

TERMS AND CONDITIONS OF SALE

TERMS AND CONDITIONS: ACCEPTANCE OF BUYER'S ORDER IS EXPRESSLY LIMITED TO THE TERMS AND CONDITIONS OF THE ATTACHED QUOTATION AND THE TERMS AND CONDITIONS OUTLINED BELOW (COLLECTIVELY, THIS "AGREEMENT"). NOTWITHSTANDING ANY ORAL, ELECTRONIC, AND/OR WRITTEN STATEMENT MADE BY BUYER, SELLER'S ACCEPTANCE OF BUYER'S ORDER DOES NOT CONSTITUTE ACCEPTANCE BY SELLER OF ANY TERMS AND CONDITIONS OTHER THAN AS SET FORTH IN THIS AGREEMENT. ANY TERMS AND CONDITIONS OF BUYER SHALL NOT BE DEEMED PART OF THIS AGREEMENT BETWEEN BUYER AND SELLER UNLESS SELLER EXPRESSLY AGREES IN WRITING TO ACCEPT SUCH TERMS AND CONDITIONS OR ANY PART THEREOF. **This Agreement is the final, complete and exclusive agreement of the parties and shall not be altered, amended, supplemented or canceled without Seller's express written consent.**

- DELIVERY** – The delivery date is based on the Seller's projected lead time, current availability of base materials and equipment, current inventory of optional materials and equipment, commitments from supplier's inventories, promises from mills and forging suppliers, and third-party inspectors on-site for inspection according to the Inspection Test Plan within 48 hours of notification during all inspection stages outlined in the plan. All shipment dates are approximate and are subject to variation based on actual receipt of equipment and materials used in the manufacturing process. All shipments shall be Ex-Works Seller's facility, unless otherwise specified. **UNLESS OTHERWISE SPECIFIED AND AGREED TO BY SELLER, PARTIAL SHIPMENTS OF PURCHASE ORDER ARE ALLOWED; LINE ITEMS WILL SHIP COMPLETE.** Buyer shall pay all applicable transportation charges (including insurance). Shipments and deliveries shall be subject to Seller's prior approval. If Buyer fails to meet the terms of payment, Seller may defer further shipments or, at its option, cancel the unshipped balance. Seller reserves the right, prior to making any shipment, to require from Buyer satisfactory security for performance of Buyer's obligations. **IN ALL EVENTS, BUYER ASSUMES RISK OF LOSS OF THE EQUIPMENT UPON THE EQUIPMENT'S DEPARTURE FROM SELLER'S FACILITY.**
- CANCELLATION/CHANGES OR RESCHEDULING** – Buyer may request changes to orders including rescheduling of either all or a portion of an order. Seller reserves the right to reject changes or to accept them and charge Buyer additional charges commensurate with the cost of the request. Buyer shall be responsible for any additional costs incurred by delays and the price for the balance of the order shall be adjusted to reflect the prices and costs in effect at time of shipment. Storage and material handling charges may be incurred if a schedule change requires holding or storing purchased materials and/or partially or completed product. These charges will be agreed upon prior to accepting the requested change by the Buyer.

Cancelled orders will be charged to Buyer according to the following fee schedule:

