



## TERMS AND CONDITIONS

1. **Acknowledgement/Acceptance.** Sale or lease of any goods or services is expressly conditioned on Buyer's acceptance of these terms and conditions. Any additional or different terms proposed by Buyer in any document, including but not limited to terms shown on Buyer's sales order or any other Buyer's document, are objected to, null and void, and rejected and will not be binding upon Seller unless agreed to in writing by Seller. These terms and conditions supersede all prior terms and conditions and shall be the sole terms and conditions which apply to any sale, lease, or other furnishing of goods or services. Seller's performance of any work shall constitute acceptance by Buyer of these terms and conditions (sometimes "agreement"). No modifications to this agreement shall be effective unless such modification is made in writing and signed by an authorized representative of Seller.

2. **Payment.** Unless otherwise agreed, payment is due within 30 days of the date of invoice. Buyer shall pay interest at the rate of one and one-half percent (1.5%) per month (18% per annum), or, if lower, the highest rate permitted by law on past due accounts. Seller shall have the right to suspend the fulfillment of any current, incomplete or future orders until Buyer has paid all past due amounts. If unpaid amounts are collected through legal proceedings or through an attorney, Buyer shall pay reasonable costs and attorneys' fees associated with such collection procedures or efforts.

3. **Cancellation.** Orders cannot be cancelled by Buyer under any circumstances without Seller's written consent. Buyer agrees to pay a minimum charge of 15% of the order amount on standard items. Higher cancellation charges may apply. Special orders may not be cancelled. The cancellation fee for items made to order will be determined on a case by case basis in Seller's sole discretion, and Buyer agrees to pay up to 100% of the order amount if cancellation is allowed.

4. **Return of Goods.** Goods may not be returned without prior written agreement of Seller and after passing an inspection by Seller to determine if the Goods are returnable. As a condition to return all returns must be requested within 30 days of delivery and be undamaged, appropriate for re-sale, and in new condition. In the event Seller agrees to a return, Buyer agrees to make Seller whole, and to pay all shipping charges and a minimum restocking charge of 15% of the invoice amount. Higher return fees may apply. Under no circumstances may any goods be returned that are used, damaged, specially ordered or manufactured, or not regularly stocked by Seller.

5. **Taxes/Other Charges.** Buyer shall pay any federal, state, local, sales, use, excise or similar taxes, duties, fees or other charges, which Seller may be required to pay or collect, under any existing or future law upon or applicable to the sale, purchase, lease, furnishing, manufacture, processing, transportation, delivery, storage, use or consumption of Seller's product or services.

6. **Delivery/Risk of Loss/Title.** All sales are "Ex Works" which means Seller fulfills its obligation of delivery when it has made the goods available at its premises (i.e. works, factory, warehouse, etc.), and shall constitute full and final delivery as provided in INCOTERMS, unless otherwise agreed in a writing signed by Seller and Buyer. Title and risk of loss shall pass to Buyer upon delivery. Seller shall retain title to all leased goods. Upon delivery, Buyer shall immediately inspect the products for conformity and visible defects. Buyer shall give Seller written notice of any visible nonconformities or defects immediately, but in no event later than two (2) weeks following delivery. If Buyer fails to timely notify Seller of such visible nonconformities or defects, any warranty claims Buyer may have related thereto are forfeited.

7. **Shipping/Delay.** Shipping dates and schedules are subject to prior orders received, availability of adequate labor and equipment and to other unavoidable

contingencies as set forth in paragraph 9. Dates of delivery are estimates only, and are dependent upon prompt receipt by Seller of materials and information necessary, in Seller's sole discretion, to proceed with the work. Seller does not warrant or, in any other way, guarantee delivery dates. Seller reserves the right to choose the facility from which it ships goods to Buyer.

### 8. **Limited Warranty.**

(a) Subject to the limitations set forth in this Agreement, Seller warrants its mechanical goods sold new shall be free from defects in workmanship or material for one year from delivery. Seller's sole and exclusive liability for breach of this warranty is expressly limited to, at Seller's sole option, the repair or replacement, Ex Works Seller's facility or on location, of the good which proves to be defective during the warranty period, or a refund of the consideration paid for the defective good.

