

## **DANIEL MECHANICAL'S STANDARD TERMS AND CONDITIONS OF SALE**

Sale of any equipment or services described or referred to herein at the prices indicated is expressly conditioned upon the terms and conditions set forth below. Any order for or any statements of intent to purchase any such equipment or services, or any direction to proceed with engineering procurement, manufacture or shipment, shall constitute assent to said terms and conditions and a representation that the purchaser is solvent. Any additional or different terms or conditions set forth in any such communication from the Purchaser are hereby objected to by Daniel Mechanical, hereinafter referred to as "seller", and shall not be effective or binding unless assented to in writing by an authorized representative of the company.

Delivery shipping dates are approximate and are based upon prompt receipt of all necessary information. The seller shall not be liable for delays in delivery or in performance or failure to manufacture or deliver, due to (1) causes beyond its reasonable control, including errors in manufacturer or (2) acts of God, acts of the purchaser, acts of civil or military authority, priorities, fires, strikes, or other labor disturbances, floods, epidemics, war, riot, delays in transportation or car shortages, or (3) inability on account of causes beyond its reasonable control to obtain necessary labor, materials, components or manufacturing facilities. In the event of any such delay, the date of delivery or of performance shall be extended for a period equal to the time lost by reason of delay.

Start-Up Service: On certain equipment start-up service is available from the seller at per diem rates plus lodging and traveling expenses but is not included unless specifically quoted. There will be an additional charge for time used exceeding the number of days quoted.

Electrical Equipment: Equipment includes only the electrical components referred to in the proposal. Charges arising from any local, state or provincial regulations necessitating changes to electrical equipment are for the customer's accounts, unless equipment has been specifically proposed to meet these regulations.

Performance: Where performance figures are specified the equipment offered is based on our experience and best judgment of the purchaser's requirement. Should any modifications be required to meet performance specifications, we reserve the right to make these modifications, at our expense. If, in our judgment, a modification problem cannot be readily and economically rectified, it is in our option to remove the equipment and refund all payments made to us by the purchaser. No other charges will or can be assessed by either the purchaser or seller.

Claims: Claim of shortages, errors or damages must be made within five (5) days after receipt of shipment.

Pricing: Prices quoted are firm provided release to manufacture and ship is furnished by purchaser within six (6) months from the date of order entry. If purchaser delays shipment of order or if shipment is delayed for reasons beyond control of Daniel Mechanical and as a consequence shipment is not made within six (6) months from date of order entry, prices are subject to escalation to current pricing at time of shipment. Prices are based on uninterrupted manufacturing and shipment of entire lot. Additional cost due to delays caused by purchaser resulting in the interruption of continued manufacturing or shipment of all product, shall be borne solely by the purchaser. Seller reserves the right to change this policy at any time without written notice.

Proposals: Valid for 15 days calendar days only.

### **PAYMENT TERMS**

Taxes: Any tax, permit or other governmental charge now or hereafter levied upon the production, sale, use or shipment of goods ordered or sold will be charged to and paid for by the purchaser. Such taxes are not covered in the Seller's price unless expressly so proposed.

Terms of Payment: Payment shall become due 30 days from the date of invoice. If shipment is delayed by the purchaser date of readiness for shipment shall be deemed to be date of invoice for payment purposes. If in the seller's judgment, the Purchaser's financial condition at any time does not justify the terms specified, the Seller may require full or partial payment as a condition to continuing manufacture, or in advance of shipment, or, if shipment has been made, recover equipment from the carrier.

Freight: Prices are F.O.B. shipping point. However, and only if agreed to by Seller in writing, the Seller shall include freight as part of the lump sum price of Purchase Order. Said freight shall be limited to the quantity of shipments made up of full 40'-0" long standard truck or container loads estimated in Sellers quote. At no time will the Seller be responsible for the added cost for shipment of or partial expedited loads unless the need for said load; was caused solely by the Seller.

Cancellation: The purchaser may cancel his order only upon written and upon payment to the company of reasonable and proper cancellation charges.

Product Changes: Factors beyond the Seller's control and the need for continuing improvement of products require the making of changes in products from time to time. The Seller reserves the right to make reasonable changes in products of any kind without notice, and to deliver revised designs or models of products against any order, unless this right is specifically waived in writing by the Seller. The Seller shall have no responsibility what so ever with respect to changes made by the manufacturer in products sold but not manufactured by the Seller.

Changes: Changes in the specifications on which purchaser's order covered by this Proposal is based will not be accepted unless requested in writing and any change in price is put to in writing.

