

Sales Conditions

1. Delivery and Excusable Delays.

Seller will make all reasonable efforts to conform with delivery estimates but neither party shall be held in default for failure to perform or delay in performance arising out of causes beyond its reasonable control and without its fault or negligence, including, but not limited to, acts of God or of the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, lockouts, labor disputes, freight embargoes, delays in routing, fuel or energy shortages, inability to secure necessary parts and materials, and unusually severe weather. Unless otherwise specified, payment is due upon shipment by Seller. If shipment is delayed beyond the original agreed shipment date due to Buyer's failure to provide information necessary to complete or to ship the order, or if Buyer requests that completion or shipment of the order be delayed beyond the original agreed shipment date, then Buyer shall be invoiced on the original agreed shipment date for so much of the order as has then been completed and Buyer agrees to make timely payment of such invoice. Seller will notify Buyer in writing within a reasonable time after the beginning of any delay. In the event of any delay, the date or dates for performance by Seller of this contract shall be deemed extended for a period equal to the time of delay.

IN NO EVENT SHALL SELLER BE LIABLE FOR CONSEQUENTIAL DAMAGES FOR FAILURE TO PERFORM OR FOR DELAY IN PERFORMANCE HOWEVER CAUSED.

2. Changes in Design or Construction.

Seller reserves the right in its sole discretion to make any changes it deems desirable in the design or construction of the equipment described in this quotation, without incurring any obligation to furnish Buyer with such changes in similar items previously delivered, provided that any equipment so changed meets the performance specifications.

3. Warranty and Liability.

Seller warrants the equipment manufactured by it to be free from defects in material and workmanship at date of shipment from Seller's factory and for a period of one year thereafter, under proper and normal use and service. As to all apparatus and accessories not manufactured by Seller which are part of the equipment furnished by Seller, Seller's only obligation shall be to obtain for Buyer such warranties or guaranties as are available from the vendors thereof. Such warranties or guaranties shall extend over the longest period of time obtainable in this instance by Seller, without payment by Seller of additional consideration therefor. Seller further warrants that the equipment will perform in accordance with the performance characteristics, if any, of such specifications as may be made a part hereof. If the specifications provide for a performance test or tests, the ability of the equipment to meet this performance warranty shall be determined by the result of such test or tests. Upon the successful completion of such test or tests, all liability of Seller under this performance warranty shall terminate. If such performance test or tests are specified but, without fault of the Seller, are not completed within 60 days after date of shipment, the equipment shall be conclusively deemed to have satisfied this performance warranty and all liability of Seller therefor shall terminate. If no performance test or tests are specified, the ability of the equipment to meet this performance warranty shall be determined by the operation of the equipment under normal operating conditions within three months from date of startup of the equipment, but not more than one year from date of shipment. If, during the applicable warranty period, the equipment or any part thereof is found to have been defective when shipped, it will be repaired at Seller's factory or replaced without charge, f.o.b. factory, provided that Buyer gives Seller immediate written notice upon discovery of such defect, whereupon Seller shall have the option of requiring the return of the defective part or parts, freight prepaid, to establish the claim. As to apparatus and accessories of other vendors, resort shall be had against such vendors only, and Seller shall use reasonable efforts to require its vendors to fulfill the obligations of their warranties or guaranties on such apparatus and accessories furnished hereunder. The replacement or repair of defective parts, as aforesaid, shall be Buyer's only remedy for breach of the warranties of Seller, except that, in case of failure of the equipment to fulfill Seller's warranty of performance, Seller shall have the option of removing and reclaiming the equipment at its own expense and of repaying to Buyer all sums received on account of the purchase price, in which event all liability of Seller shall terminate. No allowance will be made for repairs or alterations made without the written consent of Seller, in which event all Seller's warranties shall be void and of no effect. **Seller's warranties shall not extend to equipment which has not been connected, installed, used or maintained in accordance with written instructions from Seller.** Buyer agrees to assume responsibility and pay for such defects which are attributable to it and for damages which may occur to the equipment after delivery to it.

ANY OTHER PROVISIONS OF THIS AGREEMENT TO THE CONTRARY NOTWITHSTANDING THIS WARRANTY EXCEPT AS TO TITLE IS IN LIEU OF ALL OTHER WARRANTIES EXPRESS OR IMPLIED, INCLUDING MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, ARISING BY LAW, CUSTOM OR CONDUCT. THE RIGHTS AND REMEDIES PROVIDED HEREIN ARE EXCLUSIVE AND IN LIEU OF ANY OTHER RIGHTS OR REMEDIES. IN NO EVENT SHALL SELLER BE LIABLE FOR SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES.

4. Taxes.

The price for the equipment does not include any excise, sales, privilege, or use tax or taxes which are payable by Seller because of the execution of any agreement resulting herefrom, or the sale or delivery of this equipment, and Buyer shall reimburse Seller for any such tax or taxes where applicable.

5. Patents.

Seller agrees that it will, at its own expense, defend and hold Buyer free and harmless in any suit or proceeding insofar as the same is based on a claim that the equipment furnished hereunder constitutes an infringement of any existing U.S. patent provided Buyer gives Seller prompt notice of such suit or proceeding, permits Seller through its counsel to defend the same, and gives Seller all necessary information, assistance and authority to enable Seller so to do. In case said equipment is in such suit held to constitute infringement and the use of said equipment is enjoined, Seller shall, at its own expense and at its option, either procure from Buyer the right to continue using said equipment; or replace the same with non infringing equipment or modify it so it becomes non infringing; or remove said equipment and refund the purchase price. The foregoing states the entire liability of Seller for patent infringement by the equipment furnished hereunder and is not to be construed in any way as rendering Seller liable for special, indirect or consequential damages. The provisions of this paragraph shall not apply to any equipment specified by Buyer or manufactured to Buyer's design. As to such equipment, Seller assumes no liability whatsoever for patent infringement.

6. Drawings.

Ownership of drawings, bills of material, flow diagrams, plot plans, details, specifications and other data prepared by Seller shall remain with Seller, except in the case of drawings, manuals, etc., if any, required to be supplied to Buyer hereunder. Drawings, manuals, etc., so required to be supplied to Buyer shall be the property of Buyer, but Buyer agrees to use them solely for the purpose of facilitating or completing construction maintenance, operation, modification, and repair of the equipment, and agrees not to disclose the same to others for other purposes without the consent of the Seller.

7. Acceptance.

This quotation embodies the entire agreement between the parties hereto and supersedes all prior representations, samples, technical advice and agreements between the parties in connection with the sale of the articles described herein. Unless accepted in writing by an executive officer of Seller, any terms or conditions in Buyer's acceptance of the quotation, whether in the form of a purchase order, acknowledgment, confirmation or otherwise, which purport to add to, modify, supersede or otherwise alter the terms and conditions contained in this quotation, shall not be binding on Seller nor have the effect, in construing any agreement resulting from Buyer's acceptance of this quotation, of canceling or otherwise leaving open any terms or conditions herein proposed. The commencement by Seller of any work relating to supply of the equipment described in this quotation shall not be construed as Seller's acceptance of any additions to, modifications, or alterations of, the terms and conditions set forth herein

8. Interpretation.

Any agreement between Seller and Buyer resulting from acceptance of this quotation shall be governed by and construed according to the laws of the State of Maine.