

Terms & Conditions of Sale

I. Offer and Acceptance

- A. The Seller's quotation constitutes an offer for the sale of Products or Services (the "Offer"). Unless otherwise specified in the Offer, or some other document signed by Seller, the terms and conditions of sale set forth in this document ("Seller's Terms") apply to all Products and Services sold or provided by Seller.
- B. Any purchase order or other form of acceptance issued by Customer shall result in a contract for the purchase of the Products or Services at the price quoted in the Offer. Customer shall be deemed to have accepted any of Seller's Terms to which Customer has not specifically objected. Customer's issuance of a purchase order which purports to reject some or all of Seller's Terms by virtue of standard form language shall not be sufficient objection. Customer shall be required to set forth each objection to Seller's Terms in a separate writing signed and dated by Customer and delivered to Seller prior to or contemporaneous with Customer's purchase order or other form of acceptance. Seller's failure to object to provisions in any purchase order, or other communication from Customer (including, without limitation, penalty clauses of any kind), shall not be a waiver of Seller's Terms, nor an acceptance by Seller of any such provisions. Any terms in Customer's purchase order or any other document of acceptance which are different from or additional to Seller's Terms are hereby rejected unless specifically accepted by Seller in a separate document signed by both Customer and Seller, regardless of whether such other terms would materially alter the terms hereof. No course of dealing, custom or usage, which is contrary to Seller's Terms shall apply.
- C. Seller reserves the right to correct any typographical or clerical errors in prices, specifications, quotations, or acknowledgments.

II. Products or Services Subject to Sale

The Products (including equipment, supplies, and parts) or Services subject to this sale shall be limited to those described in the Offer. They do not include, and Customer assumes responsibility for (A) removal from tailgate of carrier, set-up, installation, and start-up; (B) safety equipment used with the Products or Services or by Customer's employees or any third parties in handling or working with the products; (C) signs, plaques, and training related to the proper installation, handling, use, storage, and disposal of the Products, and (D) all utility hook-ups, building code approvals, and other regulatory requirements, as applicable, unless specifically stated in Offer. If the Customer is a government entity, Customer acknowledges that the Products are commercial items and that except as required by law, government accounting and procurement principles do not apply.

III. Financial Condition

At Seller's request, Customer will furnish sufficient information to enable Seller to assess Customer's creditworthiness. Seller may, in its discretion, require letters of credit, full or partial payment in advance, or other forms of security.

IV. Prices

- A. Prices are subject to change without prior notification.
- B. Prices are based on U.S. dollars and are F.O.B. point of shipment. Prices do not include freight or delivery charges or taxes (sales, excise, use, ad valorem, etc.) or any export or import duties unless specifically stated in Offer.

V. Shipment, Delivery, and Inspection

- A. Seller shall select the method and carrier for delivery of all Products unless freight has been included in Offer. Title and risk of loss or damage to the Products shall pass from Seller to Customer upon delivery to a carrier at point of shipment.
- B. Any shipment, delivery, or performance date stated in the Offer or other contract document is approximate only and does not constitute any guarantee of shipment, delivery, or performance on any particular date.
- C. Time shall not be of the essence of this agreement.

VI. Payments, Title and Security Interest

- A. All payments shall be made in United States currency. All payments shall be without deductions for back-charges, other accounts between Seller and Customer, and the like, which shall be settled independently of the payment of the invoice. Payment shall not prejudice claims on account of omissions or shortages in shipment, but no such claim will be allowed unless made within 96 hours after receipt of the applicable shipment by Customer.
- B. Payments for Supplies or Parts shall be due 30 days from the date of Seller's invoice.
- C. Payment for Equipment shall be due upon receipt without regard to the actual date of installation. Pre-payment of 30% of the price will be required on receipt of order for specially designed or specially engineered Equipment. If production by Seller or Seller's manufacturer is delayed by Customer, partial payment is to be made based on the contract price and a percentage of completion at the time of notification of delay. If shipment is delayed by Customer, payment shall become due 30 days from the date Seller has notified Customer it is ready to ship.
- D. Payment for installation of Equipment or Parts shall be due upon completion.
- E. Should Customer delay payment beyond the date it is due, interest may be charged on the unpaid balance at the rate of one and one-half (1-1/2%) percent per month.

F. Notwithstanding that title and risk of loss pass to Customer upon shipment, Customer hereby grants a security interest in all Products to secure Customer's payment in full. Customer authorizes Seller at any time and from time to time to file in any filing office in any Uniform Commercial Code jurisdiction financing statements and amendments naming the Customer as debtor and describing the Products as collateral.

