



HARBEC, INC. TERMS AND CONDITIONS SALE

1. OFFER, CONFIRMATION OR AGREEMENT

This Quote is based on the information and prints received by HARBEC for estimating purposes and shall be deemed to be an Offer for the Sale of Custom Goods (the "Quote"). HARBEC's Quote is valid for 30 days from the "Date Quoted" and is expressly made conditional on Customer's assent to all of the terms contained in the Quote without deviation.

Acceptance effective upon receipt of Customer's written Purchase Order ("P.O.") for the subject matter pertaining to this Quote (the "Items"). No P.O. placed by Customer shall be deemed accepted unless or until HAREC issues a written acknowledgment. Any amendment, change order, revision, or termination to an already-accepted P.O. shall be subject to acceptance by an authorized representative of HARBEC. Any additional or different terms specified or referenced in Customer's P.O. are hereby excluded and shall not be deemed binding unless expressly agreed to in writing by an authorized representative of HARBEC

2. PRICING, PRODUCTION AND TOOLING

Prices in this Quote are based upon: (i) material costs in effect on above "Date Quoted"; (ii) drawings, designs and specifications provided by Customer; (iii) entire quantity purchases; and (iv) current production workload. HARBEC reserves the right to re-quote and adjust pricing: (i) to reflect actual raw material costs imposed by the Supplier and incurred by HARBEC; (ii) upon receipt and any subsequent modified tolerances, inspection criteria, print revisions, final print; and /or (iii) in the event of substantial deviations from quantity estimates and actual quantities purchased by Customer. HARBEC shall notify Customer in writing upon occurrence of any of the circumstances above. Customer shall be liable and is otherwise required to pay the adjusted price.

Additionally, HARBEC reserves the right to adjust delivery commitment dates and schedules, at its sole discretion, based on receipt of approved drawings and design files. Tooling prices do not contain shipping unless otherwise pre-negotiated. Any unusual shipping costs will be invoiced to Customer as a separate line item in the form of a nonrecurring engineering (NRE) charge.

HARBEC agrees to use commercially reasonable efforts to meet Quoted Lead Times communicated on the Offer which shall commence on the date Customer's signed P.O. is received by HARBEC. In order to accomplish this, HARBEC is entitled to make changes, at any time, to production and manufacturing schedules and reserves the right to inventory full production.

All aluminum molds have a maximum guaranteed shot life of 10,000 shots. All non-aluminum molds past shot life cannot be guaranteed after 10 years or 1,000,000 shots, whichever comes first, and will be subject to an NRE charge. This NRE charge is applied for any service(s) done outside of preventive maintenance or minor repairs. All molds not used for five (5) or more years will be considered abandoned property. At such time, HARBEC will provide Customer written notice to arrange for collection of abandoned property. Customer acknowledges the failure to take possession will result in the forfeiture and destruction of the abandoned property at Customer's sole expense.

3. PAYMENT TERMS

Customer shall pay all invoiced amounts due to HARBEC within 30 days from the date of HARBEC's invoice(s). All payments shall be made in United States Dollars. Late payments shall be subject to interest from the date due until receipt of payment in full at the lesser rate of one and one-half percent (1.5%) per month compounded monthly, or the maximum rate permitted by law

Accounts are deemed delinquent following 15 days nonpayment. At its sole discretion, HARBEC may suspend future deliveries or performance until all delinquent payments due are received. HARBEC shall be reimbursed by Customer for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees. HARBEC does not waive by the exercise of any rights herein the right to remedies available under this Agreement or at law.



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4. DELIVERY, TITLE AND RISK OF LOSS

Delivery shall be made FOB HARBEC's place of business (Delivery Point) in accordance with Customer's routing and shipping instructions attached to the purchase order. HARBEC will not be liable for any delays, loss or damage in transit. Customer is to give HARBEC written notice of failure to deliver and thirty (30) days within to cure. If HARBEC does not cure within thirty (30) days, Customer may cancel the affected and undelivered portions of the P.O. HARBEC reserves the right to make partial shipments. Customer agrees to reimburse HARBEC for any handling and storage costs associated with all rescheduled, delayed or cancelled shipments.

Title and risk of loss or damage to all Items shall transfer from HARBEC to Customer at the Delivery Point. As collateral security for the payment of the purchase price of the Items, Customer hereby grants to HARBEC a lien on and security interest in and to all of the right, title, and interest of Customer in, to, and under the Items, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase money security interest under the New York Uniform Commercial Code.

5. INSPECTION OF NONCONFORMING GOODS

Items are deemed accepted unless Customer gives HARBEC written notice of Nonconforming Goods and supporting documentation within sixty (60) days of Customer's receipt of Items ("Inspection Period"). The Inspection Period commences on the day of arrival to Customer's Delivery Location, evidenced by freight carrier documentation. Nonconforming Goods are defined as a product(s) which do not fulfill its specified requirements.

