

Petrosmith Standard Terms and Conditions

All proposals, quotes, orders, sales, leases and other transactions between Buyer and Seller (as each is defined in Section 1 below), and all other matters relating, directly or indirectly, to products and/or services provided by, through, or on behalf of Seller (including the Goods or Work, as defined below) are subject to these Standard Terms and Conditions ("Terms and Conditions") in all respects. Buyer acknowledges that these Terms and Conditions are a part of the consideration for the transaction(s) contemplated hereby, and it is expressly understood and agreed that if these Terms and Conditions were not accepted and agreed to by Buyer, a greater cash consideration would be charged by Seller in connection with such transaction(s).

1. Definitions. As used in these Terms and Conditions, the following terms have the respective meanings assigned below:

- (a) "Buyer" means the purchaser of the Goods or Work referred to in the Order.
- (b) "Goods" or "Work" shall mean the products, materials, equipment, supplies, other goods, ancillary or other services, or any other deliverables, as identified in the Order.
- (c) "Order" means, collectively, (i) any Quotation that has been accepted and affirmatively approved in writing by an authorized officer of Seller in all respects; and (ii) these Terms and Conditions.
- (d) "Party" means each of Seller or Buyer, individually, and "Parties" means, collectively, Buyer and Seller.
- (e) "Person" means any individual, corporation, limited liability company, association, partnership, non-profit organization, firm, governmental or regulatory body or authority (or any subdivision thereof), any other legal entity or other similar business or organization.
- (f) "Quotation" means any quotation, proposal, purchase order, work order, invoice or other document of sale for (or any request for any of the foregoing or for any), Goods or Work, which in each case, has not been accepted and affirmatively approved in writing, in all respects, by an authorized officer of Seller. For the avoidance of doubt, in no event shall any Quotation be binding on or enforceable against (in whole or in part) Seller unless and until such Quotation becomes an Order pursuant to the terms and conditions hereof.
- (g) "Seller" means the Petrosmith entity or affiliate of Petrosmith, in each case, as identified by an authorized representative of such entity or affiliate in the applicable Order.

2. Acceptance. Buyer acknowledges and agrees that upon Buyer's acceptance (or acceptance of any end user, designee or any other Person, acting through, on behalf of, or at the direction of Buyer, as applicable) of Work that (a) these Terms and Conditions shall apply in all respects to the Order and such Work, to the exclusion of any and all other terms and conditions that may be contained in any request for Quotation or any other document or communication provided by or on behalf of Buyer, or any end user or other Person; (b) it has carefully read and understands, in its entirety, these Terms and Conditions; and (c) it is bound by all terms, conditions and provisions hereof in all respects.

3. Orders; Non-Exclusivity. (A) Seller, in its sole discretion, may refuse any or all Quotations or other orders or requests submitted by or on behalf of Buyer, and Seller shall have no obligation to take any action (or refrain from taking any action) in connection therewith unless and until an Order concerning the subject matter of such Quotation, order or request has been accepted and affirmatively approved by an authorized officer of Seller in all respects, at which time it constitutes an Order for purposes hereof. Such acceptance of an Order by Seller by creates an irrevocable obligation on the part of Buyer to pay all amounts that may at any time become due or payable in

connection therewith, to the fullest extent allowed by applicable law, except as expressly provided otherwise in these Terms and Conditions.

(B) Buyer acknowledges and agrees that (i) this is not an exclusive relationship or arrangement, (ii) nothing in these Terms and Conditions, any Order or otherwise is intended to restrict Seller's ability to provide similar products, goods, services, labor or deliverables to any other Person(s), including other clients and customers, and (iii) Seller is in the business of providing products, goods, services, labor and deliverables that may be identical or similar to those provided for or on behalf of Buyer to other Persons generally based upon the same or similar facilities, equipment, tools, materials, components, features, labor or knowledge, and nothing will impair Seller's right to provide such goods, services, labor or deliverables to or for any other Person(s).

4. Prices; Quotations. (A) All prices are (i) expressed in United States dollars, and (ii) subject to change by Seller (with notice) and are not guaranteed. Prices or Quotations for Work are based on Seller receiving and finalizing Orders for such Work, in the sizes and quantity, of the kind and description, and upon the applicable timeframes, specified in such Quotation, promptly following the date of such Quotation. Prices reflected on an Order are not subject to change (in whole or part), except as otherwise expressly provided in these Terms and Conditions. All prices assume continuous use of and free ingress and egress to Buyer's site (or such other site that is mutually agreed upon in writing by both Parties), by Seller's personnel, contractors, vendors, designees or agents on all-weather roads that were constructed and thereafter maintained for safe and efficient use by commercial vehicles or heavy equipment of the character needed to perform, transport or deliver the Work.

(B) Prices do not include any sales, use or excise taxes, or any other taxes, duties, tariffs, charges or assessments which are or at any time hereafter may be enacted, imposed, assessed or in effect ("Taxes"), it being understood and agreed by both Parties that any and all Taxes and related responsibilities shall be borne entirely, and fully paid in a timely manner, by Buyer. Further, all prices assume that Seller is not, and at no time will be, responsible for any Taxes.

(C) In no event shall any prices, Quotation or Order include any fees or charges relating to loading, freight, delivery, storage, labor or any other costs or expenses, which shall be in addition to the prices for Goods or Work, [in amounts determined by Seller, in its sole discretion.

(D) Prices and Quotations shall automatically expire, without any further action by any Person, thirty (30) days immediately following the date of such Quotation, unless canceled or otherwise retracted by Seller prior to the expiration of such 30 day period. Any and all stock, raw materials, other inventory or supplies included in or contemplated by a Quotation, or otherwise relating to any contacts or communications between the Parties, are subject to prior sale, transfer, return, reservation, consumption or use.

