

## Master Sales/Services Agreement

### 1. Governing Law

This Agreement shall be governed, construed, and enforced in accordance with the laws of the state of Texas, excluding any choice of law rules. Any services provided by *Seller* in connection with transactions under this Agreement shall be considered ancillary to a sale of goods and the State's Uniform Commercial Code (*UCC*) shall apply to all such goods and services. Any declaration of unenforceability of a provision shall be narrowly construed and shall not affect the enforceability of any other provisions.

### 2. Formation, Integration and Modification

A. The terms and conditions stated or referred to in this Agreement apply to all sales of *Equipment* sold by *Seller* to *Buyer* and, except as otherwise specifically provided in a document signed by *Seller*, shall take precedence over any conflicting terms or conditions stated in any offer, proposal, quotation, purchase order (including preprinted terms or conditions), or other document or communication submitted by one party to the other in connection with such a sale.

B. The *Seller* is willing to negotiate written changes to these terms and conditions, but reserves the right to make an adjustment in the price of the goods to which the changes will apply. No modification, limitation, waiver, or discharge of this Agreement shall bind *Seller* unless in a writing signed by an authorized employee of *Seller*. *Seller* may correct unilaterally any mathematical or typographical errors in this Agreement. A course of performance shall not constitute a modification or waiver by *Seller* of any right.

C. This Agreement is only for the benefit of the parties. No third party rights are to be implied from the terms and conditions of this Agreement.

D. *Equipment* quoted to *Buyer* is subject to prior sale or other commitment.

E. *Buyer* and *Seller* acknowledge that: (1) they have had an opportunity to review the *Equipment* for sale; (2) they have had an opportunity to review this Agreement; and (3) the provisions of this Agreement are reasonable when considered as a whole.

### 3. Obligations of Buyer

*Buyer* shall purchase the *Equipment* as identified in the sales order or similar writing in an *as is, where is, and without recourse* condition without any additional charges. *Buyer* shall pick up the *Equipment* on a time schedule and in a manner as reasonably determined by *Seller*. *Buyer* will insure that *Equipment* is removed promptly as to not disrupt any of *Seller's* operations. *Buyer* will provide, at *Buyer's* sole expense, all *Equipment* necessary to transport, clean, and otherwise handle the *Equipment*. *Buyer* has the duty to inspect all merchandise upon receipt and shall promptly note damages in writing to *Seller*. (Failure to so note damages within a reasonable time shall absolve *Seller* and its carriers or contractors from liability.)

### 4. Authority of Seller's Agents

*Seller's* agents, employees, and representatives have no authority to bind *Seller* to any affirmation, waiver, representation, or warranty inconsistent with this Agreement.

### 5. Prices, Taxes, Payment, and Risk of Loss

A. Prices quoted by *Seller* are exclusive of any applicable taxes or governmental

fees. *Buyer* shall pay all applicable taxes, inspection fees, and import or export duties. *Buyer* shall reimburse *Seller* for any such items *Seller* pays on *Buyer's* behalf.

B. The **Equipment** shall be delivered F.O.B. *Seller's* plant and/or application warehouse. Risk of loss and all other incidents of ownership with all responsibility for the safe and lawful performance of *Buyer's* obligations under this Agreement, passes to *Buyer* upon such delivery. *Seller's* breach of this Agreement shall not affect the passing of title, risk of loss, and all other incidents of ownership to *Buyer*.

C. *Buyer* shall be responsible for all freight, transportation, insurance, shipping, storage, handling, or similar charges.

D. Invoices may be rendered separately for each delivery by *Seller* and, subject to other provisions of this Agreement; *Equipment* picked up from the *Seller* shall be paid on the 30th day thereafter, unless other credit terms have been established in writing. All amounts not paid to *Seller* when due shall incur a service charge of the lesser of 1.5% per month or the highest written contract rate for interest and handling charges allowed by law. If, at any time, reasonable grounds for insecurity arise with respect to *Buyer's* performance of its obligations, *Seller* may demand immediate payment in full, provision of reasonable financial security may immediately terminate this Agreement with respect to any incomplete sale of *Equipment* or may proceed with any other remedies available under this Agreement.

## **6. Delay of Delivery or Performance Excused for Various Reasons**

A. If delivery or other performance by *Seller* is delayed at the request of or due to *Buyer*, *Seller* may hold the *Equipment* at the risk and expense of *Buyer*. Full and final payment for such items shall be due and payable 30 days after *Buyer* is notified that the *Equipment* is ready for delivery. If *Seller* is unwilling to hold such items, *Buyer* must accept delivery immediately or pay the difference between the agreed price *Buyer* and lower bona fide price *Seller* is able to obtain from another purchaser.

