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## TERMS AND CONDITIONS OF PROPOSAL/SALE Bevcorp LLC

1. **Formation of Contract.** THE TERMS AND CONDITIONS SET FORTH BELOW SHALL COMPRISE THE SOLE TERMS AND CONDITIONS FOR THE SALE OF GOODS AND SERVICES BY SELLER, UNLESS OTHERWISE SPECIFICALLY PROVIDED ON THE FACE HEREOF, AND SHALL APPLY TO THE EXCLUSION OF ANY INCONSISTENT OR ADDITIONAL TERMS AND CONDITIONS CONTAINED IN CUSTOMER'S ORDER OR ACKNOWLEDGMENT. CUSTOMER'S ACCEPTANCE OF THESE TERMS AND CONDITIONS SHALL BE CONCLUSIVELY PRESUMED BY CUSTOMER'S SUBMISSION OF THE CUSTOMER ORDER FORM ATTACHED HERETO OR BY ANY OTHER FORM OF ACCEPTANCE INCLUDING BUT NOT LIMITED TO ITS ISSUANCE OF A PURCHASE ORDER IN RESPONSE TO THIS PROPOSAL OR BY ACCEPTING SELLER'S GOODS OR SERVICES. BY FORMATION OF A CONTRACT PURSUANT TO THIS SECTION 1, CUSTOMER GRANTS TO SELLER A POSSESSORY SECURITY INTEREST IN ANY OF CUSTOMER'S ASSETS RECEIVED BY SELLER IN CONNECTION WITH ITS PERFORMANCE PURSUANT TO THE RESULTING CONTRACT AND A CONTINUING LIEN ON ALL NEW EQUIPMENT SOLD HEREUNDER AND ON ANY ASSETS AND THEIR PROCEEDS THAT ARE THE OBJECT OF SELLER'S WORK, SUCH SECURITY INTERESTS AND LIENS TO CONTINUE UNTIL SELLER HAS RECEIVED PAYMENT IN FULL HEREUNDER.
2. **Price.**
  - a) **Excluded Items.** The proposal price does not include applicable taxes such as local, city, state and federal, sales, use, excise taxes, shipping charges, or any other services or work not specifically described in this proposal. Wherever applicable, such tax or taxes shall be added to the invoice as a separate charge to be paid by Customer unless an appropriate tax exemption certificate is presented which is acceptable to Seller.
  - b) **Additional Work Exclusion.** The proposed price shall not include any work not specifically described herein including repair or replacement of defective machine components which were undiscovered or unknown at the time of preparing the proposal by Seller. In the event such additional work or defects are discovered during the performance of this contract and it is determined by Seller that it is reasonable for such additional work to be accomplished with respect to such discovery prior to notification of Customer, then such additional work will be performed and the price thereof shall be added to the contract price. Seller shall attempt to provide notice to Customer of such additional work prior to invoicing. However, failure to provide Customer with such notice shall in no way affect Customer's obligation to pay for such additional work.
  - c) **Price Increase Exclusion.** The proposed price shall be subject to adjustment for the increase in price of components or services sourced by Seller from third parties. All costs and schedule are based upon normal work weeks. Should Customer request or require schedule changes or conditions beyond Seller's reasonable control otherwise require overtime or work on holidays or weekends, prices will be adjusted accordingly.
  - d) **Cancellation Charges.** If Customer submits its order and subsequently cancels the resulting contract for whatever reason, then Customer shall be responsible for the costs incurred by Seller up to its receipt of a written cancellation, including shipping, disassembly and reassembly, testing and all other costs plus reasonable profits with respect to performance of work on Customer's machinery and equipment. Customer shall also be charged for storage of machines and equipment remaining on Seller's premises commencing as soon as Customer is given notice the machines and equipment are available for delivery.
  - e) **Storage Charge.** If at any time shipment is deferred or delayed at Customer's request, payment for the goods shall be due to Seller at the time the same is ready for shipment and Customer shall arrange to store the same at Customer's risk and expense and if Customer fails or refuses to promptly store the same, Seller shall have the right to do so at Customer's risk and expense, either on Seller's property or at a third party location.
3. **Payment.** Payment terms for this proposal are entered in the term section of the proposal. Credit as to all Customers shall be at the discretion of Seller. Seller has the right to amend credit terms on any order prior to delivery or completion of work. Payments received after the due date shall be subject to a carrying charge of one and one-half percent (1 1/2%) per month on the unpaid balance. If Customer fails to satisfy its payment obligations hereunder on time, Customer shall be responsible to Seller for any costs of collection, including reasonable attorney fees.
4. **Minimum Order Policy.** Bevcorp LLC requires a minimum order value of \$50.00. Purchase orders received not totaling this value may be returned and advised to increase quantities to meet minimum order value requirements.
5. **Expedite Fees.**
  - a) **Standard Expediting**-An expedite fee will be imposed on any part or project that Bevcorp is able to improve production on a standard published lead time. The fee will be dependent upon the lead time reduction and based on a percentage of the total order value being expedited, with a minimum fee of \$300.
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<u>Lead Time Reduction</u>	<u>Expedite Fee %</u>
1-7 days	10% of order value
8-14 days	15% of order value
15-21 days	20% of order value
22-28 days	25% of order value

