

Terms and Conditions of Sale

1. **Governing Terms.** This document constitutes an offer or counter-offer by FEMA Corporation ("FEMA") to sell the products and/or provide the services described in this Contract (collectively, the "Products") to the buyer to which it is directed ("Buyer") in accordance with the terms and conditions of sale set forth herein (these "Terms and Conditions of Sale"); this document is not an acceptance of any offer made by Buyer, and it is expressly conditioned upon Buyer's assent to all of these Terms and Conditions of Sale. FEMA objects to any additional or different terms or conditions contained in any request for quotation, purchase order or other communication previously, now or hereafter provided by Buyer to FEMA. No such additional or different terms or conditions will be of any force or effect. Upon Buyer's acceptance of this offer, whether explicitly, by acceptance of Products, or otherwise, these Terms and Conditions of Sale and the accompanying document (whether a quotation, price letter, sales agreement, invoice, acknowledgment and/or other contract or instrument) referencing, attaching or affixing these Terms and Conditions of Sale (the "Offer" and, together with these Terms and Conditions of Sale, this "Contract") shall collectively constitute the entire agreement between FEMA and Buyer with respect to the purchase and sale of Products. No modification of this Contract shall be effected by the use of purchase orders, acknowledgments, acceptances or other forms at variance with or in addition to this Contract, except to the extent such modification is in writing and executed by Buyer and FEMA.

2. **Intellectual Property; Drawings and Designs.** Nothing in this Contract shall be understood to grant to Buyer any right or license, either express or implied, to or under any patent, patent application, copyright, trademark, trade secret or other intellectual or proprietary right of FEMA, and FEMA shall have and retain sole and exclusive rights to all intellectual and proprietary rights in or related to the Products and all other intellectual and proprietary rights of FEMA, including all patent, copyright and trademark rights. Without limiting the generality of the foregoing, all drawings, designs and specifications for the Products are considered proprietary to FEMA and shall be the exclusive property of FEMA. Any purchase orders and any other documents from Buyer shall reference the FEMA drawing number.

3. Pricing.

a. All prices of Products are subject to change upon notice from FEMA to Buyer, and the price of Products on order but unshipped will be adjusted to the price in effect at the time of shipment; provided, however, that, upon notice to FEMA, Buyer may cancel any order affected by such price increase at any time before 30 days after notice of such increase. Without limiting the generality of the foregoing, prices for any Product may be adjusted by FEMA, upon notice to Buyer, if raw material prices increase.

b. All prices, and amounts payable, under this Contract are in U.S. Dollars.

c. Where prototypes are requested, pricing will be based on the prototype quantity. No prototype, durability, or limited production orders will be at production prices unless expressly agreed to in a writing signed by FEMA.

4. **Taxes and Fees.** Any tax, duty, custom, fee, interest or charge imposed by any governmental authority on or measured by the transaction between FEMA and Buyer shall be paid by Buyer in addition to the prices quoted or invoiced by FEMA. In the event FEMA is required to pay any such tax, duty, custom, fee, interest or charge, Buyer shall reimburse FEMA therefore on demand.

5. **Tooling.** Except with respect to any tooling expressly and directly paid for by Buyer ("Buyer Tooling"), all tooling associated with the production of Products shall be the sole and exclusive property of FEMA, unless otherwise expressly agreed to in a writing signed by FEMA. Accordingly, FEMA reserves the right to modify, maintain and use the tooling (other than Buyer Tooling) for any purpose it sees fit. Buyer shall own all Buyer Tooling and, at Buyer's expense, shall be responsible for all maintenance required for such Buyer Tooling throughout the standard serviceable life of such Buyer Tooling. Replacement of all Buyer Tooling shall be the responsibility of Buyer, at its expense.

6. **Product Suitability.** Buyer shall include upfront in all design/part assembly reviews (DPARs) between Buyer and FEMA the key characteristics and features of the Products desired by Buyer. However, notwithstanding anything in this Contract to the contrary, determination of the suitability of the Products for the uses and applications contemplated by Buyer and others shall be the sole responsibility of Buyer. Buyer assumes all risks and liabilities for results obtained by the use of the Products, whether used singly or in combination with other material. Any suggestions or recommendations made by FEMA concerning uses or applications of the Products, and any drawings or specifications based on such proposed uses or applications, are believed to be reliable, but FEMA makes no warranty or guarantee of any kind whatsoever of the results to be obtained, since the conditions of the use and application by Buyer and others are beyond FEMA's control.

