

DAVE HUMPHREY ENTERPRISES, INC. TERMS AND CONDITIONS

THIS ORDER IS SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:

1. Payment shall be made in cash or by check by Buyer, identified on the reverse hereof, to Dave Humphrey Enterprises, Inc. (hereinafter "Seller"), at 145 Gandy Dancer Drive, Tracy, California 95377. Buyer agrees to pay interest on any unpaid balance remaining due more than 30 days at the rate of 1-1/2% per month, equal to 18% per annum. Buyer agrees to pay all of Seller's reasonable attorneys' fees and costs associated with actions necessary to collect amounts due and owing, whether amounts due are for equipment, freight or installation, or to otherwise enforce the terms of this agreement, including those terms relating to limitation of warranty and consequential damages.
2. Title of the goods described on the reverse hereof, and all parts and accessories now or hereafter incorporated in or on such goods by way of addition, accession or replacement, shall remain in seller until the entire purchase price, together with all interest, is paid in full.
3. DELIVERY AND INSTALLATION: Buyer specifically acknowledges and agrees that buyer is responsible for payment of all freight charges and installation expenses incurred in connection with buyer's equipment purchase or lease and that such costs are additional to equipment price(s). Buyer acknowledges and agrees that the interstate transport of concrete batch plants requires specialty equipment, operators and permits, and may not, depending on buyer's location, be permitted to follow the most direct route. Buyer may make its own arrangements for shipment by notifying Seller of Buyer's intent to do so within 5 days of acceptance of order by Seller and Manufacturer(s). IF BUYER DOES NOT NOTIFY SELLER OF BUYER'S INTENT TO ARRANGE FOR SHIPMENT OF THE DESCRIBED GOODS WITHIN SAID PERIOD, SELLER IS AUTHORIZED TO ORDER SAID GOODS TO BE TRANSPORTED AT THE BUYER'S EXPENSE, F.O.B. MANUFACTURER(S), IN ACCORD WITH INDUSTRY CUSTOM AND PRACTICE.
4. Seller's responsibility for shipments ceases upon delivery to transportation company, and any claims for shortages, delays or damages occurring thereafter shall be made by the Buyer directly to the transportation company. Buyer assumes the risk of loss or damage to the goods from and after the date that the goods are delivered to the transportation company.
5. This writing is intended by the parties as a final expression of their agreement concerning the matters contained herein, and is also intended as a complete and exclusive statement of the terms of their agreement. No course of prior dealings between the parties and no usage of the trade shall be between the parties and no usage of the trade shall be relevant to supplement or explain any term used in this Contract. Acceptance or acquiescence in a course of performance rendered under this Contract shall be relevant to determine the meaning of this Contract even through the accepting or acquiescing party has knowledge of the nature of the performance and opportunity for objection. Whenever a term defined by the Uniform Commercial Code is used in this contract, the definition contained in the Code shall control.
6. Unless otherwise stated herein, Buyer and Seller shall have all remedies afforded each by the Uniform Commercial Code.
7. No agent, employee, or representative of Seller has any authority to bind Seller to any affirmation, representation, or warranty concerning goods and sold under this Contract, and unless an affirmation, representation, or warranty made by an agent, employee, or representative, is physically included within this Contract, it is not a part of the basis of this bargain and shall not in any way be enforceable. THIS CONTRACT IS NOT BINDING ON SELLER UNLESS AND UNTIL IT IS EXECUTED BY AN OFFICER OF SELLER. A SIGNATURE BY "FIELD REPRESENTATIVE" OR "SALESPERSON" OF SELLER DOES NOT BIND SELLER UNTIL THIS CONTRACT IS SIGNED BY AN OFFICER OF SELLER.
8. Seller warrants that the goods as described in this Contract, but no other express warranty is made in respect to the goods. If any model or sample was shown Buyer, that model or sample was used merely to illustrate the general type and quality of the goods and not to represent that the goods would necessarily conform to the model or sample.
9. Seller is not and shall not, be responsible for any delays in delivery, loss of goods, or other non-performance arising out of strikes, riots, war, invasion, fire, explosion, accident, weather, or other factors which are beyond Seller's reasonable control.
10. This Contract can be modified or rescinded only by a writing signed by both of the parties or their duly authorized agents.
11. Buyer shall not assign its rights under this Contract or any interest herein without Seller's prior written consent.
12. If any paragraph or clause of this Contract is declared invalid in whole or in part, the parties agree that the remaining parts of the Contract shall be and continue to be in full force and effect and both parties' obligations shall be determined thereby.
13. The parties agree that the proper venue for adjudication of all disputes related to the performance of this Contract shall be in San Joaquin County, California.
14. WARRANTY, DISCLAIMER, LIMITATION OF LIABILITY AND REMEDY: With respect to components purchased by Seller from its suppliers that have a warranty, Buyer's exclusive remedy shall be such warranty. Except with respect to said components, Seller warrants the Equipment manufactured by it to be free from defects in material and workmanship under normal use and service. Seller's sole obligation is this warranty and its obligation hereunder is limited to repairing or replacing at its option and at its expense any parts which its examination shall have disclosed to be defective, provided that Buyer shall have given to Seller written notice of the claimed defect within six months from the date of start-up of such Equipment by Buyer and also within nine months from date of invoicing of such Equipment to Buyer. At Seller's request, Buyer shall return the claimed defective part to Seller (shipping charges prepaid by Buyer).

