



1. **GENERAL:** Seller's quote (if any) must be accepted within 15 days, or Seller reserves the right to increase prices or otherwise not honor the quote. Buyer's order will constitute an offer in accordance with these Terms and Seller's quote. Buyer's order shall not be binding upon Seller until Seller's acknowledgement of Buyer's order. The agreement between Buyer and Seller shall be evidenced solely by these Terms, Seller's Order Acknowledgement, Seller's Warranty and Seller's quote (collectively, the "Contract Documents"). Buyer's order will not be subject to cancellation, change or reduction in amount, or suspension by Buyer of deliveries, without Seller's written consent. Notwithstanding anything to the contrary in Buyer's Purchase Order or other communications, the parties agree to be bound only by these Terms and the other Contract Documents. Buyer's unconditional acceptance of these Terms (without addition or exception) shall be deemed to have occurred by the earlier of: a) submission of a Purchase Order, b) receipt of Seller's acknowledgement, c) payment of a deposit or any of the purchase price, d) receipt of goods, or e) receipt of Seller's invoice.

Any of the terms, conditions and provisions of Buyer's order which are in addition to or inconsistent with the Contract Documents shall not be binding on Seller and shall be considered not applicable to any sale. No waiver, alteration or modification of any of the provisions of the Contract Documents shall be binding upon Seller unless specifically accepted in writing by Seller.

All prices are EXW (per INCOTERMS® 2020) Seller's Shipping Facility, and method of delivery and routing shall be at Seller's discretion, unless specifically otherwise stated in Seller's quote or other Contract Documents.

Terms of payment shall be as stated on Seller's quote and/or invoice.

VAL-CO reserves the right to reprice any orders with a ship date more than 10 weeks after date of order acceptance. Repricing may be evaluated and established based on changes in commodity indices, tariffs, trade regulations, or adjustments in import duties.

On products fabricated, manufactured or produced to individual customer requirements, drawings, specifications or design, Seller reserves the right to fabricate, manufacture or produce the entire quantity ordered in one production, although shipments will be made in accordance with the parties' schedule (subject to #10 below). In the event that Seller permits Buyer's cancellation of such non-standard products, any raw materials, components, subassemblies or finished assemblies in quantities equivalent to the full production run for the entire quantity ordered plus normal over-run shall be considered as part of applicable cancellation charges and be payable by Buyer upon demand.

Seller or its affiliates may from time to time come to Buyer's (or Buyer's customer's) premises for purposes of installing/servicing products or to provide technical services. Except for losses caused directly by the gross negligence or willful misconduct of Seller or Seller's affiliate while on the premises, the Seller or Seller's affiliate shall not have any liability to Buyer or any third parties arising out of their presence or activities on the said premises; and, Buyer agrees to indemnify and hold harmless Seller and Seller's affiliates for all such losses or claims.

Buyer shall release, indemnify, defend and hold Seller harmless from and against all claims, suits, judgments, costs, losses, expenses (including attorneys' fees) and liabilities arising from or related to Buyer's breach of the Contract Documents or from infringement (actual or claimed) of patents, copyrights or trademarks arising from compliance with Buyer's design, specifications or instructions and the fulfillment of Buyer's order.

Seller is not responsible or liable for damage to or loss or destruction of drawings, samples or other items provided by Buyer or prepared by Seller at Buyer's expense not requested in writing 30 days after the completion of the order for which they are used.

The remedies herein reserved by Seller shall be cumulative and in addition to any other legal remedies. No waiver of a breach of any portion of the parties' agreement shall constitute a waiver of continuing or future breach of such provision or of any other provisions hereof.

These Terms (along with the other Contract Documents) constitute the entire agreement of the parties. No amendments, changes, revisions or discharges hereof in whole or in part shall have any force or effect unless set forth in writing and signed by the parties hereto. This contract shall not be assignable by Buyer voluntarily, by operation of law or otherwise without Seller's written consent. No failure of Seller to insist upon strict compliance by Buyer with any obligation, covenant, agreement or condition contained herein shall be a waiver of any subsequent or other failure. The Contract Documents may not be modified by any custom in the trade or course of dealing between the parties.

