



Terms and Conditions

1. **Terms and Conditions Shall Control** – These terms and conditions will apply to all goods, labor, and/or services (collectively the “**Goods**”) furnished by Trading Heritage International, LLC, and any of its parents, subsidiaries, successors, affiliates and related entities (collectively, “**THI**”) to the buyer of such Goods (“**Customer**”). Customer and THI will collectively be referred to as the “**Parties**.” In addition, these terms and conditions will control in the event of a conflict between these terms and conditions and any terms or conditions contained in any purchase order, master service agreement, or any other agreement or document between Customer and THI.
2. **Acceptance and Termination of Order** – Acceptance of any order is subject to THI’s approval of Customer’s credit and Customer’s acceptance of these terms and conditions. If Customer’s credit becomes unsatisfactory to THI at any time in THI’s sole and absolute discretion, THI may terminate any order of Customer or require Customer to pre-pay for Goods. Additionally, THI shall have the right, in its sole and absolute discretion, to cancel Customer’s Order at any time for any reason.
3. **Price and Shipment** – Unless otherwise stated in the order and agreed to by THI in writing, prices shall be those in effect at the time of shipment, which shall be made F.O.B. shipping point, prepaid, and billed to Customer. Delivery dates are approximate and not guaranteed. All payments by Customer to THI shall be made by check or wire transfer, in immediately available funds, to the bank account designated by THI in the invoice. **CUSTOMER SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THI AND ITS PAST, PRESENT AND FUTURE OFFICERS, DIRECTORS, STOCKHOLDERS, MEMBERS, MANAGERS, ATTORNEYS, AGENTS, SERVANTS, REPRESENTATIVES, EMPLOYEES, SUBSIDIARIES, PARENTS, AFFILIATES, PARTNERS AND PREDECESSORS AND SUCCESSORS IN INTEREST AND ASSIGNS FROM ALL FINES, COSTS, PENALTIES, LIABILITIES AND CLAIMS OF EVERY KIND, INCLUDING ATTORNEYS’ FEES, COSTS OF SUIT, SETTLEMENTS, JUDGMENTS, AND OTHER EXPENSES TO WHICH THI MAY BE SUBJECT ARISING OUT OF THE SHIPMENT OF GOODS TO CUSTOMER.** Customer’s obligation to defend, indemnify and hold THI harmless under this Section 3 shall not in any manner be limited by any limitation on the amount or types of damages, compensation or benefits payable by THI, its agents or subcontractors under applicable worker’s compensation acts, disability benefit acts or other employee benefit acts, and Customer specifically waives any immunity it may have under such acts.
4. **Taxes** – Prices shown may not include sales or other taxes imposed on the sale of the goods, labor, and/or services. Taxes now or hereafter imposed upon such sales or shipments will be added to the purchase price, and Customer will be invoiced for such taxes. Customer agrees to reimburse THI for such taxes or provide THI with an acceptable tax exemption certificate.
5. **Force Majeure** – THI is not responsible for delays in delivery of goods or performance of services caused by earthquakes, floods, hurricanes, named tropical storms, lightning strikes, ice storms, blizzards, icebergs, epidemics, pandemics, public health emergencies, air and sea disasters, explosions and fire, epidemics, acts of God or public enemy, war, terrorism, national emergency, invasions, insurrections, riots, strikes, lockouts, blockades, any laws, rules, regulations, orders, directives of, or interference by any government, government agency, failure of its suppliers to ship or deliver on time, or any other circumstance beyond THI’s reasonable control.
