

# **Tinker & Rasor General Terms and Conditions**

These General Terms and Conditions are part of the invoice or purchase order in which they are referenced or to which they are attached (collectively, the "Agreement"). Except for any terms and conditions set forth in any addendum of Tinker & Rasor (collectively, "TINKER & RASOR") printed on, attached to, or referenced in the Agreement (an "Addendum"), all of which are incorporated herein and made a part of the Agreement by this reference, no terms or conditions, other than those stated herein, and no agreement or understanding, oral or written, in any way purporting to modify these terms and conditions, whether contained in a purchase or shipping release form provided by the party purchasing or renting goods or services from TINKER & RASOR under the Agreement ("Customer"), or elsewhere, shall be binding on TINKER & RASOR and any such attempted modifications are hereby rejected by TINKER & RASOR. All proposals, negotiations, and representations, if any, made prior, and with reference hereto, are merged herein and superseded hereby.

## **Payment and Taxes**

Customer shall pay the amount or amounts described in the Agreement in full in cash in legal tender of the United States of America within net 30 days of the date of invoice (in the case of Goods or Work (each as defined below) purchased from TINKER & RASOR or in advance at the beginning of the rental term (in the case of Goods rented from TINKER & RASOR).

If Custom-Manufactured Equipment, A detailed quotation will be provided outlining the cost of custom-manufactured equipment. The quotation must be approved, and payment must be issued before manufacturing begins.

Prices do not include sales, use, excise, or other similar taxes. The amount of any present, retro-active, or future sales, use, excise, value-added, or similar tax applicable to Customer's purchase or rental of Goods or Work will be added to TINKER & RASOR's invoice and paid by Customer unless Customer provides TINKER & RASOR with tax exemption certificates acceptable to the appropriate taxing authorities. If Customer fails to timely pay its account or any other amount payable to TINKER & RASOR, TINKER & RASOR may set off against Customer's, and/or its parent, subsidiary, and affiliated companies, account balance, hold further orders, and charge interest on past due amounts at the lesser of 18% per annum (1.5% per month) or the maximum amount allowed by law on any invoice from the date such amount becomes due. TINKER & RASOR may use the services of a collection service and/or an attorney to collect overdue amounts. In such event, Customer agrees that it will be liable for all fees incurred by TINKER & RASOR including collection service fees and/or attorney's fees, costs, and expenses arising out of the collection efforts. If, in TINKER & RASOR's opinion, the financial position of the Customer has so changed prior to delivery as to render TINKER & RASOR insecure, TINKER & RASOR may suspend production and/or refuse to make delivery pending satisfactory modification of the terms of payment. In the event that Customer's account with TINKER & RASOR becomes delinquent, TINKER & RASOR has the right to revoke any and all discounts previously applied in arriving at the net invoice price. As collateral security for the payment of all amounts under this Agreement, the Customer hereby grants to TINKER &

RASOR a lien on and security interest in and to all Goods purchased and all proceeds thereof, which shall constitute a purchase money security interest under the Uniform Commercial Code as enacted in the applicable jurisdiction (the "UCC"). TINKER & RASOR shall have all the rights and remedies available to a secured party under the UCC and may, if it deems it necessary, file with the appropriate government filing offices UCC financing statements naming the Company as the debtor and describing the Goods in order to perfect the security interests created hereunder.

## **Delivery Terms**

All goods shall be delivered F.O.B. shipping point under the Texas Uniform Commercial Code for goods destined for final delivery in the United States or EXW TINKER & RASOR's premises under Incoterms 2010 for goods destined for final delivery outside of the United States unless otherwise agreed in writing by TINKER & RASOR. TINKER & RASOR's responsibility ceases upon delivery to carrier and title shall transfer and risk of loss shall be borne by Customer at that point. Any expedited or other premium transportation charges requested by Customer will be for the account of Customer.

## **Warranties and Remedies**

- a) Goods Sold to Customer: In the event any products, equipment or other goods (collectively, "Goods") manufactured by TINKER & RASOR and sold to Customer under this Agreement are found to be defective in materials or workmanship or otherwise fail to conform to the conditions of this Agreement and Customer notifies TINKER & RASOR thereof on or before the date that is one (1) year from the date of delivery, TINKER & RASOR will, at its option, either: (1) replace the Goods at the delivery point specified herein, (2) repair the Goods at TINKER & RASOR's regular place of business, or (3) refund the purchase price for the Goods. Customer's remedies with respect to Goods manufactured by others and sold to Customer under this Agreement that are found to be defective or otherwise not in conformity with the Agreement are limited to any warranties extended and honored by the manufacturer, which TINKER & RASOR hereby assigns to Customer without recourse.
- b) Services: With respect to any services or other work (collectively "Work") performed by TINKER & RASOR for Customer (including but not limited to repairing, welding, machining, fabricating, heat treating, and forging), TINKER & RASOR agrees to make every effort to perform such work with reasonable skill and care in accordance with Customer's specifications accepted in writing by TINKER & RASOR. In the event any Work performed by TINKER & RASOR and furnished under this Agreement is found to have failed to conform to the conditions of this Agreement and Customer notifies TINKER & RASOR thereof on or before the date that is the earlier of (i) three (3) months after the Work is put into service or (ii) one (1) year from the date the Work is delivered, TINKER & RASOR will, at its option, either: (1) correct the Work at TINKER & RASOR's regular place of business, or (2) refund the purchase price for the work.
- c) Rental: In the event, Customer rents any Goods from TINKER & RASOR under the Agreement and any rental Goods and parts are found not to be in good working condition

