

**RESOLUTION NO. 2024-054
VILLAGE OF CALEDONIA**

**A RESOLUTION APPROVING A SOLE SOURCE PURCHASE REQUEST FOR THE
RIVERBEND LIFT STATION PUMP REPLACEMENT**

The Village Board for the Village of Caledonia, Racine County, WI do resolve as follows:

WHEREAS, the Village of Caledonia Utility District recently had Pump #3 at the Riverbend Lift Station go out of service.

WHEREAS, the Village of Caledonia Utility District sent Pump #3 to LW Allen for tear down and an estimate of repair. Upon tear down of Pump #3, it was discovered that the Front Head and Volute were damaged, and the impeller needs to be replaced.

WHEREAS, the Village of Caledonia Utility District reviewed options for Pump #3. To repair Pump #3 the cost would be \$44,873, and to replace Pump #3 the cost would be \$64,845.

WHEREAS, staff prepared a letter of recommendation for a Sole Source Equipment Purchase to replace the 36-year-old Pump with a Fairbanks Nijhuis Pump B5415. See attached **Exhibit A**.

WHEREAS, the Caledonia Utility District Commission recommended that Pump #3 be replaced with the Fairbanks Nijhuis B5415 and forwarded to the Committee of the Whole for Sole Source Purchase at their April 3, 2024 meeting.

WHEREAS, the Committee of the Whole recommended approval of the Sole Source Purchase of a Fairbanks Nijhuis B5415 and forwarded to the Village Board for final approval at their April 9, 2024 meeting.

NOW, THEREFORE, BE IT RESOLVED, by the Village Board of the Village of Caledonia, that the requested Sole Source Purchase Request set forth above, is hereby approved for the same reasons as set forth above and as described in **Exhibit A**.

Adopted by the Village Board of the Village of Caledonia, Racine County, Wisconsin, this 23 day of April, 2024.

VILLAGE OF CALEDONIA

By: Thomas R Weatherston
Thomas Weatherston
Village President

Attest: Jennifer Olsen
Jennifer Olsen
Village Clerk



Office of the Utility Director
Anthony A. Bunkelman P.E.
5043 Chester Lane
Caledonia, WI 53402
www.caledonia-wi.gov

office: 262-835-6416
fax: 262-835-2388
email: ABunkelman@caledonia-wi.gov

Thursday, April 4, 2024

Committee of the Whole
5043 Chester Lane
Caledonia, WI 53402

RE: Riverbend Lift Station Pump Replacement – Sole Source Equipment

Dear Committee of the Whole:

The Caledonia Utility District recently had Pump #3 go down at the Riverbend Lift Station. This pump is an 8" Fairbanks B5415. The Utility had Pump #3 pulled and sent to L.W. Allen, the local distributor of Fairbanks Pumps. They tore down the pump and discovered that the Front Head and Volute were damaged, and that the impeller needed to be replaced. These are all major components to any pump. The quote to repair the existing pump was \$44,873. This price immediately brought up the potential for a new pump as a replacement. The current pump is 36 years old. The cost for a new pump is \$64,845.

Based on the cost of repair versus the cost of new, the Caledonia Utility District recommended at its April 3, 2024 meeting, that a new pump be purchased as the replacement.

The Fairbanks Nijhuis Pump is a sole source item because the Caledonia Utility District has all Fairbanks Nijhuis pumps within its current system. The staff is familiar with maintaining Fairbanks Nijhuis pumps and it would not make sense to introduce a different brand of pump into the system. The Fairbanks Nijhuis pumps have been reliable and dependable. The local distributor for Fairbank Nijhuis pumps is L.W. Allen of Madison.

The cost for this sole source item is as follows. For the Fairbanks Nijhuis pump the total cost is \$64,845.

The Caledonia Utility District is requesting to use the Sole Source Products/Specific Brands Exception in Ordinance 2-4-25(d)(3)(c)(ii) for the purchase of the Fairbanks Nijhuis Pump B5415.

Sincerely,

A handwritten signature in black ink that reads "Anthony Bunkelman".


