



## TERMS AND CONDITIONS OF SALE

1. This offer to sell is expressly conditioned on buyers acceptance of all terms and conditions herof, which shall take precedence over any inconsistent, contradictory, or additional terms and conditions contained in any request for quotation, purchase order or other document furnished by Buyer in connection with this transaction whether such documents are exchanged simultaneously with this offer or prior or subsequent thereto, and Buyer's acceptance and receipt of the goods shipped hereunder shall constitute acceptance of such terms and conditions contained herein.

**2. SHIPPING DATE – FORCE MAJEURE:** Unless otherwise expressly stated, anticipated shipment dates and lead times are from the date of receipt of Buyer's order with complete manufacturing information or from the date of approval of drawings, when required. It is understood that Buyer will accept this equipment at an earlier date if Seller is able to ship it sooner than such specified ship date. Seller may ship any portion of the equipment contingent upon good freight cost practices, as soon as it is completed and payment therefore shall be in accordance with agreed terms of payment. If shipment is delayed at Buyer's request or by reason of other causes beyond Seller's control, payment shall become due under the terms of payment from the date of receipt of Buyer's order complete as stated above, and buyer further agrees to pay storage charges Seller reasonably determines appropriate. In the event Seller is compelled to store the equipment, storage of such goods will be at the Buyer's risk and Buyer must insure the same. Seller shall not be liable for any loss or damage for delay or non-delivery due to governmental acts or regulations or any civil or military authority, acts of Buyer or by reason of any force majeure, which shall be deemed to mean all other causes whatsoever not reasonable within the control of Seller, including but not limited to acts of God, war, terrorism, riot or insurrections, blockades, embargoes, sabotage, epidemics, storms, floods, earthquakes, labor disputes, lockouts or other industrial disturbances, delays of carriers, interruptions of power and inability to secure materials. Any delay resulting from any such cause shall extend shipping dates correspondingly. Seller shall in no event be liable for any special, indirect or consequential damages arising from delay or non-delivery irrespective of the reason therefore, and receipt by Buyer shall constitute acceptance of goods and waiver of any claims due to delay.

**3. CANCELLATION OR TERMINATION:** If buyer shall cancel or terminate this order, such cancellation or termination shall only be made upon written notice to Seller, and in such event Buyer shall pay to Seller Seller's reasonable charges, including but not limited to, a quantity price adjustment for any goods delivered, and all other costs incurred and committed for by Seller, and Seller's prorated profit thereon.

**4. SUSPENSION:** If Seller's performance is delayed for a period of more than six (6) months by reasons of any cause set forth in paragraph two (2), above, upon removal of the cause of any such delay, performance shall be resumed, delivery rescheduled, and the purchase price shall be subject to any price increase in effect at the time of resumption of performance. If Buyer is unwilling to accept such adjusted purchase price and such rescheduled delivery date, it shall immediately cancel its order as provided in paragraph three (3) above.

**5. TERMS OF PAYMENT:** Unless otherwise specified, the equipment offered herein is quoted F.O.B. Seller's shipping point. The terms of payment are quoted in U.S. Funds, payable net 30 days after material is shipped or is reported ready for shipment. These terms are applicable to partial as well as complete shipments. A 1 ½% service charge per month will be applicable to outstanding balances past 30 days. If applicable, progress payments will be stated in the proposal. When in the opinion of Seller, the financial condition of Buyer renders it appropriate; Seller may require cash payment or satisfactory security before each shipment

**6. WARRANTY AND LIABILITY LIMITATION:** Seller, except as otherwise provided, warrants only goods of its own manufacture and that warranty is against faulty workmanship or the use of defective materials, under normal use and service, and that such goods will conform to mutually agreed upon written specifications and drawings for a period of twelve (12) months from the sooner of the date equipment is reported ready for shipment and the date of shipment of the goods from the Seller's chosen shipping point. THE ABOVE LIMITED WARRANTY IS IN LIEU OF ALL WARRANTIES OF SELLER EXPRESSED OR IMPLIED. ALL IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE (AND/OR ANY OTHER OBLIGATIONS ON THE PART OF THE SELLER) ARE HEREBY SPECIFICALLY EXCLUDED: Seller assumes no responsibility for deterioration of the equipment due to corrosion, erosion, or flow induced tube Vibration, or for fouling, maintenance problems or any other cause not specifically covered under the foregoing warranty. The sole remedy of Buyer with respect to any equipment or part not conforming to any warranty of Seller shall be the repair or, at Seller's option, replacement of any defective part at the point of manufacture, Buyer assuming all costs of removal, shipping and reinstallation, provided that immediate written notice of the defect has been given to Seller: and Seller shall not be liable for any other expenses incurred because of failure of any part to meet Seller's warranty, nor for any special, indirect, consequential or punitive damages. Material returned to Seller's factory without its written consent and notification to Seller shall not be accepted. No back charges will be honored without Seller's advance approval of the

