

C.E.S Machine Products Inc. Terms and Conditions

Revision/Date:	Description/Approval:
1 – 08/30/2017	Initial release of controlled T's & C's: Management
2 –07/26/2018	Amended to include supplier counterfeit and ethical behavior clauses. Management

PURCHASE ORDER TERMS AND CONDITIONS OF AGREEMENT

1. PURCHASE ORDER

The purchase order, together with these terms and conditions, and any attachments and exhibits, specifications, drawings, notes, instructions and other information, whether physically attached or incorporated by reference (collectively the "Purchase Order"), constitutes the entire and exclusive agreement between C.E.S. Machine Products Inc. ("CES") and the supplier (the "Supplier") identified in the Purchase Order. CES's submission of the Purchase Order is conditioned on Supplier's agreement that any terms different from or in addition to the terms of the Purchase Order, whether communicated orally or contained in any purchase order confirmation, invoice, acknowledgement, release, acceptance or other written correspondence, irrespective of the timing, shall not form a part of the Purchase Order, even if Supplier purports to condition its acceptance of the Purchase Order on CES's agreement to such different or additional terms. Supplier's electronic receipt of the Purchase Order and these Terms and Conditions, and the commencement of performance of any work under the Purchase Order constitutes Supplier's acceptance of these terms and conditions. Notwithstanding the foregoing, if a master agreement covering procurement of the Work described in the Purchase Order exists between Supplier and CES, the terms of such master agreement shall prevail but only over terms inconsistent with the Terms and Conditions contained herein.

2. DEFINITIONS

2.1 "Deliverables" means the deliverables specified in the Purchase Order (and any Statement of Work) to be delivered on or before the Delivery Date.

2.2 "Delivery Date" means the date or dates specified in the Purchase Order by which the Supplier is required to deliver the Work.

2.4 "Intellectual Property Rights" means any and all tangible and intangible: (i) copyrights and other rights associated with works of authorship throughout the world, including but not limited to copyrights, neighboring rights, moral rights, and mask works, and all derivative works thereof; (ii) trademark and trade name rights and similar rights; (iii) trade secret rights; (iv) patents, designs, algorithms, utility models, and other industrial property rights, and all improvements thereto; (v) all other intellectual and industrial property rights (of every kind and nature throughout the world and however designated) whether arising by operation of law, contract, license, or otherwise; and (vi) all registrations, applications, renewals, extensions, continuations,

divisions, or reissues thereof now or hereafter in force (including any rights in any of the foregoing).

2.5 “Preexisting Materials” means any Intellectual Property Rights or tangible personal property of Supplier or CES created before the date of this Purchase Order or outside the scope of this Purchase Order.

2.6 “Products” means tangible goods specified in the Purchase Order to be delivered on or before the Delivery Date.

2.7 “Services” means the services that Supplier is to perform for CES specified in the Purchase Order.

2.8 “Statement of Work” or “SOW” means the document specifying, without limitation, the scope, objective, and time frame of the Work that Supplier will perform for CES.

2.9 “Subcontractor” means a third party performing Work under an agreement (a “Subcontract”) with Supplier.

2.10 “Supplier Personnel” means Supplier’s employees, consultants, agents, independent contractors and Subcontractors.

2.11 “Third Party Intellectual Property” means the Intellectual Property Rights of a third party which Supplier uses or incorporates into the Work.

2.12 “Work” means the Deliverables, Products and Services specified in the Purchase Order, including any applicable SOW.

2.13 “T & C” means Terms and Conditions

3. DELIVERY

3.1 Time is of the essence in Supplier’s performance of its obligations under the terms of the Purchase Order. Supplier will immediately notify CES if Supplier’s timely performance under the Purchase Order is delayed or is likely to be delayed. CES’s acceptance of Supplier’s notice will not constitute CES’s waiver of any of Supplier’s obligations.

