



# Sale of Goods & Services

## Standard Terms and Conditions

(REC-SGS-01 Sale of Goods & Services Terms and Conditions)

### 1. DEFINITIONS

"Buyer" means the issuer of the purchase order and its attachments. "Seller" means Rafter Equipment Company, LLC, or one or more of its affiliates or subsidiaries as named on the Order. "Order" means Buyer's purchase order/contract, these Terms and Conditions of sale, Seller's acceptance and other attachments mutually agreed upon by the parties. "Order Price" means the total sum payable to Seller as specified in the Order. "Goods" means the specified drawings, goods, and parts as described in Seller's quotation/bid, this Order, and its attachments; "Services" means the specified supervision, testing, repair, or other services of Seller as described in Seller's quotation/bid, this Order, and its attachments. "Deliverables" means the Goods and/or Services described in the Order. "Work" means all other labor or services outside the scope of the Services, including without limitation supervision of non-Seller personnel, tool provision and/or usage, rigging, and operation of cranes and other equipment, including Seller-supplied equipment. Delivery and scope of supply shall be based upon Seller's quotation/bid and any expressly agreed upon changes.

### 2. CONFIDENTIAL INFORMATION

Confidential Information: means information regarding Seller, the Services, and any associated Goods, that has not been disclosed by Seller to the public and is not known to the general public, and which shall include, but not be limited to, the following: (i) information regarding bidding, quotations, price, sales, costs, joint ventures, business alliances, products, services, or purchasing; (ii) information regarding the Terms and Conditions between Seller and Buyer or other parties; (iii) information regarding current or prospective vendors, suppliers, distributors, or other business partners; (iv) specifications, drawings, manuals, technical information, models, know-how, protocols, discoveries, techniques, processes, business methods, trade secrets, and proprietary information; and (v) information regarding Services under the Order.

Notwithstanding the foregoing, Confidential Information shall be treated as such under the Order unless and until it becomes generally known to the public through no act or fault of Buyer on or after the date hereof. Any Confidential Information supplied by Seller, or otherwise discovered by or disclosed to Buyer, under the Order must not be used by the Buyer except for the purposes of the Order and for the proper use of the Services and any associated Goods, and must not be disclosed by the Buyer to any third party (except the Buyer's employees having a need to know for the aforesaid purposes) for any purpose whatsoever without Seller's prior written agreement.

### 3. INTELLECTUAL PROPERTY

Seller's intellectual property rights and proprietary information (in hard copy or in electronic format) remain the property of Seller and must not be used or reproduced without Seller's prior written consent. Seller must grant Buyer a royalty-free license to use such intellectual property rights for the sole purpose of operating and maintaining the Goods provided in furtherance of Order. Notwithstanding any other provisions or requirements of this Order, no intellectual property or proprietary information is being sold, granted, transferred, licensed, or assigned; there are no works-made-for-hire or unrestricted use (any government rights shall be "limited rights"). Seller shall not be required to provide, or provide access to, any confidential or proprietary area or information. Buyer shall not reverse engineer or otherwise attempt to re-create the Goods or Services.

### 4. PATENT INDEMNITY

Except (i) to the extent of designs or other intellectual property provided by Buyer and/or (ii) to the extent that Goods are altered or combined by Buyer in a manner causing the infringement, Seller will indemnify Buyer from claims by third parties against Buyer if the Goods infringe any Canadian or United States patent. If an injunction is issued against the further use of the Goods, Seller will, at its option and expense: (i) procure for Buyer the right to continue using said item of Goods; or (ii) modify or replace the same with non-infringing Goods; or (iii) remove the infringing Goods and refund the purchase price.

### 5. BUYER MATERIALS

Buyer-furnished material must be received by Seller in accordance with the delivery schedule agreed upon by both parties. If shipment of such material is delayed or lost, Seller reserves the right to: (i) invoice and hold shipment awaiting such material or (ii) invoice and ship less such material. Buyer shall reimburse Seller for all liability incurred by Seller as a result of any such Buyer delay.

### 6. TESTING AND INSPECTION

If specified in the Order, Seller will conduct testing and/or inspection or review(s) by Buyer of the Deliverables at Buyer's risks and costs. Buyer will receive written notice at least three (3) business days prior to such testing and/or inspection or review(s). If Buyer waives attendance or fails to attend, any testing and/or inspections or reviews, it will be deemed to have been made in Buyer's presence.

