

TERMS AND CONDITIONS OF SALE

Unless otherwise specifically agreed in writing by Birtley Industrial Equipment Corp. ("Birtley"), an Illinois corporation with its principal operation at 2333 Innovation Dr., Lexington, KY 40511, the following terms until conditions shall apply to all orders placed by Buyer for the products or services of Birtley.

1. GENERAL

The Terms and Conditions shall be the complete and exclusive terms and conditions applicable to the agreement between Birtley and Buyer. In the absence of written acceptance of these Terms and Conditions by Buyer, either acceptance of or payment for the product or service shall constitute Buyer's acceptance of these Terms and Conditions. Any different or additional terms or conditions in any order, proposal, acknowledgment form, or any other document of Buyer are hereby superseded by these Terms and Conditions.

2. QUOTATION

The quotation provided by Birtley is incorporated into, and forms part of this agreement and is subject to the following:

- (a) Unless otherwise provided in writing by Birtley, Birtley may withdraw or vary the Quotation at any time prior to the Buyer's acceptance of the Quotation;
- (b) Unless otherwise provided in writing by Birtley, the Quotation is automatically withdrawn upon the expiration of thirty (30) days from the date of Birtley's Quotation;
- (c) Prices as quoted are in U.S. Dollars and are firm for thirty (30) days from the date of quotation;
- (d) If there is a delay in completion or shipment of order, due to any change requested by Buyer, or as a result of any delay on Buyer's part in furnishing information necessary for completion of the order, the price initially agreed upon at time of acceptance is subject to change.

3. DELIVERY DATE

The promised delivery date is the best estimate possible, based upon current and anticipated production loads, of when the product will be shipped. Birtley shall have no liability for lost profits or incidental or consequential damage due to delays if any contingency beyond the control of Birtley occurs that prevents Birtley from shipping the product on time.

4. PAYMENT

Payment terms shall be decided by Birtley at its sole discretion based on the contractual value, credit approval, etc. Payment terms for all international sales shall be 100% paid in full before shipment unless otherwise agreed by Birtley in writing. Production, shipment and delivery shall at all times be subject to the approval of Birtley's credit department. Birtley reserves the

right at any time to modify or withdraw credit terms without notice and to require guarantees, security, or payment in advance of the amount of the credit involved.

Please note that the title of the product does not pass to the customer until the product is paid in full. Birtley reserves the right to repossess the product if payment is not made in full.

5. TITLE

Title to all products shall remain in Birtley's name until the complete purchase price and all additional costs and charges, as adjusted, are paid by Buyer. Birtley shall retain a security interest in, and right to repossess, any such products until it is paid in full. Risk of loss shall pass to Buyer upon delivery to carrier.

6. CHANGES

Any change ordered by Buyer will not be considered effective until mutual agreement has been reached between the Buyer and Birtley as to the effect of any changes in prices, delivery and other conditions of the order.

7. WARRANTY AND GUARANTEE

Birtley warrants its products to meet customer's specifications and be free of defects in material and workmanship for six (6) months from the delivery date (not applicable to the screen bowl rotor assembly). For the screen bowl rotor assembly, Birtley warrants the tungsten carbide screen section and ceramic conveyor liner.; on the rotor assembly with a prorated wear life the lesser of a prorated 8,500 work hours or twelve (12) months from shipment (for upgraded models) or the lesser of a prorated 6,500 work hours or nine (9) months from shipment (for ceramic models) when the centrifuge is equipped with a 40:1 ratio gear box. This warranty is subject to:

- (a) Positive protection mechanisms in place to prevent the screen bowl feed against oversize and extraneous materials such as tramp metal, bolts, nuts, welding rods, etc.
- (b) Regular inspections performed by a trained and experienced technician and appropriate maintenance protocols followed by the operator.

Birtley will repair or replace, subject to proration, any equipment or parts of its manufacture which are found to have been defective during the warranty period. Repair or replacement of defective items will be at Birtley's discretion. All mechanical parts, excluding consumables, will also be covered by this warranty. This warranty only covers parts and equipment if properly installed, operated, serviced and inspected in accordance with Birtley's recommendations. Any claims against this warranty by the customer must be documented and reported to Birtley immediately upon discovery. The customer must provide photographic, audio/video or other evidence requested by Birtley. Failure to submit claims according to requirements or attempts by someone other than Birtley or its

authorized representatives to remedy the alleged defects shall be a waiver by the customer of all rights under this warranty.

This Warranty is exclusive and limited to repair or, at the discretion of Birtley, replacement. This warranty does not cover damage or liability for misuse, modification, unauthorized repairs, abuse, alteration or the improper application or installation of the Birtley product. Accident, fire, flood, or other Act of God, or failure to pay entire contract price when due shall be a waiver by the Buyer of all rights under this warranty. Unless otherwise agreed by Birtley, this Warranty is nontransferable.

