

## **PRELIMINARY AGREEMENT**

This Agreement constitutes the entire understanding between Benda Tool & Model Works, Inc. / A & B Die Casting Company, Inc. (Seller) and the Buyer regarding the products and parts to be purchased hereunder and in the event of any inconsistency or conflict between or among the provisions of this Agreement and any prior or subsequent agreements or understandings, oral or written, express or implied or other documents on the same subject, this agreement shall take precedence unless specifically agreed to in writing by Seller. No deletions from, alterations or additions to, or modifications of the terms and conditions of this agreement shall be binding unless set out in writing and specifically agreed to in writing by Seller. For greater certainty, no terms of the Buyer's purchase order shall apply to this Agreement, even if stated to do so and even if after these terms and conditions, unless specifically agreed to in writing by Seller. Quotations and estimates covering the building of Dies, Cavities or Tools and Fixtures and the production of Die Castings are prepared based on 3D models, prints and specifications available at the time of estimating. Frequently, discussions of design and application result in changes that may affect costs. Die Casting Quotations are, therefore, for immediate action on the basis specified. Seller reserves the right to review all orders prior to acceptance and acknowledgment. The Quotation, Purchase Order, and the acceptance of a Purchase Order, by acknowledgment, by Seller, shall constitute the entire contract except where modified by separate letter. A Purchase Order shall not be construed to be a separate letter. When any provision upon the face or back of a Purchase Order shall conflict with Seller's Proposal or Acknowledgment, the Seller Proposal and/or Acknowledgment shall govern. Conflicting printed or stamped provisions contained in customers Purchase Orders shall not constitute acceptance of such provisions by operation of law or by implication. Seller's Proposal and Acknowledgment shall govern in all instances. This proposal expressly limits acceptance to the terms stated herein and such modification, if any, stated in our acknowledgment of your Purchase Order. Modifications, changes, additions, deviations, cancellations, suspension or change of orders shall not be binding upon Seller unless acknowledged, in writing, on terms that will indemnify Seller against loss. Quotations are based upon current material prices, labor costs and outside service costs. We reserve the right to change prices quoted from time to time in accordance with any changes in the cost of material, labor or outside services. Seller reserves the right to correct clerical errors. Changes due to clerical errors shall not be construed as material changes of contract terms. Prices are subject to any City, County, State or Federal taxes which are or may become effective and are based on continuous operation of the dies in the quantities specified. If quantities are reduced or productions held up or interrupted by you, castings or finished products will be subject to extra charge for the additional costs involved. Re-orders for castings or finished products previously made are considered as placed under the same terms and conditions as the original contract, except for such price changes as may be necessary, when such orders are not placed pursuant to a formal proposal and acceptance. If Buyer has not otherwise agreed to these Terms of Sale, then Buyer's acceptance of delivery of, or payment for, the goods shall constitute Buyer's agreement to these Terms. Seller objects to and will not agree to any terms that are additional to or different from these terms. This Agreement shall be governed by and construed in accordance with the laws of the State of California and applicable therein.

## **TERMS AND CONDITIONS OF SALE**

### Patents

It is not the intention of the Seller to manufacture any product, which is an infringement of a patented article. Parts are made by the Seller strictly to dimensional specifications furnished by the Buyer. It is agreed that the Buyer will defend and save harmless the Seller from any and all expenses involved in any claims for damages from infringements of letters patent by the use or sale of parts made by the Seller, either as such or as parts or units of completed entities, except for such parts as Seller manufactures under Seller's own patent rights.

### Production Allowance

Unless otherwise specified, delivery of five percent (5%) more or less than the quantities ordered or quoted will constitute fulfillment of Buyer's order, and Buyer will take and pay for any excess not exceeding five percent (5%). Claims for errors in quantity shipped must be made to the Seller within ten (10) calendar days of delivery of the applicable shipment of castings.

### Packaging and Shipping

Unless you specify otherwise in writing, (a) goods will be boxed or crated as we may deem proper for protection against normal handling, and extra charge will be made for preservation, waterproofing and similar added protection of goods; (b) All shipments EXW Seller plant of origin, delivery of goods to the initial carrier will constitute delivery to you and all goods will be shipped at your risk, a claim for loss or damage in transit must be entered with the carrier and prosecuted by you. Acceptance of goods from a common carrier constitutes a waiver of any claims against Seller for delay or damage or loss.

### Warranty

Die castings are warranted free from defects in material and workmanship, and this express warranty is in lieu of all other warranties express or implied, by law or otherwise, including, but not limited to warranties of merchantability and fitness for a particular purpose. All castings will be subject to commercial variations incident to the process of die casting. Very close or particular dimensions must be specified, and permissible variations must be agreed upon before die work is begun. NADCA standards shall govern except for special agreements or variations. Warranty claims must be submitted, in writing, within thirty (30) days from date of shipment. We shall not be liable for loss, damage or expense, direct or indirect or consequential, arising from the use or machining of die castings or from any other cause; our liability being expressly limited to the replacement or repair of the defective die castings. The Buyer is responsible for the design and performance characteristics of the die cast component.

### Returns

We agree to replace or issue credit, at our option, for all defective castings which have not been altered, machined, assembled or finished, provided claim thereof in writing, accompanied by representative samples, is made within 30 days from date of shipment of castings but will not be responsible for the cost of labor or charges of any kind incurred outside of our shop, transportation costs or other losses resulting from such castings. Castings claimed to be defective are not to be returned to us without our written approval and an opportunity to inspect them.

