



PRO-MEC ENGINEERING SERVICES, INC.
TERMS AND CONDITIONS OF SALE

1. INTRODUCTION

These Terms and Conditions of Sale (these “**Terms**”) apply to all sales of Products and Services by Pro-MEC Engineering Services, Inc. (“**Pro-MEC**”), and are part of all proposals, quotations, purchase orders, order releases, acknowledgments, confirmations, acceptances, invoices, and other documents relating to the sale and purchase of Products and Services by Pro-MEC (“**Order Documents**”).

ALL ORDER DOCUMENTS AND SALES OF PRODUCTS AND SERVICES ARE EXPRESSLY MADE CONDITIONAL ON CUSTOMER’S ACCEPTANCE OF THESE TERMS AND THE FINAL VERSIONS OF THE ORDER DOCUMENTS DELIVERED BY PRO-MEC TO CUSTOMER (“**PRO-MEC’S ORDER DOCUMENTS**”). THESE TERMS AND PRO-MEC’S ORDER DOCUMENTS TOGETHER COMPRISE THE “**AGREEMENT**” BETWEEN THE PARTIES AND THE EXCLUSIVE TERMS UPON WHICH PRO-MEC SELLS PRODUCTS AND SERVICES TO CUSTOMER AND CUSTOMER PURCHASES PRODUCTS AND SERVICES FROM PRO-MEC. DIFFERENT AND ADDITIONAL TERMS AND CONDITIONS INCLUDED IN ORDER DOCUMENTS DELIVERED BY CUSTOMER OR OTHERWISE PROPOSED BY CUSTOMER ARE NOT PART OF THE AGREEMENT AND ARE OBJECTED TO AND REJECTED.

PRO-MEC MAY REQUIRE CUSTOMER’S SIGNATURE ON A PROPOSAL, QUOTATION, CONFIRMATION, OR OTHER ORDER DOCUMENT TO CONFIRM CUSTOMER’S AGREEMENT TO PRO-MEC’S ORDER DOCUMENTS AND THESE TERMS AS EXCLUSIVELY COMPRISING THE AGREEMENT. HOWEVER, THE AGREEMENT IS BINDING AND CUSTOMER’S PURCHASE ORDER’S ARE NONCANCELLABLE NOTWITHSTANDING THAT CUSTOMER DOES NOT SIGN SUCH A DOCUMENT.

The Agreement may not be amended or terminated unless in a writing that is executed by an authorized agent of Pro-MEC expressly stating that the writing is amending or changing the Agreement. This includes that Customer may not amend, change, cancel, or terminate Customer’s purchase order or any part of the Agreement, including the quantity or specifications of the ordered Products or Services, without a Change Order or other writing executed by Pro-MEC in accordance with this Agreement.

Customer and each person apparently acting on its behalf represent and warrant that they have all requisite power and authority to enter into the Agreement and that the Agreement is comprised of only these Terms and Pro-MEC’s Order Documents and is binding and enforceable against Customer and noncancelleable. Pro-MEC is entitled to rely on the action of any person it subjectively believes to have apparent authority to act on Customer’s behalf, including any employee, agent, independent contractor, or other person who Customer allows to interact with Pro-MEC in respect of the relevant Products or Services.

2. DEFINITIONS

“**Customer**” means the person or persons, including individuals and entities, indicated in Pro-MEC’s Order Documents as purchasing the relevant Product or Service from Pro-MEC.

“**Engineering Services**” means engineering and otherwise designing Products, equipment, systems, or other goods or structures that require professional licensing as an engineer.

“**Field Service Representative**” means the individuals authorized by Pro-MEC to provide Field Services on its behalf.

“**Field Services**” means installation, inspection, servicing, reconditioning, start-up, alteration, repair, replacement, or correction of equipment or components of equipment, or assistance with respect thereto.



“GMP” means the guaranteed maximum price, if any, of a Product or Service as established in the applicable Pro-MEC Order Documents. No guaranteed maximum price /GMP otherwise applies.

“NFPA Standards” will mean the applicable codes and standards published by the National Fire Protection Association, or NFPA, in effect as of the date of Pro-MEC’s proposal or quotation.

“Products” means any equipment, apparatus, materials, components, or related items supplied, manufactured, fabricated, or delivered by or on behalf of Pro-MEC under this Agreement.

“Services” means services provided by or on behalf of Pro-MEC under this Agreement other than manufacturing or fabricating Products and incidental services in respect of a Product, and includes TAB Services, Field Services, and Engineering Services.

“TAB Services” means the Service of testing and balance the operation of equipment or components of equipment, as well as related Services including installation, inspection, servicing, reconditioning, starting-up, altering, repairing, and correcting such equipment or components to improve the test and balance results of the Equipment.

3. PURCHASE

Customer agrees to purchase the ordered Products and Services from Pro-MEC according to the terms of the Agreement. Pro-MEC’s Order Documents may specify equipment, materials, services, and other items to be supplied by Pro-MEC or Customer or to be excluded from Pro-MEC’s supply. Customer is responsible at Customer’s expense for supplying all items specified as required to be supplied by Customer or not to be supplied by Pro-MEC, and if Pro-MEC nonetheless supplies any such items Customer will compensate Pro-MEC on a time and materials basis unless otherwise agreed in writing. The Agreement does not create a requirements or output contract and is nonexclusive. Pro-MEC may manufacture and sell identical and competitive Products and Services to others.

4. PRICES AND PAYMENT

Customer agrees to pay the prices for the ordered Products and Services as set forth in or calculated pursuant to Pro-MEC’s Order Documents, according to the payment schedule set forth therein. References in Pro-MEC’s Order Documents to a Pro-MEC rate sheet incorporate the rates therein as of such date, as well as all other terms and conditions in the rate sheet as if set forth in such Pro-MEC Order Document and these Terms in full, and control any inconsistency. All prices are in United States dollars.

If no payment schedule is set forth in Pro-MEC’s Order Documents, then (1) for total order pricing up to \$10,000 where the scope of work is less than 30 days, payment terms are Net30 upon completion; and (2) for total order pricing of more \$10,000 or where the scope of work extends beyond 30 days, payment terms are 30% due with the purchase order, 60% due upon achievement of any designated project milestones and in any event prior to shipment of Products or completion of Services, and the remaining price Net30 upon delivery of Products or completion of Services. Any letter of credit must be acceptable to Pro-MEC. All amounts due upon an event that requires the action or cooperation of Customer, which Customer fails to perform within the required time or a reasonable time, will become due upon such failure to perform.

“Time and Material,” T&M,” and similar pricing designations mean that Customer is responsible for paying Pro-MEC’s charges calculated by Pro-MEC based upon: (a) the time expended by Pro-MEC personnel in performing the Services, per Pro-MEC’s rates or rate sheet referenced in Pro-MEC’s Order Documents or, if none is referenced, Pro-MEC’s applicable rate sheet as in effect on the date of Service; and (b) the cost of materials, equipment, travel, subcontractors, and other expenses incurred by Pro-MEC, plus markup, per such applicable rates or rate sheet. Rates are based on straight time (maximum of 40 hours for a normal working week, Monday through Friday), overtime (1.3x or higher standard rate for work performed Monday through Friday in excess of eight (8) hours per day and all work performed on Saturday), and double time (1.6x or higher rate for work performed on Sunday or nationally



recognized Holidays). Emergency labor (less than 72-hour notice) is billed at straight time plus the applicable increase for emergency labor (\$10 or higher per hour). Billable time includes in-house trip preparation, travel time (including layover and downtime), on-site services, on-site idle time (minimum charge of 8 hours per day), remote access to customer equipment, and post-trip reporting. All time and material contracts include charges for project manager, project coordinator, and other administration per such rates or rate sheet. Time and materials include all travel and transportation expenses, including airfare, baggage, parking, hotel, rental vehicle and insurance, mileage, other transportation, and per diem, plus mark-up, per such applicable rates or rate sheet. Rates are chargeable on mobilization and demobilization, time due to delay outside of Pro-MEC's reasonable control (process malfunctions, other subcontractors, severe weather, suspension of work, etc.), and travel based on round-trip from/to Pro-MEC's office in Grand Ledge, Michigan including layovers and downtime. Rates are per employee. Any budget or estimate of time and materials is for planning purposes only, is non-binding, and is not a limitation or cap on time and material charges.

