

General Kinematics Corporation
Crystal Lake, IL
TERMS AND CONDITIONS OF SALE

1. Purchases or execution and return of the acknowledgement copy of this quotation, shall be deemed acceptance of the Seller's offer to sell contained in this quotation. Any acceptance of this quotation is limited to acceptance of the expressed terms of the offer contained herein. A proposal for additional or different terms or attempt by Buyer to vary in any degree any of the terms of this offer in Buyer's acceptance and/or acknowledgement copy of this quotation is hereby objected to and rejected. Such proposal shall not operate as a rejection of this offer, unless such variances are in the terms of the description, quantity, price or delivery schedule of the goods, but shall be deemed a material alteration thereof, and this offer and the offer contained in this quotation shall be deemed accepted by the Buyer without said additional or different terms. This quotation or any sale or agreement arising therefrom can only be modified or changed in writing executed by a duly authorized representative of Seller containing specific reference to the number and date of this quotation.
2. Terms. (a) Subject to paragraph 2(b), prices are firm for a period of thirty (30) days from date of quotation. All orders are subject to progress billings and credit approval. Quoted prices do not include any federal, state, local taxes, VAT, GST, and customs duties and other charges and fees assessed for sale or purchase of any goods sold to Buyer. All such taxes, duties, charges and fees shall be paid by Buyer.
(b) The price(s) stated in this quotation is (are) subject to change in the event any of Seller's vendors increase their prices. Notwithstanding anything herein to the contrary, any increases of any prices of Seller's vendors shall result in a corresponding dollar-for-dollar increase(s) in the price(s) stated in this quotation.
(c) Payment is due upon receipt of invoice and paid in U.S. funds. A service charge of 1½% per month, subject to the legal maximum, will be added to accounts over 60 days. In the event collection action becomes necessary, Buyer agrees to pay all costs of collection, including attorneys' fees, incurred by Seller in collecting any amount which Buyer has not paid when due.
3. Shipment. Shipments to all Buyers in the United States and Canada are FOB Seller's premises or those of Seller's suppliers; and occurs when products are delivered to the carrier, whereupon Seller's responsibility for the products shall end and risk of loss shall pass to Buyer except as otherwise set forth herein. All other shipments are C.I.F. port of destination and risk of loss shall pass to Buyer when the products are loaded on the ship at port of embarkation. Seller reserves the right to make partial shipments and render invoices accordingly. Shipments will be routed pursuant to Buyer's instructions or, if not specified, will be made via "best way" at the option of Seller. Should Buyer delay shipment, Seller reserves the right to render, and Buyer agrees to pay, invoices covering delayed shipment plus any costs arising from the delay, including demurrage and storage. Buyer shall pay all other expenses related to shipment or delivery, including the cost of rental of cranes and other equipment at destination. Seller shall not be liable for damages occasioned by a delay in delivery. No claim for shortage, loss or damage will be allowed unless such claim is reported to Seller, in writing, within ten (10) calendar days after arrival of shipment at destination.
4. Cancellation. Cancellation of any order resulting from this quotation after acceptance by Seller shall only be agreed to on terms which will fully compensate and indemnify Seller against loss because of such cancellation.
5. Security Interest. At the option of Seller, Seller may retain a purchase money security interest in the equipment until such time that full payment is made and Buyer agrees to join with Seller in executing any documents, and to perform any other acts necessary to allow Seller to perfect its security interest.
