

ERIEZ FLOTATION DIVISION CANADA, INC. ("EFD")

TERMS AND CONDITIONS OF SALE

1. Contract Formation

1.1 Offer. EFD's proposal form and/or EFD's *pro forma* quotation (collectively, the "Proposal") constitutes an offer for the sale of goods described in the Proposal (the "Goods") and includes all the terms and conditions contained herein (the "Terms and Conditions").

1.2 Acceptance. Any purchase order or other form of acceptance issued by the Buyer in response to a Proposal from EFD shall result in a contract for the purchase of the Goods at the price quoted in EFD's Proposal and shall be subject to these Terms and Conditions. EFD does not accept any terms contained in any purchase order or other documents issued by Buyer which are different from, conflict with, modify and/or add to these Terms and Conditions. EFD's execution of any document issued by the Buyer shall constitute only an acknowledgement of receipt thereof, and shall not be construed as an acceptance of any of the terms therein. Unless Buyer shall have set forth each specific objection to these Terms and Conditions in a separate writing signed and dated by Buyer and delivered to EFD contemporaneously with Buyer's purchase order or other acceptance document, Buyer shall be deemed to have accepted all of these Terms and Conditions. Buyer's issuance of a purchase order or other document which purports to reject some or all of these Terms and Conditions by virtue of Buyer's standard form language, or otherwise, shall not be sufficient objection. Where Buyer specifically objects to any of these Terms and Conditions, no contract shall be formed unless and until EFD agrees to accept in writing Buyer's proposed modifications to these Terms and Conditions.

1.3 Entire Agreement. The Proposal and these Terms and Conditions shall constitute the entire understanding and agreement (this "Agreement") between Buyer and EFD with respect to the subject matter hereof. This Agreement supersedes in their entirety any prior agreements, representations, understandings, promises, proposals and/or negotiations between the parties. Any course of dealing, course of performance, custom or trade usage will not be binding upon either party. This Agreement may not be amended or modified except by a writing executed by both parties.

2. Agreement to Purchase and Sell

Subject to the terms and conditions of this Agreement, the Buyer agrees to purchase from EFD, and EFD agrees to sell to Buyer, the Goods described in the Proposal. Unless otherwise agreed in writing by the parties, Buyer assumes all responsibility for set-up, installation and start up of the Goods.

3. Payment of Purchase Price; Security Interest

3.1 Generally. The purchase price of the Goods shall be the purchase price set forth in the Proposal. Buyer shall pay the purchase price in U.S. Dollars, without any deduction for claims, set-offs or recoupment on account of this Agreement or any other matter between the parties. Payment shall be made in accordance with the payment schedule set forth in the Proposal. Payment shall not be contingent upon installation or upon field tests. If a payment is delayed beyond the date on which it is due, interest shall accrue and be payable by Buyer on the unpaid balance at a rate of one and one-half percent (1 1/2%) per month.

3.2 Security Interest. Buyer hereby grants to EFD a security interest in the Goods until all monies due EFD under this Agreement are paid in full. EFD shall have the right to file financing statements and any other documents that may be necessary to evidence and perfect such a security interest in the Goods in any jurisdiction. Buyer agrees to execute and deliver such additional documents as EFD may reasonably request to evidence and perfect such security interest.

3.3 Delay of Delivery of Shipment by Buyer. If delivery or shipment is delayed by Buyer, such delay shall not delay or otherwise postpone the obligation of Buyer to make payments under this Agreement as if delivery or shipment had timely been made. Notwithstanding any provisions of the payment schedule set forth in the Proposal to the contrary, if delivery or shipment is delayed by Buyer, payment in full shall, in any event, be due no later than thirty (30) days from the date that EFD notifies Buyer that the Goods are ready for delivery or shipment, whichever is the earlier.

4. Taxes

Buyer shall be responsible for, and shall pay, any taxes (sales, excise, use, etc.) which may be applicable to the sale and/or delivery of the Goods. Buyer shall defend, indemnify and hold EFD harmless from any claim, loss, damage, liability or expense incurred with regard to the payment of any such taxes or duties.

5. Delivery

5.1 Terms. Delivery of the Goods shall be as specified in the Proposal.

5.2 Date. Delivery shall be made on or before the delivery date specified in the Proposal. However, such delivery date is approximate only and shall not constitute any guarantee of delivery on such date. Time shall NOT be of the essence of this Agreement.

5.3 Risk of Loss; Title. Risk of loss shall pass from EFD to the Buyer in accordance with the delivery terms applicable to this Agreement, as specified in the Proposal. Title to the Goods shall pass from EFD to the Buyer upon the passage of risk of loss from EFD to the Buyer.

