



The Expansion Joint People

PROCO PRODUCTS, INC.

2431 N. Wigwam Drive, P.O. Box 590, Stockton CA 95201 USA

Tele: (209) 943-6088 (International) FAX: (209) 943-0242

(800) 344-3246 (USA/Canada) E-Mail: mikel@procoproducts.com

PROCO PRODUCTS, INC. DOMESTIC TERMS OF SALE

1. **Exclusive Terms.** Proco Products, Inc. ("we" or "us") offers to sell the goods described ("goods") in this quotation, order acknowledgement, offer, or invoice ("offer") to the buyer identified in the offer ("you") upon these terms. We limit acceptance to these terms, and object to any other additional or different terms in your purchase order or acceptance.
2. **2. Acceptance.**
 1. 2.1 Acceptance of this offer can be made by any commercially reasonable means, including your issuance of a purchase order or acceptance, or your return of an attached acknowledgment form. If you use your own purchase order, acceptance, or other form, such form shall be used for convenience only, and shall evidence your unconditional agreement to these terms. Any additional or different terms appearing in such form shall not be binding upon us.
 2. 2.2 After you accept this offer, you are not entitled to cancel or amend it or cause the manufacture or shipment of the goods to be delayed or stopped except with our consent. Special items are not subject to cancellation. Special items are those requiring special engineering, special machining, and/or special handling. Special items can also be those frequently ordered which appear in our catalogs but are of an unusual size, quantity, or type. On receipt of instructions from you to suspend manufacture, on items covered by this offer, we shall be entitled to an adjustment charge which shall be determined by the cost (including overhead, cost of labor, and material) involved in processing the work up to the point of suspension. A minimum restocking charge of 10% shall apply to any returned goods which we agree to accept.
 3. 2.3 Custom products are not returnable.
3. **3. Price and Payment.**
 1. 3.1 The goods are sold at the prices stated in the offer. All offers are subject to approval, acceptance, and correction at our home office. Any offers containing errors in quotations will be corrected by us and resubmitted to you for your acceptance or refusal. Prices are subject to change without notice.
 2. 3.2 If the offer does not specify payment terms, terms are net 30 days after the date of our invoice. Any invoices not paid when due shall bear interest at 1.5% of the outstanding balance per month. Payment must be made in U.S. dollars.
 3. 3.3 Prices do not include taxes or other governmental charges. We will invoice you for any such taxes or charges together with penalties and expenses, if any. If applicable, you will provide us with a tax exemption certificate acceptable to the taxing authority.
 4. 3.4 Goods not manufactured by us will be invoiced at prices stated in this offer, subject to proportionate increases should any of our suppliers increase our cost of such goods.
 5. 3.5 Shipments boxed for trans-ocean export, will require a price adjustment of 10% above total trade prices. All export orders, except those of significant value, are to be paid in advance by wire transfer, check, or credit card. Orders of significant value (determined in our sole discretion) will require a letter of credit through our confirming bank.



