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Standard Terms & Conditions

1. **DEFINITIONS. A. Goods.** The word "goods" as used herein means the product offered or acknowledged in this document, ordered by Buyer and furnished by Seller and, except as expressly limited within the Article, below, entitled "LIMITED WARRANTY", the word includes products furnished to Seller by Buyer for repair, refurbishment or overhauls except as set forth in Article 12 hereof. **B. Repair.** The word "repair" as used herein means only those services performed by Seller upon Buyer's specific broken or disabled parts or components, which are identified in writing by either Buyer or Seller before the work commences, required to return the part or components to a usable condition. **C. Refurbishment and Overhaul.** As used herein, the words "refurbishment" and "overhaul" (hereafter "refurbishment") are synonymous and mean (a) for equipment originally manufactured by seller, returning such equipment to essentially its original operating condition by replacing or repairing as necessary all parts and components worn beyond their operating tolerances and (b) for equipment manufactured by others, returning such equipment to usable operating condition by replacing or repairing worn parts and components only to the extent Seller is able to determine the original applicable tolerances and materials. It is understood and agreed that refurbishment of equipment shall in no event mean or imply that any refurbished equipment, or part or component thereof, conforms to as-new component, part, assembly or performance condition or tolerances, or that refurbished equipment will meet any regulatory, statutory or local code requirements that said equipment was not expressly designed and manufactured to meet when originally manufactured.

2. **GENERAL.** No orders for goods, repair or refurbishment will be considered accepted by Seller until approved in our offices in Houston, Texas. The terms and conditions set forth herein shall exclusively govern both the sale of goods by Seller to Buyer and furnishing of material and services for repair or refurbishment by Seller of goods furnished by the Buyer. Acceptance of this offer or to the goods and services furnished under this quotation or acknowledgment is expressly limited to the terms and conditions contained herein. Any terms or conditions stated by Buyer in any purchase order or other document accepting or ordering such goods or services is hereby objected to by Seller and any such terms or conditions shall be totally inapplicable to any transaction between Buyer and Seller unless expressly agreed to by Seller in writing, executed by an officer of Seller.

3. **DELIVERY.** Except as otherwise stated in the Quotation or Acknowledgment, delivery is *ex works*, point of manufacture. Buyer assumes all risk of loss or damage to goods in transit. Seller will use its best efforts to deliver as scheduled but, being based upon many variables, delivery schedules are approximate only. Seller shall not be liable for any damages which may be claimed to arise from late delivery, unless a specific written agreement between the parties allows for claims against late delivery. Seller's responsibility ceases upon delivery to any common carrier. We do not insure shipments beyond the point of delivery to a carrier. All materials for export are packed to the best of our ability so that they will not be damaged, rust or deteriorate in transit, but we do not guarantee against such damage.

4. **INSURANCE:** At the risk of Buyer, Seller will place insurance as nearly as possible in accordance with the written instructions of Buyer, but Seller assumes no liability for the placing of such insurance or as to the ultimate recovery in case of breakage, damage or loss.

5. **CONSULAR INVOICES:** No consular fees for legalizing invoices, stamping bills of lading, or other documents required by the laws of any country or destination are included in quotations or selling prices unless specified. At the risk of Buyer and if instructed in writing, Seller will take out consular documents and make declarations as the Agent of Buyer, but assumes no responsibility for any fines or other charges imposed due to errors or incorrect declarations.

6. **TAXES.** Prices are exclusive of all taxes and duties, however designated, including sales, use and excise taxes (but excluding taxes on Seller's net income), import duties and export fees. These taxes and other taxes measured in whole or in part of gross receipts applicable to Buyer's order shall be borne by Buyer. If Buyer claims exemption from any of these taxes, Buyer shall promptly furnish satisfactory proof of exemption and shall indemnify Seller for any loss, cost and damage including attorney's fees incurred by virtue of such taxes.

