

Terms and Conditions of Sale

1. QUOTATIONS:

La Marche Manufacturing Company (hereinafter referred to as La Marche) offers to sell the machinery, tools, equipment, components, parts, or service described in the accompanying written quotation, OR in the invoice on the reverse side issued pursuant to a prior oral quotation, OR in the accompanying confirmation of Buyer's purchase order, or on the face of the order form taken from La Marche Manufacturing Company's Parts Catalog upon these Terms and Conditions of Sale which shall apply to the exclusion of any inconsistent or additional terms and conditions of Customer's order, acceptance, or acknowledgment. These Terms and Conditions of Sale and the contract formed by acceptance of them cannot be modified, canceled, rescinded, or waived except by a written agreement in which the parties agree specifically to modify, cancel, rescind, or waive any of These terms or provisions signed by both parties, including an authorized officer of La Marche.

2. ACCEPTANCE:

Acceptance of this offer can be made by any commercially reasonable means, including Customer's issuance of an order, acceptance, or acknowledgment or Customer's return of the attached acknowledgment form. Acceptance of this quotation by Customer is expressly limited to the terms and conditions contained in it. If Customer shall use its own purchase order or other form to order goods from La Marche that form shall be used for convenience only and shall evidence Customer's unconditional agreement to these Terms and Conditions of Sale, and any terms or conditions contained in Customer's form inconsistent with or in addition to terms and conditions contained herein shall be of no force or effect whatsoever between the parties.

3. PRICES:

(a) Prices are firm unless otherwise stated in the offer/quotation. Payments made within 10 days of invoice date shall be discounted at the rate shown on the invoice; otherwise net 30 days; past due amounts are subject to service charge of 1% per month or fraction thereof.

(b) The prices do not include any applicable governmental taxes or other charges. Customer shall pay any of these taxes or other charges, together with penalties and expenses, if any, upon receipt of invoice from La Marche in lieu of a payment of these taxes, Customer shall provide La Marche with a tax exemption certificate acceptable to the taxing authorities.

(c) Unless otherwise quoted by La Marche all prices are F.O.B. La Marche Manufacturing Company, Des Plumes, Illinois.

(d) All catalog prices are subject to change without notice.

(e) Freight will be prepaid and billed as a separate item on the invoice. All extra charges for special handling, packaging and demurrage are obligations of the Buyer and will be billed as such.

(f) Goods not manufactured by La Marche will be invoiced at the prices stated in the quotation, subject to increase in prices of any of these goods by La Marche's suppliers.

(g) La Marche reserves the right to refuse to extend credit at any time, regardless of prior dealings, and for any reason; in such cases items will be shipped C.O.D.

(h) Customer shall reimburse La Marche for all costs and expenses. Including attorneys' fees and court costs, incurred in collecting any amounts due.

4. COMPLETION-DELIVERY:

(a) The proposed delivery data and performance schedule stated in the quotation is a best estimate at the time of quotation and is not binding on La Marche. Unless otherwise stated, goods quoted as "in stock" are subject to prior sale. La Marche hereby rejects any attempt to impose a penalty or other burden on the failure to deliver on the date set forth in the quote or offer or acceptance.

(b) La Marche shall have no liability to customers or any third party for any loss, damage, or expense from any delay or failure of performance due to any cause beyond the control of La Marche, including, but not limited to, fire, strike, accident, war conditions, government regulation or restriction, shortages in transportation, power, labor, or material, freight embargo, riot or civil commotion, default of the supplier, or prohibitions or events which render performance difficult or impossible.

(c) Upon giving notice to a customer of a delay in accordance with the Illinois Uniform Commercial Code, La Marche shall allocate all goods produced by La Marche among the then customers of La Marche in proportion to the contracts then received.

(d) Unless otherwise set forth or subsequently agreed to in writing, La Marche has complete discretion in specifying the manner of shipment even though Buyer is paying full cost thereof.

5. TITLE AND DELIVERY:

Delivery of goods to a carrier by La Marche F.O.B. La Marche's plant, Des Plaines, Illinois, consigned to Customer or its order, as Customer may direct, shall be complete delivery to Customer as well as transfer to Customer of title, ownership, and possession of and to the goods. Customer assumes risk of loss, damage, or shortage in transit and shall be responsible for pursuing all claims with the carrier or carrier's insurer. Customer shall provide La Marche with written notice of any shortage, loss or damage within five (5) days of receipt of the goods.

