

## **PANDJIRIS, INC. STANDARD TERMS AND CONDITIONS OF SALE**

**Table of Clauses incorporated herein (see detail following table):**

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10. Period of Quotation (1/15/99). This Quotation for the furnishing of equipment, parts, or other materials, including any equipment system consisting of components, some or all of which are manufactured by Pandjiris, Inc. ("Seller") (hereinafter collectively referred to as "Equipment"), will remain in effect for a minimum period of thirty (30) days from the date signed by or on behalf of Seller and (unless previously accepted by Customer) may be withdrawn anytime thereafter by Seller.

20. Prices (1/15/99). The prices quoted are those in effect on the date of this Quotation, and will remain in effect during the period of Quotation. Seller shall have the right, however, to issue a modified Quotation in the event of unforeseeable changes in the costs of raw materials. Seller's prices are F.O.B. Seller's factory or other designated point of shipment. Prices do not include, and Customer shall pay all costs and expenses incident to shipment and handling of materials from the point of delivery of the Equipment by Seller to carrier at Seller's factory or other point of shipment, including without limitation all transportation, shipping and handling costs, costs of insurance and costs and expenses of preparation and installation at Customer's site.

30. Taxes (07/26/10). Prices quoted do not include (and Customer agrees to pay) taxes, tariffs, duties, or fees of any kind which may be levied or imposed on either party by federal, state, municipal, or other governmental authorities in connection with the sale or delivery of the Equipment or Services provided by Seller.

All Buyer Orders are subject to applicable state, provincial, foreign and local taxes assessed as of the exit-factory date for the ordered equipment/parts/services, unless a properly executed Pandjiris Tax Exemption Certificate (see attachments here immediately below) or other legally valid destination state/country tax exemption or resellers certificate accompanies Purchase Order. Pandjiris may also charge administrative fees associated with the filling of applicable tax returns and collection of these taxes.

Preferred by Pandjiris:

[Panjiris Modified Streamlined Sales & Use Tax Exemption Certificate](#)

Acceptable Form:

[Uniform Sales & Use Tax Multijurisdiction Exemption Certificate](#)

40. Terms of Payment (1/15/99). Unless otherwise specifically agreed in writing by Seller, the total price is due and payable to Seller, without setoff or other deductions or charges, thirty (30) days net after date of Seller's invoice. If the Quotation relates to Equipment specially manufactured or modified by Seller for Customer, Seller may, at its option, require Customer to make a minimum fifteen percent (15%) down payment and to make progress payments commensurate with performance by Seller, satisfaction of which requirements

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by Customer shall be a condition to Seller's obligation to manufacture and deliver the Equipment described herein.

Any amounts due by Customer to Seller, which are unpaid, on or after thirty (30) days of Seller's invoice for such amount shall bear interest at the rate of one and one-half (1-1/2%) per month, or the maximum rate permitted by law, whichever is less. The accrual of payment of any interest as provided above shall not constitute a waiver by Seller of any rights and remedies in connection with a default by Customer. Customer shall pay all court costs, attorneys' fees, and other costs incurred by Seller in collecting past due accounts, including interest. As security for payment of all amounts due Seller hereunder, Customer hereby grants to Seller a security interest in all Equipment sold by Seller to Customer, and all proceeds or products thereof, and Seller shall have all rights of a secured party under the Uniform Commercial Code with respect to such Equipment. Customer shall sign, or hereby authorizes Seller to sign (if permitted by law) all financing statements which Seller may require to perfect the above security interest in any one or more jurisdictions, and Customer agrees to pay all filing fees for such financing statements.

If shipment or delivery of Equipment is delayed by or at the request of Customer, payment will become due in full thirty (30) days from the date Seller notifies Customer that such Equipment is ready for shipment. In such event, Seller may impose, and Customer agrees to pay, storage charges and other incidental expenses incurred by Seller as a result of the delay, in addition to any interest on late payment as described above.

