



February 12, 2019

Austin Calaman
Assistant General Manager
Lewes Board of Public Works

Dear Mr. Calaman,

Further to your meeting and discussion with Bob Fairweather, I am pleased to provide the attached proposal for an EcoPure Mini odor control system for Pump Station #4.

The BioAir team have years of experience in designing and supplying biological odor control equipment into the Municipal Wastewater market and this is evident in the simple design, quick installation and reliable operation of the units. The following testimonial came from a contractor installing BioAir equipment in Florida -

I seldom if ever write any type of recommendation letter but after completing the subject project with Bio-Air I felt compelled to let you know that they were one of the finest manufactures I have had the privilege to work with in my 33 years of working in the design and construction of water and wastewater plants and pumping stations in Florida and Georgia. Sawcross has installed over 20 scrubber and odor control projects and this order was a great experience in all phases including the painless execution of the purchase order, timely and smooth submittal process, on schedule manufacturing and delivery and finally startup and flawless operation of the units to the specification. I would highly recommend Bio-Air to anyone considering odor control for their project. They were simply fantastic. Mark Hickinbothan, P.E. President – Sawcross, Inc.

If you have any questions regarding installation requirements or details of the equipment included in this scope of supply, please give me a call at the number below.

I look forward to working with you on this project,

Sincerely,

Christopher A. West

BioAir Solutions, LLC.
Regional Sales Manager
Ph: (856) 495-5501

**Town of Lewes
Pump Station #4**



BioAir EcoPure Mini

**BioAir Odor Control Scope of Supply
Q191A018
February 12, 2019**



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1. Basis of Design

Odor Source: Pump Station #4				
Parameter	Units			Remarks
		Average	Transient Maximum	
Airflow – System 1,	Cfm	360	N/A	
H ₂ S	ppmv	50	120	
NH ₃	ppmv	N/A	N/A	
Air temperature	°F	59	99	
Relative humidity	%	60	100	
System Performance Guarantee				
<p>Biological Stage Performance Guarantee H₂S: 99% or < 0.5ppmv</p> <p>Overall Performance Guarantee H₂S: 99.5% or < 0.1 ppmv Overall Odor: 95% or < 200 D/T</p>				

