



Ajax Metal Forming Solutions General Terms and Conditions of Sale

Updated July 2024

1. Agreement. These General Terms and Conditions of Sale (“Terms”) apply to all proposals and quotations submitted by Ajax Metal Forming Solutions (“Seller”), to all purchase orders received by Seller, and to all sales of goods and services (collectively, “Goods”) sold by Seller, except as otherwise specifically agreed to by Seller. A written quotation issued by Seller is an offer to sell. Buyer shall be deemed to have accepted the provisions of these Terms and an agreement shall be formed by any of the following: (a) signing and returning to Seller a copy of any quotation; (b) sending to Seller a written acknowledgment of the quotation; (c) placing a purchase order or giving instructions to Seller respecting manufacture, assortment, or delivery of Goods following receipt of any quotation; (d) accepting delivery of all or any part of the Goods; (e) paying for all or any part of the Goods; or (f) indicating in some other manner Buyer’s acceptance of these Terms. All sales by Seller consist only of these Terms and those in other documents which are referred to herein or are attached hereto or in a document provided or signed or issued by Seller and referencing the transaction (all of which constitute the “Agreement”). Seller objects to and will not agree to any terms that are proposed by Buyer, regardless of whether such terms are additional to or different from these Terms. Seller’s sale, and Buyer’s purchase, of Goods are conditioned on these Terms only.

2. Payment Terms and Price. Unless otherwise specified by Seller, full payment of the price is due thirty (30) days after shipment, without discount. However, if at any time Seller determines that Buyer’s financial condition or credit rating does not justify a sale on credit or if Buyer shall at any time be in default in any indebtedness or obligation owing to Seller, then Seller may require advance payment or cash on delivery payment terms. Any payment not made when due shall accrue a finance charge of 1-1/2% per month. Buyer shall pay the reasonable costs and expenses (including actual attorney fees) incurred by Seller in enforcing any of Seller’s rights under these Terms. Payment must be made at Seller’s office in Minneapolis, Minnesota. Seller has the right to increase or decrease its prices at any time upon giving two weeks’ notice to Buyer to reflect any change in Seller’s costs, including, but not limited to, change in the cost of materials, manufacturing (including costs to conform to any design or specification changes requested by Buyer), treating, coating, plating material or process capability data, logistics requests or any other performance by Seller. Seller is not obligated to perform any changes requested by Seller, but shall be fully compensated for them if Seller complies with such requested change(s). Seller shall not be responsible for, and Buyer may not back-charge Seller for, sorting or inspection fees, excess freight charges or allegedly defective goods without Seller’s prior written authorization.

3. Delivery and Risk of Loss. Unless otherwise agreed to by Seller, delivery shall be F.O.B. Seller’s plant or other point of origin, but risk of loss of the Goods shall pass to Buyer upon identification of the Goods to this Agreement. Shipping dates are estimates only, and time is not of the essence. Seller may ship all the Goods at one time or in portions from time to time. Seller shall have the right to determine the method of shipment and routing of the Goods, unless otherwise specified by Buyer.

4. Force Majeure. Seller shall not be responsible or liable for any delay or failure in any performance due, without limitation, to casualty, labor disturbances, fire, flood, governmental act or regulation, riot, unavailability of anticipated usual means of supplies, materials or shipping space, plant breakdown, equipment failure, power failure, delay or interruption of carriers, tool defects, unscheduled maintenance, accident, war, blockade, embargoes or acts of God or any other causes beyond Seller’s reasonable control.

