

# TERMS AND CONDITIONS OF SALE

## **1. OFFER, GOVERNING PROVISIONS AND CANCELLATIONS.**

This writing constitutes an offer or counter offer by Felker Brothers Corporation ("Seller") to sell the products and/or services described herein in accordance with these terms and conditions. This writing is not an acceptance of any offer made by Buyer, and acceptance of this offer is expressly conditioned upon Buyer's assent to these terms and conditions. Buyer will be deemed to have assented to these terms and conditions when:

- (a) Buyer signs and delivers to Seller an acknowledgement copy of any of Seller's quotation, order acknowledgement or invoice forms;
- (b) at Seller's option, Buyer shall have given to Seller (orally or in writing) specifications of quantity, quality and/or type of goods, assortments thereof, delivery dates, shipping instructions, instructions to bill, or the like as to all or any part of the merchandise herein described;
- (c) Buyer has received delivery of the whole or any part thereof, or
- (d) Buyer has otherwise assented to the terms and conditions hereof.

No additional or different terms or conditions will be binding upon Seller unless specifically agreed to in writing by an officer of Seller at Marshfield, Wisconsin; no other representative has any authority to waive, alter, vary or add to the terms hereof. Seller hereby objects to any such additional or different provisions contained in any purchase order or other communication heretofore or henceforth received from Buyer. THIS CONTRACT AND THESE TERMS AND CONDITIONS SHALL CONSTITUTE THE ENTIRE AGREEMENT BETWEEN SELLER AND BUYER, AND SHALL BE GOVERNED BY AND SHALL BE CONSTRUED ACCORDING TO THE INTERNAL LAWS OF THE STATE OF WISCONSIN, INCLUDING ITS PROVISIONS OF THE UNIFORM COMMERCIAL CODE, THE RIGHTS AND OBLIGATIONS OF BUYER AND SELLER SHALL NOT BE GOVERNED BY THE PROVISIONS OF THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS. No order may be cancelled or altered by the Buyer except upon terms and conditions acceptable to Seller, as evidenced by Seller's written consent. In the event of such an approved cancellation by Buyer, Seller shall be entitled to payment of the full price, less the amount of any expense saved by Seller by reason of the cancellation.

**2. PRICES.** As explained on the face of this form, the prices of the goods and/or services set forth thereon are Seller's prices for such goods and/or services with all the terms in this form, including the exclusive warranty and the various disclaimers and limitations of liability enforceable against the Buyer. If Buyer desires for Seller to provide a greater, or additional warranty, and/or to be liable for some or all of the disclaimed or limited liability, the prices set forth in this offer are not available, and the Buyer must notify Seller before Buyer accepts this offer (or is deemed to accept it) pursuant to paragraph 1 above. Seller will then make a new offer containing prices reflecting that additional exposure. In the absence of such a new offer, all of the terms in this form shall be enforceable. By accepting this offer, Buyer understands that it is foregoing the possibility of, among other things, recovery of consequential damages from Seller and of indemnity for tort liability in exchange for Buyer obtaining a lower sales price for the goods and/or services.

All prices listed are payable in United States Dollars, Except as otherwise provided on the face of this form, all prices are subject to change without notice; and the price of products on order but unshipped will be adjusted to the price in effect at the time of shipment. Payment is due net 30 days from the date of Seller's invoice upon approved credit, unless otherwise specified in this form. If, during the period of performance of an order, the financial position of Buyer does not justify the terms of payment specified herein, Seller may require payment in

advance. Interest may be charged at the rate of 18% per year from the date of invoice (but not more than the highest rate permitted by applicable law) on accounts past due. The Buyer further agrees that if any or all of the purchase price or accrued interest or any other sum due Seller is collected by a collection agency, attorney or legal procedure of any kind, these costs will also be due Seller and paid by Buyer.

**3. SECURITY INTEREST.** Title to the equipment sold hereunder, and all additions or accessions to any substitutions for such equipment, shall remain in the Seller as a security interest, and Buyer hereby grants to Seller a security interest in the goods sold hereunder, until the Buyer has completed payment of the purchase price, plus accrued interest, and fully performed all of the other terms and conditions hereof, at which time the Seller's security interest is satisfied.

