

**HART INDUSTRIES, INC.**  
**GENERAL TERMS AND CONDITIONS OF SALE**

1. Applicability.

(a) These terms and conditions of sale (these "**Terms**") are the only terms that govern the sale of the goods ("**Goods**") by Hart Industry, Inc. ("**Hart**") to the purchaser of goods from Hart ("**Buyer**"). Notwithstanding anything herein to the contrary, if a written contract signed by both parties is in existence covering the sale of the Goods covered hereby, the terms and conditions of said contract shall prevail to the extent they are inconsistent with these Terms.

(b) The 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 of whether or when Buyer has submitted its purchase order or such 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. Hart shall not be liable for any delays, loss, or damage in transit.

(b) Unless otherwise agreed in writing by the parties, Hart shall deliver the Goods to mutually-agreed upon delivery location (the "**Delivery Point**") using Hart's standard methods for packaging and shipping such Goods. Buyer shall take delivery of the Goods within 3 days of Hart'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) Hart 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 Hart's notice that the Goods have been delivered at the Delivery Point, or if Hart 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) Hart, 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. Shipping Terms. Hart shall make delivery in accordance with the terms on the face of the Sales Confirmation.

4. Title and Risk of Loss. Title and risk of loss pass to Buyer upon delivery of the Goods at the Delivery Point.

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

6. Inspection and Rejection of Nonconforming Goods.

(a) Buyer shall inspect the Goods within 3 days of receipt ("**Inspection Period**"). Buyer will be deemed to have accepted the Goods unless it notifies Hart in writing of any Nonconforming Goods during the Inspection Period and furnishes such written evidence or other documentation as reasonably required by Hart. "**Nonconforming Goods**" means only the following: (i) product shipped is materially different than identified in Buyer's purchase order; or (ii) product's label or packaging incorrectly identifies its contents.

(b) If Buyer timely notifies Hart of any Nonconforming Goods, Hart shall, in its sole discretion, (i) replace such Nonconforming Goods with conforming Goods, or (ii) credit or refund the Price for such Nonconforming Goods, together with any reasonable shipping and handling expenses incurred by Buyer in connection therewith. Buyer shall ship, at its expense and risk of loss, the Nonconforming Goods to Hart's facility located at 2907 Park Six Court, Elkhart, IN, 46514. If Hart exercises its option to replace Nonconforming Goods, Hart 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 8(b)** are Buyer's exclusive remedies for the delivery of Nonconforming Goods. Except as provided under **Section 8(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 Hart.

7. Price.

(a) Buyer shall purchase the Goods from Hart at the prices (the "**Price[s]**") set forth in Hart's quotation provided to Buyer. 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, Hart's income, revenues, gross receipts, personnel, or real or personal property or other assets.

8. Payment Terms.

(a) Buyer shall pay all invoiced amounts due to Hart within 30 days from the date of Hart's invoice. Buyer shall make all payments hereunder by wire transfer or check 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 Hart 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 Hart does not waive by the exercise of any rights hereunder), Hart 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 10 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 Hart, whether relating to Hart's breach, bankruptcy, or otherwise.

9. Limited Warranty.

(a) Hart warrants to Buyer that for a period of 12 months years from the date of shipment of the Goods ("**Warranty Period**"), that such Goods will materially conform to the specifications set forth in Exhibit A, and will be free from material defects in material and workmanship.

(b) **EXCEPT FOR THE WARRANTY SET FORTH IN SECTION 11(A), SELLER MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (c) WARRANTY OF TITLE; OR (d) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER**

**EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.**

(c) Products manufactured by a third party ("**Third Party Product**") may constitute, contain, be contained in, incorporated into, attached to, or packaged together with, the Goods. Third-Party Products are not covered by the warranty in Section 11(a). For the avoidance of doubt, **SELLER MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO ANY THIRD-PARTY PRODUCT, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (c) WARRANTY OF TITLE; OR (d) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.**

(d) The Hart shall not be liable for a breach of the warranty set forth in Section 11(a) unless: (i) Buyer gives written notice of the defect, reasonably described, to Hart within 10 days of the time when Buyer discovers or ought to have discovered the defect; (ii) Hart is given a reasonable opportunity after receiving the notice to examine such Goods and Buyer (if requested to do so by Hart) returns such Goods to Hart's place of business at Hart's cost for the examination to take place there; and (iii) Hart reasonably verifies Buyer's claim that the Goods are defective.

