

**TWO HARBORS MACHINE SHOP, INC. (“SERCO LOADERS”)
STANDARD TERMS AND CONDITIONS OF SALE**

1. AGREEMENT OF SALE.

- (a) The terms and conditions set forth in this document (the “**Terms**”) are intended to establish standard terms and conditions of sale for all sales by SERCO Loaders, (“**Seller**”) to the purchaser (“**Buyer**”) unless otherwise provided in a written agreement executed by both Buyer and Seller. Such terms can be found posted on Seller’s website at sercoloaders.com (the “**Website**”). These Terms, together with quotation, order acknowledgments, or invoices, specifications, and all supplements and attachments thereto issued by Seller from time to time (collectively, the “**Other Documents**”), shall constitute the entire agreement (“**Agreement**”) between Buyer and Seller for each such sale. In the event of any inconsistency between the Terms and provisions contained in the Terms, the provisions contained in the Other Documents shall control. All sales by Seller are expressly conditional upon Buyer’s acceptance of the Terms.
- (b) Any conduct by Buyer which recognizes the existence of a contract pertaining to the subject matter hereof, including, but not limited to, acceptance of the Products (as defined herein), payment thereof or resale of the Product, shall constitute acceptance by Buyer of the Terms. Additional or different terms provided in Buyer’s purchase order or acceptance which vary in any degree from any of the Terms are hereby objected to and rejected.
- (c) The Terms may be modified from time to time by Seller by publication of the updated Terms on the Seller’s website. Each such modification shall be binding upon Buyer with respect to all purchases occurring after the date of such modification.
- (d) Except as otherwise described herein, no modification or termination hereof or waiver of any of the obligations hereunder shall be effective unless in writing and signed by Seller. The failure by Seller to enforce any of the Terms, shall not constitute a waiver and shall in no way be construed as a waiver of such provisions or options, nor in any way be construed to affect the validity of the Terms, or the right of the Seller thereafter to enforce the Terms.

2. WARRANTY; REMEDIES

Seller’s warranty is attached hereto as Exhibit A.

EXCEPT AS EXPRESSLY SET FORTH HEREIN, TO THE FULLEST EXTENT PERMITTED BY LAW, SELLER HEREBY DISCLAIMS ALL REPRESENTATIONS, WARRANTIES AND CONDITIONS, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR THAT MAY ARISE FROM ANY COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE IN THE TRADE. SELLER DOES NOT EXTEND THE FOREGOING WARRANTY, AND BUYER MAY NOT TRANSFER IT, TO BUYER’S CUSTOMERS OR OTHER THIRD PARTIES. THE REMEDIES SET FORTH IN THIS SECTION 2 SHALL BE THE BUYER’S SOLE AND EXCLUSIVE REMEDY AND SELLER’S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTY SET FORTH IN THIS SECTION 2.

3. LIMITATION OF LIABILITY.

- (a) **THE BUYER’S REMEDIES WITH RESPECT TO ANY PRODUCT FURNISHED BY SELLER HEREUNDER THAT IS FOUND NOT TO BE IN CONFORMITY WITH THE TERMS BECAUSE OF BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, OR STRICT LIABILITY, SHALL BE LIMITED EXCLUSIVELY TO THE RIGHT OF REPAIR OR REPLACEMENT OF SUCH DEFECTIVE PRODUCT. NO ALLOWANCE SHALL BE MADE FOR ANY LABOR, CHARGES OF BUYER FOR REPLACEMENT OF PARTS, ADJUSTMENTS OR REPAIRS, SHIPPING, IN-OUT COST OR ANY OTHER COST OR EXPENSE, UNLESS SUCH CHARGES ARE AUTHORIZED IN WRITING IN ADVANCE BY SELLER. BUYER’S OBLIGATION TO MAKE PAYMENT FOR PRODUCTS DELIVERED HEREUNDER IS NOT AFFECTED BY ANY CLAIM OF BUYER HEREUNDER. SELLER’S TOTAL LIABILITY, WHETHER FOR BREACH OF CONTRACT, WARRANTY OR OTHERWISE, IS LIMITED TO THE PURCHASE PRICE OF THE PARTICULAR PRODUCT SOLD HEREUNDER.**
- (b) **IN NO EVENT SHALL SELLER BE LIABLE FOR CLAIMS (BASED UPON BREACH OF CONTRACT, BREACH OF EXPRESS OR IMPLIED WARRANTY, NEGLIGENCE, OR OTHERWISE) FOR ANY**

