

LECTRUS CORPORATION

Terms and Conditions

- A. **Substitutions:** Lectrus Corporation reserves the right to substitute brands of parts, components and equipment (collectively, "equipment") of equal or better quality to those specified.
- B. **Lifting Equipment:** Spreader bars, cables, shackles, and other lifting equipment are not included unless specifically noted otherwise.
- C. **Building Codes / State Certifications:**
- Regional Codes and Statutes: Our proposal does not guarantee compliance with any regional, state, or local code or statute requirements. The governing basis for design shall be the International Building Code (Latest Revision).
 - State certification is required for EquipmentCenters shipped to the states listed below which cannot be 100% inspected on site with absolutely no disassembly required. The additional cost for this inspection and certification is \$10,500 which is not included unless specifically stated on the attached bill of materials and which amount will be added to the charges and must be paid promptly by Customer.

• Florida	• Oregon	• Minnesota	• Rhode Island
• New Jersey	• Tennessee	• Ohio	• Washington
• Maryland	• Arizona	• New Mexico ***	• Nevada ***
• Kentucky ***	• California	• North Carolina ***	
- D. **Testing:** All required testing of customer furnished equipment shall be performed by the customer at its sole cost.
- E. **Inquiry Documents:** Any code, specification, drawing or other document not specifically contained by the Request For Quote, even though referenced therein, may represent a change to our proposed scope of work and price.
- F. **Progress Payments:** On all projects with a total price over \$100,000
- 20% of total project price will be invoiced upon submittal of approval drawings
 - 30% upon release for fabrication
 - Balance upon notification of unit completion and readiness for customer inspection.
 - All invoices shall be due and payable within 30 days of issuance.
- G. **Quote Validity:** The quoted pricing and delivery will remain firm for your acceptance within THIRTY (30) calendar days from this date, based on all milestones in the "Proposed Equipment Center Schedule" on the "Quotation" worksheet, attached, being realized on or before the dates indicated therein; should those milestone dates not be realized by the dates indicated, price escalation of materials and labor may well become applicable, over and above our anticipated costs, requiring an additional amount to be added to the contract price, which will be calculated at the time the later milestones are actually effected. If a price increase is necessary due to such escalation, you will be requested to submit a new/revised Purchase Order or Change Order before manufacturing is started.
- H. **Delivery Dates:** Proposed delivery dates are estimated at time of quote. Adjustments may be required at time of release for construction, based on available plant capacity at that time.
- I. **Customer Provided Equipment:**
- Any customer provided equipment must be at our facilities a minimum of four weeks prior (or as defined on the proposal) to final inspection date. Sizes of provided equipment and conduit or wiring access information is required at order placement (if applicable). Delays in providing this information may affect drawing delivery and ultimately final delivery of the Equipment Center. If Lectrus Corporation is performing any wiring associated with this equipment, two copies of detailed point to point wiring diagrams are required at order placement.
 - Do not ship supplementary materials to Lectrus Corporation that are not to be installed by Lectrus Corporation in the Equipment Center. Charges for storage and handling of these items are not included in the quoted price and will be charged.
- J. **Freight Terms:**
- Unless otherwise provided, shipment is F.O.B. Lectrus Corporation's plant, Chattanooga, Tennessee or Houston Texas , and all risk of loss shall pass to Customer upon delivery to the carrier.
 - IT IS THE CUSTOMER'S RESPONSIBILITY TO INSURE THE EQUIPMENT CENTER DURING SHIPMENT

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- If requested, Lectrus Corporation shall solicit estimated freight pricing at time of proposal from carriers designated by the customer, or from known carriers should no designation be made, based on Lectrus Corporation's best estimate of weights and overall dimensions at that time. Lectrus Corporation shall not be responsible for variations in actual and estimated freight costs.
- At time of completion of each unit, Lectrus Corporation shall notify the carrier submitting the most favorable proposal, or as specifically designated otherwise by the customer, of approximate completion time, estimated weight(s), overall dimensions of the unit(s), and the destination provided by the customer. If not specifically designated otherwise, the freight costs shall be prepaid by Lectrus Corporation and added to the contract price.