5. Payment Terms. Payment terms are net thirty (30) days immediately following the date indicated on the invoice provided by or on behalf of Seller, except as otherwise provided herein or unless subject to the terms of a pre-existing signed and fully executed Master Service Agreement (MSA). Interest will be charged on past due invoices or accounts of Buyer at the maximum lawful rate. All fees, costs, and expenses (including attorneys' fees and legal costs) incurred by or on behalf of Seller or any other Person in the collection or pursuit of such amounts shall be fully reimbursed in their entirety by Buyer promptly upon demand (but in no event more than ten (10) days immediately following the date of such demand). Regardless of the actual or proposed shipment date or any

other target date or milestone, Seller may issue invoice(s) any time on or after the date on which Seller provides a notification of readiness for shipment.

6. Cancellation. (A) Once an Order has been accepted and approved by Seller pursuant to these Terms and Conditions, no cancellations or suspensions of, or decreases in the size or timing pertaining to, such Order (in whole or in part) by, through or on behalf of Buyer will be permitted, except to the extent otherwise expressly provided in these Terms and Conditions.

(B) [A Party may only cancel an Order for convenience by providing at least [thirty (30) days] advance written notice to the other Party concerning such cancellation.] If Buyer elects to cancel an Order for any reason, Buyer shall, within thirty (30) days immediately following the date of Seller's invoice, reimburse Seller in full for all (i) work (including labor) performed prior to the date on which Seller receives such cancellation notice from Buyer; (ii) all costs, expenses, charges or losses incurred by or on behalf of Seller relating to or arising from such cancellation (including all demobilization costs, raw material or component costs, and all other non-cancellable third party costs and expenses); and (iii) a reasonable margin. In the event of any cancellation by Buyer, Seller shall have no obligation to mitigate any costs, expenses or losses relating to steel or any other raw materials or consumable commodities used or are intended for use in connection the Goods or the performance of any other Work (including services).

7. Shipment; Delivery. All prefabricated packages, skid-mounted assemblies or similar Goods (collectively, "Assembled Units") shall be assembled in Seller's plant (or another location designated by Seller) to the extent practicable, in Seller's sole discretion. Each Assembled Unit shall be disassembled before shipping, but only to the extent required, in Seller sole discretion, to facilitate the means of transportation or delivery. All such assembly or reassembly of each Assembled Unit in the field or any other location shall be the sole responsibility of Buyer, and shall be performed at Buyer's sole expense. All materials and parts (if any) that may be provided by Seller in connection with the Goods shall be packaged and shipped to Buyer, at Buyer's sole expense, by common carrier or any other method of delivery deemed necessary or advisable by Seller, in its sole discretion. The method for shipment of Seller's Goods shall be as set in the applicable Sales Order in each case, as approved by Seller in accordance with these Terms and Conditions.

8. Title and Risk of Loss. These Terms and Conditions allocate the risks associated with the shipment, loss (including loss of use) or failure of, any damage or casualty to, Goods and Work between Buyer and Seller; and such allocation is acknowledged and agreed to by both Parties, and is reflected in the price of the Goods or Work.

Title to, and risk of loss with respect to, the Goods and Work is Ex Works Seller's facility, and Buyer will bear all responsibilities, costs, expenses, losses and liabilities, directly or indirectly, relating to such Goods or Work, including the loading, shipment, transportation or delivery to any other location or destination, including any storage site owned, leased or controlled by Seller or any of its affiliates. Upon Seller's transmittal of notice of readiness for shipment, Buyer shall become solely responsible and liable for, and bear any and all risk of loss associated with, the Goods or Work, regardless of whether Goods or Work are on or at a location owned, leased or controlled by Seller or any other Person. In the case of any pick-up by Buyer or its designee, (i) the truck, trailer or other equipment (as applicable) furnished by or on behalf of Buyer or such designee is the final destination of such Goods or Work; and (ii) upon such Goods or Work being loaded on or into such truck, trailer or equipment, neither Seller nor any member of the Seller Group shall bear any risk of loss or any other obligations or liabilities in connection with such Goods or Work other than with respect to the

limited warranty expressly provided in Sections 11 and 12 of these Terms and Condition (if applicable), subject to all terms, conditions and limitations relating to such limited warranty.

9. Inspection. Any inspection required by Buyer shall take place at Seller's facility for manufacturing the applicable Goods. Buyer shall be responsible for and pay all costs and expenses relating to any such inspection, including all fees for permits or licenses required by any law, order, rule, regulation or otherwise.

10. Changes. If Buyer or any other Person other than Seller requests, orders or causes any change(s) (in whole or in part) in or to (a) Seller's quoted or estimated schedule; (b) any method or source of engineering, manufacturing, design, procurement, fabrication, assembly or shipment; or (c) any design, specifications, components, features, capabilities or requirements of any Goods or Work, or otherwise, and such change(s) result in Seller incurring (or potentially incurring) any delay or additional costs or expenses, then the Parties agree that any and all such delays, costs and expenses incurred by or on behalf of Seller shall be solely for the account of Buyer or other Person (including storage charges that may be assessed by or on behalf of Seller or transportation costs), in the event of any suspension of or delay in sourcing materials/components, design, manufacturing, fabrication, shipment or delivery. Further, the date(s) of commencement, readiness, shipment or delivery, as the case may be, shall be equitably adjusted by Seller, in its sole discretion, when Seller is in any way affected by such change(s). Notwithstanding any other terms hereof, any Order or any communications between the Parties, in no event will any change be considered or implemented by or on behalf of Seller without a written change order issued by Buyer that has been duly signed by an authorized representative of Seller.

