

## **CONDITIONS OF SALE, REPAIR & MANUFACTURE**

The following terms, conditions, covenants, and agreements set forth the entire understanding of Shermco Industries, Inc. ("Shermco") and the distributor, industrial or commercial party listed on the front side of this agreement as the customer (the "Customer") with respect to either a sale ("Sale") of new or used parts or components; a service/repair of or modification to ("Repair") customer owned equipment, parts, or components; or to the manufacture or assembly ("Manufacture") of products by Shermco other than Repair. The GENERAL CONDITIONS hereafter set out shall apply to all categories of orders accepted by Shermco. The specific classification of conditions which are applicable to this accepted order will be either Sale, Repair or Manufacture. The terms, conditions, covenants, and agreements applicable to this agreement set forth in the specific classification below are in addition to the GENERAL CONDITIONS and are not a replacement.

### **I. GENERAL CONDITIONS**

1. Applicable Law, Jurisdiction, and Venue. The contractual arrangement arising out of Shermco's acceptance of an order for Sale, Repair or Manufacture from any Customer shall be construed and enforced in accordance with the laws of the State of Texas and venue for any dispute thereunder shall be in Dallas County, Texas. For the purpose of construing the terms, conditions, covenants and agreement applicable to the understandings of Shermco and the Customer, the provisions of the Texas Uniform Commercial Code, set forth in the Texas Business and Commerce Code, shall be used and this agreement shall be deemed to be between merchants, for the exclusive benefit of the parties hereto and to the specific exclusion of any third party or person not specifically listed on the front side of this agreement as the Customer.

2. Sales, Use or Excise Taxes. Shermco's charges DO NOT include any applicable sales, use or excise taxes which may be charged by any governmental agency or subdivision either within or without the State of Texas. Therefore, in addition to the charges made by Shermco specified herein, the amount of any present or future sales, use or excise taxes applicable to the Sale, Repair, or Manufacture which is the subject of this agreement shall be paid by the Customer unless the Customer shall provide Shermco with a valid tax-exemption certificate acceptable to the taxing authorities levying the sales, use or excise taxes.

3. Acceptance of Orders. Orders for Sales, Repairs, or Manufacture shall be expressly subject to these Conditions of Sale, Repair or Manufacture. The Customer's use of its Purchase Order shall not be deemed to modify or amend any of the terms, conditions, covenants or agreements contained herein and shall merely be deemed to be an offer to purchase. Shermco's acceptance of such an offer shall be specifically conditioned upon these Conditions of Sale, Repair or Manufacture. If the Customer shall object to any term, condition, covenant, or agreement listed in this agreement, it shall provide Shermco with written notice of its objection at the time the Customer extends its offer to purchase to Shermco and provide Shermco with fifteen (15) days to either reject or accept the objection and acknowledge the amendment to these terms, conditions, covenants, and agreements. Shermco shall not be bound by any terms, conditions, covenants, or agreements other than those set out herein unless Shermco shall have specifically accepted the same in writing after the receipt of the aforesaid written objection.

4. Price, Terms of Payment, Payments, Credit Evaluation. The price to be charged for the product(s), repair(s) or service(s) to be provided by Shermco to the Customer is set out on the front page of this agreement. The price(s) is set at the time of purchase by Shermco and are subject to change by Shermco at any time before purchase. The price(s) takes into consideration the apportionment of the risks set out below in the Limitation of Liability and Customer Indemnification and Hold Harmless paragraphs of this agreement. Unless otherwise agreed to in writing by Shermco, payment of all sums charged by Shermco together with applicable sales, use or excise taxes is due from the Customer on the tender of delivery by Shermco of the products, repairs or services purchased by the Customer without setoff of any kind or type. If the Customer shall request any delay in shipment or delivery, the Customer shall immediately make payment for all charges rendered by Shermco, including applicable taxes, and shall agree to pay such additional charges as are set out below for storage. Title shall pass upon receipt of payment. Each order made by the Customer shall constitute a representation that the Customer is solvent and has the financial ability to make payment for the products, repairs or services ordered when delivery is tendered by Shermco. In the event the Customer is unable or unwilling to provide Shermco with evidence satisfactory to Shermco of the Customer's ability to make payment, if requested by Shermco, Shermco shall be under no obligation to undertake to either start or complete any task associated with a Sale, Repair or Manufacture. If a Customer's financial condition does not at any time, in the sole opinion of Shermco, justify continuing its performance on the Customer's order under the terms, conditions, covenants, and agreements set out herein, Shermco may require full or partial payment in advance. In the event of the Customer's voluntary or involuntary bankruptcy, insolvency, or placement in a receivership, Shermco shall be entitled to cancel any order then outstanding and shall be entitled to receive all cancellation charges set forth below. The foregoing remedy shall be in addition to any remedy provided to Shermco by any federal or state law governing the bankruptcy, insolvency or receivership of the Customer. Shermco shall not be required to extend credit to any Customer, by custom or otherwise, and if credit is extended it shall only be extended under such additional terms and

