

## GENERAL TERMS AND CONDITIONS OF SALE

July 2017

**1. GENERAL.** The sale, delivery, production, shipment, and quotations by Jacob Tubing L.P. (the "Seller") of all goods, products, or services (the "Product") are subject to the terms set forth below (the "Contract"). These terms and conditions shall not be superseded by any other terms or conditions in the purchase order or any other document of the purchaser of the Product (the "Buyer"). This Contract merges and supersedes all prior negotiations or agreements of the parties, either written or oral, made either prior to or contemporaneous with this Contract. This Contract shall not be modified or amended except by a subsequent written instrument executed by the parties which expressly supersedes the provisions of this Contract. This Contract, together with its attachments, constitutes the complete, exclusive and final agreement between Buyer and Seller. Any additional or different terms provided by Buyer in subsequent purchase orders or other documents shall not be binding. The rights and obligations under Sections 3, and 5 through 22 will survive the cancellation, termination or expiration of this Contract.

**2. DELIVERIES.** Unless stated otherwise in the order confirmation, deliveries are made FOB (pursuant to Incoterms 2010 or the current version) Seller's facility or warehouse as selected by Seller in its sole discretion. Unless otherwise agreed in writing, details on delivery times are only approximate. A delivery period only commences when all details of the execution have been clarified and both parties agree on the terms of the order. Agreed delivery dates shall be shifted accordingly. Any change made to the scope shall result in a corresponding extension of the delivery period once the order has been accepted by Seller. All quantities are subject to Seller's reasonable production capabilities. Seller has the right to make partial deliveries, and where reasonable or customary, ship overages and underages of weight, length, size and/or quantity and may invoice for same. Seller's delivery obligation is subject to the timely and proper fulfillment of Buyer's obligations. Seller is entitled to postpone delivery as long as Buyer has failed to fulfill all payment obligations arising out of previous deliveries without justification. In the event that prepayment has been agreed, the deadline for delivery begins to start only after receipt of the full invoice amount. In the event of call-off contracts and/or blanket purchase orders, binding quantities are to be specified at least (one) 1 month prior to the delivery date by call-offs. Additional costs arising as a result of delayed call-offs or subsequent amendments to a call-off or blanket purchase order regarding time or quantity by the Buyer shall be borne by Buyer.

**3. PRICE, PAYMENT, SETOFF.** Unless stated otherwise in the order confirmation, all prices are FOB (pursuant to Incoterms 2010 or the current version) Seller's facility or warehouse as selected by Seller in its sole discretion and include packaging and handling. Prices do not include installation, commissioning and assembly costs, freight, postage or insurance costs. In the event that no other prices are agreed in writing, Seller's current list prices shall apply. Seller may, by giving thirty (30) days' prior written notice thereof to Buyer at any time during the Contract period, change the price of the Product and terms of delivery and shipment. Such changes shall be applicable to any Product shipped hereunder on and after the date the changes become effective, notwithstanding the fact that Buyer may have requested delivery of such Product prior to Seller's notice to Buyer of such changes. This provision shall not apply to fixed price contracts. Deliveries in excess of the order will be invoiced separately. All payments shall be made in U.S. dollars in cash, without any deductions within thirty (30) days from the date of the invoice. Payments are only considered settled if Seller can dispose of the amount. For any past-due balances a service charge of 1.5% per month will be charged until final payment is received. Buyer is not entitled to retain, setoff, and deduct any amounts due under this Contract or any other agreement in the event Seller is in breach of this Contract or any other agreement with Buyer, or provides defective or nonconforming goods or services. Notwithstanding any dissenting provisions by the Buyer, Seller is entitled to offset the Buyer's payments first with older claims due against the Buyer under the Contract or any other agreement between Seller and Buyer; Seller will inform Buyer of any type of offsetting.

