

SOUTHWEST FUEL SYSTEMS LLC

2915 N. HWY 99, STROUD, OK 74079

- 1. General.** Unless otherwise specifically agreed in writing signed by an authorized employee of Southwest Fuel Systems, LLC (hereinafter "Seller"), these Standard Terms & Conditions of Sale (Agreement) shall apply to all sales of goods ("Products") and services by seller.
- 2. Offer and Acceptance.** Seller's quotation response constitutes Seller's offer to sell solely in accordance with the exact terms and conditions hereof, and supersedes all previous written and oral quotations, representations and/or agreements. Acceptance can be made by Buyer by any commercially reasonable means, including Buyer's issuance of an order, acceptance of Seller's quotation, acceptance of products provided hereunder, acknowledgment or return of Seller's acknowledgment form or by electronic transmission. Acceptance hereof by Buyer is expressly limited to the exact terms hereof. If Buyer shall use its own purchase order or other form to order from Seller, such form shall be used for convenience only and shall evidence Buyer's unconditional agreement to these terms and conditions. Any inconsistent or additional terms or conditions contained therein must be agreed to in writing by Buyer.
- 3. Price.** All prices represent those in effect at the time of quotation and are for term specified at the time of quote. Unless prices are bid or quoted as "firm" Seller reserves the right to invoice at prices in effect at date of shipment, regardless of prior bid and whether notice was received by the Buyer. Prices are F.O.B. Seller's Oklahoma facility, unless otherwise specified. Unless otherwise agreed in writing, prices are stated in United States dollars, are exclusive of sales, use, excise or similar taxes and are subject to any price adjustment necessitated by Seller's compliance with any act of government. Any tax or other governmental charge upon the production, sale, shipment or use of the products which Seller is required to pay or collect from Buyer shall be paid by Buyer to Seller unless Buyer furnishes Seller with a tax exemption certificate acceptable to the appropriate taxing authority. Any changes as may occur on or prior to dates of shipment in applicable tariffs, freight rates or transportation charges and any prepayment by Seller of freight charges shall be for the account of Buyer and shall be paid by Buyer with and in addition to the purchase price and any special handling requested by Buyer will be at its expense.
- 4. Payment.** Unless otherwise agreed, payment is due within thirty (30) days of invoice date. Payment shall be in United States currency. Buyer agrees to pay interest on all past due invoices at the rate of two percent (2%) per month or the highest rate allowable by law, if lower. Should it be necessary for Seller to institute formal proceedings to collect any past due amounts from Buyer, Seller shall be entitled to recover its attorney fees and other costs associated with the proceedings.

Seller's acceptance of orders and shipments and delivery shall be subject to approval by Seller's Credit Department. If, in the sole judgment of Seller, the financial condition of Buyer at any time prior to delivery does not justify the continuance of the work to be performed by Seller hereunder on the terms of payment agreed upon, Seller may require full or partial payment in advance or cancel any order (or portion thereof) then outstanding and receive reimbursement for Seller's reasonable and proper cancellation charges. Title to and right to possession of (but, not risk of loss to) any product sold hereunder remains in Seller and remains personal property until all payments therefore are made in full by Buyer, and Buyer agrees to do all acts necessary to protect such right and title. In the event of bankruptcy or insolvency of Buyer, or in the event any proceeding is brought by or against Buyer under any bankruptcy or insolvency laws, Seller shall be entitled to cancel any order (or portion thereof) then outstanding at any time during the period allowed for filing claims against the estate, and Seller shall receive reimbursement for its reasonable and proper cancellation charges. The rights of Seller under this paragraph are cumulative and in addition to all rights available to the Seller at law or in equity.

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5. **Title, Delivery and Risk of Loss.** Title to and risk of loss of all goods sold hereunder by Seller shall pass to Buyer upon their delivery EX works Seller's Facility ("EX Works" shall have the meaning set forth in Incoterms 2000 with its attendant rights and obligations).
6. **Shipment.** Unless otherwise stated herein, shipment of products shall be F.O.B. Seller's facility, Stroud, OK. Any and all destination demurrage, detention or unloading charges are Buyer's responsibility. Seller will ship in accordance with instructions supplied by Buyer, and as specified on the face hereof. If Buyer fails to furnish such instructions, Seller will select what is, in its opinion, the most satisfactory routing for the shipment. If Buyer is to pick up products and has not done so within Seven (7) days after notification that they are ready for shipment, Seller may ship the products by commercial carrier in any manner it deems to be commercially reasonable. The Products shall be packed and packaged in accordance with reasonable commercial practices for one-way shipment by air and/or surface transportation.

