

## 1. INTERPRETATION AND PARAMOUNTCY

- 1.1 These terms and conditions shall form part of any request for quotation, quotation, purchase order, or agreement to which these terms and conditions are attached or which incorporate these terms and conditions by reference (the "Agreement"). This Agreement constitutes the entire agreement between Foremost and Purchaser with respect to its subject matter. This Agreement supersedes all prior communications, negotiations, representations, understandings and agreements (whether oral or written) which are made prior to the date of this Agreement. For greater certainty: (i) any invoice, acknowledgement or other communication issued by Purchaser in connection with this Agreement shall be construed only to be for record and accounting purposes and/or to fulfil the requirements requested; (ii) any terms and conditions stated in such communication shall not be applicable to this Agreement and shall not be considered to be Purchaser's exceptions to the provisions of this Agreement; and (iii) trade custom and/or trade usage is superseded by this Agreement and shall not be applicable in the interpretation of this Agreement. No other terms and conditions, pre-printed, posted, published, or otherwise, shall apply.
- 1.2 In this agreement "Purchaser" shall refer to Foremost's customer that has engaged Foremost to supply the parts and/or services (the "Work") contemplated in the quote, purchase order or invoice to which these terms and conditions are attached or which reference these terms and conditions. "Foremost" shall mean Foremost Universal LP unless another Foremost business is expressly stated as providing the parts or services in which case "Foremost" shall mean that entity.
- 1.3 This Agreement shall be construed and interpreted in the English language only. The parties confirm that it is their express wish and intention that this Agreement, as well as any other documents relating to this Agreement, including notices, appendices, orders, confirmations, quotations, schedules and authorizations ("Agreement Documents"), have been and shall be drawn up in the English language only. To the extent that any Contract Documents are translated into or otherwise proposed in any other language, the English language version shall prevail to the extent of any of any conflict, discrepancy, inconsistency, ambiguity or difference of any kind between the English language version and any such translated version. Any such translated version shall not be considered evidence of any intention or interpretation whatsoever.

## 2. ACCEPTANCE

Purchaser's acceptance of delivery and/or performance of the Work or execution of a purchase order shall constitute acceptance by Purchaser of these terms and conditions.

## 3. CHANGES

Purchaser may propose changes to the Work, the delivery schedule or any other performance obligation covered by this Agreement by giving written notice to Foremost. Foremost shall be compensated and scheduling shall be adjusted, within reason, for increased costs, time and resources required as a result of any change to which Foremost agrees. No such changes shall be binding unless set out in writing, signed by a duly authorized representative of Foremost and Purchaser.

## 4. DELIVERY, TITLE AND RISK

Unless otherwise agreed in writing, the parts and/or components shall be delivered and title and risk of loss shall pass Ex Works Foremost's facility in accordance with the provisions of Incoterms® 2010.

## 5. DELAYS

Foremost will use all commercially reasonable efforts to perform its obligations under this Agreement and the related order in accordance with the delivery deadlines agreed upon by Purchaser and Foremost. Foremost shall promptly notify Purchaser of any actual or anticipated delay in delivery and take all reasonable steps to avoid or end delays without additional cost to Purchaser.

## 6. SUSPENSIONS

Foremost may without liability suspend performance of this Agreement if Purchaser fails at any time to make payment to Foremost when due. If at any time Purchaser wishes to delay or suspend the Agreement, other than in relation to a default by Foremost, any such delay or suspension shall be treated in accordance with the procedure for changes to the Agreement providing for reasonable adjustments to delivery time and price. Purchaser shall be liable for any and all costs (including storage) resulting from any delay that Purchaser requests or causes. Foremost shall not be liable for unforeseen delays or complications.

## 7. TERMINATION

- 7.1 Purchaser may terminate this Agreement by providing Foremost with ten (10) days prior written notice. In the event of such termination, Purchaser shall pay to Foremost, in addition to all other monies received by Foremost as of the date of such notice of termination, an amount equal to any unpaid internal and third party costs incurred or accrued by Foremost prior to termination with respect to such Work, as at the effective date of such termination plus 10% of such unpaid costs. Upon receipt and clearing of this termination payment by Foremost, Purchaser shall be entitled to take possession of the Work including any cancelled portion thereof, on an "as is, where is" basis without the benefit of any warranties contained herein.
- 7.2 Foremost shall have the right to terminate this Agreement immediately upon: (a) Purchaser becoming bankrupt, insolvent or making any assignment for the benefit of its creditors; or (b) any invoice becoming more than thirty (30) days past due.
- 7.3 If Foremost terminates pursuant to Section 7.2 of this Agreement, Foremost shall have the right to dispose of the Work for the purpose of recovering amounts owed (including interest) plus storage, collection enforcement and administration costs including costs on a solicitor and his own client basis with any surplus to go to Purchaser.

