

**GULF COAST MODIFICATION, L.P.**  
**General Terms & Conditions of Orders - Effective 2015**

**1. DEFINITIONS**

- (a) "The CONTRACT" means these General Terms & Conditions of Orders together with COMPANY's quote and any exhibits, attachments and other documents incorporated by reference.
- (b) "The PRODUCTS" means \_\_\_\_\_ and related products and services as well as their packaging that form the subject-matter of the CONTRACT.
- (c) "The COMPANY" means GULF COAST MODIFICATION, L.P. or alternatively the company named in COMPANY's quotation.
- (d) "The CUSTOMER" means individual, firm, partnership, company or other party with whom the Company contracts.
- (e) "FORCE MAJEURE" means any cause or circumstances (including but not limited to, act of God, fire, storm, flood, drought, earthquake, malicious damage, shortage of material, manufacturer's inability to provide the Product, embargo, riot, strike, look-out, trade dispute, civil disturbance, war, compliance with any law or government order, rule or direction or any other event or accident) beyond the reasonable and direct control of COMPANY.
- (f) "ORDER" means any written or oral purchase order received from CUSTOMER by the COMPANY.

**2. SCOPE**

- (a) These General Terms & Conditions set out the standard terms on which the COMPANY supplies PRODUCTS to the CUSTOMER. Accordingly, these General Terms & Conditions apply to all quotations and sales unless otherwise agreed in writing.
- (b) The legality, validity and enforceability of other clauses in these General Terms & Conditions will not be affected if one of the clauses is or becomes illegal, invalid or unenforceable.

**3. QUOTATIONS AND ORDERS**

- (a) Unless otherwise expressly stipulated, all of COMPANY's quotations and prices are subject to change without notice and at any time before the relevant ORDER is accepted and the PRODUCTS are subject to availability.
- (b) Each ORDER shall be construed as the CUSTOMER's offer to purchase the PRODUCTS set out in such ORDER subject to these General Terms & Conditions. These General Terms & Conditions shall prevail over any conflicting or different terms in CUSTOMER's ORDER. The CUSTOMER's standard terms of purchase will not apply. The COMPANY will not be bound by conflicting purchasing terms, conditions or reservations made by CUSTOMER even if COMPANY does not explicitly contradict the terms, conditions or reservations.
- (c) No order in pursuance of any quotation or otherwise shall be binding on the COMPANY unless and until such ORDER is accepted by the COMPANY. The COMPANY may reject any order in whole or part. A CONTRACT between the COMPANY and the CUSTOMER is finalized once the COMPANY issues an oral, electronic or written ORDER confirmation to the CUSTOMER or ships the PRODUCT to the CUSTOMER. By accepting delivery of any PRODUCT the CUSTOMER agrees to be bound by these General Terms & Conditions.
- (d) Subject to the specific procedures for changes to the ORDER set out in Clause 7(c), none of the terms and conditions contained herein may be added to, modified, superseded or otherwise altered except by a written instrument specifically referencing the affected provision of the ORDER signed by the President, Vice President or General Manager of COMPANY.

**4. PRICES**

- (a) All prices shown are, unless otherwise expressly agreed in the invoice, in U.S. dollars and are F.O.B. COMPANY's designated shipping point, unless otherwise expressly agreed to by COMPANY.

- (b) Prices exclude taxes, duties, packaging, delivery and insurance costs, which the CUSTOMER must pay unless the law specifically provides that such payment must be made by the COMPANY in which case the CUSTOMER shall reimburse the COMPANY for such payment as part of the purchase price. All prices include the COMPANY's standard packing, but not pallets or crating for export goods.