5.4 Delay Generally. EFD shall not be responsible to the Buyer or any third party for any damages resulting from any failure or delay in manufacturing or shipping due to any cause beyond EFD's reasonable control, including, but not limited to: (1) intervening legal requirements or governmental directives; (2) acts of God; (3) *force majeure*; (4) labor disputes; (5) delays caused by EFD's subcontractors, suppliers or vendors; (6) war, terrorism, or similar disruptions and/or (7) delays caused by Buyer and/or Buyer's failure to perform its obligations under this Agreement, including (but not limited to) the failure of Buyer to (a) timely approve drawings, (b) issue notices to proceed, if applicable, and/or (c) perform any other acts required of the Buyer under this Agreement. The time for performance by EFD under this Agreement shall be extended by the length of any such delays, plus such additional time as may reasonably be necessary to re-mobilize and re-commence performance of this Agreement.

5.5 Delay by Buyer; Storage. If delivery or shipment is delayed by Buyer, EFD shall have the right to arrange for storage for the Goods at Buyer's sole expense. In such event, risk of loss to the Goods shall pass to Buyer upon placing the Goods in storage, unless risk of loss has already passed to the Buyer pursuant to the delivery terms applicable to this Agreement, as specified in the Proposal, in which case risk of loss shall remain with the Buyer.

6. **Warranties**

6.1 Limited Warranty. For the benefit of the Buyer only, EFD warrants that the Goods shall be free from defects in material and workmanship for the periods specified in Section 6.2, below. EFD's obligations under this limited warranty are conditioned upon EFD receiving written notice of any defects no later than the expiration of the applicable warranty period.

6.2 Length. The length of the warranty period shall be as specified in the Proposal. If no warranty period is specified in the Proposal, the warranty period shall extend for one (1) year from the date that risk of loss passes from EFD to the Buyer.

6.3 Alteration; Abuse. The limited warranty set forth in this Section 6 shall be void with respect to Goods which have been: (1) altered by Buyer or any third party; (2) repaired by other than EFD personnel or an EFD approved contractor; (3) subjected to misuse, abuse, neglect or accident; or (4) damaged by improper installation or application.

6.4 Exclusions. The limited warranty set forth in this Section 6 shall not apply to, and no warranty is given with respect to: (1) parts, accessories or components manufactured by others, including, but not limited to, belts, springs and electrical components; (2) bearings and motors; (3) wear liners; (4) reducers; and (5) the functionality of software.

6.5 Exclusive Warranty. THE WARRANTY SET FORTH IN SECTION 7, BELOW, WITH RESPECT TO PATENT INFRINGEMENT AND TITLE, AND THE LIMITED WARRANTY SET FORTH IN THIS SECTION 6, ARE THE SOLE AND EXCLUSIVE WARRANTIES GIVEN BY EFD WITH RESPECT TO THE GOODS AND ARE IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, BOTH OF WHICH ARE HEREBY EXPRESSLY DISCLAIMED.

6.6 Limitation of Remedies for Breach of Warranty. In the event of a breach of the limited warranty set forth in this Section 6, Buyer's sole remedy, and EFD's sole obligation, is limited to the repair or replacement of the Goods by EFD, at EFD's option. Such limitation shall apply regardless of whether the claim is characterized as arising out of breach of warranty, contract, tort, strict liability, statutory liability, indemnity or otherwise. Buyer shall be solely responsible for any costs associated with making the Goods accessible or otherwise available to EFD for the performance of repair work on, or the replacement of, the Goods. Unless otherwise agreed in writing by Buyer and EFD, EFD shall not be responsible for any back charges of any nature whatsoever.

7. **Patent Infringement; Title**

7.1 Warranty. EFD warrants that the Goods, and any part of the Goods which are manufactured to EFD's design, shall be delivered free of any rightful claim of infringement of any patents in effect in the location at which the Goods are to be installed, as set forth in the Recitals to this Agreement.

7.2 Obligation to Defend. Upon prompt written notification by Buyer of any claim of patent infringement, EFD shall defend or settle any claim of patent infringement at EFD's sole cost and expense. Buyer shall provide any information and assistance requested by EFD in providing such defense.

7.3 Remedies. EFD shall pay all damages and costs awarded against Buyer incurred as a result of a breach of the warranty contained in this Section 7. In the event that the use of the Goods or parts is enjoined or in the event EFD decides to defend or settle a claim of patent infringement, EFD shall at its sole expense and option, either: (1) procure for Buyer the right to continue using such Goods or parts; (2) replace the Goods or parts so that they are non-infringing; or (3) remove the Goods or parts and refund the purchase price, less reasonable depreciation for any period of use. The remedies set forth in this Section 7.3 shall constitute the sole and exclusive remedies of the Buyer in the event of a breach of the warranties contained in this Section 7.

