

**Pro Mach, Inc.**  
**Purchase Order Terms and Conditions**

- 1. CONTRACT:** These Purchase Order Terms and Conditions apply to the purchase order for goods and services of the division or subsidiary of Pro Mach, Inc. ("Buyer") identified in the Addendum hereto or the purchase order or other correspondence incorporating these Terms and Conditions, which together form the agreement of the parties (this "Order"). This Order constitutes an offer to purchase products and services solely on the Terms set forth herein, and acceptance is limited to such terms. The Terms and Conditions on the purchase order or other correspondence incorporating them shall supersede any inconsistent terms and conditions herein or in any acknowledgement, invoice, correspondence or other documents proposed by Seller identified with this Order ("Seller"). Reference to any form or communication of Seller shall be for reference purposes only and shall not be deemed to be in acceptance of any terms and conditions therein. When accepted, this Order and any documents incorporated by reference shall constitute the entire contract with reference to its subject matter and shall not be altered, amended, supplemented, assigned or cancelled without Buyer's written approval. If any provision contained herein is held by a court or governmental entity of competent jurisdiction to be unenforceable, such provision shall be severed from this Order and the remainder of this Order shall remain in full force and effect and such shall be interpreted and enforced consistent with such revision.
- 2. PRICES AND PAYMENT:** Prices shown on this Order shall apply to all products and services provided by Seller unless otherwise agreed to in writing by Buyer. Unless otherwise provided in this Order, such prices include all applicable federal, state, and local taxes and all charges for freight and insurance to deliver the products and services to the destination specified by Buyer, all of which are Seller's responsibility. Payment and discount dates will be calculated from the date that acceptable products and services and acceptable invoice have been received by Buyer. Payment for products and services shall not constitute acceptance thereof. Buyer may deduct or set-off from any amounts due to Seller, any amount of any reasonable claim Buyer may have against Seller.
- 3. SHIPPING AND DELIVERY:** Seller shall observe any shipping and packaging instructions contained in this Order. In the event Buyer agrees in writing to pay for shipment, Seller shall reroute deliver so as to ensure the lowest tariff rate by a reputable carrier. If shipment is made by higher rated route, or if higher rates are incurred due to improper classification, inaccurate tariff descriptions or other acts of Seller, excess charges will be paid by Seller or deducted from amounts to be paid to Seller. Time is of the essence of this agreement. Seller shall promptly notify Buyer in writing of any delay or of any anticipated delay in delivery, setting forth the cause and estimated length of the anticipated delay. Delivery of non-conforming materials shall be considered non-delivery. Buyer's volume and weight determinations shall control.
- 4. INSPECTION AND RISK OF LOSS:** All products and services shall be received subject to Buyer's inspection and rejection. At its election, Buyer may inspect the goods under this Order at Seller's plant. Acceptance shall not remove Seller's responsibility for any defect or breach of warranty discovered by subsequent inspection, analysis, manufacturing operations, use or otherwise. If requested by Buyer, Seller shall provide a certified report of analysis or test of materials incorporated in any product or service and Seller acknowledges that Buyer, in reliance upon Seller's warranties hereunder, may use the products and services without first testing them. Regardless of real or apparent compliance of the

products with the specifications, Buyer reserves the right to reject or revoke acceptance of any products which do not exhibit the properties contained in any Buyer approved samples. Payment, if any, made for any products or services rejected hereunder shall be refunded promptly by Seller. Any product or service that is defective or not in accordance with any of Seller's warranties, may, at Buyer's sole discretion, be held on behalf of Seller, and at Seller's risk and expense for handling, transportation, and storage, and, of Seller so directs, will be returned at Seller's expense. Buyer at all times may exercise any other rights at law or in equity. No replacement or substitution shall be made for any such product or service unless authorized in writing by Buyer.

**5. INSTALLATION AND WORK ON BUYER'S PREMISES:** If this Order involves work to be done on Buyer's premises then any general service conditions agreed in writing by the parties shall have priority over this Order in the event of a conflict in terms and this Order will incorporate such general conditions. In addition, after the completion of the work, Seller shall leave the work area clean and ready for use and shall remove all tools, scaffolding and surplus materials. In the performance of the work Seller will comply with all safety regulations issued by Buyer and all Buyer's company polices supplied to Seller and will require like compliance by all subcontractors.

