

PURCHASE ORDER TERMS AND CONDITIONS

1. **General**

This Purchase Order and any models, drawings, technical processes, agreements, specifications, standards or other documents made applicable hereto (the "Additional Documents"), all as replaced, substituted, amended and in effect from time to time, and including these Purchase Order Terms and Conditions (collectively, the "Order"), constitute the COMPLETE AND FINAL AGREEMENT of Hirschvogel Incorporated ("Buyer") and the seller to whom this Order is addressed ("Seller") and may not be added to, modified, superseded or altered except by written agreement or modification signed by Buyer's authorized representative, notwithstanding any additional or other proposals or terms and conditions which may now or in the future appear on Seller's invoices, quotations, acknowledgments or other forms (notification of objection thereto being given hereby), and notwithstanding any acceptance of shipments, payments or other similar acts of Buyer.
2. **Orders**
 - A. **Acceptance.** Prompt acceptance of this Order by returning the acknowledgement copy hereof is requested but, in any event, any shipment or delivery of any goods ordered hereby or the furnishing of any services in accordance with this Order (collectively, whether goods or services, the "Goods"), or other tender of performance of Seller shall be taken as Seller's assent to and acceptance of this Order. In the event of direct conflict between this Order and the Additional Documents, the provisions of the Additional Documents will prevail.
 - B. **Order Changes.** Buyer shall have the right at any time to change this Order as to specifications, delivery, quantity, packaging or means of shipment. Seller's receipt of Buyer's notice of change without response received by Buyer within ten (10) days of Buyer's notice shall be Seller's acceptance of the change without any price or other adjustments to this Order. Seller shall make no change in the Goods or any material, service or labor covered hereby without Buyer's prior written consent.
3. **Performance**
 - A. **Shipment.** Seller will pack, mail, label and ship all Goods in a commercially reasonable and appropriate manner to ensure the lowest transportation cost for which Buyer is responsible, if any, in the absence of specific instructions in the Order. Buyer's count of the Goods will be final as to all shipments not accompanied by a packing list. Seller will inform Buyer immediately of any occurrence which may result in any change in delivery time or quantity and of corrective measures taken to minimize the effect thereof.
 - B. **Quantity.** Quantity of Goods ordered must not be exceeded without permission first obtained from Buyer. Excess quantities shipped without permission may be returned at Seller's expense and risk of loss, including all freight and handling. Quantity is of the essence for all Orders.
 - C. **Timing.** Buyer may refuse or return the Goods, or any unit thereof, and cancel all or any part of this Order, if Seller delivers early, delivers late, or fails to deliver all or any part of the Goods in accordance with this Order, and any cost in keeping the Goods prior to such return and the cost of returning the same, shall be Seller's expense. Acceptance of any part of this Order, or partial or full payment made by Buyer, shall not bind Buyer to accept future nonconforming shipments. Time is of the essence for all Orders.
 - D. **Containers.** No charges will be allowed for non-returnable packages, bags, containers, boxing, crating, or cartage (collectively "Containers") unless otherwise specified in this Order. Containers will be shipped to Seller freight collect. Containers used to ship Goods to Buyer must meet carrier's specifications as published in the Uniform Freight Classification.
4. **Reporting, Composition and Inspection**
 - A. **Reporting.** Seller will submit to Buyer all production, functional and quality control test reports and other data as may be requested by Buyer from time to time concerning the Goods. Buyer may enter Seller's premises during business hours for inspections and Seller agrees to fully cooperate with Buyer in making such inspections.
 - B. **Composition of Goods.** If requested by Buyer, Seller shall promptly furnish to Buyer in such form and detail as Buyer may direct: (1) a list of all materials/ingredients in the Goods; (2) the amount of one or more materials/ingredients; and (3) information concerning any changes in or additions to such materials/ingredients. Prior to shipment of any Goods, Seller shall furnish to Buyer sufficient written warnings and notices of any hazardous materials/ingredients which are a part of the Goods, together with such special handling instructions as may be required by applicable laws.
 - C. **Inspection.** All Goods are subject to Buyer's final inspection, test and approval which shall be made within a reasonable time after receipt, irrespective of day of payment, and any Goods which are not fully satisfactory to Buyer may be rejected by notice to Seller. Rejected Goods are to be replaced with conforming Goods within the fastest reasonable time after notice of rejection, or at the option of Buyer, the quantity of Goods may be reduced by the number of rejected Goods, or the Order cancelled in its entirety.
5. **Seller's Warranties**
 - A. **Seller Warranties.** Seller warrants that the Goods furnished pursuant to the Order will: (1) be free from defects in material and workmanship; (2) not be less than merchantable and fit for the particular purpose(s) known by or disclosed to Seller; (3) meet specifications, drawings, or standards agreed upon or samples submitted or approved by Buyer, and shall conform to the Additional Documents; (4) comply with all applicable federal, state and local laws, regulations, rules, ordinances, orders and the like; and (5) be free from all lawful claims of any person of any description, including all security interests, liens and encumbrances. In addition, Seller warrants that all workers utilized by Seller to perform work pursuant to this Order shall be in full compliance with all immigration and employment eligibility requirements under applicable law.
