

**TWIN CITY DIE CASTINGS, INC.**  
**PURCHASE ORDER TERMS AND CONDITIONS**

**Last revised**  
**02/2019**

1. **Terms.** This purchase order is an offer to Seller by TCDC to enter into a purchase agreement on the terms and conditions set forth here and on the coversheet, any attachments, specifications, any nondisclosure agreement between the parties, and any other documents/materials expressly referred to in this document (collectively, the "PO"). Seller accepts the PO by: (a) executing and returning this PO or delivering to TCDC an acknowledgement form or invoice, (b) shipping any Products (defined below) or performing any Services (defined below), (c) accepting payment, or (d) starting performance or any other statement, act or course of conduct of Seller 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 PO are hereby expressly objected to and rejected. If the PO is responsive to a prior offer by Seller, then the PO shall be deemed an acceptance of such offer limited to the material terms and conditions stated in the PO, and any material additional or supplemental terms or any material variance from the terms and conditions of the PO are expressly objected to and rejected.

2. **Products.** Seller shall deliver to TCDC the products ("Products") and shall provide to TCDC the services ("Services") described in the coversheet. To the extent that TCDC delivers to Seller designs and specifications (collectively, the "Specifications") for Products, such as but not limited to, tooling and molds, to be manufactured by Seller under this PO, Seller shall manufacture such Products in strict conformity with this PO, the Specifications and all applicable laws and regulations. TCDC grants Seller a nonexclusive, nontransferable, limited license to use the Specifications solely for the purposes of manufacturing the Products. Time is of the essence in the performance by Seller of its obligations. Seller may use the logos, tradenames or trademarks (collectively "Logos") provided to Seller by TCDC solely as permitted by TCDC for use with the Products hereunder. TCDC has the right to approve any and all use of the Logos, and may terminate use at any time. TCDC owns all rights in the Logos, and all benefits arising from use shall inure to the benefit of TCDC.

3. **Price.** The coversheet lists the price for the Products and Services. Seller's prices, where no prices are stipulated shall be (a) the Seller's lowest price for products or services of like grade and quality, or (b) the fair market price of the products or services, whichever is lower. Seller warrants that such prices do not exceed those charged by Seller to any other customers purchasing on substantially similar terms in similar or smaller quantities. All charges are included in the price and no extra charges of any kind shall be allowed unless specifically agreed to in writing by TCDC. Seller agrees to pay all taxes imposed by law or regulation due under this PO. TCDC requires at least 90-day notice for any price increases to be effective; in order for TCDC to obtain competitive bids from other Suppliers.

4. **Payment.** Invoices and shipping documents shall be mailed postage pre-paid to the address shown on the coversheet. The PO no., part no., and quantity or Services rendered must appear on all shipping documents, invoices and correspondence. Except as otherwise specified on the coversheet, the payment due date and discount period, if applicable, will be calculated from the date the invoice is received by TCDC, or the date of complete delivery of all Products due in a shipment to TCDC or completion of performance of Services, as applicable, whichever is later. Notwithstanding anything herein to the contrary, payment for Products which are

tooling or molds is not due until testing is complete, including producing applicable sample parts. Any progress payments are at the complete discretion of TCDC. Arrangements for such progress payments may be cancelled by TCDC at any time. Seller waives any lien rights relating to the performance of this PO.

5. **Delivery Terms.** Delivery of Products shall be F.O.B. destination, freight prepaid, and on the delivery date(s), specified on the coversheet. Seller will perform the Services in accordance with the specified performance date. If Seller's deliveries fail to meet schedule, TCDC may direct expedited routing and charge excess cost to Seller. Seller shall package Products to prevent damage during shipping and ship Products in accordance with TCDC's instructions. Unless otherwise agreed in writing, no separate charge shall be made for packaging and Seller shall pay all insurance and freight costs for delivery. Each shipment of Products shall include separate packing slips showing: (a) PO number, (b) description of Products, (c) serial numbers of Products, where applicable, and (d) total quantity of Products shipped. On any shipment not accompanied by a packing slip, TCDC's count shall be accepted as final.

6. **Inspection.** All Products and Services are subject to inspection, and, where applicable, testing, and acceptance or rejection at any time after receipt. TCDC may apply a 100% inspection or an approval sample plan to the Products. Lots which fail to pass such sampling plans may be subsequently 100% inspected by TCDC. Seller will be charged for all such inspection costs or, at TCDC's option, lots will be returned to Seller. TCDC's decision to accept or reject shall be final. If rejected, Products may be held for disposition at Seller's risk and expense, which includes return freight and storage, and TCDC may require repair, replacement or full credit for the rejected Products or re-performance of the rejected Services.

7. **TCDC Property.** TCDC will provide those tools and equipment ("Equipment") itemized in the coversheet for use by Seller in the performance of its obligations under this PO. Seller shall (a) identify all Equipment and Specifications as TCDC's property ("TCDC Property"), (b) safely store and maintain, and return TCDC Property in good working condition, reasonable wear and tear excepted, (c) insure TCDC Property until returned to TCDC for its replacement cost with loss payable to TCDC, and (d) keep TCDC Property free of all liens, claims, encumbrances and interests of third parties, all at Seller's expense. TCDC owns all right title and interest, including all intellectual property rights, in and to TCDC Property. Seller shall return all TCDC Property upon the earlier of (i) request by TCDC, or (ii) termination or cancellation of this PO.

8. **Changes.** TCDC reserves the right to make changes within the general scope of this PO, except as to price or quantity, by any reasonable means, and if requested by Seller, TCDC shall confirm such change in writing. If any such change causes an increase or decreases in the cost of, or time required for, Seller's performance, the price therefor and/or time required for performance shall be equitably adjusted. Any claim for adjustment hereunder must be asserted in writing within thirty (30) days from the date the change is ordered. Failure on the part of either party to assert its claim within the time provided shall operate as a waiver thereof.

