

ELGE TECHNOLOGIES LLC TERMS, CONDITIONS & WARRANTY

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1. GENERAL TERMS

Binding Contract. Unless otherwise noted in the Seller's proposal, this proposal shall lapse automatically upon the expiration of a thirty (30) day period after the date of its submission unless it has been previously accepted by Purchaser or revoked in writing by Seller. This proposal does not become a binding contract until Seller confirms the Purchaser's order in writing.

Plans, Drawing and Illustrations. Proposal pages, catalogue illustrations and preliminary drawings are submitted only to show the general style, arrangement and approximate dimensions of equipment. Seller reserves the right to make such changes of design, construction or arrangement as it deems necessary to achieve the specifications contained herein. Purchaser is to provide the drawings of all foundations, concrete construction and reinforcement and required housings, based upon Seller's equipment drawings.

Proprietary and Confidential Information. This proposal and all drawings, notebooks, operating data, specifications, and other information, data and material (whether orally disclosed, printed, handwritten, typed, numerically or computer generated, computer stored, or otherwise) furnished to Purchaser by either Seller or any of its subcontractors or subsuppliers shall remain the proprietary and confidential property of Seller or the subcontractor or subsupplier, respectively, and shall be used by Purchaser only with respect to the work covered by the contract and shall not be used by Purchaser in connection with any other project. Such proprietary and confidential information and data shall not be shown or otherwise made available to any third party at any time without Seller's prior written consent. Neither Purchaser itself shall, nor shall Purchaser permit any third party to, reverse engineer, measure or otherwise technically examine or test Seller's equipment without Seller's prior written consent. Any such proprietary and confidential information which Purchaser determines must be disclosed to its employees, shall only be disclosed to its employees on a need-to-know basis for the operation, maintenance, and repair of the equipment provided under the contract. Intellectual property or patent rights which may be obtained on the basis of the information given or made available to Purchaser under the contract or with respect to Seller's equipment shall remain the exclusive property of Seller or its subcontractor and/or subsupplier, respectively.

2. SAFETY REQUIREMENTS OF PURCHASER

Purchaser shall use, and shall train and require its employees to use and shall cause any end user to use, all safety devices, guards, and proper safe operating and maintenance procedures as prescribed by all applicable laws, rules, regulations, codes and standards and as set forth in operating and maintenance manuals and instruction sheets furnished by Seller. Purchaser shall not, and shall cause any end user not, to remove or modify any safety device, guard or warning sign. If the Purchaser fails to strictly observe any of the obligations set forth in the preceding two sentences with regard to any of Seller's equipment, Purchaser agrees to defend Seller against, and indemnify and save Seller harmless from, any claim, liability or obligation (including the costs and attorneys' fees of any suit or claims related thereto) incurred by Seller as a result of persons being injured or property being damaged directly or indirectly in connection with the operation of such equipment as a result of such failure. Purchaser also agrees to indemnify and save Seller harmless from, any claim, liability or obligation incurred by Seller as a result of persons being injured or property being damaged due to Purchaser's use of Seller equipment for materials or products not specified in the contract or use of non-original replacement parts not specifically authorized in writing by Seller or due to changes in the Seller equipment made by Purchaser without Seller's specific written authorization.

3. CHANGE REQUESTS

The Purchaser has the right to ask for variation in the scope of supply. To this end the Purchaser shall inform the Seller in due time in writing about any details of such demand ("Change Request"). The Seller shall, within 10 working days from the reception of the Change Request, make an offer in writing to the Purchaser regarding the performance of the demanded variations (additional purchase price, modified delivery periods etc.). If a longer period of time from 10 days is required to determine the delay or cost increase necessitated by the change, then the Seller must advise the Purchaser within such 10 days and proceed diligently thereafter to determine the additional costs and time required. In case the Purchaser accepts said offer the Seller shall be obliged to perform the agreed modifications subject to changes being made to the purchase order or contract to reflect the Seller's response to the Change Request. Notwithstanding the foregoing, the Seller shall not be required to accept any change which the Seller believes in good faith is technically impossible or unsafe, then the change will not be made.

