



BABCOCK & WILCOX UNIVERSAL, INC. STANDARD TERMS AND CONDITIONS OF SALE

These Terms and Conditions of Sale apply to all Orders submitted to Babcock & Wilcox Universal, Inc., a Wisconsin corporation d/b/a Babcock & Wilcox Universal (B&W Universal) in addition to the description, specifications and other items set forth in or pertaining to the Order itself.

1. OFFER, GOVERNING PROVISIONS AND CANCELLATION. THESE TERMS AND CONDITIONS SHALL CONSTITUTE THE ENTIRE AGREEMENT WITH REGARD TO PRODUCTS ("PRODUCTS") SOLD BY B&W UNIVERSAL TO ITS CUSTOMER, AND SHALL BE GOVERNED BY AND SHALL BE CONSTRUED ACCORDING TO THE INTERNAL LAWS OF THE STATE OF WISCONSIN. ANY CONFLICTING, CONTRARY OR ADDITIONAL TERMS AND CONDITIONS CONTAINED IN ANY PURCHASE ORDER OR OTHER COMMUNICATION FROM CUSTOMER SHALL BE OF NO FORCE AND EFFECT. NEITHER B&W UNIVERSAL'S ACKNOWLEDGEMENT OF A PARTICULAR PURCHASE ORDER NOR ITS FAILURE TO OBJECT TO CONFLICTING, CONTRARY OR ADDITIONAL TERMS AND CONDITIONS IN A PURCHASE ORDER SHALL BE DEEMED AN ACCEPTANCE OF SUCH TERMS AND CONDITIONS OR A WAIVER OF ANY OF THE PROVISIONS HEREOF.

2. THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL NOT BE GOVERNED BY THE PROVISIONS OF THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALES OF GOODS.

3. CANCELLATION. No Order may be canceled or altered by Customer except upon terms and conditions acceptable to B&W Universal, as evidenced by B&W Universal's written consent. In the event of such an approved cancellation by Customer, B&W Universal shall be entitled to payment of the full price, less the amount of any expenses saved by B&W Universal by reason of the cancellation.

4. PRICES AND PAYMENT. All prices listed are payable as stated in B&W Universal's current applicable price list or attached quote. All prices and payment terms 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 the final accepted Order. Payment is due on the terms agreed by B&W Universal in writing, or, if there is no such written agreement, in accordance with the applicable price list, or, if no price list is applicable, upon Customer's receipt of B&W Universal's invoice. Notwithstanding the foregoing, at its sole option at any time, B&W Universal may require Customer to make payment in advance or by irrevocable letter of credit, and may defer shipment or cancel any Order if Customer does not promptly provide such payment or a letter of credit. Any such letter of credit shall be advised for B&W Universal's benefit by a bank acceptable to B&W Universal, shall be subject to and governed by the Uniform Customs and Practice for Documentary Credits (ICC Publication No. 500, 1993 Revision or subsequent revisions and amendments), shall provide for payment against B&W Universal's invoice and bill of lading, and shall be in form and substance satisfactory to B&W Universal. B&W Universal reserves the right to impose Cash in Advance terms or Customer progress billings.

5. LATE PAYMENTS. Any obligation of Customer to B&W Universal not paid as and when due shall bear interest from the due date until paid at the lower of: (a) the rate of 1½ % per month, or (b) the highest rate permitted by applicable law. It is at the discretion of B&W Universal to invoice late payment fees separately and include total on Customer's account. Failure to pay late payment fees may result in credit holds being placed on future orders in by Customer.

6. TAXES AND OTHER CHARGES. Any 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 B&W Universal and Customer shall be paid by Customer in addition to the prices invoiced. Customer shall provide B&W Universal at the time the Order is submitted with any applicable exemption certificate or other document acceptable to the authority imposing such tax, fee or charge. In the event B&W Universal is required to pay any such tax, fee or charge, Customer shall reimburse B&W Universal immediately upon request.

7. RIGHT TO REFUSE ORDER. B&W Universal reserves the right to refuse to accept any Order that it determines to be detrimental to its best interests.

8. DELIVERY. (a) Products. (i) All shipments will be F.O.B. B&W Universal's plant or other loading point designated by B&W Universal; (ii) all risks of loss or damage in transit shall be borne by Customer after delivery to the carrier; and (iii) all costs of shipping shall be borne by Customer. (b) Other Terms: (i) Any additional expense arising from the use of a method or route of shipment requested by Customer shall be borne entirely by Customer. B&W Universal reserves the right to make delivery in installments, unless otherwise agreed in writing by it; all such installments are to be separately invoiced and paid for when due per invoice or other instructions from B&W Universal, without regard to subsequent deliveries, and any deliveries not in dispute shall be paid for regardless of other controversies relating to other delivered or undelivered merchandise. Delay in delivery of any installment shall not relieve Customer of its obligations to accept remaining deliveries.

