

TERMS AND CONDITIONS OF SALE

1. **ACCEPTANCE AND FULFILLMENT OF ORDERS** All orders are subject to acceptance in writing by Seller at its home office, and no local agent or employee is authorized to contractually bind Seller. The acceptance and fulfillment of orders and agreements by Seller are contingent upon and subject to accidents, breakdowns, strikes, sabotage, riots, insurrection, war, delays, interruptions in or failure of sources to supply materials and equipment, labor transportation, acts of God, or other cause and conditions, whether of like or different nature, affecting Seller, and to orders, contracts, priorities, directives, requisitions or assumed and Seller shall not be liable for loss, damage, delay or failure of delivery resulting from such causes.
2. **PRICE** Because of the relatively long delivery time and the resultant uncertainties in Seller's costs, Seller and Buyer agree that the price to be paid by Buyer for the equipment described on the front side hereof (hereinafter referred to as the "Equipment") shall be that contained in or delivered from the Seller's price list in effect 30 days prior to delivery of the Equipment. If there is no such price list then covering the Equipment, the price may be adjusted for cost increases experienced by Seller, which may increase the total price from that stated on the front hereof. The price is also subject to adjustment by Seller for any change made by Buyer and approved by Seller in any of the specifications or other terms of this contract.
3. **TAXES, FEES AND CHARGES** The price is F.O.B. Seller's plant and includes federal excise tax, but does not include any other manufacturers, sales, use or other excise taxes, charges or duties, and the amount of any thereof which Seller is required to pay or collect will be invoiced to Buyer. Buyer shall pay all such taxes, charges and duties arising by reason of this contract and all other taxes, charges and duties of whatever nature assessed upon the Equipment. The amount, if any, shown on the front of this contract for freight shall also be adjusted to reflect any change in freight rates. Buyer shall also pay any collection fees and reasonable attorney's fees incurred by Seller in collecting payment of the purchase price and another amounts for which Buyer is liable under the terms and conditions hereof.
4. **PAYMENT** Payment terms are as specified on the front hereof.
5. **DELIVERY** The delivery date specified on the front hereof is approximate and Seller may ship or deliver Equipment before or after the specified date.
6. **SHIPMENT; RISK OF LOSS; TITLE** Unless otherwise specified by Buyer, Seller shall place the Equipment in the possession of such a carrier of Seller's choice and make such a contract for its transportation as may be reasonable, having regard for the nature of the Equipment and good commercial standards. Buyer shall bear all expenses paid or incurred by Seller in delivering the Equipment. Risk of loss of the Equipment shall pass to Buyer at the time it is tendered for shipment. Title to the Equipment shall remain with Seller until payment is received by Seller.
7. **WARRANTY, DISCLAIMERS AND LIMITATION OF LIABILITY** (A) Seller warrants the Equipment manufactured by it to be free from defects in material and workmanship under normal use and service and to be in compliance with the pertinent provisions of the ASME Boiler and Pressure Vessel Code, if applicable. For a period of six months from date of delivery (12) months in the case of an inner tank only), Seller shall correct by repair or replacement any defect in material or workmanship in any part of a product manufactured by it subject to the following conditions: (a) Written notice of any such claimed defect must be given to Seller during the warranty period; (b) Seller shall have the right to inspect the claimed defective Equipment at such time and place as it reasonably requests; (c) The Equipment must be delivered for repair within 15 days after Seller notifies Buyer of the repair procedure, but shall not be returned before such notification is given; (d) Unauthorized repairs shall void this warranty; (e) This warranty does not apply to parts requiring replacement because of natural wear and tear, or to products, accessories, parts or attachments which were not manufactured by Seller...Seller receives warranties on certain components purchased by it and its obligation with respect to such components shall be limited to the extent of the warranties, if any, given and honored by its suppliers; (f) This warranty shall not apply if parts and/or labor are required due to accident, abuse or improper or neglected maintenance, and applies only to the original purchaser from Seller; (g) When alterations are made or parts or attachments are installed by Buyer or for him by others, this warranty shall be void and Seller shall not be responsible for such alterations or installations, or for the operation of the Equipment thereafter; (h) This warranty shall be void when tanks are subjected to weight loads or pressures, or are used to contain, or are cleaned with, materials having corrosive temperature or other characteristics for which the tank was not designed; (i) Seller shall not be obligated to furnish "loaners" or any compensation for rented, loaned or borrowed equipment while repair is being made under this warranty; (j) All repairs under this warranty shall be made at Seller's plant in Ceres, California, or at such other place designated by Seller, and Buyer must bear the risk and expense of transporting the Equipment to Seller's plant or such other designated place. (B) The description of the front hereof does not create any warranty, express or implied. Seller may substitute without notice any comparable component in the Equipment, and Equipment with such substituted components shall be considered in conformance with Seller's obligations under this contract. (C) THE FOREGOING WARRANTY IS IN LIEU OF ANY OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OR MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND IS IN LIEU OF ANY AND ALL OTHER OBLIGATIONS OR LIABILITY ON SELLER'S PART. Under no circumstances will Seller be liable for any incidental or consequent damages, or for any other loss, damage or expense of any kind, including, but not limited to, personal injury, labor costs or loss of profits, arising in connection with this contract or with the use of or inability to use the Equipment sold hereunder. Seller's maximum liability shall not exceed, and Buyer's remedy is limited to, correction, by repair or replacement, of defects to which the foregoing warranty applies.
