



## Terms and Conditions of Sale

(Revised January 13, 2010)

The following Terms and Conditions of Sale apply to this proposal and any resulting contract, unless, specifically waived by **PEBCO®** in writing. Except where the following provisions contradict, Article 2 of the Uniform Commercial Code as adopted by the Commonwealth of Kentucky, located at KRS 355.2-101 et seq, shall govern this document.

1. **TERMS OF PAYMENT:** The terms of payment shall be those terms as reflected in the quotation. Unless otherwise specified in writing, all payments are due within thirty (30) days of the invoice date. Invoices not paid within these terms of payment are subject to an interest charge which will be specified on the invoice. If not specified, interest shall be at 1½% per month. Should Purchaser fail to make timely payment, **PEBCO®**, at its option, may hold Purchaser in breach of contract.
2. **CREDIT INQUIRY:** **PEBCO®** shall have the right to make a credit inquiry of Purchaser. Purchaser shall provide all pertinent credit information to **PEBCO®** upon request by **PEBCO®**. **PEBCO®** reserves the right to amend or revoke its proposal following **PEBCO®**'s review of Purchaser's credit.
3. **TAXES AND BONDS:** The prices quoted in **PEBCO®**'s proposal do not include any duty, federal, state or local taxes, or other governmental charges or taxes which are applicable to this transaction. Any such taxes shall be paid by purchaser, without charge to **PEBCO®**. Purchaser shall also be responsible for payment of any bond or bonds required for the proposed work.
4. **FREIGHT AND DELIVERY:** All quotations are for delivery f.o.b. point of manufacture unless otherwise agreed. **PEBCO®** reserves the right to make partial shipments and will render invoices accordingly.
5. **SAFETY DEVICES:** No special safety devices are included as part of this sale of equipment unless Purchaser has specifically requested such devices and the price of such devices has been specifically included in the **PEBCO®** proposal. It is **PEBCO®**'s recommendation that all special safety devices should be made a part of the equipment sold hereunder and that Purchaser should request such devices as a part of its purchase of the equipment. In the event Purchaser fails to request such devices, such failure shall be at Purchaser's risk. Purchaser shall indemnify **PEBCO®** and save it harmless from any claim, demand, or cause of action asserted against **PEBCO®** by any person, and any loss and expenses, including attorney's fees incurred by **PEBCO®** by reason of same, which relates, directly or indirectly, to the lack of special safety devices. In the event any special safety device is provided by **PEBCO®**, **PEBCO®** shall only warrant that the design and installation of such device shall be of a type which is generally recognized in the industry. Exceptions taken by local inspectors, not consistent with generally accepted industry interpretation and practice, will not be considered a failure on the part of **PEBCO®** to fulfill its obligations.
6. **COMPLETION:** No time for performance and completion will begin to run until consummation of the agreement as hereinafter defined. **PEBCO®** cannot proceed with fabrication until approval drawings are received or until written confirmation is given waiving approval drawings. Delivery date shall be interpreted as an estimate only and in no event shall such date be construed as falling within the meaning of "time is of the essence."
7. **CHANGE ORDERS:** The Purchaser may request changes to be made in the design or construction of the equipment, which request shall be subject to **PEBCO®**'s acceptance in its discretion. In the event **PEBCO®** accepts such request, **PEBCO®** shall provide to the Purchaser an equitable adjustment in the purchase price, which adjustment shall include any revisions to shipping dates and the estimate date of completion of the project. Upon Purchaser's acceptance of the adjustment(s) and revision(s), **PEBCO®** will proceed with production of the equipment in accordance with the revised plans. **PEBCO®** reserves the right to substitute like components of equal quality with those called for in the specifications or plans.
8. **DELAY:** In the event of any delay in the design or construction of the equipment which is caused by the Purchaser, the Purchaser shall be liable to **PEBCO®** for any loss, cost, or expense incurred by **PEBCO®** for reason of such delay.
