

COPPERBROOK LABS INC. TERMS & CONDITIONS



These Terms and Conditions are incorporated into and made a part of any proposed purchase order, service order, Equipment order, estimate, invoice or any other document referencing either these Terms and Conditions or the provision of Equipment and services from CopperBrook Labs Inc. ("CopperBrook") to Customer (the "Proposal"). ANY AGREEMENT, WHETHER WRITTEN OR ORAL, MADE BY AND BETWEEN COPPERBROOK AND A CUSTOMER AND PURSUANT TO A PROPOSAL IS EXPRESSLY CONDITIONED UPON THESE TERMS AND CONDITIONS, WHICH ARE INCORPORATED INTO SUCH AGREEMENT. Any terms and conditions in any Proposal or other writing relating to the transaction between CopperBrook and Customer, which are in conflict or inconsistent with or added to the Terms and Conditions hereof, will not be acceptable or become part of the Parties' agreement without CopperBrook's express written consent.¹

I. ACCEPTANCE. Unless otherwise agreed upon by the Parties in writing, Customer has thirty (30) days from the date of a Proposal to accept the Proposal and notify CopperBrook in writing. Upon confirmation by CopperBrook of Customer's acceptance of the Proposal, these Terms and Conditions shall become a binding and enforceable agreement between the Parties.

II. PRICE AND PAYMENT TERMS. CopperBrook will fulfill its Proposal, whether for the provision of Equipment or services, for the price specified in the Proposal. If the price listed in the Proposal is incorrect, Customer must reject the Proposal and notify CopperBrook of such rejection. The price in the Proposal shall include all amounts to be charged to Customer unless additional costs or charges set forth in the Proposal are agreed upon by the Parties in writing. Customer shall pay all amounts due under the Proposal within thirty (30) days from invoice date, unless otherwise agreed in writing. If payments due and owing are not received within thirty (30) days, Customer shall pay interest at the rate of one and one-half percent (1.5 %) per month (18% per annum) on the entire outstanding balance until paid in full. CopperBrook shall have the right to immediately repossess the Equipment from Customer in the event of a default in payment terms. In addition, Customer shall be obligated to pay to CopperBrook all costs to collect outstanding balances, including reasonable attorneys' fees. Customer grants a security interest to CopperBrook for all Equipment purchases from CopperBrook until said Equipment and all related charges are fully paid. Customer shall cooperate in the execution and filing of any Uniform Commercial Code Financing Statements for all Equipment not fully paid for in advance or at time of delivery.

III. FEES AND TAXES. Customer shall pay any taxes or fees for or imposed by any governmental body on the sale, delivery, use, or other handling of Equipment sold hereunder, the performance of any Work in connection with this Proposal or any transactions contemplated hereby. Customer further agrees to pay all federal, state and local fees, whether for permitting or otherwise, relating to the installation of any Equipment. If CopperBrook is required to pay any taxes or other fees relating to its provision of goods or services, Customer shall be required to reimburse CopperBrook for any such taxes or fees, and any related penalties or costs.

IV. WARRANTY. Unless otherwise stated in the Proposal, CopperBrook warrants and represents the Equipment will be free from defects in material and workmanship, will be of the kind and quality herein designated or described, and will conform to the specifications set forth in the Proposal for a for a period equal to twelve (12) months after delivery of the Equipment (the "Warranty Period"). If within the Warranty Period, CopperBrook receives written notice promptly after the discovery of any non-conformance to the above warranties, CopperBrook shall correct each such defect, at its election, either by repairing or replacing any defective part(s) of the Equipment. The liability of CopperBrook to Customer arising out of the foregoing, whether under warranty, tort, contract, negligence, strict liability or otherwise, shall not in any case exceed the cost of correcting defects in the goods and services and upon the expiration of said warranty, all such

liability shall terminate. Except as otherwise expressly set forth herein, THERE ARE NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. Liability of CopperBrook under this warranty is conditioned upon the Equipment being handled, operated, and maintained in accordance with the written instructions provided or approved in writing by CopperBrook. The warranties specified above do not cover, and CopperBrook makes no warranties which extend to damage due to deterioration or wear or failure occasioned by chemicals, abrasion, corrosion or erosion; Customer's misapplication; abnormal conditions of temperature or dirt; or operation of Equipment other than as instructed in writing. CopperBrook's sole responsibility, and Customer's exclusive remedy hereunder, shall be limited to such repair or replacement as above provided.

