

# Bauer Equipment America Sales Contract

## TERMS & CONDITIONS

1. Upon the execution of the quotation by the undersigned CUSTOMER, and upon the approval and acceptance by BAUER EQUIPMENT AMERICA, such quotation, together with these terms and conditions shall become a binding Sales Contract on CUSTOMER and BAUER EQUIPMENT AMERICA (collectively, the "Parties"). All quotations are subject to final approval and acceptance by BAUER EQUIPMENT AMERICA in writing. The Sales Contract may not be cancelled by CUSTOMER except upon (i) the written consent of BAUER EQUIPMENT AMERICA and (ii) payment to BAUER EQUIPMENT AMERICA of such cancellation charges, if any, as well as any expenses incurred by BAUER EQUIPMENT AMERICA prior to such approved cancellation. The quotation may not be approved and accepted by BAUER EQUIPMENT AMERICA for any reason, including without limitation, the availability of the Equipment due to the prior sale or rental of such Equipment. In the event of any conflict between terms and conditions of this Sales Contract with any other written or oral additions attached to or included in such quotation or otherwise provided by CUSTOMER, the terms and conditions of this Sales Contract shall control. Any inconsistent or varying terms in or attached to the quotation are hereby rejected. CUSTOMER's assent to these terms and conditions shall be conclusively presumed from CUSTOMER's failure to deliver written objection to BAUER EQUIPMENT AMERICA before its approval and acceptance by BAUER EQUIPMENT AMERICA hereof.

2. The price of all the items of equipment, together with tools and accessories, purchased by CUSTOMER under this Sales Contract (collectively, the "Equipment") are quoted in U.S. dollars, unless otherwise stated. Prices quoted are subject to change as a result of any changes in applicable law after the date of approval and acceptance by BAUER EQUIPMENT AMERICA, including the impositions of tariffs, duties and other similar governmental charges, that increases the cost of the Equipment or its components or costs in the selling, transporting, importing, exporting and the delivery of such Equipment to the Customer ..

3. CUSTOMER shall be responsible for the transportation, including all costs of transportation, of Equipment from the designated port of entry into the United States. CUSTOMER has the option to arrange for the transportation of the Equipment, or to request BAUER EQUIPMENT AMERICA to arrange for transportation for the Equipment to a designated site within the United States, for which there will be an additional charge, including but not limited to transportation and set-up (mobilization/demobilization) fees. BAUER EQUIPMENT AMERICA shall be responsible for the transportation of the Equipment from the place of manufacturer or distribution in Europe to the United States at the designated port of entry for pick up by CUSTOMER unless otherwise specified by the Parties. Any duties, tariffs or other similar governmental charges imposed upon the sale of the Equipment shall be the responsibility of the CUSTOMER unless otherwise specified by the Parties.

4. Reasonable efforts will be made to make deliveries of the Equipment as scheduled. All shipping dates are based upon the receipt of (a) all payments due and payable, (b) complete orders, (c) final approval by CUSTOMER of any necessary blueprints, sketches, specifications or information required for the identification and production of the Equipment covered in this Sales Contract and (d) performance of routine quality control and any inspection or testing requirements of CUSTOMER. In no event will BAUER EQUIPMENT AMERICA be responsible for any loss or damage arising out of failure to timely deliver the Equipment as scheduled, whether caused by the foregoing or by failure in shipment or

delivery caused by fire, strikes, weather, labor difficulties, casualties, delays in transportation, shortage of materials, shortages of transport vehicles or other causes beyond BAUER EQUIPMENT AMERICA's control.

5. The Equipment shall at all times remain and be the sole and exclusive property of BAUER EQUIPMENT AMERICA until the Total Sale Price, as set forth on the cover page of this Sales Contract, plus with any duties, tariffs or other similar governmental charges for which CUSTOMER is responsible, has been paid in full by CUSTOMER (collectively, the "Total Purchase Price"). BAUER EQUIPMENT AMERICA may repossess the Equipment without legal process or posting bond, free of any rights of CUSTOMER if the Total Purchase Price has not been paid in accordance with this Contract, and exercise any other right or remedy provided under applicable law, including the collection of attorney's fees, damages and expenses. CUSTOMER expressly authorizes BAUER EQUIPMENT AMERICA and its agents to enter any premises or site where the Equipment is located for the purpose of repossessing or removal of such Equipment, and hereby specifically waives any claim for trespass or damage caused by reason of the entry, repossession or removal. The repossession or removal of such Equipment does not affect the obligations of CUSTOMER to pay the Total Purchase Price or to perform any other obligations of CUSTOMER contained herein.

