



# A. Blair Powell Company

## TERMS AND CONDITIONS OF SALE

**1. APPLICABILITY:** These Worldwide Terms and Conditions of Sale ("Terms") shall govern all sales of Seller's Equipment or Services to Buyer ("Contract of Purchase" or "Order"). These Terms supersede any prior written or oral agreement, understanding, representation or promise, and any pre-printed or standard terms and conditions contained in Buyer's request for quote, purchase order, invoice, order acknowledgement, or similar document. These Terms may not be amended, supplemented, changed, or modified except by concurrent or subsequent written agreement, signed by an authorized representative of Seller and Buyer. A binding contract comes into force only upon Seller's order acknowledgement. Seller's acknowledgement of Buyer's purchase order shall not constitute acceptance of any deviating terms and conditions contained therein, regardless of how such terms and conditions may be prefaced or described. The Contract of Purchase, consisting of these Terms, Seller's quotation, Buyer's order, constitutes the entire agreement between Buyer and Seller.

**2. DEFINITIONS:**

"Buyer" means the company who accepted Seller's offer or is named in the Order.

"Equipment" means all equipment and parts manufactured and/or provided by Seller.

"Materials" means raw materials, supplies, and components, including but not limited to metals and metal products.

"Force Majeure" means any event or causes beyond Seller's reasonable control including, but not limited to, acts of God, acts of government, acts of Buyer, fires, blackouts, labor disputes, boycotts, floods, epidemics, quarantine restrictions, war, insurrection, terrorism, riot, civil or military authority, freight embargoes, transportation shortages or delays, unusually severe weather or inability to obtain necessary labor, materials or manufacturing facilities due to such causes.

"Seller" means the company named on the Order for Equipment or Services.

"Service(s)" means work, direction of work, technical information or technical consulting and advice or other services furnished by Seller to Buyer.

**3. DELIVERY / TITLE / SUSPENSION / FORCE MAJEURE:** Title to Equipment shall transfer to Buyer upon delivery under the agreed to Incoterm. Seller shall make commercially reasonable efforts to deliver the Equipment on the delivery date. Shipping dates are approximate and are based on prompt receipt of all necessary information. In case of delay in furnishing complete information, dates of shipment may be extended for a reasonable time. In the event Seller provides transport services these will be quoted as a lump sum price based on destination and shipping mode.

In case no other INCOTERM has been agreed in the Order, FCA (Flowserve's Manufacturing Site) shall apply. In the event Buyer requests a delay in completion and/or shipment of the Equipment or any part thereof for any reason, the parties shall agree upon any cost and/or scheduling impact of such delay and all such costs to Buyer's account. Any delay beyond 30 days after original scheduled shipment date shall require Buyer to (i) take title and risk of loss of such Equipment, and (ii) make arrangements for storage of such Equipment with the Seller or other party. Seller's invoice, which is contractually based on shipment, shall be issued upon Seller's readiness to ship the Equipment. In the event any suspension requested by Buyer should exceed 30 consecutive days or 60 days in the aggregate, Seller may cancel this Order and Buyer shall pay reasonable and proper cancellation charges in accordance with Section 7 hereto. Seller shall not be liable for delay in delivery due to Force Majeure. In the event of any such delay, the date of delivery shall be extended for a length of time equal to the period of the delay.

