



QUOTE TERMS AND CONDITIONS

Precision Rail and Mfg. Inc.

1. ACCEPTANCE OF THIS QUOTATION IS LIMITED TO THE TERMS HEREOF AND NO OTHER TERMS OR CONDITIONS APPEARING IN WRITING OF THE BUYER SHALL BE BINDING UPON SELLER.
2. UNLESS OTHERWISE PROVIDED HEREIN, SELLER WARRANTS TITLE AND THAT ALL GOODS AND SERVICES SOLD HEREUNDER SHALL CONFIRM TO THIS QUOTATION. EXCEPT AS OTHERWISE EXPRESSLY STATED HEREIN, SELLER MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, AS TO MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR ANY OTHER MATTER WITH RESPECT TO THE GOODS.
3. SELLER SHALL NOT BE LIABLE FOR CONSEQUENTIAL, CONTINGENT, OR INCIDENTAL DAMAGES WHATSOEVER RESULTING FROM ANY BREACH OF THIS PROPOSAL, OR ANY AGREEMENT RESULTING THEREFROM. BUYER SHALL INDEMNIFY SELLER AGAINST ANY AND ALL LOSSES, DAMAGES AND EXPENSES (INCLUDING ATTORNEY FEES, AND OTHER COSTS OF DEFENDING ANY ACTION) THAT IT MAY SUSTAIN OR INCUR AS A RESULT OF ANY CLAIM OF NEGLIGENCE, BREACH OF IMPLIED WARRANTY OR STRICT LIABILITY IN TORT BY BUYER, ITS SUCCESSORS AND ASSIGNS, AND ITS CUSTOMERS WHETHER DIRECT OR INDIRECT CONNECTION WITH THE USE OF THE PART(S) FURNISHED HEREUNDER, INCLUDING WITHOUT LIMITATION, SUCH AS MAY BE CAUSED BY THE NEGLIGENCE OF SELLERS, ITS OFFICERS AND EMPLOYEES.
4. ANY SUGGESTIONS BY SELLER CONCERNING DESIGN AND CONSTRUCTION OF THE PART(S), WHEN APPROVED BY THE BUYER, SHALL BECOME THE SOLE RESPONSIBILITY OF THE BUYER, UNLESS QUOTATION OTHERWISE ASSUMES RESPONSIBILITY THEREFOR, THE SELLER HAS NO RESPONSIBILITY OR LIABILITY SHOULD THE PART(S) FAIL TO PERFORM ANY PARTICULAR FUNCTION.
5. BUYER WARRANTS AND GUARANTEES THE SELLER THAT THERE ARE NO PATENTS, COPYRIGHTS, OR CLAIMS OF THIRD PERSONS FOR INFRINGEMENT OF ANY PART(S) TO BE PRODUCED OR WHICH MAY INTERFERE WITH THE MANUFACTURE OF THE PART(S). BUYER AGREES TO HOLD THE SELLER FREE AND HARMLESS OF AND FROM, AND TO INDEMNIFY THE SELLER AGAINST ANY AND ALL DAMAGES, COSTS AND ATTORNEY'S FEES RESULTING FROM ANY CLAIM, DEMAND, OR CAUSE OF ACTION THAT MAY BE INSTITUTED BY ANYONE CLAIMING SUCH INFRINGEMENT.
6. BUYER SHALL HAVE (15) DAYS AFTER DELIVERY OF THE PART(S) TO NOTIFY THE SELLER OF ANY CLAIMED DEFECT IN OR FAILURE OF THE PART(S) TO CONFORM TO THE DESCRIPTION AND SPECIFICATIONS FOR THE PART(S). IF IT IS DETERMINED BY THE SELLER THAT THERE IS SUCH DEFECT OR FAILURE TO CONFORM, THEN AT THE OPTION OF THE SELLER: (1) THE DEFECTIVE PART(S) SHALL BE RETURNED TO THE SELLER, AT SELLERS EXPENSE, TO BE CORRECTED OR REWORKED: OR (2) THE PARTIES SHALL AGREE UPON AN AMOUNT TO BE DEDUCTED FROM THE PURCHASE PRICE FOR THE CORRECTION OR REWORKING OF THE PART(S) BY OTHERS. BUYERS FAILURE TO NOTIFY THE SELLER OF ANY SUCH DEFECT OF FAILURE WITHIN SAID (15) DAYS SHALL BE CONCLUSIVE EVIDENCE THAT THERE IS NO DEFECT OR FAILURE TO CONFORM, AND THAT THE BUYER HAS ACCEPTED THE PART(S).
