



Effective June 19, 2018

## TERMS AND CONDITIONS OF SALE

- 1. OFFER; ACCEPTANCE; GOVERNING PROVISIONS.** This writing (including the reverse side hereof) constitutes an offer or counteroffer by Staco Energy Products Co. ("Staco") to sell goods and services to Buyer solely in accordance with these terms and conditions. This writing is not an acceptance of any offer made by Buyer, and the sale by Staco of goods and services, and the acceptance of this offer or counteroffer, is expressly limited to and conditioned upon the Buyer's assent and agreement to, these terms and conditions. A contract shall be formed, and Buyer will be deemed to have assented and agreed to these terms and conditions when, at Staco's sole option, Buyer shall have provided to Staco (orally, or in writing) an order or statement of intention to purchase goods and/or services from Staco; Buyer has given any direction to Seller to proceed with engineering, procurement, manufacture, or shipment; or Buyer has received delivery of the whole or any part thereof or made payment for all or part thereof. No amendments to this writing shall be valid unless in writing and signed by an authorized representative of Staco, and no additional or different terms or conditions whether or not in Buyer's assent or purchase order shall be binding on Staco (whether in conflict with, inconsistent with, or in addition to, the terms and conditions stated in this writing) unless expressly accepted in writing by Staco. Staco hereby expressly objects to any contrary, different, or additional terms or conditions in Buyer's request for quotation, purchase order, acceptance, assent, or any other form of Buyer, or any alteration to these terms and conditions, and such contrary or additional terms shall not become a part of the contract governing the sale of goods and services to Buyer and shall not be binding on Staco. Only those terms and conditions specified in any documents of Staco shall be binding unless otherwise agreed to in writing by Staco, and no implied terms or conditions shall be substituted for any of Staco's terms or conditions in order to resolve any conflict. In the event of any conflict between these terms and conditions and any terms or conditions stated orally or in any of Buyer's documents, these terms and conditions shall control.
- 2. INFORMATION IN MATERIALS.** Any contrary, different, or additional prices, payment terms, and delivery dates other than those set forth on the reverse side hereof are not binding on Staco unless agreed to in writing by Staco. Prices, specifications, and other terms and statements appearing in Staco's catalogs, brochures, advertisements, and otherwise, are subject to change by Staco at any time without notice, and all weights and dimensions shown therein are not guaranteed. In the event of a change to the design or specifications of Staco's goods, Staco shall have no obligation to modify any item previously purchased, or to continue to supply obsolete items. All typographical errors in any of Staco's publications or quotations are subject to correction by Staco. Staco has no obligation to review Buyer's request for quotation or purchase order, and has no obligation for any errors contained therein. Any sample provided by Staco is for illustrative purposes only, is not part of the basis of the bargain, and is not to be construed as a warranty that any goods will conform to such sample.
- 3. PRICES.** Staco reserves the right at any time to change prices for all goods and services. The prices stated by Staco in any quotation or acknowledgment are for the quantity and types of goods and services specified therein, and are subject to revision in Staco's discretion or as a result of any changes requested by Buyer. Unless otherwise specified by Staco, all taxes, fees, costs, insurance, and other charges associated with the sale, shipment, importation, delivery, set-up, installation, and performance of the goods and services are the responsibility of Buyer.
- 4. TAXES.** The amount of all federal, state, local, and other taxes applicable to the sale, use, delivery or transportation of the goods and services sold by Staco, and all other taxes, duties, imposts, tariffs, customs, and other similar fees and levies, shall be the obligation of Buyer. Buyer shall indemnify and hold harmless Staco from and against any and all liability relating to such items.
- 5. PAYMENT.** Invoices will be issued as of the date of shipment, when ready to ship, or otherwise in accordance with an agreed-upon progress payment schedule, in each case in Staco's discretion. All amounts owed are due net 30 days from the invoice date, and shall be payable in U.S. dollars. All payments shall be made in accordance with these terms and conditions, without deductions of any kind. Remittances marked to indicate payment in full will be deposited with the full reservation of all rights of Staco despite such markings, and such deposit will not indicate Staco's acceptance of the remittance as payment in full unless it actually constitutes payment of all sums owed. All amounts not paid when due are subject to interest charges at 1½ percent per month, provided that payment of such interest does not relieve Buyer of its obligation to pay such invoice in full when due or any other obligations of Buyer. If Buyer fails to meet full terms of payment on any order, in addition to all other remedies, Staco may defer any other shipments until such payments are made, or may, at its option, cancel any other orders. Until all invoices and other charges (including, but not limited to, all interest, late fees, costs of collection, and other costs and expenses incurred by Staco) have been paid in full by Buyer to Staco, and all of Buyer's obligations to Staco have been fully performed, Buyer hereby grants to Staco a security interest and priority lien, purchase money security interest, and/or chattel mortgage in all goods sold to Buyer, and all proceeds thereof, to secure all of Buyer's obligations, and Buyer hereby grants Staco a power of attorney to execute and file on behalf of Buyer all necessary documents required to perfect the security interest herein granted. All costs and expenses incurred by Staco in connection with the collection of any invoices or enforcing any of Staco's other rights shall be immediately paid by Buyer to Staco, with interest at 1½ percent per month.
- 6. SHIPMENT AND DELIVERY; RISK OF LOSS.** All shipments shall be Ex Works from Staco's facility, with all freight paid by Buyer either collect, prepaid, or added to the invoice, as determined by Staco. Boxing and packing for standard domestic shipment of goods are included in Staco's price unless otherwise specified, with all special domestic or export packing and other special charges to be paid by Buyer. Staco shall select the method and details of shipment in Staco's discretion, unless a method of shipment is agreed to in the contract between Staco and Buyer. Staco reserves the right to deliver the goods in one or more installments, and all such installments shall be separately invoiced and paid for when due without regard to subsequent deliveries, and any delay in delivery of any installment shall not relieve Buyer of its obligations to accept remaining deliveries. Title shall pass to Buyer, and all risk of loss, damage, and theft shall be borne by Buyer, when the goods are ready for shipment from Staco's facility. Shipping dates are approximate and are based on prompt receipt by Staco of all necessary information, licenses, and clearances for shipping. Staco shall not be liable or responsible for any delays, losses, or damages to Buyer or any third party directly or indirectly arising from a labor strike, labor difficulty, shortage of supplies, unavailability of transportation or transportation delays, riot, casualty, omission or act by Buyer, fires, floods, inability to secure fuel, materials, supplies, equipment or power, governmental import or export restrictions, acts of God or public enemy, or other force majeure act, or any other cause, direct or indirect. Delivery may be delayed for Buyer's failure to furnish complete information or failure to perform Buyer's other obligations. Delay in delivery for any reason does not entitle Buyer to cancel any order or to claim damages directly or indirectly attributable to such delay. Staco reserves the right to ship in advance and invoice Buyer. In the event that goods are held on the instructions of Buyer, or if shipment cannot be effected for reasons beyond Staco's control, Staco may store the goods at Staco's discretion at Buyer's expense and risk at prevailing storage rates, and subject to other charges for handling, insurance, and transportation. Staco may approve up to one extension of Buyer's delivery date, provided that such extension shall be requested no later than one week prior to the original delivery date, and shall be extended for a period of no longer than 30 days following the original delivery date.

