



ADDITIONAL TERMS AND CONDITIONS OF PROPOSAL

Monarch Welding & Engineering, Inc. ("Monarch") and the Customer (the party receiving the proposal letter) agree that these Additional Terms and Conditions (all pages of which are collectively referred to hereinafter as the "Agreement") are a binding and included as part of the proposal received. Nothing in this Agreement, or any interest under it, shall be assigned by Customer without the prior written consent of Monarch.

1. **CHANGES / MODIFICATIONS / ACCEPTANCE:** No modification, change, addition, or alteration of this Agreement shall be deemed effective unless in writing and signed by Monarch and the Customer. Customer acknowledges that any modification, change, addition, or alteration to the Scope of Work may result in an increase of the Total Contract Amount and/or a change in the completion date. Customer hereby agrees that Monarch will be entitled to an overhead and profit fee as allowed by industry standards, which shall be included in the Total Contract Amount. The Total Contract Amount does not include any extras not specified in the Scope of Work that are necessary to complete the project as required by code(s) or to satisfy Customer. Issuance of a purchase order to Monarch by Customer will constitute acceptance of each term and condition of the proposal and this Agreement. Any additional terms or conditions stated in the Purchase Order or other written communication accepting this proposal, or by alteration of the proposal form, are unacceptable to Monarch, and are expressly rejected by Monarch and shall not become part of this agreement unless specifically approved by written response of Monarch. **THE TERMS OF THIS AGREEMENT ARE EXCLUSIVE.**

2. **SCHEDULING OF WORK:** Monarch's work shall be performed when scheduling, materials, and weather conditions permit. Monarch shall not be held responsible or liable for any loss, damage, or delay caused by weather conditions, acts of God, labor strikes, materials shortages, civil unrest, transportation delays, or any other cause not within Monarch's direct and sole control. Customer agrees that in no event shall Monarch be liable to Customer for any claim of incidental or consequential damages, delay damages, lost profits, liquidated damages, or other form of indirect or similar damages or liability. The proposal is based on continuous and uninterrupted work unless specifically stated otherwise with a proposal clarification. Order, Sequence and Scheduling of Monarch's work is to be agreed upon with Customer prior to issue of purchase order. Monarch is to be compensated utilizing Monarch's standard T&M rates for any additional or out of scope work, extended rental, delays, interruptions, schedule changes, changes to order of work, sequence or timing alteration beyond Monarch's control.

3. **LIMITED WARRANTY:** MATERIALS ARE WARRANTED AS PER THE MANUFACTURER'S WARRANTY ONLY, A COPY OF WHICH, IF APPLICABLE, WILL BE PROVIDED TO CUSTOMER UPON REQUEST. MONARCH WARRANTS ITS LABOR AND WORKMANSHIP TO BE FREE FROM DEFECT FOR A PERIOD OF ONE (1) YEAR FROM THE DATE OF COMPLETION OF ITS WORK (NOT THE DATE OF ANY REPAIR OR WARRANTY WORK) PROVIDED, HOWEVER, THAT THIS LABOR WARRANTY IS NON-TRANSFERRABLE OR ASSIGNABLE. MONARCH'S LABOR WARRANTY EXCLUDES CONDITIONS OR DAMAGES RESULTING FROM: (1) ORDINARY WEAR AND TEAR, ANY WILLFUL ACT, NEGLIGENCE, OR ABUSE OR MISUSE BY THE CUSTOMER OR A THIRD-PARTY; (2) SERVICE OR REPAIRS PERFORMED BY PERSONNEL OTHER THAN AUTHORIZED REPRESENTATIVES OF MONARCH; (3) LOSS DUE TO THE ELEMENTS, AND (4) ANY DAMAGE OR LOSS RESULTING FROM CUSTOMER'S FAILURE TO PROPERLY OPERATE EQUIPMENT OR PERFORM REASONABLE MAINTENANCE. THE WARRANTIES DESCRIBED HEREIN ARE EXCLUSIVE AND CONTINGENT, AND ONLY ARISE, UPON FULL AND TIMELY PAYMENT BY CUSTOMER UNDER THIS AGREEMENT.

