

BROOKVILLE Equipment Corporation

Terms & Conditions of Sale

1. **OFFER AND ACCEPTANCE.** This writing constitutes an offer by BROOKVILLE Equipment Corporation ("BROOKVILLE") to sell the equipment described herein ("Equipment") in accordance with these terms and conditions. This writing is not an acceptance of any offer made by Purchaser and is expressly conditioned upon Purchaser's assent to these terms and conditions. Purchaser will be deemed to have assented to these terms and conditions when: (a) Purchaser signs and delivers to BROOKVILLE an acknowledgment copy of any of BROOKVILLE's sales quotation, order acknowledgment or invoice forms; (b) Purchaser has received delivery of the whole or any part of the Equipment described herein; or (c) Purchaser has otherwise assented to the terms and conditions hereof. No additional or different terms or conditions will be binding upon BROOKVILLE unless specifically agreed to in writing. BROOKVILLE hereby objects to any such additional or different provisions contained in any purchase order or other communication heretofore or hereafter received from Purchaser. Failure of BROOKVILLE to object to any terms or conditions which may be contained in any document or form of Purchaser shall not be construed as a waiver of these conditions, nor as an acceptance of any such terms and conditions.

2. **TERMS OF PAYMENT.** Unless otherwise specified on the face hereof or in BROOKVILLE's Sales Order Acknowledgment, payment is due, according to BROOKVILLE's quoted terms and option, either upon presentation of shipping documents or 30 days from date of invoice, subject to BROOKVILLE's approval of Purchaser's credit. BROOKVILLE may at any time change credit or payment terms or require payment in advance. If, in the judgment of BROOKVILLE, the financial condition of Purchaser at any time does not justify continuing any terms of payment, BROOKVILLE may require full or partial payment in advance. Invoices will be dated as of the time BROOKVILLE is prepared to make shipment. Delays or deferrals of delivery, for any reason (including inspections by federal/state officials), whether or not at the request of Purchaser, shall not extend the terms of payment.

Interest will be charged at the rate of 1.5% per month (compounded), or the highest rate permitted by applicable law, whichever is less, on accounts past due. Notwithstanding the above, at its option at any time, BROOKVILLE may require Purchaser to make payment by irrevocable letter of credit, and may defer shipment or cancel any order if Purchaser does not promptly provide such a letter of credit. Any such letter of credit shall be issued for BROOKVILLE's benefit by a prime U.S. bank, shall be subject to and governed by the Uniform Customs and Practice for Documentary Credits (ICC Publication No. 400, 1983 Revision), shall provide for payment against BROOKVILLE's invoice and bill of lading, and shall be in form and substance satisfactory to BROOKVILLE.

3. **TAXES:** The quoted purchase price may be increased to the extent that BROOKVILLE's cost of the product sold hereunder may be increased as a result of any agreements, codes, or legislative enactments made or enacted pursuant to federal, state or municipal legislation. In addition to paying the quoted purchase price, Purchaser is solely liable for any excises, levies or taxes which BROOKVILLE may be required to pay or collect, under any existing or future law, upon or with respect to the sale, purchase, delivery, storage, processing, use, consumption or transportation of any of the goods covered hereby, and Purchaser agrees to pay the amount thereof on the same terms as it shall pay the quoted purchase price.

4. **TITLE AND SECURITY INTEREST.** Until BROOKVILLE collects in full all amounts owed by Purchaser to BROOKVILLE for the Equipment, BROOKVILLE retains title to the Equipment; and Purchaser grants to BROOKVILLE a continuing security interest in and a lien upon the Equipment and the proceeds thereof (including insurance proceeds), as security for the payment and performance of all present and future obligations of Purchaser to BROOKVILLE. Purchaser shall execute any and all financing statements and other documents and instruments and do and perform any and all other acts and things which BROOKVILLE may consider necessary, desirable or appropriate to establish, perfect or protect BROOKVILLE's title, security interest and lien. In addition, Purchaser authorizes BROOKVILLE and its agents and employees to execute any and all such documents and instruments and do and perform any and all such acts and things in Purchaser's name and on Purchaser's behalf. Such documents and instruments may also be filed without the signature of Purchaser to the extent permitted by law.

5. **CLAIMS.** Purchaser shall inspect the Equipment immediately upon arrival and immediately file with the delivering carrier claims for loss or damage during transportation; BROOKVILLE must be notified immediately in writing of any such claims. All other claims must be made in writing to BROOKVILLE within ten days from receipt of the Equipment. Purchaser's failure to give such notice shall constitute unqualified acceptance of all shipments made prior to BROOKVILLE's receipt of Purchaser's notice of claim, and shall constitute a waiver of all such claims by Purchaser. BROOKVILLE shall not be responsible or liable for any damage due to improper storage or handling prior to installation and start-up. Purchaser shall provide BROOKVILLE with an opportunity to inspect all Equipment with respect to which a claim is made, either at Purchaser's or BROOKVILLE's premises. BROOKVILLE shall not credit Purchaser for any Equipment or parts returned to BROOKVILLE or any costs incurred by Purchaser for the repair thereof, as the case may be, without BROOKVILLE's prior written consent therefore, nor shall BROOKVILLE be responsible for any such Equipment or parts.

