

H & R Screw Machine Products, Inc.

Terms of Sale

All sales of products and services by H & R SCREW MACHINE PRODUCTS, INC. ("Seller") are made on the following terms and conditions. In these Terms of Sale, any products sold by Seller to the buyer named on the reverse side ("Buyer") are called "goods." And any services by Seller to Buyer are called "services."

1. **Agreement.** If buyer has not otherwise agreed to these terms of sale, Buyer's acceptance of delivery of, or payment for, the goods or services shall constitute Buyer's agreement to these terms.
2. **Payment Terms.** Unless otherwise specified on the reverse side, payment in full of the invoice is due thirty (30) days after shipment of the goods or performance of the services, without discount, except that if at any time Seller determines that Buyer's financial condition or credit rating does not justify a sale on credit, Seller may require advance payment or may ship C.O.D. Any payment not made when due shall accrue a late charge of 1-1/2% per month. Credit Memos must be used within one year from date of issue. Payment must be made at Seller's office in Reed City, Michigan.
3. **Delivery and Risk of Loss.** Delivery of the goods shall be F.O.B. Seller's plant or other point of origin. Seller shall have the right to determine the method of shipment and routing of the goods, unless otherwise specified by Buyer. When considered prudent by Seller, shipment will be insured at Buyer's expense, unless otherwise specified by Buyer. Seller shall use bulk packaging for the goods, unless otherwise specified in the quotation.
4. **Taxes.** Seller's price does not include any privilege, occupation, personal property, value-added, sales, excise, use or other taxes, and Buyer shall be liable for all such taxes, whether or not invoiced by Seller.
5. **Delay in Delivery.** Seller shall not be liable for any default or delay in production or delivery of all or any portion of any contract resulting directly or indirectly from: (A) accident to, or breakdowns of Seller's plant machinery or equipment; labor disputes; fire; riots; national emergency; delays of suppliers; carriers; or governmental restrictions, prohibitions; or allocations; or (B) any cause beyond the control of Seller.
6. **Changes.** Seller shall have the right to make design or engineering changes in its tooling, equipment, processes and methods of manufacture or performance, but shall make no changes in operational or dimensional specifications submitted by Buyer without Buyer's prior approval.
7. **Defects; Remedies.**
 - A. **Goods.** If any item of the goods that has been properly installed and not subject to abuse or misuse proves to be defective (as defined below) within one year after Seller manufactures it, and if Buyer returns the item to Seller within that period, F.O.B. Seller's plant in Reed City, Michigan, then Seller shall, at its option, either repair or replace, the defective item, at Seller's expense, or issue credit for the price the Buyer paid for the defective item. If Seller fails to repair or replace any defective item within a reasonable time, then Seller shall be liable to Buyer for the reasonable costs of repair or replacement by a third party, but Buyer shall not obtain repair or replacement by a third party without giving Seller at least ten (10) days prior written notice. An item shall be considered "defective" if it is found by Seller to have been defective in materials or workmanship and if the defect materially impairs the value of the goods to Buyer, except that if Buyer shall have approved or furnished to Seller a sample or drawings of, or specifications for, the goods, then the goods shall not be defective to the extent they conform to the sample, drawings or specifications. This paragraph sets forth Buyer's sole and exclusive remedies for any defect in the goods.
 - B. **Services.** If a service proves to be defective (as defined below) within one year after Seller performs the service and if, in the case of a service involving Seller's processing of products furnished by Buyer, Buyer returns the products to Seller within that period, F.O.B. Seller's plant in Reed City, Michigan, then Seller shall, at its option, either repair the products or reperform the service, at Seller's expense, or refund to Buyer the price that Buyer paid to Seller for that part of the service that was defective. A service shall be considered "defective" if it is found by Seller to have failed to meet the standards in Seller's industry and if that failure materially impairs the value of the service to Buyer, except that if Buyer shall have approved or furnished to Seller specifications for the service, then the service shall not be considered defective to the extent it conforms to the specifications. This paragraph sets forth Buyer's sole and exclusive remedy for any defect in the services.
8. **Limitations.** EXCEPT AS STATED IN PARAGRAPH 7, SELLER MAKES NO WARRANTIES AS TO THE GOODS OR SERVICES AND, IN PARTICULAR, MAKES NO WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, AND BUYER IS SOLELY RESPONSIBLE FOR DETERMINING THE PROPER APPLICATION AND USE OF THE GOODS AND OF ANY PRODUCTS PROCESSED BY SELLER. Seller shall have no tort liability to buyer with respect to any of the goods and shall not be liable for consequential, incidental, special, indirect or punitive damages, losses or expenses arising from any defect, delay, nondelivery, nonperformance or other breach. Buyer shall have no right of rejection or of revocation of acceptance of the goods.