11. Equipment Warranty. (A) Seller warrants new equipment of its manufacture to be free from material defects in workmanship and material, normal wear and tear excepted, until the earlier of (a) twelve (12) months from date of equipment delivery, or (b) eighteen (18) months from date of Seller's transmittal of notice of readiness for shipment; provided, however, that such equipment is subjected only to the specific uses and conditions, specified by Buyer, at the time of the Order. Seller does not warrant any Goods (or any components or features thereof) designed, fabricated or manufactured by any Person other than Seller; provided, however, Seller will use its commercially reasonable efforts to assign to Buyer, to the extent assignable, any warranty or guarantee (if any) issued to Seller by such third party manufacturer for such Goods, components or features, to the extent that such Goods, components or features are incorporated by Seller into the equipment of its manufacture. In the event of a breach of the limited warranty provided in this Section 11, Seller shall, at its sole option, either repair the defective part or furnish a replacement part. No claim against Seller for any material defect in workmanship and material will be allowed unless such claim is presented in writing to Seller prior to the expiration of such 12 month or 18 month period, as applicable.

(B) IN NO EVENT SHALL SELLER BE RESPONSIBLE OR LIABLE (IN WHOLE OR IN PART) TO BUYER OR ANY OTHER PERSON FOR ANY (I) USE, PERFORMANCE, CAPABILITIES OR FEATURES OF, OR ANY DEFECT OR FAILURE IN, ANY GOODS OR WORK TO THE EXTENT IT IS MANUFACTURED, FABRICATED OR OTHERWISE PRODUCED ACCORDING TO ANY DESIGNS, DRAWINGS, DIRECTIVES OR SPECIFICATIONS OF BUYER OR ANY OTHER PERSON (OTHER THAN SELLER); OR (II) DELAYS, SUSPENSIONS, CURTAILMENT OF OPERATIONS, PROCESS FAILURE, POLLUTION, LOSSES (INCLUDING LOSS OF PROFITS), COSTS OR EXPENSES DIRECTLY OR INDIRECTLY RELATING TO THE REMOVAL OF ANY GOODS, WORK OR EQUIPMENT (OR, IN EACH CASE, ANY PARTS OR COMPONENTS

THEREOF) TO BE REPAIRED OR REPLACED, TRANSPORTATION, DISASSEMBLY, OR INSTALLATION COSTS, OR ANY OTHER COSTS, EXPENSES OR CHARGES IN CONNECTION WITH THE REPAIR, REPLACEMENT, OR SERVICING OF ANY PARTS OR EQUIPMENT; ANY MATTER DIRECTLY OR INDIRECTLY RELATING TO ANY DRAWINGS, MANUALS OR OTHER GENERAL INFORMATION FURNISHED TO AID BUYER OR ANY OTHER PERSON IN THE INSTALLATION, ASSEMBLY OR ERECTION OF GOODS, IT BEING ACKNOWLEDGED AND AGREED BY BUYER THAT ALL SUCH DRAWINGS, MANUALS OR GENERAL INFORMATION IS FURNISHED FOR BUYER'S OR SUCH PERSON'S CONVENIENCE ONLY, AND DO NOT CONTAIN OR OTHERWISE REPRESENT ANY REPRESENTATION OR WARRANTY BY SELLER, AND SELLER SHALL NOT INCUR ANY LIABILITY, LOSS, PENALTY, COST, EXPENSE OBLIGATIONS WHATSOEVER ARISING THEREFROM OR IN CONNECTION THEREWITH. SELLER MAKES NO REPRESENTATIONS, WARRANTIES OR GUARANTEES WITH RESPECT TO (1) ANY WORK (OR ANY PARTS, COMPONENTS, FEATURES OR ASPECT THEREOF) REQUIRING REPLACEMENT OR REPAIR DUE TO NORMAL WEAR AND TEAR; (2) USED EQUIPMENT, PARTS OR OTHER GOODS; (3) THE DESIGN OF ANY EQUIPMENT, PARTS OR OTHER GOODS, OR (4) PAINTING, COATING, LINING OR SIMILAR FEATURES.

12. Service Warranty. Notwithstanding anything to the contrary in these Terms and Conditions or any Order, (A) Work consisting of labor or services performed by Seller is warranted to be free from all material defects in workmanship for period of 180 days after the date on which such labor or service was originally performed; and (B) Buyer's exclusive remedy for any breach of this warranty shall be limited to the repair or re-performance, at Seller's sole option, of the non-conforming portion of such labor or services; provided, however, in no event shall Seller's liability in connection with this limited warranty exceed the lesser of (i) the cost of labor to initially perform such service Work, or (ii) an amount calculated in accordance with Section 22 below. No claim against Seller for defective labor or services will be allowed unless such claim is presented in writing to Seller in reasonable detail prior to the expiration of such 180 day period.

13. LIMITED WARRANTY; DISCLAIMER OF WARRANTIES. NOTWITHSTANDING ANY OTHER TERMS OR PROVISIONS OF THESE TERMS AND CONDITIONS, ANY ORDER, OR OTHERWISE:

(A) THE REMEDIES SET FORTH IN SECTIONS 11 AND 12 OF THESE TERMS AND CONDITIONS ARE THE SOLE AND EXCLUSIVE REMEDIES, AND SELLER'S ENTIRE RESPONSIBILITY AND LIABILITY, FOR OR IN CONNECTION WITH ANY BREACH OF THE LIMITED WARRANTY SET FORTH IN THESE TERMS AND CONDITIONS OR ANY OTHER CLAIMS, LOSSES OR DAMAGES RELATING TO THE GOODS, WORK OR ANY ORDER.

