

# **TERMS AND CONDITIONS FOR PRODUCT SALES OF THE ROSEN GROUP**

Unless otherwise agreed upon by the Parties in writing, all contracts with ROSEN for product sales shall be subject to the following Terms and Conditions for Product Sales (the "Terms and Conditions"). By placing an order with ROSEN, Company accepts the following Terms and Conditions. Conflicting or additional terms and conditions of the Company shall not be binding on ROSEN. In the event the terms of the Contract between Company and ROSEN conflict with these Terms and Conditions, the contractual provisions shall have precedence over these Terms and Conditions.

ROSEN's proposals and estimates are non-binding on ROSEN, may be revoked at any time and do not constitute firm offers. In the event that Company has previously submitted a purchase order or any other document containing terms and conditions of sale, ROSEN expressly rejects any and all terms and conditions submitted in said order which conflict with, or are in addition to, these Terms and Conditions. ROSEN's acceptance is expressly conditional upon Company's consent to these Terms and Conditions. Variations or modifications to these Terms and Conditions shall only be enforceable if in writing and signed by ROSEN and Company.

## **1 DEFINITIONS**

In the Contract Documents, the following words and expressions when capitalized shall have the meanings hereby assigned to them, except where the context requires otherwise. The terms defined under the following clauses shall include the singular and the plural as the context requires.

### **1.1 Acceptance** shall mean

- a) written acceptance of the Proposal by the Company; or
- b) if the Company adds any amendments to the Proposal, the written acceptance of such amendments by ROSEN; or
- c) if the Parties execute a separate Contract, upon execution of the same by both Parties.

### **1.2 Amendments** shall mean any permitted amendment signed by both Parties to any of the Contract Documents.

### **1.3 Company** shall mean the Company and/or organization which has entered into a Contract with ROSEN for the purchase of ROSEN's products and correlated works pursuant to these Terms and Conditions.

### **1.4 Contract** shall mean the entire integrated agreement between Company and ROSEN, as evidenced by the Contract Documents.

### **1.5 Contract Documents** shall mean the purchase agreement, the Terms and Conditions, the proposal, the purchase order, the Acceptance, the NDAs, the appendices referred to in each of such documents, if any and any amendments to any of the foregoing executed after the effective date of the purchase agreement. In the event of any conflict between any of the Contract Documents, the Contract Documents shall take precedence in the following order:

- purchase agreement with its appendices
- Acceptance
- proposal
- purchase order
- These Terms and Conditions of ROSEN
- request for a proposal

None of the documents abovementioned shall be used by the Company for any purpose other than this transaction.

1.6 **Intellectual Property Rights** shall mean inventions, patents, or applications for a patent, design (registered or unregistered) utility models, rights to inventions, copyright and neighboring and related rights, moral rights, trademarks (registered or unregistered) and service marks, name, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use and protect the confidentiality of confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection or other right in respect of any information, process, work, material or method, which subsist or will subsist now or in the future in any part of the world.

1.7 **Party/Parties** shall mean ROSEN and/or Company individually and/or collectively.

1.8 **ROSEN** shall mean all members of the ROSEN Group and all ROSEN related companies, their affiliates, legal successors and permitted assigns.

1.9 **Terms and Conditions** shall mean these Terms and Conditions for Product Sales of the ROSEN Group.

## 2 **PRICING AND PAYMENT**

All prices are quoted on ex works delivery EXW (Incoterms 2020). All prices apply in the currency specified in the proposal and are firm for thirty (30) calendar days from the date quoted. If installments have been agreed in the Contract Documents, a prorated payment shall be due with the respective payment notice.

Unless stated otherwise in the proposal or invoice, payment shall be made within thirty (30) calendar days of receipt of the invoice.

In the event of default of payment of any amounts owed hereunder, interest at the maximum legal rate, shall be assessed upon the unpaid balance starting from the date that the payment was due. In the event the default is handled by an attorney for collection, all expenses arising therefrom shall be borne by Company.

Neither Company or its affiliated companies or assigns, nor ROSEN or its affiliated companies and assigns shall have the right to set-off against any amounts which may become payable under the Contract or otherwise, unless the claim is uncontested or acknowledged by the other Party or the Party has first obtained a final, non-appealable judgment adjudicating the claim.

