



## TERMS AND CONDITIONS OF SALE

1. **Purchase Agreement:** SAMSON Controls Inc. ("SAMSON") agrees to sell and provide to the person ("Buyer") specified in the SAMSON Order Confirmation ("Order Confirmation") and the Buyer agrees to purchase and procure, the products, equipment and parts (collectively, "Goods") and services ("Services") as specified in the applicable Order Confirmation, subject to the terms and conditions outlined in these Terms and Conditions of Sale (the Order Confirmation and these Terms and Conditions of Sale are, collectively, the "Agreement"). This Agreement shall become effective as of the effective date of the Order Confirmation.
  
2. **Pricing and Terms of Payment:**
  - a. **Price of Goods and Services:** The price for Goods shall be the price set out in the Order Confirmation. The price of the Goods is exclusive of all costs and charges of packaging, insurance, and transport of the Goods. Prices are F.O.B. SAMSON production and/or assembly facility. Buyer will pay, in addition to the stated price, all charges for transportation, freight, drayage and rigging of the goods and all taxes howsoever designated, levied or based on the purchase price of the Goods or their use including federal, provincial and local, excise, sales, use, privilege, excise, personal property or other taxes, and all other rates, levies, fees, assessments or other charges imposed by any government (municipal, provincial or federal) on or in respect of this Agreement or the Goods or their purchase, delivery, possession, use or operation. The fees for Services shall be based either upon on a time and materials basis or a quoted lump sum basis and shall be calculated in accordance with SAMSON's standard fee rates and service rate schedule, which is available upon request. The price for Goods and Services are collectively hereinafter also referred to as the "Prices".
  - b. **Price adjustments:** Prices may be subject to change and are subject to SAMSON's standard annual price increases. SAMSON will notify Buyer of any Price increase in its discretion or upon request. In particular, due to volatility in the exchange markets, SAMSON may adjust the Canadian dollar sale price if the Canadian/United States dollar rate has been fluctuated by 2% or more between the date of the Order Confirmation and the date of the Order Confirmation.
  - c. **Payment terms:** Invoices are payable within 30 days of the invoice date. If SAMSON has granted Buyer a discount regarding the Goods and Services, and Buyer delays payment beyond the due date, Buyer shall, at SAMSON's option, pay as liquidated damages and not as a penalty an amount equal to the price of the Goods as if no such discount had been granted plus interest at the rate specified in this clause. In the case of delay in payment, SAMSON may charge Buyer interest on the overdue amounts including all amounts due pursuant to this clause from the date such amount became due at the rate of the lesser of 3% per month (36% per annum) or the maximum interest rate permitted by applicable law.
  - d. **Set-Off:** Unless otherwise agreed by SAMSON in writing, Buyer will not have the right to claim compensation or to set-off against any amounts which become payable to SAMSON herein or otherwise. If SAMSON agrees to recognize such a claim, the obligations of Buyer to pay interest in accordance and otherwise comply with Section 2.c hereof shall not be affected.
  
3. **Credit Check:** To the fullest extent permitted by law, the Buyer hereby consents to SAMSON conducting a personal investigation or credit check on the Buyer. The consent provided hereunder is dated as of the effective date of this Agreement and shall continue until Buyer has repaid all unpaid amounts owed to SAMSON in full. The Buyer agrees that SAMSON will conduct personal investigations or credit checks to determine payment terms of Goods and Services. The Buyer may access the credit report information and rectify any errors contained in such reports by contacting the credit reporting agency directly. To obtain the name and contact information of the credit reporting credit reporting/personal investigation agency or to withdraw the consent given hereunder, please contact SAMSON at [accounting-ca@samsongroup.com](mailto:accounting-ca@samsongroup.com) For residents of Newfoundland and Labrador: SAMSON will obtain a credit report from Dunn & Bradstreet, P.O. Box 57770, Station 'A', Toronto, ON M5W 5M5.



#### 4. Purchase of Goods:

- a. **Risk:** The Buyer hereby assumes all risk regarding the Goods, including without limitation, risk of loss theft, damage or destruction (and whether or not insured against) upon delivery of the Goods by SAMSON to a carrier. The carrier shall be the agent of Buyer.
- b. **Manner of Transportation and Delivery Date:** Unless otherwise specified by Buyer and agreed to by SAMSON in writing, SAMSON may ship in any manner convenient to SAMSON. The delivery date quoted by SAMSON in the Order Confirmation is SAMSON's best estimate and is based upon the conditions in its works at the time of quotation, and therefore such date shall be interpreted as being estimated only and in no event shall time be of the essence regarding such date.