 - B. **Warranty Terms.** These warranties shall survive inspection, acceptance and payment and shall remain in effect for a period of time consistent with any warranty offered by Buyer on the product(s) into which the Goods are or will be incorporated. Payment by Buyer shall not constitute acceptance of the Goods or waive any rights of Buyer under the Order. In the event that any Goods are not in compliance with the warranties stated herein, Buyer may at Seller's cost and expense, and without limitation or exclusion of any other right or remedy, return the defective Goods to Seller at Seller's risk of loss for a full refund by Seller and/or, at Buyer's option, require Seller to repair, correct or replace the defective Goods.
6. **Price, Taxes and Payment**
 - A. **Price.** All prices shall be F.O.B. Buyer's place of delivery (destination), unless otherwise specified herein, inclusive of applicable taxes, excises, duties, quotation fees or any other governmental impositions related to the production, sale or transportation of the Goods, in compliance with any ceiling or other limitation of price established by any governmental authority; and subject to increase only with prior written consent of Buyer. Reductions in price of Goods ordered, occurring between the date an Order is issued by Buyer and the time of shipment by Seller, shall accrue to the benefit of Buyer. If Buyer stipulates no price in an Order, the price shall not be higher than Seller's current published price, or that last quoted or charged to Buyer by Seller, whichever is lower. If Buyer stipulates a price in an Order, such price is final and any increases in Seller's published price shall be ineffective as to the issued Order.
 - B. **Taxes.** Buyer and Seller will cooperate in obtaining such certificates of exemption from any sales, excise or other taxes to which either of the parties may be entitled.
 - C. **Payment.** Unless otherwise specified in an Order, Buyer shall make payment within sixty (60) days after receipt of a correct invoice and shall be entitled to all quoted discounts thereon. Invoices shall indicate Buyer's purchase order number, shall be mailed to Buyer no earlier than upon shipment of Goods and accompanied by an appropriate packing list and bill of lading. Each of Buyer's Orders shall be separately invoiced.
7. **Buyer's Property and Confidentiality**
 - A. **Buyer's Property.** Unless otherwise specified in separate written agreement between Buyer and Seller all tools, equipment, dies and jigs, drawings, specifications, information and other material of every description furnished to Seller or paid for by Buyer ("Buyer's Property") shall be and remain the sole property of Buyer, held by Seller at Seller's risk, plainly marked and or otherwise clearly identified by Seller as "Property of Hirschvogel Incorporated" with tool number designated by Buyer. Buyer's Property shall be stored separate and apart from Seller's property, not moved without Buyer's prior written approval, insured by Seller with full fire and extended coverage insurance for the replacement value thereof, treated as confidential and used so as to prevent disclosure inconsistent therewith, shall not be used except pursuant to the Order, shall be subject to Buyer's inspection at all reasonable times and immediate possession on demand. Seller specifically waives as consideration for this Order, any lien or other possessory right with respect to Buyer's Property and, in any event, Buyer's Property shall be returned to Buyer simultaneously with final shipment or termination under this Order.
 - B. **Confidentiality.** Any unpatented knowledge or information concerning Buyer's products, production or other methods, processes, scheduling, sources of supply, customers, marketing, or otherwise which Buyer may disclose to Seller attendant to or incident to this Order shall be retained in confidence by Seller, and to the extent represented by or in samples, writings, drawings or other tangibles, shall be returned to Buyer at any time upon demand. The provisions of this Section 7(B) shall survive the performance of this Order.
8. **Indemnification**
 - A. **General.** Seller shall defend, indemnify and hold Buyer harmless from any and all claims, demands, lawsuits and liability for loss, costs, damages, fines, penalties and expenses (including, without limitation, reasonable attorneys' fees, incidental or consequential liability and economic loss or damage) of every kind and nature, threatened, incurred, arising out of or relating to the Goods, Seller's performance hereunder, any breach of this Order, or by reason of: (1) the alleged infringement of any patent, trade name, trademark or copyright related to sale or use of the Goods; and/or (2) any alleged or actual breach of Seller's warranties within Section 5.
 - B. **Recall.** In the event of any inquiry or investigation by any governmental agency with respect to any defect of the Goods, or any recall of the Goods or any product containing the Goods because of a defect of the Goods, Seller shall indemnify and hold Buyer harmless from any loss, damage, liability, suit, claim, demand, cost and expense (including, without limitation, reasonable attorneys' fees, incidental or consequential liability and economic loss or damage) arising out of the inquiry, investigation or recall, except to the extent such defect of the Goods was solely caused by the negligence of Buyer.
 - C. **On-Premises.** To the extent that Seller's employees, associates, consultants, agents or other representatives ("Seller's Agents") are present on or about the premises of Buyer, Seller shall be responsible for their acts and omissions and shall indemnify and hold Buyer harmless from liability for any claims or damages to property or injuries or death to persons arising out of their acts or omissions, including without limitation: (1) the failure of Seller's Agents to comply with applicable rules governing security, maintenance and safety at Buyer's premises; (2) any claim against Buyer by Seller's Agents for injury or otherwise; or (3) any claim against Buyer resulting from Seller's failure to maintain workers' compensation or other public or private insurance with respect to any of Seller's Agents. In furtherance of the foregoing, Seller hereby expressly waives any and all statutory and/or constitutional immunity to which, but for this waiver, it might be entitled as an employer in compliance with the State of Ohio's workers' compensation laws, or under any other employee benefit statute or similar laws of any jurisdiction. The provisions of this Section 8 shall survive the performance of this Order.
9. **Cancellation of Orders**