7.4 Exclusions. The warranty set forth in this Section 7 shall not apply to: (1) any Goods or parts specified by Buyer or manufactured to Buyer's design; (2) any Goods or parts altered or modified by Buyer; or (3) the use of any Goods in conjunction with any other product, not manufactured by EFD. With respect to the Goods described in this Section 7.4, EFD assumes no liability for patent infringement and Buyer shall defend, indemnify and hold EFD harmless from any claims, liability, damages or expenses, including reasonable attorneys' fees, as a result of any patent infringement claims arising therefrom.

7.5 Title. EFD warrants that it has good title to the Goods, and that upon delivery of the Goods by EFD to the Buyer, EFD shall pass good title to the Buyer, free and clear of any liens, encumbrances or other claims.

8. **Limitation of Damages**

8.1 Exclusion of Certain Damages. In no event shall EFD or EFD's employees, officers, directors, representatives, affiliates, shareholders, owners and/or agents be liable for consequential, incidental or punitive damages incurred by Buyer or any third party in connection with any matter arising out of or relating to this Agreement, or the breach thereof, regardless of whether such damages are characterized as arising out of breach of warranty, tort, contract, strict liability, statutory liability, indemnity or otherwise. Such limitations shall apply regardless of whether EFD has been advised or otherwise made aware of the possibility of such damages arising. For purposes of this Section 8.1, consequential damages include, but are not limited to: (1) Buyer's lost production, sales and/or profits; (2) Buyer's loss of use of the Goods and/or any other equipment; (3) Buyer's cost of capital; or (4) any claims of customers of the Buyer against Buyer or EFD.

8.2 Limitation on Amount. Notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of EFD and EFD's employees, officers, directors, representatives, affiliates and agents to Buyer or any third party claiming through or under Buyer for any claims, losses, damages, or costs arising out of or relating to this Agreement, or the breach thereof, shall not exceed the total consideration received by EFD from Buyer under this Agreement. This Section 8.2 shall apply regardless of whether the claim is characterized as arising out of breach of warranty, contract, tort, strict liability, statutory liability, indemnity or otherwise.

9. **Default**

9.1 Termination for Default. EFD may terminate this Agreement if Buyer: (a) becomes insolvent; (b) is unable to meet its obligations as they become due or admits such in writing; (c) enters bankruptcy or has a receiver or trustee appointed for it; (d) fails to timely make payments under this Agreement or under any other obligation of Buyer to EFD; (e) fails to provide EFD with adequate assurance of due performance within fifteen (15) days of Buyer's receipt of EFD's written demand thereafter; and/or (f) Buyer defaults on any other obligations of the Buyer under this Agreement and Buyer fails to cure such defaults within ten (10) days of receiving written notice from EFD requesting the cure of such default. EFD shall also have the right, but not the obligation, to suspend performance under this Agreement upon the occurrence of any of the foregoing defaults and to demand cure thereof by the Buyer. In the event that EFD opts to suspend performance and the Buyer thereafter cures any such default, the time for performance by EFD under this Agreement shall be extended by the length of the suspension plus such additional time as may reasonably be necessary to re-mobilize and re-commence performance of this Agreement. The exercise of the right to suspend performance upon a default by Buyer shall not be considered an election of remedies or as otherwise restricting EFD's right to terminate this Agreement at any time upon default by the Buyer.

9.2 Remedies; Recovery of Damages. The remedies specified in Section 9.1, above, are not exclusive, and EFD shall be entitled to exercise any other remedies which may be available to EFD under this Agreement or applicable law, including (but not limited to) the recovery of any damages incurred by EFD as a result of the default of the Buyer, regardless of whether the default is subsequently caused by Buyer. Such damages include, but are not limited to, any de-mobilization and re-mobilization costs incurred by EFD.

10. **Other Provisions**

10.1 Arbitration. Any dispute, controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration. The arbitration shall be conducted in accordance with the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with said Rules, and judgment upon the award may be entered in any court having jurisdiction thereof. The agreement of the parties to arbitrate any such dispute, controversy, claim or other matter shall apply regardless of whether the dispute, controversy, claim or other matter is characterized as arising in contract, tort (including, without limitation, fraud, fraudulent misrepresentation, negligence, and/or negligent misrepresentation), strict liability, statutory liability, indemnity, contribution or otherwise. The arbitration proceedings shall take place in Vancouver, British Columbia, Canada, and shall be conducted in English. The decision of the arbitration panel shall be binding upon the parties and judgment on the award may be entered in any court of competent jurisdiction.

10.2 Limitation of Actions by Buyer. Any actions against EFD with respect to any matter arising out of or relating to the Goods or this Agreement must be brought by Buyer, or anyone claiming through or under Buyer, within the earlier of: (1) one (1) year from the date that the claim in question accrued; or (2) the expiration of any applicable statute of limitations. Any claim brought outside such limitation period shall be deemed to have been waived.

