



STARK EQUIPMENT, LLC Terms and Conditions of Sale

Stark Equipment, LLC is herein referred to as the “Seller.” The customer purchasing goods and/or services (“Goods”) and/or parts to be used for repair or maintenance (“Parts”) and/or licensing software to be used with Goods, which may be preloaded (“Software”) from Seller is referred to as the “Buyer.” These Terms and Conditions and any price list, price schedule, quotation, acknowledgment, Seller’s scope or statement of work, or invoice from Seller relevant to the sale or license of Goods, Parts, and/or Software by Seller, and all associated terms, conditions, and documents are incorporated by specific reference herein or therein, constitute the complete and exclusive statement of the terms of the agreement (the “Agreement”), governing the sale or license of Goods, Parts, and/or Software by Seller to Buyer. Any discrepancies between the terms of the foregoing referenced documents shall be resolved by Seller, in Seller’s complete and absolute discretion. These Terms and Conditions may be updated or changed, from time to time, and it is the Buyer’s responsibility to periodically review these Terms and Conditions to be aware of updates or changes.

Any Seller acceptance of a Buyer’s purchase order is expressly conditioned on Buyer’s assent to the herein Terms and Conditions of Sale, including terms and conditions that are different from or additional to the terms and conditions of Buyer’s purchase order and/or terms and conditions of purchase. Buyer’s payment of any of the price, including tendering the Down Payment (below defined), and/or acceptance of any of the Goods, Parts, and/or Software expressly manifests Buyer’s assent to the here provided Terms and Conditions. Seller reserves the right in its sole discretion to refuse orders.

1. Price and Price Adjustments. Unless otherwise specified in writing by Seller and subject to the following paragraph, the price quoted or specified by Seller for Goods, Parts, and/or Software shall remain in effect for thirty (30) days after the date of Seller’s quotation, or Seller’s acknowledgment of Buyer’s order for the Goods, whichever occurs first, provided that an unconditional authorization from Buyer, for shipment or performance of the Goods, Parts, and/or Software, is received and accepted by Seller within such time period. If such unconditional authorization is not received by Seller within the thirty (30) day period, Seller shall have the right to change the price for the Goods, Parts and/or Software at the time of Seller’s shipment or performance thereof. All on-site services are quoted with the assumption that the site complies with all applicable manufacturer installation requirements (the “Requirements”) Any delays or additional work required due to the failure to comply with the Requirements shall be billed at Seller’s then-prevailing rates. Unless otherwise stated, all prices and licensee fees are exclusive of sales or use taxes, transportation, and insurance, which are to be borne by Buyer. Seller reserves the right to correct any obvious errors in specifications or prices, and in the event of a force majeure event to make equitable adjustments in Seller’s price for the Goods, Parts, and/or Software prior to Seller’s shipment or performance thereof. Unless otherwise specified by Seller, Parts that are required for the performance of services will be furnished at Seller’s then prevailing prices except as expressly provided in any purchase order accepted by Seller in writing.

Notwithstanding anything contained herein or any document or agreement ancillary thereto, in the event that, as a result of any increases in the cost of materials or supplies due to (i) any law,



regulation, treaty, tax, tariff, or directive or in the interpretation or application thereof, whether new or existing either direct or indirect, or (ii) any other condition or increased cost whatsoever, either direct or indirect, imposed upon or applicable to Seller, the result of which is to increase Seller's cost of performing its obligations (whether such increase in cost is for materials, labor, services, or otherwise) by at least two and a half percent (2.5%) for any one item or in the aggregate, Seller shall have the right to pass along such additional or increased cost. The Parties hereby expressly acknowledge that Seller's right to increase the price, in the event of any of the foregoing, is equitable and reasonable.

