

**Special Mine Services, Inc.  
Standard Terms and Conditions**

**CONTRACT AND ACCEPTANCE**

The terms and conditions of sale ("Terms") apply to all sales from Special Mine Services, Inc. ("Seller" or "SMS") to the entity placing the order ("Buyer") and the Terms will prevail over any inconsistent terms of Buyer's purchase order or other documents. Additional or different terms and conditions in any way altering or modifying these Terms are expressly objected to by SMS and will not bind SMS unless specifically accepted in writing by SMS' authorized representative. NO modification or alteration of these Terms will result by SMS' shipment of products following receipt of Buyer's purchase order, or other document containing additional, conflicting, or inconsistent terms. There are no terms, conditions, agreements other than those stated herein and on SMS' acknowledgment of the order ("Acknowledgement"), and all prior proposals and negotiations are merged herein. These Terms are binding on SMS and Buyer and their respective successors and permitted assigns. Notwithstanding the foregoing, if the parties have entered into a distribution agreement, the terms of the distribution agreement may alter and modify these Terms, if so stated in the distribution agreement. SELLER'S ACCEPTANCE OF BUYER'S PURCHASE ORDER IS EXPRESSLY CONDITIONED ON BUYER'S ASSENT TO THESE TERMS. The failure of Seller to object to any provision in conflict herewith whether contained on Buyers purchase order or otherwise, shall not be construed as a waiver of these Terms nor as an acceptance thereof.

**PRICES**

All quotations expire 30 calendar days from the date of quotation unless withdrawn sooner. Prices of products scheduled for shipment more than 12 months after the date of Buyer's order shall be subject to escalation. Unless otherwise expressly stated, all prices are in United States Dollars and payment shall be in United States Dollars.

**PAYMENT TERMS**

Unless otherwise specified on the SMS order acceptance form, upon approved credit the following terms will apply:

1. 1% cash discount within ten days of invoice date.
2. Net 30 days.

Seller reserves the right to require advanced payment or satisfactory security for any product purchased, if the financial performance or credit worthiness of Buyer is unsatisfactory to Seller. [Such security includes, but is not limited to, execution by Buyer of a promissory note, security agreement, financing statement and/or personal guaranty.] If Buyer fails to make timely payment or otherwise fails to comply with any provision hereof, Seller may, at its option (and in addition to other remedies), cancel any unshipped portion of the order; in such event, Buyer will remain liable for all unpaid accounts.

### **SHIPPING SCHEDULE**

Seller will establish estimated shipping schedules as closely as practicable in accordance with Buyer's requested delivery date. However, Seller will not be responsible for deviations in meeting shipping schedules nor for any losses or damages to Buyer (or any third person) occasioned by any Force Majeure event, as defined herein. Seller reserves the right to ship in advance of any Buyer request dates, except those dates stipulated not before. SMS may make partial shipments at its discretion, invoicing each shipment as it is made but on terms applicable to the complete order.

Should shipment be held beyond scheduled date for the convenience of Buyer, the Seller reserves the right to bill immediately for the products and to charge Buyer for all expenses incident to such delay.

### **TAXES & IMPORT AND EXPORT DUTIES**

Unless the shipping terms in the Seller's Acknowledgement specify differently, Seller's prices do not include, and Buyer shall pay for: any applicable sales, use, excise or similar taxes, or any import or export duties, freight (unless otherwise specified herein), insurance and inspection charges, or any other fees, duties or charges incurred in connection with any products ordered. If, under any law or governmental requisition the Seller is required to pay or collect any tax, or any import or export duties or charges, upon the products included in the order or predicated upon, measured by or arising from the sale, transportation, delivery, use of consumption of said products whether directly or indirectly, the price to be paid by the Buyer hereunder shall be increased by the amount of any such tax, duty, or charge. Buyer agrees to pay such tax, duty, or charge as part of the purchase price.

### **ADDITIONS AN/OR CHANGES**

Buyer shall pay Seller's reasonable charges for changes in contract quantities, schedules, materials or services agreed to by Seller.

### **TERMINATION**

In the event that Buyer terminated all or any portion of its order, Seller shall have the right to charge Buyer for all costs already incurred by Seller including the price of any goods or services required to fill this order already committed to by Seller and a reasonable allowance for overhead and profit. Seller in its sole discretion shall have the right to manufacture the products provided hereunder as far in advance of its estimated shipping schedule as it deems appropriate.

