

Terms And Conditions Of Sale

Definitions. As used herein:

“Company” means Taber Acquisition Corp. d/b/a Taber Industries.

“Buyer” means the individual, company or entity to whom any Proposal is addressed.

“Product” means the Product or Product(s) proposed for sale by Company to Buyer.

“Proposal” means a written quotation, sales order, estimate, or invoice provided by Company to Buyer with respect to the Product sold/to be sold by Company to Buyer. These terms and conditions are incorporated into and made a part of each Proposal.

“Purchase Order” means a purchase order, request for quotation, or similar document submitted by Buyer prior to, or in response to, a Proposal.

“State” means the State of New York.

“County” means the County of Niagara in the State.

“Warranty Period” means with respect to any Product, one (1) year from the date of tender of delivery of such Product (F.O.B. Company’s facility).

“Contract” means the language herein and to all specifications or other documents agreed to by Company in writing.

Unless Company explicitly and/or affirmatively agrees in writing to different terms and conditions with respect to the purchase/sale of Products, this Contract shall apply to the purchase/sale of any and all Products.

1. **Acceptance.** Company’s offer to sell to Buyer the Product specified in any Proposal is expressly conditioned upon acceptance of these terms and conditions. Company objects to, and expressly rejects, any additional or different terms and/or conditions contained in Buyer’s Purchase Order or any other document of Buyer, none of which shall be binding or have any effect unless specifically agreed to in writing by an authorized officer of Company. These terms and conditions supersede any additional or different terms and/or conditions contained in Buyer’s Purchase Order or any other document of Buyer. Failure by Company specifically to object to provisions contained in Buyer’s Purchase Order shall not in any way alter or waive these terms and conditions. Company reserves the right to substitute substantially comparable goods for the Product stated in any Proposal. A binding contract for each Product sold to Buyer is made under these terms and conditions between Company and Buyer upon Company’s acceptance, or commencement of fulfillment, of Buyer’s Purchase Order.

2. **Delivery; Prices.** Delivery terms are F.O.B. Company’s facility or other place of manufacture. All prices reflect F.O.B. Company’s facility or other place of manufacture. Buyer is responsible for all costs of transport and insurance. Prices do not include any goods or services, setup, start-up, and/or installation, safety equipment, signage, technical data or documentation, proprietary rights of any kind, qualifications, testing or process performance that are not specifically stated in any Proposal. Prices are valid for 30 days from the date of any Proposal unless otherwise stated.

Terms And Conditions Of Sale

3. **Taxes and Other Charges.** Buyer is responsible for the payment of any and all federal, state, local, foreign or provincial taxes, fees or charges of any nature whatsoever (other than Company's income-based taxes) imposed by any governmental authority that may be assessed or levied on materials sold to Buyer provided that such taxes are added to the sales price where Company has a legal obligation to collect them. If Buyer is exempt, prior to delivery of Product, Buyer shall provide Company with the documentation necessary to support such a claim and to allow Company to document its decision not to collect such tax.

4. Changes, Cancellations and Returns.

a. If Buyer requests changes to any Product or any Purchase Order after Company's acceptance of Buyer's Purchase Order, the proposed change shall not become effective unless and until Company (in its sole discretion) issues a revised Proposal.

b. If any portion of a Product is identified as "special" or "made to order" or of similar description, or is otherwise not an off-the-shelf Product, Buyer's order shall not be cancelled or cancellable (in whole or in part) by Buyer after acceptance by Company.

c. Company permits, upon prior written approval of Company, returns on select off-the-shelf items ("Stocked Product"). In the event of a return of any Stocked Product with Company's prior written approval, Buyer shall pay to Company a restocking fee in the amount of 20% of the purchase price of the Stocked Product. Whether a Product is eligible for return hereunder will be determined by Company in its sole discretion, and Buyer agrees to contact Company prior to returning any Product to Company. Such Stocked Product must be returned to Company at Buyer's cost, in new condition, within 30 days of shipment and will be inspected upon delivery to Company. If the returned Product requires any refurbishing, the repair labor and materials will be added to the restocking fee and Company will communicate to Buyer the total restock fee prior to placing back into stock.

