

- (1) **ACCEPTANCE BY BUYER.** When included in a quotation, that quotation (called this Quotation), together with any other documents incorporated herein, or attached hereto, is an offer by Colonial Tool Group Sales & Service (Seller) to supply Buyer the goods described by this Quotation. This Quotation supersedes any prior communications between Seller and Buyer regarding this subject matter, whether written or oral. BY ACCEPTING THE GOODS, ORDERING THE GOODS OR ACKNOWLEDGING RECEIPT HEREOF, BUYER AGREES TO AND ACCEPTS THE TERMS AND CONDITIONS HEREOF AS THE ONLY TERMS AND CONDITIONS APPLYING TO THE SALE OF THE GOODS PURCHASED PURSUANT HERETO. BUYER'S ACCEPTANCE OF THIS OFFER IS EXPRESSLY LIMITED TO THE TERMS AND CONDITIONS HEREOF. ANY ADDITIONAL OR DIFFERENT TERMS OR CONDITIONS, INCLUDING THOSE CONTAINED IN BUYER'S PURCHASE ORDER OR ACCEPTANCE OF THIS OFFER, ARE HEREBY OBJECTED TO. If any terms or conditions in Buyer's purchase order or acceptance of this offer are in conflict with or not identical to the terms of this offer, the terms and conditions of this offer shall prevail. This offer may be withdrawn by Seller at any time prior to Buyer's acceptance, and will expire automatically 30 days from the date hereof.
- (2) **PRICES:** Prices are:
- A. Subject to change without notice prior to Seller's acceptance of Buyer's order;
 - B. Subject to change in the event of any changes in Buyer's requirements, including but not limited to, changes in Buyer's delivery or production requirements, the quantities or mix of items ordered, or the destination to which quoted;
 - C. Subject to change if Buyer's order does not request delivery when the goods are ready.
 - D. Exclusive of all Federal, state or other governmental entity's excise, sales, use, occupational or any other taxes now in force or enacted in the future;
 - E. Subject to an increase equal in amount to any tax Seller may be required to collect or pay upon the production or sale of goods covered hereby;
 - F. F.O.B. either Windsor, Ontario or Detroit, Michigan, as stated on the face of this Quotation: and
 - G. Subject to such changes as Seller may require because of financial or credit conditions.
- (3) **TERMS.**
- A. Invoices will be issued under date of shipment with terms of net thirty (30) days from the date of invoice, subject to such changes as Seller may impose because of financial or credit conditions existing at the time of shipment.
 - B. Interest shall be charged at the rate of 1.5% per month, or the maximum rate allowed under state or provincial law if it is lesser, on any payments not received by the due date. Any expenses of collection, including reasonable attorney's fees, shall be borne by Buyer.
 - C. Seller reserves the right to modify these terms for export business or special projects.
 - D. If the payment terms hereof provide that Buyer may take possession of the goods to be purchased hereunder prior to Seller's receipt of full payment therefore, Buyer shall, by ordering or accepting goods, grant Seller a purchase money security interest in the goods until Seller has been paid in full in cash (Seller shall accept negotiable instruments only as conditional payment), and Buyer agrees to execute a security agreement and a financing statement so as to allow Seller to perfect its' security interest.
- (4) **SHIPPING DATE.**
- A. Shipping date will be computed after receipt by Seller of Buyer's approval of engineering data required to manufacture the goods, if Buyer's approval is required, or acceptance of Buyer's order, whichever is later. Any shipping dates specified hereunder are approximate and dependent upon prior sales and circumstances beyond Seller's control.
 - B. Every effort will be made to effect shipment within the time stated, but Seller shall not be liable for any damages resulting directly or indirectly from delays in manufacture, shipping or delivery of goods caused by fire, flood, war, riot, embargo, strikes, acts of God, acts of civil or military authorities, civil strife or insurrection, transportation delay, fuel, power or other energy or material shortages, or from delay by reason of any rule, regulation or order of any governmental authority, or from any other causes beyond Seller's control. In the event of any such delay, the shipping date shall be extended for a period of time not less than the time actually lost by reason of the delay.
- C. Any changes in Buyer's requirements will require confirmation or revision of the shipping date(s).
 - D. IN NO EVENT SHALL SELLER BE LIABLE FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES OCCASIONED BY DELAYS IN SHIPMENT, WHETHER OR NOT BEYOND SELLER'S CONTROL.
 - E. SHIPMENT OF PRODUCT OR SERVICE TO BE MADE UPON THE ACCOUNT BEING WITHIN AGREED TERMS.
- (5) **DELIVERY.** All goods shall be shipped F.O.B. Windsor, Ontario, as provided in Section 2.F. Seller shall have the right to select the carrier unless the carrier is designated by Buyer. Risk of loss for goods purchased hereunder shall pass to Buyer upon delivery to Buyer or Buyer's agent, whichever first occurs: all carriers shall be deemed agents of Buyer. Seller shall not be responsible for obtaining any insurance covering the goods during shipment beyond the minimum provided by the carrier unless buyer specifically directs Seller to do so; IT IS BUYER'S RESPONSIBILITY TO SPECIFICALLY INSTRUCT SELLER TO OBTAIN ADDITIONAL INSURANCE.
