

## **GENERAL TERMS AND CONDITIONS - PALFINGER INC.**

### **GENERAL**

The terms and conditions, together with (a) such plans, specifications 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 Inc. ("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 parts or equipment 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or conditions in any of Buyer's purchasing documents will be deemed material alterations and are null and void and superseded by these terms and conditions.

### **PRICE**

Except as provided on the face of this invoice, the price stated is (a) based on U.S. dollars, (b) Ex Works-Niagara Falls, Ontario, Canada 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 an additional cost, Seller reserves the right to adjust its price should the basis for such additional cost change.

### **SECURITY**

Buyer grants Seller a purchase money security interest in the parts and equipment and the right to repossess them until the full purchase price is paid.

### **TAXES**

Seller's prices are exclusive of any federal, state, provincial or local property, licence, privilege, sales, use, excise, gross receipts or other taxes imposed upon, or measured by, the transaction, the part or equipment, 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 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 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, acts of civil or military

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authority, mobilization of armed services, war, acts of terrorism, riots, strikes, boycotts, picketing, lock-outs or other disturbances, serious breakdowns, accidents, labour 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 Niagara Falls, Ontario, Canada 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**

All technical documents are provided to Buyer on a confidential basis and remain Seller's exclusive property. 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 parts and equipment 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'S SPECIFICATIONS**

If Buyer provides any specifications or designs for parts or equipment, 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 equipment to be furnished, Buyer will inspect the equipment 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] [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 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 parts or equipment, (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

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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 parts and equipment passes to Buyer upon delivery of the equipment 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.

### **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. THIS WARRANTY IS EXCLUSIVE AND IS IN LIEU OF ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR OTHER WARRANTIES OF QUALITY, WHETHER EXPRESS OR IMPLIED.

### **LIMITATION OF LIABILITY**

NOTWITHSTANDING ANY OTHER PROVISIONS OF THIS AGREEMENT, IN NO EVENT WILL SELLER BE LIABLE FOR ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING , BUT NOT LIMITED TO, LOST PROFITS), NOR WILL SELLER'S LIABILITY FOR ANY CLAIMS ARISING OUT OF OR CONNECTED WITH THIS AGREEMENT OR THE MANUFACTURE, SALE, DELIVERY OR USE OF THE PART OR EQUIPMENT EXCEED ITS PURCHASE PRICE OR PART IN WHICH SUCH LIABILITY IS BASED.

### **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 indemnify and hold Seller harmless for all damages, costs and expenses in connection with such proceeding, action or arbitration, including reasonable attorney's fees.

### **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 parts or equipment 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

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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.

#### **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. 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 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. Paragraph headlines are for convenience only and are not to be considered in interpreting any of the provisions in this Agreement. Seller recognizes INCO terms 2000 global trade guidelines.

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