



Variperm Energy Services Inc.
GENERAL TERMS AND CONDITIONS OF SALE,
SERVICES AND RENTAL
ARTICLE 1
INTERPRETATION

1.1 Definitions.

In addition to terms defined elsewhere in these Terms and Conditions, the following terms shall have the following meanings, unless the context otherwise requires:

- (a) **Affiliate** or **Affiliates** means any Person directly or indirectly controlled by, controlling, or under common control with a party, including any of the foregoing which becomes an Affiliate after the date of an Order. **Control** means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. **Controlling** and **controlled** have correlative meanings.
- (b) **Applicable Law** means those laws (common or statutory), rules, regulations, codes, administrative and judicial orders and directives, rulings, interpretations, permit conditions and restrictions or similar requirements or actions of any federal, state, provincial, or local government, or any agency or executive or administrative body of any of the foregoing, in each case that govern or pertain, as of the date of the applicable Order, to (i) the Parties' in connection with any Order; (ii) Variperm's performance and/or Customer's use of Work; and/or (iii) the health, safety and welfare of individuals working at or visiting any Work Site.
- (c) **Claim(s)** means all claims (including those for property damage, environmental damage, personal injury, illness, disease, maintenance, cure, loss of consortium, loss of support, or death), damages, liabilities (including contractual liabilities), losses, demands, liens, encumbrances, government imposed fines and/or penalties, causes of action of any kind, obligations, costs, judgments, interest and awards (including legal costs as between a solicitor and his or her own client on a full indemnity basis) of any kind or character, whether under judicial proceedings, administrative proceedings or otherwise.
- (d) **Contract** means any written agreement entered into between Variperm and Customer and which includes, for greater certainty, any accepted Orders.
- (e) **Customer** means any Person for whom Variperm performs Work pursuant to an accepted Order.
- (f) **Customer Representatives** or **Customer Representative** means and includes, individually or in any combination, Customer, its subsidiaries and Affiliates and each of their respective directors, officers, servants, agents, advisors, employees, consultants, contractors, subcontractors and representatives and their respective successors and/or assigns.

- (g) **Dollars** or **\$** means Canadian dollars unless other expressly described in an Order or Contract.
- (h) **Force Majeure** means any act or event that renders it wholly or partially impossible for Variperm to perform its obligations under any Order or delays Variperm's ability to do so, when such act or event (i) is beyond the reasonable control of Variperm; (ii) is not due to the fault or negligence of Variperm; and (iii) could not have been avoided by Variperm by the exercise of reasonable diligence. Force Majeure shall include acts of God, laws and regulations, government action, war, civil disturbances, strikes and labor problems, delays of vendors or carriers, lightening, fire, flood, washout, breakage or accident to Rentals or machinery, shortage of raw materials, epidemic, pandemic (including the COVID-19 pandemic), quarantine, civil commotion and any other causes that are not reasonably within the control of Variperm.
- (i) **Order(s)** means any written notice, purchase order, order confirmation or quote made between Variperm and the Customer for the performance of Work and accepted in accordance with these Terms and Conditions.
- (j) **Person** includes any individual, corporation, limited liability company, unlimited liability company, body corporate, partnership, limited liability partnership, firm, joint venture, syndicate, association, capital venture fund, private equity fund, trust, trustee, executor, administrator, legal personal representative, estate, government, government authority or board or commission or authority and any other form of entity or organization, whether or not having legal status.
- (k) **Rental** means any agreement between Variperm and the Customer in respect of which Variperm agrees to rent or lease certain goods, equipment, materials, or other tangible items to Customer pursuant to an Order.
- (l) **Product(s)** means any goods, equipment, materials, or other tangible items sold by Variperm to Customer pursuant to an Order.
- (m) **Service(s)** means any services furnished by Variperm to Customer pursuant to an accepted Order.
- (n) **Terms and Conditions** means these General Terms and Conditions of Sale, Services and Rental.
- (o) **Variperm** means Variperm Energy Services Inc. (formerly Variperm (Canada) Limited) or any other member of the Variperm Group which furnishes the Work to the Customer in accordance with a Contract or Order.
- (p) **Variperm Group** means and includes, individually or in any combination, Variperm, its parents and subsidiaries and Affiliates and each of their respective directors, officers, servants, agents, advisors, employees, **consultants**, contractors, subcontractors and representatives and their respective successors and/or assigns.
- (q) **Variperm's Facility** means the Variperm manufacturing plant, stocking point or other location at or from which any Products, Rentals or Services are delivered to Customer.
- (r) **Work** means Products sold, Services rendered or Rental agreed to, in each case, by Variperm with the Customer pursuant to accepted Orders. As a result, terms such as

“perform Work,” “performance of the Work” or “Work performed” shall mean and include Variperms sale and delivery of Products, performance of Services and/or Rental to or for Customer.

- (s) **Work Site** means the facility, site or location specified in an Order at which Variperms is to perform the Work.

1.2 **General Terms.**

As used in these Terms and Conditions, unless expressly stated otherwise, references to (a) “includes” or “including” means “including, without limitation” or “including, but not limited to”; (b) “and/or” means “either or both”; (c) “or” means “either” and (d) a “party” or “Party” means Customer or Variperms and to the “parties” or “Parties” means Customer and Variperms. Unless otherwise specified, all references in these Terms and Conditions to Articles or Sections are deemed references to the corresponding Articles or Sections in these Terms and Conditions.

