

# E.H. Schwab Company

## TERMS AND CONDITIONS FOR THE SALE OF GOODS

### 1. Applicability.

(a) These terms and conditions of sale (these “**Terms**”) are the only terms which govern the sale of the goods (“**Goods**”) by E.H. Schwab Company (“**Seller**”) to any buyer of Goods from Seller (“**Buyer**”). Seller hereby objects to and rejects the provisions of any acknowledgement, order, acceptance, invoice, or other documentation which is inconsistent with or in addition to the provisions of these Terms. Seller has no obligation to fulfill Buyer’s request to purchase Goods and Seller may reject any purchase order, in its sole discretion for any reason or no reason.

(b) The applicable or accompanying quotation, confirmation of sale, or invoice (the “**Sales Confirmation**”) and these Terms (collectively, this “**Agreement**”) comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. These Terms prevail over any of Buyer’s general terms and conditions of purchase regardless whether or when Buyer has submitted its purchase order or such terms, and Seller’s consent to sell Buyer the Goods is expressly conditional on the application of the Terms. Fulfillment of Buyer’s order does not constitute acceptance of any of Buyer’s terms and conditions and does not serve to modify or amend these Terms.

### 2. Delivery.

(a) The Goods will be delivered within a reasonable time after the receipt of Buyer’s purchase order, subject to availability of finished Goods. Seller shall not be liable for any delays, loss or damage in transit.

(b) Unless otherwise agreed in writing by the parties, Seller shall deliver the Goods to the designated location for Buyer’s pickup at Seller’s point of manufacture (the “**Delivery Point**”) using Seller’s standard methods for packaging such Goods. Buyer shall take delivery of the Goods within ten (10) days of Seller’s written notice that the Goods have been delivered to the Delivery Point. Buyer shall be responsible for all loading costs and provide equipment and labor reasonably suited for receipt of the Goods at the Delivery Point.

(c) Seller may, in its sole discretion, without liability or penalty, make partial shipments of Goods to Buyer. Each shipment will constitute a separate sale, and Buyer shall pay for the units shipped whether such shipment is in whole or partial fulfillment of Buyer’s purchase order.

(d) If for any reason Buyer fails to accept delivery of any of the Goods on the date fixed pursuant to Seller’s notice that the Goods have been delivered at the Delivery Point, or if Seller is unable to deliver the Goods at the Delivery Point on such date because Buyer has not provided appropriate instructions, documents, licenses or authorizations: (i) risk of loss to the Goods shall pass to Buyer; (ii) the Goods shall be deemed to have been delivered; and (iii) Seller, at its option, may store the Goods until Buyer picks them up, whereupon Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

3. Quantity. If Seller delivers to Buyer a quantity of Goods of up to 10% more or less than the quantity set forth in the Sales Confirmation, Buyer shall not be entitled to object to or reject the Goods or any portion of them by reason of the surplus or shortfall and shall pay for such Goods the price set forth in the Sales Confirmation adjusted pro rata.

4. Shipping Terms. Delivery shall be made Ex Works (EXW) point of manufacture (Incoterms 2010), unless the parties agree otherwise in a duly executed writing. All products will be shipped “as formed” coated with the forming lubricant unless otherwise specified.

5. Title and Risk of Loss. Title and risk of loss passes to Buyer upon tender of delivery of the Goods to the carrier for shipment to Buyer. Buyer is responsible for all transportation costs and all import and export duties, taxes, and any other expenses incurred or licenses or clearances required. Any Goods held by Seller beyond the scheduled delivery date for convenience of Buyer will be invoiced on date of completion and the terms of payment will apply from the invoice date. Such products will be subject to charges for warehousing and other expenses incident to such delay. As collateral security for the payment of the purchase price of the Goods, Buyer hereby grants to Seller a lien on and security interest in and to all of the right, title and interest of Buyer in, to and under the Goods, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase money security interest under the Pennsylvania Uniform Commercial Code.

6. Amendment and Modification. These Terms may only be amended or modified in a writing which specifically states that it amends these Terms and is physically signed by an authorized representative of each party.

7. Inspection and Rejection of Nonconforming Goods.

(a) Buyer shall inspect the Goods within ten (10) days of receipt ("**Inspection Period**"). Buyer will be deemed to have accepted the Goods unless it notifies Seller in writing of any Nonconforming Goods during the Inspection Period and furnishes such written evidence or other documentation as required by Seller. Failure to notify Seller in writing within such period shall be deemed an unqualified waiver of any rights to return Nonconforming Goods. "**Nonconforming Goods**" means the following: (i) the Goods shipped are different from identified in Buyer's purchase order; (ii) the Goods' label or packaging incorrectly identifies its contents; or (iii) the Goods are not manufactured in accordance with Buyer's specifications.

