

# STANDARD TERMS AND CONDITIONS OF SALE

## **1. GENERAL**

**A.** Seller's prices are based on these sales terms and (i) this document, together with any additional writings signed by Seller, represents a final, complete and exclusive statement of the agreement between the parties and may not be modified, supplemented, explained or waived by parol evidence, Buyer's purchase order, a course of dealing, Seller's performance or delivery, or in any other way except in writing signed by an authorized representative of Seller, and (ii) these terms are intended to cover all activity of Seller and Buyer hereunder, including sales and use of products, parts and work, and all related matters (references to products include parts and references to work include construction, installation, start-up and other services). Any references by Seller to Buyer's specifications and similar requirements are only to describe the products and work covered hereby and no warranties or other terms therein shall have any force or effect. Catalogs, circulars and similar pamphlets of the Seller are issued for general information purposes only and shall not be deemed to modify the provisions hereof.

**B.** The agreement formed hereby, and the language herein shall be construed and enforced under the Uniform Commercial Code as in effect in the State of Florida on the date hereof, and all applicable Florida laws. Any legal proceedings between the parties to this agreement arising out of any matters or transactions pursuant to this agreement, shall be brought in the Courts of Osceola County, Florida, and by execution hereof Buyer submits to the jurisdiction and venue of such Courts.

## **2. TAXES**

Any sales, use or other similar type taxes imposed on this sale or on this transaction are not included in the price. Such taxes should be billed separately to the Buyer. Seller will accept a valid exemption certificate from the Buyer if applicable; however, if an exemption certificate previously accepted is not recognized by the governmental taxing authority involved and the Seller is required to pay the tax covered by such exemption certificate, Buyer agrees to promptly reimburse Seller for the taxes paid.

## **3. PERFORMANCE, INSPECTION & ACCEPTANCE**

**A.** Unless Seller specifically assumes installation, construction or start-up responsibility, all products shall be finally inspected and accepted within ten (10) days after receipt of point of delivery. Products not covered by the foregoing and all work shall be finally inspected and accepted within ten (10) days after completion of the applicable work by Seller. All claims whatsoever by Buyer (including claims for shortages) excepting only those provided for under the WARRANTY AND LIMITATION OF LIABILITY AND PATENTS Clauses hereof must be asserted in writing by Buyer within said ten (10) day period or they are waived. If this contract involves partial performances, all such claims must be asserted within said ten (10) day period for each partial performance. There shall be no revocation of acceptance. Rejection may be only for defects substantially impairing the value of products or work and Buyer's remedy for lesser defects shall be those provided for under the WARRANTY AND LIMITATION OF LIABILITY Clause.

**B.** Seller shall not be responsible for nonperformance or delays in performance occasioned by any causes beyond Seller's reasonable control, including, but not limited to, labor difficulties, delays of vendors or carriers, fires, governmental actions and material shortages. Any delays occasioned shall affect a corresponding extension of Seller's performance dates which are, in any event, understood to be approximate. In no event shall Buyer be entitled to incidental or consequential damages for late performance or a failure to perform.

**C.** It is understood time is of the essence in Seller's receipt of any material, data, facilities, approvals, and other items to be furnished by Buyer and Buyer shall be responsible for any added expenses caused Seller by delays in furnishing the same with significant delays constituting a breach of this agreement.

**D.** If Buyer wrongfully rejects or revokes acceptance of items tendered under this agreement or fails to make payment due on or before delivery, or repudiates this agreement, Seller shall have a right to recover as damages the price as stated herein. Upon recovery of the price, the items involved shall become the property of the Buyer.

## **4. TITLE AND RISK OF LOSS**

Full risk of loss (including transportation delays and losses) shall pass to the Buyer upon delivery of products to the F.O.B. point. However, Seller retains title for security purposes only, to all products until paid in full in cash and Seller may at Seller's option repossess the same, upon Buyer's default in payment hereunder, and charge Buyer with any deficiency.

## **5. WARRANTY AND LIMITATION OF LIABILITY**

**A.** Seller warrants that its products and parts, when shipped, and its work (including installation, construction and start-up), when performed, will meet applicable specifications and other specific product and work requirements (including those of performance), if any, of this agreement, will be of good quality and will be free from defects in material and workmanship. All claims for defective products or parts under this warranty must be made in writing immediately upon discovery and, in any event, within one (1) year from shipment of the applicable item unless Seller specifically assumes installation, construction or start-up responsibility. All claims for defective products or parts when Seller specifically assumes installation, construction or start-up responsibility, and all claims for defective work must be made in writing immediately upon discovery and, in any event, within one (1) year from completion of the applicable work by Seller, provided, however, all claims for defective products and parts must be made in writing no later than eighteen (18) months after shipment. Defective items must be held for Seller's inspection and returned to the original F.O.B point upon request. **THE FOREGOING IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES WHATSOEVER, EXPRESS, IMPLIED AND STATUTORY, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANT ABILITY AND FITNESS.**

**B.** Upon Buyer's submission of a claim as provided above and its substantiation, Seller shall at its option either (i) repair or replace its product, part or work at either the original F.O.B. point of delivery or at Seller's authorized service station nearest Buyer or (ii) refund an equitable portion of the purchase price.

