



seedorff
ACME
Corporation



STANDARD TERMS & CONDITIONS

1. Defined Terms. All defined terms in the PROPOSAL on the front side hereof shall apply to the terms and conditions below.

2. Change Orders. Buyer shall pay Company for any amounts due for changes or alterations relating to Equipment; in such event, Buyer agrees to execute a written change order, which must be signed by both parties. Any additional amount due by Buyer under a change order shall be part of the purchase price.

3. Delivery. Company does not guarantee delivery of Equipment at FOB Company's premises by a specific date. Buyer acknowledges that any proposed date by Company is an estimate only. In no way is this "time is of the essence" clause; but Company will use best efforts to comply with any proposed date or as soon as possible thereafter.

4. Inspection at Delivery. Buyer or its agent shall inspect the Equipment upon delivery at FOB Company premises; if Buyer fails to do so, this shall be prima facie evidence the Equipment was in good working order and condition, without any damage, upon delivery. No claims for damages will be accepted by Company after Equipment has been delivered to Buyer at FOB, Company premises.

5. Force Majeure. Company shall not be in breach of its obligations under the Agreement if its performance is prevented, delayed or made substantially more expensive due to force majeure, whether or not foreseeable and regardless of whether direct or indirect. Force majeure shall include acts of God, strikes, lockouts, acts of terrorism or public enemy, orders by U.S. Government or any state having jurisdiction over the Agreement, civil/military authority, insurrection, riots, landslide, earthquake, fire, hurricane, storm/flood, explosion or any similar cause beyond Company's reasonable control. If performance is prevented or delayed due to force majeure, Company may terminate the Agreement in its sole discretion. If performance is made substantially more expensive due to force majeure, Company may either (a) terminate the Agreement, or (b) increase the purchase price in proportion to the increase in applicable costs and expenses.

6. Warranties.

COMPANY WARRANTS EQUIPMENT SHALL BE FREE FROM DEFECT IN MATERIAL & WORKMANSHIP FOR THIRTY-SIX (36) MONTHS FROM DATE OF DELIVERY. COMPANY SHALL AT ITS SOLE DISCRETION FIX, REPLACE OR REPAIR ANY FAULTY COMPONENTS, PARTS OR WORKMANSHIP IN EQUIPMENT TO ORIGINAL SPECIFICATION (ITEMS MAY BE REMANUFACTURED OR REFURBISHED), WHICH SHALL BE COVERED FOR THE REMAINDER OF THE WARRANTY PERIOD. HOWEVER, THIS WARRANTY SHALL NOT COVER ANY DAMAGES DUE TO: FORCE MAJEURE, ABUSE OR MISUSE BY USER, ACCIDENT, UNAUTHORIZED MODIFICATION, FAILURE TO FOLLOW INSTRUCTIONS SUPPLIED WITH EQUIPMENT, REPAIRS/ATTEMPTED REPAIRS BY ANYONE NOT AUTHORIZED BY COMPANY, SHIPMENT, INSTALLATION OR REMOVAL, ELECTRIC POWER FLUCTUATIONS, SUPPLIES OR PARTS NOT MEETING COMPANY SPECIFICATIONS, NORMAL WEAR AND TEAR, FAILURE TO PERFORM PERIODIC MAINTENANCE AS STATED IN USER GUIDE, OR ANY OTHER CAUSE WHICH DOES NOT RELATE TO PRODUCT DEFECT.

COMPANY MAKES NO OTHER WARRANTY, EXPRESS OR IMPLIED, REGARDING EQUIPMENT, AND DISCLAIMS ANY OTHER WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE. IN NO EVENT SHALL COMPANY BE LIABLE TO BUYER OR THIRD PARTY FOR ANY DAMAGES INCLUDING BUT NOT LIMITED TO BODILY INJURY, PROPERTY DAMAGE, LOST PROFITS, LOST SAVINGS OR OTHER INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF THE SALE, USE OR INABILITY TO USE EQUIPMENT; OR FOR REMOVAL, INSTALLATION OR SET UP SERVICE CHARGES. COMPANY DOES NOT WARRANT ANY THIRD-PARTY PRODUCTS, OR ANY COMPONENT/PART IN EQUIPMENT OR INSTALLED BY BUYER.

7. Warranty Service. For information on warranty service, Buyer must call Company's Customer Service (Telephone: 714-252-5330) and obtain a "return authorization number;" Company will not provide any warranty service unless Buyer has been assigned such number.

8. Title & Default on Payment. If Buyer fails to pay for Equipment as set out herein, Company will give it 5-calendar day's written notice to cure; if Buyer fails to cure within that time, Company may immediately terminate the Agreement. Title to Equipment shall not pass until Buyer has paid full purchase price to Company, without setoff or deduction. As it would be difficult or impractical to assess actual damages if Buyer fails to pay for Equipment and fails to cure as set out above, Buyer agrees that in addition to any other remedies for damages Company may have against it, Company shall be entitled to retain any deposit or down payment as liquidated damages.

9. Returns; Costs & Damages. Equipment may not be returned by Buyer without written authorization by Company; however, custom Equipment may not be returned. Any Equipment returned shall be subject to 20% restocking fee on purchase price and shipping costs. Buyer agrees if Company is charged for any non-qualification or related credit card fee on any credit card payment/transaction by Buyer for Equipment, Company may immediately charge or debit Buyer's credit card in that amount. Shortage or damage to Equipment must be noted by Buyer (or its agent) on the freight bill or bill of lading upon arrival at destination; if no notation is made, Company shall be entitled to assume there was no shortage or damage.

10. Disclaimer. Except for the limited warranty set out herein, no language contained in any manual or brochure which may be provided in connection with or relating to Equipment shall be construed as an additional warranty or admission of fault or acceptance of liability by Company if any mechanical or other defect results in injury to property or person.

11. Use of Equipment; Indemnity. Company has no control over Buyer's use/operation of Equipment; Buyer assumes all responsibility and risk associated therewith. Buyer agrees to indemnify, defend and hold Company harmless from any claims, losses, damages or injuries (including attorneys' fees & costs) due to its or any third party's improper or negligent use/operation of Equipment.

12. Notice. Any notice, request, demand or communication shall be deemed properly given and received (a) immediately on personal delivery, (b) immediately if by fax to the number stated above or any subsequent number provided under this paragraph, or (c) 2-business days after being mailed to either party's address.

13. Governing Law; Arbitration & Fees. This Agreement is deemed executed in California, and shall be governed under California law, without regard to its choice of law rules. Any dispute relating to or arising out of this Agreement shall be resolved by final and binding arbitration before JAMS (pursuant to its commercial arbitration rules) before a single retired judge or justice. The parties stipulate to jurisdiction and venue in Orange County, California. The parties specifically agree to the jurisdiction of the courts sitting in Orange County, California in any action to compel arbitration or to enforce an arbitration award, and expressly waive any personal jurisdiction objections or defects. The prevailing party shall be entitled to recover their attorney's fees and costs, including collection costs & charges.

14. Entire Agreement. This Agreement shall be binding on the parties, their successors, representatives and assigns, and may only be modified in a writing signed by both parties; it constitutes the entire agreement between the parties and supersedes all prior oral or written representations or agreements that may have been made by either party.

15. No Waiver. No waiver of full performance by either party shall be construed or operate as a waiver of any present or future default or breach of any provisions of this Agreement; if any provision is held to be invalid or unenforceable, it shall not affect the remaining provisions, which shall remain in full force and effect.