



## STONE ENTERPRISES, INC. GENERAL TERMS AND CONDITIONS OF SALE

- 1. OFFER AND ACCEPTANCE.** Terms stated in the proposal supersede this document. Please make purchase orders out to Stone Enterprises, Inc., 10011 J Street, Omaha, NE 68127, USA. Submittal of a purchase order, execution of this proposal by Customer or allowing Stone Enterprises, Inc. ("S.E.") to commence work constitutes an offer by Customer to purchase the services ("Services") and the products and materials (the "Goods") indicated in strict accordance with the terms and conditions stated below. S.E. reserves the right to accept or reject such offer and shall not be required to give any reason for non-acceptance. This proposal shall not become binding upon S.E. until accepted by S.E. as indicated by a signature on the APPROVED line by an authorized representative of S.E.. Upon S.E.'s acceptance as set forth above, this proposal together with the terms and conditions set forth herein shall constitute the entire agreement between the parties (this "Agreement"). Any additional or differing terms and conditions contained on any purchase order submitted by Customer (whether or not the terms purport to materially alter this Agreement) are rejected by S.E. and become no part of the agreement between Customer and S.E. unless expressly agreed to in writing by S.E..
- 2. PRICE.** The prices contained in this Agreement are firm upon acceptance by S.E. subject only to changes as contemplated in paragraph 12.
- 3. PURCHASE MONEY SECURITY INTEREST.** Unless the Goods and Services are paid in full in cash at the time of delivery, S.E. retains and Customer hereby grants to S.E. a purchase-money security interest (PMSI) in the Goods, including all accessories, spare parts, special fittings, and tools thereof, and all additions, accessions, increases, improvements, renewals, substitutions, or replacements thereof (collectively, the "Collateral"), together with all proceeds from any sale or other disposition of all or any part of the Collateral to secure the full amount owed therefore, together with all interest, fees, and penalties. Unless Customer shall execute a separate security agreement with S.E. covering the Collateral, this Agreement shall constitute a security agreement for the Collateral. It is at S.E.'s discretion to request the customer to sign the PMSI based on balance due after shipment and/or Customer's credit rating. Fees to file the PMSI will be at S.E.'s expense. Promptly upon request, Customer agrees to execute a note or other evidence of Customer's indebtedness for the Collateral, which shall only constitute evidence of such indebtedness and not a payment or satisfaction of such indebtedness. Promptly upon request, Customer shall, at its expense, do any act and execute, acknowledge, deliver, file, register, record, and ratify all documents requested by S.E., in S.E.'s discretion, to perfect S.E.'s security interest in the Collateral, including, but not limited to, any financing statement. Customer hereby irrevocably appoints S.E. its attorney-in-fact, which such appointment shall be coupled with an interest, to do such acts and to execute and file all such documents on Customer's behalf, which power is coupled with an interest, and which power is delegable by S.E.. Customer acknowledges that S.E.'s signature or the signature of its designee on such documents to be the same as Customer's own for all purposes and with the present intent to authenticate the document. Customer represents and warrants to S.E. that (a) Customer has the power to make, deliver, and perform under this Agreement; (b) the person executing this Agreement is authorized to do so on behalf of Customer; (c) this Agreement constitutes a valid obligation of Customer, legally binding upon it and enforceable in accordance with its terms; (d) all credit, financial, and other information submitted to S.E. in connection with this Agreement is and shall be true, correct, and complete; (e) the Customer: if an individual, has his or her principal residence in Nebraska, or in state otherwise indicated on the front of this Agreement, if a registered entity, is registered under the laws of the State on front of this Agreement; if a non-registered entity, has its principal place of business in Nebraska, or in state otherwise indicated on front of this Agreement; (f) Customer's name set forth on the front of this Agreement is Customer's full, legal name; and (g) the Collateral is and shall remain located in the State of Nebraska or state otherwise indicated on the front of this Agreement. A breach by Customer in the terms, representations, or warranties of this Agreement or the terms of any invoice for the equipment hereunder, including, but not limited to, failure to pay in full the amount owed for the Goods and Services within the time periods stated herein, shall constitute an event of default, and all amounts owing to S.E. shall be immediately due, and S.E. shall have all rights and remedies in law or in equity, including, but not limited to, the Nebraska Uniform Commercial Code and as set forth herein.
- 4. TERMS OF PAYMENT.** Fifty percent (50%) of total contract value is due prior to S.E.'s acceptance of this Proposal. Forty percent (40%) of the total contract value is due prior to shipment of Goods. Ten percent (10%) of the total contract value is due thirty (30) days after delivery of Goods (Incoterms 2010), all SUBJECT TO APPROVED CREDIT. If the shipment is delayed by the Customer from the original mutually agreed upon shipment date (established at the time of Customer's acceptance of S.E.'s approval drawing), the payment required prior to shipment will be due no later than thirty (30) days after the original agreed upon ship date. If the start up is delayed by the Customer from the original mutually agreed upon start up date, final payment will be due no later than thirty (30) days from the original mutually agreed upon ship date. On amounts not paid within terms, S.E. will charge interest on the account at a rate equal to the lesser of (1) 12% per annum, or (2) the maximum rate permitted by applicable law.
- 5. PERFORMANCE.** S.E. will build the Goods according to the signed approval drawing. S.E. reserves the right to correct any errors and/or omissions. Any alteration or deviation from specifications listed in the accepted quotation involving additional costs, above and beyond this Agreement, will be effective only upon written mutual agreement between Customer and S.E. and such additional costs will be the responsibility of Customer. S.E. reserves the right to adjust prices due to material, energy and/or transportation surcharges. S.E. is not liable for failure or delays in delivery where the failure or delay is due to force majeure events such as strikes, fires, accidents, national emergency, failure to secure materials from the usual sources of supply, or any other circumstances beyond S.E.'s control, whether of the class of causes enumerated above or not, which prevent S.E. from making deliveries in the usual course of business. Upon the occurrence of any of the above events, S.E. may cancel this Agreement without any liability on S.E.'s part. Acceptance of the Goods by Customer constitutes a waiver of all claims for delay.
- 6. TAXES.** All prices in this Agreement are exclusive of any applicable fees, duties and taxes. The amount of any present or future occupation, sales, use, privilege, service, excise, federal, state, local, foreign or other similar tax for which S.E. is liable, either on its own behalf or on behalf of the Customer, with respect to any Goods or Services provided Customer, is in addition to the amounts quoted and shall be paid by Customer. Customer must provide a valid copy of a sales tax exemption certificate or letter stating sales and use tax is self-assessed with the purchase order. Otherwise, all orders are subject to sales tax.