7. ANY CAUSE OF ACTION WHATSOEVER ARISING UNDER OR BY VIRTUE OF THIS QUOTATION AND ANY AGREEMENT BASED THEREON SHALL BE FILED ONLY IN THE MILWAUKEE COUNTY COURT HOUSE FOR WHICH PURPOSE THE PARTIES HERETO AGREE AND DO HEREBY EXPRESSLY WAIVE ANY AND ALL OBJECTIONS TO THE JURISDICTION OF SAID COURT. IT IS THE EXPRESS AGREEMENT OF THE PARTIES HERETO THAT THIS AGREEMENT IS MADE AND EXECUTED AT THE SELLERS PLACE OF BUSINESS, AND THE LAW OF THE STATE OF WISCONSIN SHALL GOVERN ALL RIGHTS AND DUTIES OF THE BUYER AND SELLER HEREUNDER.
8. PRIOR TO DELIVERY BY SELLER, BUYER MAY CANCEL ITS ACCEPTANCE OF THIS QUOTATION BY DELIVERING WRITTEN NOTICE THEREOF TO SELLER. IN THAT EVENT, THE BUYER SHALL BE LIABLE TO THE SELLER FOR THE SUM OF THE FOLLOWING: (1) ALL LABOR AND MATERIAL COSTS EXPENDED OR INCURRED BY THE SELLER ON THE PART(S), (2) COSTS OF ALL MATERIALS SPECIFICALLY ORDERED OR ON HAND FOR THE PART(S) AND NOT YET IN PROCESS, (3) ALL OTHER COSTS EXPENDED OR INCURRED BY SELLER BY REASON OF THE PART(S) INCLUDING INDIRECT AND OVERHEAD COSTS, AND (4) 18% OF THE FULL PURCHASE PRICE.
9. THE PART(S) IS TO BE SPECIALLY MADE AND MANUFACTURED BY SELLER FOR THE BUYER, AND THEREFORE, THE SELLER SHALL HAVE THE RIGHT TO RECOVER THE FULL PURCHASE PRICE IF THE BUYER REJECTS DELIVERY, REVOKES ACCEPTANCE, FAILS TO MAKE PAYMENT(S), REPUDIATES OR IN ANY WAY BREACHES THIS AGREEMENT.
10. TITLE TO THE PART(S), EQUIPMENT AND ACCESSORIES, INCLUDING ALL COMPONENT PARTS THEREOF, WHICH CONSTITUTE THE SUBJECT MATTER HEREOF, SHALL REMAIN IN THE SELLER UNTIL FULL PAYMENT BY THE BUYER OF THE PURCHASE PRICE TO THE SELLER, AND THE SELLER SHALL HAVE THE RIGHT TO RECOVER POSSESSION OF SUCH OF THEM AS MAY BE IN THE POSSESSION OF THE BUYER OR ITS AGENTS OR SUB-CONTRACTORS. HOWEVER, RISK OF LOSS CAUSED BY WHATEVER REASON SHALL PASS TO THE BUYER UPON DELIVERY TO THE CARRIER. UPON SUCH DELIVERY, IN CASE OF LOSS, IN WHOLE OR IN PART, THE BUYER SHALL BE OBLIGED TO THE SELLER FOR THE ENTIRE BALANCE OF THE PURCHASE PRICE.

11. NO RIGHT OR INTEREST IN THIS AGREEMENT SHALL BE ASSIGNED BY EITHER THE SELLER OR BUYER WITHOUT THE WRITTEN CONSENT OF THE OTHER.
12. ANY ACTION FOR BREACH OF THE AGREEMENT, IN WHOLE OR IN PART, NOT FILED WITHIN ONE (1) YEARAFTER THE CAUSE OF ACTION SHALL HAVE FIRST ACCRUED, SHALL BE BARRED.
13. UNLESS THE BUYER PROVIDES SELLER WITH APPROPRIATE TAX EXEMPTION CERTIFICATES, THE AMOUNT OF ANY TAXES WHICH MAYBE APPLICABLE TO THE SALE OF THE PART(S) SHALL BE ADDED TO THE PURCHASE PRICE AND PAID BY THE BUYER.