1. DEFINITIONS

"Seller" means McClaskey International Limited. "Buyer" means the person, firm, partnership, company or corporation to whom the Buyer or agrees to purchase the Goods from the Seller. "Goods" means the equipment, spare parts, materials and related technical documentation. "Contract" means the contract for the sale of goods between the Seller and the Buyer and the terms and conditions to which are set out herein. Contract includes only such documents as are expressly made part of this Contract by the Seller and the Buyer. Such documents may include Seller’s quotation, technical specifications, purchase order, purchase order confirmation, letter of award, applicable operator’s manual, and other attachments, but they do not include any other terms, conditions or documents, whether printed on a Buyer’s purchase order form or otherwise. Descriptions, illustrations and other information contained in catalogues, price lists and other literature issued by the Seller or on its behalf are intended to act as a general guide and description of the goods, and do not form a part of the Contract.

2. CONTRACT

2.1. Seller's quotations are not binding on the Seller and the Contract will only come into being upon execution of the Contract by both parties.

2.2. Tenders submitted by the Seller shall remain open for acceptance for a period of 30 days from the date of the tender, unless in the tender some other period is specified or accepted or the tender is withdrawn by the Seller.

2.3. These terms and conditions constitute the complete and exclusive Contract between the Buyer and Seller superseding all proposals and prior agreements, oral or written, and all other communications between the Buyer and Seller relating the subject matter hereof.

3. TITLE OF GOODS AND BUYERS RISK

3.1. The Goods shall remain the property of Seller until paid for in full to the extent that such retention of title is valid under applicable law. The retention of title shall not affect the passing of risk under the applicable delivery terms.

3.2. Until such time as the property/ownership in the Goods passes to the Buyer:
   i. Buyer shall keep the Goods separately and readily identifiable as the property of the Seller;
   ii. the Seller may (without prejudice to any other of its rights) retake possession of all or any part of the Goods and enter any premises for that purpose or authorize other to do so which the Buyer hereby authorizes;
   iii. Seller may (without prejudice to any other of its rights) require delivery up to it or any part of the Goods;
   iv. Each sub-clause of this Clause 3 is separate, severable and distinct and accordingly in the event of any of them being for any reason whatever unenforceable according to its terms, the others shall remain in full force and effect.

4. PRICE

4.1. Unless otherwise stated by the Seller, the prices specified are the Sellers ex-works price and do not include any costs transport incurred in the delivery of the Goods from the Seller’s works to the delivery address.

4.2. All sums payable under this Contract by Buyer to the Seller shall be paid free and clear of all deductions and withholdings for taxes, duties, levies or other charges imposed by the federal, state, regional or other government in the country of the Buyer or the site (if different) except as required by law. If any deduction or withholding is required by law, the Buyer shall on the payment due date pay to Seller such additional sum(s) as shall, after the making of the deduction or withholding, result in the payment to Seller of the net sum provided for in this Contract. The Buyer shall make all necessary tax or other returns and all necessary payments in relation to any such deduction or withholding and shall pay (and hold Seller harmless from liabilities for) any sum, payable as a result of any failure, delay or error in any such matter. The Buyer shall promptly provide the Seller with all appropriate certificates, receipts or other documents (whether or not issued by a taxing or other authority) evidencing the deduction or withholding.

4.3. The Seller may vary the prices expressed in the Contract to reflect any increase (for whatever reason) between the date of the Contract and the date of the Seller’s invoice.

5. PAYMENT

5.1. Time for payment shall be of the essence and failure to make any payment on the due date shall entitle the Seller to terminate the contract as repudiated and act accordingly. Without prejudice to the foregoing failure by the Buyer to pay for the Goods (whether under this or any other contract with the Seller) on the due date applicable thereto shall (without prejudice to any remedies which it may take) entitle the Seller to its option to cancel the sale of any undelivered Goods whether under this or any other Contract. The Seller may charge interest until payment at the rate of 12% per annum and this right shall accrue at such a rate after as well as before any judgment.

