





Three M
Tool and Machine, Inc.

Terms and Conditions

QF-07-2-QA

Reviewed by: ISO Management Representative Signature/Date:  9/18/2009	Approved by: President Signature/Date:  10/02/2009
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- SHIPMENT:** All prices are quoted FOB motor truck, Seller's plant. All trucking and other transportation charges incurred from the time the goods are tendered to the carrier shall be paid by Buyer, who also agrees to assume all responsibility for shortage, loss, delay, or damage in transit. It is agreed that the carrier is the Buyer's agent for all purposes. All scheduled delivery dates are approximate and subject to delays caused by civil insurrection, war, fire, strike or other labor disturbance, Acts of God, shortages of materials or failure of suppliers or subcontractors to satisfactorily meet scheduled deliveries, delay or failure by Buyer to perform its obligations under this agreement, or any other factor or event beyond Seller's reasonable control. Under no circumstances, however, will Seller be responsible for or Buyer entitled to direct or consequential damage arising out of or owing to any delays in delivery whatsoever.
- PRICES:** Prices quoted are firm for 60 days or as indicated in the quotation. Prices quoted are subject to change after expiration of this time period. Any deviation in Buyer's order may affect the price and shipping date.
- IMPAIRMENT OF CREDIT:** If Buyer is or becomes insolvent or is unable to pay its debts as they mature, or files or has filed against it a bankruptcy, insolvency or similar petition, or if Seller in good faith doubts the ability of Buyer to pay, Seller may demand cash payment in advance before shipments are made.
- TAXES:** Sales, use, excise or similar taxes arising out of or relating to the sale, delivery, installation, or use of the goods described in this agreement are not included in the price except as otherwise specified herein. All such taxes are the responsibility of the Buyer and the Seller shall have the right at any time to separately bill the Buyer for such tax which Seller may have been requested to pay, and the Buyer shall upon receipt of such invoice pay the Seller the amount stated thereon.
- INSTALLATION:** At Buyer's written request, Seller agrees to furnish, at Seller's standard service rates and after arrival of said goods at Buyer's plant, an experienced technician to supervise the placing of said goods into operation. In addition, Buyer agrees to pay technician's transportation charges to and from Buyer's plant, plus reasonable living expenses at Seller's standard service rates.
- WARRANTY:** Seller warrants the goods covered by this quotation to be free from defects in material and workmanship under normal use and proper maintenance for a period of twelve (12) months (within six (6) months in the case of multiple shift operation). The warranty period shall begin after runoff of the equipment at the Buyer's facility but no later than 60 days after shipment. All commercial components carry the manufacturer's warranty only and Seller assumes no liability for their performance. This warranty is void if the Buyer has installed any parts or components not manufactured and sold by the Seller, or if the Buyer has made any alterations to delivered goods. This warranty does not cover normal wear and tear or flex fatigue, and the Seller reserves the right to evaluate and determine the condition of the goods for warranty purposes. THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE PERFORMANCE OR OTHERWISE.
- BUYER'S REMEDIES:** The Seller's obligation under its warranty is strictly and exclusively limited to the repair or replacement free of charge, FOB Seller's factory, of such warranted components of the goods as are found to be defective in material or workmanship, on the condition that the Buyer gives prompt written notice to the Seller of any claimed breach of warranty within the applicable warranty period. The Seller shall have the right to remedy such defects at such time or times as may be reasonable in terms of the availability to the Seller of qualified technicians and replacement or repair parts, the location of the goods, etc. and the repair or replacement of such components shall not extend the applicable warranty period in any manner, nor shall the Seller be liable for any labor charges in the removal or replacement of components. All sums paid hereunder by the Buyer upon the return of the goods to the Seller, and it is understood that the warranty in Paragraph 6 is not assignable. IN NO EVENT SHALL THE SELLER BE LIABLE FOR ANY CLAIMS (WHETHER DIRECT, IMMEDIATE, INCIDENTAL, FORESEEABLE, CONSEQUENTIAL, OR SPECIAL, INCLUDING DAMAGES ARISING OUT OF PERSONAL INJURIES).
- SECURITY INTEREST:** The Buyer hereby grants to the Seller a security interest in the goods, and all attachments, replacements, and proceeds thereof, to secure payment of the purchase price and Buyer's performance of this agreement, and the Seller shall have, upon a default in payment or performance, or upon the bankruptcy or insolvency of the Buyer, all of the rights and remedies of a secured creditor under the Uniform Commercial Code, including the right to the immediate possession of the goods. Such rights and remedies shall be in addition to any other rights and remedies of Seller under this agreement. The Buyer agrees to execute and deliver upon the Seller's request financing statements to perfect Seller's security interest, and it is understood that the goods shall remain personal property, regardless of the manner in which the goods may be affixed to real estate or machinery. Also, until said purchase price has been paid in full, the Buyer shall insure the goods against loss by fire and other risks customarily insured against for the full insurable value. Such insurance shall be issued to cover the interest of the Seller and Buyer, and shall provide in case of loss, damage, or destruction that the proceeds thereof be payable to the Seller and the Buyer as their interests may appear. However, the foregoing shall not change the time at which the risk of loss passes to the Buyer, which shall remain in all events as set forth in Paragraph 1 hereof.
- SPECIFICATIONS:** The Buyer shall furnish technical data or specifications with numerical information in metric or U.S. standard and all verbiage in English. Seller reserves the right to alter the design or specifications of the goods at any time prior to delivery so long as such alteration does not materially change the basic function of the goods, or increase the purchase price. This Seller is AS9100 certified but this Seller does not perform all AS9100 functions on all jobs. It is the responsibility of the Buyer to specify the requirements for AS9100 certified work, such as, but not limited to; traceability requirements, risk management documentation, material certifications, first article inspections, 100% inspection on all parts produced, control plans and/or SPC analysis. Failure of the Buyer to provide detailed specifications in the RFQ (Request for Quote) could result in an increased purchase price and/or delayed delivery times.
