



TERMS AND CONDITIONS FOR SALE OF GOODS AND SERVICES

- 1. APPLICABILITY:** The terms and conditions of sale below (“Terms”) are the only terms which govern the sale of the goods (“Goods”) and services (“Services”) between Collicutt Energy Services Inc. (“Collicutt”) and Customer. The accompanying quotation, and/or submittal package of sale/purchase order (“Sales Confirmation”) and these Terms (collectively, the “Agreement”) supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, whether written or oral. These Terms prevail over any of Customer’s general terms and conditions of purchase, regardless whether or when Customer has submitted its purchase order or such terms. Fulfillment of Customer’s purchase order does not constitute acceptance of any of Customer's terms and conditions and does not serve to modify or amend these Terms. No waiver, alteration, or modification of this Agreement shall be binding unless agreed to in writing and signed by both Collicutt and Customer.
- 2. QUOTATIONS AND PURCHASE ORDERS:** Quotations are valid for thirty (30) days from the date of the Quotation, unless otherwise agreed to in writing by Collicutt. A Quotation is a valid commitment to sell only when accompanied by a purchase order (“PO”) signed by an authorized representative of the Customer and accepted in writing by Collicutt. Customer agrees to pay for any changes in scope, design or work plan from an accepted PO and corresponding scope of work or services. All orders are subject to cancellation fees as required by the equipment manufacturer. Orders may only be cancelled in writing with approval of both Collicutt and Customer. Delivery times stated in the Quotation are approximate and may change at the time the PO is accepted. Equipment availability is subject to the manufacturers’ current offerings at the time the PO is accepted.
- 3. AIR POLLUTION CONTROL DISTRICT:** Your local air pollution control district (“District”) may require you to have an exhaust gas after treatment device, such as a diesel particulate filter or catalytic convertor. If your local District requires such device, Collicutt will be glad to provide you price adders for the device and installation of the device at your request.
- 4. SPECIAL ORDERS:** A nonrefundable deposit is required for all special order equipment and accessories, including but not limited to, all non-stock items. The deposit will be applied against the balance of the equipment and accessory invoice(s) or cancellation charges, if any.
- 5. SCOPE OF WORK or SERVICES:** Scope of Work is defined as the Goods to be purchased and the Scope of Services is defined as the Services to be performed referenced in the Quotation. Collicutt shall have the right to subcontract any or all work or Services covered by the PO.
- 6. PAYMENT TERMS:** All payments are due in US dollars net fifteen (15) days from the date of invoice. Retention is not acceptable. Customer agrees to pay delinquency charges of the lesser of 1.5% per month or the maximum interest rate allowable by law on the unpaid balance. If Collicutt initiates a lawsuit to collect amounts due, the Customer agrees to reimburse Collicutt all collection costs, reasonable attorney fees and court costs. In addition to all other remedies available under these Terms or any other rights or remedies available at law or in equity (which Collicutt does not waive by the exercise of any rights hereunder), Collicutt shall be entitled to suspend the delivery of any Goods or performance of any Services if Customer fails to pay any amounts when due hereunder, and such failure



continues for 5 days following written notice thereof. Customer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Collicutt, whether relating to Collicutt's breach, bankruptcy or otherwise. Collicutt's payment terms are subject to credit approval.

7. **SHIPPING, DELIVERY AND STORAGE TERMS:** Shipments originating from Collicutt facility will be Ex Works Collicutt facility, shipments originating from any other location will be Ex Works that facility, unless otherwise agreed upon by both parties in writing. "Delivery" is defined as legal transference of ownership from Collicutt. Offloading is the Customer's responsibility, unless otherwise provided for in writing signed by Collicutt. Customer agrees to pay storage charges and related costs, including insurance, when Customer has been notified the Goods are ready for shipment but must be stored by Collicutt's due to Customer's failure to timely accept delivery, at which time the Goods shall be deemed to have been delivered and the risk of loss shall pass to Customer. Collicutt is not liable for any damages incurred to the Goods that are stored due to Customer's inability to accept delivery. The Customer also agrees to pay preservation fees according to manufacturer's procedures from the time of delivery up until the time of startup. Any liability of Collicutt for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or adjusting the invoice for such non-delivery of Goods to reflect the actual quantity delivered.

