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**SALES TERMS AND CONDITIONS**

These sales terms and conditions (hereinafter "Sales Terms and Conditions") shall apply to any sales agreement made by Morganton Pressure Vessels North Carolina LLC (hereinafter "Seller") with any buyer (hereinafter "Buyer") to the exclusion of any contrary provisions contained in buyer's purchase orders, invoices, acknowledgements or other documents. By ordering from Seller, or accepting delivery of the products (hereinafter the "Products"), Buyer agrees to be bound by the Sales Terms and Conditions. Seller may change or revise the Sales Terms and Conditions at any time without notice. Such revised Sales Terms and Conditions shall apply to purchase orders (hereinafter the "Purchase Orders") placed after the date of their revision. The Sales Terms and Conditions have been posted at 06/08/2023 on <https://www.morgantonpv.com/>.

**Description of Products.**

(a) Upon acceptance of a Purchase Order placed by Buyer, Seller shall supply the Products specified in the Purchase Order to Buyer, and Buyer shall take delivery and accept the Products, pursuant to the Sales Terms and Conditions.

(b) Any description given or applied to the Products is given by way of identification only, and the use of such description shall not constitute a sale by description. For the avoidance of doubt, Buyer hereby declares that Buyer does not rely on any description when ordering and buying the Products.

**Prices.**

(a) The prices payable by Buyer for the Products to be supplied by Seller are specified in the applicable Purchase Order. The prices charged to Buyer shall be those in effect on acceptance of the Purchase Order.

(b) Seller reserves the right to change the prices in effect at any time without notice.

Buyer shall be solely responsible for the payment of any and all federal, state, and local sales, use, value-added taxes and other taxes that may accrue in connection with the sale, use, or delivery of the Products, unless Seller is provided with a satisfactory proof of exemption.

**Payment Terms.**

(a) Unless expressly agreed otherwise in writing between Seller and Buyer, standard payment terms are net thirty (30) days from delivery.

(b) Unless another payment method is agreed upon in writing between Seller and Buyer, payments shall be wired to the bank account designated in writing by Seller.

(c) Buyer shall remit full payment for invoices without any withholding, deduction, set-off, or counterclaim.

(d) Unless agreed otherwise in writing, payments must be made in U.S. currency. If Buyer is delinquent in payment to Seller, Seller may withhold performance until all delinquent amounts and interest, if any, are paid. Additionally, Seller may, at its option: (i) repossess Products for which payment has not been made; (ii) charge interest on delinquent amounts as specified in the Sales Terms and Conditions; (iii) recover all costs of collection, including, but not limited to, reasonable attorneys' fees; or (iv) combine any of the above rights and remedies as may be permitted by applicable law. These remedies are in addition to those available at law or in equity. Seller may re-evaluate Buyer's credit standing at any time and modify or withdraw credit.

**Retention of Title.**

Title to the Products shall remain vested in Seller and shall not pass to Buyer until the price for the Products has been paid in full and received by Seller.

**Late Payments.**

In the event that Buyer fails to pay the price within the term as specified in Section 4 (a), Buyer will in addition pay finance charges at the rate of one and one-half percent (1.5%) per month on the late balance, or the maximum permitted by law if a lesser amount.

**Delivery.**

(a) The Products shall be delivered EX WORKS 1 Alfredo Baglioni Drive, Marion DC 28752 – Incoterms 2020.

(b) Seller and Buyer agree that time is not of the essence.

(c) Any complaints regarding the Products, including, but not limited to, those relating to weight, defects or dissimilarities, must be notified by Buyer in writing, under penalty of forfeiture, within fifteen (15) calendar days from delivery of the Products. Any defect of the Products, that can be noted at sight, such as the number and the condition of the packages, must be notified by Buyer in writing, under penalty of forfeiture, immediately at delivery of the Products.

**Returns.**

(a) All returns must be authorized in writing by a Seller representative, and a return merchandise authorization (hereinafter the "RMA") number must be obtained before returning the Products, failing which the Products will not be accepted. Returns will not be accepted for customized Products or other Products that are specified as being non-returnable.

(b) Requests for RMAs shall be made in writing no later than fifteen (15) days following receipt of the Products.

(c) All returned Products must be returned in the same exact conditions as they were at the time of delivery.

