

**HAYES MANUFACTURING, INC.**  
**STANDARD TERMS AND CONDITIONS OF SALE**

1. **Offer; Scope.** These general terms and conditions apply to all proposals, acknowledgments and/or invoices submitted by Hayes Manufacturing, Inc. or its affiliates ("Seller") for the sale of products and/or services ("Products"), to all related purchase orders, order releases and/or similar documents received by Seller for the purchase of Products, and to all Products sold by Seller, except as otherwise specifically provided in a document issued and signed by an authorized representative of Seller. For the avoidance of doubt, Seller's distributors and distributor representatives are not authorized representatives of Seller and no document issued or signed by Seller's distributors or distributor representatives shall be binding upon Seller. SELLER'S PROPOSALS AND QUOTATIONS ARE EXPRESSLY MADE CONDITIONAL ON BUYER'S ASSENT TO THE ADDITIONAL OR DIFFERENT TERMS SET FORTH BELOW WHICH REPRESENT THE SOLE AND EXCLUSIVE TERMS AND CONDITIONS UPON WHICH SELLER OFFERS TO SELL PRODUCTS TO BUYER. Seller's proposals and quotations, including (1) these terms and conditions and (2) any documents (such as drawings or other specifications) expressly and to the extent incorporated by reference therein, are referred to herein as the "Agreement." The Agreement also includes any amendments made from time to time by the parties, but these terms and conditions of sale shall not be amended, modified or rescinded, and no amendment, modification or rescission of the terms and conditions set forth herein will be binding upon Seller, unless such amendment, modification or rescission is agreed to in writing, makes express reference to amending these terms and conditions, and is signed by the President of Seller through Seller's office in Michigan. Buyer's acceptance of the Agreement is limited to acceptance of the terms and conditions set forth herein. Any proposal for additional or different terms or any attempt by Buyer to vary in any degree any of the terms of this Agreement in Buyer's acceptance are hereby objected to and rejected by Seller. THE TERMS OF THIS AGREEMENT ARE EXCLUSIVE.

2. **Invoicing and Pricing.** Prices for Products shall be as quoted by Seller (FOB Seller or Seller's designated plant or warehouse), or as otherwise mutually agreed in writing. Quoted prices are based on current costs, including costs of purchased components and raw materials. If, at any time after the date of quotation or proposal, Seller's costs of purchased components or raw materials in the Products increases by any amount or if any surcharge is assessed on such purchased components or raw materials, then, in addition to the Product price, Buyer will pay such additional purchased component or raw material cost or surcharge effective as of the date such increase or surcharge is levied upon the Seller. Payment terms are as quoted by Seller or specified on Seller's invoice or as otherwise agreed by the parties in writing. Maximum interest rate permitted by applicable law shall be assessed for each month payment is overdue on the invoice. Buyer shall be liable for all costs of collection, suit, and reasonable attorney's fees. Any tax, duty or related charge which Seller is required to pay to or collect for a governmental authority with respect to services rendered or the sale, use or delivery of Products shall be billed to Buyer as a separate item, in addition to the prices provided for herein, and paid by Buyer unless a valid blanket exemption certificate or signed purchase order marked "For Resale" is furnished by Buyer to Seller. In the event Buyer requests changes to Products after the date of quotation, Seller may unilaterally increase prices to cover increased costs (plus reasonable overhead and profit) associated with such changes. Where applicable, Seller may add to the price and Buyer agrees to pay for the price of additional Products or portions of Products made necessary by incomplete or inaccurate information supplied by the Buyer. Buyer shall be liable for the price of all Products substantially conforming to the Agreement, notwithstanding that Buyer may not have accepted or may have revoked acceptance of same. In no event shall Buyer be entitled to deduct, counterclaim, hold back or set off against the price of Products, or against any other amount owing under the Agreement or otherwise, any damages, liquidated damages, liens, claims or alleged claims arising out of the Agreement or any other transaction with Seller. Seller shall have the right to stop delivery if Buyer is in arrears with payment. Seller may demand, at any time, assurance of Buyer's due performance hereunder, including, without limitation, demanding that one or more deposits, letters of credit or other assurances be provided by Buyer. Upon making such demand, Seller may suspend production, shipment and/or deliveries until Buyer has provided such assurances. If, within the period stated in such demand, but in no event longer than 30 days, Buyer fails to give adequate assurances of due performance, Seller may, in its sole discretion and without any requirement to do so, treat such failure or refusal as a repudiation by Buyer of the portion of the Agreement not then fully performed, whereupon Seller may cancel all further deliveries and any amounts unpaid hereunder shall immediately become due and payable, or make shipment under reservation of a security interest and demand payment against tender of documents of title.

