

Appendix D: Terms and Conditions

PROCESS TECHNOLOGY INTERNATIONAL, INC. **STANDARD TERMS AND CONDITIONS**

1. **Scope and Application** These standard terms and conditions are a part of any agreement between PROCESS TECHNOLOGY INTERNATIONAL, INC. ("PTI") and any person, corporation, or other entity which orders or purchases products or services from PTI (such person, corporation, or other entity being hereinafter referred to as a "Purchaser" and any agreement being hereinafter referred to as an "Agreement"). The terms of the Agreement are the terms set forth in the initial letter or other document describing the proposal (such letter proposal or other document being hereinafter referred to as the "Letter Proposal"), any technical specifications or statement of work referenced in the Letter Proposal, any special terms and conditions referenced in the Letter Proposal, and these standard terms and conditions. The Letter Proposal, any technical specifications or statement of work, any special terms and conditions, and the standard terms and conditions shall hereinafter be referred to together as the "Agreement Documents".

2. **Conflicts** In the event of any conflict between or among the Agreement Documents, each document listed below shall control over each document listed after that document:

- (a) the Letter Proposal,
- (b) the technical specifications or statement of work (if any),
- (c) the special terms and conditions (if any),
- (d) these standard terms and conditions.

The terms and conditions of the Agreement Documents control and are not be modified or affected by the terms of any acceptance by the Purchaser.

3. **Acceptance** The earlier to occur of the following events shall be deemed to constitute acceptance of the products and work by the Purchaser for all purposes of the Agreement including final billing, final payment, release of any retention, the start of any warranty period, and the Purchaser's responsibilities relating to maintenance:

- (a) The date of first use by the Purchaser or for the benefit of the Purchaser,
- (b) The date of start-up,
- (c) Thirty (30) days after PTI has delivered the product(s) to the place that PTI is required to deliver the product(s) hereunder,
- (d) Thirty (30) days after PTI has completed any work that PTI is required to complete hereunder, or
- (e) Three (3) months after PTI's work to develop or produce the product has stopped for reasons beyond PTI's control.

4. **Taxes, Duties** Unless specifically set out, Agreement prices are exclusive of any duties or any Use, Sales, Excise, Value Added or other tax, whether Federal, State or Local, which have been or may be imposed with respect to the sale of products or services hereunder. Purchaser shall pay such duty or tax.

5. **Notice and Correction of Deficiencies** In the event the Purchaser believes that any product, including materials or equipment, delivered hereunder is insufficient, defective, or deficient (any such problems being hereinafter referred to together as a "Deficiency"), prior to acceptance of the delivery, Purchaser shall do the following:

- (a) Purchaser shall notify PTI of such Deficiency in writing by facsimile machine or email with an original or a copy also sent by next business day courier as provided in "22." The notice shall describe the Deficiency with reasonable detail.
- (b) PTI, or any of the suppliers of PTI involved, shall be given the opportunity to inspect the product and correct any Deficiency.

PTI shall either correct the Deficiency or (upon agreeing on a price for correction with the Purchaser) authorize the Purchaser to correct the Deficiency and deduct the cost of correction from the purchase price. Any such authorization must be in writing and sent as provided for in "22." No back charge claims will be honored or allowed without proof that the above procedure has been followed and that proper authorization has been given by PTI to correct such Deficiency.

6. **Shipping, Shipping Instructions, Notice of Shipment, and Risk of Loss**

6.1 PTI, where possible, will give seven (7) days notice of when each shipment will be made from PTI's or its Supplier's plant. Each shipping notice shall specify the mode of each shipment, the shipping weights and sizes, and a description of each item shipped.

6.2 All shipments will be clearly marked by PTI or PTI's Supplier, as the case may be, with the Purchaser's purchase order number.

6.3 Shipment will be F.O.B. PTI or PTI's Supplier's plant for the account of the Purchaser.

6.4 Purchaser is responsible for, and assumes all risk of loss or damage to, products, from any cause, upon, during and after shipment by Seller.

7. **Permits** Permits and their costs, if required, will be the responsibility of the Purchaser. This specifically includes, but is not limited to, building and operating permits.

8. **Termination of Order** Purchaser may terminate an order for products or services hereunder or any part thereof prior to delivery of the products and/or completion of the services provided such termination shall not become effective until 30 days after receipt of written notice by PTI. Such termination must be made in writing and sent as provided for in "22" and must set forth the extent of said termination. PTI shall take such actions as are reasonable to terminate its production in accordance with the termination notice and shall continue its performance of that portion of the Agreement, if any, which has not been terminated by the termination, notice.

