

## PURCHASE TERMS AND CONDITIONS

These Purchase Terms and Conditions (the "**Terms**") are incorporated into and made a part of the Purchase Order on the face hereof ("**Order**") issued by Newpark Resources, Inc., or its subsidiaries, affiliates and/or related companies ("**Buyer**") for the goods ("**Goods**") and/or services referenced on the face of this document ("**Services**"). Seller's acknowledgment, commencement of work on the Goods or Services subject to this Order, or shipment of such Goods, whichever occurs first, shall constitute acceptance of this Order and these incorporated Terms. This Order is expressly limited to and made conditional on Seller's acceptance of and assent to these Terms. This Order together with these Terms constitutes a valid and legally enforceable contract between Buyer and Seller. In the event of a conflict between the terms written on the face of this Order and the Terms, the terms of the Order shall prevail. Any provisions, printed or otherwise, contained in any proposal, quotation, acknowledgment, shipping document or any other instrument issued by Seller which are inconsistent with or in addition to this Order and these Terms shall be of no force or effect. The contract between Buyer and Seller consisting of this Order and these Terms constitutes the sole and entire agreement of Buyer and Seller with respect to the Goods and Services, and supersedes all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral, with respect to the subject matter of the Order. The Order expressly limits Seller's acceptance to the terms of this Order. These Terms may not be modified or supplemented without a written instrument executed by a duly authorized representative of Buyer and Seller which specifically and expressly states that it is intended to modify or supplement this Order and these Terms. Seller may not assign this order, or subcontract or delegate its obligations under this Order, without Buyer's express written consent, which may be withheld in Buyer's sole discretion.

**Price and Payment Terms.** The price of the Goods and Services are as stated on the Order ("**Price**"), or if not provided therein, the price stated in Seller's last quotation on file in Buyer's office. Unless otherwise specified in the Order, the Price includes all packaging, transportation costs to the delivery location, insurance, customs duties and fees. No increase in the Price is effective, whether due to increased material, storage, labor or transportation costs or otherwise, without the prior written consent of Buyer. Seller shall separately set out the amount of any federal, state, provincial or local sales, use, excise or other tax included in the amount of the invoice. Except for any amounts disputed by Buyer, payment for the Goods and Services delivered to and accepted by Buyer shall be made within **forty five (45) days** after acceptance by Buyer or receipt by Buyer of a proper and duly supported invoice, whichever is later. Compliance by Seller with its obligations as set forth in these Terms shall be a condition precedent to the payment of any sums which may be due to Seller. Without prejudice to any other right or remedy it may have, Buyer reserves the right to set off at any time any amount owing to it by Seller against any amount payable by Buyer to Seller.

**Delivery, Title, Risk of Loss.** Time is of the essence with respect to Seller's provision of any Goods and/or the performance of any Services covered by this Order. Seller shall deliver the Goods/Services on the delivery date specified in the Order, or, if not specified therein within three (3) business days of Seller's receipt of this Order. If delivery of Goods or rendering of Services is not completed by the time specified in this Order, Buyer reserves the right without liability, and in addition to its other rights and remedies, to terminate this Order by written notice to Seller and deemed effective when received by Seller as to Goods not yet shipped or Services not yet rendered. Buyer shall have the right to purchase substitute Goods or Services elsewhere and charge Seller for all costs incurred in connection therewith. Delivery shall occur and risk of loss, title and ownership of the Goods being purchased hereunder shall pass to Buyer upon Buyer's acceptance of the Goods provided such Goods conform to the quantity, quality and specifications set forth on the face of this Order. Seller represents and warrants that it has and will have the right to sell the Goods and that upon delivery. Title in and to the Goods will pass to Buyer free from any encumbrance or charge. Seller shall indemnify and hold Buyer harmless from any liens or other claims in connection with the execution of this Order. All Goods will be shipped to Buyer prepaid unless stated otherwise by Buyer on the face of this Order. Seller shall provide a Material Safety Data Sheet (MSDS) indicating any toxic substances contained in the Goods provided hereunder.

**Quality and Warranty.** Seller warrants that all Services will be performed and rendered in a safe, diligent, skillful and workmanlike manner, in accordance with sound and generally accepted standards for Seller's industry, shall be free from defects in workmanship, shall conform strictly to any other descriptions incorporated herein, shall be suitable for their intended purpose, shall be of merchantable quality, and shall comply with all applicable laws and regulations. Should any failure to meet any of the warranties stated herein appear within twelve (12) months of the performance of the Services or eighteen (18) months after their acceptance by Buyer, whichever occurs first, the Seller shall upon written notice by Buyer at Buyer's sole option either (i) promptly reperform the Services, or (ii) promptly refund all sums paid for the Services not conforming to the foregoing Warranties. In the event of failure of the Seller to promptly remedy any breach of warranty, Buyer may do so and charge the Seller for the cost thereof.

