

TERMS AND CONDITIONS OF SALE

1.0 CONTRACT

Acknowledgement and acceptance of Customer's Purchase Order by ECO, Incorporated ("ECO") shall be conditioned, however, upon Customer's assent to all of the terms and conditions contained herein. No terms or conditions other than those stated herein, whether contained in Customer's Purchase Order or shipping release or elsewhere, and no written or oral agreement that purports to vary these terms and conditions, shall be binding upon ECO unless hereafter set forth in writing signed by ECO. Additional terms listed on the reverse side hereof, if inconsistent with the terms and conditions set forth herein, shall be controlling and shall be deemed a part of the terms and conditions hereof. All negotiations, proposals and representations, if any, made prior and with reference hereto are merged herein, and this writing shall constitute a complete and exclusive statement of the terms of the agreement between Customer and ECO.

Customer's assent to these terms and conditions of sale shall be conclusively presumed from Customer's submission of a Purchase Order or from receipt of any material ordered or services rendered.

2.0 TERMS OF PAYMENT

- 2.1 Unless otherwise specified, payment of all amounts due shall be due in U.S. currency upon receipt of Invoice.
- 2.2 Any and all sums not paid when due shall bear interest at the rate of eighteen percent (18%) per annum until paid.
- 2.3 Customer agrees that he shall not retain any sums due under ECO'S Invoice without prior written approval of ECO.
- 2.4 Should materials and/or subcontractors' services total more than Fifty Thousand Dollars (\$50,000.00), such materials and/or subcontractor services will be invoiced at cost upon receipt of proper invoices covering such materials and for subcontractor services.

3.0 PRICES

- 3.1 All prices are F.O.B. point of manufacture.
- 3.2 Prices do not include and Customer shall pay any and all sales, excise, use taxes or any other duty which may be imposed by federal, state, local, foreign or other governmental authority.
- 3.3 Unless otherwise specified, prices are firm for a period of thirty (30) consecutive days from the date of ECO's proposal. After such period, Customer agrees to pay the prices adjusted as of the date of acceptance of Customer's Purchase Order.

4.0 TRANSPORTATION

- 4.1 All orders accepted by ECO will be shipped F.O.B. point of manufacture with any and all freight, storage and other transportation charges for Customer's account, without recourse, to ECO. Freight charges, if necessary, shall be estimated based upon current rates, tariffs and classifications. Any changes in additional transportation charges shall be for the Customer's account.
- 4.2 Prepaid freight charges are not subject to discount and are due and payable by Customer upon receipt of Invoice from ECO.

5.0 FORCE MAJEURE

- 5.1 ECO shall be excused for any default or delay caused by any contingency beyond its control, including, without limitation, acts of God, wars, riots, embargoes, restraints affecting shipping, strikes, lockouts, fires, accidents, floods, droughts, earthquakes, high winds, other natural calamities, shortage of raw materials, demands or requirements of any government or other agency.

6.0 MILL OVER RUNS

- 6.1 Where tubular materials are included in a proposal, the Customer will be obligated to accept shipment of any mill over-run that ECO has been obligated to accept from its suppliers. This over-run will be limited to ten percent (10%) of any size and grade of material. All over-runs will be billed at mill price plus freight to destination.

7.0 ENGINEERING DRAWING & DATA REQUIREMENTS

- 7.1 Unless otherwise stated in our proposal, only one reproducible copy of approval and final drawings and data will be issued to the Customer. If other quantities or style of these documents are required, additional pricing can be quoted on request.

8.0 BACK CHARGES

- 8.1 No back charges will be accepted by ECO, unless the Customer first notifies ECO of the defects requiring repair and gives ECO or its suppliers the reasonable opportunity to inspect same. ECO reserves the right to return the work to the point of original manufacture for correction or make repairs at the job site with crews of its own choosing without union hindrance or permit the Customer to make on site repairs for a previously agreed upon maximum price.

9.0 CANCELLATIONS

- 9.1 In the event the Purchase Order is cancelled for any reason, a charge will be made for work already complete, including any work done by ECO suppliers, and a reasonable fee to cover lost profit.