7. Warranty and Disclaimers.

a. FEMA warrants that each Product (other than prototypes) it manufactures (i) shall be free from defects in materials and workmanship and (ii) shall conform to the mutually agreed-upon drawing(s) and specifications for such Product (or, in the absence of such mutual agreement, to FEMA's drawing(s) and specifications for such Product). If, within twenty-four (24) months from the date of manufacture of any such Product, such Product shall be proved to FEMA's satisfaction to fail to conform to the foregoing warranty, then the affected part will, at FEMA's option, either be repaired or replaced free of charge, FCA (Incoterms 2010) FEMA's plant. Such repair or replacement shall be FEMA's sole obligation and liability, and Buyer's exclusive remedy, with respect to any defect or deficiency in the Products, and shall be conditioned upon (A) FEMA's receiving written notice of any alleged defect within ten (10) days after its discovery and, (B) at FEMA's option, Buyer's return of such Product(s) to FEMA, FCA (Incoterms 2010) FEMA's plant. In addition, FEMA makes no warranty with respect to Products, or materials used therein or components thereof, not manufactured by FEMA; FEMA will, however, assign to Buyer any assignable warranties it receives from the suppliers of such Products, materials or components. Removal of defective parts and installation of replacement parts shall each be performed by Buyer at its sole risk and expense.

b. The foregoing warranty of FEMA shall not apply to, and shall be void with respect to, and FEMA shall have no responsibility or liability for, any Product that (i) has been improperly altered or modified, (ii) has been subjected to misuse, abnormal use, misapplication, negligence, accident, or damage due to circumstances beyond FEMA's control, (iii) has been used in a manner contrary to FEMA's instructions in effect on the date of the delivery of such Product, or (iv) has been damaged by or subjected to abrasion, corrosion or chemicals and gases due to the physical environment, or other conditions more hostile than those specified or contemplated by FEMA, including, but not limited to, temperature, humidity and dirt.

C. THE FOREGOING WARRANTY OF FEMA IS EXCLUSIVE AND IN LIEU OF ALL OTHER REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED; AND FEMA EXPRESSLY DISCLAIMS AND EXCLUDES ANY AND ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR PARTICULAR PURPOSE, AND ANY WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE.

d. For the avoidance of doubt, prototypes of Products are not intended for commercial usage, and FEMA makes no warranty with respect to any prototypes, all such prototypes being delivered to Buyer "AS IS."

8. Patents, Trademarks and Copyrights.

a. FEMA will, at its expense, defend or settle any suits that may be instituted against Buyer by any third party unaffiliated with Buyer alleging that the Products manufactured by FEMA and supplied hereunder infringe any United States patent, trademark or copyright, if such alleged infringement directly arises out of the use of such Products, or parts thereof, in Buyer's business for any of the purposes for which the same were sold by FEMA, and provided that Buyer shall (i) have made all payments then due hereunder; (ii) give FEMA immediate notice in writing of any such suit; (iii) transmit to FEMA immediately upon receipt all processes and papers served upon Buyer; (iv) permit FEMA through its counsel, either in the name of Buyer or in the name of FEMA, to defend or settle the same; and (v) give all needed information, assistance and authority to enable FEMA to do so. If such Products are held in and of themselves, by final, non-appealable court decision, to infringe any valid United States patent, trademark or copyright and their use enjoined, or in the event of a settlement or compromise approved by FEMA that shall preclude future use of such Products by Buyer, then FEMA (A) will pay any final, non-appealable award of damages in such suit to the extent it is directly attributable to such infringement; and (B) shall, at its expense and its sole option, (I) procure for Buyer the right to continue using such Products to the extent contemplated herein, (II) modify such Products to render them non-infringing, (III) replace such Products with non-infringing products, or (IV) refund the purchase price Buyer paid for such infringing Products upon return (at FEMA's option) of such Products to FEMA.