7. **PAYMENT TERMS.** Payment shall be due 30 days from date of invoice. Overdue payments shall bear interest of 2% per month or the maximum permitted by law. If Buyers request Seller to hold goods, other than stock items, for delivery later than scheduled, the invoice shall bear the scheduled delivery date and payment shall be due 30 days from scheduled delivery date. Buyer bears all risk of loss or damage while such held goods are in Seller's possession and shall pay reasonable charges for goods held more than two months and reimburse Seller for all use or personal property taxes levied on held goods at any time while in Seller's possession. If in Seller's judgment, the financial responsibility of Buyer becomes impaired or unsatisfactory or if Buyer default's under any contract with Seller, Seller may demand and Buyer shall give advance cash payment or satisfactory security and Seller may withhold shipments until such payment or security is received. Buyer expressly waives any right of set-off and shall make no deductions from payments due hereunder or for any damages of any type claimed by Buyer against Seller.

8. **CHANGES.** Seller reserves the right where possible to make any change in material or in its design which is an improvement but bears no obligation to do so. Any design or specification change or other change requested by Buyer shall be made only as agreed in writing by Seller. Any price or delivery schedule variation for such changes shall become effective immediately upon Seller's acceptance of the change. Additional cost arising from any change not accepted in writing by Seller will be claimed against the Buyer and such claim is payable by Buyer upon presentation.

9. **SPECIAL TOOLS AND TEST EQUIPMENT.** Any special tools or test equipment acquired by Seller specifically and solely for use on Buyer's order shall be and remain Seller's property and in Seller's sole possession and control. Any price changes to Buyer by Seller therefore shall be for usage only; and such charges designated as estimated will vary in accordance with actual costs. When for a period of one year no orders are accepted from Buyer for goods to be made with such special tools or test equipment, Seller may dispose thereof as it desires without liability to Buyer. Seller shall have no responsibility for loss or damage to any equipment or material owned or furnished by Buyer while in Seller's possession.

10. **BUYER INSPECTION AND ACCEPTANCE.** Within ten days after tender of delivery to or receipt by Buyer of any shipment, Buyer shall inform Seller in writing if the goods are found defective or short in respect. Failure to so inform seller or any use of the goods by Buyer shall constitute conclusive evidence that Seller satisfactorily performed and Buyer waives any right to reject such goods thereafter.

11. **SELLER INSPECTION AND TEST.** The goods are inspected and, where practicable, submitted to Seller's standard tests at Seller's plant of manufacture before delivery. Buyer agrees to pay Seller reasonable additional charges for any additional tests which Buyer requires Seller to perform including any tests or inspection which Seller is required to perform in the presence of Buyer's agent or representative. In the event of any delays on Buyer's part in attending such test, after three days advance notice by Seller of the scheduled time of test, the test shall proceed in Buyer's absence and shall be deemed to have been in Buyer's presence.

12. **LIMITED WARRANTY.** Seller warrants the goods other than those furnished to Seller by Buyer for repair or refurbishment to be free from defects in material and workmanship under normal use and service. With respect to goods furnished by Buyer to Seller for repair or refurbishment, this warranty extends only to those new parts and components furnished, or incorporated, into Buyer's goods by Seller in order to accomplish the repair or refurbishment. Seller's obligation under this warranty is limited to making good at its factory only those goods or any part thereof which are defective in material or workmanship and which within eighteen (18) months after delivery or twelve (12) months from service/installation date, whichever occurs first, of the goods to the original purchaser, are returned to the Seller with transportation charges prepaid. This warranty does not apply to goods which have been repaired or altered by other than authorized representative of the Seller, which have been subject to misuse, negligence or accident or which have been operated, maintained or inspected other than in strict accordance with the applicable manuals or instructions furnished by Seller. Furthermore, this warranty shall not apply to goods which have been subject to or damaged by torsional vibrations, critical resonant speeds, or by the misalignment of the goods as installed by Buyer or others. Equipment and accessories not of Seller's manufacture, if any, are warranted only to the extent that they are warranted by the manufacturers thereof, and Seller hereby assigns its interest under any such warranty to Buyer.

SELLER MAKES NO OTHER WARRANTY. ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED OR STATUTORY, SUCH AS WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ARE HEREBY EXCLUDED AND DISCLAIMED TO THE EXTENT THAT THEY EXCEED THIS WARRANTY CLAUSE. IN NO EVENT SHALL SELLER BE LIABLE FOR SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES.

Seller neither assumes, nor authorizes any person to assume any liability in connection with the goods other than the liability expressed in this Warranty. Any representation of Warranty made by any other person, including Representatives, dealers, employees and representatives of Seller which are inconsistent or in conflict with or additive to this Warranty shall not be binding on Seller unless reduced to writing and approved in writing by an officer of Seller.

