

## MARCHANT SCHMIDT PURCHASE ORDER TERMS AND CONDITIONS

**1 Definitions.** 'We' or 'us' or 'our' means Marchant Schmidt, Inc. in this Order; 'you' or 'your' means the seller named in this Order, and "goods" means the things listed in this Order. Marchant Schmidt, Inc and you are sometimes individually called 'party' and together 'parties'. 'Order' means these terms or Purchase Order.

**2 Accepting this Order.** The terms must be accepted in writing. If you propose to change the terms of this Order in any way, you must understand that none of your proposed terms will become part of this Order, and we reject all such terms unless we expressly accept them in writing.

**3 Pricing and Discounts and Payment.** We will buy goods for the price stated in this Order along with shipping cost. You will be responsible for any other costs prior to completed delivery and per the terms stated on the Order. Payment will consist of net 45 days after delivery.

**4 Warranties.** THE LAW PROVIDES US WITH CERTAIN WARRANTIES. IN ADDITION TO THOSE, YOU WARRANT TO US THAT ALL GOODS WILL (A) FULLY COMPLY WITH ALL OF THE SPECIFICATIONS THAT OUR AND YOUR COMPANY HAVE APPROVED, WHICH ARE MADE A PART OF THIS ORDER, (B) BE FREE OF DEFECTS, MADE WITH NEW MATERIALS (UNLESS WE AGREE OTHERWISE IN WRITING), OF GOOD QUALITY AND WORKMANSHIP, AND SUITABLE FOR OUR INTENDED PURPOSES AS SPECIFIED IN THE ORDER INCLUDING FOR USE IN OR WITH FOOD PRODUCTS, WE ARE RELYING ON YOU AS THE EXPERTS OF YOUR EQUIPMENT, AND TO SPECIFY WHICH PRODUCT WILL BEST FULFILL OUR SPECIFICATIONS (C) MAINTAIN THEIR QUALITY FOR THE SHELF (D) FULLY COMPLY WITH ALL LAWS, REGULATIONS, AND INDUSTRY STANDARDS WHERE THE GOODS ARE MANUFACTURED, STORED, SHIPPED, USED AND SOLD, AND (E) NOT INFRINGE, NOR WILL OUR USE OF THEM INFRINGE, THE INTELLECTUAL PROPERTY RIGHTS OF ANYONE ELSE. YOU WILL ASSIGN TO US ANY WARRANTIES YOU RECEIVE FROM SOMEONE ELSE RELATED TO THE GOODS. IF THE WARRANTIES CANNOT BE ASSIGNED, YOU AGREE TO MAKE CLAIMS UNDER THE WARRANTIES ON OUR BEHALF UPON OUR REQUEST. WARRANTY COMMENCES AFTER FINAL TESTING OF EQUIPMENT WHICH EVERY IS LONGER: A MINIMUM OF 1 YEAR OR YOUR STANDARD WARRANTY LENGTH.

**5 Notifying Us of Possible Problems.** You must tell us immediately if you learn of anything that may indicate a quality, safety or labeling problem with the goods or could cause you to violate any of your warranties.

**6 Shipping Terms.** Unless we have stated otherwise in this Order, you bear the risk of loss or damage to goods until they are unloaded at our dock or other place we request. Delivery will then be complete. Goods will ship FOB buyers factory with freight at actual cost and listed as a separate line item on the order and invoice and not included in the price of the goods. Unless we agree in writing, all deliveries must be on weekdays during normal business hours. If goods are shipped from another country, you will be the Importer of record with full responsibility for customs clearance and payment of any duties.

**7 Shipping Documents.** You must include your name, description of goods, Order number, lot number, receiving dock and any other identification number that we may give you on all shipping documents and each shipping unit. You will provide accurate and complete information on the bill of lading and customs documents.

**8 Timely Delivery.** If you fail to deliver at the stated time as per your order acknowledgement date, we may cancel the specific delivery or terminate this Order, or choose to accept late delivery.

