

# SLABE MACHINE PRODUCTS, CO. TERMS AND CONDITIONS

All purchase order agreements entered into between Slabe Machine Products, Co. (hereinafter "SMP") and a Purchaser fully incorporates these Terms and Conditions, together with any other documents expressly referred to herein constituting this order, and constitutes the entire agreement under which SMP is supplying the goods for sale to Purchaser. No other terms, conditions, or understanding, whether oral or written, shall be binding upon SMP.

**QUOTES, PRICING AND TERMS OF CONTRACT.** Quotes are valid for thirty (30) days following the date of receipt. Unless otherwise specified in writing, all quoted lead time (representing our ability to start delivering product) commences *after* all preparation requirements are fulfilled and issues are resolved and/or corrected and acknowledged, in writing, by SMP. Due to the nature of manufacturing, certain unexpected factors may alter the lead time as originally quoted; should this occur, SMP will immediately notify the Purchaser/ordering party (hereinafter referred to as "Purchaser"). Delivery dates are approximations, done for the convenience of the Purchaser and are not binding on SMP, and are not considered material to the performance of any purchase order contract. Pricing does not include any potential charges for FAIR, Cold Start, PPAP, or similar processes which are not specifically identified to SMP during the quoting process, and the inclusion of any additional specifications and/or requirements, or changes to specifications and/or requirements, implemented specifically or universally across all open orders, are subject to change of the quoted unit price(s). Accepting a quote from SMP and issuing a Purchase Order and/or "Scheduling Agreement" Purchase Order based on the quote generated by SMP creates a contract to produce the **exact quantity** of pieces contained in that Purchase Order or Scheduling Agreement and include in its terms that SMP will, within a determined and specified period of time which begins to run at the date of the original order unless otherwise specified, in writing, and approved by SMP, ship the total quantity of that exact quantity of pieces to the Purchaser. If the Purchaser cancels any *portion* of the parts that have been ordered on the original Purchase Order or Scheduling Agreement, SMP has the right to issue a new price quote for the balance of the parts, and issue an amended/updated invoice for any parts that have already been shipped at the price that corresponds to the lower quantity and/or impose cancellation charges for the amount of pieces that have been cancelled. SMP does not accept any terms included in a Purchase Order or Scheduling Agreement establishing an "end date" that intends to absolve Purchaser of liability on the Purchase Order or Scheduling Agreement on a certain date for any remaining parts produced or in production on the contract that remain unshipped on the specified "end date" for any reason, including potential scheduling adjustments made throughout the duration of the contract. SMP does not accept any such terms or terminology included in Purchase Order or Scheduling Agreement, and Purchaser understands and accepts that SMP will process all orders in accordance with (1) the quote generated by SMP, (2) these Terms and Conditions, and (3) the Policies and Regulations of SMP.

**PAYMENT, VERIFICATION, MODIFICATION AND TERMINATIONS.** Purchase orders for proprietary OEM part numbers are subject to all OEM restrictions and regulations and must contain end-use disclosure by identifying the acceptable end-use customer, OEM or other government entity approved to purchase these products, or must identify the OEM and state on the purchase order: "Parts are required solely for OEM use or a partner thereof acting pursuant to a partnership agreement with the OEM." Any order cancelled after commencement of processing and/or manufacturing of that order is subject to cancellation charges. Any material bought under Price-in-Effect ("PIE") market or volatile conditions is subject to change upon receipt and may affect the price of any component quoted. If this occurs, the Purchaser will be notified, substantiation provided and a modification will be requested, and may be required prior to work commencing. All freight charges, unless otherwise specified, are FOB Willoughby, Ohio. Should SMP choose to extend credit terms, on the sole discretion of SMP, our payment terms, unless otherwise specified in writing, are as follows: 1.0% 10 net thirty (30) days; 2.0% monthly financing charge will be applied to all open balances beyond thirty (30) days; and all shipments and work will be stopped on all open orders with any unpaid balance extending beyond sixty (60) days from invoice date. Slabe Machine Products reserves the right to vary our payment terms discretionarily towards any or all of our different customers. Any/all overseas shipments requiring SMP to obtain an export license will incur an additional \$750.00 charge invoiced along with the first shipment of parts, and will remain valid through expiration of the export license.