#### 5. Purchase of Services:

- a. **Specifications:** In the event Services are provided to Buyer by SAMSON, SAMSON will provide such Services in accordance with the specifications set out in the Order Confirmation ("Specifications") and this Agreement. SAMSON shall have the right to rely on information and materials provided by Buyer and SAMSON shall not be liable for Services performed, provided that such Services are provided in accordance with the Specifications.
- b. **Changes to Services:** SAMSON shall have the right to make any changes to the Services that are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Seller shall notify the Buyer in any such event.
- c. **Buyer's responsibilities:** Buyer shall provide SAMSON with reasonable access to its premises as necessary for Seller to perform the Services. At all times while at Buyer's premises, SAMSON's personnel will comply with Buyer's safety and security precautions, procedures, and guidelines provided to SAMSON in writing in advance of such visit. SAMSON will immediately inform Buyer of any injury or accident occurring on Buyer's premises involving SAMSON's personnel. SAMSON will provide Services in a manner as to minimize interference with Buyer's operations. Buyer shall cooperate with SAMSON in all matters relating to the Services and provide SAMSON with such information and materials as SAMSON may reasonably require to supply the Services, and ensure that such information is accurate in all material respects. Buyer shall obtain and maintain all necessary licenses, permissions and consents which may be required for the Services to be performed prior to the date on which the Services are to start, and keep and maintain all materials, equipment, documents and other property of SAMSON ("SAMSON Materials") at the Buyer's premises in safe custody at Buyer's risk, and in good condition until returned to SAMSON, and not dispose of or use the SAMSON Materials other than in accordance with the SAMSON's written instructions or authorization.
- d. **Additional terms:** Order Confirmations that include the purchase of information technology services, software, hardware, cloud based services, services related to the industrial internet of things and related electronic services or products shall, in addition to this Agreement, also be governed by additional particular terms and conditions specific to those services which shall be provided therewith.

#### 6. Licenses and Intellectual Property:

- a. **License:** SAMSON grants to Buyer during the term of this Agreement, a limited, revocable, non-transferable, non-sublicenseable and non-exclusive license to use software products provided by SAMSON in relation to the Goods, including without limitation, SAMGUARD, SAM Valve Management and SAM Tank Management (collectively, "Software"), as applicable (the "License"), subject to the terms and conditions specified in this Agreement.
- b. **Restrictions on Use:** Buyer's use of the Software is subject to the following restrictions and limitations. Buyer shall not, and shall ensure its authorized representatives do not: (i) except as otherwise expressly authorized, provide, disclose, sublicense or otherwise permit any person to access, use, read, disseminate, transmit, download or reproduce the Software; (ii) adapt, translate,



- change, customize, enhance, augment, partially delete or alter, or otherwise modify the Software in any manner or to any extent whatsoever, whether in whole or in part; (iii) disassemble, decompile, reverse engineer, or otherwise in any manner deconstruct all or any part of the Software; (iv) disclose the results of any software benchmark test without SAMSON's prior written consent.
- c. **Sole Source Maintenance:** Buyer shall only engage SAMSON or its authorized distributors and maintenance providers for provision of support and maintenance services relating to the Software. Use of unauthorized maintenance services will void any warranty or indemnity provided by SAMSON pursuant to this Agreement.
  - d. **Ownership of Software:** Buyer acknowledges and agrees that all right, title and interest whatsoever, in and to the Software (inclusive of all enhancements, changes, and modifications to the Software), including all intellectual property and other proprietary rights therein is, and shall be, owned solely and exclusively by SAMSON and/or its third party licensors. SAMSON reserves all rights not expressly granted to Buyer hereunder. Nothing in this Agreement shall, or shall be deemed or construed to, assign, transfer or convey to or vest in Buyer any title, rights or interest in or to any intellectual property, including in or to the Software, other than the rights specifically and expressly granted herein.
  - e. **Feedback.** "Feedback" means all feedback, ideas, comments, and suggestions submitted by Buyer to SAMSON concerning any of the Software or Services, or part thereof. Submission of Feedback to SAMSON is voluntary. Notwithstanding any other provision of the Agreement, Feedback is subject to the following terms: (i) SAMSON may use such Feedback and incorporate it in SAMSON's products, technologies, and services without any obligations or restrictions; (ii) Buyer waives all rights it or its representatives have or may have, including all intellectual property rights, in and to Feedback, and hereby assigns to SAMSON all of Buyer's rights in and to Feedback and will cause it representatives to assign all of such persons' rights to SAMSON and to waive all moral or similar rights that its representatives have to SAMSON. Buyer will execute and cause to be executed all documents necessary to assign such rights. Buyer is not entitled to any compensation or reimbursement of any kind under any circumstances for any Feedback.
  - f. **Residual Knowledge:** Buyer acknowledges and agrees that: (i) SAMSON and its licensors have certain knowledge, skills and expertise which forms an integral and continuing part of their businesses; (ii) in the process of performing services for Buyer hereunder and services for others, SAMSON and its licensors have developed, and will continue to develop Background Knowledge (as defined below). Subject to SAMSON's obligations of confidentiality hereunder, Buyer agrees that nothing in this Agreement shall limit, restrict or otherwise prevent SAMSON and/or its licensors from using any Background Knowledge (including any Background Knowledge that they acquire in connection with this Agreement), including to provide services to any other person. "Background Knowledge" means general skills, know-how, expertise, professional experience and generic information of general application that are neither unique nor specific to Buyer (including underlying concepts and ideas, knowledge, techniques, skills, methods and know-how).
  - g. **Limitations:**
    - i. Buyer acknowledges and agrees that SAMSON is not liable for any data uploaded to the Software by SAMSON or Buyer. The Software may be used to develop certain deliverables and communications, including without limitation, reports and notifications regarding Client's devices and systems. SAMSON shall not be liable for any inaccuracies, errors or inconsistencies in such deliverables, communications or data uploaded to or produced through the Software.
    - ii. BUYER CONFIRMS THAT IT HAS THE SOLE RESPONSIBILITY FOR ALL USE OF THE SOFTWARE AND FOR ALL DECISIONS TAKEN FROM SUCH USE. EXCEPT AS EXPRESSLY SET OUT IN THIS AGREEMENT, THE SOFTWARE IS PROVIDED TO BUYER ON AN "AS-IS", "AS AVAILABLE" AND "WITH ALL FAULTS" BASIS, AND SAMSON EXPRESSLY DISCLAIMS ANY AND ALL OTHER REPRESENTATIONS, WARRANTIES



