

Terms and Conditions of Sale for Swanson Tool Manufacturing, Inc. ("STM")

1. **ACCEPTANCE OF TERMS AND CONDITIONS:** The sale by STM of any products to a person, firm or company which places an order for purchase of products ("Buyer") shall be governed solely by these terms and conditions of sale and such other provisions agreed upon in writing by duly authorized representatives of STM. Any oral understandings are expressly excluded. STM shall not be deemed to have waived these terms and conditions of sale if it fails to object to provisions appearing on, incorporated by reference in, or attached to Buyer's purchase order, written acknowledgement or other authorization to proceed, which provisions are hereby expressly rejected. Buyer's silence or acceptance or use of products constitutes its acceptance of these terms and conditions of sale. These terms and conditions of sale shall apply to any order for products whether or referenced in such order. Reference in this order to any such offer to sell, quotation, or proposal shall in no way constitute a modification of any of the terms and conditions of this order. **TERMS AND CONDITIONS THAT ARE DIFFERENT FROM OR IN ADDITION TO THESE TERMS AND CONDITIONS, WHETHER CONTAINED IN BUYER'S ORDER OR OTHERWISE, SHALL NOT BE BINDING ON STM, WHETHER OR NOT THE SAME WOULD MATERIALLY ALTER THIS ORDER, AND STM HEREBY OBJECTS THERETO. THE TERMS AND CONDITIONS HEREUNDER MAY ONLY BE MODIFIED BY A WRITTEN AGREEMENT EXECUTED BY DULY AUTHORIZED REPRESENTATIVES OF STM AND BUYER.**
2. **PRICES:** Prices, specifications and delivery dates referenced in STM's quotations are for information only and shall not be binding on STM until all technical requirements have been agreed and STM has accepted Buyer's order. Quotations terminate if Buyer does not place an order with STM within 30 days. The prices for products shall be the price quoted by STM to Buyer or as otherwise agreed between the parties in writing. Prices and fees do not include taxes, transport charges, insurance and export and/or import charges or duties including without limitation sales, value added tax, use or excise taxes, applicable to the products sold, which taxes and other charges may, in STM's discretion, be added by STM to the sale price and or fees or billed separately and which taxes and other charges shall be paid by Buyer unless Buyer provides STM with any necessary tax exemption certificate. Unless otherwise agreed in writing, Buyer shall be liable to pay STM's charges for transport, packaging, insurance and export and/or import clearance.
3. **PAYMENT:** Each shipment of products shall be a separate transaction and Buyer will be invoiced upon shipment. Terms of payment shall be net thirty (30) days from date of invoice, unless otherwise stated on the invoice and/or sales order acknowledgment. All amounts due shall be paid in full by Buyer, in U.S. dollars, without deduction, withholding, set-off or counterclaim for any reason whatsoever, whether arising in contract, tort (including negligence), breach of statutory duty or otherwise, save as may be required by law. STM may, in its sole discretion, determine at any time that Buyer's financial condition requires full or partial payment in advance or the provision of security for payment by Buyer in a form satisfactory to STM. If Buyer fails to make any payment when due then, without prejudice to any other rights and remedies available to STM, STM shall (at its option) be entitled: (i) to treat the sale as repudiated by Buyer, to suspend or cancel further delivery of products or any part thereof between them and claim damages and/or receive reasonable cancellation fees; (ii) claim damages from Buyer; and (iii) to recover, in addition to the payment, interest on the unpaid amount (both before and after judgement) at the rate of 12% per annum or the highest interest rate allowed by law, whichever is less. If Buyer fails to pay when due any portion of any payment due from Buyer to STM, all warranties and remedies granted hereunder may, at STM's option, be terminated. STM retains and Buyer grants a security interest in the products to secure performance of all Buyer's obligations arising hereunder.
