

Standard Terms and Conditions of Sale

1. **Definitions.** "HVI" means Hirschvogel Incorporated. "Customer" means the purchaser identified in the applicable document to which these Standard Terms and Conditions of Sale are attached, or comprise the reverse part (as applicable), irrespective of whether the document is an invoice, order confirmation, quotation, statement, or other document (hereinafter, all references to such documents and to the Standard Terms and Conditions of Sale, collectively, shall be made by reference to the "Agreement"). "Goods" mean the goods, equipment, supplies and services supplied by HVI to Customer as described in this Agreement. "Customer" and "HVI" include the respective heirs, executors, personal representatives, successors and permitted assigns of each.
2. **Terms are Exclusive.** THIS AGREEMENT CONSTITUTES THE COMPLETE AND FINAL AGREEMENT OF CUSTOMER AND HVI RELATED TO THE GOODS. THIS AGREEMENT MAY NOT BE ADDED TO, MODIFIED OR SUPERSEDED EXCEPT IN A WRITING SIGNED BY AN EXECUTIVE OFFICER OF HVI, EVEN THOUGH OTHER TERMS MAY APPEAR ON CUSTOMER'S DOCUMENTS (ALL OF WHICH ARE HEREBY OBJECTED TO BY HVI WITHOUT FURTHER NOTICE). THIS AGREEMENT IS EXPRESSLY CONDITIONAL UPON CUSTOMER'S CONSENT TO ANY TERMS CONTAINED HEREIN THAT ARE ADDITIONAL TO OR DIFFERENT FROM THOSE CONTAINED IN CUSTOMER'S DOCUMENTS. IF CUSTOMER ACCEPTS ANY PERFORMANCE BY HVI, CUSTOMER WILL BE DEEMED TO HAVE ACCEPTED THE TERMS AND CONDITIONS OF THIS AGREEMENT.
3. **Price.** Unless otherwise agreed, prices will be those set forth in HVI's pricing policies in effect at the time of tender of delivery. In the event Customer changes its order (if and when permitted by HVI), HVI may adjust prices accordingly. Unless otherwise stated, prices do not include applicable quotation fees, taxes, excises, duties or other governmental impositions which HVI may be required to pay or collect, and if applicable, shall be paid by Customer. Further, unless otherwise stated, all permits, licenses, or authorizations necessary for the use of the Goods will be obtained by Customer at its sole expense. If this Agreement is a quotation, the terms and prices quoted (if any) will be firm only if accepted by Customer within thirty (30) days of the date of the quotation.
4. **Payment, Collection and Security Interests.** Unless otherwise agreed, payment for Goods shall be Net 30 days. Payment terms and conditions are subject to change at HVI's discretion. If Customer does not pay in accordance with the payment terms, HVI reserves the right to charge Customer 1.50% per month, or the maximum rate permitted by law, on the unpaid balance until paid in full. In the event that Customer fails to make payment in accordance with the terms set forth in this Agreement, HVI is authorized by Customer to employ alternative collection measures to obtain payment from Customer of past due amounts. Customer further agrees that any costs, expenses and fees (including but not limited to attorneys' fees) incurred by HVI in attempting to collect such past due amounts owed by HVI shall be added to the past due amount owed, and shall be paid by Customer to HVI. HVI reserves, and Customer hereby grants to HVI, a security interest in the Goods to secure Customer's payment of the purchase price and any other charges owed by Customer, and Customer agrees that HVI may (but is not obligated to) take appropriate actions to evidence and perfect such interest.
5. **Delivery.** Unless otherwise agreed, delivery of the Goods shall occur at HVI's loading dock at HVI's premises in Columbus, Ohio, at which location Customer may pick up the Goods. Any specified delivery date is approximate only. Title to the Goods will pass to Customer upon HVI's tender of delivery of the Goods. If the Goods are held by HVI subject to receiving instructions from Customer, HVI may invoice the Goods and Customer agrees to make payment in accordance with this Agreement. Goods invoiced and held at any location by HVI will be held at Customer's risk and HVI may charge for (but is not obligated to carry) insurance and storage. Customer will accept and pay for partial deliveries of Goods at contract prices and terms. When Customer has declared or manifested an intention not to accept delivery in accordance with this Agreement, no tender will be necessary but HVI may, at its option, give notice to Customer that HVI is ready and willing to deliver the Goods and such notice will constitute a valid tender of delivery.
