

Standard Terms and Conditions of Sale

These terms and conditions govern the sale of Products (“Product” or “Products”) and provisions of Services (“Services”) by Applegate EDM, Inc. (AEDM) (“Seller”) as well as by third party vendors and/or service providers of Seller. These terms and conditions (“Agreement”) take precedence over Buyer’s supplemental or conflicting terms and conditions to which notice of objection is hereby given. Neither Seller’s commencement of performance or delivery shall be deemed or construed as acceptance of Buyer’s supplemental or conflicting terms and conditions. AEDM’s failure to object to conflicting or additional terms will not change or add to the terms of this agreement. Buyer’s acceptance of the Products and/or Services from Seller shall be deemed to constitute acceptance of the terms and conditions contained herein.

1. Orders: All orders placed by Buyer are subject to acceptance by Seller. Orders may not be cancelled or rescheduled without Seller’s written consent. All orders must identify the products and/or services, unit quantities, part numbers, applicable prices and requested delivery dates of the Products/Services being purchased. Seller may designate certain Products and/or Services as non-cancellable, non-returnable and the sale of such Products shall be subject to any special terms and conditions contained in Seller’s Order, which shall prevail and supersede any inconsistent terms and conditions contained herein or elsewhere.

2. Prices: The prices of the Products/Services are those prices specified on the quotation or order confirmation, whichever is the most recent. Pricing may be increased in the event of an increase in Seller’s cost, change in market conditions or any other causes beyond the Seller’s reasonable control. Price quotations shall automatically expire in thirty (30) days from the date issued, or as otherwise stated in the quotation.

3. Taxes: Unless otherwise agreed to in writing by Seller, all prices quoted are exclusive of transportation and insurance costs, duties, and all taxes including federal, state and local sales, excise and value added, goods and services taxes, and any other taxes. Buyer agrees to indemnify and hold Seller harmless for any liability for tax in connection with the sale, as well as the collection or withholding thereof, including penalties and interest thereon. When applicable, transportation and taxes shall appear as separate items on Seller’s invoice.

4. Payment/Credit Terms: Payment may be made by cash, check, credit card, ACH, or wire transfer (all fees are borne by the Buyer). A surcharge of 3% for credit card sales will be assessed. Where Seller has extended credit to Buyer, terms of payment shall be net thirty (30) days from date of invoice, without offset or deduction unless otherwise noted. On any past due invoice, Seller may impose interest at the rate of one and a half percent [1.5%] per month. If Buyer fails to make each payment when it is due, Seller reserves the right to change or withdraw credit and thereby suspend or cancel performance under any or all purchase orders or agreements in which Seller has extended credit to Buyer. In the event of default by Buyer, Seller shall be entitled to costs, fees, and expenses, including but not limited to recovery of attorney fees, court costs and fees, and collections costs.

5. Delivery and Title: All deliveries will be made “EXWORKS” place of shipment. Title and risk of loss pass to the Buyer upon delivery of the Product to the carrier. Seller’s delivery dates are estimates only and Seller is not liable for delays in delivery or for failure to perform due to causes beyond the

reasonable control of the Seller, nor shall the carrier be deemed an agent of the Seller. A delayed delivery of any part of an Order does not entitle Buyer to cancel other deliveries.

6. Limited Warranty: Seller warrants to Buyer that Products/Services purchased hereunder will conform to the applicable specifications and that any value-added work performed by Seller on such Products will conform to applicable Buyer's specifications. If Seller breaches this warranty, Buyer's remedy is limited to (at Seller's election) (1) repair of such Products, (2) replacement of such Products, provided that non-conforming Products are returned to Seller, along with acceptable evidence of purchase, within 20 days from date of delivery, transportation charges prepaid, or 3) Seller will refund the purchase price or give Buyer a reasonable allowance thereof. No warranty will apply if the Product has been subject to misuse, neglect, accident or modification. EXCEPT AS EXPRESSLY PROVIDED IN THESE TERMS AND CONDITIONS, ALL IMPLIED WARRANTIES, TERMS AND CONDITIONS (WHETHER STATUTORY OR OTHERWISE) ARE EXCLUDED TO THE FULLEST EXTENT PERMITTED BY LAW. IN PARTICULAR, SELLER MAKES NO WARRANTY RESPECTING THE MERCHANTABILITY OF THE PRODUCTS OR THEIR SUITABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD-PARTY RIGHTS AND WARRANTIES AGAINST LATENT DEFECTS. PRODUCTS WHICH MAY BE SOLD BY SELLER BUT WHICH ARE NOT MANUFACTURED BY SELLER ARE NOT WARRANTED BY SELLER, BUT ARE SOLD WITH THE WARRANTIES, IF ANY, OF THE MANUFACTURERS THEREOF.

