

PEERLESS INDUSTRIAL EQUIPMENT
Terms and Conditions of Sale

The following terms and conditions of sales apply unless otherwise stated in writing on the order acknowledgment:

1. PRICES

- (a) F.O.B. point of origin
- (b) Subject to change at any time before acceptance of Purchaser's order by home office, as evidenced by Seller's formal acknowledgment, except any written quotations shall not be changed if accepted by Seller's home office within thirty (30) days from the date of such quotation.
- (c) Firm upon Seller's acceptance of Purchaser's order as evidenced by this acknowledgment unless escalation terms are included in terms of sale.
- (d) Prices do not include sales, use, excise, or similar taxes, or duties. Consequently, in addition to the prices specified, the amount of any present or future sales, use, excise or other similar tax applicable to the sale or use of the equipment shall be the responsibility of and paid by the Purchaser, or in lieu thereof; the Purchaser shall provide the Seller with a tax-exemption certificate acceptable to the taxing authorities. Seller may invoice such taxes, and Purchaser must pay at a later date, if taxes were not included in the original invoice.
- (e) Subject to change caused by modification of specifications or terms mutually agreed upon in writing after order acceptance.

2. SHIPPING SCHEDULE

- (a) Computed from the date of this acknowledgment of the order or, in the case of special items, from the date Seller receives complete information & financial settlement necessary to proceed with release of this order for design and manufacture.
- (b) The shipping date specified is:
 - 1. Subject to prior sale before seller's receipt of order and deposit and to confirmation by the Home Office at time of placing order.
 - 2. Subject to any changes that may be caused by procedures or priorities which may be set up by the US Government or any of its agencies.
 - 3. Subject to change caused by modifications of specifications; and if applicable, receipt from Purchaser of approval drawings, special documentation or special components, in accordance with the schedule specified by the Seller, or terms mutually agreed upon in writing after order acceptance.
 - 4. Shipping date estimates **shall not** be considered a promise of timely delivery.
- (c) Seller shall have no liability for loss or damage resulting from a delay in scheduled delivery caused by war, riots, strikes, labor disputes, fires, serious accidents, availability of or delays in receipt of parts or materials from suppliers or subcontractors, design or engineering problems relating to Purchaser's orders, or any other circumstances beyond Seller's control.
- (d) Under no circumstance shall Seller have any liability whatsoever for loss of use or for any indirect or consequential damages due to delay in scheduled delivery.

3. ELECTRICAL EQUIPMENT

- (a) Wiring and protective conduit from Purchaser's power supply to the machine control is not included in Seller's quotation.

4. WARRANTY

- (a) Any product or part thereof covered by Seller's quotation which, under normal operating conditions in the plant of the original Purchaser thereof, proves defective in material or workmanship within: One (1) year or 2000 hours of usage, whichever comes first, from the date of shipment from Seller's plant will be repaired or replaced, at Seller's option, but not installed, free of charge, F.O.B. original shipping point, provided that Purchaser promptly sends to Seller notice of the defect and establishes that the Purchaser has properly installed and maintained the product and furthermore, that Purchaser has adequately trained its personnel so that personnel are competent to operate the product; within the limits and normal usage.
- (b) The terms of this warranty do not in any way extend to any product or part thereof covered by Seller's quotation which, for example, such as saw blades, has a life, under normal usage, inherently shorter than the period indicated above for the product. Clutches, bearings, motors, electrical components and similar purchased items will be warranted only to the extent that they are warranted by the manufacturers thereof.
- (c) THE WARRANTY SET FORTH IN THIS PARAGRAPH 4, IN RESPECT TO REPLACEMENT OF DEFECTIVE PARTS, AND ANY SUCH ADDITIONAL WARRANTY OR REPRESENTATION EXPRESSLY MADE A PART OF SELLER'S QUOTATION ARE IN LIEU OF ALL OTHER WARRANTIES EXPRESSED OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. SELLER SHALL NOT BE LIABLE FOR INDIRECT OR CONSEQUENTIAL DAMAGES.
- (d) Purchaser's sole and exclusive remedy against Seller for any breach of warranty or other term or condition shall be the repair or replacement of the defective goods, and such remedy shall be exclusive. Purchaser agrees that no other remedy (including but not limited to, incidental or consequential damages for lost profits, lost sales, lost production, downtime, overhead, labor, injury or damage to person or property, spoilage or any other incidental or consequential loss) shall be available to the Purchaser.
- (e) This warranty is limited to the original Purchaser and is not transferable.
- (f) All claims by Purchaser against Seller that goods shipped here under do not conform to specifications, and all other claims made here under by Purchaser, must be in writing and received at Seller's Home Office, within the warranty period and within 10 days of the date of Purchaser's detection of defect. Failure to give such notice with such time period shall constitute a waiver by Purchaser of all claims with respect to such goods.
- (g) This warranty is limited to defective parts or workmanship, and **in no way applies** to any damage caused by power surges, improper power connections or failures, electrical or mechanical interference caused by other equipment or transportation damage, over which Peerless Industrial Equipment Corp. has no control.