**4. TRANSPORTATION.** Seller may, at its option, deliver from points other than that specified (but shall not be obligated to do so) provided that such delivery shall not result in a higher delivered cost to Buyer. The Buyer shall inform in its order if transport insurance is desired; if so, transport insurance will be concluded at Seller's reasonable discretion in favor of the Buyer. Any costs incurred in this respect shall be borne by Buyer. Where the Contract price provides for absorption by Seller of freight charges, wholly or in part, Seller shall have the right to select the means of transportation. If Buyer requires a means of transportation other than that selected by Seller, any extra cost incurred by reason of using such other means shall be paid by Buyer. If freight or other transportation costs are increased, Seller may add any such increase to the Contract price without prior notice thereof to Buyer. Unless stated otherwise in the order confirmation, the type of packaging will be left to Seller's reasonable discretion. The weights, dimensions and tests fixed by Seller's invoice shall govern unless proven to be incorrect. Buyer shall be responsible for asserting claims for losses or damages in transit directly against the carrier.

**5. INSPECTION; NOTICE OF CLAIMS.** All claims must be received by Seller in writing within thirty (30) days after Buyer's receipt of the Product and Buyer shall be conclusively deemed to have inspected and accepted the Product. Any deficiency in the quality or quantity of Products must be reported within five (5) days after such deficiency is or should have been discovered during the 30-days inspection-period. With respect to any defects incapable of discovery by Buyer (with the exercise of reasonable diligence) until in use or in processing in the manufacture of other products, all claims must be received by Seller in writing within five (5) days after Buyer learns (or, with the exercise of reasonable diligence, could have learned) of the alleged defect. Where the parties agree to inspection by Buyer at Seller's plant, such inspection, acceptance and deficiency report must be made prior to delivery. All claims must be received by Seller at its address specified in the Contract. All claims not made in writing as specified above and received by Seller within the time periods specified above shall be deemed waived. Upon receipt of Buyer's notification, Seller shall have the option of making inspection, analyses, and tests of the Product at Buyer's premises or of requiring Buyer to send the Product or adequate samples thereof, at Buyer's expense, to Seller or to a person designated by Seller for inspection, analyses and tests. No Product or sample shall be returned to Seller without prior written authorization from Seller. No inspection or any other actions by third parties are authorized or will be paid for by Seller, without Seller's prior consent in writing.

**6. WARRANTIES; LIMITATION OF LIABILITY; REMEDIES; DAMAGES.** Seller warrants to Buyer that (a) all new and unused goods and products furnished by Seller are (i) free from any security interest, lien or encumbrance (other than in favor of Seller for the unpaid balance of all amounts due Seller from Buyer with respect to the Product), (ii) non-infringing (with respect to United States patents and foreign patents corresponding thereto), and (iii) are free from defect in workmanship and material as of the time and place of delivery by Seller and that (b) all services furnished by Seller are performed properly under applicable industry standards as of the time and place of performance. As a matter of general warranty policy, Seller honors an original purchaser's warranty claims in the event of failure, within six (6) months from the date of shipment by Seller, of warranted Products which have been used under normal conditions and in accordance with generally accepted industry practices. The foregoing are general policies only and may be expanded or limited for particular categories of goods and products or customers by written agreement signed by Seller from time to time. Such warranties extend only to Buyer.

**EXCEPT AS EXPRESSLY SET FORTH IN THE FIRST SENTENCE OF THIS SECTION 6, SELLER MAKES NO EXPRESS OR IMPLIED WARRANTY THAT THE PRODUCT SOLD HEREUNDER IS NON-INFRINGEMENT, IS OF MERCHANTABILITY QUALITY, OR THAT THE PRODUCT SHALL BE FIT FOR ANY PARTICULAR PURPOSE. THERE ARE NO OTHER WARRANTIES EXPRESSED OR IMPLIED BY OPERATION OF LAW OR OTHERWISE.**

**SELLER SHALL NOT BE LIABLE TO BUYER OR ANYONE ELSE FOR ANY SPECIAL, INDIRECT, ECONOMIC, INCIDENTAL, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES OF ANY KIND ARISING OUT OF OR IN CONNECTION WITH THE PRODUCT,**

**THIS CONTRACT, OR ANY BREACH OF THIS CONTRACT INCLUDING, BUT NOT LIMITED TO, ANY LOSS OR DAMAGE RESULTING FROM THE USE OF THE PRODUCT IN BUYER'S MANUFACTURING PROCESSES OR IN COMBINATION WITH OTHER MATERIALS.**