4. COMPLIANCE WITH LAWS

The equipment or work purchased from Seller shall comply with all applicable laws, rules, regulations, codes and standards of all federal, state, local and municipal governmental agencies having applicable regulatory jurisdiction, as such laws, rules, regulations, codes and standards are in effect on the date of the contract, provided that: (i) the Purchaser will include in its specifications or will bring to the attention of Seller in writing any state, local or municipal laws, rules, regulations, codes or standards which are different from those imposed by the federal governmental agencies and authorities; (ii) if any such federal, state, local or municipal laws, rules, regulations, codes or standards are changed, or if new laws, regulations, codes or standards or interpretations thereof are enacted or adopted subsequent to the date of the contract, which require a change in Seller's equipment or work, an equitable adjustment shall be made to the contract price, delivery schedule and payment terms; and (iii) Seller does not guarantee any compliance with, nor will Seller incur any liability for failure of the equipment or work to comply with, any federal, state or local pollution control, effluent or utility control laws, rules, regulations, codes or standards.

5. PRICE AND PAYMENT

The purchase price shall be paid in accordance with the Seller's proposal. Any right to retain due payments or to set-off counterclaims shall be excluded unless any such claim or counterclaim of the Purchaser is undisputed or has been determined by a final judgment of the competent court or arbitration court.

Whatever the means of payment used, payment shall not be deemed to have been effected before the Supplier's account has been fully and irrevocably credited.

If the Purchaser fails to pay by the stipulated date, the Seller shall be entitled to interest from the day on which payment was due. The rate of interest shall be one and one-half percent (1.5%) per month until the payment is made in full. Additionally, if Seller is required to expend costs and expenses in collecting any payments, Purchaser shall reimburse the Seller for such costs of collection (including reasonable attorneys fees).

In case of late payment the Seller may suspend his performance of the contract until it receives payment. If the Purchaser has not paid the amount due within three months the Seller shall be entitled to terminate the contract by notice in writing to the Purchaser and to claim compensation for the losses and damages it has incurred.

6. TRANSPORTATION; INSURANCE; RISK OF LOSS

Where transportation costs are prepaid, equipment will be shipped to an unloading point designated by the Purchaser. Unloading, haulage from the designated unloading point and further necessary handling shall be at the Purchaser's risk and expense, independent of any installation services that may be requested by the Purchaser.

Shipping instructions are to be supplied by the Purchaser within 15 days after release of the purchase order by Purchaser. In the event Purchaser fails to supply shipping instructions, it shall be invoiced and Seller at its option may place the equipment in Seller's or any public or private storage facilities at the Purchaser's risk and expense.

Insurance. Purchaser accepts full responsibility for the safeguarding of all equipment delivered to the Purchaser until it is paid for in full. Until the contract price is paid in full, Purchaser shall provide and maintain insurance to the total value of the equipment delivered hereunder against all risks of fire and explosion in the names of Purchaser and Seller, as their respective interests may appear, and shall also provide and maintain such insurance to the above value against flood, earthquake, windstorm, cyclone, tornado, hurricanes, riot and strike and civil commotion.

Title; Right of Possession; Security for Payment. The parties mutually agree that the equipment specified herein shall at all times remain personal property regardless of the degree of its annexation to the real property and that the equipment shall not by reason of any annexation to real property become a part thereof or otherwise a fixture. Title and right of possession of such equipment shall remain in Seller at all times. Title shall pass to Purchaser in accordance with the delivery terms for the equipment. Without waiving any rights to elect to proceed under applicable lien laws, Seller reserves a security interest in the equipment and parts furnished by it. By accepting delivery of the equipment or parts, Purchaser grants to Seller a security interest in such equipment and parts to secure the full and prompt payment for such equipment and parts until the agreed price (including any notes therefor) for such equipment and parts has been fully paid in cash. In the event of default in payment, Seller shall have all rights of repossession and other rights available to a secured party under the laws applicable thereto. Any equipment or parts may be separated from real estate for purpose of repossession by Seller or by its agent without liability for such removal if the Purchaser is in default in payment. Seller is authorized to execute, deliver and file with the appropriate filing office or offices all assignments, financing statements and other documents which Seller may require to evidence or perfect such security interest in accordance with applicable laws.

