

# AMERICAN SHORING INC.

## TERMS AND CONDITIONS FOR SALES OF GOODS AND SERVICES

THIS AGREEMENT between SELLER and the party denoted on the front side of this invoice as Purchaser ("PURCHASER") is subject to the following terms and conditions:

### 1. Acceptance; Cancellation.

This Agreement shall be deemed accepted by SELLER at the time and on the date when this acknowledgement or invoice is deposited in the United States mail or is otherwise dispatched from SELLER'S plant, warehouse or office in New York. This order becomes non-cancellable as of such dispatch unless (a) SELLER shall consent to cancellation in writing and (b) PURCHASER pays a minimum charge of 15% of the price of the cancelled portion of the order plus the costs of any special parts manufactured or purchased specifically for that portion of this Agreement which has been cancelled, plus any sales expenses incurred by SELLER, plus all transportation and carrier charges incurred incident to the cancellation.

### 2. Price.

All prices are subject to change should SELLER'S labor or material costs increase, and PURCHASER acknowledges that SELLER'S prices may be adjusted to reflect such cost increases at the time of shipment or rendering of services, as the case may be. All prices for goods are F.O.B. place of shipment, unless otherwise specified on the face hereof. The price herein does not include any duties or sales, use, excise, or similar taxes, now or hereafter in effect, and PURCHASER assumes full responsibility for payment of all such duties and taxes. All storage charges which may be incurred while goods are in the possession of a common carrier are the responsibility of PURCHASER.

### 3. Payment.

All payments are to be made in United States currency. Notwithstanding any payment terms as may be set forth elsewhere in this Agreement, SELLER reserves the right to restrict or revise such terms or to require payment in advance of shipment or performance of services if, in SELLER'S reasonable opinion, PURCHASER'S financial condition or other circumstances warrant such revised terms and/or additional security for payment.

### 4. Fair Labor Standards Act.

"We hereby certify that these goods were produced in compliance with all applicable requirements of Sections 6, 7, and 12 of the Fair Labor Standards Act, as amended, and of regulations and orders of the United States Department of Labor issued under Section 14 thereof."

### 5. Inspection and Warranty of Goods.

PURCHASER shall inspect all goods promptly upon receipt thereof. SELLER warrants that goods shall conform to the description on the face hereof and are produced in compliance with Acceptance Quality Level Standards of the **American Welding Society, ASME and OSHA's 29 CFR Part 1926 Subpart P-Excavation; Final Rule**. This warranty shall in any event expire six (6) months after delivery, and, after such time, SELLER shall have no further liability hereunder. Any action to enforce such warranty must be commenced within one (1) year after the date of delivery. THIS WARRANTY IS GIVEN IN LIEU OF ALL OTHER EXPRESS AND IMPLIED WARRANTIES, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, WHICH ARE EXPRESSLY EXCLUDED. PURCHASER'S SOLE AND EXCLUSIVE REMEDIES WITH RESPECT TO NONCONFORMING GOODS AND BREACH OF WARRANTY ARE HEREINABOVE SET FORTH.

### 6. Warranty of Services.

SELLER represents and warrants to PURCHASER that any engineering or other services provided under this Agreement shall be furnished using personnel of required skill, experience, and qualifications and in a professional and workmanlike manner in accordance with industry standards for similar services. EXCEPT FOR THE EXPRESS WARRANTIES IN THIS PARAGRAPH 6, SELLER (A) DISCLAIMS ALL WARRANTIES, EITHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE UNDER THIS AGREEMENT, AND (B) SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT.

