



STANDARD TERMS OF SALE

March 15, 2018

- 1. LEGAL EFFECT OF QUOTATION:** Seller's quotation is not an offer to sell the goods or services noted but an invitation to the addressee hereof to purchase such goods and services on the terms and conditions here stated.
- 2. TAXES:** Seller's prices do not include taxes with respect to the sale, purchase, delivery, storage, processing, use, consumption or transportation of any of the material covered hereby. Any such taxes, which Seller may be required to pay or collect under any existing or future law, including taxes upon or measured by the receipts from the sale thereof, shall be for the account of Buyer, who shall promptly pay the amount thereof to Seller upon demand, unless Buyer provides Seller with a properly executed certificate representing that Seller is not required to collect any such taxes. Buyer will indemnify and save Seller harmless from any liability, penalties or expenses incurred by Seller as a result of its reliance upon such certificate.
- 3. DELIVERY:** Seller will meet the scheduled shipment time shown on Seller's quotation as nearly as possible, but does not guarantee to do so. All orders are accepted subject to delay caused by war, acts of terrorism, riots, civil commotion, fire, labor disputes, acts of God and restrictions of any governmental agency or other causes beyond Seller's control. Any shipping schedule quoted is based upon conditions at the factory on the date of this quotation and is contingent upon Buyer supplying to Seller, promptly when needed, all required information including drawing approvals.
- 4. CANCELLATION, SUSPENSION, OR DELAY:** After acceptance by Seller, Buyer's order is not subject to cancellation, suspension, or delay except upon payment by Buyer of appropriate charges which shall include all costs incurred and commitments by Seller to date of cancellation, suspension, or delay, plus a 25% charge for overhead and profit.
- 5. WARRANTY:** Seller warrants the equipment sold hereunder against defects in workmanship and material under normal use and service excluding erosion or corrosion for a period of one (1) year from date of shipment to Buyer, except components not manufactured by Seller, which will bear only the warranty of the manufacturer. Buyer shall promptly report all asserted defects in the equipment to Seller and shall afford Seller a reasonable opportunity to inspect all asserted defects. Seller's entire liability, whether under warranty, contract, negligence or otherwise, shall be limited to repair or replacement of the equipment found to be defective in workmanship or material within one (1) year from date of shipment to Buyer, labor excluded, at such location as may be determined in the sole discretion of Seller with Buyer responsible for all such delivery and related expenses.
 - a. THE FOREGOING IS IN LIEU OF ALL OTHER OBLIGATIONS AND LIABILITIES AND ALL WARRANTIES OF MERCHANTABILITY OR OTHERWISE, EXPRESSED OR IMPLIED IN FACT OR BY LAW, AND STATE SELLER'S ENTIRE AND EXCLUSIVE LIABILITY FOR ANY CLAIM OR DAMAGES IN CONNECTION WITH THE SALE, DESIGN, SUITABILITY OR FITNESS FOR USE, INSTALLATION OR OPERATION OF THE EQUIPMENT.**
 - b. Buyer shall be liable for and indemnify Seller against any and all claims, losses, or causes of action or judgments of any kind arising from or on account of personal injuries or death or damages to property resulting from or caused by Buyer's negligent or improper installation, operation or maintenance of the equipment.**
 - c. Any changes, repairs or modifications to the equipment by Buyer without written authorization from Seller will void Seller's warranty.**
- 6. LIMITATION OF LIABILITY:** ANYTHING ELSEWHERE HEREIN OR IN BUYER'S ORDER OR ANY OTHER RELATED DOCUMENT EXPRESSED OR IMPLIED TO THE CONTRARY NOTWITHSTANDING, SELLER SHALL IN NO EVENT BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR LIQUIDATED DAMAGES WHATSOEVER, WHETHER BASED ON CONTRACT, TORT OR ANY OTHER LEGAL THEORY. IN NO EVENT, WILL SELLER'S LIABILITY EXCEED THE VALUE OF THE PURCHASE ORDER PLACED WITH SELLER BY BUYER.
- 7. GOVERNING LAW:** Any order and any actions arising thereunder will be governed by and construed in accordance with the laws of the State of New Jersey. Should any provision be invalid or unenforceable, such provision shall be deemed to be deleted.
- 8. ENTIRE AGREEMENT MUST BE IN WRITING:** The entire agreement of Seller and Buyer is expressed exclusively in the terms, covenants and conditions set forth in Buyer's purchase order and in Seller's acceptance thereof. No agent, representative or employee of Seller has authority to agree, represent or warrant otherwise, except Seller's officers and then only in writing. Any changes to Buyer's purchase order or Seller's acceptance thereof must be in writing and signed or initialed and dated by the party to be obligated thereby.