**TRANSFER OF TECHNICAL DATA PROHIBITED.** This document may contain technical data controlled and compliant with the International Traffic in Arms Regulations (ITAR) and/or the Export Administration Act (EAR). Unless granted proper approval from the U.S. Department of State, the transfer or release of any such technical data to a foreign person or entity, whether manufactured within the United States or abroad, is strictly prohibited.

**MATERIAL AUTHENTICITY.** Orders shall be compliant with AS 6174 Assuring Acquisition of Authentic and Conforming Material.

**CUSTOMER SATISFACTION.** Purchaser shall notify SMP in writing of any claims for non-conformity, shortages and/or errors in shipment, or errors in charges, within ten (10) business days after receipt of product(s). Failure to properly notify SMP shall constitute conclusive evidence that SMP has satisfactorily performed and that the customer accepts the products, waiving any right to reject the product(s). Purchaser has ten (10) days from the date of delivery for inspection to determine whether the goods (a) conform to the order or other applicable shipping document, or (b) are damaged, visibly defective, or otherwise nonconforming, within which time Purchaser must also transmit written notice of non-conformity or damage to SMP. No returns can be made without prior authorization by SMP, which may provide a return authorization number required for all returns. All returns are subject to inspection and acceptance by SMP, and accepted returns are subject to a Handling & Re-inspection Charge as determined by SMP. All returns shall be in accordance with specified shipping instructions provided by SMP.

**OUTSOURCED WORK.** Slabe Machine outsources a wide variety of services ranging from various manufacturing processes, machine repair, landscaping, legal and professional services, etc. and in all such cases we issue purchase orders on which are contained the exact costs and details of the services provided. These purchases orders (PO's) are also called delivery receipts, (DR's) and they are contracts for services; and once one is issued and the services are completed, Slabe Machine agrees to pay no more for the work or service than the exact amount that has been detailed on that PO or DR. We contractualize literally every billable event that occurs on these premises or that is controlled by business pertaining to Slabe Machine or at any other location for Slabe Machine on a PO/DR which is signed by a representative of Slabe Machine. We do this specifically to avoid any miscommunications or misunderstandings about the exact scope of the work that is being performed as well as the exact costs of it; and if no such contract exists, Slabe Machine assumes no work or service will be done and therefore will not pay for any such work or services, and thus no claim or collection attempt for any damages resulting from work that Slabe Machine has not contracted you, in writing, to perform should occur. Anyone beginning or proceeding forward with any contract work and/or services without obtaining a signed contract from Slabe Machine does so entirely at their own cost and risk. Slabe Machine does not issue verbal contacts using 'ballpark' prices – all work or services billable to Slabe Machine must be clearly detailed in writing on the PO/DR on which will contain the exact scope of and costs for such work or services; and should during the completion of any contract work being performed for Slabe Machine it becomes apparent that there has been an error made and/or that additional monies are needed in order to successfully complete the project(s), Slabe Machine mandates that those additional costs be clearly detailed and submitted back to us so that we can either formally terminate the contract or if the additional costs are acceptable to Slabe Machine we can then detail them, modify the PO/DR and issue back a corrected/updated PO/DR so that it is, as always, in writing and very clear as to what is expected and the exact costs that will be invoiced to Slabe Machine and paid by Slabe Machine upon completion. If a contractor performs an additional service or bills for an additional charge that was not authorized by Slabe Machine and specifically contained on the PO/DR, Slabe Machine will simply pay only those amounts indicated on the contract and consider the matter closed. Our intentions are to be very clear, upfront and honest and our procedure is to clearly detail on all PO/DR's exactly the scope and costs of all work being performed, and so if you've misquoted a job and received a contract and need to adjust the costs – submit those costs to us and/or tell us what it is that you need additionally and if it's acceptable to us we'll send you an updated PO/DR. The submission of any additional costs are evaluated in exactly the same manner as the process by which we evaluate bids – we perform our due diligence, compare and contrast the various proposals and decide in which direction it's most advantageous for Slabe Machine to proceed after which we issue or modify the written contract. So please – should you come across an error on a contract –don't proceed forward without obtaining the corrected paperwork from Slabe Machine and assume that it will be coming and/or just complete the job and invoice us for some number that's higher than what is written on the PO/DR since what will happen is that you'll receive payment for only the number that was contained on the contract and it'll result in an argument... and we don't like arguments -we like everything to be nice and clear.

