

Boiler Room Services Terms and Conditions

Terms. The terms of payment are subject at all times to the approval of Boiler Room Services' (hereinafter referred to as "BRS") Credit Department. Unless otherwise stated in the proposal, Customer shall pay the full purchase price of services, equipment and/or parts to BRS within thirty (30) days of the date after shipment or completion of manufacture as evidenced by the BRS's invoice. Beginning thirty (30) days after the date of shipment or completion of manufacture, customer shall pay a late payment charge of one and one-half (1½%) percent per month on any unpaid portion of the purchase price. Amount and timing of payment is not conditioned upon payment to you by an owner, contractor or other party. As set forth in the any proposal, progress payments may become due. All payments shall be made without deduction, deferment, set-off, lien or counterclaim of any nature. In addition to all other remedies available at law or equity, all amounts due not paid within 30 days after the date such amounts are due and payable shall bear interest at the greater of 1.5 percent per month or the maximum rate of interest allowed by law. Failure to pay invoices when such invoices are due and payable, at BRS's sole election, shall make all subsequent invoices immediately due and payable irrespective of terms, and we may withhold all subsequent deliveries until the full account is settled. All sales are based on U.S. currency drawn from a U.S. bank. No other monetary funds are accepted unless with the express written consent of BRS.

Limitations on Proposal. A proposal will remain open for acceptance for a period of thirty (30) days after the date hereof, at which time it will automatically expire unless extended by a signed writing issued by BRS from its headquarters.

Selection. The selection of sizes, types, capacities and specifications of equipment and/or parts purchased by customer and the suitability thereof for customer's specific application shall be the sole responsibility of customer and/or customer's representative or consultant.

Prices. All prices are F.O.B. BRS headquarters exclusive of freight, storage, installation and local delivery charges, if any, unless otherwise stated.

Shipment. Any shipping date shown on the face hereof represents BRS's best estimate. However, BRS shall not incur any liability of any kind for failure to ship on any particular date unless a firm shipping date has been expressly agreed to by an officer of BRS in a separately signed, written instrument. Risk of loss shall pass to customer when the equipment and/or parts are placed in the possession of a carrier. Claims against the carrier shall be the responsibility of customer. Claims against BRS for patent defects, errors or shortages must be made in writing to BRS within ten (10) days of receipt of the equipment and/or parts or such claims shall be deemed to have been waived.

Retention of Title; Security Interest. BRS shall retain title to the equipment and/or parts, any replacements thereof and any additions thereto for purpose of security and title shall not pass to customer until the purchase price and all sums due under this quotation are fully paid. Customer shall furnish BRS a letter and/or agreement from a bank or finance company making a firm commitment to pay BRS any balance unpaid within thirty (30) days after the date of shipment or completion of manufacture. Such commitment must be in a form acceptable to BRS. Customer grants to BRS and BRS retains a security interest in all equipment and/or parts and proceeds thereof shipped pursuant to this proposal until customer shall have made full payment for the equipment and/or parts. Such interest is intended to be effective as a purchase money security interest. Customer agrees that BRS may file this Agreement as a financing statement. Customer shall execute a financing statement (if requested by BRS) and other documents necessary to enable BRS to perfect its security interest in the equipment and/or parts. When customer has made all of the payments called for herein including taxes and has fully complied with other provisions of any quotation, BRS shall immediately deliver to customer appropriate documents evidencing the transfer of the title and terminating the security interest.

Cancellations. Subsequent to the date an order from customer is acknowledged by BRS, Customer may not change or cancel the order, in whole or in part, without BRS's written approval. Where a proposed change would necessitate substantial delays in shipment and the equipment and/or parts has not yet become work in process, BRS may condition its approval upon a price change to reflect BRS's prevailing prices at the time of such delayed shipment. If customer requests a delay in shipment after the equipment and/or parts has become work in process or after manufacturing completion, BRS may place the equipment and/or parts in storage at customer's risk and expense and transfer to storage shall be deemed delivery for all purposes, including invoicing, payment and warranty. Cancellation approved by BRS may be conditioned on customer's payment of costs incurred by BRS prior to such approval, including engineering, testing, material costs, labor, burden, special order parts, machined parts, re-stocking fees, penalty charges, profit and commission and similar expenses in connection with the order cancelled.

