

Standard Terms and Conditions of Sale

1. Definitions:

- (a) “VES” shall mean Veteran Equipment Sales, LLC, 2339 Courage Dr. Suite C, Fairfield, California, USA 94533.
- (b) “Buyer” shall mean the Buyer, its representatives and/or its agents acting on its behalf.
- (c) “Equipment” shall mean any equipment, machinery, parts, materials or services purchased from VES.
- (d) “Contract” shall mean the agreement of the parties concerning the purchase of equipment from VES.

2. General Terms and Conditions:

- (a) These terms and conditions set forth the entire agreement between VES and Buyer concerning the equipment described in the purchase orders received by VES. If any provisions of this Contract are, in any action or proceeding to enforce them, deemed or found to be void or unenforceable, then the balance of these provisions shall remain valid and enforceable.
- (b) This Contract supersedes all other offers or counter offers whether conveyed by other documents or oral negotiations with respect to the equipment purchased. It also supersedes any terms, conditions or provisions contained in Buyer’s purchase order(s) that are at variance with the terms and conditions of this Contract, and VES specifically rejects any such terms, conditions or provisions. VES’s failure to object to any such terms, conditions or provisions shall not be deemed a waiver of the terms, conditions and provisions of this Contract. Any conduct which recognizes the existence of their agreement shall constitute acceptance by VES and Buyer of the terms and conditions set forth herein and rejection of all additional or different terms and conditions proposed by Buyer or incorporated by law. The applicability of this paragraph is an express condition of any contract formed between Buyer and VES.
- (c) The Article headings are provided for convenience and are not to be used construing these terms and conditions. No modification, change, or waiver of any of these terms, agreements and conditions shall be binding upon Buyer or VES unless signed by Buyer and by the President of VES on its behalf.

3. Price:

Buyer shall pay the price or prices for the equipment contained on VES’s last published price list before delivery. If all or a portion of the equipment is specially produced, assembled or manufactured by VES, Buyer shall pay the price quoted to it by VES for such equipment. Prices subject to change without notice.

4. Engineering and Drawings:

- (a) To the extent required by VES, all information, instructions and drawings, which are necessary for VES performance, will be supplied by Buyer. VES shall be entitled to rely on such information in the performance of its work hereunder.
- (b) VES assumes no responsibility for the adequacy of any design provided by Buyer or for its conformance to governmental or other requirements. No statement, recommendation or assistance given by VES shall constitute a waiver of any provision hereof or subject VES to liability except as herein defined.
- (c) If necessary, VES will submit general arrangement or other drawings for Buyer’s approval. Such approval shall constitute Buyer’s agreement that Equipment to be furnished by VES conforms with Buyer’s order.
- (d) VES will furnish one (1) copy of drawings and pertinent instructions required for installation and operation of the equipment supplied hereunder. A nominal charge will be made to cover the cost of additional copies.
- (e) Agreed changes in equipment or engineering resulting from Buyer’s review of VES’s drawings will result in corresponding changes in the contract price and delivery schedule. Any such changes must be in writing and signed by Buyer and an authorized representative of VES.
- (f) All engineering, drawings, specifications and instructions (“Proprietary Data”) furnished by VES and the contents thereof are and shall remain the sole property of VES. Use of such Proprietary Data by Buyer is limited to that expressly authorized by VES. Buyer shall treat such Proprietary Data as confidential and shall not disclose the same to third parties without the prior written consent from an authorized representative of VES.
- (g) All specifications, drawings and particulars of weights and dimensions submitted with proposals are approximate only. Descriptions and illustrations contained in catalogs, price lists and

advertising material are intended merely to present a general idea of the goods described therein, and none of these shall form part of the contract.

- (h) VES reserves the right to improve or modify designs, at its sole discretion, without notice to the customer.

5. Changes In Law:

In the event that changes in current codes, rules, laws or regulations increase its cost or time of performance, VES shall be entitled to an equitable adjustment of the contract price and delivery schedule.

