

CECO Kirk & Blum

KIRK & BLUM PLANT EQUIPMENT DIVISION TERMS AND CONDITIONS OF SALE

QUOTATIONS

Within thirty (30) days from date of issuance, this quotation may be converted into an offer to purchase by Purchaser's signature and shall not be binding upon Kirk & Blum until accepted in writing by Kirk & Blum at its office in Cincinnati, Ohio. This quotation is expressly limited and made conditional upon Purchaser's offer to purchase including all of the terms and conditions of this quotation without change. Any terms or conditions in Purchaser's purchase order or any other document which vary from the terms of this quotation shall not be binding upon Kirk & Blum unless expressly accepted in writing and signed by an officer of Kirk & Blum in Cincinnati, Ohio. Purchaser acknowledges that it has reviewed these terms and conditions and agrees to be legally bound by same.

TAXES

Kirk & Blum's prices do not include federal, state, local, municipal, or other sales, use, excise, property or any similar taxes or fees, not in force or enacted in the future. If any such taxes or fees are imposed, Purchaser will be responsible for paying said taxes or fees directly to the appropriate authority. If such taxes are paid by Kirk & Blum Purchaser shall promptly reimburse Kirk & Blum.

PERMITS AND LICENSES

Unless otherwise stated, Purchaser shall be responsible for securing, and pay for, any necessary permits, licenses, and other approval from every governmental authority with jurisdiction in the area in which the system or product is to be erected or used. Purchaser indemnifies and holds Kirk & Blum harmless from any damages related to a failure to comply with this requirement.

TERMS OF PAYMENT

Unless otherwise stated Kirk & Blum's terms of payment for products or systems not erected by Kirk & Blum personnel are "NET THIRTY (30) DAYS PRO-RATA WITH SHIPMENTS. In cases of multiple shipments, partial or approximate billings will be made as shipments progress with provision for adjustment of total price in accordance with any agreed price changes or applicable escalation clauses, after completion of final shipment.

Unless otherwise stated, in the case of systems or products which are to be installed by Kirk & Blum, Kirk & Blum's terms of payment are as follows: KIRK & BLUM WILL INVOICE FOR ALL COSTS INCURRED (FOR EQUIPEMNT, MATERIAL AND LABOR) DURING EACH MONTH ON OR BEFORE THE LAST DAY OF SUCH MONTH. SAID INVOICES WILL BE PAYABLE UPON RECEIPT. FINAL BILLING WILL BE DONE ON COMPLETION OF PROJECT.

DELIVERY

Kirk & Blum will make every reasonable effort to meet shipping and/or project completion dates promised and to maintain production and installation schedules consistently therewith. However, Kirk & Blum is not liable for claims of damages due to failure, for any reason, to meet such scheduled dates.

FREIGHT

All freight terms will be detailed in the K&B proposal and will consist of one of the following:

- 1) **Freight Allowed** - This is for freight that has been included in the proposal
- 2) **Freight Prepaid and Billed as an Extra** - This will be charged at the actual cost of the freight plus a 12% mark-up
- 3) **Freight by Others** - This is the default freight terms and the customer would be responsible for all costs associated with the freight, paperwork and contacts with the freight companies.

PENALTY CLAUSES

Terms and conditions including penalty clauses for failure to meet shipment are not acceptable unless specifically approved in writing by an officer of Kirk & Blum as provided above.

CANCELLATION

Cancellation by Purchaser of any item on order, or order in its' entirety, to Kirk & Blum will be valid only upon written acceptance by Kirk & Blum. Any unpaid finished goods, work in process, or any materials, labor, equipment, services, or sub-contracts for which Kirk & Blum has become obligated or performed, shall be paid for in proportion to the overall contract price, not to exceed the original contract price of such cancelled items. In the event of any cancellation, Kirk & Blum's computation of cancellation charges under the above shall be final and conclusive.

