

## **WOLFE MACHINE, Inc.**

### **TERMS AND CONDITIONS OF PURCHASE**

1. **ACCEPTANCE.** This order, inclusive of the terms on the face hereof, is the exclusive agreement between the parties, subject to the terms and conditions herein and including any documents incorporated herein by reference. Seller's acceptance of this order shall be deemed to occur either through commencement of performance under this order or acknowledgment of this order. Additional or different terms contained in Seller's acknowledgment or any other documentation of Seller shall be void and of no effect unless accepted in writing by Buyer. No change in, modification of or revisions of this order shall be valid unless in writing signed by Buyer. Notwithstanding the forgoing, terms on the face of this order shall prevail over any conflicting terms herein. None of any past practice, industry standards, course of dealing or usage of trade shall constitute a modification of any term or condition contained herein, nor shall same add any term not contained herein. **SELLER MAY NOT CHANGE MATERIAL OF MANUFACTURE, SOURCES OF SUPPLY, MANUFACTURING PROCESS OR MANUFACTURING LOCATION WITHOUT THE PRIOR WRITTEN CONSENT OF BUYER.** Except as otherwise disclosed to Buyer, Seller represents that there exists no claims, actions, litigations, or other such matters involving the Seller that in any way would affect its ability to perform the obligations under this order.

2. **CHANGES.** Buyer may change this order at any time by written notice to Seller and Seller shall comply with such change notice. If such changes result in an increase or decrease in Seller's cost or in the time for performance, an equitable adjustment in the price and time will be made by the parties through written agreement, provided a request for adjustment is made by Seller within 10 days after receipt of such change notice. Upon notice to Seller, Buyer may deduct from the amount due Seller under this order either damages for any breach of this order or amounts otherwise due Seller from Buyer, irrespective of whether the deduction is related to the goods or services covered by this order.

3. **DELIVERIES.** Time and quantities are expressly made the essence for this order, and Buyer reserves the right to terminate, without penalty, this order as to any or all items if delivery is not made as required.

4. **WARRANTY.** In addition to all warranties implied in fact or at law, (including the implied warranties of merchantability and fitness for a particular purpose), Seller expressly warrants that all items and /or services furnished hereunder will be free from defect in materials and workmanship, conform strictly to all specifications and requirements of this order, and be free from design defects. If there is a breach of this warranty, Buyer, in addition to any other rights it may have, may return such items, at Seller's expense, for repair, replacement, refund or credit at Buyer's option. Refund or credit amounts shall include the price of the item plus the amount of any costs associated with uninstalling or otherwise isolating the defective part. All warranties shall run to Buyer and its customers, and shall survive acceptance, subsequent use and/or resale or other disposition of the items or services, as well as payment therefore, by Buyer.

5. **INSPECTION.** All items are subject to inspection and test by Buyer at destination and in any event prior to acceptance. Payment for items or services shall not constitute final acceptance. Acceptance of any items shall not be deemed to alter or affect Buyer's rights or the Seller's obligations under the Warranty clause.

6. **BUYER'S PROPERTY.** All designs, tools, patterns, drawings, specifications or other information and all reproductions thereof, and any other property furnished to Seller by Buyer, or paid for by Buyer, are proprietary and confidential and shall be the property of Buyer. Seller shall use Buyer's property for no other purpose than to fill Buyer's orders, and Seller shall not reproduce, disclose or use such property in the production, manufacture or design of any items for any other purchaser or for the manufacture of larger quantities than those specified by Buyer, except with the prior written consent of Buyer. All of Buyer's property is subject to removal from Seller's facility at any time upon Buyer's demand. Seller shall be liable for all loss of, damage to or destruction of Buyer's property and Seller shall, unless otherwise directed in writing by Buyer, insure at Seller's expense such property in the amount equal to the replacement cost thereof.

