



## TERMS AND CONDITIONS OF SALE

Except where otherwise specified, this quotation/sale is subject to the following terms and conditions:

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### 1. Contract Formation

If this instrument is a quotation, whether or not responsive to a request from the Buyer, it constitutes the offer of Moog Inc., acting through its Ethox International subsidiary (hereinafter "Ethox") to the Buyer, and becomes a binding contract under the terms and conditions set forth herein when it is accepted by the Buyer. However, any such acceptance shall be valid only if made within thirty days of the date of this instrument or such other time period specified herein. Ethox reserves the right to revise this quotation at any time due to changes beyond Ethox's control, such as, without limitation, cost of materials, engineering or manufacturing process changes. If this instrument is an acknowledgment, it constitutes Ethox's acceptance of the Buyer's order, subject, however, to the terms and conditions set forth herein. Upon the creation of a contract, this instrument will recite the entire agreement between the parties with respect to the goods, equipment or services being purchased, and shall supersede any other agreement, writing, or understanding whether made before or after the date of this instrument. Thus, Ethox's contractual obligations are expressly limited to the terms contained herein. The inclusion of any different or additional terms in any other instrument is objected to, and performance by Ethox shall occur with the express understanding that only the terms and conditions recited herein shall control.

### 2. Terms of Payment

- a) All payments are to be made in U.S. funds, and without expense to Ethox.
- b) Payment Terms: Net 30 days after date of invoice.
- c) When credit is extended by Ethox, invoices shall be due and payable within thirty days from invoice date. Any amount unpaid thirty days after shipment is subject to a delinquency charge of 1-1/2 percent of the total amount due for each month that the payment is not received by Ethox. Acceptance of the delinquency charge by Ethox shall not be deemed a waiver of any rights that Ethox may have by reason of such non-payment. However, notwithstanding the foregoing, Ethox retains the option to refuse or to revoke credit, and to require immediate payment of all outstanding balances and payment on delivery for all future deliveries.
- d) Buyer agrees to pay any expenses incurred in collecting any unpaid balance of the purchase price, or in recovering possession of goods including reasonable attorney's fees.
- e) If Ethox extends credit to the Buyer, then for the purpose of securing payment and performance of all Buyer's obligations hereunder, Ethox shall retain a security interest in all of the goods being sold pursuant to this agreement. At Ethox's request, Buyer shall execute and join in executing all financing statements and other instruments, in form satisfactory to Ethox, which Ethox deems necessary or desirable to perfect its security interest in the goods being sold pursuant to this agreement.

### 3. Packing and Shipment

Packing and shipment shall be in accordance with good commercial practice.

### 4. Delivery and Title

- a) For orders with delivery inside the United States, FOB shipping point shall apply as provided for in the Uniform Commercial Code. Risk of loss and title shall pass to Buyer at the FOB point.
- b) For orders with delivery outside the United States, Ethox and Buyer agree to apply INCOTERMS 2000. Delivery shall be FCA shipping point, unless otherwise agreed by Ethox and stated in the order. Risk of loss shall pass to the Buyer as

provided for by INCOTERMS 2000. Title shall pass to the Buyer with risk of loss.

- c) Under no circumstances shall Ethox have any liability whatsoever for delays, loss of use, or for any indirect or consequential damages arising from any delay or loss of use.
- d) Ethox shall not be responsible for the failure to perform any obligation arising hereunder due to events beyond its control. These events shall include, but are not limited to, fire, storm, flood, earthquake, explosion, accidents, acts of public enemy, sabotage, strikes, labor disputes, labor shortages, work stoppages, transportation embargoes or delays, failure or shortage of materials or machinery used by Ethox in the manufacture of the goods supplied hereunder, acts of God, failure of suppliers or subcontractors to satisfactorily meet scheduled deliveries, and acts or regulations or priorities of the Federal, State or local government or branches or agents thereof, government contracts or shipments to purchasers to fulfill contracts.
- e) No claim for shortage in packaging shall be allowed unless reported to Ethox, in writing, within ten days after receipt of goods. Buyer agrees to accept deliveries of product not less than or in excess of 10 percent of the contract quantity.
- f) Lead times shall be in accordance with the quotation. General lead times are 6-8 weeks for materials and 4-5 weeks for production. Allow 2 weeks for routine sterile processing and 3-4 weeks for sterilization revalidation.

