B. J. MUIRHEAD CO., INC.
Est. 1949

Buffalo Office
115 Mid County Drive
Orchard Park, New York 14127
Phone: (716) 667-7100
Fax: (716) 667-7104

Rochester Office
705 Maple Street
Rochester, New York 14611
Phone: (585) 742-2731

STANDARD TERMS AND CONDITIONS OF SALE

1. These terms and conditions of sale (these "Terms") are the only terms which govern the sale of the goods ("Goods") and services ("Services") by B.J. Muirhead Co., Inc.'s (hereinafter "Company" or "Seller") to the Buyer (as identified on the proposal, quote and/or purchase order) . Company, Seller and Buyer are hereinafter collectively called the "Parties" and each a "Party").
2. The accompanying proposal, quotation, and/or purchase order (the "Quote") and these Terms (collectively, this "Agreement") comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. These Terms prevail over any of Buyer's general terms and conditions of purchase regardless whether or when Buyer has submitted its purchase order or such terms. Fulfillment of Buyer's order does not constitute acceptance of any of Buyer's terms and conditions and does not serve to modify or amend these Terms. The Company hereby gives notice of its rejection of any different or additional terms and conditions other than as stated herein or otherwise specifically agreed to in writing by the Company. Buyer's acceptance of the provisions of these terms and conditions shall be conclusively presumed upon acknowledgement, Buyer's receipt of the product(s) and/or services, or if no written objection is received by Seller within fifteen (15) days from the date on Seller's order acknowledgement, whichever shall first occur.
3. Unless otherwise specified in the Agreement, prices quoted herein are firm for a period of 30 days from the date of this Quote, subject to written withdrawal by the Seller at any time prior to receipt of written acceptance of this Quote from the Buyer ; however, notwithstanding the written acceptance of this Quote by the Buyer, the prices quoted herein are based on the current tariff rates, duties, export taxes, value added taxes, government charges, and similar such charges on the Goods as of the date of this Quote (collectively the "Tariffs"), and if at any time after the date of this Quote , new Tariffs are imposed, or any existing Tariffs are increased by any government or regulatory authority which result in an increase in the cost to Seller of the Goods or the Services to be rendered by the Seller, the Seller reserves the right to adjust the pricing of the affected Goods and Services to reflect the increased costs, and Seller is not obligated to deliver the affected Goods and/or Services until an agreement on the new price has been reached between the Seller and the Buyer.
4. Prices quoted herein do not include Federal, State, and Municipal, Sales, Use, Occupational, Privilege or similar taxes based on or measured by gross proceeds, sales or material cost. If the cost of the aforementioned taxes is incurred by the Seller, it will be added to the foregoing prices where applicable.
5. Please acknowledge acceptance of this quotation and terms by signing one copy and return with your purchase order.
6. As an option, if work is done during overtime or weekends, price will be extra. Any additional labor or parts not included in this quote will be invoiced on a time-and-material basis.
7. Unless otherwise specified in the Agreement, terms of payment are net 30 days from the date of invoice for orders totaling less than $50,000.00.
8. Unless otherwise specified in the Agreement, terms of payment for orders totaling more than $50,000.00 shall require progress payments as defined in 9, 10, and 11 below.
9. Progress payments are indicated below for equipment-only, including factory start-up proposals:
    a. 20% is due on order placement due Net 30 days from date of invoice
    b. 30% is due on release for production due Net 30 days from date of invoice
    c. 50% is upon readiness to ship due Net 30 days from date of invoice
10. Progress payments when Installation and Labor (Turn-key project) is required with the supplied equipment:

a. 40% is due on order placement, due Net 30 days from date of invoice
b. 50% is due on commencement of installation, due Net 30 days from date of invoice
c. 10% is due on commissioning/startup or within 10 Days of completion of installation, whichever occurs first, due Net 30 days from date of invoice

