

BuyCASTINGS.com Inc.
FOUNDRY AGREEMENT 5%
(as of May 1, 2005)

1. **Terms and Conditions.** THESE TERMS AND CONDITIONS CONSTITUTE AN AGREEMENT ("AGREEMENT") BETWEEN BUYCASTINGS.COM, INC. ("AGENT") AND THE FOUNDRY ("FOUNDRY") RESPONDING TO IT. THE FOUNDRY AGREES TO BECOME BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT BY CLICKING ON "I ACCEPT THE AGREEMENT" BELOW, BY SUBMITTING A QUOTATION OR BY ANY OTHER MEANS THAT INDICATE THE FOUNDRY'S ASSENT. THIS AGREEMENT IS ENTERED INTO AS OF THE DATE THE FOUNDRY INDICATES SUCH AGREEMENT ("EFFECTIVE DATE").
2. **Services.** The services provided by Agent ("Services") are owned and operated by Agent and are provided to Foundry under the following terms and conditions:
 - (a) Foundry understands and agrees that Agent and its licensors, shall retain all rights, title and interest in and to all information, content (including, but not limited to, the identity of the buyers) or advertisements (collectively, the "Content") distributed through, linked to, downloaded or accessed from the www.BUYCASTINGS.com Web site or any successor thereto (the "Site"). Foundry agrees that, except as necessary to use the Site for its intended purposes, Foundry shall not reproduce, use or distribute the Content in whole or in part. Foundry understands that any such misuse of the Site, the Services or the Content shall constitute infringement of Agent's copyright and other intellectual property.
 - (b) The Site acts as the venue for Foundry to submit quotations to a prospective buyer ("Buyer") for sale of castings. Buyers may respond to quotations. You may enter into correspondence with, participate in promotions by and/or conduct transactions with Buyers. Any such content, correspondence, promotion, or transaction, including the delivery of, the transaction processing for, and the payment for, all goods and services, and any other terms, conditions, warranties or representations associated with the foregoing, are solely between Foundry and Buyer. Agent does not assume any liability, obligation or responsibility in connection with any of the foregoing. In the event that Foundry has a dispute with any Buyer or third party, Foundry releases Agent (and Agent's agents, employees, directors and consultants) from claims, demands and damages of every kind and nature, known and unknown, suspected and unsuspected, disclosed and undisclosed, arising out of or in any way connected with such dispute.
3. **Submission of Quotations.** Upon the Foundry's assent to these Terms and Conditions, Agent may, in its discretion, submit to the Foundry a request for a quotation ("RFQ") for the supply of castings that Agent has obtained from a Buyer. The Foundry may submit a response to the RFQ (a "Quotation") to the Buyer. The Foundry acknowledges that the Buyer has the sole discretion to accept the Quotation, decline the Quotation and/or contact the Foundry for negotiation to modify the Quotation.
4. **Foundry Services.** The Foundry agrees to perform its obligations under any Quotation (in original or modified form) accepted by a Buyer. The Foundry, in its sole discretion, may agree to modify the Quotation.
5. **Commission.** In consideration of the services provided under this Agreement, Foundry will pay Agent a commission on all sales of castings by Foundry (or its affiliates) to Buyer (or its affiliates) that: (a) arise out of or are based on the Quotation, or (b) arise out of an order issued within three years after Foundry submits its Quotation to Agent. **For each order on which commission is due, the commission shall be equal to FIVE PERCENT (5%) of the gross invoice amount. There is no yearly fee for this commission structure.** For each order on which commission is due Foundry will provide to Agent a copy of the Purchase Order when received from the Buyer and a copy of each invoice upon issuance to the Buyer.
6. **Payment and Audit.** The payment of commission on sales of castings by Foundry to Agent shall be made under the following terms and conditions:
 - (a) The payment will be due and remitted to Agent by Foundry within five (5) days after receipt of payment from the Buyer. All payments to Agent shall be made in United States Dollars (in the case of orders providing for payment in any other

currency, at such exchange rate as Agent shall reasonably determine) and shall be made to Agent in the United States. Foundry shall not withhold any taxes or other governmental charges on any commission due to Agent. If any taxes or charges are due as a result of any commission, obligation or payment, Foundry shall bear the cost thereof.

(b) During the twenty-four (24) month period following the date that a payment by Foundry is due to Agent but no more than twice per year (except as otherwise required by any governmental regulatory agency), Agent shall have the right to audit the Foundry's records relating to payment to confirm the accuracy of Foundry's payments and records in order to verify the amount of the payments owed and/or paid. If the amount owed to Agent was underpaid by five percent (5%) or less for the applicable payment, then Foundry shall pay the additional amounts owed to Agent plus interest within thirty (30) days of notice and verification of such underpayment. If the amount owed to Agent was underpaid in excess of five percent (5%) of the amount owed for the applicable payment, then Foundry shall pay the costs associated with such audit and pay the additional amounts owed to Agent plus interest within thirty (30) days of notice and verification of such underpayment. Agent shall give reasonable advance notice to Foundry of the audit, and to the extent reasonably possible each audit shall be conducted in a manner that does not cause unreasonable disruption to the conduct of Foundry's business. Commission payments that are not paid when due shall bear interest at a rate equal to the lower of eighteen percent (18%) per year or the highest rate permitted by applicable law.

