

CALIBER ENERGY SYSTEMS LTD

Terms and Conditions for the Supply of Goods and Services

("Terms and Conditions")

The sale or supply of products, chemicals, tools or equipment ("goods") and services by Caliber Energy Systems Ltd ("CES") to you, our customer ("Customer"), is made subject to these Terms and Conditions. In these Terms and Conditions, CES and Customer are the "Parties" and each is a "Party".

Service Terms

1. **Contract.** CES may, on request, offer to sell or supply certain goods or services to Customer ("Offer"). Each Offer (a) is made subject to and in accordance with these Terms and Conditions, (b) is open for acceptance by Customer until the date specified in the Offer, and (c) may be revised by CES prior to its acceptance by Customer. If Customer fails to accept an Offer by the date specified or changes the scope of its request for goods or services after an Offer is made, CES will not be obligated to honor the Offer. Once an Offer is accepted by Customer, the terms of the Offer and these Terms and Conditions will form a binding contract between the Parties ("Contract") that may only be amended in accordance with Section 2. If Customer enters into a Contract whereby CES is supplying goods or services for the benefit of a third party, Customer represents and warrants that it is acting as the agent of such third party under the Contract and such third party has authorized the terms and conditions of, and agrees to be bound by, the Contract. Customer hereby agrees that where there is more than one party to this agreement they shall be jointly and severally liable in the event of any default hereunder. Once made, a Contract shall continue in effect until each Party has fully performed its obligations under the Contract, subject to early termination of the Contract in accordance with Section 12. Each Contract sets out the entire agreement between the Parties with respect to the subject matter of the Contract and supersedes all prior agreements, negotiations or understandings between the Parties.

2. **Contract Amendments.** No Contract may be amended by the Parties unless the amendment is (a) made pursuant to a field service ticket that is agreed to in writing by the Parties, or (b) otherwise agreed to in writing by the Parties. Any document that amends a Contract under this Section 2 will form a part of the Contract. Customer shall be responsible for all costs associated with amendments made to a Contract that result in changes to the price, quantity or scope of goods or services to be sold or supplied by CES.

3. **Authorization.** Each Party represents and warrants to the other Party that each person who makes a request for goods or services, delivers or accepts an Offer or who authorizes an amendment to a Contract, as applicable, on behalf of such Party shall be an authorized representative and, if applicable, signing authority of such Party for such purpose. Each Party waives the right to, and agrees to not, make any claim against the other Party, or defend any claim made by the other Party, on the basis that a person acting on behalf of a Party in making a request for goods or services, delivering or accepting an Offer, authorizing a field service ticket or otherwise amending a Contract did not have the required authority to do so on behalf of a Party.

4. **Access to Data.** Subject to Section 19, Customer shall, at its sole risk and expense, provide CES with timely and reasonable access to any and all data and information (whether in digital or paper format) that relates to products, tools, wellbore conditions and services associated with a Contract and to used products, equipment or tools that, in the reasonable opinion of CES, is required by CES to perform its obligations under a Contract and Customer shall permit CES to record the condition of such products, tools, equipment and conditions in digital or film format. Customer acknowledges that CES program design and modelling information is based on the data and information provided by Customer under this Section 4. CES shall be entitled to recover all costs incurred by it that arise from the misrepresentation or concealment by Customer of wellbore or other information and which has the effect of (a) delaying or adversely affecting the ability of CES to perform its obligations under a Contract or (b) causing damage to Caliber's equipment or personnel.

5. **Operating Parameters.** Goods will be supplied and services will be performed by CES on a 24 hour per day, 7 day per week basis. All hours during which CES is supplying goods or services will, for the purposes of a Contract, be "Operating Hours" and are comprised of (a) the actual hours during which CES personnel are supplying goods or performing services under a Contract ("Working Hours"), (b) Mobilization and Demobilization Hours, and (c) Stand-by Hours. Mobilization and Demobilization Hours has the meaning set out in Section 6. "Stand-by Hours" mean those hours during which work under a Contract has been temporarily suspended by Customer and during which time CES equipment, tools and personnel are on stand-by to resume work for Customer and cannot be re-assigned to perform work for another customer of CES. Operating Hours will be invoiced to Customer at applicable rates. Operating Hours that occur during statutory holidays will, in addition to applicable rates, be subject to a statutory holiday surcharge at the applicable rate.

