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CAID Industries, Inc. Standard Terms and Conditions Sales and Delivery 2018

General: CAID Industries, Inc. (and any assignee thereof) is herein referred to as "CAID" and the entity purchasing services ("Services") and parts ("Parts") required for Services to be performed by CAID on certain equipment and materials (collectively, the "Products") is referred to as "Customer." These Terms and Conditions, the Services Agreement or accompanying quotation, as applicable, and all documents incorporated by specific reference herein or therein constitute the complete and exclusive statement of the terms of the agreement ("Agreement") governing the sale of Services and Parts by CAID to Customer related to the Products. Customer's acceptance of the Services and/or Parts will manifest Customer's assent to the Agreement. No terms stated by Customer in any purchase order, acceptance or acknowledgement will become part of the Agreement unless expressly agreed upon in writing by CAID and CAID hereby objects to and rejects any additional or different terms in Customer's purchase order, acceptance, acknowledgement or other forms. CAID reserves the right in its sole discretion to refuse orders.

- 1. Prices and Taxes:** Unless otherwise specified in writing by CAID, the prices quoted for services and products are valid for thirty (30) days from the date of CAID's quotation, execution of a Services Agreement or acknowledgement of Customer's order for the Services, whichever occurs last. Service pricing is subject to change without prior notification and will be priced in accordance with CAID's prevailing service rates in effect at time of invoice.

Unless otherwise specified on a service rates list or mutually agreed upon in writing by the parties, charges for Services are due and payable within thirty (30) days following the date of CAID's invoice.

All prices are exclusive of any costs of any sales, use, value added, excise, gross receipts, business and occupation or similar present or future taxes imposed by any governmental body on the performance of Services or the sale, delivery, use, or other handling of Parts or in connection with any related or contemplated transactions, which costs are to be borne by Customer. Unless otherwise specified by CAID, Parts will be furnished at CAID's then prevailing prices.

- 2. Excuse of Performance:** CAID is not liable for non-performance or delays in performance due to acts of God; war; epidemic; fire; flood; weather; sabotage; strikes or labor disputes; civil disturbances or riots; governmental requests, restrictions, allocations, laws, regulations, orders or actions; unavailability of or delays in transportation; default of suppliers; equipment breakdown or malfunction; unforeseen circumstances; acts or omissions of Customer, including, without limitation, those specified in Section 17; or any events or causes beyond CAID's reasonable control. Performance of Services and deliveries of Parts may be suspended for an appropriate period of time or canceled by CAID upon notice to Customer in the event of any of the foregoing, but the balance of the Agreement will otherwise remain in effect.

If CAID determines that its ability to supply the total demand for the Services or Parts, or to obtain material used directly or indirectly in the rendering of Services or the manufacture of Parts, is hindered, limited or made impracticable due to causes set forth in the preceding paragraph, CAID may delay performance of Services or allocate its available supply of the Parts or such material (without obligation to acquire other supplies of any such Parts or material) among itself and its purchasers on such basis as CAID determines to be equitable without liability for any failure of performance which may result therefrom.

- 3. Limited Warranty:** Subject to the limitations of Section 5, CAID warrants that it will perform the Services as described in the Agreement in a workmanlike manner. Parts purchased by CAID for resale to Customer will carry only the warranty extended by the original manufacturer. **EXCEPT AS SPECIFIED ABOVE, PARTS FURNISHED HEREUNDER ARE FURNISHED AS-IS, WHERE-IS, WITH NO WARRANTY WHATSOEVER. THE WARRANTY SET FORTH IN THIS SECTION 4 AND THE WARRANTY SET FORTH IN SECTION 6 ARE THE SOLE AND EXCLUSIVE WARRANTIES GIVEN BY CAID WITH RESPECT TO THE SERVICES AND PARTS AND ARE IN LIEU OF AND**

EXCLUDE ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ARISING BY OPERATION OF LAW OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE WHETHER OR NOT THE PURPOSE OR USE HAS BEEN DISCLOSED TO CAID IN SPECIFICATIONS, DRAWINGS OR OTHERWISE, AND WHETHER OR NOT THE PARTS ARE SPECIFICALLY DESIGNED AND/OR MANUFACTURED BY CAID FOR CUSTOMER'S OR ANY OTHER PERSON'S USE OR PURPOSE.

