

WARRANTY

ECM warrants that all goods sold pursuant hereto will conform to the express specifications set forth on the face hereof, for a period of 3 years from the date of shipment, subject to commercial tolerances and except as provided in Section 8 below. Buyer's sole remedy in the event of ECM's breach of the foregoing shall be the repair or replacement of the nonconforming goods or, at ECM's option, to refund the portion of the purchase price allocable to the nonconforming goods. ECM shall not be liable for the cost of removal and/or reinstallation of such goods. ECM's liability shall in no event exceed the purchase price of such goods.

TERMS AND CONDITIONS

1. **DEFINITIONS.** As used in these Terms and Conditions of Sale, "ECM" means Ellwood Crankshaft & Machine Company, a Pennsylvania limited liability company. For purposes of the limitations on liability and remedies in Section 8 hereof and for purposes of Section 9 hereof, "ECM" shall include, where appropriate, all employees, agents, and representatives of ECM. "Third party" shall include every person, government, or other entity other than ECM and Buyer. Terms such as "herein," "hereof," and the like shall mean this Order Acknowledgment in its entirety, including both front and back pages. Whenever a term defined by the Pennsylvania Uniform Commercial Code (the "Code") is used in these Terms and Conditions, the definition contained in the Code shall control.

2. **EXCLUSIVE TERMS, CONDITIONS, AND LIMITATIONS OF SALE.** This is an Order Acknowledgment by ECM which acknowledges that Buyer and ECM have entered into a contract (the "Contract") whose terms, conditions, and limitations of sale are (i) those set forth in ECM's letter of quotation, if one was sent, or (ii) set forth herein, if no letter of quotation was sent, and this Order Acknowledgment restates the relevant terms, conditions, and limitations contained in such quotation, if one was sent, and contract. This Order Acknowledgment is not an acceptance of any offer or counter-offer of Buyer, and serves as a written objection to any additional, different, or inconsistent terms, conditions, or limitations contained in or incorporated by reference in any forms, purchase order, or other document of Buyer. If, notwithstanding the foregoing, this Order Acknowledgment is deemed by a court or arbitrator to be an acceptance of an offer or counter-offer by Buyer, such acceptance is expressly made conditional on Buyer's assent to the terms, conditions, and limitations set forth in this Order Acknowledgment, and if this Order Acknowledgment is deemed by a court or arbitrator to constitute an offer or counter-offer by ECM, acceptance of such offer is expressly limited to the terms, conditions, and limitations set forth in this Order Acknowledgment. In any case, the terms, conditions, and limitations set forth in this Order Acknowledgment are the only terms, conditions, and limitations to which ECM will agree, and supersede all prior statements, proposals, negotiations, representations, and agreements (other than those set forth in ECM's letter of quotation, if such letter of quotation is deemed to constitute the offer by ECM which Buyer is deemed to have accepted) and shall constitute the entire agreement between ECM and Buyer. The terms, conditions, and limitations set forth in this Order Acknowledgment can be modified, altered, or added to only by a subsequent written instrument signed by an authorized officer of ECM which shall set forth with particularity and not through incorporation by reference the precise terms, conditions, and limitations modified, altered, or added to with specific written reference to the terms, conditions, and limitations of this Order Acknowledgment which are modified, altered, or added to. No prior inconsistent course of

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dealing, course of performance, or usage of trade, if any, shall constitute a waiver or serve to explain or interpret these terms, conditions, or limitations. The term "the Contract" shall also include and/or mean any additional or different terms found by a court or arbitrator to be included in the contract between the parties.

3. **PRICES.** The prices and charges invoiced shall be ECM's prices and charges delivered in writing to Buyer by ECM or set forth on the face hereof.

4. **TERMS OF PAYMENT.**

(a) All payments shall be in United States currency or in the equivalent thereof as specified in writing by ECM.

(b) Unless otherwise specified, the net amount due shall be paid in full in accordance with the terms of payment set forth on the face hereof. In the absence of such provisions on the face hereof, the net amount due shall be paid in full within 30 days of the date of invoice with a discount of ½% if paid within 10 days of the date of invoice. Amounts unpaid after 30 days after the due date shall accrue interest, compounded semiannually, at the annual rate of 18%, or the maximum legal rate, if less.

(c) The price is payable on the terms set forth herein without deduction, set-offs, counterclaims, backcharges, or any other charges or claims of Buyer of whatsoever nature, and the obligations of Buyer to ECM shall remain unimpaired regardless of disputes which may arise between Buyer and third parties.