**C.** This warranty is contingent upon Buyer's proper maintenance and care of Seller's products and does not extend to fair wear and tear. Seller reserves the right to void warranty in event of Buyer's use of inappropriate materials in the course of repair or maintenance, or if Seller's products have been dismantled prior to submission to Seller for warranty inspection.

**D.** The foregoing is Seller's only obligation and Buyer's only remedy, for breach of warranty, and except for gross negligence, willful misconduct, and remedies permitted under the PERFORMANCE, INSPECTION AND ACCEPTANCE and the PATENTS Clauses hereof, the foregoing is Buyer's only remedy hereunder by way of breach of contract, tort or otherwise. In no event shall Buyer be entitled to incidental or consequential damages. Any action for breach of this agreement must be commenced within two (2) years after the cause of action has accrued.

## **6. PATENTS**

Seller agrees to assume the defense of any suit for infringement of any United States patents brought against Buyer to the extent such suit charges infringement of an apparatus or product claim by Seller's product in and of itself, provided (i) said product is built entirely to Seller's design, (ii) Buyer notifies Seller in writing of the filing of such suit within ten (10) days after the service of process thereof, and (iii) Seller is given complete control of the defense of such suit, including the right to defend, settle and make changes in the product for the purpose of avoiding infringement. Seller assumes no responsibility for charges of infringement of any process or method claims, unless infringement of such claims is the result of following specific instructions furnished by Seller.

## **7. SPECIAL TOOLING**

Notwithstanding any tool, die or pattern charges or amortization in connection herewith, all special tooling and related items shall be, and remain, the property of Seller.

## **8. NOTICE**

J. Herbert Corporation values highly the confidence and good will of its customers and suppliers. We offer our products only on their merit, and we expect our customers to judge and purchase our products and services solely based on quality, price, delivery, and service. Likewise, J. Herbert Corporation buys only on merit, and we judge and purchase solely based on quality, price, delivery, and service. This corporate policy applies in all relationships with our customers and suppliers.

## **9. CANCELLATION**

Orders accepted by Seller are non-cancelable by Buyer unless agreed to in writing by Seller. If Buyer makes written request for cancellation of the entire order, or any portion thereof, and Seller agrees in writing to such request, Buyer shall then be responsible for payment to Seller of the following cancellation charges:

**A.** Goods ordered from seller's stock: If cancellation notice is received prior to Seller's packaging for shipment there shall be no cancellation charges. If Seller has packaged goods for shipment a fifteen (15%) percent charge shall apply regardless of whether the goods have been delivered to a carrier or the Buyer.

**B.** All items not normally stocked, or which have been specifically designed, manufactured, or altered for the Buyer's requirements: Cancellation charges shall include reimbursement to Seller of all material and labor expenses (including overhead costs attributable to direct expenses) incurred or committed to by date cancellation request is received, plus Seller's anticipated profit on the entire order or the canceled portion thereof. In addition, Buyer shall reimburse Seller for any and all incidental damages.

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C. In any event if a cancellation request is received more than thirty (30) days after date of order acceptance, there shall be a minimum cancellation charge of twenty-five (25%) percent of the entire order price or the canceled portion thereof. For purposes of this provision B, requests for suspension of manufacture shall be treated the same as cancellation. Cancellation charges shall be due and payable upon Seller's mailing of its invoice. Title to partially or fully manufactured products shall pass to Buyer upon payment.

### 10. RETURNS

No returns of materials to Seller will be allowed without Seller's written consent, and assignment of a return material authorization number. All returns must be made freight prepaid to Seller's plant. **NO COLLECT SHIPMENTS WILL BE ACCEPTED.** Material returned for credit is subject to Seller's inspection to determine condition prior to determining the amount of credit due Buyer. In any case returned material will be subject to a fifteen (15%) percent restocking charge plus any costs Seller incurs to place material in saleable condition.

### 11. DELAYS

If the Buyer requests a delay in delivery and the Seller consents thereto, Buyer shall pay reasonable storage charges plus the Seller's costs for handling...it being understood in such event that Seller shall still have the right to render its normal invoice to Buyer as if the product had been in fact shipped in accordance with original schedule(s). If the Buyer requests a delay in erection when included in the contract and the Seller consents thereto, Buyer shall pay for erection costs to that date and any additional costs resulting from this delay.