Anthony A. Bunkelman, P.E.
Public Services Director

Village of Caledonia

MEMORANDUM

DATE: Wednesday, March 27, 2024

TO: Caledonia Utility District

FROM: Anthony A. Bunkelman P.E.
Public Services Director 

RE: Riverbend Lift Station – Pump Replacement vs Repair

BACKGROUND INFORMATION

The Caledonia Utility District recently had 1 of the 8” pumps at Riverbend go out of service. The pump was removed and sent to LW Allen to provide a quote to repair the pump. On March 4th, a quote to repair the pump was received, along with a description of the repairs needed. The pump has a damaged volute, damaged front head, and a damaged impeller. The cost for a full rebuild of this pump to factory tolerances is \$44,873.00.

When this quote was received it was immediately asked what the cost of a new pump would be so that an analysis could be done. The cost for a new, identical pump would be \$64,845.00.

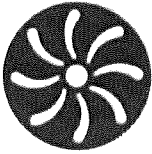
The typical service life for a lift station pump is 20 to 30 years. The pump is an original pump from when the station was built in 1988, so it has 36 years of service on it. To spend \$44,873 on this pump is difficult to do when spending an additional \$20,000 will get a new pump.

The lead time for a new pump is 13 weeks and the repair of the pump is anticipated at 11 weeks. With the lead time not being that much different it is still recommended that a new pump is purchased.

It is recommended that the Utility District purchase a new Fairbank 8” B5415 Pump for Riverbend Lift Station.

RECOMMENDATION

Move to forward to the Committee of the Whole to sole source purchase a Fairbanks 8” B5415 Pump for \$64,845.00 for the Riverbend Lift Station.



L.W. ALLEN, LLC

A Full Service Distributor
PUMPS – CONTROLS – REPAIR CENTER

PROPOSAL

TEL: (800) 362-7266
www.lwallen.com/altronex

Name	Customer	Proposal#	Due/Bid Date
Caledonia River Bend LS	Tony	03240967	March 6, 2024

Scope

Caledonia, WI – River Bend Lift Station – 8 B5415 Pump Repair
S/N K3R1-057705

LW Allen would like to thank you for allowing us the opportunity to quote repairs on the subject unit.
Below I have outlined the scope of repair and pricing for a 8” B5415 pump.

Scope of Supply:

Furnish One (1) Complete **New** Fairbanks Model 5415 Pump. Less Pump Base and Suction Elbow.

This pump will be an exact duplicate of the existing pump.

Items specifically not included in this proposal.

1. Sales or use tax.
2. Receiving and storage of equipment on the job site.
3. Installation of pump or other materials, brackets, wire, clamps, piping, junction boxes, etc., not specifically described in our material list.
4. Performance, payment or equipment bond of any kind.
5. Installation of any instruments.
6. By-pass Pumping
7. Freight is pre-paid and Add
8. Non-Wearing Parts-pump base and suction elbow.

New Proposal Amount \$ 64,845.00 USD

Freight Terms: Freight is not included.

Respectfully submitted by,

Rick Bartelt

Sales Engineer
rbartelt@lwallen.com

Acceptance of Proposal (Purchase Order or Signature) – The preceding prices, specifications and attached terms and conditions of sale are satisfactory and hereby accepted. You are authorized to proceed.

Signature

Name Print/Type

Official Position

Date

Standard Terms and Conditions

Controlling Provisions: The terms and conditions and supplemental exhibits contained herein (the "Terms and Conditions") shall supersede any provisions, terms, and conditions contained on any purchase order or other written form any direct buyer ("Buyer") may use or provide (whether received by S.J. Electro Systems, Inc. or any of its subsidiaries or affiliates (collectively, "SJE") prior or subsequent to the date hereof), and the rights of the parties shall be governed exclusively by the Terms and Conditions as described herein. SJE sells certain services, products, replacement parts and related software (collectively, the "Goods"). The purchase of the Goods is governed by the Terms and Conditions. Any communication by Buyer to SJE to purchase Goods will be treated by SJE as a request to purchase the Goods. The response, however communicated, will be understood by all parties as an agreement by SJE to sell to Buyer the requested Goods pursuant to the Terms and Conditions. SJE specifically opposes any terms or conditions that are in addition to or different from the Terms and Conditions, unless specifically agreed to in each instance in writing by SJE.