Pro-MEC's proposal or quotation pricing is subject to change at any time prior to Pro-MEC confirming a purchase order. Final pricing is contingent on "release for construction" (RFC/IFC) drawings or similar contingencies, as applicable. Pro-MEC's proposal or quotation pricing is estimated only based on the project details, assumptions, and exclusions set forth in Pro-MEC's Order Documents. Deviations from or changes to such project details, assumptions, and exclusions require a Change Order, and will unless otherwise agreed result in additional charges on a time and materials basis. Quoted prices assume work is performed during standard working hours (40 hours for a normal working week, Monday through Friday). Additional time and material charges apply for work outside such standard hours, except as otherwise agreed in writing.

Customer is responsible for all increases in material or labor costs. Pro-MEC may increase the applicable price if Pro-MEC's costs increase for reasons beyond Pro-MEC's reasonable control, including without limitation increases to (1) raw material, labor, or contractor costs, (2) the price of goods manufactured by others and included in the Product, and (3) applicable tariffs, duties, surcharges, or similar amounts.

Unless otherwise provided in Pro-MEC's Order Documents, Customer is responsible for and prices for Products and Services do not include sales, excise, use, value-added, or other taxes (other than taxes on Pro-MEC's income); transportation charges (such as freight, insurance, shipping, storage, handling, demurrage, or similar charges); tariffs, duties, surcharges, or other similar charges; charges or expenses for engineering documentation, special packaging, marketing, testing, site preparation, erecting, installation, start-up, or commissioning; or government inspection, permitting, or licensing charges or fees. Customer will pay or reimburse Pro-MEC for the same Net30 upon invoice. If Pro-MEC is responsible for any such amounts per Pro-MEC's Order Documents, any charges attributable to increases in applicable rates after the date such price is quoted to Customer will be added to the price. To claim any tax exemption, Customer must provide Pro-MEC with valid exemption certificates and other satisfactory evidence of exemption, and Customer will remain responsible for such tax if not exempt. Customer must indemnify and defend Pro-MEC against any taxes, penalties, interest, and defense costs, including actual attorneys' fees, incurred by Pro-MEC in respect of Customer's tax liabilities.

Pro-MEC will invoice Customer according to the applicable payment schedule per the Agreement, and Pro-MEC's standard invoicing procedures. Pro-MEC's invoices are not subject to Customer's invoice requirements or procedures. Pro-MEC may deliver Products or provide Services in installments, with each installment being a separate sale, and may invoice installments separately; provided that any breach of any installment will not substantially impair the value of or breach the Agreement as a whole. All payments must be made in a manner acceptable to Pro-MEC in U.S. dollars. Customer may not deduct, counterclaim, or set off any claims against amounts due under the Agreement or any invoice, including claims related to any other transactions with Pro-MEC. Customer will not mark any payment as "payment in full" or otherwise condition any payment on Pro-MEC releasing or losing any right. No such designation or condition will have effect even if the payment is accepted and deposited.

Prices for Services are based on Customer completing and obtaining all items required of it and otherwise preparing the worksite for Service before Pro-MEC's mobilization, including for TAB Services ensuring that equipment startup



and control systems are ready for verification and in proper working order at the time of Pro-MEC's mobilization. If Pro-MEC technicians are dispatched and Services or other relevant activities cannot proceed due to Customer's failure to do so, including incomplete system readiness, Customer will be responsible for additional charges on a time and materials basis or as otherwise provided in the Agreement. If applicable, any troubleshooting required before or after completion of Services or delivery of Products will be billed on a time and materials basis, other than Limited Warranty service.

5. GMP AND CONTINGENCY COSTS

Pro-MEC's Order Documents may establish a GMP for a Product or Service that includes a contingency amount ("**Contingency**") to cover certain unforeseen or incidental costs that may arise during the course of producing and delivering the Product or performing the Service. Subject to the terms of this Agreement, Pro-MEC may draw from and apply the Contingency for the following purposes related to the Product or Service: (1) implementation of recovery plans to maintain schedule or performance; (2) cost overruns; (3) minor scope adjustments; (4) warranty-related costs; (5) instances where the actual cost exceeds the line-item allocation; (6) any other use expressly authorized in this Agreement; and (7) concealed or unforeseen conditions affecting the Product or Service or its supply. Pro-MEC will reflect each use of the Contingency on the corresponding invoice, along with a brief narrative explanation for the allocation. Upon final completion, any unused Contingency balance will be returned or credited to Customer unless provided otherwise by the Pro-MEC Order Documents. The Agreement does not include a GMP or Contingency unless expressly provided in Pro-MEC's Order Documents.

6. LATE PAYMENT

Customer represents that it is solvent and capable of making all payments timely. If Pro-MEC believes that full payment is in doubt for any reason, Pro-MEC may limit or cancel Customer's credit, require deposits or other prepayments, require adequate assurances of payment, and suspend performance without liability or breach of this Agreement pending the foregoing. A failure to pay an amount when due is a material breach of the entire Agreement, including all future installments and all outstanding orders. In addition to all other available remedies, Pro-MEC will have the right to suspend or terminate performance and delivery if Customer defaults in timely payment or other performance, and Customer will pay interest on all late payments at a rate of 1.5% per month (18% per year) or the maximum rate permitted by applicable law, whichever is less. Customer will reimburse Pro-MEC for all costs and expenses incurred in collecting late payment, including without limitation actual attorneys' fees, expert witness fees, and court and arbitration costs.

7. PRODUCTS PACKAGING AND DELIVERY

This Section 7 applies to Products ordered under this Agreement, as relevant. The Agreement is a shipment contract. Product delivery will be Ex Works Pro-MEC's facility (Incoterms® 2020), unless otherwise specified in Pro-MEC's Order Documents. Title to and risk of loss for Products transfer to Customer upon delivery to the carrier or equivalent at Pro-MEC's facility, regardless of the delivery term and whether Pro-MEC arranges or prepays freight, unless provided for otherwise in Pro-MEC's Order Document. However, shipments remain subject to Pro-MEC's rights of stoppage in transit, reclamation, and other remedies. Customer is responsible for receiving, storing, installing, starting up, maintaining, and repairing all Products, unless Pro-MEC's Order Documents or this Agreement expressly require otherwise. Pro-MEC may quote Services to assist Customer with these functions upon request, subject to these Terms.

Pro-MEC will package and label Products in accordance with its standard practices. Any special packaging or labeling requested by Customer will be subject to additional charges. Pro-MEC may arrange shipment using commercially reasonable means, but is not responsible for prepayment of transportation or insurance. Customer bears all freight, handling, insurance, and other transportation costs and will pay the same in advance unless Pro-MEC allows Net30 payment from invoice, and any deviation from Customer's shipping instructions will be at Customer's expense.



