



## **CES Machine Products Inc**

8880 Double Diamond Parkway • Reno, Nevada 89521  
T: 775-852-0900 • F: 775-852-3245 • [www.cesmachine.com](http://www.cesmachine.com)

### **TERMS AND CONDITIONS**

**INVOICES:** Each shipment must be covered by a separate invoice, in duplicate. As a minimum requirement, all invoices must include date, purchase order number, quantity, price, any applicable prepaid freight charges and any applicable taxes and/or duties.

**DELIVERY INFORMATION:** Your acknowledgement must provide a firm delivery date and confirmation that you will use our method of shipment.

**GOVERNMENT CONTRACT:** If the goods covered by this order are in pursuance of fulfilling a contract with the U.S. Government, the provisions under "Government Contracts" shall apply.

**CONTROLLING LAW:** Except as modified herein, the provisions of the Uniform Commercial Code of the State of Nevada shall govern all transactions.

**EXTRA CHARGES, TAXES:** No additional charges of any kind, including charges for installation and other service charges, boxing, packing, cartage or other extras will be allowed unless specifically agreed to in writing by Buyer. Prices stated include all applicable taxes and duties and Seller assumes exclusive responsibility for payment or remittance of the same.

**PAYMENT:** Unless otherwise agreed, Seller shall allow net 60 days for payment unless 1% or greater discount is given. No C.O.D. orders or drafts on Buyer shall be accepted or honored by Buyer.

**RISK OF LOSS:** All risk of loss and/or damage shall remain with Seller while goods are in transit and until physically delivered to Buyer's plant.

**WARRANTIES:** Seller acknowledges that Buyer is relying on Seller's skill and judgment in providing proper goods and applicable services for Buyer's particular use. Seller warrants that all goods and services to be furnished hereunder will be of good quality and free from defects in design, materials, workmanship and title; will conform to the specifications, including drawings, samples and other descriptions furnished by Buyer; will be merchantable and fit for the use intended by Buyer; and will comply with any and all applicable federal, state, and local laws, regulations, rules and orders. Seller at all times shall indemnify and hold harmless Buyer from and against injury (including death at any time resulting there from) or property damage occurring as a result of or in connection with the breach of any warranty made by Seller hereunder or otherwise in connection the use or operation of the goods furnished hereby, except to the extent that such injury or damage is the result of the willful malfeasance of Buyer.



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**PATENT INFRINGEMENT:** Seller agrees to indemnify and hold harmless Buyer, its customers and users of its products, from and against all suits, claims and demands and costs and expenses thereof (including, without limitation, court costs and attorneys' fees), for actual or alleged infringement of any patent, copyright or trademark rights, or trade secrets by reason of Buyer's purchase, use or resale of the goods ordered. Buyer shall promptly notify Seller of any patent infringement claim and upon Buyer's request Seller will, at Seller's sole expense, defend such claim.

**PRICES:** No price increase by Seller shall be effective unless agreed to in advance by Buyer in writing. All releases issued pursuant to blanket orders shall be deemed to be at the price last quoted to Buyer. If Seller shall at any time sell the goods to another purchaser for a lesser price, Seller agrees to reduce its price to Buyer correspondingly.

**DELAYS:** Time is of the essence and Seller shall immediately notify Buyer of any anticipated delay in shipment. If the Buyer shall be unable to accept delivery due to causes beyond Buyer's reasonable control, Buyer may extend delivery date for 60 days or less by giving notice to Seller.

**INSPECTION AND TESTING:** All goods purchased hereunder are subject to inspection and testing by Buyer at any time, notwithstanding any prior payment, inspection or testing without limiting any other rights available to Buyer. Buyer may at its option require Sell (I) promptly to repair or replace, at Seller's expense any or all rejected goods, or (II) to refund the price of any and all rejected goods. All such rejected goods will be held for Seller's instructions and at Seller's risk. All expenses incurred by Buyer in handling, storing, and returning defective or nonconforming goods shall be paid by Seller, Seller's shipment of any defective or nonconforming goods shall entitle Buyer to terminate the balance of the particular order.

**CHANGES:** Buyer may at any time change any drawings, specifications, delivery requirements, or quantities pertaining to Orders. If such changes affect Seller's costs, Buyer will make an equitable adjustment with Seller. Sellers shall not make commitments for materials or production in excess of that necessary to meet Buyer's authorized releases, and Seller is authorized to manufacture only up to the quantities shown in such releases.

**CANCELLATION:** In addition to any other remedies available to Buyer, Buyer shall be entitled to cancel Orders for cause and without any liability or obligation on Buyer's part if (I) Seller fails to delivery conforming goods as and when required hereunder, (II) Seller fails to perform or observe any obligation, requirement or condition hereunder, (III) Seller breaches any warranty or representation made on Orders, (IV) Seller dissolves or terminates its existence, or suspends or discontinues its normal business operations, or Seller becomes insolvent, or any appointment is made for a receiver, trustee, or custodian for any substantial portion of the assets or Seller makes an assignment for the benefit of its creditors, or any proceedings are commenced by or against Seller under any bankruptcy, reorganization, or similar insolvency laws. If Buyer shall cancel without cause, any cancellation charges arising there from shall be separately negotiated and shall not include any cost incurred by Seller contrary to the terms hereof. Any such charges shall in any event be limited to the cost of any work in process, and shall not include any tooling, or general purpose equipment unless such items have been specifically ordered and separately priced in this Order.



