

APEX Mechanical & Fabrication, Inc. Sales Terms & Conditions

1. THE CONTRACT BETWEEN SELLER AND PURCHASER.

- A. **Acceptance.** These terms and conditions in this document (including any written amendments thereto) constitute Seller's offer or counteroffer and acceptance thereof by Purchaser is expressly limited to such terms and conditions alone unless specifically agreed to otherwise in writing by Seller. Such offer or counteroffer is subject to prompt written acceptance by Purchaser and may be withdrawn by Seller at any time prior to Purchaser's acceptance or performance hereunder. Such offer or counteroffer by Seller becomes a binding contract either upon acceptance by Purchaser or Purchaser's performance, partial or complete, pursuant to this contract including payment of the goods or products called hereunder.
- B. **Modification or Amendment.** No amendment, modification, alteration, or addition, to any of the terms and conditions set forth in this document (including any written amendments thereto) shall be binding on Seller unless and until Seller has expressly agreed in writing thereto. If any document of Purchaser conflicts with, contradicts, or adds to any term or condition in this document (including any written amendments thereto), it is hereby rejected unless and until it is specifically agreed to in writing by Seller.
- C. **Entire Contract.** Except as otherwise may be expressly provided herein to the contrary, the terms and conditions in this document (including any written amendments thereto) set forth the entire Contract between Seller and Purchaser. Such terms and conditions, however, also include the Sellers quote, and any specification, industry or governmental standards, drawings, blueprints, instructions, notes, models, technical data or similar material which are specifically referred to herein (including any written amendments thereto) or attached hereto.

2. WARRANTY. Seller warrants its goods and products to be free from defects in material and workmanship, provided that they have been installed and used in accordance with recognized piping practice. Seller will either repair or replace, at its option and at no charge FOB point of manufacture, any goods or products found to be defective within (1) year of shipment provided Purchaser notifies Seller in writing immediately upon discovery of such defect and such written notification is received by Seller within the warranty period designated above. This limited warranty applies only to defects caused by materials or workmanship under Seller's control up to the time of shipment; defects or failures due to piping design, installation techniques, erosion or corrosion damage, materials supplied by others, or any factors beyond Seller's control are not subject to this warranty. THE LIMITED WARRANTY SET FORTH ABOVE CONSTITUTES

THE SOLE AND EXCLUSIVE WARRANTY OF SELLER. SELLER NEITHER MAKES NOR ASSUMES ANY OTHER WARRANTY, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE. NO OTHER WARRANTY EXPRESSED OR IMPLIED, MADE BY ANY REPRESENTATIVE OR AGENT OF SELLER SHALL BE BINDING ON SELLER.

3. PURCHASER'S EXCLUSIVE REMEDIES. EXCEPT AS OTHERWISE SPECIFICALLY SET FORTH IN WRITING HEREIN, PURCHASERS SOLE AND EXCLUSIVE REMEDY UNDER ANY LEGAL THEORY SHALL BE LIMITED TO REPAIR OR REPLACEMENT, AT SELLER'S OPTION, OF ANY GOODS OR PRODUCTS SOLD UNDER THIS CONTRACT. IN NO EVENT AND UNDER NO CIRCUMSTANCES SHALL SELLER BE LIABLE FOR ANY CONSEQUENTIAL, SPECIAL, INCIDENTAL, ECONOMIC OR PROPERTY DAMAGES OR LOSSES. THE FOREGOING STATES SELLER'S ENTIRE AND SOLE LIABILITY TO ANYONE INCLUDING PURCHASER AND THE PURCHASER'S EXCLUSIVE AND SOLE REMEDY.

4. PRICES. Unless otherwise agreed to in writing the prices set forth in this contract shall be adjusted to the Seller's prices in effect at the time of shipment, and are subject to change without prior notice to adjust for changes in labor costs, prices of materials, freight rates.

5. TAXES. Taxes imposed by any present or future law of Federal, State, County or Municipal authority on the manufacture, sale or use of the goods or products purchased hereunder are required to be paid by Seller shall be added to the amount to be paid by Purchaser. Any custom duties, taxes or related charges shall also be added to the amounts to be paid by Purchaser. Unless specifically provided otherwise in writing, the prices set forth in this contract do not include any such taxes, duties, or related charges. Buyer shall furnish evidence of exemption if applicable.

