



To: Valued Supplier ("Seller")  
From: Mahar Tool Supply Company, Inc. - Purchasing Department  
Re: Mahar Tool Supply Terms and Conditions

### **Terms and Conditions**

**Terms and Conditions.** Each purchase order and purchase order revision ("Purchase Order") issued by Mahar is an offer to Seller for the purchase of goods and/or services, and includes and is governed by the express terms contained on the face of a Purchase Order, these terms and conditions, and the terms contained in any addendum or supplement to a Purchase Order, and other document incorporated by reference in a Purchase Order or in these terms and conditions (collectively, the "Terms and Conditions"). No terms and conditions other than these Terms and Conditions shall be binding upon Mahar unless accepted in writing and signed by Mahar's Purchasing Agent or other authorized agent. Notwithstanding any other provision of a Purchase Order, Mahar reserves the right to revoke a Purchase Order at any time prior to receipt of notice of acceptance by Seller. Acceptance is limited and conditional upon Seller's acceptance of these Terms and Conditions. Any proposal for additional or different terms or any attempt by Seller to vary any of the terms, shall be deemed material and is hereby objected to and rejected by Mahar, but any such proposal or attempted variance shall not operate as a rejection of a Purchase Order if Seller accepts Mahar's offer by commencement of work, shipment of the goods or performance of the services, or by any other means indicative of acceptance, in which case the Purchase Order shall be deemed accepted by Seller without any additional or different terms or variations whatsoever. Seller will be deemed to have accepted these Terms and Conditions if Seller performs any of the services or works on the goods covered by a Purchase Order or if any part of the goods and/or services covered by a Purchase Order is shipped or if an invoice is presented to Mahar in connection with the said goods and services.

**Compliance with Laws.** Seller shall comply with all applicable federal, state and local laws, rules, ordinances and regulations including without limitation any such laws, rules, ordinances and regulations in any way pertaining to the manufacture, labeling, invoicing and sale of the goods covered by a Purchase Order, and Seller by accepting a Purchase Order from Mahar, certifies that the goods were so manufactured, labeled, invoiced and sold. Seller further agrees to indemnify and hold harmless Mahar and its affiliates, and their respective customers, directors, officers, employees and agents, from and against any liability or damages for violation thereof or non-compliance therewith by Seller. Seller shall not discriminate against any employee or applicant for employment in any way, including but not limited to discrimination because of race, religion, color, sex, age or national origin. In accepting a Purchase Order from Mahar, Seller represents and warrants that the goods and/or services to be furnished hereunder were or will be produced in compliance with the requirements of the Fair Labor Standards Act of 1938, as amended, and the orders and regulations issued pursuant thereto.

**Law.** These Terms and Conditions shall be governed in all respects by the laws of the State of Michigan, excluding any conflict of law provisions, and all actions commenced pursuant hereto shall be brought in a court of competent jurisdiction in the State of Michigan. Provided, however, neither the Convention on Contracts for the International Sale of Goods ("CISG") nor the Convention on the Limitation Period in the International Sale of Goods shall apply.

**Transportation; Delivery Schedule.** Unless otherwise stipulated on the face of a Purchase Order or as modified by specific routing instructions from Mahar, goods covered shall be shipped "FOB" destination. Risk of loss and title to said goods shall pass to Mahar only upon delivery to Mahar's specified end

destination. Delivery in advance of the shipping date specified by Mahar shall not cause passage of title nor transfer of risk of loss, nor shall it establish FOB point. Transportation charges on goods delivered FOB destination must be prepaid by Seller. No charges for unauthorized transportation will be allowed. Unauthorized transportation charges not prepaid will be offset by Mahar.

Time is of the essence in the fulfillment of Mahar Purchase Orders. Purchase Orders are subject to cancellation if not shipped at the specified time. Mahar reserves the right to refuse deliveries made in advance of the delivery schedule. Goods shipped after the time specified may be returned by Mahar to Seller at the Seller's expense for full credit. Receipt of such goods by Mahar shall not be deemed a waiver of Mahar's right to hold the Seller liable for any loss or damages resulting from untimely shipping, nor shall it act as a modification of the Seller's obligation to make future deliveries in accordance with the delivery schedule.