**DATA COLLECTION.** Slabe Machine has limited means by which we're able to review, collect, correlate, document and provide large amounts of archived data. This includes but is not limited to e-mails, blueprints, process prints, internal memos, inspection methods, phone conversations, customer information, pricing, etc.. Data collection is a service that like machining and engineering we provide only for a cost. Much of our archived e-mails, purchase orders and other retained documents reside in various computer systems and for us to retrieve, review and/or correlate them is costly. Anything that exists can be found but some documents take more time than others as certain keywords, time frames and parameters often times need to be searched in multiple ways in order to eliminate errors and/or redundancies and insure the desired outcome. If documents we provide are then to be shown to any outside entity towards the end of investigating or proving or disproving any point, additional time is often necessary to determine if that particular document(s) contains proprietary, ITAR, or otherwise confidential information and/or is protected by a non-disclosure agreement; and so prior to disclosing any of it Slabe Machine accordingly needs to review, possibly with legal counsel, all of it towards the end of determining if it's appropriate to disclose. Because it can be commonplace for people to ask for enormous amounts of documents that force companies such as ours to cease or slow our operations while attempting to comply, we wish to be very clear in that if Slabe Machine is asked to provide any documentation for any action or endeavor whatsoever, it is condition of doing business with Slabe Machine that you acknowledge Slabe Machine will quote you a fee for such service and you hereby agree that upon acceptance of the quoted fee that a binding contract will have been created for services which you intend to immediately pay, then and only then will Slabe Machine dedicate/employ whatever resources are necessary towards the end of collecting and providing the requested information to you. Slabe Machine will not proceed forward with any data collection or review until after our quote is accepted and a signed contract is returned to us and your initial payment is received. Our data collection rates are \$150 per page of information reviewed (not provided – reviewed). Data mining and review is a service we provide only a cost, and because it is so time consuming it is very expensive, and we further clarify that no such data collection / mining will begin without a deposit being received, and that no documents will be provided until after the invoice for an accepted contract is paid in full, and therefore we wish to make it abundantly clear that should it become necessary for you to ask for us – for any reason – to slow our business down while collecting and reviewing data for any action, regardless as to the action or who initiated it, that you will entirely cover the costs of any such endeavor through issuing a clear contract to Slabe Machine, which will originate from a clear quote for such services that Slabe Machine will offer you prior to commencing.

**LIMITATIONS ON LIABILITY.** SMP stands behind its long history of supplying high-quality products and services; however, due to unknown value(s) of higher-level assemblies into which these parts are or may be used, all prices quoted by SMP are constructed with liability limited only to the value of the individual part(s) as manufactured by SMP. As such, SMP specifically limits its liability to the value of the parts

actually produced by SMP and incurs no liability for any higher-level assembly into which these parts are or may be incorporated or used. Any additional liability protection required for parts produced by SMP must be communicated in writing to SMP at the time of the initial order, and SMP reserves the right to re-quote the cost of that order to reflect the additional coverage necessitated by the additional risk. SMP shall not be liable to Purchaser or any other party for delays including, but not limited to, delays caused directly by SMP, and/or delays due to any of the following: fire; flood; epidemics; quarantine; lightning strikes; embargo; explosion; power surge or failure; acts of God; war; labor or material disputes; civil disturbances; acts of civil or military authority; inability to secure materials; fuel; products or transportation facilities; and/or acts or omissions of suppliers. SMP shall not be liable to Purchaser for any direct, incidental, indirect, special, punitive, exemplary, tort or consequential damages including, but not limited to, any damages for business interruption, administrative charges, back-charges, quality over-inspection, loss of revenues, profits or savings, loss of data, procurement, product recall, product removal or re-installation, increased overhead, injury to reputation or loss of customers, indemnity or reimbursement for any claims asserted against Purchaser by a third party arising directly or indirectly from the manufacture, delivery, sale, use, installation, assembly, disassembly or recall of the goods, regardless of cause or form of action asserted by Purchaser, whether in contract, tort, strict liability, statutory liability or otherwise, and whether or not such damages were foreseen, unforeseen or foreseeable, even if SMP has been advised of the possibility of such damages. Notwithstanding the foregoing, in the event the terms of this section, or any part thereof, are found invalid or unenforceable by a court of competent jurisdiction, SMP's total aggregate liability to Purchaser under this order and these Terms and Conditions shall not exceed the purchase price of the goods giving rise to the claim.

