

## SUPPLY AGREEMENT

THIS SUPPLY AGREEMENT (this "Agreement") is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_ 200\_\_ (the "Effective Date") by and between MERCHANT SCHMIDT, INC., a Wisconsin corporation ("MSI"), and "Supplier".

### RECITAL

Supplier has agreed to manufacture and supply to MSI certain products that may be agreed upon from time to time by the parties, and MSI has agreed to purchase such agreed-upon products from Supplier, subject to and in accordance with the terms of this Agreement or as indicated on future Purchase Orders.

In consideration of the recital and the mutual agreements contained herein, the parties agree as follows:

### AGREEMENT

1. Relationship of the Parties. The relationship established between the parties by this Agreement shall be solely that of vendor and vendee. Under no circumstances shall the contractual relationship between the parties be deemed or construed as one of agency, joint venture, and employment or otherwise, except for the vendor/vendee relationship. This Agreement does not give either party any right to act as a representative or agent of the other party or any authority to incur or create any obligation in the name of or on behalf of the other party.

2. Term of Agreement. This Agreement shall commence as of the Effective Date and shall remain in full force and effect for a period of one year thereafter, and shall renew for successive periods of one (1 year).

3. Terms and Conditions of Sale.

(a) Supply of Products. Subject to the terms and conditions contained in this Agreement, Supplier shall manufacture and sell the Products to MSI, and MSI shall purchase the Products from Supplier. Notwithstanding the foregoing or any other provision in this Agreement, except only as set forth in Purchase Orders issued by Buyer from time to time pursuant to this Agreement, Buyer shall not be required to make any minimum volume of purchases under this Agreement.

(b) Specifications. Supplier shall ensure that all Products manufactured under this Agreement conform to the specifications for such Products provided by Buyer to Supplier (the "Specifications"). The Specifications for a Product may be modified only by Buyer by providing written notice of the modification to Supplier.

(c) Inspection Rights. Buyer and its agents shall upon not less than 24 hours advance written notice have the right during normal business hours to inspect that portion of Supplier's facility which is used to manufacture the Products. Buyer shall use commercially reasonable efforts to ensure that any inspection pursuant to this Section 3(c) will not unreasonably disrupt the operations of Supplier.

(d) Warranties; Remedy. With respect to Products manufactured and supplied to MSI under this Agreement, Supplier provides the limited warranty set forth in this agreement hereto. If any Product fails to conform to this warranty, Supplier shall, at MSI's or MSI's customer's option, as the case may be, and without prejudice to any other rights or remedies available to MSI or its customer, either replace such non-conforming Product free of charge (including the payment of charges to ship the non-conforming Product back to Supplier) or refund the price paid for such non-conforming Product, including shipping charges. In addition, Supplier shall arrange for and bear the costs of disposal of any non-conforming Product, which disposal must be accomplished in accordance with applicable law.

(e) Hazardous Material. Seller will provide Buyer Material Safety Data Sheets for all Hazardous Material shipments. At the request of Marchant Schmidt the Seller will provide Material Safety Data Sheets for any material.

(g) Non-Conforming Material. Seller will arrange shipment for return of items that are not within specifications or the wrong material. The Buyer, at its discretion, will charge at a minimum either a \$50 (for items \$1000.00 or greater) or 5% (for items \$999.00 or less) of the cost of the item or items, as a handling fee for processing non-conforming material. These charges are in addition to any other legal action or rights Marchant Schmidt may exercise. Marchant Schmidt will also charge any additional cost inquired by Marchant Schmidt to bring the item up to specification.

(h) Limited Warranty. **THE LIMITED WARRANTY REFERENCED IN SECTION 3(d) ABOVE IS EXCLUSIVE AND IN LIEU OF ALL OTHER EXPRESS AND IMPLIED WARRANTIES AND REMEDIES FOR BREACH THEREOF WHATSOEVER REGARDING THE PRODUCT, INCLUDING WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THE LIMITED WARRANTY REFERENCED IN SECTION 3(d) ABOVE IS FOR THE BENEFIT OF MSI AND ITS CUSTOMERS.**

(i) Warranty. With respect to each Product manufactured and supplied under this Agreement, Supplier warrants that for a period of twelve months or as indicated by the manufacture of the item from the date of MSI's receipt of the Product, such Product (a) conforms to the Specifications, and (b) is free from defects in workmanship. Supplier further warrants that such Product will be delivered to MSI free and clear of all liens and encumbrances.