and repair, ordinary wear and tear excepted (other than as a result of Customer's misuse thereof or damage thereto) and notifies TINKER & RASOR thereof on or before the last day of the rental term, TINKER & RASOR will, at its option, either: (1) replace the rental Goods at the delivery point specified herein and toll the rental term during the period required for replacement, (2) repair the rental Goods at TINKER & RASOR's regular place of business and toll the rental term during the period required for repair, or (3) refund a prorated portion of the rental price for the rental Goods.

d) Additional Conditions: Customer shall at Customer's sole expense return the purchased or rental Goods or the items relating to the Work to TINKER & RASOR for repair, correction, replacement, or refund. TINKER & RASOR must be given a reasonable opportunity to investigate each case. TINKER & RASOR's total cumulative liability in any way arising from or pertaining to any Goods or Work sold or rented under this Agreement shall not in any case exceed the purchase or rental price paid by Customer for such Goods or Work. Customer's remedies are limited as provided herein regardless of whether Customer's claim is based on principles of contract, tort, or any other legal theory.

e) Disclaimer of Warranties: TINKER & RASOR MAKES NO REPRESENTATIONS OR WARRANTIES RELATING TO THE GOODS (WHETHER SOLD OR RENTED) OR WORK OTHER THAN THOSE SET FORTH IN THIS ORDER, WHICH ARE GIVEN EXPRESSLY AND IN PLACE OF ALL OTHER EXPRESS OR IMPLIED WARRANTIES. ALL IMPLIED WARRANTIES, INCLUDING THOSE FOR MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE DISCLAIMED. CUSTOMER ACKNOWLEDGES AND AGREES THAT CUSTOMER TAKES SOLE RESPONSIBILITY FOR THE SELECTION OF AND SPECIFICATIONS FOR THE GOODS AND WORK AND THEIR FITNESS FOR ANY PURPOSES INTENDED BY THE CUSTOMER OR CUSTOMER'S CUSTOMER(S).

f) Exclusion of Consequential Damages; Etc.: TINKER & RASOR WILL NOT BE LIABLE TO CUSTOMER OR ANY OTHER PERSON OR ENTITY FOR INDIRECT, INCIDENTAL, SPECIAL, COVER, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES (INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS, REVENUE, OR BUSINESS) RESULTING FROM OR IN ANY WAY RELATED TO THE GOODS OR WORK SOLD OR RENTED HEREUNDER, THIS ORDER OR TERMINATION OF THIS ORDER. THIS LIMITATION APPLIES REGARDLESS OF WHETHER THE DAMAGES OR OTHER RELIEF SOUGHT ARE BASED IN CONTRACT OR TORT, INCLUDING BREACH OF CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY IN TORT, OR ANY OTHER LEGAL OR EQUITABLE THEORY. FURTHER, NOTWITHSTANDING ANY OTHER PROVISION OF THIS ORDER TO THE CONTRARY, TINKER & RASOR'S TOTAL AGGREGATE LIABILITY HEREUNDER SHALL BE LIMITED TO THE PURCHASE OR RENTAL PRICE OF THE GOODS OR WORK GIVING RISE TO THE CLAIM. THE FOREGOING DISCLAIMERS AND LIMITATIONS OF LIABILITY SHALL APPLY EVEN IF TINKER & RASOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING THE FAILURE OF ANY ESSENTIAL PURPOSE THEREOF, AND EVEN IN THE EVENT OF THE FAULT, NEGLIGENCE, OR STRICT LIABILITY OF TINKER & RASOR.

g) Remedies Cumulative: TINKER & RASOR's remedies under this Agreement are cumulative and in addition to all other remedies existing at law or in equity.

b)

## **Cancellation and Cancellation Fees**

Orders placed by Customer and accepted by TINKER & RASOR may be canceled only with the written consent of TINKER & RASOR and will subject Customer to cancellation charges. As estimated actual damages, Customer agrees to pay TINKER & RASOR the greater of TINKER & RASOR's actual costs incurred prior to cancellation plus a reasonable profit, or the following minimum cancellation charges: a) 20% of order value if canceled thirty (30) or more days prior to the original delivery/shipment date; b) 50% of the order value if canceled thereafter; and c) 100% of the order value of any custom built items, which are items that are not built for stock or are built to Customer specifications. For rental, minimum rental charges as stated in the TINKER & RASOR proposal will apply. The customer shall verify the amount of the cancellation charges prior to canceling an order.