V. FORCE MAJEURE. CopperBrook shall not be responsible for any losses or damages to Customer (or any third person) occasioned by delays in the performance or the nonperformance of any of CopperBrook's obligations under any Proposed or these Terms and Conditions, or by loss of or damage to any of the Equipment specified in the Proposal when caused directly or indirectly by acts of God, acts of government or military authority, casualty, riot, pandemic, acts of Customer, strikes or other labor difficulties, shortages of labor, supplies, and transportation facilities or any other cause beyond CopperBrook's control. The schedule shall be adjusted in accordance with the impact of any such delay or postponement and the price shall be equitably adjusted to include all additional costs, including overheads, plus a reasonable profit thereon.

VI. CANCELLATION. Customer may cancel any contract resulting from a Proposal only upon written notice to CopperBrook and only upon such terms as will indemnify and reimburse CopperBrook for all loss or damage resulting there from including, without limitation, CopperBrook's direct costs incurred, overhead, reasonable contract profits, costs, and expenses to which CopperBrook has become committed for fulfillment of the contract prior to cancellation, plus reasonable settlement expenses.

VII. LAWS AND REGULATIONS. CopperBrook does not assume and expressly disclaims any responsibility or liability for compliance with any federal, state, and local laws and regulations unless expressly set forth in the Proposal. If Customer desires a modification to the Equipment as a result of a revision or change in any applicable laws or regulations, such modification shall be treated as a Change Order.

VIII. CHANGE ORDERS. Customer may make changes to the general scope of Work, or to the plans or Equipment specifications in the Proposal by giving CopperBrook written notification of such change in a Change Order. ("Change Order"). CopperBrook shall submit to the Customer in writing the changes required to the Price in the Proposal and to the fabrication and revision of any Work schedule resulting from a Change Order. CopperBrook shall have no obligation to proceed with a Change Order until CopperBrook and Customer agree in writing to any changes to the Price and Work schedule based on a Change Order.

IX. LIMITATION ON LIABILITY. Whether based upon contract, tort, warranty, negligence, strict liability or otherwise, CopperBrook's responsibility for any claims, damages losses or liabilities arising out of or related to its performance of this Proposal or the Equipment covered hereunder, including but not limited to any correction of Equipment defects under the Warranty or any applicable performance guarantees, shall not exceed the Price in the Proposal. IN NO EVENT, SHALL COPPERBROOK BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL,

¹ CopperBrook and Customer are collectively referred to as the "Parties". "Equipment" refers to the equipment referenced in the Proposal to be

installed by CopperBrook. "Work" refers to the installation of Equipment and all other services provided by CopperBrook to Customer under the Proposal.

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CONSEQUENTIAL, OR PUNITIVE DAMAGES OF ANY CHARACTER, INCLUDING WITHOUT LIMITATION THE LOSS OF USE OF PRODUCTIVE FACILITIES OR EQUIPMENT, LOST PROFITS, GOVERNMENTAL FINES OR PENALTIES, PROPERTY DAMAGES, PERSONAL INJURIES OR LOST PRODUCTION, WHETHER SUFFERED BY CUSTOMER OR ANY THIRD PARTY, IRRESPECTIVE OF WHETHER CLAIMS OR ACTIONS FOR SUCH DAMAGES ARE BASED UPON CONTRACT, TORT, WARRANTY, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE.

XVII. EXTENSION OF CONTRACT TIME. If CopperBrook is delayed at any time in progress of the Work by changes ordered by Customer, by acts of the Customer, or for any other reason, including without limitation labor disputes, fire, a delay in deliveries, unavoidable casualties or other causes beyond CopperBrook's control, the time for CopperBrook's completion of the Work in the Proposal shall be extended and the Price shall be equitably increased by a change order for such reasonable time and amount as the Customer and CopperBrook shall mutual agree, which consent shall not be unreasonably withheld.