5. **PAYMENT OF FREIGHT, TRANSPORTATION, TAXES, AND OTHER GOVERNMENTAL CHARGES BY BUYER.** Unless otherwise specified on the face hereof or otherwise agreed by ECM in writing, the purchase price of the goods covered by this Order Acknowledgment does not include present or future freight charges and transportation and delivery costs, if applicable, nor does it include transportation taxes and sales, use, excise, or any similar tax or other governmental charge upon or with respect to the sale, purchase, manufacture, processing, fabrication, delivery, storage, use, consumption, or transportation of such goods. The amount of any freight charges, transportation and delivery costs, and transportation taxes, and any present or future sales use, excise, gross receipts, or any similar tax or other governmental charge applicable to this Order Acknowledgment and to the sale and/or furnishing of the goods required by this Order Acknowledgment shall be deemed extra charges and shall be paid by the Buyer, or in lieu thereof in the case of taxes, Buyer shall provide ECM with a tax exemption certificate acceptable to applicable taxing authorities. If, for any reason, any such certificate is not accepted by such authorities or such acceptance is revoked, Buyer shall indemnify and hold ECM harmless as provided in Section 9 hereof. Whenever applicable, such tax or taxes or other governmental charges will be added to the invoice as a separate charge to be paid by Buyer. All licenses and permits shall be secured by Buyer at Buyer's expense unless the responsibility is assumed in writing by ECM.

6. DELIVERY, FORCE MAJEURE, RISK OF LOSS, AND TITLE.

(a) Unless otherwise specified on the face hereof, all deliveries shall be F.O.B. ECM's point of shipment. Freight charges, if applicable, shall be prepaid by ECM to ultimate points of destination within the continental United States, and shall be repaid by Buyer in accordance with Section 5 hereof.

(b) Unless otherwise specified on the face hereof, ECM may, at its discretion, use commercial carriers or its own trucks for shipment. ECM will use reasonable efforts to comply with Buyer's request as to method and route of transportation, but ECM reserves the right to use an alternate method or route of transportation, whether or not at a higher rate.

(c) Estimated dates for shipping are provided to Buyer on the basis of ECM's best estimate for informational purposes only and are not guaranteed. ECM shall not be liable for loss or damage resulting from delay or failure of delivery or performance due to ECM's other production requirements or plant conditions; to strike, differences with workmen, lockout, or any labor shortage or difficulty; to fire, flood, accident, quarantine restrictions, earthquake, tornado, epidemic, or other casualty or act of God; to war, riot, civil disobedience, or other emergency, or acts of civil or military authorities; to compliance with orders, priorities, or requests of any government agencies or courts or arbitrators; to embargoes; to failure of suppliers of ECM to meet delivery schedules, or any shortage of raw materials however caused; to inability or delay in obtaining labor or materials; to inability or delay in obtaining cars, trucks, fuel, or machinery necessary for transportation; or to any cause, condition, or contingency beyond the reasonable control of ECM, whether similar to those enumerated or not. In the event of any of the foregoing, ECM may apportion its production and all stock material among its customers in such manner as it may consider equitable. If Buyer is unable to receive the goods when tendered, Buyer shall be liable to ECM for any loss, damage, or additional expense incurred or suffered by ECM as a result thereof.

(d) Risk of loss shall pass to Buyer upon ECM's delivery to carrier or upon tender to Buyer's agent.

(e) ECM shall retain a purchase money security interest in all goods until the complete purchase price and all additional costs and charges, as adjusted, are paid by Buyer, and may make any third party notification or filing deemed necessary to protect and perfect such interest.

(f) Buyer shall pay all insurance costs associated with delivery, and Buyer shall be responsible for filing and pursuing claims with carriers for loss or damage in transit, unless these obligations are assumed in writing by ECM.

(g) Buyer shall be responsible for obtaining all necessary transportation licenses and permits, at Buyer's expense, unless this responsibility is assumed in writing by ECM.

7. PACKAGING, LOADING, OR BRACING REQUESTS.

ECM will use reasonable means to comply with any packaging, loading, or bracing requests made in writing by Buyer, provided, however, that any costs due to compliance with such requests shall be deemed extra charges to be paid by Buyer. If no such requests are made by Buyer, ECM shall comply with the minimum requirements which customarily apply to the method of transportation used for such goods.

