

ORIGINAL

H-23-1940

To TOKHEIM OIL TANK AND PUMP COMPANY, FORT WAYNE, IND.

(HEREINAFTER CALLED VENDOR)

Ship to Eureka GarageInvoice to same
(Hereinafter Called Vendee)Address Eureka Nevada

Address

Shipping Point Eureka County Eureka

Post Office

FOR INSTALLATION AT NO. Main Street STREET, CITY Eureka COUNTY Eureka STATE Nevada

QUANTITY	MODEL	DESCRIPTION	UNIT PRICE	TOTAL
1mlg.	39 H R.	Stationer Pump	274 60.	274 60
		Standard oil inserts Ethyl		
		Red color.		
		115 D.C.		4 85
TOTAL SELLING PRICE				279.45

PERMISSION IS GIVEN THE VENDOR TO INSERT SERIAL NUMBERS OF EQUIPMENT SOLD. THIS CONTRACT IS ASSIGNABLE

SHIP VIA: <u>Best way</u>	QUANTITY DISCOUNT _____% IF EARNED	
DATE TO SHIP: <u>same</u>	NET SELLING PRICE	279 45
MOTOR DATA		
IF ALTERNATING CURRENT	IF DIRECT CURRENT	
VOLTAGE	VOLTAGE <u>115</u>	CASH WITH ORDER _____%
PHASE		BALANCE SUBJECT TO CARRYING CHARGE
CYCLE		CARRYING CHARGE _____%
		TOTAL BALANCE ON ACCOUNT
		279 90

NO INSTALLATION WORK IS INCLUDED IN THIS CONTRACT UNLESS SPECIFIED IN WRITING. IF INSTALLATION IS SPECIFIED, VENDOR IS TO FURNISH AND INSTALL ONLY THE PIPING AFTER NECESSARY PREPARATIONS HAVE BEEN MADE BY VENDEE, AND VENDOR IS NOT TO DO ANY DIGGING, REFILLING, REMOVING DIRT, CONCRETE WORK, ELECTRICAL WORK NOR PAY FOR PERMITS, NOR REMOVE OR REPLACE ANY SERVICE LINES, OR BE RESPONSIBLE FOR ANY DAMAGE TO THEM UNLESS SPECIFICALLY ITEMIZED IN WRITING. IF INSTALLED BY VENDOR ON TIME AND MATERIAL BASIS, VENDEE AGREES TO PAY IN FULL ON RECEIPT OF INVOICE, ALL CHARGES ACCORDING TO VENDOR'S STANDARD SCHEDULE FOR MATERIAL AND LABOR INCLUDING WORKMEN'S TIME TO AND FROM THE JOB.

In consideration the vendee agrees to pay vendor Two Hundred Seventy Nine 90/100 (\$ 279.90) on the following terms:

- A: \$ _____ thirty days net from date of shipment.
 B: \$ _____ on arrival of property (sight draft attached to bill of lading).
 C: \$ _____ cash with order.
 D: Total balance on account \$ _____ in 23 monthly payments of \$ 11 66/100 each, and one payment of \$ 11.72, payments to begin forty (40) days from date of this contract.

Draw through _____ Bank at _____

All equipment when shipped from vendor's factory or from warehouse will be F.O.B. factory and/or warehouse with full freight allowed to shipping terminal. Freight allowed is not to include drayage at destination.

This contract is subject to the stipulations and conditions printed on the reverse side hereof, which are hereby specially referred to and made a part of this contract.

There are no agreements not mentioned herein, and all the terms and specifications have been distinctly understood.

All checks, drafts or money orders must be made payable to Tokheim Oil Tank and Pump Company.

No agreements with the vendee shall be binding on the vendor unless written on the face of this contract.

Fulfillment of this contract is subject to strikes, accidents, or other delays beyond vendor's control.

Witness: John C. Smith

Accepted: Date May 20, 1940

TOKHEIM OIL TANK AND PUMP COMPANY

By J. P. Kridner

The vendee hereby acknowledges receipt of duplicate of this contract.

Purchaser Eureka Garage

By E. Herrera

(Corporation must sign per officer, giving title)

(Firm's full name per member signing)

AGENTS FOR THE VENDOR ARE NOT AUTHORIZED TO COLLECT MONEY HEREUNDER EXCEPT THE CASH PAYMENT. ALL CHECKS, DRAFTS OR MONEY ORDERS MUST BE MADE PAYABLE TO TOKHEIM OIL TANK AND PUMP COMPANY