3.2 If Supplier delivers Work after the Delivery Date, CES may reject such Work.

3.3 Supplier will preserve, pack, package and handle the Deliverables and Products so as to protect the Deliverables and Products from loss or damage and in accordance with best commercial practices in the absence of any specifications CES may provide. Without limiting the foregoing, Supplier shall observe the requirements of any local laws and regulations relating to hazardous work, including, without limitation, with respect to its accompanying information, packing, labeling, reporting, carriage and disposal.

3.4 Supplier will include with each delivery of Products a packing list identifying the Purchase Order number, the CES part number for each of the Products (if applicable), a description and the quantity of each of the Products, and the date of shipment.

3.5 Unless CES expressly instructs otherwise, Supplier will deliver all Work to CES's plant at the address set forth in the Purchase Order. When specified by the Purchase Order; Supplier will assume the responsibility for all shipping and delivery charges including, without limitation, customs, duties, costs, taxes and insurance. Risk of loss for the Deliverables and Products does not pass to CES until acceptance.

4. PRICE AND PAYMENT

4.1 CES may request the Supplier to quote separate charges such as shipping and delivery charges and taxes; prior to the issue of a Purchase Order.

4.2 CES will pay Supplier the price in accordance with the payment terms set forth in the Purchase Order (or net 75 days if not specified in the Purchase Order) following the later of: (i) the Delivery Date; (ii) the date of CES's acceptance of all of the Work; or (iii) CES's receipt of a properly prepared invoice. A properly prepared invoice must include the Purchase Order number and Supplier's certification of conformance of the Work to the requirements. Payment will be in the currency of the country in which the CES entity or affiliate identified in the Purchase Order is located, and if the price set forth in the Purchase Order is not in the local currency, then CES will determine the local currency equivalent of the price as of date of payment. CES may, at any time, set-off any amounts Supplier owes CES against any amounts CES owes to Supplier or any of its affiliated companies.

5. OWNERSHIP AND LICENSE

5.1 Unless otherwise specified in a SOW and except as provided in Section 5.2, CES is the sole and exclusive owner of all Deliverables and Supplier hereby irrevocably assigns and transfers to CES all of its worldwide right and title to, and interest in, the Deliverables, including all associated Intellectual Property Rights.

5.2 Unless otherwise specified in a SOW, each party owns all right, title, and interest in and to any of its Preexisting Materials. Supplier hereby grants CES a perpetual, irrevocable, worldwide, transferable, royalty-free, nonexclusive license, with the right to sublicense and authorize the granting of sublicenses, to use and reproduce Supplier's Preexisting Materials in the Deliverables to the extent necessary for CES's exercise and exploitation of its rights in the Deliverables.

5.3 Unless otherwise specified in an SOW, Supplier will obtain and assign to CES a nonexclusive, royalty-free, worldwide, perpetual, irrevocable, transferable, sub-licensable license to use all Third Party Intellectual Property Rights incorporated into, required to use, or delivered with the Work. Supplier will deliver copies of the above releases and licenses to CES upon CES's request.

6. INSPECTION AND ACCEPTANCE

6.1 All goods and services will be subjected to CES's approval and rejection process. CES may reject any or all of the work which does not conform to the applicable requirements. At CES's option, CES may (i) return the non-conforming work to supplier for a refund or credit; (ii) require supplier to replace the non-conforming work; or (iii) require supplier to repair the nonconforming work so that it meets the requirements. As an alternative to (i) through (iii), CES may accept the non-conforming work conditioned on supplier providing a refund or credit in an amount CES reasonably determines to represent the diminished value of the non-conforming work. CES's payment to supplier for work prior to CES's timely rejection of such work as nonconforming will not be deemed as acceptance by CES.

6.2 Supplier will only have qualified personnel procure, inspect or certify products supplied to CES. The supplier will ensure that personnel are aware of their contribution to product conformity, product safety and the importance of acceptable ethical behavior. This awareness shall be promoted within the supplier's organization and flowed down to relevant external providers.

6.3 Supplier will maintain a quality control system acceptable to CES covering goods and services and certify work with any certifications required by the purchase order.