5. **Delivery Dates.** All delivery and shipment dates quoted are approximate and subject to Company's availability schedule. Company will endeavor to meet the delivery date(s) quoted, however, Company does not assume any liability, consequential or otherwise, because of any delay or failure to deliver all or part of an order for any reason, and Company shall have no liability whatsoever to Buyer or any third party for failure to deliver the Product by such date. All delivery dates are predicated upon prompt and timely receipt from Buyer of all necessary information, material samples, documentation, etc.

6. **Installation, Maintenance and Operation.** Buyer is solely responsible for installation, operation and maintenance of the Product in accordance with the applicable manual(s).

7. Credit and Payment Terms.

a. Unless credit terms are provided to Buyer by Company in its sole discretion, any and all amounts due to Company for the Products shall be paid in full by Buyer prior to delivery of the Products by Company. Company reserves the right, in its sole discretion, to provide credit to Buyer upon review and approval of Buyer's application for credit, and to establish credit limits at any time. Company reserves the right, at any time and in its sole discretion, to change, amend or withdraw any credit terms. All prices and payments are and shall be made in U.S. Dollars.

b. Buyer shall make all payments in full without any deduction for any claim or setoff or recoupment.

Terms And Conditions Of Sale

c. Payment by Buyer is not contingent upon installation, use or operation of any Product(s). No cash discounts for early payment will be granted. Buyer shall be delinquent if payment is not remitted according to the applicable terms. Any amounts not paid when due shall bear interest from the date of invoice until paid at the rate of 1.5% per month, or the maximum allowable legal rate, whichever is lower. Buyer also shall pay all of Company's costs incurred to collect payment of invoices, including Company's reasonable attorneys' fees.

8. **Security Interest.** Buyer grants to Company a security interest ("Security Interest") in the Product to secure the payment of the purchase price of the Product. These terms and conditions constitute a written security agreement provided by Buyer to Company covering all Product sold by Company to Buyer. Company may record a Uniform Commercial Code Financing Statement evidencing the Security Interest. Company has all rights and remedies accorded by law or equity to a secured party, and all such rights and remedies shall be cumulative. Buyer shall maintain insurance against all risks to cover full replacement value of the Product until Company has been paid in full and agrees to do all things and acts necessary to perfect and maintain such Security Interest for the benefit of Company.

9. **Title and Risk of Loss.** Title and risk of loss or damage to the Product shall pass to Buyer upon tender of delivery of Product (F.O.B. Company's facility or other place of manufacture).

10. **Product Acceptance.** All Product will be deemed accepted by Buyer if Buyer does not provide Company with a written notice of rejection within five (5) business days of the date of receipt by Buyer, which notice shall specify in detail any reasons for rejection.

11. **Limited Warranty.**

a. Company warrants that, during the Warranty Period, the Products shall (a) conform to any specifications provided by Buyer and accepted by Company and (b) be free from defects in material and workmanship. Company will, at its option in its sole discretion, repair or replace the defective Product if Company determines it is defective within the warranty period and if it is returned, freight prepaid, to Company. Any replacement parts will be shipped by Company F.O.B. Company's plant. Company is not obligated: (a) to repair damage resulting from attempts by personnel other than Company representatives to install, repair, or service the Product; (b) to repair damage resulting from improper use or from connecting the Product to incompatible equipment; or (c) if personnel other than Company representatives, without Company's prior permission, modify the Product. EXCEPT AS EXPRESSLY SET FORTH HEREIN, COMPANY MAKES NO OTHER REPRESENTATIONS, PROMISES, GUARANTEES OR WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND COMPANY EXPRESSLY DISCLAIMS ALL WARRANTIES NOT EXPRESSLY STATED HEREIN. IN THE EVENT THE PRODUCT IS NOT FREE FROM DEFECTS AS WARRANTED ABOVE, BUYER'S SOLE REMEDY SHALL BE REPAIR OR REPLACEMENT AS PROVIDED ABOVE. UNDER NO CIRCUMSTANCES SHALL COMPANY BE LIABLE FOR ANY INJURIES, DAMAGE TO OR REPLACEMENT OF OTHER PRODUCTS OR PROPERTY, COSTS FOR RECOVERING, REPROGRAMMING, OR REPRODUCING ANY PROGRAM OR DATA USED WITH ANY PRODUCT.

