

# TRUMBULL

**Trumbull Manufacturing, Inc.**  
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## GENERAL TERMS AND CONDITIONS FOR THE SALE OF PRODUCTS

1. **Applicability.** These General Terms and Conditions for the Sale of Products are supplemental to and in addition to those shown in the Distributor List Price Sheet (the "**Price List**"), as modified from time to time.

(a) These terms and conditions of sale (these "**Terms**") are the only terms which govern the sale of the products ("**Products**") by TRUMBULL MANUFACTURING, INC. ("**Seller**") to the purchaser of the Products ("**Purchaser**"). Notwithstanding anything herein to the contrary, if a written contract signed by both parties is in existence covering the sale of the Products covered hereby, the terms and conditions of said contract shall prevail to the extent they are inconsistent with these Terms.

(b) The Price List and any accompanying quotation, confirmation of sale and invoice (the "**Sales Confirmation**") and these Terms (collectively, this "**Agreement**") comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. These Terms prevail over any of Purchaser's general terms and conditions of purchase regardless of whether or when Purchaser has submitted its purchase order or such terms. Fulfillment of Purchaser's order does not constitute acceptance of any of Purchaser's terms and conditions and does not serve to modify or amend these Terms.

### 2. **Delivery of Products**

(a) The Products will be delivered within a reasonable time after the receipt of Purchaser's purchase order, subject to availability of the Products. The date of delivery stated in the Sales Confirmation and/or quotation is an estimated date and Seller shall use commercially reasonable efforts to ship within the time promised, but does not guarantee delivery. Seller shall not be liable for any delays, loss or damage in transit.

(b) Unless otherwise agreed in writing by the parties, Seller shall deliver the Products to Seller's facility

(the "**Delivery Point**") using Seller's standard methods for packaging and shipping such Products. Purchaser shall take delivery of the Products within five (5) days of Seller's written notice that the Products have been delivered to the Delivery Point. Purchaser shall be responsible for all loading costs and provide equipment and labor reasonably suited for receipt of the Products at the Delivery Point.

(c) Seller may, in its sole discretion, without liability or penalty, make partial shipments of Products to Purchaser. Each shipment will constitute a separate sale, and Purchaser shall pay for the units shipped whether such shipment is in whole or partial fulfillment of Purchaser's purchase order.

(d) If for any reason Purchaser fails to accept delivery of any of the Products on the date fixed pursuant to Seller's notice that the Products have been delivered at the Delivery Point, or if Seller is unable to deliver the Products at the Delivery Point on such date because Purchaser has not provided appropriate instructions, documents, licenses or authorizations: (i) risk of loss to the Products shall pass to Purchaser; (ii) the Products shall be deemed to have been delivered; and (iii) Seller, at its option, may store the Products until Purchaser picks them up, whereupon Purchaser shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

### 3. **Non-Delivery.**

(a) The quantity of any installment of Products as recorded by Seller on dispatch from Seller's place of business is conclusive evidence of the quantity received by Purchaser on delivery unless Purchaser can provide conclusive evidence proving the contrary.

(b) Seller shall not be liable for any non-delivery of Products (even if caused by Seller's negligence) unless Purchaser gives written notice to Seller of the non-delivery within three (3) days of the date when the Products would in the ordinary course of events have been received.

(c) Any liability of Seller for non-delivery of the Products shall be limited to replacing the Products within a reasonable time or adjusting the invoice respecting such Products to reflect the actual quantity delivered.

(d) Purchaser acknowledges and agrees that the remedies set forth in this Section 3 are Purchaser's exclusive remedies for the delivery of Nonconforming Products.

4. **Shipping Terms.** All materials are shipped F.O.B. Youngstown, Ohio.

5. **Title and Risk of Loss.** Title and risk of loss passes to Purchaser upon delivery of the Products at the Delivery Point. As collateral security for the payment of the purchase price of the Products, Purchaser hereby grants to Seller a lien on and security interest in and to all of the right, title and interest of Purchaser in, to and under the Products, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase money security interest under the State of Ohio Uniform Commercial Code. . Purchaser hereby authorizes Seller to file any financing statement or other document that is necessary for Seller to perfect the security interest granted hereunder.

