

PRECIX

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Terms and Conditions of Sale

1. **APPLICABILITY.** This Terms and Conditions of Sale constitute the entire agreement between Precix, Inc. ("Seller") and the maker ("Buyer") of the purchase order attached hereto (the "Order") for the products described therein (the "Products"). Except to the extent expressly permitted by Seller, all terms and conditions contained in the Order shall be excluded. Seller shall not be deemed to have waived any provision of this Terms and Conditions of Sale by failing to object to provisions that may appear on, be incorporated by reference in, or attached to the Order. Seller hereby accepts the Order conditional upon the acceptance by Buyer of this Terms and Conditions of Sale. Any revised and follow-on orders accepted by Seller shall be deemed to be an Order and subject to this Terms and Conditions of Sale. Seller's acknowledgement of receipt of the revised or follow-on orders shall not constitute acceptance.

2. **TITLE AND DELIVERY.** Title to the Products shall pass to Buyer when Seller places the Products at the disposal of the Buyer at Seller's facilities. Seller assumes no responsibility for damage or loss to the Products when placed by Seller in transit for delivery to Buyer. Seller shall use reasonable commercial efforts to meet agreed delivery dates. Delivery of Products and performance of Buyer's obligations under this Terms and Conditions of Sale is at all times subject to excusable delays by reason of labor troubles of any kind, civil disobedience, fires, extreme weather conditions or other acts of God, accidents to machinery, shortages of material or equipment, government embargoes, blockades, seizure or freeze of assets or any other acts of government, or any breach of obligations by third parties. Seller reserves the right to charge for any special routing, packing, labeling, handling or insurance requested by the Buyer and agreed to by Seller.

3. **ACCEPTANCE.** Buyer shall upon delivery of Products inspect and either accept or reject such Products within a reasonable period not to exceed thirty (30) calendar days of delivery (the "Acceptance Period"). In the event that Products do not comply with these Terms and Conditions of Sale, Buyer shall promptly notify Seller and provide a specific written explanation of the basis for rejection. Buyer shall be deemed to have accepted any Product delivered hereunder and to have waived any right to reject in the event that Seller does not receive such notice of rejection within the Acceptance Period. Seller shall be afforded a reasonable opportunity to repair or replace non-conforming Product, at Seller's option.

4. **PRICES AND PAYMENTS.** Seller reserves the right to correct any pricing mistakes that deviate from the pricing set forth in any quote. Subject to the "Product Changes" paragraph below, the Order will be billed at the quoted price for sixty (60) calendar days from the date of such quote, and thereafter at the price in effect at the time of shipment.

Certain additional non-recurring set-up, routine maintenance and refurbishment charges for tooling may apply, as well as charges for the construction of new tooling. The quoted price is based on the volume levels previously communicated by the Buyer to the Seller; if volume levels decrease, additional tooling set-up charges may apply before any subsequent orders are processed by the Seller. Prices also do not include applicable taxes, including but not limited to excise, sales or use taxes. Any taxes (other than taxes due on Seller's net income) that are payable on transactions hereunder shall be the responsibility of Buyer. Seller reserves the right to invoice Buyer for any such taxes that are or may become payable by Seller. The Order is subject to increase sufficient to compensate for any tax, excise, duty or levy hereafter enacted and imposed by any government authority, or for any expenses or charges due to war, hostilities, or other disorders, domestic or foreign, whereby the cost of the production or sale of articles to which such prices apply shall be increased. Prices quoted and orders accepted are also subject to a change due to increases in costs of manufacture, processing, or wages, resulting from the operations of any Federal, State, or municipal law or regulatory measure hereafter adopted and/or due to increased costs of labor, services or materials. All quotations are made and the Order is accepted subject to approval of Seller's credit department. Credit terms are net thirty (30) calendar days from date of invoice and payment shall be made in United States currency, unless Seller shall otherwise agree in writing. Seller at all times reserves the right to evaluate Buyer's credit standing and, if Buyer fails to qualify for credit under Seller's criteria, Seller may modify or withdraw credit terms without notice and require guarantees, security or payment in advance for further deliveries of Products or performance hereunder.