**IF THE GOOD OR PRODUCT DOES NOT CONFORM TO THE WARRANTIES SET FORTH IN THIS SECTION, OR IF BUYER MAKES ANY OTHER CLAIM OF ANY SORT WHATSOEVER, INCLUDING THE CLAIMS SET FORTH ABOVE, AGAINST SELLER, BUYER'S EXCLUSIVE REMEDY SHALL BE LIMITED TO, AT SELLER'S OPTION, REPLACEMENT OR REPAIR OF THE PRODUCT OR REPAYMENT OF THE PURCHASE PRICE PAID BY BUYER (LESS REASONABLE DEPRECIATION BASED UPON ACTUAL USE), PROVIDED THAT IN THE EVENT OF SELLER'S BREACH OF WARRANTY OR ANY OTHER DUTY WITH RESPECT TO THE QUALITY OF ANY SERVICES (INCLUDING REPAIR UNDER WARRANTY), BUYER'S EXCLUSIVE REMEDY THEREFORE SHALL BE PAYMENT OR CREDIT FOR SELLER'S ACTUAL CHARGE THEREFOR OR, IN THE ABSENCE OF AN ACTUAL CHARGE, THE CUSTOMARY OR REASONABLE CHARGE FOR SUCH SERVICES, AND, IF SUCH BREACH ALSO INVOLVES IMPAIRMENT OF GOODS AND PRODUCTS, THE EXCLUSIVE REMEDIES AVAILABLE FOR BREACH OF WARRANTY WITH RESPECT TO THE GOOD OR PRODUCT. Any Product supplied by Seller hereunder to replace a Product shall be deemed supplied to Buyer subject to all of the terms and conditions of this Contract, including, without limitation, those concerning warranties, limitation of liability, remedies and damages, to the same extent as the Product. In the event Seller agrees to replace any Product or agrees to repay to Buyer the purchase price of any Product supplied by Seller to Buyer under this Contract pursuant to this portion of this Contract, Buyer agrees that it shall take reasonable steps, at Seller's written request, to return to Seller (at Seller's expense) the product for which replacement or repayment is sought.**

**SELLER MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AS TO THE ACCURACY OR ADEQUACY OF INFORMATION FURNISHED TO BUYER CONCERNING THE PHYSICAL CHARACTERISTICS AND MATERIALS OF, AND PROTECTIVE MEASURES TO BE TAKEN REGARDING THE PRODUCT. SELLER SHALL NOT BE LIABLE FOR ANY ERROR OR OMISSION IN THE PREPARATION OF SUCH INFORMATION. SELLER SHALL NOT BE LIABLE TO BUYER, BUYER'S EMPLOYEES, OR ANYONE IN CONNECTION WITH THE ACCURACY, ADEQUACY OR FURNISHING OF SUCH INFORMATION.**

**7. LIMITATION OF ACTIONS.** Any action for Seller's breach of this Contract (including breach of warranties) must be commenced by Buyer within one year after the cause of action accrues, and no such action may be maintained which is not commenced within such period.

**8. BUYER'S HANDLING OF PRODUCT.** Buyer assumes all risks and liability, and Seller assumes no risk and no liability, with respect to unloading and discharge of the Product (including failure of discharge or unloading implements or material used by Buyer, whether or not supplied by Seller), storage, handling, sales, and use of the product, and the compliance or noncompliance with all federal and local laws and regulations with respect thereto.

**9. INFRINGEMENT.** Buyer assumes all risk of patent infringement by reason of any use Buyer makes of the Product in combination with other material or in the operation of any process.

**10. INDEMNITY.** Buyer shall defend (including attorneys' fees), indemnify and hold Seller harmless from and against all damages, causes of action, claims, liabilities, penalties, personal injuries (including death), environmental damages and tangible property damage caused by Buyer's negligence, strict liability, breach of warranty, breach of this Contract, fault, omissions, and willful or wanton conduct arising, without limitation, from the handling, transportation, blending, modification, processing, storage, and use of the Products. In addition, Buyer shall be liable to Seller for all costs of collection of any amounts owed by Buyer to Seller, including all court costs, service costs, discretionary costs and attorneys' fees incurred by Seller.