1.3 **Purpose.**

THIS DOCUMENT CONSTITUTES THE TERMS AND CONDITIONS THAT APPLY TO THE WORK UNDERTAKEN IN CONNECTION WITH A CUSTOMER REQUEST AND ALSO CONSTITUTE THE TERMS AND CONDITIONS THAT APPLY TO ANY CONTRACT. THE CUSTOMER ACKNOWLEDGES AND AGREES THAT ANY ACCEPTANCE OF VARIPERM OF ANY ORDER, REQUEST FOR WORK OR CONTRACT IS LIMITED TO AND SUBJECT TO THESE TERMS AND CONDITIONS. THE CUSTOMER AGREES THAT ANY SUPPLEMENTAL, ADDITIONAL OR VARYING TERMS, CONDITIONS, LIMITATIONS OF LIABILITY OR REPRESENTATIONS OR WARRANTIES PROPOSED BY CUSTOMER IN ANY WRITTEN OR ORAL COMMUNICATION BETWEEN THE PARTIES WHETHER BY QUOTE, PURCHASE ORDER, ACCEPTANCE OR DELIVERY DOCUMENT SHALL NOT BE BINDING ON THE PARTIES AND IS EXPRESSLY REJECTED BY VARIPERM. ANY REVISION OR ADDITION TO THESE TERMS AND CONDITIONS MUST BE IN WRITING AND MUST BE SIGNED BY AN AUTHORIZED SIGNATORY OF VARIPERM IN ORDER TO BE VALID AND BINDING ON VARIPERM. THE CUSTOMER'S EXECUTION OF ANY CONTRACT, ORDER OR ACCEPTANCE OF WORK IS DEEMED TO BE THE CUSTOMER'S ACCEPTANCE OF THESE TERMS AND CONDITIONS.

1.4 **Precedence.**

In the event of any conflict between these Terms and Conditions and the terms of any Contract or Order, the Parties agree that these Terms and Conditions shall prevail unless a Contract or Order: (a) makes specific reference and identification (by Section and/or subsection number) to the provision(s) of these Terms and Conditions to be modified; (b) explicitly states the intention of the Parties to effect the modification thereof; and (c) is executed on behalf of each Party by an authorized officer of the Party. Such modifications shall be effective for that provision of the Contract or Order only, and no such agreement shall have the effect of varying or amending these Terms and Conditions (or any others herein) with respect to any other or subsequent provision of the Contract or Order.

ARTICLE 2 **ORDERS; CHANGE ORDERS; CREDIT; PAYMENT; TAXES**

2.1 **Orders.**

- (a) From time to time, at the request of Customer, Variperms shall perform Work for Customer as specified in Orders provided that such request of the Customer has been accepted by Variperms in the manner set forth in these Terms and Conditions.
- (b) Each Customer request shall contain reasonably detailed business and functional requirements to permit Variperms to determine the particulars of the Work to be supplied, the scope of the required Work, details of the scope of Work to be performed by Variperms based on the business and functional requirements, any dependencies that must be accomplished by Customer or any third parties in order for Variperms to perform the Work and any other matters related to the applicable Work as Variperms may reasonably request.
- (c) Variperms is free to accept requests of the Customer in any written form, including purchase orders, work orders, statements of work, emails or other written communication between the Parties, regardless of format.
- (d) A request of the Customer shall only be accepted or deemed to have been accepted by Variperms if such request is expressly accepted in writing by Variperms delivered to Customer through the delivery of an Order or if Variperms otherwise performs or commences performance of the Work in connection with such request.
- (e) In every such case, the following shall apply:
- (i) upon receipt of a Customer request in accordance with these Terms and Conditions which Variperms desires to accept, Variperms shall prepare and deliver to the Customer a draft Order;
 - (ii) each such Order will only be open for acceptance by the Customer within 30 days from the date of the applicable Order;
 - (iii) each Order shall be subject to these Terms and Conditions, which shall control and govern all transactions between the Parties with respect to Work, whether or not these Terms and Conditions are referred to in the Order;
 - (iv) no other, additional or different terms and conditions in any written or oral communication with respect to a transaction for Work (including the terms and conditions in any Customer request for proposal, request for quote, request for bid, purchase order, or similar document) shall vary or amend these Terms and Conditions; and
 - (v) each Order shall constitute a separate agreement between the Parties when and if expressly accepted by the Customer in writing within such 30 day period.
- (f) Customer requests accepted by Variperms in the manner set forth in these Terms and Conditions may not be cancelled or postponed by Customer without Variperms written consent. For any cancelled or postponed Orders, Customer agrees that Variperms reserves the right to

charge Customer in respect of: (i) the amount set forth in the applicable Order for the processed Work plus a 10% charge for the remaining purchase Order value; and (ii) Variperms' other standard cancellation, postponement, restocking and other fees and charges incurred by Variperms with respect to any cancelled or postponed request or Order including, but not limited to, applicable mobilization or demobilization charges. Notwithstanding compliance by the Customer with the foregoing, Customer acknowledges and agrees that title to any and all Products which are the subject of a cancelled or postponed Order will remain with Variperms.

- (g) Any returns to be requested by Customer with respect to an Order or a portion thereof will be subject to Variperms' written consent, which may be withheld in Variperms' sole discretion.
- (h) For greater certainty, Variperms reserves the right to reject any request of the Customer submitted for acceptance. Orders are subject to Variperms' minimum order requirements, if any, and Variperms reserves the right to limit order quantities for certain Products. Customer agrees that Variperms may charge a "small order fee" of \$2,500.00 for any Orders in respect of a production of Products of less than 1,000 meters, if applicable.
- (i) By acceptance of an Order in writing, Customer is deemed to have represented and warranted to Variperms that such Order and the performance of its in respect thereof complies with all Applicable Laws including governmental and regulatory requirements and that the Customer will furnish to Variperms any and all such documents as may be required by Variperms to complete such Order. In the event that the Customer fails to comply with the foregoing, Variperms may defer further shipments, suspend performance of the Work and may, at its option, cancel any undelivered balance of such Order and in such circumstance Customer shall pay Variperms for all Work performed prior to the date of cancellation, as well as any applicable mobilization or demobilization charges or other costs incurred by Variperms.

