

**MARCHANT SCHMIDT, INC.**  
**TERMS AND CONDITIONS OF PURCHASE**

**1. Parties.** Marchant Schmidt, Inc. is referred to hereinafter as "MSI." The vendor from which MSI is purchasing goods and/or services is referred to hereinafter as the "Company."

**2. Acceptance; Agreement.** Acceptance of performance against the MSI purchase order making reference to these terms and conditions (the "Purchase Order") is without prejudice to the right to demand strict performance at any time and to recover damages, if any, for previous non-compliance. The Purchase Order and these terms and conditions are the final expression of our contract and are intended also as a complete and exhaustive statement of the terms of our contract and, except as expressly provided herein, may not be revised without the parties' written agreement. Unless a contrary provision is found on the face of the Purchase Order, such Purchase Order may be withdrawn without notice at any time prior to acceptance. MSI's clerical errors are subject to correction by MSI. The invalidity of any provision of these terms and conditions shall not affect the validity of the remaining terms and conditions. The Company shall not assign its obligations hereunder without MSI's prior written consent.

**3. Proprietary Information; Confidentiality.** The Company shall consider all non-public information furnished by MSI (including, without limitation, the specific terms of the Purchase Order) 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 the Company obtains written permission from MSI to do so. This Section shall apply to drawings, specifications, or other documents prepared by the Company for MSI in connection with this contract. The Company shall not advertise or publish the fact that MSI has contracted to purchase goods and/or services from the Company, nor shall any information relating to the Purchase Order be disclosed without MSI's written permission. Unless otherwise agreed in writing, no commercial, financial or technical information disclosed in any manner or at any time by the Company to MSI shall be deemed secret or confidential and the Company shall have no rights against MSI with respect thereto except such rights as may exist under patent laws.

**4. Warranty.** The Company expressly warrants that all goods and/or services furnished under the Purchase Order will strictly conform to all specifications and appropriate standards, will be new and free from liens or encumbrances, and will be free from all defects, including defects in design, material or workmanship. Company warrants that all such goods and/or services will conform to any statements made on the containers or labels or advertisements for such goods and/or services, and that any goods will be adequately contained, packaged, marked and labeled. The Company warrants that all goods and/or services furnished hereunder will be (a) merchantable, (b) safe and appropriate for the purpose for which goods or services of that kind are normally used, and (c) designed and fit for their particular purposes, including, without limitation, use with food products. The Company warrants that goods and/or services furnished will conform in all respects to samples. Inspection, test, acceptance or

use of goods and/or services furnished hereunder shall not affect the Company's obligation under this warranty, and this warranty shall survive inspection, test, acceptance and use. The Company's warranty shall run to MSI, its successors, assigns and customers, and users of products and services sold by MSI. The foregoing warranty is in addition to those available to MSI by law.

**5. Patents.** The Company agrees upon receipt of notification to assume full responsibility for defense of any allegation, suit, or proceeding arising out of any third party claim, demand, or cause of action alleging patent infringement by the goods and/or services provided under this contract which may be brought against MSI or its agents, customers, or other vendors. The Company further agrees to indemnify MSI, its agents, customers, or other vendors for any such third party claims, demands, or causes of action from and against any and all expenses, losses, royalties, profits, and damages including court costs and attorneys' fees resulting from any such allegation, suit, or proceeding, including any settlement.

**6. Inventions, Works of Authorship.** All ideas, inventions, developments, and improvements conceived and/or reduced to practice, alone or with others, in the course of providing goods and/or services under this contract shall be the exclusive property of MSI. The Company agrees to promptly and fully disclose in writing to MSI all such ideas, inventions, development and improvements. The Company hereby assigns and agrees to assign to MSI all of the Company's right, title, and interest in and to such ideas, inventions, developments, and improvements and Company agrees to (a) assist MSI, at MSI's reasonable expense, in obtaining patents on any such ideas, inventions, developments, and improvements and (b) execute all documents necessary to obtain such patents in the name of MSI. The Company hereby assigns and agrees to assign to MSI all of the Company's right, title, and interest in and to any works of authorship created by the Company relating to the goods or services provided pursuant to this contract (such works of authorship being hereinafter referred to as "Work"). The Company agrees to execute any and all documents deemed to be necessary or appropriate by MSI to effectuate the assignment to MSI of all of the Company's rights in such Works, including, but not limited to, copyright rights. The Company further agrees to maintain all information relative to such ideas, inventions, developments, improvements, and works of authorship as confidential Information of MSI subject to the obligations of confidentiality set forth in Section 3 above, and Company agrees not to submit for publication, publish, or disclose the same without the prior express written consent of MSI. The Company shall enter into such agreements with its employees and subcontractors as may be necessary for the Company to fulfill its obligations under this Section.

