

TERMS AND CONDITIONS

1. DEFINITIONS:

- "Seller" is defined as Gulf Controls Company, Incorporated, including its Action Hydraulics division, its parent, subsidiaries, and each of its affiliates and their respective transferees, successors and assigns, along with their respective directors, officers, agents, and employees.
- "Buyer" is defined as the purchaser of the Products or Services offered by Seller, along with their respective directors, officers, agents, and employees but expressly excludes any subsequent Buyer or possessor.
- "Seller's Office" is defined as Seller's address located at 5201 Tampa West Blvd., Tampa, FL 33634. If the location of the office changes, upon reasonable notice to Buyer, "Seller's Office" will be deemed amended to reflect the address of the new location.
- "Agreement" is defined as the standard Terms and Conditions contained herein.
- "Products" are defined as any item(s) sold by Seller.
- "Services" are defined as any system design, drawings, technical advice, maintenance, repair, or instructions provided by Seller in connection with the sale, maintenance, repair, or installation of Products, excluding engineering services.
- "Work" is defined as the Products and/or Services provided by Seller to Buyer.

2. ACCEPTANCE:

Seller's acceptance of any offer or order made by Buyer is materially conditioned upon Buyer's acceptance to be bound by this Agreement. If Buyer objects to this Agreement, such objection must be made in writing and received by Seller's Office within ten (10) days after this Agreement is transmitted to Buyer. Failure to so object shall be deemed to be Buyer's acceptance of this Agreement. Seller's failure to object to any terms or conditions in any oral or written communication from Buyer, at whatever time delivered to Seller, shall not constitute acceptance by Seller thereof or be considered a waiver of this Agreement. BY ACCEPTING DELIVERY OF THE PRODUCTS, OR RECEIPT OF THE SERVICES, BUYER HEREBY ASSENTS TO THIS AGREEMENT. Any terms and conditions inconsistent with, or additional to, those in this Agreement are expressly rejected, however any change, modification, extension, renewal, ratification, waiver or rescission of this Agreement, or any of the provisions hereof, shall be binding on Seller and Buyer if it is clearly described in writing and signed by both Seller and Buyer. All previous negotiations, conversations, and understandings between Seller and Buyer are merged herein.

3. PRICE:

In the event of an increase or reduction in price on materials, parts, labor, or freight rates of the Work, the new price will become effective immediately and shall be applied to the unshipped portion of the Products in Buyer's order. Any reduction in price on parts, material, labor, or freight rates of the Works shall not have a retroactive effect upon shipments of any of the Products completed prior to the date of the price reduction.

4. PAYMENT:

Payment shall be made in net U.S. Dollars, within 30 days from the date of the earliest shipment(s) of the Products, unless otherwise agreed in writing by Seller and Buyer. A 1 1/4% PER MONTH (15% PER ANNUM) SERVICE CHARGE WILL BE ADDED AND OWED FOR INVOICES NOT PAID WITHIN 30 DAYS AFTER INVOICE DATE. For international transactions, all payments shall be made as agreed to by Seller and Buyer. All sums payable by Buyer to Seller are payable to the Seller's Office. Shipment(s) of the Products are subject to Buyer establishing and maintaining satisfactory credit with Seller, which is determined by Seller. Seller may require full or partial payment for shipment(s) of the Products in advance. Pro rata payment may, at the election of Seller, become due as any shipment(s) of the Products are made. If completion of any shipment of the Products is delayed by Buyer, or Buyer's efforts could have kept such shipment from being delayed, the Seller may require payment of the contract price based upon the percentage of completion of the shipment(s) of the Products. Seller may defer or cancel shipment(s) of the Products and/or delay or cancel Services if Buyer fails to make any payment to Seller. In addition to the requirements of this paragraph, if this Agreement is regarding an international transaction, payment shall be made via wire transfer, unless Seller agrees otherwise in writing.

