

**COLUMBIA SCAFFOLDING SERVICES, LTD.  
TERMS AND CONDITIONS**

All sales and rentals of either new or used scaffolding equipment and any other goods (collectively, the “Equipment”) rented or sold by Columbia Scaffolding Services, Ltd., a Texas limited partnership (“Company”) shall be subject to these terms and conditions (collectively, the “Terms and Conditions”), which shall be deemed incorporated into all Quotes, as hereafter defined. Additionally, any services furnished by Company in connection with the sale or rental of Equipment (collectively, the “Services”) shall also be subject to these Terms and Conditions. As used herein, “Customer” shall mean any individual or entity that purchases or rents any Equipment from Company or who uses the Company’s Services. By accepting a Quote, the Equipment, or the Services, Customer expressly acknowledges and consents to these Terms and Conditions and creates a binding agreement between Customer and Company (the “Agreement”). Company expressly limits acceptance of its Equipment and Services to these Terms and Conditions and notification of objection to any different or additional terms in response to these Terms and Conditions from the Customer is hereby given. Unless otherwise agreed to in writing, the Agreement between Customer and Company shall be comprised solely of the Quote, a Delivery Ticket, and these Terms and Conditions.

1. Sales and Rental of Equipment. Company shall not have any obligation to lease or sell any Equipment unless (i) its Rental or Sale Quote or Proposal (each a “Quote”) is accepted, without modification, by Customer and (ii) its Delivery Ticket is accepted by Customer, or an agent of Customer, without modification.

2. Quotes And Price Adjustments. Company may give Customer a written Quote relating to the sales or rental terms for Equipment including, but not limited to, the sale price for Equipment (“Sales Price”), the rental price for Equipment (“Rental Price”) and the price for Services to be furnished in connection with the Equipment (“Service Charges”). The Quote shall only remain valid for the period stated in the Quote or, where no period is stated, for ten (10) days from the date of the Quote (the “Validity Period”). Customer must accept the Quote, without modification, during the Validity Period for the Quote to be binding on Company. After the Validity Period, the Quote shall be null and void. Customer further acknowledges that a Quote is contingent on the price of materials and currently prevailing rates, which prices and rates are subject to fluctuation and are outside of Company’s control. Within the Validity Period, prior to the Customer’s acceptance of the Quote, Company reserves the right to revoke or adjust the Quote, including the Sales Price, Rental Price and Service Charges.

3. Taxes & Surcharges: Unless otherwise specified in writing, the Sales Price, Rental Price and Service Charges are exclusive of all, charges, surcharges, sales, use, excise, turnover, occupational or transportation taxes, or any other taxes imposed by any country or political subdivision thereof (collectively “Surcharges”) which shall be the responsibility of Customer. All applicable sales taxes shall be added to the Sales Price, Rental Price and Service Charges unless Customer provides a valid sales tax exemption certificate. Customer shall indemnify, defend, and hold Company harmless for any and all Surcharges that may arise in connection with the purchase or rental of the Equipment and shall promptly reimburse Company for any Surcharges paid by Company, which reimbursement shall be independent of and in addition to

the Sales Price, Rental Price or Service Charges. Customer also agrees to pay to Company its cartage charges then in effect for delivery and pickup of Equipment. All third party charges and all time spent by Company's employees or its agents, including, but not limited to, locating, dismantling, and loading of Equipment, will be charged at Company's then current rates.

