

## TERMS AND CONDITIONS

**Agreement and Limitations:** All current and future orders on this quotation and/or acknowledgement will be accepted subject to the following terms and conditions which may not be varied, altered or modified without written consent of Chicago Milwaukee Acquisition Inc. ("Seller"). The contract created by these terms and conditions shall constitute the entire agreement between the parties and shall be for the benefit of said parties only and not for the benefit of any other person. Any provisions contained in Buyer's order which are inconsistent with the terms and conditions hereof, or which attempt to add or detract, in any way, from the terms and conditions hereof, shall not be binding upon Seller. The rights and duties of Buyer and Seller shall be governed by the law of the State of Wisconsin.

**Prices:** All orders, whether or not submitted pursuant to a quotation, are subject to acceptance by Seller. Prices quoted are based on a continuous production of castings in the minimum quantities stated. Unless held open for a specific length of time on Seller's quotation, all prices are subject to change without notice (including without limitation increases and surcharges based on fluctuating production costs) and any unshipped balances on purchase orders will be invoiced to and paid by Buyer at prices in effect at the time of delivery. Unless otherwise specified, all quotations expire automatically thirty (30) calendar days after the date issued, but any quotation may be amended or terminated by written notice from Seller to Buyer within that period.

**Taxes:** Buyer shall pay Seller, in addition to the prices quoted, any applicable excise, sales, use or other tax (however designated) imposed upon the sale, production, delivery or use of the items ordered to the extent required or not forbidden by law to be collected by Seller from Buyer, whether or not so collected at the time of sale, unless valid exemption certificates are in the possession of Seller before the date of its invoice.

**Credit Terms:** Net thirty (30) days (subject to approved credit). Delinquent invoices will carry interest at the rate of 2.5% per month on the entire unpaid balance.

**Termination or Modification:** After Buyer's order has been accepted, the contract resulting therefrom may be terminated or otherwise modified only with Seller's written consent. Buyer shall pay all production and other costs which are incurred up to the date of termination or the date on which modification is accepted by Seller.

**Deductions:** No deductions of any nature will be honored unless a credit memorandum covering the same has been previously issued by Seller's Accounting Department or otherwise authorized in writing.

**Delivery:** The items ordered pursuant to this quotation shall be delivered f.o.b. Seller's foundry. Title and all risk of loss with respect such items shall pass to Buyer upon delivery to a carrier. Buyer shall be responsible for obtaining any and all insurance with respect to purchased items.

**Shipments and Payments:** Shipping dates are estimates only. Seller will use commercially reasonable efforts to meet the estimated shipping date, subject to Buyer's prompt provision of all necessary, complete and correct specifications, including without limitation, shipping instructions. However, Seller shall not be responsible for failure to meet any estimated delivery date, and shall not be liable for any damages resulting therefrom. Seller may make delivery in installments. All installments will be separately invoiced and paid as billed without regard to subsequent deliveries. Buyer's failure to pay any installment when due will excuse Seller from making future deliveries. Seller may in its discretion, depending on Buyer's creditworthiness, require cash payment in advance or other security for payment.

**Security Interest:** Buyer hereby grants to Seller a security interest on all Buyer's tooling, dies, molds, fixtures and other equipment in Seller's possession to secure Buyer's payment and performance of this agreement.

**Quantity:** Seller shall make reasonable efforts to furnish as near as possible the quantity of items specified. However, Buyer understands and agrees that it will accept and pay for overruns or underruns in an amount up to and including 10% of the quantity ordered.

**Samples:** Samples from new dies will be submitted for approval before proceeding with the production. Castings made in accordance with the approved sample will be considered as complying with specifications and warranties. Production of quantities prior to sample approval are Buyer's responsibility. Sample approval must be in writing.

**Casting:** Castings will be furnished subject to commercial variations incidental to investment casting process with a blast finish but without machining, testing or heat treatment unless otherwise agreed to in writing. Cosmetic welding by the Seller is permissible unless otherwise advised by the Buyer in writing. Decarburization is not controlled unless noted on the face of the quotation.

**Exclusive Warranty:** Seller warrants to Buyer only, and not to other parties that subsequently purchase or use the castings, that castings as delivered:

1. are in accordance with Buyer's written specifications accepted by Seller or an authorized agent of Seller;
2. meet the standards established by the Investment Casting Institute for the general purpose investment castings or commercial quality; or
3. are made in accordance with the sample approved by Buyer.

THIS WARRANTY IS EXCLUSIVE AND IS IN LIEU OF ANY OTHER WARRANTY, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

**Claims:** All claims, including claims for damages, defects and shortages must be made by Buyer within ten (10) days of Buyer's receipt of the items. Seller must be given a reasonable opportunity to inspect such items. Within thirty (30) days of notifying Seller of a potential claim, Buyer shall return any disputed items to Seller. Buyer shall be responsible for all costs associated with shipping disputed items. BUYER'S FAILURE TO MAKE ANY CLAIM WITHIN THE SPECIFIED TIME PERIOD WILL RESULT IN THE UNCONDITIONAL WAIVER OF SUCH CLAIM. Seller reserves the right to reject any claim in whole or in part. Items may not be returned to Seller without a "return authorization number."

**No Assignment:** Buyer shall not delegate or assign its rights or obligations hereunder, in whole or in part, without Seller's prior written consent. Any attempted delegation or assignment by Buyer without such consent shall be void.

**Indemnification:** Buyer agrees to indemnify and hold Seller harmless against any claim, demand, action, proceeding, liability, loss, cost or expense, including reasonable attorneys' fees, arising in connection with any items or castings made in connection with this order.

**Limitation of Remedies and Damages:** If Buyer makes a valid and timely claim under the section entitled "Claims" above, Seller's liability and Buyer's remedies under this agreement will be limited solely to replacement or credit, at Seller's option, with respect to the items returned. SELLER'S LIABILITY WILL IN NO EVENT BE GREATER IN AMOUNT THAN THE PURCHASE PRICE OF THE RETURNED PRODUCTS. SELLER WILL NOT BE LIABLE UNDER ANY CIRCUMSTANCE FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LABOR COSTS OR LOST PROFITS RESULTING FROM THE USE OF OR INABILITY TO USE THE PRODUCTS OR FROM THE PRODUCTS' INCORPORATION INTO OR BECOMING A COMPONENT OF ANY OTHER PRODUCT. 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.

**Dies, Molds, Fixtures, Gages and Other Equipment:** Seller assumes no responsibility for damage caused by fire or act of God to dies, molds, fixtures, gages and other equipment held in Seller's possession and control. Insurance with respect to such items is to be supplied by Buyer. All dies, molds, fixtures, gages and other equipment in Seller's possession and control shall be maintained in the usual operating condition. In the event of normal wear, or if design changes require reconditioning or replacement, the cost thereof shall be paid by Buyer.

**Engineering and Design:** All changes in engineering or design shall be accepted by Seller subject to the provisions of the section of this agreement entitled "Termination or Modification." Seller will not be responsible for conforming to any drawing change which is not also noted on the drawing as an engineering change. Engineering and design changes suggested by Seller are made in the best interests of both parties, but in the event that such changes are approved, the responsibility for their success or failure lies entirely with Buyer.

**Publicity:** Unless otherwise agree, Seller reserves the right to have its trademark appear on each casting and use the casting for display or advertising purposes.

**Terms:** 50% With Tooling Purchase Order. Net balance upon delivery of samples.

**Production:** Net thirty (30) days.

**F.O.B.:** Milwaukee, WI

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