

STANDARD TERMS AND CONDITIONS OF SALE (Quotations)

- 1. Offer to Sell.**
Cincinnati Tool Steel Co. ("CTS") hereby offers to sell the products described in this Quotation (the "Goods"), but only on the terms and conditions described herein. If Buyer submits to CTS a purchase order or other documentation with terms and conditions different from or additional to the terms and conditions described in this Quotation, CTS hereby objects to those terms and does not assent to them. No such term shall be considered to be a part of any contract between the parties. The terms of CTS's Quotation, except for these Conditions of Sale, are not binding, do not constitute an offer and are subject to change without notice.
- 2. Payment Terms.**
Payment terms are net thirty (30) days from the date of the invoice issued by CTS, subject to a ½ of 1% discount if paid within ten (10) days of the date of such invoice. Any payments not made within thirty (30) days of the date of the invoice shall be subject to a late payment charge of 1½% per month (compounded) on the unpaid balance of any amount then past due.
- 3. Taxes.**
The quoted purchase price may be increased to the extent that CTS's cost of the Goods may be increased as a result of (1) any agreements, codes, or legislative enactments made or enacted pursuant to federal, state or municipal legislation; and (2) increase in the cost of labor or raw materials. In addition to paying the quoted purchase price, Buyer is solely liable for any excises, levies or taxes which CTS may be required to pay or collect, under any existing or future law, upon or with respect to the sale, purchase, delivery, storage, processing, use, consumption or transportation of any of the Goods, and Buyer agrees to pay the amount thereof on the same terms as it shall pay the quoted purchase price.
- 4. Warranty.**
CTS warrants that the Goods shall conform to the description stated on the reverse side hereof. THE FOREGOING WARRANTY IS CTS'S SOLE WARRANTY WITH RESPECT TO THE GOODS THAT ARE THE SUBJECT OF THE QUOTATION. ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE HEREBY DISCLAIMED. CTS'S LIABILITY FOR BREACH OF WARRANTY HEREUNDER IS LIMITED SOLELY TO THE REPLACEMENT OF THE DEFECTIVE GOODS, WHICH SHALL BE RETURNED TO CTS'S PLANT, TRANSPORTATION CHARGES PREPAID BY BUYER; AND THE FAILURE TO GIVE NOTICE OF A WARRANTY CLAIM WITHIN THIRTY (30) DAYS FROM DATE OF DELIVERY SHALL CONSTITUTE A WAIVER BY BORROWER OF ALL CLAIMS IN RESPECT TO SUCH GOODS. THE FOREGOING SHALL CONSTITUTE THE SOLE REMEDY OF BUYER AND THE SOLE LIABILITY OF CTS UNDER THIS WARRANTY.
- 5. LIMITATION OF LIABILITY.**
CTS'S LIABILITY TO BUYER, WHETHER IN CONTRACT, IN TORT, UNDER ANY WARRANTY, IN NEGLIGENCE OR OTHERWISE, SHALL NOT EXCEED IN ANY CASE THE RETURN OF THE AMOUNT OF THE PURCHASE PRICE PAID BY BUYER AND UNDER NO CIRCUMSTANCES SHALL CTS BE LIABLE FOR SPECIAL, IN DIRECT OR CONSEQUENTIAL DAMAGES. THE PRICE STATED FOR THE GOODS IS CONSIDERATION FOR LIMITING CTS'S LIABILITY. NO ACTION, REGARDLESS OF FORM, ARISING OUT OF THE TRANSACTIONS UNDER THIS INVOICE MAY BE BROUGHT BY BUYER MORE THAN ONE (1) YEAR AFTER THE DATE OF THIS INVOICE. WITHOUT LIMITATION OF THE FOREGOING, IN NO EVENT WILL CTS BE RESPONSIBLE OR LIABLE FOR (A) PENALTIES OR PENALTY CLAUSES OF ANY DESCRIPTION, OR (B) INDEMNIFICATION OF BUYER OR OTHERS FOR COSTS, DAMAGES OR EXPENSES ARISING OUT OF OR RELATED TO THE GOODS.
