



Production Terms and Conditions

The Terms and Conditions herein stated are a part of the consideration hereof and it is expressly understood that if such Terms and Conditions were not accepted and agreed to by Customer (shown on the reverse side hereof) a greater cash consideration may be charged by Forum US, Inc. (and any of its parent, subsidiary, operating divisions, or affiliated companies) (the “Company”) for the products and services listed on the reverse side hereof (hereinafter referred to as “Products” and “Services”). No agreement or modification hereof shall be effective unless in writing and executed by an officer or otherwise authorized representative of each party. Products are furnished and Services are rendered upon the following Terms and Conditions and these Terms and Conditions (regardless of any terms and conditions in Customer’s purchase order, invoice, work order, or any other document) shall supersede all prior or subsequent oral or written agreements or understandings with respect to Products and Services. No acceptance which varies these Terms and Conditions or proposes additional terms is effective. Acceptance is limited to these Terms and Conditions. Each shipment of Products and rendering of Services received by Customer from Company shall be deemed to be only upon these Terms and Conditions notwithstanding any terms and conditions that may be contained in any invoice, acknowledgment or other form of Customer. Customer’s act of accepting Products and Services or paying for Products and Services shall constitute an acceptance of these Terms and Conditions.

1. **Pricing.** Each Product and Service shall be invoiced at (and Customer shall pay) the respective price shown on the Quote and/or RFQ side hereof, or if no price is shown on the reverse side Quote, at the price shown in the current price list of Company. In addition, Customer shall pay any and all additional charges for mileage, transportation, freight, packing and other related charges, as well as any federal, state or local tax, excise, or charge applicable on the sale, transportation, or use of Products and Services, including but not limited to any permits, licenses or fees, unless otherwise specified. Prices quoted for Products are based on receiving orders for the quantity specified and are valid for 30 days from the quotation date, unless previously canceled in writing by Company. Stock materials included in a quotation are subject to prior sale.

2. **Terms of Payment.** Customer agrees to pay Company any and all payments due on or before thirty (30) days from invoice date at the designated address of Company. Amounts unpaid after such thirty (30) day period shall bear interest at the lesser of (i) one and one-half percent (1½%) per month or (ii) the maximum rate allowed by law. Customer shall also pay any and all of Company’s attorney’s fees and court costs if any amounts hereunder are collected by an attorney or through legal proceedings. Company reserves the right, among other remedies, either to terminate this agreement or to suspend further deliveries upon failure of Customer to make any payment as provided herein. Company shall issue an invoice at time of notification of readiness for shipment, or upon completion of or interruption to services rendered, even if Customer requests that shipment be delayed or services resumed at a later date.

3. **Cancellation of Orders.** Orders cannot be cancelled by Customer under any circumstances without Company’s written consent. Customer agrees to pay a minimum charge as follows of the order amount on standard items: Acceptance of PO – 15%; Engineering Complete – 25%; Initial Material(s) Ordered – 45%; Production Initiated – 55%; Test / Paint Initiated – 90%; Finished Production of Goods complete– 100%. 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 Company’s sole discretion, and Customer agrees to pay up to 100% of the order amount if cancellation is allowed.

4. **Return of Goods.** Products may not be returned without prior written agreement of Company and after passing an inspection by Company to determine if the Goods are returnable. All returns must be requested within 30 days of delivery and be undamaged, appropriate for re-sale, and in new condition. In the event Company agrees to a return, Customer agrees to make Company whole, and to pay all shipping charges and a minimum restocking charge of 25% 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 Company.

