

## TERMS AND CONDITIONS OF SALE

1. This order is subject to final acceptance by EXTEX Engineered Products (EXTEX), at Gilbert, Arizona on the following terms and conditions which may not be varied or added to except by a writing signed by EXTEX's Manager of Inside Sales or an officer of EXTEX. Any additional or inconsistent terms on the Buyer's order or confirmation will not be binding on EXTEX.
2. **PRICES AND TAXES:** Prices listed are quotation prices and are subject to change without notice prior to acceptance of your order notwithstanding any other provision herein. All prices and deliveries are F.O.B. EXTEX's factory in Gilbert, Arizona, U.S.A. All excise, sales or use taxes, any duties, any fees and any other charges imposed by any governmental authority upon the manufacture, sale, transportation, export or import of the goods sold hereunder shall be paid by the Buyer, or if required to be paid by EXTEX shall be reimbursed to EXTEX by the Buyer. The price of the individual part or parts on this order is for the specific part only and does not include manufacturing and proprietary right, assembly drawings, or manufacturing process drawings. After acceptance by EXTEX any change of specification may be made only with EXTEX, written consent and at a charge which EXTEX shall determine reasonably sufficient to cover its additional costs.
3. **TERMS:** Thirty (30) days net in United States of America currency.
4. **SHIPMENT, FORCE MAJEURE:** Shipping dates herein are approximate. They are subject to timely receipt of all necessary materials and supplies from EXTEX's vendors, all necessary information and data from Buyer and other contingencies beyond EXTEX's control. The shipping dates shall be extended to offset any delays caused by late delivery of material, supplies or data or by strikes, flood, riot, fire, governmental regulation, explosion, war or other casualty or cause beyond EXTEX's control. EXTEX will use reasonable efforts to notify Buyer of the nature of the occurrence and the estimated length of additional time necessary to fill this order. In the event of delay EXTEX may, but shall not be required to allocate production and delivery among its customers.
5. **PRODUCTS MADE TO SPECIAL ORDER:** Special Orders may be considered complete at ten percent (10%) over or under quantity ordered and the price to be paid by the Buyer shall be based on the actual quantity of merchandise delivered by EXTEX. However, EXTEX will at all times endeavor to ship the exact amount specified on the order acknowledgment form.
6. **SHORTAGES:** EXTEX reserves the right to reject all claims for shortages not made within fourteen (14) days after receipt of shipment.
7. **RISK OF LOSS:** Unless otherwise provided on the face of this form, risk of loss or damage to the goods shall pass from EXTEX to the Buyer upon the earliest of the following to occur:
  - (a) delivery to the Buyer or its representative;
  - (b) delivery to a common carrier for shipment to the Buyer; or
  - (c) delivery to the Post Office for mailing to the Buyer.

In case of returns, goods shall be at the Buyer's risk until received by EXTEX.

8. **WARRANTY:** EXTEX warrants that goods covered by this order will be free from defects in material or workmanship according to our standards of manufacture, as confirmed by EXTEX's inspection for a period of one (1) year from the date of shipment. EXTEX sole liability shall be to rework or replace without charge any goods which have not complied with this warranty. THIS WARRANTY IS EXCLUSIVE AND IS MADE IN LIEU OF ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTIES OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE.

In the event Buyer fails to limit to Seller's warranty set forth above any express or implied warranty it may make with respect to any product of which any article sold hereunder is a component, Buyer shall indemnify and hold Seller harmless from any and all liability, costs and expenses to which Seller may be subjected as a result of Buyer's failure to so limit its express or implied warranties.

**NO MODIFICATION OR ALTERATION OF THE FOREGOING WARRANTY AND LIMITATION OF REMEDIES PROVISIONS SHALL BE VALID OR ENFORCEABLE UNLESS SET FORTH IN A WRITTEN AGREEMENT SIGNED BY THE SELLER AND BUYER.**

Continued Limited Warranty After Remedy. Limited Warranty for part(s) covered continues from the original date of installation of part covered by warranty. The use of a new part at EXTEX's option does not constitute a new warranty period or extend the warranty for warranted parts. The use of repair option carries the remaining original limited warranty period or repair agency's warranty whichever is greater.

9. **LIMITATION OF LIABILITY –** Our customer's exclusive remedy for any breach of the foregoing limited warranty shall be the repair or replacement of any defective or non-conforming products, providing replacement services, or the extension of credit to our customer, at our option. We reserve the right to require the return of any product claimed to be defective for examination and evaluation in order to determine whether it is in compliance with our limited warranty. We shall not be liable for any of the following whether due to our negligence or to any defect in our product or workmanship:

- (a) the cost of removing or replacing products, or of any other work performed on products or services supplied by us
- (b) any damage to, or any of the costs of making adjustments to or repairs upon any mechanisms, equipment or machinery in which the products were installed
- (c) any other expense, loss or damages claimed to be caused by a defect in product or services.

