



Quotation Terms and Conditions

PROGRESSIVE MANUFACTURING. ("Seller") hereby quotes to the party identified on the face hereof ("Purchaser") the opportunity to purchase the products identified on the face hereof upon the terms and conditions set forth on the face hereof and hereinbelow:

1. ACCEPTANCE. The acceptance of any order from Purchaser pursuant to this Quotation is conditioned upon the acceptance by Purchaser of all Terms and Conditions contained in this Quotation. Any inconsistent or additional terms contained in the Purchaser's Purchase Order are hereby rejected unless expressly accepted in writing by Seller within ten (10) days after its receipt of such Order. The Terms and Conditions as stated herein shall not be modified other than in writing signed by Seller and Purchaser.
2. TITLE AND RISK OF LOSS. Unless otherwise stated herein, title in and risk of loss for all products sold hereunder shall pass to Purchaser upon delivery to carrier F.O.B. Seller's plant.
3. PRICES AND TAXES. Unless otherwise stated herein, the prices quoted are F.O.B. Seller's plant. The amount of any local, state or federal tax levied on the products referred to herein to the date of shipment shall be added to the amount paid by Purchaser and shall remain the sole responsibility of Purchaser. Any portion of the price which is not paid in accordance with the terms of payment herein stated shall bear interest from the due date at the rate of 5% per month until paid.
4. DELAY IN PERFORMANCE. Seller shall not be responsible or liable for any delays or failures in the manufacture or delivery of the products due to any cause or condition beyond the control of Seller, including, without limitation, strikes or labor difficulties, fires, floods and other actions of the elements, inability to secure transportation, shortage of materials or equipment, riots or other civil commotions and acts of God and war.
5. CANCELLATION OR CHANGE ORDERS; DELIVERY. No orders may be withdrawn or canceled by Purchaser, nor may they be deferred when ready, unless Seller shall have approved such cancellation in writing and Seller shall have been paid a cancellation or deferral charge of a reasonable amount acceptable to Seller. In the event Purchaser shall request changes in its order after receipt thereof by Seller, it shall be responsible for all charges reasonably incurred by Seller with respect to such changes. Any dates or schedules which may be specified for the delivery of the products purchased hereunder have been stated only approximately and are estimated from the date of this Quotation, with complete specifications, designs, samples and other information reasonably requested by Seller to be provided in order to proceed with the manufacture and delivery of the products. Seller shall not incur any liability, either direct or indirect, nor shall this Quotation or any Order be canceled, as a result of any delays in meeting such dates or schedules.
6. LIMITED WARRANTY. Seller makes no warranty whatsoever, except as to title, with respect to products manufactured, assembled, repaired, refurbished and/or designed to Purchaser's or any other party's specifications or with respect to any material selection by any party other than Seller, and Purchaser shall, at its own expense, defend and save Seller harmless from and against any claim, suit, expense or otherwise which shall be asserted or brought against Seller by reason of Seller's manufacture or sale of such products. All products are sold and samples of products provided with the understanding that Purchaser has independently determined the suitability or compatibility of such products for its purposes. Any statements, technical information or recommendations concerning products sold or samples provided by Seller are based upon data provided to Seller by its suppliers and believed to be accurate, but do not constitute a guarantee or warranty. Seller makes no representation or warranty that the delivery or subsequent use of the products ordered shall be free of the claim of any third party by way of infringement.

Seller, at its sole option, will repair or replace any of the products which are due to Seller's defective materials or workmanship; provided, however, if Seller determines that repair or replacement is not commercially practicable, Seller shall issue a credit in favor of Purchaser in an amount not to exceed the purchase price of the products. All claims for breach of this warranty must be made to Seller within 12 MONTHS after the date of shipment of the product to which the claim relates and must be returned at Purchaser's expense to Seller's plant in accordance with Seller's written material return authorization and instructions and the provided RTM label. Seller's warranty shall extend only to the original Purchaser from Seller. Seller's warranty does not cover the effects of normal wear, tear, deterioration or abuse of the products or the effects of improper shipping, storage or handling of the product.