## 5. PAYMENTS AND LICENSES

- (a) Unless otherwise expressly agreed in writing by the COMPANY, the COMPANY shall be entitled to invoice the CUSTOMER in respect of the relevant ORDER, on or following the COMPANY'S acceptance of the relevant ORDER.
- (b) Payment must be made in the currency specified in the COMPANY'S invoice.
- (c) The CUSTOMER must pay the full invoice amount within 30 days from the date of the invoice unless otherwise agreed in writing. The COMPANY is entitled to charge interest on overdue payments at the greater of the following two rates: (a) 1.5% monthly or (b) 2% annually above the current monthly base rate of the COMPANY'S bank. In no event shall the interest rate be higher than the maximum rate permitted by applicable law. The CUSTOMER shall reimburse the COMPANY for all costs and expenses, including attorneys' fees, which the COMPANY incurs in collecting overdue amounts.
- (d) The CUSTOMER is not entitled to withhold, set off or deduct claims against the COMPANY from an amount that it owes the COMPANY under the CONTRACT or other agreement with the COMPANY.
- (e) The COMPANY is obligated to deliver a PRODUCT only if the CUSTOMER has made due payment of all amounts that it owes to the COMPANY at the date of delivery under the relevant CONTRACT or as otherwise agreed expressly in writing with the COMPANY. The COMPANY is entitled to suspend delivery of a PRODUCT if the CUSTOMER is in default without this affecting the COMPANY'S other rights under the relevant CONTRACT or other agreement with

the CUSTOMER. The COMPANY is not obligated to resume deliveries until the CUSTOMER has paid all overdue amounts, including all expenses and accrued interest.

- (f) It is the CUSTOMER'S exclusive responsibility to obtain all licenses, exchange control documents and other consents needed for the import and use of the PRODUCTS as well as for payment of the PRODUCTS. The CUSTOMER will not be discharged from its obligations under these General Terms & Conditions because he fails to obtain a license or other consents.

## 6. DELIVERY AND FORCE MAJEURE

- (a) While the COMPANY will endeavor to deliver the PRODUCTS by any date or within any period agreed upon, such dates and periods are estimates only given in good faith and the COMPANY will not be liable for any failure to deliver by such date or within such a period. Time for delivery shall not be of the essence of the CONTRACT.
- (b) Should the COMPANY be delayed in or prevented from making the delivery of the PRODUCTS due to Force Majeure, the COMPANY may terminate the CONTRACT or suspend the ORDER without incurring any liability for any loss or damage arising therefrom, but without prejudice in any such case to rights accrued to the COMPANY for deliveries already made.
- (c) Unless otherwise agreed to in writing by the COMPANY, the COMPANY shall deliver the PRODUCTS by the means most convenient to the COMPANY to the address or addresses specified by the CUSTOMER at the time of placing the ORDER or (in the event that the CUSTOMER fails so to specify an address) to an address at which the CUSTOMER resides or carries on business. The PRODUCTS are considered to be delivered when they are physically handed over to 1) the CUSTOMER, 2) the CUSTOMER'S agent or a person that the CUSTOMER has authorized to take delivery, or (3) the carrier, regardless of who pays shipping costs. The COMPANY shall be entitled to add to the contract price a reasonable charge for packaging, delivery and insurance. Off-loading will be at the CUSTOMER'S expense.
- (d) The CUSTOMER is obligated to pay all costs that

the COMPANY incurs because of the CUSTOMER's failure to take delivery either 1) on the date stated in the invoice or the COMPANY's confirmation, or 2) when the PRODUCTS are ready, if the COMPANY has notified the CUSTOMER in writing of their readiness and the CUSTOMER has not taken delivery within seven days or any other period to which the parties agree.

- (e) Promptly following delivery, the CUSTOMER must thoroughly inspect the PRODUCTS delivered. The CUSTOMER shall notify the COMPANY immediately of loss, damage or shortage of PRODUCTS and in no event later than within 48 hours of delivery. If the CUSTOMER does not receive the PRODUCTS on the agreed date of delivery, it is to notify the COMPANY and in any case no later than 48 hours of the agreed date of delivery. The COMPANY disclaims all liability, and the CUSTOMER waives its rights of recovery, in relation to PRODUCTS that are lost or damaged on arrival unless the CUSTOMER's information is sufficient to allow the COMPANY to make a valid claim against the carrier of the PRODUCTS for their loss or damage.