Anything herein to the contrary notwithstanding, any action against Seller related to Seller's products or services, including but not limited to any action for breach of Seller's limited warranties, must be commenced by Buyer within one (1) year from the date such cause of action accrued.

All notices to be given by either party shall be sent in writing by recognized overnight or international courier or by confirmed facsimile, shall be addressed to the last known address of such other party, and shall be effective upon delivery.

Buyer will not export or re-export, directly or indirectly, any of Seller's products, technical data or any component to a destination to which such export or re-export is restricted or prohibited by U.S. or non-U.S. law without obtaining prior authorization from the competent government agencies.

2. **SECREC:** All information supplied by Seller to Buyer relating to the equipment purchased and installed shall be considered confidential and proprietary. Buyer shall keep confidential all prices, drawings, and proprietary information disclosed by the Seller as part of, or in conjunction with these Contract Documents and performance under the agreement created by acceptance of these Contract Documents, including, but not limited to, information relating to the design, installation, materials of construction, operations, repair, maintenance, or otherwise of the equipment or component parts thereof or other related items. Buyer shall not disclose said prices, drawings, and

proprietary technical information to any third party other than its authorized employees, or use said information except for the operation of the equipment. This restriction does not limit Buyer's rights to use said information if separately obtained from a third party prior to receipt of this information from Seller.

3. **NONASSIGNABILITY:** The contract created by acceptance of these Contract Documents can neither be assigned nor performance of the duties hereunder delegated by either party without the express written consent of the parties hereto or their duly authorized agents. Seller reserves the right to perform any portion of the work required under these Contract Documents with subcontractors of its choice.
4. **SECURITY INTEREST:** The Buyer hereby creates a security interest in favor of the Seller, and the Seller hereby reserves a purchase money security interest in all equipment to be installed under these Contract Documents to secure payment of the purchase price and any and all other sums due and owing from the Buyer to the Seller. Buyer authorizes Seller to file financing statements (without Buyer's signature) in desired jurisdictions and hereby agrees to execute all necessary documents to facilitate said filing and represents that no third party holds or shall hold a prior security interest in said equipment. Buyer shall not sell, pledge, lease, mortgage or otherwise encumber equipment sold hereunder until Seller is fully paid for said equipment and for its work under these Contract Documents including all service and costs of installation of said equipment.
5. **RISK OF LOSS:** Notwithstanding any agreement to pay freight, Seller's making the products available for shipping to a common carrier or trucker shall constitute delivery to Buyer and be determinative of the date and time of shipment, and all risk of loss or damage in transit shall be borne by Buyer. If the Buyer fails to accept the goods from the common carrier or trucker, Seller shall nonetheless be entitled to payment from the Buyer. Seller may arrange for storage, the risk and the cost, including insurance costs, will be paid by Buyer (and Buyer agrees to pay such amounts upon demand).
6. **INSURANCE BY BUYER:** Buyer will procure at its own expense and before the commencement of work hereunder "all risk" insurance with course of construction, theft, vandalism and malicious mischief endorsements attached, the insurance to be in sum at least equal to the proposal price. The insurance will name the Seller and its subcontractors as additional insured parties and will be written to protect Buyer, contractor, and its subcontractors as their interest may appear. At Seller's request, Buyer shall provide Seller with a Certificate of Insurance and copies of endorsements reflecting such coverage. Seller and Buyer waive all rights of subrogation against each other to the extent that any loss to the work under these Contract Documents, or to Buyer's other property is covered or should have been covered by the insurance required under this paragraph. If any of Seller's products or work is destroyed or damaged by accident, disaster, or calamity, such as fire, storm, flood, landslide, subsidence, or earthquake, work done by Seller in rebuilding or restoring the project shall be paid by Buyer as extra work.
7. **TAXES:** Unless otherwise stated in writing, Seller's prices do not include sales, excise, duties, value-added or other taxes or fees. Consequently, in addition to the price specified herein, the amount of any present or future sales, use, excise, duties, value-added or other tax or fee applicable to the manufacture, sale, purchase, export, import or use of the products hereunder shall be paid by Buyer.
8. **RIGHT TO STOP WORK/REMOVAL OF SYSTEM PROGRAMMING:** If payments are not made to Seller as required under the Contract Documents, Seller may stop work and shall not be required to perform any additional work. In addition, Seller may remove, or render inoperable, any system programming installed and operating partially or in full, which programming shall be considered preliminary and temporary. Any removed programming may be reinstalled or completed, at Seller's sole discretion, upon payment of all amounts due under the Contract Documents. Upon five (5) days written notice, Seller shall further have the right to terminate its obligations under the Contract Documents if any payment due and owing is not made in accordance with the terms of the Contract Documents. Upon such termination, Seller shall have all rights available to it at law or in equity.
9. **TERMINATION BY BUYER:** In the event Seller consents in writing to any full or partial cancellation, Buyer shall pay Seller, at Seller's option, the following as liquidated damages:

