



B A DIE MOLD

Since 1968

Terms and Conditions of Sale

- 1 **PRICES:** All prices herein quoted, unless otherwise noted on the reverse side hereof, are subject to change or withdrawal prior to Buyer's written acceptance of this quotation. All prices herein quoted supersede all prior quotations and are FOB Aurora, Illinois. To the quoted prices will be added all municipal, State or Federal occupational use, excise or similar taxes applicable to the transaction.
- 2 **CANCELLATIONS AND CHANGES:** After acceptance of an order by Seller pursuant to this quotation, the same shall constitute a binding agreement, and thereafter to order cannot be canceled or modified without Seller's written consent, and then only upon Buyer's payment of all costs (including overhead) and expenses incurred by Seller up to the time of receipt of such request for cancellation, or modification.
- 3 **DELIVERY DATES:** Deliveries are determined from the date Seller receives Buyer's written purchase order, or Seller's receipt of final specifications or material if Buyer is to furnish, whichever is later. Deliveries are subject to delays beyond Seller's control. Delivery dates are estimated and are not guaranteed. Every effort will be made to deliver as promised. It is expressly understood and agreed that, except as otherwise provided in this quotation, any and all oral agreements and/or representations, pertaining to the subject matter hereof are hereby expressly voided and rescinded and are considered of no legal effect. Clerical errors are subject to correction by Seller.
- 4 **PAYMENTS**
 - (a) The deposit shall be non-refundable.
 - (b) Payment shall be due according to the terms on Seller's invoice. If shipment of finished Products is delayed by Buyer beyond the approximate shipping date shown on Seller's order acknowledgment, invoice will be presented when the Products are ready for shipment. Products held for Buyer shall be at the risk and expense of Buyer.
 - (c) Should Buyer fail to make payments in accordance with Seller's terms, or if, in the judgment of Seller, Buyer's financial condition at any time does not justify the terms of payment specified, Seller may require full or partial payment in advance or shall be entitled to cancel any order then outstanding and shall receive reimbursement for its reasonable cancellation charges, including labor, materials, outside services, and overhead expenses.
 - (d) Buyer represents that is is now solvent and will continue to be solvent until the Products shown on the preceding page(s) hereof are delivered and all payment hereunder have been made in accordance with the terms hereof. Buyer agrees to give Seller immediate notice of any pending or threatened insolvency of Buyer or the existence of any conditions or events likely to lead to Buyer's insolvency.
 - (e) Seller shall have the right to stop work at anytime and withhold delivery of any and all goods ordered and property relating to said work, if any payment herein stipulated is not made promptly as agreed or upon proof of Buyer's inability to pay as agreed, and thereupon the Buyer shall pay Seller for all charges allocable to the work including overhead, labor, materials, and outside charges for goods and services allocable to the work.

Seller reserves the right at any time to require from Buyer satisfactory security for performance of Buyer's obligations, and failure of Buyer to submit the same shall be considered proof of Buyer's inability to pay as agreed.

- 5 **SECURITY INTEREST:** A security interest in and title to the Products (including all tools, dies and molds sold hereunder) shall remain in Seller and such Products shall remain Seller's personal property until fully paid for in cash, and Buyer agrees to perform all acts which may be necessary to perfect Seller's security interest in the Products covered by the quotation.
- 6 **LOSS, DAMAGE OR DELAY:** Seller shall not be liable for any loss, damage, or detention or delay resulting from causes beyond its reasonable control or caused by fire, strike, government furlough, civil or military authority, wrecks or delays in transportation, car shortages, insurrection or riots, acts of God or war, federal, state or local governmental laws, regulations or restrictions. Receipt of the Products by Buyer upon their delivery shall constitute a waiver of all claims for delay.
- 7 **RISK OF LOSS AND TRANSPORTATION CLAIMS:** Unless otherwise specified (i) Seller's responsibility for loss or damage to the Products ceases upon delivery of the Products in good order to transportation companies F.O.B. Aurora, Illinois, and (ii) all Products are shipped at Buyer's risk and should be examined carefully before a freight bill or delivery sheet is signed. If the transportation company delivers goods in bad order, Buyer must insist on carrier's agents making notation on the condition on freight bill or delivery receipt to protect Buyer's claim against the carrier.
- 8 **BUYER'S DEFENSE OF ACTIONS:** The Buyer will defend at his sole expense, any suit or court action which shall be brought against Seller by reason of the manufacture or sale of any parts or Products made to Buyer's specifications, and shall hold Seller harmless from any and all costs (including attorney's fees), including judgments paid by Seller as a result of any such suit or court action. Seller shall not be held responsible for any patent infringement due to Buyer's engineering designs

and specifications.

