



## WYANDOTTE INDUSTRIES, INC. TERMS AND CONDITIONS OF SALE

**ACCEPTANCE.** This quotation sets forth an offer by Wyandotte Industries, Inc. ("Seller"), to sell the specified goods ("Goods") to the buyer ("Buyer"). It supersedes any prior oral or written communications between Seller and Buyer. BY ACCEPTING THE GOODS, ORDERING THE GOODS, OR ACKNOWLEDGING RECEIPT OF THESE TERMS AND CONDITIONS, BUYER AGREES TO AND ACCEPTS THE TERMS AND CONDITIONS CONTAINED HEREIN. ANY ADDITIONAL OR DIFFERENT TERMS OR CONDITIONS, INCLUDING THOSE CONTAINED IN BUYER'S PURCHASE ORDER OR ACCEPTANCE OF THIS QUOTATION ARE OBJECTED TO. If any terms or conditions in the purchase order or acceptance of this offer are in conflict with the terms of this quotation, the terms and conditions of this quotation shall prevail. This quotation may be withdrawn by Seller at any time prior to Buyer's acceptance, and will expire automatically 30 days from the date hereof unless accepted by Buyer before expiration or withdrawal. Final acceptance is subject to approval by Seller's credit department.

**PRICES - Prices quoted by Seller are:**

1. Subject to change prior to acceptance of Buyer's order by Seller.
2. Exclusive of all Federal, State, Municipal or other Government Excise, Sales Use, Occupational or like taxes now in force or to be enacted in the future.
3. Exclusive of customs duties and brokerage charges.
4. Subject to an increase equal in amount to any tax Seller may be required to collect to pay upon the sale of the items quoted.
5. Quoted FOB, Wyandotte, Michigan.

**TERMS**

1. Terms are net 30 unless otherwise indicated in the quotation. Interest may be charged at the rate of 1.5% per month or the maximum rate allowed under state law, whichever is less, on any payments which are not received by the due date. Any expenses of collection, including actual attorney's fees, shall be borne by Buyer.
2. Seller reserves the right to modify these terms for export business and special projects.

**SHIPPING ESTIMATES**

1. The shipping date shown in this quotation is approximate and dependent upon prior sales raw material availability, adequate tooling, and circumstances beyond Seller's control.
2. The shipping date will be computed from (a) the date of receipt of all data required to enable complete engineering or (b) acceptance of Buyer's order as provided in the Acceptance paragraph above, whichever is later.
3. Seller shall not be liable for delays, stoppages, or defaults in shipments directly or indirectly due to causes beyond its control, or caused by Act of God, fire, strikes, flood, embargo, epidemic, quarantine restrictions, war, insurrection or riot, acts of civil or military authorities, acts of government, delays in transportation of fabrication, priorities of Seller, unusually severe weather, inability to obtain materials, or defaults of suppliers or subcontractors. In the event of any such delay, the date of shipment shall be extended for a reasonable length of time and the period of such extension shall not be less than the period of delay. If at any time Seller has reason to believe that delivery will not be made as scheduled, it will notify Buyer in writing of the causes of the anticipated delay. Buyer's receipt of the Goods, upon their delivery, waives all of Buyer's claims for delay. Buyer's damages under this section are limited to the terms of the Limitation of Liability section of this quotation.
4. **IN NO EVENT SHALL SELLER BE LIABLE FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES OCCASIONED BY DELAYS WHETHER OR NOT SUCH DELAYS ARE BEYOND SELLER'S CONTROL.**

**DELIVERY.** All Goods shall be shipped FOB, Seller's plant in Wyandotte, Michigan, U.S.A. Seller shall have the right to select the carrier unless the carrier is designated by Buyer and upon delivery of the Goods by Seller to the carrier, the carrier shall be deemed to be the agent of Buyer and thereafter risk of loss shall be on Buyer.

**LIMITED WARRANTY**

1. The Goods will be of the kind and quality described in this quotation.
2. **THE FOREGOING WARRANTY IS EXCLUSIVE AND IS IN LIEU OF ALL OTHER WARRANTIES EXPRESSED OR IMPLIED. ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE HEREBY DISCLAIMED BY SELLER AND ARE EXCLUDED FROM THIS AGREEMENT. THERE ARE NO WARRANTIES WHICH EXTEND BEYOND THE DESCRIPTION ON THE FACE HEREOF.** No agent, employee or representative of Seller other than an officer duly authorized in writing has any authority to bind Seller to any confirmation, representation or warranty concerning the Goods that are covered by this quotation beyond that specifically included in this quotation.
3. Rejected goods cannot be returned without Seller's authorization.
4. Retention of Goods for 30 days from date of shipment shall be conclusive evidence that the warranty has been fulfilled.

