

## **GENERAL TERMS AND CONDITIONS –PALFINGER NORTH AMERICA, LLC**

(Rev. date Feb. 2023)

### **GENERAL**

These terms and conditions, together with (a) such plans, specifications, Order Acknowledgement, or other documents as are incorporated by reference on the face of this document and (b) such additional terms as are approved in writing by Palfinger North America, LLC (“Seller”) are the complete and exclusive terms and conditions applicable to the agreement between Seller and Buyer (the “Agreement”). They apply to the order, regardless of any language to the contrary appearing on Buyer’s purchasing documents. Seller’s acceptance is conditioned upon Buyer’s assent to these terms and conditions, including additional and different terms and conditions. Seller is not bound by Buyer’s terms and conditions unless expressly agreed to in writing. In the absence of written acceptance of these terms and conditions by Buyer, either acceptance of, or payment for, the Products will constitute the Buyer’s acceptance. Any different or additional terms or conditions in any of Buyer’s purchasing documents will be deemed material alterations are rejected and are null and void and superseded by these terms and conditions. As used herein, “Products” means the equipment, spare parts, components, products and/or accessories and related documentation to be delivered to Buyer under the Agreement and “Buyer” means the entity whose name and address appears on a purchase order or other purchase document as the purchaser of the Products.

### **PRICE**

Except as provided on the face of this invoice, the price stated is (a) based on U.S. dollars, (b) Ex Works- Council Bluffs, IA USA or Seller’s agent, and (c) net, without deductions whatsoever. Unless separately stated on the face of this document, all additional costs, including, but not limited to, charges for freight, packing, carriage, and insurance will be borne by Buyer. If Seller assumes additional costs anytime during the performance of Seller’s obligations under this Agreement, Seller reserves the right to adjust its price due to circumstances such as increases in raw materials, commodity pricing (e.g., aluminum, steel, etc.), transportation, logistics, energy, labor, tariffs, duties, and/or supplier increases.

### **SECURITY**

Buyer hereby grants Seller a purchase money security interest in the Products sold hereunder together with the proceeds therefrom (parts and equipment and the right to repossess them) to secure payment of the price for such Products until the full purchase price is paid in full and agrees, and appoints Seller its agent, to take all such action and to execute and file all such documents and instruments (including, but not limited to, UCC-1 financing statements) as may be necessary or reasonably requested by Seller to perfect and continue Seller’s security interest hereunder.

### **TAXES**

Seller’s prices are exclusive of any federal, state, provincial or local property, license, privilege, sales, use, excise, gross receipts or other taxes imposed upon, or measured by, the transaction, the Product, its sale, its value or its use, or any related services. Buyer will pay or reimburse any such taxes which Seller or Seller’s subcontractors or suppliers are required to pay.

### **TERMS OF PAYMENT**

Except as provided on the face of this document, payment is due to Seller within 30 days of the invoice date. Interest is payable on overdue amounts from the date(s) due, at the rate of 12% per annum, calculated and payable monthly, but in any event no higher than the highest rate permitted by

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law. For purposes of interest accrual, Seller is not required to give formal notice of late payment. Payment of interest does not release Buyer from its obligation to make payments when due. If in the judgment of Seller, the financial condition of Buyer, at any time during the manufacturing period or at the time the part or equipment is ready for and prior to shipment, does not justify the continuance of the work to be performed by Seller or the terms of payment specified, Seller may require full or partial payment in advance. In the event of Buyer's bankruptcy or insolvency or in the event any proceeding is brought against Buyer, voluntarily or involuntarily, under bankruptcy or insolvency laws, Seller may cancel any order then outstanding at a time during the period allowed for filing claims against the estate and shall receive reimbursement for its proper cancellation charges and expenses.

## **DELIVERY**

Delivery dates are approximate and may be reasonably extended by Seller, if: (a) information required from Buyer to execute the order is not received in a timely manner, (b) changes which delay delivery are mutually agreed upon, (c) Seller is not able to make timely delivery by reason of hindrances which, despite due care, Seller cannot avoid (inclusive of those occurring in the works of its subcontractors and major suppliers), such as natural catastrophes, epidemics, pandemics, quarantine restrictions, acts of civil or military authority, mobilization of armed services, war, acts of terrorism, riots, strikes, boycotts, picketing, lock-outs or other disturbances, serious breakdowns, accidents, labor conflicts, delay or deficient delivery of necessary raw materials or semi-manufactured and manufactured products, the need to scrap important components due to defective casting, lack of capacity, or transport difficulties, (d) Buyer is behind schedule with work which it has to carry out, or (e) Buyer is late in fulfilling its contractual obligations (including, but not limited, to failure by Buyer to observe the terms of payment). Equipment and other large items may at Seller's option be shipped by truck if the destination is in the continental USA or in contiguous countries, unless otherwise requested in writing by Buyer. Delivery dates are based upon the stated shipment date from Seller's Facility or Seller's agent, and are dependent upon (a) the day on which a signed contract is received by Seller, (b) receipt of any advance payment due with the order, and (c) obtaining any required licenses and permits.

