



GENERAL TERMS and CONDITIONS

All Products and Services are supplied to a Buyer subject to Hunter Oil Company's General Terms and Conditions ("Terms and Conditions") detailed below and form part of any transaction between Hunter Oil Company and a Buyer, together with any schedules or appendices associated with any such transaction. Without limitation, placing an order (which is subsequently accepted by Hunter Oil Company) and/or accepting the Product shall constitute acceptance of the Terms and Conditions and shall override any other terms or conditions put forward by the Buyer. Hunter Oil Company reserves the right to recover any loss it suffers as a result of the Buyer cancelling or amending an order after it has been submitted to and accepted by Hunter Oil Company.

1. **Definitions** – The following words and expressions shall have the following meanings:

- 1.1. **Affiliate** means an entity which directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with a party. For this purpose, control means the direct or indirect ownership of, in aggregate, fifty percent or more of voting capital.
- 1.2. **Branded Material** means any advertising materials, signs or other items or materials bearing Hunter Oil Company Trade Marks.
- 1.3. **Buyer** means the company buying any Products or Services from Seller and shall include such company's servants, agents, and designated representatives.
- 1.4. **Contract** means any applicable contract or orders for the sale and purchase of Hunter Oil Company Products and/or Services.
- 1.5. **Delivery** or **Deliveries** means, in the case of Product in drums or other containers, physical delivery by Seller to Buyer or to Buyer's agent or, in the case of pump-over of Product from a tanker, as the Product exits Seller's or Seller's supplier's delivery equipment into Buyer's equipment.

- 1.6. Delivery Point** means the location(s) agreed in writing at which the Product will be delivered, or at which the Buyer or a designated nominee of Buyer takes physical possession of the Products.
- 1.7. Hunter Oil Company** means Hunter Oil Company, Inc., formed in Tennessee with its principal place of business located in Hamilton County, Tennessee.
- 1.8. Hunter Oil Company Trade Marks** means the name “Hunter Oil Company”, and any trade mark, trading name, house mark, mark of ownership, unregistered mark, service name, package shapes, color schemes, styles of labelling, emblems, registered and unregistered designs, retail and other formats, slogans, signage, communications materials, and other manifestations as specified from time to time by Hunter Oil Company, characteristic of Hunter Oil Company, its goods, services and activities.
- 1.9. Intellectual Property Rights** means the Hunter Oil Company Trade Marks, and all patents, copyrights and database rights, rights in know-how, moral rights or other similar rights in any country in or connected with the Products or any of them or any literature, manuals, materials or information supplied by Hunter Oil Company, in each case whether or not registered, and any applications for registration of any of the foregoing, and all rights to apply to register any of the foregoing.
- 1.10. Person** means any individual, partnership, limited partnership, firm, trust, body corporate, government, governmental body, agency or instrumentality, unincorporated body of persons or association.
- 1.11. Product** means any oils, fluids, lubricants, greases, absorbents, filters, equipments, and/or chemicals sold by Hunter Oil Company.
- 1.12. Purchase Order** means the document through which an order is placed by the Buyer to Hunter Oil Company seeking services or the supply of Products including the details and quantity of the Products, the timeline of delivery and Delivery Point.
- 1.13. Seller** means Hunter Oil Company with offices at 2009 South Highland Park Avenue, Chattanooga, Tennessee 37404.
- 1.14. Services** means the services as may be specifically agreed and performed by Hunter Oil Company.

In these Terms and Conditions, unless the context does not so admit, reference to the singular includes reference to the plural and vice versa.

2. Payment and Charges

2.1. Seller reserves the right to demand that all first time orders must be accompanied by a credit card or other prepayment method. Unless otherwise agreed in writing, all payments shall be made without discount, withholding or deduction, in U.S. Dollars to Seller, by the 10th day of the month following the date of invoice. A \$35.00 returned check fee will be charged on all returned checks.

2.2. Seller reserves the right to require Buyer to complete a credit application and to require a guarantee on such applications. An outside credit reporting service may be used in the application process. Buyer warrants that all information provided in the credit application is true and correct and that Buyer is not in default of any other credit obligations.

2.3. Overdue payments will bear interest at the rate of one and three-fourths percent (1¾ %) per month or any part thereof, plus all collection fees, to the extent permitted by applicable local law, unless Buyer and Seller have agreed in writing to some other rate in which event such other rate shall apply.

