

Southwest Oilfield Products
TERMS & CONDITIONS

1. General

These terms and conditions of sale (**Terms**), together with any additional writings signed by Southwest Oilfield Products, Inc., and/or its subsidiaries and affiliates (individually or collectively **Seller**) and Buyer (Seller and Buyer being the **Parties** herein) represent the complete and exclusive statement of agreement between the Parties and may not be modified or waived by Buyer's purchase order, a course of dealing, Seller's performance or shipment, or in any other way, except in writing signed by the Parties. Seller's quotation, order acknowledgement, order acceptance and sale of Parts (**Parts**) are strictly conditioned upon these Terms. Any additional or different terms proposed by Buyer are objected to and shall not be binding upon Seller, unless accepted in writing by Seller. Any confirmatory action by Buyer or acceptance of delivery of Parts shall constitute Buyer's assent to these Terms. Purchase orders and other documents or verbal requests of similar effect are subject to Seller's approval and none shall be binding upon Seller until accepted in writing by Seller. Catalogs, brochures, Parts descriptions and similar materials of Seller are provided for general information and promotional purposes only and are not part of any agreement relating to the sale to which these Terms apply. Any quotation by Seller shall expire at the end of its stated validity period, and if not stated, then 30 days after the quotation date and may be modified or withdrawn by Seller prior to receipt of Buyer's written acceptance of the quotation. References herein to **days** shall mean calendar days, unless otherwise agreed to in writing by the Parties.

2. Taxes and Other Non-Included Costs

Unless otherwise agreed in writing by Seller, Seller's prices do not include sales, use, value added, excise, or similar type taxes, duties, packing, insurance, freight, loading, handling and related delivery expenses, all of which shall be for Buyer's account and shall be billed separately to Buyer. Seller shall accept a valid tax exemption certificate from Buyer (if applicable). If an issued exemption certificate is not accepted by the relevant taxing authority, and Seller is required to pay the taxes, Buyer shall promptly reimburse Seller for the taxes paid.

3. Inspection and Acceptance

All Parts shall be finally inspected and accepted by Buyer upon receipt with respect to conformity with the agreed description and quantities of the Parts. All claims by Buyer for shortages or non-conformity with the description of the Parts must be asserted in writing by Buyer no later than 5 days after receipt but in any event prior to use, or they are waived and deemed accepted. If an order involves Partial shipments, all claims must be asserted as above for each Partial shipment. There shall be no revocation of acceptance. Rejection shall be allowed only for failure of the Parts to conform with the agreed description of the Parts. Buyer's remedy for lesser defects shall be those provided under the Warranty section herein.

4. Delivery, Title, and Risk of Loss

A. Delivery dates are approximate and are based upon prompt receipt from Buyer of all information and materials necessary to complete the order. Delivery terms shall be in accordance with *Incoterms* in effect on the date of Seller's quotation. Delivery dates are the dates the Parts are ready for shipment or pick up from Seller's facility. Seller shall, unless otherwise agreed to in writing, deliver the Parts to Buyer EXW unloaded Seller's facility. Partial deliveries shall be permitted unless otherwise agreed in writing.

B. If any Parts are not shipped when ready due to a cause referred to in the excusable delays and payment sections herein, Seller may place such Parts in storage. In that case, (i) Seller shall notify Buyer of placement of the Parts in storage; (ii) Seller's delivery obligations shall be deemed fulfilled; (iii) any amounts otherwise payable to Seller upon delivery shall be thereupon payable; and (iv) Buyer shall, promptly upon presentation of Seller's invoice, reimburse Seller for all expenses incurred by Seller incident to storage, handling, inspection, preservation and insurance.

C. Title and risk of loss (including transportation delays and losses) shall pass to Buyer at the EXW point, or if the Parties have agreed in writing that delivery is other than EXW, then title shall pass at the named shipping point and risk of loss shall pass in accordance with the agreed delivery term, unless otherwise modified in writing by the Parties. If Seller consents to a delay in the scheduled delivery date, then upon Seller's notification to Buyer that the Parts are ready for shipment or pick up. However, Seller retains title, for security purposes only, to all Parts until paid for in full in cash, and Seller may, at its option, repossess the same upon Buyer's default in payment and charge Buyer with any deficiency.