5. Defects; Remedies. Buyer shall have seven days after receipt of the Goods to inspect and either accept or deliver written notice of objection and/or rejection to Seller that specifies all defects and non-conformities upon which Buyer will rely to support its rejection. Failure to so act shall constitute an irrevocable acceptance by Buyer of the Goods. If Buyer rejects or objects to any Goods, if requested by Seller, Buyer shall return them to Seller, transportation prepaid, within three days after such request. A failure to so return shall constitute an irrevocable acceptance. At Seller's option, Seller may either repair or replace the defective Good, at Seller's expense. The acceptance of any Goods returned to Seller shall not be deemed an admission that the Goods are defective, and if Seller determines that the Goods are not defective they may be returned to Buyer at Buyer's expense. Subject to Seller receiving timely notice by Buyer, defective or non-conforming Goods or parts thereof shall be repaired or replaced by Seller without any additional charge and shipped to Buyer, FOB Seller's plant, for reinstallation by Buyer at its cost. The warranty obligation of Seller is limited to the repair or replacement at Seller's plant. Seller may provide such repairs itself or through its third party contractors. In lieu of repair or replacement, if Seller elects, Seller may, upon making a determination of nonconformity or defect, keep the Goods and refund the purchase price. Buyer's remedies shall be limited exclusively to those provided in this Section. UNDER NO CIRCUMSTANCES, AND REGARDLESS OF THE NATURE OF THE CLAIM ASSERTED BY BUYER, WILL SELLER BE LIABLE FOR ANY FORM OF LOSS PROFITS (WHETHER CHARACTERIZED AS DIRECT OR CONSEQUENTIAL DAMAGES), EXEMPLARY, PUNITIVE, SPECIAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES, INCLUDING BUT NOT LIMITED TO: INCREASED COSTS; DAMAGE TO EQUIPMENT, TOOLING, PREMISES, OR WORK-IN-PROCESS; COST OF CAPITAL; COST OF PURCHASED POWER; SUBSTITUTE OR ADDITIONAL EQUIPMENT, FACILITIES OR SERVICES, PRODUCTION INTERRUPTION OR START-UP; OR THE CLAIMS OF THIRD PARTIES FOR SUCH DAMAGES. Buyer waives any causes of action or theories of liability including, but not limited to, those arising under contract, tort, strict liability, product liability statutes, or otherwise, except as specifically provided by the Uniform Commercial Code as modified and limited herein. The replacement or repair of any Goods by Seller does not give rise to any new warranty, and the warranty period provided for in Section 9 shall not be extended by the length of any period from the date the defective or non-conforming Goods are received by Seller until the date the repaired or replacement Goods are delivered to Buyer.

6. Unrestricted Right of Sale. Seller shall have the unrestricted right to sell to other parties products identical or similar to the Goods, unless such products conform precisely to designs and specifications furnished to Seller by Buyer and Buyer has provided Seller with timely evidence that Buyer is vested with exclusive patent rights in such designs and specifications.

7. Seller's Exclusive Rights in Goods and Confidentiality.

(a) If the Goods are made to Seller's designs and specifications, Seller shall retain exclusive proprietary rights in such designs and specifications, and Buyer shall not obtain products conforming to or based upon such designs or specifications from any source other than Seller without the prior written authorization of Seller. Any Intellectual Property owned or licensed by Seller and used by Seller in connection with the Goods and/or the performance of its obligations hereunder shall remain the exclusive property of Seller and its licensors, as the case may be. Nothing in this Agreement shall be deemed to grant Buyer any license or any other rights in Seller's Intellectual Property. The term "Intellectual Property" shall include without limitation all of the following: (i) inventions, discoveries, patents, patent applications and all related continuances, divisional, reissue, utility model, design patents, applications and registrations thereof, certificates of invention; (ii) works, copyrights, registrations and application for registration thereof; (iii) computer software programs, data and documentation; (iv) trade secrets, confidential information, know-how, techniques, designs, prototypes, enhancements, improvements, work-in-progress, research and development information; and (v) all other proprietary rights relating to the foregoing.

(b) All proposals, plans, Intellectual Property and other information (including marketing, business, price and cost information) furnished by Seller in bidding, negotiating and performing the Agreement, are confidential

and the property of Seller, whether or not marked “confidential,” and shall not be shown or disclosed to any other third party or used by Buyer except as may be necessary for the selection or use of the Goods. Buyer acknowledges that any information disclosed to Seller has not and will not be considered by Buyer or Seller to be confidential or a trade secret unless clearly and conspicuously noted on the disclosure, or in some other writing delivered to Seller at or prior to the time of the disclosure.

8. Seller’s Exclusive Rights in Modifications. All modifications of the Goods, of their designs and specifications, and of methods of their manufacture, handling, installation, operation, and use originated or developed by Seller or acquired by Seller from other parties shall be and remain the exclusive property of Seller and shall be included in the definition of Seller’s Intellectual Property (Section 7), regardless of whether Seller charges for such modification(s) or Buyer or Seller provided the original designs and specifications, and Buyer shall not obtain products embodying, incorporating or employing any such modifications from any source other than Seller without the prior written authorization of Seller.

9. Warranty.

(a) For a period of 12 months after delivery, Seller warrants to Buyer that the Goods will be free from defects in manufacture and workmanship. There are no express warranties other than those contained in these Terms. SELLER EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. SELLER IS A BUILD-TO-PRINT SUPPLIER AND BUYER IS SOLELY RESPONSIBLE FOR THE SPECIFICATIONS AND DESIGN AND DETERMINING THE PROPER APPLICATION AND USE OF THE GOODS.