VII. Delays

- A. Seller shall not be liable for loss, damages, or non-performance resulting from delays in receipt of final specifications or instructions from Customer, changes in specifications, force majeure, including but not limited to strikes, labor disturbances, material shortages, non-manufacturing conditions, delays or failures of carriers or communication, epidemics, fire flood, storms, accident, riot, acts of terrorism, war and invasion, governmental requisition or priorities, acts of God, or other causes beyond Seller's reasonable control.
- B. In such event, the delivery date shall be extended for a period equal to the time lost by reason thereof, or Seller at its option may cancel the delivery and refund any amounts paid by Customer, as Customer's sole and exclusive remedy. Seller shall undertake to notify the Customer promptly of any significant delay and will specify the revised delivery date as soon as practical. IN NO EVENT SHALL SELLER BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, OR SPECIAL DAMAGES ARISING OUT OF A DELAY IN, CANCELLATION OF, OR FAILURE TO DELIVER OR MANUFACTURE.
- C. If shipment is delayed or extended by Customer, Customer shall arrange for and notify Seller of the place or places to which Seller shall ship the Products covered by the order for warehousing or storage at Customer's expense and all risk of loss or damage to the Products or Services shall be borne by Customer. If Customer is unwilling or unable to promptly arrange for warehousing or storage facility, Seller may do so at Customer's expense. Customer hereby agrees to pay any and all storage charges so incurred and Seller's invoice, which it shall issue upon shipment of Products to the place of storage.

VIII. Cancellation

Cancellation or suspension of the order by Customer after acceptance by Seller may be made only on terms which will compensate Seller for loss due to the cancellation. Prior to shipment, Customer may cancel by giving written notice of cancellation to Seller. Customer may cancel after shipment only if Products are re-salable and Customer pays restocking, shipping and handling charges as reasonably determined by Seller.

IX. Equipment Design

Seller's manufacturer's reserve the right to make changes and improvements in the design and specifications of its Products without notice or obligation to Customer.

X. Warranty and Disclaimers

- A. Seller warrants capital equipment to be free from defects in material and workmanship under normal use and operation for a period of one year after date of delivery to Customer, not to exceed 18 months from shipment. Seller's sole warranty with respect to all other Products is that such products comply with Seller's specifications for a period of 90 days from the date of shipment, unless the Product is subject to an expiration date, in which case the expiration date shall apply. Seller's warranties do not apply to damage resulting from unauthorized installation, accident, casualty, alteration, misuse, or failure to follow Seller's written instructions. No other express warranty is made with respect to the Products. If any model or sample was shown to Customer, such model or sample was used merely to illustrate the general type and quality of the Products and not to represent that the Products would necessarily conform to the model or sample in all respects. ENTIRE WARRANTY: SELLER MAKES NO OTHER WARRANTY, EXPRESS OR IMPLIED, AND SELLER EXPRESSLY DISCLAIMS ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, AND ALL OTHER WARRANTIES ARE HEREBY EXPRESSLY EXCLUDED. SELLER SHALL HAVE NO OTHER LIABILITY, DIRECT OR INDIRECT, OF ANY KIND, INCLUDING LIABILITY FOR SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES.
- B. Customer's sole and exclusive remedy for breach of the foregoing warranties shall be the repair or replacement and reinstallation of defective parts (with the exception of items normally considered to be expendable such as filters, fuses, gaskets, lamps, printer paper, printer ribbons, ink, lubricants, charts, etc.), or, at the Seller's option, to refund the purchase price; provided (1) the Product has not been altered or modified by other than Seller, (2) it has been properly stored, installed, maintained and operated within the limits specified by Seller, and (3) Customer promptly sends to Seller notice of defect and satisfactory proof thereof, including allowing Seller the opportunity to inspect the Products, and in the event of repair or replacement, returns the product to Seller, freight prepaid. Defective parts replaced by Seller shall become the property of the Seller. Repaired or replacement parts will be shipped to the Customer FOB point of shipment.
- C. If the Product sold is not manufactured by Seller, Seller will extend to the Customer the same warranty protection Seller received from the original manufacturer.
- D. Seller is not responsible for any warranty work, repairs, replacements, or other work, or charges relating thereto, that have not been authorized by Seller in writing.

