

**TWIN CITY DIE CASTINGS, INC.**  
**TERMS AND CONDITIONS OF SALE**  
**Last revised 08/07**

1. **Terms.** These terms and conditions of sale and the coversheet (“Coversheet”), the mutually agreed upon specifications of Buyer (including the part print and quality documentation, where applicable) (collectively “Specifications”), any nondisclosure agreement between the parties, and any other documents/materials expressly referred to in this document (collectively, the “Terms”) are an offer by TCDC to Buyer. Buyer accepts the Terms by: (a) executing and returning the Terms or delivering to TCDC a purchase order, forecast or formal written acknowledgement to the Terms, (b) accepting delivery of Samples (defined below) or Castings (defined below), (c) paying the price for the Tooling (defined below), Samples or Castings set forth in the Coversheet, or (d) any other statement, act or course of conduct of Buyer which constitutes acceptance under applicable law, whichever comes first. Any counteroffer or proposed material addition to or supplement of or material variation to the terms and conditions of the Terms is hereby expressly objected to and rejected. If the Terms are responsive to a prior offer by Buyer, then the Terms will be deemed an acceptance of such offer limited to the material terms and conditions stated in the Terms, and any material additional or supplemental terms or any material variance from the terms and conditions of the Terms are expressly objected to and rejected. The parties acknowledge that, because Tooling may be ordered from TCDC separately from Castings, these Terms may govern the Tooling, Samples and/or Castings as specified in the Coversheet, and Tooling ordered hereunder may be used to make Samples and Castings separately ordered by Buyer.

2. **Tooling.** Buyer will buy, and TCDC will manufacture, have manufactured, source and sell, as applicable, the tooling and dies (each is “Tooling”) ordered by Buyer for use in manufacturing the Samples and Castings ordered hereunder or under separate terms between the parties. Tooling purchased from TCDC will remain in TCDC’s possession and control and will be held without charge for use solely for Buyer’s benefit. TCDC will not be liable for any injury or damage suffered by the Tooling, as a result of any cause whatsoever, while in TCDC’s possession and control. Worn out or broken Tooling and inserts will be replaced at Buyer’s discretion and cost; provided that TCDC will not be in default for failure to manufacture Samples and Castings after notice to Buyer that Tooling or inserts need to be replaced or restocked. When TCDC receives no orders for Samples or Castings to be manufactured using particular Tooling for 3 consecutive years, the applicable Tooling will be considered as of no value to Buyer and may be disposed of by TCDC in any manner, after giving Buyer 30 days written notice at Buyer’s last known address. Tooling to be removed from TCDC’s premises will be subject to an additional payment by Buyer to TCDC of 25% of the original Tooling cost if less than 50% of the estimated Tooling life has been used in production of Samples and Castings by such Tooling. TCDC will perform normal maintenance on the Tooling at its expense, and may improve the Tooling at its discretion for performance purposes.

3. **Castings.** Buyer will buy, and TCDC will manufacture and sell, using the Tooling where appropriate, the castings (each a “Casting”) ordered by Buyer in accordance with the Specifications. The Specifications may include the part prints agreed upon by the parties and the quality criteria agreed upon by the parties for the Castings, which may be from zero defect criteria or ppm levels of agreement. Buyer grants TCDC the right to use the Specifications for the purposes set forth herein.

4. **Samples.** For ordered Castings, TCDC will submit sample Castings (“Samples”) using the Tooling in accordance with the Specifications for Buyer’s testing. Rejection by Buyer of the submitted Samples may be based only upon failure of the Samples to conform to the Specifications; in the event of any such rejection, TCDC, without incurring any liability on its part, will be allowed a reasonable time to review and recast and resubmit conforming Samples. If Buyer fails to reject Samples in writing (stating the reasons for rejection) within 10 days of receipt thereof, the Samples will be deemed to have been accepted. After acceptance of the Samples, the Buyer’s part print will be revised by the Buyer, if necessary, so as to conform to the accepted Samples, and the parties shall mutually agree on the part print to be

used thereafter. Buyer will be wholly liable for all materials, work in process, purchased parts, labor and other expenses incident to any changes in design of the Castings requested by Buyer, after approval of Samples.

