



1400 Everman Parkway, Suite 134  
Fort Worth, Texas 76140  
800.433.2212 • Fax: 817.293.7570

## **STANDARD TERMS AND CONDITIONS OF BLUFF MANUFACTURING**

These terms and conditions apply to any sales from Bluff Manufacturing to Customer and any quotation or proposal made by Bluff Manufacturing to Customer. Any different or additional terms in any documents from Customer are objected to and rejected, are deemed to materially alter these terms, and will not become part of any contract. If Bluff Manufacturing provides installation services or non-rack goods, Bluff Manufacturing's separate Standard Terms and Conditions for Installation or for rack and conveyor are incorporated herein.

### **1. Purchase Price and Payment Terms**

Payment for all equipment, machinery, materials, goods, accessories and parts purchased (the "Goods"), as well as for freight and any installation or other services purchased, is due thirty (30) days after date of Bluff Manufacturing's invoice, or earlier if otherwise agreed. A thirty percent (30%) down payment is required on the entire amount of (a) large orders as defined by Bluff Manufacturing management, (b) all first orders, or (c) any orders as determined by Bluff Manufacturing management based on credit worthiness. If completion or shipment of the Goods is delayed by or at the request of the Purchaser, Bluff Manufacturing may demand payment in whole or in part. Any amount not paid by Purchaser when due shall be assessed a late payment charge of one and one-half percent (1½%) per month of the overdue payment from its due date until paid or the highest rate permitted by applicable law for late payments, whichever is lower. Checks or payments, whether full or partial, received from or for the account of Purchaser, regardless of writings, legends or notations upon such checks or payments, or regardless of other writings, statements or documents accompanying or related to such checks and payments, shall be applied by Bluff Manufacturing against the amount owing by Purchaser with full reservation of all Bluff Manufacturing's rights and without an accord and satisfaction of Purchaser's liability.

### **2. Taxes**

Customer will be solely responsible for payment directly to taxing authority or reimbursement to Bluff Manufacturing, when paid by Bluff Manufacturing, of all sales, use or similar taxes, and any duties or permits or any other fees imposed upon this transaction by any level of government whether due at the time of sale or later (excluding Bluff Manufacturing's income taxes).

### **3. Delivery: Force Majeure**

- a. All prices are F.O.B. point of shipment, and Customer will pay all freight expense. Quoted lead times are subject to change at any time until order is placed by Customer and accepted by Bluff Manufacturing Shipping, delivery and installation dates stated are approximate. All shipments are F.O.B. Bluff Manufacturing's plant or other point of manufacture, and at the risk of

Purchaser after delivery to the carrier. Unless otherwise indicated in the order, selection of the means of transportation for shipment of the Goods shall be at Bluff Manufacturing's sole discretion. All shipping and other incidental costs with respect to the Goods shall be for the account of or paid directly by Purchaser. Third-party freight billing available upon request. Upon receiving the Goods, Purchaser shall inspect shipment for shortage or obvious damage and note discrepancies on the freight bill of lading before signing. Purchaser's claims for damage to the Goods in transit must be settled with or filed against the carrier, and not the Bluff Manufacturing. All claims for shortages or other nonconformities of shipments must be reported to Bluff Manufacturing in writing within ten days after receipt of each Shipment of the Goods. Bluff Manufacturing reserves the right to make partial deliveries and bill Goods accordingly. If shipment is postponed at Customer's request, payment will be made by Customer as though shipment had been made on schedule. If Customer delays Bluff Manufacturing's work or shipment, Customer will pay any expenses incurred by Bluff Manufacturing due to such delay, including but not limited to costs of storing and maintaining all Goods purchased hereunder and incidental labor costs, Schedule will be deferred accordingly.

- b. Bluff Manufacturing will not be liable for any delay in performing or for partial or complete failure to perform hereunder if such delay or failure is due to fire, flood, explosion, Act of God, force majeure, accident, war, intervention of governmental authorities, strikes, labor disputes, material shortages, transportation delays, any act or omission of Customer, its agents or employees or any party retained by, through or under any of them, or any other cause similar or dissimilar which is beyond Bluff Manufacturing's reasonable control.

#### **4. Change Orders**

- a. Customer and Bluff Manufacturing may agree at any time to make additions, deletions or revisions in the Goods or services to be provided, and Bluff Manufacturing shall not be obligated to make any such change without the formal execution of a written change order signed on behalf of Bluff Manufacturing by the Site Engineer or authorized representative. If Bluff Manufacturing commences work to implement a change order at Customer's request before price and time adjustments are agreed to in writing, it shall be entitled to fair compensation including profit and appropriate extensions to schedule.
- b. If changes in the work, conditions not reasonably foreseeable, force majeure events described above, or any act or omission of Customer, its agents or employees or any party retained by, through or under any of them, cause an increase in the cost or time required for performance, the Purchase Price and schedule shall be equitably adjusted.

