

# TAM Global Terms and Conditions

## GENERAL PROVISIONS

Orders for the supply or sale of Products or Equipment ("PRODUCTS"), Services ("SERVICES"), and rental Tools/Equipment ("RENTAL EQUIPMENT") to be provided by TAM INTERNATIONAL INC. or its operating divisions, or its direct or indirect wholly-owned subsidiaries (in each case as applicable referred to herein as "TAM") to its Customers (each a "CUSTOMER") are subject to acceptance by TAM, and any orders so accepted will be governed by the terms and conditions stated herein and any additional terms proposed or agreed to in writing by an authorized representative of TAM (these terms and conditions and any such additional terms collectively referred to herein as the ("AGREEMENT")). Any additions to or modifications of these terms and conditions, or any terms and conditions contained in CUSTOMER's purchase orders inconsistent herewith, shall not bind TAM unless accepted in writing by an authorized representative of TAM, and in the event of any conflict between this Agreement and any prepared form of purchase order, work or service order, job or delivery ticket, or other similar forms, this Agreement shall control.

## PAYMENT TERMS

Unless alternate payment terms are specified or approved in writing by TAM, all charges, including applicable packing and transportation costs, billed by TAM are payable within thirty (30) days of the date of invoice. At TAM's option, interest may be charged at the rate of ten percent (10%) per annum unless such rate contradicts local law, in which case the interest charged will be the maximum allowed by law. Sales, Use or other applicable taxes unless specifically stated otherwise, will be added to invoice prices in those instances in which TAM is required to collect them from the CUSTOMER. Operating, production or well conditions which prevent satisfactory operation or inspection of RENTAL EQUIPMENT, SERVICES or PRODUCTS do not relieve CUSTOMER of its payment responsibility. Payments due are not contingent on acceptance of RENTAL EQUIPMENT, SERVICES, or PRODUCTS on the part of the CUSTOMER. TAM reserves the right to place liens on CUSTOMER's property for non-payment of undisputed amounts due TAM by CUSTOMER. Customer hereby authorizes TAM to sign on Customer's behalf any financing statements, financing change statements or similar documents necessary to perfect any security interest or lien created in TAM's favor in this Agreement.

## TRANSFER OF TITLE AND RISK

For PRODUCT sales within the United States, title, risk of loss, all prices and terms of sale shall pass to CUSTOMER FOB TAM facility from which shipment is made.

For PRODUCT sales outside the United States, title, risk of loss, all prices and terms of sale shall pass to CUSTOMER EXW (INCOTERMS 2010) TAM facility from which shipment is made. TAM will use reasonable efforts to have Products and Rental Equipment ready for shipment by the date agreed to by TAM, subject to receipt by TAM of all necessary Customer information, including approval of drawings. HOWEVER, TAM ASSUMES NO LIABILITY FOR DAMAGES INCURRED AS A RESULT OF ITS LATE DELIVERY OF PRODUCTS OR RENTAL EQUIPMENT, REGARDLESS OF CAUSE.

## TITLE OF RENTAL EQUIPMENT

Title to RENTAL EQUIPMENT will remain with TAM. TAM may enter CUSTOMER's premises during business hours where the RENTAL EQUIPMENT is located to inspect them. Upon default by CUSTOMER, including without limitation default in the payment of rental charges, breach of any provision of this Agreement, or CUSTOMER's insolvency, bankruptcy or impairment of financial responsibility, TAM, in addition to its other legal rights, shall immediately have the right, without notice, liability, or the institution of legal proceedings, to take and remove its RENTAL EQUIPMENT wherever they may be found. CUSTOMER shall defend, indemnify and hold TAM harmless from any and all liens, claims and encumbrances against the RENTAL EQUIPMENT leased hereunder and shall return the same to TAM in good condition and free and clear of any liens, claims or encumbrances. In addition, TAM is also granted a first and superior lien on any property to which the Rental Equipment may be affixed in the event that TAM is unable for any reason to take possession of the Rental Equipment. Customer agrees to return each piece of Rental Equipment to TAM in as good a condition as when dispatched from TAM's store location, ordinary wear and tear from reasonable use excepted, and not to alter any such Rental Equipment in any way. Customer assumes all risk of loss, destruction or damage to Rental Equipment from the time it departs TAM's location until it is returned to that same store location, or a nearer point designated by TAM, or until it is declared lost or damaged beyond repair by TAM. With respect to Rental Equipment in the possession and control of Customer (whether leased or Rental to Customer, or stored at the work location), that is not returned or is damaged beyond repair or is altered in any way, Customer will reimburse TAM with the current list price new of such Rental Equipment. ALL RENTAL EQUIPMENT not returned, for whatever reason, or damaged beyond repair or altered in any way, will be paid for by Customer at the respective manufacturer's current list price, new.