- K. **Standard Construction Methods:** Prices are based on our standard construction methods, construction tolerances and coating systems. More information on these are available upon request.
- L. **Major Equipment Warranty:** Please note Lectrus Corporation does not warranty any major equipment purchased from other manufactures beyond the warranty provided by the equipment manufacturer. Warranty information on such items may be furnished on request, as available.
- M. **Terms and Conditions:** The terms and conditions herein and in the [quotation] set forth the entire agreement of the parties and may not be explained or supplemented by any prior, contemporaneous or subsequent purchase order, sales agreement or other document, or any prior, contemporaneous or subsequent verbal discussions. No waiver or modification of the terms and conditions shall be effective unless signed by Lectrus Corporation. Lectrus Corporation expressly limits acceptance of the [quotation] to these terms and conditions.
- N. **Charges:** Charges will be invoiced as follows: Invoices are payable within 30 days of invoice date. [Interest shall accrue on unpaid balances at a rate of 1½% per month (or any part thereof) from the date due until paid, but in no event shall such interest rate exceed the maximum rate of interest permitted by applicable law.] Charges are exclusive of all sales, use and other taxes. Charges are based on Lectrus Corporation's standard construction methods, construction tolerances and coating systems and may be adjusted by Lectrus Corporation for any variances. Quoted charges are based on completion of the Equipment Center within the time frame at time of quotation of charges, and Lectrus Corporation may adjust charges if completion is extended beyond that period.
- O. **Warranties and Exclusions.** Lectrus Corporation warrants the workmanship of its services in assembling the Equipment Center for one (1) year from the date of invoice. Lectrus Corporation does not make any warranties with respect to any equipment, and assigns (to the extent assignable) to Customer any manufacturer's warranty thereon.

EXCEPT FOR THE WARRANTY RELATING TO THE WORKMANSHIP OF SERVICES SPECIFICALLY STATED ABOVE, THERE ARE NO WARRANTIES WITH RESPECT TO EQUIPMENT, WORKMANSHIP OR OTHER ITEMS OR SERVICES. THERE IS NO IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, FREEDOM FROM INFRINGEMENT OR THE LIKE, ALL SUCH WARRANTIES BEING HEREBY EXPRESSLY EXCLUDED.

WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, CUSTOMER SPECIFICALLY ACKNOWLEDGES AND AGREES THAT IT HAS FURNISHED SPECIFICATIONS TO LECTRUS CORPORATION AND SHALL INDEMNIFY AND HOLD LECTRUS HARMLESS AGAINST ANY CLAIM BY WAY OF INFRINGEMENT OR THE LIKE WHICH ARISES OUT OF COMPLIANCE BY LECTRUS CORPORATION WITH THOSE SPECIFICATIONS. LECTRUS CORPORATION DOES NOT GUARANTEE COMPLIANCE WITH ANY REGIONAL, STATE, OR LOCAL CODE OR STATUTORY REQUIREMENTS (THE GOVERNING BASIS FOR THE DESIGN OF THE EQUIPMENT CENTER BEING THE INTERNATIONAL BUILDING CODE(LATEST REVISION). [WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, IT IS SPECIFICALLY PROVIDED THAT THERE IS NO WARRANTY WITH RESPECT TO MATERIALS SUBJECT TO NORMAL WEAR AND TEAR SUCH AS LIGHT BULBS, AIR CONDITIONING FILTERS, ETC.]

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- P. **Exclusive Remedy:** If the warranty made by Lectrus Corporation is breached, then Lectrus Corporation shall re-perform the service. All warranty claims require a purchase order from Customer prior to Lectrus Corporation re-performing services or repairing or replacing equipment covered under an assigned manufacturer's warranty. Any equipment that is replaced must be returned immediately to Lectrus Corporation.

THE FOREGOING STATES CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND LECTRUS CORPORATION'S SOLE LIABILITY FOR BREACH OF WARRANTY AND WITH RESPECT TO ANY DEFECT OR NONCONFORMITY IN THE EQUIPMENT CENTER (INCLUDING, WITHOUT LIMITATION, ANY EQUIPMENT CONTAINED THEREIN) OR FOR ANY OTHER ACTION OR INACTION BY LECTRUS CORPORATION. LECTRUS CORPORATION SHALL IN NO EVENT BE LIABLE FOR, AND CUSTOMER HEREBY WAIVES ANY RIGHT TO RECOVER, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES INCLUDING, BUT NOT LIMITED TO, ANY LOST PROFITS, DAMAGES RELATED TO INJURY TO OR DEATH OF PERSONS, AND DAMAGES TO PROPERTY, WHETHER BASED ON THEORIES OF NEGLIGENCE, BREACH OF CONTRACT, BREACH OF WARRANTY, MISREPRESENTATION, STRICT LIABILITY OR ANY OTHER LEGAL THEORY. Customer acknowledges that the price charged by Lectrus Corporation is consideration for all of the limitations contained in the warranty section above and in this remedy section.