8. LIMITED WARRANTY; LIMITATIONS ON DAMAGES.

THE 3-YEAR WARRANTY AS TO CONFORMITY TO THE EXPRESS SPECIFICATIONS SET FORTH ABOVE IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED, STATUTORY, OR

OTHERWISE, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY AND WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE. NO PROMISE OR AFFIRMATION OF FACT MADE BY ANY EMPLOYEE, AGENT, OR REPRESENTATIVE OF ECM, NOR ANY SAMPLE PROVIDED TO BUYER, SHALL CONSTITUTE A WARRANTY OR GIVE RISE TO ANY LIABILITY OR OBLIGATION.

UNLESS OTHERWISE AGREED BY ECM IN WRITING, SUCH WARRANTY AS TO CONFORMITY TO EXPRESS SPECIFICATIONS RUNS ONLY TO BUYER AND IS NON-TRANSFERABLE AND NON-ASSIGNABLE EITHER DIRECTLY, INDIRECTLY, OR BY OPERATION OF LAW, AND ANY SUCH PURPORTED OR ATTEMPTED TRANSFER OR ASSIGNMENT SHALL BE NULL AND VOID. Buyer and its employees, agents, and representatives shall not claim, represent, imply, or permit its purchasers, distributors, processors, or others to claim, represent, or imply that such warranty extends or is available to third parties and shall, in addition to other provisions herein which pertain to indemnification, indemnify and save ECM harmless from all claims and actions of third parties irrespective of whether such claims or actions are based upon contract, tort, negligence, strict liability, contribution, indemnity, infringement, statute, or otherwise. To the limit of its legal right to do so, Buyer shall cause any third party to cease and desist any such representation.

ECM SHALL HAVE NO LIABILITY WITH RESPECT TO GOODS FURNISHED PURSUANT HERETO EXCEPT FOR BREACH OF ITS 3-YEAR WARRANTY OF CONFORMITY TO THE EXPRESS SPECIFICATIONS OF BUYER. BUYER'S SOLE REMEDY FOR BREACH OF WARRANTY SHALL BE STRICTLY AND EXCLUSIVELY LIMITED TO THE REPAIR OR REPLACEMENT OF NONCONFORMING GOODS OR, AT ECM'S OPTION, TO A REFUND OF THE PORTION OF THE PURCHASE PRICE ALLOCABLE TO SUCH NONCONFORMING GOODS. IN NO EVENT SHALL ECM BEAR THE COSTS OF REMOVAL AND/OR REINSTALLATION OF NONCONFORMING GOODS. IN NO EVENT SHALL THE LIABILITY OF ECM EXCEED THE PURCHASE PRICE OF THE GOODS. THE LIMITATIONS ON REMEDIES SET FORTH IN THIS SECTION 8 SHALL APPLY ALSO TO ALL CLAIMS AND ACTIONS ARISING OUT OF OR RELATED TO THE GOODS OR THE AGREEMENT THAT A COURT OR ARBITRATOR MAY FIND TO HAVE ARISEN OTHER THAN UNDER THE 3-YEAR WARRANTY SET FORTH ABOVE, INCLUDING ANY ARISING UNDER CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, CONTRIBUTION, INDEMNITY, INFRINGEMENT, STATUTE, OR OTHERWISE.

IN NO EVENT SHALL ECM BE LIABLE TO BUYER OR TO ANY THIRD PARTY FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL, LIQUIDATED, PUNITIVE, OR OTHER DAMAGES IRRESPECTIVE OF WHETHER CLAIMS OR ACTIONS FOR SUCH DAMAGES ARE BASED UPON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, WARRANTY, CONTRIBUTION, INDEMNITY, INFRINGEMENT, STATUTE, OR OTHERWISE.

The foregoing, together with Section 11 hereof, constitutes a final expression by ECM of its warranty. Such

warranty cannot be modified or supplemented unless modified or supplemented in writing by ECM.

9. **INDEMNIFICATION.** Buyer shall indemnify and save ECM harmless with respect to:

(a) all demands, claims, actions, or judgments of a third party against ECM, directly or indirectly, for any consequential, material, special, liquidated, punitive, or other damages, regardless of whether such demand, claim, action, or judgment is based on theories of contract, tort, negligence, strict liability, warranty, indemnity, contribution, statute, or otherwise, including without limitation, all demands, claims, actions, and judgments relating to injury to and/or death of any and all persons and for loss of and/or damage to property arising from use, handling, repair, adjustment, operation, modification, or conversion of goods covered by this Order Acknowledgment; and

(b) all demands, claims, actions, or judgments of a third party against ECM, directly or indirectly, based on a theory of infringement or violation of patents, trademarks, trade names, trade secrets, copyrights, or the like when such demand, claim, action, or judgment is based in whole or in part directly or indirectly, on ECM's compliance with specifications provided by Buyer.

