

**TOM SMITH INDUSTRIES, INC.**  
**CUSTOMER TERMS AND CONDITIONS**

**Scope of Agreement**

This Agreement applies to all inquiries, quotations, purchase orders, invoices, and contracts between Tom Smith Industries, Inc. (TOM SMITH INDUSTRIES, INC.) and the Customer for Goods and Services. No terms or conditions submitted by Customer inconsistent with or in addition to this Agreement shall be binding unless expressly agreed to in writing by an authorized representative of the Company.

**1. Quotations and Orders**

- All price quotations issued by the Company are valid for 30 days unless stated otherwise.
- A binding contract arises only upon the Company's written acknowledgment of Customer's purchase order or upon shipment of Goods.
- Minimum Order Quantities (MOQ) will apply and are based on a predetermined amount for each customer per part. If the MOQ is not met, either by container quantity or PO amount, a set up fee of \$750 will apply to each order.

**2. Pricing and Payment**

- All prices are quoted in U.S. Dollars (USD) unless otherwise stated.
- Payment terms are Net 30 days from the date of invoice or approved customer specified terms.
- Late payments are subject to a 1.5% monthly service charge on any overdue balance.
- Customer is responsible for all applicable taxes, duties, tariffs, and shipping charges.
- Customer is responsible for all additional charges that arise during order processing.

**3. Delivery and Risk of Loss**

- Delivery dates are estimates, not guaranteed and contingent upon appropriate lead times.
- Risk of loss or damage passes to Customer upon delivery of Goods to the carrier.
- Tom Smith Industries, Inc. is not liable for delays due to causes beyond its reasonable control.

**4. Packaging and Shipping**

- Packaging and Shipping will conform to Customer Specific Requirements
- All goods shall be packaged, labeled, marked and shipped in accordance with Tom Smith Industries, and Customer Specific Required Policies and in accordance with all applicable federal, state, and local regulations.

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- This will include but not be limited to:
  - Packaging to sufficiently protect product from damage while in transit
  - All containers with proper labeling and COA documentation, as required
  - If Buyer fails to designate a carrier for a shipment, Tom Smith Industries, Inc. is authorized to select and arrange a carrier for shipment of product to the buyer and invoice the buyer, as necessary.
  - By doing so, Tom Smith Industries, Inc. will not assume liability for the customer shipment, nor shall the carrier be constructed to be an agent of Tom Smith Industries, Inc.

**5. Inspection and Acceptance**

- Customer must inspect Goods upon receipt and notify the Company in writing of any claims for shortages, defects, or nonconformities within 5 (five) business days.
- Failure to notify constitutes unconditional acceptance of product shipment.

**6. Returns and Cancellations**

- No returns are accepted without prior written authorization from the Company.
- Authorized returns must be in original condition and are subject to a restocking fee of 3%.
- Orders may not be canceled without the Company's prior written consent and must be completed no less than 30 days prior to order due date. Purchase order Cancellation charges of 5% of original Purchase Order value will apply, if purchase order is cancelled less than 30 days prior to order due date.
- Orders modified or cancelled less than 48 hours prior to ship date will be subject to a cancellation or restocking fee of 5% of original Purchase Order value. If product has already been produced, orders will be shipped as indicated on the original Purchase Order.

**7. Billing**

- Payment shall be made in the amount set forth and agreed to on the purchase order submitted by the buyer.
- If the customer (buyer) fails to remit payment promptly in full and complete purchase price in accordance with the terms of the Purchase Order the Buyer agrees to pay Tom Smith Industries, Inc. interest on the unpaid balance computed at the rate of 1.5% per month (18% APR) effective from the date the balance becomes past due.

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- Quoted prices are in US Dollars and are subject to change without notice unless a valid purchase order is received by Tom Smith Industries, Inc. at its main office before 30 days after the quotation date.
- Prices may be adjusted for specifications, quantities, shipment arrangements or other terms and conditions which are not a part of the original price quotation.
- Tom Smith Industries, Inc. reserves the right to correct all typographical or clerical errors or omissions which may be present in its prices or specifications.
- The amount present or future sales tax, value added tax, customs duties, tariffs, or other similar taxes or duties applicable to this transaction shall be the sole responsibility of the Buyer.

