

**EXLINE INC.**

**July 8, 2016**

**TERMS AND CONDITIONS**

1. **Definitions:** “Vendor”, when used herein means Exline, Inc., “Purchaser”, when used herein means the person, firm or corporation to whom this document is addressed, and “goods” means the equipment, parts, materials or services described on the front side hereof.
2. **Acceptance:** If this document is an order acknowledgment and constitutes an acceptance of an offer, such acceptance is expressly made conditional to Purchaser’s assent solely to the terms of this acknowledgment, and acceptance of any part of the goods delivered by Vendor shall be deemed to constitute such assent by Purchaser. If this document is a quotation and constitutes an offer, Purchaser’s acceptance of this offer is hereby limited to the terms hereof and acceptance of any part of the goods covered hereunder shall be deemed to constitute such acceptance solely to the terms hereof. No waiver, alteration or modification of, or additions to the terms and conditions contained herein shall be binding unless expressly agreed to in writing by a duly authorized representative of Vendor.
3. **Price:** Unless otherwise specified, the price of goods ordered will be those prices in effect on the date of quotation or in the case of services, the price in effect at the time the services are performed. Vendor’s prices do not include sales, use, or similar taxes. Such taxes shall be billed separately to Purchaser, unless Purchaser provides Vendor with a valid tax exemption certificate acceptable to taxing authorities.
4. **Delivery:** Terms of delivery will be F.O.B. Vendor’s Plant, unless otherwise specified. Delivery/completion dates, if shown, are approximate from the date of receipt of a firm order according to the terms herein contained including full information received at the Vendor’s office. In case of delay by Purchaser in furnishing complete information, delivery/completion dates may be extended for a reasonable time depending on factory and manpower conditions. It is expressly agreed that time is not of the essence. Vendor shall not be responsible for reasonable or excusable delays, nor shall Purchaser refuse to accept delivery because of any such delays. “Excusable delays” include, without limitation, delays resulting from accidents, acts of God, strike or other labor difficulties, government controls, or other forms of intervention, inability to obtain labor, materials, utilities or services or other causes beyond Vendor’s control. Availability of goods is subject to prior sale. When delays in performing service

work are caused by Purchaser, Vendor shall be reimbursed for the time and expenses caused by such delay.

5. **Applicable Law:** The definition of terms used, interpretation of this Agreement and rights of parties hereto shall be construed under and governed by the laws of the State of Kansas, U.S.A.
6. **Confidentiality:** The parties shall consider all information provided by the other and all drawings, reports, studies, design, calculations, plans, specifications and other documents resulting from the performance of this Order or of the services to be proprietary unless such information is available from public sources. Neither party shall publish or disclose proprietary information for any purpose other than the performance of the service without the prior written authorization of the other party.
7. **Termination** - The occurrence of any of the following events or conditions shall constitute an Event of Default:
  - A. The failure of either party to perform or observe any material obligation on its part to be performed or observed hereunder, which failure is not cured, or remedy to correct such failure is not commenced and diligently pursued thereafter, within ten (10) business days following the giving of written notice thereof to the defaulting party by the non-defaulting party; or
  - B. The filing by either party of voluntary petition or answer seeking any arrangement, composition, liquidation, or similar relief under any law or regulation relating to bankruptcy, insolvency or other relief for debtors; or
  - C. The adjudication of either party as a bankrupt or insolvent; or
  - D. The making by either party of a general assignment for the benefit of creditor; or
  - E. The admission by either party of its inability to pay its debts generally as they become due; or
  - F. The filing of a petition against a party seeking any arrangement, composition liquidation or similar relief under any law or regulation relating to bankruptcy, insolvency or other relief for debtors, and such petition is not dismissed or discharged within sixty (60) days of filing.

Upon the occurrence of an Event of Default under the section above, the non-defaulting party may immediately terminate this Agreement upon the giving of notice thereof to the defaulting party.

- 7.2 Buyer may also terminate this Order or any part hereof for reasons of convenience or necessity, in which case Seller will be paid a reasonable termination charge reflecting the percentage of the work performed prior to notice of termination plus

actual direct costs resulting from termination which Seller could not have reasonably avoided, as Seller's sole and exclusive remedy. In the event the Order is delayed, in whole or in part, beyond six months from the original agreed delivery date stated herein, Buyer shall be invoiced and shall pay within 30 days the full invoice amount due hereunder, plus actual storage costs of Seller, or Buyer shall elect to cancel the Order, subject to cancellation fees as stated herein.

