

## TERMS AND CONDITIONS

**1. General.** The sale by HPS Specialties, Inc. (“Seller”) to the buyer (“Buyer”) is limited to and expressly made conditional on Buyer’s assent to these Terms and Conditions. These Terms and Conditions govern all sales of product(s) by Seller to Buyer regardless of whether Buyer purchases through the medium of written purchase orders, telephonic orders, internet orders, electronic orders, or otherwise, and supersede and take precedence over any other terms and conditions, including without limitation the terms and conditions that may appear in Buyer’s order or in any document incorporated by reference in Buyer’s order. Any term or condition of Buyer’s order that is in addition to, inconsistent with, contrary to, or different from these Terms and Conditions is rejected and shall not become part of the contract between Seller and Buyer unless explicitly referenced and agreed to in writing by an authorized executive of Seller at its principal office in Savage, Maryland. Acceptance and/or retention by Buyer of any product delivered by Seller, or payment by Buyer of any invoice tendered hereunder, shall operate as acceptance by Buyer of these Terms and Conditions. Seller’s failure to object to any provision contained in any communication from Buyer shall not be construed as a waiver of these Terms and Conditions nor as an acceptance of any such provision.

**2. Purchase Orders.** All purchase orders from Buyer must be in writing, reference the applicable quotation from Seller, and be bona fide commitments showing definite product(s), prices, quantities, mutually agreed shipping dates, and mutually agreed locations for shipment (either from Seller’s principal office or from the manufacturer). All purchase orders are subject to acceptance by Seller, and such acceptance must be in writing and specifically reference the applicable quotation and purchase order. Acceptance of any purchase order sent by Buyer to Seller is entirely in the discretion of Seller. By submitting a purchase order to Seller, Buyer agrees to be subject to these Terms and Conditions in their entirety. Seller may in its sole discretion allocate products among its customers.

**3. Prices.** Prices posted on Seller’s website are subject to change without notice and shall not be deemed price quotations. Price quotations delivered in writing by Seller in response to a written request from Buyer shall automatically expire thirty (30) days from the issue date or as otherwise stated in the quotation. Prices do not include shipping costs, unless otherwise noted by Seller.

**4. Confidentiality.** Price quotations delivered to Buyer by Seller and any other discounts contained therein are considered confidential information of Seller, and Buyer shall not discuss with or disseminate such confidential information to any third party without the prior written authorization of Seller.

**5. Taxes.** Prices do not include federal, state, or local taxes, including without limitation sales, use, or excise taxes now or hereafter enacted applicable to the products sold in any transaction between Seller and Buyer, which taxes may in Seller’s sole discretion be added by Seller to the invoice sales price or be billed separately and which taxes will in any event be paid by Buyer unless Buyer provides Seller with a proper tax exemption certificate at the time the order is placed.

**6. Shipment, Title and Risk of Loss.** All products will be tendered and shipped FOB Savage, Maryland or FOB the manufacturer’s warehouse whereupon, in each case, title passes to Buyer. Quotations are “Freight Allowed,” unless otherwise noted. Buyer bears all risk of loss or damage in transit and shall be responsible to file claims with any carrier for damage occurring during shipment. Seller is not responsible for damage or loss in transit. Neither Seller nor the manufacturer shall be liable in any manner for any delays in delivery regardless of fault. Buyer bears all risk of delays in delivery and waives all claims against Seller and the manufacturer arising out of any such delays. Seller reserves the right to make delivery in installments and back order products unless Buyer expressly states otherwise in writing. All such installments and back orders shall be separately invoiced and paid for when due without regard to timing

of subsequent deliveries. Delay in delivery of any products, whether by installment, back order, or otherwise, shall not relieve Buyer of its obligation to accept remaining deliveries.

**7. Terms of Payment.** Payment shall be in U.S. dollars. Unless otherwise stated on Seller's invoice, terms of payment shall be net thirty (30) days from the date of the invoice. If at any time Seller in its sole discretion determines that payment in advance would be prudent, Seller may require full or partial payment in advance and, if such requirement is not met, Seller may cancel the order or any part thereof and receive reasonable cancellation fees. If Buyer fails to pay the price or any other payment due hereunder, Seller may recover, in addition to the price or payment due, interest thereon at the rate of one and one-half percent per month where lawful, otherwise the maximum lawful monthly interest rate, and all costs of collection, including without limitation reasonable attorney's fees and court costs. Terms of payment hereunder may be changed by Seller at any time.

**8. Cancellation and Rescheduling.** Orders for custom-made products accepted by Seller are non-cancellable. Orders for standard products accepted by Seller but not shipped may be cancelled or rescheduled by Buyer only with the written consent of Seller and upon payment of the greater of (a) the manufacturer's order cancellation or rescheduling fee, (b) Seller's then currently published cancellation or rescheduling fee, or (c) a minimum of twenty percent (20%) of the price. Seller shall have the right without penalty or payment to cancel any order accepted or to refuse or delay the shipment thereof: (x) if Buyer fails to make promptly any payment due Seller or to meet any other reasonable requirements established by Seller, (y) if any act or failure to act of Buyer delays Seller's performance, or (z) if Buyer's credit becomes impaired in the sole discretion of Seller. In such event, Seller shall be entitled to receive reimbursement for its reasonable and proper cancellation charges.

