

MERCHANT SCHMIDT, INC.
TERMS AND CONDITIONS OF

This terms constitutes the entire agreement between the Supplier and Marchant Schmidt, Inc. (MSI) also referred to as Buyer covering the goods described herein (the "goods") except as otherwise noted on the Purchase Order or drawings specifications.

GENERAL: Submissions of Proposal must be without qualification. No terms or conditions other than those stated herein, and no agreement or understanding, oral or written, purporting to modify these terms or conditions, whether contained in Seller's proposal, acknowledgment, shipping release forms or elsewhere, shall be binding upon Buyer unless such modifications are hereafter made in writing and signed by an authorized representative of Buyer. There are no agreements between Buyer and Seller with respect to the goods quoted herein except as set forth herein or as otherwise set forth in writing. All amendments and/or modifications shall be deemed to include each and every of the provisions herein set forth. The term "goods" as used herein shall mean goods as defined under the Uniform Commercial Code and shall also be deemed to include engineering, labor, or other services or intangibles which may be part of the Proposal. The party submitting the Proposal or accepting the Purchase Order warrants that he/she has the authority to do so on behalf of the Seller.

CONFIDENTIALITY: Both MSI and the Seller agree to respect the confidential information of the other party. "Confidential Information" shall mean all technology, data, inventions, information, drawings, records, processes, know-how, patent applications, trade secrets, or other proprietary information which is disclosed by one party to another. Provided, however, Confidential information does not include information which (a) can be demonstrated to have been known to the receiving party or its affiliates or advisors prior to the date of this Proposal, or after the date of this Proposal but prior to the time of disclosure, (b) becomes generally available to the public other than as a result of a breach of this Proposal, (c) is furnished to a receiving party by a third party who is lawfully in possession of such information and who lawfully conveys such information, (d) is required to be disclosed by any law, judicial Purchase Order or rule, or by any Purchase Order, rule or regulation of any governmental agency or other governmental body, or (e) is subsequently developed by the receiving party independently of the information received from the disclosing party.

INSPECTION: Buyer or its representatives, customers or licensors (or their representatives) may inspect the goods or services pursuant to a Purchase Order during any stage of the manufacturing, construction, preparation, delivery and/or completion. Goods may be rejected for defects or defaults revealed by any such inspection, analysis or subsequent manufacturing operations even though such goods may have previously been accepted.

CHANGES: Buyer shall have the right to make any changes, additions, omissions, or alterations in the goods, quantities, destinations, specifications, drawings, designs, or delivery schedule. Any adjustment in price or time for performance resulting from such changes shall be equitably adjusted by Seller after receipt of documentation in such form and detail as Buyer may direct. All changes, additions, omissions, or alterations must be in writing and signed by an authorized representative of Buyer.

RISK OF LOSS: Notwithstanding any provision hereof to the contrary, title to, and risk of loss of, the goods shall remain with the Supplier until the goods are delivered at the F.O.B. point specified in the Purchase Order, or if no such point is specified, then, when the goods are delivered to the Buyer at 24 West Larsen Drive, Fond du Lac, WI. However, if the goods are of an inflammable, toxic or otherwise dangerous nature, Supplier shall hold Buyer harmless from and against any and all claims asserted against Supplier on account of any personal injuries and/or property damages caused by the goods, or by transportation thereof, prior to the completion of unloading at Buyer's designated location.

WARRANTIES: Supplier warrants to and covenants with the Buyer as follows: Supplier will deliver to Buyer title to the goods free and clear of all security interest, liens, obligations, restrictions or encumbrances of any kind, nature or description, the goods shall be free from defects in material and/or workmanship; unless otherwise specified in the Purchase Order, the goods shall be new and not used or reconditioned; the goods and their packaging shall conform to the description thereof and/or specifications therefore contained in the Purchase Order, plans, specifications, drawings and other data transmitted to Seller to be incorporated as part of the Purchase Order. In placing a Purchase Order, Buyer is relying on Supplier's skill and judgment in selecting and providing the proper goods for Buyer's particular use. The goods shall be in all respects suitable for the particular purpose for which they are d and the goods shall be merchantable. Express warranties shall not be waived by reason of acceptance or payment by the Buyer. This Purchase Order incorporates by reference all terms of the Uniform Commercial Code as adopted in the State of Wisconsin (the "UCC") providing any protection to Buyer including but not limited to all warranty protection (express or implied) and all of Buyer's remedies under the UCC. All goods and work shall also be subject to any stricter warranties specified in the Data Sheet or in other materials incorporated by reference. Such warranty shall survive delivery, and shall not be deemed waived, either by reason of Buyer's acceptance of said materials or articles or by payment for the Goods. This warranty is transferrable to the r of such goods as to whom MSI is representing.

