

IMPORTANT NOTICE: TERMS AND CONDITIONS CONTAIN RESPONSIBILITIES, INSURANCE, INDEMNITY, RELEASE, HOLD HARMLESS AND WARRANTY DISCLAIMER PROVISIONS.

ADVANCED THERMAL CORPORATION TERMS AND CONDITIONS OF SALE AND SERVICE

Definitions. In addition to terms defined elsewhere in these Terms and Conditions, the following terms shall have the following meanings, unless the context otherwise requires:

“Affiliate” or **“Affiliates”** means (in relation to either Party) any Person directly or indirectly controlled by, controlling, or under common control with that Party, including any of the foregoing which becomes an Affiliate after the date of an Order(s).

“Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. **“Controlling”** and **“controlled”** have correlative meanings.

“Claim(s)” means all claims (including those for property damage, environmental damage, personal injury, illness, disease, maintenance, cure, loss of consortium, loss of support, or death), damages, liabilities (including contractual liabilities), losses, demands, liens, encumbrances, government imposed fines and/or penalties, causes of action of any kind (including actions *in rem* or *in personam*), obligations, costs, judgments, interest and awards (including payment of reasonable attorneys’ fees and costs of litigation), of any kind or character, whether under judicial proceedings, administrative proceedings or otherwise, arising out of, or in any way relating to ATC’s performance of Work under any Order(s), and expressly including any claims that may be brought by (or losses suffered by) spouses, heirs, survivors, legal representatives, successors or assigns.

“Customer” means any Person which enters into an Order(s) with ATC, pays for and for whom ATC performs Work pursuant to an Order(s).

“Customer Group” means, individually or in any combination, Customer, its Affiliates, its and their customers or clients or other Persons with a financial interest in any well, rig, or vessel on or with respect to which ATC performs Work, its lessors and co-lessees, its contractors (other than members of ATC Group) and subcontractors (of any tier), its consultants, vendors, invitees, licensees, successors and/or assigns, and each of their respective officers, directors, managers, members, shareholders, employees, agents and representatives.

“Day” means calendar day.

“Dollars” or **“\$”** means United States dollars with respect to all Work performed (and indemnities associated therewith), unless otherwise stated in the Order(s) pertaining to the Work.

“ATC” means and includes Advance Thermal Corp. and each of its subsidiaries and Affiliates from time-to-time providing Work to or on behalf of Customer and identified as “ATC” in the Order(s) pertaining to such Work.

“ATC Facility” means the ATC manufacturing plant, stocking point or other location at or from which any Products are delivered to Customer, as specified in Order(s).

“ATC Group” means, individually or in any combination, ATC and its Affiliates and each of their respective officers, directors, employees, contractors, subcontractors, consultants, vendors, agents, representatives, invitees, licensees, successors and/or assigns.

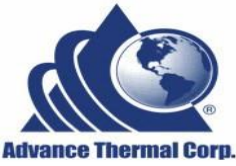
“Indemnify” or **“Indemnification”** means release, defend, indemnify and hold harmless, including the payment of all reasonable attorneys’ fees and costs associated therewith.

“Intellectual Property” means all of a Party’s copyrights, patents, trade secrets, embedded or standalone software or firmware or other intellectual property rights associated with or incorporated in any ideas, concepts, know-how, techniques, processes, reports, or works of authorship owned, developed or created by the Party, and expressly includes, as to ATC, any of the foregoing used or included in any Products, Services, or ATC tools.

“Order(s)” means the transactions between ATC and Customer for the performance of Work as evidenced by a quotation, sales order acknowledgment or purchase order.

“Person” means any legal, or governmental entity, and any natural person.

“Price Book” means the current ATC price book, price list, or rate sheet applicable to the Work covered by an Order(s).



“Product(s)” means any goods, equipment, materials, or other tangible items purchased by Customer from ATC pursuant to an Order(s) (including any Products used or consumed by ATC in performing Services) and may be (a) newly manufactured or (b) assembled from new or serviceable used parts that are equivalent to new parts in performance.

“Security Interest” means a purchase money or other security interest, together with (i) all accessions to, substitutions and replacements for the Product, (ii) all proceeds of any and all of the Product, (iii) all accessories, attachments, parts, equipment, and repairs now or hereafter attached or affixed or used in connection with or hereafter attached or affixed or used in connection with any of the foregoing Product, and (iv) all warehouse receipts, bills of lading, and other documents of title now or hereafter covering any of the foregoing Product.

“Service(s)” means the work and services furnished by ATC to Customer pursuant to an Order(s). The term Services does not mean or include Products.

“Terms and Conditions” means these Terms and Conditions of Sale and Service.

“Third Party” means any Person other than Customer Group or ATC Group.

“UCC” means the Uniform Commercial Code under Article 9 of the Texas Business and Commerce Code.

“Work” means Services rendered, Products sold and/or provided by ATC to Customer pursuant to Order(s). As a result, terms such as “perform Work,” “performance of the Work” or “Work performed” shall mean and include ATC’s performance of Services and/or Sale and delivery of Products to or for Customer.

“Work Site” means the site or location specified in an Order(s) at which ATC is to perform Services or to which it is to deliver Products.

General Terms. As used in these Terms and Conditions, unless expressly stated otherwise, references to (a) “includes” or “including” means “including, without limitation” or “including, but not limited to”; (b) “and/or” means “either or both”; (c) “or” means “either” and (d) a “party” or “Party” mean Customer or ATC and to the “parties” or “Parties” mean Customer and ATC. Unless otherwise specified, all references in these Terms and Conditions to Articles or Sections are deemed references to the corresponding Articles or Sections in these Terms and Conditions.