### 5. Patents

- a) Except for goods manufactured hereunder to Buyer's design, the Buyer shall not receive, as a result of the sale of goods hereunder, any right or license of any kind under any patent owned or controlled by Ethox, or under which Ethox may be licensed by a third party. However, the foregoing provision shall not limit the right of the Buyer to use and sell such goods, in the event such goods are covered by any such patent; and the foregoing provision does not apply to goods manufactured by Ethox hereunder to Buyer's design.
- b) Ethox agrees to defend any suit, foreign or domestic, that any party may institute against the Buyer for alleged infringement of a patent or patents relating to specific devices or apparatus of Ethox's own design and furnished to the Buyer under this contract. However, this paragraph shall apply only to such infringements as shall arise only from the use of such specific devices or apparatus themselves and not as a part of any combination of any other devices, apparatus, and/or parts. Furthermore, Ethox's obligations under this paragraph shall only arise only if the Buyer (a) shall have made all payments then due under this contract; (b) shall give Ethox immediate notice in writing of the alleged infringement and of the institution of any suit; (c) shall permit Ethox to defend such suit; and (d) shall furnish to Ethox all information, assistance, and authority which, in the opinion of Ethox's attorneys, is necessary to defend such suit. Ethox shall have no liability under this paragraph for any compromise reached without Ethox's written consent. Unless arising as a direct consequence of litigation which Ethox has itself defended under the terms of this paragraph, Ethox shall have no liability for any patent infringement. Ethox shall also not be required to defend any suits or pay any damages which may arise, directly or indirectly, by reason of the use of any part, device, apparatus, and/or design not furnished by Ethox.

### 6. Indemnity

If any goods are made in compliance with Buyer's plans, designs, specifications or instructions, Buyer shall indemnify and hold harmless, and defend Ethox from and against any damage, loss, expense, liability, claims, suits, judgments, decrees and costs caused by or relating to the plans, designs, specifications or instructions for such goods, including any patent infringement or alleged infringement.

### 7. Ethox Standard Warranty

- a) In the case of goods manufactured to Ethox's design, Ethox warrants that each item of its manufacture shall, at the time of shipment to Buyer, conform to applicable specifications and drawings, and be free from defects in material and workmanship. Design, essential performance, or other provisions expressly stated to be goals or

objectives shall not be deemed to be requirements subject to this Warranty.

- b) In the case of goods manufactured to Buyer's design and other services provided by Ethox hereunder, Ethox warrants that such goods and services shall, at the time of shipment to Buyer, conform to Buyer's applicable specifications and drawings, and be free from defects in material and workmanship.
  - c) Unless otherwise specified, Ethox's obligation under this Warranty shall be limited to repair, replacement, or re-performance of services, at Ethox's option, of any goods which within twelve months (for goods manufactured to Ethox's design), or ninety (90) days (for goods manufactured to Buyer's design and other services) from date of shipment to Buyer is proven to Ethox's satisfaction to have been nonconforming at the time of shipment. As a condition of this Warranty, Buyer shall notify Ethox in writing of any claimed nonconformance immediately upon discovery, shall obtain a Return Authorization (RA) from Ethox, and upon Ethox's approval, shall return the goods to Ethox for inspection. Ethox shall not be responsible for any work done or repairs made by others at any time. Disassembly by anyone other than persons authorized by Ethox will void the terms of this Warranty.
  - d) Ethox shall not be responsible for the performance of any product which incorporates items manufactured by Ethox unless such performance is expressly designated as Ethox's responsibility under the terms of the written agreement between Ethox and the Buyer.
  - e) Ethox shall not be liable for improper use, installation, accidents, operation or maintenance of items manufactured by Ethox, nor for any damage resulting therefrom, or from negligence on the part of Buyer's employees or agents.
  - f) Ethox shall not be responsible for any consequential or incidental damages occasioned by failure of any item or services supplied by Ethox, or by failure of any item in which a component manufactured by Ethox is incorporated.
  - g) Unless previously agreed to in writing, Ethox shall not provide field repairs, modifications, or any other field service under this Warranty.
  - h) THE WARRANTIES CONTAIN HEREIN ARE EXCLUSIVE AND ARE GIVEN IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED, IMPLIED OR STATUTORY, INCLUDING THE IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ALL OTHER OBLIGATIONS AND LIABILITIES.
- 8. Information, Data and Design**
- a) In the case of goods manufactured to Ethox's design, any proposals, prints, brochures, drawings, designs, data or other information furnished to the Buyer by Ethox before, after, or contemporaneously with the execution of this contract are intended for confidential use by the Buyer, shall remain the property of Ethox, and shall not be used to the detriment of Ethox's competitive position. When given, all such proposals, performance and production projections, prints, brochures, drawings, designs, data and other information are based on Ethox's knowledge and understanding, but are, in all events, estimates only and are not guaranteed or warranted in any respect. The providing of any design information by Ethox shall not constitute an assumption of design responsibility unless otherwise expressly assumed by Ethox.
  - b) In the case of goods manufactured to Buyer's design to be delivered by Ethox hereunder, any prints, brochures, drawings, specifications, designs, data or other Buyer information furnished to Ethox by Buyer before, after, or contemporaneously with the execution of this contract are intended for confidential use by Ethox, shall remain the property of Buyer, and shall be used by Ethox solely to perform its obligations under this contract. Buyer is responsible for evaluating, documenting, and approving all changes to Buyer information through Buyer's design control system. Ethox will participate in the design review process from a manufacturing perspective, and such approved design review will be documented and controlled through the Ethox Engineering Change Process, which requires written Buyer approval before implementation.