5. **Price.** Prices for the Tooling are specified on the Coversheet and are effective for the period specified on the Coversheet. Prices for the Samples and Castings on the Coversheet are estimated and based upon TCDC’s current cost for the alloy to be used in the applicable Samples or Casting. Net invoice amounts will reflect TCDC’s cost for the alloy specified at time of shipment, which cost may vary (higher or lower) from the costs set forth on the Coversheet, due to market fluctuation. Net invoice amounts will also be adjusted in accordance with the actual weight of each Sample or Casting, which may vary from original estimate. TCDC also reserves the right to change any Sample or Casting price upon written notice to Buyer. Prices at time of shipment are based on the total quantity ordered but are subject to retroactive increase to the price that would apply for a lesser quantity if the quantity originally ordered is reduced prior to completion of the order. If the quantity ordered is reduced, the quantity produced in excess of Buyer’s scheduled release will be subject to cancellation charges. Inserts that are to become an integral part of Samples or Castings, if furnished by TCDC, will be included as part of the price for the Samples or Castings. If inserts are furnished by Buyer to TCDC, TCDC may use the inserts for making the Samples and Castings and a minimum of 10% spoilage will be permitted. Buyer will pay, or reimburse TCDC for, all amounts due for freight, insurance and other shipping expenses relating to the Tooling, Samples and Castings.

6. **Payment.** Buyer will pay TCDC the price for Tooling, Samples and Castings, without setoff or deduction. Unless otherwise stated on the Coversheet, payment terms for Tooling are due upon receipt, and Samples, Castings and associated expenses are net 30 days from date of TCDC’s invoice. Prices are, and all payments will be made, in US Dollars. Prices exclude all federal, state, or local taxes, and therefore such prices are subject to increase in the amount of any such tax (excluding tax on net income) that TCDC may be required to collect or pay upon the sale or delivery of the Tooling, Samples and Castings. TCDC may cancel, suspend or reschedule deliveries of Tooling, Samples and Castings, without liability, if Buyer fails to make any payment when due. Past due amounts bear interest at a rate of one and one half percent (1 1/2%) per month or at the maximum rate allowed by law, whichever is less from the date on which such amounts become overdue until paid in full. TCDC’s rights under this section will be in addition to all other rights and remedies available to TCDC upon Buyer’s default. Buyer will be liable for all expenses attendant to collection of past due amounts, including attorney’s fees. Title to the Tooling, Samples and Castings shall stay with TCDC until TCDC receives payment in full for such Tooling, Samples and Castings.

7. **Force Majeure.** TCDC will not be liable for any delays in performance or delivery, due, in whole or in part, directly or indirectly, to an event of force majeure, including fire, act of God, flood, war, riots, strike, lockout, injunction, inability to obtain fuel, power, raw materials, supplies or components, labor, container or transportation facilities, accident, breakage of machinery or apparatus, national defense requirements, retooling, upgrading of technology, or any other circumstance beyond TCDC’s reasonable control. If, in the event of a force majeure, TCDC is unable to supply the total demand for Tooling, Samples and/or Castings, TCDC may allocate its available resources among itself and its customers in an equitable manner. Deliveries suspended because of a force majeure may be cancelled by TCDC, without liability.

8. **Delivery Terms.** Unless otherwise stated on the Coversheet, all deliveries will be made F.O.B. TCDC’s plant and risk of loss will transfer to Buyer upon delivery to the carrier. All quoted shipping schedules are approximate and will depend upon approval of Samples. Upon approval of Samples, TCDC will schedule shipment of the Castings at a rate approximately equal to TCDC’s and the Tooling capacity, unless otherwise agreed. Unless otherwise instructed, selection of carrier and routing of all shipments will be at TCDC’s discretion. Buyer will pay/reimburse TCDC for all costs arising

from changes to scheduled delivery dates requested by Buyer, including without limitation added cost of production (plus profit) which might be incurred because of, but not limited to, overtime work or outside labor cost, and any charges for warehousing, trucking, and other expenses incident to such changes. A variation in quantity of Castings delivered not to exceed plus or minus ten percent of the amount agreed upon will be considered to be in compliance with the Terms.