5.2. Payment shall be due immediately upon the commencement of any act or proceeding of an act or proceeding on which the Buyer’s solvency is involved. The Seller is entitled to recover the price of the Goods including Goods and not passed to the Buyer.

5.3. Tax and sales tax notwithstanding that delivery may not have taken place and property/ownership in the Goods has not passed to the Buyer.

5.4. The Buyer must make all necessary arrangements to inspect, examine and test all Goods to be supplied prior to such Goods being dispatched to the Buyer and immediately advise the Seller in writing of any defect or deficiency in the Goods prior to the dispatch to the Buyer. In the absence of any such notice under this sub-clause the Buyer thereby agrees to waive the right to reject the Goods.

6. WARRANTY

The Limited Product Warranty applicable to the Goods is set forth in the operator's manual supplied by the Seller at the time the delivery warranties are issued. The Seller makes no express warranties except those stated in the Limited Product Warranty section of the operator's manual in effect on the date of the invoice. Any such warranties will be effective and the Seller will be obliged to honour any such warranties only upon receipt of payment in full for the Goods to be warranted. THIS LIMITED WARRANTY IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, REPRESENTATIONS, GUARANTEES AND THE LIKE, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR ANY PARTICULAR PURPOSE, AND CONSTITUTES THE ONLY WARRANTY OF SELLER WITH RESPECT TO THE GOODS(S). THE REMEDIES PROVIDED HEREIN ARE BUYER'S EXCLUSIVE REMEDY AGAINST SELLER AND ITS SELLERS UNDER THE CONTRACT, WHETHER IN CONTRACT OR IN TORT OR UNDER ANY OTHER LEGAL OR CONTRACTUAL OR EXTRA-CONTRACTUAL BASIS OR THEORY, AND WHETHER ARISING OUT OF OR ARISING WITH RESPECT TO WARRANTIES, REPRESENTATIONS, INSTRUCTIONS, INSTALLATIONS OR DEFECTS FROM ANY CAUSE.

7. DELIVERY

7.1. Unless otherwise agreed, the Goods shall be delivered EXW Seller’s manufacturing plant (Incoterm 2010). Risk shall pass to the Buyer according to the delivery terms.

7.2. Dates quoted for delivery of Goods are approximate only and the Seller shall not be liable for any delay in delivery of the Goods however caused. The Buyer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery.

7.3. Delivery shall not be of the essence unless previously agreed by the Seller in writing.

7.4. If the Buyer fails to take delivery of the Goods or fails to give adequate delivery instructions at the time stated for delivery then, without prejudice to any other right or remedy which the Seller may have; the Seller may:
   a. store the Goods until actual delivery has taken place and charge the Buyer for such costs (including insurance) for storage;
   b. sell the Goods at best price readily obtainable and (after deducting reasonable storage, insurance and selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below to Contract price, or
   c. after 30 days of delay by the Buyer, by a written notice to the Buyer terminate the Contract in whole or in part for Buyer’s breach of contract, in which case the Seller is entitled to compensation for the loss it has suffered by reason of the Buyer's default.

8. FORCE MAJEURE

The Seller shall have no liability to the Buyer if its performance of the Contract is prevented or hindered by any cause whatsoever beyond the Seller’s reasonable control and in particular but without prejudice to the generality of the foregoing by Act of God, war, government control, restrictions or prohibition of any other government actor or omission whether local or national, fire, flood, earthquake subsidence, sabotage, accident, epidemics, pandemics and quarantines, strike or lock-out. In the event of performance of the Contract being so prevented or hindered, the period of the Contract shall be correspondingly extended. Deliveries are delayed for six months or more the Seller may, at its sole discretion, by notice in writing to the Buyer cancel the Contract.

9. USE OF GOODS

9.1. The Goods supplied by the Seller must always be used in a responsible manner and be operated by qualified personnel in strict accordance with the operator's manual supplied by the Seller.

9.2. The Goods sold by the Seller should be used on a regular basis in accordance with the operator's manual supplied by the Seller.

