

BECKWITH & KUFFEL INC. TERMS AND CONDITIONS OF SALE
BK-531-R18

The sale of any service or goods ordered by the customer is expressly conditioned upon the terms and conditions below. Any additional or different terms and conditions set forth in the customer's purchase order, request for quotation or similar communication are objected to and will not be binding upon Beckwith and Kuffel, Inc. (hereinafter referred to as "B&K"). Authorization by the customer, whether written or oral, to furnish services or goods or the acceptance of services or goods by the customer constitutes acceptance of these terms and conditions.

1. Warranty

(a) **Service:** B&K warrants to the customer that services and incidental goods sold will be free from defects in materials and workmanship and will conform to any mutually agreed upon specifications. Subject to Section 2 below, B&K will correct any such defect by re-performing any defective portion of the service furnished and repairing or replacing, at B&K's sole option, non-conforming goods. This service warranty is limited to the scope of work which was performed by B&K and is limited to 60 days from the date the equipment was received by customer.

(b) **Sales of New Equipment:** B&K warrants that any sale of new equipment manufactured by others will conform to the description stated. The written warranty of manufacturer, if any, is hereby assigned and transferred to the customer. Except for the manufacturer's warranty, if any, goods manufactured by others are sold by B&K AS IS.

(c) **Warranty on Rental:** B&K warrants only that rental equipment, when delivered, is in good operating condition. If the equipment is not in good operating condition due to no fault of the customer and the customer notifies B&K promptly, B&K shall thereupon (at its option) either repair the equipment or rent replacement equipment, subject to availability. Transportation and incidental expenses will be borne by the customer.

(d) **No Warranty of fitness:** B&K makes no warranty as to fitness of any goods or services for a particular purpose. B&K's sole obligation is to supply goods or perform services as specified by the customer. Without limiting the generality of the foregoing, B&K makes no warranty regarding the performance or durability of any equipment in salt or sea water applications.

(e) **EXCLUSIVE WARRANTY:** THE WARRANTIES SET FORTH ABOVE ARE EXCLUSIVE AND ARE IN LIEU OF ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR OTHER WARRANTY, EXPRESS OR IMPLIED.

(f) **No Authority to Make Express Warranties:** No agent of B&K except the president and executive vice-president has the authority to make express warranties on behalf of B&K or to agree to remedies other than as provided in these terms and conditions. No express warranty shall be enforceable against B&K unless it is in writing and signed by the president or executive vice-president.

2. Procedure for Warranty Claims (Service)

B&K shall not be responsible for any warranty work unless written notice of claim is delivered to B&K within 60 days of the date of delivery to customer and customer promptly delivers the goods to B&K, freight prepaid.

3. Limitations of Liability

(a) B&K's repair or replacement of defective materials or workmanship shall constitute fulfillment of all liabilities of B&K to the customer with respect to the goods or services sold pursuant to this contract.

(b) B&K's liability on all claims of any kind, whether based on contract, warranty, product liability, tort (including negligence), strict liability, indemnity, or otherwise, for loss or damage arising out of, connected with, or resulting from B&K's furnishing of goods or services to the customer (including remedial warranty efforts), shall in no case exceed the contract price of a lump sum contract or the price of work completed if the contract is being performed on a cost-type basis. Except as to title to any goods furnished, all such liability shall terminate upon the expiration of the warranty period specified in the article entitled "Warranty" above.

(c) IN NO EVENT SHALL B&K BE LIABLE FOR CONSEQUENTIAL, SPECIAL, INCIDENTAL, OR EXEMPLARY DAMAGES INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS OR REVENUE, LOSS OF USE OF ANY PROPERTY, COST OF CAPITAL, COST OF SUBSTITUTE EQUIPMENT, FACILITIES OR SERVICES DOWNTIME COSTS, OR CLAIMS FROM THE CUSTOMER'S CUSTOMERS. If the customer is furnishing B&K's goods or service to a third party by contract, the customer shall obtain from such third party a provision affording B&K and its suppliers the protection of the article and the preceding paragraph 3(a).