B. Neither party shall be in default because of delay or failure to deliver or perform resulting from any circumstance beyond its reasonable control (including but not limited to acts of God, strikes, lockouts, work stoppages or delays, fire, flood, windstorm, explosion, riot, war, sabotage). If any delivery is delayed for 30 days or longer, *Seller* may cancel the subject sale or waive such delay.

## **7. Inspection, Rejection, and Records**

A. If the parties agree to a pre-delivery inspection and acceptance of the *Equipment*, *Buyer* shall use industry recognized standard test procedures and shall provide results to *Seller*. Such tests shall be performed before removal of the *Equipment* from *Seller's* premises. *Seller* reserves the right to run tests of its own and *Buyer* agrees to cooperate fully should any such testing be desired by *Seller*.

B. The *Equipment* shall be deemed accepted by *Buyer* if *Buyer* does not reject them at the time of delivery. While *Seller's* products are generally warranted as fit for intended purposes for a period of 30 days from order placement, this shall not include cosmetic/aesthetic imperfections.

C. *Seller* shall have the right to inspect and copy all written licenses, permits or approvals issued by any governmental entity or agency to *Buyer* relating to *Buyer's* obligations under this Agreement. *Seller* shall also be entitled to observe and inspect *Buyer's* activities and

facilities used in the performance of its obligations under this Agreement, including, but not limited to, the pickup, handling, loading, transportation, storage, and processing of the Goods.

D. *Buyer* shall keep adequate books, records, and other documentation in accordance with good accounting practices and applicable regulatory requirements pertaining to the performance of its obligations hereunder.

## **8. Express and Implied Warranties**

A. *Seller* warrants only that it has a good faith belief that the *Equipment* is comprised of the materials specified by *Buyer* and *Seller* has no duty to inspect the *Equipment* for defects. There are no express warranties or representations as to performance, description, or classification. All descriptions, specifications, and illustrations of the *Equipment* provided by the *Seller* are intended for general guidance only. Except as otherwise provided herein, all equipment is sold on an *as is, where is, and without recourse* basis.

**B. SELLER DISCLAIMS ALL IMPLIED WARRANTIES (OTHER THAN GOOD TITLE) WITH RESPECT TO THE EQUIPMENT INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR USE, OR NON-INFRINGEMENT.**

## **9. Remedy and Limitation of Seller's Liability**

*Seller's* sole liability to *Buyer* for non-conforming *Equipment* shall be the difference between the agreed price and the actual market value of the *Equipment* at the time of delivery. **UNDER NO CIRCUMSTANCES SHALL SELLER BE LIABLE FOR CONSEQUENTIAL, PUNITIVE, EXEMPLARY, OR INCIDENTAL DAMAGES.** *Buyer* waives any and all other remedies and claims, whether arising under contract, tort, strict liability, product liability, misrepresentation, fraud, or other theory of law or statute.

## **10. Indemnification**

*Buyer* shall indemnify and defend *Seller*, its subsidiaries and affiliates and their respective officers, directors, employees, and agents (*Indemnitees*) from and against all liabilities, claims, damages, penalties, fines, forfeitures, suits, and expenses incident thereto (including costs of defense and reasonable attorneys' fees), which *Indemnitees* may incur, become responsible for, or pay out as a result of:

A. Any third-party claims under theories of tort, product liability, negligence, warranty, contract, or statute, arising out of the use, storage, sale, processing, or other disposition of the *Equipment* after their delivery to *Buyer*;

B. Contamination of or adverse effects on the environment, or any violation, alleged violation or liability relating to any environmental laws, rules, regulations, or ordinances of any governmental entity or agency (including, but not limited to, liabilities under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C.A. §§ 9601 et seq.; the Clean Air Act, 42 U.S.C.A. §§ 7401 et seq.; the Clean Water Act, 33 U.S.C.A. §§ 1251 et seq.; and the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C.A. §§ 6901 et seq.), directly or indirectly caused by any act or omission by *Buyer*, its agents or employees in the performance of this Agreement; or

C. Any breach by *Buyer* of any obligation under this Agreement, including but not limited to *Buyer's* responsibilities for safety and protection of the environment set forth in this Agreement.

