

ALBERT MANUFACTURING USA

TERMS AND CONDITIONS

ARTICLE 1. SPECIFIC TERMS AND CONDITIONS

1.1. Exclusivity. The terms and conditions contained herein govern all transactions of Albert Manufacturing USA (the “*Company*”) and are more fully set forth in the supplier agreement (the “*Agreement*”). Following the execution of the Agreement, Customer (as defined in the Agreement) will submit purchase orders with specific information on the Products being purchased (the “*Purchase Order*”). The terms and conditions contained in this Agreement will apply to any and all future transactions between the Company and Customer. The parties hereto acknowledge the accuracy of the foregoing statements despite the possibility that Customer may have submitted additional terms and conditions in its communications.

1.2. Ordering. All orders will be placed by submitting a Purchase Order to the Company by mail at the address listed below, fax at (770) 287-7525, or email at customerservice@albertusa.com. The parties acknowledge and agree that Products (as defined in the Agreement) shall be shipped bulk in predefined quantity specified by Product, as molded and non-sterile, unless otherwise specified on the Purchase Order. Customer reference numbers will only be provided on the box label, invoice and packing slip if specifically requested by Customer on the Purchase Order. All Purchase Orders must be completed in their entirety. Failure to submit a completed Purchase Order may result in a delay of processing and shipping of the order.

1.3. Price. Any price information for Products is non-binding until such time as the Company has received a signed Purchase Order from Customer. Prices found on the Company’s marketing materials, the Company’s website, or provided in a quote may be changed at any time without notice to the Customer prior to the execution of the Purchase Order. Prices exclude all federal, state, and local taxes. As such, the total invoice amounts are subject to increase in the amount of any such tax that the Company is required to collect or pay upon the sale or delivery of the Products. All amounts are set forth in U.S. Dollars. Prices set forth on the Purchase Order are final.

1.4. Payment Terms. Company accepts checks, wire transfers, MasterCard or Visa (additional 3% and minimum 10 U.S. Dollars transaction fee applies to credit card payment) and open account invoicing (upon completion and execution of a credit agreement satisfactory to Company). Unless prepaid or otherwise stated on the Purchase Order, payment terms for sales of Products are net thirty (30) days following the date of Company’s invoice. Customer shall make all payments irrespective of whether Customer has made or may make any inspection of any Product. Company may cancel or reschedule deliveries of Products if Customer fails to make any payment when due. Customer must provide Company with a sales tax exemption certificate if Customer represents that sales taxes are not to be applied to Customer’s order. Company’s rights under this Agreement shall be in addition to all other rights and remedies available to Company upon Customer’s default under applicable law. Customer shall be liable

for all expenses attendant to collection of past due amounts, including attorney's fees. Finance charges of 1.5% per month will be assessed on any balance that remains outstanding for an amount of time exceeding that which is indicated on the Purchase Order. Recurring late payments may result in change of terms.

1.5. Delivery Terms. Unless otherwise stated on the Purchase Order, (a) all domestic deliveries of Products shall be Ex Works Company factory (Domestic Incoterms) and risk of loss of such Products shall transfer to Customer upon delivery to the freight carrier; and (b) all international deliveries shall be made Ex Works Company's factory (Incoterms 2010), and, unless otherwise stated in a Purchase Order, Company shall present the Products to the carrier, and risk of loss of such Products shall transfer to Customer upon presentation. Company will attempt to meet the estimated ship date on the Purchase Order confirmation and Company shall not be in default of performance due to a delay of reasonable duration resulting from any cause. Customer shall pay, or reimburse Company, for all amounts due for import and export licenses and permits, customs charges and duties, penalties, freight, insurance and other shipping expenses. Shipment dates for export sales are approximate and are subject to receipt of all necessary Customer information, and all necessary licenses, permits and other documents. A variation in the quantity of any made-to-order Products, not to exceed plus or minus five percent (5%) of the quantity specified in the Purchase Order will be considered to be in compliance with this Agreement.

