



PKG Equipment Inc.  
367 Paul Road • Rochester, NY 14624  
(585) 436-4650 • Fax (585) 436-3751  
www.pkgequipment.com

## PKG Equipment's Terms and Conditions of Sales

This proposal, which includes all of the Terms and Conditions contained herein, sets forth the entire offer for sale by PKG Equipment Inc. (hereafter known as the "Seller"), of the equipment, materials and services described in this proposal (the "Proposal"). None of the Terms or Conditions in this Proposal may be added to, modified, superseded, or altered by Buyer except by written purchase order changes signed by an authorized representative of the Buyer and approval in writing by an authorized representative of the Seller. "Buyer" is defined as the party stated above as the party receiving this Proposal. This Proposal may not be assigned by Buyer to any third party without the written consent of the Seller.

Once the Buyer has verbally requested modifications, amendments, or alterations of the Proposal, Seller has no obligation to Buyer to proceed with engineering, purchasing and/or production, until Seller has approved in writing a written purchase order change.

Payment is due within 30 days of the date of any invoice date or due on the date of any scheduled progress payment as stated in the Proposal. In the event that payment is not received by the due date, the Buyer shall be responsible for payment of a late fee of \$50 or four percent (4%) of the amount past due, whichever is greater and interest at a rate of three percent (3%) shall be charged on the amount of any late payment.

### Acceptance by Buyer

This Proposal is for acceptance within 30 days after date of the Proposal. All Proposals are subject to change by notice to the Buyer at any time prior to Buyer's acceptance. Any Proposal not accepted within 30 days of the date of the Proposal shall be deemed withdrawn by the Seller and only upon written consent of Seller shall the Proposal be extended or continued. All equipment shall be invoiced to Buyer at the applicable address specified in the purchase order.

### Delay in Shipment or Installation

All delivery dates and installation dates (if Seller assumed installation responsibility in this quotation) are approximate only. Seller will make every effort to fill orders within the time stated, but under no circumstances will Seller be responsible for, or Buyer entitled to, any damages arising out of or owing to any delays in shipment, delivery, erection, or installation regardless of cause.

### Delivery and Risk of Loss

Unless otherwise specified in this quotation, delivery of equipment by Seller to Buyer shall be F.O.B. Seller's plant, Rochester, NY, or F.O.B. point of shipment from Seller's supplier. All risk of loss or damage shall pass to the Buyer as soon as the goods are delivered to the carrier notwithstanding any continuing of future obligations of the Seller including, but not limited to, making a field technician available to the Buyer.

### Drawings and Technical Information

Descriptive specifications, drawings, weights, and dimensions submitted in connection with this Proposal are approximate only and the descriptions and illustrations contained in our catalogs, price lists, and other advertising matter are intended merely to present a general idea of the goods described therein and none of these shall form part of any contract.

### Cancellation and Modification

This Proposal may not be canceled, modified, or delivery delayed except with the Seller's written consent and upon terms which indemnify the Seller against any or all losses including a reasonable profit.

### Taxes

Any sales, use, excise or other taxes payable in respect of the sale or installation of the equipment will be paid by the Buyer.

### Warranty

The Seller warrants parts and equipment manufactured by Seller, with the exception of threaded connections against leaks, for a period of 12 months from date of shipment under normal use and service against improper performance caused by defective material or workmanship. For parts and equipment not manufactured by Seller, the OEM's warranty applies.