b. The warranty provided herein is provided solely to Buyer, and is not transferable by Buyer to any third party.

c. The warranty provided herein shall not apply to any Product that has been altered, modified or repaired by anyone other than Company or to any Product that has been damaged through accident, misuse,

Terms And Conditions Of Sale

neglect or lack of proper maintenance. The effects of corrosion, erosion and normal wear and tear on the Product are specifically excluded from this warranty. This warranty shall not apply to wear to the Product or wear to any of its parts or components caused by Buyer's feed material or any of Buyer's products.

12. IN NO EVENT SHALL COMPANY BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES OF ANY KIND OR NATURE ARISING OUT OF OR RELATING TO ITS WARRANTY, THIS AGREEMENT, OR CONNECTED WITH OR RESULTING FROM THE MANUFACTURE, SALE, DELIVERY, RESALE, REPAIR, REPLACEMENT, OR USE OF ANY PRODUCT OR THE FURNISHING OF ANY SERVICE OR PART THEREOF, OR IN CONNECTION WITH ANY ORDER, WHETHER SUCH LIABILITY IS BASED IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE, EVEN IF WARNED OF THE POSSIBILITY OF ANY SUCH DAMAGES. COMPANY IS NOT RESPONSIBLE FOR THE LOSS OF ANY DATA UNDER ANY CIRCUMSTANCES AND ANY SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES THAT MAY RESULT THEREFROM.

13. **Limitation of Liability.** BUYER'S REMEDIES SET FORTH HEREIN ARE EXCLUSIVE, AND THE TOTAL LIABILITY OF COMPANY WITH RESPECT TO ANY PROPOSAL AND THE PRODUCT FURNISHED THEREUNDER, IN CONNECTION WITH THE PERFORMANCE OR BREACH THEREOF, OR FROM THE MANUFACTURE, SALE, DELIVERY, INSTALLATION, REPAIR OR TECHNICAL DIRECTION COVERED BY OR FURNISHED UNDER A PROPOSAL (INCLUDING THESE TERMS AND CONDITIONS), WHETHER BASED ON CONTRACT, WARRANTY, NEGLIGENCE, INDEMNITY, STRICT LIABILITY OR OTHERWISE, SHALL NOT EXCEED THE TOTAL AMOUNT PAID BY BUYER TO COMPANY FOR THE PRODUCT UPON WHICH SUCH LIABILITY IS BASED.

14. **Intellectual Property.** Company is not liable to Buyer for any claims or damages of Buyer or any other person relating in any manner whatsoever to any infringement of any patent, copyright, trademark, trade secret, or any proprietary right of any third party. Buyer shall indemnify and hold Company harmless against any and all such claims or damages arising out of Buyer's or its employees', agents' or other representatives' use of the Product, including any allegation of damage or injury as described in Section 17. Buyer acknowledges and agrees that: (a) any and all Company's Intellectual Property Rights are the sole and exclusive property of Company or its licensors; (b) Buyer shall not acquire any ownership interest in any of Company's Intellectual Property Rights; (c) any goodwill derived from the use by Buyer of Company's Intellectual Property Rights inures to the benefit of Company or its licensors, as the case may be; (d) if Buyer acquires any Intellectual Property Rights, rights in or relating to any Product (including any rights in any trademarks, derivative works or patent improvements relating thereto) by operation of law, or otherwise, such rights are deemed and are hereby irrevocably assigned to Company or its licensors, as the case may be, without further action by either of the parties; and (e) Buyer shall use Company's Intellectual Property Rights solely for purposes of using the Product under this Agreement and only in accordance with these terms and conditions. For purposes hereof, "Intellectual Property Rights" means all industrial and other intellectual property rights comprising or relating to: (A) patents; (B) trademarks; (C) Internet domain names, whether or not trademarks, web addresses, web pages, website and URLs; (D) works of authorship, expressions, designs and design registrations, whether or not copyrightable, including copyrights and copyrightable works, software and firmware, data, data files, and databases and other specifications and documentation; (E) trade secrets; and (F) all industrial and other intellectual property rights, and all rights, interests and protections that are associated with, equivalent or similar to, or required for the exercise of, any of the foregoing, however arising, in each case whether registered or unregistered and including all registrations and applications for, and renewals or extensions of, such rights or forms of protection pursuant to the laws of any jurisdiction throughout in any part of the world. Without

Terms And Conditions Of Sale

limiting the generality of anything contained in these terms and conditions, Buyer shall not, and shall not allow or cause others, to modify, alter, disassemble, or reverse engineer any Product or any portion thereof.

