

PHILLIPS PRECISION MACHINING (PPM) STANDARD TERMS AND CONDITIONS FOR SALE OF PRODUCTS AND SERVICES

1. **APPLICABLE TERMS.** This Agreement governs the sale of equipment components, parts, and materials provided by PPM ("Products"). Any applicable addenda, these terms, PPM proposal, price quote, purchase order, or acknowledgement issued by PPM for the parties' final agreement ("Agreement"). In the event of a conflict between these documents, precedence shall apply in accordance with the order listed in the previous sentence. PPM's proposal, offer or acceptance is conditioned on Buyer's acceptance of this Agreement. Any additional or conflicting terms in Buyer's request for proposal, specifications, purchase order or any other written or oral communication are not binding on PPM unless separately signed by PPM. PPM's failure to object to Buyer's additional or conflicting terms does not operate as a waiver of any terms contained in this Agreement.
2. **PRICING AND PAYMENT.** Prices and payment terms are: (i) as stated in PPM's proposal, or if none are stated: (ii) PPM's standard prices in effect when PPM receives Buyer's purchase order, or if neither (i) or (ii) apply, then PPM's standard prices in effect when the Products ship.
 - (a) **Payment.** Unless stated in PPM's proposal, all payments are due net thirty (30) days from the invoice date in United States Dollars.
 - (b) **Credit Approval.** All orders are subject to credit approval by PPM. PPM may modify, suspend or withdraw the credit amount or payment terms at any time. If there is doubt as to Buyer's financial condition, PPM may withhold manufacturing or shipment, require cash payments, or require other satisfactory security. PPM may recover shipped Products from the carrier pending such assurances.
 - (c) **Installment Shipment.** Where Products are delivered in shipments or only part of a shipment fails to comply with this Agreement, the Buyer may only reject the non-compliant portion. Buyer will separately pay for each shipment. If PPM holds or stores Products for Buyer, it shall do so at Buyer's sole risk and expense.
 - (d) **Taxes, Shipping, Packaging, Handling.** Unless stated in writing by PPM, PPM's prices exclude charges for freight, unloading, storage, insurance, taxes, excises fees, duties or other government charges related to the Products. Buyer will pay these amounts or reimburse PPM. If Buyer claims a tax or other exemption or direct payment permit, Buyer will provide a valid exemption certificate or permit and indemnify, defend and hold PPM harmless from any taxes, costs and penalties arising from same. PPM prices include the costs of its standard domestic packing only. Any packing deviation, including U.S. Government sealed packing, will be charged to Buyer. Increases, changes (including in application), adjustments or surcharges which may be incurred are for Buyer's account.
 - (e) **Late Payments.** Late payments shall bear interest at an annual percentage rate of twenty percent (20%) or the highest rate allowed by law, whichever is lower.
 - (f) **Disputed Invoice.** If Buyer disputes all or any portion of an invoice, it must first deliver written notice to PPM of the disputed amount and the basis for the dispute within twenty-one (21) days of receiving the invoice. Failure of Buyer to timely notify PPM of any dispute constitutes a waiver of Buyer's claim. If Buyer only disputes a portion of the invoice, Buyer must pay the undisputed portion in accordance with Article 2(a). Upon resolution of the dispute, Buyer must pay the invoice or the remainder of the invoice, plus any accrued interest on the late payment.
 - (g) **Suspension/Termination Right.** PPM may suspend work if an undisputed invoice is more than thirty (30) days past due. PPM may terminate this Agreement if an undisputed invoice is more than sixty (60) days past due. Unless prohibited by law, PPM may also terminate this Agreement immediately in the event of a material adverse change in Buyer's financial condition including, but not limited to, bankruptcy, insolvency, liquidation or similar financial condition.
3. **DELIVERY, TITLE, RISK OF LOSS.** Products will be delivered F.O.B. PPM point of shipment with the title and risk of loss or damage passing to Buyer at that point. Buyer is responsible for all transportation, insurance and related expenses. The related expenses shall include any taxes, duties or documentation fees. PPM may make partial shipments. Any shipping, delivery and installation dates are estimated dates only. PPM is not liable for any loss or expense incurred by Buyer or Buyer's customers if PPM fails to meet its delivery schedule.
4. **DEFERMENT AND CANCELLATION.** Buyer has no right to defer shipment but may cancel this Agreement on thirty (30) days written notice if PPM has not already performed. If Buyer cancels this Agreement, it shall pay all cancellation charges including, without limitation: (i) the full price for any finished Product; (ii) for partially completed product, the portion of the price determined to be due by PPM based on its percentage of completion of the Product; (iii) reasonable overhead and profit; and (iv) any payments due subcontractors and/or suppliers for any materials, components or products ordered which cannot be cancelled, refunded, or redirected for other beneficial use.
5. **TRANSPORTATION AND STORAGE.**
 - (a) When Products are ready for shipment, PPM will: (i) inform Buyer, and Buyer will then promptly give shipping instructions to PPM; (ii) determine the method of transportation and shipment routing, and (iii) ship the Products with freight prepaid by normal transportation. If Buyer fails to provide timely shipping instructions, PPM will ship the Products by normal transportation means to Buyer or to a storage location selected by PPM. Buyer will pay or reimburse any excess transportation charges for special or expedited transportation.
 - (b) If Products are placed into storage, delivery occurs and risk of loss transfers to Buyer when the Products are placed on the carrier for shipment to the storage location. If the Products are to be stored in the facility where manufactured, delivery occurs and risk of loss transfers to Buyer when placed in the storage location.

