



Sales Standard Terms and Conditions

INCLUDING LIMITED WARRANTY unless expressly agreed to in writing by Whitworth Tool Inc. ("Seller") the purchase of Whitworth Tool Inc. products by a customer of Whitworth Tool Inc. ("Buyer") shall be governed by and subject to the following terms and conditions of sale:

- 1. Terms/Conditions in Conflict.** Any term or condition contained in any purchase order or other communication by Buyer which is at variance with these terms and conditions is agreed by Buyer to be superseded and controlled by these terms and conditions. Stenographic and clerical errors are subject to correction. No representations or warranties other than those contained in these terms and conditions shall be binding upon Whitworth Tool Inc. unless made in writing and signed by our authorized employee or officer.
- 2. Order Acceptance.** Orders for purchase of Whitworth Tool Inc. products by Buyer shall be subject to written acceptance by Whitworth Tool Inc.
- 3. Cancellation.** Accepted orders are not subject to cancellation, change, or assignment within sixty (60) business days before scheduled or requested delivery dates without payment of applicable charges such as raw material, outside services, etc. and our authorized written consent.
- 4. Prices/Delivery Terms.** Prices for goods in our published price list shall be as in effect on the date of the invoice. Prices, unless otherwise noted on quotation, are guaranteed for 30 days from date of quote, after which they may be adjusted to those then in effect from time to time. Unless otherwise agreed in writing Whitworth Tool Inc. reserves the right to make delivery in installments when necessary and to invoice each such installment separately. Unless otherwise agreed in writing, delivery shall be F.O.B. our plant. We will select the route and manner of shipment unless otherwise advised by the Buyer. All risk of loss shall pass to Buyer upon delivery to the first common carrier. Whitworth Tool Inc. hereby is granted a security interest in the sold goods until payment has been received, and if requested Buyer will execute and deliver documents effective to perfect such interest. Unless otherwise agreed in writing, all orders are subject to credit approval and payment in full shall be due in U.S. dollars 30 days from the date of each invoice and sent to the remittance address noted on the invoice. All applicable taxes are to the account of the Buyer. If shipment of any other act or condition affecting payment for the goods or any part of them shall be delayed on account of Buyer, payment shall become due as if shipment had been made without delay. A reasonable charge may be made and such storage shall be at the risk of Buyer. All prices are exclusive of consular fees for legalizing invoices, stamping bills of lading, or other documents required by the laws of the country of destination, and of duties, fees, charges, and assessments of any nature levied by any governmental authority outside of the United States, all of which ("Impositions") are the sole responsibility of Buyer. Claims for factory damage or shortages shall not be considered unless made in writing within 10 days after receipt of the goods and accompanied by reference to our bill of lading and invoice numbers. Claims for damage or shortage in transit must be filed by



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pg. 2 Buyer against the carrier unless shipping costs are prepaid. Except as provided by these terms and conditions or other written agreement to the contrary, all goods and services shall be deemed to have been accepted 30 days after receipt by Buyer unless written notice of rejection shall have been made to Whitworth Tool Inc. at 114 Industrial Park Lane, Hardinsburg, Kentucky 40143 USA by Certified Mail/Return Receipt Requested within that period. Any notice of rejection must describe the specific defect or defects upon which rejection is claimed.

5. **Excess Inventory.** Whitworth Tool Inc. will be responsible for manufacture of parts to forecast provided by the Buyer for a mutually agreed upon time period. If quantity changes downward from originally agreed forecast, Buyer will be responsible for purchasing this inventory within a 3 month period. If at the end of this 3 month period parts have not been purchased by Buyer, Seller will have the right to ship and invoice parts to Buyer.
6. **Force Majeure.** Whitworth Tool Inc. shall not be responsible nor deemed to be in default on account of delays in performance due to causes that are beyond our control and not occasioned by our fault or negligence and which make our performance impracticable, including but not limited to civil wars, insurrections, strikes, riots, fires, storms, floods, other acts of nature, explosions, earthquakes, accidents, any act of government, delays in transportation, inability to obtain necessary labor supplies or manufacturing facilities, allocation regulations or orders affecting materials, equipment, facilities or completed products, failure to obtain any required license or certificates, acts of God or the public enemy, failure of transportation, epidemics, quarantine restrictions, failure of vendors (due to causes similar to those within the scope of this clause) to perform their contracts or labor troubles causing cessation, slowdown, or interruption of work provided such cause is beyond our reasonable control.
7. **Sale by Sample or Prototype.** At the request of Buyer, Whitworth Tool Inc. will produce and provide to Buyer a reasonable number of sample or prototype products, at an agreed upon cost, for acceptance, review, and testing. Initial acceptance by Buyer of a sample or prototype (following any necessary modifications or enhancements) shall be given by written notice to Whitworth Tool Inc., the date of which shall be the "Acceptance Date." Whitworth Tool Inc. shall have no obligation to manufacture further products subject to sample or prototype acceptance until receipt of such acceptance.
8. **Installment Shipments.** To the extent that any accepted order for Whitworth Tool Inc. products provides for installment deliveries and shipment, each such delivery or shipment shall be treated as a separate and independent contract with respect to Terms of Payment. If Buyer defaults in payment for any such delivery or shipment when due under this Paragraph 7, upon five (5) days' written notice to Buyer Whitworth Tool Inc. may, in addition to its remedies allow: (1) defer further performance until such payment default is cured; (2) make further deliveries or shipments against the contract for cash in advance; or (3) declare the entire contract in default.