(d) Buyer shall be responsible for the cost of carriage to return the Products to Seller.

**Compliance with Laws.**

It is the sole responsibility of Buyer to comply with all international, federal, state, or local laws, regulations, or codes which apply to the sale of the Products and the Buyer's use of the Products hereunder, and to comply with all applicable laws and regulations. Buyer is responsible for compliance with all import, export and re-export control laws and regulations. Buyer shall retain documentation to support compliance with those laws and regulations. Seller will not be responsible to Buyer for any failure to provide the Products as a result of government actions that affect Seller's ability to perform, including, but not limited to: (i) the failure to provide or the cancellation of export or re-export licenses; (ii) any subsequent interpretation of applicable import, transfer or export laws or regulations after the date of any purchase order or commitment that has a material adverse effect on Seller's performance; or (iii) delays due to Buyer's failure to follow applicable import, export, transfer, or re-export laws and regulations.

Buyer shall not sell, transfer, export or re-export any Products for use in activities that involve the design, development, production, use or stockpiling of nuclear, chemical or biological weapons or missiles, nor use the Products in any facility which engages in activities relating to such weapons or missiles. In addition, the Products shall not be used in connection with any activity involving nuclear fission or fusion, or any use or handling of any nuclear material.

**Intellectual Property.**

Seller shall retain all right, title, and interest to all intellectual property rights in and to Seller's Products hereunder, including, but not limited to, all inventions, discoveries, patent applications, patents, copyrights, trademarks and trade names, commercial symbols, and trade secrets embodied in or appurtenant to the Products.

**Confidential Information.**

(a) Any confidential information that Seller and Buyer exchange or acquire in connection with the sale of the Products shall remain confidential and the property of its owner. As used herein, "Confidential Information" shall include, but not be limited to: any scientific, computer or other technical information, technology, research, design, idea, process, procedure, formula or improvement, or any portion or phase thereof; information relating to any current or proposed Products, services, methods, businesses or business plans, marketing, pricing, distribution and other business strategies.

(b) Confidential Information does not, however, include any information which: (i) was publicly known and was generally available in the public domain prior to the time of disclosure to the receiving party; (ii) became publicly known and generally available after disclosure to the receiving party through no action of the receiving party; (iii) at the time of disclosure was known to the receiving party without confidentiality restrictions; (iv) was independently developed by the receiving party without a breach of the Sales Terms and Conditions; or (v) was disclosed pursuant to a legal requirement.

**Limited warranty and limitation of liability.**

(a) Seller warrants that its Products are free from defective materials or workmanship for a period of six (6) consecutive months from the date the Products have been put in service for the first time or for a period of twelve (12) consecutive months starting from the date of the Manufacturing Data Report (date in which each Product has been tested), whichever is earlier. The Buyer shall bear the responsibility to verify the Manufacturing

Data report of each Product before delivery. Seller will, at its option, either repair or replace the defective Product or part thereof, at no charge to Buyer for parts or labor, during the above-mentioned warranty period.

(b) If Seller elects to replace the defective Product, Seller shall not be responsible for reinstallation and refinishing of the replacement product, which shall be done at Buyer's expense.

(c) THIS LIMITED WARRANTY SHALL NOT APPLY IN THE FOLLOWING CONDITIONS:

- i. BUYER HAS USED THE PRODUCTS TO STORE MATERIALS AND/OR SUBSTANCES OTHER THAN AIR, ARGON, HELIUM, NITROGEN OXYGEN, WATER, OIL;
- ii. BUYER DID NOT USE THE PRODUCTS WITHIN THE RATED PRESSURE AND TEMPARTURE LIMITS STATED ON THE PLATE AND ON THE TESTING REPORT;
- iii. BUYER HAS CARRIED OUT A WELDING ON THE PRODUCTS;
- iv. BUYER DID NOT PROVIDE THE PRODUCTS WITH SUITABLE AND ADEQUATE SAFETY AND CONTROL FITTINGS AND/OR DID NOT REPLACE THEM IN CASE OF NEED;

(d) THIS LIMITED WARRANTY SHALL NOT APPLY ALSO IN THE FOLLOWING CONDITIONS:

- i. BUYER HAS ALTERED OR MODIFIED THE PRODUCTS OR USED THEM FOR PURPOSES OTHER THAN THOSE FOR WHICH THEY ARE INTENDED;
- ii. BUYER HAS USED THE PRODUCTS IN A MANNER INCONSISTENT WITH THE INFORMATION AND/OR THE INSTRUCTIONS OF USE CONTAINED IN THE TECHNICAL DATA SHEET. THE TECHNICAL DATA SHEET IS PROVIDED BY SELLER AND/OR POSTED BY SELLER ON LINE AND/OR INSERTED IN SELLER'S PRINTED CATALOGS AND OTHER DOCUMENTATION. BY SUBMITTING THE PURCHASE ORDER, BUYER DECLARES TO BE ACQUAINTED WITH ANY INFORMATION CONTAINED IN SUCH DOCUMENTATION CONCERNING THE ORDERED PRODUCTS AND ALSO DECLARES TO BE INFORMED THAT THE PRODUCTS ARE INTENDED FOR BUYERS WHO OR WHICH ARE ACQUAINTED WITH THE CONDITIONS AND METHODS OF USAGE OF THE PRODUCTS;
- iii. THE PRODUCTS WERE SUBJECTED TO MISUSE OR ABUSE, OR THEY WERE DAMAGED AS A RESULT OF AN ACCIDENT, FIRE, FLOOD, UNAUTHORIZED REPAIRS, ACTS OF GOD, OR ANY ACTS BEYOND THE CONTROL OF SELLER;
- iv. BUYER HAS USED THE PRODUCTS IN CORROSIVE ENVIRONMENTS;
- v. BUYER HAS SELECTED THE WRONG PRODUCT FOR BUYER'S SPECIFIC APPLICATION AND CONDITIONS OF USE;
- vi. BUYER DID NOT DO THE MAINTENANCE OF THE PRODUCTS IN COMPLIANCE WITH THE INSTRUCTIONS RECEIVED IN ANY MANNER BY SUPPLIER, IF ANY, AND/OR WITH THE STANDARDS OF DILIGENCE AND PROFESSIONALISM THAT ARE APPLIED IN THE INDUSTRY OF THE BUYER AND/OR WITH THE LAW REQUIREMENTS;
- vii. BUYER HAS USED THE PRODUCTS IN ANY HAZARDOUS AND/OR HIGH-RISK APPLICATIONS. IF BUYER USES THE PRODUCTS IN THESE APPLICATIONS, THE BUYER SHALL USE THE PRODUCTS AT ITS OWN RISKS AND PERILS, AND BUYER SHALL FULLY INDEMNIFY, HOLD HARMLESS AND DEFEND SELLER AND ITS DIRECTORS, OFFICERS, EMPLOYEES, SHAREHOLDERS, AND AFFILIATES FROM AND AGAINST ALL CLAIMS, DEMANDS, ACTIONS, SUITS, DAMAGES, LIABILITIES, LOSSES, SETTLEMENTS, JUDGMENTS, COSTS AND EXPENSES (INCLUDING, BUT NOT LIMITED TO, REASONABLE ATTORNEY'S FEES AND COSTS) INCURRED OR SUSTAINED BY SELLER AS A RESULT OF THE USE BY BUYER OF SELLER'S PRODUCTS IN ANY SUCH PROHIBITED APPLICATION.

(e) THE BUYER ACKNOWLEDGES THAT:

- i. THE PRODUCTS SHALL NOT BE SUBJECT TO RAPID FLUCTUATIONS OF PRESSURE CONSIDERING THAT INTERNAL CORROSION MAY BE PRESENT DUE TO THE HUMIDITY CONTAINED IN THE PRODUCTS;
- ii: THE PRODUCTS MUST BE STORED IN VENTILATED ROOMS AND KEPT AWAY FROM FLAMES, HEATING SOURCES AND INFLAMABLE SUBSTANCES;
- iii. CONDENSE DEPOSIT MUST BE DRAINED FROM THE PRODUCTS DAILY;
- iv. INTERNAL CORROSION CHECKS MUST BE CARRIED OUT AT LEAST EVERY TWELVE (12) MONTHS IF THE PRODUCTS ARE PROPERLY STORED OR EVEN LESS IF THE PRODUCTS ARE USED WITH OIL FREE COMPRESSORS AND/OR THE PRODUCTS ARE STORED IN A BADLY VENTILATED ROOM WITH HIGH HUMIDITY OR IN PRESENCE OF CORROSIVE SUBSTANCES;
- v. THE PRODUCTS MUST BE POSITIONED IN ORDER TO AVOID ANY VIBRATION DURING USE;
- vi. PRESSURE OF THE PRODUCTS MUST BE EQUAL TO ATMOSPHERIC PRESSURE BEFORE PROCEEDING WITH INSPECTION OR MAINTENANCE;
- vii. IN CASE OF ANY DAMAGES OF THE PRODUCTS, BUYER MUST INSPECT THE PRODUCTS BEFORE ANY USE;
- viii. BUYER MUST COMPLY WITH THE APPLICABLE LAW ON THE OPERATION OF THE PRODUCTS.