### 7. Shipment and Delivery of Goods.

Delivery, shipment and installation dates are estimated dates only. No allowance is made, nor shall SELLER be liable directly or indirectly for delays of carriers or delays caused by labor difficulties, shortages, strikes, stoppages, fires, accidents, failure or delay in obtaining materials or manufacturing facilities, acts of any government affecting seller in any way, bad weather, acts of God, forces of nature, or any other causes beyond SELLER'S control. In all of the foregoing events, PURCHASER'S sole remedy shall be an appropriate extension of the estimated delivery date. Unless otherwise specified on the face hereof, delivery may be made in several lots, in which case PURCHASER shall pay, upon the tender of each lot, that portion of the purchase price bearing the same ratio to the whole purchase price as the quantity of each lot bears to the entire order. Unless otherwise specified on the face hereof, goods will be boxed or crated as SELLER may deem proper for protection against normal handling, and extra charge will be made for preservation, waterproofing and similar added protection of goods. Routing and manner of shipment will be of SELLER'S discretion. Goods may be insured at PURCHASER'S expense, value to be stated at order price. In the absence of a separate "Ship to" designation on the face hereof, SELLER is authorized to ship to PURCHASER'S address shown on the face hereof. SELLER may decline to deliver or stop goods in transit if, in SELLER'S reasonable opinion, PURCHASER'S financial condition or other circumstances warrant revised payment terms (e.g., full or partial advance payment) or additional security for payment.

### 8. Risk of Loss.

Identification of the goods subject to this Agreement, under the Uniform Commercial Code, occurs upon SELLER'S transmittal of this invoice to PURCHASER. Risk of loss of or damage to the goods shall pass to PURCHASER upon delivery by SELLER to the initial carrier, notwithstanding any right of PURCHASER to cancel or return goods under Paragraph 1 hereof. In the event SELLER is forced to delay delivery of the goods to the initial carrier, due to any action or request of the PURCHASER, risk of loss shall have passed upon the date SELLER would have otherwise delivered the goods to the initial carrier, and PURCHASER agrees to pay all reasonable storage and insurance charges specified by SELLER. In the event goods are returned pursuant to Paragraph 5 hereof, risk of loss shall remain upon the PURCHASER until the goods are delivered to SELLER'S plant. PURCHASER agrees to indemnify and hold harmless SELLER from any loss of or damage to the goods, or consequences thereof, sustained while the risk of such loss or damage remains upon PURCHASER.

### 9. Special Manufacture.

In the event that the goods hereunder are indicated as "Special Manufacture" on the face hereof, the following terms apply, cumulatively with all other terms hereof except that the terms of this Paragraph 10 shall supersede any conflicting terms hereof. The equipment and materials

manufactured by SELLER under Special Manufacture terms shall be manufactured in substantial conformance with the specifications furnished by PURCHASER. PURCHASER shall indemnify, save and hold harmless SELLER from any and all claims, demands, liabilities, damages and costs resulting from or connected with any claim of intellectual property infringement arising out of the manufacture by SELLER of said goods or any claim that the goods manufactured by SELLER or the items into which the goods are incorporated are defective with respect to their design or function

### 10. Provision of Engineering or other Services.

PURCHASER shall cooperate with SELLER in all matters relating to any engineering or other services purchased under this Agreement, including but not limited to: responding promptly to any SELLER request to provide direction, information, approvals, authorizations, or decisions that are reasonably necessary for performance of the services; ensuring that all information provided to SELLER is complete and accurate in all material respects; and permitting access to PURCHASER'S premises or other location which is the subject of the services.

### 11. Confidential Information.

PURCHASER agrees not to disclose or otherwise make available any Confidential Information of SELLER to any third party without SELLER'S prior written consent; provided, however, that PURCHASER may disclose such Confidential Information to its officers, employees, consultants, agents and legal advisors who have a "need to know" and who have been apprised of this restriction; and further agrees to promptly notify SELLER in the event PURCHASER becomes aware of any loss or disclosure of any of SELLER'S Confidential Information. For purposes of this Agreement, "Confidential Information" means any information that is treated as confidential by SELLER, including but not limited to all non-public information about its business affairs, products or services, intellectual property rights, trade secrets, third-party confidential information, and other sensitive or proprietary information, whether or not marked, designated, or otherwise identified as "confidential". Confidential Information shall not include information that: (a) is already known to PURCHASER without restriction on use or disclosure prior to receipt of such information from SELLER; (b) is or becomes generally known by the public other than by breach of this Agreement by, or other wrongful act of, PURCHASER; (c) is developed by PURCHASER independently of, and without reference to, any of SELLER'S Confidential Information; or (d) is received by PURCHASER from a third party who is not under any obligation to SELLER to maintain the confidentiality of such information.