5. DELIVERY:

Seller shall not be liable for any loss or damage resulting from delay on shipment(s) of the Products or for services caused by fire, flood, strikes, labor disputes, riots, thefts, accidents, delays in transportation, acts of god, or any other cause reasonably beyond the control of the Seller. Seller shall not be liable in any event, for loss of anticipated profits, loss by reason of plant shut down, non-operation or increased expense of operation of other equipment or other direct, indirect or consequential damages of any nature caused by delay in delivery. Delivery dates quoted are approximate and delivery will be ExWorks (EXW Incoterms 2010) unless otherwise agreed to in writing by Seller. Buyer shall be solely responsible for the arrangement of shipment and all of the associated costs. In case of delays in shipment(s) caused by the fault of the Buyer, or which could have been avoided through the efforts of Buyer, Buyer agrees to promptly reimburse Seller any extra charges for Seller's additional expense and/or loss of time.

6. INSPECTION AND ACCEPTANCE:

All Products must be inspected and accepted by Buyer within ten (10) days of the date of the delivery of the Products.

7. LICENSES AND TAXES:

This Agreement does not include federal, state or local sales, use, privilege, occupation or excise taxes or any other taxes applicable to the shipment(s) of the Products, the Products, or for any Services of Seller (including, without limitation, any and all non-U.S. taxes, duties, levies or assessments). Buyer is responsible for and shall pay all taxes levied for the shipment(s) of the Products. Buyer is responsible for and shall provide and pay for all permits, licenses and certificates necessary for the installation and operation of the Products or for any Services provided by Seller.

8. SECURITY INTEREST:

If applicable, Buyer shall grant Seller a security interest in any Products purchased by Buyer. Seller shall have all the rights and remedies of a secured party under the Texas Uniform Commercial Code. Buyer agrees to sign any documents Seller deems necessary to perfect its security interest in the Products. Buyer agrees that the collateral for Seller's security interest in the Products shipped to Seller is and shall remain personal property. Seller may require Buyer to assemble any such collateral at a location Seller deems convenient. Buyer shall reimburse Seller for any expenses incurred by Seller in protecting or enforcing its rights under this Agreement, including without limitation, reasonable attorney's fees and legal expenses, and all expenses in taking possession, holding, preparing for disposition and disposing of the collateral for Seller's security interest in the Products shipped to Seller. Seller may waive any default without waiving any other subsequent or prior default by Buyer, however to be valid such waiver must be in writing and signed by Seller.

9. PATENT INFRINGEMENT:

Seller shall have no responsibility or liability for patent infringements, the design of any of the Products, or the performance of equipment manufactured according to specifications of Buyer or Buyer's agents. Seller shall have no responsibility or liability for patent infringement on equipment or components manufactured by third parties.

10. ASSIGNMENT:

Buyer agrees that Seller may assign or sublet this Agreement, in whole or in part, without Buyer's notice and consent, not to be unreasonably withheld.

11. RETURNS:

Products shall not be returned to Seller without Buyer first obtaining Seller's signed written consent and shipping instructions. Buyer agrees to promptly pay all costs associated with returned Products. In the event any Products are returned to Seller, Buyer agrees to promptly pay Seller the restocking charge, which will be a reasonable amount determined by Seller.

12. CANCELLATION, TERMINATION OR CHANGE OF ORDER:

Once Seller accepts an order by Buyer, Buyer waives its right to cancel the order. In the event of termination of an accepted order, Buyer shall pay all costs, expenses, loss of profits, and damages sustained by Seller in connection with such termination. **Terminated orders may be subject to the full invoice price, less any salvage value.** No order may be changed without Seller's written consent and then Buyer shall bear all costs involved in completing any such changes.

