

## **HABCO TOOL & DEVELOPMENT COMPANY, INC.**

### **PURCHASE ORDER TERMS AND CONDITIONS**

This Order (as defined herein) is expressly limited to and made conditional upon the terms and conditions contained herein, and any of the Seller's terms in addition to or different from those contained herein, whether contained on an acknowledgment, invoice or other Seller document sent to Habco Tool & Development Company, Inc. ("Habco"), is hereby rejected and excluded.

#### **1. Contract Formation.**

(a) If preceded by a request for a quote from Seller and Seller's submission of an unconditional offer in response thereto, which incorporates and contains only the terms and conditions herein set forth, this Purchase Order, including the face-page(s) hereof (the "Order"), constitutes Habco's acceptance of such offer. Otherwise, this Order constitutes Habco's offer to buy goods, and is expressly conditioned on Seller's assent to and acceptance of all terms and conditions set forth herein and without any additional or different terms. Any additional or different terms proposed by Seller are rejected and excluded.

(b) Seller may accept this Order only as stated in the preceding Section 1(a) and by either: (i) giving Habco written acknowledgement of acceptance or (ii) commencing performance strictly in accordance with the terms of this Order and within a reasonable time (not to exceed thirty (30) days) from the date contained on the face page(s) of the Order. If Seller objects to any term hereof or proposes any additional or different terms, whether or not material, Seller must give Habco written notice stating any such objections and/or proposed additional or different terms before commencing performance, and no acceptance of this Order can occur until such objections and/or proposals are either withdrawn by Seller or settled by written agreement signed by Habco and Seller.

2. **Price.** The Price set forth on the face hereof, if any, is the firm price and Habco shall not be liable for any price increases of any nature. Seller warrants that the prices for the goods are not less favorable than those currently extended to any other customer for the same or like articles in such quantities, either generally or for any one sale to any other customer, from the date of acceptance of this Order to the date the goods are invoiced to Habco, Seller agrees to reduce the prices hereof correspondingly. Except as otherwise mutually agreed in writing between Habco and Seller, Seller's total price shall include any and all Federal, State and/or local sales, use or excise taxes levied upon or measured by the sale price or use of the goods. All such taxes, lawfully applicable, shall be listed separately on Seller's Invoice.

3. **Delivery and Materials.** Time is of the essence in connection with this Order. Except as otherwise mutually agreed in writing between Habco and Seller, Seller will deliver the goods to Habco in the quantities and at the times specified on the face-page(s) of this Order as required for the goods to arrive on the applicable due-date at the designated ship-to destination shown on the face-page(s) hereof, or as otherwise designated by Habco in the Schedules (as defined herein). Habco will have no liability for payment for goods, materials, components, parts and/or items which are in excess of quantities specified on the face-page(s) hereof or as set forth

in the Schedules. In the event of any late delivery, Habco may, at its option, (a) terminate and cancel this Order (in whole or in part), (b) vary delivery terms hereunder, or (c) purchase substitute goods elsewhere. Any losses sustained or costs incurred by Habco by reason of late delivery of items shall be paid to Habco by Seller. All goods shall be packed by Seller in suitable containers for protection of the goods and in accordance with Habco's instructions as set forth in the Schedules, if applicable. No charge shall be made by Seller for packaging unless otherwise provided for in this Order. Any provisions herein for delivery of goods or the rendering of services by installment shall not be construed as making the obligations of Seller severable.

4. **Risk of Loss.** Seller shall bear the full risk of loss of any goods purchased pursuant hereto until the goods are delivered to, received and inspected by Habco. Seller specifically bears the risk of loss of any goods delivered to any common carrier whether or not Seller is responsible to pay for transportation.

5. **Payment.**

(a) Payment for all undisputed amounts shall be due and payable from Habco to Seller within thirty (30) days from the date of Habco's receipt and acceptance of the goods ordered pursuant hereto or within thirty (30) days of Habco's receipt of an Invoice from Seller, whichever is later to occur. It is understood that the cash discount period, if any, will date from the receipt by Habco of the goods or other Invoice, whichever is later. Notwithstanding the foregoing, If Habco, in good faith, disputes the amount of any invoice and gives Seller written notice thereof, Habco may deduct the amount in dispute from the amount of such invoice.

(b) Notwithstanding the foregoing or anything to the contrary set forth in this Order, Habco and Seller agree that Habco may set off and deduct from Seller's outstanding invoices any amounts owed by Seller to Habco as a result of the transactions under this Order or any other agreement and/or transaction between Habco and Seller.

