

## COX MHP'S TERMS AND CONDITIONS OF SALES

The following terms and conditions of sale are not meant to mitigate product performance or business practice responsibilities; but rather to remove the possibility of misunderstandings. These policies have been established to assure understanding and good relations between Seller and our customers.

### **1. PRICES AND TERMS**

(a) Quoted prices are subject to change without notice, prior to acceptance of the order by Seller. (b) Normal terms, upon credit approval, are net 30 days from invoice date, FOB our plant, Morton, Mississippi. Delays in acceptance of the purchased item(s) or deferment of shipment by the Buyer for any cause, shall not be considered sufficient cause for delay in payment beyond the due date. Interest at the rate of 1 1/2% per month will be charged to the Buyer on past due invoices. (c) In some instances, per specific quotations, progress payments may be required by Seller. As project transpires Seller will invoice Buyer for amount of progress payment due, normal terms to apply unless otherwise stated in quotation terms. (d) Export shipments must be covered by an irrevocable letter of credit drawn on any U.S. Federal Bank, payable to Seller, upon presentation of proper shipping documents. (e) Buyer hereby also agrees if it becomes necessary that Seller bring legal action to collect payment due from Buyer, that Buyer shall pay all interest due on amount owed to Seller and shall be responsible for court costs, and reasonable attorney fees of Seller.

### **2. TAXES**

(a) In addition to stated prices, the Buyer shall reimburse Seller for sales tax, use tax, municipal taxes or any other taxes, tariffs which the Seller must, at any time either pay or be required to collect as a result of the transactions contemplated hereby. (b) If Buyer claims to be tax exempted or prefers to pay their own taxes, Buyer is to provide Seller a copy of the tax exemption certificate and/or tax identification number prior to the shipment of Sellers goods.

### **3. DELIVERY**

(a) Delivery schedules are determined from the date of receipt of written purchase order and parts, specifications, drawings, etc., if required, or receipt of material if Buyer is to furnish, whichever is the later. Seller will use its best efforts to comply with delivery schedules. (b) **However, delivery dates are estimates and not guarantees, and are based on conditions at time of quotation and are subject to prior sale of Cox MHP work load capacity at time of Buyer's approval of Seller's terms and condition of sales.** Delivery dates are subject to extensions for any modifications requested.

### **4. TRANSPORTATION**

In absence of shipping instructions Seller will use our own discretion in choice of method and carrier. We assume no responsibility for insuring shipments unless specifically requested by Buyer and then only at Buyer's expense and valuation. Claims for damages and loss, concealed or otherwise, must be filed by the consignee with the carrier immediately. We assume no responsibility for such damages or loss.

### **5. ORDER ACCEPTANCE AND TITLE**

(a) All orders are subject to final acceptance by Seller at its offices in Morton, Mississippi. (b) Delivery of products by Seller to a carrier in Morton shall constitute passage of title. The carrier shall be deemed as acting for the Buyer and all risks thereafter shall be the Buyer's. (c) These terms and any others specified in the quotation shall take precedence over any conflicting terms in the purchase order.

### **6. WARRANTY, DISCLAIMER OF OTHER WARRANTIES, EXCLUSIVE REMEDY**

(a) Seller warrants our products to be free from defects in material and workmanship under normal use and

service for the period of one year use after delivery, except for purchased components. Universal joint assemblies are guaranteed for 90 days after delivery. This warranty applies only to the initial Buyer. Disassembly of defective products without prior authorization and instruction from Seller will void this warranty. The warranties shall not apply to and Seller will not be responsible for any equipment or part which has been repaired or altered in any way that, in our judgment, affects its stability or its reliability, or which has been subject to misuse, negligence, or accident. This warranty is made in lieu of all other warranties, expressed or implied, including merchantability. (b) This warranty covers the free replacement of defective parts (FOB our plant, Morton, Mississippi), if, subject to Seller's pre-approval and final examination, the defective parts are returned prepaid. (c) Unless otherwise agreed to in writing, Seller does not guarantee the **actual performance** of its products in regard to the customer's specific application. (d) Items designated in quotation as perishable items are exempt from Cox MHP's warranty.

## **7. TECHNICAL ASSISTANCE**

Buyer may request technical assistance of Seller. If not covered by the original sales contract or warranty period of the product, Seller will warrant product as per section 6.

## **8. CHANGES**

(a) Design modifications of Seller products or machines deemed desirable by Seller or our suppliers in the interest of manufacturing or purchasing efficiencies, simplifying a design, improving quality, substituting more readily available or inexpensive materials, increasing probable production performance, or the like, may be made without prior approval of the Buyer provided this action does not change price or delivery and does not materially affect the performance characteristics of the product supplied. (b) Any modifications or changes required by Seller or the Buyer which affect price, and/or delivery, or materially affects performance characteristics of the product will be mutually negotiated before proceeding.

## **9. PRINTS**

(a) Any proposals, prints, brochures, drawings, or other information furnished to the Buyer by Seller is intended for confidential use by the Buyer, and shall not be used to the detriment of Seller's competitive position. (b) The Buyer will have a responsible member of his company approve all designs made available to Seller. (c) In the absence of specified requirements, specifically stated by Buyer on blueprint or in writing, commercial tolerances, custom and usage in manufacturing practices in the machine industry shall apply.