**7. General Indemnity.** The Company shall defend, indemnify and hold MSI and MSI's employees, agents, successors, assigns and customers and users of the goods and services provided hereunder harmless from and against all damages, liabilities, fines, penalties, costs and expenses (including recall, repair and

replacement expenses and other incidental and consequential damages, including reasonable attorneys' fees) arising out of or resulting from (a) the actual or alleged failure of goods and/or services provided by the Company to conform to any of the Company's representations, warranties, guarantees or certifications including, without limitation, those in Sections 4 and 11 hereof; (b) any actual or alleged injury or death to any person, or damage to any property in any manner caused or alleged to have been caused by a defect in the goods supplied or services performed by the Company pursuant to this contract; (c) failure to make deliveries or otherwise perform its obligations hereunder; or (d) any work done, or omitted to be done by the Company, its employees, agents or subcontractors.

**8. Inspection; Testing.** Payment for goods delivered hereunder shall not constitute acceptance thereof and MSI shall have the right to inspect such goods and to reject any or all of said goods which are in MSI's judgment defective or nonconforming. Goods rejected and goods supplied in excess of quantities called for herein may be returned to the Company at its expense and, in addition to MSI's other rights, MSI may charge the Company for all expenses of unpacking, examining, repacking and reshipping such goods. Nothing contained in this contract shall relieve in any way the Company from the obligation of testing, inspection and quality control.

**9. Product Investigation.** The Company shall immediately notify MSI by telephone (followed by written confirmation within 24 hours) of any goods sold hereunder which fail to comply with an applicable safety rule or standard of any governmental agency. If a product recall pertaining to safety of any goods furnished hereunder is initiated, ordered, or deemed necessary by MSI or by any governmental agency, the Company at its expense will modify, repair or replace as required by the applicable governmental agency and correct all defective parts supplied by the Company which are alleged, in whole or in part, to require remedial action.

**10. LIMITATION ON MSI'S LIABILITY.** IN NO EVENT SHALL MSI BE LIABLE FOR ANTICIPATED PROFITS OR FOR INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES. MSI'S LIABILITY ON ANY CLAIM OF ANY KIND FOR ANY LOSS OR DAMAGE ARISING OUT OF OR IN CONNECTION WITH OR RESULTING FROM THE PURCHASE ORDER OR FROM THE PERFORMANCE OR BREACH THEREOF SHALL IN NO CASE EXCEED THE PRICE ALLOCABLE TO THE GOODS AND/OR SERVICES OR UNIT THEREOF WHICH GIVES RISE TO THE CLAIM.

**11. Compliance with Laws.** The Company warrants that all goods supplied and/or services performed hereunder will have been produced or performed in compliance with applicable laws and the Company agrees to be bound by all applicable federal, state and local laws, orders, rules and regulations.

**12. Orders; Shipment.** MSI may revise specifications for goods by notice to the Company. If such change would affect the Company's costs or delivery schedule, the parties shall agree in writing on an equitable adjustment to the price and/or delivery

schedule. Any claim for adjustment must be made by the Company within 30 days of MSI's notice of revision or shall be deemed waived. MSI may revise, suspend or terminate accepted Purchase Orders by notice to the Company. The Company's sole claim shall be for costs reasonably incurred in performance of the order prior to revision, suspension or termination but the Company shall be entitled to such costs only if MSI revises, suspends or terminates the order for convenience, and only if the Company provides evidence of such costs within 30 days of such revision, suspension or termination. MSI's revision, termination or suspension of an order shall not preclude MSI from availing itself of other remedies in the event of the Company's breach. The Company shall deliver the goods DAP (Incoterms 2010) to a delivery point designated by MSI. Unless otherwise agreed in writing by MSI, all deliveries must be on weekdays (excluding legal holidays) and during normal business hours. Time of delivery is of the essence. Shipment must actually be effected within the time stated on the Purchase Order, failing which MSI reserves the right to (a) purchase elsewhere and charge the Company with any loss incurred thereon, (b) terminate the order, or (c) accept late delivery and in connection therewith charge to the Company a late fee of 3% per late day (calculated on the aggregate price for the order) up to a maximum late fee of 20% of the aggregate price for the order. For purposes of the preceding sentence, MSI shall have the option of setting off any late fee due hereunder against the amount owed by MSI to the Company for the order. Deliveries must be complete. No charge will be allowed for packing, boxing or crating unless agreed upon in writing at the time of purchase, but damage to any material not packed to insure proper protection to same will be charged to the Company. Title to and risk of loss of goods shall transfer from the Company to MSI upon MSI's receipt of such goods at the designated DAP delivery point.

