

HESKINS LLC

TERMS AND CONDITIONS

1. INTERPRETATION

1.1 **Definitions.** The following definitions apply to these Terms and Conditions:

Business Day: Monday through Friday, excluding Saturdays, Sundays and all public holidays on which banks are closed.

Conditions: the terms and conditions set out in this document as amended from time to time in accordance with clause 13.6.

Contract: the contract between the Buyer and the Seller for the sale and purchase of the Goods in accordance with these Conditions.

Buyer: the person or firm who purchases the Goods from the Seller.

Delivery Point: the Buyer's Premises or such other location as the Buyer specifies on the Purchase Order and which has been accepted by the Seller.

Force Majeure Event: has the meaning given in clause 12.

Goods: the goods identified in the Purchase Order.

Purchase Order: an order form identifying the quantity and price of the goods the Buyer intends to purchase.

Specification: any specification for the Goods, including any related plans and drawings, that is agreed by the Buyer and the Seller.

Seller: Heskins, LLC., a Pennsylvania limited liability company with its principal place of business located at 500 Grant Avenue, Dock 40-41, East Butler, PA 16029.

1.2 **Construction.** In these Conditions, the following rules apply:

- (a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (b) A reference to a party includes and binds its agents, representatives, successors and assigns.
- (c) A reference to a statute or statutory provision is a reference to the current version of such statute or provision.
- (d) A reference to **writing** or **written** includes faxes and e-mails.

2. BASIS OF CONTRACT

- 2.1 Buyer agrees that these Conditions apply to the Contract to the exclusion of any other terms that the Buyer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.2 The Purchase Order constitutes an offer by the Buyer to purchase the Goods in accordance with these Conditions. The Buyer is responsible for ensuring that the terms of the Purchase Order and any applicable Specifications are complete and accurate.
- 2.3 The Purchase Order shall only be deemed to be accepted when the Seller issues a written acceptance of the Purchase Order.
- 2.4 The Contract contains the terms of the Purchase Order, excluding any terms and conditions included by the Buyer on the Purchase Order, and the Conditions herein and constitutes the entire agreement between the parties. The Buyer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Seller which is not set out in the Contract.
- 2.5 Any samples, drawings, descriptive matter, or advertising produced by the Seller and any descriptions or illustrations contained in the Seller's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or have any contractual force.
- 2.6 A quotation for the Goods given by the Seller shall not constitute an offer. A quotation shall only be valid for a period of 20 days from its date of issue.
- 2.7 All cancellations must be sent in writing. Any Orders where the Buyer has provided the Specification cannot be cancelled once manufacturing of the Goods has begun.

3. GOODS

- 3.1 The Goods are described in the Seller's catalogue and/or accompanying email(s).
- 3.2 To the extent that the Goods are to be manufactured in accordance with a Specification supplied by the Buyer, the Buyer shall indemnify the Seller against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties, Attorney's Fees and other professional costs and expenses) suffered or incurred by the Seller in connection with any claim made against the Seller for actual or alleged infringement of a third party's intellectual property rights arising out of or in

connection with the Seller's use of the Specification. This clause 3.2 shall survive termination of the Contract.

3.3 The Seller reserves the right to amend the Specifications if required by any applicable statute or regulation.

3.4 In the case of Purchase Orders where the Buyer has provided the Specification, the Purchase Order cannot be altered or cancelled once the manufacturing process has started.

4. **TOOLING**

4.1 The Seller reserves the right to treat as its own property any tooling which has not been utilized for any of the Buyer's business for a period of at least two years and the Seller shall be at liberty to dispose of same thereafter. All tooling charged on the basis of a part-tool cost remains the property of the Seller to be used at the Buyer's request. Any modification or refurbishment shall be the Buyer's responsibility, as invoiced by the Seller.