8. **INSPECTION AND REJECTION OF NON-CONFORMING GOODS:** Customer shall inspect the Goods within 5 days of receipt ("Inspection Period"). Customer will be deemed to have accepted the Goods, unless it notifies Collicutt in writing of any Nonconforming Goods during the Inspection Period and furnishes such written evidence or other documentation as reasonably required by Collicutt. "Nonconforming Goods" means only the following: (i) Goods shipped are different than identified in Buyer's purchase order; or (ii) label or packaging incorrectly identifies its contents. If Customer timely notifies Collicutt of any Nonconforming Goods, Collicutt shall, in its sole discretion, (i) replace such Nonconforming Goods with conforming Goods, or (ii) credit or refund the price for such Nonconforming Goods, together with any reasonable shipping and handling expenses incurred by Customer in connection therewith. Customer shall ship the Nonconforming Goods to Collicutt's facility as directed. If Collicutt exercises its option to replace Nonconforming Goods, Collicutt shall, after receiving Customer's shipment of Nonconforming Goods, ship to Customer, at Customer's risk of loss, the replaced Goods. Customer acknowledges and agrees that the remedies set forth in Section 8 are Customer's exclusive remedies for the delivery of Nonconforming Goods.

9. **INVOICE IN PLACE POLICY:** If the Customer is unable to accept delivery of the Goods at the agreed upon time, the Customer will still be invoiced on the agreed delivery date and agrees to pay such invoice(s) based on the aforementioned payment terms.

10. **PERFORMANCE OF SERVICES:** Collicutt shall use reasonable efforts to meet any performance dates to render the Services specified in the Sales Confirmation, and any such dates shall be estimates only. With respect to the Services, Customer shall (i) cooperate with Collicutt in all matters relating to the Services and provide such access to Customer's premises, and such office accommodation and other facilities as may reasonably be requested by Collicutt for the purposes of performing the Services; (ii) respond promptly to any Collicutt request to provide direction, information, approvals, authorizations or decisions that are reasonably necessary for Collicutt to perform Services in accordance with the requirements of this Agreement; (iii) provide such Customer materials or



information as Collicutt may reasonably request to carry out the Services in a timely manner and ensure that such Customer materials or information are complete and accurate in all material respects; and (iv) obtain and maintain all necessary licenses and consents and comply with all applicable laws in relation to the Services before the date on which the Services are to start. Collicutt shall comply with all rules and policies of Customer of which Collicutt is notified in writing, including building security procedures and the restriction of access by Customer to certain areas of its premises or systems for security reasons, and general health and safety practices and procedures.

11. **LIMITED WARRANTY GOODS:** Regarding Goods, Collicutt warrants to Customer that the Goods will materially conform to the specifications in the Sales Confirmation and will be free from material defects in material and workmanship. Warranty on the engines, parts and add-ons supplied with or attached to the Goods is limited to the warranty extended by the particular engine, component part or add-on manufacturer. Collicutt's sole obligation under this warranty is limited, in its sole discretion, to (i) repairing or replacing the Goods at its designated facility or (ii) crediting Customer the purchase price of the defective Goods pursuant to Collicutt's then current credit policies with respect to returned Goods upon Collicutt's receipt of the defective Goods.

12. **LIMITED WARRANTY SERVICES:** Regarding Services, Collicutt warrants to Customer that it shall perform the Services using personnel of required skill, experience and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services and shall devote adequate resources to meet its obligations under the Sales Confirmation. Collicutt's sole obligation under this warranty shall be, in its sole discretion, to (i) repair or re-perform the applicable Services or (ii) credit or refund the price of such Services at the pro rata contract rate.

13. **DEFECTIVE GOODS OR SERVICES:** Collicutt shall not be liable for a breach of the warranties set forth in Section 11 and Section 12 unless: (i) Customer gives written notice within the Warranty Period of the defective Goods or Services, as the case may be, reasonably described, to Collicutt within 30 days of the time when Customer discovers or should have discovered the defect; (ii) Collicutt is given a reasonable opportunity after receiving the notice of breach of the warranty set forth in Section 13(i) to examine such Goods, and Customer (if requested to do so by Collicutt) returns such Goods to Collicutt's facility for examination at Collicutt's cost; and (iii) Collicutt reasonably verifies Customer's claim that the Goods or Services are defective. Collicutt shall not be liable for a breach of the warranty set forth in Section 11 or Section 12 if: (i) Customer makes any further use of such Goods after giving such notice; (ii) the defect arises because Customer failed to follow Collicutt's verbal or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods; or (iii) Customer alters or repairs such Goods without the prior written consent of Collicutt.