This warranty is limited to the aforesaid defects and shall not apply (a) to any Equipment which shall have been subjected to misuse, negligence, or accident, or repaired or altered in any manner by any person other than Seller, if in Seller's judgment, this adversely affects its performance or reliability, (b) to normal maintenance services or normal deterioration due to wear or exposure, or (c) to components, replacement parts, or accessory equipment not purchased from Seller.

THE AFORESAID WARRANTY RIGHTS ARE BUYER'S EXCLUSIVE REMEDIES AND ARE IN LIEU OF ANY OTHER REMEDIES, OBLIGATIONS, OR RIGHTS, INCLUDING, WITHOUT LIMITATION, ANY OTHER WARRANTIES, EXPRESS OR IMPLIED (e.g. IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.) UNDER NO CIRCUMSTANCES SHALL SELLER BE LIABLE FOR ANY INCIDENTAL, INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES OR FOR ANY OTHER LOSS, DAMAGE, PENALTY OR EXPENSE OF ANY KIND, INCLUDING, WITHOUT LIMITATION, LOSS OF PROFITS OR OVERHEAD REIMBURSEMENT, PERSONAL INJURY OR PROPERTY DAMAGE. THE AFORESAID WARRANTY OBLIGATION OF SELLER CONSTITUTES ITS SOLE LIABILITY, FURTHER, UNDER NO CIRCUMSTANCES SHALL SELLER'S MAXIMUM LIABILITY UNDER ANY LEGAL THEORY (e.g. CONTRACT, WARRANTY, NEGLIGENCE, PROMISSORY ESTOPPEL, STRICT LIABILITY, MISREPRESENTATION, TORT) AND FOR ANY REASON WHATSOEVER (e.g. DEFECT, DELAY OR OTHERWISE) EXCEED (A) THE COST OF ACCOMPLISHING THE AFORESAID REPAIR OR REPLACEMENT OF ANY DEFECTIVE PARTS (OR) (B) \$500, WHICHEVER IS GREATER AND/OR APPLICABLE, REGARDLESS WHETHER THE CLAIM IS ASSERTED BY BUYER OR ANY OTHER PERSON OR ENTITY.

15. DELAY IN SHIPMENT: In the event that Buyer requests a delay in the estimated time of shipment of the Equipment which is agreed to by Seller, Seller may nonetheless, at its option, invoice Buyer for the purchase price of said Equipment or after the Estimated Time of Shipment specified in this Contract and Buyer shall be obligated to pay (a) such purchase price as though the Equipment had been shipped on the date of such invoice, and (b) all storage and insurance charges thereon while said Equipment is in Seller's possession.
16. SECURITY INTEREST: To secure payment and performance of all Buyer's obligations hereunder, Buyer hereby grants to Seller a security interest in the Equipment subject to this Contract and all accessories thereto. Buyer agrees to execute appropriate financing statements or other documents necessary to perfect Seller's security interests. Risk of loss of the Equipment shall pass to Buyer at the time the equipment is shipped. Title to the Equipment shall remain in Seller until full payment thereto is received by Seller.
17. INDEMNIFICATION AND WITHHOLDING: Buyer shall indemnify, defend and hold harmless Seller its officers, directors, agents, and employees, from and against all claims, demands, losses, damages, costs, expenses, and legal liability connected with or resulting from injury to or death of persons, including but not limited to employees of Buyer or Seller, injury to property of Buyer, Seller, or a third party or to natural resources, or violation of any local, state or federal law or regulation, including but not limited to environmental laws or regulations, or strict liability imposed by any law or regulation; arising out of, related to or in any way connected with Seller's performance of this Contract however caused, regardless of any strict liability or negligence of Seller, whether active or passive, excepting only such claims, demands, losses, damages, costs, expenses, liability or violations of law or regulation as may be caused by the sole negligence or willful misconduct of Seller, its officers, agents, or employees.

Buyer acknowledges that any claims, demands, losses, damages, costs, expenses, and legal liability that arise out of, result from, or are in any way connected with the release or spill of a legally designated hazardous material or waste as a result of the work performed under this Contract are expressly within the scope of this indemnity, and that the costs, expenses, and legal liability for environmental investigations, monitoring, containment, abatement, removal, repair, cleanup, restoration, remedial work, penalties, and fines arising from the violation of any local, state, or federal law or regulation, attorney's fees, disbursements, and other response costs are expressly within the scope of this indemnity.

Buyer shall, on Seller's request, defend any action, claim or suit asserting a claim covered by this indemnity or in any way related to Seller's performance of this Contract. Buyer shall pay all costs that may be incurred by Seller in enforcing this indemnity agreement, including reasonable attorney's fees.