## 3 **SECURITY INTEREST**

The Company grants ROSEN as security for payment of all sums owing and to be owed to ROSEN a security interest in all goods sold by ROSEN to Company on all accounts receivable and proceeds arising from the sale of such goods. Company agrees to execute and deliver to ROSEN such financing statements and other documents as may be contained on the terms and conditions on the invoice and as ROSEN may request to perfect such security interests.

Company hereby represents and warrants to ROSEN that Company is solvent (on a balance sheet basis) and has the unrestricted ability to pay its debts in the ordinary course of business as and when such debts are due and payable. Company also acknowledges and agrees that each purchase order or request from Company to ROSEN shall constitute a written reaffirmation of Company's representation of solvency as of the date of Company's request, which representation shall be deemed to grant to ROSEN the maximum right of reclamation available at law or in equity under either under the Uniform Commercial Code or any other applicable state law, or in any bankruptcy or insolvency proceeding.

## 4 **TAXES**

All prices are excluding taxes, VAT, GST, value added tax and/or goods and services tax, any federal, state and/or local property tax, license, duty, custom or other fee of any nature, gross receipts and/or other taxes which may be applicable now or later concerning this Contract or any services performed in connection therewith.

However, if any exemption certificate is accepted by ROSEN but not recognized and/or invoiced by the governmental taxing authority, all such taxes will be paid by Company. Company shall promptly reimburse ROSEN for any taxes included in said certificate which ROSEN is required to pay, including interest and penalties, if any.

## **5 DELIVERY**

### **5.1 Delivery dates**

Any delivery dates quoted prior to shipment are approximate only and dependent on ROSEN's prompt receipt of all information necessary to proceed with the work timely and without interruption. ROSEN shall make a good faith effort to complete delivery of the products as indicated by ROSEN in writing, but ROSEN assumes no responsibility or liability and ROSEN shall not accept any back charge, for losses or damages due to delay or inability to deliver. If the price quoted includes the delivery to Company's premises or job site, such price is conditional upon free ingress and egress to and from the location and upon the location being readily accessible by truck or car.

### **5.2 Partial deliveries**

ROSEN shall be permitted to make partial deliveries as long as they are commercially reasonable under the circumstances. A delay with respect to one partial delivery shall not affect Company's obligation to accept and pay for the remaining deliveries. Any equipment whose delivery is delayed due to any acts or failure to act by Company may be placed in storage by ROSEN at Company's risk and obligation to pay for all freight, storage and other costs incurred thereby. Every partial delivery may be invoiced separately by ROSEN.

### **5.3 Acceptance and Notice of defects**

All delivered goods shall be subject to Company's right of inspection. The Company shall have ten (10) calendar days following the delivery to undertake such inspection, and thereupon accept or reject the goods. In any case claims for alleged shortages or defective products whether obvious or hidden must be made in writing within ten (10) calendar days after receipt of the delivery or after discovery of the defect, as the case may be. After such ten (10) calendar day period, Company shall be deemed to have irrevocably accepted the products, if not previously accepted. After acceptance, Company shall not have any right to reject the products for any reason or to revoke acceptance.

Any allegedly defective products or parts must be held for inspection by ROSEN or, at ROSEN's option, returned to ROSEN's factory. Goods may be returned to ROSEN only after approval by ROSEN and receipt of definitive shipping instructions and written return material authorization. Company shall pay for all shipping charges, duties and taxes applicable for products or parts returned to ROSEN for warranty service. If ROSEN determines that the claim is a warranty issue, Company shall be reimbursed for the return costs.

## **6 FORCE MAJEURE**

### **6.1 Force Majeure Event**

Force Majeure Events are those events whose effects make it impossible for the affected Party to perform its obligation in whole or in part, provided that the events or circumstances (i) are beyond the control of the Party, (ii) are not attributable to the Party, and (iii) could not be avoided, overcome or remedied in whole or in part by the Party claiming Force Majeure using reasonable care.

The Parties shall be absolved and excused from its obligations under the Contract to the full extent, if one Party's performance is delayed or prevented by any condition or occurrence that is beyond its control including, without limitation, natural events, fires, explosions, nuclear reactions, epidemics, pandemics, quarantine (to the extent ordered by applicable public body), earthquakes, acts of public or foreign enemies, civil disturbances, war and hostilities (whether war is declared or not), invasions, blockades, insurrections, rebellion, revolution, riots, acts of terrorism, strikes, commotion, disorder, lockouts or other industrial disturbances, embargoes, sanctions, restraints or prohibitions or orders or regulations by any court, board, department, commission or agency of any state or country, any arrests or restraints.