13. NOTICE, APPLICABLE LAW AND FORUM:

Seller shall not be liable for any claims (direct or indirect) which are not presented to Seller, at Seller's Office, in writing, within 181 days of the earlier of either the date of loss or the date of the incident giving rise to the claim. **To the extent that maritime law does not apply, Seller and Buyer agree that the law of the State of Texas shall govern this Agreement and all lawsuits related to this Agreement and or Seller's Products or services shall be filed only in Harris County, Texas and Seller and Buyer hereby submit to the personal jurisdiction of Texas.** Buyer and Seller hereby disclaim the applicability of any international convention, law, or treaty, including without limitation, the United Nations Convention for the International Sale of Goods, to this Agreement. During the pendency of any dispute, the parties shall continue to perform the obligations imposed upon them by this Agreement to the fullest extent possible, consistent with the positions with respect to the dispute. Buyer shall observe and obey any and all

applicable international, national, state and local laws, rules, regulations, and any other applicable rules and standards including, but not limited to those issued for the protection of the environment, proper import/export laws, or anti-corruption laws in relation to this Agreement or the Work. Buyer shall not perform any deceptive, misleading, illegal or unethical business practice in relation to this Agreement or the Work.

14. DEFENSE, INDEMNITY AND INSURANCE:

BUYER AGREES TO DEFEND, INDEMNIFY AND HOLD SELLER HARMLESS FROM AND AGAINST ANY AND ALL LOSSES, LIABILITIES, DAMAGES, DEMANDS, CLAIMS (INCLUDING PERSONAL INJURY AND WRONGFUL DEATH), LITIGATION, DEFENSES, SUITS, PROCEEDINGS, OBLIGATIONS, ACTIONS, JUDGMENTS, CAUSES OF ACTION, AND EXPENSES (INCLUDING WITHOUT LIMITATION, THE REASONABLE FEES OF LEGAL COUNSEL, INVESTIGATORS AND ACCOUNTANTS), BASED ON CLAIMS OF PERSONAL INJURY OR DEATH BY ANYONE OR FOR DAMAGE TO PROPERTY ARISING OUT OF OR RELATED IN ANY WAY TO THE PRODUCTS OR SERVICES OF THIS AGREEMENT, WHETHER BY THE ACTS OR OMISSIONS OF BUYER OR OF SELLER, INCLUDING BUT NOT LIMITED TO SELLER'S NEGLIGENCE AND/OR GROSS NEGLIGENCE, ACTIVE OR PASSIVE AND PARTIAL OR SOLE, ACTS OF MALICE, STRICT LIABILITY, CONTRACTUAL LIABILITY, ALLEGATIONS OF BREACH OF ANY IMPLIED WARRANTY INCLUDING MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, OR ANY OTHER