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**Tool & Machine, Inc.**

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## TERMS & CONDITIONS OF PURCHASE

- 1. TERMS AND CONDITIONS.** These Terms and Conditions supersede all printed and written matter on solicitations, proposals or other instruments submitted by Seller to Purchaser, and all inconsistent terms submitted by Seller prior to acceptance by Seller of Purchaser's purchase orders; and no terms and conditions other than those set forth in Purchaser's purchase orders or in any document attached to or incorporated by reference in these orders, shall bind Purchaser. Seller is conclusively deemed to have expressly agreed to and accepted all terms and conditions herein if Seller expressly agrees in writing to or accepts in writing Purchaser's orders if any part of the goods covered by these orders are shipped by Seller.
- 2. COMPLIANCE WITH LAWS.** Seller is in compliance with and shall comply with all applicable provisions of all Federal, State or Local laws or ordinances and all orders, rules, and regulations issued thereunder. Seller is in compliance with and shall comply with all laws, ordinances, rules, regulations, provisions and agreements required to be included or incorporated by reference or operation of law in the contracts resulting from acceptance of Purchaser's purchase orders and dealing with: EQUAL OPPORTUNITY (Executive Order 11246 as amended by Executive Order 113575 and 10286); EMPLOYMENT OF THE VETERANS (Executive Order 11701); EMPLOYMENT OF THE HANDICAPPED (Executive Order 11758 as amended by Executive Order 11867); EMPLOYMENT DISCRIMINATION BECAUSE OF AGE (Executive Order 11141); UTILIZATION OF DISADVANTAGED BUSINESS ENTERPRISES (Executive Order 11625; Public Law 95-507); AMERICANS WITH DISABILITIES ACT; and all requirements for non-segregated facilities set forth in 41 CFR Chapter 60-1.8. Further, Seller warrants and represents: that each chemical substance constituting or contained in goods sold or otherwise transferred to Purchaser is on the list of substances compiled and published by the Administrator of the Environmental Protection Administration pursuant to the Toxic Substances Control Act (P.L. 92-573) as amended, and the Federal Hazardous Substances Act (P.L. 92-516) as amended and standards and regulations thereunder; and that the goods to be furnished hereunder were or will be produced in compliance with the requirements of the Fair Labor Standards Act of 1938, as amended including Section 12(a).
- 3. CONFIDENTIAL OR PROPRIETARY INFORMATION.** Any knowledge or information which Seller has disclosed or may disclose to Purchaser which in any way relates to the goods or services covered by purchase orders, shall not, unless specifically agreed to in writing by Purchaser, be deemed to be confidential or proprietary information, and shall be acquired by Purchaser free of all restrictions, as part of the consideration for orders.
- 4. TERMINATION.** Purchaser may terminate all or any portions of their orders at any time by written notice to Seller (including but not limited to any time that Seller has ceased to operate its business in the normal course for any reason [including cessation resulting from inability of Seller to meet its obligations as they mature or Seller becoming subject to any proceeding under bankruptcy or insolvency laws or subject of a receiver appointed for Seller or an assignment for the benefit of creditors]), and upon termination by Purchaser, Purchaser and Seller shall negotiate reasonable termination charges, which shall not exceed (a) the purchase price incurred by Seller for materials

purchased for ultimate delivery to Purchaser hereunder which materials have not yet been delivered to Purchaser and cannot be returned, reused or resold by Seller and (b) actual costs of work done to or upon such materials to prepare them for delivery to Purchaser. Nothing herein shall limit Purchaser's remedies against Seller in the event of rejection of this Agreement in bankruptcy. Notwithstanding the foregoing, Purchaser may terminate work under this order in accordance with the provisions of the Subcontract Termination Clause set forth in Section 8-706 of the Armed Services Procurement Regulations, modified by deleting therefrom all reference to the Government.

