



Terms and Conditions

As a customer of Great Lakes Castings LLC you agree to the below Terms and Conditions.

This website (the “Website”) is owned and provided by Great Lakes Castings LLC (including its affiliates) (“Great Lakes Castings”). Your use and access of this Website is governed by and subject to the following terms and conditions. If you do not agree to these terms, or if you do not agree with our Privacy Policy, please do not use this Website or any services offered by this Website.

All sales of iron casting products by Great Lakes Castings, LLC (“Seller”) are made on the following terms and conditions. In these Terms of Sale (the “Terms of Sale”, and together with Seller’s quotation, Seller’s acknowledgment and/or a purchase order, the “Terms”), any iron casting products sold by Seller to the buyer named in the Seller’s quotation or acknowledgment (“Buyer”) are referred to below as “goods.”

1. **Prices.** Prices do not include (i) any applicable sales, use or other federal, state or local tax, (ii) any metallic/melt surcharges (which may vary each month and will be calculated based on the actual market price paid), (iii) applicable set-up charges or (iv) miscellaneous invoicing charges, including, but not limited to, boxes and/or desiccants.
2. **Quotations.** Quoted terms shall remain in effect for thirty (30) days or such other time as is stated on Seller’s quotation. Seller’s quotations require Seller’s interpretation of the materials required by the plans or specifications provided by Buyer or Buyer’s representatives. The Seller requires a minimum mismatch allowance, core shift and dimensional tolerance of plus or minus 0.030” for dimensions up to 6” in length. The Seller’s tolerance increases by an additional plus or minus 0.015” for each 3” increment thereafter. If Seller uses estimated weights for the goods in the quotation, such weights are not to be considered a basis for invoicing. A weight adjustment factor of plus or minus \$0.30 per pound is applied to the quoted selling price when variances between estimated and actual weights are within plus or minus 5%. A requote is required when the difference between the estimated and the actual weight is greater than plus or minus 5%. Seller makes no representations or warranties as to the accuracy or appropriateness of Seller’s quotations. Stenographical and clerical errors in quotations are subject to correction. Buyer shall be solely responsible for determining the materials and quantities required for a particular project or order. Seller’s quotation is based on various business factors and considerations and may not be used by any other contractor or any other person or entity without Seller’s written consent. All orders placed pursuant to a quotation are subject to approval by Seller’s credit department and must be accepted in writing by an authorized representative of Seller.
3. **Payment Terms.** Unless otherwise specified in Seller’s quotation or acknowledgement, payment in full is due at the location designated by Seller thirty (30) days after shipment of goods, as evidenced by Seller’s signed or unsigned delivery tickets or delivery records. Any payment that is not made when it is due shall accrue a finance charge of one and one-half percent (1½%) per month or

the maximum rate allowed by law, whichever is less from the date on which such amounts become overdue until paid in full. Seller may require payment in advance or withhold future deliveries upon any late payment or reasonable uncertainty as to Buyer's ability to pay. Seller's rights under this section will be in addition to all other rights and remedies available to Seller upon Buyer's default. Buyer will be liable for all expenses attendant to collection of past due amounts, including attorneys' fees. Seller may change its quoted price upon an unusual or unforeseen increase in Seller's costs.