conditions as Shermco shall set out in writing. All Customer payments which are past due shall bear interest at the lesser of (i) 1.5% per month on the average monthly outstanding balance; or (ii) the highest rate allowed by applicable law.

**Progressive Billing and Payment Provisions:** Shermco reserves the right to make progressive billings to the Customer for extended work performed on behalf of the Customer. In such cases, billings will be made weekly or monthly with payment terms being net 30 days from the date of each invoice. In such cases, Shermco will charge labor time and related material costs to the Customer.

5. **Delivery Charges and Risks of Loss.** All charges for Sales, Repairs, and Manufacture are F.O.B. Shermco's principal place of business in Irving, Texas or other point of shipment designated by Shermco. Shipping dates, even if in writing, are merely estimates and do not constitute a warranty or representation by Shermco of the date of shipment. Shermco reserves the right to make shipments in installments and to separately invoice for each shipment. In the event of installment shipments, the terms and conditions applicable to Payment set out herein shall be applicable to each shipment and the Customer shall not have the right to withhold any payment based upon the non-receipt of the entire order or any prior or subsequent installment. Delivery by Shermco to a common carrier shall constitute delivery to the Customer and simultaneously all risks of loss as well as further costs and/or responsibility for claims, delivery, loss or damage shall pass to the Customer. All common carrier freight charges shall be paid by the Customer. If delivery is made by Shermco truck, unloading at the Customer's place of business listed on the front page of this agreement, or such other address as shall be designated by the Customer in writing, shall constitute delivery and all risks of loss pass to the Customer upon delivery by Shermco. Shermco may make an additional charge for delivery services. All claims for damage, shortage, or other errors shall be made by the Customer within ten (10) days from day of delivery and failure to provide such notice shall constitute unqualified acceptance and a waiver of all claims by the Customer.

6. **Force Majeure.** Shermco shall not be liable for any sums of money to the Customer for delays in delivery or performance of Shermco's obligations under this agreement due to (i) any cause beyond Shermco's reasonable control; (ii) acts of God, civil or military authorities; strikes or other labor disturbances; floods, epidemics, wars, riot, insurrection, sabotage, unavailability of transportation at a reasonable cost, or natural disaster, including without limitation fire and windstorm; (iii) inability of Shermco to obtain materials, services, components, or facilities necessary to make Shermco's performance possible; (iv) shortage of labor, fuel, raw materials or machinery, plant shutdowns or accident; or (v) judicial action or governmental confiscation or impoundment. Shermco will notify the Customer as soon as reasonably practical when Shermco discovers that it will be compelled to rely on a force Majeure to delay its performance. The Customer shall not have the right to terminate this agreement and the date of performance shall be extended throughout the term of the force Majeure.

7. **Cancellation.** This agreement and the attendant Customer's order may not be canceled by the Customer unless agreed to in writing by Shermco and upon the payment by the Customer of a reasonable cancellation charge. Cancellation charges may, in addition to other factors, take into consideration restocking costs, cancellation fees suffered by Shermco with its suppliers, whether or not the goods are specialty items, and the overhead invested by Shermco in processing the Customer's order. On those products which Shermco determines are readily resolvable, the minimum cancellation charge shall be fifteen (15%) percent of the original sales price to the Customer. For all other cancellations, the minimum cancellation charge shall be twenty (20%) of the original sales price to the Customer.

