

**Standard Remarks: Unless otherwise specified in writing:**

- Delivery will be per the project schedule, unless a specific “order date/delivery date” has been set.
- If applicable, all product lead times are calculated from the time that all approved documentation is returned to us.
- Please note that all installation prices included in this proposal are based on reasonable access to the installation site. We reserve the right to address any additional costs incurred due to poor or obstructed access or interference by other trades or weather-related site conditions.
- Unless specifically stated otherwise, all installation will be performed by factory-trained non-union personnel. If union labor is required additional charges will apply. This Agreement is not subject to prevailing wage requirements unless expressly stated and accompanied by required documentation and the applicable wage determination. Additional charges will apply for prevailing wage projects.
- Customer is responsible for unloading, off-loading and storage of the product.
- By accepting this proposal, Customer accepts product specifications, configuration and terms and conditions.
- For Domestic transactions prices are F.O.B. manufacturer's point of shipment and are firm for 30 days on quantities shown. For International transactions prices are FCA Factory point of shipment and are firm for 30 days on quantities shown.
- Customer is responsible for all sales and use taxes not specified herein.
- ALL TERMS AND CONDITIONS ATTACHED OR HEREIN REFERENCED, INCLUDING LIMITATIONS ON LIABILITY AND DISCLAIMERS OF WARRANTY APPLY AND ARE INCORPORATED HEREIN BY REFERENCE.
- Both parties have read, understand and agree to the prices, terms and conditions herein and attached and seller objects to any additional terms or conditions. Issuance of a purchase order and/or contract to purchase product or services shall be acceptance of these terms herein stated with or without signature. Any language, terms or conditions contained in a purchase order and/or contract that is contrary to those herein shall be null and void as this is the complete and exclusive contract between Purchaser and Seller with respect to products and/or services. Shipment of any product or any services performed pursuant to a purchase order and/or agreement shall be unaffected by language contained in this proposal and any such shipment or performance of services shall be unaffected by language contrary in any purchase order or contract. All terms and conditions are incorporated by reference and contained on Seller’s website at <http://www.ritehite.net/arbonorderterms.pdf>.

**Accepted By:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**P.O. #:** \_\_\_\_\_

**Date:** \_\_\_\_\_

# Arbon Equipment Corporation Standard Terms & Conditions

(Revised 10.19.15)