(b) Goods furnished by Seller but not manufactured by Seller will carry only the warranty of the manufacturer of the product, if any.

(c) These warranties and remedies are conditioned upon:

(a) the proper storage, installation, operation, and maintenance of the product, in accordance with the manuals and information provided by or available from Seller or its suppliers or vendors; (b) Buyer promptly notifying the Seller of any defect in writing within ten (10) days of Buyer's discovery of any defects during the warranty period, and (c) Buyer keeping such goods or the results of services in a condition that can be examined by Seller and, upon request by Seller, returning the product to a facility designated by Seller for testing and inspection. Any repair, replacement or performance by Seller shall not extend the warranty period.

(d) These warranties shall not apply (i) if the product or result of service had been subject to misuse, negligence, modification, or use other than as specified by Seller, (ii) if the product does not perform or requires replacement due to normal wear and tear, (iii) if the design or any part of it was provided by Buyer or Buyer's behalf to Seller.

(e) This section provides the exclusive remedy for all claims based upon a failure of or defects in goods or services, whether the failure or defect occurs during the warranty period, and whether a claim is based upon contract, warranty, indemnity, tort, extra-contractual liability (including negligence), strict liability, or otherwise. These warranties are exclusive and are in lieu of any other warranties of any kind, written, oral, implied, statutory, or otherwise, including, but not limited to, the implied warranties of merchantability or fitness for a particular purpose or course of performance, course of dealing, or usage of trade.

9. **Force Majeure.** Seller shall not be liable for any delay, inability to tender delivery or other failure of performance, or any loss or damage, where such delay, failure of performance, loss or damage results from any cause beyond Seller, its suppliers, or contractor's control, including, but not limited to, the elements, weather, lack of or inability to obtain materials, fuel, transportation or supplies, acts of Buyer, acts of civil or military authorities, acts of terrorism, insurrection, or war, Acts of God, power or utility failures, breakdown of equipment, machinery, tools, or production facilities, differences with workmen, strikes, boycotts, fire, flood, or other casualty, labor shortages, government regulations or requirements, whether similar or dissimilar to those enumerated, and whether or not foreseeable.

### 10. **Limitation of Liability.**

(a) The total liability of Seller for any loss or of any kind to Buyer, Buyer's property, or any other person or person's property, from Seller's product or services' failure to conform to any specification, breach of warranty, negligence or other failure to conform to any standard of care, strict liability, or patent infringement, shall not exceed the amount received by Seller from Buyer for such goods and services. If Seller uses goods of other manufacturers or suppliers in Seller's goods, and such goods are defective, Seller's liability shall exist only

to the extent that Seller is able to recover from such manufacturer or suppliers for such defects. This limitation of liability shall apply regardless of whether a loss or damage is caused by the sole, joint, or concurrent fault or negligence of Seller or third parties or is based upon contract, warranty, indemnity, tort/extra-contractual liability (including negligence), strict liability, or otherwise.

(b) IN NO EVENT SHALL SELLER BE LIABLE FOR, AND BUYER EXPRESSLY RELEASES, INDEMNIFIES, AND HOLDS HARMLESS SELLER FROM AND AGAINST ANY AND ALL LIABILITY FOR PUNITIVE, INDIRECT, OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, BUSINESS INTERRUPTION, DOWNTIME, LOSS OR INABILITY TO USE PROPERTY OR EQUIPMENT, LOSS OF WELL, RESERVOIR/UNDERGROUND DAMAGE, LOSS OF OIL, GAS OR OTHER MINERALS, DAMAGES AND EXPENSES DUE TO BLOW OUT, AND DAMAGES OR EXPENSES DUE TO POLLUTION, REGARDLESS OF WHETHER ANY SUCH LOSS OR DAMAGE IS CAUSED BY THE SOLE, JOINT OR CONCURRENT FAULT OR NEGLIGENCE OF SELLER OR THIRD PARTIES OR IS BASED UPON CONTRACT, WARRANTY, INDEMNITY, TORT/EXTRA-CONTRACTUAL LIABILITY (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE.