- 15% of purchase order value after receipt of purchase order/before release of outline drawings
 - 45% of purchase order value after release of outline drawings to Buyer
 - Actual Material + Labor + 20% of Purchase Order value after release for manufacturing
 - 100% after unit is ready for hydro test
 - If materials must be ordered prior to approval of outline drawings, the actual cost of materials plus a handling fee will be added to the above percentages. The total cost will not exceed the total purchase order value.
- PACKAGING** – Equipment shipped by Seller will be packed/package according to Seller's then current shipping and packaging methods. Special packaging or packing requirements requested by Buyer shall be quoted by Seller and mutually agreed in advance.
 - RETURNS** – Returns are not accepted unless in conjunction with fulfillment of warranty obligations. All returns must be authorized in writing in advance by obtaining a Return Authorization Number (RAN) from Seller. All returns must be shipped freight prepaid F.O.B. Seller's chosen facility.
 - PAYMENT TERMS** – Subject to Seller's approval of credit payment terms for Buyer, Buyer agrees to pay the full sales price as specified in the quotation within thirty (30) days of invoice date unless different payments terms are agreed in writing by Seller at order acceptance. The sales price does not include, and Buyer is responsible for paying, without limitation, any shipping and delivery charges, insurance, and all sales and use taxes, duties, VAT, excise or other taxes; licensing and/or registration fees or stamps; and spotting, switching, or drayage charges at the destination which relate to Buyer's acquisition and use of the equipment. Any amounts not paid by Buyer when due under this Agreement shall accrue interest from the due date until the date Seller receives payment at the lesser of (i) 18% per annum or (ii) the highest rate allowed by applicable law. Buyer grants Seller a purchase money security interest in the equipment. Seller may file a copy of this Agreement as a financing statement at any time. All amounts specified in this Agreement are in U.S. Dollars. Payments shall be made in U.S. Dollars at the location specified on Seller's invoice. **Payments shall not be subject to any "flow down" provisions or "pay when paid" provisions.**
 - RETENTION FEES ASSOCIATED WITH DATA BOOK** – As long as the content included in the attachment "Data Book Table of Contents" and/or the documents outlined in the original specification accompanying the request for quotation are submitted as part of the data book, requests for additional changes and/or additions to the data book do not constitute grounds for retention of payment. Minor grammatical errors and/or formatting issues do not constitute grounds for retention of payment. The Buyer agrees to these terms unless specifically addressed in the purchase order, not as part of the Buyer's standard terms and conditions. As soon as Seller presents the Data Book in general accordance with Seller's standard data book package and/or the requirements of the specification, failure of the Buyer and/or Buyer's agent to mark and return corrections within 15 business days of such delivery to Seller constitutes acceptance of the data book and renders final payment due.
 - ESCALATION** – Prices for labor and material are firm through the quoted validity date. After expiration of the validity date, prices quoted herein are subject to revision. Although usually unchanged, labor rates are subject to change based on market conditions and delivery requirements. All quotations and orders are subject to increases in taxes imposed by any federal, state, and/or other governmental entities, which become effective between the date of this Agreement and the date when the equipment is shipped. Budget prices are not firm and are for budgeting purposes only ($\pm 25\%$ unless otherwise stated).

8. **LIMITED WARRANTY –**

For new fabrication: Seller warrants that the equipment will conform to Seller's written specifications (the "specifications") for such equipment for a period of one (1) year after equipment start-up or eighteen (18) months after shipment, whichever occurs first. Equipment repaired pursuant to this warranty is warranted for the longer of (a) the time remaining under the original warranty period or (b) six months from completion of the repair.

For cleaning services: Seller provides the Services on a "best efforts" basis only and provides no warranty. Seller does not warrant the performance of Buyer's equipment following performance of cleaning services. Seller uses high pressure water to clean tubes which may result in tube damage. **Buyer acknowledges the risks inherent in high pressure cleaning and agrees to hold Seller harmless from any damage resulting from the same.**

For thermal bake out: Seller provides the Services on a "best efforts" basis only and provides no warranty. Seller does not warrant the performance of Buyer's equipment, including heat transfer, following performance of the Services.

For repair work: Seller warrants the workmanship of the repair for a period of six (6) months following completion of the work; Seller does not warrant the operability of equipment previously in service. (This warranty applies to contracted repairs, not warranty work.)

If Buyer notifies Seller of a warranty claim during the warranty period, Seller will (at Seller's sole discretion), without charge to Buyer, (i) repair the equipment so that it conforms to the specifications or replace the equipment with conforming equipment, or (ii) upon the return of the equipment, refund Buyer's payment for that equipment and terminate all other obligations under this Agreement as to that equipment, with such remedy being the sole and exclusive remedy of Buyer for breach of this warranty. **TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW AND EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, SELLER SPECIFICALLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, IN FACT OR BY OPERATION OF LAW OR OTHERWISE, CONTAINED IN OR DERIVED FROM THIS AGREEMENT, ANY ORDER, OR IN ANY OTHER MATERIALS, BROCHURES, PRESENTATIONS, SAMPLES, MODELS OR OTHER DOCUMENTATION OR COMMUNICATIONS WHETHER ORAL OR WRITTEN, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WHICH WOULD EXTEND BEYOND THE WARRANTIES EXPRESSLY CONTAINED HEREIN. SELLER MAKES NO REPRESENTATIONS, WARRANTIES OR GUARANTEES IN CONNECTION WITH THE EQUIPMENT OR COMPONENTS THEREOF WHICH SELLER DID NOT MANUFACTURE.**