1.6. Inspection and Acceptance. Customer must inspect delivered Products and report claims for any damages or shortages in writing within ten (10) days of delivery or the Products shall be deemed irrevocably accepted and such claims shall be deemed waived, except as provided in ARTICLE 3. In the event of source inspection by Customer, Company reserves the right to designate the place within the Company's plant where inspection may be performed and to deny access to areas and processes considered proprietary to Company. The parties agree that Company assumes no liability for defects arising from natural wear and tear or damage occurring after the transfer of risk due to defective or negligent handling, excessive loading, unsuitable operating resources or other misuse. Company agrees to provide, upon Customer's request, general user manuals for the Company's Products.

1.7. Intellectual Property. Title to the Products shall pass to Customer upon Company's delivery to freight carrier. Customer hereby recognizes that Company retains all right, title and interest in (a) all intellectual property rights in and to the Products; (b) all processes, methods, formula, ingredients, designs, procedures and other practices used by Company or relating to the manufacture and sale of the Products, including all intellectual property rights therein; and (c) all of Company' equipment and tooling used in the manufacture and sale of the Products, including all intellectual property rights therein, (collectively "**Company Technology**"). Customer hereby assigns to Company all right (including intellectual property rights), title and interest it may now or hereafter possess in and to the Company Technology and in any derivative works of and improvements to the Products and agrees to execute all documents, and take all actions, that may be necessary to effect such assignment. Company is under no obligation to disclose any of the Company Technology to Customer for any reason.

1.8. Custom Products. In the case of custom Products, Customer all assumes responsibility for the design and function of the Product. Company's sole responsibility is to manufacture Products according to the design and specifications approved by the Customer and it is agreed that, to the fullest extent permitted by law, the Customer shall indemnify, hold

harmless and defend Company from and against any and all claims, demands, suits or causes of action for any liability whatsoever that arises out of defects, latent or otherwise, from the design and use of the Products.

1.8.1. Customer shall assume all patent liability for Products manufactured to Customer's design or specifications or especially designed by Company to meet Customer's requirements. Any applicable charges for tools used to manufacture the Products only cover a portion of their cost and do not result in the transfer of title of such tools to the Customer.

1.8.2. In addition to other remedies afforded Company, Customer shall indemnify and hold Company harmless from, and release and not make claim or suit against Company because of, any suits, claims, losses, expenses (including reasonable attorney fees), or other liability made against, or suffered by, Customer arising from any claim of, or infringement of, patent, copyright, trademark, or other proprietary right, at common law, or claim of unfair trade or unfair competition, resulting from, or occasioned by, Customer's use, possession, sale, or delivery of the goods or services sold to Customer by Company under private label instructions of Customer or in accordance to specifications provided to Company by Customer.

1.9. Force Majeure. Company shall not be liable for any delays in the delivery of orders, due in whole or in part, directly or indirectly, to fire, act of God, strike, shortage of raw materials, supplies or components, retooling, upgrading of technology, delays of carriers, embargo, government order or directive, or any other circumstance beyond Company reasonable control.

1.10. Termination and Cancellation. Company may terminate this Agreement or orders placed hereunder with notice to Customer if (a) Customer fails to pay when due any sums payable hereunder and such failure continues for ten (10) days after the due date or (b) Customer fails to meet its obligations under this Agreement, other than the payment of money, and such breach continues for a period of twenty (20) days after receipt by Customer of written notice from Company specifying such breach. Customer may not cancel all or any portion of an order for which Products have been produced or materials have been ordered.

1.11. Export Regulations; Permits. Customer will comply with the provisions of the United States Government's Export Administration regulations and related documentation requirements and internal control procedures. Customer shall be responsible for obtaining any necessary export or import licenses and permits.

