



Sales Terms & Conditions

1. The execution of this Sales Contract by CUSTOMER shall constitute a purchase order. Purchase orders are not subject to cancellation except upon the written consent of BAUER EQUIPMENT AMERICA INC. and payment to BAUER EQUIPMENT AMERICA INC. of such cancellation charges, if any, as will prevent loss to BAUER EQUIPMENT AMERICA INC.. All purchase orders are subject to approval and acceptance by BAUER EQUIPMENT AMERICA INC.. To the extent that the terms and conditions of this Sales Contract are contrary to or include additions to any written or oral purchase order provided by CUSTOMER (whether provided before or after the execution of this Sales Contract by the parties hereunder), the terms and conditions of this Sales Contract shall control. Any inconsistent or varying terms in CUSTOMER's purchase order(s) 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 INC. before execution by BAUER EQUIPMENT AMERICA INC. hereof. This Sales Contract shall not be considered to be in full force until accepted and properly executed by BAUER EQUIPMENT AMERICA INC..
2. The price of all the items, together with tools and accessories, purchased by CUSTOMER under this Sales Contract (the "Equipment") are quoted in U.S. dollars, unless otherwise stated. Prices quoted are subject to change and the Equipment is subject to availability until this Sales Contract has been accepted and properly executed by BAUER EQUIPMENT AMERICA INC..
3. CUSTOMER shall be responsible for the transportation, including all costs of transportation, of Equipment. CUSTOMER has the option to arrange for the transportation of the Equipment, or to request BAUER EQUIPMENT AMERICA INC. to arrange for transportation for the Equipment, for which there will be an additional charge, including but not limited to transportation and set-up (mobilization/demobilization) fees. All shipments are FOB BAUER EQUIPMENT AMERICA INC.'s facilities, unless otherwise agreed in writing.
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 INC. 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 INC.'s control.
5. The Equipment shall at all times remain and be the sole and exclusive property of BAUER EQUIPMENT AMERICA INC. until the Total Sale Price, as set forth on the cover page of this Sales Contract, has been paid in full by CUSTOMER.
6. CUSTOMER hereby grants to BAUER EQUIPMENT AMERICA INC. a 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 INC. and any assignee, if any, to file a Uniform Commercial financing statement (UCC-1) showing BAUER EQUIPMENT AMERICA INC. and any assignee, if any, as the lienholder.

7. All scheduled maintenance and repairs of the Equipment are the exclusive responsibility of CUSTOMER to the extent such maintenance or repair is not specifically covered by Bauer Equipment America, Inc. warranty. BAUER EQUIPMENT AMERICA INC. warrants the equipment in accordance with the standard Bauer Equipment America warranty applicable for the products as outlined in the warranty statement.
8. Any warranty is provided by Bauer Equipment America, Inc. BAUER EQUIPMENT AMERICA INC. MAKES NO WARRANTY EXPRESS OR IMPLIED NOR ANY IMPLIED WARRANTY OF USE, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. BAUER EQUIPMENT AMERICA INC. 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 INC. shall use reasonable efforts to replace or repair defective parts manufactured by BAUER EQUIPMENT AMERICA INC.. With respect to such replacement or repair, BAUER EQUIPMENT AMERICA INC. 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 INC..
10. Except as to CUSTOMER's specifications expressly agreed to in writing by BAUER EQUIPMENT AMERICA INC., Equipment shall be produced in accordance with BAUER EQUIPMENT AMERICA INC.'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. In addition to the price as stated, CUSTOMER shall be responsible for any and all taxes which BAUER EQUIPMENT AMERICA INC. may be required to collect and pay, under any existing or future law, in respect of the sale, purchase, delivery, storage, processing, use and consumption or manufacturing of the materials(s) ordered. CUSTOMER shall pay any applicable export, import and other duty tariffs and customs fees or expenses.
12. CUSTOMER shall indemnify, defend and hold harmless BAUER EQUIPMENT AMERICA INC., 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, 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 tortious 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 actions by BAUER EQUIPMENT AMERICA INC. employees.

13. With respect to disputes arising under this Sales Contract between BAUER EQUIPMENT AMERICA INC. and CUSTOMER, the parties hereunder agree to attempt in good faith to resolve such dispute before pursuing any remedies available to the parties hereunder at law or in equity, subject to the terms and conditions of this Sales Contract.
14. 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.
15. 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. 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 INC. IS HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER.
16. If any term or provision of this Sales Contract is adjudged or declared to be invalid, unenforceable or null by any court or arbitration of appropriate jurisdiction, 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.
17. BAUER EQUIPMENT AMERICA INC. may assign this Sales Contract. CUSTOMER may not assign this Sales Contract without the express written consent of BAUER EQUIPMENT AMERICA INC..
18. The prevailing party in any legal proceeding shall have the right to recover reasonable legal fees and costs.

(Revised 1-27-15)