4. **ACCESS TO WORK SITE:** Customer is responsible to have the area for which services are to be performed under this Agreement accessible to Monarch and free from all obstructions, debris and other moveable property. In the event that Monarch is required or asked by Customer to move any of Customer's property or obstructions during the course of its work for the Customer, Monarch shall not be held responsible or liable for any damage or loss (unless such damage was intentionally caused by Monarch).

5. **PAYMENT BY CUSTOMER:** Customer shall pay Monarch within 30 days from invoice date. Monarch does not agree to have retention held unless specially accepted in writing. Any amounts not paid within 30 days will be subject to a time price differential increase in price equal to 1.5% per month (18% per annum) of the outstanding balance. Nothing in this Agreement shall be construed to allow for any interest on an unpaid amount to exceed the maximum amount allowed under Michigan law. Monarch may require a deposit from Customer before performing certain work or additional work under this Agreement; failure by Customer to pay a reasonable deposit may result in cancellation of this Agreement at Monarch's sole option and without penalty to Monarch. Payment to Monarch is not contingent upon Customer receiving payment. If the proposal includes a schedule of values, no exceptions will be honored unless accepted by Monarch in writing.

6. **DEFAULT / TERMINATION:** Customer's timely payment to Monarch is of the essence of this Agreement. Monarch may, by a written notice of default to Customer, cancel the whole or any part of this Agreement potentially causing an immediate halt to work, without penalty to Monarch, if Customer fails to timely pay Monarch for its work or otherwise fails to comply with the terms of this Agreement, all materials supplied by Monarch shall remain the property of Monarch until Customer has paid Monarch in full for its work under this Agreement.

7. **ATTORNEY FEES:** In the event that Customer fails to timely pay Monarch in connection with this Agreement, then Customer agrees to pay Monarch all of its collection costs, including, but not limited to, any reasonable attorney fees incurred by Monarch, court/arbitration costs, and expert witness fees.

8. **SECURITY / INSURANCE:** After Monarch has delivered materials to Customer's facility or any other applicable site location, Customer is responsible for the security of and the insurance for the applicable materials. Monarch is not responsible to insure or secure materials after they have been delivered to the Customer and/or the applicable project site. Monarch is not responsible for the storage of any onsite equipment or material purchased by the Customer. Customer acknowledges and agrees that Monarch is not, under any circumstances, responsible for the identification, discovery, investigation, presence or removal of any hazardous materials which was not provided or introduced to Monarch and accepted in writing as a proposal clarification as part of scope, without limitation, asbestos, lead, lead paint, formaldehyde, or any other toxic or hazardous material.

12. **LIMITED ENGINEERING LIABILITY:** It is the Customer's responsibility to provide Monarch with all available information necessary to perform the contracted engineering services. Engineering provided as part of our proposal is limited to the construction aspects of completing the work scope identified. Monarch does not provide engineering assessment, integrity inspection of process equipment or recommended reinforcement of support structures, unless specifically detailed in our proposal. The accuracy of engineering designs and details are subject to field conditions, which are not always available to observe or measure during the engineering phase of a project. In such cases, Monarch will base its engineering on expected conditions, such as existing drawings, inspection reports, and other data provided by the Customer. Monarch will not be held responsible for conditions that cannot be accurately verified during the engineering phase of a project. Provision of a Licensed Professional Engineer seal on drawings, details, calculations, reports, etc., will only be included as indicated specifically in our proposal. Monarch shall not be held responsible for construction in the case that a project or portion of a project that has been engineered by Monarch but is constructed, executed or installed by another party.

13. **INTELLECTUAL PROPERTY:** Designs, drawings, details, concepts, specifications, means and methods and/or other intellectual property generated by Monarch are not to be shared with any entity apart from the Customer.

