

Terms of Sale

GENERAL CONDITIONS:

Burdick & Burdick, Inc. publishes its price lists and/or product catalogs and transmits the same to its dealers, customers, and others (any such party being herein referred to as the "Buyer") in anticipation of their placing orders for equipment sold by or manufactured by Burdick & Burdick, Inc. Subject to the "Standard Terms & Conditions of Sale of Burdick & Burdick, Inc." herein below set forth, Burdick & Burdick, Inc. offers to sell such equipment to Buyer. By SUBMITTING A WRITTEN, TELEPHONE, OR VERBAL ORDER A BUYER INDICATES ITS AGREEMENT TO AND ACCEPTANCE OF THE "STANDARD TERMS & CONDITIONS OF SALE OF BURDICK & BURDICK, INC." SET FORTH BELOW. ANY DIFFERENT, INCONSISTENT OR ADDITIONAL TERM PROPOSED BY BUYER IS HEREBY OBJECTED TO AND REJECTED BY BURDICK & BURDICK, INC. UNLESS EXPRESSLY ACCEPTED IN WRITING BY AN OFFICER OF BURDICK & BURDICK, INC. WITHIN TEN (10) DAYS OF ITS RECEIPT OF SUCH ORDER. Shipment of goods by Burdick & Burdick, Inc. following receipt of Buyer's purchase order, shipping request or similar forms containing different, inconsistent or additional printed terms and conditions from the terms contained herein shall not constitute or be deemed acceptance of such different, inconsistent or additional terms. Failure of Burdick & Burdick, Inc. to enforce any of the terms listed herein does not constitute a waiver of the terms and conditions of sale. Burdick & Burdick, Inc. shall have the right to reject and refuse to process any order for any reason whatsoever.

PRICES, QUOTATIONS AND SPECIFICATIONS:

Prices and specifications published in price lists and catalogs are subject to change without notice. Unless otherwise stated in the quotation, all price quotations are good for 30 days from their date. Unless otherwise stated, prices listed or quoted do not include local, state, or federal taxes, insurance, or shipping cost. Wherever applicable, insurance, freight charges, and any taxes will be added to the invoice as a separate charge to be paid by the Buyer.

PAYMENT TERMS:

Payment terms are as stated on the invoice and are subject to change at any time. Cash discounts, if any are indicated, will apply only on the net amount of the invoice after deducting transportation charges, insurance costs and taxes, unless otherwise specified, and will be allowed only if taken within the time stated, and provided there are no past due items. Cash discounts will not be allowed on special order items or "NSI" items. The maximum legal interest rate will be charged on accounts which are past due. Should the account be placed for collection, or in the hands of an attorney for such, the Buyer agrees to pay all costs associated with such collection, including court costs, and reasonable attorney fees. Burdick & Burdick, Inc. reserves the right to require payment in advance, or satisfactory security, for any shipment of equipment if, in the opinion of Burdick & Burdick, Inc., the financial responsibility of Buyer is or becomes unsatisfactory or if, but not limited to, the Buyer has failed to pay any invoice when due or to comply with any prior agreement with Burdick & Burdick, Inc. If Buyer fails to make payment in accordance with the terms hereunder, or fails to comply with any provision hereof, Burdick & Burdick, Inc. may, at its option (and in addition to other remedies), cancel any unshipped portion of an order.

DELIVERY, TRANSPORTATION COSTS, AND CLAIMS:

Delivery shall be F.O.B. El Paso, Texas. Delivery of goods to a carrier shall be deemed delivery to Buyer, and thereupon risk of loss or damage, shall be Buyer's. All costs of transportation shall be paid and borne by the Buyer unless otherwise specified in writing by Burdick & Burdick, Inc. Transportation costs may be charged to the Buyer "charges collect" or added to the invoice as a separate charge, at the option of Burdick & Burdick, Inc. Any claim by Buyer against Burdick & Burdick, Inc. for shortage or damage occurring prior to such delivery must be made in writing within seven (7) days after receipt of shipment and accompanied by original transportation bill signed by carrier noting that carrier received goods from Burdick & Burdick, Inc. in the condition claimed by the Buyer.

DELAYS:

Burdick & Burdick, Inc. shall not be liable, either directly or indirectly, for delays in shipment or default in delivery for any reason, nor shall any order be canceled, because or as a result of any delays in meeting scheduled shipment dates.

WEIGHTS:

Seller's weights taken at the place of shipment shall govern.

WARRANTIES:

SELLER MAKES NO WARRANTIES OF ANY KIND WHETHER EXPRESSED OR IMPLIED INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY, DURABILITY, DESIGN, OPERATION, DESCRIPTION, QUALITY, CONDITION, FITNESS FOR USE OR SUITABILITY OF THE EQUIPMENT, OR ANY COMPONENT THEREOF, OR AS TO QUALITY OF MATERIAL OR WORKMANSHIP OF THE EQUIPMENT OR ANY COMPONENT THEREOF, OR CONFORMITY OF THE EQUIPMENT TO THE PROVISIONS AND/OR SPECIFICATIONS OF ANY PURCHASE ORDER RELATING THERETO. In no event shall Burdick & Burdick, Inc. be liable to the Buyer or to any third party for consequential, incidental, or special damages resulting from or in any manner related to the equipment, its design, use manufacture, or inability to use the same, including without limitation to damages arising out of or in any manner relating to the delivery or operation of the equipment or any delay with respect to its delivery or operation. Burdick & Burdick, Inc. shall be in no way responsible for the proper use and service of the equipment.

SPECIAL ORDERS:

Burdick & Burdick, Inc. may manufacture or have manufactured equipment according to plans and specifications submitted by the Buyer. Such equipment may not be returned or orders canceled without prior written approval of Burdick & Burdick, Inc. and Buyer shall remain liable for all costs associated with such equipment, including the purchase price, freight charges and return charges. Buyer warrants it has the rights to the plans and specifications submitted and that it will deem Burdick & Burdick, Inc. harmless from and indemnify it against any loss from infringement claims.

RETURNS:

Burdick & Burdick, Inc. will not accept any returns without prior written approval. No returns will be accepted after 30 days from invoice. Items returned must be in original factory packaging. Items that have been installed are not eligible for return. All merchandise accepted for return will be subject to a minimum 20% restocking charge payable in advance or with the returned merchandise. Merchandise accepted for return by Burdick & Burdick, Inc. must be returned by prepaid freight. Burdick & Burdick, Inc. will not accept returns of electrical equipment or products and equipment that have been used in conjunction with petroleum products or hazardous or toxic materials, substances or wastes or that have been contaminated with hazardous or toxic materials, substances or wastes or petroleum products under any circumstances. Special order items or "NSI" items may not be returned.

CHARGE BACKS:

Burdick & Burdick, Inc. will accept no charge backs of any kind.

TITLE:

Buyer hereby grants and acknowledges that Burdick & Burdick, Inc. shall have a purchase money security interest in the equipment purchased by Buyer until such time as complete payment is made therefore. Buyer agrees to execute any and all documents necessary to perfect such security interest.

APPLICABLE LAW AND FORUM:

The agreement between the Buyer and Burdick & Burdick, Inc. shall be governed by the Uniform Commercial Code and other applicable laws of the State of Texas. The Buyer and Burdick & Burdick, Inc. agree to submit to the jurisdiction of the appropriate State or Federal Court within the State of Texas for purposes of resolving any dispute or claim arising in connection with said transaction.