4. Excusable Delays

(a) B&K shall not be liable for delay due to causes beyond its reasonable control: acts of god; acts of the customer; prerequisite work by others; acts of civil or military authority; government priorities; fires; strikes or other labor disturbances; floods; epidemics; war; riot; delays in transportation or car shortages; inability to obtain or delays in obtaining, due to causes beyond its reasonable control, suitable labor, materials, or facilities; or additional repairs not reasonably foreseen in the original work. In the event of any such delay, the time of performance shall be extended for a period equal to the time lost by reason of the delay.

(b) In the event B&K is delayed by acts of the customer or by prerequisite work by other contractors or suppliers of the customer, B&K shall be entitled to an equitable price adjustment in addition to extension of the time of performance.

5. Changes, Deletions, and Cancellations

(a) The customer, without invalidating the contract, may make changes by altering, adding to or deducting from the general scope of the work, in which event the contract price shall be adjusted accordingly. All such work shall be executed under the conditions of the contract except that any claim for extension of time caused thereby shall be adjusted at the time of ordering such change.

(b) If the parties agree upon a price adjustment at the time of the change, it shall be reduced to writing and signed by both parties. In the absence of such written agreement, B&K shall be entitled to a price adjustment which results in a price for the work done or goods supplied sufficient to pay B&K's cost (including an allocable share of overhead) and to provide a reasonable profit margin.

(c) The customer may cancel this order only upon written notice to B&K and payment to B&K of reasonable cancellation charges as determined by B&K.

6. Customer Warranty of Specifications

In any case where the customer provides specifications for the fabrication of any part or parts, the customer warrants the adequacy of the specifications. Further, the customer warrants that B&K's fabrication of such part or parts will not infringe upon any patent and agrees to indemnify B&K and to hold B&K harmless from any liability arising from any claims of patent infringement.

7. Delivery

Unless otherwise specified, delivery of new equipment and parts will be F.O.B. factory. Delivery of used equipment or equipment serviced by B&K will be F.O.B. B&K facility. All risk of loss shall pass to customer when delivered to a common carrier or to customer's agent.

8. Washington State Sales Tax

(a) Washington State Sales Tax ("WSST") is due on all orders delivered or picked up within Washington State unless B&K has in its possession an accurate and current resale or exemption tax certificate for customer. If customer has a certificate on file with B&K, it is the customer's responsibility to advise B&K at the time of the order if tax is or is not to be applied. If B&K does not have an accurate and current resale certificate on file, B&K is required to charge WSST unless customer supplies evidence of exemption from tax at the time of the order.

(b) Customers located in the State of Oregon must obtain a corporate nonresident permit from the Washington State Department of Revenue in order to purchase goods in Washington State without being charged WSST.

(c) Customers located outside the States of Washington and Oregon do not pay WSST on items purchased **provided** the goods are delivered out of state. However, various nexus agreements between the states may require collection of local sales tax for drop shipped items. If the goods are picked up by or delivered to the customer in Washington State, B&K is required by state law (WAC 458-20-193) to charge WSST unless the company provides a certificate as described in (a) above

9. Pricing

Due to possible material shortage and price adjustments, all prices quoted by B&K for new equipment or parts are subject to change without notice and may be increased if B&K's suppliers increase the price B&K must pay for such new equipment or parts. In such case, the actual increase shall be passed on to the customer under this contract. Whenever possible, price protection and firm deliver commitments will be secured by B&K.

10. Routing

Routing of all goods sold by B&K is subject to B&K's sole discretion unless otherwise agreed upon in writing by B&K.

11. Returned Goods

Written permission must be obtained from B&K before the customer returns any material for any reason. Material returned for credit will be subject to B&K inspection. All returned new equipment must be in new condition in original cartons and packing. All returns will be subject to a restocking charge of not less than 15% of the price of such goods at the time of original shipment. All materials returned must be shipped to B&K transportation charges prepaid. Products which are obsolete or on special order are not returnable.

