

Apex Fabrication & Design, Inc. Terms and Conditions

1. **TIME LIMIT.** All quotation are valid for a period of thirty (30) calendar days, unless otherwise specified.

2. **FOB POINT.** Prices included herein are FOB point of manufacture. Any transportation or insurance charges incurred will be invoiced to the Purchaser. Claims for shortages in shipment shall be deemed waived unless made in writing to Apex Fabrication & Design, Inc. (hereafter referred to as "Apex") within ten (10) days from date of invoice.

3. **PAYMENT TERMS.** Payments will be made in accordance with the specified payment schedule. All payments are due net thirty (30) days from date of invoice, unless otherwise specified. If in the judgment of Apex, the financial position of the purchaser does not justify the terms of payment specified, Apex may require full or partial payment prior to shipment of the goods. Purchaser agrees to furnish Apex with the required credit information. Any unpaid balances will be charged interest at the rate of 1 ½% per month after due date. All costs of collection or attempted collection of delinquent payments, including reasonable attorney's fees, whether through suit or otherwise shall be added to the amount due to Apex. Any and all fees incurred due to returned checks shall be covered by the Purchaser.

Payments for all export shipments will be in accordance with the specified payment schedule included herein by way of an Irrevocable Letter of Credit, established in favor of Apex, drawn on and confirmed by a prime U.S.A. bank that is approved by Apex. This Letter of Credit is to be established at the time of award of an order. All costs associated with the Letter of Credit will be for the Purchaser's account.

4. **TAXES.** Federal, state, or local sales and/or use taxes are not included in the prices set forth herein.

5. **WARRANTY.** Apex warrants only that goods manufactured by Apex shall be free from faults in workmanship and materials when said equipment is used in a normal manner for the purpose for which it was supplied; provided, however, that this warranty shall be limited to goods found to be defective within a period of one (1) year from the date of installation or 18 months from the date of shipment, whichever occurs first. Equipment not manufactured by Apex is normally warranted by the original manufacturer and carries no further warranty by Apex. Apex does not provide any warranties for Purchaser furnished/specified equipment and/or Purchaser furnished materials.

The sole and exclusive remedy of the Purchaser for any liability of Apex of any kind, including (a) warranty, express or implied whether contained in the terms and conditions hereof or in any terms additional or supplemental hereto, (b) contract, (c) negligence, (d) tort, or (e) otherwise, is limited to the repair or replacement, FOB point of manufacture, by Apex of those goods which an examination reveals to be defective during the warranty period, or at Apex's option to refund to Purchaser the money paid to Apex for such goods. Purchaser and Apex may mutually agree to acceptance of the goods to be designated 'as is' with an agreed upon reduction in price. Before Apex undertakes any obligation to remedy defects, the Purchaser must give Apex written notice of its claim and return the defective goods after receipt of shipping instructions from Apex to return such goods. Purchaser will ship the goods to Apex, freight prepaid, and Apex will return the goods to Purchaser, freight collect. All goods returned for repair or replacement pursuant to this section are to be packaged in accordance with the instructions received.

In no event, shall Apex incur any obligation to repair or replace goods which are determined by Apex to be defective due to customer misuse, or due to use not in accordance with specified operating conditions, and operating and maintenance instructions. Apex retains the option to witness the operation of the goods to verify operating conditions. Apex shall not incur any obligation hereunder with respect to goods, which are repaired or modified in any way by the Purchaser without Apex's prior written approval. Installation by the Purchaser during regular intervals of normal maintenance of parts supplied by Apex shall not constitute such modification.

EXCEPT FOR THE EXPRESS WARRANTY STATED HEREIN, Apex DISCLAIMS ALL WARRANTIES WITH RESPECT TO THE GOODS, INCLUDING ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE. This warranty shall be for the benefit of the purchaser only and not for the benefit of any other person.

6. **CONFIDENTIAL INFORMATION.** The information, drawings, plans, and specifications being furnished by Apex have been developed at Apex's expense and shall not be used or disclosed by Purchaser for any purpose other than to install, operate, and maintain the goods supplied hereunder.

7. **DELIVERIES.** The delivery date(s) quoted are based on Apex's best estimate of a realistic time when delivery to the carrier will be made, and are subject to confirmation at time of acceptance of any resulting order. Apex reserves the right to make either early shipment or partial shipments and invoice Purchaser accordingly.

8. **EXCUSABLE DELAYS.** Apex shall not be liable for loss, damages, detention, or delays resulting from causes beyond its reasonable control or caused by but not limited to strikes, restrictions of the United State Government, or other governments having jurisdiction, delays in transportation, unusually severe weather, war, act of public emergency, fire, acts of God, inability to obtain necessary labor, materials, or manufacturing facilities, or any other cause reasonable beyond its control, whether similar or dissimilar to those listed.

