, and that the award of damages may not be adequate relief. Therefore, Vendor agrees that, in the event of a breach or a threatened breach of the confidentiality covenant, Buyer may institute an action to compel the specific performance of the confidentiality covenant; Buyer agrees not to assert adequacy of money damages as a defense and agrees that such remedy shall be cumulative, not exclusive, and in addition to any other available remedies. Vendor further covenants and agrees that, if it shall violate the confidentiality covenant, Buyer shall be entitled to an accounting and repayment of all profits, compensation, royalties, commissions, remuneration or other benefits which Vendor directly or indirectly shall have realized or may realize relating to, growing out of or in connection with any such violation; such remedy shall be in addition to and not in limitation of any injunctive relief or other rights or remedies to which Buyer is or may be entitled at law or in equity or otherwise under this Purchase Order.

**XII. Intellectual Property.** Vendor warrants that the goods described in this Purchase Order and the sale or use of them will not infringe any intellectual property rights of any third party, including, but not limited to, any trademark, copyright or patent of the United States or any foreign country (except to the extent designed by Buyer). Vendor acknowledges that any and all Improvements, including those developed by the Vendor, are the sole and exclusive property of Buyer. Vendor shall immediately notify Buyer of development or discovery any Improvements and shall assign any Improvements to Buyer without further compensation. Vendor agrees that, upon request, it shall promptly make all disclosures, execute all applications, assignments or other instruments and perform all acts necessary or desirable to vest and confirm in Buyer, fully and completely, all rights and interests in Improvements, including, but not limited to, full cooperation with any efforts undertaken by Buyer to patent, register or otherwise protect any Improvements. "Improvement" shall mean all rights and interest, both tangible and intangible, in or with respect to any improvement, development, enhancement, adaptation or advancement derived from, connected with or relating to the Confidential Information (or any constituent fact thereof), Buyer's products, product designs, tooling or any other trade secret or proprietary right of Buyer.

**XIII. Exclusivity.** While producing custom products for Buyer, Vendor shall not produce, manufacture, design or deliver substantially similar or competitive products for any third party without the Buyer's express written consent. For the avoidance of doubt, "custom" products means any product that is made to specifically for Buyer and to Buyer's specifications. For a period of one (1) year after such date, Vendor shall not, directly or indirectly, individually or in concert with any other person or entity, or through a corporation, partnership, limited liability company, proprietorship or other business enterprise do any of the following: (a) induce or attempt to induce any employee or agent of Buyer to leave its employ; (b) employ (or engage to act, directly or indirectly, as an independent contractor or agent) any employee, contractor or agent of Buyer within one (1) year following termination of the employment or agency of such employee or agent with Buyer; or (c) solicit, divert or take away or attempt to solicit, divert or take away any client or customer for which Buyer rendered services, to which it provided products or from whom Buyer solicited business of any kind during the period during which Vendor provided products/services to Buyer.

**XIV. Miscellaneous.** This Purchase Order or any part thereof shall not be assigned or performance hereunder delegated by Vendor without Buyer's written consent. This Purchase Order and its terms and conditions shall be binding upon the parties and their successors and assigns. The failure of Buyer to insist upon performance of any provision, or to exercise any right or privilege granted to Buyer, in this Purchase Order shall not be construed as waiving such provision or privilege. The invalidity of any terms or provisions hereof shall not affect the validity of the remaining terms or provisions, and this Purchase Order shall be construed as if such invalid terms or provisions had been omitted. This Purchase Order shall be governed by and construed in accordance with the laws of the State of Delaware (regardless of the laws that might be applicable under principles of conflicts of laws) as to all matters, including, but not limited to, matters of validity, construction, effect and performance. The parties hereby irrevocably consent to the exclusive jurisdiction of the courts of the State of Delaware, and the federal courts for such jurisdiction, and waive any contention that any such court is an improper venue for enforceability of this Agreement. Subject to providing prompt notice and taking commercially reasonable efforts to overcome the effects of the contingency, neither party shall be in default of its obligations hereunder to the extent that its performance is delayed or prevented by causes beyond its reasonable control, including but not limited to acts of God, civil disorders, acts of any civil or military authority, judicial action, terrorist acts, natural disasters, strikes and other labor problems. Neither party can assert the provisions of the foregoing sentence if at the time it is shipping similar products or otherwise fulfilling similar obligations to any third party and Vendor agrees to allocate its available production capacity among its customers in a fair and equitable manner.

**IX. Order Cancellations.** If Buyer cancels an Order, the Buyer will be responsible for any work-in-process that has been completed between the order date and cancellation date. All work-in-process will be billed at cost plus applicable margin (Final Billing). Final Billing to the Buyer will be netted against unused deposits related to the cancelled Order(s). Any difference will be due to Vendor. In the event unused deposits exceed the Final Billing, Buyer will receive credit for future projects or be reimbursed by Vendor if such credit is not used within twelve (12) months.