



## TERMS AND CONDITIONS OF SALES

### **ALL PROPOSALS AND QUOTATIONS FOR THE ORIGINAL SALE OF OUR PRODUCTS AND OUR ACCEPTANCE OF PURCHASE ORDERS FOR OUR PRODUCTS ARE EXPRESSLY CONDITIONAL UPON PURCHASER'S ASSENT TO THE FOLLOWING TERMS AND CONDITIONS:**

1. **ACCEPTANCE:** All orders are subject to acceptance in writing by Seller at its office listed above.
2. **PRICES:** Prices are E.X.W. ITM Palm Coast, Florida.
3. **VALIDITY OF QUOTATION:** Any quotation shall be valid for ninety (90) days from quotation date unless specified otherwise.
4. **PAYMENT TERMS:** Seller's normal terms are 30% DUE WITH RECEIPT OF PURCHASE ORDER, 60% DUE AFTER ACCEPTANCE OF THE MACHINE AT ITM FACILITY IN ACCORDANCE TO TERMS AGREED UPON IN THE PURCHASE ORDER AND PRIOR TO SHIPMENT, 10% DUE WHEN MACHINE ARRIVES AT YOUR FACILITY IN 30 DAYS OR LESS AS DEFINED IN ITM'S QUOTATION. Seller reserves the right to ask for progress payment when noted specifically in its quotations. Invoices are payable in cash without any deductions. Any late payment will be assessed with a service charge of 0.15% of total sale value per day.
5. **SECURITY INTEREST:** Seller shall retain a security interest in products sold until Purchaser has performed all of its obligations hereunder and Seller shall have all rights of a secured party with respect thereto, including the right to repossess same without legal process. Upon the request of Seller, Purchaser shall execute and deliver to Seller such UCC Financing Statements and other documents as Seller may reasonably request in order to perfect Seller's security interest. Each order accepted by Seller shall be deemed a security agreement executed by Purchaser and Seller for purposes of the Uniform Commercial Code of the State of Florida.
6. **TAXES:** Prices DO NOT include taxes. If any sales, use or similar tax is payable by Seller in connection with any transaction or part thereof between the Seller and Purchaser with respect to products delivered, Purchaser will, upon demand, pay to Seller the amount of any such tax.
7. **DELIVERY:** Any proposed shipment date is an estimate only and is subject to change due to accidents, fire, strikes, or other causes beyond Seller's control. Under no circumstances shall Seller have any liability whatsoever for loss of use of goods ordered, or for any direct or consequential damages resulting from delay in delivery.
8. **CANCELLATION:** Each order is considered an irrevocable offer to purchase and is non-cancelable after it has been accepted by Seller. Any deviation from this policy must have written approval of Seller and any cancellation accepted shall be deemed to have damaged Seller to extent of, but not limited to, the amount held as non-refundable deposit and Seller shall be entitled to retain any such deposit. Purchaser will be held responsible for all charges including, but not limited to, any additional charges which may arise as a result of any cancellation.
9. **PRODUCTION:** Production figures furnished by Seller are estimates only and are based on Seller's understanding of accuracy and finish required, machinability of the material, amount of material to be removed and Purchaser's operating conditions.
10. **SOFTWARE CHANGES:** ITM uses third party grinding software but does not own the intellectual properties of the source code. ITM can not change or alter code without the consent of the software vendor and can not be held liable for any legal infringements of any kind. It is the customer's responsibility to review the entire content of the software and select the appropriate package for its manufacturing. After final acceptance at ITM, no further change can be made to the software without going through a complete upgrades performed only by ITM.
11. **HARDWARE CHANGES:** ITM selects the highest caliber parts for its machinery and continuous improvement is our policy. Customers can not alter ITM's machine hardware without the written approval of ITM. Any mechanical changes must be communicated to ITM in writing. Any changes detrimental to the function of the machine can and will void the manufacturer's warranty. It is the customer's responsibility to review the entire content of the hardware options prior to final acceptance at ITM. After final acceptance at ITM, no further change can be made to the machine hardware without going through a complete upgrades performed only by ITM.
12. **MACHINE ACCEPTANCE PRIOR TO SHIPPING:** ITM require all machines to undergo final accepted at ITM. In certain situations, ITM can also arrange an alternative way of final acceptance agreeable in writing with the customer. At the end of such acceptance, a report is generated and approved by the customer prior to machine shipment. After installation at the customer's, the same acceptance criteria must be met onsite, prior to the commissioning of the machine for production.
13. **SHIPMENT:** Unless otherwise requested by Purchaser, shipment will be made by the carrier of Seller's choice. It is important to request at all times proper handling of the machine, such as airride truck, etc., to avoid abnormal shocks to the machine.
14. **LOSS OR DAMAGE IN TRANSIT:** Seller's liability for loss or damage to the machine and equipment covered by this order is limited to events which have occurred prior to its delivery to the carrier at the E.X.W. point shown on Seller's order acknowledgement. Any loss subsequent to such delivery is to be at the risk of Purchaser.
15. **MACHINE WARRANTY:** Warranty shall be in effect after all Payment Terms are met. Seller warrants that its products shall be free from defects in materials and workmanship for a period of twelve (12) months from the date of arrival thereof at Purchaser's plant, substantiated by return copy of signed and dated consignee's freight invoice attached to the warranty card, provided such products are used only one 8-hour shift per day. Such warranty period shall be reduced prorated to the extent the products are used on more than one shift per day, the warranty period thus being four

(4) months if the products are used on three shifts per day during the entire period. For the ITM Series 2003 machines the warranty period will be (6) months from the date of arrival thereof at Purchaser's plant. Any part or parts which upon examination Seller finds defective in workmanship or material shall, at Seller's option, be repaired or replaced free of charge, provided that (i) the products are in possession of Purchaser; (ii) on Seller's request the parts are returned to Seller's plant freight prepaid; and (iii) the products have been maintained and operated in accordance with instructions in Seller's manual. Parts furnished under warranty "free of charge" shall be made available to Purchaser E.X.W. ITM Palm Coast, Florida. Purchaser shall pay all delivery costs to his plant.