Buyer may at any time cancel this Order in whole or in part by written notice, whereupon Seller shall terminate work pursuant to the terms of such notice and without any further liability of Buyer accruing thereafter, except as specifically permitted below:

 - A. **Specialized Goods.** If Goods ordered hereunder are made specifically for Buyer and cannot be sold to other purchasers, upon cancellation by Buyer, Seller shall promptly advise Buyer of the quantities of applicable work and material on hand, or purchased prior to cancellation and the most favorable disposition that Seller can make thereof. Seller will comply with Buyer's instructions regarding disposition of such work and material. All claims by Seller based on such cancellation must be asserted within sixty (60) days from the date of the cancellation notice for the amount of the Order price of finished work, and the cost to Seller, excluding profit or losses, of work in process and raw material, less, however (1) the agreed value of any items used or sold by Seller with Buyer's consent, and (2) the reasonable value or cost (whichever is higher) of any defective, damaged or destroyed work or material, and any items sold or used by Seller without Buyer's consent. Buyer will make no payments for finished work, work in process or raw materials fabricated or procured by Seller unnecessarily in advance or in excess of Buyer's delivery requirements. The payment provided for in this clause shall constitute Buyer's only liability in the event this Order is cancelled as provided herein.
 - B. **Standard Goods.** If Goods ordered hereunder are normally carried in inventory by Seller (as distinguished from items described in subsection (A) above), Buyer shall not have liability for any cancellation of this Order, in whole or in part, prior to actual shipment and within ten (10) days after receipt of Goods by Buyer, except that in such latter situation Buyer shall return such Goods to Seller at Buyer's expense.

Notwithstanding the above, in the event Seller breaches any term of this Order or fails to demonstrate to Buyer its progress in fulfilling this Order so as to cause Buyer reasonable concern regarding the timely and proper completion or delivery of the Goods, Buyer may cancel this Order without further liability to Seller, and the provision of subsections (A) and (B) above shall not apply.
10. **Insurance**

Seller will maintain insurance, in amounts customary in Seller's industry, with reputable and financially responsible insurance companies reasonably acceptable to Buyer, insuring against all public liability, including injury and death to persons, products' liability and damage to property, arising out of or related to the Goods or Seller's performance hereunder, and shall furnish Buyer, upon request, certificates of such insurance authenticated by the issuing company. Except as otherwise agreed by Buyer, Seller will insure all shipments of Goods for full value. Upon request by Buyer, Seller shall have Buyer listed as a named insured on the insurance policies required under this section. Seller will also maintain workers' compensation insurance covering all employees and will provide certification of such insurance if requested by Buyer, however Buyer's failure to so request shall not be a waiver of this requirement.
11. **Force Majeure**

Any event or occurrence beyond the reasonable control of Buyer without its fault or negligence such as, by way of example and not of limitation, fire, flood, earthquake or other acts of God, strike, war, civil commotion, and governmental regulation, shall allow Buyer the option of canceling all or any part of an Order without liability for any damages resulting from such cancellation.
12. **Miscellaneous**
 - A. **Publicity.** Without Buyer's prior written consent, Seller shall not advertise or publish in any manner that Seller has contracted to, or has furnished Goods to Buyer.
 - B. **Assignment.** All covenants and agreements contained in this Order by or on behalf of any of the parties hereto shall bind and inure to the benefit of their respective successors and assigns, except that Seller shall have no right to assign the rights hereunder or any interest herein without the prior written consent of Buyer.
 - C. **Amendment.** No consent, amendment, modification, termination or waiver of any provision of this Order shall be effective unless in writing and signed by both parties, and then only in the specific instance given.
 - D. **Titles and Headings.** The titles and headings of the various sections of this Order are solely for convenience and are not part of the Order for purposes of interpreting the provisions hereof.
 - E. **Applicable Law.** This Order is being executed and delivered in and is intended to be performed under the laws of the State of Ohio. If any provision hereof is or becomes invalid or unenforceable under any law of mandatory application, it is the intent of the parties hereto that such provision will be deemed severed and omitted herefrom, the remaining portions hereof to remain in full force and effect as written.