11. If more than 30 days are required for completion of this project, partial billing may be submitted, at the sole discretion of the Seller, on the value of labor, materials and equipment incorporated in the installation and/or materials and equipment delivered to the job site prior to the final invoice date and shall be due Net 30 days from date of invoice.
12. Payments not made when due are subject to a late payment service charge at a rate of 16% per annum or the maximum rate permitted by law, whichever is lower. Buyer must notify Seller in writing within twenty (20) days of invoice date of disputed items. If the financial conditions of Buyer, at any time, is such as to give Seller, in its judgment, reasonable grounds for insecurity concerning Buyer's ability to perform its obligations, Seller may require full or partial payment in advance or may suspend any further deliveries or continuance of work to be performed by Seller until such payment has been received. Failure to furnish such payment within ten (10) days of demand by Seller shall constitute a repudiation of the agreement, and in such event, Seller shall be entitled to cancellation charges. In the event of bankruptcy or insolvency of Buyer or in the event any proceeding is brought by or against Buyer under the bankruptcy or insolvency laws, Seller shall be entitled to cancel any order outstanding at any time during the period allowed for filing claims against the estate and shall receive cancellation charges.
13. Unless otherwise specified in the Agreement, title passes to Buyer upon delivery of the Goods at the Delivery Point. As collateral security for the payment of the purchase price of the Goods, Buyer hereby grants to Seller a lien on and security interest in and to all of the right, title, and interest of Buyer in, to and under the Goods, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase money security interest under the New York Uniform Commercial Code. Buyer authorizes Seller to file UCC-1 Financing Statements to perfect its security interest.
14. Unless otherwise specified in the Agreement, the cancellation schedule and cancellation charges are as follows:
    a. Up to 14 Days after Receipt of Purchase Order: 0% of the Contract Price (Net 30 Days)
    b. Over 14 Days after Receipt of Purchase Order: 25% of the Contract Price (Net 30 Days)
    c. Up to 30 Days After Drawing Approval: 45% of the Contract Price (Net 30 Days)
    d. 31-60 Days After Drawing Approval: 55% of the Contract Price (Net 30 Days)
    e. 61-90 Days After Drawing Approval: 75% of the Contract Price (Net 30 Days)
    f. Over 90 Days After Drawing Approval: 100% of the Contract Price (Net 30 Days)
15. Unless otherwise specified in the Agreement, this Agreement may be canceled or modified only by written consent of the Seller. Upon cancellation by Buyer's request, Buyer shall reimburse Seller for all out-of-pocket costs incurred by Seller up to that time, together with a restocking fee to be determined by Seller, which costs and fee shall immediately be due and payable as a cancellation charge. Upon modification of the terms and conditions hereof at Buyer's request, Buyer agrees to bear any additional costs as determined by the Seller.
16. The installation and operation of the Goods must comply with applicable laws, rules and regulations. The State Inspector is the Jurisdictional Authority for the administration and enforcement of the State's requirements. If you have any uncertainties as to compliance, please contact the Chief Boiler Inspector for the state in which the Good(s) is/are to be installed.
17. EX WORKS: Unless otherwise specified in the Agreement, the Buyer is responsible for risk of loss or damage to the Goods once the Goods have been loaded for delivery at the factory/manufacturer ("Delivery Point"), with transportation expenses paid by Buyer. The Buyer is responsible for all receiving, unloading, rigging and coordination of delivery.

a. Seller will provide the purchasers contact information to the freight company and provide the purchaser with the freight carrier information and tracking # when available and applicable. It shall be the responsibility of the Buyer to file any claims with the carrier. Acceptance of a specified routing by the Company does not constitute a guarantee of ship date, transit time or arrival date. The Company will not be responsible for any cartage or storage charges at destination.
b. Seller will use reasonable efforts to meet shipment or delivery dates specified by the Company, but such dates are estimates only.
c. Seller will use Seller's standard methods for packaging and shipping.
d. Seller may make partial shipments.
e. In no case will the Company be liable for any special, consequential, liquidated or other indirect (including loss of profits) or direct damages due to any delay in delivery or shipment or non-delivery, whether or not excused hereunder. In no event shall the Company be liable for any delay or non-delivery if caused directly or indirectly by Acts of God, acts of Buyer, acts of governmental authorities, including, but not limited to, closures due to pandemics, acts of civil or military authority, fires, strikes, floods, and other catastrophes; due to inability to obtain necessary labor, materials, components or manufacturing facilities; or due to any other commercial impracticality. In the event of any such delay, the date of delivery or performance shall be deferred for a period equal to the time lost by reason of the delay.
f. In the event Buyer requests proof of delivery of the Goods, any request shall be made within 30 days of the Seller's invoice to Buyer.