2.4. Without prejudice to any other rights of Seller, Seller shall at its option be entitled to apply, in satisfaction of any obligation owing hereunder by Buyer, the amount of any monies which may then be or thereafter become owing from Seller to Buyer

2.5. If at any time the reliability or the financial responsibility of Buyer (or of any guarantor or other person furnishing security in support of Buyer) should, in Seller's opinion, be or become impaired or unsatisfactory or should Buyer exceed its credit limit, then Seller may in its absolute discretion, vary the manner and/or terms on which Buyer shall make payment for Product and /or Services or demand (additional or another form of) security from Buyer.

2.6. Time shall be of the essence in relation to all payment or repayment terms in these Terms and Conditions and any variations to these terms. If Buyer fails to make any payment under any Contract on the date it falls due then Seller may suspend any outstanding deliveries and/or terminate such Contract with immediate effect at any time by notifying Buyer in writing.

2.7. At the sole discretion of Seller, in the event the outstanding unpaid purchases of Buyer, even if not yet due and demandable, reaches the credit limit as agreed by Seller, all subsequent purchases of Product by Buyer shall be on "pre-paid" basis, i.e. the price of the Product shall be payable by Buyer with funds cleared prior to loading. Accordingly, Seller shall have the right to suspend and refuse deliveries to Buyer unless tender of payment is made and funds cleared.

2.8. If Buyer fails to pay its purchases within the agreed credit term, all subsequent purchases of Product by Buyer shall be on pre-paid basis, i.e. the price of the Product shall be payable by Buyer with funds cleared prior to loading of the Products. Accordingly, Seller shall have the right to suspend and refuse deliveries to Buyer unless tender of payment is made and funds cleared.

2.9. Exercise of any rights shall be without prejudice to Seller's rights to recover damages or losses sustained and resulting from default by the Buyer, including without limitation failure to timely pay.

3. Deliveries

3.1. Product shall be delivered to Buyer or procured to be delivered on days, between hours and in loads of minimum and/or maximum quantity as may from time to time be prescribed reasonably by Seller and Buyer shall allow reasonable time for Seller or its contractors to deliver. Products will be delivered to the Delivery Point. Failure by Buyer to timely settle its account at the time it becomes due could result at the sole option of Seller in (a) suspension of deliveries by Seller without prejudice to the rights of Seller or (b) termination of any contracts, with all amounts then outstanding becoming immediately due and payable to Seller without need of further demand.

3.2. Buyer warrants and undertakes:

3.2.1. that each Delivery Point shall be suitable for delivery and safe storage (including assistance and suitable hose connections, if applicable) which comply with all applicable legal and regulatory requirements for Product delivery without risk to property and persons;

3.2.2. that for each delivery there will be sufficient ullage for Product at the Delivery Point and that any connecting hose will be properly and securely fitted to the filling point for the safe and proper reception of the quantity of Product ordered. Buyer accepts responsibility for any loss, leakage or contamination of any Product delivered which may occur at the Delivery Point as a result of a breach by Buyer of its obligations under these Terms and Conditions;

3.2.3. that in the case of highly inflammable products and where otherwise applicable, it will observe strictly any regulations laid down by any competent authority in respect of the avoidance of smoking, naked lights, fires, stoves or heating appliances of any description in the vicinity of any Product storage facility and the fill, dip and vent pipes connected thereto; and

3.2.4. that all storage installations will be clearly and correctly labelled with the description of the grade of Product stored and the tank capacity.

3.2.5. to ensure that all storage equipment used with Product is free of contaminants and debris and that delivery of Product is placed in or otherwise pumped into the correct storage tank.

3.3. Seller reserves the right to effect delivery by means of a contractor and to refuse to deliver using public or private roadways which it considers unsafe.

3.4. Buyer shall be responsible for the safe off-loading of its Product. Where Product is delivered in containers and/or on pallets, Buyer shall ensure that appropriate facilities are available for off-loading and loading the containers and/or pallets. Buyer shall be responsible for the safe storage and handling of the containers and/or pallets whilst in its possession and shall not use them for any purpose other than the storage of Product supplied by Seller. Where Product is delivered via tanker, Buyer shall be responsible for ensuring the appropriate storage equipment is free of debris and contaminants.

3.5. When a delivery to Buyer cannot be made or is otherwise aborted as a result of Buyer's non-observance of any provision of these Terms and Conditions, Buyer shall, on request, reimburse Seller its costs for the aborted delivery.

4. Risk and Title

4.1. The risk in Product delivered to a Seller shall pass to the Buyer at the Delivery Point as follows.

4.1.1. In the case of delivery by road tank wagon, when on discharge it passes the hose connection of the storage tank, container, receptacle or fill line (as the case may be) provided by Buyer.

4.1.2. In the case of barrel, drum or other package deliveries the risk in any Product contained in any such packages shall pass to Buyer at the time of offloading when the package is removed from the craft, vessel, wagon or car provided by Seller for delivery of such package.