Patents: Seller shall defend any suit or proceeding brought against the purchaser so far as based on a claim that any equipment, or any part thereof furnished under this contract constitutes an infringement of any patent of United States, if notified promptly in writing given authority, information and assistance (at Seller's expense) for the defense of same, and Seller shall pay all damages and costs awarded therein against the Purchaser. In case said equipment, or any part thereof is in such suit held to constitute infringement and the use of said equipment or parts is enjoined. Seller shall, at its own expense and at its option, either procure for the purchaser the right to continue using said equipment or part; or replace same with non-infringing; or modify it so it becomes non-infringing, or remove said equipment and refund purchase price and the transportation and installation costs thereof. The foregoing states the entire liability of Seller for patent infringement by said equipment or any part thereof, manufactures to purchaser's design, nor for any use to which any such equipment may be part as a part of any system, mechanism or process covered by patent rights of others. As to such equipment or part, Seller assumes no liability whatsoever for patent infringement.

Limited Warranty: Daniel Mechanical, Los Angeles, California warrants to the dealers and owners that Daniel Mechanical's products and parts will be free from defects in workmanship and material under normal use and service for one (1) year after delivery to the first retail purchaser or fist user. Our obligation under this Warranty being limited to repairing or replacing, at our option, without cost as our factory any part or parts thereof which shall, within such warranty period, be returned to us with transportation charges prepaid, and which our examination shall disclose to our satisfaction to have been defective Any request for repair or replacement should be directed to Daniel Mechanical, 1939 W 11<sup>th</sup> St, Suite E, Upland, CA 91786. This warranty gives you specific legal rights, and you may also have other rights, which vary from state to state.

Limitation of Warranty and Liability: This warranty does not apply to any such Daniel Mechanical products and parts, which have failed as a result of faulty installation or abuse, or incorrect electrical connections or alterations, made by others, or use under abnormal operating conditions or misapplication of the products and parts. Daniel Mechanical will not approve for payment and repairs made outside its factory without prior written consent of its Upland, CA office. The foregoing shall constitute our sole and exclusive warranty and our sole exclusive liability and is in lieu of all other warranties, whether written, oral, implied or statutory. There are no warranties, which extend beyond the description on the page hereof. Seller does not warrant that said goods and articles are of merchantable quality or that they are fit for any particular purpose. The liability of Seller on any claim of any kind, including negligence, for any loss or damage arising out of or connected with, or resulting from the sale and purchase of the products, and parts covered by this proposal, acknowledgement, order or from the performance or breach of any contract pertaining to such sale or purchase, or from the design, manufacture, sale, delivery, resale, installation, inspection, repair, operation or use of any products covered by this proposal acknowledgement, order furnished by seller shall, in no case exceed the price allocable to the products or parts thereof which gives rise to the claim and shall terminate one year after the shipment of said products and parts. In no event, whether as a result of breach of contract, or warranty or alleged negligence, defects, incorrect advise or other causes, shall Seller be liable for special or consequential damages, including, but not limited to, loss of profits or revenue, loss of use of the equipment or any associated equipment, cost of capital, cost of substitute equipment, facilities or services, down time costs, or claims of customers of the purchaser for such damages. Daniel Mechanical neither assumes nor authorizes any person to assume for it any other liability in connection with the sale of its fan products and parts. Some states do not allow the exclusion or limitation of incidental or consequential damages, so all of the above limitations or exclusions may not apply to you.

Regulatory Laws and/or Standards: The Seller makes no promise or representation that its product will conform to any state or local laws, ordinances, regulations, codes or standards, except as particularly specified and agreed upon for compliance in writing as a part of the contract between buyer and the company. The Seller prices do not include the cost of any related inspection permits or inspection fees.

General: All proposals are made and the Seller with reference to the laws of the State of California accepts all orders and the rights and duties of all persons and the conjunction and effect of all provisions thereof shall be governed by construed according to the laws of that state. Should any terms or provisions contained in these conditions violate any or be involved under applicable law, the contract of which these conditions form apart shall not fail by reason thereof but shall be construed in the same manner as if such terms or provisions had not appeared herein. The Seller represents that any goods to be delivered hereunder will be produced in compliance with the requirements of Fair labor Standards Act of 1938, as amended. Any assignment of this contract or any rights hereunder by the purchaser without written consent of the company shall be void. The provisions of this contract are for the benefit of the parties thereto and not for any other person. These conditions of sale constitute all terms in the agreement between seller and buyer. There are no other terms or conditions of sale.