Seller's data sheet is the thermal, hydraulic, and mechanical warranty. Vibration analysis is performed prior to release of the data sheet. A copy of the HTRI analysis may be requested. Buyer is to provide Seller the date the units are placed in service, not later than 10 days after the units are placed in service. Seller assumes no responsibility for fouling of the unit by material such as coke, silt, scale, or any other foreign substance that may become deposited in the unit. A thermal warranty is not issued against data sheets provided from outside sources. However, if the product is ordered from Seller, Seller will check Buyer's design(s) and may issue a warranty upon confirmation.

9. **LIMITATION OF LIABILITY –** BUYER AGREES THAT REGARDLESS OF THE CLAIM OR OTHER FORM IN WHICH ANY LEGAL OR EQUITABLE ACTION MAY BE BROUGHT BY BUYER AGAINST SELLER AND/OR ITS AFFILIATES AND THEIR RESPECTIVE OFFICERS, DIRECTORS, REPRESENTATIVES, AGENTS, SUBCONTRACTORS, AND EMPLOYEES (COLLECTIVELY, THE "SELLER PARTIES") THAT NONE OF THE SELLER PARTIES SHALL BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES, OR LOSS OF PROFITS, REVENUE, PROMOTIONAL EXPENSES, INJURY TO REPUTATION, OR LOSS OF CUSTOMERS, REGARDLESS OF HOW ARISING. BUYER'S RECOVERY FROM THE SELLER PARTIES OR ANY OF THEM FOR ANY CLAIM IN ANY WAY ARISING FROM OR RELATED TO THE EQUIPMENT OR THIS AGREEMENT SHALL NOT IN THE AGGREGATE EXCEED THE LESSER OF (I) THE QUOTED SALES PRICE FOR THE EQUIPMENT OR (II) THE AMOUNT ACTUALLY PAID TO SELLER BY BUYER FOR THE EQUIPMENT IRRESPECTIVE OF THE NATURE OF THE CLAIM, WHETHER IN CONTRACT, TORT, WARRANTY, STRICT LIABILITY, PRODUCT LIABILITY OR OTHERWISE AND WHETHER ARISING IN WHOLE OR IN PART FROM THE NEGLIGENCE OF ANY OF THE SELLER PARTIES.
10. **LIQUIDATED DAMAGES/DELIVERY PENALTIES –** Due to uncertainty of raw materials availability, Seller does not accept liquidated damages or delivery penalty clauses of any type unless specifically agreed to in writing and associated with a corresponding bonus clause for on-time completion and/or early delivery.
11. **RELEASE OF LIEN –** Seller will provide a final release of lien which will be valid upon receipt of full and final payment. Seller will not provide a release of lien either directly or from our vendors.
12. **DEFENSE OF INFRINGEMENT CLAIMS –** Buyer shall notify Seller immediately after becoming aware of any claim or threatened claim of infringement involving the equipment manufactured by Seller and cooperate in defending such claims. Seller will defend at its expense any suit brought against Buyer alleging that the equipment (excluding equipment or components manufactured by third parties or manufactured to Buyer specified designs) when used in accordance with the specifications infringes a United States patent, copyright, or trade secret and will pay all damages finally awarded against Buyer in such suit. In the defense or settlement of the claim, Seller may at its discretion obtain for Buyer the right to continue using the equipment, replace or modify the equipment so that it becomes non-infringing, or refund the sales price less depreciation. Seller has no responsibility for infringement claims arising out of Buyer's use of the equipment in combination with equipment or software not manufactured by Seller or use which is not in conformance with the specifications. This section states Seller's entire responsibility for infringement claims.
13. **ORIGIN OF MATERIALS –** Country of origin specification is applicable for all pressure retaining components. Country of Origin specifications for non-pressure retaining components such as baffles, tie rods, skid bars, etc. do not apply. Origin of materials is understood as point of manufacturing of the final component, not the original material creation/ production, or intermediate product forms such as slabs, ingots, billets, etc.
14. **EXPORT/IMPORT –** All exports and reexports of the product are subject to United States export control laws and regulations (collectively "U.S. Export Laws") and