E. NEITHER SELLER NOR CUSTOMER SHALL BE LIABLE TO THE OTHER FOR SPECIAL OR CONSEQUENTIAL DAMAGES OR FOR DAMAGES FOR LOSS OF USE ARISING DIRECTLY OR INDIRECTLY FROM ANY BREACH OF CONTRACT, MATERIAL OR OTHERWISE, OR FROM ANY TORTIOUS ACTS OR OMISSIONS OF THEIR RESPECTIVE EMPLOYEES OR AGENTS, AND IN NO EVENT SHALL THE LIABILITY OF SELLER EXCEED THE PRICE OF THE DEFECTIVE PRODUCT OR OF THE PRODUCT SUBJECT TO LATE DELIVERY. If Seller, without separate compensation therefore, furnishes the Customer with advice or other assistance concerning any product supplied hereunder or any system or equipment in which any such product may be installed which is not required hereunder, the furnishing of such advice or assistance will not subject Seller to any liability whether in contract, tort (including negligence and strict liability) or otherwise.

XI. Disclosure of Information

Any information, suggestions, or ideas given by the Customer to Seller in connection with Seller's performance hereunder are not secret or submitted in confidence, except as may be otherwise provided in writing, signed by Seller.

XII. Severability

Invalidity of any provision of Seller's Terms shall not affect the validity of any other provision hereof and any invalid provision shall be, to the extent possible, modified to accomplish the same objectives in a valid way without affecting the surviving provisions.

XIII. Notice

Any notice required or contemplated hereunder shall be in writing and shall be delivered personally or sent by telefax or by prepaid registered mail. Notice by telefax shall be deemed to have been received when transmitted and any notice sent by registered mail shall be deemed to have been received on the second day following the date mailed.

XIV. Entire Agreement and Amendments

There are no other Terms and Conditions applicable to the purchase and sales of Seller's Products other than those contained in the Offer (including any specifications or other documents which Seller incorporated by reference in the Offer or invoice). Acceptance or acquiescence in a course of performance rendered under this agreement shall not be relevant to determine the meaning of this agreement even though the accepting or acquiescing party has knowledge of the nature of the performance and opportunity for objection. No modification, amendment, waiver or other change of any provision of Seller's Terms shall be binding on Seller without Seller's written consent.

XV. Limitation of Actions

Any action for a breach of contract arising out of Seller's acceptance of Customer's order or arising out of Customer's acceptance of Product supplied must be commenced within one year after the cause of action has accrued.

XVI. Governing Law; Remedies

- A. The rights and obligations of the Customer and Seller, and the construction and effect of any contract formed between them shall be governed by the laws of the State of Oklahoma.
- B. If the Customer fails to fulfill their terms of payment of any invoice or if the financial or business condition or responsibility of the Customer shall become impaired or unsatisfactory to the Seller, Seller may, without liability to Customer or prejudice to any other legal or equitable remedy, suspend performance until past due payments are made and satisfactory assurance of payment is received.

XVII. Operating Directions

- A. Customer shall comply with and require its agents and employees to comply with all directions, safety notices, warnings, and other instructions furnished by Seller, and shall use and require its agents and employees to use reasonable care in the use of the Products.

SELLER SHALL HAVE NO OBLIGATION OR LIABILITY FOR ANY FAILURE OF CUSTOMER, CUSTOMER'S EMPLOYEES OR AGENTS, OR ANY THIRD PARTY TO OBSERVE THE PROVISIONS OF THIS SECTION, OR FOR ANY INJURY OR DAMAGE CAUSED, IN WHOLE OR IN PART, BY CUSTOMER'S FAILURE TO COMPLY WITH APPLICABLE FEDERAL, STATE, OR LOCAL SAFETY REQUIREMENTS AND CUSTOMER SHALL INDEMNIFY AND HOLD SELLER HARMLESS FOR ANY CLAIMS, LIABILITIES OR LOSSES ARISING OUT OF OR IN CONNECTION WITH ANY SUCH INJURY OR DAMAGE OR CLAIM THEREOF.