**Default.** Mahar may, by written notice of default to Seller and Seller's failure to cure within a period of ten (10) days or such longer period as Mahar may authorize in writing terminate the whole or any part of a Purchase Order in any one of the following circumstances: (i) if Seller fails to perform within the time specified therein or any extension thereof; or (ii) if Seller fails to perform any of the other provisions of a Purchase Order, or fails to make progress so as to endanger performance of a Purchase Order in accordance with its terms; or (iii) if Seller becomes insolvent or makes a general assignment for the benefit of creditors or if a petition under any bankruptcy act or similar statute is filed by or against the Seller. Upon such termination Mahar may procure, upon such terms as it shall deem appropriate, goods or services similar to those so terminated, in which case Seller shall continue performance of the Purchase Order to the extent not terminated and shall be liable to Mahar for any excess costs for such similar goods or services obtained by Mahar. As an alternate remedy in lieu of termination for default, Mahar, at its sole discretion, may elect (a) to extend the delivery schedule and/or (b) to waive other deficiencies in the Seller's performance, in which case an equitable reduction in the Purchase Order price shall be implemented. If Seller does not comply with Mahar's delivery schedule or performance schedule, Mahar may require delivery by fastest means, and charges resulting from the premium transportation must be fully prepaid and absorbed by the Seller. The rights and remedies of Mahar provided in this paragraph shall not be exclusive and are in addition to any other rights and remedies provided by law or stated within the Purchase Order.

**Rejections.** If any of the goods and/or services furnished hereunder are found by Mahar to be defective in material or workmanship or otherwise not in conformity with the requirements of a Purchase Order, Mahar, in addition to any other rights which it may have under all applicable warranties or otherwise, may at its option correct or have corrected the nonconformity at Seller's expense, or may reject and return such goods and/or discontinue such services at Seller's expense. Such goods and/or services shall not be replaced or continued by Seller without written authorization from Mahar. Mahar may accept, without prejudice, a non-defective or non-conforming portion of a shipment. Items rejected shall be removed promptly by Seller at its expense and risk. Initial acceptance shall not be conclusive with respect to latent defects, fraud or with respect to Mahar's rights under the "Warranty" clause hereof.

**Set-Off.** Mahar shall be entitled at all times to set-off any amount owing at any time from the Seller to Mahar or any of its affiliates against any amount payable at any time by Mahar to Seller in connection with a Purchase Order.

**Payment Terms.** A Purchase Order price shall not be increased or decreased nor the terms thereof changed without Mahar's written consent. Upon receipt of proper invoices, Mahar shall pay the Purchase Order price set forth on Mahar Purchase Orders for material and supplies delivered and accepted or services rendered and accepted on a "net 75" basis for Zimmer Biomet suppliers and a "net 60" basis for all other suppliers.

**Hazcom Reporting; Test Products.** If any of the goods ordered constitute "hazardous or toxic chemicals" as defined by any applicable federal, state or local law, rule, ordinance or regulation, Seller shall provide with the first delivery, all required notices and information, including without limitation all Material Safety Data Sheets ("MSDS") in proper form. Seller agrees to maintain such information current and shall provide Mahar with any amended, altered or revised information on a timely basis. When a Purchase Order or the specifications referred to therein require documentation or certification, this requirement is a material requirement of the Purchase Order. Seller's failure to provide such information prior to or at the time of the delivery may result in withholding of payment until the same is provided.

Mahar shall within one year of receipt of goods considered by it to be "test products" have the right to return to Seller at Mahar's shipping expense unopened packages and containers for full credit subject to no restocking charge. Mahar shall within one year of receipt have the right to return opened packages and containers of "test products" to Seller at Mahar's shipping expense for appropriate reuse or disposal by Seller, but with no credit and subject to no restocking charge.

