

TERMS AND CONDITIONS OF SALE

TERMINOLOGY:

The party to whom this is submitted will hereinafter be called the "Purchaser" and Malloy Electric and Bearing Supply will be called the "Company". The word "parties" means the Purchaser and the Company.

GENERAL CONDITIONS:

- (a) The Company reserves the right to accept or reject any proposal tendered by the Purchaser.
- (b) All proposals accepted by the Company shall be subject to all the terms and conditions stated on the face and back of this proposal form.
- (c) This proposal, when accepted by an officer of the Company, shall constitute the complete agreement between the parties hereto and it is expressly agreed and stipulated that there are no promises, representations, provisions, or understandings of any nature whatsoever pertaining to the subject matter hereof not expressly stated herein.
- (d) No modification of this proposal and no modification of any ensuing agreement shall be of any force and effect unless the same shall be in writing, signed by the duly authorized representative of the Purchaser, and thereafter accepted by an officer of the Company.
- (e) All provisions of the contract ensuing from this proposal shall be subject to all present and future restrictions and regulations of the United States or any State Government or any subdivision or agency thereof, whether imposed by legal or administrative authority or by voluntary cooperation with any agency, public or private.
- (f) The Company shall be excused from all responsibility or liability for nonperformance or delayed performance caused by any labor difficulty, fire, flood, accident, transportation difficulty, material or fuel or power shortage, war, governmental action, or any contingency of whatsoever nature beyond its control.
- (g) The Company reserves the right to substitute materials when made necessary or advisable, in the sole discretion of the Company, by governmental action or other causes beyond its control.
- (h) The provisions of the agreement ensuing from this proposal shall be interpreted and enforced in accordance with the laws of the State of South Dakota.
- (i) The provisions of the agreement ensuing from this proposal shall be binding upon the heirs, administrators, executors, legal representatives, successors or assigns to the parties hereto.
- (j) If installation is included in this quotation and contract, and the installation superintendent finds that the building is not ready for installation, it shall be the obligation of the purchaser to assume all costs occasioned by failure to supply proper information.
- (k) Purchaser agrees that should the Company employ an attorney for the collection of the contract amount (or any part thereof) the Purchaser will pay reasonable attorneys' fees, court costs, and filing fees.
- (l) It is further agreed that the F.O.B. point or place of payment (or partial payment) shall not in any way change the place of performance or venue of this contract as set forth in the above paragraph.
- (m) The Purchaser agrees that any claim or suit brought against the Company for warranty or misapplication must be filed in writing with the Company within one year from date of order and/or shipment of equipment. Venue for any suit filed for said claim shall be in Minnehaha County, South Dakota.
- (n) All electric motor warranties are based on E.A.S.A. warranty policies.

PRICES:

Unless otherwise specifically stated on the face of this proposal, all prices are subject to the following:

- (a) F.O.B. shipping point.
- (b) Price does not include any transportation, handling, unloading at building, installation and erection costs, all of which must be paid by the Purchaser.
- (c) Price does not include any applicable taxes of any kind, all which must be paid by Purchaser.
- (d) All prices are subject to revision to conform to the Company's price in effect at time of shipment.
- (e) If prices are quoted on delivered basis when installed by others, it is understood delivery is to be made to nearest freight station or railhead, and does not include any unloading costs, which must be paid by the Purchaser.

SHIPPING CONDITIONS:

Unless otherwise specifically stated on the face hereof, all deliveries and shipments are subject to the following conditions:

- (a) F.O.B. shipping point, with no transportation or other allowances.
- (b) Partial shipments may be made at the Company's sole discretion. Payment for such partial shipment shall be made in the proportion of the contract price that the partial shipment bears to the whole, in accordance with the terms of payment set forth on the face hereof.
- (c) Shipping dates are approximate. It shall be the responsibility of the Purchaser to supply the final shipping date as governed by actual building conditions. If shipment is made and the building is not ready to receive the shipment, Purchaser must arrange storage in a dry place and assume responsibility for same.

CLAIMS:

The Company's responsibility for loss, damage, delay, or non delivery ceases upon delivery of material or equipment to a public carrier, and any such claim must be filed against the carrier by the consignee or Purchaser. Claims for shortages, errors in packing, or overcharges must be made to the Company within twenty days after receipt of the shipment or such claim shall be deemed to have been waived.

CANCELLATIONS OR POSTPONEMENTS:

- (a) No contract ensuing from this proposal is subject to cancellation or postponement by the Purchaser except upon written consent of an authorized Home Office representative of the Company.
- (b) Any such duty authorized cancellation or postponement shall be subject to a charge to reimburse the Company for all costs incurred in connection therewith.
- (c) The Company reserves the right to refuse shipment during any period when, in its sole judgment, Purchaser's credit is unsatisfactory.

SIZES AND WEIGHTS:

Measurements, dimensions and weights are subject to variations and are not guaranteed by the Company.

GUARANTY AND LIMITATION OF LIABILITY:

The Company warrants the equipment or material listed on the face hereof to be free from defects in material or workmanship under normal use and service, it's obligation under this warranty being limited to the repair or replacement, f.o.b. its shop, of any part or parts of its own manufacture shall, within 90 days after date of shipment of such equipment to the Purchaser, be returned to it with transportation charges prepaid and which Company's examination shall disclose to Company's sole satisfaction to have been defective in material or workmanship; provided further that the Purchaser shall have given the Company written notice of such alleged defects promptly, and further provided that the said material or equipment shall have been maintained in its original installation or shall have been in the continuous possession of the original user. This warranty is expressly in lieu of all other warranties, expressed or implied, and of all other obligations and liabilities on Company's part. The Company neither assumes nor authorizes any person to assume for it any other liability in connection with the sale of its material or equipment. This warranty shall not apply to any material or equipment which shall have been repaired or used outside of Company's shop in any way so as in the Company's sole judgment to affect its workability or reliability, nor which has been subjected to misuse, negligence or accident of any description. Company makes no warranties whatsoever in regard to merchandise, equipment, parts, or accessories not of the Company's own manufacture, the Company's liability in such cases being limited to such adjustment, if any, as the manufacturer thereof may grant, and Purchaser waives any warranties implied by law on such items as to the Company. The Company shall not be liable for damages or delays, if such occur, on account of defective material or workmanship or delays in shipments, nor will any allowance be granted for any repairs, alterations, work done or expense insured in connection with any repairs, alterations, or replacements, except on specific written authority from its Home Office at Sioux Falls, South Dakota, therefore. The company shall in no way be liable or responsible for injuries or damages to persons or property arising out of the use or operation of the materials or equipment within described, including component parts thereof, and Purchaser hereby agrees to indemnify and save harmless the Company from all such liability and responsibility. The Company reserves the right to make any changes in design, additions to and improvements in its product without imposing any obligation upon itself to install them on its product previously manufactured. No equipment will be warranted by the Company if installed or stored outdoors, unless the factory nameplate of such equipment shall designate it to be for "outdoor" use.