**4. WARRANTY:** Subject to the limitations in Section 18 herein, Seller warrants that the Equipment shall be free from defects in material, workmanship and title. If it appears within 12 months from the initial Equipment startup or until 18 months after notification of readiness for shipment or actual shipment, whichever occurs first, that the Equipment or any part thereof does not conform to this warranty, and Buyer so notifies Seller within a reasonable time after discovery, Seller shall thereupon promptly correct such nonconformity by repair or replacement. Seller's sole obligation and Buyer's sole remedy under this warranty is repair or replacement at Seller's election. Seller's warranty obligation for Services shall be the earlier of either 3 months from the date of initial startup or 6 months after completion of the Service work. Seller shall not be responsible for any on-site costs, including removal and reinstallation of any warranted Equipment. Buyer agrees to provide Seller reasonable and clear access to its Equipment which may include removal of materials or structures as well as supplying any equipment, materials or structures which are necessary to provide reasonable access to the Equipment being repaired or replaced. All Equipment repaired or replaced will be re-warranted only for the remainder of the original warranty period. **THE EXPRESS WARRANTY SET FORTH HEREIN IS THE EXCLUSIVE WARRANTY OF SELLER, AND NO OTHER WARRANTY, EITHER EXPRESSED OR IMPLIED, INCLUDING WARRANTY OF MERCHANTABILITY OR FITNESS FOR PURPOSE, SHALL APPLY.** Seller is not responsible for repairs or alterations made by others without mutual written agreement between Seller and Buyer. Seller does not warrant the Equipment or any repair/replacement part against the effects of erosion, corrosion, or normal wear and tear due to operation or the environment. The warranty and remedies set forth herein are conditioned upon proper storage, installation, use and maintenance of the Equipment in all material respects and in accordance with Seller's written recommendations.

**5. PAYMENT:** All prices are net cash 30 days from date of Seller's invoice, unless otherwise stated in Seller's proposal, quotation, or offer. Should Buyer for any reason default in the payment of the contract of purchase, Buyer agrees to pay all collection costs, attorney fees and expenses incurred in collecting payment, including interest on the amount due at the maximum legal rate. All transportation, insurance and similar charges incident to delivery shall be paid by Buyer. Seller shall issue its invoice upon shipment, or upon notice to Buyer that Seller is ready to ship, whichever is earlier. Depending on the value of the order, Seller may at its sole discretion require progress payments. Price and delivery of the Equipment are based on the current costs of Materials. The market for Materials is highly volatile, therefore if cost for any Materials increase by more than 3%, Seller reserves the right to adjust prices accordingly.

If Buyer's financial condition is or becomes unsatisfactory to Seller, Seller reserves the right to: (a) require payment from Buyer on a cash in advance basis; (b) require a letter of credit or other acceptable security before shipment; or (c) cancel or suspend shipment at any time prior to delivery of the Equipment without further obligation or liability on the Seller's part.

**6. CHANGES:** Buyer may request modifications as to the amount, scope and/or nature of the Equipment to be supplied by a written change request. If, in the opinion of Seller, any modification will affect the agreed fixed price and/or time of delivery, Seller will notify Buyer thereof in writing and will not be obligated to perform any modification unless agreed to by Seller, whereupon Buyer shall confirm that such change is authorized and accepted by issuing an Order revision.

**7. CANCELLATION:** Buyer may cancel this Order for convenience only upon written notice and payment to Seller of reasonable and proper cancellation charges. If Buyer cancels this Order for convenience, title and risk of loss of such partially completed Equipment will immediately transfer to the Buyer after payment of cancellation charges. If Buyer fails to collect the partially completed Equipment within 30 days after cancellation (or as mutually agreed by the parties), it will be deemed abandoned, at the option of Seller and Seller may sell or otherwise dispose of such partially completed Equipment. Notwithstanding the foregoing, Buyer and Seller reserve the right to cancel all or any portion of an Order affected by any insolvency or suspension of either party's operations or any petition filed or proceeding commenced by or against a party under any law relating to bankruptcy, arrangement, reorganization, receivership, or assignment for the benefit of creditors. Should Seller cancel all or any portion of an Order per this provision, Seller shall be entitled to all reasonable and proper costs and charges incurred and Buyer waives any right of recourse against Seller for Seller's cancellation.

**8. TERMINATION:** Seller may terminate this Order upon prior written notice to Buyer, in case Buyer breaches any of its material obligations under the Order to the extent such breach is not remedied within a reasonable time period as agreed by the Parties.

