

# Terms and conditions of sale

All sales of products (the “products”) by Schmale Machinery USA, LLC (hereinafter referred to as “Schmale LLC”) to a buyer anywhere in the world (each a “Buyer” and collectively the “Buyers”) are subject to the following terms and conditions (the “Terms”), which form an integral part of a contract for the sale of products by Schmale LLC. Any modification hereto must be in writing signed by Schmale LLC. Unless otherwise agreed to in writing by Schmale LLC, the Terms and conditions provided for herein shall prevail in the event of any conflict between these Terms and any differing Terms submitted by the Buyer in connection with any order.

## **1. ORDERS AND DELIVERIES**

- 1.1. All orders are subject to written acceptance by Schmale LLC.
- 1.2. Delivery schedules (even if accepted or agreed to in writing by Schmale LLC) are tentative and based upon best information available at the time of quotation or acceptance of an order. All reasonable steps to meet delivery schedules will be taken by Schmale LLC.
- 1.3. Unless otherwise set forth in Schmale LLC’s written order confirmation, all products are shipped EXW Schmale LLC as defined in the Incoterms 2020 or EXW of the supplier, if the Product is not in stock at Schmale LLC as defined in the Incoterms 2020.
- 1.4. Partial deliveries are allowed. Buyer shall bear all risk of loss to the products while in transit. Title shall pass to the Buyer upon payment in full.
- 1.5. The Buyer shall arrange for the acceptance of the products in accordance with the agreed upon delivery schedule. In the event that the Buyer fails to so accept the products, Schmale LLC may, without further notice, arrange for storage. The Buyer shall be liable for all storage charges.
- 1.6. Any claim arising out of or in connection with the condition or quality or quantity of the products shall be made in writing to Schmale LLC in 2825 Cobb International Blvd, Ste 110, Kennesaw, GA 30152, within ten (10) days after the delivery of said products. A failure to present such claim within this period shall constitute a waiver of such claim.
- 1.7. If Buyer rejects or revokes acceptance of the products or fails to make payment due on or before delivery, or repudiates all or part of the contract for any products shipped, Schmale LLC may withhold delivery, or stop delivery of products or cancel the contract and/or sue for damages at Schmale LLC's exclusive option. If Buyer causes a delay in the delivery of products or any part thereof, Schmale LLC, at its exclusive option, may extend the period of delivery by a period reasonable in consideration of the circumstances, and, if the delay causes Schmale LLC substantial inconvenience, Schmale LLC has the right to cancel the

delivery of the products whose delivery is delayed. Schmale LLC reserves the right to recoup any expenses incurred or damages suffered by Schmale LLC as a result of such delays.

## **2. PRICES AND QUOTATIONS**

2.1. Prices are subject to change without notice, but any such changes shall not affect accepted orders scheduled for shipment within 30 days from the date the order is entered. Prices of products scheduled for shipment after that period shall be those as published and in effect at the time of shipment. However, Buyer may, by written notice within 5 days of receipt of the information on price increases, elect to cancel the order for said products.

2.2. Price quotations are firm for 30 days.

2.3. Prices in catalogs or brochures are not binding unless confirmed in writing by Schmale LLC in an order confirmation. Unless otherwise agreed in writing between the parties, all prices are net EXW Schmale LLC's or vendors and exclusive of packaging, transport, delivery, assembly, installation, initial commissioning and acceptance costs.

## **3. PAYMENT**

3.1. All orders will be invoiced upon shipment. Unless otherwise specified in a written order confirmation, payment shall be made to Schmale LLC within 15 days of the date of invoice. Unless otherwise agreed in writing, Schmale LLC reserves the right to submit invoices for partial shipments. Schmale LLC reserves the right for an advanced payment before shipping. Schmale LLC reserves the right for multiple down payments, especially when machines or customized products are ordered.

3.2. Schmale LLC may charge interest from the due date of payment at the rate of 1.5 % per month, or at the maximum lesser rate allowed by law. In the event of collection of the amount due by an attorney, Schmale LLC shall be entitled, in addition to such other relief as may be granted, to reasonable attorney's fees. All further rights and remedies are expressly reserved.

## **4. SECURITY INTEREST**

4.1. As security for the timely payment and performance of all amounts due by Buyer to Schmale LLC, Buyer hereby grants to Schmale LLC a first priority security interest (the "Security Interest") in the products following delivery thereof to Buyer ("Collateral"). The Security Interest shall remain in force until payment in full of the entire purchase price for the products and any other amounts due to Schmale LLC by the Buyer has been effected.

