



Pipeline Equipment Resources Company, LLC

# TERMS & CONDITIONS OF SALE

## GENERAL TERMS & CONDITIONS

- 1) **DEFINITIONS.** "Buyer" shall mean the party purchasing Products pursuant to these Terms of Sale. "PERC" shall mean Pipeline Equipment Resources Company, LLC, a New Jersey corporation. "Products" means the Products manufactured by third parties and sold or otherwise provided by PERC pursuant to this Agreement.
- 2) **CONTRACT OF SALE FOR PRODUCTS OR SERVICES.**
  - a) All Products and Services are offered for sale by PERC subject to the prices and other terms specified in (a) the applicable PERC quotation, proposal or pricelist, and (b) these Terms of Sale, all of which are subject to the correction of clerical errors. A Buyer's purchase order, written or verbal, shall constitute an acceptance of the offer to sell. Any inconsistent, additional or different terms contained in a Buyer's request for quotation or purchase order ("Additional Terms") are hereby not accepted.
  - b) Each order for Products submitted to PERC shall be subject to the written acceptance of PERC, and PERC may, in its own discretion, accept or reject any order for products or services without obligation or liability to Buyer by reason of its rejection of any such request. PERC shall confirm its receipt and acceptance of each order.
- 3) **PRICING & RATES**
  - a) Pricing and rates are valid for 30 days from date of original quotation.
  - b) Modifications to pricing due to error or omission are acceptable.
  - c) Volume pricing assumes full customer requested quantities and/or service time is desired unless noted on quote.
  - d) Quotations for blanket orders are subject to review at intervals mutually agreed upon prior to blanket order acceptance.
  - e) Quotations for services are estimates based on information available at time of quotation. Actual time for service will be invoiced at project completion.
  - f) Services rendered outside the scope of a specific quote will be invoiced per the prevailing labor rates.
  - g) All information within and pertaining to our quotation(s) is confidential and intended solely for use by the Buyer listed on the quotation.
- 4) **TAXES.** All prices quoted are exclusive of federal, state and municipal taxes. Buyer shall be liable for all sales, use and other taxes (whether local, state or federal) imposed on this Agreement or on the Products and/or services provided to Buyer hereunder.
- 5) **PAYMENT TERMS**
  - a) **Standard Orders:** All invoices are issued upon product shipment. Buyer shall pay all invoices within thirty (30) days of the invoice date unless unique payment terms are required based on criteria within sub-parts b), c) or d) below. PERC reserves the right to establish credit limits for Buyer. Any invoices not disputed in good faith by Buyer which Buyer does not pay within the time provided in this Agreement shall bear interest at the lower of (i) one and a half percent (1.5%) per month up to a maximum of eighteen percent (18%) per year; or (ii) the highest rate permitted by applicable law. Should Buyer become delinquent in payment of sums due hereunder, Seller shall not be obligated to continue performance.
  - b) **Capital Project Equipment Orders** for products from manufacturer's in which deposit/progress payment terms exist will require deposit/progress payments in line with said manufacturer's policies.
  - c) **Capital Project Equipment Orders > \$250,000:** 20% deposit due within 10 days of purchase order. 80%, plus applicable freight, invoiced upon shipment.
  - d) **Custom Fabricated Item Orders > \$50,000 up to \$250,000:** 30% deposit due within 10 days of purchase order. 70% plus applicable freight invoiced upon shipment. Any orders > \$250,000 may incur unique payment terms independent of currently documented policies.
- 6) **FORCE MAJEURE.** If PERC becomes unable, either wholly or in part, by an event of Force Majeure, to fulfill its obligations under this Agreement, obligations affected by the event of Force Majeure will be suspended during the continuance of that inability. PERC will take reasonable steps to mitigate the Force Majeure. "Force Majeure" means an event beyond the reasonable control of PERC, including acts of God, hurricane, flood, volcano, tsunami, tornado, storm, tempest, mudslide, vandalism, illegal or unauthorized radio frequency interference, strikes, lockouts, or other industrial disturbances, unavailability of component parts of any Products provided hereunder, unavailability of Products from the manufacturer, acts of public enemies or terrorists, wars, blockades, insurrections, riots, epidemics, earthquakes, fires, restraints or prohibitions by any court, board, department, commission or agency of the United States or any State, any arrests and restraints, civil disturbances and explosions.
- 7) **LIMITATION OF LIABILITY.**
  - a) PERC'S AGGREGATE LIABILITY IN ANY AND ALL CAUSES OF ACTION ARISING UNDER, OUT OF OR IN RELATION TO THIS AGREEMENT, ITS NEGOTIATION, PERFORMANCE, BREACH OR TERMINATION (COLLECTIVELY "CAUSES OF ACTION") SHALL NOT EXCEED THE TOTAL AMOUNT PAID BY BUYER TO PERC UNDER THIS AGREEMENT. THIS IS SO WHETHER THE CAUSES OF ACTION ARE IN TORT, INCLUDING, WITHOUT LIMITATION, NEGLIGENCE OR STRICT LIABILITY, IN CONTRACT, UNDER STATUTE OR OTHERWISE.
  - b) AS A SEPARATE AND INDEPENDENT LIMITATION ON LIABILITY, PERC'S LIABILITY SHALL BE LIMITED TO DIRECT DAMAGES. PERC SHALL NOT BE LIABLE FOR: (I) ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES; NOR (II) ANY REVENUE OR PROFITS LOST BY BUYER OR ITS AFFILIATES FROM ANY END USER IRRESPECTIVE OF WHETHER SUCH LOST REVENUE OR PROFITS IS CATEGORIZED AS DIRECT DAMAGES OR OTHERWISE.
  - c) The limitations on liability set forth in this Agreement are fundamental inducements to PERC entering into this Agreement. They apply unconditionally and in all respects. They are to be interpreted broadly so as to give PERC the maximum protection permitted under law.
  - d) To the maximum extent permitted by law, no Cause of Action may be instituted by Buyer against PERC more than TWELVE (12) MONTHS after the Cause of Action first arose. In the calculation of any damages in any Cause of Action, no damages incurred more than TWELVE (12) MONTHS prior to the filing of the Cause of Action shall be recoverable.