## **TECHNICAL DOCUMENTS, CONFIDENTIAL INFORMATION; INTELLECTUAL PROPERTY**

All technical documents are provided to Buyer on a confidential basis and remain Seller's exclusive property and Confidential Information. They may not be (a) copied or reproduced, (b) communicated to a third party, or (c) used for any purpose other than operation and maintenance of the Products purchased under this Agreement. Technical documents must be returned to Seller upon request. Information in technical documents is only approximate. Specifications may change and production tolerances have to be taken into account. Seller reserves all copyright and other intellectual property rights in its technical documents and other data provided to Buyer.

Buyer shall take all necessary precautions to prevent an unauthorized disclosure or use of Confidential Information by Buyer's employees, subagents or other intermediaries. As used herein "Confidential Information" means any and all designs, drawings, technical documentation, specifications, test results, performance data, business practices, procedures, improvements, know-how, inventions, reports, financial data or other information obtained by Buyer from Seller under the Agreement.

All intellectual property rights related to the Products delivered by Seller, including, without limitation, any and all patents, trademarks, copyright, know-how, Confidential Information, software, drawings and/or documentation or data included in, with or comprising such parts and equipment ("IP Rights"), and all ownership rights in and to the IP Rights shall remain solely and exclusively with Seller or its licensor(s), as applicable. The IP Rights shall not, without the prior written consent of Seller, be used

for any other purpose than that for which they were provided for and may not be copied, reproduced, transmitted or communicated to a third party. Seller shall not be obligated to provide any manufacturing drawings of the Products to Buyer or any other information to the extent that Seller considers such information commercially sensitive.

### **BUYER'S SPECIFICATIONS**

If Buyer provides any specifications or designs for Products, Buyer will indemnify Seller for all claims, costs and expenses (including reasonable attorney's fees and disbursements) from any patent, trademark or copyright infringement claim resulting from compliance with these specifications and designs. Seller will not be responsible for the accuracy or suitability of these specifications and designs, or the performance of any products built in conformance with them.

### **INSPECTION AND NOTICE OF DEFECT**

On receipt of the Products to be furnished, Buyer will inspect the Products for possible damage, obvious defects and for completeness. In the case of transportation damage, such damage will be noted by Buyer in detail on the consignment note or bill of lading and reported immediately to the transportation provider. General remarks or reservations are not permitted. Missing parts or wrong shipments will be reported by Buyer to Seller within two (2) weeks of delivery.

### **CANCELLATION; CHANGE ORDERS**

Buyer may not cancel or change its order without Seller's written consent. Upon consent to cancellation, Buyer must immediately pay (a) all cost incurred by Seller, including overhead, and (b) a reasonable profit. Upon consent to a change, Buyer must immediately pay (a) all additional costs incurred by Seller, including overhead, and (b) a reasonable profit on such additional costs. All cancellation and change costs must be agreed upon prior to Seller's consent.

### **TERMINATION**

Seller may terminate this Agreement upon immediate written notice to Buyer, if Buyer: (a) fails to accept delivery of or pick up Products, (b) fails to cure a default in payment within 10 days after receipt of written demand, (c) fails to cure any other default within 3 days after receipt of written notice, (d) repeats any failure which is substantially similar to one previously corrected by Buyer after notice as provided in subparagraph (a) or (b) above, (e) provides information set forth in any application, claim, schedule, certificate or other document furnished by Buyer that is materially inaccurate, and (f) ceases to function as a going concern, or makes an assignment for the benefit of creditors or any proceeding under any federal or state bankruptcy, receivership or insolvency laws is instituted by or against Buyer, or the liquidation, dissolution, merger or consolidation of Buyer occurs, or a receiver or trustee for Buyer or any of its assets or property is appointed or applied for. Termination will not release or affect, and this Agreement will remain fully operative as to, any obligations or liabilities incurred by Buyer prior to the effective date of such termination; provided that all payments from Buyer to Seller will become immediately due and payable on the effective date of termination without demand and Seller may deduct from any sums it owes to Buyer sums owed by Buyer to it. Any orders received from Buyer, whether or not accepted by Seller, which have not been shipped prior to Buyer's receipt of notice of termination or the effective date of termination or expiration, whichever occurs first, will only be shipped COD or cash in advance.

### **RISK OF LOSS**

Risk of loss or damage to the Product passes to Buyer upon delivery of the Product at the Ex Works point, regardless of whether (a) title has been passed to Buyer, (b) transport is arranged or supervised by Seller, or (c) erection or start-up is carried out under the direction or supervision of Seller.