4. **DELIVERY AND SHIPMENT:** Delivery of the products shall be made FOB on a day nominated by the Seller, delivered to the carrier of Buyer's choice or other as agreed between the parties, and Buyer shall be responsible at its sole risk for their storage, transport, collection and off-loading. Any dates quoted by STM for delivery of products are approximate only and STM shall not be liable for any delay in delivery of products howsoever caused and time for delivery is not of the essence. STM reserves the right to make delivery of products by installments and to tender a separate invoice in respect of each installment. When delivery is to be by installments or STM exercises its right to deliver by installments or if there is delay in the delivery of any one or more installments for whatever reason Buyer shall not be entitled to treat the sale as a whole as repudiated. STM may charge Buyer for any delay howsoever caused, including without limitation STM's withholding of the products due to Buyer's financial condition or failure to timely pay STM, in collection or transport or off-loading of the products and for their storage and payable upon invoice to Buyer.
5. **TITLE:** Subject to any security interest retained by STM, title to and risk of loss and damage to products shall pass to Buyer on delivery to the carrier at the FOB point of shipment. Any claims for loss, damage or misdelivery shall be filed with the carrier and notified to STM promptly. Products shall be deemed finally inspected and accepted within ten (10) days after delivery unless notice of rejection is given to STM within such period, in which case STM shall have a reasonable opportunity, in its sole discretion, to correct any nonconformance. Acceptance shall constitute acknowledgement of full performance by STM of all obligations arising from the sale except as to the limited warranty stated herein.
6. **INTELLECTUAL PROPERTY:** Notwithstanding delivery of and the passing of title in any products, and despite any provision herein or in any other document or any rule of law to the contrary, in no event shall occur any granting or transferring to, or vesting in, Buyer of any patent, copyright or other intellectual property rights in or to any products or any documents, data, drawings, services, processes, specifications, articles, sketches, reports, inventions, improvements, modifications, discoveries, tools, scripts and other items relating thereto. All such intellectual property created, produced or developed by STM under or in the course of providing any products, wherever in the world enforceable, shall immediately upon creation or performance vest in and shall be and remain the sole and exclusive property of STM and Buyer shall acquire no right, title or interest in or to the same. STM grants to Buyer a revocable, non-exclusive, non-transferable license to use such intellectual property as is necessary, and to the extent necessary, for Buyer to obtain and utilize the intended benefit of the products.
7. **CONFIDENTIALITY:** Each party undertakes to keep confidential, not use for its own purposes and not without the prior written consent of the other party disclose to any third party, any information of a confidential nature belonging or relating to the other party which may become known to it unless such information is or becomes public knowledge (other than by breach of this Section) or is required to be disclosed by order of a competent authority.
8. **LIMITED WARRANTY:** STM warrants that all products delivered to Buyer shall be free from defects in material and workmanship at the time of delivery. Provided that Buyer notifies STM in writing of any claimed defect in a product immediately upon discovery, but in no event later than thirty (30) days after delivery, and any such product is returned to STM with STM's prior consent and at Buyer's risk, transportation charges prepaid, and upon examination STM determines to its satisfaction, after a reasonable period to inspect, that such product is defective in material or workmanship, STM shall, at its option, repair or replace the product shipment to Buyer prepaid or refund the purchase price, which shall be Buyer's sole remedy. Any repair or replacement of a product shall not extend the warranty in any way. Products are not warranted after being put into use, without regard to whether any claimed defects were discoverable or latent on delivery. STM shall not be liable for the breach of the warranty to any party other than Buyer nor in respect of products subject to alteration or repair by any party other than STM, accident, abuse, use or misuse. Buyer shall be responsible for determining that the product is suitable for Buyer's use and that such use complies with all applicable law. **THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, WHETHER STATUTORY OR OTHERWISE, AND BUYER WAIVES ALL OTHER WARRANTIES, OBLIGATIONS OR LIABILITIES, ORAL OR WRITTEN, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION AN IMPLIED WARRANTY OF COMMERCIAL ACCEPTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND AS TO ANY PERIOD OF SERVICE OR PRODUCTIVITY. THIS WARRANTY MAY NOT BE EXTENDED OR ALTERED EXCEPT BY WRITTEN AUTHORIZATION OF SELLER.**
9. **EXPORT:** Buyer shall not export either directly or indirectly any product, any system incorporating a product, or any information from STM either in contravention of any law, statute or regulation or without first obtaining all required licenses and permits from all relevant agencies or departments of the United States government, including the United States Department of Commerce.
