



## Modern Process Equipment Terms and Conditions of Sale

- 1. Acceptance.** Buyer may accept this product offering (“Offering”) by a written acceptance, acknowledgment, or purchase order delivered to Modern Process Equipment (“MPE” or Seller”) within a reasonable time or by delivery of the goods or services ordered. Acceptance of this Offering constitutes acceptance of all of the Terms and Conditions contained herein to the exclusion of any and all other potentially conflicting terms and conditions. Each Purchase Order shall become binding upon Seller only after it has been accepted by an authorized representative at the MPE headquarters located in Chicago, Illinois. Any provisions of Buyer’s Acknowledgment forms, Purchase Orders, or similar documents which are inconsistent with the provisions of this Offering are specifically rejected by Seller and shall be of no force and effect. Buyer’s receipt of good or any other acts of acceptance shall be construed as a waiver of any additional, different, or inconsistent terms proposed by the Buyer.
- 2. Changes to Order.** This Offering constitutes the entire contract between Buyer and Seller with respect to the work, product and material specified and expressly incorporates any and all previous communications (both oral and written) between Buyer and Seller. Subsequent oral or verbal instructions or agreements relating to or altering this Offering in any way will not alter Seller’s obligations under this Offering. Any amendments to this Offering shall be binding upon Seller only if in writing and acknowledged by both Buyer and Seller. Further, any changes which result in an increase in Seller’s costs or which alter the specifications of the goods or services sold must be agreed to in writing and acknowledged by both Buyer and Seller. In no event shall Seller have any liability for loss of anticipatory profits claimed by either Buyer or Buyer’s suppliers.
- 3. Manufacturing Changes.** The Buyer shall give Seller advance written notice in writing of all specification, design, part number, and other identification changes, as well as major changes to the Buyer’s process procedure which may affect the design and/or manufacture of the goods covered by this Offering. Further, Buyer shall give Seller written notice of any changes in location of the manufacturing plant applying to goods covered by this Offering. The warranties detailed in Paragraph 6 of these Terms and Conditions shall be rendered null and void if the Buyer fails to provide Seller with written notice of the changes identified in this Paragraph.
- 4. Terms.** Prices quoted are valid for thirty (30) days from the date of the Offering. After thirty (30) days, all prices are subject to change based upon the costs and conditions existing at the time which the Offering is being accepted and Seller has the right to revise all quotations before acceptance by the Buyer. If, in the case of an equipment order, engineering drawing approvals are not received back from the Buyer for a length of time longer than 90 days, Seller reserves the right to re-quote the equipment.

Unless otherwise stated in this Offering, Payment Terms, Finance Charges, and Storage Fees are as follows:

**Payment Terms:**

A. Equipment: Terms are 35% of order amount with the Order and the balance due upon completion of equipment. Final invoice issued 20 days prior to completion of equipment and readiness for shipment and/or testing.

B. Parts and Service: Terms are, upon credit approval, Net 20 Days.

**Finance Charges:**

Buyer agrees to pay a Finance Charge of 1.5% per month for any outstanding account balance that is not paid in full by the due date. No finance charge will be imposed if Buyer pays the entire outstanding balance by the due date. Seller will determine the Finance Charge on the account by applying the periodic rate to the adjusted balance of the account. Seller determines the "adjusted balance" by taking the balance owed at the end of the previous billing cycle and subtracting any unpaid finance charges and any payments and credits received during the present billing cycle. There is a minimum finance charge of \$50.00 for any month in which a finance charge is imposed.

**Storage Fees:**

Buyer will use commercially reasonable efforts to take delivery of the equipment from the Seller no later than ten (10) days after the delivery date as set forth in Seller's Offering. If Buyer anticipates that it will not be able to meet the shipment date, it will notify Seller promptly that Seller should store the equipment at Seller's headquarters located in Chicago, Illinois on an interim basis and indicate a date certain on which it will take delivery. A Storage Fee shall be due and payable to Seller if Buyer is unable to take delivery of the equipment in Seller's Offering ten (10) days after the delivery date as set forth in Seller's Offering. The Storage Fee shall be calculated as follows: Buyer shall pay to Seller One Hundred Dollars (\$100.00) per day for each day of storage Seller provides after the ten (10) day grace period as noted above.