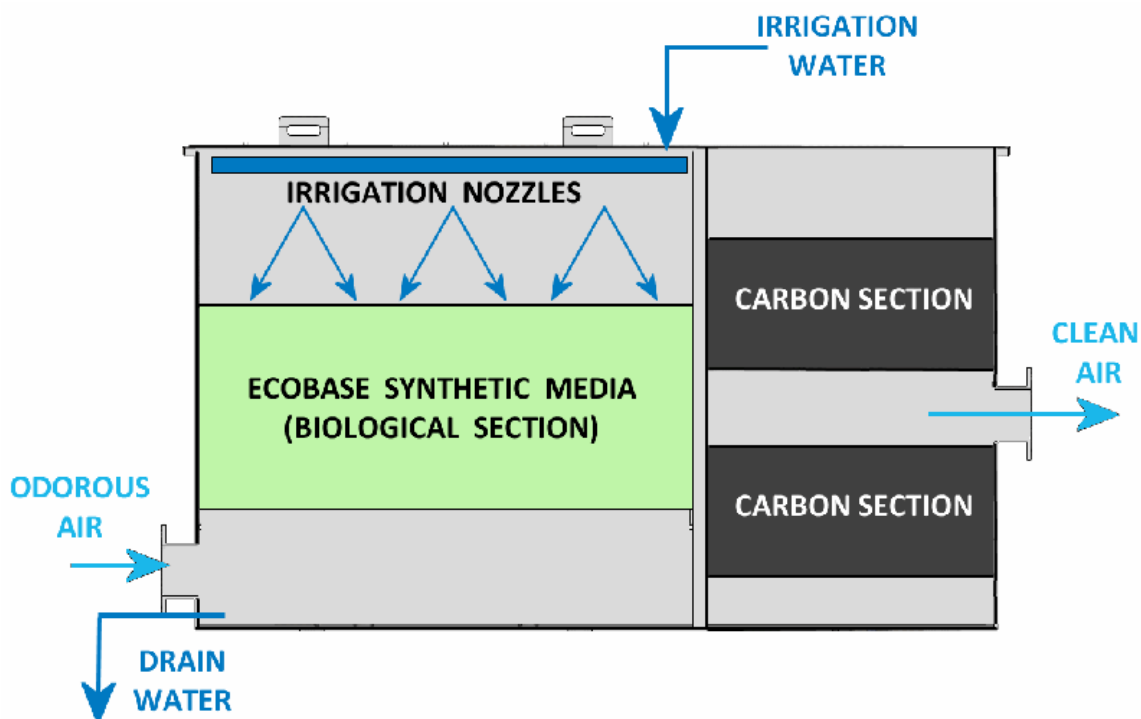
2. Equipment Included

1.1. Equipment Recommendation

BioAir recommends its EcoPure® technology odor control system to treat the odorous air stream. The EcoPure delivers performance unmatched in the industry utilizing BioAir's proprietary EcoBase® patented synthetic media with a secondary activated carbon polishing stage.

Some of the key features of EPM include:

- Exceptionally long synthetic media life; 15 – 20 years
- Fully enclosed control area – Safe and securable
- Enclosed blower for quiet operation
- Small footprint; higher loading capacity = Industry smallest footprint
- Very low operating cost
- Reliable performance
- Long polishing media life
- Extremely low level 'polished' discharge airstream
- Minimum maintenance requirements



1.1.1. Odor Control System

One (1) EcoPure® Mini System constructed of UV resistant, High Density Polyethylene (HDPE) and completely skid mounted on a 304 SS skid. The system will arrive on site with all system components, including blower, control panel, nutrient dosing system, synthetic media, all pre-installed and ready for placement and connection to the foul air ductwork and utilities. The system is controlled from a central control panel, with power requirements 230/1/60, 20A. The control panel controls the irrigation system, blower, and nutrient dosing (if applicable) and is equipped with two (2) dry output contacts for remote system diagnostics via a SCADA system.

One (1) Blower, cast aluminum blower by AeroVent, Cincinnati blower or equal.

	Approximate Values	
EcoPure Mini Dimensions	4 x 9	(feet)
Height to top of EPM Vessel	5	(feet)
Operating Weight	2,800	(lbs)
Total System ΔP^*	2	(in. w.c.)

* Not including impedance of ductwork upstream of the blower

3. Documentation

Engineering Submittals

Submitted per Specifications, the Engineering Submittals will contain detailed information on the equipment being supplied with equipment lists, drawings and calculations.

Offloading, Installation & Startup Instructions

Provided prior to equipment shipment is the EcoPure® Complete Offloading, Installation and Startup Manual. Instructions are detailed with graphic and photographic demonstrations for the plug and play assembly and installation.

Operation & Maintenance Manuals

An Operations and Maintenance Manual will be provided prior to startup of the equipment and will contain details of operation, monitoring recommendations and a troubleshooting guide, along with a listing of all components.

4. Manufacturer's Services

Installation Assistance

The equipment is modular and shipped in as few components as possible with media pre-installed so the installation is 'plug-and-play' by nature. The BioAir Service department is available by phone to assist during the installation phase to ensure correctness/readiness for operation.



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Startup Assistance

The startup of the system is simple and takes between 2 and 6 weeks to allow sufficient time for the biological acclimation process to take place. One (1) trip with two (2) on-site days is included for equipment startup. During the startup trip, the BioAir service person will measure and confirm the airflow and hydrogen sulfide concentration into the reactor and certify the mechanical and electrical installation of the equipment. For the 2- to 6-week acclimation period, BioAir Service Personnel are available for consultation and assistance. Please allow two (2) weeks for scheduling of the startup visit.

The Biological acclimation process is enhanced by the use of a BioAir proprietary Startup system. The system components are provided by BioAir for the purpose of acclimation only and will be removed from the site once completed. Complete ‘hook-up’ instructions are included in the Offloading, Installation & Startup manual. The minor piping and re-piping prior to and post startup in to be completed per BioAir instructions by the installing contactor.

Training

After Startup is complete, and at the discretion of the Owner / Contractor, the BioAir service team will provide complete operation and maintenance training for the Owner’s personnel. This training will include a training manual with excerpts of the Operation and Maintenance Manual with both classroom and hands-on, on-site sessions. One (1) trip with one (1) on-site day is included for training.

