

Terms and Conditions of Sale

- 1. OFFER AND ACCEPTANCE.** Unless otherwise noted, this quotation by Automatics & Machinery Co., Inc. ("Seller") constitutes an offer to sell you ("Buyer") the machinery and/or equipment described under separate cover ("Machinery") upon the terms and conditions set forth herein. Buyer may accept this offer only upon such terms and conditions. Seller hereby objects to any terms contained in Buyer's acceptance which is in addition to or different from the terms set forth herein. If Buyer submits to Seller an acceptance or confirmation that contains terms in addition to or different from the terms in this offer, such acceptance or confirmation shall be operative as an acceptance of this offer, but such additional or different terms will not become a part of the contract. The offer provided for herein is subject to prior sale or, in the case of goods to be purchased by Seller from a third party to fill customer's order, the continued availability of such goods. Photographs of items, options or accessories supersede all written documentation as the final list of items included with the sale.
- 2. PAYMENT TERMS, TAXES.** Unless otherwise stated herein or agreed to by Seller in writing, the purchase price for the Machinery, together with all taxes, loading, rigging, freight, shipping, insurance and other charges associated with the sale, shall be payable to Seller in cash at the time of Buyer's placement of its order. A service/late charge of 1.5% per month, compounded, will be payable by Buyer on the outstanding balance of all accounts over 30 days past due. Ten Percent (10%) payment is due for all financed sales and balance, in-full, is required prior to release or shipping, unless otherwise agreed to in writing. All prices quoted are exclusive of federal, state and/or local taxes which may be applicable to the transaction and buyer agrees to pay Seller any such taxes together with or as part of the selling price, or separately, if Seller is required by any taxing authority to collect and pay any such tax.
- 3. TITLE.** Title to the Machinery, notwithstanding delivery thereof, shall remain in Seller's name until the purchase price has been paid in full. Buyer assumes ownership and responsibility for machinery upon transfer of funds to Seller. If LKE appears on the original quotation it means the machine is part of a Like Kind Exchange (LKE) but it does not affect the transaction in any way. This LKE means: Owner has assigned its rights but not its obligations regarding the sale of the property described herein to a Qualified Intermediary as part of an IRC Section 1031 exchange. This assignment does not affect your ownership, rights or obligations herein.
- 4. SHIPPING.** Where Seller assists in arranging rigging and/or transportation, regardless of FOB quoted, Seller acts as an agent for Buyer for rigging and transportation purposes only. Seller assumes no responsibility for any damage during rigging and transporting. Unless otherwise specified herein, all sales are "ex-source" or "ex-site" (e.g. Seller's warehouse or other premises at which the Machinery is located). Shipping dates are approximate and are not guaranteed. Seller shall not be liable for failure to deliver or perform or for delays in delivery or performance, occasioned by any causes. Notwithstanding any terms of shipment, Buyer shall be responsible for loss or damage to the Machinery during rigging or transit or as covered by the insurance company representing the rigging and transportation companies.
- 5. RETURN/REPAIR PRIVILEGE.** Seller guarantees that every used machine offered (unless sold on an "as is" basis) will be mechanically satisfactory for a period of 30 days from the date of shipment to Buyer. If the Machinery is found to be mechanically unsatisfactory and Buyer notifies Seller thereof in writing within said 30 day period, the Machinery may be returned to Seller, freight prepaid, for a full refund of the purchase price. In lieu of a refund, Seller may, in its sole discretion, repair the Machinery at Buyer's place of business. Unless otherwise stated herein, this return/repair privilege does not apply to Machinery (a) purchased by Seller from third parties to fill customer orders, or (b) purchased by Buyer from third parties in connection with transactions in which Seller is acting merely as broker. In no event shall Seller be liable to Buyer for any special incidental or consequential damages, including but not limited to any lost profits of Buyer. All new machines that have been manufactured by others and all such warranties, expressed or implied, are those extended and are hereby expressly limited to the warranty of the original manufacturer of the goods. Return privilege is void if machine is not in same or better condition as originally shipped.