Written notice of disposition of cancelled items which are not yet delivered shall be given by Purchaser to Kirk & Blum within thirty (30) calendar days from date of notice to Purchaser of the cancellation charges. Failure to give Kirk & Blum notice of disposition of such items within said thirty (30) calendar days shall constitute Purchaser's agreement that Kirk & Blum may dispose of such items as it sees fit without further credit to Purchaser or any further obligation.

If at any time Purchaser does not strictly comply with all terms and conditions of any order or if at any time Purchaser: (1) shall be adjudicated bankrupt, (2) shall have filed a voluntary petition in bankruptcy, (3) has a receiver appointed for it, or (4) makes an assignment for the benefit of creditors, Kirk & Blum has the absolute right to cancel and refuse to complete the work on said order. In the event of Kirk & Blum's cancellation as above set forth, Purchaser shall pay Kirk & Blum the amount computed as provided above.

DELAY

Delivery of items or installation labor may not be delayed by Purchaser without Kirk & Blum's written consent. If delays by Purchaser with Kirk & Blum's written consent total more than thirty (30) days, Kirk & Blum may increase prices for the unbilled portion of the contract by 1 % per

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month of delay or fraction thereof, or in accordance with any applicable escalation clauses whichever is greater. In addition, if any fabricated material must be stored by Kirk & Blum, Kirk & Blum may charge Purchaser 2% of the contract price of such material per month or fraction thereof billed monthly. In the event of any delay, Kirk & Blum's computation of delay and storage charges under the above shall be final and conclusive.

CHANGES DURING PROCESS OF ORDER

If the system or items covered in this quotation are not assigned to Kirk & Blum, changes in the specifications upon which the order is based will be made only if expressly accepted in writing by Kirk & Blum. If such changes in the specifications increase or decrease the cost of any item, the price thereof shall be increased or decreased accordingly.

If the system or items covered by this quotation are designed by Kirk & Blum, the drawings required shall be prepared by Kirk & Blum's Engineering Department.

They shall upon completion, be submitted to Purchaser for approval prior to fabrication. After the drawings have been approved, changes will be made only if agreed to in writing by both parties, and if such changes increase or decrease the cost of the system or products, the price thereof shall be increased or decreased accordingly.

TITLE AND INSURANCE

For items which are not to be installed by Kirk and Blum, unless expressly provided otherwise in this proposal, passing of title of products shall be F.O.B. point of shipment, even where freight may be prepared or allowed to destination by Kirk and Blum. For systems installed by Kirk and Blum, passing of title shall be upon completion of installation or acceptance by Purchaser, whichever occurs first. Purchaser shall insure Kirk and Blum against loss by fire and all other risks normally covered by insurance, until final payment for the system is made.

INSTALLATION BY KIRK AND BLUM

In the case of systems or equipment to be installed by Kirk and Blum, the following conditions apply:

This quotation is based on the erection work being done on a standard work week, Monday through Friday, during the hours of the day normally being worked by the Sheet Metal Workers in the area in which the job is to be installed, and any variation from this schedule will result in an adjustment of the contract price quoted. Purchaser is to provide an adequate storage area in a location convenient to the job. If, through no fault of Kirk and Blum, it is necessary for Kirk and Blum's erectors to make more than one trip to install the system, the expense of the extra trip or trips is to be borne by Purchaser.

Kirk and Blum's erectors shall perform only work specifically outlined in the final approved drawings as prepared by Kirk and Blum or as outlined in the drawings furnished by Purchaser from which the job was bid. Should any additional work be requested by Purchaser, a Kirk and Blum "Field Order" will be signed by Purchaser describing such work and such work will be separately billed in addition to the quoted price at Kirk and Blum's normal billing rates on the basis of time and material required, unless both parties otherwise agree in writing. For time and material work, Purchaser shall approve Kirk and Blum's erection time sheets at regular intervals, preferably daily but never less frequently than weekly.

