



**AIR & HYDRONIC
BALANCING**

**RELIABILITY SOLUTIONS
VIBRATION ANALYSIS**
www.balcontab.com

**LAB SAFETY DIVISION
TESTING & VALIDATION**

TERMS AND CONDITIONS

The following Terms and Conditions shall apply to all Proposals/Contracts offered by Seller (BalCon).

INCORPORATION IN CONTRACT - Execution and performance of this contract shall be governed and construed under the laws of the State of Iowa. This contract constitutes the entire agreement between the parties hereto, and there are no other terms and conditions, understandings, representations or warranties of any kind, expressed, implied, statutory or otherwise (including, but without limitations, the implied warranties of merchantability and fitness for a particular purpose), not expressly set forth herein.

If substitute or additional equipment, repair parts or labor are purchased by the **Buyer** from the **Seller**, they will be billed as an addendum or addition to the Contract and the terms and conditions of this Contract shall be applicable thereto, the same as if such substitution, additional equipment, repair parts or labor had been originally purchased hereunder.

The **Seller** reserves the right to do partial shipments.

The **Seller** reserves the right to implement progress payments on Contracts involving work that is anticipated and/or scheduled to be of longer than 30 days duration from Contract date to date of final completion; and/or involves the purchase or procurement of special materials or equipment. Further, it is herein agreed that materials and/or equipment suitably stored, maintained, and insured by **Seller** on behalf of **Buyer**, at **Sellers** place of business and/or at other locations under **Sellers** control, shall qualify for inclusion in progress payments as if delivered to **Buyers** site. In this event, **Buyer** shall have the right to inspect said materials and/or equipment at the storage site(s), should **Buyer** so desire.

All salvage material shall become the property of the **Seller** and will be removed from the premises or jobsite, unless otherwise noted in the Contract.

PROPRIETARY AGREEMENT - All drawings, memoranda, ideas and information furnished by **Seller** shall remain its property and shall be considered its business and trade secrets, received in trust and confidence for the sole purpose of installing, maintaining, repairing and operating said specific equipment. **Buyer** shall not share, copy or provide any of said information to any third party without the written consent of the **Seller**.

WARRANTY - **Seller** warrants, for a period of one (1) year after initial repair (on repair work) **or** for a period of one (1) year after initial operation or eighteen (18) months after shipment or readiness to ship (on new equipment), whichever comes first, that the equipment of its own manufacture sold under this agreement is free from defects in material and workmanship. During the first ninety (90) days of the warranty period, during normal working hours, **Seller** will (at **Sellers** expense) deliver and install replacement parts or effect repairs, at **Seller's** option. Any defective parts reported after the first ninety (90) days, but before the warranty expiration date, will be shipped to **Buyers** plant at no charge to **Buyer**. However, the cost of installing such parts will be the **Buyers** responsibility. Material and equipment which is not manufactured by **Seller** shall be covered only by the warranty of its respective manufacturer. Warranty does not include routine maintenance items, airfreight and/or special handling charges on replacement parts, or overtime work to replace parts or effect repairs. Repair or replacement does not alter or extend limits of liability or warranty established at time of sale. Routine maintenance and normal wear and tear is not covered by this warranty. The **Sellers** warranty is conditional upon the **Buyer** operating and maintaining the equipment according to the manner prescribed by the **Seller**, without alteration or substitution to the equipment, the **Buyer** providing **Seller** (and others appointed by **Seller**) free and unlimited access to the equipment at all times, and the terms of payment and other contractual obligations of the **Buyer** having been strictly met. Abuse or neglect of a system or its components, lack of proper or prescribed maintenance, or improper use of the equipment will void the warranty. There shall be no warranty provided on used materials or equipment, unless expressly stated herein.

Unauthorized work performed by others on **Sellers** equipment will immediately void the warranty. The **Seller** will not pay any expenses for work performed by others upon **Sellers** equipment sold under this Contract unless prior written authorization is given by the **Seller**.

CHANGES AND/OR ADDITIONS - Changes and/or additions to the scope of work shall be by Change Order/Supplement, agreed to by **Buyer** and accepted by **Seller** before **Seller** assumes the responsibility for same. Any Change Order/Supplement shall describe work, materials, price adjustment and time extension applicable to the change or addition. Any change and/or addition shall cause **Seller** sufficient additional time to complete the project.

