

**Standard Sales Terms and Conditions**  
**Southeast Broach Company**

The Quotation and any resulting sale is expressly conditional upon the terms and conditions set forth below. Any additional or different terms or conditions submitted by Buyer shall be deemed objected to by Seller and shall be of no effect nor in any circumstance binding upon Seller unless specifically accepted by Seller in writing. If Buyer objects to any of these terms and conditions, said objection must be brought to the attention of the Seller by the Buyer in a written instrument separate from any purchase order or other printed form of Buyer. Said objection shall be deemed proposals for different terms and conditions and may be accepted only in writing by an authorized representative of the Seller.

**1. DELIVERY AND TITLE**

Delivery dates are estimates and are based on prompt receipt of all necessary information from and / or performance by Buyer. Seller shall not be responsible for any delay. Unless otherwise specified in writing and accepted by Seller, delivery will be made and title will pass to Buyer F.O.B. point of shipment and the risk of loss of or damage to the equipment, components or tools shall pass to the Buyer at the point of shipment. If Buyer delays delivery of any items, Seller may invoice Buyer for said items and hold them at Buyer's risk and expense pending instructions from Buyer.

**2. PRODUCT WARRANTY**

(A) Seller warrants to Buyer that the equipment, components or tools which are manufactured and delivered by Seller pursuant to this Agreement will be free from defects in material and workmanship for a period of one year (or such other length of time specified in the quotation) from the date said equipment, component or tool is put into operation, but in no event later than eighteen (18) months from the date of shipment (six months after the expiration of the warranty period, if the warranty period is longer than one year). If any item of equipment, component or tool shall prove defective in material or workmanship during the above warranty period, Buyer shall within thirty (30) days notify Seller, in writing, of such defect and Seller shall, at its option, adjust, modify, repair or replace said item of equipment, component or tool, or refund the purchase price of said item. Seller shall have the option to have it returned to it, F.O.B. its factory, or to make such adjustment, modification, repair or replacement at the point of installation. However, with respect to any item of equipment, component or tool which has been improperly stored, installed, operated or maintained or which the Buyer has itself modified, replaced, adjusted, or repaired or has permitted modifications, replacements, adjustments, or repairs by third persons, without the consent of the Seller, the Seller shall have no obligation under this warranty provision. Items which are not manufactured but supplied by the Seller shall be covered by the warranty, if any, of the manufacturer or supplier thereof and the Seller shall not be responsible in any way for said terms.

(B) (Applicable only if a performance guaranty is included) Seller warrants that the equipment manufactured and supplied hereunder will, when equipped with Southeast Broach Company specified and supplied components, broaches and / or cutting tools

operate in accordance with those specifications, if any, set forth in the clause or provision of the Agreement specifically identified as “PERFORMANCE GUARANTEE”.

Satisfaction of the foregoing warranty will be determined by a test – also specified in such performance guarantee provision.

The guarantee of performance specified in the provision on performance guarantee shall expire and shall be deemed satisfied either upon satisfactory completion of the Performance Test or if the Performance Test is not commenced within thirty (30) days after Seller notifies Buyer that the Equipment is ready for testing and is not completed within sixty (60) days thereafter. The sixty (60) day period will only be extended to reflect interruptions due to the fault of Seller. Seller may require preliminary tests before so notifying Buyer. Buyer at its expense shall furnish qualified testing and operating personnel for all tests and all materials for accomplishment of said tests. Seller at its expense shall furnish technical personnel for consultation with respect to all tests.

- (C) ( Applicable only if a performance guarantee is included) In the event that the Performance Guarantee, as set forth in the provision hereof relative to performance guarantee is not satisfactory upon conduct of the Performance Test as defined above as a sole result of a deficiency in the equipment, Seller shall, at its option, modify, adjust, repair or replace the equipment with the objective of attaining the guarantee and the Seller shall conduct subsequent Performance Tests in the same basis as described in (B) above.
- (D) The warranties and guarantees provided in this paragraph 2 and the provision on performance guarantee, if any, shall be applicable only if the equipment and / or components shall be unloaded, stored, installed, operated, tested, maintained and protected from damage and damaging agents by Buyer in accordance with all drawings, operating and maintenance procedures and conditions of service which may at any time be specified by Seller.
- (E) The Seller shall have no obligation hereunder until the Buyer has made the equipment available for any adjustment, modification, repair or replacement required. Buyer shall be responsible for and bear the costs of all removal and reinstallation of equipment and materials supplied by others which is necessary to provide Seller free access to any items of Seller’s supply to be modified, repaired, replaced or adjusted by Seller pursuant to 2(A) above and the provision on performance guarantee, if any.

