



# MOHAWK ENERGY

## PURCHASE ORDER TERMS & CONDITIONS

1. **AGREEMENT & ACCEPTANCE:** This Purchase Order shall become a binding contract between Seller and Buyer either upon Seller signing this Purchase Order, or upon Seller shipping the Goods or otherwise commencing performance of the Goods described herein, whichever occurs first. This Purchase Order, together with the specifications, drawings and other requirements specified herein, constitutes the entire agreement between the parties, and all prior negotiations and proposals related thereto are superseded and of no effect. Any written confirmation of this Purchase Order by Seller containing additional or different terms from this Purchase Order shall be of no effect, unless Buyer agrees in writing to such additional or different terms. Seller shall give Buyer immediate notice if it discovers any conflict or ambiguity between provisions of this Purchase Order or any of the specifications, drawings or other documents referenced therein. Buyer's determination as to which provision controls or the meaning of any ambiguity shall be final.

2. **DEFINITIONS:** "Buyer" means the company specified on the first page of this Purchase Order, whether acting on its own behalf or as agent for one of its affiliated companies. Buyer shall include Buyer, its parent or affiliated companies, and client and their respective officers, directors, employees, contractors, subcontractors, vendors [except Seller], invitees, licensees and agents, any or all of entities with an interest or any or all of such entities. If Buyer or one of its affiliated companies is not the ultimate consumer of the Goods, all rights, benefits and remedies given by this Purchase Order to Buyer, including but not limited to the benefit of any warranties, shall be deemed to also be for the express benefit of the client of Buyer. Seller means the company executing this Purchase Order with Buyer or providing Goods to Buyer. Seller shall include Seller, its parent or affiliated companies, and their respective officers, directors, employees, clients (other than Buyer), subcontractors, vendors, invitees, licensees and agents. Claims shall mean all claims, losses, damages, expenses causes of action, events, suits, judgments and liability of every kind, including without limitation all expenses of litigation, court costs and reasonable attorney's fees arising from this agreement or the Goods provided hereunder. The term "Goods" includes the equipment, materials, work or services or other items specifically specified in the Purchase Order, including design, delivery, installation, inspection and testing required to be furnished or performed in connection with the Goods.

3. **PRICE:** The price for the Goods shall include all requirements specified in this Purchase Order. It is fixed and it is not subject to adjustment for escalation. The price includes all taxes and duties to the specified delivery point, proper packing and loading and securing the Goods on the carrier's equipment at the shipping point. Buyer's count shall be final and conclusive on shipments not accompanied by Seller's itemized packing list.

4. **PAYMENT:** Seller's performance under this Purchase Order will not be considered complete nor payment made until Buyer is in receipt of all Goods specified in the quantities ordered and all other properly completed documents, including any required certifications, drawings and bills of ladings. Buyer may withhold payment, without loss of its right to a discount, until Seller meets all requirements set forth herein. **Payment will be due within the time period set out in the Purchase Order document or if none stated, then, net 60 days following receipt and acceptance of the Goods and receipt of Seller's invoice.**

5. **TITLE:** Seller warrants good title to all Goods, free and clear of any and all liens, restrictions, reservations, security interest, encumbrances and claims of others. Title to all Goods shall pass to Buyer on the earlier at a) delivery to Buyer's specified delivery point, or b) payment in whole or part. Irrespective of the earlier passage of title, risk of loss shall not pass to Buyer until physical delivery of the Goods has been made to Buyer at Buyer's specified delivery point.

