

Hennecke Inc. Terms and Conditions of Equipment Sales (2012)

1. Effect of Proposal

All work performed by Seller pursuant to Buyer's purchase order, authorization, or any acceptance documents shall be deemed to have been performed under this proposal. This proposal, together with the documents attached hereto or incorporated by reference herein shall constitute the entire agreement of the parties and may not be modified except by a written change order issued by Buyer and accepted in writing by Seller. No terms stated by Buyer in its purchase order or other authorization or acceptance documents shall be of any force or effect unless expressly incorporated herein by Seller and Buyer hereby notified of Seller's objection to and rejection of any additional or different terms in Buyer's purchase order, authorization, acceptance documents, or other forms. THIS PROPOSAL IS EXPRESSLY LIMITED TO ACCEPTANCE UPON THE TERMS AND CONDITIONS CONTAINED HEREIN.

2. Warranty

A. Seller Manufactured Components

Seller warrants that those portions of the work, materials, and components of the Equipment manufactured by Seller's employees in Seller's plant shall be free from defects in materials and workmanship for a period of six (6) months from the date the chemicals are introduced into the Equipment; provided, however, in no event shall the warranty period exceed nine (9) months from the date of shipment. In the event the Equipment fails to conform to the above warranty, Seller shall, at Seller's option, either repair or replace the nonconforming Equipment or portion thereof. Warranty claims **must** be filed in accordance with Seller's **Warranty Administration Procedure**.

B. Seller Purchased Components

Seller shall endeavor to obtain warranties on behalf of Buyer from vendors, subcontractors, and suppliers of Seller with respect to those portions of the work, materials and components of the Equipment supplied by them equivalent to the customarily offered in the applicable industry. Buyer shall accept the warranties provided by any such vendor, subcontractor or supplier in lieu of any liability or warranty on the part of Seller with respect thereto.

C. Non-Warranty Items

ITEMS LISTED IN SELLER'S **WARRANTY ADMINISTRATION PROCEDURE** ARE EXCLUDED FROM ANY OF THE FOREGOING WARRANTIES. ALL SUCH ITEMS ARE SOLD "AS IS."

D. Limitation of Warranties and Remedies

THE FOREGOING WARRANTIES ARE CONDITIONED UPON THE EQUIPMENT BEING USED AND MAINTAINED FOR THE INTENDED PURPOSES IN ACCORDANCE WITH THE INSTRUCTIONS OF SELLER AND ITS VENDORS SUBCONTRACTORS AND SUPPLIERS. FAILURES OF THE EQUIPMENT OR ANY PORTION THEREOF DUE TO NORMAL WEAR AND TEAR, ACTION OF CORROSION, EROSION, CHEMICALS, FIRES, AND ANY ACTS OF GOD ARE EXCLUDED FROM THE FOREGOING WARRANTIES. SELLER IS NOT RESPONSIBLE FOR ANY INCORRECT REPAIR OR REPLACEMENT WORK DONE BY THE BUYER.

THE TECHNICAL AND NUMERICAL PROVISIONS CONTAINED IN THIS PROPOSAL ARE FOR GENERAL DESCRIPTIVE PURPOSES ONLY AND SHALL NOT UNDER ANY CIRCUMSTANCES BE CONSTRUED TO BE WARRANTIES REGARDING EQUIPMENT CAPABILITIES, CAPACITIES, OR ANY OTHER MATTER.

THE FOREGOING WARRANTIES AND REMEDIES FOR BREACH THEREOF ARE EXCLUSIVE. THEY ARE EXTENDED BY SELLER AND ACCEPTED BY BUYER IN LIEU OF ANY AND ALL OTHER WARRANTIES AND REMEDIES, EITHER EXPRESS OR IMPLIED, AND SPECIFICALLY IN LIEU OF ANY WARRANTY OF MERCHANTABILITY AND WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE.

3. Force Majeure

The delivery date shall be extended by the delay caused to Seller in whole or in part by any act or occurrence beyond the reasonable control of Seller that hinders, delays, or prevents Seller's performance hereunder. Causes deemed to be beyond the reasonable control of Seller include, but are not limited to, any act of God; compliance with any order, decree, or request of any governmental authority; act of declared or undeclared war; public disorder; rebellion; sabotage; riot; fire; explosion; flood; accident; strike, lockout, injunction, or other labor difficulty or concerted act of workmen; inability to obtain fuel, power raw materials, equipment, labor, containers, or transportation facilities from normal sources of supply; breakage of machinery or apparatus; national defense requirements, production set-aside, or mobilization of industry; or any other cause, whether similar or dissimilar to the above listed categories, beyond the reasonable control of Seller which directly or indirectly hinders, delays, or prevents Seller's performance hereunder or any third party's

performance upon which Seller's performance hereunder is dependent. Delays in, Seller's performance occasioned by any act or inaction of Buyer or Buyer's agents, employees, contractors, vendors, or any other party under Buyer's direct or indirect control shall serve to equitably adjust the completion date and sales price.