### **CLAIMS, SHORTAGES, RISK OF LOSS, AND TITLE**

Any claims for loss, breakage or damage (obvious or concealed) are Buyer's responsibility and should be made to the carrier. Seller will render Buyer reasonable assistance in securing satisfactory adjustment of such claims.

Any notice of shortages or other errors must be made in writing to Seller within 15 days after receipt of shipment. Failure to give such notice shall constitute unqualified acceptance and a waiver of all claims by Buyer.

Risk of loss will pass to Buyer pursuant to the applicable Incoterm or other shipping term, and if no Incoterm/shipping term is used, risk of loss will pass on delivery to the common carrier at SMS at the point of shipment. Shipment will be made by surface freight unless instructed to do otherwise by Buyer. Title to the products sold hereunder passes to Buyer upon payment of the full purchase price.

#### **WARRANTIES**

All of Seller's drawings, descriptive matter, weights, dimensions, descriptions and illustrations contained in Seller's catalogues, price lists, or advertisements are approximate only and intended merely to give a general idea of the products described therein and do not form part of the parties' agreement. Notwithstanding the foregoing, the Seller warrants that the ordered products that were manufactured by SMS conform to any applicable drawings and specifications accepted in writing by Seller and will be free from any defects in material and workmanship for a period of 12 months from the date of installation. If, within that period, the Seller receives from Buyer written notice of any alleged defect in or non-conformance of any product, and it, in the Seller's sole judgement the product does not conform or is found to be defective in material or workmanship, then, Buyer shall, at Seller's request, return the part or product F.O.B. Seller's Factory, and Seller, at its option and expense, shall repair or replace the defective part or product or repay to Buyer the full price paid for such part or product by Buyer. Any purchase price repayment shall be without interest. Seller's sole responsibility, and Buyer's exclusive remedy hereunder shall be limited to such repair, replacement, or repayment of the purchase price as above provided.

Component parts and accessories not of the Seller's manufacture are warranted only to the extent that they are warranted to the end user by the manufacturers thereof.

**THERE ARE NO OTHER WARRANTIES, EXPRESS, STATUTORY OR IMPLIED, INCLUDING THOSE OF MERCHANTABILITY AND OF FITNESS FOR PURPOSE; NOR ANY AFFIRMATION OF FACT OR REPRESENTATION WHICH EXTENDS BEYOND THE DESCRIPTION OF THE FACT HEREOF.**

The warranties of Seller do not cover and Seller makes no warranty with respect to:

1. Failures not reported to Seller within the warranty period specified above;
2. Failure or damage due to misapplication, abuse, improper installation, abnormal conditions of temperature, water, dirt or corrosive matter;
3. Failures due to operation above rated capacities or in an otherwise improper manner;
4. Products which have been in any way tampered with or altered by anyone other than an authorized representative of Seller; and
5. Products damaged in shipment or storage or otherwise without fault of Seller.

Claims for expenses of Buyer relating in labor and/or material supplied by Buyer (commonly known as “Back charges”) will not be honored by Seller unless Buyer obtains Seller’s prior written consent to supply such labor and/or material.

### SHIPMENT AND DELIVERY

1. All products are sold on such Incoterms or other shipping terms that are indicated on the Seller’s Acknowledgement. If no Incoterms are indicated on the Seller’s Acknowledgement, all material is sold CPT (Incoterms 2020)
2. For all individual orders of products manufactured by SMS (“SMS products”) for a net total of \$5,000 or more, freight will be prepaid to any free delivery point on a common carrier in the continental United States or Canada. No freight allowed for orders of SMS products under \$5,000 or for products manufactured by a third party. Such orders will be shipped freight collect or prepaid by Buyer. No freight allowance will be made on shipments forwarded collect at Buyer’s request.
3. SMS will use its own discretion in routing all shipments upon which it assumes transportation charges. Where practical to do so, shipment will be made in any manner requested by Buyer if Buyer will assume the extra transportation cost.
4. Partial shipments of SMS products at Buyer’s request must each total \$5,000 or more for prepaid transportation. No freight allowed for any partial shipments under \$5,000. Such orders will be shipped freight collect or prepaid by Buyer, unless otherwise agreed.
5. SMS will not assume, allow, or pay any charges for cartage.
6. Buyer should inspect all materials upon receipt as all claims for damage, errors, or shortages, other than attributable to the transit handling, must be made by Buyer within 15 days from receipt of shipment at destination. Failure to make such claims within a 15-day period shall constitute irrevocable acceptance of the material.
7. Orders received with a “HOLD” (for release, for approval, etc.) are not processed for manufacture until release is given. Normal shipping times apply starting from time of release.

