

TERMS AND CONDITIONS OF SALE

TERMS AND CONDITIONS FOR PRODUCTS AND SYSTEMS

1. **Applicable Terms**

A. Seller's quotation constitutes an offer (the "Offer") for the sale of products, systems and/or installations (hereinafter "products") and is based upon all of the terms and conditions contained herein.

B. Any purchase order or other form of acceptance issued by Buyer shall result in a contract for the purchase of the products at the price quoted in this Offer. The resulting contract shall include all of the terms set forth in this Offer and any of Seller's subsequent documents signed by Seller and included in the contract, all of which are hereafter called "Seller's terms." Buyer shall be deemed to have accepted any of Seller's terms not specifically objected to by Buyer. Buyer's issuance of a purchase order which in effect rejects some or all of Seller's terms by virtue of Buyer's standard form language shall not be sufficient objection. Buyer shall be required to set forth each objection to Seller's terms in a separate writing signed and dated by Buyer and delivered to Seller for signature prior to or contemporaneous with Buyer's purchase order or other form of acceptance. Seller's failure to further object to standard terms and conditions of purchase set forth in any or all of Buyer's contract documents shall not be construed as an acceptance of the same, and any terms in Buyer's purchase order or any other document of acceptance which are different from or additional to the Seller's terms are hereby specifically rejected and shall not become part of the contract unless specifically accepted by Seller in a separate document signed by both Buyer and Seller.

C. Seller reserves the right to withdraw or modify any and all quotations at any time prior to acceptance by Buyer. In the event that Seller issues more than one quotation pertaining to the same products, the quotation latest in time shall control and all prior quotations shall be deemed withdrawn. Withdrawal of any quotation shall not reinstate the terms of any prior quotation. However, a subsequent quotation may modify a prior quotation, preserving the prior quotation to the extent specifically indicated on the face of the subsequent quotation form.

D. No custom in the trade or usage between the parties which is contrary to Seller's terms shall apply.

2. **Period of Quotation**

Unless otherwise specified by Seller, if not accepted by Buyer within thirty (30) days from the date hereof, Seller's quotation shall be void.

3. **Payment Terms**

Seller's prices are F.O.B. point of shipment, unless otherwise specified. Terms of payment are net cash thirty (30) days after the date of Seller's invoice, unless otherwise specified, except that terms of payment are at all times subject to the approval of Seller's Credit Department. If Seller makes the installation, Buyer shall make payments as follows: At the end of each work week Buyer shall pay the value of labor incorporated in the work, less the aggregate of previous payments. Seller reserves title in products until final payment is received, and Buyer will execute financing statements and other documents reasonably required to preserve Seller's rights. **Buyer agrees to make payment in full without any deduction for claim of set-off or recoupment with respect to this contract or any other contract or matter between the parties.** Should Buyer delay payment beyond the date on which it is due, interest may be charged on the unpaid balance at the rate of one and one-half percent (1-1/2%) per month, or at the maximum rate allowed by applicable state laws, whichever is less. Buyer agrees that in the event suit is instituted by Seller to enforce any of these terms and conditions, or to collect any sums of money, damages or costs from the Buyer hereunder, Buyer shall

pay all actual costs of collection and reasonable attorneys' fees incurred by Seller in such suit or suits.

4. **Taxes and Freight**

Buyer shall be responsible for applicable local, state or federal taxes, and all freight bills required for this purchase unless otherwise specified. If sales, use or other State or Municipal taxes in addition to any listed specifically as part of the stated purchase price, are imposed upon the Seller, the Buyer agrees to pay the same or reimburse Seller upon demand.

5. **Delivery**

Shipping and delivery dates are approximate and are not a guarantee of shipment or delivery on any particular date. Time shall not be of the essence of the contract. Seller shall not be liable for delays in or failures of delivery due to strikes or labor troubles, suppliers delays, accidents, fire, flood, acts of God, action by governmental authority, changes requested by Buyer, or other causes beyond its reasonable control. If shipment is delayed at the request of Buyer, payment shall be made by Buyer as though shipment had been made as specified and for any expenses incurred by Seller due to Buyer's request in delaying shipment; and the material shall be stored at the Buyer's risk and subject to reasonable storage charges.

