



TAILORED SOLUTIONS.  
TRUSTED SERVICE.  
TOUGHEST APPLICATIONS.

## Offer of Sale

All descriptions, quotations, proposals, offers, acknowledgments, acceptances and sales of Sellers products are subject to and shall be governed exclusively by the terms and conditions stated herein. Buyer's acceptance of any offer to sell is limited to these terms and conditions. Any terms and conditions in addition to, or inconsistent with those stated herein proposed by Buyer in any acceptance of an offer by Seller are hereby objected to. No such additional or different terms and conditions shall become part of the contract between Buyer and Seller unless expressly accepted in writing by Seller. Seller's acceptance of any offer to purchase by Buyer is expressly conditioned upon buyer's assent to all the terms and conditions stated herein, including any terms in addition to, or inconsistent with those contained in Buyer's offer. Acceptance of Seller's products shall in all events constitute acceptance.

### Prices

All quotations by Seller are made subject to acceptance and conditions set forth in this document. All prices quoted are subject to acceptance for a period of thirty (30) days only and may be revoked during this period prior to Buyer's acceptance. Any orders placed with open pricing terms will have pricing applied which is reasonable and customary to the industry. All catalog prices are subject to change without notice.

### Payment

Payment shall be made within 30 days of the date of the invoice for the items shipped. Any special payment terms must be agreed upon in writing by the Seller. Any claims by Buyer for omissions, shortages, shipment discrepancies or claims shall be deemed waived unless the Seller receives notice hereof within thirty (30) days of Buyer's receipt of the shipment.

### Credit Terms

In consideration of credit the Buyer acknowledges that accounts are considered due on the 30th day following date of shipment and agrees to pay interest at the rate of 1 ½% per month (18% per year) on balances not paid before the 31st day following shipment. Should suit or action be instituted in collection of Buyers debt, Buyer hereby agrees to pay costs of collection and/or suit, including but not limited to, reasonable attorney fees and costs of special counsel together with costs and disbursements incurred. Buyer acknowledges these credit terms and agrees that all terms of this agreement shall be binding upon Buyer as long as credit is extended to Buyer.

### Returns

Returned goods or shortage claims must be made within thirty (30) days of receipt by Buyer. No returns or claims will be honored for credit without the proper approval of Seller.

### Delivery

Unless otherwise provided on the face hereof, delivery shall be made F.O.B. Sellers plant, however, risk of loss shall pass to Buyer on Seller's delivery to carrier. Any delivery dates or schedules will be deemed to have been met on delivery to carrier and Seller shall have no liability for any delays in transportation.

### Warranty

Xmek companies guarantee their products to be free from defects in materials and workmanship for a period of thirty (30) days. This warranty comprises the sole and entire warranty pertaining to items provided hereunder. Seller makes no other warranty, guarantee, or representation of any kind whatsoever. All other warranties, including, but not limited to, merchantability, and fitness for purpose



whether express or implied, or arising by operation of law, trade usage, or course of dealing are hereby disclaimed. Notwithstanding the foregoing, there are no warranties whatsoever on items built or acquired wholly or partially, to buyer's designs or specifications.

### **Limitation of Remedy**

Seller's liability arising from or in any way connected with the items sold or this contract shall be limited exclusively to repair or replacement of the items sold or refund of the purchase price paid by Buyer, at Seller's sole option. In no event shall Seller be liable for incidental or consequential or special damages of any kind or nature, including but not limited to lost profits arising from or in any way connected with this agreement or items sold hereunder.

### **Changes or cancellation**

Buyer may request to modify the designs or specifications as well as delivery dates and quantities for the Buyer's convenience, however no such request or cancellation shall become part of the contract between Buyer and Seller unless accepted by Seller in a written amendment to the agreement. Acceptance of any such requested modification or cancellation shall be at the Seller's discretion, and shall be upon such terms and conditions as Seller may require. Special tooling A Non-recurring set-up charge or tooling charge may be imposed for any special tooling, including without limitation, dies, fixtures, molds and patterns acquired to manufacture items sold subsequent to this contract. Such special tooling shall be and remain Sellers 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 contract 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.

### **Taxes**

Unless otherwise indicated on the face hereof, all prices and charges are exclusive of excise, sales, use, property, occupational or like taxes which may be imposed by any taxing authority upon the manufacture, sale or delivery of the items sold hereunder. If any such taxes must be paid by Seller or if Seller is liable for the collection of such tax, the amount thereunder shall be in addition to the amounts for the items sold. Buyer agrees to pay all such taxes or to reimburse Seller therefore upon receipt of its invoice. If buyer claims exemption from any sales, use or other tax imposed by the taxing authority, Buyer shall hold Seller harmless from and against any such tax, together with any interest or penalties thereon which may be assessed if the items are held to be taxable. Seller shall require proof of tax exempt status from Buyer at time of sale.

### **Indemnification**

Seller shall have no liability for infringement of any patents, trademarks, copyrights, trade secrets or similar rights. Seller agrees to hold confidential, any designs, drawings, patterns, materials or other confidential information furnished by Buyer or any other items which become Buyer's property. It is the responsibility of the Buyer to protect Seller from infringement claims, subsequently, Seller shall have no liability for claims of infringement based on information provided by Buyer for manufacture or distribution of items provided hereunder resulting in infringement. If a claim is based on information provided by Buyer or if the design for an item delivered hereunder is specified in whole or in part by Buyer, Buyer shall defend and indemnify Seller for all costs, expenses or judgments resulting from any claim that such item infringes any patent, trademark, copyright, trade secret or similar right.

### **Force Majeure**

Buyer or Seller may cancel or modify this agreement or performance hereunder due to unforeseeable circumstances, or if performance is rendered impossible or impracticable. Seller shall not be liable for delays



or defaults in delivery due to fire, an act of god, labor disputes, governmental order or regulation or other unforeseeable causes beyond its control and without its fault or negligence.

### **Entire agreement**

The terms and conditions set forth herein, together with any amendments, modifications and additional terms and conditions expressly accepted by Seller in writing, shall constitute the entire Agreement concerning the items sold, and there are no oral or other representations or agreements which pertain thereto. This agreement shall be governed by and construed in accordance with the laws and decisions of the jurisdiction in which the office of the Seller from which this agreement originated is located as indicated on the front side of this document.