Quotations, Acceptance, and Agreements: Any quotation is a good faith estimate. To the extent that SJE has been provided by or on behalf of Buyer any specifications, description of operating conditions or other data and information in connection with the selection or design of the Goods, and the actual operating conditions or other circumstances differ from those provided by Buyer and relied upon by SJE, any warranties or other provisions contained herein which are affected by such conditions shall be null and void.

Acceptance of a quotation, whether by a separate purchase order or by other means, shall constitute an acknowledgement and approval of the quotation as written and an acceptance of the Terms and Conditions. Written quotations which have not been finalized by a binding purchase order shall expire on the date specified in the quotation or, in the absence of such specification, thirty (30) calendar days from the date issued. SJE may revise or withdraw a quotation at any time prior to the finalization of a binding purchase order.

Per company policy, a separate written agreement signed by both parties or a purchase order accepted and acknowledged by SJE is required to form any legally binding agreement.

Intellectual Property: All devices, patents, designs (including drawings, plans and specifications), software existing or to be developed, estimates, prices, notes, memos, summaries, electronic data and other documents or information prepared or disclosed by SJE shall remain the sole intellectual property of SJE. Following acceptance and final payment, SJE shall grant to Buyer a non-transferable, non-exclusive license for use and sale of the Goods.

Credit Approval: The credit terms granted on each order are subject to SJE's continuing approval of Buyer's credit. SJE may withdraw the extension of credit and require modified payment terms if, in SJE's sole judgment, Buyer's credit or financial standing is impaired such that SJE in good faith deems payment insecure.

Prices and Taxes: All prices are FOB shipping point, unless otherwise stated or referenced in attached exhibits. All prices are subject to any commercially reasonable additions that may be necessary to cover any duties, taxes or charges. All prices are in U.S. Dollars. Prices may be subject to change without notice.

Shipping Policy: Shipping and handling charges cover the transportation of the Goods from SJE's warehouse to Buyer, unless otherwise specified. Standard shipping rates are assessed upon placement of order. SJE uses many methods of shipment including UPS shipping services but reserves the right to substitute carriers without notice. UPS next-day air, UPS second-day air, UPS three-day ground, UPS Express and UPS Expedited are services available to Buyer for expediting orders. Expedited orders will be shipped based on the method Buyer selects. These services may not be available for shipment into all countries.

While SJE will use all reasonable commercial efforts to maintain the delivery date(s) acknowledged or quoted by SJE, all shipping dates are approximate and not guaranteed. SJE reserves the right to make partial shipments. SJE, at its option, shall not be bound to tender delivery of any Goods for which Buyer has not provided shipping instructions and other required information. If the shipment of the Goods is postponed or delayed by Buyer for any reason, Buyer agrees to reimburse SJE for any and all storage costs and other additional expenses resulting therefrom. The actual shipping weights may vary.

Title, Risk of Loss, Inspection of Equipment: Title and risk of loss to the Goods shall pass to Buyer upon delivery of the Goods to the respective delivery carrier. Buyer shall immediately inspect the Goods upon receipt and any damage must be noted on the delivery carrier's bill of lading at time of receipt. SJE is not liable for any damages caused by shipping. SJE is not liable for any shortages or nonconformance unless notified by Buyer within two (2) business days of Buyer's receipt of the Goods.

Operations/Maintenance Manuals: Installation, maintenance and operation manuals will be furnished to Buyer in the number of copies specified at the time of quotation or order. Additional copies subject to charges as outlined in attached exhibits.

Installation and Use: Buyer will be solely responsible for the proper application, installation and service of the Goods. Installation instructions are supplied by SJE and must be followed.

Export/Import: Buyer agrees that all applicable import and export control laws, regulations, orders and requirements, including, but not limited to, those of the United States and the European Union, and the jurisdictions in which SJE and Buyer are established or from which Goods may be supplied, will apply to their receipt and use. In no event shall Buyer use, transfer, release, import, or export Goods in violation of such applicable laws, regulations, orders or requirements.