### 7. TITLE & RISK OF LOSS

Unless specified in the Order, Goods are being purchased EXW (Origin/Factory), Incoterms 2020. Title and risk of loss shall transfer to Buyer upon delivery to the agreed upon Incoterms point (or when delivery should have taken place but for fault of Buyer). Buyer agrees to document (with photos) and promptly advise Seller of any damage or freight claims. Goods that are not promptly and properly rejected by Buyer upon delivery shall be deemed irrevocably accepted; accepted Goods shall be subject to Seller's warranty herein.

### 8. EXPORT CONTROL

Goods supplied may be subject to export control, trade sanctions, or other export laws, regulations, rules, and licenses of Canada, the United States or other countries ("Export Control Regulations"). Buyer agrees to comply with Export Control Regulations as well as any other

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applicable country's import control laws. Buyer further agrees that if Export Control Regulations are applicable, it will not disclose or re-export any technical data received under this order to any countries for which the United States government requires an export license or other supporting documentation at the time of export or transfer, unless Buyer has obtained prior written authorization from the United States Office of Export Control or other authority responsible for such matters. Unless otherwise mutually agreed upon by the parties, Buyer shall be responsible for obtaining export licenses or other approvals. The Order will not be accepted unless Seller is satisfied that the Goods can be supplied in compliance with the Export Control Regulations. If any applicable Export Control Regulations prohibit or make impracticable Seller's performance hereunder, Seller shall be released from all performance related to the Order. Seller shall not be liable to Buyer for any losses, damages, or claims arising from such cancellation of the Order. Seller shall not accept payment through a trade sanctioned country financial institution.

### 9. ACCEPTANCE

Buyer's acceptance of any Deliverables from Seller shall constitute full acceptance of Seller's quote and these Terms and Conditions. These Terms and Conditions take precedence over Buyer's terms and conditions to which notice of objection is hereby given. No terms or conditions in Buyer's order shall be binding upon Seller unless specifically agreed to in writing by Seller. Neither Seller's commencement of performance or delivery shall be deemed as acceptance of Buyer's terms and conditions.

### 10. WARRANTY

Seller warrants that: (i) the Goods will be of good material and workmanship; (ii) the Services shall be performed by competent and qualified personnel in a professional and workmanlike manner in accordance with generally established industry standards; and (iii) the Deliverables will conform to the technical specifications and/or drawings expressly agreed upon between the parties in writing. Seller's warranties on the Goods will be in effect until the earlier of: (a) twelve (12) months from first operation or use of any such Goods; or (b) eighteen (18) months after date of delivery (at the applicable FOB/Incoterms point quoted by Seller). For the warranty of Goods, Seller's sole liability, and Buyer's sole and exclusive remedy for breach thereof, shall be the repair or replacement of such Goods by Seller, at Seller's option and cost (but not including transportation, removal, reinstallation, and decontamination). Seller's warranties on the Services will be in effect until ninety (90) days from the date of the performance of such Services. For the warranty of Services, Seller's sole liability, and Buyer's sole and exclusive remedy for breach thereof, shall be the re-performance of such Services by Seller. Speeds of production or output are beyond the control of Seller and if set forth in the specifications shall be treated as an estimate. Auxiliary items manufactured by others are sold only under such warranty as the maker provides. Seller shall not be responsible for the equipment if modified, repaired or altered by others.

Any warranty repair, replacement, or re-performance pursuant to the above warranties shall be warranted by Seller for a period equal to the remainder of the original warranty period set forth above. No "evergreen" or "in-place" warranty is being provided. Seller shall have the sole right to specify the manner and timeframe for such repair, replacement, or re-performance. Defective or non-conforming Goods must be returned to Seller free of all contaminants, and in the event of replacement, will become the property of Seller unless Seller instructs otherwise. The warranty does not include the costs of fitting new parts or other Equipment. If Seller opts to perform any warranty obligations in-place, Buyer shall, at Buyer's expense and without cost to Seller, during a specified time period agreed upon by the parties, provide all labor necessary to perform the warranty work, including without limitation, providing access by disassembling, removing, replacing, and reinstalling any equipment, structures, or other obstructions to the extent necessary to permit Seller to perform its warranty obligations.

