TERMS AND CONDITIONS OF SALE

Sales under these terms and conditions (these “Terms”) are by SKS Industries, Inc., a Michigan corporation that operates under the assumed name “Workshop Hero” to the person named as the buyer or purchaser in the documentation to which these Terms are attached or with which they are associated (“Buyer”) are conditional upon Buyer’s assent to these Terms and only these Terms. If these Terms are first tendered to Buyer before Buyer tenders any other document, in every case Buyer’s assent to these Terms is conditioned on Buyer’s agreement that the transfer of title or the right to receive any such products is evidenced by the later tendered document or its receipt, or by Buyer’s acceptance of shipment or by Buyer’s payment or performance of any other acts or omissions by Buyer in accordance with these Terms. If these Terms are tendered to Buyer at the same time as any document or other act or omission by Buyer then Buyer’s assent to these Terms is conditioned on Buyer’s agreement that the transfer of title or the right to receive any such products is evidenced by the tendered document or act or omission or Buyer’s receipt or performance of any other acts or omissions by Buyer in accordance with these Terms. If these Terms are tendered to Buyer in any case later than any document or other act or omission by Buyer then Buyer’s assent to these Terms is conditioned on Buyer’s agreement that the transfer of title or the right to receive any such products is evidenced by the tendered document or act or omission or Buyer’s receipt or performance of any other acts or omissions by Buyer in accordance with these Terms. If these Terms are tendered to Buyer in any case after any document or other act or omission by Buyer then Buyer’s assent to these Terms is conditioned on Buyer’s agreement that the transfer of title or the right to receive any such products is evidenced by the tendered document or act or omission or Buyer’s receipt or performance of any other acts or omissions by Buyer in accordance with these Terms.

1. Description of Products. Workshop Hero agrees to sell, and Buyer agrees to purchase, the products described as part of the Order.

2. Prices; Minimum Quantities. The prices of the products and/or services supplied by Workshop Hero are as stated in the Order. Prices may be adjusted to the prices in effect at the time of delivery, whether as a result of fluctuations in commodity prices or otherwise. Except as otherwise stated in an Order, all pricing is FOB (as defined in Uniform Commercial Code Section 2-319) for shipments originating and ending in the United States and EXW (Incoterms 2000) for international shipments, in each case either Workshop Hero’s facility or such other location as Workshop Hero specifies in an Order. Buyer acknowledges that the prices for certain products offered by Workshop Hero are based on Buyer purchasing a subject of the purchase and sale transaction under these Terms constitute an “Order.” Buyer represents and warrants that any products that it purchases from Workshop Hero are for business or commercial use and not for domestic, personal, family, or household use.

3. Taxes and Fees. All prices are exclusive of sales, use, excise, customs, export, import, commodity and/or any other taxes. Buyer will pay all such taxes and any license fees or other charges incidental to the sale of products. Buyer will, at Workshop Hero’s request, provide to Workshop Hero reasonable proof of payment by Buyer of such taxes, fees, and assessments. If Workshop Hero is required to prepay any taxes on behalf of Buyer, Buyer will reimburse Workshop Hero for all such taxes paid. If provision of the products and/or services requires any documentary letter of credit or similar document, instrument, or process, Buyer shall pay all fees and costs associated therewith.

4. Payment Terms. Unless otherwise stated in writing in Workshop Hero’s quotation, payment shall be net 30 days from date of shipment. Unless otherwise expressly stated in an Order, Buyer will pay any invoice issued by Workshop Hero in U.S. Dollars without discount, setoff, or reduction. Workshop Hero may, at its sole discretion, require payment by bank transfer, cash, certified check, C.O.D., or irrevocable letter of credit. All trading terms are subject to approval by Workshop Hero’s credit department in accordance with Workshop Hero’s credit policies and practices in effect from time to time. The amount of credit or terms of payment may be changed by Workshop Hero at any time for any reason. If Buyer fails to make payment when due or defaults in any other way, Workshop Hero may, at its option, without limiting any of its other rights or remedies available under these Terms or applicable law, and until Buyer’s account is current: (1) withdraw credit and suspend or cancel performance under any or all Orders; and/or (2) reschedule shipment. Each shipment will be separately invoiced and paid for without regard for other shipments.