- 6. Claims.**
Claims by Buyer for shortages or errors in delivery must be made within five (5) days after the delivery of the goods. Goods are sold subject to the standard manufacturing practices of CTS's suppliers. Goods purchased on the basis of weight are subject to customary quantity variations recognized by practice in the industry.
- 7. Returns.**
No goods shall be returned for credit without first obtaining written consent from an executive officer of CTS.
- 8. Shipment.**
Delivery terms are either F.O.B. CTS's plant, Rockford, Illinois, or C.F., as specified on the reverse side of this document. In either case, Buyer shall assume all risk of loss or damage upon delivery by CTS to the carrier at the point of shipment. Scheduled dates of delivery are determined from the date of CTS's acceptance of any order or orders placed by Buyer and are estimates of approximate dates of delivery, not a guaranty of a particular date of delivery. CTS shall not be liable for any damages caused by failure or delay in shipping the Goods, if such failure or delay is due to any war, embargo, riot, fire, flood, accident, mill condition, strike or other labor difficulty, an act of Buyer, an act of God, an act of a governmental authority, transportation shortage or failure, inability to obtain sufficient fuel, labor, materials or manufacturing facilities, or any other cause beyond the reasonable control of CTS.
- 9. Security Interest.**
Shipments, deliveries and performance of work by CTS shall at all times be subject to the approval of and requirements of the credit department of CTS, including the requirement that Buyer pay part or all of the purchase price in advance. CTS retains a purchase money security interest in all Goods not paid for in full, notwithstanding that the Goods have been delivered to Buyer, and Buyer hereby authorizes Seller to execute and file financing statements describing the Goods, and other document which may be requested by CTS to evidence its security interest.
- 10. Cancellation.**
Orders accepted by CTS are subject to cancellation by Buyer only upon the express written consent of CTS. Upon such cancellation and consent, CTS shall cease work and hold for Buyer all completed and partially completed articles and work in progress and Buyer shall pay CTS: for all work and materials that have been committed to and/or identified to Buyer's order plus a cancellation charge as prescribed by CTS, in addition to a reasonable profit to CTS on the entire contract.
- 11. Indemnification.**
In addition to the foregoing, Buyer agrees to save and hold CTS harmless from any claims, demands, liabilities, costs, expenses or judgments arising in whole or in part, directly or indirectly, out of the negligence or lack of care by Buyer or Buyer's customers, agents, employees or invitees involving the use of the goods supplied by CTS. This indemnification shall include all costs, attorney's fees and other expenses paid or incurred by or imposed upon CTS in connection with the defense of any such claim.
- 12. Governing Law.**
Any agreement arising out of this transaction shall be deemed to have been made in Rockford, Winnebago County, Illinois. The parties agree that the validity, interpretation and performance of any agreement arising out of this transaction shall be governed by the laws of the State of Illinois without regard to conflicts of interest laws. Buyer and CTS hereby submit to the exclusive jurisdiction for the resolution of any disputes hereunder, to the Circuit Court of the Seventeenth Judicial Circuit, Winnebago County, Rockford, Illinois. This shall be the sole and exclusive jurisdiction and venue for the purpose of adjudication of any rights and liabilities hereunder.
- 13. Default.**
In the case of default or breach by Buyer in the performance of any or all of the provisions of this agreement, CTS may cancel any outstanding order from Buyer and declare all obligations immediately due and payable, and shall in addition have all remedies afforded by the Uniform Commercial Code as enacted in Illinois, and any other applicable law. Buyer shall in addition, be liable for CTS's expenses incurred in exercising any remedies available to it, including reasonable attorney's fees and legal expenses. All unpaid obligations shall bear interest at the contract rate provided under terms of payment above.
- 15. Delay.** If Buyer requests deferral of deliveries, CTS's agreement to defer delivery shall not excuse Buyer from its obligation to pay for the goods at the same times and in the same quantities as the original delivery schedule, including interest due pursuant to these terms and conditions. In addition to adhering to the original payment schedule, Buyer shall pay such storage charges as CTS may assess for storing the goods awaiting delivery. If Buyer requests deferral prior to commencement of production, CTS may require progress payments in connection with expenses for materials and services incurred by CTS in anticipation of production.