

**1. Applicability** – These Terms and Conditions of Sale (“Terms and Conditions”) constitute the sole terms and conditions of the agreement between you (“Buyer”) and EST Tools America, Inc. (DBA Ever Sharp Tools, Inc.), hereinafter referred to as “EST” or “Seller”. These Terms and Conditions supersede all other terms and conditions, oral or written, and all other communications between the parties suggesting additional or different terms. These Terms and Conditions expressly limit acceptance to these provisions. No modification, waiver or addition to any of these Standard Terms and Conditions of Sale shall be binding upon Seller unless agreed to in writing and signed by EST’s President/CEO in a written instrument separate from any purchase order or other printed form of the Buyer.

**2. Prices** – Seller’s quoted prices are subject to change without notice. Unless otherwise specified, all quotations are valid 90 days from date of issuance. Orders issued for items or services quoted beyond this period must be confirmed at the time an order is placed. Seller reserves the right to correct any errors or omissions in quotations, specifications or prices without liability. Changes to or additional specifications submitted after quotation may also affect prices.

**3. Tax/Tariff/Duty** - Prices do not include any sales, use, excise, privilege, or other tax, tariff, duty or assessment now or hereafter imposed or levied by or under the authority of any federal, state, or local law, rule, or regulation. If Seller pays any such taxes or assessments, Buyer shall, upon demand, immediately reimburse Seller for such amounts.

**4. Payment Terms** - Payment terms will be approved by Seller. Granting of credit terms is subject to continuing approval of Buyer’s credit by Seller. If Buyer’s credit becomes unsatisfactory to Seller for any reason, Seller may, at its sole discretion, require different payment terms, including, but not limited to, payment in advance of shipment. In addition, Seller, at its discretion, may require advance deposits of up to 100% of the selling price. No discounts shall be taken except as specifically allowed in writing by Seller. All amounts due to Seller from Buyer shall be paid without abatement, deduction, or setoff. If Buyer’s account becomes delinquent, Buyer shall be liable for all costs and expenses related to collection of past due amounts, including, without limitation, costs of collection, attorneys’ fees, and expenses.

**5. Acceptance of Orders** - All orders are subject to acceptance by EST at its Michigan, USA office. All orders are subject to final credit approval. All orders must clearly state the name and address of purchaser and include all product or service specifications with which the Buyer expects EST to convey or conform. Orders that do not include specific part requirements, processing, or tolerance specifications will be designed and built using standard processing assumptions, tolerances and specifications. No reproduction or design rights in or to any product are granted to Buyer by EST under any applicable purchase contract. All engineering drawings, order specifications and quotation pricing and details are considered proprietary. Any other information furnished by EST is for Buyer’s (or the prospective Buyer’s) confidential use only and shall not be used to the detriment of EST’s competitive position. A purchase order shall not be assigned in whole or in part by either party without the prior written consent of the other party.

**6. Title and Delivery** – All shipping and delivery dates are estimates and are based upon prompt receipt of all necessary information from Buyer. Delays in securing Buyer’s approval of necessary product specifications may extend the date of delivery. Seller shall not be liable for any claim, loss, expense, or damage of any kind whatsoever for delays in delivery. Delivery is based the date of the transfer of title prior to shipment. Transfer of title occurs and shipment becomes the property of Buyer at the commencement of loading to the carrier. In the event Buyer requests a delay in delivery, Seller will invoice the Buyer for said items immediately and hold the items at Buyer’s risk and expense pending instructions from Buyer.

**7. Packaging and Shipment** - All shipments shall be F.O.B. shipping point (EST’s Michigan Plant) unless otherwise agreed by Seller in writing. All risk of loss or damage to Goods shall pass to Buyer upon delivery thereof to Buyer, to its designated agent or transport carrier. All products will be shipped in accordance with Buyer’s specific shipping instructions or by means deemed most appropriate by EST and charged to Buyer, if not specified. Buyer shall be responsible for the cost of any special packing requirements. All international shipments shall be Ex Works, shipping point EST’s Michigan Plant.

**8. Cancellation** - Buyer may cancel an order only upon prior written notice to EST. EST shall confirm cancellation and advise customer of any Cancellation Fees, which are payable upon receipt. Assessment of reasonable and proper cancellation fees will satisfy costs incurred by Seller and shall be assessed as follows, in the sole discretion of EST at the time of cancellation:

After receipt of P.O.; before drawing sent: 10% of P.O. price  
After drawing sent, prior to production: 30% of P.O. price  
In production, before spline grind = 50% of P.O. price  
In production, after spline grind = 80% of P.O. price  
After production, up to final inspection = 90% of P.O. price  
After final inspection = 100%

**9. Force Majeure** – Seller shall not be liable for any delay in or failure of performance hereunder due to any contingency beyond its reasonable control.

