

ITW Dynatec, Hendersonville, USA – Terms and Conditions (T&C)

1. ACCEPTANCE

ITW Dynatec, a division of Illinois Tool Works Inc. is herein referred to as "Seller" and the customer purchasing products ("Products") or services ("Services") is herein referred to as "Buyer." These terms and conditions of sale ("Terms"), any Seller quotation, acknowledgment or invoice and all documents incorporated by specific reference herein or therein ("Seller Documents" and together with these Terms, the "Agreement"), constitute the complete terms governing the sale of Products and Services. SELLER HEREBY REJECTS ANY ADDITIONAL OR DIFFERENT TERMS OR CONDITIONS PROPOSED BY BUYER, WHETHER OR NOT CONTAINED IN ANY OF BUYER'S BUSINESS FORMS OR IN BUYER'S WEBSITE, AND SUCH ADDITIONAL OR DIFFERENT TERMS WILL BE OF NO EFFECT. No site usage agreement or any other click through agreement on a website will have any binding effect whether or not Seller clicks on an "ok," "I accept," or similar acknowledgment. Commencement of any work by Seller or Buyer's acceptance of delivery of the Products or Services will manifest Buyer's assent to the Agreement. Additional or different terms applicable to a particular sale may be specified in the body of an ITW Document or agreed to in writing by the parties. In the event of a conflict, the following order of precedence will apply: (a) terms agreed to in writing and executed by an authorized officer of ITW; (b) ITW Document terms; (c) these Terms.

2. QUOTATIONS

Quotations are only valid in writing and for 30 days from the date of the quotation. All quotations are subject to change or withdrawal without prior notice to Buyer. Quotations are made subject to approval of Buyer's credit. ITW may refuse orders and has no obligation to supply Products or Services unless ITW issues an order acknowledgement or upon the shipment of Products or commencement of Services.

3. PRICES/PAYMENT

Unless otherwise agreed to in writing by Seller, terms of payment are net thirty (30) days and prices are Ex-Works Seller's factory exclusive of sales or use taxes. All payments shall be in the legal currency of the United States unless otherwise agreed to in writing by Seller. All orders are accepted subject to Seller's price in effect at time of shipment. All prices are subject to exception or change without notice. Pricing errors may be corrected at any time. Any unpaid current balance shall bear interest at the rate of one and one-half percent (1 1/2%) per month from and after the date payment is due. Seller may, at any time and without obligation, suspend performance or require payment in cash, security, or other adequate assurances satisfactory to the Seller when, in the opinion of the Seller in its sole discretion, the financial circumstances of Buyer warrant such action. Fee free credit card purchases are available with the following conditions: 1) the customer must present their credit card at time of order and 2) purchases will be limited to orders under \$2,500 and to \$5,000 total charges per month for domestic customers. Paying charges after the fact that are on open account will be charged a 3% processing fee. All card charges exceeding these limits will have the 3% fee added to the credit card charge. All deposits are considered non-refundable. If Seller is subsequently required to pay any sales, use, value-added or other taxes, import duties, license fees or other like charges or fees, Buyer shall fully defend and indemnify Seller therefor. Under no circumstances will Buyer have a right of set-off. If Buyer fails to make any payment as required, Buyer agrees to indemnify Seller for all associated costs incurred by Seller, including reasonable attorney fees and court costs.

4. CREDIT APPROVAL

All shipments are subject to approval by Seller's credit department. Seller may invoice Buyer and recover for each shipment as a separate transaction. If, in Seller's sole judgment, Buyer's financial condition is or becomes unsatisfactory, then Seller may, without prejudice to any of its other remedies: (a) defer or decline to make any shipments except upon receipt of satisfactory security or cash payments in advance; and/or (b) terminate any or all of Buyer's purchase orders.

5. TAXES AND DUTIES

The amount of all applicable taxes (federal, state or local) will be charged unless the purchase order clearly states that the equipment or goods are tax exempt and an exemption certificate is on file at the Seller's location. Any personal property taxes assessable on the equipment or goods required for delivery shall be borne by the Buyer.

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6. CANCELLATION OR MODIFICATION

Seller may cancel any purchase order or release thereunder, or terminate any agreement relating to the purchase of Seller's Products or Services upon reasonable prior written notice to Buyer. Once Seller has accepted a purchase order or begun taking actions with respect to a purchase order, Buyer cannot cancel or modify that purchase order except with Seller's written consent. In such event, Buyer will be liable for cancellation or modification charges and all costs incurred and committed for the order or in connection with the cancellation or modification, as applicable, together with a reasonable allowance for prorated expenses and anticipated profits.

