

JOHNSON MACHINE WORKS, INC.'S PROPOSAL TERMS & CONDITIONS

The following are the terms and conditions of JMW's Proposal. Prices contained in JMW's Proposal are firm only if the delivery dates, quantities, sizes, and specifications in purchaser's purchase order are identical to those set forth in this Proposal. Any changes to this Proposal may require additional compensation and/ or time extensions.

COMPLETE AGREEMENT: JMW's Proposal will become a binding agreement with the purchaser upon JMW's receipt and acknowledgment of the purchaser's purchase order so long as it is in strict compliance with the terms of this Proposal... JMW's Proposal, together with the specifications, drawings, and documents referred to herein, and any other terms agreed to in writing by JMW and the purchaser and which by this reference are all made part hereof, constitute the entire agreement between the parties, and all prior negotiations, proposals, and writings pertaining to the subject matter of this Proposal or the subject matter hereof are superseded. Any terms and conditions issued by the purchaser in any communication to JMW, issued either before or after the date of this Proposal which are in conflict with or which attempt to modify the terms of this Proposal are excluded and objected to by JMW.

JMW'S REVIEW OF THE PURCHASER'S PURCHASE ORDER: JMW will review the purchaser's purchase order only to determine if it agrees with JMW's Proposal. JMW reserves the right to determine the purchaser's purchase order compatibility with JMW's Proposal. If there are any differences, the purchaser is hereby advised that only the terms of JMW's Proposal shall be considered valid. Any failure of JMW to identify any incompatibility of the purchaser's purchase order with the terms of this Proposal shall not be deemed a waiver of any such objection. JMW is not responsible for the accuracy and completeness of any plans, specifications, associated addendums, and related contract documents provided by the owner, contracting officer, general contractor, or subcontractor. Trade custom and trade usage are superseded by this Proposal and will not be applicable in the interpretation of this Proposal.

CREDIT APPROVAL: Purchase orders are not binding until credit arrangements satisfactory to JMW's Credit Department have been consummated.

COMMENCEMENT OF WORK: JMW will not commence any work until JMW's Proposal has been signed by both parties and a written purchase order has been received and acknowledged by JMW.

SHOP DRAWINGS: Shop drawings are to be prepared by JMW. All shop drawings must be approved by the purchaser in writing prior to JMW commencing fabrication. The purchaser's failure to provide timely written approval may delay fabrication.

INVOICING AND PAYMENT: The purchaser shall be invoiced monthly for materials shipped, materials on hand, and labor and services performed, but not necessarily complete. Payment is due 30 days from purchaser's receipt of invoice. JMW offers a .5% cash discount for payment made within 10 days of receipt of JMW's invoice. Interest will be accrued on all overdue or otherwise delinquent accounts at the rate of 1.5% per month or at the maximum legal interest rate allowable if less. In addition, the purchaser agrees to pay JMW's

reasonable attorneys' fees, litigation expenses, and/or collection fees and expenses if legal or collection action is necessary to collect payment for the same. **NO RETAINAGE OF PAYMENT IS ALLOWED.**

SALES TAX: Applicable taxes are in addition to JMW's Proposal price.

STANDARD OF PRACTICE: AISC Code of Standard Practice for Steel Buildings (most current edition) paragraph 3.2 shall apply to JMW's work unless otherwise specified..

FIELD MEASUREMENTS: Field measurements are to be furnished by the purchaser at no cost to JMW.. If JMW is required to take field measurements, then JMW will charge the purchaser \$75/hour to perform the same, including travel time (port to port), meal expenses, and mileage at the rate allowed by the I.R.S. .

CHANGE ORDERS: Change orders after the receipt and release for fabrication of final approved shop drawings often alter prices or project content, and most often necessitate rescheduling the estimated delivery date as well as additional charges for labor and material costs which shall increase the price stated in the Proposal. Purchaser acknowledges that such change orders shall be subject to negotiation between the parties, and in no event shall JMW be obligated to perform work under change orders without a written agreement, executed by both purchaser and JMW, as to compensation and/or time extensions therefor. In the event purchaser and JMW cannot reach an agreement as to compensation for a given change order, purchaser agrees to compensate JMW at JMW's usual and customary rates. In no event shall any such work be mandated or directed by purchaser under any Force Account, Construction Change Directive or similar term.