2.2 Change Orders.

- (a) Any Customer request for changes in the scope and/or scheduling of the Work under an Order must be given in the form of a written change order.
- (b) Each change order of the Customer shall reference the original Order and shall specify:
 - (i) the changes in the scope or timing of the Work to be provided under the affected Order; and
 - (ii) the adjustment to be made including in respect of fees and expenses.
- (c) Upon receipt of a proposed change order, Variperms shall either:
 - (i) proceed with the same and the changes (together with applicable fees and charges) and shall document the change in a change order form delivered by Variperms to Customer within five (5) days of Variperms' receipt of the request for change and the Customer agrees to be responsible for any

and all fees and charges associated with such change order; or

- (ii) be deemed to have rejected the proposed change and adjustments of the Customer in the event that Variperms does not perform in accordance with Section 2.2(c)(i) in which case Variperms shall not be required to continue with any such changes to the Work and Variperms may suspend the Work unless and until an appropriate change order has been executed by the Parties. If the Parties are unable to agree upon or fail to timely execute a change order with respect to requested changes to the Work, Variperms shall be entitled to permanently suspend the Work and cancel the affected Order, and Customer shall pay Variperms the applicable cancellation charges more particularly described in Section 2.1(f)(i) and Section 2.1(f)(ii).

2.3 Unexpected Conditions.

If after commencing the performance of Work, Variperms encounters unexpected or unsafe Work Site conditions, receives Customer product or goods that is in poor condition or requires Services that are beyond the scope of that reasonably anticipated by Variperms in connection with the applicable Order or if Variperms determines that the data or information provided by Customer was inaccurate or insufficient for the safe and efficient performance of the Work, as a result of which Variperms' cost of, or the time required for, performance of any part of the Work under the applicable Order will or might be increased (whether by the need for different or additional tools, materials or personnel or otherwise), Variperms shall propose an adjustment in price and time of performance for the affected Work and shall not be required to proceed with any further Work unless and until the Order has been modified accordingly in a written change order. If the Parties are unable to agree upon or fail to timely execute such change order, Variperms shall be entitled to permanently suspend the Work and cancel the affected Order, and Customer shall pay Variperms the applicable cancellation charges more particularly described in Section 2.1(f)(i) and Section 2.1(f)(ii).

2.4 Credit.

Variperms' acceptance of any Customer request is subject to Customer establishing and maintaining credit satisfactory to Variperms. Variperms reserves the right to approve or reject the credit of any Customer and to establish credit terms for each Customer. Variperms may modify the credit terms of any Order at any time prior to the performance of Work without further liability if Variperms' assessment of Customer's financial condition or creditworthiness changes. Variperms reserves the right, prior to performing any Work, to require that Customer furnish security for the performance of its obligations under any Order. Variperms may suspend any Work, without penalty or liability to Customer, if Customer's financial condition changes and Customer fails to provide, upon request, adequate assurances of its performance.

2.5 Invoicing and Payment.

- (a) Unless otherwise provided for in any provisions in any Contract or Order, Variperms will invoice the Customer monthly for all Work performed during such month and Customer shall pay the price(s), rates and other amounts stated on each invoice submitted by Variperms for Work performed within thirty (30) days of its receipt of Variperms' invoice. Customer will pay Variperms for the Work whether or not the desired results are achieved.

Unless otherwise agreed by the Parties, for Orders originating or relating to Work to be performed outside of Canada and the United States, the Customer acknowledges and agrees that Variperms standard is 50% up front and 50% Ex Works Variperms Facility (INCOTERM 2020).

- (b) Invoices shall bear interest at the rate of six percent (6%) per annum, compounded monthly, calculated from and including the date upon which a payment is due to be made to the date that the payment is made, both before and after default and judgement. All currency exchange rate changes, duties, taxes, etc. shall be paid by Customer.
- (c) If Customer fails to make payment in accordance with Section 2.5(a) above, or Variperms determines, in its sole discretion, that Customer's financial condition or creditworthiness has become impaired, Variperms shall be entitled, at its option, to: (i) require payment in advance for Work yet to be performed under any Order including deposits in respect of a particular Order; (ii) reduce Customer's payment terms under any Order to net ten (10) days of the invoice date or such other period of time as Variperms may designate; (iii) revoke any discounts available with respect to Work performed or to be performed under any Order (including discounts granted with respect to Work covered by any outstanding invoice); (iv) require that Customer furnish security or assurances, in form satisfactory to Variperms, with respect to its obligations under any Order; and/or (v) immediately suspend its performance of Work under any Order, or terminate any Order or associated Contract, without penalty or liability, and Customer shall indemnify and hold harmless the Variperms Group from and against any and all Claims resulting from or arising out of such suspension or termination. Customer will pay all of Variperms costs, including legal fees and disbursements incurred by Variperms on a full indemnity basis, in connection with the collection of past due amounts.
- (d) Operating, production or well conditions which prevent satisfactory operation or inspection of the Products, Services or the Rentals do not relieve the Customer from any of its responsibilities to pay Variperms invoices in a timely manner. Payments due are not contingent on acceptance of such Products, Services and/or Rentals on the part of the Customer. Variperms reserves the right to place liens on Customer's property or the Work Site for non-payment of undisputed amounts due to Variperms by Customer and Customer hereby authorizes Variperms to sign any financing statements, financing charge statements or similar documents necessary to perfect any security interest or lien created by Variperms on Customer's behalf in accordance with these Terms and Conditions.