IN NO EVENT SHALL BIRTLEY BE LIABLE TO THE BUYER OR ANY OTHER PERSON OR ENTITY FOR ANY EXTRA COSTS, EXPENSES, LOSSES, LOSS OF PROFITS, OR ANY INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES RESULTING FROM ANY PRODUCT DEFECT OR FROM THE USE OR INABILITY TO USE THE PRODUCT, WHETHER ARISING IN CONTRACT OR WARRANTY, STATUTE, TORT, STRICT LIABILITY, NEGLIGENCE OR OTHERWISE.

8. TERMINATION

Birtley may terminate this agreement upon immediate written notice to Buyer on the occurrence of any of the following events:

- (a) Failure of Buyer to accept delivery of equipment or to pay any indebtedness to Birtley when due, accompanied by a failure within ten (10) days after demand therefore, to fully pay the same or provide assurance of payment satisfactory to Birtley;
- (b) Failure by Buyer to honor any promise on Buyer's part contained in this agreement or to perform any of its obligations under this agreement, other than the payment of any indebtedness to Birtley, after Buyer shall have been notified by Birtley of such failure and in Birtley's opinion shall have failed to correct the same within thirty (30) days after receipt of such notice;
- (c) Repetition by Buyer of a failure which is the same or substantially the same as the one previously corrected by Buyer after notice as provided in subparagraph (a) above;
- (d) The material inaccuracy of any information set forth in any application, claim, schedule, certificate, or other document heretofore or hereafter furnished by Buyer to Birtley; and
- (e) If the Buyer ceases to function as a going concern or makes an assignment for the benefit of creditors, or any proceeding under any federal or state bankruptcy, receivership, or insolvency laws is instituted by or against Buyer, or the liquidation, dissolution, merger, or consolidation of Buyer occurs, or a receiver or trustee for Buyer or any of its assets or property is appointed or applied for. Termination shall not release or affect, and this agreement shall remain fully operative as to, any obligations or liabilities incurred by Buyer prior to the effective date of such termination; provided, that all indebtedness of Buyer to Birtley shall

become immediately due and payable on the effective date of termination without demand, and Birtley may deduct from any sums it owes to Buyer sums owed by Buyer to Birtley. Any orders received from Buyer, whether or not accepted by Birtley, which have not been shipped prior to Buyer's receipt of notice of termination or the effective date of termination or expiration, whichever shall occur first, shall only be shipped C.O.D. or cash in advance.

9. MODIFICATION

In the event Buyer modifies the product sold hereunder without the express written consent of Birtley, or Buyer fails to implement any changes in the equipment directed by Birtley, Buyer agrees to indemnify, defend, and hold Birtley harmless from any and all claims, demands, suits, costs, and expenses incurred thereby, whether in contract, tort, or otherwise resulting from such failure.

10. DEPOSITS

Deposits are non-refundable. If the original item or service is unable to be completed by the customer, a deposit may be able to be transferred to another item or service within 365 days of the deposit being transferred to Birtley's account. If the original item or service or alternate item or service is unable to be completed by the customer within 365 days of the transfer to Birtley's account, the deposit is forfeited. Completion by the customer only occurs when the item or service is paid in full.

11. ADDITIONAL TERMS

The following are additional terms set out for Birtley Centrifuge and de-watering rotors.

- (a) Rotors that are not picked up or delivered within six weeks of notification of completion are subject to a \$500 per week storage fee.
- (b) On exchange, Birtley must receive a rebuildable core with no catastrophic base metal damage. Any catastrophic damage will be invoiced in addition to the price shown on the invoice. If the amount is not paid, the rotor will be subject to repossession.
- (c) Birtley is not responsible for any taxes, duties and fees.
- (d) The warranty applied to rebuilt or refurbished de-watering rotors & centrifuge parts only applies to the new materials that are installed on the equipment sold.

12. MISCELLANEOUS

Buyer's rights and obligations hereunder may not be assigned or delegated without the prior written consent of Birtley. This agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky under which jurisdiction Buyer consents. This agreement supersedes all prior written or oral agreements with respect to the subject matter hereof. The invalidity of any part of these Terms and Conditions shall not affect the validity of the remaining provisions. All claims

or suits against Birtley must be made within one (1) year of the date the cause of actions occurred (regardless of when they were discovered) or be forever barred. No waiver shall be effective against Buyer unless Buyer agrees to same in writing. Only authorized Birtley personnel can grant written authorization or consent to Buyer. Any declarations or claims made against Birtley by Buyer based upon invalid writs of consent or authorization shall be baseless and thus shall have no legal force. Paragraph headings found herein are for convenience only and are not to be considered in interpreting any of the provisions hereof. Terms & Conditions are subject to change at any time without notice.

