



## TERMS AND CONDITIONS

**1. Payment Terms:** For Services, unless otherwise provided for above, Delta Fuel will invoice Customer for all Services and payment of said Invoice shall be made within thirty (30) days of receipt of the Invoice by Customer. For Equipment Sales, unless otherwise provided for above, Customer shall pay a deposit of fifty (50%) of the total Equipment Purchase Price upon the execution of this Agreement. Delta Fuel is not required to place an order with the Manufacturer until such time as this deposit is paid. Customer shall pay the remaining balance of Equipment Purchase Price prior to the delivery of the Equipment. Customer acknowledges that Delta Fuel is the distributor for the Equipment and upon payment of the deposit, Delta Fuel will be placing an order with the Manufacturer of the Equipment. Customer acknowledges that the Manufacturers of the Equipment may be located in Europe or countries outside of the United States and is not under Delta Fuel's control. If Delta Fuel is unable to place the order for the Equipment, Delta Fuel will return the deposit to Customer within fourteen (14) days of notice to Delta Fuel that Manufacturer is unable to fill the order.

**2. Delivery Date:** Delta Fuel will endeavor to perform all Services by the agreed upon Delivery Date. For Equipment sales, Customer acknowledges that the Estimated Delivery Date is provided for Customer convenience and planning, but Delta Fuel does not guarantee or warrant that the Equipment will arrive on or before the delivery date. Moreover, Delta Fuel may modify the Delivery Date as a result of: (i) any change to the Agreement by Customer that is accepted by Delta Fuel, (ii) any delay caused by Customer, (iii) any delay caused by Manufacturer, or (iv) any Force Majeure event. Should Delta Fuel receive information that the Delivery Date may not be met, it shall immediately give the Customer notice to this effect specifying the length of the delay and delivery. A delay in the delivery of the Equipment is not grounds for termination of this Agreement.

**3. Delivery and Waiver of Deposit:** Delta Fuel shall advise Customer when it receives the Equipment from the Manufacturer. After receiving this notice, Customer has thirty (30) days to pay the remaining balance of the Purchase Price and to take delivery of the Equipment. If Customer fails to pay the remaining balance of the Purchase Price within thirty (30) days, Delta Fuel is entitled to take possession and ownership of the Equipment and Delta Fuel shall be entitled to retain the entirety of the deposit.

**4. Changes:** Customer may, by written order, make changes in this Purchase Order until the Deposit is paid or until Delta Fuel mobilizes to provide Services hereunder. To the extent of such change, the price set forth on this Purchase Order shall be adjusted accordingly and Customer shall be liable for any costs incurred by Delta Fuel if Services or Equipment are cancelled or reduced. If Delta Fuel receives any request to quote a proposed change, or any other direction or instruction that Delta Fuel construes as a change, Delta Fuel shall promptly notify Customer of the increase or decrease in price and time necessitated by the proposed change.

**5. Inspection:** Upon delivery of the Equipment, Customer shall inspect the equipment for any visible defects and to ensure that the Equipment delivered complies with the terms and conditions of this Agreement. If Customer believes that the Equipment was damaged during transit, it must give notice to Delta Fuel within five (5) business days from delivery of the Equipment. Customer shall also inspect any Service work performed by Delta Fuel within five (5) business days from the date of service. Delta Fuel, at its sole option, shall elect to replace the damaged equipment, re-perform the service, or shall refund the price of the damaged equipment or services to Customer. Customer acknowledges that if Delta Fuel elects to replace the Equipment, said replacement Equipment may be delayed because of shipping and transportation from Manufacturer to Delta Fuel.

**6. Independent Contractor:** Delta Fuel is acting as an independent contractor for all purposes under the Agreement and no documents, actions, direction, instruction, assertions, or otherwise shall be construed to create an employer/employee relationship, partnership, joint venture or other like relationship between Delta Fuel and Customer or Delta Fuel and Manufacturer of the Equipment.