Customer is solely responsible for any required export clearance and compliance with applicable export laws, as well as import compliance and compliance with the destination country's laws, and for all export and import permits, tariffs, duties, taxes, or other fees or expenses.

8. TIME OF PERFORMANCE

All Services generally require a minimum lead time of two (2) weeks for scheduling from the date Pro-MEC receives a valid purchase order from Customer. Requests to schedule Services in less than two (2) weeks or on other lead times not offered by Pro-MEC may be accommodated at Pro-MEC's discretion and will incur additional expedited scheduling charges. Upon completion of the Services and acceptance by Customer in accordance with Section 10, final written reports, if applicable to the relevant Services performed and called for in the Agreement, will be delivered by Pro-MEC within two to four weeks following completion of on-site Services, with timing at the sole discretion of Pro-MEC.

All stated shipping, delivery, or performance dates are estimates only, based on current production and service capacity and scheduling. Lead times may be extended by Pro-MEC due to events beyond Pro-MEC's reasonable control, including supply chain disruptions; Customer-requested changes or Change Orders; delays in receiving purchase orders, required information, or approvals; or Force Majeure Events as provided below. If Pro-MEC determines that such a situation will delay shipping, delivery, or other performance by more than one hundred twenty (120) days, it may terminate the Agreement in whole or in part.

Timely delivery is contingent upon Customer's fulfillment of all obligations under this Agreement. If relevant to the particular Services or Products purchased by Customer under the terms of the Agreement, all shipping, delivery, and other dates for Pro-MEC's performance are subject to Pro-MEC's prompt receipt from Customer of all drawings, specifications, materials, tooling, information, approvals, performance, and other actions by Customer or other third parties that Pro-MEC determines it requires to commence, continue, or complete its performance; and to other delays in Customer's performance, including deferred payment. Pro-MEC will not be liable for delay or cost increases due to unforeseen problems arising from Customer's specifications or needs.

If shipment of Products or other performance by Pro-MEC is delayed at the request of or due to the fault of Customer, Pro-MEC may store Products or materials and components held in Pro-MEC's inventory for production or Services at the place of manufacture or off-site, at Customer's risk and expense, including storage charges. Any such delay by Customer will not delay Customer's payment obligations, in which case payment will become due when Pro-MEC would have completed the relevant performance but for Customer's delay. Customer must accept shipment or performance when ready if Pro-MEC is unwilling to accommodate Customer with respect to any delay.

9. FORCE MAJEURE

Pro-MEC will not be liable for any failure to perform or for any delay in performance to the extent such failure or delay is caused by a Force Majeure Event. A **"Force Majeure Event"** means any event or circumstance beyond Pro-MEC's reasonable control, whether foreseeable or not, that prevents or materially impairs Pro-MEC's performance including without limitation acts of God; natural disasters (such as floods, fires, earthquakes, storms, etc.); epidemics or pandemics; acts of war, terrorism, civil unrest, labor disputes, or strikes (excluding those involving Pro-MEC's own workforce); shortages or delays in transportation, materials, components, services, equipment, or utilities; government orders, acts, omissions, or regulations; acts or omissions of Customer; and failures or interruptions of suppliers or subcontractors due to any of the foregoing. Pro-MEC will notify Customer as soon as reasonably practicable after determining the likelihood of delay due to the Force Majeure Event of the anticipated duration and the steps being taken to mitigate its impact. Pro-MEC's time for performance will be extended for a period equal to the duration of the delay caused by the Force Majeure Event, or, at Pro-MEC's option, Pro-MEC may suspend or cancel the affected portion of this Agreement without liability. Pro-MEC may, at its sole discretion, allocate available Products, materials, components, labor, and other resources among itself and its customers in whatever manner it considers equitable to address a Force Majeure Event.



If the affected portion of this Agreement is not canceled by Pro-MEC, Pro-MEC will resume its obligations under this Agreement as soon as reasonably practicable once the Force Majeure Event has ceased. Upon resumption, Services will be performed and Products will be produced at Pro-MEC's then-current rates. Any additional costs incurred by Pro-MEC due to the delay – including, but not limited to, remobilization, travel time, transportation, and accommodation – will be the responsibility of Customer. Customer will also bear any additional costs required to maintain or realign the original schedule, including overtime labor or expedited shipping, to the extent such adjustments are requested or required.

10. ACCEPTANCE

Customer must accept, and may not reject, a Product or Service that substantially conforms to the specifications and requirements for the quantity, type, and technical requirements that are set forth in Pro-MEC's Order Documents (the "**Specifications**"). Specifications do not include proposals, plans, descriptions, drawings, designs, specifications, samples, examples, illustrations, ratings, statements, data, models, patterns, or other information or materials that are not expressly set forth in Pro-MEC's Order Documents as to that Product or Service, whether provided by Customer or Pro-MEC. Pro-MEC is not responsible for examining or verifying any proposals, plans, descriptions, drawings, designs, specifications, samples, examples, illustrations, ratings, statements, data, models, patterns, or other information or materials provided by Customer.

Acceptance and delivery of a Product will be deemed complete upon successful completion of a Factory Acceptance Test ("**FAT**") conducted at Pro-MEC's facility located in Grand Ledge, Michigan, unless waived in writing by Customer. Any Non-Conformities must be documented during the FAT. If the FAT is waived, Customer is deemed to accept the Products and assumes responsibility for any Non-Conformities after delivery, including associated transportation and related costs, subject only to Limited Warranty service. However, if a FAT is not performed other than due to Customer's waiver, then Customer's acceptance of a Product will instead be deemed to occur upon the earliest of: (1) Customer's use, resale, or incorporation of the Product; or (2) fifteen days following delivery, unless within that period Customer provides Pro-MEC with a written notice of Non-Conformity, describing the specific Non-Conformities in reasonable detail.

Pro-MEC's Services will be deemed complete upon written notification to Customer that the Services have been performed in accordance with the applicable Specifications. Customer will perform its inspection of the Services within twenty-four hours of such notice, and Customer will be deemed to accept the Services upon the earliest of (1) the end of such period unless within that period Customer provides Pro-MEC with a written notice of material Non-Conformity, describing the specific issue in reasonable detail, or (2) Customer signing Pro-MEC's completion form, which Customer will not refuse or delay other than due to a Non-Conformity. Any use or reliance on the Serviced equipment or other object of the Services by Customer will also constitute acceptance. ALL NONCONFORMITIES WHICH ARE NOT SPECIFIED IN A TIMELY AND PROPER NOTICE BEFORE ACCEPTANCE OR DEEMED ACCEPTANCE ARE WAIVED, SUBJECT ONLY TO PRO-MEC'S LIMITED WARRANTY UNDER THE AGREEMENT. A "**Non-Conformity**" means a material divergence from the applicable Specifications that materially impairs the function of the Product or Service or a failure to comply with the applicable Limited Warranty; and Products and Services are otherwise deemed to be conforming. Minor deviations that do not materially impair function will not cause a Non-Conformity or constitute grounds for rejection.

If a timely and valid notice of Non-Conformity is given, Customer will cooperate and afford Pro-MEC a reasonable opportunity (not to be less than 30 days) to inspect and, if a Non-Conformity is confirmed, commence and pursue cure of the Non-Conformity. Pro-MEC will use commercially reasonable efforts to cure the Non-Conformity within a reasonable time not to be less than 90 days. If Pro-MEC is unable to cure the Non-Conformity within a reasonable time (not to be less than 90 days), then Customer may as its exclusive remedy: (1) as to a Non-Conforming Product, return the Non-Conforming Product in exchange for a refund of the price for that Product only (but not any other Product or Services), or (2) as to Non-Conforming Service, receive a refund of an equitable portion of the price for the Non-Conforming portion of the Service only based on the relative benefit of the Conforming portion of the



Service (but not any other Services or any Product). Absent such timely and valid rejection notice, acceptance will be final and unconditional and irrevocable. After acceptance, Customer's only remedy and Pro-MEC's only responsibility with respect to a Non-Conformity or otherwise is Pro-MEC's Limited Warranty under the Agreement.