## **Intellectual Property**

Customer shall acquire no right, title, interest, or license of any kind in, or with respect to, any of TINKER & RASOR's, TINKER & RASOR's affiliates', TINKER & RASOR's manufacturers' or TINKER & RASOR's other suppliers' trademarks appearing on goods or otherwise, patents, software or any other intellectual property rights or trade secrets used to create, embodied in, used in or otherwise relating to the Goods or Work sold or rented under this Agreement. All materials, products, technology, know-how, intellectual property, and trade secrets developed by, created by, or invented by TINKER & RASOR as a part of this Agreement are and shall remain the sole and exclusive property of TINKER & RASOR without limitations.

## **Patent Infringement**

TINKER & RASOR shall have no obligation to indemnify Customer from any claims relating to any alleged patent infringement.

## **Liens**

TINKER & RASOR shall have no obligation to protect, defend, indemnify, release or hold harmless Customer from any claim or lien attaching to the property or equipment of Customer arising out of Customer's failure to pay TINKER & RASOR.

## **Force Majeure; Delivery Delays**

In the event of any delay in TINKER & RASOR's performance due to fire, explosion, strike, shortage of utility, facility, material, or labor, delay in transportation, breakdown, or accident, compliance with any other action taken to carry out the intent or purpose of any law or

regulation, or other causes beyond TINKER & RASOR's control, TINKER & RASOR shall not be liable for any damages or losses due to any such causes. TINKER & RASOR uses reasonable efforts to ship within the time specified but cannot guarantee timely delivery and shall not be liable for any damages caused by delay in delivery, irrespective of the cause of delay.

## **Confidentiality; Non-Use; No Reverse Engineering**

The customer agrees to keep confidential all TINKER & RASOR proprietary and confidential information provided whether patentable, copyrightable, or not. Customer acknowledges that TINKER & RASOR's ownership of, development of, and protection of its proprietary and confidential information is an integral part of TINKER & RASOR's business. Customer agrees that it will not use or allow the use of any technology or know-how supplied by TINKER & RASOR, or otherwise obtained from TINKER & RASOR, to replicate TINKER & RASOR's products and Customer agrees that it will not attempt to analyze, reverse-engineer, or otherwise ascertain the composition or manufacture of TINKER & RASOR's products.

## **Inspection**

Inspection of goods, if agreed to, must be made at TINKER & RASOR's warehouse or point of manufacture and such inspection and acceptance shall be final. Reasonable facilities will be afforded to inspectors representing Customer to make such inspection and to apply tests in accordance with the specifications to which TINKER & RASOR has previously agreed, prior to shipment from the warehouse of TINKER & RASOR or TINKER & RASOR's suppliers. Any inspections are at the Customer's sole cost and risk.

## **Governing Law and Dispute Resolution**

Any clause required to be included in an order of this type by any applicable law or administrative regulation having the effect of law shall be deemed to be incorporated herein. It is hereby certified that the Goods manufactured by TINKER & RASOR are produced in accordance with the Fair Labor Standards Act. TINKER & RASOR and Customer, in the interest of certainty, stipulate that the laws of the State of Texas shall in all instances govern the interpretation of this Agreement and the rights of TINKER & RASOR and Customer under this Agreement, without regard, however, to any choice of laws or conflicts of law's provisions which would direct the application of the laws of another jurisdiction. Any dispute arising out of or relating to this Agreement, or the provision of Goods or Work contemplated hereunder shall be resolved only in the state or federal courts located in Comal County, Texas, and TINKER & RASOR and Customer each hereby irrevocably submit to the exclusive jurisdiction of such courts. TINKER & RASOR and Customer each hereby irrevocably waive any right to trial by jury in any action or proceeding arising out of or relating to this Agreement or the provision of Goods or Work contemplated hereunder.

## **Customer's Indemnity**

Customer shall defend, indemnify, and hold harmless TINKER & RASOR and its officers, directors, employees, and other representatives (collectively, the "TINKER & RASOR Group") from and against any and all claims, demands, causes of action, liabilities, damages, and expenses (including reasonable legal fees) (collectively, "Claims") arising out of or relating to Customer's breach of the Agreement or Customer's or its customers' use of the Goods or Work provided by TINKER & RASOR under the Agreement, including without limitation Claims for personal or bodily injury, sickness, disease or death of any person or damage or loss or destruction of property of any person or entity, and regardless of whether any such Claim is attributable in whole or in part to any negligence or strict liability of any member of the TINKER & RASOR Group.

