



TOPCO OILSITE PRODUCTS LTD ("TOPCO") OBJECTS IN ADVANCE TO ANY TERMS OR CONDITIONS THAT PURPORT TO MODIFY OR ADD TO THESE TERMS AND CONDITIONS, WHETHER CONTAINED IN ANY PURCHASE ORDER, ACCEPTANCE OR ANY SIMILAR DOCUMENT FURNISHED BY THE CUSTOMER OR OTHERWISE. ANY SUCH MODIFICATIONS OR ADDITIONS SHALL BE VOID AND OF NO FORCE OR EFFECT, UNLESS ACCEPTED BY TOPCO IN A WRITTEN DOCUMENT THAT EXPRESSLY REFERENCES SUCH MODIFICATIONS OR ADDITIONS AND CLEARLY MANIFESTS AN INTENTION ON THE PART OF TOPCO TO BE BOUND THEREBY.

1. GENERAL

Topco's prices for Products (as defined below) sold by Topco and work performed by Topco are based on the terms and conditions set out in this document. This document, together with any order acknowledgement (or similar document) issued by Topco, represents the final, complete and exclusive statement of the agreement (the "**Agreement**") between Topco and the Customer relating to the sale of the applicable Product or the performance of the applicable work by Topco (or both), and may not be modified, amended, supplemented, rescinded, waived, explained or otherwise affected by (i) any verbal statement, (ii) Customer's purchase order (or similar document), (iii) a course of dealing, or (iv) in any other way, and only those modifications, amendments, supplements, rescissions, waivers or explanations expressly set out in a written document signed by an authorized representative of Topco, which expressly amends these terms and conditions and manifests an intention on the part of Topco to be bound thereby, shall have any effect. These terms and conditions are intended to cover all activities and arrangements between Topco and the Customer, including the sale of Products and work performed by Topco and all related matters. References herein to "**Products**" include equipment, parts and fluid compounds sold separately by Topco to the Customer on a standalone basis and parts and components incorporated into or affixed to equipment or other goods of the Customer that are worked on by Topco under the Agreement, and references to "**work**" include any service or services (including, without limitation, inspection, testing, maintenance and repair services) rendered by Topco under the Agreement. Any reference by Topco to Customer's specifications and similar requirements (including, without limitation, in any written document) is intended only to describe the Products or work (or both) subject to the Agreement and no warranty or other terms or conditions set out in any such Customer specifications or similar requirements shall have any force or effect. Website information, catalogs, and circulars or similar pamphlets or brochures of Topco are provided for general information purposes only and are not part of the Agreement.

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2. EXCUSABLE DELAYS

Topco will not be responsible for nonperformance or delays in performance occasioned by any causes beyond Topco's reasonable control, including, but not limited to, labour difficulties (including strikes), delays of vendors or carriers, fires, acts of God, war, terrorism, riot, governmental actions and material or equipment shortages. Any delays so occasioned shall result in a corresponding extension of Topco's performance dates, which are, in any event, understood to be approximate.

3. DELIVERY, TITLE & RISK OF LOSS

Completion dates and delivery dates associated with the Agreement are approximate, and in the case of work involving equipment or goods (including, without limitation, evaluations or inspections of equipment or goods), are based upon (i) prompt receipt by Topco of the applicable equipment or goods, (ii) ready access to the Customer's premises if the applicable work is to be performed by Topco at the Customer's premises, and (iii) prompt receipt by Topco of all necessary information. Full risk of loss (including, without limitation, loss while in transit) in relation to any Product sold to the Customer in connection with the Agreement shall pass to the Customer (and the Product will be deemed to have been delivered to the Customer): (i) upon the Product being made available for pickup by the Customer at the applicable Topco facility (and Topco notifying the Customer of the same), in the case of a Product sold to the Customer on a standalone basis; and (ii) upon the Product being incorporated into or otherwise affixed to equipment or other goods of the Customer (either at a Topco facility or the Customer's premises or otherwise), in cases where Topco performs work on equipment or other goods of the Customer.