4. Payment for Equipment: Unless stated otherwise in the Quote, payment for Equipment is due and payable immediately upon Customer being notified that the Equipment is ready for pick-up or delivery from Company, whichever is the earliest, and in all events prior to pick-up or delivery of any Equipment. Company reserves the right in its sole and absolute discretion to set forth such other terms relating to the payment for Equipment which additional terms shall be set forth in the Quote. Without limiting the foregoing, Company reserves the right to: (a) decline Customer's request for credit; or (b) require payment for Equipment and Services in advance, i.e., at the time the Quote is approved by Company. All payments shall be in U.S. dollars. In the event Company extends credit to Customer, Customer hereby authorizes Company to file any financing statements, financing change statements or similar documents necessary to preserve or reflect Company's security interest in the Equipment sold to Customer. Acceptance and endorsement by Company of a payment for less than the full amount shall not be deemed to be an admission of payment in full and any conditions to the contrary which may be noted on such payment shall not be binding on Company. All past due amounts shall accrue interest at a rate of eighteen percent (18%) per annum, or at the Maximum Lawful Rate, whichever is lower. As used herein, "Maximum Lawful Rate" shall mean the maximum lawful non-usurious contract rate of interest allowed by the applicable laws of the State of Texas. If credit terms are not met, in addition to its other legal rights, Company may defer or cancel, in its sole discretion, further shipments of Equipment or additional Services. Customer will pay all of Company's costs, including attorneys' fees and court costs, incurred in connection with the collection of past due amounts from Customer.

5. Payment for Services. Unless stated otherwise in the Quote, all Services provided by the Company are on a daily or hourly basis, as indicated in the Quote, subject to any minimum charge indicated therein. Charges for Services begin when the person(s) performing such Services depart Company's La Porte offices and continue until such person returns to the same location. If Services are requested by Customer and such request is later cancelled by Customer, Customer will be invoiced for a two (2) hour call out fee plus the actual drive time to and from the location from Company's La Porte office.

6. Inspection: Customer agrees that it: (a) shall inspect all Equipment prior to receipt by Customer or its authorized agent, and (b) shall inspect all Equipment at the job location prior to any use of the Equipment. Customer further agrees that it shall maintain a continuing inspection of the Equipment at all times during the rental term. Unless Customer gives written notice to Company specifying any defect in, or other objection to the Equipment within twenty-four (24) hours of receipt of the Equipment, Customer agrees that it shall be conclusively presumed that Customer has fully inspected and acknowledged that the Equipment was and is in good condition and repair, and that Customer is satisfied with and has accepted and retained the Equipment in good condition and repair.

7. Delivery: Delivery and shipping dates are triggered upon Customer's acceptance of a Quote. Delivery and shipping dates are approximate only. The Company shall use its reasonable efforts to have the Equipment ready at the time specified. However, the Company shall not be liable for damages incurred by Customer as a result of its late delivery, regardless of cause. A delay in delivery or shipping shall not give the Customer the right to reject any Equipment or relieve Customer of any of its obligations including, but not limited to, payment. Unless otherwise specified in the Quote, delivery of Equipment shall be F.O.B. Company's facility in La Porte, Texas. Customer assumes responsibility at the F.O.B. point for transportation charges. Company reserves the right to make deliveries in batches (a "Batch Delivery").

8. Risk of Loss: Notwithstanding anything herein to the contrary, Customer shall be solely responsible for any loss of or damage to Equipment that occurs during a shipment made by the Customer after the F.O.B. shipping point or prior to the F.O.B. shipping point by a carrier selected by Customer. Unless otherwise set forth in the Quote, the Equipment shall be stored at the F.O.B. shipping point unpacked and unprotected and the Customer assumes the risk of loss associated with the same.

9. Cancellation, Countermand, and Return of Equipment. An Agreement may not be cancelled, countermanded or deferred by Customer (collectively, a "Modification"), or Equipment returned by Customer, except with Company's prior written consent in its offices in La Porte, Texas, which consent may be withheld in Company's sole and absolute discretion. Notwithstanding any consent from Company on a Modification or the return of any Equipment, Customer shall indemnify, defend and hold Company harmless against all losses resulting therefrom, including the profit lost on any part of the Quote involved, which profit amount shall be determined by Company consistent with Company's customary practices. Unless otherwise authorized in writing by Company, prior to Customer's return of any Equipment that may be authorized by Company pursuant to this paragraph, Customer shall prepay to Company the shipment charges associated with the return of such Equipment.

10. Licenses and Permits. Customer shall be solely responsible for obtaining all licenses or permits necessary to import, export, sell, or use the Equipment, provided that at Customer's written request and at Customer's sole expense, Company will endeavor to assist Customer in obtaining such licenses and permits.