CANCELLATION/DISPUTES:

In the event of a dispute over the Proposal, drawings, specifications, or other documents as to whether work should be classified as a "change" or as an "extra" over the Proposal. Seller shall proceed with and complete any work which is the subject of the dispute and request arbitration of dispute by a Third Party Arbiter.

- a. Following acceptance by Seller, this Proposal may not be cancelled without the written consent of MSI.
- b. In the event Seller request to stop work or to cancel the whole or any part of the proposal, the Seller shall make payment to MSI for the following:
- c. Costs incurred by MSI over the amount in this proposal to complete the work to include any consequential damaged to include loss of profit, claims by MSI's customers, tenants or clients inquired by MSI in connection with this proposal or Purchase Order. In such event, less the sum of payments made by MSI, the Seller shall pay an amount equal to the sum of all direct material costs (including restocking charges), all direct labor, all engineering expenses, any special tooling, and all associated costs price of the proposal or Purchase Order.

REMEDIES: In the event of Supplier's breach of this contract, Buyer may take any or all of the following actions, without prejudice to any other rights or remedies available to Buyer by law: (a) require Supplier to repair or replace such goods, and upon Supplier's failure or refusal to do so, repair or replace the same at Supplier's expense; (b) reject any shipment or delivery containing defective or nonconforming goods and return for credit or replacement at Seller's option; said return to be made at Supplier's cost and risk; (c) cancel any outstanding deliveries and treat such breach by Supplier as Supplier's repudiation of this contract. In the event of Buyer's breach hereunder, Supplier's exclusive remedy shall be Supplier's recovery of the goods or the price payable for goods shipped prior to such breach. In the event legal action or arbitration is instituted by either party, the prevailing party shall be entitled to an award of reasonable attorney fees in said action or arbitration, in addition to the costs and reasonable expenses incurred in the prosecution or defense of said action or arbitration. The rights and remedies reserved by Buyer in this Purchase Order shall be cumulative and in addition to any other rights or remedies provided by law or equity. A waiver by Buyer of any such right or remedy shall not affect any right or remedies subsequently arising under the same or similar clauses, nor shall it operate as a waiver of such clause or condition. All legal action or arbitration will occur in the courts in the City or County of Fond du Lac, WI.

COMPLIANCE WITH LAW: Supplier warrants that it will comply with all federal, state, and local laws, ordinances, rules and regulations applicable to its performance under the Proposal or Purchase Order, including, without limitation, the Fair Labor Standards Act of 1938, as amended, the Williams-Steiger Occupational Safety and Health Act of 1970, the Equal Employment Opportunity Clause prescribed by Executive Purchase Order 11246 dated September 24, 1965 as amended, and any rules, regulations or Purchase Orders issued or promulgated under such Act and Purchase Order. Supplier shall indemnify and save and hold Buyer from and against any and all claims, damages, demands, costs and losses which the Buyer may suffer in the event that Supplier fails to comply with said Act, Purchase Order, rules, regulations or Purchase Orders. Any clause required by any law, ordinance, rule or regulation to be included in a contract of the type evidenced by this document shall be deemed to be incorporated herein. These Terms and Conditions and the contractual arrangement between the parties shall be interpreted and governed by the internal laws of the State of Wisconsin.

MISCELLANEOUS: The waiver of any term, condition or provision hereof shall not be construed to be a waiver of any other such term, condition or provision, nor shall such waiver be deemed a waiver of a subsequent breach of the same term, condition or provision.

MATERIAL SAFETY DATA SHEET: If any item(s) on an Purchase Order(s) resulting from this award(s) is a hazardous chemical, as defined under 29CFR 1910.1200, provide one (1) copy of a Material Safety Data Sheet for each item with the shipped container(s) and one (1) copy to Buyer's Safety Control Manger, PO Box 1839, Fond du Lac, WI 54936-1839.