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- b) **After Hours Emergency Service**-An expedite fee of \$300 will be charged on any order that is requested to be processed and shipped outside of our normal business hours. This service will be classified as part of our After Hours Emergency Service.

All Expediting fees are for the expediting processing only and are separate from any freight charges that are incurred upon leaving the Bevcorp facility.

**6. Shipping Charges and Delivery.**

- a) Unless otherwise provided on the face hereof, the proposed price does not include packing or shipping charges. Cost of packing and transporting Customer's machines and equipment to and from Seller's plant shall be at Customer's expense. Upon completion of the order, delivery shall be Ex-Works or F.O.B. (if a common carrier is involved) at Seller's plant, at Seller's option. Such delivery shall constitute complete delivery to Customer as well as transfer of title, ownership, possession and property in and to the goods to Customer. Thereafter, such carrier shall be deemed to be acting for Customer and the goods shall thereafter be at Customer's risk (including all risk of loss). Prior to shipment Seller will inspect all goods for the presence of debris or any other foreign matter, and therefore, cannot be responsible for any such debris or foreign matter acquired after leaving Seller's plant. Customer should inspect prior to installation or use.
- b) Should an earlier shipping date other than that originally specified by the Seller and on which basis the proposal was written, be requested by the Customer, and should the Seller consent thereto, the Customer shall pay any added cost plus profit, which might be incurred because of, but not limited to overtime work, outside labor cost, and any special charges.

**7. Return Policy.** Returns must be authorized by Bevcorp LLC prior to shipment return. Once return is authorized, an RMA will be issued to customer. Customer must arrange return and will be responsible for all freight charges. Bevcorp LLC reserves the right to refuse a return of a product sold and shipped more than (1) one year ago. Custom orders are not authorized for return. Returned products are credited based on three categories, see below. Credits will be issued against original invoice sold after product is inspected and product condition is determined. Bevcorp LLC reserves the right to waive restocking fees and/or return freight, when applicable.

- a) **Excellent Condition-Purchase Price less 15% Restocking Fee**-Packaging/Product is intact and resalable in current condition.
- b) **Imperfect Condition-Repackage or Re-work required-Purchase price less minimum of 30%, up to 100% Restocking Fee**-Packaging/Product is opened, damaged, rusted or deteriorated. Material must be reworked.
- c) **Scrap-No Credit**-Product cannot be salvaged; damaged beyond repair.

**8. Customer Obligations.** If Seller is to perform work at Customer's site, then unless otherwise set forth in this proposal, Customer shall be responsible for providing Seller timely, accurate and appropriate information about the work site, access to the site, secured on-site storage for Seller's materials, equipment and supplies, access to and use of on-site worker facilities (lockers, bathrooms, lunch rooms, showers) provided to comparable Customer workers, and access to and use of all required utilities (electricity, water, steam, air, sewage/drainage), all at no charge to Seller.