6.4 Suppliers are to maintain traceability throughout all processes. Goods that are uniquely identified by CES must be returned with the same identification (i.e; tagged by the heat number, lot #, etc.) All raw materials are to be identified and traceable to the heat number unless otherwise specified by the purchase order. Supplier will maintain appropriate protection for CES products during process and shipment. Any specifications; drawings; process requirements; inspection/verification instructions and other relevant technical data must be maintained by the supplier while in process and returned to CES upon completion. If revision changes have occurred in documentation; the supplier must maintain the current revision and obsolete any old revisions.

6.5 Requirements for design, test, inspection, verification (including production process verification), use of statistical techniques for product acceptance, and related instructions for acceptance by CES, and as applicable critical items including key characteristics, will be flowed down on CES's purchase order where applicable. Requirements for test specimens (i.e, production method, number, storage conditions) for design approval, inspection/verification, investigation or auditing will be flowed down on CES's purchase order.

6.6 Supplier will notify CES of non-conforming product before delivery and will obtain CES's approval for non-conforming product disposition. Supplier will notify CES of changes in product and/or process, changes of suppliers, changes of manufacturing facility location and, where required, obtain CES's approval. Supplier will flow down to the supply chain the applicable requirements including customer requirements.

6.7 Supplier agrees and shall ensure that suspected unapproved, unapproved and counterfeit goods are not delivered to CES through the implementation of policies and practices that include prevention, detection and risk mitigation methods to protect against the use or supply of counterfeit parts. In the event where the supplier becomes aware or suspects that it has provided counterfeit parts, it shall immediately notify CES. When requested, the supplier shall provide to CES documentation that authenticates traceability of the parts.

6.8 Record retention requirements are 10 years unless otherwise specified on the purchase order. Records may include but are not limited to certificate of conformance; RoHS certification, material certification, calibration certificates, etc.

6.9 CES reserves the right of entry to source inspect any goods or services before delivery as well as audit the supplier's facility. This right of entry also extends to CES's customers.

6.10 CES requires certifications for all goods and services unless otherwise specified by the purchase order.

7. CHANGES

7.1 "Change" means a change CES directs or causes within the general scope of this Agreement, the applicable SOW or both.

7.2 CES, by written order ("Change Order"), may make Changes

7.3 If Supplier asserts that CES has directed or caused a Change to the cost of or time for performance for which CES has not issued a Change Order, Supplier will promptly notify CES in writing of the Change, providing (i) a description of the action or inaction asserted to have caused the Change; (ii) an estimate of the equitable adjustment that would be required for Supplier to perform the Changed Work; and (iii) a date no less than 30 days from the date of notice by which CES must respond to Supplier's notice so that Supplier may proceed with the Work unchanged. CES will evaluate Supplier's notice of Change in good faith, and if CES agrees that it has made a constructive change, CES will issue a Change Order to Supplier.

7.4 Supplier shall, as promptly as practicable, after giving the notice of the Change, or within 10 days of receiving a Change Order, submit a request for equitable adjustment specifying the adjustment in the price or time for performance resulting from the Change.

7.5 The parties shall negotiate an amendment to any applicable SOW to incorporate a Change Order providing for an equitable adjustment to the price, time for performance, or both.

7.6 Supplier will proceed with the Changed Work as directed, notwithstanding that the parties have not negotiated an amendment to the Terms and Conditions contained herein or any applicable SOW to incorporate the equitable adjustment.

8. REPRESENTATIONS AND WARRANTIES

8.1 Supplier represents and warrants that:

(i) it has the full power to enter into the Purchase Order and to perform its obligations under the Purchase Order and the Terms and Conditions contained herein;

(ii) it has the right and unrestricted ability to assign the Work to CES including, without limitation, the right to assign any rights to the Work performed by Supplier Personnel and Subcontractors;

(iii) the Work, and CES's use of the Work, do not and will not infringe upon any third party's Intellectual Property Rights, right of publicity or privacy, or any other proprietary rights, whether contractual, statutory or common law;

(iv) Supplier will not disclose to CES, bring onto CES's premises, or induce CES to use any confidential or proprietary information that belongs to anyone other than CES or Supplier which is not covered by a non-disclosure agreement between CES and Supplier;

