



Contractual Services Term and Conditions

#D500

Terms and Conditions

New Era Manufacturing and Designs – Termed as “New Era” in all following text.

THIS AGREEMENT INCLUDES A CLASS ACTION WAIVER AND A WAIVER OF JURY TRIALS AND REQUIRE BINDING ARBITRATION ON AN INDIVIDUAL BASIS TO RESOLVE DISPUTES.

- PLEASE NOTE that New Era may modify these terms and conditions at any time, and such modifications shall be effective immediately upon posting of the modified version on the Website for orders placed after such modifications have been posted. New Era will also update the “Last Updated” date at the top of this Agreement.

Contents

SECTION ONE: PRODUCTS/SERVICES 2

SECTION TWO: WARRANTIES/LIMITATION ON LIABILITY 2

SECTION THREE: WAIVER OF CONSEQUENTIAL DAMAGES 3

SECTION FOUR: TERMS AND CONDITIONS OF SALE 4

SECTION FIVE: RECORDS..... 4

SECTION SIX: CLAIMS 4

SECTION SEVEN: CHANGE ORDERS 5

SECTION EIGHT: DELAY IN DELIVERY..... 5

SECTION NINE: PAYMENTS 5

SECTION TEN: INDEPENDENT CONTRACTOR 6

SECTION ELEVEN: ASSIGNMENT 6

SECTION TWELVE: INDEMNIFICATION 6

SECTION THIRTEEN: DURATION AND TERMINATION 7

SECTION FOURTEEN: CANCELLATION OF ORDERS 7

SECTION FIFTEEN: RIGHTS ON TERMINATION OF AGREEMENT 7

SECTION SIXTEEN: INTELLECTUAL PROPERTY 8

SECTION SEVENTEEN: NOTICES..... 8

SECTION EIGHTEEN: ENTIRE AGREEMENT 8

SECTION NINETEEN: MODIFICATION OF AGREEMENT 8

SECTION TWENTY: WAIVERS 9

SECTION TWENTY-ONE: SEVERABILITY 9
SECTION TWENTY-TWO: GOVERNING LAW/VENUE/BINDING ARBITRATION 9
SECTION TWENTY-THREE: SECTION HEADINGS/JOINT DRAFTING 9

SECTION ONE: PRODUCTS/SERVICES

New Era agrees to provide the products and/or services to Customer as outlined in subsequently executed Purchase Order(s), as well as any changes approved by both parties in writing (“Authorized Amendments”). The products/services outlined in the Purchase Order(s) (and Authorized Amendments) shall hereinafter be referred to as the Work. In the event multiple Purchase Orders are governed by this Master Contract, the terms of each Purchase Order shall stand alone and the terms of one shall not have any impact on any other, unless specifically noted.

SECTION TWO: WARRANTIES/LIMITATION ON LIABILITY

- a. **THERE IS NO IMPLIED WARRANTY OF MERCHANTABILITY AND THERE IS NO IMPLIED WARRANTY OF FITNESS FOR CUSTOMER’S PARTICULAR PURPOSE; THE IMPLIED WARRANTY OF MERCHANTABILITY AND THE IMPLIED WARRANTY OF FITNESS FOR CUSTOMER’S PARTICULAR PURPOSE ARE HEREBY DISCLAIMED.**
- b. There are **no** express warranties other than the following “Limited Product Warranty”: the Work will be performed/produced in accordance with the specifications provided by Customer and listed in the Purchase Order(s) (and Authorized Amendments).
- c. No programming, authorities, resources, specifications, suggestions or guidance of any kind are part of this Agreement unless specifically outlined in the Purchase Order(s).
- d. Customer shall be solely responsible for immediately testing and inspecting the Work to verify compliance with the specifications of the Purchase Order(s) (and Authorized Amendments). If requested by Customer within 7 days of Customer’s receipt of the part or product, any part or product confirmed by New Era that does not meet the specifications of the Purchase Order(s) (and Authorized Amendments) will be repaired or exchanged without charge to Customer.
- e. New Era’s sole obligation under the Limited Product Warranty listed above will be limited to either, at New Era’s option and expense, repairing or replacing the product or parts of a product returned to New Era by Customer F.O.B. New Era’s plant, and which New Era reasonably determines did not conform to the above-described Limited Product Warranty.
- f. Customer’s exclusive remedy for breach of New Era’s Limited Product Warranty will be the enforcement of New Era’s obligations regarding repair and/or replacement.

