



Terms and Conditions

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TERMS OF PAYMENT

Net 30 days after date of invoice. All accounts are payable in U.S. funds, at par.

If shipment is delayed by any cause for which the Seller is not responsible, the date of completion of the equipment, or any part thereof, shall be regarded as the date of shipment thereof, and an invoice will be issued accordingly. Equipment held for the Purchaser shall be at the risk and expense of the Purchaser.

Acceptance of orders and shipments and deliveries shall be subject to approval of Seller's Credit Department. If, in the judgement of Seller, the financial condition of the Purchaser, at any time, does not justify the continuance of the work to be performed by the Seller hereunder on the terms of payment agreed upon, the Seller may require full or partial payment in advance or shall be entitled to cancel any order then outstanding and shall receive reimbursement of its reasonable and proper cancellation charges. In the event of bankruptcy or insolvency of the Purchaser or in the event any proceeding is brought against the Purchaser under any bankruptcy or insolvency laws, Seller shall be entitled to cancel any order then outstanding at any time during the period allowed for filing claims against the estate and shall receive reimbursement for its reasonable and proper cancellation charges. The rights of the Seller under this paragraph are cumulative and in addition to all rights available to the Seller at law or in equity.

PRICE POLICY

Prices are subject to change without notice. In the event of a price increase, the price of equipment on order but unshipped will be invoiced at the price agreed upon at the time the order was accepted and acknowledged by the Seller (i.e. prices are firm) unless the Purchaser and Seller have agreed upon escalation at the time the order was placed and accepted.

TRANSPORTATION POLICY

Transportation cost may or may not be included in the selling price. When transportation terms are not stated, transportation costs are not included in the selling price. All orders will be shipped FOB shipping point.

TAXES

Seller's prices do not include sales, use, excise, or similar taxes applicable to the equipment or the sale or use thereof. All such taxes, if any, shall be paid by Purchaser or, in lieu thereof Purchaser shall provide Seller with a tax-exemption certificate acceptable to the taxing authorities.

SHIPMENT

Shipment dates are computed from the date Seller received order with complete specifications and/or drawing approval as required. Seller will do everything possible to

maintain the shipping dates given herein, but Seller shall not be liable for delays in delivery or in performance or failure to manufacture or deliver due to causes beyond its reasonable control such as acts of God, acts of the Purchaser, acts of civil or military authority, priorities, fires, strikes, or other labor disturbances, floods, epidemics, war, riot, delay in transportation or car shortages, or inability to obtain necessary labor, materials, components or manufacturing facilities. In the event of such delay, the date of delivery or of performance shall be extended for a period equal to the time lost by reason of the delay.

INSPECTION ACCEPTANCE

Quotations and acceptances are made on the basis that where Purchaser is to inspect, inspection and acceptance of equipment shall be made at Seller's factory, prior to shipment.

WARRANTY

Seller warrants to Purchaser that the goods shipped hereunder will be free from defects in material or workmanship and will be the kind and quality specified in the order.

This warranty shall apply only to defects appearing within one (1) year from the date of shipment by Seller. If Seller installs the equipment or supplies technical direction of installation by contract, the warranty shall be for a period of one (1) year from date of completion of field erection, but not exceeding eighteen (18) months from date of shipment.

Seller shall, in complete fulfillment of its liabilities under this warranty and if given prompt notice by Purchaser, correct, by repair or replacement at Seller's option, FOB its factory, any defect which shall appear under proper and normal use of its equipment within one (1) year after date of shipment or within one (1) year after the completion of field erection of the equipment if Seller installs the equipment or supplies technical direction of installation by contract, but not exceeding eighteen (18) months from date of shipment.

The liability of Seller under this warranty (except as to title), or for any loss or damage to the equipment whether the claim is based on contract or negligence, shall not in any case exceed the cost correcting defects in the equipment as herein provided and upon the expiration of the warranty period all such liability shall terminate. The foregoing shall constitute the exclusive remedy of Purchaser and the exclusive liability of Seller.

