

**TERMS AND CONIDITIONS OF SERVICE**

**Fairchild Industries, Inc. DBA Fairchild Auto-Mated Parts**

Effective January 29, 2025

Revision 3

No. 1 – **TERMS OF CONTRACT.** These Terms and Conditions are part of each Purchase Order entered into with Fairchild Industries, Inc. d/b/a Fairchild Auto-Mated Parts (“Fairchild”), whether or not attached to such Purchase Order. No terms or conditions other than those stated herein, and no agreement or understanding, oral or written, in any way purporting to modify these terms or conditions, whether contained in Buyer’s purchase or shipping release form, or elsewhere, shall be binding on Fairchild and any attempted modifications are hereby rejected by Seller. All proposals, negotiations, and representations, if any, made prior and with referenced hereto are merged herein and superseded hereby.

No. 2 - **SHIPMENT TERMS.** F.O.B. shipping point. Buyer is responsible for all shipping costs, insurance, and any other liabilities associated with the goods. Buyer assumes ownership and responsibility for the goods as soon as they are loaded onto the carrier. Buyer assumes the risk of transportation and is responsible for filing claims for loss or damage.

No. 3 - **QUOTATIONS AND ACCEPTANCE:** Unless otherwise stated, all quotations are for immediate acceptance and subject to change without notice. All orders and contracts are subject to acceptance only at Seller’s home office. Typographical and clerical errors are subject to correction. Prices quoted by Seller do not include sales, VAT, use or similar taxes and such taxes, where applicable shall be added to the be added to the quoted prices and invoiced accordingly. All federal, state, dominion, provincial, or municipal taxes now or hereafter imposed in respect to the goods sold by the Seller, and/or the processing, manufacture, delivery, transportation, and or proceeds of the goods herein specified shall be the responsibility of the Buyer and if taxes are required to be paid by the Seller, the amount thereof shall be added to and become part of the price payable by the Buyer.

Quotations are subject to revision in the event of a delay by Buyer in furnishing Seller with a written purchase order or acceptance, letter of credit, down payment and other conditions as specified in the Agreement, and all drawings, information, Buyer’s Property or materials, and approvals necessary to provide the Goods and/or to grant any credit terms in the Agreement.

No. 4 - **Authority of Seller’s Agents**: No agent, employee or representative of Seller has authority to bind Seller to any affirmation, waiver, representation or warranty concerning the Goods, not contained in the Agreement. Any such affirmation, waiver, representation or warranty will not be deemed to be part of the basis of the Agreement and will not be enforceable, unless it is expressly included within the Agreement..

No. 5 - **CREDIT.** Accounts will be opened only on approved credit. Seller reserves the right to decline delivery except for cash, whenever doubt as to Buyer’s financial condition develops.

No. 6 **– PAYMENT TERMS.** Seller shall invoice Buyer for the goods delivered upon each shipment, including all delivery costs and applicable taxes or other fees. Unless otherwise agreed to by the parties, all invoices are payable in 30 days. Buyer shall be entitled to a prompt payment discount of 0.5% for all invoice balances paid within 10 days. Any past due balances hereunder shall incur interest of 1.5% per month*.*

No. 7 - **CANCELLATION:** Orders may be cancelled or deliveries deferred by Buyer with written consent of Seller only upon the condition that Buyer assumes immediate liability and makes payment to Seller for all work complete at the unit sales price; work in process on the basis of the percentage of completion thereof times the unit sales price; raw material, unamortized tooling, engineering and other cancellation charges incurred on the basis of cost to Seller plus handling and overhead charges. All cancellation charges to be determined at the time of cancellation or deferment. Minimum charge $ 100.00.

No. 8 - **QUANTITIES:** All quotations are based on Buyer accepting over-run on each individual item not exceeding twenty percent (20%) of quantities ordered less than five hundred (500) pieces, fifteen percent (15%) of quantities ordered between five hundred (500) and one thousand (1,000), and ten percent (10%) of quantities ordered greater than one thousand (1,000). Further, quotation are based on Buyer accepting under-run on each individual item not exceeding five percent (5%) of quantities ordered. Where closer control of quantity is required, special arrangements must be written by the Buyer and agreed upon by the Seller.

