1. SCOPE

The Terms and Conditions ("Terms") contained herein shall apply to all quotations and offers made by and purchase orders accepted by Engis Corporation. These Terms apply to all sales made by Engis except to the extent the Terms conflict with a written acknowledgement, by implication, or acceptance and payment of products ordered hereunder. Engis's failure to object to provisions contained in any communication from Buyer shall not be deemed a waiver of the provisions herein. In no event shall Engis's liability for all damages and costs (including the costs of the defense by Engis) exceed the contractual value of the products or services that are the subject of the lawsuit, providing such defense, or in the event that such product is held to constitute infringement and the use of the product is enjoined, Engis, in its discretion, shall procure the right to continue using such product, or modify it so that it becomes noninfringing, or remove it and grant Buyer a credit for the depreciated value thereof. Engis's indemniity does not extend to claims of infringement arising from Engis's compliance with Buyer's design, specifications and/or instructions, or the use of any product in combination with other products or in connection with a manufacturing or other process. The foregoing remedy is exclusive and constitutes Engis's sole obligation for any claim of intellectual property infringement and Engis makes no warranty that products sold hereunder will not infringe any intellectual property rights.

2. PRICE, TAXES AND QUOTATIONS

Prices are subject to change on thirty(30) days’ notice to Buyer. Any order that can be cancelled or rescheduled by Buyer is subject to an immediate price change. All prices are exclusive of all present or future taxes, duties, commodity taxes, turnover tax, import duty (including brokerage fees) or other tax applicable to the manufacture or sale of any product. Such taxes, when applicable, shall be paid by Buyer unless provided by Engis for a tax exempt status. Unless otherwise agreed to in writing, prices quoted by Engis are those current at the date of quotation and may be changed prior to an order. Quotations for tooling are estimated in accordance with prints and parts submitted with Buyer’s inquiry. Prints for each part must be submitted with all orders, and all prints must include Buyer’s latest revisions.

3. DELIVERY

Unless otherwise agreed in writing, sales are F.O.B. Wheeling, Ill. Engis may deliver products in one or more consignment and invoice each consignment separately. Engis reserves the right to ship product that is not subject to cancellation in advance of the agreed shipping date. Unless otherwise agreed in writing, delivery time is not of the essence. Engis does not accept liability for any loss arising from delay in delivery of products.

4. PAYMENT TERMS

Unless otherwise agreed in writing, Payment terms shall be net thirty (30) days from the date of invoice. Buyer agrees to pay interest on any unpaid balance at a rate of five percentage points above the annual Federal Funds rate as specified in the Wall Street Journal on the date balance becomes due. Unless otherwise agreed in writing, all payments are to be in United States dollars. For exported products, Engis may require payment to be secured by an irrevocable letter of credit or bank guarantee acceptable to Engis. Where payment is made by letter of credit, all costs of collection shall be for Buyer’s account. In the event that Engis is required to bring legal action to collect delinquent accounts, Buyer agrees to pay reasonable attorney's fees and costs of suit.

5. NON-CONFORMING DELIVERY AND RISK OF LOSS

Buyer shall notify Engis of any visible defects, quantity shortages or incorrect product shipments within seven (7) days of receipt of the shipment. Failure to notify Engis in writing of any visible defects in the products or of quantity shortages or incorrect shipments within such period shall be deemed an unqualified waiver of any rights to return products on the basis of visible defects, shortages or incorrect shipments, subject to Buyer's rights under Section Seller shall retain a security interest in the products until Buyer's final payment to Engis for the products. Risk of loss and title shall pass to Buyer as soon as the products have been placed with a transport agent.

6. ORDER CANCELLATION

(a) Buyers Cancellation for Convenience: Buyer may cancel any order for convenience on the following terms: (i) For standard products, Buyer may cancel or rescind a product without penalty if the cancellation is more than thirty (30) days from the Confirmed Shipping Date (as specified in Engis’s Order Acknowledgement or other document); cancellations within thirty (30) days of the Confirmed Shipping Date must be approved in writing by a sales manager and may be subject to special charges (ii) For nonstandard parts, custom products, or standard parts with minimum usage Buyer may cancel or rescind more than ninety (90) days from the Confirmed Date, except that Buyer shall accept delivery of all such products which are completed at the time of cancellation or rescission. Those nonstandard products which are in the work-in-process inventory at the time of cancellation or rescission shall be paid for by Buyer at a price equal to the completed percentage of the product multiplied by the price of the finished product. Buyer also shall pay promptly to Engis the costs of settling and paying claims arising out of the termination of work under Engis’s subcontracts or vendors including accounting, legal, and clerical costs arising out of the cancellation. (b) Engis’s Cancellation: Engis shall have the right to cancel any unfilled order without notice to Buyer in the event that Buyer becomes insolvent, adjudicated bankrupt, petitions for or consents to any relief under any bankruptcy reorganization statute, or becomes unable to meet its financial obligations in the normal course of business. Any order that can be cancelled or rescheduled by Buyer pursuant to paragraph (a) may be cancelled or rescheduled by Engis if notice is given to Buyer.