8. **Storage.** If the Customer shall, for any reason, request a delay in delivery, the item sold, serviced/repaired or manufactured shall be placed in storage by Shermco at the Customer's sole risk and expense. Shermco may, in addition to all other applicable charges, charge the Customer for such storage together with all costs of handling, transportation, and retransfer to Shermco for delivery to the Customer at the then prevailing commercial rates for such services in Dallas, Texas. Shermco shall be deemed to have a Warehouseman's Lien on all products or pieces of equipment, or components thereof, which are stored pursuant to the provisions of this paragraph together with all rights and remedies established by the laws of the State of Texas relating to the foreclosure and sale of property subjected to such liens.

9. **Patents.** Shermco may, in the performance of its obligations to the Customer, furnish, install or manufacture components, materials and supplies which may be either (i) standard commercial products purchased and resold by Shermco; (ii) purchased from other sources specifically to meet the Customers requirements; (iii) manufactured or remanufactured by Shermco to meet the requirements of the Customer; (iv) manufactured or remanufactured by Shermco to the specific design criteria or specifications of the Customer; or (v) standard products manufactured by Shermco. Shermco specifically disclaims any liability with regard to patent infringement for categories (i) through (iv) since the circumstances associated with such activities do not readily lend themselves to patent investigation. With respect to category (v), Shermco agrees to defend any suit brought against the Customer so far as such claim is based upon a claim of infringement of any patent of the United States if Shermco is notified of the existence of the claim in writing within five (5) days of the receipt of

the claim and is given the authority, information, and assistance for the defense of the same by the Customer. If any of the assertions or allegations are held by a court of competent jurisdiction to such an infringement, Shermco will, at its option and expense, either (i) procure the right to continue the use of the product alleged to constitute an infringement, (ii) modify the allegedly infringing product so that it becomes non-infringing, (iii) replace that product with a non-infringing product or component that does not cause an alleged infringement or partial infringement of the product; or (iv) terminate this agreement and refund all of the moneys paid for the allegedly infringing product by the Customer to Shermco. If Shermco has received the required notification of the claim in the time and manner above provided and further if Shermco has been provided the required authority, information and assistance for the defense of the claim, Shermco will pay all damages and costs awarded in any judgment or decree in respect of such claim, suit or action to the extent the same are actually derived as a result of the infringement but will not be responsible for any compromise settlement made without its consent.

10. Limitation of Liability. Shermco's liability for any claim of any kind or type, including, without limitation, claims based upon the negligence of Shermco, for any and all loss, damage, or personal injury arising out of or in any way connected with this agreement shall in no event exceed the original purchase price actually paid by the Customer for the product, repair or service set forth of the front side of this agreement. Shermco shall not be subject to any other obligations or liabilities, whether alleged to be arising out of breach of contract, warranty, tort (including negligence), strict liability or any other theory of law, with respect to products, services or repairs sold or rendered by Shermco, or any undertakings, acts or omissions relating thereto. In this connection, claims under this section may result from the design, manufacture, sale, delivery, resale, installation, inspection, repair, test, modification, operation or use of any component, material, service, or piece of equipment manufactured, furnished, sold, serviced or repaired in connection with Shermco's performance under this agreement. This limitation of liability is also intended to be applicable to any technical direction provided by Shermco to the Customer in connection with any of the foregoing. In no event, shall Shermco be liable to the Customer for, and Shermco disclaims any liability for, loss of goodwill, profits or revenue; loss of use of or damage to plant or equipment; costs of capital; costs of substitute equipment, products or services; downtime, shutdown or slowdown costs; or any claims for special, indirect, consequential, exemplary or other types of damage or economic loss, and claims of the Customer's buyer for any such damage. The foregoing limitation of liability shall not apply to claims arising under patent infringement claims which claims are treated elsewhere in this agreement. Additionally, Shermco shall not be liable for, and the Customer expressly assumes, all responsibility for all personal injury and property damage resulting from the ownership, use and operation of any item, good, product or service purchased from Shermco. The foregoing limitations are intended to be an allocation of the risks between the parties which is a part of the bargain between Shermco and the Customer and reflects the price charged to the Customer by Shermco for the goods, products, repairs or services set forth on the front page of this agreement. In addition to the foregoing, Shermco's liability hereunder shall terminate upon the expiration of two (2) years from the date of delivery of the item, product or service by Shermco to the Customer. A Customer shall give Shermco ninety (90) days notice of any claim as a condition precedent to bringing suit against Shermco.