## 7. PASSING OF RISK AND CANCELLATION AND RETURNS

- (a) The COMPANY's liability for the PRODUCTS passes from the COMPANY to the CUSTOMER on the earlier of the following two dates: 1) the date when the PRODUCTS are delivered to the CUSTOMER; the CUSTOMER's agent; or a person that the CUSTOMER has authorized to accept delivery, or 2) the agreed date of delivery, if the CUSTOMER fails to take delivery as required.
- (b) The COMPANY remains the owner of the PRODUCTS until it receives full payment for all PRODUCTS and all other sums which are due from CUSTOMER under any other agreement with the COMPANY, whether or not the PRODUCTS are delivered to the CUSTOMER. Until title to the PRODUCTS passes to the CUSTOMER: (i) the CUSTOMER shall store the PRODUCTS separately from all other products of the CUSTOMER or any third party in such a way that they remain identifiable as property belonging to the COMPANY; (ii) the CUSTOMER shall maintain the PRODUCTS in satisfactory condition and keep them insured on behalf of the COMPANY

for their full price against all risks to the reasonable satisfaction of the COMPANY; (iii) the COMPANY is entitled to recover, sell or otherwise deal with and/or dispose of the PRODUCTS or any part of the PRODUCTS; and (iv) the CUSTOMER grants an irrevocable license to the COMPANY, its agents and employees to, at any time and without the need to give notice, enter upon any property upon which the PRODUCTS are stored, or upon which the COMPANY reasonably believes them to be stored in order to inspect them or recover them.

- (c) ORDERS once placed by CUSTOMER and accepted by COMPANY can be cancelled or changed only with the COMPANY's written consent and upon terms which will indemnify the COMPANY against all loss and expense. No PRODUCTS may be returned for credit or adjustment without written permission from the COMPANY's officer authorized to issue such permission.

- (d) All sales are final. This means that the CUSTOMER is not entitled to credit for returned PRODUCTS whether or not the CUSTOMER has made a complaint or a claim. If the parties expressly agree in writing that the COMPANY will credit the CUSTOMER for returned PRODUCTS, the CUSTOMER must return the PRODUCTS promptly, carriage-paid, and in the COMPANY's opinion in good condition to receive the credit.

- (e) In addition to exercising its rights at common law or under statute, the COMPANY is entitled to terminate the CONTRACT by written notice to the CUSTOMER if the CUSTOMER is in material breach of any of its obligations under the CONTRACT or other agreement with the COMPANY. The CUSTOMER is in material breach:

- if it becomes insolvent or fails to meet its liabilities when they fall due;
- if it seeks an assignment to the benefit of its creditors;
- if has all or part of its property is subject to receivership,
- if presents or has filed against it a petition for bankruptcy, liquidation, winding-up or

administration; or

ceases or threatens to cease to carry on business.