Payment: Buyer shall pay SJE the full purchase price as set forth in the respective order between SJE and Buyer. Unless otherwise agreed to in writing between SJE and Buyer, freight, storage, insurance, taxes, duties, and any governmental charges relating to the Goods shall be paid by Buyer. If SJE is required to pay any such charges, Buyer shall immediately reimburse SJE upon notice from SJE of same. All payments are due within approved credit terms. Buyer may be charged the lower of 1.5% interest per month or the maximum legal rate on all amounts not received by the due date described therein.

Security Interest: SJE shall retain a security interest in the Goods until the full purchase price has been paid. Buyer's failure to pay any amounts due, including interest, shall give SJE the right to possession and removal of the Goods after providing ten (10) days written notice to Buyer. SJE's taking of such possession shall be without prejudice to any other remedies SJE may have.

Changes, Cancellations, Returns: Buyer may request changes or additions to the Goods consistent with SJE's specifications and criteria. In the event such changes or additions are accepted by SJE, SJE shall have the absolute right to revise the prices and dates of delivery, and to add charges for work and materials rendered unnecessary by such changes or additions. All changes, cancellations, or returns must have SJE prior written approval and subject to restocking fees and service charges. Authorized returns must be packaged and shipped prepaid to SJE.

Return Policy: SJE will only accept Goods returned within one (1) year from the date of manufacture, un-used, and current production models. Returned Material Authorization ("RMA") numbers must be assigned to any Goods Buyer wishes to return for credit. To obtain an RMA, Buyer must contact SJE's Service Center at 218-847-1317 or toll free at 888-342-5753. Buyer is responsible for payment of return shipping fees unless such returned Goods result from an SJE order processing error. Upon return, SJE shall reimburse Buyer for the return freight resulting from the return of Goods due to such SJE order processing error. In the event of any return in compliance with this paragraph, SJE will provide Buyer credit for the returned Goods and work to reship correct Goods to Buyer. SJE reserves the right to refuse acceptance of returned Goods after inspection. SJE will not accept returns for Goods that are custom-built for Buyer as such items cannot be resold by SJE; however, custom-built Goods remain subject to applicable warranty provisions in each case.

Notwithstanding the foregoing (and so long as the return is not due to an order processing error of SJE), a restocking fee shall be charged to Buyer for returned Goods as outlined in the attached Exhibits.

Force Majeure: SJE shall not be liable or responsible to Buyer, nor be deemed to have defaulted under or breached any agreement with Buyer, for any failure or delay in fulfilling or performing any term of any agreement with Buyer, when and to the extent such failure or delay is caused by or results (directly or indirectly) from acts beyond SJE's reasonable control, including, without limitation: (a) acts of God; (b) flood, fire, earthquake or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order or law; (e) actions, embargoes or blockades in effect on or after the date of any subject agreement between SJE and Buyer; (f) action by any governmental authority; (g) national or regional emergency; (h) strikes, labor stoppages or slowdowns or other industrial services; or (i) any other cause beyond the reasonable control of SJE.

Indemnification and Default: In addition to all other amounts due hereunder, Buyer shall reimburse SJE in full for all collection costs or charges, including reasonable attorney fees, which SJE may incur in the collection of any past due amounts from Buyer, including applicable interest on overdue accounts. If Buyer is in default under this or any other agreement with SJE, SJE may defer performance hereunder until such default is resolved. SJE shall have no obligation to provide factory startup assistance or factory training (when requested) until all invoices (including retentions) for equipment have been paid in full. Furthermore, SJE shall have no liability to Buyer to the extent Buyer damages, or any damages are suffered by, or claims are made against Buyer as a result of Buyer's negligence, willful misconduct, misrepresentation of any Goods, or failure to utilize the Goods properly.

Warranty and Liability: During the warranty period, Buyer's exclusive remedy will be either repair or replacement, at the sole discretion of SJE and subject to the Terms and Conditions of any component which proves to be defective due to defective materials or workmanship of SJE.