5. Equipment Warranty

BioAir Solutions (“BioAir”) warrants the synthetic media against defects in material and workmanship for five (5) years from delivery of the equipment to the job site. In the event it is determined that a defect exists in the synthetic media, BioAir’s sole obligation shall be to repair or replace the defective media at BioAir’s cost and expense.

All equipment supplied by BioAir, other than the synthetic media and activated carbon media is warranted by BioAir against defects in material and workmanship for twelve (12) months from successful completion of startup of equipment or eighteen (18) months from equipment delivery to the jobsite, whichever comes first. In the event it is determined that a defect exists in such equipment, BioAir’s sole obligation shall be to repair or replace the defective equipment at BioAir’s cost and expense.

BioAir will not be liable under any warranty if the defect was caused by misuse, abuse, improper operation, improper maintenance, alteration, repair or modification, negligence in use, casualty, storage, handling or any other cause beyond the control of BioAir.

6. Price

**Total price for Equipment, Manufacturers Services, Documentation
And Warrantees listed above.....\$**
(FOB Jobsite, freight prepaid)



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Prices are valid for 90 days from the date of this proposal. BioAir Solutions, LLC General Terms and Conditions of Sale, a copy of which is annexed hereto, is incorporated into this Scope of Supply by reference and made part thereof.

The Total Price does NOT include any sales, Use, Goods and Services Tax, or any other taxes, duties or permit fees (“Taxes”) associated with the purchase of this Equipment. Purchaser shall be responsible for payment of all Taxes. Retainage is not allowed. No back-charges will be paid unless previously agreed to in writing. Payment terms are subject to receipt and approval of purchaser’s credit application. Invoices not paid per the terms above will incur late fees of 1.5% per month.

Payment terms:

- 10% of the Price, Net 30 days after approval of submittals
- 80% of the Price, Net 30 days after delivery of the equipment to the job site*
- 10% of the Price, Net 30 days after successful completion of the Performance Testing but no later than 150 days from the date that the Equipment is delivered to the job site*

* per odor control system supplied

7. Optional Equipment & Services

Performance Testing

If required, after the system is started up and fully acclimated, BioAir Solutions will provide the necessary testing and monitoring equipment to confirm that the system is operating correctly and performing as specified.

Total price for [OPTIONAL EQUIPMENT] as above.....\$4,600.00

8. Delivery Schedule

Engineering Submittals:	4 - 6 Weeks, after receipt of Purchase Order*
Equipment Delivery:	10-16 Weeks, after release to Manufacture*
Offloading / Installation Manual:	10 Weeks, after release to Manufacture
Operation and Maintenance Manual:	14 Weeks, after release to Manufacture

*Dependent on shop-loading at the time of PO.

9. Work NOT Included in Scope

- Design and construction of concrete foundation
- System anchor bolts
- Receiving and offloading of equipment
- Placement and assembly of the system components
- Supply or installation of interconnecting electrical equipment or labor including power supply to control panel, power from control panel or VFDs to motors/field disconnects, and power/signals from control panel to field-mounted instruments.
- Connection or supply of biotrickling filter water piping including supply to water panel, interconnecting piping from water panel to irrigation nozzle connection, startup system piping, drain piping, or other field piping/valves.
- Provision and installation of insulation and heat tracing (if required) for all water / nutrient lines, or nutrient container
- Felt paper below vessel(s). (Vessel(s) to be set on minimum two (2) layers of Type II (No. 30) ASTM D226 Felt Paper.)
- Heat tracing and insulation of interconnecting duct work (if required)
- Supply of ductwork, dampers and expansion joints upstream of the vessel
- All ductwork supports
- Operation of the equipment
- Neutralization of the drain water (if required)
- Any Taxes as defined herein

BioAir Solutions, LLC's General Terms and Conditions of Sale

1. **Definitions.** "Proposal" means the proposal to which these General Terms and Conditions of Sale are attached, any specifications thereto, and the terms and conditions contained herein. "Seller" means BioAir Solutions, LLC, its subsidiaries and affiliates. "Buyer" means the person, firm, or corporation identified as the purchaser or customer in the Proposal. "Equipment" means all machinery, parts, accessories and attachments described in the Proposal. Any replacements, additions, improvements, alterations, spare parts, attachments or repairs provided by Seller shall be subject to these General Terms and Conditions of Sale. The sale or furnishing of any replacements, additions, attachments, accessories or repairs to the Equipment which are made or delivered subsequent to the sale of the Equipment shall not cause or create any extension of the guarantees or warranties made herein with respect to the Equipment nor shall they change the effective date on which the Equipment is delivered by Buyer. For purposes of the warranty provision contained herein, the phrase "components of the Equipment which have been manufactured by Seller" shall include only those components manufactured by Seller.