- g. Customer is not authorized to assume, on behalf of New Era, any other or additional warranty obligation or liability in connection with the Work. In claims by any third party (including but not limited to Customer's customers) in any action or proceeding Customer shall indemnify, defend, and hold New Era harmless from all such claims, including but not limited to litigation costs and attorney's fees.
- h. This Agreement is not for the benefit of any third party, including but not limited to customers of Customer.
- i. New Era's above-described Limited Product Warranty is exclusive and in lieu of all other warranties, whether express, implied, or statutory, including, but not limited to, any warranty of merchantability or fitness for any particular purpose.
- j. In the event Customer provides parts, equipment, or materials to New Era, Customer represents that it has authority to do so and shall assume all liability for such parts, equipment, or materials relative to third parties and shall defend and indemnify, including reasonable attorney's fees, New Era from any and all claims of third parties. As between Customer and New Era, in the event New Era destroys or loses such parts, equipment, or materials in a fashion that is not agreed upon in the Purchase Order(s) (and Authorized Amendments), New Era shall be liable to Customer only for the fair market replacement value of such parts, equipment, or materials.
- k. Estimates are not binding.
- l. New Era's Purchase Orders shall supersede all prior agreements/estimates between the parties.

SECTION THREE: WAIVER OF CONSEQUENTIAL DAMAGES

New Era shall **NOT** in any event or circumstance be liable for incidental, consequential, or special damages of any kind. Customer hereby waives all claims to such damages now and in the future, accrued or unaccrued, known or unknown.

SECTION FOUR: TERMS AND CONDITIONS OF SALE

- a. Customer will accept and pay for products ordered in accordance with the prices set forth on the Purchase Order(s), Emailed order requests and Authorized Amendments.
- b. All of Customer's form purchase orders under this agreement shall be governed by the provisions of this Agreement. None of the provisions of Customer's form purchase orders, except those specifying the quantity and types of products ordered, dates of shipment, and shipping instructions shall be considered applicable to its purchase of products under this agreement.
- c. Force Majeure. Neither party shall be liable for any delay or failure to perform resulting from causes outside its reasonable control, including, but not limited to, acts of God, war, terrorism, riots, embargos, acts of civil or military authorities, fire, floods, accidents, strikes or shortages of transportation facilities, fuel, energy, labor or materials.

SECTION FIVE: RECORDS

- a. Customer will keep records of its testing procedures and results relating to the Work and shall provide such results to New Era upon request.
- b. In the event Customer wishes New Era to keep any documents or information provided by Customer to New Era Confidential, Customer shall, in writing, designate such documents or information as Confidential.

SECTION SIX: CLAIMS

If Customer has any reason to believe that it has any claim against New Era arising out of any transaction undertaken pursuant to this agreement, it shall notify New Era of such claim, in writing, within 7 days from the date the part or product is received by Customer. Failure to give notification within such a period shall relieve New Era of any liability or obligation with respect to such claim. This obligation to provide notice shall survive termination of this agreement.

SECTION SEVEN: CHANGE ORDERS

- a. New Era and Customer agree that, from time to time, circumstances may arise which cause the price, nature, scope, timing, duration, or other circumstances of the Work to change following execution of the Purchase Order(s).
- b. If New Era determines, in its sole discretion, that a change in price, nature, scope, timing, duration, or other circumstances of the Work is necessary to complete the Work, New Era shall cease the Work immediately and the parties will not move forward until a Change Order is written and agreed to in writing by both parties. If the parties cannot agree upon updated terms in a Change Order, the Purchase Order is terminated, and New Era is entitled to compensation for the work completed up to the termination.
- c. The following individuals have the authority to bind their respective company to a Change Order:
New Era: Mitchell Sand
If different from individual signing below, Customer: _____

SECTION EIGHT: DELAY IN DELIVERY

- a. In spite of any other provisions contained in this Agreement, New Era shall not be liable for any delay or failure to deliver products during the term of this Agreement, where such delay or failure to deliver results from circumstances beyond the control of, and without the fault or negligence of, New Era.
- b. In no event shall New Era be liable for any incidental, consequential, or special damages for any delay or failure to deliver products.