## **Additional Rental Terms**

In the event Customer rents any Goods from TINKER & RASOR under the Agreement, Customer represents that Customer shall use the rental Goods and parts in a careful and proper manner, shall comply with all laws, ordinances, and regulations relating to the possession, use, and maintenance of the rental Goods and parts in accordance with TINKER & RASOR's approved procedures and shall only use the rental Goods and parts at the location specified in the Agreement. In the event the parties agree that the Customer shall operate the rental Goods and parts, the Customer further represents that the rental Goods and parts will be operated by skilled employees trained in the use of the rental Goods and parts. The customer shall keep the rental Goods and parts free and clear of all liens and encumbrances. At the expiration of the applicable rental term, Customer will at its sole cost return the rental Goods to the facility designated by TINKER & RASOR, in good working condition (reasonable wear and tear excepted). Upon receipt of the returned rental Goods, TINKER & RASOR will service and inspect the rental Goods. In the event, that TINKER & RASOR determines that the rental Goods are materially damaged or not in good working condition (reasonable wear and tear excepted), the cost of any service work required to bring the rental Goods to good working condition (whether performed by TINKER & RASOR or any third party) will be payable by the Customer upon invoice. Additional Customer responsibilities are detailed in the rental Addendum attached hereto or referenced in the Agreement, and such rental Addendum is an integral part of these General Terms and Conditions.

## **Severability**

If any one or more of the provisions of this Agreement, or any schedule, addendum, or exhibit attached hereto or other document expressly incorporated herein by reference thereto, shall for any reason be invalid, illegal, or unenforceable, such circumstance shall not affect any other provision of this Agreement or such other document, as the case may be, and this Agreement shall continue in full force and effect and be construed as if such provision, to the extent that it is invalid, illegal, or unenforceable, had never been contained herein or therein.

## **Assignment; Subletting**

Customer may not assign or transfer any of its rights or obligations under this Agreement or sublet any Goods rented under this Agreement without TINKER & RASOR's prior written consent, and any such purported assignment, transfer, or subletting without such prior written consent is void ab initio and of no force or effect. TINKER & RASOR may assign its rights or obligations under this Agreement without Customer's consent.

## **Additional Conditions Applicable to Export Sales**

TINKER & RASOR Goods, technical data, and know-how are subject to the export, import, and other trade-related laws and regulations of the U.S. and other national governments, such as Title 19 of the U.S. Code of Federal Regulations; the Export Administration Regulations, 15 C.F.R. Parts 730-774 ("EAR"); Section 38 of the Arms Export Control Act, 22 U.S.C. 2778; the International Traffic in Arms Regulations, 22 C.F.R. Parts 120-130; the Trading with the Enemy Act, 50 U.S.C. App. 5, 16; the International Emergency Economic Powers Act, 50 U.S.C. 1701 et seq.; 31 C.F.R. Parts 500-598; and any similar or successor provisions to any such laws and regulations. TINKER & RASOR will not provide any certification or other documentation nor agree to any contract provision or otherwise act in any manner that may cause TINKER & RASOR to be in violation of United States law, including but not limited to the aforementioned trade-related laws and regulations. This Agreement shall be construed in accordance with United States law. All Agreements shall be conditional upon granting of export licenses or import permits which may be required. Customer shall obtain at its own risk any required export license and import permits, and Customer shall remain liable to accept and pay for Goods if licenses are not granted or are revoked. Unless otherwise specified on the face hereof, all international sales shall be EXW TINKER & RASOR's premises (INCOTERMS 2010). Neither Customer, nor any of its subsidiaries, affiliates, or customers, shall export or re-export any TINKER & RASOR Goods, technical data, or know-how to any destination, party, or entity to which the export or re-export, release, or transfer is prohibited by applicable law or regulation. By accepting this Agreement, Customer agrees and shall use reasonable best efforts to ensure that its successors and assigns will work to comply with the requirements of the EAR and all applicable international, national, state, regional, and local laws and regulations, including any applicable import, export, and use restrictions including, but not limited to, the Trade Laws and Regulations. Goods sold by TINKER & RASOR are controlled by the United States Government and authorized for export only to the country of ultimate destination for use by the ultimate consignee or end-user(s) herein identified. They may not be resold, transferred or otherwise disposed of, to any other country or to any person other than the authorized ultimate consignee or end-user(s), either in their original form or after being incorporated into other items, without first obtaining approval from the United States Government or as otherwise authorized by United States law and regulations. If the purchased Goods are to be taken out of the United States, then the Customer is solely liable for correctly obtaining any export licenses or authorizations.