In the event that Buyer is delinquent in its payment obligation to Seller, Seller may upon written notice to Buyer withhold future shipments until all delinquent amounts and late interest, if any, are paid and, if such delinquent amounts remain unpaid thirty (30) calendar days after such written notice, then:

Declare Buyer's performance in breach and terminate the Order;

Repossess Products for which payment has not been made;

Withhold performance including, without limitation, future shipments under the Order until all

Deliver future shipments on a cash basis only;

Charge interest on past due amounts at a rate of one and one half percent (1½%) per month or the

Charge inventory carrying charges on Products;

Recover all costs of collection including, without limitation, reasonable attorneys' fees; or

At Seller's option, combine any of the above rights and remedies as may be permitted by applicable law.

The above remedies are in addition to all other remedies available at law or in equity. This "Prices and Payments" paragraph shall survive the acceptance and complete performance of the Order.

5. LIMITED WARRANTY.

Seller warrants that at time of delivery to Buyer, its Products will comply with applicable Seller drawings and will be free from defects in workmanship and material. These warranties shall run to Buyer, its successors and assigns. The warranty shall be valid for twelve (12) months after delivery of the Products or six (6) months after date of first use, which ever occurs first.

Buyer must notify Seller in writing of a failure to comply with applicable Seller drawings or defects in workmanship or material (a "Nonconformance") within the warranty period and return the Product to Seller within thirty (30) calendar days after such discovery. Seller's obligation and Buyer's remedy under this warranty is limited to either repair or replacement of any Product, at Seller's option. All Products repaired or replaced hereunder shall be warranted only for the unexpired portion of the original warranty period. For all purposes hereof, normal wear and tear shall not constitute a Nonconformance. Seller shall not be liable for warranty if the Product has been exposed or subjected to:

Any maintenance, repair, installation, handling, transportation, storage, operation or use which is improper or otherwise not in compliance with Seller's instructions or applicable government regulation
Any alteration, modification or repair by anyone other than Seller or those specifically authorized in
Any accident, contamination, foreign object damage, abuse, neglect or negligence after delivery to
Any damage precipitated by failure of Product not under warranty or by any product not supplied by
Any use of counterfeit or replacement parts that are neither manufactured nor approved by Seller for use
Seller's obligations under this warranty are conditioned on Buyer's obligation to maintain records, which will accurately reflect operating time, and maintenance performed on the Product and establish the nature of any unsatisfactory condition of the Product. Buyer shall, upon the request of Seller, promptly delivery to Seller copies of such records as necessary to substantiate any warranty claims.

THIS WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER WRITTEN OR ORAL, EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE OR USE AND WARRANTIES ARISING FROM COURSE OF PERFORMANCE, DEALING, USAGE OR TRADE, ALL OF WHICH ARE HEREBY EXPRESSLY DISCLAIMED. NO EXTENSION OR EXPANSION OF THIS WARRANTY SHALL BE BINDING UPON SELLER UNLESS SET FORTH IN WRITING AND SIGNED BY SELLER'S AUTHORIZED REPRESENTATIVE.

SELLER EXPRESSLY MAKES NO REPRESENTATIONS AND WARRANTIES THAT: (i) THE PRODUCT COMPLIES WITH THE FEDERAL FOOD, DRUG AND COSMETIC'S ACT AND REGULATIONS THEREUNDER OR (ii) THE PRODUCTS DO NOT INFRINGE OF ANY INTELLECTUAL PROPERTY RIGHTS, EVEN IF SELLER HAS BEEN MADE AWARE OF SUCH INFRINGEMENT.

