

# ENGEL

## TERMS AND CONDITIONS OF SALE

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### PRICING

It is understood and agreed that in addition to the prices herein and quoted, the Purchaser shall pay to Engel Machinery, Inc. or Engel Canada Inc., as applicable (the "Seller"), the actual amount of any sales, use, consumption, import or export or excise taxes, fees, duties, tariffs or other government charges related to the products and any federal, state, provincial, local or other taxes which the Seller may be required by law or by contract to pay or assume on account of the manufacture, import or sale of machine(s), devices, parts and service work covered herein, or in lieu thereof, Purchaser shall provide Seller with a tax exemption certificate, acceptable to the taxing authorities with Seller's approval, if applicable. U.S. purchasers shall pay any actual taxes due to applicable state or local taxing authorities directly to such taxing authorities.

### ORDERS

The quotations herein constitute an invitation for an offer by Purchaser, open for a period of thirty (30) days from date of issue (unless otherwise specified by Seller in writing), but subject to change by Seller during such period upon notice to the Purchase. No order shall be binding until accepted and acknowledged by Seller's office. All orders will be accepted by Seller subject to the terms and conditions specified herein. Seller will consider the placing of an order as an acceptance of such terms and conditions by Purchaser and as a waiver of any terms and conditions on Purchaser's order form inconsistent herewith. The Seller's quotation, the Purchaser's offer and/or order (with no effect given to terms or conditions in addition to or inconsistent with the terms and conditions contained herein), and the acceptance by Seller, all in writing, shall constitute the entire agreement and no employee or agent or representative of either party, or affiliate, except those duly authorized, shall have any authority to vary any term of such agreement or make any understanding or representation not incorporated in such writing.

### DELIVERY

Times of delivery of Seller's equipment (the "Equipment") specified are only the Seller's estimate and are estimated from date of receipt of order together with complete drawings, specifications, and other required information. Seller shall not be liable for delay in delivery, including any delay caused by fires, accidents, transportation hazards, strikes, labor conditions, material shortages (including delay of material from Seller's sources of supply), governmental legislation and all other causes beyond Seller's control, foreign or domestic.

### PAYMENTS

Unless otherwise specified in writing, Seller requires a 30% down payment with receipt of Purchaser's order with the balance of purchase price to be made net cash within 30 days of Seller's invoice, unless otherwise specified in writing by Seller. If equipment, ready for shipment on or after the scheduled delivery date cannot be shipped due to Purchaser's request or for any other reason beyond Seller's control, payment shall be made within thirty (30) days after Seller's notification to Purchaser that Equipment is ready for shipment. Seller may decline at any time to fill an order until such time that a down payment or satisfactory security has been made or provided for by Purchaser.

### TITLE; SECURITY INTEREST

Title to the Equipment shall remain the property of Seller until the purchase price is paid in full. The Purchaser covenants at any time, on request, to execute such document(s) as will be required, in order to enable the Seller to protect its title to the Equipment under any applicable laws. As security for Purchaser's payment obligations and notwithstanding Seller's retention of title, Purchaser grants to Seller a purchase money security interest in and to the Equipment and Purchaser agrees that Seller may file financing statements under the Uniform Commercial Code or other equivalent legislation in order to perfect such purchase money security interest. Purchaser's signature on its purchase order or the customer signing the ENGEL order confirmation shall constitute a signed writing incorporating these Terms and Conditions of Sale, granting ENGEL a purchase money security interest in the Equipment specified therein.

### CHANGES AND CANCELLATIONS

All orders based on this quotation and accepted by Seller shall be firm. However, if Purchaser requests changes in design or specification of Equipment on order, or for any reason stops work in process, Seller's costs of complying with Purchaser's request shall be borne by Purchaser. Seller may, upon written request by Purchaser, agree to the cancellation in whole or in part of any order, provided Purchaser shall compensate Seller for its actual internal and external costs, commitments to others and normal administrative and overhead costs, up to the date that each such request is received plus a cancellation charge equal to fifteen percent (15%) of such costs as liquidated damages and not a penalty. To the extent possible, Seller shall document all such costs and expenses.

### SPECIFICATIONS AND DRAWINGS

The specifications, statements, drawings and descriptions regarding weights and dimensions, rate of speed and/or capacity and other details relating to the Equipment supplied by Seller are approximate, descriptive and not intended as a guarantee. Accurate outline drawings are supplied free of charge on request, but only after the order has been accepted by Seller. Seller retains the right of ownership and copyright in respect of all drawings or blueprints and ownership of all other intellectual property relating to the Equipment. No drawings or blueprints may be made available to third parties without Seller's written consent thereto.

