

Terms and Conditions

1. All terms and conditions in any order or other communication from the buyer that are either in addition to or are different from the terms and conditions set forth herein are hereby expressly rejected.
2. Taxes – The buyer shall pay all present or future taxes or other governmental charges whether assessed on the goods after shipment within this contract, or on any delivery, transportation, storage, installation, processing, used or consumed in the making of this particular component.
3. Law Governing – This contract shall be governed by and construed according to the law of the Province of Ontario, Canada.
4. Delivery – CMI (Clark Machine Inc.) shall not be liable for loss or damage resulting from delay or failure of delivery or performance due to CMI's other production requirements or plant conditions; to strike, differences with workmen, lockout, or any labor shortage or difficulty; to fire, flood, accident, quarantine restrictions, or other casualty or act of God; or other emergency, or failure of suppliers of CMI to meet delivery schedules, or any shortage of raw materials however caused; to inability or delay in obtaining labour or materials; to inability or as a result of any cause, condition, or contingency beyond the reasonable control of CMI, whether similar to those enumerated or not. In the event of any of the foregoing, CMI may apportion its production and all stock material among its customers in such manner as it may consider equitable.
5. Acceptance – The Seller warrants that the products covered hereby conform to the description and specifications within the order acknowledgement. However, in the unlikely event that a nonconformance occurs, CMI will notify the buyer according to CMI's ISO program and proceed with a remedy approved by the buyer. Upon acceptance of a remedy and/or accepted delivery of the product CMI will be relieved of any liability associated with the product in regards to the nonconformance.
6. WARRANTY – Seller warrants that all items shall be in accordance with Seller's Proposal (or other agreed-upon specifications) and within the scope of the Seller's Proposal shall conform to specifications. The seller warrants the product to be free from workmanship defects for a period of three hundred sixty-five (365) days from the original date of shipment. THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING (WITHOUT LIMITATION) THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. However, such a warranty shall not apply to any item or items which, in Seller's judgment, have been repaired or altered in any way so as to affect their original workmanship, or reliability nor to any item or items which have been subject to damage by fire or accident, misuse, abuse, corrosion, negligent handling or accident, use in excess of their capabilities or lack of periodic inspection.
7. The Seller's obligation under such warranty shall be limited exclusively to the repair costs (not to exceed the Purchase order issued to CMI for the particular item) of the items determined to be defective by Seller, whose determination shall be final, provided that Seller reserves the right to satisfy its warranty obligation hereunder in full by electing to repair the product, refund repair costs not to exceed the purchase order amount to CMI. Any item(s) claimed by Purchaser to be defective shall be returned to Seller's plant in St. Catharines, Ontario. Purchaser shall bear all costs and expenses of transportation to and from such plant where a full inspection report will be drafted.
8. LIMITATION OF LIABILITY – In no event shall Seller's liability under any contract exceed the purchase order amount to CMI. Seller shall not have any liability whatsoever for indirect or direct damages or for special incidental or consequential damages (including without limitation loss of anticipated profits, extra machining, tool work, setup time or assembly) arising from cause of action including (without limitation) breach of contract, breach of warranty, strict liability (and tort or warranty) and negligence. Seller assumes no responsibility for the ultimate accuracy of estimated rough weights.

9. **ORDER-RELATED MANUFACTURING EQUIPMENT:** Order-related manufacturing equipment, including without limitation patterns, templates, core boxes, moulds, tools, rigs and gauges provided by Buyer shall be shipped to Seller free of charge. Seller will inspect any manufacturing equipment supplied by Buyer for compliance with contractual specifications, drawings or patterns only if this has been expressly agreed. Manufacturing equipment provided by Buyer may be modified by Seller if this appears necessary for technical reasons, and if no product modification is entailed. Buyer shall bear the expense of modifying, servicing and replacing such manufacturing equipment. Manufacturing equipment provided by Buyer will be treated and kept by Seller with the same care Seller applies to its own equipment. Seller will not be liable, however, for accidental destruction or deterioration of such equipment. Any manufacturing equipment provided by Buyer that is no longer required by Seller may either be returned to Buyer at Buyer's expense and risk or, if the Buyer does not retrieve such equipment within a reasonable term it shall be deemed abandoned.
10. Purchase orders are not subject to cancellation, except upon such terms that will indemnify CMI from and against all loss, cost and expense (including loss of profits) to the time the cancellation or which become unavoidable as a consequence of such cancellation.
11. Unless otherwise stated, all patterns, jigs, designs, drawings, fixtures and patents connected in any way with the work and services are the sole and exclusive property of CMI.
12. Overdue accounts shall be charged 24% APR interest charged monthly on all unpaid balances.
13. **MISCELLANEOUS:** - If any provision of these Terms is held to be invalid or unenforceable, the remainder of these Terms shall not be affected thereby. No waiver or modification of any of the provisions hereof shall be binding upon Seller unless in writing and signed by an authorized representative of Seller. Buyer may not assign the Terms, any order or any interest therein without the written consent of Seller. Any such actual or attempted assignment without Seller's prior written consent shall be void and shall entitle Seller to cancel any applicable order upon written notice to Buyer.