**9 Rejecting the Goods.** Our payment for the goods does not necessarily mean that we have accepted them. When we receive goods, we may inspect them but are not required to do so. We may reject and return to you (at your expense) goods that exceed the quantity ordered or that violate your warranties. If we return goods that violate your warranties, you will replace them as soon as possible with goods that meet your warranties or refund our purchase price, whichever we choose.

**10 Canceling this Order for Convenience.** We may cancel this Order for convenience by notifying you any time before you deliver the goods. After we give you such notice, you will take all reasonable steps to minimize your costs due to our cancellation. We will pay the full price set forth in this Order less the amount of any costs saved by you because of the cancellation.

**11 Canceling this Order for Cause.** We may cancel this Order at any time if you fail to perform any of your obligations under this Order or cannot assure us that you will be able to continue to perform your obligations. In that case, we will not be responsible for any costs you incur, and we will have all rights and remedies available to us under law or in equity.

**12 Making Changes.** We may ask in writing to change requirements relating to the goods (for example, specifications, packaging, or delivery) any time before you deliver the goods. If a change affects your costs or ability to deliver the goods on time, you must tell us so that we can decide if we want you to implement the change. If a change affects your costs and we ask you to proceed, the parties will negotiate a fair adjustment to the price.

**13 Owning Custom Features of the Goods.** This Order is for standard products: i) work already in the public domain, ii) Work which can be shown by the supplier, to have been within its knowledge prior to placing the Purchase Order, iii) Work which becomes part of the public domain through no violation of the Confidentiality Agreement. If you develop creative custom features for the goods ['Custom Work'] in performing under this Order, you transfer and assign all of your right, title and interest in the Custom Works to us automatically upon creation, including all rights in copyright, the right to register and renew the copyright throughout the world, and any other rights. You agree that the Custom Work is work made for hire under applicable law. You represent and warrant that (a) the Custom Work was developed through your sole and original efforts and does not infringe the intellectual property or privacy rights of any person, and (b) you have no other arrangements that would interfere with assigning us all of your interest in the Custom Work. You waive any right of approval or moral rights that you may have with respect to modification, combination or any other use of the Custom Work, and on behalf of yourself and your successors, waive any right of reversion which you or they may have, to the extent permitted by law.

**14 Protecting Us from Losses.** You indemnify, defend and hold us (and our affiliates, shareholders, directors, officers, employees, agents, subcontractors, suppliers and customers) harmless from any and all liabilities, damages, injuries, losses, claims, suits, judgments and expenses (including but not limited to reasonable legal fees, court costs and out-of-pocket expenses) arising from (a) a breach of this Order by you or your employees, agents or subcontractors, or (b) acts or omissions related to this Order by you or your employees, agents or subcontractors, or (c) infringement of any intellectual property rights related to the goods or our use of them (unless caused solely by your proper use of our intellectual property).

**15 Insurance Requirements.** You will maintain, at your cost, commercial general liability insurance written on an occurrence basis covering your obligations under this Order with combined single limits of at least three million dollars (\$3,000,000) per occurrence and in the aggregate. The carrier must have an AM Best rating of at least A-VII (or the equivalent). If we request, you must give us a certificate of insurance that shows that these required coverage's are in place and confirms that we will receive at least thirty (30) days prior notice of any cancellation, termination or material change in coverage. You may satisfy your obligations under this section through self-insurance.

**16 Inspecting Your Facility.** We or our representative may inspect your facility where you make, store, or ship the goods, with reasonable notice and in a reasonable manner, up to two (2) times a year (or more frequently if we find a breach of this Order). If the inspection reveals that you have breached this Order, you will immediately take all corrective actions that we may reasonably require. We or our representative may return to inspect your facility as often as needed to reasonably ensure that the breach has been corrected. Inspections are at our discretion and do not relieve you of any obligations under this Order.