11. Use of Rental Equipment: All Equipment being rented shall at all times remain and be the sole and exclusive property of the Company and Customer shall only have the right to use it under the conditions set forth herein. The Equipment shall not be transferred, leased to, or used by any person other than Customer. Without obtaining the Company's written consent, Customer shall not (A) remove the Equipment from the specified job address; (B) allow the Equipment to be used for any purpose other than as agreed to by the Company, and (C) make any alteration or improvement to the Equipment. Additionally, Customer hereby authorizes Company to file any financing statements, financing change statements or similar documents necessary to preserve or reflect Company's continuing ownership in the Equipment rented to Customer. In the event of damage to, destruction of, or loss of the Equipment, Customer agrees to immediately pay Company at its office in La Porte, Texas, a sum equal to the List Price plus any applicable taxes for any such damaged, destroyed, or lost Equipment. As used herein, the

term “List Price” means that amount then charged by Company to retail Customers for new equipment similar to the Equipment being replaced. In no event will Customer allow any party to place a lien against rented Equipment.

12. Access: At all times during the term of the rental of Equipment, Company shall have the right of free access to the Job Location and the Equipment for the purpose of inspecting it, watching its use or operation or determining the nature and extent of its use. If Company observes the Equipment being used improperly, or in violation of any term contained herein or in the Quote, Company may terminate the Agreement and demand immediate return of the Equipment. This provision is for the sole benefit of Company and does not impose any duty upon Company to supervise, observe, report to, or control Customer in its use or misuse of the Equipment.

13. Customer’s Safety Regulations: Customer shall: (a) erect, maintain, and use the Equipment in a safe and proper manner, (b) comply with all applicable laws, ordinances, rules, regulations, and orders of any public authority, including, but not limited to, all federal Occupational Safety And Health Act (“OSHA”) and State regulations, having jurisdiction for the safety of persons or property; (c) comply with any rules or regulations promulgated by Company, the manufacturer, or the SIAI with respect to the Equipment, its manner of erection and use; and (d) comply with the Code of Safe Practices delivered by Company to Customer. Customer acknowledges receipt of the Code of Safe Practices, and agrees that Customer and all of Customer’s employees and agents will **at a minimum** comply with those provisions and all other safety provisions described herein. Customer agrees to obtain, provide and ensure that all of Customer’s employees and agents use all necessary safety Equipment. Customer agrees to indemnify and hold Company free and harmless from any liability which results from non-compliance with this paragraph.

14. Customer Liability: Customer shall be liable to Company for loss or damage to the Equipment during the term of the rental, including, but not limited to, (a) corrosion, (b) any damage caused by the use or operation of the Equipment, reasonable use excepted, (c) any damage occurring while the Equipment is being loaded, unloaded, transported, or towed, (d) any loss or damage due to electrical devices, (e) any loss or damage by any person while the Equipment Customer’s possession, (f) any loss or damage caused by the weight of a load exceeding the rated capacity of the Equipment, (g) any boom damage, (h) any collision while the Equipment is in operation, (i) Customer’s failure to perform maintenance, (j) any loss or damage to castors, and (k) any Occurrences (as defined herein).

15. Insurance: If required by Company, Customer shall, at its expense, maintain insurance on agreed upon amounts covering damage and loss of the Equipment. If insurance is required, Company shall be named as an additional insured on such policy which must be provided to the Company upon request.

16. Non-Returned, Uncleaned or Damaged Equipment: In addition to the Rental Price for the Equipment, Customer agrees to pay Company for Equipment not returned in the condition received, reasonable use excepted. The parties agree that Equipment returned to Company with paint, plaster or foreign matter on it will not be considered “reasonable use.” It is agreed that

Company shall have no responsibility to repair damaged Equipment or Equipment which was not received as required in the first sentence of this paragraph.

