

SUNCO POWDER SYSTEMS INC - TERMS AND CONDITIONS

1. **PROPOSAL:** This proposal, including any materials submitted herewith, remains the property of Sunco Industries, Inc. (henceforth shown as Sunco in this document) and is subject to return at Sunco's request; it contains confidential information and Purchaser agrees that such information will not be disclosed or reproduced in whole or in part. The price does not include erection, freight charges, installation or service unless otherwise noted. A supplemental proposal on these items will be submitted on request. Delivery dates are approximate.
2. **DRAWINGS:** Sunco drawings are confidential, for informational purposes only, unless certified, and subject to alterations by Sunco to reflect advances and improvements. Purchaser is to provide the drawings of all foundations, construction reinforcement and required housing based upon Sunco's equipment drawings.
3. **STANDARDS, STATE AND LOCAL:** Unless a specific state or local standard has been accepted in writing by Sunco, Purchaser is responsible for compliance with state and local standards and for obtaining whatever approvals, waivers, variances, licenses and permits state and local authority may require. Any fees or expenses incurred by Purchaser or Sunco in discharging said responsibility shall be to Purchaser's account.
4. **EQUIPMENT WARRANTY AND REMEDY:** (A) Sunco warrants only to the original purchaser that equipment sold hereunder against defects in workmanship and material under normal use and service excluding erosion or corrosion for a period of one (1) year from date of shipment to Purchaser except components not manufactured by Sunco which will bear only the warranty of the manufacturer. Purchaser shall promptly report all asserted defects in the equipment to Sunco and shall afford Sunco a reasonable opportunity to inspect all asserted defects. Sunco's entire liability, whether under warranty, contract negligence, or otherwise shall be limited to repair or replacement of the equipment found to be defective in workmanship or material within one (1) year from date of shipment to Purchaser, labor excluded, at such location as may be determined in the sole discretion of Sunco with Purchaser responsible for all such delivery and related expenses. (B) The Foregoing obligations are in lieu of all other obligations and liabilities and all warranties of merchantability or otherwise, expressed or implied in fact or by law, and state Sunco's entire and exclusive liability for any claim or damages in connection with the sale, design, suitability or fitness for use, installation or operation of the equipment covered in this agreement. (C) Purchaser shall be liable for and indemnify Sunco against any and all claims, losses, or causes of action or judgments of any kind arising from or on account of personal injuries or death or damages to property resulting from or caused by Purchaser's negligent or improper installation, operation or maintenance of the equipment.
5. **LIMITATION OF LIABILITY:** Anything elsewhere herein or in purchaser's order expressed or implied to the contrary notwithstanding, Sunco shall in no event be liable for any special, consequential or liquidated damages whatsoever, whether based on contract, tort or any other legal theory.
6. **CLAIMS:** Any action for breach of contract or warranty, strict liability or based on negligence must be commenced within one (1) year after the action has accrued and any recovery there from will be limited to the replacement F.O.B. Sunco's plant of equipment and parts therefore as determined by Sunco's list price applicable on the date of any recovery. Sunco will not be liable for any other loss or expenses or consequential damages, including, but not limited to, liabilities for negligence or arising from Federal, State or local government action.
7. **TAXES AND OTHER CHARGES:** Should this transaction be subject to any tax, assessment, or other charge under any statutory provisions for the ownership, sale, or rental or use of said equipment, Purchaser hereby assumes sole liability for such charges and will promptly report and pay them. In the event Sunco is required to pay such charges, Purchaser agrees to reimburse Sunco. If Purchaser is purchasing for resale or claims this to be an exempt transaction under the laws applicable, it hereby agrees to furnish Sunco with the proper form of certification. Sunco's acceptance of such certificate shall not constitute a waiver of any rights to reimbursement as aforesaid.
8. **ENTIRE AGREEMENT MUST BE IN WRITING:** The entire agreement of Sunco and Purchaser is expressed exclusively in the terms, covenants and conditions implicit or set forth in Purchaser's purchase order and in Sunco's acceptance thereof. No agent, representative or employee of Sunco has authority to agree, represent or warrant otherwise, except Sunco's officers, and then only in writing. Any changes to Purchaser's purchase order or Sunco's acceptance thereof must be in writing and signed of initialed and dated by the party to be obligated thereby.
