

# STANDARD TERMS AND CONDITIONS

Last modified - 7/28/2022

**1. CONTRACT.** Unless otherwise stated all sales transactions are expressly subject to these terms and conditions. Modifications or additions will be recognized only if accepted in writing by a principal officer of Carlton Group, Inc. "Company") or his designated representative. Provisions of Buyer's purchase order or other documents that add to or differ from these Terms and Conditions of Sale are EXPRESSLY rejected. No waiver of these Terms and Conditions or acceptance of others shall be construed from failure of Company to raise objections. In the event Buyer enters into a Service Agreement with Company, these Terms and Conditions shall also apply to services provided under that Service Agreement unless otherwise provided in the Service Agreement. In the event of a conflict between the terms of a Service Agreement and these Terms and Conditions, the terms of the Service Agreement shall control.

**2. QUOTATIONS AND PUBLISHED PRICES.** Quotations automatically expire thirty (30) days from the date of issuance unless otherwise stated in the quotation and are subject to withdrawal by notice within that period. Company reserves the right to unilaterally extend such quotation up to six (6) months from the date of issuance. Prices shown on the published price lists and other published literature issued by the Company are not unconditional offers to sell, and are subject to change without notice. The Company's Prices for equipment unless otherwise specified, do not include an allowance for installation and/or final on-site adjustment. Prices shall be subject to adjustment to those in effect at time of shipment.

**3. TAXES.** The Company's prices for products and services do not include any applicable sales, use, excise or similar taxes, and the amount of any such tax which the Company may be required to pay or collect will be added to each invoice unless the Buyer has furnished the Company with a valid tax exemption certificate acceptable to the taxing authorities. Where a Buyer fails to furnish the required documentation, the previously unpaid sales, use, excise, or similar tax will be billed to the Buyer. If an exemption certificate provided to the Company by Buyer is, through no fault of the Company, determined to be invalid as a result of a subsequent sales, use, excise, or similar tax audit, the Company will attempt to acquire a valid exemption certificate, notarized affidavit of exempt use or other necessary documentation from Buyer. If Buyer fails to timely furnish a valid exemption certificate, notarized affidavit or other necessary documentation, the previously unpaid sales, use or similar excise tax will be billed to Buyer.

**4. TERMS OF PAYMENT.** Except as otherwise provided herein or as provided in a Service Agreement between Customer and Buyer, cash payment in full shall be made within 30 days from date of invoice. Amounts past due, including amounts owed pursuant to a Service Agreement, are subject to a service charge of 1.5% per month (or fraction thereof) of maximum contract rate permitted by law. If the Company deems that, by reason of the financial condition of the Buyer or otherwise, the continuance of production or shipment on the terms specified herein is not justified, the Company may require full or partial payment(s) in advance. On orders of twenty thousand dollars (\$20,000) or more, the standard method of payment will be Progressive Payments. The Progressive Payments schedule will be as follows unless otherwise noted:

Progressive Invoice	Orders (Equipment and Installation)	Orders (Equipment Only)
Quote Approved / Order Placed	25% (Net Due Terms)	25% (Net Due Terms)
Delivery of Equipment	50% (Net 30 Terms)	75% (Net 30 Terms)
Installation Completed	25% (Net 30 Terms) <sup>1</sup>	N/A

All purchases made via a credit card may be subject to a processing surcharge. For all purchases made using a credit card issued by Visa or Mastercard, Company shall add, and Buyer agrees to pay, a three percent (3%) surcharge to all purchases in excess of five thousand dollars (\$5,000.00). For all purchases made using a credit card issued by American Express, Company shall add, and Buyer agrees to pay, a five percent (5%) surcharge to all purchases, regardless of purchase amount.

**5. DELIVERY.** Delivery dates indicated in the contract documents are approximate and are based on prompt receipt of all necessary information regarding the equipment covered by the contract. The Company will use reasonable efforts to meet the indicated delivery date, but cannot be held responsible for its failure to do so. In the event of any delay in delivery caused by the Buyer, the Company will store and handle all items ordered at the Buyer's risk and will invoice the Buyer for the unpaid portion of the contract price, plus storage, insurance and handling costs, on or after the date on which the equipment is ready for delivery, payable in full within 15 days from invoice date. Title to the equipment and risk of loss shall pass to Buyer upon delivery to a carrier.

