

PURCHASE ORDER TERMS AND CONDITIONS

1. **OFFER TO BUY.** This Order is an offer to buy by Ellwood Crankshaft & Machine Company, a Pennsylvania limited liability company ("Buyer") and not an acceptance of any offer to sell. Existence of any contract based upon this Order is expressly made conditional upon Seller's assent to the terms, conditions, and limitations contained herein. *Shipment by Seller of any of the goods covered by this Order, or commencement by Seller of performance under this Order, shall constitute an acceptance of this Order.* In the event that Seller's acceptance states terms additional to or different from those set forth herein, this Order shall be deemed a notice of objection to such additional or different terms and a rejection thereof, unless such different or additional terms are expressly authorized in writing by Buyer. Seller's standard acknowledgement form is not an acceptable form of notification of Seller's disagreement with or rejection of the terms and conditions of this Order. If, notwithstanding the foregoing, this Purchase Order is deemed by a court or arbitrator to be an acceptance of an offer or counter-offer by Seller, such acceptance is expressly made conditional upon Seller's assent to the terms, conditions, and limitations set forth in this Purchase Order. In any case, the terms, conditions, and limitations set forth in this Purchase Order are the only terms, conditions, and limitations to which Buyer will agree, and they supersede all prior statements, proposals, negotiations, representations, and agreements and shall constitute the entire agreement between Buyer and Seller. No prior inconsistent course of dealing, course of performance, or usage of trade, if any, shall constitute a waiver of, or shall serve to explain or interpret, the terms, conditions, and limitations set forth in this Purchase Order.

2. **PRICES.** If no price is shown on the face hereof, the price of goods or services covered by this Purchase Order shall be the lower of (i) the price last quoted or paid for identical goods or services (whichever is later), or (ii) the prevailing market price at the time of shipment.

3. **DELIVERY.** Delivery must be made within the time or times specified in this Order. Time is of the essence. Unless otherwise specified on the front of this Purchase Order, delivery shall be tendered at Buyer's plant in Hermitage, Pennsylvania during normal business hours.

4. **CHANGES.** Any change to this Order to be valid must be in writing and signed by the Buyer's authorized representative. Buyer reserves the right at any time to make changes in drawings and specifications as to any goods and/or services covered by this Order, if such changes are in the form described in the preceding sentence. Any change, in order to be effective, must set forth with particularity and not through incorporation by reference the precise terms, conditions, and limitations changed or added. If any such change causes an increase or decrease in the cost of, or time required for filling this Order, an equitable adjustment shall be made in the purchase price or delivery schedule or both and this Order will be modified accordingly. Any claim by Seller must be asserted within 30 days from the date of receipt by the Seller of the notification of the change. Nothing in this paragraph, however, shall excuse the Seller from proceeding with this Order as changed.

5. **INSPECTION AND ACCEPTANCE.** All goods and/or services shall be received subject to Buyer's inspection
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and rejection. Rejected goods will, subject to applicable law and consideration of workplace safety, be held for Seller's written instructions and at Seller's risk and if Seller so directs in writing, will be returned at Seller's expense, subject to applicable law and consideration of workplace safety. Buyer shall not be required to hold any rejected goods for an unreasonable time. Certificates of inspection or tests shall be furnished to Buyer if required by Buyer. Neither payment for goods prior to inspection nor physical acceptance of delivery shall constitute an acceptance thereof, and acceptance shall not be deemed to occur until Buyer has had a reasonable opportunity to inspect the goods and/or services. Acceptance shall not relieve Seller of responsibility for defects.

6. **WARRANTIES AND REMEDIES.** All goods covered by this Order shall (i) conform to Buyer's specifications and any drawings, samples, or other descriptions provided by Buyer or Seller, (ii) be merchantable, fit for the purpose intended by Buyer, of best quality and workmanship, and free from all defects, (iii) conform with all applicable laws and regulations; and (iv) be free and clear of all liens, claims, and encumbrances. The duration of the foregoing warranty shall be four years from the date of receipt of goods by Buyer, unless Seller customarily provides a longer warranty for such goods, in which case Seller's longer warranty shall apply. In the event of breach by Seller, Buyer shall be entitled to consequential and incidental damages in addition to other damages available.

