

STANDARD TERMS AND CONDITIONS OF SALES

March 1st 2016

1. **Entire Agreement; Acceptance** – THE HC COMPANIES, INC. (“THCC”) PROVIDES THESE TERMS AND CONDITIONS OF SALE (THESE “TERMS AND CONDITIONS”), WHICH APPLY TO ALL QUOTATIONS AND SALES MADE BY THCC. ALL PURCHASES BY CUSTOMER, ITS OWNER, EMPLOYEES OR ITS AGENT (COLLECTIVELY, “BUYER”) ARE EXPRESSLY LIMITED TO AND CONDITIONED UPON ACCEPTANCE OF THESE TERMS AND CONDITIONS. NO PROVISION, WRITTEN OR OTHERWISE, CONTAINED IN ANY ORDER, ACCEPTANCE, CONFIRMATION, ACKNOWLEDGEMENT OR OTHER WRITING WHICH IS INCONSISTENT WITH, DIFFERENT FROM, OR IN ADDITION TO THESE TERMS AND CONDITIONS IS ACCEPTED BY THCC UNLESS AGREED TO IN WRITING AND EXECUTED BY AN AUTHORIZED REPRESENTATIVE OF THCC. FOR AVOIDANCE OF DOUBT, NO TERMS AND CONDITIONS OF ANY WRITING OF CUSTOMER SHALL, EVEN IF EXPRESSLY SO STATING, BE DEEMED TO OVERRIDE THESE TERMS AND CONDITIONS. DELIVERY OF THESE TERMS AND CONDITIONS TO BUYER CONSTITUTES NOTICE OF THCC’S OBJECTION TO ANY TERM OR CONDITION THAT IS INCONSISTENT WITH, DIFFERENT FROM OR IN ADDITION TO THESE TERMS AND CONDITIONS. THESE TERMS AND CONDITIONS REPLACE ANY AND ALL PRIOR AND CONTEMPORANEOUS AGREEMENTS (WRITTEN OR ORAL), NEGOTIATIONS, COMMUNICATIONS, REPRESENTATIONS, OR UNDERSTANDINGS (WRITTEN OR ORAL) RELATING TO THE SUBJECT MATTER HEREOF. ALL REPRESENTATIONS, PROMISES, WARRANTIES OR STATEMENTS MADE BY ANY AGENT OR EMPLOYEE OF THCC THAT DIFFER IN ANY WAY FROM THESE TERMS AND CONDITIONS SHALL BE GIVEN NO EFFECT OR FORCE. NO COURSE OF PRIOR DEALINGS BETWEEN THE PARTIES AND NO USAGE OF THE TRADE SHALL BE RELEVANT TO SUPPLEMENT OR EXPLAIN ANY TERM USED IN THESE TERMS AND CONDITIONS. ACCEPTANCE OR ACQUIESCENCE IN A COURSE OF PERFORMANCE RENDERED UNDER THESE TERMS AND CONDITIONS SHALL NOT BE RELEVANT TO DETERMINE THE MEANING OF THESE TERMS AND CONDITIONS EVEN THOUGH THE ACCEPTING OR ACQUIESCING PARTY HAS KNOWLEDGE OF THE NATURE OF THE PERFORMANCE AND THE OPPORTUNITY FOR OBJECTION. ACCEPTANCE OF PRODUCTS, IN WHOLE OR IN PART, OR OTHER ASSENT BY BUYER TO THE TERMS HEREOF SHALL CONSTITUTE BUYER’S AGREEMENT TO THESE TERMS AND CONDITIONS.
2. **Payments and Credit** – Payment shall be made in accordance with the Terms of Sale as shown on the front of THCC’s invoice. Each delivery is subject to, at THCC’s election, either credit arrangements or cash receipt. If payment is not made in accordance with the Terms of Sale, or if at any time THCC deems Buyer’s credit standing to be impaired, THCC may withhold delivery of any product ordered until cash or satisfactory credit arrangements have been established.
 - a. Should Buyer fail to make payment in-full within the time period set forth on THCC’s invoice, Buyer shall pay to THCC interest compounded monthly on the unpaid amount at 2% per month, 24% per annum. If legal action is taken by THCC to collect any amount due hereunder, Buyer shall pay all collection agency fees, court costs and reasonable attorney’s and expert witnesses’ fees incurred by or on behalf of THCC in bringing such action.
 - b. **Credit Card Payments – Surcharge on Credit Card Transactions.** If Buyer elects to use a credit card as payment of an invoice, THCC will apply a surcharge to the transaction currently equal to 2.72% of the total transaction amount (after accounting for all discounts or rebates, if any) (the “Surcharge Rate”); provided, however, that a surcharge will not be applied in any state that statutorily prohibits credit card surcharges in commercial transactions. The Surcharge Rate will not be greater than the discount rate THCC is charged by the applicable credit card company. THCC may change the Surcharge Rate from time-to-time, and notice of any such change will be given at the point of sale.
3. **Price Changes** – The prices are subject to change from time-to-time by THCC without notice. Revised prices will apply to shipments made on and after the effective date of a price change.
4. **Taxes and Tariffs** – Buyer will reimburse THCC for any tax or government charge which THCC may be required to pay upon sale, production or transportation of any product sold.
5. **Shipment Quantities - Custom Items (Branded – Printed/Labelled)** – THCC reserves the right