6. Change Orders and Adjustments:

Buyer may make changes, within the general scope of work, by giving VES written notification in a change order. Within a reasonable time after receipt of such change order, VES shall submit to Buyer the adjustments to the contract price, delivery schedule and performance requirements resulting therefrom. VES shall have no obligation to proceed with any such change until VES and Buyer agree in writing to any change in the contract price, delivery schedule, performance requirements and/or terms and conditions. In addition, VES shall be entitled to an adjustment to the price, delivery schedule and performance requirements if (i) any part of the work is delayed by any act or failure to act by Buyer or third parties performing work for Buyer; (ii) work is performed in connection with changes by Buyer and not adopted; (iii) additional work is required as a result of variances in the design provided by Buyer as set forth in Article 4 (b); or (iv) the work is delayed by any cause beyond VES's control as set forth in Article 17 or Article 19(b).

7. Equipment Changes:

VES reserves the right to make at any time such changes in design, manufacture, assembly, arrangement or components of equipment as shall in its judgment constitute an improvement over former practice.

8. Taxes:

All prices quoted herein are exclusive of all sales, use, value added, excise, import, privilege, personal property or other taxes or duties occasioned by the manufacture, shipment, sale, lease, possession, ownership or use of the equipment. Buyer shall pay such taxes to VES or to public authorities, as required.

9. Title and Risk of Loss:

Title to Equipment furnished hereunder shall pass only upon receipt of payment in full by VES. Risk of loss to Equipment shall be F.O.B. point of shipment (called ex-works in many countries), even in cases wherein freight

may be prepaid or allowed to destination by VES.

10. Freight:

Freight, when estimated, is estimated at an economical rate for the method of shipment specified to the given destination, and the actual cost will be invoiced to and paid by the Buyer, in addition to the contract price. Any claims for loss, damage or shortage in transportation must be filed immediately by the Buyer against the carrier, as all Equipment is shipped at Buyer's risk.

11. Storage:

Equipment on which manufacture or delivery is delayed due to any cause beyond VES's control may be placed in storage by VES, at Buyer's cost and risk, and regular charges therefore and expenses in connection therewith shall be paid by Buyer. However, at VES's request Buyer will promptly provide or arrange for suitable storage facilities and assume all costs and risks in connection therewith.

12. Consular Fees:

If instructed in writing, VES will make arrangements, at Buyer's expense, for consular documents and declarations as agent of Buyer, provided that VES assumes no liability whatsoever as a result of making such arrangements, or of any delay related thereto. Consular fees for legalizing invoices, stamping bills of lading, or other documents required by the laws of any country or destination shall be paid by Buyer, in addition to the contract price.

13. Services:

Unless otherwise agreed, the equipment provided hereunder shall be erected, installed and serviced by the Buyer at Buyer's expense. If installation, erection or technical services are provided by VES, such services shall be governed by VES's current field service rates, which are incorporated herein.

14. Safety Devices:

VES shall not be required to furnish or be responsible for any safety devices, or codes and regulations and compliance therewith, unless otherwise agreed to, in writing, by VES's President. Buyer shall install and operate the equipment in accordance with all applicable safety laws, codes and regulations.

15. Indemnity:

To the fullest extent permitted by law, Buyer agrees to defend, indemnify and hold harmless VES, and its officers, directors, agents and employees, from and against any and all losses, damages, economic loss, non-economic

loss, costs, expenses (including attorney fees), liabilities, claims, demands, suits or causes of action, and proceedings pertaining to any bodily injury (including death) or damage to the person or property of Buyer, Buyer's agents or employees, or third parties to whom Buyer has furnished or allowed to use the equipment, arising out of, or in any way connected with the use, storage, repair or maintenance of the equipment and/or services provided by VES, or the installation, testing or work performed pursuant to this Contract.