5. Shipments. All shipments will be FOB (as defined in Uniform Commercial Code Section 2-319) for shipments originating and ending in the United States and EXW (Incoterms 2000) for international shipments, in either case Workshop Hero’s facility or such other location as Workshop Hero specifies in an Order. If Workshop Hero elects to deliver an Order line item(s) to Buyer for delivery by another carrier, Buyer accepts carrier selection by Workshop Hero unless Buyer timely specifies an alternative carrier in writing. Delivery of products to the carrier constitutes delivery to Buyer, title to products will pass to Buyer, and Buyer will have all risk of loss or damage at that time. Any claims against Workshop Hero for shortages or non-conformance that could, with due diligence, be discovered by inspection upon receipt must be made within 10 days after receipt. Prices include packaging in accordance with Workshop Hero’s standard practice. Workshop Hero may make deliveries in installments with appropriate partial invoicing issued for each such installment. Any shipping date or delivery date stated represents Workshop Hero’s estimate of when the products will be shipped or delivered. Workshop Hero is not liable for losses or added costs due to delivery delays. Without limiting the foregoing, Workshop Hero may, but will not be required to, shorten lead times and deliver products more quickly than originally estimated, in accordance with Buyer requests, but reserves the right to increase pricing accordingly, or impose break-in charges, for directly or indirectly affected products or shipments thereof. Each shipment of products to be delivered is to be considered a separate sale and Buyer will pay the agreed price for each shipment without regard for any failure to deliver any subsequent shipment of such products. Workshop Hero’s breach or default in the delivery of any particular shipment will not give Buyer the right to refuse to receive any other shipment. Any back-ordered products will be considered a separate shipment. Time is not of the essence and Buyer is not entitled to reject an otherwise conforming tender made within a reasonable time. Any failure by Buyer to pay for any shipment within the time stated for payment is an anticipatory material breach with regard to other shipments. If Workshop Hero commences production of products and/or provision of services and/or determines a shipping or delivery date with regard to the same, Workshop Hero will be entitled to provide, ship, and/or deliver such products and/or services and receive payment therefor and Buyer may not revise the timing for receipt of such products and/or services.

6. Security Interest. Buyer grants to Workshop Hero a security interest in the products supplied under these Terms and any proceeds thereof and accessions thereto as security for Buyer’s obligations (payment and otherwise) to Workshop Hero. Workshop Hero may file any financing statement and/or take any other action permitted by applicable law to perfect and enforce such security interest and, if local law requires that a financing statement or similar document be signed or otherwise acknowledged by a debtor party, Buyer appoints Workshop Hero its attorney in fact for the purposes of execution and delivery of any such document.

7. Termination; Default.

(a) Termination for Default. Either party may terminate an Order by notice, without prejudice to its other rights or remedies if: (1) the other party files a petition in bankruptcy or assignment generally for the benefit of creditors, becomes insolvent, becomes, or admits that it is, unable to pay its debts generally as they become due, or has a third-party manager or receiver appointed over any of its assets or (2) the other party defaults under these Terms and does not remedy the default within 30 days (10 days in the case of payment defaults) following written notice requiring the default to be remedied.

(b) Termination for Convenience. Workshop Hero may, at Workshop Hero’s sole discretion, cancel Orders upon receipt of written request from Buyer requesting cancellation, except that Orders or Order line items for products designated non-cancelable or non-returnable (“NCNR” or other designation to that effect), or for custom products cannot be cancelled under any circumstances. Buyer will accept delivery and pay the purchase price of such Order line item(s).

(c) Adequate Assurance of Performance. In any circumstance where Workshop Hero has the right to demand adequate assurance of Buyer’s performance (such as under Section 2-609 of the Uniform Commercial Code, where applicable), Buyer will provide such assurance within five days after demand by Workshop Hero.

