



Standard Terms and Conditions of Sale FOR

Corrosion & Abrasion Solutions Ltd.
4212 – 97 Street
Edmonton, Alberta
Canada T6E 5Z9

Enerclear Services Inc.
4212 – 97 Street
Edmonton, Alberta
Canada T6E 5Z9

Inotec Coatings & Hydraulics Inc.
4263 – 95 Street
Edmonton, Alberta
Canada T6E 5R6

TSI Thermal Spray Industries Ltd.
11205 – 84 Avenue
Fort Saskatchewan, Alberta, Canada
Canada T8L 4L1

1. General

The sale of hydraulic cylinders and other components generally used in mobile mining and construction equipment (“Goods”) or the provision of coating services, either in-shop or on-site (“Services”) by the companies listed above; collectively and individually known as Seller, all as further described in the quotation, estimate or invoice attached hereto (“Sales Document”) are subject to the following Standard Terms and Conditions of Sale (“T&C’s”). The purchaser of the Goods or Services will hereinafter be referred to as the Buyer.

2. Scope of Agreement, Acceptance

Unless expressly provided otherwise in writing and signed by Seller and Buyer prior to the date of the Sales Document these T&C’s, any Change Orders (as defined below) and any other documents identified in the Sales Document as a contract document shall be considered contract documents (collectively, the “Agreement”). Any terms or conditions that add to or contradict the terms of the Agreement are not valid. A definite expression of acceptance of this Sales Document by Buyer that contains terms or conditions that are additional to or different from the terms of the Agreement will form a contract solely on the terms of the Agreement, and the additional or different terms or conditions shall not become part of the Agreement, whether or not they would materially alter the Agreement. This Agreement becomes a valid and binding obligation of Seller and Buyer on the earlier of (a) Seller’s receipt of the Sales Document signed by Buyer; (b) Buyer delivering a purchase order to Seller for the Goods or Services described in the Sales Document; (c) Buyer’s receipt and acceptance of the Goods or Services; (d) Buyer’s payment for the Goods or Services described in the Sales Document; or (e) any other written indication by Buyer of its acceptance of the Sales Document.

3. Validity

Seller’s quoted prices for Goods or Services are valid only for the lesser of the time period stated in Seller’s written quotation or sixty days.

4. Delivery; Risk of Loss

All shipping dates of Goods and performance dates of Services stated in the Sales Document are approximate and not a guarantee of a particular date of shipment or performance of Service. Unless stated otherwise in the Agreement, delivery of Goods shall be EXW (Incoterms 2010) at Seller’s facility stated in the Sales Document. Buyer will take title and risk of loss to the Goods upon shipment, and expenses shall thereafter rest upon Buyer including without limitation all risks and expenses incurred in the storage and transportation of the Goods as well as all insurance, fees, charges, taxes, customs duties and other governmental charges or levies and all other expenses whatsoever thereafter incurred with respect to the Goods. Delivery dates are estimated only and subject to change. Seller may make delivery in installments, each of which may be separately invoiced and paid as billed without regard to subsequent deliveries. Failure to pay for any installment when due shall excuse Seller from making further deliveries. Delay in delivery of any installment shall not relieve Buyer of its obligation to accept remaining installments. Seller will use reasonable efforts to perform and deliver the Goods on time, but will not be liable for any expenses or damages incurred as a result of late delivery.

5. Inspection and Acceptance

Immediately on Buyer’s receipt of any Goods shipped or Services performed, Buyer shall inspect the same and shall notify Seller in writing of any claims for shortages or non-conformance (including damaged or defective Goods or Services). Buyer shall hold any non-conforming Goods for Seller’s written instruction concerning disposition. Failure to give written notice of any shortages or non-conforming Goods or Services within ten days after the earlier of occur of (a) receipt of Goods or performance of Services; (b) express oral or written acceptance of the Goods or Services; or (c) payment for the Goods or Services shall conclusively: (a) establish Buyer’s acceptance of the Goods or Services; (b) release Seller from any and all liability therefor; and (c) waive Buyer’s right to seek damages or other remedies for any shortage or non-conforming Goods or Services subject to section 10 below. Buyer shall bear the expense of inspection under all circumstances.