6. **WARRANTY & REJECTION FOR NON-CONFORMITY:** Seller warrants that all Goods will meet the specifications, drawings and other requirements of the Purchase Order, will be of new materials, first-class workmanship, free from defects in design, workmanship and material and fit for the purpose

intended or represented. If within 18 months from date of shipment or within 12 months from date of first intended use, whichever occurs first, Buyer discovers any breach of any warranty as to the Goods, then Seller shall promptly repair or replace the Goods in question after Buyer's written notice of breach, without cost to Buyer. If Seller fails, after 7 days notice, to promptly proceed with the repair or replacement of the defective Goods, Buyer may repair or replace such Goods and charge all related costs to Seller without voiding the warranties herein. In addition, if emergency repairs are required not allowing time for Seller to make such repairs, Buyer may nevertheless proceed and make such repairs or replacements and charge the cost to Seller. Seller warrants for a period equal to the end of the initial warranty period, to correct defects in the Goods that Seller has repaired or replaced. Buyer shall have the right to inspect the Goods at any time. Buyer's failure to inspect Goods shall not affect Buyer's right to reject non-conforming or defective Goods or constitute acceptance of the Goods if Buyer reasonably determines that all or a portion of the Goods are non-conforming.

**7. INDEMNITY: SELLER SHALL RELEASE, DEFEND, INDEMNIFY AND HOLD HARMLESS BUYER FROM AND AGAINST ALL CLAIMS, FOR INJURY TO, SICKNESS OR DEATH OF ANY MEMBER OF SELLER OR FOR DAMAGE TO PROPERTY OF ANY MEMBER OF SELLER, ARISING OUT OF OR IN CONNECTION WITH THE WORK, DONE BY SELLER UNDER THIS AGREEMENT. NOTWITHSTANDING THE ABOVE IN THE EVENT THE BUYER'S CLIENT CONTRACT SO PROVIDES, BUYER SHALL BE RESPONSIBLE FOR AND SHALL HOLD HARMLESS AND INDEMNIFY SELLER FOR LOSS OR DESTRUCTION OF OR DAMAGE TO SELLER'S EQUIPMENT WHEN SUCH EQUIPMENT IS USED IN THE HOLE, NORMAL WEAR EXCEPTED. SELLER SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS BUYER AND USER OF THE GOODS FROM AND AGAINST ANY CLAIMS IMPOSED ON, INCURRED OR ASSERTED AGAINST BUYER ON ACCOUNT OF BODILY INJURY OR DEATH OR PROPERTY DAMAGE OR DESTRUCTION, OR RESULTING FROM ANY ALLEGED DEFECT IN THE GOODS INCLUDING, THE PERFORMANCE OF THE WORK ITSELF, WHETHER LATENT OR PATENT, INCLUDING WITHOUT LIMITATION ALLEGEDLY IMPROPER CONSTRUCTION OR DESIGN, OR FROM THE FAILURE OF THE GOODS TO COMPLY WITH SPECIFICATIONS OR WITH ANY EXPRESS OR IMPLIED WARRANTIES OF SELLER, OR ARISING OUT OF THE ALLEGED VIOLATION OF ANY STATUTE, ORDINANCE, ADMINISTRATIVE ORDER, RULE OR REGULATION CONNECTED WITH THE MANUFACTURE OR SALE OF ANY GOODS TO THE EXTENT CAUSED BY SELLER. FOR THE PURPOSES OF THIS PARAGRAPH, "GOODS" SHALL BE DEEMED TO INCLUDE ANY PACKAGING SUPPLIED BY SELLER.**

8. PATENTS: Seller shall defend, indemnify, and hold Buyer, Buyer's Customer harmless from and against any claim, suit or liability based on a claim that the manufacture, use or sale of any Goods, or any part thereof supplied, constitutes infringement of any patent, trademark, copyright or other proprietary right of others. The foregoing sentence shall not apply to any Goods, or any part thereof, to the extent of being manufactured to designs furnished or required by Buyer.

