



Wagner Spray Tech Corp.
a Member of WAGNER

1770 Fernbrook LN N
Plymouth
Minnesota 55447
USA
www.wagner-group.com

Wagner Spray Tech Inc. Terms and Conditions **(for systems requiring approval drawings)**

1. **Offer and Acceptance.** The Proposal to which these Terms and Conditions are attached constitutes a non-binding Firm offer by Wagner Spray Tech Corporation ("Seller"), to sell to the purchaser named in the attached Proposal ("Purchaser"), the goods, parts and/or engineered systems described in the Proposal (collectively referred to herein as the "Goods" or "the System") at the price indicated and subject to the terms and conditions set forth in the Proposal and below. This proposal is **Firm for forty-five (45) days from the date thereof but automatically expires at the end of such 45-day period** if not superseded by another proposal revision from the seller. The intention of this proposal is to provide an indication of price for the equipment and services proposed for the purpose of funds appropriation or project planning. Seller hereby objects to the inclusion of any terms or conditions Purchaser may include in its acceptance of future version of this Proposal once issued as a firm and binding offer by seller, that are different from or additional to the terms and conditions hereof.
2. **Prices.** Prices are Ex Works Plymouth, MN, USA and other manufacturing locations in North America (purchaser's responsibility).
3. **Taxes.** In addition to any prices specified herein, Purchaser will be responsible for and pay the amount of any present or future sales, use, excise, value-added, or other similar tax applicable to the price, sale or delivery of the Goods and services furnished hereunder.
4. **Payment.** Standard terms for credit-approved purchasers are as follows:

SYSTEMS REQUIRING APPROVAL DRAWINGS

Fehler! Verweisquelle konnte nicht gefunden werden.

Purchaser shall pay all amounts when due without deduction or setoff for any reason whatsoever. Purchaser shall pay all reasonable attorneys' fees, costs and related expenses incurred by Seller in the enforcement of this Agreement, including but not limited to, the collection of any and all amounts to be paid by Purchaser hereunder. If any of the amounts listed above are not paid when due, the entire remaining balance of the selling price shall become immediately due and owing to Seller. Purchaser will pay interest on any amount not paid when due at a rate equal to the lesser of: (i) the maximum non-usurious rate of interest under applicable law and (ii) three percent (3%) per month. If Seller requests, Purchaser will furnish a minimum of four (4) credit references or an irrevocable letter of credit.

Purchase price will, at once, become due and payable. Title to the Goods will remain with the Seller until the full purchase price is paid.

All payments take place, within 10 days of rendering the invoice, purely net. On placing an order, delivery takes place based on our general trading conditions as well as the special conditions for installation and start-up. We also refer to the relevant regulations of Factory Mutual over the operation of electrostatic coating systems. We reserve the right to make changes with regard to the specification of the equipment without thereby causing an impairment to the usability, performance, and operating safety.

Any infringement bound to compensation for damages.

5. **Cancellation:** Purchaser may cancel orders by sending a written notice of cancellation to Seller, which Seller must receive at least 60 days before the scheduled shipping date. Upon receipt of timely written cancellation notice, Seller will stop all work on promptly as reasonably possible. Purchaser shall pay to Seller for completed Goods and subassemblies, expenses incurred by Seller as a result of the cancellation, plus twenty (20%) percent for incomplete Goods. Seller reserves the right to complete and ship the Goods if this Proposal is cancelled within thirty (30) days before the scheduled shipping date.
6. **Limited Warranty.** Seller warrants to Purchaser that:
 - (a) Seller has good title to the Goods, free of any encumbrances, and that the Goods will be delivered free from the rightful claim of any third person for infringement of United States patents or copyrights.
 - (b) All service provided by Seller will be performed in a workmanlike manner.
 - (c) The following Goods are free from defects in material and workmanship, other than defects within customary trade tolerances and will operate in accordance with the description and specifications, for a period of two (2) years from the date the order for Goods is fully paid by Purchaser, but no longer than twenty six (26) months from the date of the transport document for the last delivery of the Goods (the "Warranty Period"): (i) the booth and recovery equipment; (ii) application equipment, including, without limitation, application guns, controllers and pumps; and (iii) all auxiliary equipment, such as gun positioning equipment, gun movement, encoders, gun triggering devices, sieves, computers and PLC's.
7. **Disclaimer of the Warranties.** THE WARRANTIES, IN SECTION 6 ARE EXCLUSIVE. SELLER MAKES NO OTHER WARRANTY, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
8. **Time Limit for Bringing Suit.** Any claim by Purchaser of a breach of any of the warranties in Section 6 shall be deemed waived by Purchaser unless submitted in writing to Seller within ten (10) days from the date Purchaser discovered or by reasonable inspection should have discovered such claimed breach. Any cause of action for breach of the foregoing warranty or for any other claim shall be brought by Purchaser within one year from the date the alleged breach was discovered or should have been discovered by Purchaser, whichever occurs first.
9. **Exclusions from Warranty.** The warranties in Section 6(c) do NOT cover (a) injector nipples, nozzles, nozzle insert assemblies, injectors, powder tubes, wedges, hoses and tubing, gaskets, seals, belts, screens, final filters, cartridge filters, airline filters, fluidization membranes, and any other wear parts; (b) normal wear and tear;



