

Chillicothe Metal Co., Inc. (CMCO)

GENERAL TERMS AND CONDITIONS

The following terms and conditions form part of each quote submitted by Chillicothe Metal Co., Inc. ("CMCO") for products manufactured, services rendered and/or equipment provided (collectively the "Deliverables") to a purchasing customer (the "Purchaser") and any contract made by and between the parties includes as apart thereof these terms and conditions. Notwithstanding anything herein to the contrary, if a written master agreement signed by both parties is in existence covering the sale of the Deliverables, the terms and conditions of the master agreement shall prevail to the extent they are inconsistent with these terms.

The Deliverables do not include components of assembled products that CMCO does not own, or purchase, or fabricate, and that are provided by the Purchaser or third parties pursuant to agreements with the Purchaser, such as engines, generators, electrical switchgear, and fuel tanks (hereinafter "Purchaser Components"), in connection with CMCO's Deliverables.

These terms and conditions and our quote when accepted by Purchaser with a purchase order not inconsistent with these terms and conditions and our quote (unless such inconsistent terms are accepted by CMCO), comprise the entire agreement (the "Agreement") between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties and communications, both written and oral. The Agreement prevails over any of the Purchaser's general terms and conditions of purchase regardless whether or when Purchaser has submitted its purchase order or such terms. Purchaser is hereby notified in advance that CMCO takes exception to any and all changes, additions or deletions which Purchaser may make to the Agreement that are not expressly accepted by CMCO in writing. Fulfillment of Purchaser's order does not serve to modify or amend the Agreement.

I. ACCEPTANCE AND NON-ASSIGNMENT

Our quote shall lapse automatically upon the expiration of a period of 30 days (unless otherwise specified) after its date of submission unless it has been previously accepted by Purchaser or revoked by CMCO. Purchaser may not assign the Agreement without the prior written consent of CMCO.

II. COMPLETION AND DELIVERY

CMCO will make every effort to make delivery of the Deliverables as specified in the Agreement, but CMCO shall not be liable for any loss or damage if delivery is delayed as a result of causes of any kind beyond the reasonable control of CMCO, such as, but not limited to, strikes, or other labor difficulties, war, riots, acts of government authority, inclement weather, fire, flood, unavoidable casualties, delays in transportation of materials and/or Purchaser Components, or inability to obtain timely delivery of materials from suppliers and/or Purchaser. In the event of any such delay, it is agreed that the time for delivery or completion shall be extended for a period of time at least equal to the time lost by reason of the delay. A delay in delivery shall not give rise to cancellations by Purchaser until thirty days after written notice of such intention to cancel shall have been actually received by CMCO and Purchaser shall be obligated to accept any Deliverables completed or shipped by CMCO during such period. Any claims by the Purchaser for loss due to delay in delivery or completion of Deliverables shall be waived unless made in writing and delivered to CMCO within five days after delivery or completion of the Deliverable.

III. **WARRANTY**

CMCO warrants the products it manufactures as part of the Deliverables, and items specifically identified in these terms and conditions, to be free from defects in material and workmanship under normal use and service and will, within one (1) year from the shipment date from our Chillicothe, Illinois factory, repair or replace, any CMCO manufactured product which, upon our inspection or review, proves to be defective. This warranty applies to commercial use units only and is not applicable to rental unit applications.

All conditions and obligations outlined in this warranty must be observed and implemented for the warranty to remain valid. This warranty is valid for the original purchaser only and is not transferable. For stationary units, this warranty is valid only for the original installation site, and movement of the enclosure assembly or components from the original installation site will void the warranty. The manufactured product covered by this warranty must be operated in a normal and proper manner, and must be maintained in accordance with instructions and appropriate maintenance practices. Improper use or maintenance procedures, neglect, abuse, improper repair, alteration, modification, or abnormal use, as determined by CMCO, will void this warranty. Damage resulting from improper job site installation or assembly, or designs or specifications purposely required by the Purchaser, are not covered by this warranty.

Purchaser Components, equipment, accessories, and other parts and components not manufactured by CMCO, are not covered by this warranty and are warranted only to the extent of the original manufacturer's warranty, if any, as to which CMCO has no responsibility. Expendable items, rubber, hoses, light bulbs, and normal wear and tear items are not covered by this warranty. Accidental damage, and damage caused by acts of God are not covered by this warranty.

Claim Procedure:

All warranty claims must be reported to the CMCO quality assurance department by written notice within one (1) month of the discovery of any defect. The CMCO sales order and serial number must be referenced on any communications. All warranty claims must be reported to CMCO prior to any corrective action being taken, so that CMCO may have the opportunity to repair, replace, or authorize corrective actions to be taken.

Warranty Resolution:

CMCO reserves the right to repair or replace defective items subject to this Warranty. CMCO, at its sole discretion, shall repair or replace, but not install, any part or parts of the product found to CMCO satisfaction to be defective within this Warranty.