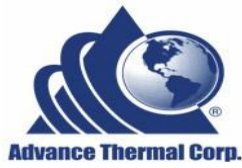
GENERAL TERMS AND CONDITIONS

1. ORDERS; CANCELLATION; RETURNS; CHANGE ORDERS; INVOICING AND PAYMENT; SECURITY INTEREST

1.1 **Order(s).** From time to time, at the request of Customer, ATC shall perform Work for Customer as specified in an Order(s). The Parties are free to issue/accept Order(s) in any written form, including purchase orders, work orders, statements of work, emails or other written communication between the Parties, regardless of format, or via oral Order(s), but, unless the Parties have entered into a separate, written, master services agreement, supply agreement, or other contract which governs the Work, (a) each Order(s) shall be subject to these Terms and Conditions, which shall control and govern all transactions between the Parties with respect to Work performed by ATC, whether or not these Terms and Conditions are referred to in the Order(s); (b) no other, additional or different terms and conditions in any written or oral communication with respect to a transaction for work (including the terms and conditions in any customer request for proposal, request for quote, request for bid, purchase order, or similar document) shall vary or amend these terms and conditions; and (c) Order(s) submitted by Customer via email shall be followed by a purchase order or other written confirmation of the Order(s) within seven (7) days from the date of the email order, failing which ATC shall have no obligation to perform Work thereunder. In the event of a conflict between these Terms and Conditions and the terms in any Order(s), these Terms and Conditions shall control, unless the Order(s) (i) makes specific reference to and identifies (by Article and/or Section number) to the provision(s) of these Terms and Conditions to be modified, (ii) explicitly states the intention of the Parties to affect the modification thereof, and (iii) is executed on behalf of each Party by an authorized officer of the Party. Such modifications shall be effective for that Order(s) only, and no agreement to modify these Terms and Conditions with respect to any particular Order(s) shall have the effect of varying or amending those Terms and Conditions (or any others herein) with respect to any other or subsequent Order(s). Each Order(s) shall constitute a separate agreement between the Parties. Only the ATC legal entity performing Work under an Order(s) shall have any liability or responsibility with respect to such Work.

1.2.1 **Cancellation of Order(s).** Subject to the further provisions of this Section 1.2, Customer may cancel any Order(s), in whole or in part, prior to ATC beginning manufacture of the Order. Customer shall pay or reimburse ATC for (i) all Services performed prior to the date ATC receives the notice of cancellation, (ii) all costs incurred by ATC which would not have been incurred, but for the cancellation, including vendor or subcontractor termination fees or charges; and (iii) any mobilization and demobilization costs incurred by ATC.

1.3 **Return of Products.** No Products will be accepted for return unless authorized in writing by ATC.



- 1.4 **Change Order(s).** Any Customer request for changes in the scope and/or scheduling of the Work to be provided under an Order(s) must be given in the form of a written change order (“Change Order(s)”). Upon ATC’s receipt of a Change Order(s), the Parties shall negotiate in good faith the terms to be included therein. Each Change Order(s) shall reference the original Order(s) and shall specify (i) the changes in the scope or timing of the Work to be provided under the affected Order(s), and (ii) the adjustment (if any) to be made to the fees and other amounts due ATC in connection therewith, and shall be executed on behalf of each Party by an authorized officer. If the Parties are unable to agree upon or fail to timely execute a Change Order(s) with respect to orally requested changes to the Work, ATC shall be entitled to permanently suspend the Work and cancel the affected Order(s), and Customer shall pay ATC for all Work performed prior to the date of cancellation, as well as any applicable mobilization or demobilization charges or other costs incurred by ATC.
- 1.5 **Invoicing and Payment.** Unless Customer is extended credit terms by ATC as indicated by ATC’s order confirmation, Customer must pay all amounts for Work prior to shipment by ATC. Where credit is being extended to Customer, all amounts due and payable on a ATC invoice for Work shall be paid in full by Customer within thirty (30) calendar days of the issue date of a ATC invoice for such Work. All such amounts shall be paid by Customer’s check to ATC or by wire transfer to such bank or account as ATC may from time to time designate in writing. Customer will be responsible for a 1.5% finance charge per month, or the maximum rate legally permissible under applicable law, charged on a daily basis, on past due accounts and all expenses of collections, including reasonable attorneys’ fees.
- 1.6 **Penalty for failure to accept Products.** If the Customer has failed to pick up the Products, or directs ATC to hold the Products for shipment, within thirty (30) days after notification of availability of Products for shipment, ATC may, in its sole discretion, charge interest beginning thirty-one (31) days after notification at the rate of 1% per week, or at the highest rate allowed by applicable law, on the Order(s) amount, calculated and compounded monthly until paid in full. The Customer also agrees to pay all reasonable legal expenses and agency commissions sustained by ATC in pursuit of any payment which is past due. ATC reserves the right to sell and/or restock the Products and apply any applicable re-stocking fees per Section 1.3 (Return of Products).
- 1.7 **Audit.**
- ATC shall maintain accounting records in such detail as to permit verification of charges made to Customer for Work (including Third Party charges reimbursed by Customer) (“Records”). ATC shall keep all Records in accordance with commonly accepted accounting practices and retain such Records for a period of two (2) years following ATC’s invoicing for the Work. Customer shall have the right, at its sole cost and expense and during regular business hours, to inspect, copy, and audit the Records of ATC pertaining to the Work performed by ATC in order to verify the accuracy of any invoice or payment; **provided**, however, the following shall be excluded from the Records subject to inspection (i) payroll, compensation, or any other personnel record or personally identifiable information regarding ATC’s employees or consultants, (ii) any trade secrets or legally privileged documents and information, (iii) any information with respect to which ATC is under an independent obligation of confidentiality to any Third Party, and (iv) data or information with respect to the calculation of ATC’s profit margin and overhead rates. No claim may be made by Customer with respect to amounts paid to ATC for Work more than two (2) years after Customer has been invoiced for that Work.
- 1.8 **Security Interest.** ATC hereby retains and Customer hereby grants to ATC, a Security Interest in the Product until Customer has made payment in full for the Product and satisfied all of its obligations to ATC hereunder. Customer will execute, deliver or endorse any and all instruments, documents, assignments, security agreements and other agreements and writings that ATC may at any time reasonably request in order to secure, protect, perfect or enforce the Security Interest and ATC’s rights under these Terms and Conditions. ATC shall have all of the rights of a secured party with respect to the Product under the UCC and other applicable laws. Upon Customer’s default of any payment obligation, in addition to other rights and remedies it may have under law and equity, ATC may exercise in respect of the Product all the rights and remedies of a secured party on default under the UCC, including, without limitation, the right to enforce the Security Interest, to retake possession of the applicable Product and to collect directly from any account obligor all amounts due Customer with respect to such Product.
- 1.9 **Failure to Comply with these Terms and Conditions - Customer.**
- (a) The occurrence of any one of the following events shall offer ATC the remedies stated in 1.9(b) below, among others, set forth in these Terms and Conditions: (i) Customer fails to pay for any item of the Product when due and payable under these Terms and Conditions or any invoice issued in connection therewith; (ii) Customer fails or neglects to perform, keep, or observe any term, provision, condition or covenant contained in these Terms and Conditions or violates any applicable law; (iii) Customer makes any false, untrue, incomplete or misleading representation, warranty, schedule, report, or other communication to ATC in connection with these Terms and Conditions or any transaction relating thereto; (iv) Customer enters into any arrangement, reconstruction, or composition with its creditors or any of them or suspends payment generally or is otherwise unable to pay its debts as they become due; (v) a petition is presented or an order is made or an effective resolution is passed for the winding up