AND CONDITIONS CONCERNING THE SOFTWARE OR ITS USE, WHETHER EXPRESS OR IMPLIED OR STATUTORY OR OTHERWISE ARISING IN LAW.

- 7. **Delay by Buyer:** Buyer may not delay delivery of the Goods or Services without SAMSON's prior written consent and Buyer agrees to pay any and all costs and expenses incurred by SAMSON, including without limitation, any storage expenses as set out in Section 8 below. If delivery of the Goods or Services is delayed by Buyer without SAMSON's consent, payment in full of the Price for such Goods and Services, and other applicable charges shall become due when Buyer is notified by SAMSON that such Goods and Services are ready for delivery or performance and Buyer shall pay such amounts within 30 days of receipt of such notice. Notwithstanding Section 4.a, the Goods shall thereafter be held by SAMSON at Buyers sole risk.
- 8. **Storage Fees:** Goods ready for dispatch and not released by Buyer may be subject to monthly storage fees at a minimum rate of two percent (2%) of the Goods' Price. If Goods are ready for dispatch and not released by Buyer, if Buyer requests deferral of shipment, or if Buyer fails to provide information, material or documentation required by SAMSON for delivery of such Goods, Buyer shall liable for monthly storage fees at a minimum rate of two percent (2%) starting on scheduled date of shipping. These charges will be invoiced to Buyer separately from the actual shipment and shall be paid in full by Buyer within thirty (30) days of date of invoice.
- 9. **Return of Goods:** SAMSON is under no obligation to accept returned Goods or issue credit on returned Goods if they were correctly supplied, as determined in SAMSON's sole direction. All Goods approved by SAMSON for returns are subject to a restocking fee based on the type of Goods.
  - a. Stocked Goods may be returned by Buyer subject to Buyer's payment of a restocking charge as per the schedule below and provided Goods are in original, saleable condition, as determined by SAMSON in its sole discretion:
    - i. 40%restocking up to (12) twelve months from shipment
  - b. Goods that are classified by SAMSON in its sole discretion as re-sellable, subject to Buyer's payment of a restocking charge as per the schedule below and provided Goods are in original, saleable condition, as determined by SAMSON in its sole discretion:
    - i. 60% restocking up to (12) twelve months from shipment
  - c. Notwithstanding the foregoing, return of Goods shall not be accepted and credit shall not be issued for (a) Goods customized for customer-specific plans and specifications; (b) Goods that are classified by SAMSON in its sole discretion as not re-sellable; or (c) third-party Goods obtained by SAMSON for a customer's benefit following a specific request from such client. SAMSON may, in SAMSON's sole and absolute discretion, agree to accept returns of non-stocked Goods subject to Buyer's payment to SAMSON of applicable charges, including restocking charges and third party charges, designated by SAMSON at the time of approval.
  - d. All costs and expenses of returning Goods will be solely paid by Buyer. Risk of loss or damage associated with such Goods shall transfer to SAMSON following receipt by SAMSON of such Goods at SAMSON's facilities.
- 10. **Cancellations:**
  - a. Any termination of this Agreement by the Buyer or cancellation of delivery of Goods or provision of Services shall be effective only if made in writing and accepted by SAMSON. In addition to the restocking fee, cancelled orders and shipments for Goods or Services are subject to cancellation fees set out in Table 1 below.

**Table 1: Cancellation Fee Schedule**

Type of Services or Goods	Receipt by SAMSON of written cancellation request	Cancellation Fee to be paid by Buyer
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For Goods manufactured by SAMSON (excluding software-related products or Goods customized for Buyer in any manner)	between the date of Order Confirmation and the time of order release to the production facility	10% of the Price
	between the time of order release to production facility and 10 days following release to production facility	30% of the Price
	between 11 – 20 days after release of order to production facility	40% of the Price
	between 21 – 25 days after release of order to production facility	50% of the Price
	any time after 26 days following the release of the order to the production facility	100% of the Price
For any other non-stocked Goods, including customized Goods, Goods manufactured by third parties and software products	any time before such order is released by SAMSON to the production facility, third party or manufacturer	10% of the Price
	any time after such order is released by SAMSON to the production facility, third party or manufacturer	100% of the Price
For any Services (subject to Sections 10.c and 10.d) below	during 48 hours before the schedule time of performance (each, a “planned day”) of such Services	\$600.00/planned day plus any additional indirect or direct costs incurred by the SAMSON in good faith reliance upon the Order Confirmation related to such Services.