### 12. FREIGHT

Freight prices quoted are approximate for the stated mode of transportation and are based on tariffs and rates in effect at the time of quotation. Actual freight charges will be invoiced at rates and subject to tariffs in effect at time of shipment.

**NOTE** If freight is included in quoted selling price, this paragraph 12 is void.

### 13. INSTALLATION AND FIELD SERVICES

Buyer is responsible for obtaining, at Buyer's expense, all required, licenses, permits, zoning approvals and authorizations of any kind for type of work being performed. Buyer shall indemnify and hold harmless Seller and its sub-contractors from all claims, actions and demands which may result from performance of construction work hereunder and shall reimburse them for all expenses incurred in investigating, handling and defending against the same, and shall pay all judgments, awards or settlements resulting therefrom. All material furnished by Buyer must be available during construction. No work will be performed under handicap of wind, rain, snow, ice or extreme temperature unless Buyer agrees to assume the additional costs and risks incurred because of such adverse weather conditions. Buyer shall provide power service for the operation during the entire work period. Unless otherwise specifically agreed in writing, or unless such failure is due to Seller's gross negligence or bad faith, Seller shall not be liable for any damages of any kind or nature for any failure to complete work on scheduled date. Work must proceed uninterrupted. Work is to be performed during normal working hours by merit shop workmen. No Labor or material is included for test loading of equipment. Clear access to equipment including necessary scaffolding and work platforms and adequate work area must be provided by Buyer. No labor or material is included for connection of equipment being installed to building power distribution panel or other power source. Buyer is to provide hoisting or lifting equipment at no cost to Seller for unrestricted use by the Seller

### 14. TERMS OF PAYMENT

**A.** Pre-Quoted Installation and Field Services, NET 30 Days on all other invoices.

Over \$5,000: 50% of total order value is to accompany Order, due upon receipt.  
50% of total order is due upon completion of service, NET 30 Days.

**B.** New Equipment Sales: NET 30 Days on all other invoices.

Over \$5,000: 50% of total order value is to accompany Order, due upon receipt. Payment must be received before Order is released.  
50% of total order value is to accompany Readiness to ship, NET 30 Days.

**C. J. Herbert Corporation Manufactured Products:**

35% of total order value is to Accompany Purchase Order or Acceptance of Contract, Due upon Receipt.  
25% of total order value is to accompany Clearance of Drawings and other Submittal Data provided by Seller, Due upon Receipt.  
30% of total order value is to accompany Readiness to ship, Due upon Receipt.  
10% of total order value is due upon completion and Buyer's acceptance of equipment, NET 30 Days.

**NOTE:** Payment terms quoted in a J. Herbert Corporation proposal shall take precedence over payment terms listed above.

### ACCEPTABLE PAYMENT METHODS

Existing Customers or Customers with approved credit by J. Herbert Credit Department

- Check
- Credit or Debit Card
- ACH Payment
- Wire Transfer (Fees paid by Buyer)

New Customers or Customers without J. Herbert Credit Approval

- Credit or Debit Card
- ACH Payment
- Wire Transfer (Fees paid by Buyer)

Accounts are opened only with firms and individuals who are satisfactorily rated by an appropriate credit authority and/or approved by JHC Credit Department. All other buyers must pay in advance by ACH or Wire Transfer Payment in advance of delivery. Buyers Terms specified on Purchase Orders do not replace JHC Standard Terms of Payment. Seller reserves the right to refuse delivery except for cash, including payment for all goods previously delivered and to stop delivery, whenever, in the discretion of the Seller, there is no doubt as to Buyer's solvency. In the event Buyer does not satisfy the terms of payment as outlined above, Seller reserves the right to assess service charges of 1.5% per month on a pro-rata basis on the amount in arrears, or such lesser amount to the maximum permitted by law.

### 15. INTEREST ON ACCOUNTS

All accounts unpaid more than thirty (30) days after the due date shall accrue interest at the rate of one and one-half (1 1/2%) percent per month beginning on the day following the due date. If paid during said thirty (30) day period, interest will be waived. Interest may be calculated daily and shall be added to the principal due on the account.

### 16. COLLECTION OF ACCOUNTS

J. Herbert Corporation reserves the right to press for collection of any account unpaid after the due date. Buyer shall pay all of the costs of any such collection efforts including, without limitation, reasonable attorney's fees through all legal proceedings including appeals and post-judgment proceedings. All property remains the property of J. Herbert Corporation until paid in full.

### 17. IMPORTANT

All quotations are subject to revocation without notice and all orders are subject to final acceptance at our Kissimmee office. Due to market conditions prices are subject to change at any time until an order is accepted. If selected, J. Herbert Corporation will provide vendor quotes and other information to be used as benchmarks in calculation of cost escalation. J. Herbert Corporation's mark-up to cover overhead and profit will be added to or deducted from escalation. Applicable sales tax will be added to or deducted from escalation.

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