(B) EXCEPT FOR SUCH LIMITED WARRANTIES EXPRESSLY SET FORTH ABOVE, SELLER MAKES NO OTHER REPRESENTATION, GAURANTEE OR WARRANTY OF ANY KIND OR NATURE, EXPRESS OR IMPLIED, INCLUDING, ANY EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

(C) No warranty contemplated these Terms and Conditions or otherwise shall cover (in whole or in part) any loss (including loss of use), damage or defect which in any way arises from or relates to, directly or indirectly, any act or omission by Buyer or any other Person after risk of loss associated therewith has become vested in Buyer pursuant to these Terms and Conditions (including, instances in which the Goods, Work or the subject of any services provided hereunder (or, each case, any portion thereof) is or has been subjected to abuse, misuse, neglect, negligence, accident, improper

testing, improper storage, improper handling, abnormal physical stress, unauthorized modification or supplement, abnormal environmental conditions, or use contrary to any instructions issued by Seller or any third party designer, manufacturer or fabricator of the Goods (or any parts, components or features thereof), or used with any other, software, equipment, other goods, property or method that has not been previously approved in writing by an authorized officer of Seller), or by any loss (including loss of use), damage or defect in any products or goods (or any parts, components or features thereof) designed, manufactured or fabricated by any Person other than Seller. Seller shall not be responsible or liable (in whole or in part) for any (i) repairs or replacements of any Work, (including labor or services) that meets the accepted leak rate established by the Environmental Protection Agency, if applicable; or (ii) cosmetic blemishes or other matters which do not materially and adversely affect the use or performance thereof, which in any case contemplated by any of any of the foregoing, shall not constitute or otherwise be considered a loss, damage or defect.

14. Buyer's Financial Condition. If, at any time prior to delivery of Goods or Work to the final destination for same, Buyer's credit, liquidity, financial condition, or ability to meet its fulfill all of Buyer's obligations (including payment) in a timely manner, is or becomes unsatisfactory to, or otherwise in question by, Seller, in its sole judgment, Seller may cancel or suspend Seller performance (including shipment) or require Buyer, at Buyer's sole cost and expense, to procure letters of credit or other security in favor of, and on terms acceptable to, Seller, without any further obligation, liability or performance on Seller's part.

15. Independent Contractor Status. The relationship of the Parties is that of an independent contractor, and not that of an employee/employer, partner, subsidiary, affiliate, joint venturer or agent of the other Party. Nothing in these Terms and Conditions, any Order or otherwise shall be construed in any manner as to create the relationship of employer/employee, partner, subsidiary, affiliate, joint venturer or agent between the Parties or any other Person. Seller may consult with Buyer or its representatives on a periodic basis with respect to the status of an Order, the Goods or the Work, but neither Party will direct or control the other Party's activities. Neither Party is an agent of the other Party, and neither Party shall have any right or authority to create any obligation, express or implied, on behalf of the other Party, or to bind the other Party in any manner whatsoever.

16. Force Majeure. Seller not be responsible or liable (in whole or in part) for any (a) delays (including, delays in the performance or fulfillment of Orders, or in the delivery or shipment of Goods) or any other inability to perform; or (b) costs, losses or damages suffered by Buyer or any end user, intermediary or any other Person by reason of such delay or inability, when such delay or inability is, directly or indirectly, caused by, related to or arises from, in any manner, any Act of God, public enemy, war, insurrection, piracy, compliance with any law, regulation, rule, ordinance or order, executive order, governmental or quasi-governmental action, tariff, fire, flood, quarantine, embargo, epidemic, pandemic, the elements, unusually severe weather, strike, accident, work stoppage, acts or omissions of carriers, supplies, vendors or other third Persons, inability to procure material, equipment or necessary labor in the open market on reasonable terms, acute and unusual labor or material or equipment shortages, or any other cause (whether or not similar in nature to any of the foregoing) that is beyond the control of Seller which affects Seller's ability to perform in any manner (each, a "Force Majeure"), and upon the occurrence and during the continuance of any such event or circumstances, Seller shall be entitled to suspend its obligation to perform its obligations hereunder and all Orders in the event that Seller is affected by such event, conditions or circumstances. In the event of any Force Majeure, (i) upon Seller become aware of such Force Majeure and ascertaining the impact that that it may have on Buyer's Order, Seller shall provide

notice of such events or circumstances to Buyer as promptly as is reasonably practicable under the circumstances; (ii) Buyer shall not be entitled terminate any Order that is or may be affected by such Force Majeure (including any resulting delay or suspension), except as otherwise except as otherwise expressly provided in these Terms and Conditions (and subject to all applicable conditions relating thereto); (iii) Seller shall promptly resume its performance upon the expiration of the circumstances or events relating to such Force Majeure; and (iv) and Seller may extend time for performance, shipment and delivery (as applicable) for a period equal to the number of days lost by reason of such Force Majeure.

17. Storage. In the event Buyer (a) delays or suspends the loading, shipment or delivery of Goods for any reason, and (b) desires to store the Goods on Seller's or any of its affiliates' premises or any other location owned, leased or controlled by Seller or any such affiliate that is designated for storage purposes by such Person, then Buyer agrees to execute, deliver and perform (including payment of storage rates and other amounts, and the maintenance of required insurance) under a Storage Agreement or similar instrument, in form and substance satisfactory to Seller; provided, that, in each instance, as conditions precedent thereto, Seller (i) is amenable to storing such Goods, and (ii) has received full and indefeasible payment for such Goods.

18. Subcontractors. Notwithstanding any other terms hereof, Seller may subcontract or delegate (in whole or in part) any Order or any Work, with or without notice to, or the consent of, Buyer or any other Person.

