



## DENGENSHA AMERICA CORP. STANDARD CONDITIONS OF SALE

**ACCEPTANCE:** This proposal is void after thirty days. It supersedes all previous quotation and agreements. Acceptance of purchaser's offer to purchase can only be accomplished by "Dengensha America Corp.," hereinafter called "Company" by formal written acknowledgement signed by the Company's President or Secretary. Prices and specifications are subject to change without notice prior to the acceptance of the Purchaser's order by the Company's home office. The Company reserves the right to make changes in design, manner of construction, use of materials, or auxiliary equipment, at any time without incurring any obligation towards any purchaser or user of apparatus previously designed or sold. The contract resulting from this proposal shall be considered an Ohio contract. Typographical errors and clerical errors are subject to correction.

**DELIVERY:** Delivery dates specified are dependent upon the timely receipt by the Company of all data required to facilitate the design and construction of the equipment, and of all materials required for testing it, and are subject to delays resulting from any Force Majeure Event (as defined below). Delivery of the equipment shall be made at the plant floor to a common carrier, licensed trucker, or into storage, at the request of Purchaser, with risk of loss thereafter upon the Purchaser. Receipt of the equipment by the Purchaser upon its delivery shall constitute a waiver of all claims for loss or damage due to delay. Claims for shortages or breakage in transit will not be recognized unless made within ten days from receipt of equipment.

**FORCE MAJEURE:** The Company shall not be liable for any failure or delay in performing any terms herein, when and to the extent such failure or delay is caused by or in connection with circumstances beyond the Company's reasonable control including, but not limited to, the following events (collectively, "Force Majeure Events"): (i) acts of God; (ii) flood, fire, earthquake, explosion, meteor strike, tornados, epidemics, pandemics, or quarantines; (iii) war, invasion, hostilities, terrorist threats or acts, riot or other civil unrest, or cyber-attacks; (iv) government order, law, actions, or restrictions, whether valid or invalid, or embargoes or blockades in effect; (v) national or regional emergency; (vi) shortage of materials, infrastructure, or transportation; (vii) strikes, labor difficulties, slowdowns, unforeseeable shortage of raw or component materials, or other industrial disturbances; (viii) any other events or circumstances beyond the reasonable control of the Company; and (ix) failure or delay of the Company's suppliers or subcontractors due to the above mentioned events.

The Purchaser recognizes that if any Force Majeure Events occur, the Company may incur additional costs to perform hereunder, including but not limited to, costs associated with the manufacture, storage, or delivery of the equipment. In the event that the Company incurs additional equipment production costs and/or freight costs as a result of any Force Majeure Event, it shall provide to the Purchaser reasonable notice of the Force Majeure Event(s) and any requested cost change, and the Purchaser and Company will thereafter negotiate in good faith concerning such requested change. If the parties are unable to reach agreement on any change within thirty (30) days after the Company's notice of a Force Majeure Event, the issue shall be resolved by arbitration in Cleveland, Ohio, in accordance with the Commercial Arbitration Rules of the American Arbitration Association.

**MATERIALS BY PURCHASER:** All materials required by Company for test operations of the equipment shall be furnished by, or at the expense of, the Purchaser. All materials and equipment furnished by the Purchaser for the

construction, remodeling, or testing of equipment, or for any other purpose, shall be delivered at no cost to the Company, fob its plant floor, and the Purchaser shall pay all costs of returning the same. All stock, samples, and parts furnished by the Purchaser for test purposes shall be manufactured by production tools for use when on the production line. The Purchaser is to pay all crating and delivery expenses for samples and parts delivered to it, and, except as required for test purposes, the cost of producing parts or samples requested by the Purchaser.

**ADDITIONAL PURCHASER RESPONSIBILITY:** The Purchaser shall have sole responsibility for the complete and proper installation of the equipment, at his own expense. The Purchaser agrees that it is his responsibility to install the equipment in a safe manner and to operate it in accordance with the operator instruction manual.

**TITLE:** The title to and property in the equipment to be delivered hereunder and all parts and pieces thereof and all replacements and substitute equipment, parts or pieces, shall be and remain in the Company, and the equipment shall remain such, until all payments due hereunder (including deferred payments, whether evidenced by notes and renewals thereof or otherwise), shall have been fully made in cash. Notes and other evidences of indebtedness shall not constitute payment hereunder, and, if any note shall not be paid when due, all outstanding notes, at the options of the holder thereof, immediately shall become due and payable. Renewal of notes shall be construed or deemed to be a waiver of any lien which the Company has upon the equipment.

The Purchaser shall do all acts necessary to perfect and maintain title to the equipment in the Company. In case of default in making payments, in the manner and at the time specified, the Company shall be entitled to the immediate possession of the equipment and shall have the right, but its agents or officers, to enter upon the premises of the Purchaser where such equipment may be located and then and there repossess the equipment and remove the same from said premises, and such right shall be in addition to all other remedies and rights of action, for damages or otherwise, which the Company may have by reason of such default or by reason of the failure of the Purchaser to deliver up the equipment when requested to do so.

