

# Hoover Precision Products, Inc.

## Standard Terms and Conditions of Sale

All sales of products (“**Goods**”) by Hoover Precision Products, Inc. (“**Seller**”) are subject to these terms and conditions of sale, unless expressly agreed otherwise in a written contract signed by Seller. References to “**Contract**” include the Purchase Order, any other contract relating to the Goods and entered into between Seller and the purchaser of the Goods (“**Buyer**”) and these terms and conditions of sale.

**1. PRICES:** All prices are F.O.B. Seller’s plant and exclusive of any federal, state or local sales, use or excise taxes and/or duties. Wherever applicable, any tax will be added to the invoice as a separate charge to be paid by Buyer. All quotations automatically expire 30 calendar days from date of issue. The price of any Goods scheduled for shipment on a date beyond a period of 120 days from Seller’s order confirmation is subject to increase by Seller unless otherwise stated on the Contract.

**2. PAYMENT:** Payment shall be due to Seller in full net 30 days from the date of invoice.

**3. LATE PAYMENT:** Any amount not paid to Seller when due shall bear interest at the rate of the lower of 18% per annum or the maximum interest rate permitted by law, calculated from the due date for payment. If Buyer fails to make timely payment or if, in Seller’s opinion, the financial condition of Buyer or other grounds of insecurity warrant such action, Seller may, without limiting its other remedies, (i) suspend shipments pending receipt of payment in advance or other security satisfactory to Seller; (ii) accelerate the payment terms; (iii) cancel orders; and/or (iv) terminate the Contract. Buyer shall remain liable for all unpaid amounts and 150% of the actual cost of material/work in progress and direct labor expended by Seller in reasonable anticipation of its fulfillment of the Contract. If Buyer fails to make timely payments, Buyer shall pay to Seller all reasonable costs of collection, including reasonable attorneys’ fees. Seller may sell all or any part of the undelivered Goods with or without notice at public or private sale, and Buyer shall be responsible for any loss or expenses incurred by Seller in connection therewith.

**4. CREDIT LINE:** If Seller elects, in its sole discretion, to extend credit to Buyer, Seller may (at any time) modify, limit, or cancel the credit of Buyer as to time and/or amount, and may thereafter refuse to deliver any part of the Goods, except against payment in cash at or prior to delivery.

**5. CHANGES:** Should Seller make any changes at the request of Buyer, the parties shall re-negotiate the price and the time schedules quoted herein to reflect cost or schedule adjustments caused by the changes. Seller shall not be obligated to perform work on any changes without written agreement from Buyer.

**6. CANCELLATION:** Partial or total cancellation of, or revision to, an order may be made only by Buyer’s written request that is accepted by Seller’s written consent and then only on the condition that Buyer reimburse Seller for all losses and damages resulting from the cancellation or revisions, including cancellation charges imposed by Seller. If the order calls for special sizes or requires special materials or tooling, cancellation charges will be made on the basis of costs incurred and time expended.

**7. DELAYS:** In the event Buyer causes Seller to delay engineering, manufacturing, shipping, installation, or startup of production under the Contract, any additional costs incurred by Seller shall be reimbursed by Buyer. Should Buyer require Seller to delay engineering, manufacturing, shipping, or startup by more than 30 days, then Seller shall invoice Buyer for a total of 100% of the value of all work completed, and the invoice shall be due and payable net 15 days.

**8. COMPLETE ORDERS:** Seller reserves the right to call any order for standard Goods complete if the final shipment is within 1% of the total due. On Goods that are of a special size or require special materials or tooling, Seller reserves the right to call the order complete if the final shipment plus or minus 10% of the total order.

**9. SHIPPING:** Goods are shipped F.O.B. Seller’s plant and will be suitably packed for domestic shipment, in an ambient environment suitable for long-term storage not to exceed two years. Shipment or delivery within the time specified under the Contract shall be subject to changes due to Events of Force Majeure. Other terms and conditions may apply to Goods shipped outside the contiguous United States. Any extra charges incurred for additional services, such as Buyer’s carrier or special handling by a carrier, must be paid by Buyer. In case of shipment or delivery in installments, each shipment or delivery shall be regarded as a separate and independent contract. Goods held by Seller beyond scheduled delivery date for convenience of Buyer may, in Seller’s discretion, be invoiced on date of completion. Such Goods may, in Seller’s discretion, be subject to charges for warehousing and other expenses incident to such delay.

**10. SURCHARGE:** A material/energy surcharge may be applied if Buyer requests that shipments occur over a period of time in excess of 120 days. In addition, any increase in the price of the Goods caused by increases in raw materials and/or energy costs from the date of the Contract to the date of final shipment shall, result in a surcharge, and be shown as a separate line item on Seller’s invoice to Buyer.

