

**SPIRAX SARCO, INC.**  
**GENERAL TERMS AND CONDITIONS FOR THE SUPPLY OF SERVICES**

**1. Applicability**

- a) These terms and conditions for services (these "Terms") are the only terms that govern the provision of services by Spirax Sarco, Inc. ("Seller") to a purchaser of such services ("Customer").
- b) The accompanying order confirmation (the "Order Confirmation") and these Terms (collectively, this "Agreement") comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. In the event of any conflict between these Terms and the Order Confirmation, these Terms shall govern, unless the Order Confirmation expressly states that the terms and conditions of the Order Confirmation shall control.
- c) A Customer's purchase order ("Order") must be sent to the Seller's designated office and is valid only after receipt of the Order Confirmation.
- d) These Terms prevail over any of Customer's general terms and conditions regardless whether or when Customer has submitted its request for proposal, order, or such terms. Provision of Services to Customer does not constitute acceptance of any of Customer's terms and conditions and does not serve to modify or amend these Terms.

**2. Provision of Services**

- a) Seller shall provide the services to Customer as described in the Order Confirmation (the "Services") in accordance with these Terms.
- b) Seller shall use reasonable efforts to meet any performance dates specified in the Order Confirmation, and any such dates shall be estimates only.

**3. Prices and Payment**

- a) In consideration of the provision of the Services by the Seller and the rights granted to Customer under these Terms, Customer shall pay the fees set forth in the Order Confirmation. All prices stated are exclusive of tax which shall be payable by the Customer at the rate in force at the time of supply of the Services.
- b) Payments may be made only to Seller's designated address and account and not to any representative of the Seller. Any other invoices subsequently rendered by Seller that are paid after due date will be assessed a late payment charge of 1.5% per month. Offsets are not allowed. Payment is due within 30 days from the date of invoice.

**4. Period of Supply**

Unless otherwise specified in the Order Confirmation, the agreement for the supply of the Services shall be for a period of one (1) year from the date the Seller issues an Order Confirmation. Once accepted by an Order Confirmation, no Order is capable of being cancelled by the Customer except with the Seller's consent in writing. In the event of the Seller agreeing to a cancellation request, it may, without prejudice to its other rights, require the Customer to pay a cancellation charge (such cancellation charge to correspond to the type of Service Ordered).

**5. Scope of Services**

- a) The Seller reserves the right, its sole discretion, to employ sub-contractors to perform all or any part of the Services (including, without limitation, to commission, install, maintain or repair any goods or equipment) on behalf of the Seller.
- b) The Seller reserves the right to replace any part of the Customer's Plant or Equipment which is unserviceable or inefficient as the Seller considers reasonably necessary in order to fulfil its obligations to provide the Services in accordance with the specification set out in the Seller's Order Confirmation.
- c) Alternatively, the Seller may charge for the reconditioning of any part of the Customer's Plant or Equipment that, in the reasonable opinion of the Seller, cannot be suitably or economically repaired at the Customer's site. The Seller will provide the Customer with an estimate of reconditioning charges for each item and if the Customer does not elect to have the item(s) reconditioned, such items will be deemed to be excluded from the scope of the Services.
- d) If the Customer places an order for goods with the Seller, and the Seller agrees to supply such goods, the supply of the Seller's goods will be strictly on the basis of the Seller's Terms of Sale of Goods as annexed to these Terms.