No return, withholding of payment, or rejection of any Products or Services will be permitted except as expressly set forth in this Section 10. Acceptance confirms conformance to the Agreement and waives further claims relating to nonconformity unless otherwise covered under the Limited Warranty under the Agreement.

11. SITE CONDITIONS, FACILITIES, AND PERMITS

Customer will, at its sole expense, provide Pro-MEC with adequate and secure on-site storage space suitable for protecting any tools, materials, or equipment furnished or used by Pro-MEC at Customer's facility. The storage area must be reasonably close to the work location and suitable for maintaining the condition of such items. Customer will also furnish, at no cost to Pro-MEC, all utilities reasonably required for the performance of the Services in accordance with customary trade practices or Pro-MEC's Order Documents, including, but not limited to, sufficient light, heat, power, and water. Pro-MEC will be responsible for protecting the portions of the Services under its control while on site; however, Pro-MEC will not be liable for any damage or loss caused by others, or for any damage occurring when Pro-MEC personnel are not present at the site. Customer will ensure all work areas are properly prepared and accessible prior to Pro-MEC's mobilization. Pro-MEC will not be obligated to commence or continue Services where such conditions do not exist. Customer is responsible for coordinating jobsite readiness to allow uninterrupted performance of the Services and for any resulting delays or increased expenses. Pro-MEC will not be liable for damage to: (1) property identified for replacement or demolition by Customer, or (2) property that must be removed in order to perform the Services.

Customer will, at its sole expense, obtain and maintain any and all permits, licenses, tax exemption certificates, authorizations, or approvals required for Pro-MEC to perform the Services, including, but not limited to, work permits and labor permits, as applicable to the jurisdiction in which the Services are performed. If any certification, pre-qualification, examination, or other credentialing is requested by Customer or required due to Customer-specific project conditions, all associated costs will be borne by Customer. Pro-MEC will not be liable for any delay, unavailability, or suspension of Services or delivery of Products resulting from Customer's failure to timely secure the necessary permits, authorizations, or approvals. Any such delay will be at Customer's risk and expense.

12. CHANGE ORDERS

Specifications of Products, the general scope of Services, and other terms of the Agreement are firm. Changes to Specifications or other terms of the Agreement require a change order made in accordance with this Section 12 (a "Change Order"), except as this Section 12 otherwise provides. Pro-MEC has no obligation to agree to Change Orders, and Customer must accept Products and Services per the original Specifications and other original terms, conditions, and provisions of the Agreement except to the extent that Pro-MEC explicitly agrees to a Change Order.

Customer may request a Change Order by providing a detailed description to Pro-MEC of the changes in writing that Customer desires to make before the acceptance of any Products or Services. Any such change will require an equitable adjustment to the price and the project schedule, to be determined in Pro-MEC's sole discretion. If Pro-MEC is willing and able to honor the request, Pro-MEC will provide a proposal or quote to Customer for the Change Order. Within the proposal or quote, Pro-MEC reserves the right to increase lead times and prices to cover increased costs (plus overhead and profit) associated with such changes, including, without limitation, increases to costs of design; raw materials; labor costs; contractor costs; applicable tariffs, duties, surcharges, or similar amounts; and any costs due to the price of goods manufactured or services provided by others. Pro-MEC may change the dimensions, composition, design, performance, color, appearance, or other qualities of Products, as well as to the methods, procedures, or details of Services it provides, without liability or requiring a Change Order if Pro-MEC determines that the change is immaterial.



All Change Orders must be documented in writing, signed by Pro-MEC and Customer, and when signed will be incorporated into and become part of this Agreement. A Change Order will only become effective when executed by both Pro-MEC and Customer. Pro-MEC is not required to commence or continue work while a Change Order request is pending, and Pro-MEC may suspend performance while a Change Order request is pending, which will increase lead times and delay shipment, delivery, and other performance dates for the period of suspension and any time that Pro-MEC requires to resume performance. Customer will be responsible for Pro-MEC's demobilization, suspension, and re-mobilization expenses on a time and materials basis.

If, despite having no obligation to do so, Pro-MEC continues or resumes performance in reliance on a pending Change Order request, or if Pro-MEC proceeds with changes in reliance on Customer's statements or indications that a Change Order will be submitted, approved, or otherwise, but a Change Order is not executed, then Pro-MEC may nonetheless unilaterally increase lead times, delay shipment, delivery, and other performance dates, and increase prices as if a Change Order was approved, and Customer will be responsible for such changes and increases.

13. CONFIDENTIAL INFORMATION

Unless otherwise agreed in Pro-MEC's Order Documents or in a separate confidentiality agreement, Customer agrees that any information disclosed to Pro-MEC is subject only to Customer's patent rights, without any other restrictions on Pro-MEC's use or disclosure. Customer agrees not to label any such information with a notice asserting that the information is proprietary or confidential to Customer. In addition, Customer agrees not to assert any claim (other than a claim for patent infringement) against Pro-MEC, Pro-MEC's customers, or their respective suppliers, with respect to any information that Customer has disclosed or may disclose to Pro-MEC in connection with the Products. Customer grants Pro-MEC a nonexclusive, royalty-free, worldwide, sublicensable license to use Customer's patent rights and other intellectual property to perform the Agreement.

All Pro-MEC Order Documents, estimates, proposals, plans, descriptions, drawings, designs, Specifications, samples, examples, illustrations, ratings, statements, documents, data, models, patterns, tools, processes, fixtures, designs, and other information or materials disclosed by Pro-MEC or Pro-MEC's affiliate companies to Customer, whether disclosed orally or disclosed or accessed in written, electronic, or other form or media, and whether or not marked or otherwise identified as "confidential", in connection with the bidding, negotiation, or performance of the Agreement ("**Confidential Information**"), remain the confidential and proprietary information of Pro-MEC to the extent not generally known to the public and may not be disclosed, copied, used, or retained by Customer unless directly authorized in by Pro-MEC in writing, except only that Customer may use the Confidential Information solely for the limited purpose of evaluating or facilitating the scope of Products or Services offered or provided by Pro-MEC under this Agreement.

These restrictions in this Section 13 related to Confidential Information include that Customer may not show or disclose Confidential Information to any other bidder. Pro-MEC is not obligated to furnish detailed or shop drawings, engineering calculations, computer programs, or other information to Customer or any other person for any Products or part thereof, unless specifically required by Pro-MEC's Order Documents. Customer agrees to take reasonable measures to protect the confidentiality of the Confidential Information. Upon Pro-MEC's request, Customer will promptly return and destroy all Confidential Information, and may not retain any Confidential Information after completion or termination of the Agreement.