Buyer will pay all PPM's storage expenses, including but not limited to, preparation for and placement into storage, handling, freight, storage, inspection, preservation, maintenance, taxes and insurance, upon receipt of an invoice(s) from PPM. When conditions permit and upon payment to PPM of all amounts due, Buyer must arrange at its expense, to remove the Products from storage. Buyer bears the risk of loss, damage or destruction to Products in storage.
6. **FORCE MAJEURE/DELAYS.** If PPM's performance is delayed by any cause beyond its reasonable control (regardless of whether the cause was foreseeable), including without limitation acts of God, strikes, labor shortage or disturbance, fire, accident, war or civil disturbance, delays of carriers, cyber-attacks, terrorist attacks, failure of normal sources of supply, or acts or inaction of government, PPM's time of performance will be extended by a period equal to the length of the delay plus any consequences of the delay. PPM will notify Buyer within a reasonable time after becoming aware of any such delay.
7. **BUYER'S REQUIREMENTS.** PPM's performance is contingent upon Buyer timely fulfilling all of its obligations under this Agreement. These obligations include the Buyer supplying all documents and approvals needed for PPM to perform, including but not limited to technical information and data, drawing and document approvals, and necessary commercial documentation. PPM may request a change order for an equitable adjustment in prices and times for performance, as well as for any additional costs or any delay resulting from the failure of Buyer or Buyer's contractors, successors or assigns to meet these obligations.
8. **INDEMNITY.** PPM and Buyer (each as an "indemnitor") shall indemnify the other ("indemnitee") from and against all third-party claims alleging bodily injury, death or damage to a third party's tangible property, but only to the extent caused by the indemnitor's negligent acts or omissions. If the injury or damage is caused by the parties joint or contributory negligence, the loss and/or expenses shall be borne by each party in proportion to its degree of fault. No part of the Product(s) or Buyer's site is considered third party property.

Indemnitee shall provide the indemnitor with prompt written notice of any third-party claims covered by this Article. Indemnitor has the unrestricted right to select and hire counsel and the exclusive right to conduct the legal defense and/or settle the claim on the indemnitee's behalf. The indemnitee shall not make any admission(s) which might be prejudicial to the indemnitor and shall not enter into a settlement without the express permission of the indemnitor.
9. **WARRANTIES.**
 - (a) **Warranties.** PPM warrants that: (i) each Product is free from defects in material and workmanship; (ii) each Product materially conforms to Buyer's specifications that are attached to, or expressly incorporated into this Agreement, and (iii) at the time of delivery, PPM has title to each Product free and clear of liens and encumbrances (collectively, the "Warranties").
 - (b) **Conditions to the Warranties.** The Warranties are conditioned on: (i) no repairs, modifications or alterations being made to the Product other than by PPM or its authorized representatives; (ii) Buyer handling, using, storing, installing, operating and maintaining the Product in compliance with any parameters or instructions in any specifications attached to, or incorporated into this Agreement; (iii) compliance with all generally accepted industry standards; (iv) Buyer discontinuing use of the Product after it has, or should have had, knowledge of any defect; (v) Buyer providing prompt written notice of any warranty claims within the warranty period described below; (vi) at PPM's discretion, Buyer either removing and shipping the Product or non-conforming part thereof to PPM, at Buyer's expense, or granting PPM reasonable access to the Products to assess the warranty claims; (vii) Product not having been subjected to accident (including force majeure), alteration, abuse or misuse; and (viii) Buyer not being in default of any payment obligation.
 - (c) **Exclusions from Warranty Coverage.** The Warranties do not apply to any equipment not provided by PPM under this agreement.

