



SALE OF GOODS TERMS AND CONDITIONS

1. ACCEPTANCE: These terms and conditions (the "Terms and Conditions") govern the purchase of products and services ("Goods") listed in a written offer, quotation, order form, or website (the "Offer") offered by Berg Tool Inc. ("Seller") to the purchaser of such Goods ("Purchaser"), with the combination of such written document or site and these Terms and Conditions constituting the entire agreement between them (this "Agreement"). Seller and Purchaser acknowledge and agree that this Agreement binds and benefits Seller and Purchaser and their respective successors, assigns, heirs, and legal representatives. Any changes to this Agreement by purchase order, lease, or other means are deemed *material changes*, and Seller objects to and rejects such changes. Any proposed changes by Purchaser shall not operate as Purchaser's rejection of the terms of this Agreement if Purchaser accepts Seller's Terms and Conditions by accepting the Goods, in which case this Agreement shall be deemed accepted by Purchaser without any additional or different terms. If this Agreement is deemed to be an acceptance by Seller of a prior offer by Purchaser, such acceptance shall be limited to the Terms and Conditions contained in this Agreement; and any additional or different terms in Purchaser's prior offer shall be deemed material changes, which Seller objects to and rejects. Acceptance by Purchaser occurs upon completion of inspection.

2. PRICE: The price(s) of the Goods are as set forth in the Offer. Except as otherwise provided in the Offer, Purchaser shall be solely responsible for all shipping and handling charges, freight and insurance charges. Purchaser shall be solely responsible for the amount of all fees, duties, licenses, tariffs, and all sales, use, privilege, occupation, excise, or other taxes or governmental assessments (such as VAT), whether federal, state, local or foreign, which are required to be paid or collected in connection with the sale of the Goods to Purchaser and shall pay the same on the terms set forth in Section 3 below based upon an invoice therefor delivered by Seller.

3. DELIVERY: Deliveries shall be made by Seller to Purchaser's address as set forth on the face of this Agreement or as otherwise indicated to Seller in writing within forty-five (45) days of receipt of payment for the Goods pursuant to Section 4 below. Deliveries shall be made F.O.B. Seller's principal's facility.

4. PAYMENT TERMS: Subject to Section 5 below, Purchaser must pay Seller in full for the Goods and other applicable charges provided herein within 30 days from the date of this Agreement. If Purchaser fails to pay in full by the due date, Purchaser's balance shall accrue interest at the rate of 1½% per month, or the maximum rate permitted by law, whichever is less. Purchaser shall pay all of Seller's costs of collection, including attorneys' fees, and shall not have any right of set off. Payment shall be made in United States dollars unless quoted in a different currency on the face of this Agreement.

5. LIMITED WARRANTY: Seller warrants that the Goods, as delivered, will meet the specifications for such Goods set forth in the applicable Offer (or separate documentation related thereto). OTHER THAN AS EXPRESSLY SET FORTH IN THIS AGREEMENT, GOODS ARE SOLD "AS IS", AND SELLER MAKES NO OTHER EXPRESS OR IMPLIED WARRANTIES REGARDING THE GOODS. THIS WARRANTY IS EXCLUSIVE, AND IT IS EXPRESSLY MADE IN LIEU OF ANY AND ALL OTHER EXPRESS OR IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, STATUTORY WARRANTIES, ANY IMPLIED WARRANTY OF MERCHANTABILITY, OR ANY IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE.

6. TITLE AND RISK OF LOSS: Title and risk of loss in respect of the Goods shall pass to the Purchaser upon delivery to Purchaser, Purchaser's agent or to any common carrier.

7. INSPECTION OF GOODS: Within forty-eight (48) hours of completion of delivery of the Goods at Purchaser's location, Purchaser must inspect the Goods and notify Seller of any patent defects or non-conforming Goods. If Seller does not timely receive such notice, and excepting only latent defects that could not practically be ascertained by physical inspection, the Goods will be conclusively presumed to be (a) free of any patent defects, (b) manufactured in accordance with industry standards within an industry accepted variation, (c) to conform to the specifications therefor, and (d) otherwise in conformity with the terms of this Agreement, and that Purchaser has accepted the Goods. Seller shall have the right to inspect and test any Goods claimed to be defective or non-conforming. In the event the provided Goods are

defective or non-conforming, Seller shall provide replacement Goods and remove such defective or non-conforming goods at its sole expense as soon as commercially practicable.

8. COMPLIANCE WITH LAWS: Purchaser is solely responsible for compliance with all applicable international, federal, state, provincial and local laws, ordinances, rules and regulations. In addition, with respect to certain Goods, additional use restrictions will be set forth by Seller either in the documentation or the packaging associated with such Goods.

