

# Hennigan Engineering LLC Proposal Terms

## Terms

Unless General Service Agreements or other terms are currently in place between the Customer and Hennigan Engineering LLC the below terms are presented to cover the scope of services listed in the attached proposal.

### **HENNIGAN ENGINEERING LLC STANDARD TERMS AND CONDITIONS OF SERVICE**

- 1. GENERAL:** These standard terms and conditions and the variable terms contained in the quote accompanying these standard terms (collectively, the "Agreement") govern the sale of services ("Services") provided to the customer identified ("Customer") by Hennigan Engineering LLC ("Contractor"). The Agreement comprises an offer or counter-offer by Contractor, not an acceptance of any offer made by Customer; and Contractor's willingness to provide Services to Customer is expressly conditioned upon Customer's assent to these standard terms and conditions. Contractor objects to any additional or different terms contained in any purchase order or other communication previously or hereafter provided by Customer to Contractor. No such additional or different terms or conditions will be of any force or effect. The Agreement will be the entire agreement between Contractor and Customer on the subject of the sale of Services by Contractor to Customer; and there are no conditions to that agreement that are not expressly contained in the Agreement. The Agreement may not be canceled by Customer.
- 2. PRICE AND DELIVERY:** The price(s) for the Services will be those listed in the Purchase Order, and shall expire thirty (30) days from the date thereof (unless otherwise specified in the Purchase Order), subject to increase for any additional costs incurred by Contractor due to the acts or omissions of Customer or any of its other contractors. If the price(s) for the Services have expired, then the prices(s) for the Services shall be the then-current prices for services similar to such Services generally in effect at the time Contractor performs the Services. Except as otherwise stated in the Purchase Order or agreed in writing between Contractor and Customer, all prices shall exclude taxes, fees, duties and levies, which shall be payable by Customer. For Services performed at Contractor's premises, Customer is responsible for arranging delivery and pick-up of the unit immediately following completion of the Services and assumes all costs and risk of loss associated with such.
- 3. TIMING OF PERFORMANCE:** All dates for performance of Services are approximate. Further, Contractor shall not be responsible for delays or failures in the performance of Services, and reserves the right to cancel or delay any performance, due to causes beyond its reasonable control, including but not limited to shortages of supplies, actions of government agencies, acts of nature, acts by Customer or any of its other contractors, fires, strikes, or other labor difficulties, wars, hostilities or terrorist acts, embargoes, equipment breakdown, or inability to obtain necessary labor, material or manufacturing facilities. In the event of such delay, and assuming that Contractor chooses not to cancel due to such cause, the date of performance shall be extended for a period equal to the time lost by reason of the excused delay.
- 4. PAYMENT:** Except as otherwise agreed to in writing by Contractor or specified in the Purchase Order, payment shall be made, in U.S. Dollars, in full within thirty (30) days of the date of Contractor's invoice to Customer at the conclusion of performance. The due date for any payment is not subject to Customer's inspection or acceptance of the Services. Late payments shall incur a charge at the rate of one and one-half percent (1.5%) per month, or the maximum allowed by law, whichever is less. Contractor may require payment in advance of performance, a letter or credit or other security for payment if Contractor determines that such terms are required to assure that Contractor will be paid in full for Services.
- 5. LIMITED WARRANTY BY CONTRACTOR:** Contractor represents and warrants that any Services that it provides to Customer will be performed in accordance with generally accepted industry standards of care and competence. Any claim for breach of this limited warranty must be made within ninety (90) days after Customer puts the unit that was provided the Services into use or one (1) year, whichever is less; and Customer's sole and exclusive remedy (and Contractor's sole and exclusive liability) for any breach shall be for Contractor to either (a) re-perform the Services, or (b) provide Customer with a refund (the choice between those alternatives being in Contractor's sole discretion). Under no circumstances shall Contractor's liability to Customer for breach of the above warranty, or other breach of the Agreement, exceed the amount paid by Customer for the affected Services. This warranty does not apply to any defect or nonconformance caused by (i) the failure by Customer to provide a suitable storage, use, or operating environment or Customer's purchase of substandard quality

goods, (ii) Customer's use of the goods serviced for a purpose or in a manner other than that for which they were designed, (iii) the failure by Customer to follow any procedures established by Contractor or Customer's vendor of the goods serviced; or (iv) any other abuse, misuse or neglect of the goods by Customer. This warranty applies only to Customer and not to third parties. CONTRACTOR DISCLAIMS ALL OTHER REPRESENTATIONS, AND WARRANTIES EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES, INCLUDING BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

6. LIABILITY LIMITATION: CONTRACTOR SHALL IN NO EVENT BE LIABLE FOR INCIDENTAL, PUNITIVE, CONSEQUENTIAL, INDIRECT, SPECIAL OR OTHER, SIMILAR CATEGORIES OF DAMAGES, HOWEVER CAUSED AND REGARDLESS OF FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, EVEN IF CONTRACTOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. CUSTOMER UNDERSTANDS THAT ANY RISKS OF LOSS HEREUNDER ARE REFLECTED IN THE PRICE OF THE SERVICES AND THAT THESE TERMS WOULD HAVE BEEN DIFFERENT IF THERE HAD BEEN A DIFFERENT ALLOCATION OF RISK.

7. INSURANCE AND INDEMNIFICATION: Customer shall purchase and maintain property insurance on the site at which the Services are to be performed, for the full insurable value of that property and all improvements including but not limited to those that are the product of the Services. Such insurance shall insure against perils of fire and extended coverage and shall include "all risk" insurance for physical loss or damage (including but not limited to theft, vandalism and malicious mischief), and shall name Contractor as an additional insured to the extent that its interests appear. Customer shall indemnify, defend and hold harmless Contractor from and against any and all claims by Customer's employees and third parties, and all loss, liability and expense thereon, arising out of or relating to the presence of such persons at the site at which the Services are to be performed, including but not limited to the use of the goods serviced by Contractor.

8. GOVERNING LAW AND DISPUTE RESOLUTION: The Agreement shall be governed by and construed according to the laws of the State of Massachusetts, without reference to principles of conflicts of laws. Customer consents to the jurisdiction of the courts of the State of Massachusetts and waives any objection to venue in any court sitting in Massachusetts. In any legal action arising out of or relating to the Agreement, the prevailing party shall be entitled to recover from the other party its reasonable attorneys' fees and expenses. Any action by Customer against Contractor for Contractor's breach of the Agreement must be commenced within 12 months following the date of such breach.

9. MISCELLANEOUS: Modifications to the Agreement may be made only in writing, signed by an authorized corporate officer of Contractor. The waiver of any term or condition or any breach thereof shall not affect any other term or condition of the Agreement. In the event that any provision of the Agreement or portion thereof is found to be illegal or unenforceable, then the Agreement shall be construed without the unenforceable provision or portion thereof.

By affixing your signature and returning one signed copy to HENNIGAN ENGINEERING, I hereby accept the above quotation and its terms in total. I also affirm that I have the authority to make this acceptance on behalf of Hennigan Engineering

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(SIGNATURE)

\_\_\_\_\_  
(TITLE)

\_\_\_\_\_  
(DATE)

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(P O#)

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HENNIGAN ENGINEERING is the leader in performing plant performance maintenance activities and keeping operating components at or near design performance. We have the very best safety record in our industry and we are honored you have chosen us to work with your firm. We are committed to deliver the best service available in the industry today.