

Terms and Conditions

WHRL SOLUTIONS LLC. CONDITIONS AND TERMS OF SALE

1. APPLICABLE TERMS. The terms and conditions set forth below express the complete and entire agreement between WHRL Solutions LLC and any purchaser of WHRL Solutions LLC. equipment and/or services, hereinafter known as Seller and Buyer respectively. No prior agreements, negotiations or representations made by Seller or any authorized representative of Seller shall be deemed to affect, alter, modify, amend or supplement the terms and conditions herein. None of the terms and conditions contained herein may be amended, supplemented, modified, superseded or otherwise altered without the prior written consent of Seller (or an authorized representative of Seller). This Agreement and Seller's liability hereunder are expressly conditioned upon Buyer's assent to the terms and conditions contained herein. Seller hereby objects to, and rejects, any and all additional or different terms proposed by Buyer, whether or not contained in Buyer's request for quotation, purchase order, purchasing or shipping release forms.

2. QUOTATION AND ORDER. Quotations do not include taxes, excises or levies which may be payable as described in Section 12 herein. Quotations shall be effective for thirty (30) days from the date of the quotation, and shall become invalid in the event that the order resulting from such quotation is not shipped by Seller to the shipping address provided by Buyer within five (5) months from the date of the quotation. Orders must be made in writing on Buyer's purchase order form of letterhead, must be accompanied by the plans and specifications used for the quotations if submitted by Seller, and must specify a shipping address. The preparation and submission of submittal documents by Seller does not constitute acceptance of Buyer's order by Seller. Orders become binding only upon Seller's written acceptance as evidenced by Buyer's receipt of an executed order confirmation ("Seller's Acceptance") of the purchase price ("Purchase Price").

3. PAYMENT. Payment terms are net thirty (30) days from date of Seller's invoice to Buyer. No retention or discounts shall be permitted. Buyer shall make payment of Seller's invoices directly to Seller or to Seller's designee as indicated on the invoice. Payment not received within thirty (30) days from the date of invoice, and unauthorized retentions and discounts, shall be subject to an interest charge of one and one-half percent (1.5%) per month, or the highest rate permitted by law applicable to this transaction, if less. Orders over \$50,000.00 shall require a fifty percent (50%) deposit by Buyer at the time that the purchase order is issued by Buyer to Seller and an additional twenty-five percent (25%) payment prior to shipment of the order. Irrevocable letters of credit payable at sight for the full purchase amount shall be required for any Buyer located outside the United States.

4. SHIPMENT. Upon Seller's delivery to Shipper, as defined below in this Section 4, of the equipment ordered herein ("Order"), Seller shall cease to be responsible for any loss of or damage to the order. In addition to the Purchase Price, Seller may charge Buyer a fee for non-continuous shipment of an Order. Seller shall not be responsible for spotting, switching or drayage charges at destination. Unless Buyer designates in writing a specific mode of shipment of the Order, shipment shall be made by any reasonable means of transportation at the direction of Seller for the account of Buyer; and at Seller's discretion, shipment may be made freight collect. Delivery of the order to a

carrier for transportation to Buyer ("Shipper") shall constitute delivery to Buyer, and Shipper shall be deemed Buyer's agent for such purpose. Any claims that Buyer may have for damages to, or loss of, Order shall be made directly to Shipper. Shipment date of Order is to be calculated from the date of Seller's Acceptance.

5. SELLER'S CREDIT APPROVAL. All shipments and deliveries shall be subject to approval of Seller. Seller reserves the right, prior to delivering the Order to Shipper, to require from Buyer satisfactory security for performance of Buyer's obligations. If Buyer fails to fulfil the terms of payment in accordance with Section 3 herein, or Buyer's financial condition becomes unacceptable to Seller, then Seller may defer or decline to deliver the Order to the Shipper unless and until Seller receives satisfactory security or cash payment in advance. In the event that Seller does not receive satisfactory security or cash payment in advance, Seller may terminate this Agreement without liability to Buyer in accordance with the termination provisions provided herein. No failure by Seller to exercise any rights accruing from any default of Buyer hereunder shall impair Seller's right with respect to any subsequent default by Buyer of either the same or a different kind.

6. CHANGES IN DRAWINGS OR DIMENSIONS. Buyer shall reimburse Seller for the reasonable value of work required by reason of changes or revisions to drawings or dimensions ("Changes to the Work") including, but not limited to, all costs or expenses incurred by Seller.