2.6 Taxes.

Variperms and Customer are each responsible for all taxes legally imposed upon their respective businesses, including taxes imposed upon their respective income, personnel or property. Such taxes are for Variperms or Customer's account, as applicable, and each Party shall indemnify the other from any liability with respect thereto. Notwithstanding the foregoing, Customer shall be responsible for paying all taxes and duties applicable to the Work and as may be set forth in an invoice of Variperms issued to the Customer from time to time. Such taxes and duties will be shown by Variperms on invoices complete with registration numbers. Prices and rates provided by Variperms in an Order are

exclusive of taxes and duties unless otherwise specified. Such taxes and duties are in addition to the prices or rates, and shall be for Customer's account. The term "taxes and duties" shall mean all fees or charges imposed, assessed or levied by any governmental department, agency, or taxing authority and shall include property taxes, sales and use taxes, value added taxes, goods and services taxes and excise taxes or other charges of a similar nature, customs or other duties, customs agent fees and other such charges and fees.

ARTICLE 3 PRICING; DELIVERY; TITLE; QUALITY CONTROL

3.1 Pricing and Fees.

- (a) Prices for Products, Rentals and rates for Services shall be those stated in the applicable Order or applicable Contract for the Order. Notwithstanding the foregoing, Customer acknowledges and agrees that unless expressly stated in the applicable Order or Contract, the prices for Products do not include prices for oil country tubular goods (OCTG) base pipe.
- (b) Customer acknowledges and agrees that Variperms reserves the right to: (i) charge a handling fee of \$39.00/ton based on blank pipe exceeding 20% of manufacturing requirements or upon load out; (ii) charge an additional \$1/meter for cleaning and deburring pipe that is received by Variperms in poor condition, as reasonably determined by Variperms; and (iii) charge a fee of \$0.25/meter/month for storage and handling (inclusive of loading and unloading charges) in respect of any storage of goods of the Customers if agreed to be assumed by Variperms in writing. Customer acknowledges that for blank pipe, such fees will commence upon arrival at Variperms Facility and for finished product such fees will commence upon completion as identified by Variperms to the Customer. For Leduc operations of Variperms, maximum storage available is 20,000 meters for blank and finished product and there is a thirty (30) day grace period prior to the initiation of any such storage charges. Variperms DOES NOT accept rig returns without written agreement prior to shipment. If accepted, there is no grace period for rig returns and standard rates apply. All other operations are determined by Variperms on a case by case basis. For greater certainty, Customer acknowledges and agrees that the storage fees do not include fees chargeable by Variperms to maintain product condition which will be charged additionally as agreed between the Parties.
- (c) Notwithstanding anything to the contrary in these Terms and Conditions, Customer further acknowledges and agrees that Variperms may unilaterally change any of the prices set forth in an accepted Order or Contract with respect to the Work or any portion thereof (even if such Order or Contract specifies that the price is firm) in one or more of the following circumstances: (i) changes in Customer's specifications, quantities ordered, shipment arrangements, pipe mills of origin and machinability, and other Customer requests; (ii) changes in freight rates and other transportation related expenses; (iii) changes in Applicable Laws, including, but not limited to, conditions such as taxes and duties; and (iv) changes in Variperms cost of production, such as in the cost of raw materials, components, and/or labor.

3.2 Delivery.

Unless otherwise provided for in any provisions in any Contract or Order, all delivery terms are Ex Works Variperms Facility (INCOTERM 2020). Customer shall be responsible for payment of all shipping costs at Variperms applicable rates. Variperms will schedule delivery in accordance with its standard lead-times unless otherwise mutually agreed by the Parties in writing.

3.3 Title and Risk of Loss.

- (a) Title and risk of loss for Products sold to Customer will pass to Customer upon invoice date and/or delivery of the applicable invoice from Variperms in respect of such Products, whichever comes first. Until title passes to Customer in accordance with this Section 3.3, title and risk of loss shall remain with Variperms and Variperms shall insure all such Products for which it accepts risk of loss.
- (b) For greater certainty, title to all Rentals will remain with Variperms. Variperms may enter Customers premises during business hours where the Rentals are located to inspect them. Upon default by Customer, including without limitation default in the payment of rental charges, breach of any provision of these Terms and Conditions or Customers insolvency, bankruptcy or impairment of financial responsibility, Variperms, in addition to its other legal rights, shall immediately have the right, without notice, liability, or the institution of legal proceedings, to take and remove its Rentals wherever they may be found. Customer shall defend, indemnify and hold Variperms harmless from any and all liens, claims and encumbrances against the Rentals and shall return the same to Variperms in good condition (reasonable wear and tear excepted) and free and clear of any liens, claims or encumbrances. Customer assumes all risk of loss, destruction or damage to Rentals from the time it departs Variperms Facility until it is returned to that same location, or a nearer point designated by Variperms, or until it is declared lost or damaged beyond repair by Variperms. WITH RESPECT TO RENTALS IN THE POSSESSION AND CONTROL OF CUSTOMER THAT IS NOT RETURNED OR IS DAMAGED BEYOND REPAIR OR IS ALTERED IN ANY WAY, CUSTOMER WILL REIMBURSE VARIPERM AT THE THEN-CURRENT MANUFACTURER'S LIST PRICE OF SUCH EQUIPMENT OR GOODS.