6. SERVICES PERFORMED:

If customer has requested La Marche to service and repair any machinery or equipment (Work), Customer shall provide a safe area in which La Marche's employees, agents, or contractors may perform the Work and Customer shall be responsible for the safety of all persons on, about, or adjacent to areas where the Work is performed. Customer shall furnish to La Marche all necessary work tools, equipment, and supplies.

7. COOPERATION, CHANGES, OR CANCELLATIONS:

(a) Customer shall at all times cooperate with La Marche and furnish any specifications, drawings, or information requested by La Marche within a reasonable time after any request. La Marche and its agents and employees are under no obligation whatsoever to treat as confidential any disclosure made by Customer in connection with this or other transactions with La Marche.

(b) Customer shall not countermand, cancel, or change the order on cause the work or shipment to be delayed or stopped except with the consent of, and upon the terms agreed to, by La Marche.

(c) No goods can be returned to La Marche without prior written approval. All returned goods are subject to La Marche's usual and customary restocking fee. Special made items are not returnable.

8. PERFORMANCE BY LA MARCHÉ:

In the event of any proceedings filed by or against Customer, voluntary or involuntary, in bankruptcy or insolvency, or for appointment of a receiver or trustee, or an assignee for the benefit of creditors, La Marche shall have the right to discontinue work on the offer and receive full reimbursement for all costs incurred plus a reasonable profit. If La Marche, in its sole discretion, in good faith, is insecure as to customer's payment or performance, it may refuse to perform until it receives adequate assurances of customer's payment or performance.

9. INSTALLATION:

Unless otherwise specifically agreed by La Marche, Customer shall install all goods, and La Marche shall bear no expense of installation.

10. WARRANTY:

For a period of one (1) year from the date of shipment, La Marche warrants that the goods manufactured and the services performed by it shall be free from defects in material and workmanship.

NOTWITHSTANDING ANY PROVISION OF THESE TERMS AND CONDITIONS, THE WARRANTY CONTAINED IN THIS PARAGRAPH, AS LIMITED IN IT, IS THE ONLY WARRANTY EXTENDED BY LA MARCHÉ IN CONNECTION WITH ANY SALE BY IT AND IS EXTENDED TO

CUSTOMER ONLY AND NOT TO ANY SUCCESSIVE BUYERS, USERS, THIRD PARTIES, OR EMPLOYEES AND IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

11. REMEDIES:

La Marche's obligations under these Terms and Conditions upon breach of warranty or other provision shall be limited, at La Marche's election, to the repair or replacement of goods or the crediting to the Customer of an amount not to exceed the purchase price of the goods. If notice of a breach of warranty is given by Customer, La Marche shall be obligated only to repair, replace. Or credit the purchase price for goods which examination by La Marche or its representatives shall disclose to have been defective under ordinary and normal use. Written notice of any defect shall be given by Customer to La Marche at 106 Bradrock Dr., Des Plaines, Illinois, within thirty (30) days after the defect appears. No allowance shall be made for any expenses incurred by Customer in repairing defective parts or supplying any missing parts except on the written consent of La Marche. In any case, if La Marche agrees to replace or repair a defective part, Customer shall have the responsibility and bear the cost for and related to procuring and providing all necessary dismantling, reassembling, and handling facilities in connection with these services.

12. LIMITATION OF DAMAGES:

In no event shall La Marche have any liability whatsoever for payment of any consequential, incidental, indirect, special, or tort damages of any kind, including, but not limited to, any loss of profits.

13. CUSTOMER RESPONSIBILITY-INDEMNITY:

(a) Customer assumes and shall bear sole responsibility for providing adequate and efficient safeguards, work-handling tools, and safety devices necessary to provide a safe work place and to protect fully all personnel from bodily injury or death which otherwise may result from the use, operation, setup or maintenance of the goods. Compliance with the Occupational Safety and Health Act and the regulations adopted under it and with other prevailing federal, state, and local codes and industry-accepted standards is the responsibility of Customer. La Marche shall bear no responsibility whatsoever for the failure of Customer to order, install, on use safeguards, work-handling tools, or safety devices. Customer shall establish, and require all persons who use, operate, set up, or maintain the goods to use, all proper and safe operating procedures, including, but not limited to, procedures set forth in any manuals or instruction sheets relating to the goods. Customer shall not remove or modify any devices, warning signs or manuals furnished with or installed upon or attached to the goods.