No. 9 -**LIMITATION OF LIABILITY.** Seller shall not be liable for damages due to default or delay in production or delivery of all or any portion of any contract resulting directly or indirectly from: (A) accident to, or breakdowns of Seller’s plant machinery or equipment; labor disputes; embargoes; fire; riots; national emergency; delays of suppliers; carriers; or governmental restrictions, prohibitions, or allocations; or (B) any cause beyond the control of Seller. In no event shall Seller be liable for any consequential, special, or contingent damages arising out of Seller’s default or delay in filling this order.

Any work quoted which is dependent upon Buyer furnishing raw materials for fabrication is contingent upon Buyer’s delivery of the required amount of materials as specified by Seller in 12’ to 14’ lengths, F.O.B. Seller’s facility. Such work and quoted prices are subject to adjustment if the materials furnished by Buyer are defective or will not machine with reasonable wear on tools at the speed and feed estimated. Chemical and physical specifications are the sole responsibility of the Buyer, and Buyer shall accept all parts manufactured from Buyer’s materials which conform to blueprint specifications. Pursuant to Paragraph 6 herein, Seller does not guarantee more than 90% of the quantity ordered. If the Buyer’s materials prove defective in total or in part or are of a different character than represented by either the Buyer or the material supplier, Buyer shall indemnify Seller in full for all costs incurred and work performed.

No. 10 – **DELIVERIES.** Unless otherwise agreed between Buyer and Seller, orders are accepted for delivery as fast as manufactured by complete shipment packed in bulk. If either party has the right to make or demand delivery in lots, the price may be demanded for each lot.

No. 11 - **BUYER’S WARRANTY.** Buyer warrants the accuracy of any information provided to Seller in connection with any Purchase Order hereunder, including without limitation specifications and information relating to the details of its operating conditions, including temperatures pressures and where applicable the nature of all hazardous materials. Buyer further represents and warrants that any information provided hereunder does not infringe on any patents or other intellectual properties rights of third parties. Buyer shall indemnify and hold harmless Seller from any claims, damages, or losses of any kind, including without limitation reasonable attorney’s fees, related in any way to Buyer’s inaccurate information and in connection with any suits or claims for infringement of any patents or other intellectual property rights.

No. 12 - **SAMPLES.** If requested, Seller will submit samples for approval when commencing operations upon any order but does so with the understanding that his machines are to be run immediately after they are set correctly to Buyer’s accepted specifications, and Seller will assume responsibility for having the product in conformity with such specifications while awaiting Buyer’s approval. Any changes in original specifications will be made only at Buyer’s direction and expense. If changes are to be made, Seller must be notified at once by e-mail.

No. 13 - **TOLERANCES:** All dimensions must be limited by a specific tolerance. When not specified, it is understood that commercial tolerances apply:

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| --- | --- | --- | --- |
| Decimal | All diameters plus or minus .003" | Angles | Plus or minus 2-1/2 degrees |
| Dimensions | Lengths plus or minus .010" | Intersecting | Surfaces |
| Fractional | Diameters plus or minus .005" | Fillets | .020" Max. |
| Dimensions | Lengths plus or minus 1/64" | Corners | .020" Max. Radius or chamfer |

Drilled hole tolerances will be open unless otherwise specified by the Buyer.

Samples are to be considered as denoting fractional dimensions, unless otherwise specified and dimensions of samples will be considered “mean” dimensions. Where there is cross drilling, slabbing and similar operations specified, the location will be without relation to other dimensions unless otherwise specified.

When Buyer purchases to his own specifications, Seller will not be responsible for the design and fitting of parts.

Concentricity requirements, if any, must be specified separately from dimension and will be subject to inspection only at the point where the relation is shown on the blueprint. When concentricity limitation is specified, it is understood that it means the actual eccentricity allowable between the center lines of the dimensions, which is one-half of a dial-reading registration. When concentricity is not specified, the work will be manufactured in the most economical manner without particular regard to concentricity.