## CANCELLATION OF PRODUCTS

Orders for PRODUCTS which are subject to cancellation after acceptance by TAM will be subject to a restocking charge, plus any actual packing and transportation costs. PRODUCTS specially built or manufactured to CUSTOMER specifications, or orders for substantial quantities manufactured specially for CUSTOMER, may only be cancelled subject to either payment of a cancellation fee by CUSTOMER, or a return credit against future purchases, to be determined solely by TAM. Credit for unused PRODUCTS will be issued for the quantity returned to the original purchase price, less restocking or cancellation charges, provided the returned PRODUCTS are in reusable condition as determined by TAM. No credit will be given for shipping charges incurred by CUSTOMER. In no event will credit be allowed for PRODUCTS returned without prior written authorization by TAM.

## CANCELLATION OF RENTAL EQUIPMENT/SERVICES

In the event CUSTOMER cancels an order for SERVICES or RENTAL EQUIPMENT, CUSTOMER shall be liable for all costs incurred by TAM in the mobilization/demobilization related thereto, and any other reasonable costs incurred by TAM incident to such cancellation. In addition, a restocking charge may be applied at TAM's sole discretion.

## WARRANTY

**SERVICES:** TAM warrants that the SERVICES to be provided by TAM pursuant to this Agreement shall conform to the material aspects of the specifications set forth in the relevant scope of work document agreed to in writing by TAM and CUSTOMER. In the event that the SERVICES fail to conform to such specifications, TAM shall re-perform that part of the non-conforming SERVICES, provided TAM is notified thereof by CUSTOMER prior to TAM's departure from the work site.

**RENTAL EQUIPMENT:** TAM warrants that the RENTAL EQUIPMENT will be of the types specified in writing by CUSTOMER and will be in good operating condition.

**PRODUCTS:** TAM warrants that the PRODUCTS to be provided by TAM pursuant to this AGREEMENT shall conform to TAM's published specifications or the specifications agreed to in writing by TAM and CUSTOMER. If any of the PRODUCTS fail to conform to such specifications upon inspection by TAM, TAM at its option shall repair or replace the non-conforming Product with the type originally furnished or issue credit to the CUSTOMER, provided TAM is notified thereof in writing within thirty (30) days after delivery of the particular PRODUCTS. The Warranty Period for all TAM PRODUCTS is twelve (12) months from the date the PRODUCTS are shipped from TAM's facility.

TAM's warranty obligations hereunder shall not apply if the non-conformity was caused by (i) CUSTOMER's failure to properly store or maintain the PRODUCTS or RENTAL EQUIPMENT, (ii) well conditions beyond TAM's control, abrasive materials, corrosion due to aggressive fluids or incorrect specifications provided by CUSTOMER, (iii) unauthorized alteration or repair of the PRODUCTS or RENTAL EQUIPMENT by CUSTOMER, (iv) the PRODUCTS or RENTAL EQUIPMENT are lost or damaged while on CUSTOMER's site due to CUSTOMER's or any third party's negligence, vandalism or force majeure (including, but not limited to, lightning), or (v) use or handling of the PRODUCTS or RENTAL EQUIPMENT by CUSTOMER in a manner inconsistent with TAM's recommendations.

Further, TAM's warranty obligations shall terminate if (i) CUSTOMER fails to perform its obligations under this or any other Agreement between the parties, or (ii) CUSTOMER fails to pay any charges due TAM.

