



**HABCO INDUSTRIES, LLC  
("HABCO")**

**STANDARD TERMS AND CONDITIONS OF SALE  
PERTAINING TO COMMERCIAL CONTRACTS FOR PRODUCTS**

**1. TITLE, DELIVERY, RISK OF LOSS AND SHIPPING**

1.1 Except for those transactions described in Section 1.2, title to and risk of loss of all goods sold hereunder by HABCO will pass to Customer with shipping terms free on board (F.O.B.) shipping-point ("Delivery"), at which time title and risk of loss or damage shall pass to Customer, and Customer shall insure accordingly. Each Delivery shall stand as a separate contract and the failure of any Delivery shall not be deemed a breach of the contract as to others. Customer shall be responsible for paying all freight and handling charges relating to any purchased Product and HABCO shall add such freight charges to, and include such freight charges on, the invoices. Customer will notify HABCO upon placing the order if they would like to pick up the goods. If so, the Customer will pick up the goods within ten (10) days of being notified that the goods are ready for shipment. If Customer does not do so, HABCO may, at the sole risk and expense of Customer: (a) ship the goods by a carrier of HABCO's selection to Customer's place of business or another destination that HABCO believes to be suitable; or (b) warehouse the goods.

1.2 In the case of transactions requiring export documentation, title to and risk of loss of such goods sold hereunder by HABCO shall pass to Customer upon their delivery, which shall occur at an international airport in the destination country at the time they are unloaded but prior to clearing through customs. HABCO shall be exporter of record and shall be responsible for maintaining any export documentation required for shipment out of the United States. Consistent with Section 9 below, Customer shall be responsible for any import documentation and/or customs duties required for importation into the destination country. HABCO and Customer shall provide any necessary information to each other to accomplish the foregoing. HABCO shall arrange transportation from HABCO's manufacturing facility to the destination airport, consistent with Customer's shipping instructions at Customer's expense using a commercially reasonable carrier.

**2. CUSTOMER'S INSPECTION OF GOODS**

Customer will inspect all goods within twenty (20) days of receipt from HABCO and will notify HABCO within ten (10) days thereafter of any defects in the material or manufacture of the goods. Customer will not bring any claim relating to any defects which were or which could or should have been discovered during such inspection and about which Customer did not notify HABCO within the prescribed time.

**3. WARRANTIES, REMEDIES AND LIMITATIONS**

3.1 HABCO warrants to Customer that the goods sold hereunder will be free from defect in material and manufacture. This warranty terminates ninety (90) days after the Customer first operates the goods or one (1) year after the goods are delivered to the Customer by HABCO, whichever first occurs (the "Warranty Period").

3.2 If HABCO breaches the warranties set forth in Section 3.1, HABCO will provide to Customer the remedy set forth in Section 3.3, provided that Customer has given written notice of any such breach to HABCO within the Warranty Period.

3.3 HABCO's liability and Customer's remedy under the warranties set forth in Section 3.1 are limited to HABCO repairing or replacing, at HABCO's election, goods returned to HABCO's designated facility. HABCO will bear transportation charges and the risk of loss for the return to HABCO of such goods if Customer returns them in accordance with HABCO's written shipping instructions.



3.4 IF ANY PORTION OF THE CONTRACT IS NOT ABLE TO BE PERFORMED ON TIME DUE TO DELAYS CAUSED BY THE CUSTOMER, HABCO WILL INVOICE AND THE CUSTOMER AGREES TO PAY IN FULL FOR THE DELAYED PORTION(S) OF THE CONTRACT WITHIN 30 DAYS OF THE DELAY. IF CUSTOMER DELAY IS EXTENDED PAST 14 DAYS OF CONTRACT SHIP DATE, HABCO WILL INVOICE IN FULL FOR REMAINING LINE ITEMS ON THE CONTRACT, AND CUSTOMER WILL BE CHARGED AN APPLICABLE WEEKLY STORAGE FEE UNTIL THE PROJECT IS COMPLETED AND DELIVERY OR UNTIL OTHER ARRANGEMENTS ARE MADE. 3.4 THE FOREGOING WARRANTIES ARE EXCLUSIVE AND ARE GIVEN AND ACCEPTED IN LIEU OF (A) ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE; AND (B) ANY OBLIGATION, LIABILITY, RIGHT, CLAIM, OR REMEDY IN STATUTE, CONTRACT, TORT OR STRICT LIABILITY AGAINST HABCO OR ITS AFFILIATES, WHETHER OR NOT ARISING FROM THE NEGLIGENCE, ACTUAL OR IMPUTED, OF HABCO OR ITS AFFILIATES, STOCKHOLDERS, DIRECTORS, OFFICERS, EMPLOYEES, ASSIGNS AND AGENTS.