6. **Mobilization and Demobilization.** "Mobilization and Demobilization Hours" mean those hours during which CES equipment, tools, goods and personnel are being mobilized from their point of origin to the Customer worksite or demobilized from the Customer worksite to their point of origin (or a service center as designated by CES) and includes the transportation of equipment, tools, goods and personnel between Customer worksites. Mobilization and Demobilization Hours listed in a Contract are estimates only and Customer acknowledges that the number of Mobilization and Demobilization Hours actually incurred under a Contract may be influenced by factors including the nature and size of CES equipment and tools, adverse weather conditions, lighting, temperature, permit restrictions, road and travel conditions and restrictions and driver fatigue. Mobilization and Demobilization Hours will be accounted for and invoiced to Customer as follows: (a) portal-to-portal mobilization fees will be in effect for all operations and mobilization fees will be charged on an hourly basis based on the actual time required to mobilize equipment, tools and personnel to the Customer work-site, regardless of any estimate provided in the Contract, (b) point of origin for CES equipment is subject to change without notice (and any associated difference in cost shall be borne by Customer unless otherwise agreed to by the Parties in writing), and (c) demobilization fees will be charged on an hourly basis based on the actual time required to return equipment, tools and personnel to their point of origin (or a service center as designated by CES).

7. **Chemicals and Disposal.** The type and quantity of chemicals (including nitrogen, acids, additives, lubricants and other chemicals) to be used by CES in performing services will be subject to the sole discretion of CES. Chemical quantities listed in a Contract are estimates only. CES will charge Customer, and Customer will pay CES, for actual chemical quantities used in performing services. Customer acknowledges that chemical pricing is market based and therefore may change at any time. Customer shall be responsible, at its sole risk and expense, to dispose of all chemicals and other hazardous waste used in the performance of services.

8. **Management of Change Process.** If, during the performance of services, it is deemed by CES that there has been a change in operating conditions, CES will work with Customer representatives to determine the best management of change ("MOC") process, in either verbal or written format as applicable to the circumstance, which outlines the actions required to resolve the circumstances encountered, reduce the risk of damage to or loss of CES equipment and maintain the safety of all CES personnel. If Customer fails to adhere to the standards set forth in a MOC, CES will thereafter have no liability to Customer for losses of Customer associated with Customer's failure to adhere to the MOC and CES may elect to terminate the Contract in accordance with Section 12. The MOC will supersede all previous recommendations relating to the performance of services under a Contract and includes, but is not limited to, situations involving (a) unsafe work practices – CES has the right to refuse or stop any task or operation where concerns or questions regarding the control of health and safety hazards exists without reprimand.