- to adjust original order quantities \pm 10% to account for fluctuations in manufacturing yield quantities.
6. **Buyer Pick-Up** – At some locations, Buyer pick-up of ordered products can be arranged. These arrangements must be made and confirmed at the time the order is placed. If products ordered are not picked up by Buyer within three business days of notification that parts are ready, THCC reserves the right to ship the products ordered via common carrier, consistent with current THCC Freight Policy. A staging fee of \$100 will apply beyond three business days of notification.
 7. **Separate Sale** – Each product delivery shall stand as a separate sale and irregularity of any delivery shall not invalidate an order as to the remaining installments.
 8. **Representation and Warranty** – Buyer hereby represents and warrants that it is solvent, that it pays and will pay its obligations as they come due and that the fair market value of its assets exceeds its disputed and undisputed liabilities. These representations and warranties shall be deemed to be repeated in each Purchase Order issued by Buyer, and are incorporated therein by reference.
 9. **Title and Risk of Loss** – Title to and risk of loss of product will pass to Buyer after Buyer picks up the product or THCC delivers the product to the carrier at the shipping point, as applicable, unless other title and risk of loss terms are agreed to in a writing signed by both parties. All tooling, dies, blueprints plans and specifications in connection with the products shall remain the sole property of THCC unless otherwise agreed to in a writing signed by both parties.
 10. **Return of Good Product** – If Buyer desires to return product that meets product specifications, Buyer may NOT do so unless the following conditions have been met: (i) THCC has authorized the return in writing; (ii) the product is unused and undamaged, and is currently standard THCC stock; (iii) the product is returned with all freight prepaid by Buyer; and (iv) Buyer pays a restocking fee of 20% of the original purchase price. If a return is allowed, THCC must be notified within 30 days of invoice. All returned goods must be assigned a Return Authorization Number by THCC, and that number must be displayed prominently upon each pallet, carton or case returned, as applicable. Notwithstanding the foregoing, custom products made to particular specifications of Buyer are NOT eligible for return.
 11. **Force Majeure** – THCC will be excused from its obligations to the extent that performance is delayed or prevented by any circumstances beyond its reasonable control including, but not limited to, floods, wars, fire, explosion, sabotage, accidents, mechanical breakdown, strikes or other labor disputes, plant shutdown, inability to obtain materials, unavailability to, or interference with, the usual means of transporting product, or compliance with any law, regulation, or request of any government authority (each a "Force Majeure"). The occurrence of a Force Majeure shall act to suspend THCC's obligation to perform and either party may cancel its obligations to the other that are subject to the Force Majeure. Notwithstanding the foregoing, Buyer's duty to pay for product received shall never be suspended.
 12. **Allocation** – If for any reason THCC is unable to produce sufficient product to meet its internal needs and the requirement of its customers, THCC shall be permitted, without liability to Buyer, to allocate its product (including any product to be sold and delivered to Buyer) in a manner THCC deems, in its sole discretion, to be fair and reasonable.
 13. **Limited Warranty and Limitations of Liability** – THCC warrants that the products sold hereunder shall conform to THCC's specifications and that THCC will convey good title to the products to Buyer. Specifications are subject to change by THCC without notice. Weights, capacities and other specifications are for information purposes only and their accuracy is not guaranteed. **THERE ARE NO WARRANTIES MADE BY THCC EXTENDING BEYOND THOSE IN THIS PARAGRAPH. THCC DISCLAIMS ALL OTHER EXPRESS OR IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, NONE OF WHICH SHALL BE OF ANY FORCE OR EFFECT. NOTWITHSTANDING ANYTHING CONTAINED IN THIS AGREEMENT TO THE CONTRARY, IN NO EVENT SHALL THCC BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, LOST SALES, BUSINESS INTERRUPTION, DOWN TIME, INJURY TO PERSON OR PROPERTY OR ANY OTHER INCIDENTAL LOSS OR DAMAGE RESULTING FROM THE SALE, USE OR HANDLING OF THE PRODUCTS.**
 14. **Technical Advice** – For the protection of both parties, technical advice for the handling and use of any product should be given in writing. THCC will not be liable for any advice given by it or its