3. **Acceptance.** Buyer shall accept any tender of Products which substantially conforms to the description of the Products set forth in the Agreement. Seller's standard acceptance procedures conducted by Seller's representative shall be the criteria for inspection and/or acceptance, unless other specific procedures have been specified in the Agreement. Buyer shall be deemed to have accepted drawings, specifications, technical documentation, samples, prototypes and Products unless Buyer gives Seller notice in writing stating with specificity all defects and nonconformities upon which Buyer will rely to support its rejection within five (5) days after receipt of the item. Failure to so act shall constitute an irrevocable acceptance of the Products by the Buyer. ALL DEFECTS AND NON-CONFORMITIES WHICH ARE NOT SO SPECIFIED ARE WAIVED. If the Buyer rejects any tender of the Products or other items and if requested by Seller, Buyer shall return them to the Seller, pursuant to Seller's directions. In the case of Buyer acceptance of non-conforming Products, Buyer shall immediately notify Seller whether or not Buyer will continue to accept similarly non-conforming Products and failure to do so shall constitute a waiver by Buyer of specification requirements for said Products. In any event, if any Products have been altered from their original state, Buyer shall be deemed to have accepted such Products. Buyer's acceptance of Products tendered under this Agreement shall be final and irrevocable. No attempted revocation of acceptance shall be effective, and Buyer shall be limited to the remedies specifically provided in the Agreement. In respect of items manufactured by Seller to Buyer's requested, furnished, accepted or approved specifications, instructions or design, Buyer shall defend and indemnify Seller, its successors, officers, directors and agents against, and hold them harmless from, any and all claims, losses or expenses (including attorney fees) arising or alleged to arise, in whole or in part, from the manufacture, sale or use of the Products, including, but not limited to, infringement, products liability and other alleged torts. Seller may charge Buyer a restocking charge equal to twenty-five percent (25%) of the invoice price of returned Products. Returned Products must be returned to Seller in the original packaging and Buyer must first obtain a written consent from Seller to return the Products. Seller may offset the restocking charge against any amounts Seller owes to Buyer.

It is expressly understood that any technical advice furnished by Seller with respect to the production or use of its Products is given without charge, and Seller assumes no obligation or liability for the advice given or results obtained, all such advice being given or accepted at Buyer's risk. Seller is not an engineering firm. Any issues, concerns, specifications or requirements for Buyer's use of the Products is beyond Seller's knowledge and Buyer agrees no reliance is given to any suggestion or advice given by Seller. Buyer represents that it has consulted with or had an opportunity to consult with engineers and any such other expert or specialist and has satisfied itself that the specifications required for the Products ordered are satisfactory for its use. Seller has not been provided with and has made no advice, recommendations or representation that the Products specified are adequate for the purpose Buyer intends.

4. **Delivery and Returns.** The Agreement shall be a shipment contract, and the Products shall be delivered EXW (Incoterms 2000) Seller's designated facility, unless otherwise provided in the Agreement. Whether or not Seller prepays shipping charges, title to Products delivered hereunder and risk of loss thereon shall pass to Buyer on the earliest of (i) the date of payment by Buyer for such Products and (ii) when Seller or its agent delivers such Products to a common carrier or licensed trucker consigned to Buyer or its agent, but such shipment shall remain subject to Seller's rights of stoppage in transit, rights of reclamation and other legal rights of Seller. Seller's breach of the Agreement shall not affect the passing of the risk of loss to Buyer notwithstanding any provision of law to the contrary. Whether or not title has passed to Buyer, all risk of loss or damage to the Products or to materials, supplies, equipment or scaffolds shall rest solely on Buyer, including loss or damage due to vandalism or theft, upon the date of delivery of such materials to Buyer.

When a shipping/delivery date is specified by Seller, that date reflects Seller's estimate for the probable time required for completion of Buyer's order, based on Seller's then-current workload, raw material and labor availability, engineering and manufacturing capacity and scheduling. All shipping dates are approximate and shall be computed from the date of entry of the order on Seller's books. All shipping/delivery dates are further subject to Seller's prompt receipt from Buyer of all drawings, information and approvals necessary to provide the Products and satisfaction of any other conditions under the Agreement. Seller shall not incur liability of any kind whatsoever for failure to ship on any particular date. Buyer shall pay all handling and other charges incidental to transportation of the Products.

