

## ***Seattle Safety Parts and Service Terms and Conditions***

### **1 Parts and Service Terms and Conditions**

- 1.1 These Terms and Conditions and the Invoice that accompanies, attaches, or incorporates them, represent the entire agreement between Buyer and Seattle Safety, LLC (“Seattle Safety”). Acceptance is limited to these Terms and Conditions and any additional terms and conditions set forth in the Invoice. To the extent these Terms and Conditions and any additional terms and conditions set forth on the Invoice conflict, as to conflicting terms and conditions the terms and conditions set forth on the Invoice shall govern. No purported revisions of, additions to, or deletions from these Terms and Conditions shall be effective, whether in Buyer’s purchase order or otherwise, and no local, general or trade custom or usage shall be deemed to effect any variation herein unless expressly agreed in writing by Seattle Safety’s authorized representative. The provision of any goods or services by Seattle Safety shall constitute acceptance by Buyer of the goods and services subject to, and in strict accordance with, all of these Terms and Conditions and any additional terms and conditions set forth in the Invoice. Any reference on the face of the Invoice to Buyer’s purchase order shall not modify these Terms and Conditions or the terms and conditions set forth in the Invoice unless explicitly stated in the Invoice. Buyer and Seattle Safety agree that these Terms and Conditions shall prevail over any conflicting or different terms in the Buyer’s purchase order or other documents and any failure of Seattle Safety to object to any conflicting or different provisions in Buyer’s purchase order or other documents shall not be construed as an acceptance of any such provision or a waiver of these Terms and Conditions.

### **2 Installation**

- 2.1 Except as otherwise set forth in these Terms and Conditions or Seattle Safety’s Invoice, Seattle Safety shall have no obligation to provide any installation services with respect to the goods provided hereunder. If Seattle Safety has agreed to install the goods, such installation will be performed in a workmanlike manner. The Buyer shall pay all costs of installation, including the cost of any modifications to the Buyer’s plant and equipment necessary or advisable to accommodate the installation.
- 2.2 Buyer shall provide Seattle Safety reasonable access to its facility for the installation of any goods and/or the provision of any services. Buyer agrees to (1) provide and maintain access to the site, and prepare the site for the services, with adequate health and safety conditions, (2) provide all relevant information regarding the conditions of access, as well as the guidelines related to health and safety, (3) provide, free of charge, adequate resources and materials such as, but not limited to, facilities and utilities available on-site (*e.g.*, forklifts, machinery, energy, office space, sanitary facilities, and the like) and an adequate and qualified staff in a

suitable timeframe, and (4) provide an adequate space for unloading, moving, and handling of the goods. If such access is not provided, Seattle Safety shall be entitled to receive reimbursement by the Buyer of all costs and expenses resulting from such lack of access (including but not limited to storage costs, waiting time of Seattle Safety's staff and/or demobilization/remobilization of the same, and the like).

### **3 Warranty**

- 3.1 Seattle Safety's goods and/or services are warranted to be free from defects in materials and workmanship for one year following:
- For goods not installed by Seattle Safety, arrival of the goods at the destination location / dock;
  - For goods installed by Seattle Safety, installation by Seattle Safety; and
  - For services performed by Seattle Safety, the provision of those services.
- 3.2 Any goods found to be defective during this warranty period will be replaced or repaired free of charge at Seattle Safety's discretion. Service repair labor shall be provided free of charge by Seattle Safety during this warranty period unless the defective goods can be easily and rapidly replaced by the Buyer's personnel.
- 3.3 Seattle Safety's goods are warranted only for their intended use and only for use on the system specifically identified in Seattle Safety's Invoice or the purchase order. Seattle Safety's goods and/or services are warranted only as to the original Buyer; subsequent sale or other distribution of the goods and/or system voids any warranty for the goods and/or services provided under these Terms and Conditions. Any modification to the goods, other than that performed by Seattle Safety, voids any warranty for the goods provided under these Terms and Conditions. Seattle Safety is under no liability for any maintenance, adjustments, repairs or replacements arising from fair wear and tear, willful damage, negligence, failure to follow Seattle Safety preventative maintenance plan instructions, abnormal working conditions, failure to follow the original equipment's manufacturers' instructions (e.g., ballasts), misuse, or unauthorized alterations or repair of hardware.