The equipment covered hereby shall remain strictly personal property, irrespective of the mode of its attachment to realty, the consequences of its being disturbed or removed, or the use made of it. The Buyer shall maintain the equipment covered hereby in good condition and repair and not permit its value to be impaired. The Buyer shall not sell, mortgage, pledge or otherwise deal in or encumber the equipment or any part of it or permit it to be removed from the place where first installed (so long as any portion of the purchase price or accrued interest or any other sum due Seller under these terms of sale remains unpaid), without the Seller's prior written consent. The Seller is authorized to inspect the equipment wherever located at any reasonable time or times. The equipment shall be insured by the Buyer at its own expense in an amount not less than the balance due to the Seller under this agreement, with loss, if any, payable to the Seller. Seller has no duty to protect, insure or realize upon the equipment.

**4. TAXES AND OTHER CHARGES.** Any manufacturer's tax, occupation tax, use tax, sales tax, excise tax, value-added tax, duty, custom, inspection or testing fee, or any other tax, fee or charge of any nature whatsoever imposed by any governmental authority, on or measured by the transaction between Seller and the Buyer shall be paid by the Buyer in addition to the prices quoted or invoiced. In the event the Seller is required to pay any such tax, fee or charge, the Buyer shall reimburse Seller therefore.

**5. DELIVERY, CLAIMS AND FORCE MAJEURE.** Delivery of products to a carrier at Seller's plant or other loading point shall constitute delivery to Buyer, and regardless of shipping terms or freight payment, all risk of loss or damage in transit shall be borne by Buyer. Seller reserves the right to make delivery in installments, unless otherwise expressly stipulated herein, all such installments to be separately invoiced and paid for when due per invoice, without regard to subsequent deliveries. Delay in delivery of any installment shall not relieve Buyer of its obligations to accept remaining deliveries.

Claims for shortages or other errors in delivery must be made in writing to Seller within ten (10) days after receipt of shipment. Failure to give such notice shall constitute unqualified acceptance of all shipments made prior to Seller's receipt of Buyer's notice of claim, and shall constitute a waiver of all such claims by Buyer. Claims for loss or damage to goods in transit should be made to the carrier and not to Seller.

All delivery dates are approximate. Seller shall not be liable for any damage as a result of any delay or failure to deliver due to any act of God, act of the Buyer, embargo or other governmental act, regulation or request, fire, accident, strike, slowdown or other labor difficulties, war, riot, delay in transportation, defaults of common carriers, inability to obtain necessary labor materials or manufacturing facilities or, without limiting the foregoing, any other delays beyond the Seller's control. In the event of any such delay the date of delivery shall be extended for a period equal to the time lost because of the delay. Buyer's exclusive remedy for other delays and for Seller's inability to deliver for any reason, shall be rescission of this agreement.

# TERMS AND CONDITIONS OF SALE

**6. EXCLUSIVE WARRANTY.** Seller warrants products manufactured by it and supplied hereunder to be free from defects in materials and workmanship for a period of twelve (12) months from the date of shipment. If within such period any such product shall be proved to Seller's satisfaction to be defective, Seller shall, at Seller's option, either repair or replace such defective product or issue a credit or refund for that part of the purchase price of such product which is equitably allocable to the part or parts of such product which gives rise to such claim. Seller shall not be liable for the costs of removing defective products or reinstalling repaired or replaced products. Such repair or replacement shall be Seller's sole obligation and Buyer's exclusive remedy hereunder and shall be conditioned on Seller's receiving written notice of any alleged defect within ten (10) days after its discovery and, at Seller's option, return of such products to Seller, F.O.B. its factory. This warranty is only applicable to products properly maintained and used according to Seller's instructions. This warranty does not apply to products damaged by misuse, neglect, improper operation, accident or alteration, as determined by Seller. Products supplied by Seller hereunder which are manufactured by someone else are not warranted by Seller in any way, but Seller agrees to assign Buyer any warranty rights in such products that Seller may have from the original manufacturer.

THE WARRANTY CONTAINED IN THIS SECTION 6 IS EXCLUSIVE AND IN LIEU OF ALL OTHER REPRESENTATIONS AND WARRANTIES, EXPRESSED OR IMPLIED, AND SELLER EXPRESSLY DISCLAIMS AND EXCLUDES ANY IMPLIED WARRANTY OF MERCHANTABILITY OR IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE. If Buyer desires for Seller to provide a warranty greater than that which is stated above, then Seller will adjust upward the prices for goods and/or services listed on the face of this offer to reflect the additional expense to Seller which a warranty obligation would cause. These exclusive remedies shall not be deemed to have failed of their essential purpose so long as Seller is willing and able to repair or replace defective products or issue a credit or refund within ninety (90) days after the date on which Seller determines a defect to exist.

Any description of the products, whether in writing or made orally by Seller or Seller's agents, specifications, samples, models, bulletins, drawings, diagrams, engineering sheets or similar materials used in connection with Buyer's order are for the sole purpose of identifying the products and shall not be construed as an express warranty. Any suggestions by Seller or Seller's agent regarding use, application or suitability of the products shall not be construed as an express warranty unless confirmed to be such in writing by Seller.

