

Helac Corporation
Standard Terms and Conditions of Sale

- 1. Scope.** The Terms and Conditions (“Terms”) contained herein apply to all quotations, proposals, offers, acknowledgements, acceptances and sales made by Helac, except to the extent the Terms conflict with a Sales Agreement signed by Helac and Buyer. These Terms apply in lieu of any course of dealing between the parties or usage of trade in the industry. These Terms may in some instances conflict with some of the terms and conditions affixed to the purchase order or other procurement document issued by the Buyer. In such case, the Terms contained herein shall govern, and acceptance of Buyer’s order is conditioned upon Buyer’s acceptance of the terms and conditions herein, regardless of whether the Buyer accepts these conditions by written acknowledgement, implication, or acceptance and payment for products ordered hereunder. Helac’s failure to object to provisions contained in any communication from Buyer shall not be deemed a waiver of the provisions herein. Any changes in the Terms contained herein must specifically be agreed to in writing, signed by an officer of Helac, before becoming binding on either party.
- 2. Prices.** All published and quoted prices are based on freight terms Incoterms 2000 Ex-Works – Enumclaw, WA USA for buyers outside North America, and for North American buyers, on the commonly used term F.O.B. shipping point with freight to destination to be paid by Buyer. Prices are subject to change on thirty (30) days’ notice to Buyer. Any order that is cancelled and rescheduled pursuant to Paragraph 5 may be subject to a price change immediately. Unless otherwise agreed to in writing by the parties, prices quoted by Helac are those current at the date of quotation and shall be subject to variation by Helac.
- 3. Taxes.** All prices are exclusive of any present or future sales, revenue, excise, property or occupational tax, value added tax, turnover tax, import duty (including brokerage fees), or other tax applicable to the manufacture or sale of any product. Such taxes, when applicable, shall be paid by Buyer unless Buyer provides a proper tax exemption certificate. In any event, Buyer shall indemnify, defend (with counsel of Helac’s choosing), and save Helac harmless from and against any claim for collection of any such tax, together with any interest or penalties thereon which may be assessed.
- 4. Delivery.** Unless otherwise agreed in writing, delivery shall be made Incoterms 2000 Ex-Works – Enumclaw, WA USA for buyers outside North America, and for North American buyers, the commonly used term F.O.B. Helac’s Plant. Regardless of the method of delivery, risk of loss shall pass to Buyer upon Helac’s delivery to a carrier. Helac may deliver products in one or more consignments and reserves the right to ship product that is not subject to cancellation in advance of the agreed shipping date. Unless otherwise agreed in writing, any delivery dates agreed to are approximate only and Helac accepts no liability for any loss arising from delay in delivery of products.
- 5. Buyer Acceptance/Returns.** Failure of Buyer to notify Helac in writing of any visible shipping damage to the products or of quantity shortages or incorrect shipments within ten (10) days of Buyer’s receipt shall be deemed an unqualified waiver of any rights to return products on the basis of visible defects, shortages or incorrect shipments, subject to Buyer’s rights under Paragraph 8 (Limited Warranty). No products may be returned for credit without prior written approval and a Return Material Authorization (“RMA”) number from Helac. Any returned product must be accompanied by an RMA form provided by Helac which shall be valid for fourteen (14) days from the date issued. Unless otherwise agreed to in writing, shipping costs for shipment of products authorized to be returned to Helac must be pre-paid by Buyer. Any product accepted for return as an accommodation to Buyer will be subject to a 25% restocking fee. Products returned for reasons other than an alleged defect must be in new condition and, where applicable, in their original packaging.
- 6. Payment.** Unless otherwise agreed to by Helac, payment of the purchase price shall be made in full within thirty (30) days after shipment is made to Buyer. Helac reserves the right to charge interest on all past due amounts. Acceptance by Helac on any occasion of less than the full amount which Helac claims is due shall not be deemed an admission or waiver that payment in full has been made, and any conditions to the contrary which by endorsement or otherwise may be placed on any instrument accepted by Helac shall not be binding upon it. Unless otherwise agreed in writing, all payments are to be in United States dollars. For contracts outside the United States, Helac may require prepayment or for payment to be secured by an irrevocable letter of credit or a bank guarantee acceptable to Helac. Where payment is made by letter of credit, all costs of collection shall be for Buyer’s account. In the event Helac is required to bring legal action to collect delinquent accounts, Buyer agrees to pay reasonable attorneys’ fees and costs of suit. Payments via credit cards will only be accepted for transactions under \$5,000.
- 7. Cancellation/Modification Policy.** Any request by Buyer to modify, reschedule or cancel an order after Helac has accepted the order must be made in writing and will not be deemed accepted by Helac unless accepted in writing. Acceptance of such requests shall be at Helac’s sole discretion. If Buyer requests cancellation of an order of standard products less than three (3) weeks before the specified shipment date Buyer agrees to pay Helac an amount equal to 65% of the quoted purchase price as compensation for the costs and inconvenience to Helac caused by the cancellation and not as a penalty. If Buyer requests cancellation of an order of a custom product less than six (6) weeks before the specified shipment date, Buyer agrees to pay Helac an amount equal to 35 % of the quoted purchase price as compensation for the costs and inconvenience to Helac caused by the cancellation and not as a penalty. Helac shall have the right to cancel any unfilled order without notice to Buyer in the event Buyer becomes insolvent, adjudicated bankrupt, petitions for or consents to any relief under any bankruptcy reorganization statute, or becomes unable to meet its financial obligations in the normal course of business.
- 8. Limited Warranty.** Helac warrants its manufactured products shall be free from defects in material or workmanship for a period of twelve (12) months from the date of shipment. This warranty does not apply to any products which have been repaired, worked upon or altered by persons not authorized by Helac, or which have been subject to misuse, neglect, accident or overload. Helac shall make the final and conclusive determination as to whether any of its products are defective. Helac’s sole obligation for products failing to comply with this warranty shall be, at its sole option, to either repair or replace the nonconforming product or component of the product, *provided that* within fourteen (14) days of the expiration of the warranty period, (i) Buyer has provided Helac written notice of any nonconformity and requested an RMA; (ii) within fourteen (14) days after receiving Helac’s RMA, Buyer has removed the nonconforming product and, at its own expense, returned the product to Helac’s manufacturing facility at 225 Battersby Avenue, Enumclaw, Washington 98022, USA; and (iii) Helac has determined the product is nonconforming and that such nonconformity is not the result of improper installation, repair or other misuse. No cash payment or credit will be given for products Helac deems defective.