4. Limitation of Liability

NOT WITHSTANDING ANYTHING HEREIN TO THE CONTRARY, UNDER NO CIRCUMSTANCES, WHETHER ARISING, CLAIMED, OR CHARACTERIZED IN CONTRACT, STRICT LIABILITY TORT (INCLUDING NEGLIGENCE), EQUITY, OR OTHERWISE SHALL SELLER, ITS AGENTS, SUBCONTRACTORS, VENDORS, AND THE EMPLOYEES OF EACH, BE RESPONSIBLE OR LIABLE FOR LOSS OF PROFIT, LOSS OF OPERATING TIME, LOSS OR REDUCTION IN USE OF ANY FACILITIES INCLUDING EXISTING FACILITIES, INCREASED EXPENSE OF OPERATION OR MAINTENANCE COST OR VALUE OF INVESTMENT OR CAPITAL, OR FOR ANY OTHER SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES.

5. Indemnity

Buyer hereby agrees to and does release, indemnify and hold harmless Seller, its shareholder and each and every affiliate, and their respective directors, officers, employees, agents, and representatives, from and against any and all losses, demands, claims, expenses (including attorneys' fees), actions, judgments and/or costs ("liabilities") arising from or relating to claims made by any person (including, but not limited to employees of Buyer) or entity for any damage, whether arising in contract, breach of warranty, tort (including, but not limited to, strict liability, negligence or fraud) or any other cause of action, and whether such damage is direct, indirect, special, general, consequential or incidental, whether arising from personal injury (including death), loss of or damage to any property or any other type of injury or damage (including but not limited to, loss of profits), which in any way relate to or arise out of Buyer's operation of the Equipment (including, but not limited to, Buyer's removal, disconnection or disengagement of any safety device or feature on the Equipment), except to the extent that any such liabilities are caused by the negligence of Seller.

For the purposes hereof, "*affiliate*" means any person that, directly or indirectly, controls, is controlled by, or is under common control with, another person; "*person*" means any individual, corporation, partnership, joint venture, limited liability company, association, joint stock company, trust, unincorporated organization or any other form of entity; and "*control*" means the power to direct or cause the direction of the management and policies of a person, directly or indirectly, whether through the ownership of voting securities, by contract, or otherwise.

6. Patents

A. Patent Warranty

Seller warrants that the Equipment or any part thereof, shall be delivered free of any rightful claim of any third party for infringement of any United States patent. To the extent that any claim, suit proceeding, or threat thereof, brought against Buyer would result in a breach of this warranty, then in case the Equipment of any part thereof furnished hereunder becomes the subject of any claim, suit or proceeding for infringement of any United States patent, or in the event of an adjudication that such Equipment or part infringes any United States patent, or if the use or sale of such Equipment or part could reasonably become the subject of such a claim, suit or

preceding, then Seller, at its own expense agrees, at its option, to one or more of the following:

- i. to defend and pay all damages and costs awarded or to settle any claim, suit, or proceeding; or
- ii. to procure for Buyer the right to continue using or selling said Equipment or part thereof; or
- iii. to replace it with a noninfringing Equipment; or
- iv. to modify it so it becomes noninfringing; or
- v. to remove it and refund the purchase price and any transportation and/or installation costs thereof. Buyer Specified Design/Use in Combination
- vi. As to any Equipment or part specified by Buyer or manufactured to Buyer's specification or design, or as to any product produced from any Equipment furnished hereunder, or as to any modification or change to any Equipment furnished hereunder. Seller assumes no liability whatsoever for patent infringement and Buyer will hold Seller harmless against any infringement claims arising therefrom.
- vii. As to the use of any Equipment furnished hereunder in combination with any other equipment, or to any processes performed by or with the Equipment. Seller assumes no liability whatsoever for patent infringement, except to the extent the Seller is a contributory infringer.

B. Limitation on Patent Warranty and Remedy

THE FOREGOING STATES THE ENTIRE LIABILITY OF SELLER FOR PATENT INFRINGEMENT BY SAID EQUIPMENT OR ANY PART THEREOF. THIS OBLIGATION SHALL BE EFFECTIVE ONLY IF BUYER SHALL HAVE MADE ALL PAYMENTS THEN DUE HEREUNDER AND IF SELLER IS NOTIFIED PROMPTLY IN WRITING OF ANY CLAIM, SUIT, PROCEEDING OR THREAT THEREOF AND IS GIVEN AUTHORITY, INFORMATION AND ASSISTANCE FOR THE DEFENSE OF SAID CLAIMS, SUIT OR PROCEEDING.

7. Changes

Seller shall evaluate any Buyer request for changes, to the Equipment and advise Buyer of the adjustment to the completion date, sales price, payment terms, any other terms that will be required by Seller to implement such change. Upon receipt by Seller of an executed change order from Buyer setting forth such adjustments to the completion date, sales price, payment terms, and any other terms, Seller shall implement such change to the Equipment.