- 8) **CONFIDENTIALITY.** Buyer shall, and shall cause its employees and contractors to keep all PERC Confidential Information strictly confidential and shall not disclose it to any third party or use it, except to the extent reasonably required to perform and enforce this Agreement or as required under applicable law, court order or regulation. As used herein, "PERC Confidential Information" means any and all non-public information of PERC, Notwithstanding the foregoing, "PERC Confidential Information" shall not include: (i) any information that is in the public domain other than due to Buyer's breach of this Agreement; (ii) any information in the possession of the Buyer without restriction prior to disclosure by PERC; or (iii) any information independently developed by the Buyer without reliance on or access to the information disclosed hereunder by PERC.
- 9) **GOVERNING LAW AND DISPUTE RESOLUTION.** This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of New Jersey, without regard to conflicts of law principles. Any and all disputes arising under, out of, or in relation to this Agreement or its performance ("Disputes") shall first be submitted to mediation by the Parties in New Jersey. If the Dispute is not resolved within sixty (60) days of the commencement of mediation, it shall be litigated in the state or federal courts located in the State of New Jersey. TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE PARTIES AGREE TO A BENCH TRIAL AND THAT THERE SHALL BE NO JURY IN ANY DISPUTES.
- 10) **SEVERABILITY.** In the event any provision of this Agreement is held to be void, unlawful or otherwise unenforceable, that provision will be severed from the remainder of the Agreement and replaced automatically by a provision containing terms as nearly like the void, unlawful, or unenforceable provision as possible and the Agreement, as so modified, will continue to be in full force and effect.
- 11) **NON-WAIVER.** Failure or delay of PERC to exercise a right or power under this Agreement shall not operate as a waiver thereof, nor shall any single or partial exercise of a right or power preclude any other future exercise thereof.
- 12) **TRAINING POLICY (WHERE APPLICABLE)**
  - a) Technician's day meals and incidentals are included in all quotes.
  - b) Rates based on class size up to 8 students. Additional students may attend for the prevailing additional fee.
  - c) Phone training is billed at a minimum of 1 hour. Any portion of a call beyond an hourly increment is billed a complete hour.