b. Notwithstanding the foregoing, FEMA's obligations under Section 8.a shall not apply to, and FEMA shall not be responsible in any way or to any extent for, (i) any compromise or settlement made without FEMA's prior written consent; (ii) infringement of combination patents arising directly or indirectly out of the use of Products in combination with other products or materials not manufactured and furnished by FEMA; (iii) infringement of any method or process patents or patent claims arising directly or indirectly out of the use of Products, or for infringement of any patents covering goods or articles into which the Products are incorporated; (iv) any claim of contributory infringement resulting from the use or resale by Buyer of the Products or of goods or articles into which the Products are incorporated; or (v) infringement by Products manufactured or provided by FEMA in accordance with drawings, designs or specifications proposed or furnished by Buyer.

c. Section 8.a, as limited by Section 8.b, states the entire liability of FEMA for infringement of patents, trademarks, copyrights and other intellectual property rights whatsoever, and, without limiting the generality of Section 9.b, in no event shall FEMA be liable for consequential damages attributable to an

infringement. Buyer shall indemnify and hold harmless FEMA from and against all claims, demands and suits (including, without limitation, reasonable attorneys' fees and costs of legal defense) arising out of any act of infringement described in clauses (i) through (v) of Section 8.b.

9. Limitations of Liability; Disclaimer of Damages.
Notwithstanding anything in this Contract to the contrary:

a. Except as otherwise expressly agreed to in a writing signed by FEMA, FEMA's liability with respect to the Products sold hereunder or defects therein shall be limited to the warranty and remedy provided in Section 7. FEMA's liability with respect to alleged infringement shall be limited as provided in Section 8. With respect to any other breaches of this Contract by FEMA, FEMA's liability shall in no event exceed the purchase price of the Products that are the subject of the breach.

b. FEMA SHALL NOT BE SUBJECT TO ANY OTHER OBLIGATIONS OR LIABILITIES, WHETHER ARISING OUT OF BREACH OF CONTRACT, WARRANTY, TORT CLAIMS (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR UNDER OTHER THEORIES OF LAW OR EQUITY, WITH RESPECT TO PRODUCTS SOLD BY FEMA, OR ANY UNDERTAKINGS, ACTS OR OMISSIONS RELATING THERETO. FEMA SHALL NOT BE LIABLE FOR AND DISCLAIMS ALL SPECIAL, CONSEQUENTIAL, PUNITIVE, INCIDENTAL, INDIRECT AND CONTINGENT DAMAGES WHATSOEVER, REGARDLESS OF WHETHER FEMA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND WHETHER BUYER'S CLAIM IS BASED ON CONTRACT, BREACH OF WARRANTY, NEGLIGENCE OR OTHER TORT, OR ANY OTHER LEGAL THEORY. Without limiting the generality of the foregoing, FEMA specifically disclaims any liability for property damages, penalties, special or punitive damages, damages for lost profits or revenues, loss of goodwill, down-time, cost of capital, cost of substitute products, or for any other types of economic loss, or for claims of Buyer's customers or any third party for any such damages.

10. Indemnity. Buyer shall defend, indemnify and hold harmless FEMA and its directors, officers, employees, affiliates, agents, advisors and representatives from and against all claims, liabilities, losses, attorneys' fees, costs and expenses (including, but not limited to, those related to any injury to or death of any of Buyer's employees) arising from or connected with the possession, handling, processing or use of any Product by Buyer or others obtaining access to the Products from Buyer, except to the extent any such claims, liabilities, losses, attorneys' fees, costs and expenses are the result of Product defects proven to have been caused by FEMA's gross negligence or willful misconduct. FEMA may participate in the defense of any such claim for the further protection of its own interests.