9.3. Only parts and services supplied or approved by the Seller should be used with or fitted to the Goods.

9.4. The Buyer agrees to pay due regard to any information or any revised information whenever supplied by the Seller (and is deemed to have been given adequate information and to have read and understood it) relating to the use for which the Goods are designed or to be used by the Buyer or used in a manner prescribed for the Goods. The Buyer shall take such steps as may be specified by the above information to ensure that, a far as reasonably practicable, the Goods will be safe and without risk to health at all times when they are being set, used, cleaned or maintained by any person to work or when they are being dismantled or disposed of, and the Buyer undertakes to take such steps as may be specified by the above information to ensure that, a far as reasonably practicable, the Goods will be safe and without risk to health at all times as mentioned above. For these purposes, the Buyer is deemed to have been given a reasonable opportunity to test and examine the Goods before delivery.

10. STANDARD EQUIPMENT MODIFICATION

10.1. Seller only warrants factory recommended and available options to its Goods ("Standard Equipment"). Any modifications, additions or re-engineering of Standard Equipment requested by the Buyer are at additional cost and will be charged accordingly. Any modify a Goods ("Modifications") Moreover should the Buyer request such Modifications, or affect same after sale and delivery of the Goods, this constitutes a contravention of Clause 9 above (Use of Goods) and does not qualify for Warranty coverage under Clause 6 above to the extent that any subsequent damage, malfunction or improper performance is related to the Modifications made, in the opinion of the Seller.

11. DAMAGE SHORTAGE OR LOSS IN TRANSIT

11.1. Claims for damage or loss in transit should be made on the carrier and any costs imposed by the carrier in relation to claims for damage or loss in transit should be complied with.

11.2. Where the Contract provides for delivery elsewhere than at the Seller’s works, risk will pass at the point specified in the Contract and the Seller will entertain a claim by the Buyer in respect to loss or damage in transit only if the Buyer.

11.2.1. Gives written notice to the Seller within 21 days of non-delivery or within seven days of the delivery of the Goods in respect of that claim.

11.2.2. Where the Goods are transported by an independent freight carrier, complies in all respects with the freight carrier’s conditions of carriage for notifying claims for loss or damage in transit.

12. SANCTIONS AND EXPORT CONTROL LAWS: (A) Buyer and Seller undertake as follows. (1) To comply with all applicable laws and regulations including any of the relevant laws of the country in which the Goods are manufactured. (2) To sell or transfer the Goods in any manner to any end user or destination where such sale or transfer would: (a) violate any laws or regulations relating to the export of Goods to any country, or (b) cause any cause for concern that the Goods could be used for any purpose that would be prohibited by any such laws or regulations.

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on the same, including without limitation sanctions, embargoes and export controls such as those imposed by the government of Canada, and such as those imposed by the US Treasury Department Office of Foreign Assets Control (OFAC), the US Department of State, the US Commerce Department, the European Commission or any member state of the European Union (together “Sanctions and Export Control Laws”). (2) To not take any action, or make any omission, that could cause any party to be in breach of, or otherwise be exposed to any restriction or penalty pursuant to, or suffer any adverse consequences of any of the foregoing directly or indirectly, any Sanctions and Export Control Laws, including without limitation making any Goods or any item incorporating the Goods available for the direct or indirect benefit of a person subject to financial sanctions, such as those named on the OFAC list of Specially Designated Nationals and Blocked Persons, the EU Consolidated List of Sanctioned Financial Sanctions Targets or any similar list maintained by any EU member state, or any party owned or controlled by such a person (together “Sanctions Targets”). (B) Seller shall have the right to suspend performance of its obligations and the right to terminate the Contract immediately, without liability, if (1) in its reasonable judgment, circumstances exist that could result in the non-fulfillment of the undertakings herein; (2) the Buyer becomes a Sanctions Target; (3) any bank refuses to receive or otherwise process any payment under the Contract; (4) Buyer does not reimburse Seller for factors, claims, damages, losses, costs and expenses (including attorney’s fees) suffered or incurred by Seller resulting from: (i) Buyer’s breach of any of its undertakings herein; or (ii) Seller’s suspension or termination of the Contract pursuant to this section. (D) In the event that the Seller terminates the Contract pursuant to this section, and without prejudice to Seller’s other rights and obligations under the Contract, Seller shall be entitled to use any money received as a set-off against claims.