5. **Limited Warranty.** **COMPANY MAKES NO WARRANTY, EXPRESSED OR IMPLIED, AS TO THE MERCHANTABILITY, FITNESS FOR PURPOSE, DESCRIPTION, QUALITY, PRODUCTIVENESS, ACCURACY OR ANY OTHER MATTER WITH RESPECT TO PRODUCTS OR SERVICES, ALL SUCH WARRANTIES BEING HEREBY SPECIFICALLY AND EXPRESSLY DISCLAIMED BY COMPANY.** COMPANY MAY OFFER TECHNICAL ADVICE OR ASSISTANCE AND/OR PROVIDE DRAWINGS OR GENERAL INFORMATION TO CUSTOMER WITH REGARD TO THE PRODUCTS AND SERVICES BASED ON LABORATORY AND/OR FIELD EXPERIENCE AND CUSTOMER UNDERSTANDS AND AGREES THAT SUCH ADVICE REPRESENTS ONLY GOOD FAITH OPINIONS AND DOES NOT CONSTITUTE A WARRANTY OR GUARANTEE. THE SOLE AND EXPRESS WARRANTY PROVIDED BY COMPANY IS AS FOLLOWS:

A. **VALVE PRODUCTS OFFERED BY COMPANY:** Company warrants new valve products of its manufacture to be free from material defects in workmanship and material for a period of twelve (12) months from installation of the Goods by the end user or eighteen (18) months from the date of delivery per the Parties’ agreed Incoterm of delivery, whichever is earlier;

B.. **ALL OTHER PRODUCTION AND INFRASTRUCTURE PRODUCTS OFFERED BY COMPANY:** Company warrants all other production and infrastructure products not included in (A) above of its manufacture to be free from material defects in workmanship and material for a period of twelve (12) months from the date of delivery per the Parties’ agreed Incoterm of delivery.

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 Company or its suppliers or vendors; (b) Customer keeping accurate records of the operation and maintenance of the product during the warranty period and providing such records to Company on request; (c) modification or repair of any product only as authorized by Company in writing, (d) Customer promptly notifying the Company of any defect in writing within ten (10) days of Customer discovery of any defects during the warranty period, and (e) Customer keeping such goods or the results of services in a condition that can be examined by Company and, upon request by Company, returning the product to a facility designated by Company for testing and inspection. Any repair, replacement or performance by Company shall not extend the warranty period.

These warranties shall not apply to the following: (i) the product or result of service had been subject to misuse, negligence, modification, or use other than as specified by Company, (ii) Customer uses the goods with components which are not manufactured or approved by Company, (iii) requires replacement due to normal wear and tear, (iv) the design or any part of it was provided by Customer or Customer’s behalf to Company or designs were made Company but subject to Customer approval, (v) to any service work, (vi) to used equipment, and (vii) to painting, coating, or lining of the Product.

Company does not warrant components manufactured by others but will use its best efforts to assign any component manufacturer’s warranty or guarantee to Customer.

This section provides the exclusive remedy for all claims based upon a failure of or defects in goods, 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.

6. **Change of Design.** Company 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.

7. **Remedy.** The exclusive remedy for the warranty for Products as provided in section 5 above shall be limited to, in Company’s sole discretion and judgment, the replacement of defective part(s), Ex Works Company’s fabrication plant (transportation, redesign, dismantling, disposal of material and installation are not included and shall be borne and paid for by Customer), or repair of defective part(s). Any such repeat of services or replacement or repair of goods shall not include any materials not sold by Company hereunder, and specifically excludes any obligation by Company related to other property of the Customer or any property of third parties. **IN ANY EVENT AND NOTWITHSTANDING ANY**



LANGUAGE TO THE CONTRARY HEREIN, CUSTOMER ACKNOWLEDGES THAT ANY CLAIM IT MAY HAVE ARISING OUT OF OR IN CONNECTION WITH ANY ORIGINAL PRODUCTS AND SERVICES, ANY REPLACEMENT PRODUCTS OR REPEAT OF SERVICES AND THESE TERMS AND CONDITIONS SHALL BE LIMITED TO AND NOT EXCEED THE AMOUNT CUSTOMER HAS ACTUALLY PAID TO COMPANY FOR SUCH PRODUCTS AND/OR SERVICES PURSUANT HERETO. Unless Customer is an authorized reseller of Company, Company's liability in connection with Products and Services shall extend only to Customer.

