

**Schober USA, Inc.**  
4690 Industry Drive  
Fairfield, OH 45014



**TERMS AND CONDITIONS OF SALE AND PURCHASE**

(November 1, 2015)

**I. General Terms and Conditions**

- A. **Terms of Agreement:** The sale, shipment, delivery, and performance by Seller for the goods covered hereunder shall be subject only to these terms and conditions (the "Agreement"). Any additional or different terms that may be contained in any documents furnished by the Buyer, including terms contained in Buyer's purchase order submitted in response to a quotation, are hereby objected to and expressly rejected.
- B. **Quotations and Acceptance of Orders:** All quotations made by Seller are in response to Buyer's request for a quotation for a future contract. All such quotations are subject to change without notice. All purchase orders submitted by Customer in response to a quotation are subject to acceptance by Seller only at Seller's home office. This agreement shall be binding upon Seller only after it is executed by Seller's Home Office representative, at which time it shall be binding on Seller and its respective successors, assigns, and legal representatives.
- C. **Confirmation of Order:** Seller's confirmation and acceptance of the order is the sole determiner of the content of this contract, including measurements, price, delivery and workmanship. Accordingly, it shall be the Buyer's responsibility to check this document and all other documents provided by Seller, such as drawings and similar items, immediately upon receipt and provide notice to Seller of any objections. Failure to notify Seller of any objection or change within seven (7) days of the receipt of the documents shall be deemed to be explicit approval by the Buyer.
- D. **Shipment Terms:** All shipments for merchandise which are the subject of this Agreement shall be F.O.B. shipping point. Buyer assumes freight costs and liability for any loss or damage to goods once they have left Seller's premises. In ordering, Buyer should state specifically the method of shipment preferred and in the absence of shipping directions, Seller will use its discretion shipping by air, truck or parcel post.

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- E. **Modifications to an Order:** Once an Order has been accepted by Seller, no addition, deletion or amendment shall be enforceable against Seller unless Seller has consented in writing to such modification.
- F. Buyer acknowledges that Seller shall have the absolute right to store and process any of Buyer's proprietary information supplied to Seller in connection with this Agreement in such manner as Seller deems appropriate.

## **II. Prices and Payment**

- A. Unless otherwise agreed to in writing, all pricing for the goods which are the subject matter of this Agreement shall be as set forth in the order accepted by Seller.
- B. **Payment and Credit:** Unless otherwise agreed to in writing, payment is due within thirty (30) days after the date of invoice. Title to the goods which are the subject of this contract will remain with the Seller until such time as payment is received in full. Accounts will be opened only upon approved credit and at the sole discretion of Seller. Seller reserves the right to demand payment in advance or C.O.D. whenever Seller has any concern with respect to Buyer's financial condition.
- C. **Taxes:** Taxes imposed by any federal, state, county or municipal authority on the sale or use of the goods purchased hereunder and required to be paid by Seller shall be added to the amount to be paid by Buyer. Buyer shall furnish evidence to Seller in writing of any applicable exception.

## **III. Deliveries**

- A. **Liability:** Seller assumes no responsibility for damage due to default or delay in production or delivery of all or any portion of any order for any reason, including not by way of limitation, default or delay resulting directly or indirectly from accident to or breakdown of Seller's or its suppliers plant machinery or equipment, labor disputes, embargoes, fires, riots, national emergencies, delays of suppliers or carriers, governmental restrictions, prohibitions or allocations, acts of God, or any other causes beyond the control of Seller. In no event shall Seller be liable for any consequential, special or contingent damages or lost or imputed profits arising

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out or relating to this Agreement.

- B. **Modifications:** In the case of special production of certain parts, i.e., punches, dies, crimps, and cutting/perforating wheels and blades, Seller reserves the right to deliver either an additional or reduced quantity within a tolerance of 15% based upon Seller's sole discretion, and the price therefor shall be revised accordingly. In addition, Seller reserves the right to make partial deliveries when Seller deems such partial deliveries to be appropriate.
- C. **Optional Goods and Services:** The purchase price of goods hereunder does not include optional installation, service or equipment, including, but not by way of limitation, optional service kits, any other additional goods. Modules, punching tools, cutting rollers and other accessories are supplied without safety guards or only with simple safety guards, i.e. protective sheet on sized tooth gears. Any further mechanical or electrical safety guards which may be desired by Buyer and which may, in particular, be required by the type of machine for which the part in question is intended, are not included in the delivery and is not the responsibility of the Seller or of the manufacturer.