**9. Completion Date.** Seller shall expend every reasonable effort to complete the order by the estimated delivery date, however, due to the nature of the work involved, no liability shall attach or accrue to the benefit of the Customer for any delay in performance or delivery. In no event shall Seller be responsible for any delays in performance due to any cause beyond the control of Seller including but not limited to, failure of Customer to fulfill required obligations, fire, strike, accident, war conditions, government regulations or restriction, shortage in transportation, power, labor or material, freight embargo, riot or civil commotion, default of a supplier or prohibitions or events which render performance difficult, commercially unreasonable or impossible.

**10. Warranty.** Unless otherwise provided on the face hereof, the goods and repair services sold pursuant to this proposal are warranted against defects in material and workmanship from the date of delivery in the following manner:

- a) New equipment for a period of one (1) year.
- b) Repairs to machinery and equipment for a period of six (6) months.
- c) Parts or components manufactured by Seller for a period of one (1) year.
- d) Parts or components obtained by Seller from suppliers shall be subject only to the warranty provided by and enforceable against the manufacturer of such parts or components.
- e) Seller shall not be responsible for the replacement cost of parts, components and materials furnished by Customer that are damaged or spoiled by Seller in its process period due to existing deficiencies or defects. The obligation with respect to the above-described warranty shall be limited to repair or replacement by Seller of those repairs or parts, exclusive of normal wear components (rubber goods such as seals, cam blocks, springs, guides, etc.) furnished by Seller which, based on its examination, inspection and determination, have become defective as a result of ordinary and normal use and proper lubrication and maintenance in accordance with the design purpose and intended application of the machine or equipment, provided written notice of such defect is given by Customer within seven (7) days after such defect is first discovered. Inspection of the machine or equipment may occur at Customer's plant or at a location to be determined by Seller at its discretion. The warranty does not cover expenses incurred by Customer in reworking, repairing, or replacing such defective repairs and parts, or of supplying any missing parts, except upon written consent of Seller. In no event shall such warranty cover costs of transportation, rigging, disassembly, inspection and/or installation of the subject parts replaced or of the repaired machine or equipment. Under no circumstances shall Seller have any liability for payment for any consequential, incidental, indirect, or special damages of any kind including, but not limited to lost revenues. In no event shall Seller's liability hereunder exceed the total amount of the original order placed by Customer for the warranted goods or services.
- NOTWITHSTANDING ANY OTHER PROVISION HEREIN, THE WARRANTY STATED IN THIS PARAGRAPH 7, AS LIMITED HEREIN, IS THE ONLY WARRANTY EXTENDED IN CONNECTION WITH THE GOODS AND SERVICES SOLD BY SELLER AND IS IN LIEU OF ALL OTHER WARRANTIES EXPRESSED OR IMPLIED INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR ANY PARTICULAR PURPOSE.**

**11. Customer's Responsibility and Indemnification of Seller.**

- a) **Design and Specifications.** Drawings and specifications prepared by Seller, when submitted to Customer for examination and approval, shall be presumed as being approved by Customer unless written objections are received by Seller within fifteen (15) days following date of submission. Customer shall at all times fully cooperate with Seller, and furnish all specifications, drawings or information required within a reasonable time after Seller's request therefore. Customer shall not countermand or cancel the order or cause the work or shipment to be delayed or stopped, except with the consent of and upon the terms agreed to in writing by Seller. Customer shall pay for all necessary costs and profit for changes required by Customer. In the event of cancellation of an order by Customer, Seller in its discretion, may charge and Customer shall pay Seller full reimbursement for all normal and customary charges,

