

GENERAL TERMS AND CONDITIONS
FOR ALL PURCHASE ORDERS

American Tug & Barge, Inc. | 81 Big Break Rd., Oakley, CA 94561 | www.amtug.com

These General Terms and Conditions for All Purchase Orders ("**Terms**") apply to all offers made by American Tug & Barge, Inc. and its affiliates ("**Company**" or "**ATB**"), for the purchase of goods, services, or other acquisition requests and all similar agreements ("**Purchase Order**") from any party to whom the Purchase Order is addressed ("**Seller**"). These Terms cover the supply of tangible personal property ("**Goods**") and the furnishing to or for Company of any type of services ("**Services**"). Goods and Services may be collectively referred to as "**Products**."

By providing Products to Company as set forth in any Purchase Order, the Seller acknowledges and agrees to all Terms without amendment, except as permitted in accordance with these Terms.

SCOPE OF AGREEMENT.

The Purchase Order and these Terms ("**Agreement**") constitute the entire agreement between Company and Seller. Company expressly objects to any terms or conditions provided by Seller that purport to legally bind Company, including any that may appear in any of Seller's order forms, invoices, delivery receipts, warranty documents, websites or similar materials. Any such Seller terms or conditions will not be part of the Agreement and will be of no force or effect, notwithstanding Company's acceptance of Products from Seller.

ACCEPTANCE.

The Purchase Order is not binding on Company until Seller accepts these Terms. Seller may object to any Terms in writing to Company by the earlier of either (a) ten (10) days after the date of the applicable Purchase Order, or (b) before Seller begins providing Products. Company will consider any objections at the Company's discretion, but any Company agreement to change these Terms must be in writing before Seller begins providing Products. Any objections or amendments to the Agreement made or received after such time will be of no force and effect and Seller will remain bound to all terms and conditions of this Agreement.

CHANGES TO PURCHASE ORDER.

Company may, by written change order issued to Seller, make any changes within the general scope of the applicable Purchase Order, including additions to or deletions from the quantities originally ordered, or in the specifications or drawings or in the time and place of delivery. All such changes will become a valid and binding part of this Agreement. If any such change(s) affect the amount due to Seller or the time Seller is required to provide Products and Seller requests an adjustment, Seller must notify Company in writing of the desired adjustment within five (5) days from the date of Company's change order. Upon receipt, Company will negotiate with Seller to arrive at an equitable adjustment to the affected terms; provided, however, that changes do not otherwise relieve Seller of its obligation to proceed with the Purchase Order as changed. These Terms apply to all changed work or supply, growth work, or modifications to work or supply of Products under any Purchase Order.

GENERAL PROVISIONS

DELIVERY AND INVOICING.

Seller must deliver all Products to the address or location specified in the Purchase Order ("**Delivery Location**"). Title passes to Company upon delivery of Products. All invoices must be issued to American Tug & Barge, Inc., c/o Accounts Payable, submitted electronically to office@amtug.com or mailed to 81 Big Break Rd., Oakley, CA 94561. Delivery point and discount terms, if any, must be shown on all invoices. If freight is prepaid for Company, Seller's invoice must show freight charges separately and Seller must also submit a copy of the freight bill showing actual payment of freight charges. Any sales tax, VAT, import/export duties, and other governmental assessments owed by Company to Seller on Company's purchase, receipt or use of Products ("**Taxes**") must be computed before adding freight charges. If Seller is responsible for collecting Taxes from Company and remitting them to the proper taxation authorities, Seller must include Taxes as a separate line item on each invoice. Invoices for Purchase Orders for Goods will not be processed for payment until all invoiced Goods are accepted by Company, as more completely described below. Company will remit payment to Seller for all invoices by mail. Seller will not deliver Goods on a sight draft basis. If Company is entitled to a cash discount, the period of computation thereof will begin on the date of acceptance or receipt of a correctly completed invoice, whichever is later. If Company is entitled to a cash discount and such discount is not included in Seller's invoice, the period of computation will begin on the date Company determines that the discount applies. If Company requests a price adjustment because of damage to Goods or any other reason, the cash discount period will begin on the date on which Company and Seller agree on an adjusted price, or the date Company agrees that no price adjustment will be made. Unless otherwise specified on the applicable Purchase Order, payment terms are 30 days from the later of the date a correct invoice is received or the date all invoiced Goods are accepted by Company.

