

TERMS AND CONDITIONS OF SALE

- 1. Effect of Buyer modifications to this quotation.** The price and delivery terms in this quotation are subject to change if Buyer wishes to change any terms of this quotation.
- 2. Acceptance** of this quotation may be by any reasonable and customary communication. No inconsistent terms in Buyer's purchase orders, such as quantities, delivery schedules, or inconsistent printed text will have any force or effect unless specifically agreed to in writing by Frasal Tool Co., Inc.
- 3. Price increases for materials.** This quotation is based on the present cost of materials; Buyer shall pay Frasal Tool Co., Inc. for any increase in cost of materials purchase by Frasal tool Co., Inc. to fulfill this contract.
- 4. Payment terms** quoted are based on the Buyer's present financial condition and record of payment. If any material change arises, Frasal Tool Co., Inc. has the right to require C.O.D., or other security for payment, or to withhold delivery. Buyer agrees to pay all invoices within 30 days. If Buyer defaults, in payment, Buyer shall pay Frasal Tool Co., Inc.'s costs of collection including reasonable attorney's fees, in addition to damages.
- 5. No warranties on goods.** The goods sold to Buyer will be as described, and no other express or implied warranties are made by Frasal Tool Co., Inc., including any warranty of fitness to perform any particular function unless expressly stated in this quotation. Buyer has furnished the drawings and specifications for the goods and Buyer is not relying on Frasal Tool Co., Inc. to select goods or engineering designs. Therefore, Frasal Tool Co., Inc. DOES NOT WARRANT THAT THE GOODS ARE FIT FOR ANY PARTICULAR PURPOSE AND MAKES NO WARRANTY OF MERCHANTABILITY, and Buyer indemnifies and holds harmless Frasal Tool Co., Inc. from any claims or liability arising from any use of the goods subject of this contract.
- 6. Raw materials availability.** This contract is contingent upon the availability of raw materials required for the manufacture of the goods. Frasal Tool Co., Inc. shall not be deemed in breach of this agreement for delay in manufacture or delivery where such raw materials are unavailable. In such case, Frasal Tool Co., Inc. may, at its options, cancel this agreement or deliver to you its pro-rata share of its production.
- 7. Force majeure.** Frasal Tool Co., Inc. will not be liable for any delay or failure in performance resulting from labor disputes, war, riot, insurrection, fire, flood, accident, storm, act of God, or other causes beyond its control, or from Frasal Tool Co., Inc.'s good-faith compliance with any foreign or domestic governmental law, rule, order or regulation, whether or not it later is held invalid.
- 8. Special tooling.** Unless otherwise specifically provided in Frasal Tool Co., Inc.'s quotation, special tooling developed by Frasal Tool Co., Inc. to complete this contract shall be the property of Frasal Tool Co., Inc. Special tooling supplied by Buyer or special tooling developed by Frasal Tool Co., Inc. subject to property ownership of Buyer shall be maintained by Frasal Tool Co., Inc. with reasonable care at Buyer's risk or loss of damage arising from force majeure events and Buyer is encouraged to provide its own insurance against such loss or damage. In the event Buyer does not claim such special tooling within two years after completion of Frasal Tool Co., Inc.'s deliveries under this contract, then Frasal Tool Co., Inc. shall have the right, following 30 days' written notice to Buyer, to dispose of such special tooling without liability to Buyer.
- 9. Buyer's requests for changes.** Following acceptance of this quotation, any technical, quantity, delivery or other change requested by Buyer shall be in writing and shall be construed as a request to renegotiate the contract without prejudice to the rights of Frasal Tool Co., Inc. under the contract.
- 10. Cancellation by Buyer.** In the event Buyer cancels this contract following acceptance of this quotation, Buyer agrees to pay Frasal Tool Co., Inc.'s expenditures for raw materials, no amortized tooling, labor incurred, handling and overhead, and for all work completed to date and in progress but not yet delivered to Buyer, plus a

cancellation charge of 10% of the above amount. This is without prejudice to such other and additional rights as are available to Frasal Tool Co., Inc. under the law.

11. Incidental charges. Any special packaging requirements, source inspection by Buyer on the premises of Frasal Tool Co., Inc., or other requirements not expressly provided for shall be subject to additional charges by Frasal Tool Co., Inc.

11a. Under/Over shipment policy. One to nine piece orders will result in exact

quantity shipments. Ten or more piece orders may result in customer receiving

plus or minus ten percent of the quantity ordered with charges applying.

12. Short count. Buyer shall be deemed to have accepted the numerical count of goods shipped unless Buyer notifies Frasal Tool Co., Inc. in writing of any claim for short count within 10 days after delivery to Buyer.

13. Nonconforming goods. Goods delivered to Buyer shall be deemed to conform to this contract unless Buyer notifies Frasal Tool Co., Inc. in writing of any claim of nonconformance within 30 days after delivery to Buyer. Buyer will then await instructions and unless otherwise agreed to in writing by Frasal Tool Co., Inc. Buyer assumes the full risk and expense of returning goods to Frasal Tool Co., Inc., including but not limited to damage arising from Buyer's improper packaging. Frasal Tool Co., Inc. agrees to repair or replace nonconforming goods or allow a credit for nonconforming goods at its option, which shall be the sole liability of Frasal Tool Co., Inc. with respect to nonconforming goods.

