

ASPEN EQUIPMENT, A DIVISION OF MGX EQUIPMENT SERVICES, LLC - TERMS AND CONDITIONS OF PURCHASE

**1. PARTIES.** "ASPEN" refers to ASPEN EQUIPMENT, a division of MGX Equipment Services, LLC, and any of its parents, subsidiaries or affiliated companies. "Seller" refers to the named supplier(s) providing goods and services pursuant to these terms and conditions ("Terms"), and any purchase order ("Purchase Order") issued to Seller by ASPEN.

**2. ACCEPTANCE WITHOUT CHANGES; ENTIRE AGREEMENT.** These Terms, including all documents specified by ASPEN as being a part of these Terms, all addenda, and any Purchase Order issued to Seller by ASPEN constitutes the agreement between Seller and ASPEN and supersedes all other agreements and understandings regarding the subject matter hereof. These Terms shall be deemed to be incorporated within any Purchase Order issued to Seller by ASPEN. These Terms are expressly subject to, and Seller's acceptance expressly conditioned upon, Seller's assent to each and all of the terms hereof. ASPEN hereby objects to any different or additional terms not specifically agreed to in writing by ASPEN. The terms of Seller's forms, invoices, or other documents shall not be a part of the Terms herein. Reference to Seller's bids, proposals or acknowledgments of any Purchase Order shall not affect the terms hereof and the terms of such items are expressly excluded. ASPEN's receipt and acceptance of goods and services furnished under and pursuant to these Terms and any Purchase Order shall not be construed to be conduct inconsistent with the terms of this section.

**3. MODIFICATION & CHANGE.** ASPEN may at any time make changes in drawings, designs, specifications, materials, packaging, time and place of delivery, method of transportation, quantities or other terms of a Purchase Order, and shall have the right to reduce, delay delivery, or cancel any outstanding Purchase Order at any time and at its convenience (a "Change") and Supplier shall immediately implement any such Change as made by ASPEN. Where any such Change subjects Supplier to unmitigable direct costs or actual damages, then an equitable pricing adjustment shall be made as mutually agreed upon between the parties subject to Supplier presenting a claim for such in writing within thirty (30) days of the Change, or such claims for adjustment shall be deemed waived. Payments to Supplier hereunder shall be the sole and exclusive remedy available to Supplier in the event of a cancellation of a Purchase Order for convenience by ASPEN. Seller shall not make any changes to the goods, location where the goods are produced, or method of producing the goods without the prior written consent of ASPEN.

**4. STATUS OF PARTIES.** Seller and its employees, agents, representatives, assigns and subcontractors (the "Seller's Affiliates or Seller's Parties") are independent contractors and shall not be considered agents or legal representatives of ASPEN for any purpose. Seller and Seller's Affiliates shall not have any authority to represent or bind ASPEN in any matter or contract with any third party, and shall represent themselves only as independent contractors unrelated to ASPEN. Nothing in these Terms is intended to create a relationship, express or implied, of employer-employee, principal-agent or partnership between ASPEN and either the Seller, or Seller's Affiliates. Seller and all Seller's Affiliates shall agree to be bound by all applicable provisions these Terms and Seller shall be liable for all acts or omissions of such Seller's Affiliates as if performed by Seller itself. Seller and Seller Affiliates are strictly prohibited from using ASPEN's trademark(s) or trade-name(s).

**5. PRICES; TAXES.** Prices specified in any Purchase Order may not be changed without the written approval of ASPEN. Unless otherwise specified in a Purchase Order, the prices herein include: (a) all transportation charges to the destination specified in a Purchase Order, including without limitation, packing, packaging, freight charges, drayage, and insurance; and (b) all federal, state and local taxes, including without limitation, sales and use taxes, customs duties and fees of every kind and nature. No extra charges of any kind will be allowed unless specifically agreed to in writing by ASPEN.

**6. PAYMENT; INVOICING.** Unless otherwise specified in a Purchase Order, terms of payment are net sixty (60) days after the later of: (a) delivery of the goods; or (b) receipt of invoice. If a Purchase Order permits progress payments, Seller shall certify in writing the performance of the applicable payment milestones and Seller's granting of a security interest in the work or goods to ASPEN to the extent of such payment. Seller's sole remedy for late payment of undisputed invoices is to charge interest at a rate not to exceed 0.50% (one half of one percent) per month from the date of late payment.