13. TERMINATION

13.1. Buyer’s orders are irrevocable. The Buyer may not cancel a purchase order and/or the Contract without the Seller’s written consent. The Buyer agrees to indemnify, defend and hold Seller harmless from all suits, claims and actions in respect of all damage or injury, actions, suits, claims, demands, costs or charges incurred by Seller in connection with such installation and work and in respect of all sums due to the Seller from Buyer. The limitation of liability contained in this section shall be effective without regard to (i) Seller’s performance or failure or delay of performance under any other term or condition of the Contract, including any warranty or remedy or (ii) the invalidity or unenforceability of any other limitation, disclaimer or exclusion of any warranty, remedy or other right.

14. COMPLIANCE

14.1. Compliance with all occupational, health and safety laws or other applicable federal, provincial or municipal laws during any installation, operation, or use the Goods is the sole responsibility of the Buyer. Buyer also acknowledges its responsibility for the disposal of any Goods (including any computer or other electronic equipment or components) in accordance with applicable laws, including any recycling, reporting or record keeping requirements.

15. SERVICES

15.1. Installation. Any installation or other work carried out in connection with the Goods at the Buyer’s premises or outside the Seller’s premises shall be subject of separate charges in addition to the purchase price of the Goods and the Buyer agrees to indemnify, defend and hold Seller harmless from all suits, claims and actions in respect of all damages or claims, actions, suits, claims, demands, costs or charges incurred in connection with such installation and work and in respect of all sums due to the Seller from Buyer.

15.2. Service. All hours the Seller’s employees spend on Buyer’s site shall be charged to the Buyer, included hours wasted that Buyer: The Buyer may give the Seller’s technical personnel a copy of the technical documentation needed for the maintenance of the Goods, including the Goods maintenance register. The Buyer is liable to make the plant available for the maintenance operation (putting the plant and out of running and making the equipment available safe). The Buyer shall at own cost provide all necessary assistance for service works, such as qualified personnel, as well supply of fluids and consumables necessary for the maintenance operations. The Buyer shall make free and safe access to the plant, to the usage of consumables, to the available facilities and to waste removal. Before any work performed at site, the Buyer shall give a copy of the site safety plan to the Seller technician. Buyer’s permits, approvals, data. The Buyer shall provide and pay for all permits and licenses required for the completion of installation and operation of the Goods. The Buyer shall provide and pay for all necessary recovery, treatment, registration and reporting measures of electronic, electrical and other waste and hazardous substances. Timely performance by the Seller is contingent upon Buyer supplying to the Seller, when needed, all required technical documentation and data, including drawing approval, as well as all required commercial documentation.

16. INTELLECTUAL PROPERTY

16.1. The Seller shall pay all direct costs and damages finally and irrecoverably awarded by a court or an arbitral tribunal against Buyer to the extent that the design or construction of the delivered Goods is ruled to infringe a patent or copyright in the country where the Buyer is located (except infringement occurring as a result of incorporating a design or modification at Buyer’s request). The Seller shall be liable under this Clause to pay the costs and damages only if the Buyer promptly notifies the Seller of any such infringement, and the Seller is given the right at all times to settle such claim and to defend or control the defense of any suit based upon such charge. The Buyer shall be obliged to assist the Seller in the defense. For the avoidance of doubt, this Clause sets forth the Seller’s sole and exclusive liability with respect to infringement of third party’s intellectual property.

16.2. The Seller and its suppliers exclusively retain all right, title and interest in and to the intellectual property rights and related concepts, to developed knowledge, inventions, innovations and improvements, concepts ideas and trademarks, drawings, specifications, data, software, firmware, manuals, instructions, documentation or other works of authorship and other intellectual property ("McCloşkey IP") furnished by Seller to the Buyer. Nothing in the Contract shall be construed as conveying or assignment or license to or interest in the McCloskey IP. The Buyer may not use the McCloskey IP for any other purpose.

