



## ENERMECH NORTH AMERICA STANDARD TERMS AND CONDITIONS OF PURCHASE

### 1. INTERPRETATION

In these Standard Terms and Conditions of Purchase:

“**EnerMech**” means EnerMech Mechanical Services Inc, its subsidiaries and other affiliates;

“**EnerMech Group**” means EnerMech, its affiliates and agents and its and their respective directors, officers and employees;

“**Consequential Loss**” means loss and/or deferral of production, loss of profit, loss of use, loss of revenue, loss of business opportunity, loss of contract(s), business interruption losses, loss of goodwill, profit or anticipated profit (if any), whether direct or indirect and any other form of consequential or indirect loss whether or not foreseeable at the date of commencement of the Contract.

“**Contract**” means these Terms and Conditions, together with any Purchase Order issued and Special Conditions agreed to in writing by EnerMech;

“**Equipment**” means all equipment, tools, products, materials, consumables and supplies and/or merchandise supplied by Seller to EnerMech;

“**Restricted Person**” means (i) any person included on one or more of the Restricted Party Lists, (ii) any person owned by or acting on behalf of a person included on one or more of the Restricted Party Lists, or (iii) a person ordinarily resident in or an entity that is located in or organized under the laws of a Restricted Country.

“**Restricted Party Lists**” includes the list of sanctioned entities maintained by the United Nations; the Specially Designated Nationals and Blocked Persons List, the Foreign Sanctions Evaders List, and the Sectoral Sanctions Identifications List, all administered by OFAC; the U.S. Denied Persons List, the U.S. Entity List, and the U.S. Unverified List, all administered by the U.S. Department of Commerce; the consolidated list of Persons, Groups and Entities subject to EU Financial Sanctions, as implemented by the EU Common Foreign & Security Policy; and similar lists of restricted parties maintained by other applicable governmental entities.

“**Seller**” means the selling entity identified in Contract to supply the Equipment and/or Services hereinafter defined and shall include the Seller’s legal personal representatives, successors and assigns;

“**Seller Group**” means the Seller, its sub-suppliers, its and their respective affiliates and agents, its and their respective directors, officers and employees (including agency personnel) but shall not include any member of the EnerMech Group;

“**Price**” means the price for the whole of the Equipment and Services as specified under each applicable Purchase Order, as may be amended by mutual agreement of the parties from time to time;

“**Purchase Order**” means the individual instruction to be issued by EnerMech to Seller in accordance with these terms and conditions;

“**Services**” means all services furnished by the Seller, including services of employees and equipment, goods, tools and/or other merchandise necessary to perform the Contract; and

“**Special Conditions**” means those Special Conditions set out in the Contract, including any documentation specified therein.

### 2. APPLICABILITY

2.1 These Terms and Conditions apply only to supplies made or works undertaken in North America. These Terms & Conditions do not apply to Central America, South America or any other region.

2.2 No terms or conditions endorsed on, delivered with or contained in the Seller’s confirmation of the Contract, specification or other documents shall form part of the Contract generally or as a result of such document being referred to in the Contract. For the avoidance of doubt any reference by the Seller or Seller’s representative to Seller’s terms and conditions in its quotation or other documentation presented by the Seller, including any such endorsement or marking on the Seller’s

confirmation, in connection with the Contract will have no effect on the Contract, unless mutually agreed upon in writing by EnerMech and the Seller.

- 2.3 These Standard Terms and Conditions of Purchase apply to all EnerMech's purchases and any variations to these Standard Terms and Conditions of Purchase and any representations about the Equipment and/or Services shall have no effect unless expressly agreed in writing and signed by an authorized signatory of EnerMech. The Seller acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of EnerMech which is not set out in the Contract.
- 2.4 All instructions, notices, agreements, authorizations, approvals and acknowledgements shall be in writing. All such documentation together with all correspondence and other documents shall be in the English language.
- 2.5 If for any reason, it is considered necessary by EnerMech to give an instruction to the Seller orally in the first instance, the Seller shall comply with such instruction. Any such oral instruction shall be confirmed in writing as soon as possible under the circumstances.