**6. SHIPPING CHARGES.** Shipments are normally F.O.B. point of shipment. In this case, freight will be prepaid and billed as a separate item on the equipment invoice based on the charge listed by the carrier engaged to transfer the shipment from the point of manufacture to Buyer's destination.

**7. MODIFICATIONS.** Buyer may, with express written consent of the Company, make changes in the specifications for equipment or work covered by the contract. In such event the contract price and delivery dates shall be equitably adjusted. The Company shall be entitled to

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<sup>1</sup> In the event the installation portion of any order is delayed by thirty (30) days or more from the order date for any reason other than delay caused solely by Company, Company reserves the right to immediately bill Buyer the balance of the order less reasonable costs of installation which shall be finally billed after installation is completed.

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payment for reasonable profit plus costs and expenses incurred by it for work and materials tendered unnecessarily as a result of such changes and for work and materials required to effect said changes.

**8. CANCELLATION.** Undelivered parts of any order may be cancelled by the Buyer only with the written approval of the Company. If the Buyer makes an assignment for the benefit of creditors, or in the event that the Company for any reason feels insecure about the Buyer's willingness or ability to perform, then Company shall have the unconditional right to cancel this sales transaction. In the event of any cancellation of this order by either party, the Buyer shall pay to the Company the reasonable costs and expenses (including engineering expenses and all commitments to its suppliers and subcontractors) incurred by the Company prior to receipt of notice of such cancellations, plus the Company's usual rate of profit for similar work. The minimum cancellation charge will be 15% of the contract price.

**9. ADDITIONAL MATERIALS AND EQUIPMENT.** Unless otherwise stated, the Company's prices for equipment do not include planking, concrete, steel plate or other platform topping material, weigh-bridges, or other structural steel, hoppers, tanks, weigh cans, conveyors, conveyor sections, other attachments or accessories, wiring to the scale, or any material or equipment other than the scale itself, unless the Company's acceptance specifically so states.

**10. PITS AND FOUNDATIONS.** Unless the Company's acceptance expressly includes the furnishing of scale pits or foundations, the Company's responsibility for such pits or foundations is limited to supplying correct drawings. Such drawings illustrate and describe pits or foundations for normal site conditions.

**11. SECURITY INTEREST.** Buyer agrees to pay for the equipment according to the Company's payment terms and does hereby grant a purchase money security interest in the equipment until such time as it is fully paid. Buyer will assist Company in taking the necessary action to perfect Company's security interest. In the event of a default by Buyer, the Company shall be entitled to any of the rights and remedies provided by law.

**12. DEFAULT.** Upon default and placing this instrument with an attorney for collection or repossession of equipment, Buyer agrees to reimburse reasonable attorney's fees and court costs incurred by the Company in connection therewith.

**13. WARRANTIES. COMPANY EXPRESSLY WARRANTS THE EQUIPMENT FURNISHED BY IT AS SET FORTH HEREIN. COMPANY DISCLAIMS ALL OTHER WARRANTIES EITHER EXPRESS OR IMPLIED (INCLUDING WITHOUT LIMITATION WARRANTIES AS TO MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE). THESE WARRANTIES MAY BE TRANSFERRED TO A SUBSEQUENT PURCHASER OF THE EQUIPMENT ONLY WITH THE PRIOR WRITTEN CONSENT OF COMPANY. IN ADDITION, THE FOLLOWING SHALL CONSTITUTE THE SOLE AND EXCLUSIVE REMEDIES OF BUYER FOR ANY BREACH BY COMPANY OF ITS WARRANTIES HEREUNDER.**