Further, the Seller shall not be responsible for the performance of equipment or parts furnished by others or repairs or work done by others unless the same is specifically ordered by the Seller.

- (F) THE SELLER AND BUYER AGREE THAT, IN CONSIDERATION OF THE EXPRESS WARRANTY AND GUARANTEE SET FORTH IN 2 ABOVE AND THE PROVISION ON PERFORMANCE GUARANTEE, IF ANY, ALL OTHER WARRANTIES AND GUARANTEES, OTHER THAN TITLE, EITHER EXPRESSED OR IMPLIED, WHETHER ARISING UNDER LAW OR EQUITY OR COURSE OF

DEALING OR CUSTOM OF THE TRADE, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE EXCLUDED FROM THIS CONTRACT.

(G) The sole liability of the Seller and the exclusive remedy of the Buyer arising out of the manufacture, sale or furnishing of the equipment hereunder or its use whether arising under contract, tort (including negligence), strict liability or otherwise shall be the modification, adjustment, repair or replacement of the item of equipment, or component thereof, or refund of purchase price of the defective item of equipment, or component thereof, as set forth in paragraph 2 above. In no event shall Seller's liability exceed the purchase price of the defective item. In applying this limitation, any expenses or damages paid or payable to the Buyer by the Seller under the Patents, Product Warranty or other provisions hereof shall be credited against the Seller's maximum liability.

### **3. DAMAGE DISCLAIMER.**

Notwithstanding any other provision of the Contract, in no event shall the Seller or its suppliers be liable, whether arising under contract, tort (including negligence), strict liability, or otherwise, for loss of anticipated profits, loss by reason of plant shutdown, non-operation or increased expense of operation, service interruption, cost of purchased or replacement power, claims of customers, cost of money, loss of use of capital or revenue, or for any special, incidental or consequential loss or damage of any nature arising at any time or from any cause whatsoever.

### **4. LIMITATION OF LIABILITY**

The Seller's maximum liability arising from any cause whatsoever, including but not limited to breach of contract, tort (including negligence), strict liability or otherwise shall not exceed the Contract Price. In applying this limitation, any damages paid or payable to the Buyer by the Seller as well as any expense incurred by the Seller, under the Patent provision, Product Warranty and Performance Guarantees shall be credited against the Seller's maximum liability.

### **5. PRICE POLICY**

The Seller's Quotation is an offer made by the Seller and is subject to acceptance within the time period stated in the Quotation. However, Seller reserves the right to change or cancel this Quotation at any time prior to receiving written acceptance from Buyer. Prices listed in Seller's Quotation become fixed upon Seller's written acknowledgement of receipt of Buyer's purchase order, but are subject to economic price adjustment (EPA) in accordance with the Economic Price Adjustment Clause, if said clause is included in the quotation.

### **6. TERMS OF PAYMENT**

Terms of payment are as stated in the Quotation. Pro rata payments shall become due as shipments are made. If shipments are deferred at the request of Buyer, payments shall become due on the date Seller is prepared to make shipment.

### **7. TAXES**

The prices provided for herein are exclusive of any present or future Federal, State, Municipal or other sales or use tax with respect to the products or services covered hereby,

of any other present or future excise tax upon or measured by the gross receipts from this transaction or any allocated portion thereof or by the gross value of the products covered hereby and of any present or future property tax or other similar charge with respect to the products covered hereby. If the Seller is required by applicable law or regulation to pay or collect any such tax or taxes on account of this transaction or the products or services covered hereby, then such amount of tax shall be paid by the Buyer in addition to the prices herein provided.