9. **FORCE MAJEURE:** **PEBCO®** shall not be liable to Purchaser for any loss or damage arising out of delay in shipment or delivery, or failure to manufacture or failure of the equipment to operate, due to causes beyond its reasonable control, such as but not limited to acts of God, acts of purchaser, fires, strikes, floods, delays in transportation, car shortages, and **PEBCO®**'s inability to obtain necessary labor material or manufacturing facilities. In the event of any such delay, the date of delivery shall be extended to a period equal to the time lost by the reason of the delay, and **PEBCO®** shall be entitled to an equitable adjustment in the sales price for increased costs incurred due to the aforementioned Force Majeure.
10. **CANCELLATION:** Purchaser shall not cancel, amend or otherwise terminate this contract without **PEBCO®**'s consent. In the event of cancellation, the purchaser shall pay **PEBCO®** a cancellation charge sufficient to reimburse **PEBCO®** for all costs and expenses incurred plus its entire anticipated profit under this agreement.
11. **USE OF SPECIFICATIONS, BLUEPRINTS, DRAWINGS:** Specifications, blueprints, and drawings are **PEBCO®**'s property and are subject to recall at any time. No such blueprints, drawings, photographs or specifications are to be reproduced, transmitted or otherwise disclosed to any person not connected with Purchaser's organization. At no time shall such blueprints, drawings, photographs, or specifications be delivered to any competitor of **PEBCO®**. **PEBCO®** shall not be required to supply detailed prints, tracings, photographs or drawings of material manufactured and used in the fabrication and construction of the equipment described herein.
12. **WARRANTY:** **PEBCO®** warrants to purchaser, upon the terms set forth, that the equipment purchased, so far as such equipment is of **PEBCO®**'s manufacture, is free from defects in material and workmanship under normal use and service for a period of twelve (12) months from date of shipment. All other equipment, including but not limited to the motors and valves, which are manufactured by others, are warranted solely and exclusively by their manufacturers and not by **PEBCO®**, and **PEBCO®** hereby assigns to purchaser without recourse to **PEBCO®** such warranty as is given by the manufacturer.
  - a. Limited Warranty: **PEBCO®**'s obligation under this warranty is limited to and shall be fully discharged by **PEBCO®** repairing or at its option replacing f.o.b. point of manufacture any part which is shown to **PEBCO®**'s satisfaction to have been defective as to material or workmanship, provided that written notice of defect is delivered to **PEBCO®**'s office in Paducah, Kentucky within Sixty (60) days after defect is discovered, and in no event more than twelve (12) months and sixty (60) days after shipment. This warranty shall only extend to Purchaser and shall not be assigned.
  - b. Purchaser's Acts Voiding Warranty: The warranty furnished by **PEBCO®** herein will be rendered void by any improper erection or installation, if erected or installed by other than **PEBCO®**, any misuse, any unauthorized alterations, any substitution, any repairs or modifications, any neglect or accident, or damage to the equipment caused by improper storage, and any abrasion, corrosion, an/or operation outside the rated load limitations for use of the equipment. **PEBCO®** shall not be liable for any repairs, replacements or adjustments to the equipment, or any cost of labor performed by the purchaser or others, without **PEBCO®**'s prior written approval.
  - c. **DISCLAIMER OF WARRANTY AND LIMITATION OF REMEDY:**
    1. **THERE ARE NO EXPRESS OR IMPLIED WARRANTIES, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR PARTICULAR PURPOSE. THE SOLE AND EXCLUSIVE WARRANTY FROM PEBCO TO PURCHASER IS THAT AS REFERENCED ABOVE. PEBCO DISCLAIMS ANY AND ALL OTHER WARRANTIES.**
    2. **PEBCO® DISCLAIMS ANY WARRANTY REGARDING PATENT OR COPYRIGHTS RELATING TO THE EQUIPMENT SOLD HEREUNDER. PURCHASER ASSUMES ALL RISKS REGARDING PATENT OR COPYRIGHT INFRINGEMENT.**
    3. **PURCHASER'S EXCLUSIVE REMEDY AND PEBCO®'S ENTIRE LIABILITY IN CONTRACT, TORT, OR OTHERWISE SHALL BE THE REPAIR OR EXCHANGE OF ANY PARTS WHICH ARE FOUND DURING THE APPLICABLE WARRANTY PERIOD BY PEBCO®'S INSPECTION AT THE INSTALLATION SITE TO BE DEFECTIVE IN WORKMANSHIP OR MATERIAL. ALL EXCHANGED PARTS WILL BECOME THE PROPERTY OF PEBCO®. IN NO EVENT SHALL PEBCO® BE LIABLE TO PURCHASER FOR ANY OF PURCHASER'S COMPENSATORY OR INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF THIS AGREEMENT OR THE USE OF THE EQUIPMENT AND SERVICES PROVIDED UNDER THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS, COSTS TO PURCHASE SUBSTITUTE POWER, PLANT DOWNTIME, INCREASE COSTS OF OPERATION, ETC.**
    4. **NO ACTION IN ANY FORM ARISING OF THIS AGREEMENT MAY BE INSTITUTED BY PURCHASER MORE THAN ONE YEAR FOLLOWING DATE OF COMPLETION.**