**13. Prices and Payment.** Unless otherwise agreed by MSI, payment terms shall be as follows: (a) for orders of \$10,000 or less, net 45 days from the later of receipt of shipment/performance of services or invoice; and (b) for orders of more than \$10,000, as set forth in the Purchase Order (provided that if no payment terms are set forth in an order for more than \$10,000, then the payment terms shall be net 90 days from the later of receipt of shipment/performance of services or invoice). MSI reserves the right to set off any amounts due to the Company hereunder against any amounts owed by the Company to MSI under this contract or otherwise. Prices are payable in U.S. dollars unless otherwise indicated by MSI.

**14. Tooling.** All special dies, molds, patterns, jigs, fixtures and other property furnished by MSI and paid for by MSI shall be, and remain, the property of MSI, shall be subject to removal by MSI, shall be used only in filling orders from MSI and shall be held at the Company's risk. Any failure by the Company to return the tooling and other property of MSI after a reasonable request to do so shall result in irreparable injury to MSI, its business and property and MSI shall be entitled to injunctive relief ordering the return of its tooling and property. The Company's acceptance of the above provisions regarding return of tooling and other property furnished or purchased by MSI is a material factor in MSI's decision to do business with the Company. In the event

MSI is required to seek legal action in order to enforce the provisions of this Section, the Company shall be liable for actual attorneys' fees and other expenses incurred by MSI in enforcing this provision regarding the return of special tools, molds, patterns, jigs, fixtures and other personal property furnished by MSI, paid for by MSI or required for use in the performance of this contract.

**15. Insurance.** In accepting this order, the Company agrees to maintain at its own expense a policy or policies of commercial general liability insurance written on an occurrence basis. Such insurance shall name Marchant Schmidt, Inc. as an additional insured and shall be written with such companies as are satisfactory to MSI. The Company agrees to furnish a certificate of insurance to MSI as evidence of such insurance and provide MSI with ten days prior written notice of cancellation or material change in such insurance.

**16. Facility Inspection.** MSI or its representative may inspect the Company's facility or facilities where goods are made, stored or shipped, with reasonable notice and in a reasonable manner, up to two times a year (or more frequently if the Company breaches this contract). If the inspection reveals that the Company has not performed in accordance with the requirements of this contract, the Company shall immediately take all corrective actions that we may reasonably require. MSI or its representative may return to inspect to the facility as often as needed to reasonably ensure that the breach has been corrected. Inspections are at MSI's discretion and do not relieve the Company of any obligations under this contract.

**17. Audit.** If MSI agrees in writing to reimburse any of the Company's expenses in connection with the Purchase Order, MSI shall have the right to audit (or have its representative audit) the Company's books and records relating to 'the reimbursed expenses' for the order, with reasonable notice and in a reasonable manner, for up to two years after delivery of the goods and/or services. In connection with any such audit, the Company shall make its records available for review and copying in a convenient location and organized in a manner to facilitate MSI's audit process.

**18. Exclusive Terms.** These terms and conditions shall control in any contract resulting from or arising out of the Purchase Order regardless of printed terms, conditions or provisions found in responses hereto or documents giving rise hereto; all of such printed matter incorporated therein being deemed waived insofar

as the same differ from or add to these terms and conditions, unless such different or additional terms, conditions or provisions shall be specifically asserted for inclusion in written form other than printing and be specifically accepted by MSI as a change in these terms and conditions by express reference in writing. The applicability of this Section is an express condition to any contract being formed between the Company and MSI. MSI's offer to purchase goods or services from Company, and any contract therefor, is expressly limited to these terms and conditions. If this document is deemed an acceptance by MSI of a prior offer by Company, such acceptance is limited to the express terms and conditions herein. MSI objects to and rejects any different, additional or varying terms proposed by Company, except additional warranties by Company, regardless of whether such terms would materially alter these terms and conditions. The Company's proposal of additional or different terms shall not operate as a rejection of MSI's terms except to the extent such variances are in the description, quantity, price or place or date of delivery of goods or services, and MSI's terms shall be deemed accepted without said additional or different terms. Company shall be deemed to have made an unqualified acceptance of these terms and conditions on the earliest of the following to occur: (a) performance against the Purchase Order, (b) the Company's failure to object to these terms and conditions within ten days of receipt, or (c) any other event constituting acceptance under applicable law.

**19. Applicable Law; Arbitration of Disputes.** Each Purchase Order and any contract arising herefrom in connection with goods and/or services provided by the Company shall be governed by the internal laws of the State of Wisconsin, including without limitation the Uniform Commercial Code as adopted in the State of Wisconsin. The parties further agree to this contract being in English. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this contract or any purchases or sales hereunder. Any controversy or claim arising out of or relating to this contract shall be determined by binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association (or, if the Company is an entity organized under the laws of a country outside the United States, the International Arbitration Rules of the American Arbitration Association). The place of arbitration shall be Milwaukee, Wisconsin. Judgment on any award rendered by the arbitrator(s) may be entered by any court of competent jurisdiction. The arbitration provision in this Section 19 shall survive if this contract terminates for any reason.