THE OBLIGATIONS OF TAM TO REPAIR OR REPLACE AS SET FORTH IN THIS SECTION SHALL BE CUSTOMER'S SOLE REMEDY AND TAM'S ONLY OBLIGATION WITH REGARD TO NON-CONFORMING SERVICES, RENTAL EQUIPMENT OR PRODUCTS. EXCEPT AS IS OTHERWISE EXPRESSLY PROVIDED PURSUANT TO THE PROVISIONS OF THIS SECTION, TAM MAKES NO WARRANTY OR GUARANTEE OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING NO IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, REGARDING ANY SERVICES PERFORMED OR RENTAL EQUIPMENT OR PRODUCTS SUPPLIED BY TAM HEREUNDER. TAM WILL NOT BE RESPONSIBLE FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND.

## LIABILITIES, RELEASES AND INDEMNIFICATION

In this AGREEMENT, "Claims" shall mean all claims, demands, causes of action, liabilities, damages, judgments, fines, penalties, awards, losses, costs, expenses (including, without limitation, attorneys' fees and costs of litigation) of any kind or character arising out of, or related to, the performance of or subject matter of this Agreement (including, without limitation, real or personal property loss, damage or destruction, personal or bodily injury, illness, sickness, disease or death, loss of services or wages, or-loss of consortium or society).

TAM shall release, indemnify, defend and hold CUSTOMER, its parent, subsidiary and affiliated or related companies, and the officers, directors, employees, consultant and agents of all of the foregoing (referred to in this AGREEMENT as "CUSTOMER INDEMNITEES") harmless from and against any and all Claims asserted by or in favor of any member of TAM INDEMNITEES (As defined in the following paragraph below) or TAM INDEMNITEES' subcontractors at any tier or their employees, agents, or invitees.

CUSTOMER shall release, indemnify, defend and hold TAM, its parent, subsidiary and affiliated or related companies, and the officers, directors, employees, consultants and agents of all of the foregoing (referred to in this AGREEMENT as "TAM INDEMNITEES") harmless from and against any and all Claims asserted by or in favor of any member of CUSTOMER INDEMNITEES or CUSTOMER INDEMNITEES' contractors at any tier (except TAM INDEMNITEES or TAM INDEMNITEES' subcontractors) or their employees, agents or invoices.

Notwithstanding anything contained in the AGREEMENT to the contrary, CUSTOMER, to the maximum extent permitted under applicable law, shall release, indemnify, defend and hold TAM INDEMNITEES and TAM INDEMNITEES' subcontractors harmless from and against any and all Claims asserted by or in favor of any person or party, including TAM INDEMNITEES, CUSTOMER INDEMNITEES or any other person or party, resulting from: (i) loss of or damage to any well or hole (including but not limited to the costs of re-drill), (ii) blowout, fire, explosion, cratering or any uncontrolled well condition (including but not limited to the costs to control a wild well and the removal of debris), (iii) damage to any reservoir, geological formation or underground strata or the loss of oil, water or gas therefrom, (iv) the use of TAM INDEMNITEES' or TAM INDEMNITEES' subcontractors radioactive tools or any contamination resulting therefrom (including but not limited to retrieval or containment and clean-up, (v) pollution or contamination of any kind (other than surface spillage of fuels, lubricants, rig sewage or garbage, to the extent attributable to the control and negligence of TAM INDEMNITEES) including but not limited to the cost of control, removal and clean-up, or (vi) damage to, or escape of any substance from, any pipeline, vessel or storage facility.

Neither party shall be liable to the other for indirect, special, punitive, exemplary or consequential damages or losses including without limitation damages for lost production, lost revenue, lost product, lost profit, lost business, or lost business opportunities.

TAM WILL NOT BE RESPONSIBLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND, WHICH SHALL INCLUDE BUT NOT BE LIMITED TO, LOSS OF REVENUE, PROFITS OR ANTICIPATED PROFITS, LOSS OF BUSINESS OPPORTUNITY, LOSS OF PRODUCTION, DAMAGES FOR FAILURE TO MEET DEADLINES, LOSS OF USE, RIG TIME EXPENSES, WELL CONTROL EXPENSES, SUBSURFACE DAMAGE, LOSS OF HOLE, RE-DRILLING EXPENSES, RESERVOIR OR FORMATION DAMAGE, POLLUTION DAMAGE AND/OR WRECK OR DEBRIS REMOVAL EXPENSE.