2. Taxes. Any current or future tax, duty, tariff, or governmental charge (or increase in same) affecting Seller's costs of production, sale, services, delivery, or shipment of Goods, Parts, and/or Software, or which Seller is otherwise required to pay or collect in connection with the sale, purchase, delivery, performance, storage, processing, use, or consumption of Goods, Parts, and/or Software shall be for Buyer's account and shall be added to the price or billed to Buyer separately at Seller's election unless Buyer provides evidence of an applicable exemption from any such tax.

3. Terms of Payment. Unless the Seller and Buyer enter into a purchase agreement, purchase order, or similar agreement that expressly provides terms of payment, the Buyer shall pay, at the Seller's acceptance of an order a ten percent (10%) down payment on the total cost (the "Down Payment"), and the remaining balance of the total cost of the order net thirty (30) days from the date of shipment by Seller. Buyer shall not deduct or offset any amounts due to Seller (including, without limitation, retention) without Seller's prior written consent. Seller shall have the right, among other remedies, either to terminate the sale or to suspend further performance under this and/or other agreements with Buyer, in the event Buyer fails to make any payment when due. Buyer shall be liable for any and all expenses, including attorneys' fees, relating to the collection of past due amounts. If any payment owed to Seller is not paid when due, it shall bear interest at the rate of one percent (1%) per month not to exceed the maximum rate permitted by law, from the date on which it is due until it is paid. Seller may preserve its payment rights by enforcing any applicable mechanic's, labor, construction, or similar lien rights. Should Buyer's financial responsibility become unsatisfactory to Seller, cash payments or security satisfactory to Seller may be required by Seller for future deliveries or performance of Goods, Parts, and/or Software. If such cash payment or security is not provided, in addition to Seller's other rights and remedies, Seller may discontinue deliveries or performance. Buyer hereby grants Seller a security interest in all Goods, Parts, and/or Software sold to Buyer by Seller, which security interest shall continue until all such Goods, Parts, and/or Software are fully paid for, and Buyer, upon Seller's demand, will execute and deliver to Seller such instruments as Seller requests to protect and perfect such security interest. These terms and Conditions of Sale constitute a security agreement for purposes of Article 9 of the Uniform Commercial Code.

4. Cancellation. Buyer may cancel orders only upon reasonable advance written notice. If Buyer cancels an order, Buyer will forfeit all of the Down Payment, and be subject to Seller's cancellation charges. At a minimum, such cancellation charges shall include the following:

a. Ten percent (10%) of the total contract amount if the order is cancelled after the issuance of a notice to proceed but before Seller has commenced submittals;



- b. Twenty percent (20%) of the total contract amount if the order is cancelled after submittals have been completed but before Buyer approval;
- c. Thirty percent (30%) of the total contract amount if the order is cancelled after submittal approval and order release, but prior to shipment.

In addition to the minimum percentages above, Buyer shall be responsible for all costs and expenses incurred by Seller at any stage, including but not limited to engineering, administrative, and supplier-related costs, and any cancellation charges imposed by the manufacturer. Nothing herein shall limit Seller's discretion to assess additional cancellation charges based on the specific circumstances. Seller's determination of such cancellation charges shall be final and conclusive.