16.3. The Buyer shall indemnify the Seller against all costs, claims, damages and other expenses suffered by the Seller in connection with any infringement of patent, copyright or other intellectual property right arising out of the manufacture or sale of goods in accordance with the Buyer’s specifications.

17. LIMITATION OF LIABILITY. NEITHER SELLER NOR ITS SELLERS SHALL BE LIABLE, WHETHER IN CONTRACT (INCLUDING BREACH OF REPRESENTATION OR WARRANTY) OR IN TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY), OR FOR INFRINGEMENT OR UNDER ANY OTHER LEGAL THEORY, OR EXTRA-CONTRACTUAL BASIS OR THEORY, FOR LOSS OF USE, GOODWILL, REVENUE OR PROFIT, OR FOR COST OF CAPITAL, OR OF SUBSTITUTE USE OR PERFORMANCE, OR INCREASED COSTS OF OPERATIONS OR MAINTENANCE, OR FOR INCIDENTAL, INDIRECT, PUNITIVE, EXEMPLARY, SPECIAL, OR CONSEQUENTIAL DAMAGES, OR FOR ANY OTHER LOSS OR COST OF SIMILAR TYPE.

18. GOVERNING LAW/DISPUTE RESOLUTION

The Contract shall be governed by the laws of Ontario (without reference to its conflict of laws principles or the United Nations Convention on Contracts for the International Sales of Goods) and the laws of Canada applicable therein. Any and all disputes relating to the Contract and/or this document shall be submitted for final settlement (which may not be appealed) by arbitration conducted in Toronto, Ontario pursuant to ADR Chambers Arbitration Rules. The arbitration shall be conducted in the English language by one arbitral, who shall be chosen by agreement of the parties, provided that if the parties are not able to agree on the selection of an arbitrator, ADR Chambers will appoint an arbitrator. Arbitrator fees and costs shall be equally shared, but otherwise the parties are responsible for their own legal fees, costs and expenses. Notwithstanding the foregoing, either party may apply to a court of competent jurisdiction for preliminary injunctive or other interim relief to prevent disclosure of confidential information or misappropriation or other misuse of intellectual property pending final determination of the arbitration. The arbitration award shall be governed by the Arbitration Act (Ontario) and judgment upon the award by the arbitrator may be entered by any court of competent jurisdiction.

19. MISCELLANEOUS

19.1. Buyer is not entitled to assign its rights or obligations under the Contract.

19.2. No waiver of any term of the Contract by the Buyer shall be deemed to be a further waiver of any term of the Contract.

19.3. The Clause headings in the Terms and Conditions are for ease of reference only and will not affect the interpretation hereof.

19.4. If any of these Terms and Conditions of sale is at any time found to be in contravention of the relevant law, or to be contradictory with another part of the Terms and Conditions then such part shall be severed from the remainder which shall continue to be valid and enforceable to the fullest extent permitted by law.

20. COVID-19

20.1. The parties are aware that the Coronavirus COVID-19 (“Outbreak”) was declared a pandemic by the World Health Organization on March 11th, 2020. This Outbreak may or may not impact the normal execution and performance of the Contract. Should there be an impact to performance of the Contract, the parties agree:

20.2. The affected party will notify the other in writing, outlining the effect of the Outbreak on its performance under the Contract.

20.3. Seller shall have no liability for damages to the Buyer, including but not limited to liquidated damages, penalties, fines or fees, whether arising out of or in connection with the Outbreak.

20.4. Seller is entitled to a reasonable extension of time representing the impact of the Outbreak on its performance or delivery obligation, and

20.5. any additional cost directly attributable to the Outbreak in Seller’s performance of the Contract for or otherwise will be borne by the Buyer.

Each party shall be entitled to terminate the Contract by written notice to the other party if the non-performance of the Contract due to this Outbreak continues for more than six (6) months.