ACCEPTANCE OF PRODUCTS.

If Seller delivers more than 5% or less than 5% of the quantity of Products ordered, Company may reject all or any excess Products. Company may return any rejected Products to Seller at Seller's risk and expense. If Company does not reject Products and accepts delivery of Products at the increased or reduced quantity, Seller must adjust the price for Products on a pro-rata basis. Company has the right to inspect Products on or after the Delivery Date. Company, at its sole option, may inspect all or a sample of the Product, and may reject all or any portion of the Product if it determines the Products are nonconforming or defective. If Company rejects any portion of the Products, Company has the right, effective upon written notice to Seller, to: (a) rescind the Order in its entirety, (b) accept the Products at a reasonably reduced price, or (c) reject the Products and require replacement of the rejected Products. If Company requires replacement of the Products, Seller will, at its expense, promptly replace the nonconforming Products and pay for all related expenses, including, but not limited to, transportation charges for the return of the defective Product and the delivery of replacement Products. If Seller fails to timely deliver replacement Products, Company may replace them with Products from a third party and charge Seller the cost thereof and terminate the Order for cause. Any inspection or other action by Company under this Section does not reduce or otherwise affect Seller's obligation under the Agreement, and Company has the right to conduct further inspections after Seller has carried out remedial actions. Payment or partial payment does not, by itself, constitute acceptance of Products.

PRICE AND PAYMENT.

The price of the Product is the price stated in the Purchase Order. If no price is included in the Purchase Order, the pricing will be as per Seller's published price list as of the date of the Purchase Order. Unless otherwise specified in the Purchase Order, the price includes all packaging, transportation costs to the Delivery Location, insurance, customs, duties, fees, and applicable taxes, including, but not limited to, all sales, use or excise taxes. No increase in Price is effective, whether due to increased material, labor or transportation costs, or otherwise, without prior written consent of the Company. Without prejudice to any other right or remedy it may have, Company reserves the right to set off at any time any amount owing to it by Seller against any amount payable by Company to Seller.

OWNERSHIP OF WORK PRODUCT.

If Seller's Goods or Services involve custom design, fabrication or manufacturing to Company's specifications, these provisions apply.

"**Work Product**" means all designs, discoveries, creations, works, devices, masks, models, work in progress, Services deliverables, inventions, products, computer programs, procedures, improvements, developments, drawings, notes, documents, information and materials made, conceived, or developed by Seller, alone or with others, which result from or relate to the Services performed hereunder. Standard Goods manufactured by Seller and sold to Company without having been designed, customized, or modified for Company do not constitute Work Product; however, the design and customization of such Goods will be considered Work Product.

All Work Product is and will remain the sole and exclusive property of Company. Seller irrevocably assigns and transfers to Company all right, title, and interest in and to the Work Product throughout the world, including all intellectual property rights vesting in such Work Product. Company will have the sole right to determine the treatment of any Work Product, including the right to keep it as trade secret, execute and file patent applications on it, to use and disclose it without prior patent application, to file registrations for copyright or trademark in its own name, or to follow any other procedure that Company deems appropriate. Seller agrees: (i) to disclose promptly in writing to Company all Work Product in its possession; (ii) to assist Company in every reasonable way, at Company's expense, to secure, perfect, register, apply for, maintain, and defend for Company's benefit all copyrights, patent rights, mask work rights, trade secret rights, and all other proprietary rights or statutory protections in and to the Work Product in Company's name as it deems appropriate; and (iii) to otherwise treat all Work Product as Company's Confidential Information (as defined below). These obligations to disclose, assist, execute, and keep confidential survive the expiration or termination of this Agreement.

Without limiting the foregoing, Seller will ensure that Seller's employees and subcontractors appropriately waive any claims and assign to Company any and all rights or any interests in any Work Product or original works created in connection with this Agreement. Seller irrevocably agrees not to assert against Company or its direct or indirect customers, assignees, or licensees any claim of any intellectual property rights of Seller affecting the Work Product.

Company will not have rights to any works conceived or reduced to practice by Seller which were developed entirely on Seller's own time without using equipment, supplies, facilities, or trade secret or Company Confidential Information, unless (i) such works relate to Company's business, or Company's actual or demonstrably anticipated research or development, or (ii) such works result from any Services performed by Seller for Company.

WARRANTIES.