6. **Warranties and Indemnification.**

(a) As of the time of Seller's delivery of the goods to Habco, Seller represents and warrants to Habco that:

(i) the goods will be in full conformity with Habco's specifications, drawings, samples, data, instructions, schedules and/or other description furnished or specified by Habco to Seller (the "Specifications");

(ii) the goods will be (A) of the highest quality, (B) in conformity with applicable industry standards, (C) in compliance with all applicable laws relating to the manufacture and sale of the goods and (D) free from defects in workmanship and/or design;

(iii) the goods will be merchantable and fit and sufficient for the use and purposes intended by Habco;

(iv) the goods will be new and unused and will be free of and from all liens and encumbrances; and

(v) Habco's sale, resale and/or use of the goods (either alone or in combination with other products), will not infringe or contribute to the infringement of any third-party intellectual property rights or otherwise result in a violation of the laws relating to unfair competition or claim arising there under.

(b) Seller will provide Habco with product data sheets and/or Material Safety Data Sheets relating to the goods ("Safety Data Sheets") either at the time of or before Seller's delivery of the goods to Habco. Subsequent to Seller's delivery of goods to Habco, Seller will promptly provide Habco with copies of any amended or revised Safety Data Sheets relating to such goods.

(c) Except as set forth in the Specifications or otherwise mutually agreed in writing between Habco and Seller, Seller shall obtain and maintain the following occurrence based insurance coverage on a primary and non-contributory basis: (i) comprehensive general liability insurance (including premises and operations, completed products and contractual liability) with limits of at least \$2 million per occurrence and \$4 million in aggregate, (ii) umbrella liability insurance with limits reasonably satisfactory to Habco, and (iii) such other levels of insurance as may be adequate to cover any consequential damages arising as a result of its Seller's sale of goods to Habco hereunder and Habco's incorporation of such goods into its products and sale thereof. Within thirty (30) days of any material change in Seller's insurance coverage and/or upon Habco's request, Seller will provide proof of such insurance to Habco and each such policy of insurance shall name Habco (including Habco's subsidiaries and affiliates) as an additional named insured under each such policy of insurance.

(d) Seller agrees to indemnify, defend and hold Habco (including Habco's officers, directors, employees, affiliates, subsidiaries and customers) harmless of and from any and all liabilities, including all claims, allegations, suits, costs, damages, fines, penalties, losses and expenses (including, but not limited to reasonable attorney's fees), which may be incurred by Habco for arising from or in connection with Seller's breach of any of Seller's warranties set forth in this Order. Seller agrees that Seller's warranties relating to the goods shall survive Habco's acceptance of such goods. Seller further acknowledges and agrees that the warranties set forth in this Order shall be construed as conditions, as well as warranties, which shall run to both Habco and its customers, and shall be in addition to any warranties of additional scope given by Seller to Habco.

7. **Cancellation.** Habco may, at any time, cancel all or any part of the work covered by this Order and terminate this Order in whole or in part, even though Seller is not then in default. Seller will in accordance with Habco's notice of cancellation terminate and any all work under any orders or subcontracts outstanding, place no further orders or subcontracts, and take all steps necessary to protect the material or property in Seller's possession in which Habco has or may acquire an interest. In the event of cancellation, Habco's obligation, if any, shall be limited

to reasonable compensation for materials completed or services furnished in accordance with the terms of this Order and not previously paid for. In no event will Habco be responsible for materials which are in excess of quantities specified in the schedules furnished nor for items manufactured in advance of the schedules, notwithstanding the quantities specified in any orders outstanding for the materials, nor for services which go beyond the face of this Order. If, however, cancellation arises out of Seller's breach of any condition hereof, including breach of warranty, or by Seller's delay. Seller shall not be entitled to any claim for compensation, and Habco shall have against Seller all remedies provided by law and equity.

8. **Termination for Default.** Habco will have the right to immediately terminate this Order, without prior notice to Seller and without any liability to Seller, if: (a) Seller defaults in the performance of any material obligation hereunder; (b) Seller ceases to conduct its operations in the normal course of business; (c) Seller is unable to meet its obligations as they mature; (d) any proceedings under the bankruptcy or insolvency laws is brought by or against Seller and involves Seller's assets; (e) a receiver is appointed or application is made for appointment of a receiver of Seller's assets; (f) Seller makes an assignment of assets for the benefit of its creditors; or (g) Seller assigns or otherwise transfers this Order to any other person, and/or sells or transfers ownership or control of its entire business or the part of its business which makes and delivers goods to Habco hereunder to any other person, whether or not Seller owns, controls or otherwise is affiliated with such other person, without the prior written consent of Habco.

9. **Patents.**

(a) Seller warrants to Habco that the sale or use of the goods or any part thereof or any device or product incorporating same will not infringe any U.S. or foreign Patent.

(b) Seller hereby grants to Habco an unrestricted and royalty-free right and license under each Patent owned and/or controlled by Seller to use and sell the goods delivered hereunder, including the right to modify and reconstruct same.