This warranty does not extend to any losses or damages due to misuse, accident, abuse, neglect, normal wear and tear, Customer's or any other person's negligence, unauthorized modification or alteration, use beyond rated capacity, unsuitable power sources or environmental conditions, improper installation, repair, handling, maintenance or application or any other cause not the fault of CAID. CAID is responsible for providing only those Services specified in a Scope of Work and not for installing, inspecting, observing, advising or warning as to the Products, or as to any other products or conditions located on Customer's property or work site, at the time of performing the Services or otherwise. To the extent that Customer or its agents has supplied specifications, information, representation of operating conditions or other data to CAID that are used in the selection or design of the Services and/or Parts and the preparation of CAID's quotation and/or Services Agreement, and in the event that actual operating conditions or other conditions differ from those represented by Customer, any warranties or other provisions contained herein which are affected by such conditions are null and void.

If within thirty (30) days after Customer's discovery of any warranty defects within the warranty period or within ten (10) days after shipment for quantity discrepancies and Customer notifies CAID thereof in writing, CAID shall, at its sole option, correct performance for that portion of the Services found by CAID to be defective or refund the purchase price for that portion of the Services found by CAID to be defective. Failure by Customer to give such written notice within the applicable time period is deemed an absolute and unconditional waiver of Customer's claim for such defects or shortages.

Customer assumes all other responsibility for any loss, damage, or injury to persons or property arising out of, connected with, or resulting from the use of Services or Parts, either alone or in combination with other products/components, and shall indemnify, defend, and hold CAID harmless from any such loss, damage or injury.

- 4. Limitation of Remedy and Liability: THE SOLE AND EXCLUSIVE REMEDY FOR BREACH OF ANY WARRANTY HEREUNDER (OTHER THAN THE WARRANTY PROVIDED UNDER SECTION 6) IS LIMITED TO, AT CAID'S SOLE OPTION, EITHER CORRECT THE PERFORMANCE FOR THAT PORTION OF THE SERVICES FOUND BY CAID TO BE DEFECTIVE OR REFUND OF THE PRICE PAID FOR THAT PORTION OF THE SERVICES FOUND BY CAID TO BE DEFECTIVE.**

CAID IS NOT LIABLE FOR DAMAGES CAUSED BY DELAY IN PERFORMANCE AND IN NO EVENT, REGARDLESS OF THE FORM OF THE CLAIM OR CAUSE OF ACTION (WHETHER BASED IN LAW, EQUITY, CONTRACT, INFRINGEMENT, NEGLIGENCE, STRICT LIABILITY, TORT OR OTHERWISE), DOES CAID'S LIABILITY TO CUSTOMER AND/OR END USERS FOR ANY DAMAGES HEREUNDER (INCLUDING, WITHOUT LIMITATION, DAMAGES IN AN ACTION FOR CONTRIBUTION OR INDEMNITY) EXCEED THE PRICE PAID BY CUSTOMER FOR THE SPECIFIC SERVICES OR PARTS PROVIDED BY CAID GIVING RISE TO THE CLAIM OR CAUSE OF ACTION. CUSTOMER AGREES THAT IN NO EVENT DOES CAID'S LIABILITY TO CUSTOMER AND/OR END USERS EXTEND TO INCLUDE INCIDENTAL, CONSEQUENTIAL, SPECIAL, INDIRECT OR PUNITIVE DAMAGES. The term "consequential damages" includes, but is not limited to, loss of anticipated profits; business interruption; loss of use, revenue, reputation or data; costs incurred, including, without limitation, costs for capital, fuel, or power; loss or damage to property or equipment; and environmental clean-up. Any action arising out of or relating to the Agreement, regardless of the form of the action (whether based in law, equity, contract, infringement, negligence, strict liability, other tort or otherwise), must be commenced within one (1) year after the date of the Services giving rise to the claim.

Unless otherwise specified by CAID in writing, it is expressly understood that any technical advice furnished by CAID with respect to the use of the Parts and/or Services is given without charge, and CAID assumes no obligation or liability for the advice given or not given, or results obtained there from.

