

Able Tool Corporation	AQMSD-1014 Terms and Conditions of Sale/Services Approved By: President		
Not controlled in hard copy	Rev. 1.0	Date: 08/02/2023	Page 1 of 3

TERMS AND CONDITIONS OF SALE/SERVICES

1. **AGREEMENTS AND ACCEPTANCE**. These terms and conditions and the provisions hereof or in any agreement to which these terms and conditions are attached or into which they are incorporated shall constitute the entire agreement ("Agreement") between BUYER and Able Tool Corporation ("ABLE") as to the sale of the goods sold pursuant hereto. No prior or other understandings or agreements shall be binding upon ABLE. No additions to or deletions or modifications of this Agreement proposed by BUYER in its printed forms or otherwise shall bind ABLE unless accepted by ABLE in writing. ABLE's acceptance of BUYER's order is conditioned on BUYER's assent to the terms contained herein in lieu of those in BUYER's purchase order and any terms conflicting with those contained herein are expressly rejected. ABLE's failure to object to provisions contained in any purchase order related documents or communication from BUYER shall not be deemed a waiver of the provisions of this acceptance.

 2. **PROPOSAL VALIDITY**. Unless otherwise stated, any proposal made by ABLE is open for acceptance by BUYER for a period not to exceed 30 days from the date thereof unless earlier withdrawn by ABLE.

 3. **PRICES AND PAYMENT TERMS**. Prices and payment terms are F.O.B. ABLE's facility in Lockland, Ohio, and are subject to change without notice at any time prior to ABLE's acceptance of BUYER's order. Unless otherwise specifically set forth on the face hereof, prices do not include any sales, use, transfer, excise or other taxes, tariffs or customs duties levied upon the sale, transfer, import or use of the goods sold hereunder, and BUYER will pay directly or reimburse ABLE for any such charges.

 4. **PAYMENT TERMS**. Payment for orders shall be made in the manner set forth in ABLE's proposal. Any invoice submitted by ABLE shall be due and payable 30 days from the date of the invoice. ABLE's invoices are payable only in United States currency. BUYER shall pay interest on overdue amounts at the rate of 1.5% per month, such interest to accrue from the due date thereof until paid.

 5. **ASSIGNMENTS**. BUYER shall not delegate any duties or assign any contracts entered into by ABLE without ABLE's prior written consent, which consent shall not be unreasonably withheld.

 6. **DELIVERY SCHEDULE AND RISK OF LOSS**. Quoted lead times by ABLE are valid estimates for the business and production schedules at which time the quotation is made. Shipping dates are approximate dates only and will be provided three (3) working days after placement of order with ABLE and receipt of any required deposits. ABLE is not responsible for any delays or nonperformance, including without limitation, those resulting from (a) delays in receipt of or changes in final specifications or instructions from BUYER or (b) force majeure, including, without limitation, strikes, labor disturbances, material shortages, nonperformance by subcontractors or suppliers or other abnormal manufacturing conditions, delays or failures or carriers or communications, fire, flood, storms, accident, riot, war or invasion, governmental requisitions or priorities, acts of God, or other causes beyond ABLE's reasonable control. **IN NO EVENT SHALL ABLE BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES ARISING OUT OF SUCH DELAY OR FAILURE TO DELIVER.** All shipments hereunder shall be by truck, unless BUYER specifies other means of shipment and pays any additional cost thereof. BUYER shall bear all risk of loss after delivery to the carrier. Additionally, changes in specifications and instructions from Buyer can result in SCHEDULE Disruptions and can be subject to 0.1% of the total price in liquidated damages plus additional charges for any re-work caused by Buyer changes.

 7. **DELIVERY**. Unless otherwise stated in ABLE's proposal, all goods furnished hereunder will be shipped F.O.B. point of origin. Title to, right of possession and risk of loss or damage to such goods shall pass to BUYER upon ABLE's releasing of said goods to carrier. Shipments will be made "best way" freight prepaid, however, the cost of shipping and insurance will be the responsibility of BUYER and will be billed to BUYER by ABLE.

 8. **WARRANTIES AND DISCLAIMERS**. Unless otherwise quoted, ABLE warrants that its products will be free from defects in workmanship for a period of 90 days from the date of shipment and free from defects in material for a period of 270 days from the date of shipment. This defects in material warranty covers replacement of the part(s) only and does not cover normal wear and tear items, not items that fail because of improper operation and/or improper maintenance.
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Able Tool Corporation	AQMSD-1014 Terms and Conditions of Sale/Services Approved By: President		
Not controlled in hard copy	Rev. 1.0	Date: 08/02/2023	Page 2 of 3

Commercial components, i.e., electronic parts, motors, switches, etc., will carry the warranty as specified by the OEM, and will be passed on to the BUYER. NO OTHER WARRANTY, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OR MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE IS MADE FOR THESE PRODUCTS, AND ALL OTHER WARRANTIES ARE HEREBY EXPRESSLY EXCLUDED. BUYER agrees that ABLE'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, professional malpractice or strict liability, against ABLE or any of its affiliates, shall be (a) the repair, replacement or reassembly, at ABLE's option, of defective products or parts thereof, or (b) a refund of the price allocable to the defective product or part thereof if ABLE is unable, effectively, to repair, replace, reassemble or correct such defect within reasonable time after using its best efforts, or (c) in those situations where ABLE has provided only engineering or design services, the correction of any engineering or design defect, however this does not include any reworking or remanufacturing caused by any defect or error in ABLE's engineering or design. SUCH REPAIR, REPLACEMENT OR REFUND SHALL CONSTITUTE FULL AND FINAL DISCHARGE FROM ANY AND ALL CLAIMS FOR DAMAGE OR LOSS RESULTING FROM ANY CAUSE WHATSOEVER, WHETHER BASED ON NEGLIGENCE, STRICT LIABILITY, BREACH OF CONTRACT OR BREACH OF WARRANTY, AND ABLE SHALL HAVE NO OTHER LIABILITY, DIRECT OR INDIRECT, OF ANY KIND, INCLUDING LIABILITY FOR SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES.