9. **Solvency and Security Interest.** Buyer represents that Buyer is solvent. Buyer grants to Seller a security interest in the goods to secure payment of the price and all other indebtedness now and in the future owing by Buyer to Seller. At Seller's request, Buyer shall sign and deliver to Seller a financing statement evidencing this security interest.
10. **Permits and Compliance.** Seller is not responsible for obtaining any permits, inspections or licenses required for installation or operation of the goods. Seller makes no promise or representation that the goods or services will conform to any federal, state or local laws, ordinances, regulations, codes or standards.
11. **Resale.** On any resale of the goods, Buyer will contractually limit its buyer's rights and remedies against both Buyer and Seller to the same extent as Buyer's rights and remedies are limited under Paragraphs 7 and 8 above.
12. **Quantities.** Unless otherwise specified on the reverse side, Seller may overrun or underrun the agreed-upon quantities by up to 10%, and Buyer shall pay Seller at the unit price for quantities that Seller delivers within these limits. Claims for shortage of goods in an individual shipment must state the packing slip number, weight including tare, and the method used in arriving at a count of the parts. Seller may, at Seller's discretion, request the shipment be returned in its entirety for full evaluation. Any claim by Buyer that Seller failed to deliver the agreed upon quantity of goods (subject to any adjustment under the preceding sentences) must be submitted to Seller in writing within fifteen (15) days after Buyer receives the goods. If Buyer fails to do so, it will be conclusively presumed that the proper quantity was delivered.
13. **Tools, Tooling Charges, Fixtures, and Products:** Tools, dies, jigs, fixtures, programs, gages, and their engineering and design, are integral parts of Seller's manufacturing processes. Therefore, separate quotation to, or payment by Buyer for these items, supplied by Seller, conveys neither ownership nor the right of removal from Seller's factory. If Buyer delivers products to Seller for processing: (i) the risk of loss of the products shall at all times remain with Buyer; (ii) Buyer grants to Seller, a security interest in the products to secure all obligations at any time owing by Buyer to Seller; (iii) Seller shall be allowed to scrap up to 5% of the goods.
14. **Cancellation.** Orders may be cancelled or deliveries deferred by Buyer with written consent of Seller only upon the condition that Buyer assumes immediate liability and makes payment to Seller for all work complete and incomplete, recovering Seller's costs and lost profits. The Seller will recover from Buyer the unit sales price of completed work, work in process on the basis of the percentage of completion, raw material costs, unamortized tooling costs, engineering, handling, overhead charges, and other cancellation charges incurred on the basis of cost to Seller, as well as, lost profits. All cancellation charges shall be determined by Seller at the time of cancellation or deferment.
15. **Indemnity.** Buyer shall indemnify and hold harmless Seller from and against all damages, losses, claims and expenses, including attorney fees, incurred by Seller as a result of any breach by Buyer of any of its obligations under these terms of sale or any claimed unfair competition or patent, trademark or copyright infringement or any other claim resulting from Seller's manufacture of the goods or performance of the services to Buyer's specifications.
16. **Seller's rights.** Seller has all rights and remedies given to sellers by applicable law, and Seller's rights and remedies are cumulative and may be exercised from time to time. No waiver by Seller of any right on one occasion will be a waiver of any future exercise of that right.
17. **Time For Bringing Action.** Any action by Buyer against Seller for breach of this Agreement or for any other claim arising out of or relating to the goods or services or their design, manufacture, sale, delivery or performance must be brought within one year after the cause of action accrues.
18. **Applicable Law.** This agreement between Seller and Buyer shall be considered to have been made in the State of Michigan, and it shall be governed by and interpreted according to Michigan law. Any action arising out of or relating to this agreement may be brought in any federal or state court located in, or whose district includes, Reed City, Michigan. Buyer irrevocably consents that any such court shall have personal jurisdiction over Buyer and waives any objection that the court is an inconvenient forum.
19. **Complete Agreement; Amendment.** The terms on the reverse side and these standard terms contain the entire agreement between Buyer and Seller. Any change in this agreement must be by a signed writing.