



# CUSTOM PRODUCTS ORDER CANCELLATION TERMS

## 1. Applicable Products

These custom product cancellation terms serve as an enhancement to the Terms and Conditions of Sale for Bebcu Environmental Control Corporation (hereafter referred to as Seller). Applicable Products covered by these terms shall include products that are manufactured in accordance with unique customer specifications, including but not limited to Model PAC, PHP, WAC, WHP, WVF, RVF and GPF Units, along with Model EAC, TAC, THP, SHP, RAC or RHP Units that have significant custom enhancements as determine at the sole discretion of Seller.

Accordingly, the following order cancellation terms shall apply for aforementioned products purchased under client purchase orders (hereinafter referred to as "orders") that are cancelled due to no fault or breach of sales contract by the Seller, unless other order cancellation terms are specifically accepted by Seller in writing at time of order:

## 2. Order Cancellation Prior to Approval for Manufacturing

To facilitate potential ordering errors, orders may be cancelled within a period of 3 working days after receipt of the order by electronic, hand delivered, mailed or couriered means without charge.

**AFTER** the 3rd business day, **BUT PRIOR** to Client's approval for manufacturing, charges equivalent to all incurred costs, in addition to all incurred labor expended including Design, Engineering, Planning and Procurement Labor at the rates expressed below or a cancellation fee of 10% of the total order amount shall be applicable, whichever is greater.

## 3. Order Cancellation After Approval for Manufacturing

**AFTER** Client's approval for manufacturing **BUT PRIOR** to completion of sheet metal fabrication and integration of major refrigerant system equipment, charges equivalent to all incurred costs in addition to all labor expended, including Design, Engineering, Planning, Procurement, Production Management and Production Labor at the rates expressed below or a cancellation fee of fifty percent (50%) of the total order amount shall be applicable, whichever is greater.

**AFTER** completion of sheet metal fabrication and integration of major refrigerant system equipment, **BUT PRIOR** to the prefabrication or integration of major electrical system equipment, charges equivalent to all incurred costs in addition to all labor expended, including Design, Engineering, Planning, Procurement, Production Management and Production Labor at the rates expressed below or a cancellation fee of seventy-five percent (75%) of the total order amount shall be applicable, whichever is greater.

**AFTER** completion of sheet metal fabrication, integration of major refrigerant system equipment and prefabrication or integration of major electrical system equipment, charges equivalent to all incurred costs in addition to all labor expended, including Design, Engineering, Planning, Procurement, Production Management and Production Labor at the rates expressed below, not to exceed a cancellation fee of one hundred percent (100%) of the total order amount shall be applicable.

## 4. Definition of Incurred Costs

Seller shall make every reasonable attempt to minimize order cancellation cost by restocking any materials or supplies that are not consumed or modified in a manner as to render them as used or expended, and to restock any refrigerant system or electrical materials or equipment that are not specially purchased, customized or integrated at time of cancellation; thereafter, incurred costs shall be herein defined as, but not limited to the total sum of 1) all restocking fees, 2) the purchased value of all non-returnable or specially purchased materials and equipment, 3) all incurred expenses for outsourced fabrication, coating application, product certification and professional engineering, and 4) the purchased value of all materials, supplies and consumables allocated from the Seller's inventory, all as directly related to order fulfillment, plus an applied markup to the total sum not exceeding thirty-five percent (35%).

## **5. Applicable Labor Rates**

The following rates shall be applied to determine portions of any cancellation fee, as herein expressed:

Design: \$100.00/hr.

Engineering: \$150.00/hr.

Planning: \$125.00/hr.

Procurement: \$95.00/hr.

Production Management: \$100.00/hr.

Production Labor: \$85.00/hr.

## **6. Progress Payment Hold-Over**

Received progress payments in relation to any order shall be held-over during the negotiation of any order cancellation, and shall be applied to the applicable order cancellation charge. Should the total sum of all progress payments be less than the total amount due at cancellation, the remaining balances shall be billed directly as a balance due under the terms and conditions of sale regarding final payment of the original order.

## **7. Taxes**

Except as may otherwise be provided, the cost of order cancellation shall not include sales, use, excise, import/export duties, tariffs, etc. and similar taxes which might otherwise be applicable to the products sold and thereafter cancelled.

## **8. Incurred Cost Disclosures**

Seller agrees that all information regarding incurred costs shall be provided in a timely manner upon the Buyer's written request. Information shall include internally generated purchase orders, vendor or supplier invoices, estimated salaried and non-production employee time expenditures and job labor and material reports, as generated by the Seller's in-house accounting system, within reason, at the sole discretion of Seller. The rights of the Buyer for reasonable disclosure shall not be construed to give Buyer any specific rights to conduct on-sight audits, with exception only to on-site examination of all drawings, documents, materials, equipment and products at time of order cancellation.

## **9. Disposition of Completed or Partially Completed Goods & Services**

Following attempts to minimize order cancellation costs as established under Section 4, or in lieu of such initial efforts by Seller at Buyer's sole discretion, Buyer shall have the right to claim possession of all completed drawings and documents and fabricated, consumed or specially purchased items, components or materials, whether integrated or not, with no implied warranty at its sole expense, in exchange for the payment of all applicable order cancellation fees plus any costs incurred by Seller to further integrate or finalize the product or services to any degree and package, crate and transfer the partially or fully completed goods and services into the Buyer's possession. Otherwise, said goods and services shall remain as the property of Seller.

## **10. Force Majeure**

Buyer shall have no right to cancel an order without incurring costs herein expressed, and Seller shall not be liable for non-performance or delays caused by acts of God, wars, riots, strikes, fires, shortages of labor or materials, labor disputes, governmental restrictions, or any causes beyond its reasonable control. In the event of any such excused delay or failure of performance, the date of delivery shall, at the request of Seller, be deferred for a period equal to time lost by reason of the delay. Seller shall notify Buyer in writing of any such event within a reasonable period, upon Seller's knowledge of same.

## **11. Waiver of Order Cancellation Rights due to Delay of Shipment**

Upon written acceptance of Progress Payment Terms, Buyer understands and is obligated to pay all required progress payments prior to shipment of any purchased products, and hereby agrees and understands that delayed shipment due to non-payment of progress invoices are incurred at the sole risk of the Buyer, and shall not be deemed as an acceptable reason or justification for cancellation or termination of any order, nor shall such delay of payment due to non-payment be construed as justification for taking exception to the terms of order cancellation as herein expressed.

## **12. Governing Law**

Unless otherwise agreed in writing prior to order acceptance, the venue for resolution of any conflict regarding the terms and conditions of order cancellation as herein expressed shall be the County of Galveston, in the State of Texas.

## **13. Conflict Resolution**

Unless otherwise agreed in writing prior to any attempted order cancellation, any controversy or claim arising out of or relating to an order cancellation under the terms and conditions as herein expressed shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules [including the Optional Rules for Emergency Measures of Protection]. The arbitration hearing shall take place in Galveston County, Texas before a single arbitrator. Judgment on the award rendered by the arbitrator shall be final, and may be entered in any court having jurisdiction thereof.