(b) If Buyer timely notifies Seller of any Nonconforming Goods, Seller shall, in its sole discretion, (i) replace such Nonconforming Goods with conforming Goods, (ii) repair the Nonconforming Goods to be consistent with Buyer's specifications, or (iii) credit the Price for such Nonconforming Goods. Buyer shall ship, at its expense and risk of loss, the Nonconforming Goods to Seller's manufacturing facility. If Seller exercises its option to replace Nonconforming Goods, Seller shall, after receiving Buyer's shipment of Nonconforming Goods, ship to Buyer, at Buyer's expense and risk of loss, the replaced Goods to the Delivery Point.

(c) Buyer acknowledges and agrees that the remedies set forth in Section 7(b) are Buyer's exclusive remedies for the delivery of Nonconforming Goods. Except as provided under Section 7(b), all sales of Goods to Buyer are made on a one-way basis and Buyer has no right to return Goods purchased under this Agreement to Seller.

8. Price.

(a) Buyer shall purchase the Goods from Seller at the quoted price (the "**Price**") which is based on current metal markets and subject to change without notice prior to receipt by Seller of written acceptance of the Price. If the Price should be increased by Seller before the acceptance of the Price, then these Terms shall be construed as if the increased price was originally inserted therein, and Buyer shall be billed by Seller on the basis of such increased price. Any quotation or other offer that Seller makes may be withdrawn by Seller at any time prior to Seller's receipt of a written acceptance from Buyer. Unless withdrawn or otherwise terminated earlier by Seller, the terms and pricing of a quotation are open for and automatically expire within thirty (30) days from the date of the quotation. Thereafter, Seller must confirm any acceptance of the quotation in order for the quotation to be valid.

(b) All Prices are exclusive of all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any Governmental Authority on any amounts payable by Buyer. Buyer shall be responsible for all such charges, costs and taxes; provided, that, Buyer shall not be responsible for any taxes imposed on, or with respect to, Seller's income, revenues, gross receipts, personnel or real or personal property or other assets.

9. Blanket Orders. Blanket orders shall be for a period of twelve (12) months with releases supplied by Buyer from time to time. At the end of the twelve (12) months period all remaining Goods will automatically be shipped and billed or applied to a new purchase order. Any drawing revisions affecting the Goods dimensionally that are subject to a blanket order that occur during the twelve (12) months period will obligate Buyer to purchase existing products in production and inventory upon the effective date of the applicable revision.

10. Tooling. Tooling built specifically for Buyer's requirements will be identified as Buyer's property and will be invoiced as completed and held by Seller at Buyer's risk. Insurance for tooling is Buyer's responsibility. Seller will use reasonable efforts to provide wood tooling that is capable of producing repeat quantity parts, but does not guarantee that any such wood tooling will be capable of producing repeat quality parts. Tools designated as "temporary" will be consumed during the process of forming the Goods. Hardwood tools will be scrapped after three (3) years of dormancy. All other tools will be scrapped after a six (6) year period of dormancy.

11. Cancellation. A request from Buyer to cancel all or any part of an order previously placed with Seller, currently in production, will be accepted by Seller, all work stopped as reasonably as possible and the resulting cancellation charges will be computed on the basis of our full costs plus normal profit covering all engineering work, all work in process, all raw materials, all supplies and all commitments made by Seller in connection with the order, less allowances Seller may be in a position to make for any standard components and for the balance of the material as scrap. Buyer agrees to pay all such charges as fair and reasonable direct damages to Seller for the cancellation.

12. Payment Terms.

(a) Except as otherwise expressly provided in this Section 12(a), Buyer shall pay all invoiced amounts due to Seller with immediately available funds upon delivery of the Goods to Buyer's carrier. With prior written credit approval of Buyer by Seller (after Buyer provides three (3) credit references and its bank affiliation to Seller), Buyer can qualify, at Seller's sole discretion, to pay Seller net thirty (30) days from the date of Seller's invoice. Seller will retain a security interest in the products until Buyer's final payment for the Goods. Buyer shall make all payments hereunder in immediately available funds and in US dollars.

(b) Buyer shall pay interest on all late payments at the lesser of the rate of 1.5% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. Buyer shall reimburse Seller for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees. In addition to all other remedies available under these Terms or at law (which Seller does not waive by the exercise of any rights hereunder), Seller shall be entitled to suspend the delivery of any Goods if Buyer fails to pay any amounts when due hereunder and such failure continues for fifteen (15) days following written notice thereof.