#### **5. Acceptance**

Bluff Manufacturing's acceptance of Purchaser's purchase order relating to the Goods is expressly made conditional on Purchaser's acceptance of these Terms and Conditions, which are in lieu of any additional or different terms contained in Purchaser's purchase order or other document or communication pertaining to Purchaser's order of the Goods, which additional or different terms shall be deemed ineffective and rejected. Purchaser assents to the Terms and Conditions of this offer by (a) placing an order or otherwise accepting Bluff Manufacturing's quotation; (b) not promptly objecting in writing to Bluff Manufacturing's acknowledgement terms and conditions received by Purchaser after placing an order; (c) instructing or requesting Bluff Manufacturing to begin work on or to ship any of the Goods after receipt of Bluff Manufacturing's quotation or acknowledgement; or (d) or accepting or paying for all or any part of the Goods. Design, specifications, material and finish are subject to change without notice. Prices quoted are valid for thirty (30) days and are subject to change without notice thereafter. All orders require a written purchase order. Upon such acceptance, payment of any unpaid balance of the purchase price will be due. Payment in full shall also constitute acceptance and waiver of all claims other than claims relating to warranty or liens.

## **6. Held Orders**

In the event an order has to be held after manufacturing, the order will be invoiced as of the date Bluff Manufacturing received the request for the order to be placed on hold, and storage charges will accrue.

## **7. Delays**

Any delivery date for the Goods acknowledged by Bluff Manufacturing is a desired and not promised date. Bluff Manufacturing will make all reasonable efforts to meet the delivery schedule set forth in the order but shall not be liable for failure to do so. Bluff Manufacturing shall not be liable for any damage to or loss of the Goods or any delay in or failure to deliver or replace the Goods arising from shortage of raw materials failure of suppliers to make timely delivery, labor difficulties of any kind, fire, windstorm, flood, theft, war, embargoes, governmental acts or rulings, loss or damage or delays in carriage, acts of God, or any other circumstances reasonably beyond Bluff Manufacturing's control. Goods stored at the request of the Purchaser or because Purchaser refuses or delays shipment shall be at the risk and expense of Purchaser.

## **8. Cancellations, Returns**

Orders are not subject to cancellation or return by Purchaser without the written consent of an authorized officer of the Bluff Manufacturing. All authorized return packages must prominently bear an RGA # provided by Bluff Manufacturing, Inc., or the returned Goods may be refused by Bluff Manufacturing. Orders placed into production are not subject to change or cancellation. Special products or sizes are not returnable. All authorized returned shipments are subject to a restocking charge up to twenty-five percent (25%) plus all transportation charges.

## **9. Confidential Engineering Data**

- a. The drawings and specifications of any Bluff Manufacturing proposal or any quotation are confidential engineering data, and represent Bluff Manufacturing's investment in engineering skill and development and remain the property of Bluff Manufacturing. All confidential information will not be disclosed or used by Customer or its successors or assigns in any manner other than in using the work contemplated by this Agreement.
- b. All specifications and dimensions of proposal drawings are approximate, and are subject to changes during detailed engineering. Weights are approximate. Purchased materials and components referred to by trade-names or by manufacturer may be interchanged at the option of Bluff Manufacturing with other materials and components of at least equal quality and value. After an order from Customer is received by Bluff Manufacturing, Inc., Bluff Manufacturing will submit layout drawings, if required, to Customer who will check and verify them in the field in writing with reasonable promptness.
- c. All molds, dies, tools, special fixtures, jigs, patterns, plates and models used by Bluff Manufacturing in manufacture or installation are and remain the property of Bluff Manufacturing.

## **10. Warranty**

- a. Warranty periods. Warranty period is outlined in separate documents for both Bluff Manufacturing core products as well as Bluff Manufacturing steel structure products.
- b. The warranty applicable to components purchased by Bluff Manufacturing will be limited to the warranty given by Bluff Manufacturing's supplier in each instance, and will not exceed the warranty stated herein.
- c. Bluff Manufacturing reserves the right to make changes in its own equipment and designs at any time, without incurring any obligation to make the same or similar changes to Goods sold to Customer.

