

Cole Industrial, Inc. Terms and Conditions of Sale

Except as specifically modified by the typed or handwritten portions of this proposal on the face side, the proposal is subject to the following terms and conditions.

ACCEPTANCE OF PROPOSAL: By signing and returning a copy of this proposal or a purchase order to the Seller, the Buyer shall be deemed to have accepted this proposal and agreed to the terms and conditions set forth herein. Seller may not amend or revoke this proposal for a period of 30 days from date hereof. If Buyer's acceptance is not received within such a period, Seller may amend or revoke this proposal at any time. Buyer understands that Seller is an independent sales representative and does not own or manufacture any of the new equipment covered by this proposal. Thus, upon acceptance by Buyer, it is understood that Seller's obligations hereunder are subject to the further conditions that the manufacturer will promptly approve and requires any adjustments in the prices or terms hereof unacceptable to Buyer. Seller shall have the option to void this entire proposal or substitute comparable equipment at the same or lower prices as quoted herein. However, the right of substitution shall not apply when the proposal is made as part of a bid on a construction project whose specifications expressly require use of equipment made by a manufacturer who does not approve the sale.

TERMS OF PAYMENT AND PRICES: The standard terms of payment are 30 days (O.A.C) from the date of shipment of any equipment or completion of the performance from the date of shipment of any equipment (excluding Rental and Used Equipment). In some instances progress payments will be required, including all proposals exceeding \$100,000.00. If sale consists of equipment and startup services, payment terms shall be Net 30 days from date of shipment regardless of whether or not field services have been completed. If partial shipments are made or several types of services to be performed, Buyer may be invoiced as such partial shipment is made or upon completion of each type of service performed. In addition to the purchase price, Buyer shall pay all shipping costs or, if by prior arrangement Seller is to advance such shipping costs, reimburse Seller for such costs, Buyer shall also pay excise, sales, uses or other taxes or duties which the Seller may be required to pay because of the sale, delivery or use of equipment or services covered hereby, unless Buyer timely provides Seller with a resale certificate or other document acceptable to the appropriate taxing agency establishing an exemption from such taxes or duties. If after acceptance of this proposal Buyer requests changes in the equipment or services to be rendered or delays progress of the manufacturer or delays shipment of the equipment, or the performance of such services later than the dates specified herein, the price therefore shall be appropriately increased.

SHIPMENT: Unless otherwise specified, shipment of the equipment shall be FOB the place of manufacture of equipment. The Seller's responsibility for shipment shall cease and Buyer shall assume all risks of loss upon delivery to the transporting carrier. Any claims for shortages, delays or damages occurring thereafter shall be made by the Buyer directly to the transporting carrier. Any claims against the Seller for shortages in shipment shall be made written 15 days after receipt of shipment by Buyer.

DELIVERY: Seller will use its reasonable best efforts to cause shipment of equipment as scheduled, but all shipment dates are approximate only. Delays in delivery of equipment or the performance of services shall be excused when caused by strikes, lockouts, accidents, fire, acts of God, embargoes, or governmental action or any other cause beyond the reasonable control of the Seller or manufacturer/supplier, whether the same as or different from the instances therein specifically enumerated. If for some reasons, Seller or manufacturer/supplier is unable to ship within a reasonable time after the date scheduled, Seller may, at its option, cancel the agreement without liability, except for return of any amounts previously paid. In no event shall the Seller be responsible or incur any liability for an costs or damages or any nature sustained by Buyer due to any delay in delivery or failure to make delivery as scheduled due to circumstances beyond reasonable control.

EQUIPMENT WARRANTY: The Seller warrants that the equipment to be furnished pursuant to this proposal will conform to the description contained therein. However, the Seller does not warrant that any new equipment will be free of defects in design, material or workmanship and such equipment is sold subject to such warranties as are made by the manufacture/supplier for breach of any such manufacturer's supplier's warranty, any expense to be for Buyers account.