**7. Force Majeure:** Delta Fuel may terminate this Agreement if a Force Majeure event renders performance of Services or delivery of the Equipment impossible or impracticable by the Delivery Date. The term

"Force Majeure" as employed herein means any event or occurrence not within the control of the parties including acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, wars, insurrections, riots, lightning, epidemics, earthquakes, fires, floods, storms, washouts, explosions, and any governmental, commission or agency regulation, order, restraint or prohibition having jurisdiction of the parties hereto, or jurisdiction of parties supplying labor, material, or any item or items necessary for the performance of this Agreement. If Delta Fuel, at its sole discretion, terminates this Agreement, Delta Fuel shall have the right to partially fill the order from the Equipment at the stated price with stock on hand and apply the deposit to any Equipment delivered Customer. If Delta Fuel elects to not partially fill the order for the Equipment upon termination of the Agreement, Delta Fuel shall return the deposit to Customer.

**8. Warranty:** EXCEPT FOR ANY EXPRESS REPRESENTATIONS AND WARRANTIES STATED HEREIN, THE EQUIPMENT AND ANY OTHER SERVICES ARE PROVIDED "AS IS" AND ON AN "AS AVAILABLE" BASIS, AND DELTA FUEL MAKES NO ADDITIONAL REPRESENTATION OR WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED (EITHER IN FACT OR BY OPERATION OF LAW), OR STATUTORY, AS TO ANY MATTER WHATSOEVER AND EACH PARTY EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, REDHIBITION, FITNESS FOR A PARTICULAR PURPOSE, QUALITY, ACCURACY, AND NON-INFRINGEMENT. NEITHER PARTY WILL HAVE THE RIGHT TO MAKE OR PASS ON ANY REPRESENTATION OR WARRANTY ON BEHALF OF THE OTHER PARTY TO ANY THIRD PARTY.

**9. Indemnity:** Customer agrees to release, protect, defend, indemnify, and hold harmless Delta Fuel from and against any and all claims, demands, liabilities, or causes of action of every kind and character, without limit and without regard to the cause or causes thereof or the negligence of any party or indemnitee, arising in connection with bodily injury, death, or damage to property of Customer, Customer's employees or invitees.

**10. Limitation of Liability:** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL EITHER DELTA FUEL OR CUSTOMER BE LIABLE TO THE OTHER PARTY FOR ANY PUNITIVE, EXEMPLARY, MULTIPLE, INDIRECT, CONSEQUENTIAL, SPECIAL, OR LOST PROFITS DAMAGES ARISING FROM OR RELATING TO THIS AGREEMENT, WHETHER FORESEEABLE OR UNFORESEEABLE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. CUSTOMER HAS ONE YEAR FROM THE DATE OF SERVICE OR DELIVERY OF EQUIPMENT TO ASSERT ANY CLAIM FOR DELTA FUEL'S BREACH OF THIS AGREEMENT. CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR ANY BREACH BY DELTA FUEL OF ITS OBLIGATIONS UNDER THIS AGREEMENT IS REFUND FOR THE SERVICES OR A REFUND FOR THE PRORATED PORTION OF THE PRICE THAT CUSTOMER PAID FOR THE EQUIPMENT, WHICH SHALL BE PRORATED BASED ON THE NUMBER OF DAYS REMAINING UNTIL THE ONE YEAR ANNIVERSARY OF THE DELIVERY OF THE EQUIPMENT. DELTA FUEL'S MAXIMUM LIABILITY TO CUSTOMER SHALL BE THE AMOUNTS ACTUALLY PAID TO DELTA FUEL UNDER THIS AGREEMENT WITHIN THE PAST TWELVE (12) MONTHS.

**11. GOVERNING LAW:** This Agreement shall be governed by and construed in accordance with the laws of the State of Louisiana without regard to choice of law principles. The parties hereby consent to the personal jurisdiction of the state and federal courts located in Concordia Parish, Louisiana for any dispute involving this Agreement and parties waive any objection to the forum on the grounds of venue, forum non-conveniens, or any similar ground. **THE PARTIES HEREBY WAIVE THE RIGHT TO TRIAL BY JURY IN ANY LITIGATION ARISING OUT OF OR RELATING TO THIS AGREEMENT.**

**12. Entire Agreement.** This Agreement constitutes the entire Agreement of the parties and supersedes all prior communications, understandings, and agreements relating to the subject matter hereof, whether oral or written.