7. DELIVERY

Deliveries shall be INCOTERMS 2010 FCA Hendersonville Shipping Dock unless otherwise stated in the Proposal. Shipping dates given by the Seller are approximate and are based on prompt receipt of all necessary information regarding the order. The Seller will use its best efforts to meet the scheduled date provided to Buyer, but does not guarantee to do so. Failure to make shipments as scheduled does not constitute a cause of cancellation and/or for damages of any character. In the event of any delay requested by the Buyer or any delay caused by lack of shipping instructions, the Seller will store all items ordered at the Buyer's expense and risk and will invoice the Buyer for the full contract price of the equipment or goods on or after the date on which the same is ready for delivery.

8. TITLE AND RISK OF LOSS

Risk of loss or damage to the equipment or goods shall pass to Buyer at Seller's Dock. Buyer will keep the equipment or goods insured to the full purchase price with Seller as the named loss payee and Seller retains a security interest in the equipment or goods until the purchase price is paid.

9. INSPECTION / NON-CONFORMING SHIPMENTS

Buyer may inspect Products for a period of 15 business days after delivery ("Inspection Period"). Buyer must notify Seller in writing of any Products that do not conform to the specifications applicable to their sale within the Inspection Period and afford Seller a reasonable opportunity to inspect such Products and cure any nonconformity. If Buyer fails to provide Seller such written notice within the Inspection Period, Buyer will be deemed to have accepted the Products. Buyer may not return any Product without Seller's prior written authorization. Any return authorized by Seller must be made in accordance with Seller's return policies. Buyer will be responsible for all costs associated with returns of Products and will bear the risk of loss unless Seller agrees otherwise in writing or determines that the Products do not conform to the applicable terms of sale. Any variation in quantities shipped over or under those ordered (not to exceed 10%) will constitute compliance with Buyer's order, and the stated price per item will continue to apply.

10. ENGINEERING DATA

All Engineering data, design information, engineering and shop drawings used on the completion of this order are the property of the Seller.

11. PATENT INDEMNIFICATION

The Seller agrees to indemnify Buyer from and against all claims, demands and suits based on allegations that the equipment or goods designed and manufactured by Seller constitutes an infringement of any patent, if the Seller is notified promptly of the assertion of any such allegation, and if the Seller is given authority to defend the same and reasonable information and assistance for the defense of the same. Upon notification of an infringement claim, the Seller reserves the right to do any of the following, at no cost to the Buyer: (a) Procure for the Buyer the right to continue using the equipment; or (b) Replace the same with non-infringing equipment; (c) Modify the equipment so that it becomes non-infringing or (d) if Seller cannot reasonably accomplish the actions specified in subsections (a) – (c), then in Seller's sole discretion, Seller may discontinue selling the part or Product without any further liability to Buyer. The Seller does not assume liability for the infringement of any method and/or process patent or for infringement of any patent covering articles manufactured or produced in accordance with Buyer's design.

12. RETURNS

No equipment or goods requiring repair or alleged to be defective is to be returned without written authorization by the Seller. Requests to return items for restocking require written authorization by the seller. Restocking requests for equipment identified as custom / special built for buyer or obsolete version of product may be refused. Restocking fees will apply.

13. LIMITED WARRANTY AND LIMITATION OF LIABILITY

Seller warrants that it will convey the Products free and clear of all liens, security interests and encumbrances created by, through or under Seller. Seller further warrants that for the period denoted below with respect to the applicable type of Product, from the date of delivery to the common carrier (the "Warranty Period"), under normal use and given proper installation and maintenance as determined by Seller, the Products will be free from substantial defects in material and workmanship.

- ***All New Components & Assemblies: Twelve (12) months from the date of shipment by Dynatec***