- 9 BUYER'S DESIGN APPROVAL: Buyer must approve, in writing, all designs, if any, made by seller. Buyer is specifically responsible for all gating locations and arrangements, all K.O. (knockout) locations and styles and shrinkage factors used. Seller will correct any errors in the design mutually agreed upon, but will not assume any liabilities for correction to Buyer's Product design.
- 10 SELLER'S RESPONSIBILITY: When a Product is manufactured to Buyer's design or specifications furnished with an order, Seller shall not be responsible for Product performance. Seller's responsibility is for workmanship and tolerances only.
- 11 TOLERANCES: All tolerances are considered commercial of plus or minus .005 inches unless otherwise specified
- 12 SELLER'S CORRECTION OF ERRORS: Seller reserves the right to correct all errors in the Products which Buyer brings to Seller's attention within the period stated in Paragraph 16. Unless otherwise specifically agreed to in writing, Buyer assumes any and all expenses for corrections or repairs to the Products made by Buyer or under his direction or control prior to Seller investigating the complaint or claim.
- 13 SELLER'S PROPERTY: All models, 3D data, and special tools used to manufacture a Product remain the property of Seller unless otherwise specified.
- 14 BUYER'S PROPERTY IN SELLER'S POSSESSION: Seller will be free of responsibilities of and/or for Buyer's equipment, such as designs, tools, dies, molds, etc., in Seller's possession. Insurance of said equipment or material will be Buyer's responsibility.
- 15 FAIR LABOR STANDARDS ACT: Seller hereby certifies that all Products or services performed are in compliance with all applicable requirements of Section 6, 7, and 12 of Fair Labor Standards Act, as amended and the regulations and orders U.S. Dept. of Labor issued under Section 14 thereof.
- 16 BUYER'S INSPECTION PERIOD: After delivery of any manufactured Product is received by Buyer, inspection, tryout or any other test must be performed by Buyer within a 15 day period from signed receipt for the Products. A rejection must be made formally to Seller within this time period, otherwise the Product shall be deemed acceptable and no further guarantee applied unless a written extension is issued to Seller.
- 17 WARRANTIES: Seller warrants to Buyer that the products will be made in a workmanlike manner and in accordance with any written specifications supplied by Buyer and will be made pursuant to Seller's customary manufacturing procedures.
- 18 DISCLAIMER: Except for the warranties expressly set forth in writing herein and on the face or preceding page(s) of this document, SELLER MAKES NO WARRANTY, EXPRESS OR IMPLIED. ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WHICH EXCEEDS THE WARRANTIES HEREIN EXPRESSLY SET FORTH IS HEREBY DISCLAIMED BY SELLER AND EXCLUDED FROM THIS QUOTATION OR ANY OTHER AGREEMENT RESULTING THEREFROM.
- 19 LIMITATION OF SELLER'S LIABILITY: Seller's liability on any claim of any kind including negligence, for any loss or damage arising out of, or connected with, or resulting from any purchase order issued with respect to this quotation, or from the performance or breach by Seller of any contract, purchase order or other agreement resulting from this quotation, or from the manufacture, sale, delivery, resale, repair or use of any tools and/or molds, or any other Products sold by Seller covered by or furnished under any purchase order, contract, agreement resulting from this quotation shall in no case exceed the total price paid by Buyer for the tools and/or molds, part or parts thereof or any other Products sold by Seller which gives rise to the claim. IN NO EVENT SHALL B.A. DIE MOLD, INC. BE LIABLE FOR ANY SPECIAL, CONSEQUENTIAL, OR INCIDENTAL DAMAGES.
- 20 LAW OF ILLINOIS: Buyer and Seller agree that any purchase order, contract, agreement or other contractual relationship established as a result of this quotation shall be deemed executed and intended to be performed in the State of Illinois and that the laws of the State of Illinois shall govern the construction and application of any contractual relationship between Buyer and Seller resulting from this quotation. Buyer and Seller agree that any suit or litigation arising out of this quotation or any order resulting therefrom shall be brought only in the State and/or Federal Courts located in Illinois. If Seller shall be required to bring suit or other collection proceeding against Buyer to collect any amounts unpaid by Buyer under this quotation, Seller shall be entitled to collect from Buyer all attorneys fees, court costs and expenses incurred by Seller in enforcing collection against Buyer for any amounts unpaid hereunder.
- 21 GENERAL PROVISIONS
 - (a) Any assignment of this quotation or any order resulting therefrom or any rights hereunder by Buyer without Seller's prior written consent shall be void.
 - (b) The provisions of any order, contract resulting from this quotation are for the benefit of the parties hereto and not for any other person
 - (c) No waiver, alteration or modification of any of the provisions hereof shall be binding unless in writing and signed by a duly authorized representative of Seller.
 - (d) Seller will not be bound by any printed matter on Buyer's acceptance forms or purchase orders which impose conditions at variance with the terms herein provided and Buyer's acceptance of this quotation or any of the Products to be delivered hereunder shall be deemed an acceptance of the terms herein