6. **RETURNS:** No goods shall be returned for credit without first obtaining written consent from BROOKVILLE via BROOKVILLE's approved Return Material Authorization (RMA)

7. **WARRANTY:** BROOKVILLE warrants that it shall repair or replace, at its option and FOB its factory, their manufactured products furnished under this Agreement that are found to be defective in material and workmanship, provided that BROOKVILLE receives written notification of any such defect within one (1) full year from the date of Shipment, unless quoted otherwise. Warranties shall not apply to defects caused as a result of misuse, abuse, normal wear and tear, modification, or lack of recommended maintenance, and do not include the costs of labor or travel time and expense for performance of any warranty that takes place at Purchaser's site. In the case of pre-purchased items such as engines, transmissions, and final drives, all warranties pass from BROOKVILLE (seller) to Purchaser (customer) from the component manufacturer to the extent that such warranties allow and Purchaser agrees to look only to such component manufacturer's warranties on components. BROOKVILLE agrees to provide reasonable assistance to Purchaser in obtaining satisfaction from component manufacturer.

BROOKVILLE MAKES NO OTHER WARRANTY EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR ARISING FROM COURSE OF DEALING OR USAGE OF TRADE. THE FOREGOING CONSTITUTES BROOKVILLE'S SOLE OBLIGATION AND THE EXCLUSIVE REMEDIES OF PURCHASER FOR ANY BREACH BY BROOKVILLE OF THE WARRANTIES CONTAINED HEREIN. BROOKVILLE'S aggregate liability hereunder shall be limited to the repair, replacement, or re-performance described above, and shall in no case exceed the lesser of one half (½) the contract price or five hundred thousand dollars (\$500,000).

WARRANTY WORK PERFORMED

An inspection of any warranty claim will be performed at location of the Equipment, and if warranty work is determined necessary, all such work will be performed by authorized BROOKVILLE representatives and by original component manufacturer(s). In some instances BROOKVILLE will supervise customer's trained maintenance personnel who will perform work.

In any instance where warranty or repair work is not permitted at Equipment's location, customer will pay freight charges to send Equipment to authorized service facility or to factory.

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8. **LIMITATION OF LIABILITY:** Manufacturer's liability to Buyer on any claim, whether based on contract, warranty, tort (including negligence or for property damage or death), strict liability, or other grounds, for any loss or damage arising out of or in any other manner connected with the performance or breach of Sales Contract or from the operation, or use on any Equipment manufactured by BROOKVILLE is in no case greater than the price paid for such Equipment or their part, which gives rise to such claim. BROOKVILLE is not liable to Buyer for special incidental or consequential damages; these include but are not limited to: loss of production, profits or revenues; loss of use of equipment or other items or any associated equipment; cost of capital, facilities or services; downtime costs; or claims of customers or buyers for these damages, even if BROOKVILLE has been advised of the possibility of such loss or damage. Buyer shall institute suit or claim with respect to any cause of action within one year after it arises, or shall be barred from doing so. The parties agree that without this limitation of liability the company would not have agreed to the price or terms and conditions of this agreement.

9. **FORCE MAJEURE.** BROOKVILLE shall not be liable for any damage as a result of any delay or failure to deliver or otherwise to perform due to causes, whether or not foreseeable, beyond BROOKVILLE's reasonable control. Such causes include, without limitation, any event referred to as an act of God; any act of Purchaser; any embargo or other governmental act, regulation, or request; any fire, flood, accident, or other natural disaster; any sabotage, strike, slowdown, or other labor difficulties; any war, terrorism, or riot; any delay in transportation, defaults of common carriers, inability to obtain necessary labor, materials, or manufacturing facilities, or emergency requirements of other customers. In the event of any such delay, delivery date(s) shall be extended by a time at least equal to the period of the delay and its consequences, plus a reasonable time to resume performance, or BROOKVILLE, at its sole discretion, may cancel this contract without liability to the Purchaser.