## 8. FORCE MAJEURE

Neither party shall be considered to be in default in the performance of its obligations to the extent it proves such performance has been prevented by an event of Force Majeure. "Force Majeure" means natural disasters, strikes, transportation disruptions, interruptions in the supply of raw materials including without limitation, acts of God or interference by governments or agencies of governments, health crises, pandemics or epidemics, and any circumstances beyond either party's reasonable control. Under no circumstances will lack of finances be construed to constitute an event of Force Majeure.

## 9. WARRANTY

- 9.1 The warranty period for the Work is ninety (90) days from the date the Work was completed (the "Warranty Period").
- 9.2 For the duration of the Warranty Period, Foremost warrants that the services performed, and the parts and components manufactured by Foremost, shall be free of defects of material or workmanship (the "Warranty").
- 9.3 Notwithstanding the foregoing, parts or components not manufactured by Foremost are sold and conveyed to Purchaser "as is, where is" without any Foremost warranty; however, Foremost will provide reasonable assistance to Purchaser to make claims for warranties as provided by such original part or component manufacturers.
- 9.4 The following conditions do not constitute a defect under this warranty:
  - 9.4.1 conditions resulting from normal wear and tear or minor aesthetic damage or defects;
  - 9.4.2 conditions resulting from improper storage, use or any negligent acts or omission by Purchaser or any third party;
  - 9.4.3 conditions resulting from failure by Purchaser or any third party to properly install, service, and/or maintain the part and/or component;
  - 9.4.4 conditions or damages resulting from or caused by accident or incident or any other sources affecting the newly installed part or component, including but not limited to foreign object damage or the failure of a part or component other than the part or component newly installed by Foremost.
- 9.5 Any claimed defects must be discovered during the Warranty Period. Foremost must receive written notice of the discovery no later than ten (10) days after discovery of the defect. The notice must include sufficient information to substantiate the warranty claim.
- 9.6 Foremost hereby disclaims all representations or warranties, except as specifically set forth in this Agreement, either expressed or implied, including, without limitation, any warranty of title, condition, design, operation, freedom from infringement, absence of latent or other defects, quality of material or workmanship, merchantability or fitness for purpose.

## 10. INDEMNITY AND LIMITATION OF LIABILITY

Foremost's liability for any claim, breach, action, judgment, loss, cost, expense, fine, penalty or other damage or for any indemnity hereunder shall be limited to the lesser of: (a) \$1,000,000; and (b) the amount equal to the price payable here under, and shall be limited to direct actual expenses and damages only. Foremost shall not, under any circumstances, be liable for any indirect, special, punitive, exemplary, consequential damages, loss of profit, economic loss, loss of opportunity, loss of reputation, loss of use, environmental damage after transfer of ownership, or anticipated savings on costs or expenses. Foremost shall not be

liable where and to the extent that the subject loss falls within a peril covered by the insurance policy of the Purchaser, project owner, or engineering services firm as applicable and which will include a waiver of subrogation.

## 11. LIENS

Without limitation to any lien rights that Foremost may have at law, including pursuant to any act, regulation or rule, Purchaser hereby grants to Foremost a first security interest and charge in and to the parts and/or components to be installed as part of the Work, and in any and all proceeds derived therefrom as security for payment of all obligations arising in connection with this Agreement or any other amounts owed from time to time to Foremost by Purchaser. Such security interest shall survive regardless of whether Foremost has released possession of the Work. Purchaser waives the requirement of Section 11 of the Personal Property Security Act (Alberta) to deliver a copy of this security agreement.

## 12. SET-OFF

Foremost shall be entitled at all times to a right of set-off in respect of any amounts owing at any time from Purchaser to Foremost (or any of Foremost's affiliates and subsidiaries) against any amount payable at any time by Foremost (or any of its affiliates and subsidiaries) to Purchaser.

## 13. DEPOSIT AND CANCELLATION CHARGES

Any deposit or cancellation fee required by Foremost is a non-refundable, good faith and genuine pre-estimate of liquidated damages and not a penalty.