11. Transportation; Risk of Loss; Title; Delivery.

a. Unless otherwise specified by FEMA in writing, all shipments shall be FCA (Incoterms 2010) FEMA's plant in Portage, Michigan, U.S.A. FEMA shall not be responsible for any Product once it leaves FEMA's loading site, and risk of loss for the Products shall pass to Buyer upon FEMA's delivery of the Products to the carrier at FEMA's loading site.

b. In the absence of Buyer-specific shipping instructions agreed upon in a writing signed by FEMA, FEMA will use its own discretion in choice of method of transportation and carrier. FEMA assumes no responsibility for insuring shipments,

and Buyer, at its expense, shall be responsible for any insurance that it specifies.

c. Unless otherwise expressly stipulated in this Contract, FEMA reserves the right to make delivery in installments; all such installments to be separately invoiced and paid for when due per invoice, without regard to subsequent deliveries. Delay in delivery of any installment shall not relieve Buyer of its obligations to accept remaining deliveries.

d. Claims for shortages or other errors in delivery must be made in writing to FEMA within ten (10) days after receipt of shipment. Failure to timely make such a claim shall constitute unqualified acceptance of the Products and a waiver of all such claims by Buyer. All claims for damage and loss, whether apparent or concealed, shall be filed by Buyer with the carrier. FEMA assumes no responsibility for any such damage or loss.

e. Notwithstanding anything in this Contract to the contrary, FEMA shall retain title to the Products delivered, or to be delivered, to Buyer until FEMA has received payment in full of the purchase price for such Products.

f. FEMA shall not be responsible for any premium freight unless such premium freight is required for a late delivery caused solely by FEMA.

12. **Cancellation.** Either party reserves the right to cancel any order/contract upon at least 90 days' written notice to the other party.

13. **Packaging.** All packaging will be per FEMA specifications unless otherwise agreed to in a writing signed by FEMA. FEMA quotations are based on domestic packaging, and any cost for export packaging or any other special packaging agreed upon by the parties shall be added to such price quotations.

14. **Payment Terms.**

a. Unless otherwise agreed to in a writing signed by FEMA, payment terms are net 30 days after shipment, except when FEMA requires payment in advance. There shall be no discount or credit for early payment.

b. Should Buyer's financial condition become unsatisfactory to FEMA, cash payment or satisfactory security may be required by FEMA before proceeding with any delivery of Products.

c. FEMA reserves the right to charge interest at the rate of 2% per month (or, if lower, the highest rate permitted by applicable law) on all balances past due.

15. **Force Majeure.**

a. FEMA shall not be responsible or liable for any delay or failure to deliver any or all of the Products if occasioned by an act of God, fire, flood, embargo, explosion, accident, breakdown of machinery or equipment; shortage of or inability to obtain fuel, power, raw materials, equipment, transportation, or any Product itself, without litigation and at usual prices or from usual sources; good faith compliance with any law, regulation, standard, order, rule or recommendation made by any governmental authority; strike or labor controversy (FEMA shall not be required to settle any labor matter against its own best judgment); any cause or circumstance beyond FEMA's reasonable control; or any other cause or circumstance, whether similar or

dissimilar to the foregoing, which makes impracticable the production, transportation or delivery of any Product or any material used in or in connection with its production; and the contracted quantity shall be reduced to the extent of the quantities not delivered due to any such cause or circumstance. In the event of any such delay, the date of delivery shall be extended for a period equal to the time lost because of the delay.

b. In the event of any cause or circumstance excusing FEMA's obligations to perform under this Contract, FEMA shall have the right to utilize its available production and/or supply to satisfy its own requirements, in full, and to allocate any remaining production and/or supply among its customers, including those not under contract, in a fair and reasonable manner, and Buyer hereby releases FEMA from responsibility or liability for any resulting incomplete fulfillment of this Contract.

16. **Governing Law; Jurisdiction.** This Contract shall be governed by and construed in accordance with the laws of the State of Michigan, U.S.A., without reference to its conflict of law principles. THE RIGHTS AND OBLIGATIONS OF THE PARTIES UNDER THIS CONTRACT SHALL NOT BE GOVERNED BY THE 1980 U.N. CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS. Any dispute involving this Contract shall be exclusively submitted to a court of competent jurisdiction in the State of Michigan, U.S.A. Notwithstanding the foregoing, FEMA shall be entitled to file a claim with respect to non-payment by Buyer of outstanding invoices at the court of the place of business of Buyer in accordance with the law of the state or country of origin of Buyer.