2. **Price and Terms.** The purchase price of the Equipment shall be as set forth in the Proposal. The purchase price shall not include, taxes, freight and/or handling charges unless these items are specifically listed and priced in the Proposal. Buyer shall pay or reimburse Seller for any sales, use, excise or other tax now or hereafter imposed by reason of the production, sale, transportation, delivery or installation of the Equipment. The purchase price is F.O.B. point of shipment unless otherwise stated in the Proposal. The purchase price shall be payable in United States currency on or before fourteen (14) days after the date of invoice unless otherwise specified in the proposal. Any invoices which are not paid within fourteen (14) days shall be subject to interest at the rate of 1.5% per month from the date of the invoice until the date on which such invoice is paid.

3. **Delivery, Risk of Loss and Storage.** The delivery date set forth in the Proposal is the Seller's best estimate when the Equipment will be delivered to the carrier and shall not be deemed to represent a fixed or guaranteed delivery date. Delivery shall be deemed to have been made when Seller places the Equipment in the possession of a carrier selected by Buyer (or selected by Seller with Buyer's approval) at which time Buyer shall bear the risk of loss for the Equipment. If Buyer is not prepared to accept delivery of the Equipment upon notice that it is ready for shipment, Seller may store it in a warehouse at Buyer's expense and risk, in the name of the Buyer or Seller. Such delivery to a warehouse shall constitute shipment and delivery of the Equipment to Buyer and the balance owed shall become immediately due and payable.

4. **Insurance.** Buyer shall be required to obtain and maintain an insurance policy in an amount equal to the unpaid balance of the purchase price, to cover all risks of loss and damage to the Equipment, which policy shall name Seller as an insured to the extent that its interest may appear. Buyer shall deliver a certificate from the insurance company certifying that such insurance is in effect and shall not be cancelled or revoked without fifteen (15) days prior written notice to Seller until the purchase price of the Equipment is paid in full.

5. **Installation.** The purchase price does not include installation unless installation is expressly specified in the proposal. If installation is included, (i) the Buyer shall be responsible for preparing the site and all other equipment for the installation of the Equipment prior to the Equipment's scheduled delivery date, and (ii) the Buyer shall pay Seller at the Seller's rates then in effect for any additional installation time caused by Buyer's failure to prepare the site or by any other delay at the installation site not within Seller's control.

6. **Security Agreement.** To secure payment of any obligation of Buyer to Seller (including, but not limited to, Seller's charges for service and parts), Buyer hereby grants Seller a security interest in the Equipment together with all parts, accessories, attachments, additions, accessions, substitutions, improvements and replacements thereto or thereof and all proceeds from insurance, sale or disposition.

7. **Default and Remedies.** The occurrence of any of the following shall constitute a default by Buyer: failure to make any payment when due; failure to comply with or perform any provision of the Proposal; false or misleading representations or warranties made or given by Buyer; assertion of any lien, levy or other judicial process against the Equipment or diminishment or impairment of Buyer's rights in or to the Equipment; voluntary or involuntary commencement of any proceeding under which Buyer is subjected to or seeks relief under any bankruptcy, insolvency or receivership proceeding; any act of Buyer which results in the substantial reduction in the value of the Equipment or imperils the prospect of full performance or satisfaction of Buyer's obligations hereunder; any modification to the Equipment without Seller's written consent; if Buyer sells, encumbers or otherwise disposes of the Equipment while title thereto remains in Seller; or if Buyer is in default of any other obligation to Seller or any company affiliated with Seller. Upon any default by Buyer, and at the option of Seller, all sums payable under the Proposal and any other