7. **INSURANCE.** Seller shall, prior to commencement of performance, transmit to Buyer a certificate of insurance affirming that Seller has the following types of insurance and minimum coverage amounts: (a) Statutory worker's compensation and occupational disease; (b) Employer's liability with limits of \$500,000; (c) General liability, including contractor's protective liability, products-completed operations and blanket contractual liability for both personal injury and property damage with limits of \$2 million, occurrence form; (d) Automobile liability, including non-owner automobile liability for both personal injury and property damage with limits of \$1 million, and (e) Umbrella/excess liability providing additional insurance over the above employers liability, general liability and auto liability with limits of \$3 million. This certificate of insurance shall name Buyer as an additional insured and contain a clause reading as follows: "The insurance provided by these policies shall not be materially changed or cancelled without at least 30 days prior written notice being given to the appropriate Wolfe Machine Buyer. At Buyer's written request, Seller shall maintain greater coverage amounts or other types of insurance.

8. **SUBCONTRACTING.** In the event Seller must contract a third party in performance of this order, Seller must receive written authorization from the organization prior to work performed. In addition, Seller agrees to enter into a written agreement with third party that obligates third party to be bound by and comply with the conditions set forth herein, inclusive of all government regulations applicable and referenced herein. At Buyer's request, Seller shall provide Buyer with a copy of such written agreement.

9. **PATENTS.** Seller warrants that the sale, manufacture or use of any or all items delivered hereunder, or the services performed by Seller hereunder, shall not infringe any patent or other intellectual property right of any third party. Seller shall, at its own expense, defend any action, suit or claim in which such an infringement is alleged, and Seller shall indemnify and hold harmless Buyer and/or its customers from any loss, damage or liability arising from any claim of such infringement, including any special, consequential and indirect damages so arising.

10. **PRICE.** Except as otherwise set forth on this order, the price includes all applicable federal, state and local sales, use and other taxes, duties and fees. The price to be paid for the items or services covered by this order shall in no event exceed the applicable maximum price, if any, established by Government regulation, and any provision or condition of the order which is in violation of any such regulation shall be of no effect. Seller warrants that the price for this order is equal to or less than the lowest price offered by Seller to any of its customers for comparable items at comparable quantities.

11. **TERMINATION.** Buyer may terminate this order in whole or in part at any time by written notice to Seller. Upon receipt of such notice or at the time specified there in, if any, Seller shall immediately discontinue all work under the order, shall incur no further costs of performance and shall terminate all related orders and subcontracts given by Seller for performance. If made exclusively for Buyer, Seller will then deliver and Buyer will accept and pay for at the original purchase price all items then completed and ready for delivery in final form and according to specification. If any uncompleted items are for use by Buyer in fulfilling a contract with another party that is subject to termination, settlement shall be made on the basis of and by analogy to the procedures provided by Buyer's contract with such other party; otherwise on the basis of and by analogy to Government FAR termination procedures. If dispute shall arise to any sum claimed by Seller, it shall be determined from an audit of Seller's books and records by a certified public accountant selected by Seller and approved by Buyer. In no event shall Buyer be liable for any loss of profit or for any incidental, indirect or consequential damages or losses incurred by Seller as a result of such termination.

12. **LABOR DISPUTES.** If an actual or potential labor dispute delays or threatens to delay Sellers performance under this order, Seller shall immediately give notice thereof to Buyer. Such notice shall include all relevant information with respect to such dispute.

13. **FORCE MAJEURE.** Neither party shall be liable for defaults or delays due to acts of God or any government or governmental agency, fires, floods, accidents or other unforeseeable events beyond its reasonable control and not due to its fault or negligence. Each party shall notify the other in writing of the cause of such delay, and the expected period of such delay within five (5) days after the beginning thereof.

In the case of delays impacting Seller's performance under this order, Buyer reserves the right to terminate the order in accordance with the provisions of Paragraph 11 above.

14. GOVERNMENT CONTRACTS. When government flowdown is noted on this order, the applicable referenced Government clauses and any additional clauses which the Government makes mandatory for a contractor under a Government contract to include in its subcontracts thereunder will apply to this order.

15. ASSIGNMENT. Neither this order nor any rights and obligations herein may be assigned by Seller nor may Seller delegate performance of any of its duties hereunder without the prior written permission of Buyer.