**9. SET-OFF:** All amounts that Buyer owes Seller under an Order shall be due and payable according to the terms of an Order. Buyer is prohibited from, and shall not set-off such amounts or any portion thereof, whether or not liquidated, against sums which Buyer asserts are due it, its parent affiliates, subsidiaries or other divisions or units under other transactions with Seller, its parent, affiliates, subsidiaries or other divisions or units.

**10. NON-DISCLOSURE AND NON-USE OF SELLERS' INFORMATION:** Buyer agrees that it will not use Seller's data for the manufacture or procurement of Equipment which are the subject of an Order or any similar Equipment, or cause said Equipment to be manufactured by, or procured from, any other source or reproduce said data and information or otherwise appropriate them without the written authorization of the Seller. Buyer agrees that it will not disclose or make available to any third party any of Seller's data or other information pertaining to this Order which is proprietary to Seller without obtaining Seller's prior written consent.

**11. INTELLECTUAL PROPERTY:** Unless otherwise agreed in writing, all material, software, data processes, equipment, facilities and special tooling, which term includes but is not limited to jigs, dies, fixtures, molds, patterns, special taps, special gages, special test equipment, other special equipment and manufacturing aids and replacements thereof, used in the manufacture of the Equipment covered by an Order shall be and remains the property of Seller. Seller retains all rights, title and interest in drawings, engineering instructions, specifications, and all other written data, if any, furnished and/or specified to be supplied with the Equipment.

**12. TAXES:** Seller's price, unless otherwise agreed, does not include, and Seller is not responsible for, payment of any tax levied for sales, use, excise, value-added, goods and services, business (franchise or privilege) or any duties, charges, or other such taxes. Seller is only responsible for any tax imposed on Seller, by taxing authorities in Seller's jurisdiction, which are based on Seller's revenue, income, net income, net assets, net worth, or capital or any taxes imposed in lieu thereof. If Seller is required to pay any taxes or other charges that are the responsibility of the Buyer, then Buyer shall promptly reimburse Seller those amounts.

**13. ASSIGNMENT:** Neither party shall assign an Order or any portion thereof without the advance, written consent of the other party, which consent shall not be unreasonably withheld.

**14. WAIVER / SEVERABILITY:** Failure by Seller to assert all or any of its rights upon any breach of an Order shall not be deemed a waiver of such rights either with respect to such breach or any subsequent breach, nor shall any waiver be implied from the acceptance of any payment of service. No waiver of any right shall extend to or affect any other right. Seller may possess, nor shall such waiver extend to any subsequent similar or dissimilar breach. If any portion of these Terms are determined to be illegal, invalid, or unenforceable, for any reason, then such provision shall be deemed stricken for purposes of the dispute in question and all other provisions shall remain in full force and effect.

**15. APPLICABLE LAW / DISPUTES:** This Order shall be interpreted in accordance with the laws of the jurisdiction in which the Seller's facility accepting the Order hereunder is located, exclusive of any choice of law provisions. The Seller and Buyer expressly agree to exclude from this Order the United Nations Convention on Contracts for the International Sale of Goods, 1980, and any successor thereto and the Contracts (Rights of Third Parties) Act of 1999. Except as otherwise specifically agreed in writing by Buyer and Seller, any dispute relating to an Order placed by a Buyer incorporated in the United States which is not resolved by the parties shall be adjudicated by a court of competent jurisdiction in the state of Texas. All disputes arising out of or in connection with an Order placed by a Buyer incorporated outside the United States that shall be finally settled by binding arbitration in London, England under the Rules of Arbitration of the International Chamber of Commerce then in effect by one or more arbitrators appointed in accordance with said Rules.

