

BENDER CCP, INC. STANDARD TERMS & CONDITION OF SALE

Fabrication, Tooling, Thermal Spray Coatings, Machining and Shop Repair Services

10 Terms Applicable. The Terms and Conditions of Sale ("Terms and Conditions") listed below are the exclusive terms and conditions applicable to quotations made and orders acknowledged by Bender CCP, Inc. ("BENDER CCP") for the Services in accordance with BENDER CCP fee schedules ("Schedules") which are referenced in a Purchase Order, or if none are referenced, then the Schedule(s) which is/are in effect at the time the Services are performed.

1.1 The quotation presented by, or Purchase Order received by, BENDER CCP is expressly made conditional upon Customer's assent to these Terms and Conditions. Any of Customer's terms and conditions which are in addition to or different from those contained herein, which are not separately agreed to by BENDER CCP in writing, are hereby objected to and shall be of no effect. Objections to any terms and conditions contained herein shall be deemed waived if Customer does not receive written notice that BENDER CCP agrees to them within 20 days of the date of the quotation or Purchase Order acknowledgment. Customer in any event will be deemed to have assented to these Terms and Conditions if delivery of any Service is requested or accepted.

1.2 The term "this Agreement" as used herein means the applicable quotation or acknowledgment or Purchase Order, together with BENDER CCP's proposal and any attachment thereto, any documents expressly incorporated by reference and these Terms and Conditions. These Terms and Conditions shall in all cases, without exception, control and take precedence over any terms and conditions in Customer's acceptance.

20 Invoicing and Payment. Customer will pay BENDER CCP for the Services, in accordance with BENDER CCP fee schedules ("Schedules") in effect at the time the Services are performed.

2.1 BENDER CCP shall invoice Customer monthly for its Services. In the event of a dispute over payment, customer shall pay all undisputed amounts in accordance with this Agreement. Terms are cash unless otherwise agreed upon in writing.

2.2 Invoices are due upon presentation and past-due thirty (30) days from the date of the invoice. Should any invoice for payment become past due, Customer agrees that BENDER CCP may suspend Services and/or demand prepayment of fees at BENDER CCP's option.

2.3 Customer agrees to pay a service charge of one and one-half (1- 1/2) percent per month, compounded monthly from the past due date of the invoice, on past-due accounts, not to exceed limits set by any applicable usury laws. In the event that it becomes necessary for BENDER CCP to commence action to force payment of invoices, Customer shall reimburse BENDER for its reasonable collection costs, including attorney's fees and court costs.

2.4 Prices on the products sold by BENDER CCP are exclusive of any city, state, federal or foreign taxes or duties, of any kind. Buyer is responsible for all such taxes and duties and agrees to indemnify BENDER CCP for all taxes and duties that may be assessed upon

30 Warranty. BENDER CCP shall perform the Services in accordance with the standards of care and diligence customary in the industry. In the event BENDER CCP fails to perform in accordance with those standards, or there is an error in the Services resulting in a defect in fabricated items, tooled, machined or repaired parts ("Parts"), Customer shall give written notice thereof to BENDER CCP. Such notice must be given during the one-year period following the date the Services are completed, or, if Parts are provided, the date that such Parts are available for use in Customer's facility. Upon such notice, BENDER CCP shall perform all corrective Services within the original scope of Services as necessary to conform the Services to such standard. All costs of such reperformance of work shall be borne by BENDER CCP.

3.1 Notwithstanding the above, in the event that Parts are stored or remain unused for thirty (30) days or more following furnishing by BENDER CCP, BENDER CCP warranty shall be void, and BENDER CCP shall be released from all liability whatsoever in connection with the Parts unless, prior to startup of the equipment in which the Parts are used, BENDER CCP, at customer's expense, is afforded an opportunity to perform an inspection and any necessary testing to assure that the Parts can be warranted. Customer shall compensate BENDER CCP for all costs of such inspection and testing in accordance with BENDER CCP Schedules.

3.2 EXCEPT AS EXPRESSLY STATED ABOVE, BENDER CCP MAKES NO OTHER WARRANTY, EXPRESS OR IMPLIED, CONCERNING ANY OF THE SERVICES OR PARTS WHICH MAY BE FURNISHED PURSUANT TO THIS AGREEMENT. IN PARTICULAR, THERE ARE NO IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. BENDER CCP'S LIABILITY FOR WARRANTY REPAIR OR REPLACEMENT SHALL NOT EXCEED THE AMOUNT PAID BY CUSTOMER FOR THE ORIGINAL SERVICES OR PARTS PURCHASED.

3.3 BENDER CCP shall, for the protection of Customer and to the extent available, demand available warranties, indemnities and guaranties with respect to third party machinery, equipment, materials and services from all vendors and subcontractors with whom BENDER CCP contracts and shall render all reasonable assistance to Customer for the purpose of enforcing the same. BENDER CCP does not provide warranties, indemnities and guaranties with respect to third party machinery, equipment, materials and services.

40 Limitations. BENDER CCP's liability under any legal theory including, but not limited to contract, tort and strict liability, including that of its employees, agents, and officers shall not exceed the amounts paid to BENDER CCP under this Agreement. CUSTOMER SHALL RELEASE, DEFEND, INDEMNIFY AND HOLD BENDER CCP AND ITS EMPLOYEES, OFFICERS AND AGENTS HARMLESS FROM AND AGAINST ANY AND ALL OTHER CLAIMS, DEMANDS, LOSSES AND CAUSES OF ACTION.