11. Exclusion of Warranties. All warranties made by Shermco are extended only to distributors and industrial or commercial customers of Shermco and do not apply to consumers as that term is defined by 15 U.S.C. §2301 or by the Texas Deceptive Trade Practices - Consumer Protection Act. NO REPRESENTATIONS, GUARANTEES OR WARRANTIES, EXPRESS OR IMPLIED, ARE MADE BY SHERMCO TO THE CUSTOMER OTHER THAN THOSE EXPLICITLY SET FORTH HEREIN. ANY OTHER REPRESENTATIONS, GUARANTEES OR WARRANTIES, EXPRESS OR IMPLIED, ARE HEREBY DISCLAIMED AND WAIVED BY THE CUSTOMER, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR OF FITNESS OR SUITABILITY FOR ANY PARTICULAR PURPOSE OR APPLICATION.

12. Entire Agreement. The terms of this agreement constitute the entire agreement between Shermco and the Customer with regard to the purchase and sale of the component, product, service, repair or equipment set forth on the front side of this agreement. All amendments or modifications of this agreement must be in writing and signed by a duly authorized officer of Shermco. No other terms or conditions shall be binding upon Shermco.

13. Modification of Terms/Interpretations. If any term, condition, covenant, or agreement contained herein is determined by any court of competent jurisdiction to be invalid or unenforceable, the offending term, condition, covenant, or agreement shall be stricken without affecting the validity or enforceability of the remaining terms, conditions, covenants, or agreement set forth in this agreement.

14. Assignment. None of the Customers rights or privileges hereunder shall be assignable without the prior written consent of Shermco.

15. Nuclear Limitation of Use. The component, product, service, repair, or equipment set forth on the front side of this agreement is not intended for use in any nuclear facility or application unless specifically so stated on the front side of

this agreement. The Customer assumes the responsibility for insuring that the component, product, service, repair, or equipment set forth on the front side of this agreement is not used in or in connection with such a facility or application.

16. No Destructive Testing, Spoliation, Disassembly or Reassemble. Unless otherwise specifically authorized by this agreement, the Customer shall never be allowed to conduct any destructive testing, initiate or conduct any testing or experimentation which would result in spoliation to any piece of equipment or any component of any piece of equipment, disassemble or reassemble any piece of equipment or any component of any piece of equipment which was either (i) a Shermco Product as that term is hereafter defined, or (ii) subject to any repairs or service by Shermco without first having (a) given ten (10) days prior written notice of such activities to Shermco, (b) allowed Shermco to either conduct the proposed procedure or approve the proposed procedure in writing, and (c) authorized Shermco to disapprove of proposed testing, spoliation, disassembly or reassemble procedure.

17. Customer Indemnification and Hold Harmless. In the event that a claim is made against Shermco in excess of the limitation of liability set forth in the Limitation of Liability paragraph set forth above by a third party in respect to any product, repair or service sold or rendered by Shermco to the Customer, or any undertaking, act or omission relating thereto for any matter or thing, the Customer shall indemnify and forever hold Shermco harmless from any and all claims, actions and causes of action relating in any way to the Customer or any third parties for any and all loss, damage or personal injury. In this connection, the indemnity and hold harmless shall include but not be limited to (i) all costs of defense of such claim including Shermco's attorney's fees and all costs of discovery; (ii) the payment of all sums awarded in any judgment including any damages, prejudgment interest, post judgment interest, attorney's fees, costs, and exemplary damages, (iii) all costs, including attorney's fees, associated with any appeals of any kind or type of any judgment, and (iv) the cost to supersede any judgment rendered in favor of any third party. Also, the customer shall, as a part of this indemnity, acquire in the name of Shermco a bond or other security satisfactory to the trial court in the amount fixed by the trial court to supersede the judgment rendered against Shermco and deposit the same with said court in the manner provided by law. It is the intent of this paragraph that Shermco shall never bear any damage or cost of any kind or type associated with the rendition of a judgment as a result of a claim for loss, damage or personal injury in excess of the original purchase price actually paid by the Customer for the product, repair or service to Shermco. The foregoing limitations are intended to be an allocation of the risks between the parties which is a part of the bargain between Shermco and the Customer and reflects the price charged to the Customer by Shermco for the goods, products, repairs or services set forth on the front page of this agreement.

