



## Pinnacle Terms and Conditions of Sale

These Terms and Conditions of Sale apply to all sales of goods or services provided by Pinnacle Machine Works, LLC or its affiliate, Pinnacle Machine Processing, LLC (collectively, "Seller"). Seller's acceptance of any purchase order by Buyer is expressly limited to these Terms and Conditions, and any proposal for additional or different terms, or any attempt by Buyer to vary in any degree any of these Terms and Conditions, is hereby objected to and rejected by Seller. All references herein to "Buyer" refer to the purchaser of goods or services from Seller. These Terms and Conditions are incorporated by reference in our Order Acknowledgement ("OA").

1. **Acceptance of Terms.** These Terms and Conditions constitute the complete, exclusive and fully integrated statement of terms and conditions between the Buyer and Seller with regard to the matters contained herein. No terms or conditions other than those stated herein, and no agreement or understanding, oral or written, in any way purporting to modify these Terms and Conditions shall be binding on Seller unless expressly agreed upon in writing by an authorized representative of Seller. Buyer's placement of an order or release for, or taking delivery of, any product of Seller that is the subject of this contract shall constitute acceptance of the Seller's offer under these Terms and Conditions, and Seller hereby objects to and rejects any and all additional or different terms proposed by Buyer, whether contained in Buyer's purchase orders, shipping release forms, or related correspondence or any other documents (including emails). All proposals, quotes, purchase orders, negotiations and other communications, if any, are merged herein.
2. **Title, Acceptance and Inspection.** Notwithstanding any prior payment or inspection, title of the product and risk of loss of the product will pass to Buyer upon delivery as specified in the OA. Product will be subject to final inspection and acceptance by Buyer upon use or within 60 days of delivery, whichever is sooner. Within such time period Buyer shall provide Seller written notice giving reasons for the rejection (if any) of all or part of the product. Seller shall then have the option to repair or replace the nonconforming product within 90 days. Rejected product shall not be used, altered or abandoned in any manner subject to Seller's timely inspection and direction.
3. **Shipping.** It is Buyer's responsibility to supply shipping instructions to Seller. All products will be accompanied by a detailed packing list. Product may ship in whole or in part. Under circumstances that Seller deems to be extenuating, it reserves the right at Buyer's cost to select the method and mode of transportation. When goods are purchased F.O.B., Buyer must contract for, at its own expense, the transport of the goods from Seller's premises, yard or other facilities and provide Seller with reasonable notice thereof, including the name of the carrier and the shipment date. If title passes to Buyer at Seller's plant and Buyer fails to take possession of the product on the date specified in the invoice or OA, then Seller reserves the right to charge Buyer a fee related to the storage of the product.
4. **Payment.** In the event that Buyer fails to make payment in full within the time period set forth on the invoice or expressly agreed upon in writing by the parties, such failure will constitute a material breach of contract by Buyer permitting Seller to suspend shipment or delivery of goods under this contract or any other contract between Buyer and Seller. Buyer shall pay to Seller interest on any unpaid amount at a rate of 2% per month. Further, upon Buyer's failure to make a timely payment of any amounts due and owing to Seller, Seller and/or its affiliates shall be authorized to set-off and apply any and all existing or future amounts owed by Seller and/or its affiliates to Buyer against any such amounts owed by Buyer without demand or notice to Buyer. Seller shall have, in addition, all other remedies permitted to Seller by law, equity, or this contract. If Seller takes legal action to collect any amount due from Buyer, Buyer shall pay all dispute resolution costs, including court costs plus reasonable legal fees incurred by Seller in bringing such legal action.
5. **Credit.** Seller may suspend or terminate its performance hereunder without further liability or obligation to Buyer, or Seller may require payment in advance before making shipment, if Buyer's credit declines or otherwise becomes unsatisfactory to Seller at any time. Nothing contained herein obligates Seller to extend credit or provide financing to Buyer, and any such extension of credit is in the sole discretion of Seller.
6. **Taxes.** All relevant taxes, fees, duties and other charges imposed on or related to the sale, storage, and/or shipping of the product shall be Buyer's responsibility.