9. **ENGINEERING AND DESIGN.** ABLE warrants that any engineering or design services provided by it, including the creation of corresponding drawings shall be performed and produced in accordance with generally accepted engineering standards, and if any design or engineering services prove defective, as determined by ABLE's inspection, ABLE will provide sufficient engineering and design services to correct said defect, not to exceed ABLE's proposal or quotation for the cost of such engineering and/or design services. Engineer of Record. Unless otherwise stated, ABLE's responsibility will be limited to satisfactory performance in those specific and individual areas set forth in its proposal. BUYER or its designee will be considered the "Engineer of Record" as that term has been defined by the American Society of Civil Engineers. Accordingly, BUYER shall protect, indemnify, hold harmless, and defend ABLE, its subsidiaries, officers, and directors from and against all damages, suits and other liabilities including attorney fees and other expenses of litigation, resulting from the failure of BUYER or its designee to satisfactorily perform in the role of "Engineer of Record".
10. **EQUIPMENT SUITABILITY AND UPGRADES:** The equipment offered is acknowledged by the Buyer as suitable to the purposes intended when accepted by the Buyer. Payment by the Buyer for the equipment acknowledges acceptance of the equipment and its condition as suitable for the purposes intended. From time to time, ABLE Products may offer upgrades/modifications in the future and such upgrades are made available at quoted prices to Buyer at ABLE Product's discretion. Buyer has no claim for upgrades without additional compensation to ABLE Products.
11. **COMPLIANCE WITH LABOR AND NON-DISCRIMINATION LAWS.** ABLE certifies that it complies with the Fair Labor Standards Act and Executive Order 11246, and the applicable regulations issued thereunder, the terms of which are incorporated herein by reference.
12. **CANCELLATION.** Orders are not subject to cancellation or modification, in whole or in part, after ABLE's acceptance, without ABLE's express written consent and payment of a cancellation charge in the amount of ABLE's fully burdened costs incurred for the order prior to the time of written notification cancellation plus liquidated damages in the amount of 20% of the total price of the canceled order.
13. **INDEMNIFICATION.** BUYER shall comply with and require its agents and employees to comply with all directions, safety notices, warnings and other instructions furnished by ABLE, and shall use and require its agents and employees to use reasonable care in the use of the products. If BUYER fails to observe the provisions of this section, or if any injury or damage is caused, in whole or in part, by BUYER's failure to comply with applicable federal, state or local safety requirements, ABLE shall have no obligation to BUYER or any other person in respect thereof, and BUYER shall indemnify, defend and hold harmless ABLE against any claims, loss or expense for injury or damage arising directly or indirectly from any such failure. In addition, ABLE shall have no liability or responsibility with respect to any product supplied by BUYER or manufactured to BUYER's design or specifications which infringes upon any United States or foreign patent, and BUYER will indemnify, defend and hold harmless ABLE from any such claim of infringement, including payment of ABLE's attorney's fees. ABLE SPECIFICALLY DISCLAIMS ANY AND ALL LIABILITY ARISING OUT OF THE USE OF THE PRODUCTS SUPPLIED HEREUNDER OTHER THAN TO THE ORIGINAL

Able Tool Corporation	AQMSD-1014 Terms and Conditions of Sale/Services Approved By: President		
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BUYER AS PROVIDED ABOVE IN PARAGRAPH 5.

14. **LIMITATIONS OF ACTIONS.** Any action for breach of contract arising out of ABLE's acceptance or performance of this Agreement or products supplied hereunder must be commenced within one (1) year after the cause of action accrues.

15. **BUYER'S DEFAULT OR INSOLVENCY.** ABLE shall have the right to cancel or suspend performance hereunder if BUYER is in default in making timely payment or otherwise in default under this or any other contract between BUYER and ABLE or if any proceedings by or against BUYER are instituted or pending under any insolvency law or any provisions of the Federal Bankruptcy Code or in which the appointment of a receiver is sought for BUYER or any of its assets. BUYER will pay ABLE's costs of collection of overdue amounts, including, but not limited to, attorney's fees.

16. **GOVERNING LAW; REMEDIES.** No claim will be allowed for omissions or shortages unless made within thirty (30) days after receipt of the applicable shipment by BUYER. ABLE shall, in addition to the rights and remedies herein set forth, be entitled to all rights and remedies provided by the Uniform Commercial Code, as amended from time to time, and other applicable law and at equity. The rights and obligations of the parties hereto and the construction and effect of any contract formed pursuant hereto shall be governed by the laws of the State of Ohio without reference to choice of law doctrine.