## TERMS AND CONDITIONS SPECIFIC TO PRODUCT SALES

- 13) **PRODUCT SHIPMENT TERMS.**
  - a) All Products are shipped FOB shipping point, freight prepaid and added to invoice. Title, risk of loss and property in the Products pass upon shipment.
  - b) All Products are shipped when available unless a customer specified "do not ship before" date is acknowledged by PERC. Customer may, subject to PERC's approval, request delay of shipment provided request is made at least 30 days prior to acknowledged shipment date. Invoices for delayed shipments will be issued on the acknowledged shipment date and title to, risk of loss and property in, the Products shall immediately pass to Buyer.
- 14) **PRODUCT PACKAGING.** PERC reserves the right to select the manner in which Products are packaged. Quoted prices include regular packaging. Special requirements for packaging may be subject to extra charges.
- 15) **PRODUCT DELIVERY AND ACCEPTANCE.** Shipping dates quoted by PERC are made in good faith and are not guaranteed; PERC reserves the right to extend shipping dates as it deems necessary in its sole discretion, without liability to Buyer. In the absence of shipping instructions from Buyer, PERC will use its discretion as to the selection of shipping services and routings. Installation of Products is the responsibility of the Buyer unless quoted separately. Shipment discrepancies or Products received damaged must be reported to PERC within 10 days of receipt of shipment.
- 16) **PRODUCT ORDER CANCELLATIONS AND DELAYS.**
  - a) Orders submitted to PERC may not be canceled or amended or deliveries deferred by Buyer except with PERC's prior written consent and then only upon such terms and conditions as shall be acceptable to PERC.
  - b) Orders for Custom Fabricated or Buyer uniquely specified Products may be canceled upon payment for fabrication process completed and parts or goods purchased as of the date of cancellation.
  - c) If, more than 10 business days after the date of an order, Buyer cancels an order which has been accepted by PERC and acknowledged to Buyer, Buyer shall pay to PERC any cost incident to such order incurred by PERC prior to the time the order is cancelled.
  - d) If Buyer requests shipment of a product be delayed beyond the scheduled shipping date, PERC will invoice Buyer as of the scheduled shipping date and payment will be immediately due per payment terms within the acknowledged P.O. from the date of that invoice as if delivery had taken place. PERC will apply storage fees effective 10 business days thereafter.
- 17) **PRODUCT WARRANTIES.**
  - a) PERC warrants the Products it manufactures for 1 year from invoice date. Warranty is limited exclusively to the replacement of the component part or assembly where defect in product material or workmanship is found. Defect is exclusively determined by PERC.
  - b) PERC does not warrant Products manufactured by third parties. PERC hereby assigns to the end user the benefits of any warranties provided by manufacturers. PERC will service the warranty on behalf of the end user. PERC EXPRESSLY DISCLAIMS ANY AND ALL OTHER REPRESENTATIONS AND WARRANTIES, EXPRESS, IMPLIED OR OTHERWISE, INCLUDING WITHOUT LIMITATION, WARRANTIES AS TO FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, NON-INFRINGEMENT AND TITLE.
- 18) **PRODUCT RETURNS.** Product(s) may be returned for credit or repair with prior written authorization of PERC or the applicable manufacturer. Authorized return shipments must be returned in good condition in accordance with the instructions in the Return Material Authorization (RMA), must be accompanied by a packing slip, including the applicable RMA, and must have transportation charges prepaid. Correspondence concerning returned Products must be addressed to authorized personnel within PERC's corporate office. PERC reserves the right to charge a service fee equal to 30% of invoiced Product price to cover all inspection, testing, handling and restocking.