7. **PATENTS, ETC.** Seller shall indemnify, defend, protect, and save harmless Buyer, Buyer's successors, assigns, and customers; and other direct or indirect users of the goods covered by this Order against all suits, at law or equity, and from all damages, claims, and demands for actual or alleged infringement of any United States or foreign patent, copyright, trade secret, trademark, license, or similar rights, including reasonable counsel fees and costs of defense. Without limiting the scope of the foregoing, if the goods or services covered hereby are found to infringe or their use is enjoined, Seller shall, at its expense and with Buyer's approval, either procure for Buyer the right of continued use by Buyer and its successors, assigns, and customers and such other users or promptly replace the goods and services with equal but non-infringing and non-enjoined goods or services. All specifications, instructions, drawings, designs, and manufacturing processes disclosed to Seller shall remain the sole property of Buyer, shall be held and maintained confidential by Seller, shall be returned to Buyer on demand upon completion of this Purchase Order, and shall not be used for purpose other than the performance of Seller's obligations under this Purchase Order.

8. **RISK OF LOSS.** Risk of loss or damage to the goods furnished under this Order shall be upon Seller until Buyer's inspection and acceptance of the goods at Buyer's plant in Hermitage, Pennsylvania, or such other place of delivery specified on the front of this Purchase Order.

9. **INDEMNITY.** Seller shall indemnify, defend, protect, and hold harmless Buyer, Buyer's successors, assigns, and customers, and other users of its products from and against all injuries, loss, expense (including reasonable counsel fees and costs), recovery, and settlement, including any incurred in connection with any demand, claim, or suit (regardless of the

merits of such demand, claim, or suit) which may be asserted or brought against any of them, arising as a result of the actual or alleged sale, use, or failure of the goods, services, or work covered by this Purchase Order and arising out of the breach by Seller of any representation, warranty, covenant, or other term or condition of this Purchase Order or any other provisions that may be deemed to constitute part of the contract between Buyer and Seller or any warranty or duty otherwise imposed by law or under the Uniform Commercial Code as adopted in Pennsylvania, whether or not due to any negligence of Buyer or Buyer's employees, or arising as a result of any failure by Seller to pay Seller's subcontractors and/or suppliers for services and/or materials used by Seller in the manufacture of the products supplied to Buyer under this Order.

10. **COMPLIANCE WITH LAWS.** Seller shall comply with all applicable laws and regulations, including, but not limited to Sections 6, 7, and 12 of the Fair Labor Standards Act, as amended, and with all applicable regulations and orders issued under Section 14 thereof; the Occupational Health and Safety Act of 1970 and all applicable regulations standards issued thereunder. Seller further agrees to furnish Buyer with any certification Buyer requires in order to show compliance with applicable laws and regulations.

11. **TERMINATION FOR CONVENIENCE.** Buyer may, at any time by written notice to Seller, cancel this Order in its entirety or any part thereof at its convenience. Such termination shall be effective in the manner specified in said notice and shall be without prejudice to any claims which the Buyer may have against Seller. Upon receipt of such notice, Seller shall, unless the notice directs otherwise, immediately discontinue work and the placing of orders for materials and supplies in connection with the performance of the Order and shall, if requested, make every reasonable effort to procure cancellation of existing orders upon terms satisfactory to Buyer and shall thereafter do only such work as may be necessary to preserve and protect work already in progress and to protect material or equipment in transit. In the event of termination under this paragraph, Buyer shall be responsible to reimburse Seller only for goods produced prior to the termination and for the cost of materials and supplies for, and work performed on, work in progress at the time of termination, subject further to Seller's duty to mitigate damages.

12. **TERMINATION FOR CAUSE.** If Seller fails to deliver the goods or to perform the services at the time specified herein or to perform any of the other provisions of this Order and does not cure such failure within a period of 10 days after receipt of notice from Buyer specifying such failure, Buyer may, by written notice of default to Seller, cancel the whole or any part of this Order without liability and may procure similar goods or services elsewhere in such manner as Buyer deems appropriate. Seller shall be liable to Buyer for any excess costs in reprocurring the similar goods or services. If it is determined for any reason that the Buyer had no right to cancel this Order for cause, the cancellation will be deemed to have been made pursuant to paragraph 11 entitled "Termination for Convenience" and the rights and obligations of the parties shall be governed by paragraph 11.