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**BUYER'S PROPERTY:** All tools, patterns, specifications, drawings, designs or other property furnished or paid for by Buyer for Seller's use in filling Orders shall remain the property of Buyer, and the Seller shall not use the same in connection with any other customer's work. Seller shall be responsible for all such property and shall protect Buyer against any loss of or damage to such property by fire or other causality through insurance coverage with limits and on terms and conditions satisfactory to Buyer. Seller shall be responsible for and safeguard all secret, confidential or restricted matters disclosed by Buyer to Seller.

**APPROVAL:** Seller shall not assign contracts or publicize the making of hereof without the prior written consent of Buyer

**SUPPLIES, REPAIR PARTS:** Seller shall furnish all necessary gauges and/or fixtures required to execute this Order. If the goods purchased constitute components used in Buyer's products, Seller shall make such goods available to purchase for a period of five years after they are discontinued on current models produced by Buyer and for an additional period of three years, repair or replace such goods as are returned by Buyer.

**REMEDIES:** The remedies provided herein to Buyer are cumulative and in addition to any remedies at law. Failure or forbearance of Buyer to exercise any rights or remedies, nor shall any single or partial exercise of any power or right hereunder preclude any other or further exercise thereof or the exercise of any other power or right.

**MISCELLANEOUS:** The various provisions of all Orders are severable, and any determination of invalidity or unenforceability of any one provision hereof shall have no bearing on the continuing force and effect of the remaining provisions hereof. All orders and the terms and conditions herein constitute the entire understanding of the parties with respect to the purchase and sale of goods, and any prior agreements, with respect thereto, whether written or oral, are superseded hereby. All Orders shall be binding on the parties and their respective successors and any permitted assigns.

**SERVICES:** For all Orders for services, preceding paragraphs 9, 11, 15, 17 and 19-25 apply (except where they are modified by the following paragraphs), as well as the following paragraphs. Use of the word "Goods" in the specified preceding paragraphs also mean "Services" except as noted or modified in paragraphs 26-35.

**ACCEPTANCE:** All purchase orders constitute an offer to buy services on the express terms and conditions set forth, and it is not an acceptance of any offer made by Seller, nor a confirmation. Acceptance by Seller is limited to the terms hereof. No additional, different or conflicting provisions proposed by Seller are acceptable to Buyer and are hereby specifically rejected, Buyer being unwilling to purchase services on any terms conflicting with, limiting or modifying the terms hereof. This offer shall be deemed accepted by Seller at the earlier of (I) Seller commencing performance of the services described on the face hereof (the term "Services" to include such services and any materials, parts or equipment necessary for the performance of such services), or (II) Seller forwarding written acknowledgement of acceptance to Buyer.



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**CONTRACT TERMS:** The terms set forth herein and applied to all Purchase Orders together with such plans, specifications or other documents as are specifically incorporated herein by reference on the face of Purchase Orders constitute the entire Order and are intended by the parties as a final expression of their agreement. No course of prior dealing between the parties and no usage of the trade shall supplement or explain any terms used in Orders. All modifications must be in writing and signed by both parties. In the event that any provision herein shall be deemed invalid or unenforceable, the other provisions hereof shall remain in full force and effect, and binding upon the parties hereto.

**WARRANTY:** Seller warrants that all services will be timely and diligently performed in conformity with the specifications, instructions, drawings or samples furnished by Buyer and that all material, procedures and equipment used in connection therewith shall be free from defects and fit for the purposes expressed in all Orders. Professional services provided by Seller, if applicable, will be performed, findings obtained and recommendations prepared in accordance with generally accepted engineering principles and practices.

**INDEMNITY:** (a) Seller, its successors and assigns, hereby indemnifies and agrees to hold harmless the Buyer, its officers, agents and employees, from and against any and all losses, damages, liabilities, claims or injury, including reasonable attorney's fees, sustained by Buyer or any other person or entity arising out of or in any manner connected with the failure by Seller to perform fully or properly its obligations hereunder, breach of any warranty, and including any losses, damages, injuries or claims whether to persons or property arising out of acts or omissions of Seller's officer, agents, including, but not limited to all subcontractors hired by Seller in the event that Seller is acting as a general contractor for the provision of services purchased by Buyer, and employees who enter Buyer's premises to perform any services. These indemnities shall further cover all such losses, damages, claims, liabilities or injuries (including attorney's fees) however caused or occasioned and whether or not claimed or determined to be caused, in part, by acts or omissions of negligence by Buyer, its officers, agents and employees. (b) Seller shall maintain insurance coverage listed below at levels no less than \$1,000,000 unless lower levels are agreed to by Buyer at the time Purchase Orders are accepted. Upon Buyer's request Seller shall promptly provide Buyer with certificates of insurance showing such coverage - Commercial General Liability (including Products and Completed Operations and Contractual Liability coverage), Automobile Liability, Professional Errors and Omissions (if applicable). (c) If Seller's employees shall have cause to enter on to Buyer's premises in order to perform Seller's obligations set out in the Purchase Order, Seller shall provide Buyer, prior to such entry, with a certificate of insurance showing that Seller has Workers' Compensation Liability coverage in amounts to or greater than the statutory amounts unless specifically exempted by statute. (d) All certificates of insurance requested by Buyer from Seller shall provide that the Buyer will be given 30 days' notice if the described policies are modified or cancelled before the expiration date stated on the certificate.



