

Sales Terms and Conditions

These Sales Terms and Conditions are the only terms that govern the provision of services by Viewpoint Manufacturing, LLC, a Texas limited liability company ("Company" or "VPM") to its Customer ("Customer," and together with Company shall be herein after referred to as "Parties"). These Terms, the Purchase Order Requirements (as defined below) and the accompany Quote, if a Quote is submitted by the Company in connection with the Servies (a "Quote" and, together with these Terms and the Purchase Order Requirements, this "Agreement") collectively comprise the entire agreement between Parties and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. For purposes of this Agreement, all services provided by Company to Customer shall be referred to herein as the "Services" and shall include any engineering, machining, welding, assembly, finishing, and other processing services provided by Company to Customer.

These Terms shall prevail in the event of any conflict with any terms and conditions provided by Customer in any form, including but not limited to any purchase order, specification, drawing, bill of material or email correspondence provided by Customer to Company in connection with the Services or otherwise. Provision of Services to Customer does not constitute acceptance of any of Customer's terms and conditions and does not serve to modify or amend these Terms or this Agreement. In case of conflict or inconsistency between the provisions hereof and any applicable laws or regulations, the provisions hereof shall prevail, to the extent legally possible (and to the extent legally impossible, shall be amended accordingly). The Parties acknowledge and agree that this Agreement cannot be modified, except in a valid written agreement signed by Company and the Customer. Any attempt to modify supersede, add to, supplement or otherwise alter these Terms or this Agreement, whether contained in any purchase order, specification, drawing, bill of material, email correspondence or other printed form of Customer or elsewhere, are deemed rejected and excluded by Company and will not modify these Terms or this Agreement or be binding on the Parties, unless such terms have been fully approved in a written instrument signed by Company and the Customer.

1. QUOTES

Quotes are valid for the time noted on the quote by VPM. After, prices and terms are subject to change without notice, unless otherwise specified. Prices estimated from a blueprint or verbal description are subject to revision on the basis of actual sample or a detailed review of the specifications and/or specific process required to complete the project. All quotations, orders, agreements or modifications thereof are contingent on and subject to any and all occurrences beyond the Company's control, including but not limited to: strikes and boycotts (as Company or Supplier of Company or Customer, or elsewhere), accidents, thefts, fires, war, shortage of materials and equipment, casualty, disruption in supply chain, acts of God, and Company shall not be liable for failure to perform any agreement for such causes.

2. EXPEDITED ORDERS

Any order which a Customer requests to expedite is subject to an Expedite Fee of \$150 for each defined process required to complete the order. Expediting is defined as any request for completion before the amount of time written as the due date on the Quote, or any time before the date in which an order would be completed if processed in order of the normal operations by VPM (pausing other orders).

3. PURCHASE ORDER REQUIREMENTS

Customers shall make every effort to ensure that all their requirements are set forth in the Purchase Order or RFQ (Purchase Order Requirements). Incomplete information may result in changes to lead times and/or delivery dates or inaccuracies in the Services.

Additionally, customer supplied materials/products must be received in a timely basis, are not damaged, rusted or otherwise in a condition not suitable for immediate processing by VPM. If received parts are not suitable for immediate processing, VPM shall notify the Customer and request instruction or disposition. VPM may charge additional fees for any additional cleaning, treating, or other preparation required that is not specified on the Quote. Any lead times and/or delivery dates shall be automatically extended for any delays resulting from the condition of the provided product/material.

4. CHANGE ORDERS OR CANCELLATION

Changes to the scope or performance of the Services, the Product, or the applicable delivery date(s), as outlined in the applicable Quote or Purchase Order shall be considered a change order request. Customer shall submit details of the requested change to VPM. VPM, within a reasonable time after such request, will provide a written estimate or revised quote. A revised quote or estimate must be confirmed by the Customer prior to the commencement of changes of applicable services or production.

If production or services have already commenced when a change order request or cancellation request is received, VPM will not be approve requests that result in loss for VPM without full reimbursement of all related expenses (including but not limited labor and material) incurred to date of written notice.

Product modifications require review and written approval from the customer.

5. DESTRUCTIVE TESTS: THIRD-PARTY TESTS

Company does not perform tests (even when required by specification) that are destructive in nature and/or that require completion by a third party (i.e., laboratory), unless such tests are indicated in writing on the Customer's purchase order, included in the pricing for the Quote and paid for by Customer. If such testing is indicated in writing on the Customer's purchase order, Customer agrees to provide sufficient extra parts or specimens made from the same material for such testing. Company may perform such test in-house or through a third-party provider, at Company's option.

6. DELIVERY

VPM will use commercially available services for delivery or make available for pickup by Customer. Any order not picked up within 15 days of completion (defined as the written Invoice date on the invoice)

will be further subject to a \$10 holding fee each day, or \$400 per month, for the time it remains in VPM facilities.