### **3. DELIVERY AND INSPECTION**

- 3.1 The Equipment shall be delivered DDP (Incoterms 2010) to EnerMech's place of business or to such other place of delivery as agreed by EnerMech in writing prior to delivery. The Seller shall off-load the Equipment at its own risk as directed by EnerMech.
- 3.2 The date for delivery shall be specified in the Contract, or if no such date is specified then delivery shall take place within 28 days of the date of Contract commencement.
- 3.3 The Seller shall ensure that each delivery is accompanied by a delivery note which shows, among other things, the Contract number, date of Contract, number of packages and contents and, in the case of part delivery, the outstanding balance remaining to be delivered.
- 3.4 Time shall be of the essence.
- 3.5 If the Equipment is not delivered on the due date then, without prejudice to any other rights which it may have, EnerMech reserves the right to:
  - (a) cancel the Contract in whole or in part;
  - (b) refuse to accept any subsequent delivery of the Equipment which the Seller attempts to make;
  - (c) recover from the Seller any expenditure reasonably incurred by EnerMech in obtaining the Equipment in substitution from another supplier; and
  - (d) claim damages for any additional costs, loss or expenses incurred by EnerMech which are in any way attributable to the Seller's failure to deliver the Equipment on the due date.
  - (e) enforce pre-agreed liquidated damages as specified in the Special Conditions, if any.
- 3.6 Where EnerMech agrees in writing to accept delivery by installments the Contract shall be construed as a single contract in respect of each installment. Nevertheless failure by the Seller to deliver any one installment shall entitle EnerMech at its option to treat the whole Contract as repudiated.
- 3.7 If the Equipment is delivered to EnerMech in excess of the quantities ordered EnerMech shall not be bound to pay for the excess and any excess shall be and shall remain at the Seller's risk and shall be returnable at the Seller's expense.
- 3.8 EnerMech shall not be deemed to have accepted the Equipment until it has had not less than 10 days to inspect the Equipment following delivery. EnerMech shall also have the right to reject the Equipment as though it had not been accepted for 30 days after any latent defect in the Equipment has become apparent. Notwithstanding that EnerMech has taken delivery of the Services or Equipment, the Seller will remain responsible for any loss or damage to the Services or Equipment, which may have occurred prior to delivery, and for any non-compliance of the Services or Equipment with the requirements of the Contract.
- 3.9 The Seller will allow EnerMech to expedite, inspect and test the Equipment during manufacture at the Seller's premises on reasonable prior notice. Any expediting, inspection, testing or any failure to do so shall in no way relieve the Seller of its obligations under the Contract.
- 3.10 Unless otherwise agreed in the Purchase Order, materials, goods and equipment in an as supplied, unused and saleable condition, which have been purchased from Seller can be returned by EnerMech at no restocking charge within twelve (12) months of receipt of same.
- 3.11 On returns that are greater than twelve (12) months of receipt, EnerMech shall pay a restocking charge of 10%.

### **4. TITLE AND RISK OF LOSS**

- 4.1 The Equipment shall remain at the risk of the Seller until delivery to EnerMech is complete (including off-loading and stacking) when ownership of the Equipment shall pass to EnerMech.
- 4.2 Title to the Equipment purchased hereunder shall pass directly from Seller to EnerMech at the delivery point as specified in the Contract and subject to EnerMech's right of inspection.

## **5. WARRANTY**

5.1 Seller warrants, without limitation of time, that the Equipment and Services provided:-

- (a) are of merchantable quality;
- (b) are fit for the particular needs and purposes of EnerMech as may be communicated to Seller;
- (c) comply with the highest warranties, representations, and opinions expressed by Seller orally or in any written advertisement, correspondence or other document provided to or in possession of EnerMech;
- (d) comply with all applicable laws, codes, and regulations as published by any national or international body, commission, association or group;
- (e) are free from defect in materials and workmanship;
- (f) will be performed with reasonable care and skill and in accordance with generally recognised industry practices and standards;
- (g) will be provided in accordance with all applicable legislation from time to time in force, and the Supplier will inform EnerMech as soon as it becomes aware of any changes in that legislation;
- (h) Supplier warrants that it has or will be deemed to have done everything required under the Contract that would be expected of a prudent, competent and experienced supplier.
- (i) The Supplier warrants that it enters into this Contract based on its own investigations, interpretations, deductions, information and determination.
- (j) are not restricted in any way by patents, copyrights, trade secrets, or other rights of third parties; and
- (k) that all Equipment and materials delivered are free and clear of all liens, claims, and encumbrances of any kind whatsoever.

If any of the foregoing warranties are breached, Seller agrees to correct all defects and nonconformities, to be liable for all direct and other damages suffered by EnerMech and any other persons, and is to defend and indemnify EnerMech from any claim (including all costs, expenses, and attorney's fees in defending any such claim) asserted by any person resulting in whole or in part from such breach.