9. **Warranties.** Seller warrants that all Products shall (a) be new, (b) be fit for the general and particular purposes for which they are required, (c) be free from all defects, (d) conform to all samples

furnished, (e) strictly conform to the Specifications, this PO and all applicable laws and regulations, (f) not infringe any patent, trademark, trade secret or copyright, or any other intellectual property, contract or other third party right, and (g) be of good and merchantable title, free of liens and encumbrances. Seller acknowledges that it is an expert in manufacturing and supplying the Products and, notwithstanding TCDC's acceptance of Specifications, samples, test data and the Products, Seller agrees that TCDC may rely on Seller as an expert. In the event of a breach of any of the foregoing warranties, Seller shall, at TCDC's request, promptly and without charge, replace or repair the Products. If after notice, Seller fails promptly to replace or repair any defective or nonconforming Product, TCDC may do so without further notice and Seller shall reimburse TCDC for all costs and expenses incurred thereby, and Seller shall repay any price paid for the Products. TCDC may warrant Products to its customers in any manner. In the event of any warranty claims by a customer of TCDC relating to the Products, Seller will cooperate with TCDC and use its best efforts to resolve such claims in a manner reasonably acceptable to TCDC. Seller warrants that the Services shall be performed consistent with generally prevailing professional and industry standards. In the event of a breach the foregoing warranty, Seller shall, at TCDC's request, promptly and without charge, reperform the deficient Services. If after notice, Seller fails promptly to reperform the deficient Services, Seller shall pay to TCDC the price paid for the deficient Services (or all Services if the deficiency affects all), and the costs and expenses of having a third party or TCDC perform the Services. TCDC's customers are third party beneficiaries of Seller's warranties. Seller shall be liable for all direct, incidental, consequential and other damages resulting from nonconforming Products or Services or breach of any other warranty or provision of this PO.

10. Quality. Seller shall maintain quality data to substantiate compliance with the warranties set forth in Sections 9 (b), (c), (d) and (e), and Seller's manufacturing processes and inspection system shall be subject to on-sight review and verification by TCDC during performance of this PO during ordinary business hours.

11. Insurance Warranty. Seller warrants that Seller has adequate general liability and product liability insurance to protect TCDC relating to this PO, and that TCDC is named as an additional insured therein. Seller shall furnish a certificate evidencing insurance on TCDC's request.

12. Indemnification. Seller shall indemnify and hold harmless TCDC, its customers, and their respective officers, directors, shareholders, employees, agents and successors and assigns from all losses, claims, damages, costs, expenses or liabilities of any kind (including attorney's fees and court costs) resulting from (a) breach of Seller's representations, warranties or covenants, (b) loss or damage to TCDC Property while in Seller's custody or control, or in transit to TCDC, (c) any product liability claims relating to Products, including without limitation personal injury, death or property damage, or (d) personal injury, death or property damage arising as a result of or resulting from performance of the Services by Seller.

13. Confidential Information. The nondisclosure agreement between the parties shall govern the protection of any confidential information disclosed by TCDC hereunder, including all TCDC Property. If the parties have not entered into a separate nondisclosure agreement, then Seller agrees that the TCDC Property and all nonpublic information furnished hereunder to Seller by TCDC is proprietary to TCDC and such information shall be held in confidence and shall not be used or disclosed by Seller without TCDC's prior written consent, except for the fulfillment of this PO. Seller shall enforce against its employees, contractors and agents

these obligations of confidentiality. Seller shall return all such information and any copies thereof to TCDC upon termination or cancellation of this PO.

14. Termination; Cancellation. TCDC may terminate this PO in whole or in part for convenience by written notice to Seller. In the case of TCDC's termination for convenience (a) for special order Products manufactured by Seller where the Specifications are a primary feature of their manufacture, TCDC shall be liable for marginal costs incurred by Seller prior to the date of receipt of the written notice of termination, less full credit for direct materials or tooling reusable by Seller, and less the full scrap or salvage value for materials and tooling which cannot be used by TCDC, (b) for all other Products (including but not limited to those Products where the Specifications are secondary or incidental), TCDC shall be liable for the PO price only for those conforming Products shipped in accordance with the terms of this PO prior to the date of receipt of the written notice of termination, and (c) TCDC shall be liable for the PO price for those conforming Services performed prior to the date of receipt of the written notice of termination. TCDC may cancel this PO in whole or in part by written notice to Seller due to

(i) Seller's breach of, or failure to comply with, any of the terms and conditions of this PO, or (ii) Seller filing a petition of any type as to its bankruptcy, being declared bankrupt, becoming insolvent, making an assignment for the benefit of creditors or going into liquidation or receivership. On such cancellation, TCDC shall not be liable to Seller for any amount, and Seller shall be liable to TCDC for all damage sustained due to the default plus any reprocurement charges exceeding the amounts payable by TCDC under this PO. This Section 14 and Sections 1, 9, 11, 12, 13 and 15 shall survive any termination/cancellation of this PO.

15. General. All remedies under this PO are cumulative and in addition to any other remedies at law or in equity. TCDC may deduct amounts due to Seller for any setoff, counterclaim or indemnification right arising out of this PO or any other PO between the parties. This PO 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 this PO. This PO is 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 this PO. Seller may not assign or subcontract its rights or obligations under this PO, unless TCDC has expressly consented to such assignment or delegation in writing. TCDC may freely assign its rights and obligations under this PO. Prohibited assignments are null and void. This PO 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 this PO is unenforceable, the remaining portions shall 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.