DISCLOSURE/USE OF INFORMATION: All specifications, drawings, notes, instructions, engineering notices, technical data, and/or equipment referred to in this Purchase Order or supplied by Buyer in connection with this Purchase Order are incorporated by reference. Such information is confidential and proprietary to Buyer and shall not be reproduced, summarized, extracted, used, or disclosed to others by Seller without Buyer's prior specific written consent. Seller must also take reasonable steps to safeguard the confidential and proprietary information from unauthorized access and disclosure. Any information, writings or inventions derived by Seller or its agents from Buyer's information hereunder are hereby assigned to Buyer by Seller, Seller warranting the right to do so. Upon demand or upon completion by Seller of its obligations under this Purchase Order, all confidential and proprietary information shall be returned to Buyer and Seller shall not retain any copies, summaries or extracts of all or part of the information. Any information which Seller discloses to Buyer with respect to the services to be rendered or the design, manufacture, sale, or use of the goods covered by the Purchase Order shall be deemed to have been disclosed as part of the consideration for the Purchase Order, and Seller shall not assert any claim against Buyer by reason of Buyer's use of the information disclosed by Seller. Without Buyer's express written consent, Seller shall not disclose to any third party any information relating to the Proposal or Purchase Order without the written consent of Buyer.

BUYER'S DESIGN: If the goods specified in the Purchase Order are peculiar to Buyer's design either as an assembly or a component part of an assembly, or they bear Buyer's trademark or other identifying mark, they shall not bear the trademark or other designation of Seller, and similar material shall not be sold or disposed of to anyone other than Buyer.

ADVERTISEMENT: Seller shall not, without first obtaining the specific written consent of Buyer, in any manner, advertise, publish, or disclose to any third party that Seller has contracted with Buyer to furnish the goods or render the services covered by the Purchase Order except as specified or required for completion of the Purchase Order. Seller's breach of this Paragraph shall permit Buyer to cancel the Purchase Order in addition to any other rights and remedies Buyer may have as provided by law. Goods shall not bear the trademark or any other identifying mark designation of Seller.

SHIPMENT: Buyer shall have the right to specify the carrier and/or the method of transportation to be used in conveying any part of the goods covered by the Purchase Order. A packing slip shall accompany each shipment. If no such slip is forwarded, the count or weight made by Buyer shall be conclusive. Seller will furnish all labor and equipment necessary to load equipment to include any packaging or crating material.

DELIVERY: Time of delivery or rendering services is of the essence. Seller is required to achieve 100% on time delivery performance. Deliveries shall be made during regular business hours unless otherwise specified by Buyer and in quantities specified by Buyer. Buyer shall not be required to make payment for goods delivered to Buyer which are in excess of quantities specified in Buyer's delivery schedules. Delivery shall not be deemed to be complete until goods have been actually received and accepted by Buyer. Whenever Seller has knowledge that delivery may be delayed, Seller shall immediately give written notice to Buyer. Seller will provide written status report detailing percentage completion and expected completion date for each phase to include but not limited to engineering, purchasing, manufacturing and inspection.

PAYMENT TERMS: Unless otherwise agreed to in writing, Buyer shall pay for the price for the goods as follows:

- a. Ten percent (10%) at the time the Purchase Order is placed.
- b. Thirty percent (30%) after approved drawings have been accepted by Buyer.
- c. Ten percent (10%) upon notification goods are ready to ship.
- d. Fifty percent (50%) net thirty (45) days following shipment.

FORCE MAJEURE: Neither party shall be in default by reason of any failure in performance of this Agreement in accordance with reasonable control and without fault or negligence on their part. Such causes may include, but are not restricted to, acts of nature or the public enemy, acts of the government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes and unusually severe weather, but in every case the failure to perform such must be beyond the reasonable control and without the fault or negligence of the party.

ERRORS: This Proposal and other quotations are subject to revision in case of clerical error, whether in favor of the Seller or MSI, upon notice by either party.

HOLD HARMLESS / INDEMNITY: Seller shall hold MSI harmless from any and all liability, costs, damages, attorneys fees, and expenses resulting from claims or causes of action of any nature arising out of the sale or use of the goods manufactured or supplied by MSI except to the extent such claims or liability results from the fault, or alleged fault, of MSI.

APPLICABLE LAW: These Terms and Conditions and the contractual arrangement between the parties shall be interpreted and governed by the internal laws of the State of Wisconsin.