

PENN MACHINE COMPANY LLC TERMS AND CONDITIONS OF PURCHASE

1. **APPLICABILITY.** The purchase order, including these Terms and Conditions of Purchase (these "Terms") is an offer by Penn Machine Company LLC ("Buyer") to purchase goods and/or services (collectively, the "Goods") described in the purchase order from the seller to which the offer is addressed ("Seller"). These Terms are subject to the terms of any agreement between the parties that specifies the terms which apply to Buyer's purchases from Seller, and if none, the purchase order and these Terms, together with any documents incorporated by reference, is the sole and entire agreement of the parties with respect to the purchase order, and supersedes all prior or contemporaneous understandings, agreements, negotiations, representations, and warranties, both written and oral, regarding the subject matter of the purchase order. Except for any additional terms given by Seller that are for Buyer's benefit, determined using Buyer's sole discretion, Buyer objects to any additional or different terms contained on any quotation, invoice, acknowledgment or other form supplied by Seller. Unless otherwise stated by Buyer, Seller's acknowledgment of Buyer's order, shipment of Goods or commencement of any work or performance of any Services shall constitute acceptance by Seller of these Terms.

2. **SHIPMENT.** Time is of the essence. If Seller fails or refuses to proceed with the purchase order, or if Seller fails to perform within the time specified by Buyer, Buyer may reject all or any part of the Goods, or may require Seller to expedite performance or ship via air to avoid or minimize delay, with any added shipping cost to be paid by Seller. The Goods are transported at Seller's risk. Title and risk of loss passes to Buyer upon delivery to Buyer's designated facility and acceptance by Buyer. All Goods shall be delivered during Buyer's normal business hours to the address specified in the purchase order or as otherwise instructed by Buyer.

3. **MODIFICATIONS.** Seller may not change or modify a purchase order without Buyer's written consent. Buyer reserves the option, at any time, to change the purchase order including the volumes, delivery dates, delivery method, specifications and/or the nature of the Goods. If such change results in an increase in cost or time of performance, an equitable adjustment to the price and/or delivery date may be made by mutual agreement. If the parties are unable to agree on an equitable adjustment to the price and/or delivery date, Buyer may, at its option, terminate all or any portion of the purchase order without liability. Claims for equitable adjustment must be asserted by Seller within ten (10) calendar days of the change to the purchase order.

4. **PRICE; INVOICES.** Unless otherwise stated by Buyer in the purchase order: (a) all prices are firm; and (b) payment terms are as stated in the purchase order or, if not stated, shall be Net 60 from the later of the date of the receipt of a complete invoice or Buyer's acceptance of the Goods. If price is not stated in the purchase order, the Goods shall be billed at the price last quoted or at the prevailing market price, whichever is lower. No invoices may be sent by Seller until after the Goods have been accepted. Seller agrees that the prices for Goods are not less favorable than those now or in the future extended to any other customer for similar Goods in similar quantities. Seller authorizes Buyer to set-off and deduct any and all liabilities, debts and Claims Seller or its affiliates now or hereafter owe to Buyer or its affiliates. Buyer or Buyer's end user shall have the right to audit and inspect Seller to determine Seller's financial condition as well as Seller's compliance with the purchase order and these Terms.

5. **FACTORING.** Seller shall not assign, transfer or factor all or any portion of its accounts receivable arising under any purchase order without at least fifteen (15) days prior written notice to and written authorization of Buyer's accounts payable department. Should Seller have a Buyer approved factoring arrangement, all invoices shall be paid to the factoring company and Buyer shall not owe Seller and Seller shall indemnify Buyer against any Claims and losses.

6. **INSPECTION.** Buyer, at its sole option, may inspect all or a sample of the Goods, and may reject all or any portion of the Goods if it determines the Goods are nonconforming, defective, of inferior quality or workmanship, not as warranted or guaranteed, or fail to meet any other requirements of the purchase order ("Nonconforming"). Buyer has the right to enter Seller's and its subcontractor's premises at any reasonable time to inspect the Goods, work in process, method of manufacture and other matters pertaining to the purchase order.

