

Ohio Tool Works, LLC
Standard Terms & Conditions of Sale

ANY DIFFERENT OR ADDITIONAL TERM, WHETHER OR NOT MATERIAL, PROPOSED BY THE BUYER IN ANY PURCHASE ORDER OR OTHERWISE IS HEREBY REJECTED. THIS IS NOT AN ACCEPTANCE OF ANY PRIOR OFFER, NOR IS IT A CONFIRMATION OF ANY PRIOR ORAL DISCUSSION. Ohio Tool Works, LLC, herein referred to as the “Company,” will sell to the Buyer the products described in its product quotation, subject, however, to the following terms and conditions:

1. **ACCEPTANCE:** Acceptance by the Company of the Buyer’s order is expressly conditioned upon Buyer’s agreement to all of the terms and conditions set forth herein and any inconsistent or additional terms contained in the Buyer’s purchase order, purchase contract or other document are hereby rejected. The terms and conditions contained herein shall not be modified other than in a single writing executed by the Buyer and the Company. Such terms and conditions constitute the entire agreement between the Company and the Buyer with respect to the subject matter contained herein and supersede all prior oral or written representations and agreements.

2. **PRICES AND TAXES:** The prices quoted by the Company are subject to change without notice due to metal price fluctuations and are stated in United States dollars. Unless otherwise stated in the Company’s sales quotation, prices quoted are F.O.B., the Company’s facility, 1374 Enterprise Parkway, Ashland, Ohio 44805. The amount of any local, State or Federal tax levied on the products referred to herein shall be added to the amount paid by and remain the sole responsibility of the Buyer. All invoices are payable within thirty (30) days of the delivery date. All invoices not paid in accordance with such terms of payment shall bear interest from the due date at the rate of 1/20 of 1% per day until paid. In the event a charge of 1/20 of 1% per day may not be charged under applicable state or federal law, then the maximum amount of service charge permitted under applicable state or federal law shall be charged until paid in full. The Company reserves the right to revise the above payment terms if at any time the Company, acting in its sole discretion, deems the credit worthiness of the Buyer to be in question. The Buyer shall pay, to the extent permitted by law, all reasonable costs and expenses, including attorney fees and costs incurred by the Company in connection with any collection action for payment of the amounts due herein. If the products covered hereby are to be delivered to the Buyer over a specified period of time following the order date, or if the Buyer orders a specific quantity or estimated quantity of products based on an estimated need, the Buyer shall accept shipment of and pay for all products stated or estimated in such order and such payment shall be made in accordance with this Section 2 above, and in any event, on or before the end of such specified period of time, if any.

3. **PACKAGING:** All products shipped in one-way containers (barrels, canisters, sacks, bags, cartons, etc.) shall become the property of the Buyer and shall not be returned to Company but properly disposed of by Buyer. All products shipped in returnable containers are the property of the Company and the Buyer shall return any such containers to the Company. Buyer shall be liable for the failure to return such containers. Goods in containers are invoiced at their net weight.

4. **DELIVERY:** Any dates or schedules which may be specified for the delivery of the products covered hereby have been stated only approximately and are estimated from the date of receipt of the Buyer’s order. The Company shall not incur any liability, either direct or indirect, nor shall any order be cancelled, because or as a result of any delays in meeting such dates or schedules. Company reserves the right to satisfy delivery of the products through partial delivery and part performance.

5. **FORCE MAJEURE:** The Company shall in no event be responsible or liable for any delays or failures in manufacture or delivery due to any cause or condition beyond the control of the Company, including, without limiting the generality of the foregoing, failure or refusal of any carrier to transport materials, delay

in transport thereof, failure of any source of supply to honor orders within time periods customarily or heretofore experienced by the Company, shortage or lack of material, fuel or power, strikes or other labor difficulties, fire, floods, inability to secure transportation facilities, actions of the elements, shortage of materials or equipment, riots or other civil commotion, war, and any contingency or delay or failure or cause beyond Company's control.

