

Terms and Conditions

Unless as specifically noted in the accepted proposal or associated invoices, the following Terms and Conditions apply to the transaction for equipment or services identified on the signed proposal or invoice between BUYER and FESCO (the "TRANSACTION"). BUYER acknowledges that no TRANSACTION is finalized until expressly approved by FESCO, and after full payment is received. BUYER acknowledges that FESCO's agreement to the TRANSACTION is expressly conditioned on BUYER's assent to all of the Terms and Conditions set forth herein, notwithstanding any contrary provisions set out in writing in the related proposal or invoices.

Acceptance. These Terms and Conditions apply to the equipment, parts and/or service for which form the basis of the TRANSACTION and/or issued an invoice to the BUYER. All orders placed by the BUYER are subject to FESCO's approval and acceptance of the order at its home office. No agreement shall be binding unless accepted at the home office of FESCO Direct LLC which shall be deemed to be the location of the making of the contract. Any clerical or typographical errors contained in any proposal, invoice or purchase order are subject to correction by FESCO.

Availability. All equipment offered, new and used, are subject to prior sales and availability.

BUYER Responsibilities. All products specified in the proposal and associated invoices shall be shipped, assembled and installed by BUYER at BUYER's sole expense, including, but not limited to: shipping and unloading, site preparation, foundation design, foundation, anchor bolts, shims, grout, plant/equipment erection/installation, electrical wiring and electric motor starters to meet local codes, water supply and water piping, air supply and air piping, calibration of weighing systems, admix dispensing hardware, all applicable permits, and any/all other accessories and services not specifically identified in the accepted proposal. FESCO shall make a representative available to provide technical advice to assist BUYER's employees in the installation and/or first operation on a daily charge + per diem expense to BUYER, to be invoiced separately. BUYER is also responsible for any equipment or service not specifically identified in the accepted proposal even if it is required for the project including, but not limited to: equipment and system integration, environmental equipment, heating and/or cooling equipment, control systems or any other equipment not specifically listed in the accepted proposal or associated invoices.

Permits. BUYER shall be responsible for obtaining all federal, state and municipal permits required to install, operate or modify the equipment and shall be responsible for any additional plans or specifications required to obtain said permits. Buyer is solely responsible for ensuring equipment proposed by FESCO is eligible for all permits required for setup and operation. FESCO makes no representation or warranty and assumes no responsibility in equipment's ability to pass inspections necessary for permitting.

Seismic, Zoning and Design. Because of varying use and application, equipment sold by FESCO may be designed and manufactured to varied seismic, wind and structural specifications. BUYER is solely responsible for ensuring the equipment proposed by FESCO meets the required design specifications and standards of the areas in which the equipment will be located. Any increase cost of engineering or labor as a result of more stringent laws, regulations or codes shall be BUYER's sole responsibility. FESCO shall not be responsible to comply with more stringent requirements unless they are specifically identified in FESCO's written proposal or associated invoices.

FESCO reserves the right to make changes in product design from time to time without incurring the obligation to furnish such changes to BUYER for products previously sold or shipped to BUYER.

Safety Devices. Equipment and products are provided with only those safety devices installed at the time of shipping. It is the BUYER's responsibility to furnish other appropriate safety devices which are desired by BUYER and/or required by OSHA standards and any other applicable laws. Because of the varying conditions of use of FESCO equipment, no guarantee of compliance with OSHA, MSHA or other standards is made, either express or implied. It is the responsibility of BUYER to verify compliance with the appropriate safety regulations before starting the equipment.

Taxes. BUYER agrees to comply with all government laws and regulations affecting these Terms and Conditions and the products, equipment or services sold hereunder, and to pay all license fees, assessments, and sales, use, property, excise and other taxes now or hereafter imposed by any governmental body or agency for or on the equipment sold hereunder.

Payment. BUYER shall make all deposits, progress payments and other payments associated with the TRANSACTION to FESCO by an approved payment method in advance of the payment due date. Wire transfer is the preferred form of payment. Checks are accepted at the sole discretion of FESCO, and the funds must clear the issuing bank before the TRANSACTION may be finalized. BUYER acknowledges that the date equipment or products may be picked up / shipped may be delayed to allow sufficient time for check processing. Credit cards are accepted at the sole discretion of FESCO only on small parts orders without exception.