17. Occurrences: Customer shall immediately notify Company of any Occurrence, and all information related to an Occurrence, involving or in any way related to the Equipment, but in no event more than twelve (12) hours after Customer's discovery of the same. As used herein, "Occurrence" shall mean any disappearance, theft, or damage of property (including the Equipment) or injury or death of person, which is, or is claimed to be, or appeared to have happened related to, on, by, around, or in the vicinity of the Equipment. Customer agrees to secure and maintain all Equipment and surrounding premises, in the condition existing at the time of any Occurrence, until such time as Company, and any of its authorized agents, investigators, attorneys or any other designated persons, inspects or investigates the Equipment and/or premises. Company shall have the exclusive right to reclaim any Equipment involved in any Occurrence and to, in its sole and absolute discretion, replace such Equipment with comparable Equipment. The replacement by Company of any Equipment involved in an Occurrence shall not be deemed to be an admission that Equipment is in some way at fault in connection with the Occurrence.

18. Termination: Once the Quote has been accepted by Customer in accordance with the provisions of these Terms and Conditions, including, but not limited to the provisions of Section 2 herein, it becomes an Agreement, and such Agreement may only be terminated or amended by Customer with the written consent from an authorized officer of Company. Notwithstanding the foregoing, Company shall have the right without prior notice to Customer, to terminate an Agreement in the event of: (a) the breach of any of these Terms and Conditions; (b) if any lien, levy, or other attachment is filed against the Equipment; (c) if Customer becomes insolvent, or if any proceedings in bankruptcy, or receivership be instituted by or against Customer, or (d) as otherwise set forth herein. In addition, except as otherwise set forth therein, the Company may terminate an Agreement for any or no reason by giving Customer a thirty (30) days notice of termination. Notice of termination may be made by (i) regular mail and shall be deemed received three (3) business days after deposited with the U.S. Postal Service, (ii) by personal service, or (iii) by national courier (overnight or otherwise) with confirmed receipt.

19. Return of Equipment Upon Termination: Upon termination or expiration of the Agreement, regardless of how such termination or expiration occurs, Customer shall immediately deliver the Equipment in an orderly manner to Company at its office in La Porte, Texas, in as good order and condition as delivered to it, reasonable use excepted. Should Customer not return the Equipment upon termination of the Agreement, Company shall have the right to take all actions allowed by law in equity to recover the Equipment, all such actions at Customer's expense. Company shall not be required to post a bond in excess of \$2,000.00 in any action it brings to recover the Equipment. If possible to do so without breaching the peace, upon termination of the Agreement, Company may repossess the Equipment. Customer hereby agrees to indemnify Company and its agents from all claims by Customer or any other person for or by reason or on account of any repossessions or actions to recover the Equipment.

20. **CUSTOMER INDEMNIFICATION: CUSTOMER SHALL INDEMNIFY AND HOLD THE COMPANY HARMLESS FROM ANY AND ALL CLAIMS, ACTIONS,**

**SUITS, PROCEEDINGS, COSTS, EXPENSES, DAMAGES AND LIABILITIES OF ANY KIND WHETHER RELATED TO INJURY OR DEATH OF ANY PERSON (INCLUDING, BUT NOT LIMITED TO EMPLOYEES, AGENTS, AND SUBCONTRACTORS OF CUSTOMER), OR TO DAMAGE OR DESTRUCTION OF PROPERTY (INCLUDING, BUT NOT LIMITED TO, THE EQUIPMENT) (COLLECTIVELY, “CLAIMS”), WHICH ARE CAUSED BY, OR CLAIMED TO BE CAUSED BY, IN WHOLE OR IN PART, BY AN AGREEMENT, THE EQUIPMENT, OR THE SERVICES (INCLUDING, BUT NOT LIMITED TO, ERECTION, USE, OR ANY ACTIVITY CONDUCTED ON OR AROUND THE EQUIPMENT, OR THE VIOLATION OF ANY REGULATION OF THE OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION OR ANY OTHER GOVERNMENTAL OR QUASI-GOVERNMENTAL AGENCY OR BODY) AND RESULTING FROM ANY CAUSE WHATSOEVER, INCLUDING, BUT NOT LIMITED TO (I) THE SOLE OR CONCURRENT NEGLIGENCE (WHETHER ACTIVE, PASSIVE, PRIMARY OR SECONDARY) OF COMPANY, ITS AGENTS, EMPLOYEES OR INDEPENDENT CONTRACTORS, OR ANYONE FOR WHOSE ACTS OR OMISSIONS ANY OF THEM MAY BE LIABLE, (II) A PRODUCT DEFECT IN THE EQUIPMENT OR ANY PART THEREOF, OR (III) A CLAIM OF STRICT LIABILITY OR OF PRODUCTS LIABILITY.**