X. PROPRIETARY MATERIAL. All drawing, patterns, specifications and information included in the Proposal, and all information otherwise supplied by CopperBrook relating to the design, erection, operation, and maintenance of the Equipment is the proprietary and/or confidential or information of CopperBrook. Customer shall not disclose such material or information to others or allow others to use such material or information except as required for Customer to obtain service for the Equipment.

XVIII. HAZARDOUS CONDITIONS. CopperBrook shall not be responsible for hazardous materials or a hazardous condition (a "Hazard") in the Work environment. If CopperBrook encounters a Hazard, the Parties agree as follows: (a) CopperBrook shall, upon recognizing the Hazard, immediately stop Work and report to Customer; (b) CopperBrook shall not continue Work in the area until the Hazard has been appropriately abated and CopperBrook has received written direction and approval from the Customer to continue the Work; (c) CopperBrook and Customer agree to appropriately extend any deadline for the completion of the Work and equitably amend the Price in the Proposal to account for the additional costs and delays associated with the Hazard; (d) to the fullest extent permitted by law, the Customer shall indemnify and hold harmless CopperBrook and its subcontractors, agents and employees from and against claims, damages, losses and expenses, including but not limited to attorneys' fees and costs, arising out of or resulting from performance of the Work; and (d) If CopperBrook is held liable by a local, state or federal agency for the cost of remediation of a Hazard solely by reason of performing Work as required by the Proposal then Customer shall defend and indemnify CopperBrook for all cost and expense thereby incurred, including without limitation all attorneys' fees and costs.

XI. LICENSES AND PERMITS. CopperBrook and/or its subcontractors shall obtain any required contractors' licenses. All other licenses and/or permits shall be supplied by Customer.

XII. INSURANCE. CopperBrook and/or its subcontractors shall maintain the following insurance coverage during the erection schedule: Workmen's compensation as required by statute; and Employer's Liability with a limit of liability of \$100,000. Comprehensive General Liability including Completed Operations with the following limits:

Bodily Injury	\$1,000,000 Each Occurrence \$1,000,000 Aggregate \$1,000,000 Each Occurrence \$1,000,000 Aggregate
Property Damage	

CopperBrook's responsibility under its insurance shall cease and such coverage shall be canceled upon CopperBrook's decision, in its sole discretion, the Work in the Proposal is complete. A Certificate of Insurance shall be furnished upon request.

XIV. INDEMNIFICATION. To the fullest extent permitted by law, Customer agrees to protect, defend, indemnify, and hold harmless CopperBrook, and each of its shareholders, directors, officers, employees, agents, representatives, subcontractors, insurers and affiliates from and against any loss, costs, damages or expense, including attorneys' fees and costs, and any injuries to persons or damage to property (including loss of use), arising from or relating to the Equipment or Work provided by CopperBrook to Customer under the Proposal as well as any failure by Customer to comply with its obligations under these Terms and Conditions.

XIII. WAIVER OF SUBROGATION. CopperBrook and Customer waive their rights and their respective insurance carriers' subrogation rights against each other with respect to any property damage. In the event the Customer is not the Owner of the facilities where the Equipment is being erected or installed the Customer agrees to include a provision in its contract with the Owner of such facilities requiring the Owner to supply CopperBrook with a written waiver of its rights of recovery and its insurance carrier's right of subrogation against CopperBrook as specified herein.

XIV. ASSIGNMENT/SUBCONTRACT. CopperBrook may assign/subcontract all or any portion of the contract included in the Proposal.

XV. INTERPRETATION AND ENFORCEMENT. Any agreement between the Parties shall be construed according to the laws of the State of Wisconsin without giving effect to the conflict of law provisions thereof and suit may be instituted for the enforcement thereof in any state or federal court situated in Wisconsin.

XVI. OSHA. Customer represents and warrants it is familiar with, responsible for, and insures that the setup, construction or installation facility for all Equipment complies with all federal and state occupational safety and health standards and regulations, including without limitation the Occupational Safety and Health Act of 1970, as amended, and all regulations thereunder ("OSHA"). Customer agrees to indemnify and hold CopperBrook, its employees, agents and subcontractors harmless from any and all violations under all applicable federal and state occupational safety and health standards and regulations, including without limitation OSHA.