16. COMPLIANCE WITH LAWS. Seller warrants and hereby certifies that in the performance of this order, Seller shall comply, and shall cause all items or services furnished hereunder to comply with all current governmental and safety constraints on restricted, toxic, and hazardous materials as well as environmental, electrical, and electromagnetic considerations applicable to the country of manufacture and sale. In addition, Seller shall comply, and shall cause all items or services furnished hereunder to comply with the Fair Labor Standards Act of 1938, as amended, and Seller agrees that this certification may be considered as a certificate contemplated by that Act. Seller further warrants and certifies that its performance of this order and the items and services furnished hereunder shall be in compliance with all applicable federal, state and local laws, rules, regulations, standards and orders, including, without limitation, the Equal Opportunity Clause in Section 202 of Executive Order 11246 of September 24, 1965, as amended; the Affirmative Action provisions referenced in the regulations at 41 CFR Parts 60-1 through 60-250, and Section 402/503 and the regulations at 41 CFR Parts 60-250 and 60-741; and the provisions of the Toxic Substances Control Act of 1976, as amended.

17. OSHA COMPLIANCE. Seller warrants and certifies that the items covered by this order shall be in compliance with the provisions of the Federal Occupational Safety and Health Act of 1970 (OSHA), as amended; and regulations thereunder at the time of shipment by Seller; or upon completion of, if installed by Seller; or upon assembly by Buyer, in accordance with Seller's instructions. Where services are being provided, Seller shall perform the services in a manner so as to comply with the applicable provisions of OSHA and regulations thereunder. Seller further agrees to defend, indemnify and hold Buyer harmless for any loss, damage, fine, penalty or any expense whatsoever as a result of Seller's failure to comply with OSHA and any standards or regulations issued thereunder.

18. CONFIDENTIALITY. Any information disclosed by Buyer to Seller incident to the performance of this order, including but not limited to information related to pricing, volumes or the financial terms of the order and the existence of this order itself is disclosed in confidence for the sole and exclusive use of Seller. Seller shall not publish or otherwise disclose such information without the express written consent of Buyer. In the absence of a signed agreement to the contrary, no information disclosed by Seller to Buyer shall be considered confidential.

19. GOVERNING LAW. This order shall be construed, interpreted and controlled by the laws of the Commonwealth of Pennsylvania, and all claims arising out of or related to the parties' relationship created by this order, whether in contract, tort or otherwise, shall be governed and decided pursuant to the laws of the Commonwealth of Pennsylvania. Seller agrees to subject itself to the courts of said jurisdiction and that such venue shall be exclusive regarding disputes arising out of this order.

20. SEVERABILITY. Should any part of this order be deemed invalid by court of law, it shall not constitute an invalidation of any other part of this order, which shall otherwise remain in effect. Additionally, Buyer's failure to insist on performance of any of the terms or conditions herein or to exercise any right or privilege or Buyer's waiver of any breach hereunder shall not thereafter waive any other terms, conditions, rights or privileges.

21. SURVIVAL. The following clauses survive in perpetuity cancellation, termination, completion or expiration of this order: 4. Warranty; 6. Buyer's Property; 9. Patents; 11. Termination; 17. OSHA Compliance; 18. Confidentiality; and, 19. Governing Law.

22. USE OF BUYER'S NAME. Seller shall not in any advertising, sales promotion materials, press releases or any other publicity matters use the name of Buyer, Buyer's parent, any affiliate or subsidiary of Buyer or any variation thereof or language from which the connection of said names may be implied without Buyer's prior written approval.

23. AUDIT RIGHTS. For any reason determined by Buyer, including without limitation quality control and pricing, Buyer may inspect Seller's manufacturing facilities as well as review and copy, upon its request, any and all books, records and information of Seller relating to the items provided hereunder. Seller shall maintain the books, records and information (including but not limited to production and quality records) relating to the items provided hereunder for a minimum of ten (10) years after delivery and acceptance of items, unless a longer period is specified by a clause on the face hereof.