Product Changes. In the interests or continuous product improvement, BRS may fill all orders with goods having improvements or changes which are not shown in its price catalog or printed matter or as original manufactures change the products.

Governing Law. The transaction, with respect to the goods, which are the subject hereof, shall be governed by the interpreted and construed in accordance with the laws of the Commonwealth of Pennsylvania.

Limitations of Actions. Irrespective of whether BRS agreed to perform field start-up or any other service after the delivery of the product, all claims, suits or actions must be brought within one (1) year of shipment or completion of manufacture or 18 months of customer's order, notwithstanding any statutory period of limitation to the contrary. This clause is in no way to be interpreted as an extension of any warranty provided in the proposal. Any dispute between customer and BRS arising as a result of a proposal or any eventual agreement, at Customer's option, shall be submitted to either the American Arbitration Association and governed by the rules governing construction disputes or an action at law initiated in the Court of Common Pleas of Allegheny County, Pennsylvania, U.S.A.

or the United States District Court of the Western District of Pennsylvania. Customer agrees that venue is proper in said courts and that any hearing, arbitration or trial will be conducted in Pittsburgh, Pennsylvania, U.S.A.

Damage Limitation. Customer agrees that its sole and exclusive remedy is the repair or replacement of defective parts as set forth above. Under no circumstance shall BRS be liable for any lost profits, down time or any incidental or consequential damages of any kind with respect to its product or the transactions by which its products are sold. Customer further agrees that on your behalf and others claiming under you, that BRS is released and discharged from and against all hazards from which you receive or are entitled to receive insurance proceeds, it being expressly agreed and understood that no insurance BRS, insurer, or other third party will have any right of subrogation against BRS.

Excuse. In no event shall BRS be liable for any loss or damage resulting from any delay or failure in shipment or other failure, loss or damage as the proximate result of any act of any governmental authority, revolution, riot, civil disorder or disturbance, act of enemies, delay or default in transportation, strike, dispute among or between labor unions or other disputes, inability to obtain materials or facilities from normal sources, fire, flood, act of God or any cause not within the reasonable control of BRS, whether of the class of causes enumerated or otherwise. Without limiting the generality of the foregoing, BRS may, without causing a breach or incurring liability, allocate goods which are in short supply irrespective of the reasons therefore among customers in any manner which BRS in its discretion deems advisable. If an event occurs which is beyond the control of BRS and that delays BRS's performance and causes its cost of production to increase because of the delay, BRS may pass such increased cost to the customer.

Warranty. BRS warrants all products supplied to be free of defects in materials and workmanship if properly installed, cared for, and operated under normal conditions, with competent supervision, and in accordance with the original equipment manufacturer's installation, operating and maintenance instructions. BRS's only obligation under this warranty is to replace at its shop such original equipment products which shall within one (1) year after installation or the product, be returned by the original customer to BRS's shop after receipt or written approval from BRS and with transportation charges prepaid, and which upon examination shall appear to the original manufacturer's satisfaction to have been defective in material and workmanship. Correction of such defects by repair or replacement shall constitute fulfillment of all obligations to customer and BRS shall not be liable for loss or damage, or expense directly or indirectly arising from the use or products supplied or from any other cause. BRS assumes no liability for replacement due to damage in shipment, exposure to weather or improper installation. Replacement parts purchases from BRS are warranted for a period of ninety (90) days from date of invoice, or as warranted by original equipment manufacturer. Parts furnished by BRS on a warranty basis are warranted only to the expiration date of the warranty or the products they are a part of. This warranty supersedes and is in lieu of all other warranties, expressed or implied, and no person, agent or representative is authorized to give any additional warranty on behalf of BRS or assume for BRS any other liability in connection with any BRS product. No warranty is given in connection with secondhand products and equipment or products and equipment altered or rebuilt without BRS's written approval. THIS PARAGRAPH CONTAINS BRS'S SOLE WARRANTY. BRS MAKES NO IMPLIED WARRANTY AND THERE IS NO IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE.

BRS Liability. BRS will use its best efforts to fill all orders given and accepted, but it shall not be responsible or liable for delays or defaults occasioned by strikes, fires, floods, snow, ice, differences with workmen, accidents, the exercise of governmental authority, inability to obtain, or shortage of, materials, fuel, labor, or transportation, for any reason, and all causes unavoidable or beyond BRS's control including acts of God. All goods shipped or installed by BRS will remain BRS property until full payment is received. BRS reserves the right to repossess any and all goods under this category. BRS's failure to object to provisions contained in the customer's order or other communications shall not be deemed a waiver of the terms or conditions hereof nor acceptance of such provisions. No representations or guarantees other than those contained herein shall be binding upon BRS unless in writing and signed by an official of BRS.