**THERE ARE NO WARRANTIES, CONDITIONS, GUARANTEES, REPRESENTATIONS, OR REMEDIES THAT EXTEND BEYOND THE FACE OF THESE TERMS AND CONDITIONS. ALL OTHER WARRANTIES, CONDITIONS, GUARANTEES, REPRESENTATIONS, OR REMEDIES EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE (INCLUDING ANY CONDITION OR WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE) NOT EXPRESSLY SET FORTH HEREIN, ARE FULLY DISCLAIMED AND EXCLUDED TO THE FULLEST EXTENT PERMITTED BY LAW. SELLER'S WARRANTIES DO NOT COVER ANY GOODS OR SERVICES THAT HAVE BEEN ALTERED OR SUBJECT TO ACCIDENT OR IMPROPER STORAGE, INSTALLATION, ASSEMBLY, COMMISSIONING, MAINTENANCE, USE OR APPLICATION. SELLER DOES NOT WARRANT THAT THE GOODS WILL RESIST THE ACTION OF EROSION OR CORROSIVE GASES, LIQUIDS, OR SOLIDS, OR PRODUCE RESULTS IN COMPLIANCE WITH ANY LAWS, DECREES, OR OTHER STANDARDS. FAILURE OF BUYER TO PAY THE PURCHASE PRICE IN FULL OR ANY PORTION OF SELLER'S INVOICES WHEN DUE WILL VOID SELLER'S WARRANTY IN ITS ENTIRETY.**

### 11. ON-SITE SERVICES

The following section shall apply to on-site Services provided to Buyer under this Order:

- 11.1. Insurance. Seller shall maintain the following insurance coverage: (1) Commercial General Liability with limits of \$1,000,000 combined single limit occurrence for Bodily Injury, Physical Property Damage of third party property, and Contractual Liability coverage, subject to an annual aggregate of \$2,000,000; (2) Automobile Liability – Bodily Injury/Physical Property Damage in the amount of \$1,000,000 combined single limit each occurrence; and (3) Workers Compensation Insurance – statutory, as to Seller's employees. If requested, Seller will provide an ACORD form of certificate confirming such coverage. Seller's provision of a certificate of insurance in accordance with Buyer's site requirements does not constitute Seller's acceptance of Buyer's terms of purchase. Seller shall have no other or further obligations related to insurance or coverage.



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11.2. Other On-Site/Service Provisions. Seller shall comply with applicable Canadian, U.S. and/or provincial/territorial/state statutes, acts, ordinances, regulations, codes, and laws that apply to Seller's performance of the Work. Seller shall comply with job/site requirements as mutually agreed upon by the parties. Seller is an independent contractor and is not responsible for oversight or supervision of work, property or employees of others, including health, safety, or security. Buyer shall advise Seller's personnel in advance of all known and/or suspected hazardous/unsafe conditions and risks that may be encountered while on-site, including proper Material Safety Data Sheets (MSDS). Seller's personnel shall not be required to take, or to refrain from taking, any action, or to enter or remain in any area where he/she reasonably determines that it would be unsafe. Seller's employees, subcontractors, and representatives shall be given unobstructed access to the site and the work. Seller's time and expense for any delays not caused by Seller shall be paid by Buyer. Buyer shall be responsible for any damage to or loss of property of Seller, or its subcontractors, property, if such damage/loss is not caused by Seller or its subcontractors.

11.3. Erection. The following provisions shall also apply where the on-site Services provided in the Order include erection, installation, and/or commissioning (individually and collectively as "Erection"):

- (1) Seller's sole responsibility in Erection shall be to provide suitably qualified personnel who shall give the Buyer the benefit of their experience in the Erection of the Goods or similar installations and who shall advise the Buyer's personnel as to the Erection in an efficient manner. Buyer is responsible for all Work and must carry out Erection and achieve the desired work schedules, timescales, and quality of workmanship for Erection using appropriately qualified workmen in sufficient numbers to achieve the task. Seller is not responsible for the Work or for achieving Buyer's desired work schedules, timescales, or quality of workmanship for Erection.
- (2) Buyer is responsible for all Work overruns relating to Erection. Seller is not responsible for any Work overruns relating to Erection. Buyer must not instruct Seller's personnel to personally undertake any Work, regardless of whether the Work may be necessary for Erection.
- (3) If, due to any overruns in the timescales for Erection, Seller is required to keep its personnel on site for longer than specified in the Order, Buyer must compensate Seller for further site attendance as specified in the Order, or if not specified in the Order, at Seller's applicable daily rate.
- (4) If the Erection work is suspended by the Buyer, or for any reason without Seller's control, for more than two (2) working days, Buyer must allow Seller to withdraw its personnel from site at Seller's discretion. If the Buyer requires Seller's attendance on site thereafter, the Buyer must pay return travel fares (business class) and any other reasonable costs Seller incurs due to its personnel's withdrawal from, and return to, the site.
- (5) The Buyer must, at its own expense and responsibility, unless otherwise expressly agreed: (i) provide all health, welfare, and security facilities (including, but not limited to, medical, messing, accommodation, toilet, and like facilities as appropriate) as required by law and otherwise reasonably necessary for personnel working at site; (ii) provide any necessary office, telephone, and like facilities on site; (iii) where the site is offshore, overseas, or otherwise inaccessible, provide all necessary transportation facilities to and from site; and (iv) obtain all necessary statutory and other consents, approvals, licenses, and permissions for Erection to proceed and for Seller's personnel to travel to and from the site.

