

## Standard Terms and Conditions of Sale

The Terms and Conditions of Sale (“Terms”) stated herein shall constitute an integral part of and are incorporated into any contractual agreement between Osorno Enterprises Inc. (hereinafter “COMPANY”) acting in its capacity as a Manufacturer, Supplier, or Vendor, NOT as a subcontractor, and the buyer and/or licensee (“Buyer”) in any transaction (“Transaction”) for the sale, lease or license of any tangible or intangible item or matter from COMPANY to Buyer. In accepting COMPANY’s proposal or quotation, the Buyer’s Purchase Order shall not change any Terms in said Proposal. COMPANY objects in advance to any additional or different terms proposed in Buyer’s order. Acceptance of COMPANY’s proposal or quotation by Buyer must be pursuant to and in accordance with this agreement. No additional, different or inconsistent Terms in Buyer’s acceptance or order shall become part of this agreement, and nothing in these Terms may be changed in any manner other than by a written agreement signed by an authorized official of COMPANY, and any attempt to the contrary shall be null and void and of no effect.

### 1. ACCEPTANCE

Buyer’s acceptance of COMPANY’s proposal for Transactions shall be by purchase order (“Purchase Order”) issued to COMPANY, subject to these Terms, and shall not be binding unless and until these Terms are accepted by Buyer. The Purchase Order shall be effective upon acknowledgement of receipt of same and acceptance by a duly authorized official of COMPANY at COMPANY’s main office in Winnipeg, Manitoba, Canada. In no event will any Purchase Order or other acceptance or presentation by Buyer be binding on COMPANY unless so approved. Quotations or proposals accepted by Buyer, with the acceptance properly acknowledged by COMPANY, are referred in these Terms as “Proposals”.

### 2. PRICES

Unless the properly acknowledged and agreed terms of a Transaction otherwise specifically so states, prices in written Proposals are FCA (Incoterms 2000) Shipping Point and are firm for thirty (30) calendar days from date of COMPANY’s quotation or proposal, provided COMPANY is permitted to ship on COMPANY’s normal schedule and ship immediately upon shipment readiness. Buyer’s Purchase Order or acceptance may not vary in any manner the price in a proposal without COMPANY’s written approval.

#### 2A. Escalation

If Buyer specified a shipping date which is more than six (6) months beyond the date of COMPANY’s proposal or quotation, or if Buyer requests deferment of shipment beyond scheduled shipping date, COMPANY will invoice in accordance with the prices in effect at time of actual shipment.

#### 2B. Taxes

Buyer shall be fully responsible for the payment of all taxes, levies, duties or other fees imposed by any governmental unit on or in connection with a Transaction, except for taxes imposed on and measured by COMPANY’s net income. Applicable sales and/or use taxes will be billed to Buyer unless Buyer has furnished COMPANY with an appropriate tax exemption certificate.

#### 2C. Resale Equipment

If COMPANY’s Proposal includes products, accessories or components manufactured by others, Buyer will be billed for any increases in prices from COMPANY’s vendors occurring between the date of COMPANY’s Proposal and the final billing from said vendor.

### 3. SPECIFICATION CHANGES

Any changes from the original specifications on which the Proposal or Buyer’s accepted order is based, shall be documented in writing. All changes authorized and approved by Buyer are binding only if approved in writing by a duly authorized official of COMPANY at its main office in Winnipeg, Manitoba, Canada, and may result in price and delivery changes. Also, is an extension in delivery is required beyond the original schedule because of authorized changes escalation in accordance with Paragraph 2A above shall apply.

### 4. DELIVERY

Shipping and delivery dates are approximate and are based on prompt receipt by COMPANY at its office of all necessary information including final written agreement on detailed specifications, approved submittal drawings and complete technical data as may be necessary for finalizing the design and releasing the order for production. IN NO EVENT SHALL COMPANY ACCEPT RESPONSIBILITY FOR LIQUIDATED DAMAGES, CONSEQUENTIAL, INCIDENTAL, INDIRECT OR

SPECIAL DAMAGES OR COSTS, CHARGES OR ANY PENALTIES FOR DELAYED DELIVERY.