**A. STANDARD INDUSTRIAL PRODUCT.** The Company warrants that equipment furnished by the Company will be free from defects for a period of one year from date of installation or 18 months from date of shipment to the Buyer, whichever occurs first, and free from defects in workmanship for a period of ninety (90) days from installation unless the warranty provided to Company by the manufacturer is for a shorter duration, in which case the Company warranty shall be for the duration of the warranty provided to Company by the manufacturer. These limited warranties are subject to the limitations herein set forth. Should any such defects be found and reported during the above-mentioned warranty period, the Company will, at its option, refund the purchase price or correct such defects, furnishing replacement parts and service free of charge to the Buyer. Certain equipment, parts and components sold by the Company will be warranted as to defects in materials and workmanship consistent with the warranty policy of the original manufacturer of the equipment, parts or components. This provision shall only apply to equipment, parts and components manufactured by original manufacturers advertised by the Company as vendors at the time of purchase from the Company. Such warranties, if any, may vary from vendor to vendor. In no event shall the Company warrant equipment, parts or components manufactured by another company to a greater degree or extent than the equipment, parts or components were warranted to the Company. Copies of any warranties may be obtained from the Company sales office.

**B. ENGINEERED SYSTEM.** The Company warrants that for a period of one (1) year from the date of shipment to the Buyer the Engineered System covered by this warranty will perform in accordance with the specifications if final adjustments and start-up operations are approved by qualified Company personnel. The Company does not warrant that the Engineered System covered by this warranty will perform in accordance with specifications to the extent that equipment forming a part of the Engineered System is not supplied by or approved for incorporation into the Engineered System by the Company. The Company will correct during the warranty period any deficiency in meeting specifications. If, after reasonable effort, the Company cannot correct said deficiencies, the Company will make an equitable price adjustment based on the performance actually provided, not to exceed the purchase price. The Company further warrants that equipment, parts and components supplied by it and forming a part of the Engineered System covered by this warranty will be treated as described in paragraph A. above. For purposes of this warranty, start-up will have been deemed to be completed when either the Engineered System is partially or completely put into use or when the Company has met the specification, whichever is sooner.

**C. SOFTWARE/LICENSE.** The Company warrants that Company developed software will perform substantially the functions described in the software documentation when properly installed. Company does not warrant that the software is error-free, that

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Buyer will be able to operate the software without interruption, or that the software will be free of vulnerability to intrusion or attack. The warranty period shall be the same as the warranty period for the Company equipment with which the software is supplied. If the software does not perform substantially the functions described in the software documentation when properly installed, and if the Buyer promptly notifies the Company and provides like description of the error and complete information about the manner of its discovery, the Company shall thereupon correct any defect or error (at its option): (a) by modifying or making available to the Buyer instructions for modifying any erroneous program, or (b) by making available at the Company's Plant necessary corrected or replacement programs. The foregoing warranty shall not apply to effects resulting from: (1) unauthorized modification, or (2) Buyer-supplied software or interfacing. If Buyer elects not to enter into a software maintenance agreement with Company, Buyer agrees that any modification, update or other change to the software will be governed by Company's standard hourly rates.

**D. REPAIRED PRODUCTS WARRANTY.** On repaired equipment the warranty shall be so noted at time of repair as determined by the type of repair required, however, it shall only apply to parts repaired or replaced by the Company. No separate warranty shall apply to repaired equipment as a whole or to parts not repaired or replaced by the Company.

**E. SPECIAL.** The foregoing warranties do not apply to all equipment sold by the Company. In certain cases the warranty period is less than or more than one year or provides for a payment of money or replacement to the Buyer based on the age or extent or usage of the equipment in lieu of repair or replacement by the Company. It is Buyer's responsibility to inquire as to whether purchased equipment and/or software is subject to the foregoing warranties.

**F. GENERAL.** The foregoing warranties are further subject to the following general conditions:

1. If the Buyer requests the performance of warranty work provided for under the foregoing warranties during other than normal Company working hours, the Buyer agrees to pay for all premium time.
2. If the Buyer requests the performance of warranty work outside of the contiguous United States, the Buyer agrees to pay for the travel time, living and travel expenses of any Company personnel required to perform such warranty work.
3. These warranties shall not apply where the equipment has been subjected to accident, alteration, misuse, abuse, unauthorized repairs, acts of God or failure on the part of the Buyer to ensure proper storage, installation, operation and maintenance of the equipment.
4. Company does not warrant (1) the calibration of any scale, scale equipment, or measurement device, or (2) the inspection of any crane or hoisting system.
5. In the event equipment and/or software is inspected by the Company, Company's act of inspection shall not be construed to be a guarantee of equipment performance or that the equipment meets the needs or requirements of Buyer.
6. Products of other manufacturers sold by Company as such are warranted by Company solely to the extent of any remaining warranty provided by the original manufacturer.
7. If Buyer requests a change to the scope of the original scope of work, Company, within its sole discretion, can decline to accept the change order. If Company does accept the requested change order, Company can, in its sole discretion, limit its warranty to the original scope of work. Any change order must be in writing and signed by the Company and the Buyer.
8. In the event equipment and/or software is repaired by the Company, the performance of such repair work will not extend existing nor generate new warranty coverage for the equipment and/or software as a whole or for those parts not repaired or replaced by Company.
9. Consumables, accessories, normal wear and tear, wear parts and perishables are expressly excluded from the foregoing warranties.