- including profit. Seller reserves the right, through its Engineering Department, to make changes in design and to modify specifications, except for design and specifications provided by customer.
- b) **Maintenance, Alteration, Safety Devices, and Guarding.** Customer shall assume and bear sole responsibility for proper maintenance of the new or repaired machinery and equipment and for providing adequate and sufficient safeguards, warnings, procedures and instructions, work handling tools and safety devices necessary to protect fully all personnel (including operators, helpers, repairmen, bystanders, and all others who would be in the vicinity of the machinery and equipment repaired or provided by Seller) from bodily injury or death which otherwise may result from the use, operation, set up or maintenance of the machinery or equipment, including all requirements for compliance with prevailing federal, state, and local codes and industry accepted standards. Seller shall bear no liability for the failure of Customer to provide any of the foregoing. Customer shall require and be responsible for requiring all persons operating the machinery and equipment to use proper operating procedures, to wear appropriate equipment including goggles and other safety devices when required and to be properly educated and trained in the operation of the machinery and equipment. Customer shall not permit anyone to alter or modify any of the machinery repaired or provided by Seller, including but not limited to, the removal or modification of machine guarding, safety devices, warning signs or signals, electrical circuitry, instructional labels, or manuals attached to or furnished with the machinery or equipment.
  - c) **Indemnification by Customer.** CUSTOMER AGREES TO INDEMNIFY AND HOLD SELLER, ITS AGENT, AND EMPLOYEES HARMLESS from and against any and all claims, damages, losses, expense, legal actions (including attorneys fees and costs) and liability brought against or sustained by Seller arising out of any claimed improper design, design drawings specifications, materials, repairs or manufacture as provided by Seller pursuant to this proposal, or of any claimed inadequate or insufficient manuals, warnings, safety devices, safety procedures, training, or other safeguards.
  - d) **Customer's Employees on Seller Premises.** Customer shall indemnify and hold Seller, its agents and employees harmless from and against any and all claims of Customer's agents and employees resulting from any alleged incident, transaction or occurrence on the premises of Seller in connection with this proposal or any order or contract arising there from.
  - e) **Compliance conditions.** Customer agrees to comply with all applicable laws and regulations. Customer understands that Seller is subject to regulation by agencies of the U.S. government, including the United States Department of Commerce, which require licensing for and/or prohibit export or diversion of the Seller's products/technology to certain countries, persons or companies, and agrees it will not knowingly assist or participate in any such diversion or other violation of applicable U.S. laws and regulations. Seller assumes any resale will solely be to customers in the original country to which Seller's products are exported hereunder. Customer warrants that it shall not sell any of the Seller's products in countries or to users not approved to receive the product or technology without first obtaining the licenses or permits required under applicable U.S. laws and regulations. Customer shall hold harmless and indemnify Seller for any damages resulting to Seller from a breach of this paragraph by Customer.
12. **Fair Labor Standards Act.** We hereby certify that these goods were produced in compliance with all applicable requirements of Sections 6, 7, and 12 of the Fair Labor Standards Act, as amended and of regulations and orders of the United States Department of Labor issued pursuant to Section 14 thereof.
  13. **Insurance.** Customer agrees to carry and maintain insurance policies covering all of Customer's potential liability as provided herein. Such insurance policies shall include Workers Compensation coverage, General Liability, including products and completed operations, coverage for bodily injury and property damage and Automobile and or Fleet Liability coverage. Customer agrees to carry property insurance policies covering the value of all Customer machinery and equipment located in Seller's facilities or at Seller's sublet facility and while being transported between Customer's and Seller's and/or sublet facilities. Certificates of insurance evidencing such coverage shall be presented to Seller upon request and shall provide and maintain insurance coverage in such amounts as determined to be sufficient and adequate to the satisfaction of Seller.
  14. **Disclaimer of Noise Level.** Unless otherwise provided in the proposal, Seller makes no representation or warranties with respect to the noise level of the equipment or machinery supplied to Customer.
  15. **Customer Insolvency.** In the event of bankruptcy or insolvency proceedings by or against Customer, or if Customer is insolvent, whether or not such proceedings have been commenced, Seller shall have the right to discontinue all work on the order and receive full payment for all work performed (cost incurred plus mark-up).
  16. **Patents.**
    - a) Customer shall indemnify and hold Seller, its agents and employees harmless from any claim of, or infringement of, patent, copyright, trademark or other proprietary right, at common law, or claim of unfair trade or of unfair competition, resulting from Customer's use, possession, sale, or delivery of the equipment or machinery, including any components thereof, repaired or manufactured by Seller and delivered pursuant to any contract or order resulting from this proposal to the extent based upon equipment and/or intellectual property provided to Seller by Customer.
    - b) Seller will defend, and save Customer harmless from and against any loss or expense incident to any claimed infringement of any patent of the United States arising out of the use, possession, sale or delivery of goods designed by Seller, provided Customer shall give Seller prompt written notice of any such claim of infringement and complete authority in defending against it.
    - c) In the event that use, possession, sale, or delivery of goods designed and manufactured by Seller is held to infringe any United States patent and such use, possession, sale or delivery is enjoined, Seller in its discretion may: 1) either procure for Customer the right to continue using such goods; 2) replace the goods with non-infringing goods; 3) modify the goods so to become non-infringing; or 4) rescind this order with Customer agreeing to return the goods and Seller returning amounts previously paid for goods returned. The foregoing excludes any Seller Liability with regard to parts or designs provided to Seller by Customer. Seller grants no license, expressed or implied, other than the right for Customer to use the goods delivered by the Seller.
  17. **State Law Applicable.** The sale of goods and services in accordance with this proposal shall be governed in all respects by the laws of the State of the Seller's facility delivering the goods or services to Customer.
  18. **Arbitration.** The parties agree to conduct bona fide negotiations with respect to all disputes, controversies or differences that may arise between themselves out of or in relation to or in connection with this Order or for the breach thereof. However, if such negotiations do not resolve the matter, it shall be settled by arbitration held accordance with the Commercial Rules of the American Arbitration Association in Cleveland, Ohio and courts of Ohio. The arbitration award shall be final and binding upon all parties and for the purposes of enforcement of same, each party hereto consents to the jurisdiction of any court of competent jurisdiction in the State of Ohio.