14. Customer-supplied raw or semi-finished materials. In the event this contract requires Frasal Tool Co., Inc. to perform work on raw or semi-finished materials supplied by Buyer but not purchased by Frasal Tool Co., Inc. from Buyer, Buyer shall supply an adequate excess to allow for machining losses. If Frasal Tool Co., Inc. scraps any such materials, it shall not be liable to Buyer for such scrapped materials. Buyer warrants that any raw or semi-finished materials shall be suitable for the operations to be performed by Frasal Tool Co., Inc., free of defects in workmanship and material. If found defective during processing, Buyer shall promptly deliver suitable replacements at no charge to Frasal Tool Co., Inc. Buyer shall pay Frasal Tool Co., Inc. for all work performed to the time when the defect was discovered.

15. Other indemnification. Buyer agrees to defend at its own expense, indemnify and hold harmless Frasal Tool Co., Inc. from all claims of patent infringement of trade secret misappropriation arising from its performance under this contract, including damages, costs and attorneys' fees.

16. Taxes. Prices quoted are subject to added charges levied by any government taxing authority, all of which shall be paid by Buyer.

17. Construction, modification. This quotation upon acceptance becomes the entire understanding of the parties with respect to this subject matter and supersedes all representations or understandings relating thereto. It may not thereafter be modified orally, but only in writing, signed by the party to be charged; and, it shall be construed in accordance with law of Frasal Tool Co., Inc.'s state.

ADDITIONAL TERMS AND CONDITIONS

(Directed toward the sale of tools, dies, molds and miscellaneous provisions of general interest)

- 1. Progress payments**, if any, unless otherwise provided in this quotation, shall be made in installments invoiced by Frasal Tool Co., Inc. as the work progresses, but not more frequently than bi-weekly (monthly or some suitable interval) up to 80% (or another percentage) of the amount of Frasal Tool Co., Inc.'s recorded costs for payment of goods or services acquired to fulfill this contract plus the costs of materials withdrawn from inventory and placed in the production process to fulfill this contract, plus direct labor, travel, engineering and other direct costs to fulfill this contract. Frasal Tool Co., Inc. shall maintain, in accordance with generally acceptable accounting principles, books and records reflecting such costs and to make such books and records available for inspection by the Buyer on reasonable notice. The aggregate amount of progress payments shall not, however, exceed 80% (or another percentage) of the total contract price.

(OR progress payments may not be related to costs by providing in the quotation any desired timetable for pre-delivery payments.)

- 2. Ownership title to molds, tool and dies** subject of this contract and all accessories and components shall remain with Frasal Tool Co., Inc. until full payment by the Buyer of all indebtedness incurred by the Buyer pursuant to this contract, and Frasal Tool Co., Inc. has the right, at its sole option, to withhold delivery of any goods to Buyer if, at the time Frasal Tool Co., Inc. has agreed to deliver such goods, Buyer is in default by than 30 days on previously submitted invoices pursuant to this contract, all without prejudice to such other relief available to Frasal Tool Co., Inc. under the law.

- 3. Risk, or loss of damage** from any cause shall pass to Buyer upon delivery of goods to Buyer or Buyer's carrier as applicable and in the event of any such loss

Or damage, Buyer nevertheless shall pay Frasal Tool Co., Inc. the full contracted amount.

- 4. Engineering, design, and construction suggestions** by Frasal Tool Co., Inc.'s representatives, if and when approved by Buyer in writing following acceptance of the quotation, shall constitute thereby an amendment of the contract and shall be the sole responsibility of the Buyer unless Frasal Tool Co., Inc., and Frasal Tool Co., Inc.'s disclaimer of warranties and all other provisions in this contract shall continue in full force and effect.
- 5. Defects.** Buyer shall, within 30 days after delivery of goods subject of this contract, notify Frasal Tool Co., Inc. in writing of any claimed defect in or failure of the goods to conform to the technical specifications subject of this contract. Buyer shall not, without prior written consent of Frasal Tool Co., Inc., return the goods to Frasal Tool Co., Inc. If following such notice, the parties agree that there exist such a defect or failure to conform due to the fault of Frasal Tool Co., Inc., then at the option of Frasal Tool Co., Inc.: (1) the defective goods shall be returned, at Frasal Tool Co., Inc.'s expense, to Frasal Tool Co., Inc. properly packaged and safeguarded against normal transit hazards as Frasal Tool Co., Inc. may require for repair or replacement by Frasal Tool Co., Inc., at its sole option, and thereafter returned to Buyer at Frasal Tool Co., Inc.'s expense; or (2) the parties shall negotiate an agreed amount to be deducted from the purchase price of such goods for the repair of the goods by Buyer or others. Buyer's failure to so notify Frasal Tool Co., Inc. in writing of any such claimed defect or failure to conform within the above period shall constitute Buyer's complete waiver of any such claim with respect to defects or nonconformance, and Buyer's release and covenant not to sue Frasal Tool Co., Inc. with respect to such claim.