9. Inspection of Castings. Buyer must inspect delivered Castings and report claims for any damages or shortages in writing within five days of delivery or the Castings shall be deemed irrevocably accepted and such claims shall be deemed waived, except as provided in Section 10. In the event of source inspection by Buyer, TCDC reserves the right to designate the place within the plant where inspection may be performed and to deny access to areas and processes considered proprietary to TCDC. If TCDC verifies any nonconformity, Buyer may return the individual shipment for replacement; providing, however, that TCDC may elect to pay Buyer at prevailing rates for individual inspection of all Castings in the shipment in order to determine the exact number of nonconforming Castings, and in such event, only said nonconforming Castings may be returned for replacement. Buyer will not return Castings without receiving a return material authorization ("RMA") number issued by TCDC.

10. TCDC's Limited Warranty and Exclusive Remedy. TCDC warrants to Buyer that the Castings will conform to the applicable Samples and Specifications upon delivery. Any claims for breach of the foregoing warranty shall only be valid if Buyer makes such claim within 30 days of the date of shipment of the Casting to which the claim relates, by notifying TCDC's Quality Department in writing (stating the breach of warranty) and obtaining an RMA number for the return of the Castings. Buyer's exclusive remedy and TCDC's sole liability for any breach of the foregoing warranty shall be for TCDC, at TCDC's sole option, to repair or replace the nonconforming Casting, or refund to Buyer the purchase price paid by Buyer for the nonconforming Casting. The warranty service shall be performed at TCDC's plant. In order to receive the warranty service, Buyer must return the nonconforming Casting within 30 days of notification of the claim from Buyer hereunder. If TCDC determines that the original Castings were not nonconforming, Buyer shall reimburse TCDC for all costs of handling, transportation and repairs at TCDC's prevailing rates. All nonconforming Castings returned under this warranty which are replaced or for which a refund is given to Buyer shall become TCDC's property. Any repair or attempt to repair Castings by anyone other than an authorized representative of TCDC automatically voids any warranty on those Castings.

11. Disclaimer. THE LIMITED WARRANTY SET FORTH IN SECTION 10 IS IN LIEU OF ALL OTHER WARRANTIES FOR THE SAMPLES, TOOLING AND CASTINGS, TCDC MAKES NO WARRANTY WHATSOEVER AS TO SAMPLES AND TOOLING, AND THE WARRANTY SET FORTH IN SECTION 10 DOES NOT EXTEND TO THE SAMPLES AND TOOLING, WHICH ARE PROVIDED ON AN AS IS BASIS. TCDC HEREBY EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR PARTICULAR USE.

12. Buyer's Warranty and Indemnification. Buyer warrants that the Specifications do not infringe the rights of any third party, including without limitation, any intellectual property rights. Buyer will indemnify and hold harmless TCDC and its suppliers, and their respective successors and assigns, employees, directors, shareholders, officers and agents, from all losses, claims, damages, expenses or liabilities of any kind (including attorney's fees and court costs) resulting from or arising out of (a) breach of the foregoing warranty; or (b) any use of the Tooling, Samples or Castings.