7. Term and Termination.

(a) The term and methods of termination of this Agreement shall be as follows:

(i) This Agreement shall commence upon the Effective Date and shall remain in force for one (1) year subsequent to the Effective Date ("Term"). This Agreement will automatically renew for successive one (1) year terms ("Renewal Term") unless either party gives written notice of termination to the other party at least thirty (30) days prior to the end of the initial or successive term.

(ii) This Agreement may be terminated at any time by either party upon at least thirty (30) days prior written notice to the other party. Without limiting any other remedies available, either party shall have the right to terminate this Agreement at any time upon giving prior written notice as follows:

(1) If the other party commits a material breach of this Agreement, and such breach remains uncured thirty (30) days after written notice of such breach is delivered to the other party; or

(2) If the other party makes an assignment for the benefit of creditors, or commences or has commenced against it any proceeding in bankruptcy, insolvency, or reorganization pursuant to bankruptcy laws or laws of debtor's moratorium.

(b) From and after any termination of this Agreement:

(i) Rights of termination are without prejudice to any remedies available to the parties under this Agreement for breach at law or in equity.

(ii) All commissions and any other monies due to Agent by Foundry shall remain due and payable in accordance with the terms hereof.

(iii) Foundry shall complete all pending transactions with Buyers.

(c) Upon termination or expiration of this Agreement, all provisions of this Agreement concerning the ongoing interests of the parties shall continue and survive in full force and effect.

8. Warranty Disclaimer. Foundry uses the Services at its own risk. Agent, its employees, users, affiliates, agents, third-party content providers, suppliers, licensors, and the like do not warrant that the Services will be uninterrupted or error free; nor do they make any warranty as to the results that may be obtained from use of the Services, or as to any castings, product, service, transaction or merchandise provided, promoted or entered into through the Services. THE SERVICES AND ANY CONTENT, CASTINGS AND PRODUCTS ARE PROVIDED ON AN "AS IS, AS AVAILABLE" BASIS. NEITHER AGENT NOR ANY OF ITS AFFILIATES MAKE ANY WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES OR ANY CONTENT, CASTINGS OR PRODUCTS, AND HEREBY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, THOSE OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

9. Confidentiality/Non Disclosure. It is expected that from time to time, Foundry may receive certain confidential and proprietary information from Buyer or Agent in connection with the Services (all such information is herein referred to as "Confidential Information"). Subject to the provisions below, Foundry

agrees to treat Confidential Information as confidential and agrees not to use the same or any part thereof except as may be required to prepare or submit a quotation pursuant to this Agreement or to perform any agreement with a Buyer arising out of this Agreement, and will not disclose the same or any part thereof to any third party without the prior, specific written approval of Agent; provided, however, that to the extent, but only to the extent reasonably necessary in connection with its activity hereunder, Foundry may disclose the same to such third parties, including subcontractors and vendors, who are subjected in writing to an obligation of confidentiality and restricted use with respect to the same which is at least as restrictive as herein required of Foundry. Nothing contained in this section shall in any way restrict or impair the right of Foundry to use, disclose or otherwise deal with any information which:

- (i) At the time of disclosure is generally available to the public or thereafter becomes generally available to the public by publication or otherwise through no act of the Foundry;
- (ii) Foundry can show was in its possession prior to the time of the disclosure hereunder and was not acquired directly or indirectly from Agent or Buyer; or
- (iii) Is independently made available to Foundry as a matter of right by a third party other than Agent.

10. **Limitation of Liability.** NOTWITHSTANDING ANYTHING CONTAINED IN THIS AGREEMENT OR OTHERWISE, NEITHER AGENT (INCLUDING WITHOUT LIMITATION, ITS DIRECTORS, OFFICERS AND SHAREHOLDERS) NOR ANY OF ITS AFFILIATES WILL BE LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY (I) FOR ANY AMOUNT IN EXCESS OF THE AGGREGATE OF THE AMOUNTS PAID BY FOUNDRY FOR THE SERVICES DURING THE TWELVE MONTH PERIOD PRIOR TO THE DATE THE CAUSE OF ACTION AROSE, OR (II) FOR ANY INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES OF ANY KIND, INCLUDING, WITHOUT LIMITATION, LOSS OF DATA, CONTENT OR FILES, PROFIT, GOODWILL, OR PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES.

11. **Compliance with Law.** Foundry shall fully and faithfully comply with all applicable laws, rules and regulations in connection with the use of the Site or Content, dealings with Buyers and sales of castings including but not limited to all applicable export, import, antitrust and competition laws, rules and regulations.

