

# TOOLMEX INDUSTRIAL SOLUTIONS

## Elektrim Motors Business Unit

# Terms and Conditions

All products are covered by the following Terms and Conditions, except where products may require specific Terms and Conditions. Toolmex Industrial Solutions (Toolmex) reserves the right to change and amend this policy as business conditions warrant. Toolmex is not responsible for typographical errors that may appear on this page.

These Terms and Conditions shall apply to the agreement resulting from Buyer's acceptance (as defined in Article 1 below) of Toolmex's Quotation and or Delivery, hereinafter referred to as "the Agreement." The products, machinery and equipment of the description and quantity stated in the Quotation are referred to hereinafter as "the Goods." The term "the Goods" also refers to any single item of such Goods, any part of any Goods and any repair or replacement Goods or part thereof. PURCHASE OF ANY GOODS FROM Toolmex Industrial Solutions ELEKTRIM MOTORS BUSINESS UNIT SHALL BE SUBJECT TO THESE TERMS AND CONDITIONS.

### Article 1. Acceptance

Buyer's acceptance or purchase order must be received by Toolmex in writing. Any terms or conditions appearing in Buyer's purchase order or acceptance either in addition to the terms and conditions herein set forth or modifying such terms and conditions shall not be a part of the Agreement and shall be of no effect unless specifically accepted in writing by an authorized representative of Toolmex. If a purchase order or other correspondence submitted by Buyer contains terms or conditions contrary to or in addition to the terms and conditions contained herein, Toolmex's fulfillment of any such purchase order shall not be construed as acceptance of any terms and conditions proposed by Buyer, and will not constitute a waiver by Toolmex of any terms or conditions contained herein or in Toolmex's acknowledgement. In any event, delivery by Toolmex and acceptance by Buyer of any Goods shall constitute acceptance by Buyer of Toolmex's Quotation and Toolmex's terms and conditions. The Goods as stated in the Toolmex's Quotation are subject to prior sale unless a different expiration date is confirmed in writing by Toolmex. Acceptance or shipment of any order by Toolmex is subject to final approval by the Toolmex Credit Department.

### Article 2. Payment and Credit Terms

Toolmex accepts checks, money orders, ACH payments, bank to bank wires, Visa, MasterCard, Discover, and American Express. For Buyers with established Toolmex line of credit, payment terms are net thirty (30) days from the date of invoice. All terms or credit limits extended by Toolmex to Buyer, and the limits of such credit, is at Toolmex's sole discretion, and may be reduced or revoked by Toolmex at any time, for any reason without notice. Toolmex reserves the right to charge a penalty fee of 1.5% per month applied against undisputed overdue amounts, or the maximum rate permitted by law, whichever is less. Late penalties will be calculated every 30 days thereafter based on the Buyer's current outstanding balance. Each shipment shall be considered a separate and independent transaction and payment for each shipment shall be subject to Toolmex's payment terms. Export orders are subject to special export payment terms and conditions (See Article 27). All payments must be made in U.S. dollars. Toolmex shall have the right of set-off and deduction for any sums owed by Buyer to Toolmex. Toolmex reserves the right to assess a non-sufficient funds (NSF) fee in the amount of \$35 for each returned check, regardless of the amount of the check or the reason it was returned. It is the responsibility of Buyer to ensure payments are authorized and approved on time to ensure receipt of payment no later than the due date; in no case shall Toolmex be responsible for ensuring such authorization or approval. Buyer failure to supply adequate assurance of full performance to Toolmex within a reasonable time after requested by Toolmex (such time as specified in Toolmex's request), Toolmex may hold orders/shipments until such payment or compliance is made, pre-payment in advance for any further shipments, demand immediate payment of all amounts then owed, elect to pursue collection action (including without limitation, attorneys' fees and any and all other associated costs of collection), and/or may, at its option, cancel all or any part of an unshipped order. Buyer agrees to assume responsibility for, and Buyer hereby unconditionally guarantees payment of, as provided herein, all purchases made by Buyer, its subsidiaries and affiliates. Each of Buyer's subsidiaries and affiliates purchasing from Toolmex will be jointly and severally liable for purchases with Buyer, and Buyer is also acting as agent for such subsidiaries and affiliates. Accounts in good standing order(s) will ship immediately. Accounts that are delinquent will be put on credit hold, and the products will not ship until account is reviewed by Toolmex Credit Department. Any arrangements made outside of the terms should be in writing and signed by both the applicant and the creditor.