(a) Invoice price of all products which have been identified to the contract, whether such products have been delivered to Buyer or not.

(b) Actual costs incurred by Seller for products not completed which are allocable to the balance of the contract, including the cost of discharging Seller's liabilities which are so applicable, costs of materials, labor and overhead, which were acquired or produced or incurred in connection with partially finished work and materials.

(c) A reasonable allowance for profit in connection with products called for under the contract.

(d) Reasonable costs incurred by Seller, including accountants' and attorneys' fees, if any, in making any termination settlement hereunder.

(e) Amounts as outlined in #1 above.

10. **DELAY:** In the event Buyer requires Seller to delay Seller's performance, including but not limited to engineering, fabrication, shipment, installation, or start-up of the equipment and/or machinery under these Contract Documents, all additional direct and indirect costs, including without limitation extended project and home office overhead incurred by the Seller shall be reimbursed by the Buyer. Seller shall have the right to terminate these Contract Documents if the project is delayed by Buyer for a total period of ninety (90) days. In the event of such termination, Seller shall have the right to recover all costs set forth in # 9 above.

Deliveries will be made in accordance with Seller's production schedule. Reasonable effort will be made to meet the Buyer's requested delivery dates, but Seller will not be liable for damages (whether or not foreseeable) or be in default for any failure to deliver or delay in delivery due to any Force Majeure.

11. **PRODUCT SUBSTITUTIONS:** Seller reserves the right, at its discretion, to substitute items or components of items with those providing the same product form, fit and function.