### Quoted Lead Times and Pricing

Quoted tooling and production lead times are in effect for thirty (30) days from date provided. Quoted tooling and production prices are based on the quantities requested and are in effect until costs beyond our control increase. Prices are reviewed periodically but are subject to change at any time upon thirty (30) days written notice. Acceptance of order is based on available manufacturing capacity at time of order.

### Ordering Policies

Seller will accept Purchase Orders under the following conditions:

Parts that do not have plating or paint specified:

- Orders of 100 parts or less will be shipped on one delivery line.
- Orders of more than 100 parts may have delivery lines with a min quantity of 100 parts per line.

Parts that have plating or paint specified:

- Orders of 250 parts or less will be shipped on one delivery line.
- Orders of 250 or more may have delivery lines with a min quantity of 250 parts per line.

Parts made from a family die must be ordered in quantities equal to family die configuration.

PLEASE NOTE: All Purchase orders quantities must be shipped in their entirety within 6 months of the order acknowledgment date, unless otherwise approved by Seller in writing.

### Order Changes and Cancellation

Charges for dies, tools, and fixtures constitute only a portion of the total cost of such dies, tools and fixtures, the balance being absorbed by Seller. It is understood that cancellation or tool removal charges may include compensation to Seller for proprietary contribution and lost profit potential as well as out-of-pocket expenses.

Production orders accepted by Seller are not subject to changes or cancellation by Buyer, except for Seller's written consent. If this sale covers goods that must be manufactured especially for Buyer and such change or cancellation is made, Buyer shall take all completed goods at full price and all goods in process at cost plus pro-rata profit and Buyer shall reimburse Seller for any loss on materials purchased or on contract for the filling of the order.

### Taxes, Tariffs and Fees

In addition to the prices stated herein, Buyer shall reimburse Seller for all taxes, excises, fees or other charges, which Seller may be required to pay to any government (National, State or Local) upon the sale, use, production or transportation of the goods sold hereunder.

### Payment Terms (Upon Credit Approval)

- New Tooling Invoices – 40% due with your Purchase Order, 40% due upon tooling completion, 20% due upon First Article Approval and prior to any production run. All New Tooling invoices are Due On Receipt.
- Tooling Invoices (other than new) – Net 30 days.
- Production Invoices – Net 30 days.

Seller shall have the right to modify, change, or withdraw credit terms at any time. If you wish Seller to sell parts and/or assemblies to a subcontractor of your choosing, you must agree to be financially responsible for that subcontractor.

#### Security Interest

We reserve the right to retain tooling as a security interest for any amount due. You hereby grant such security interest in us. The good faith retention of the tooling by us as a security interest shall not result in any liability on our part for damages, consequential or otherwise.

#### Dies, Tools and Fixtures

Dies, special tools and fixtures will be used exclusively for the Buyer for whom they were made. All tooling will remain in our possession and control, and when, for three (3) consecutive years no orders are received for castings to be made from such dies, they will be considered as obsolete and may be destroyed by us, or returned to you at your expense, after giving 30 days written notice thereof to you, at the last known email address.

#### Tooling Maintenance, Repair and Replacement

Dies, special tools and fixtures for the manufacturing of castings will be kept in condition for production by us without expense to you for normal maintenance until such time repair or replacement becomes necessary. As caused by wear associated with typical production, such repair or replacement will be quoted to you as necessary, and work performed against your purchase orders as appropriate. Part quality, features or dimensions affected by such wear are deemed acceptable by you if such required tool work is not purchased and performed.

We will not be responsible for loss of or damage to dies, fixtures, gauges, inserts, or patterns by fire, theft or any cause or accident beyond our control or due to acts of God. You should cover your insurable interest.

It is agreed that Seller as sole custodian of your tooling will not use it to produce castings for any other purpose other than your requirements, unless having expressed written consent by you.

#### First Article Samples

Samples (5-10) from new dies will be submitted for approval before proceeding with production. Castings delivered from a preproduction run shall be considered to be dimensionally and otherwise compliant with the 3D model, production print and specifications. Deviations, if any, shall be construed and considered to have been waived upon receipt of a production order. Preproduction castings shall, expressly, not constitute a "sample". Such castings are submitted for your consideration as an acceptable final product of the Die for your purpose prior to wear and depreciation due to normal running operation. In the absence of written approval, acceptance of initial production run shall constitute approval.

#### Engineering and Design Disclaimer

Seller's engineering department, without charge, may suggest modifications, changes in design, etc., in an effort to better serve customer requirements. Engineering and design suggestions are made in the best interest of all concerned, but all responsibility for their acceptance and use lies entirely with the customer.

#### Design Changes

It is the responsibility of the Buyer to notify the Seller in writing specifically of any part design or specification changes prior to each production order release. Any changes in drawings, materials or design of Tools, parts, castings or other items which affect costs will call for re-pricing and, if work has been started, Buyer will promptly reimburse the Company for work already performed.

#### Delivery

Estimates of delivery are subject to revision when complete ordering information is received by Seller. There shall be no liability for failure or delay of delivery due to acts of God, acts of Buyer, Government action, fire, flood, war, accident, labor trouble or shortage, inability to obtain material, equipment or transportation or other causes beyond the reasonable control of Seller. Upon any such delay or failure, the delivery date shall be extended, or the items affected may be eliminated from the order.