### Article 3. Credit Balance

Buyer agrees that any credit balance(s) issued by Toolmex will be applied to Buyer's account within one (1) year of its issuance. IF BUYER HAS NOT REQUESTED THE CREDIT BALANCE WITHIN ONE (1) YEAR, ANY REMAINING CREDIT BALANCE WILL BE CANCELLED,

AND TOOLMEX SHALL HAVE NO FURTHER LIABILITY. WE WILL BE UNABLE TO REFUND ANY CREDIT MEMO ON AN ACCOUNT WITH AN OUTSTANDING BALANCE.

### Article 4. Prices

Prices are subject to change without notice unless confirmed in writing by Toolmex in the Order Confirmation. The amount of any present or future sales, use, excise, privilege, occupation, property or similar tax applicable to the manufacture, transfer, sale, use or other disposition of the Goods (other than taxes on the income of Toolmex) is excluded from the sale price and shall be paid by the Buyer. If any such taxes are imposed upon, or required to be collected by Toolmex, Buyer shall promptly pay Toolmex the amount thereof within ten (10) days of receipt of an appropriate invoice therefore. Prices are subject to change at any time by Toolmex in the event of any change in the Buyers requirements or the Terms and Conditions of Toolmex's Quotation. The prices quoted by Toolmex do not include the cost of insurance for any liability disclaimed or limited in these Terms and Conditions.

### Article 5. Sales Tax, Duties and Import Fees

Toolmex is required to charge federal, state, local tax, applicable duties, and import fees on products, or Buyer must provide a valid tax exemption certificate. Buyer assumes responsibility for, and unconditionally guarantees payment or reimbursement of, all applicable taxes, fees, licenses, import duties, and expenses as may be applicable. When placing an order, Buyer shall indicate which products are tax exempt.

### Article 6. Order Cancellation

All product order cancellations must be approved by Toolmex, and may be subject to restocking fees and other charges.

### Article 7. Custom Products

Buyer may order custom products ("Custom Product(s)") created to Buyer's specifications. Toolmex is not responsible for verifying or confirming the accuracy of specifications provided by Buyer to Toolmex for Custom Products. TOOLMEX'S LIMITED WARRANTY TERMS INCLUDED IN THESE TERMS AND CONDITIONS DO NOT APPLY TO CUSTOM PRODUCTS. THE PRODUCT WARRANTY PROVIDED BY THE MANUFACTURER AND/OR SUPPLIER WILL BE BUYER'S SOLE REMEDY. All Custom Products are sold on a "FINAL SALE" basis only, and no cancellations, returns, refunds or credits are allowed. Custom order products require a 50% down-payment by the Buyer.

### Article 8. Sourced or Special Order Products

Toolmex may procure products not available through the Toolmex catalog or available on [www.toolmex.com](http://www.toolmex.com) for a Buyer from other sources ("Sourced Product(s)"). Sourced products are priced according to current market conditions on a per order basis, and are shipped FOB origin with freight and handling fee paid by Toolmex and charged to Buyer. Any charges for Other Freight Services are paid by Buyer. Special order products require a 50% down-payment by the Buyer. TOOLMEX'S LIMITED WARRANTY TERMS INCLUDED IN THESE TERMS AND CONDITIONS DO NOT APPLY TO SOURCED PRODUCTS. THE PRODUCT WARRANTY PROVIDED BY THE MANUFACTURER AND/OR SUPPLIER WILL BE BUYER'S SOLE REMEDY. All Sourced Products are sold on a "FINAL SALE" basis only, and no cancellations, returns, refunds or credits are allowed. Sourced and/or Special Order Product orders may be subject to advance deposits, prepayments, or other non-standard payment terms. At its discretion, Toolmex may require non-cancelable purchase orders for any sourced or special order requests.

### Article 9. Performance of Services

In conjunction with Buyer's purchase of product, Toolmex may perform certain services for Buyer on Buyer premises such as delivering, ordering, performing inventory management, or putting-away product (collectively, the "Services"). Buyer will hold harmless and indemnify Toolmex, its officers, directors, employees, agents, subcontractors or representatives from and against any and all claims, including bodily injury, death, or damage to personal property, and all other losses, liabilities, obligations, demands, actions and expenses, whether direct or indirect, known or unknown, absolute or contingent, incurred by Toolmex related to the performance of Services for Buyer (including without limitation, settlement costs, attorneys' fees, and any and all other expenses for defending any actions or threatened actions) arising out of, in whole or in part, any act or omission of Buyer, its employees, agents, subcontractors or representatives.

