



Weston and Associates · 295 Wetmore Avenue SE · Massillon, OH 44647 · (330) -791-7118

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## **Terms and Conditions of Sale:**

### **1 SITE CONDITIONS:**

Buyer will provide a suitable, clear, safe, dry, leveled, compacted staging area adjacent to the tank foundation and extending 25 ft. around the tank foundation. A graveled or hard surface access roadway from a public road to erection site, so the loaded trucks can be driven to a point adjacent to tank foundation, must be provided and maintained. Minimum clearance of six (6) feet is required between tanks, eight (8) feet overhead. If work is located inside building or enclosed area, it must be noted in the Contract. Free access to work site must be provided by Buyer during daylight hours on all working days including Saturday, Sunday, U.S. holidays and country or regions pacific holidays if outside U.S. If 8 hours, 5 day week is required, Buyer must specify. Buyer will ensure all tank parts are within 50 feet of tank foundation with no interfering objects. Weston and/or the construction contractor will be allowed access for a truck to be placed and operated at the erection site. Should concealed, unusual, unexpected, and/or unrecorded conditions be encountered which interfere with normal erection procedures, Weston and/or the construction contractor will advise Buyer of conditions encountered.

### **2 WIND, RAIN & WINTER CONDITIONS:**

If wind, rain, or winter conditions are slowing our crew's performance, Weston will provide daily reports showing the impacts of these events and all costs incurred for these issues will be passed onto and invoiced to the client. If the equipment is on rent, the costs associated with the downtime due to delays will also be passed onto the client.

### **3 FOUNDATIONS:**

Top of foundation must be within two (2) feet of grade. If higher or on structures, price will be adjusted. It is the Buyer's responsibility to provide a level and true foundation, with level tolerances of 0.5 inches per ten (10) feet. Buyer is responsible for establishing center lines on foundations or structures. If Weston and/or the construction contractor or erection contractor finds inaccuracies or deficiencies in foundation work done by others, or is required to alter the tanks to make them fit, the Buyer shall be notified and if Buyer instructs Erector to make necessary changes, erection contractor shall be reimbursed for the cost of material and labor used. In any event, the Buyer will reimburse erection contractor for the cost of lost time by the erection crew and equipment. If a tank embedment ring is required, Weston and/or the construction contractor personnel will be required to inspect the installation of the ring prior to concrete being poured. Proper installation and roundness tolerance is the responsibility of the contractor providing concrete installation. Location of all plumbing located within the foundation, concrete slab, or underground, is the responsibility of others, and Weston and/or the construction contractor is not liable for accuracy of location related to the tank. If Foundation Design is required, customer is to supply Geotechnical Soils Report. Unless otherwise noted, all foundation construction shall be done by others.

### **4 EXCLUSIONS:**

This Contract does not include unloading, hauling, grouting, washing, painting (other than touch-up on erection scratches), welding, load lines or other systems installation unless stated as being included. The responsibilities of Weston and/or the construction contractor will not include liability for demurrage. All licenses, fees, permits, taxes or any items or services not specifically mentioned are excluded. Weston and/or the construction contractor will not be responsible for damage to personnel, automobiles, or machines within 100 feet of erection site.

### **5 CONTINUOUS OPERATIONS:**

Buyer will ensure all operations are continuous, scheduled and completed in accordance with suggested sequence throughout erection and finishing with a completed water test and inspection. Weston and/or the construction contractor will not be liable for any reason whatsoever for any indirect, incidental, special or consequential damages.

### **6 INSPECTIONS:**

Buyer inspection and acceptance of interior and exterior must be performed during and prior to erection crew leaving jobsite. Delay caused by Buyer will be charged to Buyer.

### **7 CHANGES:**

If the Buyer orders extra work or makes changes by altering, adding to, or deducting from the work set forth in this quote, the priced any completion date quoted will be adjusted accordingly. The price adjustment will include costs of engineering, shipping, manufacturing performed, materials purchased, extra erection expense, extra supervisor and administration expense.

### **8 BUYER'S RESPONSIBILITY:**

Buyer will supply, if required, 120 volt/60 Amp AC current at no cost, within 10 feet of tank foundation and necessary utilities including, but not limited to, the necessary sanitary facilities and palatable drinking water as required for the performance of the contract. Foundation will be clean and clear of any obstruction, material, or equipment. Adequate clearance will be provided around the tank foundation area as well as overhead. Buyer is responsible for supplying trash dumpster at job site and for disposing of contents of dumpster.