Seller represents, warrants and agrees as follows:

All Goods, including all replacement Goods furnished by Seller, will be (i) new; (ii) conform to all applicable specifications, drawings, samples and descriptions; (iii) merchantable; (iv) free and clear of all liens, claims or encumbrances of every kind; and (v) fit for the particular purpose(s) for which such Goods are ordinarily employed and any other purpose(s) specified by Company.

All Services will be performed in a professional and workmanlike manner consistent with best industry practices.

Without limiting the foregoing, Goods, Services and Work Product do not and will not violate or misappropriate any third-party property right, including any patent, copyright, trademark, trade secret, right of publicity, right of privacy or any other, and that, as of the date such Products or Work Product are provided, there are no suits, proceedings or causes of action pending against Seller alleging any of the foregoing; and

Company's written approval of designs furnished by Seller will not relieve Seller of its obligations under this warranty.

The foregoing express warranties are in addition to, and not in limitation of, any warranty customarily made by Seller for its Products, any other warranty made by Seller to Company in connection with such Products, and any implied warranties of any kind or nature, and will be construed as conditions as well as warranties. For clarity, and language to the contrary elsewhere notwithstanding, any additional warranties made by Seller to Company will be incorporated into the Agreement by reference.

Seller's warranties for each Good and each Service will extend (i.e., be deemed continuously made) for a period of twelve (12) months, or such longer period as may be offered by Seller or Seller's suppliers, after the Good or Service is accepted by Company and successfully used for its intended purpose, whichever is later. If Seller or Seller's suppliers

provide warranties for longer than twelve (12) months, the longer period of such warranties will be incorporated into the Agreement by reference. Notice of defect may be given to Seller at any time within the warranty period except that notice of latent defect or one concealed by fraud or such gross neglect as amounts to fraud may be given at any time. Seller will, at Company's option, promptly either repair or replace defective Goods or re-perform defective Services, at Seller's sole expense. Seller will also repair or replace any damage to Company's or any third-party's real or personal property caused by defects in the Products. Company's continued use of defective Goods pending repair or replacement will not constitute Company's waiver of its rights hereunder.

The warranties, representations and covenants of Seller will survive delivery and acceptance of and payment under this Purchase Order and will be fully enforceable thereafter. Seller's warranties are part consideration for the applicable Purchase Order. Any payment by Company is conditional upon each warranty remaining in effect for the stated time period. No modification or other change of any warranty is valid unless specifically authorized by Company in writing.

EXTENSION OF BENEFITS; THIRD PARTY BENEFICIARIES.

All exceptions, exemptions, defenses, immunities, limitations of liability, privileges and conditions granted or provided by this Agreement to the benefit of Company will also apply to and be for the benefit of all of Company's parent and affiliated companies, as well as all directors, employees and agents of Company and such entities. In addition, if Company is not the ultimate consumer of any Goods, or if Goods are incorporated into products Company sells to its own customer(s), all rights, benefits, warranties, indemnities and remedies available to Company under this Agreement will be deemed made and available to the ultimate consumer of Goods. All of the foregoing parties are made third-party beneficiaries to this Agreement to the extent indicated.

INSURANCE.

Seller, at its sole cost and expense (including the cost of all deductibles), will procure and maintain (or cause to be procured and maintained) in force during the term of this Agreement the following insurance coverages:

Workers compensation insurance as required by law for all employees, agents and subcontractors of Seller; and employer's liability insurance with a minimum limit of $1,000,000 each accident or illness. Such insurance will provide coverage in the location in which Services are to be performed, from which Goods are shipped (if applicable) and the location in which the Seller is domiciled. If there is an exposure of injury or illness under the U.S. Longshore and Harbor Workers Compensation Act (including the Outer Continental Shelf Lands Act), the Jones Act, Death on the High Seas Act or other statutes applicable to maritime employees, Seller agrees to maintain insurance for such injuries or illnesses, and to provide evidence of such insurance as applicable.

Commercial general liability insurance, on a per occurrence basis, endorsed to cover premises, operations, products/completed operations, personal injury and contractual liability; with watercraft exclusions deleted and "in rem" coverage as may be applicable, with a minimum limit of $1,000,000 any one accident or occurrence.

Umbrella or additional insurance sufficient to cover and support Seller's indemnification obligations set forth below, if other required coverages are inadequate.

Automobile liability insurance, covering Seller's owned, rented, leased, non-owned and hired vehicles; with a minimum limit of $1,000,000 any one occurrence.