16. Product Warnings: Additional Indemnity

Buyer shall diligently and competently advise its agents and employees, and Third persons whom it actually or reasonably foresees as users or bystanders exposed to risks of harm from the equipment, of all WARNINGS provided by VES, including VES's Abrasive Blast Worker Creed, those set forth below or those attached to or furnished with the equipment. Buyer shall not deface, remove, modify or obscure any such warnings and provisions, or allow them to be defaced, removed, modified or obscured. To the fullest extent permitted by law, Buyer shall defend, indemnify and hold VES, and its officers, directors, agents, employees, successors and assigns, harmless from and against any and all claims, causes of action, demands, suits, actions, proceedings, bodily injuries, damages, losses, expenses (including attorneys fees), expert witness fees, property damage and liabilities arising out of, related to, or caused by any of the following: (1) Buyer's breach of any Buyer warranties (e.g. secs 29 & 30); (2) Buyer's failure to advise its agents, employees, successors, assigns, customers or applicable third persons, of all warnings provided by VES, or (3) Buyer's removal, defacement, modification or obscurement of said warnings.

17. Inspection:

Buyer shall be entitled to perform inspections of Equipment at VES's plants at mutually agreed upon times or points. Any inspections at VES's distributors' or subcontractors' facilities shall be coordinated through VES. Buyer's failure to perform such inspections in a timely manner may delay the progress of the work and increase VES's costs. Such delay(s) shall entitle VES to an equitable adjustment in the price, delivery schedule and performance requirements, and/or at VES's sole option, permit VES to proceed with the work without Buyer's inspection.

18. Returned Equipment and Parts:

Equipment may not be returned except by prior written authorization of the President of VES, and when so returned, will be subject to handling and restocking charge. Transportation cost is responsibility of Buyer.

19. Delivery/Delay/Extension of Time:

- (a) VES will make every reasonable effort to meet scheduled delivery dates and to maintain production schedules consistent therewith; however, VES is not liable for damages due to any failure to meet such scheduled delivery dates and no such failure to meet scheduled dates shall be sufficient cause for cancellation, except as provided in Article 24 hereof. Equipment stated to be in stock is subject to prior sale or use.
- (b) Scheduled delivery dates shall be extended for delays occasioned by any cause beyond VES's reasonable control, including, without limitation, governmental actions or orders, embargoes, defective materials, default or delay of material suppliers, delays in transportation, labor disputes, fires, and floods, inability to obtain fuel, labor or materials, riots, acts of God, and all other such causes which delays performance by VES or any of its suppliers or subcontractors.

20. Limited Warranty

- (a) LIMITED WARRANTY. VES warrants equipment of its manufacture to be free from defects in material and workmanship for a period of 1 (one) year from date of shipment provided Buyer properly installs, maintains, and operates said equipment under normal conditions with competent personnel and supervision.
- (b) EXCLUSIONS. This warranty shall not apply to, and VES shall have no obligation to repair or replace, any equipment: (1) due to ordinary wear and tear during normal use; (2) which has been damaged by, or subjected to, improper application or operation, misuse, negligence, or accident; (3) which has been damaged or destroyed by corrosion, erosion, chemical or abrasive action, excessive heat, improper lubrication, improper or extended storage prior to start up, or other environmental, mechanical or maintenance conditions beyond VES's control; (4) which Buyer has applied outside the design limitations of said equipment; or (5) which has been maintained, repaired or altered by the Buyer or any third party in any way so as, in VES's judgment, to affect its fitness, quality, durability or stability. VES assumes no liability for defects in equipment, parts, or accessories not of its own manufacture, and Buyer's remedy in such event is limited to recourse under any applicable warranties of such other manufacturer(s).
- (c) NOTICE TO VES. In order to invoke this warranty, Buyer must give VES prompt written notice of the defect or non-conforming nature of the equipment within two calendar weeks of discovery and full descriptions and satisfactory proof of any such

non-conformity or defect. Absent receipt of such notice by VES, VES shall have no obligation under this warranty.

