

WARRANTY DETAILS

1. Contract of Sale

TEMCo – Tower Electric Motor Company (hereinafter called “Seller”) agrees to sell, and buyer agrees to purchase, the equipment described in this Proposal/ [Confirmation] [Invoice] pursuant to these terms and conditions, which shall constitute the entire contract of sale between buyer and seller. These terms and conditions supersede and take precedence over any and all terms, including, but not limited to, any contrary terms, in any documents (such as purchase orders) submitted by buyer to seller.

2. Orders

Orders are subject to acceptance at home office of Seller.

3. 5 Year Limited Warranty

Equipment distributed by TEMCo is warranted to be free from defects in material and workmanship under normal use, service, and indoor storage, for sixty (60) months after date of start up. This warranty is limited to repair, replacement or issuing of credit, as Seller may elect, and at Seller’s distribution center, of such parts as shall appear to Seller, upon inspection, to have been defective in material or workmanship, but does not include any installation, labor or transportation costs.

When the equipment reaches its final destination, the buyer must promptly notify the carrier of any damage, should the case arise. Otherwise, the buyer shall have no recourse against TEMCo. TEMCo inspects parts returned for warranty claim for misapplication. Misuse of equipment will void this warranty. TEMCo shall in no event be liable for any special or consequential charges for replacing or installation of warranty parts.

4. Limitation of Remedies and Damages

The Limited Warranty set forth in Section 3 above is in lieu of any and all other express and/or implied warranties. All other warranties, both express and/or implied, including but not limited to implied warranties of performance, merchantability or fitness for a particular purpose are expressly disclaimed and denied. Except for the remedy set forth in Section 3 above, Seller shall not be liable to buyer or any third party under this contract, or for any-thing in any manner relating to or arising out of the subject matter of this contract, for any loss of business or profits or for any general, direct, indirect, special, consequential, exemplary, punitive, incidental or other damages, loss or expenses, even if Seller has been advised of the possibility of such damages, loss or expense. Seller is not responsible for any consequence of the use or application of the products by the buyer. Buyer shall indemnify and hold Seller, and its officers, directors, employees and agents harmless against any and all losses, claims, damages, judgments, liabilities, costs and expenses (including attorneys’ fees and expenses) arising out of or in any way related to the use of Seller’s products by buyer and/or any third party.

5. Shipping

Seller shall not be responsible for any default or delay in shipping due to contingencies beyond its control, or the control of its suppliers, which prevents or interferes with Seller making delivery on the date specified, including but not limited to wars, or restraints affecting shipping, delivery of materials or credit as a result of strikes, lockouts, fires, floods, or any other contingency affecting the seller or its suppliers. The Seller shall have the right to cancel a contract of sale or to extend the shipping date in the event that any such contingencies prevent or delay shipments. Seller shall not be liable for any losses incurred by late delivery of equipment. All equipment will be suitably packed for domestic shipment and are not suitable for long term storage.

DELAYS

In the event Buyer causes Seller to delay shipping or start up of equipment under this proposal, any additional costs incurred by the Seller shall be reimbursed by the Buyer. Seller shall not be responsible for delays in delivery caused by acts of God, government rulings, strikes, accidents, delays or default of Seller’s suppliers, delays caused by acts of the Buyer, or other causes outside of Seller’s reasonable control.

WARRANTY DETAILS CONTINUED

6. Cancellation

Orders are not subject to cancellations or change in specifications, shipping schedules or other conditions originally agreed upon without Seller's written consent, and then only upon agreement to compensate Seller for expenses incurred by such cancellation or changes.

7. Taxes

Any excise tax, sales tax, other taxes, or duty of any nature arising out of or assessed against equipment or orders shall be the sole and exclusive responsibility of buyer and shall be added to the prices quoted or invoiced and shall in all circumstances be paid by the buyer.

8. Insurance and Risk of Loss

The equipment distributed by TEMCo shall at all times after delivery to buyer, buyer's agent or transportation company, whichever occurs first, be the sole responsibility of the buyer, and all loss or damage to said equipment or any part thereof shall be borne by the buyer (even if Seller has arranged for transportation), unless otherwise agreed in writing.

9. Venue

Any and all disputes, claims, or causes of action arising out of or in any way relating to any equipment distributed by TEMCo must be brought in the Circuit Court for the Tenth Judicial Circuit, Alameda County, California.

10. Exceptions

Anything not specifically quoted above in lieu of any specification.