

TERMS AND CONDITIONS

These terms and conditions make up part of our offer to you, and, if you accept our offer, part of the contract which will bind us.

1. **ACCEPTANCE & CANCELLATION.** Purchaser, by accepting this Quote, acknowledges that each and every one of these terms and conditions make up a part of the Contract created when Purchaser accepts this Quote. No terms, conditions, indemnities, or warranties of sale are offered, save the warranty, if any, appended to this Quote. This Quote supersedes any and all discussions, representations, statements, or descriptions of the terms of this Quote, and all oral discussions concerning this transaction or any part of it, are, by virtue of this acceptance, merged into this Contract, and extinguished by the specific terms of this Contract.
2. **FREIGHT & DELIVERY.** All prices quoted and all products described are FOB Seller's location. Seller agrees to package products for shipment in a reasonable fashion. If Purchaser wishes products that are the subject of this Quote to be packaged in a specific manner or way, such instructions shall be provided to Seller, in writing, at the time Purchaser accepts this Quote. Both title and risk of loss of products shall transfer to Purchaser when Purchaser picks up the products in question from Seller's location, or when the products pass into the possession of a shipping agent, such as the U.S. Postal Service, FedEx, U.P.S., or DHL. Purchaser shall pay, and is responsible for, all shipping and handling charges related to the shipment of the products identified in this quote. Purchaser is responsible for the payment of any taxes, duties, or other fees or charges imposed by any carrier, or by any local, state, federal, or foreign governmental body or entity.
3. **PAYMENT TERMS.** Purchaser shall pay for products identified in this contract, in full, within the time frame, and in the manner set forth, on the Quote. Should credit be granted by Ewert Energy to Purchaser, all decisions with respect to the continuation or extension of this credit shall be made by Ewert Energy Systems, Inc. If payment is not received on or before the agreed upon time frame on the Quote to which these terms and conditions are attached, then simple interest at the rate of 0.75% per month, or 9.00% per year, shall be due and owing. In the event that a debt is placed with an attorney or collections agency, Purchaser agrees to pay the reasonable fees and charges associated with the retention of such a collection agency or counsel up to and including the time the due amount, including any late fees, interest, and/or attorneys' fees or collection fees, is paid in full.
4. **FORCE MAJEURE.** Seller shall not be liable to Purchaser or to any third party for any delays in filling this order or complying with this contract if the reason for such a delay is a cause beyond Seller's reasonable control, including, but not limited to: acts of God, governmental action, war, riots, civil commotion, embargos, customs issues, or the imposition of martial law; fire, flood, or other casualties; the unavailability of raw materials or component parts at or after the time of order; any shortage of labor, raw materials, production, or delays in the transit of such raw materials or component parts to Seller; labor difficulties involving Seller or its employees or independent contractors or agents; or other contingencies of manufacture or shipment. **Acceptance by Purchaser of the products described in this Quote and/or Contract shall constitute a waiver, by Purchaser, of any claim for damages flowing from or account of any delay in the Seller making these products available for shipment.**
5. **SUITABILITY OF PRODUCT.** Purchaser acknowledges that, while Seller will make every effort to provide Purchaser with products that fit its discreet needs, it is the Purchaser and only the Purchaser who is responsible for making a determination that the products purchased are suitable for the use or uses to which the Purchaser will put them. The products identified in this Quote and/or Contract are not sold for the purpose of, and are not authorized to be included in, medical, surgical, or life-support equipment. Any use of the products identified in this Quote for such purposes is a use chosen by Purchaser and Purchaser alone, and Purchaser agrees to indemnify, defend, and hold Seller harmless of and from any and all claims (whether or not later proved), damages, and costs, including attorneys' fees, and including sums paid in compliance and settlement, which Seller is required to pay, or reasonably chooses to pay, to extinguish such a claim, damage, and/or cost arising out of such a use.
6. **DISCLAIMER OF WARRANTY.** Seller's only warranty with regard to the products described on the first page of this Quote and/or Contract is the "Ewert Energy Warranty", if any, which is appended hereto, and made a part hereof. **SAVE THE TERMS OF THE "EWERT ENERGY WARRANTY", WHICH IS APPLICABLE TO THIS QUOTE AND/OR CONTRACT IF AND ONLY IF THE BOX MARKED "WARRANTY" IS CHECKED, PURCHASER UNDERSTANDS THAT THE "EWERT ENERGY WARRANTY" IS IN LIEU OF ANY AND ALL, AND EXCLUDES ANY AND ALL OTHER WARRANTIES, WHETHER EXPRESSED, IMPLIED, OR IMPLIED BY OPERATION OF LAW, OR OTHERWISE. PURCHASER FURTHER ACKNOWLEDGES AND UNDERSTANDS THAT THERE IS NO WARRANTY, SAVE THE WARRANTY ATTACHED HERETO, AND THAT THIS CLAUSE EXCLUDES ANY WARRANTY WHICH WOULD ACTUALLY OR ALLEGEDLY RELATE TO THESE PRODUCTS BEING FIT FOR A PARTICULAR PURPOSE. PURCHASER FURTHER ACKNOWLEDGES THAT THE IMPLIED WARRANTY OF MERCHANTABILITY IS SPECIFICALLY EXCLUDED.**