or the dissolution of Customer or Customer ceases to carry on business as a going concern; (vi) a receiver for Customer or any material portion of its property is appointed or steps are taken for the appointment of such receiver by any person or entity; (vii) if a bankruptcy, liquidation, insolvency or other similar proceeding is filed by or against Customer, and in the case of an involuntary proceeding, is not vacated or set aside within sixty (60) days of its commencement; or (viii) a breach or default by Customer occurs under any other agreement between Customer and ATC or with respect to any other obligation of Customer to ATC.

- (b) On the occurrence of any of the events specified in Section 1.9 (a) hereof, or on any other termination of these Terms and Conditions, ATC may (i) immediately take all necessary steps to secure and/or to remove the Product from Customer, (ii) in lieu of return thereof to ATC, at its sole election charge to the account of Customer at ATC's then quoted prices any of the unpaid Product as ATC shall determine on an item-by-item basis, and/or (iii) take whatever action at law, in equity or otherwise is deemed necessary by ATC to collect any amounts then due and payable by Customer to ATC under these Terms and Conditions and/or to enforce performance and observance by Customer of any obligation, agreement, or covenant of Customer hereunder. In addition, in the event of default, ATC shall have all the remedies provided under the UCC, which shall be cumulative with one another and with any other remedies which ATC may have at law, in equity, under any agreement of any type, or otherwise. In the event of the removal of the Product from Customer by ATC pursuant to this Section 1.9, Customer shall pay all costs and expenses in connection with any such removal of the Product, including transportation, handling, and insurance to ATC's facilities. If ATC shall advance or otherwise pay any of the foregoing costs or expenses for the account of Customer, Customer agrees to promptly reimburse ATC for any such amounts so advanced or paid. In the event of any default by Customer, Customer shall pay all costs incurred by ATC in collecting any amounts due under these Terms and Conditions, including without limitation reasonable attorneys' fees and costs including fees and costs arising from the representation of ATC in a bankruptcy of Customer.

2. PRICING; TAXES; SHIPMENT; TITLE

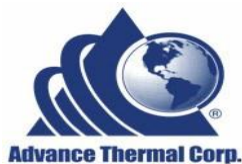
- 2.1 **Pricing.** Unless otherwise specified in the Order(s) applicable thereto, prices for Products and rates for personnel performing Services shall be those stated in the applicable ATC Price Book at the time the Order(s) is entered into. Price Book prices are subject to change at any time, without notice. When prices are quoted by ATC, same shall be valid for thirty (30) days only, unless otherwise noted in the quotation. Not all Products listed in ATC's Price Book are available at every ATC location.

All Product pricing is based on ATC's standard procedures and specifications for manufacturing and testing the Product. Cost of additional labor, materials or outside services for Customer-requested modification of such procedures, specifications and/or testing will be charged to Customer at ATC's cost (including, but not limited to, direct and indirect cost, such as engineering, travel, labor, overhead and shop supplies), plus fifteen percent (15%) administrative charge.

2.2 Taxes

- (a) ATC and Customer are responsible for all taxes legally imposed upon their respective businesses, including taxes imposed upon their respective income, personnel or property. Such taxes are for ATC's or Customer's account, as applicable, and each Party shall indemnify the other from any liability with respect thereto.
- (b) Unless otherwise stated in the Order(s), prices and rates quoted by ATC and other charges payable by Customer are exclusive of Taxes and Duties (as those terms are defined below). If not included in the price or rates, such Taxes and Duties shall be shown as a separate line item on the invoices submitted by ATC, are in addition to the prices or rates, and shall be for Customer's account. The term "Taxes and Duties" shall mean all fees or charges imposed, assessed or levied by any governmental department, agency, or taxing authority (a "Taxing Authority") with respect to the Work performed by ATC and shall include property taxes, sales and use taxes, value added taxes, goods and services taxes and excise taxes or other charges of a similar nature, customs or other duties, customs agent fees and other such charges and fees.
- (c) Each Party shall be liable for and indemnify the other Party from and against all Claims resulting from the failure of the indemnifying Party to pay any of the Taxes or Duties for which the indemnifying Party is responsible under this Section 2.2.
- (d) The provisions of this Section 2.2 shall continue after the expiration or termination of any Order(s) or the completion of Work thereunder.