**7. PACKAGING AND SHIPPING.** All packages shall be clearly marked with ASPEN's Purchase Order and identification numbers, appropriate description of the goods, manufacturing date codes, part numbers and quantity of items contained in each package. A copy of the packing slip shall also be emailed to purchasing@aspeneq.com. Seller shall comply with the best commercial practice for shipments adequate for safe arrival at the destination and for storage against weather and transportation. No additional charges of any kind, including charges for boxing, packaging, cartage or other extras shall be added unless specified in a Purchase Order. Seller shall not deviate from ASPEN's shipping instructions without its prior written consent.

**8. DELIVERY; COMPLETION OF SERVICES.** Seller shall strictly comply with delivery instructions (including the delivery schedule) in a Purchase Order. Time is of the essence with respect to Seller's obligations hereunder. Unless otherwise stated, goods shall be delivered FOB destination designated by ASPEN. If delivery of items or rendering of services is not completed by the specified delivery date, ASPEN reserves the right, in addition to its other rights, to return goods and/or terminate all or part of a Purchase Order and charge Seller with all costs, expenses and damages associated with such return or termination. If ASPEN believes that either Seller or Seller Parties are failing to competently and timely perform services specified herein with all necessary means and diligence, ASPEN may by written notice require Seller to employ/contract more or different personnel or to take other measures to expedite completion of the services in accordance with the delivery schedule. If Seller fails to effectively expedite the services, ASPEN may, in addition to any other remedies, employ any other means to complete the services, and Seller shall reimburse ASPEN for such additional costs and expenses as it incurs. ASPEN may delay delivery and/or acceptance for causes beyond its control.

**9. INSPECTION AND ACCEPTANCE.** ASPEN shall have the right of inspection, testing, approval and acceptance within a reasonable time after arrival of the goods at their destination or completion of services. However, inspection, testing or acceptance shall not relieve Seller of its warranty or other obligations hereunder. If inspection discloses that some or all of a shipment of goods received are not in accordance with ASPEN's specifications, ASPEN may, at its option, and at Seller's expense: (a) return the entire shipment and cancel any unshipped portion of a Purchase Order, in which event Seller shall immediately ship sufficient quantities of conforming goods; (b) procure, upon terms and in a manner it deems appropriate, goods similar to those terminated (in which event, Seller shall be liable for additional costs, if any, for the purchase of such similar goods to cover such default); or (c) accept the goods subject to an equitable adjustment in the price. If services are not in accordance with ASPEN's specifications, Seller shall at ASPEN's option: (i) repair, remedy or re-perform the defective services; or (ii) accept the services subject to an equitable adjustment in price. Payment shall not constitute acceptance of any shipment, and if made, shall be without prejudice to any and all claims that ASPEN may have against Seller. In the event the goods must be installed, tested, inspected or assembled prior to commercial use, they shall not be deemed finally accepted until such installation, testing, inspection or assembly indicates that the goods are in accordance with specifications and are operating properly. Upon notice, ASPEN may make inspection visit(s) at the site where the goods are being designed or manufactured, or services being performed. Upon request, Seller shall provide ASPEN with written performance and status reports.

**10. TERMINATION FOR CONVENIENCE OR CAUSE.** ASPEN may, at any time and without further liability, terminate a Purchase Order or any part thereof for its sole convenience, at which time Seller shall immediately stop all work related to a Purchase Order. ASPEN shall pay Seller's actual direct costs for goods produced or work performed up until the date of termination, provided that such costs were incurred by Seller in good faith to fulfill a Purchase Order in accordance with its terms. Seller's claims under this section must be provided in writing with sufficient detail within thirty (30) days of receipt of ASPEN's termination notice. Further, ASPEN may rescind or cancel a Purchase Order, in whole or part, at any time and without penalty or liability if: (a) Seller breaches any terms or conditions of a Purchase Order, including without limitation, late delivery; (b) Seller ceases operations or fails to make progress or meet progress milestones; or (c) a petition in bankruptcy is filed by or against Seller, Seller is declared insolvent or has a receiver or trustee appointed for it or its assets, or Seller makes an assignment for the benefit of creditors or commences proceedings under any insolvency or similar laws. Payments to Seller hereunder shall be the sole and exclusive remedy available to Seller in the event of a termination by ASPEN. Seller shall protect ASPEN's property, work or goods in Seller's (or Seller Party's) care, custody or control until final transfer of such property, work or goods has been made to ASPEN. Seller shall at ASPEN's sole option, direction and benefit deliver to ASPEN or dispose of any partially completed goods or obsolete materials.

