

# **RESURGENT MANUFACTURING SERVICES, LLC**

## **STANDARD TERMS AND CONDITIONS OF SALE**

The sale of products and services (“Products”) by Resurgent Manufacturing Services, LLC (“RESURGENT”) to you (“Buyer”) is subject to the following Terms and Conditions. For further clarity, “Buyer” means the entity to which RESURGENT’s Offer (herein defined) is made or the entity purchasing Products from RESURGENT. “Offer” shall mean any quotation, bid, or proposal for Products made by RESURGENT to Buyer.

### **1. Prices**

1.1 All prices are subject to adjustment on account of specifications, quantities, shipment arrangements or other terms and conditions, which are not part of the original price quotation. All prices, invoices, and payments shall be in the currency specified in RESURGENT’s Offer.

1.2 Prices are exclusive of all federal, state, municipal or other government excise, sales, use, occupational or like taxes, tariffs, customs, duties and importing fees. Prices are consequently subject to increase by the amount of any such tax, tariff, duty or fee, which RESURGENT pays or is required to pay or collect upon sale or delivery of products. Any certificate of exemptions or similar document or proceeding required to exempt the sale of products from sales or use tax liability shall be obtained by Buyer, at its expense.

### **2. Terms of Payment**

2.1 Subject to RESURGENT’s approval of Buyer’s credit, and unless expressly stated otherwise in RESURGENT’s Offer or other agreement, payment terms for domestic customers and domestic orders are net thirty (30) days from date of RESURGENT’s invoice. At RESURGENT’s sole discretion, payment terms for international Orders shall be cash in advance by wire transfer, unless different payment terms are otherwise agreed to and approved.

2.2 Payment terms are as described on the PO acknowledgment for purchase order placed. If no payment terms are specified on the PO acknowledgment, payment terms shall default to NET 30 days from date of product shipment.

2.3 Supplier will invoice Customer for each shipment. The amount invoiced will include the price of the Products plus all applicable taxes, packaging, transportation, insurance, and other charges. If all Products in Customer's purchase order are not shipped at the same time, Supplier will invoice Customer at the time of shipment only for the Products that are shipped.

2.4 In addition to all other remedies available under RESURGENT’s terms and conditions or at law, which RESURGENT does not waive by the exercise of any rights hereunder, RESURGENT shall be entitled to suspend the delivery of any Products if Buyer fails

to pay any amounts when due hereunder. Buyer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with RESURGENT, whether relating to RESURGENT's breach, bankruptcy or otherwise. If RESURGENT at any time determines, in its sole and absolute discretion, that Buyer is not financially sound or responsible or may be unable to pay in full and in a timely manner all amounts due to RESURGENT, RESURGENT shall have the right to require immediate payment in full in cleared funds prior to continuing work or incurring any further cost. Buyer must raise any dispute relating to an invoice within fifteen (15) days of the date of invoice. If Buyer's dispute is held to be valid, RESURGENT shall credit Buyer the disputed amount.

### **3. Delivery, Risk of Loss, and Title**

3.1 All products will be shipped EXWORKS Incoterms 2020, from location of manufacture. Risk of loss and title to Goods shall pass in accordance with the Incoterm selected for such Order. All shipping charges and expenses shall be paid by Buyer. If under separate written agreement, it is decided RESURGENT prepays shipping, insurance, or other related charges, Buyer agrees to reimburse RESURGENT promptly for such charges.

3.2 Products held or stored by RESURGENT for the Buyer shall be at the sole risk of Buyer, and Buyer shall be liable for the expense to RESURGENT of holding or storing products at Buyer's request.

3.3 If applicable, RESURGENT shall make deliveries in installments and shall bill partial shipments as made.

3.4 All products will be scheduled for shipment in accordance with RESURGENT's applicable shipment sequence and RESURGENT will confirm in writing, and amend as appropriate, the shipment schedule. Under no circumstance shall RESURGENT be liable to Buyer for any delay either in shipment or in delivery.

### **4. Inspection and Tests**

4.1 All Goods manufactured by RESURGENT are subject to RESURGENT's standard inspection and quality assurance processes and, if applicable, acceptance testing at RESURGENT's facility. Any additional requirements mutually agreed by the Parties in writing including, without limitation, Buyer's source inspection or additional testing required by Buyer, shall be at Buyer's sole expense.

4.2 Source inspection by Buyer or Buyers' customer must be stipulated in writing, at the time of ordering, and is subject to reasonable charges and safety and security conditions. Buyer shall have no right of access to RESURGENT plant except as specifically authorized in advance by RESURGENT. Buyer or Buyers' agent shall indemnify and hold RESURGENT harmless from any and all suits, damages and expenses of Buyer, his agent or his customer resulting from personal injury including death or loss or damage of property occurring during, or in connection with, any visit to RESURGENT plant.