5. Force Majeure

Seller shall not be liable for failure to deliver or for delay in delivery due to: (i) failure by Buyer to promptly furnish to Seller information and materials necessary to work on Buyer's order; (ii) Buyer's failure to comply with payment terms; (iii) denial by the U.S. government of export authorization, revocation of export authorization previously granted, placement by the U.S. government of a relevant embargo prior to shipment, or other governmental actions or inactions; or (iv) other causes beyond Seller's reasonable control, including without limitation, delays of vendors or carriers, fires, acts of God, acts of military or civil authorities, sabotage, industrial disturbances resulting in work slowdowns or stoppages, or inability to obtain necessary labor, materials, components or work facilities. Any delays so occasioned shall affect an extension of Seller's delivery dates corresponding to the time lost by Seller by reason of the delay and its consequences.

6. Payment and Financial Condition

A. Unless otherwise set forth in Seller's quotation, payment is due in full in cash net 30 days from the invoice date. Progress payments shall become due as invoiced, net 30 days. If shipment is delayed by Buyer for any cause whatsoever, payment shall be due and payable upon notification to Buyer that the Parts are ready for shipment. Unless otherwise agreed in writing, the currency of payment shall be U.S. Dollars. Seller may charge interest on past due accounts at the maximum rate allowable by law. If payment terms require Buyer to pay by letter of credit, the letter of credit shall be established by Buyer within 15 days after order acceptance by Seller; all costs, including bank confirmation charges shall be for Buyer's account; the letter of credit shall be in favor of and in form and substance satisfactory to Seller; shall be maintained in sufficient amounts and for the period of time necessary to meet all payment obligations; shall be irrevocable and advised through and confirmed by a bank nominated by Seller; shall permit Partial deliveries; and shall provide for pro rata payments upon presentation of Seller's invoices for same.

B. If Buyer fails to fulfill any condition of its payment obligations, Seller may: (i) withhold deliveries; or (ii) place the Parts in storage pursuant to the provisions of section 4.B. herein. In any event, the costs incurred by Seller as a result of Buyer's non-fulfillment shall be payable by Buyer upon submission of Seller's invoices for same. If such non-fulfillment is not rectified by Buyer promptly upon written notice thereof, Seller may terminate the agreement formed hereby and Buyer shall pay Seller its charges for termination upon submission of Seller's invoices for same.

C. Buyer represents and warrants to Seller that it is not insolvent, and that it will immediately notify Seller if it becomes insolvent. If Buyer's financial condition at any time does not justify continuation of Seller's work under the agreement formed hereby on the agreed terms of payment, Seller may require full or Partial payment in advance or shall be entitled to terminate the agreement. If Buyer becomes bankrupt or insolvent, or if any proceeding is brought against Buyer, voluntarily or involuntarily, under the bankruptcy laws or any insolvency laws, Seller shall be entitled to terminate the agreement. In either such termination event, Buyer shall pay Seller its reasonable and proper cancellation charges.

7. Warranty and LIMITATION OF REMEDY

A. Seller warrants only that Parts of its manufacture when shipped shall be free from defects in design, material, workmanship and title. Seller's obligations set forth below shall apply to failure to meet the foregoing warranties (**Defects**) for nonexpendable Parts, except as to title, occurring within 12 months after the date of shipment, and which Defects are brought to Seller's attention in writing by Buyer immediately upon discovery but not later than within the foregoing time period. Defective items must be held for Seller's inspection and returned

by Buyer, at Buyer's expense (including freight, duties and insurance), to the original shipment point upon Seller's request. **THE FOREGOING IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES WHATSOEVER, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS.**

