

AMERICAN SHOE MACHINERY COMPANY
("SELLER")

TERMS AND CONDITIONS OF SALE

SELLER'S ACCEPTANCE OF ANY OFFER IS EXPRESSLY CONDITIONED ON APPROVAL OF SUCH OFFER BY SELLER'S CREDIT DEPARTMENT AND BUYER'S ACCEPTANCE OF THE FOLLOWING TERMS AND CONDITIONS WHICH CANNOT BE ALTERED OR AMENDED WITHOUT SELLER'S EXPRESS WRITTEN CONSENT. SELLER OBJECTS TO THE INCLUSION OF ANY DIFFERENT OR ADDITIONAL TERMS PROPOSED BY BUYER IN ANY PURCHASE ORDER OR ANY OTHER DOCUMENTS. ANY ACT BY SELLER IN MANUFACTURING OR DELIVERING ANY GOODS/ITEMS FOR OR TO BUYER SHALL NOT CONSTITUTE AN ACCEPTANCE OF ADDITIONAL OR DIFFERENT TERMS IN BUYER'S PURCHASE ORDER OR ANY OTHER DOCUMENT AND ANY SUCH ADDITIONAL OR DIFFERENT TERMS SHALL BE NULL AND VOID AGAINST SELLER. IF A CONTRACT IS NOT EARLIER FORMED BY MUTUAL AGREEMENT IN WRITING, ACCEPTANCE OF ANY GOODS/ITEMS FURNISHED HEREUNDER SHALL BE DEEMED TO BE ASSENT TO AND ACCEPTANCE OF ALL THE TERMS AND CONDITIONS STATED HEREIN. THIS QUOTATION IS INTENDED BY THE PARTIES AS A FINAL EXPRESSION OF THEIR AGREEMENT AND AS A COMPLETE AND EXCLUSIVE STATEMENT OF THE TERMS THEREOF. NO REPRESENTATIONS, UNDERSTANDINGS, OR AGREEMENTS HAVE BEEN MADE OR RELIED ON IN THE MAKING OF THIS AGREEMENT OTHER THAN THOSE SPECIFICALLY SET FORTH HEREIN. ACCEPTANCE OF THE FOLLOWING TERMS AND CONDITIONS SHALL BE BINDING UPON BUYER AND BUYER'S PERMITTED SUCCESSORS AND ASSIGNS.

1. **Prices.** Seller's prices specified in this Quotation are subject to the following:
 - (a) Prices quoted are based on the cost of labor and materials as of the date of this Quotation and on the volume indicated. Seller shall have the right to adjust prices to reflect (i) any subsequent change(s) in costs of labor and/or materials affecting production costs of the goods/items sold hereunder and (ii) smaller volumes than otherwise indicated.
 - (b) Unless otherwise stated in writing by Seller, regardless of destination, all prices quoted are in U.S. dollars and are based on packing for domestic shipment. Packing for international shipment may result in additional charges.
 - (c) Unless otherwise stated in writing by Seller, all prices quoted shall be exclusive of transportation from the F.O.B. point, insurance, taxes (including without limitation any sales, use or similar tax, and any tax levied on or assessed to Seller after delivery by reason of Seller's security interest in the goods/items), license fees, customs fees, duties and other charges related thereto. If Seller pays any such shipping charges, premiums, taxes, fees, duties, or other charges, Buyer will promptly reimburse Seller therefor. Buyer shall report and pay any and all such shipping charges, premiums, taxes, fees, duties, and other charges related thereto, and shall hold Seller harmless therefrom.
 - (d) Typographical and clerical errors are subject to correction.
 - (e) Prices quoted are for the goods/items specified only and do not include technical data or proprietary rights of any kind.
 - (f) Unless otherwise stated in writing by Seller, prices do not include any special inspections which may be required and for which Buyer hereby agrees to pay Seller.

