



**TERMS & CONDITIONS OF SALE OF EMCO CORPORATION,
30475 S. Wixom Rd, Suite 125, Wixom, MI 48393, USA
(March 2019)**

General

Products and services furnished by EMCO Corporation, 30475 S. Wixom Rd, Suite 125, Wixom, MI 48393, USA (hereinafter called "EMCO"), are sold only on the terms and conditions stated herein. Any proposal for or submission of additional or different terms or conditions or any attempt by Customer to vary any of these Terms (through the submission of a Purchase Order or otherwise) shall be deemed a material alteration of these Terms and is hereby objected to and rejected by EMCO; provided, however, that any such proposal or attempted variance shall not operate as a rejection of these Terms by Buyer, and these Terms shall be deemed accepted by Buyer without the additional or different terms. The validity, construction and performance of these Terms shall be governed by, and construed in accordance with, the laws of the State of Michigan, without regard to its choice of law provisions. The U.N. Convention on Contracts for the International Sales of Goods does not apply to these Terms and any term contained herein must be construed in accordance with Michigan's adoption of the Uniform Commercial Code. Buyer irrevocably submits and agrees to the jurisdiction of the state and federal courts of the State of Michigan, County of Oakland in any action, suit or proceeding related to, or in connection with, any dispute between the parties.

Prices

All published prices are subject to change without notice. Unless otherwise specified in writing, all quotations are firm and expiration date is specified on the written document. Unless otherwise stated, all prices, published or quoted, shall be exclusive of transportation, insurance, and taxes.

Transportation & Acceptance

Shipping or freight will be paid by the customer. We reserve the right to select the means of transportation and routing when Customer's instructions are deemed unsuitable. If the term "free" for place of destination, dispatch and lading etc. is agreed, the transfer of perils to the customer shall take place with the handing over of the merchandise to the forwarding agent, hauler or to any other person or institution authorized to perform shipment. For interpretation and amendments of other supply and transfer of perils agreements the version of the INCOTERMS as amended at the time the contract is entered into shall prevail. All products must be inspected upon receipt and claims should be filed with the transportation company when there is evidence of shipping damage, either concealed or external. The furnishing of a product to the Customer shall constitute acceptance of that product by Customer unless notice of defect or nonconformity is received by us within ten (10) days of receipt of the product at Customer's designated receiving address. Customer's failure to make a written claim for defective Products within 10 days from and including the day on which EMCO tenders such Products to Customer shall constitute a waiver of its right to inspect such Products and shall constitute Customer's acceptance of such Products and agreement that such Products constitute "conforming goods" (as such term is defined in the Uniform Commercial Code as enacted in the State of Michigan and are otherwise in conformity with these Terms. In no event may Product be returned to Seller without Seller's prior written consent. We may repair or, at our option, replace defective or nonconforming parts after receipt of notice of defect or nonconformity.

Performance

ANY DELIVERY OR SHIPMENT DATES PROVIDED TO CUSTOMER ARE ESTIMATED DATES ONLY, AND SUCH ESTIMATED DATES MAY BE MODIFIED FROM TIME TO



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TIME AT THE DISCRETION OF EMCO. EMCO shall not be liable or responsible for delay or failure to perform any of its obligations under these Terms to make delivery of the Products occasioned by (i) any cause beyond its reasonable control, including, but not limited to, a labor dispute, industry disturbance, fires, unusually severe weather conditions, earthquakes, floods, declared or undeclared war, epidemics, computer malfunctions, civil unrest, riots, lack of supplies, delay in transportation, governmental, regulatory or legal action, act of God, or (ii) by acts or omissions of Customer, including, but not limited to, Customer's failure to promptly comply with the terms of payment under any invoice (collectively, the "Excusable Delays"). The date of delivery shall be extended for a period equal to the time lost by reason of any of the Excusable Delays. EMCO reserves the right to substitute suitable products, when in our opinion such substitution is necessary due to such circumstance or causes. No order may be terminated by Customer except by mutual agreement in writing. Cycle times quoted on EMCO time studies are not guaranteed until EMCO has had the opportunity to cut parts with tooling and material supplied by the Customer. Changes in the material and tooling provided by Customer will affect cycle times quoted, EMCO shall not be held responsible for machinability of different lots of material not previously specified by Customer. In such situations, EMCO shall not be responsible for the effect on quoted or guaranteed cycle times.