**6. WARRANTY:**

(a) Seller expressly warrants that all products, materials, and services supplied herein will strictly conform to the requirements, specifications, samples or other descriptions furnished or specified by Buyer or Seller, be free from contaminants, be adequately packaged and labeled, of merchantable quality free from defects in material and workmanship, fit for the purposes for which purchased and be transferred free from any lien, security interest, or other claim. These warranties shall be assignable by Buyer. Seller will correct all non-confirming products and services and will be responsible for all costs of field repair and return freight incurred by Buyer or Seller in connection with the warranty provided hereunder. All warranties shall survive any inspection or acceptance by Buyer.

(b) Seller also warrants that it will not, without Buyer's prior written consent, materially change the raw materials, composition, manufacturing location or process or test method used to produce the products from those present when Buyer approved the products.

**7. INDEMNITY:** Seller shall indemnify and hold harmless Buyer and all of its subsidiaries, affiliates, agents and employees, and all persons claiming through any of them (including Buyer's customers) from and against all claims, demands, costs (including attorney's fees and liens from laborers, mechanics and materialmen), expenses and direct, indirect, special, incidental and consequential damages caused by or alleged to be caused by, in whole or in part, any goods or services supplied by Seller, or work done for or on Buyer's premises, any breach by Seller of any of its obligations under this Order or any other act, omission or negligence of Seller or any of its subcontractors or suppliers. Buyer shall have the right to retain out of any payment due under this Order, an amount, sufficient to indemnify Buyer completely against such lien or claim. Should there prove to be any such lien or claim after all payments are made, Seller shall refund to Buyer all moneys that the latter may be obligated to pay in discharging any such lien or claim.

**8. FORCE MAJEURE:** Neither party shall be liable for failure or delay in the performance of this Order to the extent caused by circumstances reasonably beyond the control of the party claiming the benefit of this Section.

**9. TERMINATION:**

(a) **Termination in General:** Buyer may at any time, without cause, terminate this Order, in whole or in part, upon written notice to Seller. In the event of such termination of this Order, Buyer shall pay for all products and services delivered and accepted and for the cost incurred by Seller for goods and services in process, not to exceed that part of the price specified herein which is attributable to such cancelled products and services. Such payment shall constitute Seller's sole remedy.

(b) **Termination for Default:** In the event Buyer terminates this Order in whole or in part as a result of Seller's default Buyer reserves all its legal rights and remedies available at law or in equity. Seller shall continue performance of any non-terminated portion of the Order.

**10. PRICE AND SPECIFICATION CHANGES:** Buyer may from time to time by written instructions, or drawings issued to Seller make changes to any aspect of this Order, and the provisions of this Order shall apply to all such changes, additions and modifications. No work, addition or alteration will be paid for unless performed pursuant to and in accordance with Buyer's written change order. If any work or change in work affects the price or the time required for performance, Seller shall notify Buyer thereof within 15 days of any change order and no adjustment in price or schedule shall be binding upon Buyer unless Buyer has agreed in writing to the same. However, nothing herein shall excuse Seller from immediately proceeding with the change.

**11. COMPLIANCE:** Seller certifies that it complies with all applicable federal, state or local ordinance, regulation, statute, rule or order, covering the production, sale and delivery of the products or services specified herein, including but not limited to, all environmental laws, the Fair Labor Standard Act, Equal Opportunity Laws, the Occupational Safety and Health Act of 1970, the Equal Employment Opportunity clause in Section 202 of Executive Order 11246, as amended by Executive Order 11376, and the regulations thereunder, the regulations concerning Affirmative Action for Handicapped Workers issued under the Rehabilitation Act of 1973 in Title 41, Chapter 60, Part 60-741 of the Code of Federal Regulations, and the regulations issued under the Vietnam Era Veterans Readjustment Assistance Act of 1974 in Title 41, Chapter 60, Part 60-250 of the Code of Federal Regulations. All of the foregoing regulations are incorporated hereunder as it fully set forth herein unless this Order is exempted from such regulations by rules, regulations, or orders of the Secretary of Labor. Seller shall furnish Buyer with such evidence of compliance as Buyer may request at any time. Specifically, Seller certifies that any and all chemical substances contained in products sold hereunder have been and shall be reported in compliance with any applicable present and future inventory reporting requirements under the Toxic Substances Control Act.