18. Severability of Terms. In the event a court of competent jurisdiction shall ever determine that any term, condition, covenant, or agreement set forth in this agreement or void for any reason, the offending term, condition, covenant, or agreement shall be stricken from this agreement without affecting, impairing, or otherwise modifying any other term, condition, or covenant, of this agreement.

## **II. SALES**

19. Sales of New Products Acquired or Held for Resale. New products, components or other items acquired or held as inventory by Shermco for resale are not subject to any warranty of any kind or type from Shermco other than that (i) they are new and (ii) they are subject to the original manufacturer's warranty, if any.

20. Shermco Sole Responsibility - Products Held for Resale. Shermco's sole responsibility for products resold by Shermco, that Shermco determines to be defective, shall, at Shermco's option, be to (i) replace a defective product returned to Shermco within 45 days after the original sale unused and in its original container and condition; (ii) make a refund of the original purchase price to the Customer if the defective product is returned to Shermco within 45 days of its purchase, unused and in its original container and condition; or (iii) have the Customer look solely to the original manufacturer under its warranty, if any. The Customer shall return the product to Shermco at the Customer's sole cost. The Limitation of Liability set out above in the General Conditions shall be applicable.

21. Product Suitability. Many federal, state, and local governmental agencies may have promulgated codes and regulations concerning use of products of certain qualities, grades, or of unique specifications. Shermco cannot and does not guarantee or represent that the product which is being purchased complies with those codes and regulations and is not responsible for how the product is installed or used by the Customer. Before purchasing and using the product the Customer is cautioned to review the product application and compare its specifications and uses to those required by law to be used. The Customer is solely responsible for ascertaining that the product purchased complies with the requirements attendant to its intended use. In this connection, the Customer shall rely exclusively on its own expertise in determining which product is best suited for its needs. Shermco specifically disclaims any obligation to make any recommendations and the Customer

acknowledges that Shermco has made no recommendations of which the Customer has relied in making its decision to purchase.

22. Reconditioned or Used Products. If the products, components or other items sold by Shermco which are either reconditioned or used such information shall be disclosed at the place provided on the front side of this agreement by a check mark in the block provided. In addition to the Exclusions on Warranties set forth in the General Conditions, all reconditioned or used products are sold WITHOUT WARRANTY OF ANY KIND OR TYPE, AS IS, AND WITH ALL FAULTS. SHERMCO FURTHER DISCLAIMS ANY IMPLIED WARRANTIES WITH RESPECT TO SUCH RECONDITIONED OR USED PRODUCTS UNLESS OTHERWISE SPECIFICALLY STATED HEREIN.

23. Shermco Responsibility Regarding Reconditioned or Used Products. Shermco shall have no responsibility to repair, replace or honor returns for credit for any product that is identified at the time of sale as either reconditioned or used.

### **III. REPAIRS AND SERVICE**

24. Warranty and Warranty Period. Shermco warrants in connection with the making of Repairs and the provision of Service that (i) any replacement parts or components furnished by Shermco and any work done are free from defects in workmanship and materials; (ii) that the parts or components are of the kind, quality and/or meet the specifications designated by the Electrical Apparatus Service Association (EASA) or are otherwise acceptable within the industry; and (iii) that the equipment or component repaired will operate satisfactorily in accordance with the performance criteria generally associated within the industry for equipment or a component of that type provided the Customer (a) operates the equipment or component with competent supervision, (b) does not exceed the normal industry standard design capacity of the equipment or component, and (c) subjects the equipment or component only to normal usage and operating conditions. This warranty shall apply only to defects appearing under normal use within one (1) year from the date of delivery by Shermco to the Customer, **providing Customer is able to furnish recent (within 90 days) vibration analysis documentation and initial laser alignment readings for rotating equipment. The Customer must not remove the equipment from service until a Return Authorization is issued from an authorized Warranty Representative from Shermco. Otherwise the warranty period will be for 30 days from date of delivery by Shermco to the Customer.** Shermco discloses that it may use reconditioned or used parts, products, components or other items to make repairs to Customer equipment or components or to effectuate service on Customer owned equipment or components.