2. **Terms of Payment.** Unless otherwise expressly stated by Seller in writing (a) with regard to manufactured goods, terms are net cash 30 days from the date of invoice and (b) with regard to gauges, molds, tools, jigs, and similar items, payment terms are 1/3 upon order date, 1/3 upon notice from Seller of receipt of the item(s) by Seller, and 1/3 upon approval by Buyer of the item(s) and the sample goods manufactured therewith. Past due balances will be subject to a service charge of 1-1/2% per month (18% per annum), but not more than the amounts allowed by applicable laws. Partial shipments will be billed as made and payments therefor are subject to the above terms.

3. **Delivery.** Transportation will normally follow Buyer's shipping instructions, but Seller reserves the right to select the means of transportation and routing when Buyer's instructions are deemed unsuitable. Unless notified to the contrary by Buyer, Seller may insure the full value of the goods or declare full value thereof to the transportation company at the time of delivery and all such freight and insurance costs shall be for Buyer's account. All shipments are F.O.B. Seller's factory at which the goods are manufactured. Risk of damage or loss is Buyer's responsibility after delivery by Seller to a carrier for shipment. Estimates of shipping dates are approximate, representing Seller's best judgment when made. Seller shall make all reasonable efforts to meet dates indicated for delivery or other performance, but Seller shall not be liable for any delays in shipping or in the time in which shipments reach Buyer.

4. **Acceptance of Goods.** Samples and finished goods shall be deemed approved and accepted by Buyer if written notice of rejection is not received by Seller within 10 days after date of delivery. Before any rejected goods are returned to Seller, Seller's prior written authorization and Seller's instructions regarding how and where goods should be returned must be obtained. Rejected goods shall be returned to Seller's factory, transportation charges paid, within 30 days after date of receipt by Buyer for Seller's inspection. If defective, at Seller's discretion either a credit therefor or a replacement thereof will be made, subject to the following exceptions. No credit or replacement will be issued on any goods which have been altered or defaced in any way, or upon which an additional process has been performed.

5. **Financial Responsibility.** Whenever Seller in its sole discretion determines that Buyer is not financially responsible, Seller shall have the right to (a) require reasonable progress payments for work in process or, in the absence of such progress payments, to terminate its obligations without affecting the obligation of Buyer to pay for goods/items delivered and work in process as of such termination and/or (b) to decline to make deliveries except for cash; and, in either case, Seller shall have no liability to Buyer therefor.

6. **Security Interest.** Seller reserves and Buyer grants a purchase money security interest in all goods/items which are the subject of this Quotation or any contract of sale entered into pursuant hereto (and proceeds thereof) as security for the payment by Buyer of the full purchase price for such goods/items. Buyer agrees to execute such documents as Seller requests to perfect its security interest.

7. **Patents, etc.** Seller assumes no obligation or liability with respect to infringements of patents, copyrights, trademarks or other proprietary rights arising out of goods/items sold hereunder. With regard to any goods/items made specifically for Buyer, Buyer agrees to indemnify and hold Seller harmless against any claims resulting from infringement.

8. **Limitation of Liability; Warranties.** NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN OR ELSEWHERE AND SUBJECT TO THE PROVISIONS OF PARAGRAPH 11, SELLER'S RESPONSIBILITY FOR LOSSES OR LIABILITIES ARISING OUT OF, IN CONNECTION WITH, OR RELATED TO THE GOODS/ITEMS COVERED HEREUNDER AND ANY CONTRACT OF SALE ENTERED INTO PURSUANT HERETO SHALL NOT EXCEED THE PURCHASE PRICE HEREUNDER. SELLER'S OBLIGATION WITH REGARD TO DEFECTIVE GOODS/ITEMS SHALL BE LIMITED TO REPLACEMENT OF SUCH GOOD/ITEM OR ISSUANCE OF A CREDIT THEREFOR. IN NO EVENT SHALL SELLER BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY CHARACTER, WHETHER SUFFERED BY BUYER OR A THIRD PARTY RELATING TO THE SUBJECT OF THIS QUOTATION, INCLUDING WITHOUT LIMITATION, CLAIMS FOR PROPERTY DAMAGES, PERSONAL INJURY, OR LOSS OF USE OR LOSS OF PROFITS. EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED IN WRITING FROM SELLER TO BUYER, SELLER MAKES NO WARRANTIES WITH RESPECT TO THE GOODS/ITEMS COVERED HEREUNDER, AND SELLER EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS, STATUTORY OR IMPLIED, INCLUDING THOSE OF MERCHANTABILITY AND OF FITNESS FOR ANY PARTICULAR PURPOSE.

