

TERMS AND CONDITIONS OF SALE

1. **CONTROLLING PROVISIONS:** ALL SALES ARE SUBJECT TO AND EXPRESSLY CONDITIONED UPON THE TERMS AND CONDITIONS CONTAINED HEREIN, AND UPON BUYER'S ASSENT THERETO. No terms and conditions other than the terms and conditions contained herein (hereinafter "Agreement") shall be binding upon Seller unless accepted by it in a writing signed by an employee of Seller with a title of Vice President or higher. All terms and conditions contained in any prior oral or written communication, including, without limitation, Buyer's purchase order, which are different from or in addition to the terms and conditions herein are hereby rejected and shall not be binding on Seller, whether or not they would materially alter this document, and Seller hereby objects thereto. All prior proposals, negotiations and representations, if any, are merged herein.

2. **PRODUCTS:** Unless otherwise agreed in writing, neither Buyer nor Seller is making any volume commitments, or commitments to each other for any particular duration, except as accepted by both parties in writing in the form of issued and accepted purchase orders that are legally binding on both parties. Buyer and Seller acknowledge that "blanket purchase orders" (and other similar communications) are not binding purchase orders but are instead non-binding forecasts outlining potential purchase orders that may or may not become binding on the parties.

3. **TERMS:** Buyer agrees to pay for the products according to the Seller's payment terms, and unless otherwise agreed in writing, payment terms are "due upon receipt of products." In the event Buyer fails to make any payment to Seller when due or if Buyer's credit is for any reason no longer acceptable, Seller may, at its discretion, consider this Agreement breached, accelerate all unpaid amounts, claim interest for delayed payments and/or cancel or suspend any pending deliveries to Buyer. The interest rate for delayed payments will be the highest rate permitted under applicable law. Buyer does hereby grant Seller a purchase money security interest in the products until such time as Seller is fully paid. Buyer will assist Seller in taking the necessary action to perfect and protect Seller's security interest.

4. **PRICES:** Prices shall be as agreed upon in writing by Buyer and Seller, and prices may be changed by Seller upon five (5) days prior written notice to Buyer. Any additional costs or fees not contemplated in the calculation of Seller's quotation, including without limitation, any associated with credit card or similar payments, any costs of performance bonds or other security, or any taxes, tariffs or other similar amounts, will be paid by Buyer.

5. **REMEDIES:** If any products supplied by Seller (or its agent or affiliates) are determined to be defective, Buyer's exclusive remedy will be either replacement of the defective product or receipt of a credit or refund for any purchase price paid. Buyer agrees that any of the following shall constitute an event of default which shall enable Seller, at its option, to cancel any unexecuted portion of the order or to exercise any right or remedy which it may have by law: (a) the failure of Buyer to perform any term or condition contained herein; (b) any failure of Buyer to give required notice; (c) the insolvency of Buyer or its failure to pay debts as they mature, an assignment by Buyer for benefit of its creditors, the appointment of receiver for Buyer or for the materials covered by this order or the filing of any petition to adjudicate Buyer bankrupt; (d) the death, incompetence, dissolution or termination of the existence of Buyer; (e) a failure by Buyer to provide adequate assurance of performance within ten (10) days after a demand by Seller, or (f) if Seller, in good faith, believes that Buyer's prospect of performance under this Agreement is impaired. All rights and remedies of Seller herein are in addition to, and shall not exclude, any rights or remedies that Seller may have in law or equity. In the event it becomes necessary to incur any expense for collection of any overdue account, reasonable collection charges, including reasonable attorneys' fees, will be added to the balance due and Buyer shall pay all such charges.

6. **DELIVERY:** Seller will make a good faith effort to complete delivery of the products as indicated by the parties in writing, but Seller assumes no responsibility or liability and will accept no backcharge for loss or damage due to delay or inability to deliver, whether or not such loss or damage was made known to Seller, including, but not limited to, liability for Seller's non-performance caused by acts of God, war, labor difficulties, accidents, inability to obtain materials, delays of carriers, contractors or suppliers or any other causes of any kind whatsoever beyond the control of Seller. Under no circumstances shall Seller be liable for any special, consequential, incidental, indirect, or liquidated damages, losses, or expense (whether or not based on negligence) arising directly or indirectly from delays or failure to give notice of delay or any other matter whatsoever.

