



# Anaconda Equipment Int Ltd & Anaconda USA Inc

## TERMS & CONDITIONS OF SALE

### 1.1 PARTIES TO A LEGALLY BINDING AGREEMENT

We, Anaconda, are extending and offering for sale, goods and/or services to you. The particular goods and/or services being offered are described in more detail in the attached quotation. The following terms and conditions explain certain details of our offer. If you accept our offer and these terms, we will both become parties to a legally binding agreement. The terms of this agreement prevail over any terms or conditions contained in any other documentation and expressly exclude any of your general terms and conditions contained in any purchase order or other document issued by you, which are hereby rejected. Fulfillment of your order does not constitute acceptance of your terms and conditions and does not serve to modify or amend this agreement.

### 1.2 OWNERSHIP OF MATERIALS WE MAY PROVIDE

We may provide you with quotations, estimates, prints, drawings, sketches, models, samples, tools, computer or other apparatus programs, technical or business information, or data. Although we provide the materials and/or programs for your use, they remain our property. You promise that you will keep such materials and/or programs strictly confidential and that neither you, nor any of our employees, nor anyone else, will disclose the materials without our prior permission. If you choose not to accept our offer or if our agreement is cancelled for any reason, we may ask you to return any materials previously provided to you. If we ask you to return materials, you promise to do so promptly and at your own expense.

### 1.3 CANCELLATION OF THE AGREEMENT; TERMINATION COSTS

If you accept this quotation and offer (so long as it has not previously been rescinded by us) it becomes a legally binding agreement between us. Neither of us may cancel this agreement unless we both agree in writing to cancel it. If you decide to cancel this agreement without first reaching a new written agreement with us, or if you fail to pay us any money you owe us under this agreement, or if you fail to fulfill any of your promises you made by accepting this agreement, we may treat the order as having been wrongfully terminated by you. If you terminate the order without reaching a new agreement with us first, you agree to pay us ten (10%) percent of the original price you agreed to pay us.

#### IF SOLD BY ANACONDA EQUIPMENT INT LTD TO YOU:

If you refuse to pay us the damages for which you are liable, you agree that we may collect from you any incidental expenses we may incur in recovering the damages from you, including court costs, legal fees, and any other incidental expenses authorized under UK law. You agree that we may cancel any order or require full or partial payment in advance by you if you file for bankruptcy, if your solvency is in question, or if a trustee or receiver is appointed for you.

#### IF SOLD BY ANACONDA USA INC TO YOU:

If you refuse to pay us the damages for which you are liable or any other amounts owed by you, you agree that we may collect from you any incidental expenses we may incur in recovering such amounts from you, including court costs, attorneys' fees, and any other incidental expenses authorized under applicable law. You agree that we may cancel any order or require full or partial payment in advance by you if you file for bankruptcy, if your solvency is in question, or if a trustee or receiver is appointed for you.

### 1.4 PRICES AND TERMS OF PAYMENT

Our prices are free carrier (FCA) at our designated facility (Incoterms 2020), unless stated otherwise in the attached quotation, or otherwise agreed upon in writing by us. Free carrier prices do not reflect any cost for delivering the item to your location. You will be responsible for any delivery costs if you need us to ship the goods to you. If we quoted you delivered prices, they are based on carrier rates in effect at the time of our quote for delivery to your delivery point. Should the carrier's rates be changed, you agree to be responsible for any increase. Any decrease in rates will be deducted from the delivered price we quoted.

The prices we quoted in this offer will remain in effect for thirty (30) days unless we stated otherwise in the attached quotation. We reserve the right to increase or decrease prices at any time to allow for changes in our cost of labor, materials and/or other manufacturing costs after thirty (30) days have passed.

If the prices we quoted are subject to any Sales or Excise taxes, use or Manufacturer's tax imposed by Federal, State, Municipal or other Government authorities upon the sale, use, and/or manufacture of the goods being offered, the amount of such taxes will be added to our quoted prices. Our quoted prices do not include any such taxes. If you accept this offer, you agree to pay such taxes even if the statute imposing the tax places the tax on us.

We reserve the right to require a partial advance cash payment with any order.