- b. The cancellation charges listed above are in addition to, and not in lieu of, any other rights and remedies SAMSON possesses under this Agreement, at law, or in equity. SAMSON shall not be limited from pursuing any such remedies and suspension, cancellation and/or termination by Buyer shall not relieve Buyer from paying all costs incurred by SAMSON in good faith reliance upon the Order Confirmation, including, but not limited to, the costs of any third-party materials, products, or services purchased by SAMSON to fulfill its obligations hereunder. SAMSON shall be entitled to reimbursement of the Price set out in the Order Confirmation for all Goods assembled and Services performed prior to the termination as well as an allowance for reasonable overhead and profit on the not yet completed portion. SAMSON shall also be entitled to retain any and all payments and/or deposits received by it from Buyer under this Agreement in the event of a cancellation/termination and shall be entitled to retain copies of all data, information, and documents received hereunder, regardless of form and whether or not modified or merged into other information or materials.
- c. Cancellation of training services shall be subject to SAMSON's standard and customary cancellation fees. A copy of these fees is provided at the time of the submission of the proposal to Buyer. Buyer may substitute participants in lieu of cancelling at any time up to the start of training at no charge.
- d. In the event Buyer cancels services concerning project and solutions business that involves project management, technical drawings, design work and/or technical documentation, Buyer shall be charged for the actual costs incurred by SAMSON prior to receipt of the notice of termination (including labour cost) for the project or solution, in an amount not to exceed the original quoted Price for the Services.

**11. Warranty:**

- a. SAMSON warrants that, during the period that commences on the date of shipment from SAMSON and for 12 months thereafter (“Warranty Period”), the Goods, so far as the same have been manufactured by SAMSON, shall (i) be free, under normal use and maintenance and when installed



- and used in accordance with the applicable documentation that accompanies the Goods from defects in material and workmanship; and (ii) materially comply with the Specifications, subject to Section 25.
- b. The warranty set out in this Section is non-transferable. Should any Good be found to not comply with the foregoing limited warranty during the Warranty Period, SAMSON's sole obligation, and Buyer's sole and exclusive remedy, will be to either, as determined by SAMSON, repair the non-compliant Good (or part thereof) or to replace the non-compliant Good (or part thereof) at SAMSON's plant. All repaired and/or replaced Goods (or part thereof) shall be warranted to be free from defects in material and workmanship under normal use and service for a period of 90 days from the date that the repaired or replaced Good (or part thereof) is shipped from SAMSON's location, or until the end of the original Warranty Period, whichever is longer. Buyer shall be solely responsible for payment of the costs of removal and installation of the non-compliant Good and costs of transportation and insurance to and from SAMSON's location. Goods (or parts thereof) which have been replaced become the property of SAMSON. Risk of loss of Goods during shipment to / from SAMSON shall be Buyer's. Buyer must immediately inspect all delivered Goods and SAMSON must be informed in writing without delay of any such defects which are detected. The foregoing warranty does not apply to or cover:
- i. changes, alterations, attachments, repairs or modifications made to Goods (or damage that is due to same) by any party other than SAMSON, unless conducted with SAMSON's prior written approval;
  - ii. normal wear and tear;
  - iii. any defects or damage caused by or repairs required as a result of abusive operation, misuse, negligence, accident, inappropriate use, including as may be described in the Goods documentation, or any other causes not arising out of defects in material or workmanship;
  - iv. Goods that have not been installed and/or operated in accordance with SAMSON's instructions, documentation or good industry practices;
  - v. non-compliance to the extent due to Buyer's default of its obligations hereunder;
  - vi. non-compliance due to a Buyer failure to use supplies or materials meeting SAMSON's specifications; or
  - vii. any other acts or occurrences that are not the fault of SAMSON.
- c. Goods purchased by SAMSON from other manufacturers or other third parties and sold hereunder are covered only by the express warranties of such manufacturers to extent assignable by SAMSON. Should any third party Good be found to not comply with the applicable third party warranty (if any), SAMSON's sole obligation and Buyer's sole and exclusive remedy from SAMSON, will be for SAMSON to coordinate on behalf of Buyer to either, as determined by SAMSON and/or the applicable third party, repair the non-compliant Good (or part thereof) or to replace the non-compliant Good (or part thereof) subject to and in accordance with the terms of the third party warranty.
- d. SAMSON shall not be obligated to perform Services as a result of malfunctions of the Goods caused by: (i) the acts of persons other than SAMSON; (ii) inadequate facilities of Buyer; (iii) systems or equipment outside SAMSON's control (such as those provided by vendors of utilities); (iv) modifications to the Goods made by a party other than the SAMSON.
- e. THIS LIMITED WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES. SAMSON EXPRESSLY DISCLAIMS AND EXCLUDES, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, ALL OTHER WARRANTIES, REPRESENTATIONS, PROMISES OR CONDITIONS, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, AND WHETHER ARISING BY STATUTE OR OTHERWISE IN LAW, FROM A COURSE OF DEALING OR USAGE OF TRADE, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE (WHETHER USED SINGLY OR IN COMBINATION WITH OTHER MACHINERY AND MATERIAL OR AS A SYSTEM OR PART THEREOF) OR ANY WARRANTY OF NON-INFRINGEMENT OF THIRD PARTY RIGHTS, ANY WARRANTY WITH RESPECT TO THE FUNCTIONALITY, DURABILITY, COMPATIBILITY, OPERATION OR USE OF THE GOODS OR THAT THE GOODS OR SERVICES WILL MEET BUYER'S REQUIREMENTS OR THAT ANY OR ALL DEFECTS WILL BE CORRECTABLE BY SAMSON.