DELAYS - In the event that **Sellers** personnel arrive on site to perform work or to start-up a system as planned, and then, for reasons outside of **Sellers** control, this cannot be accomplished, it will be the responsibility of the **Buyer** to pay additional monies for **Sellers** personnel to wait or to return at a time when the work can be performed, whichever the case may be. In case **Sellers** personnel must return to perform the work, this then will be rescheduled by **Seller** within its normal schedule.

OVERTIME WORK - The prices are based on work being done during normal working hours. Should overtime work be required and authorized, the overtime premium in effect at the time will be applied.

SUBSTITUTION - The **Seller** reserves the right to substitute equipment and/or components which are considered to be of equal or superior quality or performance. In the event such substitutions are made necessary by circumstances beyond **Sellers** control relative to availability or procurement, **Buyer** shall be notified.

PAYMENTS - Payments are due upon submission, Net 30 days. Interest on deferred balances shall be paid by the **Buyer** at the highest legal rate per annum from the date of delivery until paid, such interest to be payable along with the deferred balance.

EVENTS OF DEFAULT - **Buyer** is in default upon the happening of any one or more of the following: (a) Failure to make payment when due, or (b) A change hereafter in the present financial conditions, credit-worthiness or ability to pay **Seller**, or (c) A breach by **Buyer** of any responsibility of warranty.

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TERMS AND CONDITIONS (continued)

REMEDIES OF DEFAULT - Upon the happening of one or more events of default, **Seller** at his option, may exercise or perform one or more of the following remedies: (a) Cease manufacture, fabrication, delivery, installation and performance or any other obligation under this Contract, or (b) Exercise any remedy under the Uniform Commercial Code of the state where the remedy is being exercised, or (c) Exercise any remedy available under the laws of the jurisdiction where such remedy is sought to be exercised, or (d) Take possession of all equipment and work wherever located, or (e) Void all warranties and refuse start-up, or (f) Declare all sums owed immediately payable, or (g) Act as attorney-in-fact for **Buyer** to take possession of the property wherever located and sell the same at the best price obtainable.

All remedies exercised by **Seller** shall be free and clear of any liability to **Buyer** and the exercise of one or more of said remedies by **Seller** shall not eliminate or waive its right to exercise any other legal or equitable remedy it may have.

CANCELLATION - This Contract is subject to cancellation by **Buyer** only upon payment to **Seller** of reasonable cancellation charges which shall consist of the value of work performed but not paid for, **Sellers** commitments to material suppliers and/or subcontractors, cancellation charges for the **Sellers** disruption, cost of demobilization of the site, general and administrative expenses, and anticipated Contract profit. All cancellation costs shall be due and payable immediately upon **Sellers** consent to cancellation.

FORCE MAJEURE & DELAYS - The **Seller** shall not be liable for any expense, loss or damage suffered by **Buyer**, directly or indirectly, resulting from any delay or failure to make delivery or complete the work within the time specified of all or any part of the equipment or installation due to Acts of God; war; Acts of Public Enemy; riot; civil commotion; sabotage; Government action or regulation; strikes or other labor trouble or disputes; fire; flood; thefts; accidents; explosions; epidemics; quarantine restrictions; disruption of utility services; embargoes; non-availability of appropriate transportation; transportation delays; material lost in transit; breakdown, damage or destruction in whole or in part of the manufacturing equipment or plant; labor shortages; inability to obtain materials, fuel or supplies for any reason including delays by or default of suppliers or sub-contractors; failure on the part of the **Buyer** or his representative to approve or comment on drawings or other technical documents within the period of time specified by the **Seller**; or any other cause, contingency, or circumstance whether similar or dissimilar to those enumerated above, beyond the reasonable control of the **Seller** which may delay or prevent the **Sellers** performance. In the event of any delay arising by any of the foregoing events, the work schedule shall be extended by the length of delays occasioned thereby, including delays reasonably incident to the resumption of formal productions.

CONTINGENCIES - If, through no fault of the **Seller**, shipment or erection is abandoned or postponed (and in any such event a delay of more than three (3) months shall constitute an abandonment or postponement), any further obligations of the **Seller** under this Contract shall terminate. In such event, all sums due to the **Seller** which have been withheld shall become due and owing. If additional costs are incurred by the **Seller** on account of any such delay or postponement, the **Seller** shall be reimbursed for such costs by the **Buyer**.

