

TERMS AND CONDITIONS OF SALE

Unless otherwise agreed in writing, all quotations are made and all products are sold upon the following terms and conditions:

1. Notwithstanding the terms and conditions contained in any purchase order, no terms and conditions contained in any order placed with Ancast Industries Ltd, (seller) other than those stated herein, shall be binding on the seller unless hereafter made in writing, specifically referring to the terms and conditions modified and signed by the seller's authorized representative, in all other events these terms and conditions shall supersede and govern any order placed with seller. Title to all castings sold to the purchaser shall remain with the seller until the purchaser price shall have been fully paid in cash (regardless of any agreement to extend the time of payment).
2. If the financial condition of the purchaser at any time does not in the judgment of the seller, justify continuance of the work to be performed by the seller as set forth in the Agreement, the seller may require full or partial payment in advance or shall be entitled to cancel any order then outstanding at any time during the period allowed for filing claims against the estate of the bankrupt and shall receive reimbursement for its reasonable cancellation charges as provided above. If the purchaser defaults in any payment when due or refuses to accept delivery, the seller, at its option, and without prejudice to other lawful remedies, may defer further deliveries, cancel the remainder of the order, or withhold warranty work. The purchaser agrees to pay all reasonable expenses, costs and lawyer's fees, which the seller may incur in taking possession of the castings sold to the purchaser or in collecting any part of the purchase price. Castings repossessed and held for resale by the seller shall be at the risk and expense of the purchaser.
3. Seller will not be liable for any damages or delays suffered by the purchaser for any cause, such as, but not limited to, strikes, acts of God, fires, shortage of labour, fuel, power, material or supplies, beyond the reasonable control of the seller.
4. Seller's obligation to replace defective castings is limited to the replacement of castings proved to be defective within one hundred eighty (180) days of delivery to the purchaser. The seller shall not be liable for consequential damages of any nature whatsoever, or for loss of profits or injuries, damages, delays or contingent expense caused by defective castings. In no event that seller be liable to purchaser for any damages whatsoever in excess of the total price paid by purchaser for castings referenced in the within quotation.
5. Payments for material and services to be made 30 days net after date of invoice unless quoted in writing otherwise. A service charge of 1 1/2% per month may be imposed if payment is not made within 30 days or agreed upon terms.
6. Seller shall not be liable for the infringement of any patent rights arising out of the manufacture or sale of any patented device or part thereof made in accordance with designs, drawings or other specifications furnished by purchaser, and the purchaser agrees to indemnify and hold the seller harmless against any or all claims.
7. When a casting price is based on an estimated or given weight, it shall be subject to revision when actual weight is established.
8. Quotations are based upon the pattern, blueprint or drawings submitted with the request for quotation. Any changes, errors or alterations to these patterns, blueprints or drawings may alter the quoted price.
9. Seller is not responsible for variations existing between blueprints and patterns and core box equipment supplied by purchaser.
10. Should purchaser require special treatment of castings, such as heat, special analysis, chemical and physical specifications, test bars, X-ray, etc., their inquiry shall set forth such requirements in detail.
11. The seller is to make an effort at all times, as operating conditions will permit, to furnish as near as possible the exact quantity specified. However, unless otherwise stipulated, the purchaser shall accept an over-run or under-run not to exceed 10% over or under the quantity specified on order.
12. All casting physical properties quoted on our quotations are results as obtained for a standard keel block cast in accordance with good foundry practices. Seller is not responsible for machine work, welding, inserts or chills furnished by purchaser, labour charges or any other losses or damage caused by defective castings.
13. Test certificates will accompany shipment of casting only when specifically requested in writing by the customer or covered in the official quotation and subsequent purchase order.
14. Claims for error in weight and number must be made in writing within ten (10) days after receipt of material.
15. Any material found unsatisfactory due to defects will be replaced, providing such items are reported in writing within one hundred eighty (180) days of receipt and returned to the seller in accordance with this paragraph within two hundred (200) days after their receipt and further providing that no guarantee can be given on material which has passed inspection and was found suitable prior to being put into service. No material to be returned by the customer, as defective or otherwise, should be returned without consent in writing. The purchaser shall indemnify the seller against and save the seller harmless from any and all claims, actions, suits, proceedings, costs, expenses, damages and liabilities (including, without limitation, legal fees incurred by the seller in defending any such claims, actions, suits, and proceedings on a lawyer and his own client basis) arising out of, connected with or resulting from the use by the purchaser of the castings or the incorporation of the castings within any machinery or equipment either by the purchaser or those to whom the purchaser delivers the casting, including suits for contribution and/or indemnity on account of or in any way arising out of acts or omissions of the seller, its agents or employees relating to the castings except to the extent that the claim, action, suit, or proceeding is successful based solely on the negligence of the seller.
16. Purchase orders issued by purchaser to seller are considered firm and may not be eligible for cancellation or modification within 28 days before due date.
17. Seller is not responsible for loss of or damage to purchaser's pattern equipment, blueprints, or tooling equipment held by the seller, by fire or other casualties beyond its control. It is the responsibility of the purchaser to carry all forms or insurance deemed necessary.