14. **DISCLAIMER OF IMPLIED WARRANTIES: EXCEPT FOR THE LIMITED WARRANTIES SET FORTH IN SECTION 11 AND SECTION 12, COLLICUTT DISCLAIMS ALL IMPLIED WARRANTIES (OTHER THAN GOOD TITLE), INCLUDING BUT NOT LIMITED, TO THOSE OF FITNESS FOR A PARTICULAR PURPOSE AND MERCHANTABILITY, WHETHER OTHERWISE ARISING BY LAW, CUSTOM, USAGE, TRADE PRACTICE, COURSE OF DEALING, OR COURSE OF PERFORMANCE.** Customer affirms that it has not relied upon Collicutt's skill or judgment to select or furnish the Goods for any particular purpose beyond the specific limited warranty herein. Any design provided by Collicutt is based on information provided by Customer. Any



modifications of drawings, prototypes and other work of Collicutt after approval by Customer will be at Customer's expense at Collicutt's then customary rates for services and materials

15. **RETURNED GOODS:** Equipment, accessories and parts cannot be returned without Collicutt's written approval. Equipment, accessories and parts must be in new and salable condition. Special orders are not returnable. Customer must pay transportation costs and restocking charge of a minimum twenty-five percent (25%) of invoice amount or a larger restocking fee amount pursuant to the manufacturers' policy.

16. **LIMITATION OF LIABILITY:** IN NO EVENT SHALL EITHER PARTY HERETO BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL (INCLUDING GENERAL OR SPECIAL DAMAGES FOR LOSS OF USE OR REVENUE OR LOST PROFITS), EXEMPLARY, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT COLLICUTT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE (COLLECTIVELY "EXCLUDED DAMAGES"). EACH PARTY HERETO DISCLAIMS AND WAIVES ANY LIABILITY OF THE OTHER FOR ANY "EXCLUDED DAMAGES." COLLICUTT'S AGGREGATE LIABILITY FOR ANY CUSTOMER'S CLAIM SHALL NOT, UNDER ANY CIRCUMSTANCES, EXCEED THE PAYMENT RECEIVED BY COLLICUTT FOR THE EQUIPMENT, PARTS, ACCESSORIES AND/OR SERVICES FURNISHED.

17. **SECURITY INTEREST:** Collicutt retains and Customer hereby grants Collicutt a lien and security interest in and to all of the right, title and interest of Customer in, to and under the Goods, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase money security interest under the California Uniform Commercial Code or whichever State's Uniform Commercial Code is applicable ("Code"). Customer hereby authorizes Collicutt to prepare and/or file such financing statement(s) and other documents and do such acts and things as Collicutt shall determine in its sole discretion are necessary or appropriate to create, establish and maintain, pursuant to the Code a perfected security interest in the Goods by any means authorized by law, whether currently in effect or becoming effective in the future, including electronic filing. Customer hereby authenticates this Agreement as a record and authorizes Collicutt to (i) prepare and file such records without the signature of Customer; (ii) file such writing bearing any general, generic or super generic description of the Goods as collateral authorized by the Code; and (iii) file any future records which shall be deemed authenticated by Customer.

18. **TAXES, LICENSES, PERMITS AND INSURANCE:** Customer shall pay to Collicutt the amount of any sales, use, excise, duty or similar tax attributable to the sale covered hereby, whether or not included in the purchase or quotation price. Collicutt assumes no responsibility for obtaining permits or licenses other than those specifically provided for in the Sales Confirmation. Customer shall reimburse Collicutt for the cost of providing any insurance related rights or waivers associated with Collicutt's existing insurance policies. Where taxes do not apply upon sale or resale, Customer shall provide Collicutt with appropriate exemption certificates.



19. EXPORT/IMPORT CONTROLS: Customer shall comply with all relevant statutes, rules and regulations and by-laws affecting its obligations and the performance of the Agreement (including any laws and regulations concerning the export, re-export or import of Goods, technology or technical data and Services) and shall obtain at its own costs and expenses all necessary permits and licenses. Collicutt may suspend performance if Customer is in violation of applicable laws or regulations. Customer shall indemnify, defend and hold harmless Collicutt from and against any claim, proceeding, action, fine, loss, cost and damages, including reasonable attorneys' fees and costs, arising out of or relating to any noncompliance with export-import control regulations by Customer, and Customer shall compensate Collicutt for all losses and expenses resulting therefrom.

20. WAIVER: No waiver by Collicutt of any of the provisions of this Agreement is effective unless set forth in writing signed by Collicutt. No failure to exercise, or delay in exercising any right or remedy arising from this Agreement operates as a waiver thereof. No single or partial exercise of any right or remedy hereunder precludes any other or further exercise thereof or the exercise of any other right or remedy.

21. FORCE MAJEURE: Collicutt shall not be liable or responsible to Customer, nor be deemed to have breached this Agreement, for any failure or delay in performing any term of this Agreement, when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of Collicutt, including, without limitation, acts of God, flood, fire, earthquake, severe weather events, explosion, governmental actions, terrorist threats or acts, riot, or other civil unrest, national emergency, epidemic, lockouts, strikes or other labor disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, or power outage; provided that, if the event in question continues for a continuous period in excess of 30 days, Customer shall be entitled to give notice in writing to Collicutt to terminate this Agreement. Customer agrees to pay Collicutt any costs incurred up to the date of termination.