(v) Software supplied by Supplier does not contain any Harmful Code;

(vi) Supplier's Work conforms to CES's specifications, Supplier's quotation or proposal, and Supplier's brochures or catalogs, and if none of the foregoing is applicable, then such Work is suitable for the intended use;

(ix) it will not use or disclose any information that may identify an individual ("Personal Data") that is processed for or on behalf of CES, except to the extent necessary to perform under this Purchase Order;

(x) only to the extent that Supplier actually processes Personal Data it will: (A) implement and maintain appropriate technical and organizational measures and other protections for Personal Data (including, without limitation, not loading any Personal Data provided to Supplier on (a) any laptop computers or (b) any portable storage media that can be removed from Supplier's premises unless each case (i) such data has been encrypted and (ii) such data is loaded onto portable storage media solely for the purpose of moving such data to off-site storage), (B) report to CES any breaches of security of Personal Data immediately after discovery ("Security Incident"), (C) cooperate fully with CES in investigating any Security Incidents, (D) cooperate fully with CES's requests for access to, correction of, and destruction of Personal Data in Supplier's possession, (E) comply with all instructions or other requirements provided or issued by CES from time to time relating to Personal Data, and (F) permit CES and/or its duly authorized representatives, on reasonable prior notice, to inspect and audit Supplier's business premises and computer systems to enable CES to verify that Supplier is in full compliance with its processing obligations under this Purchase Order;

(xi) it will not transfer Personal Data across any country border unless it is (a) strictly unavoidable for the proper performance under this Purchase Order, and (b) notified to CES in writing prior to any such transfer. Upon CES's request, Supplier shall enter into such other arrangements with CES as CES considers appropriate in order to ensure that Supplier's transfers are lawful.

(xii) it will not provide CES with Personal Data of any third party or its own employees.

Notwithstanding the foregoing, if Supplier does provide CES with any Personal Data, Supplier represents and warrants that it has obtained the necessary consent to provide that Personal Data to CES and to allow CES to use, disclose, and transmit such Personal Data on a worldwide basis among CES and its affiliates in connection with this Purchase Order; and

(xiii) no Products contain or include components (a) containing PCB' (polychlorinated biphenyls) chemical substances, (b) manufactured using a cadmium plating process or contain a

chemical substance or mixture that is or becomes subject to a reporting requirement under Section 8(e) of the Toxic Substances Control Act, 15 U.S.C. Section 2607(e), as in effect at time of shipment.

8.2 CES warrants and represents to Supplier that it has the full power to enter into the Purchase Order and to perform its obligations under the Purchase Order.

8.3 SUPPLIER WARRANTS THAT THE PRODUCTS, DELIVERABLES AND/OR SERVICES TO BE PROVIDED TO CES PURSUANT TO THE PURCHASE ORDER WILL CONFORM TO INDUSTRY STANDARDS OR SUCH OTHER STANDARDS AS SET FORTH IN THE PURCHASE ORDER AND WILL BE IN ALL INSTANCES APPROPRIATE FOR THE PURPOSES FOR WHICH THEY ARE INTENDED. WHEN APPLICABLE ALL OUTSIDE CALIBRATIONS MUST BE CERTIFIED AND TRACEABLE BACK TO A NATIONAL RECOGNIZED STANDARD (NIST).

9. ASSIGNMENT AND SUBCONTRACTING

9.1 Supplier may not assign any of its rights or delegate any of its obligations under the Purchase Order without CES's prior written consent, which CES will not unreasonably withhold. CES may, at its option, void any attempted assignment or delegation undertaken without CES's prior written consent.

9.2 Supplier may not subcontract any of its rights or obligations under the Purchase Order without CES's prior written consent. If CES consents to the use of a Subcontractor, Supplier will: (i) guarantee and will remain liable for the performance of all subcontracted obligations; (ii) indemnify CES for all damages and costs of any kind, subject to the limitations in Section 12 (Indemnification), incurred by CES or any third party and caused by the acts and omissions of Supplier's Subcontractors' and (iii) make all payments to its Subcontractors. If Supplier fails to timely pay a Subcontractor for work performed, CES will have the right, but not the obligation, to pay the Subcontractor and offset any amount due to Supplier by any amount paid to the Subcontractor. Supplier will defend, indemnify and hold CES harmless for all damages and costs of any kind, without limitation, incurred by CES and caused by Supplier's failure to pay a Subcontractor.