LEGAL FAULT. SUCH DEFENSE AND INDEMNITY AND HOLD HARMLESS AGREEMENT SHALL INCLUDE, WITHOUT LIMITATION, ANY LIABILITY TO OR ACTION UNDERTAKEN BY ANY GOVERNMENTAL AUTHORITY OR AGENCY (INCLUDING, WITHOUT LIMITATION, THE UNITED STATES GOVERNMENT, STATE GOVERNMENT OR OTHER THIRD PARTIES) UNDER ANY APPLICABLE INTERNATIONAL, FEDERAL OR STATE LAWS OR GOVERNMENTAL ORDERS, RULES, AND REGULATIONS, INCLUDING THOSE RELATING TO POLLUTION. NOTWITHSTANDING, ANYTHING CONTAINED ABOVE, IN THE EVENT THAT AN INJURY OR ACCIDENT CAUSING A CLAIM, DAMAGE, LOSS OR LIABILITY OCCURS WHICH IS SUBJECT TO THE LAWS OF ANY JURISDICTION THAT PROHIBITS OR LIMITS BUYER'S ABILITY TO INDEMNIFY SELLER, THEN, IF SUCH LAW MUST BE APPLIED, BUYER'S LIABILITY SHALL EXIST TO THE FULL EXTENT ALLOWED BY THE LAW OF SUCH JURISDICTION, AND BUYER AGREES TO CARRY THE MAXIMUM AMOUNT OF INSURANCE WHICH MAY BE ALLOWED OR REQUIRED BY THE LAW OF SUCH JURISDICTION FOR THE PROTECTION OF SELLER AGAINST SUCH LOSS OR LIABILITY. BUYER SHALL USE INSURANCE PROVIDERS SATISFACTORY TO SELLER AND WHO ARE AUTHORIZED TO DO BUSINESS IN THE STATE OR STATES OR OFFSHORE AREAS IN WHICH THE PRODUCTS AND SERVICES OF THIS AGREEMENT MAY INVOLVE. BUYER AGREES THAT BUYER'S INSURANCE COVERAGE SHALL SUPPORT BUYER'S DEFENSE AND INDEMNITY OBLIGATIONS DESCRIBED IN THIS AGREEMENT. THE INSURANCE COVERAGE OF BUYER WILL INCLUDE COMPREHENSIVE GENERAL LIABILITY INSURANCE WITH LIMITS OF LIABILITY FOR BODILY INJURY AND FOR PROPERTY DAMAGE OF NOT LESS THAN \$1,000,000 ANY ONE OCCURRENCE. IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT INSURANCE COVERAGE REQUIRED OF BUYER OUTSIDE THIS AGREEMENT REPRESENTS BUYER'S MINIMUM REQUIREMENTS AND IS NOT TO BE CONSTRUED TO LIMIT ANY DEFENSE AND INDEMNITY OBLIGATIONS OF BUYER UNDER THIS AGREEMENT. BUYER'S INSURANCE POLICY SHALL BE PRIMARY TO AND SHALL RECEIVE NO CONTRIBUTION FROM ANY INSURANCE POLICIES MAINTAINED BY SELLER. THE INSURANCE POLICY OF BUYER SHALL EXPRESSLY WAIVE SUBROGATION AS TO SELLER, AND NAME SELLER AS ADDITIONAL INSURED. THE OBLIGATION TO NAME SELLER AS ADDITIONAL INSURED IS INDEPENDENT OF AND A SEPARATE AND DISTINCT OBLIGATION FROM THE DEFENSE AND INDEMNITY OBLIGATIONS DESCRIBED IN THIS AGREEMENT. TO THE EXTENT THAT THIS AGREEMENT MAY BE CONSTRUED BY ANY COURT OR AUTHORITY WITH RESPECT TO THE LOUISIANA OILFIELD INDEMNITY ACT, LA. REV. STAT. ANN. § 9:2780(B), THE BUYER SHALL SUBMIT AN INVOICE TO SELLER REPRESENTING THE PREMIUM FOR SUCH INSURANCE COVERAGE.