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## **WARRANTY**

Seller warrants its Products to Buyer and guarantees its products to end-customers strictly in accordance with its standard written Warranty and Guarantee Terms ("Warranty Policy"), a copy of which will be provided to Buyer and is available at [www.palfinger.com/en-us/terms-conditions](http://www.palfinger.com/en-us/terms-conditions) (the "Consumer Warranty Policy") and the terms of this Warranty Section (together with the Consumer Warranty Policy, the "Warranty"). THIS WARRANTY IS EXCLUSIVE, IS THE SOLE WARRANTY OF SELLER, AND ALL OTHER WARRANTIES OF ANY KIND OR DESCRIPTION WHATSOEVER INCLUDING WARRANTIES OF MERCHANTABILITY, QUALITY, TITLE, NON-INFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE OR OTHER WARRANTIES OF QUALITY, WHETHER EXPRESSED OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE, ARE EXCLUDED. SELLER ALSO DISCLAIMS ANY LIABILITY FOR CLAIMS ARISING OUT OF MISUSE, IMPROPER PRODUCT SELECTION, IMPROPER INSTALLATION, MODIFICATION, MISREPAIR OR MISAPPLICATION. Unless specifically agreed otherwise in writing, Seller makes NO WARRANTIES with respect to used or secondhand Product(s) or to any non-Palfinger branded parts or products ("Third Party Parts"). Seller's sole obligation with respect to Third Party Parts shall be to transfer to Buyer the manufacturer's warranty for such parts, to the extent transferable.

Buyer shall promptly and at the latest within fourteen (14) days from the discovery of a defect, notify Seller in writing of any Product defect under the Warranty. If Buyer fails to give notice of such defect within the warranty period described in the Consumer Warranty Policy, Buyer shall lose all rights with respect to such defect. If defects in the Products may cause damage or danger, Buyer shall take all immediate measures, which are necessary to prevent or reduce such damage or danger.

The Warranty will not apply, and Buyer shall have no right or remedy and Seller shall have no liability or obligation under the Warranty, with respect to defects arising from (i) damage to the Product after delivery in accordance with the agreed Incoterm (ii) faulty or improper maintenance, installation, handling, service, storing or inspection (except to the extent performed by Seller), (iii) non-compliance with manufacturer's or operator's manual, operating or maintenance instructions or other instructions relating to the Product(s), (iv) repairs, alterations or adjustments carried out by parties other than Seller, (v) accidents, theft, vandalism, misuse or negligence, (vi) use of a Product for a purpose or application for which it is unfit, unsuitable or inappropriate, or (vi) normal wear and tear. Further exclusions and requirements for the warranty coverage may be included and specified in the Warranty Policy.

Buyer's sole and exclusive right and remedy, and Seller's sole and exclusive liability and obligation, for a breach of the Warranty shall be that Seller will either repair or replace the Product or refund or credit to Buyer the price Buyer paid therefor. The decision whether to repair, replace, refund or credit the Product shall be made by Seller in its sole discretion. Repaired Products and replacement Products shall be warranted for the remainder of the original warranty period.

## **LIMITATION OF LIABILITY**

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL SELLER BE LIABLE TO BUYER OR TO ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT OR LOSS OF DATA OR DIMINUTION IN VALUE, OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, PUNITIVE, EXEMPLARY OR SPECIAL DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE

FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. EXCEPT IN THE CASE OF CLAIMS RESULTING FROM THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF SELLER, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL SELLER'S AGGREGATE LIABILITY FOR ANY CLAIMS ARISING OUT OF OR CONNECTED WITH THIS AGREEMENT OR THE MANUFACTURE, SALE, DELIVERY OR USE OF ANY PRODUCT EXCEED THE PURCHASE PRICE PAID TO SELLER FOR THE PART OR EQUIPMENT WITH RESPECT TO WHICH SUCH LIABILITY IS BASED. THE REMEDIES OF BUYER SET FORTH IN THE AGREEMENT ARE EXCLUSIVE.

### **GENERAL INDEMNIFICATION**

If Seller is made a party to any proceeding, action or arbitration, on the basis of breach of warranty, negligence, strict liability or other tort, by Buyer or any persons deriving title from Buyer, or any third party, unless it shall be determined that Seller was solely negligent, then Buyer will defend, indemnify and hold Seller and Seller's affiliates harmless from and against any injuries, losses, damages, costs, fees, judgment, settlement and expenses in connection with such proceeding, action or arbitration, including reasonable attorney's fees caused by, related to or arising from Buyer's operations, use, sale or ownership of the Products, or other claims however arising in connection with the use or operation of the Products, unless caused by the gross negligence or willful misconduct of Seller.

