



# STANDARD TERMS AND CONDITION OF SALE

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**1. DEFINITIONS.** "Seller" shall mean Able Tool Corporation, "Buyer" shall mean Seller's customer as described in any proposal, quotation, invoice or order acknowledgment provided by Seller to Buyer.

**2. EFFECT OF TERMS AND CONDITIONS.** The terms and conditions contained herein shall apply to each proposal, quotation, invoice or order acknowledgment provided by Seller to Buyer, and such terms and conditions shall supersede all prior oral or written statements or documents made with respect to the subject matter contained herein. The terms and conditions contained herein as well as in any proposal, quotation, invoice or order acknowledgment provided by Seller to Buyer shall also supersede any terms or conditions contained in any purchase order or other communication provided by Buyer to Seller. Any terms or conditions not specifically contained herein or in any proposal, quotation, invoice or order acknowledgement provided by Seller to Buyer shall be inapplicable to any transactions between Seller and Buyer, and Seller hereby specifically notifies Buyer of its objection to all terms and conditions not specifically contained herein or not contained in any proposal, quotation, invoice or order acknowledgement provided by Seller to Buyer.

**3. PRICES AND TAXES.** All prices for the products, equipment, services and/or parts (collectively, the "Goods") described in any proposal, quotation, invoice or order acknowledgment are quoted in U.S. Dollars, and unless otherwise indicated, are exclusive of all current and future federal, state, municipal or other governmental excise, sales, use or other taxes as well as any tariffs applicable to the Goods. Such taxes, when applicable, will be paid by Buyer and will appear as separate, additional items on each invoice provided by Seller to Buyer unless Buyer provides Seller with a tax exemption certificate acceptable to the applicable taxing authorities. Prices are based on costs and market conditions existing on the date of proposal, quotation or order acknowledgment and are subject to change by Seller prior to the date of invoice if such costs and market conditions should change.

**4. TERMS OF PAYMENT.** Payment for any order placed by Buyer and accepted by Seller shall be due within thirty (30) days from the date that Seller submits an associated invoice to Buyer. Invoices shall be submitted by Seller to Buyer on the date that Seller substantially completes any services or ships any products, equipment or parts. In the event Buyer fails to pay any invoice in full within such 30 day period, any overdue amount shall bear interest at the rate of one and one half percent (1.5%) per month until paid in full. Additionally, if Buyer fails to pay any invoice in accordance with this paragraph, in addition to any other amounts owed hereunder, Buyer shall pay all costs and expenses incurred by Seller in the course of collection, including, without limitation, all reasonable

attorneys' fees incurred by Seller. If payment is in the form of a check or draft and the check is returned for insufficient funds or is refused by any bank, a service charge of \$30 will be payable by Buyer to Seller. If Seller determines, in Seller's sole discretion, that Buyer is financially unstable, if Seller has reasonable doubts as to Buyer's financial responsibility, or if Buyer is past due on any payment or other amount owing hereunder, Seller reserves the right, without liability and without prejudice to any other remedies, (a) to suspend performance, decline shipment, or stop any material in transit, until Seller receives payment of all amounts owing from Buyer and (b) to require that Buyer pay all amounts in full prior to Seller delivering any Goods with respect to future purchases.

**5. LEAD TIMES.** Buyer acknowledges that the lead times for Seller's production and delivery of any Goods shall be as specified in any order acknowledgment submitted by Seller to Buyer. Buyer further acknowledges that such lead times are for estimation purposes only, and Seller shall bear no liability for any loss resulting to Buyer due to Seller's failure to meet such lead times, provided that Seller produces and delivers the Goods within a reasonable time considering industry standards and market conditions.

**6. QUANTITY VARIANCES.** Buyer specifically acknowledges that all Goods produced by Seller hereunder are considered custom and specialty metal Goods. Buyer further acknowledges that the standard within the specialty metal Goods industry allows for quantity variances of +/- 10%. Therefore, Buyer agrees that all orders specifying a quantity of Goods shall be filled within a tolerance of +/- 10% from the quantity term specified in each order acknowledgment sent from Seller to Buyer. Seller reserves the right to ship and invoice Buyer for the actual quantity of Goods shipped, and provided the quantity of Goods actually shipped to Buyer complies with the quantity tolerance stated in this paragraph. If the actual quantity so shipped complies with the quantity tolerance state in this paragraph, such order shall be considered fulfilled and complete.