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Our payment terms are Net Monthly Account (NMA) unless documented so on the sales order acknowledgement or invoice and agreed upon in writing. Net Monthly Account means that you promise you will pay your bill within the month in which our invoice is dated. Invoices issued within the last five working days of any month will bear the following month's date. We reserve the right to require stage payments. If you offer as payment a cheque or other note, such offer will not be considered a payment unless and until converted into cleared funds

### 1.5 RESERVATION OF TITLE; RIGHTS OF OWNERS OF LAND WHERE EQUIPMENT IS LOCATED; PROVISIONS FOR INSURANCE AND SECURITY INTEREST

We retain title to any equipment, machinery and materials sold to you until you have made all payments in cleared funds in accordance with the terms of our agreement and any other obligations arising out of our agreement have been settled. You agree to complete all acts and execute all papers necessary including without limitation security agreements, financing statements, conditional sales, chattel mortgages, notes, and/or any other papers which may be required to preserve title with us. You agree not to sell any such equipment, machinery or materials, until title has passed to you. You also agree not to contest the validity or scope of our title or rights in such equipment, machinery or materials prior to the title passing to you.

If you fail to make a payment under this agreement or fail to fulfill any of your obligations under this agreement, we may at any time repossess the equipment, machinery and or materials covered by this agreement. We may do so by entering onto the premises where the equipment, machinery or materials are located. We may do so in person or may direct a third party to do so on our behalf. We may do so without undertaking any legal process whatsoever. You agree that we may not be held legally liable by you for repossessing the equipment, machinery or materials. You also agree that we will not be required to return any money that you have paid in part for the equipment, machinery or materials.

You agree that the equipment, machinery, or material will not become a fixture by reason of its being attached to the real estate where it is located. It may be separated from the real estate, and we may reclaim and/or sell it in accordance with the terms of this agreement. So long as we safely remove the equipment, you agree that we will not be held legally liable for doing so.

Neither you, nor the owner of the real estate where the equipment, machinery, or materials are located, nor the mortgagee of the real estate, nor anyone with a prior encumbrance of the real estate will have any right, title, claim or interest in the equipment, machinery, or materials whatsoever by virtue of its attachment to the real estate. While title remains with us, no one may remove the equipment, machinery, or materials from the real estate without our prior permission.

While title remains with us for the equipment, machinery, or materials, you agree to fully insure it at your own expense. The insurance must cover all casualties and hazards including, but not necessarily limited to, fire, flood, tornado, collision, upset, riot, or other civil disturbance, vandalism, or act of terrorism.

You agree that we have reserved title in the equipment, machinery, and materials for security purposes. By accepting this agreement, you irrevocably authorize us to execute and deliver in your name and on your behalf all documents necessary to identify, secure, and perfect our reservation of title and security interest, including a financing statement.

You agree to inform us immediately in writing of any seizure or other act of intervention by third parties relating to the equipment, machinery, or materials that may affect our security interest in them.

### 1.6 DELIVERY OF THE ORDER

All equipment, machinery or materials sold free carrier (FCA) are considered delivered to you when they are loaded on to a carrier's truck at our designated facility. Once delivery occurs when they are loaded on to the carrier's truck at our designated facility, you are responsible for any claim for loss or damage, that is, the risk of loss or damage falls to you and not us. You will have to make and pursue any claim yourself against the freight carrier. If a shipment is short or in error, we will correct the problem if you contact us in writing within ten (10) days after you received the shipment.

If you choose to delay the shipment for any reason, you assume all risks once we notify you that the equipment, machinery, or materials are ready for shipment. You will still be responsible for making all payments in accordance with the terms of this agreement regardless of when your order is shipped. If we incur any additional expenses because of a delay in shipment or changes to your order made when completing your order, you will be responsible for compensating us for such expenses.

### 1.7 DELAYS BEYOND OUR CONTROL; ESTIMATED SHIPPING DATES

You agree that we may not be held responsible for any loss or damages resulting from a delay or failure to make delivery due to damages to the equipment, machinery, or materials occurring in transit, whether or not it was within our control. You agree that we will not be held responsible for any loss or damages resulting in a delay or failure to make delivery because of priorities or other regulations or orders of any governmental authority, agency, or instrumentality. You agree that we will not be held responsible for any loss or damages resulting in a delay or failure to make delivery due to a failure to obtain labor, a labor dispute, riot, civil disturbance or insurrection, fire, act of God, act of a Public enemy, or any other cause outside our control. The same will be true whether any of the events just described affected us directly or affected one or more of our suppliers or freight carriers.

