



## THE HORSBURGH & SCOTT CO. TERMS AND CONDITIONS OF PURCHASE

Dated: April 22, 2009

1. **Acceptance:** To the extent this form is deemed an offer to purchase by Buyer, this offer expressly limits Seller's acceptance to the terms of this offer and expressly rejects any proposals for deletions or additional terms to the contract. Seller's acceptance of this offer may be by execution and return of the acknowledgment copy, or by any other conduct consistent with an acceptance including, but not limited to commencement of the work.

To the extent this form is deemed an acceptance by Buyer, this acceptance is limited to the terms stated on this acceptance. Buyer expressly rejects all conflicting or additional terms contained in the offer. Any conduct by Buyer consistent with this acceptance is not deemed to accept any conflicting or additional terms.

2. **Changes:** Buyer shall have the right at any time to make changes in drawings, designs, specifications, materials, packaging, time and place of delivery and method of transportation. If any such changes cause an increase or decrease in the cost, or the time required for the performance, an equitable adjustment shall be made and this agreement shall be modified in writing accordingly. Seller agrees to accept any such changes subject to this paragraph.
3. **Inspection/Testing:** Payment for the goods delivered hereunder shall not constitute acceptance thereof. Buyer shall have the right to inspect such goods and to reject any or all of said goods, which are in Buyer's judgment defective or nonconforming. Goods rejected and goods supplied in excess of quantities called for herein may be returned to Seller at its expense and, in addition, to Buyer's other rights, Buyer may charge Seller all expenses of unpacking, examining, repacking and reshipping such goods. In the event Buyer receives goods whose defects or nonconformity are not apparent on examination, Buyer reserves the right to require replacement, as well as payment of damages. Nothing contained in this purchase order shall relieve in any way the Seller from the obligation of testing, inspection and quality control.

In the event that Buyer rejects any goods due to nonconformity or defect, Buyer may, at Buyer's election, upon notice to Seller, immediately deduct or setoff from any amounts due from Buyer to Seller for goods under this Order or any other Order pending between Buyer and Seller, the price, the cost of unpacking, examining, repacking and reshipping, of any such goods so rejected.

4. **Warranty:** Seller warrants that all goods and services covered by this order shall conform exactly to the description and specifications of this order and any specifications and drawings upon which this order is based. All goods and services shall be of merchantable quality and workmanship, and be fit for their intended use. Materials of construction and work performed thereon by Seller are warranted to conform in all substantial respects to the specifications, drawings, blueprints, and/or samples, and to be free from defects in MATERIAL CONTENT and SELLER'S WORKMANSHIP, for a period of TWENTY FOUR (24) months from date of receipt by Buyer. Buyer acknowledges that, with respect to components not manufactured by Seller (such as bearings and seals) which are attached to, incorporated in or otherwise made a part of Seller's goods, the respective original manufacturers' warranties with respect to such components shall continue to be offered to Buyer to the extent permitted by such manufacturer. Seller also warrants exact prices and delivery of exact quantities. Such warranties shall survive all inspections, tests and acceptance by Buyer. In addition, all warranties shall run to Buyer, its successors, assigns, customers and users of the products sold by Buyer. Seller's obligations for breach of warranty include complete replacement or repair of the goods, all installation charges incurred in fixing the goods, and all consequential and incidental damages. Should Seller's warranty fail of its essential purpose, any limitation of Seller's liability for damages shall be void.

In the event of a breach of warranty by Seller, in addition to any remedies that Buyer may have hereunder or under applicable law, Buyer may, at Buyer's election, upon notice to Seller, immediately deduct or setoff from any amounts due from Buyer to Seller for goods under this Order or any other Order pending between Buyer and Seller, the cost of any damages, costs, charges, or expenses (other costs or expenses), (including the price of replacement goods), incurred by Buyer as a result of such breach of warranty.

5. **Time of the Essence:** Time is of the essence in the performance of this order, unless explicitly stated otherwise. Where delivery dates are specified herein, failure to deliver in accordance with them shall constitute a breach of this order unless such failure resulted in full from a fire or flood.
6. **Force Majeure:** Buyer may delay without additional expense delivery or acceptance of goods occasioned by causes beyond its direct control including, but not limited to, government action or failure to act, strike or other labor trouble, accident, fire, act of God or unusually severe weather.
7. **Invoices:** Itemized invoice in triplicate, showing the correct purchase order number, accompanied by a manifest and bill of lading must be sent to Buyer at the time of shipment. Shipper's name must appear on all packages and pieces. Packing Slip must accompany each shipment.
8. **Termination for Convenience of Buyer:** Buyer reserves the right to terminate his order or any part hereof for its sole convenience. In the event of such termination, Seller shall immediately stop all work hereunder, and shall immediately cause any of its suppliers or subcontractors to cease such work. Seller shall be paid a reasonable termination charge consisting of only actual direct costs resulting from the work already performed. Seller shall not be paid for any work done after receipt of the notice of termination, nor for any costs incurred by Seller's suppliers or

## THE HORSBURGH & SCOTT CO. TERMS AND CONDITIONS OF PURCHASE (continued)

subcontractors which Seller could reasonably have avoided. In no event is Buyer responsible for any indirect expenses, overhead, incidental or consequential damages.