5.2 The Seller will repair, replace or rectify any of the Equipment and/or Services (or any replacement thereof) which are defective. Should the Seller be unable to repair, replace or rectify any of the Equipment or Services, then it shall cover the reasonable and documented costs incurred by EnerMech is repairing, replacing or rectifying any of the Equipment or Services. The Seller's obligation shall cease 24 months from delivery or 18 months from installation whichever comes first. However, where the Seller undertakes defect rectification works, the aforementioned defect liability period will commence from the date of completion of the defect rectification.

## **6. VARIATIONS**

- 6.1 EnerMech has the right to issue instructions to the Seller at any time to make any variations to the Equipment and/or Services which are within the capability and resources of the Seller. The Seller shall proceed immediately as instructed.
- 6.2 Any adjustment to the Price resulting from any variation shall be valued at the appropriate rates and prices included in the Contract or, in the absence of any appropriate rates and prices, a fair evaluation shall be made by the parties.
- 6.3 Where the Seller receives any instruction from EnerMech which the Seller in its reasonable opinion believes it constitutes a variation, it shall within 5 days notify EnerMech to direct a variation. Should EnerMech agree to direct a variation, then within 3 days from that date the Seller must provide a description of the variation, the additional or reduced cost of the variation and any proposal for sharing any savings in costs; any benefits which will flow from the variation.

## **7. INFRINGEMENT**

Seller shall save, indemnify, defend and hold harmless EnerMech Group from all claims, losses, damages, costs (including legal costs), expenses, and liabilities of every kind and nature for, or arising out of, any alleged infringement of any patent or proprietary or protected right or intellectual property arising out of or in connection with the performance of the obligations of the Seller under the Contract.

## **8. INDEMNITIES**

8.1 **SELLER HEREBY RELEASES AND SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS ENERMECH GROUP FREE AND HARMLESS FROM AND AGAINST ALL LOSSES, CLAIMS, LIABILITIES, DEMANDS, DAMAGES, COSTS AND EXPENSES WHETHER ARISING AT ANY TIME AND CAUSED BY THE ACT, FAILURE TO ACT, FAULT, OMISSION, NEGLIGENCE OR MISCONDUCT, WHETHER ACTIVE OR PASSIVE, OF SELLER, ITS LOWER TIER SUBCONTRACTORS OR ANYONE ACTING UNDER ITS OR THEIR DIRECTION, IN CONNECTION WITH THE PERFORMANCE OF THE CONTRACT. SELLER'S AFORESAID RELEASE, INDEMNITY AND HOLD HARMLESS OBLIGATIONS SHALL APPLY EVEN IN THE EVENT OF THE FAULT OR NEGLIGENCE OF ENERMECH GROUP TO THE FULLEST EXTENT PERMITTED BY LAW BUT IN NO EVENT SHALL THEY APPLY TO LIABILITY CAUSED BY THE SOLE GROSS NEGLIGENCE OR WILFUL MISCONDUCT OF ENERMECH GROUP.**

**SELLER'S AFORESAID DEFENSE, RELEASE, INDEMNITY AND HOLD HARMLESS OBLIGATIONS SHALL INCLUDE ANY AND ALL**

**CLAIMS, SUITS, LIABILITIES, JUDGEMENTS OR DEMAND IN RESPECT OF:**

- (a) Loss of or damage to property of the Seller Group whether owned, hired, leased or otherwise provided by the Seller Group arising from, relating to or in connection with the performance or non-performance of the Contract; and
- (b) Personal injury including death or disease to any person employed by the Seller Group arising from, relating to or in connection with the performance or non-performance of the Contract; and
- (c) Subject to any other express provisions of the Contract, personal injury, including death or disease or loss of or damage to the property of any third party to the extent that any such injury, loss or damage is caused by the negligence, act, omission, or breach of duty (whether statutory or otherwise) of the Seller Group. For the purposes of this Clause 8.1(c) "third party" shall mean any party, which is not a member of the Seller Group or EnerMech Group.
- (d) Any environmental damage
- (e) Any and all damages incurred by EnerMech Group to settle, pay or discharge a lien or similar title.

8.2 NOT USED.

8.3 Notwithstanding any provision to the contrary elsewhere in the Contract and except to the extent of any agreed liquidated damages (including without limitation any predetermined fees) provided for in the Contract, EnerMech shall save, indemnify, defend and hold harmless the Seller Group from EnerMech Group's own Consequential Loss and the Seller shall save, defend, indemnify EnerMech Group from the Seller Group's own Consequential Loss, arising from, relating to or in connection with the performance or non-performance of the Contract.