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4. **4. Delivery.**
 1. 4.1 The proposed delivery date stated in this offer is our good faith estimate based on current conditions, but we reserve the right to change it upon notice to you if conditions change. Hold for approval orders and hold for release orders will not be entered for production until your approval has been received in writing. Orders noting "hold for future delivery" and "hold for shipping instructions" are considered bona fide orders and are not subject to cancellation. After 45 days has expired, we reserve the right to invoice you for material not yet released for shipment.
 2. 4.2 If the offer does not specify delivery terms, delivery is F.O.B our factory.
 3. 4.3 We have no liability to you or any third party for any loss, damage, or expense from any delay in delivery or failure of performance due to any cause beyond our control, including fire or other casualty; strike or labor difficulty; accident; war conditions; riot or civil commotion; terrorism; government regulation or restriction; shortages in transportation, power, labor or material; freight embargo; default of our supplier; or events which render performance commercially impracticable or impossible.
 4. 4.4 Any goods offered for delivery are subject prior sale, and are offered on a first come, first serve basis. Upon giving notice to you of a delay in accordance with the Uniform Commercial Code, we reserve the right to allocate goods produced by us among our customers.
5. **5. Risk of Loss.** Delivery of goods to a carrier by us, consigned to you or your order as you may direct, shall be complete delivery to you of title, ownership and possession of the goods. You assume risk of loss, damage, or shortage in transit and shall be responsible for pursuing all claims with the carrier or carrier's insurer. You must provide us with notice of any shortage of goods, delivery of non-conforming goods, loss, or damage within 10 days of receipt of the goods, and if no such notice is given, you waive any right to assert such matters.
6. **6. Drawings and Specifications.**
 1. 6.1 Our product drawings and specifications reflect the design characteristics at the time of printing. We reserve the right to change dimensions, material, or method of construction without notice. Please contact us for certified prints (exact dimensions) when necessary.
 2. 6.2 You will cooperate with us and furnish any drawings, specifications, or information reasonably requested by us with respect to the goods within a reasonable time after such request.
 3. 6.3 The drawings, specifications, computer media, documents, samples, or other information we furnish you in connection with the goods may comprise in whole or part trade secrets that are proprietary to us and protectable by law. You agree that you will disclose the trade secrets only to your employees and agents on a "need-to-know" basis, will take reasonable measures to prevent disclosure of the trade secrets to any other persons, and will return to us or destroy any information containing the trade secrets after your need for the information ends, or upon our demand.
 4. 6.4 We are not obligated to treat as confidential any disclosure made by you to us, unless we give our consent otherwise.
7. **7. Collection.**



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1. 7.1 You will furnish us with a completed credit application using our form, your current financial statements, and such other documents as we reasonably request at any time in connection with the analysis and determination of your creditworthiness and financial capability.
2. 7.2 If any proceedings are filed by or against you in bankruptcy, or for appointment of a receiver or trustee, or if you make an assignment for the benefit of creditors, we have the right to discontinue production and deliveries under this offer and receive full reimbursement for all costs incurred plus a reasonable profit.
3. 7.3 If we have reasonable grounds, in our sole discretion, for insecurity as to your payment or performance, we may refuse to manufacture or deliver the goods until we receive adequate assurances of your payment or performance, in such form as we reasonably request.
4. 7.4 If we have reason to believe, in our sole discretion, that you are or are about to become insolvent, we have the right, at our option, to: (1) withhold delivery of goods; (2) stop delivery of goods in transit; (3) reclaim goods delivered to you while insolvent, as permitted by law; (4) immediately change payment terms to C.O.D., or require a bank standby letter of credit as security; or (5) exercise any other remedy available to us under law.
5. 7.5 You grant us a purchase money security interest in the goods to secure payments due from you to us. You authorize us to file a financing statement to evidence the security interest. We have all of the rights and duties of a secured party, and you have all of the rights and duties of a debtor, under the Uniform Commercial Code.
6. 7.6 You will reimburse us upon demand for all costs and expenses, including attorneys' fees and court costs, incurred in collecting any amounts due.
8. **8. Warranty.**
 1. 8.1 For a period of one year from date of delivery, we warrant that the goods manufactured by us shall conform to the specifications in our specification sheet for the goods current on the date of this offer. We make no warranty with regard to goods not manufactured by us, but we do assign all of our rights under the warranty made by the manufacturer (if any) to you, to the extent the rights are assignable.
 2. **8.2 The warranty contained in this offer is the only warranty extended by us and is extended to you only and not to any successors, assigns, purchasers, users, third parties, employees, or agents. This limited warranty is in lieu of all other warranties, express or implied, including any warranties of merchantability or fitness for a particular purpose. We disclaim any warranties given via any other document, computer media, verbal or written communication, or sample.**
 3. 8.3 The goods are not manufactured, sold or intended for personal, family, or household purposes.
 4. 8.4 We make no representation of compliance with safety and health standards contained in any statute, regulation, or ordinance of any State or political subdivision applicable to the goods unless you have notified us of the existence and contents of such standards and we have agreed in writing to the incorporation of such standards in the specifications relating to such goods.
9. **9. Limitations on Liability.**
 1. 9.1 We are liable for defects in goods directly attributable to the design or manufacture of the goods only. Goods must be handled and installed based on our specifications. We are not liable for failures due to



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variables out of our control, including improper installation or installation without proper safety devices, including tie rods and anchors.