**12. Limitation:** IN NO EVENT AND TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW SHALL SAMSON, ITS SHAREHOLDERS, AFFILIATES, THIRD-PARTY CONTRACTORS, SUPPLIERS AND AGENTS AND THEIR RESPECTIVE DIRECTORS, OFFICERS AND EMPLOYEES (COLLECTIVELY THE "SAMSON PARTIES") BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY SPECIAL, CONSEQUENTIAL, PUNITIVE, EXEMPLARY, INCIDENTAL OR INDIRECT DAMAGES OR ANY OTHER COMMERCIAL OR ECONOMIC LOSS OR DAMAGES OF ANY KIND OR NATURE WHATSOEVER (INCLUDING, WITHOUT LIMITATION, IN RESPECT OF LOSS OF PROFIT OR REVENUE, FAILURE TO REALIZE EXPECTED SAVINGS, COSTS OF DELAY, LOSS OF TIME OR INCONVENIENCE OR COSTS OF PROCURING SUBSTITUTE PRODUCTS) EVEN IF SUCH DAMAGES ARE FORESEEABLE OR THE SAMSON PARTIES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SAMSON PARTIES' TOTAL LIABILITY AND OBLIGATION IN THE AGGREGATE FOR ANY AND ALL CLAIMS ARISING OUT OF OR IN ANY CONNECTION WITH THIS AGREEMENT, WITH RESPECT TO ANY EXPENSE, DAMAGE, LOSS, INJURY, OR LIABILITY OF ANY KIND, REGARDLESS OF THE CAUSE OR FORM OF ACTION OR THEORY OF LIABILITY (INCLUDING FOR BREACH OF CONTRACT, TORT, NEGLIGENCE, BY STATUTE OR OTHERWISE) SHALL BE LIMITED TO THE ACTUAL DIRECT DAMAGES SUFFERED AND SHALL NOT EXCEED THE ACTUAL PRICE PAID BY BUYER FOR THE GOODS AND SERVICES THAT ARE THE SUBJECT OF THE CLAIM. All disclaimers and limitations set forth herein shall apply regardless of the nature of any cause of action or demand (including, but not limited to breach of contract, breach of warranty, negligence, strict liability, tort or any other cause of action) and shall survive a fundamental breach or breaches and/or failure of the essential purpose of this Agreement or any remedy contained herein.

### 13. Confidentiality

- a. **Definition:** "Confidential Information" means all documents, information, technology and data disclosed or furnished in any connection with this Agreement by one party to the other party prior to or after the date of this Agreement, directly or indirectly, whether in oral, written, graphic, video, machine-readable or other form that is either marked or identified (in writing or orally) as being confidential or proprietary or that the receiving party can reasonably conclude or ought to know is confidential or proprietary to the other party. For certainty, SAMSON's Confidential Information shall be deemed to include, all software, documentation and all other technical and product information and documentation, trade secrets, and the whole of the ideas, concepts, processes, procedures, and know-how contained therein.
- b. **Use of Confidential Information:** Buyer shall be permitted to use the Confidential Information of SAMSON solely, and to the extent necessary, for its internal business purposes in connection with its operation and use of the Services and Goods as permitted by this Agreement. SAMSON shall be permitted to use the Confidential Information of Buyer solely and to the extent necessary for the installation, provision and support of the Software and its activities related thereto and as otherwise set out in this Agreement. Each party shall hold in confidence and shall protect (using efforts and measures it uses to protect its own confidential information of a similar nature, but in any event reasonable efforts and measures) the Confidential Information of the other party from harm, loss, theft, reproduction and unauthorized access while in its possession or control. Buyer acknowledges and agrees that the Confidential Information it may receive from SAMSON is the sole and exclusive property of SAMSON (and/or its suppliers and licensors) and is highly valuable, confidential and material to the interests, business and affairs of SAMSON, and that disclosure thereof would be detrimental to the interests, business and affairs of SAMSON.
- c. **Exceptions; Permitted Disclosure:** A party shall be permitted to disclose relevant aspects of the other party's Confidential Information to its officers, directors, employees, agents and professional advisors to the extent that such disclosure is necessary for the performance of its duties and obligations or the exercise of any rights or privileges granted under this Agreement; provided, however, that prior to such disclosure such disclosing party shall inform such persons and parties of



the confidential nature of the Confidential Information. A party shall, subject to the terms hereof, be fully responsible for ensuring that any such persons to whom it discloses the other party's Confidential Information comply with the confidentiality obligations contained in this Agreement and shall be liable for any breach of this Agreement by such persons. The confidentiality obligations set out in this Section do not apply in the following circumstances: (i) if Confidential Information prior to furnishing or thereafter becomes known to the public without fault or breach of receiving party; (ii) if a party obtains Confidential Information from a third party without restriction on disclosure and without breach by such third party of a non-disclosure obligation; and (iii) to the extent that a party is required to disclose information by applicable law or a court of competent jurisdiction; provided, however, that it shall not make any such disclosure without first notifying the other party and allowing the other party a reasonable opportunity to seek injunctive relief from (or a protective order with respect to) the obligation to make such disclosure. In addition, it shall take reasonable steps, to the extent permitted by law, to remove from the Confidential Information that is required to be disclosed, any information that a reasonable person would conclude is commercially sensitive to the other party.