3.5 HABCO WARRANTS TO CUSTOMER THAT HABCO WILL CONVEY GOOD TITLE TO ALL GOODS SOLD OR EXCHANGED BY HABCO HEREUNDER. HABCO'S LIABILITY AND CUSTOMER'S SOLE REMEDY UNDER THE WARRANTY SET FORTH IN THIS SECTION ARE LIMITED TO REMOVING ANY TITLE DEFECT OR, AT THE ELECTION OF HABCO, REPLACING ANY SUCH GOODS THAT ARE DEFECTIVE IN TITLE, SUBJECT TO THE CONDITIONS IN SECTION 3.4

#### 4. LIABILITY LIMITATION

The price allocable hereunder to any goods alleged to be the cause of any loss or damage to Customer will be the total ceiling limit on the liability of HABCO, whether founded in statute, contract, tort (including negligence), or strict liability, or any other theory, arising out of or resulting from: (a) this Agreement or the performance hereunder or breach hereof; or (b) the design, manufacture, delivery, sale, furnishing, replacement or use of any goods sold by HABCO. In no event will HABCO, have any liability for any indirect, incidental, special, consequential or punitive damages.

#### 5. CHANGES

5.1 HABCO may, at its option, modify Customer's order where necessary by making any of the following changes: (a) substituting the latest or correct part numbers or part description for the part numbers or part description set forth on the order; (b) substituting correct prices in accordance with HABCO's current pricing policy (as set forth in the HABCO Commercial Parts Support Price List) for the prices set forth on the order; and (c) substituting an estimated delivery schedule which is reasonable (considering HABCO's stock availability and lead time) for the delivery schedule set forth on the order.

5.2 Except as otherwise stated in Section 5.1 above, no modification of this Agreement will be binding unless agreed to in writing and signed by both Customer and HABCO.

5.3 No Customer Purchase Order shall be considered accepted or valid until an Order Acknowledgement has been provided by HABCO to the Customer. HABCO has the right to refuse any order that does not meet the intent or conditions as set forth in these Terms and Conditions.

#### 6. TAXES AND OTHER CHARGES

In addition to the agreed purchase prices set forth in this Agreement, Customer will pay to HABCO, upon HABCO's demand, any and all taxes, customs and duty fees and similar charges (but not including any income or excess profit taxes) that any foreign or domestic taxing authority may impose arising from the sale, delivery or use of any goods sold or exchanged hereunder and for which HABCO may be held responsible for collection or payment either on its own behalf or that of Customer or any end user. Customer will be responsible for any and all interest and penalties relating to the non-payment or late payment of such taxes in any jurisdiction. HABCO reserves the rights to, and Customer waives any interest in, drawback of any duty and/or refunds of any fees paid by HABCO, and Customer will assist HABCO in



obtaining same. Customer has not and will not assign the right to claim drawback on the particular exportation to any other party.

## 7. INVOICES AND PAYMENT

7.1 If, before completion of performance by HABCO of this Agreement, or at any time thereafter, (a) Customer becomes unable or refuses to make payment to HABCO in accordance with any of Customer's obligations to HABCO, (b) a receiver or trustee is appointed for any of Customer's property, or (c) Customer becomes insolvent or makes an assignment for the benefit of creditors, or takes or attempts to take the benefit of any insolvency act, or any execution is issued pursuant to a judgment rendered against Customer, HABCO may, at its option in any of such events and without prejudice to any of its other remedies, retain possession of all goods in the possession of HABCO until HABCO receives all payments due from Customer and/or may terminate this Agreement by giving to Customer written notice of HABCO's intention so to do. HABCO will thereupon be relieved of any further obligations to Customer and Customer will reimburse HABCO for its termination costs and expenses and a reasonable allowance for profit.

7.2 HABCO retains the right, based on order value and Purchase Order conditions, to institute a progressive payment schedule or a percentage of total purchase value, to be paid up front and as agreed with the Customer, prior to Order Acknowledgement. These payment terms set forth in the sales order acknowledgement shall supersede and take precedence over any previously agreed payment terms with the Customer and are determined on a contract by contract basis.

7.3 If HABCO determines, since the date of execution of this Agreement, that there has been any material adverse change in the financial condition, business operation, or condition of the Customer or any subsidiary which has a material adverse effect on the ability of Customer to perform its obligations pursuant to this Agreement, HABCO may terminate this Agreement in its sole discretion. The conditions as set forth below and in other sections of this agreement, and at the discretion of HABCO, may supersede any customer terms at time of purchase.