18. Seller shall use reasonable efforts to meet any performance dates to render the Services specified in the Agreement, and any such dates shall be estimates only. With respect to the Services, Buyer shall (i) cooperate with Seller in all matters relating to the Services and provide such access to Buyer's premises, and such office accommodation and other facilities as may reasonably be requested by Seller, for the purposes of performing the Services; (ii) respond promptly to any Seller request to provide direction, information, approvals, authorizations, or decisions that are reasonably necessary for Seller to perform Services in accordance with the requirements of this Agreement; (iii) provide such customer materials or information as Seller may need to carry out the Services in a timely manner and ensure that such customer materials or information are complete and accurate in all material respects; and (iv) obtain and maintain all necessary licenses and consents and comply with all applicable laws in relation to the Services before the date on which the Services are to start.
19. Seller warrants to Buyer that it shall perform the Services using personnel of required skill, experience, and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services and shall devote adequate resources to meet its obligations under this Agreement.
20. Seller does not manufacture or produce any of the Goods. The Goods are manufactured by a third party ("Third Party Product"). **THE SELLER MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO ANY THIRD-PARTY PRODUCT, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (c) WARRANTY OF TITLE; OR (d) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE.**
21. **EXCEPT FOR THE WARRANTY SET FORTH IN SECTION 19 SELLER MAKES NO WARRANTY OF ANY KIND, WITH RESPECT TO THE GOODS OR SERVICES, INCLUDING, BUT NOT LIMITED TO ANY (a) WARRANTY OF MERCHANTABILITY; OR (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE.**
22. **SELLER'S LIABILITY FOR ANY CLAIM OF ANY KIND, INCLUDING NEGLIGENCE OR BREACH OF WARRANTY, FOR ANY LOSS OR DAMAGE RESULTING FROM, ARISING OUT OF, OR CONNECTED WITH**

ANY CONTRACT ARISING HEREIN, OR FROM THE PERFORMANCE OR BREACH THEREOF, OR FROM THE MANUFACTURE, SALE, DELIVERY, INSTALLATION, RESALE, REPAIR, OR USE OF ANY PRODUCTS COVERED HEREBY OR PROVIDED HEREIN, SHALL IN NO CASE EXCEED THE PURCHASE PRICE THERETOFORE PAID FOR THE PRODUCTS AND/OR SERVICES THAT GIVE RISE TO THE CLAIM. IN ANY EVENT, LIABILITY FOR SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING LOST PROFITS, IS EXPRESSLY EXCLUDED AND ANY AND ALL SUCH LIABILITY SHALL TERMINATE UPON THE EXPIRATION OF THE APPLICABLE WARRANTY PERIOD FOR SUCH GOODS.

23. Insurance:
    a. During the term of this Agreement and until the Goods are finally accepted and the purchase price and invoice is paid in full, and all obligations of the Buyer are concluded, Buyer shall, at its own expense, maintain and carry, fire, theft casualty and equipment breakdown insurance ("Property Insurance") covering the Goods with limits sufficient to cover the replacement of Goods and will cause such policy to be payable to the Seller as a named insured and loss payee.
    b. Buyer shall, at all times, at its own expense, maintain and carry commercial general liability, including product liability, ("Commercial Liability Insurance") in a sum no less than $1,000,000 each occurrence and $2,000,000 per location annual aggregate designating Seller as additional insured and umbrella liability limits ("Umbrella Insurance") of not less than $5,000,000 designating Seller as additional insured.
    c. All such Property Insurance, Commercial Liability Insurance, and Umbrella Insurance (collectively, "Required Insurances") shall be placed with a company or companies which are licensed to do business in New York State and are well rated by the national rating organizations as determined by Seller in its reasonable judgement. Further, such policies shall contain an agreement with the insurer that such policy shall not be canceled or modified without at least thirty (30) days' prior written notice to Seller, and upon Seller's request, insurer will deliver each policy or certificate of insurance to Seller.
    d. Seller may set maximum deductible amounts on the Required Insurances.
    e. In no event shall the levels of insurance maintained by Buyer limit in any way its liability under this Agreement. Any insurance required to be maintained by Buyer shall be considered the primary insurance. Upon Seller's request, Buyer shall provide Seller with a certificate of insurance from Buyer's insurer evidencing the insurance coverage specified in these Terms. Buyer shall provide Seller with 30 days' advance written notice in the event of a cancellation or material change in Buyer's insurance policy. Except where prohibited by law, Buyer shall require its insurer to waive all rights of subrogation against Seller's insurers and Seller.
24. No waiver by Seller of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Seller. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.
25. Buyer will take all necessary precautions regarding the Goods under this Agreement and protect all persons and property from injury or damage. Buyer shall indemnify, defend, and hold harmless Seller, its parent, subsidiaries and affiliates, and each of their respective agents, officers, employees, successors, assigns, and indemnitees (the "Indemnified Parties") from and against any and all losses, costs, damages, claims, liabilities, fines, penalties, and expenses (including, without limitation, attorneys' and other professional fees and expenses, any mediation, arbitration, witness fees, and court costs, incurred in connection with the investigation, defense, and settlement of any claim asserted against any Indemnified Party or the enforcement of Buyer's obligations under this Agreement (collectively, "Losses")), which any of the Indemnified Parties may suffer or incur arising out of or related to the use, maintenance, , instruction, operation, possession, or ownership of the Goods, and/or the actions or omissions of