### Article 10. Delivery and Risk of Loss

**Standard Freight Policy:** Prices stated are FOB origin, freight prepaid to destination specified in the order. Toolmex charges a shipping and handling fee, (which includes internal handling and related costs), on each order which is applied at time of order and reflected on Buyer's invoice. Receipts for shipping and handling charges will not be

furnished. Dates of delivery are determined from the date of Toolmex's acceptance of any order or orders by Buyer and are estimates of approximate dates of delivery, not a guarantee of a particular day of delivery. Title and risk of loss shall pass to the Buyer upon delivery of the Goods by Toolmex to the carrier. Short shipment claims must be made within 30 days from the date of shipment by the Buyer. **Latin American export orders are shipped EX-WORKS Natick, MA or EX-WORKS Schaumburg, IL. See Article 27 for export order specific terms and conditions.**

**Elektrim Motors Freight Policy:** All electric motors are shipped FOB shipping point freight prepaid and add unless otherwise specified by the Buyer. Toolmex covers shipping and handling for standard ground delivery of regularly priced motors (excluding overstock and sale items) on a single order over \$3000.00 before tax and freight, on a carrier chosen by Toolmex, to a single destination within the continental United States. Other terms and conditions may apply for additional freight services, including, without limitation, expedited delivery, air freight, freight collect, export orders, hazardous materials, shipments outside the contiguous United States, or other special handling by the carrier. Any extra charges incurred for additional freight services must be paid by Buyer. Title and risk of loss pass to Buyer upon tender of shipment to the carrier. All Latin America export orders are shipped EX-WORKS Natick, MA or EX-WORKS Schaumburg, IL. See full Terms and Conditions for Latin American export sales in Article 27.

**Elektrim Motors Damaged or Lost Shipments:** In the event of damaged or lost shipments: (a) If Buyer requested freight charges via collect or third party freight, Buyer is responsible for filing claim with carrier. Toolmex is not liable for merchandise damaged or lost by carrier; (b) If Toolmex paid pre-paid or no-charge freight, receiver of Goods must have the driver note the damage or shortage on the freight bill, and Buyer must notify Toolmex within 5 business days with pictures and explanation of damages. Keep damaged product and packaging until you are advised to dispose by Toolmex. Toolmex does not recommend shipping electric motors and related products over 40lbs via UPS or FedEx Ground. Buyers choosing UPS or FedEx Ground as their carrier for Toolmex or Elektrim products over 40 lbs must sign a shipping waiver or ship collect or third party billing, and are responsible for filing claim with carrier in the event of damage or loss. Shipping wavier provided by Toolmex upon request.

#### Article 11. Product Return

Product returns must be returned in original packaging, unused, undamaged and in saleable condition within 30 days after the date of shipment for a 20% restocking fee, unless otherwise indicated. Depending on circumstances, repackaging or other fees may apply. If a new order of equal or greater value is placed before or at the time of the return request, Toolmex may elect to waive restocking fees at Toolmex's discretion. Proof of purchase is required in all cases, and Buyer must obtain a Returned Merchandise Authorization (RMA) from Toolmex prior to return. Buyer is responsible for freight charges on original order, and may be billed for freight paid out by Elektrim on original order. Original freight charges are not reimbursable. Buyer is responsible for return freight and new freight charges on any replacement order. After 30 days product cannot be returned. No credit will be issued on authorized returns due to the following conditions: (a) item has been used, and is not in resalable condition; (b) item has been modified by Buyer; (c) item has been damaged; or (d) item returned does not match item authorized for return.

**Unauthorized Returns:** Unauthorized returns with no RMA and no paperwork will be processed, and no credit is due to Buyer. Such returns are subject to be returned to Buyer, and freight charges for the return are the responsibility of the Buyer.

**Returns due to Toolmex Error:** A return request due to Toolmex error must be made within 30 days from the date of shipment, and an RMA must be obtained. Buyer will not incur a restocking charge, and Toolmex will pay for return shipping.

#### Article 12. Security Interest

Until payment is received in full for Goods sold and/or delivered on consignment, Toolmex shall retain security interest in the Goods hereunder and in the proceeds thereof and the Buyer hereby authorizes Toolmex to execute on Buyer's behalf a standard financing statement setting forth Toolmex's security interest to be filed under the applicable filing provisions of the Uniform Commercial Code of the State in which the Goods are located. Upon Toolmex's request, Buyer shall promptly execute such financing statement.

#### Article 13. Warranty Policy

**Limited Warranty Policy:** All products sold are warranted by Toolmex only to Buyers for: (i) resale; or (ii) use in business, government or original equipment manufacturer. Toolmex warrants products against defects in materials and workmanship under normal use for a period of one (1) year after the date of purchase from Toolmex, unless otherwise stated. Provided that Toolmex accepts the product for return during the Limited Warranty period, Toolmex may, at its option: (i) repair; (ii) replace; or (iii) refund the amount paid by Buyer. Buyer must return the product to the appropriate Toolmex branch or authorized service location, as designated by Toolmex, shipping costs prepaid.