B. Upon Buyer's submission of a warranty claim as provided above, and its substantiation by Seller, Seller shall, as its sole obligation, either: (i) repair; or at Seller's option (ii) replace the defective Part(s). Shipment to Buyer of repaired or replaced Parts shall be EXW unloaded Seller's facility. Seller's obligations shall not apply to any Parts which are not properly stored, installed, used, maintained or repaired by Buyer, or are modified other than pursuant to Seller's written instructions or approval, or have been subjected to misuse, detrimental exposure, accident, normal wear and tear, or normal deterioration. **SELLER NEITHER MAKES NOR GIVES ANY WARRANTY AND HEREBY DISCLAIMS ANY AND ALL WARRANTIES OF ANY KIND OR CHARACTER WHATSOEVER WITH RESPECT TO EXPENDABLE OR REPAIRED PARTS, OR PARTS NOT MANUFACTURED BY SELLER. SELLER'S ONLY OBLIGATION WITH RESPECT TO PARTS SUPPLIED BUT NOT MANUFACTURED BY IT SHALL BE TO ASSIGN TO BUYER, ON BUYER'S WRITTEN REQUEST, THE WARRANTY, IF ANY, OF THE THIRD PARTY MANUFACTURER.**

C. Optional Commercial Warranty as related to Modules

The warranty outlined in Section 7C must be registered and confirmed by Southwest prior to delivery of any equipment and cannot be retroactively established.

7C 1.0 Definitions

7C 1.1 "Defective" means not conforming to the warranties in Section 7A.

7C 1.2 "Defective Goods" means goods shipped by Seller to Buyer pursuant to this Agreement that are Defective.

7C 1.3 "Goods" means the Equipment and Parts sold to Buyer under this Agreement.

7C 2.0 Warranty:

7C 2.1 Defects Warranty: For the purchase of new Equipment/Parts, and solely for the benefit of the original user, Seller warrants for a 4-year period from the date of installation, with installation not to exceed 90 days from date of delivery ("Warranty Period") that the Goods will be free from significant defects in material and workmanship.

7C 2.2 Cracking Warranty: Additionally, Seller warrants for a 6-year period from the date of installation, with installation not to exceed 90 days from date of delivery, that the Equipment will be free from significant module cracking ("Cracking Warranty"). This warranty is valid only if the Equipment is operated using Seller's Fluid End expendable and consumable parts for the life of the module as provided in Section 2.1e. If cracking occurs within this timeframe under normal use conditions and with the specified parts, the product will be eligible for repair or replacement. Buyer must confirm with Seller in writing that the Cracking Warranty is applicable to the specific serial numbers prior to delivery in order for the Cracking Warranty to be effective.

7C 2.3 Warranty coverage is contingent upon consistent adherence to agreed payment terms. If payment terms are not maintained, the warranty will no longer apply.

7C 3.0 Cracking Warranty Coverage:

7C 3.1 Expendable and Consumable Parts: The Cracking Warranty is contingent upon the Buyer's use of Southwest Oilfield's Fluid End expendable and consumable parts, including but not limited to (liners, valves, seats, springs, pistons, seals, liner and valve retention). In the absence of exclusive use of these parts, the warranty will be void.

7C 4.0 Warranty Claim Process:

7C 4.1 Notwithstanding any other provision of this Agreement, this Section 3 contains Buyer's exclusive remedy for Defective Goods. Buyer's remedy under this Section 3 is conditioned upon Buyer's compliance with its obligations under Section 3.2 and Section 3.3 below.

7C 4.2 To initiate a warranty claim, Buyer must contact Seller in writing, of any alleged claim or defect within 3 Business Days from the date Buyer discovers, or upon reasonable inspection should have discovered, such alleged claim or defect (but in any event before the expiration of the applicable Warranty Period), providing details of the issue, proof of purchase, and serial number.

7C 4.3 Buyer shall ship, at its expense and risk of loss, such allegedly Defective Goods to Seller's facility located at 7903 Breed Rd Houston Texas for inspection and testing by Seller.

7C 4.4 If Seller's inspection and testing reveals, to Seller's reasonable satisfaction, that such Goods are Defective and any such defect has not been caused or contributed to by any of the factors described under Section 4.1, Seller shall in its sole discretion, and at its expense, (i) repair or replace such Defective Goods, or (ii) credit or refund the price of such Defective Goods less any applicable discounts, rebates or credits.