**Shipment.** All goods shall be properly packed for shipment. Unless otherwise specified, the Seller shall comply with all routing and shipping instructions issued by Mahar. No additional charge will be allowed for packing, crating, freight, express shipping or cartage unless specified on the face of the Purchase Order. Any loss or damage whenever occurring which results from Seller's improper packaging or crating shall be borne by Seller. All goods shall be properly identified with Mahar's Purchase Order number releasing shipments against the Purchase Order and the item number or other identification number.

**Patent and Copyright Indemnity.** Seller represents and warrants that neither the goods nor the sale thereof covered by a Purchase Order will infringe upon or violate any trademarks, patents, copyright or other legal rights of third parties. Seller agrees to indemnify and hold harmless Mahar and its affiliates, and their respective customers, directors, officers, employees and agents, from and against any and all claims, liability, loss, costs, actual attorney fees, expenses and damages due to or arising from any such alleged infringement or violation.

**Indemnification.** To the fullest extent permitted by law, Seller agrees to indemnify and hold harmless Mahar and its affiliates, and their respective customers, directors, officers, employees and agents from and against any loss, liability, cost, expense, suit, action, claim and all other obligations and proceedings whatsoever, including without limitation, all judgments rendered against and all fines and penalties imposed upon them and any actual attorney fees and any other cost of litigation (hereinafter collectively referred to as "liabilities") arising out of injuries to persons (including death) or out of damage to property caused by Seller, its employees, agents or subcontractors, or in any way attributable to the performance and fulfillment of a Purchase Order, including without limitation breach of warranty and/or products liability, except that Seller's obligation herein to indemnify Mahar shall not apply to any liabilities arising from Mahar's sole negligence. Seller expressly waives its immunity, if any, under applicable workers' compensation laws if such immunity may affect this indemnification obligation.

**Waiver.** Mahar's failure to insist upon strict compliance shall not be deemed to be a waiver of any right granted Mahar herein. Mahar shall not be deemed to waive any such right unless the waiver is in writing signed by Mahar's authorized representative; such waiver shall not constitute a waiver of any other default under a Purchase Order.

**Taxes.** Unless prohibited by law, Seller shall pay all federal, state or local tax of any kind, which is required to be imposed upon the goods or services , or by reason of their sale or delivery; the Purchase Order price shall be deemed to include such taxes.

**Insurance.** Seller shall maintain and carry property and general liability insurance, including public liability, property damage liability, product liability and contractual liability coverage, and workers' compensation and employers' liability insurance covering all employees engaged in the performance of a Purchase Order; in each case in such amounts and with such limits and with such insurers that are reasonably acceptable to Mahar. Seller shall furnish buyer with certificates or other satisfactory proof of insurance confirming the foregoing insurance coverages within ten (10) days of Mahar's request. Any such certificate shall provide for terms and conditions satisfactory to Mahar whereby, among other things: (i) the interest of Mahar in such insurance coverage has been recognized, whether by way of designating Mahar as loss payee or otherwise, as may be requested by Mahar from time to time; and (ii) Mahar will receive not less than thirty (30) days prior written notice from the insurer before any termination or reduction in the amount or scope of coverage can occur, with Mahar having the right, but not the obligation, to maintain such insurance coverage prior to the expiration of such notice. The receipt or review of such certificates or other proof of insurance coverage at any time by Mahar shall not relieve Seller from its insurance obligations hereunder or reduce or modify such insurance obligations.

**Warranty.** Seller warrants that it has clear title to all goods furnished to Mahar, and that the goods are free and clear of any encumbrances. Seller further warrants that all such goods shall conform to (a) Mahar's specifications, (b) the requirements of all Purchase Orders and (c) all pre-approved samples, if any, and further that such goods shall be merchantable and fit for Mahar's or its customers' intended usage and that such goods shall be free from defects in design, material and workmanship. Neither approval of the Seller's design nor receipt and/or resale of the goods by Mahar shall release or discharge Seller from liability for damages resulting from a breach of Seller's warranty as set forth herein or as otherwise afforded by applicable law.