With regard to the Goods purchased by Buyer under this Order, Seller warrants that all such Goods shall (a) conform to Buyer's written specifications, descriptions and/or samples, (b) unless otherwise specified by Buyer, will be new, free from defects in design, material, fabrication and workmanship, (c) shall be suitable for their intended purpose, (d) shall be of merchantable quality, (e) shall comply with and be usable in compliance with all applicable laws and regulations, and (f) be free of any and all liens and other encumbrances (collectively, the "**Warranties**"). Further, Seller assigns to Buyer any and all manufacturers' product warranties and remedies thereunder (collectively, the "**Manufacturer Warranties**") applicable to such Goods and agrees to fully assist and intervene on Buyer's behalf in the enforcement of the Manufacturer Warranties. Should any failure to meet any of the Warranties stated herein appear within twelve (12) months of the commencement of use or operation of the Goods or after their acceptance by Buyer, whichever occurs first, the Seller shall upon written notice by Buyer and, at Buyer's sole option either (i) promptly replace or repair the Goods, or (ii) promptly refund all sums paid for the Goods not conforming to the foregoing Warranties. In the event of failure of the Seller to promptly remedy any breach of the Warranties, Buyer may do so and charge the Seller for the cost thereof. The aforesaid Warranties shall survive acceptance of and payment for Goods and Services furnished hereunder.

In the event Buyer requests Seller to reperform the Services, replace the Goods, or repair the Goods, the applicable warranty period shall restart upon the completion of Seller's reperformance of the Services or replacement or repair of the Goods.

**Patents.** Seller agrees to be responsible for all claims made against Buyer for alleged or actual patent infringement and shall defend, indemnify and hold Buyer harmless from and against, and shall defend, any suit or proceedings brought against Buyer, based on a claim that the manufacture, use or sale of any Goods, Services, equipment, or any part thereof, supplied under this Order constitutes infringement of any patent, copyright or proprietary information of others, and Seller shall pay all damages and costs awarded therein against the Buyer. Seller shall, at its own expense, either procure for Buyer the right to use said equipment or part or modify it so it becomes substantially equal but non-infringing or remove said equipment and refund the purchase price and the transportation, installation and associated costs thereof. Buyer retains title to all information and materials (including, but not limited to, all drawings, specifications, and production or product know-how) furnished to Seller to facilitate performance under this Order. The same shall be (i) treated as Buyer's confidential information, (ii) used by Seller exclusively to complete this Order, and (iii) returned to Buyer at its written direction or upon completion, cancellation or termination of this Order, along with all copies or reproductions thereof. Seller shall not make copies or reproductions of such materials unless authorized in writing by Buyer.

**Cancellation.** In the event the Seller is in default of any of its obligations under this Order, Buyer shall have the right, by written notice to the Seller, to cancel the Order, in whole or in part, for such default and Buyer shall have no further liability to Seller except for the payment of any fully conforming Goods and Services received prior to such cancellation subject to Buyer's right to set off any costs or expenses incurred by Buyer as a result of such default. Additionally, Buyer may for any reason whatsoever, including its own convenience, by written notice to the Seller cancel this Order, in whole or in part, without liability to the Seller except as stated in this paragraph. In the event of cancellation for Buyer's convenience, Buyer, in full discharge of its obligations to the Seller, shall pay to Seller for Goods delivered or specially manufactured or Services satisfactorily performed prior to cancellation an amount which is equitable in light of the Order price. The Seller shall take all reasonable steps to minimize any cancellation charges of its suppliers as well as its own cancellation costs. In no event shall Buyer be liable to Seller for damages of any kind arising out of the cancellation or for lost profit, unrecovered or increased overhead or lost opportunities to obtain other sales. In the event Buyer shall cancel this Order based on Seller's default of its obligations and it is later determined that Seller was not in default, the cancellation shall be deemed to have been made for Buyer's convenience.

