

**ROWLEY TOOL & DIE**  
**Terms and Conditions**

**THE QUOTATION PROVIDED TO THE BUYER IS SUBJECT TO THE TERMS AND CONDITIONS PROVIDED HERE BY THE SELLER. THIS DOCUMENT, INCLUDING ALL OF THE PROVISIONS OF THE TERMS AND CONDITIONS PAGE, CONSTITUTE A CONTRACT BETWEEN THE PARTIES UPON ISSUANCE OF THE PURCHASE ORDER BY THE BUYER OR OTHER ACCEPTANCE OF THE QUOTATION BY THE BUYER.**

**TERMS AND CONDITIONS**

- 1. Parties.** Rowley Tool & Die is the Seller. Seller's customer identified on the customer's purchase order or on the Seller's quotation is the Buyer.
- 2. Definitions.**
  - (a) Tool** means the tool or tools and/or any base for the tool to be manufactured by the Seller and delivered to the Buyer under this contract.
  - (b) Indemnified Party** means a party indemnified for a claim or liability under paragraph 12 of this agreement.
  - (c) Indemnifying Party** means a party entitled to indemnity for a claim or liability under paragraph 12 of this agreement.
- 3. Contract.** When the Buyer authorizes the Seller to begin work on the Tool by issuance of a purchase order or otherwise, Buyer agrees to the terms and conditions of this contract incorporated into the terms of Seller's quotation as a contract. Any conflicts between the terms and conditions of the quotation, these terms and conditions and the Buyer's purchase order shall be governed by the terms and conditions of the quotation and these terms and conditions and not by the conflicting terms in the Buyer's purchase order. Any change in any material terms of this contract must be accepted in writing by the Buyer to constitute a binding contract. Material terms mean only description or design or specifications of the Tool to be produced, quantity, price, or delivery schedule of the Tool and nothing else. Conflicts of other terms shall still result in a binding contract and shall be interpreted as provided in these terms and conditions and the quote.
- 4. Delivery.** Seller shall deliver the Tool according to the terms of the quote. Risk of loss shall be retained by Seller until it has delivered the Tool to Buyer's shipper or any other shipper of Seller.
- 5. Tariff Price Adjustment.** Seller shall in its discretion charge a Tariff Price Adjustment for any tariff imposed that directly or indirectly affects the price of steel or other raw materials used in the production of a Tool from the date of the first price increase received by the Seller with respect to its raw materials. The Tariff Price Adjustment shall be billed and collected on the last bill for a Tool. Tariff Price Adjustment means a price increase adjustment for a Tool made by the Seller related

to Tariffs imposed on imported goods that directly or indirectly causes an increase in the Seller's cost of raw materials for a Tool order that receives such an adjustment.

6. **Shipping Costs.** Shipping costs are an extra cost that Seller will bill to Buyer unless it is described as to be arranged and paid for by the Buyer in the Buyer's purchase order or otherwise.
7. **Cancellation.** Buyer retains the right to cancel all or any part of this contract in the event that the Seller does not deliver the Tool in accordance with the purchase order or design specifications or the Seller otherwise breaches the terms and conditions of this Contract.

In the event of cancellation, the Seller shall immediately tender any work-in-progress to Buyer (provided all payments due have been paid to the Seller), and Seller shall invoice Buyer with the required payment up to the date of cancellation which shall be paid as required by this contract. If the Buyer cancels the contract due to no negligence of Seller, Buyer shall pay Seller the value of the work completed by the Seller to the date of cancellation, but in no case less than the lost opportunity costs and overhead absorption rate and other out of pocket expenses under the contract due to the Seller.

8. **Verification of Tool.** Seller shall comply with all drawings and test specifications relating to the Tool when manufacturing it. Seller may be required to verify the accuracy of manufacturer of the tool in the quotation in which case the Seller shall verify the Tool and provide evidence of that to the Buyer when delivering the Tool. In any case, Buyer shall have the independent right to verify that the Tool meets specifications and is working properly before final payment to Seller, but such verification must occur within thirty (30) days of delivery of the Tool to Buyer or the Tool shall be deemed verified and accepted, after which the final payments to Seller shall be due.

9. **Buyer Changes.** Any Buyer changes to the design, specifications or data incorporated in the purchase order must be delivered to Seller in writing. Seller must have approval of its new quote for the revision or a purchase order from the Buyer to approve the additional work before it commences the additional work.. **Design changes that result in any change in the delivery schedule or price of the Tool shall be approved by Buyer and Seller and put in writing with an amended quote.**

10. **Warranty.** Seller warrants to Buyer that the Tool produced under this contract: (a) is held and owned as to title by the Buyer upon payment in full to the Seller for the Tool and is free of any liens or encumbrances of creditors of the Seller; and (b) that the Tool will be free of any defect in material and workmanship according to the quoted specifications. At the sole discretion of the Seller, Seller shall review warranty claims and appropriately resolve such claims. Prior authorization from the Seller is required before any Tool is returned under a warranty to the Seller. This warranty does not cover Tools that have been damaged, subjected to misuse, neglect, improper or poor maintenance, improper installation, deliberate destruction, or use in violation of any instructions given by the Seller. Seller makes no further warranty, expressed or implied of any kind and Seller specifically disclaims any warranty of merchantability or warranty of fitness for its intended purpose. Any representations or promises made by any employees or agents of Seller are not binding if they are not

part of this written contract. Under no circumstances shall Seller be responsible for lost profits, consequential damages, increased costs, economic losses suffered either by Buyer or any other third party.