6. **Force Majeure.** HVI shall not be liable for failure to perform by reason of strikes, fires, floods, unavoidable accidents, wars, delays in transportation, acts of God, or other causes beyond its reasonable control. In connection with the foregoing, Customer acknowledges that delivery of the Goods is contingent upon HVI's ability to obtain supplies, raw materials and services through its regular and usual sources and thus, if for any reason beyond HVI's control, HVI is not able to meet anticipated deliveries, HVI will not be liable therefore and may postpone the delivery date(s) under this Agreement for a period of time which is reasonable under all circumstances.
7. **Warranty, Limitation of Remedies and Liabilities.** HVI warrants only to Customer that at the time of delivery the Goods will conform (subject to variations acceptable within the industry) to the specifications agreed to by HVI as applicable to the Goods. Published material and information concerning the Goods (including any such information in HVI's literature, brochures, advertisements and other publicly disseminated materials) are based upon research which HVI believes to be reliable, but such material and information does not constitute a warranty. Because of the variety of possible uses for the Goods and the continuing development of new uses, Customer should carefully consider the fitness and performance of the Goods for each intended use and Customer assumes all risks in connection with such uses. **EXCEPT AS SET FORTH ABOVE, HVI DISCLAIMS AND EXCLUDES ALL OTHER EXPRESS WARRANTIES AND ALL IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. NO WAIVER, ALTERATION, ADDITION OR MODIFICATION OF THE FOREGOING SHALL BE VALID UNLESS MADE IN WRITING AND SIGNED BY AN EXECUTIVE OFFICER OF HVI. CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AGAINST HVI FOR ANY LIABILITY WITH RESPECT TO THE GOODS, WHETHER ANY CLAIM FOR RECOVERY IS BASED UPON OR ARISES OUT OF THEORIES OF CONTRACT, NEGLIGENCE, TORT (INCLUDING STRICT LIABILITY) OR OTHERWISE, WILL BE REPAIR, REPLACEMENT OR CREDIT, AT HVI'S OPTION, SUBJECT TO CUSTOMER'S COMPLIANCE WITH THE REQUIREMENTS OF SECTION 8. IN NO EVENT WILL HVI BE LIABLE FOR DAMAGES IN EXCESS OF THE PURCHASE PRICE OF THE GOODS OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO, LOSS OF PROFITS, LOSS OF REVENUES, OR LOSS OF OPPORTUNITIES ARISING OUT OF THIS SALE OF GOODS, EVEN IF HVI HAS BEEN ADVISED, OR IS OTHERWISE AWARE, OF THE POSSIBILITY OF SUCH DAMAGES.**
8. **Inspections and Acceptance of Claims.** Each delivery of Goods will be inspected promptly by Customer for damage and defects, however Customer must notify HVI of any claimed damage or defects no later than thirty (30) days after Customer's receipt of the Goods. If Customer fails to so inspect or notify HVI, Customer will be deemed to have accepted the Goods and to have waived any claim for damage or defect. If Customer inspects the Goods and notifies HVI within such period of its claim that the Goods are damaged or defective, HVI will review Customer's claim, and if HVI determines such claim to be valid, Customer and HVI will mutually agree on the timing of curing such damage or defect. Any remedy of Customer against HVI shall be barred unless notice is given in accordance with this Section 8. All actions by Customer for breach of warranty against HVI must be brought within one (1) year after the cause of action thereon accrues.
