



# Terms and Conditions

1. **GENERAL** - The acceptance of any Quotation submitted by Mechanical Electrical Systems (MES) shall incorporate acceptance of these terms and conditions and of Special Conditions (if any) specified in the Quotation. Any conditions proposed by the Customer shall except insofar as they conform to these terms and conditions be expressly excluded.
2. **ACKNOWLEDGMENT** - All quotations are subject to acceptance by MES in Indianapolis, Indiana on receipt of the Customer's order and no contract shall be concluded until confirmation of acceptance is given or the Customer's order is otherwise accepted by MES.
3. **PRICES**
  - a. Prices quoted are net FOB Indianapolis, Indiana, prices ruling at the date of quotation and are exclusive of taxes, packing and shipping charges, which will be involved at the date of dispatch. Payment of such charges shall be made in accordance with the payment terms for the equipment. Quotations are open for acceptance for 30 days unless otherwise stated.
  - b. MES reserves the right to vary the quoted prices and to invoice the Customer at the price ruling at the date of dispatch of the goods whether these are of MES or other manufacture.
4. **PAYMENT**
  - a. Subject to MES' approval of the Customer's current credit rating, payment shall be made within 30 days from invoice date unless otherwise specified in the quotation. Past due accounts will bear a finance charge of 1½% per month on the unpaid balance which corresponds to an 18% annual percentage rate. If the customer fails to pay MES in accordance herewith MES may, without prejudice to other remedies that may be available, either suspend all further deliveries of equipment and performance of services (whether under this Contract or otherwise) until payment is made in full or cancel the Contract and subsequent contracts as far as equipment remains to be delivered and services to be performed hereunder.
  - b. MES will use its best endeavors to make shipments of the equipment as agreed with the Customer but reserves the right to make such part or complete shipments as may be most convenient to it or, where due to circumstances beyond its control, it is unable to make shipment as agreed. Invoices will be delivered for actual shipments made and payment is due to MES in accordance with the payment terms in 4.A above.
5. **ACCEPTANCE** - Acceptance of the order by MES is subject to provision by the Customer of full and final information to enable MES to proceed with manufacture and the Customer agrees to provide such information promptly as required. If in the opinion of MES the Customer has failed to provide sufficient information as required by the Quotation, MES will not proceed with the order until full and final information is made available. In such an event, MES shall be entitled to vary prices and delivery periods or dates in accordance with these terms and conditions.
6. **LIMITS OF CONTRACT**
  - a. The Quotation includes only such equipment, accessories and works as is specified therein and if any variations are required they will be charged in addition to the quoted price. Variations to the Quotation are accepted subject to these terms and conditions only.
  - b.
    - i. The Customer shall accept all liability for provision to MES of all free issue material required by the Contract and MES shall be under no liability whatsoever in respect thereof or for the commissioning thereof notwithstanding that the contract provides that MES shall install such material.
    - ii. In the event that delivery of such material to MES is for any reason delayed, MES shall be entitled to invoice the Customer for work already completed and the Customer shall on giving reasonable notice be entitled to inspect such work during normal working hours.
7. **CANCELLATION** - The Customer may not cancel any order accepted by MES but in the event of any cancellation MES shall be entitled to recover cost incurred as a result of cancellation and loss of profits, which shall be calculated by MES but shall not in any event exceed the total contract value.
8. **DELIVERY, TITLE AND RISK**
  - a. Unless otherwise stated in the Quotation any delivery dates or periods given are estimates only and shall not be construed as fixed. While every effort will be made to maintain delivery schedules time is not of the essence in this respect and MES hereby excludes all liability for any loss or damage whatsoever including consequential loss or damage suffered by the Customer as a result of delays.

- b. Delivery dates and periods shall be extended as necessary if delay in delivery is caused as set out in paragraph 3,C of these terms and conditions or by industrial dispute or due to any other circumstances beyond the control of MES. If any such delay causes MES to revise agreed production schedules, delivery will (subject to these terms and conditions) be in accordance with such revised schedules which will be notified to the customer.
- c. Prices are quoted exclusively of packing and shipping charges, unless otherwise stated, the fob point is Indianapolis, Indiana. Delivery to common carrier or postal authorities at Indianapolis, Indiana shall constitute delivery and passing of title to the customer, who shall thereafter be responsible for delays, loss or damage in transit.

9. **NON-ACCEPTANCE** - MES will not accept return of equipment correctly supplied in accordance with the Order.

10. **INSPECTION AND TESTS**

- a. The equipment when practicable undergoes MES standard tests before dispatch. If tests other than standard or those (if any) specified in the Quotation or tests in the presence of the Customer or Customer's representative are agreed these will be charged for and must be commenced within 7 calendar days of notification that MES is ready. If the Customer fails to attend within that time the tests will proceed in the Customer's absence and shall be deemed to have been made in his presence and the Customer shall be bound by the results thereof and the equipment will be dispatched and invoiced accordingly. Should MES agree to delay a functional, witnessed test specified in the contract, all reasonable expenses which MES may incur as a result of the delay will be charged extra and shall be payable by the Customer.
- b. Visual inspection of complete equipment by the Customer's representative during normal working hours may be arranged on request and without charge.