13. **WORK ON PREMISES.** If labor is to be furnished at the premises of Buyer or Buyer's customer, Seller shall, before starting work, furnish Buyer with certificates of

insurance covering Workmen's Compensation Insurance limits as provided by statute and Public Liability Insurance with limits of \$150,000/500,000 for bodily injury or death and limits of \$50,000/100,000 for property damage. Certificates shall also include evidence of automobile insurance of owned and non-owned vehicles with limits of \$100,000/300,000 public liability and \$50,000 property damage. The existence of such insurance, however, shall not relieve Seller of its obligations under Section 9 hereof.

14. **TAXES.** Seller shall pay all taxes applicable to this Order unless shown separately on the face of this Order.

15. **PACKING, STORAGE, AND SHIPPING.** No charges for blocking, boxing, packing, drayage, cartage, transportation, shipping, storage, or demurrage shall be allowed without the written approval of Buyer.

16. **NON-ASSIGNMENT.** Assignment of this Order or any interest therein or any payment due or to become due thereafter without the written consent of Buyer shall be void.

17. **FORCE MAJEURE.** Failure of Buyer to take delivery of goods or accept performance of services hereunder or portions thereof when due if occasioned by act of God or public enemy, fire, explosion, perils of the sea, flood, drought, war, riot, sabotage, accident, embargo, government priority, requisitions or allocation, or any circumstance of like character beyond the reasonable control of Buyer, or by interruption of or delay in transportation, labor trouble, partial or complete suspension of Buyer's operations, compliance with any order or request of any court, arbitrator, or governmental officer, department, agency, or committee, shall not subject Buyer to any liability to Seller. Buyer shall not be required to settle any strike or labor dispute except as Buyer may determine in its own absolute discretion. At Buyer's option, the period specified for delivery of goods or performance of services hereunder shall be extended by the period of delay occasioned by such circumstance, and deliveries or services omitted shall be made or performed during such extension or the total ordered hereunder shall be reduced by the deliveries or services or portions so omitted.

18. **GOVERNING LAW AND VENUE.** The local law of the Commonwealth of Pennsylvania, excluding the Convention on Contracts for the International Sales of Goods, shall apply in interpreting these terms and conditions and shall apply to all questions arising in connection with this Purchase Order, the acceptance hereof, the purchase of goods or services covered hereby, the contract of the parties (if different from the foregoing), and any claims relating to the foregoing. Any proceeding arising out of this Purchase Order, the acceptance hereof, the purchase of goods or services covered hereby, the contract of the parties (if different from the foregoing), or any claims relating to the foregoing shall be brought only in the Court of Common Pleas of Mercer County, Pennsylvania or the United States District Court for the Western District of Pennsylvania.

19. **EMPLOYMENT POLICIES AND PRACTICES.** To the extent required under applicable law (a) all applicable provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor are hereby incorporated by reference, and (b) the following affirmative action clauses and the related

regulations of the United States Secretary of Labor are hereby incorporated herein by reference: (a) Affirmative Action for Handicapped Workers, 41 CFR 60-741.4, and (b) Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era, 41 CFR 60-250.4.

20. **INTEREST.** Amounts owed by Buyer or Seller under the terms and conditions of this Purchase Order or otherwise in connection with the purchase of goods or services covered hereby shall bear simple interest at the rate of 6% per year.

21. **NO WAIVER.** Failure by Buyer to enforce any of the terms, conditions, and limitations of this Purchase Order shall not be construed as a waiver thereof nor a waiver of any other terms, conditions, or limitations of this Order, and the failure by Buyer to exercise any of its rights arising from default of Seller or otherwise shall not be deemed a waiver of such right or of any other right. The terms, conditions, and limitations of this Purchase Order, and all rights under this Purchase Order or otherwise of Buyer, may be enforced at any time in whole or in part.