Customer expressly acknowledges and agrees that CAID has set its prices and entered into the Agreement in reliance upon the limitations of liability and other terms and conditions specified herein, which allocate the risk between Customer and CAID and form a basis of this agreement.

- 5. Patents and Copyrights:** Subject to the limitations of the second paragraph of Section 5, CAID warrants that the Services sold, except as are performed or delivered specifically for Customer according to Customer's specifications, do not infringe any valid United States patent or copyright in existence as of the date of performance and/or shipment. This warranty is given upon the condition that

Customer promptly notifies CAID of any claim or suit involving Customer in which such infringement is alleged and shall cooperate fully with CAID and permit CAID to control completely the defense, settlement or compromise of any such allegation of infringement. CAID's warranty as to use patents only applies to infringement arising solely out of the inherent operation, according to CAID's specifications and instructions of such Services or Parts. In the event such Services or Parts are held to infringe such a United States patent or copyright in such suit, and the use of such Services or Parts is enjoined, or in the case of a compromise or settlement by CAID, CAID will have the right, at its option and expense, to procure for Customer the right to continue using such Services or Parts, or modify such Services or Parts to become non-infringing, or grant Customer a credit for the value of any prepaid Services or Parts. In the event of the foregoing, CAID may also, at its option, cancel the Agreement as to future performance of such Services or future deliveries of such Parts without liability.

- 6. Special Tooling:** Notwithstanding any tool, die or pattern charges, all tooling and related items are and shall remain the property of CAID.
- 7. Shipment and Delivery:** Unless otherwise specified by CAID, for sales of Parts in which the end destination of the Parts is outside of the United States, risk of loss and legal title to the Parts transfers to Customer immediately after the Parts have passed beyond the territorial limits of the United States. For all other shipments, risk of loss and legal title passes from CAID to Customer upon delivery to and receipt by carrier at CAID's shipping point. Notwithstanding the above, risk of loss and legal title to Parts transfers to Customer (i) when delivered by the individual providing the Services, or (ii) at the time Parts are placed in storage due to Customer's delay or postponement. Any claims for shortages or damages suffered in transit are the responsibility of Customer and will be submitted by Customer directly to the carrier. Shortages or damages must be identified and signed for at the time of delivery. While CAID will use all reasonable commercial efforts to maintain the performance and delivery date(s) acknowledged or quoted by CAID, all performance and shipping dates are approximate and not guaranteed. CAID reserves the right to make partial shipments. CAID, at its option, is not bound to tender delivery of any Parts for which Customer has not provided shipping instructions and other required information. If the provision of Services or shipment of Parts is postponed or delayed by Customer for any reason, Customer agrees to reimburse CAID for any and all storage costs and other additional expenses resulting therefrom.
- 8. Terms of Payment:** Unless otherwise specified by CAID, terms of payment are net thirty (30) days from date of CAID's invoice in U.S. currency. If any payment owed to CAID is not paid when due, it will bear interest, at a rate to be determined by CAID, which will not exceed the maximum rate permitted by law, from the date on which it is due until it is paid in full. CAID has the right, among other remedies, either to terminate the Agreement or to suspend further performance under this and/or other agreements with Customer in the event Customer fails to make any payment when due, which other agreements Customer and CAID hereby amend accordingly. Customer is liable for all expenses, including attorney's fees, relating to the collection of past due amounts. CAID may preserve its interests in payment by enforcing any applicable mechanic's, construction or similar lien rights including the filing of any applicable bond claim. Should Customer's financial responsibility become unsatisfactory to CAID, cash payments or security and/or further assurances satisfactory to CAID may be required by CAID for future performance of Services or provision of Parts. If such cash payment or security or assurance is not provided, in addition to CAID's other rights and remedies, CAID may discontinue performance of Services and provision of Parts.
- 9. Returns and Cancellations:** In the event Customer desires to return Products, prior written approval of an authorized representative of CAID is required. Customer may cancel orders only upon reasonable advance written notice and upon CAID's approval and payment to CAID of CAID's cancellation charges which include, among other things, all costs and expenses incurred and, to cover commitments made by CAID, a reasonable profit thereon.
- 10. General Provisions:** This Agreement, including these Terms and Conditions, supersedes all other communications, negotiations and prior oral or written statements regarding the subject matter of the Agreement. No change, modification, rescission, discharge, abandonment, or waiver of the Agreement is binding upon CAID unless made in writing and signed on its behalf by a duly authorized representative of CAID. No conditions, usage of trade, course of dealing or performance, understanding or agreement purporting to modify, vary, explain, or supplement this Agreement is binding unless hereafter made in writing and signed by the party to be bound. No modification or additional terms are applicable to this Agreement by CAID's receipt, acknowledgment, or acceptance of purchase orders, shipping instruction forms, or other documentation containing terms at variance with or in addition to those set forth herein. Any such modifications or additional terms are specifically rejected and deemed a material alteration hereof. If the Agreement is deemed an acceptance of a prior offer by Customer, such acceptance is expressly conditional upon Customer's assent to any additional or different terms set forth in the Agreement. If one or more of the provisions of this agreement are deemed void by law, then the remaining provisions will continue in full force and effect. CAID reserves the right to subcontract Services to others. No waiver by either party with respect to any breach or default or of any other right or remedy, and no course of dealing, is deemed to constitute a continuing waiver of any other breach or default or of any other right or remedy, unless such waiver be expressed in writing and signed by the party to be bound. All typographical or clerical errors made by CAID in any quotation, acknowledgment, or publication are subject to correction.