19. INDEMNIFICATION. (A) BUYER SHALL INDEMNIFY, DEFEND, RELEASE AND HOLD HARMLESS SELLER, ITS AFFILIATES AND SUBSIDIARIES, AND ITS AND THEIR RESPECTIVE DIRECTORS, OFFICERS, MANAGERS, CONTROLLING PERSONS, PARTNERS, SHAREHOLDERS, MEMBERS, INVESTORS, OWNERS, EMPLOYEES, CONTRACTORS, INVITEES, AGENTS, REPRESENTATIVES, AND THE RESPECTIVE SUCCESSORS AND ASSIGNS OF THE FOREGOING (COLLECTIVELY WITH BUYER, THE "SELLER GROUP") FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, LAWSUITS, ACTIONS, LIABILITIES, AWARDS, LOSSES, DAMAGES, PENALTIES, INVESTIGATIONS, COSTS OR EXPENSES (INCLUDING COURT COSTS AND REASONABLE ATTORNEY'S FEES) THAT ARISE FROM, RELATE TO, OR BE IN CONNECTION WITH, THESE TERMS AND CONDITIONS, ANY ORDER, OR ANY GOODS OR WORK (COLLECTIVELY, "CLAIMS"), THAT MAY BE ALLEGED OR ASSERTED BY, OR THAT MAY ARISE IN FAVOR OF, ONE OR MORE MEMBERS OF THE BUYER GROUP (AS DEFINED BELOW) OR ANY OF THEIR RESPECTIVE AGENTS, REPRESENTATIVES, EMPLOYEES, CONTRACTORS, INVITEES, SPOUSES, HEIRS, SUCCESSORS OR ASSIGNS, FOR, RELATING TO, OR IN CONNECTION WITH, ANY: (I) DAMAGE OR DESTRUCTION TO, LOSS (INCLUDING LOSS OF USE) OF, ONE OR MEMBERS OF THE BUYER GROUP'S TOOLS, EQUIPMENT, MATERIALS, SUPPLIES OR OTHER PROPERTY, WHETHER OWNED, LEASED, BORROWED OR OTHERWISE; OR (II) PERSONAL INJURY, BODILY INJURY, MENTAL OR EMOTIONAL DISTRESS, ILLNESS, OR DEATH, OR ANY DESTRUCTION OR LOSS (INCLUDING LOSS OF USE) OF, OR DAMAGE TO, PROPERTY OR INTERESTS OF ANY MEMBER(S) OF THE BUYER GROUP. THE INDEMNIFICATION RIGHTS AND OBLIGATIONS PROVIDED IN THIS SUBPART (A) SHALL APPLY REGARDLESS OF WHETHER OR NOT (1) THE EVENT, CONDITION OR CIRCUMSTANCES ARE OR WERE CAUSED BY, ARISE FROM OR RELATE TO ANY NEGLIGENCE OF ONE OR MORE MEMBERS OF THE BUYER GROUP; (2) ANY CLAIM OF STRICT LIABILITY; OR (3) ANY CAUSE WHATSOEVER. NOTWITHSTANDING ANY OTHER TERMS HEREOF OR ANY ORDER, NO MEMBER OF THE SELLER GROUP SHALL BE ENTITLED TO INDEMNIFICATION FOR ANY

CLAIMS TO THE EXTENT THAT THEY RELATE TO, ARISE FROM, OR ARE CAUSED BY, THE SOLE NEGLIGENCE, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF ONE OR MORE MEMBERS OF THE SELLER GROUP.

(B) SELLER SHALL INDEMNIFY, DEFEND, RELEASE AND HOLD HARMLESS BUYER, ITS AFFILIATES AND SUBSIDIARIES, AND ITS AND THEIR RESPECTIVE DIRECTORS, OFFICERS, MANAGERS, CONTROLLING PERSONS, PARTNERS, SHAREHOLDERS, MEMBERS, INVESTORS, OWNERS, EMPLOYEES, CONTRACTORS, INVITEES, AGENTS, REPRESENTATIVES, AND THE RESPECTIVE SUCCESSORS AND ASSIGNS OF THE FOREGOING (COLLECTIVELY WITH BUYER, THE "BUYER GROUP") FROM AND AGAINST ANY AND ALL CLAIMS, THAT MAY BE ALLEGED OR ASSERTED BY, OR THAT MAY ARISE IN FAVOR OF, ONE OR MORE MEMBERS OF THE SELLER GROUP (AS DEFINED BELOW) OR ANY OF THEIR RESPECTIVE AGENTS, REPRESENTATIVES, EMPLOYEES, CONTRACTORS, INVITEES, SPOUSES, HEIRS, SUCCESSORS OR ASSIGNS, FOR, RELATING TO, OR IN CONNECTION WITH, ANY: (I) DAMAGE OR DESTRUCTION TO, LOSS (INCLUDING LOSS OF USE) OF, ONE OR MEMBERS OF THE SELLER GROUP'S TOOLS, EQUIPMENT, MATERIALS, SUPPLIES OR OTHER PROPERTY, WHETHER OWNED, LEASED, BORROWED OR OTHERWISE; OR (II) PERSONAL INJURY, BODILY INJURY, MENTAL OR EMOTIONAL DISTRESS, ILLNESS, OR DEATH, OR ANY DESTRUCTION OR LOSS (INCLUDING LOSS OF USE) OF, OR DAMAGE TO, PROPERTY OR INTERESTS OF ANY MEMBER(S) OF THE SELLER GROUP. THE INDEMNIFICATION RIGHTS AND OBLIGATIONS PROVIDED IN THIS SUBPART (A) SHALL APPLY REGARDLESS OF WHETHER OR NOT (1) THE EVENT, CONDITION OR CIRCUMSTANCES ARE OR WERE CAUSED BY, ARISE FROM OR RELATE TO ANY NEGLIGENCE OF ONE OR MORE MEMBERS OF THE SELLER GROUP; (2) ANY CLAIM OF STRICT LIABILITY; OR (3) ANY CAUSE WHATSOEVER. NOTWITHSTANDING ANY OTHER TERMS HEREOF OR ANY ORDER, NO MEMBER OF THE BUYER GROUP SHALL BE ENTITLED TO INDEMNIFICATION FOR ANY CLAIMS TO THE EXTENT THAT THEY RELATE TO, ARISE FROM, OR ARE CAUSED BY, THE SOLE NEGLIGENCE, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF ONE OR MORE MEMBERS OF THE BUYER GROUP.