## **SELLER'S WARRANTY**

Seller will replace or repair, at its option and free of charge (except for transportation charges) any part of the Equipment that, in Seller's sole opinion, proves to be defective in material or workmanship under normal usage conditions in accordance with Seller's operating instructions within twelve (12) months from date of delivery unless otherwise specified in writing, provided that the alleged defective part is shipped pursuant to Seller's instructions, transportation charges prepaid, by Purchaser to the location specified by Seller, within the said warranty period, and said part proves to be defective upon inspection by Seller. The results of ordinary wear and tear, improper operation or maintenance, or use of corrosive or abrasive materials shall not be considered a defect in material and workmanship and Seller shall have no liability under this warranty for defects in the Equipment or any part thereof arising from same. No claim by Purchaser for damages, labor or installation charges will be allowed but Purchaser will be reimbursed for transportation charges if the part is determined by Seller to be defective. This warranty does not extend to defects in motors, controls, timers, valves and parts of components not manufactured by Seller, but the original manufacturer's warranties may be applicable to the extent that such warranties are assignable.

This warranty does not extend to any ancillary upstream or downstream machinery or equipment utilized in conjunction with the Equipment manufactured by a party or parties, other than the Seller, such as, for example: granulators, conveyors, chillers, mold temperature control equipment, driers, loaders, process controls. These and others may be covered by the original equipment manufacturers' warranties but not by Seller's warranty. Moreover, Seller makes no warranty or representation as to the performance of Seller's Equipment as it may relate to such third party ancillary machinery or equipment.

ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING WARRANTIES OF FITNESS FOR ANY PARTICULAR PURPOSE, MERCHANTABILITY OR QUALITY, ARE HEREBY EXPRESSLY DISCLAIMED AND EXCLUDED BY THIS AGREEMENT OF THE PARTIES.

## **OPERATING INSTRUCTIONS**

Seller will furnish a person to instruct one employee of Purchaser in the initial check and operation of the Equipment during the start-up period. Purchaser is to make, at its expense, all service connections necessary for operating the Equipment such as electricity, water and air. Should Purchaser request additional instructions at Purchaser's plant, Seller shall furnish a person at Purchaser's request upon receipt of formal purchase order at Seller's regular service charge rates, unless otherwise agreed upon in writing.

## **LIMITATION OF LIABILITY**

The remedies provided herein are the sole and exclusive remedies of Purchaser. The limitations of liability provided herein shall apply in any and all events, regardless of the legal theory upon which a claim is based. In no event shall Seller's liability hereunder exceed the amount actually paid by Purchaser to Seller under this agreement for the Equipment. In no event shall Purchaser be entitled to loss of profits, products, material or goodwill, or any incidental or other special or consequential damages, or injuries, direct or indirect which may result due to defects or failure in the Equipment or due to Purchaser's inability to operate it satisfactorily. Equipment manufactured to Purchaser's design is quoted on Purchaser's drawings and bills of material; any costs incurred as a result of errors in Purchaser's drawings or bills of material shall be paid for by the Purchaser. The Purchaser assumes all risks and liabilities for the operation and the use of the Equipment described herein and agrees to defend and to save Seller, its officers, directors, shareholders and employees and all affiliate entities, harmless from and against any and all claims arising from any cause whatsoever other than claims subject to the warranty provided herein.

## **RIGHT OF PURCHASER TO LEASE AND SUBSEQUENT LEASE AGREEMENT**

If, subsequent to the date of this agreement, Purchaser shall enter into an agreement in form satisfactory to Seller providing for the lease by Seller of the Equipment to Purchaser, such leasing agreement shall be deemed to supersede this agreement which shall be declared to be null and void.

## **GENERAL**

No verbal agreement, representation or warranty respecting said Equipment shall bind Seller or have any force or effect, whatsoever. This agreement may not be changed or terminated verbally and no change, termination or waiver of any of its provisions shall be valid unless agreed to in writing and signed by the party, against which such claims change, termination or waiver is sought to be enforced.

Where the order is confirmed by Engel Machinery, Inc., the contract between the Seller and Purchaser shall be governed by and construed according to the laws of the Commonwealth of Pennsylvania and the parties hereto agree that any claims or actions relating to the Equipment or the contract arising out of Seller's acceptance of Purchaser's order may only be brought in the Court of Common Pleas of York County, Pennsylvania or the United States District Court for the Middle District of Pennsylvania. Where the order is confirmed by Engel Canada Inc., the contract between the Seller and Purchaser shall be governed by and construed according to the laws of the Province of Ontario and the parties hereto agree that any claims or actions relating to the Equipment or the contract arising out of Seller's acceptance of Purchaser's order may only be brought in the courts of competent jurisdiction sitting in Toronto, Ontario. The parties hereby submit to the jurisdiction of such courts and waive change of venue to any other jurisdiction. In the event of litigation arising in connection with the Equipment or the contract arising out of Seller's acceptance of Purchaser's order, the party which substantially prevails in such litigation shall be entitled to reimbursement by the other party of its attorneys' fees, court costs and related litigation expenses.