4.2. If so requested by Schmale LLC, Buyer shall deliver to Schmale LLC, in form and substance satisfactory to Schmale LLC, and duly executed as required by Schmale LLC, such financing statements and other security interest perfection documentation, duly filed under the UCC in all jurisdictions as may be necessary, or in Schmale LLC's opinion, desirable, to perfect Schmale LLC's Security Interest in the Collateral, in order to establish, perfect, preserve and protect the Security Interest as a legal, valid and enforceable security interest

and lien, and all property or documents of title, in cases in which possession is required for the perfection of the Security Interest.

## **5. SOFTWARE**

5.1. With respect to software incorporated into, or used in connection with, any products, Schmale LLC hereby grants Buyer a non-exclusive and non-transferable license to use such software in connection with the products for which the software was delivered. Such license shall not include any right to copy, modify, market, sublicense or distribute the software, to make the software available to any other person, whether on a time sharing basis or otherwise, or to create works derivative of the software.

5.2. Any software delivered to Buyer by or on behalf of Schmale LLC may not be reverse engineered, decompiled, decrypted or otherwise altered without Schmale LLC's prior written approval.

5.3. Buyer acknowledges and agrees that all title and interest, including all patents, copyrights and trade secret rights in software are the exclusive property of Schmale LLC or its licensors, if any, and that such software is licensed to Buyer by or on behalf of Schmale LLC and not sold to Buyer.

## **6. RETURN POLICY**

6.1. Returns for credit are not allowed without Schmale LLC's prior written consent. Only unused standard products in original packaging and suitable for resale will be considered for credit, provided that such products are received within 30 days of the original invoice date. Special order products (including but not limited to non-stocked items, specifically designed products, non-standard aggregates, special assemblies, machines, control systems, and electronic products) are not returnable for credit.

6.2. Credit will be based upon prices in effect at the time of return or time of invoicing, whichever price is lower, less deduction for handling, re-inspection, and less any additional expenses incurred in restoring goods to saleable condition, as determined by Schmale LLC's inspection. The restocking charge will be the higher of 20% of the purchase price invoiced for such products or Schmale LLC's documented costs and expenses in connection with restocking the returned products. All return shipping charges must be prepaid by the Buyer.

6.3. Products not accepted for credit (such as used or damaged products, or products with missing accessories or packaging materials) will be returned freight collect to Buyer, or become Schmale LLCs property after 30 days.

## **7. ORDER CANCELLATIONS**

Order cancellations by Buyer are subject to a reasonable charge, to be determined by and at the sole discretion of Schmale LLC. Orders for Special order products (as defined under section "Return Policy") may not be cancelled. A cancellation charge of the higher of 20% of the purchase price invoiced for such products or Schmale LLC's documented costs and expenses resulting from such cancellation will be applied to any order cancellation.

## **8. DESIGNS AND PUBLISHED DATA**

All designs and specifications are subject to change without notice. Such changes are not applicable to prior sales. Schmale LLC assumes no responsibility for changes to products already supplied. All data is sufficiently accurate for general use, however, any responsibility for errors or omissions is excluded. Certified prints are available on request at such charge as shall be in effect from time to time.

## **9. WARRANTY**

9.1. Schmale LLC warrants to Buyer that the products will be free of defects in material and workmanship appearing within 3 months from the date of shipment; provided the products are used for the purpose intended and are maintained, handled, serviced and operated in accordance with the written instructions and manuals supplied by Schmale LLC or the manufacturer of the products (or developer of the software). Moving parts and wear items like pneumatic cylinders, motors, bearings and such are excluded from warranty. In no case Schmale LLC offers longer warranty than the vendor of the product. If the vendor of the product offers shorter warranty than Schmale LLC offers in general, the shorter warranty term applies.

9.2. If a warranty defect arises, Schmale LLC will, at its option, repair or replace the defective part or product or refund the purchase price thereof. Such repair, replacement or refund shall be the sole liability of Schmale LLC and the sole remedy of Buyer with respect to the defective product. Schmale LLC will not be liable to remove defective parts or material, or install replacement parts or material, or to pay for the same. In no event shall any warranty claims be made more than three (3) months after delivery of the purchased products, unless otherwise noted in writing by Schmale LLC.

9.3. Schmale LLC shall have no responsibility to repair, replace or issue refunds for products damaged as a result of (a) inadequate installation, handling, operation or maintenance of products (including without limitation, the installation, handling, operation or maintenance of products contrary to written instructions and/or recommendations of Schmale LLC), or (b) acts of Buyer or third parties, acts of God or Nature, modification, misapplication, abuse, or other similar events.