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In any case, Customer shall bear all costs of any special packaging or containers requested by Customer, or otherwise deemed necessary in B&W Universal's opinion, in connection with shipping. B&W Universal may, at any time, require any or all costs of shipping for which Customer is responsible under the terms hereof to be prepaid by Customer. (ii) Claims for shortages or other errors in delivery must be made in writing to B&W Universal within 5 days after receipt of shipment. Failure to give such notice shall constitute unqualified acceptance and a waiver of all such claims by Customer. Claims for loss or damage to Products in transit, after risk of loss has passed to Customer, shall be made to the carrier and not to B&W Universal. (iii) All delivery dates are approximate.

9. SECURITY INTEREST. This Agreement shall be considered a security agreement to the maximum extent allowed by law. Customer hereby grants to B&W Universal, and B&W Universal shall have, retain, and possess, a valid and perfected security interest in the Products and proceeds thereof, free of all liens, claims and rights of other parties, until B&W Universal is paid in full. Customer hereby irrevocably grants to B&W Universal a power of attorney to complete, sign on Customer's behalf, and file all financing statements and other documents reasonably necessary to perfect B&W Universal's security interest. Customer further agrees, upon B&W Universal's request, to deliver to B&W Universal any financing statement and other documents and take such actions as B&W Universal may consider necessary in order to establish and maintain B&W Universal's aforementioned valid and perfected security interest. If Customer defaults, or B&W Universal deems itself insecure of receiving payment, the full unpaid balance shall become immediately due and payable at the option of B&W Universal, and B&W Universal may retake possession of the Products without court order. Customer agrees that it will not, directly or indirectly, sell, assign, convey, give away, or otherwise create any security interest in the Products or other rights provided under this Agreement without B&W Universal's prior written consent.

10. DELAYED SHIPMENT. If the Products are completed and ready for shipment but are delayed by an amount of time greater than 10 days for any reason beyond B&W Universal's reasonable control, including Customer's failure to give shipping instructions, B&W Universal will have the right to transfer ownership and risk of loss to the customer. Additionally, B&W Universal reserves the right to invoice the full amount of the products being shipped and will expect payment according to the terms of the purchase order. B&W Universal may store such Products at Customer's risk in a warehouse or yard or upon B&W Universal's premises, and Customer shall pay all handling, transportation and storage charges upon submission of invoices by B&W Universal. B&W Universal reserves the right to charge 1% of the product(s) purchase price per week of storage. Calculation of storage will begin 10 days after notification to the Customer that products are ready for shipment.

11. PRODUCT DESCRIPTIONS AND LITERATURE. Any description of the Products, whether made in writing or orally by B&W Universal or its agents, or in specifications, samples, models, bulletins, drawings, diagrams, engineering sheets, catalogues, product brochures, photographs and other illustrations or similar materials used in connection with the Order, are for the sole purpose of identifying the Products and shall not be construed as an express warranty and shall not form part of the terms of the transaction between B&W Universal and Customer. Any suggestions by B&W Universal or B&W Universal's agents regarding use, application or suitability of the Products shall not be construed as an express warranty unless confirmed to be such in writing by B&W Universal.

12. CHANGES. B&W Universal may at any time make such changes in design and construction of Products as B&W Universal deems appropriate, without notice to Customer. B&W Universal may furnish suitable substitutes for materials unobtainable because of priorities or regulations established by governmental authority or non-availability of materials from suppliers.

13. LIMITED WARRANTY. Subject to the exclusions contained herein, B&W Universal warrants that the Products will comply with the agreed upon specifications therefore and shall be free of defects in material and workmanship. The term of this warranty is for a period terminating 12 months from the date the Products are placed in operation or 18 months from the date the Products are complete and ready for shipment, whichever shall first occur, and provided Customer shall, within such period, notify B&W Universal in writing of such defect(s) and fully cooperate with B&W Universal in pursuing the remedying thereof. If a failure to conform to this warranty be reported to B&W Universal within such period, B&W Universal shall re-perform any defective workmanship and, at its option, repair any defective material or furnish replacement parts D.A.P. (Delivered at Place), provided Customer has restored the Products to the "as shipped" condition prior to installation and has installed, maintained and operated the Products in accordance with standard industry practices and has complied with all B&W Universal Installation, Operation and maintenance manuals and with any other specific recommendations of B&W Universal respecting the Products.

Spare parts or other parts of the Products furnished by B&W Universal but manufactured by others shall carry whatever warranty, if any, the manufacturer thereof has given to B&W Universal and which can be passed on to the Customer.