9. **INFRINGEMENTS.** The Purchaser shall indemnify and hold Apex harmless (and defend) against any expense or loss or other damage resulting from infringement of patents or trademarks arising from Apex compliance with any designs, specifications, or instructions of the Purchaser. In addition, all license fees and royalties are the exclusive responsibility and liability of Purchaser.

10. **TITLE AND RISK OF LOSS OR DAMAGE.** Risk of loss and/or damage shall pass to the Purchaser upon delivery of the goods to the F.O.B. point. Title shall pass to the Purchaser upon receipt of final payment by Apex.

11. **INSTALLATION/FIELD SERVICE.** Installation of goods furnished hereunder shall be by the Purchaser, unless otherwise agreed to in writing. The Purchaser will be responsible for obtaining all permits, fees, licenses, etc. necessary for installing and operating any system or equipment supplied by Apex.

Field service will be provided on a per diem basis upon written authorization by the Purchaser and will be at the rates in effect at the time such services are provided unless otherwise agreed to in writing. Field service at the job site to diagnose equipment problems will be provided on a per diem basis at the then current rates.

12. **CANCELLATION.** Cancellation of any order must be by written notice to Apex and will be subject to cancellation charges, which will include all expenses incurred by Apex and a reasonable profit on the sale.

13. **RESTOCKING FEE.** If Purchaser orders the wrong material, it may NOT be returned to Apex unless the following conditions have been met:

- Apex has authorized the return of the material, and has issued a Return Material Authorization number;
- The material is unused and undamaged;
- The material is returned with all freight costs paid for by Purchaser;
- and Purchaser agrees to pay the applicable restocking fee.

NOTE: Apex will not authorize or accept the return of any system or chemicals under any circumstances.

14. **LAWS, CODES, AND STANDARDS.** Except as expressly stated herein, the price and schedule included herein are based on United States laws, codes, and standards in effect as of the date of this order. Should such laws, codes, and standards change and increase or decrease the cost of performing the work or impact the schedule, Apex will advise Purchaser of such. Purchaser and Apex shall mutually agree to any modification to the order resulting from such change.

15. **CONSEQUENTIAL DAMAGES/LIMIT OF LIABILITY.** Apex SHALL NOT IN ANY CASE WHATSOEVER BE LIABLE FOR ANY LOST PROFITS, SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES OF ANY KIND. In no case shall Apex's liability exceed the amount paid to Apex by the Purchaser for the specific goods giving rise to such liability less a reasonable depreciation allowance for the period of use of those goods. Purchaser agrees to indemnify and hold Apex harmless from and against all liabilities, claims, and demands of third parties of any kind relating to the goods and their use arising after shipment of the goods.

Except for any liquidated damages specifically provided for in this agreement, in no event shall Apex be liable for indirect, special, incidental or consequential damages including but not limited to loss of profits or revenue, loss of data, loss of use of equipment or facilities, or costs for replacement steam or power.

16. **MODIFICATION.** No modification or waiver of any part of this agreement shall be valid unless it is in writing and signed by an authorized representative of the Purchaser and Apex.

17. **ASSIGNMENT.** This agreement may not be transferred or assigned by operation of law or otherwise, without the prior express written consent of Apex. Any transfer or assignment of any rights, duties, or obligations hereunder without such consent shall be void.

18. **EXPORT SALES.** No provision of this agreement shall be construed to require Apex to export or deliver any technical information, data, and/or equipment if such export or delivery is then prohibited or restricted by any law or regulation of the U.S. Government.

19. **INSURANCE.** Upon the request by Purchaser, Apex will provide a Certificate of Insurance evidencing the following types of insurance: workers' compensation, comprehensive general liability, comprehensive auto liability and physical damage.

20. **GOVERNING LAW.** All matters involving the validity, interpretation and application to this agreement shall be controlled by the laws of the Commonwealth of Pennsylvania, United States of America.

The Court of Common Pleas of Berks County will have jurisdiction over any and all disputes arising under the terms of this agreement.

Purchaser shall be responsible for any and all attorney fees incurred by Apex for any disputes arising under the terms of this agreement between Apex and Purchaser.

21. **BONDING.** Except as expressly stated herein prices stated in this proposal do not include any performance bonds or warranty/maintenance bonds. Apex can provide these or other types of bonds if required. Pricing for bonding can be provided at the customer's request.

22. **HEADINGS.** The headings used throughout are for convenience only and shall be disregarded for the purpose of construing and enforcing this agreement.

23. **ENTIRE AGREEMENT.** Purchaser by acceptance of Apex's offer does acknowledge and agree to the terms and conditions contained herein. Only representations, promises, conditions, or understandings subsequently reduced to writing and signed by an authorized representative of each party shall be binding upon either party.