5. **Retention of Security Interest and Right to Possession.** Buyer agrees that the Seller shall retain a security interest in the goods manufactured by Seller until such time as Seller is paid in full. At the request of Seller, Buyer agrees to execute such documents as are necessary to perfect Seller's security interest in the items, including but not limited to, one or more financing statements in a form satisfactory to the Seller. To the extent permitted by law, Buyer hereby grants Seller authority on its behalf to execute, file, or record any document necessary to perfect the Seller's security interest in the goods, including but not limited to a financing statement.

6. Warranty. The seller warrants that the products manufactured and supplied pursuant to this offering are free from defects in materials and workmanship for a period of one (1) year from the date of shipment so long as the buyer has subjected the products to normal use and followed necessary and proper maintenance.

The seller shall possess the exclusive discretion to determine whether a defect in materials or workmanship arose during the warranty period. If seller concludes that a warrantable condition exists, the seller possesses the discretion to either repair or replace the specific defect. If the defect in materials or workmanship occurs within a period of ninety (90) days from the date of shipment, seller shall be responsible for labor charges in connection with repair or replacement of the defect – as long as the product or equipment is located within the continental United States or Canada. All other labor charges shall be buyer's responsibility and shall be billed to buyer at seller's then prevailing rates, including travel and lodging expenses.

Seller's obligations and buyer's exclusive remedy hereunder shall be limited to such repair and replacement and shall be conditioned upon seller receiving written notice of any alleged defect no later than ten (10) days after its discovery within the warranty period. At seller's sole option and discretion, seller may require return of such products to seller when such return is feasible. Seller reserves the right to satisfy all of its warranty obligations by reimbursing buyer for all amounts buyer has paid to seller for such product upon which buyer shall immediately return the product(s) to seller. The foregoing warranty is not applicable to: (i) accessories and components not manufactured by seller, which are warranted only to extent, if any, of the manufacturer's warranty for such accessories and components (but the warranty term for any such warranty shall be the expiration date of such warranty, or one year from date of shipment, whichever is the first to occur), or (ii) damages caused by shipping. Seller shall be responsible for freight charges for replacement parts only if shipped within the continental United States or Canada.

The foregoing warranty is exclusive and in lieu of all other express and implied warranties (except of title) including but not limited to implied warranties of merchantability, fitness for a particular purpose, performance, or otherwise. All other warranties are expressly disclaimed.

7. Limitation of Liability. The remedies of buyer set forth herein are exclusive and the aggregate liability of seller for any claim of any kind for any loss or damage resulting from, arising out of, or connected with this offering or from the performance or breach thereof or from the sale, delivery, resale, repair, or use of any product whether based on contract, tort (including any product liability theory such as negligence, product recall, or product retrofit), fault, indemnity or otherwise, shall in no event exceed the price allocable to the product giving rise to the claim. In no event shall the seller be liable

**for special, limited, or consequential damages of any nature, including but not limited to loss of profits or revenue or business opportunity, loss by reason of shutdown of facilities or inability to operate any facility at full capacity, or cost of replacement power. The limitations contained in this paragraph shall supersede any inconsistent provisions in any instrument forming part of this agreement.**

8. **Breach and Cancellation.** In the event Buyer breaches any of the terms and conditions of the Offering, Seller shall have all the rights and remedies provided to Seller by the Uniform Commercial Code, as adopted by the State of Illinois, including the right to recover any incidental, consequential, special, or indirect damages resulting from said breach(es). If Buyer cancels an order, the Buyer will be subject to a cancellation charge. If the order is cancelled within the first thirty (30) days from the order acknowledgment date, the Buyer agrees to pay a cancellation charge and shall be charged 20% of the Order amount. If the cancellation is after that date and prior to the Order release to production, Buyer agrees the charge shall be 50% of the order amount. If cancellation is after the release to production, Buyer agrees the charge shall be 100% of the order amount. Seller also reserves the right to cancel this Order or any part thereof in the event of insolvency or bankruptcy of Buyer.