- d. **Unauthorized Disclosure:** A party shall notify the other party promptly upon discovery of any unauthorized use or disclosure of the other party's Confidential Information, and will cooperate with the other party in every reasonable way to help regain possession of such Confidential Information and to prevent its further unauthorized use or disclosure.
- e. **Survival and Return of Information:** The obligations of confidentiality in this Agreement shall be effective throughout the term of this Agreement and, notwithstanding the return of any Confidential Information or any other event, shall continue in full force and effect following its termination. Without prejudice to any other rights provided herein, upon termination of this Agreement, each party shall return to the other all Confidential Information of such other party in its possession or control, or destroy such Confidential Information, including any copies or reproductions thereof. In the case of Confidential Information in electronic form "return" and "destroy" means to use reasonable efforts to permanently delete such Confidential Information from its information systems such that the Confidential Information is not accessible in the ordinary course, however each disclosing party recognizes that such electronic representations of Confidential Information may continue to exist, subject to the terms hereof, in the receiving party's data system backup tapes, or similar storage media.

**14. Intervening Events:** SAMSON shall not be liable for delay or failure in performance resulting from acts or events beyond the control of SAMSON, including but not limited to, strikes or labour or industrial disturbances, civil disturbances, acts, orders, legislation, regulations or directives of any government or other public authorities, acts of public enemies, riots, sabotage, blockages, embargoes, shortages of labour, materials and suppliers, delays of suppliers, lightning, earthquakes, fire, storms, hurricanes, floods, washouts, explosions, pandemics and acts of God.

**15. Import and Export Compliance:** Buyer is solely responsible for compliance with all applicable import and export control laws, in any jurisdiction, relating to the Goods and Services. Buyer shall undertake all necessary actions to comply with such laws, including, but not limited to, processing of all necessary customs procedures, payment of import/export duties and import/export taxes, completion and maintenance of documentation and provision of accurate information to all customs authorities. Buyer shall indemnify and hold harmless SAMSON against all damages, costs, expenses and attorney's fees arising from or alleged to arise from any violation, alleged violation, or failure to comply with, the terms of this provision by Buyer or any person for whom Buyer may be responsible.

**16. Indemnity:** The Buyer hereby agrees to indemnify and hold harmless the SAMSON Parties and their successors and assigns from and against all liabilities, obligations, costs, losses, demands, actions, proceedings, claims, damages and penalties (including, without limitation, all legal costs and costs of enforcement) incurred or suffered by any of the SAMSON Parties and arising out of or relating to the Buyer's





performance or breach of this Agreement or Buyer's purchase, possession, use, operation or re-sale of Goods.

- 17. Retention of Title and Security Interest:** Title to and ownership of the Goods shall not pass to the Buyer on delivery of the Goods but shall remain with SAMSON until the Buyer has paid all payments and other amounts owing to SAMSON under this Agreement in full and has performed all obligations under this Agreement in full. Thereupon, title to and ownership of the Goods shall vest in the Buyer without further act. SAMSON may require plates or markings to be placed on the Goods indicating SAMSON's ownership until title is transferred. The Buyer shall keep the Goods free and clear of all liens, encumbrances, security interests and rights of other persons. If any such fees, taxes, rates, levies, assessments or charges are not paid when due or if any lien, encumbrance, security interest or right of another person is placed or acquired against the Goods, SAMSON may pay off the same and charge the amount so paid with all costs and expenses incidental thereto to the Buyer as a special payment under this Agreement.
- 18. Purchase Money Security Interest:** As security for the payment of all present and future amounts due to SAMSON and for the fulfillment of all obligations of the Buyer to SAMSON hereunder or under any other agreement or arrangement between the Buyer and SAMSON, the Buyer hereby assigns, transfers and grants to SAMSON a security interest in and to the Goods and all proceeds derived therefrom. The Buyer intends such security interest to constitute a purchase money security interest in the Goods in favour of SAMSON.
- 19. Authorization:** The Buyer hereby authorizes SAMSON to file such financing statements, financing change statements and other documents and do such acts, matters and things (including completing and adding schedules hereto identifying the Goods) as SAMSON may deem appropriate to perfect on an ongoing basis and continue a security interest, to protect and preserve the Goods and to realize upon the security interest and the Buyer hereby irrevocably constitutes and appoints any officer of SAMSON the true and lawful attorney of the Buyer, with full power of substitution, to do any of the foregoing in the name of the Buyer whenever and wherever it may be deemed necessary or expedient.
- 20. Repossession: Waiver of Certain Rights:** The Buyer, if a corporation, waives the rights, benefits and protection given by The Civil Enforcement Act of Alberta or any amendment or successor legislation thereto and agrees that The Limitation of Civil Rights Act of Saskatchewan or any amendment or successor legislation thereto shall not apply to this Agreement or to any agreement renewing or extending this Agreement or to the rights, powers or remedies of SAMSON under this Agreement or under any agreement renewing or extending this Agreement. To the extent permitted by law, the Buyer waives the benefit of any statute which restricts SAMSON's enforcement right to the recovery of money due and owing under this Agreement, to taking possession of the Goods, or to the choice of such recovery or taking possession. The Buyer expressly waives the right to receive a copy of any financing statement or financing change statement which may be registered by SAMSON in connection with this Agreement or any verification statement issued with respect thereto where such waiver is not otherwise prohibited by law.
- 21. Insurance:** Buyer shall arrange for 'all-risk' insurance to be placed on the Goods for their full insurable value, and shall maintain such insurance until the Goods have been paid for in full. Buyer hereby irrevocably assigns to SAMSON, to the extent that amounts remain owing by Buyer in respect of the Goods, any monies which may become payable under such policy of insurance. Buyer shall cause all such insurance policies to contain a standard mortgage clause in favour of and acceptable to SAMSON.
- 22. Default:** The occurrence of any one of the following events shall constitute a "Default" under this Agreement:

