

**FREEMAN SCHWABE MACHINERY, LLC**  
**TERMS AND CONDITIONS**

**1. Application.**

These standard Terms and Conditions shall apply to all purchase orders submitted by Buyer or on Buyer's behalf and accepted by Freeman Schwabe Machinery, LLC ("Seller") and all sales made by Seller, unless Seller otherwise specifically agrees in writing. Any other terms or conditions which Buyer may state in its purchase order or elsewhere (whether oral or in writing), are hereby deemed to be null and void and of no force or effect, even if not expressly objected to by Seller. The goods and articles sold or to be sold by Seller and purchased or to be purchased by Buyer are referred to in these Terms and Conditions as the "Products." Seller reserves the right to modify the specifications quoted for the Products, without notice and at Seller's sole and exclusive discretion, if such modifications prove desirable or necessary for reasons of technical improvement, provided such changes do not materially adversely affect the performance of any of the Products.

**2. Prices.**

Unless otherwise agreed upon in writing between Buyer and Seller, all prices quoted, in the order, contract or otherwise, are net EXW shipping point, without exception. All shipping, handling and transportation charges shall be paid exclusively by the Buyer, and such prices do not include insurance, sales, use, excise or similar taxes or customs duties. The amount of any present or future sales, use, excise or other similar tax or customs duties shall be paid or reimbursed to Seller by Buyer, as the case may be. Buyer must obtain any insurance desired by Buyer at its own expense.

**3. Orders and Cancellations.**

Seller may accept all or a portion of the orders placed by Buyer or may choose to reject some or all of the Buyer's orders, at Seller's sole and exclusive discretion. An acceptance by Seller will be valid only if (i) made by notice in writing to Buyer, or (ii) the item is actually shipped by the Seller to the Buyer. All orders of Buyer will be binding upon it unless and until they are rejected by the Seller. However, in the event of a partial acceptance by Seller, Buyer will no longer be bound with respect to the parts of the order that are rejected by the Seller. Once Seller accepts an order, Buyer may not at any time thereafter cancel the order unless expressly consented to in writing by Seller. In the event of a cancellation by Buyer which is not consented to by Seller, Seller shall, without limiting any rights it may have against Buyer, retain all sums paid by Buyer pursuant to the order. In addition, without limiting any of Seller's other rights, Buyer shall pay to Seller (a) any additional amounts necessary to pay for the entire order as if there had been no cancellation, and (b) any additional costs caused by or arising as a result of the cancellation.

**4. Delivery.**

The Products will be delivered to Buyer EXW Seller's place of business. Upon shipment, all risk of loss or damage to the Products shall pass to the Buyer, as soon as the Products leave or are removed from the Seller's loading dock. Any delivery dates indicated by Seller are only approximate. Seller may place in storage any Products that are ready for delivery but which cannot be delivered due to any causes occasioned by Buyer. Upon such storage, (1) delivery to Buyer of the Products placed in storage shall be deemed to have been made, and all risk of loss or damage with respect to such Products which has not previously passed to Buyer shall pass to Buyer at the time the same are placed into storage, and (2) all amounts otherwise payable to Seller upon delivery, as well as all expenses incurred by Seller in connection with the storage, preparation, handling, freight, inspection, preservation and insurance of the Products placed in storage, shall be paid by Buyer upon presentation of Seller's invoice.

**5. Payment.**

Unless Buyer and Seller otherwise agree in writing, all payments shall be made in United States dollars. Any payments due and owing by the Buyer to the Seller which are not timely paid shall bear interest at the rate of 1½% per month or any part thereof, or the highest rate permitted by law, whichever is less. Before a purchase order or sales agreement will be processed, the Seller will propose payment terms to the Buyer in the form of a Proposal or updated Proposal, as the case may be. All prices and specifications quoted by the Seller shall be valid for only 30 days from the date of the quote. Buyer shall bear all expenses of Seller, including all legal expenses, which are incurred to enforce these Terms and Conditions, regardless of whether Seller is successful in such enforcement efforts.