5. **DELIVERY**

5.1 Delivery of the Products shall take place at the Delivery Point. Acceptance of any change to the Delivery Point requested by the Buyer shall be at the Seller's sole discretion and the Buyer shall be liable for any additional Expenses incurred by the Seller as a result of such change. The Seller shall arrange for suitable transport to the Delivery Point. On delivery, the Seller (or its appointed carrier) shall provide the Buyer with such documents as are necessary and which the Buyer is unable to prepare together with:

- (a) a delivery note which shows the date of the Purchase Order, all relevant Buyer and Seller reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Order is being delivered by installments, the outstanding balance of Goods remaining to be delivered; and
- (b) if the Seller requires the Buyer to return any packaging materials to the Seller, that fact is clearly stated on the delivery note. The Buyer shall make any such packaging materials available for collection at such times as the Seller shall reasonably request. Returns of packaging materials shall be at the Seller's expense.

5.2 Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Point.

- 5.3 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. The Seller shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Buyer's failure to provide the Seller with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 5.4 The Buyer shall not be entitled to reject the Goods if the Seller delivers up to and including 5% more or less than the quantity of Goods ordered, but a pro rata adjustment shall be made to the Purchase Order invoice on receipt of notice from the Buyer that the wrong quantity of Goods was delivered.
- 5.5 The Seller may deliver the Goods by installments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate Contract. Any delay in delivery or defect in an installment shall not entitle the Buyer to cancel any other installment.
- 5.6 The Buyer shall, within seven days of the arrival of each delivery of the Goods at the Delivery Point, give written notice of rejection to the Seller on account of any defect by reason of which the Buyer alleges that the Goods delivered do not comply with the Specification and which was apparent on reasonable inspection.
- 5.7 If the Buyer fails to give notice as specified in clause 5.6 then, except in respect of any defect which is not one which would be apparent on reasonable inspection, the Goods shall conclusively be presumed to comply with the Purchase Order and Specification and, accordingly, the Buyer shall be deemed to have accepted the delivery of the Goods in question and the Seller shall have no liability to the Buyer with respect to that delivery.
- 5.8 If the Buyer alleges that any Goods are defective, it shall, if so requested by the Seller, return the relevant Goods (unaltered and unrepaired) to the Seller for inspection as soon as possible and at the Buyer's own risk and expense.
- 5.9 It is strongly suggested that all Goods be counted and inspected before they are accepted. Any damages or shortages should be documented on the delivery note. In accordance with ICC and/or UCC regulations, the Buyer is responsible for filing claims with the freight carrier and shall contact the freight carrier immediately to file a claim and schedule an inspection. The Buyer shall keep all original packaging and take pictures of the damaged Goods whenever possible.
- 5.10 Requests to return any Goods must be made to our Buyer Service Department at 877.900.8359. Unauthorized return of Goods will be refused. All returned Goods will be assessed and a 30% restocking charge and freight must be pre-paid by the Buyer. Returns can be made up to 30 days after the original ship date.

- 5.11 Authorized returns must be received in our warehouse within thirty (30) days of the original ship date or they will not be accepted. Items returned without authorization or by collect freight will be refused.

6. **IMPORT AND EXPORT LICENCES**

- 6.1 The Buyer is responsible for obtaining, at its own cost, such import licences and other consents in relation to the Products as are required from time to time and, if required by the Seller, the Buyer shall make those licences and consents available to the Seller prior to the relevant shipment.

7. **QUALITY**

- 7.1 The Seller warrants that on delivery, and for a period of 12 months from the date of delivery (“Warranty Period”), the Goods shall conform in all material respects with the Specification. This is the sole and exclusive warranty provided by Seller. All other warranties or conditions (whether express or implied) as to quality, condition, description, compliance with sample or fitness for a particular purpose (whether statutory or otherwise) other than those expressly set out in this agreement are excluded from this agreement to the fullest extent permitted by law.