## TERMS AND CONDITIONS SPECIFIC TO TOOL REPAIR

# TERMS & CONDITIONS OF SALE (cont.)

- 19) **LIMITED WARRANTY.** PERC warrants its repair services for 30 days from date of invoice. In the event applicable law imposes any implied warranties, the implied warranty period is limited to 30 days from the date of invoice. Some jurisdictions do not allow such limitations on duration of an implied warranty, so the above limitation may not apply to Customer. If a manufacturer's warranty is available for a part, the manufacturer's warranty will take precedence.
- 20) **CUSTOMER REMEDIES.** PERC's entire liability and Customer's exclusive remedy shall be, at PERC's option, either (a) return of the price paid for the repair, or (b) repair or replacement of the part that does not meet this Limited Warranty and which is returned to PERC with a copy of Customer's receipt. This Limited Warranty is void if failure of the repair has resulted from accident, abuse, or misapplication any or all of which are determined solely by PERC evaluation. Any repair service or replacement part will be warranted for the remainder of the original warranty period or thirty days, whichever is longer.
- 21) **NO OTHER WARRANTIES.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, PERC DISCLAIMS ALL OTHER WARRANTIES, EITHER EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WITH REGARD TO THE PART(S) REPAIRED. THIS LIMITED WARRANTY GIVES CUSTOMER SPECIFIC LEGAL RIGHTS. CUSTOMER MAY HAVE OTHER RIGHTS DEPENDING ON THE JURISDICTION.
- 22) **NO LIABILITY FOR DAMAGES.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL PERC BE LIABLE FOR ANY DAMAGES WHATSOEVER (INCLUDING WITHOUT LIMITATION, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR INDIRECT DAMAGES FOR PERSONAL INJURY, LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, OR ANY OTHER PECUNIARY LOSS) ARISING OUT OF THE USE OF OR INABILITY TO USE THE PART(S) REPAIRED, EVEN IF PERC HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY CASE, PERC'S ENTIRE LIABILITY UNDER ANY PROVISION OF THIS AGREEMENT SHALL BE LIMITED TO THE AMOUNT ACTUALLY PAID BY CUSTOMER FOR THE REPAIR SERVICES AND/OR PARTS. BECAUSE SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE ABOVE LIMITATION MAY NOT APPLY TO YOU.

## TERMS AND CONDITIONS SPECIFIC TO FIELD / FABRICATION SERVICES

### 23) SERVICE WARRANTY

- a) OEM products purchased and used as a part of an installation or fabrication carry original manufacturer's warranty (available upon request). PERC EXPRESSLY DISCLAIMS ANY AND ALL OTHER REPRESENTATIONS AND WARRANTIES, EXPRESS, IMPLIED OR OTHERWISE, INCLUDING WITHOUT LIMITATION, WARRANTIES AS TO FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, NON-INFRINGEMENT AND TITLE.
- b) Technician workmanship and installation are warranted for 1 year from date of project completion.
- c) If any component installed by the Technician at the time of the service is proven to be defective during the warranty period, the component can be replaced at no cost by request of the customer.

### 24) SERVICE PERFORMANCE & SCHEDULING

- a) **4 weeks** advance notice is requested for all training and field service.
- b) **Emergency / Fast Response service**, required within 48 hours (two business days) of initial request, will be invoiced at 1-1/2 x standard hourly rate.
- c) **Weekends and Holidays will be charged at 1-1/2 x prevailing standard hourly rate for category of service provided.**
- d) **Overtime** (any non-travel service performed before 7:30a.m., after 5:30p.m.) will be charged at 1-1/2 x the standard, weekend or holiday hourly rate in effect at time of service.
- e) Expert Consultant rates apply to phone time as well as on site services offered. An initial retainer fee independent of the rate charged for services rendered will be charged for Expert Consulting engagements involving legal cases. Retainer fee will be commensurate with project scope.
- f) All expert consulting for legal cases require the execution of a retainer agreement clearly outlining the parameters of the services to be offered and any special circumstances or limits to said service. If expert consulting requires the use of retained legal counsel, applicable counsel's fees will be divulged in advance and included as part of the final invoice.
- g) Phone consultation is billed at a minimum of 1 hour. Any portion of a call beyond an hourly increment is billed a complete hour.
- h) If our technicians encounter a safety hazard that will compromise their ability to perform their job properly or without injury, they will inform Buyer's supervisory personnel. If the issue cannot be remedied immediately, they will terminate service until the issue is rectified.
- i) Technician's **day** meals and incidentals are included in all rates except expert consulting.
- j) **3 Hour minimum billing** in addition to travel time applies to all services rendered.
- k) If project travel and labor requirements exceed DOT restrictions of 14 hours per day/person or 11 hours travel per day/person, the project may need to be extended and will be billed at the prevailing rate.
- l) Original Equipment Manufacturer's recommended spare parts are used to complete all maintenance service unless otherwise specified by customer and listed in customer accepted quotation.
- m) Any wetted odorant parts remaining after job completion will be left on site in sealed, properly labeled containers containing active carbon. Unless removal is specifically called out on our quotation as a priced service, remediation is the customer's responsibility. Separate quote can be provided for this service.
- n) Existing infrastructure removed from service during a project will be left neatly on site out of operator work areas. Unless removal or replacement is specifically called out on our quotation as a priced service, remediation is the customer's responsibility. Separate quote can be provided for this service.