- 1. ORDERS; QUOTATIONS.** Purchaser has read, understands and agrees to the prices, terms and conditions herein and attached and seller objects to any additional terms or conditions. Issuance of a purchase order and/or contract to purchase product or services shall be acceptance of these terms herein stated with or without signature. Any language, terms or conditions contained in a purchase order and/or contract that is contrary to those herein shall be null and void as this is the complete and exclusive contract between Purchaser and Seller with respect to products and/or services. Shipment of any product or any services performed pursuant to a purchase order and/or agreement shall be unaffected by language contained in this proposal and any such shipment or performance of services shall be unaffected by language contrary in any purchase order or contract. This Agreement is not subject to prevailing wage requirements unless expressly stated and accompanied by required documentation and the applicable wage determination. Any and all modifications to this Order must be in writing and signed by the Seller.
- 2. PRICING.** For Domestic transactions prices are F.O.B. manufacturer's point of shipment and are firm for 30 days on quantities shown. For International transactions prices are FCA Factory point of shipment and are firm for 30 days on quantities shown. All bonds or permits shall be Purchaser's responsibility unless specified in a quotation. All quotations are void if not accepted by Purchaser in writing within 30 days from its date. Seller reserves the right to increase a quoted fee in the event that the Purchaser requests a variation on the goods agreed. If Purchaser does not take delivery of a confirmed Order for goods within 90 days of the agreed upon delivery date, Seller shall have the right to increase the purchase price provided Seller gives Purchaser reasonable notice of the proposed price increase. In the event of a proposed price increase based on the foregoing Purchaser shall have the right to cancel this agreement within 5 days after receipt of such notice and subject to the pre-shipment Cancellation Charges below.
- 3. DELIVERY.** Delivery dates specified, if any, are estimates and Seller shall in no event be held liable for delays occasioned by labor disputes, material shortages, acts of God, fires, floods, delays in transportation, or any event or circumstances beyond its exclusive control. IN THE EVENT OF A DELAY OR FAILURE OF PERFORMANCE NOT EXCUSED UNDER THE FOREGOING, SELLER'S LIABILITY SHALL NOT EXCEED THAT PORTION OF THE INVOICE PRICE REPRESENTED BY THE QUANTITY OR MATERIAL DELAYED OR NOT SHIPPED. Purchaser acknowledges that title and risk of loss shall pass upon delivery of the goods to carrier.
- 4. PAYMENTS.** Net invoices will be paid within 30 days from the date of invoice for equipment purchases and 10 days from the date of invoice for service transactions. A finance charge of two-percent (2%) per month, or the highest rate allowed by law may be added to the unpaid balance on all accounts not paid in full on or before the due date. Purchaser shall be liable for all costs of collection including but not limited reasonable attorney fees and court costs. Unloading of all goods is the responsibility of the Purchaser.
- 5. WARRANTIES.** In all cases in which a manufacturer extends to Seller a limited warranty for finished goods covered by this document, that warranty and all associated limitations of liability shall control Purchaser's rights. The standard warranty of Rite Hite is as follows: Rite Hite warrants that its products will be free from defects in design, materials and workmanship for a period of one to five years from the date of shipment depending on the product. All claims for breach of this warranty must be made within 30 days after the defect is or can, with reasonable care, be detected and in no event no more than 30 days after the warranty has expired. In order to be entitled the benefits of this warranty, the products must have been properly installed, maintained, operated within their rated capacities, and not otherwise abused. Periodic lubrication and adjustment is the sole responsibility of the owner. This warranty is Seller's exclusive express warranty. SELLER EXPRESSLY DISCLAIMS ANY OTHER EXPRESS WARRANTIES INCLUDING BUT NOT LIMITED TO ALL IMPLIED WARRANTIES INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS. Nonstandard Seller warranties, if any, must be specified by Seller in writing. In the event of any defects covered by this limited warranty, Seller will remedy such defects by repairing or replacing any defective equipment or parts, bearing all of the costs for parts, labor and transportation. This shall be the exclusive remedy for all claims whether based on contract negligence or strict liability.
- 6. LIMITATION OF LIABILITY.** ARBON EQUIPMENT CORPORATION, RITE-HITE COMPANY, LLC OR THEIR PARENT, AFFILIATES, SUBSIDIARIES, EMPLOYEES, AGENTS, SHALL IN NO EVENT BE LIABLE FOR ANY LOSS OF THE USE OF ANY EQUIPMENT OR SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGE OF ANY KIND WHETHER FOR BREACH OF WARRANTY, NEGLIGENCE OR STRICT LIABILITY. SELLER'S LIABILITY AND BUYER'S EXCLUSIVE REMEDY IS EXPRESSLY LIMITED TO THE REPAIR OR REPLACEMENT OF GOODS OR REPERFORMANCE OF SERVICES, WITHOUT COST TO BUYER, OF DEFECTIVE MATERIALS, OR THE REPAYMENT OF THE PURCHASE PRICE UPON RETURN OF MATERIALS, OR THE GRANTING OF A REASONABLE ALLOWANCE ON ACCOUNT OF ANY DEFECTS, AS SELLER MAY SOLELY ELECT. Seller shall have the right, at all times hereafter, to inspect the materials and otherwise investigate Purchaser's claims.
- 7. SPECIFICATIONS.** The application of a manufacturer's specifications to a particular job is the responsibility of the Purchaser.
- 8. CANCELLATION CHARGES.** If Purchaser cancels an order for goods before accepting the goods for any reason other than a timely objection to a price increase, the following cancellation charges expressed in a percent of the purchase price will be paid by the Purchaser and constitute liquidated damages.
  - A) Standard equipment cancelled  
- before (pre) shipment - 20%

- after shipment but before installation - 50% plus cost of shipment and return
- B) Special equipment cancelled
  - before manufacturing - 20%
  - during manufacturing - 100%
  - after shipment - 100% plus cost of shipment and return

“Standard Equipment” means any equipment described on current price list as available without modifications, options, or changes whether at additional cost or not excepting rail car ramps which are considered special equipment being manufactured to the purchaser's center line dimensions. All other equipment is special equipment.