This indemnification and promise to save ECM harmless extends to instances where ECM is alleged or found to be negligent and includes, without limitation, reasonable attorneys' fees and all other expenses incurred by ECM in connection therewith. If ECM, at its option, chooses to defend such a demand, claim, action, or judgment, Buyer agrees to cooperate with and assist ECM in its defense in whatever reasonable ways ECM chooses.

10. **TECHNICAL DATA, ADVICE; SPECIFICATIONS.** Any technical data, production data, production estimates, design and performance figures, mechanical properties, advice, drawings, and specifications furnished by ECM with respect to goods supplied and the use of such goods is given without charge, and ECM assumes no obligation or liability for any damages, consequential, incidental, special, liquidated, punitive, or otherwise for such data, estimates, figures, advice, drawings, and specifications given or results obtained irrespective of whether claims or actions with respect to such are based upon contract, tort, negligence, strict liability, warranty, contribution, indemnity, infringement, statute, or otherwise. All of such data, estimates, figures, properties, advice, drawings, and specifications shall be given and accepted at Buyer's risk. Any such data, estimates, figures, properties, advice, drawings, and specifications are given to Buyer for use only in connection with the goods supplied, and may not be used for any other purpose, and shall not be disclosed by Buyer or its agents or employees without the written consent of ECM.

11. **CLAIMS.** In order to insure prompt inspection by Buyer and to estimate improper methods of storage and other abuse of goods sold, ECM must be notified in writing concerning the nonconformity of the goods to the Contract as soon as practicable but in no event later than 120 days after Buyer discovers or should have discovered such nonconformity, subject, however, to the 3-year period of warranty set forth above. Such written notice shall set forth with particularity the nature and extent of the nonconformity complained of. All claims for shortages must be made in writing within 15 days after receipt of the goods by Buyer or its agent and specify with particularity the exact shortage complained of. Immediate

written notice must be given to the carrier's agent at destination in the event of damage or loss in transit.

In no event shall ECM be responsible for claims resulting in whole or in part, directly or indirectly, from the use or abuse of nonconforming goods or for the costs of labor and/or materials expended on any such goods.

Failure to furnish such written claim within such prescribed period of time shall terminate all liability of ECM. ECM must be given the opportunity upon written demand to inspect the goods claimed to be nonconforming to this Agreement.

Goods which do not conform to the Contract shall be returned to ECM upon receipt of ECM's authorization to do so and at ECM's expense.

Buyer must demonstrate to the reasonable satisfaction of ECM that any alleged nonconformity to the Contract was solely caused by a breach by ECM of the 3-year warranty as to the conformity to the express specifications of Buyer set forth above. In no event shall any claim of Buyer be set-off against outstanding or subsequent invoices of ECM without ECM's written consent.

12. **CHANGES, TERMINATION, OR CANCELLATION.**

(a) After Buyer's acceptance hereof, ECM shall have the right to change, terminate, or cancel the Contract because of any circumstances set forth in Section 6(c) hereof or other circumstances which may be deemed by ECM to require allocation of production or delivery by ECM, including but not limited to the effect of any laws, ordinances, regulations, directives, or administrative or other governmental actions, the compliance with which ECM shall deem to require such change or cancellation. No such change or cancellation by ECM shall be deemed to be a breach of any provision, term, condition, or covenant of the Contract.

(b) After Buyer's acceptance hereof, the Contract shall not be changed, terminated, cancelled, or modified by Buyer nor shall Buyer hold up releases of goods manufactured or processed except with ECM's written consent, which consent shall be deemed to be conditioned upon compliance with the terms and conditions hereof and the agreement of Buyer to indemnify ECM against all resulting loss.

(c) Insistence by Buyer upon cancellation or suspension of manufacture, processing, shipment, or delivery or failure to furnish data or specifications when requested or required, may be treated by ECM as a breach of contract.