Any warranty adjustments or repairs made by CMCO shall not extend the initial warranty period. CMCO will not reimburse expenses incurred by the Purchaser in removing, replacing, installing, repairing, or returning defective manufactured products or any parts. CMCO shall not be responsible for any costs or expenses for repairs made by anyone other than CMCO unless such repairs have been authorized in advance, and in writing, by CMCO.

Expenses incurred for field repair, replacement, or field services of CMCO manufactured products or parts may be honored at the sole discretion of CMCO. Any agreement for additional field installation charges must be approved by CMCO in writing. To be considered, a fixed price quote from the Purchaser, or its representative, shall be submitted in writing prior to any repairs having been performed. Reasonable expenses may be considered, and final determination is the sole right of CMCO. Invoices issued for field service repairs or replacements, which have not been authorized by CMCO, will not be honored. All invoices issued for field service rework must be specifically broken down into exact material costs, labor hours, mileage, and other charges. Charges that are not specifically broken down, documented, or deemed excessive will not be honored. If repair, replacement, or field services are provided, and CMCO determines that there is no defect within the provisions of this warranty, then the Purchaser shall pay for any and all expenses associated with such repair, replacement, or field service.

Our goals at CMCO are to provide quality Deliverables and customer satisfaction. All valid warranty claims will be processed and resolved as expeditiously as possible under the circumstances. Purchasers experiencing quality or other issues with Deliverables should direct their communications to Quality Assurance Department, Chillicothe Metal Co., Inc.

THE FOREGOING WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, AND OF ALL OTHER OBLIGATIONS OR LIABILITIES ON THE PART OF CMCO. Other warranties may be issued by CMCO from time to time with respect to a particular Deliverable and, in the absence of other written warranties of this specific nature, the above warranty is the only warranty offered by CMCO covering the Deliverables. CMCO neither assumes nor does it authorize any other person to assume on its behalf, any other liability in connection with the Deliverables, including but not limited to any liability arising from loss or damage to the Deliverables during transportation after the Deliverables have left CMCO's jobsite, and/or loss or damage to Purchaser Components.

IV. DAMAGES

UNDER NO CIRCUMSTANCES, WHETHER DUE TO BREACH OF WARRANTY HEREUNDER OR ANY OTHER CAUSE ARISING OUT OF PERFORMANCE OR NON-PERFORMANCE OF THE AGREEMENT, SHALL CMCO BE LIABLE (1) FOR CONSEQUENTIAL OR INDIRECT LOSS OR DAMAGE, INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS, LOSS OF PRODUCTION, PLANT DOWN-TIME OR LIABILITIES TO PURCHASER OR OTHER THIRD PARTIES, (2) FOR LOSS OR DAMAGE ARISING OUT OF THE SOLE OR CONTRIBUTORY NEGLIGENCE OF THE PURCHASER, ITS EMPLOYEES AND AGENTS, OR ANY THIRD PARTY, OR (3) FOR ANY SPECIAL OR PUNITIVE DAMAGES OF ANY NATURE.

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V. PRICING AND TAXES

The price for the Deliverables set forth in CMCO's quote is exclusive of any federal, state or municipal taxes, including sales or use taxes, which may be payable in respect of the sale, purchase or use of the Deliverables, the payment of all such taxes to be the responsibility of the Purchaser. If CMCO is required by applicable law to collect any such taxes from the Purchaser, it may pay the same and add the amount thereof to its invoice. The Purchaser will furnish CMCO with appropriate tax exemption certificates, if applicable.

CMCO reserves the right to modify the price, between the date of the Agreement (i.e., the date CMCO's quote is accepted by Purchaser) and the date raw materials are purchased for production of the Deliverables in the event of an increase in raw material costs greater than 10% as reflected by an industry index using CRU commodity prices for low carbon steel.

VI. SECURITY INTEREST

Purchaser grants to CMCO a security interest in the Deliverables until the purchase price (including any notes therefor) has been fully paid in United States currency, and in the event of default in payment, CMCO shall have all rights of repossession and other rights available to a secured party under the laws applicable thereto. The Purchaser agrees that no part of the Deliverables shall be considered a fixture or a part of any realty by reason of its being attached to real estate, and any part maybe separated from real estate for purpose of repossession by CMCO or by our agent without liability for such removal if the Purchaser is in default in payment of the purchase price.

VII. RISK OF LOSS

The Purchaser shall bear the risk of loss of or damage to the Deliverables during transportation after the Deliverables have left CMCO's jobsite per F.O.B. term in the Agreement.

The Purchaser shall bear the risk of loss of or damage to Purchaser Components, however such loss or damage may be caused or occasioned. The Purchaser shall be responsible for carrying insurance insuring Purchaser and CMCO from the risk of such loss or damage, in no less than the amount of the market value, or purchase price, of the Purchaser Components at the time of delivery to CMCO in connection with CMCO's Deliverables. The Purchaser shall provide a certificate of insurance showing CMCO as an additional insured at CMCO's request.