6. Buyer Assets

Buyer acknowledges that Seller is an independent contractor and that Buyer shall at all times have complete control of the pipeline, vessel, tank or other assets (collectively the Facility) which are the subject of the Services. Both parties agree that Buyer has full knowledge of the specific conditions existing in the Facility and represents that all conditions in the Facility relevant to the Services have been communicated to Buyer in writing. It is understood that Buyer has superior knowledge of the prospective hazards that may be encountered in conjunction with the performance of the Services.

7. Payment Terms

Unless otherwise stated payment shall be made in Canadian dollars, net 30 days from date of Seller's invoice. Prices do not include sales, use, excise, or similar taxes. All such taxes shall be paid by the Buyer. Overdue payments shall bear interest at the lesser of 18% per annum (1.5% per month) or the maximum rate permitted by law. Seller shall have the right, among other remedies, including the right of setoff, either to terminate this Agreement or to suspend further deliveries under this Agreement and/or other agreements with Buyer in the event Buyer fails to make any payment when due. Buyer shall be liable for all expenses related to collection of past due amounts, including attorneys' fees. Seller may require full or partial payment in advance of shipment or change credit or payment terms if, in Seller's opinion, the credit or financial condition of Buyer is, or is about to become, impaired. If Buyer requests delayed shipment, Seller may bill for Goods when ready for shipment and charge reasonable daily storage fees. Seller retains a security interest in Goods until payment, and Buyer will execute any paperwork required by Seller to perfect any such security interest.

8. Specifications

Buyer warrants that any documents, drawings, designs or specifications furnished to Seller by Buyer or any party acting on behalf of, or under direction from, Buyer (collectively "Specifications") are complete, accurate and may be relied on by Seller. Seller shall have no liability for errors, omissions, or inconsistencies in any Specifications. In the event the Agreement contains submittal requirements pertaining to the Goods or Services, Seller agrees to submit in a timely fashion to Buyer for review and approval any shop drawings, samples, product data, manufacturers' literature or similar submittals as Buyer may reasonably request. Buyer shall be responsible for review and approval of submittals with reasonable promptness to avoid causing delay.

9. Default; Termination; Cancellation

If Buyer fails to perform any of its obligations under this Agreement, including failure to make payments as provided in this Agreement or otherwise, or if Buyer fails to give prompt assurances of future performance when requested by Seller, then Seller may, on five days' notice to Buyer, declare Buyer to be in default and Seller may suspend or terminate performance of its obligations under this Agreement without liability and retain all rights and remedies Seller possess at law, in equity or as provided in the Agreement. In addition to the remedies above, to the extent that (a) Seller declares a default under this Section 9; or (b) if the order is cancelled for any reason other than default by Seller, Buyer agrees to pay Seller for any (i) Services performed and Goods delivered to date of termination, (ii) Goods or materials ordered which cannot be cancelled, and (iii) all costs associated with mobilizing and demobilizing equipment and personnel. All costs recovered shall include overhead and/or profit on costs.

10. Change Orders

Changes to the quantity, Specifications, scope of supply or performance, delivery schedule, period of performance, shipping instructions or any other material term or condition of the Agreement may only be made by Buyer and Seller executing a written change order ("Change Order"). Any Change Order shall state the parties' agreement on: (a) the change in a material term or condition of the Agreement; and (b) an adjustment to the purchase price or the date of shipment or period of performance, as applicable. Both parties agree that, unless a Change Order is agreed in writing and signed by authorized representatives of both parties, the Agreement shall not be changed or modified in any manner. In addition, Seller has the right to suspend performance during the period while the change is being evaluated and negotiated. In the event Buyer has communicated proposed changes to Seller, Seller, at its sole discretion, shall either: (i) accept the Change Order; (ii) reject the Change Order and continue performance under the existing Agreement; or (iii) terminate the Agreement. In the event that Seller elects (ii) above, Buyer shall have the option to terminate the Agreement within 5 days of Seller election in (ii) above.