THIS WARRANTY DOES NOT APPLY TO PRODUCTS WHICH ARE MISUSED, OR ABUSED, OR DAMAGED FROM INSTALLATION, OR NOT USED IN ACCORDANCE WITH SELLER'S INSTRUCTIONS. NORMAL WEAR OF EQUIPMENT OR GOODS ARE NOT INCLUDED IN THIS WARRANTY. Products not manufactured by the Seller but supplied through the Seller shall carry the warranty of the original manufacturer. THE SELLER'S SOLE LIABILITY UNDER THIS WARRANTY SHALL BE LIMITED TO EITHER REPLACING OR REPAIRING WITHOUT CHARGE, AT ITS FACTORY OR ELSEWHERE AT ITS DISCRETION, ANY EQUIPMENT OR GOODS NOT MEETING THIS WARRANTY, OR AT SELLER'S OPTION, REFUNDING THE PURCHASE PRICE. THE SELLER SHALL IN NO EVENT BE LIABLE FOR ANY OTHER DIRECT OR ANY SPECIAL INDIRECT OR CONSEQUENTIAL DAMAGES OF ANY KIND UNDER THIS CONTRACT OR OTHERWISE. The warranties of the Seller do not cover, and the Seller makes no warranty with respect to any defect, failure, deficiency, or error which is: (a) Not timely reported to the Seller; or (b) Due to misapplication, modification, disassembly, abnormal conditions of temperature, dirt or corrosive matter; or (c) Due to operation, either intentional or otherwise, above rated capacities or in an otherwise improper manner. Seller assumes no responsibility for the quality or performance of coatings, adhesives or other materials used with Seller's equipment or goods. All claims must be brought within one (1) year of shipment by Dynatec. THERE ARE NO OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

14. LIMITATION OF LIABILITY AND REMEDIES

SELLER WILL NOT BE LIABLE, AND BUYER WAIVES ALL CLAIMS AGAINST SELLER, FOR INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, DOWN TIME, LOST PROFITS OR COMMERCIAL LOSSES, WHETHER OR NOT BASED UPON SELLER'S NEGLIGENCE OR BREACH OF WARRANTY OR STRICT LIABILITY IN TORT OR ANY OTHER CAUSE OF ACTION. IN NO EVENT WILL SELLER'S LIABILITY IN CONNECTION WITH THE AGREEMENT OR SALE OF SELLER'S PRODUCTS OR SERVICES EXCEED THE PURCHASE PRICE OF THE SPECIFIC PRODUCTS OR SERVICES AS TO WHICH THE CLAIM IS MADE.

15. PRODUCT USE

Buyer is solely responsible for determining if a Product is fit for a particular purpose and suitable for Buyer's method of application. Accordingly, and due to the nature and manner of use of Seller's Products, Seller is not responsible for the results or consequences of use, misuse or application of its Products. All physical properties, statements and recommendations are either based on the tests or experience that Seller believes to be reliable, but they are not guaranteed.

16. TOOLING/MOLDS/DIES

All material, equipment, facilities and special tooling (including tools, jigs, dies, fixtures, molds, patterns, special taps, special gauges, special test equipment and manufacturing aids and replacements thereof) used in the manufacture of the Products will remain the property of Seller. Any material, tooling or equipment furnished to Seller by Buyer will remain the property of Buyer with title to and right of possession remaining in Buyer.

17. OWNERSHIP OF INTELLECTUAL PROPERTY

All drawings, know-how, designs, specifications, inventions, devices, developments, processes, copyrights and other information or intellectual property disclosed or otherwise provided to Buyer by Seller and all rights therein (collectively, "Intellectual Property") will remain the property of Seller and will be kept confidential by Buyer in accordance with these Terms. Buyer has no claim to, nor ownership interest in, any Intellectual Property, and such information, in whatever form and any copies thereof, shall be promptly returned to Seller upon request from Seller. Buyer acknowledges that no license or rights of any sort are granted to Buyer hereunder in respect of any Intellectual Property, other than the limited right to use Seller's Products or receive the Services purchased from Seller.

18. USE OF TRADEMARKS AND TRADE NAMES

Buyer shall not use, directly or indirectly, in whole or in part, Seller's name, or any other trademark or trade name that is now or may hereafter be owned by Seller or any affiliate of Seller (collectively the "Trade-marks"), as part of Buyer's corporate or business name, or in any way in connection with Buyer's business, except in a manner and to the extent authorized herein or otherwise approved by Seller in writing. Buyer hereby acknowledges Seller's ownership of the Trademarks and the goodwill associated therewith. Buyer shall not infringe upon, harm or contest the validity of any Trademarks. Buyer shall be entitled to use the Trademarks only in connection with the promotion or sale of the Authorized Products pursuant to the terms of the Agreement. Buyer shall repro-duce the Trademarks exactly as specified by Seller. Buyer shall not use the Trademarks in combination with any other trademarks or names. Buyer agrees that it will not register or attempt to register any Trademark or any color-able imitation thereof (including any non-English language variation thereof), or use such Trademarks for any products or for any purposes other than those set forth in the Agreement. Buyer shall not at any time during or after termination of the Agreement use in its business any other trademark that is similar to or in any way resembles the Trademarks so as to be likely to cause deception or confusion with the Trademarks. Buyer shall provide reasonable cooperation to Seller with respect to any efforts of Seller to protect, defend or enforce its rights to the Trademarks. Should Buyer cease being an authorized customer of Seller for any reason, Buyer shall immediately discontinue any formerly permitted use of Seller's name or the Trademarks.