7. Limitation of Liabilities: BUYER SHALL NOT BE ENTITLED TO, AND SELLER SHALL NOT BE LIABLE FOR, LOSS OF PROFITS OR REVENUE, PROMOTIONAL OR MANUFACTURING EXPENSES, OVERHEADS, BUSINESS INTERRUPTION COST, LOSS OF DATA, REMOVAL OR REINSTALLATION COSTS, INJURY TO REPUTATION OR LOSS OF BUYERS, PUNITIVE DAMAGES, INTELLECTUAL PROPERTY INFRINGEMENT, LOSS OF CONTRACTS OR ORDERS OR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY NATURE. BUYER'S RECOVERY FROM SELLER FOR ANY CLAIM SHALL NOT EXCEED THE PURCHASE PRICE PAID FOR THE AFFECTED PRODUCTS IRRESPECTIVE OF THE NATURE OF THE CLAIM WHETHER IN CONTRACT, TORT, WARRANTY, OR OTHERWISE. BUYER WILL INDEMNIFY, DEFEND AND HOLD SELLER HARMLESS FROM ANY CLAIMS BASED ON (a) SELLER'S COMPLIANCE WITH BUYER'S DESIGNS, SPECIFICATIONS, OR INSTRUCTIONS, (b) MODIFICATION OF ANY PRODUCTS BY ANYONE OTHER THAN SELLER, OR (c) USE IN COMBINATION WITH OTHER PRODUCTS.

8. Acceptance of Goods, Delivery and Transportation: Upon Buyer's receipt of shipment, Buyer shall immediately inspect the Product(s). Unless Buyer provides Seller with written notice of any claim of shortages or defects in the Goods/Products forty-eight (48) hours after receipt of shipment, such Products shall be deemed finally inspected, checked and accepted by Buyer. In the absence of shipping and packing instructions, Seller shall use its own discretion in choice of carrier and method of packing. Seller shall not be responsible for insuring shipments unless specifically requested by Buyer and any insurance so requested shall be at Buyer's expense and valuation.

9. Set-up Charges: A non-recurring set-up charge may be imposed for any special tooling, including without limitation, dies, fixtures, molds and patterns manufactured or acquired to manufacture items sold subsequent to Buyer's order. Such special tooling shall be and remain Seller's property notwithstanding payment of any charges, therefore, by Buyer unless otherwise agreed to on the face

hereof. Payment of charges in connection with tooling or apparatus does not constitute ownership of same. All charges in connection with this Buyer's order will be imposed only with the knowledge and acceptance of Buyer. Seller shall have the right to alter, discard or otherwise dispose of any special tooling or other property at its sole discretion at any time.

10. Termination, Cancellation and Changes: Orders cannot be terminated, cancelled or modified after acceptance of Buyer's order by Seller, except with Seller's written consent and subject to reasonable charge for expenses incurred and work executed by Seller or its suppliers. Buyer shall be obligated to accept any portion of the Products shipped or delivery by Seller pending Seller's written approval of cancellation. Orders for custom-made material may not be cancelled after Seller has been in production unless Seller agrees in writing.

11. Export Control: Buyer certifies that it will be the recipient of the Products to be delivered by Seller. Buyer understands that the associated hardware, software, and/or technical data ("products") listed on their Purchase Order includes items that are governed by the U.S. Export Administration Regulations ("EAR"), by the U.S. Foreign Assets Control Regulations ("OFAC") and the International Traffic in Arms Regulations ("ITAR"). The Buyer understands that its sale or distribution of said products may constitute exports or re-exports, and as such, must be in accordance with the requirements administered by Bureau of Industry and Security, Department of Treasury, and Department of State. It is understood that the country of ultimate destination, commodity classification, end-user, or end-use for any said products, could affect the applicable license requirements and exportability. The Buyer agrees to consult various resources, such as the EAR, ITAR, and OFAC, by the U.S. Department of Commerce's Bureau of Industry and Security's ("BIS") Export Counseling Division, and other appropriate Government Sources to ensure that the sales and distribution of said products, is processed in accordance with all applicable laws. The Seller will not transfer any export-controlled products to a "non-U.S. Person" without the proper authority of the United States Government, and the Buyer's written approval.