5. RETURNED MERCHANDISE

- (a) In no case are goods to be returned without first obtaining **written** permission from Seller.
- (b) Restocking charges:
 - 1. For currently used, off the shelf items; in stock. Restock charges 25%
 - 2. Manufactured items, we did not have in stock and had to put in time, etc. Restock charges 50% or as deemed by Seller
 - 3. Specials & Discontinued items we had to manufacture or buy No returns allowed.
 - 4. Current Purchased items, had to go out and purchase and ship out (i.e. solenoid, valves, etc.) Restock charges. . .50% or as determined by Seller.
- (c) A Purchaser returning merchandise must pay transportation charges and bear risks of loss or damage to goods while in transit.

6. PRODUCTION ESTIMATES

- (a) All working drawings or other materials provided by Seller are for general information purposes only, and may or may not relate to Purchaser's order or other machine or equipment. Any Specifications contained therein are not binding on Seller except as expressly so stated on this form or other written form. Seller reserves the right to make at any time, such changes in detail of design or construction as shall in the sole judgment of Seller constitute an improvement over former practice.
- (b) Production data, where given, is based on Seller's careful analysis and understanding of the limits of accuracy and handling facilities provided, but is nonetheless an estimate only and is not guaranteed or warranted. If by written agreement the equipment is to be subject to acceptance tests before shipment, rejection under this clause must take place prior to shipment.

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7. CANCELLATION

- (a) Following acceptance by Seller, this order may not be canceled without the written consent of the Seller. Cancellation charges of up to 25% of order value, or such other amount as determined by Seller will promptly be invoiced from Seller for all standard goods as maintained on printed price lists .
- (b) Seller shall have the absolute right to cancel and refuse to complete this order (1) if at any time all terms and conditions governing this order (including any requirement of progress payments) are not strictly complied with by the Purchaser, and/or (2) if at any time the Purchaser becomes bankrupt or insolvent.
- (c) In the event of cancellation by Seller as above set forth or of a request by the Purchaser to stop work or to cancel the whole or any part of an order, the Purchaser shall make payments to the Seller as follows:
 1. Any and all work which is scheduled and that can be completed within 30 days from the date of notification to stop work on account of cancellation shall be shipped, and paid for in full.
 2. For work in process and any materials and supplies procured or for which definite commitments have been made by the Seller in connection with the order, the Purchaser shall pay to the Seller the actual costs and overhead expenses determined in accordance with generally accepted accounting practice plus 25%.
 3. For all special materials for which definite commitments have been made by the Seller in connection with the order, the purchaser shall pay to the Seller the full purchase price. Said special materials shall become the property of Purchaser.

8. PAYMENT TERMS

- (a) Terms of payment on all orders are subject to the approval of PEERLESS INDUSTRIAL EQUIPMENT credit department. If buyer does not pay PEERLESS INDUSTRIAL EQUIPMENT any amount due under this contract or any other agreement when such amount is due or if buyer defaults in the performance of this contract, PEERLESS INDUSTRIAL EQUIPMENT may, without prejudice to PEERLESS INDUSTRIAL EQUIPMENT'S other lawful remedies (a) terminate PEERLESS INDUSTRIAL EQUIPMENT obligations under this contract, (b) declare immediately due and payable all Buyer's obligations to PEERLESS INDUSTRIAL EQUIPMENT, (c) change credit terms with respect to any further work, (d) suspend or discontinue any further work until Buyer pays all overdue amounts. On all orders over \$5,000.00, unless otherwise stated, terms are 30% with order, 60% before shipment; 10% net 30 days. Interest will be charged starting with the 31st day at the rate of 11/2% per month compounded monthly.
- (b) Peerless Industrial Equipment Corporation reserves the right to file UCC documents on all orders with a balance of \$5000.00 or more.