(f) SAMPLES OF PRODUCTS MAY BE SHOWN TO BUYER FOR GENERAL INFORMATIONAL PURPOSES ONLY AND SHALL NOT BE DEEMED A WARRANTY BY SAMPLE OR MODEL OR OTHERWISE HAVE ANY LEGAL EFFECT.

(g) THE WARRANTIES IN THE SALES TERMS AND CONDITIONS ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND SHALL BE THE SOLE AND EXCLUSIVE REMEDY AVAILABLE TO BUYER. THE MAXIMUM LIABILITY, IF ANY, OF SELLER FOR ALL DIRECT DAMAGES IS LIMITED TO AN AMOUNT NOT TO EXCEED THE PRICE OF THE PRODUCTS. IN NO EVENT SHALL SELLER BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST REVENUES AND PROFITS, AND LOSS OF BUSINESS OPPORTUNITIES, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

(h) THE BUYER ACKNOWLEDGES THAT THE PRODUCTS ARE NOT CONSIDERED TO BE GOODS FOR USE PRIMARILY FOR PERSONAL, FAMILY OR HOUSEHOLD PURPOSES OR CONSUMER GOODS. SELLER SHALL NOT BE LIABLE FOR ANY CLAIMS OF BUYER USING THE PRODUCTS FOR PERSONAL, FAMILY OR HOUSEHOLD PURPOSES OR CONSUMER GOODS. MOREOVER, BUYER SHALL DEFEND SELLER FROM, AND INDEMNIFY AND HOLD SELLER HARMLESS AGAINST, ANY CLAIMS BROUGHT BY THIRD PARTIES, USING THE PRODUCTS FOR PERSONAL, FAMILY OR HOUSEHOLD PURPOSES OR CONSUMER GOODS, AND TO WHOM THE BUYER DID NOT PROVIDE ADEQUATE WARNING NOT TO DO SO.

(i) THE FOREGOING STATES THE ENTIRE LIABILITY OF SELLER WITH REGARD TO THE SALES TERMS AND CONDITIONS AND THE PRODUCTS. THE LIMITATIONS OF LIABILITY CONTAINED IN THE SALES TERMS AND CONDITIONS ARE A FUNDAMENTAL PART OF THE BASIS OF SELLER'S BARGAIN HEREUNDER, AND SELLER WOULD NOT ENTER INTO THE SALES TERMS AND CONDITIONS ABSENT SUCH LIMITATIONS. TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE LIMITATIONS AND EXCLUSIONS OF THIS SECTION WILL APPLY WHETHER LIABILITY ARISES FROM BREACH OF CONTRACT, INDEMNITY, WARRANTY, TORT, OPERATION OF LAW, OR OTHERWISE.

(f) SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU. THIS WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS AND YOU MAY ALSO HAVE OTHER LEGAL RIGHTS WHICH VARY FROM STATE TO STATE.

**Authority of Agents.**

No agent, employee or representative of Seller shall have the authority, absent express written consent, to bind Seller with regard to any affirmation, representation, or warranty of the Products sold hereunder.