## General Terms and Conditions (continued)

- Operational concerns may be related to casing deformations, changes in pressure or inadequate ancillary services and (c) any other situation or circumstance that CES believes may be detrimental to its equipment or personnel.
9. **Supply of Goods and Services.** CES shall supply goods to and perform services for Customer in accordance with the terms and conditions of each Contract. Customer shall assist CES in the performance by CES of its obligations under each Contract by identifying the worksite(s) at which services are to be performed and by providing such equipment, tools, materials, supplies and personnel as may be required. Customer (a) has custody and control of each worksite, the conditions created in each well and the access routes to and from each worksite, (b) will have each well ready for service, and (c) will secure and maintain for CES rights of ingress and egress to, and for parking and storage of equipment upon, each worksite. CES is an independent contractor with respect to the performance of each Contract, neither CES nor any representative of CES shall be deemed for any purpose to be the employee, agent or representative of Customer in performing a Contract and nothing in a Contract will be construed as creating any partnership or joint venture between the Parties.
10. **Prime Contractor** – In accordance with all applicable federal and provincial laws and regulations, Customer shall be the “prime contractor” for the worksite.
11. **Standard of Performance.** CES shall perform its obligations under each Contract with due care and diligence, in a good and workmanlike manner and in accordance with good industry practices and the terms and conditions of each Contract.
12. **Termination of Contract.** A Contract may be terminated by either Party, on notice to the other Party, at any time prior CES completing the performance of its obligations under such Contract. If a Contract is terminated early by either Party, Customer shall pay all expenses reasonably and necessarily incurred by CES prior to or, in the case of termination by Customer, by reason of such early termination. Notwithstanding the expiration or termination of a Contract, each Party will be entitled to enforce any rights or pursue any remedies that have accrued in its favour prior to or that are otherwise intended to survive the expiration or termination of a Contract or are otherwise of a continuing nature.
13. **Prices, Payment Terms, Taxes and Audit.** (a) The prices for goods and services supplied by CES shall be in Canadian dollars (unless otherwise stated) and listed in the then current CES price schedule provided to Customer. Special jobs or jobs performed under unusual conditions will be subject to special price quotations. In addition: (i) third party charges that are in addition to the pricing quoted in a Contract will be invoiced at cost plus applicable administration fees, (ii) Operating Hours will be accounted for and invoiced in accordance with Section 5, (iii) mobilization and demobilization fees and costs will be accounted for and invoiced in accordance with Section 6, and (iv) CES reserves the right to charge back to Customer all permitting fees necessary to perform services requested by Customer. (b) Payment terms shall be cash in advance unless CES has approved the credit of Customer in advance. Credit terms of sale for approved accounts are total amount due at CES's remittance address on or before the 30<sup>th</sup> day from the date of invoice. If it is necessary for CES to collect any amount owing from Customer, Customer shall pay, in addition to the amount owing, all collection expenses of CES. A service charge of 1½% per month (18% per annum) will be charged on overdue accounts. CES reserves to itself all lawful remedies to collect overdue accounts including, without limitation, the filing of liens. (c) All prices are exclusive of GST and other applicable taxes and such taxes will be charged, collected and remitted by CES as required by applicable law. (d) Provided that all outstanding invoices have been paid, Customer may, on reasonable prior notice to, and during the normal working hours of, CES, audit the records of CES relating to any Contract within a period of 12 months following the expiration or termination of such Contract. The cost of any such audit shall be for the account of Customer. Claims relating to any such audit shall be made not later than 30 days following the expiration of such 12 month period. (e) All claims against invoices must be made within 30 days after receipt of service, in writing and reported to the CES Sales Manager. If Customer does not issue a written dispute of claim within 30 days, notwithstanding the dispute is not resolved, Customer will pay to CES all amounts due and owing without set-off pending resolution of the dispute. The payment made by the Customer shall not affect the Customer's dispute.
14. **Warranties.** (a) CES warrants only that goods supplied to Customer shall conform to the specifications represented by CES and that CES will convey good title to such goods, free and clear of all liens, charges encumbrances and adverse claims created by, through or under CES. CES MAKES NO WARRANTY OF MERCHANTABILITY OR THAT ANY GOODS SHALL BE FIT FOR ANY EXPRESSED OR IMPLIED PURPOSE EXCEPT AS EXPRESSLY STATED HEREIN. CES's liability, and Customer's exclusive remedy, for any claim arising out of a supply of goods is expressly limited, at CES's option, to (i) a replacement of goods upon their return to CES, or (ii) an allowance to Customer of a credit for the cost of such goods. (b) In interpreting information and making recommendations to Customer as to (i) the type or amount of goods or services to be supplied under a Contract, or (ii) the manner of performing services or predicting results to be obtained therefrom, CES will provide Customer with its best recommendations; provided, however, that such recommendations are the opinion of CES only and NO WARRANTY IS GIVEN BY CES CONCERNING THE EFFECTIVENESS OF THE GOODS USED OR SERVICES PROVIDED, THE RECOMMENDATIONS GIVEN OR THE EXPECTED RESULTS THEREFROM.
15. **Allocation of Risk.** (a) CES shall be solely liable for and shall indemnify Customer from and against losses of or claims against Customer arising from: (i) death of or injury to CES employees or contractors, (ii) loss of or damage to CES equipment (unless such loss or damage is caused by adverse subsurface conditions, actions by Customer to control a blow out or wild well or the negligence of Customer), (iii) above ground pollution resulting from the actions of CES, and (iv) the negligence or willful misconduct of CES in performing services under a Contract. (b) Customer shall be solely liable for and shall indemnify CES from and against losses of or claims against CES arising from: (i) death of or injury to Customer employees or contractors, (ii) loss of or damage to any Customer equipment, including damage to access roads and the worksite caused by the transportation of CES equipment (iii) loss of or damage to CES equipment caused by adverse subsurface conditions, actions by Customer to control a blow out or wild well or the negligence of Customer, (iv) loss of or damage to the down-hole equipment of CES (including the cost of fishing operations to retrieve the same), (v) reservoir or well-bore damage, including the cost to repair, re-drill or re-service a lost or damaged hole, or to control a blow out or wild well (vi) pollution, other than above ground pollution resulting from the actions of CES, and (vii) the negligence or willful misconduct of Customer. (c) Subject to the provisions of Section 13, each Party shall notify the other Party in a timely manner, with particulars, of any matter in respect of which such Party claims indemnification under this Section 15. (d) Notwithstanding any other provision of a Contract, neither Party will be liable to the other Party for any indirect or consequential damages.
16. **Insurance.** CES shall carry and maintain insurance of the types and in the minimum amounts as a reasonably prudent oil field services contractor providing services similar in nature to the services provided under a Contract would carry and maintain and shall provide Customer with evidence of such insurance on request.
17. **Third Party Charges.** Each Party will pay all taxes, assessments, fees and charges that are levied or assessed against it in connection with any Contract. CES shall not allow any lien, charge, encumbrance or adverse claim of any third party that is created by, through or under it to be fixed upon any asset of Customer as a result of any act of or omission by CES in the performance of its obligations under a Contract or otherwise.
18. **Force Majeure.** If either Party is unable by reason of Force Majeure to carry out any of its obligations under a Contract, other than obligations to pay money, then on such Party giving notice and particulars to the other Party within a reasonable time after the occurrence of the Force Majeure event, such obligations shall be suspended. "Force Majeure" shall include any event that is beyond the reasonable control of the Parties including, acts of God, changes to applicable laws, government action, war, civil disturbances, criminal action by a third party, threats or acts of terrorism, strikes and labour problems, delays of vendors, lightning, fire, flood, washout, storm, breakage or accident to equipment, tools or machinery, and shortage of raw materials. If any suspension of obligations due to Force