7. LIMITED WARRANTY

Except as specified below, products sold hereunder shall be free from defects in materials and workmanship and shall conform to Engis’s published specifications or other specifications accepted in writing by Engis for a period of one (1) year from the date of shipment of the products. The foregoing warranty does not apply to any products which have been subject to misuse, neglect, accident or modifications. Engis shall make the final determination as to whether its products are defective. Engis’s sole obligation for products failing to comply with this warranty shall be, at its option, to replace or issue credit for the nonconforming product where, within fourteen (14) days of the expiration of the warranty period, (i) Engis has received written notice of any nonconformity; (ii) after Engis’s written authorization, Buyer has returned the nonconforming product to Engis; and (iii) Engis has determined that the product is nonconforming and that such nonconformity is not the result of improper installation, repair or other misuse. THE FOREGOING WARRANTY AND REMEDIES ARE EXCLUSIVE AND MADE EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR OTHERWISE INCLUDED, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. ENGIS DOES NOT ASSUME OR AUTHORIZER ANY OTHER PERSON TO ASSUME FOR IT ANY OTHER LIABILITY IN CONNECTION WITH ITS PRODUCTS. Buyer shall pass this warranty to any third-party purchaser of Engis products.

8. LIMITED LIABILITY

Neither Engis nor Buyer shall be liable for incidental or consequential damages, including but not limited to, the cost of labor, rework, reclassification, rework charges, delay, lost profits, or loss of goodwill arising out of the sale, installation or use of any Engis product. If Engis has any liability for breach of contract, breach of any implied condition, warranty or representation, the aggregate liability of Engis to Buyer shall be limited in respect of any occurrence or series of occurrences to the contractual value of the products or services that are the subject of the contract.

9. PATENTS

(a) Indemnification: Subject to the limitations herein, Engis will defend any suit or proceeding brought against Buyer if it is based on a claim that any product furnished hereunder constitutes an infringement of any U.S., Canadian, Japanese, EU or EFTA member country intellectual property rights. Engis shall notify promptly in writing and given full and complete authority, information and assistance (at Engis’s expense) for defense of the suit. Engis will pay damages and costs therein awarded against Buyer but shall not be responsible for any compromise made without its consent.

10. CONFIDENTIAL INFORMATION

Except as required by law, neither party shall use (except for purposes connected with the performance of its obligations hereunder), divulge or communicate to any third party any information of the other which is reasonably known to be confidential.

11. FORCE MAJEURE

Engis shall not be liable for any damage or penalty for delay in delivery or for failure to give notice of delay when such delay is due to the elements, acts of god, acts of Buyer, act of civil or military authority, war, riots, concerted labor action, shortages of materials, or any other cause beyond the reasonable control of Engis. The anticipated delivery date shall be deemed extended for a period of time equal to the time lost due to any delay excusable under this provision.

12. EXPORT REGULATIONS

Buyer agrees to comply fully with all laws and regulations concerning the purchase and sale of products. In particular, Buyer agrees to comply with the Export Administration Regulations of the United States in so far as they apply to the sale of products. The products are licensed by the United States for delivery to the ultimate destination as shown on the shipment/invoice address and any contrary diversion is prohibited.

13. ASSIGNMENT AND SUBCONTRACTING

Engis shall be entitled at all times to assign its rights under the contract (in whole or in part) or to subcontract any part of the work or services to be provided under the contract as it deems necessary or desirable.

14. NOTICES

Any notice hereunder shall be deemed to have been given if sent by prepaid first class mail to the party concerned at its last known address. Notice to Engis shall be to 105 W Hintz Rd., Wheeling, IL 60090.

15. WAIVER

Failure by Engis to exercise or enforce any rights hereunder shall not be deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement thereof at any time or times thereafter.

16. APPLICABLE LAW

Unless otherwise agreed in writing, the terms and conditions contained herein shall be governed by and construed under the laws of the State of Illinois, USA.

World Leader in Superabrasive Finishing Systems
Engis Standard Terms and Conditions of Sale

For questions or comments, please contact us at:
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