## 12. NON-SOLICITATION

Buyer must not, without the prior written consent of Seller, at any time from the date of Order to the expiry of two (2) years after the completion of the Services, solicit or entice away from Seller, or employ or attempt to employ, any person who is, or has been within the last two (2) years of the date of the Order, engaged as an employee, representative, or agent of Seller.

## 13. TAXES & DUTIES

Buyer shall be responsible for all sales, use, value added, and similar taxes ("Sales Taxes") required on the Deliverables, which shall be in addition to the consideration payable for such Deliverables. If Seller invoices Buyer for Sales Taxes, then Buyer shall pay such amounts to Seller concurrent with the payment of the consideration upon which such Sales Taxes are calculated. If Seller does not invoice Buyer for Sales Taxes, Buyer shall report and remit such Sales Taxes directly to the appropriate taxing authority within the time period required by law and shall provide evidence of such remittance to Seller upon request. Buyer shall be responsible for all import, export, customs duties, fees, and similar charges ("Duties") for the Deliverables, and if Seller is required to pay any amount of Duties for the Deliverables, then Buyer shall reimburse Seller for such amount upon request.

## 14. PAYMENT OF ORDER PRICE

Buyer shall pay all invoices within thirty (30) days from the date of Seller's invoice ("Payment Due Date") by electronic funds transfer (EFT) or automated clearing house (ACH) transaction. If Buyer disputes all or part of an invoice, Buyer must (i) submit the dispute to Seller in writing within five (5) business days of the date of invoice or the entire amount of the invoice shall be due on the Payment Due Date; and (ii) pay all undisputed amounts on the Payment Due Date. If Buyer fails to pay an undisputed invoice on or before the Payment Due Date, Seller reserves the right to (i) charge late fees at the lesser of (a) the rate of 1.5% per month (18% per annum) or (b) the maximum amount permitted by law; (ii) require Buyer to pay all of Seller's collection costs; and (iii) cease all work in relation to this Order (without obligation for liquidated damages, if applicable, incurred due to such cessation). No claim by the Buyer under warranty or otherwise shall entitle the Buyer to any deduction, retention, or withholding of any part of the Order Price. The terms of payment must be adhered to, and any such claims must be dealt with separately.

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For milestone payments required under this Order, Seller may invoice on the original milestone completion date if the milestone is not met due to Buyer's fault, untimely response or unreasonable delay. If Buyer seeks to modify the Purchase Order, Buyer agrees to make payments in accordance with the original contract terms until such time as modification is mutually agreed upon. Seller only waives claims for payment to the extent that such payments have been received by Seller. If, in Seller's reasonable opinion, Buyer's financial condition may jeopardize full or timely payment, Seller may (i) require full or partial payment as a condition to commencing or continuing its performance (including in advance of any shipment) or (ii) recover Goods from the carrier, if shipment has been made. Unless otherwise expressly agreed in writing, all orders issued by a Buyer outside of the United States, payment in full must be received prior to Seller's shipment of the Order.

### 15. FORCE MAJEURE; SHIPMENT AND DELAYS

Neither party shall be liable for its obligations, and shall not be considered to be in default or in breach of its obligations under the Order, to the extent that performance of such obligations is prevented or delayed by any circumstances outside its reasonable control ("Force Majeure") including, without limitation, strikes, lock-outs or other industrial disputes, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation, or direction, embargoes, sanctions, accidental breakdown of plant or machinery, fire, flood, storm, or epidemic. Either party shall be entitled to terminate the Order if the Force Majeure situation continues, or it is reasonably obvious that it will continue, for more than one hundred and eighty (180) days without liability to the other party. If Buyer requests that Seller store Goods, or if delivery instructions are not promptly received from Buyer upon Seller's ready-to-ship notification, Seller may store the Goods at Buyer's risk and expense, or Buyer must store at Buyer's cost and risk. Shipments held beyond the scheduled date at the request or fault of Buyer may be billed immediately to Buyer including reasonable expenses incident to such delay, and Buyer shall assume title and risk of loss thereof. Liquidated/delay damages shall not apply to this order. If Buyer delays fulfillment of its obligations as part of the Order, including (but not limited to) Buyer's timely payment obligations and the timely approval and return of any project submittals or Change Order Requests that require Buyer's approval, then, subject to the provisions of this section there will be an equal and commensurate delay in the Order execution and deliverables and may result in rescheduling.