6. **LIMITED WARRANTIES – ALL GOODS, LABOR, AND/OR SERVICES FURNISHED BY THI ARE SOLD AS-IS, WHERE-IS, AND WITH ALL FAULTS. THI DISCLAIMS AND MAKES NO EXPRESS OR IMPLIED WARRANTIES REGARDING ANY GOODS, LABOR, AND/OR SERVICES FURNISHED BY THI, AND THI SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND AGAINST DEFECTS.** Customer shall inspect all Goods for non-conformities with respect to quantity, and to the extent of any such non-conformity, provide THI with written notice of the same, within fifteen (15) days of delivery of such Goods. If THI does not actually receive this written notice within the time provided herein, any and all claims Customer may have with respect to such Goods are irrevocably waived.
7. **LIMITATIONS OF LIABILITY - THI SHALL NOT BE LIABLE FOR AND CUSTOMER WAIVES ALL CLAIMS FOR INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES. THI’S MAXIMUM CUMULATIVE LIABILITY TO CUSTOMER FOR ANY AND ALL CLAIMS OR SERIES OF CLAIMS IN THE AGGREGATE ARISING OUT OF OR IN CONNECTION WITH ANY GOODS, LABOR, AND/OR SERVICES FURNISHED BY THI SHALL NOT EXCEED 100% OF THE PRICE OF SUCH GOODS, LABOR, AND/OR SERVICES. THE LIMITATIONS OF LIABILITY DESCRIBED HEREIN SHALL APPLY TO ANY AND ALL CLAIMS (WHETHER ARISING IN TORT, INCLUDING NEGLIGENCE OR GROSS NEGLIGENCE, CONTRACT, OR OTHERWISE) EVEN IF CAUSED BY THE SOLE, JOINT, OR CONCURRENT NEGLIGENCE OR FAULT OF THE THI GROUP (AS DEFINED IN SECTION 8).**
8. **INDEMNITY AND INSURANCE**
 - 8.1 **CUSTOMER’S PEOPLE AND PROPERTY** - CUSTOMER SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THI AND THI’S PARENT COMPANY, SUBSIDIARIES, AFFILIATES, CONTRACTORS (OF ANY TIER), SUCCESSORS OR ASSIGNS, AND SUCH PARTIES’ RESPECTIVE DIRECTORS, OFFICERS, MEMBERS, SHAREHOLDERS, AND EMPLOYEES (COLLECTIVELY, THE “**THI GROUP**”) AGAINST ANY AND ALL LOSS, INJURY, DEATH, DAMAGE, LIABILITY, CLAIM, DEFICIENCY, ACTION, JUDGMENT, INTEREST, AWARD, PENALTY, FINE, COST OR EXPENSE, INCLUDING REASONABLE ATTORNEY AND PROFESSIONAL FEES (COLLECTIVELY, “**LOSSES**”) RELATED TO THE GOODS AND ARISING OUT OF OR RELATED TO ANY ILLNESS, BODILY INJURY OR DEATH OR ANY PROPERTY LOSS OR DAMAGE (INCLUDING PROPERTY OWNED, LEASED, HIRED OR CHARTERED) SUFFERED BY CUSTOMER, CUSTOMER’S PARENT COMPANY, SUBSIDIARIES, AFFILIATES, CONTRACTORS (OF ANY TIER), SUCCESSORS OR ASSIGNS, AND SUCH PARTIES’ RESPECTIVE DIRECTORS, OFFICERS, MEMBERS, SHAREHOLDERS, AND EMPLOYEES (COLLECTIVELY, THE “**CUSTOMER GROUP**”) EVEN IF CAUSED BY THE SOLE, JOINT, OR CONCURRENT NEGLIGENCE OR FAULT OF ANY MEMBER OF THI GROUP.
 - 8.2 **THI’S PEOPLE AND PROPERTY** - TO THE EXTENT THE INDEMNITY OBLIGATIONS CONTAINED IN THIS AGREEMENT ARE GOVERNED BY CHAPTER 127, TEXAS CIVIL PRACTICE & REMEDIES CODE, KNOWN AS THE TEXAS OILFIELD ANTI-INDEMNITY ACT, THI SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS CUSTOMER GROUP AGAINST ANY AND ALL LOSSES RELATED TO THE GOODS AND ARISING OUT OF OR RELATED TO ANY ILLNESS, BODILY INJURY OR DEATH OR ANY PROPERTY LOSS OR DAMAGE (INCLUDING PROPERTY OWNED, LEASED, HIRED OR CHARTERED) SUFFERED BY ANY MEMBER OF THI GROUP EVEN IF CAUSED BY THE SOLE, JOINT, OR CONCURRENT NEGLIGENCE OR FAULT OF ANY MEMBER OF CUSTOMER GROUP.
 - 8.3 **INSURANCE** - TO THE EXTENT THE INDEMNITY OBLIGATIONS CONTAINED IN THIS AGREEMENT ARE GOVERNED BY CHAPTER 127, TEXAS CIVIL PRACTICE & REMEDIES CODE, KNOWN AS THE TEXAS OILFIELD ANTI-INDEMNITY ACT, THE