If shipment of any Products or other performance by Seller is delayed at the request of or due to the fault of the Buyer, the Seller may at its option hold the Products at the place of manufacture at the risk and expense of the Buyer from the time the Products are ready for shipment. In the event of any such delay to shipment, full and final payment for an item shall be due and payable thirty (30) days after the Buyer is notified that the item is ready for shipment and an invoice issued for such Products. If the Seller is unwilling to accommodate the Buyer by holding such item, then Buyer agrees to accept shipment immediately. Delivery rescheduled at Buyer's request, if agreed to by Seller, is subject to an additional charge of 2% of the selling price if rescheduled within ten (10) days immediately preceding the then-current scheduled delivery date, which will be invoiced at the time of shipment.

If Buyer fails, with or without cause, to furnish Seller with instructions for, or refuses to accept deliveries of, any of the Products sold under the Agreement, or is otherwise in default under or repudiates all or any part of the Agreement or any other agreement with Seller, or advises Seller that it will default in the performance of any of its obligations, or fails to pay when due any invoice under the Agreement or any other agreement with Seller, or if any action is started by or against Buyer seeking the appointment of a trustee or receiver or the entry of an order for debtor's relief for Buyer, then, in addition to any and all remedies allowed by law, Seller may, without notice: (1) bill and declare due and payable amounts for all undelivered Products, work in process and raw material under the Agreement and/or any other agreement between Seller and Buyer, (2) cease performance of its obligations and defer shipment under the Agreement and/or any other agreement between Buyer and Seller until such default, breach or repudiation is removed, (3) cancel any undelivered portions of the Products and/or any other agreement with Buyer in whole or in part, and/or (4) recover Products in transit or delivered, retrieve delivered Products, repossess all Products which may be stored by Seller for Buyer's account and otherwise enforce its remedies for Buyer's default. Buyer shall remain liable for all damages suffered or incurred by Seller in any such circumstances, including, without limitation, for work in process and raw material. Seller shall be awarded incidental damages including, without limitation, reasonable profits and costs such as actual reasonable attorney fees in any proceeding to enforce its remedies in which it obtains relief for damages or injunctive relief. All rights granted to Seller in the Agreement and by law are cumulative, provided Seller shall be entitled to only a single full recovery.

No return from Buyer of product will be accepted without Buyer first obtaining a Return Material Authorization (RMA) issued by Seller.

5. **Limited Express Warranty.** Seller warrants to Buyer only, subject to the limitations and disclaimers of this Agreement, that the Products covered hereby shall be free from defects in workmanship and materials and shall conform to specifications identified in Seller's order acknowledgment and agreed to in writing by Seller when delivered to Buyer in accordance herewith. Products which are supplied by other vendors and which are resold by Seller hereunder without alteration or change shall only have (1) the warranty furnished by said vendor, which, to the extent possible, Seller passes on to Buyer, and (2) Seller's warranty that the Products are furnished free and clear of any liens of third parties created by Seller. Seller retains the right to change the dimensions, composition, design, performance, color and appearance of the Products without liability if, in its judgment, the change is immaterial. The foregoing warranty is conditioned upon (i) installation, maintenance and normal use in conformity with instructions furnished by Seller from time to time, if any, and (ii) the Products not having been subjected to misuse, neglect, or accident, or to alteration, improper assembly or installation, modification repair, improper testing, handling, use or soldering in any respect which, in the judgment of Seller, adversely affects the condition or operation of the Products. The foregoing warranty shall not cover defects arising from designs which do not adhere to accepted industry design rules or artwork, either received by or generated by Seller, which are found to be incorrect due to incompleteness, incorrect revision level, ambiguity, or any other reason. Seller shall not be liable for any value added such as component costs, assembly, or test. Seller's sole obligation to Buyer hereunder, and the sole and exclusive remedy of Buyer for breach of warranty shall be, at Seller's discretion, to replace the nonconforming product or issue Buyer credit for the purchase price of the nonconforming Product, where within the warranty period: 1) Seller has received written notice of any nonconformity, and 2) after Seller's written authorization to do so Buyer has returned the nonconforming Product to Seller's, freight prepaid, and 3) Seller has determined that the Product is nonconforming and that such nonconformity is not a result of misuse, mishandling, neglect, accident, improper assembly, modifications, soldering, or other misuse by Buyer.