13. **OIL INDUSTRY GOODS FOR USE AT SEA.** If any of the goods are used for hydrocarbon oil exploration, drilling or transportation purposes on, in or under any ocean or sea, the Buyer agrees to hold Seller harmless from any and all liability and claims, for loss, damage and expense, including attorney fees, arising out of such use of the goods whether direct, indirect or consequential of such use. This hold harmless provision shall apply to the property rights and interest of the Buyer, the public and any third party.

14. **LIMITATION OF LIABILITY.** Seller's liability on any claim of any kind, including claims based upon Seller's negligence, for any loss or damage arising out of, connected with or resulting from this document or Buyer's purchase order, or from the performance or breach thereof, or from the manufacture, sale, delivery, resale, repair, refurbishment or use of any goods covered by or furnished under this document or Buyer's purchase order shall in no case exceed the purchase price allocable to the goods or part hereof which give rise to the claim. **IN NO EVENT SHALL SELLER BE LIABLE FOR SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES.**

15. **FORCE MAJEURE.** Seller shall not be liable for any loss, damage or delay caused or occasioned by acts of God, fire, strikes, civil or military authority, insurrection or riot, failure to make timely delivery, the requirements of any statute, order or directive of any governmental authority, or without limiting the generality of the foregoing, by any other cause which is unavoidable or beyond Seller's reasonable control.

16. **DESIGN, SPECIFICATIONS AND SHIPPING WEIGHTS.** Except for goods of Buyer's design. Seller reserves all proprietary rights in the design and configuration of, and any data describing the goods. Weights and dimensions and performance characteristics set forth in sales literature, drawings, and specifications and in other documents are approximate only and are not guaranteed. Seller shall not be responsible for the accuracy of shipping weights. Such weights are correct only within the limits necessary for estimating freight.

17. **LIMITATION PERIOD.** Causes of action for breach of contract relative to any order for goods shall not be asserted after one year from the date said cause of action accrues, provided that this limitation shall not apply to actions by Seller to recover the purchase price of the goods.

18. **LOSS OR DAMAGE AND EXTRA WORK.** Buyer bears all risk of loss or damage to Buyer's property furnished to Seller and agrees that in the event of loss or damage thereof while such property is in Seller's control. Buyer shall make no claim arising from such loss or damage against Seller. Extra work occasioned by latent defects in Buyer's property not apparent on Seller's initial inspection shall be reimbursed by Buyer to Seller.

19. **CANCELLATION.** The contract arising out of Buyer's order may not be canceled, except as may mutually be agreed in writing between the parties. A cancellation of an order for stock items will subject the Buyer to a 30% charge based on the gross amount of the order.

Orders for products or parts of special design or materials will be subject to cancellation upon written agreement of the parties only under the following terms. The Buyer will pay to Seller in accordance with the schedule of charges set out herein. Only one of these charges will apply depending on the actual date of cancellation. In the event of cancellation the Buyer is not entitled to receive any goods whatsoever (finished or unfinished) except where otherwise noted.

The dates referred to in the schedule are those as set out in the first project schedule submitted by the Buyer to the Seller. The "contract value" at the time of cancellation is the total of the Buyer's original purchase order value and all amendments, additions or deletions to the contract that have been previously agreed by Seller. The "cancellation value" is the value of that portion of the contract which has been canceled. Cancellation stages: (a) cancellation at any time from the date of the Buyer's initial order up to and including the date of first submission by Seller of drawings and/or documents for approval and/or information in accordance with the order: charge 25%; (b) cancellation at any time from the date of first submission by Seller of drawings and/or documents for approval and/or information, in accordance with the order up to and including the date of Buyer's written approval of drawings and/or documents (if approval is required) OR the date of Seller's placement of its major sub-orders on its suppliers, whichever applies: charge 40%; and (c) cancellation of the contract is NOT POSSIBLE after the date of Buyer's written approval of drawings and/or documents (if approval is required) OR the date of Seller's placement of its major sub-orders on its suppliers. After such time full "contract value" is due Seller.

Notwithstanding anything to the contrary contained in these Terms and Conditions, no cancellation is available unless all costs of labor and materials for all work accomplished by Seller on an order is recovered.