(b) Buyer warrants to Seller that the design and specifications for the Goods are free from defect and that the Goods do not infringe on the intellectual property or trade secret rights of a third party.

10. Components of Another Product. If any of the Goods constitute parts or components to be incorporated or installed in a product manufactured or assembled by or for Buyer, then (i) Buyer shall obtain, or cause the end-user of the product to obtain, all permits, inspections and licenses required for installation or operation of the product, (ii) Buyer shall cause the product to conform to all applicable laws, ordinances, regulations, codes and standards, and (iii) Buyer shall place on the product all safety devices and warnings, and shall furnish to its buyer all operating instructions, that shall be necessary or desirable to prevent any death, personal injury or property damage from being caused by any use or operation of the product.

11. Resale. On any resale of the Goods, Buyer shall contractually limit its buyer’s rights and remedies against both Buyer and Seller to the same extent as Buyer’s rights and remedies are limited above.

12. Tooling. If Buyer furnishes tooling to Seller or fully pays Seller a separately-identified charge for tooling to be used in the manufacture of the Goods, then such tooling shall be the property of Buyer, subject to the following: (i) risk of loss of the tooling shall at all times remain with Buyer; (ii) Seller retains, and Buyer grants to Seller, a security interest in the tooling to secure all obligations at any time owing by Buyer to Seller; (iii) Buyer shall have no right to possession of the tooling as long as Seller has any outstanding obligation to sell, to Buyer goods whose manufacture requires use of the tooling; (iv) Buyer shall reimburse Seller on demand for all costs of modifications of the tooling made reasonably necessary by changes to the specifications or design for the goods; and (v) upon Seller’s demand, Buyer shall immediately remove the tooling from Seller’s premises, at Buyer’s expense and, if Buyer fails to do so within ten days after such demand, Seller may destroy or otherwise dispose of the tooling, without further notice or liability to Buyer.

13. Cancellation/Termination.

(a) If Buyer chooses to cancel or terminate any order or reduce any quantities of Goods previously ordered or forecasted, Buyer must purchase from Seller all finished Goods and work-in-process manufactured by Seller and all raw materials ordered by Seller and any other costs of manufacture that Seller incurred in reliance on Buyer's order or forecast.

(b) If Buyer fails to pay or perform any indebtedness or obligation owing to Seller (whether or not related to the sale of Goods), then Seller may consider Buyer's failure to be an anticipatory repudiation of any or all outstanding contracts providing for Seller to sell goods to Buyer, and Seller may, without liability to Buyer, cancel any or all of those outstanding contracts.

14. Indemnity. Buyer shall indemnify and hold harmless Seller from any and all third party claims, damages, losses, claims and expenses, including actual attorney fees, under theories of tort, product liability, negligence (ordinary or gross), warranty, contract, statute or otherwise that arise out of (1) any breach by Buyer of its obligations under these Terms including its warranty obligations or (2) any action or inaction of Buyer or its employees, customers or agents if such action or inaction was a cause of injuries or damages giving rise to claims against Seller.

15. Seller's Rights. Seller has all rights and remedies given to sellers by applicable law, and Seller's rights and remedies are cumulative, provided Seller shall be entitled to only a single full recovery. Seller's failure or delay in enforcement of any provision shall not constitute a waiver of a breach or of the provision itself.

16. Time For Bringing Action. Any action by Buyer against Seller for breach of this Agreement or for any other claim arising out of or relating to the Goods or their design, manufacture, sale or delivery must be brought within one year after the cause of action accrues.

17. Applicable Law. This Agreement between Seller and Buyer shall be considered to have been made in the State of Minnesota, and it shall be governed by and interpreted according to Minnesota law. Any action arising out of or relating to this Agreement may only be brought in any federal or state court in Minneapolis, Minnesota having jurisdiction of the subject matter, and Buyer irrevocably consents that any such court shall have personal jurisdiction over Buyer and waives any objection that the court is an inconvenient or otherwise improper forum.

18. Taxes. Seller's price does not include any privilege, occupation, personal property, value-added, sales, excise, use or other taxes, and Buyer shall be liable for all such taxes, whether or not Seller invoices Buyer for them.

19. Complete Agreement; Amendment. The Agreement is a final, complete and exclusive statement of the agreement of the parties. No modifications, limitations, waiver or discharge or any provision of the Agreement shall bind Seller unless in a writing signed by Seller's authorized employee.