



TERMS AND CONDITIONS OF SALE

Please read these terms and conditions carefully. They materially affect the parties' obligations. Kingsford Broach & Tool, Inc. ("Seller") is bargaining for and will do business with the Buyer only on the terms and conditions set forth herein.

- Acceptance and Filling of Orders; Contrary Terms; Acceptance of Terms and Conditions; Course of Dealings; Entire Agreement. BUYER'S ORDER FOR THE ARTICLES DESCRIBED (the "Articles") IS ACCEPTED ONLY ON THE TERMS AND CONDITIONS CONTAINED HEREIN AND IN ANY QUOTATION PROVIDED BY SELLER. THE PROVISIONS OF ANY PURCHASE ORDER OR OTHER WRITING INCONSISTENT HERewith SHALL NOT CONSTITUTE A PART OF THE CONTRACT OF SALE. All orders for Articles are subject to acceptance by an authorized representative of Seller at its home office. If Buyer requests shipment based on telephone, e-mail, or facsimile order, Buyer does so with the understanding that these Terms and Conditions and Sellers Terms and Conditions of Sale apply. If any of these terms and conditions are not acceptable to Buyer, Seller must be notified promptly in writing, as specified below, or Buyer will be deemed to have accepted them. No course of prior dealings between Buyer and Seller and no usage of the trade will be relevant to supplement, interpret or explain these Terms and Conditions of Sale. This writing is intended by the parties to be the final expression of their contract and is intended also as a complete and exclusive statement of the terms and conditions thereof.
- Excuse From Performance. Seller is excused from performance if performance is rendered impracticable by any accident; breakdown; sabotage; riot; insurrection; war; delay; inclement weather; interruption in or failure of sources or subcontractors to supply materials and equipment; strike, labor, or transportation problem; act of God; other causes and conditions, whether of like or different nature, that affect Seller.
- Buyer's Specifications and Indemnification. Where the Article is supplied according to Buyer's specifications, or the Article is designed by Seller and approved by Buyer prior to manufacture, Buyer agrees to indemnify Seller and its affiliates, officers, directors, shareholders, managers, agents, employees, suppliers, subcontractors, servants, customers, successors and assigns from any liabilities, obligations, losses, damages, penalties, claims, actions, suits, arbitrations and costs (including, without limitation, attorneys' fees and costs, litigation support charges, and expert witness fees) and expenses suffered by Seller with respect to (a) any claim that the Article design infringes on any patent, copyright, trademark, trade secret, design, or other intellectual property right or proprietary or similar rights and (b) any claim that the Article was incorrectly or improperly manufactured. Seller will not be liable for (a) any error, omission, or inaccuracy in drawings or specifications provided or approved by Buyer and will be under no obligation to check or confirm the conformity, accuracy, or adequacy of patents, regulatory requirements, drawings, or similar specifications provided to Seller by Buyer and/or (b) Buyer's failure to install, operate, or maintain the Article correctly or properly.
- Payment. Payment is due thirty (30) days from the date of invoice. Payments made by credit card may incur a credit card fee applicable to that card's vendor. This fee is not shown in on Seller's Quotation No payment may be withheld nor may any offset, counterclaim or any other change be deducted from the payment due without prior written consent of Seller. Seller reserves the right to add a late charge of 1.5% percent per month (18% percent per annum) on late payments. In the event of litigation Buyer shall pay Seller's attorney's fees, court costs and other cost incurred.
- Taxes and Fees. Unless otherwise specified, prices stated on this Sales Order Acknowledgement do not include any manufacturers, sales, use or excise taxes, charges or duties. Buyer will pay all such taxes, charges and duties. In lieu of sales taxes, Buyer may provide Seller with a tax exemption certificate which is acceptable in form to Seller.
- Pricing and Price Adjustments. The pricing set forth on Seller's Quotation is based on single-shift work. Rush orders and additional orders from Buyer may result in an adjustment to the quoted price. Pricing is also based on material costs and estimated delivery costs as of the quotation date. Buyer's issuance of a Purchase Order or Acknowledgement indicates that Buyer will accept responsibility for payment of any significant increase in pricing or costs provided Seller inform Buyer of the price adjustment prior to adjusting Seller's quoted price.
- Risk of Loss; Shipment; Installments. Unless otherwise specified on this Sales Order Acknowledgement, all shipments are F.O.B. Seller's place of business. Any shipping dates given by Seller are estimates only. Seller will use every reasonable effort to meet the estimated shipping date, subject to Buyer's prompt provision of all necessary, complete and correct specifications, information and data, but Seller shall not be held responsible for failure to meet such estimated date. Unless otherwise expressly stated, Seller will have the right to deliver the Products in installments. All installments will be separately invoiced and paid as billed without regard to subsequent deliveries. Failure to pay for any installment when due will excuse Seller from making future deliveries.
- Exclusive Warranty. Seller warrants the Articles to be free from defects in materials and workmanship and to meet Buyer's specifications or, if designed by Seller, Seller's specifications as approved by Buyer. THIS WARRANTY IS EXCLUSIVE AND IS IN LIEU OF ANY OTHER WARRANTY, EXPRESS OR IMPLIED OF WHATEVER NATURE, WHETHER IMPLIED, ARISING FROM OPERATION OF LAW, OR ARISING FROM TRADE USAGE OR COURSE OF DEALING, INCLUDING BUT NOT LIMITED TO, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.
- Limitation of Remedies and Damages. Seller's sole liability and Buyer's exclusive remedies for any breach of warranty hereunder or arising out of any claimed breach by Seller of its obligations hereunder will be limited to repair, replacement or credit, at Seller's option. Buyer shall be deemed to have waived any claim for nonconforming goods if notice, as provided below, is not delivered to Seller in writing within ten (10) days of delivery to Buyer. Buyer shall be deemed to have waived any breach of warranty about which it did not notify the Seller, as provided below, within one year of the date of delivery. SELLER WILL NOT