Any Product that is described as being experimental, prototype, or pilot is specifically excluded from the Warranties and is provided to Buyer "as is" with no warranties of any kind. Normal wear and tear is excluded, including any expendable items that comprise part of the Product. PPM does not warrant or guarantee that any Product will be secure from cyber threats, hacking or similar malicious activity.
 - (d) **Warranty Period.** Buyer must provide written notice of any claims for breach of Warranties by the earlier of three (3) months from initial operation of the Product or six (6) months from shipment. Additionally, absent written notice within the warranty period, any use or possession of the Product after expiration of the warranty period is conclusive evidence that the Warranties have been satisfied.
 - (e) **Remedies.** Buyer's sole and exclusive remedies for breach of the Warranties are limited, at PPM's discretion, to repair or replacement of the Product, or its non-conforming parts, within a reasonable time period, or refund of all or part of the purchase price. The warranty on repaired or replaced parts is limited to the remainder of the original warranty period. Unless PPM agrees otherwise in writing, Buyer will be responsible for any costs associated with: (i) gaining access to the Product; (ii) removal, disassembly, replacement, installation, or reinstallation of any equipment, materials or structures to permit PPM to perform its warranty obligations; (iii) transportation to and from the PPM factory or repair facility and (iv) damage to equipment components or parts resulting in whole or in part from non-compliance by the Buyer with Article 9(b) or from their deteriorated condition. All exchanged Products replaced under this Warranty will become the property of PPM.
 - (f) **Transferability.** The Warranties are only transferrable during the warranty period and only to the Product's initial end-user.
 - (g) **THE WARRANTIES IN THIS ARTICLE 9 ARE PPM'S SOLE AND EXCLUSIVE WARRANTIES AND ARE SUBJECT TO THE LIMITS OF LIABILITY IN ARTICLE 10 BELOW. PPM MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OR MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, COURSE OF DEALING AND USAGE OF TRADE.**
10. **LIMITATION OF LIABILITY, NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, PPM IS NOT LIABLE, WHETHER BASED IN CONTRACT WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, INDEMNITY OR ANY OTHER LEGAL OR EQUITABLE THEORY, FOR: LOSS OF USE, REVENUE, SAVINGS, PROFIT, INTEREST, GOODWILL OR OPPORTUNITY, COSTS OF CAPITAL, COSTS OF REPLACEMENT OR SUBSTITUTE USE OR PERFORMANCE, LOSS OF INFORMATION AND DATA, LOSS OF POWER, VOLTAGE IRREGULARITIES OR FREQUENCY FLUCTUATION, CLAIMS ARISING FROM BUYER'S THIRD PARTY CONTRACTS, OR FOR ANY TYPE OF INDIRECT, SPECIAL, LIQUIDATED, PUNITIVE, EXEMPLARY, COLLATERAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, OR FOR ANY OTHER LOSS OR COST OF A SIMILAR TYPE.**

PPM'S MAXIMUM LIABILITY UNDER THIS AGREEMENT IS THE ACTUAL PURCHASE PRICE RECEIVED BY PPM FOR THE PRODUCT THAT GAVE RISE TO THE CLAIM.