## 14. PAYMENT

Except to the extent expressly otherwise agreed in writing, Purchaser shall pay all invoices submitted by Foremost within thirty (30) days of invoice date of such invoice by Purchaser. All past due invoices shall bear interest on the amount unpaid, from the date until paid, at two percent (2%) per month, compounding monthly. Purchaser's dispute of any invoice shall not be grounds to withhold payment of such invoice or any other invoice provided that Purchaser's payment of any such invoice shall not prejudice Purchaser's right to dispute any such invoice. Purchaser agrees this is a genuine estimate of damages, and not a penalty. Foremost's right to collect interest is in addition to and without limitation to its rights to pursue any and all other remedies available to it hereunder and at law. Milestones are non-refundable, and would be netted out of any cancellation fees payable.

## 15. TAXES AND DUTIES

Purchaser shall be responsible for all applicable customs, duties and goods and services, value added, or other similar taxes, as well as any income tax or franchise tax related to the Work pursuant to Applicable Laws.

## 16. INTELLECTUAL PROPERTY

Purchaser acknowledges and agrees that there is no license, transfer or grant of any intellectual property right, including any patent right, trademark or industrial design right, by virtue of this Agreement or the sale of services or parts to Purchaser hereunder beyond the right to use the parts provided hereunder.

## 17. SUBJECT TO EXPORT APPROVAL

- 17.1 Foremost's obligations to fulfill this Agreement shall be subject in all respects to Foremost obtaining, in a timely manner all requisite export permits and approvals and continued compliance with the laws, rules and regulations referred to in ss.17.3 below ("Export Permission").
- 17.2 If at any time Export Permission is denied or any investigation, claim or proceeding is brought in connection with Export Permission which obstructs or delays export for 180 days or longer, the provisions of Section 7 (Termination) shall apply "mutatis mutandis" and this Agreement shall be terminated without further liability to Foremost.
- 17.3 You represent, warrant and certify that the sale of the Work to You (including without limitation, our agents, successors and assigns) and thereafter ultimately to the end-user, does not contravene the *Corruption of Foreign Public Officials Act*, (Canada), the *Extractive Sector Transparency Measures Act*, (Canada), the *Proceeds of Crime* (Money Laundering) and *Terrorist Financing Act*, (Canada), the *Criminal Code*, (Canada), the *Foreign Corrupt Practices Act*, (United States), the *United Nations Act*, (Canada) the *Special Economic Measures Act*, (Canada), the *Export and Import Permits Act*, (Canada), the *Freezing Assets of Corrupt Foreign Officials Act*, (Canada) or any directives, rules or regulations thereunder or similar law having jurisdiction over the transaction, or any law, sanction, rule, prohibition or restriction imposed by the United States Office of Foreign Assets Control, the United States Bureau of Industry and Security, or any similar or equivalent law or agency of Canada, the United States or any international ally of Canada or the United States having jurisdiction or effecting Canadian policy with respect to the transaction.

## 18. GOVERNING LAW AND JURISDICTION

- 18.1 This Agreement shall be governed by and interpreted pursuant to the laws of the Province of Alberta and the federal laws of Canada applicable therein, without regard to its rules on conflict of laws.
- 18.2 The parties hereby agree that any dispute, action or proceeding hereunder shall be brought in the courts of the Province of Alberta and the parties consent and submit to the jurisdiction of the courts of the Province of Alberta. The United Nations Convention on the International Sale of Goods shall not apply.

## 19. CONFIDENTIAL INFORMATION

Purchaser shall consider all information furnished by Foremost, or prepared for Foremost under this Agreement, in any form whatsoever, to be confidential and shall not disclose any such information to any person without Foremost's prior written consent, or use such information itself for any purpose other than performing the Work. Upon termination of this Agreement, Purchaser will, upon request, destroy or deliver to Foremost all confidential information and other reports, summaries or information obtained, developed or derived from the confidential information as a result of this Agreement.

## 20. NOTICES

Copies of notices will be sent to the following addresses:

Foremost Universal LP  
6614 50th Avenue  
Lloydminster, Alberta T9V 2W8  
Attention: Legal Services  
Email: [legal@foremost.ca](mailto:legal@foremost.ca)  
Facsimile: (780) 875-6169

With copy to:

Foremost Universal LP  
c/o TOM Capital Associates Inc.  
200, 1210 – 11th Avenue SW  
Calgary, Alberta T3C 0M4  
Attention: Legal Services  
Email: [legal@foremost.ca](mailto:legal@foremost.ca)  
Facsimile: (403) 571-4444 (General)