4.2. Title to Product supplied shall pass to Buyer on payment of all debts due and owing by Buyer to Seller as long as Buyer is not in default of any agreements, contracts and/or these Terms and Conditions. Although Product supplied remains the property of Seller under this sub-clause, Buyer may use the Product in the ordinary course of business as long as Buyer is not in default of any agreement, contract and/or these Terms and Conditions.

4.3. If the Product is sold to third parties prior to being paid for then the Buyer shall hold the proceeds of the sale in trust for the Seller until the Product has been paid for. The Buyer

will, on the demand of the Seller, provide full details of all the sales made of the Product that is not paid for and the account where the proceeds of the sales thereof are held.

4.4. When any payment is overdue Seller will be entitled to demand specific performance by payment or entitled to enter Buyer's premises and secure or uplift and remove Product supplied. All costs and expenses reasonably so incurred by Seller shall be paid by Buyer.

4.5. Until such time as title in Product passes to Buyer, Buyer shall hold Product as Seller's fiduciary agent and bailee, and shall keep Product properly protected and insured and identified as Seller's property.

4.6. Buyer shall not provide the Product as a security or collateral nor pledge it or use it as a lien.

5. Product Discrepancy, Claims, Deliveries, and Returns

5.1. Products: Buyer should inspect any and all Product and packaging on delivery at the Delivery Point to verify quantity and check for damage. Buyer will be required to sign a delivery note and/or Purchase Order indicating that it has inspected and accepts the Product in all regards, including without limitation quantity, quality, brand, kind, amount, and satisfaction. Seller is not obligated to accept any returns of Product following signature of the delivery note or Purchase Order for whatever reason but may elect to allow returns subject to a restocking fee of Twenty-Five Percent (25%) of the order, plus shipping costs. All return requests/faults must be submitted to Seller in writing within seven (7) days after delivery and Buyer shall give Seller or Seller's agents an opportunity to inspect the Product in question. To the extent permitted by law, Seller will not be liable to rectify damaged Product or short deliveries where Buyer has signed a delivery note and/or Purchase Order.

5.1.1. In the event Buyer's agent and/or representative is not present at the time Product is delivered to the Delivery Point or if Buyer is present but fails to sign delivery note and/or Purchase Order, Buyer has seven (7) days from the date of delivery as noted on the delivery note and/or Purchase Order to verify quantity and check for damage. Buyer will be deemed to have inspected and accepted Product if written notice of any discrepancy is not received by Seller within seven (7) days of delivery of Product as noted on the delivery note or Purchase Order. Seller will not accept any returns of Products following the deadline to notify Seller as provided herein.

5.1.2. Buyer agrees that Seller's delivery agent's signature on delivery note or Purchase Order constitutes confirmation of delivery of Seller's Product, notwithstanding the lack of Buyer's signature, and Buyer's responsibility for payments shall be conclusive and binding for the Product. In respect to deliveries of Product, the quantity of Product delivered shall be

determined on the basis of the quantities stated in the packages/containers by Seller's record of the quantity of Product.

5.2. It is always the Buyer's responsibility to determine the grade of Product (i.e., grade of lubricant, viscosity, etc.) is the correct grade for the intended use, notwithstanding any recommendation made by Seller staff or Seller's agents given in good faith and to the best of their knowledge. Seller will not accept responsibility for any damage resulting from the Product being used by an unqualified tradesman or in an untradesmanlike manner, nor being adapted for a use for which Product is not intended.

5.3. Notwithstanding the above, if Product is proved to be off-brand through no fault of Buyer the limitations on returns set out in this section shall not apply but the Product must be returned within fourteen (14) days after delivery. The sole remedy of Buyer in cases of off-brand Products shall be replacement of Product at the cost of Seller. Returned Product must be unused and in its original container or packaging.

5.4. Bulk Oil Products (i.e., from dispensers): Bulk Oil Product returns will be accepted by Seller ONLY IF there has been a contamination of the Product by Seller or its agents. Buyer is responsible for inspecting the Bulk Oil Product PRIOR TO Bulk Oil Product being pumped into a container of any type at Buyer's designated location. Buyer shall be entitled at its own cost to sample the Bulk Oil Product prior to offloading. Bulk Product will not be accepted under any circumstances for return after Bulk Oil has been pumped into a container of any type at Buyer's designated location. Buyer acknowledges and accepts that Seller has no control over Buyer's containers located at Buyer's facilities and that Seller cannot prevent against malicious or incidental contamination of Bulk Oil Product once pumped into such container. As such, Seller cannot verify the quality or condition of Bulk Oil Product once pumped into Buyer's container. To the extent Buyer wants Bulk Oil Product removed, such removal shall be treated as waste oil.