**6. Customer Obligations and Access to Customer's Site(s)**

- a) The Customer shall permit the Seller and its employees, agents and sub-contractors full and free access to the Customer's site(s) and to all of the Customer's plant and equipment which is the subject of an Order ("Plant & Equipment"). Such access shall always be subject to the Seller and its employees and sub-contractors complying with the Customer's reasonable requirements as to site safety and security (such requirements to be confirmed in writing prior to attendance by the Seller's employees, agent or sub-contractor at the relevant Customer site(s)). If, at the time of any pre-arranged visit the Seller's employees or sub-contractors are unable to gain access to the Customer's Plant or Equipment in order to supply the Services, the Seller reserves the right to charge for the time spent attending at the Customer's site(s) and for the cost of carrying out any subsequent visit.
- b) If reasonably required by the Seller, the Customer shall make available to the Seller a secure storage area at the Customer's site(s) for storage of the Seller's equipment.
- c) Prior to any visits by the Seller's employees or sub-contractors, if requested to do so by the Seller, the Customer will at its own cost:
  - (i) strip back any pipe insulation
  - (ii) supply and erect suitable scaffolding to allow safe working access to the Customer's Plant and Equipment; and
  - (iii) supply appropriate lifting equipment.
- d) The Customer shall be responsible for the reinstatement of any pipe insulation after a visit by the Seller's employees or sub-contractors. The Customer will provide the Seller's employees or sub-contractors with any specialist safety clothing or equipment as may be necessary to meet the Customer's health and safety and environmental rules (excluding hard hat, safety glasses, overalls and protective shoes which will be provided by the Seller).
- e) During the term of this Agreement, the Customer shall, at its own cost, ensure that the Seller's employees or sub-contractors are covered by the Customer's third party liability insurance policy while such employees or sub-contractors are on the Customer's site(s). Customer shall provide Seller with evidence of such insurance on request by the Seller.
- f) The Customer acknowledges and agrees that the Seller shall at no time own, occupy or control (or be deemed to control) any part of the Customer's site(s) and/or hold or be fixed with any duties or liabilities under health and safety laws or regulations or common law (current or future) in relation to any part of the Customer's site(s).
- g) The Customer shall:
  - (i) cooperate with Seller in all matters relating to the Services;
  - (ii) respond promptly to any Seller request to provide direction, information, approvals, authorizations or decisions that are reasonably necessary for Seller to perform Services in accordance with the requirements of the Order Confirmation and these Terms;
  - (iii) provide such Customer materials or information as Seller may reasonably request to carry out the Services in a timely manner and ensure that such Customer materials or information are complete and accurate in all material respects; and
  - (iv) obtain and maintain all necessary licences and consents and comply with all applicable laws in relation to the Services before the date on which the Services are to start.
- h) Customer represents and warrants to Seller that any site at which installation Services are to be performed by Seller is free of asbestos and any other hazardous or toxic substances. If any such substances exist at any site, in or near any area on which the Seller is required to perform the Services, Seller shall not be required to carry out such installation Services until Customer has, at its own expense, removed or contained such substance, such that it is safe for the Seller to continue to perform the Services.

**7. Limitation and Exclusion of Liabilities**

- a) **IN NO EVENT SHALL SELLER BE LIABLE TO CUSTOMER OR TO ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT OR LOSS OF DATA OR DIMINUTION IN VALUE, OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.**
- b) **IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THE SUPPLY OF SERVICES BY THE SELLER, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE AGGREGATE AMOUNTS PAID TO SELLER UNDER THIS AGREEMENT.**
- c) The limitation of liability set forth in Section 7(b) above shall not apply to death or bodily injury resulting from Seller's negligent acts or omissions.

- d) If Seller's performance of its obligations under these Terms is prevented or delayed by any act or omission of Customer or its agents, subcontractors, consultants or employees, Seller shall not be deemed in breach of its obligations under these Terms or otherwise liable for any costs, charges or losses sustained or incurred by Customer, in each case, to the extent arising directly or indirectly from such prevention or delay.

#### **8. Warranty**

- (a) Seller warrants to Customer that it shall perform the Services using personnel of required skill, experience and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services and shall devote adequate resources to meet its obligations under the Order Confirmation and these Terms.
- (b) The Seller shall not be liable for a breach of the warranty set forth in Section 8(a) unless Customer gives written notice of the defective Services, reasonably described, to Seller within 14 days of the time when Customer discovers or ought to have discovered that the Services were defective.
- (c) The Seller accepts no liability arising out of any failure or diminution in performance of the Customer's Plant or Equipment caused by the Plant or Equipment, or any part thereof:-
- (i) being used or operated otherwise than in accordance with Seller's installation, maintenance or operational instructions; or
  - (ii) being used or operated otherwise than in accordance with the Seller's written instructions or recommendations; or
  - (iii) having been adjusted, changed or altered in any way by the Customer or any third party since the date of installation or commissioning of the Plant or Equipment or the date of the immediately preceding visit by the Seller.
- (d) Subject to Sections 8(b) and 8(c), Seller shall, in its sole discretion, either:
- (i) repair or re-perform such Services (or the defective part); or
  - (ii) credit or refund the price of such Services at the pro rata contract rate.
- (e) **THE REMEDIES SET FORTH IN SECTION 8(c) SHALL BE THE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND SELLER'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTY SET FORTH IN SECTION 8(a).**

#### **9. Disclaimer of Warranties**

**EXCEPT FOR THE WARRANTY SET FORTH IN SECTION 8(a) ABOVE, SELLER MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE SERVICES, WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.**