12. **TERMINATION ON BANKRUPTCY:** The obligations of the Seller shall terminate, without notice, (i) upon the institution by or against either party of insolvency, receivership or bankruptcy proceedings or any other proceedings for the settlement of either party's debts, (ii) upon either party making an assignment for the benefit of creditors, or (iii) upon either party's dissolution or ceasing to do business.
13. **FORCE MAJEURE:** If either party shall be delayed, hindered, interrupted in or prevented from the performance of any of its obligations hereunder (other than obligations to pay monies) by reason of force majeure ("**Force Majeure**"), including, without limitation, earthquake, flood or other acts of God or a public enemy, fire, explosion, war (declared or undeclared), warlike conditions, embargo, public disaster, riots, strike or labor differences, unavailability of materials or transportation facilities, wrecks, order of, or failure to issue or continue in effect any necessary permit by, any governmental authority, severe weather, unavailability of materials or shipping space, delays of carriers or suppliers or delays of any subcontractors, preference, priority, allocation or allotment order or any other action beyond such party's reasonable control, such party shall not be liable to the other party therefor and the time for performance of such obligation shall be extended for a period of time equal to the duration of the contingency which occasioned such delay, hindrance, interruption or prevention. Further, if Seller deems that travel to Buyer's facility presents unreasonable hazards to its personnel, Seller may withhold performance. These Contract Documents and any subsequent contract created by acceptance of these Contract Documents is subject to priority ruling, restrictions, or conditions in manufacture, delivery, or sale occasioned by a national emergency.
14. **CHANGES/EXTRA WORK:** Should Buyer make changes to the work required under these Contract Documents, or should site conditions or other factors require changes in the work, Seller and Buyer shall agree on the cost of such additional work which shall be added to the agreed contract price, along with an equitable schedule adjustment. If agreement of such costs cannot be reached, Seller shall be entitled to compensation for such work at its actual costs plus a 37% overhead rate, and 8% for profit.
15. **APPROVALS:** All local, state, or federal approvals, licenses, or permits, including building permits and transport licenses, are to be provided and paid for by the Buyer.
16. **LABOR:** All labor utilized shall be open shop (non-union). Any other labor requirements shall require that the terms of these Contract Documents be renegotiated.
17. **STANDARDS:** If Buyer refuses to allow Seller to perform work required by code or other standard, including without limitation, NFPA, IRI, FM, OSHA, or others, Buyer shall make such request in writing signed by an authorized representative and shall further agree to indemnify, defend, and hold Seller harmless from and against any damage or cost, including attorney fees, resulting from such work. Also, Seller reserves the option to withhold performance until agreement is reached on the means to address codes and standards.
18. **REMOVAL/INSTALLATION:** Any equipment removal or installation work which is part of these Contract Documents shall be performed only with the approval of the Seller. Buyer shall furnish sufficient electricity, water, air, light, heat, sanitary facilities, and fire protection, as well as, safe and adequate all weather secure storage space, ingress, and egress to job site. The site is to be prepared for personnel work in a normal fashion with no extra equipment or procedures required of Seller due to construction or production interferences.
19. **CONCEALED/UNKNOWN CONDITIONS:** Seller shall not be responsible for any underground obstacles or other latent conditions in and around any area requiring excavation or Seller's work. It is Buyer's responsibility to approve and clear any area for excavating and to notify Seller of any possible obstacles before excavating or other work begins. If rock, ground water, underground utilities, or other obstruction is encountered, any additional charges resulting from the obstruction will be billed as additional costs. For the purpose of these Contract Documents, a clear excavating area is assumed. If this project, including repairs or removal work, is to be performed in a work place that contains or is suspected to contain asbestos or other hazardous materials, it is the Buyer's responsibility to notify Seller in writing, prior to the start of the project, and Seller may withhold performance until such conditions are rectified by Buyer at its own expense. The Buyer shall be responsible for compliance with all regulations and standards regarding asbestos and other hazardous material removal and its disposal as set forth by the authority having jurisdiction. The costs of such compliance, including, but not limited to, tests, encapsulation, removal, delays, and all consequential damages shall be the responsibility of the Buyer. The Buyer shall indemnify and hold harmless Seller and its officers, employees, heirs, agents, and assigns from any and all actions, suits, claims, or liability resulting from asbestos and other hazardous materials on this project.