If the **Buyer** requests a change or causes a change in the **Sellers** planned schedule of engineering, fabrication, shipment of equipment or materials, or erection and such change results in additional expenses to the **Seller** an equitable adjustment in the price and schedule shall be negotiated and the Contract amended accordingly. If such change involves a suspension or postponement of the work, in addition to any aforementioned adjustment, there shall immediately become due and payable to the **Seller** an amount of the total Contract price proportional to the total work performed as of the time of such suspense, as it bears to the total Contract requirements.

If, due to delinquent or untimely remittance of invoices or progress payments by the **Buyer**, **Seller** is caused to stop work, the additional costs of demobilization and/or remobilization shall be borne by the **Buyer** as an extra to the Contract price.

It is herein understood and agreed that the equipment, materials and/or components which, in part or in whole, comprise the system shall not become the property of the **Buyer** in whole until full and complete payment has been received by the **Seller** in accordance with the terms and conditions of the Contract; and that **Seller** shall retain the right to remove and reclaim any such equipment, materials and/or components in the event that **Buyer** defaults on the terms and/or conditions of payment. Further, until complete and satisfactory payment by the **Buyer**, in accordance with the Contract terms and conditions, the **Buyer** is not allowed to sell, resell or transfer any of the equipment or materials provided as part of this Contract. The **Buyer** commits to safeguard and maintain the equipment and materials on behalf of the **Seller**.

SECURITY AGREEMENT - Notwithstanding the foregoing, to secure the **Sellers** rights in the equipment, materials and/or components that comprise the system, in the event that title should pass from **Seller** to **Buyer** in whole or in part before **Buyer** has paid the full contract price for the goods sold (including any costs of installation owed by **Buyer** to **Seller**), **Buyer** hereby acknowledges and grants to **Seller** a Purchase Money Security Interest in the equipment, materials, and/or components of the system being sold under the Uniform Commercial Code and other applicable laws, agrees that **Seller** has a purchase money security interest in the system, and agrees to execute one or more UCC-1 or other requested filing statements that may, at **Sellers** election, be recorded in the jurisdictions where the equipment is manufactured by **Seller** and where it is delivered to **Buyer**. **Buyer** hereby appoints **Seller** as **Buyers** agent to the extent necessary to allow **Seller** to amend any UCC-1 or other filing statement already executed by **Buyer** in order to describe more fully the equipment manufactured or provided by **Seller** for **Buyer**, including, without limitation, to add identification numbers once they have been assigned and other specifics concerning equipment as it is identified. **Buyer** expressly agrees that all installation fees and costs are part of the price that is secured.

LIMITATION OF LIABILITY - The **Seller** shall, in no event, be liable for (a) Any consequential, special, or incidental damages of any kind; and/or (b) Any other losses, damages, or injuries sustained by anyone due to the misuse of equipment furnished by the **Seller**. The **Buyer** does hereby undertake and agree to save, hold harmless, and indemnify the **Seller** from (a) any and all claims, deeds or actions, damages or charges and expenses incurred, including attorney's fees arising by reason of the misuse of such equipment; and/or (b) Costs incurred by the **Buyer** for changes made in the equipment and/or installation, either by the **Buyers** own personnel or by the **Buyers** contractors, because of alleged malfunction of the installation, or any other reasons, unless the **Seller** authorized the **Buyer** in writing to do so, and agreed to defray these expenses; and/or (c) Any secondary damage (work stoppage, delay in production or delivery, etc.), sustained by reasons of outage and/or malfunction of the installation, or by any other reason whatsoever.

Further to, but not detracting from the above, the responsibility of the **Seller** for any damages ensuing from the equipment and/or services provided shall be limited to the cost of the equipment provided.

The **Seller** cannot be held liable for the availability or supply of any required installation, use or operating permits or licenses as may be required for the installation and/or operation of the equipment provided, beyond that specifically identified and agreed to as being provided by **Seller** in the Contract.

RISK OF LOSS - The risk of loss or destruction of, or damage to equipment shall be on the **Buyer** from and after its delivery to any common carrier, or **Buyer's** own carrier. In the event that said equipment is destroyed or damaged by accident, fire, or any other cause whatever, whether within or without the **Buyer's** control, **Buyer** nevertheless shall be liable to **Seller** for the full unpaid purchase price plus accrued interest. Said equipment shall be insured by the **Buyer** at its own expense against such loss or damage.