4. **Delivery.** Unless otherwise agreed in writing, Seller shall deliver the goods F.O.B. Seller's facility indicated on Seller's quotation or acknowledgment. Seller shall use reasonable commercial efforts to meet scheduled shipping, delivery and performance. Seller may ship all the goods at one time or in portions from time to time. Seller shall have the right, but not the obligation, to determine the method of shipment and routing of the goods, unless otherwise stated in Seller's quotation or acknowledgement. Buyer shall reimburse Seller for all costs arising from changes to scheduled delivery dates requested by Buyer, including without limitation, added costs of production (plus profit) which might be incurred because of, but not limited to, overtime work or outside labor cost, and any other expenses incident to such changes.
5. **Force Majeure.** Seller will not be liable for any delays in performance, due, in whole or in part, directly or indirectly, to an event of force majeure, including fire, act of God, flood, war, accidents, transportation delays, riots, strike, lockout, labor disputes, labor shortages, lack of or inability to obtain materials, fuels, supplies or equipment, acts or failures to act of any government or the Buyer, or any other cause whatsoever, provided that such cause is beyond the reasonable control of the Seller; and Seller shall have such additional time for performance as may be reasonably necessary under the circumstances and may adjust the price to reflect increases occasioned by such delay.
6. **Defects; Remedies.** Buyer agrees to inspect the goods immediately upon receipt of such goods from Seller. If any item of the goods manufactured by Seller, and is not subject to alteration, improper installation, abuse or misuse, proves to be defective (as defined below) within five (5) days following the date of shipment and prior to installation (in the case of a patent defect) or one year following the date of shipment (in the case of latent defect), and if Buyer gives written notice to Seller of such defect within that period and does not alter the goods, then Seller shall, at Seller's option, either (a) repair or (b) replace the defective item, at Seller's expense. Seller shall not be responsible, however, for the expense of locating or removing the defective goods or re-installing any repaired or replacement goods. Notice of a breach of Seller's warranty must be made in writing addressed to Seller, setting forth sufficient detail to permit identification by Seller of the claimed defect. Samples, if practicable, should accompany the notification. If Buyer alters the goods or fails to notify Seller within the one year period following shipment of the goods or the goods are installed improperly, then any claim for breach of warranty shall be conclusively deemed to have been waived by Buyer with respect to the alleged defect. In the event of a defect in any goods constituting a breach of the warranty provided herein, Seller shall furnish instructions for the disposition of the defective goods. Seller shall have the option of requiring the return of the defective goods, transportation prepaid, and proof that the goods were not altered or subject to misuse or abuse to establish a claim. No goods shall be returned to Seller without its prior consent. The acceptance of any goods returned to Seller shall not be deemed an admission that the goods are defective or in breach of any warranty, and if Seller determines that the goods are not defective, they may be returned to Buyer at Buyer's expense.

If Seller fails to repair or replace any defective items within a reasonable time, the Seller shall be liable to Buyer for the lesser of (i) the reasonable costs of repair or replacement by a third party or (ii) that part of the purchase price of the defective goods that shall have been paid by Buyer, but Buyer shall not obtain repair or replacement by a third party without giving Seller at least fifteen (15) days prior written notice, during which time Seller may repair or replace the defective item. An item shall be considered “defective” if it is found by Seller to have been defective in materials or workmanship and if the defect materially impairs the value of the goods to Buyer, except that the goods shall not be defective to the extent that (i) they conform with drawings of or specifications for or a sample of goods that have been approved by Buyer, (ii) they are inspected and not rejected by governmental authorities upon final installation, (iii) they conform with goods, testing results, dimensional layouts or manufacturing methods that have been submitted and approved by the Buyer or (iv) they are damaged due to the method or length of storage or in the course of installation. Seller does not warrant the workmanship of others who have performed work on or installed the goods. If Buyer’s representative agrees, either orally or in writing, to a change in or waiver of the specifications for any item of goods, then such goods shall not be considered defective to the extent they conform to the specifications as so changed or waived. This section sets forth Buyer’s sole and exclusive remedies for any defect in the goods. Neither Buyer nor any other person may modify or expand the warranty provided herein, waive any of the limitations, or make any different or additional warranties with respect to the goods. Any statements to the contrary are hereby rendered null and void unless made in a writing signed by an authorized officer of Seller.