**11. REMEDIES.** ASPEN's remedies granted herein are not exclusive, but are in addition to any other remedies provided by law or equity. Where specified herein, Seller's remedies are exclusive of all other remedies.

**12. RISK OF LOSS; TITLE.** Unless otherwise specified in a Purchase Order, Seller shall bear all risk of loss or damage to goods until acceptance of delivery by ASPEN at its facility specified in the Purchase Order. Seller shall remain responsible for any hidden damages. Title to goods shall pass upon delivery, or sooner if otherwise specified in Purchase Order.

**13. INDEMNIFICATION.** Seller shall defend, protect, indemnify and save harmless ASPEN, its parents, subsidiaries, affiliates, directors, officers, employees, customers, successors and assigns from and against all damages, liability, claims, losses, and expenses (including reasonable attorneys' fees) arising out of or resulting in any way from: (a) enforcement by ASPEN of its rights hereunder; (b) any act or omission of Seller or Seller Parties, whether based upon claims of negligence, breach of warranty, or strict liability in tort or otherwise; (c) any breach of the terms and conditions of these Terms or a Purchase Order; and/or (d) any actual or alleged: (i) defect in the goods or services; (ii) failure by Seller or Seller Parties to comply with ASPEN's specifications or with the express or implied warranties of Seller; (iii) violation by the goods, or in their manufacture or sale, or in the provision of services, of any federal, state, local, foreign or international law, rule or regulation; or (iv) infringement of any patent, trademark, trade name, trade secret, copyright or other property right by reason of the sale or use of the goods or services ordered by ASPEN. Seller may employ counsel of its own choice; provided, however, that ASPEN shall have the opportunity to participate in its own defense and to engage counsel of its own choice at Seller's expense. Seller shall have the right to settle any such matter when settlement is at Seller's sole cost and expense and with ASPEN's prior written consent. Further, Seller will reimburse ASPEN for any defense costs incurred by ASPEN, as well as any costs incurred by ASPEN in enforcing Seller's obligations hereunder.

**14. INSURANCE.** Seller shall obtain and maintain general liability insurance (including products) in amounts no less than \$5 million per occurrence, worker's compensation insurance in accordance with all state laws, and property insurance sufficient to cover the work or any ASPEN property that is in the care, custody or control of Seller. Such insurance shall be primary (with deductibles or SIR no greater than \$500) and shall pay in full before any other insurance available to ASPEN. Seller shall obtain waivers of subrogation for the benefit of ASPEN and shall name it as an additional named insured under all such insurance policies.

**15. COMPLIANCE WITH LAWS.** Seller warrants that all goods and services provided hereunder comply with all federal, state, local or agency laws or regulations as applicable, including, without limitation, export and import laws, anti-corruption, anti-slavery, anti-human trafficking, fair labor, and laws that protect humans, forestry, wildlife, and the environment.

**16. WARRANTIES.** Seller warrants that all goods delivered and services performed shall, for a reasonable period of time, but no less than three (3) years: (a) be merchantable and free from defects in design, materials and workmanship; (b) strictly conform to all specifications, statements of work, drawings, samples, descriptions, designs and any other requirements specified by ASPEN; (c) be free from all liens and encumbrances (this warranty shall continue without limitation as to time); and (d) be fit and safe for their intended purpose. Seller further warrants that all goods provided hereunder shall have a useable life of no less than ten (10) years. Seller shall, at no cost to ASPEN and at ASPEN's option, expeditiously repair or replace all defective work or goods at the exact place the goods are, or the work is, located, time being of the essence. Seller shall reimburse ASPEN all of ASPEN's direct and indirect costs associated with the defects, including without limitation lost profits and loss of use. All warranty work shall be warranted for an additional three (3) years from the completion of repairs or new installation. Without limiting in any way the foregoing warranties, Seller also warrants that it shall obtain and assign or otherwise provide to ASPEN the benefits of warranties and guarantees provided by manufacturers or suppliers of material or equipment incorporated into the goods or services, and shall perform its responsibilities so that such warranties or guarantees remain in full effect. Unless a Purchase Order expressly provides otherwise, any goods which discolor or create discoloration, or emit an odor, are not merchantable.