Toolmex's repair, replacement, or refund of amounts paid by Buyer for the product, shall be Buyer's sole and exclusive remedy.

**Warranty Disclaimer:** No warranty or affirmation of fact, express or implied, other than as set forth in the Limited Warranty statement above, is made or authorized by Toolmex. Toolmex disclaims any liability for claims arising out of product misuse, improper product selection, improper installation, product modification, mis-repair or misapplication. Toolmex expressly disclaims any warranty that the products: (i) are merchantable (ii) fit for a particular purpose; or (iii) do not and will not infringe upon other's intellectual property rights.

Toolmex makes no warranties to those defined as consumers in the Magnuson-Moss Warranty Federal Trade Commission Improvement Act.

**Warranty Limitation of Liability:** Toolmex expressly disclaims any liability for consequential, incidental, special, exemplary, or punitive damages. Toolmex's liability in all circumstances is limited to, and shall not exceed, the purchase price paid for the product that gives rise to any liability.

**Warranty Product Return:** Before returning any product, Buyer shall: (i) write or call Toolmex at +1-847-524-1074, +1-855-463-5358, or support@elektrimmotors.com; (ii) and provide the date, the original invoice number, the stock number, and a description of the defect. Proof of purchase is required in all cases.

**Elektrim Motors Warranty Period:** Elektrim motors are warranted for (Part Number Prefixes 20J, 20M, 20N, 31N, 32N, 34N, 40J, 40M, 40N, 60N, 77N: 36 months; 36, 38, 39, 79: 12 months) from the date of shipment to customer from the Elektrim warehouse or, if applicable, any consigned inventory or district warehouse. All warranty claims must be submitted to Elektrim Motors prior to expiration of the warranty period.

**Procedure to Receive Elektrim Motors Warranty Service:** Customers must contact Elektrim Motors and receive authorization prior to obtaining warranty service. Elektrim is not liable for cost of modifications or repairs performed to Elektrim motors if warranty authorization was not obtained. Customers seeking warranty authorization must fill out and submit to Elektrim the Motor Warranty Service Report indicating the defect or problem, a description of the way in which the motor was used, your name, address and phone number.

The Warranty Service Report can be obtained by contacting Elektrim or at <http://www.toolmex.com/cb-Support/SupportDocuments.aspx>.

**Elektrim Motors Warranty Service Center Locations:** Warranty service is available for all Elektrim motors from all Elektrim Authorized Service Centers. A list of service centers is available by contacting Elektrim at 2015 S. Mitchell Blvd., Schaumburg, IL 60193, 1-855-GO-ELEKTRIM (855-463-5358) or email [warranty@elektrimmotors.com](mailto:warranty@elektrimmotors.com).

**Repair by Other than an Elektrim Authorized Service Center:** Customers who are unable to take or ship the Elektrim motor to an Elektrim Authorized Service Center, or those who desire that there be made an alternative facility must contact Elektrim to receive a written authorization. Modifications or repairs performed to Elektrim motors by non-authorized service providers will void the warranty.

**Repairs or Replacement Within the Scope of the Warranty:** If an Elektrim motor is defective due to Elektrim workmanship or materials and the defect occurs during the warranty period, Elektrim will either repair the product, issue credit or replace it with a new one, whichever Elektrim believes to be appropriate under the circumstances. Elektrim will pay domestic freight on replacement motors (and only if requested by Elektrim, motors returned to Elektrim) as a result of warranty. Elektrim will not pay freight for any returned motors as a result of warranty, if the return was not requested by Elektrim in writing. ELEKTRIM IS NOT RESPONSIBLE FOR REMOVAL AND SHIPPING OF THE ELEKTRIM MOTOR TO THE SERVICE CENTER, REINSTALLATION OF THE ELEKTRIM MOTOR UPON ITS RETURN TO THE CUSTOMER, OR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES RESULTING FROM THE DEFECT, REMOVAL, REINSTALLATION, SHIPMENT OR OTHERWISE.

**Repairs Outside the Scope of the Warranty:** Problems with Elektrim motors can be due to improper maintenance, faulty installation, non-Elektrim additions or modifications, or other problems not due to defects in workmanship or materials. If the Elektrim Authorized Service Center determines that the problem with an Elektrim motor is not due to defects in workmanship or materials, then the customer will be responsible for the cost of any necessary repairs. Customers not satisfied with a determination that a problem is outside warranty coverage should contact Elektrim Motors.

