

Affiliated Steam Equipment Company
Standard Terms and Conditions

1. **Standard Terms.** These standard terms are part of an Order Acknowledgement by Affiliated Steam Equipment, Co. ("Affiliated") to the addressee of the Order Acknowledgement. "Product" will refer to the materials, other goods and services (if any) described in the acknowledgement. The acknowledgement, including these Standard Terms, constitutes the complete Purchase Order ("Purchase Order") between Affiliated and the Customer concerning the sale of the Product; there are no other terms to the Purchase Order.

(a) **Purchase Order Formation.** The Customer agrees to the Purchase Order by (1) signing bill of lading; (2) by making any payment for the Product; (3) by signifying the existence of a Purchase Order in some other writing; or (4) by failing to object to the Purchase Order as printed in a quote or other material prior to shipment by Affiliated.

(b) **Acceptance Limited.** This Acknowledgement is conditional on Customer's assent to all terms in the Acknowledgement that are additional to or different from earlier terms.

(c) **Modification.** This Acknowledgement may be modified only by a writing signed by Affiliated's authorized representative. After acceptance under paragraph 1(a), the Purchase Order may be modified only in writing, signed by an authorized representative of Affiliated. Customer may not rely on Affiliated's performance, course of dealing, or other conduct as a modification of the Acknowledgement or Purchase Order. No failure to exercise a right, and no failure to insist on strict compliance with Acknowledgement or Purchase Order will be a waiver of Affiliated. Customer may not rely on any waiver or any failure to enforce any rights as a course of dealing. No waiver by Affiliated of any breach of the Acknowledgement or Purchase Order will be a waiver of any other breach.

(d) **Definitions and Rules of Construction.** "Circumstances over which Affiliated has no control" means circumstances and conditions over which Affiliated has no reasonably cost effective control, including raw materials and third party item shortages; power and fuel shortages; unavailability of transportation, including transportation for delivery of raw materials and third party items; fire, floods, and other acts of God; strikes, lockouts, and shut downs; equipment failures; wars, civil riots, embargoes, blockades, trade sanctions and restrictions, and other government actions; and compliance with any law.

"Includes" and "Including" do not exclude an item not listed.

"May" signifies a right that a party may or may not exercise, without waiving the right.

"Or" and "either...or" include the conjunction of two or more of multiple elements.

"Rights" includes all rights and remedies available to Affiliated at law, in equity and under the Purchase Order. All rights are cumulative and may be exercised individually or concurrently.

"Terms" includes conditions.

"Third party item" means any Product supplied by third parties.

Prices, Payment and Late Charges. Prices are F.O.B. point of shipment. All freight charges are subject to payment by Customer. If such costs are prepaid by Affiliated, Customer shall reimburse Affiliated for such costs. Customer agrees that all changes in the engineering details of any order which Customer may request after final approval of drawings are subject to engineering charges and to factory charges on in-process work already completed and affected by the change. Such charges are to be added to the stated price. Prices are subject to change without notice. Full payment of purchase price and other charges is due within thirty (30) days after invoice date. If full payment is not received by the applicable due date, Customer agrees to pay Affiliated attorney's fees and other cost of collection incurred by Affiliated, and a monthly late charge equal to one and one-half percent (1.5%) of all outstanding amounts. Customer understands that Affiliated may refuse to sell any goods to Customer until overdue accounts are paid in full. Customer shall be responsible for the payment of all taxes, duties, customs and other fees of any nature imposed relating to this transaction. In the event Affiliated is required to prepay any such amount, Customer will reimburse Affiliated immediately.

Customer agrees that all changes in the engineering details of any order which Customer may request after final approval of drawings are subject to engineering charges and to factory charges on in-process work already completed and affected by the change. Such charges are to be added to the stated price.

2. **Delivery.** Affiliated shall ship the Goods to the location designated by Customer via commercial carrier or private delivery at the earliest available shipment date. Shipping dates are estimates only. Changes in the shipping schedule by Customer may, at Affiliated's discretion result in an increase in the purchase price of the Goods

3. **Limited Warranty.**

(a) **Disclaimer of Warranty.** Affiliated makes no express or implied warranty of merchantability. Affiliated makes no express or implied warranty of fitness for a purpose. Affiliated makes no express warranty except as described in this paragraph

(b) Affiliated makes no implied warranty of any kind. Customer is solely responsible for determining whether or not Product is suitable for Customer's intended uses. Any technical advice requested from the customer is only for informational purpose. This information does not relieve the Customer from ultimate liability to insure products are used properly per specifications. Any information or technical advice has been given without consideration, and no such information or advice relieves Customer from sole responsibility to determine whether the product is suitable for Customer's intended use, including the responsibility to the Product if desirable. Affiliated warrants that all Product, except third party items will conform to the description in the Purchase Order, and to Product specifications and available to Customer if not previously provided. Affiliated warrants that the Product has been produced in compliance with the Fair Labor Standards Act of 1938, as amended.

4. **Remedies.** The remedies in these Standard Terms are the only remedies for any failure of the Product to conform to any warranty or for breach of any other obligation of Affiliated or for any other claim against Affiliated that may arise in connection with the Purchase Order. Customer shall inspect all Product promptly upon receipt. Remedies are further limited in other provisions of these Standard Terms.