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(c) damage caused by accidents, violent handling, force majeure, undue strain of the Goods, faulty erection or installation of the Goods if not performed by Seller, faulty or negligent conduct of personnel operating the Goods and/or non-compliance with the operation and maintenance instructions for the Goods including use under abnormal conditions of temperature, dirt or corrosion, or use with abrasive or corrosive materials, or use with poor compressed-air quality; (d) accidents; (e) repairs and/or alterations carried out by Purchaser or any third party without prior written consent by Seller; (f) malfunctions or failure of the Goods due to use of non-Wagner genuine replacement parts; (g) labor and incidental costs occasioned by removal, replacement or repair of any Goods, unless Seller gives prior written authorization; (h) merchandise sold by Seller that was manufactured by and identified as the product of another company, such merchandise being subject to the warranties of such other manufacture; (i) cost of repair and return transportation from Seller of the Goods determined by Seller, in its own discretion, not to be covered by the limited warranty. Seller makes no representation or warranty as to whether the Goods comply with the requirements of the Occupational Safety and Health Act of 1970, as amended, and the regulations promulgated thereunder ("OSHA"). Responsibility for using the Goods in compliance OSHA is borne entirely by Purchaser.

10. Remedies.

(a) The warranty in Section 6(a) is subject to the following conditions, limitations, qualifications and exclusive remedies. Seller will defend Purchaser against any claim of infringement and will pay resulting costs, damages, and attorney fees finally awarded, provided that (A) Purchaser gives prompt and written notice of any such suit of infringement and/or any claim for infringement, (B) Purchaser gives prompt written notice of a request for defense or indemnity, with full authority, at Seller's discretion, to conduct such defense, or to settle such suit or claim, except to the extent such settlement would require a payment by Purchaser; and (C) Purchaser gives full assistance and cooperation in such defense or settlement as Seller may reasonably request. Seller shall, at its own sole cost and expense, provide one or more of the following at its option: (i) obtain adequate license for Purchaser to use the Goods as originally intended; (ii) modify the Goods so that they become non-infringing; (iii) replace the Goods; (iv) perform such other remedial action recommended by Seller and agreed to by Purchaser, which approval will not be unreasonably withheld or delayed; or (v) refund to Purchaser an amount which represents the value of the Goods less reasonable depreciation at the rate of 20% per year. Any payment by Seller to Purchaser pursuant to this Section is not to exceed a maximum of five percent (5%) of the price of the Goods paid by Purchaser to Seller.

(b) The warranties in Section 6(b) and (c) are subject to the following conditions, limitations, qualifications and exclusive remedies. Within a reasonable time, following notification of a breach of warranty, Seller will determine whether such warranty has in fact been breached. If Purchaser alleges a breach of any warranty of efficiency or performance, Purchaser shall afford Seller, at Purchaser's request, the opportunity of proving that such warranty obligation has been satisfied. Purchaser shall, at Purchaser's expense, supply the necessary power, raw material and personnel to Seller, free of charge, for such purpose. So long as the price for the services or Goods, as applicable, has been paid in full, Seller will, at its option and as applicable, (i) perform the services again at no charge, (ii) repair the Goods using new or used replacement parts, (iii) replace the Goods, (iv) modify the Goods or provide additional Goods or parts as necessary to cause the Goods to satisfy any warranty of efficiency or performance, or (v) remit to Purchaser the price paid for the services or for the Goods less reasonable depreciation at the rate of 20% per year. Purchaser shall be responsible for all labor necessary to remove defective parts or equipment and to install replacement or additional parts or equipment.