EXTEX shall not be liable for any consequential, incidental, or other damages sustained by purchaser, including but not limited to loss of profits or revenue, loss of use of product, cost of capital, cost of substituted product, facilities, services, or claims of purchaser's customers for any damage. This exclusive remedy applies regardless of the nature of purchaser's claim, whether in contract, tort, express or implied warranty, negligence, or strict liability, upon which damages are claimed and regardless of whether the same is due to our negligence or any defect in our product or services. 10. **CANCELLATION –** Should you desire to cancel an order placed with us, after being so advised we shall discuss the matter promptly with you and if possible make a mutually satisfactory contract for cancellation. If such an agreement cannot be reached, you shall give us a notice of your desire to proceed with cancellation, such notice to be sent to us by registered mail, addressed to EXTEX Engineered Products, 340 E Germann Rd, Suite 113, Gilbert, AZ 85264. We shall thereupon submit a statement to you of the amount of material that was completed and ready for shipment, the amount of material partially completed or purchased for use in the performance of your order, whether actually in the process of manufacture, and the scrap or other value of all finished and unfinished material, all as of the time of receiving your said notice.

Within thirty days from the receipt of such statement from EXTEX, you will notify us of your desired disposition of all completed material, and will pay EXTEX:

- (a) For all material completed and ready for shipment at the contract price; and
- (b) For all unfinished material at cost, including all sales and administrative overhead and profit in proportion to the state of completion of the product at the time of the termination of your order provided, however, that you will be credited with the scrap or other value of all unfinished material and of any finished material that can be utilized by EXTEX to fulfill other orders.

EXTEX reserves the right to cancel the order in the event that any governmental price regulation, schedule or ceiling prescribes a price lower than EXTEX's price as established in the order acknowledgement, or in any way prevents EXTEX from purchasing or otherwise acquiring any commodity or service necessary to the performance of the order, or in any way prevents EXTEX from adjusting its prices when the cost of any such commodity or service is increased.

10. **INDEMNITY:** EXTEX will indemnify and hold harmless Buyer, its customers and agents, from all costs and damages which may be recovered against it or them for infringement of any United States Letters Patent or Copyrights, by reason of the sale or use of articles furnished Buyer by EXTEX hereunder, except for articles supplied in accordance with designs, drawings, or specifications furnished by Buyer, provided that the articles are used, without any changes in the manner directed, and exclusively for the purpose for which sold; and further provided EXTEX is given prompt notice of any actual or potential suit and exclusive control of the defense or any settlement hereof, and is given all needed information, assistance and authority to enable EXTEX to defend such suit.

11. **APPLICABLE LAW:** The validity, construction and interpretation of this order and all documents relating to this sale, and the rights and duties of the parties shall be governed by the laws of the State of Connecticut, U.S.A.

12. **PROPRIETARY MARKINGS AND RIGHTS IN DATA:** EXTEX reserves the right to affix patented, patent pending or proprietary stamps on writings, sound recordings, pictorial reproductions, drawings or other graphical representations and works of any similar nature (whether or not copyrighted) as it deems necessary to protect or give notice of its rights in items which are specified to be delivered under this order. EXTEX grants no "Rights in Data" unless such is negotiated as a separate item of the purchase order or contract. EXTEX's manufacturing processes are proprietary and Buyer acknowledges that it shall have no right to inspect or otherwise observe or have access to such processes. EXTEX does not grant any rights to manufacture or reproduce the goods covered by the order or authorize others to do so by inference except by separate document signed by an officer of EXTEX; fly sheets, boiler plate, or other general terms and conditions on Buyer's documents to the contrary notwithstanding.

13. **EXPORT SALES:** Unless otherwise provided on the face of the form, the following provisions apply to export sales. The consignee must furnish any import license and any other documentation required by the country of destination. In case the commodity requires an export license from the United States Department of Commerce or from the United States Department of State, the consignee and/or end user in the country of destination shall furnish an end use statement and Import Certificate and/or Transaction Statement when requested by EXTEX in order to enable EXTEX to apply for an export license. All quotations and order acknowledgements are subject to EXTEX obtaining a United States export license in case the commodity requires such a license.

If required by EXTEX, the Buyer further agrees to furnish a delivery verification certificate after the merchandise has been received in the country of destination.