Buyer and/or its subcontractors, including without limitation Losses relating to actual or alleged bodily or mental injury to or death of any person or damage to property; provided, however, that Buyer's indemnity obligations under this section shall not apply to any Losses to the extent such Losses are found to have been caused by the gross negligence or willful misconduct of any of the Indemnified Parties.

26. This Agreement and all purchase orders and quotes and proposals shall be governed by and construed in accordance with the internal laws of the State of New York without regard to any conflict of law provision which may cause the application of any law other than the internal laws of the State of New York. Any proceeding arising out of or relating to this Agreement and all purchase orders and quotes and proposals must be brought in the courts of the State of New York, County of Erie, or, if it has or can acquire jurisdiction, in the United States District Court for the Western District of New York, and each of the Parties hereto hereby irrevocably submits to the exclusive jurisdiction of each such court in any such proceeding, waives any objection it may now or hereafter have to venue or to convenience of forum, agrees that all claims in respect of the proceeding shall be heard and determined only in any such court and agrees not to bring any proceeding arising out of or relating to this Agreement and all purchase orders and quotes and proposals in any other court.
27. The Seller shall not be liable or responsible to Buyer, nor be deemed to have defaulted or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of Seller including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions and restrictions, war, invasion, or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic, lockouts, strikes or other labor disputes.
28. Buyer shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Seller. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Buyer of any of its obligations under this Agreement.
29. All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a "Notice") shall be in writing and addressed to the Parties at the addresses set forth on the face of the Quote or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile (with confirmation of transmission), email (with delivery receipt and read receipt) or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section.
30. Provisions of the Agreement which by their nature should apply beyond their terms will survive, and remain in force after, any termination or expiration of this Agreement. Without limitation, Sections 12, 14, 19-23, 25, 26 and 35 shall survive termination of this Agreement.
31. Neither Buyer nor Seller shall be considered to be the party responsible for drafting any particular provision of the Agreement.
32. If any provision of this Agreement will be held to be invalid or unenforceable for any reason, the remaining provisions will continue to be valid and enforceable. If a court finds that any provision of this Agreement is invalid and unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision will be deemed to be written, construed, and enforced as so limited.
33. This Agreement may be executed in counterparts all of which taken together shall constitute one original Agreement. Delivery of an executed counterpart of this Agreement via facsimile transmission or email shall be equally effective as delivery of an original executed counterpart.
34. The delay or failure of either party to assert or enforce the strict performance of any of the terms of the Agreement or to exercise any rights hereunder, shall not be construed as a waiver or relinquishment to any extent of its rights to assert or rely upon such terms or rights at any later time or on any future occasion.

35. The Buyer recognizes the substantial expenditure of time and expense that BJ Muirhead devotes to the recruitment, hiring, orientation, training and retention of its employees. Accordingly, the Buyer agrees that, during the Term of this Agreement and for twelve (12) months after termination of this Agreement, regardless of the reason for such termination, Buyer shall not directly or indirectly, on its own behalf or on behalf of any other person or entity, solicit, induce, offer employment to, hire or otherwise retain the services of any employee of BJ Muirhead unless expressly agreed to in advance by BJ Muirhead. For purposes of the foregoing, "employee of BJ Muirhead" shall include any person who is currently an employee of BJ Muirhead or becomes an employee of BJ Muirhead at any time during the Term of this Agreement. This Section shall survive termination of this Agreement.
36. This Agreement is binding upon and shall inure to the benefit of the parties and their permitted successors and assigns.

Company: _____
By: _____
Name _____
Title: _____
Date: _____
P.O. Number: _____