8.4 All exclusions and indemnities given under this Clause 8 shall apply irrespective of cause and notwithstanding the negligence or breach of duty (whether statutory or otherwise) of the indemnified party or any other entity or party and shall apply irrespective of any claim in tort, under contract or otherwise at law.

**9. INSURANCE**

Seller shall maintain at all times during the terms of this Agreement the insurance coverages set forth in Appendix A – Insurance Requirements, with limits and coverages not less than those specified therein. Upon execution of this Agreement and thereafter upon an annual basis, Seller shall furnish to EnerMech Group certificates of insurance, evidencing that the herein required minimum coverages are in effect and comply with the requirements set below:

1. Workers Compensation and Employers Liability for all states where operations are being conducted
  - a) Employers Liability Insurance limits of at least **\$1,000,000** each accident for bodily injury by accident and **\$1,000,000** each employee for injury by disease.
2. Commercial General Liability (CGL) with limits of Insurance of not less than \$1,000,000 each occurrence and **\$2,000,000** Annual Aggregate.
  - Products Completed Operations Aggregate: **\$2,000,000**
  - Personal & Advertised Injury: **\$1,000,000**
  - Damage to Rented Premises: **\$50,000**
  - Medical Expenses: **\$5,000**
  - a) EnerMech Mechanical Services, Inc. and all other parties required, shall be included as additional insured's on the CGL
  - b) Seller shall maintain CGL coverage for itself and all additional insureds for the duration of the contract and maintain Completed Operations coverage for itself and each additional insured for at least 2 years after completion of the Work.
3. Automobile Liability
  - a) Business Auto Liability with limits of at least **\$1,000,000** each accident.
  - b) Business Auto coverage shall include coverage for all owned, hired, and non-owned autos.
  - c) EnerMech and all other parties required shall be included as insured's on the auto policy.
4. (Applicable to Logistics Company) - Motor Truck Cargo Insurance with limits of equal to or greater than the value covering direct physical loss to property transported. Policy shall name EnerMech Mechanical Services, Inc. as a Loss Payee.
5. Commercial Umbrella
  - a) Umbrella limits must be at least **\$5,000,000**.
  - b) Umbrella coverage must include as insureds all entities that are additional insureds on the General Liability and Auto Liability.

- c) Umbrella coverage for such additional insureds shall apply as primary before any other insurance or self-insurance, including any deductible, maintained by, or provided to, the additional insured other than the CGL, Auto Liability and Employers Liability coverages maintained by the contractor.

**All policies, with the exception of Workers Compensation, shall be endorsed as naming the EnerMech Mechanical Services, Inc. and all other parties required as Additional Insured's. The insurance shall be primary and non-contributory.**

**The Acord Form Certificate shall specifically name the ISO form Additional Insured Endorsement as well as Waiver of Subrogation in the Description of Operations section of the certificate. This wording can follow on an additional page of the certificate if it will not all fit in the Descriptions of Operations section of the first page.**

**Every policy shall be endorsed with a Waiver of Subrogation in favor of EnerMech Mechanical Services, Inc.**

**All policies shall provide that they may not be modified or cancelled without giving EnerMech Mechanical Services, Inc. and all other parties at least thirty (30) days written notice.**

**During the full term of The Work of this Agreement, Seller shall at all times maintain the above insurance coverage with limits not less than those described above, and with insurers licensed to do business in the State of Wyoming.**

**Please have your insurance agent email us a copy of your insurance certificate with their cover letter immediately.**

## **10. PAYMENT AND INVOICING**

10.1 In consideration of Seller's satisfactory performance and completion of the Services and/or provision of Equipment, EnerMech shall pay or cause to be paid to Seller the Price specified in the applicable Purchase Order at the times and in the manner specified herein. The Price shall be Seller's full compensation for all things to be supplied or performed by the Seller under the Purchase Order, with the exception of any applicable taxes which shall be shown as a separate item on the invoice in addition to the Price at the appropriate rates.

10.2 Seller shall submit a pro-forma invoice to EnerMech once per calendar month on a monthly basis. The pro-forma invoice shall be submitted no later than five (5) days following the month end or completion of work.

