

TERMS AND CONDITIONS

1. OFFER AND ACCEPTANCE

York International Corporation (York) offers to sell the materials, equipment or services indicated in strict accordance with the terms and conditions stated herein. Submittal of a Purchase Order or execution of this offer by Buyer, or allowing York to commence work, shall be deemed an acceptance of this offer, which offer and acceptance shall constitute a legally enforceable contract between Buyer and York. Any additional or differing terms and conditions contained on Buyer's Purchase Order (whether or not such terms materially alter this offer) are hereby rejected by York and shall not become part of the contract between Buyer and Seller unless expressly consented to in writing by York.

2. PRICE

The prices contained in this offer to sell are firm upon acceptance by Buyer, provided: (1) that such acceptance occurs within thirty (30) days of the submission of this offer and (2) that within three (3) months of Buyer's acceptance Buyer authorizes York to release for fabrication (in accordance with approved submittal data) and shipment immediately upon completion of fabrication. In the event that Buyer's release for fabrication is not received by York at York, Pennsylvania, within such three (3) month period, prices are subject to increase to current prices in effect at the time Buyer's release is actually received by York. If the Buyer delays shipment after release, prices are subject to increases equal to the percentage increase in York's prices during such period of delay.

3. TERMS OF PAYMENT

Upon normal credit approval by the York Credit Department, terms of payment for goods shipped hereunder shall be net thirty (30) days immediately following shipment of any portion of the goods. York reserves the right to add to any account outstanding more than thirty (30) days a charge of one and one-half percent (1-1/2%) of the principal amount due at the end of each thirty (30) day period. In the event of disapproval of the York Credit Department, terms of payment will be established through mutual agreement of Buyer and the York Credit Department.

4. PERFORMANCE

York shall not be liable for failure or delays in delivery hereunder where such failure or delay is due to the disapproval of the York Credit Department, or due to strikes, fires, accidents, national emergency, failure to secure materials from the usual sources of supply, or any other circumstances beyond the control of York, whether the class of causes enumerated above or not, which shall prevent York from making deliveries in the usual course of business. Upon the occurrence of any of the above events, York may cancel this order without any liability on the part of York. Receipt of the equipment by Buyer upon its delivery shall constitute a waiver of all claims for delay.

5. TAXES

All prices in York's offer to sell are exclusive of taxes. The amount of any present or any future occupation, sales, use, service, excise or other similar tax which York shall be liable for, either on its own behalf or on behalf of the Buyer, with respect to any orders for machinery or services, shall be in addition to the billing prices and be paid by the Buyer.

6. WARRANTY

York guarantees all machinery and materials of its manufacture or installation or start-up services performed by York, against defects in workmanship and material for eighteen (18) months from date of shipment, or one (1) year from date of initial start-up, whichever shall occur first, and will repair or replace F.O.B. point of manufacture such products or components as York finds defective. This warranty does not include the cost of labor to remove or reinstall any defective components; nor does it include cost of handling, shipping or transportation involved in supplying replacements for defective components. This warranty does not include replacement of refrigerant lost from the unit after shipment from the point of manufacture. On machinery and materials furnished by York, but manufactured by others, York will extend the same guarantee it receives from the manufacturer. No liability shall be attached to York until said York machinery or materials have been paid for, and then said liability shall be limited to the cost of repairing or replacing said defective product or component. THE WARRANTY AND LIABILITY SET FORTH ABOVE ARE IN LIEU OF ALL OTHER WARRANTIES AND LIABILITIES, EXPRESS OR IMPLIED, IN LAW OR IN FACT, INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THE WARRANTIES CONTAINED HEREIN SET FORTH BUYER'S SOLE AND EXCLUSIVE REMEDY IN THE EVENT OF A DEFECT IN WORKMANSHIP OR MATERIALS.

7. PATENTS

If there is brought against the Buyer any suit or proceeding based on a claim that an apparatus, or any part thereof, furnished under this contract constitutes an infringement of any patent of the United States, York, if notified promptly in writing and given authority, information and assistance by the Buyer for the defense of same, will defend same and pay all expenses and costs which may be awarded therein against the Buyer. In such suit, in the event that the Buyer has complied with the conditions just stated and the apparatus, or any part thereof, is held to constitute infringements and its use is enjoined, York, in lieu of all other liability except as above stated, will, at its own expense, either procure for the Buyer the right to continue using said apparatus, or replace same with noninfringing apparatus, or modify it so it becomes noninfringing, or remove said apparatus and refund the purchase price and the transportation and installation costs thereof, but York's liability shall in no case exceed the purchase price of said infringing apparatus.