8. **Limitation of Liability.** The total liability of Company for any loss of any kind to Customer, Customer's property, or any other person or person's property, from Company'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 Company from Customer for such goods and services. If Company uses goods of other manufacturers or suppliers in Company's goods, and such goods are defective, Company's liability shall exist only to the extent that Company 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 Company or third parties or is based upon contract, warranty, indemnity, tort/extra-contractual liability (including negligence), strict liability, or otherwise. CUSTOMER HEREBY INDEMNIFIES AND HOLDS COMPANY (AND ITS AGENTS, REPRESENTATIVES, OFFICERS DIRECTORS AND EMPLOYEES) HARMLESS FOR ANY LOSS, EXPENSE OR DAMAGE (WHETHER OF CUSTOMER OR OF ANY THIRD PARTY) ARISING FROM OR IN CONNECTION WITH PRODUCTS AND SERVICES, INCLUDING WITHOUT LIMITATION ANY FAILURE OF SUCH PRODUCTS AND SERVICES TO CONFORM TO CUSTOMER'S ORDER OR SPECIFICATION OR ANY OTHER STANDARD, OR ANY NEGLIGENCE OR BREACH OF WARRANTY BY COMPANY WITH RESPECT TO ANYTHING DONE OR FAILED TO HAVE BEEN DONE BY COMPANY, IF AND TO THE EXTENT THAT SUCH LOSS, EXPENSE OR DAMAGE EXCEEDS THE AMOUNT CUSTOMER HAS ACTUALLY PAID COMPANY PURSUANT HERETO FOR SUCH PRODUCTS OR SERVICES.

9. **Inspection.** The results of any inspection or testing reported by the Company to Customer represents only good faith opinions and are not to be construed as warranties or guarantees of the quality, classification, merchantability, fitness for purpose, condition, or liability of any equipment or material that has been inspected or tested by the Company.

10. **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. The Company (and such of its affiliates as it shall designate) including their officers, directors, members, shareholders, partners, joint ventures, employees, agents and representatives shall be named as additional insureds under the policies of Customer on a primary basis to the extent of its indemnification obligations set forth in these Terms and Conditions, and the policies shall also provide a waiver of subrogation rights in favor of the Company (and such of its affiliates as it shall designate) and their officers, directors, members, shareholders, employees, agents and representatives. **The provisions of this Section 10 shall apply and the obligation to maintain insurance of each party in the coverages and amounts set forth herein shall remain in force regardless and independent of the validity or enforceability of the indemnity provisions of Section 11. The obligation to obtain insurance is a separate and independent obligation. If the insurance required herein is more or less than allowed by prevailing law, the indemnity obligations in Section 11 below shall be effective only to the maximum extent permitted under applicable law.**

11. **Indemnification.** The following indemnifications and releases of liability will apply to any Products or Services provided under this contract. **COMPANY AND CUSTOMER EXPRESSLY AGREE THAT, TO THE EXTENT REQUIRED BY APPLICABLE LAW TO BE EFFECTIVE, THE INDEMNITIES AND DISCLAIMERS OF WARRANTIES CONTAINED HEREIN ARE "CONSPICUOUS."**