5. Shipment and Delivery. Unless otherwise expressly agreed in writing, all shipments are made F.O.B to Seller's facility. All shipping dates and/or performance dates are approximate and not guaranteed. Seller will use reasonable commercial efforts to maintain the delivery date(s) and/or performance dates acknowledged or quoted by Seller. Seller reserves the right to make partial shipments. Seller, at its option, shall not be bound to tender delivery of any Goods, Parts, and/or Software for which Buyer has not provided shipping instructions and other required information. If the shipment or performance of the Goods, Parts, and/or Software is postponed or delayed by Buyer for any reason, Buyer agrees to reimburse Seller for any and all storage costs and other reasonable additional expenses resulting therefrom. For sales in which the end destination of the Goods, Parts, and/or Software is outside of the United States, risk of loss and legal title to the Goods, Parts, and/or Software shall transfer to Buyer immediately after the Goods, Parts, and/or Software have passed beyond the territorial limits of the United States. Any claims for shortages or damages suffered in transit are the responsibility of Buyer and shall be submitted by Buyer directly to the carrier. Risk of loss and legal title to Goods, Parts, and/or Software shall transfer to Buyer (i) upon delivery by the Seller as provided above or (ii) at the time such is placed in storage due to Buyer's delay or postponement. Shortages or damages must be identified and signed for at the time of delivery. Requests for changes in quoted transportation modes will not be made or accepted on orders already processed unless otherwise mutually agreed upon by Seller and Buyer. Requests for changes in quoted transportation modes for orders already accepted by Seller will be subject to new freight terms and billed at the price in effect at the time of the request for change. Any request for changes to quoted transportation modes must be submitted in writing to Seller and are subject to Seller's acceptance and adjustment in freight price. The transportation costs quoted are F.O.B. factory and may be changed by Seller without notice in order to reflect Seller's prices at the time of shipment and will reflect any market increase in transportation costs. If a price for delivery has been quoted, any changes at the destination for transportation modes, spotting, switching, handling, storage, and other accessorial services and demurrage shall be borne by the Buyer, and any related increase in transportation charges shall be added to the quoted price.

6. Limited Warranty. Subject to the limitations of Section 7, the herein provided warranty is the only warranty provided by Seller applicable to the Goods, Parts, and/or Software purchased by Buyer. Seller warrants that it will perform the services to be provided and will exercise all commercially reasonable skill, care, and due diligence in the performance of the services. Connected to providing Goods, Parts, and/or Software, Seller warrants with respect to installation or commissioning services, that such services shall be free from faulty workmanship for a period





of twelve (12) months after substantial completion (the “Warranty Period”). For the purposes hereof “substantial completion” shall be deemed to have occurred upon Seller’s notification to Buyer that the equipment has been started up, is otherwise ready for use, or has been delivered and is operationally functional, whichever occurs first. If any part of the installation or commissioning services fails to conform to the warranty during the Warranty Period, Seller at its option will repair or replace the failed portion. Any new repair or replacement does not extend or restart the original Warranty Period. This warranty extends only to the original Buyer, and it is not transferable or assignable without the prior written consent of the Seller. The warranty does not include possible shipping costs, product removal, external resetting of circuit breakers or other equipment, or loss of refrigerant. The Seller’s foregoing limited warranty is conditional on the following conditions being met: (i) preventive maintenance logs are maintained by Buyer documenting that the recommended Seller or manufacturer maintenance is performed, and such logs are available to Seller upon request; (ii) input voltage to installed equipment or Parts, including air conditioner units, does not vary by greater than +/-10%; (iii) in the event of accidental or intentional shut-off, a thermal solution component will not be restarted for at least five (5) minutes; (iv) refrigerant specified for an air conditioner unit will be the only refrigerant utilized in the unit; and (v) Buyer complies with all installation, operations, and maintenance instructions provided by Seller or manufacturer.

Goods, Parts, and/or Software purchased by Seller from a third party for resale or license to Buyer (“Resale Products”) shall carry only the warranty extended by the original manufacturer or licensor. To the extent assignable, Seller assigns to Buyer any warranties provided by such manufacturers and licensors of such Resale Products. Seller makes NO REPRESENTATIONS as to the effectiveness or extent of such warranties, assumes NO RESPONSIBILITY for any matters which may be warranted by such manufacturers or suppliers and extends no coverage under this warranty to such Resale Products.