9. PROPER USE OF GOODS: Purchaser's failure to use the Goods properly may affect the safety and efficacy of the Goods and will void Seller's warranty. Purchaser must use the Goods: (a) in compliance with all applicable law, rules and regulations; (b) consistent with statements, technical information, instructions, warnings, and recommendations of Seller; (c) solely in those applications for which the Goods were designed and intended, and (d) in a manner both suitable and safe for Purchaser's intended use. Purchaser must ensure that the Goods are properly stored, maintained, and protected from physical damage, including, without limitation, damage caused by humidity, excessive heat, moisture, and/or contamination. Purchaser may not modify the Goods in any manner.

10. TIME OF PERFORMANCE AND DELAYS: Seller shall use commercially reasonable efforts to timely perform its obligations. Seller shall not be responsible for delays or defaults caused by events outside Seller's control including, without limitation: weather, transportation delays, materials shortages, civil disorders, labor difficulties, fires, floods, accidents and natural disasters.

11. OWNERSHIP OF INTELLECTUAL PROPERTY: All intellectual property rights in the Goods are owned or licensed by Seller. Nothing in these Terms and Conditions, the Agreement, or the Offer shall be construed to serve as a license or conveyance of such intellectual property rights to Purchaser, and Purchaser acknowledges that it will receive no such rights by purchase of the Goods hereunder.

12. LIMITATION OF SELLER'S LIABILITY: Seller shall not be liable for any claim of any kind arising from or related to (a) Purchaser's misuse of the Goods, (b) Purchaser's negligence, or for (c) direct or indirect incidental, consequential, or special damages, known or unknown, including, without limitation, lost revenues and profits, loss of production, or injury to persons and/or property. The maximum liability of Seller for any and all damages with respect to any Goods or services provided under this Agreement is limited to the price of the Goods.

13. INDEMNIFICATION: Purchaser shall defend, indemnify, and hold harmless Seller, its shareholders, officers, directors, advisors, agents, servants, employees, and each of their respective affiliates and parent companies from any third party claims, damages, or expenses, including attorneys' fees, arising or alleged to arise out of: (a) injuries to persons, including death, or damage to property caused by any acts or omissions of Purchaser in connection with the use or handling of the Goods, and/or (b) Purchaser's breach, misrepresentation, or non-performance under this Agreement. Notwithstanding the foregoing, Seller shall defend, indemnify, and hold harmless Purchaser, its shareholders, officers, directors, advisors, agents, servants, employees, and each of their respective affiliates and parent companies from any third party claims, damages, or expenses, including attorneys' fees, arising or alleged to arise out of Seller's breach, misrepresentation, or non-performance under this Agreement.

14. INTELLECTUAL PROPERTY INDEMNIFICATION: Seller shall defend and indemnify Purchaser from all third party claims, including for injunctions or damages, alleging that any design, manufacture or use of the Goods infringes any third party patent or other intellectual property right, except to the extent such claims arise from or relate to (a) any Good or component thereof designed by Purchaser (including but not limited to any trademarks, logos, service marks, trade names, trade dress, or any other form of intellectual property requested to be added to or combined with the Goods by Purchaser pursuant hereto ("Requested IP")), or (b) modification or change in any Good after delivery. Purchaser represents and warrants that it owns or has all rights to the Requested IP necessary to incorporate the Requested IP into the Goods, and further that it shall indemnify Seller from all third party claims, including for injunctions or damages, alleging that the use of the Requested IP infringes on the rights of any third party.

15. WAIVER: A failure or delay by any party to exercise any right under this Agreement shall not operate as a waiver of that right. Any single or partial exercise of a party's rights under this Agreement shall not preclude a party's further exercise of its rights. The rights and remedies in this Agreement are cumulative and not exclusive of others provided by law or equity.

16. CHOICE OF LAW AND VENUE; WAIVER OF JURY TRIAL: This Agreement will be governed by the laws of the State of Michigan, United States of America, without giving effect to its conflicts of laws principles. Each party hereto submits to the exclusive jurisdiction of the state and federal courts located in the Eastern District of the State of Michigan for the adjudication of disputes hereunder, and agrees not to attempt to bring any action in connection with any such dispute in any other jurisdiction. EACH PARTY HERETO HEREBY FURTHER WAIVES ANY RIGHT TO REQUEST A JURY TRIAL IN RESPECT OF DISPUTES ARISING OUT OF THIS AGREEMENT.

17. ASSIGNMENT: Purchaser may not assign this Agreement without Seller's consent. Seller may freely assign its rights and obligations in this Agreement and subcontract any portion of its performance.

18. AMENDMENT: This Agreement may not be altered, modified or amended except in writing signed by Seller and Purchaser.

19. UNENFORCEABLE PROVISIONS: If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement shall remain in full force and effect.

20. COUNTERPARTS AND COPIES: This Agreement may be executed in one or more counterparts, each of which shall constitute an original, and all of which together shall constitute one and the same instrument. Copies and facsimile or other electronic transmissions of this Agreement shall have the same legal force and effect as the original.