6. TERMS OF PAYMENT. Net 30 days with 1 1/2% interest per month charged on any past due balance.

7. CREDIT. Accounts will be opened and goods or products delivered only on approved credit. Seller reserves the right to refuse delivery at any time in whole or in part, except for cash, whenever in doubt as to Purchaser's financial condition.

8. FOB. Delivery of goods and products shall be FOB Seller's plant. The risk of loss or damage to the goods or products shall pass to Purchaser at the time the goods or products commence transportation from Seller's shipping point or points. Where the price is quoted "FOB freight allowed", price is based on the most economical rate for shipment to the specified destination. If a different means or different rate of shipment is later specified, the difference in cost will be to the Purchaser's account. Any extra charges connected with, related to or involved in transportation which Seller has not specifically agreed in writing to pay shall be the sole responsibility of Purchaser including, but not limited to, demurrage, special handling, storage and similar charges in the absence of shipping direction from Purchaser which are acceptable to Seller. Seller will use its discretion in selecting the method and mode of shipment.

9. FORCE MAJEURE. Seller shall not be responsible or liable for any delay or failure to deliver any of the goods or products provided for hereunder if such delay or failure results directly or indirectly from any act of God, war, riot, insurrection, embargoes, acts of civil or military authorities, fires, floods,

explosions, accidents, strikes, differences with workmen, delays in transportation, shortage of fuel, labor or materials, delays of suppliers, governmental restrictions, prohibitions or allocations (including any statute, ordinance, regulations, or order by any government or governmental body), or any other cause beyond the reasonable control of Seller whether or not similar to one or more of those herein specified but which prevents, hinders, or interferes with the manufacture, assembly, or delivery of the goods or products called for hereunder. Any such event or circumstance shall release Seller without penalty from performance, in whole or in part of its obligations under this contract. Under like circumstances, Purchaser shall be released from its obligation to accept and pay for the goods or products providing that actual notice in writing of such circumstances is received by Seller from Purchaser prior to the start of engineering, manufacture, or construction of the goods or products at issue. If Seller is partially excused from performance, either pursuant to the paragraph or pursuant to law including the provision of the Uniform Commercial Code, Seller shall not be required to make any allocation, shipments, or deliveries that would otherwise be required under applicable law. IN NO EVENT WILL SELLER BE LIABLE FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, ECONOMIC OR PROPERTY DAMAGES OR LOSSES CAUSED BY SELLER'S DELAY IN PERFORMANCE OR FAILURE TO PERFORM WHETHER EXCUSED OR NOT EXCUSED UNDER THE PROVISIONS OF THIS PARAGRAPH OR APPLICABLE LAW.

10. CANCELLATION. Orders may be canceled in whole or in part or deliveries deferred by Purchaser only with the prior written consent of the Seller and only upon such terms as will protect Seller from any loss in connection therewith. Purchaser shall pay a reasonable charge for such cancellation or delay which shall, at a minimum, cover the expenses of any direct and indirect commitments Seller has made to any third party, including any of its suppliers, and further providing a reasonable allowance for allocated production space, overhead, and profit. The cancellation charge payable by Purchaser will, in any event, be at least 15% of the net sales price.

11. DELAYS OR INTERRUPTIONS CAUSED BY PURCHASER. When Seller's production is delayed, interrupted, or stopped at Purchaser's request, or because Purchaser's materials, drawings, or specifications are late in coming, or because Purchaser's inspector does not arrive when scheduled, or for any other reason beyond Seller's control, then the following provisions apply. Seller may, at its option, fabricate Purchaser's order as far as possible. The work in process will then be set aside until the condition causing the delay, interruption, or stoppage has been eliminated or corrected to the Seller's satisfaction. Commencing with the time the work in process is set aside, Seller may invoice the Purchaser for materials and labor expended to that point and for any reasonable charges for storage. Upon the ultimate completion of such goods of product, Seller shall invoice Purchaser for all balances still due, plus the rehandling charge designated in the quotation or General Pricing Notes.

12. BACK CHARGES. Seller shall be notified promptly in writing of any material claimed to be defective and such material shall be held subject to Seller's inspection. No back charges for field correction of fabricated piping will be honored unless agreed to in writing prior to field correction. In no case will Seller's allowance for correction exceed the price for the unit or material or labor involved.

13. DESIGN. Except as otherwise specifically set forth herein, the Purchaser assumes all responsibility and liability for the design of any goods or products provided hereunder by Seller, in accordance with

any specification, industry or governmental standards, drawings, blueprints, instructions, notes, models, technical data or similar materials requested, provided, or proposed by Purchaser rather than by Seller.