9. **Infringement Indemnification.** Customer will defend, indemnify and hold HVI and its officers, employees, and agents harmless from and against any and all claims, demands, actions, liabilities, damages, or expenses (including reasonable attorneys' fees) arising out of or in connection with any alleged infringement of any patent, copyright, trademark or other intellectual property right related to Goods made specifically by HVI for Customer as long as: (a) HVI gives Customer prompt notice of any such claim, etc. and/or an opportunity to settle or defend it as Customer may see fit; and (b) HVI gives Customer its reasonable assistance, at Customer's expense, in connection with the defense and/or settlement of such claim. HVI reserves the right to cancel Customer's order, without liability, if, in HVI's opinion, the manufacture, sale or use of the Goods would infringe any patent, copyright, trademark or other intellectual property right related to Goods.
10. **General Indemnity.** If Customer's employees, associates or agents are on or about HVI's premises or other property under HVI's control, or are working with or using property owned by or under the control of HVI, Customer will be responsible for their acts and omissions and agrees to indemnify and hold HVI and its officers, employees, and agents harmless from all liability of any nature for any claims or damages to property or injuries or death to persons arising out of their acts or omissions including, without limitation: (a) any claims arising from their failure to comply with applicable rules, regulations and directions governing security, maintenance and safety; (b) any claims against HVI by or on behalf of any of them for injury or otherwise; and/or (c) any claims against HVI resulting from Customer's failure to maintain workers' compensation or other public or private insurance with respect to any of them. The foregoing indemnity will also extend to, without limitation, claims asserted under the workers' compensation laws of the State of Ohio or any other jurisdiction and any consequential increased premium or contribution costs of or for securing workers' compensation insurance, whether public or private, and/or any consequential costs of or for the direct payment of any such workers' compensation benefits. Customer hereby expressly waives any 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 workers' compensation laws, or under any other employee benefit statute or similar laws of any jurisdiction.
11. **Permissible Variations.** HVI has the right to make changes in the composition of the Goods which, in HVI's opinion, do not affect the general characteristics or properties of the Goods or are within applicable government or industry standards.
12. **Cancellation.** Orders may not be cancelled or modified by Customer except with the express written consent of HVI. HVI may cancel or terminate all or part of the contract evidenced by this Agreement immediately if: (a) Customer is materially delinquent on any of its obligations hereunder or under any other order or transaction with HVI; (b) Customer becomes insolvent; (c) a receiver under Title 11 U.S.C., as amended (the "Bankruptcy Code") is appointed for or on behalf of Customer, or a case under any chapter of the Bankruptcy Code is commenced for, by or against Customer; (d) Customer suspends or terminates business or makes an assignment for the benefit of creditors; or (e) any event occurs, whether or not similar to the foregoing, which in HVI's good faith belief materially impairs the prospect of payment or performance by Customer. HVI's right to cancel or terminate an order pursuant to this Section 12 may be exercised by HVI without liability to Customer for any damages.
13. **Confidentiality.** Customer will not disclose or otherwise disseminate, directly or indirectly, any of the terms of this Agreement or any other information of HVI given to or received by Customer or its associates or agents, unless Customer has received HVI's written permission or such information is required to be disclosed by law or becomes part of the public domain through no fault of Customer, its associates or agents.
14. **Safety.** Customer warrants that it will comply with all OSHA and other safety-related laws, regulations, standards and requirements which are applicable to the use of Goods in Customer's business.
15. **Miscellaneous.** If any of the provisions of this Agreement are deemed invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions will in no way be affected or impaired thereby. This Agreement and the contractual relationship between HVI and Customer shall be governed by and construed under the internal laws of the State of Ohio (without regard to Ohio conflicts of law principles). No right or interest in the contract arising from this Agreement may be assigned by Customer and no delegation of any obligation owed by Customer may be made without the prior written permission of HVI. The rights and remedies of HVI herein will be cumulative and additional to any other or further rights and remedies provided in law or equity. Waiver by HVI of Customer's performance, or inaction with respect to Customer's breach of any provision of this Agreement, or failure of HVI to enforce any provision of this Agreement (including, without limitation, the imposition of any finance charge), will not be deemed a waiver of future compliance therewith or a course of performance modifying such provision, and such provision will remain in full force and effect as written. The titles and headings of the various sections of this Agreement are solely for convenience and are not part of the Agreement for purposes of interpreting the provisions hereof.

IN ALL CASES CLERICAL ERRORS ARE SUBJECT TO CORRECTION