## **10. PRODUCTION ESTIMATES**

(a) Quoted production estimates are based on Seller's understanding of material specifications, tolerances required, metal removal, fixturing and tooling supplied, and user's operator efficiency. However, production estimates are not guaranteed. (b) Any requested deviations from Seller's standard inspection or test procedures are subject to additional charges. (c) Seller shall not be held liable for capacity or performance of the product due to Buyer's equipment work pieces to be used with, or in conjunction with, Seller's equipment, nor will Seller be held responsible for performance of the product due to information not supplied to Seller before acceptance of the order by Seller.

## **11. SAFETY**

(a) Seller will use its best efforts to include reasonable safety features on its products. Notwithstanding the foregoing, it shall be the responsibility of Buyer to request and itemize, prior to Seller's acceptance of order, any specific safety features Buyer desires or safety standards or regulations with which the products must comply. Quoted prices are subject to modifications for safety features. (b) When, in Seller's opinion, any ambiguity exists in applicable safety rules or deemed reasonable. (c) Seller will not guarantee safety compliance of any components supplied by Buyer. (d) It shall be Buyer's responsibility to determine compliance with applicable safety standards at time of delivery and Buyer's acceptance of the product shall relieve Seller of any further liability for safety of the product. (e) Buyer shall require its employees to use all safety features included with products and will not modify or remove any safety feature. Buyer shall give Seller written notice of any accidents or malfunction relating to Seller's products which results in personal injury or damage to property and

shall cooperate fully with Seller in any investigation of such incident.

## **12. CANCELLATIONS**

(a) If, without Seller's written consent, Buyer shall breach or cancel this contract in any way, including non-payment, insolvency or bankruptcy, Seller shall immediately be released from Seller's obligation, and if less than half the Seller quoted delivery schedule has transpired Buyer shall pay Seller twenty percent (20%) of contract price, or Seller's incurred cost plus 20% up through date of cancellation whichever is greater, as liquidated damages and not as a penalty and Buyer agrees said terms are fair and reasonable. If one half or more of Seller's quoted delivery schedule has transpired Buyer agrees to pay Seller full quoted price. (b) Seller reserves the right to cancel the production of an order or to request partial or full advance payment if, in Seller's judgment the financial condition of the Buyer so justifies, or the Buyer fails to comply with any of these terms and conditions. If order is so canceled, Buyer agrees to pay for work completed as described in paragraph (a) above.

## **13. EXCLUSION OF CONSEQUENTIAL DAMAGES**

Subject to the express terms of this agreement relating to warranty and repair of products, in no event shall Seller's performance exceed the cost of replacing or repairing defective parts or components. Buyer specifically understands and agrees that under no circumstances will Seller be liable for any incidental economic, special or consequential damages, of any kind, including but not limited to loss of profits or other loss caused by reason of non-operation or malfunction of the goods. This exclusion is applicable to any cause of action by Buyer against Seller including, but not limited to, claims for breach of any express or implied warranty and any claim based on tort liability (including negligence and strict liability).

## **14. DISCLAIMER OF TORT LIABILITY**

Buyer specifically understands and agrees that Seller shall not be liable in tort whether based on negligence, strict liability or any other theory of tort liability, for any action or failure to act in respect to the manufacture, preparation for sale, sale or delivery of goods sold hereunder. It is the parties intent and the intent of this paragraph to absolve and protect Seller from any and all tort liability.

## **15. INDEMNITY**

Buyer agrees to indemnify, defend and hold Seller harmless from and against any and all costs, damages, injuries to persons or property, or other liabilities of whatever kind or character, arising out of or relating to the use, misuse, design or performance of the products covered hereby.

## **16. FORCE MAJEURE**

Seller shall not be liable for any delay in delivery or for non-delivery, caused in whole or in part, by the occurrence of any contingency beyond the control of either Seller or Seller's suppliers, including but not limited to war (whether an actual declaration thereof is made or not); sabotage; insurrection; riot or other act of civil disobedience; act of public enemy; failure or delay in transportation; act of any government or any agency or subdivision thereof; judicial action; labor dispute; accident, fire, explosion, flood, storm, or any other act of God; shortage of labor, fuel, raw materials or machinery, receipt of approval prints, unforeseeable debugging, receipt of purchased components from suppliers, test parts or tooling from Buyer; or technical failure where Seller has exercised ordinary care in the prevention thereof. If any contingency occurs, Seller may, in its sole discretion, allocate production and deliveries among Seller's customers and Seller's own requirements.

## **17. GENERAL**

(a) All orders will be considered Mississippi contracts and shall be governed by and construed for all purposes under the laws of the State of Mississippi. (b) Except as is otherwise stated, in this contract the words "WE", "OUR", or "US", shall mean Seller and the words "YOU" or "YOUR", shall mean Buyer. (c) It is understood that there are no conditions or agreements outside this written proposal; and that all prior conversations, agreements, or representations with reference to its subject matter are hereby superseded. Clerical errors are subject to correction. (d) NO OTHER TERMS OR STIPULATIONS SHALL APPLY UNLESS BY

SEPARATE AGREEMENT SIGNED BY BOTH BUYER AND SELLER. (e) All rights of the Seller hereunder are separate and cumulative, and no one of them, whether or not exercised, shall be deemed to be an exclusion of any of the other rights and shall not limit or prejudice any other legal or equitable rights which the Seller may have.

**18. ACCEPTANCE**

Seller hereby gives notice of its objection to any different or additional terms and conditions other than as stated herein. This sale is expressly made conditional to Buyers assent to Seller's Terms and Conditions. These terms will be considered in effect and the order accepted upon Seller's execution of this agreement.