#### **4A. Shipping Instructions**

Buyer agrees to furnish complete shipping instructions to COMPANY at least 14 days prior to date such shipment is to be made per schedule. Shipping delivery and related dates in a Proposal are approximate, and COMPANY does not guarantee precise compliance with specific delivery, shipment, or related dates.

#### **4B. Deferred Shipments**

If the equipment has been manufactured or outside purchases made prior to the receipt of a customer hold notice, or the customer has failed to provide shipping instructions, the order will be invoiced on the date the equipment is placed in storage. The equipment will be held in storage and storage charges will be levied on the customer at a rate of 2% of the invoice value per month.

#### **4C. Packaging**

Delivery and shipment shall be made in accordance with the terms of the Proposal and in substantial accordance with standards for domestic carriers. COMPANY will box or crate the products accordingly. An extra charge will be made for preservation, special paint, or plating, waterproofing, or similar added protection from the elements, if requested in writing from the Buyer at least 14 days prior to scheduled date of shipment.

#### **4D. Partial Shipments**

COMPANY reserves the right to make partial shipments unless otherwise specified in the Proposal. Invoices shall be rendered for each partial shipment of components as made unless the payment schedule for systems applies.

### **5. PAYMENTS**

The Buyer shall pay the price as well as other charges as detailed in the invoice submitted to Buyer in accordance with subparagraph A, B or C, whichever applies, within ten (10) days after the date of the invoice. COMPANY may request, at COMPANY's sole discretion, full or partial prepayment on all orders.

#### **5A. Component Sales**

The following payment schedule applies for component sales: Thirty percent (30%) of the total contract price will be invoiced upon release of Buyer's Purchase Order to COMPANY; Thirty percent (30%) of the total contract price will be invoiced upon Buyer's inspection prior to shipment by COMPANY; Forty percent (40%) of the total contract price will be invoiced upon shipment by COMPANY. At COMPANY's discretion, small orders can be invoiced with the final invoice (100%) only.

#### **5B. System Sales**

The following payment schedule applies for system sales: Thirty percent (30%) will be invoiced upon release of Buyer's Purchase Order to COMPANY; COMPANY will not deliver shop drawings and other submittals without the initial payment; forty percent (40%) of the total contract price will be invoiced upon complete delivery of the major equipment to the site; twenty percent (20%) of the total contract price will be invoiced upon first operation ("on line") of the system by COMPANY; ten percent (10%) of the total contract price will be invoiced upon completion of the system as the final payment.

#### **5C. Sale of Water Additives and Other Chemicals**

The following payment schedule applies for the sale of water additives and other chemicals: The full amount (100%) will be invoiced upon shipment of the order, unless a partial shipment is made.

#### **5D. Overdue payments**

Overdue payments are subject to a service and carrying surcharge of one and a half (1.5) percent per month (equivalent to 19.56% per annum) on the outstanding balance. If COMPANY undertakes action to collect any overdue amount, there shall also be added reasonable attorneys' fees, and the greater of 15% of the amount due or \$1,000 for collection costs.

#### **5E. Letter of Credit**

The Purchase Order of a Buyer outside of Canada shall be accompanied by a Letter of Credit (L/C) issued by a bank acceptable to COMPANY. The wording of the L/C shall substantially follow the guidelines for documentary letters of credit, then in effect, and established by The International Chamber of Commerce, Paris, France. The L/C shall be issued in accordance with subparagraph A, B or C, whichever applies, and shall allow to be partially drawn. The L/C shall be transferable and irrevocable.

## **6. REFUSAL**

In the event of failure or refusal of the Buyer to accept delivery, Buyer will be charged for all reasonable costs and expenses incurred in stopping delivery, including but not limited to all transportation, storage and handling charges.

## **7. CANCELLATION & REPOSSESSION**

In addition to other rights and remedies provided by law or contained elsewhere in this agreement, COMPANY may elect, without prejudice to any other rights and remedies to cancel this agreement, and with or without cancellation, if the purchase price has not been paid in full, repossess the equipment:

- If the Buyer, upon ten days prior written notice, has failed to make payments due hereunder or has failed to perform any other substantial obligation to be performed by the Buyer under this agreement, or
- If a petition in bankruptcy has been filed by or against the Buyer or the Buyer has made an assignment for the benefit of creditors, or a receiver has been appointed or applied for by the buyer.