The following types and limits of insurance, as applicable:

(i) If consulting Services are being performed under this Agreement, professional liability / errors & omissions liability insurance with a minimum limit of $1,000,000 any one occurrence.

(ii) If Seller is selling or delivering fuel or other hazardous Goods, or performing waste disposal Services, pollution insurance or environmental impairment insurance with a minimum limit of $5,000,000 per occurrence, and any other public liability or environmental impairment coverage required by federal, state or local laws.

(iii) Should the Services supplied under this Agreement include use of Seller's vessels:

(1) Protection & indemnity insurance to be evidenced through a full entry with an international P&I Club, including collision liability, tower's liability, and liability for seepage, pollution, containment and cleanup, with

extensions for marine contractual liability, removal of wreck, etc., with a minimum limit of liability of $5,000,000 any one accident or occurrence. Alternatively, if a full entry in an international P&I Club is not available or applicable, maritime liability coverage should be evidenced on an SP-23 form or equivalent including collision liability, tower's liability and third-party statutory liability for seepage, pollution, containment and cleanup, with extensions for marine contractual liability, wreck / debris removal, with a minimum limit of liability of $5,000,000.

(2) Hull & machinery insurance including collision liability with sister-ship clause unamended, with a minimum limit equal to the full value of all vessels used in connection with performance of the Services, and with navigational limitations adequate for the Seller to perform the specified Services. Where vessels engage in towing operations, said insurance must include full tower's liability with sister-ship clause unamended.

(3) If the performance of Services requires the use of any aircraft that are owned, leased, rented or chartered by Seller or any of its subcontractors, aircraft liability or non-owned aircraft liability insurance, as applicable, with a minimum limit of $5,000,000 per occurrence, including passengers and crew.

(iv) The Workers Compensation / Employers Liability insurance policy will be endorsed to waive all rights of subrogation against (i) Company; and, if applicable (ii) the vessel(s) on which Seller's personnel are providing Services, and must contain an "In Rem" endorsement, along with an endorsement providing Company with thirty (30) days advance written notice of cancellation. Sellers in states with "State Fund" Workers Compensation must provide proof of coverage through the State Fund. All other insurance policies must be endorsed to name Company, its parent, subsidiary or affiliated companies and their shareholders, officers, directors, agents and employees, and, if applicable, the Company vessels on which Seller's personnel are providing Services, as additional insureds with a waiver of subrogation against all additional insureds, along with an endorsement providing Company with thirty (30) days advance written notice of cancellation.

(v) The amount or scope of insurance described in this Section and Seller's compliance (or failure to comply) with the foregoing obligations is not intended and may not be interpreted to limit or restrict Seller's liability under this Agreement, including Seller's indemnification obligations set forth below. Should Seller maintain insurance limits higher than the limits listed above, Company will benefit from those higher limits. In addition, any insurance company's insolvency, bankruptcy, or failure to pay all Claims (as defined below) accruing will not relieve Seller of any of its obligations.

(vi) Seller will require its subcontractors performing hereunder to maintain insurance of the types and amounts required of Seller.

(vii) Seller's policies will be deemed primary to any insurance carried by or available to Company and any "other insurance" clauses under Seller's policies will be amended accordingly.

(viii) All insurance must be written with insurers carrying no less than a "B" rating from A.M. Best's. Commencement of operations without receipt of the required certificates of insurance will not constitute a waiver of the obligation of the Seller to maintain the required insurance coverages and to provide Company with certificates of insurance at American Tug & Barge, Inc., 81 Big Break Rd., Oakley, CA 94561.

INDEMNIFICATION.

Seller will indemnify, defend and hold Company, Company's affiliates, and their respective officers, agents, employees, contractors, and customers ("**Company Indemnitees**") harmless from and against all claims, losses, expenses, damages, fines, penalties, proceedings, investigations, causes of action and liabilities of every kind and nature, including, without limitation, reasonable attorney's fees (together, "**Claims**"), arising from or out of, or alleging facts that, if proven would constitute (a) Seller's breach of this Agreement; or (b) other acts or omissions of Seller or Seller's officers, agents, employees, subcontractors, and guests, excluding Claims or portions of Claims (if applicable) to the extent caused by the negligence, gross negligence or willful misconduct of the Company. In addition, Seller waives any immunity or partial immunity that it may have under applicable Laws for all of the foregoing Claims regarding or as a result of the maintenance and payment of workers' compensation insurance. For clarity, Seller's obligations under this Section will extend to any interparty Claims, as well as any Claims brought or asserted against Company Indemnitees by a third-party.