6. **Express Warranties Relating to Patents, Other Intellectual Property Rights.** Seller will indemnify Buyer only against and defend all suits and pay all damages and costs finally adjudicated against Buyer for infringement of United States patents by Products purchased under the Agreement; provided that Buyer will promptly notify Seller in writing of any claim asserted and suit or action brought against Buyer alleging that the Products purchased under this Agreement infringe one or more United States patents, and provide Seller with assistance and information requested by Seller for its defense, and provided that the indemnity of Seller hereunder shall not extend to (1) Products which are supplied by other vendors and which are resold by Seller hereunder without alteration or change and which shall only have the warranty furnished by said vendor (which, to the extent possible, Seller passes on to Buyer), and (2) claims, suits or actions for infringement based upon the use of any Products in

combination with apparatuses, circuits or devices not furnished by Seller or upon the use of any such combination, or based upon the application or use to which such Products are put, including any application or process performed or facilitated by such Products ("Excluded Claims"). Seller shall defend with its counsel or other counsel of its choice and shall have the sole right, without consultation with Buyer, to take all action Seller deems appropriate to prosecute or settle such claims. Buyer shall not be entitled to indemnification or contribution from Seller with respect to any Excluded Claims, and Buyer will indemnify Seller against and defend all suits and pay all damages and costs awarded against Seller arising out of any such Excluded Claims. In addition, Buyer will indemnify Seller against and defend all suits and pay all damages and costs awarded against Buyer with respect to claims of infringement for Products manufactured wholly or partially to Buyer's design, instructions or specifications. Notwithstanding the foregoing, Seller shall have the right, in its sole discretion and at its expense, either to (a) procure for Buyer the right to continue using such Products, (b) replace such Products with non-infringing products and services of at least equal function and quality, (c) modify such Products so that they become non-infringing, or (d) request the return of such Products and refund the purchase price less an allowance for depreciation and shipping costs thereof. THE FOREGOING EXPRESSES THE ENTIRE OBLIGATION AND LIABILITY OF SELLER WITH RESPECT TO INFRINGEMENT OF PATENTS BY SAID PRODUCTS.

**7. Limitation of Warranty; Limitation of Liability; Remedies; Indemnification.** THE FOREGOING LIMITED WARRANTIES AND REMEDIES ARE EXCLUSIVE AND ARE MADE EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR USE AND NON-INFRINGEMENT. SELLER NEITHER ASSUMES NOR AUTHORIZES ANY OTHER PERSON TO ASSUME FOR SELLER ANY OTHER WARRANTY OR LIABILITY IN CONNECTION WITH THE SALE, INSTALLATION OR USE OF PRODUCTS AND SELLER MAKES NO WARRANTY WHATSOEVER FOR PRODUCTS NOT MANUFACTURED BY SELLER. SELLER SHALL NOT BE LIABLE FOR DAMAGES DUE TO DELAYS IN DELIVERIES OR USE. NOTWITHSTANDING ANYTHING SET FORTH IN THIS AGREEMENT AND TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT SHALL SELLER BE RESPONSIBLE OR LIABLE TO BUYER, TO BUYER'S CUSTOMERS, OR TO ANY OTHER PERSON, FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, SPECIAL, CONTINGENT OR PUNITIVE DAMAGES OF ANY KIND, WHETHER ARISING FROM CONTRACT (FOR EXAMPLE, IN CONNECTION WITH ANY BREACH OF WARRANTY OR OTHER BREACH OF SELLER'S OBLIGATIONS UNDER THIS AGREEMENT), TORT OR NEGLIGENCE, INCLUDING BUT NOT LIMITED TO ANY LOSS OF PROFITS OR GOODWILL OR OVERHEAD OR LIKE DAMAGES, AND SELLER'S AGGREGATE LIABILITY FOR ANY DAMAGES OR CLAIMS ARISING OUT OF OR RELATING IN ANY WAY TO THIS AGREEMENT OR ANY PRODUCTS SUPPLIED OR TO BE SUPPLIED UNDER THIS AGREEMENT SHALL IN NO EVENT EXCEED THE AMOUNT BUYER PAID FOR THE PRODUCT(S) GIVING RISE TO THE CLAIM OR DAMAGES. Buyer waives any causes of action or theories of liability including, but not limited to, those arising under contract, tort, strict liability, product liability, statutes or otherwise, except as specifically provided by the UCC as modified and limited herein. Buyer further waives any right of implied contractual or common law indemnity against Seller for any claim, including, but not limited to, liability for claims for damages to person or property arising out of the use of Products sold to Buyer under this Agreement.