### 11. **INDEMNITY/RELEASE.**

(a) BUYER ACKNOWLEDGES THAT IT IS A SOPHISTICATED USER, BUYER'S USE OF THE GOODS IS SUBJECT TO THE SOLE DISCRETION AND CONTROL OF BUYER, AND BUYER IS IN THE BEST POSITION TO KNOW IF THE PRODUCT IS APPROPRIATE FOR USE UNDER THE CIRCUMSTANCES.

(b) EXCEPT AS EXPRESSLY PROVIDED OTHERWISE IN THIS AGREEMENT, BUYER HEREBY ASSUMES (AND SELLER DISCLAIMS) ANY LIABILITY FOR BUYER'S USE OF THE GOODS. BUYER RELEASES SELLER AND AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS SELLER AND ITS PARENT, SUBSIDIARY AND AFFILIATED COMPANIES, THEIR AGENTS, SERVANTS, EMPLOYEES, OFFICERS, DIRECTORS AND INSURERS ("SELLER GROUP"), FROM ALL DEMANDS, CLAIMS, PROCEEDINGS AND SUITS OF ANY KIND, INCLUDING BUT NOT LIMITED TO INJURY, DISEASE, OR DEATH TO PERSONS, PROPERTY DAMAGE INCLUDING UNDERGROUND OR SURFACE, (HEREAFTER "CLAIMS"), AND ALL DAMAGES, JUDGMENTS, LIABILITIES, FINES, PENALTIES, ASSESSMENTS AND LOSSES OF ANY KIND INCLUDING, WITHOUT LIMITATION, ATTORNEYS FEES, EXPERT WITNESS FEES, EXPENSES AND OTHER COSTS OF LITIGATION (HEREAFTER "LOSSES") ASSERTED AGAINST OR INCURRED BY SELLER GROUP BY REASON OF, ARISING OUT OF, OR IN ANY WAY RELATED TO BUYER'S USE (OR ANY SUBSEQUENT END USER'S USE) OF SELLERS GOODS, SERVICES OR PRODUCTS, REGARDLESS OF WHETHER OR NOT THE CLAIMS OR LOSSES ARE CAUSED BY OR RESULTS FROM THE ACTUAL OR ALLEGED NEGLIGENCE, STRICT LIABILITY, FAULT OR OTHER WRONGFUL CONDUCT OF SELLER AND/OR ANY OTHER PERSON, OR ENTITY, IN WHOLE OR IN PART, WHETHER SOLE, JOINT, ACTIVE OR PASSIVE, AND EVEN IF BUYER IS WITHOUT ANY LEGAL FAULT OF ANY KIND.

(c) IF BUYER IS SUPPLYING SELLER'S GOODS OR SERVICES TO A THIRD PARTY, BUYER SHALL PROVIDE THESE TERMS AND CONDITIONS TO THE THIRD PARTY AND REQUIRE THE THIRD



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PARTY TO AGREE TO BE BOUND BY THESE TERMS AND CONDITIONS. IF BUYER DOES NOT OBTAIN THIS AGREEMENT, BUYER AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS SELLER GROUP FROM AND AGAINST ANY AND ALL CLAIMS AND LOSSES (AS DEFINED IN (b) ABOVE), WHICH SELLER GROUP MAY INCUR AS A RESULT OF BUYER'S FAILURE TO TRANSMIT THE TERMS AND CONDITIONS OR OBTAIN SUCH AGREEMENT, REGARDLESS OF WHETHER OR NOT ANY LOSS OR DAMAGES WERE CAUSED IN WHOLE OR IN PART BY THE SOLE, JOINT, OR CONCURRENT NEGLIGENCE OF SELLER GROUP OR ANY OTHER PERSON OR ENTITY.