No. 14 - **THREADS:** Unless otherwise specified, threads will be of the American National or Unified form and will be made to Class 2A and Class 2B Fit tolerances. When Buyer specifies threads other than sizes in the Coarse Thread Series or Fine Thread Series or in other classes of tolerances or limits, gages are to be furnished by Buyer or charged for by the Seller.

EXTERNAL THREADS: Where threading to the shoulder is specified, if a relief or under-cut of sufficient width is not provided for, it will be understood that the last full thread will not be cut closer to the shoulder than a distance of two and one-half threads and in the case of fine pitches, never closer than 1/16″.

INTERNAL THREADS**:** Unless dimensional limits for minor diameter of tapped holes are specified, the percent of full depth thread will be in accordance with regularly accepted general practice. Unless otherwise specified, blind tapped holes may not have a full thread closer than five threads from the bottom and in case of fine pitches, not closer than 5/32″.

No. 15 - **GAGES:** Where dimensions cannot be readily gaged with micrometers and require special gages, such gages may be furnished by Buyer or supplied by Seller at an extra charge. In the case of threads, the inspection gages shall conform to the limits specified by the latest National Bureau of Standards Handbook H28, as supplemented, entitled “Screw Thread Standards for Federal Services for Inspection Gages”.

No. 16 - **DIES, TOOLS, ETC.** All specialized drawings and tools developed by the Seller in connection with fabricating the goods, including without limitation fabrication drawings, custom-designed jigs, dies, fixtures, gages and their engineering and design, shall remain the proprietary physical and intellectual property of the Seller. Unless Buyer requests a quotation and makes the required payment for such proprietary property, delivery of the materials to the Buyer shall not covey any ownership interest in this proprietary property nor authorize the removal of the proprietary property form the Seller’s facility. In the case that any proprietary physical or intellectual property is inadvertently delivered to Buyer, Buyer agrees to immediately return said proprietary property at the Seller’s expense.

No. 17 – **BUYER’S PROPERTY:** “Buyer’s Property” means tools, jigs, dies, gauges, fixtures, molds and patterns owned and fully paid for by Buyer and provided to Seller for the purposes of manufacturing Goods or performing services for Buyer. If Buyer’s Property wears out under normal use, Buyer must supply to Seller new or repaired Buyer’s Property. Seller will release to Buyer, Buyer’s Property, provided that: (i) Buyer has fully paid Seller for all Goods produced using Buyer’s Property and delivered to Buyer (ii) Buyer has fully paid for all Goods, raw materials and work in process produced and/or associated with Buyer’s Property (not sure that that means) (iii) Buyer’s Property is not subject to any lien asserted by Seller or any third party and (iv) Buyer releases Seller from any obligation for further production of the Goods that Seller produced with Buyer’s Property. If (i)-(iv) are satisfied, and upon written request to release by Buyer, Seller, within 30 days of receipt of Buyer’s request, will make Buyer’s Property available for pick up by Buyer. Buyer is responsible for all costs associated with removing and transporting Buyer’s Property from Seller’s premises including but not limited to freight and packaging. Under no circumstances is Seller responsible for any damage that occurs to Buyer’s Property. If Buyer does not remove Buyer’s Property from Seller’s premises within 20 days after Seller gives notice to Buyer that Buyer’s Property is ready for removal or if Seller maintains possession of the property for more than seven (7) years with no contact from the Buyer, Buyer’s Property becomes the property of Seller and Seller may dispose of Buyer’s Property in its sole discretion. Buyer waives subrogation and agrees, to the fullest extent permitted by law, to indemnify and hold Seller harmless for any damages, claims, costs, or other expenses arising from the loss of or damage to such property or personal injury arising from the use, transportation or storage of such property.

No. 18 - **SHIPMENT:** Buyer must notify Seller of its preferred shipping method; in the absence of shipping direction from Buyer, Seller shall choose the shipping method in its discretion, including without limitation by air or rail express, truck or parcel post, and will be insured at Buyer’s expense.