#### 4. Orders; Lead Time.

(a) Orders. Orders for Products shall be made in accordance with the ordering procedures specified on hereto.

(b) Timing of Delivery. Supplier shall deliver Products ordered under this Agreement to the Delivery Point (as defined in Section 6 below) on the delivery date specified in the Purchase Order (or such other date as may be agreed on in writing by the parties).

(c) Acknowledgements. Acknowledgements will be used solely to determine delivery date and price verification. Any variation on Seller's acknowledgement from these terms and conditions, Marchant Schmidt's Purchase Order or other order-processing document is not valid. Sellers will have (48) hours from date of purchase order for non-quoted or repeat orders and (24) hours for quoted orders to acknowledge or revise delivery dates on an order.

Marchant Schmidt will then update the purchase order and consider the revised date as the Acknowledged Delivery Date. If Seller fails to acknowledge a delivery date or price, then the delivery date and price on the original purchase order will be considered the Acknowledged Delivery Date and current price. Any revisions after the above (48)/(24) hour time frames will be used to track delivery only, not on-time delivery performance.

(d) Minimum Orders: Marchant Schmidt will not be held to any minimum order dollar amount. Marchant Schmidt will be allowed to order any quantity amount that is listed as a normal package size.

5. Returns: Marchant Schmidt reserves the right to return any none custom made item to supplier without occurring a restocking charge and receive a full refund for the purchase price of the item. Custom made items are defined as items manufactured from a drawing provided by Marchant Schmidt or listed on the purchase orders as custom made item.

6. Prices and Terms. The price for a Product shall be determined in the manner set forth in this agreement hereto and set forth in the Purchase Order for such Product. The provisions of this Agreement shall govern all purchases and sales of the Products between Supplier and MSI during the term hereof. Any provision, term or condition set forth in any purchase order, release, acknowledgement, invoice or other document or communication provided by either party which is inconsistent with or in addition to the terms of this Agreement (other than specific prices, quantities, Specifications and delivery date(s) referenced in a Purchase Order) shall be deemed void and of no force or effect.

7. Delivery Terms: Title and Risk of Loss. All Products ordered under this Agreement shall be delivered FOB MSI's facilities at 24 West Larsen Drive, Fond du Lac, Wisconsin (the "Delivery Point"), provided that the cost of freight shall be billed back to MSI on Supplier's invoice for the applicable Products. Prior to shipment, Supplier shall consult with MSI in connection with its selection of a carrier. Supplier shall have no further responsibility for the Products, and all risk of damage to or loss or delay of the Product shall pass to MSI, upon delivery of the Products to the Delivery Point. Regardless of F.O.B. terms, title and risk of loss to the material shall not pass to Buyer until Buyer's receipt and acceptance of items at destination. If delivery of material is made to Buyer without moving the items, then title shall pass to Buyer upon Buyers inspection of material at delivery point or Seller's.

(a) Late Deliveries: The Seller will ensure all purchase orders are shipped complete and delivered on time. After five (5) late deliveries within a calendar year (January 1<sup>st</sup> – December 31<sup>st</sup>), Marchant Schmidt will deduct 5% not to exceed \$50.00 off the invoice from cost of any item or items that were not delivered per the acknowledge delivery date. Seller will, if necessary to provide on- time delivery or complete shipment, expedite the order at Seller's expense.

(b) Premium Shipments: If because of failure of Seller to meet the delivery requirements of the purchase order or, as stated in the Acknowledgement Paragraph of these terms, Buyer finds it necessary to require shipment of any material by any other method than originally specified, Seller shall be responsible for the additional cost, if any, unless such failure is due to causes covered under the Notice Paragraph, listed in these terms.

(c) Partial Shipments: The Seller will ship all orders complete except where partial shipment is authorized by Marchant Schmidt. If no authorization is given, Seller will be

responsible for additional shipping charges. Marchant Schmidt will deduct additional shipping charges from any and all invoices associated with the order. If Marchant Schmidt authorizes a partial shipment due to a late delivery of material, Seller is responsible for the additional shipping charges. Marchant Schmidt will pay one shipping charge per order unless multiple delivery dates are approved by MSI Purchasing and indicated on the order.