- 7.2 Subject to clause 7.3, if:

- (a) the Buyer gives notice in writing to the Seller during the Warranty Period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 7.1;
- (b) the Seller is given a reasonable opportunity of examining such Goods; and
- (c) the Buyer (if asked to do so by the Seller) returns such Goods to the Seller's place of business at the Buyer's cost,

the Seller shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

- 7.3 The Seller shall not be liable for Goods' failure to comply with the warranty set out in clause 7.1 in any of the following events:

- (a) the Buyer makes any further use of such Goods after giving notice in accordance with clause 7.2;
- (b) the defect arises because the Buyer failed to follow the Seller's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
- (c) the defect arises as a result of the Seller following any drawing, design or Specification supplied by the Buyer;

- (d) the Buyer alters or repairs such Goods without the written consent of the Seller;
- (e) the defect arises as a result of fair wear and tear, willful damage, negligence, or abnormal storage or working conditions; or
- (f) the Goods differ from the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

7.4 The Buyer must make a specific request in writing to the Seller if it requires Goods to be produced to a particular tolerance. Otherwise information regarding weights, measurements, powers, capacities, performance or other data must be regarded as approximate only and the Seller shall not be liable in any event of any inability to attain specifications stated.

7.5 Except as provided in this clause 7.6, the Seller shall have no liability to the Buyer in respect of the Goods' failure to comply with the warranty set out in clause 7.1.

7.6 The implied warranties set forth in the UCC are excluded from the Contract to the extent permitted by law.

7.7 These Conditions shall apply to any repaired or replacement Goods supplied by the Seller.

8. TITLE AND RISK

8.1 Risk in and responsibility for the Goods shall pass to the Buyer once they have been delivered to the carrier appointed to deliver the Goods to the Delivery Point.

8.2 Title to the Goods shall not pass to the Buyer until the earlier of:

- (a) the Seller receives payment in full (in cash or cleared funds) for the Goods and any other Goods that the Seller has supplied to the Buyer, in which case title to the Goods shall pass at the time of payment of all such sums; and
- (b) the Buyer resells the Goods, in which case title to the Goods shall pass to the Buyer at the time specified in clause 8.4.

8.3 Until title to the Goods has passed to the Buyer, the Buyer shall:

- (a) store the Goods separately from all other goods held by the Buyer so that they remain readily identifiable as the Seller's property;
- (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;

- (c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
- (d) notify the Seller immediately if it becomes subject to any of the events listed in clause 10.2; and
- (e) give the Seller such information relating to the Goods as the Seller may require from time to time.

8.4 Subject to clause 8.5, the Buyer may resell or use the Goods in the ordinary course of its business (but not otherwise) before the Seller receives payment for the Goods. However, if the Buyer resells the Goods before that time:

- (a) it does so as principal and not as the Seller's agent; and
- (b) title to the Goods shall pass from the Seller to the Buyer immediately before the time at which resale by the Buyer occurs.

8.5 If before title to the Goods passes to the Buyer the Buyer becomes subject to any of the events listed in clause 10.2, then, without limiting any other right or remedy the Seller may have:

- (a) the Buyer's right to resell the Goods or use them in the ordinary course of its business ceases immediately; and
- (b) the Seller may at any time:
 - (i) require the Buyer to deliver to Seller all Goods in its possession which have not been resold, or irrevocably incorporated into another product; and
 - (ii) if the Buyer fails to do so promptly, enter any premises of the Buyer or of any third party where the Goods are stored in order to recover them.

8.6 The Buyer grants to the Seller an irrevocable licence for the Seller, its agents and employees to enter any premises where the goods of the Buyer are stored to ascertain whether any Goods are stored there and to inspect, count and recover them.

8.7 The Buyer shall register any necessary charge over money or goods and take such other steps as are necessary to give effect to this clause 8.7 at the request of the Seller.

9. **PRICE AND PAYMENT**

9.1 The price of the Goods shall be the price set out in the Purchase Order, or, if no price is quoted, the price set out in the Seller's published price list in force as at the date of delivery.