6. **Risk of Loss**

Notwithstanding the reservation of title by Seller, risk of loss or damage to all products shall pass from Seller to Buyer upon delivery by Seller to the carrier. When F.O.B. destination is specified, there shall be truck-bed delivery only, with offloading the obligation of Buyer. Any claims for loss or damage after possession by the carrier will be solely between Buyer and the carrier. Seller will provide reasonable assistance to Buyer in filing loss or damage claims.

7. **Cancellation and Returns**

A. On all cancelled orders Buyer shall compensate Seller for its performance, commitments and damages. For normally stocked catalog items, Buyer shall pay Seller a cancellation fee determined by Seller not to exceed 25% of the purchase price. For items not ordinarily stocked, Buyer shall pay all engineering, labor and materials costs used or committed by Seller plus 10% of the full purchase price. In no event shall the full amount exceed the purchase price.

B. Products and parts not considered as standard inventory by Seller, and/or manufactured by Seller to Buyer's specification or job requirements, will become the sole property of the Buyer and will not be accepted for return.

8. **Warranty**

A. Seller warrants that products of its manufacture shall be free of defects in material and workmanship and according to agreed specifications and for ordinary applications for which the products were designed. The warranty shall extend to products for which Seller receives a written report of defects within a period of one year from the date of shipment from Seller's factory. This warranty does not apply to parts which, through normal use, require replacement during the warranty period. Seller's liability under the warranty shall be limited to repair or replacement of defective products or parts thereof F.O.B. original destination. Seller shall have the option, in its sole discretion, of repairing products at the site of installation. Buyer shall notify Seller as soon as any defect becomes apparent and shall confirm in writing such notice within a reasonable time, but not later than thirty (30) days after the discovery of the defect. **Buyer shall not take any steps to correct any alleged defect** without written authorization of Seller, or Buyer assumes full responsibility for all costs and

damages thereby incurred. The warranty for items purchased by Seller and resold to Buyer shall be limited to the warranties given by Seller's suppliers of the items, but shall not enlarge Seller's warranty beyond that stated herein. This warranty shall not apply to products or parts which have been improperly applied or installed by or for Buyer, or which have been altered, misused, abused, damaged or not properly maintained.

B. This warranty is the exclusive warranty given by Seller and is in lieu of all other warranties, whether written or oral, express or implied. The implied warranties of merchantability and fitness for a particular purpose are hereby expressly excluded by Seller. Seller neither assumes, nor does it authorize any other person to assume on its behalf, any other warranty or liability in connection with the sale of its products.

C. All material shall be furnished subject to the standard manufacturing and commercial variations and practice of the Seller.

9. Limitations of Liability and Indemnities

Whether as a result of a breach of contract, breach of warranty or tort (including negligence or strict liability) neither Seller nor Buyer shall be liable to the other for any consequential or incidental damages incurred by it, including, but not limited to, loss of sales, profit, revenue or good will; loss of use of products or any associated equipment or material; cost of capital; cost of substitute products, facilities or services; downtime costs; attorneys' fees; or losses or claims of customers of the other for such damages. Buyer and Seller hereby agree to indemnify and hold harmless the other from any and all such damages. Seller agrees to defend, indemnify and hold harmless Buyer from any and all claims, liability, damages or expenses (including reasonable attorneys' fees) due to personal injuries or death to Buyer's and Seller's employees and third parties and from property damage to the extent the same may result from the breach of contract, breach of warranty, negligence or strict liability of Seller. Buyer agrees to defend, indemnify and hold harmless Seller from any and all claims, liability, damages or expenses (including reasonable attorneys' fees) due to personal injuries or death to Buyer's and Seller's employees and third parties and from property damage to the extent the same may result from the breach of contract, breach of warranty, negligence or strict liability of Buyer.