- (d) AS BUYER'S SOLE AND EXCLUSIVE REMEDY, VES will repair or replace equipment of its own manufacture only, determined by it to have been defective as limited herein, provided said equipment is shipped, prepaid, to VES at Fairfield, California. If repairs, alterations, or replacements are made by Buyer without VES's prior written consent, this warranty shall cease to be in effect and no allowance will be granted for any repairs, alterations, or replacements made by Buyer. In no event will VES be liable for any special, indirect, incidental or consequential damages, attorney's fees, lost profits, or commercial or business losses of any nature.
- (e) No person, agent, representative, employee, distributor or dealer is authorized to give any other warranties on behalf of VES nor to assume for VES any other liability or obligation in connection with the goods purchased under this agreement.
- (f) If the cost to repair or replace any defective or non-conforming part of the equipment exceeds the price thereof, VES may, in lieu of repair or replacement, at its sole option, upon return of said equipment, refund the purchase price.
- (g) No back charge for field correction will be honored unless the amount and corrective procedure are agreed upon in writing, by the President of VES, prior to field correction.

THERE ARE NO WARRANTIES WHICH EXTEND BEYOND THE DESCRIPTION ABOVE.

WARRANTY DISCLAIMER

THE ABOVE LIMITED WARRANTY IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, AND SPECIFICALLY EXCLUDES ANY IMPLIED WARRANTY THAT THE EQUIPMENT IS MERCHANTABLE OR FIT FOR A PARTICULAR PURPOSE.

The use of any sample or model during the negotiations leading to this agreement serves merely to indicate the type of goods which will be tendered to buyer. Such samples or models create no warranty that the equipment sold shall conform to the samples or models.

21. Custom Equipment, Demonstration Run:

In the event all or any portion of the equipment purchased by Buyer is custom, the following additional terms and conditions will apply:

- (a) Buyer shall, at VES's request, witness a demonstration run of the equipment at location of

VES's choosing.

- (b) Buyer shall also identify to VES, at this demonstration run, any and all variations and discrepancies between the equipment's dimensions, components, software, appearance or performance and the purchase agreement.
- (c) Buyer shall sign an acknowledgement and acceptance that the equipment and its performance meet Buyer's expectations.
- (d) VES emphasizes to its valued Buyer that the customer-witnessed demonstration run is a vital part of the manufacturing process and is Buyer's best opportunity to obtain satisfactory results with its newly purchased equipment.

If buyer fails or declines to comply with paragraphs (a)-(c) above, buyer expressly assumes all risks of defective or non-performance, and agrees that the equipment is purchased as is or with all faults.

22. Remedies:

- (a) Subject to the Limitations and Disclaimers of Warranty, Damages and liability contained herein, VES agrees to repair or, at its sole option, replace, F.O.B. original point of shipment, any Equipment which proves, during the warranty period, to be nonconforming or to contain defective material or workmanship, provided that written notice is given to VES within two (2) calendar weeks of discovery. Buyer shall provide VES with full description and satisfactory proof of such nonconformity or defect.
- (b) Subject to the Limitations and Disclaimers of Warranty, Damages and liability contained herein, if the cost to repair or replace any defective or non-conforming part of the Equipment exceeds the price thereof, VES may in lieu of repair or replacement, at its sole option, upon return of said part, refund the price thereof.
- (c) It is expressly agreed that those are the sole and exclusive remedies available to the Buyer and that VES's liabilities are limited as set forth herein. VES has not granted nor assumed any other warranties, guarantee, duties, liabilities, or obligations, either express, implied, statutory, at law or in equity. It is further expressly agreed that no breach of warranty or of contract or failure by VES to fulfill any other conditions of this contract shall constitute a waiver these exclusive limited remedies.
- (d) All liability of VES shall terminate upon the expiration of the warranty period set forth in Article 18 (a). Buyer hereby releases VES, its agents and employees from any further liability therefor.
- (e) No liability whatsoever shall attach to VES unless the equipment has been said paid for and Buyer

has not modified it without VES's prior written consent.

- (f) In any action or proceeding to enforce this Contract, the prevailing party shall be entitled to recover reasonable attorneys fees in addition to all other costs and expenses incurred in connection therewith.