Shipping dates are approximate and are based upon conditions existing upon Seller's receipt of Buyer's firm order and full information. Seller will, in good faith, endeavor to ship by the estimated shipping date but shall not be responsible for any delay or any damage arising therefrom. It is agreed that time is not of the essence.

7. **Acceptance.** Acceptance shall occur, if not before, when Buyer fails to reject only within ten (10) days after delivery of the products. Buyer may rightfully reject only where a reasonable inspection shows that products fail to substantially conform to the specifications of this agreement. Buyer waives its right to revoke acceptance, it being the intent of the parties that Buyer's remedies for any nonconformity detected after acceptance be limited to those expressly provided herein for breach of warranty.
8. **Force Majeure.** Seller shall not be liable for any failure to perform its obligations under this Agreement resulting directly or indirectly from or contributed to by any acts of God, acts of Buyer, acts of government or other civil or military authorities, priorities, strikes, or other labor disputes, fires, accidents, floods, epidemics, war, riot, embargoes, delays in transportation, lack of or inability to obtain raw materials, components, labor, fuel or supplies, or circumstances beyond Seller's reasonable control ("Force Majeure Event"). In the event of the occurrence of a Force Majeure Event, Seller's time for performance shall be extended by a period of time equal to the time lost because of any delays caused by reasons of a Force Majeure Event, if the delay lasts more than ninety (90) days, the parties shall immediately consult with one another for the purpose of agreeing upon the basis upon which Seller shall resume production at the end of the delay. If the parties do not agree upon a solution of the problems involved, including adjustments of the purchase price, within one hundred and fifty (150) days from the beginning of the delay, then either party may, by written notice, cancel the portion of the order which is delayed and, in such event, Buyer shall pay to Seller reasonable cancellation charges.
9. **Patent Indemnity.** If any product manufactured by Seller and furnished under this Agreement is to be made in accordance with drawings, samples or manufacturing specifications designated by Buyer, Buyer agrees to indemnify and hold Seller harmless from any and all damages, costs and expenses (including attorney's fees) relating to any claim arising from the design, distribution, manufacture or use of the product or arising from a claim that such product furnished to Buyer by Seller, or the use thereof, infringes any letters patent, foreign or domestic, and Buyer agrees at its own expense to undertake the defense of any suit against Seller brought upon such claim or claims.

In the event any product to be furnished under this Agreement is not to be made in accordance with drawings, samples, or manufacturing specifications designated by Buyer, but rather is the design of Seller, and product has

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not been modified by Buyer or its customers. Seller agrees to hold Buyer and its customer harmless against any damages awarded by a court of final jurisdiction in any suit or suits for the infringement of any United States

letters patent by reason of the sale or use of such product furnished by Seller under this Agreement, provided that Seller is notified promptly in writing of any claim or suit and is permitted to assume the full direction and control of the defense against such a claim and of any suit brought Theron and is given authority, information and assistance by Buyer (at Seller's expense) for such defense and authority to settle. In case any judgment rendered in such suit shall become final (beyond right of appeal), and where Buyer has complied with the foregoing provisions of this paragraph to Seller's satisfaction, Seller agrees to pay all damages and costs thereby awarded against Buyer. If, subject to the above limitations, said products, or any part thereof, should be finally held in suit to constitute an infringement, Seller shall have the right at its own expense either (I) to procure for Buyer rights to the patent, or (II) to modify or replace said product with non-infringing product accomplishing the same purposes as the replaced product, or (III) to withdraw such product and refund to Buyer the purchase price thereof. Seller shall have the right to settle any claim at its own expense (I) by procuring for Buyer the right to continue using said product without liability for infringement of such patent, or (II) by modifying or replacing said product with non-infringing product accomplishing the same purposes as the replaced product, or (III) by removing said product and refunding to Buyer the purchase price thereof. Buyer's remedies for damages resulting from the infringement or claimed infringement of any patent by the products are exclusively limited to the provisions of this paragraph.