Possession and Past Due Accounts. BUYER shall not arrange shipping or take possession of equipment or products, or receive services prior to payment in full of all outstanding invoices. FESCO may, at its sole discretion, refuse to provide services on any TRANSACTION until BUYER pays all outstanding invoices due FESCO in full. Any payment not made when due shall bear interest at the rate of 1.5% per month on the balance due until the full amount has been paid, unless payment arrangements have been arranged and authorized in writing by an authorized representative of FESCO.

Storage Fees. In the event that BUYER does not promptly arrange for shipping or take possession of equipment or products, BUYER shall be solely responsible for all storage costs, including any nonpayment penalty, assessed by any manufacturer.

Security Interest. To secure the full and complete payment due FESCO for equipment and services purchased in the TRANSACTION, BUYER hereby grants to FESCO a security interest in all of BUYER's right, title, and interest in and to all equipment in the TRANSACTION, now owned or hereafter acquired, and as may be more particularly described in the invoices issued by FESCO in connection with the TRANSACTION.

Cancellation. If BUYER gives notice of cancellation of the TRANSACTION or fails to accept delivery, BUYER shall forfeit to FESCO all sums previously paid by BUYER. BUYER shall also be liable to FESCO for all costs incurred by FESCO to date in the fulfillment of this TRANSACTION, including overhead expenses and profit on that portion of the equipment manufactured up to the date of the cancellation. Down payments and progress payments are non-refundable. FESCO shall NOT be obligated to return any portion of the down payment or the progress payments to BUYER under any circumstances.

Force Majeure/Delivery. FESCO shall not be liable for any delay in delivery of the product or service or nonperformance due to any cause beyond its control including but not limited to: acts of God, fire, strike, flood, delays in transportation, shortage of energy, or default of a supplier or contractors. In the event of any such delay, the date of delivery will be extended to a period not less than the period of such delay. Delivery time shall be from date of FESCO's acceptance of order, or receipt of accepted approval drawings, or the date upon which the parties hereto agree to the amount of the contract price, whichever is later. FESCO shall not be responsible for any damage in transit. All claims for breakage or damage in transit shall be made to the carrier

by BUYER and any unrecovered loss there from shall not relieve BUYER from the obligations of this contract unless agreed to in writing by FESCO. Any change in design, or layout drawing change after approval of design or layout drawing shall extend delivery date to a reasonable length of time not less than the period needed to make such change. In no event shall FESCO be liable for special or consequential damages. Receipt of the equipment by the BUYER will constitute waiver of all claims of loss or damage due to delay. If delivery as originally scheduled is delayed as the result of BUYER's actions, FESCO shall invoice BUYER for payment due and shall store the products at BUYER's expense.

LIMITATION OF LIABILITY. FESCO SHALL NOT, UNDER ANY CIRCUMSTANCES, BE LIABLE TO BUYER FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES REFERRING OR RELATING TO ANY AND ALL CLAIMS BUYER MAY ASSERT INCLUDING, BUT NOT LIMITED TO, STRICT LIABILITY, STATUTORY, BREACH OF CONTRACT AND BREACH OF EXPRESS OR IMPLIED WARRANTY CLAIMS.

All Sales Final. All sales are final. No returns or exchanges.

Indemnity. BUYER hereby releases and agrees to indemnify and hold harmless FESCO, it's officers, agents, servants and employees, from and against all direct and indirect claims and all loss to property, both real and personal (including FESCO's property) arising or growing out of or in connection with the performance of this TRANSACTION by BUYER or its contractors and subcontractors and from and against all damage claims, demands or suits of whatever nature, and any expense incidental hereto which may be made, claimed or brought by the BUYER, its contractors or subcontractors, their employees or agents, or by any other person or persons (including claims by employees or the representative of the BUYER or BUYER's contractor's or sub contractor's employees, for workers compensation) on account of property damage or personal injury sustained or suffered by, or the death of any person or persons arising or growing out of or in connection with the performance of this TRANSACTION or the design, installation or repair of the goods sold hereunder by BUYER or its contractors of subcontractors or any act or omission in connection therewith with whether caused by the negligence of FESCO, its agents, servants and employees. BUYER's indemnification shall include any and all attorney's fees incurred by FESCO in defending against such claims.