10.0 WARRANTY AND EXCLUSION OF OTHER WARRANTIES

- 10.1 ECO warrants, to the original Customer only, the equipment sold to Customer to conform to the specifications set forth in the Proposal and Invoice and shall be tested to indicate that same are free from structural defects in material and workmanship under normal recommended use for a period of one (1) year from the date of delivery to the original Customer.
- 10.2 ECO warrants the equipment to perform at the minimum thermal efficiency and maximum pressure drop stated in the proposal for a period of one (1) year from date of delivery to the original customer. These values are understood to apply only when the unit is operated in accordance with the design process conditions stipulated in the proposal and in a new and clean condition. ECO does not warrant against erosion, corrosion, natural wear or faulty operation.
- 10.3 This warranty does not apply to equipment or accessories manufactured by manufacturers other than ECO, which are separately warranted by such other manufacturers (appropriate adjustments therefor being provided by their respective manufacturers), and any of the equipment which has been altered, subjected to misuse, negligence or accident.
- 10.4 The obligation of ECO under this warranty shall be limited to the repair or replacement of any part which is judged defective by ECO. ECO will not be liable for transport time or income, or any other special or consequential damages of any kind or nature. Implied warranties, if any, shall be limited to the duration of this written limited warranty.
- 10.5 The Customer, at his option and cost, may conduct a performance test to determine if the performance warranties are being met. The Customer shall provide sufficient notice to ECO so that a representative of ECO can witness the test. Additionally, ECO will be given access to all operating data and laboratory analysis that would bear on the final determination of performance. All analysis of operation data will be done in accordance with generally accepted engineering practices and using published physical data and procedures.
- 10.6 ECO shall not be liable for special or consequential damages, such as, but not limited to, damage for cost of replacement goods, or damages for claims of third parties against the Customer, or damages for loss of profits.
- 10.7 Notification of any warranty claim arising within the applicable warranty period, as set forth and mentioned above, must be made in writing by the original Customer within thirty (30) days after the discovery of the alleged basis for any warranty claim.
- 10.8 In no event shall the liability of ECO under this warranty exceed the purchase price of the specific item or items to which such warranty claim relates.
- 10.9 THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PURPOSE, WHETHER ARISING BY LAW, CUSTOM OR CONDUCT.
THE FOREGOING RIGHTS AND REMEDIES ARE EXCLUSIVE AND IN LIEU OF ANY OTHER RIGHTS OR REMEDIES WHATSOEVER, WHETHER STATUTORY OR OTHERWISE, AND WHETHER BASED ON A CONTRACT, TORT OR OTHERWISE.
- 10.10 During the applicable warranty period, as set forth above, warranty repairs will be made without charge by ECO at its designated point of manufacture and repair. Transportation to and from Oklahoma, in connection with any such warranty repair, will be at the Customer's expense. All warranty repairs will be subject to the authorization of factory-trained personnel of ECO whose decision will be final.

11.0 WAIVER OF BREACH

- 11.1 Any waiver by ECO of any breach of any term or condition shall not constitute a waiver of any subsequent breach of the same, or of any other term or condition. The invalidity in whole or in part of any term or condition hereof shall not affect the validity of any other term or condition herein.

12.0 RIGHTS IN INVENTIONS

- 12.1 Customer agrees that all drawings, reports, designs, data and technical and other information emanating from or pertaining to the equipment manufactured pursuant hereto or to the materials supplied or services rendered, all information provided by ECO to Customer and all information becoming known to Customer concerning ECO's inventions, discoveries, improvements, processes or methods, business plans, ventures or practices, manufacturing or other plant design, or any other information affecting the business or professional operations of ECO, shall be maintained confidential by Customer and shall not be published, disseminated, revealed in any manner or to any party, or used in the design, manufacture, use or operation of the plant or business, or the performance of services without ECO's prior written consent; provided, however, that these provisions shall not apply to such information which was known to Customer at the same time it was obtained from ECO or is acquired by Customer from a third party without such third party being under an obligation of confidentiality or is or becomes available other than by violation of the confidentiality obligations herein.

13.0 INDEPENDENT CONTRACTOR

- 13.1 Customer and ECO agree that the status of ECO to Customer shall be that of an independent contractor.

14.0 PERMITS

- 14.1 Customer agrees to procure, at its sole cost and expense, any and all permits and licenses necessary for the performance hereof.

15.0 CHOICE OF LAW

- 15.1 The agreement arising hereunder shall be construed in all respects according to the applicable laws of the State of Oklahoma.

16.0 ENTIRE AGREEMENT

- 16.1 The Invoice, together with all documents, shall constitute the entire agreement between ECO and Customer, superceding any and all oral or written understandings between the parties hereto relating to the items purchased hereunder.

17.0 ASSIGNMENT

- 17.1 Neither the purchase documents, nor any rights, or obligations are transferable (as security for advances or otherwise) without ECO's prior written consent.