PARTIES SHALL EACH SUPPORT THEIR RESPECTIVE MUTUAL INDEMNITY OBLIGATIONS IN SECTIONS 8.1 AND 8.2 BY FURNISHING LIABILITY INSURANCE COVERAGE OF LIKE KIND AND IN EQUAL AMOUNTS OBTAINED BY EACH PARTY FOR THE BENEFIT OF THE OTHER PARTY AND ITS GROUP, RESPECTIVELY, AS INDEMNITEES. CUSTOMER SHALL OBTAIN COMMERCIAL GENERAL LIABILITY INSURANCE WITH A LIMIT OF NOT LESS THAN \$1,000,000 PER OCCURRENCE INCLUDING, BUT NOT LIMITED TO, COVERAGE FOR PUBLIC LIABILITY INCLUDING BODILY INJURY AND PROPERTY DAMAGE LIABILITY, PERSONAL/ADVERTISING INJURY, CONTRACTUAL LIABILITY FOR ALL LIABILITIES ASSUMED BY CUSTOMER HEREIN (INCLUDING THE INDEMNITIES CONTAINED HEREIN), CROSS LIABILITY AND SEVERABILITY OF INTEREST, POLLUTION, PRODUCTS AND COMPLETED OPERATIONS. THI SHALL BE NAMED AS AN ADDITIONAL INSURED UNDER SUCH INSURANCE POLICY.

8.4 THIRD PARTIES - TO THE EXTENT ALLOWED BY APPLICABLE LAW, CUSTOMER SHALL RELEASE, DEFEND, INDEMNIFY, AND HOLD HARMLESS THI GROUP AGAINST ALL LOSSES RELATED TO THE GOODS AND ARISING OUT OF OR RELATED TO ILLNESS, BODILY INJURY, DEATH, AND PROPERTY LOSS OR DAMAGE SUFFERED BY THIRD PARTIES EVEN IF CAUSED BY THE SOLE, JOINT, OR CONCURRENT NEGLIGENCE OR FAULT OF ANY MEMBER OF THI GROUP.

9. **Interest and Attorney Fees** – Interest shall accrue on amounts past due at a monthly rate of 1.5% or the maximum rate permitted by law, whichever is higher. In the event that customer breaches these terms and conditions, or a legal action is otherwise required to collect money due from Customer, Customer shall pay all reasonable costs, including without limitation, collection agency costs, attorneys' fees and court costs incurred by THI in connection with such action.

10. **Liens** – THI expressly reserves all lien and bond rights. Customer agrees to provide THI, upon request, information relevant to THI's lien and bond claims or the perfection thereof.

11. **Assignment** – Customer shall not assign its rights or delegate its duties hereunder, or any interest herein, without the prior written consent of THI. Any such assignment will be void.

12. **Waiver** – The failure of THI to insist upon the performance of any of these terms or conditions, or to exercise any right hereunder, shall not be deemed a waiver of such terms, conditions, or rights in the future, nor shall it be deemed to be a waiver of any other term, condition, or right hereunder.

13. **Severability** - If any provision herein is partially or completely void or unenforceable pursuant to applicable law, then such provision shall be deemed amended to the extent necessary to make it enforceable. If such an amendment is not possible, then such provision shall be deemed deleted. If any provision is so deleted, the remaining terms and conditions will remain in full force and effect.

14. **Entire Agreement and Amendment** - These terms and conditions constitute the entire understanding between the Parties and replace any previous oral or written agreements, representations, or statements. No modification or amendment to these terms and conditions will be effective unless it is in writing and signed by an authorized representative of both Parties. Any proposed modifications or additional terms are specifically rejected and deemed a material alteration hereof. If this document shall be deemed an acceptance of a prior offer by Customer, such acceptance is expressly conditional upon Customer's assent and agreement to any additional or different terms set forth herein.