THE FOREGOING WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES; ALL OTHER WARRANTIES, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE HEREBY DISCLAIMED. The sole liability of B&W Universal and the exclusive remedy of Customer arising out of any failure of B&W Universal to uphold the warranties provided in this section 13 shall be the re-performance, repair or replacement as set forth above.

B&W Universal shall not be liable for any repairs, replacement or adjustments to Products or any costs of labor performed by Customer without B&W Universal's prior written approval. All warranties shall expire in the event the Product is misused, neglected, or operated other than for its intended purpose.

Unless specifically stated in writing, B&W Universal makes no performance warranty of any kind respecting the Products. The effects of corrosion, erosion and normal wear and tear are specifically excluded from B&W Universal's warranty. In the event performance warranties are expressly included in writing, B&W Universal's sole obligation shall be to correct non-conformities in the manner and for the period of time provided herein above.

This warranty covers non-emission related products only.

14. **RETURNS.** To return any Product, Customer must first obtain a "Return Authorization Number" from B&W Universal. Any returned Products must be securely packaged and reach B&W Universal without damage. All returned Products must be shipped to B&W Universal insured and prepaid (no COD's will be accepted), must be accompanied by the "Return Authorization Number" clearly marked on the shipping box and enclosed letter, a copy of the original invoice, and a note explaining the reason for return. B&W Universal reserves the right to refuse returns based on lower priced stock products or special order items. Products that have been changed or modified by the Customer may be returned only with approval from B&W Universal or B&W Universal's agents. If any modified or damaged products are returned by the Customer, B&W Universal may deny Customer any requested credit.

15. **INTELLECTUAL PROPERTY RIGHTS; CONFIDENTIAL INFORMATION.** Seller Technology is the sole property of B&W Universal. Except as provided in this Section 15, Customer acquires no right, title or interest in or to the use of Seller Technology. Buyer agrees to restrict the use of Seller Technology, and any other B&W Universal confidential technical information, to the installation, testing, calibration, operation or maintenance of the Products purchased by Customer. "Seller Technology" means the knowledge, information, discoveries, patents, patent applications, copyrights, mask works, concepts, ideas and other intellectual property owned by B&W Universal and/or its subsidiaries or affiliates, whether patentable, copyrightable or not, including without limitation, know-how, processes, methods, formulae, software algorithms and techniques, and all manifestations or embodiments thereof and improvements made thereto and derivatives therefrom. It may be in electronic form or any other form. Except as required by law, Customer shall not use (except for purposes connected with the performance of its obligations hereunder), divulge or communicate to any third party any information of B&W Universal it reasonably knows to be confidential or proprietary.

Customer shall have the right to reproduce any and all drawings, reports or other submittals received from B&W Universal if such reproduction does not include any confidential, proprietary or work product information belonging to B&W Universal; if such reproduction includes such information, Customer may reproduce such information only if as necessary for the installation, testing, calibration, operation or maintenance of the Products.

16. **PATENTS, TRADEMARKS AND COPYRIGHTS.** B&W Universal will, at its own expense, defend any suits that may be instituted by anyone against Customer for alleged infringement of any United States patent, trademark, copyright or other intellectual property right of a third party relating to any Products manufactured and furnished by B&W Universal hereunder, if such alleged infringement consists of the use of such Products, or parts thereof, in Customer's business in accordance with standard industry practices and all B&W Universal Installation, Operation and maintenance manuals, and if Customer shall have made all payments then due hereunder, provided, however, that Customer shall give B&W Universal immediate notice in writing of any such suit, shall transmit to B&W Universal immediately upon receipt all processes and papers served upon Customer, shall permit B&W Universal through its counsel, either in the name of Customer or in the name of B&W Universal, to defend the same and shall give all needed information, assistance and authority to enable B&W Universal to do so. If such Products in such suit are held in and of themselves to infringe any valid United States patent, trademark, copyright or other intellectual property right of a third party, then: (a) B&W Universal will pay any final award of damages in such suit attributable to such infringement, and (b) if in such suit use of such Products by Customer is permanently enjoined by reason of such infringement, B&W Universal shall, at its own expense and at its sole option, either (i) procure for Customer the right to continue using the Products, (ii) modify the Products to render them non-infringing, (iii) replace the Products with non-infringing goods, or (iv) refund the purchase price and the transportation costs paid by Customer for the Products.

Notwithstanding the foregoing, B&W Universal shall not be responsible for any compromise or settlement made without its written consent, or for infringements of combination or process patents covering the use of the Products in combination with other goods or materials not furnished by B&W Universal.