19. **Successors and Assigns.** The terms and conditions of this proposal shall inure to the benefit of and be binding upon the successors and assigns of the parties.
20. **Entire Agreement.** The parties agree that there are no other agreements or warranties, terms or conditions, relating to the goods and services to be provided in accordance with this proposal except as contained herein.
21. **Limitation on Actions.** Any legal action or suit against Seller in any way arising from the duties and obligations under this proposal must be commenced within one (1) year after the cause of action has accrued.
22. **Expiration of Proposal.** This proposal shall be effective for up to ninety (90) days unless cancelled by Seller. This is not to be confused with delivery which will be evaluated and confirmed upon receipt of purchase order from Customer. In the event Customer submits its order after the applicable effective period just defined, then the proposal shall be subject to renegotiation.
23. **Proposal Not a Binding Offer.** This proposal does not constitute a binding offer-inviting acceptance but is an invitation to place an order in accordance with the terms and conditions stated herein. All orders received by Seller are subject to acceptance of Seller.
24. **Local Legal Requirements.** Seller shall not be responsible for compliance with any local Laws, Ordinances, Codes or the interpretation thereof, which may be in effect at Customer's plant, unless Seller has specifically agreed in its proposal to accept that responsibility.
25. **Amendment.** This proposal or the resulting order may only be amended by a written agreement executed by both parties hereto, and no waiver, alteration or modification of any of the provisions of this proposal or the resulting order shall be binding on a party unless in writing and signed by a duly authorized person.
26. **Notice.** All written notices required under this proposal or the resulting order shall be in English and be sent by registered or certified airmail, return receipt requested, by commercial courier services such as Federal Express, UPS, or their equivalents, or by telefacsimile confirmed by registered mail or certified mail, return receipt requested. Notices initially sent by telefacsimile shall be deemed received and shall be effective upon confirmation of receipt by the sending equipment. Notices initially sent by registered airmail or certified mail, return receipt requested, or by commercial courier services shall be deemed received as of the date for which they are signed by the receiving party. Notices to Seller shall be addressed as noted on the face of this proposal.
27. **Heading.** Paragraph headings in this proposal are included for convenience only and shall not be used in construing or interpreting this proposal or the resulting order.

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