- 6. DISCLAIMER.** Buyer acknowledges that the machinery and/or goods described herein are preowned (used) goods which were neither designed nor manufactured by Seller. Except as otherwise provided in the preceding paragraph: (a) Seller does not make any warranty of any kind whatsoever, expressed or implied, concerning the machinery, including but not limited to, any warranty of merchantability or fitness for a particular purpose; and (b) the Machinery is purchased by Buyer "AS IS" and "WITH ALL FAULTS". All specifications and descriptions of the Machinery are approximate only. It is the Buyer's responsibility to inspect the Machinery and to ascertain if the specifications, descriptions and condition of the Machinery conform to Buyer's requirements. Buyer acknowledges that the Machinery may not incorporate approved activating mechanisms, operator safety devices or safety guards as required by OSHA, or other federal, state or local law or regulation. Buyer agrees that it may provide proper safety devices and equipment to safeguard the operator of the Machinery and all third parties from injury resulting from the use, operation or set up of the Machinery in accordance with all federal, state and local governmental safety standards. Buyer further acknowledges that the Machinery may contain, have processed, or have come into contact with, toxic or hazardous substances regulated under federal, state or local law.
- 7. WAIVER/INDEMNIFICATION.** Buyer hereby waives, releases and discharges Seller from any and all claims (with the exception of claims for breach of this agreement) of any and every kind (including but not limited to injury or death of any person or damage to property), which it may have at any time against Seller, its agents or employees, by reason of or arising out of any condition or defect of the Machinery, including but not limited to any improper design or manufacturing defect. Buyer agrees to indemnify, defend and hold Seller, its agents and employees harmless from and against any and all loss, liability, damage, claims, suits or expenses, including attorney's fees, which Seller or any of its agents or employees may suffer arising out of any use whatsoever of the Machinery, including but not limited to any loss, liability, damage, claims, suits or expenses based upon, resulting from, or in any way related to; (a) the failure of Buyer, Buyer's officers, agents, or employees to follow manufacturer instructions, warnings or recommendations; (b) the failure of Buyer, Buyer's officers, agents or employees, to comply with any federal, state, or local laws or regulations applicable to the use of such equipment; (c) any negligence or alleged negligence of Seller or any of Seller's officers, agents or employees in the sale of the Machinery; (d) any legal theory of strict liability without fault applied to Buyer, Seller or the original manufacturer of the Machinery; (e) any theory or breach of warranty of any kind; (f) the presence on or in the Machinery of any toxic or hazardous substance regulated under federal, state or local law. Buyer recognizes and understands that Seller did not build, rebuild or remanufacture any machine sold.
- 8. SELLER'S TERMINATION RIGHTS IN CONNECTION WITH BROKER TRANSACTIONS.** If Machine is not from inventory, that is, Seller does not own the Machinery, but is acting merely as a broker of such goods on behalf of Buyer or the owner thereof, it is understood and agreed that Seller shall be entitled to terminate this agreement upon written notice to Buyer if for any reason the goods become unavailable for sale to Buyer. If funds have been transferred Seller will return funds within 48 hours of this notification.
- 9. ATTORNEY'S FEES.** In the event of any action or proceeding arising out of this agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees in addition to any other relief to which it may be entitled.
- 10. ENTIRE AGREEMENT; SEVERABILITY.** This agreement contains the entire agreement of the parties with respect to the matters covered hereby, and is not contained herein, shall be binding or valid. Each provision of this agreement is severable and, in the event any one or more provisions hereof are declared invalid, the remainder of this agreement shall nevertheless remain in full force and effect.
- 11. GOVERNING LAW; VENUE.** This quotation and any contract arising there from shall be deemed for all purposes to have been made in the State of Colorado and shall be governed by and construed in accordance with the laws of the State of Colorado. Any cause or action arising from a contract resulting from this quotation shall be brought only in the Superior Court of the State of Colorado in and for the County of Boulder, which shall have sole and exclusive jurisdiction over all controversies arising hereunder.