6. **Purchaser's Acts or Omissions.** If Seller's performance of its obligations under this Agreement is prevented or delayed by any act or omission of Purchaser or its agents, subcontractors, consultants, or employees, Seller shall not be deemed in breach of its obligations under this Agreement or otherwise liable for any costs, charges, or losses sustained or incurred by Purchaser, in each case, to the extent arising directly or indirectly from such prevention or delay.

7. **Inspection and Rejection of Nonconforming Products.**

(a) Purchaser shall inspect the Products within seven (7) days of receipt ("**Inspection Period**"). Purchaser will be deemed to have accepted the Products unless it notifies Seller in writing of any Nonconforming Products during the Inspection Period and furnishes such written evidence or other documentation as reasonably required by Seller. All requests for return must include the original invoice number and the date of the invoice. "**Nonconforming Products**" means only the following: (i) product shipped is different than identified in Purchaser's purchase order; or (ii) product's label or packaging incorrectly identifies its contents.

(b) If Purchaser returns the Nonconforming Products to Seller, Seller shall, in its sole discretion, (i) replace such Nonconforming Products with conforming Products, or (ii) credit or refund the Price for such Nonconforming Products, together with any reasonable shipping and handling expenses incurred by Purchaser in connection therewith. Purchaser shall ship the Nonconforming Products freight prepaid to Seller's facility located at 3850 Hendricks Rd. Youngstown, OH 44515. If Seller exercises its option to replace Nonconforming Products, Seller shall, ship to Purchaser, the replaced Products to the Delivery Point. The liability for freight on shipment of replacement Products shall be based on the Freight Policy as stated in the Price List.

(c) Purchaser acknowledges and agrees that the remedies set forth in Section 7(b) are Purchaser's exclusive remedies for the delivery of Nonconforming Products.

8. **Price.**

(a) Purchaser shall purchase the Products from Seller at the applicable price[s] (the "**Price[s]**") set forth on the Price List; provided, that for Products not listed on the Price List, the price shall be as quoted to Purchaser by the Seller.

(b) All Prices are exclusive of all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any governmental authority on any amounts payable by Purchaser. Purchaser shall be responsible for all such charges, costs and taxes; provided, that, Purchaser shall not be responsible for any taxes imposed on, or with respect to, Seller's income, revenues, gross receipts, personal or real property, or other assets.

9. **Acceptance of Orders; Credit.** All orders are subject to Seller's credit department approval prior to acceptance by Seller. Seller makes no assurance or guarantee regarding any amount of credit or the continuation of such credit to Purchaser. Notwithstanding the foregoing, if Seller determines, in its sole discretion, that the creditworthiness or future performance of Purchaser is impaired or unsatisfactory, Seller may: (a) suspend deliveries of Products, (b) require prepayment by wire transfer of immediately available funds, or (c) require Performance Assurance. Purchaser hereby waives written notice of any such action. "Performance Assurance" means collateral in the form of cash, letters of credit, guaranty, or other security acceptable to Seller in its sole discretion. In the event Purchaser fails to timely pay Seller any payments due (whether hereunder or pursuant to any other obligation of Purchaser to Seller) in accordance with Seller's terms, Seller may, in addition to any other remedies it may have hereunder, defer further shipments until such payments are

made or, at its option, cancel the unshipped balance without any liability to Purchaser.

10. **Payment Terms.**

(a) Purchaser shall pay all invoiced amounts due to Seller net thirty (30) days from the date of Seller's invoice. Purchaser shall make all payments hereunder in US dollars.

(b) Purchaser shall pay interest on all late payments at the lesser of the rate of 2% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. Purchaser shall reimburse Seller for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees. In addition to all other remedies available under these Terms or at law (which Seller does not waive by the exercise of any rights hereunder), Seller shall be entitled to suspend the delivery of any Products if Purchaser fails to pay any amounts when due hereunder and such failure continues for five (5) days following written notice thereof.

(c) Purchaser shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Seller, whether relating to Seller's breach, bankruptcy or otherwise.