OTHER DAMAGES, WHETHER DIRECT, IMMEDIATE, FORESEEABLE, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR SPECIAL, OR FOR ANY EXPENSES ARISING DIRECTLY OR INDIRECTLY FROM THE SALE, HANDLING, OR USE OF THE PRODUCTS SOLD HEREUNDER, INCLUDING WITHOUT LIMITATION ANY DAMAGES RESULTING FROM COST OF SUBSTITUTE PROCUREMENT, LOSS OF USE, LOSS OF DATA, LOSS OF PROFITS, LOSS BY REASON OF PLANT SHUTDOWN, NON-OPERATION, SAVINGS, GOODWILL OR REVENUES, LOSS OF BUSINESS, FAILURE OR DELAY IN PERFORMANCE, TRANSPORTATION, HANDLING OR INSTALLATION, OR FABRICATION CHARGES OR EXPENSES, EVEN IF SELLER HAS BEEN NOTIFIED OF THE LIKELIHOOD OF SUCH DAMAGES OCCURRING.

- (c) Except where previously limited or excluded, the Seller's cumulative maximum liability arising from any cause whatsoever, including, but not limited to, breach of contract, tort (including negligence), strict liability, breach of warranty, or otherwise, shall not exceed the contract price, paid by Buyer.

4. **MODIFICATION OF PRODUCTS.** Seller shall be entitled to make any and all changes in details of design, fabrication or arrangement of the Products as Seller in its sole discretion determines will constitute an improvement upon the Products or any design specifications previously furnished to Buyer.

5. **INDEMNIFICATION.** Buyer shall defend and indemnify Seller and its affiliates, directors, officers, agents, servants, employees, successors and assigns against, and hold them harmless from and against and pay on behalf of or reimburse any and all claims, demands, actions, causes of action, suits, obligations, liabilities, losses, damages, deficiencies, judgments, settlements and compromises (whether or not arising out of third-party claims), costs and expenses, including, reasonable attorney's fees and court costs (collectively "**Losses**"), in connection with, without limitation: (a) a recall of any product into which Seller's Products are incorporated; (b) Buyer's failure to specify to Seller any requirements that are required to be passed through to Seller, pertaining to a product into which Seller's Products are incorporated; (c) the use of a Product in combination with other products, equipment, or software not supplied by Seller; (d) the negligence or misconduct of Buyer, its agents, employees, representatives, or contractors; (e) infringement of any patent made in accordance with the design or specification furnished by Buyer; (f) use of a Product in an application or environment for which it was not designed; (g) modifications of the Product by anyone other than Seller; (h) the transportation, storage, sale, or service of the Products by Buyer; and (i) bodily injury, death, property damage, or economic loss, relating to, resulting from or arising out of acts or omissions of Buyer or relating to or arising out of the use, operation, ownership or condition of any of the Products purchased by Buyer or the breach or non-performance of Buyer's obligations under the Terms, including, but not limited to Buyer or any user's failure to follow all proper safety protocols relating to the use, operation, ownership or condition of any of the Products supplied by Seller.

6. **DELIVERY.** Domestic orders are shipped per the terms set forth in the purchase order by and between Seller and Buyer (the "**Purchase Order**"). All shipping terms contained in the Purchase Orders shall have meaning set forth in the Uniform Commercial Code for domestic sales or in INCOTERMS 2020, as published and promulgated by the International Chamber of Commerce, for international sales. Any liability of Seller for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or adjusting the invoice respecting such Goods to reflect the actual quantity delivered. If for any reason Buyer fails to accept delivery of any of the Goods on the date fixed pursuant to Seller's notice that the Goods have been delivered at the Delivery Point, or if Seller is unable to deliver the Goods at the Delivery Point on such date because Buyer has not provided appropriate instructions, documents, licenses or authorizations: (i) risk of loss to the Goods shall pass to Buyer; (ii) the Goods shall be deemed to have been delivered; and (iii) Seller, at its option, may store the Goods until Buyer picks them up, whereupon Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