7. INSPECTION. In the event that Buyer reserves the right to inspect the Order prior to acceptance of the Order, inspection and acceptance must be made before Seller delivers Order to Shipper.

8. PRODUCT DESIGN. Seller does not assume responsibility for, nor warrant, the performance or accuracy of Buyer's furnished design, design criteria, or specifications.

9. WARRANTY. THE IMPLIED WARRANTIES OF MERCHANTABILITY AND OF FITNESS FOR A PARTICULAR PURPOSE AND, EXCEPT AS SPECIFICALLY SET FORTH IN THIS SECTION 9, ALL OTHERS' WARRANTIES AND REPRESENTATIONS, EXPRESSED OR IMPLIED, ARE HEREBY DISCLAIMED AND EXCLUDED BY THIS AGREEMENT. Seller warrants to the original Buyer only that the Order sold hereunder will substantially conform to Seller's specifications as furnished to Buyer. Any equipment or material not in substantial conformance with Seller's specifications shall be deemed "Defective Equipment". The foregoing warranty shall be in effect only for a period of twelve (12) months from the date of completion of testing of the Order, but in no event more than twelve (12) months from the date of shipment of the Order; provided, however, that Buyer has given to Seller written notice that Buyer claims the Order to have Defective Equipment within ten (10) days from the date that Buyer discovers, or should have discovered, a defect in the Order and, further, that Buyer has afforded Seller a reasonable opportunity to inspect the Order after written notice was given. The above warranty shall not apply to any equipment, or components thereof, which have been subject to abnormal or improper use, negligence or accident or which have been altered or repaired by other than Seller.. No Order or portion of Order shall be returned without written permission from Seller. Seller warrants that its title to the Order is good and that transfer thereof is rightful. Nothing shall be construed as an additional warranty unless specifically designated as such in writing and signed by Seller ("Additional Warranty"), in which case the Additional Warranty shall be subject to the provisions of Section 9 as to duration and limitation of remedy, unless the Additional Warranty

expressly amends such provisions. All labour warranty coverage provided by the Seller is based on normal ground mounted equipment with proper clearance and equipment access. The Buyer is responsible for any additional costs associated with special rigging or access platforms required to perform the warranty work and/or any additional labour cost associated with delays caused by the Buyer which prevent the Seller's service technician from performing their repair work in a proper timely manner. Seller's obligation under warranties contained in this Section 9, and in any other provision of this Agreement determined to constitute a warranty by Seller, and Buyer's remedies for any Defective Equipment shall be limited solely to the repair or replacement, as elected by Seller, of the Defective Equipment, and in no event shall Seller's liability exceed the Purchase Price. Return of Defective Equipment or components thereof, shall be prepaid. Replacement shall be F.O.B. Seller's plant or at such point as Seller designates. IN NO EVENT SHALL SELLER BE LIABLE AS A RESULT OF THIS TRANSACTION FOR ANY DAMAGES UNDER ANY THEORY, DOCTRINE, OR CAUSE OF ACTION SOUNDING IN TORT INCLUDING, BUT NOT LIMITED TO, STRICT LIABILITY, NEGLIGENCE OR PRODUCT LIABILITY. IN NO EVENT, WHETHER BECAUSE OF A BREACH OF WARRANTY OR REPRESENTATION OR ANY OTHER CAUSE, WHETHER BASED UPON CONTRACT, TORT, WARRANTY OR OTHERWISE, ARISING OUT OF THE PERFORMANCE OR NON-PERFORMANCE BY SELLER OF ITS OBLIGATIONS HEREUNDER, SHALL SELLER BE LIABLE TO THE BUYER FOR LOST EARNINGS, INCOME OR PROFITS, OR SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR ANY OTHER DAMAGES.

10. MODIFICATIONS TO THE PROJECT. Buyer is not authorized to modify, repair or alter the Order except at its own risk, and no back charges shall be allowed for any such modification, repair, or alteration without Seller's prior consent. Seller shall not be responsible for any time delays or additional charges incurred by reason of Buyer's desire to modify, repair or alter the Order.

11. FORCE MAJEURE. In the event that Seller's performance of any provision under this Agreement is delayed, interfered with, or prevented by war, fire, flood, earthquake, acts of God, strike, material shortages, disputes with employees, accident, law, order regulation, requisition of the government of the United States of America or any agency thereof, or any other cause beyond the reasonable control of Seller, the Seller, at its option, will be relieved from further performance under this Agreement, whether or not such cause is operative at the time the Agreement is made. In the event that Seller elects to complete its performance, the time of performance on the part of Seller shall be extended for such period as may be necessary to enable it to complete the Order after such cause has been removed.