In the event Staco approves an extension for longer than 30 days, Buyer shall be responsible and shall pay immediately to Staco for all storage fees and expenses (which will be charged on a daily basis for any delivery date deferred longer than 30 days), and all other costs and expenses incurred by Staco.

7. **DESIGN APPROVAL.** Staco's terms and conditions, including delivery schedule, do not provide for approval by Buyer of drawings or designs. Where pre-approval by Buyer is agreed to by Staco, Staco reserves the right to modify these terms and conditions, and to extend the delivery schedule based upon the additional time necessary to provide such drawings and associated materials. Upon the review of drawings or designs, and where changes to the goods and services are agreed to be made, Staco reserves the right to change the price therefor, and to alter any invoices previously provided to Buyer. Staco shall have no liability or responsibility for any goods or services which are produced from Buyer's designs, drawings or specifications.

8. **CHANGES/CANCELLATION.** In the event that Buyer changes any order (other than an approved deferral of delivery of less than 30 days), and such change is accepted by Staco, such change shall be governed by the terms and conditions specified by Staco. Buyer shall be responsible for any change in price, and all other costs and expenses relating to the change of an order, including, but not limited to, costs incurred by Staco for the completion of the original order, and if any such change delays Staco's performance, then Staco shall be entitled to an extension in time of delivery. Buyer may cancel an order only upon written notice to Staco and upon payment to Staco of cancellation charges, including but not limited to, all costs incurred prior to the notice of cancellation and all costs and expenses incurred by Staco attributable to the cancellation and for completion of the original order, including compensation to Staco for disruption in scheduling, planned production and other indirect costs.

9. **INSPECTION AND SPECIAL TESTING.** Buyer's inspection during the process of manufacture, or prior to delivery is not contemplated and will not be performed unless expressly agreed to by Staco in writing. If Buyer inspects the goods, the inspection will be made at Buyer's sole expense, and under the supervision and at the convenience of Staco. If such inspection causes an increase in the cost or time of performance, an appropriate adjustment will be made to the price and/or delivery schedule.