Neither Party shall be in default of its respective obligations under the Contract which are hindered by Force Majeure; provided, however, that the payment of invoices due and owing hereunder shall in no event be delayed by the Company because of a Force Majeure Event affecting the Company. In the event of any such delay due to a Force Majeure Event, the date for performance or delivery shall be extended for a period equal to the time lost by reason of delay. In no event shall Company have their right to see any damages for delay of delivery if ROSEN is unable to perform due to a Force Majeure Event.

### **6.2 Force Majeure Notification**

In case of Force Majeure, the affected Party shall inform the other Party within seven (7) days after occurring such case. If the affected Party fails to send a Force Majeure Notification to the other Party, it loses the right to refer to these Force Majeure circumstances in future.

### **6.3 Cancellation of Contract**

If the event of Force Majeure continues for more than six (6) months, either Party shall have the right to cancel the Contract partially or completely upon written notice to the other Party.

All indemnity claims based on partial or complete non-fulfillment of the affected Party obligations caused by an occurrence as aforementioned are excluded and invalid.

## **7 WARRANTY**

### **7.1 Warranty period**

ROSEN warrants that the goods and/or products which are manufactured by ROSEN's control shall be free from material defects in workmanship or materials and are suitable for their intended purpose. The suitability of the goods is based on the Company provided information and specification. The goods and/or products shall be stored according to the instructions in the product manuals. All warranties will be null and void if the goods and/or products are not properly stored. The warranty period will be twelve (12) months from the date of acceptance of the goods and/or products by the Company, subject to the following conditions.

### **7.2 Repair or replacement**

ROSEN's sole responsibility under this warranty shall be, at its sole discretion, to either repair or to replace any part which fails during the warranty period due to a defect in workmanship or material. Company shall promptly report any alleged part failure to ROSEN.

The warranties mentioned above shall not apply (I) if repair or part replacements are required because of accident, misuse, neglect or failure to maintain in accordance with any specifications, or caused by a non-ordinary use, or (II) if the goods have been modified by Company, or (III) where manufacturer's serial numbers or warranty date badges have been removed or altered, or (IV) if wrong information given by Company has led to the damage in question, or (V) if the good has a minor defect. A minor defect shall be deemed to exist if the functionality of the product is not restricted according to the current state of the art.

Any other claims of the Company against ROSEN or its agents are excluded.

### **7.3 Exclusion of Warranty**

**THIS WARRANTY SHALL NOT APPLY TO COMPONENT PARTS AND/OR ACCESSORIES WHICH ARE NOT MANUFACTURED BY ROSEN, NOR TO NORMAL MAINTENANCE OR NORMAL MAINTENANCE PARTS. ROSEN DOES NOT WARRANT AGAINST DAMAGE DUE TO NORMAL WEAR AND TEAR, ABRASION, THE USE OF THE PRODUCTS OTHER THAN FOR THEIR INTENDED PURPOSE AND/OR MISUSE. ROSEN'S OBLIGATION UNDER THIS WARRANTY DOES NOT INCLUDE ANY TRANSPORTATION CHARGES, COSTS OF INSTALLATION, REMOVAL OR RETURN, DUTIES, TAXES OR ANY OTHER CHARGES WHATSOEVER.**

### **7.4 Limitation of Warranties**

The warranties and any associated remedies expressed or referenced in these Terms and Conditions are exclusive. No other warranty, written or oral, express or implied, is made by ROSEN or may be inferred from a course of dealing or usage of trade.

**ROSEN DISCLAIMS ALL WARRANTIES, CONDITIONS AND REPRESENTATIONS, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY; FITNESS FOR A PARTICULAR PURPOSE, SYSTEM INTEGRATION OR NON-INFRINGEMENT. ROSEN DOES NOT WARRANT AND DISCLAIMS THAT THE DELIVERED GOODS WILL MEET COMPANY'S NEEDS. ROSEN DOES NOT WARRANT, EXPRESS OR IMPLIED, THE SUITABILITY OF ANY RESULTS, CALCULATIONS OR PREDICTIONS OF THE DELIVERED GOODS.**