20. **STRUCTURAL CONDITIONS:** Buyer warrants and represents that the building in which Seller installs its system has the structural capacity to accommodate the loads imposed or expected from operation of the system. Seller shall have no responsibility for determining or designing the structural capacity of the building in which its system shall be installed. To the fullest extent allowed by law, Buyer shall indemnify, defend, and hold Seller harmless from and against any claim or damage arising from or relating to an alleged structural or design inadequacy of the building into which Seller's system is installed.
21. **DISPUTE RESOLUTION:** The parties' agreement shall be governed and construed according to the domestic laws of the Commonwealth of Pennsylvania, specifically excluding the U.N. Convention for the International Sale of Goods (Vienna Convention) and any successor. Any action related to the Contract Documents may be commenced only in the state or federal courts of Pennsylvania, and all parties consent to the exclusive personal jurisdiction of those parties. In any action seeking to enforce or defend an action arising under this contract, Seller shall be entitled to the costs and expenses of such action, including reasonable attorney's fees.
- BINDING ON SUCCESSORS:** All of the provisions of these Contract Documents will be binding on assignees, successors, parent companies, and subsidiary companies of both parties. If either party is acquired by a corporation through purchase, merger, or consolidation, the provisions of these Contract Documents will be binding on the successor or surviving corporation.
22. **WARRANTY/COMPLETE AGREEMENT:** SELLER'S LIABILITY SHALL IN NO EVENT EXCEED SELLER'S STATED SELLING PRICE PER UNIT OF ANY DEFECTIVE GOODS AND SHALL IN NO EVENT INCLUDE BUSINESS DOWNTIME, BUYER'S MANUFACTURING COSTS, LOST PROFITS, GOODWILL, OR ANY OTHER SPECIAL, DIRECT OR INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, ARISING OUT OF THE PARTIES' AGREEMENT, THE SALE OF THE PRODUCTS, SERVICE OR THE USE OR PERFORMANCE OF THE PRODUCTS. NOTWITHSTANDING ANYTHING IN THE CONTRACT DOCUMENTS OR ELSEWHERE, BUYER AGREES THAT ITS SOLE AND EXCLUSIVE REMEDY FOR ANY BREACH OF THE CONTRACT DOCUMENTS SHALL BE A WARRANTY CLAIM FOR REPAIR, CREDIT OR REPLACEMENT UNDER THIS SECTION.
- Subject to Seller's warranty, Seller may at its discretion repair, replace or give the Buyer credit for defective products.
- Notwithstanding anything herein to the contrary, Seller shall have no liability for alleged defects with the products which are not specified in written notice from the Buyer to the Seller within the warranty period. Seller shall have no liability for warranty in the event Buyer attempts to repair an alleged defect without prior written consent of the Seller. Wearing parts and consumables shall not be the responsibility of Seller in any event.
- Seller warrants to the customer that the equipment manufactured by Seller shall be free from defects in materials or workmanship, under normal use and maintenance, for a period of one (1) year from date of final acceptance.
- FOR ANY COMPONENTS SUPPLIED BY A THIRD PARTY AND PURCHASED BY SELLER FOR USE ON OR IN CONJUNCTION WITH THE EQUIPMENT, THE WARRANTY IS THE SAME WARRANTY GRANTED BY SELLER'S COMPONENT VENDOR OR MANUFACTURER, AND SELLER MAKES NO OTHER WARRANTY WHATSOEVER WITH RESPECT TO ACCESSORIES OR COMPONENTS NOT MANUFACTURED BY SELLER. Buyer is advised that in most cases, Seller's third party vendor warranty covers parts only, installation and freight are not included.
- The performance and safety of the equipment mentioned therein is contingent upon proper installation and operation and maintenance by properly trained personnel.
- THIS WARRANTY IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. UNDER NO CIRCUMSTANCES SHALL SELLER BE HELD LIABLE FOR ANY SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES ARISING FROM ANY CAUSE INCLUDING DEFECTS IN MATERIAL AND WORKMANSHIP, AND SELLER'S WARRANTY LIABILITY SHALL BE STRICTLY LIMITED AS STATED HEREIN.
23. **LIMITATION OF REMEDY.** The liability of Seller for its design, manufacture and/or installation of any equipment and/or machinery shall be limited to the re-design, repair, or replacement, at Seller's option, of any part, component, equipment and/or machinery which may prove to be defective under proper use, service, and maintenance after Seller, in its sole discretion, determines same to be defective. In the event that Seller is unable to re-design, repair, or replace a defective part, component, or the equipment and/or machinery, or that the repair or replacement remedy fails of its essential purpose for any reason, then the sole exclusive remedy of Buyer shall be return of the total sums paid for such design, part, component, or equipment and/or machinery. Buyer's sole and exclusive remedies with respect to components purchased by Seller from other vendors are the remedies against the vendor provided by the vendor's warranty or by law. Buyer shall have no remedy against Seller with respect to such components.