### **9 HYDRO-TEST:**

Buyer is responsible to provide sufficient water to test within 24 Hours of tank erection completion. Buyer shall provide water, hoses, and pumping to fill the tank for the Hydro-Test, and any subsequent fillings after that are the responsibility of the Buyer. If a leak is disclosed during the hydro-test, a Weston and/or the construction contractor service personnel will be dispatched immediately. Buyer is responsible for emptying and disposing of water after testing. If the client cannot provide the sufficient water within 24 hours and requests Weston and or construction contractor to be on-site during testing, a remobilization will be necessary and additional costs will be billed.

### **10 BUYER'S INSURANCE:**

The Buyer will obtain insurance and indemnify Weston and/or the construction contractor against loss by fire, lightning, removal, and all extended coverage perils, theft, vandalism, and malicious mischief, earthquake, negligence, breach of contract and any other insurance which the Buyer deems necessary upon the work covered by the Contract, for the full insurable value thereof. Additional expense by theft will be reimbursed to Weston and/or the construction contractor by Buyer. Cost of security guards, if required, to be paid by Buyer. Weston and/or the construction contractor is to be named as an additional insured and a certificate of insurance is to be provided at the time the order is agreed upon.



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**11 OFFER AND PRICE INCREASES:**

This offer shall constitute an offer to sell goods described herein by Weston and Associates, LLC (“Weston” or “Seller”). This offer shall be construed as inviting acceptance by Buyer as prescribed by applicable law. If Seller’s material increases and/or economic conditions impact price prior to delivery of goods, Seller may increase the price of the goods. Prior to doing so, Seller shall give Buyer ten (10) days written notice of any proposed increase. If, however, within ten (10) days of receipt of Seller’s notice of the proposed increase, Buyer notifies Seller in writing that it will not accept the proposed increase, Seller will have the right to cancel this Offer by written notice to Buyer within ten (10) days after receipt by Seller of Buyer’s notice. Stenographic and clerical errors are subject to correction by Seller.

**12 ACCEPTANCE:**

The terms and conditions of this Offer will apply and become a part of the contract between Seller and Buyer unless specifically changed in writing and signed by an executive officer of Seller. Upon acceptance, the terms and conditions of this Offer shall in all cases, without exception, control and take precedence over any terms and conditions in Buyer’s acceptance. Any conflicting terms and conditions in any purchase order, acknowledgement or other document utilized by Buyer in this transaction, are expressly rejected and the terms of this offer will prevail.

**13 DELIVERY:**

Unless otherwise agreed to in writing, the price and delivery of all goods, are FOB Seller’s factory. Title to the goods shall pass to Buyer once Seller has completed its performance with reference to the physical delivery of the goods, subject to any security interest in favor of Seller, if applicable (see Section 12); except where Buyer requests a delay in shipment, in which case the title will pass to the Buyer when the goods are ready for shipment. If Buyer requests a delay in shipment, then Buyer shall pay Seller’s standard storage charges (see Section 8) for the period from the scheduled shipment date to the actual date of shipment. Such storage charges shall include insurance coverage for the buyer’s stored product. The processing of freight claims or loss claims is the responsibility of Buyer.

**14 SCHEDULING OF GOODS:**

Seller utilizes the same process for all orders. Receipt and execution of order from Seller, drafting and engineering, submission of engineered drawings for approval, release to manufacture. Orders can only be released to manufacture if engineered drawings have been approved by Buyer and all changes have been reconciled. Once an order has been released to manufacture it will progress through Seller’s production schedules. A “Planned” schedule date is given out at the time the sales order is entered and reflects the current engineering, drafting, procurement, and fab lead times plus 2-3 weeks for customer to turn around approval drawings. Projects move to a “Soft” schedule status when the customer returns approved engineering drawings and drafting provides a committed date to have fab drawings and Bills of Material to the shop. Projects move to a “Hard” schedule status when the shop has received completed fab drawings and bills of material from drafting, and has a commitment from vendors on material availability. Until a project is hard scheduled, any shipment estimate is subject to the availability of products from vendors. In the event of a production shortage, Seller shall have the right to allocate its available goods among its customers in such a manner as Seller shall desire.