CANCELLATION OF ORDER: Purchase orders acknowledged by JMW become binding contracts pursuant to the terms and conditions of this Proposal. Costs incurred as a result of cancellation of any acknowledged purchased order makes the purchaser subject to charges for engineering/drawings, labor and materials allocated or purchased, and all costs incurred by order processing to the date of cancellation. Because JMW's products are specially manufactured or fabricated to order, JMW shall have, among others, the remedy of specific performance of the contract.

DELAYS: JMW will not be responsible for delays due to strikes, slowdowns, shortages of material, fire, theft, vandalism, weather conditions, vendor performance, or any other acts or circumstances beyond JMW's control. Delivery is contingent and dependent upon the absence of delays due to strikes, the inability to obtain material, mill rolling schedules, any lack of expedient responses to JMW's RFIs resulting from, among other things, missing information in the construction documents, or other delays beyond JMW's control.

DELIVERY: Orders are shipped FOB shipping point with freight allowed to the nearest hard surface road to the jobsite with trucks under their own power at the time of delivery.

SHIPMENT DELAY OR PRICE INCREASE OF MATERIAL: Shipments of orders delayed for any reason beyond six (6) months of the purchase order date are subject to increases

based upon increased labor and material costs and the time value of monies involved. In the event of significant delay or price increase of material occurring after commencement of the work through no fault of JMW, the contract sum, time of performance, or contract requirements shall be equitably adjusted by change order. A change in price of material shall be considered significant when the price of an item increases by 10% or more between the date of this Proposal and the date of installation.

SHIPPING DATES: Shipping dates are quoted as weeks from complete, final, written approval, and as such, are contingent upon JMW's receipt of complete final approved shop drawings and release for fabrication. Any lead times as quoted in number of weeks begins when this written information is received by JMW. Lead times are good-faith estimates, and are not construed to become the basis of the bargain or a term of this Proposal.

FREIGHT DAMAGE: Damage or shortages occurring on JMW trucks will be expediently corrected by JMW, provided written notice of the damage is given within thirty (30) days of the time the product is delivered to the destination. The purchaser accepts the risk of loss when materials are shipped by common carrier and the purchaser's sole remedy is to file with the common carrier involved for all freight damage or shortages occurring from such shippage.

INSPECTION: Prior to JMW shipping any material included in purchaser's purchase order, purchaser agrees to perform a thorough inspection of all material and to provide JMW written acknowledgment that the material is free of defects and in accordance with the drawings, plans, and specifications. Said inspection shall occur at JMW's facilities in Chariton, Iowa.

TITLE TO THE ORDERED ITEMS: Title shall pass to the purchaser on delivery to a common carrier at the point of shipment. Title passes when delivered on JMW's own truck at time of delivery at destination. JMW as the seller shall, however, retain any and all necessary lien rights allowable for payment on the products subject to this order until the purchase price has been paid in full.

RETURNS: Returns will not be accepted unless JMW, in its discretion, has previously authorized in writing the return of items, accompanied by the return merchandise identification ticket within thirty (30) days of the receipt of the ticket. Credit for the return of salable new materials shall be made on such basis as JMW determines appropriate under the circumstances and all transportation costs of the return of material will be prepaid by the purchaser.

SUPPLIED PRODUCT: JMW's Proposal does not include: any materials not listed in the "Contract Bid Items" listed above; any materials not sized; bolts or fasteners for other trades (including deck fasteners); light gauge framing; professional engineering; erection and installation; field paint; field painting and touch-up painting; or any field work unless specifically stated in the price quotation.

FINISHES: Finishes may vary in color, shading and gloss, and the purchaser agrees to abide by industry standard variations as followed by JMW.

TEXTURA: Required use of Textura necessitates an additional cost (to be determined by JMW) to JMW's Proposal.

BACK CHARGES AND LIQUIDATED DAMAGES: JMW will not permit or accept any back charges for any reason, nor will JMW accept any assessment for any damages due to delivery performance unless authorized in writing by JMW prior to such charges being incurred. JMW accepts no liquidated damages, whether in a Purchase Order or any contracts between Purchaser and others.

CONDITIONAL LIMITED WARRANTY: Except for the warranty of title, no other warranty (whether expressed, implied, or statutory) is made by JMW. **THE EXPRESS WARRANTY OF TITLE STATED ABOVE IS IN LIEU OF ALL OTHER WARRANTIES OR GUARANTEES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. ALL OTHER WARRANTIES OR GUARANTEES ARE HEREBY DISCLAIMED AND EXCLUDED BY JMW.**

LIMITATION OF LIABILITY: JMW's liability for any claim of any kind, whether based on contract, warranty, tort (including negligence), fault, strict liability, indemnity, or otherwise for any loss or damages resulting from, arising out of, or connected with JMW's Proposal, or from the performance or breach thereof, of from the manufacture, sale, delivery, resale, repair, or use of the materials and services provided, or any portion thereof, shall in no event exceed JMW's Proposal price.