(c) These are the exclusive remedies for any breach of warranty. The sole purpose of these exclusive remedies is to provide Purchaser with free services, free modification, repair, or replacement of the Goods in the manner provided above or to accept return of any non-complying Goods at the purchase price set forth herein less reasonable depreciation. These exclusive remedies shall not be deemed to have failed of their essential purpose so long as Seller is willing and able to provide such services, to modify, repair or replace the Goods in the manner set forth above or is willing to accept return of the Goods and refund its purchase price set forth herein less reasonable depreciation at the rate of 20% per year.

11. LIMITATION OF REMEDIES. In no event is Seller liable for any incidental, consequential, punitive, special or similar damages of any kind arising under or in any way related to this Proposal, the Goods and the services delivered hereunder, or the use of the Goods. In no event is Seller's aggregate liability to Purchaser arising under or in any way related to this Proposal, the Goods and services delivered hereunder, or the use of the Goods, to exceed a maximum of five percent (5%) of the aggregate amount paid by Purchaser for Goods hereunder. In no event will Seller's obligation or liability for breach of warranty or any commercial or quality claim arising out or related to any Goods, or for any other type of obligation or claim, exceed a maximum of five percent (5%) of the price of the Goods with respect to which the claim is made. The foregoing limitations apply regardless of the form of any claim by Purchaser, whether for breach of any warranty, for breach or repudiation of any other term or condition of this Proposal or other writing, for negligence, on the basis of strict liability, or under any other legal theory. Some states do not allow limitations on warranties or on remedies for breach in certain transactions. In such states, the limits in this Section may not apply.

12. Risk of Loss; Title: For an order that consists of the purchase of Goods alone, the risk of loss passes to Purchaser upon Seller's: (a) delivery of the Goods to the carrier or (b) tender to Purchaser's agent, whichever occurs first. For an order that consists of the purchase of Goods and installation by Seller, the risk of loss passes to Purchaser after the earliest of the following: (a) Seller provides written documentation to Purchaser that installation is complete, (b) Purchaser executes a written acceptance form from Seller, or (c) Purchaser starts to use any portion of the Goods. If Purchaser fails to timely pay the full purchase price owed to Seller, Seller has the right to take back the Goods or the installed system, respectively, and to pursue all legal and equitable remedies, including but not limited to those referenced in Section 4, above. Title to the Goods will remain with Seller until the full purchase price is paid.

13. Intellectual Property. Seller retains all rights, title, and interests in any intellectual property rights embodied in or associated with its Goods and services furnished hereunder. Unless Seller and Purchaser mutually agree otherwise in writing, Seller owns all rights, title, and interest in any custom developments relating to its products and services, including all rights, title, and interest in all worldwide copyrights, trade secrets, trademarks, service marks, patents, utility models, industrial designs, proprietary rights, or other intellectual property. Purchaser shall not reverse engineer, modify, decompile, analyze the composition of, create other works from, or disassemble any of Seller's Goods.

14. Indemnity. Purchaser will indemnify and defend Seller against any and all losses, damages, liabilities, costs and/or expenses (including reasonable attorney's fees) of any kind or nature whatsoever (collectively, "Damages") in anyway connected with the manufacture or use of parts or Goods produced in accordance with Purchaser's designs or specifications, including but not limited to Damages on account of injuries to or death of any persons, damage to any property, and infringement or violation of intellectual property rights.



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15. **Independent Contractor.** Purchaser and Seller shall act at all times as independent contractors, and nothing contained herein shall be construed to create the relationship of principal and agent, or employee between Purchaser and Seller. It is mutually understood and agreed that personnel assigned to perform services hereunder are solely the employees, agents, or subcontractors of Seller.