11. Warranties

Seller warrants, subject to limitations in this Agreement, that: (a) for Services, on the date of delivery, each Service has been performed in accordance with applicable Specifications and procedures for such Service and as described in the Sales Documents; and (b) for Goods each Good will be free in defects related to materials and workmanship for a period of one (1) year beginning on the earlier of the date of installation or 6 (six) months following shipment from the Seller. Seller's obligation to honor its warranty on defective Goods is in all cases limited to, at Seller's sole option, repair or replacement of the defective Good or component thereof, or providing a cash refund or credit equivalent to the decreased value of the defective Good. Seller's obligation to honor its warranty on defective Services is in all cases limited to, at Seller's sole option, re-performing such Services, performing additional Services, or providing a refund or credit equivalent to the decreased value of the Services. Notwithstanding anything in this Agreement to the contrary, Seller's warranty liability shall in no event exceed the amount paid for the original defective Services or Goods. Any claim not received by Seller within the applicable warranty period shall be conclusively deemed waived by claimant. Seller has the option to verify, with its own representatives, the nature and extent of the alleged warranty claim. Seller shall have no obligation to provide warranty service and shall have no liability with respect to defective Services or Goods if the Goods, materials, systems of which they are a part, or structures they are intended to protect from corrosion have: (a) been modified, altered, relocated, used for other than intended purposes, or otherwise changed without Seller's prior written consent; (b) been damaged or abused; (c) not been operated or maintained in accordance with design Specifications, instructions, operations and maintenance documents, or reasonable business practices; or (d) in the case of Goods or Services, not been paid for in full. The providing of warranty service does not extend or restart a new warranty period.

12. Warranty Limitations

The Goods warranty applies only to: (a) Goods re-manufactured solely by Seller. Except as stated in the preceding sentence, Seller does not warrant products manufactured or supplied by other parties, and Buyer shall be entitled to rely on the warranties, if any, only to the extent offered to Buyer by such other parties. Replaced Seller Goods shall become the property of Seller, if Seller so elects. Seller shall not be liable for any expense incurred by Buyer in order to remedy any warranted defect. THE WARRANTIES CONTAINED IN THIS AGREEMENT ARE IN LIEU OF, AND SELLER DISCLAIMS, ANY AND ALL OTHER WARRANTIES, CONDITIONS, AND LIABILITIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, AND ANY LEGAL WARRANTIES UNDER APPLICABLE LAW. BUYER EXPRESSLY AGREES THAT THIS WARRANTY SHALL SERVE AS BUYER'S SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO THE GOODS. IN NO EVENT WILL SELLER BE LIABLE TO BUYER, ITS AFFILIATES, SUCCESSORS, ASSIGNS OR TRANSFEREES OR TO ANY THIRD PARTY (BY VIRTUE OF CONTRACT, TORT (INCLUDING NEGLIGENCE), WARRANTY, STRICT LIABILITY OR OTHERWISE) FOR ANY LOST USE, REVENUES OR PROFITS, INDIRECT, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, PUNITIVE OR SPECIAL DAMAGES ARISING OUT OF OR IN ANY WAY RELATED TO THE GOODS, ACTS OR OMISSIONS IN CONNECTION WITH ANY AGREEMENT RELATED TO THESE WARRANTIES, OR GOODS PROVIDED BY SELLER UNLESS EXPRESSLY AND EXPLICITLY

PROVIDED FOR IN WRITING SIGNED BY AN AUTHORIZED REPRESENTATIVE OF SELLER OR AS OTHERWISE REQUIRED BY LAW. THESE WARRANTIES SHALL EXTEND ONLY TO THE FIRST PURCHASER OF GOODS FROM SELLER AND SHALL NOT BE ASSIGNED OR TRANSFERRED.

13. Reliance on Buyer's Representations

Seller shall be entitled to rely on representations made by or on behalf of Buyer that all conditions necessary for the proper remanufacturing of Goods or performance of Seller Services have been satisfied, except to the extent Seller is specifically contracted to make such determination. Buyer covenants that it has made such disclosures to Seller as is necessary for Seller to reasonably assess the cost, time and hazards associated with the provision of Services within the Facility, and that the Facility is free from hazards and impediments that have not been disclosed to Seller. Buyer acknowledges that the Sales Documents are based on the accuracy of these disclosures and that terms will not be binding on Seller if material impediments or hazards not previously disclosed are discovered in the Facility by Seller during the provision of Services. Seller shall have no liability for any and all claims, losses, and causes of action arising out of, resulting from, or in any way attributable to failure of Buyer to satisfy such conditions. Seller makes no representations or warranties with respect to, and disclaims liability arising out of, products or services sold by Buyer.

14. Confidentiality

All information, including quotations, specifications, drawings, prints, schematics, and any other engineering, technical or pricing data or information submitted by Seller to Buyer related to any order for Goods or Services are the confidential and proprietary information of Seller. Buyer and its employees, agents or other parties for whom Buyer is responsible may not disclose Seller's confidential and proprietary information to any third parties, or use Seller's confidential and proprietary information for its own account or that of any third party, except in the performance of this Agreement.

