

# DRILLMAX TERMS AND CONDITIONS

## 1. ACCEPTANCE

Orders or other requests, whether oral or written, for the supply or sale of equipment ("Equipment"), or the supply or sale of spare or replacements ("Parts"), to be provided by **Drillmax, Inc.**, on behalf of itself and its affiliates ("Seller") to its customers (each a "Buyer") (the "Order(s)") are subject to Seller's written acceptance by an authorized representative of Seller and any Orders so accepted will be governed by (a) the terms and conditions stated in these Terms and Conditions for provision of Equipment or Parts (the "Terms and Conditions"); (b) the written proposal submitted by Seller to Buyer ("Proposal"), if any; (c) the written order acknowledgement issued by Seller to Buyer ("Acknowledgement"), if any, and (d) any change orders identified as such and agreed to in writing by Seller (the Order, Terms and Conditions, Proposal, Acknowledgement, and any such change order, and any such additional terms as agreed to in writing by an authorized representative of Seller (the Order, Terms and Conditions, Proposal, Acknowledgement, and any such change order, and any such additional terms as agreed to in writing by an authorized representative of Seller collectively referred to herein as the "Agreement"). Buyer's submission of a purchase order (or other similar document) shall be deemed to be an express acceptance of these Terms and Conditions notwithstanding language in Buyer's purchase order (or similar document) inconsistent herewith, and any inconsistent language in Buyer's purchase order (or other similar document) is hereby rejected. Buyer's purchase order (or other similar document) is incorporated in this Agreement, only to the extent consistent with the Proposal or Acknowledgement. In the event of any conflict between a Proposal and an Acknowledgement, the Acknowledgement shall prevail.

## 2. PRICES

Prices of Equipment and Parts, shall be stated in the Quote or RFQ, or if there is no Quote or RFQ, as otherwise agreed to in writing by the Seller. Unless otherwise specified, all prices contained in a Quote are valid for thirty (30) days from date of issue of the Quote. All Quotations are EXW Seller's premises (INCOTERMS 2010), or as agreed per the Quote or RFQ and are subject to change without notice. Seller bears no responsibility for any consular fees, fees or legalizing invoices, certificates of origin, stamping bills of lading, or other charges required by the laws of any country of destination, or any fines, penalties or interest imposed due to incorrect declarations. Charges will be added for factory preparation and packaging for shipment. Minimum freight and invoice charges in effect at the time of the Order shall apply. If by reason of any act of government, the cost to the Seller of performing its obligations hereunder is increased, such increase shall be added to the quoted price. Stock materials included in a quotation are subject to prior sale. All quotations made by our representatives are subject to review and acceptance by **Drillmax** headquarters located in Houston, TX. We reserve the right to correct clerical errors on quotations, acknowledgements and invoices.

## 3. TAXES

Transaction Taxes. In addition to the charges due under this Agreement, the Buyer shall be responsible for, and shall protect, indemnify, defend and save harmless Seller from and against the reporting, filing and payment of any taxes, duties, charges, licenses, or fees (and any related fines, penalties or interest and the like) imposed directly on Buyer as a result of this Agreement and all liabilities, costs and associated expenses (including lawyers' and experts' fees) which may be incurred in connection therewith. Such taxes, duties, charges, licenses, or fees include but are not limited to any local, state, federal, foreign, or international sales, use, value added tax ("VAT"), goods and services tax ("GST"), rental, import, export, personal property, stamp, excise and like taxes and duties. If Seller pays any such tax, Buyer shall, within thirty (30) days of Seller's demand, reimburse Seller for the tax including interest, fines, and penalties, paid by the Seller. It shall be Buyer's sole obligation after payment to Seller to challenge the applicability of any tax.

Notwithstanding the foregoing, the Buyer shall provide Seller with a copy of all exporting documents and any other documents reasonably requested by Seller to prove or substantiate to the appropriate tax authorities the goods were timely exported.