a. **Customer Indemnity Obligations.** Customer hereby releases Company from any liability for, and shall protect, defend, indemnify, and hold harmless Company, its parents, affiliates, subsidiaries, partners, joint owners, joint venturers, and its contractors and subcontractors of any tier, and the officers, directors, agents, representatives, employees, insurers, and consultants (specifically excluding any member of Customer Group) of all of the foregoing, and its and their respective successors, heirs and assigns ("Company Group") from and against all costs (including the payment of reasonable attorneys' fees), losses, liabilities, demands, causes of action, damages, or claims of every type and character ("Claims"), arising out of or resulting from or related, directly or indirectly, to (i) injury to, illness or death of Customer its parents, affiliates, subsidiaries, partners, joint owners, joint venturers, and its contractors and subcontractors of any tier, and the officers, directors, agents, representatives, employees, customers, insurers, invitees and consultants of all of the foregoing, and its and their respective successors, heirs and assigns ("Customer Group"), or (ii) loss of or damage to any property of any member of Customer Group, **REGARDLESS OF THE CAUSE OF SUCH CLAIMS, INCLUDING THE NEGLIGENCE (WHETHER SOLE, JOINT OR CONCURRENT, ACTIVE OR PASSIVE, ORDINARY OR GROSS) STRICT LIABILITY, OR ANY OTHER LEGAL FAULT OR RESPONSIBILITY OF ANY MEMBER OF COMPANY GROUP.**

b. **Company Indemnity Obligations.** Company hereby releases Customer from any liability for, and

shall protect, defend, indemnify, and hold harmless Customer from and against all Claims arising out of or resulting from or related, directly or indirectly, to (i) injury to, illness or death of any member of Company Group, or (ii) loss of or damage to any property of any member of Company Group, **REGARDLESS OF THE CAUSE OF SUCH CLAIMS, INCLUDING THE NEGLIGENCE (WHETHER SOLE, JOINT OR CONCURRENT, ACTIVE OR PASSIVE, ORDINARY OR GROSS) STRICT LIABILITY, OR ANY OTHER LEGAL FAULT OR RESPONSIBILITY OF ANY MEMBER OF CUSTOMER GROUP.**

c. **Third Party Claims.** Notwithstanding the foregoing, to the extent of its negligence, Company and Customer shall each indemnify, defend and hold harmless Claims, of every type and character, which are asserted by third parties for bodily injury, death or loss or destruction of property or interests in property in any manner caused by, directly or indirectly resulting from, incident to, connected with or arising out of the work to be performed, Services to be rendered or materials to be furnished by Customer. When personal injury, death or loss of or damage to property is the result of joint or concurrent negligence of Customer or Company, the indemnitor's duty of indemnification shall be in proportion to its allocable share of such negligence.

d. **Pollution.** Customer shall assume all responsibility for, including control and removal of, and shall protect, defend and indemnify Company Group from and against all Claims arising directly or indirectly from all pollution or contamination which may occur during the conduct of operations hereunder, including, but not limited to, that which may result from fire, blowout, cratering, seepage or any other uncontrolled flow of oil, gas, water or other substance, or wild well, including regaining control thereof, debris removal and property restoration and remediation, **EVEN IF THE LOSSES, DAMAGES, CLAIMS, DEMANDS, COSTS, FEES, AND EXPENSES ARE CAUSED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF COMPANY GROUP.**

e. **Compliance With Laws, Rules And Regulations.** Customer expressly agrees to comply with and abide by all of the laws of the United States and of the state in which goods are delivered or services are performed, including, but not limited to, OSHA, EPA and all rules and regulations now existing or that may be hereafter promulgated under and in accordance with any such law or laws, and **Customer hereby agrees to indemnify and hold Company Group harmless from any and all claims, demands, or damages incurred by Company Group arising from Customer Group's failure to comply with all laws and governmental regulations.**

f. The foregoing indemnities set forth in these Terms and Conditions are intended to be enforceable against the parties hereto in accordance with the express terms and scope hereof notwithstanding Texas' Express Negligence Rule or any similar directive that would prohibit or otherwise limit indemnities because of the negligence (whether sole, concurrent, active or passive, ordinary or gross)



or other fault or strict liability of Company or Customer.

g. If a claim is asserted against one of the parties to this agreement which may give rise to a claim for indemnity against the other party hereto, the party against whom the claim is first asserted must notify the potential indemnitor in writing and give the potential indemnitor the right to defend or assist in the defense of the claim.

h. Anti-Indemnity Savings Provision.