15. Confidentiality and Non-Solicitation. Any Proposals, quotes, invoices, order acknowledgments, prints, brochures, drawings or other information furnished to Buyer by Company are intended for confidential use by Buyer, and shall not be disclosed by Buyer to any person or used to the detriment of Company's competitive position. In addition, Buyer hereby agrees that for the two (2)-year period following any Proposal, Buyer shall not interfere in, or solicit or induce any change in or cessation of, the business relationship between Company and any of its customers, independent contractors, agents, representatives, contract manufacturers, suppliers, or investors; nor solicit or induce any Company employees or other agents to terminate their employment or other relationship with Company.

16. Buyer's Use and Covenants. Buyer hereby agrees as part of Company's consideration to sell the Product that Buyer hereby covenants to Company that Buyer will use each Product only for its intended use.

17. Indemnification; Waiver of Subrogation. Buyer agrees that if any damage or injury (including death) to any person or to any property (including loss of use thereof) results, or is alleged to have resulted, in whole or in part from any modification or alteration of the Product (including but not limited to the removal of any guards), from the improper or abnormal operation of the Product, or from Buyer's breach of any covenants herein, then Buyer will defend, indemnify and hold harmless Company and its affiliates and its and their respective officers, directors, employees, agents, successors and assigns (collectively, "Indemnified Parties") from all liability, damages, penalties, fines, settlement and/or compromise payments, costs and expenses (including attorneys' fees and all other costs of litigation and defense) arising from such injury or damage, whether the Indemnified Party's liability or alleged liability be in contract, negligence, strict tort, or otherwise. Buyer covenants that any insurance policies carried by Buyer shall waive any right of subrogation of the insurers against the Indemnified Parties, and Buyer will deliver to Company satisfactory proof that such waivers have been incorporated into such insurance policies.

18. Miscellaneous.

a. **Applicable Laws: Jurisdiction and Venue.** This Contract shall be construed in accordance with the laws of the State without reference to principles of conflicts of laws. Exclusive venue and jurisdiction of any dispute between the parties regarding a Proposal and all related issues shall be with the local and federal courts of the County. Buyer hereby submits itself to this venue. Company and Buyer waive any objection to such venue and waive any right under the doctrine of forum non conveniens or otherwise to transfer any such action filed in any such court to any other court. In the event of a lawsuit, Buyer and Company each agree not to file any motion or defense asserting that the foregoing described courts are not a court of proper venue.

b. **Force Majeure.** Neither Company nor Buyer shall be responsible for any failure to perform the Contract formed hereunder due to causes beyond its control, including, but not limited to, acts of God, labor disputes or shortages, acts of government or judicial action, inability or delay in securing parts or components, epidemic, pandemic, declared state of emergency, all whether foreseen or unforeseen. These items are sold for domestic consumption in the United States. If exported, Buyer assumes full responsibility for compliance with U.S. export controls.

c. **Assignment.** None of the rights, duties or obligations defined herein or in any Proposal may be assigned, transferred or delegated without the prior written consent of the other party.



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Terms And Conditions Of Sale

d. Non-waiver. Neither party's failure to exercise any of its rights for any period shall constitute or be deemed a waiver or forfeiture of such rights.

e. Modification/Entire Agreement. Any modification of these terms and conditions must be expressly agreed to in writing by authorized representatives of Company and Buyer. The applicable Proposal (including these terms and conditions) are the complete and exclusive statement of the terms and conditions of the agreement between Company and Buyer with respect to the purchase/sale of the Product, and supersede all previous written or oral commitments, and specifically defines the Product to be delivered, and constitutes the complete agreement between Company and Buyer.