

Standard Terms and Conditions of Sale ----- Pioneer Broach Company, Inc.

1. **Applicability.** These Standard Terms & Conditions (“*Terms & Conditions*”) govern all sales of goods and services by Seller to Buyer. Seller agrees to supply the ordered goods or services only upon these Terms & Conditions. Seller’s acceptance of the Purchase Order and agreement to supply the ordered goods or services is expressly made conditional on Buyer’s acceptance of these Terms & Conditions. In the event Buyer’s Purchase Order includes terms and conditions that differ from or are in addition to these Terms & Conditions, such terms and conditions are expressly rejected by Seller and are null and void. If Buyer objects to any of these Terms & Conditions, such objection must be brought to the attention of Seller by Buyer in a written instrument separate and apart from the Purchase Order or other printed form of Buyer (an “*Objection Notice*”). Any additional or different terms contained in an Objection Notice shall be deemed to be proposals for additional or different terms and conditions and may be accepted by Seller only in a writing signed by an authorized representative of Seller.
2. **Definitions.** As used herein, (a) “*Buyer*” means the party who submits a Purchase Order, (b) “*Seller*” means Pioneer Broach Company, Inc., a California corporation, (c) “*Purchase Order*” means the purchase order, electronic order or any other order submitted by Buyer for goods and/or services, (d) “*Acknowledgement*” means Seller’s written acceptance of the Purchase Order (which includes these Terms & Conditions) transmitted to Buyer via facsimile transmission or otherwise, (e) “*Agreement*” means the Acknowledgement and these Terms & Conditions, and (e) “*Effective Date*” of this Agreement shall be the date set forth in the Acknowledgement.
3. **Delivery.** All delivery dates are estimates and Seller shall not be liable for any damages of any kind resulting from any delay. All shipments shall be F.O.B point of shipment. Accordingly, the risk of loss of or damage to the goods covered by the Purchase Order shall pass to Buyer at the point of shipment. Prices stated in the quotation do not include freight costs. If Buyer delays delivery of any goods covered by this Agreement (a “*Delayed Delivery*”), payments shall become due on the date Seller is prepared to make the shipment. Any goods subject to a Delayed Delivery shall be held by Seller at Buyer’s risk. Buyer agrees to accept partial or pro rata deliveries as full performance in the event Seller cannot fulfill an entire order.
4. **Expedited Orders.** Buyer may place the Purchase Order on “expedited” basis (the “*Expedited Order*”) to improve Seller’s originally quoted delivery date for an additional fee (the “*Expedite Fee*”). If Seller does not deliver the goods and/or perform the services set forth in the Expedited Order by the date required in the Expedited Order, the Expedite Fee shall be reduced on a pro rata basis based on the latest originally quoted delivery date and the actual delivery date (*i.e.*, Seller does not accept Expedited Orders on an “all or nothing” basis). For purposes of hereof, the Expedite Fee shall be reduced on a daily basis.
5. **Terms of Payment.** Unless otherwise agreed in writing by an authorized representative of Seller:
 - a. With respect to broaching tools, fixtures or gauges (except as noted in paragraph 5.b below), payment terms include thirty-three percent (33%) of the total sales price due upon Buyer’s receipt of the Acknowledgement as a non-refundable deposit, and the balance is due net thirty (30) days after shipment, upon approved credit. With respect to international transactions, payment in full must be received by Seller prior to shipment of any goods. Additionally, if applicable, Seller reserves the right to make partial shipments of goods and to submit invoices for such partial shipments. Pro rata payments shall become due as shipments are made by Seller.
 - b. With respect to broaching machines and broaching machine “packages” payment terms include forty percent (40%) of the total sales price due upon Buyer’s receipt of the Acknowledgement as non-refundable deposit, fifty percent (50%) due prior to shipment (payment must be received two (2) days prior to shipment), and ten percent (10%) is due net thirty (30) days after shipment, upon approved credit. For purposes of this paragraph, “packages” shall mean any broaching tools, fixtures, pullers or other accessories that are purchased in connection with the purchase of a broaching machine.