Notwithstanding anything else herein to the contrary, if any tribunal determines that any provision to release, protect, defend, indemnify, and/or hold harmless herein (or any part of such provision) is unenforceable because such provision provides for any person to be protected, defended, indemnified and/or held harmless for its own negligence, gross negligence or other fault, then such provision shall be construed as written, except (i) neither Company Group nor Customer Group shall be released, protected, defended, indemnified, or held harmless for its own negligence, gross negligence or other fault, (ii) if Customer is the indemnifying party therein, Customer shall release, protect, defend, indemnify, and hold harmless Company Group from and against all Claims covered by such indemnity provision to the extent of Customer Group's negligence, and (iii) if Company is the indemnifying party therein, Company shall release, protect, defend, indemnify, and hold harmless Customer Group from and against all Claims covered by such indemnity provision to the extent of Company Group's negligence. In the event that a court shall determine that any governmental requirement shall subject these Terms and Conditions to other limitations other (other than that described in the preceding sentence) on the parties' freedom to obligate themselves to indemnify and/or insure each, then the these Terms and Conditions shall be construed to provide the maximum permissible amount of protection from liability to the party claiming the benefit of indemnity or insurance.

12. Title and Risk of Loss.

a. Title and risk of loss shall pass to Customer upon delivery as specified in Section 14. Customer's receipt of any material delivered hereunder shall be an unqualified acceptance of and a waiver by Customer of any and all claims with respect to, such material unless Customer gives Company written notice of claim within fifteen (15) days after such receipt. Notwithstanding the foregoing, installation or use of materials or equipment shall unequivocally constitute irrevocable acceptance of said materials. In addition, Customer assumes all risk and liability for the results obtained by the use of any material or products delivered hereunder in work performed by on behalf of Customer or in combination with other substances or products.

b. If Customer fails to take delivery or otherwise delays delivery after the Parties agreed delivery date, Company reserves the right to immediately place such goods in storage and charge Customer storage fees at a rate of \$500.00 per day. During such storage time, title to the goods will remain with Company until actually delivered to Customer, but risk of loss shall shift to Customer upon original agreed delivery date. Company assumes no liabilities while maintaining temporary storage of Customer's

equipment. Company also reserves the right to invoice Customer after the Parties agreed delivery date if such delay in delivery is not due to Company's fault.

c. For services, Company shall not be liable for loss or deterioration of any equipment and material of Customer under Company's control or stored on Company's premises after Company has completed its work.

13. **Termination.** Company reserves the right to terminate the order at issue, or any part hereof, solely for its convenience at any time without cause with notice to Customer. Company shall have the right to cancel any unfilled order without notice to Customer in the event that Customer becomes insolvent, adjudicated bankrupt, petitions for or consents to any relief under any bankruptcy reorganization statute, violates a term of these Terms and Conditions, or is unable to meet its financial obligations in the normal course of business. In the event of such termination, Company shall immediately stop all work hereunder.

14. **Delivery.** All sales are "Ex Works". This means Company fulfills its obligation of delivery when it has made the goods subject of the order 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 Company and Customer. All prefabricated packages or skid-mounted assemblies shall be assembled in Company's plant to the extent practicable. These assembled units shall be disassembled before shipping, but only to the extent required to facilitate the chosen means of transportation. All field reassembly necessary to place units in operable condition shall be done by and at Customer's expense. Upon notification by Company of delivery, Customer shall become liable and shall bear all risk of loss associated with the goods at issues regardless of whether the goods are at a location controlled by Company. Excess packing, marking, shipping, and transportation charges resulting from compliance with Customer's request shall be for Customer's account. Freight charges will be supported by appropriate shipping documents and an administrative fee, as solely determined by Company, will be added to prepaid freight shipments. Unless otherwise agreed in writing, delivery time is not of the essence.

15. **Delays.** 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 Section 25. Dates of delivery are estimates only, and are dependent upon prompt receipt by Company of materials and information necessary, in Company's sole discretion, to proceed with the work. Company does not warrant or, in any other way, guarantee delivery dates. Company reserves the right to choose the facility from which it ships goods to Customer.