3.4 Acceptance of Products and Services.

The Work is deemed to have been accepted and deemed to have been satisfactory to the Customer unless Variperms receives written notice to the contrary from the Customer within three (3) days of receipt of the Products in accordance with Section 3.2 or completion of the Services, in each case, with written details explaining the basis for non-acceptance of the Work. Remedies for breach of Product or Service warranties are more particularly set forth in Article 4. If Variperms reasonably determines that any objection by Customer is improper, Customer will be responsible for all costs and expenses caused by such improper objection.

3.5 Quality Management.

Variperms will review the requirements of the Customer provided in connection with Section 2.1(b) and use reasonable commercial efforts to complete the Work in accordance with such requirements but subject to Variperms standard inspection procedures and test plans. Customer acknowledges that Product specifications,

tolerances and quality control may be subject to change based on requirements of the Customer.

3.6 Lost Rental Equipment.

In the event that any of the Rentals should become lost or damaged during the performance of the Services, Customer will use best efforts to recover the lost or damaged Rentals and will assume any and all responsibility and costs for such operations in the recovery or attempted recovery of such Rentals. In the event that such Rentals are not recovered or such Rentals are damaged in the well or damaged during the recovery process, Customer will reimburse Variperms for the full replacement value of such Rentals or for the full cost to Variperms of repairing such Rentals. The foregoing is in addition to any charges incurred by Customer for renting the Rentals from Variperms.

ARTICLE 4 WARRANTIES AND REMEDIES

4.1 Product Warranties.

- (a) OTHER THAN ANY REPRESENTATIONS AND WARRANTIES GIVEN EXPRESSLY BY VARIPERM IN ANY APPLICABLE ORDER OR CONTRACT, VARIPERM PROVIDES NO EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS IN RELATION TO ANY PRODUCTS INCLUDING IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT OR THAT ANY SUCH PRODUCTS WILL MEET THE REQUIREMENTS OR NEEDS OF CUSTOMER OR WILL BE AVAILABLE FOR USE AT ANY PARTICULAR TIME OR WILL BE ERROR FREE. VARIPERM HEREBY EXPRESSLY DISCLAIMS ANY AND ALL OTHER PRODUCT REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED.
- (b) WITHOUT LIMITING THE FOREGOING, THE CUSTOMER FURTHER ACKNOWLEDGES AND AGREES THAT WHERE DESIGNS AND SPECIFICATIONS ARE FURNISHED OR APPROVED BY THE CUSTOMER OR SPECIALLY-MANUFACTURED GOODS ORDERED FROM VARIPERM, CUSTOMER WILL INDEMNIFY AND HOLD HARMLESS THE VARIPERM GROUP FROM AND AGAINST ANY AND ALL CLAIMS RESULTING FROM OR ARISING OUT ANY CLAIM OR ALLEGATION THAT SUCH GOODS INFRINGE THE INTELLECTUAL PROPERTY OF A THIRD PARTY INCLUDING, BUT NOT LIMITED TO, ON ACCOUNT OF ANY PATENTED OR UNPATENTED INVENTION, ARTICLE OR APPLIANCE MANUFACTURED BY VARIPERM FOR CUSTOMER AND IN CONNECTION WITH CUSTOMER'S INSTRUCTIONS.
- (c) ANY REPRESENTATIONS AND WARRANTIES GIVEN EXPRESSLY BY VARIPERM IN ANY APPLICABLE ORDER OR CONTRACT DO NOT APPLY TO: (A) PRODUCTS THAT HAVE BEEN MODIFIED BY CUSTOMER, CUSTOMER REPRESENTATIVES OR THIRD PARTIES AFTER DELIVERY; (B) PRODUCTS SUBJECTED TO IMPROPER HANDLING, STORAGE, INSTALLATION, OPERATION OR MAINTENANCE BY CUSTOMER, CUSTOMER REPRESENTATIVES OR THIRD PARTIES INCLUDING USE OF UNAUTHORIZED REPLACEMENT PARTS OR OPERATION UNDER CONDITIONS OTHER THAN THOSE FOR WHICH THE PRODUCT IS INTENDED;

(C) PRODUCTS REQUIRING REPLACEMENT BECAUSE OF NATURAL WEAR AND TEAR; (D) THE DESIGN OF PRODUCTS WHICH WERE MODIFIED ACCORDING TO SPECIFICATIONS FURNISHED BY CUSTOMER; AND/OR (E) CUSTOMER'S FAILURE TO IMPLEMENT ANY UPDATE OR UPGRADE TO THE PRODUCT RECOMMENDED BY VARIPERM.

- (d) EXCEPT WITH RESPECT TO PRODUCTS SPECIFICALLY MANUFACTURED PURSUANT TO EXPRESS INSTRUCTIONS OF CUSTOMER, VARIPERM RESERVES THE RIGHT TO MAKE SUBSTITUTIONS OR DESIGN AND CONSTRUCTION MODIFICATIONS WITH RESPECT TO ANY PRODUCTS PROVIDED THOSE SUBSTITUTIONS CHANGES DO NOT MATERIALLY AFFECT THE PERFORMANCE OF THE PRODUCTS AS DETERMINED BY VARIPERM.
- (e) If any Products subject to an Order are warranted by any third party manufacturers (other than Variperm), Variperm will use its reasonable commercial efforts to have such warranties assigned to the Customer provided that the Customer is otherwise in good standing under the terms of the applicable Order or Contract.

4.2 Rental Warranties.

VARIPERM ONLY WARRANTS THAT ANY RENTALS WILL BE OF THE TYPES REQUESTED IN WRITING BY THE CUSTOMER IN AN ORDER AND BE IN GOOD OPERATING CONDITION.