15. Force Majeure

If Seller is delayed at any time by the acts or omissions of Buyer, Change Orders, or any Force Majeure (as defined below), then the period of performance of Services shall be extended, the delivery of Goods rescheduled and the price equitably adjusted to reflect the effects of delay on Seller's costs. "Force Majeure" means circumstances beyond Seller's reasonable control, including acts of God, acts of public enemies, wars, other hostilities, blockades, insurrections, riots, epidemics, quarantine restrictions, floods, unavailability of components or supplies, lightning, fire, storms, earthquakes, arrests, civil disturbances, acts of any governmental or local authority, and any other acts and causes, not within Seller's control, which by the exercise of due diligence and reasonable commercial effort, Seller shall not have been able to foresee, avoid or overcome. If Seller is unable for any reason to supply the total demands for Goods specified in the Agreement, Seller may allocate its viable supply among any or all purchasers on such basis as Seller may deem fair and practical, without liability for any failure of performance which may result therefrom.

16. Hazardous Material

Seller is not responsible for the discovery of any hazardous material at the Facility where Services are to be performed. In the event Seller discovers hazardous material, Seller will promptly notify Buyer. Seller is not obligated to commence or continue the performance of Services until all hazardous material discovered at the Facility has been removed, remediated, or determined to be harmless. If Seller incurs additional costs or is delayed due to the presence or remediation of hazardous material, Seller is entitled to an equitable adjustment in both the Agreement's price and the time for performance. In no event shall Seller be liable to Buyer or any third party for any hazardous material existing at the Facility, or brought onto said premises by any third party. Hazardous material includes any substance or material identified currently or in the future as hazardous under applicable laws, or any other substance or material that may be considered hazardous or otherwise subject to statutory or regulatory requirement governing handling, disposal, or cleanup.

17. Indemnification

TO THE FULLEST EXTENT PERMITTED BY LAW, BUYER AGREES TO DEFEND, INDEMNIFY, AND HOLD HARMLESS SELLER AND ITS DIRECTORS, OFFICERS, AFFILIATES, EMPLOYEES, CONTRACTORS, SUBCONTRACTORS AND AGENTS FROM AND AGAINST ANY AND ALL LIABILITY, LOSSES, COSTS (INCLUDING COSTS OF LITIGATION OR OTHER DISPUTE RESOLUTION AND LEGAL FEES INCLUDING SOLICITOR AND OWN CLIENT COSTS), CLAIMS AND CAUSES OF ACTION IN FAVOR OF ANY AND ALL PERSONS ARISING OUT OF, RESULTING FROM, OR IN ANY WAY ATTRIBUTABLE TO THE NEGLIGENT ACT OR ACTION, OMISSION OR FAILURE TO ACT ON THE PART OF BUYER OR ITS DIRECTORS, OFFICERS, EMPLOYEES, CONTRACTORS, SUBCONTRACTORS, AGENTS OR ANY OTHER PARTY FOR WHOSE ACTS OR OMISSIONS ANY OF THEM MAY BE LIABLE. TO THE FULLEST EXTENT PERMITTED BY LAW, BUYER FURTHER AGREES THAT WHERE OTHER CONSULTANTS OR CONTRACTORS ARE EMPLOYED BY BUYER, BUYER WILL NOT HOLD SELLER LIABLE FOR ANY LOSS, DAMAGE OR INJURY CAUSED BY ANY FAULT OR NEGLIGENCE OF SUCH OTHER CONSULTANTS OR CONTRACTORS FOR RECOVERY FROM THEM, OR ANY OF THEM, FOR ANY SUCH DAMAGE OR INJURY.

18. Limitation of Liability

NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, BUYER AGREES THAT ANY RECOURSE AGAINST SELLER UNDER THIS AGREEMENT OR RELATED TO SELLER'S PERFORMANCE OF THE SERVICES OR THE FURNISHING OF GOODS HEREUNDER, INCLUDING BUT NOT LIMITED ANY INDEMNITY OR WARRANTY OBLIGATIONS, SHALL BE STRICTLY LIMITED TO THE AMOUNT PAID TO SELLER UNDER THIS AGREEMENT (EXCLUDING TAXES). IN NO EVENT SHALL SELLER OR ITS AFFILIATES BE LIABLE TO BUYER, ITS AFFILIATES, SUCCESSORS, ASSIGNS, VENDEES OR TRANSFEREES, OR TO ANY THIRD PARTY, FOR ANY ECONOMIC LOSS, LOST PROFITS OR BUSINESS OPPORTUNITIES, PHYSICAL HARM, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES, EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, ARISING OUT OF, RESULTING FROM OR RELATING IN ANY WAY TO THIS AGREEMENT OR ACTS OR OMISSIONS OF SELLER IN CONNECTION THEREWITH.