16. **Force majeure;** Delay. Seller is not liable for any delay in manufacturing, shipments, or delivery of the Goods resulting from any cause beyond Seller's control, including, but not limited to, provisions of law or governmental regulations, accidents, terrorist acts, explosions, fires, windstorms, floods, or other natural disasters, strikes, lockouts, or other labor difficulties, riots, wars, insurrections, and shortages of, or inability to secure, labor, raw materials, production or transportation facilities. Shipping dates are approximate and are based on factory conditions at the time of purchase.

17. **Fire Protection Systems.** Purchaser is solely responsible for the purchase, installation and maintenance of any fire protection, detection and suppression systems that are in any way related to the Goods purchased from Seller.

18. **Installation/Labor.** If Seller installs the Goods, such work will be performed by Seller's factory crew or agents. If Purchaser's installation requires local personnel or specific contractors to perform such work, Purchaser will be credited the portion of that work from Seller's installation selling price, and Purchaser will assume full responsibility for the installation costs and performance of that portion. Seller will provide a non-working supervisor at an agreed upon price for the extent of such work.

19. **Modifications.** Seller may modify the Goods at any time before delivery in any manner that does not affect the form, fit or function of the Goods, Seller may substitute materials and components that do not affect the design or result expected from the operation of the Goods. To improve performance of the Goods, Seller may initiate design changes or modifications to Purchaser's designs or specifications.

If the purchaser requests a change at any time after the approval drawing has been signed, an Engineering Design Change Form (provided by Seller) must be filled out and the Purchaser is responsible for any additional charges regarding the changes.

20. **Delivery.** Seller will provide commercial packaging, adequate under normal conditions, to protect the Goods in shipment and identify the contents. Should Purchaser request any special packaging, it will be done at Purchaser's expense. All Goods will be shipped via the most cost-effective means of transportation under the circumstances unless Purchaser indicates otherwise. In the event Purchaser requests expedited shipping and handling, Seller shall comply provided Purchaser pays all reasonable expediting and increased shipping fees and expenses. If Purchaser provides no routing instructions, Seller shall be the sole judge of the best method of routing shipment. Claims for loss or damage in transit must be entered and prosecuted by the Purchaser. Seller will provide reasonable assistance, at Purchaser's expense, upon request.

21. **Seller's Right to Charge Daily Storage Fee:** Should Purchaser impede or delay Seller's ability to deliver the order to Purchaser when the order is ready, Seller has the right to charge Purchaser a WEEKLY STORAGE FEE of \$1.00 per square foot of storage space utilized for the order. Purchaser will be required to pay the daily storage fee to Seller within thirty (30) days of invoicing by Seller. Any daily storage fee balance due to Seller must be paid by Purchaser in full prior to Seller releasing the order to Purchaser.

22. **Export Control.** Purchaser agrees not to disclose or export, either directly or indirectly, any Goods acquired by it pursuant to this Agreement to any destination or person if such disclosure or export is prohibited by the laws or regulations of the United States of America or any other country's applicable laws or regulations.

23. **Tariff Adjustment Clause.** System pricing is based on the trade and tariff regulations in effect on the date of this proposal document. The seller reserves the right to adjust the pricing to reflect any additional costs incurred in the event of changes to tariffs, trade policies, or regulations after this date. This applies before or after a purchase order contract is in place and throughout the duration of the contract period.. The Purchaser agrees to pay these additional charges, if applicable, upon notification from the seller.

24. **Drawings and Specifications.** In all cases where this Proposal includes a drawing reference, a copy of the approved print or prints signed by Purchaser must accompany the order. In the event that Seller has not received the drawings thirty (30) days after Seller's submission to Purchaser for approval; they will be considered approved. Purchaser will check the Goods' size, location in building, and all interference and clearance, and note any applicable changes or interference on the print.

It is the job of the Purchaser to check the Goods' sizes and location in the building. This includes all interference and clearance, such as, building rafter, support beams, etc. Any changes need to be discussed with the Project Engineer or noted on the approval drawing.

