

## DMG MORI USA, INC. TERMS & CONDITIONS OF PURCHASE

These terms and conditions of purchase ("Terms") are the only terms which govern the purchase of goods and services ("Goods") by DMG MORI USA, INC., or its affiliates (collectively "DMG MORI") listed in the purchase order issued by DMG MORI ("PO"). All quotations, proposals, and confirmations or acknowledgments of DMG MORI's PO by Seller for the Goods are subject to these Terms. These Terms prevail over any of Seller's general terms and conditions whatsoever, regardless of whether and when Seller has submitted such terms. No additions, deletions or deviations from these Terms shall be binding on DMG MORI unless accepted in a writing signed by a duly authorized representative of DMG MORI. Notwithstanding anything herein to the contrary, if a written contract signed by both parties is in existence covering the purchase of the Goods, the terms and conditions of said contract shall prevail to the extent they are inconsistent with these Terms. The "Seller" herein refers to the provider of the Goods to DMG MORI as stated in PO.

**ACCEPTANCE.** PO is deemed accepted by Seller (i) if not rejected by Seller in writing within five (5) days of PO's date of issuance or (ii) if Seller commences performance of work under PO.

**DELIVERY.** Time is of the essence. Seller shall deliver the Goods in the quantities and on the date(s) specified in PO ("Delivery Date"). If a delay is expected, Seller shall promptly advise DMG MORI of such delay. If Seller fails to deliver the Goods on the Delivery Date in full, DMG MORI reserves the right to take the following actions, without liability to Seller and in addition to its other rights and remedies under these Terms: (i) to direct expedited delivery of the Goods, with any difference in cost paid by Seller, (ii) to purchase similar Goods from other vendors and charge Seller with the expenses DMG MORI incurs in connection to such procurement and/or (iii) to have Seller indemnify DMG MORI against any losses, claims, damages, and reasonable costs and expenses directly attributable to Seller's failure to deliver the Goods on the Delivery Date. Seller's performance is not deemed completed until the Goods have been accepted by DMG MORI. Substitutions will not be accepted. DMG MORI shall not be obligated to accept untimely, excess, or under shipments and such shipments in whole or in part may, at DMG MORI's option, be returned to Seller, or held for disposition at Seller's expense and risk. When more than one shipment is made against any PO, Seller shall indicate "Final Shipping" on shipping papers and invoice accompanying the last shipment.

**SHIPPING TERMS.** Unless otherwise stated in PO, delivery shall be made DDP location specified in PO ("Delivery Point"), according to Incoterms 2010. Title and risk of loss passes to DMG MORI upon delivery of the Goods at the Delivery Point.

**INSPECTION AND REJECTION.** Goods will be subject to inspection by DMG MORI after delivery to DMG MORI. In addition, DMG MORI has the right to inspect the Goods at Seller's facility, prior to its shipment. Seller shall permit access to Seller's facilities at all reasonable times for inspection of Goods by DMG MORI's employees or agents and provide all tools, facilities and assistance reasonably necessary for such inspection at no additional cost. If DMG MORI determines that the Goods do not meet the specifications and requirements of PO or is otherwise defective, DMG MORI may reject any portion of such Goods. If DMG MORI rejects any portion of the Goods, DMG MORI has the right, without liability to Seller and in addition to its other rights and remedies under these Terms: (a) to have Seller repair or replace the Goods either at the Delivery Point or at Seller's premise, (b) to have Seller refund the price of the rejected Goods, (c) to purchase similar Goods from other vendors and charge Seller with the costs DMG MORI incurs in connection to such procurement and/or (d) to have Seller indemnify DMG MORI against any losses, claims, damages, and reasonable costs and expenses directly attributable to Seller's failure to deliver a conforming or non-defective Goods. Inspections or any payments prior to Delivery Date shall not constitute a waiver of DMG MORI's right to reject the Goods under this paragraph.

**PRICES.** DMG MORI shall not be billed at prices higher than those stated in the PO. Seller is solely responsible for all costs, and expenses relating to packing, crating, boxing, transporting, loading and unloading, customs, taxes, tariffs and duties, insurance and any other similar financial contributions or obligations relating to the production, manufacture, sale and delivery of the Goods. Should DMG MORI incur costs which should be borne by Seller, Seller shall indemnify DMG MORI against such costs upon written notice from DMG MORI.

**PAYMENT.** Except for any amounts disputed by DMG MORI in good faith, Seller's accurate and correctly submitted invoices will be payable within forty-five (45) days following the latter of (i) DMG MORI's receipt of Seller's invoice and (ii) DMG MORI's receipt of proof of delivery, in a form and contents satisfactory to DMG MORI. Without prejudice to any other right or remedy it may have, DMG MORI reserves the right to set off at any time any amount owing to it by Seller against any amount payable by DMG MORI to Seller under PO.

**CHANGES.** DMG MORI may make changes in drawings, specifications, quantities, delivery schedules, or methods of shipment or packaging on any Goods at any time. If such changes require adjustment of prices and/or Delivery Date, the parties shall promptly agree on such matters; or, if such agreement cannot be reached within a reasonable time, DMG MORI may, at its option, terminate PO. Claims for adjustment must be asserted by Seller within ten (10) days of the change order.

**TERMINATION.** DMG MORI may terminate PO in whole or in part at any time, by providing a written notice to Seller. Upon receipt of such notice, Seller shall, unless the notice directs otherwise, immediately discontinue all work and the placing of all orders for materials, facilities and supplies in connection with the performance of PO. Seller's sole and exclusive remedy is payment for the Goods received and accepted by DMG MORI prior to the termination.

**WARRANTIES.** Seller warrants that the Goods (i) are free and clear of all liens, claims or encumbrances; (ii) are merchantable, of good material and workmanship, free from defects in material and workmanship; (iii) are fit and sufficient for the purpose intended; (iv) meet and conform to applicable specifications, instructions, drawings and data; (v) do not infringe or misappropriate any third party's patent or other intellectual property rights; and (vi) comply with all applicable federal, state, and local laws and regulations. These warranties shall be in addition to all other warranties, express, implied or statutory. Payment for, inspection of, or receipt of Goods shall not constitute a waiver of any breach of warranty. Without limiting DMG MORI's right to pursue any applicable remedies, in the event of a breach of any warranty, DMG MORI may require prompt correction, repair, or replacement of the defective or nonconforming Goods, or receive a creditor full refund in an amount equal to the purchase price of the Goods. All returns, replacements and corrections will be at Seller's expense including all labor, materials, installation, repair, service, transportation and other charges. Seller agrees that its warranty under these Terms may be assigned to DMG MORI's successors, assigns, customers and end users of the Goods.

**ASSIGNMENT.** Neither PO nor any rights or obligations herein may be assigned by Seller nor may Seller delegate the performance of any of its duties hereunder to third parties, including without limitation, subcontractors, affiliates and consultants, without DMG MORI's prior written consent. If DMG MORI agrees to assignment, Seller shall (a) bind the subcontractors or affiliates with a non-disclosure agreement and/or intellectual property agreement that is reasonably satisfactory to DMG MORI; and (b) remain fully responsible for the performance of each such subcontractor and affiliates and for their compliance with all of the terms and conditions of these Terms and PO as if they were Seller's own employees.

**DMG MORI'S EQUIPMENT.** Title to and right of any property or information, including without limitation, drawings, designs, specifications, manuals, programs, patterns, tools, jigs, dies, equipment or materials furnished to Seller by the DMG MORI ("DMG MORI's Equipment") shall remain in DMG MORI. Seller shall neither use DMG MORI's Equipment other than the fulfillment of its obligations under PO nor provide it to any other party without DMG MORI's prior written consent. Seller shall keep adequate records of DMG MORI's Equipment, which shall be made available to DMG MORI upon request, and shall store, protect, preserve, repair and maintain it in accordance with sound industrial practice, all at Seller's expense. Unless otherwise agreed to by DMG MORI, Seller shall insure DMG MORI's interest in DMG MORI's Equipment against all risks of theft, loss or damage (including extended coverage). Copies of certificates of insurance evidencing this coverage will be furnished to DMG MORI on demand. Upon DMG MORI's request, Seller shall promptly return all DMG MORI Equipment. Notwithstanding anything to the contrary, DMG MORI shall be entitled to injunctive relief for any violation of this paragraph.

**INSURANCE.** Seller shall furnish to DMG MORI a certificate of insurance showing Seller has obtained insurance coverage in the following minimum amounts upon the acceptance of PO: (a) Worker's Compensation - statutory limits for the state or states in which the work is to be performed; (b) Commercial General Liability - \$1,000,000 single limit per occurrence including Premises and Operations Independent Contractors, Contractual Liability and Products and Completed Operations Coverages; (c) Automobile Liability (including owned, hired and non-owned vehicles) - \$1,000,000 combined single limit per occurrence; and (d) umbrella and/or excess liability insurance to a combined single limit of at least \$4,000,000 in the aggregate in excess of Commercial General Liability indicated above. Such certificate shall include a thirty days' notice of cancellation or alternation of its terms to DMG MORI. DMG MORI must be named as an additional insured party under each

of these policies except for policy covering worker's compensation liability. Insurance coverage must be maintained by Seller at all times while it is performing work under each applicable PO. Compliance by Seller with these insurance requirements does not affect Seller's indemnification or other liabilities under these Terms or PO.

**INDEMNIFICATION.** Seller shall defend, indemnify and hold harmless DMG MORI and its successors and customers and its respective directors, officers, shareholders and employees (collectively, "Indemnitees") against any and all loss, injury, death, damage, liability, claim, deficiency, action, judgment, interest, award, penalty, fine, cost or expense, including reasonable attorney and professional fees and costs, and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers (collectively, "Losses") arising out of or occurring in connection with any of the Goods supplied by Seller (regardless of whether such claim or demand arises under tort, negligence, contract, warranty, strict liability or other legal theories), except to the extent that the Losses resulted solely from DMG MORI's negligent actions or misuse of the Goods provided by Seller. Seller shall not enter into any settlement without Indemnitee's prior written consent.

**DEFAULT.** In addition to any remedies that may be provided under these Terms and PO, DMG MORI may terminate PO, either in whole or in part, before or after the acceptance of the Goods, with immediate effect upon written notice to Seller, in the event of any of the following: (i) Seller's non-performance or non-compliance with any of the terms herein or under PO; (ii) insolvency of Seller; (iii) the filing of a voluntary petition in bankruptcy by Seller; (iv) the filing of an involuntary petition to have Seller declared bankrupt; (v) the appointment of a receiver or trustee for Seller; (vi) the execution by Seller of an assignment for the benefit of creditors; (vii) DMG MORI becomes aware or has reasonable doubt that Seller or any of its affiliates, directors, officers, or major customers is (a) located in an embargoed country or territory, (b) under the control of an entity organized in or a resident of an embargoed country or territory, (c) listed on any U.S. government list of persons or entities with which U.S. persons are prohibited from transacting, including, but not limited to, OFAC's List of Specially Designated Nationals and Other Blocked Persons, the U.S. State Department's Nonproliferation Sanctions Lists, the U.S. Commerce Department's Entity List or Denied Persons List located at <https://www.trade.gov/consolidated-screening-list> or (d) subject to end destination export control regulations, such as, but not limited to, the U.S. Export Administration Regulations and U.S. Government EU Dual-Use Regulation EC 428/2009; or (viii) any other situation under which a reasonable person may construe that Seller is not capable to fulfill its obligations under PO ("Seller's Default"). If PO is terminated for Seller's Default, Seller shall, at its expense, defend, indemnify and hold harmless Indemnitees against any and all Losses arising out of or in connection with Seller's Default. In no event shall Seller enter into any settlement without Indemnitee's prior written consent. The remedies provided herein shall be cumulative in addition to any other remedies provided at law or in equity.

**CONFIDENTIAL INFORMATION.** All non-public, confidential or proprietary information, including but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by DMG MORI to Seller in connection with the delivery or performance of Goods, whether disclosed orally, in writing, or in electronic form, and whether or not marked, designated or otherwise identified as "confidential" ("Confidential Information") is confidential, and Seller shall not use, either directly or indirectly, any Confidential Information or any information derived therefrom for any purpose other than to perform its obligations under PO unless authorized in advance by DMG MORI in writing. Except as required for the efficient performance of PO, Seller shall not make copies or permit copies to be made without the prior written consent of DMG MORI. Seller shall not advertise, publish or disclose to third parties in any manner the fact that Seller has contracted to furnish DMG MORI any Goods, or use any trademarks or trade names of DMG MORI in any press release, advertising or promotional materials, including but not limited to postings on social media platforms, without obtaining DMG MORI's written consent. Upon the completion of its obligations under PO or DMG MORI's request, Seller shall promptly return all Confidential Information and copies thereof to DMG MORI. Notwithstanding anything to the contrary, DMG MORI shall be entitled to injunctive relief for any violation of this paragraph.

**DRAWINGS AND SPECIFICATION REVIEW.** If DMG MORI reviews drawings, specifications or other data developed by Seller in connection to PO and make suggestions or comments or approve such drawings, specifications or data, such action is only an expression of opinion by DMG MORI and shall not serve to relieve Seller of any responsibility for the reliability, quality, rate of output, cost, delivery, performance or any other obligations under PO.