7. SELLER'S REMEDIES

In the event of the insolvency of the Purchaser, Seller reserves the right to cancel the sale as well as the right to stop delivery of the goods and to resell same. Such a right shall not restrict or otherwise impair Seller's remedies for damages in the event of Purchaser's breach.

Should Purchaser fail to comply with the terms and conditions set forth herein, or if any writ or execution be levied on any of Purchaser's property, or a receiver be appointed, or if a petition in bankruptcy be filed by or against Purchaser, Seller may, upon election, demand the entire purchase price stated herein or may without notice or demand by process of law or otherwise, take possession of all or any of the equipment, wherever located, and retain all monies theretofore paid as compensation for the reasonable use of such equipment. If a contract arising from this proposal is breached and is placed in the hands of an attorney for collection of any balance due or enforcement of any other of Seller's remedies, Purchaser agrees to pay all reasonable attorneys' fees and other expenses involved therein paid or incurred by Seller. Purchaser hereby waives any and all claims, damages and demands against Seller arising out of the repossession, retention and repair as aforesaid. All rights and remedies contained herein are cumulative and not alternative.

Seller reserves all other rights and remedies available to it in the event of Purchaser's breach.

8. ASSIGNMENT

The Purchaser shall not have the right to assign the agreement without the written consent of Seller.

9. INCREASE IN COST OR PRICE

Unless otherwise noted in Seller's proposal, all prices quoted are subject to surcharges in accordance with the provisions posted on a monthly basis on the Seller's Internet site. If shipment should be delayed by Purchaser beyond sixty (60) days or as specified in the Seller's proposal, the price may be increased to the price in effect at the time the equipment is shipped.

10. SELLER'S LIABILITY; FORCE MAJEURE

Seller shall not be liable for loss or damage of any kind resulting from: (i) Purchaser failing to supply any necessary technical data, as required; (ii) Purchaser failing to supply the apparatus, materials and services required; (iii) any changes in designs or specifications made subsequent to acceptance of this proposal; (iv) failure of suppliers to furnish purchased material or auxiliary equipment within scheduled dates provided that the purchased material or auxiliary equipment was properly ordered and appropriately expedited; (v) by any other reason beyond its control; or (vi) any delay caused by late payments by Purchaser.

Seller shall attempt to overcome but shall not be liable for any loss or damage from delay in delivery of any equipment or completion of any work as a result of causes of any kind beyond the reasonable control of Seller, such as, but not limited to, strikes or other labor difficulties, war, riots, changes in laws and regulations and other acts of governmental authorities, inclement weather, fire, flood or unavoidable casualties, or any delays in transportation of materials, or inability to obtain timely delivery of materials from suppliers where such transportation or delivery has been properly procured and appropriately expedited. In the event of any such delay, Seller will notify the Purchaser within a reasonable time after Seller becomes aware of such cause of delay and it is agreed that the time for delivery or completion shall be extended for a period of time at least equal to the time lost by reason of the delay.

11. MATERIAL AND WORKMANSHIP WARRANTY

Seller warrants to the Purchaser that the equipment purchased from Seller is free from defects in material and workmanship for a period of twelve (24) months from the date of Purchaser's initial operation using the equipment but not more than eighteen (36) months from the date of delivery of the equipment provided that: (i) the equipment is installed in accordance with Seller's specifications and instructions and is used and maintained normally and properly in accordance with Seller's instructions as to maintenance and operation, as set forth in written operation and maintenance manuals and instruction sheets furnished by Seller; (ii) the equipment has not been changed without the prior written approval of Seller; (iii) Purchaser gives prompt written notice to Seller before the end of the warranty period specifying all alleged defects in the equipment purchased; and (iv) Purchaser preserves and turns over to Seller and permits reasonable inspection by Seller of all allegedly defective equipment, parts or items and access to the equipment to observe its startup, operation and maintenance.