14. PATENTS. Seller shall indemnify Purchaser against any liability for infringement of any United States patents arising out of the use of manufacture of Seller's goods or products, except if liability arises out of Seller's compliance with specifications or other materials furnished by Purchaser. The indemnification shall include the cost of defending any action alleging patent infringement, modifying or replacing the goods or product so it becomes non infringing, and/or procuring rights for the use or manufacture of such goods or product at Seller's sole option, provided that Purchaser promptly notifies Seller in writing of any claim or action alleging patent infringement.

15. INDEMNIFICATION AND CONTRIBUTION. Purchaser agrees to indemnify (and/or as allowable under applicable law make contribution) and hold Seller including any of Seller's suppliers affected thereby harmless against and to pay all loss, costs, damages and expenses (including reasonable attorney's fee) arising in connection with or as a result of the incorporation, combination or use of any goods or products purchased hereunder into or with any goods or products of Purchaser and resulting in any alleged or actual damage or injury to person or property asserted under any legal theory, resulting in any alleged or actual infringement of any patent, trademark, copyright or similar right, or resulting in any other alleged or actual damage or loss to person or property by whomsoever suffered.

16. RETURN OF GOODS.

- A. If Purchaser claims any goods or products furnished hereunder are not as ordered. Purchaser must notify Seller in writing within thirty (30) days of the Purchaser's
- B. receipt of the shipment or portion thereof at issue. Similarly, if Purchaser claims any shortage in the goods or products purchased hereunder, he must notify Seller in writing to this effect within thirty (30) days of receipt of the shipment or portion thereof at issue. Any claim submitted by Purchaser after such thirty (30) days period shall be deemed waived by Purchaser and Purchaser shall further be prohibited from asserting any such claim against Seller.
- C. No goods or products purchased hereunder shall be returned under any circumstances without Seller's written consent in connection with any return of goods for any reason. Purchaser shall pay all expenses in connection therewith including all transportation, storage, and related charges and further including any other charges specified as part of this contract including, but not limited thereto, any restocking charges assessed by Seller.

17. INSPECTION AND TESTING. Unless otherwise agreed to in writing by Seller, the goods or products covered hereunder may be inspected or tested by Purchaser only at the place of manufacture or at such other place or places as Seller, in its sole discretion shall designate. Inspection and testing degree, method, level and interpretation shall be as specified or referenced in the order acknowledgment and may not be changed without the Seller's prior written consent. Any such inspection or testing by Purchaser must be done in accordance with any reasonable conditions and rules specified by Seller and

must be completed no later than thirty (30) days after Purchaser receives the goods or products being tested. Purchaser further must notify Seller of any claimed rejection of goods or products so tested within thirty (30) days after their receipt by Purchaser. Thereafter, Purchaser shall be deemed to have waived and further to be prohibited from asserting any rejection or seeking the return of any such goods or products.

18. CESSATION OF BUSINESS BY PURCHASER. If Purchaser for any reason ceases to conduct its business or operation in the normal course of business (including inability to meet its obligations as they mature), or if Purchaser undergoes bankruptcy, insolvency, receivership, reorganization, or an assignment for the benefit of creditors, then Seller at its option may cancel without penalty any undelivered portion of the goods or products covered hereunder and may further demand the return from Purchaser (or any successor in interest) of any goods or products which have been delivered but which have not been paid for in full by Purchaser.

19. WAIVER. The failure of either Seller or Purchaser to insist on any occasion upon the performance of any term or condition of this contract or to exercise any such right or such term or condition, on any other occasion, nor shall any such failure be constructed as a waiver or relinquishment of any term or condition of the contract by either Seller or Purchaser.

20. SEVERABILITY. If any provision included in the terms and conditions set forth in this contract shall be deemed invalid, void, or unenforceable by a Court of competent jurisdiction, this contract shall be construed as though such provision does not appear herein. Any such finding by a Court of competent jurisdiction shall not affect the validity of any other term or condition of this contract.

21. LIMITATION OF ACTION. Without extending any other time period provided for in this contract, any controversy or claim arising out of or related to this contract, including but not limited to the breach thereof, must be commenced within one (1) year after the cause of action has occurred.

22. ADVICE. No statement or recommendation made, or assistance given, by Seller to Purchaser in connection with the use of any material by Purchaser shall constitute waiver by Seller of any provision hereof or affect Seller's liability as herein defined.

23. CHOICE OF LAW. This contract shall be construed, interpreted, and all rights of the parties determined in accordance with the laws of the State of Delaware.