(d) Other Termination by Workshop Hero. If Buyer fails to make payments in accordance with these Terms or any Order or fails to comply with any provision of these Terms or any Order, Workshop Hero may terminate any Order as to unshipped portions of the products, terminate any applicable raw materials orders placed with its suppliers, and Buyer will remain liable for shipped products. If Workshop Hero elects to continue to make shipments after the Buyer has failed to make payment for the shipment in advance or fails to provide satisfactory security, any action by Workshop Hero shall constitute a waiver of any default by the Buyer or in any way affect Workshop Hero’s remedies for any such default.

8. Product Changes. Workshop Hero may, at any time and without notice to the Buyer, change the product(s) in any way that does not adversely affect the form, fit or function of the product(s) in any material respect. If Buyer at any time directs Workshop Hero to cause any changes in the product, drawings, or specifications of the product(s), or otherwise changes the scope of the work covered by an Order, including, but not limited to, work with respect to such matters as inspection, testing, or quality control, Workshop Hero may terminate the Order with respect to the items affected by such change(s) or equitably change the time for performance and/or the price of product(s) to take into account the changes.
Technical Assistance. Except as provided for in a separate signed agreement, Workshop Hero will not be liable in any respect to provide technical advice, facilities or service in connection with any Order or the products supplied.

Assignment. Buyer may not assign any right or obligation under any Order. Workshop Hero may freely assign any right or obligation under any Order.

Warranty. Workshop Hero warrants solely to Buyer that each product supplied under these Terms will, for 90 days after shipment by Workshop Hero to Buyer or such shorter period as may be specified by the applicable Indemnified Warranty Period), conform to Workshop Hero’s written specifications during normal use and/or operation. Workshop Hero’s sole and exclusive obligation, and Buyer’s sole remedy for failure of any product to conform to the above warranty is, at the option of Workshop Hero, to replace or repair defective products at no charge to Buyer, or at Buyer’s option, to refund the money paid by Buyer for the non-conforming product. Buyer must notify Workshop Hero in writing during the Warranty Period of any nonconformity. Transportation charges for any product returned by Buyer to Workshop Hero in connection with a valid warranty claim will be at Workshop Hero’s expense, except for any product returned by Buyer necessary to repair or replace products or equipment purchased by Buyer at Buyer’s expense. The warranty will not apply if the product: (1) fails, malfunctions or is damaged as a result of improper handling, improper storage conditions (including, but not limited to, where applicable, temperature and humidity), installation, maintenance, removal, modification or repair; (2) is accidentally damaged, subjected to abuse or improper use; (3) is altered or damaged so that Workshop Hero is unable to verify the defect with its normal test equipment and/or procedures; or (4) is not returned in the same or equivalent container in which it was shipped or is not returned with the appropriate lot numbers, manufacturing dates, and shipper numbers.

Product Returns. Buyer may not return any product unless Workshop Hero approves in writing the return. Upon Workshop Hero’s request, Buyer will provide to Workshop Hero samples of products alleged by Buyer to be eligible for return. All return documentation must contain Workshop Hero’s Returned Materials Authorization Number (RMA number), a description of the product and the serial number in which it was shipped, if applicable. The request for return approval must include serial number, part number, lot number, and date code (each as applicable), and full identification of products to be returned. Proper handling procedures must be used in packing and shipping any product to be returned in the same or equivalent container in which they were shipped with the RMA number clearly visible on the package. Buyer retains title and assumes all risk of loss relating to products returned for repair or replacement until Workshop Hero completes repair or identifies products as replacements.