If Customer timely notifies HARBEC of any Nonconforming Goods, then HARBEC, may, at its option, either replace Nonconforming Goods, or credit or refund the Price for such Nonconforming Goods, together with any reasonable shipping and handling expenses incurred by HARBEC for such goods. Customer will ship, at its expense and risk of loss, Nonconforming Goods back to the HARBEC facility at HARBEC request.

6. WARRANTIES

HARBEC warrants all Items delivered hereunder to be free from defect in material or workmanship and to conform strictly to the specifications, drawings, or sample specified or furnished by Customer in effect as of the date of this Quote. This warranty shall survive any inspection, delivery, acceptance of, or payment by Buyer for the products or materials or services.

EXCEPT FOR THE WARRANTY SET FORTH ABOVE, HARBEC MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE ITEMS, INCLUDING ANY (i) WARRANTY OF MERCHANTABILITY; (ii) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (iii) WARRANTY OF TITLE; OR (iv) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE.

HARBEC shall not be liable for a breach of the warranty set forth above unless: (i) Customer gives written notice of the defect, reasonably described, to HARBEC within 60 days of the time when Customer discovers or ought to have discovered the defect; (ii) HARBEC is given a reasonable opportunity after receiving the notice to examine such Items and Customer (if required to do so by HARBEC) returns such Items to HARBEC's place of business at HARBEC's cost for the examination to take place; and (iii) HARBEC reasonably verifies Customer's claim that the Items are defective.

HARBEC shall not be liable for a breach of the warranty set forth above if: (i) Customer makes any further use of such Items after giving such notice; (ii) the defect arises because Customer failed to follow HARBEC's oral or written instructions as to the storage, installation, commissioning, use, or



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maintenance of the Items; or (iii) Customer alters or repairs such Items without the prior written consent of HARBEC.

Subject to the exceptions above, with respect to any such Items during the Warranty Period, HARBEC shall, in its sole discretion, either (i) repair or replace such Items (or the defective part(s)) or (ii) credit or refund the Price of such Items at the pro-rata contract rate, provided that if HARBEC so requests, Customer shall, at HARBEC's expense, return such Items to HARBEC.

THE REMEDIES SET FORTH IN THIS SECTION SHALL BE THE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND HARBEC'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTY SET FORTH HEREIN.

7. LIMITATIONS ON WARRANTIES

IN NO EVENT SHALL HARBEC BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE, OR ENHANCED DAMAGES, LOST PROFITS OR REVENUES, OR DIMINUTION IN VALUE, ARISING OUT OF, OR RELATING TO, OR IN CONNECTION WITH ANY BREACH OF THIS AGREEMENT, REGARDLESS OF (i) WHETHER SUCH DAMAGES WERE FORESEEABLE, (ii) WHETHER OR NOT HARBEC WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, (iii) THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT, OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, AND (iv) THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

IN NO EVENT SHALL HARBEC'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO HARBEC FOR THE ITEMS SOLD HEREUNDER.

8. COMPLIANCE WITH LAWS

Each party hereto represents that it is duly authorized to enter into these Terms and Conditions and represents that with respect to its performance hereunder, it will comply with all applicable federal, state, and local laws, including, but not limited to those pertaining to the U.S. Export Administration or other export or import controls applicable to performance.

In order to ensure quality control and specification compliance under this Quote, HARBEC must be provided with a prior written request containing any environmental and /or social responsibility programs requirements for the Items identified in this Quote. Examples of such may include: RoHS, REACH, Conflict Mineral Compliance, California Proposition 65, procurement restrictions and conduct due diligence documentation. HARBEC cannot guarantee compliance if the request is made after the P.O. has been placed. A service fee will be calculated based on customer requirements and invoiced to Customer for any request supporting warranty or representation documents made after one (1) from the Date of Delivery for Items identified in such request.

9. CONFIDENTIAL INFORMATION

All non-public, confidential, or proprietary information of either Party, including, but not limited to, trade secrets, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts, or rebates, disclosed by either Party, whether disclosed orally or disclosed or accessed in written, electronic, or other form or media, and whether or not marked, designated, or otherwise identified as "confidential," in connection with this Quote is confidential, solely for the use of performance therein and may not be disclosed or copied unless authorized by Disclosing Party in writing. Upon request, Non-Disclosing Party shall promptly return all documents and other materials received from Disclosing Party. Disclosing Party shall be entitled to injunctive relief for any violation of this Section. This Section shall not apply to information that is: (a) in the public domain; (b) known to the



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Buyer at the time of disclosure; or (c) rightfully obtained by the Buyer on a non-confidential basis from a third party.