6. CUSTOMER hereby grants to BAUER EQUIPMENT AMERICA a purchase money security interest in and to all and any parts of the Equipment (and proceeds thereof) to secure CUSTOMER's obligations under the Contract until full payment has been received. CUSTOMER authorizes BAUER EQUIPMENT AMERICA and any assignee, if any, to file a Uniform Commercial financing statement (UCC-1) and sign it on their behalf, if required, showing BAUER EQUIPMENT AMERICA and any assignee, if any, as the lienholder.

7. All maintenance and repairs of the Equipment are the exclusive responsibility of CUSTOMER. BAUER EQUIPMENT AMERICA makes no warranty with respect to the Equipment other than as expressly stated in the Warranty documentation provided in connection with the Sales Contract. With respect to any used Equipment included in the Sales Contract, CUSTOMER accepts the used Equipment on an "AS IS, WHERE IS" basis upon delivery at designated port of entry in United States.

8. Manufacturer Warranty Only. Upon the sale of the Equipment to CUSTOMER, BAUER EQUIPMENT AMERICA shall assign to CUSTOMER all manufacturers' warranties, if any. CUSTOMER shall directly pursue any warranty claims with appropriate manufacturer. EXCEPT AS MAY BE CONTAINED IN THE WARRANTY DOCUMENTATION REFERENCED ABOVE, **BAUER EQUIPMENT AMERICA MAKES NO WARRANTY EXPRESS OR IMPLIED NOR ANY IMPLIED WARRANTY OF USE, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. BAUER EQUIPMENT AMERICA SHALL NOT BE RESPONSIBLE OR LIABLE FOR ANY LOSSES, EXPENSES OR DAMAGES, INCLUDING BUT NOT LIMITED TO, INCIDENTAL OR CONSEQUENTIAL DAMAGES, OR LOST PROFITS SUFFERED OR CLAIMS MADE BY CUSTOMER, ANY OF ITS AFFILIATES OR ANY OTHER PERSON OR ENTITY, DIRECTLY OR INDIRECTLY, ARISING IN CONNECTION WITH THE USE, INABILITY TO USE, MALFUNCTION, MISUSE OR FAILURE OF THE EQUIPMENT FOR ANY PURPOSE WHATSOEVER.**

9. BAUER EQUIPMENT AMERICA shall use reasonable efforts to replace or repair defective parts manufactured by BAUER EQUIPMENT AMERICA. With respect to such replacement or repair, BAUER EQUIPMENT AMERICA shall not be responsible for retrieving or removing defective Equipment, or any part thereof, or for reinstalling the same when repaired or replaced, or for any cost incurred by CUSTOMER in connection with such retrieval, removal or reinstallation. No Equipment shall be returned without the written consent of BAUER EQUIPMENT AMERICA.

10. Except as to CUSTOMER's specifications expressly agreed to in writing by BAUER EQUIPMENT AMERICA, Equipment shall be produced in accordance with BAUER EQUIPMENT AMERICA 's standard practices. All products, including those produced to meet CUSTOMER'S specifications, shall be subject to tolerances and variations consistent with (a) usage of the trade, (b) regular mill practices concerning dimensions, weight, straightness, section, composition and mechanical properties, (c) normal variations, internal condition and quality and (d) deviations from tolerances and variations consistent with practical testing and inspection methods.

11. Terms of payment shall be as set forth on the face of this Sales Contract, plus any increases in cost as a result of any changes in applicable law set forth in paragraph 2 herein prior to the complete performance of this Sales Contract.

