

**Madison Manufacturing Company  
Peerless Blowers**

Subsidiary of HBD Industries, Inc.  
P.O. Box 187, Hot Springs, NC 28743

**TERMS AND CONDITIONS OF SALE (03/07/11)**

**ENTIRE AGREEMENT.** The parties agree that there are no understandings, agreements or representations, express or implied, not specified herein, respecting this offer or sale, and that this instrument contains the entire agreement between Seller and Buyer. No prior waiver, course of prior dealing or usage of the trade shall be relevant to supplement or to explain terms used in this agreement.

**CONTROLLING TERMS.** All sales are expressly limited to, and the rights and liabilities of the parties shall be governed exclusively by, the terms and conditions herein. In the event any purchase order or offer from Buyer states terms additional to or different from those set forth herein, this document shall be deemed a notice of objection to such additional or different terms and a rejection thereof. Any acknowledgment or shipment of product by Seller to Buyer subsequent to Seller's receipt of a purchase order or offer from Buyer shall not be deemed to be an acceptance by Seller of an offer to contract on the basis of any Buyer's terms and conditions. Receipt and acceptance by Buyer of products shall be conclusive evidence of Buyer's acceptance of the terms and conditions set forth herein as the sole controlling terms and conditions of the contract between Seller and Buyer. Stenographic and clerical errors by Seller are subject to correction.

**ACCEPTANCE OF ORDERS.** Seller possesses the exclusive right to accept or refuse any and all orders. No bid, offer, or quotation shall be valid or binding upon Seller, and no order shall be accepted and no sale shall be final, until such bid, offer, quotation, order or sale shall be acknowledged in writing by Seller.

**PRICES; TOOLING & IP.** All prices are subject to change without notice and shall be adjusted to the Seller's prices in effect on the date of shipment. Prices reflect standard packaging for domestic shipment only. All prices are in U.S. Dollars. See price pages for minimum order amount. All tooling, equipment and intellectual property Seller owns, produces or acquires in connection with this order shall remain the sole property of Seller notwithstanding any charges to Buyer therefor.

**DELIVERY.** Delivery dates are estimates and not a guaranty of a particular day of delivery and are based on the prompt receipt of all necessary information from the Buyer. Seller shall not be liable for failure or delay in shipping goods hereunder if such failure or delay is due to an act of God, fire, flood, war, labor difficulties, accident, strikes, lockouts, civil disorders, governmental priorities or embargoes, inability or difficulty in obtaining raw materials or supplies at customary terms and prices or any other causes or failure of presumed conditions of any kind whatsoever which are either beyond the reasonable control of the Seller or which would make impracticable the fulfillment of Seller's obligations hereunder. Buyer shall not refuse to accept deliveries so delayed. Seller shall be compensated for any and all extra costs and expenses occasioned by delays attributable to Buyer.

**TRANSPORTATION AND RISK OF LOSS.** All shipments are freight collect unless eligible for a freight allowance expressly set forth in current price sheets or on the face hereof. Seller reserves the right to select the method and type of transportation. If a method of transportation other than that selected by Seller is requested by Buyer, excess packing, shipping and transportation charges resulting from compliance with Buyer's request shall be for the Buyer's account. All shipments are F.O.B. point of shipment and risk of loss shall pass to Buyer after products are delivered to carrier. Claims for damage or loss in transit must be filed by Buyer against the carrier.

**CANCELLATION OR MODIFICATION.** Buyer may not cancel or modify any order, either in whole or in part, without Seller's prior written consent and then only upon payment to Seller for all costs incurred by Seller, including, without limitation, costs of materials, labor, overhead, equipment and supplies incurred or committed for, and for lost profits on such cancelled or modified orders. Order changes or additions received after original order has been processed will be treated as a new order.