**7. DELIVERY.** Unless otherwise stated in any proposal, quotation, invoice or order acknowledgment submitted by Seller to Buyer, all Goods furnished hereunder will be shipped F.O.B. point of origin at Seller's place of business. Title to, right of possession, and risk of loss or damage to such Goods shall pass to Buyer upon Seller's release of any such Goods to a common carrier for shipment. Buyer shall be responsible for any insurance with respect to such shipments and shall also be responsible for making any and all claims with any common carrier resulting from delay, non-delivery, damage or loss to the Goods shipped. Unless otherwise stated in any proposal, quotation, invoice or order acknowledgment submitted by Seller to Buyer, the cost of all shipping will be the responsibility of Buyer, and such cost shall be included in each invoice submitted to Buyer and shall be payable in accordance with Section 4 above.

**8. TOOLING, DIES AND DESIGNS.** Unless otherwise stated in writing in any proposal, quotation, invoice or order acknowledgment submitted by Seller to Buyer, Buyer shall furnish all tooling, dies, and all designs, drawings, specifications, technical documents and other such material (collectively, the "Tooling") required to product any Goods hereunder to Supplier, and such Tooling shall be in good, quality, and condition free from defect. Any Tooling furnished by Buyer hereunder and any Tooling furnished by Seller for which Buyer has otherwise paid shall be considered by property of Buyer. Accordingly, Seller shall not be required to store any of Buyer's Tooling on which no

production orders have been received for two (2) years, and upon thirty (30) days written notice to Buyer, Seller may return such tooling and dies to Buyer transportation collect. The quantity and quality of Goods produced by any Tooling furnished by Buyer shall be the sole responsibility of Buyer and Seller is not responsible for variation or defects in Goods resulting from Tooling furnished by Buyer. Unless otherwise stated in writing in any proposal, quotation, invoice or order acknowledgment submitted by Seller to Buyer, all maintenance and repairs with respect to such Tooling shall be the responsibility of Buyer.

**9. FORCE MAJEURE.** Seller shall not be liable for and Buyer shall have no rights with respect to any delay or failure in performance or non-performance which is due to acts beyond Seller's reasonable control. Such acts shall include, but shall in no way be limited to, acts of God, acts of third parties, acts of governmental authorities or any agencies or commissions thereof, acts of war, accidents, breakdowns of equipment, strikes, lockouts, riots, fires, communication line failures, or other interferences with production and the supply or transportation of products, raw materials or components.

**10. CANCELLATION.** Once Seller submits an order acknowledgment to Buyer, such order may not be cancelled by Buyer without Seller's prior written consent, and without Seller being reimbursed by Buyer for any and all expenses incurred with respect to such order, including, but not limited to, all manufacturing expenses, labor costs, specialized design costs, and other costs related to the order.

**11. LIMITED WARRANTY.** Seller warrants that the Goods manufactured and sold by Seller will, on the date of shipment, be free from defects in material and workmanship under normal use and service. THIS LIMITED WARRANTY IS GIVEN ONLY TO THE ORIGINAL BUYER AND DOES NOT EXTEND TO ANY SUBSEQUENT BUYER OR TRANSFEREE OF SELLER'S PRODUCTS. THE ORIGINAL BUYER IS NOT ENTITLED TO EXTEND OR TRANSFER THIS WARRANTY TO ANY OTHER PARTY. THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, WRITTEN OR ORAL, STATUTORY, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

**12. LIMITATION OF REMEDIES AND LIABILITIES.** Buyer agrees that Seller's liability and Buyer's sole and exclusive remedy pursuant to any claim of any kind, including but not limited to a claim in contract, negligence or strict liability, against Seller shall be (a) the repair or replacement, at Seller's option, of defective Goods, or (b) a refund of the price allocable to the defective Goods if Seller is unable to effectively repair, replace or correct the defect in a reasonable time after using Seller's best efforts. UNDER NO CIRCUMSTANCES SHALL SELLER HAVE ANY LIABILITY WHATSOEVER FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS, COST OF ANY SUBSTITUTE FOR THE GOODS, CLAIMS OF THIRD PARTIES, OR INJURY TO PERSON OR PROPERTY.

**13. GENERAL CONDITIONS.** (a) No modification, amendment, rescission, discharge, abandonment or waiver of these terms and conditions shall be binding upon Seller unless set forth in writing and signed by the President or a Vice President of Seller. (b) Neither party may assign these terms and conditions without the written consent of the other party, except that Seller may assign these terms and conditions without Buyer's consent to any company with which it merges or

to which it sells all or substantially all of its assets. (c) These terms and conditions shall be governed by and construed in accordance with the laws of the State of Ohio, and any contract resulting heretofore shall be deemed to be made in the State of Ohio, and Seller and Buyer hereby consent to the exclusive jurisdiction of the courts of the State of Ohio located in Hamilton County, with respect to any controversy or claim arising out of, or relating to, any contract resulting from these terms and conditions.