## **8. WARRANTIES**

COMPANY warrants that all equipment manufactured by or for COMPANY and sold by, or leased or rented from, COMPANY to Buyer will, if installed and used in accordance with COMPANY's specifications, guidelines, installation and user's manual's and other instructions, be free from defects in material and workmanship for a period of one year after shipment. The foregoing warranty does not apply to failure of disposable items, to any defect caused by the negligent or intentionally improper acts or omissions of Buyer or its personnel or agents or any third party, or by defect which Buyer does not report to COMPANY within one week after discovery.

The equipment manufacturer solely warrants the equipment as set forth in their standard warranty as attached to the Proposal. COMPANY does not in any manner warrant equipment manufactured by third parties and included in COMPANY's products or systems, however, COMPANY shall use reasonable efforts to extend to Buyer the benefits of all warranties made by the manufacturer of such products.

COMPANY's sole and exclusive obligation for any breach of the warranty set forth in sub-paragraphs a and b shall be to repair or replace, at its option and free of charge, any item to which this applies during the warranty period which, after reasonable examination, proves to have a defect covered by the warranty. Buyer shall be responsible for all shipping costs and for warranty service, and COMPANY shall bill and Buyer shall pay, for all services requested from COMPANY which prove not to subject to defects covered by warranty. COMPANY shall have no responsibility with respect to matters covered by sub-paragraph b, except to the extent necessary or appropriate to convey warranty claims from Buyer to third party manufacturers.

## **9. DISCLAIMER**

COMPANY makes no other warranties, express or implied (including without limitation warranties as to merchantability or fitness for a particular purpose). In no event shall COMPANY be liable for any incidental, indirect, special or consequential damages, or losses of any kind sustained directly or indirectly as a result of a defect in any equipment, material or installation.

## **10. PROPRIETARY INFORMATION**

Buyer acknowledges that all material prepared by COMPANY in connection with Transactions, including and without limitation, engineering or other drawings, computer and control programs, specifications and technical data, and all know-how relating to the Transactions constitutes confidential Proprietary information and trade secrets of COMPANY, in which Buyer has no rights or interests of any kind, except as described in the operations & maintenance manual(s) provided by COMPANY, or as otherwise expressly agreed in a written agreement duly executed by an authorized official of COMPANY at its main office in Winnipeg, Manitoba, Canada. Neither Buyer nor its representative have any right to audit, examine or otherwise obtain or inspect any such material under any circumstances.

## **11. COMPLIANCE WITH LAWS**

The Buyer shall be responsible for securing and shall pay for any necessary registration, licenses, permits or other requirements of the province/state and/or local governing bodies concerning service if any specified in COMPANY Proposal to be performed by COMPANY's representatives at the jobsite.

## **12. UNION AND OTHER JURISDICTION**

The use or presence of any union or other personnel during COMPANY's activities outside of COMPANY's facilities, which use or presence is not otherwise required by COMPANY, but is required or necessitated by law, regulation, custom, practice, jurisdictional or other agreements to which COMPANY is not a direct party, or for any reason, is solely and entirely at Buyer's

cost and expense in addition to the price(s) quoted in the Proposal.

### **13. INSTALLATION AND SITE PREPARATION**

The use or presence of any union or other personnel during COMPANY's activities outside of COMPANY's facilities, which use or presence is not otherwise required by COMPANY, but is required or necessitated by law, regulation, custom, practice, jurisdictional or other agreements to which COMPANY is not a direct party, or for any reason, is solely and entirely at Buyer's cost and expense in addition to the price(s) quoted in the Proposal.