BUYER AGREES THAT THE EXCLUSIONS AND LIMITATIONS IN THIS ARTICLE 10 WILL PREVAIL OVER ANY CONFLICTING TERMS AND CONDITIONS IN THIS AGREEMENT AND MUST BE GIVEN FULL FORCE AND EFFECT, WHETHER OR NOT ANY OR ALL SUCH REMEDIES ARE DETERMINED TO HAVE FAILED OF THEIR ESSENTIAL PURPOSE. THESE LIMITATIONS OF LIABILITY ARE EFFECTIVE EVEN IF PPM HAS BEEN ADVISED BY BUYER OF THE POSSIBILITY OF SUCH DAMAGES. THE WAIVERS AND DISCLAIMERS OF LIABILITY RELEASES FROM LIABILITY AND LIMITATIONS ON LIABILITY EXPRESSED IN THE ARTICLE 10 EXTEND TO PPM AFFILIATES, PARTNERS, PRINCIPALS, SHAREHOLDERS, DIRECTORS, OFFICERS, EMPLOYEES, SUPPLIERS, AGENTS, AND SUCCESSORS AND ASSIGNS.
11. **PATENT AND COPYRIGHT INFRINGEMENT.** PPM will, at its option and expense, defend or settle any suit or proceeding brought against Buyer based on an allegation that any Product or use thereof for its intended purpose constitutes an infringement of any Patent Cooperation Treaty country member's patent or misappropriation of a third party's trade secret or copyright in the country where the Product is delivered by PPM. Buyer will promptly give PPM written notice of the suit or proceeding and the authority, information, and assistance needed to defend the claims. PPM shall have the full and exclusive authority to defend and settle such claim(s) and will pay the damages and costs awarded in any suit or proceeding so defended. Buyer shall not make any admission(s) which might be prejudicial to PPM and shall not enter into a settlement without PPM's consent. PPM is not responsible for any settlement made without the prior written consent. If the Product, or any part thereof, as a result of any suit or proceeding so defended is held to constitute infringement or its use by Buyer is enjoined, PPM will, at its option and expense, either (i) procure for Buyer the right to continue using said Product (ii) replace it with substantially equivalent non-infringing Product, or (iii) modify the Product so it is non-infringing.

PPM will have no duty or obligation under the Article 11 if the Product is: (i) supplied according to Buyer's design or instructions and compliance therewith has caused PPM to deviate from its normal course of performance; (ii) modified by Buyer or its contractors after delivery, or (iii) combined by Buyer or its contractors with devices, methods, systems or processes not furnished hereunder and by reason of said design, instruction, modification, or combination a suit is brought against Buyer. In addition, if by reason of such design, instruction, modification or combination, a suit or proceeding is brought against PPM, Buyer must protect PPM in the same manner and to the same extent that PPM has agreed to protect Buyer under this Article 11.

THIS ARTICLE 11 IS AN EXCLUSIVE STATEMENT OF PPM'S DUTIES AND BUYER'S REMEDIES RELATING TO PATENTS, TRADE SECRETS AND COPYRIGHTS, AND DIRECT OR CONTRIBUTORY INFRINGEMENT THEREOF.
12. **CONFIDENTIALITY.**