7. **PRICES; PAYMENT.** Buyer shall purchase the Goods from Seller at the price[s] (the "**Price[s]**") set forth in Seller's the accepted Purchase Order. Prices, and other terms of sale and payment, are subject to change without notice. Stenographic or clerical errors are subject to correction. All accounts are payable in United States funds, free of setoff, exchange, collection, or any other charges. Buyer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Seller, whether relating to Seller's breach, bankruptcy or otherwise. Payments shall be received by Seller no later than thirty (30) days from the date of Seller's invoice. Unless otherwise specified, if payment hereunder is not made on time, Seller, in addition to all other legal, equitable and contract rights, shall be entitled to interest on such overdue payment at the rate of two percent (2%) per month. Notwithstanding the foregoing, interest shall not be charged on any overdue payment at a rate in excess of the maximum rate permitted by law. In addition, all collection charges including reasonable attorneys' fees incurred to collect said payment shall be payable by Buyer. **NOTWITHSTANDING ANY OTHER PROVISION TO THE CONTRARY, ANY PROGRESS PAYMENTS MADE ON THE PRODUCTS ARE NON-REFUNDABLE TO BUYER, AND SHALL BE RETAINED BY SELLER.**

8. ACCEPTANCE OF ORDERS; CREDIT.

- (a) All orders are subject to Seller's credit department approval prior to acceptance by Seller. Seller makes no assurance or guarantee regarding any amount of credit or the continuation of such credit to Buyer. In the event Seller provides credit to Buyer, Buyer shall provide to Seller such annual or interim reports containing Buyer's consolidated financial statements and/or tax returns for a particular fiscal year or accounting period, as requested. In all cases, such statements shall be in accordance with generally accepted accounting principles.
- (b) Notwithstanding the foregoing, if Seller determines, in its sole discretion, that the creditworthiness or future performance of Buyer is impaired or unsatisfactory, Seller may: (a) suspend deliveries of product or services, (b) require prepayment by wire transfer of immediately available funds, or (c) require Performance Assurance. Buyer hereby waives written notice of any such action. "Performance Assurance" means collateral in the form of cash, letters of credit, guaranty, or other security acceptable to Seller in its sole discretion. In the event Buyer fails to provide Performance Assurance within 30 days of receipt of such notice, Seller may, in addition to any other remedies it may have hereunder, terminate the Agreement and cancel any unshipped Products without any liability to Buyer.
- (c) If at any time there is a change in the financial condition or structure of Buyer, arising from a change in business or market conditions or otherwise, or arising from a merger, reorganization or other change in business form or if Buyer becomes insolvent, makes an assignment for the benefit of its creditors or ceases to be a going concern, or if a petition in bankruptcy with respect to Buyer is filed, or if any lien arising from judicial process or otherwise is placed upon or any receiver or trustee is appointed with respect to any material asset of Buyer, then Seller, in addition to any and all other rights and remedies, shall have the right to cancel an order without liability.

9. **IMPORT DUTIES, TAXES AND OTHER CHARGES.** Except to the extent otherwise provided in an invoice, Buyer shall pay all taxes (excluding federal, state or local income or franchise taxes of Seller) and all import duties, levies and impositions and all other governmental charges, assessments, fees, and any interest or penalties thereon, whether payable by Seller or Buyer, imposed or levied on or with respect to the Agreement, the amounts payable hereunder, the Product or the possession, sale, use, furnishing or ownership of the Product. Buyer shall also be responsible for obtaining and paying for any permits, licenses, or other governmental authorizations necessary for the exportation or importation of the products into the designated country of importation, and it shall comply with all laws and regulations thereof. If Buyer shall fail to pay and discharge such taxes, duties and other sums when due, Seller may at its option, pay the same, in which event Buyer shall promptly reimburse Seller for such sums paid. The Agreement price will be increased by the increased amount Seller is liable to pay in respect of any value added tax chargeable on the supply to Seller of materials to be incorporated in the Products or on services which are required for the performance of Seller's obligations under the Agreement.