**16. COMPLIANCE WITH LAWS / ANTI-BRIBERY / EXPORT / IMPORT:** Seller and Buyer agree to comply with all applicable laws, regulations, codes and standards, including but not limited to those of the United States and other jurisdictions where the parties conduct business. Additionally, Buyer has not and will not offer, promise, authorize or make, directly or indirectly, any payments (in money or any other item of value, including meals, entertainment and travel), contributions or gifts to any individual, entity or government agency, department, official or government-owned or controlled entity in order to obtain or retain business or secure any other improper business advantage, which would violate the U.S. Foreign Corrupt Practices Act and/or any other applicable anti-bribery laws. Buyer agrees that it will comply with all laws concerning trade or economic sanctions or embargoes, restricted or denied party lists, trade controls on the import, export, re-export, transfer or otherwise trade of Equipment and any other similar regulations, rules, restrictions, orders or requirements having the force of law in relation to the above matters and in force from time to time including without limitation those of the United States, European Union, United Kingdom and/or any government laws in relation to the above matters applicable to the performance of the Contract of Purchase ("Trade Control Laws"). In no event shall Buyer use, transfer, release, import, export or re-export the Equipment in violation of Trade Control Laws.

**17. LIMITATION OF LIABILITY / EXCLUSION OF CONSEQUENTIAL LOSS:** The remedies set forth herein are exclusive, and the total liability of the Seller with respect to this Order, or any breach thereof, whether based on contract, warranty, tort (including negligence), indemnity, strict liability or otherwise, shall not exceed the Order price of the specific Equipment or Service which gives rise to the claim.

In all cases where Buyer claims damages allegedly arising out of defective or nonconforming Equipment or Services, Buyer's exclusive remedies and Seller's sole liability shall be those specifically provided for under Section 4 "Warranty".

**IN NO EVENT, WHETHER ARISING BEFORE OR AFTER COMPLETION OF ITS OBLIGATIONS UNDER THE CONTRACT, SHALL SELLER BE LIABLE FOR SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES OF ANY KIND (INCLUDING BUT NOT LIMITED TO LOSS OF USE, REVENUE OR PROFITS, INVENTORY OR USE CHARGES, OVERHEAD, COST OF CAPITAL, OR CLAIMS OF CUSTOMERS) INCURRED BY THE BUYER OR ANY THIRD PARTY.**

**18. GENERAL PROVISIONS:** (a) No Action, regardless of form, arising out of transactions under the Order, may be brought by the Buyer more than 1 year after the cause of action has accrued. (b) Any modification to these Terms must be set forth in a written instrument signed by a duly authorized representative of Seller. (c) In the event Buyer has reason to believe the Equipment could be subject to a claim for damages or personal injury, Buyer shall immediately provide Seller with written notice of such claim, and shall provide Seller reasonable opportunity to inspect said Equipment and/or investigate the basis for such potential claim. (d) **UNLESS EXPRESSLY AUTHORIZED IN WRITING BY SELLER, EQUIPMENT AND SERVICES HEREUNDER ARE NOT INTENDED FOR USE IN ANY NUCLEAR OR NUCLEAR RELATED APPLICATIONS. IN THE EVENT THAT THE EQUIPMENT AND SERVICES ARE INTENDED FOR NUCLEAR OR NUCLEAR RELATED APPLICATIONS, SELLER'S ADDENDUM FOR NUCLEAR LIABILITY PROTECTION (P-62) IS HEREBY INCORPORATED BY REFERENCE AND SHALL APPLY TO ANY SUCH ORDER.** Buyer (i) accepts the Equipment and Services in accordance with the restriction set forth in the immediately preceding sentences, (ii) agrees to communicate such restriction in writing to any and all subsequent purchasers or users, and (iii) agrees to defend, indemnify and hold harmless Seller from any and all claims, losses, liability, suits, judgments and damages, including incidental and consequential damages, arising from the use of the Equipment or Services in any nuclear or nuclear related applications, whether the cause of action be based in tort, contract or otherwise, including allegations that the Seller's liability is based on negligence or strict liability.

**19. TRANSLATIONS / GOVERNING LANGUAGE:** English shall be the legal language of this Order, and all parties waive any right to use and/or rely upon any other language, translation, or interpretation. The parties agree that in the case of any inconsistencies or interpretation disputes, the English language version shall control.