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**TERMINATION:** Buyer shall have the right to terminate any Order in whole or in part by written or electronic notice whenever it deems such action to be in its best interest. Upon termination, all obligations of either party not fully performed shall terminate, but any right based on prior breach or performance shall survive in the event of any termination by Buyer other than for default of Seller. Seller shall be entitled to payment only for those services which have been completed. This remedy shall be exclusive. ALL INCIDENTAL AND CONSEQUENTIAL DAMAGES ARE EXPRESSLY EXCLUDED. Seller shall inform Buyer of any proposed major change in design, material or process relating to the performance of services prior to implementation of such changes. Supporting data, if any, shall be sent to Buyer for evaluation. Buyer's written approval of such proposed change must be obtained by Seller prior to Seller's implementation thereof.

**INSPECTION AND ACCEPTANCE:** Buyer shall have ten (10) business days after actual completion of service in which to review work performed prior to Buyer's acceptance thereof. Failure of Buyer to inspect the completion of services shall not impair or constitute a waiver of any of the Buyer's remedies hereunder or under applicable law.

**INDEPENDENT CONTRACTOR:** Seller and Buyer acknowledge that in performing services pursuant to all Orders, Seller, its agents, including but not limited to subcontractors in the event that Seller is acting as a general contractor for the provision of services purchased by Buyer and employees, are independent contractors and none of them is or shall be deemed an employee or agent of Buyer. Note: Seller is acting as general contractor for all projects. Seller and all of its employees, officers and agents, including but not limited to subcontractors employed by Seller for the provision of the services purchased by Buyer, are subject to the terms and conditions herein.

**SELLER'S COMPLIANCE WITH APPLICABLE LAWS:** Seller, in its acceptance of Orders certifies that it presently complies with all applicable federal, state and local laws, regulations, rules and ordinances, including, without limitation the Fair Labor Standards Act of 1938, as amended, and the Occupational Safety and Health Act of 1970, as amended, and that the Services to be supplied hereunder comply with the Occupational Safety and Health Act of 1970. Seller shall, upon request, furnish Buyer a certificate as to the Warranties set forth in this paragraph.

**AFFIRMATIVE ACTION:** CES Machine Products has a policy of Affirmative Action to ensure equal opportunity without regard to race, color, national origin, sex, religion, handicap or status as a disabled or Vietnam veteran.

### **GOVERNMENT CONTRACTS**

If Purchase Orders cover articles or services for Buyer's use in the performance of any contract or subcontract under which the United States Government or agency thereof is the principal contractor, the following terms shall apply.

- Seller agrees by acceptance of Purchase Orders that the same shall be subject to all of the provisions of the Renegotiation Act of 1951 and regulations adopted thereunder, to the same extent as is set forth in detail herein, including all provisions and regulations with respect to the elimination of excessive profits through negotiation. Any subcontracts issued by Seller to which said Renegotiation Act may apply shall also be made expressly subject thereto.



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- If the Government should terminate the contract work, Buyer reserves the right to cancel Order by written notice to Seller. All claims and demands of Seller arising from such cancellation shall be adjusted and paid upon the same terms, conditions and settlements as the claims and demands of Buyer are adjusted and paid by the Government following such termination.
- Seller shall comply with all applicable Government laws and regulations relating to non-discriminatory hiring, wage rates and other subject pertinent to Seller's subcontract goods or services, including but not limited to Executive Order 11246, The Vietnam Era Veterans Readjustment Act of 1974, The Rehabilitation Act of 1973, and all terms and regulations associated with such acts. By entering into the Purchase Order or subcontract, the Subcontractor, Seller or Supplier certifies that he maintains no segregated employee facilities as provided in 41 C.F.R. Section 60-1.8. Seller shall provide evidence of compliance upon request.
- All materials and workmanship used in the performance of Orders shall be subject to inspection, test and approval of the Government and/or Buyer at all times during manufacture.
- Seller agrees that the Comptroller General of the United States shall, until the expiration of three years after final payment under the prime contract with the Government, have access to and the right to examine any pertinent books, papers and records of Seller invoicing the performance of or transactions relating to this Order.