5.5. The responsibility of maintaining proper security and integrity of the Products after delivery to Buyer, rests solely upon the Buyer, who must adequately safeguard the Products against pilferage, theft, damage and contamination and segregate the same to prevent commingling and confusion with other materials and/or goods and/or petroleum products in Buyer's premises. Should there be any product loss and/or contamination, Buyer shall be solely responsible for it.

5.6. Seller shall forthwith remedy without cost to Buyer any part of the Services which prove deficient due to any failure on the part of Seller to perform Services in conformity with any requirements of applicable law.

6. Liability and Indemnification

6.1. Notwithstanding any other provision to the contrary in these Terms and Conditions and to the maximum extent permitted by the applicable law, Seller's total liability to Buyer with respect to any order or to any event or a series of related events, whether as a result of breach of contract, breach of warranty, breach of statutory duty, negligence or other tort, shall not exceed the purchase price of the relevant delivery of the Product or if the above breach consists of a failure to deliver, the price of the Product had it been delivered and invoiced.

6.2. Notwithstanding any other provision, Seller shall not be liable to Buyer for loss of actual or anticipated profit, losses caused by business interruption, loss of goodwill or reputation, or any indirect, special or consequential cost, expense, loss or damage EVEN if such cost, expense, loss or damage was reasonably foreseeable or might reasonably have been contemplated by Seller and whether arising from breach of contract, negligence or other tort, breach of statutory duty or otherwise.

6.3. Buyer shall indemnify and hold Seller, its Affiliates and agents harmless against any losses, damages, costs or expenses (including reasonable attorneys' fees), which Seller, its Affiliates or agents may incur or for which they may become liable, arising out of the wrongful or negligent acts or omissions of Buyer or its servants or agents or in connection with any Deliveries.

7. Force Majeure

7.1. Seller shall not be responsible for any loss, damage, or demurrage due to any delay, hindrance, or prevention by a "Force Majeure Event" meaning any circumstance which is not within the reasonable control of Seller as the case may be including, without limitation, any (or the apprehension of any) strike, lockout or labor dispute, or any government order or restriction or compliance with any order or request of any national, supra-national, provincial, port or any other public authority or any person purporting to act for such authority or by failure, total or in part, of any of Seller's existing or contemplated sources of supply of Product or of the means of delivery thereof howsoever such failure is caused.

7.2. If by reason of any such circumstances the availability from any of Seller's suppliers' sources or contemplated sources of supply (wherever situated) of Seller's Product is so curtailed or interfered with as either to delay or hinder Seller in or to prevent Seller from supplying the quantity of the Product and also at the same time maintaining in full its other business in the Product then Seller shall be at liberty to withhold, reduce or suspend deliveries to such extent as Seller may in its absolute discretion think fit and Seller shall not be bound to acquire by purchase or otherwise additional quantities from other suppliers. Any additional quantities which Seller does acquire from other suppliers or from alternative sources may be used by Seller at its complete discretion and need not be taken into account

by Seller for the purpose of determining the extent to which it is to withhold, reduce or suspend deliveries.

7.3. Buyer shall be free to purchase from other suppliers any deficiencies of deliveries caused by the operation of this force majeure provision but Seller shall not be responsible for any additional cost thereby incurred by Buyer.

7.4. Seller reserves the right to increase the price charged for any Product (whether the price was originally determined by reference to Seller's prices or separately agreed in writing) if there is any increase in the costs incurred or to be incurred by Seller in making the relevant supply due to factors which are beyond the control of Seller. These factors include without limitation any increased taxes, duties, the making of any law, order, bye-law or other regulation affecting the cost of Product.

7.5. Notwithstanding the provisions under this Section Seven, the Buyer shall be liable for making payment for all Products, the delivery of which has been achieved.

8. Warranty

8.1. Seller warrants that at the time of shipment from Seller's facilities, the Product meets the Product manufacturer's specifications. THERE ARE NO GUARANTEES OR WARRANTIES, EXPRESS OR IMPLIED, OF MERCHANTABILITY, FITNESS OR SUITABILITY OF THE PRODUCT FOR ANY PARTICULAR PURPOSE OR OTHERWISE, WHICH EXTEND BEYOND THE MANUFACTURER'S DESCRIPTION AND/OR SPECIFICATIONS OF THE PRODUCT.

8.2. This warranty is given instead of, and excludes, all other express or implied conditions, warranties or other contractual undertakings concerned with any of the following:

- 8.2.1.** the condition or quality of the goods
- 8.2.2.** their fitness for any particular purpose
- 8.2.3.** their compliance with any description which might otherwise arise at common law or under any statute.