INSTALLATION BY OTHERS

In cases where a system or system components are fabricated by Kirk and Blum and installed by another party, it is understood that a substantial amount of cutting, drilling, alteration, welding, adjustment, field fitting, etc. shall be considered to be a normal part of the installation. Piping and system components furnished by Kirk and Blum must often have loose flanges, loose joints, and extra lengths for field fitting and assembly. This flexibility must be provided in order to efficiently install the systems.

In addition, it may be discovered during installation that ductwork must be routed differently than shown on the engineering drawings. If such rerouting is caused by Kirk and Blum errors, Kirk and Blum shall furnish the additional materials required to reroute the system at no additional charge. Any additional expenses of rerouting or reworking, other than material, shall be paid by Purchaser.

Kirk and Blum shall accept back charges for field corrections to materials and equipment only in the event of poor workmanship or faulty construction, and back charges shall be honored only if Kirk and Blum's representative is present at the jobsite and agrees that the fault is Kirk and Blum's and to the charges involved, in advance of any corrective field work being done.

SYSTEMS GUARANTEES AND SAFETY DEVICES (OSHA)

No system performance guarantee other than that specifically made in the body of this proposal, if any, is extended, and any guarantees with regard to OSHA compliance, dust levels, or compliance with pollution codes are conditional upon written approval by Kirk and Blum's Engineering Department. Any system performance guarantees are specifically limited to performance at start up only. It is the responsibility of Purchaser to maintain the system and monitor system performance. Except with respect to its own employees, Kirk and Blum shall not be required to provide any safety devices or be responsible for compliance with any federal, state, municipal or other local safety regulations, except as expressly agreed to in writing by Kirk and Blum's Engineering Department. Except with respect to its own employees, Purchaser agrees to hold Kirk and Blum harmless against any claims, costs, or damages arising from lack of compliance with or violation of such regulation, or failure to furnish or provide such devices.

RESPONSIBILITY/WARRANTY

The products furnished hereunder are guaranteed by Kirk and Blum against any defect in material or workmanship for a period of one (1) year from date of shipment when owned by original Purchaser or first User, and maintained and operated under normal conditions; provided, however, any products furnished hereunder are not manufactured by Kirk and Blum are warranted only to the extent of the original manufacturer's warranty. Parts found to be defective in material or workmanship under this guaranty shall be repaired or replaced without charge. F.O.B. original point of shipment provided prompt written notice of the defect is given and compliance with the terms of the guaranty is established. **THE FOREGOING SHALL BE PURCHASER'S SOLE AND EXCLUSIVE REMEDY FOR DEFECTS.** Decomposition by chemical action and wear caused by abrasion shall not constitute defects for purposes hereof. This warranty shall be void if repairs or alterations are made without Kirk and Blum's prior written consent. No person, agent, representative, salesman, dealer or distributor has any authority to change or extend the warranty expressed herein nor to obligate Kirk and Blum by any terms stipulations or conditions not herein expressed.

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THE ABOVE WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES EXPRESSED OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

LIMITATION OF LIABILITY

Purchaser agrees and acknowledges that in no event shall Kirk and Blum be liable to Purchaser or to any third party for any ordinary, special, consequential or incidental damages or losses or for any expenses or damages incurred by Purchaser or any third party attributable to any item sold, installed, fabricated, or designated hereunder. Purchaser shall protect, indemnify, save harmless and defend Kirk and Blum of and from any loss, cost, damage or expense, including attorney's fees, arising from any claim asserted against Kirk and Blum that is in any way associated with the matters set forth in this limitation of liability section.

COMPLETION OF INSTALLATION AND ACCEPTANCE

For all purposes hereof, installation by Kirk and Blum shall be deemed complete when Kirk and Blum's erectors leave the jobsite, or as to any readily divisible portion of a system, when they cease work on such portion; and the use of a system, or any part thereof, by Purchaser for a continuous period of fifteen (15) working days shall constitute acceptance by Purchaser of such system or part, as the case may be.

CASE LAW

This quotation and any agreement arising there from shall be governed by and construed in accordance with the laws of the State of Ohio.
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