SJE DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE, AND SJE SHALL NOT, IN ANY MATTER, BE LIABLE FOR ANY SPECIAL, INDIRECT, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING LIQUIDATED DAMAGES, OR PENALTIES THAT RESULT FROM A BREACH OF CONTRACT, BREACH OF WARRANTY (EXPRESS OR IMPLIED), STRICT LIABILITY, PRODUCT LIABILITY OR OTHERWISE. IN NO EVENT SHALL SJE'S LIABILITY TO BUYER OR ANY OTHER PARTY EXCEED THE LESSER OF (i) THE COST OF REMEDIATING ANY DEFECT OR DEFICIENCY IN THE PERFORMANCE OF SJE HEREUNDER OR (ii) THE PURCHASE PRICE OF THE GOODS IN RESPECT OF WHICH THE CLAIM IS MADE.

ANY ELECTRICAL WIRING AND SERVICING OF THE GOODS MUST BE PERFORMED BY A LICENSED ELECTRICIAN. WARRANTY CLAIMS FOR GOODS WHICH WERE AT ANY TIME WIRED OR SERVICED BY ANYONE OTHER THAN A LICENSED ELECTRICIAN SHALL NOT BE HONORED IN WHOLE OR PART BY SJE.

Furthermore, this warranty shall not apply to: (a) damage due to any weather-related or other conditions beyond the control of SJE; (b) defects or malfunctions resulting from the Goods not installed, operated, or maintained in accordance with instructions provided, applicable local codes, ordinances, or accepted trade practices; (c) failures resulting from abuse, misuse, accident, or negligence; or (d) Goods repaired and/or modified without prior written authorization from SJE.

Some states do not allow limitations on implied warranty duration, as such, this limitation may not apply to Buyer. Some states do not allow the exclusion or limitation of incidental or consequential damages, as such, these limitations or exclusions may not apply to Buyer. The above-described warranty gives Buyer specific legal rights, and Buyer may also have other rights which vary from state to state.

TO OBTAIN WARRANTY SERVICE: Buyer shall assume all responsibility and expense for removal, reinstallation, and freight associated with any warranty service. Any Goods to be repaired or replaced under this warranty must be returned to SJE, or such place as designated by SJE. Buyer can contact SJE Service Center at 218-847-1317 or toll free at 888-342-5753 for an RMA on any Goods being submitted for a warranty claim.

Applicable Law and Forum: Any disputes between Buyer and SJE shall be venued in Becker County District Court in the State of Minnesota. Buyer agrees to submit to such jurisdiction and agrees that the dispute shall be governed by and construed in accordance with the laws of the State of Minnesota without giving effect to any choice or conflict of law pro



L.W. ALLEN, LLC

A Full Service Distributor
PUMPS – CONTROLS – REPAIR CENTER

PROPOSAL

TEL: (800) 362-7266
www.lwallen.com/altronex

Name	Customer	Proposal#	Due/Bid Date
Caledonia River Bend LS	L.W. Allen	300240967Rev1	February 27, 2024

Scope

Caledonia, WI – River Bend Lift Station – 8 B5415 Pump Repair
S/N

LW Allen would like to thank you for allowing us the opportunity to quote repairs on the subject unit.
Below I have outlined the scope of repair and pricing for a 8" B5415 pump.

Scope of Shop Repair:

- Disassemble pump complete.
- Clean all components.
- Inspect each component thoroughly and compare critical dimensions to manufactured tolerance.
- Furnish an inspection report indicating each component's condition and recommended repairs.
- Replace the following OEM components:
 - Impeller hardware
 - Impeller wear ring.
 - Front Head
 - Front Head wear ring
 - Back Head
 - Shaft Sleeve
 - Bearings
 - Mechanical Seal
 - Misc. Gaskets, O-rings, Lip seals, and hardware (as needed).
- The following components are considered to be reuseable:
 - High Ring Base
 - Vertical Base
 - Frame
 - Pump Shaft
 - Volute
 - Bearing Housing and Cover.
 - Suction Elbow
- Assemble the pump complete.
- Pressure Test New Mechanical Seal

This quotation includes only the parts or processes specifically outlined above. Any additional parts or processes required will be included only after the approval and authorization by the Customer. Warranty will be contingent on the inclusion of any processes deemed necessary by LW Allen.

The above quotation is valid for **30 days**
Taxes are excluded, and will be billed separately, as applicable.