Withholding Taxes. If Buyer is required by any appropriate government agency to withhold compensation due Seller to satisfy any obligation of Seller for taxes due, Buyer shall give at least 30 days' notice to Seller that buyer will withhold. Buyer agrees to pay on a timely basis the amounts so withheld over to the appropriate government department or agency, on behalf of Seller, and to provide Seller with any tax receipts (originals, if possible) or other reliable evidence of payment issued by such government department or agency within 30 days of the date required for

withholding. Buyer shall not withhold compensation due Seller if Seller produces evidence, acceptable to Buyer, that Seller is not subject to the withholding of such taxes. Buyer agrees that it shall not unreasonably withhold such acceptance. Buyer shall reimburse Seller for any taxes withheld for which receipts or other reliable evidence substantiating the remittance of taxes to the appropriate government department or agency are not provided to Seller. Buyer's obligation to deliver to Seller tax receipts or other reliable evidence issued by the taxing authority shall not apply if Buyer establishes to the reasonable satisfaction of Seller that the appropriate government department or agency does not provide such documentation. Notwithstanding the above, if Buyer is required to pay any such taxes or amounts that Buyer believes is directly attributable to Seller. Buyer shall first provide notice to Seller and give Seller an opportunity to intervene to protect its interest before buyer makes any payment.

Protest Rights. If the Buyer receives any demand or request of any levies, charges, taxes or contributions for which it would seek indemnity or reimbursement from Seller, Buyer shall promptly and timely notify the Seller in writing of such demand or request. "Promptly and timely" as used in this sub clause means that Buyer must notify Seller so that Seller has enough time and a reasonable opportunity to appeal, protest or litigate the levies, charges, taxes or contributions in an appropriate venue. To the extent that Buyer fails to give prompt and timely notice, Seller has no obligation to, and will not, reimburse Buyer for these levies, charges, taxes or contributions. At Seller's request and cost, Buyer shall initiate an appeal, protest or litigation in Buyer's own name if Buyer is the only party that can legally initiate this appeal, protest or litigation. The Buyer shall allow the Seller to control the response to such demand or request and the Buyer shall use its best efforts to appeal against such demand or request. If Buyer is required to pay any levies, taxes or contributions in order to pursue an appeal, protest or litigation, Seller shall reimburse Buyer for that amount promptly upon receipt of a written request from Buyer. Seller shall not be responsible for any compromise made by Buyer without Seller's prior written request.

Cooperation. Buyer shall cooperate with Seller, and at the request of Seller, Buyer shall use its best efforts to supply to Seller such information (including documentary information) in connection with its activities as may be required by Seller for any of the following purposes:

- (a) To enable Seller to comply with lawful demand or requirement for such information by any appropriate government authority or to insure that all requirements of the applicable law are being complied with;
- (b) To enable Seller to conduct, defend, negotiate or settle any claim arising out of, or in connection with, such activities, whether or not such claim shall have become the subject of arbitration or judicial proceedings;
- (c) To enable Seller to make any application (including, but without limitation, any claim for any allowances or relief) or representation in connection with, or to contest any assessment on, or liability to Seller to any taxes, duties, levies, charges and contributions (and any interest or penalties therein); or
- (d) To secure for Seller any beneficial tax treatment and legally minimize any tax obligations in connection with this Agreement.

Sellers request for such information and documents shall allow Buyer a reasonable time to prepare, provide and submit that information requested. The obligations set forth above shall exist for a period of six (6) years commencing with the date of agreement by Buyer of Seller's final statement of account under the Agreement, and the Buyer shall retain and shall procure any subcontractor hereunder to retain, all information and documents in connection with its activities under or pursuant to the Agreement as shall enable the Buyer to comply with the above obligations.

## 4. PAYMENT TERMS

Unless alternate payment terms are specified and agreed to by Seller in writing, all charges, including applicable packing and transportation costs, billed by Seller are payable within 30 days of the date of invoice. Seller reserves the right to modify or withdraw credit terms at any time without notice. Unless otherwise specified, all payments are due in the currency specified in Seller's Proposal, Acknowledgement and/or Invoice. Interest shall be due from Buyer to Seller on overdue accounts at the maximum rate allowed by law. When partial shipments are made, the goods will be invoiced as shipped and each invoice will be treated as a separate account and be payable accordingly. Payment for goods is due whether or not technical documentation and/or any third party certifications are complete at the time of shipment. Seller shall be entitled to recover all reasonable attorney's fees and other costs incurred in the collection of overdue accounts. Seller reserves the right, where a genuine doubt exists as to Buyer's financial position or if Buyer is in default

of any payment obligation, to suspend delivery or performance of any Agreement or any part thereof without liability and without prejudice to, and without limitation of, any other remedy available to Seller until Buyer cures the default or satisfactory security for payment has been provided. Seller shall have the option to extend the delivery date by a time at least equal to the period of such suspension.