### **14. INSURANCE & INDEMNITY**

COMPANY agrees to indemnify and hold harmless the Buyer only against such liabilities as are imposed upon the Buyer by law with respect to bodily injury or property damage to the extent such liability results from COMPANY's performance under the written contract with the Buyer. The Buyer hereby agrees to defend, indemnify and hold harmless COMPANY, its Agents, and Employees against any and all losses, costs, damages, expenses, liabilities or claims arising out of or resulting from and injury or damage to any person or property caused by the negligence or carelessness of Buyer, its agents, servants, and employees as well as those caused by the inadequacy or safety procedures, devices, or characteristics in the installation, use or misuse, application or misapplication of COMPANY's products.

### **15. INSPECTION & TESTING**

Passive inspection of equipment on manufacturer's premises by Buyer's representative prior to shipment will be scheduled during normal working hours provided that advance written arrangements are made by the Buyer and the inspection procedure does not unduly interfere with manufacturer's production workflow. If Buyer shall fail so to proceed prior to shipment, it shall be deemed to have accepted the item after and with inspection.

If Buyer's inspection procedure requires the setting up of special tools or test equipment, an extra charge will be made for such inspection on a time and material basis, unless stated otherwise in our Proposal.

### **16. AVAILABILITY OF SPARE PARTS**

On products manufactured by others and supplied by COMPANY, no future availability of spare parts is guaranteed except that which is guaranteed by the original suppliers.

### **17. AUDIT OF PROPRIETARY DATA & RECORDS**

Neither the Buyer, his authorized representative or any other person shall have the right to audit, examine, or inspect any kind of business records of COMPANY of any manner, nor shall anyone be entitled to inspect, examine, or have control over any engineering or production drawings, prints, or technical data which COMPANY, in sole discretion, may consider in whole or part to be proprietary.

### **18. ENTIRE CONTRACT**

This writing and COMPANY's Proposal constitute the entire final and complete agreement and understanding between the buyer and COMPANY and shall not be modified thereafter in any way except by writing executed by a duly authorised agent of both COMPANY and the Buyer.

### **19. GENERAL PROVISIONS**

Notwithstanding any shipping terms, title to all items sold by COMPANY to Buyer and all risk of loss of or damages to all tangible items shall pass to the Buyer upon placement of the appropriate items with a carrier for shipment from the manufacturer's facility. Neither party shall be liable nor deemed to be in default for any delay or failure in performance under agreement or interruption of service resulting directly or indirectly from *force majeure*, civil or military authority, acts of public enemy, war, riots, civil disturbances, insurrections, accidents, fire, explosions, earthquakes, floods, the elements, strikes, labour disputes, shortages of suitable parts, materials, labour or transportation or any other causes beyond the reasonable control of such party.

COMPANY shall not be liable for any direct or indirect costs resulting from Trades Personnel assigned to perform duties which are normally performed by COMPANY Service Technicians, or to accompany COMPANY Service Technicians in the performance of such duties at the jobsite. Performance of such duties by unauthorised personnel shall void all warranties, express or implied, attendant to such equipment.

Each provision of these Terms & Conditions shall be deemed severable and in the event that any part hereof is unenforceable in any action or proceeding, the balance should be considered separate and enforceable as such.

COMPANY shall not be responsible or liable for delays in manufacture, shipping, delivery or other elements of performance because of causes beyond its reasonable control. In the event of any such event, the period of COMPANY's performance shall be extended, without liability or penalty, for the period of such delay.

## **20. DISPUTE RESOLUTION**

All disputes, controversies or claims that may arise from a Transaction, Purchase Order, Contract, or associated service or activity of COMPANY, and any question regarding the existence, interpretation, validity, breach or termination of such Transaction, Purchase Order, Contract, or associated service or activity shall be subject to arbitration under the rules of the United Nations Conference on International Commercial Arbitration in New York on June 10, 1958, as adopted by the Province of Manitoba in The International Commercial Arbitration Act and its amendments, then in effect. The location of arbitration shall be Winnipeg, Manitoba, and the language English. The ruling of, and an award by the arbitration tribunal shall be final and enforceable in any court of law, in any jurisdiction.

## **21. APPLICABLE LAW**

The law of the Province of Manitoba and of Canada shall govern the validity, construction, interpretation and effect of all Transactions between COMPANY and Buyer, including these Terms & Conditions, and all Proposals.