- (6) **INSTALLATION.** Upon Buyer's request, and at Buyer's expense, Seller will furnish a service technician to supervise installation, start-up and tryout. This Quotation does not include any installation, start-up or tryout services unless specified herein together with Seller's charges therefore. Any additional or special services will be quoted upon request. It is Buyer's responsibility to place the goods and components on their foundation site, perform all rough leveling and to connect all electrical, water, air, coolant and lube lines at Buyer's expense prior to arrival of any Seller's service technician provided for hereunder. Seller reserves the right to modify these terms for export business or special projects.
- (7) **PRODUCTION ESTIMATES.** Any production estimates contained herein are based upon Seller's analysis and understanding of the work to be performed, and assume various production factors, including normal working conditions, competent operators, proper maintenance of the goods, and the use of materials which conform to the specifications contained herein and to the standards of the industry. IT IS EXPRESSLY UNDERSTOOD THAT PRODUCTION ESTIMATES ARE NOT GUARANTEED.
- (8) **WARRANTY.**
- A. Any goods, or part thereof, covered hereby which, under normal operating conditions prove defective and commercially unacceptable in material or workmanship, as determined by Seller's inspection, within (i) ninety (90) days for tool products, or (ii) one (1) year for spindle products, from the date of shipment by Seller, will be repaired or replaced at Seller's option without charge, provided Buyer provides Seller with prompt notice of the defect and establishes that the goods are not subjected to misuse, disrepair, negligence or accident, and are properly installed, maintained and operated within the limits of rated and normal usage and in accordance with Seller's recommended maintenance and operating instructions.
 - B. This warranty does not extend to any goods, or part thereof, which are deemed perishable by Seller, or to goods, or parts thereof, not manufactured by Seller or which are covered by another manufacturer's warranty.
 - C. Unless expressly contained herein, no oral or written statements of Seller regarding the subject matter hereof, other than those of officers of Seller duly authorized in writing, shall a) be considered a part hereof or of any subsequent contract between Buyer and Seller, b) be considered warranties, or c) be relied upon by Buyer. All of the terms hereof are embodied herein and this is a complete and exclusive statement of the terms of this Quotation. No representative of Seller, other than officers of Seller duly authorized in writing, has authority to vary the terms of this Quotation or to bind Seller to a contract for the supply of the goods described herein which varies in any way from the express written terms hereof.
 - D. All parts replaced pursuant to this warranty must be returned to Seller within fifteen (15) days after they are replaced or Seller shall charge Buyer the full price therefore.

- E. The cost of all servicing not provided for in this warranty shall be charged to Buyer by Seller at a per diem rate per person per work day, plus transportation.
- F. THE FOREGOING WARRANTY IS EXCLUSIVE AND SHALL BE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
- (9) **INSTRUCTIONS AND SAFETY DEVICES.** Because Seller's products will be incorporated by Buyer into Buyer's products, it shall be the sole responsibility of Buyer to provide all instructions, warnings and safety devices and equipment required for the safe use and operation of the products and to comply with all applicable governmental laws, rules and regulations and industry safety standards. Insofar as Seller provides instructions, including but not limited to those relating to safety. Buyer agrees to pass such instructions on to all users of the products, including but not limited to Buyer's employees, customers and the employees of any subsequent purchaser. Buyer agrees to indemnify, defend and hold harmless Seller from and against any and all claims arising from a claim that adequate warning or instructions were not provided with the products, or that the products lacked any necessary or appropriate safety device.
- (10) **LIMITATION OF LIABILITY.**
- A. BUYER'S EXCLUSIVE REMEDY AND SELLER'S SOLE LIABILITY FOR BREACH OF WARRANTY SHALL BE REPAIR OR REPLACEMENT, AT SELLER'S OPTION. OF THE GOODS; provided, however, if the goods are incapable of being repaired or replaced, Buyer's exclusive remedy and Seller's sole liability shall be money damages, but such damages shall not exceed the purchase price of the goods.
- B. Any claim for breach of Seller's warranty must be addressed to Seller in writing and must set forth the alleged defect in sufficient detail to permit its easy identification by Seller. Any claim for breach of warranty must be made within thirty (30) days of the alleged breach. Any such claim not made within such period will not be honored by Seller and will be of no force and effect.
- C. Seller's liability for any claim of any kind, including negligence, for any loss or damage arising out of, connected with, or resulting from this Quotation, or from the performance or breach hereof, or from the design, manufacture, sale, delivery, resale, installation, technical direction of installation, inspection, repair, operation or use of any goods covered by or furnished under this Quotation shall in no case (except as provided in Section 11, Property and Patent Rights) exceed the purchase price allocable to the goods giving rise to the claim and shall terminate upon expiration of the applicable warranty period.