7. **LIMITATION OF LIABILITY.** Purchaser understands and agrees that Seller shall not be liable for any incidental damages or consequential damages or expenses which arise, directly or indirectly, from the sale, purchase, shipment, handling, or use of the products described on the front page of this Quote and/or Contract. Purchaser acknowledges that Seller's non-liability for incidental or consequential damages, losses, or expenses extends to any incident or claim, regardless of whether it is based on breach of contract, breach of warranty, strict liability in tort, negligence, or any other claimed violation of any other common law or statutory theory or provision. Purchaser agrees that Seller's liability for a material breach of this Contract shall be and is expressly limited to the repair or replacement of the good or products described on the face page of this Quote and/or Contract, or to the repayment of the sum paid by Purchaser (when such products are returned); or to the provision of a credit for the value of the products.
8. **LIMITATION OF TIME TO MAKE CLAIM.** Any claim for any damage, defect, or shortage relating to this Quote and/or Contract, and the items it describes, or for any other cause whatsoever, including claims based in contract, negligence, strict liability, warranty, contribution, or indemnity, shall be deemed to have been waived unless Purchaser (1) makes such a claim in writing, and (2) ensures that such a writing is received by Seller within sixty (60) days of the creation of the damage, defect, or shortage, or within sixty (60) days on which the damage, defect, or shortage should reasonably have been discovered. Purchaser however further notes and agrees that in no event shall Purchaser be allowed to pursue any claim for damage, defect, or shortage against Seller, regardless of the theory advanced, and regardless of the fact that claim was filed, for any of the products identified on the first page of this Quote and/or Contract, if more than two (2) years has passed from the date identified on the front page of this Quote and/or Contract as the "Date Items Will be Available for Shipment." To be sufficient, notice of any such claim must be in fact received by Seller on or before the expiration of this two year period. The notice shall include the Quote and/or Contract number; a description of the product or item being made subject of the claim; the nature of the problem or claim (briefly described); and the date and location when the damage, defect, shortage, or problem was first known to the Purchaser. For purposes of determining whether notice is in fact received, Purchaser understands that Seller must have, in hand, the notice on or before the expiration of the two (2) year period, and that the Mailbox Rule shall not apply to the service of such a notice. Purchaser additionally agrees that any claim for contribution or for indemnity must be brought by providing a written notice of the type described above, and containing the written information required above, and filing a suit or action for indemnity contribution, within one year of the date of any claim or cause of action is brought against Purchaser. Purchaser understands and agrees that this limitation controls any claim made part of a third-party action for indemnity or contribution.
9. **TECHNICAL ADVICE AND DATA.** Purchaser acknowledges and agrees that technical advice, if any, offered to Purchaser, or given to Purchaser in connection with the sale or use of any products, is an accommodation offered to Purchaser, and that no such advice is incorporated into or is made a part of this Quote and/or Contract, unless specifically set forth in those documents. Purchaser may have learned, from Seller, or from some other source, technical data and/or specifications related to the goods and products shown on the first page of this Quote and/or Contract. Purchaser agrees that it shall use such information for no purpose other than for the installation, operation, or maintenance of the products purchased by Purchaser from Seller, and that such technical data and specifications represent the trade secrets, confidential business information, and property of Sellers. Purchaser agrees that such items will not be shared with other parties and/or business, and Purchaser agrees to take reasonable steps to protect any technical data or information.
10. **CHOICE OF LAW AND CHOICE OF VENUE.** Purchaser understands, acknowledges, and agrees that by accepting the Quote and/or Contract to which these Terms and Conditions are attached, and by entering into the contract thereby created, Purchaser agrees that the Circuit Court for the Eighteenth Judicial Circuit, Wheaton, DuPage County, Illinois, shall be the exclusive jurisdiction for the filing of claims related to this contract, or for the filing of any suit relating in whole or in part to this quote, this contract, or to the products described herein. Purchaser further stipulates and agrees that the substantive law of the State of Illinois shall control the interpretation and/or enforcement of this Quote and/or Contract.
11. **RECOVERY OF SELLER'S ATTORNEYS' FEES AND COSTS.** Purchaser understands, acknowledges, and agrees that if a claim is made, or if a suit is relating to this Quote and/or Contract and/or the products described therein, and Seller prevails in whole or in part, then Purchaser shall be responsible for paying for and/or for reimbursing Seller for Seller's reasonable attorneys' fees and costs incurred in either enforcing this Agreement, and/or in responding to any suit or claim initiated by Purchaser against Seller which in any way relates to this Agreement or the products described herein.