10. Special Tooling.

- a. Designs, tools, jigs, dies, fixtures, templates, patterns and drawings (hereinafter collectively called "Tools" furnished by Buyer, and tools (except as provided in © hereof) made or acquired by Seller for performance of Buyer's Purchase Order, the cost of which is separately stated in the Purchase Order, shall remain or become the property of Seller unless otherwise specified. Such tools shall be used exclusively for production under Buyer's Purchase Orders.
- b. Reproducible drawings for tools to be made or acquired by Seller for performance of Buyer's Purchase Order Shall be Submitted to Buyer for approval prior to the manufacture of acquisition of such tools.
- c. Seller will maintain the Buyer's tooling referred to in (a) above so that their normal use permits production of items meeting the requirements of this Agreement or purchase order except for reasonable wear and tear and will make replacements where necessary. Seller will not make any alterations in such tools without Buyer's specific written authorization.
- d. Upon completion or cancellation of this Agreement or purchase order, tools shall be stored by Seller at no charge for a period not to exceed six (6) months unless Seller agrees to a time extension. Storage fees, at that time may be assessed. At any time, Seller may request written disposition instructions from Buyer, which Buyer will provide within thirty (30) days and tools shall be dispositioned as directed by Buyer. Any tooling to be delivered to Buyer or Buyer directed destinations shall be identified and packed in suitable containers for protection in shipment. Tooling shall be shipped F.O.B Stroud, OK, freight collect.
- e. Tools made or acquired by Seller in the performance of Buyer's Agreement or purchase order, the cost of which is chargeable to Buyer, shall be separately identified by Seller as directed by Buyer.

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11. Indemnification.

Buyer will indemnify and hold harmless Supplier from and against all losses, liabilities, claims or demands whatsoever (including without limitation, all costs, expenses and attorney fees), arising out of any personal injury (death) or any damage to or loss or destruction of property, in any manner based upon, occasioned by, or attributable or related to the Deliverables or to any act or omission, negligent or otherwise, in the performance of an Order whether by Supplier, its subcontractors, any employee of Supplier or its subcontractors, (except where such injury to or death of persons or damage to or loss or destruction of property is due solely to the negligence of the Supplier, its officers, agents or employees).

12. Warranty.

Seller warrants that the products or services sold hereunder shall be free from defects in design, material and workmanship under normal use and service when correctly installed and maintained. This warranty of quality shall terminate one (1) year after the goods are delivered to the Buyer (the "Warranty Period") and shall not apply to products which have been subjected to misuse, abuse, neglect or improper storage, handling or maintenance. **THE FOREGOING WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES WITH RESPECT TO THE PRODUCTS AND SERVICES. WHETHER ORAL WRITTEN. EXPRESS, IMPLIED. BY OPERATION OF LAW OR OTHERWISE OR STATUTORY. THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ANY OTHER WARRANTIES ARISING BY USAGE OF TRADE, COURSE OF PERFORMANCE OR COURSE OF DEALING.** Seller's warranties are extended to Buyer only and Seller makes no warranties whatsoever to Buyer's customer or any third party. If Buyer resells or otherwise transfers the products subsequent to Buyer's receipt of the products, Buyer will have no authority to make any warranty or representation to Buyer's customer or any other party on behalf of Buyer. Buyer agrees to indemnify and hold Seller harmless against all Claims arising from Buyer's breach of this provision. **SELLER NOT BE LIABLE TO BUYER FOR SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR EXEMPLARY LOSSES, DAMAGES OR EXPENSES.** Defective or non-conforming Products will be returned, F.O.B. Buyer's facilities. The warranty period on such repaired or returned products will be the original warranty period. In the event it is later determined that such returned product is not defective or non-conforming within the terms of this provision, Seller will be reimbursed by Buyer for the cost of such shipment. The Parties expressly waive the Statute of Limitations and agree that any claim by Buyer under this warranty with reference to the products or services sold hereunder, shall be deemed waived by Buyer unless filed within one (1) year from accrual of the cause of action therefore. This warranty applies unless there is a product specific warranty in place, in which case, that agreement shall supersede the warranty provisions herein.

13. **Cancellation.** Orders shall not be subject to the cancellation or modification either in whole or in part without Seller's written consent and then only with terms that will reimburse Seller for all applicable costs incurred by virtue of the sale, including costs of purchased materials, engineering costs and a reasonable allowance for profit in accordance with Seller's cancellation policy in effect on the date of cancellation. In any circumstances, Seller's written consent must be given in advance of Buyer's return of Products for credit.

