

TERMS AND CONDITIONS

The following conditions will apply, irrespective of your ("Purchaser's") Conditions or Policies:

1. This order is not binding until signed and accepted by an authorized official of Seller. This order, including any documents made a part hereof, constitute the entire agreement between Purchaser and Seller. No additional or different terms or conditions, whether contained on a prior purchase order or otherwise proposed by Purchaser or Seller, are binding on Purchaser or Seller. All shipments are F.O.B. St. Marys, Pennsylvania, USA, unless otherwise specified. All taxes, currently effective or to be effective, levied by the Federal, State, Governmental Agency, Municipal Legislation, or any taxing authority, upon the articles shipped, shall be added to the price of Purchaser.
2. Shipments are based on Acceptable Quality Levels ("AQL") commensurate with normal processing. If particular AQL values are required, the Purchaser shall state them along with its original request.
3. Seller shall not be liable for any delay or failure to obtain materials, supplies or shipping space, carrier difficulties or delays, accident, acts of God, fires, labor difficulties, and any other cause beyond Seller's reasonable control.
4. Stenographic and clerical errors are subject to correction. Purchaser will be invoiced at the respective prices in effect on the dates the articles are shipped, plus applicable taxes as stated herein.
5. Prices are based on existing prints, conditions and quantities as specified and submitted on the date of quotations and are subject to adjustment upon any changes or deviations. The price to be paid by Purchaser shall be Seller's price in effect at date of shipment. Quoted prices are based on the assumption that the entire quoted quantity will be produced at one time. Any restriction of this option will result in an increase in price to the proper price for the quantity firmly released for production. Quoted prices are also based on the assumption that the entire quoted quantity will be made and shipped. In the event of partial cancellation of an order, the price will be adjusted to the correct price for the reduced quantity.
6. All orders are custom manufactured to Purchaser's unique specifications. It is, accordingly, impractical to make and ship the exact quantity ordered. Seller, therefore, reserves the right to overship or undership orders by 10% of the quantity. Where exact quantities must be shipped, there will be a surcharge of 10% of the normal price.
7. Orders accepted cannot be countermanded or changed, except with Seller's consent and upon terms that will reimburse or indemnify Seller against all loss. Telephone orders must be confirmed within 24 hours or Seller shall not be held liable for the execution of the order.
8. Seller shall not be held liable for any loss or damage upon delivery to the carrier. Purchaser shall pay all costs of transportation, and shall bear all risk of loss or damage after such delivery. Any loss or increased costs resulting from a change in quantity, specified deliveries, design or specification will be at Purchaser's expense.
9. Seller's maximum total liability under this order shall not be greater than the actual purchase price in the aggregate paid by Purchaser to Seller hereunder over the immediately preceding twelve (12) month period. No claims shall be made by Purchaser or otherwise for special, consequential or indirect damages. Failure of Purchaser to give written notice to Seller of a claim within thirty (30) days after receipt of any article or ninety (90) days from date of shipment (whichever shall occur first) shall constitute a waiver by Purchaser of all claims with respect to such article. No goods are to be returned without Seller's written consent.
10. All tooling purchased will remain in the possession of Seller for Purchaser's exclusive use. The tool charge quoted is Purchaser's cost for initial design and construction. No additional charges will be made unless the part design is changed. In the event of tooling transfer at Purchaser's request, a fee of 25% of the original tool price will be assessed. Seller's obligation to maintain or retain the tooling will expire two (2) years from Purchaser's last order to Seller. All material and physical properties are representative "typical" properties and not guaranteed values pertaining to any specific part or section thereof.