4. WARRANTY

A. In Relation to Work. Topco warrants that its work when performed will meet all specific requirements agreed to in writing by Topco, and will be done in a good and workmanlike manner. Such warranty will remain in effect for a period of six (6) months from completion of the work and all claims for defective work must be made in writing by the Customer immediately upon discovery, and in any event, no later than six (6) months from date of completion of the applicable work by Topco. Upon Customer's submission of a warranty claim and its substantiation to the reasonable satisfaction of Topco, Topco will at its option either: (i) repair Customer's equipment or other goods at the original Ex Works point of delivery or the location at which the applicable work was originally performed (at the option of Topco), (ii) refund an equitable portion of the contract price, (iii) furnish (Ex Works, Topco's facility or other delivery point acceptable to Topco) any necessary repaired or



replacement parts, or (iv) re-perform the applicable work at the original Ex Works point of delivery or the location at which the work was originally performed (at the option of Topco). If it becomes necessary for any Product or any of the Customer's equipment or other goods to be transported to a Topco facility or other location in order to enable repair work or the re-performance of work as contemplated by this paragraph, all costs associated with such transportation of the Product or the Customer's equipment or other goods will be the responsibility of the Customer and will be paid by the Customer.

B. Products Manufactured by Topco. Topco warrants that the Products manufactured by it and delivered to the Customer hereunder will be free from defects in materials and workmanship for a period of twelve (12) months from the date of initial use of the Products or eighteen (18) months from the date of delivery of the Products to the Customer, whichever is earlier. The Customer shall report any claimed defect in any Product in writing to Topco immediately upon discovery. After receipt of notice of a warranty claim from the Customer and substantiation of the claim to the reasonable satisfaction of Topco, Topco shall, at its option, correct such defect either by repairing the affected Product (at a Topco facility or other location acceptable to Topco), or by furnishing a replacement Product to the Customer at the original Ex Works point of delivery. Notwithstanding the foregoing, Topco does not warrant seals or packing materials in Products that are exposed to special or corrosive fluids or that operate at temperatures or pressures outside of any recommended range. If it becomes necessary for any Product to be transported to a Topco facility or other location in order to enable repair work to be undertaken as contemplated by this paragraph, all costs associated with such transportation of the Product will be the responsibility of the Customer and will be paid by the Customer.

C. Products Supplied but Not Manufactured by Topco. With respect to Products not manufactured by Topco ("**Third-Party Products**"), such Third-Party Products shall carry only the warranties provided by the manufacturer to the extent such warranties are assignable to the Customer by Topco, and Topco provides no other conditions, warranties or representations and has no other responsibility for such Third-Party Products or for combinations of Third-Party Products. The Customer agrees that Topco shall have no liability for correcting any defect in any Third-Party Product and that Topco's only obligation is to use reasonable commercial efforts to assist the Customer in making a warranty claim against the applicable manufacturer under any warranty provided to Topco by such manufacturer. Any such warranty from a manufacturer shall be subject to all limitations, qualifications and conditions applicable to the original warranty received by Topco from the manufacturer.

D. No Liability for Repairs, Etc. Performed by a Person Other Than Topco. Topco shall not be liable for the cost of any repair, adjustment or other modification of any Product made by the Customer or for labor performed by the Customer or any person other than Topco on or in relation to any Product.