14. **LIMIT OF LIABILITY:** In recognition of the relative risks, rewards, and benefits of the project to both the Customer and Monarch, the risks have been allocated such that the Customer agrees that, to the fullest extent permitted by law, that Monarch's total liability to the Customer for any and all injuries, claims, losses, expenses, damages or claim expenses arising out of this agreement from any cause or causes, shall not exceed the limits of Monarch's available insurance policies or the value of the proposal, whichever is less.

15. **BUILDERS RISK:** If a Builders Risk insurance policy is provided by others, including but not limited to Customer for the work covered in the proposal, Monarch is not liable for the policy deductible.

16. **QUALITY STANDARDS:** Proposal is based on applicable AWS, ASME, NBBI or Monarch's Quality Manual dependent on the application of the work.

17. **REWORK AND DELAYS:** Any rework or field modifications required due to Customer provided improper fabrications or incorrect drawings will be invoiced utilizing Monarch's standard T&M rates, approved timesheets and supporting documentation. Delays and interruptions due to plant activities, early/late outage start/finish, other contractors' activities, unsafe plant conditions (e.g., emissions, live power sources, dust, heat, etc.), emergent work scope, and weather are not included in this proposal. Monarch will make Customer aware of any such occurrence as soon as possible. The proposal is based on (1) one mobilization and (1) one demobilization unless specifically stated otherwise in the proposal clarifications.

18. **MONARCH EQUIPMENT:** In the event the Customer uses Monarch's equipment (owned or rented), tools or facilities, Customer shall reimburse Monarch based on Monarch's standard T&M rates. Customer will be responsible for all operating expenses and the care, maintenance, and usage of the equipment, tools and/or facilities in accordance with all OSHA requirements and agrees to repair or replace if damaged or destroyed from any cause while in Customer care, custody, or control.

19. **INDEMNITY:** Customer shall indemnify and hold harmless Monarch from any and all claims, actions, costs, expenses, damages and liabilities, resulting death or bodily injury or damage to real or tangible personal property, to the extent caused by its negligence or misconduct in connection with its activities with the scope of the work associated with the proposal.

20. **SEVERABILITY:** Should any portion, word, clause, phrase, sentence or paragraph of this Agreement be declared void or unenforceable, such portion shall be considered independent and severable from the remainder of the Agreement, the validity of which shall remain unaffected.



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21. **DISPUTE AND ARBITRATION:** If a dispute or claim arises between the Customer and Monarch, the project representatives of the Customer and Monarch shall attempt to negotiate a resolution of the dispute or claim. If the Customer and Monarch are unable to negotiate a resolution of any dispute or claim, the dispute or claim shall be referred to a member of senior management of the Customer and Monarch and they shall attempt to negotiate a resolution. If resolution between Customer and Monarch is not found, at Monarch's sole discretion, any dispute or claim between Monarch and Customer in any way relating to Monarch's work and/or this Agreement, may be submitted to mediation and/or arbitration pursuant to the Construction Industry Rules of the American Arbitration Association then in effect at a mutually agreeable location in Oakland County, MI. Any decision of any Arbitrator rendered pursuant to an arbitration initiated or consented to by Monarch may be enforced by a court of competent jurisdiction.

22. **JURISDICTION AND VENUE:** Unless Monarch invokes arbitration, for any suit or proceeding to enforce the provisions of this Agreement or any other claim or action arising out of or in connection with this Agreement, Customer irrevocably consents to the exclusive jurisdiction of the state courts sitting in Oakland County, Michigan. Furthermore, Customer agrees that this Agreement shall be interpreted, construed and enforced in all respects in accordance with the laws of the State of Michigan, and without regard to the draftsmanship.

23. **COMPLETE AGREEMENT:** This Agreement and the proposal letter constitutes the complete, integrated and exclusive statement of the agreement among the parties with respect to its subject matter and replaces and supersedes all prior written and oral agreements among the parties.