

## **Terms and Conditions of Sales and Service**

(Effective on and after January 1, 2019)

### **1. Agreement.**

(a) Unless otherwise agreed in a written document signed by an authorized representative of Southwest Products Corporation ("SWP"), these Terms and Conditions of Sales and Service ("Terms") govern the purchase of goods (including, but not limited to, new and used equipment, trucks, attachments, components, technology and parts) ("Goods") and services ("Services") from SWP by any individual or entity ("Customer"). SWP hereby rejects the terms of any purchase order or other document submitted by Customer, unless the document is signed by an authorized representative of SWP. Acceptance of a Customer's purchase order is expressly made conditional upon Customer's assent to these Terms.

(b) These Terms are subject to change by SWP without prior written notice at any time, in SWP's sole discretion. The latest version of these Terms will be posted on this website, and you should review these Terms before purchasing any Goods or Services. Your continued purchase of Goods and/or Services after a posted change in these Terms will constitute your acceptance of and agreement to such changes.

2. **Order and Delivery of Goods or Services.** All orders for Goods and/or Services are subject to credit approval and final acceptance by SWP in its sole discretion. Customer shall have no right to cancel purchase orders for Goods once a purchase order is issued to SWP. Returns of new, unused, packaged product and parts may be returnable to SWP in accordance with SWP's then current Product and Parts Return Policies available on the SWP website: <https://www.southwestproducts.com/return-policy/> . Customer acknowledges that estimated delivery dates for Goods and/or Services are estimates only; actual delivery dates depend on a variety of factors, including, but not limited to, the production schedules of manufacturers. SWP will use commercially reasonable efforts to meet estimated delivery dates and shall keep Customer advised of the status of its delivery, but SWP shall have no liability for any loss associated with delay in the delivery of Goods and/or Services.

3. **Claims and Acceptance.** Customer shall inspect the Goods at the place of delivery promptly upon arrival. Claims respecting the condition of Goods, compliance with specifications, or any other matter affecting Goods shipped or Services provided to Customer, must be made promptly and in no event later than twenty (20) calendar days after receipt of the Goods by Customer or the furnishing of the Services by SWP. Failure of Customer to make a claim within such 20-day period shall be deemed an unqualified acceptance of the Goods or Services by Customer and waiver of any claims, including but not limited to breach of warranty. Customer shall set aside, protect and hold such Goods (without charge to SWP) without further processing until SWP has an opportunity to inspect and advise of the disposition, if any, to be made of such Goods. In no event shall any goods be returned, reworked, or scrapped by Customer without the express written authorization of SWP. Repair or replacement of defective goods, or repayment of the purchase price, will be made only upon the return of the defective goods, which shall not be returned until SWP has consented thereto and has delivered to Customer written shipping instructions.

4. **Pricing.** Unless otherwise set forth on a written quote issued by SWP ("Quote") or other written agreement the price for Goods shall be SWP's list price for such Goods on the date such Goods are delivered to Customer. SWP reserves the right to adjust quoted pricing based upon any previously undisclosed or revised contract/project requirements. Unless otherwise set forth on a Quote, the labor rates for Services shall be SWP's standard labor rates for the applicable type of Service (field rates, shop rates, mine rates or specialty rates, as applicable) in effect at the time the Services are performed. Pricing for future orders is subject to change without notice. Price does not include registration, license, permits or insurance of any kind. Customer will promptly pay to SWP any taxes that SWP is required to collect with respect to the purchase of Goods and Services, including, but not limited to, value added, personal property, sales, use and similar taxes ("Taxes"). For any Taxes from which Customer claims exemption, Customer shall provide SWP with properly completed exemption certificates and any

documentation needed to validate the exemption prior to the purchase of the applicable Goods and Services. If Customer fails to provide an appropriate exemption certificate and supporting documentation, as determined by SWP in its sole discretion. Customer will remain liable for all such Taxes and will indemnify SWP for any liability related to the same. Pricing and risk of loss for purchased Goods is Ex Works SWP's site, unless purchased Goods are shipped to Customer directly from the manufacturer, in which case pricing and risk of loss is Ex Works the manufacturer's factory. Any claims for shortages, damages, or delays must be made by Customer direct to the carrier.