- 7. PACKING AND SHIPPING.** Goods and Services provided under this Agreement are furnished Ex Works S.E.'s point of manufacture (Incoterms 2010) excluding appropriate skidding/crating for chosen mode of transport and all Goods will be shipped by common carrier unless contrary shipping instructions are provided herein. Customer will pay all crating, freight and handling charges from S.E.'s manufacturing location unless otherwise stated herein. Special crating needed due to local requirements (such as ISPM-15) will be provided at an additional cost payable by Customer.
- 8. CLAIMS AND CREDITS.** S.E. is not responsible for shortages or errors unless written claims are made to S.E. within five (5) days of Customer's receipt of Goods. In any event, claims of shortages or damage should be noted immediately upon receipt of the Goods on the bill of lading or delivery ticket. If there is a shortage or the Goods have been damaged in transit, a notation to that effect must be made upon Customer's receipt on the carrier's bill of lading or delivery ticket (receipt). Damaged Goods should not be unloaded until they have been thoroughly inspected and all damages noted on the delivery ticket or bill of lading. If Customer requests that the Goods be shipped via common carrier, freight charges do not include insurance. S.E. will not insure the Goods unless specifically instructed to do so. All charges relating to insurance of Goods will be made to the Customer's account and are due and payable upon receipt of S.E.'s invoice unless they are billed directly to Customer by the insurance company.
- 9. RETURNS.** No Goods shall be accepted for return without a prior written authorization of S.E. (RMA). There will be a twenty-five percent (25%) restocking charge on all returned Goods accepted by S.E.. No returns will be accepted after thirty (30) days from the date of delivery to Customer. S.E. may, in its sole discretion, refuse to authorize or place conditions on, any request for return authorization. Customer will reimburse S.E. for any cost S.E. incurs to put Goods in marketable condition. Goods which have been put into service may not be returned.
- 10. SUSPENSION OF PERFORMANCE.** If Customer fails to pay any amount owed to S.E., or if in S.E.'s judgment there is reasonable doubt concerning Customer's financial responsibility, S.E. may suspend performance of or terminate this Agreement without liability and without prejudice to other remedies, as to further delivery and work, and no forbearance or course of dealing affects this right. Notwithstanding any previous shipment on credit, S.E. may, at any time, demand payment on delivery, require payment in advance or upon tender of shipping documents.
- 11. VERBAL ORDERS.** S.E. telephone desks are maintained and staffed for immediate service. If shipment of Customer's verbal order is made before written confirmation is received by S.E., such orders will be considered as accurate as recorded by S.E.'s inside sales personnel. To avoid duplication of verbal orders please mark confirming orders prominently and clearly "confirmation." Otherwise, duplications will result and the charges involved will be at Customer's expense. Acceptance of all oral orders are expressly limited to these terms and condition stated herein.
- 12. CHANGES.** Should Customer desire to change the specifications contained in this Agreement while work is in progress, S.E. will make reasonable efforts to accommodate such changes subject to a written amendment signed by both parties to this agreement detailing impact on contract pricing and completion/delivery time. Customer is responsible for and agrees to pay for any additional services, labor, or material necessary to make such changes. Additionally, Customer is responsible for and agrees to pay for any services, labor, or material which are discarded or unusable because of such changes.
- 13. TESTING MATERIALS.** Customer will furnish to point of manufacture at its expense sufficient product, sample packages, packaging materials, complete manufacturing data and other material necessary for full testing of equipment prior to delivery if requested by S.E..
- 14. COMPLETION.** Completion dates are approximate only. No completion date requested or specified by Customer is binding on S.E. unless an officer of S.E. specifically agrees to the request or specification in writing. Shipment is "ex works" from S.E.'s point of manufacture (Incoterms 2010).
- 15. WARRANTY OF MATERIALS AND WORKMANSHIP.** S.E. guarantees all materials to be as specified. S.E. warrants all Services performed by it will be completed in a workmanlike manner according to standard practices. S.E. warrants all Goods provided by it against defects in materials and workmanship under this Agreement for 12 months from date of delivery, and will repair or replace Ex Works point of manufacture the Goods S.E. finds defective. This warranty does not include the cost of labor to remove or re-install any defective Goods, nor does it include cost of handling, shipping or transportation involved in supplying replacements for defective Goods. On Goods furnished by S.E., but manufactured by others, S.E. will extend the same warranty it receives from the manufacturer. No liability attaches to S.E. until the Goods are fully paid for, and then the liability is limited to the cost of repairing or replacing the defective Goods. Any defect due to or connected with any of the following is not covered by this warranty: (1) products or materials or design provided by Customer or on behalf of Customer; (2) negligence or other improper acts or omissions of Customer, its employees or agents, or third parties; (3) the use of spare parts other than original spare parts supplied by S.E.; (4) improper installation or alterations made without S.E.'s consent in writing; (5) design errors or omissions which were unknown to S.E. and Customer and which are detectable only through operation of the Goods after installation; and (6) failure of Customer to follow S.E.'s design, operation or installation recommendations. In particular, any defects that are caused by or connected with normal wear and tear or with any use, maintenance, service or operation of the Goods or any part of the Goods which is not in conformance with S.E.'s or the manufacturer's manuals, instructions or specifications are not covered by this warranty. All warranty claims must be reported to and work must be completed by S.E. before warranty expires. THE WARRANTIES SET FORTH ABOVE ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, IN LAW OR IN FACT, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, WARRANTY OF NONINFRINGEMENT, WARRANTIES CREATED BY ANY AFFIRMATION OF FACT OR PROMISE OR BY ANY DESCRIPTION OF THE GOODS AND SERVICES AND ANY OTHER WARRANTIES WHATSOEVER CONTAINED IN OR CREATED BY THE UNIFORM COMMERCIAL CODE OR SIMILAR LAW AS ADOPTED IN THE STATE OF NEBRASKA. THE WARRANTIES SET FORTH ABOVE ARE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR A DEFECT IN MATERIALS OR WORKMANSHIP.