 - c. With respect to production broaching services provided by Seller to parts supplied by Buyer (“*Production Parts*”) and to parts manufactured complete by Seller (“*Complete Parts*”), payment terms include net thirty (30) days after shipment, upon approved credit. Seller reserves the right to make partial shipments of completed Production Parts and Complete Parts and to submit invoices for such partial shipments. Pro rata payments shall become due as shipments are made by Seller.
 - d. Overdue payments are subject to a service charge of 1.5% per month or the maximum legal rate, whichever is lower. To the extent permitted by applicable law, Buyer agrees to pay any and all costs and disbursements, including reasonable attorney’s fees, incurred by Seller in legal proceedings to collect overdue invoices or enforce indebtedness. Buyer agrees that any and all costs or disbursements may be added to the total invoice amount already due at the time of placement with an attorney or collection agency.
6. **Title/Security Agreement.** Except with respect to Production Parts, title to the goods covered by this Agreement shall remain in Seller until payment in full is received. To secure payment of any sums due under this Agreement or otherwise, Seller shall retain a security interest in the goods delivered (except with respect to Production Parts) pursuant to this Agreement and these Terms & Conditions shall be deemed a security agreement under the Uniform Commercial Code. Buyer authorizes seller as its attorney-in-fact to execute and file on Buyer’s behalf all documents Seller deems necessary to perfect such security interest. Seller is relying upon Buyer’s representation of solvency and if Seller at any time reasonably believes that Buyer is insolvent or that Buyer’s credit is impaired, or if Buyer shall fail to make a payment when due which payment is not cured within ten (10) days after receipt of notice of same from Seller, Buyer shall be in material breach hereof and Seller may, without liability to Buyer, withhold performance hereunder, change the payment terms and/or repossess goods that have been delivered. If Buyer fails to pay according to the terms of this Agreement, Buyer shall be liable to Seller for all costs of collection, including attorney’s fees.
7. **Taxes.** The prices provided in the Acknowledgement are exclusive of any present or future Federal, State, Municipal or other sales or use tax with respect to the goods or services covered hereby, of any other present or future excise tax upon or measured by the gross receipts from this transaction or any allocated portion thereof of by the gross value of the goods covered hereby and of any present or future property tax or other similar charge with respect to the goods or services covered hereby. If Seller is required by applicable law or regulation to pay or collect any such tax or taxes under this Agreement or the goods or services covered hereby, then such tax shall be paid by Buyer in addition to the prices provided herein.
8. **Warranty.**
 - a. With respect to broaching machines, Seller warrants that new broaching machines will be of quality workmanship and free from defects for a period of (i) twelve (12) months from receipt or (ii) two thousand (2000) operational hours, whichever comes first, provided the machine has not been modified, has been subject to normal use and has been used only in accordance with the Seller’s instructions. Used broaching machines (*i.e.* reconditioned or refurbished) carry a limited warranty of three (3) months or five hundred (500) operational hours, whichever comes first, and are subject to the above conditions.
 - b. With respect to broaching tools furnished by Seller, any tools which Seller finds defective, in workmanship or material shall, at Seller’s option, be repaired or replaced free of charge to Buyer provided that, (i) the tools are in possession of Buyer, (ii) on Seller’s request, the tools are returned to Seller’s plant freight pre-paid and (iii) the tools have been operated and maintained in accordance with the instructions in the Seller’s instructions. Buyer acknowledges that all production rates (*i.e.*, useful life) of broaching tools are estimates only and are based on numerous factors provided by Buyer to Seller including, but not limited to, accuracy limits (*i.e.*, tolerances), finish required, machinability of material, amount of material to be removed, handling facilities provided, and part prints provided to Seller at the time of Seller’s quotation.
9. **Seller’s Right to Cure.**
 - a. Because of the complexity of the goods sold and/or services performed under this Agreement, there may be a period after delivery during which adjustments and repairs will be necessary. Buyer agrees that Seller shall have access to the goods during this period and that it will cooperate with Seller in attempting to solve problems that arise. In any event, Seller shall have a commercially reasonable amount of time in which to correct defects in the goods sold and/or services performed, and during that time Buyer will have no right to reject the goods or services or to revoke acceptance.