Delivery dates are estimates based on Seller’s present engineering and manufacturing capacity, scheduling, and third-party service provider lead time estimates and may be revised by Seller upon receipt or scheduling of Buyer’s order. All shipping dates are approximate and will be computed from the date of entry of the order on Seller’s books. Timely delivery is dependent on Buyer providing Seller with the minimum lead time quoted by Seller and Seller’s prompt receipt from Buyer of a written purchase order or acceptance, letter of credit, down payment and other conditions as specified in the Agreement, and of all drawings, information, Buyer’s Property or materials, and approvals necessary to provide the Goods and/or to grant any credit terms in the Agreement.

Any request to accelerate, delay, or otherwise change the delivery schedule must be submitted to Seller in writing and is only effective upon written acceptance from the Buyer of any increase in price or additional costs incurred as a result thereof.

Seller shall not be responsible to Buyer for any loss, whether direct or indirect, arising out of or relating to any failure of the good to be delivered by the estimated delivery dates.

No. 19 - **DELAYED SHIPMENT BY BUYER** – Notwithstanding the terms of any purchase order or blanket order, Seller has no obligation to delay production, hold goods or delay the shipment of any goods beyond the dates set forth in Seller’s order acknowledgement. If the shipment of any Goods or other performance by Seller is delayed at the request of or due to the fault of Buyer, Seller may in its sole direction hold the Goods at the place of manufacture or elsewhere at the risk and expense of Buyer. If Seller is unwilling to accommodate Buyer’s request or delay, Buyer must accept shipment on the original delivery date in Seller’s order acknowledgement.

No. 20 - **INSPECTION BY SELLER.** Inspection by Seller is made on a percentage basis at 2.5% acceptable quality level (A.Q.L.) unless otherwise agreed to. If a higher quality level is required or 100% inspection is required, it is at Buyer’s expense. Acceptable quality levels including the designation of sampling plans shall be established by Buyer in writing prior to quotation by Seller. Otherwise, Seller reserves the right to adjust his quotation or delivered part price in consideration of a subsequent establishment of an A.Q.L. by Buyer.

No. 21 - **INSPECTION BY SELLER.** Buyer has an affirmative obligation to inspect all goods delivered by Seller upon receipt. Buyer’s failure to promptly inspect any goods may result in a waiver of claims for damage caused by the shipper and/or any defects that are reasonably observable upon receipt as set forth in paragraph 23 herein.

No. 22 – **WARRANTY.** Seller warrants that the goods manufactured thereby and sold to Buyer hereunder (with the exception of “wear parts” or consumables all of which are not warranted except as otherwise provided in the quotation or sales form) will conform to the drawings and specifications furnished by the Buyer and will be free from defects in material and workmanship (the “Warranty”). The Warranty shall be in effect for a period of six (6) months after the date of receipt of the goods by Buyer (the “Warranty Period”).

Seller shall, at its option and expense, either repair, replace or refund amounts paid for any goods that fail to conform to the Warranty. In no case shall Seller be obligated to remove the defective goods or install the replaced or repaired goods, and Buyer shall be responsible for providing ready access to the goods or areas for warranty work, and all other associated costs, including without limitation service costs, shipping fees, and expenses. Seller shall have complete discretion as to the method or means of repair or replacement. Buyers’ failure to comply with Seller’s repair or replacement directive shall constitute a waiver of its rights and render any Warranty void.

The Warranty is conditioned on Buyer giving written notice to Seller of any goods that fail to meet the Warranty within ten (10) days of the date when any defects first become apparent. Seller shall have no Warranty obligations to Buyer with respect to any goods or parts of a good that (a) have been repaired by parties other than Seller or without Seller’s written approval; (b) have been subject to misuse, misapplication, neglect, alteration, accident or physical damage; (c) have been used in a manner contrary to Seller’s or the manufacturer’s instructions for installation, operation, and maintenance; (d) have been damaged from ordinary wear and tear, corrosion, or chemical attack; (e) have damages due to abnormal conditions, vibration, failure to properly prime, or operation without flow; (f) have damages due to a defective power supply or improper electrical protection; or (g) have damages resulting from the use of accessory equipment not sold by Seller or not approved by Seller in connection with the goods supplied by Seller hereunder. In any case of goods not manufactured by Seller, there is no warranty from Seller, however, Seller will extend to Buyer any warranty received from Seller’s supplier of such goods.