7. **WARRANTY:** SELLER MAKES NO EXPRESS OR IMPLIED WARRANTIES. SELLER HEREBY DISCLAIMS ALL EXPRESS AND IMPLIED WARRANTIES, WHETHER IMPLIED BY OPERATION OF LAW OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS OR FITNESS FOR A PARTICULAR PURPOSE. UNDER NO CIRCUMSTANCES, AND IN NO EVENT, WILL SELLER BE LIABLE FOR PERSONAL INJURY OR PROPERTY DAMAGE OR ANY OTHER LOSS, DAMAGE, COST OF REPAIRS OR INCIDENTAL, PUNITIVE, SPECIAL, CONSEQUENTIAL, OR LIQUIDATED DAMAGES OF ANY KIND, WHETHER BASED UPON WARRANTY, CONTRACT, STRICT LIABILITY, NEGLIGENCE OR ANY OTHER CAUSE OF ACTION ARISING IN CONNECTION WITH THE DESIGN, MANUFACTURE, SALE, TRANSPORTATION, INSTALLATION, USE OR REPAIR OF THE PRODUCTS SOLD BY SELLER. BUYER HEREBY ACKNOWLEDGES AND AGREES THAT UNDER NO CIRCUMSTANCES, AND IN NO EVENT, SHALL SELLER'S LIABILITY, IF ANY, EXCEED THE NET SALES PRICE OF THE DEFECTIVE PRODUCT(S); NO ADDITIONAL ALLOWANCE SHALL BE MADE FOR THE LABOR OR EXPENSE OF REPAIRING OR REPLACING DEFECTIVE PRODUCTS OR WORKMANSHIP OR DAMAGE RESULTING FROM THE SAME. EXCEPT AS EXPRESSLY SET FORTH IN THIS PARAGRAPH, ALL PRODUCTS AND/OR SERVICES PROVIDED BY SELLER AND ITS EMPLOYEES AND AGENTS ARE PROVIDED "AS IS," "WHERE IS," AND "WITH ALL FAULTS."

8. **REPRESENTATIONS BY SELLER:** Buyer acknowledges that Seller does not make and specifically negates, renounces and disclaims any representations, warranties and/or guaranties of any kind or character, expressed or implied, with respect to (a) the products sold, their use, design, application or operation, their merchantability, their physical condition or their fitness for a particular purpose, (b) the maintenance or other expenses to be incurred in connection with the products, (c) the engineering, design, fabrication work or any other work or service (whether gratuitous or for payment) supplied by Seller and/or its agents, suppliers and employees or (d) the accuracy or reliability of any information, designs or documents furnished to Buyer. Seller neither assumes, nor authorizes any person to assume for it, any other obligation in connection with the sale of its products and/or rendering of its services. Any recommendations made by Seller concerning the use, design, application or operation of the products shall not be construed as representations or warranties, expressed or implied. Failure by Seller to make recommendations or give advice to Buyer shall not impose any liability upon Seller.

9. **INDEMNIFICATION:** Seller makes no promise or representation that the products or services will conform to any federal, state or local laws ordinances, regulations, codes or standards, except as particularly specified and agreed upon in writing by an authorized representative of Seller with the title of Vice President or higher. Seller shall not be responsible for any losses or damages sustained by the Buyer or any other person as a result of improper installation or misapplication of the products. Buyer shall defend, indemnify and hold harmless Seller and its agents and employees against any loss, damage, claim, suit, liability, judgment or expense (including, without limitation, attorney's fees) arising out of or in connection with any injury, disease or death of persons (including, without limitation, Buyer's employees and agents) or damage to or loss of any property or the environment, or violation of any applicable laws or regulations resulting from or in connection with the sale, transportation, installation, use or repair of the products by Buyer or of the information, designs, services or other work supplied to Buyer, whether caused by the concurrent and/or contributory negligence of Buyer, Seller or any of their agents, employees or suppliers. The obligations, indemnities and covenants contained in this paragraph shall survive the consummation or termination of this transaction.

10. **INSPECTION AND ACCEPTANCE:** Claims for damage, shortage or errors in shipping must be reported within one (1) day following delivery to Buyer. Buyer shall have seven (7) days from the date Buyer receives any

products to inspect such products and services for defects and nonconformance which are not due to damage, shortage or errors in shipping and notify Seller, in writing, of any defects, nonconformance or rejection of such products. After such seven (7) day period, Buyer shall be deemed to have irrevocably accepted the products, if not previously accepted. After such acceptance, Buyer shall have no right to reject the products for any reason or to revoke acceptance. Buyer hereby agrees that such seven (7) day period is a reasonable amount of time for such inspection and revocation. Buyer shall have no right to order any change or modification to any product or service previously ordered by Buyer or its representatives or to cancel any order without Seller's written consent and payment to Seller of all charges, expenses, commissions and reasonable profits owed to or incurred by Seller. Specially fabricated or ordered items may not be canceled or returned, and no refund will be made. The sole and exclusive remedy for merchandise alleged to be defective in workmanship or material will be the replacement of the merchandise subject to inspection by Seller.

