

- I. **Acceptance:** All Purchase Orders should be made out to THE W.A. KATES COMPANY, 1363 ANDERSON, CLAWSON, MI 48017, and are subject to acceptance at this address. Seller's offer is limited to the terms on the face and back hereof. Any term or condition in any purchase order or other form of acceptance in conflict with, different from, or in addition to the terms and conditions of Seller's offer are deemed to be material and shall be of no force and effect.
- II. **Prices:** The prices quoted herein are F.O.B. Origin. Buyer is responsible for payment, in addition to the quoted prices, of any state or local taxes, insurance, imposts, cartage, duties, levies, assessments, or similar charges by any U.S. or foreign governmental or administrative authority. The prices contained herein cover packaging standards to Seller's established practices. If Buyer requests special packaging or handling, such shall be provided at additional costs to Buyer.
- III. **Payment:** Time is of the essence with respect to all payments required to be made by Buyer to Seller hereunder. When credit has been extended, all payments are due net thirty (30) days after receipt of invoice by Buyer unless specified otherwise on the face of this offer. Seller may change or withdraw extensions of credit at any time. In the event payment is not received as specified herein, Buyer shall be liable for a finance charge computed at a periodic interest rate of 1 ½% per month (18% annual percentage rate) applied to the unpaid balance. Seller reserves the right to invoice Buyer for partial or incremental shipments made.
- IV. **Shipment:** Seller will utilize reasonable efforts to satisfy the Buyer's requested delivery schedule or make partial shipments, neither of which shall entitle Buyer to an equitable adjustments to the price for goods ordered hereunder.
- V. **Return Policy:** All returned goods are subject to a restocking charge. 50% for standard products returned within one year of original shipment from factory, 75% for standard products after one year. If the units to be returned are damaged or if repair is necessary, additional charges will be assessed. Special items, accessories, or items made of special materials are not returnable without approval.
- VI. **Cancellation of Orders:** A cancellation charge will be assessed to orders that are cancelled after being released to production. For standard product, a 25% cancellation charge will be assessed if the order is not completed at the time of cancellation, 35% if completed and not yet shipped. Orders that are cancelled after shipment will be subject to our previously stated Return Policy. For special items, accessories or items made of special materials, a cancellation fee of as much as 100% may apply.
- VII. **Tools Patterns and Manufacturing Data:** A tooling charge may be imposed for any special tooling acquired to manufacture items sold pursuant to this contract, including without limitation dies, fixtures, molds, and patterns. Notwithstanding payment of any such charges by the Buyer, all rights and title to tooling, patterns, drawings, and technical manufacturing data shall be in and remain exclusively with Seller. Unless otherwise agreed in writing, Seller shall have the right to alter, discard, or otherwise dispose of any special tooling or property in its sole discretion at any time. Title to and risk of loss of any tools, jigs, or other property furnished by Buyer shall remain solely with the Buyer.
- VIII. **Intellectual Property Rights:** Buyer acknowledges that Seller owns all right, title, and interest in and to all data and related information which Seller, in its sole discretion, may furnish to Buyer, and that such information constitutes valuable proprietary trade secret information, whether or not all or any portion thereof is or may be patented or subject to registered copyright protection. Buyer agrees that it will not use or disclose or permit its employees to use or disclose any Seller furnished information except in the performance of its obligations to Seller. Buyer agrees to take all reasonable measures to safeguard Seller furnished information from unauthorized use or disclosure, which in no event will be less than a reasonable standard of care. Buyer agrees that it will not reverse engineer, nor use Seller furnished information to compete, either directly or indirectly, with Seller, nor provide any information furnished by Seller to any third person, including consultants, without first obtaining the prior written consent of Seller. In the event of joint inventions resulting from technical collaboration of the parties, the parties shall jointly own the invention. The parties agree to all reasonable attorney's fees and other expenses thereof. Foreign patent applications shall be filed only in countries upon which the parties mutually agree. Neither party shall grant any license or right or assign or otherwise alienate any right in such U.S. or foreign patents without the express, prior written consent of the other party. Nothing contained herein shall be construed as preventing the assignment of such patents in connection with the sale of substantially all of the assets of the assignor to a purchaser. Buyer acknowledges that use or disclosure of Seller furnished information in breach of this provision may cause irreparable harm to the Seller, and that Seller shall be entitled to injunctive relief in addition to all other available remedies.