24. HEADINGS. Each heading herein has been inserted for convenient reference only and shall not be utilized in any question of interpretation or construction of the terms and conditions of this contract.

COVID-19 Clause: Notwithstanding anything contained in any of the Bid Documents to the contrary, this bid is clarified and conditioned as follows:

1. It is understood that this bid is submitted during the worldwide pandemic of the coronavirus (COVID-19) as declared by the World Health Organization (WHO) in March 2020. Notwithstanding anything contained in any of the Bid or Contract Documents to the contrary, the Seller and Purchaser, or Subcontractor and Contractor (**the Parties**) agree that if a Purchase Order, Contract or Subcontract Agreement is executed during the worldwide pandemic of the coronavirus (COVID-19) as declared by the World Health Organization (WHO) in March 2020, the Parties will follow all applicable local, state and federal orders and regulations that are implemented as a result of COVID-19 as they pertain to performance of their respective obligations under the Contract Documents. The severity and impact of the continuing spread of COVID-19 is unknown at this time.
2. Any delays in the performance of any of the obligations of the Seller and/or Subcontractor under the Contract Documents that is attributable to COVID-19 (“Attributable to COVID-19”), including without limitation, (a) disruptions in the supply chain for materials, (b) disruptions in Subcontractor’s workforce, (c) new or amended laws, rules, regulations or recommendations with respect to the health, safety and environment, shall not result in or constitute a breach or default under any of the Contract Documents by Subcontractor and when such occurrence arises the Parties shall work together expeditiously to implement mitigation strategies and revised schedules and deadlines to take into account items (a), (b), or (c) as the case may be.
3. Seller and/or Subcontractor shall not be responsible for any losses or penalties incurred by Purchaser, Contractor or Owner as a result of delays in completing Subcontractor’s work that is Attributable to COVID-19.
4. Seller and/or Subcontractor shall not be liable to the Purchaser, Contractor or Owner for any delay or damages including consequential or liquidated damages, threatened, or assessed against the Contractor that are Attributable to COVID-19.
5. Seller and/or Subcontractor shall have the right to seek and to recover from Purchaser, Contractor or Owner any damages or losses, whether direct or indirect, arising from or related to any delay or acceleration to overcome delay and/or any impact or effect of such delays on work Attributable to COVID-19. No additional work shall be performed by Seller and/or Subcontractor until the Parties agree on the cost of such work. The Contract, Purchase Order or Subcontract Amount for the work to be performed by the Seller and/or the Subcontractor is conditioned on there being no labor increases or material escalation costs which might occur during the course of construction that is attributable to COVID-19

Market Volatility, Material, Equipment, Subcontract Price Escalation Clause: Notwithstanding anything contained in any of the Bid Documents to the contrary, this bid is clarified and conditioned as follows;

- a. In the event that, during the performance of this agreement, the price of labor, material, equipment, subcontracts, freight and/or any other necessary commodities

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significantly increases, through no fault of the Seller and/or Subcontractor, the price of any and all labor, material, equipment, subcontracts, components, or goods to be furnished under this agreement shall be equitably adjusted by an amount reasonably necessary to cover any such significant price increases. As used herein, a significant price increase shall mean any increase in price exceeding three percent (3%) experienced by the Seller and/or Subcontractor from the date of the execution of this agreement. Such price increases shall be documented through commercial quotes, invoices, receipts, or other such documentation. Where the delivery of materials, components, or goods required under this agreement is delayed, through no fault of the Seller and/or Subcontractor, as a result of price escalation and/or the shortage or unavailability of labor, equipment commodities, raw materials, components and/or products, Seller and/or Subcontractor shall not be liable for any additional costs or damages associated with such delay(s).

- b. In the event such delay materially impacts the project schedule the Seller and/or Subcontractor shall have the option, at its sole discretion, to terminate this Agreement and shall be reimbursed for any and all costs incurred by Seller and/or Subcontractor during the execution of the Work up through the date of termination and shall have no further liability under this Agreement.

BY signing below the Parties, (Purchaser & Seller and/or the Subcontractor and Contractor) accept the terms and conditions of this Contract and represent they are an officer of the Company or have been duly authorized by an officer of the Company to execute this binding Contract.

APEX Mechanical & Fabrication, Inc.
302 Falco Drive,
Newport DE, 19804

Authorized: _____

Date: _____

Client Name: _____

Address: _____

Authorized: _____

Date: _____