11. **SHIPMENTS:** All products are shipped F.O.B., point of shipment. Risk of loss shall transfer to the Buyer upon tender of goods to Buyer, Buyer's representative, or common carrier. The cost of any special packing or special handling caused by Buyer's requirements or requests shall be added to the amount of the order. If Buyer causes or requests a shipment delay, or if Seller ships or delivers the products erroneously as a result of inaccurate, incomplete or misleading information supplied by Buyer or its agents or employees, storage and all other additional costs and risks shall be borne solely by Buyer. Claims for products damaged or lost in transit shall be made by Buyer to the carrier, as Seller's responsibility ceases upon tender of goods to Buyer, Buyer's representative, or common carrier.

12. **TAXES:** The amount of any sales, excise or other taxes, if any, applicable to the products shall be added to the purchase price and shall be paid by Buyer unless Buyer provides Seller with an exemption certificate acceptable to the taxing authorities. Any taxes which Seller may be required to pay or collect under any existing or future law, upon or with respect to the sale, purchase, delivery, storage, processing, use or consumption of any of the products, including taxes upon or measured by the receipts from the sale thereof, shall be for the account of the Buyer, who shall promptly pay the amount thereof to Seller upon demand.

13. **SET-OFF:** Buyer shall not be entitled to set-off any amounts due Buyer against any amount due Seller in connection with this transaction.

14. **CONFIDENTIALITY:** Buyer and Seller agree that all information provided by one party to the other is proprietary and confidential information ("Confidential Information"), and the parties agree to keep secret and confidential all of the other party's Confidential Information. Notwithstanding the foregoing, Confidential Information does not include information that (a) was lawfully known to or in the possession of the receiving party at the time of its disclosure by the disclosing party or its affiliates; (b) was or becomes publicly available or publicly known through no fault, wrongful act or omission by the receiving party or any of its affiliates; (c) was received by the receiving party from a third party who has a right to disclose the Confidential Information and such third party does not have a confidential relationship or obligation to the disclosing party or its affiliates and without breach of the restrictions contained in this Agreement; (d) was independently developed by the receiving party without access to or use of the disclosing party's Confidential Information or a breach of this Contract; (e) was approved for release in writing by the disclosing party; or (f) must be disclosed in accordance with applicable law with prior notice to the disclosing party as soon as possible. Relevant Confidential Information may be provided by the parties to their independent auditors and attorneys.

15. **FORCE MAJEURE.** To the extent Seller is not able to perform its obligations after having undertaken reasonable efforts to do so, Seller will be excused from performance to the extent that performance is prevented by causes beyond Seller's reasonable control, including but not limited to natural disasters and other acts of God, civil disturbances, war, terrorism, pandemic flu or other sickness or endemic, or substantial disruption of telecommunications or other essential services.

16. **GOVERNING LAW AND VENUE:** This Agreement and all transactions between Buyer and Seller shall be governed in all respects by the laws of the State of Michigan without regard to conflict of law and choice of law provisions. All actions, regardless of form, must be brought against Seller within the applicable statutory period, but in no event more than ONE (1) YEAR after the date of invoice, and must be brought in the state or federal courts of Michigan, and Buyer consents to the jurisdiction of said courts. Each party waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in respect of any suit, action or proceeding relating to this Agreement. Each party (a) certifies that no representative, agent or attorney of the other party has represented, expressly or otherwise, that such other party would not, in the event of such a suit, action or proceeding, seek to enforce the foregoing waiver, and (b) acknowledges that it and the other party have been induced to enter into this Agreement by, among other things, the mutual waivers and certifications in this section.

17. **MISCELLANEOUS:** The parties agree that the United Nations Convention on Contracts for the International Sale of Goods is specifically excluded from application to this Agreement. No modification or waiver of this Agreement shall be valid unless the same is in writing and signed by the party against which the enforcement of such modification or waiver is sought. This Agreement represents the entire agreement by the parties regarding the subject matter hereof, and this Agreement supersedes and replaces any prior conflicting agreements. The failure of either party at any time to exercise any of its rights under this Agreement will not be deemed to be a waiver of those rights or any other rights hereunder. If any provision in this Agreement is or becomes invalid under any applicable law or regulation, the provision will be deemed amended so as to make it enforceable. Alternatively, if any court of competent jurisdiction finds that any provision is unenforceable, and the provision cannot be amended so as to make it enforceable, the finding will not affect the enforceability of any of the other provisions in the Agreement. Any headings used herein are for convenience only and shall not affect the interpretation of the substantive provisions of this Agreement. The fact that one party or the other shall have prepared this Agreement shall be disregarded in the construction of its terms. In the event of litigation arising out of this Agreement, the prevailing party (as determined by the court having jurisdiction) shall be entitled to recover its fees and costs (including attorney fees and costs) from the non-prevailing party.

Atlas Oil Company & Affiliates
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