For any Claims arising out of or alleging Seller's breach of the intellectual property warranty above, in addition to and not in lieu of Seller's indemnification obligation, if the person or entity alleging such infringement is successful in the prosecution of its Claims, Seller will, at its sole cost and expense, either (i) obtain the right for Company to use the Products or Work Product that is the subject of the Claim, in which case Seller will pay all royalties, license fees and other fees with respect thereto, or (ii) obtain a substitute or replacement for the infringing Products or portion thereof reasonably acceptable to Company.

Seller will promptly notify Company in writing of any Claim of which it becomes aware. Company will have the right to participate in the defense of any Claim with counsel of its choosing at its own expense. Seller may not settle any Claim or consent to the entry of any final judgment on a Claim without Company's prior written consent.

TERMINATION.

Company may terminate any Purchase Order, in whole or part, without liability, including the payment of liquidated damages, for Company's convenience, by giving notice to Seller at any time. If terminated for Company's convenience, Seller will be entitled to the reasonable, documented costs Seller has actually and directly incurred in the performance of the Purchase Order through the date Company provides notice of termination.

DEFAULT.

Company may, without liability, by written notice of default to Seller, (a) terminate any Purchase Order in whole or in part, and (b) exercise any other remedy provided to buyers of goods by law or in equity, including, without limitation, any remedy under the Uniform Commercial Code as adopted in California (Cal. Com. Code Division 2), in any of the following circumstances:

If Seller fails to deliver any Goods or to perform any Services within the time specified in the applicable Purchase Order, or any extension thereof agreed to in writing by Company;

Without limiting Company's right to return rejected Goods at Seller's expense, as discussed below, if, in Company's good faith judgment, Seller fails to perform any of the other provisions of the applicable Purchase Order or fails to make progress so as to endanger such performance and does not cure such failure within a period of ten (10) days, or such longer period as Company may authorize in writing, after receipt of notice from Company specifying such failure; Seller is in breach of any of the terms or conditions of this Agreement; or

If Seller becomes insolvent or makes an assignment for the benefit of creditors, or if any proceeding under any bankruptcy, reorganization, arrangement, readjustment of debt or insolvency law of any jurisdiction or for the appointment of a receiver or trustee in respect to any of Seller's property is instituted against Seller and such proceeding is not dismissed or cured within sixty (60) days.

COMPLIANCE WITH LAWS/REGULATIONS.

Seller is in compliance with and will comply with all applicable laws, regulations and ordinances. Seller has and will maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under the Order. Seller must comply with all export and import laws of all countries involved in the sale of Products under this Order. Seller assumes all responsibility for shipments of Products requiring any government import clearance. Company may terminate this Order if any government authority imposes any retaliatory duties on the Goods.

ASSIGNMENT.

Seller may not assign this Agreement, in whole or in part, or the right to any payment due hereunder, without Company's prior written consent. Any unauthorized assignment of this Purchase Order by Seller, by operation of Laws or otherwise, will be void. This Agreement will inure to the benefit of each party's successors and authorized assigns. Without limiting the foregoing, Seller may use subcontractors to fulfill its obligations; provided, however, that (a) Seller will remain liable for the performance of all its obligations under this Agreement, even if subcontracted; and (b) Seller will be as liable for the acts or omissions of Seller's subcontractors, including for indemnification purposes, as it would its own acts or omissions.

ADVERTISING.

Seller will not advertise or make publicity statements in any medium having or containing any reference to Company, Company's trademarks or any of its personnel, including on any customer lists Seller uses for advertising and promotional purposes, without Company's prior written consent in each instance.

CONFIDENTIALITY.

