

Frank Mayer and Associates, Inc. Terms-Conditions

1. These terms and conditions shall apply to any order, quotation, or statement of work which is placed with or provided by Frank Mayer and Associates, Inc. ("FMA") for any goods and/or services we supply to you, regardless of how such order is placed ("the Service"). No modification of these terms and conditions shall be valid unless agreed to in writing by FMA. These terms and conditions, along with any order, quotation or statement of work, shall constitute the entire agreement between us and shall prevail over any other conflicting terms or conditions present on any purchase order, invoice, confirmation or any other documentation generated by you. You agree that in entering into this agreement for the Service, you shall not rely on any representation or understanding, whether oral or in writing, which is not included or referred to in these terms and conditions, or in any other order, invoice or statement of work agreed to in writing by FMA.

1.1. Orders accepted by FMA may be cancelled by you only upon written consent of FMA. In the event of cancellation or other withdrawal of an order for any reason, and without limiting any other remedy which FMA may have as a result of such cancellation, which shall include all expenses then incurred on commitments made by FMA, shall be paid by you.

1.2. All communication in respect of the Service received from you whether by way of a requested change or otherwise shall only be accepted in writing. Writing shall include email or fax. FMA shall not be responsible for confirming that the relevant person communicating with us is authorized to act on your behalf unless you have specifically notified FMA in writing that such person is not authorized.

1.3. Where we are to provide the Service in accordance with your specifications, you shall deliver to us, at your sole expense, all the necessary information (including, without limitation, details of any design and plan) in sufficient time and of sufficient quality to enable FMA to provide the Service in accordance with your instructions and by any dates estimated for delivery. You shall indemnify us against all losses, expenses, damages and costs incurred by us as a result of our use of any information supplied by you including (but not limited to) any loss or expense or damage incurred by FMA in respect of any claim by a third party for infringement of any patent, copyright, design, trademark or other industrial or intellectual property right or for negligence, whether in respect of personal injury or death or otherwise. Risk of damage to or loss of any documentation (in whatever form) supplied by you shall be yours even if in FMA's possession.

1.4. You will pay the price for the Service set out in the relevant quotation issued by FMA to you. If during the provision of the Service the information and/or instructions you have given us at the time the relevant order, quote or statement of work was issued changes, and that change increases the cost in providing the Service whether by increase man hours or otherwise, or the materials you have supplied us are inferior and result in greater cost to us in providing the Service than reasonably anticipated when supplying the quote, we reserve the right without notice to increase the price.

2.1. In respect of development work only (unless otherwise agreed) the price shall be payable as set forth on the individual quote(s).

2.2. In respect to any other Service, payment terms for all other work carried out by us shall be as stated in the relevant quotation.

2.3. Unless otherwise agreed by FMA in writing, the contract price for the Service shall be payable in the manner agreed without set off on or before the agreed due date.

2.4. If payment is overdue and/or you are in breach of your obligations set forth herein or in any relevant quote, statement of work or order, FMA reserves the right (without prejudice to any other right or remedy available to us) to stop or postpone delivery or performance, and FMA will not be liable for any loss you may suffer as a result.

2.5. FMA reserves the right to apply any payment made by you in total or partial satisfaction of any debt due from you to us.

2.6. FMA may submit work at various stages for your approval. Once you have approved the work we shall have no responsibility for any errors not corrected by you.

2.7. Requested changes must be made in writing and approved by FMA. Where additional work is required due to the changes such additional work will be charged at our current hourly rate of \$135.00/hr.

2.8. Times given for delivery of the Service are estimates only. FMA shall not be liable for any delays.

2.9. FMA shall not be liable for delays or defaults in delivery due to the acts of God or public enemies, war or military activity, riots, insurrection or sabotage, fires, floods, explosions, or other catastrophes, unusually severe weather, accidents, epidemics or quarantine restrictions, acts of local, state or national governments, or public agencies, labor disputes or shortages, energy or material shortages, utility or communication failures or delays, delays of a supplier of FMA, or causes beyond the reasonable control and without the fault or negligence of FMA.