(d) Shipping Claims: Claims for wrong, missing or damaged material are the responsibility of the Seller. Marchant Schmidt will provide documentation to Seller. The Seller will promptly replace and deliver to Marchant Schmidt any and all material.

8. Additional Obligations. In connection with its activities under this Agreement, Supplier shall comply with all applicable laws, rules, and regulations. Supplier shall establish and maintain at its manufacturing facility appropriate test and inspection procedures designed to help ensure that the Products will conform to the Specifications.

9. Termination.

(a) Default. If either party is in default on any of its material obligations under this Agreement and such default continues for a period of 30 days after written notice thereof is given to the defaulting party by the nondefaulting party, the nondefaulting party may terminate this Agreement by providing the defaulting party with written notice of such intent; provided, however, that in the case of a payment default, the 30-day cure period referenced in this Section shall be reduced to 10 days.

(b) Insolvency. If either party becomes insolvent or the subject of bankruptcy or insolvency proceedings, this Agreement shall terminate immediately; provided, however, that in the case of involuntary bankruptcy or insolvency proceedings, this Agreement shall not terminate unless such proceedings have continued unstayed for any period of 60 consecutive days.

(c) Effects of Termination. Upon termination of this Agreement, all of the respective rights and obligations of the parties under this Agreement shall terminate and be of no further force or effect, except that (i) unless otherwise directed by MSI, Supplier shall complete all Purchase Orders submitted to Supplier by MSI prior to the effective date of termination (and the provisions of this Agreement shall apply to the Products manufactured pursuant to such Purchase Orders), (ii) termination of this Agreement shall not affect any right or obligation which at the time of such termination shall have already accrued to a party or which thereafter may accrue in respect of any act or omission occurring prior to such termination, and (iii) termination of this Agreement will not affect the survival of any provision of this Agreement which is expressly stated elsewhere in this Agreement to survive the termination of this Agreement.

10. Invoices and Payment. After shipment of Products ordered pursuant to a Purchase Order, Supplier shall render an invoice for such Products. The invoice shall be computed on the basis of the pricing set forth in the Purchase Order and shall identify and show the quantity of Products shipped, applicable sales or use taxes, if any, and total amount due. Unless explicitly agreed to elsewhere in writing, standard payment terms are 1% 10, Net 45 days from complete delivery of purchase order. Payment of an invoice shall not constitute acceptance of Products.

11. Force Majeure. The performance or observance by either party of any obligations of such party under this Agreement, other than a payment obligation, may be suspended by it, in whole or in part, in the event of any of the following which prevents such performance or observance: act of God, war, riot, fire, explosion, accident, flood, sabotage, strike, lockout, injunctions, national defense requirements, compliance with governmental laws, rules, regulations, widespread raw material shortages, orders or action or any other cause (whether similar or dissimilar) beyond the reasonable control of such party; provided, however, that such party, not later than three business days after the force majeure event, shall notify the other party in writing of such event, and such party shall exercise diligence in and endeavor to remove or overcome the cause of such inability to comply; and provided further that neither party shall be required to settle a labor dispute against its own best judgment.

12. Indemnification. Supplier shall indemnify, defend and hold MSI and its directors, officers, employees, agents, successors and assigns harmless from and against any and all damages, expenses (including, without limitation, reasonable attorneys' fees), losses, suits, claims, demands, and liabilities arising out of any of the following: (a) the breach by Supplier of any of its representations, warranties, covenants and/or agreements contained herein; (b) violation of applicable law by Supplier or any of its employees or agents; and (c) negligence or tortious conduct by Supplier or any of its employees or agents.

13. Intellectual Property.

(a) General. Supplier does not have, nor shall Supplier acquire by virtue of this Agreement, any right, title, or interest in any of the trademarks, trade names or other intellectual property owned or used by MSI. Supplier shall not acquire any right, title, or interest in any of the intellectual property (including but not limited to trade secrets, know-how, patents, formulas, designs and specifications) owned by, licensed to or used by MSI which Supplier learns, has access to or uses in the course of performing this Agreement, and shall use such items only in connection with its performance of this Agreement. Except only as necessary to satisfy Supplier's obligations under Section 8(d)(i) above, Supplier shall cease using all of such intellectual property upon termination of this Agreement for any reason and thereupon shall provide to MSI all copies of any tangible material containing such intellectual property.