(b) Customer releases all actions (including, but not limited to, any action for injury to or death of any person or damage to property) arising out of the manufacture, sale, use, or operation of the goods which Customer may have any time against La Marche or its agents or employees. Customer covenants to indemnify and hold harmless La Marche and its agents and employees of, from, and against any and all loss, damage, expense (including reasonable attorneys' fees, claims, suits, or liability) which La Marche or any of its agents or employees may sustain or incur at any time, for or by reason of any injury to or death of any person or damage to any property, arising out of any claimed or actual breach by Customer of Customer's undertaking under Paragraph 13 (a) or any acts primarily attributable to the conduct of Customer on its employees and agents, including, but not limited to, the negligence or reckless conduct of Customer's employees or agents, Customer's maintenance of the goods, Customer's addition to or modification of the goods, or Customer's use of the goods in an inappropriate manner.

(c) Customer shall notify La Marche promptly, in writing, and in all events within ten (10) days after its occurrence, of any accident or malfunction involving any goods which results in injury to or death of persons, including Customer's agents and employees, or damage to property, including Customer's property, or the loss of use of any property, and Customer shall cooperate fully with La Marche in investigating and determining the cause of any such accident or malfunction.

14. PATENTS:

(a) La Marche will defend and save Customer harmless from and against any loss or expense caused by any claimed infringement of any United States patent arising out of the purchase, sale, or use of goods designed and manufactured by La Marche in the event Customer gives La Marche prompt, written notice of any claim of infringement and complete authority in defending against it. Notwithstanding La Marche's indemnity, Customer releases any claims Customer may have at any time against La Marche for consequential damages or loss of profits to Customer resulting from any suit regarding the use of La Marche's goods or any part of them. Customer shall give La Marche any reasonable assistance in defense of any claimed infringement as it shall be able to give and shall not charge La Marche for the costs of that assistance. If the goods or any part of them designed and manufactured by La Marche are held to infringe any United States patent and the use is enjoined, La Marche shall, at its own expense, in lieu of all other liability, either procure for Customer the right to continue using the goods, replace the goods with non-infringing goods, modify the goods so as to become non-infringing, or return the purchase price. NOTWITHSTANDING ANYTHING IN THESE TERMS AND CONDITIONS TO THE CONTRARY, LA MARCHÉ'S LIABILITY UNDER THIS PARAGRAPH 14 SHALL BE LIMITED TO THE PURCHASE PRICE AND THE TRANSPORTATION AND INSTALLATION COSTS OF THE GOODS. La Marche grants no license express or implied other than the right of Customer to use the goods in the form delivered by La Marche.

(b) Customer will defend, protect and save La Marche harmless from and against any loss or expense incident to any claimed infringement of any United States patent arising out of the manufacture, service, or sale of goods or any parts of them which are manufactured or serviced by La Marche but which are not designed by La Marche.

15. APPLICABLE LAW:

These Terms and Conditions of Sale shall be construed in accordance with the law of the State of Illinois.

16. SUCCESSORS:

La Marche's quotation and these Terms and Conditions shall inure to the benefit of, and be binding upon, the successors of the parties to them.

17. LIMITATION ON ACTION:

Any action or suit against La Marche arising in any way from the quotation or with respect to the goods must be commenced within one (1) year after the cause of action has accrued.

18. SEVERABILITY:

The invalidity of any segment of these Terms and Conditions shall in no way operate to invalidate any other portion and, except for the invalid segment, the entire balance of these Terms and Conditions shall be and remain in full force and effect.

19. WHOLE AGREEMENT:

All previous oral and written communications of the parties for the sale of goods are abrogated. The parties agree that there are no other agreements or warranties, except as contained in these Terms and Conditions and the accompanying quotation. These Terms and Conditions and the accompanying quotation are the final, complete and exclusive expression of the parties' agreement.

20. WAIVER:

No waiver of performance required by Customer shall be valid unless in writing signed by a duly authorized officer of La Marche. No waiver of a specific action shall be construed as a waiver of future performance.