9.3 To the extent allowed by applicable law, no person who is not a party to Purchase Order shall be entitled to enforce or take the benefit of any of its terms whether as a result of applicable legislation, custom or otherwise.

10. TERM AND TERMINATION

10.1 The Purchase Order will remain in effect with respect to any SOW already issued prior to expiration of the term of the Purchase Order until such SOW is either terminated or the Work is completed and accepted.

10.2 CES may terminate this Purchase Order, any SOW, or both at any time, for no reason or for any reason, upon 15 days written notice to Supplier. Upon receipt of notice of such termination,

Supplier will inform CES of the extent to which it has completed performance as of the date of the notice, and Supplier will collect and deliver to CES whatever Work then exists. CES will pay Supplier for all Work performed and accepted through the effective date of the termination, provided that CES will not be obligated to pay any more than the payment that would have become due had Supplier completed and CES had accepted the Work. CES will have no further payment obligation in connection with any termination.

10.3 Either party may terminate the Purchase Order, any SOW or both, immediately by delivering written notice to the other party upon the occurrence of any of the following events: (i) a receiver is appointed for either party or its property; (ii) either makes a general assignment for the benefit of its creditors; (iii) either party commences, or has commenced, proceedings under any bankruptcy, insolvency or debtor's relief law, if such proceedings are not dismissed within 60 days; or (iv) either party is liquidating, dissolving, or ceasing to do business in the ordinary course.

10.4 CES may immediately terminate the Purchase Order upon written notice to Supplier if there is a change in ownership representing 20 percent or more of the equity ownership of Supplier.

10.5 Either party may terminate the Purchase Order, any applicable SOW or both, immediately by delivering written notice to the other party for any material breach not cured within 30 days of receipt of notice of the breach. CES shall have no further payment obligation to Supplier under any terminated SOW if CES terminates the SOW under this Section 10.5.

10.6 Any obligations or duties which, by their nature, extend beyond the expiration or termination of the Purchase Order shall survive the expiration or termination of the Purchase Order.

11. CONFIDENTIAL INFORMATION AND PUBLICITY

11.1 If CES and Supplier have entered into a Non-Disclosure Agreement ("NDA") which covers disclosure of confidential information under the Purchase Order, and if the term of the NDA expires before the expiration or termination of the Purchase Order, then the term of the NDA shall be automatically extended to match the term of the Purchase Order.

11.2 The parties shall treat the terms, conditions, and existence of the Purchase Order as Confidential Information as defined in the NDA.

11.3 Supplier shall obtain CES's written consent prior to any publication, presentation, public announcement, or press release concerning its relationship as a supplier to CES.

12.1 Supplier shall defend, indemnify and hold CES harmless from and against any and all Claims as incurred, arising out of or in connection with any (i) act or omission of Supplier (including its Subcontractors) in the performance of the Work; or (ii) any infringement of a third party's Intellectual Property Rights or any other rights.

12.2 Supplier shall further indemnify and hold CES harmless from and against any and all

Claims as incurred, arising out of any negligent or willful acts or omissions of Supplier; which results in personal injury (including death) or damage to tangible property (not including lost or damaged data.)

12.3 CES will provide Supplier with prompt written notice of the Claim and permit Supplier to control the defense, settlement, adjustment, or compromise of any Claim. CES may employ counsel at its own expense to assist it with respect to any Claim. CES will have no authority to settle any Claim on Supplier's behalf.

12.4 The Indemnified Party will provide the Indemnifying Party with prompt written notice of the Claim and permit the Indemnifying Party to control the defense, settlement, adjustment, or compromise of any Claim. The Indemnified Party may employ counsel at its own expense to assist it with respect to any Claim. The Indemnified Party will have no authority to settle any Claim on the Indemnifying Party's behalf.