(c) In the event that a claim is asserted against Habco that any goods or part thereof or any device or product resulting from use thereof infringes any U.S. or foreign Patent, Seller will defend, at its own expense, such claim and any lawsuit or other proceeding to the extent based on such claim, and Seller will pay all damages, attorney fees, and costs awarded therein; provided that Habco: (i) gives Seller written notice thereof; (ii) provides Seller with copies of all documents received in connection therewith, (iii) cooperates with Seller, at Seller's expense, in the defense thereof, and (iv) gives Seller full authority to control the defense thereof through lawyers of its own choice, including compromise and settlement of all claims. Further, if any such goods, parts, devices or products are held to infringe and use thereof is enjoined, Seller, at its own expense and option, will either procure for Habco and/or Habco's customer the right to continue using same, modify same to avoid infringement, replace same with a non-infringing article, or refund the full purchase price thereof and pay all costs which Habco and/or Habco's customer incurs in connection with receipt and return such goods, parts, devices or products.

10. **Confidentiality and Nondisclosure.** Seller acknowledges and agrees that all designs, construction, arrangements, disclosures and devices shown or described in this Order and all drawings, Specifications and documents forming a part thereof by reference or otherwise (collectively the "Information") is the property of Habco and is submitted by Habco to Seller in confidence upon the understanding, agreement and warranty by Seller that: (a) Seller will use best efforts to safeguard and prevent the disclosure of Habco's Information to third-parties; (b) the Information shall not be utilized in whole or in part by Seller or on behalf of any other person, firm or corporation without the prior written consent of Habco and/or (c) the Information shall not be disclosed to any third-party without the prior written consent of Habco. Upon Habco's request, Seller shall return all Habco Information in Seller's possession to Habco and shall provide Habco with written certification that all such Information has been returned to Habco.

11. **Work Performed on Habco's or Habco's Customer's premises.** If Seller's work under this Order involves operations by Seller on the premises of Habco or one of Habco's customers, Seller shall take all necessary precautions and such additional precautions as Habco or Habco's customer may prescribe to prevent the occurrence of any injury to persons or property during the progress of such work and, except to the extent that any such injury is due solely and directly to Habco's or Habco's customer's negligence, Seller shall indemnify, defend and hold Habco (including Habco's customer) harmless from and against all claims, liability, damage, or loss (including expenses and attorneys' fees) which may result in any way from any act or omission of the Seller, or Seller's agents, employees, or contractors; and shall maintain such public liability, property damage, and employer's liability and compensation insurance as will protect Habco and Habco's customer from said risk and from any claims under any applicable worker compensation and occupational disease acts.

12. **Assignment.** Seller shall not make any assignment of this Order or any of Seller's rights, duties and/or obligations hereunder without the prior written consent of Habco. Any such assignment without Habco's prior written consent will be void and shall have no force or effect.

13. **Non-Waiver.** No delay or failure by Habco to exercise any right under this Order, and no partial or single exercise of that right, shall constitute a waiver of that or any other right.

14. **Governing Law and Dispute Resolution.**

(a) This Order and any dispute which may arise under or in connection with this Order or any goods purchased hereunder shall be governed, construed and interpreted in accordance with the laws of the State of Ohio, excluding its conflict of laws rules. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Order or any dispute between the parties hereunder.

(b) Habco and Seller will seek to resolve all claims and disputes concerning the construction, interpretation, and/or application of the provisions of this Order by informal discussion. If any such claim is not resolved to the satisfaction of the claimant, such party will

either discontinue making the claim or submit it and related dispute(s) to arbitration by a single arbitrator in the Cleveland, Ohio, metropolitan area pursuant to the rules of the American Arbitration Association applicable to commercial matters. The parties will have all rights to pretrial discovery provided under the Ohio Rules of Civil Procedure and the Ohio Arbitration Act. The arbitrator will have authority to hear and decide in the same proceeding all issues related to such claim and related disputes, including any counterclaims asserted by the other party which concern the construction, interpretation, and/or application of the provisions of this Order, and award any damages and other relief provided under this Order or by law, except punitive damages. The arbitrator will base any decision and award on the provisions of this Order or, absent an applicable provision, the Ohio Uniform Commercial Code, and the facts presented at the hearing. Any court having jurisdiction, including any state or federal court in Ohio, may confirm the award and enter judgment thereon.

15. **Complete and Entire Agreement.** This Order, including each Habco document referenced and/or incorporated herein, including the Schedules and all exhibits and attachments thereto, constitutes the entire and only agreement between the parties relating to the subject matter hereof and this Order supersedes any prior or contemporaneous agreements and understandings, oral or written, between the parties. No waiver, alteration or modification of any of the provisions set forth herein shall be binding upon Habco unless mutually agreed in writing between Habco and Seller and signed by a specifically authorized representative of Habco.