If any defect, failure or other non-conformity appears, Mahar shall have the right to take the following actions: (1) retain such defective goods and make an equitable adjustment in the Purchase Order price for such defective goods; (2) require Seller to repair or replace such defective goods at the Seller's sole expense, including all shipping, transportation, and installation costs; or (3) correct or replace such defective goods with similar items and recover the total cost thereof from the Seller. The aforesaid warranties shall survive acceptance and payment and shall run to Mahar, its customers and their successors in the title and shall not be deemed to be exclusive, but shall be in addition to Mahar's other rights under the terms of a Purchase Order or at law or equity.

**Termination by Mahar.** Mahar shall have the right for its convenience to terminate a Purchase Order in whole or in part at any time, and from time to time, by written or e-mail or facsimile notice effective upon receipt by Seller, even though Seller is not in breach of any obligation hereunder. Upon receipt of notice of termination, Seller shall immediately discontinue performance and shall comply with Mahar's instructions concerning disposition of completed and partially completed goods, work in progress and materials acquired pursuant to a Purchase Order. In the event of such termination, Seller shall be paid an amount in settlement to be mutually agreed upon by the parties which shall cover Seller's reasonable costs of performance incurred prior to termination in connection with the goods for which a Purchase Order is terminated, plus a reasonable profit based upon such goods. Seller shall be entitled to no other damages of any kind, including but not limited to incidental or consequential damages. Seller shall advise Mahar in writing of Seller's claim, if any, for termination costs within ten (10) days after the receipt of the notice of termination.

**Returns.** Mahar may at its expense return complete packages of unused/unsold goods to Seller within one year of Mahar's receipt thereof. Said returns shall be for full credit minus a 10% restocking charge.

**Website.** Mahar's website ("Website") may contain specific additional requirements for certain items covered by a Purchase Order, including labeling, packaging, shipping, delivery and quality specifications, procedures, directions and/or instructions. Any such requirements shall be deemed to form part of these

Terms and Conditions. Mahar may periodically update such requirements by posting revisions thereto on the Website. Mahar may modify these Terms and Conditions from time to time by posting revised Terms and Conditions on the Website. Such revised Terms and Conditions shall apply to all Purchase Orders and Purchase Order revisions issued on or after the effective date thereof. Seller shall review the Website periodically.

**Confidentiality.** Seller shall consider and treat all Information (as defined herein) as confidential and shall not disclose any Information to any other person, or use any Information itself for any purpose other than pursuant to and as required by a Purchase Order, without Mahar's prior written consent. Mahar retains all rights with respect to the Information, and Seller shall not acquire, nor attempt to obtain, any patent, trademark, copyright, license or other rights in respect of the Information. Seller shall not allow any Information to be reproduced, communicated or in any way used, in whole or in part, in connection with services or goods furnished to others, without Mahar's prior written consent. "Information" means trade secrets, patents, copyrights, know-how, formulas, patterns, devices, inventions, processes, records, files, drawings, documents, specifications and similar items disclosed by Mahar to Seller.

**Severability.** If any provision of these Terms and Conditions is invalid or unenforceable under any federal, state or local laws, rules, ordinances, regulations or any other rules of law, such provision shall be deemed reformed or deleted, as the case may be, but only to the extent necessary to comply with such federal, state or local laws, rules, ordinances, regulations or any other rules of law, and the remaining provisions of these Terms and Conditions shall remain in full force and effect.

**Entire Agreement.** These Terms and Conditions constitute the entire agreement between the parties and contain all the agreements and conditions of sale; no course of dealing or usage of trade shall be applicable unless expressly incorporated in a Purchase Order. These Terms and Conditions may not be added to, modified, superseded or otherwise altered except by a written modification signed by Mahar's Authorized Agent. Each delivery shall be deemed to be only upon these Terms and Conditions.