#### Article 14. Limitation of Liability

Toolmex's total liability to Buyer for all claims of any kind, whether based on contract, tort (including negligence) or otherwise, for any loss or damage arising out of, connected with or resulting from, the performance or breach of the Agreement shall in no case exceed the total price paid by Buyer for the Goods sold under the Agreement. In all cases where Buyer's claim involves defective Goods or damage resulting therefrom, Buyer's exclusive remedies and Toolmex's sole liability whether based upon contract tort

(including negligence) or otherwise shall be as specifically provided in Article 13. Toolmex's liability for any claims arising out of connected with or resulting from the performance or breach of the Agreement other than those claims covered by the preceding sentence shall be limited to specifically identified written claims as to which Buyer has given Toolmex notice prior to the expiration of the warranty period set forth for bringing claims under the warranties therein contained. In applying the monetary limitation of Toolmex's total liability any damages paid to Buyer by Toolmex as well as any costs incurred (as determined in accordance with Toolmex's normal accounting practices) and settlements made by Toolmex under Article 13 or any other provision of the Agreement shall be credited against Toolmex's total liability to buyer. In no event, whether as a result of breach of contract, tort liability (including negligence) or otherwise, shall Toolmex be liable to Buyer for any special, indirect, incidental or consequential damages of any nature, including, but not limited to, any such losses or damages caused by reason of unavailability of, or defects in the Goods or any manual or instruction sheet, or by reason of unavailability of any plant or equipment with which they are to be used including, but not limited to, loss of profits or revenue, inventory or use charges, cost of purchased or replacement equipment or machinery, cost of capital or claims of customers. In no event shall Toolmex be liable to Buyer for any damage to or loss of Goods during shipment or for any damages incurred by Buyer as a result of such damage or loss. The provisions of this Article and of other Articles of these Terms and Conditions providing for limitation of or protection against liability of Toolmex shall also protect its Suppliers and shall apply to the fullest extent permitted by law and regardless of fault and shall survive either termination or Cancellation pursuant to these Terms and Conditions as well as the completion of the undertakings hereunder. As used herein the term "Supplier" means any Toolmex, subcontractor or other person who supplies materials, equipment, labor, information or services to Toolmex in connection with furnishing the Goods or any manual or instruction sheet. The provisions of this Article shall apply notwithstanding any other provisions in these Terms and Conditions. The provisions of these Terms and Conditions providing for limitations of and protection against Toolmex's liability shall apply to and be deemed incorporated (without any further reference thereto) in any separate orders or contracts between the parties for spare, renewal or replacement parts for the Goods furnished by Toolmex hereunder.

#### **Article 15. Product Compliance and Sustainability**

Jurisdictions have varying laws, codes and regulations governing construction, installation, and/or use of products for a particular purpose. Certain products may not be available for sale in all areas. Toolmex does not guarantee compliance or suitability of the products it sells with any laws, codes or regulations, nor does Toolmex accept responsibility for construction, installation and/or use of a product. It is Buyer's responsibility to review the product application and all applicable laws, codes and regulations for each relevant jurisdiction to be sure that the construction, installation, and/or use involving the products are compliant.

#### **Article 16. Product Liability**

Buyer shall use and shall require its employees to use all safety devices, guards, and proper safe operating procedures as set forth in manuals and instruction sheets furnished by Toolmex. Buyer shall not remove or modify any such device or warning sign. Buyer is solely responsible for operating or using the Goods in compliance with applicable safety and environmental laws and regulations. Buyer agrees to indemnify and save Toolmex harmless from any claims for loss or damage to persons or property suffered or incurred directly or indirectly in connection with the operation of the Goods or resulting from or related to Buyer's failure to strictly observe each of its obligations pursuant to this Article. Buyer is solely responsible for operating or using the Goods in compliance with applicable safety and environmental laws and regulations. Buyer shall notify Toolmex promptly and in any event within 30 days of any accident or malfunction involving the Goods which results in personal injury or damage to property and shall cooperate fully with Toolmex in investigating and determining the cause of such accident or malfunction. In the event that Buyer fails to give such notice to Toolmex and so cooperate, Buyer agrees to indemnify and save Toolmex harmless from any claims arising from such accident or malfunction.

#### **Article 17. Intellectual Property**

Buyer shall have no right, title, or interest in the trade names, trademarks, trade dress, copyrights, patents, domain names, product names, catalogs or any other intellectual property rights reserved by Toolmex, or any trademarks or service marks owned by suppliers to Toolmex. All materials contained on the [www.toolmex.com](http://www.toolmex.com) website are subject to the ownership rights of Toolmex and its suppliers. Buyer shall have no right to copy or use any of the intellectual property of Toolmex or its suppliers without Toolmex's permission.