12. TAXES. All federal, state, and local excises, levies and 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, consumption or transportation of the Order, or any portion of the Order ("Taxes"), shall be on behalf of Buyer, and Buyer agrees to reimburse Seller for said Taxes in accordance with the payment terms specified herein and in addition to the Purchase Price.

13. TERMINATION FOR CONVENIENCE. Upon Seller's Acceptance, Seller shall commence design, purchase of materials, and manufacture of equipment (the "Work"). Seller or Buyer may

terminate this Agreement for any reason upon seven (7) days written notice to the other party. Buyer and Seller agree that Seller would incur expenses from termination by Buyer, or by Seller for cause, and agrees to liquidate Seller as follows: Seller shall be entitled to a termination fee equal to twenty-five percent (25%) of the Purchase Price in the event that Seller is less than fifty percent (50%) complete with the Work, including all Changes to the Work; and to a termination fee equal to thirty-five percent (35%) of the Purchase Price if Seller is more than fifty percent (50%) completed with the Work. This termination fee is in addition to all monies due and owed to Seller for Work performed and materials purchased prior to the date of termination, even though not invoiced, and all other legal and equitable remedies resulting from Buyer's termination. Buyer shall not be entitled to compensation for Seller's termination.

14. DEFAULT. The occurrence of any of the following without prior written consent of Seller shall constitute an event of default by the Buyer:

- a) Failure by Buyer to make payment due to Seller within thirty (30) days after date of invoice;
- b) Buyer's filing of a voluntary petition or having an involuntary petition filed against Buyer for any bankruptcy or insolvency proceedings;
- c) Buyer's refusal to sign a change order for a change in the Work as defined herein;
- d) Buyer's refusal to remove asbestos or other hazardous material required by the Work;
- e) Buyer's failure to pay a termination fee as defined herein; or
- f) any other breach of the terms and conditions of this Agreement.

Seller shall be entitled to collect its reasonable attorney's fees and costs resulting from Buyer's breach of any of the terms of this Agreement or Seller's enforcement of the terms of this Agreement including, but not limited to, fees incurred from settlement discussions, inspections, fact gathering, arbitration proceedings, and litigation proceedings.

15. REMEDIES. Upon the occurrence of an event of a default or at any time thereafter, Seller may, without waiving its rights to assert any other legal or equitable remedy, refuse to furnish service to Buyer, including, but not limited to, any warranty service; termination of this Agreement by seven (7) calendar days' written notice to Buyer; and/or pursue all legal or equitable remedies including, but not limited to, a filing of an arbitration demand, lawsuits, mechanic's lien claim, or foreclosure of mechanic's lien lawsuit. The failure of Seller to exercise any or all of these rights does not waive in any way Seller's available legal or equitable remedies at any time.

16. ARBITRATION. Any claim or controversy arising out of, or related to, this Agreement or the breach thereof, except for mechanic's lien claims, shall be settled by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator or arbitrators may be entered in any court having competent jurisdiction. Such claims or controversies shall be subject to arbitration upon written demand by either party. Arbitration shall not be commenced later than the applicable statute of limitations. Claims in excess of \$50,000.00 shall not be subject to arbitration upon Seller's discretion only and may, at Seller's sole option, be asserted in a court of law having competent jurisdiction. All such arbitration or litigation proceedings shall take place in Erath County, Texas.

17. APPLICABLE LAW. This Agreement has been made and delivered in Texas and all obligations of Seller and Buyer hereunder shall be deemed to have been performed in Texas. The transaction contemplated hereby shall be governed by and construed in accordance with the laws of the State of Texas.

18. MISCELLANEOUS. This Agreement contains the entire understanding of Buyer and Seller and supersedes all prior negotiations, agreements and proposals. The laws of the State of Texas shall govern this Agreement and any arbitration or litigation which may result from an alleged breach of this Agreement shall take place in Erath County, Texas provided, however, mechanic's lien foreclosure actions shall take place in the county where the site is located. A modification, amendment, release or waiver of any provision of this Agreement shall be effective only if made in writing and signed by the party to be bound thereby; except for Changes to the Work. The terms in this Agreement shall supersede any terms and conditions of any other document which may apply to the transaction between the Buyer and Seller. Any term of this Agreement found to be unenforceable shall not invalidate the remainder of this Agreement. The person signing this Agreement on behalf of Buyer represents that he or she has the power and authority to enter into and bind Buyer with respect to this Agreement.