### **PARTS POLICY**

Seller's goal is to have an adequate supply of spare parts available for Buyer's needs. No guarantee can be made, however, that the supply of spare parts will in fact be adequate in practice. Shipping is subject to Palfinger spare parts policy and procedure.

### **PRODUCT CHANGES**

Seller may change its Product design at any time. Seller assumes no obligation to incorporate these changes in Products manufactured prior to the change.

**DISPUTE RESOLUTION, GOVERNING LAW.** Except as set out below, the parties will arbitrate any dispute or claim arising out of or relating to this Agreement or any other related agreement (a "Dispute"). The arbitration will be held in accordance with the International Arbitration Rules of the American Arbitration Association (the "AAA") and administered by the International Center for Dispute Resolution of the AAA (the "ICDR;"). The arbitration will be held at Buffalo, New York. This jurisdiction will be exclusive, except for the rights set out this Section below. All Disputes will be heard by a single arbitrator. If the parties cannot agree on a single arbitrator, one will be appointed by the ICDR. The arbitrator may not modify this Agreement. Any court having jurisdiction may enter judgment on the arbitration award. Unless otherwise agreed to by the Seller and the Buyer, or required by applicable law, they, the arbitrator and the administrator will keep confidential all matters relating to the arbitration or the arbitration award. The costs of arbitration will be borne equally by the parties and each party will be responsible for its own costs. The parties recognize that if either breaches any provision of this Agreement that prohibits it from infringing intellectual property rights in trademarks, trade names or symbols or from improperly using or disclosing confidential information, or from competing, it may cause irreparable harm to the other party. Such other party may bring an action in any court having jurisdiction in connection with any such breach and may seek damages and injunctive or other equitable relief. The arbitration procedures above will not apply to any such breach. If either party defaults upon any payment obligation arising out of or relating to this Agreement, the other party may bring an action in any court having jurisdiction in connection with any

such default.

The arbitration procedures above will not apply to any such default. The Seller may send default notices to the Buyer and terminate its agreement with the Buyer without first pursuing arbitration. Any arbitration award will have a binding effect only on the actual Dispute arbitrated and will not have any collateral effect on any other Dispute. The parties will arbitrate or litigate each Dispute with each other on an individual basis. The parties will not consolidate their Dispute in any arbitration or litigation action with a claim by any other individual or entity. The parties waive all rights to a jury trial in any litigation. This Agreement will be construed and governed by the laws of the State of New York without reference to its conflicts of law principles. The United Nations Convention on Contracts for the International Sale of Goods (Vienna 1980) will not apply. The limitation period for any claim brought under a statute will be as provided in the statute. If the statute does not provide a limitation period or for non-statutory claims, the general limitation periods under New York law will apply.

## **COMPLIANCE WITH LAWS; EXPORT**

Seller and Buyer shall each comply with and shall conduct its business at all times in accordance with all applicable laws and regulations, including, without limitation, anti-money laundering, bribery and anti-corruption and the US Foreign Corrupt Practices Act. Buyer shall be solely responsible for obtaining all approvals, authorizations licenses and permits, complying with all laws, rules and regulations, and making all arrangements related to the export of Products supplied by Seller from the United States and/or the import of Products supplied by Seller into a country outside the United States. Products and related technical information, data, documents and materials are subject to export controls under U.S. Export Administration Regulations, U.S. Department of the Treasury embargo regulations and other applicable laws or regulations. Buyer shall strictly comply with all such export controls and regulations, shall fully cooperate with Seller in any official or unofficial investigation, audit or inspection that relates to any of such controls.

## **MISCELLANEOUS**

Buyer's rights and obligations under this Agreement may not be assigned or delegated without the prior written consent of Seller. Seller may freely assign its rights and obligations. Except for the Seller's subsidiaries and affiliates, the provisions stated herein are for the sole benefit of the parties hereto, and confer no rights, benefits or claims upon any person or entity not a party hereto. This Agreement supersedes all prior written or oral agreements with respect to its subject matter. The invalidity of any part of this Agreement will not affect the validity of the remaining provisions. Seller's rights under this Agreement are cumulative and are in addition to all rights available to it at law or in equity. All claims or suits against Seller must be made within one (1) year of the date the cause of action accrued (regardless of when they were discovered) or be forever barred. No waiver will be effective against Seller unless Seller agrees to it in writing. If any portion of the Agreement is found to be invalid or unenforceable by a court of competent jurisdiction, the invalid or unenforceable term shall be severed from the Agreement, and the remaining terms and conditions shall be valid and fully enforceable as written. Paragraph headlines are for convenience only and are not to be considered in interpreting any of the provisions in this Agreement. Seller recognizes INCOTERMS 2000 global trade guidelines.

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