7C 4.5 If Seller exercises its option to repair or replace, Seller shall, after receiving Buyer's shipment of such Defective Goods, ship to Buyer, at Seller's expense and risk of loss, the repaired or replaced Goods to a location designated by Buyer.

7C 4.6 Buyer has no right to return for repair, replacement, credit, or refund any Goods except as set forth in this Section 3. In no event shall Buyer reconstruct, repair, alter, or replace any Goods, in whole or in part, either itself or by or through any third party.

7C 4.7 THIS SECTION 7 SETS FORTH THE BUYER'S SOLE AND EXCLUSIVE REMEDY AND SELLER'S ENTIRE LIABILITY FOR ANY BREACH OF THE WARRANTY SET FORTH IN SECTION 1. IN NO EVENT SHALL SELLER SHALL BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, OR INDIRECT DAMAGES ARISING OUT OF THE USE OR INABILITY TO USE THE GOODS.

7C 5.0 Exclusions:

7C 5.1 This warranty does not cover damages caused by misuse, accidents, alterations, improper installation, improper storage, improper handling, abnormal physical stress, abnormal environmental conditions or use contrary to any instructions issued by Seller, or unauthorized repairs or operating the equipment outside of normal operating conditions. Normal operating conditions are determined by Seller and can relate to the speed, pressure, horsepower, maintenance, and drilling conditions of the pump and mud/fluid system.

7C 5.2 Buyer must be able to provide reasonable proof that damage was not caused by caused by misuse, accidents, alterations, improper installation, improper storage, improper handling, abnormal physical stress, abnormal environmental conditions or use contrary to any instructions issued by Seller.

7C 6.0 Non-Transferability:

7C 6.1 This warranty is non-transferable and is only valid for the original purchaser.

7C 7.0 Disclaimer: EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN SECTION 7C 2.0, SELLER MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; OR (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; WHETHER ARISING BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE. BUYER ACKNOWLEDGES THAT IT HAS NOT RELIED UPON ANY REPRESENTATION OR WARRANTY MADE BY SELLER, OR ANY OTHER PERSON ON SELLER'S BEHALF.

8. Limitation of Liability

The remedies stated in these terms and conditions are Seller's only obligations and Buyer's exclusive remedies against Seller for all claims (excepting only for gross negligence, willful misconduct and remedies permitted under section 3 and 8 herein), whether such claims are based on breach of contract, breach of warranty, tort or other theories. **IN NO EVENT, WHETHER AS A RESULT OF BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY) OR OTHERWISE, SHALL SELLER'S LIABILITY TO BUYER EXCEED THE TOTAL PRICE OF THE AGREEMENT FORMED HEREBY, NOR SHALL THE PARTIES BE LIABLE TO ONE ANOTHER FOR INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING BY WAY OF EXAMPLE ONLY AND WITHOUT LIMITATION, LOST REVENUE, LOST PROFIT, LOST PRODUCTION, COST OF CAPITAL, LOSS OF USE, COST OF SUBSTITUTE PARTS, OR DOWNTIME COSTS.** If Buyer purchases the Part(s) for resale to others, Buyer shall obtain the foregoing limitation of liability from its customer for the express benefit of Seller, failing which, Buyer

shall, to the fullest extent permitted by law, indemnify, defend and hold Seller harmless from and against all such liabilities and costs, including without limitation, reasonable attorneys fees and expenses, and costs.

9. Applicable Law and Dispute Resolution

A. The agreement formed hereby shall be governed by and construed and enforced in accordance with the laws of the State of Texas, U.S.A., without regard to conflicts of law principles that would cause the law of any other jurisdiction to be applied. The application to this agreement of the *United Nations Convention on Contracts for the International Sale of Goods* is expressly waived by the Parties.