8.3. If Product is proved not to meet the specifications set forth by the manufacturer of the Product, the Seller may, at its option, replace the Product at the next mutually convenient port where supplies can reasonably be made available or refund any sums paid by the Buyer in respect of the Product. The Buyer agrees that any and all claims against Seller are limited solely to the replacement of Product or the repayment of the Product as a full satisfaction of all claims it may have against Seller.

8.4. Seller shall not be liable to the Buyer in contract, tort, negligence, breach of statutory or otherwise for any loss, damage, costs or expenses of any nature whatsoever incurred or suffered by Buyer of an indirect or consequential nature including without limitation, any economic loss or other loss of turnover, profits, business or goodwill.

9. Health, Safety and Environment

9.1. If an escape, spillage or discharge of Product (a "Spill") occurs while Product is being delivered to Buyer hereunder, Buyer will promptly take such action as is reasonably necessary to remove the Product and mitigate the effects of such Spill. However, notwithstanding the cause of such Spill, Seller is hereby authorized, at its option, upon notice to Buyer, to take such measures, either in co-operation with Buyer, or exclusively as the sole party, and incur such expenses (whether by employing its own resources or by contracting with others) as are reasonably necessary, in the judgement of Seller, to remove the Product and mitigate the effects of such Spill. If Seller has exercised its option to remove the Product and mitigate the effect of such Spill, Buyer agrees to cooperate and render such assistance as is required by Seller in the course of such action. Any expenses, damages, costs, fines and penalties arising from the Spill of Product shall be paid by the party that caused or contributed to the Spill by negligent act(s) and/or omission(s). If both parties have acted negligently, any expenses, disbursement(s) and/or costs in respect of actions to remove the effects of such Spill shall be divided between the parties in accordance with the respective degree of negligence and culpability. Each party agrees to indemnify the other party and to hold it harmless against all expenses, cost(s) and/or disbursements which under this Section Nine are stated to be for the account of the indemnifying party. Buyer also agrees to give, or cause to be given, to Seller, its Affiliates or its Agents, all such documents and other information concerning any Spill or any program for the prevention thereof, which is requested or required by law or regulation applicable at the time and place where Seller delivers Product to Buyer.

9.2. Buyer shall ensure that all installations and equipment used with Product are installed, maintained and operated in such manner to avoid accidents which could have reasonably been anticipated and shall do everything necessary to prevent Product, used or unused, to enter drainage, sewage systems, water courses or soil.

9.3. If the Product is available and supplied in containers and/or on pallets Buyer shall ensure that appropriate facilities are available for off-loading and loading the containers and/or pallets. Buyer shall be responsible for the safe storage and handling of the containers and/or pallets whilst in its possession and shall not use them for any purpose other than the storage of Product supplied by Seller.

10. Hunter Oil Company Trade Marks, Specifications and Formulations

10.1. All Intellectual Property Rights, and any Branded Materials or literature supplied by Hunter Oil Company shall be and remain the property of Hunter Oil Company or the relevant Hunter Oil Company Affiliate, and Buyer shall not be entitled to or claim, and shall procure that its Affiliates or agents do not claim ownership of or any rights in the same. Buyer further acknowledges that any use or display of the Hunter Oil Company Trade Marks shall be deemed to be use by Hunter Oil Company or the relevant Hunter Oil Company Affiliate and furthermore that any goodwill attaching to the Hunter Oil Company Trade Marks and arising out of such use or display shall accrue to and be for the benefit of, Hunter Oil Company or the relevant Affiliate of Hunter Oil Company. Nothing in any contract or these Terms and Conditions shall give Buyer, its Affiliates or its agents any proprietary interest in or title, claim or right whatsoever to any of the Hunter Oil Company Trade Marks.

10.2. Buyer agrees that it will not perform any act that may affect or harm the good reputation of Seller or any Affiliates of Seller, or of any of its or their products or brands. Buyer agrees that Product bearing Hunter Oil Trade Marks will be sold by Buyer in the form in which it is received and, in particular, Buyer will sell such Product without addition, adulteration, alteration or contamination of any kind whatsoever. Buyer further agrees not to alter the decoration or visible design of packaged Product in any way or to remove, obliterate or otherwise deface the trade marks appearing thereon. For the avoidance of doubt and without prejudice to the generality of the foregoing, Buyer shall only use the Product containers and packaging material as provided by Seller, and shall return any used containers and advertising and packaging material to Seller if so requested and not repackage any Product supplied in bulk.