6. Ownership of Intellectual Property. Unless otherwise provided in writing signed by both parties, Seller owns all intellectual property rights in the goods and equipment described in this quotation, including but not limited to, copyrights, patents, trade secrets, specifications, designs, schematics, working models or other proprietary matters, either currently existing or created in the course of the production or manufacture of goods and equipment by Seller for Buyer. Seller will have the sole and exclusive ownership of the intellectual property created by any customizations, improvements or enhancements incorporated in the goods and equipment at Buyer's request. To the extent that Buyer may be considered an inventor of patentable inventions or improvements; Buyer authorizes Seller to identify Buyer as an inventor on relevant patent documents. Buyer irrevocably assigns to Seller all right, title and interest in any patentable inventions, improvements or enhancements to the goods and equipment described in this quotation. Seller has the absolute right to hold in its own name the registration with any governmental unit of any patentable inventions, improvements or enhancements to the goods and equipment described in this quotation. At Seller's request, Buyer will give Seller, its attorneys or agents, all reasonable assistance with the preparation and prosecution of any patent applications. At Seller's request, Buyer will execute a written assignment or other instrument that Seller considers necessary or appropriate to carry out the intent of this section. Seller may affix a notice upon the goods and equipment which identifies Seller as the owner of intellectual property rights related to goods and equipment described in this quotation.
7. Non-Exclusive License. Upon payment in full of all amounts due pursuant to the purchase order and any adjustments thereto, Seller grants to Buyer an irrevocable, non-exclusive, worldwide, royalty-free license to use the patentable inventions or improvements belonging to the Seller and which are necessary for the use and operation of the goods and equipment sold pursuant to this quotation. No license or right granted to Buyer, either expressly or by implication, gives Buyer the right to make improvements to the goods and equipment described in this quotation without the Seller's express written permission.
8. Patent Infringement. General Kinematics will indemnify and hold harmless Buyer and its customers against any compensatory money damages awarded in any suit for patent infringement resulting from the sale or use of the goods identified in the this quotation. The compensatory damage award must be contained in a final order entered in a court of competent jurisdiction in the United States and after all appeals have been exhausted. Upon Buyer's receipt of any cease and desist letters, demands, service of process or complaints, Buyer will promptly notify General Kinematics. The notice shall be in writing and shall identify the patent involved, the name, address and contact information of the claimant or plaintiff, and a copy of the documents served upon the Buyer. Buyer will cooperate fully with General Kinematics in defense of any claim, suit, or action. Buyer will permit General Kinematics to conduct and control the defense and the disposition of such claim, suit, or action (including all decisions relative to litigation, appeal, and settlement). General Kinematics has the right to retain counsel on its behalf and on behalf of Buyer at the expense of General Kinematics. If Buyer determines that representation by counsel retained by General Kinematics would be inappropriate because of actual or potential differences in interest, Buyer may retain its own counsel at its own expense. This indemnification will not apply if: (1) Buyer fails to provide the written notice described herein; (2) Buyer settles, litigates or otherwise disposes of the matter without notice to General Kinematics; (3) the infringement results from the use of goods and equipment delivered under this Agreement in combination with other goods and equipment not delivered by this purchase order and the infringement would not have occurred by the use of General Kinematics' goods and equipment alone; and (4) the infringement occurred as a result of a modification to the goods and equipment by the Buyer after delivery of the goods and equipment and the infringement would not have occurred by the use of General Kinematics' equipment alone.
9. Warranty. (a) Seller warrants to the Buyer only, or if the Buyer is not the first-end user, then to the first-end user only, that, at the time of shipment to Buyer, all equipment and parts thereof, except electronic components, shall be free of defects in material and workmanship. Seller agrees to correct any defective equipment or part thereof, or deliver to Buyer other equipment or part thereof free of defect, provided that Seller is advised in writing by Buyer of the existence of such defective equipment within 15 months from the date of shipment thereof by Seller or within 12 months of the date of first use of such equipment, whichever period shall first expire, and provided further that such defective equipment or part thereof is made available for inspection by Seller. Seller may choose to send a service representative and/or have the product returned for inspection.
(b) At the request and option of Seller, Buyer shall return the defective equipment or part to Seller. Transportation charges shall be prepaid and shall be at the expense of Buyer. Buyer shall pay any federal, state, local taxes, VAT, GST, custom duties or other charges and fees assessed for shipment of the defective equipment or part to and from Seller. The specific procedure for returning equipment or parts to Seller is explained in the then current Return Merchandise Policy, a copy of which may be obtained from Seller's field service manager. If upon receipt and inspection the equipment or part thereof is found to be defective, Seller will (i) at its option, repair or supply a replacement for the defective product or component free of charge except authorized replacement labor which shall be the responsibility of the Buyer and (ii) credit Buyer's account for the inbound transportation charges paid by Buyer.