9. **Data/Drawings.** Information, including drawings and data, submitted at any time by Buyer to Seller relating to the goods or services covered by this Offering are not submitted in confidence and may be used by Seller in any way in the conduct of its business. Seller's quotations will be prepared on the basis of technical data available on your product and application at time of inquiry. Changes in product condition or application after receipt of order may void any and all warranties.

10. **Force Majeure.** The shipping dates given by Seller are approximate and Seller will use its best efforts to meet such dates. All orders are accepted with the understanding that shipping dates are approximate and subject to change because of Buyer delays (including, but not limited to, late approval drawings, acknowledgments, receipt of down payment, or other delays), acts of God, pandemics, factory conditions, fire, labor disputes, materials shortages, civil or military authority, and/or other causes beyond Seller's knowledge or control.

11. **Construction of Contract and Seller's Rights.** This Offering and the terms and conditions herein shall be construed according to the laws of the State of Illinois, without giving effect to choice of law principles. Buyer consents and agrees to the exclusive jurisdiction of the State courts in Cook County, Illinois or the United States District Court in Chicago, Illinois. Buyer further consents that Seller shall have the right to transfer any legal action to either the State courts in Cook County, Illinois or the United States District Court in Chicago, Illinois and Buyer waives any objection to such a transfer. All rights and remedies of Seller as herein specified shall be cumulative and in addition to any other or further remedies provided in law or equity. Failure of Seller to enforce any of the provisions of this Offering, to exercise any option herein provided or to require performance by Buyer of any of the provisions hereof, shall not in any way be construed to be a waiver of any provisions nor in any way affect the validity of this Offering or any part thereof, or the right of Seller thereafter to enforce each and every such provision.

12. **Insurance and Indemnification.** Buyer shall, upon demand, fully indemnify and hold seller harmless from any and all losses, costs, damages, expenses, penalties, fines, settlement and/or compromise payments, including, but not limited to, seller's reasonable attorneys' fees (through all appellate, enforcement, or collection proceedings), occasioned by or resulting from the breach or nonperformance of any of the buyer's obligations contained in this agreement. This indemnification includes, but is not limited to, claims asserted against seller by employees, agents and subcontractors of buyer, or subsequent buyers or users of the services performed or products sold under this offering/order, which are caused by buyer's failure to meet its obligations under this agreement or to situations in which the accident or injury could have been prevented had the buyer enforced workplace rules or followed OSHA regulations.

13. **Use of Seller's Designs and Data.** Buyer shall not use or disclose other than to authorized subcontractors, any data, designs or technical information belonging to or supplied by Seller except in the performance of this Offering/Order. Upon completion of this Offering/Order, the data, designs or technical information shall be returned to Seller upon Seller's request. The same obligation of return to Seller shall extend to any subcontractors of Buyer engaged in the performance of this Offering/Order.

14. **Patents.** Buyer agrees to defend, protect, and hold Seller, its successors, customers, and users of its products harmless against every action or claim for alleged infringement of patent by reason of the sale or use of goods ordered hereby and to pay all costs, damages, and profits recoverable from such action or claim. Buyer agrees to disclose and on request to assign to Seller or to such other party as Seller may direct, any invention, improvement, or discovery conceived or reduced to practice, arising from designs, tools, patterns, drawings, or any other information supplied by Seller pertaining to goods developed especially for the Buyer and covered by this Offering.

15. **Severability.** The invalidity or unenforceability of any of the clauses, terms or provisions of this Offering/Order shall not affect the validity or enforceability of any other clause, term, or provision hereof.

16. **Sales and Use Tax.** Prices quoted are net unless otherwise stated. Prices quoted do not include federal, state, municipal or governmental excise, sales, use, occupational, or other like taxes now enforced or to be enacted. Should such taxes be assessed upon this transaction, Seller hereby reserves the right to invoice Buyer and Buyer agrees to pay the same.

17. **Collection and Remedies.** Buyer agrees that seller may take any action it deems necessary to collect accounts/invoices not paid within terms and that seller shall be entitled to collect the cost of each product purchased along with all accrued finance charges, costs, and expenses incurred. Buyer agrees to pay all costs and expenses, including but not limited to, actual attorney fees incurred by seller to enforce the terms and conditions of this agreement and/or incurred as a result of any breach of this agreement by buyer.