B. If the Buyer entity from which the purchase order was issued is located in the U.S.A., the courts in Harris County, Texas, U.S.A. shall have exclusive jurisdiction over all disputes between the Parties arising out of or in connection with the agreement formed hereby (**Dispute**), which the Parties were unable to first resolve among themselves by good faith negotiations within 30 days after notice of the Dispute. The Parties hereby irrevocably submit to the jurisdiction of said courts. If the Buyer entity is located outside of the U.S.A., and the Parts are shipped outside of the U.S.A., any such Dispute, which the Parties were unable to first resolve among themselves by good faith negotiations within 30 days after notice of the Dispute, shall be finally settled by binding arbitration under the Rules of Arbitration of the International Chamber of Commerce (the **ICC Rules**). The substantive law to be applied to the arbitration shall be the laws of the State of Texas, U.S.A. Any procedural issues not resolved by the ICC Rules shall be governed by the procedural laws of the State of Texas, U.S.A. The ICC shall act as appointing authority and shall administer the arbitration. There shall be three (3) arbitrators, unless the Parties agree in writing to one (1) arbitrator, and the proceedings shall be conducted in the English language. The place of arbitration shall be Houston, Texas, U.S.A., unless otherwise agreed in writing by the Parties. Judgment upon the award may be entered by any court having jurisdiction. The Parties hereby expressly and irrevocably waive submission of Disputes, that are required herein to be submitted to arbitration, to any court of law, except for the purpose of seeking interim protective relief (if not available through arbitration), or entering or enforcing an arbitration award.

C. Any action by the Parties against one another must be commenced within one (1) year after the cause of action accrues, or it shall be barred.

10. Export Compliance

All shipments hereunder shall at all times be subject to the export control regulations of the U.S.A. and any amendments thereto. **Buyer warrants and represents to Seller that it shall not make any disposition of U.S.A. origin Parts purchased from Seller by way of transshipment, re-export, diversion or otherwise, other than in and to the ultimate country of destination specified in Seller's quotation or declared as the country of ultimate destination on Seller's invoices, except as said laws and regulations may expressly permit.** If the Buyer entity is located outside of the U.S.A., and Parts are to be exported by Buyer, and delivery to Buyer is EXW unloaded Seller's

facility in the U.S.A., Buyer shall be responsible for compliance with export controls, and Buyer, or its authorized forwarding agent, and Seller shall enter into an *Assignment of Export Responsibilities in Routed Export Transaction* pursuant to the U.S. Code of Federal Regulations (15 CFR 758.3). Seller shall furnish to Buyer information in its possession about the Parts that may be needed by Buyer for export authorization and reporting. **Buyer further represents and warrants to Seller that, absent export authorization, it shall not, directly or indirectly, export, re-export, or transship any of Seller's information made available to Buyer, whether such information is received verbally, or in written or electronic format, and whether an actual export or a "deemed" export (as that term is defined in §734.2(b)(2)(ii) of the U.S. Export Administration Regulations.**

11. Miscellaneous

A. Parts manufactured by Seller shall comply with federal, state and local laws and regulations of the U.S.A. applicable to their manufacture, packing, sale and shipment as of the date of Seller's quotation.

B. Seller shall have the right to subcontract any or all of the work covered by the agreement formed hereby.

C. The agreement formed hereby shall inure to the benefit of and be binding upon the Parties and their respective affiliates, subsidiaries, successors and permitted assigns, and no others. Neither the agreement formed hereby nor any rights hereunder may be assigned by either Party without first obtaining the written consent of the other Party, which consent shall not be unreasonably withheld. Any attempted assignment without such prior written consent shall be void. However, Seller may, without consent, assign the agreement formed hereby to its subsidiaries, affiliates, or parent of Seller, or to an acquirer of substantially all of the assets of or a majority of the shares of Seller.

D. No waiver, alteration, or modification of any of the provisions hereof or the agreement formed hereby shall be binding unless in writing and signed by an authorized representative of Seller.

E. The relationship of Buyer and Seller is one of independent contractors. Nothing in these Terms shall be interpreted as authorizing either Party to bind the other, to incur any liability on behalf of the other, or to act as an agent for the other.

F. In the event that any provision of these Terms is held to be illegal, invalid or unenforceable under any present or future law, rule or regulation, such provision shall be deemed stricken from these Terms, but such illegality, invalidity or unenforceability shall not invalidate any of the other provisions of these Terms, and the remainder of these Terms shall continue in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance from these Terms. In lieu of such provision, there shall be added a legal, valid and enforceable provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible.