

TURNING POINT TOOL LLC

Terms & Conditions

Receipt of purchase order by TURNING POINT TOOL LLC and confirmation of that purchase order to purchaser shall constitute agreement to accept the following terms and conditions relative to the purchased products. Turning Point Tool offers a **Limited Mold Warranty** for mold build and production productions.

1) **Turning Point Tool LLC** hereinafter "SELLER", will manufacture products to customer's "BUYER" product specifications and are only guaranteed as such.

2) **Acceptance:** No purchase order shall be binding on Seller unless and until accepted in writing by and authorized employee of Seller. Any terms and conditions of Buyer's purchase order or other similar instrument, which are different from, in addition to or inconsistent with Seller's terms and conditions are expressly rejected by Seller, shall not be binding on Seller and shall not apply to this transaction, unless specifically agreed to in writing in Seller's acceptance.

ORDER CANCELLATIONS: Buyer is responsible to pay cancellation charges related to Buyer's order cancellation. Cancellation charges shall include as applicable the landed cost of raw materials, raw materials restocking fees, work in process, finished goods, partial or completed tooling, and miscellaneous items directly related to the cancelled order. Buyer is obligated to pay cancellation charges within 30 days of invoice date.

3) **Shipment and Delivery:** Delivery will be made for each shipment of goods F.O.B. Turning Point Tool, Rochester, NY. Buyer shall examine all goods promptly upon receipt thereof. No later than fifteen (5) days after receipt, Buyer shall notify Seller of all claimed shortages or damaged goods, or if rejection is intended, shall specify all grounds therefore. Failure to give such notice shall be deemed an acceptance of the goods as of the date of shipment.

4) **Payment Terms:** Payment terms for each shipment of goods shall be as stated on Seller's invoice in U.S. Dollars. In the event Buyer fails to make timely payment of any amount invoiced hereunder, Seller shall have the right, in addition to any and all other rights and remedies available to Seller, at law or in equity, to delay or cancel future deliveries. All costs of collection, including reasonable attorney's fees, shall be paid by Buyer. Any obligation of Seller under this Agreement to deliver goods on credit terms shall terminate without notice if Buyer files a voluntary petition under a bankruptcy statute, or makes an assignment for the benefit of creditors, or if an involuntary petition under a

bankruptcy statute is filed against Buyer, or if a receiver or trustee is appointed to take possession of the assets of Buyer. Unpaid balances on invoices for molds, tools, and molded parts covered by this quotation shall constitute a lien on any molds or tools in seller's possession. *Seller reserves the right to adjust production piece pricing in accordance with resin market fluctuations.*

5) **Title and Risk of Loss:** Seller assumes no responsibility for any loss or damage occurring by reason of delay or inability to deliver caused by fire, strikes, accident, embargoes, delays of carriers, insurrection, riot, acts of civil or military authorities, acts of God or other acts or occurrences beyond the reasonable control of seller. Furthermore, seller assumes no responsibility for damages of any kind whatsoever on account of failure of delivery at time specified, regardless of cause. *Buyer shall be responsible for maintaining insurance on all molds and tools kept in seller's possession and acknowledges that Seller does not insure Buyer's molds and tools. Seller shall not be responsible for safekeeping of buyer's molds/tools.*

6) **Warranty:** Seller hereby disclaims all warranties, expressed or implied, including but not meant to be an inclusive list, the implied warranty of merchantability and fitness for a particular purpose. Prior to purchase, buyer shall determine the suitability of the product for his intended use, and buyer assumes all risk and liability whatsoever in connection with the fit and use of the purchased product for the buyer's intended use. Seller, when requested, will give assistance to buyer in the form of suggestions concerning design and manufacturing of parts and/or molds, but seller does not assume any responsibility or liability for the practicality of any such design suggestions offered or recommended by seller, if adopted by buyer. Seller will provide normal maintenance for molds/tools while in production. All repairs and/or replacements due to normal manufacturing processes will be provided by seller at buyer's costs. Except for rights specifically contracted for by buyer, seller retains the rights to all intellectual properties and trade secrets developed in the course of manufacturing. **Limited mold warranty terms and conditions** in respect to mold build and production shall apply as noted in the job specific proposal.

7) **Taxes:** All sales, use, excise, property or other taxes, whether Federal, state or local, with respect to the products or their sale or use are the responsibility of the Buyer.

8) **Custom Production:** Custom orders can incur minimum purchases of raw material requirements. The buyer is responsible for consumption of any excess materials through future orders or one time charges. *Buyer requested deviations affecting design, raw material, acceptance criteria, packaging, and/or any variation from original agreement occurring after purchase order acceptance notification will be quoted accordingly.*

9) **Indemnity:** Customer shall defend, indemnify and hold seller, its officers, employees and agents harmless from and against all liability, loss and expenses of any kind, including attorney fees, arising out of any claim of infringement of any patent, copyright, trademark, or any other intellectual property right of any third party in connection with the products. Buyer will also indemnify and hold seller harmless from and against any liability, cost or expense and from any damages awarded, resulting from any product liability claim of any third party with respect to products.

10) **Governing Law and Jurisdiction:** These terms and conditions (and any agreement into which they are incorporated) shall be interpreted in accordance with and governed by the laws of the State of New York.