**11. CREDIT.** Seller may recover for each shipment hereunder as a separate transaction, without reference to any other shipment. If Buyer fails to pay any invoice in accordance with the terms of this Contract or is past due in payment of any other amount owing to Seller, Seller may, at its option (and without liability and without prejudice to any other remedies) defer further shipments until all payments owing to Seller by Buyer have been made (in which event Seller may elect to extend the Contract period for a time equal to that for which shipments were so deferred), stop any Product in transit, and/or decline further performance of this Contract. If at any time in the judgment of Seller, the financial responsibility of Buyer is impaired, Seller may change the terms of payment and may require advance payment as a condition of shipment.

**12. TAXES.** All payments under this Contract are exclusive of all applicable taxes and governmental charges (such as duties), all of which shall be paid by Buyer regardless of which party such taxes are imposed upon (with the exception of any taxes computed with regard to Seller's income). In the event Buyer is required by law to withhold taxes, Buyer agrees to furnish Seller all required receipts and documentation substantiating such payment. If Seller is required by law to remit any tax or governmental charge on behalf of or for the account of Buyer, Buyer agrees to reimburse Seller within thirty (30) days after Seller notifies Buyer in writing of such remittance. Buyer agrees to provide Seller with valid tax exemption certificates in advance of any remittance otherwise required to be made by Seller on behalf of or for the account of Buyer, where such certificates are applicable.

**13. TITLE AND RISK OF LOSS.** Unless stated otherwise in the order confirmation, all sales are made FOB (pursuant to Incoterms 2010 or the current version) Seller's facility or warehouse as selected by Seller in its sole discretion. Title to and risk of loss of all Product sold hereunder shall pass to Buyer upon Seller's delivery to carrier, freight forwarder or any other third party entrusted with the execution of shipment at point of shipment whether or not Seller pays all of any part of the freight, and notwithstanding any designation in this Contract of any other shipping point. If delivery is delayed for reasons attributable to Buyer, the risk will pass to Buyer at the time the goods are ready for dispatch and Seller notified Buyer thereof. Seller shall retain a first priority security interest in and a lien on such Product until payment by Buyer of all amounts due Seller from Buyer with respect to such Product. Buyer shall insure the Products for an amount sufficient to cover any balance owed to Seller and Buyer hereby grants Seller an assignment of insurance benefits payable in the event of loss of the Products.

**14. CONFIDENTIALITY AND PROPRIETARY RIGHTS.** Buyer agrees to treat Confidential Information (as defined below) disclosed to it by Seller (or its authorized representatives or agents) in strict confidence, but at a minimum, to treat the Confidential Information with the same degree of care that it exercises in protecting its own confidential and/or proprietary information or not less than a reasonable degree of care, and to disclose such Confidential Information within Buyer (employees or its authorized representatives or agents) only on a need-to-know basis. The type and quantity of Confidential Information disclosed is within the sole discretion of Seller. Ownership of the Confidential Information shall remain the property of Seller. Use of Confidential Information by Buyer is limited to the purpose of this Contract. Buyer shall not commercially utilize, manufacture, sell or otherwise exploit, said Confidential Information received from Seller without the prior written consent of Seller. By way of illustration, and not limitation, Buyer may not file any patent applications using the Confidential Information of Seller without prior written consent of Seller. Nothing in this Contract shall be construed as creating an obligation on the part of Seller to disclose any proprietary information to Buyer. **ALL INFORMATION, PROPRIETARY INFORMATION, DATA, PRODUCTS, FORMULAE AND SAMPLES ARE PROVIDED "AS IS" WITHOUT ANY WARRANTIES, EXPRESS OR IMPLIED. ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO ANY USE OF THE INFORMATION, DATA OR SAMPLES ARE DISCLAIMED AND EXPRESSLY EXCLUDED FROM THIS CONTRACT.**

Buyer agrees and accepts that ownership of any intellectual property (under trademark, trade secret, patent, copyright or other law) of Seller shall remain with Seller. No right or license, express or implied, under any patent, copyright, trade secret or other proprietary right is granted hereunder.

For purposes of this Contract, "Confidential Information" means (i) any trade secrets which shall include, without limitation, all information of any nature considered a trade secret under law and (ii) proprietary information, which as used in this Contract, without limitation, means any non-public technical, scientific or business information of Seller, including without limitation any information relating to Seller's designs, formulas, samples, processes, laboratory or testing procedures, manufacturing processes, techniques or procedures, trade secrets, know-how, current and future products and services, research, financial information, procurement requirements, customer lists, business forecasts, marketing plans and information, relationships with third parties, and all terms and conditions and any other information relating to this Contract.