## **8 LIMITATION OF LIABILITY**

**COMPANY'S SOLE AND EXCLUSIVE REMEDY AND ROSEN'S ABSOLUTE LIMIT OF LIABILITY IN CONNECTION WITH ANY LAWSUIT, CLAIM OR CAUSE WHATSOEVER DIRECTLY OR INDIRECTLY RELATING TO OR ARISING OUT UNDER THIS CONTRACT, WHETHER BASED ON CONTRACT, TORT OR ANY OTHER LEGAL THEORY OF RECOVERY, SHALL IN ALL CASES BE STRICTLY LIMITED, AT ROSEN'S SOLE OPTION, TO EITHER: (a) REIMBURSING COMPANY FOR COMPANY'S ACTUAL DIRECT DAMAGES UP TO THE AMOUNT OF THE PURCHASE PRICE OF THE PRODUCTS PURCHASED UNDER THIS CONTRACT; OR (b) REPLACING ANY ALLEGED NONCONFORMING PRODUCTS AT THE ORIGINAL POINT OF DELIVERY. AS A CONDITION PRECEDENT TO ROSEN'S OBLIGATION TO REPLACE THE PRODUCTS, COMPANY MUST ASSIST ROSEN IN ALL RESPECTS IN ITS INVESTIGATION OF THE BASIS AND LEGITIMACY OF ANY SUCH CLAIMS. COMPANY**

**ACKNOWLEDGES AND AGREES THAT THE REMEDIES SET FORTH HEREIN ARE COMPANY'S SOLE AND EXCLUSIVE REMEDIES EVEN IF SUCH REMEDIES FAIL IN THEIR ESSENTIAL PURPOSE FOR ANY REASON WHATSOEVER. IN NO EVENT SHALL ROSEN BE LIABLE FOR ANY PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES TO COMPANY OR ANY THIRD PARTY AND ALL SUCH DAMAGES ARE HEREBY DISCLAIMED.**

**COMPANY SHALL COMPLY WITH ANY APPLICABLE LAWS, RULES, OR REGULATIONS RELATED TO ANY FEATURES OF THE DELIVERED GOODS. IF COMPANY FAILS TO DO SO, ROSEN WILL IN NO EVENT BE LIABLE FOR ANY FAILURE BY THE COMPANY TO ABIDE BY THIS SECTION.**

**ALL ACTIONS FILED BY COMPANY AGAINST ROSEN ARISING OUT OF OR RELATED TO THIS CONTRACT, WHETHER BASED ON CONTRACT, TORT OR ANY OTHER LEGAL THEORY OF RECOVERY, MUST BE COMMENCED WITHIN THE APPLICABLE STATUTORY PERIOD, BUT IN NO EVENT MORE THAN ONE (1) YEAR FROM THE DATE THE CAUSE OF ACTION ARISES.**

Company hereby acknowledges and accepts certain risks involved with the performance of pipeline cleaning tools and runs, including but not limited to, the lodging of a cleaning tool in the pipeline. Company acknowledges that it is its sole responsibility and risk to operate ROSEN's goods, even if technical specifications of a pipeline have been made known to ROSEN prior to ordering the equipment.

## **9 SAFETY NOTICE**

Any operation involving work on pipelines containing liquids and/or gases under pressure is potentially hazardous. It is imperative that proper procedures are followed in the use of ROSEN equipment to maintain a safe working environment.

No person should be permitted to use this equipment/products who is not fully trained in the procedures stated in the handling instruction manual and who is not fully aware of the potential hazards connected with work on pipelines containing liquids and/or gases under pressure.

The Company shall be responsible for the manner in which the equipment/product is used and the training and competence of the operators. Should any problem arise at any time in the use of equipment/product, Company shall notify ROSEN immediately in writing. Furthermore, Company shall indemnify, defend, and hold ROSEN harmless from any claim, liability, damages, lawsuits, and costs (including attorney's fees), whether for personal injury, property damage or other, brought by or incurred by Company, Company's employees, or any other person, arising out of the improper application or other misuse of products purchased by Company from ROSEN.

## **10 INTELLECTUAL PROPERTY RIGHTS**

All data which ROSEN has prepared or supplied to Company and all patents, copyrights, design rights, and other intellectual property rights therein shall remain the property of ROSEN. Company shall promptly disclose to ROSEN all inventions which Company or Company's personnel may create and/or which are wholly or substantially based on concepts or data developed or supplied by ROSEN. Ownership of and all Intellectual Property Rights to such inventions shall vest in ROSEN.

Company shall indemnify, defend and hold ROSEN harmless from any action, claim or loss resulting from infringement of patents, licenses, copyrights or other protected rights in connection with the goods.