- Q. **Customer Credit:** Lectrus Corporation reserves the right to refuse any purchase order based on its sole evaluation of the credit worthiness of the Purchaser.
- R. **Miscellaneous.** The consequences of labor troubles, fires, accidents, floods, wars, shortages of transportation, failure of any supplier to supply equipment, and any and all like or different causes beyond the control of Lectrus Corporation shall excuse performance by Lectrus Corporation to the extent that performance is prevented or delayed thereby. This Agreement is governed by the laws of the State of Tennessee. In the event of a breach of this Agreement, the breaching party agrees to pay all costs and expenses incurred by the non-breaching party in enforcing this Agreement or collecting damages for the breach including, but not limited to, attorneys' fees and court costs. Buyer submits to and consents to jurisdiction and venue in any action or proceeding commenced by Lectrus Corporation in any state or federal court located within Hamilton County, Tennessee.
- S. **International Equipment:** If included in our proposal, International equipment operating at frequencies other than 60Hz or voltages other than that available in our plant (480/277/208/120V) will get continuity testing only. If function testing is required the customer will bear the cost of renting or purchasing (and related shipping and handling) of all special equipment required to perform such test.
- T. **Liquidated Damages, Penalties and Bonds:** We take exception to all liquidated damages, penalty clauses and bond requirements.
- U. **Storage Charges (Should they be required):**
- Request to hold the unit without invoicing and without power. If it is shipping within the first 30 days of the original ship date no charge. If it is going to be delayed past that then it is 1% (\$500 minimum) of the invoiced price per month from the date it was originally scheduled to ship commencing after the 4-week period.
 - Request to hold the unit but we are allowed to invoice and the customer will pay in normal terms. Same as above but monthly storage fee is 0.5% of invoiced price.
 - Either of the above scenarios that require power on the unit add another 0.25% onto the storage fee.
 - If there are other requirements then they will need to be considered on a case by case basis.
 - If Lectrus Corporation deems it necessary to move the unit(s) to clear production areas during the storage period then crane and handling charges may also apply.
- V. **Construction Location Options:** Lectrus Corporation reserves the option to build the above quoted structure at our Chattanooga, TN or Houston TX facilities at our option.
- W. **Transportation Notes:**
- W.1 **QUOTED SHIPPING AND HANDLING:** Lectrus Corporation shall not be responsible for variations in actual and estimated freight cost, which may vary over time due to fuel cost, actual routing at the time of haul, permitting cost changes, demurrage, etc...

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- Customer to supply equipment to assemble/disassemble specialized trailers at destination.
 - Others to provide suitable route within the destination plant
 - Clear compacted access to the point of unloading to be provided by others. There must be sufficient room to be able to move in and out of the origin and destination facilities.
 - Four (4) hours free time is provided for unloading per piece. Thereafter, standby charges will apply.
 - Changes in weight and/or dimensions may require an adjustment to pricing.
 - Bucket trucks/Utilities trucks and/or crews are not included in the quoted charges and, if necessary, will be billed at cost plus ten (10) percent.
 - State or local patrolmen / equipment are not included in the quoted charges and will be billed at cost plus ten (10) percent
 - Labor and equipment for unloading to be provided by others.
 - We are not responsible for equipment or labor cost incurred due to delays in the arrival of the shipment.
- The Shipping and Handling proposal is valid for thirty days unless otherwise specified.
- W.2 **CARRIER INSURANCE:** Most carriers utilized carry product liability insurance up to, but not exceeding \$300,000. Should you desire Lectrus Corporation to arrange for a carrier to the site and should you desire additional transit insurance from the carrier, please add a line item to your Purchase Order to Lectrus Corporation in the amount of two percent (2%) of the declared value of each shipping piece (including all equipment), over and above the estimated freight cost, for an insurance rider covering the excess amount.
- The above option is for domestic shipments only. For international shipments this would only apply to transportation to the US Port
- W.3 **OPTION FOR FOB SITE:** Should you desire FOB site terms, please add a line item to your Purchase Order to Lectrus Corporation in the amount of two percent (2%) of the declared value of each shipping piece (including all customer provided equipment), over and above the estimated freight cost, for an insurance rider covering the excess amount.
- The above option is for domestic shipments only. For international shipments this would only apply to transportation to the US Port.
- X. **Oral Agreements:** There are no oral understandings or agreements other than those embodied in this proposal. This proposal represents the entire agreement, terms and conditions between parties.