6. **TOOLING.** Unless otherwise agreed in writing, all tooling, dies, special dies, patterns, patents, jigs, gages, fixtures, drawings, designs, samples, tooling aids, molds and/or any other property furnished by Seller by the Order (the "tooling") is the property of Seller. Seller shall maintain a lien on all tooling and/or material whether purchased from Seller or shipped to Seller by Buyer for any amounts owing by Buyer. Seller agrees that Buyer's tooling in the possession of Seller will be insured against the perils covered by a fire policy with a standard extended coverage endorsement at Seller's expense. Buyer will pay on demand all (i) personal property taxes on any such tooling and/or materials of Buyer in possession of Seller, (ii) sales and use taxes and (iii) excise taxes.

7. **PRODUCT CHANGES.** Seller at all times reserves the right in its sole discretion without consent of Buyer to incorporate changes, additions or improvements to Products, including, but not limited to their design and application, to be delivered hereunder. Any designs or specifications that are modified at the request of Buyer after the date of the quoted price may cause Seller to adjust the quoted price of the Products described in the "Prices and Payment" paragraph above.

8. **CONFIDENTIALITY.** "Proprietary Information" means any information, in whatever form, Proprietary Information may be used only for purposes consistent with the express intent of this Terms and Conditions of Sale. Without limiting the scope of the forgoing, Buyer agrees that it will not: (i) use Seller's Proprietary Information for the manufacture or procurement of products which are the subject of this Order or any similar products, or cause said products to be manufactured by or procured from any other source, or reproduce, redesign or reverse engineer said products, or reproduce said data and information otherwise appropriate them; or (ii) disclose or make available to any third party any Proprietary Information without obtaining Seller's prior written consent. Buyer shall have no duty to protect information that is: (i) developed by Buyer independently or Seller as supported by Buyer's written records; or (ii) rightfully obtained without restriction by Buyer from a third party; or (iii) publicly available other than through the fault or negligence of Buyer; (iv) released without restriction by Seller to anyone as supported by Buyer's written records; or (v) known to Buyer at the time of its disclosure, without an existing duty to protect the information.

9. **LIMITATION OF LIABILITY.**

SELLER'S LIABILITY FOR ANY LOSS OR DAMAGE ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM THE ORDER, OR FROM THE PERFORMANCE OR BREACH THEREOF, OR FROM THE DESIGN, DEVELOPMENT, MANUFACTURE, SALE, DELIVERY, RESALE, REPAIR OR USE OF ANY PRODUCT COVERED BY OR FURNISHED UNDER THIS ORDER SHALL IN NO CASE EXCEED THE CONTRACT PRICE ALLOCABLE TO THE PRODUCT OR PART THEREOF, OR SERVICE THAT GIVES RISE TO THE CLAIM.

NOTWITHSTANDING ANYTHING IN THIS ORDER TO THE CONTRARY, SELLER WILL NOT BE LIABLE FOR ANY SPECIAL DAMAGES, INDIRECT DAMAGES, INCIDENTAL DAMAGES, CONSEQUENTIAL DAMAGES, LOSS OF PROFITS, BUYER OR ANY THIRD PARTY, EVEN IF THE POSSIBILITY OF SUCH DAMAGES HAS BEEN DISCLOSED TO SELLER IN ADVANCE OR COULD HAVE BEEN REASONABLY FORSEEN BY SELLER.

THESE EXCLUSIONS OF TYPES OF DAMAGES AND LIMITATIONS ON THE AMOUNT OF DAMAGES SET FORTH IN THIS ORDER SHALL APPLY REGARDLESS OF THE THEORY OF LIABILITY, WHETHER BASED ON CONTRACT, INDEMNITY, WARRANTY, TORT, NEGLIGENCE, STRICT LIABILITY OR ANY OTHER LEGAL THEORY. THESE EXCLUSIONS OF TYPES OF DAMAGES SHALL BE DEEMED INDEPENDENT OF, AND SHALL SURVIVE ANY FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY UNDER THE TERMS OF THIS AGREEMENT.