### 12. Remedies.

PURCHASER'S remedies with respect to defective or nonconforming goods are solely limited to those set forth under Paragraph 5 hereof. In the event of PURCHASER'S failure to make any payment required under this Agreement when due, or upon other material breach of this Agreement, the entire unpaid balance of the contract price shall become immediately due and payable as a condition precedent to any further obligation or performance by SELLER under this Agreement. SELLER may take all lawful measures to remedy and/or mitigate any damages suffered as a result of PURCHASER'S breach, including taking possession and disposing of any goods without notice or demand, and retain all monies previously paid thereon as liquidated damages representing compensation for the reasonable use and/or rental value of such goods. PURCHASER hereby waives all claims, damages and demands against SELLER arising out of or related to any such retention or repossession of such goods.

### 13. LIMITATION OF LIABILITY.

PURCHASER WAIVES ANY AND ALL CLAIMS FOR LOSS OF USE, REVENUE OR PROFIT, OR FOR CONSEQUENTIAL, SPECIAL, INDIRECT OR PUNITIVE DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT OR ANY GOODS OR SERVICES PURCHASED HEREUNDER, WHETHER OR NOT PURCHASER WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL SELLER'S LIABILITY FOR THE PROVISION OF SERVICES EXCEED THE AGGREGATE AMOUNTS PAID OR PAYABLE TO SELLER FOR SUCH SERVICES. THE LIMITATIONS OF LIABILITY SET FORTH HEREIN APPLY REGARDLESS OF THE NATURE OF THE CLAIM, WHETHER ARISING IN CONTRACT OR TORT, NEGLIGENCE, GROSS NEGLIGENCE, STRICT LIABILITY, FUNDAMENTAL BREACH, INTELLECTUAL PROPERTY OR OTHERWISE.

### 14. OSHA Compliance.

The Buyer represents and warrants that it will have a Competent Person in charge of any premises where goods purchased hereunder will be used in an excavation, and that such Competent Person will ensure compliance with all OSHA Regulations and safety requirements, particularly, OSHA Federal Register, 29 CFR Part 1926, Subpart P, Excavations, Final Rule.

### 15. Late Fees; Collection Costs.

A late fee, representing 1.5% of any unpaid balance ("Late Fee"), shall be applied to any balance not paid in full within (30) days after the due date; an additional Late Fee shall be applied on the first day of each succeeding month thereafter until such balance is paid in full. PURCHASER agrees to pay reasonable all attorney fees, collection fees, court costs and any other expenses incurred by SELLER in collecting any charges under this Agreement, in repossessing any goods or otherwise in enforcing the terms of this Agreement.

### 16. Integration and Modification.

This writing represents the sole and complete agreement between SELLER AND PURCHASER with respect to the goods and/or services identified in this Agreement. Acceptance of, or acquiescence in, any course of performance rendered under this or any prior agreement shall not be relevant or admissible to determine the meaning of this agreement even though the accepting or acquiescing party has knowledge of the nature of the performance and an opportunity to make objection. No representations, understandings, or agreements have been made or relied upon in the making of this Agreement other than those specifically set forth herein. This agreement can only be modified by a writing signed by all of the parties hereto or their duly authorized agents. SELLER does not, by acceptance of payment or otherwise, accept any terms or conditions other than those contained herein. SELLER shall not be bound by any different or additional provision(s), such as may appear in PURCHASER'S purchase order, unless such different or additional provisions are expressly agreed to in writing signed by SELLER. Acceptance of goods and/or services by PURCHASER shall constitute assent to these terms and conditions.

### 17. Applicable Law; Jurisdiction.

This Agreement shall be governed, construed and interpreted in accordance with the laws of the State of New York. PURCHASER agrees that the Supreme Court of the State of New York in and for the County of Orange shall have jurisdiction over any claim at law or equity which either party may have against the other and each party hereby consents the jurisdiction of that court to determine any such claim.