amount due Seller shall immediately become due and payable in full without notice or demand to Buyer and Seller shall have all the rights, remedies and privileges as are accorded to Seller by law including, without limitation, those pertaining to repossession, retention and sale of the Equipment and disposition of the proceeds. In addition, Seller may also enter, with or without legal process, into or upon the premises where the Equipment or any part thereof may be located and take possession of the Equipment, or render it unusable, or dispose of the Equipment (in such event Buyer agrees not to resist or interfere with Seller's actions); or require Buyer to make the Equipment available to Seller at a place reasonably designated by Seller to enable Seller to dispose of the Equipment. If Seller exercises its option to retake the Equipment, it may resell the Equipment at public or private sale. The proceeds of sale shall be applied as follows: first to reimburse Seller for the fees, costs and expenses incurred, including reasonable counsel fees; next to pay Seller the unpaid balance of the purchase price or any other amount due Seller; and the surplus, if any, shall be paid to Buyer. Buyer shall remain liable to Seller for any deficiency. Seller shall be entitled to recover reasonable attorneys' fees and all other fees, costs and expenses incurred by Seller if Buyer defaults or Seller is successful in defending a claim asserted by Buyer. If, in the judgment of Seller, Buyer's financial condition has changed, Seller shall have the right to cancel the Proposal unless Buyer provides such additional security as Seller may require or makes full payment of the balance of the price. Such cancellation shall be without prejudice to Seller's claim for damages.

8. **Warranty. THE WARRANTIES PROVIDED FOR IN THIS PROVISION AND THE OBLIGATIONS AND LIABILITIES OF SELLER SET FORTH HEREIN ARE EXCLUSIVE AND IN LIEU OF AND BUYER HEREBY WAIVES ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR ANY PARTICULAR PURPOSE AND ALL OTHER REMEDIES AND LIABILITIES.** The Buyer acknowledges and agrees that no other representations or warranties were made to or relied upon by Buyer.

A. **Warranty For Components of Equipment Manufactured by Seller.** Seller warrants that the components of the Equipment which have been manufactured by Seller shall, under normal use, be free of defects in material and workmanship for a period of one (1) year from the date the Equipment is delivered to Buyer or installed by Seller, if applicable, provided that, (i) Buyer, immediately upon discovery of the claimed defect, discontinues all use of the components, and (ii) the claim of defect with respect to the components is submitted to Seller in writing within the one (1) year warranty period and no later than ten (10) days after the discovery of the claimed defect. If Buyer claims, within the warranty period, that a defect exists, Seller reserves the right to demonstrate that there is no defect. If a defect exists, Seller's sole responsibility shall be to repair or replace any defect or, at its option, Seller may rescind the Proposal and, in such event, Seller's only obligation shall be to refund amounts previously paid by Buyer without interest.

B. **Disclaimer For Parts or Units Not Manufactured by Seller.** Seller shall not be liable to Buyer for any breach of warranty or breach of contract on account of any defect in the Equipment or failure of the Equipment to operate properly where the cause thereof is attributable to a defect in the work, labor, services or materials employed in parts or integral units of the Equipment which are not manufactured by Seller. Component parts or integral units of the Equipment not manufactured by Seller are sold only under such warranty as the manufacturer of such parts or units may give to Buyer. Seller shall assist Buyer in obtaining from the manufacturer, in accordance with the manufacturer's warranty (copies of which will be furnished upon request), the repair or replacement of any component parts or integral units of the Equipment that may prove defective in material or workmanship. The foregoing shall constitute the exclusive remedy of Buyer and the sole responsibility of Seller with respect to component parts or integral units of the Equipment not manufactured by Seller.

C. **Warranty Limitations.** Seller shall not be liable under any warranty if Seller determines that the defect was caused by misuse, abuse, improper application, improper operation, improper maintenance, alteration, repair or modification, negligence in use, casualty, storage, handling or any other cause beyond the control of Seller. The remedies set forth herein shall be Buyer's sole and exclusive remedies for any breach of warranty. If any samples, technical literature, illustrations, catalogues or other documents have been shown to Buyer, they shall not give rise to any express or implied warranty except to the extent that such warranties are specifically set forth in writing in the Proposal.