- IX. **Changes:** Buyer shall make no change in drawings, specifications, or other technical requirements relating to any order resulting therefrom without prior written consent of Seller. Subject to the foregoing, Buyer, by written order, may make changes in drawings, specifications, delivery schedule, or packing of articles. If any such change causes an increase or decrease in amounts due under this contract, or in the time required for its performance, an equitable price adjustment shall be made and the contract shall be modified accordingly. Any claim for adjustment hereunder may be asserted up to one (1) year after final payment for the work being performed by Seller for Buyer hereunder.
- X. **Warranty:** Seller warrants its products delivered hereunder to be free from defects in materials and workmanship. This Warranty shall run to the Buyer and/or its customers. The liability of Seller hereunder is limited to replacing or repairing any part or parts, which have been returned to the Seller and which, are found to be defective. Buyer shall flow down to its customers Seller's disclaimers of liabilities and limitations of remedies. At Seller's discretion, Seller shall either replace or repair any part or parts, returned to Seller which, to Seller's satisfaction, are shown or found to be defective; provided that such part or parts are so returned at the expense of the Buyer within thirty (30) days after such defects is discovered. The Seller shall have the sole right to determine whether such parts shall be repaired or replaced. The Buyer and/or its customer shall pay all transportation costs and other handling cost incurred by Seller for all products returned and found by the Seller not to be defective. **IN NO EVENT SHALL THE SELLER BE LIABLE FOR COLLATERAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES.** This Warranty shall terminate one (1) year after delivery to Buyer. This Warranty shall not apply to any product, which shall have been improperly installed or subjected to misuse, or neglect or which has been repaired or altered except by the Seller's accredited representative. No Warranty is given with respect to any apparatus, instrument, component or accessory not manufactured by the Seller. Such items will carry the Seller's Supplies Warranty. **THE AFORESAID WARRANTIES ARE EXPRESSLY IN LIEU OF ANY AND ALL WARRANTIES OR REPRESENTATIONS, EXPRESSED OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF FITNESS FOR INTENDED PURPOSE AND MERCHANTABILITY** to the Buyer or the User of said products and no agreement this Warranty will be binding upon the Seller unless in writing and signed by a duly authorized officer or representative of Seller. Notwithstanding any other provisions. Buyer's exclusive remedies with respect to accepted products are limited to this Warranty Provision.

- XI. **Patent Warranty:** Except insofar as Seller's goods are manufactured pursuant to Buyer's drawings, specifications or other requirements, Seller warrants that its products do not infringe upon any U.S. patent which was issued and in existence on the date of the contract between parties. Upon the assertion of any such alleged patent infringement, Buyer shall give Seller written notice within thirty (30) days of the assertion of any such claim. At Seller's option, to be exercised in writing, Seller shall be entitled to take over the defense of any such litigation. Seller disclaims all warranties related to actual or alleged infringement of any foreign patent, or any U.S. or foreign trademark or copyright. Buyer agrees to indemnify Seller and hold Seller harmless from, any and all expenses, costs, damages, and judgements, including attorney's fees, arising out of claims or assertions of patent infringement resulting solely from Seller's compliance with Buyers article or component not manufactured by Seller, or from the sale or use of any such combination by Buyer.
- XII. **Transportation:** Seller assumes no responsibility for delay, breakage, or damage of any of the articles being produced hereunder after same have been delivered in good condition to any carrier, or such carrier's agent or forwarder.
- XIII. **Applicable Law and Venue:** This quotation (offer) and any purchase orders resulting therefrom shall be construed and enforced in accordance with the laws of the State of Michigan, except for conflicts of law provisions thereof. Venue of any action or claim shall be brought exclusively in a court of competent jurisdiction located in the State of Michigan.