### **4 Force Majeure**

- 4.1 Neither party shall be liable to the other for failure or delay in performance under Buyer's purchase order, Seattle Safety's Invoice, or these Terms and Conditions due to a Force Majeure Event, as defined in Section 4.2 below. Should a Force Majeure Event occur, each party will make its best efforts to reduce any losses caused thereby. Should a Force Majeure Event occur, those elements of Buyer's purchase order, Seattle Safety's Invoice, and these Terms and Conditions unaffected by the Force Majeure Event shall remain in effect. Any dispute relating to this force majeure clause shall be resolved by the Dispute Resolution procedures set forth in Section 5.

- 4.2 “Force Majeure Event” means war, riot, invasion, act of foreign enemies, hostilities (whether war is declared or not), acts of terrorism, civil war, rebellion, revolution, insurrection of military or usurped power, ionizing radiation or contamination, radioactive toxic explosive or other hazardous properties of any explosive assembly or nuclear component, government acts or orders, act of God or public enemy, epidemic, pandemic, outbreak of communicable disease, quarantine, earthquake, tsunami, flood, fire, physical natural disaster, damage to or destruction of facilities, strike, labor dispute, failure of workers, inability to obtain supplies, or any other events or circumstances substantially beyond the reasonable control of the party affected, whether similar or dissimilar to any of the foregoing.

## **5 Dispute Resolution**

- 5.1 The Parties shall attempt to resolve all disputes relating to the goods and/or services provided under these Terms and Conditions by settlement. With the exception of disputes relating to the Confidentiality Requirements of these Terms and Conditions, no dispute shall be submitted to arbitration until the Parties have attempted in good faith to settle the dispute for 30 days after the dispute arises. Should settlement fail, either Party may initiate arbitration under Section 5.2 or 5.3, depending upon which is applicable.
- 5.2 For disputes involving a Buyer whose principal place of business is outside the United States, any controversy or claim arising out of or relating to the goods and/or services provided under these Terms and Conditions or the breach thereof (with the exception of claims for breach of the Confidentiality Requirements, which may be brought in any court of competent jurisdiction) shall be determined by arbitration administered by the International Centre for Dispute Resolution in accordance with its International Arbitration Rules.
- 5.3 For disputes involving a Buyer whose principal place of business is within the United States, any controversy or claim arising out of or relating to the goods and/or services provided under these Terms and Conditions or the breach thereof (with the exception of claims for breach of the Confidentiality Requirements, which may be brought in any court of competent jurisdiction) shall be settled by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.
- 5.4 The Parties recognize that by agreeing to arbitrate disputes relating to the goods and/or services provided under these Terms and Conditions they are giving up certain rights, including but not limited to the right to a jury trial and the right to appeal the arbitration results.
- 5.5 The arbitrator (or, in the case of a dispute relating to the Confidentiality Requirements, the court) shall award reasonable attorneys’ fees and costs to the prevailing party.
- 5.6 The laws of the State of Washington govern these Terms and Conditions.

## **6 Additional Terms**

- 6.1 All written communication from both sides relating to the goods and/or services provided under these Terms and Conditions shall be in English.
- 6.2 Any provision of these Terms and Conditions or Seattle Safety's Invoice that is unenforceable in any jurisdiction shall be ineffective to the extent of such unenforceability (but shall be enforced to the maximum extent permissible) without invalidating the remaining provisions of these Terms and Conditions or Seattle Safety's Invoice.
- 6.3 No term or provision of these Terms and Conditions or Seattle Safety's Invoice will be deemed waived, and no breach excused, unless such waiver or consent is in writing and signed by the party claimed to have provided such waiver or consent. No waiver of any right will constitute a waiver of any other right, whether of a similar nature or otherwise.