17. **Proposed Changes.** With respect to any change proposed by Buyer in (i) the drawings and specifications of Products, (ii) methods of packaging and shipping, (iii) schedules, (iv) the place of delivery, (v) quantities, or (vi) any other terms of this Contract, Buyer shall notify FEMA at least 60 days (unless a shorter period is otherwise approved by FEMA in a writing signed by FEMA) in advance of the effective date proposed by Buyer for such change, and such change shall be subject to approval by FEMA in a writing signed by FEMA. If FEMA approves any such change, then, as applicable, and without limiting the generality of Section 3.a, FEMA may adjust the price and time for performance as a result of such change, and FEMA shall notify Buyer in writing of any such adjustment(s). If Buyer uses a web portal to propose such changes, then FEMA shall not be deemed to have been notified of such change unless and until Buyer instructs FEMA in writing (including, if applicable, by e-mail) to check such portal.

18. **Confidentiality.** All information (including materials that contain information) relating to the sale of Products to Buyer disclosed to Buyer by or on behalf of FEMA ("Confidential Information") shall be received and held by Buyer in confidence. Confidential Information may include, but is not limited to, trade secrets, drawings, plans, designs, specifications, manufacturing, research and development data, inventions, know-how, processes, procedures, costs, methods, sales, supplier/customer information and lists, financial data and business plans; provided, however, that Confidential Information shall not include information Buyer can demonstrate (a) is generally available to the public other than as the result of disclosure by Buyer in violation of this Contract or any other confidentiality obligation, (b) is legally in Buyer's possession at the time of receipt from FEMA, or (c) is obtained by Buyer from a third party that is in lawful possession of the information and that has the right to make disclosure thereof, but only if the third party has authorized Buyer's use thereof. Buyer shall not disclose any Confidential Information to others and shall not use any Confidential Information for any purpose other than exclusively for the direct benefit of FEMA. All Confidential Information shall remain FEMA's exclusive property, and Buyer shall acquire no right in or to any Confidential Information. Buyer



shall promptly return all Confidential Information to FEMA and discontinue all use of such Confidential Information upon expiration or termination of this Contract or, earlier, at anytime upon FEMA's written request. Buyer shall limit access to Confidential Information to only those employees of Buyer having a need to know such Confidential Information, and Buyer shall ensure that all such employees of Buyer having access to such Confidential Information shall be made aware of and agree to Buyer's obligations in this Section 18. Buyer shall be responsible for any breaches of this Section 18 by its employees.

19. **Waiver.** The provisions of this Contract may be waived only in a writing signed by both Buyer and FEMA. FEMA's failure to insist upon the performance of any term of this Contract or to exercise any right under this Contract on one of more occasions shall not constitute a waiver or relinquishment of FEMA's right to exercise such right in the future. Nothing contained herein shall limit the remedies of FEMA in the event of Buyer's breach of any term or condition contained herein.

20. **Severability.** Any provision of this Contract that is prohibited or unenforceable in any applicable jurisdiction shall, as to such jurisdiction, be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions.

21. **Survival.** Notwithstanding anything in this Contract to the contrary, any provision of this Contract that by its nature or terms is intended to extend beyond the termination of this Contract (including, without limitation, Sections 6, 7, 9, 10 and 18) shall survive the termination of this Agreement.

22. **No Assignment.** Neither this Contract nor any rights or obligations under this Contract may be assigned by Buyer without the prior written consent of FEMA, and any attempted or purported assignment without such consent shall be null and void.

23. **Setoff.** FEMA may set off any amount owing from Buyer to FEMA against any amount owing from FEMA to Buyer.

24. **Language.** Except as may otherwise be agreed upon by Buyer and FEMA, the language for all correspondence and other communications between the parties shall be English. In the event of any conflict between this Contract in the English language and any translation hereof, the English-language version shall prevail.

25. **Export, Re-export, Transfer, and Use Controls.** The Products (or Services) supplied by the Seller under this Contract may be subject to export controls under the laws and regulations of the United States (U.S.). Buyer shall comply with such laws and regulations governing export, re-export, transfer and use of Seller Products and will obtain all required U.S. and local authorizations, permits, or licenses. Seller and Buyer each agree to provide the other party with information, support documents, and assistance as may be reasonably be required by the other in connection with securing authorizations or licenses. Buyer's obligations under this clause shall survive the expiration or termination of this contract.

Company:

By:

Name:

Title:

Date:

ACKNOWLEDGED AND AGREED