## **11. DISCLAIMER OF OTHER WARRANTIES**

THE FOREGOING WARRANTIES ARE IN LIEU OF AND EXCLUDE ALL OTHER WARRANTIES NOT EXPRESSLY SET FORTH HEREIN, WHETHER EXPRESSED OR IMPLIED BY OPERATION OF LAW OR OTHERWISE, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR AP PARTICULAR PURPOSE. CUSTOMER MUST GIVE WRITTEN NOTICE TO BLUFF MANUFACTURING OF ANY DEFECTS WITHIN THIRTY (30) DAYS FROM THE DATE THAT SUCH DEFECTS WERE DISCOVERED OR SHOULD HAVE BEEN DISCOVERED

AND IN ANY EVENT WITHIN THIRTY (30) DAYS AFTER THE LAST DAY OF THE APPLICABLE WARRANTY PERIOD. FAILURE BY CUSTOMER TO GIVE SUCH WRITTEN NOTICE TO BLUFF MANUFACTURING OF DEFECTS WILL CONSTITUTE A WAIVER BY CUSTOMER OF ALL CLAIMS OR WARRANTY REMEDIES FOR SAID DEFECTS.

**12. LIMITATION OF LIABILITY**

No dealer, distributor or other sales representative has any authority from Seller to alter, amend or extend any of the foregoing warranties and exclusions thereof. Any alterations of any kind to the product will immediately void any and all warranties.

CUSTOMER AGREES THAT INNO EVENT, WHETHER AS A RESULT OF BREACH OF CONTRACT OR WARRANTY, NEGLIGENCE OR ANY OTHER CAUSE WHATSOEVER, AND REGARDLESS OF THE FORM OF LEGAL ACTION OR THE THEORY OF RECOVERY, WILL BLUFF MANUFACTURING OR ITS SUBCONTRACTORS OR AFFILIATES BE LIABLE FOR (a) CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS OR REVENUES, LOSS OF USE OF THE GOODS OR ANY OTHER PROPERTY, COST OF CAPITAL, COST OF SUBSTITUTE GOODS, FACILITIES OR SERVICES, DOWNTIME COSTS OR CLAIMS OF CUSTOMER'S CLIENTS FOR SUCH DAMAGES, NOR (b) ANY LOSSES OR DAMAGES UNDER ANY CLAIM OF ANY KIND IN EXCESS OF THE PURCHASE PRICE ACTUALLY PAID TO BLUFF MANUFACTURING FOR THE GOODS WHICH GIVES RISE TO THE CLAIM. ALL SUCH LIABILITY WILL TERMINATE THREE (3) YEARS AFTER SUBSTANTIAL COMPLETION OF WORK UNDER THIS AGREEMENT.

**13. Risk of Loss: Insurance Coverage**

If the Goods is to be installed by Bluff Manufacturing, risk of loss passes to Customer when the Goods is delivered to the site; otherwise, risk of loss passes to Customer upon delivery of any portion of the Goods to a carrier for shipment. Customer agrees to maintain insurance, such as all risk builders insurance, covering equipment on site against loss by fire, theft or other hazard at least equal to the purchase price of the Goods (and other work and materials on site) until the purchase price is completely paid, and to provide Bluff Manufacturing a certificate of insurance.

**14. Compliance With Government or Industry Codes**

As government and industry codes and standards may apply differently depending on Customer's use of the Goods, compliance with government and industry codes and standards is Customer's responsibility.

**15. Equal Opportunity.**

Bluff Manufacturing does not discriminate against any employee or applicant for employment because of race, religion, sex or national origin. Bluff Manufacturing complies with applicable legal requirements to hire veterans and the handicapped. Bluff Manufacturing complies with the Fair Labor Standards Act.

**16. Liens: Security Interest**

- a. Bluff Manufacturing will protect Customer against any lien asserted against Customer's property for materials or services furnished by others under contract with Bluff Manufacturing, provided that Customer makes the payments required under this Contract and provides Bluff Manufacturing timely notice of lien claims.
- b. Customer grants Bluff Manufacturing a security interest in any and all Goods purchased hereunder, until the purchase price is fully paid, and upon request will sign a financing statement evidencing the security interest.