- 16. PATENTS.** The Goods can be employed as a part of or in a large number of complete systems and processes, certain of which are covered by presently existing or future letters of Patent or patent applications owned by or licensed to S.E.. Notice is hereby given that the sale of S.E. equipment does not include an express or implied license to construct any system or practice any process covered by patents or patent applications owned by or licensed to S.E.. Such licenses will be subject to a separate written agreement and will be non-transferrable.
- 17. LIMITATION OF LIABILITY.** All claims, causes of action or legal proceedings against S.E. arising from S.E.'s performance under this Agreement must be commenced by Customer within the express warranty period specified in Section 15 above. Failure to commence any claim, cause of action or legal proceeding within such period constitutes a voluntary and knowing waiver of the claim, cause of action or legal proceeding by Customer. S.E.'S LIABILITY FOR DIRECT OR COMPENSATORY DAMAGES MAY NEVER EXCEED THE TOTAL MONETARY VALUE OF THIS CONTRACT NOR IS S.E. LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES. THESE LIMITATIONS ON LIABILITIES APPLY UNDER ALL THEORIES OF LIABILITY OR CAUSES OF ACTION, INCLUDING CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE) OR STRICT LIABILITY. THE ABOVE LIMITATIONS INURE TO THE BENEFIT OF S.E.'S SUPPLIERS AND SUBCONTRACTORS.
- 18. TERMINATION.** Once this Agreement is formed pursuant to Section 1 above and S.E. has received the down payment as specified herein, S.E. will promptly commence the purchase of materials and the provision of engineering and administrative services necessary and associated with the performance of this Agreement. Accordingly, Customer may terminate this Agreement only on the terms and conditions, and upon payment of the termination fees, as described herein. Any notice of termination by Customer must be in writing and will only become effective upon actual receipt (by S.E. at the address on this document) and acknowledgement by an authorized S.E. employee. Customer's termination rights (and attendant payment obligations) are as follows:
- (1) Prior to Start of Manufacturing - If S.E. receives written notice of termination of this Agreement from Customer prior to the time S.E. commences manufacturing the product or products specified herein, Customer shall be liable for payment of a termination fee equal to the sum of the following amounts:
    - (a) all materials purchased by S.E. in connection with this Agreement prior to S.E.'s receipt of notice of termination (The price of such materials, plus any administrative fees, material handling fees, freight charges, tariffs, taxes or other charges incurred by S.E. in connection with such purchase, shall be determined by S.E., after all materials and charges are received. S.E. will provide an invoice for these items); and
    - (b) the cost of all engineering and administrative services performed by S.E. associated with this Agreement prior to S.E.'s receipt of notice of termination (as determined by S.E. in accordance with its pricing for such services as established by S.E. from time to time in its discretion).