**12. GOVERNING LAW:** Unless otherwise specified in the Addendum or a writing signed by Buyer, any claim or controversy arising out of or relating to this Contract or to matters of the place of contracting, interpretation, performance, breach, and obligations of the parties will be construed and adjudicated in accordance with the laws of Ohio . The United Nations

Convention on Contracts for the International Sale of Goods (1980) will not apply to this Contract.

**13. DISPUTES:**

(a) **Arbitration:** Unless otherwise specified in the Addendum or a writing signed by Buyer, any claim or controversy arising out of or relating to this Contract or a breach thereof will, upon the request of either party, be submitted to and settled by arbitration in Ohio in accordance with the Commercial Arbitration Rules of the American Arbitration Association (or any other form of arbitration mutually acceptable to the parties involved) then pertaining in Ohio. The decision made pursuant to such arbitration will be binding and conclusive on all parties involved; and judgment upon such decision may be entered in the highest court of any forum, federal or state, having jurisdiction.

(b) **Forum Selection:** Unless otherwise specified in the Addendum or a writing signed by Buyer, any action or legal proceeding of any kind arising out of or relating to this Contract or a breach thereof will be brought exclusively in an appropriate court of competent jurisdiction (state or federal) located in Cincinnati, Ohio.

**14. ASSIGNMENT:** This Order shall not be assigned in whole or in part without Buyer's prior written consent.

**15. INTELLECTUAL PROPERTY:** Seller shall indemnify and hold harmless Buyer from and against any and all loss, liability damages or expense including attorneys' fees incurred by Buyer by reason of any claim or suit for alleged infringement of any copyright, trademark, patent or other proprietary right resulting from or arising in connection with the manufacture, sale, use, performance, or other disposition of any goods or materials furnished hereunder, or the performance of any work hereunder. Seller shall defend any such claim or suit and pay all costs and expenses related or incidental thereto; provided, however, that Buyer shall have the right, at its option, to participate in the defense of any such claim or suit without relieving Seller of any obligations hereunder.

**16. BUYER'S SPECIFICATIONS AND TECHNICAL DATA:** Any specifications drawings, notes, instructions, or technical data or information furnished by Buyer or referred to in this Order shall be part of this Order as if fully set forth herein and shall remain the property of Buyer and be returned to Buyer upon request. Seller shall not, without Buyer's prior written consent, disclose any such document or information contained therein to any party other than those employees of Seller who require the same for the performances of their duties in connection with this Order, or use any such document or information in any other way. Any information disclosed to Buyer shall not be deemed to be confidential.

**17. PERMITS AND LICENSES:** Seller shall obtain at its expense and possess at all times during performance hereunder, all necessary releases, permits, licenses or other authorizations required to fulfill Seller's obligations hereunder. Seller shall give all necessary notices and pay all fees required by law.

**18. FEDERAL GOVERNMENT CONTRACTS:** If the products covered by this Order are to be used by Buyer in whole or in part for the performance of a federal government contract, all applicable provisions of such contract and of the Federal Acquisition Regulations, 48 C.F.R. Chapter 1 (Parts 1-99), or if such federal government contract relates to the Department of Defense, of the Defense Federal Regulations, 48 C.F.R. Chapter 2 (Parts 201-299), are

incorporated herein by reference. Seller shall execute certificates of compliance as required by Buyer.

**19. SUBCONTRACTORS AND INDEPENDENT CONTRACTORS:**

- (a) **Subcontractors:** If this Order involves the use of subcontractors, the names and references of all proposed subcontractors shall be submitted in writing by Seller to Buyer, and Buyer shall have the right to reject such subcontractors which it deems unsatisfactory. Seller shall not subcontract any portion of the work without the written permission of Buyer. Such permission shall not, however, relieve Seller from responsibility for the conduct and work of all subcontractors. Seller, in subcontracting any part of the work shall bind each subcontractor by a contract incorporating all terms, obligations and conditions provided for by this Order, in so far as the same may be applicable to the work of the subcontractor, without in any way creating any contractual relations between such subcontractor and Buyer. Seller shall properly direct and control the subcontractors, being responsible for the correlation of the work of Seller and that of the subcontractors.
  
- (b) **Independent Contractors:** Seller has no authority to hire any persons on Buyer's behalf and each person employed or used by Seller shall be Seller's and not Buyer's employee, servant or agent and further that Seller is performing all of said work as an independent contractor.