(c) Buyer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Seller, whether relating to Seller's breach, bankruptcy or otherwise.

13. Warranty Disclaimer. **SELLER MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS, AND SPECIFICALLY DISCLAIMS ANY WARRANTIES OR INDEMNITIES, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, WARRANTY OF QUALITY, WARRANTY OF SUITABILITY, OR WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY, AND WHETHER EXPRESS OR IMPLIED, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE. SECTION 8 SETS FORTH THE SOLE AND EXCLUSIVE RIGHTS OF THE BUYER REGARDING NONCONFORMING GOODS AND IS IN LIEU OF ANY WARRANTY.**

14. Limitation of Liability. **IN NO EVENT SHALL SELLER BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES (INCLUDING, BUT NOT LIMITED TO LOST PROFITS, LOST BUSINESS, COSTS OF REMOVAL AND REINSTALLATION, LOSS OF GOOD WILL OR LOSS OF USE) WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT OR TO THE GOODS, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO SELLER FOR THE GOODS SOLD HEREUNDER. SECTION 8 SETS FORTH THE SOLE AND EXCLUSIVE REMEDY AGAINST SELLER.**

15. Noninfringement. Buyer shall indemnify, defend and hold harmless Seller from and against any loss, liability, cause of action, damage, claim or expense (including attorneys' fees and expenses) incurred by Seller arising from or as a result of Seller manufacturing the Goods in accordance with Buyer's specifications, including without limitation any claim of intellectual property infringement.

16. Compliance with Law. Buyer shall comply with all applicable laws, regulations and ordinances. Buyer shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under this Agreement. Buyer shall comply with all export and import laws of all countries involved in the sale of the Goods under this Agreement or any resale of the Goods by Buyer. Buyer assumes all responsibility for shipments of Goods requiring any government import clearance. Seller may terminate this Agreement if any governmental authority imposes antidumping or countervailing duties or any other penalties on Goods.

17. Termination. In addition to any remedies that may be provided under these Terms, Seller may terminate this Agreement with immediate effect upon written notice to Buyer, if Buyer: (i) fails to pay any amount when due under this Agreement; (ii) has not otherwise performed or complied with any of these Terms, in whole or in part; or (iii) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors.

18. Waiver. No waiver by Seller of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Seller. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

19. Confidential Information. All non-public, confidential or proprietary information of Seller of other information of the Seller that has value because it is not generally known in the market, including but not limited to specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by Seller to Buyer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential" in connection with this Agreement is confidential, solely for the use of performing this Agreement, and may not be disclosed or copied unless authorized in advance by Seller in writing. Upon Seller's request, Buyer shall promptly return all documents and other materials received from Seller. Seller shall be entitled to injunctive relief for any violation of this Section. This Section does not apply to information that is: (a) in the public domain; (b) known to Buyer at the time of disclosure; or (c) rightfully obtained by Buyer on a non-confidential basis from a third party.

20. Force Majeure. The Seller shall not be liable or responsible to Buyer, nor be deemed to have defaulted or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of Seller including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic, lockouts, strikes or other labor disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, materials or telecommunication breakdown or power outage.

21. Assignment. Buyer shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Seller. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Buyer of any of its obligations under this Agreement.

22. Relationship of the Parties. The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

23. No Third-Party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms.

24. Governing Law. All matters arising out of or relating to this Agreement is governed by and construed in accordance with the internal laws of the Commonwealth of Pennsylvania without giving effect to any choice or conflict of law provision or rule (whether of the Commonwealth of Pennsylvania or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the Commonwealth of Pennsylvania.

25. Submission to Jurisdiction. Any legal suit, action or proceeding arising out of or relating to this Agreement shall be instituted in the federal courts of the United States of America or the courts of the Commonwealth of Pennsylvania in each case located in the City of Pittsburgh and County of Allegheny, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding.

26. Notices. All notices, request, consents, claims, demands, waivers and other communications hereunder (each, a "**Notice**") shall be in writing and addressed to the parties at the addresses set forth on the face of the Sales Confirmation or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section.

27. Severability. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

28. Survival. Provisions of these Terms which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Agreement including, but not limited to, the following provisions: Disclaimer of Warranties, Limitation of Liability, Noninfringement, Compliance with Laws, Confidential Information, Governing Law, Submission to Jurisdiction, and Survival.