**STIPULATIONS AND CONDITIONS REFERRED TO ON FACE OF CONTRACT AND EXPRESSLY AGREED TO
BY AND BETWEEN VENDOR AND VENDEE**

1. That this contract is not subject to countermand by the Vendee; and that nothing but shipment of equipment sold hereunder by the Vendor or delivery or acceptance of this order in writing by the Vendor at its general offices in Fort Wayne, Indiana, shall constitute an acceptance of this contract.
2. That the equipment covered in this contract will be used at the address of installation as given herein, and none of same shall be removed therefrom, nor from any other filing district where same may be legally located, during the life of this contract, without Vendor's previous written consent.
3. That Vendee agrees to keep said equipment free of all taxes, liens and encumbrances, and shall not use same illegally, improperly or in violation of any state or Federal laws.
4. That Vendee agrees to insure said equipment promptly upon receipt thereof against loss or damage through fire and wind-storm or other casualty in a solvent Insurance Company.
5. That payment, agreed to be made under this contract, may be evidenced by a promissory note (not as payment, but merely to evidence the debt for convenience in the collection thereof); that the signing and delivery of the note, trade acceptance, or draft shall not be considered to have been received by the Vendor as payment, or waiver of any of the provisions hereof; and that default in any payment under this contract shall render the entire balance forthwith due and payable at the option of the Vendor, without notice, demand, or relief from valuation or appraisalment or exemption laws, and with attorney fees in a reasonable amount.
6. That the Vendee agrees that the title to said equipment shall remain in Vendor until paid for in full, which shall include the payment of any note, trade acceptance, draft, or the payment of any judgment secured for same.
7. That upon failure of the Vendee to make the payments as the same become due in accordance with the terms hereof, or if the Vendee shall sell, encumber or assign, or attempt to sell, encumber, assign, remove, or attempt to remove, from the filing district where same is legally located, said goods and chattels or any interest therein, or if a writ of execution or a writ of distress or attachment shall be issued against the Vendee, or if any distress or attachment warrant shall be levied on said goods and chattels, or any part thereof, or if the Vendee shall become a voluntary or involuntary bankrupt, or shall make any assignment in whole or in part for the benefit of creditors, or in event proceedings in receivership or insolvency be instituted by or against the Vendee, then:
 - A. The Vendor may at its option, without notice or demand to Vendee, declare the unpaid balance forthwith due and payable, without relief from valuation or appraisalment or exemption laws, together with attorney fees in a reasonable amount, and the Vendee hereby authorizes any attorney in any court of record to appear for and enter judgment against the Vendee for the entire balance due on this contract, with costs of suit, release of errors without stay of execution, and the Vendee hereby waives and releases all relief from any appraisalment, stay of execution, or exemption laws now in force or hereafter enacted; or
 - B. The Vendor shall have the right to cancel this contract and enter the premises herein described and take immediate possession of said equipment, and, for that purpose may pursue the same wherever it may be found, and may enter (all damages for said entry being hereby expressly waived) the premises of the Vendee with or without force, or process of law and remove same and retain all payments theretofore paid as compensation for the use of said equipment, its deterioration in value and as liquidated damages and not as a penalty.
8. The Vendee represents that he is owner of the Real Estate upon which said equipment is located and or will be maintained or has a lease thereon extending beyond the maturity date of the last payment or any extension thereof of this contract.
9. That no matter in what manner said equipment shall be attached or become attached to real estate, it shall not become, or be construed, a fixture or a part of said real estate, and in the event the Vendor employs an attorney to recover the possession of equipment herein described, the Vendee agrees to pay a reasonable attorney's fee to the Vendor.
10. That time is strictly the essence of this contract and the acceptance of payments after the due date shall not be construed as a waiver of such provisions and/or any of the remedies given in event of any subsequent default, and the Vendor may enforce one or more remedies hereunder successfully or concurrently and any action taken shall not operate to stop or prevent the Vendor from pursuing any further remedy which may exist.
11. That the loss, injury or destruction of said property shall not operate in any manner to release the Vendee from payment as provided herein.
12. That the Vendee agrees to pay interest at the rate of six (6) per cent per annum on past-due installments.
13. That the Vendor will not be held responsible for property damage or other liability resulting from the installation of the above equipment or attendant connections; nor will the Vendor be held responsible for any damage or loss resulting from the use, under air pressure, of any storage tank.
14. ~~That all tanks are thoroughly tested for leaks before shipment, and all pumps are set to correct measurement and sealed; and that the Vendor will not be responsible for any claims for loss of gasoline or other liquids or any other losses whatsoever, by reason of leakage or inaccuracy of measurement.~~
15. That the Vendor will not allow claims for repairs done outside of factory without previous written consent.
16. That any provision of this contract prohibited by the law of any state shall be ineffective, as to said state to the extent of such prohibition without invalidating, modifying or affecting the remaining provisions of this contract.
17. I (we) admit notice of the intended assignment of this contract and agree that if this contract be assigned, you shall not be deemed the agent of assignee for any purpose whatsoever, and all payments shall be made to assignee absolutely, hereby waiving all right now or hereafter existing in my (our) favor against you to make any defense, counter claim, or cross complaint to any demand or action brought by assignee to recover payments due under this contract or to recover possession of said chattels, I (we) further agree that all claims or demands on my (our) part against you shall be independent of any action by assignee against me (us).

ALL EQUIPMENT SOLD UNDER THE FOLLOWING GUARANTEE

The Vendor guarantees all parts of the equipment shipped under this agreement for one year, and no more from date of invoice thereof, against DEFECTIVE MATERIAL OR WORKMANSHIP (but not against damage caused by accident, abuse or faulty installation) when the equipment is installed in accordance with the Vendor's specifications, and will repair or replace free of charge all such defective parts if returned to the factory.

This guaranty applies to new equipment only.

This guaranty is given expressly in lieu of other guaranties, expressed or implied, and the Vendor neither assumes nor authorizes any person to assume for it any liability beyond that stated herein.

The Vendor reserves the right to make changes in design or add improvements to the line of equipment at any time without incurring any obligation to install same on equipment that may have been previously sold by it.

If equipment is damaged in transit, the Vendor will ship new parts for replacement, without cost to the Vendee, provided the Vendee delivers to the Vendor the freight bill with freight agent's notation of damage thereon. It is understood that the Vendor does not assume any obligation and undertakes this adjustment purely as an accommodation to the Vendee. All such claims must be made within sixty days from date of shipment.

Filed at office of 3rd District Clerk of Court May 24 1940 at 3:45 P.M. C. H. Mendenhall