## **8. INSURANCE**

During performance of work hereunder Seller shall maintain Comprehensive General Liability insurance policies to protect Seller's legal liability and Workmen's Compensation protection for Seller's employees. However, Seller shall not accept any contractual liability for indemnity.

## **9. SELLER'S PERFORMANCE**

The Seller shall not be liable for any expense, loss or damage resulting from delay in or prevention of its performance of this contract where such delay or prevention is caused by fires, floods, Acts of God, strikes, labor disputes, labor shortages, lack of or inability to obtain materials, supplies or other equipment, riots, thefts, accidents, fuel or energy shortages, transportation delays, acts or failures to act of Government or Buyer, delay in obtaining licenses, major equipment breakdown, or any other cause whatsoever, whether similar or dissimilar to those enumerated above, beyond the reasonable control of the Seller. In the event of any delay or prevention arising by reason of the foregoing, the time for Seller's performance shall be extended by a period of time equal to the time lost by reason of such delay or prevention.

## **10. PATENTS**

Seller shall defend, at its own expense, any suit or action against Buyer based on a claim that the equipment, or any component thereof, manufactured and supplied by Seller constitutes an infringement of any United States patent in effect on the date of Seller's Quotation, if notified promptly in writing and given authority, information and assistance for the defense of same, and Seller shall pay all costs awarded therein against Buyer.

In case the equipment, or any component thereof, is held in such suit to constitute an infringement and its use is enjoined, Seller shall at its option and at its own expense:

- (a) Procure for the buyer the right to continue using said components or equipment;
- (b) Replace same with non-infringing components or equipment.
- (c) Modify it so it becomes non-infringing; or
- (d) Remove said components or equipment and refund the contract price, transportation and installation costs thereof.

The foregoing obligation of the Seller applies solely to the components or equipment operating alone as a separate unit. Seller will have no responsibility when these components or equipment combined with other equipment results in infringement by virtue of the combination.

The seller's obligation set forth in this paragraph 10 shall not apply to any component or equipment, or part thereof, which is based on Buyer's design. As to such equipment or part, seller assumes no liability whatsoever for patent infringement.

**11. PRODUCTION ESTIMATE**

All production rates of the equipment, as furnished by Seller, are estimates only, based on Seller's understanding of accuracy limits, finish required, machinability of the material, amount of material to be removed, handling facilities provided and locating points as provided in Buyer's process or part prints furnished to Seller at time of Quotation.

**12. REVISIONS**

The Buyer may request changes in the specifications of the components or equipment purchased only upon written notice to the Seller and subject to such change in estimated delivery, selling price, and other affected items, plus additional charges for completed parts of the order no longer required due to the changes, as may be determined by the Seller.

**13. NON-DISCRIMINATION**

The non-discrimination provisions of Executive Order 11246 and all applicable Federal regulations issued thereunder are incorporated herein by reference.

**14. GOVERNING LAW**

The rights and obligations of Seller and Buyer with respect to Seller's Quotation and any resulting contract shall be governed by the laws of the State of Michigan.

**15. NON-WAIVER**

No failure of Seller to insist on strict compliance of Buyer to any of these Terms and Conditions or to promptly exercise any right accruing from any default of Buyer shall impair Seller's rights in case Buyer's default or failure to comply with these Terms and Conditions continues or in case of any subsequent default or failure to comply with these Terms and Conditions by the Buyer.

**16. ASSIGNMENT**

Neither Seller nor Buyer shall have the right to assign right or interest in Seller's Quotation or any resulting contract, unless such assignment is in connection with the transfer of all or substantially all of the assignor's business.

**17. SET OFF**

In no event shall the Buyer be entitled at any time to set off against any amount payable by the Buyer in connection with this Contract any amount owed or allegedly owed by the Seller to the Buyer arising from this or any other transaction between the Seller and the Buyer or its predecessors or successors in interest.

**18. BACKCHARGES**

The Seller shall not be called upon to make any allowance nor shall the Buyer offset against any amount otherwise payable by the Buyer under this contract for material, labor, repairs, or alterations made or ordered by the Buyer, unless authorized by the Seller in writing.