50. Limited Warranty - Disclaimer of Warranties (1/15/99). Seller warrants that Equipment manufactured by Seller (including any and all components of a system described in the Quotation to the extent manufactured by Seller) will be free from defects in materials and workmanship for a period of twelve (12) months or two thousand (2,000) hours of operation, whichever expires first, in each case extending from the first day of service. As to all Equipment manufactured by Seller (other than replacement parts), the first day of service shall not be later than a date ninety (90) days from exit-factory date of shipment to Customer, and the warranty period described above shall commence no later than such date. As to replacement parts, such first day of service shall not be later than a date one hundred eighty (180) days from exit-factory date of shipment to Customer, and the warranty period described above shall commence no later than such date. Such warranty shall not apply in any event to failure or defects in materials due to normal wear and tear, failure to perform recommended or customary maintenance procedures, exposure to detrimental elements, improper or extended storage, or corrosion, and shall not extend to any person or entity other than Customer.

In the event of any such defect in materials or workmanship, the sole liability

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and obligation of Seller shall be to furnish replacement Equipment, or components or parts thereof, F.O.B. Seller's factory (excluding costs of shipping, handling and installation, which shall be arranged and incurred by Customer). At the option of Seller, Seller may arrange for repair of any such Equipment, or components or parts thereof, provided that Customer pays all costs of shipment to and from Seller's factory.

The obligations of Seller under this limited warranty are subject, however, to the following conditions:

- (a) Customer shall give prompt notice to Seller of the date on which the Equipment is first placed in service.
- (b) Customer shall give Seller immediate written notice (within the warranty period) of any defect in material or workmanship covered by warranty.
- (c) Customer shall install, maintain, and use the Equipment strictly in accordance with instructions, procedures, or specifications supplied by Seller, and in any event in accordance with industry standards.
- (d) Customer shall ensure that the Equipment is operated only by qualified and properly trained personnel.
- (e) Customer shall not abuse the Equipment by overloading or improper operation, and shall not modify the Equipment or use repair parts other than furnished by Seller, except as approved by Seller in writing.
- (f) Any defects or non-conformities in the Equipment, which could be identified on initial inspection or testing of the Equipment by Customer, shall not be covered by warranty unless notice is given to Seller within thirty (30) days after receipt by Customer.

The above limited warranty shall apply solely with respect to Equipment manufactured by Seller, and Seller makes no warranties with respect to materials and components of the Equipment described in the Quotation which are manufactured by others. The sole remedy available to Customer with respect to defects in such materials or components supplied by others shall be against such manufacturer under any manufacturer's warranty relating to such materials or components to the extent available to Customer. The warranty in this Clause shall terminate upon sale or lease of the Equipment by Customer to any other person, unless otherwise agreed in writing by Seller.

**EXCEPT AS SPECIFICALLY PROVIDED ABOVE, SELLER DISCLAIMS ANY AND**

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ALL EXPRESS AND IMPLIED WARRANTIES WITH RESPECT TO OR IN ANY WAY RELATING TO THE EQUIPMENT, WHETHER BASED ON BREACH OF WARRANTY OR CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

THE WARRANTIES STATED HEREIN ARE IN LIEU OF ALL OTHER WARRANTIES WHETHER WRITTEN OR ORAL, STATUTORY, EXPRESS OR IMPLIED, INCLUDING ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

60. Limitation of Liability and Remedies (1/15/99). The sole and exclusive remedies of Customer, and the sole and exclusive obligation of Seller, with respect to any defects or failures of the Equipment (including results of operation) (whether resulting from defects, failures, or errors in design, materials or workmanship, or otherwise) shall be under the limited warranties described in Clause 50 above.

SELLER SHALL IN NO EVENT BE LIABLE FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES RESULTING FROM ANY ALLEGED DEFECTS OR FAILURES OF THE EQUIPMENT, INCLUDING BUT NOT LIMITED TO DAMAGES RELATING TO USE OR LOSS OF USE OF THE EQUIPMENT, OR DELAYS IN MANUFACTURE, DELIVERY, OPERATION, OR USE OF THE EQUIPMENT. Unless otherwise specifically agreed to in writing, in no event shall Seller be directly or indirectly liable for any drawings, designs, parts, items, or materials specified or furnished by the buyer or its agents or suppliers for incorporation into the Equipment. In no event shall any damages in the aggregate payable by Seller as a result of any and all breaches of this contract by Seller exceed one hundred percent (100%) of the price for the Equipment.

70. Indemnification (1/15/99). Customer agrees to defend, indemnify, and hold harmless Seller, and its respective employees and agents, from and against all liabilities, claims, damages, losses, and expenses (including reasonable attorneys fees) for injury to any person or property which directly or indirectly arises out of: 1) any breach of this contract, or 2) the misuse, unsafe, negligent, or inappropriate use of the Equipment.