#### **Quality Management System Requirements**

16. **Quality Management System.** An appropriate quality management system is required of suppliers. If supplies are not ISO 9001 or AS9100 certified, Habco reserves the right to audit suppliers with one week prior notification during regular business hours.

17. **Notification of Revision Status.** When applicable, purchase orders will provide for the identification and revision status of specifications, drawings, process requirements, inspection/verification instructions and other relevant technical data.

18. **Notification of Nonconforming Material.** No product shall be shipped under this purchase order which contains material that departs from drawings or specifications. The supplier will provide notification of any proposed deviation of material and receive prior consent to manufacture and ship nonconforming material. The seller shall be responsible for any additional costs incurred due to use of such nonconforming material. Should the Seller detect that nonconforming material has been delivered to Habco; the Seller is required to notify Habco immediately.

19. **Qualifications of Personnel.** Personnel shall have appropriate qualifications to conduct their jobs, including industry qualifications if specified for the performance of a given task and degrees as required to perform a given task. For example, legal, financial and other certifications and degrees as required either by law, industry standards or certifying agencies to meet appropriate standards.

20. **Certificate of Compliance.** By accepting a purchase order from Habco Tool & Development Inc., seller agrees to provide certification of compliance with all products (items) sold to Habco Tool & Development Inc. Any revisions of product data sheets and or Material Safety Data Sheets (Safety Data Sheets).

21. **Inspection.**

(a) No goods shall be delivered to Habco that contain material or components that vary from or fail to comply with the Specifications and/or the face-page of this Order. Seller will give Habco prior written notice of any proposed deviation from the Specifications and/or the face-page of this Order. Seller shall be responsible for any additional costs incurred by Habco due to use of such nonconforming materials. Should the Seller determine that nonconforming material has been delivered to Habco, Seller is required to notify Habco immediately. Seller shall not make any substitutions of goods and/or materials without the prior written consent of Habco.

(b) In the event of Seller's delivery of noncompliant goods and/or nonconforming materials as set forth in Section (a) above, then Seller shall, upon Habco's request, perform a corrective action investigation and prepare and deliver a written report to Habco within a reasonable time period in form and content reasonably acceptable to Habco.

(c) All materials or equipment purchased hereunder are subject to inspection and approval at Habco's destination. Habco reserves the right to reject and refuse acceptance of untimely delivered goods and/or goods which are not in accordance with the Specifications and/or Seller's warranties as set forth herein. Habco will charge Seller for the cost of inspection of any and all goods rejected by Habco. Rejected goods will be held for Seller's instruction at Seller's risk and if Seller so directs, will be returned to Seller at Seller's expense. No rejected goods returned to Seller hereunder shall be replaced without a new purchase order issued by Habco to Seller. Habco's payment for goods shall not be deemed an acceptance of such goods. Habco's payment to Seller for goods shall not constitute acceptance of such goods and shall not be deemed as a waiver of Habco's rights relating to the inspection and/or rejection of such goods.

22. **Corrective Action.** Acceptance of a Purchase Order obligates the Seller to perform, upon request, a corrective action investigation when discrepant material is received by Habco, a written report shall be furnished, within a reasonable time period not exceeding the time stated on the specific request, which is specific and conclusive to prevent a reoccurrence of the discrepancy.

23. **Reference and Flow Down.** Seller shall reference and flow down the Habco revision status of drawings, Specifications, process requirements, inspection instructions and other relevant technical data if so stated on the face-page of this Order or in the Specifications.

24. **Counterfeit Parts.** The Seller warrants that counterfeit supplies or material shall

not be supplied to the Buyer or installed in the Buyer's products by the Seller. The Seller warrants that only new, unused, authentic, genuine and legitimate items shall form part of the supplies supplied to the Buyer.

25. **Right of Access and Entry.** Seller shall provide Habco with reasonable right-of-entry and access to Seller's facility for the purposes of product, systems and process verification at any level of the supply chain when required. Seller shall allow access by Habco and any customer or regulatory agency as deemed appropriate.

26. **Record Retention.** Seller's records, documents and information associated with this Order (excluding any Habco Information), must be retained for a minimum of thirty (30) years.

27. **FOD Requirement.** Seller must maintain a FOD prevention program designed to identify and prevent foreign objects from entrapment in production parts and eliminate paths through which foreign objects can migrate

28. **WARNING: Export Controlled ITAR (Military).** - This document contains Technical Data whose export is restricted by the Arms Export Control Act (Title 22, U.S.C., Sec 275 1-2794). Including the International Traffic in Arms Regulation (ITAR) (22 CFR 120-130) Violations of these export laws are subject to sever criminal penalties.

29. **Other Requirements.**

Other requirements that may apply:

- statistical techniques used for product acceptance
- critical items including key characteristics
- test specimens
- approval for the disposition of nonconforming product
- changes in processes