**G. ADDITIONAL WARRANTIES.** In its sole discretion, the Company may from time to time offer additional warranties for sale to Buyer. Any such additional warranty shall represent an amendment to these Standard Terms and Conditions only if agreed to in writing by both the Company and Buyer, but shall not supersede all or any other relevant terms and conditions contained in these Standard Terms and Conditions unless stated expressly in such amendment.

**14. INTELLECTUAL PROPERTY.** The sale and delivery of Company's equipment and/or software to Buyer will in no way transfer to Buyer any right of ownership in any patents, copyrights, trademarks, technologies, designs, specifications, drawings, trade secrets, or other intellectual property incorporated into the equipment and/or software. Certain programs provided by the Company are copyrighted. Buyer is granted a limited license to make copies of such programs for use only with the system for which such programs were acquired. This limited license is transferrable to subsequent purchasers upon written consent of the Company. Other programs supplied by the Company are trade secrets, and if so, are marked confidential. Buyer agrees to use its reasonable efforts to maintain such programs confidential and to not disclose such programs to third parties after receipt unless such programs enter the public domain through no fault of the Buyer. Buyer agrees to use those programs marked confidential only with the system for which they were acquired.

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The provision of Company's safety training and technical matter delivered to Buyer whether electronically or in the form of onsite classroom training will in no way transfer to Buyer any right of ownership in any patents, copyrights, trademarks, trade secrets, or other intellectual property incorporated into such safety training and technical matter. Safety training and technical matter provided by Company to Buyer shall not be used outside of Company provided training without the express consent of Company. Buyer agrees that any ongoing training using Company's safety training and technical matter shall be provided by Company or with Company's written consent.

**15. INSURANCE.** The Company is insured at all its locations where it undertakes business operations with coverage and limits it feels necessary to conduct business in a prudent manner. The Company will furnish its standard insurance certificate incorporating this coverage upon request for a fee not to exceed the amount charged Company for providing such certificates.

**16. REGULATORY LAWS/STANDARDS.** The performance of the parties hereto is subject to the laws of the United States. The Company takes reasonable steps to keep its products in conformity with various nationally recognized standards and such regulations which may affect its products; however, the Company recognizes that its products are utilized in many regulated applications and that, from time to time, standards and regulations are in conflict with each other. The Company makes no promise or representation that its product will conform to any federal, state or local laws, ordinances, regulations, codes or standards, except as particularly specified and agreed upon for compliance in writing as a part of the contract between Buyer and the Company. The Company's prices do not include the cost of any related inspections or permits or inspection fees.

**17. ADDITIONAL RENTAL AND LEASE TERMS.** In the event Buyer elects to rent Company equipment or accept loaned equipment from the Company, Buyer's responsibilities and obligations concerning Company's leased or loaned equipment during the term of Buyer's lease or loan arrangement with Company are outlined on Company's lease or loan documentation to be provided to Buyer. Such lease or loan documentation shall be an addendum to, and not a replacement of, these terms and conditions and are specifically incorporated by reference as if set forth fully herein.. If Company's leased or loaned equipment is damaged while in possession of Buyer, Buyer shall be fully responsible for the cost of repair to Company's leased or loaned equipment, up to the entire value of Company's leased or loaned equipment. If Company's leased or loaned equipment is lost or stolen while in possession of Buyer, Buyer shall be fully responsible for the full value of Company's leased or loaned equipment and agrees to fully compensate Company for such loss or theft. In the event of damage, loss, or theft to Company's leased or loaned equipment, Company reserves the right, in its sole discretion, to terminate the lease or loan arrangement with Buyer. Termination of any such lease or loan arrangement shall not alleviate Buyer of its obligations to fully compensate Company for any such damage, loss, or theft as outlined above.