Repaired parts will be warranted for the remainder of the original warranty period; replacement parts will be warranted for twelve (12) months from the date of shipment to Buyer. Buyer shall install any repaired or replacement product provided by Helac. Helac shall have the right to dispose of items replaced by it. THE FOREGOING WARRANTY AND REMEDIES ARE HELAC’S SOLE AND EXCLUSIVE WARRANTIES. HELAC

MAKES NO OTHER WARRANTY, GUARANTEE OR REPRESENTATION OF ANY KIND WHATSOEVER AND EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR PURPOSE, WHETHER EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW, TRADE USAGE OR COURSE OF DEALING. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY HELAC, OR ITS REPRESENTATIVES, SHALL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF THIS WARRANTY. HELAC DOES NOT ASSUME, OR AUTHORIZE ANY OTHER PERSON TO ASSUME FOR IT, ANY OTHER LIABILITY IN CONNECTION WITH ITS PRODUCTS. By way of example and not as a limitation of the foregoing, Buyer is solely responsible for the selection and utilization of the products in any particular application; the engineering of mating structures, fasteners and other associated components used in installation; as well as the overall integrity of the installation, its safety, and compliance with industry standards and warning requirements. Buyer shall pass this warranty to any third-party purchaser of Helac's products.

9. Limitation of Liability/Indemnity. IN NO EVENT SHALL HELAC BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR SPECIAL DAMAGES OF ANY KIND OR NATURE WHATSOEVER, INCLUDING BUT NOT LIMITED TO LOST PROFITS ARISING FROM OR RELATED TO THIS AGREEMENT OR PRODUCTS SOLD HEREUNDER, WHETHER ALLEGED TO ARISE FROM BREACH OF CONTRACT, EXPRESS OR IMPLIED WARRANTY, OR IN TORT, INCLUDING WITHOUT LIMITATION, NEGLIGENCE, FAILURE TO WARN, OR STRICT LIABILITY. HELAC'S MAXIMUM LIABILITY UNDER THIS CONTRACT SHALL BE THE CONTRACT PRICE WHETHER OR NOT ANY OTHER REMEDIES AVAILABLE TO BUYER UNDER THIS AGREEMENT ARE DEEMED TO HAVE FAILED OF THEIR ESSENTIAL PURPOSE. BUYER WILL INDEMNIFY, DEFEND (WITH COUNSEL OF HELAC'S CHOOSING), AND HOLD HELAC HARMLESS FROM ANY CLAIMS ARISING FROM BUYER'S MODIFICATION OF HELAC'S PRODUCTS BY ANYONE OTHER THAN HELAC, IMPROPER INSTALLATION OF THE PRODUCT, MISMATCHING OF EQUIPMENT (SUCH AS CONNECTING A HELAC PRODUCT WITH THE WRONG-SIZED RIG) AND/OR USE OF HELAC'S PRODUCTS IN BUYER'S APPLICATION.