 - b. In the event of a discrepancy, Buyer agrees to send Seller the discrepant good(s) (or a sample thereof) at its own expense for Seller’s internal inspection and verification. Under no circumstances will Seller accept liability for discrepant goods or services unless it has received the discrepant good (or sample thereof).
10. **Limitation of Liability.** IN NO EVENT SHALL SELLER BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOSS OF PROFITS, REVENUE, GOODWILL OR USE, INCURRED BY BUYER, OR DAMAGE TO ASSOCIATED EQUIPMENT, COST OF SUBSTITUTE GOODS, FACILITIES, SERVICE OR REPLACEMENTS, OR DOWNTIME COSTS (COLLECTIVELY, “*DAMAGES*”), WHETHER IN AN ACTION IN CONTRACT, TORT, STRICT LIABILITY, OR IMPOSED BY STATUTE OR OTHERWISE, EVEN IF (A) ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND/OR (B) SELLER MAY HAVE BEEN NEGLIGENT IN ITS PERFORMANCE OF THIS AGREEMENT. SELLER’S LIABILITY FOR DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT SHALL IN NO EVENT EXCEED THE PURCHASE PRICE OF THE GOODS OR, IF APPLICABLE, THE AGGREGATE FEES PAID TO THE SELLER UNDER ANY SERVICE CONTRACT. BUYER SHALL INDEMNIFY AND HOLD SELLER HARMLESS FROM ANY AND ALL CLAIMS OF SUCH DAMAGES BY BUYER OR OTHERS. IT IS AGREED AND ACKNOWLEDGED THAT THE PROVISIONS OF THESE TERMS ALLOCATE THE RISKS BETWEEN SELLER AND BUYER, THAT SELLER’S PRICING REFLECTS THIS ALLOCATION OF RISK, AND BUT FOR THIS ALLOCATION AND LIMITATION OF LIABILITY, SELLER WOULD NOT HAVE ENTERED INTO THIS CONTRACT.
11. **Limitation of Action.** Any action for any loss or damage with respect to the goods and/or services provided by Seller under this Agreement must be commenced by Buyer within one (1) year after Buyer’s cause of action has accrued.
12. **Indemnification and Waiver.** To the maximum extent allowed by law, Buyer shall defend and indemnify Seller, its employees, officers, directors and agents against all sums, costs, liabilities, losses, obligations, suits, actions, damages, penalties, fines, interest and other expenses (including investigation expenses and attorney’s fees) that Seller, its employees, officers, directors and agents may incur or be obligated to pay as a result of (a) Buyer’s negligence, willful misconduct, (ii) use, ownership, modification, maintenance, transfer, transportation or disposal of the good, (iii) any infringement or alleged infringement of the intellectual property rights of others arising from Buyer’s plans, specifications or production of the goods ordered by Buyer and (iv) Buyer’s violation or any alleged violation of any federal, state, county or local laws or regulation, including the laws and regulations regarding product safety and labor practices. Buyer hereby waives and releases Seller from all rights of contribution or indemnity to which it may otherwise be entitled from Seller.
13. **Set Off.** Buyer shall be liable to Seller for the entire amount due under this Agreement and shall not be entitled to any withholding, set-off, counterclaim or deduction, unless authorized by Seller.
14. **Cancellations, Returns and Modifications.**
 - a. After Seller transmits the Acknowledgement to Buyer, this Agreement is not subject to cancellation, except with Seller’s express written consent. All goods provided under this Agreement are considered to be “custom orders” and cannot be returned.
 - b. Buyer may request modifications to this Agreement only upon written notice to Seller (“*Modifications*”). Any Modifications must be acknowledged by Seller in writing to be effective and may result in changes to this Agreement (including changes in the estimated delivery date and selling price). Additionally, Buyer shall be liable to Seller for completed parts of this Agreement no longer required due to any Modifications, as determined by Seller.