23. Security Interest

VES retains, and Buyer hereby grants to VES, a security interest in all equipment sold to Buyer. The terms hereof shall constitute a security agreement between VES and Buyer. Upon VES's request, Buyer agrees to perform all acts reasonable, necessary or appropriate to assist VES in perfecting and maintaining such security interest. VES shall have all of the rights and remedies of a secured party as set forth in the Commercial Code for the State of California. Any such rights and remedies shall be cumulative to those set forth in this Contract.

LIMITATION OF DAMAGES

BUYER'S REMEDIES ARE LIMITED TO THE RETURN OF THE GOODS AND REFUND OF THE PURCHASE PRICE OR TO REPAIR OR REPLACEMENT OF NON-CONFORMING OR DEFECTIVE EQUIPMENT. These are buyer's exclusive remedies. In no event will VES be liable for any special, indirect, incidental, or consequential damages, attorneys fees, lost profits, or commercial or business losses of any nature.

24. Terms of Payment:

- (a) Terms of Payment shall be as specified in accepted purchase orders. Payments shall become due as shipments are made under such financial guarantee of payment as VES may require. If shipment is delayed through no fault of VES, date of readiness for shipment shall be deemed to be date of shipment for payment purposes. If manufacture is delayed by Buyer, payment shall be made based on price and percentage of completion with the balance payable in accordance with the contract terms stated.
- (b) Terms of payment are subject to VES's approval at time order is accepted and again prior to delivery. In the event that, in VES's judgment, Buyer's credit position changes after the date hereof, VES reserves the right to refuse to deliver except for cash without being liable for nonperformance of contract either in whole or part.
- (c) Invoices are payable in accordance with the terms of payment described above. In the event discrepancies exist, full payment of the invoices will be made within the prescribed time and adjustments for proven discrepancies will be made as soon as practical.

- (d) If any payment is not then current within the specified time, interest will be charged at the prime rate of Citibank, N.A., New York, NY, or at the maximum legal rate permitted, whichever is lower, with interest computed and due monthly. Moreover, VES may at any time take such other legal actions as may be available to VES to collect amounts due.
- (e) If Buyer fails to fulfill the terms of payment or other terms or conditions hereof, VES may, at its option cease performance, defer further shipments to Buyer or cancel the unshipped balance and all other Buyer's contracts then unfilled. VES reserves the right in the event of Buyer's default to reclaim at Buyer's cost any item described herein. All rights of VES shall be cumulative and in addition to any other rights conferred by law.

25. Termination or Breach By Buyer: Liquidated Damages

It is understood and expressly agreed that in the event of Buyer's breach or termination of the Contract for any reason not the fault of VES, Buyer shall pay to VES as liquidated damages and not as a penalty ten per cent (10%) of the purchase price, plus the cost of all material and work performed by VES to date of termination plus any cancellation charges incurred by VES from its suppliers plus any costs incurred in bringing the work to an orderly conclusion. Buyer expressly agrees to this provision because it would be difficult or impossible to calculate VES's damages in the event of buyer's breach or termination.

26. Governing Law And Forum:

Any proposals and this Contract shall be governed by and construed in accordance with the laws of the State of California, U.S.A. Suit concerning any dispute between Buyer and VES arising out of or related to the terms and conditions of this contract or its enforcement that is not required to proceed to arbitration pursuant to the Arbitration section below may be brought in the Superior Court for the County of Solano, State of California. This Contract is deemed to have been made and entered into in Solano County, California.

The parties expressly waive application and jurisdiction of the U.N. Convention on Contracts for the International Sale of Goods.

27. Arbitration:

Any controversy or claim arising out of or relating to this contract, the breach thereof, or any warranties, limitations, or exclusions therein, shall be submitted to arbitration in accordance with the applicable commercial arbitration rules of the American Arbitration Association

then in effect, including any supplementary procedures for international commercial arbitration that may apply. Written notice of the demand for arbitration by one party to this agreement shall be delivered to all other parties and to the American Arbitration Association. There shall be three arbitrators who shall be selected by mutual agreement of the parties. If the parties cannot agree on the identity of any or all arbitrators, then said arbitrators shall be selected by the American Arbitration Association. All arbitrators selected shall be experienced and knowledgeable in the area(s) relating to the matter(s) in dispute. One of the three arbitrators selected must be a licensed mechanical engineer with at least 10 years experience. Another arbitrator shall be an attorney, licensed to practice law in the State of California, with at least 10 years experience in commercial litigation.