## **11 CONFIDENTIALITY**

The Company shall treat any and every detail of the Contract as private and confidential, and shall not publish and/or disclose the same or any particulars thereof in any trade or technical paper or elsewhere without the prior written consent of ROSEN or as may be required by law.

The Company acknowledges the highly secret and valuable nature of all proprietary inventions, methods, processes, designs, know-how and trade secrets (the "Confidential Data") embodied in ROSEN's equipment, including, without limitation, the cleaning tools and inspection tools and their components. The Company agrees not to disclose or use any Confidential Data or Information provided by ROSEN. For these purposes, "Information" means any and all technical, commercial and financial information that is disclosed to the Company by ROSEN under the Contract in oral, written, graphic, digital and/or sample form, including the execution of the Contract itself. The Company guarantees that no photos will be taken of ROSEN's equipment without the prior written approval of ROSEN. The Company further agrees to take all necessary precautions to prevent disclosure of the Confidential Data and Information to persons other than those employees of the Company to whom such disclosure is necessary for the performance of the Contract. The

Company shall obtain written agreements from such employees, obligating them not to make any unauthorized use or disclosure thereof.

The obligations of the Company under this Section "Confidentiality" shall survive the expiration and termination of the Contract for a period of ten (10) years.

In the event of a breach or misuse of Confidential Data or Information under the Contract by Company, ROSEN shall have the right to seek an injunction, without bond, and to terminate the Contract in addition to any other remedies that may be available at law or in equity

## **12 TERMINATION**

ROSEN has the right to terminate the Contract for convenience, at ROSEN's absolute discretion, by giving Company thirty (30) calendar days written notice. Without prejudice to any other remedy to which ROSEN may be entitled at law or in equity or elsewhere under the Contract Documents, upon the occurrence of any of the following events, ROSEN may terminate the Contract in writing without notice, provided that the Company has previously been given a fourteen (14) calendar day period to remedy the breach of Contract:

- (a) an order for relief is entered on behalf of Company, or Company makes a general assignment for the benefit of its creditors or Company declares insolvency; or
- (b) failure by the Company in the performance or compliance with any of the agreements, terms, covenants or conditions contained in the Contract Documents; or
- (c) failure by the Company to make prompt payments when due to ROSEN in accordance with the Contract Documents.

In any event, Company shall bear all costs incurred by ROSEN under the Contract until the specified date of termination. In no event shall Company be entitled to charge ROSEN any cancellation fees.

## **13 ASSIGNMENT**

Company shall not have the right to assign this Contract or any part of its interest, rights, obligations or duties hereunder, without the prior written consent of ROSEN.

## **14 APPLICABLE LAW AND VENUE**

Unless specifically provided otherwise in the Contract Documents, the Contract shall be governed by, and any dispute, controversy or claim arising out of or in connection with this Contract shall be resolved in accordance with the law of the state in which the contracting ROSEN entity has its registered office. Any suit, action or proceeding with respect to the Contract shall be brought to a court where the respective ROSEN entity has its place of business, which shall have exclusive jurisdiction and venue.

The application of the uniform law on international sale of goods (CISG) is explicitly excluded.

## **15 MISCELLANEOUS**

### **15.1 Notices**

Wherever in the Contract Documents provision is made for the giving of any notice, consent, approval or determination by any person, unless otherwise specified, such notice, consent, approval or determination will be in writing and words "notice", "notification", "notify", "consent", "determination", or "determine" will be construed accordingly. All notices and other communications provided for herein (including, without limitation, any modifications of, or waivers or consents under this Contract) shall be given in writing, including an electronic writing and shall be faxed (and confirmed by copy delivered by personal delivery or mail), mailed or delivered to the intended recipient at the address specified by the recipient in writing. Except as otherwise provided in this Contract Documents, all such communications shall be deemed to have been duly given when transmitted by email, facsimile or personally delivered or, in the case of a mailed or electronically mailed notice, upon receipt, in each case given or addressed as stated in the Contract Documents.

### **15.2 Waiver**

ROSEN's failure to exercise any of its rights hereunder shall not constitute nor be deemed a waiver or forfeiture of such rights. Stenographical and clerical errors are subject to correction. If either Party discovers a clerical error it shall promptly notify the other Party of the same.

### **15.3 Severability Clause**

If any provision or part of a provision of these Terms and Conditions is found to be illegal, invalid or unenforceable under any applicable law, such provision or part of a provision shall, insofar as it is severable from the remaining terms, be deemed omitted from these terms and shall in no way affect the legality, validity or enforceability of the remaining terms.