10. **DELAY IN DELIVERY: FORCE MAJEURE.** The date of delivery stated in the order acceptance or confirmation is an estimated date and Seller shall use commercially reasonable efforts to ship within the time promised, but does not guarantee to do so, and assumes no liability for not doing so. Seller shall not be responsible for any liability due to any failure or delay in the performance of any order accepted by it, or for any damage to the Products during transit, due to unforeseen circumstances or to causes beyond its reasonable control, including, without limitation, acts of God, acts of Buyer, strikes, war, riots, acts of terrorism, fires, floods, accidents, pandemics, epidemics, differences with workers, lockouts, or other industrial disturbances, freight embargoes, lock-out of suppliers necessary to the execution of the order, loss or unavailability of usual sources of transportation, fuel, labor, supply, raw materials, or power priorities, failure, breakdown or shortage of components necessary to the completion of the order, equipment breakdown, embargoes, subcontractor caused delays, increases in the costs of materials, the compliance with any law, rule, regulation or order, whether valid or invalid, of any government body or any instrumentality thereof, or acts of civil or military authorities, whether now existing or hereafter created. Performance of an order shall be deemed suspended so long as any such circumstances or causes delay its execution and Buyer shall extend any letter of credit issued in payment for the Product, if applicable, through any such delay. Whenever such circumstances or causes have been remedied, Buyer shall accept performance under said order.

11. **SELLER'S REMEDIES.** In the event that Buyer fails to perform all or any part of its obligations hereunder, Seller, at its option and in addition to any and all other remedies, whether at law or in equity, which Seller may have, may cancel the Agreement and recover from Buyer its damages, including its expenses, mill cancellation fees and the differences between the Agreement price and the lesser of (a) Seller's cost, or (b) the market price at point of delivery to Buyer or Seller may dispose of the Product, whether shipped, manufactured or otherwise identified to the Agreement, publicly or privately, in bulk units, for Buyer's account and apply the net proceeds after deducting expenses or disposition, against the purchase price. In case of any deficiency, Buyer shall remain liable therefore, and Seller's expenses in either case shall include reasonable attorneys' fees and other cost of enforcing its rights.

12. **SECURITY INTEREST.** Buyer grants to Seller a security interest, including a purchase money security interest, in and to all Products and all proceeds thereof to secure the full payment and performance by Buyer of its liabilities and obligations to Seller. Buyer hereby authorizes Seller to file any financing statement or other document that is necessary for Seller to perfect the security interest granted hereunder.

13. **LAWS, ORDINANCES AND REGULATIONS.** Seller shall not be responsible or liable to Buyer for compliance with federal regulations or insurance codes, nor with any State or local laws, ordinances, codes or regulations which may at any time be in effect with respect to the Products, unless such responsibility is expressly assumed by Seller in writing. Seller's obligations are subject to the export administration and control laws and regulations of the United States. Buyer shall comply fully with such laws and regulations in the export, resale or disposition of Products. Buyer shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under this Agreement. **Buyer agrees and shall cause each of its customers to agree, that it shall commit no acts which directly or indirectly violate any United States export control law, regulation, treaty or other international agreement to which the United States adheres or complies or any applicable export, import or other laws of any other jurisdiction and agrees to indemnify and to hold Seller harmless from any and all Losses incurred by Seller or its affiliates for any reason arising from or connected with any such violation, incurred intentionally or unintentionally.** Any orders accepted by Seller from a Buyer outside the United States are with the understanding that the ultimate destination of the Products is the country indicated therein. Diversion of the Products to any other destination contrary to United States law is prohibited.

14. **CONFIDENTIALITY.** Confidential Information means information relating to the research, development, products, methods of manufacture, trade secrets, business plans, customers, finances, and personal data related to the business or affairs of Seller. Confidential Information does not include any information (a) that Buyer can prove with conclusive written evidence that Buyer knew before Seller disclosed it to Buyer; (b) that has become publicly known through no wrongful act of Buyer; or (c) which Buyer developed independently, as evidenced by conclusive written documentation. Buyer agrees not to disclose any Confidential Information and to take all reasonable precautions to prevent its unauthorized dissemination, both during and after the Agreement. Without limiting the scope of this duty, Buyer agrees to limit its internal distribution of Confidential Information to its employees and agents who have a need to know and to take steps to ensure that the dissemination is so limited. Buyer agrees not to use any Confidential Information for its own benefit or for the benefit of anyone other than Seller. Without limiting the scope of this duty, Buyer agrees not to design or manufacture any products which incorporate Confidential Information. All Confidential Information remains the property of Seller and no license or other rights in the Confidential Information are granted hereby. All information is provided "AS IS" and without any warranty, express, implied, or otherwise, regarding accuracy or performance. Further, upon Seller's written request, Buyer agrees to return to Seller, all Confidential Information, including but not limited to all computer programs, documentation, notes, plans, drawings and copies thereof.