7. **Disclaimer; Limitations on Liability.** EXCEPT AS PROVIDED FOR IN SECTION 6 HEREIN, SELLER HEREBY EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR USE, AND BUYER IS SOLELY RESPONSIBLE FOR DETERMINING THE PROPER APPLICATION AND USE OF THE GOODS. Seller’s warranty applies only to goods that it manufacturers. All other goods are sold AS IS, without warranty, provided, however, that Seller assigns to Buyer any warranties provided by the manufacturers of such goods, to the extent that they are assignable. Seller shall not have any liability, whether such claim is based on contract, negligence, tort, warranty or other basis, to Buyer or any other person with respect to any of the goods and shall not be liable for consequential, incidental, special, collateral, treble, exemplary, indirect or punitive damages (including without limitation, loss of profits or goodwill) arising from any product defect, delay, non-delivery, recall or other breach. In no event shall Seller’s aggregate liability under or as a result of the Terms exceed the total amounts actually paid by Buyer for the goods purchased under the Terms.
8. **Solvency and Security Interest.** Buyer represents that Buyer is solvent. Seller retains a security interest in the goods to secure payment of the price and all other indebtedness that Buyer now and in the future owes to Seller.
9. **Quantities.** Any claim by Buyer that Seller failed to deliver the agreed-upon quantity of goods (subject to any adjustment under the preceding sentence) must be submitted to Seller in writing with-

in five (5) days after Buyer receives the goods. If Buyer fails to do so, then it shall be conclusively presumed that the proper quantity was delivered.

10. **Tooling.** If Seller imposes and Buyer pays a separately-identified charge for tooling to be used in the manufacture of the goods, then the tooling shall be the property of Buyer, subject to the following: (1) risk of loss of the tooling shall at all times remain with Buyer; (2) Seller retains a security interest in the tooling to secure all obligations that Buyer at any time owes to Seller; (3) Buyer shall not have any right to possess the tooling as long as Seller has any outstanding obligation to sell to Buyer goods whose manufacture requires use of the tooling; (4) Buyer shall reimburse Seller on demand for all costs of modifications of the tooling that are made reasonably necessary by changes in the specifications for the goods; and (5) upon Seller's demand, Buyer shall immediately remove the tooling from Seller's premises, at Buyer's expense, and if Buyer fails to do so within ten (10) days after such demand, then Seller may destroy or otherwise dispose of the tooling, without further notice or liability to Buyer.

11. **Cancellation; Returns.**

- (a.) Buyer does not have any right to cancel its agreement to buy the goods or services from Seller. If, however, Seller agrees in writing to permit cancellation, then Buyer shall immediately pay to Seller a cancellation charge in an amount equal to the purchase price (including any tooling charge) less allowances (in the amounts that Seller determines) for (1) the realizable value to Seller of any standard components that Seller purchased or ordered before cancellation, (2) the realizable scrap value to Seller of the remaining material and tooling that Seller purchased, fabricated or ordered before cancellation and (3) any direct labor costs that Seller saved by reason of the cancellation.
- (b.) Buyer may not return any custom or labeled goods unless the goods do not meet the specifications agreed to in the Seller's quotation. Seller may request certain information from Buyer prior to authorizing a return, and may impose a restocking fee.
- (c.) If Buyer fails to pay or perform any indebtedness or obligation that Buyer at any time owes to Seller, then Seller may consider Buyer's failure to be an anticipatory repudiation of any or all outstanding contracts that provide for Seller to sell goods or services to Buyer and Seller may, without liability to Buyer, cancel any or all of those outstanding contracts.

12. **Indemnity.** Buyer, for itself and its successors and assigns, hereby acknowledges and agrees to defend, indemnify and hold harmless Seller, and its successors, predecessors, affiliates, assignees, subsidiaries, parent companies, present and former directors, officers, agents, employees, advisors, general partners, limited partners, heirs, legal representatives, legal counsel and other representatives from and against any and all losses, liabilities, claims, causes of action, damages, demands, defaults, taxes, fees, costs and expenses (including reasonable attorneys' fees) of whatever kind, arising out of, incurred in connection with or otherwise relating to Buyer's breach of any of Buyer's obligations under the Terms or any claimed unfair competition or patent, trademark or copyright infringement or any other claim resulting from Seller's manufacture of the goods, or performance of the services, to Buyer's specifications. Seller, for itself and its successors and assigns, hereby acknowledges and agrees to defend, indemnify and hold harmless Buyer, and its successors, predecessors, affiliates, assignees, subsidiaries, parent companies, present and former directors, officers, agents, employees,

advisors, general partners, limited partners, heirs, legal representatives, legal counsel and other representatives from and against all damages, losses, claims and expenses (including reasonable attorneys' fees) that Buyer incurs as a direct result of Seller's breach of any of Seller's obligations under the Terms.