EXCEPT AS SPECIFIED ABOVE, RESALE PRODUCTS FURNISHED HEREUNDER ARE FURNISHED AS IS, WHERE-IS, WITH NO WARRANTY WHATSOEVER. THE WARRANTY SET FORTH IN THIS SECTION 6 AND THE WARRANTY SET FORTH IN SECTION 9 ARE THE SOLE AND EXCLUSIVE WARRANTIES GIVEN BY SELLER WITH RESPECT ANY AND ALL GOODS, PARTS, AND/OR SERVICES SELLER MAY PROVIDE AND ARE IN LIEU OF AND EXCLUDE ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ARISING BY OPERATION OF LAW OR OTHERWISE, INCLUDING WITHOUT LIMITATION, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE WHETHER OR NOT THE PURPOSE OR USE HAS BEEN DISCLOSED TO SELLER IN SPECIFICATIONS, DRAWINGS, OR OTHERWISE, AND WHETHER OR NOT SELLER’S PRODUCTS ARE SPECIFICALLY DESIGNED AND/OR MANUFACTURED BY SELLER FOR BUYER’S USE OR PURPOSE. SELLER’S WARRANTY EXTENDS ONLY TO PURCHASERS WHO BUY FOR INDUSTRIAL OR COMMERCIAL USE. This warranty does not extend to any losses or damages due to misuse, accident, abuse, neglect, normal wear and tear, negligence (other than Seller’s), unauthorized modification or alteration, use beyond rated capacity, unsuitable power sources or environmental conditions, improper installation, repair, handling, maintenance, or application or any other cause not the fault of Seller. To the extent that Buyer or its agents have supplied specifications, information, representation of operating conditions, or other data to Seller for Seller to utilize for the selection or design of the Goods, Parts, and/or Software and the preparation of Seller’s quotation and/or scope of work, in



the event that actual operating conditions or any other information or data differs from that represented or provided by Buyer and relied upon by Seller, any warranties or other provisions contained herein that are affected by such differing conditions, information, or data shall be null and void. Buyer assumes all other responsibility for any loss, damage, or injury to persons or property arising out of, connected with, or resulting from the use of Goods, Parts, and/or Software, either alone or in combination with other products/components.

7. Limitation of Remedy and Liability. SUBJECT TO SECTION 6, THE SOLE AND EXCLUSIVE REMEDY FOR BREACH OF ANY WARRANTY HEREUNDER (OTHER THAN THE WARRANTY PROVIDED UNDER SECTION 9) SHALL BE LIMITED TO REPAIR, REPLACEMENT, OR REFUND OF THE PURCHASE PRICE. SELLER SHALL NOT BE LIABLE FOR DAMAGES CAUSED BY DELAY IN PERFORMANCE AND THE REMEDIES OF BUYER SET FORTH IN THIS AGREEMENT ARE EXCLUSIVE. IN NO EVENT, REGARDLESS OF THE FORM OF THE CLAIM OR CAUSE OF ACTION (WHETHER BASED IN CONTRACT, INFRINGEMENT, NEGLIGENCE, STRICT LIABILITY, OTHER TORT OR OTHERWISE), SHALL SELLER'S LIABILITY TO BUYER AND/OR ITS CUSTOMERS EXCEED THE PRICE PAID BY BUYER FOR THE SPECIFIC GOODS, PARTS, SERVICES AND/OR SOFTWARE PROVIDED BY SELLER GIVING RISE TO THE CLAIM OR CAUSE OF ACTION. BUYER AGREES THAT SELLER'S LIABILITY TO BUYER AND/OR ITS CUSTOMERS SHALL NOT EXTEND TO INCLUDE LIQUIDATED, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES. The term "consequential damages" shall include, but not be limited to, loss of anticipated profits, business interruption, loss of use, revenue, reputation and data, costs incurred, including without limitation, for capital, fuel, power and loss or damage to property or equipment. It is expressly understood that any technical advice furnished by Seller with respect to the use of the Goods, Parts, and/or Software is given without charge, and Seller assumes no obligation or liability for the advice given, or results obtained, all such advice being given and accepted at Buyer's risk.

8. Insurance. Seller may maintain the following insurance or self-insurance coverage: Worker's Compensation, Employer's Liability, Commercial General Liability, and Automobile Liability insurance. Buyer expressly acknowledges and agrees that Seller has set its prices and entered into this Agreement in reliance upon the limitations of liability for its insurance coverage, and other terms and conditions herein, which allocate the risk between Seller and Buyer and form a basis of this bargain between the parties.

