



## TERMS AND CONDITIONS

These terms and conditions are applicable to the Purchase Order ("PO") that was issued by Continental Diamond Tool ("Buyer") to you ("Seller"). By accepting the PO Seller agrees that it has read, understands, and agrees to be bound for these terms and conditions.

**ACCEPTANCE:** The PO shall constitute the final, complete and exclusive statement of Buyer and Seller's contract and may not be modified or rescinded except by a written change order issued by the Buyer. No substitution of materials or accessories may be made without written authorization from Buyer. If the PO constitutes an offer by the Buyer to purchase the goods and/or services specified upon the terms and conditions and at the price(s) and with the delivery date(s) specified herein. Seller shall indicate its acceptance of this order by verbal acceptance communicated to the Buyer, by written acceptance on the PO received by the Buyer, by other written confirmation received by the Buyer, by commencing work on the PO in any manner, expressly conditioned on notice of such commencement of work received by the Buyer, or by the delivery of the goods or services within the time for such delivery as stated in the PO. Seller will immediately notify Buyer if Seller cannot meet the delivery date specified in the PO. If Seller delivers goods or services after the delivery date specified on the PO, Buyer may reject the goods and may return the goods to Seller at Seller's expense. Regardless of the manner or medium of acceptance, time is of the essence. **As an offer, the PO expressly limits acceptance to its terms and conditions, and notification of objection to any different or additional terms in any response to this offer from the Seller is hereby given.** If the PO is construed as an acceptance of the Seller's offer, this acceptance is expressly conditioned on the offeror's assent to any additional or different terms contained in the PO. If the PO is construed as a confirmation of an existing contract, the parties agree that the PO constitutes the final, complete and exclusive terms and conditions of the contract between the parties. **Regardless of its construction as an offer, acceptance or confirmation, the PO incorporates by reference all terms of the Uniform Commercial Code providing any protection for the Buyer, including, without limitation, all express and implied warranty protection and all Buyer's remedies under the Uniform Commercial Code.**

**SHIPMENT:** Seller shall deliver good F.O.B. to Buyer's place of business. No charges will be allowed for boxing, wrapping or cartage or storage unless so specified in the PO. Seller shall follow any shipping instructions provided by Buyer and shall properly and carefully package the goods to minimize the risk of damage in transit. Title to and risk of loss of the goods shall pass to Buyer only upon receipt of the goods by Buyer, and any rightful rejection or revocation of any goods by Buyer shall immediately shift the risk of loss of such goods, wherever located, to Seller. Seller agrees that any contrary provisions of Sections 2-509 and 2-510 of the Uniform Commercial Code shall not apply.

**TRANSPORTATION LIABILITY:** Seller agrees that in any case where freight regulations or contracts covering goods transported by common carrier establish a maximum limit on the carrier's liability for loss or damage suffered in transit, Seller will be liable to Buyer for any loss or damage in excess of such maximum limit, including any consequential damages.

**INSPECTION/REJECTION:** Buyer shall have a reasonable opportunity to inspect the goods after delivery. Buyer shall not be deemed to have accepted any goods until the expiration of such reasonable time for inspection, notwithstanding any payment. Without prejudicing any of its other rights and remedies, non-conforming goods may be returned by Buyer, at Seller's expense, including all transportation charges. Buyer shall not be required to accept replacements without its prior written consent.

**PURCHASE PRICE AND TERMS OF PAYMENT:** All goods shipped under this PO shall be invoiced at the price set forth in the PO. Unless otherwise specified, the price of goods includes taxes, duties, customs, tariffs, and other applicable charges. Seller shall generate a separate invoice for each shipment. Payment terms are as stated on the PO. Buyer may withhold payment of any amount to be paid to Seller which are disputed in good faith by Buyer.

**CANCELLATION:** Buyer may cancel the PO any time prior to manufacturing commencement. Buyer shall have option to request Seller to complete PO and pay full price or to cancel PO and pay a negotiated price.

**WARRANTIES:** In addition to any and all express warranties and implied warranties provided under the Uniform Commercial Code, Seller represents and warrants that (i) the goods conform to the PO and all applicable specifications and drawings, are free from defects in design, workmanship and material, are of merchantable quality, and are fit for Buyer's intended uses; (ii) the goods and the use thereof do not infringe on any third party's intellectual property rights, including but not limited to any patent, trademark, copyright or trade secret; and (iii) the goods, including their advertising, labeling, packaging, manufacture, delivery, use and sale, conform to all applicable federal, state, and local laws and regulations. All warranties of Seller shall insure to the benefit of Buyer, its successors, assigns and customers and shall survive any inspection or testing by Buyer and any payment to Seller. In the event of any breach of any warranty, Buyer, in addition to all its other rights and remedies, may, at its option, either return the goods for credit or refund, at Seller's expense, or require prompt correction or replacement of the non-conforming goods. Acceptance of any replacement goods shall not relieve Seller of liability for damages of breach. The provisions of this Section shall survive termination of the PO and these terms and conditions.