### 16. CANCELLATION

Buyer may cancel this Order, in whole or in part, upon at least seven (7) calendar days advanced written notice to Seller and payment for work performed, work in progress, and Seller's costs incurred in effecting such termination. Buyer's cancellation costs shall not exceed the total Order price. Any Deliverables sold by Seller that are incomplete shall be deemed to be sold "AS IS" and "WITHOUT WARRANTY OR GUARANTEE OF ANY KIND." Seller may cancel this Order, in whole or in part, at any time if: (i) Buyer suspends work or delays delivery beyond forty-five (45) days without it being mutually agreed upon in advance; (ii) Buyer breaches any material term of this Order; and/or (iii) Buyer files bankruptcy or otherwise fails to either make full and timely payments, meet its obligations, or provide further assurances.

### 17. INDEMNIFICATION

If, during the progress of Seller's work at the jobsite, any person is accidentally injured (including death at any time resulting therefrom) or any property is accidentally damaged, as a proximate result of the negligent acts of the parties to the Order, then Seller and Buyer agree that each party to the Order shall be responsible for that portion of their liability attributable to their negligent acts, their agents, employees, and subcontractors, and shall, to the same extent, indemnify, the other party to the Order, and its agents, employees, and subcontractors from any liability, loss, damage, and claims, in excess of their pro rata portion of liability.

### 18. LIMITATION OF LIABILITY; INDEMNITY CONDITIONS; EXCLUSIVE REMEDIES; OBLIGATIONS; VALIDITY

The following shall apply, govern, control, and survive at all times and to the fullest extent permitted by law:

- 18.1. Seller shall not be liable for any loss of profit or revenue, loss of business, loss of contracts, or for any special, indirect, economic, incidental, consequential, or punitive damages or losses, whether based on contract, warranty, indemnity, statute, tort (including negligence), or otherwise pursuant and/or related to this Order.
- 18.2. Seller's total liability pursuant and/or related to this Order whether for breach of contract or by reason of any tort (including negligence), statute, warranty, indemnity, or otherwise, shall in no event exceed the Order Price. Maximum liability shall be based on the Order Price and the price of the unit(s) involved.
- 18.3. Any duty to indemnify under these Terms and Conditions is conditioned upon Buyer: (i) providing prompt and detailed notice to Seller of any such claim; (ii) tendering the defence/settlement to Seller; and (iii) providing full cooperation, authority, and assistance to Seller.
- 18.4. Buyer's rights and remedies shall be deemed sole and exclusive, and in place of those at law and equity. The exclusions and limitations set forth in these Terms and Conditions shall control at all times and survive any breach, or termination of the Order. If any provision of these Terms and Conditions of this Order or part thereof shall be held by judicial determination to be invalid or unenforceable they shall be severed from the Order and the valid or enforceable parts of these Terms and Conditions shall continue in full force and effect.



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### **19. ENTIRE CONTRACT; GOVERNING LAW & FORUM; OFFICIAL LANGUAGE; NO THIRD-PARTY BENEFICIARIES; ASSIGNMENT**

These Terms and Conditions contain the entire understanding of the parties with respect to the terms and conditions of the Order and supersedes any and all prior negotiations, contracts, commitments, and writings with respect thereto. There are no oral understandings, terms, or conditions, and neither party has relied upon any representation, express or implied, not contained in these Terms and Conditions. These Terms and Conditions of sale cannot be amended, superseded, or modified except by a written document signed by Seller's duly authorized officer and Buyer's duly authorized representative. Governing law and forum of the Terms and Conditions of the Order shall be the laws (and exclusive forum) of the State of Ohio (USA), despite any conflicts of laws provisions. The official language of this Agreement is English. It is the express wish of the parties that this Agreement and any related documents be drafted and executed in English. The parties agree to exclusive venue in Medina County, Ohio. Buyer and Seller agree that this Order is between them alone, and there are no third-party rights or beneficiaries. Seller may subcontract with third parties for the performance, manufacture, and/or purchase of all or part of the Deliverables. Other than Seller's ability to use its vendors and subcontractors, neither party may transfer or assign this Order, in whole or in part, without the other party's express advance written permission (which shall not be unreasonably delayed or withheld), and any assignment or transfer without proper consent shall be null, void, and of no force or effect. The parties expressly exclude the application of the United States Convention on Contracts for the International Sale of Goods.