

## **TERMS AND CONDITIONS OF SALES CONTRACT WITH PARKER TECHNICAL SALES**

### **1. Definitions:**

- a. "Seller" shall mean Parker Technical Sales ("PTS").
- b. "Buyer" shall mean the person or entity who either places an order to purchase Goods from Seller or accepts the benefit of the Goods.
- c. "Goods" means items either ordered or received by the Buyer.

### **2. Terms & Pricing:**

- a. These terms and conditions apply to all Goods ordered or accepted from Seller. The Seller's Sales Order along with these terms and conditions shall serve as the understanding and agreement between Buyer and Seller and which shall govern the transaction between them.
- b. Seller's Sales Order is attached hereto and incorporated for reference purposes. Unless otherwise agreed in writing by the parties, prices and quantities are set forth in the attached Sales Order.
- c. Terms of payment on all orders are subject to the approval of Seller's credit department and, unless stated otherwise, are net thirty (30) days from the date of the invoice without regard to the date of delivery of Products. Seller reserves the right to charge a late payment fee of one and one-half percent (1.5%) per month for all amounts not paid in full within thirty (30) days from the date of the invoice.
- d. Prices and deliveries are F.O.B. Seller's plant unless otherwise stated and risk of loss shall pass to Buyer upon delivery to the carrier.
- e. Buyer shall pay directly to the appropriate government authority all sales, use and any other local, state, or federal taxes, which arise from the sale or delivery of the products or the execution of any contract of sale and will reimburse Seller for any such payments made by Seller.

### **3. Specifications:**

- a. All Goods shall be furnished pursuant to the specifications provided by Buyer and as memorialized in the Sales Order. Buyer has performed its own due diligence relative to the intended use of the Goods and Buyer shall be solely responsible for ensuring that such specifications conform to their intended use. Buyer is not relying on any information, warranties, representations, expressed or implied, or data of any kind from Seller as to the intended use of the Goods.

### **4. Place of Delivery**

- a. Place of Delivery shall be Buyer's address as stated on the Sales Order unless otherwise agreed to in writing.

### **5. Shipping Date and Delivery**

- a. Buyer's receipt of any Goods delivered by Seller shall be an unqualified acceptance of any waiver by Buyer of any and all claims with respect to such products on the earliest to occur of: (i) payment for the Goods or (ii) failure of Seller to receive notice of shortages of defects in the Goods within five (5) business days of their delivery to Buyer.
- b. The shipping date and delivery estimates are subject to adjustment due to any priorities or allocations necessitated by government orders or regulations and the time and manner of delivery is subject to adjustment due to any delays on the part of Buyer in supplying the necessary data, or any changes therein at Buyer's insistence, and to delays caused by and caused beyond Seller's reasonable control. Delay in delivery for any of the aforementioned causes shall extend the terms of delivery hereunder by a period equal to the length of such delay. Seller shall be compensated for any and all extra costs and expenses occasioned by delays attributable to Buyer.

### **6. Cancellations, Changes, Alterations:**

- a. Orders placed by Buyer cannot be cancelled or altered nor can deliveries or Goods be completed or in process be extended beyond original specified delivery dates except with Seller's consent and upon terms which will indemnify Seller against loss.
- b. Goods returned without express written permission of Seller will not be accepted.
- c. The delivery scheduled of an order cannot normally be extended beyond the date of the first scheduled delivery without Seller approval. If Buyer requests an extension of the delivery schedule beyond the date of the first delivery, Seller reserves the right to increase the price of the ordered Goods or to substitute other products in place of the Goods.
- d. Any claim based on receipt of the damaged Goods must be filed with the carrier which delivered the Goods. Seller will not allow credit for the return of the damages Goods.

### **7. Limitation of Liabilities:**

- a. Any person or entity who buys, receives, or uses these Goods (collectively the "User") thereby accepts and agrees to the limitations of liabilities contained herein between User and Seller. If User did not purchase Goods directly from Seller, User agrees that Seller is a third-party beneficiary and is entitled to enforce this Agreement as if it had been entered into between User and Seller. User agrees to accept full responsibility for the performance of the Goods. If User does not accept these terms, User must return the Goods to Seller immediately within seven (7) days of receipt.
- b. Buyer shall be solely responsible for inspecting, testing and confirming the specifications and utility of the Goods ordered for their intended use. Other than ensuring that the Goods conform to the Buyer's specifications as provided for in the Sales Order, Seller shall have no obligation to ensure that the Goods are suitable for Buyer's intended purpose.
- c. To the extent permitted by law, Seller makes no (and expressly disclaims all) warranties, express, implied, or statutory, including without limitation, any implied warranty of merchantability, fitness for a particular purpose, noninfringement, or arising from course of performance, dealing, usage or trade. Without limiting the generality of the foregoing, Seller makes no claim, representation, or warranty of any kind as to the utility of the Goods for Buyer's intended uses.
- d. Buyer's exclusive remedy and Seller's sole liability for any loss resulting from the ordering of Goods is limited to a refund of the price paid for the Goods as stated in the Sales Order. In no event shall Seller be liable to Buyer or any other party for consequential or incidental damages including those damages as defined by California Uniform Commercial Code Section 2715, statutory or exemplary damages, goodwill, business interruption, loss of yield, or lost profits incurred or claimed by Buyer or any other party in relation to this agreement. Buyer agrees that Seller's refund of the price paid for the Goods will not cause this agreement to fail of its essential purpose.
- e. The obligations of Seller under this Agreement shall not constitute personal obligations of Seller, its officers, directors, shareholders, members, managers partners, principals, employees, agents, or affiliates. In no event shall Buyer have the right to seek recourse against Seller's officers, directors, shareholders, members, managers, partners, principals, employees, agents, or affiliates or any of their personal assets for satisfaction of any claims, losses, or damages of any nature for any reason.