13. **BUYER'S RESPONSIBILITY, ANTICIPATORY BREACH, AND DEFAULT IN PAYMENT.**

(a) If ECM has any doubt as to Buyer's responsibility, or if Buyer fails to fulfill the terms and conditions of payment herein and on the face hereof, ECM may decline to make any further shipment or delivery hereunder, except upon receipt of satisfactory security including but not limited to full or partial prepayment.

(b) In the event of anticipatory breach by Buyer or if the financial condition of Buyer at any time does not, in the reasonable judgment of ECM, justify continuance of the work to be performed by ECM hereunder on the terms of payment originally specified, ECM may require full or partial payment in advance and, in the event of bankruptcy or insolvency of Buyer, or in the event any proceeding is brought by or against Buyer under any bankruptcy or insolvency laws, ECM shall be entitled to cancel any agreement and work then outstanding and Buyer

shall reimburse ECM for any losses, expenses, and charges incurred as a result thereof.

(c) If Buyer shall fail to make payments on this or any other agreement between Buyer and ECM in accordance with the terms hereof or thereof, ECM may defer further shipments until such payments are made or, at its option, cancel the Contract with respect to any balance. If pursuant to this provision, ECM shall defer any shipments or cancel in whole or in part the Contract, Buyer shall be liable for and reimburse ECM for all losses, expenses, and damages, including any and all direct and consequential damages, incurred by ECM as a result of such deferral or cancellation.

14. **NO WAIVER.** Failure by ECM to enforce any of the terms, conditions, and limitations of this Order Acknowledgment or the Contract shall not constitute a waiver thereof or a waiver of any other terms, conditions, or limitations herein or on the face hereof, and the failure of ECM to exercise any rights arising from default of Buyer or otherwise shall not constitute a waiver of such right or any other right. The terms, conditions, and limitations herein and on the face hereof may be enforced and rights of ECM enforced at any time in whole or in part.

15. **BINDING AGREEMENT.** This Order Acknowledgment will be deemed to have been accepted by Buyer (a) unless ECM is otherwise notified in writing within 10 days or (b) when Buyer accepts any of the goods covered by this Order Acknowledgment. Any goods delivered shall be subject only to the terms, conditions, and limitations contained herein and on the face hereof. Upon acceptance of goods by Buyer, Buyer consents to and accepts all of the terms, conditions, and limitations contained herein and on the face hereof.

16. **NO ASSIGNMENT.** Buyer may not, by operation of law or otherwise, assign its rights or delegate its obligations hereunder to any third party without the prior written consent of ECM, and any such purported or attempted assignment or delegation shall be null and void.

17. **APPLICABLE LAW AND JURISDICTION; SAVINGS CLAUSE.** The local law of the Commonwealth of Pennsylvania, excluding the United Nations Convention on Contracts for the International Sales of Goods, shall apply in interpreting these terms, conditions, and limitations, and shall apply to all questions arising in connection with this Order Acknowledgment, the acceptance hereof, the sale of goods covered hereby, the Contract, and any claims related to the foregoing. Any proceeding arising out of this Order Acknowledgment, the acceptance hereof, the sale of goods covered hereby, the Contract, or any claims relating to the foregoing may be brought by Buyer only in the Court of Common Pleas of Mercer County, Pennsylvania, or the United States District Court for the Western District of Pennsylvania. If any clause or provision of these terms and conditions is held in violation of applicable law, this Order Acknowledgment shall be interpreted as if such provisions are in full force and in effect to the extent legally permitted or, if such clause or provision is prohibited in its entirety, it shall be null and void, and the Order Acknowledgment as so modified shall remain in full force and effect.

18. **ADDITIONAL CLAUSES.** To the extent that this Order Acknowledgment or the Contract is required to do so, they hereby incorporate by reference the applicable rules, regulations, and orders of the Secretary of Labor issued pursuant to Executive Order 11246 of September 24, 1965, and the following affirmative action clauses and related regulations of

the Secretary of Labor: Affirmative Action for Handicapped Workers, 41 CFR 60-741.4, and Affirmative Action for Disabled Workers and Veterans of the Vietnam Era, 41 CFR 60-250.4 Acceptance and execution of orders accepted by reason of any law or administrative regulation having the effect of law, or in order to carry out the intent or purpose of any law or regulation or to acquiesce in a request by a government agency or official thereof are contingent upon the continuation in effect of such law, regulation, or request and may be cancelled by ECM upon the expiration or withdrawal of such law, regulation, or request, provided, however, that ECM at its option may complete such orders.