**COMPLIANCE WITH LAWS.** Seller shall comply with all applicable laws and regulations, and refrain from engaging in any illegal, unethical, or deceptive practices. Without limiting the foregoing, Seller agrees to complete any security chain questionnaire or other document reasonably requested by DMG MORI relating to its import/export activities and shall provide written notice if it is C-TPAT certified. Upon request, Seller shall furnish DMG MORI certificates of compliance with such laws and regulations. Where the Goods being procured from Seller are in support of a U.S. government contract, all applicable procurement regulations required by U.S. law or regulation to be inserted in contracts or subcontracts apply to PO.

**SUPPLIER CODE OF CONDUCT.** Seller shall comply with DMG MORI's CSR Procurement Guideline ("Supplier Code of Conduct"), as amended by DMG MORI from time-to-time, a copy of which is available at [https://www.dmgmori.co.jp/corporate/en/sustainability/supply\\_chain/supplier.html](https://www.dmgmori.co.jp/corporate/en/sustainability/supply_chain/supplier.html). Seller shall include the substance of the Supplier Code of Conduct, including this flowdown requirement, in all subcontracts awarded by Seller for the work under this Agreement.

**EXPORT CONTROL.** The parties acknowledge that information subject to U.S. export control laws and regulations may be disclosed pursuant to this Agreement. Each party shall comply with all applicable export and import laws and regulations, including but not limited to, the International Traffic in Arms Regulations, as amended (22 C.F.R. Parts 120 - 130) ("ITAR"), the Export Administration Regulations, as amended (15 C.F.R. Parts 730 - 774) ("EAR"), and regulations by the U.S. Department of the Treasury, Office of Foreign Assets Control ("OFAC") (collectively the "Export Control Laws"). The parties shall not export, disclose, transfer, furnish or otherwise provide any article, technical data, technology, defense service, or technical assistance of the other party to any foreign country or foreign person as defined by ITAR, including those working for a party, whether in the United States or abroad, without obtaining in advance proper United States government export authorization.

**RELATIONSHIP OF THE PARTIES.** The relationship between the parties is that of independent contractors. Nothing contained in these Terms or PO 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 shall have authority to contract for or bind the other party in any manner whatsoever.

**FORCE MAJEURE.** Neither party shall be liable for defaults or delays due to Acts of God or the public enemy, acts or demands of any Government or any Governmental agency, strikes, fires, floods, accidents, or other unforeseeable causes beyond its control and not due to its fault or negligence. Each party shall notify the other in writing of the cause of such delay within five (5) days after the beginning thereof.

**GOVERNING LAW & ARBITRATION.** These Terms shall be construed in accordance with the laws of the State of Illinois, except for such state's conflicts of law provisions. The provisions of these Terms are divisible and the invalidity or unenforceability of any provision or provisions contained herein shall not in any way affect the validity of these Terms without the invalid or unenforceable provision or provisions. All disputes that may arise in connection with these Terms shall, unless settled by the parties, be submitted to arbitration in Chicago, Illinois in accordance with the Commercial Arbitration Rules of the American Arbitration Association. Except as may be required by law, neither a party nor the arbitrator may disclose the existence, content or results of any arbitration without the prior written consent of both parties, unless for DMG MORI to pursue injunctive relief permitted herein. The award rendered by the arbitrator shall be final and binding on the parties and may be entered and enforced in any court having jurisdiction, and any court where a party or its assets is located Judgement upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. Any action to by Seller relating to DMG MORI's breach of its obligations under these Terms or PO shall be commenced no later than one year from the date of alleged breach. All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and addressed to the parties at the addresses set forth on the face of PO or to such other address that may be designated by the receiving party in writing.

**ATTORNEY'S FEES.** If there is any dispute concerning these Terms or PO, and any party retains counsel for the purpose of enforcing any of the provisions of these Terms or PO or asserting the terms of these Terms or PO in defense of any suit filed against said party, each party shall be solely responsible for its own costs and attorneys' fees incurred in connection with the dispute irrespective of whether or not a lawsuit is actually commenced or prosecuted to conclusion.

**MERGER CLAUSE.** The entire agreement is embodied in this writing. There are no understandings, agreements, representations, or warranties, either oral or written, relative to Goods, including statements made in or conduct implied from past dealings that are not fully expressed herein.

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