VIII. INDEMNIFICATION

The Purchaser shall indemnify, hold harmless, and defend CMCO from and against all suits, actions, legal proceedings, demands, damages, costs, expenses and attorneys fees caused by, arising from, incident to, connected with or growing out of the performance of the work covered by the Agreement.

IX. CHANGES

If pursuant to the Purchaser's written direction or request any change is made in the Deliverables, the purchase price shall be increased or decreased to reflect such changes and the time for completion under the Agreement shall be extended to the extent required to make such change.

X. PROPRIETARY AND CONFIDENTIAL INFORMATION

All information and data herein or furnished to the Purchaser hereunder, relating to price, size, type and design is submitted with the understanding that it is for the confidential use of the Purchaser and is not to be shown or otherwise made available to any third party at any time without written consent of CMCO.

XI. CONFORMANCE WITH LAWS, CODES, ETC.

If applicable laws, ordinances, regulations, or conditions require anything different from or in addition to the drawing and specifications provided to CMCO by Purchaser then, upon the written request and expense of Purchaser, CMCO will satisfy such requirements upon receipt of proper specifications from Purchaser before commencement of manufacture of the Deliverables.

XII. GOVERNING LAW

The parties hereby agree that all rights and obligations of the parties will be governed by the substantive laws of the state of Illinois, without regard to its laws of conflicts.

XIII. DEFAULT

In the event the Purchaser becomes insolvent, commits an act of bankruptcy or default in the performance of any term or condition of this Agreement, the entire unpaid portion of the purchase price shall without notice or demand, become immediately due and payable. In any such event, CMCO at its option, without notice or demand, shall be entitled (1) to sue for such balance and for reasonable attorneys' fees plus out-of-pocket expenses and interest, (2) to enter any place where the Deliverables are located and to take immediate possession of and remove the Deliverables with or without legal process; (3) to retain all payments theretofore made as compensation for the use of the Deliverables; (4) to resell the Deliverables at public or private sale without notice or demand for and on behalf of Purchaser, and (5) to apply the net proceeds from such sale (after deduction from the sale price of all expenses of such sale and all expenses of retaking possession, repairs necessary to put the Deliverables in salable condition, storage charges, taxes, liens, collection and attorneys charges and all other expenses in connection therewith) to the balance then due to CMCO for the Deliverables and to receive from the Purchaser the deficiency between such net proceeds of sale and such balance. The Purchaser hereby waives all trespass, damage and claims resulting from any such entry, repossession, removal retention repair, alteration and sales. The remedies provided in this paragraph are in addition to and not in limitation of any other available remedy or remedies of CMCO, but each and every such remedy shall be cumulative and shall be in addition to every other remedy under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed as a waiver thereof but any such right or power may be exercised from time to time and as often as may be deemed expedient.

XIV. TERMS OF PAYMENT & RECOVERY OF COLLECTION COSTS

Unless otherwise stated, terms are net thirty (30) days from date of invoice, subject to our prior approval of credit. Interest will be charged beginning the 31st day at the applicable legal rate under local laws.

If CMCO is required to pursue legal action to enforce its contractual rights, the Purchaser shall be obligated to pay reasonable collection costs including attorney's fees.

XV. INTEGRATION CLAUSE

By acceptance of the quote, the Purchaser acknowledges (1) that it has not relied on any previous written, oral or implied representations inducement or understanding of any kind or nature,(2) that the quote, these general terms and conditions and any drawings incorporated in the quote by reference embodies the entire agreement between the Purchaser and CMCO and supersedes all prior agreements and understandings, both written and oral, between the parties with respect to the subject matter hereof, and (3) that the Agreement entered into by Purchaser's acceptance of the quote may not be modified or terminated except in writing signed by an officer of CMCO.

XVI. WAIVER

No claimed waiver of any of the provisions of the Agreement shall be valid unless signed by an officer of CMCO and waiver of one provision shall not constitute waiver of another provision. CMCO shall not be bound by any additional or different terms unless those terms are accepted in writing by an officer of CMCO.

XVII. PATENT INFRINGEMENT

CMCO will hold the Purchaser harmless against any liability arising out of any claim that a product manufactured by CMCO or that CMCO designed parts furnished by it, infringes any United States patent (except for equipment or parts of special design, construction or manufacture specified or originated by the Purchaser with respect to which the Purchaser similarly agrees to indemnify CMCO as provided in this paragraph XVII), provided that the indemnity of CMCO shall not exceed the amount paid to CMCO by the Purchaser hereunder and provided further that the Purchaser promptly notifies CMCO in writing of such claim of infringement, that the defense of any legal action relating to such claim shall be under the direction and control of CMCO and that the Purchaser shall cooperate with CMCO in making such defense.