9.2 Our obligations upon breach of warranty or other provision are limited, at our election, to the repair or replacement of goods (F.O.B. our factory) or crediting to you of an amount not to exceed the purchase price of the goods. We are only be obligated to repair, replace or credit the purchase price for goods which our examination discloses to have been defective under ordinary and normal use. You must give us notice of such breach of warranty or other provision at our home office, within 30 days after you discover such breach or should have discovered such breach using reasonable care, and if no such notice is given, you waive the right to assert such matters.

1. **9.3 We are not liable for payment of any consequential, incidental, indirect, punitive, special or tort damages of any kind, including, any loss of profits.** We are not liable for any expenses incurred by you in repairing defective parts or supplying any missing parts, except with our consent. If we agree to replace or repair a defective part, you will pay the cost for procuring and providing all necessary dismantling, reassembling, and handling facilities, and for freight and insurance for shipment of goods or parts to and from us.

2. **9.4** The limitations on our liability contained in this offer apply regardless of whether the form of the claim against us is based on contract, negligence, strict liability, or tort law.

2. **10. Use of the Goods.**

1. **10.1** You will provide adequate and efficient safeguards, work handling tools, and safety devices necessary to provide a safe work place and to protect fully all personnel from bodily injury or death which otherwise may result from the use, operation, setup or maintenance of the goods. You will comply with the Occupational Safety and Health Act, its regulations, and all other applicable federal, state and local codes and industry accepted standards. We are not liable for your failure to order, install, or use safeguards, work handling tools, or safety devices. You will establish and require all persons who use, operate, setup or maintain the goods to use all proper safe operating procedures, including, procedures set forth in any manuals or instruction sheets relating to the goods.

2. **10.2** You indemnify us, and our employees and agents from any loss, damage, or expense (including reasonable attorneys' fees), by reason of any injury to or death of any person or damage to any property, arising out of (1) any breach of your obligations under this offer or (2) any actions or omissions by you or your employees or agents concerning or related to the goods, including, negligence or reckless conduct, maintenance of the goods, additions or modifications to the goods, or use of the goods.

3. **10.3** You will notify us, within 10 days after its occurrence, of any accident or malfunction involving any goods which results in injury to or death of persons, or damage to property, or the loss of its use. You will cooperate fully with us in investigating and determining the cause of any such accident or malfunction.

3. **11. Patents.**

1. **11.1** We indemnify you from any loss, damage, or expense (including reasonable attorneys' fees) directly caused by any infringement of a United States patent arising out of the purchase, sale or use of goods designed and manufactured by us so long as you give us prompt notice of any such claim and complete authority to direct its defense. You will give us reasonable assistance in defense of any claimed infringement without charge. If any part of the goods designed and manufactured by us are held to infringe any United States patent, and the use of the goods is enjoined, we will, at our election and as your sole remedy, procure for you the right to continue using the goods, replace them with noninfringing goods, modify the goods so to become noninfringing, or refund the purchase price. Our liability under this section shall be limited to the purchase price and the transportation and



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installation costs of the goods. We grant no license, express or implied, other than your right to use the goods in the form delivered by us.

2. 11.2 You indemnify us from any loss, damage, or expense (including reasonable attorneys' fees) directly caused by any infringement of any United States patent arising out of the manufacture, service or sale of goods which are manufactured or serviced by us, but which are designed by you or your employees or agents.

4. 12. Engineering Services

1. 12.1 If you have requested us to service, repair, or perform engineering services, as set forth in the offer, ("Services") related to the goods, you shall provide a safe area in which our employees, agents, or contractors may do so. You shall be responsible for the safety of all persons on, about, or adjacent to such areas. You shall furnish to us all necessary work tools, equipment, and supplies.

2. 12.2 You agree to pay us for the Services performed and for reimbursable expenses, as provided in the offer. We may suspend Services upon 7 days written notice until we have been paid in full all amounts due for Services, expenses, interest, and other related charges.