(c) Seller's liability is limited to the correction or to the supply of a replacement of the defective equipment as above set forth or, at the option of Seller, to a refund of the purchase price. This warranty is not transferable. This warranty shall not apply to any product or part which has been repaired or altered without the prior written consent of Seller, or has been subject to misuse, abuse, or accident, or has not been operated in accordance with printed instructions provided by Seller, or has been operated under conditions more severe than, or otherwise exceeding, those set forth in the specifications for such product. Seller will not pay for any warranty work performed by others, including employees of Buyer, unless it consents in writing to such work and the rate for such work before it is performed. In the event Buyer performs warranty work or has others perform warranty work, without the written consent of Seller, the warranty contained in this paragraph 9 shall be void and unenforceable and Seller shall have no further obligation to perform any warranty work for Buyer.
(d) Seller does not warrant the design or manufacture of any electronic components. The repair of electronic components of any equipment and parts sold under this quotation shall be at the sole discretion of Seller and subject to terms and conditions as determined by Seller in its sole discretion.
(e) Seller shall not be liable for labor costs in removing or reinstalling equipment or parts thereof. If Buyer grants any warranty on such equipment of greater scope than the warranty set forth above, Buyer will hold Seller harmless from any claims of third parties based on such greater warranty.
(f) **THE WARRANTY PROVIDED IN THIS PARAGRAPH AND THE OBLIGATIONS AND LIABILITIES OF SELLER HEREUNDER ARE EXCLUSIVE. ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE EXPRESSLY EXCLUDED. THIS WARRANTY SHALL NOT BE EXTENDED, ALTERED OR VARIED EXCEPT BY WRITTEN INSTRUMENT SIGNED BY AN AUTHORIZED REPRESENTATIVE OF SELLER.**
10. Returns. Any equipment or part sold to Buyer under this quotation may, but only at the option of the Seller, be returned to Seller for credit to the Buyer's account. Transportation charges shall be prepaid and shall be at the expense of Buyer. All such returns shall be subject to a restocking charge of 20% of the price of the equipment or part.
11. Dynamic Load. Seller's products are available in various designs, including isolated and other models commonly identified as "balanced", which affect the total dynamic reaction imposed upon the supporting structure and foundation. Approximate reactions for proposed equipment will be furnished to Buyer upon request and final magnitude and frequency limits of dynamic reactions will be shown on general arrangement drawings. Analysis of such reactions relative to deflection, rigidity, strength and loading of supports, as well as the effect of these reactions on the foundation, the transmissibility of the soil and any other environmental aspects is the responsibility solely of the Buyer. Seller shall not be liable for any direct or indirect damage caused by such dynamic reactions.
12. Safety Devices. Equipment furnished by Seller includes certain safety measures and devices which may include, but are not limited to, guards, safety rails, safety controls and circuits. Buyer agrees to maintain such safety measures and devices in proper working condition without modification and to provide and install any additional safety features required by law or otherwise. In the event Buyer fails to maintain such safety features and devices in proper working condition and in place on Seller's equipment, Buyer agrees to indemnify and hold Seller harmless from any and all claims, judgments and expenses, including attorney's fees and other defense costs, resulting from, or incidental to, any injuries or claimed injuries to persons or property resulting from, or claimed to result from, operation of equipment manufactured by Seller and attributable, directly or indirectly, to the absence or malfunction of such measures or devices.

13. Drawings and Manuals. (a) Seller shall submit design drawings to Buyer for Buyer's approval, the number of copies and the particular designs selected shall be determined by Seller. Should Buyer request construction and/or design changes which increase the cost of the equipment, Buyer will be advised of the amount of the additional cost. Upon Buyer's approval, production will proceed as revised and approved. Extensive revisions and/or delays in drawing approval shall be considered as sufficient cause for extended delivery.