- 9. PAYMENT TERMS:** Unless other terms are specified, pro rata payments shall become due as shipments are made. If shipment is delayed by Buyer, date of readiness for shipment shall be deemed to be date of shipment for payment purposes. If manufacture is delayed by Buyer, a payment shall be made based on purchase price and percentage of completion, and the balance payable in accordance with the terms as stated. If in Seller's judgment, Buyer's financial condition at any time adversely changes, Seller may require full or partial payment as a condition to commencing or continuing manufacture, or in advance of shipment, or if shipment has been made, recover the equipment from the carrier. If payments are not made in conformance with the terms stated herein, the contract price shall, without prejudice to Seller's right to immediate payment, be increased by 1.5% per month on the unpaid balance, but not to exceed the maximum amount permitted by law.
- 10. STORAGE:** Any delivery which is delayed by causes within the Buyer's control or causes which affect Buyer's ability to receive the goods will allow the Seller to place such goods in storage for Buyer's account and risk.
- 11. TITLE AND INSURANCE:** Title to the goods and risk of loss or damage shall pass to Buyer upon tender of delivery, except that a security interest in the goods or any replacement shall remain in Seller, regardless of mode of attachment to realty or other property, until the full price has been paid. Buyer agrees to do all acts necessary to perfect and maintain said security interest, and to protect Seller's interest by adequately insuring the product(s) against loss or damage from any cause with Seller named as insured or co-insured.
- 12. CONFORMANCE TO FEDERAL OCCUPATIONAL SAFETY AND HEALTH ACT (OSHA):** Seller's equipment is designed in principle to meet the general conditions for safety as required by OSHA. However, because of the general and often subjective nature of OSHA requirements and because the proper installation and operation of the equipment will have significant effect on compliance to such requirements, Seller does not warrant or guarantee, expressly or implicitly, that Seller's equipment conforms in all respects to OSHA requirements.
- 13. SAFETY:** Buyer is responsible for reviewing the Seller's design with its insurance underwriters, safety engineers, local fire marshal and any other authorities having the expertise and jurisdiction to confirm that the system meets the necessary safety requirements for Buyer's facility and operations. Buyer is solely responsible for the determination, purchase and installation of all fire and explosion protection necessary for its facility.
- 14. PROPOSAL:** Proposal prices are firm for thirty (30) days from date of quotation unless specifically stated otherwise in Seller's quotation.
- 15. PERSONNEL CHARGES:** Charges for Sellers field service technicians, erection advisors and engineers shall be at its current **per diem** rates, plus travel and living expenses.
- 16. INDEMNIFICATION:** Buyer shall indemnify and hold Seller, its successors and assigns, shareholders, directors, officers, employees and agents harmless from any claims for personal injury, property damage or other damage or loss ("Losses") caused by or incidental to Buyer's use of goods referenced in this document. Seller and Buyer each agree to indemnify the other from all Losses from any breach of any representation, covenant, undertaking or promise set forth herein provided that neither Seller nor Buyer will be liable to the other for consequential, special, indirect or punitive damages, lost profits or similar claims. Buyer waives its rights of recovery against Seller for loss or damage arising out of or incident to this transaction, whether due to negligence of Buyer or Seller of their agents, employees, contractors, and/or invitees.
- 17. CONFIDENTIALITY:** Buyer acknowledges that information which Seller may disclose to Buyer in a tangible form marked "Confidential" comprises proprietary or confidential information of Seller ("Confidential Information"). Confidential Information shall include all information, designs, technical details, schematics, and drawings developed by Seller with respect to the goods described hereunder. Buyer agrees not to use Confidential Information or disclose, distribute or disseminate such Confidential Information to any person except as necessary to use, install or maintain the goods and will bound those individuals by duly executed confidentiality arrangements as the Buyer is bound.
- 18. INTELLECTUAL PROPERTY** – Seller retains for itself all proprietary and intellectual property rights including all patent rights in and to all designs, engineering details, schematics, drawings, specifications, plans and other similar data and Confidential Information which pertains to the goods referenced hereunder.
- 19. MISCELLANEOUS** - Electronic communications regarding commercial terms that are not confirmed and accepted either in writing or by immediate electronic confirmation do not apply and are to be disregarded and will have no application to any resulting purchase order and or contract received by Seller.