

Terms and Conditions of Sale

1. **TRANSFER POINT/PRICES:** (a) Unless otherwise agreed in writing, products are sold FCA point of origin (Incoterms 2010), unpacked. Any taxes are in addition to the prices and may be invoiced later. (b) Buyer may obtain a delay in scheduled shipment by notifying us in writing of the revised shipping date and paying us a delayed shipment fee equal to 1½% of the price per month for each month that the revised shipping date exceeds the original scheduled shipping date hereunder.
2. **SHIPPING SCHEDULE:** The shipping schedule is our current estimate of delivery dates and we agree to use reasonable efforts to comply with the schedule. Buyer's acceptance of delivery of our products from the carrier shall constitute a waiver of any claim for delay.
3. **WARRANTY:** (a) Any Milacron trademarked or tradenamed product or part thereof manufactured by or for us which, under normal operating conditions in the plant of the Buyer thereof, proves defective in material or workmanship, as determined by our inspection, within 12 months from the date of shipment will be replaced or repaired as follows: (i) during the first 90 days of such warranty period, any such repair or replacement shall be free of charge to Buyer, and (ii) during the balance of such warranty period (beyond the first 90 days), any replacement part will be provided without charge for the part itself but Buyer shall be responsible for labor and other costs incurred for repairing, removing, installing, shipping, servicing or handling either defective or replacement products or parts. This warranty does not apply to (i) software covered by subparagraphs (b) and (c) below, and (ii) molds, tooling or auxiliary equipment which were not manufactured by us as referred to in subparagraph (c) below. This warranty is contingent upon the following conditions: that we promptly receive notice of the defect; that Buyer establish that the product has been properly installed, maintained, and operated within the limits of related and normal usage as specified by us; and that, upon our request, Buyer will return to us at our expense the defective product or part thereof. This warranty is void with respect to barrels, screws and screw tips of injection molding machines if these items are used with other than unfilled, general purpose, and engineering plastics, unless otherwise stated in our Proposal or herein. (b) Any computer program, parts program, or programming manual (hereinafter called software materials) which, under normal operating conditions in the plant of Buyer, proves defective, as determined by our inspection, within 90 days from the date of shipment will be corrected by us. The warranty is contingent upon the following conditions: that we promptly receive from Buyer notice of the defect, including a reasonably detailed description of the problem or difficulty which has been experienced; that Buyer establish that the correction does not involve new software materials to serve a function not intended to be served by the original software materials; and that no change or addition has been made in or to our software materials which had not been first approved by us in writing. (c) The terms of this warranty do not in any way extend to any product or part thereof which have a life, under normal usage, inherently shorter than 12 months or to software materials which have a life, under normal usage, inherently shorter than 90 days or to auxiliary equipment, molds or tooling which were not manufactured or, in the case of software materials, not prepared by us or any of our affiliates, in which event we shall use reasonable efforts to pass on to Buyer the manufacturer's warranty. (d) The conditions of actual production in each end user's plant vary considerably. Therefore, descriptions of the production or performance capabilities of any product or software materials are estimates only and are not warranted. (e) Any service or parts provided by us which are outside the scope of the warranties shall be charged to Buyer at our applicable time and material rate and terms and conditions in effect at the time such service or parts are provided.

- 4. EXCLUSIONS OF WARRANTIES: THE WARRANTIES TO REPAIR OR REPLACE DEFECTIVE PRODUCTS OR PARTS OR TO CORRECT SOFTWARE MATERIALS, AS SET FORTH IN PARAGRAPH 3, AND ANY ADDITIONAL WARRANTY EXPRESSLY STATED TO BE A WARRANTY AND SET FORTH IN WRITING AS PART OF THESE TERMS HEREIN ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**
- 5. LIMITATION OF REMEDIES AND LIABILITIES:** Buyer agrees that our liability and Buyer's sole and exclusive remedy pursuant to any claim of any kind, including but not limited to, a claim in contract, negligence or strict liability, against us or any of our affiliates, shall be (a) the repair or replacement at our option of defective products or parts thereof or the correction of software materials, or (b) a refund of the price allocable to the defective product or part thereof or software materials if we are unable to effectively repair, replace or correct such defect in a reasonable time after using our best efforts. Claims of any kind include but are not limited to, those for any loss or damage arising out of, connected with, or resulting from this Agreement or from the performance or breach of the terms hereof, or claims that the warranty failed of its essential purpose, or from the design, manufacture, sale, delivery, resale, installation, technical direction of installation, inspection, repair, operation or use of any product or part thereof or software materials covered by this Agreement. If, however, any warranty is expressly set forth in writing in accordance with Paragraph 4 above as part of these terms in addition to those set forth in Paragraph 3 above, our liability and the liability of any of our affiliates under such additional warranty shall terminate one year from the date of shipment by us. **UNDER NO CIRCUMSTANCES SHALL WE OR ANY AFFILIATE OF OURS HAVE ANY LIABILITY WHATSOEVER FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES HOWSOEVER CAUSED OR ARISING (INCLUDING CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE)**, such as, but not limited to, loss of profit or revenue; loss of use of the product, part thereof, or software materials; cost of capital; cost of replacement equipment; claims resulting from contracts between Buyer, its customers and/or suppliers; or claims that the warranty failed of its essential purpose. Unless expressly provided for herein, in no event shall we or any affiliate of ours assume responsibility or liability for (a) penalties, penalty clauses or liquidated damages clauses of any description, (b) certifications or (c) indemnification of Buyer or others for costs, damages or expenses arising out of or related to the product or part thereof.
- 6. CANCELLATION:** Unless otherwise agreed, Buyer may cancel all or any part of the order by written notice received by us no later than 120 days before the acknowledged shipping date or (in the case of cancellation of only part of an order) 120 days before our completion of that part of the order. On receipt of such cancellation notice, all work on the order or part thereof canceled will be stopped as promptly as is reasonably possible. Buyer will then be invoiced for and will pay to us as liquidated damages a cancellation charge. For completed items, the charge will be equal to their established prices. For items not completed, the charge will be equal to 120% of our full cost as determined by us in accordance with our standard accounting practices, plus a charge for any packing and storage, less a credit for the balance of the material as scrap. The full cost includes burden and overhead costs incurred by us or by any of our affiliates.
- 7. PAYMENT TERMS:** Payment is due in accordance with any applicable progress, advance or other agreed upon payment schedule, or, if no such schedule has been agreed to, upon Acceptance as specified in Paragraph 8, but in no event later than 30 days from the date of invoice. No cash discount is provided. If, in our judgment, Buyer's financial condition changes, we may stop work until financial arrangements satisfactory to us are made.