SERVICE WARRANTY: Seller warrants that all installation, start-up or other services to be performed by Seller as described in this proposal will be performed in a workmanlike manner and in accordance with the applicable laws and regulations. However, Buyer shall be responsible for obtaining any required permits or other governmental approvals required as a condition precedent to Seller's performance of such services. Such warranty hereunder shall extend for a period of 90 days after completion of such services. If several different types of services are to be performed, such 90-day period shall run from the completion date of each type of service. Any claimed deficiency in the matter in which such services are performed must be brought to Seller's attention in writing in such 90-day period. Upon lapse thereof without such claim being made, this warranty shall lapse. This warranty is limited to the repair or redoing without charge to Buyer of any defective or non-conforming services. At Seller's option, any warranty work will be performed only during regular working days. This warranty shall be inapplicable if the Buyer or any third party first attempts such repairs or redoing or if the equipment involved has been tampered with, altered, abused, subjected to abnormal treatment or maintained and operated in accordance with the Seller's or manufacturer's instructions and applicable methods.

DISCLAIMER: THE FOREGOING IS IN LIEU OF ALL OTHER CLAIMS OR WARRANTIES, ORAL, EXPRESSED, OR IMPLIED, INCLUDING ANY WARRANTY OR MERCHANT ABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WHETHER BASED ON WARRANTY, TORY OR CONTRACT THEORIES, SELLER MAKES NO WARRANTIES WHATSOEVER, INCLUDING ANY WARRANTY OF MERCHANT-ABILITY OR FITNESS FOR A PARTICULAR PURPOSE. WITH RESPECT TO USED EQUIPMENT, BUYER TAKES ANY USED EQUIPMENT "AS IS". Seller shall not be liable for any direct, special or consequential changes or loss to the Buyer or any third party as a result of defects in the equipment sold nor any damage to the equipment itself or caused by the equipment. Nor shall Seller be liable for any direct, special or consequential changes or loss to the Buyer or any third party as a result of any defective or non-conforming services performed hereunder.

PATENT INFRINGEMENT: Seller shall not be liable for any change, loss or expenses incurred by Buyer in the event of any suits the Buyer for an alleged infringement of any patent rights, covering equipment sold to buyer hereunder. However nothing herein shall be construed as relieving the manufacturer of such equipment from any responsibility it may have to the Buyer in connection with such a claim.

SECURITY INTEREST: Except in cases where payment of the purchase price has been guaranteed by the posting of an adequate bond benefiting the Seller and to secure payment of the purchase price. Buyer agrees that the Seller shall retain a security interest in the equipment until Buyer shall have paid in cash the full purchase price for all equipment sold and services performed hereunder. This security interest shall cover any proceeds of the equipment. Upon Seller's request, Buyer shall execute and deliver to Seller any financing statement or other documents requested by Seller reflecting its security interest. The equipment shall at all times be considered and remain the personal property. If full payment of the purchase price is not made when due, Buyer shall pay interest on the delinquent amount at the highest lawful contract rate, not to exceed 18% per annum, and all costs of collection, including reasonable attorney's fees. Such interest and costs shall be deemed secured by the foregoing security interest.

INSURANCE: Cole Industrial maintains a comprehensive portfolio of insurance coverage's. When agreed to under contract, our General Liability coverage provides Additional Insured status to our clients for both ongoing and completed operations claims caused in whole or in part by our acts or omissions. We take exception to any language requiring additional insured status broader than that provided by forms CG2010 10/04 and CG2037 10/04.

So long as any portion of the purchase price remains unpaid, Buyer at its cost shall obtain insurance against loss or damage from all external causes, naming the Seller as an insured in an amount and form sufficient to protect the Seller's security interest in the equipment.

APPLICABLE LAW: The validity, performance and construction of the proposal shall be governed by the laws of the State of Washington.

AFFIRMATIVE ACTION: On purchase orders of \$10,000 or more, vendor or subcontractor shall comply with current affirmative action requirements for Disabled Veterans and Veterans of the Vietnam Era and for Handicapped workers as described in FAR 52.222-35 and 36 respectively.