9. **Cancellation.** Buyer shall have no right to cancel all or any portion of its order unless it pays Seller for all costs already incurred by Seller, including the price of any goods/items or services required to fill the order already committed to by Seller, and a reasonable allowance for overhead and profit.

10. **Breach.** In the event of breach by Buyer of any provision of this Quotation, Seller reserves the right to cancel and terminate this agreement on giving notice to Buyer. Buyer covenants and agrees that in the event suit is instituted by Seller, Buyer shall pay to Seller the costs and expenses incurred by Seller in connection therewith, including reasonable attorneys' fees.

11. **Inserts; Supplemental Parts.** SELLER SHALL NOT BE LIABLE FOR DAMAGES TO BUYER'S MOLDS, TOOLS, JIGS OR SIMILAR ITEMS CAUSED BY DEFECTIVE INSERTS OR SUPPLEMENTAL PARTS, NOR FOR MANUFACTURED PARTS WHICH ARE MADE WITH INSERTS FURNISHED BY BUYER AND LATER FOUND DEFECTIVE.

12. **Molds, Tools, Etc.** If special gauges, molds, tools, jigs or similar items are required, Buyer will either furnish them to Seller or purchase them from Seller. Seller will not insure Buyer's gauges, molds, tools, jigs or similar items in Seller's possession; therefore, Buyer agrees to carry adequate insurance to cover such items. Seller shall maintain all molds built by it in operating condition for the shorter of (a) their ordinary life or (b) one year after completion of the most recent production order. Buyer shall maintain all molds furnished or altered by it. Upon completion of the manufacturing process, and receipt by Seller of payment in full of all amounts owed by Buyer to Seller, such items will be delivered to Buyer upon Buyer's request and payment of delivery charges. In the event Buyer's account for any goods/items remains open and unpaid for more than 90 days, and for so long as such condition exists, Buyer grants to Seller the right to use any and all of Buyer's gauges, molds, tools, jigs or similar items in Seller's possession to make and sell parts for other customers and to sell and dispose of any such manufactured parts solely for Seller's account.

13. **Statute of Limitations.** No action arising out of, in connection with, or relating to this Quotation or the subject of this Quotation shall be brought more than one (1) year after the accrual of the cause of action.

- This period shall not be extended for any reason, except by the written consent of both parties. All statutes or provisions of law which would toll or otherwise affect the running of the period of limitation are hereby waived, and no such statute or provision of law shall operate to extend the period limited in the foregoing paragraph.

14. **Assignment.** This Quotation is issued only to the Buyer named on the face hereof. Any assignment by Buyer of this Quotation or any contract entered into pursuant hereto is void without the prior written consent of Seller.

15. **Liability.** Seller shall not be liable for loss or damage of any kind resulting from delay or inability to deliver on account of acts of God, fire, labor troubles, accidents, acts of civil or military authorities, fuel, labor or materials shortages, or any other conditions beyond Seller's control. Performance shall be deemed suspended during and extended for such time as any such circumstances or causes delay its completion.

16. **Severability.** Any provision herein which is prohibited by the laws of any state or other jurisdiction applicable hereto shall be ineffective to the extent of such prohibition, without invalidating the remaining provisions of the contract between the parties.

17. **Survival.** The following provisions of this Quotation shall survive any termination of any contract of sale entered into pursuant hereto: paragraphs 7, 8, 11 and 12 and all other provisions, rights and obligations that by their sense and context are intended to survive until performance thereof.