9. SCHEDULE/DELAYS: It is agreed that time is of the essence under this Purchase Order. Except as provided below, Seller shall complete its obligations pursuant to this Purchase Order by the delivery dates specified (or within 7 days of Buyer's written demand after a reasonable time has elapsed if no delivery date is specified in the Purchase Order). Delays in Seller's performance or delivery due to defaults of Buyer in meeting its obligations under this Purchase Order or force majeure occurrences such as acts of God, or, strikes or other similar causes beyond Seller's control, which Seller could not have reasonably prevented or foreseen, shall be excused. In such event, Seller shall promptly notify Buyer of any such delay and at no additional cost to the Buyer, Seller shall take all reasonable steps to avoid herein such delay. The date of delivery or of performance will be extended for a period equal to the duration of the delay, but Seller shall not be entitled to any additional compensation for such delay. In the event such force majeure delays delivery more than 60 days from any scheduled delivery date, Buyer shall have the right to cancel the Purchase Order or any part thereof. If the time of delivery is not excused by a force majeure occurrence or Buyer's default, then the failure of Seller to deliver the Goods by such specified delivery date or within 7

days of Buyer's notice if no such delivery date is specified shall permit buyer to cancel this Purchase Order or any part thereof without cost to Buyer.

10. **CHANGES:** Buyer shall have the right to make changes in the requirements for the Goods. If such changes affect either the delivery date or price of the Goods, an equitable adjustment to the price and/or delivery date shall be mutually agreed between Buyer and Seller to reflect such change. Seller shall continue work during any discussion concerning such change and shall implement such change if directed to do so in writing by Buyer. Additional compensation or changes to the delivery date shall only be made if agreed to in writing by Buyer. If Seller believes a change has been made, Seller shall give Buyer notice of such change within 7 days after it has occurred, failing which it shall be deemed that Seller has waived any claim for an adjustment in price or delivery time for the Goods.

11. **TERMINATION:** In the event Seller becomes bankrupt in either the legal or equitable sense, makes a general assignment for the benefit of the creditors, has a receiver appointed because of its insolvency, or in the event the Seller does not correct or, if immediate correction is not possible, commence and diligently pursue to correction any default of Seller under this Purchase Order, within 7 days after written notice by Buyer of such default, Buyer may, by written notice to Seller, immediately terminate this Purchase Order, without prejudice to any rights or remedies which Buyer may have. In the event of such termination Buyer may take possession of all Goods and complete the performance of this purchase Order by such means as Buyer selects and Seller shall be responsible for any additional costs incurred by buyer in doing so. In addition to the foregoing, Buyer reserves the right to terminate this Purchase Order for its convenience at any time for any reason on written notice to Seller. In such event, Seller will be paid for all materials or services authorized and satisfactorily performed or received prior to said termination plus the reasonable cost incurred by Seller in terminating the of order.

12. **LAWS: Subject to the limitations of this agreement, it is agreed that in the performance of this agreement all matters shall be conducted in full compliance with any and all applicable federal, state, provincial and local laws, rules and regulations in the area(s) in which the matters are being conducted. If either Buyer is required to pay any fine or penalty or is subject to a claim due to Seller's failure to comply with applicable laws, rules or regulations, Seller shall defend, indemnify and hold harmless Buyer for all damages, fees and/or fines for such failure to comply to the extent of Seller's negligence or fault.**

13. **ASSIGNMENT:** Seller shall not assign any of its obligations under this Purchase Order without the prior written consent of Buyer. Buyer shall have the right to assign this Purchase Order to Buyer's affiliated companies or Buyer's Customer, without the consent of Seller.

14. **AUDIT:** The Buyer shall have the right to audit Seller's books and records, including but not limited to business entertainment expenses at all reasonable times during the continuation of this Purchase Order and for a period of five years thereafter, for the purpose of auditing and verifying, the charges or costs presented by Seller to Buyer for payment are in accordance with this Purchase Order.

15. **CONFIDENTIALITY:** All data and information acquired directly or indirectly by Seller from Buyer relating to this Purchase Order or in connection with the performance of this Purchase Order, excluding information or data in the public domain through no default of Seller, shall be held strictly confidential and not be reproduced or used for any purpose unrelated to the Purchase Order or disclosed to a third party without Buyer's written consent.