10.3. Buyer shall not, and shall procure that its resellers and agents do not, without the prior written consent of Seller in its absolute discretion:

10.3.1. negotiate, renew or enter into any sponsorship, advertising or similar arrangement which would involve use or display of any of the Hunter Oil Company Trade Marks; or

10.3.2. engage any brand service provider (e.g. advertising or media agency or market research company) in connection with activities which would involve use or display of any of the Hunter Oil Company Trade Marks; or

10.3.3. commission, release, display or use any advertising or promotional materials in any media in connection with Hunter Oil Company or the Products and involving use or display of any of the Hunter Oil Company Trade Marks, other than those materials and templates provided or made available by Seller; or

10.3.4. erect or otherwise display any signage or advertising hoardings displaying any of the Hunter Oil Company Trade Marks, other than as may be supplied or approved by Seller.

10.4. Buyer shall immediately discontinue any use of the Hunter Oil Company Trade Marks on expiration or termination of any contract.

10.5. Where any specification has been supplied by Buyer for Product manufacture by or to the order of Seller, Buyer warrants that the use of that specification for the manufacture, processing, assembly or supply of Product to be sold shall not infringe the rights of any party.

10.6. No warranty or condition, express or implied, shall be given by Seller in respect of the merchantability or fitness for purpose of any Product supplied that has been manufactured in accordance with Buyer's product specification.

10.7. Buyer shall promptly notify Seller on becoming aware of any infringement or suspected or apparent or threatened infringement of, or any actions, claims or demands or proceedings in relation to, any Intellectual Property Rights and shall render to Seller all the assistance Seller may require in connection therewith, incidental thereto or arising thereunder, including the prosecution of any actions that Seller may deem necessary to commence for the protection or defense of any of its rights.

11. Termination

11.1. Without prejudice to any other rights or remedies, Seller shall be entitled to terminate any contract or agreement summarily by written notice to the Buyer if Buyer has committed a material breach of any of its obligations between Buyer and Seller.

11.2. Without prejudice to any other rights or remedies, Seller shall be entitled to terminate any contract or agreement summarily on written notice if Buyer:

11.2.1. is an individual or a partnership firm and is declared bankrupt, or a receiver or manager is appointed in respect of his assets, or a receiving order is made against him, or he enters into any composition or arrangement with creditors generally, or he is unable to pay his debts as they fall due; or

11.2.2. is a company and is declared bankrupt, or it makes a composition or arrangement with its creditors, or a winding-up order is made or a resolution for voluntary winding-up is passed in respect of it, or a provisional liquidator, receiver, administrator or manager of its business or undertaking is appointed, or a petition is presented applying for

an administration order to be made in respect of it, or it is unable to pay its debts as they fall due or possession is taken of any of its assets on behalf of the holders of any debentures of such company which are secured by a floating charge, of any property comprised in or subject to the floating charge; or

11.2.3. should, in Seller's opinion, be or become financially impaired or distressed or Buyer's reliability or financial responsibility should become impaired or if Buyer exceeds its credit limit or if Buyer refuses to pay in advance or to provide security within a period of 7 days after such demand is made; or

11.2.4. is a company and there is a change of ownership of its shares resulting in 50 percent or more of the issued share capital of the company becoming legally or beneficially the property of a new owner.

11.3. On termination of any contract or agreement:

11.3.1. all sums owed to Seller shall become immediately due and payable and any and all obligations of Seller hereunder for the sale of Product to Buyer shall cease; and

11.3.2. orders for Product which have been accepted but have not been fulfilled by Seller shall be cancelled at Seller's option without any liability on behalf of Seller.

11.4. Where Buyer is a partnership, reference in this Section 11 to Buyer shall mean any one or more of the partners.

11.5. Upon termination of any contract or agreement, the rights and obligations of the parties shall terminate and be of no further effect, except for those provisions that by their nature are intended to survive termination.

12. Governing Law, Jurisdiction

12.1. Any question concerning the construction, meaning or effect of these terms, or any dispute concerning the rights and liabilities of the parties under any Contract, its performance and enforcement, or any other dispute or difference connected with or arising out of any Contract shall be governed by the laws of the state of Tennessee to the exclusion of any conflicts of law rules which would refer the matter to another jurisdiction.

12.2. Any claim or controversy arising out of or relating to any Contract, or the breach of any Contract, shall be resolved by a court of competent jurisdiction in Hamilton County, Tennessee, provided that if Seller's principal place of business ceases to be in Hamilton County, Tennessee, then in the county and state where the Seller's then-current principal

place of business is located. Buyer irrevocably consents to the exclusive jurisdiction of those courts and waives any objection to either the jurisdiction of or venue in those courts. Notwithstanding, Buyer agrees that Seller may enforce any order and award in the courts of the state or states in which Buyer is located.