- (b) At the time of completion of shipment of equipment and parts sold under this quotation, Seller shall furnish Buyer with service manuals and with sets of drawings deemed appropriate by Seller for the proper operation and maintenance of any equipment sold under this quotation. Seller shall solely determine the format of any such service manuals and drawings, which shall be in the English language. In the event of translation of any service manuals or drawings, the Seller's English version shall be the governing document.
14. Inspection. Buyer may, after reasonable notice, inspect materials and workmanship of equipment during fabrication, provided that such inspection is done during normal working hours and prior to scheduled shipment.
15. Painting. All equipment will be cleaned of dirt, loose scale and spatter and will be painted with machinery blue enamel prior to shipment. Upon request, specific colors, multiple coatings, and special surface preparation or special coating materials will be provided at additional cost.
16. Export Controls. Buyer understands that Seller is subject to regulation by agencies of the U.S. Government, including the U.S. Department of Commerce, which prohibits export or diversion of certain products and technology to certain countries. Any and all obligations of Seller to provide drawings, data and technical assistance for its products and/or services to be manufactured and sold by customer shall be subject to such laws and regulations of the United States which govern the license and delivery of technology abroad by persons subject to the jurisdiction of the United States, including the Export Administration Act of 1979, as amended, any successor legislation, and the Export Administration Regulations issued by the Department of Commerce, International Trade Administration, or Office of Export Licensing. Buyer agrees to comply in all respects with the export and re-export restrictions contained in the export license (if necessary) for every product or service covered by these terms and conditions. Buyer shall take all actions reasonably necessary to assure that no end user contravenes such United States laws or regulations. Without in any way limiting the provisions of these terms and conditions, the customer agrees that unless prior authorization is obtained from the Office of Export Licensing, Buyer will not export, re-export or trans-ship directly or indirectly to any country designated by any U.S. Government agency, now or hereafter, any of the technical data disclosed to customer or the direct product of such technical data which contravenes or otherwise violates the Export Administration Regulations or other United States laws and regulations in effect from time to time.
17. Delay. Any delay or failure in performance hereunder by a party or parties hereto shall be excused if and to the extent caused by occurrences beyond such party's reasonable control, including but not limited to, decrees or restraints of government, force majeure, strikes or other labor disturbance, war, riot, civil commotion, sabotage, floods, fires or natural catastrophes. If, as a result of legislation or governmental action, any party or parties are precluded from receiving any benefit to which they are entitled hereunder, the parties shall review the terms hereof and use their best efforts to restore the party or parties to the same relative positions as previously enjoyed hereunder.
18. Confidentiality. Each party acknowledges that in the course of the performance by Seller and Buyer, either party may obtain the Confidential Information of the other party. "Confidential Information" includes but is not limited to, trade secrets, know-how, inventions, techniques, processes, algorithms, software programs, schematics, designs, contracts, and other proprietary information that gives the party an advantage in the marketplace and that the party protects from dissemination to the general public by reasonable measures of secrecy. Each party will, at all times, keep in confidence and trust all of the other party's Confidential Information. Each party will take reasonable steps to prevent unauthorized disclosure or use of the other party's Confidential Information and to prevent it from falling into the public domain or into the possession of unauthorized persons. Each party will not disclose Confidential Information of the other party to any person or entity other than its officers, employees, contractors, and consultants who need access to such Confidential Information in order to effectuate the intent of this quotation and any sale or contract arising therefrom and who will be bound by this provision as the agents of the party. Each party will immediately give notice to the other party of any unauthorized use or disclosure of the party's Confidential Information. Each party agrees to assist the other party to remedy such unauthorized use or disclosure of its Confidential Information. Confidential Information will not include (a) information which is: (i) now or hereafter, through no unauthorized act or failure to act on the party's part, in the public domain; (ii) known to the party without an obligation of confidentiality at the time the party receives the same from the other party, as evidenced by written records; (iii) hereafter furnished to the party by a third party as a matter of right and without restriction on disclosure; (d) furnished to others by the other party without restriction on disclosure; or (e) independently developed by the party without use of the other party's Confidential Information.