**15 SELLER’S LIMITED WARRANTY (Summary and Reference):**

Seller’s Limited Warranty is for a term of twelve (12) months from the date of acceptance and is set forth in detail at: <https://westonandassociates.com/limited-warranty/> which Limited Warranty language is incorporated herein by this reference. All warranty claims shall be asserted as set forth in the Limited Warranty or are waived

**16 METHOD OF SHIPMENT AND FREIGHT CHARGES:**

Freight will be charged prepay and add unless otherwise mutually agreed to in writing and are due upon receipt. Orders specifically including freight, handling or other logistics charges are based on Seller’s rates in effect on date of acceptance of this Offer and on the routing of shipment arranged by Seller. Seller will ship goods in accordance with Buyer’s routing whenever such routing will not result in an increase in freight or other transportation charges. In the event of such increases, the payment of any additional freight or other transportation charges is guaranteed by Buyer to Seller’s satisfaction. The goods shall be packaged for shipment at the lowest acceptable rate by common or other carrier, or any other method deemed necessary or advisable by Seller. Marking shall be in accordance with ordinary commercial practice at place of shipment, unless otherwise designated by Buyer and accepted by Seller.

**17 FORCE MAJEURE:**

Shipping and delivery dates are approximate and are based upon Seller’s ability to obtain all necessary labor, materials, parts and, where applicable, the receipt of all necessary information, plans or specifications from Buyer. Seller shall not be liable for damages resulting from any delay or failure to deliver the goods, or otherwise perform under this Offer, due to circumstances beyond its control and not occasioned by its fault or negligence, including but not being limited to, any act of government, inability to obtain materials, failure of vendors, strikes, labor disputes, civil commotion, acts of God, or other occurrences rendering Seller’s performance commercially impracticable, regardless of whether such occurrences are foreseeable.

**18. INVOICE & HOLD – STORAGE FEES:**

Buyer will be invoiced immediately and accept responsibility for payment and any applicable storage fees. Storage– Two (2) weeks “grace period” from agreed upon ship date – no charge. A charge of \$500 per tank/cover per week will be assessed for weeks 3-5. A charge of \$1000 per tank/cover per week will be assessed for weeks 6-8. The maximum storage period is eight (8) weeks. Arrangements must be made for shipments so that the maximum storage period is not exceeded.

**19 CREDIT APPROVAL:**

This Offer is subject to (a) execution by Buyer of such additional contract documents, security agreements, notes or other instruments as Seller shall deem necessary or desirable and (b) Seller’s review and acceptance of the financial condition of Buyer. If the financial condition of Buyer at any time does not in the sole judgment of Seller, justify continuance of shipment under the terms of this Offer, Seller reserves the right to ship under reservation, or to require full payment before shipment, delivery or erection. Additionally, Seller may at its discretion file such notices for financial protection under the lien or bond statutes of each state.

**20 DUTY DRAWBACK:**

The manufacturer reserves all drawback rights for materials it produces and sells to Buyer. If Buyer exports the product which Seller manufactures, it is agreed that evidence of exportation shall be supplied to Seller to facilitate its claim of drawback upon request and without charge to Seller.

**21 SECURITY INTEREST:**

To secure payment for goods, Buyer grants to Seller a security interest in the goods and agrees that Seller shall have the rights and remedies of a secured party under the Uniform Commercial Code. Buyer designates Seller as its attorney-in-fact to execute any financing statements on behalf of Buyer necessary to perfect such security interest.

**22 TAXES:**

Seller’s prices do not include sales, excise or similar taxes levied by government authority, either foreign or domestic. Consequently, in addition to the prices specified herein, the amount of any present or future sales, use, excise or other similar tax applicable to this transaction, shall be paid by Buyer as part of this sale, or in lieu thereof, Buyer shall provide Seller with a valid tax exemption certificate acceptable to taxing authorities of the Shipped-To state. On any material picked up by Buyer at the plant, the tax jurisdiction of the FOB state is applicable.