10. INDEMNIFICATION. Buyer at its expense will indemnify and hold Seller harmless with respect to every claim that may be brought against Seller for any alleged infringement of any present or future patent, copyright, industrial design right or other proprietary right based on Buyer's activity under an Order, or the manufacture, sale, or use of the Products (i) alone, (ii) in combination by reason of their content, design or structure or (iii) in combination in accordance with Buyer's recommendations, or any alleged infringement of applicable Federal Motor Vehicle Safety Standards under the National Traffic and Motor Safety Act of 1996, as amended. Buyer will investigate and defend or otherwise handle every such claim, and at Seller's request, assist Seller in Seller's investigation, defense, or handling of any such claim. Buyer will pay all expenses and damages or settlement amounts that Seller may sustain by reason of each such indemnified claim. Buyer's obligations will apply even though Seller furnishes all or any portion of the design and specifies all or any portion of the processing used by Buyer.

11. GOVERNING LAW: This Order shall be interpreted in accordance with the laws of the Commonwealth of Massachusetts, U.S.A., exclusive of any choice of laws provisions. Seller and Buyer expressly agree to exclude from this Order the United Nations Convention on Contracts for the International Sale of Goods, 1980, and any successor thereto.

12. TERMINATION OF ORDER: Either Party may terminate any or all unperformed Orders:

By giving written notice if the other Party materially breaches this Order and fails to remedy the breach within ninety (90) calendar days after the non-breaching Party delivers written notice that specifies the grounds for the material breach, except for Buyer's failure to make payment for delivery when, after Without notice if either Party files a petition in bankruptcy for liquidation or reorganization, makes an assignment for the benefit of creditors, consents to the appointment of a receiver, trustee or other custodian for all or a substantial part of its property, is adjudicated bankrupt, fails to cause to be vacated, set aside or stayed within thirty (30) calendar days any court order appointing a receiver, trustee or other custodian for all or a substantial part of its property or ordering relief against it in any involuntary case of bankruptcy or admits in writing its inability to pay its debts as they mature.

13. ASSIGNMENT: Neither Party shall assign any rights nor delegate any obligations under this Order or any portion thereof without the advance, written consent of the other Party, which consent shall not be unreasonably withheld. Any attempt to assign or delegate in violation of this clause shall be void. Notwithstanding the foregoing, Seller may assign this Order in the event of a merger, consolidation or reorganization, or in connection with a sale of all or substantially all of the assets of the business of Seller to which this Order relates.

14. **WAIVER:** Failure by either Party to assert any of its rights under this Order shall not be deemed a waiver of such rights, nor shall any waiver be implied from the acceptance of any payment of service. No waiver of any right shall extend to or affect any other right a Party may possess or to any subsequent similar or dissimilar event.

15. **SEVERABILITY:** If any provision of this Order is determined by an arbitrator or court of competent jurisdiction to be illegal, invalid, or unenforceable, for any reason, then such provision shall be deemed stricken for purpose of the dispute in question, but only to the extent necessary to make the remaining portion of the provision legal, valid and enforceable, if possible, and all other provisions of this Order shall remain in full force and effect.

16. **AUTHORIZED REPRESENTATIVES:** Every material, communication between the Parties relating to the performance or administration of this Order, shall be made in writing and, if to Buyer, to Buyer's authorized purchasing representative or, if to Seller, to Seller's authorized contracts representative.

17. **NOTICES:** All notices required under this Order shall be in writing and shall be deemed received Five (5) calendar days after mailing by certified mail, return receipt requested; or One (1) business day after deposit for next day delivery with a commercial carrier.

18. **ENTIRE AGREEMENT:** The provisions contained herein and incorporated in the Order constitute the entire agreement between the Parties with respect to the subject matter hereof and supersede all previous agreements, communications, or representations, either verbal or written between the Parties hereto. Any oral understandings are expressly excluded. The Order may not be changed, altered, supplemented or added to at any time except by a writing that expressly states a mutual intent to amend the Order and is executed by the authorized representatives of the Parties.