(b) Work Product. All writings, reports, analysis, ideas, inventions, developments, improvements and other works made to MSI equipment, conceived and/or reduced to practice, alone or with others, in the course of manufacturing Products under this Agreement shall be the exclusive property of MSI. Supplier agrees to (i) promptly and fully disclose in writing to MSI all such ideas, inventions, developments, and improvements, (ii) assign all such ideas, inventions, and developments to MSI, (iii) assist MSI, at MSI expense, in obtaining patents on any such ideas, inventions, developments and improvements, and (iv) execute all documents necessary to obtain such patents in the name of MSI. Supplier and MSI agree that any works of authorship created by Supplier relating to the MSI Products (such works of authorship being hereinafter referred to as "Works") shall be considered a "work made for hire" for MSI as that term is defined in Section 101 of the 1976 Copyright Act. To the extent that any Work is determined by a court of competent jurisdiction or the Register of Copyrights not to be a work made for hire, Supplier agrees to execute any and all documents deemed to be necessary or appropriate by MSI to effectuate a complete transfer of ownership of all rights, including, but not limited to, copyright rights, to MSI throughout the world. Supplier 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 contained in the Confidentiality Agreement, as defined in Section 13

below. Supplier shall obtain an agreement by each person who assists Supplier in performance of Supplier's services under this Agreement to assign all inventions and works of authorship relating to such services to MSI.

14. Miscellaneous.

(a) Assignment. Neither party may assign this Agreement or any rights or obligations under this Agreement without the prior written consent of the other party.

(b) Governing Law. The internal laws of the State of Wisconsin shall govern the rights and obligations of the parties under this Agreement and any order under this Agreement.

(c) Compliance with Laws, Rules, and Regulations: Seller agrees that in the manufacture and sale of items to Buyer, Seller shall comply with all applicable federal, state, and local laws, Executive Orders and regulations. Including but not limited too; Federal Occupational Safety and Health Act of 1970, Construction Safety Act 1969, and equal opportunity or as amended. The items sold by Seller to Buyer shall conform to the requirements of such laws, orders and regulations; and this purchase order shall be deemed to incorporate said laws, orders and regulations.

(d) Entire Agreement. This Agreement, including the Preamble and the recitals set forth above, the schedules and exhibits attached hereto, and the Confidentiality Agreement represents the entire agreement between the parties with respect to the subject matter hereof. All prior agreements between the parties relating to the subject matter hereof (whether written or oral), if any, are hereby terminated.

(e) Notices. All notices, requests, demands and other communications required or permitted to be given by any party under this Agreement shall be in writing and shall be delivered either personally, by regular mail, postage prepaid, or by facsimile transmission, addressed as follows: If to MSI: Marchant Schmidt, Inc., Attn: Jenö Thuecks, 24 West Larsen Drive, Fond du Lac, WI 54937. Notices delivered personally or by facsimile transmission shall be deemed "received" for purposes of this Agreement upon receipt (which in the case of facsimile transmissions shall be evidenced by a confirmation page). Notices delivered by regular mail shall be deemed "received" for purposes of this Agreement on the third day after such notice is deposited in the United States mail with postage prepaid.

(f) Waiver. No provision of this Agreement shall be deemed waived, amended or modified by any party hereto, unless such waiver, amendment or modification is in writing and signed by a duly authorized representative of each of the parties.

(g) Severability. If any of the provisions of this Agreement are invalid or unenforceable, such invalidity or unenforceability shall not invalidate or render unenforceable the entire Agreement, but rather the entire Agreement shall be construed as if not containing the particular invalid or unenforceable provision or provisions, and the rights and obligations of the parties hereto shall be construed and enforced accordingly.

(h) Survival. The following provisions of this Agreement shall survive any termination or expiration of this Agreement: 3(d), 3(e), 11, 12, 13 (i.e., the Confidentiality Agreement) and 14.

(i) Facsimile Signatures; Counterparts. This Agreement may be executed by facsimile signature. This Agreement may be executed in counterparts, each of which shall be deemed an original but both of which, taken together, shall constitute one and the same instrument.