8. **PATENT INDEMNITY** (A) In the event the Equipment furnished hereunder is claimed to infringe any United States patent issued at the time of delivery, Seller agrees, at its option; (1) to procure for Buyer the right to use the Equipment, or (2) to modify or replace the Equipment so as to avoid infringement, or (3) to accept redelivery of the Equipment and reimburse Buyer for the purchase price and any reasonable transportation expenses incurred by Buyer. Should any litigation be instituted against Buyer based on a claim that the Equipment in the condition received from Seller infringes any such United States patent, Seller will undertake the defense thereof on Buyer's behalf and pay any damages and costs awarded therein against Buyer, provided Seller is given written notice and is furnished with copies of all demands, process and pleadings; and provided Buyer cooperates fully in giving Seller authority, information and assistance at Seller's expense for such defense, as well as control over the defense and any negotiations with regard to settlement. (B) THE FOREGOING REPRESENTS SELLER'S ENTIRE AND EXCLUSIVE OBLIGATION WITH RESPECT TO ANY CHARGE OR PATENT INFRINGEMENT AND IS IN LIEU OF ANY STATUTORY WARRANTY RELATING TO INFRINGEMENT. SELLER SHALL HAVE NO RESPONSIBILITY INsofar AS THE EQUIPMENT IS MODIFIED BY BUYER OR IS MADE OR MODIFIED BY SELLER IN ACCORDANCE WITH BUYER'S ORDER, AND BUYER SHALL WHOLLY INDEMNIFY SELLER FOR ALL DAMAGES, COSTS OR EXPENSES, INCLUDING ATTORNEYS FEES, PAID OR INCURRED BY SELLER IN CONNECTION WITH ANY CLAIM OF INFRINGEMENT OF A PATENT, COPYRIGHT OR TRADEMARK, TRADE SECRET OR OTHER PROPRIETARY RIGHT, WHICH ARISES OUT OF SELLER'S COMPLIANCE WITH BUYER'S SPECIFICATIONS OR ANY MODIFICATION BY BUYER. SELLER SHALL ALSO HAVE NO RESPONSIBILITY WITH REGARD TO ANY SETTLEMENT, ADMISSION OR PROMISE MADE BY BUYER WITHOUT SELLER'S PRIOR WRITTEN CONSENT, NOR SHALL SELLER BE LIABLE FOR ANY INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OF ANY NATURE WHATSOEVER, INCLUDING LOSS PROFITS CLAIMED TO HAVE BEEN SUSTAINED BY BUYER OR ANY USER OF THE EQUIPMENT ARISING OUT OF ANY CLAIM OR INFRINGEMENT. (C) Seller may be entitled to indemnity from certain of its suppliers, and the rights and options vested in Seller shall extend to such suppliers and may be exercised by them.
9. **TRADEMARKS** Buyer warrants that any trademark Buyer requests Seller to affix to the Equipment is owned or authorized for use by Buyer.
10. **CANCELLATION, MODIFICATION, SUSPENSION** Cancellation, modification, suspension or delay in shipment of Buyer's order will not be accepted on terms which will not fully indemnify and reimburse Seller against loss; such indemnity to include recovery of all direct costs incurred, normal indirect and overhead charges, and a normal profit. No change proposed by Buyer in any specifications, terms or conditions shall be valid or binding upon Seller unless approved in writing by Seller's chief executive officer or general sales manager.
11. **CONTRARY TERMS; ENTIRE AGREEMENT** Buyer's order is accepted only on the terms and conditions herein, and the provisions of any purchase order or other writing inconsistent are herewith rejected and shall not constitute a part of the contract of sale. If any of the terms and conditions hereof are not acceptable to Buyer, Seller must be notified promptly. This writing is intended by the parties to be a final expression of their agreement and is intended also as a complete and exclusive statement of the terms and conditions thereof.
12. **NOTICE** Any notice shall be considered given when deposited in the United States mail, postage prepaid, addressed to the other party at the addresses given herein.
13. **WAIVER** No claim or right arising out of a breach of this agreement can be discharged in whole or part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party.
14. **SETOFF** Seller may set off any amount due from Buyer hereunder against any amount, which may be due to Buyer whether or not under this agreement.
15. **ASSIGNMENT** Buyer shall not assign its rights under this agreement or any interest therein without Seller's prior written consent.
16. **CONTROLLING LAW** This transaction shall be governed by, and this agreement shall be construed and enforced in accordance with the internal laws of the State of California. If any provision, clause or part, or the application thereof under certain circumstances is held invalid, the remainder of this agreement or the application of such provision, clause or part under other circumstances shall not be affected thereby.
17. **SECURITY INTEREST** If financing is involved or under other circumstances if Seller so chooses, Buyer agrees to execute such further documents as Seller requests to reflect Buyer's obligation to pay the deferred portion of the price and perfect a security interest in the Equipment and/or other collateral as security for payment thereof. The Equipment shall at all times be considered personal property and shall not be deemed a fixture or a part of or an appurtenance to building, real estate or vehicle, even though attached thereto. Damage to or loss or destruction of the Equipment shall not release Buyer from its payment obligation.
18. **TRADE-IN** If a trade-in is involved, Buyer shall be responsible for maintaining the equipment to be traded in the same condition as when inspected by Seller in determining the trade-in allowance. The trade-in allowance shall be adjusted, or eliminated, for any subsequent change in condition of the equipment to be traded.