- 2.3 **Shipment.** Unless otherwise specified in the Order(s) with respect thereto, prices for Products sold to Customer are Ex Works ATC's Facility (Incoterms 2010). Customer will arrange for shipping and pay all shipment costs. If Customer requests ATC to arrange for Product shipment or does not furnish ATC with shipping instructions prior to the time Products are ready for shipment, ATC will ship the Products to Customer, at Customer's risk, via a commercial carrier of ATC's choosing, and charge Customer at ATC's cost, plus fifteen percent (15%) charge. All shipment dates quoted are approximate and estimated from the date of a complete Order(s) with all drawings, instructions and specifications. Any alteration of an Order(s) will affect the estimated



delivery date. ATC will not be liable for any failure to deliver or delays in delivery occasioned by causes beyond ATC's control, including without limitation, strikes, lockouts, fires, embargoes, war or other outbreak of hostilities, acts of God, inability to obtain shipping space, breakdowns, delays of carriers or suppliers and governmental acts and regulations.

2.4 **Title and Risk of Loss.** Title shall pass to Customer upon ATC's delivery of Order(s). Risk of loss for Products sold to Customer will pass to Customer upon delivery of the Products, Ex-Works ATC's Facility (Incoterms 2010) or Incoterms applicable to the Order(s).

3. WARRANTIES AND REMEDIES

3.1 **ATC Product Warranties.**

(a) ATC warrants to Customer that all Products of its own manufacture ("ATC Products") supplied pursuant to an Order(s) (i) shall conform in all respects to ATC's published Product specifications (and to any additional Customer specifications stipulated and agreed to in the Order(s) therefore); and (ii) shall be and remain free of defects in materials and workmanship until the earlier of (a) twelve (12) months from installation, (b) eighteen months (18) from the date of shipment to Customer or (c) as applicable, the date same are run or installed downhole below the rotary table. Except with respect to Non-Standard Products, ATC reserves the right to make substitutions or design and construction modifications with respect to any Products, provided those substitutions changes do not affect the performance of the Products. Substituted Products shall conform to the foregoing warranties.

(b) **Unless otherwise expressly stated in the Order(s) with respect to a particular ATC Product, the foregoing ATC Product warranties are the sole and exclusive warranties made by ATC with respect to ATC Products, and ATC HEREBY EXPRESSLY DISCLAIMS ANY AND ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR USE OR PURPOSE.**

(c) The foregoing ATC Product warranties do not apply to (i) ATC Products that have been modified after their delivery; (ii) ATC Products subjected to improper handling, storage, installation, operation or maintenance; including use of unauthorized replacement parts or operation under more severe conditions than those for which the Product is rated; (iii) ATC Products (or any component thereof) requiring replacement because of natural wear and tear; (iv) the design of ATC Products which were modified according to specification furnished by Customer; or (v) Customer's failure to implement any update, upgrade or adjustment to the ATC Product (or any component thereof) recommended by ATC and furnished by it without cost to Customer.

3.2 **Remedies for Breach of ATC Product Warranties.** ATC shall, at its sole cost and expense, repair or replace with products of like or comparable quality any ATC Product not conforming to the ATC Product warranties specified above; **provided** Customer has notified ATC of the non-conformity within the warranty period specified in Section 3.1 above. **The foregoing remedies of repair or replacement shall be the sole and exclusive obligations and responsibilities of ATC (and the sole and exclusive remedies of Customer) with respect to ATC Products not conforming to the Product warranties specified in Section 3.1 above. ATC's responsibility to repair or replace ATC Products shall not exceed the price of the Products or extend to any ancillary or related costs (such as installation or removal) not included in the original Order(s) with respect to such Products.**

3.3 **Third-Party Product Warranties.** Customer acknowledges that certain Products to be provided by ATC may be secured by ATC from Third Parties ("Third-Party Products"). **With respect to Third-Party Products, ATC warrants that same will be new (unless otherwise specified in the Order(s)) but makes no other representations or warranties whatsoever with respect thereto, hereby disclaiming any and all other warranties, express or implied. ATC shall pass through to Customer any Third-Party Product warranties provided by the Third-Party Product's manufacturer, to the extent same are transferable, and shall provide Customer reasonable assistance in the pursuit and enforcement of all warranty claims with respect to Third-Party Products.**

3.4 **Service Warranties.** ATC may offer technical advice or assistance and/or provide drawings or general information to Customer based upon laboratory and/or field experience and customer understands and agrees that such advice represents only good faith opinions and does not constitute a warranty or guarantee. Similarly, ATC does not warrant or guarantee the results of the Services it performs or represent that those Services will achieve Customer's intended objectives, but does warrant to Customer that all Services performed by ATC (i) shall be performed in a good and workmanlike manner, with reasonable diligence, using competent workmen and supervisors; (ii) shall be performed in accordance with the specifications (if any) detailed in the Order(s) therefore; and (iii) shall be performed in accordance with the requirements of any applicable laws.

3.5 **Remedies for Breach of Service Warranties.** ATC shall, at its sole cost and expense, reperform any Services (or portion thereof) not conforming to the Service warranties specified above; **provided** Customer has notified ATC of the non-conformity within thirty (30) days of the date of the completion of the Services with respect to which the warranty claim is made



("Nonconforming Services"). If the Parties mutually determine that ATC's reperformance of the Nonconforming Services cannot or will not provide a commercially viable remedy, ATC shall, at its option, either refund or credit in full the price paid by Customer for the Nonconforming Services. **The foregoing remedies of reperformance of Nonconforming Services, or the refund or credit of the price paid therefore, shall be the sole and exclusive obligations and responsibilities of ATC (and the sole and exclusive remedies of Customer) with respect to Nonconforming Services.**

3.6 **Analytical Services.** If the Services performed by ATC require or involve (a) predicting results to be obtained from the Work; (b) estimating the type(s) or amount(s) of Products or Services that will be required in connection with the Work; (c) the interpretation of test or other data (including data gathered or generated by ATC's Products); or (d) the expression of opinions or the making of recommendations, either written or oral, based upon data, samples or information provided by Customer Group or Third Parties, or upon inferences from measurements and empirical relationships and assumptions (collectively "Analytical Services"), ATC will give Customer the benefit of ATC's best judgment based on its experience and will perform all such Analytical Services in accordance with standard oilfield industry practices. ATC makes no other warranty with respect to the Analytical Services, hereby disclaiming any warranty as to the adequacy, sufficiency or completeness of any data, reports, estimates, analyses, interpretations, modeling, predictions, opinions or recommendations provided to Customer in connection with the Analytical Services, all of which shall be considered advisory only. Customer assumes all responsibility for any decision made by Customer Group based on ATC's Analytical Services, including any drilling, well treatment, production or other financial decision, and **HEREBY WAIVES AND RELEASES ATC GROUP FROM ANY LIABILITY WITH RESPECT TO CLAIMS RELATING THERETO WITHOUT REGARD TO THE CAUSE(S) THEREOF, INCLUDING WITHOUT LIMITATION ANY NEGLIGENCE, STRICT LIABILITY, OR OTHER LEGAL FAULT OR RESPONSIBILITY ON THE PART OF ATC.**