12. **Indemnification.** Foundry agrees to indemnify and hold harmless Agent for damages, costs and attorneys' fees that Agent incurs from any claims, actions or demands, including by way of example but not limitation legal and accounting fees, arising from (i) Foundry's wrongful use of the Site, (ii) Foundry's breach of this Agreement, or (iii) any alleged violation of or otherwise relating to any applicable law, regulation or statute. Agent shall provide notice to Foundry promptly of any such claim, suit, or proceeding and shall assist Foundry, at Foundry's expense, in defending any such claim, suit or proceeding.

13. **Non-Transferable.** Your right to use the Site is not transferable and is subject to any limits established by Agent, by your credit card company or by the credit line you establish with Agent.

14. **Notices.** Unless states otherwise, all notices will be sent by email: (i) by Foundry to BUYCASTINGS.com or (ii) by Agent either to the email address Foundry provides to Agent during the registration process or other address that Foundry specifies in writing. E-mail notices will be read within 24 hours after they are sent, unless the sender is notified that the email address is invalid or returned undeliverable. Alternatively, Agent may provide notice by certified mail, postage prepaid and return receipt requested, to the address provided to Agent on the user's registration form.

15. **Force Majeure.** Failure of or delay in performance of any obligation or adherence to any provision of this Agreement (except for failure or delay by a party to make payments due under or in connection with this Agreement), shall not constitute a breach of the Agreement, if such failure or delay is caused by or arises out of acts of God, acts of government, applicable export or import laws or regulations as in effect from time to time, strikes or labor difficulties, fire, failures or delays caused by suppliers or carriers, material shortages, or any other cause which is beyond the control of the party failing to perform or delaying its performance.

16. **Governing Law; Forum.** This Agreement shall be exclusively governed by, and shall be exclusively interpreted in accordance with, the laws of the State of Ohio, U.S.A. (excluding the conflict of laws provisions thereof). Notwithstanding the foregoing, the 1980 U.N. Convention on Contracts for the International Sale of Goods shall not apply to this Agreement or any sale made pursuant to this Agreement. Subject to Section 14 of this Agreement, any action or proceeding by either of the parties against the other arising out of or relating to this Agreement; the making, performance, nonperformance, or termination thereof; or any transaction between the parties or obligation of either party or both parties in that connection, may (and, in the case of any such action or proceeding against Agent may only) be brought in any federal or state court located in Montgomery County, Ohio, U.S.A., and service therein may

be made upon any nonresident party at its address set forth in this Agreement in accordance with the procedures provided for service upon nonresidents under the laws of Ohio.

17. **Arbitration.** Any dispute or claim arising under or in connection with this Agreement shall be finally settled by arbitration under the international commercial arbitration rules of the American Arbitration Association by one arbitrator appointed in accordance with such Rules. Such arbitration shall be held in Dayton, Ohio, U.S.A. and shall be conducted in the English language. Any award resulting from such arbitration shall be final and binding on the parties. Judgment on any such award may be entered and enforced in any court of competent jurisdiction. Notwithstanding the foregoing, Agent shall at all times have the right to seek, at its option in lieu of arbitration, in order to protect its trademarks, trade names, trade secrets, domain names and/or any other confidential and/or proprietary information, such remedies through the courts, at law or in equity, or otherwise as it deems necessary or desirable, including without limitation, injunctive relief.

18. **Severability.** Nothing contained in this Agreement shall be construed as requiring the commission of any act contrary to law. Whenever there is any conflict between any provisions of this Agreement and any applicable present or future statute, law, ordinance or regulation contrary to which the parties have no legal right to contract, the latter shall prevail, and in such event, the provisions of this Agreement thus affected shall be curtailed and limited to the extent (but only to the extent) necessary to bring them within the requirements of the law. If any part, section, sentence or clause of this Agreement shall be held to be invalid or unenforceable, the same shall in no way affect any other provision of this Agreement and the balance of this Agreement shall continue in full force and effect.

19. **Entire Agreement; Amendment; No Waiver.** This Agreement and any and all exhibits, addenda and supplements attached hereto constitute the entire agreement between the parties in regard to the subject matter of this Agreement and supersede any prior agreement, statements of policy, negotiations or discussions in regard thereto. No amendment of this Agreement shall be effective until signed by both parties hereto. No waiver, express or implied, of strict compliance with all terms and conditions of this Agreement shall operate as a waiver of any prior or subsequent failure to comply.

I REPRESENT AND WARRANT THAT I AM AN OFFICER OR REPRESENTATIVE OF THE FOUNDRY AUTHORIZED TO BIND THE FOUNDRY TO THE TERMS AND CONDITIONS SET FORTH HEREIN. I HEREBY ACCEPT THE PROVISIONS OF THESE TERMS AND CONDITIONS AND AGREE TO BE BOUND BY ITS TERMS AND CONDITIONS IN ALL FUTURE COURSE OF CONDUCT OF THE SITE.

PLEASE SIGN AND FILL OUT THE FOLLOWING ONLY IF MAILING OR FAXING BACK THE PRINTED VERSION OF THIS AGREEMENT OTHERWISE PLEASE FILL-OUT THE ONLINE ACCEPTANCE FORM.

Read and Accepted by:

Signature

Date

Print Name of Person Accepting: _____

Title: _____

E-mail: _____

Company Name: _____