

THE OHIO CRANKSHAFT COMPANY

TERMS & CONDITIONS

1. **ACCEPTANCE.** This Purchase Order is to be accepted by Seller by returning the Acknowledgement Copy to Buyer, but if for any reason Seller should fail to do so any conduct by Seller which recognizes the existence of the contract including, without limitation, the commencement of any work, delivery of any goods or performance of any services in accordance herewith, shall constitute acceptance of this Purchase Order and all of its terms and conditions. Any terms proposed in Seller's acceptance of Buyer's offer which add to, vary from or conflict with the terms herein are hereby objected to and any such proposed terms shall be void and the terms hereof shall constitute the complete and exclusive statement of the terms and conditions of the contract between the parties and may hereafter be modified only by written instrument executed by the authorized representatives of both parties. If this Purchase Order has been issued by Buyer in response to an offer and if any terms herein are additional to or different from any terms of such offer, then the issuance of this Purchase Order by Buyer shall constitute an acceptance of such offer subject to the express condition that the Seller assent to such additional and different terms herein and acknowledge that this Purchase Order constitutes the entire agreement between Buyer and Seller with respect to the subject matter hereof and the subject matter of such offer, and the Seller shall be deemed to have so assented and acknowledge unless Seller notifies Buyer to the contrary in writing within ten (10) days of the receipt of this Purchase Order.

2. **SHIPPING, DELIVERY AND BILLING.** All materials shall be forwarded in accordance with the instructions on front of this Purchase Order or in the absence of such instructions, by the route using the lowest transportation rate. Otherwise, excess transportation costs will be charged to Seller's account. When the usual terms of traffic do not include insurance, shipments must be forwarded properly insured. All material shall be suitably packed, marked and shipped in accordance with the requirements of common carriers to secure lowest transportation costs. No charge for boxing or crating shall be made unless agreed to by Buyer. All containers to be returned must be shipped on a non-charge or consignment basis. Seller shall properly mark each package with purchase order number and, where multiple packages comprise a single shipment, each package shall be consecutively numbered. Packing slips must accompany each shipment. Purchase Order and package number shall be shown on packing slips and bills of lading. The original bill of lading or other shipping receipt for each shipment shall be forwarded to buyer on the date of shipment. Damage to any goods because of packing that fails to protect such goods will be charged to Seller.

Duplicate invoices shall be mailed promptly after each shipment showing purchase order number, package number, part or material specification number (or other information to facilitate proper identification), shipping point, place of delivery, route and destination.

The obligation of Seller to meet the delivery dates, specifications, and quantities, as set forth herein this Purchase Order, is of the essence of this order. If Seller's deliveries fail to meet said schedule, whether such failure is a result of advance or late deliveries, or if material arrives without proper notice, Buyer, without limiting its other rights or remedies, may, at its option, return the material at Seller's expense for redelivery at the proper time, withhold payment for material until such time as payment would have become due had delivery been made at the proper time; direct expedited routing, the excess costs for which shall be charged to Seller, and/or place the material in storage at Seller's expense and for Seller's account until the time provided for delivery.

3. **PRICES AND TERMS OF PAYMENT.** The prices and terms of payment stated hereof apply to all shipments made or services rendered hereunder. In the event that no price is set forth on the front of Purchase Order it is agreed that Seller's price will be the lowest prevailing price on the date of this Purchase Order, provided, however, that if said prevailing price is in excess of the price last charged or quoted by Seller to Buyer, Buyer shall have no obligation to pay any amount in excess of such lower price. The discount period, if any, shall begin on the date the invoice or material is received by Buyer, whichever is later. Buyer shall have no obligation to honor invoices for goods or services at increased price, for extra work not authorized herein or for Seller's commitments or production arrangements in excess of the amount or in advance of the time necessary to meet the delivery schedule set forth herein unless agreed in writing by the Buyer. All payments are made conditional upon acceptance by Buyer of the goods and services called for under this Purchase Order.