12.3. Buyer waives to the fullest extent permitted by law any right to or claim for any punitive, exemplary or multiple damages against Seller.

12.4. Seller irrevocably waives trial by jury in any action, proceeding or counterclaim, whether in law or in equity, brought by either Seller or Buyer.

12.5. Subject to Section 5, any claim by Buyer against Seller shall be barred unless asserted by Buyer by commencement of an action as required under Section 12.2 against Seller within twelve (12) months from the date on which the Buyer knew or should have known of the facts giving rise to the claim, except to the extent any applicable law or statute provides a shorter period of time to bring a claim. This provision shall survive any termination of any Contract.

12.6. If a claim for amounts owed by Buyer to Seller is asserted in any proceeding or appeal thereof, or if either party is required to enforce any Contract in a proceeding or appeal thereof, the party prevailing in such proceedings shall be awarded its costs and expenses including, but not limited to, reasonable accounting, paralegal, expert witness, attorneys' and arbitrators fee, whether incurred prior to, in preparation for or in contemplation of the filing of any written demand, claim, action, hearing or proceeding to enforce the obligations of any Contract.

12.7. The rights of Seller are cumulative and no exercise or enforcement by Seller of any right or remedy under shall preclude the exercise or enforcement by Seller of any other right or remedy which Seller is entitled by law to enforce.

13. Rental of Seller's Equipment

13.1. To the extent Buyer rents, leases or otherwise takes possession of Seller's equipment, Buyer shall take such equipment in the condition in which it is at the commencement of the rental or holding period and Seller does not in any way represent or warrant that the equipment is of merchantable quality or suitable or fit for the particular or any purpose for which it is or may be required. THERE ARE NO GUARANTEES OR WARRANTIES, EXPRESS OR IMPLIED, OF MERCHANTABILITY, FITNESS OR SUITABILITY OF SELLER'S EQUIPMENT FOR ANY PARTICULAR PURPOSE OR OTHERWISE.

- 13.2.** Seller shall not be liable either in contract or in tort for any loss, injury or damage whatsoever (whether sub surface or not and including reservoir loss) caused by reason of any defect in the equipment whether such defect be latent or apparent on examination.
- 13.3.** Buyer shall indemnify the Company against any loss of or damage to the equipment from whatever cause arising and whether or not such loss or damage results from the negligence of Seller. Equipment shall be used in accordance with its intended uses and practices.
- 13.4.** Weather conditions or other factors which prevent satisfactory operation of Seller's equipment shall not relieve Buyer of the responsibility for paying the rental charges.
- 13.5.** Buyer shall keep Seller's equipment in good repair and condition (fair wear and tear excepted) and all damaged equipment which may need to be repaired will be repaired by Buyer at its discretion and the cost of such repairs. In addition, Buyer shall be liable for loss of rental, any other consequential loss arising out of any loss or damage to the hired equipment.
- 13.6.** Equipment lost or damaged beyond repair shall be paid for in full by Buyer at the reinstatement value (i.e.; replacement cost new) plus cost of freight charges and cost of reinstallation, unless otherwise agreed in contract(s).
- 13.7.** Buyer shall permit Seller at all reasonable times to enter upon the premises in which the equipment is for the time being kept for the purpose of inspection and examining the condition of the equipment. Such inspection by Seller shall not constitute a warranty of any kind, including the suitability or merchantability of the equipment, and such inspection is for the sole benefit of Seller. Seller shall not be liable to Buyer in respect of any incorrect or incomplete advice or information given by Seller or any servant or agent of Seller to Buyer.
- 13.8.** Buyer shall not assign, let, pledge, mortgage, charge, encumber, or part with possession of or otherwise deal with the equipment or any interest therein.
- 13.9.** Seller shall not be liable for any consequential loss or loss of market or delay however caused relative to the equipment.
- 13.10.** Seller shall not be liable for loss, damage or injury to the equipment, nor responsible for use of equipment supplied, or from acts of any person engaged in performing services relative to the equipment. Buyer assumes all responsibility relative

to the equipment and agrees to Seller harmless for injuries to persons resulting from the equipment.

13.11. In connection with any equipment, or parts thereof, furnished or rented to Buyer, Seller the liability of Seller shall be limited to the replacement of, or the allowance of credit for, the equipment, or parts thereof. In no case whatsoever shall any liability of Seller, however arising, exceed the replacement price for any equipment or parts thereof.

14. Compliance with Law

14.1. Buyer undertakes to Seller that:

14.1.1. the execution and performance of Buyer's obligations relating to any Contract do not violate or conflict with any law applicable to it, any order of any governmental or regulatory body or any contractual restriction binding on it; and

14.1.2. Seller has complied with and will comply with all laws, regulations, orders and requirements of all competent authorities relating to the performance of its duties relating to any Contract or transaction.