- 9.2 The Seller may, by giving notice to the Buyer at any time before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:
- (a) any factor beyond the Seller's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
 - (b) any request by the Buyer to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or
 - (c) any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate or accurate information or instructions.
- 9.3 The price of the Goods is exclusive of the costs and charges of packaging, insurance and transportation of the Goods, which shall be invoiced to the Buyer.
- 9.4 The Seller may invoice the Buyer for the Goods on or at any time after the risk in the Goods have been passed to the Buyer. In the case of Purchase Orders where the Buyer has provided the Specification the Seller may invoice the Buyer for the Goods at the time of acknowledging the Order.
- 9.5 The Buyer shall pay the invoice in full, in United States Dollars and in cleared funds within 30 days of the date of the invoice. Payment shall be made to the bank account identified by the Seller. Time of payment is of the essence, notwithstanding that delivery may not have taken place and that property in the Products has not passed to the Buyer. In the case of Orders where the Buyer has provided the Specification the Buyer shall pay 50% of the invoice as a non-refundable deposit before production of the Goods can begin.
- 9.6 If the Buyer fails to make any payment due to the Seller under the Contract by the due date for payment, then the Buyer shall pay interest on the overdue amount at the rate of 4% per annum above the Prime Rate of PNC Bank. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Buyer shall pay the interest together with the overdue amount.
- 9.7 The Buyer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Seller may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Buyer against any amount payable by the Seller to the Buyer.
- 9.8 Where the Seller has manufactured material to the Buyer's specifications, designs or measurements, the Buyer shall be liable for the full price of such materials notwithstanding that they are no longer required following any alteration in such

designs and/or specifications and for the full cost of any alterations rendered necessary and/or materials wasted through the inaccuracy or variation of such designs, specifications or measurements.

10. TERMINATION AND SUSPENSION

10.1 If the Buyer becomes subject to any of the events listed in clause 10.2, the Seller may terminate the Contract immediately by giving written notice to the Buyer.

10.2 For the purposes of clause 10.1, the relevant events are:

- (a) the Buyer commences bankruptcy proceedings;
- (b) the Buyer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors [other than (where the Buyer is a company) where these events take place for the sole purpose of a scheme for a solvent amalgamation of the Buyer with one or more other companies or the solvent reconstruction of the Buyer];
- (c) (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Buyer, other than for the sole purpose of a scheme for a solvent amalgamation of the Buyer with one or more other companies or the solvent reconstruction of the Buyer;
- (d) (being a company) an application is made to court, or an order is made, for the appointment of an administrator, trustee or receiver or if a notice of intention to appoint the same is given or if an administrator, trustee or receiver is appointed over the Buyer;
- (e) (being a company) the holder of a lien over the Buyer's assets has become entitled to appoint or has appointed an administrative receiver;
- (f) a person becomes entitled to appoint a receiver over the Buyer's assets or a receiver is appointed over the Buyer's assets;
- (g) (being an individual) the Buyer is the subject of a bankruptcy petition or order;
- (h) a creditor or encumbrancer of the Buyer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- (i) any event occurs, or proceeding is taken, with respect to the Buyer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 10.2(a) to clause 10.2(f) (inclusive);
- (j) the Buyer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business;

- (k) the Buyer's financial position deteriorates to such an extent that in the Seller's opinion the Buyer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; and
 - (l) (being an individual) the Buyer dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.
- 10.3 Without limiting its other rights or remedies, the Seller may suspend provision of the Goods under the Contract or any other contract between the Buyer and the Seller if the Buyer becomes subject to any of the events listed in clause 10.2(a) to clause 10.2(l), or the Seller reasonably believes that the Buyer is about to become subject to any of them, or if the Buyer fails to pay any amount due under this Contract on the due date for payment.
- 10.4 On termination of the Contract for any reason the Buyer shall immediately pay to the Seller all of the Seller's outstanding unpaid invoices and interest.
- 10.5 Termination of the Contract, however arising, shall not affect any of the parties' rights, remedies, obligations and liabilities that have accrued as of the date of termination.
- 10.6 Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