19. CONFIDENTIAL INFORMATION

All information furnished or made available by Seller to Buyer in connection with the subject matter hereof shall be held in confidence by Buyer. Buyer agrees not to use (directly or indirectly), or dis-close to others, such information without Seller's prior written consent. The obligations in this section will not apply to any information that: (a) at the time of disclosure was or thereafter becomes generally available to the public by publication or otherwise through no breach by Buyer of any obligation herein; (b) Buyer can show by written records was in Buyer's possession prior to disclosure by Seller; or (c) is legally made available to Buyer by or through a third party having no direct or indirect confidentiality obligation to Seller with respect to such information.

20. AUDIT

Unless agreed to in writing by an officer of Seller, neither Buyer nor any Buyer representative, may examine or audit Seller's cost accounts, books or records of any kind or any matter, or any other data that Seller, in its sole discretion, considers confidential or proprietary.

21. SELLER EMPLOYEES

Seller sales and service employees do not have the training or authority to make legal representations or enter into any agreements or execute any Buyer documents affecting legal responsibilities or waiving legal rights, including those regarding the transfer of intellectual property rights or related to privacy laws. Any such representations, agreements or documents will not be binding on Seller or such Seller employees.

22. COMPLIANCE

Buyer agrees to comply with all federal, state, local and foreign rules, regulations, ordinances and laws applicable to Buyer's obligations hereunder and Buyer's use of the Products and Services, including import/export laws, labor laws and anti-corruption laws.

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23. RELATIONSHIP OF THE PARTIES

Nothing in the Agreement or the course of dealing of the parties may be construed to constitute the parties hereto as partners, joint venturers or as agents for one another or as authorizing either party to obligate the other in any manner.

24. FORCE MAJEURE

Seller will not be responsible for failure to perform in a timely manner under the Agreement when its failure results from events beyond its reasonable control (an event of "Force Majeure"), including acts of God, epidemics, acts of war whether declared or undeclared, blockades, labor disputes (whether of Seller's employees or the employees of others), raw material shortages and material increases in costs of raw materials. In the event of Force Majeure, the time for performance will extend for such time as reasonably necessary to enable Seller to perform.

25. ASSIGNMENT; BINDING EFFECT

No assignment of any rights or interest or delegation of any obligation of Buyer under the Agreement or Buyer's purchase order may be made without Seller's prior written consent. Any attempted assignment will be void. Seller may assign the Agreement or otherwise transfer its rights and/or obligations under the Agreement. The Agreement will inure to the benefit of and be binding upon the parties and their respective permit-tee successors and assigns.

26. WAIVER

In the event of any default by Buyer, Seller may decline to ship Products or provide Services. If Seller elects to continue shipping or otherwise fails to insist upon strict compliance with the Agreement, Seller's actions will not constitute a waiver of Buyer's default or any other existing or future default, or affect Seller's legal remedies.

27. BANKRUPTCY

If either party becomes insolvent, is unable to pay its debts when due, files for or is the subject of in-voluntary bankruptcy, has a receiver appointed or has its assets assigned, the other party may cancel any unfulfilled obligations hereunder.

28. GOVERNING LAW

THIS AGREEMENT AND ANY CONTRACT RESULTING OUT OF OR RELATED TO THIS AGREEMENT SHALL BE GOVERNED BY THE LAWS OF THE STATE OF ILLINOIS and litigated exclusively in a state or federal court located in Cook County, Illinois. Any legal action to enforce any right granted by this contract must be filed within one (1) year after delivery, or for warranty claims, within one (1) year of the expiration of the applicable warranty period. The parties hereto expressly release and waive any and all rights to a jury trial and consent to have any dispute heard solely by a court of competent jurisdiction. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply to the Agreement.

29. SURVIVAL

Any provisions in the Agreement which, by their nature, extend beyond the termination or expiration of any sale of Products or Services, will remain in effect until fulfilled.

30. SEVERABILITY

If any provision herein is held to be unlawful or unenforceable, the remaining provisions herein will remain in effect.

31. INTEGRATION AND MODIFICATION

The Agreement constitutes the entire agreement between Seller and Buyer with respect to the Products and Services covered by the Agreement, and supersedes any prior agreements, understandings, representations and quotations with respect thereto. No modification hereof will be of any effect unless in writing and signed by the party to be bound thereby.