### 25) SERVICE EQUIPMENT USE

If, in connection with services provided, equipment is left on Customer's property, the following additional terms and conditions shall apply:

- a) Title to the Equipment shall at all times remain with PERC/Subcontractor;
- b) Customer shall promptly pay all fees associated with the use of the Equipment as set forth in the applicable quotation;
- c) Customer shall provide a safe and secure location for the Equipment;

- d) Under no conditions shall Customer, without prior authorization from PERC/Subcontractor:
1. turn Equipment on or off;
  2. adjust Equipment settings
  3. alter or modify the Equipment;
  4. repair or attempt to repair the Equipment;
  5. affix the Equipment to the property so as to change its character from personal property to realty;
  6. alter, modify or remove identification plates, tags or signs.
- e) PERC/Subcontractor shall have the right to inspect the Equipment upon reasonable notice to customer and without notice to the customer in the case of emergency;
- f) Buyer assumes all liability for loss, theft or damage to the Equipment or injury to persons or property arising directly or indirectly out of the possession, use or operation of the Equipment by Buyer whether or not caused by negligence whether or not such loss, damage or injury is attributable to Buyer or persons for whom Buyer is responsible. Buyer hereby indemnifies and covenants to save harmless PERC/Subcontractor from any such liability and for legal and other fees and costs that PERC/Subcontractor may incur in investigating and defending any claims, actions or proceedings in respect of such liability whether or not they were caused by Buyer or persons for whom Buyer is responsible.
- g) Buyer shall notify PERC/Subcontractor when Buyer no longer requires the use of the Equipment and shall allow PERC/Subcontractor a commercially reasonable time to remove the Equipment from Buyer's premises.

### 26) PRE-SERVICE GENERAL REQUIREMENTS

**Unless specifically called out in our quotation, Scope of Work or Site Readiness, customer is responsible for:**

- a) All applicable trench preparation and/or installation of concrete pads, poles, electrical & signal/phone wiring and conduit from initiating source to equipment being serviced or installed. Additional requirement details may be provided in addenda provided with your site readiness form or quotation.
- b) Providing technician(s) with any applicable safety or procedural manuals required for the specific project.
- c) A secure site for placement of our trailer during working hours.
- d) A safe environment with good air quality and free of physical hazards.
- e) Following safe digging practices prior to the arrival of technicians.

### 27) SERVICE TRAVEL, MOBILIZATION, MEALS & LODGING

- a) Ground travel is charged at an hourly rate consistent with the category of service provided and per the prevailing rate at time of service. Applicable air travel expenses will be added to final invoice.
- b) **Mobilization of trailered equipment** is charged at flat rate per mile per the prevailing rate at time of service.
- c) Applicable shipping charges are invoiced in addition to technician ground travel.
- d) Equipment Use charges begin when the equipment leaves our service center and ends with return to same.
- e) Technician travel charges begins with ground travel from nearest regional service center that qualified technician travels from and ends with return to same.
- f) Overnight hotel stays, night meals and incidentals are charged per the prevailing rate on a per/day per/person basis regardless of service category.

### 28) EARLY COMPLETION, DELAY OR CANCELLATION OF SERVICE

- a) **Same day 6 hour policy.** Service work of 6 hours or greater will be invoiced at a full day rate plus overtime if applicable.
- b) If ordered service is completed early or terminated for reasons beyond our control, **3 hour minimum or same day 6 hour policy** will apply.
- c) Scheduled service can be cancelled two business days prior to scheduled time/date without penalty. If scheduled service cancelled within two business days of scheduled time/date, 1 day minimum labor (at prevailing rate) and unrecoverable travel, hotel and/or pre-purchased material expenses will be invoiced.
- d) Customer caused service delays exceeding 2 hours from any agreed upon start time may necessitate working past our published end of day, beginning prior to our published beginning of day or require an unplanned return trip to complete the service. These additional work hours and any additional travel/mobilization and lodging will be invoiced at prevailing standard/overtime rates.
- e) Service delays exceeding 4 hours will default to the above cancellation policy and work will be rescheduled.
- f) Customer caused delay of equipment installation/startup services exceeding above service delay times will be rescheduled accordingly. Discounted **"Startup Value Adder Rates"** associated with service are replaced by full start up rate, travel/mobilization and lodging fees.
- g) Fabricated items or equipment unique to the project are the property of Buyer at purchase and will be invoiced if service is cancelled.
- h) If a delayed project includes any rental of equipment, customer is still responsible for rental fees associated with lost time.