**AMENDMENTS.** Once a quote for any product is made by SMP, and a purchase order accepted and/or initiated, no promise, representations or agreement made prior to, or subsequent to, the initiation and completion, including delivery, of the order is valid if not made in writing and approved by SMP, signed by both SMP (or a duly authorized Agent of SMP) and Purchaser (or a duly authorized Agent of Purchaser). No revocation, partial or otherwise, or change, amendment, addition, alteration or modification shall be valid unless made in writing and approved by SMP, signed by both SMP (or a duly authorized Agent of SMP) and Purchaser (or a duly authorized Agent of Purchaser).

**WARRANTIES.** SMP makes no other warranties, express or implied, of any kind, with respect to the goods, including, without limitation, any warranties as to accuracy, functionality, performance, or merchantability. SMP expressly disclaims all other warranties, express, implied, or statutory with respect to the goods, including, without limitation, the warranties of merchantability and fitness for a particular purpose, and any warranties arising from trade usage, course of dealing, or course of performance. Any performance estimates described in these Terms and Conditions, or in any SMP written, electronic or magnetic media proposals and/or quotations, are only estimates and are not intended as an express warranty. Any samples submitted by SMP to purchasers, and any descriptions, illustrations, or forecasts in trade literature, brochures, or other documentation or electronic or magnetic media, shall not be construed as warranties as to substance, performance, quality, weight or dimension, and any failure to conform with such samples, descriptions, forecasts or illustrations shall not constitute a breach of this order or these Terms and Conditions. Sales personnel, employees, agents, and/or representatives of SMP, or any third parties, are not authorized to make any representation, warranty, or covenant, whether in writing or orally, on behalf of SMP.

**SUSPENSION AND ASSURANCE.** If reasonable doubt exists as to a Purchaser's abilities to fulfill its financial obligation under the contracted Purchase Order, or if Purchaser is past due in payment of any amount owing to SMP, SMP reserves the right, without liability and without prejudice to any other remedies, to suspend performance, decline to ship, or stop any material or goods in transit, until SMP receives payment of all amounts owing to SMP, whether or not due or adequate assurance of such payment has been made by Purchaser to SMP.

**INTELLECTUAL PROPERTY.** Any ideas and/or suggestions introduced, presented, or brought to SMP and/or its officers, directors, employees, agents, shareholders, or affiliated companies, are considered available for use at the sole discretion of SMP, subject only to a Confidentiality or Non-Disclosure Agreements executed by SMP and the presenting party prior to introduction or presentation of the idea and/or suggestion, whether the idea and/or suggestion is presented to SMP orally or in writing. Acceptance of these Terms and Conditions without a separately-executed Confidentiality or Non-Disclosure Agreement between SMP and the presenting party is conclusive evidence that these ideas and/or suggestions are not proprietary in nature, and the presenting party hereby agrees that it will not seek compensation from SMP for its use of these ideas or suggestions at any time.