5. **Liabilities.** Affiliated shall not be liable for any special, consequential, incidental, or penal damages, whether the damages relate to breach of Purchase Order or warranty, tort (including negligence and strict liability), or other rights, including, but not limited to, damages attributable to loss of profits or revenues, loss of production, loss of the use of the Product, cost of substitute equipment or facilities, down time costs, increased construction costs, and claims of Customer's customers or contractors. Customer shall indemnify Affiliated and hold Affiliated harmless from all claims by third parties arising out of or in connection with the Purchase Order or the Product, including, but not limited to, claims for personal injuries, property damages, economic loss, or costs of litigation. Customer shall reimburse Affiliated for all attorneys' fees and other costs of litigation incurred in connection with the defense of any such claim.

6. **Patents.** Affiliated warrants that the Product does not infringe upon any United States patents directly covering the Product or products similar to the product.

7. **Maintenance of labels.** Customer shall maintain all labels, product information materials, and warnings for the Product supplied by Affiliated, and shall restore any such materials that have been damaged, defaced, or otherwise made difficult to read.

8. **Defaults.**

(a) **Termination.** Affiliated may delay shipment, or terminate the Purchase Order if (1) Customer fails to make any payment promptly when due under the Purchase Order or otherwise fails to comply with the Purchase Order, (2) Customer ceases to conduct its operations in the normal course of business, (3) Customer is or becomes unable to pay its obligations as they mature, (4) any proceeding under the Bankruptcy Code or any other insolvency law is brought by or against customer, (5) a receiver for Customer is appointed or an application for a receiver is filed, (6) Customer makes an assignment for the benefit of creditors, or (7) Customer fails to provide adequate assurance of future performance within thirty (30) days after demand by Affiliated (which will be a repudiation by Customer of the unperformed portion of the Purchase Order). Customer shall reimburse Affiliated for all attorneys' fees and all other costs of litigation incurred by Affiliated in connection with the enforcement of the Purchase Order or any right accruing to Affiliated as a result of the Customer's breach of the Purchase Order.

(b) **Assurance of Performance.** Affiliated may demand from Customer adequate assurance of future performance acceptable to Affiliated whenever Affiliated has reasonable grounds for insecurity concerning Customer's performance. Until it receives adequate assurance of future performance, Affiliated may suspend its performance under the Purchase Order. "Reasonable grounds for insecurity" includes the circumstances described in Paragraph 8(a). "Adequate assurances of future performance acceptable to Affiliated" will depend on the circumstances.

9. **Limitations on Claims.** Legal proceedings on any claim by Customer or any other party against Affiliated in any way related to the Purchase Order must be brought within one year from the date of shipment of the Product from Affiliated's facilities or manufacturer's facility. Customer waives all proceedings not brought within one year from the date of shipment of the Product and all claims and defenses that could have been asserted in such proceedings. Regardless of any other provision in the Purchase Order or in any other Purchase Order between the parties, Affiliated's liability for damages shall be limited to the consideration actually paid to Affiliated under the Purchase Order. This limitation covers all claims in any way arising out of or resulting from the Purchase Order, including breach of Purchase Order or warranty, tort (including negligence and strict liability), or otherwise.

10. **NO DAMAGE FOR DELAY.** Affiliated shall not be liable for, and Customer covenants not to assert against Affiliated in any legal or quasi-legal proceeding, claims or demands for construction or project delays, disruptions, interference hindrances, or other losses, damages, costs or expenses of any nature whatsoever, caused by or attributed to delays in engineering, shipping, delivery or other performance required of Affiliated or caused by or attributed to missing, misfabricated or otherwise defective or deficient drawings, parts, materials and products. No written or oral representation, promise, or undertaking of Affiliated with respect to any proposed, anticipated, planned or required date shall be construed to be an undertaking by Affiliated to assume liability for losses, costs or damages of the type and kind disclaimed in the preceding sentence. If any portion of the foregoing disclaimer is determined to be subject to a common law or statutory exception, or is otherwise held to be unenforceable in whole or part, the remaining portion shall be unaffected. UNDER NO CIRCUMSTANCES WHATSOEVER SHALL AFFILIATED BE LIABLE FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES FROM ANY DELAY FOR ANY DAMAGES WHATSOEVER FROM DELAYS CAUSED BY FACTORS BEYOND AFFILIATED REASONABLE CONTROL. Customer covenants not to assert any claim against Affiliated in any legal or quasi-legal proceeding that is inconsistent with this provision. Breach of this covenant shall entitle Affiliated to recover damages for the costs and expenses, including attorneys' fees, Affiliated incurs defending against such claims.

11. **Force Majeure.** Affiliated will not be liable to Customer for any inability or delay in performing the Purchase Order attributable to circumstances over which Affiliated has no control. If circumstances over which Affiliated has no control occur, Affiliated's time for performance will be extended by the period of any delay attributable to the circumstances, and Affiliated will be excused from delivery of the Product or may allocate Product among Customers.

13. **Security Interest.** The Customer grants and Affiliated retains a purchase money security interest in the products purchased hereunder until the net purchase price is fully paid and all other obligations of the Customer are satisfied.

12. **Assignments.** Customer may not assign all or any part of this Purchase Order without the written consent of Affiliated.

13. **Applicable Law.** The Purchase Order shall be construed under the laws of the United States of America and the State of Illinois.