Buyer shall indemnify, defend and hold harmless Seller, and Seller's parent, subsidiary and affiliate companies, and their respective shareholders, officers, directors, employees, representatives and agents, from and against any and all third party claims, damages and expenses (including reasonable attorney fees) under theories of tort, product liability, negligence (ordinary or gross), warranty, contract, statute or otherwise arising out of the use, storage, sale, processing or other disposition of the Products, supplies or materials used in connection with the Products or parts manufactured with the Products if (1) the action or inaction of Buyer or its employees, customers or agents, or Buyer's design, instructions or specifications, were a material or proximate cause of injuries or damages giving rise to claims against Seller, and/or (2) the claim asserted is inconsistent with the limitation of warranties, limitation of liability, and/or limitation of remedies provisions set forth in this Agreement. Any proceeding by the Buyer arising from or in connection with these general terms and conditions and the transactions contemplated herein cannot be filed or maintained unless it is commenced within one (1) year of the receipt of the Products to which such claim relates.

**8. Cancellation by Buyer.** If Buyer cancels shipment of any purchase order or a portion of any purchase order or reschedules without prior agreement by Seller, any purchase order or a portion of any purchase order, 100% of the invoice charges shall apply and be assessed against Buyer unless otherwise agreed to in writing by an authorized officer of Seller.

**9. Confidential Information.** Unless otherwise agreed, Buyer acknowledges that any information disclosed to Seller is subject only to Buyer's patent rights, without any other restrictions on Seller's use, including reproduction, modification, disclosure or distribution of the information. Buyer agrees not to label any such information with a notice asserting that the information is proprietary or confidential to Buyer. In addition, Buyer agrees not to assert any claim (other than a claim for patent infringement) against Seller, Seller's customers, or their respective suppliers, with respect to any information that Buyer has disclosed or may disclose to Seller in connection with the Products.

Buyer shall consider and treat all Information (as defined below) as confidential and shall not disclose any Information to any other person, or use any Information itself for any purpose other than pursuant to and as required by this Agreement, without Seller's prior written consent. Seller retains all rights with respect to the Information, and Buyer shall not acquire, nor attempt to obtain, any patent, trademark, copyright, license or other rights in respect of the Information. Buyer shall not allow any Information to be reproduced, communicated or in any way used, in whole or in part, in connection with services or goods furnished to others, without Seller's prior written consent. For the purposes of this Agreement, "Information" means all drawings, reproductions, specifications, designs, engineering instructions, photographs, reproducible copy, parts lists, plans, reports, working papers, computations and other information furnished by Seller and shall include all terms and conditions and any other information relating to this Agreement. Any invention or other information, whether patentable or not, developed by Seller in the performance of the Agreement shall remain the property of Seller. Seller shall be under no obligation to refrain from using in its business any of Seller's proprietary information disclosed to Buyer under this Agreement.

**10. Force Majeure.** Neither party to this contract shall be responsible or liable to the other party or to any third party for any damages, including without limitation, incidental and consequential damages, arising out of, nonperformance or delay in performance of the terms and conditions herein due to acts of God, wars, riots, strikes, unavailability of suitable and sufficient labor, materials, capacity or technical or yield failures and any unforeseen event or event beyond its control. The anticipated delivery date shall be deemed extended for a period of time equal to the time lost due to any delay excusable under this provision. Seller shall be entitled to an extension of time for commercially reasonable delays.

**11. Cancellation for Default.** Any order may be canceled in whole or in part due to Seller's failure to deliver product in accordance with these terms and conditions, provided that such default shall be effective only upon Seller's failure to correct it within a reasonable period of time, but in no case in less than ten (10) days.

**12. Assignment.** Buyer shall not assign this contract or any interest therein or any rights thereunder without the prior written consent of Seller, and any purported assignment without such consent shall be void.

**13. General.** This contract constitutes the entire agreement between the parties and supersedes all prior agreements and understanding between them relating to the subject matter hereunder and no modifications of this contract shall be binding on either party unless it is in writing and signed by both parties. No waiver of any provision of this contract shall be effective unless made in writing. No waiver of any breach of any provision of this contract shall constitute a waiver of any subsequent breach of the same or of any other provision of this contract. Buyer and Seller agree that this contract is made and entered into in the State of Michigan, and shall be governed by, subject to, and construed in accordance with the laws of the State of Michigan. Buyer and Seller consent to jurisdiction of a state or federal court located in or closest to Grand Traverse County, Michigan to resolve any claim or controversy arising from or in any manner related to the transaction documented in this contract. The United Nations Convention on Contracts for the International Sale of Goods is hereby excluded and shall have no effect on the Agreement. Section headings are for convenience only and shall not be considered in the interpretation of this contract. The provision of this contract are severable and if any one or more such provisions are judicially determined to be illegal or otherwise unenforceable, in whole or in part, the remaining provisions or portions of this contract shall nevertheless be binding on and be enforceable by and between the parties.

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