- agents unless such advice is given or confirmed in writing. Any advice given by THCC for the use of its products is based upon tests or data believed to be reliable, but THCC MAKES NO WARRANTIES AS TO THE RESULTS TO BE OBTAINED. Buyer assumes all risk and liability that may result from the use of any product whether used singly or in combination with other products.
15. **Construction; Severability** – Paragraph headings in these Terms and Conditions are for the convenience of the parties only and will have no legal effect whatsoever. The provisions of these Terms and Conditions will be deemed severable, and the invalidity or enforceability of any provision will not affect the validity and enforceability of the other provisions of these Terms and Conditions. If any provision of these Terms and Conditions is unenforceable for any reason whatsoever, such provision will be appropriately limited and given effect to the extent that it may be enforceable.
 16. **Assignment** – Buyer may not assign these Terms and Conditions, the Terms of Sale or THCC's invoice or any interest herein or therein without the prior written consent of THCC. These Terms and Conditions, the Terms of Sale and THCC's invoice and all of the provisions herein and therein shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns.
 17. **Amendment** – These Terms and Conditions, the Terms of Sale and THCC's invoice, may not be modified or amended except in writing signed by both parties.
 18. **Patents and Trademarks** – Buyer shall indemnify, defend and hold THCC, its officers, directors, employees, agents, customers, successors, and assigns harmless against any expense or loss or damage (including reasonable attorney's fees) resulting from alleged or actual infringement of copyrights, inventions, patents, trademarks, trade secrets, utility models or other proprietary rights throughout the world arising from THCC's compliance with any designs, specifications or other instructions of Buyer.
 19. **Choice of Law** – These Terms and Conditions shall be governed by and construed in accordance with the laws of the State of Ohio without regard to conflict of law principles. The parties agree that any claim relating to these Terms and Conditions and the transactions contemplated by these Terms and Conditions shall be brought solely in the state or federal court of competent jurisdiction located in Summit County, Ohio and all obligations to personal jurisdiction and venue in any action, suit, or proceeding so commenced are hereby expressly waived by each party; provided, that a party may commence any action or proceeding in a court other than as set forth above solely for the purpose of enforcing an order or judgment issued by one of such courts. THCC and Buyer hereby expressly exclude applicability of the United Nations Convention on Contracts for the International Sale of Goods if the same would otherwise apply hereto.
 20. **Limitation of Liability; Remedies; Waiver of Jury Trial** – THCC's liability and Buyer's exclusive remedy for any cause of action arising in connection with this transaction under any legal theory, including, but not limited to, negligence, strict liability, tort, breach of contract or warranty, is limited to, at THCC's election, either the amount of the purchase price of the product shipped or replacement of product shipped not conforming to specifications. Buyer waives all claims involving orders and product specifications that are not made within 60 days from the date of invoice. **EACH PARTY WAIVES ITS RIGHT TO JURY TRIAL ON ANY CLAIM ARISING FROM THIS TRANSACTION.**