  - a. the Buyer fails to make any payment, pay any special payments or other amount payable under this Agreement when due;
  - b. the Buyer fails to perform or observe any other covenant, condition or agreement to be performed or observed by the Buyer hereunder;



- c. any representation or warranty made by the Buyer herein or in any document or certificate furnished to SAMSON in connection herewith proves to be incorrect in any material respect;
- d. the Buyer defaults under any other agreement to which the Buyer and SAMSON are parties;
- e. the Buyer ceases or threatens to cease to carry on business in the normal course;
- f. the Buyer dies or becomes incompetent, if an individual;
- g. the Buyer sells all or substantially all of its property or makes a sale in bulk;
- h. any bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings or any other proceedings for the relief of debtors are instituted by or against the Buyer and, if instituted against the Buyer, are allowed, consented to or not dismissed or stayed within 30 days after such institution;
- i. execution or other court process becomes enforceable against the Buyer or any of its property, or distress or similar process is levied upon all or part of the Buyer's property;
- j. a trustee, receiver or receiver and manager is appointed for the Buyer or for part or all of the property of the Buyer; or
- k. SAMSON, in good faith, believes the ability of the Buyer to pay or perform any term or condition of this Agreement is impaired, or that the Goods are in danger of being lost, damaged or confiscated.

### **23. Remedies:**

- a. Upon the occurrence of a Default, SAMSON shall be entitled to declare this Agreement to be terminated and, subject to any applicable statutory requirements:
  - i. declare all remaining payments, special payments and all other amounts owing hereunder to be immediately due and payable;
  - ii. enter upon the premises where the Goods or other equipment which is the subject of any other contract, security agreement or lease between the Buyer and SAMSON (whether or not such other contract, security agreement or lease has expired or terminated) is located (the Goods together with such other equipment is referred to in this Section as the "Equipment") and take possession of and remove the Equipment, whether affixed to real or immovable property or not, without liability to SAMSON for any damage to such premises caused by taking of possession and removal of the Equipment;
  - iii. recover from the Buyer all payments, special payments and other amounts payable under this Agreement on the date that SAMSON declares the Agreement to be terminated (the "Termination Date");
  - iv. lease or sell the Equipment to any other person;
  - v. appoint a receiver, manager or agent of the Equipment, including any rents and profits thereof, and such receiver, manager, or agent so appointed shall have the power to take possession of the Equipment and to carry on or concur in carrying on the business of Buyer, as it relates to the Equipment and to sell or concur in selling the Equipment or any part thereof. Any such receiver, manager, or agent so appointed shall for all purposes be deemed to be the agent of the Buyer;
  - vi. to the extent permitted by applicable law, recover from the Buyer all costs incurred by SAMSON in connection with the Default and termination of this Agreement and all legal and other out-of-pocket costs incurred in enforcing the remedies available to SAMSON referred to in this Section;
  - vii. to the extent not otherwise recovered hereunder, recover from the Buyer liquidated damages under this Agreement which as between the parties hereto shall be conclusively deemed to be a genuine pre-estimate of the damages suffered by SAMSON in the circumstances and not a penalty and which liquidated damages shall be calculated in accordance with Section 23.b.
- b. SAMSON may terminate this Agreement for any reason whatsoever without penalty following 30 days' written notice to Buyer.
- c. The amount of the liquidated damages for which the Buyer shall be liable under Section 23.a.vii hereof as of the Termination Date shall be:



- i. the aggregate of the present value on the Termination Date of the remaining payments, special payments and other amounts, if any, owing by the Buyer, including all unpaid payments, to and including the final payment date (which shall be calculated as of the Termination Date) calculated by discounting such amount at the rate of 2% per year; less
  - ii. any proceeds of sale, leasing or other disposition of the Equipment after deduction of SAMSON's cost of disposition provided that if SAMSON has not sold, leased or otherwise disposed of the Equipment at the time of any proceeding to recover such liquidated damages, there shall be no deduction, but SAMSON shall, upon the sale, lease or other disposition of the Equipment, refund to the Buyer forthwith an amount equal to the deductions that would have been made but for this proviso.
- d. The Buyer acknowledges that the said calculation of the amount of the pre-estimated liquidated damages is based upon the fact that SAMSON acquired and sold the Equipment to the Buyer at its request and that the purchase of the Equipment, the payments, the term of the Agreement and the final payment date were predicated upon a minimum return expected by SAMSON from the transaction.
- e. All rights and remedies of SAMSON in this Agreement shall be cumulative, may be exercised singularly or concurrently, and shall not be deemed exclusive of any other rights or remedies available at law or in equity.
- f. *For Buyers operating in the Province of Quebec only.* Unless prohibited by applicable laws, the Buyer hereby renounces to the provisions of section 2125 of the *Civil Code of Quebec*.