9. Patents and Copyrights. Subject to the limitations of Section 7 and any and all associated terms, conditions, and documents incorporated by specific reference by Seller, Seller warrants that the Goods, Parts, and/or Software sold, except as are made specifically for Buyer according to Buyer's specifications, do not infringe any valid U.S. patent or copyright in existence as of the date of shipment. This warranty is given upon the condition that Buyer promptly notifies Seller in writing of any claim or suit involving Buyer in which such infringement is alleged and cooperate fully with Seller and permit Seller to control completely the defense, settlement, or compromise of any such allegation of infringement. Seller's warranty as to utility patents only applies to infringement arising solely out of Buyer's operation according to Seller's specifications and instructions for such Goods, Parts, and/or Software. In the event: (i) such Goods, Parts, and/or Software are held to infringe a U.S. patent or copyright in such suit, and the use of such Goods, Parts, and/or Software is enjoined, or (ii) a compromise or settlement is made by Seller; Seller shall have the right, at its option and expense, to procure for Buyer the right to continue using



such Goods, Parts, and/or Software, or replace them with non-infringing Goods, Parts, and/or Software, or modify same to become non-infringing, or grant Buyer a credit for the depreciated value of such Goods, Parts, and/or Software and accept return of them. In the event of the foregoing, at its option Seller may also cancel the sale as to future deliveries of such Goods, Parts, and/or Software, without liability. Except as otherwise provided herein, Seller or applicable third-party seller or licensor to Seller maintains all rights, title, and interest in and to the intellectual property in the Goods, Parts, and/or Software.

10. Excuse of Performance. Seller shall not be liable for delays in performance or for non-performance due to acts of God; acts of Buyer; war; viral outbreaks, disease, pandemic, widespread sickness or epidemic; fire; flood; weather; sabotage; strikes or labor disputes; civil disturbances or riots; governmental requests, restrictions, allocations, laws, regulations, orders or actions; unavailability of or delays in transportation; unavailability of or delays in the supply of materials, components, parts or labor required for the design and/or manufacture of Goods, Parts and/or Software or the performance by Seller hereunder; default of suppliers; or unforeseen circumstances, acts or omissions of Buyer, or any events or causes beyond Seller's reasonable control. Deliveries or other performance may be suspended for an appropriate period of time or canceled by Seller upon notice to Buyer in the event of any of the foregoing, but the balance of the sale shall otherwise remain unaffected as a result of the foregoing. If Seller determines that its ability to supply the total demand for the Goods, Parts, and/or Software, or to obtain material used directly or indirectly in the manufacture of the Goods, Parts, and/or Software, is hindered, limited, or made impracticable due to causes set forth in this paragraph, Seller may delay or cancel performance, make equitable adjustments in Seller's price for the Goods, Parts, and/or Software, and/or allocate its available supply of the Goods, Parts, Software, and/or such material (without obligation to acquire other supplies of any such Goods, Parts, Software, or material) among its purchasers on such basis as Seller determines to be equitable without liability for any failure of performance which may result therefrom.

11. Changes. Buyer may request changes or additions to the Goods, Parts, and/or Software consistent with Seller's specifications and criteria. In the event such changes or additions are accepted by Seller, Seller may revise the price, license fees, and dates of delivery and/or performance dates. Seller reserves the right to change designs and specifications for the Goods, Parts, and/or Software without prior notice to Buyer, except with respect to Goods, Parts, and/or Software being made to order for Buyer. Seller shall have no obligation to install or make such change in any Goods, Parts, and/or Software manufactured prior to the date of such change.