Installation Terms & Conditions (where installation is purchased from seller)

I. General Definitions & Scope of Responsibilities

- A. The Seller's Terms attached hereto are hereby incorporated by reference herein.
- B. Seller will not be responsible for services other than Seller or Seller contracted sources, unless authorized in writing by Seller.
- C. Customer shall provide to Seller the contact information of one person having the authority to represent Customer concerning any discrepancies of on-site installation conditions. This shall include coordination of other trades in a manner that will avoid unnecessary delays.
- D. All work will be performed during normal working hours: 8:00 AM to 5:00 PM, Monday through Friday. Holidays and other hours will require additional charges.
- E. Non-Union labor will be used.
- F. Seller will be responsible for clean-up of all packing materials, crates, crating and/or other debris of transporting/setting up the equipment, but containers/dumpsters must be provided by/at the owner's facility.
- G. Parts and labor required to repair damage caused by accident, abuse, natural disaster, fire or theft, misuse by operating equipment for functions/processes not originally designed or recommended, or alteration/ modification of the equipment or accessories after final assembly by Seller shall be provided by Customer and are not covered by Seller.

II. Environmental and Safety Issues

- A. Hazard Communication - Customer agrees to provide Seller with information as to all hazards or hazardous materials which Seller's personnel may encounter when performing services for Customer and to familiarize Seller, its employees and contractors with Customer's Hazard Communication Program. If Customer's facility has an asbestos maintenance plan, the applicability of the plan to Seller's services must be specifically pointed out to Seller, and a copy of the plan must be provided to Seller prior to Seller's commencement of work. Customer shall ensure the safety of the work area and of Seller's employees and agrees to defend, indemnify and hold Seller, its employees and contractors, and their insurers (the 'Indemnified Parties') harmless from any and all claims, demands, losses, liabilities, fines, penalties (including but not limited to OSHA penalties), costs (including but not limited to attorneys' fees) or other liability suffered or incurred by the Indemnified Parties as a result of Customer's failure to do so.
- B. Unexpected or hazardous conditions - If unforeseen conditions are discovered (such as the discovery of hazardous substances or conditions) which may increase the time or expense of performance, Seller shall be entitled to additional compensation for the effects of such unexpected conditions. If Seller and Customer cannot agree on such additional compensation, Seller may stop work without liability and Customer shall pay Seller for any services already performed, at Seller's hourly rates. If Seller encounters materials which it believes may be hazardous, Seller may suspend its services until adequate testing and analysis have been conducted to confirm whether such materials are hazardous or not. In no event shall Seller or its contractors be responsible for the removal, abatement or disposal of any hazardous materials (including but not limited to asbestos, asbestos containing materials, hazardous waste, or infectious waste).

III. Customer Responsibilities-Site Preparation

- A. Remove all asbestos and/or other hazardous materials from equipment building and surrounding area, and safely dispose of same in accordance with local/state/federal codes, prior to Installation and/or Equipment Removal.
- B. Obtain or incur expenses for obtaining any/all permits, approvals, licenses, certification, fees and source testing, local or otherwise, that may be required for installation or operation of the equipment being installed.
- C. Prepare site for equipment installation, to include walls, floors, drains, ceilings, building utility connections, and any/all required structural modification to the building, including superstructure above finished ceiling and/or wall back and floor reinforcement.
- D. Install any/all building exhaust systems beyond manufacturer's exhaust termination point, as designated in Seller equipment drawings/technical documentation, and ensure total HVAC system is adequate to handle load(s) expected with new equipment.
- E. Assure that all door openings, hallways and areas in route from receiving area to installation site will accept equipment without dismantling equipment or removing/modifying any door frames, ceilings, cabinets or other facility structures.
- F. Provide all utilities and utility connections (steam, water, compressed air, waste-drain, electric, exhaust, natural gas, special gases) according to local/state/federal codes and Seller equipment drawings/technical documentation.

- G. Furnish and install all electrical disconnects and shutoff valves in accordance with local/state/federal codes.
- H. Provide adequate lighting, heat and electrical power in the location(s) of final installation.
- I. Provide any/all in-wall blocking or backing according to local/state/federal codes in locations specified on Seller equipment drawings/technical documentation.
- J. Properly protect and/or remove any/all existing instrumentation, equipment and supplies not suitable for, or in conflict with, all construction/installation activities.

IV. Customer Responsibilities-Receiving

- A. Provide for a loading dock with capacity for non-power tailgate delivery.
- B. If vertical transport is required due to limited access to higher or lower floors via stairways, elevator limitations, etc., customer will be responsible for any/all additional charges.
- C. Receive and inspect new equipment for shipping damage and store in weather-protected, secure area inside building designated for final installation, or arrange for transportation and off-site storage, scheduling re-delivery in time for final installation.
- D. Seller will require two (2) weeks' notice prior to beginning actual installation work, with clear access to final equipment location(s) guaranteed.