EXCEPT FOR THE EXPRESS WARRANTY DESCRIBED ABOVE, THERE ARE NO OTHER WARRANTIES OR GUARANTEES, EITHER EXPRESSED OR IMPLIED, WRITTEN, ORAL OR ARISING UNDER CUSTOM OF TRADE INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR ANY PARTICULAR PURPOSE. NO WARRANTIES OR REPRESENTATIONS AT ANY TIME MADE BY ANY REPRESENTATIVE OF SELLER SHALL BE EFFECTIVE TO VARY OR EXPAND THE ABOVE-REFERENCED EXPRESS WARRANTY OR ANY TERMS HEREOF.

7. **LIMITATION OF LIABILITY.** In no event shall Seller be liable to Purchaser or to any third party for consequential, incidental or special damages, or for lost profits, resulting from or in any manner related to the products, their delivery, non-delivery, design, use, or any inability to use the same, whether such damages be claimed under contract, tort or any other legal theory. Purchaser understands that the sole and exclusive remedy of Purchaser shall be the repair or replacement of any defective product pursuant to the warranty provision hereinabove. Should the product prove so defective, however, as to preclude the remedying of warranty defects by repair or replacement, Purchaser's sole and exclusive remedy and Seller's sole and exclusive liability shall be a credit in favor of Purchaser in an amount not to exceed the purchase price of the products upon Purchaser's return of the products of Seller. This limitation of liability shall survive the termination, expiration or cancellation hereof.

8. **THIRD PARTY PARTICIPATION.** Seller is not responsible for any delays caused by third parties utilized by Seller to produce its products or the inability of any such third parties to deliver their goods or services to Seller. It is understood by Buyer that Seller's quote may be based on a quote from a third party and Seller shall not be bound by its own quote if any third party fails to provide its goods or services as promised or agreed.

9. **INDEMNIFICATION.** Purchaser shall indemnify Seller against all claims, losses, liabilities and expenses (including, without limitation, reasonable attorney fees) on account of any damaged property or injury or death of persons (including, without limitation, Purchaser's employees) arising out of the Purchaser's storage, handling, use, implementation or disposal of the products or arising out of any infringement claim where Seller was not responsible for the design of the products, except for any portion of damages attributable to Seller's gross negligence. This indemnity obligation of Purchaser will survive the expiration, termination or cancellation hereof.

10. **INTEGRATION.** There are no understandings between the parties hereto as to the subject matter hereof other than as set forth herein. All previous communications between the parties hereto concerning the subject matter hereof, whether verbal or written, including, but not limited to Purchaser's Order, are hereby abrogated and withdrawn, and this contract constitutes the whole of the agreement between the parties hereto. Any additional Terms and Conditions of a Purchase Order or Change Order shall not apply hereto unless agreed to by Seller in writing. Delivery of a Purchase Order by the Purchaser pursuant to this Quotation shall be deemed to be an acceptance by Purchaser of the Terms and Conditions of this Quotation and the terms and conditions included herein. Any different terms or conditions in any Purchase Order, regardless of whether such terms and conditions are material or not, shall not be binding unless expressly accepted in writing by Seller and Seller specifically objects to the inclusion of any different or additional terms or conditions by Purchaser in confirming or accepting this Quotation. If Purchaser does include different or additional terms and conditions in its purchase order, acceptance, confirmation or other written form sent in response to this Quotation, neither Seller's delivery of all or part of the products, nor any other action except a written writing from Seller, shall constitute acceptance of such additional or different terms, but instead the terms and conditions of this Quotation shall govern.

11. **MISCELLANEOUS.** The Terms and Conditions applicable to the transaction provided for herein shall be determined and construed in accordance with, and shall be governed by, the laws of the State of Ohio. Further, Purchaser and Seller agree to submit to the jurisdiction of the appropriate local, state or federal courts within Summit County, Ohio for purposes of resolving any dispute or claim arising in connection with said transaction. The prevailing party to any litigation involving this transaction shall be entitled to recover its reasonable attorney's fees and costs incurred herein. Nothing in this contract shall be construed as creating any act or beneficial right in or on behalf of any third party. The failure of either party to insist or enforce in any instance strict performance of any of the terms of this contract or to exercise any rights hereunder conferred, shall not be construed as a waiver or relinquishment to any extent of its right to assert or rely upon such terms or rights on any future occasion.