**18. DISCLAIMER OF DAMAGES. IN NO EVENT SHALL COMPANY BE LIABLE FOR ANY TYPE OF SPECIAL, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES WHETHER SUCH DAMAGES ARISE OUT OF OR ARE A RESULT OF BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE.** Such damages shall include, but not be limited to, loss of profits or revenues, loss of use of the equipment or associated equipment, cost of substitute equipment, facilities, down time costs, increased construction costs or claims of Buyer's customers or contractors for such damages. Buyer agrees that in the event of a transfer, assignment, or lease of the equipment sold hereunder that Buyer shall secure for the Company the protections afforded to the Company in this paragraph.

**19. LIMITATION OF LIABILITY.** The Company shall not be liable for any loss, claim, expense or other damage caused by, contributed to by or arising out of the acts or omissions of Buyer or third parties, whether negligent or otherwise. In no event shall the Company's liability for any cause of action whatsoever exceed the cost of the item giving rise to the claim, whether based in contract, warranty, indemnity, or tort (including negligence). Any suit arising hereunder must be commenced within one (1) year from the date the cause of action accrues. Except as otherwise noted, the Company shall not indemnify any party.

**20. GRATUITOUS INFORMATION OR ASSISTANCE.** If Company provides Buyer with assistance or advice which concerns any part/products/service supplied hereunder or any system or equipment in which any such part/product/service may be installed and which is not required pursuant hereto, the furnishing of such assistance or advice shall not subject Company to any liability, whether based in contract, warranty, tort (including negligence) or otherwise.

**21. FORCE MAJEURE.** The inability of Company to fulfill its obligations required under these terms and conditions resulting from defaults or delays caused by conditions beyond Company's reasonable control including, but not limited to strikes, insurrection, acts of God, war, terrorist activities, emergencies, public health emergencies, declared epidemic or pandemic, shortages or unavailability of materials, weather, change in law or other similar causes, will extend the period for the performance of the obligations for the period equal to the period(s) of any such delay(s) and Buyer will not have the right to terminate; provided that Company will continue to perform to the extent feasible in view of such force majeure.

**22. EXPORT CONTROL.** Buyer acknowledges that the equipment may include technologies and software that are subject to export control regulations in Europe or the United States of America or countries in which the equipment is delivered or used. The buyer is solely responsible for adherence to these restrictions in case the Buyer exports or re-exports the equipment and the Buyer agrees to indemnify and hold Company harmless from, or in connection with, any violation of such export restrictions by Buyer, or its employees, consultants, agents, or customers.

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**23. INTERPRETATION.** Should any term or provision contained in the contract contravene or be invalid under applicable law, the contract shall not fail by reason thereof but shall be construed in the manner as if such term or provision had not appeared therein.

**24. RETURNS.** Items returned for Buyer's convenience (and not for product or part failure or warranty issues) will be subject to a twenty-five percent (25%) restocking fee, minimum \$200. Company must be contacted for a Return Authorization number (RAN) within 21 days of shipment (for a customer) or thirty (30) days of shipment (for a dealer/distributor) from Company to be eligible for return credit. Buyer must return items within ten (10) days of receiving a RAN. Item must be in new and unused condition, packaged in original packaging and container, and include all manuals, peripherals and accessories.

**25. SURCHARGE.** Company's pricing shall be subject to certain additional surcharges at Company's sole discretion. Such surcharges may be required to partially offset the increase in costs of certain raw materials and other commodities including, but not limited to, fuel and steel. Applicable surcharges will appear on invoices issued by Company to Buyer and shall be due and payable in accordance with the invoice terms. Company shall periodically update any applicable surcharges based upon reported pricing in the respective industry.

**26. GOVERNING LAW AND PLACE OF JURISDICTION.** The legal relationship between Buyer and Company shall be governed by the laws of the State of North Carolina. Exclusive place of jurisdiction shall be Guilford County, North Carolina. Company, however, reserves the right to initiate court proceedings against the Buyer at any other court of competent jurisdiction.