You agree that we will not be held responsible if we cannot complete your order if events beyond our control occur that make it impossible or commercially unreasonable for us to complete your order, including acts of God or "force majeure events," or raw material shortages.

Unless we agree otherwise, any shipment dates that we may provide to you before we actually ship your order are only best estimates based upon current shipping schedules and promises from our suppliers. You agree that any such shipment dates will not be considered fixed or guaranteed shipping dates.



# Anaconda Equipment Int Ltd & Anaconda USA Inc

## TERMS & CONDITIONS OF SALE

Our performance under this agreement is contingent on you timely fulfilling all of your obligations under this agreement, including your payment obligations. These obligations include supplying all documents and approvals needed for us to perform, including but not limited to technical information and data, drawing and document approvals, and necessary commercial documentation. We may request a change order for an equitable adjustment in prices and times for performance, as well as for any additional costs or any delay resulting from the failure of you or your contractors, successors or assigns to meet these obligations.

### 1.8 LIMITATION OF LIABILITY

The parties agree to indemnify the other party and its servants and agents from and against any and all actions, claims, demands, cost, losses, damages, and expenses which may be brought against the other party as a result of any act or omission, negligent or otherwise, by each other. Neither party will be liable to the other for any loss of profits, loss of production or consequential or indirect loss or damages. McLanahan's liability in respect of any claim whether under this Agreement or otherwise shall be limited to the value of any insurance policy McLanahan is required to maintain under this agreement or 5% of the value of the relevant Purchase Order whichever the greater.

### 1.9 LIMITED WARRANTY

We warrant that the equipment, machinery, or materials we sold to you will be free from defects in material and workmanship, and that they will perform in accordance with the statements as outlined in your order to the extent we agreed to them in our acknowledgment of your order. However, we do not warrant component parts, which are subject to normal wear and tear or are designed to be replaced or renewed as part of the routine maintenance of the machinery. Our obligations under this Limited Warranty are limited however, to replacing but not installing, free carrier (FCA) at our designated facility, the replacement part or parts in which substantial defects in material or workmanship shall appear under normal use and service within one (1) year of the date of shipment. Our obligations under this Limited Warranty only apply if the machinery is kept properly maintained and is operated in accordance with our instructions and established engineering practice. Also, if you wish to make a claim under this Limited Warranty, you must notify us in writing of the existence of a defect within ten (10) days after the defect appears. At our choice, any parts replaced under this Limited Warranty become our property, and you promise that you will follow our instructions regarding the disposition of any parts that are replaced, whether that includes returning such parts to us or discarding such parts.

If you are unable to make the equipment perform as it should, you must immediately notify us. Your notification should include a description of the difficulties you encountered with the equipment. You promise to give us a reasonable amount of time to assist you in making the equipment work satisfactorily. You also promise to provide all possible amicable assistance in order to make the equipment work satisfactorily.

You agree that we will not be charged for, or held responsible for, any alterations or repairs made to the machinery unless you first obtained our written consent and approval in advance. If the equipment cannot be made to fulfill the warranty, we will reload the equipment on the carrier and pay the freight for returning the shipment. You promise not to hold us liable for any damages, expenses of unloading and reloading, or freight from our location to you.

THIS LIMITED WARRANTY IS GIVEN ONLY TO YOU, AND DOES NOT EXTEND TO ANY SUBSEQUENT BUYER OR TRANSFEREE OF OUR PRODUCTS. YOU AGREE THAT UNDER NO CIRCUMSTANCES WILL WE BE LIABLE FOR ANY CONTINGENT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO ANY LOSS OF TIME, LOSS OF GOOD WILL, LOSS OF PROFITS, ANY DAMAGE TO GOODS BEING PRODUCED, OR ANY OTHER COSTS OR EXPENSES OF ANY KIND OR NATURE RESULTING FROM A BREAKAGE, BREAKDOWN OR MALFUNCTIONING OF ANY OF THE PRODUCTS OR EQUIPMENT SOLD TO YOU BY US.

### 1.10 DISCLAIMER OF EXPRESS AND IMPLIED LAW

Except for the Limited Warranty set forth in section 1.9, we make no express or implied warranties of merchantability, fitness, or particular purpose or warranties by affirmation, promise, description, sample, or any other type of warranty except as described in this agreement. There are no warranties extending beyond the description set forth in this agreement.