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### RETURN POLICY

To qualify for a return, all products require a Return Authorization Number (RMA) prior to being returned, must be 100% complete, in the same condition as when sold and in the original packaging as provided by the manufacturer. All packaging materials, accessories and documentation must be included. Used parts will not be accepted. All returns will be inspected and products found to be non-conforming will be rejected. All returns are subject to a 25% restocking fee. Products returned without an RMA will be denied. An RMA must be requested from SMS within 180 days of the product purchase and the request must include the purchase order number or invoice number. Returns of specially made to order items is not subject to this return policy and will be handled by SMS on a case-by-case basis.

SMS is not responsible for products returned that are lost, broken, or damaged in transit. Freight and handling charges, both to and from SMS' warehouse will be paid by Buyer and are non-refundable.

Refunds will be issued within 45 days from receipt of accepted items and in the same form as payment originally used for purchase. Refunds may be either in the form of credit towards future purchases from SMS, or: (a) for credit card purchases, a refund back to the credit card in U.S. funds; or (b) for purchases paid for by check, a refund in the form of a check in U.S. funds. The refunded value for each item returned will be reduced to reflect the amount of any term discount previously taken when payment was made. If applicable, the appropriate tax amount for each item will be included with your refund. An additional deduction may be taken for any freight expense incurred by SMS when the product was originally shipped.

If SMS, at its sole discretion, decides to accept a non-qualified item for return, a restocking fee of 35% will be assessed.

Note: some manufacturers have implemented return restrictions that prevent SMS from being able to accept returns or offer exchanges, replacements or credits on their products for any reason. If this is the case, an RMA will not be issued.

#### **PATENT INDEMNITY**

Seller agrees that it will indemnify Buyer for all damages or costs resulting from any suit or demand alleging that the structure of a product or any part thereof manufactured by Seller infringes on any United States patent of plaintiff, if Seller is notified promptly in writing of such suit or demand and given adequate authority, information and assistance for the defense of name, provided, however, that Seller at its own option and expense shall have the right to settle such suit or demand either by procuring for Buyer the right to continue using the product or part thereof, or by replacing same with non-infringing product; or by modifying the same so that it becomes non-infringing; or by removing the alleged infringing product and refunding the purchase price. This indemnification clause does not apply to any product or part thereof made to Buyer's design or the design of which has been modified by Buyer or to any process in which the product may be used by Buyer or to any product which may be produced by the use of the product. As to any product or part thereof made to the Buyers design or the design of which has been modified by Buyer, Buyer agrees that it will indemnify Seller for all damages or costs resulting from any suit or demand alleging infringement of any United States patent which claims the structure of such product or any part thereof.

#### **LIMITATION ON LIABILITY**

Seller's responsibility for any claims, damages, losses or liabilities arising out of or related to its performance of Buyer's order or the products covered hereunder shall not exceed the purchase price. In no event shall Seller be liable for any special, indirect, incidental or consequential damages of any character: including,

but not limited to, loss of use of productive facilities or equipment, lost profits, property damage, expenses incurred in reliance on Seller's performance hereunder, or lost production, whether suffered by Buyer or any third party. Seller disclaims all liability for any and all costs, claims, demands, charges, expenses, or other damages, either direct or indirect, incident to all property damages arising out of any cause of action based on strict liability.

#### **MODIFICATION, RESCISSION AND WAIVER**

This contract may not be modified or rescinded nor any of its provisions waived unless such modification, rescission or waiver is in writing and signed by an authorized representative of Seller.

#### **MISCELLANEOUS**

Seller reserves the right to furnish substitutes for products which cannot be reasonably obtained because of any restrictions, voluntarily or compulsorily established by or in connection with any governmental authority or program. Seller may during any periods of shortage due to causes beyond the control of Seller or its suppliers, prorate its supply of products among all of its Buyers in such manner as may be deemed equitable in the sole judgement of Seller. Seller shall not incur any liability to Buyer because of any proration hereunder.