7.3.1 CUSTOMERS WITH TERMS: Invoices are due net 30 and payable, net cash, on the date specified on the relevant invoice ("Due Date"). HABCO may charge interest on the overdue amount at the rate of one and one-half percent (1.5%) for each thirty (30) day period or portion thereof (but not more than the maximum rate of interest allowed by applicable law), from the Due Date until the date on which HABCO receives payment in full. Customer agrees that if it fails to pay when due any amount owed to HABCO, Customer will also reimburse HABCO for all costs that HABCO incurs to collect such unpaid amount. If HABCO determines that Customer's financial condition has materially changed, or if Customer fails to pay to HABCO when due any amount owed, HABCO will have the right to specify alternative payment terms which will supersede the payment terms specified in this Agreement. For transactions requiring export documentation, HABCO shall issue its invoice for such goods to Customer when such goods leave HABCO's manufacturing facility.

CREDIT CARD PAYMENT: HABCO accepts MasterCard, Visa and American Express. HABCO reserves the right to change the list of accepted credit card types without notice at any time. If Customer order qualifies for credit card payment, there will be a credit card authorization form that can be requested from your HABCO sales agent. Fill out the form and return to your sales agent via fax or email. For each transaction, in addition to the charge the Customer has authorized, your credit card issuer and network may assess their customary transaction or handling charge, if any. If a charge is declined or reversed by the credit card issuer or network, Customer agrees to pay HABCO a service charge and to reimburse us for all reasonable costs of collection. Customer credit card issuer may also assess its customary charge for such transactions.

PAYMENT BY CHECK: HABCO accepts payment by a pre-approved company check or a certified bank check. Pre-approval can be obtained through HABCO finance by contacting your HABCO sales agent. Any check that incurs transaction fees, for any reason, may be subject to additional service charges to cover ancillary costs.



**WIRE TRANSFER OF FUNDS:** Wire Transfers are accepted by HABCO for all invoices. Any and all bank fees related to the transfer of funds is the responsibility of the sender. Additional bank or handling fees incurred by HABCO will be the responsibility of the sender. Wire transfer instructions will be provided on invoices as required.

**PAYMENT IN ADVANCE:** Advanced payment is required for all new accounts unless otherwise agreed in writing. Credit terms are not guaranteed and Payment in Advance will stay in full force until a time in which terms can be established. Credit Card, Payment by Certified Check and Wire Transfer are all acceptable methods for Payment in Advance.

7.4 If Customer reasonably disputes any portion of an invoice, Customer will be required to pay the undisputed portion immediately, and interest on the disputed portion only will be waived until the dispute is resolved.

7.5 HABCO may set off any amount that Customer owes HABCO against any credits, deposits or other amount that HABCO owes Customer. Any credits available to Customer under this Agreement shall expire three (3) years from the date such credit was earned, and upon expiration, any and all remaining unclaimed credits are null and void. For the purposes of this Agreement, a credit is earned on the date Customer is eligible to request the issuance of the credit and HABCO becomes obligated to pay such credit. Credits shall not be subject to escalation or interest.

Customer may not offset against any amounts owed to Customer, unless agreed to in writing by HABCO.

## 8. EXCUSABLE DELAYS

Customer will not hold HABCO responsible for any delays or non-deliveries that are caused by circumstances beyond HABCO's reasonable control including, without limitation, delays of Customer, suppliers, force majeure or the public enemy, compliance in good faith with any applicable foreign or domestic governmental regulation or order whether or not it proves to be invalid, fires, riots, labor disputes, litigation, court order or other legal action or unusually severe weather.

## 9. EXPORT

9.1 The export and re-export of goods and related technical information under this Agreement are subject to the export laws of the United States of America. Customer will be responsible for applying for, obtaining and maintaining all required export licenses and approvals and complying with all applicable export reporting requirements. HABCO does not guarantee the issuance of such licenses or their continuation in effect once issued. It will be a condition precedent to HABCO's obligations hereunder that all necessary and desirable export licenses and approvals will be timely granted and continue in effect during the term of this Agreement.

9.2 Customer agrees that it will not, directly or indirectly, export or re-export any goods or technical information received from HABCO to any destination if such export or re-export would violate the laws of the United States of America. Customer agrees to indemnify and hold HABCO harmless against any liability arising from any breach of Customer's obligations under this Article 9.

## 10. CONFIDENTIALITY

Each of HABCO and Customer (each, a "Party"; collectively, the "Parties") agree that the terms of this Agreement are confidential unless otherwise agreed in writing. Each Party agrees to limit disclosures of such confidential information only to persons who have a need to know within their own organizations and third parties that are suppliers of HABCO or participate with HABCO in the manufacture, sale and support of HABCO products. Should either Party be subject to a legal action or proceeding or a requirement under applicable government regulations to disclose such confidential information ("Obligated Party"), the Obligated Party shall forthwith notify the other Party, and upon the request of the other Party, shall cooperate with the other Party in contesting such disclosure.