4. INDEMNITY; RELEASE; WAIVER

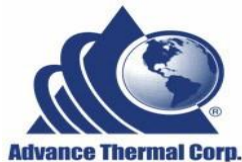
4.1 **ATC RELEASE AND INDEMNITIES.** ATC AGREES TO INDEMNIFY CUSTOMER GROUP FROM AND AGAINST ANY AND ALL CLAIMS ARISING OUT OF, RESULTING FROM, OR RELATING TO (I) PERSONAL INJURY, INCLUDING DEATH OR DISEASE, AFFECTING ANY PERSON WHO IS A MEMBER OF THE ATC GROUP, (II) LOSS OR DAMAGE TO PROPERTY OF ATC GROUP EXCLUDING PRODUCTS AFTER DELIVERY TO CUSTOMER AND (III) POLLUTION OR CONTAMINATION WHICH ORIGINATES FROM ATC'S EQUIPMENT ABOVE THE SURFACE OF THE EARTH OR WATER WHILE SUCH ATC EQUIPMENT IS IN ATC'S SOLE POSSESSION OR CONTROL, INCLUDING COSTS OF CLEAN UP OR REMEDIATION ASSOCIATED THEREWITH ARISING OUT OF OR IN CONNECTION WITH THE WORK PERFORMED BY ANY MEMBER OF ATC GROUP UNDER ANY ORDER.

4.2 **CUSTOMER RELEASE AND INDEMNITIES.** CUSTOMER AGREES TO INDEMNIFY ATC GROUP FROM AND AGAINST ANY AND ALL CLAIMS ARISING OUT OF, RESULTING FROM, OR RELATING TO (I) PERSONAL INJURY, INCLUDING DEATH OR DISEASE, AFFECTING ANY PERSON WHO IS A MEMBER OF THE CUSTOMER GROUP; (II) LOSS OR DAMAGE TO PROPERTY OF CUSTOMER GROUP (III) POLLUTION OR CONTAMINATION WHICH ORIGINATES ABOVE OR BELOW THE SURFACE OF THE EARTH OR WATER WHICH MAY OCCUR IN CONJUNCTION WITH THE WORK, INCLUDING, BUT NOT LIMITED TO, THAT WHICH MAY RESULT FROM ANY FIRE, EXPLOSION; AND/OR (IV) OTHER CATASTROPHIC EVENT RESULTING IN A FIRE OR EXPLOSION AT THE WORK SITE AND/OR (V) ANY LOSS, DAMAGE, INJURY AND/ OR DEATH SUFFERED OR SUSTAINED BY ANY PERSON, PARTY OR ENTITY IN II-IV

4.3 **Third Party Claims.** Subject only to the provisions of Section 4.2 II-IV above, each Party shall, to the full extent of its liability therefore under applicable law, be and remain responsible for, and shall Indemnify the other Party and all members of its Group from and against, any and all Claims resulting from or with respect to (i) bodily injury, disease, or death suffered by any Third Party, or (ii) damage to or loss of property suffered or sustained by any Third Party.

4.4 **Express Negligence.** SUBJECT ONLY TO LIMITATIONS IMPOSED BY APPLICABLE LAW OR PUBLIC POLICY, THE INDEMNITIES SET FORTH IN THIS ARTICLE ARE INTENDED TO BE ENFORCEABLE AGAINST THE PARTIES IN ACCORDANCE WITH THE EXPRESS TERMS AND SCOPE THEREOF, NOTWITHSTANDING ANY STATUTE, RULE, OR DIRECTIVE THAT WOULD PROHIBIT OR OTHERWISE LIMIT INDEMNITIES BECAUSE OF THE NEGLIGENCE OR OTHER FAULT OR STRICT LIABILITY OF ANY OF THE INDEMNIFIED PARTIES. THE INDEMNITIES SET FORTH IN THIS ARTICLE APPLY REGARDLESS OF WHETHER OR NOT THE CLAIM IS CAUSED BY THE SOLE, JOINT, CONTRIBUTORY OR CONCURRENT NEGLIGENCE (IN ANY AMOUNT), GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, STRICT LIABILITY, PRODUCT LIABILITY, BREACH OF WARRANTY, BREACH OF CONTRACT, BREACH OF STATUTE OR OTHER FAULT OR FORM OF LIABILITY OF ANY MEMBER OF ATC GROUP, CUSTOMER GROUP, OR A THIRD PARTY, THE UNSEAWORTHINESS OR UNAIRWORTHINESS OF ANY VESSEL OR CRAFT, OR ANY PRE-EXISTING CONDITION.

5. CONFIDENTIAL INFORMATION; INTELLECTUAL PROPERTY; DISCOVERIES



Advance Thermal Corp.