10. **INDEMNIFICATION:** Buyer will indemnify, release, defend and hold harmless STM, its subsidiaries, affiliates, licensees and assigns, and their respective officers, directors, agents, representatives, subcontractors and employees (each, an "Indemnified Party"), from all claims, liabilities, damages, costs (including reasonable attorneys' fees), expenses, liens and actions including, without limitation, arising from personal injury (including death) or damage to property, incurred by or asserted against an Indemnified Party, in any manner arising out of or relating to Buyer's acts, omissions and misrepresentations, and/or the use, promotion or sale of products provided by STM.
11. **LIMITATION OF LIABILITY:** NOTWITHSTANDING ANYTHING HEREIN, OR IN ANY OTHER DOCUMENT OR RULE OF LAW TO THE CONTRARY, STM WILL NOT BE LIABLE TO BUYER FOR ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES. STM'S CUMULATIVE LIABILITY TO BUYER OR ANY THIRD PARTY UNDER ANY CLAIM FOR LOSS OR LIABILITY BASED ON, RESULTING OUT OF, OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OR BREACH HEREIN OR MANUFACTURE, SALE DELIVERY OF USE OF ANY PRODUCT SHALL IN NO CASE EXCEED THE FEES ACTUALLY RECEIVED BY STM FROM BUYER IN RESPECT OF THE PRODUCT(S) AT ISSUE.
12. **CANCELLATION:** Orders for products accepted by STM may be cancelled or rescheduled by Buyer only with the written consent of STM, which may be withheld for any reason or no reason, and Buyer shall indemnify STM against the cost of all labor and materials used in connection with the order so cancelled or varied and against all loss, damage, cost, charges and expenses suffered or incurred by STM as a result of that cancellation or variation. STM, by written notice, may terminate any order, in whole or in part, at any time when it is in STM's interest to do so and at no cost to STM.
13. **FORCE MAJEURE:** Notwithstanding anything to the contrary herein, STM shall not be liable to Buyer for any loss or damage which may be suffered by Buyer as a direct or indirect result of the supply of products being prevented, delayed or rendered uneconomic by reason of circumstances or events beyond STM's reasonable control. If due to such circumstances or events STM has insufficient stocks to meet all its commitments, STM may apportion available stocks between its customers at its sole discretion.
14. **GOVERNING LAW:** The terms and conditions herein and the sale of products by STM shall be governed by and construed exclusively in accordance with the laws of the State of Connecticut, U.S.A., without regard to its conflict of law provisions. The parties agree that the United Nations Convention on Contracts for the International Sale of goods is specifically excluded from application hereunder. Any action or suit which arises hereunder, or the sale of products by STM or otherwise from the parties' relationship must be commenced in a state court of general jurisdiction in the state of Connecticut, U.S.A., County of Hartford and the parties irrevocably submit to the jurisdiction of such courts and waive any objection to either the jurisdiction of or venue in such court.
15. **MISCELLANEOUS:** Buyer may not assign, transfer, novate or otherwise dispose of all or any of its rights or delegate any of its obligations thereunder, in whole or in part, without the prior written consent of STM. Failure by STM to exercise or enforce any rights hereunder shall not be deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement thereof any time or times thereafter. If any provision or part of a provision hereunder is or is held by any court of competent jurisdiction to be unenforceable or invalid, such unenforceability or invalidity shall not affect the enforceability of any other provision. The headings of the sections and paragraphs are for convenience only and do not define, limit, or construe the contents of these sections or paragraphs.