Manufacturing is defined as the actual fabricating and/or welding and/or assembly of components associated with this Agreement. S.E. shall be entitled to apply any down payment received by it to the payment of the termination fee. If Customer's down payment is insufficient to pay the termination fee described above, Customer will nevertheless be liable to S.E. for any deficiency, and Customer shall promptly pay any such amount on demand.
  - (2) After Start of Manufacturing - If S.E. receives written notice of termination of this Agreement from Customer after S.E. has commenced manufacture of any of the products identified in this Agreement, Customer is then obligated to pay S.E. the full Agreement price.
  - (3) Storage Fees - In either of the situations listed in paragraphs (1) or (2) above, S.E. will store the associated Agreement materials for the Customer for a \$2,000 monthly charge. The effective date of storage is 30 days after termination notification from Customer to S.E.. S.E. will ship materials to Customer's designated location if Customer chooses not to have S.E. store the materials. Customer is responsible for all crating and packaging (labor and materials) required for shipping materials along with all shipping charges to Customer's facility.
- 19. FREIGHT CHARGES.** This Agreement is based on providing the Goods with the Services described "ex works" point of manufacture (Incoterms 2010). Customer shall take delivery of the Goods as soon as they are placed at its disposal at the agreed place. Customer shall pay all export taxes, or other fees or charges, if any, levied for transport of the Goods. Customer shall bear all costs of and risks to the Goods from the time it is obligated to take delivery of the Goods. Customer pays all costs and charges incurred in obtaining the documents issued in the country of origin or shipment, or both, which are required either for purposes of exportation or of importation at destination.
- 20. GOVERNING LAW AND JURISDICTION.** This Agreement shall be construed and enforced in accordance with, and all questions concerning the validity, construction, interpretation and performance of this Agreement shall be governed by, the laws of the State of Nebraska, USA without giving effect to provisions thereof regarding conflict of laws. Customer hereby irrevocably submits to the exclusive jurisdiction of the Douglas County, Nebraska District Court in respect of any claim relating to this Agreement, or the Goods and/or Services, and hereby waives, and agrees not to assert, as a defense in any action, suit or proceedings in which any such claim is made that it is not subject thereto or that such action, suit or proceeding may not be brought or is not maintainable in such courts, or that the venue thereof may not be appropriate or that this Agreement may not be enforced in or by such courts.
- 21. COSTS TO S.E..** If S.E. incurs any costs or expenses in the collection of monies due S.E. from Customer, or enforces any of its rights or privileges under this Agreement, Customer, upon demand, shall reimburse S.E. for all its costs and expenses (including reasonable attorneys' fees).