11. **COMMISSIONING** - Start up of equipment is not undertaken by MES unless specifically referred to in the Quotation. Where commissioning is included MES Standard Terms and Conditions for Commissioning shall apply and these may vary certain clauses contained herein.

12. **WARRANTY AND LIABILITY**

- a.
  - i. MES will repair or (at its option) replace any equipment manufactured by MES which is found within 12 months after delivery thereof to be defective by reason of faulty materials, workmanship or design provided that such defect is notified to MES within four weeks of becoming apparent and that the equipment is returned forthwith, freight paid to the premises of MES or at the option of MES is made available at the Customer's premises for attention by MES engineers. Where the equipment is repaired at MES' option on the Customer's premises, the Customer accepts liability for payment of travel and subsistence expenses of the MES engineer.
  - ii. In respect of goods not of MES manufacture, the Customer shall be entitled only to such benefits as MES may recover under any guarantee given to MES in respect thereof by the manufacturer.
- b. MES accepts no liability under this clause:
  - i. In respect of damage sustained in transit, liability for which is dealt with in paragraph 8 hereof.
  - ii. For defects caused by installation, operation or maintenance carried out other than in accordance with instructions supplied with the equipment or by wear and tear, accident or misuse, improper operation or neglect or arising as a result of the fitting of any equipment which does not comply with MES recommendations or otherwise as a result of failure of the Customer to comply in full with any manual or handbook containing the technical specifications and operating instructions supplied by MES with the equipment.
  - iii. Where equipment has been used for an application other than that specified at the time the Order was acknowledged or not in accordance with MES instructions
  - iv. Where the Customer has failed to observe the terms of payment for the equipment and all other obligations imposed by these terms and conditions.
- c. Where equipment has been ordered, obtained or manufactured to the Customer's own design or specification MES can accept no liability for any failure or defect in such equipment except insofar as such failure or defect arises directly as a result of the failure of MES to follow the design or specification provided and in particular MES gives no warranty as to the fitness for any particular purpose of goods so supplied to the Customer's design or specification. The Customer shall indemnify MES in respect of all liability, loss or damage suffered by MES as a result of MES following designs or specifications provided by the Customer including any such liability suffered as a result of a claim by a third party for infringement of intellectual property rights.
- d. Except as specifically set out herein MES shall be under no liability in respect of the quality, conditions or description of equipment or for any loss or damage howsoever caused to the Customer or to any other person and any term, condition or representation to the contrary whether expressed or implied by statute, common law or otherwise is hereby expressly excluded.
- e. No implied statutory warranty of merchantability or fitness for a particular purpose shall apply.

13. **LIMITATION OF LIABILITY** - Seller's liability on any claim of any kind, including negligence, for any loss or damage arising out of, connected with, or resulting from this sales contract or the performance or breach thereof, or from the design, manufacture, sale, delivery, resale, installation, repair operation or use of any equipment covered by or furnished under this agreement shall in no case (except as provided under "PATENTS") exceed the purchase price of the equipment which gives rise to the claim. In no event, whether as a result of breach of contract or warranty or negligence, shall seller be liable for special or consequential damages including, but not limited to, loss of profits or revenue, loss of use of equipment or any other equipment, cost of capital, cost of substitute equipment, facilities or services, downtime cost, or claims of customers of purchaser for such damages even if seller has been informed of the possibility of such damage or loss by purchaser or any third party.
14. **HEALTH AND SAFETY AT WORK**
- a. The Customer undertakes that it will comply and will procure that its employees, customer and every other person working with, on or near or using the equipment, comply in full with the instructions and recommendations made in any manual or handbook provided by MES or other manufacturer of the equipment that they will comply with all other instructions given in connection with the use or operation of the equipment.
  - b. The equipment detailed in our quotation is designed to operate without danger to health and safety where correctly installed by competent personnel and used in accordance with the relevant US Standards, the rating for which it was designed and accepted good practice. If it is intended to operate or use the equipment under unusual conditions, especially if special danger to health and safety from the equipment may occur, MES must be informed accordingly, as otherwise no liability can be accepted by MES for any loss or damage caused.
15. **IMPROVEMENTS AND ALTERATIONS** - MES has a policy of continuous improvements to its products and in pursuance of this policy reserves to itself the right to make without notice any changes in materials, specifications or designs of equipment which having regard to all the circumstances it believes to be reasonable or desirable but which do not affect the basic operation or price of the equipment and such changes shall not affect the validity of the contract.
16. **EXPORT CONTRACT** - In all export contracts the following provisions shall have effect and shall prevail over any conflicting provisions in the preceding paragraphs hereof:
- a. Unless otherwise stated in the contract the full price shall be payable against presentation of shipping documents.
  - b. The Customer shall obtain all import licenses and other necessary authorizations required for the transit of the equipment to and into the country of destination and shall pay all customs and import duties on the equipment wherever levied outside the United States. Failure to obtain any such documents shall not entitle the Customer to cancel the contract.

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