2.10. The title to and any copyright or other intellectual property rights in the materials supplied by you to FMA will belong to you to the extent that it is not materially altered by FMA. FMA retains title to and any copyright or other intellectual property rights in all designs, plans, images, engineering, and any other material developed by FMA. Any breach of FMA's intellectual property rights will be deemed to be a breach of these terms and conditions. Sale of the Services to you does not convey a license, implied or otherwise, under any patent or other intellectual property right in which FMA has an interest, nor does it convey right to any descriptive data, including, but not limited to, FMA's manufacturing drawings, secrets, processes, or tooling, or the know-how acquired by FMA while performing services for you.

3.1. If FMA delivers Services identified as "prototypes," "samples," "designs," "for engineering approval," "on consignment," "for evaluation," or terms of similar report, you agree that such Services are confidential and experimental in nature, that you will limit their availability only to those of its employees as are necessary to carry out the testing and evaluation contemplated by the parties and to no others, and that all information concerning such Services received or generated by you shall become and remain the proprietary property of FMA and shall not be disclosed to any third party.

3.2. You agree to indemnify and hold FMA harmless from all liabilities, loss, claims and expenses that may arise from any breach by you, including any third-party liabilities incurred by FMA. Subject to the foregoing warranties, FMA agrees to indemnify and hold you harmless from all liabilities, loss, claims and expenses that may arise from any breach of these terms and conditions by us.

3.3. FMA warrants that the Services provided will be free from defects in material and workmanship furnished by FMA and will conform with specifications as contained in the order, quote or statement of work for the Services.

THE FOREGOING WARRANTIES ARE EXCLUSIVE AND ARE GIVEN AND ACCEPTED IN LIEU OF ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THE REMEDIES FOR ANY BREACH OF WARRANTY SHALL BE LIMITED TO THOSE PROVIDED HEREIN, AND FOR DELAY OR NON-DELIVERY WHICH IS NOT EXCUSABLE, TO THE PURCHASE PRICE OF THE GOODS IN RESPECT OF WHICH THE DELAY OR NON DELIVERY IS CLAIMED, TO THE EXCLUSION OF ANY AND ALL OTHER REMEDIES. IN NO EVENT SHALL FMA BE LIABLE FOR SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION, LOSS OF USE OR LOST PROFITS. NO AGREEMENT VARYING OR EXTENDING THE FOREGOING WARRANTIES, REMEDIES OR THIS LIMITATION WILL BE BINDING UPON FMA UNLESS IN WRITING SIGNED BY A DULY AUTHORIZED OFFICER OF FMA. FMA'S LIABILITY FOR FAILURE TO COMPLY WITH THE FOREGOING WARRANTIES SHALL BE LIMITED TO THE VALUE OF THE SERVICES.

3.4. Any claim that you may have against us must be notified to us in writing within one month of the claim arising.

3.5. FMA may reference any work carried out by FMA on your behalf and/or list you as being a customer of ours for marketing and promotional materials.

3.6. If any provision of these terms and conditions (whether in part or in whole) is held by a Court or jurisdiction to be illegal, or unenforceable the parties shall agree to amend the relevant provision as shall be necessary to ensure its application and the remaining provisions of the Contract shall remain full force and effect.

3.7. Any waiver by us of any breach of or any default under any provision of this agreement will not be deemed a waiver of any subsequent breach or default and will in no way affect the terms of this agreement.

3.8. You undertake that you shall not for a period of 24 months after the date of these terms employ, enter into a contract for the services of, or entice away from the employment of us anyone who is at that time, and was at the date of these terms and conditions, an employee of FMA.

3.9. You shall not assign its rights or obligations hereunder without the prior written consent of FMA.

3.10. Any notices and other communications required or permitted to be given hereunder shall be in writing and shall be effective when delivered personally, emailed, faxed or delivery by private carrier.

Company

Frank Mayer & Associates, Inc.

Signed _____

Signed _____

Name _____

Name _____

Title _____

Title _____