**22. INSTALLATION.** Goods are transported, installed and connected at Customer's risk and expense. S.E. may furnish a service technician, upon request, to assist in the supervision of the initial installation and startup of the Goods. Conditions are listed below (if applicable):

- (1) Customer shall furnish, as an independent contractor and not as an employee of S.E., labor, cranes, cribbing, oil, supplies, station operating force, steam, electricity, water, inhibitors and other material, supplies and utilities required to install and operate the Goods and furnish free available crane and switching services and the services of operators and other employees that are necessary in connection with the crane and switching services.
- (2) S.E. is not responsible for products or materials furnished by Customer, nor is S.E. responsible for the construction of foundations or for the nature of the soil upon which they are built.
- (3) Unless otherwise stipulated, these services are available to Customer on the following terms unless otherwise agreed to in writing:
  - (a) Charges will be at the current hourly/daily rate for each standard hour/day worked or spent in travel to and from the job site. Local living expenses, all travel expenses from the time of leaving base location until return to base location and all shipping charges for any special tools and materials are additional charges at actual cost.
  - (b) Hours/days worked in excess of the normal day are billed at the then current overtime rate.
  - (c) The minimum billing per person for less than four hours worked or spent in travel is four hours (or 50% of the daily rate). The minimum billing per person for more than four hours but less than eight hours worked or spent in travel is eight hours (or the full daily rate).
  - (d) The times when the service technician is ready, willing and able to work at the job site is considered time worked for the purposes of this paragraph, even if his services are not in fact utilized.
  - (e) The use of a S.E. provided service technician shall not relieve the responsibility of Customer for safeguarding materials and services furnished by S.E..
- (4) S.E. IS NOT IN ANY EVENT LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES.
- (5) Adherence of Goods to codes or standards, whether local, national, or enacted/enforced by another entity, shall be the exclusive responsibility of the Customer and/or Customer's contractor/sub-contractor.

**23. CONSUMER LAWS.** The laws of certain jurisdictions prohibit the limitation of certain warranties and the remedies and damages for the breach of such warranties. If any provision of this Agreement is in conflict with any statute or rule of law of any state or district in which jurisdiction may lie for enforcement, then such provision shall be deemed null and void to the extent, but only to the extent, that it may conflict therewith, and the remaining provisions hereof shall not be invalidated, but may be reformed by the court to the extent necessary to protect the rights of the parties.

**24. ENTIRE AGREEMENT.** THIS AGREEMENT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN S.E. AND CUSTOMER. NO PRIOR UNDERSTANDING, AGREEMENTS OR REPRESENTATIONS, WRITTEN OR VERBAL, EXPRESS OR IMPLIED, ARE A PART OF THIS AGREEMENT. NO SUBSEQUENT MODIFICATION, AGREEMENT OR REPRESENTATION IS A PART OF THIS AGREEMENT UNLESS EXPRESSLY AGREED TO IN WRITING BY S.E.'S AUTHORIZED REPRESENTATIVE.

TO THE CUSTOMER: Do not sign this proposal before you read it or if it contains blank spaces. You are entitled to an exact copy of the proposal you sign. THIS PROPOSAL IS SUBJECT TO THE FOREGOING TERMS AND CONDITIONS. Customer acknowledges he/she/it has read this entire proposal, accepts it and acknowledges receipt of an exact copy thereof. This proposal is not binding upon S.E. until approved by an authorized representative of S.E. International, Inc.

STONE ENTERPRISES, INC.	CUSTOMER (As identified on proposal)
Signed: _____ Salesperson Signature	Signed: _____ Customer's Authorized Signature
Approved: _____ Stone Enterprises Authorized Representative Signature	Title: _____
Date: _____	Date: _____
	Purchase Order # _____