9. **Limitation of Liability, Safety and Indemnification.** IN NO EVENT SHALL SELLER BE LIABLE TO BUYER, OR TO BUYER'S OFFICERS, EMPLOYEES OR REPRESENTATIVES, OR TO ANY THIRD PARTY, FOR ANY SPECIAL, INDIRECT, INCIDENTAL, LIQUIDATED OR CONSEQUENTIAL DAMAGES INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFIT OR REVENUES, LOSS OF USE OF EQUIPMENT, DAMAGE TO ASSOCIATED EQUIPMENT,

COST OF CAPITAL, COST OF SUBSTITUTE PRODUCTS, FACILITIES OR SERVICE, OR DOWNTIME COSTS. Buyer assumes all risks and liabilities for any loss, damage or injury to persons, property, or the environment arising out of, connected with or resulting from the use or subsequent sale of the Equipment, either alone or in combination with other products. Buyer expressly agrees that the remedies granted to it hereunder are Buyer's sole and exclusive remedies with respect to any claim of Buyer arising under the Proposal. During the life of the Equipment, Buyer agrees to provide to all Equipment users (including its own employees and independent contractors) all of Seller's safety information as contained in warnings, instructions, owner's manuals, safety features of the Equipment and to adequately train all users in the safe use and maintenance of the Equipment. Buyer agrees to defend, indemnify and hold Seller harmless from and against all claims, losses, damages, liabilities and expenses (including reasonable attorneys' fees) to the extent that they relate to or have been caused by Buyer's failure to comply with the provisions of the Proposal or Buyer's negligence.

10. Patents. If any claim is asserted or action commenced against Buyer based upon a claim that the Equipment or any part thereof manufactured or sold by Seller constitutes an infringement of any U.S. Letters Patent or Trademark, Buyer shall give immediate notice thereof to Seller. Seller shall have the exclusive right, at its own expense, to conduct any litigation and/or settlement negotiations with respect to such claim or action. However, Buyer shall render all reasonable assistance required by Seller in the defense of the claim or action. Subject to the conditions and limitations set forth below, Seller shall pay such portion of the damages awarded against Buyer in such action as are allocable to the infringing Equipment or parts manufactured or sold by Seller, to the exclusion of any damages awarded for the use of such Equipment or part. In no event shall Seller's liability to Buyer exceed the purchase price of the infringing Equipment or part. If the Equipment or any part thereof manufactured or sold by Seller is held to be an infringement in such action, and the use thereof is enjoined or if, as a result of a claim or settlement, Seller deems the continued use thereof inadvisable, Seller may, at its sole option and expense, (a) procure for Buyer the right to continue using said Equipment or parts, (b) replace said Equipment or parts with non-infringing equipment or parts, (c) modify said Equipment or parts so that they are no longer infringing, or (d) refund the purchase price of the Equipment or parts less reasonable depreciation and remove the Equipment or parts from Buyer's place of business. The obligation of Seller set forth in this Section shall be null and void and Seller shall have no liability whatever to Buyer on account of any judgment, award or damages suffered by Buyer arising out of such claim or action, if (a) Buyer does not give immediate notice to Seller of such claim or action, (b) Buyer does not render all assistance reasonably required by Seller in the defense of such action or claim, (c) Buyer interferes with Seller's defense thereof, (d) the Equipment or any part thereof has been changed or altered, has been combined with equipment or parts not manufactured by Seller, or has not been used in accordance with Seller's specifications, or (e) the Equipment, or any part thereof, was manufactured by Seller in accordance with Buyer's designs, blueprints, samples, or specifications, in which case Buyer shall defend, indemnify and hold harmless Seller from any and all expenses (including reasonable counsel fees), injuries or loss arising out of any claims or actions related to the manufacture, use or sale thereof. THE FOREGOING SETS FORTH THE SELLER'S ENTIRE LIABILITY FOR PATENT OR TRADEMARK INFRINGEMENT INVOLVING THE EQUIPMENT OR ANY PART THEREOF. Nothing in the Proposal shall be deemed to grant any license or right to Buyer, express or implied, under any patents or patent application, design patent or trademark owned or controlled by Seller.

11. Specifications/Documents. The specifications and all other documents supplied pursuant to and in connection with the Proposal are the property of Seller and are being made available to Buyer on a non-exclusive basis as long as Buyer owns the Equipment. The specifications and documents shall not be used by Buyer in any manner for manufacture or for the purchase or other acquisition of similar equipment from any competitor of Seller nor will Buyer display, exhibit, or otherwise make available such specifications and documents to any competitor of Seller.