12. Nuclear/Medical. EXCEPT AS EXPRESSLY PROVIDED IN ANY PURCHASE ORDER ACCEPTED BY SELLER, GOODS, PARTS, AND/OR SOFTWARE SOLD HEREUNDER ARE NOT FOR USE IN CONNECTION WITH ANY NUCLEAR, MEDICAL, LIFE-SUPPORT AND/OR RELATED APPLICATIONS. Buyer accepts Goods, Parts, and/or Software with the foregoing understanding, agrees to communicate the same in writing to any subsequent purchasers or users, and to defend, indemnify, and hold harmless Seller from any claims, losses, suits, judgments, and damages, including incidental and consequential damages, arising from such use, whether the cause of action be based in tort, contract, or otherwise, including allegations that the Seller's liability is based on negligence or strict liability.



13. Assignment. Buyer shall not assign its rights or delegate its duties hereunder or any interest herein without the prior written consent of Seller, and any such assignment, without such consent shall be void, as if having never been made.

14. Software. Notwithstanding any other provision herein to the contrary, Seller or applicable third-party licensor to Seller shall retain all rights of ownership and title in its respective Software, including without limitation, all rights of ownership and title in its respective copies of such Software. Except as otherwise provided herein, Buyer is hereby granted a nonexclusive, non-transferable royalty free license to use the Software incorporated into the Goods solely for purposes of Buyer properly utilizing such Goods purchased from Seller. All other Software shall be furnished to, and used by, Buyer only after execution of Seller's or the licensor's applicable standard license agreement, the terms of which are incorporated herein by reference.

15. Documentation. Seller shall provide Buyer with the data/documentation which is specifically identified in Seller's quotation. If additional copies of data/documentation are to be provided by Seller, it shall be provided to Buyer at Seller's applicable prices then in effect.

16. Inspection/Testing. Inspection and testing of the Goods, Parts, and/or Software, whether prior to shipment or after delivery, are governed solely by the policies of the applicable manufacturer. Buyer acknowledges that not all manufacturers allow inspection, accept returns, or provide post-shipment inspection periods. Seller makes no representations regarding the availability of inspection or return rights. If Buyer wishes to inspect the Goods, Parts, and/or Software prior to shipment, this must be requested in writing before final pricing is issued and prior to submission of any purchase order or contract. Any inspection-related costs shall be the sole responsibility of Buyer. Unless otherwise agreed to in writing, Buyer shall be deemed to have unconditionally accepted the Goods, Parts, and/or Software upon delivery unless Seller receives written notice of non-conformity within the inspection period, if any, permitted by the manufacturer. Failure to provide timely written notice in accordance with manufacturer policy constitutes full acceptance.

17. Returned Goods. Advance written permission to return Goods, Parts, and/or Software must be obtained from Seller. Such Goods, Parts, and/or Software must be (i) current, unused, catalogued Goods, Parts, and/or Software, still in original packaging (ii) free of all liens, encumbrances, or other claims, and (iii) shipped, transportation prepaid, to Seller's specified site. Returns made without proper written permission will not be accepted by Seller. Seller reserves the right to inspect Goods, Parts, and/or Software prior to authorizing return.

18. Billable Services. Additional charges will be billed to Buyer at Seller's then prevailing labor rates and Part prices for any of the following: (a) any services not specified in Seller's quotation, Seller's order acknowledgement, Seller's scope of work, or other documents referenced herein and therein; (b) any services performed at times other than Seller's normal service hours; (c) if timely and reasonable site and/or equipment access is denied the Seller service representative; (d) if it is necessary, due to local circumstances, to use union labor or hire an outside contractor, Seller service personnel will provide supervision only and the cost of such union or contract labor will be charged to Buyer; (e) if service or repair is necessary to return equipment to proper operating condition as a result of Buyer's (i) modification, or faulty repair or maintenance, (ii) misuse or neglect, (including, without limitation, failure to maintain facilities and equipment in a reasonable manner), and (iii) failure to operate equipment in accordance with applicable



specifications; (f) Seller's performance is made more burdensome or costly as a result of Buyer's failure to comply with its obligations herein, or (g) any additional obligations or requirements, including but not limited to those related to insurance requirements, service delivery, building entry, or technical training.