**11. TITLE; SECURITY INTEREST:** Until Buyer has completed payment for the Goods, (i) title and ownership to the Goods shall remain with Seller, and Seller hereby reserves, and Buyer hereby grants to Seller, a purchase money security interest in the Goods, (ii) the Goods shall at all times be located at the place to which delivery is to be made as indicated in the Contract unless written approval is obtained from Seller for removal to some other place, (iii) the Goods shall not become a part of the realty or any other goods, and (iv) Buyer may not sell, transfer, convey, pledge, hypothecate or otherwise use the Goods as security for any borrowing or for any other purposes. Buyer hereby authorizes the filing by Seller of an initial UCC-1 financing statement with respect to the Goods and amendments thereto to add Goods.

**12. INSURANCE AND RISK OF LOSS:** The Goods manufactured by Seller shall at all times after delivery to Buyer, Buyer’s agent or transportation company, whichever occurs first, be the sole responsibility of Buyer, and all loss or damage to said Goods or any part thereof shall be borne by Buyer (even if Seller has arranged for transportation), unless otherwise agreed in writing.

**13. DEFECTIVE GOODS:** Claims for defective Goods or workmanship must be verified by Seller or an authorized representative of Seller, before return of any Goods. Further, shipping instructions and written authorization must be obtained from Seller before Goods are returned. All claims for shortage or defective Goods must be made within 30 days from the date of delivery.

**14. ACCEPTANCE:** The following shall be deemed to be acceptance of the Goods by Buyer: (i) Payment of the purchase price for the Goods; (ii) use of the Goods in a product manufactured by Buyer; or (iii) Buyer’s resale of the Goods.

On all Goods rejected for non-conformance or for which acceptance is justifiably revoked by Buyer due to non-conformance, and all Goods delivered in error (including Goods in excess of the quantity ordered by Buyer), Seller shall retrieve such Goods upon written notice from Buyer and if it does not do so within 30 days, Buyer reserves the right to return such goods by any reasonable means.

**15. FORCE MAJEURE:** Seller shall be excused for delays in the performance of its obligations hereunder due to causes beyond its reasonable control, or the control of its suppliers, including, but not limited to acts of God, acts of war, terrorism, riots, civil disorders, rebellions, revolutions, strikes, labor disputes, sabotage, accident or breakdown of machinery or plant, unavailability of transportation, restraints affecting the delivery of material or credit, any acts by a third party, any third party products or any other cause beyond the reasonable control of Seller, including, but not limited to failures or fluctuations in electrical power, heat, light, air conditioning, computer hardware and/or software or telecommunications equipment (each, an “**Event of Force Majeure**”). Upon the occurrence of an Event of Force Majeure, Seller shall be excused for such non-performance, hindrance or delay, as applicable, of those obligations affected by the Event of Force Majeure for as long as such Event of Force Majeure continues and Seller continues to use commercially reasonable efforts to recommence performance whenever and to whatever extent possible without undue delay. If the Event of Force Majeure causes a delay of 120 consecutive days or more from the original date of performance, Buyer shall have the right to terminate the Contract by written notice to Seller, it being understood that the right of termination shall be the sole and exclusive remedy of Buyer.

**16. CONFIDENTIALITY:** Buyer shall keep all proprietary or non-public information or data confidential of or regarding Seller or the Goods, including without limitation all pricing, shipping and payment terms and other information disclosed and/or supplied by Seller as part of, or in conjunction with, the Contract.

**17. LIMITED WARRANTY:** The Goods will be free from defects at the time of delivery and will conform to Buyer’s specifications, provided, however, that the specifications are submitted to Seller in writing prior to Seller’s commencement of work to fulfill the order. This warranty is limited to repair, replacement or issuing of credit, as Seller may elect, of such Goods as shall appear and be determined by Seller, upon inspection and verification, to have been defective in material or workmanship, but does not include any installation, labor or transportation costs. All warranty requests require Seller’s written authorization and a new Purchase Order. After evaluation, if deemed to be covered under warranty, the new Purchase Order will not be charged. No warranty is made with respect to items manufactured by others. Misapplication, misuse, revision, or alteration (i.e., dimensional, characteristics, chemical properties, or metallurgical properties) of the Goods, without written approval by Seller, will void the limited warranty.

**18. WARRANTY EXCLUSION:** Except for the Limited Warranty set forth in Section 16, SELLER PROVIDES THE GOODS “AS IS” AND MAKES NO OTHER EXPRESS OR IMPLIED WARRANTIES, WRITTEN OR ORAL, AND ALL OTHER WARRANTIES ARE SPECIFICALLY EXCLUDED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, AND ANY OTHER WARRANTY ARISING BY STATUTE, OPERATION OF LAW, COURSE OF DEALING OR PERFORMANCE, OR USAGE OF TRADE.