9. **STORAGE:** Any item of the product(s) on which manufacture or delivery is delayed by causes within the Purchaser's control or causes which affect Purchaser's ability to receive the product(s) may be placed in storage by Sunco for Purchaser's account and risk.
10. **PATENTS:** Sunco shall hold Purchaser harmless against any claim that Sunco equipment infringes United States apparatus patents.
11. **PAYMENT TERMS:** Unless other terms are specified, pro rata payments shall become due as shipments are made. If shipment is delayed by Purchaser, date of readiness for shipment shall be deemed to be date of shipment for payment purposes. If manufacture is delayed by Purchaser, a payment shall be made based on purchase price and percentage of completion, balance payable in accordance with the terms as stated. If retention of part of the purchase price is provided for herein, such retention shall be subtracted from the final invoice(s) if the event upon which payment of the retained amount is based, is delayed through no fault of Sunco, the retained amount shall be paid within 60 days after final shipment. If in Sunco's judgment, Purchaser's financial condition at any time does not justify terms specified, Sunco may require full or partial payment as a condition to commencing or continuing manufacture, or in advance of shipment, or if shipment has been made, recover the equipment from the carrier. If payments are not made in conformance with the terms stated herein, the contract price shall, without prejudice to Sunco's right to immediate payment, be increased by 1.5% per month on the unpaid balance, but not to exceed the maximum amount permitted by law.
12. **CANCELLATION, SUSPENSION, OR DELAY:** After acceptance by Sunco, Purchaser's order or contract is not subject to cancellation, suspension, or delay except upon payment by Purchaser of appropriate charges which shall include all costs incurred and commitments by Sunco to date of cancellation, suspension, or delay, plus a proportionate charge for overhead and profit. In addition, in cases of cancellation, suspension, or delays caused by Purchaser's failure to forward Engineering or Manufacturing approvals, or delays of over thirty (30) days in forwarding shipping instructions from date of notification of readiness to ship, as required in this proposal, Sunco may, set new delivery dates, or when applicable, place equipment in public or private storage at Purchaser's expense.
13. **TITLE AND INSURANCE:** Title to the product(s) and risk of loss or damage shall pass to Purchaser upon tender of delivery, except that a security interest in the product(s) or any replacement shall remain in Sunco, regardless of mode of attachment to realty or other property, until the full price has been paid in cash. Purchaser agrees to do all acts necessary to perfect and maintain said security interest, and to protect Sunco's interest by adequately insuring the product(s) against loss or damage from any external cause with Sunco's name as insured or co-insured.
14. **CONFORMANCE TO FEDERAL OCCUPATIONAL SAFETY AND HEALTH ACT (OSHA):** Sunco's equipment is designed in principle to meet the general conditions for safety as required by OSHA. However, because of the general and often subjective nature of OSHA requirements and because the proper installation and operation of the equipment will have significant effect on compliance to such requirements, Sunco does not warrant or guarantee, expressly or implicitly, that Sunco's equipment conforms in all respects to OSHA requirements.
15. **WAIVER, ALTERATION OR MODIFICATION:** No waiver, alteration or modification of the foregoing terms and conditions, except as noted in the text of this proposal shall be valid unless made in writing and signed by an authorized official of Sunco. Any additions or modifications to the equipment, materials, drawings, etc. will be at Purchaser's expense.
16. **PROPOSAL:** Proposal prices are firm for thirty (30) days from date of this quotation.
17. **ACCEPTANCE:** Sunco equipment is sold pursuant to the foregoing terms and conditions whether acceptance occurs as provided in Execution section, by receipt of a purchase order or acknowledgment, or by action of the parties. No language contained in any purchase order or other Purchaser's documents will be effective to supplement or alter these terms and conditions unless accepted in writing by an officer of Sunco. Any different or supplemental terms in Purchaser's documents are hereby objected to. In cases where different or supplemental terms are contained in Purchaser's documents, it is the Purchaser's responsibility to call the matter to the attention of Sunco so that the matter may be discussed. Failure to inform Sunco of such supplemental or different terms in a separate writing shall constitute acceptance of Sunco's terms and conditions.