Items specifically not included in this proposal.

1. Sales or use tax.
2. Receiving and storage of equipment on the job site.
3. Installation of pump or other materials, brackets, wire, clamps, piping, junction boxes, etc., not specifically described in our material list.
4. Performance, payment or equipment bond of any kind.
5. Installation of any instruments.
6. By-pass Pumping

New Proposal Amount \$ 44,873.00 USD

Freight Terms: Freight is included.

Respectfully submitted by,

Rick Bartelt

Sales Engineer

rbartelt@lwallen.com

Acceptance of Proposal (Purchase Order or Signature) – The preceding prices, specifications and attached terms and conditions of sale are satisfactory and hereby accepted. You are authorized to proceed.

Signature

Name Print/Type

Official Position

Date

Standard Terms and Conditions

Controlling Provisions: The terms and conditions and supplemental exhibits contained herein (the "Terms and Conditions") shall supersede any provisions, terms, and conditions contained on any purchase order or other written form any direct buyer ("Buyer") may use or provide (whether received by S.J. Electro Systems, Inc. or any of its subsidiaries or affiliates collectively, "SJE") prior or subsequent to the date hereof), and the rights of the parties shall be governed exclusively by the Terms and Conditions as described herein. SJE sells certain services, products, replacement parts and related software (collectively, the "Goods") The purchase of the Goods is governed by the Terms and Conditions. Any communication by Buyer to SJE to purchase Goods will be treated by SJE as a request to purchase the Goods. The response, however communicated, will be understood by all parties as an agreement by SJE to sell to Buyer the requested Goods pursuant to the Terms and Conditions. SJE specifically opposes any terms or conditions that are in addition to or different from the Terms and Conditions, unless specifically agreed to in each instance in writing by SJE.

Quotations, Acceptance, and Agreements: Any quotation is a good faith estimate. To the extent that SJE has been provided by or on behalf of Buyer any specifications, description of operating conditions or other data and information in connection with the selection or design of the Goods, and the actual operating conditions or other circumstances differ from those provided by Buyer and relied upon by SJE, any warranties or other provisions contained herein which are affected by such conditions shall be null and void.

Acceptance of a quotation, whether by a separate purchase order or by other means, shall constitute an acknowledgement and approval of the quotation as written and an acceptance of the Terms and Conditions. Written quotations which have not been finalized by a binding purchase order shall expire on the date specified in the quotation or, in the absence of such specification, thirty (30) calendar days from the date issued. SJE may revise or withdraw a quotation at any time prior to the finalization of a binding purchase order.

Per company policy, a separate written agreement signed by both parties or a purchase order accepted and acknowledged by SJE is required to form any legally binding agreement.

Intellectual Property: All devices, patents, designs (including drawings, plans and specifications), software existing or to be developed, estimates, prices, notes, memos, summaries, electronic data and other documents or information prepared or disclosed by SJE shall remain the sole intellectual property of SJE. Following acceptance and final payment, SJE shall grant to Buyer a non-transferable, non-exclusive license for use and sale of the Goods.

Credit Approval: The credit terms granted on each order are subject to SJE's continuing approval of Buyer's credit. SJE may withdraw the extension of credit and require modified payment terms if, in SJE's sole judgment, Buyer's credit or financial standing is impaired such that SJE in good faith deems payment insecure.

Prices and Taxes: All prices are FOB shipping point, unless otherwise stated or referenced in attached exhibits. All prices are subject to any commercially reasonable additions that may be necessary to cover any duties, taxes or charges. All prices are in U.S. Dollars. Prices may be subject to change without notice.

Shipping Policy: Shipping and handling charges cover the transportation of the Goods from SJE's warehouse to Buyer, unless otherwise specified. Standard shipping rates are assessed upon placement of order. SJE uses many methods of shipment including UPS shipping services but reserves the right to substitute carriers without notice. UPS next-day air, UPS second-day air, UPS three-day ground, UPS Express and UPS Expedited are services available to Buyer for expediting orders. Expedited orders will be shipped based on the method Buyer selects. These services may not be available for shipment into all countries.