15. **TRADEMARK AND INTELLECTUAL PROPERTY USE.** Under no circumstances shall Buyer use any of Seller's intellectual property, without the prior written consent of Seller and a license from Seller thereof. **SELLER MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO CLAIMS OF INFRINGEMENT MADE BY THIRD PARTIES AND ARISING FROM TRADEMARK, PATENT, OR OTHER PROPERTY RIGHTS IN THE PRODUCTS.** Buyer understands and agrees that Seller does not warrant that the Products are free of the rightful claim of any third person by way of infringement or the like. Buyer further agrees to indemnify, defend and hold harmless the Seller Indemnified Parties, at Buyer's sole expense, against any Damages from any claim of trademark or patent infringement arising out of any Products sold to Buyer.

16. **SPECIFICATIONS.** All specifications referring to published standards (such as ASTM) shall be deemed to refer only to the physical properties set forth therein unless otherwise specified.

17. **LAW AND JURISDICTION.** Regardless of the location of Buyer or place of shipment of the Products, the Terms and the Other Documents (and the order) shall be governed by and construed in accordance with the substantive law of the State of Minnesota, without giving effect to its conflict of law provisions. The parties hereby expressly exclude the applicability of the United Nations Convention on Contracts for the International Sale of Goods, if the same would otherwise apply here. Buyer agrees that Buyer shall commence, and that Seller may commence, any legal suit, action, or proceeding involving the Seller in State or Federal court of general jurisdiction in Lake County, Minnesota; provided that any party shall have the right, to the extent permitted by applicable law, to proceed against any other party or its property in any other location to the extent necessary for the enforcing party to enforce a judgment or other court order. Buyer hereby consents to the jurisdiction of such courts and waives all questions of jurisdiction and venue. Buyer agrees that Seller may file a copy of this Section with any court as written evidence of the knowing, voluntary and bargained agreement of Buyer to irrevocably submit to the jurisdiction of the State and Federal Courts located in Lake County, Minnesota and to waive any objections to venue or to convenience of forum. Legal process in any proceeding may be served on any party anywhere in the world.

18. **LIMITATION ON ACTIONS.** No claim or cause of action of Buyer arising under the Terms may be asserted more than one (1) year after the date on which such claim or cause of action arises regardless of the existence of any statutes of limitations to the contrary.

19. **SEVERABILITY.** In the event that any provision hereof shall be illegal, invalid or unenforceable, it shall not affect the legality, validity or enforceability of any other provision hereof and such illegal, invalid, or unenforceable provision shall be interpreted and modified by the parties so as to eliminate such illegality, invalidity and/or unenforceability.

20. **BINDING EFFECT; ASSIGNMENT.** This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms. The Agreement shall be binding upon inure to the benefit of the parties hereto and their successors and permitted assigns. Buyer may not assign any rights or claims, or delegate any duties hereunder, in whole or in part, without the prior written consent of Seller, which may be withheld at Seller's sole discretion.

21. **BUYER'S UNDERSTANDING.** Buyer represents and warrants: (a) that it has read and understood the Terms; (b) that the Terms are fair and reasonable to Buyer; (c) that the party or individual placing an order on behalf of Buyer has the full power, authority and capacity to do so, and to perform the obligations contained hereunder in accordance with its terms; and (d) no representations have been made or relied upon except as specifically stated in the Terms.

22. **TERM; SURVIVAL.** The Terms shall remain in effect unless expressly terminated in writing by Seller. The rights and obligations of the parties under the Terms which by their nature continue beyond the termination, cancellation or expiration of the Agreement including, without limitation, warranty, indemnifications, intellectual property rights, shall survive such termination, cancellation or expiration and shall thereafter bind the parties and their successors and assigns.

23. **VALIDITY AND ENFORCEABILITY OF ELECTRONIC TRANSMISSIONS.** The conduct of Seller and Buyer hereunder, including the use of documents communicated by facsimile or electronic transmission to initiate and accept sales orders, shall, for legal purposes, evidence a course of dealing and a course of performance accepted by the parties. Facsimile or electronic copies of signed documents, if introduced as evidence in any judicial, arbitration, mediation or administrative proceedings, shall be admissible as between the parties to the same extent and under the same conditions as original business records. Neither party shall contest the admissibility of facsimile or electronic copies of documents under the best evidence rule, or otherwise, on the basis that the documents are not the original form of such documents.

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