Pro-MEC retains ownership of and all of its other rights in its intellectual property existing prior to the Agreement, as well as all improvements and derivatives of such preexisting intellectual property and rights therein created or developed by Pro-MEC solely or jointly with Customer or others during the performance of this Agreement. Pro-MEC will own all inventions, innovations, and other intellectual property, whether patentable or not, and all intellectual property rights therein, created or developed by Pro-MEC solely or jointly with Customer or others during the performance of this Agreement. Customer assigns any rights it may have in any such improvements, derivatives, inventions, innovations, or other intellectual property to Pro-MEC, and will execute and cause its personnel to



execute further assignments or take other actions as Pro-MEC determines to be necessary or helpful to perfect Pro-MEC's rights. Pro-MEC will be under no obligation to refrain from using in its business any of Pro-MEC's proprietary information disclosed to Customer under this Agreement. Customer will not attempt to reverse engineer, reverse decompile, disassemble, modify, adapt, translate, create derivative works from, rent, lease, loan, distribute, or sublicense the Products or Pro-MEC Confidential Information to any other party or affiliate of Customer without the express written consent of Pro-MEC. Pro-MEC will be entitled to injunctive relief to enforce this Section 13.

Customer understands and acknowledges that any and all works of authorship created by Pro-MEC in connection with the Products, whether paid for in whole or part by Customer, are not works-made-for-hire under any copyright laws and will not be the property of Customer. Nothing in this Agreement will be interpreted as granting Customer any ownership or license rights in the Confidential Information, whether by implication, estoppel, or otherwise. Moreover, Pro-MEC will be entitled to injunctive relief to enforce this Section 13.

Customer's confidentiality obligations under this Section 13 will survive the termination or expiration of this Agreement.

14. CUSTOMER REPRESENTATIONS AND WARRANTIES

Customer represents, warrants, and covenants to Pro-MEC that: (1) it is duly organized, validly existing, and in good standing under the laws of its jurisdiction of organization, and has full power and authority to enter into and perform its obligations under this Agreement; (2) the execution, delivery, and performance of this Agreement by Customer does not and will not conflict with, violate, or constitute a default under any other agreement, instrument, order, or obligation to which Customer is a party or by which its assets are bound; (3) as of the date of this Agreement and upon each acceptance of delivery of Products or performance of Services, Customer is and will remain solvent and capable of paying its debts as they become due in the ordinary course of business; (4) if Customer purchases any Product from Pro-MEC, and except for Pro-MEC's retained rights and interests under this Agreement, no other party holds or will hold a lien, security interest, or other encumbrance on the Products until Customer has fulfilled all payment and performance obligations in full; (5) Customer will comply with all applicable laws, regulations, and permits necessary to purchase, use, install, or resell the Products or utilize the Services, and has not relied on any advice from Pro-MEC with respect to legal compliance; and (6) each acceptance of delivery of the Products or performance of Services will constitute a reaffirmation by Customer of the representations and warranties set forth herein as of that date.

15. LIMITED WARRANTIES

In regards to Products, subject to the terms of the Agreement, Pro-MEC provides the following limited warranty as to Products (the "**Products Limited Warranty**"): (1) that the Products will comply with the Specifications; (2) that those portions of the Products manufactured by Pro-MEC will be free from defects in materials and workmanship under normal use and service; (3) that the Products will be delivered free and clear of all liens, encumbrances, and other claims, except for any security interest retained by Pro-MEC pending full payment; and (4) that the Products will not infringe third party patent rights. Pro-MEC does not provide any warranty with respect to any Products or portion of a Products manufactured or provided by a third party, such as parts manufactured by third parties that are installed in the Products, and instead Pro-MEC hereby assigns any warranties provided by the third party manufacturer or vendor with respect thereto to Customer to the extent of Pro-MEC's right to do so. Products may include new parts or serviceable used parts that are functionally equivalent to new parts. The Products Limited Warranty is to the original Customer only, and is not transferable or assignable.

Unless Pro-MEC's Order Documents expressly set forth a different Product Warranty Period, the Products Limited Warranty for a Product commences on the date on which Pro-MEC delivers the Product and continues for twelve (12) months after that date (the "**Products Warranty Period**"). The Products Warranty Period is not subject to extension due to any period during which Products Limited Warranty service is provided or otherwise, unless Pro-MEC expressly agrees in writing. To be eligible for Products Limited Warranty service, Customer must provide written



notice of a Product's Non-Conformity with the Products Limited Warranty during the Products Warranty Period promptly within not less than fifteen business days from Customer's discovery of the Non-Conformity, which notice must describe the Non-Conformity in detail and provide documentation substantiating the Non-Conformity. As a condition to receiving warranty service, Pro-MEC may, in its sole discretion, require return of the alleged defective Product or allow for inspection at Customer's site. Products returned without Pro-MEC's prior written authorization will not be accepted. Customer will be responsible for properly packaging any returned items and will bear the risk of loss or damage until receipt by Pro-MEC.

In regards to Services, subject to the terms of this Agreement, Pro-MEC warrants that the Services provided under this Agreement will be free from material defects in workmanship and performed in a professional and workmanlike manner (the "**Services Limited Warranty**"). The Services Limited Warranty will remain in effect for a period of ninety (90) calendar days from the date the Services are completed in accordance with this Agreement (the "**Services Warranty Period**"). The Services Limited Warranty will be void if any portion of the Services or related work is modified, altered, or repaired by anyone other than Pro-MEC without Pro-MEC's prior written consent.

The Product Limited Warranty and Services Limited Warranty (the "**Limited Warranties**") do not cover, and Pro-MEC will have no liability for: (i) normal wear and tear; (ii) consumables or expendable parts; (iii) damage caused by failure to follow Pro-MEC's recommendations; (iv) any defects attributable to drawings, designs, or specifications supplied or approved by Customer; and (v) any damages arising from excessive temperatures or pressures, or from corrosive, abrasive, or otherwise harmful compounds or agents for which any Product is not specifically designed per the Specifications. Moreover, the Limited Warranties do not include, and Pro-MEC provides no warranty with respect to, any proposals, plans, descriptions, drawings, designs, specifications, samples, examples, illustrations, ratings, statements, data, models, patterns, or other information or materials, whether provided by Customer or Pro-MEC, that are not expressly included as Specifications in Pro-MEC's Order Documents. Any such information or materials are deemed to be for general guidance only and nonbinding, and Pro-MEC is not responsible for any errors or omissions in such information or materials or as a result of any reliance by Pro-MEC or Customer on them.

Pro-MEC's Products Limited Warranty is conditioned on: (a) a Product's installation, maintenance, repair, and normal use in conformity with best industry practice and any instructions furnished by Pro-MEC from time to time; (b) a Product not having been repaired or modified by anyone other than Pro-MEC or its authorized vendors; (c) a Product not being used in combination with any third-party product, hardware, or software not approved in writing by Pro-MEC; and (d) a Product not having been subjected to misuse, neglect, abuse, negligence, abnormal physical stress, improper environmental conditions, accident, or improper testing.

Customer's sole and exclusive remedy for any breach of a Limited Warranty is, at Pro-MEC's sole option, repair or replacement of the Non-Conforming Product or re-performance of the Non-Conforming portion of the Service. Any claim for Limited Warranty coverage must be submitted in writing within the applicable Products Warranty Period or Services Warranty Period, as relevant. Repair, replacement, or re-performance will not extend a Limited Warranty.

Pro-MEC provides Limited Warranty service during normal business hours. Expedited, premium, or overtime service requested by Customer will be at Customer's expense. Pro-MEC will commence Limited Warranty service within a reasonable period of time (not less than fifteen business days from Pro-MEC's confirmation that Limited Warranty service is required) and will continue to use commercially reasonable efforts to cure the Non-Conformity by repair or replacement, or re-performance until the Product or Service conforms to the Limited Warranty.

If Pro-MEC determines that it cannot cure a Non-Conformity within the Limited Warranty by repairing or replacing the Product, then Pro-MEC will notify Customer in writing and the parties will negotiate a solution in good faith, which may include Pro-MEC authorizing a discount to the price, Pro-MEC authorizing Customer to return the Product for a refund, or another mutually agreeable solution. Customer may not return a Product except with Pro-MEC's express written agreement.