(e) The Hart shall not be liable for a breach of the warranty set forth in Section 11(a) if: (i) Buyer makes any further use of such Goods after giving such notice; (ii) the defect arises because Buyer failed to follow Hart's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods; or (iii) Buyer alters or repairs such Goods without the prior written consent of Hart.

(f) Subject to Section 11(d) and Section 11(e) above, with respect to any such Goods during the Warranty Period, Hart shall, in its sole discretion, either: (i) repair or replace such Goods (or the defective part) or (ii) credit or refund the price of such Goods at the pro rata contract rate provided that, if Hart so requests, Buyer shall, at Hart's expense, return such Goods to Hart.

**(g) THE REMEDIES SET FORTH IN SECTION 11(F) SHALL BE THE BUYER'S SOLE AND EXCLUSIVE REMEDY AND SELLER'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTY SET FORTH IN SECTION 11(A).**

10. Limitation of Liability.

**(a) IN NO EVENT SHALL SELLER BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT OR LOSS OF DATA OR DIMINUTION IN VALUE, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) 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.**

**(b) IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, 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.**

(c) The limitation of liability set forth in Section 12(b) above shall not apply to (i) liability resulting from Hart's gross negligence or willful misconduct and (ii) death or bodily injury resulting from Hart's acts or omissions.

11. Insurance. During the term of this Agreement and for a period of 2 thereafter, Buyer shall, at its own expense, maintain and carry insurance in full force and effect which includes, but is not limited to, commercial general liability (including product liability) in a sum no less than \$5,000,000 with financially sound and reputable insurers. Upon Hart's request, Buyer shall provide Hart with a certificate of insurance from Buyer's insurer evidencing the insurance coverage specified in these Terms. The certificate of insurance shall name Hart as an additional insured. Buyer shall provide Hart with 30 days' advance written notice in the event of a cancellation or material change in Buyer's insurance policy. Except where prohibited by law, Buyer shall require its insurer to waive all rights of subrogation against Hart's insurers and Hart.

12. 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. Hart may terminate this Agreement if any governmental authority imposes antidumping or countervailing duties or any other penalties on Goods.

13. Termination. In addition to any remedies that may be provided under these Terms, Hart 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 and such failure continues for 10 days after Buyer's receipt of written notice of nonpayment; (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.

14. Waiver. No waiver by Hart of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Hart. 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.

15. Confidential Information. All non-public, confidential or proprietary information of Buyer, including but not limited to specifications, samples, patterns, designs, plans, drawings, documents, data disclosed by Buyer to Hart, whether disclosed orally or disclosed or accessed in written, electronic or other form or media identified as "confidential" in connection with this Agreement is confidential and solely for use by Hart in performing its obligations under this Agreement. Upon Buyer's request, Hart shall promptly return all documents and other materials received from Buyer. This Section does not apply to information that is: (a) in the public domain; (b) known to Hart at the time of disclosure; or (c) rightfully obtained by Hart on a non-confidential basis from a third party.

16. Force Majeure. No party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations of Buyer to make payments to Hart hereunder), when and to the extent such failure or delay is caused by or results from acts beyond the impacted party's ("Impacted Party") reasonable control, including, without limitation, the following force majeure events ("Force Majeure Event(s)": (a) acts of God; (b) flood, fire, earthquake, epidemics or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order, law, or actions; (e) embargoes or blockades in effect on or after the date of this Agreement; (f) national or regional emergency; (g) strikes, labor stoppages or slowdowns, or other industrial disturbances; (h) shortage of adequate power or transportation facilities; and (i) other similar events beyond the reasonable control of the Impacted Party. The Impacted Party shall give notice within 5 days of the Force Majeure Event to the other party, stating the period of time the occurrence is expected to continue. The Impacted Party shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized. The Impacted Party shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause. In the event that the Impacted Party's failure or delay remains uncured for a period of 30 days following written notice given by it under this Section 18, either party may thereafter terminate this Agreement upon 5 days' written notice.

17. Assignment. Buyer shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Hart. 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.

18. 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.

19. 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.

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

21. 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 State of Indiana in each case located in the City of Elkhart and County of Elkhart, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding.

22. Notices. All notices, requests, 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.

23. 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.

24. 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: Insurance, Compliance with Laws, Confidential Information Governing Law, Submission to Jurisdiction and Survival.