

TERMS AND CONDITIONS

The following terms and conditions of sale apply to sales or price quotations by The Bilco Company (BILCO):

1. These terms and conditions shall supersede any inconsistent or supplementary provisions contained in the purchaser's purchase order or any other communication. BILCO CONTRACTS WITH THE PURCHASER ON THE CONDITION THAT THE PURCHASER ACCEPTS THESE TERMS AND CONDITIONS WITHOUT MODIFICATION OR QUALIFICATION.
2. Any typographical, clerical or other error or omission in any quotation, price list, acceptance of offer, invoice or other document or information issued by BILCO shall be subject to correction without liability on the part of BILCO.
3. All quotations provided by BILCO are preliminary, unless indicated in writing on the quotation.
4. Final terms of sale as to product specification, price and delivery date are subject to approval by BILCO, upon receipt of an order for immediate fabrication, at BILCO's main business office in New Haven, CT.
5. Acceptance of an order by BILCO is in all situations subject to a credit review of the purchaser by BILCO. BILCO reserves the right, in its sole discretion, to require full or partial payment in advance of shipment or commencement of the manufacturing process. Any delay resulting from a credit review may result in a delay in shipping, which delay shall not subject BILCO to any liability. BILCO reserves the right, in its sole discretion, to require the purchaser to provide letters of credit satisfactory to BILCO.
6. All contractor work proposed for any project shall be provided by the purchaser.
7. The purchaser shall provide all drawings and specifications when requested by BILCO to allow BILCO to design the product(s). BILCO shall provide finished drawings and specifications for the product(s), and, when so required by BILCO, the purchaser shall approve such drawings and specifications in writing. When required, BILCO's fabrication WILL NOT BEGIN UNTIL PURCHASER'S WRITTEN APPROVAL IS RETURNED TO BILCO AND ALL CREDIT ISSUES ARE RESOLVED.
8. If the purchaser wishes to make any changes to the product(s) after work has begun on the product(s) or after materials have been ordered specific for the order, such changes may only be made pursuant to a change order executed by BILCO, with such changes to price, delivery date and other matters as are agreed by BILCO.
9. Terms of payment are specified on BILCO'S invoice to the purchaser. Shipment is FOB Factory. Interest will accrue at BILCO'S sole discretion on any amounts not paid within 30 days of invoice date at the rate of one and one-half percent per month, or if such rate is not allowed by law in the appropriate jurisdiction, then at the highest rate allowed by law in that jurisdiction. All payments are to be made in U.S. dollars.
10. BILCO shall invoice the purchaser at time of shipment for delivery of product(s). The sales price set forth therein does not include sales, receipts, occupation, use or similar taxes or customs and duty charges now or hereafter imposed by any federal, state or local governing body, all of which taxes and charges are to be paid by the purchaser. Where applicable, such taxes and charges shall be added to the invoice as a separate charge or billed separately to the purchaser. In the event that such taxes or charges are paid by BILCO, the purchaser shall, upon demand, reimburse BILCO such amount. If tax exempt, the purchaser shall provide an exemption certificate for the jurisdiction where the material is delivered. The cost of delivering product(s) from plant of manufacture to the location specified by the purchaser shall be at the expense of the purchaser.
11. Except as set forth herein, BILCO warrants all equipment manufactured or sold by it to be free, under normal use and service, from defects in material and workmanship for a period of five years from date of purchase. Electrical motors, smoke detectors and other special equipment may carry warranties of the manufactures of those items. Any such warranties as to special equipment are hereby, to the extent legally permitted, assigned to the purchaser. BILCO makes no warranty as to any such special equipment or as to any goods not manufactured by BILCO.
12. In no event shall BILCO be responsible for any failure caused by installation, fire, flood, war, riot, civil commotion, settling or shifting of walls or foundation or components, failure to properly store goods, abuse, vandalism, criminal acts, misuse of equipment, failure of electrical power, other utilities or environmental controls, nondedicated circuits, or unauthorized attachments to or modifications of the product(s).