**TAXES.** Any taxes which Seller may be required to pay or collect with respect to the sale, delivery or storage of the products, including taxes upon or measured by the receipts from the sales thereof, shall be for the account of Buyer who shall promptly pay the amount thereof to Seller upon demand, or in lieu thereof, furnish Seller with a tax exemption certificate acceptable to the taxing authorities.

**WARRANTY AND DISCLAIMER.** Seller warrants that its products shall be free from defects in material and workmanship under normal use and service for a period of 12 months from date of shipment. On equipment and materials furnished by Seller but manufactured by others, Buyer shall accept in lieu of any liability or guarantees on the part of Seller, the benefits of guarantees as are obtained by Seller from such manufacturers or vendors. SELLER MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ANY OTHER WARRANTY, EXPRESS OR IMPLIED, EXCEPT AS IS EXPRESSLY SET FORTH HEREIN. Failure by Buyer to object to or reject products or materials delivered hereunder, in writing within 30 days from the date of shipment of the products or materials, shall constitute an acceptance and waiver by Buyer of all claims hereunder on account of alleged errors, shortages, defective workmanship or material, breach of warranty or otherwise, discoverable upon inspection by Buyer.

**LIMITATION OF LIABILITY.** Buyer's exclusive remedy on any claim of any kind for any loss or damage arising out of, connected with, or resulting from this contract, or from the performance or breach thereof, or from the design, manufacture, sale, delivery, resale, or repair or use of any products covered by or furnished under the contract, including but not limited to any claim for breach of warranty, negligence, strict liability or other tort, shall be the repair or replacement, F.O.B. Seller's factory, as Seller may elect, of the product or part thereof giving rise to such claim, except that Seller's liability for such repair or replacement shall in no event exceed the contract price allocable to the product or part thereof which gives rise to the claim. **SELLER SHALL IN NO EVENT BE LIABLE FOR, PUNITIVE, EXEMPLARY, SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES.**

**RETURN OF MATERIAL.** Seller's permission must be obtained in writing before any products are returned to it by Buyer. If products are returned without such permission, Buyer authorizes Seller, in addition to such other remedies as it may have, to hold the returned products at Buyer's sole risk and expense. All returns must be freight prepaid by Buyer. Seller will in no event accept the return of any product that upon return is in the opinion of Seller altered, damaged, used, or in other than first class salable condition.

**INDEMNITY.** Buyer agrees to indemnify, defend and hold harmless Seller from any claims, loss or damages arising out of or related to Seller's compliance with Buyer's designs, specifications or instructions in the furnishing of products to Buyer, whether based on infringement of patents, copyrights, trademarks or other rights of others, breach of warranty, negligence, strict liability or other tort.

**PAYMENT.** All invoices are due net 30 days from date of invoice unless otherwise specified by Seller. If at any time Seller deems itself insecure from any cause whatsoever, including but not limited to adverse changes in Buyer's financial condition or impairment of Buyer's credit, Seller may in its sole discretion stop delivery of goods, require advance payment for goods, and/or declare immediately due all indebtedness owed to Seller including amounts due hereunder. Payments not made when due shall bear interest at the prime rate plus 5% per annum or, if lower, the highest rate legally permissible, until paid. Credit balances will be applied against future purchases only and must be claimed within one year of creation or are waived.

**GOVERNING LAW AND ARBITRATION.** Any dealings or contract between the parties shall be governed by and construed in accordance with the law of the state of Ohio, excluding its choice of law provisions. Buyer and Seller agree that any action, suit or proceeding arising hereunder or related hereto may be brought in any state or federal court of competent jurisdiction sitting in the State of Ohio and each party submits to the jurisdiction of such courts. Either Buyer or Seller may elect to have any controversy arising under or in any way related to the subject matter hereof decided by binding arbitration by a single disinterested arbitrator in Columbus, Ohio, U.S.A., in accordance with the commercial rules of the American Arbitration Association then obtaining. The fee for the arbitrator shall be shared equally by the parties. Each party shall bear its own costs and expenses, including attorneys fees. **03/07/11**