ARTICLE 2. LIMITED WARRANTIES AND REMEDIES

2.1. Limited Warranties. Company warrants to Customer that the Products shall be free from defects in materials and workmanship. Any claims for breach of the foregoing warranty shall only be valid if Customer makes such claim within 2 weeks starting from the receipt of the goods. Claims for warranty and damages shall be submitted to the Company as required by ARTICLE 9 and by obtaining an authorization number for the return of goods (referred to as a "Returned Goods Authorization Number" or "RGA") for the return of the Products which is to be referenced on all return shipping documents. **THE LIMITED WARRANTIES SET FORTH IN THIS ARTICLE IS IN LIEU OF ALL OTHER**

WARRANTIES AND COMPANY HEREBY EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, INFRINGEMENT AND FITNESS FOR PARTICULAR USE.

2.2. Remedies. Any warranty service shall be performed at Company's factory. In order to receive the warranty service, Customer must return the defective Products within thirty (30) days of notification from Customer hereunder. All warranty claims will be handled pursuant to Company's standard RGA procedures, which can be provided to Customer upon written request. If Company determines that the original Products were not defective, Customer shall reimburse Company all costs of handling, transportation and repairs at Company's prevailing rates. All defective Products returned under this warranty which are replaced or for which a refund is given to Customer shall become Company property. Any repair or attempt to repair Products by anyone other than an authorized representative of Company automatically voids any warranty on those Products. Company's parts are not intended for human implantation or use in aircraft applications. Customer may request samples of Products for testing and evaluation.

2.3. Additional Limitations on Liability. Company shall not be liable for any loss or damage caused by delay in furnishing the Products. UNDER NO CIRCUMSTANCES SHALL COMPANY BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, COLLATERAL, SPECIAL, PUNITIVE, TREBLE, EXEMPLARY OR INCIDENTAL DAMAGES (INCLUDING, WITHOUT LIMITATION, LOSS OF PROFITS OR GOODWILL) WHETHER SUCH CLAIM IS BASED ON CONTRACT, NEGLIGENCE, TORT, WARRANTY OR ANY OTHER BASIS UNDER OR AS A RESULT OF THIS AGREEMENT OR THE PRODUCTS, IRRESPECTIVE OF WHETHER COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF ANY SUCH LOSS OR DAMAGE. IN NO EVENT SHALL COMPANY'S AGGREGATE LIABILITY UNDER, OR AS A RESULT OF THIS AGREEMENT, EXCEED THE TOTAL AMOUNTS ACTUALLY PAID BY CUSTOMER FOR THE PRODUCTS PURCHASED UNDER ANY PURCHASE ORDER. The parties agree that the limitations on liability set forth in this Agreement are independent of any exclusive or limited remedies, and shall survive and apply even if such remedies are found to have failed of their essential purpose. No action, regardless of form, arising out of the transactions under this Agreement may be brought by Customer more than one (1) year after the events which gave rise to the cause of action occurred.

ARTICLE 3. CONFIDENTIALITY AND RESTRICTIVE COVENANTS

3.1. Confidentiality. Company Products are designed and manufactured to specifications developed, maintained, and controlled by Company. For the purpose of processing Purchase Orders, Company requires no proprietary information from Customer, and specifically requests that Customer refrain from including any information that may be considered proprietary. Customer agrees that all non-public information furnished to Customer by Company, including any variations in pricing from Company's standard prices for Products, is proprietary to Company and such information shall be held in confidence and shall not be used or disclosed by Customer without Company's prior written consent. Customer shall ensure all employees and agents are aware of the confidentiality requirement set forth in this Agreement.

3.2. Reasonableness. Customer hereby agrees that: (i) the covenants and agreements contained in this Agreement are reasonably necessary to protect the interests of the Company in

whose favor said covenants and agreements are imposed; (ii) the covenants and agreements of Customer contained herein are material inducements for the Company to work with Customer; and (iii) the covenants and agreements of Customer contained herein are separate and independent covenants and agreements and shall survive both the termination of this Agreement and the breach by the Company or Customer of any other covenant or agreement contained in this Agreement.