25. Warranty Remedies for Repair and Service. If, prior to the expiration of the Warranty Period for Repairs and Service, the Customer shall prove to Shermco's satisfaction that the Repairs performed or the Service rendered do not meet the warranty stated above, Shermco will, at Shermco's option, either (i) correct any defect including any non-conformance with the EASA specifications by replacing the defective component or work; or (ii) refund the actual cost paid by the Customer to Shermco for the repairs or service provided by Shermco. The foregoing remedies shall be the sole remedies available to the Customer and shall further be conditioned on the Customer providing Shermco with written notice of the defect or nonconforming nature of the performance within ten (10) days after the Customer either discovered the defect or nonconforming performance, or, should have discovered the defect or nonconforming performance using reasonable diligence and care. This repair or replacement warranty is the exclusive warranty provided by Shermco and in no event shall Shermco's liability ever exceed the original repair or service cost charged by Shermco and actually paid by the Customer. The Limitation of Liability set out above shall be applicable and SHERMCO AND THE CUSTOMER EACH DISCLAIM ALL OTHER WARRANTIES, EXPRESS OR IMPLIED. This is in addition to the Exclusion of Warranties set forth in the General Conditions above.

26. Performance Tests. In the event the Customer shall desire to conduct a performance test after the provision of Repairs or Service, Shermco shall have the right to be present at all tests and to observe the conduct of such tests. Shermco reserves the right to retest any equipment or component tested either by the Customer or by third parties to ascertain the accuracy of any such Customer or third party test. In the event the equipment or component repaired or serviced by Shermco shall fail any Customer or third party test and pass any Shermco test, Shermco and the Customer agree to mutually develop a test criteria which is binding on both parties and subject the equipment or component to a final test. The results of that test will determine Shermco's responsibilities to effectuate any warranty work.

27. Termination of Warranty. In addition to the Limitation of Liability set out above, if the Customer shall (i) make or cause any third party to make a repair to the equipment or component repaired or serviced by Shermco without having notified Shermco of the difficulties being experienced and allowed Shermco a reasonable time to perform under its

warranty; or (ii) conducted a performance test without notifying Shermco of the test; or (iii) subjected the equipment or component to operating conditions which either (a) exceed the normal design capacity generally associated within the industry for that equipment or component; or (b) subject the equipment or component to abnormal usage; or (c) allow the equipment or component to be operated by other than competent personnel who are adequately supervised, the Repair and Service Warranty shall automatically terminate and Shermco shall have no further responsibility thereunder.

28. Customer Furnished Parts or Components. In the event that a Customer shall ever direct that Shermco utilize parts or components provided by the Customer in the performance of either repairs on or service to Customer equipment or components, the service or repairs are made and delivered to the Customer WITHOUT WARRANTY OR ANY KIND OR TYPE, AS IS, AND WITH ALL FAULTS. SHERMCO FURTHER DISCLAIMS ANY IMPLIED WARRANTIES WITH RESPECT TO SUCH REPAIRS OR SERVICE. This is in addition to the Exclusion of Warranties set forth in the General Conditions above.

29. Warranty Exclusions. The warranty for Shermco repairs and service does not (i) cover shipping expenses from the Customer to Shermco for the return of the customer equipment or component or from Shermco to the Customer for the repaired or replaced equipment or component; (ii) apply and shall be void with respect to (a) operations of the repaired or serviced equipment or component in excess of rated capacities; (b) installations, maintenance, or operations not in conformity with Shermco's instructions or requirements, if any; (c) modified or repaired pieces of equipment or components which were not modified or repaired by Shermco; (d) equipment or components which were subjected to negligent misuse, misapplication or accident caused by acts beyond Shermco's control; (iii) apply to the cost of replacement of any non-Shermco replaced or repaired pieces of equipment or components whether or not associated with or components of the customers equipment which was repaired or serviced. In no event shall Shermco's liability ever exceed that set forth in the Shermco Repair and Service Warranty Liability paragraph above and its specifically subject to the provision of the Limitation of Liability paragraph above.