BE LIABLE UNDER ANY CIRCUMSTANCES FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES RELATED IN ANY WAY TO THE PRODUCT SOLD, WHETHER IN TORT, STRICT LIABILITY, BREACH OF CONTRACT, BREACH OF EXPRESS OR IMPLIED WARRANTY, OR ANY OTHER CLAIM PERMITTED UNDER APPLICABLE LAW, INCLUDING BUT NOT LIMITED TO, LABOR COSTS OR LOST PROFITS RESULTING FROM THE USE OF OR INABILITY TO USE THE ARTICLES OR FROM THE ARTICLES BEING INCORPORATED IN OR BECOMING A COMPONENT OF ANY OTHER ARTICLE.

10. Exclusion of Tort Remedies. This is a commercial sales transaction. The parties want it to be governed by Article 2 of the Uniform Commercial Code and related commercial legal principles. NEITHER PARTY WILL HAVE ANY NEGLIGENCE OR OTHER TORT LIABILITY TO THE OTHER, OR TO ANY THIRD PARTY, ARISING FROM ANY BREACH OF THIS AGREEMENT.
11. Pre-Production Testing. Before using tooling produced pursuant to this Contract, Buyer shall make pre-production test cutting, at Buyer's expense, to ensure that materials cut and/or parts produced meet production specifications. Buyer shall run tests using first quality parts that are intended to be run in production.
12. Cancellation. Buyer may cancel its order only upon written notice to Seller as provided below and upon payment to Seller of a cancellation charge to be determined by Seller based upon Seller's costs incurred to date of cancellation, including normal indirect and overhead charges and a normal profit.
13. Changes. No modification of Buyer's accepted order will be accepted unless done so in writing, by a representative of Seller authorized to accept modifications of orders, and on terms that will fully indemnify and reimburse the Seller against loss. Such indemnity will include recovery of all direct costs incurred, including normal indirect and overhead charges and a normal profit. No change proposed by Buyer in the Terms and Conditions of Sale will be valid or binding upon Seller unless requested by Buyer in writing, as provided below, and approved in writing, as provided below, by Seller's home office.
14. Notices. All required notices, claims, and demands under this agreement shall be (1) in writing, in the English language, (2) signed by a person authorized to provide such notice, and (3) considered given when deposited, postage prepaid, in a United States Post Office or authorized depository addressed to the other party at the address contained on Seller's Sales Order Acknowledgement.
15. Set Off. Seller may set off any amount due from Buyer, whether or not under this agreement, against any amount that may become due to Buyer.
16. Assignment. Buyer may not assign its rights, duties or obligations under this agreement without Seller's consent expressed in writing as provided above.
17. Controlling Law. This agreement shall be governed by and construed according to the laws of the State of Michigan. Venue for any disputes under this agreement shall lie in and be limited to Dickinson County, Michigan. This agreement contains the entire understanding of the parties on the subject matter of this agreement, and the parties acknowledge that there have been and are no representations, warranties, covenants, or understandings other than those expressly set forth in the agreement.
18. Severability. If any material provision contained herein is held to be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions will not in any way be affected or impaired thereby.