5. Payment Terms. For Customers who do not have an open credit account with SWP, payment is due upon order of Goods or scheduling of Services. For Customers with an open credit account with SWP, payments are due on terms as indicated on the invoice. SWP may, in its sole discretion, at any time: (a) revoke credit; (b) modify terms and conditions of credit; (c) require payment in advance; and/or (d) withhold Goods and/or Services until receipt of payment; (e) cancel the unshipped balance of any order, and Customer shall not have any cause of action or be entitled to any offset, counterclaim, or recoupment against SWP by reason of such an action. Customer unconditionally and irrevocably waives any rights of set-off, recoupment, or counterclaim with respect to amounts owing to SWP unless specifically agreed to in advance by SWP in writing. Customer agrees to pay a late charge of 1.50% per month (18.0% per year) on all past due balances. In addition to any other right of set-off or recoupment SWP has under applicable law, Customer agrees that, with respect to any amounts due from Customer or Customer's affiliates to SWP or SWP's affiliates, SWP and its affiliates may set-off such amounts against any amounts owing to Customer or Customer's affiliates. If Customer requests customization of the Goods, Customer agrees to pay all parts and labor costs SWP incurs in customizing the Goods, regardless of whether or not Customer completes the purchase of the customized Goods. Customer must pick up the Goods from SWP's facility within 48 hours after notification from SWP of completion of the Goods and, if it fails to do so, Customer will be liable for reasonable storage fees at a per day rate from the date of completion of the Goods until Customer takes possession of the Goods. Subject to applicable state law, SWP may (but shall have no obligation to) sell Customer's Goods if such Goods remain in SWP's possession after 30 days after notification from SWP of completion of the Goods. SWP may apply the proceeds of such sale to the unpaid balance owing by Customer, plus SWP's reasonable attorneys' fees, costs and other expenses.

When products arrive prior to Customer's ability to take delivery a Bill and Hold agreement will be produced and signed by the Customer to hold product at SWP premises, transfer title to the Customer, and allow for invoicing and payment of the product.

## 6. Warranties.

(a) New Goods. If Customer is purchasing new Goods from SWP, Customer acknowledges and agrees that (i) SWP is not the manufacturer of the Goods; (ii) if the Goods include a manufacturer's warranty, SWP will pass through to Customer the manufacturer's warranty to the extent, if any, permitted by the terms of such warranty; and (iii) the manufacturer's warranty will be subject to all conditions, limitations, and exclusions set forth therein.

(b) Remanufactured Goods. If Customer is purchasing used Goods from SWP, Customer acknowledges and agrees that the only warranties with respect to such used Goods are those warranties, if any, expressly set forth in the specific warranty provisions located at:

[https://www.perkinspacific.com/wp-content/uploads/2018/10/PerkinsRemanWarranty\\_10.18.pdf](https://www.perkinspacific.com/wp-content/uploads/2018/10/PerkinsRemanWarranty_10.18.pdf).

(c) Services. If Customer is purchasing Services from SWP, SWP warrants that its Services will be completed in a good and workmanlike manner, with such service warranty extending for a period of 90 days from completion of the original Services. If SWP performs a repair pursuant to its service warranty, the warranty period remains 90 days from the initial completion of the Services (for the absence of doubt, the 90 days service warranty period does not begin anew with the repair). If the replacement parts used by SWP in connection with the provision of Services include a manufacturer's warranty, SWP will pass such warranty through to Customer to the extent permitted by the terms of the manufacturer's warranty. SWP's service warranty will be voided in the event of any of the following: misuse or abuse of

Goods by Customer, subsequent repairs performed by Customer or vendors other than SWP, use beyond ordinary wear and tear, failure to maintain and operate Goods in accordance with the maintenance and operations manual of the manufacturer (including, but not limited to, use of fluids that do not meet the manufacturer's standards or failure to maintain fluid levels recommended by the manufacturer) or damage due to theft, vandalism or casualty.