Once the pro-forma invoice is approved by EnerMech then Seller shall submit the original invoice to EnerMech Financial Department [us.accounts@enermech.com](mailto:us.accounts@enermech.com) with a copy to EnerMech's representative for processing and payment. Payment shall only be effected within sixty (60) days of receipt of a correctly prepared and adequately supported original invoice, EnerMech shall effect payment of the due amount into the bank account of the Seller specified on the invoice or as otherwise notified.

10.3 Invoices will only be considered valid for payment if accurately prepared and submitted with sufficient supporting documentation, and must include the following items:

- EnerMech Purchase Order Number (only one Purchase Order per invoice)
- EnerMech Purchase Order item/line number(s)
- Seller and EnerMech legal name and addresses
- Description of the Goods/Service provided
- Quantities and unit of measures for item(s) being invoiced
- Applicable delivery dates
- Currency stated in USD or as applicable
- Any applicable Sales Tax and/or withholding tax
- Total invoice value (both net and gross of any discounts or sales tax)
- Sufficient supporting documentation detailing the work performed, such documentation includes without limitation and where applicable, authorized timesheets, third party invoices, cargo summary tickets and expense receipts

EnerMech may reject invalid invoices. If an invoice is invalid, EnerMech will provide Seller with reasons for rejection and Seller shall re-submit a revised invoice.

10.4 The latest time for receipt of invoices following completion of the whole of the Services and/or provision of Equipment is

- ninety (90) days. Seller shall not be entitled to receive any payment on any invoice submitted after this time.
- 10.5 If EnerMech disputes any items on any invoice in whole or in part or if the invoice is prepared or submitted incorrectly in any respect, EnerMech shall notify the Seller of the reasons and request the Seller to issue a credit note for the unaccepted part or whole of the invoice as applicable. Upon receipt of such credit note, EnerMech shall pay the undisputed part of a disputed invoice. On settlement of any dispute Seller shall submit an invoice for sums due and EnerMech shall make the appropriate payment in accordance with the provisions of this Clause 10 where applicable.
- 10.6 Neither the presentation nor payment nor non-payment of an individual invoice nor issuance of a credit note shall constitute a settlement of a dispute, an accord, satisfaction, a remedy of account stated, or otherwise waive or affect the rights of the parties hereunder. In particular, EnerMech may correct or modify any sum previously paid in any or all of the following circumstances:- (a) any such sum was incorrect; or (b) any such sum was not properly payable to Seller.
- 10.7 Without prejudice to any other right or remedy, EnerMech shall have the right to offset monies owed to EnerMech by Seller at any time under this or any other contract or agreement against any amount payable by EnerMech to the Seller under the Contract. Seller shall pay to EnerMech within thirty (30) days of receipt of an invoice any sums outstanding after such right of offset has been applied.
- 10.8 Any rebates, discounts or credits provided to or received by Seller for Equipment or Services completed under this Contract shall be passed onto EnerMech.
- 10.9 Seller shall maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Equipment and/or Services in such form as EnerMech shall approve. The Seller shall allow EnerMech to inspect such records at all reasonable times on request.

## **11. CONFIDENTIALITY**

The Seller shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Seller by EnerMech or its agents and any other confidential information concerning EnerMech's business or its equipment which the Seller may obtain and the Seller shall restrict disclosure of such confidential material to such of its employees, agents or subcontractors as need to know the same for the purpose of discharging the Seller's obligations to EnerMech and shall ensure that such employees, agents or subcontractors are subject to like obligations of confidentiality as bind the Seller. This clause does not apply where the confidential information:

- (i) was in the public domain prior to disclosure Seller;
- (ii) has become part of the public domain through no fault or breach of Seller;
- (iii) was in Seller's possession prior to the date of the Contract and was not subject to obligations of confidentiality;
- (iv) was given without restriction to Seller by a third party duly authorised or otherwise entitled to do so, and who did not receive the same in any way from EnerMech;
- (v) is required to be produced by order of a court or in any arbitration proceedings or under the requirements of any Law and/or by the rules of any relevant stock exchange; or
- (vi) EnerMech has given its prior written consent for disclosure.