**11. Cancellation and Breach**

A. *Buyer* may cancel an order for *Equipment* by immediate payment to *Seller* as liquidated damages *Seller's* expenses (computed using *Seller's* standard internal costing procedures) plus 5% of the sale price of the *Equipment*. Liquidated damages shall include the cost of obtaining another *Buyer* for the *Equipment* together with any difference in price between that agreed to by *Buyer* and the reasonable market price at the time of cancellation. The parties acknowledge the great difficulty of proving damages for such a cancellation and the reasonableness of this liquidated damages provision.

B. If *Buyer* defaults or advises *Seller* that it will default or any action is started by or against *Buyer* seeking the appointment of a trustee or receiver for *Buyer* then the *Seller* may cease performance, recover *Equipment* delivered but not paid for, deny access to the *Equipment*, and otherwise enforce its remedies for *Buyer's* default. *Seller* shall be awarded incidental damages and costs (such as actual reasonable attorney's fees) in any proceeding to enforce its remedies in which it obtains relief or damages.

C. The *Seller* may require that *Buyer* post security amounts to be paid if *Seller* has a good faith doubt as to the *Buyer's* ability to make prompt payment. If such security is not posted, *Seller* shall have the right to cease performance and enforce its remedies for *Buyer's* default.

**12. Term**

The term of this **Agreement** shall commence upon placement of an order by *Buyer*.

**13. Security Interest, Power of Attorney**

In addition to any security interest granted by the UCC, the *Buyer* grants *Seller* a security interest in all *Equipment*, proceeds, and products from the same to secure all obligations of the *Buyer* to the *Seller*. *Buyer* shall sign financing statements evidencing the security interest as reasonably requested by *Seller*. In case of a default by *Buyer*, *Seller* may peaceably enter the premises of the *Buyer* to repossess all *Equipment* in which it has a security interest. *Buyer* shall not sell, exchange, transfer, or grant a security interest in any *Equipment*, which are subject to this Agreement if payment for same has not been made in full to *Seller*.

**14. Solvency of Buyer**

*Buyer* represents that it is solvent and able to pay the price for the *Equipment*, and that all financial and business information given to *Seller* is correct. If *Buyer* becomes insolvent before delivery of the *Equipment*, it shall notify *Seller*. Each acceptance of delivery shall be a reaffirmation of *Buyer's* solvency.

**15. Proprietary Information**

A. *Buyer* acknowledges that any information disclosed to *Seller* is only deemed Confidential or a trade secret if conspicuously noted on the disclosure.

B. All information furnished by the *Seller* in connection with this Agreement, specifically including the composition of the *Equipment*, is confidential and shall not be shown or disclosed to any third party or used by *Buyer* except as necessary to the permitted use of the *Equipment*.

**16. No Waiver**

The failure of either party to this Agreement to insist upon the performance of any of the terms and conditions of this Agreement, or the waiver of any breach of any of the terms and

conditions of this Agreement, shall not be construed as subsequently waiving any such terms and conditions, but the same shall continue and remain in full force and effect as if no such forbearance or waiver had occurred.

**17. Notices**

Any notice provided for or concerning this Agreement shall be in writing and may be delivered by fax or e-mail.

**18. Attorney's Fees**

In the event that any lawsuit is filed in relation to this Agreement, the unsuccessful party in the action shall pay to the successful party, in addition to all the sums that either party may be called on to pay, a reasonable sum for the successful party's attorney fees.

**19. Arbitration**

Any dispute under this Agreement may be required to be resolved by arbitration of the parties hereto. If the parties cannot agree on an arbitrator, each party shall select one arbitrator and both arbitrators shall then select a third. The third arbitrator so selected shall arbitrate said dispute. The arbitration shall be governed by the rules of the American Arbitration Association then in force and effect.

**20. Entire Agreement**

This Agreement shall constitute the entire agreement between the parties and any prior understanding or representation of any kind preceding the date of this Agreement shall not be binding upon either party except to the extent incorporated in this Agreement.

**21. Modification of Agreement**

Any modification of this Agreement or additional obligation assumed by either party in connection with this Agreement shall be binding only if placed in writing and signed by each party or an authorized representative of each party.

**22. Assignment of Rights**

The rights of each party under this Agreement are personal to that party and may not be assigned or transferred to any other person, firm, corporation, or other entity without the prior, express, and written consent of the other party.

**23. Miscellaneous**

In this contract, any reference to a party includes that party's heirs, executors, administrators, successors and assigns, singular includes plural and masculine includes feminine.

All sales hereunder are subject to Seller's ongoing credit review process, which may be updated and re-evaluated from time to time.

Clerical and stenographic/typographic errors are subject to reasonable correction by either party.

WHEREFORE Buyer has agreed and assented to the foregoing upon placement of its first order with Seller, and is expressly subject to the terms hereof.