11. **Limited Warranty.**

(a) Seller warrants to Purchaser that for a period of twelve (12) month[s] from the date of shipment of the Products ("**Warranty Period**"), that such Products will materially conform to Seller's published specifications in effect as of the date of manufacture and will be free from material defects in material and workmanship. Notwithstanding the foregoing, all tools sold by Seller have a lifetime warranty against failure of the tool due to defect in workmanship or materials.

**(b) EXCEPT FOR THE WARRANTIES SET FORTH IN SECTION 11(a), SELLER MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE PRODUCTS, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; OR (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; OR (c) WARRANTY OF TITLE; OR (d) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE.**

(c) Products manufactured by a third party ("**Third Party Product**") may constitute, contain, be contained in, incorporated into, attached to or packaged

together with, the Products. Third Party Products are not covered by the warranty in Section 11(a). For the avoidance of doubt, **SELLER MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO ANY THIRD PARTY PRODUCT, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (c) WARRANTY OF TITLE; OR (d) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE.**

(d) Seller shall not be liable for a breach of the warranties set forth in Section 11(a) unless: (i) Purchaser gives written notice of the defective Products, as the case may be, reasonably described, to Seller within five (5) days of the time when Purchaser discovers or ought to have discovered the defect; (ii) if applicable, Seller is given a reasonable opportunity after receiving the notice of breach of the warranty set forth in Section 11(a) to examine such Products and Purchaser (if requested to do so by Seller) returns such Products to Seller's place of business at Seller's cost for the examination to take place there; and (iii) Seller reasonably verifies Purchaser's claim that the Products are defective.

(e) Seller shall not be liable for a breach of the warranty set forth in Section 11(a) if: (i) Purchaser makes any further use of such Products after giving notice of a warranty claim; (ii) the defect arises because Purchaser failed to follow Seller's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Products; (iii) Purchaser alters or repairs such Products without the prior written consent of Seller; (iv) abuse of the Product; (v) normal wear and tear of the Product; or (vi) Purchaser actions, or omissions to act, results in the damage, loss, costs, claims, and liability of the Product.

(f) Subject to Section 11(d) and Section 11(e) above, with respect to any such Products during the Warranty Period, Seller shall, in its sole discretion, either: (i) repair or replace such Products (or the defective part) or (ii) credit or refund the price of such Products provided that, if Seller so requests, Purchaser shall, at Seller's expense, return such Products to Seller. No claim for labor, freight or other damages will be allowed, and Seller is not liable for any such claim.

(g) Oral or written statements by Seller's employees or agents, including via email, do not constitute warranties, shall not be relied upon by Purchaser, and are not part of this agreement of sale.

**(h) THE REMEDIES SET FORTH IN SECTION 11(f) SHALL BE THE PURCHASER'S SOLE AND EXCLUSIVE REMEDY AND SELLER'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTIES SET FORTH IN SECTION 11(a).**

**12. Limitation of Liability.**

**(a) IN NO EVENT SHALL SELLER BE LIABLE TO PURCHASER OR ANY THIRD PARTY FOR ANY LABOR CHARGES, EQUIPMENT CHARGES, LOSS OF USE, REVENUE OR PROFIT OR LOSS OF DATA OR DIMINUTION IN VALUE, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, LIQUIDATED OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.**

**(b) IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO SELLER FOR THE PRODUCTS SOLD HEREUNDER.**

**13. Compliance with Law.** Purchaser shall comply with all applicable laws, regulations and ordinances. Purchaser shall maintain in effect all the licenses, permissions, authorizations, consents, and permits that it needs to carry out its obligations under this Agreement. Purchaser shall comply with all export and import laws of all countries involved in the sale of the Products under this Agreement or any resale of the Products by Purchaser. Purchaser assumes all responsibility for shipments of Products requiring any government import clearance. Seller may terminate this Agreement if any governmental authority imposes antidumping or countervailing duties or any other penalties on Products.

**14. Termination.** In addition to any remedies that may be provided under these Terms, Seller may terminate this Agreement with immediate effect upon written notice to Purchaser, if Purchaser: (a) fails to pay any amount when due under this Agreement; (b) has not otherwise performed or complied with any of these Terms, in whole or

in part; or (c) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization, or assignment for the benefit of creditors.