manufacture, sale, delivery, resale, installation, technical direction of installation, inspection, repair, operation, or use of any equipment covered by or furnished hereunder shall in no case exceed the price paid by Buyer for the equipment. Seller also disclaims all liability, whether in contract, tort, warranty, or otherwise, to any party other than the Buyer.

**7. DRAWINGS AND DESIGN CHANGES:** Proposal drawings submitted with Seller's offer are intended only to show the general style, arrangement and approximate dimensions of the equipment and are not certified for field installation. Only when specifically requested by Buyer will Seller submit plans or certified drawings for Buyer's approval. Shop detail drawings shall not normally be furnished and in any event they are proprietary to Seller. Should Buyer request changes, Seller shall have the option of making an additional charge over the original purchase price to cover the change; however, Seller shall notify Buyer of such additional charge prior to proceeding with the modification. Should Buyer approve plans and/or drawings without change, Seller shall then proceed with fabrication of the equipment in accordance with such approval. Should Buyer subsequently request changes after fabrication has commenced, Buyer shall be responsible for Seller's additional expenses and charges.

### 8. TITLE-RISK OF LOSS-FREIGHT ROUTING

Unless otherwise agreed in writing, the equipment purchased hereunder shall be delivered F.O.B Seller's chosen shipping point. Title, possession and risk of loss from any damage or casualty to the equipment shall be upon Buyer when Seller has delivered the equipment to the carrier. Buyer agrees that Seller shall retain, and Buyer hereby grants to Seller, a security interest in the equipment until the purchase price has been paid, and Buyer agrees to perform all acts necessary to protect and assure Seller's security interest. In the event of any loss or damage or shortage in transit on a sale where it is expressly agreed in writing that Seller is responsible for the freight, and/or that the F.O.B is other than Seller's chosen shipping point, Buyer must make notation on the carrier's delivery receipt of said loss or damage or shortage, and make this document immediately available to Seller and as further provided in paragraph 9. Buyer shall pay to Seller, in addition to the purchase price, any amount by which transportation charges may be increased, by reason of increased transportation rates, between dates of proposal and the actual shipping date. Seller may ship or route as Seller deems reasonable in the circumstances and is authorized to ship the goods by any carrier. Should premium transportation be requested or required, such as expedited transportation or exclusive use of truck, Buyer agrees to reimburse Seller the difference between normal and premium transportation costs on all orders, including those orders sold with freight included in the total purchase price.

**9. SHORTAGES:** Seller will not recognize any claims for shortages, errors or breakage, unless made in writing within 30 days after receipt of goods at destination, accompanied by transportation bill with detailed notation of the problem thereon.

**10. INSURANCE:** Seller shall not provide any insurance coverage, unless by special written agreement to which Seller expressly consents.

**11. SELLER'S SUPPLIERS AND SUBCONTRACTORS:** Seller may contract with one or more suppliers or subcontractors relative to any obligation to Buyer (while additionally remaining responsible to Buyer) Where performance is contracted or arranged by Seller, that supplier or subcontractor shall be included within the term Seller as used herein.

**12. TAXES:** Any tax imposed by any present or future law on the sale of equipment described herein shall be added to the purchase price stated herein and is the responsibility of Buyer

**13. WAIVER OR MODIFICATION:** The terms and conditions stated herein constitute the entire agreement between the parties relating to this transaction and no addition to or modification of any provision hereof shall be binding upon Seller unless made in writing and signed by a duly authorized representative of Seller. No waiver by Seller of any provision set forth herein shall constitute a waiver of any other provision.

**14. APPLICABLE LAW:** The laws of the State of Minnesota shall govern the validity, performance and construction of any agreement between Buyer and Seller. Any action against Seller, in any way related to this sale or these terms and conditions of sale, shall only be venued in State or Federal Court, Hennepin County, Minnesota

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