4. **TAXES.** Unless otherwise indicated, the prices set forth in this Purchase Order do not include applicable Federal, state and local taxes. All such taxes shall be separately stated on Seller's invoice. Prices stated herein do not, nor will any invoice of Seller, include any tax for which an exemption either is, or is indicated by Buyer to be available, or any Federal excise or other tax for which Buyer has furnished Seller evidence of a lawful exemption. Seller agrees to pay any and all personal property ad valorem or value added taxes assessed or otherwise levied against any property placed in the hands of the Seller by the Buyer for the purpose of fulfilling this Purchase Order. In case it shall ever be determined that any tax, whether separately stated on Seller's invoice and paid by Buyer or included in the prices charged by the Seller was not required to be paid, Seller agrees to notify buyer to promptly take all steps necessary to obtain a refund, and when received, to pay such refund, including interest, if any, to Buyer.

5. **INSPECTION.** At any time or place before or after delivery Buyer may, but need not, inspect the goods and all parts, material and workmanship entering into the performance of this Purchase Order. In addition, Seller agrees at its expense to perform such tests as are required to confirm that the material is free from defects and conforms with all specifications, including such tests as may be stipulated in the specifications or reasonably requested by Buyer. Seller shall maintain records of such tests and shall certify the results to Buyer in such form and detail as Buyer reasonably requests. Payment for material prior to inspection shall not constitute an acceptance thereof. If any of the goods shall be defective in material or

workmanship or otherwise not in conformity with the requirements of this Purchase Order, Buyer, in addition to its other rights, may reject the same for full credit (or prompt refund if payment has been made), rework the same at Seller's expense or require prompt correction or replacement thereof by Seller at Seller's expense. Any goods rejected by Buyer shall be at Seller's risk and expense. Packaging, handling expense and the applicable transportation costs or charges incidental thereto will be charged to Seller's account. No goods returned as defective shall be replaced without a new order from Buyer.

6. **WARRANTY.** Seller expressly warrants that all material and work provided hereunder will conform in all respects to the specifications, drawings, samples and other descriptions furnished or adopted by Buyer and will be merchantable and free from defects in material, design or workmanship. Seller further warrants that all goods purchased hereunder which are in accordance with Seller's specifications will be fit and sufficient for the purposes for which Buyer intends them. Seller's warranty is for Buyer, its successors, assigns and users of its products. In addition to all other remedies that Buyer may have, Buyer may reject goods not conforming to the foregoing warranties, whether or not such goods have been previously accepted by Buyer or any prior payments have been made. Any payments made on such rejected goods shall be immediately returned to Buyer.

7. **PATENTS.** Seller warrants that the goods specified herein and their sale or use alone, or in combination according to specifications or recommendations agreed to by Seller, will not infringe any United States or foreign patents. Seller shall indemnify and hold harmless Buyer, its subsidiaries, constituent companies, agents and anyone purchasing or using said goods against all losses, liabilities, judgments, decrees, costs and expenses (including but not limited to court costs and attorneys' fees) arising out of or in any manner connected with any alleged infringement. Upon request of buyer, Seller shall, at its own expense, defend any action which may be brought by reason of any such alleged infringement. Upon a finding of patent infringement and the use of the goods being enjoined, Seller shall, at Buyer's option and at Seller's expense, either procure the right to continue using such goods, modify them so they become non-infringing or remove them and refund the total purchase price thereof.

8. **PATENT LICENSE.** Seller, as part consideration for this Purchase Order and without further cost to Buyer, hereby grants to Buyer, its subsidiaries, constituent companies, agents and anyone purchasing or using any of Buyer's products an irrevocable, non-exclusive, royalty-free right and license to use, sell, manufacture and cause to be manufactured products embodying any and all inventions and discoveries made, conceived or actually reduced to practice in connection with Seller's performance of this Purchase Order, and Seller hereby grants a license to repair, rebuild or relocate and to have repaired, rebuilt or relocated the goods purchased under this Purchase Order.

