



## TERMS AND CONDITIONS OF PURCHASE

Please read these terms and conditions carefully. They materially affect the parties' obligations. Kingsford Broach & Tool, Inc. ("Buyer") is bargaining for and will do business with the seller only on the terms and conditions set forth herein.

1. **Acceptance; Contrary Terms; Entire Agreement.** This order is an offer to purchase goods and/or services ("Items"). Buyer may revoke this offer at any time prior to its acceptance by Seller. Commencement of delivery or other indications of acceptance by Seller will result in a firm contract containing all terms and conditions on this form. NOTWITHSTANDING THE CONTENTS OF ANY FORM FROM SELLER, THE ONLY EFFECT THEREOF WILL BE TO ACCEPT THIS ORDER ON BUYER'S TERMS AND CONDITIONS. ANY PROVISION OF ANY FORM OR OTHER WRITING INCONSISTENT WITH THESE TERMS AND CONDITIONS WILL NOT CONSTITUTE A PART OF THE CONTRACT OF SALE. Buyer's performance is conditional upon Seller's assent to these terms and conditions; if any of these terms and conditions are not acceptable to Seller, Buyer must be notified promptly, as provided below. This writing is intended by the parties to be the final expression of their agreement and is intended also as a complete and exclusive statement of the terms and conditions thereof. No modification of any term or condition will be valid or binding upon Buyer unless approved by Buyer in writing.
2. **Packing.** The Items will be packed and shipped by Seller in accordance with any instructions by Buyer and in accordance with good commercial practices, to ensure that no damage results from weather or transportation. No extra charges will be allowed for packing and shipping unless specified on the Purchase Order.
3. **Indemnification.** Seller agrees to defend, indemnify, and hold Buyer, its employees, customers, successors and assigns, harmless against any claims or demands, action or proceeding, liability, loss or expense whatsoever, including reasonable attorneys' fees, arising from any actual or alleged (a) defect in the Items, (b) failure to comply with Buyer's specifications, (c) failure to comply with Seller's express and implied warranties, (d) violation by the Items, or in their manufacture or sale, of any statute, ordinance or administrative order, rule or regulation, or (e) infringement by any Article not manufactured, packaged, or labeled in accordance with Buyer's design, of any patent, trademark, or other trade designation, trade secret, copyright, or other intellectual property right, which shall have been in effect at the time this order is accepted by Seller. If any claim, demand, action or proceeding is commenced against Buyer by reason of any of the above matters, Buyer agrees to give Seller notice thereof in writing.
4. **Warranty.** In addition to all warranties prescribed by law, Seller specifically warrants that the Items ordered will be merchantable; free from defects in material or workmanship; to the extent the Items are not manufactured in accordance with Buyer's design, free from defects in design; and fit for the purposes for which such Items are intended and ordinarily employed. Seller warrants that the Items will conform to any specifications, drawings, and other descriptions. Such warranties, including warranties prescribed by law, will run to Buyer, its successors, assigns, and customers, and to users of the Items. The agreement to purchase is subject to and contingent on the right of the purchaser to recover for any incidental or consequential damages related in any way to the products purchased, whether in tort, strict liability, breach of contract, breach of express or implied warranty, or any other claim permitted under applicable law.
5. **Inspection; Rejection.** Items purchased hereunder are subject to inspection and approval at Buyer's designated destination or Supplier's premises. Buyer reserves the right, at any time, to reject and refuse acceptance of Items that are not in accordance with Buyer's instructions, specifications, drawings, and data or Seller's warranties (express and implied). Seller will reimburse Buyer for inspection costs of rejected Items. Rejected or refused Items will be returned to Seller at Seller's expense. Payment for any of the Items hereunder will not be deemed an acceptance thereof.
6. **Changes, Cancellation and Termination.**
  - (a) Buyer may, at any time before delivery of the order, make changes in quantities, specifications, delivery schedules, and methods of shipping and packing. If such changes cause an increase or decrease in prices or in time required for performance, Seller will notify Buyer thereof within 15 days of receipt of such change by Seller, and an equitable adjustment will be made. Changes will not be binding on Buyer unless evidenced by a change order issued and signed by Buyer.
  - (b) Time is of the essence and Buyer may cancel this agreement in whole or in part, without liability, if deliveries are not made at the time and in the quantities specified or in the event of any other breach or failure of any other terms or conditions hereof.