16. **Consequential Damages.** Notwithstanding any other provision contained herein, Company shall not be liable to Customer Group of any third party for consequential (whether direct or indirect damages), indirect, incidental, special or punitive damages, howsoever arising, including, but not limited to loss of profits (whether direct or indirect damages), revenues, production or business opportunities, WHETHER OR NOT

SUCH LOSSES ARE THE RESULT IN WHOLE OR IN PART FROM THE NEGLIGENCE (WHETHER SOLE, JOINT, CONCURRENT OR COMPARATIVE, ACTIVE OR PASSIVE, ORDINARY OR GROSS) OF COMPANY GROUP, OR ANY DEFECT IN THE PREMISES, PRE-EXISTING CONDITIONS, PATENT OR LATENT, BREACH OF STATUTORY DUTY, STRICT LIABILITY OR ANY OTHER THEORY OF LEGAL LIABILITY OF COMPANY GROUP (EXCLUDING ONLY LOSSES CAUSED BY THE WILLFUL MISCONDUCT OF COMPANY GROUP). In addition, in no event shall Company be liable to Customer for delays, curtailment of plant operations, process failure, pollution, cost for removing any parts or equipment to be repaired or replaced, transportation, or installation charges in connection with the repair, replacement, or servicing of any parts or equipment.

17. **Security Interest.** Customer grants to Company a security interest in all of Customer's equipment and material delivered pursuant to these Terms and Condition. Customer agrees to sign all documents and do all things which in the opinion of the Company may be necessary or desirable for Company to perfect such security interest and in connection therewith authorizes (to the extent permitted by applicable law) Company to sign and publicly file any financing statement on Customer's behalf as Customer's attorney-in-fact. Company shall retain this interest until Company has been paid in full.

18. Patent And Intellectual Property.

a. Company agrees to indemnify and hold harmless Customer from and against all claims, suits, and costs of patent infringement related to goods or services provided by Company, expressly subject to the following conditions: (i) Customer must promptly notify Company in writing upon receipt of any claim for infringement or service of any suit for infringement, (ii) Customer must make no admission of liability and must unconditionally afford Company the opportunity, at Company's sole option and expense, to answer such claim or suit, assume control of the defense, and settle, compromise, or try such matter as Company sees fit, (iii) Customer must provide Company 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 Company, (ii) any product specially made, in whole or in part, to Customer'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 Company) is the basis for the claim of infringement, (iv) any product for which Company 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 Customer.

c. Section 16 of these terms and conditions excluding any liability for consequential damages is incorporated by reference as if fully set forth here. Company's liability under this indemnity shall not



exceed the amount received by Company for such Product or Services claimed to be infringing.

d. Company may, at its option, (i) procure for Customer 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 Company 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 Company'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. Company retains the copyright in all documents, catalogs and plans supplied to Customer pursuant to or ancillary to the contract. Unless otherwise agreed in writing, Customer shall obtain no interest in any tooling used in the production of any Company product.

19. **Ownership Of Customer Developments.** All copyrights, patents, trade secrets, or other intellectual property rights associated with any ideas, concepts, techniques, inventions, processes, or works of authorship developed or created by Company during the course of performing work for Customer (collectively the "**Work Product**") shall belong exclusively to Company and shall not, to the extent possible, be considered a work made for hire for Company within the meaning of Title 17 of the United States Code. Customer agrees to assign, and hereby assigns at the time of creation of the Work Product, without any requirement of further consideration, any right, title, or interest Customer may have in such Work Product. Upon request of Company, Customer shall take such further actions, including execution and delivery of declarations, instruments of conveyance, and the like for any applications or registrations Company may, at its expense, apply for and as may be appropriate to give full and proper effect to such assignments.

20. **Taxes.** Unless otherwise specifically provided for herein, Customer shall be liable for all federal, state, or local taxes or import duties assessed by any governmental entity of any jurisdiction in connection with the goods or services furnished hereunder.