- CANCELLATION:** No order is subject to cancellation or change by Buyer in any respect without liability. In the event the Buyer refuses to accept delivery of the goods, or otherwise defaults or repudiates this agreement prior to delivery of the goods, the Seller shall be entitled to recover from the Buyer an amount equal to all of the Seller's damages (including reasonable overhead charges) for such non-acceptance, default or repudiation, and the Seller shall have the right to retain, in partial or complete payment of such amount, the total of all payments made hereunder less only that portion, if any, in excess of such amount.
- PATENTS:** The Seller warrants that the goods specified herein shall be delivered free of the rightful claim of any third person by way of infringement or the like, provided that the Buyer gives immediate notice in writing of the commencement or threat of commencement of any claim or suit. In such event the Seller shall have full right to defend, compromise or settle such claim or suit, and the Buyer shall give the Seller needed information, assistance and authority to enable the Seller to do so. A Buyer who furnishes specifications to the Seller must hold the Seller harmless against any claim that arises out of compliance with the specifications. The Seller is not responsible for any damages or expenses resulting from any infringement or alleged infringement if said goods are modified, altered, or changed, or if such infringement or alleged infringement arises out of the combination of said goods with other components or accessories not sold by the Seller. This indemnity covers the structure of the goods only and does not extend to methods or processes, employed by the Buyer. Under no circumstances shall the Seller's liability exceed the market value of the apparatus charged to infringe at the time infringement was determined.
- PACKING AND STORAGE:** The price quoted includes standard packing for motor truck shipment. Export or special packing shall be undertaken only upon Buyer's written instructions and at the Buyer's expense. If Buyer fails to take timely delivery of the goods, Buyer shall pay reasonable storage charges and care and maintenance expenses of the goods. This clause shall not, however impose any liability upon Seller for such care and maintenance.
- BUYER FURNISHES:** The Buyer shall furnish the following: (1) a building to house the goods, assuming all responsibility for providing the proper strength of same; (2) all foundations including the excavation thereof; (3) auxiliary components that are not integral parts of the equipment specified, such as electrical wiring and conduit, protective guards, interconnecting piping (hydraulic and air, if applicable) when required (4) erection and delivery, and (5) tools for erection, unless such tools are specifically included in this quotation.
- SAFETY DEVICES:** Safety devices specified in the specifications will be furnished by the Seller. In the event further safety devices are required by Buyer, the Seller will at Buyer's written request and expense, furnish such additional safety devices upon receipt of proper specification thereafter.
- APPLICABLE LAWS AND ORDINANCES:** The Buyer shall be responsible for ascertaining that the goods as installed and operated will comply with all building code requirements and all other applicable laws, rules, ordinances and regulations, whether federal, state or local.
- OPERATING INSTRUCTIONS:** The Buyer agrees it will cause the goods to be maintained and operated in strict accordance with the Seller's written instructions, including such owner's manuals as the Seller may provide, and will indemnify and save the Seller harmless against any and all damages, demands, suits, causes of action and other claims arising directly or indirectly out of Buyer's failure to cause the goods to be so maintained and operated.
- PERFORMANCE AND SPEEDS:** Where reference is made in Seller's specifications to various speeds of the goods, Buyer understands that such references do not constitute a representation or warranty as to normal operating speed of the goods. The speed at which the goods perform are dependent upon the quality, nature and consistency of the materials used on the goods, the level of competency of the personnel (including trained personnel) operating or supervising the operation of the goods, the humidity and temperature conditions in the factory, and such other conditions as may exist at the premises where the goods are situated. Likewise, average or production speed of the goods will be influenced by start-up time, robotic mishandling or failure, stops, interruptions and other on-site conditions at the plant where the goods are situated which are under the exclusive control of Buyer.
- CLAIMS:** No claims for shortages or errors will be considered unless such claim is made in writing within (10) days from receipt of the goods. Buyer's acceptance or use of the goods shall constitute Buyer's waiver of any and all such claims and any claims for losses or damages resulting from any delays in delivery or shipment, regardless of the cause.
- DRAWINGS:** Specifications and or drawings accompanying this quotation are the property of the Seller and are subject to recall at any time prior to acceptance of this quotation. Assembly and appropriate section drawings will be provided to the Buyer in conjunction with the finished goods. Detail drawings are considered proprietary in nature and will be provided to the Buyer solely at the discretion of the Seller.
- ACCEPTANCE:** All orders are subject to final written acceptance and approval by an executive officer of Seller at its principal office in Commerce Twp., Michigan. This agreement represents the entire agreement between the parties hereto, superseding all prior agreements and representations, whether written or oral. In no event shall this agreement or any provision hereof be deemed to be amended, modified or changed in any manner whatsoever (including by reason of trade usage or course of dealing) except and unless such amendment, modification or change is set forth in writing executed by the Buyer and an executive officer of Seller in a document making specific reference to this agreement.
- ASSIGNMENT AND WAIVER:** Neither this agreement nor any right or interest in this transaction may be assigned by Buyer without the prior written consent of Seller, and the Seller's failure at any time to insist upon strict performance of any term or condition of this agreement shall not be construed as a waiver of any subsequent breach of any term or condition.
- GENERAL:** (a) This agreement shall be governed by and construed according to the laws of the State of Michigan and the laws of the United States of America (b) interest at the maximum legal rate shall be charged on all past due payments under this agreement.