**Force Majeure.**

Seller shall be relieved from its duty to perform its obligations under any sale agreements and from any liability in damages in case of occurrence of an event of force majeure, including, without limiting the generality of the foregoing, (i) war (whether declared or not), hostilities, invasion, act of foreign enemies, extensive military mobilization; (ii) civil war, riot, rebellion and revolution, military or usurped power, insurrection, act of terrorism, sabotage or piracy; (iii) currency and trade restriction, embargo, sanction; (iv) act of authority whether lawful or unlawful, compliance with any law or governmental order, expropriation, seizure of work, requisition, nationalization; (v) plague, epidemic, natural disaster or extreme natural event; (vi) explosion, fire, destruction of equipment, prolonged break-down of transport, telecommunication, information system or energy; (vii) general labor disturbance such as boycott, strike and lock – out, go-slow, occupation of factories and premises; (viii) Covid-19 pandemic and any related act and any other impediment outside Sellers control. Buyer acknowledges that where Seller fails to perform one or more of its obligations because of default by a third party who has been engaged to perform the whole or part of any sale agreements, Seller may invoke this Section to the extent that the third party is affected by an event of force majeure as described in this Section. Seller shall have the right to terminate any sale agreements if the duration of the impediment exceeds 120 days. In any case, should the customer derive a benefit before the termination of any sale agreements, the latter shall pay to Seller a sum of money equivalent to the value of such benefit.

**Export Control.**

Buyer acknowledges that the Products may be subject to export control regulation such as, but not limited to, the U.S. Export Administration Regulations and the International Traffic in Arms Regulations and any other applicable regulations. Buyer agrees to strictly comply with the laws and regulations stated in this Section if applicable, and to provide Seller with any information that Seller may demand in order to comply with the laws referred to in this Section. Seller disclaims any responsibility for any kind of damages that the customer may sustain as a result of delayed delivery or non-delivery due to present and/or future acts or restraints of Governments, the imposition of export restrictions and any other impediment beyond the control of Seller, directly or indirectly related to the provisions of this Section.

**Entire Agreement.**

The Sales Terms and Conditions supersede any and all other agreements, either oral or in writing, between Seller and Buyer with respect to the Products hereby sold by Seller to Buyer, and contain all of the representations, covenants and agreements between the parties with respect to such Products. No trade usage, course of performance or course of dealing between the parties shall be used to explain or supplement the Sales Terms and Conditions. No waiver, alteration, modification, or addition shall be binding unless in writing and signed by both parties.

**No Waiver.**

If Seller elects to continue performance after a breach or default by Buyer, its actions shall not constitute a waiver of such default or breach.

**Validity of Provisions.**

If any provision contained in the Sales Terms and Conditions is held to be void, illegal, unenforceable, or in conflict with any law, the validity of the remaining portions and/or provisions of the Sales Terms and Conditions shall not be affected thereby.

**Communications.**

Seller shall communicate in writing to Buyer the contact information where Buyer shall send any communication according to the Sales Terms and Conditions.

**Assignment.**

Buyer shall not have the right to assign to third parties any sales agreement as well as any rights and/or obligations thereof.

**Governing Law.**

The Sales Terms and Conditions and any sales made hereunder shall be governed by the laws of the State of North Carolina, excluding its conflicts of laws principles. The application of the United Nations Convention on Contracts for the International Sale of Goods is hereby excluded.

**Jurisdiction.**

Any disputes, actions, or proceedings arising from the sale of Products hereunder shall be exclusively heard by the federal or state courts of the State of North Carolina, McDowell County. Seller and Buyer expressly waive any objection that each may now or hereafter have to the venue of any such suit, action, proceeding or settlement in any such court, or that such suit, proceeding or settlement was brought in an inconvenient forum.

**Attorney's Fees.**

If the services of any attorneys are employed to enforce any rights or obligations arising out of or relating to the Sales Terms and Conditions, the prevailing party shall be entitled to recover its reasonable attorney's fees, costs, and other reasonable expenses. For purposes of this Section, "prevailing party" shall be defined as the party obtaining substantially the relief sought, whether by compromise, settlement, or judgment. By accepting delivery of, and/or responding to, an email referencing the Sales Terms and Conditions, or by being provided with the opportunity to review or be provided with the Sales Terms and Conditions, Buyer and Seller hereby affirm that their electronic signatures, as that term is defined in N.C.G.S. § 66-312(9), has been attached to, associated with, and adopted by both the Buyer and Seller, and the Buyer and Seller indicates their intent to agree to the Sales Terms and Conditions, and waive all defenses related thereto.