(C) NOTWITHSTANDING SUBPARTS (A) AND (B) ABOVE OR ANY OTHER TERMS HEREOF, ANY ORDER, OR OTHERWISE, BUYER SHALL INDEMNIFY, DEFEND, RELEASE AND HOLD HARMLESS SELLER AND THE SELLER GROUP FROM AND AGAINST ANY AND ALL CLAIMS OF ANY KIND OR CHARACTER THAT MAY BE SUFFERED OR INCURRED, DIRECTLY OR INDIRECTLY, IN CONNECTION WITH OR THAT ARISE FROM THE MANAGEMENT, CONTROL, REMOVAL, TRANSPORTATION, STORAGE, TREATMENT, PROCESSING, CLEAN UP, RECYCLING, DISPOSAL, SPILL, DISCHARGE, RELEASE OR LOSS OF ANY HAZARDOUS MATERIALS (OTHER THAN TO THE EXTENT SUCH HAZARDOUS MATERIALS ARE THEN-OWNED, POSSESSED AND INTRODUCED BY SELLER) OR DUE TO BUYER'S, ANY MEMBER OF THE BUYER GROUP'S, OR ANY OTHER PERSON'S USE, STORAGE, CONTROL, MAINTENANCE, REPAIR, TRANSPORT OR POSSESSION OF ANY OF THE GOODS, WORK, OR ANY OTHER EQUIPMENT OR PROPERTY ON WHICH LABOR OR SERVICES ARE PERFORMED; REGARDLESS OF FAULT, INCLUDING THE SOLE, JOINT, CONCURRENT, OR GROSS NEGLIGENCE, STRICT LIABILITY, OR OTHER LEGAL FAULT OF SELLER OR ANY OTHER MEMBER OF THE SELLER GROUP. As used herein, "Hazardous Materials" means any polychlorinated biphenyls, flammable explosives, radioactive materials, carcinogens or other chemicals known or suspected to cause or be a factor in cancer or reproductive toxicity, pollutants, effluents, contaminants, emissions, or related materials, and any items included in the definition of hazardous or toxic waste, materials, or substances under any law, regulation, rule, order, ordinance

or authority relating to hazardous material, waste, environmental conditions (including the protection of the environment or wetlands), or environmental or industrial hygiene.

(D) **Express Negligence**: THE INDEMNIFICATION, DEFENSE, RELEASE AND HOLD HARMLESS OBLIGATIONS CONTAINED WITHIN THIS SECTION 19 SHALL APPLY EVEN IF CAUSED, IN WHOLE OR IN PART, BY THE NEGLIGENCE (WHETHER SOLE, JOINT OR CONCURRENT), GROSS NEGLIGENCE, STRICT LIABILITY, CONTRACTUAL LIABILITY TO THE PARTY OR ONE OR MEMBERS OF SUCH PARTY'S GROUP (*i.e.*, SELLER GROUP OR BUYER GROUP, AS THE CASE MAY BE) SEEKING INDEMNIFICATION HEREUNDER, OR OTHER FAULT, WHETHER PASSIVE OR ACTIVE, OF ANY PERSON, INCLUDING THAT OF THE PARTY OR MEMBER(S) OF SUCH PARTY'S GROUP SEEKING INDEMNIFICATION. BOTH PARTIES AGREE THAT THIS STATEMENT COMPLIES WITH THE REQUIREMENT KNOWN AS THE EXPRESS NEGLIGENCE RULE TO EXPRESSLY STATE IN A CONSPICUOUS MANNER TO AFFORD FAIR AND ADEQUATE NOTICE THAT THIS SECTION 19 HAS PROVISIONS REQUIRING ONE PARTY TO BE RESPONSIBLE FOR THE NEGLIGENCE, STRICT LIABILITY, OR OTHER FAULT OF ANOTHER PARTY.

(E) **TEXAS**: Separate and independent from any other insurance procurement and maintenance requirements in these Terms and Conditions or any Order (if any), Buyer and Seller each agree to carry insurance in support of their respective indemnity obligations under this Section 19 in mutually agreeable amounts; provided, however, each Party agrees that the maximum amount of such supporting insurance shall be the lower of the maximum amount carried by either Party. If a Party does not carry insurance in the required mutually agreed amount, such Party will be deemed to be self-insured in an amount equal to the amount of insurance carried by the other Party in compliance with this Subpart (E).

(F) In the event that these Terms and Conditions, any Order, or any transaction or matter contemplated hereby or thereby is subject to the indemnity limitations of any applicable state law, and so long as such law is in force and effect, then the Parties agree that such indemnification obligations shall apply to the fullest the extent allowed by applicable law.

20. [Reserved].

21. Waiver of Certain Damages. IN NO EVENT SHALL EITHER PARTY OR ANY OTHER PERSON BE RESPONSIBLE OR LIABLE (IN WHOLE OR PART) FOR ANY INCIDENTAL, CONSEQUENTIAL, PUNITIVE, SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT OR ENHANCED DAMAGES (INCLUDING, LOST PROFITS OR REVENUES, DIMINUTION IN VALUE, LOSS OF USE OR BUSINESS INTERRUPTION LOSSES) AS A RESULT OF, ARISING FROM OR RELATING TO THESE TERMS AND CONDITIONS, ANY ORDER (OR BREACH OF ANY PROVISION HEREOF OR THEREOF), GOODS, WORK, OR OTHERWISE; OR ANY DAMAGES LOSSES THAT MAY BE SUFFERED OR INCURRED BY ANY OTHER PERSON REGARDLESS OF (A) WHETHER SUCH DAMAGES OR LOSSES WERE FORESEEABLE; (B) WHETHER OR NOT SUCH PARTY OR ANY OTHER PERSON WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR LOSSES; OR (C) THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT, OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