12. Use of Products: Unless otherwise noted, Products sold by Seller are not designed, intended or authorized for use in life support, life sustaining, nuclear, or other applications in which the failure of such Products could reasonably be expected to result in personal injury, loss of life or catastrophic property damage. If Buyer uses or sells the Products for use in any such applications: (1) Buyer acknowledges that such use or sale is at Buyer's sole risk; (2) Buyer agrees that Seller and the manufacturer of the Products are not liable, in whole or in part, for any claim or damage arising from such use; and (3) Buyer agrees to indemnify, defend and hold Seller and the manufacturer of the Products harmless from and against any and all claims, damages, losses, costs, expenses and liabilities arising out of or in connection with such use or sale.

13. Force Majeure: Seller is not liable for failure to fulfill its obligations for any accepted Order or for delays in delivery due to causes beyond Seller's reasonable control including, but not limited to, acts of God, natural or artificial disaster, riot, war, strike, delay by carrier, shortage of Product, acts or omissions of other parties, acts or omissions of civil or military authority, Government priorities, changes in law, material shortages, fire, strikes, floods, epidemics, quarantine restrictions, acts of terrorism, delays in transportation or inability to obtain labor, materials or Products through its

regular sources, which shall be considered as an event of force majeure excusing Seller from performance and barring remedies for non-performance. In an event of force majeure condition, the Seller's time for performance shall be extended for a period equal to the time lost as a consequence of the force majeure condition without subjecting Seller to any liability or penalty. Seller may, at its option, cancel the remaining performance, without any liability or penalty, by giving notice of such cancellation to the Buyer.

14. Severability: If any provision of this Agreement is unenforceable or invalid, this Agreement shall be interpreted and enforced to the greatest extent possible as if the unenforceable provision or portion had never been a part hereof.

15. Technical Assistance or Advice: If technical assistance or advice are offered or given to Buyer, such assistance or advice is given free of charge and only as an accommodation to Buyer. Seller shall not be held liable for the content or Buyer's use of such technical assistance or advice nor shall any statement made by any of Seller's representatives in connection with the Products or Services constitute a representation or warranty, express or implied.

16. Governing Law: The laws of the State of Texas will exclusively govern any dispute between Seller and Buyer without regard to its conflict of law provisions. All actions or proceedings arising directly or indirectly herefrom shall be litigated only in the courts of the State of Texas or United States federal courts located therein and the parties hereby consent to the jurisdiction and venue of such courts.

17. Alternative Dispute Resolution: Any dispute or claim arising from or relating to this Agreement or performance under it shall be resolved amicably through discussions between Buyer and Seller attempting in good faith to negotiate a resolution thereof; provided, however, that either Buyer or Seller may seek injunctive relief from a court of proper jurisdiction where appropriate, in order to maintain the status quo while this procedure is being followed. If the parties fail to resolve any dispute arising under this Agreement, either party may seek arbitration as follows:

(a) By written notice to the other party, submitting the dispute to binding arbitration, in accordance with the then-current Expedited Commercial Arbitration Rules under the American Arbitration Association ("AAA"), each party to equally bear the costs of the arbitration provided, however, that the other party may agree or refuse to participate in such arbitration.

(b) If the parties are not successful in resolving the dispute through self-help or one of the parties refuses to participate in arbitration, the dispute shall be resolved by litigation.

(c) Any claim submitted to arbitration must be governed by the Expedited Commercial Rules of the AAA, except that (i) Provision 20 must govern applicable law and construction, (ii) the locale of any arbitration will be in Dallas, Texas, the parties in writing, (iii) the arbitration panel will consist of a single arbitrator, selected pursuant to the rules of the AAA, (iv) the language of the arbitration must be in English, (v) any arbitration award must state the arbitrator's material findings of fact and conclusions of law, (vi) a party may seek preliminary injunctive or other

equitable relief from any court of competent jurisdiction to preserve the status quo pending establishment of an arbitration panel, (vii) a prevailing party in litigation to require arbitration or to obtain preliminary relief pending establishment of an arbitration panel, in arbitration, or in litigation to confirm or enforce an arbitration award will be entitled to recover is reasonable attorney's fees and costs. Any suit to require arbitration under this agreement, or to enforce judgment upon an arbitration award, may be brought in the state and federal courts of the State of Texas.

18. General: (a) Buyer may not assign this Agreement without the prior written consent of Seller. Seller or its affiliates may perform the obligations under this Agreement. This Agreement is binding on successor and assigns. (b) Products and intellectual property are subject to any applicable rights of third parties, such as patents, copyrights and/or user licenses. (c) This Agreement and all related order documents, including specification, drawings or correspondence shall be drafted in the English language.

19. Entire Contract: Upon Seller's acceptance of Buyer's order, the terms and provisions set forth herein shall constitute the entire agreement between Buyer and Seller and no statement, correspondence, sample or other terms shall modify or affect terms thereof.