## **5. Shipment**

5.1 Unless specific instructions to the contrary are supplied by the Buyer, RESURGENT will select the carrier and ship the products to the Buyer's address indicated on Buyer's purchase order using Buyer's shipping account information. RESURGENT will not assume any liability in connection with the shipment nor constitute any carrier as its agent. Buyer shall be responsible for making all claims with carriers, insurers, warehouses and other for non-delivery, loss, damage, or delay. All claims for damage to the product or shortage must be made within thirty (30) days of shipment.

5.2 All Products shall be packed and packaged in accordance with RESURGENT's standard commercial packing and packaging methods. Any nonstandard or special packing or packaging requested by Buyer is subject to RESURGENT's written agreement and shall be at Buyer's sole expense.

## **6. Offers and Acceptance of Buyer's Order**

6.1 OFFERS. Unless stated otherwise in writing by RESURGENT, RESURGENT's Offer shall be valid for thirty (30) days from the date of such Offer. Any extension to the validity period shall be at RESURGENT's sole discretion. RESURGENT reserves the right to withdraw and/or revise the Offer at any time during the validity unless it is accepted by Buyer in its entirety. The prices offered by RESURGENT apply only to the specific details of the Offer, including quantities, specifications, statement of work, and delivery schedules and RESURGENT's terms and conditions.

6.2 RESURGENT offers to sell and deliver the products and services specified herein in accordance with the terms and conditions hereof. This offer expressly limits acceptance to the terms hereof and any additional or different terms proposed by the buyer are hereby objected to and rejected unless expressly assented to in writing by RESURGENT.

6.3 RESURGENT's Offer and any Order issued by Buyer to RESURGENT for Products, and any amendments thereto, are strictly limited to RESURGENT's terms and conditions. Buyer's issuance of an Order in response to RESURGENT's Offer shall conclusively evidence Buyer's unconditional acceptance of RESURGENT's terms and conditions irrespective of any different terms and conditions included in Buyer's Order and RESURGENT hereby rejects and shall not be bound by any terms or conditions in Buyer's Order or other written communications that differ from, add to, or modify RESURGENT's terms and conditions. RESURGENT's terms and conditions shall govern and apply to Orders accepted by RESURGENT whether they are attached to RESURGENT's Offer or referenced on RESURGENT's website. RESURGENT's failure to object to any terms and conditions or any other provisions contained in any communication from Buyer does not waive any of RESURGENT's terms and conditions specified herein.

## **7. Cancellation, Rescheduling, Returns and Modifications**

7.1 Any request for order cancellation, rescheduling, return or modification must be made in writing and such action must be approved in writing by an authorized agent of RESURGENT at its principal office in Georgia. Such requests are subject to processing charges as outlined below.

7.2 Rescheduling. No rescheduling, quantity decreases, or pushouts can be made for orders due to ship less than 60 days before the original scheduled delivery date.

### 7.3 Cancellation.

7.3.1 If a cancellation request is received and approved by Resurgent more than 60 days before the original ship date, no cancellation charge or penalty is due from the Buyer.

7.3.2 If the cancellation is received and approved by Resurgent 60 days or less before the original ship date, the Buyer shall pay to RESURGENT 100% of the purchase order, in addition to any charges for unearned discounts (bill back).

7.3.3 For non-standard products, built to Buyer's specifications or pursuant to RESURGENT's design, Buyer shall have no right to cancel or reschedule the delivery of any such non-standard products.

7.4 Returns. Buyer's return of nonconforming or defective Products to RESURGENT is subject to RESURGENT's then current return authorization process and procedures. Buyer shall promptly notify RESURGENT of any non-conformance or defects in Products and provide RESURGENT a reasonable opportunity to inspect and evaluate such Products. Buyer shall not return any products for any reason without the prior authorization of RESURGENT and issuance on a Return Material Authorization (RMA) number. The RMA number shall specify the terms and conditions upon which returns may be made. Returns made without obtaining prior authorization shall be returned to sender at Buyer's expense. Products for which the seal of the anti-static shipping bag has been broken may not be returned. Products determined by RESURGENT to be nonconforming or defective and covered by RESURGENT's warranty shall be replaced at RESURGENT's expense and shall be returned to Buyer at RESURGENT's expense. If any Products returned by Buyer are found not to be nonconforming or defective, Buyer shall be notified, and Buyer shall be liable for applicable inspection and evaluation charges. Such Products shall be returned to Buyer at Buyer's expense.

## **8. Installation**

8.1 RESURGENT assumes no obligation to install the products or to place them in operation at the Buyers premises, unless specifically stated in writing by an authorized agent of RESURGENT.