This warranty shall not cover (i) any equipment furnished by Purchaser or any third party (other than a subcontractor of Seller), (ii) any defects arising from gaskets failure, corrosion, abrasion, fouling, scaling, water hammering, freezing or other operation outside of prescribed temperature or/and pressure ranges, or negligent attendance or faulty operation, (iii) ordinary wear and tear, or (iv) any defects caused by errors on the part of the Purchaser in not providing a suitable place in which the equipment is to be located, adequate foundation works, or adequate protection against influences within or outside the place where the equipment is to be located which may affect the equipment or its operation. Notwithstanding the warranty set forth above, Seller shall not warrant any equipment, where the vendor of such equipment (other than Seller) is specified by Purchaser, for a period longer than warranted by the vendor.

Seller's obligation under this warranty and any other warranty or guarantee which is part of the contract is strictly and exclusively limited to furnishing repairs or replacements for equipment or parts determined to be defective on inspection by an authorized representative of Seller. Notwithstanding this exclusive remedy, if it is ultimately determined that the remedy fails in its essential purpose, then any action which may be brought against Seller subject to the terms of the contract will be limited to 100% of the contract price for the purchased equipment for which the exclusive remedy has so failed. Seller assumes no responsibility and shall have no liability for any repairs or replacements by Purchaser without Seller's prior written authorization. If Seller did not originally install the equipment, Seller shall have no liability for the costs of removing or segregating any defective equipment so that the repairs or replacements can be made.

12. DAMAGES

NOTWITHSTANDING ANY OTHER PROVISION OF THE CONTRACT TO THE CONTRARY:

(A) SELLER'S AND ITS SUBCONTRACTORS' AND SUBSUPPLIERS' AGGREGATE RESPONSIBILITY AND LIABILITY, WHETHER ARISING OUT OF CONTRACT OR TORT OR ANY OTHER LEGAL CONTEXT OR THEORY, INCLUDING NEGLIGENCE AND STRICT LIABILITY, UNDER THE CONTRACT, INCLUDING, BUT NOT LIMITED TO, ALL CLAIMS FOR BREACH OF ANY WARRANTY OR GUARANTEE, FAILURE OF PERFORMANCE OR DELAY IN PERFORMANCE BY SELLER OR PERFORMANCE OR NON-PERFORMANCE OF THE PURCHASED EQUIPMENT SHALL NOT EXCEED THE CONTRACT PRICE FOR THE PURCHASED EQUIPMENT; PROVIDED, HOWEVER, THAT THIS LIMITATION WILL NOT APPLY TO ANY LIABILITY OF SELLER FOR DIRECT DAMAGES CLAIMED BY PURCHASER FOR PHYSICAL DAMAGE TO PURCHASER'S PROPERTY (OTHER THAN EQUIPMENT PROVIDED BY SELLER) OR FOR DIRECT DAMAGES CLAIMED BY THIRD PARTIES FOR SUCH THIRD PARTIES' PERSONAL INJURY OR PHYSICAL PROPERTY DAMAGE (FOR WHICH PURCHASER IS LIABLE) TO THE EXTENT CAUSED