E. Exceptions re: Reasonable Wear and Tear, Etc. No Product furnished by Topco shall be considered to be defective for purposes of this Section 4 by reason of normal wear and tear, or Customer's failure to properly store, install, operate or maintain the Product in accordance with good industry practices or specific recommendations made by Topco or the manufacturer (or, if applicable, any intermediate supplier) of the Product. The limited warranty provided in this Section 4 shall not apply in respect of any claimed defect in a Product that is attributable to or caused by abuse, accidental damage, misuse, improper installation, use of unauthorized parts, unsuitable power sources or environmental conditions, improper application, corrosion or inadequate or improper preventative or recommended maintenance of the Product or in respect of any Product that is altered or tampered with, or on which corrective work is performed without Topco's specific written consent. Topco does not recommend, and will not have any responsibility for, any rebuilding, repairing, special plating, coating, welding or heat-treating not done by Topco, and any special plating, coatings, or heat treatment applied to any Product is not warranted by Topco but carries only the manufacturer's warranty, if any.

F. Exclusion of Other Representations, Conditions and Warranties, Etc. TOPCO MAKES NO OTHER REPRESENTATION, CONDITION OR WARRANTY OF ANY KIND WHATSOEVER, EXPRESSED OR IMPLIED, AND ALL WARRANTIES OR IMPLIED CONDITIONS OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ANY OTHER WARRANTY OR CONDITION IMPLIED BY STATUTE, ARE HEREBY AGREED BY THE PARTIES NOT TO BE PART OF THE AGREEMENT AND ARE EXCLUDED FROM THE TERMS AND CONDITIONS OF THE AGREEMENT. THE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AGAINST TOPCO, WHETHER BASED UPON WARRANTY, STATUTE, CONTRACT, TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY), OR ANY OTHER BASIS, WILL BE LIMITED TO THE RIGHTS OF THE CUSTOMER UNDER THIS SECTION 4 (WARRANTY).

5. CUSTOMER'S RESPONSIBILITY

Customer agrees to only operate Products sold to it by Topco within the design specifications applicable to such Products as well as in accordance with recommendations of Topco and, if applicable, the manufacturer (or, if applicable, any intermediate supplier) of such Products.

6. INVOICES Invoices are due within 30 days the date shown on the invoice for the Products, work or services. Thereafter, interest shall be payable on unpaid balances at the rate of 18% per annum, calculated semi-annually not in advance, from the due date until payment is received.

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7. TOPCO'S LIEN RIGHTS

In addition to any other right that Topco may have under statute, Topco shall have a particular lien and general right of detention upon any equipment or other goods of the Customer that are repaired, modified, inspected, tested, maintained or serviced by Topco and that are in Topco's possession or control. This lien and general right of detention shall be for all amounts owing to Topco by the Customer, whether those amounts were owing to Topco before or after the applicable equipment or other goods of the Customer came into Topco's possession or control. If any amount is owing by the Customer for more than 90 days following the earlier of the date of completion of any work performed by Topco and the date that the Customer is invoiced for that work, Topco may, upon not less than 7 days written notice given to the Customer at the Customer's last known address, sell the Products at public or private sale. The Customer shall be responsible for all costs associated with such a sale, including costs of advertising, commissions and legal fees. Topco shall apply the net proceeds realized from such sale to any amount owing by the Customer to Topco as Topco deems appropriate. The Customer shall remain liable for the balance owing to Topco after such net proceeds are applied to the indebtedness of the Customer.

8. LIMITATION OF LIABILITY

IN ADDITION TO THE PROVISIONS OF SECTION 4 (WARRANTY) ABOVE, WHICH LIMIT THE REMEDIES OF THE CUSTOMER TO THOSE EXPRESSLY SET OUT IN SECTION 4 (WARRANTY) ABOVE, THE CUSTOMER HEREBY FURTHER AGREES THAT:

A. THE TOTAL LIABILITY OF TOPCO WITH RESPECT TO PRODUCTS SOLD OR WORK PERFORMED UNDER THE AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY CLAIM IN RELATION TO THE PERFORMANCE OR BREACH OF THE AGREEMENT, OR ARISING FROM THE MANUFACTURE, SALE, DELIVERY, INSTALLATION, REPAIR, INSPECTION OR TECHNICAL CORRECTION OR OTHER WORK COVERED BY OR PERFORMED UNDER THE AGREEMENT, AND WHETHER SUCH CLAIM IS BASED UPON WARRANTY, STATUTE, CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), OR ANY OTHER BASIS, EVEN WHERE TOPCO HAS BEEN ADVISED OF THE POSSIBILITY OF SAME, SHALL NOT EXCEED THE CONTRACT PRICE AGREED TO BY TOPCO IN RELATION TO SUCH PRODUCTS OR WORK.