**7. Product Warranty; Limitation of Liability.**

- a. Seller manufactures couplings to meet the requirements of the latest edition of API 5CT. Any alterations of the product design and/or use in applications which are outside of API specifications and calculations for intended use shall be considered to be outside of the product's fitness for purpose and therefore shall be at the sole risk of the end user.
- b. Seller warrants its API and proprietary grade products to be free of defects in workmanship, materials, and design under normal and ordinary use and service for the purpose for which the product is designed and as specified in the latest editions of API specifications for a period of one (1) year from the date of purchase.
- c. SELLER EXCLUDES ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, WHETHER EXPRESSED OR IMPLIED. THERE ARE NO WARRANTIES WHICH EXTEND BEYOND THE DESCRIPTION ON THE FACE HEREOF.
- d. In the event of a claim, Seller will promptly investigate and timely make a determination as to whether (a) its product was involved, (b) its product was defective per API specifications, and (c) the defective product was the cause of the damage or loss. In the event that the above conditions are confirmed by Seller, then Seller will honor the claim by refunding the purchase price of the specific nonconforming goods and further Seller will take responsibility for those reasonable incremental costs in its sole discretion that it deems necessary to restore the end user of the product to the position it would have been in had the damage or loss not occurred. If any of the above conditions are not confirmed, then Seller reserves the right to determine in its sole discretion whether to take responsibility for the damage or loss.
- e. NOTWITHSTANDING THE ABOVE, SELLER'S LIABILITY FOR DAMAGES, COSTS, EXPENSES OR OTHER CLAIMS OF ANY KIND, WHETHER BY CONTRACT, TORT, OR OTHERWISE SHALL BE LIMITED TO A MAXIMUM AMOUNT OF CONSIDERATION NOT TO EXCEED THE AGGREGATE OF \$800,000.00 U.S. DOLLARS. UNDER NO CIRCUMSTANCES SHALL SELLER BE LIABLE FOR ANY CLAIMS RELATED TO CONSEQUENTIAL DAMAGES, EXEMPLARY DAMAGES, STRICT LIABILITY, LOSS OF PROFIT, LOSS OF INCOME, POLLUTION, RECALL OF PRODUCT, DELAY, PRODUCTION, PERSONAL INJURY, LABOR, TRANSPORTATION, OR OTHER LIKE DAMAGES.
- f. Buyer or the end user of the product must notify Seller in writing or by phone within 48 hours of the occurrence of damage or loss for which a claim may be filed. End user will use its best efforts to secure and protect the product in question from being altered or otherwise abused until such time as Seller

has had an opportunity to investigate the claim. Buyer and end user agree to allow Seller full participation in the investigation of the claim including the sharing of all third party information developed in relation to the claim.

**The warranty set forth above will be voided in the event:**

- g. There has been any alteration whatsoever to the product from its original condition that existed at the time of sale to Buyer, including any alteration of the product design and/or use from its applications which are outside of API specifications and calculations for intended use.
- h. The product is subjected to more than one internal pressure event associated with the multi-stage hydraulic fracturing process during downhole operations.
- i. End user fails to provide timely notification to Seller of the claim.
- j. Seller is in any way barred from full participation in the investigation or sharing of information related to the claim.
- k. End user did not exercise sound engineering or follow recommended operating practices, including those specified in applicable API publications.

**8. Buyer Indemnification.** If Buyer resells or otherwise conveys any product purchased from Seller to a third party, Buyer agrees to secure a legally binding agreement with that third party which specifically includes paragraphs 7, 12 and 13 of these Terms and Conditions setting forth Seller's warranties, remedies, limitation of liability, resolution process for claim dispute and governing law. Buyer agrees to fully indemnify, defend, and hold Seller and its affiliates harmless from any claims, causes of action, damages, losses or expenses (including reasonable attorneys' fees and related costs) that Seller incurs due to Buyer's failure to comply with this paragraph. In addition to the indemnity provisions set forth above, Buyer agrees to indemnify, defend, protect, and save harmless Seller and its officers, directors, employees, affiliates, agents and assigns against all claims, damages, liability, losses, fines, or judgments, including costs, attorney fees, and other expenses, for death or injuries to persons or property arising out of or in connection with the product, unless in Seller's determination the product was found to be defective and the defective product was the actual cause of the claim or claims.

