

# Terms & Conditions

## FlashCut CNC

1. These terms and conditions, together with any accompanying sales quotation or order acknowledgement, constitute the complete and exclusive statement of agreement (collectively, “Agreement”) between you (“Buyer”) and FlashCut CNC (“Seller”) with respect to the sale of Seller’s equipment, software, or other goods (collectively, “Goods”). All representations, promises, warranties, or statements by an agent or employee of Seller that differ in any way from the terms and conditions hereof shall be given no force or effect, no modifications or additions thereto shall be binding upon Seller unless expressly consented to in writing. Any additional or different terms or conditions in Buyer’s purchase order or any other Buyer document are specifically rejected by Seller. Buyer’s receipt of these terms and conditions without prompt written objection thereto, or Buyer’s acceptance of any Goods, shall constitute Buyer’s acceptance of these terms and Conditions. No course of prior dealing or usage of trade shall supplement or explain any term used in this Agreement. All purchase orders that are accepted by Seller are accepted at Seller’s place of business in Deerfield, Illinois.
2. **PRICE AND TAXES.** Prices quoted are valid for thirty (30) days from the quoted date unless otherwise specified on the quote. For blanket production orders that are accepted within the quoted thirty (30) days the pricing for the active production order will be valid for the agreed to period in the blanket order. (1) Pricing adjustments will be looked at the end of the blanket order period or (2) if a blanket production order is completed and the Buyer wants to issue a new blanket order or (3) if material costs rise 20% or higher Seller and Buyer will negotiate a new price or (4) if Buyer requests design or material modifications Seller and Buyer will negotiate a new price. All Goods ordered by Buyer are subject to availability. Unless otherwise indicated in a quotation or order acknowledgement, the net amount to be paid for the Goods is due on the date of shipment unless otherwise negotiated between Buyer and Seller. Any tax or duties which the Seller may be required to pay or collect through assessment or otherwise, under any existing or future law upon or with respect to the sale, purchase, delivery, transportation, storage, processing, use or consumption of any Goods (other than taxes on Seller’s net income), including, without limitation, taxes upon or measured by receipt from sales or services, shall be for the account of Buyer and be added to the price of such Goods. Buyer shall promptly pay the amount thereof to Seller upon demand but may, in lieu of such payment, furnish to Seller evidence of the issuance of tax exemption certificates acceptable to the appropriate taxing authorities
3. **30 DAY GUARANTEE.** If Buyer is not satisfied with the performance of the Goods within thirty (30) days from the day the Goods were shipped from Seller, Buyer may return the Goods (in the original carton) that Seller has determined are in sellable condition for a full refund less shipping, handling, stocking fees, damages to the Goods and freight charges. Special-order, non-stocking, custom, or modified Goods are non-

refundable and no credit or refund of payment shall be available to Buyer.

4. Seller warrants Goods manufactured by it will be free of material defects and will conform and function in a manner materially consistent with the appropriate Seller specification(s), if any, for a period of one (1) year from the shipping date. If any of the Goods are found by Seller to have a manufactures defect, such Goods will, at Seller's option, be replaced or repaired at Seller's cost. No defective goods are to be returned without a written return merchandise authorization (RMA) from Seller. The sole purpose of the stipulated exclusive remedy shall be to provide the Buyer with free repair and replacement of defective Goods in the manner provided herein. This exclusive remedy shall not be deemed to have failed of its essential purpose so long as Seller is willing and able to repair or replace defective Goods in the prescribed manner. The foregoing warranty IS EXCLUSIVE AND is in lieu of all other warranties, express or implied, including those of merchantability, fitness for any PARTICULAR PURPOSE, AND NONINFRINGEMENT. No affirmation of Seller, by words or action, other than as set forth in this Section shall constitute a warranty. Seller's warranty shall not be enlarged and no obligation or liability shall arise out of Seller's rendering of technical assistance, technical advice facilities, service or recommendations made by Seller in connection with Buyer's purchases of the Goods hereunder. Said technical services, advice, assistance or recommendations made by Seller or any representative of Seller concerning any use or application of any Goods furnished hereunder is believed to be reliable, but SELLER MAKES NO WARRANTY, EXPRESS OR IMPLIED, AND THE SAME ARE HEREBY EXPRESSLY DISCLAIMED as to the same and the results to be obtained. Purchaser assumes all responsibility for loss or damage resulting from the use of any such Goods. Seller's warranty does not apply to any Goods which have been subjected to misuse, mishandling, misapplication, neglect (including but not limited to improper maintenance), accident, improper installation, modification (including by not limited to use of unauthorized parts or attachments), or adjustment or repair performed by anyone other than Seller or one of Seller's authorized agents without the written consent of Seller. When returning Goods to Seller packaging must be adequate to safeguard the condition of the Goods or all associated warranties are null and void. Buyer will pay all costs of shipping to and from Seller for all warranty returns or repairs. Any claim by Buyer with reference to the Goods sold hereunder shall be deemed waived by the Buyer unless submitted in writing to Seller within the earlier of (I) thirty (30) days following the date Buyer discovered or by reasonable inspection should have discovered, any claimed breach of foregoing warranty, or (ii) twelve (12) months following the date of shipment. Any cause of action for breach of the foregoing warranty shall be brought within one (1) year from the date the alleged breach was discovered or should have been discovered, whichever occurs first. Any warranty, license, maintenance and/or support for Goods sold is only available to those original Buyers that purchase directly from Seller or Seller's authorized agent, and is not transferable without Seller's prior written consent, which may be withheld by Seller for any reason.
5. LIMITATION OF LIABILITY. Seller's liability (whether under the theories of breach of contract or warranty, negligence, or strict liability) for its Goods shall be limited to repairing or replacing Goods found by Seller to be defective, or at Seller's option, to

refunding the purchase price of such Goods or components thereof.