12. Hazardous Materials

Hazardous materials shall be removed from all equipment entering B&K's premises, whether being returned or sent in for service. Any cost of disposal of such material shall be borne by the customer as a charge additional to the price quoted unless such disposal was specifically included in the price quotation.

13. Governing Law; Jurisdiction; Costs of Collection

Customer agrees that any legal proceeding arising out of this contract shall be filed exclusively in King County Superior Court and consents to jurisdiction in that court. This contract shall be governed by Washington law without regard to any conflict of law provision. If it becomes necessary to put this account into the hands of an attorney to enforce collection of any amount due B&K, customer agrees to pay all necessary costs and reasonable attorney's fees.

14. Complete Agreement

This contract contains the complete agreement between the parties. No modification, amendment, rescission, waiver or other change will be binding on B&K unless agreed to in writing by B&K's authorized representative. The invalidity, in whole or part, of any of paragraph of these terms and conditions will not affect the remainder of such paragraph or any other paragraph of the contract.

PAYMENT AND SECURITY FOR PAYMENT

15. Payment and Security for Payment

(a) Customer agrees to pay all invoices timely without set-off for claims arising from other transactions.

(b) If at any time before delivery B&K reasonably believes that customer may be financially unable to perform, B&K may demand adequate assurance of due performance and until B&K receives such assurance may suspend performance until adequate assurance (which may include advance payments) is received. If adequate assurance is not received within fifteen days, B&K may terminate this contract and recover termination charges sufficient in amount to pay B&K's costs (including an allocable share of overhead) and a reasonable profit margin.

(c) Customer hereby grants to B&K a security interest in any good sold or serviced hereunder. Customer authorizes B&K to file a financing statement to perfect this security interest.

(d) For work performed in B&K shop, B&K has a chattel lien on the equipment under RCW 60.08.010. B&K may retain possession of goods ordered or services provided under the contract until its charges for such goods or services are paid. B&K may enforce its lien as provided in RCW 60.10.

16. Payment Terms

(a) Under \$50,000: Payment terms are based on the terms specified on the Sales Order.

(b) Over \$50,000: Advance payments shall apply as follows:

25% of total due upon order acceptance by B&K;

35% of total due upon release to manufacture, submittal approval, or drawing approval;

Remaining balance due based on payment terms specified on the Sales Order.

(c) Credit Card Sales: 3.1% additional will be charged for all credit card payments to cover additional transaction costs.

(d) All payments must be in U.S. Dollars.

(e) A carrying charge of 1.5% per month will apply to all amounts due over 30 days.

For complete terms and conditions – see www.b-k.com/terms

ADDITIONAL SERVICE DEPARTMENT TERMS AND CONDITIONS

17. Customer Obligations

If requested, B&K will provide services of a Field Service Engineer or Technician to advise and assist the customer in the inspection or startup of the machinery. If in the field at a customer location, the customer shall furnish safe and proper working conditions and safe storage of any special tools. If at the customer facility, the customer shall furnish all necessary labor, cranes, cribbing, oil, supplies, station operating force, steam, electricity, water, and other material and supplies required to install and operate the equipment, along with crane, switching service and the service of operators and other employees that may be deemed necessary by B&K.

18. No Warranty

B&K shall not be responsible for material furnished by the customer or for acts, or failures to act, of personnel furnished by customer, nor shall B&K be responsible for the construction of foundations or for soil conditions upon which they are built. B&K provides no warranties, either expressed or implied, in conjunction with this service.

19. Time Sheets

If time sheets are required by the customer, they shall be provided by the customer and signed after services are performed.

20. Payment Terms

Invoices rendered to the customer are payable upon receipt of the invoice. For all purchases with established credit, terms are NET 30 days from date of shipment.

21. Conflicting Provisions

To the maximum extent possible, all the foregoing terms and conditions apply to all transactions. To the extent that any provision contained in paragraphs 19-22 is in conflict with any provision contained in paragraphs 1-16, then as to service jobs, the provisions of paragraphs 19-22 shall govern.

22. Terms of Payment:

Terms of payment are shown on Section 15 and 16 under Payment Terms and Payment and Security for Payment.