11. LIMITATION OF LIABILITY

- 11.1 Nothing in these Conditions shall limit or exclude the Seller's liability for:
 - (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
 - (b) fraud or fraudulent misrepresentation;
 - (c) breach of the covenants of good faith and fair dealing;
 - (d) any matter in respect of which it would be unlawful for the Seller to exclude or restrict liability.
- 11.2 Subject to clause 11.1:
 - (a) the Seller shall under no circumstances whatever be liable to the Buyer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
 - (b) the Seller's total liability to the Buyer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort

(including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed 100% of the price of the Goods.

- 11.3 The Seller is not liable for a defect in the Goods unless it is notified to the Seller within 7 days of the date of delivery or, if the defect would not be apparent on reasonable inspection, within three months of the date of delivery.
- 11.4 The Seller is not liable for:
- (a) non-delivery, unless the Buyer notifies the Seller of the claim within 7 working days of the date of the Seller's invoice; or
 - (b) shortages in the quantity of Goods delivered in excess of those permitted by clause 5.4, unless the Buyer notifies the Seller of a claim within 15 working days of receipt of the Goods; or
 - (c) damage to or loss of all or part of the Goods in transit (where the Goods are carried by the Seller's own transport or by a carrier on behalf of the Seller).

12. **FORCE MAJEURE**

Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A **Force Majeure Event** means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of Sellers or subcontractors.

13. **GENERAL**

13.1 **Assignment and other dealings.**

- (a) The Seller may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- (b) The Buyer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Seller.

13.2 **Notices.**

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing and in the English language (with the exception of standard order acknowledgements, invoices, credit notes etc from the Seller to the Buyer), addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by first class mail, postage prepaid, or other next working day delivery service, commercial courier, fax or e-mail.
- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 13.2(a); if sent by first class mail, postage prepaid, or other next working day delivery service, at 9.00 am on the second Business Day after posting (five Working Days if sent by USPS mail); if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or e-mail, one Business Day after transmission.
- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

13.3 **Severance.**

- (a) If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- (b) If any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

13.4 **Waiver.** A waiver of any right or remedy under the Contract or law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

- 13.5 **Third party rights.** A person who is not a party to the Contract shall not have any rights to enforce its terms.
- 13.6 **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is in writing and signed by the Seller.
- 13.7 **No partnership or agency.** Nothing in this agreement shall create, or be deemed to create, a partnership, joint venture or legal relationship of any kind between the parties that would impose liability upon one party for the acts or failure to act of the other party, or authorise either party to act as agent for the other. Save where expressly stated in this agreement, neither party shall have the authority to make representations, act in the name or on behalf of or otherwise bind the other.

14. **GOVERNING LAW AND JURISDICTION**

- 14.1 This agreement shall be governed by and construed in all respects in accordance with the law of the Commonwealth of Pennsylvania.
- 14.2 Subject to clause 14.3, the parties submit to the exclusive jurisdiction of the Butler County Court of Common Pleas.
- 14.3 Nothing in this clause 14 shall limit the right of the Seller to take proceedings against the Buyer in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdiction preclude the Seller from taking proceedings in any other jurisdiction, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.
- 14.4 It is the Buyer's obligation to acquaint itself and to comply with all applicable requirements and restrictions imposed by law or by governmental and other authorities or corporations relating to the possession, use, import, export, or resale of the Goods. It is the Buyer's obligation to ensure that no Goods are exported or imported in violation of the laws of any jurisdiction into or through which the Goods are transported during the course of reaching the Delivery Point. Where necessary, the Buyer shall inform the Seller at a reasonable time before delivery of any documents which it is necessary for the Seller to provide in order to allow export of the Goods in compliance with the laws of any relevant jurisdiction.
- 14.5 The rights set out in this clause 14 are in addition to any other manner of service permitted by law at the time when service is made.