In the event of termination by Purchaser under this Section, prior to shipment of all components or providing of all services, Purchaser must pay to PTI the costs incurred by PTI as of the effective date of termination in the performance of said terminated order or portion thereof, plus twenty (20%) percent of said costs as profit, based upon the actual costs incurred by PTI, plus all costs subsequent to termination resulting from said termination, including but not limited to all legal, collection, storage, disposal and other fees resulting therefrom. Notwithstanding anything to the contrary, termination by Purchaser under this Section shall result in payment by Purchaser to PTI of a profit of at least ten (10%) percent of the total Agreement price.

The above-prescribed liquidated damages shall be in lieu of any other damages for such early termination. The parties agree that the exact amount of the actual damages that PTI would sustain as a result of such early termination would be difficult or impossible to determine or establish. For that reason, the parties have pre-determined the amount of damages recoverable in the event of such early termination. The parties acknowledge and agree that the liquidated amounts set forth above are a reasonable pre-estimate of what the damages would be in the event of such an early termination. The parties further agree that the liquidated damages set forth hereinabove are the amounts recoverable for any such early termination and are in lieu of any recovery of other compensatory damages for any such early termination.

9. **Default** If PTI or Purchaser fails or refuses to abide by and perform the terms and provisions of this Agreement, either by act or omission, upon thirty (30) days notice, in writing, describing the default, either party may declare this Agreement breached unless within said period of thirty (30) days the other party shall have cured any such default (except that if such default involves failure to pay an obligation in a timely manner the cure period shall be ten (10) days and, if the default is other than a failure to pay and if such default cannot reasonably be cured within thirty (30) days, provided such defaulting party initiates whatever actions are necessary to cure such default within such thirty (30) day period and diligently acts to cure such default thereafter, until such default is cured). A waiver upon the part of PTI or Purchaser as to any particular item of default shall not be construed in any way as to be a waiver of similar or other

defaults. In the event this Agreement is breached by PTI as herein provided then Purchaser may, itself, take over the work of PTI, or contract for the performance thereof, and in either event, Purchaser shall forthwith release to PTI all retainages withheld from previous progress payments.

10. **Insurance and Allocation of Risks** Purchaser shall be responsible for assuring that any equipment purchased from PTI is operated in accordance with the instructions provided by PTI or PTI's Supplier.

Purchaser shall maintain "All Risk" insurance coverage on all products, equipment and materials that PTI or PTI's subcontractors sell to Purchaser or that is being used in connection with the installation of any such products from the time any such products, equipment, or materials are delivered to Purchaser.

Purchaser will obtain and maintain at Purchaser's own expense "all risk" shipping insurance to cover the purchase price of products, including equipment, in transit to Purchaser's plant or site.

11. **Force Majeure** Any delays in or failure of performance by either party under this Agreement will not constitute a default or give rise to any claims for damages or penalties if the delay or failure is directly caused by occurrences beyond the control of the party who would otherwise be in default. Such occurrences would include, but not be limited to, acts of God, acts of governmental authorities, strikes, labor disputes, riots, rebellion, war, sabotage, fires, floods, explosions and inability to procure, after diligent efforts, materials or labor. In the event of any such delay, the date of performance shall be extended for a period equal to the time lost by reason of the delay. This clause shall not be interpreted to prevent Purchaser's termination of an order, or portion thereof, in accordance with provisions hereinabove set forth under "Termination of Order."

12. **Limited Warranty** PTI warrants that the products and materials sold to Purchaser will be free from defects upon delivery and shall operate in accordance with the descriptions set forth in the Agreement Documents for a period of one (1) year after acceptance of the products provided that the products are properly installed in accordance with instructions provided by PTI or PTI's supplier and are operated in accordance with operating instructions and parameters provided by PTI or PTI's supplier. Continuous records of operating conditions, e.g., temperature, pressure and flows for the period of the warranty, must be presented by Purchaser to PTI in connection with any claim. If any product, including equipment, sold by PTI to Purchaser hereunder fails to operate properly under the above conditions, and written notice thereof is given to PTI no later than fifteen (15) days after such observation and within one year of acceptance, PTI, reserving the right to either inspect such defective equipment at Purchaser's installation site or request its return to PTI, or PTI's supplier, will, at its option, repair or replace or give Purchaser proper and equitable credit for the purchase price for such equipment determined by PTI to be defective, provided that the equipment shall not have been altered or improperly repaired after shipment to Purchaser. Purchaser shall have no right to hold money for such defects from any monies owed PTI. Notwithstanding the above, equipment manufactured by others, but furnished by PTI, is limited to the original manufacturer's warranty. Title to all equipment that has been replaced or for which total or partial credit has been extended, shall thereafter vest in PTI.