**9. Cancellation of Contract**

Under no condition may the Buyer cancel its obligations under this contract unless Ethox expressly agrees in writing. In the event Ethox agrees to allow Buyer to cancel its obligations hereunder, Ethox, in its sole discretion, may require Buyer, as part of such cancellation, to (a) reimburse Ethox for all direct, indirect, and consequential damages and expenses arising by reason of such cancellation, and/or (b) retain as liquidated damages any Buyer deposit made under this contract.

**10. Tooling**

Unless otherwise agreed to in writing in the contract by both Ethox and Buyer, all tools, dies, fixtures, jigs, set-ups, or other tooling used in connection with this quotation/contract shall be retained and owned by Ethox.

**11. Residual Materials**

In the case of goods manufactured to Buyer's design hereunder, Buyer will be responsible for residual materials not applied or consumed in production, including residual materials resulting from minimum-buy quantities, at Ethox's materials invoice cost plus 30% for storage and handling. Payment is due thirty (30) days after completion of the last production shipment.

**12. Applicable Law**

In the event of a dispute regarding any of the terms or conditions contained herein, the parties agree that the laws of New York State, excluding its choice of law rules, will control.

**13. Assignments**

Neither party may assign its rights to any other person, whether by operation of law or otherwise, without the non-assigning party's prior written approval.

**14. Taxes**

Buyer shall pay all taxes imposed upon or in any way connected with the manufacture, use, sale, possession or delivery of product/services ordered, unless Buyer furnishes Ethox with the appropriate tax-exempt certificate. Such taxes shall be billed separately unless otherwise required by law.

**15. Waivers**

A waiver by either party of any breach of any of these provisions, or its failure to exercise any right, shall not be construed as a waiver of any other breach, or a waiver to exercise any other right.

**16. Default**

If the Buyer fails to pay any invoice when due, fails to accept conforming shipments as scheduled, or fails to comply with any of the terms and conditions contained herein, Ethox may, at its option and without prejudice to other remedies, either defer further shipments until the default is corrected or cancel Ethox's remaining obligations under the contract. In addition, Ethox reserves the right to terminate this quotation/contract in whole or in part if:

- (a) Buyer ceases to conduct its operations in the normal course of business or is unable to meet its obligations;
- (b) Any proceedings in bankruptcy or insolvency are brought by or against the Buyer;
- (c) A receiver for Buyer is appointed or applied for;
- (d) An assignment for the benefit of creditors is made by Buyer.

**17. Buyer's Authorization**

Buyer represents and warrants that the person who executed the offer which this instrument accepts, or who will execute the Buyer's acceptance of the offer contained in this instrument, has duly executed the relevant documents on behalf of the Buyer, and is duly authorized to so act.

**18. Compliance with U.S. Export Regulations**

The Buyer is hereby placed on notice that the technical data or hardware furnished with this quotation or order acknowledgment may relate to articles controlled by the U.S. Government for export and may, therefore, be subject to export licensing requirements and limitations on disclosure or shipment to foreign nationals under U.S. Law. Federal, criminal and civil penalties may result from any violation of these export provisions. **BUYER INDEMNIFIES ETHOX FROM ANY BREACH OF SUCH REQUIREMENTS AND LAWS FOLLOWING BUYER'S RECEIPT OF EXPORT CONTROLLED DATA OR HARDWARE.**