## 5. DELIVERY

Unless otherwise agreed to by Seller in writing, delivery terms shall be EXW Seller's premises (INCOTERMS 2010), except to the extent modified by these Terms and Conditions. Where goods are to be supplied from stock, such supply is subject to availability at the date of delivery. Partial shipments may be made as agreed to by Buyer and Seller. Stated delivery dates are approximate only and cannot be guaranteed. Seller shall have no liability for damages arising out of the failure to keep a projected delivery date, irrespective of the length of the delay. In the event Buyer is unable to accept delivery of goods when tendered, Seller may, at its option, arrange for storage of the goods at Buyer's sole risk and Buyer shall be liable to Seller for the reasonable cost of such storage. This provision is without prejudice to any other rights which Seller may have with respect to Buyer's failure to take delivery of goods, which includes the right to invoice Buyer for the goods. Buyer agrees that title to the stored goods will transfer to Buyer upon invoicing notwithstanding Buyer's inability to accept delivery and that Buyer assumes all risk of loss or damage to the goods from the date title passes to Buyer. Buyer is responsible for all shipping costs from Seller's premises to the location as designated by the Buyer. All shipping costs for the return of goods from the location specified by Buyer to Seller's premises shall also be for Buyer's account.

## 6. FORCE MAJEURE

If either party is unable by reason of Force Majeure to carry out any of its obligations under this Agreement, other than the obligations to pay money when due and indemnification obligations assumed hereunder, then on such party giving notice and particulars in writing to the other party within a reasonable time after the occurrence of the cause relied upon, such obligations shall be suspended. "Force Majeure" shall include acts of God, laws and regulations, government action, war, civil disturbances, strikes and labor problems, delay of vendors, carriers, lightning, fire, flood, washout, storm, breakage or accident to equipment or machinery, shortage of raw materials, and any other causes that are not reasonable within the control of the party so affected. Seller shall be paid its applicable standby rate, during any such Force Majeure event.

## 7. CANCELATIONS & RETURNS

Firm orders that have been accepted and entered are not cancelable except by our written permission and on terms which save us from loss. We reserve the right to charge a restocking and handling fee. Products of special design or products not normally carried in our standard inventory are not subject to cancellation privileges.

With Seller's written approval, stock goods that are unused, and are in new condition and of current manufacture and catalog specifications, that have been incorrectly ordered or incorrectly shipped, may be returned by Buyer for credit (subject to a restocking and handling fee), provided written request is received within 6 months after the purchase date. Non-standard goods are not returnable for credit and such goods shall only be accepted for return with the prior written agreement of the Seller. Requests for return of goods must show the original purchase order number, invoice number, description of material, and date of purchase. Return of goods does not relieve the Buyer of the obligation to make payment against the Seller's invoice, and any credit or refund of goods. The credit allowed on returned goods, if any, is merchandise credit and is applicable only against future purchases of Seller goods, for a period not to exceed 1 year from date of credit. The credit given will be solely at the Seller's discretion and may be based on the original or a subsequently adjusted price. A charge will be assessed to cleanup, refinish and restock the goods, if applicable. Expired credits will be deemed expired and removed for customer account.

## 8. TITLE AND RISK OF LOSS

For purchased goods, ownership and risk of loss pass to Buyer UPON THE EARLIER OF (A) Seller's delivery of the goods, or (B) invoicing by Seller for the goods where Buyer is unable to accept delivery on the scheduled date. Seller retains a security interest in the goods until the purchase price has been paid, and Buyer agrees to perform upon request all acts required to secure Seller's interest. Seller accepts no responsibility for any damage, shortage or loss in transit. Seller will attempt to pack or prepare all shipments so that they will not break, rust or deteriorate in shipment. But Seller does not guarantee against such damage. Claims for any damage, shortage or loss in transit must be made by Buyer on the carrier.