18. Time specified for delivery shall not be of the essence of the Agreement unless otherwise expressly agreed to by the parties in writing. The time of delivery of all castings is approximate and estimated from the date of receipt of order, complete drawings, specifications, and any other information required to manufacture the castings. In the event the purchaser is unable or unwilling to accept delivery on the date the castings are ready for shipment on or after the date provided for in the Agreement, the castings will be invoiced to the purchaser and stored at a place designated by the purchaser or at a place chosen by the seller in the absence of such designation. Unless otherwise specifically agreed to by the parties in writing, all deliveries shall be EX-Works the seller's plant in Winnipeg, Manitoba, Canada. The cost of export packing is not included. The seller warrants that the castings shall be in a merchantable and transportable condition when they are transferred to the carrier designated by the purchaser in writing, or to the carrier of the seller's choice in the absence of such designation. The castings shall be at the sole risk and expense of the purchaser at the time when they are placed in storage or delivered to a carrier as aforesaid. If the purchaser fails to designate a carrier within a reasonable period before the shipment date, the seller shall use its best efforts to obtain the most suitable means of shipment and routing consistent with the nature of the castings shipped and the delivery schedule. The seller shall not be held responsible for loss or damage resulting from the choice of carrier or means of shipment or routing used or for any other losses or damages arising while in transit and the purchaser agrees to make any claim therefore directly against the carrier.
19. Notices. Any notice, demand, consent, or other communication required or permitted to be given under this Agreement is to be made in writing and delivered in person, mailed by prepaid registered mail or sent by electronic mail, addressed as follows: To: seller
Ancast Industries Ltd.
1350 Saskatchewan Avenue
Winnipeg, MB R3E 0L2
Attention: General Manager
Facsimile: (204) 786-2548
E-mail: j-herdman @ ancast.mb.ca
20. Any contract arising out of or related to the Agreement shall be construed and governed by the Laws of the Province of Manitoba and the Federal Laws of Canada applicable therein without regard to any conflicts of law principles but excluding application of the United Nations Convention on Contracts for International Sale of Goods. The purchaser irrevocably attorns to the non-exclusive jurisdiction of the court of the Province of Manitoba in connection with any action arising from or related to this Agreement.
21. Until the purchase price and all other amounts required to be paid by the purchaser hereunder have been paid in full, neither the Agreement nor the purchaser's rights shall be assigned except with the seller's prior written consent. The Agreement and all rights of the seller thereunder may be assigned by the seller without the purchaser's consent. All rights of the seller shall inure to the benefit of its successors and assigns; and all obligations of the purchaser there under shall bind the heirs, legal representatives, successors and permitted assigns of the purchaser.
22. Seller warrants that castings are shipped from its plant free of corrosion and are properly packaged to prevent corrosion during shipment. Seller is not responsible for corrosion caused by damage to packaging during shipment or by purchasers conduct after receipt by purchaser. Unpacking casting which are at a low temperature in a warm environment, or storing packaged castings for extensive time periods, may result in corrosion, which will be Buyer's responsibility.
23. Prices are set with a minimum and maximum order size. If order quantities, higher or lower are required then Inside Sales will provide updated pricing as requested. Prices may or may not change for higher or lower order quantities.
24. If a part has not been purchased in the last one (1) year then updated pricing will have to be provided before a purchase order can be received.
25. All pricing is subject to change with sixty (60) days written notice. This includes any orders shipped after the effective date.
26. Pricing will be subject to change if there are changes to design, material, weight, annual volume, order size, dimensional tolerance, quality criteria, value added process, or any other change material or theoretical.
27. Unless otherwise agreed, Material Surcharge will be charged in addition to the quoted base price. This will be a separate line item calculated by dollar per pound (\$/lbs) of the part weight of record.
28. The Material Surcharge will be set monthly.
29. The Material Surcharge will be calculated with the current price (\$/lbs) at the time of shipment.