18. **Governing Law.** This Quotation shall be construed, and the rights and obligations of the parties shall be determined by and, in accordance with the laws of The Commonwealth of Massachusetts.

19. **Arbitration.** Disputes arising out of, in connection with, or relating to this Quotation that are not settled by mutual agreement shall be resolved as follows. The complaining party shall give the other party a written notice containing a concise description of the dispute to be resolved and the terms of the complaining party's proposal for a reasonable settlement thereof. Within thirty (30) days after receipt of such notice and proposed settlement from the complaining party, the other party shall send to the complaining party a notice proposing a settlement which such other party considers more reasonable, or else shall be deemed to have accepted the complaining party's settlement proposal. Within forty-five (45) days after receipt of such response the complaining party shall either accept the settlement proposal of the other party or shall refer the matter to arbitration. The arbitration shall be conducted in Boston in accordance with the commercial arbitration rules of the American Arbitration Association. The arbitration shall be before a single neutral arbitrator, who shall determine which of the two settlement proposals is the more reasonable under all of the facts and circumstances. The arbitrator shall issue an award effectuating the proposal found to be the more reasonable, and assessing against the party whose settlement proposal was not determined to be the more reasonable all costs relating to such arbitration, including without limitation the fees of the arbitrator and the American Arbitration Association, and all legal fees and other expenses of the other party incurred in connection with the arbitration. The arbitrator shall have no authority to resolve the dispute in any other manner. Judgment upon the award so rendered by the arbitrator may be entered in any court of competent jurisdiction.

20. **Forum Selection.** The parties hereby consent and submit to the jurisdiction of the federal or state courts sitting in The Commonwealth of Massachusetts, United States of America to enter judgment on any arbitration award, waive any objections that they may have to venue in any such court, and agree that process in any such action shall be deemed sufficiently served if sent by registered airmail to the party to be served.

21. **Repair and Maintenance Warranty.**

- (a) The warranty period for all products and equipment and for installed material is 12 months. Fuels, tools, expendable items, and wearing materials are exempt from warranty.
- (b) The Buyer must grant the Seller within reason the necessary time and opportunity to remove defects, in particular, the Buyer must ensure that the reclaimed item is available to the Seller, or the Seller's agent, for inspection and repair. If this availability is denied or delayed, the Seller is relieved from liability for defects.
- (c) The following instances are exempt from warranty; defects caused by damaging acts, faulty connection, or faulty operation, damage due to force majeure; defects or wear and tear as a consequence of excessive strain on mechanical, electromechanical, or electronic parts due to improper usage, defects due to contamination, damage due to extraordinary mechanical, chemical or atmospheric impact.
- (d) Warranty claims do not expire even upon invasive acts by the Buyer or third parties with respect to the subject of repair provided that the Buyer is able to disprove the Seller's correspondingly substantiated claim that manipulation of the items caused the damage.
- (e) The Buyer must remind the Seller in writing of any obvious defects of the Seller's performance without delay, however, no later than 5 working days from acceptance or, as the case may be, from the date of execution of the performance protocol; the Seller is otherwise relieved from liability for defects.
- (f) The Seller is liable for damage and loss of the subject of the order, to the extent that the Seller must provide remedy in the event of impossibility of performance; compensation must be in the amount of the replacement value. Further claims, in particular claims for damage, are excluded except for instances of proven intent and gross negligence.

22. **Indemnification.** Buyer shall hold seller harmless and indemnify and defend the seller, its officers, directors, employees, attorneys and agents against any and all debts, obligations, costs and damages, including attorney's fees arising from any claims or causes of action, whether in law or equity, which may be asserted against seller its officers, directors, employees, attorneys and/or agents, by any person, resulting from buyer's installation, use, repair, maintenance, training, or resale of any products; provided, however, that the provisions of this indemnity shall not apply to seller's own acts of willful misconduct in connection with its installation or repair of any of its products.