If no delivery date(s) are set forth in a Quote from VPM, then the Company's standard delivery terms shall apply.

VPM reserves the right to make partial or installment deliveries, for which Customer shall pay at the contract price. Defective delivery or non-delivery with respect to any installment or partial delivery shall be a severable breach and shall not give Customer the right to treat the entire order as breached contract.

7. DEFECTS AND REWORKS

Any claims for defects, damages, or shortages of an order, or rework requests must be made by the Customer in writing within a period of five (5) days after delivery. Failure to make such a claim or request within the specified time constitutes an acceptance and admission that the order fully complies with the terms, conditions and specifications required. (See section 11b for more information)

VPM may impose a rework charge on orders that meet specifications but require slight modifications. Rework fees will be \$75 per operation.

No materials/products may be returned to VPM without written approval by an authorized representative of VPM. A completed RGA form must be submitted, approved and attached to returned material. Returns without a RGA form and authorization code will be rejected.

8. TAXES

Customer shall be responsible for all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state or local governmental entity on any amounts payable by Customer hereunder.

9. INTELLECTUAL PROPERTY

All intellectual property rights, including copyrights, patents, patent disclosures and inventions (whether patentable or not), trademark service marks, trade secrets, know-how and other confidential information, trade dress, trade names, logos, corporate names and domain names, together with all of the goodwill associated therewith, derivative works and all other rights (collectively, "Intellectual Property Rights") in and to (a) all documents, work product and other materials that are delivered to Customer or prepared by or on behalf of VPM in the course of performing Services, Product development and manufacture and (b) any special tooling or products that has been designed and/or built by VPM shall be owned by VPM and shall be and remain Company property.

10. PAYMENT OF INVOICES

Terms of payment are as previously granted by VPM to the Customer, and as reflection of this are written on the Customer's most recent invoice. The date of the invoice is defined as the date in which the work is completed, shipped or ready for pick up and is written on the invoice as "Invoice Date."

Invoices will be sent via email, mail, or other customer specified route (listed in order of dissemination based on availability or required information). Invoices will include the due date for payment. Regardless of whether or not the Customer picks up their order, full payment is due on the due date written on the invoice. VPM accepts payment via check, ACH, and wire transfer.

a. **DOWN PAYMENT AND ADVANCE PAYMENTS**

VPM requires 30% down payment on any order in excess of \$25,000 or where material prices exceed the credit limit with VPM associated vendors. VPM requires advance payment whereunto the order price exceeds the Customer credit limit with VPM.

VPM reserves the right to require advance payment on any order, if the credit of the customer with VPM becomes impaired at any time.

b. **DELINQUENT PAYMENTS**

Invoices unpaid on due date shall be considered delinquent and thereafter subject to a finance charge computed by a single monthly periodic rate of 1.5%, being annual percentage rate of 18%. Company reserves the right to suspend or terminate Services on all written orders pending with Customer in the event Customer is delinquent on any single invoice.

11. **WARRANTY**

- a. VPM warrants that Services and Products shall meet Customer specification supplied in writing; provided that, the Company warranty extends only to its quality and accuracy and not to the design performance where customers specifications, methods or procedures were followed. VPM does not warrant, and assumes no responsibility for, the correctness of any such specification, method or procedure or the result obtained when they are followed. If work performed by VPM is in the nature of restoring or salvaging parts, then such work is accepted by Customer on a commercially reasonable efforts basis, Company makes no warranties and shall incur no liability of any kind or nature whatsoever with respect to such work.
- b. VPM requires Customer to notify Company in writing of any defects within five (5) business days of receipt of the parts or other product, and Customer shall supply objective evidence (*e.g.*, pictures, video, *etc.*) of such defects at the time of notification. Customer shall make any parts suspected of defects available to the Company for inspection. Parts suspected of defects shall not be altered in any way by Customer or otherwise prior to the notification and inspection by the Company. If Customer does not comply with the foregoing procedures and requirements for reporting suspected defects in parts, Customer accepts sole responsibility for any such suspected defects, as well as any rework, scrap material or shipping costs related to such suspected defects.
- c. **EXCEPT FOR THE WARRANTY SET FORTH IN THIS SECTION 11, COMPANY HEREBY DISCLAIMS ALL WARRANTIES OF ANY KIND WITH RESPECT TO THE SERVICES AND THIS**

AGREEMENT, INCLUDING BUT NOT LIMITED TO ANY (A) WARRANTY OF MERCHANTABILITY; (B) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (C) WARRANTY OF TITLE; OR (D) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY, IN EACH CASE WHETHER EXPRESSLY OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE. CUSTOMER REPRESENTS AND WARRANTS TO THE COMPANY THAT CUSTOMER IS NOT RELYING ON, AND WILL NOT RELY ON, ANY REPRESENTATIONS OR WARRANTIES MADE OR PURPORTED TO BE MADE BY THE COMPANY OR ANY OF ITS OFFICERS, EMPLOYEES, AGENTS OR REPRESENTATIVES WITH RESPECT TO THE SERVICES, THIS AGREEMENT OR OTHERWISE, EXPRESSED OR IMPLIED, AT LAW OR IN EQUIT, EXCEPT FOR THE WARRANTY SET FORTH ABOVE IN THIS SECTION.