- 5. EXTRA CHARGES AND PACKAGING REQUIREMENTS.** No charges, including but not limited to boxing and cartage charges, will be allowed unless specifically agreed to by Purchaser in writing. Seller shall be responsible for packing and packaging necessary to withstand transportation hazards, and any special packaging instructions of the Buyer set forth on the purchase orders are Seller's obligations. Price will cover net weight, unless otherwise agreed. Packaging for shipments on Commercial Bills of Lading must meet commercial standards and accepted Industry practices with full protection of the materials to ultimate destination and must conform to governing classifications, including but not limited to Uniform Freight Classification, for rail - National Motor Freight Classification, for truck - Railway Express Classification, for express - U.S. Official Postal Manual, for parcel post - Official Air Freight Rules Tariffs, for air freight.
- 6. DELIVERY SCHEDULE.** Seller shall not make material commitments or production arrangements schedules. Seller shall comply with the delivery requirements set forth on the purchase orders. Goods shipped to Purchaser in advance of schedules may be returned by Purchaser to Seller at Seller's expense.
- 7. DELAYS IN DELIVERY.** Purchaser's production schedules are based upon Seller's timely delivery. Time is of the essence for Purchaser's purchase orders. If Seller for any reason does not comply with Purchaser's delivery schedules solely by reason of causes beyond Seller's control of which delays Seller gave written notice to Purchaser within five (5) days after the start of any such delay, Purchaser, in addition to any other rights, may, at its option, either approve or provide a revised delivery schedule or terminate in whole or in part this order without liability to Seller on account thereof.
- 8. REJECTIONS.** If any of the goods are defective in material or workmanship or do not conform with the requirements of purchase orders, Purchaser, in addition to all other rights which it may have, may, at its option, at Seller's expense, correct or have corrected the defect or nonconformity or reject and return such goods.
- 9. PURCHASER'S PROPERTY.** Unless otherwise agreed in writing, all tools, equipment or materials of every description furnished to Seller by Purchaser or paid for by Purchaser, and all replacements thereof, and all materials affixed or attached thereto, shall be and remain the personal property of Purchaser. Each individual item shall be plainly marked or otherwise adequately identified by Seller as "Property of Major Tool & Machine, Inc." and be safely stored separate and apart from Seller's Property. Seller shall not substitute any of Purchaser's property nor use such property except in filling Purchaser's orders. Such property shall be held at Seller's risk and be kept insured by Seller at Seller's expense in an amount equal to the replacement cost with loss payable to Purchaser. Such property shall be subject to removal at Purchaser's request, in which event Seller shall prepare such property for shipment and redeliver it to Purchaser in the same condition as originally received by Seller, reasonable wear and tear excepted, at Seller's expense. The foregoing shall not affect the rights of the U.S. Government in such property.

- 10. SELLER'S WARRANTIES.** Seller warrants and represents to Purchaser that all products and materials sold by Seller pursuant hereto will, when delivered to Purchaser, conform to the specifications, drawings or samples specified or furnished there of and be and remain free from defects in workmanship and material. In addition to other remedies available, all products or components which, in Purchaser's judgment, fail to meet either such warranty shall, at Purchaser's option, be replaced by Seller at no charge for the product or components thereof or labor connected therewith. This warranty shall survive any inspection, delivery or acceptance of, or payment by Purchaser for, the products or materials or services.
- 11. CHANGES.** Purchaser shall have the right to make changes in orders, but no additional charges will be allowed unless authorized in writing by Purchaser. If such change affects deliveries or the amounts to be paid by Purchaser, Seller shall notify Purchaser immediately and negotiate an adjustment, based upon Seller's actual additional out-of-pocket costs. The maximum liability of Purchaser for obsolescence, scrapage, and/or rework resulting from any change shall be limited to the materials and parts in process at the time of the change and when such parts are within Seller's normal manufacturing cycle required to meet the established delivery schedules. Purchaser shall have no liability hereunder for cost of obsolescence, scrapage or rework of materials and parts which Seller has released for manufacture in advance of Seller's normal manufacturing process.
- 12. ASSIGNMENT.** Assignment of this purchase order or any interest therein or payment due or to become due without Purchaser's written consent shall be void.
- 13. SET-OFF.** Purchaser shall be entitled at all times to set-off any amount owing at any time from Seller to Purchaser or any of Purchaser's affiliated companies against any amount payable at any time by Purchaser in connection with orders.
- 14. FOR WORK ON PURCHASER'S OR ITS CUSTOMER'S PREMISES.** If Seller's work hereunder involves operations by Seller on premises of Purchaser or one of its customers, Seller shall take all necessary precautions to prevent injury to person or property during such work and shall indemnify Purchaser against all loss which may result from any act or omission of the Seller, its agents, employees, or subcontractors. Seller shall maintain such Public Liability, Property Damage and Employer's Liability and Compensation Insurance (with Purchaser as a named insured) as is hereafter approved by Purchaser with respect to such risks and from all claims under any applicable Workmen's Compensation and Occupational Disease Acts.
- 15. INSPECTION AND QUALITY CONTROL.**
- a) Seller and its subcontractors agree that Buyer, its customers and/or pertinent regulatory agencies shall have the right to enter their facilities at reasonable times to inspect the facilities, goods, materials, records, and property of Buyer covered by this order. Buyer's inspection of goods whether during manufacture, prior to delivery or within a reasonable time after delivery, shall not constitute acceptance of any work-in-process or finished goods. Seller shall provide and maintain Quality Control, Inspection, and Process Control systems acceptable to Buyer and its Customer and in accordance with Buyer's current revision of the Major Tool & Machine Quality Program. If any inspection or test is made on the premises of Seller or its supplier, Seller without additional charge shall provide all reasonable facilities and assistance for the safety and convenience of the inspectors in the performance of their duties. All inspections and tests on the premises of Seller or its supplier shall be performed in such a manner as not to unduly delay the work.

- b) Where necessary to ensure valid results, measuring equipment shall be calibrated or verified at specified intervals, or prior to use, against measurement standards traceable to international or national measurement standards; where no such standards exist, the basis used for calibration or verification shall be recorded.
- c) In the event the seller discovers a nonconformance to the material or service to be provided, the seller shall promptly advise MTM in writing of the nonconformance, seller-recommended disposition and technical justification. The notification will be in sufficient detail for MTM to evaluate the full scope of the nonconformance and approve the seller-recommended disposition or require an alternative disposition to the seller. No nonconforming material is to be shipped to MTM without prior written approval from MTM. A nonconformance is defined as one or more of the following
- technical or material requirement is violated;
  - requirements in Seller documents, which has been approved by MTM, is violated;
  - nonconformance cannot be corrected by continuation of the original manufacturing process or by rework;
  - the item does not conform to the original requirement even though the item can be restored to a condition such that the capability of the item to function is unimpaired.