**15. Waiver.** No waiver by Seller of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Seller. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

**16. Force Majeure.** Seller shall not be liable or responsible to Purchaser, nor be deemed to have defaulted or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of Seller including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion, or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic, lockouts, strikes or other labor disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, materials or telecommunication breakdown or power outage.

**17. Patents.** In the event of a patent infringement suit brought against Purchaser, its successors or assigns arising out of a patent infringement by Seller relating to the Products and if, as a result of such suit, a judgment is made final in a court of last resort against Purchaser, its successors or assigns, Seller agrees to pay that portion of the judgment (excluding any legal fees and expenses or court costs and expenses) only to the extent of the purchase price which shall have been paid by Purchaser to Seller for the infringing Products delivered by Seller during the last six (6) months prior to the commencement of said suit. The foregoing is conditional upon prompt notification to Seller of the commencement of such suit and Seller's having the opportunity to participate in the defense thereof on behalf of Purchaser. **THE FOREGOING STATES THE ENTIRE OBLIGATION AND THE EXCLUSIVE REMEDY OF PURCHASER WITH RESPECT TO ANY ALLEGED PATENT, COPYRIGHT, MASK WORK, TRADEMARK, TRADE SECRET OR OTHER INTELLECTUAL PROPERTY INFRINGEMENT BY ANY PRODUCT OR PART FURNISHED HEREIN AND THIS LIMITED INDEMNITY IS IN LIEU OF ANY OTHER STATUTORY OR IMPLIED WARRANTY AGAINST INFRINGEMENT.**

Seller shall not be liable for any judgement amount or losses and Purchaser will indemnify, defend with competent and experienced counsel and hold harmless the Seller from any losses resulting from any suit or proceeding based upon a claim arising from: (a) compliance with Purchaser's designs, specifications or instructions; (b) modification of the Products by a party other than Seller after delivery by Seller; (c) the use of any Product or any part thereof furnished herein in combination with any other product, or (d) the direct or contributory infringement of any process patent using any Product furnished herein. Sale of any Product or any part thereof by Seller does not confer upon Purchaser any license under any patent rights or copyrights.

18. **Trademark and Intellectual Property Use.** Seller owns all the trademarks and copyrights related to the Products. Under no circumstances shall Purchaser use any of Seller's intellectual property, without the prior written consent of Seller and a license from Seller thereof.

19. **Assignment.** Purchaser shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Seller. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Purchaser of any of its obligations under this Agreement.

20. **Relationship of the Parties.** The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

21. **No Third-Party Beneficiaries.** This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of these Terms.

22. **Governing Law.** All matters arising out of or relating to this Agreement are governed by and construed in accordance with the internal laws of the State of Ohio without giving effect to any choice or conflict of law provision or rule (whether of the State of Ohio or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of Ohio.

23. **Submission to Jurisdiction.** Any legal suit, action, or proceeding arising out of or relating to this Agreement shall be instituted in the federal courts of the

United States of America or the courts of the State of Ohio in each case located in the City of Warren and County of Trumbull, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding.

24. **Notices.** All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a "Notice") shall be in writing and addressed to the parties at the addresses set forth on the face of the Price List or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile (with confirmation of transmission), or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section.

25. **Severability.** If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

26. **Survival.** Provisions of these Terms which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Agreement including, but not limited to, the following provisions: Warranty, Limitations of Liability, Compliance with Laws, Governing Law, Submission to Jurisdiction and Survival.

27. **Amendment and Modification.** These Terms may only be amended or modified in a writing stating specifically that it amends these Terms and is signed by an authorized representative of each party.

28. **VALIDITY AND ENFORCEABILITY OF ELECTRONIC TRANSMISSIONS.** The conduct of Seller and Purchaser hereunder, including the use of documents communicated by facsimile or electronic transmission to initiate and accept sales orders, shall, for legal purposes, evidence a course of dealing and a course of performance accepted by the parties. Facsimile or electronic copies of signed documents, if introduced as evidence in any judicial, arbitration, mediation or administrative proceedings, shall be admissible as between the parties to the same extent and under the same conditions as original business records. Neither party shall contest the admissibility of facsimile or electronic copies of documents under the best evidence rule, or otherwise, on the basis that the documents are not the original form of such documents.