9. ACCEPTANCE OF ORDERS

The Seller shall furnish written "Order Acknowledgment" which shall constitute the Seller's acceptance of the order upon the terms and conditions specified in the "Order Acknowledgment".

10. TITLE

Delivery of items of any order to the carrier by Seller consigned to Purchaser, or as Purchaser shall direct, shall constitute transfer of title, ownership, possession and property in and to such items at such point of delivery; such carrier shall thereafter be deemed to be acting for the Purchaser and the said items thereafter shall be at Purchaser's risk, provided however, that Seller reserves all right to stoppage in transit and to repossess said items, not withstanding delivery to the carrier, until full payment of purchase price is made to Seller.

11. CONFIDENTIALITY

Drawings, machine specifications or production methods furnished herein or herewith constitute our confidential information. Their receipt or possession does not convey any right to use, license, reproduce or disclose the information nor any part hereof without written consent.

12. PATENT INDEMNITY

Seller agrees that it shall, at its own expense, defend any suit that may be instituted by any party against Purchaser or on alleged infringement of any patent relating to the item of sale as originally furnished by Seller, provided Purchaser shall have made all Payments due therefor and gives to Seller immediate notice in writing of the institution of such suits, and permits Seller through its counsel to defend the same, and give all needed information, assistance and authority to enable Seller to do so, and thereupon in case of final award or damages in such suit, Seller, at its option, may pay such award or remove said item of sale and refund the purchase price so that Seller's liability shall be limited to the purchase price of the item of sale, in case such item of sale or part is in such suit held to infringe any such patent and its use thereof is enjoined, Seller shall, at its expense and at its option:

- A. Obtain for the Purchaser the right to continue using the equipment or part, or
- B. Replace the same with non-infringing equipment, or
- C. Modify the same so that it becomes non-infringing, or
- D. Remove said equipment and refunds the purchase price.

Purchaser shall hold Seller harmless from any action arising by reason of alleged infringement of patent related to the design and construction of the products handled by the item of sale.

13. PLACE OF CONTRACT

All orders are made subject to final acceptance by Seller at its principle office in the State of Wisconsin, USA. The plant of Seller in the State of Wisconsin, shall be the place of performance where title passes to Purchaser and payment becomes due. This agreement shall be a Wisconsin contract and shall be interpreted and administered for all purposes under the laws of Wisconsin.

14. ATTORNEY'S FEES

In the event of a breach of this agreement, or if Seller must defend itself against claims, which are the responsibility of the Purchaser, Purchaser shall pay all Seller's attorney's fees, including in-house counsel expenses and related costs.

15. GENERAL

The foregoing compromises Seller and Purchaser's entire agreement. On any order placed pursuant hereto, the above provisions entirely supersede any prior oral or written correspondence, quotation or agreement. There are no agreements between Seller and Purchaser in respect of the product quoted herein except as set forth in writing. There shall be no modification to the foregoing except as entered into by writing, signed by Seller and Purchaser. The designs and specifications of all products sold by Seller are subject to change without notice, and in the event of any such changes, Seller will have no obligation whatsoever to make similar changes in a product previously ordered by Purchaser. In the event of breach or repudiation by us, you shall not be entitled to consequential damages or damages for loss of use, and in no event shall damages to which you are entitled exceed the price stated herein. No agent, salesman, or distributor has any authority to obligate us by any terms, stipulations, or conditions not herein expressed. Neither the warranty nor any other provision stated herein entitles you or any third party to damages, direct or consequential, for personal injury arising from the installation, operation or use of the goods furnished hereunder and you agree to assist us and to hold us harmless in effectuation of this provision.

You should advise us immediately of anything herein which you do not assent to as a term or condition governing the transaction covered herein.

Wherever used herein SELLER shall mean Peerless Industrial Equipment. PURCHASER shall mean the customer placing the purchase order with the Seller.