5.1 **Confidential Information.**

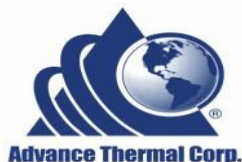
- (a) Each Party receiving Confidential Information (the “Receiving Party”) warrants and agrees that for a period of three (3) years after its receipt thereof, it shall maintain and safeguard the confidentiality of all Confidential Information received by it from the other Party (the “Disclosing Party”), handling and treating it with at least the same degree of care (and affording it the same protections) the Receiving Party observes and provides for its own confidential, proprietary and trade secret information, and in all events with at least a reasonable standard of care. For purposes of these Terms and Conditions, the term “Confidential Information” shall mean and include only confidential, non-public information provided by the Disclosing Party that describes, pertains or relates to the Work or the performance thereof (including information with respect to the Work Site) or to the tools, equipment, processes or technologies employed in performing the Work. Confidential Information shall not include information which is independently developed by a Party, without reliance upon or reference to the Confidential Information of the other Party.
- (b) Nothing contained herein shall in any way limit or restrict a Receiving Party’s right to use, disclose, or otherwise deal with any Confidential Information of the Disclosing Party which (i) is or becomes generally available in the public domain through no wrongful act or unauthorized disclosure of the Receiving Party, (ii) was lawfully in the Receiving Party’s possession prior to being provided to the Receiving Party, or (iii) is independently made available to the Receiving Party as a matter of right by a Third Party who is under no obligations to maintain the confidentiality thereof.
- (c) If a Receiving Party receives a request or order to disclose all or any part of the Disclosing Party’s Confidential Information under the terms of a discovery request, subpoena, or other order issued by a court or governmental body pursuant to law or regulation (a “Disclosure Request”), the Parties each hereby agree (i) to promptly notify the other Party of the existence, terms and circumstances surrounding the Disclosure Request and (ii) to reasonably assist the other Party in seeking an appropriate protective order and/or taking other legally-available steps to resist or narrow the scope of the Disclosure Request, and (iii) if disclosure of the Confidential Information of the Disclosing Party is required to prevent the Receiving Party from being held in contempt or subject to other penalty, to furnish only such portion of the Confidential Information as it is, in the opinion of the Receiving Party’s counsel, legally compelled to disclose.

6.2 **Intellectual Property Rights.**

- (a) Unless the Parties have otherwise agreed in writing, a Party’s Intellectual Property (and any development, enhancement, improvement, or derivative thereof, regardless of inventorship) shall be and remain the property of that Party. To the extent any Intellectual Property of a Party (and/or any enhancement, improvement, or derivative thereof) is incorporated into or necessary for the performance of any Work provided to Customer, that Party grants the other Party only a non-exclusive, non-transferrable, non-sub-licensable, revocable, royalty-free, right and license to use such Intellectual Property incorporated into the Work solely for the purpose of performing or using such Work, as applicable. Except as expressly stated herein, neither ATC nor Customer shall have any right or license to use, whether directly or indirectly, any of the other’s Intellectual Property. The foregoing does not, however, grant or extend to Customer any ownership interest in or license to use (or right to sublicense) any computer programs, software or firmware used or employed by ATC in performing Work or made available to Customer in connection therewith.
- (b) If ATC and Customer or their respective employees jointly develop any Intellectual Property which is not an enhancement, improvement or derivation of either Party’s Intellectual Property (“Joint IP”), the Joint IP shall be owned by ATC. ATC hereby grants Customer, a revocable, non-exclusive, non-sub-licensable, non-transferrable, royalty free, right and license to use the Joint IP incorporated into the Work solely for the purpose of using such Work.

6.3 **Reverse Engineering Prohibited.** Except to the extent necessary for the maintenance or repair thereof, Customer shall not (and shall not direct or permit any Third Party to) disassemble any ATC Product(s) or Rental Equipment, or decompile, analyze or otherwise seek to reverse engineer any ATC Product(s) or Rental Equipment (or any component part thereof) in an effort to discover its design, structure, construction, or formulation, or the firmware used or embedded therein.

6.4 **Injunctive Relief.** Because money damages would not be a sufficient remedy for any breach or threatened breach by Customer of this Article 6, ATC shall be entitled to specific performance, injunctive or other equitable relief to enforce the provisions of this Article 6, without the necessity of proving irreparable harm, without the necessity of posting bond, and without waiving any other remedies available to it, at law or in equity. In the event of such an action, ATC shall be entitled to recover its reasonable attorney’s fees and costs of litigation.



7. INSURANCE

7.1 **Insurance in Support of Indemnities.** Customer and ATC shall each procure and maintain in support of their respective indemnity obligations under these Terms and Conditions, and not as an obligation separate or independent therefrom, policies of insurance of the following types (with coverage amounts not less than the minimum limits specified) (the "Insurance Policies"):

- (a) Statutory Workers' Compensation Insurance complying with applicable state or provincial laws and Employer's Liability Insurance covering all of the Party's employees, with liability limits of \$1,000,000.00 per occurrence.
- (b) Comprehensive or Commercial General Liability Insurance (including contractual liability for the Party's obligations to Indemnify the other Party) with combined single limits of not less than \$1,000,000.00 per occurrence and in the aggregate, to include bodily injury and property damage, specifically including Contractual Liability.
- (c) Comprehensive or Commercial Automobile Liability Insurance covering all owned, non-owned, and hired automobiles used by it in connection with the Work, if any, with a combined minimum limit of \$1,000,000 each occurrence for bodily injury and property damage.
- (d) Excess Liability Insurance over that required in Paragraph (a), (b) and (c) above, with minimum limits of \$4,000,000.00 per occurrence and in the aggregate, specifically including Contractual Liability.
- (e) If the Work to be provided by ATC involves well(s) that Customer operates, Customer shall procure and maintain, at its sole expense, a Control of Well Policy that covers the cost of regaining control of a Wild Well, pollution, stuck drill stem, and evacuation expense.
- (f) All Insurance Policies must be issued by a reputable insurance company with a Best's Issuer Credit Rating of A- or better and shall be obtained by each Party at its sole cost and expense.

7.2 **Insurance Policy Endorsements.** To the extent of its indemnity obligations under these Terms and Conditions, each Party's Insurance Policies shall be endorsed to (i) name the other Party (and all members of the other Party's Group) as an additional insured (except Workers Compensation and Employer's Liability), (ii) provide that the insurer waives its rights of subrogation against the other Party's Group and its insurers, and (iii) be primary as to any other insurance policies. Neither Party's Insurance Policies (or any of them) shall be cancelled without thirty (30) days' advance written notice to the other Party.