10.3 Governing Law. This Agreement shall be construed in accordance with the laws of British Columbia, Canada, without reference to any applicable principles of conflicts of law which would direct the application of the laws of another jurisdiction. The United Nations Convention on the International Sale of Goods, the 1974 Convention on the Limitation Period in the International Sale of Goods and the Protocol amending the 1974 Convention shall not apply to this Agreement.

10.4 Entire Agreement. This Agreement (including the Schedules hereto) constitutes the entire agreement of the parties with respect to the subject matter hereof, and supersedes in their entirety any prior agreements, representations, understandings, promises, proposals and/or negotiations between the parties. Any course of dealing, course of performance, custom or trade usage will not be binding upon either party. This Agreement may not be amended or modified except by a writing executed by both parties.

10.5 Waiver. The waiver of any right or default in any one instance shall not be deemed a waiver of any future right to enforce this Agreement.

10.6 Assignment.

10.6.1 Generally. This Agreement may not be assigned by either party without the prior written consent of the other party, which consent shall not be unreasonably withheld. The assignment of this Agreement shall not relieve the assignor of any of its obligations under this Agreement, and the assignor shall remain fully responsible for its obligations under this Agreement, and any breach thereof

by assignor's assignee. Notwithstanding the foregoing, nothing in this Section 10.6 shall be construed as prohibiting or otherwise restricting EFD from subcontracting the manufacture and/or fabrication of the Goods.

10.6.2 Exception. Notwithstanding the provisions of Section 10.6.1, above, EFD shall have the right to assign this Agreement to any affiliate of EFD, any entity into which EFD is merged, consolidated or liquidated, or any entity which acquires substantially all of the operating assets of EFD.

10.7 Severability. If any provision of this Agreement is held to be invalid or unenforceable for any reason, the remaining provisions shall remain in full force and effect.

10.8 Safety Devices, Risks and Damages. Buyer assumes all responsibility for the safe operation of the Goods. Buyer shall provide all signage, warning labels, safety devices, guarding, shielding and other measures as may be necessary and/or appropriate, or which are required by federal, state, provincial or local laws and regulations, for the safe operation of the Goods. Buyer shall defend, indemnify and hold EFD harmless with respect to any property damage and/or personal injury, including death, which is caused by reason of the failure on the part of Buyer, and/or any employee, representative, operator or agent of Buyer, to comply with this Section 10.8.

10.9 Buyer Disclosures. Unless otherwise agreed to in writing by EFD, any information or ideas transmitted by Buyer to EFD in connection with this Agreement or the Goods shall not be regarded as a trade secret of, or submitted in confidence by, the Buyer.

10.10 No License or Sale of Intellectual Property. Except as otherwise expressly set forth in this Section 10.10, the sale of the Goods to the Buyer does not grant to, convey to or confer upon Buyer a license or any other rights, express or implied, under any patent, copyright or other intellectual property right of EFD encompassed within, covering or relating to the Goods. All such intellectual property rights shall remain the property of EFD. To the extent that any intellectual property of EFD (whether in the form of drawings, maintenance manuals, operational manuals, or otherwise) is disclosed or otherwise made available by EFD to the Buyer in conjunction with the sale of the Goods to the Buyer, Buyer shall have a limited, fully paid up, irrevocable, non-exclusive license to use such intellectual property solely for the purpose of properly operating and maintaining the Goods. The Buyer shall not have the right to use such intellectual property for any other purposes, including (without limitation) the replication of the Goods or parts thereof. The Buyer shall not: (1) disclose such intellectual property to any third party; or (2) sub-license such intellectual property to any third party.

10.11 Recovery of Expenses. EFD shall be entitled to recover from Buyer all costs and expenses (including, but not limited to, reasonable attorney's fees) which are incurred by EFD in enforcing its rights under this Agreement, including, but not limited to, the recovery of any amounts owed by Buyer to EFD under this Agreement.

10.12 No Third Party Beneficiaries. There are no third party beneficiaries with respect to this Agreement between the Buyer and EFD, including (but not limited to) any customers of the Buyer or any affiliates of the Buyer.

10.13 No Nuclear Use. The Goods which are the subject of this Agreement shall not be used by Buyer or any third party in any nuclear installation or for the processing, handling, movement and/or storage of nuclear material. If any such use occurs, EFD disclaims all liability for any damages, injury or contamination relating to or arising out of such use. Buyer shall defend, indemnify and hold EFD harmless from any such liability, regardless of whether the claim is characterized as arising out of breach of warranty, contract, tort, strict liability, statutory liability, indemnity or otherwise.

1323340