# PKG Equipment Inc.

PKG Equipment Inc.  
367 Paul Road • Rochester, NY 14624  
(585) 436-4650 • Fax (585) 436-3751  
www.pkgequipment.com

EXCEPT AS PROVIDED HEREIN, WE HAVE NOT MADE AND DO NOT MAKE ANY WARRANTY OR REPRESENTATION WHATSOEVER, EITHER EXPRESS OR IMPLIED, AS TO THE FITNESS, CONDITION, MERCHANTABILITY, DESIGN OR OPERATION OF THE EQUIPMENT OR SERVICES REFERRED TO IN THIS PROPOSAL, THEIR FITNESS FOR ANY PARTICULAR PURPOSE, THE BENEFITS PROVIDED AS PART OF THE SERVICES, THE WORKMANSHIP OF THE EQUIPMENT OR ANY OF ITS COMPONENTS, NOR ANY OTHER REPRESENTATION OR WARRANTY WHATSOEVER, ALL OF WHICH ARE EXPRESSLY DISCLAIMED AND EXCLUDED FROM THIS PROPOSAL. IN ADDITION, EXCEPT AS PROVIDED HEREIN, WE DO NOT WARRANT OR REPRESENT ANY PARTICULAR OUTCOME FROM THE USE OF THE EQUIPMENT OR SERVICES. WE DO NOT MAKE ANY REPRESENTATIONS OR WARRANTIES WITH RESPECT TO COMPLIANCE, REGULATORY OR LEGAL ASPECTS OF THE USE OF THE EQUIPMENT OR SERVICES FOR WHICH THE BUYER ACCEPTS ALL RESPONSIBILITY. BUYER AGREES THAT SELLER WILL NOT BE LIABLE UNDER THIS PROPOSAL, OR WITH RESPECT TO THE ACTIVITIES HEREUNDER, FOR INCIDENTAL DAMAGES, FOR CONSEQUENTIAL DAMAGES, FOR BREACH OF WARRANTY DAMAGES, OR FOR ANY OTHER DAMAGES OF ANY KIND.

#### **Limitation of the Seller's Liability**

The Seller's liability under any warranty shall be limited to repairing or replacing, F.O.B. Seller's plant or allowing an equivalent credit at Seller's option for any part or parts of material which may prove to be defective provided the Buyer gives Seller prompt notice of the defect and inspection, if required by the Seller, confirms the defect. In no event will the Seller be liable for removal or reinstallation of any parts or for any costs incurred therewith. This remedy or repair, replacement or credit, at Seller's option is the exclusive remedy there under. Seller shall have no other liability to Buyer on any claims however arising and in no event shall Seller be liable for special, incidental, or consequential damages, nor will Seller's liability exceed the purchased price of the equipment/products or services.

#### **Indemnification**

Buyer will indemnify, protect and hold harmless Seller, its officers, directors, employees and agents of, from and against all Claims made by any third party in connection with Buyer's breach of this Proposal or the use of the equipment or services provided by Seller. "Claims" as used in this paragraph, shall mean all claims, causes of action, judgments, damages, costs or expenses (including, without limitation, attorneys' fees and court costs) arising in connection with this Proposal, except where the claim results from the Seller's gross negligence. Buyer shall, at its own expense, if Seller requests, defend any action or proceeding brought against Seller in connection with any Claim. Buyer shall also be responsible for the payment attorney's fees or cost of collection incurred by Seller in enforcement of the terms of this Proposal.

#### **General Terms and Conditions**

The prices and terms on this quotation are not subject to verbal changes or other agreement unless approved in writing by Seller (PKG Equipment Inc.). All quotations and agreements are contingent upon strikes, accidents, fires, availability of materials and all other causes beyond our control. Prices are based on costs and conditions existing on date of quotation and are subject to change by Seller before final acceptance.

Typographical and stenographic errors are subject to correction. Buyer assumes liability for patent and copyright infringement when goods are made to Buyer's specifications. When quotation specifies material to be furnished by the Buyer, ample allowance must be made for reasonable spoilage and material must be of suitable quality to facilitate efficient production.

Conditions not specifically stated herein shall be governed by established trade customs. Terms inconsistent with those stated herein which may appear on Buyer's formal order will not be binding on the Seller.

#### **Governing Law and Jurisdiction**

Any order and any agreement of sale shall be governed by and construed according to the laws of New York State. Any disputes between the Buyer and Seller shall be determined in the State or Federal Courts located in the Western District of New York, which courts shall have exclusive jurisdiction over the parties for such purpose.