6. **DISCLAIMER OF CONSEQUENTIAL DAMAGES.** In no event shall Seller be liable for incidental or consequential damages arising out of or in connection with this Agreement or Goods purchased from Seller, including without limitation, breach of any obligation imposed on Seller hereunder. Incidental or consequential damages shall include, without limitation, loss of use, income or profit, loss of product or material, or loss sustained as the result of injury (including death) to any person, or loss of or damage to property (including without limitation property handled or processed by the use of the Goods). Buyer shall indemnify Seller against all liability, cost or expense which may be sustained by Buyer on account of any such loss, damage, or injury.
7. **ACCEPTANCE AND TRANSPORTATION.** Upon Buyer's receipt of shipment, Buyer shall immediately inspect the Goods. Unless Buyer provides Seller with written notice of any claim for shortage, overcharge, or damage of Goods within ten (10) days from Seller's invoice date, such Goods shall be deemed finally inspected, checked and accepted by Buyer and no allowances shall be made thereafter. In absence of shipping and packaging instructions, Seller shall use its own discretion in the choice of carrier and method of packing. Seller shall not be responsible for insuring shipments unless specifically requested by Buyer and any insurance or special packaging so requested shall be at Buyer's expense and valuation.
8. **SHIPPING; TITLE AND RISK OF LOSS.** All prices, quotations, shipments and deliveries by Seller are F.O.B. Seller's warehouse, unless otherwise consented to in writing by the Seller. Title to any Goods sold and risk of loss of such Goods passes to Buyer upon delivery by Seller to a carrier at Seller's warehouse, and any claims for losses or damages shall be made by Buyer directly with such carrier. All transportation and other charges are for the account of Buyer, including any increase or decrease in such charges prior to shipment. The method and route of shipment is at Seller's discretion, unless Buyer supplies explicit written instructions which are accepted by Seller.
9. Unless expressly specified to the contrary, Goods in stock that do not require assembly or rework will be shipped within five (5) business days, and Goods not in stock will be shipped according to Seller's production schedule. However, all shipping dates are approximate, and are based upon current availability of materials, present production schedules, and prompt receipt of all necessary information. Shipments made within a reasonable time after the specified date of delivery shall constitute a good delivery. No right of cancellation shall accrue to Buyer based on such a delivery. Seller will not be liable for any damage, loss, fault, or expense arising out of delays in shipment or other partial performance or nonperformance of this Agreement, including, without limitation, those caused by or imposed by: (1) strikes, fires, disasters, wars, riots, acts of god, and epidemic; (2) acts of Buyer; (3) shortages of fuel, labor, power, materials, supplies, transportation, or manufacturing facilities; (4) governmental action; (5) subcontractor delay; or (6) any other cause or condition beyond Seller's reasonable control. In the event of any such delay or nonperformance, Seller may, at its option, and without liability, cancel all or any portion of this Agreement and/or extend any date upon which any

performance hereunder is due.

10. **TERMINATION AND CANCELLATION.** Orders cannot be terminated, or modified, or shipment deferred after acceptance of Buyer's order by Seller, except with Seller's written consent. In the event of cancellation or termination by Buyer of this order before completion thereof, other than breach thereof by Seller, Buyer shall pay to Seller promptly upon receipt of invoice from Seller: (a) contract price for all Goods which shall have been completed prior to notice of termination; (b) all actual costs incurred by Seller in connection with the uncompleted portion of the order including, without limitation, labor, overhead and costs of materials in process or purchased for processing the order, and which materials shall belong to the Buyer; (c) cancellation charges that Seller incurs from vendors and commitments made under the order; and (d) in the event a tooling charge has been prorated over the cost of the order, the balance of the tooling charge not so prorated on previous shipments shall be billed as a cancellation charge.
11. **ORDER CHANGES.** Orders will be subject to a price increase or holding charge unless different terms are agreed in writing by Seller if: (a) 15% of any new purchase order is not scheduled within the first one hundred and fifty (150) day period or 15% of the order is not scheduled quarterly thereafter (b) An active order is placed on hold by Buyer and not rescheduled within sixty (60) days.
12. **GENERAL CONDITIONS A.** In addition to the rights and remedies conferred upon Seller by law, Seller shall not be required to proceed with the performance of any order or contract if the Buyer is in default in the performance of any order or contract with Seller, and in case of doubt as to Buyer's financial responsibility, shipments under this order may be suspended or sent sight draft with bill of lading attached by Seller. **B.** No delay or omission by Seller in exercising any right or remedy provided for herein shall constitute a waiver of such right or remedy and shall not be constituted as a bar to or a waiver of any such right or remedy on any future occasion. **C.** The sale of Goods pursuant to this order shall be governed by the laws of the State of Illinois, without regard to conflict of law principles. The parties agree that any action or proceeding to enforce or arising out of this Agreement shall be commenced only in state or federal courts located in Lake or Cook counties in Illinois. The parties consent to such jurisdiction, agree that venue will be proper in such courts and waive any objections based upon *Forum Non Conveniens*. The choice of forum set forth in this section shall not be deemed to preclude the enforcement of any judgment under this Agreement in any other jurisdiction. Seller's failure to insist on performance of any of the terms or conditions of this Agreement or to exercise any right or privilege or Seller's waiver of any breach hereunder shall not thereafter waive any other terms, conditions, or privileges, whether of the same or similar type. The parties agree to comply with all applicable federal, state, and local laws of the United States with respect to the purchase, sale, and use of the Goods.
13. The invalidity or unenforceability of any one or more phrases, sentences, or sections shall not affect the validity or enforceability of the remaining portions of this Agreement.