

AIROFLEX EQUIPMENT TERMS AND CONDITIONS

The Purchaser's Purchase Order and/or the Seller's Proposal are subject to the following Terms and Conditions despite any different or additional Terms and Conditions which may be contained in the Purchaser's Purchase Order. If any of the Seller's Clarifications, Limitations or Terms and Conditions are deemed to be unacceptable by the Purchaser, the Purchaser shall immediately notify the Seller and all issues resolved prior to the execution of the Proposal/Purchase Order.

MODIFICATION - All previous communications between the parties hereto, or the subject hereof, either verbal or written, are hereby abrogated and withdrawn, unless attached to and made a part of this instrument, and the final acceptance of this Proposal or a Purchase Order, with the specifications and drawings referred to herein, constitutes the whole agreement between the parties hereto. No modifications, changes or waivers of any of the terms, agreements and conditions of the agreement shall be binding upon Purchaser or Seller, unless signed by Purchaser and by an executive of Seller on its behalf.

EXECUTION & CHANGES MADE PRIOR TO EXECUTION – Prior to the execution of this Proposal or a Purchase Order by both parties, the Seller reserves the right to withdraw, or change the terms of this Proposal at anytime. A valid and binding contract shall arise hereunder only when this Proposal or Purchase Order shall have been officially signed by Purchaser, and accepted and signed by an authorized executive of Seller on its behalf or by such executive's written acceptance of Purchaser's Purchase Order covering the equipment herein specified, and such acceptance shall be with the mutual understanding that all terms and conditions of this Proposal are a part thereof with the same effect as though signed by both parties named herein and shall prevail over any inconsistent provisions of said Purchase Order.

LIMITATION OF LIABILITY & DAMAGES – Notwithstanding any other term or condition, the Seller's aggregate liability herein shall not exceed the Proposal Price, as may be adjusted by Change Order, for all uninsured claims. All insured claims are subject to the terms, coverage's and limits the Seller has in place at the time the services are sold to the Purchaser. **SELLER SHALL NOT BE LIABLE FOR ANY CONSEQUENTIAL DAMAGES RESULTING FROM THE USE OF THIS PRODUCT OR CAUSED BY ANY DEFECT, FAILURE OR MALFUNCTION OF ANY PRODUCT WHETHER A CLAIM FOR SUCH DAMAGE IS BASED UPON WARRANTY, CONTRACT, NEGLIGENCE OR OTHERWISE.**

TAXES - All sales, use or other taxes on the products purchase that may be imposed upon this transaction by the federal government or any state government, or any subdivision thereof shall be paid by the Purchaser. If the project is tax exempt, the Purchaser shall provide the Tax Exemption Certificate to Seller at the time the Proposal or Purchase Order is signed by the parties.

PAYMENT – Payments shall be made by the Purchaser to the Seller pursuant to the terms/schedule contained in the Seller's Proposal. A late payment charge of one and one-half percent (1½ %) per month will be added to any invoiced amounts unpaid when due. If said late payment charge is prohibited by law the charge shall then be at the highest lawful contract rate. Purchaser shall reimburse Seller, upon demand, for any costs of collection incurred by Seller, including reasonable attorneys' fees. If during the period of the contract the financial condition of Purchaser does not justify the terms of payment specified, Seller may demand full or partial payment in advance before proceeding with further work or deliveries. If shipment is delayed beyond the scheduled ship date by Purchaser, payment shall be due in full when Seller was originally scheduled to make the shipment(s). If Purchaser defaults in any payment when due, then the whole contract price shall immediately become due and payable upon demand, or Seller, at its option without prejudice to other lawful remedies, may defer delivery or cancel this contract, and in such case shall not be liable for non-performance of this contract.

CHANGES - Any change in material and/or labor will be documented by a written Change Orders. Said Change Order shall be at a price agreed upon by the Parties and then signed by both Parties before the additional work is commenced. The Seller reserves the sole right and discretion not to accept a Change Order or change request made by the Purchaser.

INSURANCE – Seller has provided its Proposal and quoted the work based upon its current insurance coverage's, limits and policy terms. Seller will furnish its current certificate of insurance to the Purchaser upon written request. The Certificate may name the Purchaser as additional insured. If a waiver of subrogation is requested, it will be provided to the Purchaser for the Seller's General Liability Policy only and then subject to the terms as the insurers may require. Seller agrees to provide the Purchaser with thirty (30) days notice of cancellation of any policy provided.

The Purchaser shall provide all necessary insurance to protect and cover the work itself during shipment, the term of project construction and at the project's completion. Seller shall not be obligated to pay any premium or deductibles without prior written acceptance and approval by Seller. Such additional requirements may result in an adjustment to the Contract price via a Change Order or to Seller's Proposal.

INDEMNIFICATION – Seller will defend, indemnify, and/or save harmless the Purchaser from the payment of any damages caused by accidents, injuries or hurt that may occur in connection with this work so long as such damages are caused by acts or omissions of Seller, its subcontractors, or its suppliers. The Seller shall not be liable for the acts or omissions of any others, including the Purchaser or for the defense of such claims.