**17 Protecting Our Confidential information.** You will treat as confidential any non-public information that you may receive from us or learn about us. You may only disclose our confidential information on a need-to-know basis to your employees (and your agents and subcontractors previously authorized by us to work with you who have signed confidentiality agreements reasonably acceptable to us). You may not use our confidential information for any purpose other than to fulfill this Order, and you may not disclose it to anyone else. We own the confidential information and when this Order is completed or cancelled, you must return it to us if requested without keeping any copies other than one file copy which may be kept for legal records.

**18 Addressing Events Beyond Reasonable Control.** If either party is unable to comply with this Order because of events beyond its reasonable control, that party will promptly notify the other in writing and will make reasonable efforts to restore its ability to perform within ten (10) days. If the inability to perform continues for more than ten (10) days, the other party may cancel this Order immediately, without costs or penalty, by giving written notice to the party unable to perform.

**19 Not Disclosing Information.** Neither party will publicly disclose the terms of this Order or our business relationship and transactions, nor use the other's name or trademark, without prior written approval.

**20 Checking Backgrounds.** To the extent legally permitted, you will interview, screen, and check the references of, and conduct criminal background checks on, all of your employees who interact with the goods. You will insist upon and document a zero tolerance policy for the use of illegal drugs.

**21 Resolving Disputes.** If we have a dispute with you relating to this Order, both parties will try to settle through cooperation and negotiation in good faith. If that fails, it will be resolved by binding arbitration in Wisconsin with the American Arbitration Association under its rules for arbitration of business disputes. If the parties cannot agree on an arbitrator, the arbitrator will be chosen according to the rules of the arbitration forum. The arbitrator will apply the law referenced in the Section below titled "Governing Law" but in the U S the Federal Arbitration Act will govern the interpretation and enforcement of this Section. The arbitrator may not add to or modify the terms of this Order, or award punitive damages or attorneys' fees, and both parties waive any right or claim to punitive damages or attorneys' fees. The arbitration will be confidential and the arbitrator will issue appropriate orders to protect confidential information. We will split the arbitrators' fees equally with you. Regardless of what it says elsewhere in this Section, either party may go to court to seek a preliminary injunction or to prevent the statute of limitations from barring a claim.

**22 Auditing Your Records.** If we have agreed to reimburse any of your expenses, we have the right to audit (or have our representative audit) your books and records relating to 'the reimbursed expenses' for this Order, with reasonable notice and in a reasonable manner, for up to two (2) years after delivery of the goods. You will make your records available for review and copying in a convenient location and organized in a manner to facilitate our audit process.

**23 Assigning This Order.** Neither party will assign any of its rights or obligations under this Order without the other's approval, which may not be unreasonably withheld. However, the obligations of Marchant Schmidt, Inc. with respect to the warranty are going to be assigned to the consignee who will be entitled to enforce warranty rights as to the goods to the same extent as Marchant Schmidt, Inc. If there is a dispute with respect to whether or not a warranty claim of consignee is the result of fault or neglect of you or a neglect of Marchant Schmidt, Inc., this matter will be negotiated and if no negotiation is successful will be resolved as provided in Section 21 preceding.

**24 This Is Our Entire Agreement** This Order is the entire agreement between the parties with respect to the goods and no prior discussion, agreement, conduct or industry practice will affect it. Any changes to this Order must be in a written document signed by both parties. We may modify these preprinted terms elsewhere in this Order and, if we do so, those terms will govern.

**25 Not Waiving Rights.** Neither party waives any rights under this Order by delaying or failing to exercise them.

**26 Governing Law.** The internal laws of the State of Wisconsin without regard to conflict laws will govern the laws applying to this Order and the relationship between the parties.

**27 Language Of This Order.** We both agree to this Order and any related documents being in English.

**28 Survival.** Completion or cancellation of this Order will not affect any obligations which expressly survive nor any rights that accrued before the Orders completion or cancellation.

Company Name: \_\_\_\_\_

Authorized Name: \_\_\_\_\_

Authorized Signature: \_\_\_\_\_

Date: \_\_\_\_\_