10. Engineering Data

The proposal drawings and/or specifications of any quotation are confidential engineering data and represent Seller's investment in engineering skill and development and remain the property of Seller. Such are submitted with the understanding that the information will not be disclosed to anyone other than the Buyer's employees who have a need to know or used for any purpose except for the subject quotation or order, or used in any manner detrimental to Seller. All specifications and dimensions of proposal drawings are approximate, and are subject to changes during detailed engineering. Purchased materials and/or components referred to by trade names or by manufacturer may be interchanged at the option of Seller with other materials and/or components of at least equal quality and value. As soon as practicable after an order from Buyer is received by Seller, Seller shall submit layout drawings, if required, to Buyer who shall check and verify them in writing with reasonable promptness, which verification shall indicate Buyer's acceptance of all information on the drawings. Actual shipment and delivery dates are dependent on the prompt verification of the drawings by Buyer. Seller shall thereafter execute the work in accordance with such drawings.

11. Patents

A. Seller warrants that products furnished, and any parts of those products, which are manufactured to Seller's design, shall be delivered free of any rightful claim for infringement of any United States patent and that if Seller is notified promptly in writing of any such claimed patent infringement

and given authority, information and assistance, Seller will defend or may settle at its expense any suit. Failure to do so will be considered a breach of this warranty by Seller, and Seller shall pay all damages and costs awarded against Buyer due to such breach in case any products or parts thereof are in the suit held to constitute such an infringement. If the use of the products or parts is enjoined, or if Seller deems it necessary to defend or settle a claimed patent infringement, Seller shall at its expense and option, either procure for Buyer the right to continue using such products or parts, or replace the same so that they become non-infringing, or remove the products and refund the purchase price (less reasonable depreciation for any period of use). The foregoing states the entire liability of Seller for patent infringement by said products or any part thereof.

B. The preceding paragraph shall not apply to any product or part specified by Buyer or manufactured to Buyer's design, or to the use of any product furnished hereunder in conjunction with any other product in a combination not furnished by Seller as a part of this transaction. As to any such product, part, or use in such combination, Seller assumes no liability whatsoever for patent infringement, and Buyer will indemnify Seller and hold Seller harmless against any claims, liability, damages or expenses, including reasonable attorneys' fees, as a result of infringement claims arising therefrom.

12. Compliance with Law

Seller makes no warranty regarding the Occupational Safety and Health Act Standards or other government requirements. If Seller's products do not meet such standards and requirements, Seller shall reasonably cooperate with Buyer to meet them, but Seller may charge Buyer the reasonable value therefor.

13. Limitation of Actions

A. Buyer or anyone claiming through Buyer must bring any action against Seller within one (1) year from the date on which the act complained of occurs.

B. Seller shall have a minimum of four (4) years from the date when payment is due from Buyer to Seller to bring any action against Buyer.

14. Applicable Law

The validity, performance and all matters relating to the interpretation and effect of a contract resulting from any one or more quotations and/or acknowledgments shall be governed by the laws of the Commonwealth of Pennsylvania, U.S.A., and any litigation arising therefrom shall be decided in the state and federal courts located in Erie County, Pennsylvania, which shall be the exclusive venue for such matters. Both parties hereby submit themselves to the jurisdiction of such courts for these purposes.

15. Errors

Seller reserves the right to correct any typographical or clerical errors which may be present in prices, specifications, quotations or acknowledgments.

16. Entire Agreement

The terms of a quotation and/or acknowledgment (including any specifications or other documents incorporated by reference therein) and these Terms and Conditions constitute the entire understanding and agreement between Buyer and Seller concerning the subject matter. Any representation, promise, course of dealing or trade usage not contained herein will not be binding on either party. No modification, amendment, rescission, waiver or other change of any resulting agreement or any part thereof shall be binding upon Seller unless consented to in writing by Seller authorized representatives in North East, Pennsylvania, U.S.A. If any term or condition set forth in a quotation and/or acknowledgment is declared null and void by any court with competent jurisdiction, the remaining terms and conditions shall nevertheless remain applicable.

Note: Additional terms and conditions apply to installation services.