**9. PERFORMANCE.** Seller shall perform all services in a professional and workmanlike manner. Nothing herein shall be deemed to constitute Seller as a joint venturer, partner, or anything other than an independent contractor. Purchaser acknowledges that it will comply with all U.S. laws and regulations including but not limited to U.S. laws regulating export compliance.

If Purchaser (i) fails to perform any of the terms and conditions to be performed by Purchaser, including, without limitation, payment of the purchase price when due, (ii) dissolves or is liquidated, or (iii) is the subject of a proceeding in bankruptcy, insolvency, receivership or assignment or the benefit of creditors, then Seller may, in its sole discretion, without notice to Purchaser, declare Purchaser to be in default. Upon or after default, Seller may, without notice, (i) defer any shipments or stop any materials shipped while in transit until payment in full is made, or until Seller is otherwise satisfied as to Purchaser's financial responsibility and Purchaser has given adequate assurance of payment to Seller as requested by Seller, (ii) cancel in whole, or in part, any and all orders then outstanding between Seller and Purchaser, (iii) declare all sums owing hereunder and under any other agreement, documents or instruments between Seller and Purchaser, whether now or hereafter existing to be immediately due and payable, and (iv) exercise any and all other rights and remedies available under applicable law, including, without limitation, the Uniform Commercial Code of Wisconsin. All attorneys' fees and legal expenses incurred by Seller in enforcing the same shall be borne by Purchaser.

**10. INDEMNIFICATION.** Purchaser shall defend, indemnify and hold Seller, its agents and employees harmless against any and all liability including strict liability, any allegations, demands, claims, charges, causes of action, suits, proceedings, judgments, awards, orders, decrees, losses, fines, penalties, costs and expenses including but not limited to attorneys' fees arising out of Purchaser's use of the goods and/or services. Purchaser agrees that upon acceptance of the goods or services or payment hereunder, that any action shall be commenced within one (1) year.

**11. CONFIDENTIAL INFORMATION.** Purchaser and Seller may have access to, acquire, or become acquainted with confidential and proprietary information relating to the other party's business, including without limitation, financial information, market information, business projections, business methods, algorithms, trade secrets, technology, contacts, etc. that is not generally known to the public (the “confidential or proprietary information”). Each party shall hold in strictest confidence and shall not (other than as required in the performance of the party's duties or specifically allowed in writing) disclose or use, either directly or indirectly, any confidential or proprietary information, either during the term of the Agreement, or any time thereafter. Notwithstanding anything to the contrary, “confidential or proprietary information” shall not include any information: (a) which is, at the time of disclosure, known to the recipient without violation of this Agreement or is generally available to the public; (b) which becomes at a later date, known to the recipient or generally available to the public through no act or omission of the recipient, and then only after such later date; or (c) to the extent which may be required by process of law to be disclosed by the recipient, but only upon prior written notice to the disclosing party of no less than ten (10) days, if notice is permitted, so that the disclosing party may obtain a protective order or other equitable relief.

**12. VENUE/JURISDICTION.** This transaction shall be governed by the laws of the State of Wisconsin. Purchaser hereby agrees that any all disputes arising under this Order shall be subject to adjudication only in the state courts of Milwaukee County, Wisconsin or the Eastern United States District Court in Milwaukee, Wisconsin and Purchaser hereby consents to the exclusive jurisdiction of those courts. In any dispute arising hereunder the prevailing party shall be entitled to attorneys' fees. The rights and obligations of the parties hereunder shall not be governed by the provisions of the 1980 U.N. Convention on Contracts for the International Sale of Goods.

If any provision is declared invalid by a court of competent jurisdiction all other provisions shall remain in full force and effect.