**9. Seller Indemnification.** Seller warrants that any purchase or use of a product by Buyer pursuant to these Terms and Conditions of Sale will not infringe upon any patent. Seller

agrees to indemnify, defend, protect, and save harmless Buyer from damages arising from a claim for actual infringement of any patent by reason of the sale or use of the product.

**10. Right to Cancel or Suspend.** Buyer may not cancel, suspend, or revise any purchase order(s) without Seller's prior written consent. At any time upon written notice, Seller in its sole discretion may renegotiate, suspend, or cancel these Terms and Conditions of Sale and any OA, or any part hereof or thereof, upon the occurrence of any of the following:

- a. Buyer's failure to make timely payment on any obligation owed to Seller.
- b. Buyer's failure to maintain its credit worthiness.
- c. Seller's cost of steel and/or other raw materials increase in price by 15% from the date of the OA and Buyer's product shipment date is 30 days or greater from production.
- d. Seller's manufacturing facility suspending or ceasing operations for a period of 90 consecutive days.

**11. Force Majeure.** Seller shall not be liable for delay or failure of delivery due to any circumstance that reasonably is beyond Seller's control, including by way of example only, and without limitation, failure of carriers to transport or furnish facilities for transportation, mechanical breakdown, temporary suspension or closure of plant, unavailability of raw materials or energy source, strikes, accident, labor unrest, storm or wind damage to its manufacturing facility, explosion, fire, flood, war, terrorism, rebellion, insurrection, riot, and/or any governmental decree, and any other circumstance that prevents or materially delays Seller's performance beyond the control of Seller.

**12. Arbitration.** Any dispute, controversy or claim arising out of or relating in any way to the sale, use, conveyance or transfer of any product or service supplied by Seller to Buyer shall be resolved and settled by binding arbitration. Such arbitration shall be conducted in accordance with the Commercial Rules of the American Arbitration Association ("AAA") by a single arbitrator of the AAA, or other like reputable arbitration service that may be mutually agreeable to both parties. Arbitration shall be conducted in the Houston, TX area or elsewhere as the parties may so agree. Each party to the arbitration shall bear its own costs and be responsible to pay for its portion of the arbitration service fees when due. A party may commence the arbitration process by supplying written notice to the other party of its intent to commence the arbitration process. Within 45 days of receipt of such notice the parties shall meet "in-person" in an attempt to resolve the dispute. The

meeting shall be conducted in Houston, TX or elsewhere as the parties may so agree, and will require the presence of a senior officer of each of the respective parties to be in attendance. If the dispute cannot be resolved during the in person meeting, either party may then file with the arbitration service a request to arbitrate the dispute. It is intent of the parties to conduct the arbitration within one year of the filing of the request to arbitrate. Parties' discovery shall be limited to written request of no more than 200 documents and three depositions with no deposition lasting longer than three hours. Discovery may be expanded only after a hearing conducted by the Arbitrator for that limited purpose. The Arbitration shall be limited to a maximum of two consecutive eight hour days with each party receiving equal time. The Arbitrator shall have no authority to award punitive, compensatory, consequential, special, or indirect damages of any kind.

**13. Governing Law.** This contract, and all sales of goods and services by Seller to Buyer, is governed by the laws of Texas, exclusive of its conflict of laws rules that would require the application of any other laws.

**14. Assignment.** Buyer shall not assign its rights or obligations hereunder without the prior written consent of Seller. Any attempted assignment in contravention of the foregoing shall be void.

**15. Time is Not of the Essence.** Except for the obligation to notify Seller of a claim, Buyer acknowledges that time is not of the essence.

**16. Third Party Rights.** No third party shall be a beneficiary to this agreement.

**17. Construction; Waiver; Severability.** No provision of this contract may be construed against the Seller as the drafting party. The term "including" means "including without limitation". The term "days" means calendar days unless otherwise expressly stated. Waiver by Seller of any breach of these provisions shall not be construed as a waiver of any other breach. Should any clause, sentence or part of this agreement be held invalid, such holding shall in no way affect the validity of the remainder, which shall remain in full force and effect.