Seller acknowledges that the Purchase Order is confidential, and will not disclose the terms of the Purchase Order to any third party, except to Seller's legal and financial advisors who are obligated to keep such information confidential and as necessary for Seller to perform Seller's obligations under this Agreement, and as otherwise specifically agreed in writing by Company. Seller further acknowledges that all information disclosed to Seller by Company, to which Seller otherwise has access or information developed in the course of Seller's performance of the Purchase Order, by either party, alone or with others (together with the terms of the Purchase Order, the "**Confidential Information**"), is Company's exclusive property. Seller may use the Confidential Information only as necessary to perform Seller's obligations under this Agreement and Seller may not disclose the Confidential Information to any third party, except in those cases set forth above regarding the terms of this Agreement. Confidential Information excludes or will exclude information that (a) is or becomes known to the general public, other than as a result of Seller's breach of any obligation hereunder; or (b) information that Seller has in its possession before disclosure by Company that it has received from a third-party not affiliated with Company or any transaction contemplated by the applicable Purchase Order free of any duty of confidentiality. It will not be a breach of this section if Seller discloses Confidential Information to the extent required by applicable Laws, including a subpoena or similar document issued by any court of competent jurisdiction, provided that Seller (c) provides Company with advance written notice of such required disclosure sufficiently in advance to permit Company to contest or seek to limit the disclosure or seek a protective order or similar instrument; and (d) cooperates with Company in such efforts.

GOVERNING LAW / JURISDICTION.

This Agreement will be construed under and governed by the substantive laws of the State of California, United States of America, as if entirely made therein, without regard to its conflicts of laws provisions. Any Claim arising under or in connection with this Agreement between the parties, including as to its existence, breach, validity or Products supplied, will be adjudicated exclusively in the state or federal courts located in the State of California, and the parties consent to the exclusive jurisdiction of such courts. Venue for any such Claim will be in the courts of competent jurisdiction located in Contra Costa County, California.

In any Claim brought to construe or enforce any term of this Agreement or to recover damages arising from any breach of this Agreement, the losing party must pay to the prevailing party reasonable attorneys' fees and all other costs and expenses which may be incurred by the prevailing party in any such suit or action and in any reviews thereof and appeals therefrom, in addition to, and not in limitation of, other available remedies.

SEVERABILITY.

If any provision of this Agreement is held illegal, invalid or unenforceable, in whole or in part, by a court, arbitrator or other competent authority, the provision will be deemed to be restated to reflect as nearly as possible the original intentions of the parties in accordance with applicable Laws. The legality, validity and enforceability of the remaining provisions will not be affected and will remain in full force and effect.

FORCE MAJEURE.

Company will not be liable or responsible for delays or failures in performance resulting from events beyond Company's control. Company may delay delivery or acceptance of Goods or postpone performance of Company's obligations hereunder without being in breach of this Agreement as a result of such events.

NO WAIVER.

Company's failure to enforce Seller's compliance with the specific terms of this Agreement will not be considered a waiver of (a) its right to do so at a later date; (b) of any Claims Company may have against Seller arising out of the Seller's lack of compliance; or (c) any other terms of this Agreement or remedies against Seller, regardless of how arising, all of which are reserved to Company.

ENGLISH LANGUAGE CONTROLS.

Seller acknowledges that the English language version of this Agreement, including, for clarity, all Purchase Orders and these Terms, governs and controls and that any translations are provided as a courtesy only.

LIMITATION OF LIABILITY.

Company will not be liable to Seller or any other person or entity for any consequential, special, incidental or indirect damages, including without limitation lost profits, under or with respect to this Agreement, whether arising in tort, contract, strict liability, or any other legal theory, even if Company has been informed of the possibility of such damages and even if any remedy set forth in this Agreement fails as to its essential purpose.

ADDITIONAL PROVISIONS APPLICABLE TO GOODS

IDENTIFICATION.

Seller will include the applicable Purchase Order number on all invoices, packing lists, packages, shipping notices, instructions, manuals and other written documents relating to or affecting a Purchase Order or the Goods. Seller will enclose packing lists in each box or package shipped under any Purchase Order that specifies its contents. Seller will supply hazard communication information, such as complete Safety Data Sheets (SDS), to Company for all hazardous material, including, without limitation, all Goods that are known to constitute toxic, health, poison, fire or explosive hazards. Without limiting Seller's general compliance obligations, Seller will label all boxes, packages or other containers as required by applicable Laws at all of the locations to and through which Goods are shipped and will include all certifications required by Laws or reasonably required by Company, including U.S. Coast Guard certifications, as applicable.

SHIPPING INSTRUCTIONS.

Seller will ship all Goods DDP to the address or location set forth on the applicable Purchase Order, unless otherwise specified on such Purchase Order. All Goods must be suitably packaged, marked and shipped in accordance with the requirements of common carriers and this Agreement in a manner to secure the lowest transportation costs. Company reserves the right to reject C.O.D. shipments. Seller will not, and will not be required to, insure the Goods for Company's account during shipment except upon Company's written request, or where the approved shipping mode is parcel post.