12. CUSTOMER shall indemnify, defend and hold harmless BAUER EQUIPMENT AMERICA , its affiliates, directors, officers, employees and agents from and against all losses, liabilities, judgments, awards, settlements, damages, fines, injuries, penalties and costs (including legal fees and expenses), claims, causes of action and suits (the "Liabilities") by, to or in favor of any third party, including without limitation employees, operators of the Equipment, subcontractors or agents of CUSTOMER and its affiliates for (a) personal injury (including death) or real and/or tangible property damage, arising out of any damage or loss due to or by reason of any accident, or other casualty, theft or from the claims or demands of liability arising out of the Equipment, or its use, operation, ownership or maintenance, (b) any acts or omission to act under this Sales Contract of employees, contractors or agents of CUSTOMER or (c) any negligence, fraud or willful or other tortuous misconduct by CUSTOMER, its employees or agents or any other person or entity for whose conduct CUSTOMER is legally responsible; provided, however, such Liabilities are not directly the result of gross negligence or willful misconduct of any BAUER EQUIPMENT AMERICA employees. CUSTOMER shall indemnify, defend and hold harmless BAUER EQUIPMENT AMERICA for any damage to the Equipment (after the CUSTOMER takes possession of the Equipment) prior to the payment of the Total Purchase Price, whether or not, BAUER EQUIPMENT AMERICA exercises its right to repossess such Equipment. CUSTOMER shall pay such damage amount upon demand by BAUER EQUIPMENT AMERICA. In no event does BAUER EQUIPMENT AMERICA assume, nor shall BAUER EQUIPMENT AMERICA be liable to CUSTOMER for any special, indirect, incidental, or consequential damages of any nature, arising out of, or in any way or manner in connection with, the purchase, sale, maintenance, use, operation, storage, erection, dismantling, and/or transportation of the Equipment.

13. With respect to disputes arising under this Sales Contract between BAUER EQUIPMENT AMERICA and CUSTOMER, the parties hereunder agree to attempt in good faith to resolve such dispute in mediation or arbitration before pursuing any remedies available to the parties hereunder at law or in equity, subject to the terms and conditions of this Sales Contract. Any mediations shall be conducted by a mediator reasonably acceptable to the Parties and an executive of the CUSTOMER and BAUER EQUIPMENT AMERICA. An arbitration shall be conducted on a confidential basis pursuant to the Commercial Arbitration Rules of the American Arbitration Association on an expedited basis not to exceed sixty (60) days. Any decision or award as a result of any such arbitration proceeding shall be in writing and shall provide an explanation for all conclusions of law and fact and shall include the assessment of costs, expenses, and reasonable attorneys' fees. Any such arbitration shall be conducted by an arbitrator experienced in heavy duty equipment sales and service. The arbitrator shall prepare a brief written record of the arbitration hearing. The parties reserve the right to object to any individual who shall be employed by or affiliated with a competing organization or entity. An award of arbitration may be confirmed in a court of competent jurisdiction. No award or procedural order made in the arbitration shall be published.

14. With respect to any services, training, consultancy or otherwise, not specifically set forth herein, such services should be handled in a separate contract and quoted separated by BAUER EQUIPMENT AMERICA.

15. This Sales Contract comprises the entire agreement and contract between the parties hereunder and it is acknowledged that there are no understandings, representations, warranties, express or implied promises, verbal or otherwise, pertaining to this Sales Contract or to the Equipment other than the terms and conditions herein.

16. This Sales Contract and all its terms and conditions shall be interpreted and enforced in accordance with the laws of the State of Texas without giving effect to any rules or principles of conflicts of laws. Any legal proceeding instituted by either party hereunder shall be brought in the courts, state or federal, sitting in Harris County, Texas, and the parties hereunder consent to the jurisdiction and venue of such courts.

**WAIVER OF TRIAL BY JURY: CUSTOMER HEREBY AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD HERETO, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION HEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY CUSTOMER AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. BAUER EQUIPMENT AMERICA IS HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER.**

17. If any term or provision of this Sales Contract is adjudged or declared to be invalid, unenforceable or null by any a Texas court then such term or provision shall be modified to the extent possible and necessary to preserve the original intentions of the parties hereunder, and the validity and enforceability of the remaining terms and provisions shall not be affected or impaired thereby and remain in full force.

18. BAUER EQUIPMENT AMERICA may assign this Sales Contract. CUSTOMER may not assign this Sales Contract without the express written consent of BAUER EQUIPMENT AMERICA.

19. The prevailing party in any legal proceeding shall have the right to recover reasonable legal fees and costs.