9. **INDEMNIFICATION; INSURANCE.** Seller agrees to indemnify and save harmless Buyer from and against all losses, liabilities, judgments, settlements, expenses (including, without limitation, attorney's fees), or claims based on injuries or damages to any person or property arising out of or in any way related to (a) this agreement, (b) the breach of any obligation or warranty hereunder, or (c) the delivery, condition use or operation of the goods or services purchased hereunder, whether such claims are based on the negligence, breach of warranty or strict tort liability of Buyer or otherwise and whether any such goods are in the same mode as when delivered hereunder or whether they have been used in the manufacture of or become part of equipment, machinery or goods sold by Buyer, its subsidiaries, affiliates or agents to third parties. Seller also agrees to and will assume on behalf of Buyer, upon its demand (without regard to the real or apparent merits of such action), the defense of any court or agency action that may be brought against Buyer. Upon Buyer's request, Seller shall furnish evidence of comprehensive general liability insurance including product and contractual liability with minimum limits of \$1,000,000 bodily injury per person and aggregate and \$1,000,000 property damage per incident and aggregate. Seller shall cause notice of material change or cancellation of said insurance to be given to Buyer at least ten (10) days before the effective date of such change or cancellation. All certificates of insurance furnished pursuant to this Section 9 must contain an agreement to provide such notice by the agent issuing the certificate.

10. **COMPLIANCE WITH LAWS.** Seller represents and warrants that no law, rule, regulation, ordinance or Executive Order of the United States, a state or local government, or other government agency has been violated in the manufacture or sale of the goods or in the performance of the services covered by this Purchase Order. Seller will indemnify and hold the Buyer harmless from and against any and all claims, losses, damages, fines, penalties, costs and expenses assessed against or incurred by Buyer as a result of any such actual or alleged violation. Without limiting the foregoing, all invoices shall contain the following assurance:

"Seller represents that it has complied with the Fair Labor Standards Act of 1938, as amended, in producing the goods and supplies covered by this Invoice."

11. **GRATUITIES.** Seller represents and warrants that it has not offered or given or will not offer or give to any employee, agent or representative of Buyer any gratuity with a view towards securing any business from Buyer. Any breach of this warranty shall be a material breach of each and every contract between Buyer and Seller.

12. **USE OF BUYER'S NAME AND INSIGNIA.** Seller shall not use the Buyer's name, trade names, insignia, symbols, decorative designs or other evidence of Buyer's identity in advertising or for promotion of Seller's sales, without prior written permission of Buyer. Any material rejected or not purchased by Buyer which utilizes any of Buyer's names, trade names, insignia, symbols, decorative designs or other evidence of Buyer's identity shall not be sold or used until all of the same has been removed.

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13. **USE OF DESIGNS.** Seller shall keep confidential all information, drawings, specifications, designs, patterns or data furnished by Buyer or prepared by Seller specifically in connection with this Purchase Order. Materials purchased hereunder with Buyer's specifications, drawings, designs or patterns shall not be quoted for sale or in any other manner advertised or published to others without Buyer's prior written authorization; nor shall Seller publish the fact that it has furnished or contracted to furnish Buyer the goods, materials or services herein mentioned without the prior written consent of Buyer. Any specifications, drawings, samples, designs, patterns or other data furnished by Buyer or any other information gained by Seller in connection with this Purchase Order shall remain Buyer's property and shall be returned to it upon request.

14. **TOOLING.** Unless otherwise agreed in writing, all materials, drawings, tools, dies, jigs, gauges, fixtures, patterns, molds, testing apparatus, machinery and equipment, together with all other manufacturing aids used in the manufacture of the goods or services ordered hereunder which are furnished to Seller by Buyer or specifically paid for by Buyer, and any replacement thereof or any materials affixed or attached thereto, shall remain the personal property of Buyer. All such property shall be plainly marked or otherwise adequately identified by Seller as Buyer's property and shall be safely stored separate and apart from Seller's property. Said property shall be subject to removal from the Seller's premises by Buyer at any time without further charges. All such property shall be kept in good condition and from time to time replaced by Seller without expense to Buyer, except that the actual cost of changes due to changes of design or specifications by Buyer shall be paid for by Buyer. Such property shall be used for no other purpose except completion of orders submitted by Buyer.