DELIVERY.

Time is of the essence in delivery of the Goods. If Seller fails to deliver Goods in the quantities and at the time(s) specified in any Purchase Order, Company may, without limiting Company's other rights or remedies, either (a) direct expedited routing, at Seller's expense (which Company may offset against amounts owed to Seller); or (b) terminate the applicable Purchase Order. No change in the scheduled delivery date or performance will be permitted without Company's prior written consent. Company's acceptance of Goods after the scheduled delivery date will not waive Company's rights or remedies with respect to such late delivery. If Seller delivers Goods in advance of schedule, Company may, at its option, (i) return the Goods at Seller's expense for scheduled delivery; (ii) accept delivery of the Goods but withhold payment until the date that such Goods are actually scheduled for delivery; or (iii) place Goods in storage at Seller's account and at Seller's expense until the scheduled delivery date(s). Delivery in accordance with this Agreement does not constitute acceptance by Company.

INSPECTION, QUALITY CONTROL AND ACCEPTANCE.

Company may inspect all Goods at any time or place and may reject them if not strictly in accordance with all terms, conditions and provisions set forth in this Agreement.

Company will have a reasonable time after receipt of Goods and before payment to inspect them for conformity to the requirements of the applicable Purchase Order and this Agreement, and Company will not be deemed to have accepted Goods until it has run an adequate test to determine compliance. For clarity, use of a portion of the Goods for the purpose of testing will not constitute an acceptance of the Goods. If the Goods do not comply, Company may reject them and return them to Seller, at Seller's expense, as described below. Company's count of Goods will be accepted as final on all shipments whether or not accompanied by a packing list.

Without limiting the foregoing, at Company's option, Company or its customers may inspect or test Goods at Seller's premises or elsewhere, at reasonable times and places, and Seller will provide sufficient safe and proper facilities for

such preliminary inspection or testing. But Goods will not be deemed accepted until Company conducts the final testing and inspection described in the previous subsection(s). For clarity, and as indicated above, the ultimate consumer of the Goods, if not Company, is a third-party beneficiary to the terms permitting testing and acceptance.

If a specific brand is specified in a Purchase Order for any Goods, the Goods purchased must (i) be of that brand; and (ii) meet the standards for quality, performance, and use of such brand. If Seller receives Company's prior written approval, Seller may provide Goods of a different brand equivalent to the designated brand, provided that Seller must first provide Company with descriptive literature identifying such equivalent brand, including the quality, performance and specifications therefor. If Company elects to accept Goods of such substitute brand, such election will not limit or restrict Company's right to inspect and reject such Goods as provided hereunder, or any other right or remedy of Company.

DEFECTIVE / NON-COMPLIANT GOODS.

If Company determines that any or all Goods do not comply with the requirements of this Agreement, in whole or in part, such Goods will be deemed "rejected." Company may, at Company's option, (a) hold rejected Goods for Seller's instructions at Seller's risk, or (b) return rejected Goods to Seller at the address indicated in the applicable Purchase Order. Seller will be responsible for transportation charges on returned Goods both ways. Seller will refund any prior payment for rejected Goods, and the rejected Goods will not be replaced without Company's authorization.

PASSAGE OF TITLE.

Title to Goods will pass to Company upon delivery of the Goods as indicated in these Terms or as may be separately stated in the Purchase Order. No loss, injury, or destruction of or to Goods while in Seller's or Company's possession or in transit will release Seller from any obligations hereunder. Seller will be solely responsible for asserting any Claims against any applicable common carrier of the Goods and for maintaining any required insurance against loss in transit. If the Goods ordered are destroyed or substantially damaged before title passes to Company, Company may at its option terminate the Agreement or require delivery of substitute Goods of equal quantity and quality. Such delivery will be made as soon as commercially practicable. If loss of Goods is partial, Company may require delivery of the Goods not destroyed.

SPECIAL TOOLING, DRAWINGS OR SPECIFICATION.

Seller is responsible for the protection, calibration, maintenance and care, other than normal wear, of all tooling and equipment owned by Company that Seller uses under or in relation to any Purchase Order. This tooling or equipment will be subject to surveillance or inspection upon notice and will be returned in an acceptable condition upon demand or notice from Company.