3.3. Invalidity or Unenforceability. The parties intend and desire that the provisions of this Agreement shall be enforced to the fullest extent permissible under applicable law. Accordingly, if any provision thereof is held to be invalid or unenforceable for any reason, that provision shall be reformed to the maximum extent permitted to preserve the parties' original intent, failing which it shall be deemed to be severed from this Agreement with the remaining provisions thereof continuing in full force and effect.

3.4. Costs and Expenses of Action. If any action at law or in equity is initiated by the Company to enforce any provision of this Agreement, Customer will reimburse the Company for all costs and expenses thereof, including, without limitation, reasonable attorneys' fees, to the fullest extent permissible under applicable law. Accordingly, if any provision hereof is held to be invalid or unenforceable for any reason, that provision shall be reformed to the maximum extent permitted to preserve the parties' original intent, if possible, otherwise it shall be deemed to be severed from this Agreement with the remaining provisions thereof continuing in full force and effect.

ARTICLE 4. INDEMNIFICATION

Customer shall indemnify, defend and hold harmless each of the Company, its affiliates, and each of their respective partners, shareholders, members, managers, officers, directors, employees, affiliates, agents, representatives, attorneys, successors and permitted assigns (each a "*Company Indemnitee*"), from and against all losses, liabilities, damages, costs and expenses of any nature whatsoever (including, without limitation, reasonable attorneys' fees and costs related thereto) which any Company Indemnitee may suffer or incur as the result of Customer's negligence, misconduct, or failure or refusal to comply with any term, condition or covenant of this Agreement.

ARTICLE 5. MODIFICATION

This Agreement may not be modified or supplemented except in a writing signed by both of the parties.

ARTICLE 6. SUCCESSORS AND ASSIGNS

This Agreement is personal to Customer and may not be assigned by Customer without the prior written consent of the Company. This Agreement will be binding upon and will inure to the benefit of the parties and their respective legal representatives, successors and permitted assigns; and the parties hereby agree for themselves and their respective legal representatives, successors and permitted assigns to execute any instruments and to perform any acts which may be necessary or proper to carry out the purposes of this Agreement. Company reserves the right to subcontract any of its obligations under this Agreement and any Purchase Orders.

**ARTICLE 7.
COUNTERPARTS**

This Agreement may be executed and delivered in counterparts, including by facsimile transmission or by email transmission in Adobe portable document format, each of which shall be deemed an original and all of which when taken together, shall constitute one and the same Agreement.

**ARTICLE 8.
NO WAIVER**

The failure of either party to insist upon the strict performance of any terms, covenants or conditions of this Agreement at any time, or in any one or more instances, or its failure to take advantage of any of its rights hereunder, or any course of conduct or dealing will not be construed as a waiver or relinquishment of any such rights or conditions at any future time and will in no way affect the continuance in full force and effect of all the provisions of this Agreement.

**ARTICLE 9.
NOTICES**

Any notices or other communications to any party relating to this Agreement will be deemed to be given, delivered or received when delivered personally or three (3) days after being deposited in the United States mail, registered or certified, and with proper postage and registration or certification fees prepaid, addressed to the party for whom intended at the address listed at the end of this Agreement. Each party's notice address may be changed by proper notice to the other party in accordance with this ARTICLE.

**ARTICLE 10.
CHOICE OF LAW, JURISDICTION, AND VENUE**

In light of the Company's substantial business and frequent connections with the State of Georgia, and its significant interests in ensuring that disputes as to the validity and enforceability of the Agreement are resolved on a uniform basis, the Company and Customer agree that this Agreement shall be interpreted and enforced in accordance with the laws of the State of Georgia, as if it were made and performed entirely in Georgia by persons domiciled therein, and the parties consent to the jurisdiction and venue of the courts of Gainesville, Georgia for the resolution of any civil action relating to this Agreement.