## 9. LIMITED WARRANTY

**New Products.** In the case of the purchase of new Products, and solely for the benefit of the original user, Seller warrants, for a period of 12 months from delivery, that its products are free from defects in material and/or workmanship. Goods manufactured by others are sold "as is" except to the extent the manufacturer honors any applicable warranty made by the manufacturer.

Seller's warranty obligations hereunder shall not apply if non-conformity or failure was caused by (a) Buyer's failure to properly store or maintain the equipment of parts; (b) the unauthorized modification of the equipment or parts by Buyer; (c) utilization of replacement parts not manufactured by Seller, or (d) use of handling of the product by Buyer in a manner inconsistent with Seller's recommendations. Further, Seller's warranty obligations under this Article 9 shall terminate if (a) Buyer fails to perform its obligation under this or any other Agreement between the parties, or (b) if Buyer fails to pay any charges due Seller. Any third party warranties provided on equipment or parts not manufactured by Seller are assigned to Buyer, without recourse, at the time of delivery, provided such warranties are assignable.

This Article 9 sets forth Buyer's sole remedy and Seller's exclusive obligation with regard to non-conforming equipment parts. Except as otherwise expressly provided pursuant to the provisions of this Article 9, seller makes no other warranties or representations of any kind, express or implied, and Seller disclaims implied warranties of merchantability and fitness for a particular purpose.

## 10. CHANGES

Seller expressly reserves the right to change, discontinue or modify the design and manufacture of its products without obligation to furnish, retrofit or install products previously or subsequently sold.

## 11. INSPECTION

The results of any inspection or testing reported by Seller to Buyer represents only good faith opinions and are not to be construed as warranties or guarantees of the quality, classification, merchantability, fitness for purpose, condition, or liability of any equipment or material that has been inspected or tested by the Seller.

## 12. LIABILITIES, RELEASES AND INDEMNIFICATION

For the purpose of this Article 12, the following definitions shall apply:

"Seller Group shall mean (i) Seller, its parent, subsidiary or related companies, (ii) its and their working interest owners, co-lessees, co-owners, partners, joint ventures, if any, and their respective parents, subsidiary or related companies and (iii) the officers, directors, employees, consultants, agents and invitees of all of the foregoing.

"Buyer Groups" shall mean (i) Buyer, its parent, subsidiary or related companies, (ii) its and their working interest owners, co-lessees, co-owners, partners, joint ventures, if any, and their respective parents, subsidiary or related companies and (iii) the officers, directors, employees, consultants, agents and invitees of all of the foregoing.

"Claims" shall mean all claims, demands, causes of action, liabilities, damages, judgments, fines penalties, awards, losses, costs, expenses (including, without limitation, attorney's fees and costs of litigation) of any kind or character arising out of, or related to, the performance of or subject matter of this Agreement (including, without limitation, property loss or damage, personal or bodily injury, sickness, disease or death, loss of services and/or wages, or loss of consortium or society).

- (a) Seller shall release, indemnify, defend and hold Buyer Group harmless for and against any and all Claims in respect of personal or bodily injury to, sickness, disease or death of any member of Seller Group or Seller Group's subcontractors or their employees, agents or invitees, and all Claims in respect of damage to or loss or destruction of property owned, leased, rented or hired by any member of Seller Group or Seller Group's subcontractors or their employees, agents or invitees.
- (b) Buyer shall release, indemnify, defend and hold Seller Group harmless from and against any and all Claims in respect of personal bodily injury to, sickness, disease or death of any member of Buyer Group or Buyer Group's subcontractors or their employees, agents or invitees, and all Claims in respect of damage to or loss or destruction of property owned, leased, rented or hired by any member of Buyer Group or Buyer Group's subcontractors or their employees, agents or invitees.
- (c) Each party covenants and agrees to support the mutual indemnity obligations contained in Paragraphs (a) and (b) above, by carrying

equal amounts of insurance (or qualified self-insurance) in an amount not less than U. S. \$2,000,000.00.

