

POWERHOUSE EQUIPMENT & ENGINEERING CO., INC. STANDARD TERMS AND CONDITIONS FOR SALE OF PARTS AND SERVICES

**1. ACCEPTANCE OF SALES QUOTE:** These terms and conditions are the offer to Buyer to purchase from Powerhouse Equipment & Engineering Co., Inc. (hereinafter "Seller") the sale of Parts and/or Services described in the attached Sales Quote (hereinafter "Order"). This Order may be accepted by Buyer by issuance of a Purchase Order to Seller. Buyer's acceptance is expressly limited to the terms hereunder, and Seller objects to all additions, exceptions, or changes to these terms whether contained in any printed form of Buyer or elsewhere, including Buyer's Purchase Order terms and conditions, which these terms shall supersede. Any Purchase Order terms by Buyer that contain terms in addition to or inconsistent with these Terms, or terms that reject any term or condition set forth herein, shall be deemed to be a counteroffer to Seller, and shall not be binding upon Seller unless specifically accepted in writing by Seller.

**2. PRICE:** The price stated in the Sales Quote includes all charges except for any applicable sales and use tax. Sales and use taxes not subject to exemption shall be stated separately in Seller's invoice. Seller is responsible to collect/remit sales tax in the states of Florida, New Jersey, North Carolina and Pennsylvania. Outside of these states, any sales or use tax is the responsibility of the Buyer. Seller may not increase price for sale of Parts and Services as stated in the Sales Quote after acceptance of this Order by way of issuance of a Purchase Order. If Order is on a time and materials basis, Seller's current Labor Rate Detail Sheet will be attached and apply along with the following overtime rates:

1.5x (OT) rates will be charged:

- Any time in excess of eight (8) hours on site in a twenty-four (24) hour period M-F OR forty (40) hours on site in a five (5) period M-F

- Any time on site before 7:00AM or after 5:00PM M-F

- Any time on site on a Saturday

2.0x (2OT) rates will be charged:

- Any time in excess of twelve (12) hours on site in a twenty-four (24) hour period M-F OR sixty (60) hours on site in a five (5) period M-F.

- Any time on site on a Sunday

- Any time on site on an Official (Bank) or Company Holiday

\*Boiler Operators are charged at straight time for any hours operating M-F and 1.5x (OT) for any hours operating Saturday or Sunday.

**3. TERMS OF PAYMENT:** Seller's invoice for said sale of Parts and Services shall be paid by Buyer net thirty (30) days.

**4. CHANGES:** No changes to the Order can be made unless documented in a revised Sales Quote and reflected in Buyer's Purchase Order.

**5. CANCELLATION:** Cancellation of the Order can be done in whole or in part by written notice to Seller any time prior to Parts being consigned to a Carrier for shipment or scheduling of travel arrangements for Service to commence the Order.

**6. INDEPENDENT CONTRACTOR:** Nothing herein shall be construed as creating the relationship of employer and employee between the Parties. The Seller shall be deemed to be at all times an Independent Contractor. The Seller agrees that he will conduct himself in a manner that is consistent with such status; that he will neither hold himself out as nor claim to be an officer or employee of the Buyer; and that he will not make any claim, demand or application for any right or privilege applicable to an officer or employee of the Buyer including, but not limited to, Worker's Compensation coverage, Unemployment Insurance benefits, Social Security coverage, or Retirement benefits or credit. It is agreed that the personnel (including all employees of subcontractors and all agents of the Seller) engaged in performance under this Agreement are employees of the Seller and under no circumstances are to be considered or treated as employees of the Buyer. Seller agrees to indemnify, defend, and hold harmless the Buyer against liability for and the payment of all contributions, taxes and premiums required by law measured by the payroll of persons performing the work described herein for the Buyer or any subcontractor of the Buyer.

**7. INSURANCE:** Seller shall, at its own expense, maintain the following insurance at all times:

- Commercial General Liability - \$1M/\$2M aggregate
- Automobile Liability - \$1M/\$2M aggregate
- Umbrella Liability - \$5M
- Worker's Compensation - Statutory workers' compensation covering all state and local requirements
- Employer's Liability - \$1M/\$1M

Buyer is responsible to maintain Equipment liability insurance (including, without limitation, bodily injury and property) including coverage to replace Equipment in the event of loss or damage in the sale of Parts and Services being performed by Seller.

**8. INDEMNIFICATION:** Buyer shall indemnify Seller and hold Seller harmless against all claims, losses, actions, costs, damages and liabilities of any nature whatsoever, including but not limited to negligence, bodily injury, death, tort and strict liability, including attorney's fees, arising out of, relating to, resulting from (i) unsafe work conditions at the

Client site and (ii) the Buyer's use of the sale of Parts and Services performed by Seller, except to the extent caused by the Seller's gross negligence or willful misconduct.