9. **Termination for Cause:** Buyer may also terminate this order or any part hereof for cause in the event of any default by the Seller, or if the Seller fails to comply with any of the terms and conditions of this offer. Late deliveries, deliveries of products which are defective or which do not conform to this order, and failure to provide Buyer upon request of reasonable assurances of future performance shall all be causes allowing Buyer to terminate this order for cause. In the event of termination for cause, Buyer shall not be liable to seller for any amount, and Seller shall be liable to Buyer for any and all damages sustained by reason of the default, which gave rise to the termination.
10. **Tools, Dies, etc.:** All tools, dies, patterns, molds, templates, or other equipment or material forwarded by Buyer, or paid by Buyer, shall become Buyer's property and will be subject to removal at any time upon Buyer's demand and shall be used only in filling Buyer's orders. Seller agrees not to furnish parts made to Buyer's specifications to any other party.
11. **Applicable State Law:** The terms and conditions of this order shall be governed, construed, and interpreted under the laws of the State of Ohio, without regard to the State of Ohio's conflicts of laws principles. Further, by accepting this order, Seller agrees to be subject to personal jurisdiction in the State of Ohio.
12. **Shipment:** Seller shall ship according to Buyer's instructions, absent such instructions Seller shall use least expensive lawful method of transportation. If a more expensive way is necessary in order to meet delivery dates, any increased transportation costs shall be paid for by Seller.
13. **Patents and Copyrights:** Seller agrees to indemnify and hold Buyer and Buyer's customers harmless from all liability, costs and expenses, direct or indirect, for claimed or actual patent, trademark, copyright or trade secret infringements and to defend all suits against Buyer and Buyer's customers involving any such claims.
14. **Material Safety Data Sheets:** Seller must furnish to Buyer's purchaser all Material Safety Data Sheets (MSDS) for the goods being purchased prior to delivery of the goods. Seller agrees to indemnify Buyer for any damages or fines caused in whole or in part by Seller's failure to provide the appropriate MSDS, or for providing an inaccurate MSDS.
15. **Remedies for Breach of Agreement:** Buyer's remedies for Seller's breach of any terms of this agreement include all of those which are allowed pursuant to the Ohio Uniform Commercial Code including, but not limited to, collection of all incidental and consequential damages sustained. Seller shall defend, indemnify and hold harmless Buyer against all damages, claims or liabilities and expenses (including attorney's fees) arising out of or resulting in any way from any alleged defect in the goods or services purchased hereunder, or from any negligent or intentional act or omission of Seller, its agents, employees or subcontractor. Further, Seller agrees to reimburse Buyer for all costs and attorney fees Buyer expends in enforcing this agreement and claiming damages. THESE INDEMNIFICATION RESPONSIBILITIES ARE IN ADDITION TO SELLERS WARRANTY OBLIGATIONS.
16. **Assignments and Subcontracting:** No part of this order may be assigned or subcontracted without the written approval of Buyer.
17. **Setoff:** All claims for money due or to become due from Buyer shall be subject to deduction or setoff by the Buyer by reason of any counterclaim arising out of this or any other transaction with Seller.  
  
In addition to any right of setoff provided by law, all amounts due Seller shall be considered net of indebtedness of Seller to Buyer and its subsidiaries; and Buyer may deduct any amounts due or to become due from Seller to Buyer and its subsidiaries from any sums due or to become due Seller.
18. **Waiver:** Buyer's failure to insist on performance of any of the terms or conditions herein or to exercise any right or privilege or Buyer's waiver of any breach hereunder shall not thereafter waive any other terms, conditions, or privileges, whether of the same or similar type.
19. **Compliance with Laws:** Seller shall comply with all applicable federal, state and local laws, rules and regulations including, but not limited to, Section 202 of Executive Order 11246 as amended. The affirmative clause contained in 41 CFR 60-250.4 (Veterans) and 41 CFR 60-741.4 (Rehabilitation Act), notice to develop written affirmative action programs, annually file VETS-100 Report, and all relevant rules, regulations and orders of the Secretary of Labor are hereby incorporated by reference. Seller will indemnify and hold Buyer harmless from liability or any damages or costs caused by Seller's failure to comply with any such laws, rules or regulations.
20. **Modification of Agreement:** These terms and conditions constitute the complete and exclusive provisions of this contract. No prior written or oral agreement shall in any way modify these Terms and Conditions. In addition, Seller expressly agrees that any modification of this order will only be effective if agreed to by Buyer in writing.
21. **Proprietary Information-Confidentiality-Advertising:** Seller shall consider all information furnished by Buyer to be confidential and shall not disclose any such information to any other person, or use such information itself for any purpose other than performing this contract, unless Seller obtains written permission from Buyer to do so. This paragraph shall apply to drawings, specifications, or other documents prepared by Seller for Buyer in connection with this order. Seller shall not advertise or publish the fact that Buyer has contracted to purchase goods from Seller, nor shall any information relating to the order be disclosed without Buyer's written permission. Unless otherwise agreed in writing, no commercial, financial or technical information disclosed in any manner or at any time by Seller to Buyer shall be deemed secret or confidential and Seller shall have no rights against Buyer with respect thereto.