THE FOREGOING WARRANTY IS EXCLUSIVE AND IN LIEU OF ANY AND ALL OTHER EXPRESS, ORAL, OR IMPLIED WARRANTIES, GUARANTEES, CONDITIONS OR TERMS OF WHATEVER NATURE RELATING TO THE GOODS AND SERVICES PROVIDED HEREUNDER, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WHICH ARE HEREBY EXPRESSLY DISCLAIMED AND EXCLUDED. BUYER’S EXCLUSIVE REMEDY AND SELLER’S AGGREGATE LIABILITY FOR BREACH OF ANY OF THE FOREGOING WARRANTIES ARE LIMTED TO THE REPAIR, REPLACEMENT, RE-PERFORMANCE, OR REFUND.

Because goods furnished hereunder are to Buyer’s specifications and are used or combined by Buyer with other equipment or components not furnished by Seller, Buyer agrees to indemnify and hold harmless Seller for all claims, losses, and other costs related in any way to the use or incorporation of said goods in the Buyer’s product.

No. 23 – **CLAIMS.** In addition to the limitations set forth in Paragraph 18 herein, Buyer must notify Seller within ten (10) calendar days of receipt of shipment of any claims that the goods delivered are not as ordered or for any defect that is reasonably observable upon receipt of the goods. All such claims must be in writing and state the customer’s name, the order and/or purchase order number, the packing slip number, weight of the shipment including tare, the method used in arriving at any count of the parts, and brief statement describing the deviation or defect.

Seller may elect, in its sole discretion, to inspect the goods at the Buyer’s premises or to return the goods to the Seller’s facility for inspection. Buyer must return goods with the original shipping materials and include all packing slips, invoices, bills of laden, or other shipping documents. Seller shall not be responsible for any costs incurred by Buyer for any repair or inspection of the goods without prior authorization from the Seller.

If such a claim is sustained, Seller shall either repair the goods, replace the goods, credit the Buyer, or complete the order within the limitations of Paragraph 7 herein, in its sole discretion. If Seller determines that the goods were delivered as ordered, Buyer shall be responsible for any additional costs incurred by Seller in connection with the claim, including without limitation costs for shipping, storage, or inspection of the materials.

Failure to present a claim to the Seller in accordance with the requirements of this provision shall be conclusively deemed a waiver of such claim.

No. 24 – **PROPRIETARY INFORMATION, INJUNCTION.** Seller’s designs, illustrations, drawings, specifications, technical data, catalogs, “know-how,” economic or other business or manufacturing information (collectively “Confidential Information”) disclosed to the Buyer shall be deemed proprietary and confidential to the Seller. Buyer agrees not to disclose, use, or reproduce any Confidential Information without first having obtained Seller’s express written consent. Buyer’s agreement not to disclose, use, or reproduce such Confidential Information shall survive completion of this Agreement. Buyer acknowledges that its improper disclosure of proprietary information to any third party will result in irreparable harm to the Seller. Seller may seek injunctive or equitable relief to prevent Buyer’s unauthorized disclosure

No. 25 – **COLLECTION COSTS & ATTORNEY’S FEES.** In the case that Seller must take steps to recover amounts due from Buyer hereunder, Seller shall be entitled to recover all collections costs, including reasonable attorney’s fees.

If any action at law or in equity is necessary to enforce or interpret the terms of this agreement, or to enforce an award rendered following an arbitration hereunder, the prevailing party shall be entitled to reasonable attorney’s fees and costs in addition to any other relief to which such party may be entitled.

No. 26 - **SEVERABILITY AND WAIVER.** The partial or complete invalidity of any one or more provisions of this Subcontract shallnot affect the validity or continuing force and effect of any other provision. The failure of eitherparty to insist, in any one or more instances, upon the performance of any of the terms,covenants, or conditions of this Subcontract, or to exercise its rights herein, shall not beconstrued as a waiver or relinquishment of such term, covenant, condition or right as respectsfurther performance.

No. 27 – **GOVERNING LAW AND VENUE**.This Subcontract shall be governed by and construed in accordance with the laws of theState of Connecticut without regard to conflict of law principles. All disputes arising hereunder shall be brought in the Connecticut Superior Court in the Litchfield Judicial District.