**16. PROCESS CONTROL.** When prior Purchaser review is required, the seller shall identify and present to the Purchaser processes for planning the fulfillment of PO requirements. If specified, the seller shall maintain a frozen process in the manufacturing and/or processing of controlled items. For any such item, the seller will submit a written request to MTM for prior approval before making any modifications to the process.

**17. PATENT INDEMNITY.** Seller shall, at its expense, handle, adjust and dispose of all claims and defend all suits and proceedings brought against Purchaser or its customers (which term includes, without limitation, Purchaser's lessees, bailees, transferees and assigns) based to any extent on any claim that the manufacture or use or sale of goods, constitutes infringement of any patent of any country; and Seller shall indemnify, defend and save harmless Purchaser and its customers from and against all losses, costs, damages, expenses and liabilities arising out of or related to any claim, suit or proceeding. If said goods or their manufacture or sale are enjoined or interfered with, Seller shall, at its expense, procure for Purchaser and its customers the right to continue using said goods, or modify them so they become non-infringing or, with the written approval of Purchaser, remove said goods and refund the purchase price and transportation and installation costs thereof. The foregoing indemnity and warranty obligations are inapplicable: (a) where the infringement results from detail designs supplied by Purchaser, unless goods embodying such designs are normally sold or advertised for sale to others by Seller; or (b) to the extent that a suit based on said infringement claim may be maintained only against the U.S. Government.

**18. SPECIFICATIONS.** All specifications, drawings, notes, instructions, engineering notices, or technical data referred to in purchase orders shall be deemed incorporated herein by reference as if fully set forth.

**19. TITLE TO DRAWINGS AND SPECIFICATIONS.** Purchaser shall at all times retain title to all drawings and specifications furnished by Purchaser to Seller. Seller shall use such drawings and specifications only in connection with purchase orders and not disclose such drawings and specifications to any person or entity other than Purchaser or Seller's employees, subcontractors, or governmental inspectors. Seller shall, upon Purchaser's request or completion of orders, promptly return all drawings and specifications to Purchaser.

- 20. PROOF OF SHIPMENT.** Seller shall forward to Purchaser, with each receipt of goods by Purchaser, the express receipt or bill of lading, signed by the carrier, evidencing the fact the shipment has been made.
- 21. WAIVER OF LIENS.** Seller hereby waives and relinquishes all liens and claims, statutory or otherwise, which Seller now has or may hereafter have as a result of labor done and materials furnished by Seller in performance of the purchase orders.
- 22. REMEDIES.** In the event of Seller's default, Purchaser shall have all remedies available at law or in equity.
- 23. BINDING EFFECT.** Purchase orders and acceptance thereof shall be a contract made in the State of Indiana, governed in all respects by the laws of Indiana.
- 24. RECORD RETENTION.**  
Seller shall maintain a documented procedure for the generation, verification, and retention of records associated with articles and materials throughout procurement, processing, fabrication, inspection, and test. Records shall be of sufficient detail, accuracy, and format to permit analysis of quality performance. Records shall be legible and reproducible.  
These records shall be identified and traceable to associated articles, including unit or lot serialization and configuration, when applicable; and shall be made available to Purchaser upon request.  
Records shall be retained for a minimum of five (5) years after final payment of purchase order or for an additional period, if specified in the purchase order. Records retained, unless otherwise specified include:
- Seller's Procurement Documents
  - Receiving / In-Process / Final Inspection and Test (including results)
  - Process Control Records
  - Employee Training/Qualifications
  - Calibration Records
  - Dispositions of Nonconforming Articles and Corrective Action
- 25. CERTIFICATE OF CONFORMANCE.** Seller agrees to generate Certificates of Conformance (C of C) when required by the Purchaser that comply with the following criteria:
- a) The certificate shall identify the purchased material, equipment, or service such as by the purchase order number including change order number where applicable.
  - b) The certificate shall identify the specific procurement requirements met by the purchased material, equipment, or service, such as codes, standards, and other specifications. The procurement requirements identified shall include any approved changes, waivers, or deviations applicable to the subject material, equipment, or service.
  - c) The certificate shall identify any procurement requirements that have not been met, together with an explanation and the means for resolving the nonconformance(s).
  - d) The certificate shall be signed or otherwise authenticated by a person who is responsible for this quality assurance function and whose function and position are described in the Purchaser's or Supplier's quality assurance program.
  - e) The certificate shall be completed per established procedures within the Seller's quality assurance program. These procedures include defined processes for filling out, reviewing, and approving certificates.
- 26. Subtier Vendor Flowdown.** The Seller is responsible for passing down all applicable purchase order requirements to subtier vendors.