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Southwest Fuel Systems, LLC Cancellation Policy

Purchased orders cancelled by the customer will be subject to the following fees.

If the purchase order is cancelled and the parts are ready to ship, the customer will be charged 100% of the cost of the parts and labor per the purchase order.

If the purchase order is cancelled within 30 days of the scheduled delivery date the customer will be charged 100% of the labor allocated to the completion of work on the purchase order and 100% of the sales price of parts that cannot be returned to stock per Southwest Fuel Systems Quality Manager's review.

14. **Assignment.** Buyer shall not assign this Agreement, or any rights therein, without the prior written consent of Seller.
15. **Waiver.** The waiver by Seller of any term, provision, or condition hereof shall not constitute a waiver of any other term, provision, or condition hereof, nor shall such waiver be deemed a waiver of a subsequent breach of the same term or condition.
16. **Other Laws.** Any clause required to be included in a contract of this type by any applicable law or administrative regulation having the effect of law shall be deemed to be incorporated herein. Seller represents that with respect to the production of the Products, it has fully complied with Section 12(A) of the Fair Labor Standards Act of 1938, as amended. Acceptance and execution of order accepted by reason of any law or administrative regulation having the effect of law, or in order to carry out the intent or purpose of any such law or regulation or to acquiesce in a request by a government agency of official thereof, or contingent upon the continuance in effect of such law, regulation or request, may be canceled by Seller upon the expiration or withdrawal of such law, regulation or request, provided, however, that Seller, at its option may complete such order.
17. **Severability.** If any provision or provisions of this Agreement, or parts thereof, shall be held to be invalid, illegal or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.
18. **Governing Law; Limitation of Actions.** All matters relating to the interpretation and effect of these Terms and Condition of Sale shall be governed by the Laws of the State of Arizona. No action for breach of this Agreement or any covenant or warranty arising therefrom shall be brought more than one (1) year after the cause of action accrued.
19. **Intellectual Property.** Notwithstanding any assertions by Purchaser to the contrary, unless Buyer and Seller have otherwise expressly agreed in writing signed by both parties, all intellectual property relating to the Products is owned by Seller and Seller shall not, in any way, be restricted from selling any Products to any third party.

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20. Buyer Furnished Material.

- (a) When Buyer furnishes raw material, forgings (raw or partially machined) or finished parts for performance of this Agreement, such materials shall become and remain the property of Buyer during all stages of use by Seller.
- (b) Buyer shall be liable for any non-conformance to the product as a result of non-conforming material supplied by the Buyer.

21. Export.

- (a) The export and re-export of goods and related technical information under this Agreement or purchase order are subject to the export laws of the United States of America. Buyer shall be responsible for applying for, obtaining and maintaining all required export licenses and approvals and complying with all applicable export reporting requirements. Seller does not guarantee the issuance of such licenses or their continuation in effect once issued. It shall be a condition precedent to Seller's obligations hereunder that all necessary and desirable export licenses and approvals shall be timely granted and continue in effect during the term of this Agreement. Buyer shall not export or re-export goods or technical data unless specifically directed by the Seller.
- (b) Buyer agrees that it will not, directly or indirectly, export or re-export any goods or technical information received from Seller to any destination if such export or re-export would violate the laws of the United States of America. Buyer agrees to indemnify and hold Seller harmless against any liability arising from any breach of Buyers obligations under this Section (b).

22. **Changed Circumstances.** Buyer agrees to notify the Seller in writing of any adverse change in its financial condition or credit rating or of any anticipated change in Buyer policies, ownership, control or operating management, whether contingent or otherwise, arising during the term of this Agreement which might affect the performance of this Agreement.

23. Order of Precedence.

- (a) The Sections of this Agreement;
- (b) The Purchase Order;
- (c) The specifications;
- (d) Other referenced documents

24. **Complete Agreement.** The complete agreement between Seller and Buyer is contained herein, and no additional or different terms or conditions stated by Buyer shall be binding upon Seller unless agreed to in writing. No course of dealing or usage of trade shall be relevant to supplement or explain any terms used in this Agreement.

25. **Confidentiality.** This Agreement is confidential and proprietary to Seller. Buyer agrees that it will treat this Agreement as confidential and that it will not disclose any of the terms of this Agreement to any person without the prior written approval of Seller.