**17. FORCE MAJEURE.** Each party shall be excused from performance under these Terms or any Purchase Order while and to the extent that it is unable to perform, for a cause beyond its reasonable control. Force majeure shall not include Seller's mechanical failure or failures, labor shortages or work stoppages. In the event either party is rendered unable wholly or in part by force majeure to carry out its obligations under these Terms or any Purchase Order, then the party affected by force majeure shall give written notice with explanation to the other party within ten (10) days of the occurrence of such cause. Following such notice, the affected obligations of the party giving notice shall be suspended only during the continuance of the events giving rise to the force majeure provided that the affected party is acting with due diligence to remedy the events giving rise to the force majeure. During a Force Majeure Event, ASPEN may cancel or modify, in whole or in part, any affected Purchase Orders and elect to use other suppliers, without any obligation, liability, or penalty of any kind as of the date specified in written notice to Supplier.

**18. INTELLECTUAL PROPERTY.** All rights, title and interest in and to all information developed by Seller specifically related to these Terms or any Purchase Order on behalf of ASPEN, (including, but not limited to, designs, drawings, specifications, tests, promotional materials, financial information, software, digital information, models, inventions, discoveries, trade secrets, patents, copyrights, trademarks, service marks, trade names, methods of manufacture) (the "Information") are, by these Terms or any Purchase Order, irrevocably assigned to ASPEN. Seller shall have no right or license in or to any Information, except as expressly granted in writing by ASPEN. All Information shall be the sole property of ASPEN and may be used, disclosed, assigned, licensed or otherwise exploited by ASPEN for any purpose without any additional fees, royalties or compensation to Seller. Seller shall take timely actions as may be requested by ASPEN, at ASPEN' expense, to protect, maintain, preserve, use or exploit any Information.

**19. CONFIDENTIALITY.** All information, in any form, which is owned by ASPEN or which is disclosed or made available in any manner by or on behalf of ASPEN to Seller, including these Terms or any Purchase Order ("Confidential Information") shall be deemed to be confidential and proprietary. Except to the extent that Confidential Information is in or comes into the public domain through no fault of Seller, Seller warrants that Seller shall maintain Confidential Information in strict confidence, and

shall not disclose Confidential Information to any third party or use any Confidential Information for any purpose other than the performance of these Terms (on a strict need-to-know basis) without the prior written consent of ASPEN. Upon request by ASPEN, employees or agents of Seller or Seller's Affiliates performing work under these Terms shall execute an agreement that provides that such person or entity will not use or disclose any Confidential Information.

**20. ASSIGNMENT.** Seller shall not have the right or power to assign its rights (including monies due or to become due) or delegate its obligations hereunder without the express written consent of ASPEN. Any attempt to do so without such consent shall be null and void and shall permit ASPEN the right to cancel and terminate this agreement.

**21. SETOFF.** ASPEN may setoff any amount due from Seller to ASPEN, whether or not under these Terms, from any amounts due to Seller whether or not under these Terms. If Seller breaches any of these Terms, any Purchase Order or other agreement with ASPEN, ASPEN may, in addition to all other remedies, withhold any payments due Seller until Seller cures its breach.

**22. LIMITATION OF LIABILITY.** ASPEN SHALL NOT BE LIABLE TO THE SELLER FOR ANY CONSEQUENTIAL, SPECIAL, OR INDIRECT DAMAGES IN CONNECTION WITH OR ARISING OUT OF THESE TERMS OR ANY PO, AND IN NO EVENT SHALL ASPEN BE LIABLE TO THE SELLER FOR ANY PUNITIVE OR EXEMPLARY DAMAGES.

**23. MISCELLANEOUS.** (a) These Terms, the Purchase Order and the parties' performance hereunder shall be governed by, construed and interpreted in accordance with the internal laws of the State of Wisconsin without regard to those provisions relating to conflicts of laws.; (b) ASPEN's failure to insist on performance of any of the terms of these Terms or a Purchase Order, its failure to exercise any right or privilege or its waiver of any breach hereunder, shall not effect a waiver of any other right or privilege whether of the same or similar type; (c) the invalidity or unenforceability of any provision of a these Terms or a Purchase Order shall not affect the validity or enforceability of any other provisions of these Terms or a Purchase Order; (d) Seller agrees that any disputes between it and ASPEN relating to these Terms or a Purchase Order shall be heard before the courts situated in the State of Wisconsin; and (e) no arbitration provision in any of Seller's documents shall be binding on ASPEN.