**CUSTOMER SHALL, AT ITS OWN COST, AND EXPENSE, DEFEND COMPANY, ITS EMPLOYEES, AGENTS, AND INDEPENDENT CONTRACTORS AGAINST ALL CLAIMS, MADE. CUSTOMER SHALL BE LIABLE AND RESPONSIBLE FOR ALL COSTS, EXPENSES AND ATTORNEYS’ FEES INCURRED IN SUCH DEFENSE AND/OR SETTLEMENT, JUDGMENT OR OTHER RESOLUTION. NOTWITHSTANDING THE ABOVE, COMPANY MAY, AT ITS SOLE DETERMINATION, ELECT TO DEFEND ANY CLAIM ON ITS OWN BEHALF AND CUSTOMER AGREES THAT IT SHALL BE LIABLE FOR ALL COSTS, EXPENSES AND ATTORNEYS’ FEES INCURRED BY THE COMPANY IN SUCH DEFENSE. IT IS THE PURPOSE OF THIS SECTION TO SHIFT THE RISK OF ALL CLAIMS RELATING TO THE EQUIPMENT TO THE CUSTOMER.**

**21. EQUIPMENT WARRANTIES: THE WARRANTIES ON THE EQUIPMENT ARE ONLY THOSE MADE BY THE MANUFACTURER OF THE EQUIPMENT. COMPANY MAKES NO, AND DISCLAIMS ALL, WARRANTIES, REPRESENTATIONS OR GUARANTEES OF ANY KIND OR NATURE, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE OR USE, AND WARRANTIES OF UNINTERRUPTED OR ERROR FREE PERFORMANCE OF EQUIPMENT.**

**22. Types of Services Performed. Upon request by the Customer, Company will provide personnel to erect and dismantle the scaffolding, which shall include providing (a) standard consumables, which includes #9 wire, 16d Duplex nails, orange debris mesh on scaffold between knee rail and deck, plywood, toe-boards and scaffolds tags, (b) standard personal protective equipment, including leather gloves, hard hat, steel-toed boots, FRC, and eye protection, (c)**

standard training of Basic Plus and normal site specific requirements, (d) Fifty-six (56) days of scaffolding rental, (e) freight to and from the jobsite within a 10 mile radius of the Company's La Porte office, and (f) the use of foreman's truck on the jobsite. Note that there is a **four (4) hour minimum**. Straight time hours are Monday-Thursday, 6:30AM to 5:00PM, ten (10) hours per day, forty (40) hours per week. Overtime hours are Friday, Saturday and Sunday, before or after straight time hours or any holidays. Straight time is billed at \$29.95 per man hour, with overtime billed at \$41.56 per man hour. Any overtime work will be invoiced on both a time and materials basis. The following may be provided by Company at an additional charge: (i) retractable life-lines, (ii) specialized scaffolding products including aluminum stage boards, trusses exceeding 10 feet in length and odd size or special made components, (iii) engineered stamp drawings, or (iv) a forklift.

23. Performance of Services. The scaffolding will be erected and dismantled one time only, unless otherwise specified in a Quote. The Services will be performed during straight time hours on day shift, unless otherwise specified in the Quote. Any delays or work stoppage not caused by the Company which exceed one (1) hour will be accounted on a separate time sheet and billed at the straight time rate in addition to the changes included in the Quote. The Customer is responsible for determining load capacity and the general condition of any roof and/or deck that will support the scaffolding. Company will provide the weight and load capacity of roof and/or deck supported scaffolding to be erected. Company is not responsible for roof and/or deck protection or any damage incurred to the roof and/or deck. Customer will be responsible for providing and subsequently repairing all holes in existing structure left as a result of concrete anchors or other ties necessary to stabilize scaffold structure.