Taxes. Customer shall be liable for all taxes, fees and/or charges imposed by any government with respect to the purchase and/or sale contemplated herein or the sale, delivery or transportation of the equipment and/or parts being purchased by customer hereunder (except taxes on or measured by net income of BRS) including those which BRS may be required to pay, except where the law otherwise provides. Customer shall pay all such taxes directly to the appropriate taxing authorities or reimburse BRS if BRS is required to pay on behalf of customer. Customer agrees to pay, defend, indemnify and save harmless BRS for and against liabilities, expenses and damages in respect of any claim, action, suit, proceeding, assessment, demand and/or judgment arising in any manner from customer's failure or refusal to fully comply with the Sales and/or Use Tax or any other statutes or laws.

Customer further agrees that BRS may, in good faith, compromise and settle any claim, action, suit, proceeding, assessment, demand and/or judgment upon BRS on account or by reason of the failure or refusal of customer to fully comply with the Sales and/or Use Tax or any other statutes or laws and by the same shall constitute "liability" hereunder as fully as if "liability" had been established by judgment, decree or arbitration award. All customers that qualify for a tax exemption status must provide the proper tax exemption certificates and documentation to BRS Accounting Department. These records must be kept up to date in order for the tax exemption status to remain. Any customer with out-dated certificates will be invoiced for any taxes related to the sale.

Reasonable Attorney's Fees. In the event suit or other proceeding shall be brought for the recovery of the purchase price or any unpaid balance or breach by the customer of any term of the agreement between BRS and customer, customer shall pay to BRS, in addition to any changes provided by law, reasonable attorney's fees and costs.

Assignment. The agreement evidenced by the acknowledgment shall be binding upon and inure to the benefit of customer and BRS and their respective heirs, successors, or assigns.

Ownership. All drawings, designs and specifications supplied in connection with the proposal and/or Equipment prepared or assembled by BRS, are solely BRS's property, and are furnished to facilitate this purchase and shall not be reproduced in any manner,

except for customer's internal use for this purchase and they shall not be used for any purpose not specifically authorized in a writing signed by one of our corporate officers. BRS is not a design professional and nothing in this proposal is intended to impose on BRS the duties or liabilities of a design professional.

Software Provisions. If software is provided hereunder, you are granted a nonexclusive, royalty free license only for your use of the software provided with the equipment. This license may not be assigned, sublicensed or otherwise transferred by you without our prior written consent. Customer agrees that the software provided comprises valuable trade secret and/or copyright property of BRS [or its licensor] and customer agrees to take adequate precautions against access to, or disclosure of, the software to anyone not authorized to use or access the software. Customer's use of the software provided pursuant to this proposal is limited to site and application of the equipment provided herein. Customer reserves the right to terminate this license if customer fails to perform any obligation set forth in this proposal.

Waiver. BRS's failure to assert any right under the proposal will not operate as a waiver of any provision of the proposal or subsequent agreement.

Indemnity. Customer agrees to defend, indemnify and save harmless BRS from and against all claims, damages, losses or expenses (including costs and attorney's fees) for claims arising out of the supply of the equipment and/or parts including the negligence of BRS, for damages due to bodily injury, including death and/or damage to property, including loss of use thereof, arising out of or in consequence of this proposal or any subsequent agreement.

THE EQUIPMENT AND/OR PARTS DESCRIBED IN THESE TERMS AND CONDITIONS OF SALE MAY CAUSE INJURY IF NOT OPERATED PROPERLY AND FOR THIS REASON ALL OPERATORS SHOULD BECOME THOROUGHLY FAMILIAR WITH THE OPERATING INSTRUCTIONS BEFORE OPERATING THE EQUIPMENT AND/OR PARTS. CUSTOMER AGREES TO USE THE EQUIPMENT AND/OR PARTS IN A SAFE AND LAWFUL MANNER IN COMPLIANCE WITH APPLICABLE HEALTH, SAFETY AND ENVIRONMENTAL REGULATIONS AND LAWS AND GENERAL INDUSTRY STANDARDS OF REASONABLE CARE.