

Manufacturing and supply agreement for Merit3D 600 S Nick Ln Price, UT 84501

For this manufacturing and supply agreement, any person, body or organization that buys products from Merit3D or its affiliates, are considered the "Buyer" in this manufacturing and supply agreement. Please read these terms carefully and fully prior to making any purchases with Merit3D.

**Additive Manufacturing**-Merit3D is a contract manufacturer of additively manufactured products. These products are produced by means of FDM and SLA type 3D printers. Like any manufacturing process, there are limitations and tolerances (e.g., color, quality, and material limitations/tolerances) that should be understood by the Buyer prior to ordering.

**PRODUCT PURCHASE.** For any order to Merit3D or their affiliates, the Buyer agrees to purchase the products identified in a purchase order submitted by the Buyer and/or a quote sent out by Merit3D and accepted by the Buyer. Quantities and prices shall be listed on said documents. Merit3D agrees to manufacture and supply to Buyer the products identified in said documents and according to Buyers tolerances subject to the natural and reasonable limitations, tolerances, and variations inherent in the additive manufacturing process. Buyer will provide Merit3D with pass-fail specifications of the parts ordered at the time of submitting the Purchase Order.

**SAMPLES.** Merit3D may provide initial samples prior to mass production of products under any Purchase Order or Quote. Merit3D may charge Buyer for time and costs for samples in connection with any orders.

**DEPOSIT.** Buyer agrees to pay Merit3D the Deposit identified in a retainer invoice to the start of any manufacturing project. All orders over \$5,000 require a minimum 50% down payment prior to Merit3D starting the manufacturing project.

**FINAL PAYMENT.** Buyer agrees to pay Merit3D all remaining unpaid balance of invoice, including any shipping charges, upon receipt of the final invoice, and prior to delivery of product. Any net payment terms must be approved in advance by Merit3D in writing.

**PAYMENT METHOD; CREDIT CARD / ACH PAYMENT AUTHORIZATION.** Unless otherwise agreed to in writing, Buyer shall make all payments hereunder by ACH or credit card. Buyer may be responsible for all transaction fees. Other payment methods must be approved in advance by Merit3D in writing.

**RENEWAL.** Any renewal of this agreement shall be subject to the mutual agreement and acceptance of the parties. All future purchase orders must be promptly confirmed in writing prior to start of any manufacturing project and shall be subject to the terms of this Agreement unless such future purchase orders are accompanied by a new Purchase Order Terms and Conditions signed by both Merit3D and Buyer.

**BUYER COVENANTS AND REPRESENTATIONS.** Buyer represents and warrants that: (i) it has power and authority to enter into and perform its obligations under this Agreement; and (ii) at all times, it will comply with all applicable foreign, federal, state and local laws, rules, regulations and ordinances. Buyer further covenants, represents, and warrants that: (iii) the products and manufacture of the products that are contracted between Merit3D and the Buyer do not infringe any third-party's patents, trademarks, trade secrets, copyrights, other intellectual property rights; and (iv) that Buyer will comply with all requirements of California Proposition 65, including providing all applicable packaging and label warnings as may be required by Proposition 65. For info regarding Proposition 65 visit: <https://oehha.ca.gov/proposition-65> other state and federal laws. Buyer covenants and agrees that is responsible to review and inspect products and product samples and ensure that such products meet and comply with: (v) any state or federal laws, regulations, rules, or other legal or regulatory requirements or of any other governing or regulatory authority; (vi) any expectations of Buyer or its customers; and/or (vii) any and all safety requirements, whether required by law or pursuant to any Buyer or customer specification or expectation.

**DISCLAIMER; LIMITATION OF LIABILITY.** Merit3D hereby disclaims any and all implied warranties of merchantability, fitness for a particular purpose, non-infringement and implied warranties arising from course of dealing or course of performance. In no event shall Merit3D's liability exceed the total amount paid to Merit3D by buyer hereunder. In no event shall Merit3D be responsible for any indirect, incidental, consequential, special, punitive, liquidated, lost profits or exemplary damages arising from any aspect of the manufacturing relationship contemplated herein. It is the Buyers responsibility to make sure that the product they are subcontracting to Merit3D, will work for said Buyers application. Merit3D does not do any testing for the Buyers purpose and will not claim any responsibility that they product will work for Buyers application. ALL buyers MUST verify that the process, procedures and materials that Merit3D provides, will work for Buyers end user and customers.

**INDEMNIFICATION.** Buyer hereby agrees to indemnify, defend and hold harmless Merit3D and its affiliates, and each of their respective officers, directors, shareholders, members, agents, partners and employees, from and against all claims, actions, liabilities, losses, expenses, damages, and costs (including, without limitation, reasonable attorneys' fees) that may at any time be incurred by any of them by reason of any claims, suits or proceedings arising from or relating to: (a) patent infringement, copyright infringement, trademark infringement, unfair competition, trade secret violations, or other infringement of any third party intellectual property or other right; (b) fraud, false advertising, misrepresentation, product liability or violation of any law, statute, ordinance, rule or regulation in connection with any material provided by Buyer; (b) Buyer's negligence or willful misconduct, (c) any breach by Buyer of any duty, representation, warranty or covenant hereunder; and/or (d) a contaminated file, virus, worm, or trojan horse, or similar deleterious items, originating from any material provided by Buyer. Buyer shall promptly act in accordance with this section upon receipt of written notice of a claim. Merit3D shall have the right to participate in its own defense.

**Applicable Law-** This Agreement shall be governed by, interpreted in accordance with the laws of the State of Utah. Any legal proceeding relating to this Agreement shall be brought and litigated solely in the State of Utah.

**CANCELLATIONS AND REFUNDS.** Buyer may not cancel any Purchase Order after a Manufacturing Project has commenced. Merit3D will not provide any refunds after a Manufacturing Project has commenced. Merit3D may under appropriate conditions elect in its discretion to replace parts at the discretion of Merit3D, subject to appropriate change order charges. All product specifications and tolerances and critical dimensions must be communicated by Buyer to Merit3D in writing prior to execution of the Purchase Order.

**FORCE MAJEURE.** Merit3D's obligations under this Agreement shall be suspended for so long as Merit3D is prevented from complying with the provisions hereof by acts of God, the elements, riots, war, acts of Federal, state or local governments, agencies or courts, strikes, lock-outs, damage to or destruction or unavoidable shut-down of necessary facilities, or other matters beyond Merit3D's reasonable control; provided, however, that Merit3D shall promptly notify Buyer thereof and shall exercise all due diligence to remove and overcome the cause of such inability to comply as soon as practicable.

**MISCELLANEOUS.** The prevailing party in any legal action to enforce payment of amounts owed by Buyer to Merit3D under this Agreement shall be entitled to payment by the non-prevailing party of their reasonable attorney's fees, court costs and other related collection costs and expenses incurred.

**USE MARKETING AGREEMENT-**Merit3D is active on social media, and loves to share stories, pictures, and videos about buyers' products and projects. Companies' social campaigns also help the Merit3D of the Buyer in many cases and could help increase sales. With Buyers permission, Merit3D can and may include pictures and videos of parts in their social media projects.