## 8. WARRANTY AND LIMITATIONS OF LIABILITY

- (a) As to PRODUCTS modified by COMPANY pursuant to plans and specifications provided by CUSTOMER and approved by the manufacturer, COMPANY warrants against defects and workmanship for the modified parts of the PRODUCTS for a period of twelve (12) months from the date of the invoice. **This Clause 8 provides the only warranty for the modified PRODUCTS, and it replaces and supersedes all other warranties for the modified PRODUCTS, whether express or implied. The COMPANY shall have no other liability under this CONTRACT (express or implied), in tort (including negligence) or otherwise for the quality, performance, merchantability or fitness for any purpose of the PRODUCTS, and/or warranties arising from course of dealing or usage of trade.** This warranty applies only to the work performed by COMPANY.
- (b) The COMPANY's warranty does not include defects for the unmodified parts of the PRODUCTS. Nor does the COMPANY's warranty include any PRODUCT which has been disassembled, affected or modified by a party other than COMPANY.
- (c) If the CUSTOMER proves a right under the warranty under 8(a), the COMPANY must at its own option either replace the COMPANY's parts of the PRODUCTS which were modified or pay the costs of purchasing equivalent products elsewhere, but the COMPANY is not obligated to pay an amount above the invoiced price for the PRODUCTS. The CUSTOMER is not entitled to any other remedy once the COMPANY has replaced the PRODUCTS or paid the costs of purchasing equivalent products elsewhere. The COMPANY may suspend subsequent deliveries of PRODUCTS or postpone corresponding dates of delivery accordingly until the validity of the CUSTOMER's claim has been finally determined.
- (d) LIMITATION OF LIABILITY. CUSTOMER'S EXCLUSIVE REMEDY AGAINST COMPANY**
- FOR DEFECTS IN THE PRODUCTS IS THE WARRANTY SET FORTH IN SECTION 8(a). THE PARTIES AGREE THAT UNDER NO CIRCUMSTANCE SHALL THE COMPANY HAVE ANY LIABILITY WHATSOEVER FOR ANY CLAIM ARISING FROM OR RELATING TO THE ORDERS OR THE PRODUCTS FOR AN AGGREGATE AMOUNT IN EXCESS OF THE INVOICED PRICE FOR THE PRODUCTS.**
- (e) The COMPANY shall not be liable for any damage resulting from delays, failure of the PRODUCTS, loss of profit or revenues, loss of time or loss of use, cost of capital, diminution of goodwill, or claims of CUSTOMER's customers.
- (f) IN NO CIRCUMSTANCES WILL THE COMPANY BE LIABLE FOR ANY CONSEQUENTIAL, SPECIAL, PUNITIVE OR INDIRECT LOSS OR DAMAGE WHATSOEVER.
- (g) The COMPANY is not liable if the CUSTOMER's use of the PRODUCTS infringes a third party's patent rights.
- (h) Any exclusions or limitations of liability in this CONTRACT in favor of the COMPANY are agreed to be extended for the benefit of all companies and/or individuals within the COMPANY's group of companies. The CUSTOMER agrees in the appointment of the COMPANY as its agent or trustee solely for the extension of the benefit of the exclusions and limitations of liability. All duties, liabilities and obligations that would otherwise result from this agency are expressly excluded.

## 9. SPECIFICATION, INSTRUCTIONS AND/OR DESIGN

If PRODUCTS are modified to a specification, instruction or design supplied by CUSTOMER or any third party on behalf of CUSTOMER, then:

- (a) the suitability and accuracy of that specification, instruction and/or design will be CUSTOMER's responsibility.
- (b) the CUSTOMER will indemnify COMPANY against any infringement or alleged infringement of any third party's intellectual property rights

including but not limited to patent, design right, registered design, trademark, trade name or copyright and any loss, damage or expense which the COMPANY may incur by reason of any such infringement or alleged infringement in any county, and

- (c) the CUSTOMER will indemnify COMPANY against any loss, damage or expense in respect of any liability arising in any country by reasons of the PRODUCTS being made to such specification, instruction or design.

## **10. CHOICE OF LAW AND JURISDICTION**

- (a) The laws of the State of Texas, including the Uniform Commercial Code, shall govern this CONTRACT and, when maintainable, the United States District Courts for the Southern District of Texas shall have jurisdiction, otherwise CUSTOMER agrees to submit to the jurisdiction of the State District Courts of Houston, Harris County, Texas for all disputes arising from or related to the CONTRACT. However, the CUSTOMER expressly agrees that the COMPANY may take action in another jurisdiction to obtain security for the COMPANY's claims under the CONTRACT.
- (b) The CONTRACT constitutes the entire agreement between the COMPANY and the CUSTOMER concerning the subject matter of such CONTRACT. The CUSTOMER agrees that he has no other rights of recourse to the COMPANY other than those expressly stated in these General Terms & Conditions. **These General Terms & Conditions apply whether or not the CUSTOMER has a cause of action because the COMPANY or its representative has acted negligently.**