**7. COMPLIANCE WITH LAWS.** Seller strives to comply with the provisions of all federal, state and local laws, standards and regulations for which liability may accrue to Buyer for violation thereof. Seller certifies that these goods were produced in compliance with all applicable requirements of Sections 6, 7 and 12 of the Fair Labor Standards Act, as amended, and all regulations and orders of the United States Department of Labor issued under section 14 thereof. However, Seller does not warrant that any equipment and features meet the requirements of any local, state or federal laws or regulations, including those issued under OSHA. The equipment described herein is provided only with the safety devices and features shown in the applicable specifications. Should the customer require any additional devices or features, they should be specifically identified, and Seller will amend this quotation accordingly.

**8. RETURNS.** Products may be returned to Seller only when Seller's written permission, signed by duly authorized personnel of Seller, shall be obtained by Buyer in advance. Goods may not be returned unless they are in marketable condition. Returned products must be securely

packaged and reach Seller without damage. Return transportation charges must be prepaid by Buyer. Stock items, when returned, will be credited at lowered prevailing price, and subject to a charge for handling and restocking. Non-standard or special items are not subject to cancellation, change, reduction in amount, nor returned for credit without written consent and upon terms which indemnify Seller against loss. Any cost incurred by Seller to put products in marketable condition will be charged to Buyer.

**9. EXCLUSION OF CONSEQUENTIAL DAMAGES AND DISCLAIMER OF LIABILITY; BUYER'S INDEMNITY.** Seller's liability with respect to breaches or warranty shall be limited as provided in Section 6 hereof. With respect to other breaches of this contract, Seller's liability shall in no event exceed the contract price. SELLER SHALL NOT BE SUBJECT TO AND DISCLAIMS; (1) ANY OTHER OBLIGATIONS OR LIABILITIES ARISING OUT OF BREACH OF CONTRACT OR OF WARRANTY; (2) ANY OBLIGATIONS WHATSOEVER ARISING FROM TORT CLAIMS (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR ARISING UNDER OTHER THEORIES OF LAW WITH RESPECT TO PRODUCTS SOLD OR SERVICES RENDERED BY SELLER, OR ANY UNDERTAKINGS, ACT OR OMISSIONS RELATING THERETO, AND (3) ALL CONSEQUENTIAL, INCIDENTAL AND CONTINGENT DAMAGES WHATSOEVER. Without limiting the generality of the foregoing, Seller specifically disclaims any liability for penalties (including administrative penalties), special or punitive damages, damages for lost profits or revenues, loss of use of products or any associated equipment, cost of capital, facilities or services, downtime, shut-down or slow-down costs, spoilage of material, or for any other types of economic loss. All the limitations and disclaimers contained in this paragraph and in the rest of this contract shall apply to claims of Buyer's customers or any third party asserted by Buyer against Seller for indemnity or contribution, as well as direct claims of Buyer against Seller.

Buyer shall indemnify Seller against any and all losses, liabilities, damages and expenses (including, without limitation, attorney's fees and other costs of defending any action) which Seller may incur as a result of any claim by Buyer or others arising out of or in connection with the products and/or services sold hereunder and based on product or service defects not proven to have been caused solely by Seller's negligence.

**10. BUYER'S PROPERTY.** Any property of the Buyer placed in Seller's custody for performance for this contract is not covered by insurance, and no risk is assumed by Seller in the event of loss or damage to such property by fire, water, burglary, theft, civil disorder or any accident beyond the reasonable control of the Seller.

**11. ADDITIONAL DOCUMENTS; POWER OF ATTORNEY.** At the request of Seller, Buyer will join with Seller in executing one or more Financing Statements, pursuant to the Uniform Commercial Code in form satisfactory to seller and will pay the cost of filing the same in public offices whenever filing is deemed by Seller to be necessary or desirable. If Buyer fails to promptly execute and file such Financing Statements, then Buyer hereby appoints any officer, employee, or agent of Seller as Buyer's attorney-in-fact for purposes of signing and filing such Financing Statements, and hereby authorizes such officer, employee or agent to execute and file such Financing Statements in the name of the Buyer.

**12. SEVERABILITY.** If any provisions of these terms and conditions of sale shall be deemed illegal or unenforceable, such illegality or unenforceability shall not affect the validity and enforceability of any legal and enforceable provision hereof, which shall be construed as if such illegal and unenforceable provision(s) had not been inserted herein.