16. **LAW AND DISPUTE RESOLUTION:** This agreement shall be interpreted and construed in accordance with the laws of Texas, U.S.A., excluding any choice of law rules that would otherwise require the application of laws of any other jurisdiction. It is the intent of the Parties to exclude the application of the UN Convention on the International Sale of Goods. Any dispute arising in connection with this agreement shall be exclusively settled by arbitration in the Houston, Harris County, Texas, U.S.A. under the rules for arbitration of the American Arbitration Association (the "Rules"), which Rules shall be deemed to be incorporated herein as if set out verbatim and further provided that the provisions of this paragraph shall prevail in the event of any conflict with such Rules. The arbitration panel shall render its

decisions in writing and such written decisions and conclusions with respect to the disputes so settled shall be final and binding on the parties to the arbitration proceeding, and confirmation and enforcement of the awards so rendered may be obtained and entered in any court having jurisdiction thereof. The arbitration panel shall have no power or authority to make awards or issue orders of any kind except as expressly permitted by this agreement and the substantive laws of Texas, and in no event shall the arbitration panel have the authority to make any award that provides for punitive or exemplary damages. The arbitration award may be enforced by application to any court of competent jurisdiction. Nothing herein shall prohibit a Party from availing itself of a court of competent jurisdiction for the purpose of injunctive relief.

17. **INSURANCE:** Seller shall procure and maintain at its expense the following insurance coverages: a) as required by applicable law; and b) **Seller further agrees to obtain and maintain during the term of this agreement, at its expense, product liability insurance, with a vendor's endorsement, in such form and amount and with such insurer as may be approved by Buyer in writing. Satisfactory evidence of such insurance shall be submitted to Buyer upon request.** When this Purchase Order involves the provision of labor, installation, testing or start up of any equipment or material on Buyer's or its Customer's premises, the following additional terms and conditions shall apply: a) Workers Compensation Insurance – In accordance with the applicable workers compensation law or similar laws of the country, state or province having jurisdiction over the employee, and employer's liability insurance with policy limits of at least US \$1,000,000 per occurrence; b) Comprehensive General Liability Insurance with policy limits of at least US \$1,000,000 per occurrence for personal injury and property damage; c) Automobile Liability Insurance covering use of all owned or non-owned vehicles with a policy limit of at least US \$1,000,000 per occurrence for personal injury and property damage; d) Certificates of Insurance shall be provided to Buyer by Seller evidencing that Seller's underwriters have waived all rights of subrogation against Buyer, Buyer's Customer and their affiliated companies under all of Seller's insurance for claims or losses assumed by Seller under this Purchase Order. Such insurance certificate shall also provide that Buyer will be given at least 10 days written notice prior to any cancellation or substantial modification of the policies.

18. **MECHANIC'S LIEN:** Seller agrees to waive all rights of Mechanic Liens against the property of Buyer and/or its customers and further agrees to hold harmless Buyer, Buyer's Customer and their affiliated companies from any Mechanic Liens on such parties property arising from the performance of Seller's work at Buyer's or Buyer's Customer's premises.

19. **SAFETY RULES:** Seller warrants that it and its employees shall comply with all statutory and governmental safety and health regulations and the safety and health regulations of Buyer and/or Buyer's Customer while Seller performs work on the premises of Buyer or its Customer.

20. **SAVINGS CLAUSE:** In the event any provision, clause, sentence or part of this agreement is inconsistent with or contrary to any applicable law, same shall be deemed to be modified to the extent required to comply with said law (it being the intention of both Parties to enforce to the fullest extent all terms of this agreement) and as so modified, this agreement shall continue in full force and effect. In the event any such provision, clause, sentence or part of this agreement cannot be modified to comply with the law, then said provision, clause, sentence or portion of the agreement shall be deemed to be deleted from the agreement and the remaining terms and conditions shall remain in full force and effect.

21. **Amendments, Severability, No Waiver** **This Purchase Order constitutes the entire agreement between the parties with respect to the provision of services and supersedes all other terms either expressed or implied by law. No oral arrangement will be effective to modify or waive any provision of this Purchase Order. Any modification of this Purchase Order will not be effective unless signed by both parties. Both parties agree that this Purchase Order will be modified or altered only insofar as required by any jurisdiction purporting to limit such provisions, it being the intent of the parties to enforce all Purchase Order to the fullest extent.**