#### **Article 18. Patents**

If any suit or proceeding is brought against Buyer based on a claim by a third party that Goods sold under the Agreement infringe any valid United States patent Toolmex shall defend, or may settle at its expense, such suit or proceeding, providing that Toolmex is notified promptly in writing and is given all necessary authority, information and assistance and provided the manufacture of such Goods itself infringes the claim of such patent. Toolmex shall not be responsible for any settlement of such suit or proceeding

made without its written authorization. In case any Goods are in such suit held to constitute an infringement, Toolmex shall, at its expense and option, either (i) procure for Buyer the right to continue using such Goods; (ii) replace such Goods with equivalent non-infringing Goods; (iii) modify the Goods so as to render them non-infringing, or (iv) pay Buyer a sum equal to the then unexpended portion of Toolmex's maximum liability under the Agreement as specified under Article 14 hereof. The foregoing states the entire liability for patent infringement in respect of the Goods. Toolmex assumes no liability for patent infringement in respect of furnishing any manual or instruction sheet to Buyer's use thereof.

#### **Article 19. Cross Reference Information**

Product cross-reference comparisons do not imply that products are available, interchangeable or fit for a particular purpose and or application. CROSS-REFERENCED PRODUCTS ARE NOT REPRESENTED OR WARRANTED AS FUNCTIONAL OR PERFORMANCE EQUIVALENTS. Buyer agrees to review all cross-referenced product specifications prior to purchase and assumes sole responsibility for determining the suitability of any referenced product for Buyer's intended use.

#### **Article 20. Catalog, Literature and Website**

Toolmex reserves the right to update publishing errors in its catalogs, website or any other marketing collateral including but not limited to flyers, advertising, promotions, specification sheets and drawings. Product depictions in the catalog, websites or other marketing materials are for illustrative purposes only. Possession of, or access to, any Toolmex catalog, literature or websites does not constitute the right to purchase products. IT IS EXPRESSLY UNDERSTOOD THAT MANUALS AND INSTRUCTION SHEETS ARE FURNISHED SOLELY FOR BUYER'S CONVENIENCE AND TOOLMEX MAKES NO WARRANTY WHATEVER WITH RESPECT TO THE ADEQUACY OR ACCURACY OF ANY INFORMATION CONTAINED THEREIN. Specifications regarding tolerances, productivity, accuracy and other matter are descriptive, unless expressly stated as warranties. Toolmex makes no warranty with respect to auxiliary equipment and components purchased from others and furnished by it, and such items are warranted only to the extent of the warranties of the original manufacturer or supplier.

Any drawings or catalogs furnished with Toolmex's Quotation are submitted only to show the general style, arrangement and approximate dimensions of the Goods and are not binding on Toolmex except as expressly so stated by Toolmex. Buyer shall not incur any expense or perform any work in reliance on such drawings or catalogs except at Buyer's sole risk and expense. Foundation or assembly drawings certified by Toolmex will be furnished when required, after the acceptance of Toolmex's Quotation. All working drawings or other materials provided by Toolmex are for informational purposes only and the specifications contained therein are not binding on Toolmex except as expressly so stated by Toolmex. Toolmex reserves the right to make, at any time, changes in detail or design or construction of its products and to substitute other suitable materials. Any proposal, prints, brochures, drawings or other information furnished to Buyer by Toolmex are intended for confidential use by the Buyer, shall remain the property of Toolmex, and shall not be disclosed to others or otherwise used to Toolmex's detriment. At the request of Toolmex, and in any event upon the expiration of Toolmex's Quotation, such prints, brochures, drawings and other information shall be returned to Toolmex.

#### **Article 21. Product Substitution**

Products (and country of origin) may be substituted and may not be identical to catalog or website published descriptions and/or images.

#### **Article 22. Occupational Safety and Health Administration (OSHA)**

Material Safety Data Sheets ("MSDS") for OSHA defined hazardous substances are prepared and supplied by the manufacturers. TOOLMEX MAKES NO WARRANTIES AND EXPRESSLY DISCLAIMS ALL LIABILITY TO ANY BUYER OR USER WITH RESPECT TO THE ACCURACY OF THE INFORMATION OR THE SUITABILITY OF THE RECOMMENDATIONS IN ANY MSDS. BUYER IS SOLELY RESPONSIBLE FOR ANY RELIANCE ON OR USE OF ANY INFORMATION, AND FOR USE OR APPLICATION OF ANY PRODUCT.