3. 12.3 The obligation to provide further Services may be terminated for cause, by us, upon 7 days written notice if (1) we believe we are being requested by you to furnish or perform services contrary to our Professional Engineer's responsibilities as a licensed professional; or (2) if our Services are delayed or suspended for more than 90 days for reasons beyond our control.

4. 12.4. The standard of care for our Services performed will be the care and skill ordinarily used by providers of such Services practicing under similar circumstances at the same time and in the same locality. We make no warranties, express or implied, under this offer or otherwise, in connection with our Services. Our disclaimer of warranties related to the goods as set forth elsewhere in this offer shall not be diminished or affected by, and no obligation or liability shall arise or grow out of, our rendering of technical advice or Services in connection with goods furnished under this offer.

5. 12.5. The relevant limitations of liability contained in this offer shall apply to Services rendered by us except that our liability arising out of or relating in any way to the Services performed shall not exceed the amount paid to us for such Services.

6. 12.6. You shall be responsible for, and we may rely upon, the accuracy and completeness of all requirements, programs, instructions, reports, data, and other information furnished by you that we may use in the provision of Services.

7. 12.7. We shall not be responsible for the acts or omissions by you at the work area or otherwise, or for any decision made on interpretations or clarifications of this offer given by you without the consultation and advice of us.

8. 12.8. To the fullest extent permitted by law, you agree to defend, indemnify and hold us harmless, and also our officers, agents, and employees, from and against all claims, losses, costs, expenses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) arising from or related to property damage, economic injury, or bodily injury (including death) of any kind or nature arising: (1) out of our provision of Services relating to the goods; or (2) caused by the negligent acts or omissions of you with respect to the Services.



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9. 12.9. Except as expressly provided otherwise in this offer, we retain on an exclusive basis all right, title, and interest in and to any intellectual property developed, including but not limited to all paper or electronic documents generated related to our Services ("Documents") delivered, and used by us in the performance of any Services for you. Such Documents are not intended or represented to be suitable for reuse by you or others on extensions of our Services or on any other project. Any such reuse or modification without written verification or adaptation by us, as appropriate for the specific purpose intended, will be at your sole risk and without liability or legal exposure to us. You shall indemnify us and hold us harmless from all claims, damages, losses, and expenses, including attorneys' fees arising out of or resulting from any such reuse or modification.

5. 13. **General.**
 1. 13.1 California law applies to this offer.

 2. 13.2 We are in breach of this offer only after you have given us notice describing the breach in reasonable detail, and we have failed to cure the breach within 30 days after service of the notice (or if the breach cannot reasonably be cured within that period, we have failed to diligently begin to cure the breach within that period).

 3. 13.3 Our obligations under this offer are extended to you only, and shall not inure to the benefit of or form the basis of a claim by any purchaser of the goods or other party. You will not assign this offer without our consent.

 4. 13.4 Any action or suit against us arising in any way from this offer or with respect to the goods must be commenced within one year after the cause of action has accrued, and must be filed in the state or federal courts located within California. You consent to exclusive jurisdiction and venue in such courts, and agree not to seek any other forum.

 5. 13.5 All previous verbal and written communications between you and us for the sale of the goods are canceled. There are no other agreements or warranties, except as contained in this offer, which is the final, complete, and exclusive expression of the agreement between you and us. This offer may be amended only with our consent. The word "including" as used in this offer means "including, without limitation". The invalidity of any part of this offer shall not invalidate any other part and, except for such invalid part, the rest of this offer shall remain effective. No waiver of your performance shall be valid unless we give our consent. No waiver of a specific action shall be construed as a waiver of future performance.

 6. 3.6 Any notice, consent, demand or submission required under this offer shall be in writing and delivered to the parties at the address set forth in the offer, or at such addresses as they designate in writing. Service shall be made by hand delivery, by recognized overnight courier, by first class mail (registered or certified, return receipt requested), or (if confirmed in writing using one of the foregoing methods) by facsimile or email, in each case prepaid. All such communications shall be effective when received, except that email and facsimile communications shall be effective when received only if confirmation is received within seven days later.