22. CONFIDENTIALITY: Each party agrees not to, and shall ensure that its employees, agents and advisors do not, disclose to any third party(s), any confidential or proprietary information arising or disclosed pursuant to this Agreement (including information not generally known to the public, such as without limitation technical, development, marketing, sales, operating, performance, cost, know-how, business and process information or computer programming techniques).

23. INDEMNIFICATION: Customer shall keep Collicutt, its employees, agents and advisors fully and effectively indemnified, defended and held harmless against any loss of or damage, including all costs, charges, expenses and reasonable attorneys' fees and costs, to any property or injury to or death of any person caused by any negligent act or omission or breach of this Agreement by Customer, its employees, agents or advisors, and shall pay to Collicutt all reasonable costs, charges and losses, including reasonable attorneys' fees and costs, sustained or incurred by Collicutt as a result of Collicutt being prevented or delayed from performing its obligations under this Agreement by reason of any act or omission of Customer, its employees, agents or servants.



24. **GOVERNING LAW:** Except as expressly provided herein, this Agreement shall be governed by and construed in accordance with the laws of the State of California without regard to the conflict of laws provisions therein. The United Nations Convention on Contracts for the International Sales of Goods (CISG) shall not apply and are specifically excluded. Collicutt elects to opt out of the CISG.

25. **DISPUTE RESOLUTION:**

25.1. Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, will be resolved by arbitration before a retired judge selected pursuant to the then Comprehensive Arbitration Rules and Procedures and in accordance with the Expedited Procedures in those Rules of the Judicial Arbitration & Mediation Service ("JAMS") conducted in Los Angeles County, California.

25.2. The parties agree that such claims or controversies shall first be submitted to JAMS, or its successor, for mediation; and if the matter is not resolved through mediation, then it shall be submitted to JAMS, or its successor, for final and binding arbitration as provided herein. Either party may initiate arbitration with respect to the matters submitted to mediation by filing a written demand for arbitration at any time following the initial mediation session or at any time following 45 days from the date of filing the written request for mediation, whichever occurs first ("Earliest Initiation Date"). The parties will cooperate with JAMS and with one another in selecting a mediator from the JAMS panel of neutrals and in scheduling the mediation proceedings. The parties agree that they will participate in the mediation in good faith and that they will share equally in its costs.

25.3. At no time prior to the Earliest Initiation Date shall either side initiate an arbitration or litigation related to this Agreement, except to pursue a provisional remedy that is authorized by law or by JAMS Rules or by agreement of the parties. Judgment upon the award rendered by the JAMS retired judge may be entered in any Court having jurisdiction over said award. Any such award will include costs and attorneys' fees as directed by the retired judge. The Prevailing Party in any such proceeding, action, or appeal thereon, will be entitled to reasonable attorneys' fees and costs. The term "Prevailing Party" will include, without limitation, a party who substantially obtains or defeats the relief sought, as the case may be, whether by compromise, settlement, judgment, or the abandonment by the other party of its claim or defense.

26. **NOTICE:** Any notices required or permitted to be given hereunder will be in writing and signed by an authorized representative of the party addressed to the other party at its registered office or principal place of business or such other address as may at the relevant time have been notified to the party giving the notice by any of the following methods and shall be deemed to have been served: (i) if by personal service (including by private courier service) at the time of delivery; (ii) if by registered or certified First Class Mail, postage prepaid 3 working days after posting; or (iii) if by electronic transmission (if confirmed in writing sent by personal delivery or by registered or certified, First Class Mail, return receipt requested) 1 business day after transmission.

27. **GENERAL PROVISIONS:** No agent, salesman or any other person has any authority to obligate Collicutt with regard to any terms or conditions not contained herein. This Agreement is the entire agreement between the parties, and the terms and conditions herein may not be modified, changed,



amended or waived, unless in writing duly signed by an authorized officer of Collicutt. In the event that any term or any portion of any term contained in this Agreement is determined to be unenforceable, the remaining portions or terms hereof will nevertheless remain in full force and effect. This Agreement is solely for the benefit of the parties below; no other person shall acquire or have any right under this Agreement. The headings are for convenience of reference only and not to be construed as part of this Agreement. The undersigned have fully power and authority to enter into this Agreement on behalf of each party.

28. **CREDIT:** Customer authorizes Collicutt to verify bank and trade references and to utilize credit report services for the purpose of investigating and extending credit.

29. **ELECTRONIC COPIES OF DOCUMENTS:** The undersigned agrees that an electronic version of any document(s) signed by the Customer and Collicutt may be substituted for all purposes as though it was an original.