

**PROGRESS INDUSTRIES INC. (SELLER)  
TERMS AND WARRANTIES**

**1. Prices and Payment Terms:**

Prices F.O.B. Trussville, Alabama or shipping point. \*

\*Example: Air Compressors or other machinery not manufactured by Progress Industries can usually be shipped direct to Buyer from manufacturer to better customer advantage than by shipping to Progress Industries Inc. and then reshipping to Buyer.

The prices set forth are F.O.B. Seller's plant or shipping point at Seller's discretion and are subject to the Engineering Review as set forth below. All transportation, rigging and draying charges will be paid by Buyer. There shall be added to the price set forth in amounts equal to taxes based on gross revenue, and any taxes or amounts in lieu thereof paid or payable by Seller in respect of the foregoing, exclusive, however, of taxes based on net income. Any personal property taxes assessable on the equipment after delivery to the carrier shall be borne by Buyer. Without limiting the foregoing and for information only, Seller's understanding of the present Alabama law is that it must collect 1½% Alabama Sales Tax, 1% City Tax and 3/8 of 1% County Tax from buyers who receive the equipment at Seller's plant; and it must collect from Buyers located within Alabama, but who receive shipment by commercial carrier, 1½% Alabama Sales Tax.

Until this instrument is signed and returned, the prices quoted are merely quotations of sales prices which shall be firm for only 30 days from this date. This is not an offer and the quotation may be revoked or withdrawn prior to acceptance by the Seller.

**2. Errors in Price:** The Seller reserves the right to correct all typographical or clerical errors, which may be present in the prices or specifications on this quotation.

**3. Warranties:** Seller guarantees all machinery and parts manufactured by Seller against defects in material or workmanship for 365 days / 8 hours a day from shipment, when equipment is given normal and proper usage by Buyer. Engines, motors, generators, valves, cylinders, etc., not of Company manufacture are not included in foregoing warranty, these being covered by the warranty of their respective manufacturers. Sellers will repair or replace any parts, which have not been altered, and in its judgement, show evidence of defect. All replacement parts are F.O.B. point of shipment and the necessary labor to replace parts is to be furnished by Buyer. This warranty is void if the equipment has been subjected to misuse or negligence.

THIS EXPRESS WARRANTY SHALL EXCLUDE ALL IMPLIED WARRANTIES AND THE SELLER SHALL IN NO EVENT BE LIABLE FOR ANY BREACH OF WARRANTY IN AN AMOUNT EXCEEDING THE PURCHASE PRICE OF THE MACHINERY NOR FOR ANY DAMAGES SUFFERED BY THE BUYER DUE TO LOST PROFITS, LOST GOOD WILL OR INCIDENTAL OR CONSEQUENTIAL DAMAGES.

**4. Engineering Review:** When complete systems drawings are prepared, Buyer's order will have an engineered review. If at this time, any changes from the written contract are deemed necessary to make the system more functional, Buyer will be contracted as to any increase or decrease in price.

**5. Title:** It is understood and agreed that title to the equipment and all parts thereof remain in the Seller until the entire amount of money involved in the purchase as listed and agreed upon in this contract is paid to the Seller. It is also understood and agreed that in case of default by the Buyer, Seller shall have the right, without liability, to enter the premises upon which the equipment is located and take immediate re-possession of said equipment, with or without notice and to avail itself of any legal remedy.

**6. Risk of Loss and Shipping Responsibility:** The Seller shall deliver the equipment to a carrier for transportation to the Buyer's place of business, but all costs of transportation shall be borne by the Buyer and all risks of loss shall pass to the Buyer when the equipment is delivered to the carrier. The Seller's responsibility for shipment covered by this order ends when the equipment is received by the initial carrier. Any damage resulting from shipment should be reported to the carrier. Any claims for delay, damage, or shortages must be filed with the carrier by the Buyer.

**7. Cancellation:** Orders accepted by Seller are not subject to cancellation except at Seller's option and then only after reasonable cancellation charges, as determined by the Seller, are paid in full by the Buyer.

**8. Guards on Equipment:** It is understood by Buyer that there is an element of danger associated with all machinery. When specifically indicated, Seller will furnish guards over exposed drives and gears; however, this is not intended as a guarantee, nor is there any implied guarantee that any equipment meets local, State or Federal safety standards.

**9. Delivery Date:** Any shipping date specified is to be considered approximate since the ability of the Seller to complete and ship equipment ordered within the period may dependent upon conditions over which it has no control. The Seller shall not be liable for damages resulting from delays in shipments caused by strikes, fires, war, civil riots, acts of God or any other cause over which it has no reasonable control.

**10. Entire Agreement; Waiver of Default:** This instrument contains the entire agreement between the parties and there are no representations, understandings or agreements, oral or written, which are not included herein. The Seller's failure to exercise any right hereunder, or to take any action permitted on a breach by the Buyer, shall not be deemed a waiver thereof or of other rights of breaches of a like or different nature. No waiver shall be effective unless specifically made in writing and signed by a duly authorized representative of the party making such waiver. This agreement cannot be changed except by the duly authorized representatives of both parties in writing.

**11. General:** No suit may be brought by Purchaser against Seller for any breach of this agreement more than one year after the claim shall have accrued. This agreement is made in and shall be governed by the laws of the State of Alabama. Any suit between the parties shall be maintained in the Circuit or District Court of the State of Alabama for Jefferson County, to which jurisdiction and venue the parties hereby consent.

In the event Seller brings any suit, action, counterclaim, or arbitration, or hires counsel to enforce the provisions of this Agreement, Seller shall be entitled to recover its costs and reasonable attorneys' fees with connection with such actions.