The foregoing warranty is exclusive and in lieu of all other warranties, whether written, oral, implied or statutory (except as to title). **NO WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR PURPOSE SHALL APPLY.** Seller does not warrant any equipment of other manufacture designated by Purchaser.



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CANCELLATION

After receipt of Purchaser's acceptance to the quotation, the same may, upon ten (10) days notice in writing, be cancelled by the Purchaser, in whole or in part at any time, not later than forty-five (45) days prior to the date scheduled for shipment of the particular equipment for which cancellation is desired, but only upon the written consent of Seller and upon terms providing for payment to Seller of a cancellation charge satisfactory to it which shall take into proper account the work already done, facilities and material acquired, and/or commitments made by Seller.

PROTECTION AGAINST INFRINGEMENT

Seller agrees that it will, at its own expense, defend any suits which may be instituted by any party against Purchaser for alleged infringement of United States patents relating to the equipment of its own manufacture furnished hereunder, as used in the regular course of Purchaser's business, provided Purchaser shall have made all payments then due hereunder, and give to Seller immediate notice in writing of such suits and permits Seller to defend the same, and gives all needed assistance and authority to enable Seller so to do, and thereupon, in case of a final award of damages in such suit Seller will pay such award but Seller shall not be responsible for any compromise made without its written consent, nor shall it be bound to defend any suit or to pay any damages therein when the same shall arise by reason of the use of parts not furnished by Seller hereunder. In the event that the use of said equipment is enjoined, Seller, if unable within a reasonable time to secure for Purchaser the right to continue using the said equipment will, at its own expense, either replace the said equipment with non-infringing equipment, or modify the said equipment so that the same becomes non-infringing or remove the enjoined equipment, and refund the sums paid therefore. The foregoing states the entire liability of Seller for patent infringement by said equipment or any part thereof.

Seller assumes no liability whatever for patent infringement of any equipment or part thereof manufactured to Purchaser's design.

LIMITATION OF LIABILITY

Seller's liability for any claim of any kind (except "Protection Against Infringement") shall not exceed the purchase price of equipment, or portion thereof, which gives rise to the claim, whether such claim shall be for breach of contract, breach of warranty or negligence and whether such claim arises out of or results from this contract, or from the design, manufacture, sale, delivery, resales, installation, technical direction of installation, inspection, repair, operation or use of any equipment furnished under this contract.

Seller shall not be liable in any event for special or consequential damages including, but not limited to, loss of profits or revenue, loss of use of the equipment or any associated equipment, cost of capital, cost of substitute equipment, facilities or services, downtime costs, or claims of customers of Purchaser for such damages.

RETURNED MATERIAL

Material returned for credit or replacement will be accepted only when return authorization and related instructions have previously been obtained from Elliott Industries, Inc. general office.

OVERDUE ACCOUNTS

If payments of invoices are not made in conformance with standard terms of sale, a service charge will be made monthly until such time as the account is brought up to date.

ERRORS

Clerical errors are subject to correction.

GOVERNING LAW

All matters relating to the interpretation and effect of these terms and any authorized changes, modifications or amendments thereto shall be governed by the laws of the State of Louisiana.

NON-WAIVER BY SELLER

Waiver by the Seller of a breach of any of these terms and conditions shall not be construed as a waiver of any other breach.

OTHER LAWS

Any clause required to be included in a contract of this type by any applicable law or administrative regulation having the effect of law shall be deemed to be incorporated herein. Seller represents that with respect to the production of the articles and/or the performance of the services covered hereunder, it has fully complied with Section 12(A) of the Fair Labor Standards Act of 1938, as amended. Acceptance and execution of orders accepted by reason of any law or administrative regulation having the effect of law, or in order to carry out the intent or purpose of any such law or regulation or to acquiesce in a request by a government agency or official thereof, or contingent upon the continuation in effect of such law, regulation or request, may be cancelled by Seller upon the expiration or withdrawal of such law, regulation or request, provided, however, that Seller, at its option, may complete such order.