**27. DISPUTE RESOLUTION.** In the event that any dispute or claim arising out of, or in connection with these Terms and Conditions, any Service Agreement, or any dispute or claim between Company and Buyer that does not directly arise out of and relate to these Terms and Conditions or any Service Agreement but exists because of the relationship created between Buyer and Company related to these Terms and Conditions or any Service Agreement, whether in contract, tort, statutory, or other law, for all claims of any type, including intentional torts and statutory claims as well as claims concerning the Work, quality of work, completion of work, or the enforcement of this Agreement, (hereafter, "Dispute") arises such Dispute shall be finally settled by litigation in the State and Federal Courts located in Guilford County, North Carolina, or, at Company's sole election, by binding arbitration in the exclusive venue of Greensboro, North Carolina, in accordance with the then-current rules and procedures of the American Arbitration Association (the "AAA") by one (1) arbitrator appointed by the AAA. Arbitration under this section shall be subject to the Federal Arbitration Act. The arbitrator shall apply the law of the State of North Carolina, without reference to rules of conflict of laws the merits of any dispute or claim. Should there be disagreement between Buyer and Company as to the application of this binding arbitration clause to a Dispute, the arbitrator(s) appointed by AAA shall decide if the issue should be resolved by the arbitrator(s) who has/have the full power to determine the scope of this clause. In all arbitrations pursuant to this section, the Parties shall have the right to reasonable discovery, the scope of which shall be determined in the discretion of the arbitrator. Any decision and award by the arbitrator shall be final and binding and judgment may be entered thereon by any court of competent jurisdiction.

**28. INDEMNITY.** Buyer shall defend, indemnify and hold harmless Company, including its officers, directors, employees, agents, and assigns, from and against any and all claims, suits, liabilities, expenses, attorney's fees or damages (collectively "Claims") respecting property, including loss of use thereof, injuries to persons, including death, and from any other Claims on account of acts or omissions of Buyer arising from or relating to Buyer's use, operation, or maintenance of equipment provided by Company, or any of its subcontractors, suppliers, officers, agents, employees or servants to the extent caused by the negligent acts of such party. Buyer's obligation hereunder shall not be limited by the provisions of any workers' compensation act or similar statute.

## **29. SERVICE AGREEMENT SPECIFIC TERMS**

In the event Buyer enters into a Service Agreement with Company, in addition to the foregoing Terms and Conditions contained herein, the following terms shall apply.

- A. PRIORITIZED SCHEDULING.** If a Service Agreement contains a component for Prioritized Scheduling, Company agrees that, should Buyer have a need to schedule Company to visit Buyer's site, Company will prioritize the scheduling of Buyer's visit and place Buyer's request at the top of Company's scheduling queue in order to support the target date visit date requested by Customer. Company shall not be in breach of this provision if Buyer is unable to receive Company's representative on the date requested by Customer. Should Buyer need to reschedule Company after Company schedules a visit in response to a Buyer request, Company will reschedule its visit, to the greatest extent possible, to a new Buyer target date and time. In the event of a breach by Company of its obligations related to Priority Scheduling, Company shall not charge Buyer for labor associated with the single visit to Buyer's site that is the subject of the breach—with such labor credit being Buyer's sole remedy against Company for any breach of Company's obligations related to a Priority Scheduling component. In the event Company's breach relates to a multi-day visit to Buyer's site, the aforementioned labor credit shall only apply to the first day of Company's visit and will apply to any subsequent days.
- B. GUARANTEED RESPONSE TIMES.** If a Service Agreement contains a component for Guaranteed Response Times, Company agrees that it shall respond to a service request from Buyer within the time period agreed to in the Service Agreement. For purposes of this component, a response to a service request shall be construed to mean only the initial visit by Company in response to Buyer's request. Any subsequent visits necessitated by Buyer's request, either in the same day or subsequent days, shall not be subject to any response time guarantee. Company's obligations for Guaranteed Response Times are limited to Company arriving at Buyer's site in the agreed upon time period regardless of the actual time it takes Company to address Buyer's request. In the event Company fails to

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arrive at Buyer's site within the agreed upon time period, Company shall not charge Buyer for labor associated with the first visit to Buyer's site that is the subject of the response time failure—with such labor credit being Buyer's sole remedy against Company for any breach of Company's obligations related to a Guaranteed Response Time component. In the event Company's breach relates to a multi-day visit to Buyer's site, the aforementioned labor credit shall only apply to the first day of Company's visit and will apply to any subsequent days.