80. Product Notices (1/15/99). Customer agrees to provide the user (including its employees) of the goods or a transferee in the event of a transfer of the goods or interest therein by Customer with all Seller supplied product notices, warnings, instructions, recommendations and similar materials. Customer agrees to implement and enforce the safety provisions of these materials.

90. Proprietary Information (1/15/99). Seller may from time to time in

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connection with this Quotation supply to Customer certain engineering data, drawings, designs and other documents or information relating to design, construction, performance, or use of Equipment supplied by Seller ("Proprietary Information"). Customer acknowledges and agrees that all such Proprietary Information is owned by Seller, and that the unauthorized use or disclosure of such Proprietary Information by Customer will cause irreparable damage to Seller. Customer agrees that it will not acquire any rights to such Proprietary Information hereunder, except only a non-exclusive license (revocable by Seller on any breach by Customer of its obligations hereunder) to use such Proprietary Information solely as required for the maintenance and use of the Equipment. Customer will not use the Proprietary Information in any other way and will not disclose any such Proprietary Information to any other person or entity without the prior written consent of Seller. In the event of any cancellation or termination of this contract, Customer shall immediately cease using and shall return all Proprietary Information to Seller.

100. Delivery (1/15/99). Any delivery dates, or other schedule of performance by Seller are approximations, and the sole obligation of seller with respect to the schedule of delivery or performance shall be to use commercially reasonable efforts to deliver the Equipment, or otherwise to perform, consistent with the reasonable demands of its business and the availability of materials and components. In any event, Seller shall have no liability to Customer or any other person for delays in performance due to strikes or labor disputes of any type; accidents, fire, floods, acts of God, or action by governmental authority; acts, omissions, or delays of Customer or any other third party; shortages of labor and materials; or without limitation of the above for any causes reasonably beyond the control of Seller. Customer shall make all arrangements for transportation, handling, and installation of Equipment.

110. Changes (1/15/99). Seller reserves the right from time to time to correct any typographical or clerical errors, including errors in mathematical computations, which may exist in any terms of this Quotation. All Equipment shall be furnished subject to any and all variations and tolerances based on the standard practice of Seller. Seller may at any time cease manufacturing any Equipment (including replacement parts or components) at its discretion without liability to Customer.

120. Title and Risk of Loss (1/15/99). Title to and risk of loss or damage to the materials shall pass to Customer upon delivery by Seller F.O.B. point of shipment exit-factory date, subject only to the security interest retained by Seller.

130. Cancellation or Termination (1/15/99). In the event of cancellation of this Quotation by Customer, or in the event of a default hereunder by Customer which is not cured within ten (10) days after notice by Seller, Customer shall pay to Seller on demand all direct and indirect costs (including,

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without limitation to engineering, product development, overhead, and administrative costs) incurred directly or indirectly by Seller in connection with the Quotation, all as reasonable determined by Seller, for the period to and including the date on which Seller receives notice of cancellation, plus profit in an amount equal to twenty five percent (25%) of all such direct and indirect costs. Any progress payments or other amounts paid by Customer shall be credited toward payments of any such costs and profit. In no event, however, shall any amount payable by Customer hereunder exceed the total price payable by Customer for the Equipment under this Quotation. If at the time of cancellation or termination, Seller has delivered to Customer, Equipment which constitutes a standard product of Seller (not modified for delivery to Customer), Seller may at its discretion accept return of such Equipment provided that (a) Customer pays all costs of re-shipping such equipment or materials to Seller F.O.B. Seller's facility, (b) such materials are in the judgement of Seller merchantable and fit for use and resale by Seller, and (c) Customer shall pay a restocking charge equal to twenty-five percent (25%) of the list price of such Equipment as of the date of such return.

140. Technical Assistance (1/15/99). Unless otherwise specifically provided herein, this Quotation does not include any services of Seller in connection with installation, testing, or evaluation of the Equipment. Seller shall, however, consistent with its capabilities and subject to scheduling acceptable to Seller, make available to Customer technical assistance solely for the purpose of assisting Customer in installation and start-up of the Equipment in accordance with Seller's instructions. Customer shall pay Seller for such services at the per diem rates then imposed by Seller, together with any out- of-pocket expenses to Seller of providing such technical assistance. The sole remedy of Customer in connection with any acts or omissions of Seller in the provision of such services shall be the provision of further technical assistance to Customer reasonably required in connection with installation and start-up of the Equipment.