#### **Article 23. Force Majeure**

Toolmex shall not be liable for any expense, loss, damage or delay in, or impairment of, resulting in whole or in part from any force majeure event, including but not limited to acts of God, Acts (including delays or failures to act) of any civil or military authority, domestic or foreign, irrespective of whether valid, wars, insurrections, sabotage, acts of terrorism (whether actual or threatened), riots, embargoes, fires, storms, floods, accidents, strikes, work stoppages, major equipment breakdowns, shortages of cars, fuel, labor or material, laws, ordinances, rules and regulations of any government, domestic or foreign, whether valid or invalid (including, but not limited to, priorities, requisitions, and allocations), epidemics, quarantines, communication or power failures, inability to procure or ship product or obtain permits and licenses, inability to procure supplies or raw materials, acts of omission of the Buyer, or any other act or occurrence, whether similar or dissimilar to the above mentioned acts or occurrences, beyond Toolmex's reasonable control. If any such acts, omissions, or occurrences delay but not prevent, Toolmex performance, the time for performance shall be extended for

a period of time necessary to overcome the effect of the delay; provided that if the total time lost by reason of acts or omissions of Buyer exceed sixty (60) days, Toolmex may, in addition to all other rights it may have, terminate the Agreement upon ten (10) days' notice to Buyer. If due to any contingency described in this paragraph Toolmex is unable to supply all Goods to be provided hereunder, Toolmex shall have the right to allocate its available supply among its customers in a fair and equitable manner. In no event shall Toolmex be obligated to purchase Goods or component parts thereof from sources other than its normal sources of supply in order to enable it to deliver Goods to Buyer hereunder. If any act or occurrence referred to herein affect the ability of any Toolmex Supplier to perform, the same shall be deemed to be an act so affecting Toolmex.

#### **Article 24. Assignment**

Buyer shall not assign any order, or any interest therein, without the prior written consent of Toolmex. Any actual or attempted assignment without Toolmex's prior written consent shall entitle Toolmex to cancel such order upon notice to Buyer.

#### **Article 25. Severability**

If any portion of these terms and conditions is found to be invalid or unenforceable by a court of competent jurisdiction, the invalid or unenforceable term shall be severed from these terms and conditions, and the remaining terms and conditions shall be valid and fully enforceable as written.

#### **Article 26. Complete Agreement**

The terms and conditions in: (i) Toolmex's forms; (ii) acknowledgments, (iii) quotations; (iv) invoices; (v) websites; (vi) catalogs; and (vii) extension of credit are incorporated herein by reference, and constitute the entire and exclusive agreement between Buyer and Toolmex.

#### **Article 27. Additional Terms and Conditions Related to Export of Toolmex Products**

IN ADDITION TO THE STANDARD TERMS AND CONDITIONS IN SECTION I, EXPORT SALES OF TOOLMEX PRODUCTS WILL BE GOVERNED BY THE FOLLOWING ADDITIONAL TERMS AND CONDITIONS RELATED TO EXPORT OF TOOLMEX PRODUCTS ("ADDITIONAL TERMS"). IN THE EVENT OF A CONFLICT BETWEEN TOOLMEX'S STANDARD TERMS AND CONDITIONS AND THE ADDITIONAL TERMS, THE ADDITIONAL TERMS SHALL PREVAIL FOR EXPORT SALES OF TOOLMEX PRODUCTS.

**Sales Tax, Duties and Import Fees:** Toolmex is required to charge federal, state, local tax, applicable duties, and import fees on products, or you must provide a valid tax exemption certificate. Buyer assumes responsibility for, and unconditionally guarantees payment or reimbursement of, all applicable taxes, fees, licenses, import duties, and expenses as may be applicable. When placing an order, Buyer shall indicate which products are tax exempt.

**Payment and Credit Terms:** Payment terms are net sixty (60) days from the date of shipment. All other payment terms are as set forth in paragraph I.A.4 of the STANDARD TERMS AND CONDITIONS. Buyer agrees to inform Toolmex immediately if it intends to use any import or export financing, or has or will be granting a lien or security interest on its inventory to any third party.