#### IV. Limited Warranty

- A. Seller warrants goods sold hereunder for a period of six (6) months due to defects in material or workmanship if the goods fail to function under normal wear and proper use. The delivered goods must be examined immediately by the Buyer and any alleged defects in the delivered goods or performance must be reported to the Seller within ten (10) days of delivery. Seller shall have the option to inspect the goods on Buyer's premises or to authorize the return of those goods for inspection by Seller at its own premises. Buyer shall not return any goods to Seller without Seller's prior written consent. Seller shall not be liable for any expenses, including inspection expenses incurred by Buyer, in order to remedy defects in the goods. Seller will, at its sole option, credit, repair or replace such goods determined by Seller to be defective in workmanship or material. Such repair or replacement by Seller shall constitute the sole exclusive remedy available to Buyer in connection with any claim for breach of warranty relating to the goods. Products manufactured by others and distributed or furnished by Seller are subject to the original manufacturer's warranty and Seller shall not be liable under any circumstances for defects in such products. Excluding any claim asserted by Seller due to Buyer's

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failure to pay amounts due hereunder, any controversy or claim arising out of or related to this Agreement or the breach thereof must be commenced within one (1) year after the cause of action has accrued.

- B. To the extent that this Agreement pertains to the purchase of rotating tools, Seller's limited warranty pertains solely to warranting that the tool shall properly rotate as designed. Seller assumes no liability and shall not be liable for any claims arising in connection with the operation of the tool with respect to the nature of any material to be processed by the Buyer using the tool, including but not limited to issues as to tensile strength, linings with glued layers, structure, static electrification, excessive moisture content, and register differences.
- C. The limited warranty herein made by Seller shall, in no event, extend to the following:
- (1) damages to the goods resulting from fire, flood, storms, electrical malfunctions, malfunction of Buyer's equipment, accidents, acts of God, or from alterations, misuse, or abuse of the goods by any person whatsoever;
  - (2) damages resulting from Buyer's failure to observe any installation, operating or service instructions furnished by Seller;
  - (3) failure of the goods to function due to the characteristics of material processed, including but not limited to, its tensile strength, coating texture, static changes and/or moisture contact, or abrasive action or deterioration due to chemical reaction;
  - (4) personal injury and/or property damage to the goods or any part thereof which have been connected or used with any machinery equipment or altered without written approval from an authorized officer at Seller's Home Office, or whichever have been repaired or altered or in any way so as to affect their stability or reliability or which has been subject to misuse, negligence, or accident, or which shall not have been operated in accordance with Seller's instructions or beyond

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the factory-rated capacity of the goods; or

- (5) improper installation, service or maintenance of the goods by the Buyer or any third party and any damages resulting therefrom.

**THE LIMITED WARRANTY HEREIN MADE BY SELLER IS IN LIEU OF ALL OTHER WARRANTIES WITH RESPECT TO THE PRODUCT, EXPRESSED OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY STATUTORY OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS OR FOR A PARTICULAR PURPOSE.**

**V. Limitation of Liability**

- In no event shall Seller be liable for any incidental, consequential, special or contingent or punitive damages or lost or imputed profits or expenses arising from or related to this Agreement or from any defect in goods purchased hereunder regardless of whether Seller has been advised of the possibility of such damages. Buyer waives any claim that these exclusions deprive it of an adequate remedy. Seller's liability to buyer shall not exceed the total amount of the fees paid within the one-year period immediately preceding the date that the alleged wrongful act first occurred. Because the goods furnished hereunder are used or combined by Buyer with other equipment or components not furnished by Seller, Buyer agrees to indemnify Seller for all claims resulting from the use or incorporation of said goods in the Buyer's machinery or equipment.

**VI. Entire Agreement**

- This Agreement contains the entire agreement between Seller and Buyer with respect to the sale of the goods and installation and services to be provided by Seller. No other representations, warranties or other inducements or agreements reported to be made by any of Seller's representatives, whether oral or written, shall be binding on Seller or have any force or effect.

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**VII. Jurisdiction, Governing Law; Waiver of Jury Trial; Attorneys' Fees**

- This Agreement shall be interpreted according to the laws of the State of Ohio and any action brought for the enforcement of the terms and provisions of this Agreement must be brought in a court of competent jurisdiction in Hamilton County, Ohio. If any provision of this Agreement or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, then the remainder of this Agreement and the application of such provision to other person or circumstances shall not be affected thereby and shall be enforced to the full extent permitted by the laws of Ohio. Buyer hereby knowingly and intentionally waives the right to a jury trial on any issue or dispute that may arise between the parties. In any legal proceeding relating to a dispute arising out of or relating to this Agreement, the prevailing party shall be entitled to an award of legal fees and costs.