As to any Products furnished by B&W Universal to Customer and manufactured in accordance with drawings, designs or specifications proposed or furnished by Customer, or any claim of contributory infringement resulting from the use or resale by Customer of such Products, B&W Universal shall not be liable, and Customer shall indemnify B&W Universal and hold B&W Universal harmless from and against any and all loss, liability, damage, claim or expense (including but not limited to B&W Universal's reasonable attorneys' fees and other costs of defense) incurred by B&W Universal as a result of any claim of patent, trademark, copyright or trade secret infringements, or infringements of any other proprietary rights of third parties. The purchase of any Products hereunder does not entitle Customer to employ the same in any patented process.

The foregoing states the entire liability of B&W Universal for infringement, and in no event shall B&W Universal be liable for consequential damages attributable to an infringement.

17. LIMITS ON LIABILITY; EXCLUSION OF CONSEQUENTIAL DAMAGES AND DISCLAIMER OF LIABILITY; CUSTOMER'S INDEMNITY. With respect to any and all claims arising under this Agreement, whether arising out of contract, tort (including negligence), strict liability, or any other cause of or form of action, B&W Universal's liability shall in no event exceed the contract price for the Products out of which the claim arose.

B&W UNIVERSAL 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 B&W UNIVERSAL, OR ANY UNDERTAKINGS, ACTS OR OMISSIONS RELATING THERETO, AND (3) ALL CONSEQUENTIAL, INCIDENTAL AND CONTINGENT DAMAGES WHATSOEVER.

Without limiting the generality of the foregoing, B&W Universal specifically disclaims any liability, whether arising out of contract (including the failure of essential purpose of any remedies), tort (including negligence), strict liability, or any other cause of or form of action whatsoever, 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 slowdown 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 Customer's customers or any third party asserted by Customer against B&W Universal for indemnity or contribution, as well as direct claims of Customer against B&W Universal. Customer shall indemnify B&W Universal against any and all losses, liabilities, damages and expenses (including, without limitation, attorneys' fees and other costs of defending any action) that B&W Universal may incur as a result of any products' liability claims or damages, or any claim by Customer or others arising out of or in connection with Customer's use of the Products and/or related products or services

18. FORCE MAJEURE. In the event of fire, labor disputes, accident, flood or other casualty, governmental regulations, or any cause or condition beyond the reasonable control of either party that affects its ability to perform under an Order, the affected party may suspend or reduce performance accordingly without being deemed in breach of the Order; provided, however, that the other party may, at its option, cancel that part of the Order so delayed or affected and seek substitute performance from a third party. In the event of a force majeure event, delivery and performance deadlines shall be extended by a period of time equal to duration of such force majeure event.

19. 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.

20. INSURANCE. B&W Universal shall maintain Commercial General Liability Insurance policies to protect B&W Universal's legal liability and Workers' Compensation protection for B&W Universal's employees. Upon written request, certificates evidencing the insurance in effect will be forwarded to the Customer. If Customer has requested to be named additional insured with a waiver of subrogation included by endorsement to B&W Universal's Commercial General Liability Insurance policy, such additional insured endorsement and waiver of subrogation shall only be to the extent of any contractual indemnity obligations expressly assumed by B&W Universal in this Agreement.

21. COMPLIANCE; EXPORT RESTRICTIONS.

a. Sales to Customer are expressly made subject to any applicable laws, regulations, orders, or other restrictions on the export of the technology or information about the Products or the Products which may be imposed from time to time. Customer shall not export the information about the Products or the Products without complying with such laws, regulations, orders, or other restrictions. Customer agrees to indemnify and hold harmless B&W Universal against all claims, losses, damages, liabilities, costs and expenses, including reasonable attorneys' fees, to the extent such claims arise out of any breach of this Section.

b. Customer shall not pay, make any offer or promise to pay, gift, or promise to give monies or anything of value; nor authorize any such pay, offer or promise to pay, gift, or promise to give by anyone acting for or on behalf of Customer or B&W Universal, to any person that is contrary to the provisions of any anti-bribery rules, including the Foreign Corrupt Practices Act.

c. Notwithstanding anything to the contrary herein, B&W Universal may terminate the purchase order at any time, without any liability or obligations to Customer, if B&W Universal believes, in good faith, that Customer has violated Articles 21(a) or (b). Any action by Customer which would or might constitute a violation of any provision of any anti-bribery rules or a request for such action from or by Customer shall result in immediate termination of the purchase order without further liability or obligation of B&W Universal.

22. CHANGE IN LAW. If there is any change in law, regulation, procedure, legislation, governing rules, taxation (whether new or an increase in an existing tax), or if there is a change in the enforcement practices of any of the foregoing by any federal, state, or local governmental authority or quasi-governmental authority which materially adversely affects B&W Universal's costs, schedule, or performance, then both the sale price and the schedule shall be subject to adjustment.