IT IS EXPRESSLY AGREED THAT NO WARRANTY OF MERCHANTABILITY NOR ANY OTHER WARRANTY EXPRESSED OR IMPLIED IS MADE BY PTI HEREUNDER EXCEPT THE LIMITED WARRANTY EXPRESSLY STATED IN THIS SECTION 12.0. IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE HEREBY EXCLUDED. PTI WILL IN NO EVENT BE LIABLE FOR ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES WHATSOEVER. THE FOREGOING SETS FORTH PTI'S ENTIRE AND EXCLUSIVE LIABILITY AND PURCHASER'S EXCLUSIVE AND SOLE REMEDY FOR ANY CLAIM OR DAMAGE IN CONNECTION WITH THE SALE OF PRODUCTS, INCLUDING EQUIPMENT, HEREUNDER.

13. **Patent Warranty** PTI represents and warrants that the use or operation of any products supplied by PTI as recommended or approved by PTI will not infringe any U.S. Patent. This warranty does not apply to infringement resulting from the use of PTI's products with other equipment not furnished, recommended or approved by PTI or resulting from modifications not provided, recommended or

approved by PTI. PTI's liability for any loss arising from the inability to use or operate any products by reason of any U.S. patent infringement shall be limited to the lesser of (a) the cost of purchasing the right to use and operate the product, (b) the cost of replacing or altering the product so that it will not be infringing and will still meet the performance requirements or (c) the sale price of the product. As a condition of the enforceability of this representation and warranty, Purchaser agrees to notify PTI of any claim of infringement within a reasonable time after receiving notice of any claim.

14. **Limitation on Liability.** THE PURCHASER'S EXCLUSIVE REMEDY FOR CLAIMS ARISING UNDER THIS AGREEMENT SHALL BE THE REMEDIES PROVIDED FOR ANY SUCH CLAIMS IF SUCH REMEDIES ARE PROVIDED, AND OTHERWISE FOR ACTUAL DAMAGES. PTI'S LIABILITY FOR ALL LOSSES AND DAMAGES, WHETHER ON ACCOUNT OF NEGLIGENCE, BREACH OF WARRANTY OR OTHERWISE, SHALL IN NO EVENT EXCEED THE PRICE OF THE PARTICULAR PRODUCT OR SERVICE WITH RESPECT TO WHICH SUCH LOSSES OR DAMAGES OCCUR, OR, AT THE OPTION OF PTI, THE REPAIR OR REPLACEMENT OF SUCH ITEM. IN NO EVENT WILL PTI BE LIABLE FOR LOST PROFITS OR PRODUCTION OR OTHER CONSEQUENTIAL OR INCIDENTAL DAMAGES.

15. **Applicable Law** This agreement shall be interpreted and construed in accordance with the laws of the State of Georgia.

16. **Confidentiality**

16.1 Purchaser acknowledges that PTI possesses certain proprietary trade secrets embodied in the design (including as documented in any drawings and plans provided to Purchaser by PTI) and operation of its products, including components thereof, equipment, and related processes. Purchaser may not use such trade secrets (other than to operate the products purchased from PTI) or disclose or disseminate such trade secrets to any competitor of PTI or any other person, company, or entity, including its affiliated companies, under any circumstances without PTI's prior written consent. Purchaser will ensure that all persons afforded access to such products, including components thereof, equipment, and processes, including documentation thereof, protect PTI's trade secrets against unauthorized use, dissemination, or disclosure.

16.2 Purchaser will not reverse engineer, decompile, disassemble, replicate or reproduce any of the products (including components thereof) purchased from PTI, or permit any other party to take such action under any circumstances without PTI's prior written consent.

