

Bourn & Koch, Inc.

Terms and Conditions

The following terms and conditions apply to and are an integral part of any proposal, bid, request, or submission by Bourn & Koch, Inc. (collectively, the ("Proposal")). "Customer" refers to the party to whom the Proposal has been made, and "Bourn & Koch" is the party who has made the Proposal.

1. The Proposal will become a contract upon receipt by Bourn & Koch at its Rockford, Illinois office of Customer's acceptance of the Proposal & Bourn & Koch's acceptance of that receipt. The acceptance must be in writing and received by Bourn & Koch within ninety (90) days of the Proposal date or said Proposal is voidable at Bourn & Koch's option. Prior to acceptance by Customer in such manner, Bourn & Koch may withdraw or modify the Proposal.
2. The ultimate agreement between Bourn & Koch and Customer (the "Agreement"), with the respect to goods or services described in the Proposal shall consist of the terms contained in the Proposal.
3. Bourn & Koch shall not be bound by any additional or different terms outside of the Agreement, whether printed or otherwise, in Customer's purchase order or in any other communication from Customer to Bourn & Koch unless specifically agreed to in writing by an authorized Bourn & Koch employee. Supplier representatives, distributors, dealers or other non-employees have no authority to bind Bourn & Koch.
4. Failure of Bourn & Koch to object to any terms or conditions that may be contained in any acceptance, purchase order or other form of Customer shall not be construed as a waiver of these conditions nor an acceptance of any such provision. If all or a part of the Agreement is terminated by such modification or rescission, Customer, in the absence of a contrary written agreement between Bourn & Koch and Customer, shall pay termination charges based upon cost, plus Bourn & Koch's pro-rata profit on any work performed under the Agreement, except that any services scheduled for completion within thirty (30) days of Customer's request for termination will be accepted and paid for in full by Customer.
5. Delivery terms are F.O.B. Bourn & Koch's plant, Rockford, Illinois. Customer shall assume all risk of loss or damage upon delivery to the carrier at the point of shipment. Bourn & Koch may, in its sole discretion, without liability or penalty, make partial shipments to Customer. Each shipment will constitute a separate sale, and Customer shall pay for the units shipped whether such shipment is in whole or partial fulfillment of the Agreement. Dates of delivery are determined from the date of Bourn & Koch's acceptance of any order or orders by Customer and are estimates of approximate dates of delivery, not a guaranty of a particular day of delivery. Bourn & Koch shall not be liable for failure or delay in shipping goods hereunder if such failure or delay is due to acts of God; acts of Customer; acts of civil or military authority; fire; strikes or other labor disputes; accidents; floods; epidemics; war; riots; delays in transportation; lack of or inability to obtain raw materials, components, labor, fuel or supplies; or other circumstances beyond Bourn & Koch's control.
6. Any tax or other government charge upon the production, sale, shipment, or use of the services performed or parts supplied which Bourn & Koch is required to pay or collect from Customer shall be paid by Customer to Bourn & Koch, in addition to the contract price specified in the Agreement, unless Customer furnishes Bourn & Koch with exemption certificates acceptable to the appropriate taxing authority.
7. Bourn & Koch warrants that (1) goods supplied will be free from any defects of material and workmanship for a period of one (1) year from the date of shipment and (2) the parts will be in accordance with the specifications stated in the Agreement. Unless otherwise specified in the Agreement, wear parts that contact the work piece are not to be considered equipment covered by this warranty.

The following EXCLUSIONS are not covered by this warranty:

- a. Damages due to neglect by Customer.
- b. Damages due to lack of proper maintenance or to misuse by Customer.
- c. Products that have been repaired by Customer or any third party without the prior written consent of Bourn & Koch, regardless of whether such repair resulted in damages. Any unauthorized repair of a product voids its warranty.
- d. Damages due to acts of God or other unforeseen accident or other cause beyond the control of Bourn & Koch.
- e. Any incidental, indirect, special or consequential damages.

BOURN & KOCH MAKES NO OTHER WARRANTY OF ANY KIND WHATSOEVER, EXPRESS, IMPLIED OR STATUTORY, AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE EXCEEDING THE ABOVE OBLIGATIONS ARE HEREBY DISCLAIMED FROM THE AGREEMENT.

8. Bourn & Koch's sole obligation under these warranties will be limited to either, at Bourn & Koch's option and expense, repair or replacement of the parts thereof which Bourn & Koch reasonably determines do not meet the above warranties, and Customer's exclusive remedy for breach of any of such warranties will be enforcement of the above obligation of Bourn & Koch.
9. In no event shall Bourn & Koch be liable for consequential damages nor shall Bourn & Koch's liability on any claims for damages arising out of or in connection with the Agreement exceed the amount specified in the Agreement. Bourn & Koch shall not be liable for any delay or failure to perform its obligations under the Agreement resulting directly or indirectly from or contributed to by acts of God; acts of Customer; acts of civil or military authority; fire; strikes or other labor disputes; accidents; floods; epidemics; war; riots; delays in transportation; lack of or inability to obtain raw materials, components, labor, fuel or supplies; or other circumstances beyond Bourn & Koch's control.
10. The Proposal and the Agreement shall be governed by the laws of the State of Illinois without regard to its conflicts of law doctrine. The parties expressly disclaim the application to the Proposal or the Agreement of the 1980 United Nations Convention on the International Sale of Goods.
11. Any agreement arising out of this transaction shall be deemed to have been made in Rockford, Winnebago County, Illinois. If acceptance occurs in Rockford, Illinois, the parties agree that the validity, interpretation and performance of any agreement arising out of this transaction shall be governed by the law of the State of Illinois and of the United States of America. The parties hereto hereby submit to the jurisdiction of the Circuit Court of the Seventeenth Judicial Circuit, Winnebago County, Rockford, Illinois, as the sole and exclusive jurisdiction and venue for the purpose of adjudication of all their respective rights and liabilities hereunder.