22. Limitation of Liability. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, SELLER'S TOTAL LIABILITY AND RESPONSIBILITY, IN THE AGGREGATE, TO BUYER IN

CONNECTION WITH ANY CLAIMS ARISING FROM OR RELATING TO ANY CAUSE(S), OR ANY THEORY, LEGAL, EQUITABLE OR OTHERWISE (INCLUDING, ANY BREACH OF CONTRACT, WARRANTY, INDEMNITY, NEGLIGENCE OR STRICT LIABILITY CLAIM), SHALL NOT EXCEED TWENTY FIVE PERCENT (25%) OF THE CONSIDERATION ACTUALLY PAID BY BUYER TO SELLER UNDER THE SPECIFIC ORDER UNDER WHICH SUCH CLAIM ARISES. THIS LIMITATION OF LIABILITY SHALL APPLY IN ANY CLAIM REGARDLESS OF CAUSE, FAULT, NEGLIGENCE OF DUTY, OR OTHER ACT OR OMISSION, ON THE PART OF SELLER OR ANY MEMBER(S) OF THE SELLER GROUP.

23. DTPA Waiver. Buyer represents, acknowledges and agrees that (a) the application of Section 17.45(4) of the Texas Deceptive Trade Practices Act (located at Texas Business Commission Code §17.41 et. seq., as amended from time to time, and including any successor statutes or regulation, the “DTPA”) to any Goods, Work, transaction or other matter contemplated by these Terms and Conditions, any Order or Quotation, or otherwise; and (b) Buyer is not a “consumer” for the purposes of the DTPA. As such, Buyer’s and Seller’s respective rights and remedies with respect to these Terms and Conditions, any Order or Quotation or any transaction or matter contemplated hereby or thereby, and with respect to all acts or practices of the other (past, present or future) in connection therewith, shall be governed by legal principles other than the DTPA. Accordingly, Buyer further acknowledges and agrees as follows: **BUYER HEREBY IRREVOCABLY WAIVES, TO THE FULL EXTENT PERMITTED BY LAW, ANY AND ALL RIGHTS, INTEREST OR CLAIMS THAT BUYER MAY NOW HAVE, OR TO WHICH IT MAY OTHERWISE IN THE FUTURE HAVE BEEN ENTITLED, UNDER THE TEXAS DECEPTIVE TRADE PRACTICES – CONSUMER PROTECTION ACT (TEX. BUS. AND COM. CODE §17.41 ET SEQ. (AS AMENDED FROM TIME TO TIME, AND INCLUDING ANY SUCCESSOR STATUTES OR REGULATION), ARISING OUT OF OR RELATING TO ANY ACT, CONDUCT, REPRESENTATION OR OMISSION OF SELLER, ANY OF ITS AFFILIATES, ANY OTHER MEMBER(S) OF SELLER GROUP, OR ANY OF ITS OR THEIR RESPECTIVE EMPLOYEES, CONTRACTORS, REPRESENTATIVES, PERSONNEL, DESIGNEES OR AGENTS, OR ANY OTHER PERSON, WHETHER HERETOFORE OR HEREAFTER TAKEN, DONE OR OMITTED TO BE DONE, IN CONNECTION WITH THESE TERMS AND CONDITIONS, ANY ORDER, QUOTATION, GOODS, WORK, OR ANY TRANSACTION OR MATTER CONTEMPLATED HEREBY OR THEREBY OR ANY SUBSEQUENT RELATED TRANSACTIONS.**

24. Compliance with Law. (A) Each Party hereto represents and warrants that it is familiar with, and at all times shall observe and comply with, all applicable international, federal, state, and local laws, ordinances, rules, and regulations in any manner affecting Goods, Work, or any Order, including decrees that exist at present and those that may be enacted later by any authorities, bodies, agencies, or tribunals having jurisdiction or authority over the Parties, Goods, Work, any Order or any other matters contemplated hereby or thereby.

(B) *Sanctions Laws.* The Goods or other items, technologies or software (as applicable) that are sold or otherwise provided to Buyer under any Order are subject to the export laws of the United States and perhaps other countries. The export, deemed export, re-exports, or release of these Goods or other items, technologies or software to any country, government, entity, organization or Person, to other Countries, jurisdictions or parties may require the prior approval of the United States Government, the governments of other countries or jurisdictions, or international organizations such as the United Nations. Diversion of any such Goods, items, technologies or software contrary to any applicable laws (domestic or foreign) is prohibited.

(C) *Anti-Bribery Laws*. Buyer hereby represents, warrants and covenants to Seller that, in connection with any transaction or matter contemplated by these Terms and Conditions or any Order or Quotation, neither Buyer, any member of the Buyer Group, nor any of its or their respective directors, officers, employees, contractors, personnel, intermediaries, agents or representatives has made or will make any gifts or payment of money or anything else of value, directly or indirectly, to any official, employee, representative or agent of any government, or any department, agency or division thereof (including governmental-owned companies), to any official, employee, representative or agent of any international organization, or to any political party or candidate for political office (each, and "Official") for the purpose of influencing any decisions of such Official in such Person's official capacity, inducing any such Official to act or fail to act in violation of his official duty, or inducing such Official to use such Person's influence to influence or affect any act or decision of a government, any department or agency or instrumentality thereof, or any international organization for the purpose of obtaining, retaining, or directing business to or for Buyer or any other Person.