## General Terms and Conditions (continued)

Majeure exceeds 10 consecutive days, either Party may terminate a Contract by notice to the other Party and Customer shall be liable for all costs that are reasonably incurred by CES in relation to such termination.

19. Confidentiality. All non-public information and data exchanged between the Parties under a Contract, including the terms of the Contract, is confidential information and may not be disclosed by either Party to any third party without the prior written consent of the other Party, subject to compliance with applicable law.

20. Miscellaneous. (a) Notices that may be provided under a Contract shall be in writing and delivered to a Party at the address provided for such Party in the applicable Contract. (b) Each Party will execute and deliver such further documents and agreements as may be reasonably required in order to carry out the intent of each Contract. (c) No waiver by a Party of any default or right under a Contract shall be effective unless it is in writing. (d) Each Party will comply with applicable law in performing its obligations under a Contract. (e) Each Contract shall be governed and interpreted in accordance with the laws of Alberta. Any disputes under a Contract that the Parties agree to resolve by arbitration shall be resolved in accordance with the *Arbitration Act* (Alberta). Otherwise, the Parties attorn to the jurisdiction of the courts of Alberta for the resolution of disputes under each Contract. (f) Neither Party may assign any of its rights or obligations under a Contract without the prior written consent of the other Party, which consent may not be unreasonably withheld, conditioned or delayed, and each Contract enures to the benefit of the respective successors and permitted assigns of each Party.

**End of Terms and Conditions**