12. LIMITATION OF LIABILITY

- a. **In no event shall Company be liable to Customer OR ANY THIRD PARTY for (a) any damages resulting from loss of data, intellectual property, lost profits, lost revenue, loss of use of equipment, lost contracts or cost of procurement of substitute goods, or (b) any special, indirect, incidental, consequential, punitive, reliance, or exemplary damages, however caused and under any theory of liability whether based in contract, tort (including negligence), or otherwise. The foregoing limitations shall apply regardless of whether Company has been advised of the possibility of such damages and notwithstanding the failure of essential purpose of any limited remedy. in no event shall company's aggregate liability arising out of or related to this agreement, whether arising out of or related to breach of contract, tort (including negligence) or otherwise exceed the aggregate amount paid or payable to company pursuant to the APPLICABLE QUOTE.**
- b. Company assumes no liability for loss or damage to parts while in transit to or from any Company factory or facility, whether in Company's or Customer's trucks or other vehicles or in the possession of any third party acting in the Company's or Customer's behalf. Customer's parts may be stored in uncovered lots and/or buildings without air conditioning. Company shall not be liable for deterioration of finishing, rust or other damage to or deterioration of parts (including due to exposure to sun, rain or other weather conditions) while in storage. Storage charges will be made for work held over one week after Customer is notified of completion.
- c. Company shall not under any circumstances be considered an insurer of any Customer parts and shall not be liable, regardless of cause for loss by fire, explosion, accident, theft, vandalism, casualty, or acts of God while parts are in Company possession. The provisions of this Section 12 may be modified only by separate written agreement signed by Company, and any liability Company assumes will be covered by a separate charge for such coverage.

13. LIEN

All Customers parts in Company possession shall be subject to a lien for all monies and other amounts owing by Customer to Company under this Agreement or otherwise in connection with the Services, including but not limited to all amounts owed by Customer to Company for work, labor or other Services rendered, or materials or equipment used in connection with such parts.

14. GOVERNING LAW

This Agreement, and all actions, causes of action, or claims of any kind (whether at law, in equity, in contract, in tort (including negligence or breach of statutory duty) or otherwise) that may be based upon, arise out of, or relate to this Agreement or the Services shall be governed by and construed in accordance with the laws of the State of Texas, without giving effect to any choice or conflict of law provision or rule.

Each party irrevocably agrees to the exclusive jurisdiction of the State of Texas courts.

15. INDEMNITY

The Customer agrees that the Customer will defend, indemnify and hold Company harmless from all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, fees, costs (including attorneys' fees and costs), expenses or disbursements of whatever kind which may at any time be imposed upon, incurred by or asserted against the Company or its officers, employees, affiliates or representatives in any way relating to or arising out of the Services provided to Customer or attributable to any defect from such Services. The Customer bears the risk of any loss, damage or casualty occurrence regarding the Services.

16. AUTHORITY

This Agreement shall apply to this and any future order or agreement for any work. The Customer (a) acknowledges that Customer has read and understands this Agreement and the Standard Terms and Conditions of Sale and Statement of Policy as set out herein, and each and every term thereof, and agrees to be bound by this Agreement, and (b) warrants that Customer is authorized to enter into this Agreement, and that this Agreement is an integral part of all invoices and purchase orders, specifications, drawings, bills of material, written instructions, email communications and other communications between Customer and Company and governs all such documents and instruments and all matters set forth herein and therein.

17. SEVERABILITY

If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Agreement is invalid or unenforceable, but that limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

18. CONTROLLING EFFECT

Nothing to the contrary notwithstanding, it is specifically agreed and understood that if there is any ambiguity or conflict between any purchase order, specification, drawing, bill of material, written instructions or other printed form or email communications of Customer and this Agreement, then this Agreement shall control and prevail. Customer acknowledges that Company only accepts Customer purchase orders and agrees to perform Services for Customer solely upon Customer agreeing and assenting that this Agreement, and the Standard Terms and Conditions of Service and Statement of Policy contained herein, are controlling.

19. ENTIRETY

This Agreement constitutes the entire agreement among the Parties with respect to the subject matter hereof and supersede any prior understandings, agreements, or representations by or among the Parties, written or oral, with respect to the subject matter hereof.