4.3 Remedies for Breach of Product or Rental Warranties.

- (a) In the event that the Customer receives a Product or Rental which does not conform to representations and warranties given expressly by Variperm in any applicable Order or Contract, as determined by Variperm acting reasonably, Variperm shall, in its sole discretion and at its sole cost and expense, either repair or replace with products of like or comparable quality any Products or Rentals not conforming to such Product or Rental warranties, as the case may be, provided that the Customer has notified Variperm in writing of the non-conformity of such Products or Rentals with such representations and warranties within five (5) days of delivery or receipt of such Products or Rentals.
- (b) Unless otherwise provided for in any Order or Contract, Customer agrees that the foregoing remedies of Customer of repair or replacement shall be the sole and exclusive obligations and responsibilities of Variperm (and the sole and exclusive remedies of Customer) with respect to Products and Rentals not conforming to representations and warranties given expressly by Variperm in any applicable Order or Contract. Variperm's responsibility to repair or replace Products or Rentals shall not, in any circumstance, exceed the price of such Products or Rentals or extend to any ancillary or related costs (such as shipping or personnel charges) not included in the original Order with respect to such Products or Rentals.

4.4 Service Warranties.

VARIPERM DOES NOT GUARANTEE THE RESULTS OF THE SERVICES IT PERFORMS UNDER ANY ORDER OR REPRESENT THAT THOSE SERVICES WILL ACHIEVE

CUSTOMER'S INTENDED OBJECTIVES BUT DOES WARRANT TO CUSTOMER THAT ALL SERVICES PERFORMED BY VARIPERM (I) SHALL BE PERFORMED WITH DUE CARE AND SKILL; AND (II) SHALL BE PERFORMED IN ACCORDANCE WITH STANDARD INDUSTRY PRACTICES AND THE REQUIREMENTS OF ANY APPLICABLE LAWS. VARIPERM HEREBY EXPRESSLY DISCLAIMS ANY AND ALL OTHER SERVICE REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED.

4.5 Remedies for Breach of Service Warranties.

In the event that the Customer receives a Service which does not conform to the warranty described in Section 4.4, as determined by Variperm acting reasonably, Variperm shall, at its sole cost and expense, re-perform any Services (or portion thereof) not conforming to the Service warranties specified in Section 4.4 provided that the Customer has notified Variperm in writing of the non-conformity of such Services with such warranty within five (5) days of completion of such Services. If Variperm determines, acting reasonably, that Variperm's re-performance of the non-conforming Services cannot or will not provide a commercially viable remedy to the Customer, Variperm shall, at its option and in its sole discretion, either refund or credit in full the price paid by Customer for such non-conforming Services. The foregoing remedies of re-performance of non-conforming Services, or the refund or credit of the price paid therefore, shall be the sole and exclusive obligations and responsibilities of Variperm (and the sole and exclusive remedies of Customer) with respect to non-conforming Services.

4.6 Permits and Licenses.

Customer shall obtain all permits, licenses, easements, rights of way and/or other authorizations (collectively, **Authorizations**) from Customer's clients, governmental agencies, and the owner(s) and/or operator(s) of the Work Site as may be necessary in connection with the Work to be performed by Variperm or any member of the Variperm Group under an Order or Contract and shall advise Variperm as to any areas for which Authorizations have been obtained, and the pertinent conditions of such Authorizations and special conditions thereof, if any. Variperm shall not perform (or be required to perform) Work in any area requiring Authorizations until Customer has notified Variperm that Customer has obtained such Authorizations and that it is acceptable for Variperm to proceed with the Work. Customer shall indemnify Variperm and any member of the Variperm Group from and against any and all Claims relating to Customer's failure to obtain any necessary Authorizations.

ARTICLE 5

INDEMNITY; RELEASE; WAIVER

5.1 Customer Release and Indemnities.

- (a) Except in the case of Claims resulting from the willful misconduct or gross negligence on the part of Variperm, the Customer will indemnify Variperm and each member of the Variperm Group from any and all Claims (including legal costs as between a solicitor and his or her own client on a full indemnity basis) arising out of, resulting from or related to: (i) any fraud, inaccuracy or breach of representations or warranties made by the Customer to Variperm or any member of the Variperm in any Order or Contract; (ii) any breach or default of the covenants made by the Customer in any Order or Contract or these

Terms and Conditions; (iii) in connection with the completion of the Work by Variperem; (iv) loss of or damage to any well or hole or blowout, fire, explosion, cratering or any uncontrolled well condition; (v) damage to any reservoir, geological formation or underground strata or the loss of oil, water or gas therefrom; (vi) pollution or contamination of any kind (other than spillage of fuels, lubricants, sewage or garbage to the extent attributable to the negligence of Variperem); and/or (vii) damage to, or escape of any substance from, any pipeline, vessel or storage facility.

- (b) In the case of Claims resulting from the wilful misconduct or gross negligence on the part of Variperem, Variperem will indemnify Customer from such Claims to the extent due to Variperem's wilful misconduct or gross negligence.