  - (c) Buyer may terminate this agreement in whole or in part, at any time for any reason (including, without limitation, the commencement of any reorganization or proceeding involving Seller based on actual or alleged insolvency) without liability, by informing Seller of its intent to terminate this agreement. When Seller is informed of Buyer's intent to terminate the agreement, it will, to the extent specified therein, stop work and the placement of subcontracts under this agreement, terminate work under subcontracts outstanding hereunder, and take any necessary action to protect the property in Seller's possession in which Buyer has or may acquire an interest. Any termination claim submitted by Seller as required below must be received by Buyer within 10 days of the effective date of the termination. Buyer reserves the right to accept or reject any such claim in whole or in part.
7. **Compliance with Laws.** Seller will comply with all applicable federal, state and local laws, regulations and orders. This includes, without limitation, the requirement that Seller certify in writing that the Items were produced in compliance with and meet all applicable requirements and standards of the Fair Labor Standards Act and the regulations and orders of the United States Department of Labor issued thereunder, the Occupational Health and Safety Act, and applicable affirmative action laws.
8. **Setoff.** Buyer may set off any amount due from Seller, whether or not under this agreement, against any amount due Seller hereunder.
9. **Subcontracting; Assignment.** Seller may subcontract its obligations with respect to Items made to Buyer's design only with Buyer's prior written consent. Seller may not assign any of its rights, duties, or obligations under this agreement without Buyer's prior written consent. Any attempted assignment without such consent, even if by operation of law, will be void. Any consent by Buyer to Seller's subcontracting or assignment will not relieve Seller from its obligations, from any liability for breach, or from any duty to perform hereunder.
10. **Notice of Delay.** Whenever any occurrence or event affecting Seller or its subcontractors or suppliers delays or threatens to delay the timely performance of this order, Seller will immediately give written notice thereof to Buyer as provided below.
11. **Notices.** All required notices, claims, and demands under this agreement shall be (1) in writing, in the English language, (2) signed by a person authorized to provide such notice, and (3) considered given when deposited, postage prepaid, in a United States Post Office or authorized depository addressed to the other party at the address contained on Buyer's Purchase Order.
12. **Excuse From Performance.** Either party is excused from performance if performance is rendered impracticable by any accident; breakdown; riot; war; delay; strike; labor or transportation problem; act of God; or other causes and conditions, whether of like or different nature, that are beyond such party's reasonable control. Written notice of delay or failure to perform must be given, as provided above, by the affected party within 10 days of the cause or condition. At Buyer's request, Seller will provide adequate assurances that the delay or failure to perform will not exceed the maximum delay, if any, specified by Buyer. If Seller fails to immediately provide such assurances, Buyer may immediately cancel the agreement without liability.
13. **No Identification After Breach.** If Buyer wrongfully rejects or revokes acceptance of any Article, fails to make any payment due on or before delivery, or repudiates with respect to any Article covered by this agreement, Seller will have no right to identify any goods to the contract after it learns of the rejections, revocation, breach or repudiation.
14. **Reservations of Rights; Waiver.** Buyer explicitly reserves its rights to all remedies available to it under applicable law, including, without limitation, any rights it may have to incidental and

consequential damages. The waiver by Buyer of a breach by Seller of any term or condition hereunder will not be deemed a waiver of future compliance and such term or condition will remain in full force and effect.

15. Corrections. Buyer's clerical and stenographic errors are subject to correction.
16. Controlling Law. This agreement shall be governed by and construed according to the laws of the State of Michigan. Venue for any disputes under this agreement shall lie in and be limited to Dickinson County, Michigan. This agreement contains the entire understanding of the parties on the subject matter of this agreement, and the parties acknowledge that there have been and are no representations, warranties, covenants, or understandings other than those expressly set forth in the agreement.
17. Severability. If any material provision contained herein is held to be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions will not in any way be affected or impaired thereby.