13. No agent, representative, or dealer, or any other person or entity, is authorized to give on BILCO's behalf any representation or warranty as to the product(s) other than the warranty herein expressed or to assume for BILCO any liability pertinent to the product(s) under any circumstances.
14. THIS WARRANTY IS EXPRESSLY IN LIEU OF ANY OTHER EXPRESS OR IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, AND IS IN LIEU OF ANY OTHER OBLIGATION ON THE PART OF BILCO.
15. THE PARTIES AGREE THAT THE PURCHASER'S SOLE AND EXCLUSIVE REMEDY AGAINST BILCO FOR ANY CLAIM OF ANY KIND, INCLUDING BREACH OF WARRANTY, NEGLIGENCE AND/OR STRICT LIABILITY IN TORT, SHALL BE FOR THE REPAIR OR REPLACEMENT OF DEFECTIVE PRODUCT(S), SUCH REPAIR OR REPLACEMENT TO BE AT BILCO'S SOLE DISCRETION.
16. 14.THE PURCHASER AGREES THAT UNDER NO CIRCUMSTANCES SHALL BILCO BE LIABLE FOR INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, FOR LOST PROFITS, INJURY TO PERSON OR PROPERTY(OR ANY OTHER INCIDENTAL OR CONSEQUENTIAL LOSS), WHETHER ARISING UNDER WARRANTY, NEGLIGENCE, STRICT LIABILITY, TORT, OR ANY OTHER THEORY.
17. THE PARTIES AGREE THAT IN NO EVENT SHALL BILCO BE LIABLE TO THE PURCHASER, A USER, OR ANY THIRD PERSON FOR LOSS OR DAMAGES TO PROPERTY RESULTING FROM FAILURE OF BILCO'S PRODUCT(S) TO OPERATE OR TO FUNCTION PROPERLY, NOR ANY INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES RESULTING THEREFROM. THE PURCHASER SHALL OBTAIN ITS OWN INSURANCE COVERING PERSONAL INJURY AND PROPERTY LOSS OR DAMAGE TO ITS PREMISES, AND THEREBY AGREES TO INDEMNIFY BILCO AGAINST ALL CLAIMS OF THIS NATURE.
18. BILCO shall not be liable for any loss or damage caused by delay in the performance or non-performance of any of its obligations due to any cause that is beyond BILCO'S control, including but not limited to hostilities, civil disturbance, requisitioning, governmental or municipal restrictions, prohibitions , or enactments of any kind, any strike, lockout or trade disputes (whether involving its own employees or those of any other person), difficulties in obtaining workmen or materials, breakdown of machinery, fire or accident. Should any such event occur, BILCO may cancel or suspend any order of product(s) made by purchaser without incurring liability to purchaser for any loss or damage.
19. If the purchaser cancels all or any part of an order, the purchaser shall pay reasonable cancellation charges, the amount of such charges to be determined by BILCO.
20. No product returns will be accepted unless BILCO expressly agrees in advance to permit the return of such product(s). Such permission shall be granted in writing on a form provided by BILCO (Return Material Authorization Form) . A restocking charge plus inbound freight charges will apply. If material returned requires rework to allow for resale, the purchaser will be charged the cost of the rework plus the restocking fee.
21. In the event any clause contained in this agreement is declared invalid or unenforceable by any court of competent jurisdiction, all other clauses or parts contained in this agreement shall remain in full force and effect and shall not be thereby affected.
22. This agreement shall be governed and construed in all respects in accordance with the laws of the State of Connecticut without giving effect to principles of conflicts of laws. The purchaser hereby irrevocably and unconditionally waives any claim to assert that the law of any other jurisdiction should govern this agreement.
23. The purchaser hereby consents to the jurisdiction of the courts of the State of Connecticut and the United States District Court of Connecticut with respect to any suit, action or other proceeding arising under or in respect of this agreement or with respect to the transactions contemplated hereby, and expressly waives any and all objections purchaser may have to venue in any such courts. The purchaser shall not bring any suit, action or other proceeding with respect to this agreement in any courts other than the above. The purchaser further agrees that any summons and complaint commencing an action or proceeding in any of such courts shall be properly served and shall confer personal jurisdiction if served personally or by certified mail to the purchaser at its address provided at the beginning of this agreement or as otherwise provided under the laws of the State of Connecticut.
24. Where required, the purchaser shall be responsible for complying with any legislation or regulations governing the importation of the product(s) into the country of destination.
25. The United Nations Convention on the Sale of Goods does not apply to the sale of products under this agreement.