THE EXCLUSIONS OF LIABILITY, RELEASES AND INDEMNITIES SET FORTH IN THIS ARTICLE SHALL APPLY TO ANY CLAIM(S), LOSSES OR DAMAGES WITHOUT REGARD TO THE CAUSE(S) THEREOF INCLUDING BUT NOT LIMITED TO PRE-EXISTING CONDITIONS (PATENT OR LATENT), IMPERFECTION OF THE MATERIAL, DEFECT OR FAILURE OF PRODUCTS OR RENTAL EQUIPMENT, BREACH OF REPRESENTATION OR WARRANTY (EXPRESS OR IMPLIED), STRICT LIABILITY, TORT, BREACH OF CONTRACT, BREACH OF DUTY (STATUTORY OR

OTHERWISE), BREACH OF ANY SAFETY REQUIREMENT OR REGULATION, OR THE NEGLIGENCE OR OTHER LEGAL FAULT OR RESPONSIBILITY OF ANY PERSON (INCLUDING THE INDEMNIFIED OR RELEASED PARTY), WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, ACTIVE OR PASSIVE.

REDRESS UNDER THE INDEMNITY PROVISIONS SET FORTH IN THIS ARTICLE SHALL BE THE EXCLUSIVE REMEDY(S) AVAILABLE TO THE PARTIES HERETO FOR THE MATTERS, CLAIMS, DAMAGES AND LOSSES COVERED BY SUCH PROVISIONS.

#### **LOST IN HOLE:**

Should any of TAM INDEMNITEES or TAM INDEMNITEES' subcontractors' RENTAL EQUIPMENT become lost or damaged in the well when performing or attempting to perform the SERVICES hereunder, it is understood that the CUSTOMER shall make every effort to recover the lost or damaged RENTAL EQUIPMENT. CUSTOMER shall assume the entire responsibility for such fishing operations in the recovery or attempted recovery of any such lost or damaged RENTAL EQUIPMENT. Should CUSTOMER fail to recover such RENTAL EQUIPMENT lost in the well or should such RENTAL EQUIPMENT become damaged in the well, or damaged during recovery, CUSTOMER shall reimburse TAM the full replacement value of such lost RENTAL EQUIPMENT or for the cost of repairing any such damaged RENTAL EQUIPMENT. CUSTOMER is responsible for incurred RENTAL charges in addition to what is stated.

#### **INTELLECTUAL PROPERTY**

TAM warrants that the use or sale of RENTAL EQUIPMENT or PRODUCTS hereunder will not infringe patents of others and hereby agrees to hold CUSTOMER harmless against judgment for damages for infringement of any such patent, provided that CUSTOMER shall promptly notify TAM in writing upon receipt of any claim for infringement, or upon the filing of any such suit for infringement, whichever first occurs, and shall afford TAM full opportunity, at TAM'S option and expense, to answer such claim or threat of suit, assume the control of the defense of such suit, and settle or compromise same in any way TAM sees fit.

#### **CONFIDENTIALTY**

Each party shall maintain all data and information obtained from the other party in strict confidence, subject only to disclosure required by law or legal process. In the event that TAM owns copyrights to, patents to, or has filed patent applications on, any technology related to the SERVICES, PRODUCTS or RENTAL EQUIPMENT furnished by TAM hereunder, and if TAM makes any improvements on such technology, then such improvements shall not fall within the confidentiality obligations included herein, and TAM shall own all such improvements, including drawings, specifications, calculations and other documents.

The design, construction, application and operation of TAM'S SERVICES, RENTAL EQUIPMENT and PRODUCTS embody proprietary and confidential information. CUSTOMER shall maintain this information in strict confidence and shall not disclose it to others, subject only to disclosure required by law or legal process.