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9. **Late Charges.** Payments not received by Whitworth Tool Inc. at the times specified by these terms and conditions shall bear interest after their due date at the highest rate permitted by applicable law, but not in excess of 18% per annum, calculated on a 360-day year. If Whitworth Tool Inc. is required to commence any suit or proceeding for collection of any delinquency, the customer agrees to pay our actual costs of collection incurred, including actual reasonable attorney's fees.
10. **Tooling and Buyer's Property.** To the extent that product tooling is provided or funded by Buyer, it shall be and remain the property of Buyer for use by Whitworth Tool Inc. exclusively for the benefit of Buyer. Technical information of Buyer provided to Whitworth Tool Inc. for performance of an accepted purchase order shall be and remain the property of Buyer and, if designated in a timely manner as confidential or proprietary, shall be protected by Whitworth Tool Inc. in the same manner as Whitworth Tool Inc. protects its own property for a period of 6 months from initial use/order.
11. **Warranty.** Whitworth Tool Inc. warrants that its products will conform to all specifications, drawings, samples, prototypes, or other descriptions provided or approved by Buyer. Whitworth Tool Inc. also warrants that its products will be of merchantable quality and free from defects in material, workmanship, and design (other than a design provided by Buyer) under normal use and service. Any claims by Buyer shall be submitted in writing to Whitworth Tool Inc. within 30 days of shipment from Whitworth Tool Inc. to Buyer or designated recipient. Whitworth Tool Inc. makes no warranty with regard to component parts of its product that are manufactured by others and instead passes to Buyer such warranties as may be provided by them to Whitworth Tool Inc.
12. **Warranty Limitations.** Unless otherwise expressly agreed in writing, the Whitworth Tool Inc. WARRANTY SET FORTH ABOVE IN PARAGRAPH 10 IS EXCLUSIVE OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, OR OTHERWISE ARISING FROM ANY COURSE OF DEALING OR TRADE USAGE. WHITWORTH TOOL INC ALSO DISCLAIMS ANY WARRANTY OF FITNESS FOR INTENDED PURPOSES FOR PRODUCTS MANUFACTURED PURSUANT TO DESIGNS PROVIDED BY BUYER, WHICH ARE SOLD "AS-IS WITH ALL FAULTS".
13. **Remedies.** The warranties set forth above in paragraph 10 shall not apply to any defect to the extent caused in whole or in part by or resulting from product misuse, neglect, improper installation, improper operation, improper maintenance, repair or alteration, accident, or unusual deterioration or degradation of a product due to physical environment not expressly made known to Whitworth Tool Inc. and beyond the requirements intended for such product's specifications. No defective product may be returned to Whitworth Tool Inc. without prior or written consent. Any return must be with transportation prepaid, which may be refunded at our discretion. Under no circumstances will Whitworth Tool Inc. be liable for:
- Failures not reported within the warranty period;



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b. Failures or damage due to the negligence, accidents, abuse, improper installation (unless installation is made by Whitworth Tool Inc.), improper operation, or improper maintenance and repair of others;

c. Expenses incurred by Buyer in an attempt to correct or repair any alleged defect without the prior written consent of Whitworth Tool Inc.; or