- IN NO EVENT, WHETHER AS A RESULT OF BREACH OF CONTRACT OR WARRANTY OR ALLEGED NEGLIGENCE OR STRICT LIABILITY IN TORT, SHALL SELLER BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES INCLUDING, BUT NOT LIMITED TO, LOSS OR PROFITS OR REVENUE, LOSS OF USE OF THE GOODS OR ANY ASSOCIATED EQUIPMENT, COST OF CAPITAL, COST OF SUBSTITUTE EQUIPMENT, FACILITIES OR SERVICES, DOWNTIME COSTS, OR CLAIMS OF CUSTOMERS OF BUYER FOR ANY SUCH DAMAGES.
- (11) **PROPERTY AND PATENT RIGHTS.** Seller retains for itself any and all property rights in and to all designs, inventions and improvements pertaining to any goods designed in connection with this Quotation, and to all patents, trademarks, copyrights and related industrial property rights arising out of the work done in connection therewith. Buyer expressly agrees that it will not assert any rights to property rights retained hereunder by Seller. Seller will indemnify Buyer for any suit or proceeding against Buyer based on a claim that any goods, or part thereof, furnished hereunder constitutes an infringement of a patent of the United States covering a new machine or any new and useful improvement thereof, if notified promptly and in writing and given authority, information and assistance (at Seller's expense) for the defense of the same, and Seller shall pay all damages and costs, if any, awarded therein against Buyer. The preceding sentence shall not apply to any goods, or part thereof, manufactured to Buyer's design specifications. As to such goods, Seller assumes no liability whatsoever for patent infringement and Buyer shall indemnify and hold Seller harmless from any liability arising out of the infringement of any patent in the manufacture, sale or use of any goods described in Buyer's specifications.
- (12) **RESERVATION OF RIGHTS TO CHANGE SELLER'S PRODUCTS.** Seller reserves the right to make improvements to and changes in the design of its products without any obligation to make such changes or improvements in the goods that are the subject hereof or in goods previously manufactured and sold by it.
- (13) **LIMITATION OF ACTIONS,** Notwithstanding any statute or law to the contrary, any action to recover for any loss or damage arising out of, connected with, or resulting from this Quotation, or from the performance or breach hereof, must be commenced within one (1) year after the cause of action accrues to Buyer, unless expressly extended in writing by Seller. It is expressly agreed that there are no warranties of future performance pertaining to the goods that are the subject of this Quotation that would extend such period of limitation.
- (14) **LIABILITY.** Buyer agrees to indemnify and hold Seller harmless from all actions, claims or demands by any person, firm or corporation arising out of or in any way connected with the goods, their operation, use or misuse or the design, construction or composition of any product made by the goods, including without limitation all such actions, claims or demands based in whole or in part on the fault or negligence of Seller.
- (15) **CANCELLATION.** In the event Buyer requests Seller to stop work on or cancel an order or any part thereof resulting from or related to this Quotation, cancellation charges shall be paid to Seller as follows:
- A. Any work that has been completed or is scheduled to be completed within thirty (30) days of the date Buyer notifies Seller, in writing, to stop work or to cancel shall be invoiced to and paid in full by Buyer.
- B. For work in process not covered by the preceding paragraph and for any materials and supplies procured, or for which commitments have been made by Seller in connection with Buyer's order, Buyer shall pay Seller's actual costs and overhead expenses, plus 20%.
- C. Buyer shall promptly instruct Seller as to the disposition of the finished goods and Seller shall, if requested, hold the goods for Buyer's account for a reasonable period of time. All costs of storage, insurance, handling, boxing, and any other cost in connection with such storage shall be borne by Buyer.
- D. A minimum cancellation charge of 15% of the amount of the order shall be due and payable on all cancellations received by Seller. In the event of cancellation, Seller shall also be entitled to all applicable remedies under the Uniform Commercial Code or other applicable law.
- (16) **ASSIGNMENT.** Any assignment by Buyer of its rights hereunder, without the prior written consent of Seller, shall be void.
- (17) **APPLICABLE LAW.** This Quotation, and the rights, obligations and liabilities of the parties hereunder, shall be construed pursuant to the laws of the jurisdiction referenced under Section 2F.
- (18) **WAIVER OF TERMS AND CONDITIONS.** Any failure or delay of Seller to insist upon strict performance of any of the terms and conditions hereof, or to exercise any rights or remedies provided herein or by law, shall not release. Buyer from any of the obligations hereof and shall not be deemed a waiver of any right of Seller to insist upon strict performance thereof, or of any right or remedy of Seller as to any prior or subsequent default hereunder.
- (19) **COMPLETE AGREEMENT.** Any orders received by Seller in response hereto shall not be binding or firm orders until accepted by Seller. This Quotation, when accepted by Buyer in any manner whatsoever, and when Seller's acknowledgment of receipt of acceptance is given to Buyer, shall constitute the entire agreement between the parties relating to this Quotation and the goods provided hereunder, and no alteration or addition hereto shall be binding unless it is in writing and signed by duly authorized officers of both Seller and Buyer.