7.3 **Certificates of Insurance.** Each party shall deliver to the other, upon request, certificates of insurance showing that its Insurance Policies (endorsed as described above) are in full force and effect, and ATC shall have no obligation to perform Work unless and until it has received same.

7.4 **Indemnity not Limited by Insurance Coverage.** The insurance coverages specified in Section 7.1 are not to be construed to void or limit either Party's indemnity obligations under these Terms and Conditions.

8. LAWS AND REGULATIONS

8.1 **Compliance with Laws.** Customer (and all members of its Group) shall comply with all applicable laws and regulations in the performance of their obligations and the enforcement of their rights under these Terms and Conditions and all Order(s). Notwithstanding anything to the contrary in these Terms and Conditions, Customer shall not be required to take any action prohibited or penalized by, or to refrain from taking any action required under, the laws of any applicable domestic or foreign jurisdiction relating to international boycotts.

8.2 **Trade Compliance.**

- (a) Without limiting the generality of Section 8.1, Customer agrees to comply with all applicable laws, ordinances, rules, regulations, by-laws, decrees, orders and the like, whether of governmental or other authority or agency, related to economic sanctions, embargoes, international boycotts and/or the importation, exportation, or re-exportation of any equipment, product, materials, software (including source code), technical data or technology (collectively "**Trade Compliance Laws**"), and shall not, directly or indirectly, sell, provide access to, export, re-export, transfer, divert, loan, lease, consign, transship, transport, or otherwise dispose of any ATC equipment, product, materials, software (including source code), technical data or technology to, via, or for (i) any entity known to be headquartered in, or owned or controlled by a national of, any country or region subject to comprehensive sanctions at any time applicable to ATC, including currently Cuba, Iran, North Korea, Sudan, Syria, Russia, and the Crimea Region of Ukraine, (ii) any other Person identified on a denied or restricted party list applicable to ATC, or (iii) any activity or end-use restricted by Trade Compliance Laws without first obtaining all required government authorizations and ATC's written permission. Customer agrees to complete ATC's end-use, end-user, end-destination documentation when requested.



(b) ATC shall have the right, in its sole discretion, to immediately suspend performance under or to terminate any Order(s) if (i) applicable comprehensive sanctions are imposed, or (ii) Customer is designated as or determined to be a denied or restricted party under any Trade Compliance Law.

8.3 **Ethics and Anticorruption.** ATC complies with and requires that each member of Customer Group comply with, the U.S. Foreign Corrupt Practices Act of 1977, the UK Bribery Act of 2010, and/or any applicable laws related to anti-corruption, anti-kickbacks, and anti-money laundering with regards to the Work. Customer shall make no facilitating payments, or grease payments, with regards to the Work.

8.4 **Termination and Indemnification.** If ATC is required by Customer to engage in any act that violates this Article 8, ATC may immediately terminate any Order(s) and will not be in breach or default as a result of such termination. Customer agrees to Indemnify ATC Group for all Claims arising from Customer's violation of this Article 8.

9. **ASSIGNMENT AND SUBCONTRACTING**

ATC may assign any Order(s) (or any rights and interests thereunder) to an Affiliate, or subcontract the Work (or any portion thereof) to be performed under any Order(s), but shall not assign any Order(s) to any Third Party without the prior written consent of Customer, which consent shall not be unreasonably withheld, conditioned, or delayed. Customer may not assign any Order(s) (or any rights and interests thereunder) without the prior written consent of ATC. Subject to the foregoing, each Order(s) shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assignees.

10. **FORCE MAJEURE**

(a) Neither Party shall be considered in breach of any Order(s) or the requirements of these Terms and Conditions (excluding the obligation of Customer to pay ATC for the Work) if prevented from performing due to a Force Majeure Event. The term "Force Majeure Event" means any act or event that renders it wholly or partially impossible for the affected Party to perform its obligations under these Terms and Conditions or any Order(s) or delays such affected Party's ability to do so, when such act or event (i) is beyond the reasonable control of the affected Party, (ii) is not due to the fault or negligence of the affected Party, and (iii) could not have been avoided by the affected Party by the exercise of reasonable diligence.

(b) Should a Force Majeure Event delay ATC's performance of Work under an affected Order(s) by more than thirty (30) days and cannot be accommodated by adjustment to the schedule of the Work, either Party may terminate the affected Order(s) by giving five (5) days written notice to the other Party. In the event of such termination, ATC shall be paid or reimbursed for (i) all Work performed prior to the date of termination and (ii) any other reasonable costs incurred as a result of such termination (including ATC's standard personnel and equipment stand-by charges, demobilization costs, and any early vendor termination expenses incurred). If the Force Majeure Event affects only a portion of the Work and Customer should elect to terminate the Order(s), then Customer shall pay the early termination fee specified in the Order(s) (if any) or as agreed between the Parties. Subject to the foregoing and/or any other compensation or reimbursement provided for in the applicable Order(s), each Party shall otherwise bear its own costs for the Force Majeure Event.

11. **Consequential Damages Waiver.**

(a) Notwithstanding any provision of these Terms and Conditions to the contrary, neither Party shall be liable to the other Party (or any member of the other Party's Group) for, and each Party hereby waives and releases the other Party from and against, any and all Claims for Consequential Damages (as hereinafter defined). For purposes of the foregoing, the term "Consequential Damages" shall mean and include (i) all indirect, incidental, special, punitive, exemplary, or consequential damages or consequential losses of any nature whatsoever (whether or not foreseeable), and (ii) damages or losses, whether direct or indirect, for lost product or production, lost profit or revenue, loss of data, reservoir loss or damage, loss of or damage to the well or the hole, lost business, loss of or inability to use property and equipment, losses from business interruptions, losses resulting from failure to meet other contractual commitments or deadlines, or losses from downtime of rigs, vessels or facilities.