5.2 Consequential Damages Waiver.

Notwithstanding any provision of these Terms and Conditions to the contrary, neither Party shall be liable to the other Party (or any member of the other Party's group) for, and each Party hereby releases and agrees to indemnify the other Party from and against, any and all Claims for Consequential Damages (as hereinafter defined), regardless of the cause or causes thereof, including the sole, joint or concurrent negligence (in any amount), gross negligence or wilful misconduct, strict liability, breach of warranty, breach of duty (statutory or otherwise), breach of contract, or any other legal fault, liability, or responsibility of Variperem or any member of the Variperem Group. For purposes of the foregoing, the term **Consequential Damages** shall mean (i) any indirect, incidental, special, punitive, exemplary or consequential damages or consequential losses of any nature whatsoever (whether or not foreseeable), and (ii) damages or losses, whether direct or indirect, for lost product or production, lost profit or revenue, loss of data, reservoir loss or damage, loss of use or rig time expenses, well control expenses, subsurface damage, loss of hole, re-drilling expenses, reservoir or formation damage, pollution damage and/or wreck or debris removal expense, lost business, loss of or inability to use property and equipment, losses from business interruptions, losses resulting from failure to meet other contractual commitments or deadlines, or losses from downtime of facilities. Without negating the preceding general exclusion of Consequential Damages, the Parties expressly agree that Claims with respect to the following shall not be considered Consequential Damages and are recoverable between the Parties: (i) Claims of Variperem with respect to amounts due to it for Work or otherwise in connection with the provisions of these Terms and Conditions; and (ii) Claims for breaches of the Customer's obligations with respect to the Confidential Information (as hereinafter defined).

5.3 Liability Cap.

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THESE TERMS AND CONDITIONS AND SUBJECT TO ANY FURTHER LIMITATIONS ON LIABILITY EXPRESSLY SET FORTH IN ANY APPLICABLE ORDER OR CONTRACT, VARIPERM'S MAXIMUM AGGREGATE LIABILITY WITH RESPECT TO CLAIMS ARISING OUT OF, OR IN ANY WAY RELATING TO ITS PERFORMANCE OF WORK UNDER ANY ORDER, WHETHER SOUNDING IN CONTRACT OR TORT (INCLUDING NEGLIGENCE, STRICT LIABILITY AND BREACH OF STATUTORY DUTY), AT LAW OR IN EQUITY, SHALL BE LIMITED TO THE VALUE OF THE ORDER WHICH GAVE RISE TO THE CLAIM (THE **LIABILITY CAP**), AND CUSTOMER HEREBY

AGREES TO INDEMNIFY VARIPERM AND ANY MEMBER OF THE VARIPERM GROUP AGAINST ANY LIABILITY IN EXCESS OF THE LIABILITY CAP. CUSTOMER ACKNOWLEDGES AND AGREES THAT A HIGHER PRICE WOULD BE PAYABLE BY CUSTOMER TO VARIPERM IN CONNECTION WITH THE WORK BUT FOR THE AGREEMENT BY THE CUSTOMER TO ADHERE TO THESE TERMS AND CONDITIONS INCLUDING, BUT NOT LIMITED TO, ACCEPTANCE OF THE PROVISIONS SET FORTH IN Article 4 AND Article 5.

ARTICLE 6 **CONFIDENTIAL INFORMATION**

6.1 Confidential Information.

- (a) For the purposes of these Terms and Conditions, **Confidential Information** means the content of any Order or Contract, and all documents, information and data, written or oral, furnished by Variperem or any member of the Variperem Group to the Customer or any Customer Representative or resulting from performance or supply of the Work or coming to the knowledge of the Customer or any Customer Representative in connection with the Work or otherwise obtained (including but not limited to all contracts, financial information, engineering reports, environmental reports, land and lease information, technical and economic data, knowledge, know-how and related information such as plans, maps, drawings, field notes, sketches, photographs, specifications, models, reports, improvements, inventions, processes, formulae or technology and marketing terms and arrangements) or which is or may be either applicable to or related in any way to the Products, the Services, the Rental or the business or affairs of Variperem. Notwithstanding the foregoing, Confidential Information shall not include any information which the Customer can conclusively establish:
- (i) was already lawfully in the possession of the Customer on a non-confidential basis or lawfully known to the Customer on a non-confidential basis prior to the disclosure of such information;
 - (ii) is lawfully and independently developed by the Customer, or on its behalf, by Persons having no access to the Confidential Information at the time of such independent development;
 - (iii) is at the time of disclosure or thereafter becomes part of the public domain through no act of the Customer or of any third party under an obligation of confidence with respect to such information, but only after such information becomes part of the public domain; or
 - (iv) is lawfully obtained by the Customer from an independent Person under no legal obligation to maintain the confidentiality of such information, but only after such information is so received or acquired.
- (b) The Customer agrees that the Confidential Information:
- (i) is the sole property of Variperem and shall not be used for any purpose whatsoever other than for the purpose of using the Work in connection with Customer's business in accordance with these Terms and Conditions and the terms of any Order or Contract; and

- (ii) shall not, without Variperm's prior written consent, be disclosed or made available or accessible to any Person other than, to the extent required, the Customer Representatives who have a need to know the Confidential Information or any part thereof for purposes of using the Work in connection with the Customer's business in accordance with these Terms and Conditions and the terms of any Order or Contract.
- (c) The Customer shall be responsible for any breach of this Section 6.1 by any of the Customer Representatives. If Confidential Information is disclosed to any the Customer Representatives, the Customer shall inform such Persons at the time of disclosure of its confidential nature and the terms of this Section Error! Reference source not found. and shall procure an agreement in advance in writing to have such Persons also be bound by its terms. The Customer shall keep and provide Variperm (at its election) a list of all persons and individuals that have been provided with any Confidential Information and copies of agreements by such Persons to be bound to confidentiality.
- (d) The Customer shall not disclose any Confidential Information to any Person other than in accordance with the terms of this Article 6, except in the event that the Customer or the Customer Representatives are required by Applicable Laws to otherwise disclose any Confidential Information. Prior to any such disclosure, however, the Customer shall provide written notice to Variperm immediately upon receipt or imposition of any requirement of disclosure and thereafter cooperate with Variperm so that Variperm may seek a protective order or other appropriate remedy or waive compliance by the Customer or the Customer Representatives, as the case may be. In the event that any court or administrative body requires disclosure of the Confidential Information, the Customer or any of the Customer Representatives required to provide such disclosure shall furnish only that portion of the Confidential Information which is legally required and, further, shall each exercise their best efforts to obtain reasonable assurances that confidential treatment will be accorded such Confidential Information.
- (e) The confidentiality covenants contained in these Terms and Conditions will survive for three (3) years from the date that the Customer or any Customer Representative receives the Confidential Information.