## **9. Warranty**

9.1 RESURGENT warrants that each Product will be free of defects in material and workmanship for a period of one (1) year for its component products. The warranty commences on the date the product is shipped by RESURGENT. RESURGENT's sole liability and responsibility under this warranty is to repair or replace (at its own discretion) any product which is returned to it by the Buyer and which RESURGENT determines does not conform to the warranty. If for any reason, RESURGENT cannot repair or replace such Product, RESURGENT will issue Buyer a credit for the original price of the defective Products. Product returned to RESURGENT for warranty service will be shipped to RESURGENT at Buyer's expense and will be returned to Buyer at RESURGENT expense. In no event shall RESURGENT be responsible under its warranty for any defect which is i) caused by negligence, misuse, mishandling, or mistreatment of a product, ii) improperly stored, installed, operated, or maintained or iii) for any unit which has been altered or modified in any way from its original state. The warranty of replacement shall terminate with the warranty of the product.

## **10. Warranty Disclaimer**

10.1 THE FOREGOING WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE EXCEPT AS THUS PROVIDED, RESURGENT DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

## **11. Intellectual Property Rights Indemnity**

11.1 RESURGENT agrees to indemnify and defend Buyer against any claim that a product, as delivered, infringes a United States Patent, United States copyright, United States trademark or other United States intellectual property right, provided RESURGENT is promptly advised of any such claim or action and has sole control of the defense of any such action and all negotiations for its settlement or compromise. If at any time use of the product is enjoined or is discontinued because of a settlement, RESURGENT shall have the right, but not the obligation, at its sole option and expense, to either produce for Buyer the right to continue using the product, replace or modify the product so that it becomes non-infringing or grant Buyer a credit for the product as depredated, and accept its return. RESURGENT shall not have any liability to Buyer if the infringement or other violation of a third party right is based in any way upon (i) the use of products in combination with other components, equipment or software not furnished by RESURGENT; (ii) use of a product in practicing any process; (iii) any product which has been modified or altered; (iv) the manner in which the product is used even if RESURGENT has been advised of such use; or (v) RESURGENT's compliance with the Buyer's designs, specification or instructions. In no event shall RESURGENT's total liability to Buyer under this section exceed the aggregate sum paid to RESURGENT by Buyer for the products hereunder.

## **12. Indemnification**

12.1 Unless otherwise expressly provided in writing signed by both parties, RESURGENT does not indemnify, nor does it hold Buyer harmless, against any liability, losses, damages, and expenses (including attorney's fees) relating to any claim whatsoever, including without limitation, claims for personal injuries, death or property damage related to the products sold hereunder.

## **13. Proprietary Rights**

13.1 RESURGENT shall retain all right, title, and interest in and to any licenses, data, information, software programs, tools, specifications, templates, scripts, ideas, concepts, inventions, works of authorship, products, know-how, processes, techniques, and the like used or developed by RESURGENT or its employees in connection with Buyer's Order. Buyer agrees that RESURGENT retains all proprietary rights to all products, specifications, designs, discoveries, inventions, patents, copyrights, trademarks, trade secrets, and other proprietary rights relating to Products.

## **14. Substitutions and Modifications of Specifications**

14.1 RESURGENT assumes the right to make substitutions and modifications in the specifications of any of the products or parts thereof sold by RESURGENT provided such substitutions or modifications will not materially affect the performance of such products.

## **15. Assignment**

15.1 This contract is not assignable by Buyer and any attempt to assign any rights, duties or obligations arising hereunder shall be void.

## **16. Force Majeure**

16.1 RESURGENT shall not be liable for any loss or damage resulting from any delay in delivery or failure to give notice of delay when such delay is due to any cause or event beyond RESURGENT's control, including, without limitations, acts of nature, unavailability of supplies or sources of energy, riots, wars, fires, strikes, labor difficulties, delays in transportation, delays in delivery or defaults by RESURGENT's vendor or acts or omission of the Buyer. In the event of delay due to any such cause, time for delivery shall be extended for a period of time equal to the duration of such delay and the Buyer shall not be entitled to refuse delivery or otherwise be relieved of any obligations as a result of the delay. If, as a result of any such cause, any scheduled delivery is delayed for period in excess of one-hundred-twenty (120) days, RESURGENT or Buyer shall have the right by written notice to the other to cancel the order for the products subject to the delayed delivery without further liability of any kind.