may be subject to export and/or import control laws and regulations in countries other than the United States (collectively "Foreign Import/Export Laws"). Accordingly, Buyer and its employees, distributors, dealers, and agents will not export or reexport the products from the United States, or import the products into countries other than the United States, without first obtaining an appropriate license, exemption, or similar authorization in accordance with all applicable U.S. Export Laws and Foreign Import/Export Laws. Further, Buyer agrees and guarantees that it will not, directly or indirectly, export or reexport, or otherwise transmit or retransmit, the products or related technical data (or any part thereof), or any service that is the direct product of the products, to any country to which such export, reexport, transmission, or retransmission is restricted by any applicable U.S. Export Laws or Foreign Import/Export Laws without the prior written consent, if required, of the Bureau of Export Administration of the United States Department of Commerce, and such other governmental entities (in the United States or abroad) as may have jurisdiction over such export, reexport, or transmission. BUYER'S OBLIGATIONS TO COMPLY WITH U.S. EXPORT LAWS AND FOREIGN IMPORT/EXPORT LAWS ARE INDEPENDENT OF AND SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

15. **FORCE MAJEURE** – Seller is not liable for its failure to perform any of its obligations hereunder during any period in which performance is delayed by Buyer or circumstances beyond Seller's reasonable control, including, without limitation, an act of God, epidemic/pandemic, war, terrorism, civil disturbance, court order, labor dispute, third party nonperformance, acts of third parties, or failures, fluctuations or non-availability of materials, components, electrical power, heat, light, air conditioning, computing or information systems or telecommunications.
16. **INDEPENDENT CONTRACTOR** – Seller, in providing the equipment hereunder, is acting as an independent contractor and does not undertake by this Agreement or otherwise to perform any obligation of Buyer, or to assume any liability for Buyer's business or operations.
17. **GOVERNING LAW** – THIS AGREEMENT SHALL BE GOVERNED UNDER THE LAWS OF THE STATE OF TEXAS, WITHOUT REGARD TO TEXAS PRINCIPLES OF CONFLICTS OF LAW, AS TO ALL MATTERS, INCLUDING, WITHOUT LIMITATION, MATTERS OF VALIDITY, CONSTRUCTION, EFFECT, PERFORMANCE AND REMEDY. ANY SUIT OR PROCEEDING HEREUNDER SHALL BE BROUGHT ONLY IN HARRIS COUNTY, TEXAS, AND EACH OF THE PARTIES CONSENTS TO THE PERSONAL JURISDICTION OF THE COURTS, STATE AND FEDERAL, LOCATED THEREIN. EACH PARTY AGREES TO WAIVE ANY OBJECTION THAT THE STATE OR FEDERAL COURTS OF HARRIS COUNTY, TEXAS, ARE AN INCONVENIENT FORUM. THIS AGREEMENT SHALL NOT BE GOVERNED BY THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS. If Seller is the prevailing party in any legal proceedings brought by or against Buyer to enforce any provision of this Agreement, Seller shall be entitled to recover against Buyer the reasonable attorney's fees, court costs and other expenses incurred by Seller.
18. **ASSIGNMENT** – Neither party may assign this Agreement without the prior written approval of the other party, except that no approval shall be required for Seller to (i) assign this Agreement to an affiliate of Seller or (ii) use subcontractors to fulfill its obligations. Any assignment made by either party in contravention hereof shall be null and void for all purposes.
19. In operating and using the equipment, Buyer shall comply with all applicable federal and state laws and regulations for such operation and use.
20. **THIRD PARTY BENEFICIARIES** – There are no third-party beneficiaries to this Agreement.
21. Buyer shall, at its own expense, obtain all, licenses, permissions or authorizations to use, purchase, export or import the equipment, as may be required by any governmental authority.
22. If any provision of this Agreement is held invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision of this Agreement, and this Agreement shall be construed as if such invalid or unenforceable provision were omitted.
23. Failure to enforce any term of this Agreement will not waive future enforcement of such terms.