6.2 Injunctive Relief.

Because money damages would not be a sufficient remedy for any breach or threatened breach by Customer of this Article 6, Variperm shall be entitled to specific performance, injunctive or other equitable relief to enforce the provisions of this Article 6, without the necessity of proving damages and without waiving any other remedies available to it, at law or in equity. In the event of such an action, Variperm shall be entitled to all of its costs and expenses resulting from any breach of this Article 6 (including, but not limited to, costs as between a solicitor and his or her own client on a full indemnity basis).

ARTICLE 7 GENERAL TERMS

7.1 Compliance with Laws.

Each Party shall act in accordance with Applicable Laws.

7.2 Assignment and Subcontracting.

Variperm may subcontract the Work (or any portion thereof) to be performed under any Order, and may assign it's rights, interest or obligations under or in respect of these Terms and Conditions and applicable Order(s) to any person, persons, partnership, association or corporation provided that the transferee agrees in writing to assume all of Variperm's obligations hereunder and thereunder. Upon such assignment and assumption, Variperm will be under no further obligations hereunder. Customer may not assign any Order (or any rights and interests thereunder) without the prior written consent of Variperm. Subject to the foregoing, each Order shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assignees.

7.3 Force Majeure.

Variperm will not be in breach of any Order or the requirements of these Terms and Conditions if prevented from performing due to an event of Force Majeure. If any period of Force Majeure preventing performance of Work continues for more than thirty (30) days, either Party may terminate the specific effected Order by giving five (5) days written notice to the other Party. Variperm shall be paid for all Work provided and/or performed to the effective date of termination and any other reasonable costs incurred as a result of such termination (including Variperm's standard personnel and equipment stand-by charges and demobilization costs).

7.4 Governing Law; Venue; Arbitration.

All Orders and all Work performed by Variperm shall be governed, construed and interpreted in accordance with the laws of the Province of Alberta, which shall apply without regard to any choice of laws or conflict of laws provisions which would direct the application of the laws of another jurisdiction. Any dispute amongst the Parties in connection with the Work, any Order or these Terms and Conditions will be resolved by final and binding arbitration in accordance with the Arbitration Rules of the ADR Institute of Canada Inc. and subject to the following terms: (i) one arbitrator with the legal seat or place of arbitration located Calgary, Alberta, Canada; (ii) the Parties will be equally responsible for any and all up-front costs and/or fees associated with the arbitration as they become due, with the ultimate responsibility for such costs and/or fees to be determined by the arbitral tribunal in accordance with the ADRIC Rules; (iii) the Parties shall request that the arbitrator render a final award as soon as reasonably practicable after the close of proceedings taking into consideration the size, nature and complexity of the matters in dispute and the Parties' intent to achieve a just, timely and cost effective determination of the matters in dispute; (iv) the arbitration will be strictly private and confidential; (v) the final award of the arbitrator will be final and binding upon the Parties, and may be filed in any court of competent jurisdiction and may be enforced by a Party as a final judgment in such court; and, (vi) the Agreement provided that all documentation and arbitration would be in English.

7.5 Severability.

If any of the provisions in these Terms and Conditions are found to be inconsistent with or contrary to any Applicable Law, same shall be deemed to be modified to the extent required to comply with Applicable Law (it being the intention of the parties to enforce to the fullest extent all of these Terms and Conditions) and as so modified, these Terms and Conditions shall continue in full force and effect. In the event

such provisions cannot be deemed or modified automatically, the Parties agree to meet to attempt to reach agreement on a conforming modification to such provision. In the event any provision cannot be modified to comply with Applicable Law, then said term or provision shall be deemed to be deleted from these Terms and Conditions and the remaining provisions shall remain in full force and effect.

7.6 Waiver.

No waiver by Variperm of any of the terms, provisions, or conditions of these Terms and Conditions shall be effective unless said waiver shall be in a writing signed by an authorized officer of Variperm. Variperm's failure to enforce any term, provision or condition of these Terms and Conditions shall in no manner affect its right to enforce the same at a later time, and the waiver by Variperm of any breach of any term, provision or condition of these Terms and Conditions shall not be construed to be a waiver by Variperm of any subsequent or succeeding breach of such term, provision or condition or of any other term, provision or condition hereof.

7.7 Independent Contractor.

The Parties agree that they are independent contractors and expressly disavow any intention to enter into a relationship in the nature of a partnership or joint venture or as franchisor and franchisee. Nothing contained in any Order, Contract or these Terms and Conditions shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, franchise, employment, master-servant or fiduciary relationship between the Parties. Neither Party has the right to bind or obligate the other.

7.8 Acknowledgement and Acceptance.

Customer acknowledges that Variperm may revise and post updates to these Terms and Conditions from time-to-time, and that any future Orders will be subject to the most recently posted version of the Terms and Conditions.

7.9 Entire Agreement.

These Terms and Conditions, together with the applicable and accepted Order or mutually executed Contract, is the entire agreement between the Parties with respect to an Order and supersedes any prior agreements and representations, whether oral or written, and all other communications between the Parties relating to an Order.