10. **EQUIPMENT RATINGS AND DESIGN.** Equipment shall be rated in accordance with the applicable standards of IEEE, ANSI, NEMA, IEC and UL, and assumes "usual and normal" service condition installations in accordance with industry standards. Installations where intended service conditions exceed "usual and normal", including, but not limited to, nuclear and seismic installations, are not contemplated unless agreed to in writing by Staco. Buyer is responsible at Buyer's expense for providing Staco prior to ordering goods and services with all information relevant to the selection and design of the goods and equipment. Staco has no responsibility or liability where incomplete, inaccurate, or lack of information is provided by Buyer, and is not responsible for any requirements necessary for proper installation, including but not limited to, specific codes, and sizing of equipment and materials involved in the installation. Engineering consideration, where match and line with other existing equipment is required by Staco, may include but not be limited to, site visits, and review of existing drawings and other details, all of which shall be at Buyer's expense. Staco reserves the right to amend the pricing after review of the complete information.

11. **PROPRIETARY INFORMATION.** When Staco's software is a component of the goods purchased by Buyer, Buyer shall have a non-exclusive, limited license to use Staco's software solely in connection with the use of the goods purchased, for their intended use, and for no other use. All information pertaining to Staco's software and Staco's goods, and all other information pertaining to or provided by Staco, shall be proprietary information of Staco, and shall be owned by Staco. Buyer may not use, disclose, decompile, reverse engineer, modify, or create derivative works of Staco's software or any other proprietary information of Staco. Except as provided herein, no license or other right is granted to Buyer with respect to any proprietary information or trade secrets of Staco, including with respect to the goods and services purchased hereunder, and Buyer may not use for any purpose other than the use of the goods purchased hereunder, or disclose for any reason, any of such proprietary information. The provisions of this Section 11 shall survive indefinitely any termination or completion of any contract between Staco and Buyer. Buyer shall indemnify and hold harmless Staco from any and all loss, expense, cost, damage, liability, claim, or demand resulting from a breach by Buyer of any of its obligations to Staco, from the use by Buyer of the goods or services purchased by Buyer, or any claim that Buyer's design, drawings, or specifications with respect to the goods or services constitute an infringement on the rights of any third party.

12. **WARRANTY/LIMITATION OF LIABILITY.** Staco's standard warranty for the goods and services sold hereunder shall apply, provided that all items have been installed and used as recommended, and have not been subjected to misuse, alteration, accident, abuse, or unauthorized repair. SUCH WARRANTY SHALL BE EXCLUSIVE, AND SHALL BE IN LIEU OF ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ARISING BY LAW OR CUSTOM, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ALL OF WHICH ARE HEREBY EXPRESSLY DISCLAIMED. IN NO EVENT SHALL STACO BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL OR OTHER DAMAGES OF ANY KIND WHATSOEVER (INCLUDING ATTORNEYS' FEES) ARISING OUT OF THE SALE OF GOODS AND SERVICES TO BUYER OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, LOSSES OR DAMAGES ARISING OUT OF CLAIMS FOR LOSS OF BUSINESS, GOODWILL, PROFITS, OR ARISING OUT OF THIRD PARTY ACTIONS, TORT CLAIMS, OR CLAIMS UNDER STATUTE, AND BUYER HEREBY WAIVES FOR ITSELF AND ITS SUCCESSORS AND ASSIGNS ANY SUCH CLAIMS AGAINST STACO. Buyer acknowledges and agrees that Buyer has independently determined the suitability of the goods and services for Buyer, and Buyer assumes all risks and liabilities resulting from the use of the goods and services, and shall use such in accordance with all laws, rules, and regulations, and Staco's materials relating thereto. None of Staco's agents, employees, or representatives have any authority to bind Staco to any affirmation, representation, or warranty other than those stated herein.

13. **DEFAULT.** If Buyer defaults in performing any of its obligations to Staco, Staco may, at its option and without incurring liability, elect to cancel all orders from or agreements with Buyer, and pursue all legal and equitable remedies. In addition to the breach or failure to perform by Buyer of any of Buyer's obligations to Staco, if Buyer is insolvent, fails to pay its obligations hereunder, ceases doing business, or is the subject of any proceeding of bankruptcy, insolvency, or reorganization, Staco may deem Buyer to be in default.

14. **APPLICABLE LAW.** The contract between Staco and Buyer shall be governed by the laws of the State of Ohio. Any action arising from or related to the contract between Staco and Buyer shall be litigated in any federal or state court located in Montgomery County, Ohio.

15. **MISCELLANEOUS.** Staco and Buyer shall at all times be deemed to be an independent contractor with respect to each other, and no joint venture, partnership, agency, or any other relationship between Staco and Buyer shall be construed or created for any purpose. No failure of Staco to enforce, and no waiver by Staco of any provision or breach hereof shall constitute a waiver of any other provision, breach, or remedy, nor shall constitute an amendment of the contract between Buyer and Staco. No right or interest in the contract shall be assigned by Buyer, and no delegation of any obligation of Buyer shall be permitted. The provisions of the contract shall otherwise bind and inure to the benefit of the parties hereto and their respective permitted heirs, executors, administrators, successors and assigns. Goods sold to Buyer hereunder are not intended to be re-sold or distributed to those foreign countries listed by U.S. government agencies as restricted.