### **8. Incorporation by Reference of Seller's Sales Order**

a. It is the intention of the parties that the Seller's Sales Order attached hereto is expressly incorporated by reference into these terms of this agreement. In the event that any provision listed in the Seller's Sales Order conflicts with these terms and conditions, these terms and conditions shall control and the conflicting provisions of the Sales Order shall have no force or effect.

9. **Breach by Seller:**

a. Seller shall not be deemed in breach of this Agreement unless Seller fails within a commercially reasonable time to perform an obligation required to be performed by Seller. For purposes of this paragraph a commercially reasonable period of time shall be no less than thirty days after receipt of written notice by Buyer specifying where such obligation of Seller has not been performed; provided, however, that if the nature of the Seller's obligation is such that more than thirty days are reasonably required for its performance, then Seller shall not be in breach if performance is commenced within thirty days period and thereafter diligently pursued to substantial completion.

10. **Miscellaneous:**

a. **Binding Effect:** These terms and conditions shall be binding on the parties unless rejected in writing within three (3) days of receipt by Buyer.

b. **Enforceability:** If any portion of this Agreement is construed by a court to be invalid or unenforceable, such portion shall be severable from the remainder of the Agreement, and the remainder of the Agreement will remain in full force and effect.

c. **Attorneys' Fees:** In the event that any Party brings an action to enforce or effect its rights under this Agreement, the prevailing Party shall be entitled to recover its costs and expenses, including the costs of mediation, arbitration, litigation, court fees, expert fees, appellate fees, and reasonable attorneys' fees incurred in connection with such an action.

d. **Indemnification:** Buyer agrees to indemnify, defend, (with legal counsel satisfactory to Seller's choosing) protect, and hold Seller, its agents, employees, partners, principals, officers, directors, shareholders, members, managers, and/or trustees harmless from and against any all claims, demands, litigation, attorneys' fees, loss, costs, damage, and/or expense arising out of or related to this Agreement which arise from and after the effective date.

e. **Presumption:** The Parties agree that this Agreement was drafted jointly by the Parties, and each Party and his or its legal counsel have had a sufficient opportunity to review this Agreement. No presumption shall arise regarding this Agreement based on the identity of the drafter.

f. **Acknowledgment:** Each of the Parties represents and warrants that: (a) such Party has read this Agreement; (b) such Party has made such investigation of the matters pertaining to this Agreement as such Party deems necessary and find the terms of this Agreement to be satisfactory; (c) such Party understands all of this Agreement's terms; (d) such Party agrees to this Agreement freely, voluntarily and without coercion, with full knowledge of its significance and the legal consequences thereof; (e) such Party has been represented by counsel, or has had sufficient time and opportunity to retain counsel, and has had an adequate opportunity to review and consider the terms of this Agreement; and (f) such Party has relied solely upon their own judgment, analysis, and advice from counsel, and have not relied on any advice or representation by any other Party in entering into this Agreement.

g. **Modification:** No supplement, modification, or amendment to the Agreement shall be binding unless executed in writing by all Parties.

h. **Integration:** The Agreement and any incorporated Seller's Sales Order constitutes an integration of the entire understanding and agreement of the Parties with respect to the matters referred to in the Agreement. No prior oral or written understanding, representation, promise, condition, covenant, or agreement between the Parties, with respect to the matters referred to in the Agreement shall survive the execution of the Agreement.

i. **Choice of Law:** This Agreement is made and entered into in the State of California and shall in all respects be interpreted, enforced and governed under the laws of the State of California, without regard for its choice-of-law provisions. Each of the Parties submits to the exclusive personal and subject matter jurisdiction of the state court encompassing the County of Contra Costa.

j. **Dispute Resolution:** Any dispute, claim, cause of action, or controversy arising out of, relating to, or is based upon this Agreement or the transactions contemplated by this Agreement, shall be resolved by binding arbitration before a neutral arbitrator with the American Arbitration Association. The arbitration shall be conducted in accordance with California Arbitration Act (Cal. Code. Civil Procedure Sections 1281-1294.2). The arbitration shall occur in Danville, California. The arbitrator's award shall be final, binding, and enforceable. The arbitrator shall have the authority, power, and right to award damages and provide for other remedies as are available at law in accordance with California law except as provided herein. The parties expressly waive their right and any claim to punitive damages and the arbitrator shall have no right to award punitive damages. **THE PARTIES HEREBY AGREE TO ARBITRATION AND WAIVE THEIR RIGHTS TO A COURT OR JURY TRIAL IN ACCORDANCE WITH APPLICABLE STATE LAW.**

Upon notice of a demand for arbitration, or upon being compelled to arbitration by a court of competent jurisdiction, the parties shall have fourteen (14) days to agree on one mutually agreeable arbitrator. In selecting an arbitrator each party shall propose three arbitrators of its choosing. Within three days, each side shall have the right to reject two of the opposing party's proposed arbitrators. The parties shall then agree on one of the two remaining arbitrators. In the event that the parties are unable to agree on an arbitrator, the parties shall immediately file a petition with the Superior Court in Contra Costa County to allow for the Court to select the final arbitrator.