**PAYMENTS:** Payments shall be made in United States currency or its equivalent and collection and exchange charges shall be borne by the Purchaser. Pro rata payments shall become due as shipments are made. Payment for shipments delayed by Purchaser shall become due when the Company is prepared to ship. Payments shall become due immediately when manufacture is delayed by Purchaser and shall be based on the contract price and percent of completion. Equipment held for the Purchaser shall be as his risk and expense. The Company may require full or partial payment in advance if in its judgment the financial condition or payment record of the Purchaser does not justify continuance of production or shipment on the agreed terms of payment.

**TAXES:** In addition to the specified price, the Purchaser shall pay all sales, use, excise and similar taxes or, in lieu thereof, shall provide proper tax exemption certificates.

**CANCELLATION:** This order may be cancelled by the Purchaser only upon written notice and upon payment to the Company of reasonable and proper cancellation charges.

**DRAWINGS:** All drawings supplied by the Company remain the exclusive property of the Company. Purchaser agrees that such drawings will not be duplicated and that the drawings will be returned to the Company upon demand.

**WARRANTIES:** The Purchaser's warranty protection is applicable only if the Company is notified in writing, within ten days, of any claim. The Company warrants that the equipment delivered hereunder shall be reasonably fit for performing the purpose required by and stated in the specifications. Unless otherwise agreed upon in writing between the Company and the Purchaser, the Company makes no other warranties and shall be held to no other warranties, whether expressed or implied and whether asserted because of statute, course of dealing, usage of trade or otherwise. In particular, the warranty above stated shall exclude any implied warranty of merchantability of fitness.

There are no warranties which extend beyond the description and requirements stated in the specifications. Speed of production or output, or economics of operation are matters beyond the control of the Company, and no warranties are implied with respect to such matter. If such matters are set forth or described in the specifications, such statement or description shall be treated as an estimate only. It shall be the obligation of the Purchaser to fully test the apparatus upon receipt, provided however, that the Company shall be notified of, and may be represented at, any tests that may be made.

Auxiliary equipment manufactured by others is sold or incorporated only under such warranties or guarantees as its maker may provide. The Company makes no warranty whatsoever in connection with equipment of others which is used or incorporated by the Company at the Purchaser's request. We assume no liability or responsibility for alterations or repairs made by others without our express consent. The Company's liability upon its warranty hereunder is strictly and exclusively limited to the repair or replacement of equipment proven defective within fifteen months after date of shipment to the Purchaser, fob our factory, or twelve months after installation at the Purchaser's plant, whichever occurs first. Severe damage may be caused to the equipment unless it is properly installed and operated. Therefore, all warranties become valid only after the installation has been completed in accordance with the Company's installation instructions. It is expressly agreed that the Company shall not be liable to anyone on account of any damage to persons or property, or any consequential damages, nor for loss or delay or wasted materials, caused by any failure or faulty operation of the equipment whether due to defective material, workmanship, construction, design, or otherwise.

Company shall not be liable for any loss of profits (whether direct or indirect), business revenue goodwill or anticipated savings, consequential, special, incidental or punitive loss or damage suffered by purchaser whether this loss or damage arises from breach of duty in contract, or tort, strict liability, or any other way (including loss arising from Company's negligence).

**PATENTS:** Insofar as any suit or proceedings brought against the Purchaser is based on a claim that the equipment, or any part thereof, delivered under this contract, constitutes an infringement of any patent of the United States, the Company shall defend the same, at its own expense, provided that prompt notice of such suit or proceeding is given, in writing, and provided that all necessary authority, information and assistance is

furnished to the Company. In case the equipment, or any part thereof, is held in any such suit or proceeding to constitute an infringement, and the use of said equipment, or part, is enjoined, the Company shall, at its own option and expense, before or after a suit, either procure for the Purchaser the right to continue the use of said equipment, or part, or replace the same with a non-infringing equipment, or part, or modify the same so that it becomes non-infringing, or the Company at its option, may remove said equipment and refund the purchase price, together with the transportation and installation costs thereof, which said price and costs shall be reduced by Thirty-three and one-third Per Cent (33 1/3%) thereof for each year, or fraction thereof, since it was shipped to the Purchaser hereunder. The foregoing states the entire liability of the Company for patent infringement of any kind by said equipment, or any part thereof. The Company shall not under any circumstances assume any responsibility for infringing use of equipment furnished by it where the equipment itself does not infringe any patent.

**GOVERNING LAW:** These Conditions of Sale shall be governed and interpreted by the laws of the State of Ohio without regard to choice of law principles.

**VENUE AND JURISDICTION:** The Cuyahoga County Court of Common Pleas, or in the alternative, the United States District Court for the Northern District of Ohio, shall be the sole venue and jurisdiction for any claims, legal, equitable or otherwise, arising out of the sale of product and/or the interpretation of the Conditions of Sale. Purchaser specifically consents to the jurisdiction of the Courts identified above to resolve all disputes between Company and Purchaser.

**ATTORNEY'S FEES:** In any proceeding brought to enforce these Conditions of Sale, the prevailing party shall be entitled to recover reasonable expenses of litigation, including attorney's fees and costs incurred prosecuting the action, any appeal arising from an action or expenses incurred to collect on a judgment arising out of the relationship between Company and Purchaser.

Any of the terms or provisions of the Purchaser's order, which are not expressly contained herein, shall not be binding on the Company and shall not be considered applicable to this sale.

No waiver, alteration or modification of, or addition to, the provisions hereof, shall be binding upon the Company, unless in writing, and signed by an Officer, of the Company.