**9. QUALITY OF SERVICE/WARRANTY:** Seller shall perform its Services with care, skill, and diligence, in accordance with the applicable industry-standard practices currently recognized by such profession. Services shall be performed in a safe and workman like manner, and all materials and equipment furnished hereunder shall conform to all requirements and specifications identified in the Sales Quote and be free from defects of any kind in materials and workmanship for a period of 12 months. If Seller fails to meet applicable industry standards, Seller shall correct or revise any errors or deficiencies. Seller shall at all times keep the job site reasonably neat and clean and upon completion of the Services, shall remove and dispose of all waste from the Services performed.

**10. LIMITATION OF LIABILITY:** In no event shall either Party be liable to the other for any incidental, consequential, punitive, indirect, exemplary, liquidated or special damages of any kind, arising from any cause, for any reason, or claimed under any theory of law, including, without limitation, loss of use, loss of sales, loss of production, loss of profits or revenues, loss of business opportunity, interest charges, or cost of capital. Seller's liability and indemnity obligations, if any, shall in no event exceed the total amounts paid to Seller by Buyer under this Order.

**11. NO EXPRESS OR IMPLIED WARRANTIES:** Except as provided by in this Agreement, Seller neither makes nor shall be deemed to have made any warranty or representation, express or implied, concerning any Parts or Equipment, including, without limitation, any warranty or representation as to design, quality, or condition of the Parts or Equipment, or as to the merchantability or fitness of Equipment for any particular purpose or to any other matter relating to the Equipment in which Seller is providing the sale of Parts and/or Services. Buyer hereby agrees to waive and make no claim for breach of warranty arising from any cause whatsoever.

**12. GENERAL:** Seller personnel will not, under any circumstance, export steam, hot water or other service into a Buyer's system. Seller assumes no liability to Buyer-owned equipment and will not be held liable as direct or indirect damages, under any circumstance. Boiler operators are not guaranteed compliant with job site or jurisdictional regulations and or certifications.

**13. JOB SITE CONDITIONS AND SAFETY:** Buyer's worksite must be safe, accessible and free of all obstructions. Buyer shall indemnify Seller and hold Seller harmless against all claims, losses, actions, costs, damages and liabilities of any nature whatsoever resulting from unsafe conditions. All required utilities for proper operation of Equipment must be readily available. Seller will not perform any work on equipment in disrepair or out of inspection. Seller reserves the right to stop work due to unsafe conditions. Seller's personnel will be responsible for basic personal protective equipment ("PPE"). If worksite requires additional PPE, Buyer shall provide such PPE to Seller's personnel at Buyer's expense. Sale of Parts and Services may be delayed if additional PPE is not readily available to Buyer's personnel. Buyer shall be solely responsible for training Seller's personnel in its worksite safety protocols and rules.

**14. EXPEDITING/MOBILIZATION FEES:** For any job that requires the mobilization of workers, equipment, tooling or other resources in less than forty-eight (48) hour notice, additional fees may apply. These fees will be communicated in writing to Buyer prior to job initiation. Buyer must consent to these additional fees in writing and include these funds in the Purchase Order.

**15. DELAYS/FORCE MAJEURE:** Seller shall not be liable for loss or damage to Buyer from delay in delivery of the Order resulting from causes beyond Seller's reasonable control or caused by strikes or labor difficulties, lockouts, acts or omissions of any governmental authority of the Seller, insurrection or riot, terrorism or threats of terrorism, war, fires, floods, Acts of God, breakdown of essential machinery, accidents, embargoes, car and material shortages, delays in transportation or inability to obtain labor, materials or parts from usual sources. Any such delay shall be excused for the time reasonably necessary to compensate for the delay.

**16. SUBCONTRACTORS:** Seller may subcontract all or a portion of the work required. Subcontractor shall agree to perform work in compliance with set forth terms and conditions. Subcontracting of any work will not result in any rate increases.

**17. BILLING RECORDS:** Service reports will be kept by Seller personnel detailing work performed, hours worked, parts/materials used and any Buyer directives. These records are available upon request for Buyer review.

**18. NO SET-OFF BY BUYER:** Buyer's obligations to pay amounts due under these terms are absolute and unconditional under all circumstances whatsoever and shall not be subject to any set-off or reduction for any reason whatsoever.

**19. MODIFICATIONS:** These terms may not be amended, modified, or supplemented except by written agreement executed by Seller and Buyer.

**20. SEVERABILITY:** If any term or provision herein shall be held void, unenforceable, or in conflict with any law of a federal, state, or local government having jurisdiction over these terms and conditions, the validity of the remaining portions of these terms and conditions shall not be affected thereby. Invalidity or unenforceability of one provision shall not affect any other provision of these agreed to terms.

**21. WAIVER OF JURY TRIAL:** The parties expressly, voluntarily, and unequivocally waive any right they may have to a jury trial and agree that all disputes, claims, and counterclaims relating to or arising from these terms shall be litigated or otherwise resolved without a jury.

**22. GOVERNING LAW:** These terms shall be governed by and construed in accordance with the laws of the State of New Jersey without regard to principles of conflicts of law. Buyer expressly consents to the exclusive personal and subject

matter jurisdiction of the State and/or federal courts in the State of New Jersey for all lawsuits arising out of or related to these terms.