SECTION NINE: PAYMENTS

- a. All payments under this agreement shall be in United States dollars to New Era at its address listed above.
- b. New Era may suspend Work if payments are not kept current. If the Purchase Order(s) (and Authorized Amendments) so requires, New Era may withhold shipping/delivery of the Work until payment is received in full by New Era.
- c. New Era will charge Customer's late fees as defined and agreed to in the controlling master contract or interest at the highest lawful rate.

SECTION TEN: INDEPENDENT CONTRACTOR

- a. New Era is, and shall remain, an independent contractor.
- b. New Era may perform some portion or all of the Work on Customer's premises. The customer is solely responsible for maintaining the safety and security of its premises, including equipment upon which New Era employees are working. Customer shall have exclusive liability for any injuries or damage caused or contributed to by the condition, maintenance, instructions, and/or safety compliance status of Customer's machinery, property, and/or premises.
- c. New Era does not appoint Customer as its agent or authorize Customer to hold itself out as its agent, nor does New Era authorize Customer to bind New Era, pledge the credit of New Era, or enter into any contract for New Era.

SECTION ELEVEN: ASSIGNMENT

The rights of the Customer under this agreement are personal to the Customer and may not be assigned or transferred to any other person, firm, corporation, or other entity without the prior, express, and written consent of New Era.

SECTION TWELVE: INDEMNIFICATION

- a. As one of the material considerations of this Agreement, without which it would not be granted, Customer assumes all risk relative to the Work and, to the maximum extent permitted by law, Customer releases and agrees to indemnify, hold harmless and defend (including litigation costs and attorney's fees) New Era and its directors, officers, stockholders, agents, affiliates, subsidiaries, predecessors, successors and assigns, or anyone acting on its behalf, from and against any and all claims of every kind, past, present, and future, accrued or unaccrued, known or unknown, whether caused by an act or omission of New Era or not.
- b. Nothing in any other section of this Agreement shall be interpreted to limit the Customer's indemnification obligations under this Section Twelve, only expand such obligations.

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SECTION THIRTEEN: DURATION AND TERMINATION

- a. This agreement shall be effective until the Work has been completed and/or as provided in the Purchase Order(s) (and Authorized Amendments).
- b. The Customer's obligations and New Era's protections under this Agreement shall survive termination of this Agreement, including but not limited to Sections Two, Three, Seven, Nine, and Twelve.
- c. In addition to New Era's right to terminate this Agreement as set out above, this Agreement may be terminated immediately pursuant to the following:
 - i. Death, incapacity, or resignation from Customer of any person who, on the effective date of this agreement, was participating substantially in the operations or ownership of Customer.
 - ii. New Era shall have just cause for termination if any indebtedness owed by Customer becomes past due; shall customer fail to perform any obligation imposed upon it by this agreement; or Customer for any reason create for New Era as determined by New Era in its sole discretion an unfavorable impression in the public mind.
 - iii. By New Era, at any time, if Customer assigns this agreement, or any rights under this agreement, without New Era's prior written consent; or if there is a change in the control or management of Customer which is unacceptable to New Era; or if Customer ceases to function as a going concern, or to conduct its operations in the normal course of business.
 - iv. If a receiver for Customer is appointed or applied for; or a petition in bankruptcy is filed by or against Customer; or Customer makes any assignment for the benefit of creditors.
 - v. If the Work is to be performed on or using Customer's machinery or equipment and New Era, at its sole discretion, determines that the machinery or equipment is unsafe, defective, broken, or otherwise inadequate or unsuitable.