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13. **RISK OF LOSS AND TITLE:** The risk of loss and title to the equipment covered under this quotation shall pass to the Purchaser upon delivery to Purchaser. Notwithstanding passing of title, **PEBCO®** shall retain, and Purchaser hereby assigns to **PEBCO®**, a security interest in the equipment until such time that payment has been made in full. Upon delivery of the equipment, the Purchaser shall procure and maintain fire and other casualty insurance coverage with insurers and such amounts and terms of coverage as is acceptable to **PEBCO®** in its reasonable discretion. **PEBCO®** shall be made a named insured under such policy. In case of any default in payment by the Purchaser, **PEBCO®** shall have the right to take immediate possession of the equipment and all payments therefore made shall be kept by **PEBCO®** and applied to the purchase price, and **PEBCO®** may sell the equipment at public or private sale without notice and apply the proceeds of said sale to the purchase price, and the purchaser shall owe any deficiency to **PEBCO®**.
14. **ASSIGNMENT:** This proposal shall be binding upon and shall inure to the benefit of the respective heirs, personal representative, successors and assigns of **PEBCO®** and purchaser. Purchaser shall not assign this proposal without first obtaining the written consent of **PEBCO®**. Purchaser shall remain liable to **PEBCO®** for the purchase price.
15. **ENFORCEMENT COSTS:** Purchaser shall pay all collection costs and reasonable attorney fees and costs of suit with respect to any legal action brought by **PEBCO®** to enforce the terms of this agreement.
16. **PRICE OF ADJUSTMENT:** Prices quoted in this proposal are subject to change by **PEBCO®** without notice to purchaser prior to **PEBCO®**'s receipt and acceptance in writing of purchase order.
17. **CONSUMMATION OF AGREEMENT:** The terms and conditions of this proposal are to be deemed as a solicitation to the Purchaser for an offer to purchase. Any response from the Purchaser to this proposal shall be deemed an offer. Any terms and conditions of Purchaser's response which conflict with or is otherwise inconsistent with the terms and conditions of this proposal shall be deemed of no legal force and effect. Any written acceptance of Purchaser's response by **PEBCO®** shall be deemed to incorporate the terms and conditions of sale as set forth herein. It is agreed between **PEBCO®** and Purchaser that these terms and conditions of sale represent the entire terms and conditions which shall apply to such sale, and all prior representations, statements, warranties, agreements or inconsistent terms and conditions shall be deemed merged herein. Purchaser expressly agrees to be strictly bound by the terms and conditions as set forth herein. This proposal shall be a binding agreement only when Purchaser's response is approved and accepted in writing by **PEBCO®**'s authorized agent. **PEBCO®** will not proceed with any work until such approval and acceptance.
18. **SERVICE CALLS:** Any service calls made by **PEBCO®** shall be billed at the rate of **PEBCO®**'s customary service fee in effect at the time of the service call. Any travel, lodging, and other related expenses shall also be billed at the rate of **PEBCO®**'s customary fee schedule in effect at the time of the service call.
19. **INSPECTION:** Purchaser may schedule a shop inspection. In the event Purchaser requests any non-routine test, set up or demonstration, Purchaser shall pay to **PEBCO®** the cost of same as determined by **PEBCO®**.
20. **OPERATING MANUALS:** **PEBCO®** will provide three (3) operating manuals and spare parts lists at the time of shipment based on **PEBCO®**'s regular quote for such items. Extra manuals are available as quoted.
21. **ARBITRATION:** Any disputes, claims, or causes of action which arise from this agreement shall be subject to binding arbitration in conjunction with the rules of the American Arbitration Association. Any arbitration conducted pursuant to this agreement shall be heard by a panel of three (3) arbitrators, with each party selecting one (1) arbitrator and the two arbitrators selecting a third. The decision of the arbitrators, or a majority of them, shall be final and binding upon the parties as to the questions submitted. Any arbitration hearings shall be conducted in Paducah, Kentucky.
22. **APPLICABLE LAW:** This contract shall be considered as being made at Paducah, Kentucky and for purposes of choice of law and jurisdiction shall be governed by the laws of Kentucky. Purchaser hereby waives any right to trial by jury.
23. **TIME IS OF THE ESSENCE:** All times stated in this document are of the essence hereof and may not be extended except by the mutual agreement of the Purchaser and **PEBCO®**.
24. **PEBCO®** is not liable for defects arising out of materials provided, or a design stipulated or specified by the Purchaser.