13. Limitations on Liability. TCDC shall not be liable for any loss or damage caused by delay in furnishing the Tooling, Samples or Castings. UNDER NO CIRCUMSTANCES SHALL TCDC BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, COLLATERAL, SPECIAL, PUNITIVE, TREBLE, EXEMPLARY OR INCIDENTAL DAMAGES (INCLUDING, WITHOUT LIMITATION, LOSS OF PROFITS OR GOODWILL), WHETHER SUCH CLAIM IS BASED ON CONTRACT, NEGLIGENCE, TORT, WARRANTY OR ANY OTHER BASIS, UNDER OR AS A

RESULT OF THESE TERMS OR THE TOOLING, SAMPLES OR CASTINGS, IRRESPECTIVE OF WHETHER TCDC HAS BEEN ADVISED OF THE POSSIBILITY OF ANY SUCH LOSS OR DAMAGE. IN NO EVENT SHALL TCDC'S AGGREGATE LIABILITY UNDER OR AS A RESULT OF THE TERMS EXCEED THE TOTAL AMOUNTS ACTUALLY PAID BY BUYER FOR THE TOOLING AND CASTINGS PURCHASED UNDER THE TERMS. The parties agree that the limitations on liability set forth in the Terms are independent of any exclusive or limited remedies, and shall survive and apply even if such remedies are found to have failed of their essential purpose. No action, regardless of form, arising out of the transactions under the Terms may be brought by Buyer more than 1 year after the events which gave rise to the cause of action occurred.

14. Termination/Cancellation. Without limiting TCDC's right to cancel, suspend or reschedule otherwise set forth herein, TCDC may terminate the Terms or orders placed hereunder with notice to Buyer if Buyer materially breaches the Terms and such breach continues for a period of 20 days after receipt by Buyer of written notice from TCDC specifying such breach. No order for Samples, Castings or Tooling under the Terms may be cancelled or terminated by Buyer except as follows: (a) Buyer may cancel without cost, penalty or obligation, any part of an order for Castings, so long as Buyer gives written notice of cancellation 90 days prior to the scheduled shipment date for the applicable Castings; or (b) Buyer may cancel otherwise only upon written notice and payment to TCDC of TCDC's full cost and expenses for the cancelled Samples, Castings and/or Tooling, (plus 15%) computed in accordance with TCDC's standard practice of all work in process including but not limited to any labor used, Samples developed and any raw materials, or supplies used or for which commitments have been made by TCDC in connection therewith. Buyer shall also pay the amounts specified in (b) to TCDC in the event that TCDC terminates or cancels under this section or Sections 5 or 6. Notwithstanding any termination or cancellation, Buyer will pay at contract price for all Tooling, Samples and Castings completed at the effective date of cancellation or termination. Sections 1, 5, 6, 11, 12, 13, 14, 15 and 16 shall survive any termination or cancellation. TCDC's failure to deliver, or nonconformity of, any installment of the Terms shall not be a breach of the entire Terms.

15. Confidential Information. The nondisclosure agreement between the parties will govern the protection of any confidential information disclosed by either party hereunder. If the parties have not entered into a separate nondisclosure agreement, then Buyer agrees that all nonpublic information furnished hereunder to Buyer by TCDC is proprietary to TCDC and such information shall be held in confidence and shall not be used or disclosed by Buyer without TCDC's prior written consent, except for the fulfillment of the Terms. Buyer shall enforce against its employees, contractors and agents these obligations of confidentiality. Buyer shall return all such information and any copies thereof to TCDC upon termination or cancellation of the Terms.

16. General. The Terms constitutes the final, complete, exclusive and entire agreement between the parties and supercedes all prior or contemporaneous agreements, written or oral, regarding the subject matter of the Terms. The Terms are governed by Minnesota law, excluding its conflict of laws provisions. The parties consent to the exclusive personal and subject matter jurisdiction of the federal and state courts of the State of Minnesota sitting in Ramsey County in any dispute arising under the Terms. Buyer may not assign or subcontract its rights or obligations under the Terms without TCDC's express written consent. TCDC may freely assign its rights and obligations under the Terms. TCDC may subcontract any of its obligations hereunder. Prohibited assignments are null and void. The Terms may only be modified or provisions waived by a writing signed by both parties. No failure or delay to enforce a provision will be deemed a waiver thereof. The parties are independent contractors and not agents of each other. If any portion of the Terms is unenforceable, the remaining portions will remain in full force and effect. All required notices must be in writing and are deemed received the day of personal delivery or faxing and two days after mailing to the addresses listed on the Coversheet.