### III.

#### **SHERMCO MANUFACTURED PRODUCTS**

30. Warranty and Warranty Period. Shermco warrants that the products originally manufactured by it for sale ("Shermco Products") under normal use are free from defects in materials and workmanship and conform to Shermco's specifications for such Shermco Product for a period of one (1) year from the date of delivery.

31. Shermco Products Warranty Liability. If, prior to the expiration of the Warranty Period for Shermco Products, the Customer shall prove to Shermco's satisfaction that the Shermco Products purchased was either defective or nonconforming, Shermco will, at Shermco's option, either (i) repair or replace at its sole expense the defective or nonconforming Shermco Product; or (ii) refund the original sales price of the defective or nonconforming Shermco Product to the Customer. The Customer's sole remedy, at Shermco's discretion, for the defective or nonconforming Shermco Product shall be either the (i) repair or replacement of the Shermco Product; or (ii) the refund of the purchase price. The Customer shall return, at the Customer's sole cost, the Shermco Product to Shermco as a condition precedent to repair, replacement or refund. The foregoing remedies shall be conditioned on the Customer providing Shermco with written notice of the defect or nonconforming nature of the performance of the Shermco Product within ten (10) days after the Customer either discovered the defect or nonconforming performance, or, should have discovered the defect or nonconforming performance using reasonable diligence and care.

32. Termination of Warranty. In addition to the Limitation of Liability set out above, if the Customer shall (i) make or cause any third party to make a repair to a Shermco Product without having notified Shermco of the difficulties being experienced and allowed Shermco a reasonable time to perform under its warranty; or (ii) conducted a performance test without notifying Shermco of the test; or (iii) subjected the Shermco Product to operating conditions which either (a) exceed the normal design capacity established by Shermco for the Shermco Product; or (b) subject the Shermco Product to abnormal usage; or (c) allow the Shermco Product to be operated by other than competent personnel who are adequately supervised, the Shermco Product Warranty shall automatically terminate and Shermco shall have no further responsibility thereunder.

33. Warranty Exclusions. The warranty for Shermco Products does not (i) cover shipping expenses from the Customer to Shermco for the return of the Shermco Product or from Shermco to the Customer for the repaired or replaced Shermco Product; (ii) the cost of removing and replacing the Shermco Product from any piece of Customer equipment; (iii) apply and shall be void with respect to (a) operations of Shermco Products in excess of rated capacities; (b) installations, maintenance, or operations not in conformity with Shermco's instructions or requirements, if any; (c) modified or repaired Shermco Products which were not modified or repaired by Shermco; (d) Shermco Products which were subjected to

negligent misuse, misapplication or accident caused by acts beyond Shermco's control; (iv) apply to the cost of replacement of any non-Shermco Products whether or not associated with or components of Shermco Products. In no event shall Shermco's liability ever exceed that set forth in the Shermco Products Warranty Liability paragraph above and is specifically subject to the provision of the Limitation of Liability paragraph set forth in the General Conditions above.

34. Product Suitability. Many federal, state, and local governmental agencies may have promulgated codes and regulations concerning use of products of certain qualities, grades, or of unique specifications. Shermco cannot and does not guarantee or represent that the Shermco Product which is being purchased complies with those codes and regulations and is not responsible for how the product is installed or used by the Customer. Before purchasing and using the product the Customer is cautioned to review the product application and compare its specifications and uses to those required by law to be used. The Customer is solely responsible for ascertaining that the product purchased complies with the requirements attendant to its intended use. In this connection, the Customer shall rely exclusively on its own expertise in determining which product is best suited for its needs. Shermco specifically disclaims any obligation to make any recommendations and the Customer acknowledges that Shermco has made no recommendations of which the Customer has relied in making its decision to purchase. The Customer further acknowledges that Shermco has not provided any technical direction for the use of the Shermco Product unless such service has been contracted and paid for independently of the sale of the Shermco Product.