25. Amendments. (A) These General Terms and Conditions (i) supersede all prior or subsequent oral or written agreements or understandings with respect to the products, services, transactions and other matters contemplated by these Terms and Conditions; (ii) are not subject to any amendment, supplementation, modification or waiver (in whole or in part) by reason of any terms or conditions provided in any order, quote or proposal provided by or on behalf of Buyer, or by reason of any order, acknowledgement, confirmation, invoice or other form provided by or on behalf of Buyer, or any other written or oral terms, conditions, statements or other communications made or provided, or any acceptance of Work, by or on behalf of Buyer or any other Person; and (iii) [shall not be amended, modified, supplemented or waived (in whole or in part), unless such the amendment, modification, supplement or waiver or is in writing and duly signed by an authorized officer of **[each Party]**, and any and all amendments, modifications, supplements or waivers of these Terms and Conditions shall be null and void and have no effect, unless and until the signed writing described in this clause (iii) is so executed and delivered.

(B) No course of dealing, usage of trade, any course of performance or similar concepts shall amend, modify, supplement, explain or waive (in whole or in part) any terms or provisions of these Terms and Conditions or any Order.

26. Conflicts. In the event of any conflict between the terms of these Terms and Conditions and any Order or other document, instrument or communication between the Parties, these Terms and Conditions will govern and control, absent a separate, binding written agreement, executed and delivered by an authorized officer of Buyer and Seller, to the contrary.

27. Assignment. Neither Buyer's rights or obligations hereunder, any Order or Quotation, nor any transaction resulting herefrom or therefrom may be assigned, transferred or pledged by Buyer, without the express prior written consent of an authorized officer of Seller.

28. Governing Law; Venue; Jurisdiction. These Terms and Conditions, each Order and all subsequent agreements of any nature between the Parties shall be governed by and construed in accordance with the laws of the State of Texas, without regard to the conflicts of law principles of any jurisdiction. Each Party irrevocably (a) consents to the jurisdiction of the United States District Court for the Northern District of Texas, or the state courts of the State of Texas located in Taylor County, Texas, and (b) agrees that such courts shall have exclusive venue and jurisdiction for any Claim, suit, action, dispute or proceeding arising from or relating to these Terms and Conditions, or

any Goods, Work, Order or Quotation. For the avoidance of doubt, the United Nations Convention on Contracts for the International Sale of Goods expressly does not apply to these Terms and Conditions, any Order or any transactions contemplated hereby or thereby.

29. Survival. Subject to applicable limitations statutes and laws, as well as each other provision hereof that, in order to give proper effect to its intent, should so survive, shall survive the fulfillment, termination or cancellation, as the case may be, of any and all Orders, all deliveries of Goods, or any other performance or obligation hereunder.

30. Notices. All notices, consents, claims, demands, waivers, summons, other legal process, and other similar types of communications hereunder must (a) be in writing and addressed to the relevant Party at the address set forth on the Sales Order (or to such other address that may be designated by the receiving Party from time to time in accordance with this Section 30); and (b) be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), certified or registered mail (in each case, return receipt requested, postage prepaid), or electronic mail. A notice or other communication referenced herein is effective only (a) upon receipt by the receiving Party and (b) if the Party giving the notice has complied with the requirements of this Section 30 in all material respects.]

31. Waivers. No waiver by any Party of any of the provisions of these Terms and Conditions or otherwise shall be effective unless explicitly set forth in writing and signed by an authorized officer of the Party so waiving. Except as otherwise set forth in these Terms and Conditions, no failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from these Terms and Conditions, any Order, or otherwise associated with Goods or Work, shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power, or privilege preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege. Termination for default or convenience shall not serve to waive any portion hereof or of any Order, except as otherwise expressly provided by these Terms and Conditions.

32. Cumulative Remedies. All rights and remedies provided in these Terms and Conditions are cumulative and not exclusive, and the exercise by either Party of any right or remedy does not preclude the exercise of any other rights or remedies that may now or subsequently be available, at law or in equity, or in any other legally binding agreement between the Parties. Notwithstanding the previous sentence or any other terms hereof or any Order to the contrary, the Parties intend and agree that Sections 11 and 12 above constitute Buyer's sole and exclusive rights and remedies concerning the respective events or circumstances contemplated in such Sections.

33. No Third-Party Beneficiaries. Except for the indemnification rights expressly set forth in Section 19 above, these Terms and Conditions are solely for the benefit of the Parties and their respective permitted successors and permitted assigns, and nothing herein or in any Order or Quotation, express or implied, confers on any other Person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms and Conditions, any Order or Quotation, or any other document, instrument, transaction or matter contemplated hereby or thereby.

34. Entire Agreement. These Terms and Conditions [and the applicable Order] constitute the sole and entire agreement of the Parties with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, regarding such subject matter.

35. Severability. If any term or provision of these Terms and Conditions or any Order is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of these Terms and Conditions or such Order, or invalidate or render unenforceable such term or provision in any other jurisdiction.

36 Counterparts. Any written agreement, document or instrument contemplated by these Terms and Conditions, any Order or the transactions contemplated hereby or thereby, may be executed or delivered in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. A signed copy (or counterpart) of any such agreement, document or instrument executed or delivered by facsimile, email, or other means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy (or counterpart) of such agreement, document or instrument.

37. Interpretation. The headings and captions contained in these Terms and Conditions are for convenience of reference only and shall not constitute a part hereof or define, limit or otherwise affect the meaning of any of the terms or provisions hereof. For purposes of these Terms and Conditions, (i) the words "include," "includes" and "including" are deemed to be followed by the words "without limitation"; (ii) the word "or" is not exclusive; (iii) the words "herein," "hereof," "hereby," "hereto" and "hereunder" refer to these Terms and Conditions as a whole; (iv) words denoting the singular have a comparable meaning when used in the plural, and vice-versa; and (v) words denoting any gender or gender neutral reference, if any, include all genders or gender neutral designations. The Parties acknowledge and agree that no presumption or rule requiring construction or interpretation against the Party drafting or otherwise preparing these Terms and Conditions, any Order or any other document or instrument.