20. **RETURNS:** Written permission must be obtained before returning material to us for credit. When written permission is acquired, shipment must be returned to location as specified via prepaid freight. Material will be subject to our inspection before credit can be issued. A restocking charge will be made on all orders returned for credit, or costs that may be necessary to return material to salable condition. In no case will any material be accepted for credit 60 days from date of invoice. Products of special design or equipment altered to fit customer's specifications will not be accepted for credit.

21. **COMPLIANCE WITH STATUTES & REGULATIONS:** Seller warrants and certifies that in performing this order it will comply with applicable statutes, rules, regulations and orders of the United States and of any state or political subdivision thereof including laws and regulations pertaining to labor, wages, hours, equal opportunity and other conditions of employment, applicable price ceilings, if any, and that the articles delivered hereunder shall be produced in compliance with the Fair Labor Standards Act.

22. **GOVERNMENT REQUIREMENTS.** If the end use of the goods is for the United States Government, Seller agrees that provisions of the Federal Acquisition Regulation or other Federal Regulation which Buyer by regulation must impose upon Seller are made a part hereof to the extent Buyer gives Seller written notice of each such provision prior to such placement and subject to Seller's exceptions taken prior to order placement.

23. **APPLICABLE LAW, JURISDICTION AND BINDING ARBITRATION.** The contract arising out of Buyer's order shall be interpreted and construed in accordance with the laws of the State of Texas. All disputes or actions of any nature based on these Terms and Conditions shall be brought and heard in Harris County, Texas U.S.A.

All claims, disputes, controversies and any other matters arising out of the making, interpretation, performance, breach of, or relating in any way to these Terms and Conditions or the relationship between the parties created by the Agreement of which these Terms and Condition are a part, including but not limited to the authority or capacity of any signatory to the Agreement, shall be determined by binding arbitration before three (3) arbitrators (one in case of controversies of \$250,000.00 or less) in accordance with the Commercial Arbitration Rules of the American Arbitration Association (AAA). The arbitration shall be conducted in Houston, Harris County, Texas with proceedings and awards to be in the English language. All awards, final or interim, shall be in writing. The making, validity, scope, interpretation and enforceability of this Arbitration Agreement, including, but not limited to, who shall be parties to the arbitration and what issues shall be submitted to arbitration shall be determined by the arbitrators chosen in accordance with this provision. If the amount in dispute is two hundred fifty thousand and no/dollars (\$250,000.00) or less, the Parties will agree on one (1) arbitrator or AAA will select a single arbitrator.

Any party may initiate arbitration by written notice to the other party(s) of the intention to arbitrate identifying the party(s) nominated arbitrator and specifying the claims to be arbitrated. If the arbitration shall be conducted before three (3) arbitrators, each party shall select one arbitrator and the two so selected shall appoint a third neutral arbitrator. In the event any party fails to name an arbitrator within 15 days of the receipt of a notice of intent to arbitrate, the party serving the notice may request the appointment be made by AAA and proceed before the arbitrators nominated and that arbitrator is empowered to make a decision binding upon all parties for the third arbitrator. Should the two appointed arbitrators be unable to agree on the neutral arbitrator within 15 days of the naming of the respondents arbitrator, the AAA shall appoint the neutral arbitrator. In the event of the incapacity of an arbitrator after appointment, which incapacity will prevent the conclusion of the proceedings within the time limits set forth below, such arbitrator shall be replaced in the same manner as originally appointed. Within 15 days of the appointment of the arbitrator or arbitration panel, the arbitrator(s) shall convene a preliminary hearing to set a schedule for the proceedings. Unless the parties stipulate to the contrary, the final arbitration hearing will be held no later than 60 days after the notice of intent to arbitrate is served and the arbitrators will render their final decision in writing, no later than 30 days after the final hearing is concluded. Notwithstanding the foregoing, if the Owner is seeking an injunction, restraining order or similar equitable remedy, the arbitrators shall issue a preliminary ruling with respect to such request no later than five (5) days following request by the Party.

The substantive law of Texas shall apply to all issues presented to the arbitrators, including the validity, scope, interpretation and enforceability of this Arbitration Agreement. Conflict of laws or choice of law principles that might call for the application of another law shall not be applied.