- XIV. **Limitation of Liability:** Seller shall not liable for any special, consequential, collateral, or indirect damages of any nature whatsoever alleged to arise, directly, or indirectly, out of the performance of this purchase order.
- XV. **Indemnification:** Buyer shall indemnify and hold harmless Seller, its officers, employees, agents, and invitees from and against all claims, judgement, liabilities, losses, injuries, and damages of every nature (including costs and expenses incident thereto) caused by the acts or omissions to act by the Buyer, its officers, employees, agents, invitees, or vendors directly or indirectly arising out of the performance of any contract resulting from this order, or Buyer's or its customer's subsequent use of Seller's goods.
- XVI. **Provision Effectively:** If any provision of this order resulting therefrom is determined to be ineffective or invalid, all other provisions of said order shall remain effective and valid provided the purpose of the remaining valid and effective provisions is not frustrated.
- XVII. **Order of Precedence:** In the event of any conflict between the terms of this quotation and any purchase order resulting therefrom, then the following order of precedence shall govern:
- (1) Special Terms on the face of this document.
 - (2) Terms of the reverse of this document.
- XVIII. **Complete Agreement:** This order, together with the attachments, exhibits, or supplements specifically referenced therein, constitutes the entire agreement between the parties with respect to the subject matter contained therein and supersedes all prior oral or written discussions, undertakings, representations and agreements. This order may only be modified by a written amendment signed by authorized representatives of the parties.
- XIX. **Force Majeure:** Any delay or failure by Seller to perform its obligations hereunder shall be excused when such delay or failure is caused in whole or in part by any event or occurrence beyond Seller's reasonable control, such as, by way of example and not by way of limitation: acts of God, actions by any governmental entity or authority, fires, explosions, earthquakes, adverse weather, insurrection, natural disasters, strikes and slowdowns, utilities interruption, or inability to obtain labor, material, or transportation, provided that reasonable written notice shall be provided to Buyer of any such delay or failure to perform. During the period of any such delay or failure to perform, estimated delivery dates will be extended.
- XX. **Conformance with Laws:** The performance of any purchase order between the parties is subject to all laws and regulations applicable thereto, including, but not by way of limitation, export controls. Unless otherwise stated in the order, obtaining any such export license or approval shall be the Buyer's responsibility. At Buyer's request, Seller shall provide reasonable assistance. Delay or inability to perform due to applicable governmental authorities shall constitute a "force majeure" event.
- XXI. **Remedies:** In the event that Seller asserts any claim or brings any action in law or equity against Buyer to enforce the terms of any agreement between the parties, Seller shall, in addition to all other available remedies, be entitled to recover all costs and damages arising from any such claim or action, including reasonable attorney's fees.
- XXII. **Substitutions:** Seller reserves the right to substitute any item which, due to modification, engineering changes, or any other reason, has superseded the item ordered by Buyer, provided that, the form, fit and the function of said substitution is the same or substantially the same to the item originally ordered. If the price of the substitution exceeds the price of the original item ordered, Seller shall not proceed with performance unless the Buyer consents in writing to an equitable price adjustment. If the price of the substituted product is less than the price of the original item ordered, Seller will provide a downward price adjustment to the Buyer.
- XXIII. **Inspection and Acceptance:** Upon thirty (30) days prior written notice to Seller, buyer may appoint a suitable agent for the purpose of inspecting and accepting ordered products at Seller's facilities. Any such inspection shall be conducted during normal business hours at a time and date agreed to by Seller, and in accordance with applicable Seller's safety and security practices. Inspection shall be in accordance with Seller's standard commercial practices.
- XXIV. **Partial Invalidity/Waiver:** If any provision of this agreement or order becomes void or unenforceable by force of law, the remaining provisions shall remain valid and enforceable. Seller's waiver of any rights or breach of contract by Buyer shall not be deemed to waive any other rights due to Seller under the order.