15. **Disclaimer of Reliance** - Customer acknowledges that it agrees to these terms and conditions by its own free choice and without any inducement offered in any way other than the express terms and conditions contained herein. Customer warrants and represents that no promise, agreement, representation, inducement or condition not set forth in these terms and conditions has been made or relied upon by Customer in agreeing to these terms and conditions. Customer is relying solely upon its own judgment in agreeing to these terms and conditions.

16. **Law / Forum / Arbitration** - These terms and conditions and the relations between the Parties shall be governed by the procedural and substantive laws of the state of Texas, irrespective of conflict of laws rules which would direct the application of the substantive or procedural law of another jurisdiction. If Customer's principal place of business is in any state, territory, or district of the United States of America, each party: (a) irrevocably submits to the jurisdiction and venue of the courts located in Harris County, Texas for the resolution of any and all disputes arising from or relating to these terms, the agreement and the relations between the Parties; and (b) **KNOWINGLY AND VOLUNTARILY WAIVES ALL RIGHTS TO A JURY TRIAL IN ANY LEGAL PROCEEDING ARISING FROM OR RELATING TO THESE TERMS AND THE RELATIONS BETWEEN THE PARTIES.** If Customer's principal place of business is not in any state, territory, or district in the United States of America, each party agrees all disputes arising out of or relating to these terms and conditions, the relationship between the Parties, or any orders or agreements between the parties, shall be finally settled under the Rules of the International Chamber of Commerce by a single impartial and qualified arbitrator appointed in accordance with the said rules within the limits of the City of Houston, Texas. The arbitrator will have the authority to determine the validity and existence of an agreement between the Parties including, without limitation, the existence of the agreement containing this arbitration agreement and apportion liability between the Parties, but will not have authority to award any damages or remedies not available under, or in excess of, the terms herein. The arbitration award will be presented to the Parties in writing, upon request, will include findings of fact and conclusions of law, and may be confirmed, reviewed, and enforced in any local, state, or federal court located within Houston, Texas. The Parties expressly reserve all rights to pursue injunctive relief in any court located in Houston, Texas. The Parties acknowledge and agree that these terms and conditions govern activities in interstate commerce, and, accordingly, the Federal Arbitration Act of the United States shall control and apply to all arbitration conducted hereunder notwithstanding any state law provisions to the contrary.

17. **CUSTOMER ACKNOWLEDGMENT - CUSTOMER HAS READ ALL OF THESE TERMS AND CONDITIONS. CUSTOMER HAS HAD THE OPPORTUNITY TO ASK ANY QUESTIONS CONCERNING THE TERMS AND CONDITIONS BEFORE AGREEING TO THEM. CUSTOMER FURTHER STATES THAT IT HAS BEEN ADVISED BY AN ATTORNEY OF ITS CHOICE AND SELECTION, OR HAS HAD THE OPPORTUNITY TO CONSULT WITH SUCH ATTORNEY REGARDING THE BENEFITS AND DETRIMENTS OF AGREEING TO THESE TERMS AND CONDITIONS. CUSTOMER HAS READ AND UNDERSTANDS THE TERMS AND CONDITIONS. CUSTOMER HAS BEEN ADVISED TO KEEP A COPY OF THE TERMS AND CONDITIONS.**

18. Notwithstanding anything to the contrary, all orders placed with THI by Customer are subject to immediate cancellation at THI's sole discretion in the event of any finding or recommendation by the U.S. Department of Commerce pursuant to Section 232(B) of the Trade Expansion Act of 1962 that the country of origin of or the import of the materials to be furnished by THI to Customer threatens to impair U.S. national security, whether such finding or opinion is issued prior to or after Customer's acceptance of the material. This includes any agreement or action by the U.S. Government, including but not limited to the imposition of any tariff(s) or quotas applicable to the order and any action by the U.S. Government against unfairly traded products, regardless of whether such recommendation, agreement or action is proactively or retroactively enforced. Additionally, in the event the



U.S. Government makes a recommendation or takes any action referenced herein, THI may demand specific performance of the order and Customer shall pay THI for any additional tariffs, taxes or fees imposed upon any materials furnished by THI to Customer within thirty (30) days of delivery of an invoice for such amounts to Customer from THI.