#### 11. PRESS RELEASE

HABCO or its designated affiliate may issue a press release announcing that Customer has selected HABCO or its designated affiliate to supply the goods described in this Agreement.

#### 12. ASSIGNMENT

Neither Party may assign its rights or delegate its obligations under this Agreement, in whole or in part, without the prior written consent of the other Party, except that HABCO may, without recourse, assign its rights and/or delegate its obligations under this Agreement to any subsidiary or affiliate of HABCO Industries, or in connection with the merger, consolidation, reorganization or voluntary sale or transfer of its assets. Any assignment or delegation made in contravention of this provision will be invalid.

#### 13. GOVERNING LAW AND DISPUTE RESOLUTION

The Parties agree that this Agreement will be governed by and construed and enforced in accordance with the substantive laws of the State of Connecticut, United States of America, except that the United Nations Convention on Contracts for the International Sale of Goods will not apply. The Parties agree to the exclusive jurisdiction of the state and federal courts of general jurisdiction of the State of Connecticut and agree not to commence any suit or proceeding, whether directly or indirectly relating to or arising from this Agreement, except in such courts. If Customer or any of its property is entitled to any immunity from legal action on the grounds of sovereignty or otherwise, Customer hereby waives and agrees not to plead such immunity in any legal action arising out of this Agreement.

#### 14. SURVIVABILITY

Notwithstanding anything in this Agreement to the contrary, the following provisions shall survive the expiration or early termination of this Agreement: Article 3 (Warranties, Remedies, and Limitations); Article 4 (Liability Limitation); Article 6 (Taxes and Other Charges); Article 7 (Invoices and Payment); Article 9 (Export); Article 10 (Confidentiality); Article 13 (Governing Law and Dispute Resolution); and this Article 14 (Survivability). The termination or expiration of this Agreement shall not relieve either Party hereto of any obligation or liability accruing prior to the effective date of such termination. All other rights and obligations of the Parties, unless expressly provided otherwise, will cease upon termination or expiration of this Agreement.

#### 15. DEFINITIONS AND MISCELLANEOUS PROVISIONS

In these standard terms and conditions, "Agreement" means the agreement or order to which these standard terms and conditions are appended or in which they are incorporated by reference, including the terms and conditions contained herein. Captions used in this Agreement are for convenience of reference only and will not be interpreted as in any way limiting or extending the meaning of the provisions to which such captions may refer. If any provision of this Agreement is for any reason held invalid, such invalidity will not affect the validity of the remainder of the terms of this Agreement. No Party will be deemed to have waived any of its rights under this Agreement except by a written waiver signed by such Party's authorized representative. Failure to complain of any action or inaction by the other Party or to declare the other Party in default under this Agreement, regardless of the duration of such failure, will not constitute a waiver of any of the rights of the non-defaulting Party. This Agreement constitutes the full agreement of the Parties. Terms and conditions on Customer's purchase orders will have no effect.

#### 16. NO DAMAGES.

NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR DAMAGES OF ANY KIND, INCLUDING INCIDENTAL OR CONSEQUENTIAL DAMAGES, LOSS OF GOODWILL OR LOSS OF PROSPECTIVE PROFITS, ON ACCOUNT OF THE TERMINATION OR EXPIRATION OF THIS AGREEMENT (IN WHOLE OR IN PART) STRICTLY IN ACCORDANCE WITH THE TERMS OF THIS AGREEMENT; AND THAT THE



PARTIES WOULD NOT HAVE ENTERED INTO THIS AGREEMENT, BUT FOR THE LIMITATIONS OF LIABILITY AS SET FORTH HEREIN.

#### 17. INDEMNIFICATION

Each Party shall hold harmless, and indemnify the other Party and its directors, officers, agents and employees against any and all loss, liability, damage, or expense, including any direct, indirect or consequential loss, liability, damage, or expense, but not including attorneys' fees unless awarded by a court of competent jurisdiction, for injury or death to persons, including employees of either Party, and damage to property, including property of either Party, arising out of or in connection with intentional, willful, wanton, reckless or negligent conduct regarding (a) any use of the products manufactured or supplied, (b) manufacture, marketing or resale of any products, (c) failure to comply with any and all laws, rules and regulations applicable to, or associated with, its manufacture, marketing and/or sale of any products, or the engineering, design, construction, maintenance, repair, operation, supervision, inspection, testing, protection or ownership of the products. However, neither Party shall be indemnified hereunder for any loss, liability, damage, or expense resulting from its sole negligence or willful misconduct. Notwithstanding the indemnity provisions contained herein, except for a Party's willful misconduct or sole negligence, each Party shall be responsible for its own damages resulting from the use of the products.