10. Ownership of Intellectual Property. Solely for the purposes of and directly for purposes of Buyer's authorized resale of Helac product purchased pursuant to this agreement, Helac grants to Buyer a royalty free right and license (a) to use Helac's trademarks, trade dress, logos and commercial symbols, in such manner as Helac may approve, in Buyer's advertising, website and finished attachments, and (b) to use and practice any patents owned by Helac pertaining to the combination, recombination or use of such products with any other components parts, attachments, arrangements, or systems. Examples of all proposed trademark usage shall be submitted to Helac for approval prior to use. Buyer shall not register any Helac trademarks in any jurisdiction. In no way does this agreement assign or transfer ownership of any Helac trademarks, patents or other IP. Upon the termination of this agreement for any cause, reason or basis, all use by Buyer of Helac trademarks, patents or other IP shall immediately cease. The sale of any products hereunder does not convey any license by implication, estoppel, or otherwise covering combinations of the products with other equipment, data or programs. All devices, designs (including drawings, plans and specifications), estimates, prices, notes, data and other documents or information prepared by Helac, and all related intellectual property rights, shall remain Helac's property. Buyer shall not disclose any such material to third parties without Helac's prior written consent.

11. Buyer's Property. Any designs, tools, patterns, materials, drawings, confidential information or equipment furnished by Buyer will be considered obsolete and may be destroyed by Helac after two (2) consecutive years have elapsed without Buyer placing an order for the products which are manufactured using such property. Helac shall not be responsible for any loss or damage to such property while it is in Helac's possession or control.

12. Indemnification for Infringement. Helac will defend Buyer, at its expense and with counsel of its choosing, against any claim brought against Buyer alleging a product sold pursuant to this Agreement infringes on a third-party's patent, trademark, copyright, trade dress, trade secrets or other similar rights (hereinafter, "Intellectual Property Rights"), *provided that* Buyer promptly notifies Helac of any such allegation, and agrees Helac shall have sole and complete control of any such defense, including any settlement or compromise. Alternatively, if any such claim is brought against Buyer, Helac, at its expense and in its sole option, may procure for Buyer the right to continue using the product, replace or modify the product such that it is no longer alleged to be infringing, and offer to accept return of the product and reimburse Buyer the purchase price less a reasonable allowance for depreciation. Notwithstanding the foregoing, Helac shall have no liability for claims of infringement based on Helac's compliance with Buyer's design, specifications and/or instructions, use of any product that has been modified by someone other than Helac, or use of the product in combination with other products or in connection with a manufacturing or other process. If a claim is brought against Helac alleging that Helac's compliance with Buyer's design, specifications and/or instructions, use of a product that has been modified by someone other than Helac, or use of the product in combination with other products or in connection with a manufacturing or other process, infringes the Intellectual Property Rights of a third party, Buyer agrees to indemnify, defend and hold Helac harmless for all costs, expenses or judgments resulting from such claim. THE PROVISIONS OF THIS PARAGRAPH 12 CONSTITUTE HELAC'S SOLE AND EXCLUSIVE LIABILITY AND BUYER'S SOLE AND EXCLUSIVE REMEDY FOR INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS.

14. Export Regulations. Buyer agrees to comply fully with all laws and regulations concerning the purchase and sale of products. In particular, Buyer agrees to comply with the Export Administration Regulations of the United States insofar as they apply to the sale of products. The products are licensed by the United States for delivery to the ultimate destination as shown on the shipment/invoice address and any contrary diversion is prohibited.

15. Force Majeure. Helac shall not be liable for any damage or penalty for delay in delivery or any other failure to perform under this Agreement when such delay or nonperformance is due to causes beyond Helac's reasonable control, including, but not limited to, acts of god, acts of the Buyer, acts of civil or military authority, war, riots, fires, floods, concerted labor action, delays or failures in delivery of carriers or suppliers, and shortages of material. In the event of any force majeure condition, Helac's time for performance shall be deemed extended for a period of time equal to the time lost due to any delay excusable by such condition.

16. Successors, Assigns and Subcontracting. Buyer may not assign this Agreement without Helac's prior written consent. This Agreement is binding on the Parties' successors and authorized assigns. Helac shall be entitled at all times to subcontract any part of the work or services to be provided under this Agreement as it deems necessary or desirable.

17. Governing Law/Jurisdiction. This Agreement shall be governed in all respects by the laws of the state of Washington without regard to its conflicts of law provisions. Any litigation or other court proceeding or arbitration with respect to any matter arising from this Agreement shall be conducted in the state or federal courts of King County in the state of Washington, USA.