- (a) Both during and after the term of this Agreement, the parties will treat as confidential all information obtained from the disclosing party and all information compiled or generated by the disclosing party under this Agreement for the receiving party, including but not limited to business information, manufacturing information, technical data, drawings, flow charts, program listings, software code, and other software, plans and projections. Neither party may disclose or refer to the work to be performed under this Agreement in any manner that identifies the other party without advance written permission. However, PPM has the right to share confidential information with its affiliates and subcontractors, provided those recipients are subject to the same confidentiality obligations set forth herein.
- (b) Nothing in this Agreement requires a party to treat as confidential any information which: (i) is or becomes generally known to the public, without the fault of the receiving party; (ii) is disclosed to the receiving party, without obligation of confidentiality, by a third party having the right to make such disclosure; (iii) was previously known to the receiving party, without obligation of confidentiality, which fact can be demonstrated by means of documents which are in the possession of the receiving party upon the date of the Agreement; (iv) was independently developed by receiving party or its representatives, as evidenced by written records, without the use of discloser's confidential information, or (v) is required to be disclosed by law, except to the extent eligible for special treatment under an appropriate protective order, provided that the party required to disclose by law will promptly advise the originating party of any requirement to make such disclosure to allow the originating party the opportunity to obtain a protective order and assist the originating party in so doing.
- (c) It is PPM's policy not to unlawfully or improperly receive or use confidential information, including trade secrets, belonging to others. This policy precludes PPM from obtaining, directly or indirectly from any employee, contractor, or other individual rendering services to PPM confidential information of a prior employer, client or any other person which such employee, contractor, or individual is under an obligation not to disclose. Buyer agrees to abide by this policy.
13. **COMPLIANCE WITH LAWS.** The parties agree to comply with all applicable laws and regulations, including but not limited to those relating to the manufacture, purchases, resale, exportation, transfer, assignment or use of the Products.
14. **CHANGES IN WORK.** No change will be made to the scope of work unless Buyer and PPM agree in writing to the change and any resulting price, schedule or other contractual modifications. If any change to any law, rule, regulation, order, code, standard or requirement impacts PPM's obligation or performance under the Agreement, PPM may request a change order for an equitable adjustment in the price and time of performance.
15. **NON-WAIVER.** Any waiver by a party of strict compliance with this Agreement must be in writing, and any failure by the parties to require strict compliance in one instance will not waive its right to insist on strict compliance thereafter.
16. **MODIFICATION OF TERMS.** This Agreement may only be modified by a written instrument signed by authorized representatives of both parties.
17. **ASSIGNMENT.** Neither party may assign all or part of this Agreement, or any rights or obligations under this Agreement, without the prior written consent of the other; but either party may assign its rights and obligations, without recourse or consent, to any parent, wholly owned subsidiary, or affiliate or affiliate's successor organization (whether as a result of reorganization, restructuring or sale of substantially all of a party's assets). However, Buyer shall not assign this Agreement to: a competitor of PPM; an entity in litigation with PPM, or an entity lacking the financial capability to satisfy Buyer's obligations. Any assignee expressly assumes the performance of any obligation assigned. PPM may grant a security interest in this Agreement and/or assign proceeds of this Agreement without Buyer's consent.
18. **APPLICABLE LAW AND JURISDICTION.** This Agreement is governed by and construed in accordance with the laws of the State of Delaware, without regard to its conflict of laws principles. The application of the United Nations Convention on Contracts for the International Sale of Goods is excluded. BOTH PPM AND BUYER KNOWINGLY, VOLUNTARILY AND IRREVOCABLY WAIVE ALL RIGHTS TO A JURY TRIAL IN ANY ACTION OR PROCEEDING RELATED IN ANY WAY TO THIS AGREEMENT. Each party agrees that claims and disputes arising out of the Agreement must be decided exclusively in a federal or state court of competent jurisdiction located in a state in which PPM maintains its principal place of business. Each party submits to the personal jurisdiction of such courts for the purpose of litigating any claims or disputes.
19. **SEVERABILITY.** If any provision of this Agreement is held invalid, illegal or unenforceable, the remaining provisions will not in any way be affected or impaired. A court may modify the invalid, illegal or unenforceable provision to reflect, as closely as possible, the parties' original intent.
20. **EXPORT/IMPORT COMPLIANCE.** Buyer acknowledges that PPM is required to comply with applicable export/import laws and regulations relating to the sale, export, import, transfer, assignment, disposal and use of the Products, including any export/import license requirements. Buyer agrees that Products will not at any time directly or indirectly be used, exported, imported, sold, transferred, assigned or otherwise disposed of in a manner which will result in non-compliance with any export/import laws and regulations. PPM's continuing performance hereunder is conditioned on compliance with such export/import laws and regulations at all times.
21. **PRODUCT RETURNS.** Prior to the return of any Product to PPM, Buyer must identify the Product or portion thereof and obtain written authorization and shipping instructions from PPM. PPM has the right, in its sole discretion, to permit or reject any such return. PPM's authorization to return any Product to PPM does not relieve Buyer of its obligation to pay for such Product. Upon receipt, inspection, and acceptance of the Product by PPM, PPM will issue a credit memo to Buyer, less applicable re-stocking fees. PPM reserves the right to reject any hazardous material.
22. **NUCLEAR.** Unless expressly authorized in writing by PPM, the Products must not be used in or in connection with a nuclear facility or application. If Buyer uses any Product in connection with any nuclear facility or activity, it does so at its own risk and Buyer will indemnify, defend and hold PPM harmless, and waives and will require its insurers to waive all right of recovery against PPM for any damage, loss, destruction, injury or death resulting from a "nuclear incident," as defined in the Atomic Energy Act of 1954, as amended, whether or not due to PPM's negligence. PPM's consent to Buyer's use of the Product in connection with any nuclear facility or application will be subject to additional terms and conditions that PPM deems necessary to protect its interests.
23. **SURVIVAL.** The articles titled "Patent and Copyright Infringement," "Limitation of Liability," "Confidentiality," "Delivery, Title, Risk of Loss," "Export/Import Compliance," and "Nuclear" survive termination, expiration or cancellation of this Agreement.