For retrofitted machines ITM can provide service and support at the customer's facility at our standard service rate plus expenses. There is no explicit or implied warranty for retrofitted machines. Except when parts are new replacements, there will be a (60) day warranty on the new parts from the time of shipment if the parts are deemed defective by the manufacturer.

The parties agree that the warranty stated herein, along with the maintenance service contained in paragraph 13, is the entirety of the warranty given form Seller to Purchaser. The parties expressly agree that in no event does the seller warrant to the Buyer for any incidental or consequential damages caused by any failure in the product, regardless of the cause of the failure. This limitation includes, but is not limited to, any damages related to: lost production, lost sales, increased overhead, mobilization, finance charges or any other damages beyond what is expressly warranted in this paragraph and paragraph 13 herein. **THE PURCHASER EXPRESSLY WAIVES ITS RIGHT TO ANY DAMAGES OTHER THAN AS SET FORTH HEREIN.**

16. **PARTS WARRANTY:** Warranty shall be in effect after all Payment Terms are met. After initial year of warranty, Seller warrants, if installed by the customer, that all mechanical spare products shall be free from defects in materials and workmanship for a period of sixty (60) days from the date of arrival thereof at Purchaser's plant. Electrical products shall be free from defect in material and workmanship for a period of fifteen (15) days from the date of arrival thereof at Purchaser's plant.

17. **MAINTENANCE SERVICE WITHIN WARRANTY PERIOD:** During the warranty period, as defined, remedial service assistance on Seller's products will be furnished at no charge by Seller. Service beyond warranty period will be furnished by Seller at Seller's then prevailing rates.

IT IS EXPRESSLY UNDERSTOOD THAT THE WARRANTY MADE BY SELLER HEREIN SHALL BE IN LIEU OF ANY AND ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR USE.

If Purchaser accepts the products and does not notify Seller of any defect or breach of warranty within 30 DAYS FROM DATE OF SHIPMENT, Purchaser shall be deemed to have waived any claim with respect thereto. No claim shall be made for any damages, including incidental and consequential damages or damages to any product of Purchaser or damages due to Purchaser's inability to perform its contracts with others.

PURCHASER AGREES TO INDEMNIFY, HOLD HARMLESS, AND DEFEND SELLER FROM ANY AND ALL CLAIMS AND LIABILITIES CAUSED BY THE NEGLIGENCE OF PURCHASER, IT'S AGENTS, SERVANTS AND EMPLOYEES AND THOSE WHO MAY ACQUIRE FROM PURCHASER PRODUCTS PURCHASED FROM SELLER.

18. **INDEMNITY:** Purchaser shall notify Seller promptly and in any event WITHIN 30 DAYS, of any accident or malfunction involving Seller's products which results in personal injury or damage to property, and shall cooperate fully with Seller in investigating and determining the cause of such accident or malfunction. In the event that Purchaser fails to give such notice to Seller and to so cooperate, Purchaser shall indemnify and save Seller harmless from any claims from such accident or malfunction.

19. **OSHA:** Purchaser acknowledges that due to the large variety of sizes and geometric shapes of grinding wheels, it is virtually impossible to completely guard the grinding wheel and that it is Purchaser's responsibility, by law, to provide an appropriate point-of-operation protection as described in the ANSI Standard B11.9, Section 4.5.

Coolant guards (housing), as provided with a machine, are designed only to contain the coolant in the machine and are not constructed as guards to protect against wheel breakage.

Purchaser acknowledges that it is Purchaser's obligation to comply with the Federal Occupational Safety and Health Act of 1970 (OSHA) and agrees to do so with respect to the use of Seller's products.

Seller will be ready to quote any modifications or additions which Purchaser may need to meet OSHA requirements. If during the time between the order and the actual delivery of a machine or other product of Seller any specific OSHA requirement comes to Purchaser's attention, Purchaser shall promptly notify Seller in writing requesting said modification. Upon receipt of such request, a quotation will be given for modification in compliance with Purchaser's request.

Seller shall not be responsible for any failure to so comply which results from the location, operation, design, use, or maintenance of Seller's products or from alteration of such products by persons other than Seller or from any optional accessories to the equipment which were available to Purchaser, but omitted at Purchaser's direction from design or instructions furnished by the Purchaser or its agents. To ensure Purchaser's compliance with the safety regulations of OSHA as they pertain to grinding equipment, Seller encourages Purchaser to review the complete ANSI B11.9 Standards.

20. **DISPUTES:** Any disputes arising from this agreement shall be governed by the laws of the State of Florida. The parties agree that the proper venue for any litigation will be in Flagler County, Florida. In the event that the parties engage in any litigation, the prevailing party will be entitled to recover its attorney's fees and costs.

ALL CONDITIONS RESPECTING WARRANTY MADE HEREIN SHALL BE APPLICABLE TO THOSE WHO MAY PURCHASE, LEASE, OR OTHERWISE ACQUIRE MACHINERY OR OTHER PRODUCTS, OF SELLER FROM PURCHASER, AND PURCHASER SHALL INFORM ANY SUCH PERSON THAT SELLER DOES NOT MAKE ANY WARRANTY RESPECTING SAME OTHER THAN AS HEREIN PROVIDED.