19. Governing Law; Venue; Prevailing Party

This Agreement shall be governed and construed in accordance with, and all claims relating to or arising out of this Agreement, or the breach thereof, whether sounding in contract, tort or otherwise, shall be governed by the laws of the Province of Alberta (Canada) without regard to its conflict of law provisions. Each party attorns to the exclusive jurisdiction of the courts of the Province of Alberta (Canada). The prevailing party in any formal dispute shall be entitled to reasonable legal fees and costs, including reasonable expert fees and costs. The UNCITRAL Convention on Contracts for the International Sale of Goods does not apply to this Agreement.

20. Insurance

Both parties agree to maintain adequate insurance to support each party's obligations under this Agreement. Upon written request by one party, the other party shall furnish to the requesting party certificates of insurance to evidence that adequate insurance is in place and is in full force and effect.

21. Compliance with Anti-Corruption Laws

Buyer represents and warrants, in connection with the transactions contemplated by this Agreement, and any other agreement contemplated by or entered into pursuant to this Agreement, that it shall take no action, directly or indirectly, that would constitute a violation of the United States Foreign Corrupt Practices Act, Canadian Corruption of Foreign Public Officials Act or any other applicable anti-bribery or anti-corruption law, convention or regulation (collectively, "anti-corruption laws"). Seller acknowledges and confirms that it and its officers, directors, employees, agents, contractors, designees and/or any other party acting on its behalf (collectively, "Related Parties") are familiar with the provisions of the anti-corruption laws. Buyer hereby agrees to indemnify, defend and hold harmless Seller and its employees from and against any and all claims, demands, damages, costs, penalties and fines arising in connection with any alleged breach by Buyer or any of its Related Parties of this paragraph. Seller reserves the right to terminate the Agreement in its entirety, without liability to Buyer, if Seller has a good faith basis for believing Buyer or any of its Related Parties has violated or intends to violate any country's anti-corruption laws.

22. Dispute Resolution

In the event of any dispute or disagreement between Seller and Buyer arising out of or relating to this Agreement ("Dispute"), such Dispute, upon the written request of Seller or Buyer, shall be referred to the chief financial officers of each party or their respective designees. The chief financial officers or their respective designees shall promptly meet in good faith to resolve the Dispute and if they do not agree upon a resolution within thirty (30) calendar days after the reference of the Dispute to them, then such Dispute, upon written notice from one party to the other of its intent to arbitrate ("Arbitration Notice"), shall be submitted to and settled exclusively by final and binding arbitration in lieu of any judicial proceeding; provided, however, that nothing contained in this Section 22 shall preclude any party from seeking or obtaining from a court of competent jurisdiction: (a) injunctive relief, or (b) equitable or other judicial relief to specifically enforce the provisions of this Agreement or to preserve the status quo prior to the event(s) leading to the Dispute. Arbitration shall be conducted before a single arbitrator in accordance with the Commercial Arbitration Rules of the American Arbitration Association existing at the date of submission of the Dispute to arbitration. Any arbitration award shall be binding and enforceable against Seller and Purchaser and judgment may be entered thereon in any court of competent jurisdiction.

23. Waiver, Entire Agreement, Severability

The failure of either party to enforce any right or remedy provided in this Agreement or by law on a particular occasion will not be deemed a waiver of that right or remedy on a subsequent occasion or a waiver of any other right or remedy. This Agreement constitutes the entire agreement between the parties with respect to its subject matter, and supersedes all prior oral or written representations or agreements by the parties with respect to the subject matter of this Agreement. This Agreement may not be modified unless in writing and signed by authorized representatives of both parties. Any provision found invalid or unenforceable will not affect the validity or enforceability of any other provision and the invalid provision may be judicially modified to the extent enforceable.

24. One Year Limitation

Neither party may bring a claim or action arising out of or related to this Agreement, including any claim of fraud or misrepresentation, more than one (1) year after the cause of action accrues.