6. **PRODUCT SELECTION AND SUITABILITY:** The Company shall not be responsible for how the products are used or installed and the product's conformance with applicable Federal, state, local or foreign laws, rules, regulations, and ordinances. **IN NO EVENT SHALL THE COMPANY BE RESPONSIBLE FOR ANY LOSS OR DAMAGE ARISING OUT OF THE BUYER'S IMPROPER SELECTION, MISAPPLICATION OR MISUSE OF A PRODUCT.**

7. **LIMITED WARRANTY:** The Company will repair or replace, at its discretion, any of the products which fail to meet the applicable specifications within ninety (90) days from date of shipment upon return of the same at the Buyer's expense, provided that the Company's warranty shall extend only to the original purchaser from the Company, provided further the Buyer notifies the Company in writing within thirty (30) days after the Buyer is aware of any such defect, and provided, finally, that the Company shall in no event be responsible for the cost of labor or other charges incurred by the Buyer in returning any of the products to the Company for replacement. No returns shall be made without prior written consent of the Company. The Company shall not be liable for repair or replacement under this paragraph for any product defect resulting from the misuse, improper selection or misapplication of the product.

8. **MANUFACTURER WARRANTY:** The products or components of the products sold by the Company may be warranted to the Buyer by a third party manufacturer. The Company is not responsible or obligated to enforce the warranties extended by such manufacturer to the Buyer, but will use commercially reasonable efforts to assist the Buyer in obtaining or verifying any such warranty information. The Company may distribute literature or sales materials of the manufacturer, but assumes no responsibility for the content of such literature or materials.

9. **EXCLUSION OF OTHER WARRANTIES:** EXCEPT FOR THE EXPRESS WARRANTY SET FORTH ABOVE, THERE ARE NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, WHICH APPLY TO THE PRODUCTS AND THE COMPANY HEREBY DISCLAIMS SAME. NO WARRANTIES OR REPRESENTATIONS AT ANY TIME MADE BY ANY REPRESENTATIVE OF THE COMPANY SHALL BE EFFECTIVE TO VARY OR EXPAND THE ABOVE-REFERENCED EXPRESS WARRANTY OR OTHER TERMS HEREOF.

10. **LIABILITY LIMITATION:** In no event shall the Company be liable to the Buyer or to any third party for consequential, incidental, special or other damages of any kind resulting from or in any manner related to the products, their design, use, or any inability to use the same, including, without limitation, damages arising out of or in any manner relating to the delivery of the products or any delay with respect to their delivery, it being understood that the sole and exclusive remedy of the Buyer or any third party shall be the replacement or repair of defective products pursuant to the "LIMITED WARRANTY" provision hereinabove contained. **IN NO EVENT SHALL THE MEASURE OF DAMAGES EXCEED THE PURCHASE PRICE ACTUALLY PAID BY THE BUYER FOR THE PRODUCTS.** Should the products prove so defective, however, as to preclude the remedying of warranted defects by repair or replacement, the Buyer's sole and exclusive remedy shall be the refund of the actual purchase price paid by Buyer to the Company upon return of the products to the Company.

11. **SHOP DRAWINGS:** Shop drawings prepared by Company and approved by Buyer shall be deemed the correct interpretation of the work to be performed even when not consistent with the plans and specifications. Company will not commence fabrication of any materials required hereunder until: a) All complete contracts, plans, drawings and specification have been delivered to Company; b) All detail drawings submitted by Company have been finally approved by all authorities whose approval is required; c) Company has received all necessary information from other trades which affect or are related to our work or products (i.e. complete hardware schedule, templates, etc.); d) Company shall have received after completion of a), b), and c), a reasonable notice to commence fabrication of such materials, and e) All credits or debits for changes in quality or design of material furnished shall have been accepted in writing by Buyer

12. **CANCELLATION OR CHANGES OF ORDERS:** No orders may be withdrawn or cancelled by the Buyer, nor may they be deferred when ready, unless the Company shall first be paid a cancellation or deferral charge of a reasonable amount acceptable to the Company. In the event the Buyer shall request reasonable changes in its order after receipt thereof by the Company, the Buyer shall be responsible for all charges reasonably assessed by the Company with respect to such changes. In no event shall the Buyer request unreasonable changes with respect to any of the terms of any order, including but not limited to changes with respect to quantity and delivery dates. The reasonableness of a requested change shall be solely determined by the Company using its reasonable discretion.

13. **INSOLVENCY OR BANKRUPTCY:** If in the sole judgment of Company the credit of Buyer shall have or is likely to become impaired, or it appears to Company that it does not have a reasonable expectation of being paid at the time and in the amount specified in this agreement, without additional expense or delay, or both, then Company may at its option retain title to the goods manufactured or retain possession of Buyer's goods on which services have been performed until paid in cash or cancel the contract and receive such amount as provided in paragraph 12 above unless Company receives reasonable assurances of Buyer's ability to perform. In the event of any voluntary or involuntary proceedings against the Buyer in bankruptcy or insolvency, or in the event of any proceedings for the appointment of a receiver, trustee or assignee for the benefit of creditors of the property of the Buyer, Company may immediately assert any of its legal rights with respect to this contract, or at Company's option, cancel the same unless Company receives reasonable assurances of Buyer's ability to perform.