### 1.11 DESIGN CHANGES

We reserve the right to make changes in the design of any of our products. If we elect to make such changes, we are not obliged to notify you or make any changes to products we previously sold to you.

### 1.12 COMPLIANCE WITH THE LAW

You shall at all times comply with all laws applicable to this agreement, your performance of your obligations hereunder and your use or sale of the goods and services, including the laws of the United States, applicable international law, and the laws of the destination country in connection with the purchase and use of any products we sell to you. You also agree to cooperate with us as well as with any United States government agency or instrumentality or other international or foreign governing body to assist us in complying with all applicable export control regulations. Without limiting the generality of the foregoing, you shall (a) at your own expense, maintain all approvals, certifications, credentials, licenses, and permits necessary to conduct your business relating to the purchase or use of the goods and services and (b) not engage in any activity or transaction involving the goods or services, by way of shipment, use or otherwise, that violates any applicable law. Our obligations to fulfill your order under this agreement are subject to the condition that fulfillment will not be in violation of any United States laws or other international laws or the laws of the destination country.



# Anaconda Equipment Int Ltd & Anaconda USA Inc

## TERMS & CONDITIONS OF SALE

If for any reason the order cannot be fulfilled due to a failure by you to obtain proper authorization to export your order, we reserve the right to cancel the order. If the order is cancelled for this reason, you will be responsible for damages equal to the damages described above that would have been due under this agreement just as if you had elected to voluntarily terminate the order without first reaching a mutual agreement with us.

### 1.13 SEVERABILITY

If any provision of this agreement is deemed invalid, illegal, or unenforceable, the other provisions of this agreement will remain in force.

### 1.14 ENTIRE AGREEMENT

If you accept these terms and conditions, you agree that together with the quotation attached to these terms and conditions, these documents will constitute the entire agreement between us.

### 1.15 ASSIGNMENT OF THIS AGREEMENT

You agree that we may assign this agreement to a third party without your permission and without notifying you in advance. If we choose to assign this agreement to another party (an assignee), you agree that you will not consider us to be an agent of the assignee for any reason. If this agreement is assigned, you promise to make any future payments due under this agreement to the assignee. By accepting our offer, you waive any rights you now have or may have against us to make any defence, counterclaim, or cross complaint in the event the assignee brings legal action against you to recover for payments or to repossess the equipment, machinery, or materials. You also agree that any claims you may have against us will be independent of any action brought by the assignee against you. You may only assign this agreement if you first obtain our prior written consent.

### 1.16 OFAC REPRESENTATIONS AND WARRANTIES

You are in compliance with the International Emergency Economic Powers Act (50 U.S.C. § 1701) and all other laws administered by Office of Foreign Assets Control of the US Treasury Department or any other governmental authority imposing economic sanctions and trade embargoes ("Economic Sanctions laws") against countries ("Embargoed Countries") and individuals or entities designated in such Economic Sanctions laws (collectively, "Embargoed Targets"). You are not an Embargoed Target or otherwise subject to any Economic Sanctions law. Further, you shall comply with all Economic Sanctions laws. Without limiting the generality of the foregoing, you shall not: (a) directly or indirectly export, re-export, transship, or otherwise deliver the goods or services or any portion of the goods or services to an Embargoed Target; or (b) broker, finance, or otherwise facilitate any transaction in violation of any Economic Sanctions law. Likewise, you will not take any action that would cause us to be in violation of any Economic Sanctions laws, and you agree that we will not be required to take any action, such as providing assistance with training or service of a product that we sell to you under this agreement, or any other action, that would result in us committing a violation of any Economic Sanctions law.

### 1.17 FOREIGN CORRUPT PRACTICES ACT

You and your affiliates, employees, officers, directors, partners, shareholders, agents, attorneys, third-party advisors, successors, and permitted assigns ("Representatives") are in compliance with the Foreign Corrupt Practices Act of 1977, as amended ("FCPA"). Neither you nor any of your Representatives has: (a) used any corporate funds for any unlawful contribution, gift, entertainment, or other unlawful expense relating to political activity or to influence official action; (b) made any direct or indirect unlawful payment to any foreign or domestic government official or employee from corporate funds; (c) made any bribe, rebate, payoff, influence payment, kickback, or other unlawful payment; or (d) failed to disclose fully any contribution or payment made by you (or made by any Person acting on your behalf of which you are aware) that violates the FCPA. Without limiting the generality of the foregoing, you shall, and shall cause your Representatives to, comply with the FCPA, including maintaining and complying with all policies and procedures to ensure compliance with the FCPA.