21. **Deceptive Trade Practices.** Customer acknowledges the application of Section 17.45(4) of the Texas Deceptive Trade Practices Act (Texas Business Commission Code §17.41 et. seq.) (the "**Act**") to any transaction contemplated hereby and represents that it is not a "consumer" for the purposes of the Act.

22. **No Waiver.** Failure to enforce any or all of the provisions in these Terms and Conditions in any particular instance shall not constitute or be deemed to constitute a waiver of or preclude subsequent enforcement of the same provision or any other provision of these Terms and Conditions. Should any provision of these Terms and Conditions be declared invalid or unenforceable all other provisions of these Terms and Conditions shall remain in full force and effect.

23. **Choice of Law and Jurisdiction.** This Agreement (including all schedules, exhibits, attachments and Purchase Orders), and all matters arising out of or relating to this Agreement, whether sounding in contract, tort, or statute, are governed by and construed in accordance with, the laws of the State of Texas (including its statute of limitations), excluding any choice of law rules or principles which would refer the matter to the laws of another jurisdiction, and shall be performable in Harris County Texas. The Parties agree that the United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement. IN CONNECTION WITH ANY MATTER ARISING OUT OF OR RELATING TO THIS AGREEMENT (INCLUDING ALL SCHEDULES, EXHIBITS, ATTACHMENTS OR PURCHASE ORDERS), WHETHER SOUNDING IN CONTRACT, TORT, OR STATUTE, EACH PARTY HERETO IRREVOCABLY AND UNCONDITIONALLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF—AND AGREES TO BRING ANY ACTION, LITIGATION, OR PROCEEDING ONLY IN—THE COURTS OF THE STATE OF TEXAS IN HARRIS COUNTY, TEXAS AND THE FEDERAL COURTS IN AND FOR THE SOUTHERN DISTRICT OF TEXAS SITTING IN HOUSTON, TEXAS.

24. **Authority.** Customer warrants and represents that the individual receiving this order at issue on behalf of Customer has the authority to enter into these Terms and Conditions on behalf of Customer, and that upon receipt these Terms and Conditions shall be binding upon Customer.

25. **Force Majeure.** Company 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 Company, 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 Customer, acts of civil or military authorities, acts of terrorism, insurrection, or war, pandemic, government orders, or other shutdowns, 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.

26. **Confidentiality.** Customer acknowledges the highly secretive and valuable nature of all proprietary inventions, methods, processes, designs, know-how, and trade secrets embodied in the Company's equipment, products and services and its components (hereinafter referred to as "**Confidential Data**"). Accordingly, Customer agrees not to disclose or use any Confidential Data. Customer further agrees to take any and all necessary precautions to prevent disclosure of the Confidential Data associated with the Company's equipment, products and services and components thereof to persons other than those employees of Customer for whom such disclosure is necessary for performance of the work hereunder.

27. **Compliance.** Customer expressly agrees to comply with and abide by, all of the laws of the United States and of the State of Texas, including, but not limited to, OSHA, EPA and all rules and regulations now existing or that may be hereafter promulgated under and in accordance with any such law or laws, and hereby agrees to indemnify and hold Company harmless from any and all claims, demands, or damages incurred by Company arising from Customer's failure to comply with all laws and governmental regulations. The indemnities in this paragraph shall be in addition to any other indemnity obligations between Customer and Company, including any other indemnity obligations contained herein.

28. **Export Laws.** It is the Customer's responsibility to comply with applicable export control regulations and comply with any restrictions in the Company's export license for Goods shipped internationally, including from and to the United States and/or United Kingdom. The Customer shall be responsible for and shall save, indemnify, defend and hold harmless the Company from and against all Claims in connection with any failure by the Customer to comply with applicable export control regulations or the Company's export license arising from, relating to or in connection with this agreement. The Customer 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 Company, 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 Company to monitor and screen all customers, suppliers, subcontractors and other parties and entities, including banks and vessels, which the Customer interfaces with, selects, or uses in connection with the Contract for compliance with the requirements of all Export Controls. The Customer shall promptly alert the Company 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 Customer 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 Company insofar as they relate to this agreement. The Customer 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 Customer shall make such records available to the Company upon request for inspection and copying.