In performing the Services, CAID is an independent contractor and not an agent, servant or employee of Customer. Except as otherwise specifically stated in the Agreement, each party intends that the Agreement will not benefit or create any right or cause of action in or on behalf of, any person or entity other than Customer and CAID.

All notices, demands, or consents required or permitted under this Agreement will be in writing. Notice is considered delivered and effective when (i) personally delivered; (ii) the day following transmission if sent by facsimile followed by written confirmation by registered overnight carrier or certified United States mail; or (iii) the day after posting when sent by registered private overnight. Notice will be sent to the parties at the addresses set forth on the Services Agreement or at such other address as will be given by either party to the other in writing.

- 11. Applicable Law and Forum:** The exclusive jurisdiction and venue for all actions arising out of this Agreement, including any amendments or changes thereto, is only in a state or federal court located in the County of Pima in the State of Arizona and Customer agrees to submit to such jurisdiction and venue.
- 12. Changes:** Customer may request changes or additions of the Scope of Work. If the changes or additions are accepted by CAID, CAID may revise the price and performance dates. CAID reserves the right to change designs and specifications for Parts without prior notice to Customer, except with respect to Parts being made-to-order for Customer. CAID has no obligation to install or make such changes in any Parts manufactured prior to the date of such change.
- 13. Assignment:** Customer shall not assign its rights or delegate its duties hereunder or any interest herein without the prior written consent of CAID, and any such assignment or delegation, without such consent, is null and void.
- 14. Inspection:** Customer has ten (10) days from the date of completion of each portion of the Services to inspect the Services, and in the event of any non-conformity, Customer must give written notice to CAID within said period stating why the Services are not conforming. Failure by Customer to give such notice constitutes unqualified acceptance of the Services.
- 15. Installation Services Conditions:** In order to receive installation services, Customer, at its sole expense, shall: (i) maintain the Customer installation site (“**Site**”) in accordance with the requirements of CAID’s specifications for the Site as set forth on the applicable maintenance order or otherwise provided in writing to Customer (“**Installation Site Specifications**”) and the instructions of CAID’s service personnel (“**Service Personnel**”), including, without limitation, preparing the Site for any installation of new or upgraded or updated equipment, hardware and software, if any; (ii) provide Maintenance Personnel with reasonable access to the Site as well as to the data relating to the operation of the Products to be maintained; (iii) furnish adequate heat, telephone, light, ventilation and regulated electric power for testing purposes; (iv) provide the means to shut off and secure electric power and other process media supplied to the equipment and provide safe working conditions; (v) perform the routine hardware preventive maintenance and cleaning described in the manuals and any documentation provided by CAID with the Products (“**Operating Manuals**”); (vi) operate the Products in accordance with the instructions of Service Personnel and the recommendations and instructions appearing in the Operating Manuals; (vii) not directly or indirectly, maintain, repair, modify or alter any Product without the prior written approval of CAID (and in such event, at CAID’s sole discretion and judgment all warranties, express, implied or statutory, may be revoked by CAID and be deemed waived by Customer with respect to that Product); (viii) at CAID’s request, make available adequate storage facilities for spare parts, tools and other equipment that CAID wishes to store at the Site and provide the Service Personnel, within reasonable proximity to each relevant Product, with adequate working space and facilities; (ix) receive CAID’s prior written consent before using any hardware not provided by CAID (“**Non-CAID Hardware**”) in connection with the Products (Customer’s failure to seek such approval from CAID is deemed an immediate default under the Agreement allowing CAID to terminate the Agreement and CAID’s approval of any Non-CAID Hardware in no way alters or affects any of Customer’s responsibilities or obligations under the Agreement other than as provided for herein); and (x) be responsible for procuring, installing, and maintaining all Non-CAID Hardware necessary to operate the Products and obtain Services. If Customer fails to meet any of its responsibilities set forth above then CAID’s performance of the Services is excused and CAID may terminate the Agreement at its sole option.