25. **Confidentiality.** Purchaser will hold any drawings, specifications, designs, development plans and any other proprietary or technical information ("Confidential Information") related to the Goods in the strictest confidence. Purchaser recognizes that the Confidential Information is the exclusive property of Seller and Purchaser will comply with all of Seller's instructions for preserving its confidentiality. In addition, Purchaser will not, except as Seller otherwise directs, copy or directly or indirectly, disclose, sell, give, loan, or otherwise transfer Confidential Information to any person or entity, or for itself or others use Confidential Information in any manner that is or would be damaging to Seller's business or competitive advantage. Purchaser acknowledges that the breach of any of the covenants in this section may result in irreparable harm and continuing damages to Seller and its business, and that Seller's remedy at law for any such breach or threatened breach may be inadequate, and, accordingly, in addition to such other remedies as may be available to Seller, at law or in equity, in such event, Purchaser agrees to pay an engineering charge of 25% of the amount of Purchaser's order, plus any other damages for any breach of this section.

26. **Labor Costs and Expenses.** If Purchaser requests Seller to supervise installation or install Goods, Seller will make field supervisors available at the following rates to be paid by Purchaser:



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Travel & Living: at cost +15%

Mechanical Installation: \$2,000 per person day (invoiced by whole days; partial days billed as whole days)

Electrical Installation: \$2,000 per person day (invoiced by whole days; partial days billed as whole days)

Installation Supervision: \$2,000 per person day (invoiced by whole days; partial days billed as whole days)

Overtime: add 50% for weekends and double time for holidays

27. Standard Rates for Additional Work and Re-Mobilization. In the event that Wagner incurs costs as a result of:

Delays that are not caused by, nor are the responsibility of Wagner, or re-mobilization with additional trips needed to complete any aspect of a project. The purchaser agrees to additional costs based on the following rates:

Engineering: \$180 per hour

Project Management: \$150 per hour

Travel & Living: at cost +15% (for remobilization or extended stay if part of original mobilization)

Mechanical Installation: \$2,000 per person day (invoiced by whole days; partial days billed as whole days)

Electrical Installation: \$2,000 per person day (invoiced by whole days; partial days billed as whole days)

Installation Supervision: \$2,000 per person day (invoiced by whole days; partial days billed as whole days)

Overtime: add 50% for weekends and double time for holidays

28. Default by Purchaser. Seller reserves the right to terminate this Agreement in whole or in part for default if: (i) Purchaser fails to timely perform in strict compliance with the requirements of this Agreement or (ii) Purchaser becomes insolvent or suspends any of its operations or if any petition is filed or proceeding commenced by or against Purchaser under any state or federal law relating to bankruptcy, reorganization, receivership, or assignment for the benefit of creditors. Any such termination shall be without liability on the part of Seller and Purchaser will be liable to Seller for damages caused by, or resulting from, Purchaser's default.

29. Miscellaneous.

(a) This Proposal constitutes the entire offer of Seller and no other statements or other promises made by Seller or any of its agents that are not in writing and signed by it are binding. Seller objects to the inclusion of any terms or conditions Purchaser may include in its acceptance of this Proposal that are different from or additional to the terms and conditions hereof. This Proposal constitutes a final written expression of the terms of the parties' agreement with respect to subject matter hereof and is complete and exclusive statement of such terms. This Proposal may not be amended, nor any provision hereof waived, unless set forth in writing and signed by Purchaser and specifically by the General Manager, Operations Manager or Financial Comptroller of Seller.

(b) Applicable Law; Jurisdiction. The parties acknowledge that this agreement shall be deemed: (i) to have been made and entered into in, and (ii) to be performed, in whole or in part in, the State of Minnesota, USA. The parties therefore stipulate and agree that: (i) this Agreement shall be governed by and construed according to the laws of the State of Minnesota; (ii) any action related to or arising from this agreement may be brought only in a local, state or federal court located within the State of Minnesota, and the parties each consent to the jurisdiction of any local, state or federal court located in the State of Minnesota and waive any objection to such jurisdiction over any action related to or arising from this Agreement.

30. Severance. If any court or competent authority finds that any provision of the Proposal (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Proposal shall not be affected. If any invalid, unenforceable or illegal provision of the Proposal would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.