14.2. Taxes

14.3. Prices charged by Seller are subject to applicable sales taxes unless such sale is exempt from sales tax. Buyers must notify Seller prior to purchase of any Product or Service and must provide a properly completed tax exemption certificate to Seller prior to purchase. To the extent Buyer fails to provide a properly completed tax exemption certificate to Seller prior to purchase of any Product or Service, such sale is inclusive of applicable sales tax.

14.4. Buyer warrants and undertakes to assure that any Products and Services purchased are of the type and use covered by the exemption certificate.

15. Availability

15.1. Seller may at any time change the grade, specifications, characteristics, delivery package, brand name, or other distinctive designation of any Product, and such Product as so changed shall remain subject to any Contract with Buyer. Seller reserves the right at any time to discontinue supplying any such Product or to substitute a different Product or grade(s) of Product. In the event any substitution is made, any maximum and minimum quantities applicable to the substituted Product shall apply to such replacement Product or grade(s) of Product and the price shall be Seller's applicable price for such replacement

Product. Thereafter, Seller shall be relieved of any further liability or obligation to furnish the discontinued Product or grade(s) of Product. For the avoidance of doubt, it is understood between the Parties that Seller may, at its sole discretion, change the shape, size or format of any packaging or labels at any time and that such change is not considered to be a change of quality. Seller may at its option notify Buyer in advance of such change.

16. Assignment

16.1. No Contract entered into by Buyer with Seller shall be assigned or transferred in whole or in part by Buyer and Buyer shall not subcontract any of its obligations under any Contract without the prior written consent of Seller.

16.2. Seller shall be free to assign any Contract either in whole or in part or to subcontract any of its obligations under any Contract to a third party by written notice to Buyer.

17. Waiver

17.1. The failure or delay of Seller in exercising any right, power or remedy provided by law or under any of these Terms and Conditions shall not affect that right, power or remedy or operate as a waiver of it. The single or partial exercise of any right, power or remedy provided by law or under these Terms and Conditions shall not preclude any other or further exercise of it or the exercise of any other right, power or remedy.

18. Amendment/Modification

18.1. No amendment or modification of any of the provisions of these Terms and Conditions shall be valid unless it is agreed in writing by and is signed on behalf of each of the parties.

19. Invalidity

19.1. If at any time any provision of these Terms and Conditions is or becomes illegal, invalid, void or unenforceable under the laws of any jurisdiction, the legality, validity and enforceability of the remainder of these Terms and Conditions in that jurisdiction shall not be affected, and the legality, validity and enforceability of the whole of these Terms and Conditions in any other jurisdiction shall not be affected.

20. Entirety

20.1. The Terms and Conditions set forth herein shall prevail over any terms put forward by the Buyer, unless the Seller expressly agrees to those terms in writing. No conduct by the

Seller, its Affiliates or Agents shall be deemed to constitute acceptance of any terms put forward by the Buyer.

21. Buyer Acting as Agent.

21.1. If the order for Products was placed by Buyer acting as agent on behalf of a disclosed or undisclosed principal, Buyer shall be liable for performance of all obligations of the principal, including payment.

22. Information

22.1. Data supplied, whether personal or otherwise, by a Buyer and/or which relates to a Buyer's account will be held and processed by computer or otherwise by Seller to operate Buyer's account(s); to confirm, update and enhance Seller's Buyer records; for statistical analysis; to establish any identity or otherwise as required under applicable legislation; to assess each Buyer's credit status on an ongoing basis; and otherwise as considered necessary or appropriate by Seller. In each case the processing may continue after any relationship with Buyer has ended. Alternatively, Buyer may be requested to complete or fulfil other checks as may be necessary to satisfy credit assessments, money laundering or fraud detection requirements.

22.2. Seller may disclose data relating to Buyer and/or a Buyer's account(s) to (a) a credit reference agency where it may be accessed by other financial institutions to assist assessment of any application for credit made to Seller and for debt tracing and fraud prevention; (b) to any agent or sub-contractor of Seller performing services in connection with Buyer's account; (c) to any person to whom Seller proposes to transfer any of its rights and/or duties under any Contract; (d) to any guarantor or person providing security in relation to Buyer's obligations under any Contract; (e) as required or permitted by law or any regulatory authority; (f) as otherwise considered necessary or appropriate by Seller.

22.3. Without prejudice to any other provisions for termination contained in these Terms and Conditions, all monies due and owing by Buyer to Seller shall become due and payable forthwith if Seller discovers that any information provided by Buyer to Seller is materially inaccurate.