## **7 Limitation of Liability**

- 7.1 IN NO EVENT SHALL EITHER PARTY BE LIABLE HEREUNDER TO THE OTHER, IN CONTRACT, TORT, OR OTHERWISE, FOR ANY CONSEQUENTIAL, SPECIAL, PUNITIVE, OR INDIRECT DAMAGES, INCLUDING, BUT NOT LIMITED TO, DAMAGE TO TEST ARTICLES, FACILITIES, LOST BUSINESS, OR LOST PROFITS RESULTING FROM PERFORMANCE OR NONPERFORMANCE UNDER THESE TERMS AND CONDITIONS. THE FOREGOING LIMITATIONS SHALL APPLY EVEN IF A PARTY WAS INFORMED OR KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES OR LOSS.
- 7.2 IN NO EVENT SHALL SEATTLE SAFETY BE LIABLE FOR ANY DAMAGE ARISING FROM ANY DELAY IN DELIVERY OF GOODS AND/OR SERVICES PROVIDED UNDER THESE TERMS AND CONDITIONS.
- 7.3 SEATTLE SAFETY'S LIABILITY ARISING OUT OF THE GOODS AND/OR SERVICES PROVIDED UNDER THESE TERMS AND CONDITIONS SHALL BE LIMITED TO DIRECT DAMAGES TO THE SEATTLE SAFETY SUPPLIED GOODS AND EQUIPMENT, REGARDLESS OF THE DAMAGES THEORY. NOTWITHSTANDING THIS PROVISION, SEATTLE SAFETY'S OBLIGATIONS AS SET FORTH IN THE WARRANTY SECTION 3.1 TO 3.3 REMAIN IN EFFECT.
- 7.4 THE LIMITATIONS WITHIN THIS SECTION 7 SHALL NOT APPLY TO THE INDEMNIFICATION PROVISIONS OF SECTION 10.1 OF THIS AGREEMENT OR A BREACH OF A PARTY'S CONFIDENTIALITY OBLIGATIONS UNDER SECTION 11 OF THIS AGREEMENT.

## **8 Termination**

- 8.1 Buyer may terminate the purchase order upon written notice to Seattle Safety. In the event of termination or cancellation, the Buyer shall owe Seattle Safety the full amount shown on the purchase order. Any funds paid to the Buyer shall be retained by Seattle Safety.

## **9 Risk of Loss**

- 9.1 The Buyer shall assume risk of loss per the Incoterms and no later than arrival at the destination location / dock.

## **10 Indemnification**

- 10.1 To the fullest extent permitted by applicable law, Buyer shall indemnify, defend, and hold harmless Seattle Safety and Seattle Safety's affiliates, officers, directors, employees, agents, successors, and assigns (each, a "Seattle Safety Indemnified Party") from and against all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys' fees and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers arising out of or in connection with any third-party claim, suit, action, or proceeding arising from or relating to any actual or alleged negligence, harm, or other wrongdoing relating to the goods and/or services provided under these Terms and Conditions, except with respect to any losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys' fees arising by reason of such Seattle Safety Indemnified Party's gross negligence, fraud, or willful misconduct.

## **11 Confidentiality**

- 11.1 Both parties shall keep the following information confidential for the time set forth in Section 11.2:
- Any proprietary software acquired by either party, including algorithms and other predictive models;
  - Commercial secrets about the production, sales, and management of either party;
  - Any technical data, documents and drawings that were formed to perform the Contract, excluding commonly exchanged information such as data generated for crash test pulse formulation; and
  - Any other information that qualifies as a Trade Secret under the Washington Uniform Trade Secrets Act, Chapter 19.108 RCW, which provides in part that this includes information, including a formula,

pattern, compilation, program, device, method, technique, or process that: (a) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and (b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

- 11.2 This confidentiality obligation is valid from the date provision of any goods or services by Seattle Safety under these terms and conditions and for ten years after the most recent upgrade of the Buyer's equipment or software by Seattle Safety.
- 11.3 The Parties recognize that the harm from breach of these Confidentiality Requirements would be significant, and that calculation of that harm would be difficult. Accordingly, the parties agree that USD \$200,000 is a reasonable estimate of the harm that would flow from breach of this Confidentiality Requirement and agree that a sum of USD \$200,000 is to be paid by the offending party to the non-offending party for breach of this Confidentiality Requirement.
- 11.4 Either party has the right to request from the other party additional compensation under these Confidentiality Requirements, if the amount stipulated in 11.3 above is insufficient to cover the other party's losses.