19. Drawings. Seller's documentation, prints, and drawings (including without limitation, the underlying technology) furnished by Seller to Buyer in connection with the provided Goods, Parts, and/or Software are the property of Seller and Seller retains all rights, including without limitation, exclusive rights of use, licensing, and sale. Possession of such prints or drawings does not convey to Buyer any rights or license, and Buyer shall return all copies (in whatever medium) of such prints or drawings to Seller immediately upon request therefor. Notwithstanding the foregoing, all submittal drawings, and related documents provided by the Seller are for reference and coordination purposes only and shall not be deemed to modify the scope, design or performance obligations of Seller unless provided in writing. Buyer may use the documentation, prints, and drawings in connection with the use of the Goods, Parts, and/or Software.

20. Export/Import. Buyer agrees that all applicable import and export control laws, regulations, orders, and requirements, including without limitation those of the United States and the jurisdictions in which the Seller and Buyer are established or from which Goods, Parts, and/or Software may be supplied, will apply to their receipt and use. In no event shall Buyer use, transfer, release, import, export, any Goods, Parts, and/or Software in violation of such applicable laws, regulations, orders, or requirements.

21. General Provisions. These Terms and Conditions supersede all other communications, negotiations, and prior oral or written statements regarding the subject matter of this Agreement. No change, modification, rescission, discharge, abandonment, or waiver of these Terms and Conditions shall be binding upon the Seller unless made in writing and signed on its behalf by a duly authorized representative of Seller. No conditions, usage of trade, course of dealing or performance, understanding, or agreement purporting to modify, vary, explain, or supplement this Agreement shall be binding unless hereafter made in writing and signed by the party to be bound. No modification or additional terms shall be applicable to this Agreement by Seller's receipt, acknowledgment, or acceptance of Buyer's purchase orders, shipping instruction forms, or other documentation containing terms at variance with or in addition to those set forth herein. Any such modifications or additional terms of Buyer's purchase orders are specifically rejected and deemed a material alteration hereof. If this document shall be deemed an acceptance of a prior offer by Buyer, such acceptance is expressly conditional upon Buyer's assent to any additional or different terms set forth herein. Seller reserves the right to subcontract performance of Goods, Parts, and/or Software to others. No waiver by either party with respect to any breach or default or of any right or remedy, and no course of dealing, shall be deemed to constitute a continuing waiver of any other breach or default or of any other right or remedy, unless such waiver be expressed in writing and signed by the party to be bound. All typographical or clerical errors made by Seller in any quotation, acknowledgment, or publication are subject to correction.

The validity, performance, and all other matters relating to the interpretation and effect of this Agreement shall be governed by the law of the state of New York without regard to its conflict of laws principles. Buyer and Seller agree that the proper and exclusive jurisdiction and venue for all actions arising in connection herewith shall be only in the State of New York, waiving any and



all objections to jurisdiction and venue on the basis of forum non conveniens or otherwise. No action arising out of transactions relating to this contract may be brought by either party more than two (2) years after the cause of action has accrued. The U.N. Convention on Contracts for the International Sales of Goods shall not apply to this agreement.