16. DISCLAIMER OF OTHER WARRANTIES

The Limited Warranties set forth in this Agreement are the exclusive warranties applicable to the Products and Services, respectively as applicable, and provide Customer's exclusive remedy with respect to Non-Conformity or otherwise after acceptance. PRO-MEC DISCLAIMS, AND CUSTOMER WAIVES, ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT; WHETHER ARISING BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE.

Any and all descriptions, specifications, performance data, illustrations, or depictions of the Products or Services contained in Pro-MEC's catalogs, brochures, quotations, price lists, promotional materials, or other publications or communications – unless expressly and specifically incorporated into this Agreement in writing – are for general informational purposes only. Pro-MEC makes no representation or warranty regarding the accuracy or completeness of such materials and disclaims any liability for errors or omissions therein or reliance thereon.

Any samples provided by Pro-MEC are subject to the terms of this Agreement, even if such samples are provided at no cost. These samples are offered "as is" and "with all faults", with all warranties under the Agreement expressly disclaimed. Such samples are intended solely for the Customer's evaluation as examples of the types of Products Pro-MEC may offer, and do not represent or guarantee the quality or Specifications of any Products that may later be sold under a separate agreement. Samples must not be used in production or final assembly and, if provided free of charge, must be returned to Pro-MEC upon request.

Pro-MEC does not warrant that the Products or Services comply with any particular industry or other standards, codes, guidelines, or legal or regulatory requirements (including safety, environmental, or building codes) of any federal, state, local, or foreign authority, unless such compliance is expressly and specifically stated in the Agreement.

Customer affirms that it has made its own independent determination regarding the suitability of the Products and Services for its intended use and has not relied on Pro-MEC's skill or judgment for such purposes, except to the extent expressly stated in a written warranty provided by Pro-MEC and incorporated into this Agreement.

This Section 16 will survive the termination or expiration of this Agreement.

17. LIMITATION OF LIABILITY

TO THE FULLEST EXTENT PERMITTED BY LAW, PRO-MEC'S TOTAL CUMULATIVE LIABILITY UNDER OR IN CONNECTION WITH THIS AGREEMENT, WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), WARRANTY, STRICT LIABILITY, INDEMNITY, OR OTHERWISE, WILL NOT EXCEED THE TOTAL AMOUNT ACTUALLY PAID TO PRO-MEC BY CUSTOMER FOR THE SPECIFIC PRODUCT OR SERVICE GIVING RISE TO THE CLAIM, LESS PRO-MEC'S OUT-OF-POCKET COSTS AND EXPENSES INCURRED UNDER THIS AGREEMENT AND INCOME TAXES ON SUCH AMOUNT.

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE AGREEMENT OR ANY ORDER DOCUMENT, AND WITHOUT LIMITING THIS SECTION 17, PRO-MEC WILL NOT BE RESPONSIBLE FOR OR LIABLE TO CUSTOMER OR ANY OTHER PERSON FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, INDIRECT, EXEMPLARY, OR PUNITIVE DAMAGES, INCLUDING, WITHOUT LIMITATION, FOR ANY LOSS OF PROFITS, LOSS OF USE, LOSS OF REVENUE, BUSINESS INTERRUPTION, DIMINUTION IN VALUE, DOWNTIME COSTS, OR CLAIMS OF THIRD PARTIES ARISING OUT OF OR RELATING TO THE AGREEMENT OR ANY ORDER DOCUMENTS OR PRO-MEC'S PERFORMANCE OR BREACH, REGARDLESS OF FAULT AND REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE, PRO-MEC WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT, OR OTHERWISE) UPON WHICH THE CLAIM IS BASED. CUSTOMER RELEASES THE INDEMNITIES FROM ALL SUCH LIABILITY.



Pro-MEC will not be liable for any defect or failure of any equipment, components, or parts incorporated into the Products but not manufactured or installed by Pro-MEC, except to the extent such defect or failure is directly attributable to Pro-MEC's gross negligence.

Customer assumes all responsibility and liability for any loss or damage resulting from the improper use, operation, modification, or maintenance of the Products or Services by Customer or any third party not under Pro-MEC's control.

This Section 17 will survive the termination or expiration of this Agreement.

18. INDEMNIFICATION

To the fullest extent permitted by law, Customer will indemnify, defend, and hold harmless Pro-MEC and its parent, subsidiary, and affiliate companies, and their respective officers, directors, managers, members, shareholders, employees, agents, subcontractors, representatives (including Pro-MEC's Authorized Representatives), and contractors (collectively, the "**Indemnitees**") from and against any and all losses, liabilities, claims, demands, damages, actions, suits, judgments, settlements, costs, and expenses (including actual attorneys' fees) (collectively, "**Losses**") arising out of or relating to: (1) Customer's misuse, modification, or improper installation or maintenance of the Products or Services; (2) bodily injury, death, or damage to individuals or property during, due to, or resulting from Customer's acts, omissions, use, operation, or maintenance, or those of its agents, employees, contractors, subcontractors, or customers; (3) Customer's failure to properly instruct and train its agents, employees, contractors, subcontractors, or customers in the use, operation, or maintenance of any Products; (4) from Customer's failure to properly maintain or repair any Product; (5) any violation of applicable laws or regulations by Customer related to the use, operation, or resale of the Products or Services; (6) negligence by Customer or its agents, employees, contractors, subcontractors, or customers; or (7) any claim that the Products or Services, when combined or used by Customer with any other products, processes, or materials not provided or approved by Pro-MEC, infringe or misappropriate the intellectual property rights of a third party. Customer will further indemnify, defend, and hold harmless the Indemnities from and against any and all Losses arising out of the use of any hazardous materials with any Products, including injuries or damages to individuals or property, such as environmental or other contamination. Customer's indemnification obligations will survive the termination or expiration of this Agreement.

Pro-MEC will indemnify, defend, and hold Customer harmless against Losses from third party claims that a Product infringes a United States patent; provided that Customer must promptly notify Pro-MEC in writing of any claim asserted and suit or action brought against Customer alleging such infringement and provide Pro-MEC with assistance and information requested by Pro-MEC for its defense, and provided that such indemnity will not cover claims or associated Losses based upon Customer's use of the Product in combination with any other good or service or based upon Customer's application or use of the Product (an "**Excluded Claim**"). Pro-MEC will defend the indemnified claim with counsel of its choice and will have the sole right, without consultation with Customer, to take all action Pro-MEC deems appropriate to defend or settle such claim. Customer will not be entitled to indemnification, defense, or contribution from Pro-MEC with respect to any Excluded Claims, and Customer will indemnify, defend, and hold harmless the Indemnities against all Losses arising out of any such Excluded Claims as well as any Losses arising out of claims of infringement for Products manufactured wholly or partially to Customer's design or specifications. Notwithstanding the foregoing, Pro-MEC will have the right, in its sole discretion and at its expense, either: (a) to procure for Customer the right to continue using such Product; (b) to replace such Product with non-infringing products and services of at least equal function and quality; (c) to modify such Products so that they become non-infringing; or (d) to require the return of such Products and refund the purchase price less an allowance for depreciation and shipping costs thereof. THE FOREGOING EXPRESSES THE ENTIRE OBLIGATION AND LIABILITY OF PRO-MEC WITH RESPECT TO INFRINGEMENT BY PRODUCTS. Except as otherwise provided herein, Pro-MEC will have no other obligation to indemnify Customer, except to the extent Losses arise directly from the gross negligence or willful misconduct of Pro-MEC and are not otherwise waived, disclaimed, or limited under this Agreement.