## **12. FORCE MAJEURE**

EnerMech reserves the right to defer the date of delivery of the Equipment and/or the date for performance of the Services or payment or to cancel the Contract or reduce the volume of the Equipment and/or amend the scope of the Services ordered if it is prevented from or delayed in the carrying on of its business due to circumstances beyond its reasonable control including but not limited to, natural disasters, forces of nature, earthquake, tidal wave, landslide, flood, lightning, hurricane, typhoon, storm or other weather condition not included in normal planning, epidemic and plague; changes in laws or regulations, governmental actions; acts of civil or military authority; fire; explosion; lock-outs, strikes and/or labor disputes (whether or not relating to either party's workforce); civil commotion; protests; war; national emergency; riot; civil insurrection; acts of terrorism; restraints or delays in transportation; restraints or delays in manufacturing and inability of Seller to obtain adequate or suitable supplies from usual sources, or acts of EnerMech resulting in commercial impracticality. In the event of any such delay, the date of delivery and/or performance shall be deferred for a period equal to the time lost by reason of the delay. Neither EnerMech nor Seller shall be entitled to any damages, costs or expenses arising from or incurred as a result of a Force Majeure event.

## **13. TERMINATION**

- 13.1 EnerMech shall have the right to terminate the Contract, or any or all Purchase Orders in whole or in part, at such time or times as EnerMech may consider necessary for any or all of the following reasons:
- (a) to suit the convenience of EnerMech; or
  - (b) in the event of any default on the part of the Seller; or
  - (c) If Seller or its parent company becomes bankrupt or insolvent, is unable to pay its debts as they fall due, goes into

liquidation, has a receiving or administration order made against it or a petition or application made for same, makes an arrangement with its creditors, or carries on business under a receiver, trustee, administrator or supervisor for the benefit of its creditors, or if any act is done or event occurs which (under applicable laws) has an equivalent or similar effect to any of these acts or events.

13.2 If EnerMech gives the Seller notice of termination of all or any part of the Purchase Order or Contract, such notice shall become effective on the date specified therein whereupon the Seller shall immediately:

(a) cease performance of the Services or provision of Equipment as may be specified in the notice;

(b) allow EnerMech or its nominee full right of access to take over the performance of Services or provision of Equipment or the relevant part thereof;

(c) assign to EnerMech, or its nominee, to the extent desired by EnerMech, all or the relevant parts of the rights, titles, liabilities, and subcontracts relating to the performance of Services or provision of Equipment which the Seller may have acquired or entered into.

EnerMech shall have the right to obtain completion by other sellers.

13.3 In the event of termination under Clause 13.1(a) the Seller shall be entitled to payment as set out in the applicable Purchase Order for the part of the Services performed or Equipment provided in accordance with the Contract along with such other direct, reasonable costs as agreed between the parties which shall in no event exceed the Price set out in the applicable Purchase Order.

13.4 In the event of termination under Clause 13.1(b) or 13.1(c) the Seller shall be entitled to payment as set out in the applicable Purchase Order for the part of the Services performed or Equipment provided in accordance with the Contract. Any additional costs reasonably incurred by EnerMech as a direct result of such termination shall be recoverable from the Seller.

#### 14. **BUSINESS ETHICS and ANTI-BRIBERY/ANTI-CORRUPTION**

The Seller acknowledges that it has received and reviewed the EnerMech Supplier Code of Business Conduct (the "Supplier Code of Business Conduct"). The Seller undertakes that it shall, and shall ensure that its partners, members, beneficial owners, subcontractors and affiliates shall, comply with the Supplier Code of Business Conduct.

Neither Seller nor EnerMech has made, or shall make, any payment or take any action that could be construed to be the payment of money or other thing of value to any person for the purpose of influencing any act or inducing any person to use his, her or its influence to assist in obtaining or retaining business in any country in a manner which is illegal or which would subject EnerMech to civil or criminal penalties, or which is inconsistent with the Supplier Code of Business Conduct.

The Seller agrees that it shall take no action or use or spend any funds, regardless of the source, in violation of all applicable laws and regulations, including without limitation applicable laws, regulations or orders relating to anti-bribery, influence peddling or anti corruption, such as the United States Foreign Corrupt Practices Act and the United Kingdom Bribery Act 2010 ("Anti-Corruption Laws") and applicable laws, regulations, rules or guidelines relating to money laundering ("Anti-Money Laundering Laws").

The Seller represents and warrants that no investigation by or proceeding by or before any government authority involving the Seller with respect to Anti-Corruption Laws, Anti-Money Laundering Laws is pending or, to the knowledge of the Seller, is threatened.

The Seller shall ensure that any person or subcontractor associated with the Seller who is performing services or providing goods in connection with this Contract does so only on the basis of a written contract which imposes on and secures from such persons terms equivalent to those imposed on the Seller in this Clause 14. The Seller agrees that it shall be liable for the breach by any such person or subcontractor of any provision of this Clause 14.