Warranty & Liability for Machine Sales, Accessory & Spare parts

Our machines, including accessories and spare parts purchased and/or included with the machine sale, are free from defects in workmanship for twelve (12) months after date of purchase, unless specified otherwise in writing. Accessories and spare parts purchased after a machine sale and/or out of the machine warranty period are free from defects in workmanship for 90 days after date of purchase, unless specified otherwise in writing. This expressed warranty does not include common wearable spare parts. This warranty is effective only if the necessary information is provided, serial number of machine and nature of defect, and any part claimed defective is returned prepaid to us. No such return will be accepted unless we are first notified of the part to be returned. Upon its proper return to us, we shall repair or replace, at our option, the defective part. This warranty applies only if the products have been operated in accordance with normal anticipated procedure, and if no unauthorized repairs have been attempted. This warranty is expressly in lieu of and excludes all other express or implied warranties including, but not limited to, warranties of merchantability and fitness for particular purpose, use or application and all other obligations or liabilities on our part. The remedy of repair or replacement, as provided herein, shall be the Customer's exclusive remedy and will satisfy all our liabilities whether based upon contract, negligence, or otherwise. In no event shall we be liable for incidental, consequential, or special damages. Liability to third parties for bodily injury including death relating to our performance or products delivered hereunder shall be determined in accordance with applicable law and shall not exceed the payment, if any, received by us for the product or service furnished. All actions for a claimed breach of this warranty must be brought within one (1) year of the date the cause of action accrues. Notwithstanding anything else in these Terms, EMCO will not be obligated in any event under this Warranty (i) for alleged defects due to misuse, neglect or improper storage, handling or maintenance of the products, (ii) for alleged defects that are not solely the result of a defect in material or workmanship, (iii) in any case where Products are disassembled or modified in any manner, (iv) for alleged defects relating to any specifications or instructions provided by or on behalf of Customer, for alleged defects otherwise caused by Customer or any third party, for alleged defects which should have been discovered by Customer in its inspection and are not reported within ten (10) days of



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delivery of the Product or, (v) resulting from damages occurring after tender of the Product by EMCO. This section survives the termination or cancellation of these Terms.

Limitation of Damages

IN NO EVENT SHALL EMCO BE LIABLE FOR ANY CLAIM (WHETHER BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE) OR OTHERWISE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE, OR OTHER DAMAGES, WHETHER KNOWN OR UNKNOWN (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR INJURY TO PERSONS OR PROPERTY, LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, OR OTHER PECUNIARY LOSS), ARISING OUT OF THESE TERMS OR THE PRODUCTS, EVEN IF EMCO HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING ANYTHING ELSE IN THESE TERMS, IN NO EVENT SHALL EMCO'S LIABILITY EXCEED THE PURCHASE PRICE RECEIVED BY EMCO FROM CUSTOMER FOR THE PRODUCT UPON WHICH SUCH LIABILITY IS BASED OR, IF SUCH LIABILITY IS NOT BASED UPON A PARTICULAR PRODUCT, THE AGGREGATE AMOUNT PAID BY CUSTOMER TO EMCO IN CONNECTION WITH THE APPLICABLE PURCHASE ORDER(S). THIS SECTION SURVIVES THE TERMINATION OR CANCELLATION OF THESE TERMS.

Terms of Payment

All payments for products released and shipped on shall be due in full within thirty (30) days from the date of invoice. Past Due balances shall be subject to a service charge of 1-1/2% per month. Partial shipments will be billed as made and payments are subject to the Terms, described herein, except as specifically modified in writing by EMCO. EMCO may cancel or delay delivery of products in the event Customer fails to make prompt payment or in the event Customer's account with us is past due. At EMCO's discretion machine sales may be secured by a Purchase Money Security Interest and/or UCC-1 filing. Customer agrees to grant a security interest in each present and future item of inventory or equipment we sell, consign or floor plan to you to secure all present and future amounts you owe us, and you hereby authorize us to file appropriate documents with each state to secure such security interest. Any security interest granted shall be terminated upon EMCO receiving full payment for the products.

Sales Tax

Sales tax is charged on shipments in most states that have sales tax, unless we have your resale or exempt usage certificate. Sales tax will be estimated at order submit time, based on the subtotal of your order. The exact calculation will be applied to your invoice upon shipment, per your State's tax laws. Fax your certificate and your customer number to 248-313-2712, Attention: Sales Tax.