Unless otherwise agreed, any arbitration proceeding conducted pursuant to this provision shall be held in Solano County, California. The parties shall have 15 days after delivery of the demand for arbitration to select arbitrators by mutual agreement. To the extent possible, the arbitration proceeding shall be held not later than 60 days after written demand is made for such arbitration, provided that the final determination of the arbitrators shall be made not later than 15 days following the final submission of evidence. The fee to initiate any arbitration shall be born by the party demanding arbitration, but the final cost of any arbitration shall be born by the non-prevailing party.

Any award or decision rendered pursuant to arbitration shall be final and binding and judgment shall be entered upon such award or decision in accordance with the applicable law in any court having jurisdiction thereof.

No later than 20 days before the arbitration hearing is to commence the party demanding arbitration shall submit to the arbitrators and all other parties a statement of the facts supporting his or her claim or demands, the points at issue, the relief or remedy sought, the names, addresses, and telephone numbers of any witnesses to be called in person or by declaration or statement, or whose information is otherwise relied upon by that party. No later than ten days before the arbitration hearing commences any responding party shall state his or her factual and legal defenses and witnesses in response to the demanding party's statement. Any statements, documents, or other information supplied to the arbitrators by one party shall be communicated to the other party at the same time. Except as provided above, no other discovery shall be allowed.

28. Assignment:

Neither party shall assign any rights nor delegate any duties without the prior written consent of the other party,

except that VES reserves the right without the consent of Buyer, to subcontract any portion of the work under the Contract to affiliated persons or companies of VES, or to assign it for collection. In the event VES consents to any assignment, the rights of any assignee shall be subject to all set-offs, counterclaims and other rights of VES arising hereunder and Buyer remains fully responsible for the performance by its assignee of all conditions hereof.

29. Buyer warrants that the equipment will never be used with sand abrasive.

Buyer also agrees to defend, indemnify and hold VES, and its officers, directors, agents, employees, successors and assigns, harmless from and against any and all claims, demands, actions, proceedings, lawsuits, causes of action, bodily injuries, damages, losses, expenses (including attorneys fees), expert witness fees, property damage and liabilities arising out of, related to, or caused by Buyer's breach of this warranty or its use of the equipment with sand abrasive, or such use by third parties with Buyer's knowledge and consent.

30. WARNINGS AND ADDITIONAL BUYER WARRANTIES

1. Never use VES supplied equipment and items with sand abrasive. All abrasive blasting creates breathable particles of dust, which may cause lung disease, death or disability. If sand abrasive is used, the dust may also include silica, which may lead to various diseases including silicosis, a lung disease that can be fatal. Abrasive rebound or direct blast also may injure an unprotected operator. Therefore, safety requires that those persons in the area of abrasive blasting, performing repairs or maintenance inside a dust collector, or handling dust collector waste, must always wear properly selected, maintained, government approved respiratory equipment and full protective clothing, from head to foot.
2. Buyer warrants that it shall fully, completely, and prominently advise all users, subsequent users, subsequent buyers, employees, independent contractors, bystanders, and others of all risks of harm and warnings relating to the use of any equipment sold which buyer is aware of or should be aware of from any source, including those provided by VES with or attached to the equipment. However, this shall not create any duty by VES to advise buyer of such risk or warnings.
3. Buyer warrants that it shall not deface, remove, modify, obscure or permit to be defaced, removed, modified, or obscured, any warning, safety device, logos or pictures attached to, or provided with the equipment. Buyer further warrants it shall replace defaced, missing, modified, or obscured warnings with new VES warnings.
4. Buyer warrants that it shall provide VES's Abrasive Blast Worker Creed and all other VES supplied warnings to all of its agents, employees, successors, and third parties whom it allows to use, repair, store or maintain the equipment, and direct them to read and abide by them.