(d) **LIMITED WARRANTY.** SWP makes no warranty, express or implied, with respect to any Goods or Services other than the foregoing warranties. **THERE ARE NO OTHER WARRANTIES, EXPRESSED OR IMPLIED (INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY AND ANY IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE) FOR ANY GOODS OR SERVICES.** To the maximum extent permitted by law, all such warranties are hereby disclaimed by SWP and waived by Customer.

7. **Limitation on Customer's Remedies.** CUSTOMER'S SOLE REMEDY WITH RESPECT TO ANY CLAIM ARISING OUT OF ANY ORDER OR SWP'S PERFORMANCE IN CONNECTION THEREWITH INCLUDING, WITHOUT LIMITATION, ANY CLAIM ARISING OUT OF ANY DEFECT OR ALLEGED DEFECT IN ANY GOODS OR SERVICES FURNISHED BY SWP, SHALL BE EXCLUSIVELY (AT SWP'S SOLE OPTION) THE RIGHT OF REPAIR OR REPLACEMENT OF SUCH GOODS OR SERVICES, OR REPAYMENT OF THE PURCHASE PRICE THEREFOR. WITHOUT LIMITING THE FOREGOING, IN NO EVENT SHALL SWP BE LIABLE, WHETHER BASED IN CONTRACT, WARRANTY, INDEMNITY, TORT, STRICT LIABILITY OR ANY OTHER THEORY OF LAW OR EQUITY, FOR ANY SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOST PROFITS, LOSS OF USE OF PROPERTY OR EQUIPMENT, DOWNTIME, LOSS OF THIRD PARTY CONTRACTS OR LOST PRODUCTION, REGARDLESS OF WHETHER CUSTOMER WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. In addition, SWP's maximum aggregate liability (whether in contract, warranty, indemnity, tort, strict liability or any other theory of law or equity) for damages or loss, howsoever arising or caused, shall in no event exceed the amount Customer paid to SWP for the Goods or Services to which the liability relates. The parties recognize that the pricing associated with Goods and Services reflects this allocation of risk and is the basis of the bargain between the parties. The foregoing limitations shall be valid and enforceable, notwithstanding any alleged failure of essential purpose of the limited remedies set forth herein.

8. **Indemnification.** Customer assumes all liability (including, without limitation, liability for injury to person or property, economic loss, or business interruption) for all claims arising from the sale or use of the goods sold by SWP. Customer will indemnify, defend, protect, and hold harmless SWP, at all times from and after the date hereof, from and against all claims, damages, actions, suits, proceedings, demands, assessments, adjustments, costs, and expenses (specifically including reasonable attorneys' fees and expenses of investigation) incurred by SWP as a result of or arising from (a) any Goods and Services sold by Seller to Customer, (b) any use of the Goods and Services sold hereunder by Buyer or any third party, (c) any nonfulfillment of any covenant or agreement on the part of Customer under these Terms and any other agreement between Customer and SWP, including, without limitation, any breach of the representations and warranties made by Customer in favor of SWP, and (d) any claim made by a third party, or the commencement of any action or proceeding by a third party, that would give rise to SWP's right of indemnification under these Terms.

9. **Liability Limitation.** In no event shall SWP be liable, whether based in contract, warranty, indemnity, tort, strict liability or any other theory of law or equity, for any special, incidental, indirect, punitive, exemplary or consequential damages, including, but not limited to, lost profits, loss of use of property or equipment, downtime, loss of third party contracts or lost production, regardless of whether or not Customer was advised of the possibility of such damages. In addition, SWP's maximum aggregate liability (whether in contract, warranty, indemnity, tort, strict liability or any other theory of law or equity) for damages or loss, howsoever arising or caused, shall in no event exceed the amount Customer paid to SWP for the Goods or Services to which the liability relates. Customer agrees that the pricing for the Goods and Services reflects this allocation of risk and is the basis of the bargain between the parties. The foregoing limitations shall be valid and enforceable, notwithstanding any alleged failure of essential

purpose of the limited remedies set forth herein. Any and all claims alleged by Customer arising out of or relating to the Goods and/or Services will be barred unless a legal proceeding is commenced within one (1) year from completion of the Services or delivery of the Goods to Customer.