**Shipping Charges and Freight Policy:** All Toolmex export orders are shipped under INCOTERMS® 2010 rules as defined by the International Chamber of Commerce. Unless otherwise stated and agreed, default shipping terms are EX-WORKS Natick, MA or EX-WORKS Schaumburg, IL. Freight is prepaid to U.S. airport or port of exit for single shipment orders of U.S. \$5,000 or more of motor products (before tax and freight) using routing of Toolmex's choice. Other shipments are freight collect from any Toolmex facility. Buyer shall be responsible for obtaining insurance. At Toolmex's option, this freight policy may be subject to special terms and conditions for certain export orders. If any item is backordered that qualifies for freight prepayment, that item will be shipped prepaid as Buyer's exclusive remedy. Title and risk of loss for products shall pass when made available to Buyer on delivery to carrier in the U.S.; provided that if payment has not been made at the time of shipment, Toolmex shall retain title (but not risk of loss) until payment has been made. If product is damaged in transit, Buyer's only recourse is to file a claim with the applicable airline, carrier, vessel and/or insurance company; provided, however, that if Toolmex has not received payment in full at the time the product is damaged in transit, Buyer shall be liable to Toolmex to make payment for the product, and Toolmex shall also, if Buyer fails to make payment, have the exclusive right to file a claim with the applicable airline, carrier, vessel and/or insurance company.

**Export Controls and Related Regulations:** Buyer represents and warrants that it is not designated on, or associated with, any party designated on any of the U.S. government restricted parties lists, including without limitation, the U.S. Commerce Department Bureau of Industry and Security ("BIS") Denied Persons List; Entity List or Unverified List; the U.S. Treasury Department Office of Foreign Assets Control ("OFAC") Specially Designated Nationals and Blocked Persons List; or the U.S. State Department Directorate of Defense Trade Controls ("DDTC") Debarred Parties List. Buyer shall

comply with all applicable U.S. economic sanctions and export control laws and regulations, including without limitation, the regulations administered by OFAC, the Export Administration Regulations administered by BIS, and the International Traffic in Arms Regulations administered by DDTC.

**Foreign Principal Party in Interest; Freight Forwarder and Documentation:** It is specifically agreed that Buyer shall be the foreign principal party in interest and/or that its freight forwarder shall act as Buyer's agent in such capacity for purposes of the Foreign Trade Regulations or other regulatory purposes, and Buyer and its freight forwarder are responsible for all routed export transactions documentation, including but not limited to the filing of the required Electronic Export Information/Automated Export System records. At Toolmex's request, Buyer or its freight forwarder shall provide copies of any export, shipping, or import documentation prepared by Buyer or its freight forwarder related to sales to Buyer by Toolmex.

**U.S. Foreign Corrupt Practices Act:** Buyer acknowledges that it is an independent contractor and represents, warrants, and covenants that it has not paid, offered or agreed to pay, authorized the giving of, or caused to be paid, directly or indirectly, money or anything of value to any foreign official (as defined in the U.S. Foreign Corrupt Practices Act, as amended), a foreign political party or party official, or any candidate for foreign political office in connection with the purchase and resale of the products ordered from Toolmex.

**Dispute Resolution:** Actions by Toolmex for non-payment by Buyer of the purchase price of products sold by Toolmex, or for redress of other breaches by Buyer of these terms and conditions may be brought by Toolmex, at its option, before any U.S. or foreign judicial court of competent jurisdiction. At Toolmex's option, disputes between Buyer and Toolmex, including all claims for non-performance by Toolmex, shall be finally settled by arbitration in Massachusetts, U.S., in accordance with the Commercial Arbitration Rules ("Rules") of the American Arbitration Association, by a single arbitrator appointed in accordance with said Rules, applying these terms and conditions and consistent provisions of the federal and state laws (except conflict of law rules) of the State of Massachusetts, U.S. The language of the arbitration shall be English.

**Country of Importation and Anti-diversion:** Buyer represents that it is purchasing products from the U.S. and importing them to the country specified in the Buyer and Toolmex documentation. Buyer agrees that the products will be shipped to the specified destination in compliance with the laws of such destination and the U.S., and that the products will not be directly or indirectly sold, exported, transferred, assigned, used, or otherwise disposed of in a manner which may result in any non-compliance with applicable U.S. laws and regulations relating to the product purchased by Buyer. Any commodities, technology and software will be exported from the U.S. in accordance with the U.S. Export Administration Regulations and other applicable laws or regulations. Diversion contrary to U.S. law is prohibited. If requested by Toolmex, Buyer shall provide documentation satisfactory to Toolmex verifying delivery at the designated country. Buyer further agrees to inform Toolmex at the time of order of any North American Free Trade Agreement or other special documentation, packaging or product marking or labeling, but Toolmex shall not be responsible for providing any such documentation, packaging, marking or labeling other than such documents that are necessary under U.S. export laws and regulations for export, unless Toolmex expressly agrees to do so.

**Permits, Export, and Import Licenses:** Buyer shall be responsible for obtaining any licenses or other official authorizations that may be required by the country of importation and/or under the Export Administration Regulations, International Traffic in Arms Regulations. Toxic Substances Control Act, or other applicable laws or regulations.

**I have read the terms and conditions in full.**

---

SIGNATURE