Notwithstanding the foregoing, in any third-party actions involving Seller's employees, its subcontractor's employees or its supplier's employees, Seller agrees that it will defend and indemnify the Purchaser for any negligence acts or omissions up and to an amount equal to the amount that has paid or tendered, or will pay or tender, in workers compensation benefits. Seller, its subcontractors or suppliers specifically seeks to enforce their rights under Kotecki v. Cyclops Welding Corp. or under any other statute, law or ordinance, or common law theory that limits an employer's common law liability to the amount of worker's compensation benefits it has paid or tendered to its employee. Further, the Seller shall not be liable for any damages or claims that may exist or may be brought due provision of services and/or the shipment of any equipment/goods outside of the continental United States

In no event shall the Seller be liable to the Purchaser or any others for the failure of the Purchaser or others to abide by the Operating Instructions and/or Maintenance Manuals or for abuse neglect etc. of the equipment/goods

Purchaser agrees that they shall provide the same indemnification obligations to Seller as the Seller has provided to them herein for the duties and obligations they may have under the Proposal/Purchase Order.

DESIGN AND ENGINEERING SERVICES – Only the engineering services that are outlined and defined in the Seller's Proposal shall be the responsibility of the Seller. Generally, these services include the equipment design (excluding foundation), electrical schematic and the hydraulic system. These services do not include the interface of the Seller's equipment with other existing systems/work at the site and/or new systems installed contemporaneously with the Seller's equipment. Notwithstanding the foregoing, the Seller shall have no obligation to furnish these services until the Purchaser has furnished the Seller with the information and instructions it is obligated to provide and as is reasonably necessary for the execution of the Seller's services.

Seller agrees to prepare and then submit to the Purchaser, for approval the Purchaser's approval, all equipment general arrangement drawings (not including and of the Seller's shop drawings), unless Purchaser waives such approval in advance. When the Purchaser's approval is required, it shall consist of review and notation of any concerns, comments or questions in a timely fashion. Failure by the Purchaser to comment or reject drawings within ten (10) days of the Seller's submission or as may be necessary to maintain the project schedule shall be deemed to constitute "Approval by the Purchaser". Drawings and specifications furnished by Seller are and shall remain the sole property of the Seller, regardless of whether or not the work for which they are made is completed, improved or used for any other project.

PRODUCT DESIGN CHANGES - Seller reserves the right to make, at any time, such changes in its design, arrangement, specifications or equipment as shall in its judgment constitutes an improvement over former practice. These shall be at the Seller's cost, unless otherwise agreed by the parties or otherwise requested by the Purchaser. Such changes do not include changes requested or made by the Purchaser. Such changes are subject to the execution of a Change Order by the parties.

LIMITED WARRANTY - Seller warrants its equipment against defects in materials and workmanship for a period of twelve (12) months after Start-up or eighteen (18) months from the date of shipping, whichever occurs first. Warranty does not include any field labor or equipment for the removal/replacement of defective parts. This warranty is for the "repair and/or replacement of parts only". Notwithstanding, all equipment, parts, and accessories furnished and sold by Seller, but manufactured by others, will be warranted only as allowed by the specific Manufacturer, Supplier or Vendor and not as is provided by the Seller herein.

Without limiting the foregoing, any warranty found applicable to the Seller, shall be the exclusive remedy available to Purchaser and shall be specifically limited to the replacement free of charge, F.O.B. factory of parts failing through defective workmanship or materials and does not apply to any machinery, equipment and accessories which have been subjected to misuse, neglect or accident, or have been altered or tampered with or if corrective work has been done thereon without written consent of Seller. In addition, the warranty does not apply to machinery, equipment and accessories which have been improperly lubricated, has deteriorated due to abrasive material and/or has not been stored properly or per recommendations.

The Purchaser shall notify the Seller, in writing of any part or piece that they believe is defective. This includes providing relevant information to assist the Seller in determining the root cause of the defect (photos, maintenance documents etc.). The Seller shall have a period of twenty (20) days from the date they receive the Purchaser's notice the review the claim, deny the claim, provide a repaired or replaced the part/piece or submit a plan ("plan period") to repair or replace the part for any items that will take more than twenty (20) days to actually repair/replace. After the passage of the twenty (20) days or the plan period the Purchaser may take steps to complete the work on their own and charge the Seller for the reasonable cost thereof. Such damages shall not include liquidated damages, consequential or incidental damages or other similar damages and shall be expressly limited to the reasonable cost to complete the work

THIS WARRANTY AGREEMENT IS EXPRESSLY IN LIEU OF ANY AND ALL REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WHETHER ARISING FROM STATUTE, COMMON LAW, CUSTOM OR OTHERWISE. THE REMEDY SET FORTH IN THIS DISCLAIMER AND WARRANTY AGREEMENT SHALL BE THE EXCLUSIVE REMEDIES AVAILABLE TO ANY PERSON. NO PERSON HAS ANY AUTHORITY TO BIND THE COMPANY TO ANY REPRESENTATION OR WARRANTY OTHER THAN THIS DISCLAIMER AND WARRANTY AGREEMENT.