#### **8. Limited Warranty**

- Tom Smith Industries, Inc. warrants that Goods will conform to the applicable customer specifications for 6 months from the date of shipment.
- The Company's obligation is limited to, at its discretion, repairing, replacing, or crediting the defective Goods.
- This warranty excludes defects caused by misuse, improper installation, improper storage, unauthorized modifications, or normal wear and tear.

**DISCLAIMER:** Tom Smith Industries, Inc. makes no warranty or representation concerning the product(s) other than as specified in this section. All other warranties, expressed or implied, including but not limited to the implied warranty of merchantability and fitness for a particular purpose are hereby disclaimed. Notwithstanding anything to the contrary herein, and to the maximum extent permitted by law, Tom Smith Industries, shall not be liable to buyer by way of indemnity or by reason of any breach of contract or of statutory duty or by reason of tort (including but not limited to negligence) for any loss of profit, loss of contracts or earnings, delay, damages, interruption or loss of production, loss of use, or loss of opportunity or business, indirect, punitive, special, incidental or consequential damages whatsoever that may be suffered by buyer.

#### **9. Limitation of Liability**

- The Company's total liability under any claim arising out of this Agreement shall not exceed the purchase price paid by Customer for the Goods or Services giving rise to the claim.
- Tom Smith Industries, Inc. shall not be liable for any incidental, consequential, special, or punitive damages.

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**10. Intellectual Property**

- All drawings, designs, tooling, inventions, and other intellectual property created, developed, or supplied by Tom Smith Industries, Inc. remain the sole property of the Company unless otherwise agreed in writing.

**11. Confidentiality**

- Both parties agree to keep confidential and not disclose to any third party any proprietary information, specifications, technical data, pricing, or other confidential information received during the course of this Agreement, unless required by law or with written consent.

**12. Custom Tooling Ownership**

- Any custom molds, tools, dies, jigs, or fixtures ("tooling") created by Tom Smith Industries, Inc. for the manufacture of Customer's Goods shall remain the sole property of the Company unless otherwise agreed in writing.

- Customer may purchase exclusive ownership rights to Tooling under a separate agreement.

- All customer owned molds, tools, dies, jigs, or fixtures ("tooling") owned by the customer will be tagged and cataloged accordingly and housed at Tom Smith Industries for the life of the program or until otherwise specified by the buyer.

**13. Indemnification**

- The Buyer agrees to indemnify, defend and hold Tom Smith Industries, Inc harmless from any and all claims, suits or judgments arising out of or resulting in whole or in part from: (a) any modification, alteration or other change made by the Buyer, its servant, agents, employees or independent contractors, to the products sold under Buyer's Purchase Order, without the express written consent of Tom Smith Industries; (b) any product of the Buyer (including without limitation under any product liability claim based upon such product); (c) for failure of the Buyer to properly train and supervise personnel in the handling of the Tom Smith Industries' product; or (d) any act or omission to act of the Buyer.

**14. Force Majeure**

- The Company shall not be liable for any failure to perform or delay in performance caused by circumstances beyond its reasonable control, including but not limited to acts of God, natural disasters, wars, strikes, supply shortages, transportation delays, or governmental actions.

**15. Compliance with Laws**

- Customer agrees to comply with all applicable federal, state, and local laws, regulations, and ordinances, including but not limited to U.S. export control regulations.

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**16. Governing Law and Dispute Resolution**

- This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio.
- Any disputes arising from or related to this Agreement shall be resolved through binding arbitration in Clayton, Ohio under the rules of the American Arbitration Association (AAA).

**17. Entire Agreement**

- This Agreement, together with any attached schedules or incorporated documents, constitutes the entire agreement between the parties and supersedes all prior agreements, understandings, or communications.