#### **10. Intellectual Property**

All intellectual property rights, including copyrights, patents, patent disclosures and inventions (whether patentable or not), trademarks service marks, trade secrets, know-how and other confidential information, trade dress, trade names, logos, corporate names and domain names, together with all of the goodwill associated therewith, derivative works and all other rights (collectively, "Intellectual Property Rights") in and to all documents, work product and other materials that are delivered to Customer under the Order or prepared by or on behalf of the Seller in the course of performing the Services, including any items identified as such in the Order Confirmation (collectively, the "Deliverables") except for any Confidential Information of Customer or customer materials shall be owned by Seller. Seller hereby grants Customer a license to use all Intellectual Property Rights free of additional charge and on a non-exclusive, worldwide, non-transferable, non-sublicenseable, fully paid-up, royalty-free and perpetual basis to the extent necessary to enable Customer to make reasonable use of the Deliverables and the Services.

#### **11. Confidential Information**

- (a) All non-public, confidential or proprietary information of Seller, including, but not limited to, trade secrets, technology, information pertaining to business operations and strategies, and information pertaining to customers, pricing, and marketing (collectively, "Confidential Information"), disclosed by Seller to Customer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential," in connection with the provision of the Services is confidential, and shall not be disclosed or copied by Customer without the prior written consent of the Seller. Confidential Information does not include information that is: (i) in the public domain; (ii) known to Customer at the time of disclosure; or (iii) rightfully obtained by Customer on a non-confidential basis from a third party.
- (b) Customer agrees to use the Confidential Information only to make use of the Services and Deliverables.
- (c) Seller shall be entitled to injunctive relief for any violation of this Section.

#### **12. Force Majeure**

Seller shall not be responsible for any delays or non-performance caused by strikes, accidents, embargoes, fire, floods, inability to obtain materials, labor or services, conditions arising from government orders or regulations, war or national emergency, Acts of God, and any other similar events which are deemed beyond Seller's reasonable control as events of Force Majeure. Customer may not refuse delivery of Services on grounds of commercial frustration of purpose or impracticability.

#### **13. Termination**

In addition to any remedies that may be provided under this Agreement, Seller may terminate an Order with immediate effect upon written notice to Customer, if Customer:

- (a) fails to pay any amount when due under the Order and these Terms and such failure continues for 7 days after Customer's receipt of written notice of non-payment;
- (b) has not otherwise performed or complied with any of the provisions of these Terms, in whole or in part; or
- (c) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors.

#### **10. Miscellaneous**

- (a) No person other than the Seller or the Customer (and their respective successors and permitted assigns) shall have any rights to enforce any contract between them or to benefit from or rely upon any rights created by or arising out of such a contract.
- (b) The Seller's rights under these Conditions are in addition to any other rights which the Seller may have under the general law or otherwise.
- (c) If the Customer comprises two or more persons, their obligations are joint and several.
- (d) The Customer shall not assign, charge, sub-let or otherwise dispose of any contract or any rights thereunder in whole or in part without the Seller's prior written consent. Any of the same purported to be effected without such consent shall be void.
- (e) No modification of this Agreement nor amendment to an Order shall be valid unless it is consented to by the Seller in writing. If any provision herein shall be held to be invalid, illegal or unenforceable, these Terms shall be construed as if such provision is not contained herein, and such offending provision shall be stricken. On Seller's request, Buyer shall return any proprietary or Confidential Information or property of Seller.

#### **11. Notices**

All notices, requests, consents, claims, demands, waivers and other communications hereunder (each, a "Notice") shall be in writing and addressed to the parties at the addresses set forth in the Order Confirmation or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in these Terms, a Notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section.

#### **12. Arbitration and Governing Law**

- (a) Except as provided below, the parties agree to submit disputes to an arbitrator in Columbia, South Carolina, U.S.A. applying the American Arbitration Association Rules. The proceeding shall be in English and enforceable in any court of competent jurisdiction according to the South Carolina Arbitration Act and the United Nations Convention for the Enforcement and Recognition of Arbitral Awards unless the dispute is suitable to injunctive relief thereby affording a right to pursue redress in court without proceeding to arbitration. Submission to arbitration shall be made within 60 days after a default and conducted under South Carolina Civil Rules of Procedure and completed in 120 days.
- (b) The parties incorporate the South Carolina Uniform Commercial Code trade terms and definitions and exclude the United Nations Convention on the International Sale of Goods. The parties submit to the exclusive personal and exclusive subject matter jurisdiction of the laws and courts of South Carolina and the forum of Columbia, South Carolina and adopt the laws of South Carolina as the governing law without regard to its conflict of laws rules.

[SELLER'S TERMS OF SALE OF GOODS – ANNEXED]