24. Safety Precautions and Personal Protective Equipment. The scaffold will be erected and dismantled in accordance with applicable state laws and codes, including fall protection systems and methods used during the erection and dismantling of scaffold. The feasibility and proper use of the fall protection systems will be in Company's sole and absolute discretion. Company will supply full body harness with lanyards for fall protection, hard hat, safety glasses, mono goggles, Nomex (FRC) coveralls, and earplugs as standard equipment. Screens and nets are generally not included but are available upon request for an additional charge. To the extent a Customer and/or general contractor's safety require additional safety precautions in excess of those generally provided by Company, the cost and time required to meet such requirements will be invoiced to Customer on a time and materials basis.

25. Jobsite Conditions. Customer and/or its general contractor shall provide reasonable access to the jobsite for Company's personnel and materials. Customer must provide a firm and level grade, as well as suitable crane and forklift support, or other material handling, as needed to complete the Services at no cost or charge to Company. Customer will also be responsible for obtaining permission for Company to have access to or erect from adjoining property if required. Customer will arrange for the jobsite to have all utilities necessary to provide the Services, including but not limited to electric power and lighting, as well as appropriate safeguards. Customer shall provide Company with a written list of dates and times during which the utilities will be unavailable prior to the commencement of the Services. Additionally, Customer will provide facilities for use by Company personnel. All permits and licenses for the Services are to be provided by and paid for by Customer. Any cost incurred due to job site conditions, delays,

or safety considerations not directly attributable to Company's actions or inactions will be invoiced to Customer on a time and material basis.

26. Use of Scaffolding. Customer agrees to abide by all laws and regulations related to the proper use of scaffolding. Upon acceptance of the erected scaffold, Customer will be responsible for its maintenance (including daily inspections of scaffolds), control, and proper use until such time as the scaffold released to Company for dismantle and/or removal. Customer shall indemnify and hold Company harmless for any claims, liabilities, fines, citations, injuries, and/or property damage that results from the scaffold being altered or modified following installation by Company.

27. Warranty on Services. Company shall use reasonable efforts to ensure that all Services furnished in accordance with these Terms and Conditions are in accordance with industry standards at the location where the Services are performed. Company will use its reasonable efforts to perform all work requested. However, because of the nature of Company's work, its reliance on third parties to provide Services, and unpredictable conditions, such results cannot be and are not guaranteed or warranted by Company. Company reserves the right not to perform requested work if, in its sole discretion, job conditions render such action inadvisable, or it cannot obtain the Product, on terms acceptable to Company, from third parties. Customer must pay Company for all Services rendered whether or not the desired results are achieved without any deduction or offset of any kind, irrespective of any Claims which Customer may assert or allege against Company. All rates and charges for Services are subject to change by Company without notice and Customer will be invoiced at the rates in effect at the beginning of the invoice period.

28. **LIMITATION OF LIABILITY: CUSTOMER ACKNOWLEDGES AND AGREES THAT AS A MATERIAL PORTION OF THE CONSIDERATION FOR COMPANY ENTERING INTO AN AGREEMENT, COMPANY'S LIABILITY SHALL BE LIMITED TO THE SALES PRICE, RENTAL PRICE, OR AMOUNT PAID FOR SERVICES. IN NO EVENT SHALL COMPANY BE LIABLE TO THE CUSTOMER OR ANY THIRD PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES, LOSS OF PROFITS, LOSS OF USE OR INTERRUPTION OF BUSINESS, COSTS OF SUBSTITUTE GOODS, WHETHER SUCH DAMAGES OR LOSSES ARE ALLEGED IN TORT (INCLUDING NEGLIGENCE), CONTRACT OR INDEMNITY, EVEN IF COMPANY WAS ADVISED OR AWARE OF THE LIKELIHOOD OF SUCH DAMAGES OR LOSSES OCCURRING.**

29. Non-Disclosure of Confidential or Proprietary Information. Customer agrees to not disclose, further distribute, copy or reproduce to or for any person all or any part of Company's Confidential Information. Company's Confidential Information shall at all times remain the sole and absolute property of Company. As used herein, "Company's Confidential Information" includes (a) all information, data or material disclosed by Company, its agents, or representatives, in connection with the sale of a Product which is not generally known by the public or by parties which are competitive with or otherwise in an industry, trade or business similar to Company; (b) devices, secret inventions, processes, compilations of information,



records, source codes, object codes, and specifications, that are owned by Company and that are used in the operation of its business, also including, but not limited to, customer lists, financial, accounting, statistical, product design or manufacturing methods, and personnel information concerning Company; and (c) any information described above which Company obtains from another party and which Company treats as proprietary, whether or not owned or developed by Company.