B. TO THE EXTENT PERMITTED BY APPLICABLE LAW, TOPCO SHALL IN NO EVENT BE LIABLE TO THE CUSTOMER, ANY SUCCESSOR IN INTEREST OR ANY BENEFICIARY OR ASSIGNEE OF THE CUSTOMER, FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL OR PUNITIVE DAMAGES, INCLUDING, BUT NOT LIMITED TO, CLAIMS BASED UPON LOSS OF USE, LOST PROFITS OR REVENUE, INTEREST, LOST GOODWILL, WORK STOPPAGE, IMPAIRMENT OF OTHER EQUIPMENT OR GOODS, LOSS BY REASON OF SHUTDOWN OR

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NON-OPERATION, INCREASED EXPENSES OF OPERATION, COST OF PURCHASE OF REPLACEMENT POWER, EQUIPMENT OR GOODS, OR CLAIMS OF CUSTOMER OR ITS CUSTOMERS FOR SERVICE INTERRUPTION, WHETHER OR NOT THE CLAIM FOR SUCH LOSS OR DAMAGE IS BASED ON WARRANTY, STATUTE, CONTRACT, TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY) OR ANY OTHER BASIS, EVEN WHERE TOPCO HAS BEEN ADVISED OF THE POSSIBILITY OF SAME.

C. TO THE EXTENT PERMITTED BY APPLICABLE LAW, TOPCO DISCLAIMS ALL LIABILITY, WHETHER THE CLAIM IS BASED UPON WARRANTY, STATUTE, CONTRACT, TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY), OR ANY OTHER BASIS, EVEN WHERE TOPCO HAS BEEN ADVISED OF THE POSSIBILITY OF SAME, TO ANY PERSON OTHER THAN THE CUSTOMER.

D. THE CONSIDERATION BEING PAID TO TOPCO IN RESPECT OF THE AGREEMENT DOES NOT INCLUDE ANY CONSIDERATION FOR TOPCO TO ACCEPT THE RISKS ASSOCIATED WITH PROVIDING ANY OF THE FOREGOING DISCLAIMED REPRESENTATIONS, WARRANTIES OR CONDITIONS, OR ANY LIABILITY IN EXCESS OF THE LIMITED AMOUNTS PROVIDED FOR HEREIN, AND IF ANY SUCH RISKS OR LIABILITIES WERE TO BE ASSUMED BY TOPCO, TOPCO WOULD NOT HAVE ENTERED INTO THE AGREEMENT WITHOUT CHARGING SUBSTANTIALLY HIGHER CONTRACT PRICES.

9. ASSIGNMENT

The Customer shall not assign or transfer the Agreement without the prior written consent of Topco, which shall not be unreasonably withheld, delayed or conditioned.

10. GOVERNING LAW

The Agreement, and rights and obligations of Topco and the Customer under the Agreement, shall exclusively be governed by and construed in accordance with the laws of the Province of Alberta, Canada and the federal laws of Canada applicable therein, without reference to conflicts of laws principles that might result in the application of the laws of another jurisdiction. The Customer attorns to the jurisdiction of the courts of the Province of Alberta, and all courts that may hear appeals therefrom, in relation to all disputes arising under or in relation to the Agreement and agrees that such courts shall have exclusive jurisdiction over all disputes arising under or relating to the Agreement. Topco and the Customer agree that the United Nations Convention on Contracts for the International Sale of Goods is specifically excluded from application to the Agreement.

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