9.4. Unless expressly warranted in Schmale LLC's order confirmation, Schmale LLC makes no warranty that the products comply with applicable law, regulations or specifications in any jurisdiction in which the products may be sold, marketed or used, except for the designated use in the United States, its states, territories and possessions. Any governmental or other approvals necessary in connection with the resale, marketing, distribution or use of the products shall be the sole responsibility of Buyer.

9.5. THIS WARRANTY IS PROVIDED IN LIEU OF ALL OTHER EXPRESS OR IMPLIED WARRANTIES; AND SCHMALE LLC SPECIFICALLY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. No agent, distributor or employee of Schmale LLC has authority to extend the scope of this warranty or make any other representation, promise or warranty with respect to the products.

## **10. LIMITATION OF LIABILITY**

10.1. IN NO EVENT SHALL SCHMALE LLC BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE DAMAGES OF ANY KIND, OR DAMAGES CAUSED BY DELAY IN PERFORMANCE, INCLUDING BUT NOT LIMITED TO LOST PROFITS OR REVENUE, COST OF SUBSTITUTES, ARISING FROM OR IN ANY WAY CONNECTED TO THIS AGREEMENT OR ORDER, WHETHER FOR BREACH OF WARRANTY OR OTHER BREACH OF CONTRACT, NEGLIGENCE OR OTHER TORT. SCHMALE LLC'S MAXIMUM LIABILITY FOR ANY CLAIMS ARISING FROM OR IN ANY WAY CONNECTED TO THIS AGREEMENT OR ORDER, WHETHER IN CONTRACT OR TORT OR OTHERWISE, SHALL NOT EXCEED 100,000 USD OR THE INVOICED PURCHASE PRICE OF THE PRODUCT(S) GIVING RISE TO THE CLAIM WHICHEVER IS LESS.

10.2. It is agreed and acknowledged that the provisions of these Terms allocate the risks between Schmale LLC and the Buyer in a fair and equitable manner, Schmale LLC's pricing reflects this allocation of risk, and but for this allocation and limitation of liability, Schmale LLC would not have agreed to sell the products to Buyer.

10.3. In jurisdictions that limit the scope of, or preclude limitations or exclusions of, remedies or damages or of liability such as liability for gross negligence or willful misconduct or do not allow implied warranties to be excluded, the limitation or exclusion of warranties, remedies, damages or liability set forth herein are intended to apply to the maximum extent permitted by applicable law.

## **11. INDEMNIFICATION**

11.1. Subject to the limitations set forth in these Terms, Buyer agrees to diligently defend, and hold harmless and indemnify, Schmale LLC and its directors, officers, employees, shareholders, affiliates, agents and representatives from and against any and all liability, claims, lawsuits, losses, demands, damages, costs and expenses, including, without limitation, attorney's fees and costs, expert's fees and costs, and court costs, (the "Losses") arising from any third party claim (i) due to any use of the products of any nature, except to the extent such Losses have been incurred as a direct result of a breach of Schmale LLC's warranty, Schmale LLC's willful and knowing infringement of the intellectual property rights of any third party, or Schmale LLC's gross negligence or willful misconduct, or (ii) arising out of any breach of any of Buyer's representations or covenants or other Terms contained in these Terms or any contract in which these Terms are incorporated or to which these Terms are attached or made part of, or (iii) arising out of the improper use, storage, handling, transportation, maintenance, modification or alteration of products by or on behalf of Buyer or any third party; or (iv) arising out of a design or specification which is provided by or on behalf of Buyer.

11.2. Each indemnitee shall notify the indemnitor in writing within 10 days of the receipt of any claim, suit or proceeding, including any incidents involving personal injury or damage to property. The indemnitee shall cooperate with the indemnitor with regard to the defense of any suit or threatened suit. In the event of a claim involving an accident or safety issue, the indemnitor shall make available all statements, reports and tests concerning the incident. The indemnitor may assume control of the defense of any such claim, proceeding or suit and shall have the authority to settle or otherwise dispose of any such suit or

threatened suit, and to appeal any adverse judgment which may be entered, except that the indemnitor shall obtain the indemnitee's prior written consent to any settlement.