8. LIMITATION OF LIABILITY

All claims, causes of action or legal proceedings against York arising from York's performance under this contract must be commenced by Buyer within the express warranty period specified under Paragraph 6 hereof. Failure to commence any such claim, cause of action or legal proceeding within such period shall constitute a voluntary and knowing waiver thereof by Buyer. IN NO EVENT SHALL YORK'S LIABILITY FOR DIRECT OR COMPENSATORY DAMAGES EXCEED THE PAYMENTS RECEIVED BY YORK FROM BUYER UNDER THE INSTANT CONTRACT, NOR SHALL YORK BE LIABLE FOR ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, THE LIMITATIONS ON DAMAGES SHALL APPLY UNDER ALL THEORIES OF LIABILITY OR CAUSES OF ACTION, INCLUDING BUT NOT LIMITED TO CONTRACT, WARRANTY, TORT OR STRICT LIABILITY. THE ABOVE LIMITATIONS SHALL INURE TO THE BENEFIT OF YORK'S SUPPLIERS AND SUBCONTRACTORS.

9. DELIVERY

Shipping dates are approximate only. No shipping date requested or specified by Buyer will be binding on York unless such request is specifically agreed to in writing by an officer of York. Shipment shall be F.O.B. factory, with title passing to Buyer upon delivery to the carrier by York.

10. CANCELLATION

In the event Buyer cancels this contract, Buyer agrees to pay the following cancellation charges:

(a) If notice of cancellation is received by York prior to Buyer's release for fabrication, a minimum booking charge of five per cent (5%) of the selling price (ten per cent (10%) in the case of stock units) will be assessed.

(b) If notice of cancellation is received by York after Buyer's release for fabrication, cancellation charges shall be calculated according to the following formula:

cancellation charge = $(x/y + 0.1) \times$ equipment selling price

x = number of weeks from date of Buyer's release for fabrication to the date of York's receipt of Buyer's notice of cancellation.

y = number of weeks for delivery as offered at the time of contract.

Provided, however, that cancellation charges shall not exceed eighty per cent (80%) of the equipment selling price.

Buyer acknowledges that any cancellation charges assessed under (a) or (b) above are reasonable in light of the difficulties in proof of actual losses caused by Buyer's cancellation and are not to be construed as a penalty.

11. FREIGHT CHARGES

Freight Allowed Products - Shipment shall be F.O.B. point of manufacture, freight prepaid and allowed via most economical common carrier to first destination within continental U.S.A. unless stated elsewhere in this offer to sell. York reserves the right to select carrier, routing, shipping point, and method of shipment. Freight allowances will not include any additional charges for services performed by carrier not included in road haul rates, such as stop-off charges, detention of carrier's equipment, redeliveries, reconsignments, etc. Any such additional charges will be for the account of the Buyer.

Method of Shipment - Standard form of shipment shall be via truck. Rail shipment will be made when the size of equipment in York's opinion makes truck shipment impractical. For all rail shipments, freight is allowed to the nearest rail siding only. Additional rigging, handling, and transfers are not included, and are the responsibility of the Buyer.

12. DISPUTES, CHOICE OF LAW AND COSTS

This contract shall be deemed to have been entered into and shall be governed by the laws of the Commonwealth of Pennsylvania. All claims, disputes and controversies arising out of or relating to this contract, or the breach thereof, shall, in lieu of court action, be submitted to arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and any judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The site of the arbitration shall be York, Pennsylvania, unless another site is mutually agreed between the parties. The parties agree that any party to the arbitration shall be entitled to discovery of the other party as provided by the Federal Rules of Civil Procedure; provided, however, that any such discovery shall be completed within four (4) months from the date the Demand for Arbitration is filed with the American Arbitration Association.

13. COSTS TO YORK

In the event it becomes necessary for York to incur any costs or expenses in the collection of monies due York from Buyer, or to enforce any of its rights or privileges hereunder, Buyer, upon demand, shall reimburse York for all such costs and expenses (including, but not limited to, reasonable attorney's fees).

14. ENTIRE AGREEMENT

These terms and conditions, and the matter set forth on the face of York's offer to sell, constitute the entire agreement between York and Buyer. No prior understandings, agreements or representations, written or verbal, express or implied, are a part of this contract, nor shall any subsequent modification, agreement or representation become part of this contract unless expressly agreed to in writing by an authorized representative of York.