15. **CHANGES.** This Purchase Order contains the complete and final agreement between Buyer and Seller as of the date hereof. Nonetheless, Buyer may at any time, by written order, make changes within the general scope of this Purchase Order in any one or more of the following:

- a. applicable drawings, designs or specifications.
- b. method of shipment or packing.
- c. place or time of delivery, including temporary suspension of shipments.
- d. materials, methods or manners of production or final product and Seller shall comply therewith. If any such change causes an increase in the cost of, or time required for performance, an equitable adjustment shall be made in the price or delivery schedule, or both, and this Purchase Order shall be modified in writing accordingly. Where the cost of property made obsolete or excess the result of a change is included in Seller's claim for adjustment, Buyer shall have the right to prescribe the disposition of such property. Any claim by Seller for adjustment hereunder must be asserted within ten (10) days from the date of receipt by Seller of the notification of change. However, nothing in this section shall excuse Seller from proceeding with the order as changed or modified.

16. **CANCELLATION.** In addition to any other provisions contained herein for the cancellation or termination of this Purchase order. Buyer may cancel this Purchase Order for any reason or no reason, in whole or in part, by written notice to Seller on the following terms and conditions:

- a. Buyer shall pay to Seller (in addition to all sums payable for goods and services completed and delivered to Buyer prior to such cancellation) the sum equal to the actual expense incurred by Seller in good faith prior to its receipt of the cancellation notice in connection with the manufacture and/or the procuring of material necessary to supply the goods and/or services with respect to which the cancellation is effective (including the reasonable expense of cancelling firm commitments for procuring such material) less the value of all benefits which Seller will, or may reasonably be expected to derive from its possession of such goods, material or other things of any description provided, however, that in no event shall payment to Seller exceed either (i) the price specified herein for the goods and/or services with respect to which the cancellation is not effective; and provided further that in no event shall Buyer be liable for Seller's commitments or production arrangements in excess of the amount, or in advance of the time necessary to meet Buyer's delivery schedule. Where cancellation is by reason of termination of a contract of the United States Government under which this order has been placed, Buyer will pay the Seller at such times as Buyer is paid by the United States Government.
- b. Cancellation under this Section shall not affect the rights of the parties hereto with regard to goods and/or services with respect to which the cancellation is not effective.

Upon receipt of any notice of cancellation hereunder, Seller shall, unless otherwise directed, immediately discontinue all work in progress and immediately cancel all orders or subcontracts given or made pursuant to this Purchase Order. Exercise, by the Buyer, of the rights of cancellation shall give rise to no liability except as specified herein, and shall not have any effect of waiving any damages the Buyer might otherwise be entitled to.

17. **TERMINATION (DEFAULT).** In the event that Seller is insolvent, makes a general assignment for the benefit of creditors or admits in writing inability to pay its debts as they mature, or if a trustee or receiver of Seller or any substantial part of Seller's assets is appointed by any court, or if a proceeding is instituted under any provision of any Federal bankruptcy or state insolvency law by or against Seller and its acquiesced in or is not dismissed within thirty (30) days or results in an adjudication in bankruptcy or insolvency or in the event that Seller fails or appears to be unable to perform any of its obligations in accordance with the terms and conditions of this Purchase Order and Seller does not correct such failure to Buyer's satisfaction within ten (10) days, after receipt of written notice from Buyer specifying such failure, then Buyer may (a) cancel this Order in whole

or in part by written notice to Seller, (b) obtain the goods and/or services ordered herein from another source and charge any costs thereof which exceed the price therefore stated in this Purchase Order to Seller, and/or (c) require Seller to deliver at Seller's expense to Buyer or Buyer's designee any materials acquired by, and any work in progress and finished parts fabricated by, Seller or Seller's subcontractor(s) in order to perform any of its obligations under this Purchase Order for which Buyer will pay to Seller a reasonable amount not exceeding the price stated on this Purchase Order for such materials, work in progress (as if the work had been completed and delivered to Buyer in accordance with this Purchase Order) or finished parts, less all sums expended by Buyer to complete or to have such work completed and delivered to Buyer. Buyer agrees to accept goods which were ready for shipment prior to notification of termination, subject to the terms and conditions of this Purchase Order provided that such goods are free and clear from any liens and encumbrances. The remedies set forth herein shall be cumulative and additional to any other or further remedies provided at law or in equity Seller hereby agrees to notify Buyer immediately upon the occurrence of any event set forth in this Section 17 or upon the occurrence of any other event which may delay delivery of the goods or services herein ordered.