## **12. PROPRIETARY RIGHTS**

All inventions (whether patented or not), methods, processes, know-how, layouts, models, designs, sketches, drawings, blueprints, patterns, trade secrets, copyrights, mask works, trade names, registered and unregistered trademarks and service marks, proprietary materials or other intellectual property and all improvements or modifications relating to any of the foregoing, incorporated into or in any manner associated with or attached to the products or otherwise provided to Buyer (the "Schmale LLC Intellectual Property") are and shall at all times remain the sole property of Schmale LLC or its Licensors. Buyer agrees not to (a) modify, translate, decompile, reverse engineer, copy or duplicate the Schmale LLC Intellectual Property, nor to remanufacture or have remanufactured any products which incorporate the Schmale LLC Intellectual Property, (b) to use any of Schmale LLC's trademarks, service marks or trade names in any manner without the prior written permission of Schmale LLC, or (c) to infringe, or permit a third party to infringe, any such Schmale LLC Intellectual Property or to adapt the products in any way or to create a derivative work of any of the Schmale LLC Intellectual Property, except as may be authorized in writing by Schmale LLC. Any act or omission of Buyer contrary to the provisions of this Section 12 shall be a material breach of these Terms.

## **13. FORCE MAJEURE**

13.1. Schmale LLC shall not be liable for delays in performing contractual obligations due, in whole or in part, to any contingency beyond its reasonable control, including acts of God, fires, pandemics, accidents, strikes, labor disputes, floods, wars, terrorism, sabotage, or governmental laws, ordinances, rules or regulations or any other events, occurrences or conditions beyond Schmale LLC's control.

13.2. If Buyer fails to accept delivery of any products due to reasons beyond Schmale LLC's control, Buyer shall nonetheless pay the purchase price for the products to Schmale LLC.

## **14. APPLICABLE LAW AND JURISDICTION**

14.1. This Agreement is governed by and construed in accordance with the laws of the State of Georgia, without regard to its conflict of laws principles. The application of the United Nations Convention on Contracts for the International Sale of Goods is excluded. BOTH SCHMALE AND BUYER KNOWINGLY, VOLUNTARILY AND IRREVOCABLY WAIVE ALL RIGHTS TO A JURY TRIAL IN ANY ACTION OR PROCEEDING RELATED IN ANY WAY TO THIS AGREEMENT. Each party agrees that claims and disputes arising out of this Agreement must be decided exclusively in a federal or state court of competent jurisdiction located in a state in which Schmale maintains its principal place of business. Each party submits to the personal jurisdiction of such courts for the purpose of litigating any claims or disputes.

14.2. Place of fulfilment shall be the place from which we render performance.

14.3. Should any provision of this Terms be or become invalid, this shall have no effect on the validity of the remaining provisions.

#### **15. NO ASSIGNMENT**

Buyer may not assign its orders or any contract in which these Terms are incorporated or to which these Terms are attached or made part of, or any right or interest herein or therein, or any other obligation arising hereunder or thereunder without the prior written consent of Schmale LLC.

#### **16. SEVERABILITY**

If any provision contained in these Terms is held by final judgment of a court of competent jurisdiction to be invalid, illegal or unenforceable, such invalid, illegal or unenforceable provision shall be severed from the remainder of these Terms, and the remainder of these Terms shall be enforced. In addition, the invalid, illegal or unenforceable provision shall be deemed to be automatically modified, and, as so modified, to be included in these Terms, such modification being made to the minimum extent necessary to render the provision valid, legal and enforceable. Notwithstanding the foregoing, however, if the severed or modified provision concerns all or a portion of the essential consideration to be delivered under these Terms by one party to the other, the remaining provisions of these Terms shall also be modified to the extent necessary to equitably adjust the parties' respective rights and obligations hereunder.

#### **17. MISCELLANEOUS**

17.1. In the event of a violation or threatened violation of Schmale LLC's proprietary rights, Schmale LLC shall have the right, in addition to such other remedies as may be available pursuant to law or these Terms, to temporary or permanent injunctive relief enjoining such act or threatened act. The parties acknowledge and agree that legal remedies for such violations or threatened violations are inadequate and that Schmale LLC would suffer irreparable harm.

17.2. The waiver by Schmale LLC of any breach or violation of these Terms by Buyer shall not be construed as a waiver of any other existing or future breach or breaches by Buyer.

17.3. The parties hereto are independent parties and nothing in these Terms will be construed as creating a joint venture, partnership, employment or agency relationship between the parties.

17.4. These Terms shall apply to all sales of products and services to Buyer and shall survive the termination or cancellation of any other agreements, including but not limited to development agreements, service agreements or supply agreements, between Schmale LLC and Buyer.

**Last Revised: January 1<sup>st</sup>, 2020**