12. Confidentiality. Buyer acknowledges that Buyer, its employees, agents, and contractors may receive certain proprietary and confidential business or other information of Seller in connection with Buyer's purchase, installation or use of the Equipment. Buyer shall not disclose such information to any other party in any manner whatsoever, or use such information for any purpose other than in connection with Buyer's purchase, installation or use of the Equipment, without the prior written consent of Seller. Buyer shall take all reasonable precautions to protect the confidentiality of such information, which precautions shall in no event be less than the precautions taken to protect its own proprietary and confidential information.

13. Performance and Payment Bond. Notwithstanding any provisions in the Proposal, contract, the bond or any other document or representation to the contrary, the surety's liability hereunder shall be limited to those provisions of the

contract relating to performance of construction and the liability of the surety shall not extend to claims of any kind or nature which in any way relate to any alleged design and/or engineering defect, inadequacy, or deficiency or any damages arising from any alleged design and, or engineering defects, inadequacy or deficiencies. Furthermore surety's liability hereunder shall be limited to the warranty against defective materials and workmanship as defined in the Contract, not to exceed one (1) year from Substantial Completion. Surety's liability shall not extend to any claims resulting from any special, or extended warranties.

14. Adjudication of Disputes and Governing Law. The parties agree that any controversy or claim between them shall be governed by and construed in accordance with the laws of the State of New Jersey and, unless an alternative jurisdiction is selected by Seller, shall be adjudicated exclusively in the State Courts of New Jersey. Buyer consents to the exclusive jurisdiction of the state courts of New Jersey. Service of process by certified or registered mail, return receipt requested, shall be sufficient to commence suit and Buyer waives any right to personal service of process. THE PARTIES AGREE TO WAIVE THE RIGHT TO TRIAL BY JURY. Provided, however, if Seller so directs, the controversy or claim shall be resolved by binding arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The arbitration shall take place in a location in New Jersey selected by Seller. Nothing contained herein shall prevent a party from applying to a court having jurisdiction for emergent equitable relief. In the event Seller prevails, Seller shall be entitled to recover reasonable counsel fees and costs.

15. Miscellaneous. The parties specifically exclude the provisions of the United Nations Convention On Contracts For the International Sale of Goods. Section headings are for convenience only and shall not be used to interpret or change the provisions of the Proposal. The Proposal shall be construed in accordance with its plain meaning and not against either party as the drafting party. The Proposal expressly limits acceptance to the terms and conditions in the Proposal and supercedes all other terms and conditions contained in any purchase order, sales order, proposal, acknowledgement or other document submitted by Buyer prior to, concurrently with, or pursuant to the Proposal. Any additional or different terms proposed by Buyer are expressly rejected unless specifically accepted by Seller in writing. The Proposal constitutes the complete and final agreement of the parties hereto and supercedes all prior or contemporaneous agreements, discussions and/or representations not expressly stated in the Proposal. No alterations, modifications, deletions, additions or changes in or to the Proposal, whether by Buyer's purchase order or otherwise, shall be binding unless embodied in writing signed by both parties. Buyer shall not assign the Proposal without Seller's prior written consent. Seller's failure at any time to insist upon strict performance of any term or condition of the Proposal shall not be construed as a waiver of any subsequent breach of any term or condition. Buyer shall not assert against any assignee of Seller of the Proposal any claim or defense that it may have against Seller. The invalidity or unenforceability of any provision of the Proposal shall not affect the other provisions hereof, and the Proposal shall be construed in all respects as if the invalid or unenforceable provision had been omitted. Seller shall not be liable for any costs, expenses or damages or be deemed to be in default of the Proposal as a result of any delay in performance including, but not limited to, a delay caused by any act of God, labor problem, war, fires, floods, accidents, act of a governmental entity, accident (whether valid or invalid), unavailability or delay in obtaining labor, parts, transportation or equipment or any cause beyond Seller's control. If there is any conflict between the printed Terms and Conditions and the typed portion of the Proposal, the typed portion shall control. Notices and consents required by the Proposal shall be in writing and sent by certified mail, return receipt requested, or by recognized overnight courier with a copy, if possible, sent by facsimile. The Proposal shall, when signed by Buyer or otherwise adopted by Buyer, constitute Buyer's offer to buy the Equipment. The Proposal shall not constitute a binding agreement until accepted by an authorized officer of Seller at Seller's New Jersey office. Without limiting the generality of the foregoing, acceptance of a deposit or other payment from the Buyer shall not constitute acceptance by the Seller.