#### **FORCE MAJEURE**

If either party is unable by reason of Force Majeure to carry out any of its obligations under this AGREEMENT, other than obligations to pay money, then upon such party giving notice and particulars in writing to the other party within a reasonable time after the occurrence of the cause relied upon, such obligations shall be suspended. "Force Majeure" shall include acts of God, laws and regulations, government action, war, civil disturbances, strikes and labor problems, delays of vendors or carriers, lightening, fire, flood, washout, storm, breakage or accident to RENTAL EQUIPMENT or machinery, shortage of raw materials, and any other causes that are not reasonably within the control of the party so affected.

#### **DISPUTE RESOLUTION: For Disputes within the United States**

The parties shall attempt to resolve any dispute arising out of or relating to this contract through negotiations between senior executives of the parties, who have authority to settle the same. If both parties are unable to reach an agreement within a reasonable amount of time, the dispute shall be settled in the courts of Harris County, Texas. This Agreement and all matters relating to or arising hereunder shall be governed in all respects by the laws of the State of Texas, United States of America, without giving effect to its principles of conflicts of law. Any action or proceeding seeking to enforce any provision of, or based on any right arising out of, this Agreement may be brought in the courts of the State of Texas, United States of America and each of the parties consents to the jurisdiction of such courts in any such action or proceeding and waives any objection to venue in connection therewith. Process in any such action or proceeding may be served on any party anywhere. Should legal action arise concerning this Agreement, the prevailing party shall be entitled to recover all reasonable attorneys' fees and related costs, in addition to any other relief which may be awarded by any court or other tribunal of competent jurisdiction.

#### **ALTERNATIVE DISPUTE RESOLUTION: For Disputes Outside Of the United States**

In the event of any claim or dispute between the parties arising under or relating in any way to this Agreement, as an EXCLUSIVE SUBSTITUTE FOR INITIATING ANY ACTION IN LAW OR EQUITY IN ANY COURT OR OTHER JUDICIAL PROCESS, THE PARTIES AGREE THAT THE FOLLOWING DISPUTE RESOLUTION PROCEDURE SHALL BE COMPLIED WITH:

1. If any claim or dispute of any nature arises between the parties, all parties first shall exert all reasonable and necessary efforts, amicable and in good faith, to resolve such dispute promptly and with finality, by direct negotiation between each party. Any settlement agreement shall be made in writing and signed by authorized representatives of all parties to the agreement.
2. Should such efforts described in (1) above fail to settle such dispute, then the aggrieved party shall send to the other a notice in writing, and the receiving party shall have ten (10) working days to submit a written response. The notice and response shall include: (i) a statement of each party's position and a summary of facts supporting that position, with all pertinent supporting documentation, and (ii) the name and title of who will represent that party in negotiations.

3. Within thirty (30) working days after delivery of the written response, the representatives from each side shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary, to exert their best efforts to resolve the dispute with finality. All reasonable requests for information made by either party to the other shall be honored. Any settlement agreement shall be made in writing and signed by authorized representatives of all parties to the agreement.
4. Should negotiations between the representatives not be successful after thirty (30) working days, the dispute, controversy or claims arising out of or in connection with the Agreement, including any question regarding its existence, validity or termination, shall be referred to and finally resolved SOLELY AND EXCLUSIVELY by binding arbitration under the Rules of the London Court of International Arbitration ("LCIA"), which Rules are deemed to be incorporated by reference into this clause.
5. The governing substantive and procedural law of this Agreement shall be the law of Texas excluding any conflict of law provision which would lead to the application of a different body of law and excluding any conflict of procedural law which would conflict with the specific procedures outlined in the LCIA Rules.
6. The arbitration panel shall be composed of three arbitrators; one arbitrator shall be appointed by each of the parties to the claim or dispute, and another independent arbitrator appointed by the two arbitrators chosen by the parties.
7. The place of the arbitration shall be London and the language shall be English.
8. Each of the parties shall pay one-half of the costs and expenses of the LCIA in the administration of any dispute resolution proceeding, including but not limited to any mediation, arbitration, and hearing on motions.
9. The decision of a majority of the arbitrators shall be reduced to writing; final and binding without the right of appeal. Judgment upon the award may be entered in any court having jurisdiction over the person or the assets of the Party owing the judgment or application may be made to such court for a judicial acceptance of the award and an order of enforcement as the case may be.
10. Consequential, punitive or other similar damages shall not be allowed.