**24. No Rejection by Buyer, Changes:**

- a. **Acceptance:** Buyer must accept all Goods and Services tendered under this Agreement. Under no circumstances is Buyer permitted to reject Goods or Services tendered or return any Goods or Services, unless otherwise expressly permitted by this Agreement.
- b. **Changes:** In the event that the Buyer wishes to request changes to Goods or Services ordered, Buyer must request the proposed change(s) in writing to SAMSON. SAMSON will provide Buyer with a quotation to make the described change(s), providing details of revised costs and new delivery and performance schedule, as applicable. A written change order amending this Agreement must be executed by the parties documenting the change(s) and amendments to this Agreement.

**25. Specifications:** Specifications set forth in sales literature (including on SAMSON's website) are subject to change unless otherwise certified in writing by SAMSON. SAMSON may, without affecting its obligations under an Order Confirmation, make changes in the specifications of the Goods and Services delivered under an Order Confirmation from those contained in sales literature. Specifications for custom Goods and Services may be set forth in separate written documentation that expressly references the Goods and Services purchased and has been agreed to by each party.

**26. Audit Rights:** During the term of this Agreement and not more than once per year (unless circumstances warrant additional audits as set out below), SAMSON may audit the Buyer's systems and records to ensure compliance with the Agreement upon fifteen (15) days' written notice to Buyer. Notwithstanding the foregoing, the parties agree that SAMSON may conduct an audit at any time, in the event SAMSON reasonably believes an infringement of its intellectual property rights has occurred or an audit is necessary to address a material operational problem or issue that poses a threat to SAMSON's business.

**27. Entire Agreement and Amendment:** This Agreement constitutes the entire agreement between the parties pertaining to the subject matter hereof and supersedes all prior agreements, proposals, promises, inducements, representations, conditions, warranties, understandings, purchase or sales orders, negotiations and discussions, whether oral or written, of the parties. Any modification, amendment, supplement or other change to this Agreement must be in writing and signed by duly authorized representatives of the parties. As used herein, the term "Agreement" shall include any such future modifications, amendments, supplements or



other changes hereto. No terms or conditions which may be confined in Buyer's order forms, purchase orders or any other document not agreed to in writing by SAMSON shall bind SAMSON unless such order form is signed by an authorized representative of SAMSON. This Agreement will endure to the benefit of and be binding upon the parties and their respective successors and permitted assigns. In the event of any inconsistencies or conflicts between the terms of this Agreement and the terms of the Order Confirmation, any Buyer purchase order or of any schedules or other documents attached to or relating to this Agreement, the terms of this Agreement will prevail.

**28. Time for Payment of Essence:** Time for payment by Buyer shall be of the essence.

**29. Assignment:** Neither this Agreement nor any right granted hereby is assignable by Buyer without SAMSON's prior written consent. SAMSON may assign this Agreement at any time without notice to Buyer.

**30. General:**

- a. Any provision of this Agreement which is unenforceable in any jurisdiction shall, in such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validating or enforceability of such provision in any other jurisdiction. No delay or omission by a party to exercise any right or power it has under this Agreement or to object to the failure of any covenant of the other party to be performed in a timely and complete manner, shall impair any such right or power or be construed as a waiver of any succeeding breach or any other covenant. All waivers must be in writing and signed by the party waiving its rights.
- b. This Agreement shall be governed by, construed and enforced in accordance with the laws of the Province of Ontario, Canada, without regard to conflict of laws principles. Any and all disputes arising under this Agreement, whether as to interpretation, performance or otherwise, shall be subject to the jurisdiction of the courts of the Province of Ontario and each of the parties hereto hereby irrevocably attorns to the jurisdiction of the Courts of the Province of Ontario, Canada. The parties expressly exclude the application of The United Nations Convention on Contracts for the International Sale of Goods to this Agreement.
- c. The parties are acting hereunder as independent contractors and neither party shall have any right, power or authority to bind or obligate the other.
- d. All limitations, exclusions and indemnities, payment obligations, title, security, risk and remedy provisions, and all other terms necessary to give effect to such provisions shall survive any termination of this Agreement.

**31. Notices:** Any notice or other communications given under this Agreement shall be in writing and shall be given by delivery in person or by overnight courier service (with signature required), if to SAMSON to 1-105 Riviera Drive, Markham, Ontario L3R 5J7, and if to Buyer to the address specified for Buyer in the Order Confirmation applicable to the Goods and Services, and shall be effective upon receipt.

**32. Language:** It is the express wish of the parties that this Agreement and any related documents be drawn up in the English language after consideration of the Charter of the French Language. *Les parties confirment qu'il est de leur volonté expresse et réciproque que cette convention et tout document qui s'y rattache soient rédigés en anglais après considération de la Charte de la langue française.*