29. **HAZARDOUS WASTE AND/OR MATERIALS.** Customer shall be solely responsible for management of any hazardous or toxic waste or material or any component thereof, or radioactive waste including but not limited to such waste generated before (including delivery of Customer's product to Company's site) or during cleaning or servicing of Customer's equipment ("Waste"). This does not include the management of any hazardous or toxic waste or material or any component thereof



that is owned by Company. As used in this provision, the term “management” shall include, but is not limited to, transporting, collecting, processing, treating, using, reselling, or storing. Company is not permitted, certified, or otherwise licensed to manage or dispose of Waste generated when cleaning or servicing Customer’s equipment and shall bear no liability for the same. CUSTOMER AGREES THAT IT SHALL BE TOTALLY RESPONSIBLE FOR ANY AND ALL WASTE AND/OR HAZARDOUS SUBSTANCES DIRECTLY INTRODUCED BY CUSTOMER OR BY A CUSTOMER EMPLOYEE OR CUSTOMER PRODUCT PROVIDED TO COMPANY FOR SERVICES AND SHALL PERFORM ALL CLEAN-UP AND REMOVAL OF SUCH SUBSTANCES. IN THE EVENT CUSTOMER DOES NOT PERFORM SUCH CLEAN-UP AND/OR REMOVAL, CUSTOMER SHALL INDEMNIFY CUSTOMER FOR ALL LOSSES, DAMAGES, CLAIMS, DEMANDS, COSTS, CHARGES, AND OTHER EXPENSES, INCLUDING ATTORNEYS’ FEES, AS WELL AS EXPERTS AND CONSULTANT FEES, INCURRED BY COMPANY RELATED TO SUCH CLEAN-UP AND/OR REMOVAL, EVEN IF THE LOSSES, DAMAGES, CLAIMS, DEMANDS, COSTS, FEES, AND EXPENSES ARE CAUSED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF COMPANY.

There are no understandings or agreements which are not expressed herein.

31. **Anti-Corruption.** Customer agrees to comply with the U.S. Foreign Corrupt Practices Act of 1977, as amended (the “FCPA”), U.K. Bribery Act 2010 (“UKBA”), U.K. Criminal Finances Act 2017 (“UKCFA”) and all other anti-corruption and/or anti-bribery laws applicable in the jurisdiction in which Customer is purchasing or using the goods sold by Company. Customer hereby declares that it has read and understood the provisions of the FCPA, UKBA, UKCFA and, on that basis, it further represents and covenants that neither it nor any of its employees or agents have taken or will take any action to cause Customer to be in violation of any of these. Specifically, Customer hereby certifies that it has not paid, nor offered or agreed to pay, nor has caused to be paid, or offered or agreed to be paid, directly or indirectly, in respect of this Agreement, any political contributions, fees or commissions to any public or governmental employee or official anywhere for the purpose of influencing such official’s act or decision to provide business to Customer or Company nor has it facilitated the evasion of any taxation by another party. Customer hereby agrees to indemnify and hold Company harmless from any and all claims, demands, or damages incurred by Company arising from Customer’s failure to comply with this section and governmental regulations and requirements.

32. **General Clauses.** Independent Contractor. Customer is an independent contractor and not an employee, agent, joint venturer, or partner of Company. Assignment. These terms and conditions and applicable work order shall not be assigned by Customer without the prior written consent of Company. Notices. Any notices required by this Agreement shall be considered given when received by the other party. Entire Agreement. This is the entire agreement of the parties and supersedes all prior oral or written agreements. Customer acknowledges that it has not relied on any representations other than those in this agreement.