The Seller shall immediately notify EnerMech if it becomes aware of, or has reasonable grounds to suspect, any violation or potential violation of this Clause 14.

#### 15. **ENTIRE AGREEMENT**

The Contract, any Special Conditions and these Standard Terms and Conditions of Purchase constitute the entire agreement between the parties relating to the sale of the Equipment and/or Services and supersedes all previous communications, representations, or agreements, either oral or written, with respect to the subject matter hereof.

#### 16. **ASSIGNMENT**

- 16.1 The Seller shall not be entitled to assign the Contract, any part of it including any or all of its obligations thereunder without the prior written consent of EnerMech.
- 16.2 EnerMech may assign the Contract or any part of it including any or all of its obligations thereunder to any person, firm or company.

**17. APPLICABLE LAWS**

Seller agrees that in the performance of this contract it shall comply with all applicable laws, statutes, rules and regulations or orders.

**18. GOVERNING LAW**

The laws of the State of Texas shall govern the validity, construction, interpretation and effect of these Terms and Conditions for services performed in the United States of America. The parties hereby irrevocably waive their right to a jury trial. In all subcontracts, in connection with the services, Seller shall require its subcontractors to agree to the foregoing.

**19. DISPUTE RESOLUTION**

Any dispute between the parties in connection with or arising out of the Contract shall be resolved by means of the following procedure:

- (a) the dispute shall initially be referred, by means of a formal notice, to the representative of each party who shall discuss the matter under dispute and make all reasonable efforts to reach an agreement;
- (b) if no agreement is reached under Clause 19(a) above, within thirty (30) days of the date of the formal notice, the dispute shall be referred to an appropriate senior executive of each of the parties who shall meet to discuss the matter in dispute who shall make all reasonable efforts to reach an agreement;
- (c) if no agreement is reached under Clause 19(b) above within thirty(30) days of the date the dispute was referred to the senior executives of each party, the dispute shall be settled by binding arbitration which shall take place in Houston, Texas. The arbitration shall be conducted in accordance with the Commercial Rules of the American Arbitration Association. The laws of the state of Texas shall be applied in any arbitration proceedings, without regard to principles of conflict of laws.

Notwithstanding the existence of a dispute at any stage contemplated by this clause, the Seller and EnerMech must continue to perform the Contract.

**20. HUMAN RIGHTS**

Seller shall comply with all laws and applicable principles pertaining to human rights, including the United Nations Universal Declaration of Human Rights, the International Labor Organization and the US Foreign Office of Assets Control.

Seller shall not engage in slavery, forced labor or human trafficking of any kind. Seller's employees, either directly or indirectly must do so voluntarily and without coercion. Seller will not impose unreasonable restrictions on workers' rights to leave work or terminate employment.

**21. COMPLIANCE WITH TRADE LAWS**

The Seller will remain in full compliance with applicable laws, regulations or orders relating to economic and trade sanctions, export or import control ("Trade Laws"). The Seller acknowledges that the Trade Laws may affect not only the sale and resale of the Services but also technical data and plans and specifications dealing with the Services. The Seller shall immediately notify EnerMech if Seller knows or has a reasonable suspicion that the Services, technical data, plans, or specifications may be redirected to other countries in violation of the Trade Laws;

Seller shall obtain all necessary export and other licences, consents, clearances and/or authorisations (the "Export Licenses") required in order to fulfil its obligations under this Contract and to comply with the Trade Laws. The Seller shall, in a timely manner and at its own costs and expense provide EnerMech such end-user certificates, end-user undertakings or other information as Seller may request in support of obtaining and maintaining and Export Licences.

Seller shall be responsible for complying with any legislation or regulations governing the importation of the Services in to the country or destination and for the payment of any duties or taxes.

Seller warrants that it shall not sell, distribute, disclose, release, receive or otherwise transfer any item or technical data provided under this Contract in violation of the Trade Laws, including without limitation: (a) U.S. Export Administration Regulations and the International Traffic in Arms Regulations (ITAR); and (b) applicable EU export control regulations, sanctions and embargoes



Seller represents, warrants and undertakes that it does not, and shall not do business and/or conduct any direct or indirect dealings with any entity that is located, organized or resident in a country or territory subject to comprehensive sanctions administered by the U.S. Treasury Department's Office of Foreign Assets Control (each a "Restricted Country"), which currently includes: Cuba, Iran, North Korea, Syria and Crimea.