- Each party may disclose Confidential Information to the extent legally compelled to do so by any governmental investigative or judicial agency pursuant to proceedings over which such agency has jurisdiction; provided, however, that prior to any such disclosure, the party making the disclosure will (a) assert the confidential nature of the Confidential Information to the agency; (b) immediately notify the other party in writing of the agency's order or request to disclose; and (c) cooperate fully with the other party in protecting against any such disclosure and/or obtaining a protective order narrowing the scope of the compelled disclosure and protecting its confidentiality.
19. Financial Ability. If Buyer is in default of the performance of the order or agreement with Seller, or if Seller has any doubt or insecurity as to the Buyer's financial ability to perform any order or contract Buyer has with Seller, Seller may, at its discretion, terminate this contract without penalty.
20. Buyer Tooling. Seller shall separately charge Buyer for any special tooling necessary for Seller or its subcontractors to fabricate any product or part thereof for the Buyer ("Tooling"). Any repairs and/or changes made to Buyer's Tooling at Buyer's request shall be at Buyer's expense. Further, neither Seller nor its agents are responsible for ordinary wear and tear of Buyer Tooling resulting from use. Seller shall not insure Buyer's Tooling and holds any Buyer's Tooling at Buyer's sole risk. Seller and its agents shall not be liable for any loss or damage to Buyer's Tooling. All packing and freight charges for Buyer's Tooling, both for shipment to Seller and any return to Buyer, shall be at Buyer's expense.
21. Choice of Law. All sales shall be governed by the laws of the State of Illinois. In no event shall any sale or agreement arising from this quotation be subject to the United Nations Convention on Contracts for the International Sale of Goods or the Convention on the Limitation Period in the International Sale of Goods.
22. Dispute Resolution. For all agreements for goods to be delivered by Seller to anywhere in the United States, its commonwealths and territories, arising from any order for goods pursuant to this quotation, all disputes concerning such sales agreements shall be litigated in a court of law. Venue for all such litigation shall be in a state or federal court for McHenry County, Illinois. For agreements for which goods are delivered to a location other than in the United States, its commonwealths or territories, any controversy or claim arising from any order for goods pursuant to this quotation shall be resolved by binding arbitration in accordance with the International Arbitration Rules of the International Centre for Dispute Resolution. The arbitration hearings shall take place in Chicago, Illinois, USA, and the arbitration shall be in English. One arbitrator shall be appointed, except for disputes exceeding \$250,000.00 for which three arbitrators shall be appointed.
23. Consequential Damages. **Seller shall in no event be responsible for indirect, incidental, or consequential damages, including, without limitation, lost profits, lost sales, lost revenue or loss of customers, or for any other loss of any nature, whether based in contract, tort, negligence, strict liability or otherwise, due to its performance, or failure to perform, under any agreement resulting from this quotation.**
24. Limitation of Liability. Seller's liability for any claim arising from performance of, or failure to perform, any agreement, or any part thereof, arising from this quotation shall be limited to the price of the agreement, including, without limitation, any claim or suit based in contract, negligence, strict liability or otherwise related to design, manufacture, delivery, resale, inspection, repair, operation or use of any piece equipment, or any component thereof, or any replacement part.
25. Permits, Fees and Licenses. Buyer shall secure and pay for any building permits, other permits, and governmental fees, licenses, inspections necessary for a purchase and installation of any goods sold hereunder.
26. Agreement. (a) The agreement arising from this quotation consists of this quotation, any written modifications to this agreement executed by Seller and Buyer, and any documents incorporated by reference in this quotation. The agreement constitutes the entire agreement between Seller and Buyer and shall supersede all prior agreements pertaining to the subject matter of the agreement, whether written or oral.
- (b) If any provision of the agreement shall be invalid or enforceable under the laws of any state, country or jurisdiction where used or performance occurs or is to occur, the agreement shall be interpreted as not containing the particular provision(s) which is (are) invalid or unenforceable.
- (c) The failure of Buyer or Seller to enforce any provision of the agreement shall be limited to the one instance and shall not be construed as evidence of waiver of the right to enforce that provision in any other instance.