12. **Insurance.** Each party agrees to maintain comprehensive general liability insurance in the amount of \$1,000,000 each occurrence, \$2,000,000 general aggregate, and Workers Compensation insurance per statutory requirements providing coverage for the indemnity obligations in this agreement. Such insurance shall be endorsed to provide (i) it is primary to the other party's insurance and (ii) it waives subrogation against the other party, their parent, subsidiary and affiliated companies, and their agents, servants and employees.

13. **Change of Design.** Seller expressly reserves the right to (i) change or modify the design and construction of any of its goods without obligation to furnish or install such change or modification on goods previously sold and (ii) make substitutions and modifications to its product or services, so long as the changes do not adversely affect the performance of those items.

14. **Patents.**

(a) Seller agrees to indemnify and hold harmless Buyer from and against all claims, suits, and costs of patent infringement related to goods or services provided by Seller, expressly subject to the following conditions: (i) Buyer must promptly notify Seller in writing upon receipt of any claim for infringement or service of any suit for infringement, (ii) Buyer must make no admission of liability and must unconditionally afford Seller the opportunity, at Seller's sole option and expense, to answer such claim or suit, assume control of the defense, and settle, compromise, or try such matter as Seller sees fit, (iii) Buyer must provide Seller with full disclosure and assistance that may reasonably be required to defend and claim or suit.

(b) This indemnity shall not apply to (i) any product not manufactured by Seller, (ii) any product specially made, in whole or in part, to Buyer's design specifications, (iii) any product used in combination with other goods or materials in such a manner that the combination (and not the product manufactured by Seller) is the basis for the claim of infringement, (iv) any product for which Seller has offered an update or change, which would prevent the claim or suit, and (v) any product that has been altered, modified, or revised by Buyer.

(c) Paragraph 10(b) of these terms and conditions excluding any liability for consequential damages is incorporated by reference as if fully set forth here. Seller's liability under this indemnity shall not exceed the amount received by Seller for such product or services claimed to be infringing.

(d) Seller may, at its option, (i) procure for Buyer the right to continue using the product or service, (ii) modify or replace it in whole or in part to avoid infringement, or (iii) take back the product or discontinue service and refund any fees received by Seller for the infringing product or services.

(e) This indemnity is in lieu of any other warranty or indemnity, express or implied, with respect to infringement and states Seller's entire liability for indemnification for patent, trademark, copyright, and trade secret infringement for goods and services.

(f) The sale of any products hereunder does not convey any license by implication, estoppel or otherwise covering combinations of the products with other equipment data or programs. Seller retains the copyright

in all documents, catalogs and plans supplied to Buyer pursuant to or ancillary to the contract. Unless otherwise agreed in writing, Buyer shall obtain no interest in any tooling used in the production of any Seller product.

15. **Confidentiality.** Information regarding Seller's services, equipment, goods, and materials will be held by Buyer in confidence, and may be released to others only upon written approval of Seller or when required by law. This provision shall not apply to information that becomes generally available to the public other than through disclosure by Buyer. Seller retains all rights to all designs, engineering details, and data concerning the goods and services provided and nothing herein shall grant Buyer a license under any invention, patent, trademark or copyright now or hereafter owned by Seller. For the avoidance of doubt, in the cases of deliveries of products manufactures to Buyer's specifications, all tools, models, plans, blueprints and other devices and/or documents used and/or developed by Seller in order to fill any order are and remain the property of the Seller, even if the cost of development and/or manufacturing of such items was wholly or partially borne by the Buyer.

16. **Liens.** Buyer grants Seller a purchase money security interest in the goods for any portion of the purchase price not paid at delivery and Seller shall retain this interest until Buyer has been paid in full.