8. **Warranty:** "Exline Products" are warranted to be free from defects in materials and workmanship, when properly installed and used in the manner for which they are intended, for a period of 12 months from the date of shipment from Exline. Products characterized by Exline as having been *Remanufactured* are covered by this **Warranty** the same as newly manufactured Exline Products. "Exline Products" include: (i) products manufactured by Exline, as well as parts or components of such products as are manufactured exclusively for Exline, by any other party, to Exline specifications and drawings produced by Exline. "Non-Exline Products" **not covered by this Warranty**, include: (ii) products supplied by Exline manufactured by another party. Such Non-Exline Products are resold by Exline in their original form and are not modified by Exline in any way. Purchaser's remedy for defective Non-Exline Products shall be limited to the applicable warranty of the manufacturer or supplies.

9. **Service Warranty:** Exline Inc. warrants its Services, such as overhauls, repairs, site supervision and installation services, to be free from defects in materials and workmanship for a period of 12 months from the date of service completion/start-up. Exline Products installed as part of a Service provided, will be covered by for a period of 12 months from date of installation. Following **Warranty Services**, the period of warranty coverage for the unexpired portion of the **Product Warranty** shall also apply.

A. **Limitations:** The sole obligation of Exline hereunder is to repair or replace, at its option, and without charge, any Exline Product which is defective, or, in the case of defective Services, such Services such be repaired. Other than the foregoing repair, or replacement, the purchaser shall have no other remedy against Exline, and Exline shall not be liable for loss or damage arising from statute, law, strict liability in tort, or negligence resulting from any defect in a Exline Product or in Exline Services, even though the defect was caused by negligence, breach of warranty or strict liability in tort of Exline. **IN NO EVENT SHALL EXLINE, INC. BE LIABLE FOR SPECIAL, CONSEQUENTIAL, OR INCIDENTAL DAMAGES INCLUDING, BUT NOT LIMITED TO, LOSS OF ANTICIPATED PROFITS OR LOSS OF USE OF ANY EQUIPMENT, INSTALLATION, SYSTEM, OPERATION OR SERVICE INTO WHICH THE EQUIPMENT, PARTS OR MATERIALS MAY BE PUT, OR THE SERVICES PERFORMED. THIS LIMITATION ON VENDOR'S LIABILITY SHALL APPLY TO ANY LIABILITY FOR DEFAULT UNDER OR IN CONNECTION WITH THE GOODS OR SERVICES DELIVERED HEREUNDER, WHETHER BASED ON WARRANTY, FAILURE OF OR DELAY IN DELIVERY OR OTHERWISE.** In any event,

Exline shall not be liable for incidental and /or consequential damages including loss of income or profits, lost sales, or economic loss.

**B. Conditions:** Such repair or replacement will be affected at a location of Exline's choice (including Exline plants and service facilities, Exline subsidiary plants, or authorized service facilities). In replacing any Exline Product pursuant to this **Warranty**, Exline may replace such Exline Product with a modified or improved product or component. Purchasers claiming warranty service should contact the Customer Service department at its Salina, KS facility.

**C. Other Exclusions: Warranty does Not Apply To:**

1. Exline Products which, in Exline's opinion, have been damaged by misuse, misapplication, negligence, or accident.
2. Exline Products on which disassembly and/or repairs have been attempted without prior authorization from Exline.
3. Any Exline Product if any component part has been repaired or replaced by any part not manufactured or furnished by Exline.
4. Products or Services, totally or partially, under the condition of customer furnished engineered specifications/design and/or procedures for lack of serviceability resulting from faulty engineered specifications/design and/or procedures.
5. Apart from the obligations set forth herein (unless otherwise agreed in writing) Exline makes no other warranty or condition, expressed or implied (by statute, common law, trade usage or otherwise) and specifically excludes the implied warranties of merchantability and fitness for a particular purpose, as well as all other warranties expressed or implied.

9. **Indemnity & Insurance - For Service Work Only:**

- A. Vendor agrees to indemnify Purchaser and hold Purchaser harmless against any claims, demands, or causes of action for property damage or personal injury (including death) caused by the negligent act or omission of any employee, agent or subcontractor of Vendor, and not contributed to by the negligence of Purchaser, its agents or employees. Vendor shall not be responsible for the acts and workmanship of employees, agents, contractors or subcontractors of Purchaser, nor for failure or malfunction of any tools, materials, equipment, supplies, facilities or devices not supplied by Vendor.
- B. Vendor shall provide the following insurance coverage:
  1. Worker's Compensation: statutory limits

2. General Liability: \$2,000,000 aggregate coverage for Premises and operations ad for Products and Completed Operations. \$1,000,000 per occurrence for Bodily injury and Property damage.
3. Automobile Liability-\$1,000,000 combined single limit.
4. Umbrella - \$5,000,000 additional coverage over all three coverages' listed above.

If requested by Purchaser, Vendor shall furnish Purchaser with certificates evidencing such coverage.