- (d) Notwithstanding anything contained in this Agreement to the contrary, in all instances where Seller is providing Services at a well site, Buyer, to the maximum extent permitted under applicable law, shall release, indemnify, defend and hold Seller Group and Seller Group subcontractors harmless from and against any and all Claims asserted by or in favor of any person or party, including Seller Group, Buyer Group or any other person or party, resulting from; (i) loss of or damage to any well or hole (including but not limited to the costs of re-drill), (ii) blowout, fire, explosion, cratering or any uncontrolled well condition (including but not limited to the costs to control a wild well and the removal of debris), (iii) damage to any reservoir, geological formation or underground strata or the loss of oil, water or gas therefrom, (iv) pollution or contamination of any kind (other than surface spillage of fuels, lubricants, rig sewage or garbage, to the extent attributable to the negligence of Seller Group, including but not limited to the cost of control, removal and clean-up, or (v) damage to or escape of any substance from, any pipeline, vessel or storage facility.
- (e) NOTWITHSTANDING ANYTHING CONTAINED IN THIS AGREEMENT TO THE CONTRARY, NEITHER PARTY SHALL BE LIABLE TO THE OTHER AND EACH PARTY RELEASES THE OTHER FOR ANY INDIRECT, SPECIAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES OR LOSSES (WHETHER FORSEEABLE AT THE DATE OF THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, DAMAGES FOR LOST PRODUCTION, LOST REVENUE, LOST PRODUCT, LOSS PROFIT, LOST BUSINESS OR BUSINESS OPPORTUNITIES.
- (f) Seller's total liability for all claims, damages, causes of action, demands, judgments, fines, penalties, awards, losses, costs and expenses (including attorney's fees and cost of litigation) shall be limited to and shall not exceed the value of the Equipment/Parts purchased under the Agreement.
- (g) THE EXCLUSIONS OF LIABILITY, RELEASES AND INDEMNITIES SET FORTH IN PARAGRAPH A THROUGH F OF THIS ARTICLE 11 SHALL APPLY TO ANY CLAIM(S), LOSSES OR DAMAGES WITHOUT REGARD TO THE CAUSE(S) THEREOF, INCLUDING BUT NOT LIMITED TO PRE-EXISTING CONDITIONS, WHETHER SUCH CONDITIONS BE PATENT OR LATENT, THE UNSEAWORTHINESS OF ANY VESSEL OR VESSELS, IMPERFECTION OF MATERIAL, DEFECT OR FAILURE OF PRODUCTS OR EQUIPMENT, BREACH OF REPRESENTATION OR WARRANTY (EXPRESS OF IMPLIED), ULTRAHAZARDOUS ACTIVITY, STRICT LIABILITY, TORT, BREACH OF CONTRACT, BREACH OF DUTY (STAATUATORY OR OTHERWISE), BREACH OF ANY SAFETY REQUIREMENT OR REGULATION, OR THE NEGLIGENCE OR OTHER LEGAL FAULT OR RESPONSIBILITY OF ANY PERSON (INCLUDING THE INDEMNIFIED OR RELEASED PARTY), WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, ACTIVE OR PASSIVE.
- (h) Redress under the indemnity provisions set forth in this Article 11 shall be the exclusive remedy (ies) available to parties hereto for the matters, claims, damages and losses covered by such provisions.

### 13. INSURANCE

Upon written request, each party shall furnish to the other party certificates of insurance evidencing the fact that the adequate insurance to support each party's obligations hereunder has been secured. To the extent of each party's release and indemnity obligations expressly assumed by each party hereunder, each party agrees that all such insurance policies shall, (a) be primary to the other party's insurance, (b) include the other party, its parent, subsidiary and affiliated or related companies, and its and their respective officers, directors, employees, consultants and agents as additional insured, and, (c) be endorsed to waive subrogation against the other party, its parent, subsidiary and affiliated or related companies, and its and their respective officers, directors, employees, consultants and agents.