10. Technical Assistance. Unless otherwise expressly agree in writing: (a) any technical advice provided by SWP to Customer with respect to the use and selection of Goods or Services shall be without charge; (b) SWP assumes no obligation or liability for any such advice or for any resulting claims for damages or any other relief; and (c) Customer assumes sole responsibility for selection and specifications of the Goods and/or Services appropriate for Customer's needs.

11. Choice of Law. These Terms shall be governed by and construed in accordance with the laws of the State of Oregon without giving effect to conflict of law provisions. The applicability of the UN Convention on Contracts for the International Sale of Goods is expressly waived by SWP and Customer and it will not apply to these Terms or any other agreement between SWP and Customer. The parties agree that exclusive jurisdiction and venue for any proceeding at law or in equity will be in the State or Federal courts located in Multnomah County, Oregon.

12. General Provisions.

(a) Customer may not assign Customer's rights or obligations hereunder without SWP's prior written consent, which consent will not be unreasonably withheld. Any such attempted assignment will be void.

(b) If any provision in these Terms is found to be invalid, unlawful or unenforceable, the remaining provisions in these Terms shall remain in full force and effect.

(c) Waiver by SWP of any breach of any of these Terms shall not be construed as a waiver of any other breach, and the failure of SWP to exercise any right arising from any breach by Customer shall not be deemed to be a waiver of such right.

(d) No employment, agency, joint venture, or similar arrangement is created or intended between Customer and SWP.

(e) SWP retains ownership of all records relating to Goods and Services provided to Customer ("Records") and may disclose the Records pursuant to a court order or in the event disclosure of the Records becomes part of SWP's defense in a legal matter.

(f) Customer warrants that the invoiced Goods and/or Services will be used for commercial or agricultural purposes and are not for personal, family or household use.

(g) These Terms have been reviewed and negotiated by Customer and SWP with the benefit of or the opportunity to seek the assistance of legal counsel, and shall not be construed against any party by presumption or rule of construction.

(h) These Terms may not be amended, modified, or changed other than by an instrument in writing signed by the party against whom enforcement of any such amendment, modification, or change is sought.

13. Delays and Force Majeure. SWP shall not be in default or otherwise responsible for any delay in performance or delay in delivery caused by circumstances beyond its control, including, but not limited to, an act of God, fires, floods, wars, government actions, accidents, labor troubles, labor shortages, unavailability of materials, unavailability of equipment, or unavailability of transportation. SWP may, without liability to Customer or any third party, suspend its performance when SWP's performance is delayed or prevented by weather conditions, fires, floods, accidents, riots, acts of God, war, government interference, embargo, strikes, labor disputes, shortage of labor, fuel, power, materials or supplies, transportation delays, or any other cause or causes (whether or not similar in nature to any of those hereinabove specified) beyond Seller's reasonable control. If such conditions continue for ninety (90) consecutive days, SWP may terminate its performance to Customer.

14. Attorneys' Fees and Costs. If SWP retains an attorney to collect payments due from Customer, or to otherwise enforce these Terms and any other agreement between SWP and Customer, Customer

agrees to pay, in addition to all other amounts due to SWP, SWP's reasonable attorneys' fees, costs, and expenses. If SWP refers Customer's account to a collection agency, Customer agrees to pay all such attorneys' fees, costs and expenses that are incurred by the collection agency.

15. Entire Agreement. These Terms and any sales agreement, credit application, invoice, price quotation, and/or other SWP document that incorporates these Terms, constitute the sole and entire agreement between Customer and SWP with respect to any order or sale of Goods or Services to Customer, superseding completely any prior or contemporaneous oral or written communications.

16. Use of Images. Images of equipment used in SWP's print, online or other material may show the Customer's name, logo or other company information due to their installation on the product. This does not constitute SWP's promotion of Customer's company or services nor does it constitute Customer's promotion of SWP's product.