**6. Warranties/Remedies/Damages.**

**Warranties.** Subject to all of the exceptions contained herein, Seller warrants that the new Products delivered by it will, for a period of one (1) year from the date of delivery or two thousand (2,000) hours of operation, whichever occurs first, be free from material defects. The aforementioned warranties shall not include any travel expenses incurred by Seller to maintain, repair or replace such Products or parts. **Notwithstanding anything contained in these Terms and Conditions to the contrary:** (1) electrical components, motors, pumps, digital controls and other OEM items shall be subject only to the manufacturer's original warranty (and only to the extent transferable to the Buyer); (2) it is understood that the cutting surface, belts and other related items are expendable and shall only be subject to the original manufacturer's warranty (to the extent transferable); and (3) in no event shall any warranties set forth herein extend beyond one (1) year. BUYER ACKNOWLEDGES AND AGREES THAT ITS SOLE AND EXCLUSIVE REMEDY UNDER THIS WARRANTY IS LIMITED, AT SELLER'S SOLE OPTION, TO THE REPAIR OR THE REPLACEMENT OF PARTS ONLY.

For any warranty set forth hereunder to be valid, however, Buyer must have (i) promptly informed Seller of any defects in writing within five (5) days of discovery of such defects; (ii) satisfied all of its obligations under these Terms and Conditions, without exception, including all of its payment obligations to Seller; (iii) properly and promptly used, maintained and repaired the Products and parts and used only suitable materials in connection with such processes, and (iv) not made any changes or alterations to the Products, including the reduction of the safety features of the Products. In the event that any of the aforementioned conditions are not fully satisfied, all of the warranties set forth hereunder shall become null and void, without exception. The warranties set forth hereunder do not cover normal wear and tear or defects due to (1) improper or negligent handling or overloading; (2) the use of unsuitable operating or raw materials; (3) defective or improper premises, chemical, electro-chemical or electrical influences; or (4) weather or other influences of nature. No returns will be accepted without written Return Material Authorization.

THE WARRANTIES SET FORTH HEREIN ARE EXPRESSLY IN LIEU OF ANY AND ALL OTHER WARRANTIES AND OBLIGATIONS, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE. THE EXPRESS WARRANTIES OF THE SELLER SET FORTH IN THESE TERMS AND CONDITIONS SHALL BE THE EXCLUSIVE WARRANTIES OF THE SELLER AND ANY AND ALL OTHER WARRANTIES ARE HEREBY EXPRESSLY DISCLAIMED. IN NO EVENT SHALL BUYER BE ENTITLED TO ANY SPECIAL, CONSEQUENTIAL, PUNITIVE OR DIRECT DAMAGES HEREUNDER AND BY AGREEMENT TO THESE TERMS AND CONDITIONS, BUYER HEREBY EXPRESSLY WAIVES ANY RIGHT THAT BUYER MIGHT OTHERWISE HAVE TO ANY SUCH DAMAGES. The term "Buyer" as used herein, with respect to warranties and the limitation of damages and remedies as set out in these Terms and Conditions, includes the initial purchaser and any subsequent purchaser, transferee, assignee or user of the Products who shall likewise be bound by the limitations as to warranties and provisions herein. Buyer shall provide a copy of these Terms and Conditions to any such subsequent purchaser, transferee, assignee or user prior to any transfer. Further, Buyer will not, nor will Buyer permit any other person or business to, alter or otherwise attempt to defeat the operation of any part of system in the equipment which is installed for the purpose of, or which contributes to the prevention of personal injury or the attainment of safety. The equipment will be used only for the purpose(s) for which it was manufactured.

**Buyer's Remedies and Damages.** Buyer's sole and exclusive remedy for any action or omission of Seller, is expressly limited to having Seller, at its option, either repair or replace at Buyer's place of business or in Seller's own shop, any defects in material or workmanship. **All freight, travel and other expenses incurred in connection with or associated with such repairs or replacements shall be borne solely by Buyer.** Service is deemed to be based on a normal eight (8) hour day, Monday through Friday; Saturday, Sunday and Holiday hours per prior written agreement; overtime to be charged at premium rates, unless otherwise agreed to in writing. Buyer is responsible for all travel expenses (airfare, hotel, meals, etc.) unless otherwise specified in writing. Any and all claims against Seller for any losses or damages, including but not limited to loss or damage arising out of the failure of the

Product or parts to operate for any period of time, inconvenience, or the use of rental or replacement equipment, other economic loss or loss of profits, or general, direct, immediate, special, indirect, incidental or consequential damages or loss, commercial loss or any other loss or damage, whether arising from the negligence of Seller or contract or from any other cause whatsoever, are expressly waived by the Buyer and are hereby excluded, and Buyer hereby expressly acknowledges that it is not entitled to any of the same.