**17. Termination; Cancellation**

- a. If Customer or Bluff Manufacturing fails to comply or becomes disabled from complying with the terms of this Agreement in any material respect and such lack of compliance is not corrected within five business days after written request, then Bluff Manufacturing and Customer will meet to negotiate regarding modification of this Agreement. If no modification is agreed upon within three weeks after the notice referred to is received, or after such longer period as the parties may agree upon, then the party in compliance herewith and under no disability may terminate this Agreement upon notice.
- b. If Customer cancels or repudiates this Agreement in whole or in part except as permitted hereunder, Bluff Manufacturing shall, in addition to those remedies provided under applicable law including but not limited to the Uniform Commercial Code, be entitled to recover from Customer (i) the portion of the purchase price chargeable for work completed in manufacturing or installing the Goods as of the date of termination (ii) any direct liabilities, obligations, damages, and/or claims incurred by Bluff Manufacturing in performing under this Agreement and (iii) gross profit on the terminated portion of the order, equal to not less than fifteen percent (15%) of the unpaid portion of the purchase price.
- c. Nothing herein shall be construed to waive, limit or otherwise deprive Bluff Manufacturing of any remedy available at law or in equity for Customer's cancellation or repudiation of this Agreement.
- d. Customer shall not have the right to reject specified, approved and delivered Goods unless that Goods is proven defective.

**18. Costs of Collection; Indemnification**

- a. In the event Customer shall default in its obligations hereunder, Customer shall be liable for Bluff Manufacturing's costs of collection, including reasonable attorneys' fees, whether or not suit is actually filed.

- b. Certain liabilities are allocated to Customer as follows. Customer agrees to indemnify, defend and hold harmless Bluff Manufacturing, its affiliates, successors and assigns from and against any liabilities, claims, demands, damages, losses and expenses (including attorney's fees) arising from any act or omission of Customer or its employees or agents or any party under Customer's direction or anyone acting on behalf of Customer; this includes (without limitation) personal injury or death to any person (whether an employee of Customer or any other person) and damage to any property. Bluff Manufacturing does not indemnify Customer.

**19. General; Assignment; Entire Agreement; Waiver; Interpretation.**

- a. Customer may not assign in whole or in part without written consent of Bluff Manufacturing. Bluff Manufacturing may assign its rights and/or obligations hereunder.
- b. Customer acknowledges that these terms and conditions, and Bluff Manufacturing's proposal if any, constitute the entire agreement between Bluff Manufacturing and Customer and supersede any prior agreements and representations. Customer acknowledges and agrees that any prior or contemporaneous promises, agreements, or representations, whether oral or written, or created through custom, usage, or course of dealing are also superseded by these terms and conditions. No waiver of any of these terms and conditions will be valid unless in writing and signed by an authorized representative of Bluff Manufacturing. Waiver of any breach or default will not be deemed a waiver of any subsequent breach or default. Delivery of these terms and conditions constitutes either an offer or an acceptance by Bluff Manufacturing. If these terms and conditions constitute an offer by Bluff Manufacturing, Customer's acceptance shall be limited to these terms and conditions. If Customer has made an offer and if these terms contain different or additional terms or conditions than the terms or conditions of Customer's offer, then any acceptance of Customer's offer by Bluff Manufacturing is expressly made conditional on assent by Customer to the additional or different terms or conditions hereof. Customer shall be bound by these terms and conditions. Any terms and conditions which are not enforceable are deemed severed only to the extent of such non-enforceability.

**20. Notices.**

Notice under this Agreement will be deemed given (a) when sent by fax with electronic confirmation of receipt, or (b) one business day after being sent by reliable overnight courier, or (c) three business days after being placed in a postage prepaid envelope, registered or certified mail, and deposited with the U.S. Post office, properly addressed.

**21. Governing Law and Arbitration.**

- a. This Agreement and any dispute related directly or indirectly to this Agreement (“Dispute”) will be governed by the law of the jurisdiction in which the Goods is to be installed if the Goods is to be installed by Bluff Manufacturing, and otherwise by the law of the State of Texas.
- b. If any Dispute is not resolved in the ordinary course of business, the Dispute will be resolved exclusively as provided in this section, and either party may by written notice demand dispute resolution. The notice, and a response required within three weeks, shall state each party’s position and the reasons supporting it.
- c. Senior executives of all parties will meet at least once within six weeks after the notice. Upon request of either party, the negotiation shall be presided over by a third-party mediator pursuant to the Center for Public Resources Institute for Dispute Resolution (“CPR”) Model Procedure for Mediation of Business Disputes, and the neutral mediator will be from the CPR Panel of neutrals (or successor). The parties will attempt to resolve in good faith. If the executives are unable to resolve the Dispute within nine weeks after the notice of Dispute, arbitration may be commenced by either party. The then-current CPR Non-Administered Arbitration Rules will govern, there will be one arbitrator, and the place of arbitration will be metropolitan Dallas. Each party is limited to two days of evidence and three live witnesses. The arbitrator’s decision will be final and binding. Each party must bear its own costs of the dispute resolution and the parties must bear equally the costs of any arbitrator or mediator.