12.5 Nothing in this Section shall limit any other remedy of the parties.

13. LIABILITY

13.1 NOTWITHSTANDING ANYTHING ELSE IN THE PURCHASE ORDER OR OTHERWISE, CES WILL NOT BE LIABLE TO SUPPLIER WITH RESPECT TO THE SUBJECT MATTER OF THE PURCHASE ORDER UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY FOR ANY AMOUNTS IN EXCESS IN THE AMOUNT CES PAID TO SUPPLIER IN THE SIX MONTHS PRECEDING THE EVENT OR CIRCUMSTANCE GIVING RISE TO SUCH LIABILITY.

13.2 IN NO EVENT WILL CES BE LIABLE TO SUPPLIER FOR ANY INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL DAMAGES OR LOSS OF PROFITS ARISING OUT OF, OR IN CONNECTION WITH, THE PURCHASE ORDER, WHETHER OR NOT CES WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

13.3 THE LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY PROVIDED HEREIN. NOTHING IN THE PURCHASE ORDER LIMITS EITHER PARTY'S LIABILITY FOR BODILY INJURY OF A PERSON, DEATH, OR PHYSICAL DAMAGE TO PROPERTY OR ANY LIABILITY WHICH CANNOT BE EXCLUDED UNDER APPLICABLE LAW.

14. INSURANCE

Supplier will secure and maintain insurance providing coverage for liabilities to third parties for bodily injury (personal injury) and damage to property in amounts sufficient to protect CES in the event of such injury or damage, and will be in compliance with any and all laws, regulations or orders addressing the liabilities of an employer to its employees for injuries and disease suffered in connection with employment. Supplier further will maintain such additional types and limits of insurance as is customary for a company of similar size and similar operations to

Supplier in the jurisdiction or jurisdictions in which Supplier's operations take place.

15. GENERAL

15.1 Any notice to be given under the Purchase Order will be in writing and addressed to the party at the address stated in the front of the Purchase Order. Notices will be deemed given and effective (i) if personally delivered, upon delivery, (ii) if sent by an overnight service with tracking capabilities, upon receipt; (iii) if sent by fax or electronic mail, at such time as the party which sent the notice receives confirmation of receipt by the applicable method of transmittal; or (iv) if sent by certified or registered mail, within five days of deposit in the mail.

15.2 If there is a conflict between or among the Purchase Order and any documents attached to and incorporated by reference, the conflict will be resolved as follows:

15.2.1 A conflict between the terms of the Purchase Order and the Terms and Conditions set forth herein and those set forth in an exhibit or hyperlink will be resolved in favor of the Purchase Order and the Terms and Conditions set forth herein.

15.2.2 A conflict between the terms of the Purchase Order and the Terms and Conditions set forth herein and those set forth in an applicable SOW will be resolved in favor of the applicable SOW.

15.2.3 A conflict between the terms of an exhibit or hyperlink and those set forth in an applicable SOW will be resolved in favor of the applicable SOW.

15.3 If any court of competent jurisdiction holds that any provision of the Purchase Order is illegal, invalid, or unenforceable, the legality, validity, and enforceability of the remaining provisions of the Purchase Order will not be affected or impaired, and all remaining terms of this Purchase Order remain in full force and effect, provided that this provision shall not be applied to defeat the intent of the parties.

15.4 A party's election not to insist on strict performance of any requirement of the Purchase Order will not operate or be construed to waive any future omission or breach, or any other provision of the Purchase Order.

15.5 Any dispute with respect to the Purchase Order, the Terms and Conditions contained herein and any applicable SOW, shall be brought in Litchfield County, Connecticut and the laws of the State of Connecticut shall govern.

16. ACCEPTANCE

It is the responsibility of the Supplier to verify compliance to the T & C's. CES will assume that the Supplier accepts the T & C's upon acceptance of the Purchase Order. It is the responsibility of the Supplier to notify CES of any discrepancy, non-compliance or inability to comply with T & C's.