30. Force Majeure. In the event that performance by Company of any of its obligations under the terms of these Terms and Conditions shall be interrupted by an act of God, by an act of war, riot, or a civil disturbance, by an act of state, by strikes, fire, flood, hurricane, tropical storm or by the occurrence of any other event beyond the reasonable control of Company, and which by the exercise of due diligence could not reasonably be prevented, Company shall be excused from its obligations under the Agreement upon written notice to the Customer.

31. Reformation and Severability. Company and Customer agree that if any provision included in these Terms and Conditions is held to be invalid, illegal or unenforceable, it shall, to the extent possible, be modified in such manner as to be valid, legal and enforceable but so as to most nearly retain the intent of the Company and Customer. If such modification is not possible, such provision shall be severed from these Terms and Conditions, and in either case the validity, legality and enforceability of the remaining provisions of these Terms and Conditions shall not in any way be affected or impaired thereby.

32. Entire Agreement: These Terms and Conditions, read in conjunction with the provisions in the applicable Quote and Delivery Ticket contain the entire understanding of the parties with respect to the transactions contemplated herein and supersede all prior agreements, understandings, negotiations, and discussions among the Customer and Company with respect to such transactions. Except as set forth in the prior sentence, it is acknowledged that there are no understandings, representations, warranties, promises, verbal or otherwise, pertaining to the Equipment. These Terms and Conditions, the Quote, and the Delivery Ticket, may not be amended, modified, supplemented, restated, discharged or waived except in writing and with Company's express written consent. Customer shall reimburse Company for all fees, costs and expenses reasonably incurred in the enforcement of Company's rights under or with respect to the Agreement, including, without limitation, reasonable attorneys' fees. The Agreement shall not be construed for or against any party.

33. Conflict: In the event of a conflict between these Terms and Conditions and the provisions of the Quote, the Delivery Ticket, or any of Customer's printed or other prepared form of purchase orders, work or service orders, job or delivery tickets, or other similar forms, the provisions of these Terms and Conditions, the Quote, and the Delivery Ticket shall govern and control in the order set forth herein. Any conflict between these Terms and Conditions and the provisions of any of Customer's work or service orders, job or delivery tickets, or any other similar forms, shall not constitute an objection in writing by Customer and the terms of these Terms and Conditions shall prevail.

34. Arbitration. Any dispute related to Terms and Conditions that cannot be resolved by negotiation between Company and Customer shall be settled by binding arbitration conducted by

one arbitrator in accordance with the Commercial Arbitration Rules of the American Arbitration Association, as amended by Terms and Conditions. The arbitration shall take place in Houston, Texas. The parties agree that this provision, the arbitrator's authority to grant relief, and all post-arbitration proceedings shall be subject to the provisions of this Agreement, the governing law specified herein, the United States Arbitration Act, 9 U.S.C. *et seq.*, and the ABA-AAA Code of Ethics of Arbitrators in Commercial Disputes. The arbitrator shall have no power or authority to make awards or issue orders of any kind except as expressly permitted by the substantive law referenced above, and in no event shall the arbitrator have the authority to make any award that provides for punitive or exemplary damages or, except as specifically set forth herein, attorneys' fees.

35. Miscellaneous: The failure of either party to enforce any provision hereof will not constitute a waiver or preclude subsequent enforcement. The laws of the State of Texas shall govern the validity, construction, interpretation, and effect of these Terms and Conditions, excluding any choice of law rules which would otherwise require the application of laws of any other jurisdiction, and specifically including any applicable laws governing sanctions or the control of exports.