19. BREACH, TERMINATION, AND CANCELLATION

Pro-MEC may cancel or terminate this Agreement or any portion thereof immediately upon written notice to Customer if Customer: (1) breaches any provision of this Agreement, has otherwise not performed or complied with the Agreement, or is otherwise in default under or repudiates all or any part of the Agreement or any other Agreement with Pro-MEC, in each case whether in whole or in part, and fails to cure such breach within ten days of receiving written notice from Pro-MEC; (2) becomes insolvent, files a petition for bankruptcy or similar protection, makes a general assignment for the benefit of creditors, commences (or has commenced against Customer) proceedings related to bankruptcy, receivership, reorganization, or assignment for the benefit of creditors, or ceases to do business in the ordinary course; (3) informs Pro-MEC, or Pro-MEC reasonably determines, that Customer's condition jeopardizes Customer's ability to perform its obligations under this Agreement and fails to promptly provide adequate assurances, acceptable to Pro-MEC in its sole discretion, that Customer will perform this Agreement in full; (4) fails, with or without cause, to furnish Pro-MEC with instructions for, or refuses to accept deliveries or performance of, any of the Products or Services sold under the Agreement; or (5) fails to pay when due any amount when due under the Agreement or any other agreement with Pro-MEC.

Customer may not cancel or terminate the Agreement or otherwise avoid Customer's responsibilities to purchase the Products or Services, except with Pro-MEC's written consent. For any cancellation to which Pro-MEC consents, unless the parties agree otherwise in writing, the following cancellation fees apply:

- (1) If Customer cancels a purchase order for Services, Customer agrees to pay for time and materials up to the date of cancellation plus a cancellation fee equal to fifteen percent (15%) of the total contract value, as determined by Pro-MEC in its sole discretion.
- (2) If Customer cancels a purchase order for Products before production has begun, Customer agrees to pay for time and materials up to the date of cancellation plus a cancellation fee equal to twenty-five percent (25%) of the total contract value, as determined by Pro-MEC in its sole discretion.
- (3) If Customer cancels a purchase order for Products after production has begun, Customer agrees to pay the full contract price less the amount of expenses saved by Pro-MEC by reason of the cancellation. Any expense deductions in such circumstances will be determined in Pro-MEC's sole discretion.

If Customer wrongfully cancels or terminates this Agreement, or if Pro-MEC terminates this Agreement in accordance with this Section 19 or otherwise due to Customer's material breach of the Agreement, then, in addition to all remedies allowed by this Agreement and applicable law, Pro-MEC, without notice to Customer: (a) may declare due and payable, and invoice, the full price of all Products or Services under the Agreement and any other agreement between Pro-MEC and Customer, notwithstanding Pro-MEC's release from its obligation to perform; (b) may cease performance of its obligations and defer shipment of any Products under the Agreement, and any other agreement between Pro-MEC and Customer, until such default, breach, or repudiation is removed and Customer's performance is assured to Pro-MEC's satisfaction; (c) may cancel any undelivered portions of any Products and any other agreement with Customer, in whole or in part, but Customer will remain responsible for full payment; (d) may recover Products in transit, retrieve delivered Products, repossess all Products which may be stored by Pro-MEC for Customer's account, exercise its security interest in delivered Products, and may sell or otherwise dispose of all Products or portions of them and retain the proceeds and apply them to amounts owed to Pro-MEC and against Pro-MEC's damages, and (e) may otherwise enforce all remedies available under this Agreement and applicable law for Customer's default. Customer will be liable for all damages incurred by Pro-MEC in any such circumstances, including consequential and incidental damages, lost profits, and overhead, and all of Pro-MEC's costs and expenses incurred in performance or enforcement of the Agreement including actual attorneys' fees, expert witness fees, and the costs of enforcement proceedings. All rights and remedies granted to Pro-MEC in the Agreement and by law are cumulative, including that termination or cancellation of the Agreement will be in addition to, and not in lieu of, any other rights or remedies available to Pro-MEC at law or in equity, including the right to recover damages for breach. Pro-MEC will not be liable for any action taken in the good faith exercise of any of rights Pro-MEC reasonably believes



it has under the Agreement or law.

20. SECURITY INTEREST

In addition to any security interest or lien granted by the Uniform Commercial Code (“UCC”) or other law, Customer hereby grants to Pro-MEC a purchase money security interest in each Product and proceeds therefrom (including cash, accounts, contract rights, instruments, and chattel paper) to secure Customer’s obligations to Pro-MEC under this Agreement with respect to any Products. Pro-MEC may file financing statements and take other actions to perfect its security interest, and Customer agrees to cooperate with such actions and take such further actions as Pro-MEC requests to secure and perfect Pro-MEC’s security interest, including providing creditor and landlord waivers as well as other waivers of rights that may impact Pro-MEC’s security interests or the priority thereof.

In case of a breach of the Agreement by Customer, Pro-MEC may peaceably enter the premises of Customer and others to repossess or render inoperable the Products in which it has a security interest. Customer hereby irrevocably appoints Pro-MEC as its agent to obtain possession of the Products and documents related thereto to enforce Pro-MEC’s security interests upon breach of the Agreement by Customer. Customer will not sell, exchange, transfer, convey, mortgage, pledge, hypothecate, or grant a security interest in any Products or the proceeds thereof until Customer has paid all amounts it owes Pro-MEC with respect to the Product.

21. CUSTOMER’S PROPERTY

Customer retains title and risk of loss to all materials, equipment, fixtures, tooling, and other property that Customer may deliver to Pro-MEC in connection with this Agreement (“**Customer’s Property**”), such as for testing and inspection purposes. Customer will insure Customer’s Property against all risks. Pro-MEC will have no responsibility or liability with respect to Customer’s Property, and Customer waives any claims, loss, or damage to Customer’s Property as well as subrogation. Pro-MEC will, at Customer’s expense, store and return Customer’s Property in its then current condition, subject to wear, tear, and consumption, upon completion of the Agreement, unless Customer authorizes its disposal or fails to provide required instructions or to pay the return shipping cost.

22. CUSTOMER’S LEGAL COMPLIANCE

Customer will at all times comply with all laws applicable to this Agreement, Customer’s performance of its obligations hereunder, and Customer’s use of the Products or Services. Without limiting the generality of the foregoing, in relation to any Products purchased by Customer hereunder, Customer: (1) at its own expense, will maintain all certifications, credentials, licenses, and permits necessary to conduct its activities relating to the purchase, installation, operation, or use of the Products; and (2) will not engage in any transaction with respect to the Products, by way of resale, use, lease, shipment, or otherwise, which violates any statute or regulation of the United States, including any environmental or safety law.

23. DISPUTE RESOLUTION; ARBITRATION

Any claim, proceeding, or cause of action by Customer arising out of or related to this Agreement against Pro-MEC, including, but not limited to, claims for breach of contract or warranty, cannot be filed or maintained unless: (1) it is commenced within one (1) year after the cause of action accrues; (2) Customer has given timely written notice to Pro-MEC of its claim as provided herein; and (3) Customer deposits any unpaid portion of the purchase price for Products with the arbitrator pending a final arbitration decision. An action will accrue no later than shipment of any relevant Product or performance of any Service. Pro-MEC’s liability and other obligations under the Agreement terminate on the first anniversary of the shipment of the relevant Product or performance of the relevant Service, but Pro-MEC’s rights survive such termination. Failure to bring such claim, proceeding, or cause of action within the period specified herein will be deemed an absolute bar to the claim, proceeding, or cause of action – regardless of any contrary statute of limitations.