Except as otherwise specified in a Purchase Order, if Seller requires any special tooling, including jigs, dies, fixtures, molds, patterns, special gauges, special test equipment or other items to provide Products under a Purchase Order, and Company is not in possession of such special tooling or is not otherwise able to provide it to Seller, Seller will acquire all such special tooling at its sole cost and expense. If Seller purchases any such special tooling, title will automatically pass to Company upon delivery to Seller (or Company, as agreed to by the parties). In addition, Seller will (i) stamp or paint "Property of American Tug & Barge, Inc." on all such special tooling; (ii) store all such special tooling separately from Seller's other equipment, tools and materials when not in use; (iii) keep all such special tooling in good condition; and (iv) when necessary, replace any such special tooling without expense to Company. Seller will supply all Goods (or components thereof) made from special tooling(s) to Company exclusively.

Any drawings and specifications prepared by Seller under this Agreement are considered Work Product. Seller will store such items separately from Seller's other documents and materials when not in use. Seller will send all such drawings or specifications to American Tug & Barge, Inc., 81 Big Break Rd., Oakley, CA 94561, Attention: Purchasing, when the applicable Purchase Order is completed.

ADDITIONAL PROVISIONS APPLICABLE TO SERVICES

APPLICABLE SERVICES.

If Seller is required to perform Services, including, for clarity, installation of Goods, on Company's premises or any real or personal property under its ownership or control, or that of its agents, customers or subcontractors, in addition to its obligations elsewhere in this Agreement, Seller must:

take precautions to protect all property and persons from damage or injury arising out of the Services;

comply with any policies, procedures, rules or regulations of Company and the owner of the premises upon which Services are being performed, as well as be responsible for the observance of such policies, procedures, etc. and of applicable laws by all Seller's subcontractors of any tier and their employees, agents or representatives (failing which Company may exclude Seller personnel from the premises and at Company's election, may declare a default under this Agreement);

receive, inspect, inventory, store, and protect from exposure to weather, excessive heat, cold or humidity, theft or vandalism any and all Company-furnished or owned items, equipment, machinery or other materials onto Goods (or their components) to the manufacturer's recommended specifications before delivering completed Goods to Company;

notify Company's representative upon receipt of all Company-furnished items, equipment, machinery or other materials, to include all items received, date received, condition, serial number, and other relevant information;

keep Company-furnished or owned items, equipment, machinery or other materials and the premises or property on which Services are being performed free and clear of all mechanics' and materialmen's liens;

without limiting the foregoing, promptly pay for all labor and material and, if Seller fails to do so, Company, without waiving any rights or remedies against Seller for or by reasons of such failure, may, but without any obligation to do so, pay the same and deduct the amount of such payments from sums due Seller hereunder; and Company may withhold any payment to Seller until receiving such affidavits, waivers and releases with respect to liens or other Claims for labor and materials as Company may require;

replace at its own expense all Company-furnished or owned items, equipment, machinery or other materials, or any Goods or portions of Goods or other property damaged or destroyed by any cause whatsoever;

perform Services in accordance with the schedule established by Company and fully cooperate with Company and others engaged in work in connection with the Services so that all work may be performed with the utmost speed, consistent with good practices (and Company may direct necessary coordination in case of conflict); and

keep the premises on which Services are performed clean, orderly and free from debris and upon completion, remove all equipment and unused materials, clean up all refuse and debris and leave the premises in a clean, orderly and good condition, normal wear and tear excluded.

INDEPENDENT CONTRACTOR.

Company is interested only in the results obtained under this Agreement. Without limiting Seller's obligations, the manner, method and means of achieving the results are under Seller's sole control. Seller is an independent contractor for all purposes, without express or implied authority to bind Company by contract or otherwise. Neither Seller nor its employees, agents or subcontractors are agents or employees of Company, and therefore are not entitled to any employee benefits of Company, including but not limited to, any type of insurance. Seller is responsible for all costs and expenses incident to performing its obligations under this Agreement, including any costs arising from its employment or engagement of personnel, and will, unless otherwise indicated, provide Seller's own supplies and equipment to perform Services. No relationship other than that of an independent contractor is intended or will be interpreted to exist between Company and Seller under this Agreement including, without limitation, a partnership, joint venture or co- or joint-employer relationship.

**** END OF GENERAL TERMS AND CONDITIONS APPLICABLE TO ALL PURCHASE ORDERS ****