150. Approval of Specifications and Drawings (1/15/99). Customer shall promptly approve, reject, or otherwise respond to any and all specifications or engineering drawings submitted by Seller to Customer in connection with the manufacture of Equipment. Any approval by Customer of specifications or drawings shall constitute conclusive approval of Equipment supplied in conformity to such specifications or drawings.

160. Precedence (1/15/99). If the various parts of this contract are inconsistent, the following order of precedence will apply; (i) Seller's Quotation and attachment documents in their entirety; (ii) special terms and conditions as agreed to in writing by Seller and Customer; (iii) the Clauses of these PANDJIRIS, INC. STANDARD TERMS AND CONDITIONS OF SALE; (iv) other specifications; (v) all other attachments incorporated in this

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contract by reference.

In the event of any inconsistencies in or among any attachments incorporated in Seller's Quotation by reference, Attachment A of Seller's Quotation, if applicable, will govern over any other attachments in Seller's Quotation. In the event of any inconsistencies in or among any other attachments incorporated herein by reference, Attachment A of such other attachments, if applicable, will govern over any other attachments.

170. Technology Export (1/15/99). These commodities, technology or software must not be exported from the United States unless in accordance with Export Administration Regulations. Diversion contrary to U.S. Law is prohibited.

180. Literature (1/15/99). Seller shall have no liability for the accuracy or content of any advertising material or catalogs or reference literature relating to the Equipment. Such literature is made available solely for the purpose of description and does not constitute a warranty or any term or condition of this Quotation.

190. Modifications and Waiver - Entire Agreement (1/15/99). Neither party has rights, warranties, or conditions expressed or implied, statutory or otherwise, other than those herein contained. This Quotation contains the entire agreement between Seller and Customer and can be modified or rescinded only by a writing signed by both parties. No waiver of any provision of this Quotation shall be binding unless in writing signed by an authorized representative of the party against whom the waiver is asserted, and unless expressly made generally applicable shall apply only to the specific case for which the waiver is given. Failure of either party to insist upon strict performance of this quotation shall not be construed as a waiver of any term or conditions thereof.

Any document submitted by Customer to Seller confirming its intention to purchase Equipment described in this Quotation shall be deemed to constitute a confirmation and acceptance of the terms and conditions of this Quotation, even if such document states terms additional to or different from those in this Quotation. Any contract between Seller and Customer shall be solely under the terms and conditions of the Quotation; and Seller hereby objects to any and all such additional or different terms contained in any document submitted to Seller by Customer. Any execution by Seller of a document submitted by Customer in connection with purchase of the Equipment described herein does not constitute acceptance of or agreement to any terms and conditions in addition to or different from those contained herein, but shall constitute only acknowledgment of receipt of such document. In addition, notwithstanding any terms contained in any



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documents submitted by Customer in connection with purchase of the Equipment described hereunder, the acceptance of delivery by Customer of Equipment described in this Quotation shall constitute a course of conduct constituting Customer's agreement to the terms and conditions of this Quotation, to the exclusion of any additional or different terms and conditions.

200. Compliance With Laws (1/15/99). Customer shall be responsible for compliance with any and all federal, state or local laws or regulations respecting safety or respecting use of the Equipment, and shall indemnify and hold Seller harmless from and against any and all claims of violations of such laws or regulations or other claims of personal injury or property damage directly or indirectly related to the installation, maintenance or operation of the Equipment.

210. Governing Law (1/15/99). This Purchase Order shall be governed by and construed in accordance with the laws of the State of Missouri.

220. Agreement to Arbitrate (12/15/09). Customer agrees that all disputes between the Seller and Customer (and their respective affiliates) relating in any way to or arising in any way out of Seller's Quotation(s) and/or Purchaser's Purchase Order(s), whether pleaded in contract or tort, at law or in equity, and whether for damages or equitable relief, shall be settled by arbitration administered by the American Arbitration Association ("AAA") in accordance with the AAA's Commercial Arbitration Rules, and judgment entered on an award by the arbitrator(s) may be entered by any Court having jurisdiction thereof. Customer agrees that the location of any arbitration as provided for in this paragraph shall be conducted in St. Louis, Missouri, and Customer waives any right to contest or object to the location of the arbitration in St. Louis, Missouri, under R-11 of the Commercial Arbitration Rules, and/or any other rule or law.