8. Taxes

Unless otherwise agreed in writing, Seller's prices are exclusive of any federal, state or local property, license, privilege, sales, use, excise, gross receipts or other like taxes which may now or hereafter be applicable to, measured by, or imposed upon or with respect to the transaction, the equipment, its sale, its value or its use, or any services performed in connection therewith, and Buyer agrees to pay or reimburse any such taxes which Seller or Seller's subcontractors or suppliers are required to pay.

9. Terms of Payment.

If, in the judgment of Seller, the financial condition of the Buyer, at any time during the manufacturing period or at the time the equipment is ready for shipment, does not justify the continuance of the work to be performed by Seller hereunder or the terms of payment specified, Seller may require full or partial payment in advance. In the event of Buyer's bankruptcy or insolvency or in the event any proceeding is brought against Buyer, voluntarily or involuntarily, under the bankruptcy or any 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 reimbursements for its proper cancellation charges and expenses. Seller's rights under this Section 9 are in addition to all rights available to it at law or in equity.

10. Buyer Default.

In the event Buyer does not comply with any part of the payment terms of this Purchase order, Seller shall have the right to elect to accelerate and declare immediately due and payable all debts and obligations of Buyer of any nature due to Seller, whether under this purchase order or otherwise, and, in addition, Seller may refrain from making any further shipments, whether under this purchase order or another contract, until such default or noncompliance is remedied. If at any time there is a substantial change in the financial condition of Buyer arising from a change in business or market conditions or otherwise, or in the event of Buyer's merger, reorganization, change in corporate or legal status, or other change in Buyer's business form, or if Buyer is unable to pay its debts as they become due, makes an assignment for the benefit of creditors, or if a petition is filed under any applicable chapter of the relevant bankruptcy law respecting Buyer, or if any lien, arising from judicial process or otherwise, is placed on any material asset of Buyer, or if any tax lien is filed against Buyer, Seller, at its option, shall have the right to declare all amounts accrued under this purchase order or any other contract immediately due and to change the payment terms hereunder, or any other contract between Buyer and Seller, for any future deliveries, including, but not limited to, requiring cash in advance of delivery or delivery of an acceptable Letter of Credit. Any failure of performance of this purchase order by Buyer shall at the option of Seller be grounds for Seller, in addition to any remedies of Seller provided by law, to cancel or terminate this purchase order and all other contracts of sale between Buyer and Seller, and to recover all damages provided by law, including reasonable attorneys' fees and disbursements and court costs.

11. Risk of Loss.

Risk of loss or damage to the equipment shall pass from Seller to Buyer upon delivery of the equipment. If delivery of the equipment is delayed at the request of or due to the fault of Buyer or due to other reasons beyond Seller's control, the risk of loss on said equipment shall pass to the Buyer at the time of the original anticipated date of delivery of the equipment at the place of delivery. From this time forward the equipment shall be stored and insured for the account of and at the risk of the Buyer, and Buyer shall be responsible for all additional costs incurred as a result of such delay.

12. Technical Documents.

All technical documents provided by Seller to Buyer, including all calculations, drawings, descriptions and illustrations, shall be deemed confidential, shall remain Seller's exclusive property, shall not be copied or reproduced

by Buyer or communicated by Buyer to any third party, and shall not be used for any purpose other than the operation and maintenance of the products. Information in technical documents shall serve only as estimates, unless otherwise agreed in writing. Technical documents submitted in connection with a proposal not resulting in an order, and all copies thereof, shall be returned to Seller upon request.

13. Assignment

Neither this proposal nor any interest hereunder shall be assigned or transferred by either party hereto without the prior written consent of the other party, except that the Seller may subcontract with Seller's customary practice. Subject to the foregoing, this proposal shall inure to the benefit of and be binding upon the successors, legal representatives, and assigns of the parties hereto.

14. Waiver

Waiver by either party of any breach by the other party of any of the terms or provisions hereof shall not be deemed to be a waiver of breach on any other occasion of the same terms or provisions, or a waiver of breach of any other term or provision hereof.

15. Governing Law

This proposal, its administration and performance and all rights, obligations, liabilities, and responsibilities of the parties hereto, shall be governed and interpreted in accordance with the laws of Commonwealth of Pennsylvania.

16. Dispute Resolution.

At Seller's option, any dispute arising out of or in connection with this purchase order shall be resolved in the appropriate federal or state courts located in the Commonwealth of Pennsylvania, and in such event, the parties hereto shall each irrevocably submit to the jurisdiction of said courts. **TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW, SELLER AND BUYER HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVE ANY RIGHT TO TRIAL BY JURY THAT SELLER OR BUYER MAY HAVE IN ANY ACTION OR PROCEEDING, IN LAW OR IN EQUITY, IN CONNECTION WITH THIS PURCHASE ORDER.**