Assignability. BUYER agrees not to sell, assign, lease, pledge, hypothecate, or otherwise encumber or suffer a lien upon or against this TRANSACTION or the product sold hereunder during the time FESCO has an interest therein.

No Waiver. No waiver or consent by FESCO of any breach or default by BUYER shall constitute a waiver of all other breach or default by the BUYER, nor shall it be considered a waiver of any of FESCO's rights. The failure of FESCO to insist upon strict performance of any of the Terms or Conditions stated herein will not be considered a continuing waiver of any such Term or Condition or any of its rights nor will it imply a course of performance between the parties.

Jurisdiction. This transaction shall be governed by the laws of the State of Wisconsin without regard to conflict of law provisions. Any dispute concerning or relating to this TRANSACTION or these Terms and Conditions shall be brought in Waukesha County, Wisconsin. BUYER shall pay all costs and expenses incurred by FESCO relating to the enforcement of these Terms and Conditions, including actual, reasonable attorney's fees.

Disclaimer of WARRANTIES. FESCO does not warranty or guarantee product or service in any way. All sales of equipment are considered "AS IS, WHERE IS", unless specifically identified in writing in the proposal or invoices, and signed by FESCO.

When applicable, FESCO agrees to cooperate in making available to BUYER the benefit of any warranties offered by parties other than the FESCO. Claims pursuant to any warranty shall be submitted in writing to party offering the warranty according to the terms and conditions of the warranty. If applicable, see Manufacturers/Service documentation for additional warranty information.

FESCO shall not be responsible for damages to equipment resulting from improper installation, from operation in excess of its rate speed or capacity, or from improper control or maintenance. **ALL OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, ARISING BY LAW OR CUSTOM INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE ARE EXPRESSLY DISCLAIMED. NO OTHER WARRANTY IS MADE OR AUTHORIZED BY FESCO UNLESS NOTED HEREIN AND SIGNED BY THE PURCHASER AND AN AUTHORIZED REPRESENTATIVE OF FESCO.** No oral or written statements or representations shall be binding upon FESCO unless reduced to writing and endorsed by FESCO.

Used Equipment. FESCO makes no representation as to the condition of used equipment. All information listed by FESCO is provided by the equipment's current owner. FESCO shall not be responsible for BUYER's failure to inspect the goods or for any inaccuracies, insufficiencies or omissions in descriptions furnished regarding the equipment. BUYER should physically inspect all used equipment prior to purchase. Costs associated with inspection are the sole responsibility of the BUYER. No oral or written statements or representations shall be binding upon FESCO unless reduced to writing and signed by FESCO's service department or authorized third party (if applicable).

The following Terms and Conditions are applicable only to new equipment purchases.

Descriptions and Specifications. All information furnished in connection with new equipment and parts is provided directly by the manufacturer. FESCO makes no representations as to the accuracy of the information provided by the manufacturer. Actual delivered equipment may differ in immaterial ways from the specifications listed.

Electrical Equipment and Wiring. Unless specifically agreed to in the accepted proposal, FESCO's control and/or motor starter panels are furnished terminal block wired. BUYER is responsible for all electrical wiring between all of FESCO furnished panels and devices. It is BUYER's responsibility to see that all electrical wiring is in compliance with the governing electrical codes. Scale, probe, moisture meter or computer control cables or wires are not to be installed underground and each is to be kept isolated from all other power and /or signal wires. See manufacturer specifications for detailed installation instructions.

Technical Information. All manufacturing devices, designs, data or other technical information relating to BUYER's order shall remain the property of FESCO/manufacturer.

Paint. All equipment is painted one color, high grade machinery enamel per manufacturers color guideline unless specifically noted hereon and authorized by the purchaser and an authorized representative of the FESCO.

Water, Air and HVAC. Unless specifically agreed to in the accepted proposal, BUYER is responsible for plumbing, venting or other connections required between FESCO supplied devices and equipment. It is BUYER's responsibility to see that all plumbing, HVAC and other device connections are in compliance with the governing codes.