15. **Buyer’s Materials.** All of Buyer’s tooling, goods and other property in Seller’s possession shall be fully insured by Buyer, and Buyer releases Seller from all liability for loss or damage to such materials caused by Seller’s negligence or otherwise.
16. **Advice and Assistance.** Upon request, Seller, in its discretion, may furnish as an accommodation to Buyer, technical advice or assistance regarding the goods and/or services ordered under this Agreement. Seller assumes no obligation or liability for the advice or assistance given or results obtained, which shall be at Buyer’s sole risk.
17. **Proprietary Rights.** Buyer agrees that it will not copy, or permit anyone else to copy any goods or parts thereof, or any pattern, plan, drawing, specification, instruction or depiction thereof, without Seller’s written approval, and that it will not knowingly, directly or indirectly, violate or infringe upon or contest the validity of any patent, license, trade secret or any right of Seller pertaining to such goods. Where any goods are manufactured from patterns, plans, drawings or specifications furnished by Buyer, Buyer shall indemnify Seller against and hold Seller harmless for infringement of any patent, trademark, copyright or other right because of Seller’s manufacture of such goods or because of the use or sale of such goods by any person.
18. **Miscellaneous**
 - a. **Force Majeure.** Seller shall not be liable for any expense, loss or damage resulting from any delay in or prevention of its performance of this Agreement where such delay or prevention is caused by fires, floods, acts of God, strikes, labor disputes, labor shortages, lack of or inability to obtain materials, suppliers or other equipment, riots, thefts, accidents, fuel or energy shortages, transportation delays, acts or failures to act of government or Buyer, delay in obtaining licenses, major equipment breakdown, or any other cause whatsoever, whether similar or dissimilar to those enumerated above, beyond the reasonable control of Seller. In the event of any delay or prevention arising by reason of the foregoing, the time for Seller’s performance shall be extended by a period of time equal to the time lost by reason of such delay or prevention.
 - b. **Waiver.** No waiver of any provision of this Agreement will be implied from any course of dealing between the parties hereto either before or after the Effective Date of this Agreement or from any failure by any party hereto to assert its rights hereunder on any occasion or series of occasions.
 - c. **Successors; Assignment.** This Agreement shall be binding upon the successors and assigns of the parties to the Agreement, but neither of the parties shall assign this Agreement without the prior written consent of the other party. Any purported assignment in violation of this Agreement shall be void.
 - d. **Choice of Law/Venue.** All Purchase Orders (including these Terms & Conditions) shall be interpreted in accordance with the laws of the State of California (without regards to any choice of law principles). Any and all disputes or controversies, whether of law or fact and of any nature whatsoever arising from or respecting this Agreement shall take place in Los Angeles, California.
 - e. **Notices.** Any notice required or desired to be delivered under this Agreement will be effective on actual receipt and will be in writing and (i) delivered personally; (ii) sent by first class mail or overnight delivery, postage prepaid; or (iii) transmitted by fax. Notices must be sent to the address or fax number specified in the Purchase Order or Acknowledgement, as applicable, or such other address of fax number as the parties from time to time specify in writing.
 - f. **Severability.** If any provision of this Agreement is or should become inconsistent with any present or future law, rule, or regulation of any governmental or regulatory authority having jurisdiction over the subject matter of this Agreement, such provision will be deemed rescinded or modified in accordance with any such law, rule or regulation.
 - g. **Interpretation.** Headings to sections and subsections in this Agreement are for the convenience of the parties only and are not intended to be a part of or affect the meaning or interpretation hereof.
 - h. **Entire Agreement.** The parties hereto certify that they have read this Agreement, that they fully understand its terms and conditions, that this Agreement constitutes the entire agreement between the parties with respect to the goods and/or services set forth in the Acknowledgement, that no promises or understandings (whether written or oral) have been made other than those stated above, and that this Agreement supersedes any and all prior arrangements that may have existed concerning the goods and/or services set forth in the Acknowledgement.