d. Any losses, costs, expenses, liabilities and damages, including but without limitation to, loss of use of profits, damage to persons or property, any liabilities Buyer may have to its customers or third persons, and all other special or consequential damages, whether direct or indirect. No liability whatsoever shall attach until the goods have been paid in full. Should a Whitworth Tool Inc. product fail within the warranty period set forth above in Paragraph 10 as a result of defect in the manufacture or of failure to meet written specifications of Buyer against which the warranty applies, Whitworth Tool Inc. will repair or replace such nonconforming product at its expense or refund its purchase price if paid. If a Whitworth Tool Inc. product fails to conform to the warranties set forth in Paragraph 10 and such nonconformity is not due to misuse or improper maintenance, Buyer shall notify Whitworth Tool Inc. in writing not later than 14 days after the expiration of such warranties identifying the product, its date of purchase and the details of failure and shall make the product available for inspection by Whitworth Tool Inc. or its designated agent. At the request of Whitworth Tool Inc. any defective product shall be returned to Whitworth Tool Inc. for examination, with transportation charges prepaid and assumed by Buyer. Within a reasonable time Whitworth Tool Inc. shall provide, at its option, with respect to a product which fails to conform to the Warranty either: a) repair or replacement of such nonconforming or defective product; or b) full refund of its purchase. Repair or replacement shall be made only by a facility approved in advance by Whitworth Tool Inc. THIS REMEDY SHALL BE THE EXCLUSIVE AND SOLE REMEDY FOR ANY BREACH OF WARRANTY.

14. **Exclusion of Consequential and Incidental Damages.** IN NO EVENT SHALL WHITWORTH TOOL INC. BE LIABLE FOR ANY INCIDENTAL, SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES, WHETHER RESULTING FROM NONDELIVERY OR FROM THE USE, MISUSE OR INABILITY TO USE THE PRODUCT OR FROM DEFECTS IN THE PRODUCT OR FROM THE NEGLIGENCE OF WHITWORTH TOOL INC. OR FROM TORT. This exclusion applies regardless of whether such damages are sought for breach of warranty, breach of contract, negligence or strict liability in tort or under any legal theory.

15. **Seller's Right of Possession.** Whitworth Tool Inc. shall have the right, in addition to all others it may possess, at any time, for credit reasons or because of Buyer's default(s), to withhold shipments, in whole or in part, and to recall products in transit, retake same, and repossess all products which may be stored with Whitworth Tool Inc. for Buyer's account, without the necessity of taking any other proceedings. This shall not be construed as limiting, in any manner, any of the rights or remedies available to Whitworth Tool Inc. because of any default of Buyer under the Uniform Commercial



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Code as it is in force and effect in the State of Kentucky on the date of signing this agreement.

16. **Time and Place for Return.** Any action for resolution of any controversy or claim arising out of the sale of Whitworth Tool Inc. products to Buyer shall be commenced within 1 year after the expiration of the applicable warranty period. The prevailing party in any such action shall be entitled to recover its reasonable attorney's fees and the costs and expenses incurred in any such action.
17. **Choice of Law; Venue.** Any controversy or claim arising out of or relating to this order or the performance or breach thereof shall be governed by the laws of the State of Kentucky.
18. **Interpretation.** This instrument is intended by the parties to be a final, exclusive, complete, and fully integrated expression of their agreement and its terms. NO COURSE OF PRIOR DEALINGS BETWEEN THE PARTIES AND NO USAGE OF THE TRADE SHALL BE RELEVANT TO SUPPLEMENT OR EXPLAIN ANY TERM USED HEREIN. Acceptance of, or acquiescence in, a course of performance rendered under this agreement shall not be relevant to determine the meaning of this agreement though the accepting or acquiescing party has knowledge of the nature of the performance and an opportunity to object.
19. **Merchant Representations.** Buyer and Whitworth Tool Inc. represent to each other that they are merchants with respect to Whitworth Tool Inc. products that are subject to these terms and conditions of sale. No representations were made or relied upon with respect to the products or the purchase and sale not contained in these terms and conditions. No agent, employee or representative of Whitworth Tool Inc. made, or has any authority to bind Whitworth Tool Inc. by any warranty, representation, or affirmation concerning Whitworth Tool Inc. products. Buyer acknowledges that no such affirmation, warranty, or representation has been made nor relied upon, and none forms the basis of this bargain.
20. **Modification.** These terms and conditions of sale may be modified only by a written instrument signed by the parties or their respective agents.
21. **Severability.** If any provision of these terms and conditions of sale is determined to be invalid, illegal, or unenforceable in whole or in part, then the invalid, illegal or unenforceable provision shall be deemed severed and the remaining provisions of such terms and conditions shall remain in full force and effect.
22. **Equal Opportunity Employment.** Whitworth Tool Inc. is an Equal Opportunity Employer and has an Affirmative Action Plan on file. We comply with Executive Order No. 11246 dated September 14, 1965 and the Federal Occupational Safety and Health Act of 1970 along with all subsequent amendments.
23. **Export Laws.** If applicable, performance is subject to U.S. Export Laws and Regulations. Our failure to perform due to such Laws and Regulations shall not constitute a breach.