The arbitrators are empowered in their sole discretion to make interim awards, including injunctions to preserve the status quo, and to require the posting of security for potential awards, arbitration expenses and fees of the arbitrators. The arbitrators are empowered to issue subpoenas for witnesses and documents. Any and all of the decisions or orders of the arbitrators may be enforced if necessary by any court. The arbitrators award and all interim awards may be confirmed and judgment entered upon the award in any court having jurisdiction over the parties or in any jurisdiction where any of the parties have real or personal property, each party consenting to jurisdiction in such venues. The expenses of the arbitration shall be borne by the Parties as specified by the panel of arbitrators.

24. **REPAIR AND REFURBISHMENT ORDERS.** This Article is a part of all quotations and orders for the repair or refurbishment by Seller of Buyer furnished equipment. Should Seller at its sole discretion judge any Buyer furnished equipment to require repair or refurbishment work in addition to that offered and ordered or for any reason to be unsuitable for repair or refurbishment, Seller will so advise Buyer. Seller will hold equipment (a) found to require any work offered but not ordered or (b) found unsuitable for repair or refurbishment for thirty days pending Buyer's decision to authorize the work as offered or to dispose of the equipment as the Buyer may instruct at Buyer's expense. Equipment is stored at Buyer's expense. If no such authorization is received within said thirty days, Seller, at its option, may take title to the equipment and dispose of it in any manner to mitigate Buyer's responsibility for Seller's storage and other consequent expenses for which Buyer shall remain liable. Written notice of such action will be sent to Buyer prior to the action at Buyer's latest known address. Also, Buyer agrees that Seller has no obligation to recommend or perform any repair, refurbishment or other work except as specifically offered in Seller's quotation and confirmed in Buyer's order and, furthermore, Buyer agrees to indemnify and save harmless and defend Seller from and against any and all loss, cost, damage, injury, death, liability, claims, demands, penalties or causes of action of every nature whatsoever in any way connected with any failure by Seller to (1) inspect for a possible need for, or recommend or perform any repair, refurbishment or any work other than as specifically offered in the quotation and confirmed in the order or (2) disclose or otherwise act upon any existing or possible broken, disabled, discrepant or unsafe condition of Buyer's equipment or parts or components thereof except as to the extent specifically offered in the quotation and confirmed in the order.

If Buyer delivers equipment to Seller for Seller's inspection and quotation to either refurbish the equipment or to repair parts or components thereof, or both, Seller will endeavor to provide Buyer a firm offer to perform such work based upon Seller's visual inspection, which inspection shall exclude any disassembly or tear-down of the equipment except to the extent specifically required by Buyer, in which case all costs of such disassembly or tear-down shall be to Buyer's account whether or not subsequent refurbishment and/or repair is ordered.

Repair shall be performed only to the extent set forth in Seller's quotation and confirmed in Buyer's acceptance thereof which acceptance shall be conclusively presumed by Buyer's placement of order or by Buyer's delivery of its property to repair by Seller Refurbishment of Buyer's equipment shall be ordered and performed (1) only to the extent defined in Article 1 DEFINITIONS hereof and offered in Seller's quotation and (2) only if specifically stated to be "refurbishment" (or "overhaul") in Seller's quotation and confirmed by Buyer's acceptance of same, which acceptance shall be conclusively presumed by Buyer's placement of order or by delivery of the Buyer's equipment to Seller for the refurbishment to be performed.

25. **WAIVERS.** No waiver by Seller of any breach of any provision hereof shall constitute a waiver of any other breach or of such provision. Seller's failure to object to provisions contained in any communication from Buyer shall not be deemed an acceptance of such provisions or as waiver of the provision hereof.

26. **ATTORNEY FEES.** In any suit or action arising by virtue of this contract, the prevailing party shall be awarded reasonable attorney's fees and costs (including the cost of experts).

27. **NO OTHER REPRESENTATIONS.** There are no understandings, agreements, representations or warranties, either written or oral, relative to the goods that are not fully expressed in this document. No statement, recommendation or assistance made or offered by Seller through any representative or agent or by sales literature in connection with the use of any goods, shall be or constitute a warranty or a waiver by Seller of any of the provisions hereof. This provision pertains to any service representative, whether employed by or under contract by the Seller. The provisions of this document supersede and cancel any previous understanding or agreement between the parties with respect to the subject matter hereof. This document expresses the complete and final understanding of the parties.