(b) Without negating the preceding general exclusion of Consequential Damages, the Parties expressly agree that Claims with respect to the following shall NOT be considered Consequential Damages and are recoverable between the Parties: (i) ATC claims with respect to amounts due it for Work or Customer's cancellation of an Order(s); (ii) damages for breaches of a Party's obligations with respect to the Confidential Information (as hereinafter defined) or Intellectual Property of the other Party, or (iii) Third Party Claims with respect to which a Party is entitled to indemnification under these Terms and Conditions.

12. **LIABILITY CAP.**

Save and except for ATC's Indemnification obligations under Sections 4.1, and 4.3 above, which shall not be so limited, and subject to the provisions of Article 3 limiting ATC's responsibility for breach of warranty claims, ATC's maximum aggregate liability with respect to Claims arising out of, or in any way relating to its performance of Work under any Order(s), whether

sounding in contract or tort (including negligence, gross negligence, willful misconduct, strict liability and breach of statutory duty), at law or in equity, shall be limited to 100% of the value of the applicable Product, Rental Equipment or Service (the "Liability Cap"). The Liability Cap shall include, without limitation, all reasonable attorney fees and costs associated with defending any Claim(s) arising out of or related to the Order(s). Customer agrees to Indemnify ATC Group from and against any and all Claims in excess of the Liability Cap asserted by or in favor of any person, party or entity, including, without limitation, Claims for damage to or loss or destruction of real or personal property belonging to any person, party or entity (including, without limitation, property belonging to ATC, Customer or any Third Party), and Claims for personal or bodily injury to, sickness, disease or death of any person (including, without limitation, personnel of ATC, Customer or any Third Party), **REGARDLESS OF WHETHER OR NOT THE CLAIM IS CAUSED BY THE SOLE, JOINT, CONTRIBUTORY OR CONCURRENT NEGLIGENCE (IN ANY AMOUNT), GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, STRICT LIABILITY, PRODUCT LIABILITY, BREACH OF WARRANTY, BREACH OF CONTRACT, BREACH OF STATUTE OR OTHER FAULT OR FORM OF LIABILITY OF ANY MEMBER OF ATC GROUP, CUSTOMER GROUP, OR A THIRD PARTY, THE UNSEAWORTHINESS OR UNAIRWORTHINESS OF ANY VESSEL OR CRAFT, OR ANY PRE-EXISTING CONDITION.**

13. GOVERNING LAW; DISPUTE RESOLUTION; ATTORNEYS' FEES

13.1 Governing Law, Venue and Dispute Resolution

- (a) The Parties agree that the application of the United Nations Convention on Contracts for the International Sale of Goods is specifically excluded from these Terms and Conditions and shall not be applied to any Order(s) hereunder.
- (b) Any dispute arising out of or in connection with these Terms and Conditions and Order(s) hereunder shall be resolved in accordance with laws of the State of Texas, which shall apply without regard to any choice of laws or conflict of laws provisions which would direct the application of the laws of another jurisdiction. Venue for any litigation filed with respect to these Terms and Conditions or any Order(s) (or the Work performed thereunder) shall be exclusive in the courts, state or federal, sitting in Houston, Harris County, Texas, and **TO THE EXTENT ALLOWED BY APPLICABLE LAW, EACH PARTY HEREBY WAIVES ALL RIGHTS TO A JURY TRIAL WITH RESPECT TO ANY SUCH LITIGATION.**
- (c) If pursuant to applicable law or statute, the law of Texas cannot be applied, then all disputes shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules. The Emergency Arbitrator Provisions (or other similar rules or provisions pertaining to pre-judgment, equitable relief) shall not apply. The proceedings shall be conducted and concluded as soon as reasonably practicable, based upon the schedule established by the tribunal. The seat of arbitration shall be Houston, Texas (or such other location as the Parties may agree upon in writing), and the proceedings shall be conducted and concluded as soon as reasonably practicable, based upon the schedule established by the tribunal.
- 13.2 **Attorney's Fees and Injunctive Relief.** The prevailing Party in any litigation or arbitral proceedings shall be entitled to recover, in addition to any damages or other relief awarded to it, reasonable attorney's fees, fees and expenses of the arbitrator, court costs, fees of testifying experts or consultants, and other expenses related thereto. Nothing herein shall prohibit a Party from availing itself of a court of competent jurisdiction for the purpose of injunctive relief.

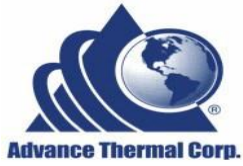
14. SEVERABILITY

If any of the provisions in these Terms and Conditions are found to be inconsistent with or contrary to any applicable law, same shall be deemed to be modified to the extent required to comply with applicable law (it being the intention of both Parties to enforce to the fullest extent all of these Terms and Conditions), and as so modified, these Terms and Conditions shall continue in full force and effect. In the event such provisions cannot be deemed or modified automatically, the Parties agree to meet to attempt to reach agreement on a conforming modification to such provision. In the event any provision cannot be modified to comply with applicable law, then that term or provision shall be deemed to be deleted from these Terms and Conditions and the remaining provisions shall remain in full force and effect.

15. WAIVER OF TERMS

No waiver by ATC of any of the terms, provisions, or conditions of these Terms and Conditions shall be effective unless expressly stated in a writing signed by an authorized officer of ATC. ATC's failure to enforce any term, provision or condition of these Terms and Conditions shall in no manner affect its right to enforce the same at a later time, and the waiver by ATC of any breach of any term, provision or condition of these Terms and Conditions shall not be construed to be a waiver by ATC of any subsequent or succeeding breach of such term, provision or condition or of any other term, provision or condition hereof.

16. ACKNOWLEDGEMENT AND ACCEPTANCE



ATC may revise and post updates to these Terms and Conditions from time-to-time, and all Order(s) will be subject to the most recently posted version of these Terms and Conditions. In accepting Work from ATC, Customer shall be deemed to have accepted these Terms and Conditions which shall not be altered or amended by any terms and conditions provided by Customer, including any terms and conditions linked to or provided in conjunction with customer's PO, unless ATC and Customer have entered into a separate, written, master services agreement, supply agreement, equipment rental agreement, or other contract which governs the Work.