13. **Seller's Rights.** Seller has all rights and remedies that applicable law gives to sellers. Seller's rights and remedies are cumulative, and Seller may exercise them from time to time. Seller's waiver of any right on one occasion shall not be a waiver of any future exercise of that right.
14. **Time for Bringing Action.** Any action that Buyer brings against Seller for breach of the Terms or any other claim that arises out of or relates to the goods or their design, manufacture, sale or delivery or the services must be brought within one year after the cause of action accrues.
15. **Governing Law; Jurisdiction.** This agreement between Seller and Buyer shall be governed and construed in accordance with the laws of the State of Michigan (without reference to its conflict-of-laws principles). The state and federal courts in the Western District of Michigan shall have exclusive jurisdiction and venue over the subject matter hereof, and Buyer irrevocably consents that any such court shall have personal jurisdiction over Buyer and waives any objection that the court is an inconvenient forum.
16. **Proprietary Information.**
 - (a.) Any information or knowledge which Seller may have disclosed or may hereafter disclose to Buyer in connection with these Terms is and shall be deemed confidential and proprietary information of Seller. Buyer, shall not, without authorization in writing from Seller, use, communicate or disclose the confidential and proprietary information of Seller. Buyer agrees to safeguard the confidential and proprietary information of Seller by using reasonable efforts, consistent with those used in the protection of its own proprietary information of a similar nature, to prevent its disclosure to third parties. Buyer agrees to cause its employees, contractors, officers, directors, agents and representatives to be bound by and comply with the foregoing restrictions regarding the use or disclosure of such confidential and proprietary information. Buyer further agrees not to assert any claims (other than a claim for patent infringement) with respect to any technical information Seller shall have disclosed or may hereafter disclose to Buyer in connection with the goods.
 - (b.) All documents containing proprietary information relating to the goods produced or acquired by Buyer under these Terms shall belong to Seller. All drawings, know-how, and confidential information supplied to Buyer by Seller and all rights therein will remain the property of Seller and will be kept confidential by Buyer in accordance with Section 16 (a) above.
 - (c.) Buyer shall, within five (5) business days of Seller's request or the cancellation or termination of these Terms (i) return all confidential and proprietary information (including all copies, notes and/or extracts thereof) furnished by Seller pursuant to these Terms, (ii) destroy that portion of the confidential or proprietary information which consists of analyses, compilations, studies or other documents prepared by Buyer, or by its directors, officers, employees or advisors and (iii) certify in writing that Seller has complied with the requirements of (i) and (ii) of this Section 16 (c).

(d.) Buyer will ensure that any third party to whom Buyer subcontracts any of the work hereunder is bound by all of the terms and conditions relating to such work to which Buyer is bound under these Terms.

17. **General.** If Buyer has not otherwise agreed to these Terms, then Buyer's acceptance of, delivery of, or payment for, the goods or services shall constitute Buyer's agreement to these Terms. The Terms constitute the final, complete, exclusive and entire agreement between the parties and supersedes all prior or contemporaneous agreements, written or oral, regarding the subject matter of the Terms. Buyer may not assign or subcontract its rights or obligation under the Terms without the express written consent of Seller. The Terms may only be modified or provisions waived by a writing signed by both parties. No failure or delay to enforce a provision will be deemed a waiver thereof. If any portion, of the Terms is unenforceable, the remaining portions will remain in full force and effect.