**10. Limited Warranty** – Seller warrants to Buyer that at the time of delivery, the products or services (“Goods”) sold by EST will conform to applicable drawings and specifications and will be free from defects in material and workmanship, per acceptable industry norms. With respect to any defect in material or workmanship covered by this Limited Warranty, Buyer is required to notify Seller of any defect or discrepancy in writing within the Warranty Period of ninety (90) days of receipt of Goods.

If Buyer notifies Seller of a defect in writing within the warranty period, Buyer shall afford Seller a reasonable opportunity to inspect the Goods in dispute. Seller will, as its sole option, upon determination of defect, either repair or replace any such Goods or part thereof. This shall be Buyer’s exclusive remedy. Any claims not made within the warranty period are deemed waived by Buyer. Before returning any Goods or part hereunder, Buyer must contact Seller for a Return Goods Authorization number and to arrange for transportation. Any warranty shall be voided if Buyer and/or any other supplier or any other 3<sup>rd</sup> party sharpens, modifies, repairs or damages products made by EST.

Additional Warranty requirements may apply:

**Gauges & Measuring Devices:** EST gauges shall be produced within specified tolerances and free from manufacturing defects at the time of delivery. Seller shall provide a Certificate of Inspection with gauges, confirming the measurement of specified attributes by EST’s quality laboratory. Any dispute as to the measurement or performance of EST gauges must be made within the warranty period and must be accompanied by Buyer’s own certified inspection. In the event of a dispute between Seller’s and Buyer’s inspection results, Buyer must provide additional inspection results by an ISO-17025 certified independent 3<sup>rd</sup> party. Based on those results, EST may rework or replace gauges that do not measure within specified tolerances as confirmed by independent 3<sup>rd</sup> party inspection. This shall be the sole remedy for any dispute arising from said claim.

**11. Broach Tool Sharpening, Maintenance, Diagnosis and Repair:** Broach tools sent to Seller for sharpening are processed to inspect for wear, perform face-sharpen to optimal condition, then tools are cleaned and packaged for return to Seller.

Seller inspects all broach tools for face and corner wear prior to sharpening and maintains written records of all tools processed. These proprietary records are used to maintain customer tools at optimal cutting conditions. Buyer is responsible to monitor tool wear so it does not exceed .010” / .25mm prior to requesting sharpening service. Seller is under no obligation to honor a sharpening price quote if, upon inspection, tools received from Buyer have excessive tool wear exceeding .010” / .25mm. Buyer will be advised of excess wear prior to processing and provided with an updated quote, based on added machine time necessary to sharpen to optimal condition.

Broach tools sent to Seller for inspection, diagnosis, and/or repair will be quoted on a case-by-case basis and will not be processed until a purchase order is received from Buyer.

**12. Limit of Liability** – Seller’s liability for any claim or action of any kind arising out of, connected with or resulting from the manufacture, sale, delivery, resale, use or repair of parts or tools furnished, or services rendered under a purchase order, written or verbal, shall not exceed EST’s price for the product or service which gives rise to such claim or action. In no event shall Seller be liable for special or consequential damages. No penalty clause of any description shall be effective as to Seller, unless approved in a separate document signed by EST President/CEO.

**13. Indemnification** - Buyer shall defend, indemnify and hold Seller, its affiliates and their respective representatives, agents, employees, successors and assigns harmless from and against all claims, suits, demands, losses, liabilities, damages and expenses (including, without limitation, reasonable attorneys’ fees) (collectively, “Losses”), including death or injury, arising out of or relating to (a) Buyer provided specifications, structure, operation, material, method of manufacture or other directions including, without limitation, any resulting violation of intellectual or proprietary rights; (b) accident, damage or Buyer’s use, abuse, misuse; (c) Buyer’s non-compliance with any federal, state, or local law or regulation; (d) Buyer’s breach of these Terms and Conditions; and (e) Goods being subjected to, in whole or part: (i) improper installation or storage; (ii) accident, damage, abuse or misuse; (iii) abnormal operating conditions or applications; (iv) operating conditions or applications above the rated capacity of the Goods; or (v) any use or application other than or varying in any degree from Seller’s instructions or that for which the Goods were designed.

**14. Governing Law** - All orders, contracts and transactions shall be interpreted and construed in accordance with the laws of the State of Michigan, the county of St. Clair without regard to any rules on conflicts of laws. Buyer hereby consents to personal jurisdiction in the State of Michigan.

**15. Amendment** – Seller reserves the right to modify or change the impact or enforcement of the terms listed herein with or without prior notice. Seller may, at its sole discretion, modify or change the impact or enforcement of any of the terms listed herein to the benefit and satisfaction of any one Buyer without prejudice or precedent, in other circumstances, with other Buyers. Any attempt by Buyer to modify, supersede, supplement or otherwise alter these Terms and Conditions will not modify these Terms and Conditions nor be binding on Seller unless expressly agreed upon and signed in writing by Seller stating that these Terms and Conditions are modified, superseded, supplemented or otherwise altered.

Thank you for your business. Direct all questions to:

[admin@est-us.com](mailto:admin@est-us.com)

