

**1. Title and Risk of Loss.** Title and risk of loss pass to Buyer Ex Works Seller's fabrication plant.

**2. Prices.** Prices quoted for equipment are based on receiving orders for the quantity specified. Prices quoted also assume Seller shall not be responsible for any duties, fees, licenses, permits, tariffs, or taxes.

**3. Validity.** Prices expire 30 days from quotation date, if not previously canceled in writing by Seller. Stock materials included in a quotation are subject to prior sale.

**4. Changes.** If Buyer requests or causes a change in Seller's quoted schedule or method of engineering, fabrication, or shipment that results in delay or additional expense to Seller, all costs incurred shall be for the account of Buyer, including storage charges in the event of a suspension of fabrication or delivery. The delivery date shall be equitably adjusted when affected by any Buyer change. In no event will a change be implemented without a signed change order issued by Buyer.

**5. Shipment/Delivery.** All prefabricated packages shall be assembled in Seller's plant to the extent practicable. These assembled units shall be disassembled before shipping, but only to the extent required to facilitate the chosen means of transportation. All field reassembly necessary to place units in operable condition shall be done by and at Buyer's expense.

**6. Force Majeure.** Seller shall not be liable for delays due to unforeseeable causes or events beyond its reasonable control. Seller shall give Buyer written notice within 7 days of commencement of the cause or event and shall promptly resume performance upon expiration of the cause or event.

**7. Equipment Warranty.** Seller warrants new equipment of its manufacture to be free from defective workmanship and material for a period of 12 months from date of equipment startup or 18 months from date of Seller's transmittal of notice of readiness for shipment to Buyer, whichever period expires first, provided Buyer subjects the equipment only to the operating conditions specified by Buyer when the order is placed and in accordance with Seller's written operating instructions, if any. Seller does not warrant components manufactured by others but will use its best efforts to procure and assign any component manufacturer's warranty or guarantee to Buyer. In the event of a breach of this warranty, Seller shall, at its option, repair the defective part or furnish a replacement part Ex Works Seller's fabrication plant. Equipment performance guarantees, if any, are specifically limited to those described in Seller's quotation. **SELLER MAKES NO WARRANTY WITH RESPECT TO PARTS REQUIRING REPLACEMENT DUE TO NORMAL WEAR AND TEAR. EXCEPT FOR THE WARRANTY EXPRESSLY STATED ABOVE, THERE ARE NO OTHER WARRANTIES AND NONE SHALL BE IMPLIED BY LAW INCLUDING THOSE OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**

**8. Service Warranty.** Service work is warranted for 180 days from the original service date. **NO OTHER WARRANTIES, EXPRESS OR IMPLIED, ARE GIVEN.**

**9. Indemnity.** To the extent of its negligence or fault, each party agrees to release, indemnify, and hold harmless the other party from and against all causes of action, claims, damages, demands, liability, losses, and suits of every type and character, including all litigation expenses, court costs, and attorney's fees, arising out of or related in any way to the work contemplated by this sale ("Claims") that are asserted for personal injury, death, or property damage. Seller's liability for damages to Buyer's tangible property shall be limited to repair or replacement of the damaged part or parts of the goods furnished hereunder. In no event shall Seller be liable to Buyer for delays, curtailment of plant operations, process failure, pollution, loss of profits, costs for removing any parts or equipment to be repaired or replaced, transportation, or installation charges in connection with the repair, replacement, or servicing of any parts or equipment. Any drawings or general information furnished to aid Buyer in the installation or erection of goods sold are furnished for Buyer's convenience only, are not warranted by Seller, and Seller shall incur no liability whatsoever arising therefrom.

Neither party shall be liable for any special, indirect, speculative or consequential damages of any type or character (including, but not limited to, loss of profit, use, or production) arising from or related in any way to performance hereunder.

**BUYER WILL RELEASE, INDEMNIFY, AND WILL HOLD SELLER HARMLESS FROM ANY CLAIMS REGARDING POLLUTION REGARDLESS OF SOURCE.**

Seller shall not be liable for the structural design or operating performance of equipment manufactured according to designs, drawings, or specifications of Buyer or a third party acting for Buyer; this provision shall also include shop drawings made by Seller and approved by Buyer.

**10. Cancellation for Convenience.** Where cancellation of this sale or any work ordered in connection with this sale is for Buyer's sole convenience, Buyer shall ratably reimburse Seller for all work performed prior to Seller's receipt of Buyer's cancellation notice and all reasonable costs incurred in effecting cancellation.