LIMITATION OF REMEDIES: The sole and exclusive remedy of the purchaser under this contract is JMW's obligation to repair or replace parts or the entire product at JMW's discretion at no cost to the purchaser (removal and reinstallation charges are not included in the remedy), provided the purchaser notifies JMW in writing of such defect within sixty (60) days of discovery of such defect (assuming said notice is within the above-stated warranty period), such writing to be mailed to JMW, 318 N. Eleventh Street, Chariton, Iowa 50049. In the absence of such timely notice, the purchaser shall be barred from the remedies as allowed herein. The remedies provided to the purchaser herein as to parts and replacement shall be the purchaser's sole and exclusive remedy under this contract and is expressly made in substitution of any and all remedies provided under the Uniform Commercial Code as enacted in Iowa or elsewhere. Under no circumstances shall JMW be liable for liquidated, special, indirect, or consequential damages of any nature whatsoever.

CHOICE OF LAW FORUM: Any action arising out of or related to the transactions contemplated by this quotation shall be governed and construed in accordance with the laws of the State of Iowa, without regard to conflict of law provisions wherever contained. **ANY CLAIM OR DISPUTE ARISING OUT OF OR RELATED TO THIS PROPOSAL SHALL BE SUBJECT TO ARBITRATION. PRIOR TO ARBITRATION, THE PARTIES SHALL ENDEAVOR TO RESOLVE CLAIMS OR DISPUTES BY MEDIATION. CLAIMS OR DISPUTES NOT RESOLVED BY MEDIATION SHALL BE DECIDED BY ARBITRATION, AND UNLESS THE PARTIES AGREE OTHERWISE, SHALL BE IN ACCORDANCE WITH**

THE CONSTRUCTION INDUSTRY RULES OF THE AMERICAN ARBITRATION ASSOCIATION. DEMAND FOR ARBITRATION SHALL BE FILED WITH THE AMERICAN ARBITRATION ASSOCIATION AND WITHIN A REASONABLE TIME AFTER THE CLAIM HAS ARISEN. THE MEDIATION AND ARBITRATION SHALL BE HELD IN DES MOINES, IOWA. THE PREVAILING PARTY TO ANY ARBITRATION SHALL BE AWARDED ALL REASONABLE ATTORNEY’S FEES AND COSTS INCURRED IN THE ARBITRATION.

INDEMNIFICATION: To the fullest extent permitted by law, Purchaser will indemnify, defend, and hold harmless JMW, its successors, assigns, employees, customers, and users of the goods or services with respect to all claims, liability, damage, loss, and expenses incurred, including attorney fees and costs of defense relating to or caused by: (a) actual or alleged claim of infringement of patent, copyright, trademark, or other rights, misappropriations of trade secrets, breach of confidential relationships, or violation of other property right arising out of the purchase, sale, or use of the goods or services covered by this Proposal; (b) actual or alleged defects in the goods or in the design, manufacture, or material of the goods; (c) actual or alleged breach of warranty, (d) failure of JMW to deliver the goods or services on a timely basis; and (e) failure of the goods or services to meet the requirements of all federal, state, or local laws.

SEVERABILITY: If any section (or part of a section) of this Proposal is found to be unenforceable in any judicial proceeding, then the remainder shall continue in full force and effect as if the unenforceable section (or part thereof) did not exist.

This Proposal may only be accepted on the exact terms set forth herein, and no additional terms or different terms shall form the basis of a contract between JMW and Purchaser pursuant to Iowa Code § 554.2207(2)(a).

Purchase order issued against this Proposal is confirmation of all terms and conditions of sale as described above.

PURCHASER:

JOHNSON MACHINE WORKS:

Authorized Representative

Authorized Representative

Title

Title

Date

Date

To learn more about Johnson Machine Works, Inc. (“**JMW**”), please visit us online at www.jmworks.com. JMW participates in the AISC Quality Certification Program. JMW is an AISC-certified plant for conventional steel building structures, simple steel bridges, complex steel building structures, and major steel bridges. JMW holds AISC certifications for both sophisticated paint and fracture critical fabrication. For more information on the AISC Certification criteria, please visit www.aisc.org.