14. **RETURN OF PRODUCTS:** The Buyer may return any allowed product in the original package and in a non-objectionable condition only with the Company's prior written consent.

15. **RESTOCKING FEES:** The Buyer will be charged a fifteen percent (15%) restocking fee for processing all Eligible Return Product returned to the Company; provided, however, that no such fee will be charged for (a) Defective Product or (b) Product that was shipped to one of Retailer's customers but (i) was not listed on the customer's invoice or (ii) was incorrectly listed on the invoice.

16. **NO PROTECTION FROM CLAIM OF INFRINGEMENT:** The Company makes no representation or warranty that the delivery or subsequent use of the products ordered shall be free of the claim of any third party by way of infringement.

17. **SECURITY INTEREST:** The Buyer grants to the Company a purchase money security interest in the products covered hereby and any proceeds thereof resulting from the resale of the products until full payment is received, with respect to any sales on open account. The Buyer hereby authorizes the Company to file any and all documents to establish and maintain such security interest.

18. APPLICABLE LAW:

(a) The terms and conditions applicable to any sale of Goods by the Company shall be determined and construed in accordance with, and shall be governed by, the laws of the State of Ohio, excluding its conflict of law principles, and Buyer and the Company agree to submit to the exclusive jurisdiction of the appropriate state or federal court located within Ohio for purpose of resolving any dispute or claim arising in connection with said transaction(s).

(b) In the event Buyer is an entity formed under the laws of a jurisdiction other than any State of the United States of America, Ohio law shall still govern any sale of Goods to such Buyer, excluding its conflict of law principles, and all disputes arising under any such sale shall be finally settled under the Rules of Arbitration of the International Chambers of Commerce instead of submitting to the exclusive jurisdiction of the appropriate state or federal court within Ohio. The place of arbitration shall be Cleveland, Ohio. The language to be used in the arbitral proceeding shall be English. The arbitration panel shall consist of three arbitrators, one arbitrator to be appointed by the Company, one arbitrator to be appointed by Buyer and the third arbitrator to be appointed in accordance with the Rules of the International Chambers of Commerce. Arbitration awards rendered shall be final and binding and shall not be subject to any form of appeal. The losing party, as determined by arbitrators, shall pay all reasonable out-of-pocket expenses (including, without limitation, reasonable attorneys' fees) incurred by the prevailing party, as determined by the arbitrators, in connection with any dispute unless the arbitrators direct otherwise. Nothing shall preclude either party from seeking interim or permanent equitable or injunctive relief, or both, from any court having jurisdiction to grant the same. The pursuit of equitable or injunctive relief shall not be a waiver of the duty of the parties to pursue any remedy for monetary damages through the arbitration described in this section. The Company and Buyer hereby expressly exclude applicability of United Nations Convention on Contracts for the International Sale of Goods if the same would otherwise apply hereto.

19. MISCELLANEOUS These terms and conditions contain the entire agreement and understanding of the parties and merge and supersede all prior discussions, agreements and understandings of every nature between the parties covering the products. These terms and conditions shall not be amended except in a writing signed by both parties. Failure, delay, or any partial exercise by either party of any right, power, or privilege available to such party hereunder shall not operate as a waiver, or preclude further exercise by such party of any other right, power, or privilege. If any provision or any portion of these terms and conditions are construed to be illegal, invalid or unenforceable, such provision or portion thereof shall be deemed stricken and deleted from these terms and conditions to the same extent and effect as if it were never incorporated herein, but all other provisions of these terms and conditions and the remaining portion of any provision that is construed to be illegal, invalid or unenforceable in part shall continue in full force and effect. The obligations and rights of the parties with respect to an order of products hereunder shall not be delegated or assigned by either party without the prior written consent of the other party. Any notice or other documents to be given or delivered hereunder by any party to any other party shall be in writing and shall be delivered personally or sent by certified mail, postage prepaid return receipt requested, or by a nationally recognized overnight courier service, to the respective addresses set forth on the Company's quotation. Each party is acting as an independent contractor and not as an agent, partner, or joint venture with the other party for any purpose. Neither party shall have any right, power, or authority to act or to create any obligation, express or implied, on behalf of the other party.