All orders must be accepted by an authorized representative of Seller. The rights and duties of the parties and construction and effect of all provisions hereof shall be governed by and construed according to the internal laws of Illinois, without reference to its choice of law provisions, provided that the parties agree to exclude the application of the United Nations Convention of Contracts for the International Sale of Goods (1980), and that all matters relating to arbitration will be governed by the Federal Arbitration Act (9 U.S.C. §§ 1 et seq.) and not by any state arbitration law.

Failure of Seller to insist in any one or more instances upon the performance of and of the terms and conditions of this contract or the failure of Seller to exercise any of its rights hereunder shall not be construed as a waiver or relinquishment of any such term, condition, or right hereunder and shall not affect Seller's right to insist upon strict performance and compliance with regard to any unexecuted portions of this contract or future performances of these terms and conditions.

#### **NUCLEAR SALES**

The products sold hereunder are not designed or manufactured for use in or with any atomic installation or activity.

#### **FORCE MAJEURE**

Seller will not be liable for: delays in shipment, default in delivery, Seller's non-performance of any obligations hereunder, or loss or damage to the products, caused directly or indirectly by any cause beyond Seller's or its suppliers' or subcontractors' reasonable control including, but not limited to, (a) government

action, war, riots, civil commotion, acts of terrorism, embargoes or martial laws, (b) Seller's inability to obtain necessary materials from its usual sources of supply, (c) shortage of labor, raw material, production or transportation facilities or other delays in transit, (d) labor difficulty involving employees of Seller or others, (e) epidemic, fire, flood or other casualty, or (f) other contingencies of manufacture or shipment. In the event of any delay in Seller's performance due in whole or in part to any cause beyond Seller's reasonable control, Seller shall have such additional time for performance as may be reasonably necessary under the circumstances. Acceptance by Buyer of any goods shall constitute a waiver by Buyer of any claim for damages on account of any delay in delivery of such goods.

#### **ARBITRATION**

Any controversy or claim arising out of or relating to this agreement shall be determined by arbitration in accordance with the Arbitration Rules (the international rule if Buyer is located outside the U.S.A) of the American Arbitration Association. The arbitration proceedings shall be held before a one-member arbitral tribunal in Chicago, Illinois, U.S.A. and shall be conducted in the English language. The arbitrator shall be experienced in distribution matters. This arbitral tribunal shall apply the substantive laws set forth in these terms and conditions and shall render a written opinion of its decision. Seller and Buyer agree that arbitration will be conducted on an individual, not class-wide basis, and that an arbitration proceeding involving Seller and Buyer may not be consolidated with any other arbitration proceeding involving Seller or Buyer and another party. Any award of such arbitration tribunal shall be final and binding upon the parties to this agreement and non-appealable, except as provided by law or precedent, and shall be enforced in any court having competent jurisdiction.

#### **U.S.A. EXPORT CONTROLS**

Regardless of any disclosure made by Buyer to Seller of an ultimate destination for the good, Buyer acknowledges that goods being sold to Buyer are subject to United States export control laws. Buyer acknowledges that diversion contrary to United States law is prohibited and that it may not re-export the goods to any country or end-user subject to any United States trade embargo or otherwise ineligible to receive United States goods. Buyer shall be solely responsible for complying with all applicable government regulations of the United States and any foreign countries with respect to use of the goods outside the United States, including all costs associated therewith. Buyer shall defend, indemnify and hold Seller harmless from and against any and all claims, judgments, costs, awards, expenses (including reasonable attorneys' fees) and liabilities of any kind arising out of Buyer's noncompliance with applicable United States or foreign government regulations, statutes, decrees or other obligations with respect to the use or transfer of the goods outside of the United States by Buyer and its affiliates.

#### **FOREIGN CORRUPT PRACTICES ACT REPRESENTATION**

Buyer represents and agrees that it has not offered, given, promised to give or authorized giving, and will not offer, give, promise to give or authorize giving,

directly or indirectly, any money or anything else of value to any government official, political party, political official or candidate for political official in connection with its activities hereunder.