10. INTELLECTUAL PROPERTY RIGHTS INDEMNIFICATION

Subject to terms and conditions of this Agreement, Customer shall indemnify, defend and hold harmless HARBEC and its officers, directors, employees, agents, Affiliates, successors and permitted assigns (collectively Harbec's Indemnified Parties) from and against all Losses awarded against HARBEC's Indemnified Parties, without limitation and including reasonable attorneys' fees, arising out of any Claim of a third party alleging that any of the Items infringe any Intellectual Property Right of a third party. If the Items, or any part of the Items, becomes, or in Customer's reasonable opinion is likely to become, subject to a third-party Claim that qualifies for intellectual property indemnification coverage under this Section, Customer shall, at its sole discretion, either (i) procure for HARBEC the right to continue to use and manufacture such Items; or (ii) terminate any P.O. to the extent related to such Item. In the event of any such termination, Customer shall immediately become responsible for payments on all costs associated, including but not limited to: material costs, work-in-process notify HARBEC in writing. At which time HARBEC, at its sole discretion, may cease using or manufacturing all or a part of the Items, in which case Customer shall immediately be liable for payments on all completed Items in inventory and /or work-in-process of such Items.

11. TERMINATION

Without prejudice to any rights and remedies HARBEC may have under these Terms and Conditions or at law, HARBEC may, by written notice to Customer, terminate with immediate effect any Purchase Order, or any part thereof, without any liability whatsoever, if:

- a. Customer fails to pay any amount when due and account becomes delinquent in accordance with Section 3 herein;
- b. Customer fails to accept conforming Items supplied hereunder;
- c. Customer commences any proceedings or filings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors of Customer; or
- d. Customer violates or breaches any of the provisions of these Terms and Conditions and/or the Quote.

Upon occurrence of any of the events referred above, all payment to be made by Customer shall become immediately due and payable. In the event of cancellation, termination or expiration of any P.O. the terms and conditions destined to survive such will survive.

Customer may not reschedule or cancel any Purchase Order, or any part thereof unless:

- a. Customer receives prior written consent from an authorized HARBEC representative; or
- b. HARBEC is in material breach of any representation, warranty or covenant of HARBEC under this Quote and either the breach cannot be cured or, if the breach can be cured, it is not cured by HARBEC within thirty (30) days after receipt of Customer's written notice of such breach, excluding lead time necessary to obtain raw materials for the production of replacement parts.

As a condition precedent to Customer's right to terminate the Order pursuant to this Section, Customer shall pay to HARBEC all amounts due to HARBEC for Items delivered by HARBEC prior to receipt of the termination notice and reimburse HARBEC for all of HARBEC's out-of-pocket costs and expenses (including, but not limited to, raw materials, work-in-process, completed Items in inventory, storage and disposal costs) incurred by HARBEC that arise from or relate to the P.O. issued by Customer to HARBEC prior to termination notice. Upon full reimbursement, HARBEC will delivery to Customer all such tangible Items free and clear of any title defects.



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12. FORCE MAJEURE

Any delay or failure of HARBEC to perform its obligations under this Quote will be excused to the extent that the delay or failure was caused directly by an event beyond HARBEC's control, without HARBEC's fault or negligence and that by its nature could not have been foreseen by HARBEC or, if it could have been foreseen, was unavoidable (which events may include natural disasters, epidemics, embargoes, explosions, riots, wars, acts of terrorism, strikes, labor stoppages or slowdowns or other industrial disturbances, and shortage of adequate power or transportation facilities). HARBEC shall resume the performance as soon as reasonably practicable after the removal of the cause. In the event that the HARBEC's delay remains uncured for a period of sixty (60) consecutive days following written notice given to Customer, either party may thereafter terminate the P.O. upon thirty (30) days' written notice.

13. ASSIGNMENT.

Customer shall not assign, transfer, delegate, or subcontract any of its rights or obligations under this Quote without the prior written consent of HARBEC. Any purported assignment, transfer, delegation, or subcontract in violation of this Section shall be null and void. No assignment, transfer, delegation, or subcontract shall relieve Customer of any of its obligations hereunder. HARBEC may at any time assign, transfer, delegate, or subcontract any or all of its rights or obligations under this Quote with Customer's prior written consent.

14. GOVERNING LAW

This Quote and all related documents and all matters arising out of or relating to the Item identified in this Quote, whether sounding in contract, tort, or statute are governed by and construed in accordance with the laws of the State of New York, without regard to conflict of law issues. Parties agree all disputes arising from the terms and conditions of this Quote shall be subject to the jurisdiction of the Supreme Court of the State of New York, County of Wayne or of the US District Court for the Western District of New York. Each Party agrees that a final judgment in any such action, litigation, or proceeding is conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. HARBEC generally retains all rights and remedies granted to it by operation of law in addition to those set forth herein. Any waiver or failure on HARBEC's part to require strict compliance with the provisions of this Quote shall not be deemed a waiver of HARBEC's right to insist upon strict compliance thereafter.