**23 ADDITIONAL WORK AND INSPECTION:**

No extra labor, materials or parts will be furnished under this Offer, unless it has been ordered by Buyer on Seller's sales order form, and the prices and terms of sales are approved by Seller. Seller may at its option subcontract labor, material and parts required by this Offer without Buyer's consent. The goods shall be, at Seller's option, subject to inspection and testing during manufacture. Any inspection by Buyer shall be made prior to shipment at Seller's factory or point of shipment. Unless otherwise agreed to, Seller shall not be responsible for unpacking, storage, field assembly of goods, or construction of foundations. Furthermore, Seller shall not be responsible for the choice of use or linings, sealants, and gasket materials not sold hereunder; or the installation, attachment, or connection of piping, conveying and ventilating equipment, or other attachment of accessories or components not sold hereunder.

**24 INFRINGEMENT:**

Seller, at its own expense, shall defend the Buyer against any claims which may be instituted against the Buyer alleging infringement of United States Patents relating to the subject matter of the accompanying sales proposal, provided the Buyer gives Seller immediate notice in writing of any such alleged patent infringement claim and permits Seller, through its own counsel, to defend such claim. In such cases, Buyer shall furnish Seller with all needed information and assistance. The obligations of Seller hereunder shall not extend to any infringement claims arising as a result of the use of the equipment as part of any combination of other devices, machinery or parts.

**25 CANCELLATION, ETC.:**

Buyer's cancellation of any order is required to be in writing, and Buyer is subject to pay a cancellation fee equal to 25% of the total purchase price plus all non-recoverable costs and expenses.

**26 CHANGE CONTROL:**

The scope of work described in this proposal will be executed on a fixed price basis. Any change to the project scope that would impact pricing must be agreed to by both parties and approved in writing on a form provided by Seller. Either party may request a change. Weston has built sufficient time into this project to account for the impact of reasonable timelines that are present at the beginning or any engagement. Nevertheless, the parties agree that legitimate issues outside of Seller's control could arise during the project that would have an impact on the effort and/or time required to complete the project. Examples include, but are not limited to: Any change in project objectives or scope, deviations from the functionality used to determine scope, discovery of a requirement or issue that was not disclosed by Buyer or that could not have been reasonably anticipated by either party, failure by the Buyer to respond in a timely manner to requests by Seller for information, direction or decision. It is the Seller's responsibility to notify Buyer if a situation arises that it believes justifies a pricing or schedule change, and to provide associated rationale. Both parties agree to negotiate any disagreements in good faith. Work on any change will not begin until a change request has been agreed to and approved in writing by both parties.

**27 APPLICABLE LAW/FORUM:**

The rights and obligations of the parties shall be governed by the domestic laws of the State of Ohio without regard to its conflict of law rules or the United Nations Convention for the International Sale of Goods. Any litigation arising out of or related to this Agreement or any other aspect of the Parties relationship shall be heard only in the Court of Common Pleas for Stark County, Ohio to the exclusion of all other courts and fora. The Parties irrevocably consent to the jurisdiction of such court and waive any objection that such court is an inconvenient forum.

**28 DISPUTE RESOLUTION:**

All disputes, controversies or claims arising under this agreement shall first be subject to mediation with the American Arbitration Association as a condition precedent to Arbitration or Litigation. All disputes, controversies or claims pending at the time of the request for mediation shall be addressed in such mediation. Such mediation shall be completed on or before the 60<sup>th</sup> day after a request for mediation is submitted by either party to the other party, or such later time as parties mutually agree in writing. If the mediation fails to result in resolution of the dispute, controversies or claims be settled, decided or resolved, **at Seller's sole option** by (i) arbitration conducted in Canton, Ohio pursuant to the American Arbitration Association rules or (ii) litigation in the Stark County Court of Common Pleas, or other court of competent jurisdiction. The court or arbitrator, as the case may be, shall identify the prevailing party in the proceeding and shall include as part of its award or judgment, in addition to all other damages, an amount for attorneys' fees and costs associated with the disputes, controversies or claims from the dated of the request for mediation through final judgement including any and all appeals.

**29 CONFIDENTIALITY OF PROPOSAL:**

All terms and conditions of this Offer shall be held in strict confidentiality by the Buyer and shall not be divulged by the Buyer to any other person or entity without the express prior written approval of Seller.