CAID is under no obligation to remove or dispose of Parts or equipment unless specifically agreed upon in this Agreement. Parts removed by CAID become the property of CAID. CAID bears no responsibility for and incurs no liability in connection with any Non-CAID Hardware used in connection with the Products or the installation thereof, including Non-CAID Hardware approved by CAID in accordance with this Section 17.

Customer shall immediately notify CAID, in writing, at the time of order placement and thereafter, of any unsafe or hazardous substance or condition at the site, and shall provide CAID with any applicable Material Safety Data Sheets regarding the same.

Customer shall bear any losses, costs, damages, claims and expenses incurred by CAID as a result of Customer’s failure to advise CAID

of unsafe or hazardous substances or conditions at the site. CAID, in its sole discretion and without cost or penalty, reserves the right to cancel its performance under the Agreement immediately upon written notice to Customer following CAID's discovery of an unsafe or hazardous site substance or condition or any other circumstance affecting CAID's performance of Services. Customer shall appoint a representative familiar with the site and the nature of the Services performed by CAID to be accessible at all times that CAID personnel are at the site. CAID is not liable for any expenses incurred by Customer in removing, replacing or refurbishing any Customer equipment or any part of Customer's building structure that restricts CAID access. Customer personnel shall cooperate with and provide all necessary assistance to CAID. CAID is not liable or responsible for any work performed by Customer.

If Customer violates or CAID has reason to believe that Customer has violated any of its obligations under this Section 17, CAID, at its sole option, may evaluate any and all Products, their use and environment and, upon thirty (30) days' prior written notice to Customer stating CAID's reasonable objections to continued maintenance of such Products, may condition CAID's continued performance of the Services with respect to those Products upon Customer's prior written agreement to: (i) pay revised prices and rates in respect of those Products; or (ii) change those Products, or modify the environment for and/or use of those Products, or make such other modifications as are, in the opinion of CAID, necessary for the proper operation and maintenance of those Products; provided that Customer must pay CAID for any labor, materials, parts and adjustments deemed necessary by CAID at CAID's then current fees and prices for Additional Services.

- 16. Drawings:** CAID's documentation, prints, and drawings ("**Documents**"), including, without limitation, the underlying technology, furnished by CAID to Customer in connection with the Agreement are the property of CAID and CAID retains all rights, including, without limitation, exclusive rights of use, licensing and sale. Notwithstanding the foregoing, Customer may use the Documents in connection with Services and Parts.
- 17. Export/Import:** Customer agrees that all applicable import and export control laws, regulations, orders and requirements, including, without limitation, those of the United States, and the jurisdictions in which CAID and Customer are established or from which Services and Parts may be supplied, applies to their receipt and use. In no event will Customer use, transfer, release, import, or export Parts in violation of such applicable laws, regulations, orders or requirements.
- 18. Term:** The term of the Agreement begins on the Effective Date or the date of Customer's acceptance of this Agreement, as applicable, and will continue until withdrawn by either party. Either party may mutually terminate this agreement with a 30 day written notice to the other party.
- 19. Survival:** Sections 5, 7, 9, 11, 12, 19, will survive the expiration or earlier termination of the Agreement.