**SELLER'S INDEMNITY AND RESPONSIBILITIES.** SELLER SHALL BE RESPONSIBLE FOR AND AGREES TO DEFEND, INDEMNIFY, RELEASE AND HOLD HARMLESS BUYER, ITS PARENT,

SUBSIDIARY AND AFFILIATED OR RELATED COMPANIES AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, REPRESENTATIVES AND INSURERS (COLLECTIVELY, "**BUYER GROUP**") AGAINST ALL CLAIMS AND CAUSES OF ACTION (INCLUDING ALL LEGAL FEES AND OTHER COSTS IN DEFENSE THEREOF OR IN THE ENFORCEMENT OF THIS INDEMNITY), ARISING IN FAVOR OF SELLER, SELLER'S EMPLOYEES, OR ANY THIRD PARTIES, ON ACCOUNT OF BODILY INJURIES, DEATH OR DAMAGE OR LOSS OF PROPERTY IN ANY WAY RESULTING FROM ANY BREACH OF ANY REPRESENTATION OR WARRANTY MADE BY SELLER HEREUNDER AND/OR ARISING FROM OR RELATED TO THIS ORDER OR THE GOODS OR THE SERVICES WHICH ARE THE SUBJECT OF THIS ORDER, WHETHER CAUSED, IN WHOLE OR IN PART, BY THE NEGLIGENCE OF BUYER GROUP OR BY ANY DEFECT OR DEFICIENCY IN BUYER'S PREMISES, OR ANY DEFECT OR DEFICIENCY IN ANY EQUIPMENT OWNED, OPERATED OR CONTROLLED BY BUYER.

**Insurance.** Seller shall maintain all necessary insurance policies including Worker's Compensation Insurance or coverage as prescribed by the Governing Law or as required by Buyer, Employers Liability, Commercial General Liability, including contractual liability and products liability, and Automobile Liability insurance in reasonable amounts covering the obligations of Seller set forth in this Order. Buyer Group shall be protected and included as additional insureds under the aforesaid liability policies to the extent of Seller's indemnity obligations assumed hereunder and Seller shall cause its worker's compensation insurer to waive all rights of subrogation against Buyer Group. Upon request, Seller will provide Buyer a certificate of insurance evidencing that the aforesaid coverages and endorsements are in effect; provided, however, that Buyer shall always remain responsible for maintaining such coverages whether evidence of such insurance is provided or not.

**WAIVER OF CONSEQUENTIAL DAMAGES.** EXCEPT FOR OBLIGATIONS OF INDEMNITY UNDER THIS ORDER, UNDER NO THEORY OF LAW, WHETHER CONTRACT, QUASI-CONTRACT, STRICT LIABILITY, WARRANTY, INDEMNITY, TORT OR FAULT, SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY CONSEQUENTIAL OR INDIRECT DAMAGES INCLUDING, WITHOUT LIMITATION, ANY CLAIM FOR LOSS REVENUE, LOSS OF PROFIT, PUNITIVE DAMAGES, INCIDENTAL OR INDIRECT DAMAGES, LOSS OF USE OF CAPITAL, DISRUPTION OR DELAY DAMAGES. EACH PARTY ACKNOWLEDGES THAT IT HAS READ AND AGREES TO THE FOREGOING WAIVER OF CONSEQUENTIAL DAMAGES WHICH THE PARTIES AGREE CANNOT BE MODIFIED, ALTERED OR SUPERSEDED IN ANY FORM OR MANNER, WHETHER ORALLY OR IN WRITING.

**Governing Law and Forum Selection.** Buyer and Seller agree that if Goods are furnished and/or Services are performed in the United States, "Governing Law" means the laws of the State of Texas and the applicable laws of the United States therein, excluding conflict of law principles, and the parties agree that the venue shall lie exclusively in the United States Courts or the courts of the State of Texas located in Houston, Harris County, Texas. If Goods are furnished and/or Services are provided in Canada, "Governing Law" means the laws of the Province of Alberta and the applicable laws of Canada therein, and the courts of Alberta shall have jurisdiction. The United Nations Convention on Contracts for the International Sale of Goods shall not be applicable to any Goods or Services provided herein. This Order is subject in all respects to the Governing Law. Buyer and Seller irrevocably waive any defense of forum non-conveniens and the right to assert any other challenge to venue, and agrees to be bound by any judgment rendered thereby in connection with this Order. BUYER AND SELLER WAIVE ANY RIGHT TO A TRIAL BY JURY IN CONNECTION WITH ANY SUIT, ACTION OR PROCEEDING ARISING UNDER OR RELATED TO THIS ORDER, THESE TERMS AND ANY GOODS OR SERVICES PROVIDED BY SELLER.

**Waiver.** Failure to enforce any term or condition herein in any specific instance shall not constitute a waiver of such term or condition in another instance. No amendment to or waiver by Buyer of any term or condition shall be effective unless in writing and signed by an authorized representative of Buyer.

**Compliance with Laws.** Seller shall comply with all aspects of the Governing Law and all local laws, executive orders, regulations and rules applicable at the time of performance under this Order. Additionally, Seller shall not take any action in the name of or on behalf of Buyer that would violate any law of any applicable jurisdiction and no provision in this Order shall be interpreted or applied which would require any party to do or refrain from doing any act which would constitute a violation of, or result in a loss of economic benefit under, any anti-boycott or export law. Upon request, Buyer may audit any and all records of Seller and of any subcontractor or agents of Seller relating to the execution and performance of this Order.