Limitation of Liability. Subject to the exceptions expressly described in Section 1, the Products delivered under these Terms and/or any Order are supplied “AS IS” and WITH ALL FAULTS. WORKSHOP HERO MAKES NO OTHER REPRESENTATIONS OR WARRANTIES, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO THE PRODUCTS, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. NOTWITHSTANDING ANYTHING IN THESE TERMS OR IN ANY ORDER OR OTHERWISE TO THE CONTRARY, WORKSHOP HERO WILL NOT BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, LOSS OF REVENUE OR PROFITS) ARISING FROM OR CAUSED, DIRECTLY OR INDIRECTLY, BY THE USE OR SALE OF ANY PRODUCT BY BUYER OR ANY CUSTOMER OR SUCCESSOR THERETO, OR BY ANY OTHER ACT OR OMISSION OF ANY PRODUCT; BY THE PERFORMANCE OR FAILURE OF WORKSHOP HERO TO PERFORM UNDER THESE TERMS; BY ANY OTHER ACT OR OMISSION OF WORKSHOP HERO; OR BY ANY OTHER CAUSE. IN NO EVENT WILL WORKSHOP HERO’S TOTAL LIABILITY TO BUYER FOR ANY BREACH OF THESE TERMS EXCEED THE AMOUNT PAID BY BUYER TO WORKSHOP HERO BY BUYER FOR THE PRODUCTS SUPPLIED UNDER THE ORDER IN CONNECTION WITH WHICH THE CLAIM ARISES. NO ACTION MAY BE BROUGHT BY BUYER FOR ANY BREACH OF THESE TERMS MORE THAN ONE (1) YEAR AFTER THE ACCRUAL OF SUCH CAUSE OF ACTION.

Indemnification. Buyer shall defend, indemnify, and hold harmless Workshop Hero and its employees, officers, directors, agents, affiliates, successors and assigns (each an “Indemnified Party”) from and against any and all claims, suits, actions, demands, damages, losses, liabilities, penalties, fines, costs and expenses (including, without limitation, attorneys fees) whatsoever that a

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shortages of labor (whether involving employees of Workshop Hero or employees of others and regardless of responsibility or fault on part of any employer), embargoes, wars, riots, civil commotion, shortage of rail cars or semi-tractors and trailers, delays in transit or inability to secure necessary parts or materials (whether at all or at commercially reasonable prices). In no event will Workshop Hero be liable for any loss or damage, including in particular, direct, incidental, indirect, special, punitive or consequential damages (including loss of profits) due to any failure to deliver or delay in delivery. If Workshop Hero is wholly or partially unable to perform because of any cause beyond its reasonable control, Workshop Hero may allocate production and deliveries among Workshop Hero’s customers or may terminate the Order without any further liability to Buyer.

25. Remedies Cumulative. All rights and remedies of Workshop Hero under these Terms and any Order are cumulative. No pursuit or receipt by Workshop Hero of any particular remedy will constitute an exclusive election of remedies and Workshop Hero will have the benefit of all remedies available at law, in equity, or otherwise.

26. Cross-Default. Any default by Buyer under any other agreement to which Workshop Hero or any Workshop Hero affiliate is a party will be a default by Buyer under these Terms and of each Order. Such other agreements may, where applicable, be (but are not limited to), distributor or similar agreements.

27. Third Parties. Except for the Indemnified Parties other than Workshop Hero (who are all express third-party beneficiaries of Buyer’s indemnification obligations), there are no third-party beneficiaries of any right or obligation under these Terms or any Order.

28. Third-Party Terms. Under no circumstances will Workshop Hero be obliged or liable to Buyer or to any third party with respect to any representation, warranty, covenant, duty, or liability to any third party, whether as part of a “directed sourcing” arrangement or otherwise. Without limiting the foregoing, Workshop Hero expressly disclaims and rejects any obligation of any kind to comply with any terms or conditions of Buyer’s direct or indirect customer(s), regardless of any obligation to such persons taken on by, and/or imposed upon, Buyer and regardles of whether Workshop Hero is aware of any such requirement upon Buyer. Workshop Hero will be liable to any third party, if at all, solely according to such separately negotiated, written, and signed agreement, if any, as Workshop Hero actually negotiates and executes with such third party.

29. Entire Agreement. These Terms, together with any specific terms contained in any Order, any separate written and signed distributor agreement, and any separate written confidentiality agreement between the parties, embody the entire agreement between the parties with regard to such subject matter. Neither these Terms nor any Order may be modified, except in writing and signed by the party against whom enforcement is sought.