**REMEDIES.** Except with respect to infringement of any United States patent or United States copyright by the goods, Purchaser's sole and exclusive remedy with respect to defective or otherwise nonconforming goods is limited, at the discretion of SMP, to: (a) replacement (not including labor) of the non-conforming goods and delivery to Purchaser, free of charge, to the same location of original shipment; (b) repair (not including labor) of the non-conforming goods and delivery to Purchaser, free of any additional charges, to the same location of original shipment; or (c) refund of Purchaser's purchase price for the non-conforming goods (without interest) upon the return of the alleged defective or non-conforming goods. If requested by SMP, Purchaser shall return to SMP any goods which are replaced or for which Purchaser receives a refund, at the expense of SMP, provided that Purchaser has complied with the return policies and procedures set forth by these Terms and Conditions and provided by the Policies and Procedures of SMP.

**INDEMNITY.** Purchaser shall indemnify, defend, and hold harmless SMP and its officers, directors, employees, agents, shareholders, affiliated companies and their respective successors and assigns from and against any and all claims relating to, in connection with or arising from: (a) any breach by Purchaser of any provisions of these Terms and Conditions; (b) any claim or suit for actual or alleged violation or infringement of any United States patent or United States copyright of any third party arising from Purchaser's designs, specification or instructions to SMP; (c) any unauthorized modifications, alterations, adaptations or use of the goods; and (d) any claim or suit for damages arising from acts, representations or omissions of Purchaser related to Purchaser's sale or use of goods, or incorporation of goods into a product or part thereof. SMP shall have the right to control the defense of any such claim, including, without limitation, authority to settle any such claim, select counsel, and seek reimbursement from Purchaser. Purchaser shall indemnify, hold harmless and defend SMP and its agents and employees from and against all claims, damages, losses and expenses, including attorney's fees, arising out of any materials supplied by SMP to Purchaser, provided that any such claim is attributable to bodily injury, sickness, disease, death, or injury to or destruction of tangible property, including the loss of use resulting there from, caused in whole or in part by any negligent act or omission of Purchaser, any subcontractor, employee, agent, or anyone else directly or indirectly employed by any of them or by any third party, regardless of whether or not it was caused, in whole or in part, by an indemnified party. The purchaser of products shall indemnify, defend and hold SMP, its officers and agents harmless from and against all loss, cost, damage, or expense whatsoever incident to any claim, action, or proceeding against SMP. Purchaser waives any right to any remedies for nonconforming goods otherwise available at law or statute other than those expressly stated herein.

**ARBITRATION AND GOVERNING LAW.** Any action or lawsuit against SMP arising in any way from or with respect to these Terms and Conditions, or an order for parts or services must be commenced not later than one (1) year after the cause of action has occurred. Any order(s) made with SMP is/are made and entered into within the State of Ohio, United States of America, and all the rights and duties of the parties arising from or relating in any way to the subject matter of this order or the transaction(s) contemplated by it, shall be governed by, construed and enforced in accordance with the laws of the State of Ohio and the United States of America without regard to any conflict of laws rules, except to the extent of provisions included herein by virtue of the requirements applicable to Federal Government procurement, which provisions shall be construed and interpreted according to the Federal common law of government contracts as enunciated and applied by Federal judicial bodies, boards of contract appeals and quasi-judicial agencies of the Federal Government. The rights and obligations of a Purchaser and SMP shall not be governed by the provisions of the United Nations Convention on Contracts for the International Sale of Goods. Any suit or proceeding relating to this order, these Terms and Conditions, or the goods must be brought in the state courts located in Lake County, Ohio, or, where proper, the United States District Court for the Northern District of Ohio, located in Cleveland, Cuyahoga County, Ohio. Purchaser and SMP hereby consent to the exercise of personal jurisdiction over them by these courts, as specified herein by these Terms and Conditions, for the resolution of any claim or dispute arising between the parties. Further, should a conflict or dispute arise between the parties, upon the election of SMP at any time, Purchaser agrees to waive its right to a jury trial and submit any and all dispute between the parties to arbitration, to be held in Lake County, Ohio, in accordance with the Rules of the American Arbitration Association, and judgment upon the award rendered by the Arbitrator(s) may be entered in the Court having jurisdiction thereof, as provided herein by these Terms and Conditions.

If any provision of these Terms and Conditions are held by a court or arbitrator of competent jurisdiction to be void or unenforceable, the void or unenforceable provision is severable and the remaining provisions remain binding on all parties and shall continue with full force and effect.