**Compliance with Rules and Regulations.** If Seller or Seller's employees, agents or subcontractors enter upon or perform Services on the premises or other property of Buyer or its affiliates, Seller shall ensure compliance with the Rules and Regulations of Buyer, particularly as to Safety Precautions, Fire Hazards and Traffic applicable on the premises or other property of Buyer or its affiliates. Seller shall report to Buyer as soon as practicable all injuries or damages for which Seller is obligated to indemnify Buyer and shall furnish Buyer with all reports in the possession of Seller relating to such injuries or damages.

**Independent Contractor and Statutory Employer:** It is expressly understood and agreed to the extent Seller performs or provides any Services under this Order that Seller is an independent contractor and that neither Seller nor Seller's principals, partners, employees or subcontractors are servants, agents or employees of Buyer. Notwithstanding the foregoing, in all cases where Seller's employees (defined for purposes of this Order to include Seller's direct, borrowed, special or statutory employees) are covered by the Louisiana Workers' Compensation Statute, LSA – R.S. 23:1021 et seq., Buyer and Seller agree that all such Services performed by Seller and its employees pursuant to this Order are an integral part of Buyer to generate Buyer's goods, products and services for purposes of LSA – R.S. 23:1061(A)(1). Furthermore, Buyer and Seller agree that Buyer is the principal or statutory employer of Seller's employees for purposes of LSA – R.S. 23:1063(A)(3). Irrespective of Buyer's status as the statutory or special employer of Seller's employees, Seller shall remain primarily responsible for the payment of Louisiana Workers' Compensation benefits to its employees and shall not be entitled to recover contribution or indemnity for any such payment from Buyer. Seller accepts full and exclusive liability for the payment of all contributions or taxes for social security, pension plans, unemployment insurance, medical benefits, retirement benefits, pensions or annuities, now or hereafter imposed by any government with respect to Seller's employees. If Buyer shall be required by law to pay any of said contributions or taxes, Seller shall forthwith indemnify Buyer with regard thereto.

**Buyer Provided Items.** In the event that Buyer provides any products, supplies, materials, tools, instruments, equipment or other items ("**Buyer Equipment**") in connection with Seller's provision of the Goods or Services, Buyer shall retain title to the Buyer Equipment at all times, and Seller acquires no ownership, title, property, right, equity or interest in the Buyer Equipment whatsoever. Seller shall not remove any plates, tags, or identifying labels from the Buyer Equipment. Seller shall not attach Seller's name, or allow the name of any other person or party to be placed on the Buyer Equipment. Seller shall not move any item of Buyer Equipment from the location approved by Buyer without Buyer's prior written consent. Seller agrees to permit Buyer (through any of its officers, employees, or agents) to access, inspect and remove the Buyer Equipment at any time, in Buyer's sole discretion. Seller shall keep the Buyer Equipment free and clear of all liens, claims or encumbrances. If any lien or encumbrance should attach to the Buyer Equipment, Seller agrees to promptly remove the lien or encumbrance at its sole expense. Seller agrees to not affix or attach any item of Buyer Equipment to real property or any improvements. Each item of Buyer Equipment shall at all times remain personal property and not a fixture under applicable law, even if the item of Buyer Equipment, or any part thereof, may be or becomes affixed or attached to real property or any improvements. Upon Buyer's request, Seller agrees to obtain and provide to Buyer, from each real property landlord, mortgagee, or lienholder for each location where the Buyer Equipment is stored or used, a waiver of any interest that it may have in the Buyer Equipment arising from its interest in the real property. Seller hereby authorizes Buyer to file precautionary UCC financing statements and other similar filings and recordings with respect thereto. Seller agrees not to file any corrective or termination statements or partial releases with respect to any UCCs or other similar filings or recordings filed by Buyer in connection with any item of Buyer Equipment, without Buyer's express written consent. Seller shall bear all risk of loss or damage to the Buyer Equipment from the time of delivery to Seller until the time of return to Buyer. Seller agrees to notify Buyer in writing within three (3) days of any loss or damage to the Buyer Equipment. Seller agrees to defend, indemnify and hold Buyer Group harmless from all claims, losses, liabilities, and expenses arising from Seller's failure to comply with its obligations with respect to Buyer Equipment under this Order.

**Severability and Reformation.** The provisions of this Order are separable and severable. If any provision, item or application of this Order is held to be partially or wholly contrary to law and/or unenforceable, the Order shall be deemed amended to partially or completely modify such provision, item or application thereof to the extent necessary to make it enforceable, or, if necessary, the Order shall be deemed to be amended to delete the invalid or unenforceable provision, item or application thereof.