10. **Responsibilities - Service Work:**

- A. Unless otherwise stated in writing, Purchaser shall furnish all labor and supervision, materials, supplies, utilities and such tools and equipment as may not be provided by Vendor. Purchaser understands that Vendor's responsibility is limited to furnishing technical advice only and that Vendor shall not be utilized by Purchaser as a supervisor of Purchaser's employees, subcontractors or agents. Should Purchaser use Vendor in any manner as a lead hand, foreman, supervisor, etc., Vendor shall become, for that purpose, Purchaser's employee, for whom Purchaser shall be liable, shall maintain adequate insurance coverage and shall hold harmless and indemnify Vendor from and against any and all claims arising out of Vendor's acts or omissions while acting in such capacity.
- B. Should this Agreement provide for the overhaul of Purchaser's equipment by Vendor, Vendor shall provide the labor, supervision, materials and supplies necessary to perform work. Purchaser shall furnish all necessary cranes, utilities, and such tools and equipment as may not be provided by Vendor.
- C. Purchaser shall obtain any required local working permits.
- D. Vendor shall have the right to subcontract any of the work to one or more subcontractors. Purchaser shall not assign this Agreement to a third party without prior written consent of Vendor.
- E. Vendor shall comply with federal, state and local laws, ordinances, rules and regulations applicable to any part of the work.
- F. Time sheets showing hours worked and expenses incurred shall be presented to Purchaser for approval insofar as practical; however, such approval shall not be required for invoicing.

G. Should Purchaser elect to suspend work under this contract, Vendor shall be notified in writing at least seven (7) days in advance of the suspension date, and such notice shall indicate the estimated period of suspension. Vendor shall be entitled to a reasonable price adjustment resulting from expenses in relocating manpower, equipment and material as a result of such suspension. Purchaser may cancel this contract only upon prior written notice to Vendor and upon payment of reasonable cancellation charges.

H. **Damages: IN NO EVENT SHALL VENDOR BE LIABLE FOR SPECIAL, CONSEQUENTIAL, OR INCIDENTAL DAMAGES INCLUDING, BUT NOT LIMITED TO, LOSS OF ANTICIPATED PROFITS OR LOSS OF USE OF ANY EQUIPMENT, INSTALLATION, SYSTEM, OPERATION OR SERVICE INTO WHICH THE EQUIPMENT, PARTS OR MATERIALS MAY BE PUT, OR THE SERVICES PERFORMED. THIS LIMITATION ON VENDOR'S LIABILITY SHALL APPLY TO ANY LIABILITY FOR DEFAULT UNDER OR IN CONNECTION WITH THE GOODS OR SERVICES DELIVERED HEREUNDER, WHETHER BASED ON WARRANTY, FAILURE OF OR DELAY IN DELIVERY OR OTHERWISE.**

Any action for breach of contract hereunder must be commenced within one year after the cause of action has occurred.

11. **Payment:** Unless otherwise specified in writing by Vendor, payment terms are net 30 days. Unless otherwise prohibited by law, Purchaser agrees to pay interest on all past due invoices at a rate of 18 percent per annum or at the highest allowable rate according to the laws of the State of Kansas.
12. **Patent indemnity:** Unless Purchaser furnished designs to Vendor, Vendor agrees to indemnify Purchaser against any claim that the equipment, parts or materials sold infringe any United States or Canadian patent (except a patent on an article manufactured by the use of the equipment, parts or materials), provided Purchaser notifies Vendor promptly in writing of any claim or suit, gives Vendor assistance and information and permits Vendor to assume full direction and control of any settlement, negotiations or suit. Vendor shall, at its option, either (a) procure for Purchaser the right to continue using the equipment, parts or materials, (b) modify or replace the equipment, parts or materials or (c) remove the equipment, parts or materials and refund the purchase price. Purchaser's remedies for infringement are exclusively limited to this paragraph.
13. **Controlling Terms:** In the event of conflict between these terms and conditions and those of any purchase order issued, these terms and conditions shall govern.

14. **Miscellaneous:** Vendor's equipment, parts or materials are highly engineered and constantly subject to engineering refinement and improvement. Of necessity, therefore, Vendor reserves the right to change the affected part numbers and prices at any time.
  
15. **Cancellation and Returns:** Any order made hereunder may not be cancelled in whole or in part without the Vendor's written consent and payment of reasonable cancellation charges. Any equipment, parts or materials returned to Vendor will be subject to a restocking charge not to exceed 100 percent of the invoice price. Credits for returned equipment, parts or materials will not be issued until such equipment, parts, or materials have been received at a Vendor specified location, inspected and deemed to be re-salable as in their original manufactured condition.
  
16. **Language:** Unless agreed otherwise in writing, all communications, documents, equipment labels, and execution of services shall be in the English language.
  
17. **Disputes:** Any controversy or claim arising out of or relating to this agreement or breach thereof shall be settled as far as possible by means of friendly negotiation. If this is unsuccessful, both Vendor and Purchaser shall submit to arbitration in accordance with the rules of the American Arbitration Association. Arbitration shall be held in Salina, Kansas U. S. A.