DEFAULT – In the event that the Purchaser believes that the Seller is in default of a “material provision” of the Proposal/Purchase Order, the Purchaser shall provide the Seller with a written “notice of default”. The Seller shall be given a period of twenty (20) days to cure the default or to provide a plan, including a “plan period” to correct/cure the default in the event that the default cannot be corrected within the twenty (20) day period. After the passage of the twenty (20) days or the plan period the Purchaser may take steps to complete the work on their own and charge the Seller for the reasonable cost thereof. Such damages shall not include liquidated damages, consequential or incidental damages or other similar damages and shall be expressly limited to the reasonable cost to complete the work

CANCELLATION-TERMINATION BY PURCHASER - It is understood and expressly agreed that in the event of cancellation/termination for any reason (except the Seller’s default) or refusal by the Purchaser to accept the products herein contemplated, Seller shall be entitled to demand receipt from the Purchaser as liquidation charges and not as a penalty, not less than ten percent (10 %) of the purchase price, plus the cost of all material and work furnished or done or purchased by Seller up to the time of cancellation or the Purchaser’s refusal to accept the products, plus costs for time spent by the Seller in cancelling the order and/or any cancellation charges incurred by Seller to its Manufacturers, Suppliers or Vendors.

PURCHASER RETURNED PRODUCTS - Products may not be returned, except by prior written permission of an authorized official of Seller. All returned products will be subject to handling and restocking charge and any transportation costs.

SELLER’S LIMITED SAFETY DEVICES - Seller shall not be required to furnish or be responsible for any safety devices, except those which may be provided for in the equipment design. Purchaser agrees to abide by Section 29 of the Seller’s Limitations-Clarification-Exceptions included herewith.

DELIVERY - Seller will make reasonable efforts to meet the scheduled shipping dates. Notwithstanding, Seller shall have no liability for consequential, incidental, or other damages due to failures, for any reasons, to meet scheduled shipping dates for reasons beyond the Seller’s control. The Seller’s failure to meet such scheduled shipping dates shall not be sufficient cause for cancellation, without the liquidation charges.

TITLE - Unless expressly provided otherwise in this Proposal or Purchase Order, title to products shall pass from the Seller to the Purchaser only upon the receipt of payment by the Seller.

RISK OF LOSS - Risk of Loss shall pass to the Purchaser F.O.B. point of shipment, even in cases wherein freight may be prepaid or allowed to destination by Seller. The Purchaser is instructed to immediately inspect all products when they are delivered to the site. Risk of Loss claims will not be considered by the Seller, unless made in writing to Seller within ten (10) days after receipt of the products accompanied by reference to our bill of lading and factory order numbers. Failure by the Purchaser to make a claim in this ten day (10) period shall be deemed a waiver of the right to make a claim at a later date. Any claims for damages or shortages occurring during transportation must be filed by Purchaser against the carriers, as all equipment is shipped at the Purchaser’s risk, unless otherwise provided by the Seller.

PURCHASER CLAIMS - No claims for product shortages or other damages will be considered by Seller, unless made in writing by the Purchaser within ten (10) days after receipt of shipment, the date the damages were actually discovered or the date the damages should have been discovered by the Purchaser using reasonable care, whichever occurs first.

SELLER’S RIGHT TO INSPECT GOODS IN THE PURCHASER’S POSSESSION - Seller shall have the right, but without any obligation on its part, to enter the Purchaser’s premises for the sole purpose of inspection of described equipment while it is in the Purchaser’s possession. Such an inspection will be at the Seller’s cost, unless the parties agree otherwise. Seller shall give Purchaser sufficient advance notice of its intent to inspect so as not to interfere with or disrupt production.

DISPUTE RESOLUTION – In the event a dispute arises between the parties the following dispute resolution procedure shall be exclusively used by the parties: (i) project managers shall attempt to resolve the matter within a time frame of twenty (20) days; (ii) after the passage of twenty (20) days senior officers of the Seller and the Purchaser shall meet at a mutually agreed upon location (the location should be an equal distance for both to travel and must be within the continental United States) within the next ten (10) days; (iii) if the senior officers of the parties cannot resolve the matter within this time frame, the parties agree to proceed to Binding Arbitration per the American Arbitration Associations Rules and Procedures at the location in which the Proposal/Purchase Order is signed by the Seller..

PLACE OF CONTRACT – LAW – VENUE - This Proposal, or the resulting Purchase Order, shall be interpreted under the laws and exclusive venue shall reside in the state where the Proposal/Purchase Order is accepted and signed by an authorized executive of the Seller despite any laws to the contrary. Any product shipped to the Purchaser in any other state shall be considered as a shipment made in interstate commerce.