While SJE will use all reasonable commercial efforts to maintain the delivery date(s) acknowledged or quoted by SJE, all shipping dates are approximate and not guaranteed. SJE reserves the right to make partial shipments. SJE, at its option, shall not be bound to tender delivery of any Goods for which Buyer has not provided shipping instructions and other required information. If the shipment of the Goods is postponed or delayed by Buyer for any reason, Buyer agrees to reimburse SJE for any and all storage costs and other additional expenses resulting therefrom. The actual shipping weights may vary.

Title, Risk of Loss, Inspection of Equipment: Title and risk of loss to the Goods shall pass to Buyer upon delivery of the Goods to the respective delivery carrier. Buyer shall immediately inspect the Goods upon receipt and any damage must be noted on the delivery carrier's bill of lading at time of receipt. SJE is not liable for any damages caused by shipping. SJE is not liable for any shortages or nonconformance unless notified by Buyer within two (2) business days of Buyer's receipt of the Goods.

Operations/Maintenance Manuals: Installation, maintenance and operation manuals will be furnished to Buyer in the number of copies specified at the time of quotation or order. Additional copies subject to charges as outlined in attached exhibits.

Installation and Use: Buyer will be solely responsible for the proper application, installation and service of the Goods. Installation instructions are supplied by SJE and must be followed.

Export/Import: Buyer agrees that all applicable import and export control laws, regulations, orders and requirements, including, but not limited to, those of the United States and the European Union, and the jurisdictions in which SJE and Buyer are established or from which Goods may be supplied, will apply to their receipt and use. In no event shall Buyer use, transfer, release, import, or export Goods in violation of such applicable laws, regulations, orders or requirements.

Payment: Buyer shall pay SJE the full purchase price as set forth in the respective order between SJE and Buyer. Unless otherwise agreed to in writing between SJE and Buyer, freight, storage, insurance, taxes, duties, and any governmental charges relating to the Goods shall be paid by Buyer. If SJE is required to pay any such charges, Buyer shall immediately reimburse SJE upon notice from SJE of same. All payments are due within approved credit terms. Buyer may be charged the lower of 1.5% interest per month or the maximum legal rate on all amounts not received by the due date described therein.

Security Interest: SJE shall retain a security interest in the Goods until the full purchase price has been paid. Buyer's failure to pay any amounts due, including interest, shall give SJE the right to possession and removal of the Goods after providing ten (10) days written notice to Buyer. SJE's taking of such possession shall be without prejudice to any other remedies SJE may have.

Changes, Cancellations, Returns: Buyer may request changes or additions to the Goods consistent with SJE's specifications and criteria. In the event such changes or additions are accepted by SJE, SJE shall have the absolute right to revise the prices and dates of delivery, and to add charges for work and materials rendered unnecessary by such changes or additions. All changes, cancellations, or returns must have SJE prior written approval and subject to restocking fees and service charges. Authorized returns must be packaged and shipped prepaid to SJE.

Return Policy: SJE will only accept Goods returned within one (1) year from the date of manufacture, un-used, and current production models. Returned Material Authorization ("RMA") numbers must be assigned to any Goods Buyer wishes to return for credit. To obtain an RMA, Buyer must contact SJE's Service Center at 218-847-1317 or toll free at 888-342-5753. Buyer is responsible for payment of return shipping fees unless such returned Goods result from an SJE order processing error. Upon return, SJE shall reimburse Buyer for the return freight resulting from the return of Goods due to such SJE order processing error. In the event of any return in compliance with this paragraph, SJE will provide Buyer credit for the returned Goods and work to reship correct Goods to Buyer. SJE reserves the right to refuse acceptance of returned Goods after inspection. SJE will not accept returns for Goods that are custom-built for Buyer as such items cannot be resold by SJE; however, custom-built Goods remain subject to applicable warranty provisions in each case.

Notwithstanding the foregoing (and so long as the return is not due to an order processing error of SJE), a restocking fee shall be charged to Buyer for returned Goods as outlined in the attached Exhibits.