- C. SPARE PART GUARANTEES.** If a Service Agreement contains a component for Guaranteed Spare Parts, Company agrees that it will hold in inventory only those parts specifically delineated in the Service Agreement. For the avoidance of doubt, the Guaranteed Spare Parts component shall only apply to those parts specifically listed in the Service Agreement and shall not apply to any parts not listed therein. Only new Mettler Toledo equipment purchased by Buyer from Company is eligible under a Guaranteed Spare Parts plan. Guaranteed Spare Parts shall not apply to any customized equipment or any parts Company, in its sole discretion, deems non-standard. It is Buyer's obligation to inquire as to whether equipment or parts in its possession fall outside the scope of Guaranteed Spare Parts plans. In the event Company fails to keep in inventory any part covered by a Guaranteed Spare Parts plan, Company shall not charge Buyer for labor associated with the installation of the part that Company failed to maintain in inventory—with such labor credit being Buyer's sole remedy against Company for any breach of Company's obligations related to a Guaranteed Spare Parts component.
- D. PRICING.** The prices in any Service Agreement shall remain constant for the then current term of the Service Agreement. Company reserves the right to adjust prices for any Service Agreement offerings at the time of renewal of the Service Agreement term.
- E. BUYER'S DEFAULT.** Each of the following events shall constitute a Buyer event of default ("Buyer Default") under a Service Agreement and shall be considered a material breach of a Service Agreement, and shall allow a party, as applicable, to seek the remedies under these Terms and Conditions:

  - a. Buyer's failure to timely pay any amount due to Company in accordance with a Service Agreement which is not cured within thirty (30) days following written notice of said failure;
  - b. A material breach of any representation or warranty under this Agreement by Buyer, provided that such failure is not cured within the time frames, if any, set forth in this Agreement or within thirty (30) days of receipt of written notice of said breach if no specific time to cure is specified;
  - c. Failure of Buyer to timely observe or perform any other material covenant, agreement, obligation, term or condition required to be observed or performed under this Agreement which is not cured within thirty (30) days following receipt of written notice of such failure, except if a specific date for performance is expressly stated in this Agreement or otherwise, which date shall be strictly enforced and shall not be subject to cure;
  - d. The institution by or against Buyer of bankruptcy, receivership, insolvency, reorganization or other similar proceedings under any section or chapter of the United States Bankruptcy Code, as amended, or under any similar laws or statutes of the United States or any state thereof, or any other applicable country or province, if such proceedings have not been dismissed or discharged within thirty (30) days.

Upon the occurrence of a Buyer Default, Company shall have the following remedies: (1) Terminate any Service Agreement, and (2) Company may recover actual amounts owed by Buyer to Company accruing on or before the date of termination, in addition to any reasonable attorneys' fees and litigation/arbitration costs.

- F. INDEMNITY.** Buyer shall defend, indemnify and hold harmless Company, including its officers, directors, employees, agents, and assigns, from and against any and all claims, suits, liabilities, expenses, attorney's fees or damages (collectively "Claims") respecting property, including loss of use thereof, injuries to persons, including death, and from any other Claims on account of acts or omissions of Buyer under any Service Agreement, or any of its subcontractors, suppliers, officers, agents, employees or servants to the extent caused by the negligent acts of such party. Buyer's obligation hereunder shall not be limited by the provisions of any workers' compensation act or similar statute.
- G. MODIFICATION.** A Service Agreement may not be modified orally, but only in writing by agreement of Buyer and Company.
- H. TERM AND TERMINATION.** A Service Agreement shall remain in effect for the term outlined in the Service Agreement, and shall automatically renew for successive terms unless Buyer provides Company with written notice of cancellation at least 30 days in advance of the expiration of the then current term.
- I. ASSIGNMENT.** Buyer shall not assign its rights under any Service Agreement with Company without Company's prior written consent.