### 1.18 PRIVACY

By accepting this agreement, you acknowledge that you understand and agree to the Anaconda terms of the Equipment Data Privacy Notice, found in the Anaconda Corporation Privacy Policy ([https://s3.amazonaws.com/mclanahan.com/files/McLanahan-PrivacyPolicy-09\\_19.pdf?mtime=20180924160139](https://s3.amazonaws.com/mclanahan.com/files/McLanahan-PrivacyPolicy-09_19.pdf?mtime=20180924160139)).

YOU ACKNOWLEDGE AND AGREE THAT WE MAY USE REMOTE MONITORING DEVICES TO COLLECT INFORMATION REGARDING THE EQUIPMENT THAT YOU PURCHASE. THE INFORMATION WE COLLECT IS NOT PERSONAL DATA. WE DO NOT ACTIVELY MONITOR THE DATA WE COLLECT FROM THE EQUIPMENT IN REAL TIME. THEREFORE, NO ONE SHOULD RELY, OR IN ANY WAY DEPEND, ON US TO ACT IN REAL TIME BASED UPON THE INFORMATION WE OBTAIN. THE COLLECTION OF THIS DATA IS NOT A SUBSTITUTE FOR THE SAFE OPERATION AND MAINTENANCE OF THE EQUIPMENT AT ALL TIMES, AND IS NOT TO BE RELIED UPON FOR THE DISPATCH OF EMERGENCY ASSISTANCE. WE MAY USE THE INFORMATION COLLECTED TO INVESTIGATE AND DEFEND OURSELVES FROM CLAIMS OR ALLEGATIONS BROUGHT BY YOU OR THIRD PARTIES.



# Anaconda Equipment Int Ltd & Anaconda USA Inc

## TERMS & CONDITIONS OF SALE

### 1.19 GOVERNING LAW; DISPUTE RESOLUTION; SUBMISSION TO JURISDICTION

#### IF SOLD BY ANACONDA EQUIPMENT INT LTD TO YOU:

We agree that the law of the United Kingdom will govern this agreement. You promise that before you seek to bring a legal claim against us you will first attempt to negotiate in good faith a resolution to any dispute arising out of this agreement. We will have thirty (30) days to conduct such negotiations prior to you filing suit. If we fail to achieve resolution of your dispute after negotiating in good faith, and if you decide to bring a law suit against us, you agree that such a suit may only be brought in the United Kingdom. If we are required for any reason to bring legal action against you, you agree to submit to the exclusive jurisdiction of the courts of the United Kingdom.

#### IF SOLD BY ANACONDA USA INC TO YOU:

We agree that the law of the Commonwealth of Pennsylvania will govern this agreement. You promise that before you seek to bring a legal claim against us you will first attempt to negotiate in good faith a resolution to any dispute arising out of this agreement. We will have thirty (30) days to conduct such negotiations prior to you filing suit.

#### **For domestic sales:**

If we fail to achieve resolution of your dispute after negotiating in good faith, and if you decide to bring a law suit against us, you agree that such a suit may only be brought in Blair County, Pennsylvania court. If we are required for any reason to bring legal action against you, you agree to submit to the exclusive jurisdiction of the courts of the Commonwealth of Pennsylvania.

#### **For international sales:**

All disputes arising out of or in connection with this agreement shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce (the "Rules") by one or more arbitrators appointed in accordance with the said Rules, with any such arbitration to be held in Blair County, Pennsylvania. You hereby irrevocably waive any objection that you may have to the venue of any such proceeding. You represent and warrant that (a) your agreement to submit to arbitration is valid and legally binding on you under the laws of your country of incorporation, registration and/or residency (the "Country"), and (b) you are subject to suit in the courts of the Country and that, under such laws, the courts of the Country would recognize as a valid judgment any monetary awards obtained pursuant to arbitration or any final and conclusive civil judgment for monetary or equitable claims obtained in any federal or state court in Blair County, Pennsylvania against you related to this agreement. Pursuant to Article 6 of the United Nations Convention on Contracts for the International Sale of Goods ("U.N. Convention"), the parties agree that the U.N. Convention shall not apply to this agreement.