**9. Refunds and Exchanges.** Custom-made products are non-returnable. Standard products may not be returned or exchanged more than thirty (30) days after the date of invoice and, then, only upon the prior written approval of Seller. All returns of standard products must be freight prepaid and will be subject to a fee equal to the greater of (a) the manufacturer's restocking, refund or exchange fee, (b) Seller's then currently published restocking, refund or exchange fee, or (c) a minimum of twenty percent (20%) of the price. No refunds or exchanges are ever allowed on modified or damaged products.

**10. Defective Products; Freight Shortages.** Any claims for defective product(s) and any claims resulting from freight shortages must be made in writing by Buyer within seven (7) days of receipt of such product(s). Failure to make a written claim within the stated time constitutes acceptance of the product(s) as is and a waiver of any claims. In addition, Buyer must promptly return any rejected product(s) to Seller, accompanied by a valid return authorization obtained from Seller. For any valid claim timely made, Seller at its option may repair product(s) or replace product(s) with an identical or substantially similar product(s).

**11. Contingencies.** Seller shall not be liable for any delay in delivery or for non-delivery, in whole or in part, caused by the occurrence of any contingency beyond the control of Seller, including by way of illustration but not limitation, war (whether an actual declaration is made or not); sabotage; insurrection or other act of civil disobedience; act of a public enemy; failure or delay in transportation; act of any government or agency or subdivision thereof; judicial action; labor dispute; accident; fire; explosion; adverse weather, floods, storm, or other act of God; shortage of labor, raw materials or machinery; or technical failure. If any such contingency occurs, Seller may allocate production and deliveries in its discretion among Seller's customers.

**12. No Warranties by Seller; Manufacturer Warranties.** Seller offers no warranty of any kind for product it sells. Rather, Buyer agrees to look solely to the manufacturer's warranty, if any, for any such product. Manufacturer warranty policy information may be requested from Seller or the manufacturer.

**13. Limitation of Liability.** UNDER NO CIRCUMSTANCES SHALL SELLER'S LIABILITY ARISING OUT OF OR IN CONNECTION WITH THE CONTRACT, PRODUCTS SOLD BY SELLER, OR SELLER'S PERFORMANCE OR ALLEGED FAILURE TO PERFORM, WHETHER IN CONTRACT, IN TORT (INCLUDING BUT NOT LIMITED TO NEGLIGENCE), OR OTHERWISE, EXCEED THE PURCHASE PRICE OF THE PRODUCT SOLD THAT IS THE SUBJECT OF BUYER'S CLAIM FOR LIABILITY; AND IN NO EVENT SHALL SELLER BE LIABLE FOR SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, OR CONSEQUENTIAL DAMAGES OR DAMAGES RESULTING FROM OR MEASURED BY LOSS OF USE, LOSS OF PROCESS, LOSS OF BUSINESS, LOSS OF GOODWILL OR LOST REVENUE OR PROFITS.

**14. Governing Law/Jurisdiction.** The sale of any product(s) by Seller and the contract between Seller and Buyer, including but not limited to these Terms and Conditions, shall be governed by and construed in accordance with the laws of the State of Maryland, exclusive of its choice of law provisions. All claims, disputes, controversies, and other matters in question arising out of or relating to the sale of any product(s) by Seller and/or the contract between Seller and Buyer, including but not limited to these Terms and Conditions, shall be decided and adjudicated through litigation in a Maryland state court in Howard County or the federal court in Baltimore, Maryland, which shall have exclusive jurisdiction and be the exclusive venue.

**15. No Waiver and Severability.** No waiver of any provision of these Terms and Conditions by Seller shall be construed as a subsequent waiver of same or a waiver of any other provision. No invalidity of any provision of these Terms and Conditions shall invalidate the other provisions, which shall remain in full force and effect. In the event a court of competent jurisdiction determines that a provision of these Terms and Conditions imposes on Buyer a greater obligation than permitted by applicable law, such provision shall be deemed to be re-written to provide for the maximum permitted obligation. It is the parties' express intention that no provision shall be declared void or unenforceable.

**16. Basis of Bargain.** Seller and Buyer agree that the warranty disclaimers, the limitations of liability, governing law, and jurisdiction, and the exclusive remedy provisions are material, bargained-for terms that are fundamental to these Terms and Conditions and are reflected in the consideration to be given to both parties under these Terms and Conditions and in the decision by both parties to accept these Terms and Conditions.

**17. Entire Agreement and Amendment.** These Terms and Conditions, along with any valid quotation from Seller and a timely delivered purchase order from Buyer that has been accepted by Seller in writing, constitute the entire agreement between the parties with respect to the subject matter of the quotation and the purchase order, and supersede all previous negotiations, agreements, or communication, whether oral or written. After Seller's written acceptance of a purchase order from Buyer, any change to the quotation, the purchase order, or these Terms and Conditions may be made only upon mutual agreement of the parties in writing.

May 2018