SECTION FOURTEEN: CANCELLATION OF ORDERS

- a. Upon notice of termination, all orders for products or parts of orders, that have not been shipped or completed by New Era prior to such notice shall be automatically cancelled, and neither party shall be liable to the other for non-delivery or non-acceptance.
- b. Following notice of termination of this Agreement, New Era will not accept any new orders from Customer under the terms of this Agreement.

SECTION FIFTEEN: RIGHTS ON TERMINATION OF AGREEMENT

On termination of this Agreement, New Era shall be entitled to compensation for its Work completed (including but not limited to costs incurred, as well as a reasonable profit) up to the date of termination.

SECTION SIXTEEN: INTELLECTUAL PROPERTY

Except for any intellectual property (i) owned by Customer prior to entering into this Agreement, or (ii) developed or acquired by Customer other than in the course of doing the Work under this Agreement (collectively, “Pre-existing Customer IP”), Customer agrees that the Work and any intellectual property conceived or reduced to practice during the creation of the Work or performance of the services constitute the work product of New Era (the “New Era Work Product”). Additionally, other than Pre-existing Customer IP, New Era Work Product shall further include, without limitation: all tools, data (including, without limitation, specifications) and/or methods used to design, create, generate or otherwise develop the Work and/or perform the services; and all patent, copyright, trade secret or other proprietary or intellectual property rights developed with respect to the creation of the Work or performance of the services. Upon the request of New Era, Customer shall, and shall cause Customer personnel to, promptly take such further actions, including execution and delivery of all appropriate instruments of conveyance, as may be necessary to assist New Era to prosecute, register, perfect or record its proprietary or intellectual property rights in or to any New Era Work Product.

All New Era Work Product is solely and exclusively the property of New Era. To the extent any New Era Work Product qualifies as a “work made for hire” under applicable copyright law, it will be considered a work made for hire and the copyright will be owned solely and exclusively by New Era. To the extent any New Era Work Product is not considered a “work made for hire” under applicable copyright law, Customer hereby irrevocably assigns and transfers, in each case without additional consideration, all of its right, title and interest throughout the world in and to the New Era Work Product to New Era.

SECTION SEVENTEEN: NOTICES

- a. Any notice provided for by or concerning this Agreement shall be in writing and be deemed sufficiently given when sent by certified or registered mail if sent to the respective address of each party as set forth at the beginning of this agreement.
- b. The address of Customer or New Era may be changed by giving written notice of such a change to the other party. Notices may also be given by email.

SECTION EIGHTEEN: ENTIRE AGREEMENT

This Agreement shall constitute the entire agreement between the parties. Any prior understanding or representation of any kind preceding the date of this agreement shall not be binding on either party except to the extent expressly set forth in this Agreement.

SECTION NINETEEN: MODIFICATION OF AGREEMENT

Any modification of this Agreement or additional obligation assumed by either party in connection with this Agreement shall be binding only if evidenced in a writing signed by each party or an authorized representative of each party.

SECTION TWENTY: WAIVERS

The waiver of any right under this Agreement by either party shall not be construed as a waiver of the same right at a future time or as a waiver of any other right under this agreement.

SECTION TWENTY-ONE: SEVERABILITY

Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition and unenforceability without invalidating the remaining provisions of this agreement.

SECTION TWENTY-TWO: GOVERNING LAW/VENUE/BINDING ARBITRATION

This Agreement shall be governed by, construed, and enforced in accordance with the laws of Minnesota. All proceedings relating to this Agreement shall be a venue in Stearns County, Minnesota. Any disputes arising between the parties arising from or relating to this Agreement shall be resolved through binding arbitration.

SECTION TWENTY-THREE: SECTION HEADINGS/JOINT DRAFTING

- a. The titles to the sections of this Agreement are solely for the convenience of the parties and shall not be used to explain, modify, simplify, or aid in the interpretation of the provisions of this Agreement.
- B.** The parties also expressly agree that this Agreement was jointly drafted, and that they both had opportunity to negotiate terms and to obtain assistance of counsel in reviewing terms prior to execution and that this Agreement shall be construed neither against nor in favor of either party but shall be construed in a neutral manner.

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