17. **Packing and Shipment** Unless otherwise specified in writing, products, including equipment, will be packed as PTI may deem proper for protection against normal handling and an extra charge will apply where extraordinary packing procedures are necessary. Claims for loss or damage in transit must be entered and prosecuted by Purchaser with Purchaser's shipper and Purchaser agrees to hold PTI harmless for loss or damages in transit.

18. **Delivery** Dates quoted herein are approximate and are based upon proper and timely receipt of all necessary information and materials to be furnished by Purchaser. All sales are F.O.B. PTI's shipping point. PTI shall not be liable for direct, special, or consequential damages resulting from delay in delivery or failure to manufacture.

19. **Terms of Payment** Except as otherwise expressly agreed by PTI and Purchaser, the schedule of payments for this Agreement shall be as follows:

- (a) Forty percent (40%) of the purchase price is due with Purchaser's order;
- (b) Fifty percent (50%) of the purchase price will be due upon shipment of the products from PTI's factory or the factory of PTI's Supplier.
- (c) Ten percent (10%) of the purchase price will be due upon start-up or Purchaser's acceptance as defined herein.

20. **Late Payments** Interest will accrue at the lesser of the maximum legal rate permitted under applicable law or one and one-half percent (1.5%) per month on any outstanding balance owed by Purchaser to PTI from and to the extent such balance is owed until paid.

21. **Indemnification** Purchaser shall indemnify and hold harmless PTI from and against any and all liability, loss, cost, damages, claims, obligations, fees and expenses (including reasonable attorneys' fees) arising out of or resulting from the failure to install or operate the products in accordance with the descriptions, instructions and parameters provided by PTI or PTI's supplier, which failure would include, without limitation, the utilization of any spare parts or components that are not exactly as specified in any listing of recommended spare parts provided by PTI or PTI's supplier.

22. **Arbitration Clause** Any controversy or claim arising out of or relating to this Agreement, and any other disputes between the parties hereto, shall be settled by arbitration in accordance with the commercial arbitration rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator or arbitrators may be entered in any court having jurisdiction thereof. Any arbitration proceedings shall be held at the offices of the American Arbitration Association in Atlanta, Georgia. It is expressly agreed that the arbitrator shall be empowered and permitted to grant preliminary and permanent equitable relief in addition to awarding damages. Notwithstanding the foregoing, the parties hereby agree that there shall be only one arbitrator and the fees for the arbitrator shall not exceed the lesser of \$200.00 per hour or \$1,200.00 per day.

23. **Notice.** All notices shall be in writing and shall be delivered, faxed, emailed or sent by registered or certified mail, postage fully paid, with a copy sent by ordinary mail. The following addresses, fax numbers and email addresses shall be used for each party for these purposes:

TO: PROCESS TECHNOLOGY INTERNATIONAL, INC.
4950 S. Royal Atlanta Drive, Suite A
Tucker, GA 30084
Fax No. (770) 414-9037
Email: sales@pticombustion.com

TO: PURCHASER

NAME OF PURCHASER
c/o _____

Fax No. _____
Email: _____

Any party may change the address, fax number and/or email address for that party by written notice hereunder. All notices shall be effective upon the date of the earlier of delivery or attempted delivery, if mailed certified mail, delivery, if hand delivered, and faxing or emailing, if faxed or emailed. **If faxed or emailed, such notice shall not be effective at the time faxed or emailed unless a copy is also sent that same day by next day (or next business day) delivery via Federal Express, United Parcel Service, Airborne, U.S. Postal Service (Express Mail) or any of their successors.**

24. **Construction** The laws of the State of Georgia shall govern the validity, performance, and enforcement of this Agreement. Regardless of on which party's behalf various drafts of this Agreement were proposed, this Agreement shall not be construed either for or against PTI or Purchaser, but this Agreement shall be interpreted in accordance with the general tenor of the language.

25. **Entire Agreement** The Agreement Documents contain the entire agreement of the parties concerning the subject matter hereof and supersede any and all previous representations and agreements relating to the subject matter hereof. Any acceptance by the Purchaser is effective in

accordance with the terms of the Uniform Commercial Code as adopted in the State of Georgia. Any additional terms and conditions that may be included with such acceptance are not part of this Agreement. It is understood that there are no oral agreements between the parties affecting this Agreement, and this Agreement supersedes and cancels any and all previous negotiations, arrangements, and understandings, if any, between the parties hereto with respect to the subject matter hereof, and none thereof shall be used to interpret or construe this agreement.