**11. Limitation of Liability.** To the fullest extent permitted by applicable law and to the extent not specifically negotiated and noted elsewhere, Seller's total liability, in the

aggregate, to Buyer or anyone or any entity claiming by, through, or under Buyer for any Claims from any cause or causes including, but not limited to, any breach of contract or warranty or negligence or strict liability shall not exceed 25% of the value of the goods provided, services rendered, or work performed by Seller.

**12. Intellectual Property.** Unless otherwise specifically stipulated elsewhere, Seller shall pay all royalties and license fees and assume all costs and expenses incident to the use of any invention, composition, process, device, article, appliance, or design that is the subject of patent rights, copyrights, or other legal rights of ownership as are applicable to the goods manufactured by Seller and furnished hereunder. Seller shall indemnify and hold harmless Buyer from and against all Claims, including attorney's fees, arising out of any infringement of these rights during or after completion of performance and shall defend all Claims in connection with any alleged infringement of these rights. Seller must be notified promptly in writing and given authority, information, and assistance (at Seller's expense) for the defense, and Seller shall pay all sums and costs awarded against Buyer, not to exceed the price paid or due to Seller for the equipment held to infringe. Seller shall have no liability for infringement Claims related to its equipment, if the equipment is used for purposes other than those contemplated by the Seller or if infringement Claims arise out of the use of Seller's equipment in conjunction with other equipment not supplied by Seller. Unless the use of an infringing item or part is enjoined, Seller shall, at its own expense and option, either (i) procure for Buyer the right to continue using the item or part, (ii) replace with non-infringing items, (iii) modify it so that it becomes non-infringing, or (iv) remove the items and refund the purchase price thereof. These provisions shall not apply to any item manufactured pursuant to Buyer's design or to infringement Claims for equipment furnished but not manufactured by Seller. Further, Seller assumes no liability and shall be indemnified by Buyer for any infringement associated with any item manufactured pursuant to Buyer's design.

**13. Buyer's Financial Condition.** Seller reserves the right to cancel work at any time prior to delivery of the equipment without further obligation or liability on Seller's part, if Buyer's credit or financial condition is unsatisfactory to Seller.

**14. Payment Terms.** Terms are net 30 days from date of invoice. Interest will be charged on past due accounts at the maximum lawful rate. All fees, costs, and expenses incurred (legal or otherwise) by Seller in pursuit of monies due shall be reimbursed by Buyer. Regardless of the actual shipment date, Seller shall issue an invoice at time of notification of readiness for shipment.

**15. Inspection.** Any inspection or acceptance required by Buyer shall take place at Seller's fabrication plant; however, it is expressly understood that inspection and acceptance at the fabrication plant shall not relieve Seller of the Warranty responsibilities found in these terms and conditions. Buyer shall be responsible and pay for all permit and licenses fees required by any law, order, rule, or regulation of any authority having jurisdiction relative to inspection of the material or labor sold hereunder.

**16. Subcontractors.** Seller may subcontract all orders.

**17. Storage.** In the event Buyer delays shipment for any reason and desires to store the equipment on Seller's premises, Buyer agrees to and shall execute Seller's Storage Agreement.

**18. Assignment.** Any transaction resulting from this order shall not be assignable by either party without the prior written consent of the other party, except that any transaction may be assigned without consent to the successor of either party acquiring all or substantially all of the business or assets of that party.

**19. Controlling Terms.** These terms and conditions shall prevail over all other terms and conditions unless an officer of Seller waives the conflict in writing.

**20. Applicable Law.** The validity of these terms and conditions, all related documents, and all Claims arising hereunder shall be construed, interpreted, and governed in accordance with the laws of the State of Texas. The parties agree that for purposes of all Claims that arise out of or are related in any way to the subject matter of this sale that proper venue shall be Harris County, Texas.

**21. Buyer Responsibility.** Buyer, through its own analysis, is solely responsible for making the final product selection and assuring that all performance, endurance, maintenance, safety, and warning requirements for Buyer's particular application are met. Buyer must analyze all aspects of its particular application and follow applicable industry standards and product information. If Seller provides product options, Buyer is responsible for determining the utility and functionality of the option, as well as its suitability and sufficiency for the reasonably foreseeable uses of the product by Buyer.

**22. Survival.** Articles 7, 8, 9, 11, 12, 19, 20, and 21 shall survive termination or delivery of the goods provided, services rendered, or work performed by Seller.