### 14. GOVERNING LAW

For Equipment and Parts provided, or to be provided by Seller, this Agreement shall be governed by and interpreted in accordance with the substantive laws of the State of Texas, excluding conflicts and choice of law principles. Any dispute, action or proceeding arising out of or relating to this Agreement must be brought in the state or federal court sitting in Harris County, Texas, and each of the parties hereby agrees to irrevocably submit itself to the exclusive jurisdiction of each such court in any such action or proceeding and waives any objection it may now or hereafter have to venue or convenience of forum. Seller retains the right to arbitrate any all disputes that may arise in connection with the provision of the Equipment and Parts.

### 15. OWNERSHIP AND PATENT INDEMNITY

All software used in connection with the Equipment and Parts, either purchased or rented from Seller, is copyrighted and owned by Seller and licensed to Buyer. Seller warrants that the use or sale of Equipment or Parts hereunder will not infringe patents of others by reason of the use or sale of such Equipment or Parts per se, and hereby agrees to hold Buyer harmless against judgment for damages for infringement of any such patent, provided that Buyer shall promptly notify Seller in writing upon receipt of any claim for infringement, or upon the filing of any such suit for infringement, whichever first occurs, and shall afford Seller full opportunity, at Seller's option and expense, to answer such claim or threat of suit, assume the control of the defense of such suit, and settle or compromise same in any way Seller sees fit. Seller does not warrant that such Equipment and Parts; (a) will not infringe any such patent when not in Seller's manufacture, or specially made, in whole or in part, to the Buyer's design specifications; or (b) if used or sold in combination with other materials or apparatus or used in the practice of processes, will not, as a result of such combination or use, infringe any such patent, and Seller shall not be liable and does not indemnify Buyer for damages or losses of any nature whatsoever resulting from actual or alleged patent infringement arising pursuant to (a) and (b) above. THIS ARTICLE STATES THE ENTIRE RESPONSIBILITY OF SELLER CONCERNING PATENT INFRINGEMENT.

### 16. CONFIDENTIAL INFORMATION

Each party recognizes and acknowledges that it shall maintain all data, information, disclosures, documents, drawings, specifications, patterns, calculations, technical information and other documents (collectively, "Confidential Information") obtained from the other party in strict confidence. However, nothing hereinabove contained shall deprive the party receiving the Confidential Information the right to use or disclose any information: (a) which is, at the time of disclosure, known to be trade or public; (b) which becomes at a later date known to the trade or the public through no fault of the party receiving the Confidential Information and then only after said later date; (c) which is possessed by the party receiving the Confidential Information, as evidenced by such party's written records, before receipt thereof from the party disclosing the Confidential Information; (d) which is disclosed to the party receiving the Confidential Information in good faith by a third party who has an independent right to such information; (e) which is developed by the party receiving the Confidential Information as evidence by documentation, independently of the Confidential Information; or (f) which is required to be disclosed by the party receiving the Confidential Information pursuant to an order of a court of competent jurisdiction or other governmental agency having the power to order such disclosure, provided that the party receiving the Confidential Information uses its best efforts to provide timely notice to the party disclosing the Confidential Information of such order to permit such party an opportunity to contest such order. In the event that Seller owns copyrights to, patents to or has filed patent applications on, any technology related to the Equipment and Parts furnished by Seller hereunder, and if Seller makes any improvements on such technology, then Seller shall own all such improvements, including drawings, specifications, patterns, calculations, technical information and other documents.

### 17. GENERAL

Failure of Buyer or Seller to enforce any of the terms and conditions of this Agreement shall not prevent a subsequent enforcement of such terms and conditions or be deemed a waiver of any subsequent breach. Should any provisions of this Agreement, or portion thereof, be unenforceable or in conflict with applicable governing country, state, province, or local laws, then the validity of the remaining provisions, and portions thereof, shall not be affected by such unenforceability or conflict, and this Agreement shall be construed as if such provision supersedes all prior oral or written agreements or representations. Buyer acknowledges that it has not relied on any representatives other than those contained on this Agreement. This Agreement shall not be varied, supplemented or qualified, or interpreted by any prior course of dealing between the parties or by usage of trade and may only be amended by an agreement executed by an authorized representative of each party.

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