50 Changes. In the event Customer desires to make changes in the Services, BENDER CCP will perform such changes pursuant to the terms, conditions and pricing of this Agreement, or pursuant to a written mutually agreed upon change order. Customer acknowledges that the individual signing this Agreement on its behalf, or any authorized representative of Customer, may amend or change any Scope of Work.

60 Termination. Either party may, prior to completion and with or without cause, terminate the Services at any time upon five (5) working days' written notice to the other. In event that Customer terminates this Agreement, BENDER CCP shall be paid for Services performed to the date of termination plus non-cancelable commitments entered into prior to

BENDER CCP's receipt of notice of termination, and actual, reasonable, termination costs.

70 Term. The term of this Agreement is one year from its effective date; however, this Agreement shall automatically be renewed for consecutive one-year terms unless terminated by either party by providing at least 30 days' notice. Termination shall not affect the rights, obligations and remedies of the Parties.

80 Dispute Resolution. Any dispute arising out of, or relating to, this Agreement must be settled by mediation by a neutral person acceptable to both parties under the Commercial Mediation Rules of the American Arbitration Association (AAA). Failing resolution by mediation, such dispute shall be settled by binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association in Orange County, California. The parties shall jointly select one arbitrator and the decision of the arbitrator shall be final and binding on the parties and enforceable in any court of competent jurisdiction. Each party shall bear its own costs and expenses and an equal share of the arbitrator's and administrative fees of arbitration. The prevailing party may, at the arbitrator's sole discretion, be awarded reasonable attorney fees. Except as may be required by law, neither party nor an arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both parties.

90 Entire Agreement. This Agreement constitutes the complete Agreement of the parties. No other representations of any kind, oral or otherwise, have been made. If Customer elects to utilize a Purchase Order or other order form as a convenience, for billing purposes or in accordance with its customary practice, BENDER CCP will refer to the same in invoices or correspondence, with the understanding that these Terms and Conditions supersede all inconsistent terms.

100 Choice of Law. The laws of the State of California shall govern this Agreement. Any mediation, arbitration or litigation arising from this Agreement shall take place in Los Angeles, California.

110 Severability. If any provision of this Agreement is finally determined to be contrary to, prohibited by, or invalid under applicable laws or regulations, such provision will be renegotiated so as to give effect to the original intent of the parties to the maximum possible extent. Other terms shall be modified only to the extent necessary for consistency with renegotiated terms.

120 No Third-Party Rights. Nothing contained in or relating to the formation of this Agreement is intended to make any person or entity that is not a signatory to the Agreement a third-party beneficiary. No one other than Customer shall be entitled to use the Parts produced hereunder.

130 Execution and Counterparts. This Agreement and any Scope of Work may be executed and delivered in counterparts and by each party in separate counterparts, each of which, taken together, shall constitute but one and the same instrument.

140 Remedies. Neither party shall be held liable for punitive, indirect, special, or consequential damages (including loss of profits) under any theory of law or of any nature whatsoever, howsoever arising. THE OBLIGATIONS, RESPONSIBILITIES, WARRANTIES, AND LIABILITIES OF THE PARTIES WITH RESPECT TO THE SERVICES AND PARTS SHALL BE SOLELY THOSE EXPRESSLY SET FORTH IN THIS AGREEMENT, AND THEY SHALL APPLY REGARDLESS OF WHETHER AN ACTION IS BROUGHT IN CONTRACT, OR IS BASED ON TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR ANOTHER THEORY OF LAW. The limitations stated in this Agreement extend collectively to the parties' partners, joint ventures, licensors, insurers, and affiliates. Customer and BENDER CCP agree that, notwithstanding the Dispute Resolution provision, above, any legal action with respect to the Services or Parts shall be brought solely against the parties, and not against affiliated companies, individual officers, employees or former employees of the parties. All legal actions by either party against the other for breach of this Agreement, or for the failure to perform in accordance with the applicable standard of care, however framed, that are essentially based upon such breach or failure shall be barred following expiration of BENDER CCP's one (1) year warranty period.

150 Force Majeure. Unless otherwise specified in this Agreement, BENDER CCP shall be obligated to perform its Services within a reasonable period of time. Schedules are estimates only. BENDER CCP shall not be responsible for delays in the completion of the Services if such delays are created by reason of any unforeseen cause or causes beyond BENDER CCP's reasonable control. In the event of delay due to any such cause, BENDER CCP shall be paid for actual out of pocket costs occasioned by such delay, including standby costs.

160 Compliance. BENDER CCP agrees to perform its Services in accordance with all applicable laws and regulations which are in force and effect at the time of performance.

170 Information Obtained from Others. BENDER CCP will be supplied with certain information and/or data by Customer and/or others, and BENDER CCP shall be entitled to rely on same. BENDER CCP shall not be responsible for verifying the accuracy of such information.

180 Headings and Construction. Headings used herein are for convenience of reference only and shall not affect meaning. This Agreement shall be construed according to its fair meaning and not strictly for or against any party hereto.

190 Independent Contractor. BENDER CCP shall perform its services as an independent contractor and not an employee or agent of Customer.

200 Notices. Any and all notices and other communications hereunder shall be in writing and be deemed received when delivered, or five (5) days after being mailed, via certified or registered mail, return receipt requested, postage prepaid, to the last known addresses of the parties as the parties may from time to time notify each other.

210 Intellectual Property: All intellectual property of Seller shall remain the exclusive property of Seller and no license to pre-existing intellectual property will be created by this Agreement. Any new intellectual property developed by Buyer that includes or incorporates the Products shall also be owned by Seller.