- 11. Title.** Title to the Tool shall remain with the Seller until such time as Buyer has paid all amounts due to Seller under the terms of this contract. At that time the title shall pass to the Buyer. Seller retains any lien rights it has in the Tool until such time as any lien rights have expired and not exercised by Seller and or payment in full is received for the Tool.
- 12. Indemnification.** Either party shall indemnify and hold harmless the other party for any claim, loss, liability or expense (including reasonable attorney's fees and costs) that arise relating to this contract to manufacture a Tool, including any incidental or consequential damages not disclaimed in writing, if any, directly or indirectly arising out of (a) any infringement or claim of infringement of any patents, trademarks, copyrights or trade secrets by the use or sale of any goods purchased hereunder, except goods manufactured in accordance with the design and specifications for the Tool, (b) any injury to persons or property by reason of any defects in the Tool; or (c) any violation of laws applicable to this contract. The Indemnifying Party shall at its own expense, if so requested by the Indemnified Party, defend all claims, proceedings or suits against the Indemnified Party and its officers, managers, directors, governors, successors, assigns, employees, customers and users of the Tool, in which any of the aforesaid claims are alleged, provided the Indemnifying Party is duly and within a reasonable time notified of such claim, proceeding or suits. Any claim under this contract by Seller or Buyer seeking indemnity must be submitted in writing to the party subject to the claim within one year of the date of delivery of the Tool under this contract or such claims shall be void and of no further effect.
- 13. Intellectual Property.** Data, drawings, specifications or other technical information furnished directly or indirectly, in writing or otherwise, to either Buyer or Seller pursuant to this contract will in no event become the property of the other party to this contract and will be used only in fulfilling such other party's obligations under this contract and for no other purpose, and will not be duplicated or disclosed to others, provided, however, that in the case of Tool designs, the design shall be the intellectual property of the Buyer, but Seller shall retain a license and ability to use the same Tool design concepts to design Tools for other customers of Seller. All patents, copyrights, trademarks, trade secrets or other intellectual property resulting from work under this contract will be the sole property of the party generating such data, drawings or specifications or other technical information under this contract, except as provided otherwise herein.
- 14. Confidentiality.** The parties acknowledge that performance of this contract will require them to have access to confidential business and proprietary information of the other party, including but not limited to: (a) data, formulae, drawings or any other information whether business or technical of a confidential nature, which has been furnished directly or indirectly, in writing or otherwise to the other, and (b) such information as a person familiar with the disclosing party's business and the industry in which it operates would reasonably consider to be (i) of a confidential or proprietary nature and (ii) that the maintenance of its confidentiality would likely be

of commercial value to the disclosing party. Each party agrees on behalf of itself and its officers, managers, governors, directors, employees and agents to use its/their best efforts to prevent either republication or disclosure of the confidential information of the other party to any third parties.

**15. Federal Arms Control Requirements; Electronic Communications Act.** The quote or Tool design specifications and data subject to this contract may contain technical data as defined in the federal International Traffic In Arms Regulations (ITAR) 22 CFR 120.10. If so, export of this technical data is restricted by the Arms Export Control Act (22 U.S.C. 2751 et seq.) and may not be exported or transferred to non-U.S. persons without prior written approval from the U.S. Department of State. Furthermore, any qualifying Tool delivered to the Buyer may also be subject to the Arms Export Control Act.

The information transmitted in this quote (including attachments) is covered by the Electronic Communications Privacy Act, 18 U. S. C. 2510-21 and is intended only for the person (s) or entity / entities to which it is addressed and may contain confidential and/or privileged material. Any review, retransmission, dissemination, copying, disclosure or use, or taking of any action in reliance upon, this information by persons or entities other than the intended recipient (s) is prohibited.

**16. Waiver.** Either party to this contract may waive performance of any condition, but waiver of any condition with reference to any shipment will not be construed as a waiver of that condition for subsequent shipments. All rights and remedies of either party under this contract are non-exclusive and in addition to their rights and remedies provided by applicable law.

**17. Notices.** All notices and design data as other pertinent information shall be transmitted between personnel of the Buyer and Seller by e-mail, secure FTP site, or written letter. Any notifications regarding the project must be sent to the project manager by notifying the project manager through the FTP site or by e-mail notification to the project manager.

**18. Force Majeure.** Excluding any payment obligations under this Agreement, neither of the parties hereto shall be liable in damages or have the right to terminate this Agreement, or any contract arising out this Agreement, for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its control including, but not limited to, act of God, governmental actions, statutes or regulations, wars or insurrections, strikes or other labor disputes, fires, floods, and/or work stoppages.

**19. Miscellaneous.** The contract is a binding agreement and cannot be modified in any respect, except upon written agreement signed by both parties. This contract (the Seller's quote, the Buyer's Purchase Order, if any, and these Terms and Conditions) are the entire agreement between the parties with respect to the subject matter hereof and supersede and replace all prior agreements, understanding or representations, whether written or oral.

**20. Governing Law; Severability; Venue.** The validity, construction and performance of this Agreement and the legal relations among the parties of this Agreement shall be governed by and construed in accordance with the laws of the State of Wisconsin. If any provision of this Agreement or the application of any such provision shall be held by a tribunal of competent jurisdiction to be contrary to law, the remaining

provisions of this Agreement shall continue in full force and effect. Buyer and Seller agree that all disputes governing this Agreement shall be venued in either Brown County Circuit Court or the United States District Court for the Eastern District of Wisconsin, Green Bay Division and both parties hereby submit to the jurisdiction of such courts and agree not to remove any suit or other action regarding or relating to this Agreement to any other court or jurisdiction.