15. LIMITED WARRANTY AND DISCLAIMERS:

Seller warrants that Products shall, upon delivery, be free from defects in material and workmanship. Seller makes this warranty derivatively and in reliance upon the warranty of the Products' manufacturer(s). Seller's obligation in this respect is limited (at Seller's election) to: (1) furnishing, on an exchange basis, a replacement of or repairing Products as having been (in Buyer's judgment) defective, and is so found by Seller upon inspection, or (2) refunding to Buyer (or crediting Buyer with) the purchase price of such Products. Seller's obligations hereunder are conditioned upon Buyer (1) notifying Seller in writing of each defect asserted by Buyer within sixty (60) days after delivery of the complained of Products, stating such particulars as may be reasonably necessary to notify Seller of each asserted defect, (2) submitting proof as may be reasonably required by Seller that an asserted defect is within Seller's warranty hereunder, and did not result from acts or omissions of Buyer, and (3) delivering, at Buyer's expense, to Seller's facility at Tampa, Florida, each of the Products in which a defect is asserted. If this Agreement relates to Services, Seller agrees to perform Services in accordance with the reasonable standard of care practiced by representative companies that perform similar Services in the State of Florida; and if Seller fails to perform the foregoing Services in accordance with the reasonable standard of care practiced by representative companies that perform similar Services in the State of Florida, Seller will re-perform the Services as Seller deems necessary to adequately perform the Services. **Notwithstanding the above, Seller's limited warranty does not apply to any used item and all such used Products are sold by Seller "AS IS/ WHERE IS."** SELLER'S LIMITED WARRANTY IS EXCLUSIVE OF, IS IN LIEU OF, AND BUYER HEREBY WAIVES, ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR OF FITNESS. Seller's obligations as set forth herein shall be Seller's sole obligations in the event of a breach of Seller's express warranty. Seller shall not in any event, be liable in respect of any loss, damage, or expense, if caused or contributed to by: (1) any failure on Buyer's part to conform to manufacturer's, supplier's, or Seller's specifications or instructions; (2) any misuse, abuse, accident, improper installation or alteration, or other act or omission of Buyer; (3) any failure on Buyer's part to consult with personnel (of Buyer's selection and at Buyer's risk and expense) having the competence and skill to interpret and advise with respect to engineering and technical specifications and data; (4) any failure on Buyer's part to inspect and/or test any item or any article of which an item is (or is to become) a component; (5) anything otherwise addressed in this Agreement. If any item described herein is determined (by final judgment of a court of competent jurisdiction) to be a "consumer product" as that term is defined in the Magnuson Moss Warranty Federal Trade Commission Improvement Act, Seller's warranty shall be deemed to be "SELLER'S 60-DAY LIMITED WARRANTY" and, if Seller shall elect to repair or replace an item pursuant to such warranty, such replacement or repair shall be effected without charge.

16. LIMITATION OF DAMAGES:

Anything in this Agreement to the contrary notwithstanding, the maximum aggregate liability, if any, of Seller (whether arising in contract, tort, negligence, strict liability, breach of warranty, breach of contract or otherwise) under or in connection with this Agreement or the Work rendered hereunder shall be limited to an amount equivalent to ten percent (10%) of the total payments received hereunder, and Purchaser hereby releases Seller from any and all further liability, loss, cost and expense in excess of such amount. SELLER SHALL IN NO EVENT BE LIABLE TO BUYER OR ANY OTHER PERSON OR ENTITY FOR LOSS OF OR DAMAGE TO OR LOSS OF USE OF FACILITIES, EQUIPMENT, OR OTHER PROPERTY, WHETHER OF BUYER OR THIRD PARTIES, LOSS OF REVENUE, LOSS OF ANTICIPATED PROFITS, OR OTHER INCIDENTAL, INDIRECT, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES OF ANY KIND WHATSOEVER, OR CLAIMS OF ANY CUSTOMERS OF BUYER OR OTHER CLAIMANTS RESULTING FROM OR ARISING OUT OF THIS AGREEMENT, REGARDLESS OF THE CAUSE OF THE SAME, IRRESPECTIVE OF SELLER'S STRICT LIABILITY, FAULT OR NEGLIGENCE.

17. MISCELLANEOUS:

If any provision of this Agreement is held to be unenforceable, this Agreement shall be deemed to be amended to the extent necessary to make this Agreement enforceable. In the event any provision is unenforceable, the remaining provisions remain in full force and effect. It is the express intent, understanding and agreement of the parties that waivers, limitations and releases of liability set forth in this Agreement are: (i) to be enforceable to the fullest extent allowed by law, notwithstanding the negligence (whether sole, joint or concurrent), strict liability or other fault of a party hereto; and (ii) independent and severable from the indemnities contained in this Agreement, so that in the event any indemnity is found to be void or unenforceable, such finding shall not affect in any way the enforceability of any related waiver, limitation or release of liability. The headings of the paragraphs in this Agreement are for convenience only and are not a part of the Agreement. Seller may waive any default without waiving any other subsequent or prior default by Buyer, however to be valid such waiver must be in writing and signed by Seller.