**15. FORCE MAJEURE.** Neither party shall be liable for its failure to perform hereunder if due to any event beyond the reasonable control of the party affected, including but not limited to acts of God, war, fire, bad weather, flood, accident, labor trouble or shortage, terrorism, civil disturbance, plant shutdown, equipment failure, voluntary or involuntary compliance with any applicable governmental regulation or order, or shortage or inability to obtain (on terms deemed reasonable by the party affected) any raw material (including energy), equipment or transportation, which materially impairs such party's ability to so perform. Any quantities not delivered or accepted because of any such event shall be eliminated from the Contract without liability. Seller shall not be obligated to deliver the Product from other than the production or shipping points designated herein and shall not be obligated to rebuild or repair any damage or destruction to such production or shipping points in order to fulfill this Contract. Seller shall also not be obligated to obtain any raw materials or Product from sources other than its usual sources. During any period when Seller is unable to supply the Contract quantity of the Product, whether caused by the circumstances above or otherwise, Seller may allocate any available Product, among its customers, including its own subsidiaries, divisions and departments, on such basis as Seller deems fair and reasonable, and its failure, partial or otherwise, to make deliveries to Buyer shall not be a breach of this Contract.

**16. TERMINATION OF CONTRACT.** Should Seller for any reason elect to suspend manufacture of any Product which is the subject of this Contract, or curtail production or sale of the Product in consequence of the application of any governmental regulation or order which will, in the reasonable judgment of Seller, render the production, marketing or transportation of the Product economically, technically or commercially impracticable, Seller may terminate this Contract upon thirty (30) days prior written notice to Buyer. Contracts with an undefined term may be terminated by either party by providing three (3) months' prior written notice to the end of a calendar month to the other party.

**17. ASSIGNMENT.** This Contract and the rights and obligations of Buyer hereunder shall not be assignable by Buyer, either by act of Buyer or by operation of law without the prior written consent of Seller, and shall not be deemed an asset of Buyer in, and at the option of Seller shall terminate in the event of, the commencement of any case or proceeding in respect of Buyer under any bankruptcy, insolvency or similar law or any assignment for the benefit of creditors. At the option of Seller, this Contract shall terminate in the event of the insolvency of Buyer. Any purported assignment of this Contract without the prior consent of Seller shall be null and void.

**18. GOVERNING LAW AND VENUE SELECTION.** This Contract is made under and shall be governed by, construed in conformance with, and all disputes shall be governed by the internal laws (exclusive of the conflicts of law principles) of the State of Tennessee. The United Nations Convention on Contracts for the International Sale of Goods (CIGS) shall not apply. Venue shall always be in Shelby County, Tennessee. Buyer waives objection to jurisdiction and/or venue in the State of Tennessee.

**19. SEVERABILITY.** If any provision of this Contract shall be invalid or unenforceable, such invalidity or unenforceability shall not invalidate or render unenforceable the entire Contract. The entire Contract shall be construed as if not containing the particular invalid or unenforceable provision and the rights and obligations of each party shall be construed and enforced accordingly.

**20. BUYER'S BREACH OF CONTRACT.** If Buyer fails to perform any of the terms of this Contract, Seller may at its option defer shipments until the default is remedied and/or treat such default as a breach of the entire Contract. Such deferment shall not be Seller's exclusive remedy, but Seller shall be entitled to pursue any remedy available to it.

**21. NON-WAIVER.** Seller's waiver of any breach or failure to enforce any of the terms or conditions of this Contract at any time shall not in any way affect, limit or waive its right thereafter to enforce strict compliance with every term and condition hereof.

**22. OFAC LISTS.** None of Buyer or any of its officers, directors or employees is on any list of prohibited countries, individuals, organizations or entities that is administered or maintained by the U.S. Office of Foreign Assets Control ("OFAC"), including but not limited to the List of Specially Designated Nationals and Blocked Persons, or on any similar list not maintained by the OFAC. Buyer has and will maintain a process to ensure compliance with this Section 22.

\*\*\*\*