10. **STORAGE.** If the Equipment is not shipped within fifteen (15) days after notification to Purchaser that it is ready for shipping, for any reason beyond BROOKVILLE's reasonable control, including Purchaser's failure to give shipping instructions, BROOKVILLE may store such Equipment at the Purchaser's risk and expense in a warehouse or yard or at an area designated by BROOKVILLE. During any period of delay or deferment requested by Purchaser, Purchaser shall pay all handling, transportation, and storage charges, and service/QA re-work to prepare for shipment at the prevailing commercial rates upon submission by BROOKVILLE of invoices therefore. Purchaser may not obtain any delay or deferment of delivery unless BROOKVILLE agrees thereto in writing. In no event will BROOKVILLE agree to any such delay or deferment unless Purchaser establishes good and sufficient cause therefore, to the satisfaction of BROOKVILLE, and unless Purchaser agrees in writing to terms acceptable to BROOKVILLE. No period of delay or deferment at the request of Purchaser may exceed 60 days.

11. **INSTALLATION AND OPERATION OF EQUIPMENT; INDEMNIFICATIONS.** Purchaser shall install, operate and maintain the Equipment, and shall require its employees and agents to operate the Equipment, in compliance with BROOKVILLE's instructions and operating manuals and under normal conditions, safe operating procedures and proper supervision. Except as otherwise provided herein, BROOKVILLE is not responsible for providing or installing any guards or safety devices, whether or not required or recommended under the Occupational Safety and Health Act or the safety regulations of any jurisdiction; this remains the responsibility of Purchaser. Purchaser shall provide, install and use, and shall require its employees and agents to use, all such guards and safety devices and shall maintain such guards and safety devices in proper working order. Purchaser shall indemnify and hold BROOKVILLE free and harmless of and from any and all claims, liabilities and obligations with respect to any personal injuries or property damage directly or indirectly related to the operation or use of the Equipment. Purchaser shall also notify BROOKVILLE promptly, and in any event not later than 10 days after Purchaser has notice or knowledge thereof, of any accident or malfunction involving the Equipment resulting in any personal injury or property damage and shall cooperate fully with BROOKVILLE in investigating and determining the causes of such accident or malfunction. Purchaser shall indemnify and hold BROOKVILLE free and harmless of and from any and all claims, liabilities and obligations relating to such accident or malfunction.

12. **CANCELLATION/CHANGE ORDERS:** Order cancellation penalties for any order in process - If the order is cancelled or quantities are reduced by Customer before the Equipment is completed; Customer shall be obligated to all of the following: a) Reimburse BROOKVILLE for all labor and materials in house or on order for the cancelled Equipment. b) Purchase certain components originally planned into this Equipment that are of a type or quantity deemed by BROOKVILLE to be not normally stocked. c) Shall be liable for a restocking charge of 25% of normal Customer selling price for components restocked by BROOKVILLE or its suppliers. Order cancellation penalties for completed Equipment - If the order is cancelled or quantities are reduced by Customer which affects a piece of Equipment that is completed, Customer is liable for the completed price of that Equipment. BROOKVILLE will do its best to accommodate Purchaser required change orders, however the Purchaser is responsible for any and all costs related to such. Delivery schedule is subject to impacts due to Purchaser required change orders.

13. **SHIPMENT:** Standard delivery terms are Ex-Works, BROOKVILLE, PA. Purchaser shall assume all risk of loss or damage upon delivery by BROOKVILLE to the carrier at the point of shipment. Scheduled dates of delivery are determined from the date of BROOKVILLE's acceptance of any order or orders placed by Purchaser and are estimates of approximate dates of delivery, not a guarantee of a particular date of delivery.

14. **BROOKVILLE'S REMEDIES.** In the event that Purchaser fails to make any payments when due, fails to take delivery at the specified time or destination or, by any action or inaction, prevents or frustrates any delivery or any shipment to effect delivery, or otherwise defaults in the performance of these terms, BROOKVILLE may cancel or terminate the Contract of Sale. In the event of any such cancellation or termination, Purchaser shall pay to BROOKVILLE (a) the prices specified for all Equipment completed prior to such cancellation or termination; (b) the amount of BROOKVILLE's expenditures and financial obligations in connection with all unfinished Equipment, including without limitation, any cancellation charges paid by BROOKVILLE or for which BROOKVILLE may be liable with respect to commitments made by BROOKVILLE in connection with the Equipment; and (c) the amount of BROOKVILLE's loss of profits, as determined by BROOKVILLE, arising out of such cancellation or termination. The rights and remedies of BROOKVILLE hereunder are not exclusive but are in addition to any other rights and remedies which shall be available to BROOKVILLE under applicable law.

15. **GOVERNING LAW.** This contract and these terms and conditions shall constitute the entire agreement between BROOKVILLE and purchaser, and shall be governed by and construed according to the internal laws of the Commonwealth of Pennsylvania and of the United States of America (without reference to principles of conflicts of laws). The rights and obligations of the parties hereunder shall not be governed by the provisions of the 1980 U.N. convention on contracts for the international sale of goods.

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