Any and all disputes, claims, or controversies arising out of or relating to this Agreement, including the breach, termination, enforcement, interpretation, or validity thereof, or the sale, delivery, condition, or performance of the Products or Services provided hereunder, will be resolved solely by binding arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules then in effect. The arbitration will be conducted by a single arbitrator with relevant commercial or technical experience, as applicable, and the proceedings will take place in Grand Ledge, Michigan, unless otherwise mutually agreed by the parties. However, notwithstanding the foregoing: (a) Pro-MEC may elect to institute, prior to formation of the arbitration process, an action for to enforce or protect its security interest in a Product, including for claim and delivery, replevin, or similar relief; and (b) either party may seek preliminary or injunctive relief from a state or federal court located in Grand Ledge, Michigan to enforce provisions of the Agreement relating to Confidential Information. Judgment upon any arbitration award may be entered and enforced in any court having proper jurisdiction. No demand for arbitration hereunder may be filed by Customer as a claim or counterclaim if Customer has not given timely written notice of its claim to Pro-MEC or if more than one (1) year has expired from the date of the cause of action accrued, as provided in the Agreement.

Upon the filing of a demand for arbitration by Pro-MEC or Customer, Customer will deposit with the arbitrator any unpaid balance of the purchase price for any Products or Services, and any other unpaid amount under the Agreement to be held in an interest-bearing account. If such deposit is not made, the arbitrator will enter a final award against Customer in the amount of the unpaid purchase price and other amounts owed by Customer to Pro-MEC under the Agreement. The arbitrator will be bound by the terms of the Agreement, will not apply principles of equity or allow any claims not permitted by the Agreement, and may only award or grant to the parties such remedies as a court of competent jurisdiction could award or grant within the locality where the arbitration takes place and which are authorized (and not excluded or otherwise limited under the Agreement). The arbitrator may include the arbitration fees in an award, and will do so to the extent required by the Agreement. The arbitrator's decision will be final, binding, and enforceable in any court of competent jurisdiction. Each party will bear its own costs and fees of arbitration, subject to the arbitrator's discretion to award costs or fees to the prevailing party.

24. NOTICES

All notices, requests, consents, demands, and other communications required or permitted under this Agreement will be in writing and will be deemed duly given: (i) when delivered personally; (ii) when sent by a nationally recognized overnight courier service; or (iii) when sent by certified mail, return receipt requested, postage prepaid, to the receiving party at the address set forth below (for Pro-MEC) or at the address provided in any purchase order or other contract document under this Agreement (for Customer), or to such other address as either party may designate by notice in accordance with this Section 24.

If to Pro-MEC:

Pro-MEC Engineering Services, Inc.
Attention: Josh Mills, National Sales & Marketing Manager
480 Promec Drive
Grand Ledge, Michigan 48837
Joshm@pro-mec.com

If to Customer:

At the address provided in the applicable purchase order or other contract document under this Agreement.

All notices will be deemed effective upon receipt or refusal of delivery.



25. NO THIRD-PARTY BENEFICIARIES

There are no third-party beneficiaries to the Agreement, which is for the benefit of Pro-MEC and Customer only. However, the Agreement is enforceable against the parties' respective successors and permitted assigns, subject to the foregoing limitations of liability and its other terms.

26. RELATIONSHIP OF THE PARTIES

The relationship between the parties is solely that of independent contracting parties: vendor and vendee. Nothing contained in this Agreement will be construed to create any agency, partnership, joint venture, other form of joint enterprise, fiduciary relationship, or employment relationship between the parties. Neither party will have the authority to contract for, act on behalf of, accept service of process for, create obligations of any kind for, or otherwise bind the other in any manner except as expressly set forth herein.

27. GOVERNING LAW, JURISDICTION, AND VENUE

This Agreement will be governed by, enforced by, and construed in accordance with, the laws of the state of Michigan, without giving effect to its conflict of laws principles and except as provided herein. The United Nations Convention on Contracts for the International Sale of Goods will not apply to this Agreement and is disclaimed. In regards to any sale of Products, the Michigan UCC will apply to all Products to be provided hereunder, provided that the provisions of this Agreement take precedence over inconsistent provisions of the Michigan UCC.

State and federal courts in Grand Ledge, Michigan will have exclusive jurisdiction over the parties and the claims arising under the Agreement, subject to the provisions of Section 23 above regarding arbitration. Neither party will assert any objection to such jurisdiction or that venue in any such court is inconvenient or otherwise improper. Customer and Pro-MEC consent to service of process by personal delivery or by postage prepaid, certified United States mail, mailed to the address of such party set forth in this Agreement in Section 24.

28. ASSIGNMENT

Customer may not assign, pledge, hypothecate, delegate, or otherwise transfer any of its rights, interests, or obligations under this Agreement, or the Agreement itself, in whole or in part, without the prior written consent of Pro-MEC. Any attempted transfer without such consent will be null and void. No assignment or delegation relieves Customer of any of its obligations under this Agreement. Pro-MEC may assign its rights and obligations under this Agreement without Customer's consent, including to any affiliate or in connection with a merger, acquisition, or sale of substantially all of Pro-MEC's assets. Pro-MEC may also freely subcontract performance of any aspect of this Agreement.

29. WAIVER

No waiver by Pro-MEC of any breach, default, or failure to exercise any right under this Agreement, or of any provision of this Agreement, will be deemed a waiver of any subsequent breach, default, or right, whether of the same or a similar nature unless explicitly set forth in writing and signed by Pro-MEC. No failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement by Pro-MEC operates or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power, or privilege hereunder by Pro-MEC precludes any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege by Pro-MEC.

30. ENTIRE AGREEMENT; AMENDMENT OR MODIFICATION

The Agreement is the complete and exclusive statement of the Agreement of the parties and supersedes any and all previous or contemporaneous understandings, agreements, negotiations, representations and warranties,



communications, and agreements, both written and oral, relating to the Products or Services.

The Agreement may not be amended or terminated unless in a writing that is executed by Pro-MEC expressly stating that the writing is amending or changing the Agreement. This includes that Customer may not amend, change, cancel, or terminate any part of the Agreement, including the quantity or specifications of the ordered Products or Services, without a Change Order or other writing executed by Pro-MEC in accordance with this Agreement. No course of performance or usage of trade will be used to modify the terms of this Agreement. However, obvious typographical and clerical errors contained in the Agreement are subject to correction by Pro-MEC. Notwithstanding anything to the contrary in the Agreement, no modifications, limitations, waiver, or discharge of any provision of the Agreement will affect Customer's liabilities to Pro-MEC accrued prior thereto.

31. HEADINGS

Headings and titles used in this Agreement are for convenience only and will not affect the interpretation of any provision.

32. SEVERABILITY

If any provision of the Agreement is held to be unenforceable, illegal, or invalid, such provision will be ineffective to the extent of such prohibition, illegality, or invalidity, and such invalidity, illegality, or unenforceability will not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Any declaration of unenforceability of a provision will be as narrow as possible.

33. INTERPRETATION

This Agreement will be construed fairly and not in favor of or against either party, regardless of which party drafted or caused the drafting of its provisions. Any ambiguities will not be construed against either party. References to "including" or "includes" will be deemed to be followed by "without limitation" unless expressly stated otherwise. Both Pro-MEC and Customer acknowledge that they are merchants in respect to the Products or Services, they have had an opportunity to review the Agreement, and the provisions of the Agreement are reasonable when considered as a whole.

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