(B) IN NO EVENT SHALL SELLER, ITS SUBCONTRACTORS OR SUBSUPPLIERS BE LIABLE IN CONTRACT OR IN TORT OR UNDER ANY OTHER LEGAL CONTEXT OR THEORY, INCLUDING NEGLIGENCE AND STRICT LIABILITY, FOR ANY SPECIAL, PUNITIVE, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND OR CHARACTER, INCLUDING, BUT NOT LIMITED TO, LOSS OF USE OF PRODUCTIVE FACILITIES OR EQUIPMENT, COSTS OF PRODUCT RECALL, PLANT DOWNTIME, DAMAGE TO OR LOSS OF PRODUCT, CHEMICALS, CATALYSTS, FEEDSTOCK OR OTHER RAW MATERIALS, LOSS OF REVENUES OR PROFITS OR LOSS UNDER PURCHASES OR CONTRACTS MADE IN RELIANCE ON THE PERFORMANCE OR NON-PERFORMANCE OF THE PURCHASED EQUIPMENT, WHETHER SUFFERED BY PURCHASER OR ANY THIRD PARTY, OR FOR ANY LOSS OR DAMAGE ARISING OUT OF THE SOLE OR CONTRIBUTORY NEGLIGENCE OF THE PURCHASER, ITS EMPLOYEES OR AGENTS OR ANY THIRD PARTY.

TO THE EXTENT THAT SELLER OR THE PURCHASER MAKES ANY CLAIM UNDER ANY FRAUD OR TORT THEORY FOR THE PURPOSE OF CIRCUMVENTING THE LIMITATIONS AND DISCLAIMERS SET FORTH ABOVE AND IS UNSUCCESSFUL IN PREVAILING ON THOSE CLAIMS, IT HEREBY AGREES TO REIMBURSE AND INDEMNIFY THE OTHER PARTY FOR ALL ATTORNEYS' FEES AND EXPENSES AND COSTS INCURRED BY THE OTHER PARTY IN DEFENDING SUCH CLAIM.

13. ALTERATION – MODIFICATION

No waiver, alteration or modification of the foregoing terms and conditions, except as noted in the text of this proposal shall be valid unless made in writing and signed by an authorized representative of Seller.

14. PATENTS

Seller shall hold Purchaser harmless against any claim that Seller's equipment infringes United States apparatus patents, but Seller makes no representation or warranty, and Seller shall have no responsibility for any infringement or unfair competition resulting from, the use of Seller's equipment with the Purchaser's process, or in combination with other equipment not supplied by Seller.

15. PRODUCT SELECTION AND USE

The Purchaser shall be responsible for accurate design and operating conditions used in the selection and use of the Seller's products. The Purchaser's selection and use of Seller's products from published literature shall be at the Purchaser's risk as to appropriate application, design conditions and performance criteria use.

16. STANDARDS AND TOLERANCES

All product dimensions and published information is subject to change without notice. All of Seller's products furnished to the Purchaser shall also be subject to tolerances and variations consistent with usages of the trade concerning dimensions, composition and mechanical properties and normal variations in performance characteristics and quality.

17. INTEGRATION CLAUSE

By acceptance of this proposal, the Purchaser acknowledges (1) that it has not relied on any previous written, oral or implied representation, inducement or understanding of any kind or nature, (2) that Seller's proposal, including these General Terms and Conditions of Sale and any drawings incorporated in the proposal by reference, embodies the entire agreement between the Purchase and Seller and supersedes all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof, (3) that the contract entered into by acceptance of Seller's proposal by the Purchaser may not be modified or terminated except in writing signed by a duly authorized representative of Seller making specific reference to the contract, and (4) the Purchaser may not assign the contract without the prior written consent of Seller.

18. DISPUTE RESOLUTION; GOVERNING LAW

Any determination, agreement or performance which is disputed or cannot be made, resolved or agreed within fourteen (14) days of the date requested by either Purchaser or Seller or such longer period for resolution as may be mutually agreed shall be submitted for resolution by the chief executive officers of the Purchaser and the Seller. It shall be a condition precedent to any subsequent proceeding that the dispute shall be submitted for resolution by such chief executive officers, but if those officers shall not reach a resolution within twenty-one (21) days of submittal to them, then the matter shall be finally settled by arbitration under the Rules of the American Arbitration Association by one or more arbitrators appointed in accordance with such Rules. The place of arbitration will be Bronx, New York. The contract between the Seller and the Purchaser and their respective performances shall be construed under and governed by the laws of New York.