Neither the Seller, nor its subsidiaries, affiliates, predecessors, officers, directors, or agents, is currently a Restricted Person.

## **22. DOMESTIC CONTENT FOR SPECIALTY METALS**

- 22.1 Unless otherwise agreed in the Purchase Order, Any goods containing specialty metals provided by Seller in connection with the services performed shall originate from domestic of qualifying countries. Any specialty metals used in deliverable goods must be melted in the United States or a qualifying country which includes the following:
- 22.2 Australia, Austria, Belgium, Canada, Czech Republic, Denmark, Egypt, Finland, France, Germany, Greece, Israel, Italy, Luxembourg, Netherlands, Norway, Poland, Portugal, Spain, Sweden, Switzerland, Turkey, United Kingdom of Great Britain, and Northern Ireland.
- 22.3 If the items ordered contain specialty metal and either the item is not already compliant or cannot be considered compliant based on any of the exceptions contained herein, the Seller must immediately provide notice and impact if compliance causes any cost or schedule impact or cannot be made compliant.
- 22.4 EnerMech reserves the right to reject the goods in full if Seller does not provide compliant material.

## **23. MISCELLANEOUS**

- 23.1 EnerMech and the Seller agree that that any special conditions set out in the Contract will take precedence over the general terms and conditions set out in these Terms and Conditions of Purchase.
- 23.2 The Seller shall at its own expense secure any permits or any other authorizations (including but not limited to work permits and visas for employees of the Seller) which may be required to permit the Seller to perform the Services. The Seller agrees to indemnify EnerMech against any costs, claims, actions, demands or expenses incurred or suffered in connection with the Seller's failure to obtain any permits or authorizations required to perform the Services.
- 23.3 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force.
- 23.4 Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.
- 23.5 Any notice to be given under, or in connection with the matters contemplated by, these Terms and Conditions shall be in writing and signed by or on behalf of the party giving it and shall be served by delivering it personally or sending it by facsimile, e-mail or pre-paid recorded delivery or registered post to the address and for the attention of the person stated in the Contract (or as otherwise notified by that party hereunder). Any such notice shall be deemed to have been received:-
- a) if delivered personally, at the time of delivery;
  - b) in the case of pre-paid recorded delivery or registered post, forty-eight (48) hours from the date of posting;
  - c) in the case of registered airmail, five (5) days from the date of posting; and
  - d) in the case of fax, at the time of transmission; and
  - e) in the case of electronic mail, forty-eight (48) hours after the time of sending.
- If deemed receipt occurs before 9am on a business day the notice shall be deemed to have been received at 9am on that day and if deemed receipt occurs after 5pm on a business day, or on a day which is not a business day, the notice shall be deemed to have been received at 9am on the next business day. For the purpose of this Clause, a "business day" means any day which is not a Saturday, a Sunday or a public holiday in the place at or to which the notice is left or sent.
- 23.6 Seller shall, and shall ensure that its subcontractors and sub-suppliers report, file and pay any and all taxes, duties and levies in respect of income, corporation, revenue or similar taxes, howsoever described, and all fines, penalties and interest thereon duly assessed on the income, profits and gains accruing to Seller or any subcontractor or sub-supplier in performance of the Contract in the country or countries in which the Services are rendered or supplied, or any other country. Seller shall defend, indemnify and hold harmless EnerMech Group against any and all claims relating to taxation howsoever arising in connection with said income, profits and gains of Seller Group.
- 23.7 Shipment must be made as specified in the Contract unless otherwise agreed in writing by EnerMech.

- 23.8 The Seller shall ensure that the Equipment is all properly packed, secured and labeled in accordance with accepted good industry practices and to meet EnerMech's requirement as specified in the Contract.
- 23.9 Seller agrees to furnish all documentation as EnerMech may require including, but not necessarily limited to, material test reports (MTR's), Certificates of Conformance, compliance, origin, etc. Seller agrees that EnerMech may withhold payment of invoice until all documentation requirements are satisfied and that timeframe for discount terms will not commence until all acceptable documentation is received.
- 23.10 Either party's failure to enforce any provision hereof shall not be construed to be a waiver of such provision or the right of such party thereafter to enforce each and every such provision.
- 23.11 From time to time as requested by EnerMech, Seller shall certify by way of declaration to EnerMech that it has complied with its obligations, representations, and warranties of Seller as set forth in this Clauses 14, 20, 21 and 23.6.