22. Data Collection and Use. By using the Goods, Parts and/or Software, Buyer grants Seller, its affiliates, subsidiaries, and service providers, a non-exclusive, irrevocable, royalty free, worldwide right and license to collect, compile, retain, use, reproduce, and create derivative works of your non-personal information and data, which includes without limitation, all data, materials, reports, text, sound, video, image files, software, or any other information (“Service Data”) that is provided by Buyer, or on behalf of Buyer, or collected or compiled by Seller, its affiliates, subsidiaries, or service providers through the Goods, Parts, and/or Software. Seller, its affiliates, subsidiaries, and service providers may collect, compile, retain, use, reproduce, and create derivative works of Service Data: (i) to provide services, support, and maintenance; (ii) to develop and improve products, software, and services; and (iii) for scientific and technical research and marketing purposes. Buyer is solely responsible for the Service Data, and Buyer will secure and maintain all rights necessary for Seller, its affiliates, subsidiaries, and service providers to process and use Service Data as described in this paragraph without violating the rights of any third party or otherwise obligating Seller, its affiliates, subsidiaries, and service providers to Buyer or any third party. The Service Data will be aggregated with other information, materials, or data collected or compiled by, or provided to, Seller, its affiliates, subsidiaries, or service providers and anonymized, such that the Service Data will not intentionally reveal Buyer’s identity. In accordance with applicable law, Service Data may be transferred, transmitted, or distributed to, stored, and processed in, cloud computing environments in the United States or any other country in which Seller, its affiliates, subsidiaries, or service providers maintain operations. By using the Goods, Parts, and/or Software, Buyer agrees to such use, transfer, transmission, distribution, storage, and processing of the Service Data. Seller, its affiliates, subsidiaries, and service providers will retain Service Data for as long as is necessary for Seller and its affiliates and subsidiaries business purposes in accordance with applicable law. The rights and licenses granted herein to Seller’s service providers shall only be granted to the extent service providers are providing goods and services on Seller’s, its affiliates, and/or subsidiaries behalf.

23. Additional Service Conditions. If needed for the scope of work, the Buyer shall furnish to Seller, at no cost, suitable working space, storage space, adequate heat, telephone, light, ventilation, regulated electric power and outlets for testing purposes. Such testing shall take place at the site where the Goods, Parts, and/or Software are to be provided or at facilities within a reasonable distance. Seller and its representatives shall have full and free access to the site necessary to provide the Goods, Parts, and/or Software. Buyer authorizes Seller to send a service technician or an authorized agent to access any site requested by Buyer to perform services, including services on different scopes of work as requested by Buyer. Buyer shall provide the means to shut-off and secure electric power to the equipment and provide safe working conditions. Seller is under no obligation to remove or dispose of Parts or equipment unless specifically agreed upon in Seller’s scope of work. Buyer shall immediately inform Seller, in writing, at the time of order placement and thereafter, of any unsafe or hazardous substance or condition at the site, including, but not limited to, the presence of asbestos or asbestos-containing materials, and shall provide Seller with any applicable material data safety sheets regarding the same.



Any losses, costs, damages, claims, and expenses incurred by Seller as a result of Buyer's failure to so advise Seller shall be borne by Buyer. Seller, in its sole discretion and without cost or penalty, reserves the right to cancel its performance under this Agreement or any order immediately upon written notice to Buyer following Seller discovery of unsafe or hazardous site substance or condition or any other circumstance altering Seller's performance hereunder. Buyer shall appoint a representative, familiar with the site and the nature of Seller's performance, to be accessible at all times that Seller personnel are at the site. Seller shall not be liable for any expenses incurred by Buyer in removing, replacing, or refurbishing any Buyer equipment or any part of Buyer's building structure that restricts Seller access. Buyer personnel shall cooperate with and provide all necessary assistance to Seller. Seller shall not be liable or responsible for any work performed by Buyer.

24. Indemnity. Each party shall indemnify and hold the other party harmless from loss, damage, liability, or expense resulting from damage to personal property of a third party, or injuries, including death, to third parties to the extent caused by a negligent act or omission of the party providing indemnification or a party's subcontractors, agents, or employees during performance of services hereunder. Such indemnification shall be reduced to the extent damage or injuries are attributable to others and in no event shall the indemnifying party be obligated to indemnify or insure the other party for the indemnitee's own fault or negligence. The indemnifying party shall defend the other party in accordance with and to the extent of the above indemnification, provided that the indemnifying party is: (i) promptly notified by the other party, in writing, of any claims, demands or suits for such damages or injuries; (ii) given all reasonable information and assistance by the other party; (iii) given full control over any resulting negotiation, arbitration or litigation, including the right to choose counsel and settle claims, or the indemnifying party's obligations herein shall be deemed waived.

Stark Equipment, LLC-Terms and Conditions of Sale-05_2025