**19. LIMITATION OF LIABILITY:** SELLER’S TOTAL LIABILITY AND BUYER’S OR ANY THIRD PARTY’S SOLE AND EXCLUSIVE REMEDY FOR ANY CLAIM OF ANY TYPE WHATSOEVER, REGARDLESS OF THE FORM OF ACTION AND ON ANY THEORY OF LIABILITY, INCLUDING CONTRACT, STRICT LIABILITY, NEGLIGENCE OR OTHER TORT, ARISING FROM OR IN CONNECTION WITH THE CONTRACT OR USE OF SELLER’S GOODS, SHALL BE LIMITED TO PROVEN DIRECT DAMAGES ARISING FROM SELLER’S NEGLIGENCE OR BREACH OF ITS OBLIGATIONS HEREUNDER IN AN AMOUNT NOT TO EXCEED IN THE AGGREGATE THE AMOUNTS ACTUALLY PAID BY BUYER TO SELLER UNDER THE CONTRACT.

**20. EXCLUSION OF DAMAGES:** IN NO EVENT SHALL SELLER HAVE ANY LIABILITY, REGARDLESS OF THE FORM OF ACTION AND ON ANY THEORY OF LIABILITY, INCLUDING CONTRACT, STRICT LIABILITY, NEGLIGENCE OR OTHER TORT, FOR ANY SPECIAL, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, PUNITIVE OR INDIRECT DAMAGES (INCLUDING, BUT NOT LIMITED TO, LOSS OF INTERESTS, PROFITS, REVENUES, OR USE) SUFFERED BY BUYER, ARISING FROM OR RELATED TO THE CONTRACT, EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES. SELLER ALSO EXPRESSLY DISCLAIMS ANY LIABILITY RELATED TO MISUSE OF THE GOODS, IMPROPER GOODS SELECTION, GOODS RECOMMENDATION, OR MISAPPLICATION OF THE GOODS.

**21. INDEMNIFICATION:** Buyer shall indemnify and hold Seller, and its officers, directors, employees and agents harmless against any and all losses, claims, damages, judgments, liabilities, costs and expenses (including attorneys’ fees and expenses) arising out of or in any way related to (i) Buyer’s obligations under the Contract; (ii) Buyer’s use of or changes to the Goods; (iii) defects in the Goods due to the specifications furnished by Buyer to Seller; and (iv) amounts, including taxes, interest and penalties which are obligations of Buyer.

**22. TRADE TERMS; GOVERNING LAW; VENUE:** The trade terms used in the Contract shall be interpreted in accordance with the latest INCOTERMS of the International Chamber of Commerce. The Contract shall be governed by the laws of the State of Georgia, excluding its conflict of laws rules. Any and all disputes, claims, or causes of action arising out of or in any way relating to the Contract must be brought in solely and exclusively in the United States District Court located within the Northern District of Georgia or in the state courts of the State of Georgia. Each party irrevocably accepts and submits to the sole and exclusive jurisdiction of each of the aforesaid courts in personam, generally and conditionally with respect to any action, suit or proceeding brought by it or against it by the other party.

**23. SEVERABILITY AND WAIVER:** If any provision hereof shall be held illegal or unenforceable by any regulatory body or court of competent jurisdiction, such provision(s) shall be deemed null and void and separable from, and shall in no way affect or impair the validity or enforceability of, the remaining provisions. No delay or omission by Seller to exercise any right or power it has under the Contract shall impair or be construed as a waiver of such right or power. A waiver by Seller of any breach or covenant shall not be construed to be a waiver of any succeeding breach or any other covenant.

**24. ASSIGNMENT:** Buyer shall not assign, without the prior written consent of Seller, any right or interest under the Contract. Any actual or attempted assignment without Seller’s consent prior written consent shall entitle Seller to terminate the Contract upon notice to Buyer.

**25. AMENDMENTS:** No amendment to, or change, waiver or discharge of, any provision of the Contract shall be valid unless in writing and signed by an authorized representative of each of Buyer and Seller.

**26. GENERAL:** The terms and conditions contained in this Contract supersede and take precedence over any and all terms, including, but not limited to, any contrary terms, in any documents (such as proposals, invoices, shipping documents, purchase orders or other writings, whether or not preprinted or signed by Seller’s or Buyer’s agent, employee, or representative) submitted by Buyer to Seller. If there is a conflict or inconsistency between the terms and conditions of the Contract and the terms and conditions of any subsequent purchase order or delivery document, the terms and conditions of the Contract shall control. The headings in the Contract are for convenience of reference only and shall not affect its interpretation or construction. The provisions of the Contract which by their nature are intended to survive the termination, cancellation, completion or expiration of the Contract, including the payment, indemnification, limitation of liability, exclusion of damages, confidentiality, and this Section 25 shall continue as valid and enforceable obligations of the parties notwithstanding any such termination, cancellation, completion or expiration. Buyer represents that it is not insolvent, and in the event that Buyer becomes insolvent before the delivery of the Goods, it will notify Seller in writing.

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