## **17. Limitation of Liability**

17.1 IN NO EVENT WHETHER AS A RESULT OF CLAIMS IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR OTHERWISE, SHALL RESURGENT BE LIABLE FOR SPECIAL,

INCIDENTAL OR CONSEQUENTIAL DAMAGES DUE TO ANY CAUSE WHATSOEVER. NO SUIT OR ACTION SHALL BE BROUGHT AGAINST RESURGENT MORE THAN ONE YEAR AFTER THE RELATED CAUSE OF ACTION HAS ACCRUED. IN NO EVENT SHALL THE ACCRUED TOTAL LIABILITY OF RESURGENT FROM ANY LAWSUIT, CLAIM, WARRANTY, OR INDEMNITY EXCEED THE AGGREGATE SUM PAID TO RESURGENT BY BUYER UNDER THE SPECIFIC ORDER TO WHICH SUCH SPECIFIC LAWSUITS, CLAIMS, AND WARRANTY OR INDEMNITY RELATES.

## **18. Waivers**

18.1 All rights and remedies of RESURGENT hereunder shall be cumulative and may be exercised singularly or concurrently. In the event that either party shall on any occasion fail to perform any term herein and the other party shall not enforce that term, failure to enforce on that occasion shall not prevent enforcement on any other occasion.

## **19. Governing Law**

19.1 This Contract is made in, governed by and shall be construed in accordance with the laws of Delaware. If the products purchased hereunder are purchased by a Buyer residing in a country other than the United States, then parties agree that the United Nations Convention on Contracts for the International Sale of Goods is hereby excluded in its entirety from this Contract.

## **20. Exports**

20.1 RESURGENT's obligations are subject to the export administration and control laws and regulations of the U.S. government. Buyer certifies that it will not export or re-export the products furnished hereunder unless it complies fully with all liens and regulations of the United States relating to such export or re-export, including but not limited to applicable U.S. Administration rules and regulations. Buyer is responsible for determining the correct export classification of any item at the time of export.

## **21. Federal Contract Terms**

21.1 In any contract entered into with the federal government, or in any contract entered into with any other party, which is a subcontract or at any tier of one entered into with the federal government only those clauses of the federal acquisition regulations which the regulations themselves mandate for a party in RESURGENT's position, given all relevant limitations including RESURGENT's status as a customer or a subcontractor and the size and type of contract, shall apply; and

21.2 RESURGENT retains proprietary rights in all technical data and computer software provided under such contract. Only limited rights or restricted rights are provided to the federal government under the narrowest provision of those rights that the regulations allow, and no rights (including rights of audit of RESURGENT's cost or pricing data) are provided to any other party, including the prime contractor or any higher tier subcontractor.

## **22. Unintended Use in Applications and Lawful Use**

22.1 Products sold by RESURGENT are not designed, intended, or authorized for use in life support, life sustaining, or nuclear applications / equipment where malfunction of the Product can reasonably be expected to result in personal injury, loss of life, or catastrophic property damage (“Unintended Use”). If Buyer uses or sells such Products for use in any such unintended applications, Buyer acknowledges that such use or sale is at Buyer’s own risk and agrees to indemnify and hold harmless RESURGENT from any and all damages, claims, suits, or expense resulting from such use.

22.2 Buyer warrants and represents that all Products purchased by Buyer from RESURGENT shall be used only for or in connection with lawful purposes and that such use shall strictly comply with all applicable laws and regulations of all jurisdictions in which the Goods are purchased, resold, integrated, or used.

## **23. Dispute Resolution**

23.1 If a dispute arises out of or relates to these Terms and Conditions, or the breach thereof, and if the dispute cannot be settled through negotiation, the Parties shall first try in good faith to settle the dispute by mediation administered by the American Arbitration Association under its Commercial Mediation Procedures. Any such dispute not resolved through mediation, shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. Disputes involving international Customers not resolved through mediation shall be settled in an arbitration proceeding in Alpharetta, Georgia USA in accordance with the International Arbitration Rules of the International Centre for Dispute Resolution.

## **24. Entire Agreement and Amendments**

24.1 The terms and conditions herein, constitute the entire Contract between the parties and supersede all previous communications, whether oral or written. Any changes to this contract may be made only upon mutual agreement of the parties in writing.

## **25. Miscellaneous**

25.1 These Terms and Conditions may periodically be changed by RESURGENT and Buyer agrees to periodically review these Terms and Conditions for any changes or amendments and abide by those changes and amendments in subsequent orders.

25.2 Buyer may not assign its obligations or rights under an order or these Terms of Sale without the express prior written consent of RESURGENT.

25.3 Any representation, warranty, course of dealing or trade usage not contained or referenced herein shall not be binding on RESURGENT.

25.4 RELATIONSHIP OF THE PARTIES. Each Party is an independent contractor. Neither Party shall have authority to bind the other except to the extent authorized

herein. Any such Orders between the Parties are not intended to constitute or create a joint venture, partnership, or formal business organization of any kind. The Parties shall act as independent contractors at all times, and neither Party shall act as an agent for the other.