**INDEMNIFICATION:** Seller shall indemnify, defend and hold Buyer and its owners, officers, directors, agents and employees harmless from and against any and all claims, losses, liabilities, suits, causes of action, damages, costs, and expenses (including reasonable attorney's fees), arising out of or related to: (i) any patent, trademark, copyright, trade secret or other intellectual property infringement claim relating to the goods, including packaging, supplied by Seller; (ii) any breach of any provision of these terms and conditions by Seller or of any representation or warranty made by Seller herein; (iii) any injuries to or the death of any person(s), including employees of Buyer or Seller, or the loss of or damage to the property of any person(s), caused in whole or in part by or resulting from the negligence of Seller or any of its employees, or

from improper or defective goods, except that Seller shall not be liable for any such claims resulting from the sole negligence of Buyer. Such indemnification obligations shall survive termination or expiration of the PO and these terms and conditions. Buyer may participate in such defense to such extent as Buyer in its discretion may determine. Seller agrees to maintain at its expense, general liability insurance (including product liability) and such other insurance with limits of no less than \$3,000,000 general aggregate, \$1,000,000 personal injury, \$1,000,000 each occurrence, and which includes Buyer as an additional insured. Seller shall provide a certificate of insurance to Buyer upon request.

**LIMITATION OF LIABILITY:** Under no circumstances shall Buyer be liable to Seller for special, incidental, punitive or consequential damages (including without limitation lost profits), even if Buyer has been advised of the possibility of such damages. Some states do not allow the exclusion or limitation of incidental or consequential damages, so the above limitation or exclusion may not apply to Seller.

**CONFIDENTIAL INFORMATION:** All plans, drawings, designs, specifications or other confidential or proprietary information supplied or communicated by Buyer to Seller shall remain the property of Buyer, and such information, and any information derived therefrom, shall be regarded by Seller as confidential and shall not, without the prior written consent of Buyer, be disclosed to any third party, or used by Seller, except to the extent authorized by Buyer in connection with the performance of the PO by Seller. The provisions of this Section shall survive termination of this Agreement.

**CHANGE NOTIFICATION:** Supplier will not change, substitute or modify the Goods, nor make any changes that may affect the specifications, including any changes to design, material, engineering, documentation or manufacturing process (which includes the manufacturing site and the manufacturer), or process step discontinuances affecting the electrical or mechanical performance (whether specified or not), the mechanical form or fit, interchangeability, the environmental compatibility or chemical characteristics, the life, reliability, serviceability, regulatory compliance or quality of Goods or any other changes that have a material impact upon Supplier's quality system. By means of a written change request, Supplier will obtain Buyer's prior written consent to any such changes proposed by Supplier. In requesting such consent, Supplier will provide to Buyer a written description of the expected effect of such changes and will provide evaluation samples as requested by Buyer.

**FORCE MAJEURE:** Neither Buyer nor Seller shall be liable to the other for default or delay in performing its obligations, if caused by an event beyond its reasonable control, provided that the affected party gives prompt written notice within fifteen (15) days of any such inability to perform to the other party.

**SETOFF:** Buyer may set off any amount owing at any time from Seller to Buyer or any of its affiliates against any amount payable at any time by Buyer in connection herewith.

**ASSIGNMENT:** Seller may not assign this PO or any of its rights or obligations hereunder without the prior written consent of Buyer, which Buyer may withhold in its sole discretion. These terms and conditions will inure to the benefit of Buyer's and Seller's successors and permitted assigns.

**ATTORNEY'S FEES:** If Buyer hires an attorney to enforce or interpret the PO or these terms and conditions, Seller agrees to pay Buyer's attorneys' fees and costs. The prevailing party in any action or proceeding to enforce or interpret the PO or these terms and conditions will be entitled to its costs and reasonable attorneys' fees, in arbitration, at trial, on appeal, in any bankruptcy proceeding, and the costs and attorneys' fees of collecting any judgment obtained.

**GOVERNING LAW:** The PO and these terms and conditions will be governed by and construed in accordance with the laws of the state of Indiana without giving effect to any conflict-of-law principle that would result in the laws of any other jurisdiction governing. Seller submits to the exclusive jurisdiction of Indiana courts.

**ARBITRATION:** All disputes relating to the PO or these terms and conditions shall be decided by binding arbitration before a private arbitrator in Fort Wayne, IN. A single arbitrator shall hear and decide all disputes. The party demanding arbitration ("Demanding Party") shall send a written demand for arbitration to the other party ("Responding Party"). The written demand will identify the issues to be arbitrated and will list three to five suggested arbitrators, all of whom will be professionals qualified in the area of dispute. The Responding Party will have 10 days after receipt of the demand to agree to one of the suggested arbitrators or reject all suggested arbitrators and suggest alternates. The conduct of the arbitration will be governed by the chosen arbitrator, and discovery will be conducted in accordance with the Indiana Rules of Civil Procedure. Either party may have the arbitration award filed as a judgment. Any arbitration must take place within one (1) year of the alleged breach of the PO Agreement.

**SEVERABILITY:** If any term herein or the application of any term to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of these terms and conditions and the application of such term or provision to persons or circumstances other than those to which it is held invalid or unenforceable will not be affected, and each term and condition will be valid and enforceable to the fullest extent permitted by law.

**WAIVER OF BREACH:** The waiver by either party of a breach of any term in the PO or these terms and conditions will not be construed as a waiver of any subsequent breach of the same or any other term or provision by either party.

**ENTIRE AGREEMENT:** These terms and conditions contain the entire understanding of the parties regarding the subject matter of the PO and supersede all prior and contemporaneous negotiations and agreement, whether written or oral, between the parties with respect to the subject matter of the PO.