Force Majeure: SJE shall not be liable or responsible to Buyer, nor be deemed to have defaulted under or breached any agreement with Buyer, for any failure or delay in fulfilling or performing any term of any agreement with Buyer, when and to the extent such failure or delay is caused by or results (directly or indirectly) from acts beyond SJE's reasonable control, including, without limitation: (a) acts of God; (b) flood, fire, earthquake or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order or law; (e) actions, embargoes or blockades in effect on or after the date of any subject agreement between SJE and Buyer; (f) action by any governmental authority; (g) national or regional emergency; (h) strikes, labor stoppages or slowdowns or other industrial services; or (i) any other cause beyond the reasonable control of SJE.

Indemnification and Default: In addition to all other amounts due hereunder, Buyer shall reimburse SJE in full for all collection costs or charges, including reasonable attorney fees, which SJE may incur in the collection of any past due amounts from Buyer, including applicable interest on overdue accounts. If Buyer is in default under this or any other agreement with SJE, SJE may defer performance hereunder until such default is resolved. SJE shall have no obligation to provide factory startup assistance or factory training (when requested) until all invoices (including retentions) for equipment have been paid in full. Furthermore, SJE shall have no liability to Buyer to the extent Buyer damages, or any damages are suffered by, or claims are made against Buyer as a result of Buyer's negligence, willful misconduct, misrepresentation of any Goods, or failure to utilize the Goods properly.

Warranty and Liability: During the warranty period, Buyer's exclusive remedy will be either repair or replacement, at the sole discretion of SJE and subject to the Terms and Conditions of any component which proves to be defective due to defective materials or workmanship of SJE.

SJE DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE, AND SJE SHALL NOT, IN ANY MATTER, BE LIABLE FOR ANY SPECIAL, INDIRECT, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING LIQUIDATED DAMAGES, OR PENALTIES THAT RESULT FROM A BREACH OF CONTRACT, BREACH OF WARRANTY (EXPRESS OR IMPLIED), STRICT LIABILITY, PRODUCT LIABILITY OR OTHERWISE, IN NO EVENT SHALL SJE'S LIABILITY TO BUYER OR ANY OTHER PARTY EXCEED THE LESSER OF (i) THE COST OF REMEDIATING ANY DEFECT OR DEFICIENCY IN THE PERFORMANCE OF SJE HEREUNDER OR (ii) THE PURCHASE PRICE OF THE GOODS IN RESPECT OF WHICH THE CLAIM IS MADE.

ANY ELECTRICAL WIRING AND SERVICING OF THE GOODS MUST BE PERFORMED BY A LICENSED ELECTRICIAN. WARRANTY CLAIMS FOR GOODS WHICH WERE AT ANY TIME WIRED OR SERVICED BY ANYONE OTHER THAN A LICENSED ELECTRICIAN SHALL NOT BE HONORED IN WHOLE OR PART BY SJE.

Furthermore, this warranty shall not apply to: (a) damage due to any weather-related or other conditions beyond the control of SJE; (b) defects or malfunctions resulting from the Goods not installed, operated, or maintained in accordance with instructions provided, applicable local codes, ordinances, or accepted trade practices; (c) failures resulting from abuse, misuse, accident, or negligence; or (d) Goods repaired and/or modified without prior written authorization from SJE.

Some states do not allow limitations on implied warranty duration, as such, this limitation may not apply to Buyer. Some states do not allow the exclusion or limitation of incidental or consequential damages, as such, these limitations or exclusions may not apply to Buyer. The above-described warranty gives Buyer specific legal rights, and Buyer may also have other rights which vary from state to state.

TO OBTAIN WARRANTY SERVICE: Buyer shall assume all responsibility and expense for removal, reinstallation, and freight associated with any warranty service. Any Goods to be repaired or replaced under this warranty must be returned to SJE, or such place as designated by SJE. Buyer can contact SJE Service Center at 218-847-1317 or toll free at 888-342-5753 for an RMA on any Goods being submitted for a warranty claim.

Applicable Law and Forum: Any disputes between Buyer and SJE shall be venued in Becker County District Court in the State of Minnesota. Buyer agrees to submit to such jurisdiction and agrees that the dispute shall be governed by and construed in accordance with the laws of the State of Minnesota without giving effect to any choice or conflict of law pro