7. **WARRANTIES.** Seller represents, warrants and covenants to Buyer that, in addition to Seller's (and its suppliers') standard warranty, guaranties and all warranties implied by law, all Goods: (i) have good and merchantable title and are free and clear of all Claims; (ii) are of best quality, merchantable and free from defects in design, manufacture, material and workmanship and is fit for the purposes for which purchased; (iii) conform to Buyer's specifications, descriptions, the purchase order, and/or the sample furnished or specified by Buyer; (iv) comply with Governmental Laws, industry codes and standards; (v) conform to all reference materials; and (vi) do not and will not infringe upon, misappropriate or violate any personal, contractual, intellectual or proprietary rights of any person or entity, including any patent, trademark, trade name, copyright or trade secret ("IP Rights"). The foregoing warranties shall survive inspection, delivery, acceptance and payment, and shall run in favor of Buyer and its customers and cover reimbursement for travel, labor, transportation, removal, rework, installation, disposal and other expenses incurred. No payment, inspection, acceptance, test, delay, use, resale or failure to inspect, test or discover any defect or other non-conformance shall relieve Seller of any of its obligations under these Terms or impair any rights or remedies of Buyer. In all cases, Buyer shall be reimbursed by Seller for all of its costs expenses in connection with the handling and transporting of any unsatisfactory Goods and additional expenses incurred by Buyer as a result of nonconformance of Goods, including travel, rework, de-installation, re-installation, disposal, replacement or recall. Seller shall assume all risk of loss or damage in transit to Goods returned by Buyer. In the event that Buyer determines, in Buyer's sole discretion, that any defect, nonconformance or deficiency in any Good requires a field campaign, recall or similar action, to repair, replace or remediate any Goods or any of Buyer's products in which Goods are incorporated, Seller shall be liable to Buyer and its customers for all costs and expenses, including but not limited to attorneys' fees and court costs. Seller shall be liable to Buyer for all expenses, including but not limited to attorneys' fees incurred by Buyer or its customers in enforcing any of Seller's covenants, duties, representations and warranties under the purchase order or these Terms. Buyer expressly retains all rights and remedies, at law, in equity or otherwise. NO ATTEMPT BY SELLER TO DISCLAIM, EXCLUDE, LIMIT, OR MODIFY ANY WARRANTIES OR SELLER'S LIABILITY FOR DIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES SHALL BE OF ANY FORCE OR EFFECT.

8. **INDEMNIFICATION.** Seller shall defend (by counsel acceptable to Buyer), indemnify and hold Buyer, its affiliates, customers and their respective officers, directors, shareholders, members, managers, partners, legal representatives, employees, agents, successors and assigns (the "Buyer Group") harmless of, from and against any and all claims, losses, demands, damages, liens, debts, encumbrances, actions, liabilities, fines, settlements, costs and expenses, including but not limited to attorneys' fees and litigation costs ("Claims"), whether direct or indirect, incidental, consequential, or otherwise, arising out of or relating to: (a) any violation of common law or any federal, provincial, state, local or foreign statute, law, ordinance, rule, regulation, license, permit, authorization, registration, policy or order ("Governmental Laws"); (b) Seller's breach or default of these Terms, any purchase order, or any other agreement between Buyer and Seller; (c) negligence,

breach of warranty or strict liability, regardless of whether such may be caused by the negligence of Buyer; (d) any act or omission of Seller, its agents, employees or any persons or entities acting by or through it; and (e) infringement, misappropriation or violation of IP Rights. This indemnification is in addition to the warranty obligations of Seller.

9. **INTELLECTUAL PROPERTY.** Seller warrants that the manufacture, sale and use of the Goods will not infringe any patent, copyright, trademark, trade secret or other intellectual property or proprietary right. If all or any portion of the Goods are held to constitute an infringement of a patent and/or their use is enjoined for any reason, Seller shall promptly, and at its own expense, either procure for Buyer the right to continue using such Goods royalty-free or replace such Goods to Buyer's satisfaction with non-infringing Goods of equal quality and performance. To the extent that any pre-existing IP Rights are contained in or used in connection with the Goods ("Pre-existing IP"), Seller grants to Buyer a worldwide, irrevocable, non-exclusive, fully paid, royalty-free right and license to and to authorize others to, use, execute, reproduce, display, perform, distribute and prepare derivative works of such Pre-existing IP.