18. **PERFORMANCE: NOTICE OF LABOR DISPUTES.** It shall not be deemed a default hereunder and neither Buyer nor Seller shall be liable for a failure to perform arising from causes or events beyond their reasonable control and without their fault or negligence, including, but not limited to, labor disputes of any kind. To the extent that, and so long as, the obligations of either party are affected by any such cause or event, such obligation shall be suspended; provided, however, that time is of the essence of this Purchase Order and should Seller fail to comply with Buyer's delivery schedule or otherwise fail to comply with its obligations hereunder. Buyer may terminate without liability. Whenever any such cause or event is delaying or threatens to delay timely performance by either party, such party shall immediately notify the other of such cause or event and shall furnish all relevant details. Seller will include a provision identical to the preceding sentence in each subcontract and immediately upon receipt of any such notice from its subcontractors transmit the same to the Buyer. Seller agrees that upon the occurrence of any such cause or event which might possibly result in a delay in the performance of Seller's obligations, Buyer shall have the option, exercisable by written notice, to vest title in itself to all tools, finished parts, raw materials and work in process associated with this Purchase Order and Seller will, upon request from Buyer, deliver the same to Buyer at any point outside of Seller's plant. Buyer will make an equitable payment there for to Seller.

19. **LIMITATION OF BUYER'S LIABILITY; STATUTE OF LIMITATIONS.** IN NO EVENT SHALL BUYER BE LIABLE FOR ANTICIPATED PROFITS OR FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES Buyer's liability on any claim of any kind for any loss or damage arising out of connected with or resulting from this Purchase Order shall in no case exceed the price allocable to the goods or services or unit thereof which gave rise to the claim. Any action resulting from any breach on the part of Buyer must be commenced within one (1) year after the cause of action has accrued.

20. **GOVERNMENT CLAUSES AND CONTRACTS.** If this purchase is subject or related to a Government Contract those Government Contract clauses which are not inconsistent with the terms and conditions hereof and which applicable Regulations (and the prime and/or subcontract to which this purchase is subject) require to be included in a contract or subcontract such as this purchase shall be included herein, but only for the minimum necessary purposes of this clause.

21. **ASSIGNMENTS.** Without Buyer's prior written consent, Seller shall not assign or delegate its obligations or performance hereunder.

22. **WAIVER.** No waiver shall be effective without the express written consent of Buyer's authorized representative. No waiver of a breach of any provision hereof shall constitute a waiver of any other breach or entitle Seller to any further waivers.

23. **SHOP SAFETY RULES.** Seller's personnel must comply with all shop safety rules while in our plant, which includes wearing safety glasses and shoes.

24. **MATERIAL SAFETY DATA SHEET.** For all materials forwarded in accordance with this purchase order, seller shall provide a Material Data Safety Sheet, as required by OS HA Standard 29 CFR1910.1200 Hazardous Communication, or such other applicable regulations as may be in effect as of the date of shipment.

25. **LABOR AND MATERIALMEN'S LIENS.** Before payment by Buyer to the Seller the Seller shall submit all evidence satisfactory to the Buyer that all bills for labor and materials and other indebtedness connected with said work for which a lien might be filed, have been paid by the Seller.

26. **CHOICE OF LAW.** This Purchase Order, the contract based hereon and any questions with respect to the construction, interpretation or performance shall be governed by and determined in accordance with the laws of the State of Ohio.

27. Subcontractors will afford Ohio Crankshaft and our customers the right to verify at the subcontractor's facility that the subcontracted items/services conform to specified requirements. Verification does not absolve the contractor from providing acceptable services nor shall it preclude subsequent rejections.