8. **ACCEPTANCE OF PRODUCT:** Before accepting any product covered by Buyer's order. Buyer shall have a final opportunity to inspect it immediately prior to delivery of the product to the carrier. Each such product shall be deemed to be accepted upon the earlier of: (i) inspection at our plant, or if no inspection is requested, then upon delivery of the product to the carrier, unless we receive written notification of rejection for cause from Buyer at the time of inspection or within the seven-day period, or, (ii) the date the product is first used in production.
9. **PATENT INDEMNITY:** We shall defend any suit or proceeding brought against Buyer and pay all costs and damages awarded against Buyer provided that: (a) The suit or proceeding is based upon a claim that the product or part thereof is an infringement of any claim of a presently existing U.S. patent, or, in the case of any software materials supplied by us, any presently existing U.S. copyright;(b) The claim of infringement is not based, directly or indirectly, upon (i) the manufacture, use, or sale of any product furnished by us which has been modified without our consent; or, (ii) the manufacture, use, or sale of any combination of a product furnished by us with products not furnished by us; or (iii) performance of a patented process using a product furnished by us or production thereby of a patented product; and, (c) We are notified promptly and given information and assistance (at our expense) and the authority to defend the suit or proceeding. We shall not be responsible hereunder for any settlement made without our written consent not shall we be responsible for costs or expenses incurred without our written consent. If our product is adjudicated to be an infringement and its use in the U.S. by Buyer is enjoined, we shall, at our own expense, either:(i) procure for Buyer the right to continue using our product; (ii) replace it with a noninfringing product; (iii) modify it so it becomes noninfringing; (iv) remove the product or part thereof and refund Buyer's net book value and transportation costs attributable to it. The foregoing states our entire liability with respect to any patent infringement by our products or any parts thereof and with respect to any copyright infringement by any software materials supplied by us. To the extent that our product or any part thereof is supplied according to specifications and designs furnished by Buyer, Buyer agrees to indemnify us in the manner and to the extent set forth above insofar as the terms thereof are appropriate.
10. **SOFTWARE LICENSE:** System Operation Control Programs (Programs) supplied with our control products whether provided in transportable media or embedded within the equipment are copyrighted property. Buyer is granted a non-exclusive right to use Programs only in the equipment we designate. Unless being supplied with its associated products hereunder, no Program, regardless of the form in which it is embodied when received by Buyer, shall be made available to others without our prior written consent. In the event Buyer makes an unconsented use, duplication or transfer of any Program, we may terminate the right granted; and Buyer shall, upon and in accordance with our request, return or destroy all copies of Programs then in its possession. Our right to terminate the right granted herein shall be in addition to our other rights and remedies for unconsented use, duplication or transfer, including our right to seek damages for same.
11. **FORCE MAJEURE:** We shall not be liable for any delay in performance or nonperformance which is due to war, fire, flood, acts of God, acts of third parties, acts of governmental authority or any agency or commission thereof, accident, breakdown of equipment, differences with employees or similar or dissimilar causes beyond our reasonable control, including but not limited to, those interfering with production, supply or transportation of products, raw materials or components or our ability to obtain, on terms we deem reasonable, material, labor, equipment or transportation.

12. **ACCEPTANCE OF ORDERS:** Buyer agrees that all orders, including any arising from our Proposal, shall include these terms and conditions only, notwithstanding any different or additional terms that may be embodied in Buyer's order. All orders are subject to acceptance by us in writing.
13. **MERGER CLAUSE:** This Agreement entirely supersedes any prior oral representations, correspondence, proposal, quotation, or agreement. This writing constitutes the final and total expression of such agreement between the parties, and it is a complete and exclusive statement of the terms of that agreement.
14. **ASSIGNMENT:** Neither party may assign this Agreement without the written consent of the other party, except that we may assign this Agreement to a third party that acquires substantially all of our assets or we may assign the flow of funds arising out of this Agreement.
15. **GOVERNING LAW:** This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio.
16. **SECURITY INTEREST:** We reserve a purchase money security interest in all products and all proceeds thereof to secure payment of all sums due hereunder. The security interest shall be retained until the purchase price is paid in full. Buyer shall permit us to file this agreement or financing statement(s) pursuant to the applicable Uniform Commercial Code or other applicable laws to evidence and perfect our security interest in the product. Purchaser represents that the product is being purchased for use in its business and the product will not be sold or removed from the site where Buyer requests the product be delivered. On request, Buyer shall execute any and all documents and agreements in this regard and assist us in filing them. Until we receive full payment for the product, Buyer shall not permit any liens or encumbrances to be placed on the product and shall cause any such liens or encumbrances to be promptly discharged.

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