10. **INSURANCE.** (A) Seller shall procure and maintain, at Seller's sole cost the following insurance (or as otherwise required by Buyer from time to time) with insurers having a current A.M. Best rating of "A- VIII" or better: (1) primary commercial general liability insurance with limits of at least \$1 million per occurrence and \$2 million annual aggregate combined single limit, including coverage for: (i) Products and Completed Operations liability providing coverage throughout the contract period and for two (2) years after final payment for the Goods; (ii) Blanket Contractual liability; (iii) Premises Operations liability; (iv) Bodily Injury; (v) Cross Liability endorsement or Severability of Interest clause; and (vi) Independent Contractors liability; (2) comprehensive auto liability insurance with limits of at least \$1 million per occurrence combined single limit; (3) workers' compensation insurance with statutory limits and employer's liability insurance with limits of at least \$1 million for each accident and \$1 million for disease of each employee; and (4) errors and omissions insurance with limits of at least \$2 million per occurrence and \$2 million annual aggregate. (B) Insurance required shall: (1) be endorsed to insure Buyer, its officers, directors, members, managers, employees, representatives and agents as additional insureds; (2) be endorsed to waive any rights of subrogation against Buyer; (3) provide contractual liability coverage to Seller for its indemnity obligations assumed under these Terms; (4) be endorsed as primary to and non-contributory with any other insurance obtained by, for or on behalf of Buyer; and (5) provide that written notice be given to Buyer not less than thirty (30) days prior to the effective date of cancellation or any material reduction of any required insurance coverage. Seller shall provide certificates of insurance to Buyer along with copies of the endorsements and other documentation as may be required by Buyer to evidence the insurance. The insurance required in the purchase order does not limit Seller's responsibility in the event of a loss.

11. **CHANGES.** Buyer shall have the right at any time to make changes in drawings, specifications, materials, packaging, time and place of delivery, and method of transportation. If any such changes cause an increase or decrease in the cost or the time required for the performance, a mutually agreed upon equitable adjustment shall be made therein. Seller agrees to accept any such changes subject to this section.

12. **FORCE MAJEURE.** Buyer shall not be liable for failure to take delivery of the Goods or to allow performance of the Services if such failure or inability is due to causes beyond Buyer's reasonable control.

13. **TERMINATION FOR CAUSE.** Buyer may terminate its purchase order without liability, in whole or in part, at any time, if Seller breaches or defaults under these Terms. Buyer's right under this section to terminate its purchase order is not an exclusive remedy. Buyer shall be entitled to all other rights and remedies it may either at law or in equity. No termination shall affect any accrued rights or obligations of either party as of the effective date of such termination.

14. **TERMINATION FOR CONVENIENCE OF BUYER.** Buyer may terminate its order at its convenience at any time by written notice to Seller. For specially prepared products which are unique to Buyer's order, any partially completed work or raw materials whose full costs are included in the cancellation charges shall be identified in writing and held by Seller for disposition in accordance with Buyer's written instructions.

15. **TOOLING.** Any tooling provided by or specifically paid for by Buyer ("Tooling") shall be and remain the sole property of Buyer. Seller shall be responsible for maintenance of the Tooling while in its possession and shall return Tooling to Buyer immediately upon demand. Seller waives any lien rights or other rights to retain Tooling and acknowledges that its obligation to return Tooling upon demand is unconditional.

16. **BUYER INFORMATION.** BUYER MAKES NO WARRANTY WITH RESPECT TO INFORMATION PROVIDED BY BUYER TO SELLER. ANY IMPLIED WARRANTIES THAT MAY EXIST WITH RESPECT TO ANY INFORMATION PROVIDED BY BUYER, INCLUDING ANY WARRANTY OF MERCHANTABILITY AND WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE ARE EXCLUDED. Seller acknowledges and agrees that any sales forecasts, quantity purchase estimates or similar projections received from Buyer are not purchase commitments of Buyer, but rather represent estimates for planning purposes only. Buyer shall have no obligation to purchase or otherwise compensate Seller for any of Seller's finished products, or unfinished raw materials, not covered by a purchase order issued by Buyer.

17. **WAIVER.** All waivers by Buyer shall be in writing. Failure of Buyer at any time to require Seller's performance of any obligation hereunder shall not affect Buyer's right to require performance of that obligation. No delay or omission in the exercise of any right, power, or remedy hereunder shall impair such right, power, or remedy or be considered to be a waiver of any default or acquiescence therein.

18. **CONFIDENTIALITY.** Any information, materials and equipment provided to Seller, or to which Seller may have access or learn shall be kept strictly confidential and exclusively reserved for the purpose of performing under the purchase order and these Terms.

19. **LAW AND VENUE.** The purchase order, these Terms, and all other aspects of the relationship between Seller and Buyer, shall be construed and governed according to the laws of the State of Pennsylvania, without regard to any rules on conflicts of laws. Seller agrees that any litigation shall only be commenced in the State of Pennsylvania courts or the United States District Court in which Johnstown, PA sits. Seller hereby consents to subject itself to personal jurisdiction in the State of Pennsylvania.

20. **MISCELLANEOUS.** Buyer may modify these terms at any time. Seller shall not assign Buyer's purchase order or any monies due or to become due from Buyer hereunder without Buyer's prior written consent. Provisions which by their nature should survive will remain in force after any termination or expiration. The section headings contained herein are not part of these Terms and are included solely for the convenience of the parties.