**LIMITATION OF LIABILITY**

1. **BUYER'S EXCLUSIVE REMEDY FOR BREACH OF WARRANTY SHALL BE REPAIR OR REPLACEMENT OF DEFECTIVE GOODS** as provided in the limited warranty stated herein. This EXCLUSIVE REMEDY shall not be deemed to have failed of its essential purpose so long as Seller is willing and able to repair or replace defective Goods in the prescribed manner. However, if the Goods are incapable of being repaired or replaced, Buyer's exclusive remedy shall be money damages, but such damages shall not exceed the purchase price of the defective Goods.
2. Any claim for breach of Seller's limited warranty must be in writing, addressed to Seller and must set forth the alleged defect in sufficient detail to permit its easy identification by Seller. Buyer's failure to notify Seller as set forth above will be conclusively deemed Buyer's waiver of its claim.
3. Seller's liability on 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 thereof, 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 the paragraph entitled Property and Patent Rights), exceed the purchase price allocable to the Goods and shall terminate one year after the Goods have been shipped.

**4. IN NO EVENT, WHETHER AS A RESULT OF BREACH OF CONTRACT OR WARRANTY OR ALLEGED NEGLIGENCE OR OTHERWISE, SHALL SELLER BE LIABLE FOR SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, ANY LOSS OF PROFIT, LOSS BY REASON OF PLANT SHUTDOWN, INCREASED EXPENSE OF OPERATION, LOSS OF PRODUCT OR MATERIALS, 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 SUCH DAMAGES OR ANYTHING DONE IN CONNECTION HERewith OR ANY OTHER LOSSES RESULTING FROM THE GOODS WHETHER BASED UPON CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE EVEN THOUGH SELLER MAY HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY EVENT, SELLER'S LIABILITY WITH RESPECT TO THE GOODS SHALL NOT EXCEED AN AMOUNT EQUAL TO THE PURCHASE PRICE THEREOF.**

**QUANTITY VARIATION.** Quantity variation shall be to standard manufacturing and commercial practice of plus or minus 10% unless otherwise mutually agreed.

**TOOLING.** Unless otherwise specified, all tooling for the production of the Goods shall remain the property of the Seller.

**PRODUCT LIABILITY AND INDEMNIFICATION**

1. Buyer shall notify Seller promptly and in any event within thirty (30) days of any accident or malfunction involving any of the Goods which results in personal injury or damage to property and shall cooperate fully with Seller in investigating and determining the cause of such accident or malfunction. In the event that Buyer fails to give such notice to Seller and so cooperate, Buyer agrees to indemnify and hold Seller harmless from any claims arising from such accident or malfunction.

2. If the Buyer has furnished specifications for the Goods to be provided hereunder, Buyer agrees to save harmless, indemnify, protect and defend Seller against all suits at law or in equity, and all claims, demands, damages and judgments arising out of or due to actual or alleged infringement of any patent, copyright or trademark, together with all expenses incurred by Seller in connection therewith by reason of the sale or use of the materials or products purchased.

**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 the 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 herein by Seller.

**CHANGES.** Buyer accepts the limited capabilities of the Goods, their materials and components upon approving the design of the Goods. Buyer shall bear the cost of all subsequent changes to the design, materials and/or components of the Goods subsequent to approving the design. Buyer shall request all such changes by change order, and pay the cost of the change, in full, within 30 days of submitting the change order.

**LIMITATION OF ACTIONS.** Any statute or law to the contrary notwithstanding, any action by Buyer to recover for any loss or damage arising out of, connected with, or resulting from this quotation, or from the performance or breach thereof must be commenced within one year after the cause of action accrues to Buyer, unless otherwise extended by Seller in writing. 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 beyond such one year period of limitation.

**CANCELLATION.** In the event Buyer requests Seller to stop work or cancel its order or any part thereof, the following cancellation charges shall apply: (a) any and all work that is complete or scheduled for completion within thirty (30) days of the date of notification in writing to stop work or to cancel, shall be invoiced and paid in full, and (b) any materials and supplies procured or for which definite commitments have been made by Seller in connection with Buyer's order, shall be invoiced and paid in full, excepting those materials and supplies invoiced and paid under item (a).

**APPLICABLE LAW.** This quotation and the rights, obligations and liabilities of the parties, shall be construed pursuant to the laws of the State of Michigan.

**COMPLETE AGREEMENT**

1. Orders received by Seller shall not be binding or firm orders until approved by Seller. When accepted by Buyer in accordance with the Acceptance paragraph hereof, and when Seller's acknowledgement of receipt of acceptance is given to Buyer, this agreement shall constitute the entire agreement between the parties relating to this quotation and the Goods provided pursuant thereto, shall supersede all previous communications or understandings between Buyer and Seller with respect to the subject matter hereof and no alteration or addition to this agreement shall be binding on Seller unless it is in writing and signed by a duly authorized officer of Seller.

2. The parties hereto agree that if any clause is held unenforceable by a court of competent jurisdiction, the balance of the contract shall remain in full force and effect.

**WAIVER OF TERMS AND CONDITIONS.** Failure or delay of Seller to insist upon strict performance of any of the terms and conditions of this quotation or to exercise any rights or remedies provided herein or by law, shall not release Buyer from any of the obligations of this quotation and shall not be deemed a waiver of any right of Seller to insist upon strict performance hereof or of any rights or remedy of Seller as to any prior or subsequent default hereunder.