17. **Alternative Dispute Resolution.** Any dispute arising out of or in connection with Seller providing goods and services to Buyer, and the interpretation, enforcement, or arbitrability of this agreement, shall be resolved by arbitration under the commercial rules of the American Arbitration Association. Arbitration shall be before a single arbitrator in Houston, Texas. The result of the arbitration shall be final and binding on the parties. The award shall be "reasoned" and any party may enforce the award in any court of competent jurisdiction. The parties shall share the cost of the arbitration equally.

18. **NORM/TNORM/Radioactive Materials.** Buyer warrants that any used goods returned to Seller shall be free of radioactive material, including NORM and TNORM. BUYER AGREES TO INDEMNIFY, DEFEND, AND HOLD HARMLESS SELLER GROUP (AS DEFINED IN PARAGRAPH 11(b) ABOVE) FROM ANY CLAIMS OF ANY KIND, AND ALL CLAIMS AND LOSSES (AS DEFINED IN 11 (b) ABOVE), RELATED TO ANY CLAIM BY ANY PERSON AGAINST SELLER GROUP THAT ANY OF SELLER'S GOODS CAUSED BODILY INJURY, SICKNESS, DISEASE, OR DEATH OF ANY PERSON BY DUE TO EXPOSURE TO NORM, TNORM, OR ANY RADIOACTIVE MATERIALS. WITH RESPECT TO NORM, TNORM, AND RADIOACTIVE MATERIALS, SELLER SHALL HAVE NO OBLIGATION TO INDEMNIFY AS SET FORTH IN PARAGRAPH 11(d).

19. **Export Laws.** It is the Buyer's responsibility to comply with applicable export control regulations and comply with any restrictions in the Seller's export license for Goods shipped internationally, including from and to the United States and/or United Kingdom. The Buyer shall be responsible for and shall save, indemnify, defend and hold harmless the Seller from and against all Claims in connection with any failure by the Buyer to comply with applicable export control regulations or the Seller's export license arising from, relating to or in connection with this agreement. The Buyer represents that it is knowledgeable and has expertise regarding all export control laws, regulations, procedures, international sanctions, embargoes and restrictions, prohibited party lists and international shipping practices applicable to the Seller, including but not limited to the laws of the United Kingdom and the laws of the United States of America ("Export Controls"), and confirms its obligations to the Seller to monitor and screen all customers, suppliers, subcontractors and other parties and entities, including banks and vessels, which the Buyer interfaces with, selects, or uses in connection with the Contract for

compliance with the requirements of all Export Controls. The Buyer shall promptly alert the Seller to any violations or suspected violations of Export Controls and shall obtain all necessary licenses, permits, forms and applications required pursuant to Export Controls. The Buyer further represents that it is not currently aware of and shall continually monitor any transactions it or its customers, suppliers or subcontractors are involved in for possible violations of Export Controls and shall report any questionable transactions or suspicious circumstances immediately to the Seller insofar as they relate to this agreement. The Buyer agrees to keep records of its export control related activities for a period of five (5) years and records pertaining to export licenses, re-export licenses, and project licenses for a period of five (5) years from the expiration date of such license. The Buyer shall make such records available to the Seller upon request for inspection and copying.

20. **General Clauses, Independent Contractor.** Seller is an independent contractor and not an employee, agent, joint venturer, or partner of Buyer. **Assignment.** These terms and conditions and applicable work order shall not be assigned by Buyer without the prior written consent of Seller. **Governing Law.** This agreement is governed by the laws of the State of Texas, without regard to its conflicts of law principles. **Notices.** Any notices required by this Agreement shall be considered given when received by the other party. **Waiver.** Any delay or failure to enforce any of these terms and conditions shall not bar any subsequent enforcement of the terms and conditions or be deemed a waiver of any subsequent breach. **Severability.** All parts of these terms and conditions are severable. The invalidity of any part shall not affect the validity of any other part. If any clause is determined to be unenforceable, the remaining terms and conditions shall be enforced to the maximum extent permissible. **Entire Agreement.** This is the entire agreement of the parties and supersedes all prior oral or written agreements. Buyer acknowledges that it has not relied on any representations other than those in this agreement. There are no understandings or agreements which are not expressed herein.