**7. Buyer's Acknowledgement of Availability of Training; Safety Protocols Responsibility of Buyer.**

Buyer hereby expressly acknowledges all of the following: (i) Seller has offered to provide training on the Products, and Buyer understands that training by Seller on the Products is required; (ii) Seller has exercised reasonable care in the design and construction of the Products and used reasonable means to guard against accidents and prevent injury to operators or other personnel; and (iii) due to the multiple uses of the Products with many varied tools (dies) and materials, the following are the sole responsibility of Buyer: (a) point of operation guarding and installation thereof; (b) training and supervision of operators or other personnel on the proper use of the Products (after Buyer has conducted a thorough hazard analysis of the specific work requirements); and (c) any and all other safety protocols regarding the Products.

**8. Suspension of Performance.**

If Buyer is in default under any of these Terms and Conditions or any other contract with Seller, or if Seller at any time shall not be satisfied with Buyer's financial responsibility, Seller shall have the right, without prejudice to any other legal remedy, to suspend performance of Seller's obligations hereunder until such default or condition is remedied in full.

**9. Indemnification.**

Buyer shall hold Seller harmless and indemnify and defend the Seller, its officers, directors, employees, attorneys and agents against any and all debts, obligations, costs and damages, including attorney's fees, arising from any claims or causes of action, whether in law or equity which may be asserted against Seller, its officers, directors, employees, attorneys and/or agents, by any person, resulting from Buyer's installation, use, repair, maintenance, or resale of any Products; provided, however, that the provisions of this indemnity shall not apply to Seller's own acts of willful misconduct in connection with its installation or repair of any Products.

**10. Jurisdiction.**

All actions or legal proceedings to enforce the rights of Buyer or Seller shall be brought exclusively in federal or state courts of competent jurisdiction within Hamilton County, Ohio, USA. Each party irrevocably waives any objections it now has or thereafter may have respecting the venue of any such action or proceeding or the inconvenience of such forum, and each party hereby consents to the service of process in any such action or proceeding in the manner permitted in such jurisdictions. By accepting these Terms and Conditions, Buyer waives any and all rights that Buyer may have to bring any arguments or claims regarding forum non conveniens.

**11. Force Majeure and Government Requirements.**

Seller shall not be liable for delays in performance due to inability to obtain raw materials, parts or supplies through its usual and regular sources (on a timely basis), interruptions in transportation, fires, floods, accidents, riots, acts of God, war, governmental interference or embargoes, strikes, labor difficulties or any other cause or causes beyond its control.

**12. Applicable Law.**

These Terms and Conditions, and the agreement between Seller and Buyer, shall be construed, enforced and performed in accordance with the laws of the State of Ohio, without reference to its conflict of law provisions.

**13. Assignability.**

The Seller shall be permitted to assign any or all of its rights hereunder to any third party, for any reason or no reason at all, at its sole and exclusive discretion. The Buyer shall not be permitted to assign any of its rights hereunder without the express prior written consent of the Seller, which can be withheld for any reason or no reason at all.

**14. No Waiver.**

The failure of the Seller to insist upon the strict performance of any of the provisions of these Terms and Conditions shall not constitute a waiver of any of the Seller's rights hereunder. A waiver by Seller of any of its rights shall only be enforceable to the extent that it is expressly included in these Terms and Conditions or included in a signed writing, executed by the Seller. A waiver of any of Seller's rights shall not be deemed to be a waiver of any additional rights.

**15. Severability.**

In the event that any one or more provisions set forth in these Terms and Conditions is deemed to be unenforceable, the remaining balance of these Terms and Conditions shall continue on in full force and effect and the parties shall amend these Terms and Conditions to make the otherwise unenforceable provision enforceable to the maximum extent permitted under relevant law.

**16. Complete Agreement.**

These Terms and Conditions and the Proposal to which these Terms and Conditions are attached or to which these Terms and Conditions relate contain the complete agreement between the parties regarding the single transaction or series of related transactions contemplated between Seller and Buyer and hereby supersede(s) any and all prior agreements or understandings between them, whether written or oral, relating to such transaction(s).

**17. BUYER HAS READ AND FULLY UNDERSTANDS ALL OF THE LANGUAGE AND ALL OF ITS OBLIGATIONS UNDER THESE TERMS AND CONDITIONS.**