11. Terms of payment are net thirty (30) days, unless specified differently on the face page hereof or on an appropriately signed document appended hereto. All international sales shall be by irrevocable letter of credit drawn on a U.S. Bank agreeable to Seller unless agreed to by Seller and Buyer. Any amount not paid by Purchaser when due shall bear interest at 1-1/2% per month (18% annum) until paid. All transactions, unless otherwise stated on the face page hereof or an appropriate document signed by both parties and appended hereto, are made entirely in U.S. currency.
12. Prices will be subject to adjustment at the date of shipment and/or shipments to coincide with the fluctuating metals market. The price quoted, which is Seller's standard price, F.O.B. St. Marys, is shown for information only. Purchaser will be invoiced at and shall pay Seller's standard price F.O.B. shipping point, in effect on the respective dates the articles are shipped, plus taxes. In the event of unforeseen causes beyond our control Seller is unable to process parts in accordance with our estimate production rate or in the event of increases in labor or material costs, prices quoted herein may be adjusted on written notice.
13. Seller shall hold harmless and defend Purchaser against any expense, loss or damage resulting from actual or alleged infringement or violation of patents, copyrights, trademarks or intellectual property rights of others in connection with the Seller's production and sale to the Purchase of the products under this quotation, except to the extent otherwise set forth under this quotation. Purchaser shall hold harmless and defend Seller against any expense, loss or damage resulting from actual or alleged infringement or violation of patents, copyrights, trademarks or intellectual property rights of others in connection with the Seller's compliance with Purchaser's designs, specifications or instructions. Purchaser shall further hold harmless and defend Seller against any liability or obligation with respect to any expense, loss or damage to Purchaser or any other person resulting from parts or materials being improperly installed or stored, or subjected to accident, damage, misuse or abnormal or unusual operating conditions or conditions, or applied or used for a purpose or installation other than that for which designed, or operated in any manner or degree beyond their rated capacity.
14. DISCLAIMER: EXCEPT FOR THE EXPRESS WARRANTY STATED ABOVE, SELLER DISCLAIMS ALL WARRANTIES WITH RESPECT TO THE MATERIALS AND PARTS SUBJECT TO THIS ORDER ACKNOWLEDGEMENT INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR ANY PARTICULAR PURPOSE.
15. EXCLUSIVE REMEDY: THE SOLE AND EXCLUSIVE REMEDY OF PURCHASER FOR ANY LIABILITY OF SELLER OF ANY KIND INCLUDING (i) ANY WARRANTY, EXPRESS OR IMPLIED, (ii) CONTRACT, (iii) NEGLIGENCE, OR (iv) OTHERWISE IS LIMITED TO THE REPAIR OR REPLACEMENT (F.O.B SELLER'S PLANT) BY SELLER OF THE MATERIAL AND PARTS SUBJECT TO THIS ORDER ACKNOWLEDGEMENT FOR WHICH CLAIM IS MADE BY PURCHASER IN ACCORDANCE WITH THE ABOVE PARAGRAPHS AND WHICH SELLER ON PROPER EXAMINATION BY IT DETERMINES TO BE DEFECTIVE. IN THE UNLIKELY EVENT THAT SUCH REPAIR OR REPLACEMENT IS IMPRACTICAL OR WILL NOT PERMIT PURCHASER TO RECEIVE THE BENEFITS OF THE WARRANTY CONTAINED IN THE ABOVE PARAGRAPH OF THIS ORDER ACKNOWLEDGEMENT, PURCHASER MAY RETURN THE MATERIAL OR PARTS TO SELLER. SELLER, UPON VERIFICATION THAT SUCH REPAIR OR REPLACEMENT IS IMPRACTICAL OR WILL NOT PERMIT PURCHASER TO RECEIVE THE BENEFITS OF THE WARRANTY CONTAINED IN THIS ORDER ACKNOWLEDGEMENT, SHALL PROMPTLY PAY TO PURCHASER THAT AMOUNT PREVIOUSLY PAID TO SELLER FOR SAID MATERIAL AND PARTS.
16. No waiver, change or amendment of any term or condition of this quotation is effective against Seller unless made in writing and signed by an authorized official of Seller.
17. This order shall be governed by the laws of the Commonwealth of Pennsylvania. The parties hereby agree to the exclusive jurisdiction of the courts located in Pennsylvania, with exclusive venue in Elk County or Allegheny County, Pennsylvania.