



C&D Technologies, Inc.
Standard Terms & Conditions of Services

1. Definitions:

- a. "Customer" shall mean the person or entity that either purchased or contracted to purchase the Services from the Seller.
- b. "Days" shall mean calendar days, unless otherwise specified herein; *provided, however*, if the final calendar day of any period falls on a Saturday, Sunday, or federal holiday, then such period shall be extended to include the next weekday that is not a federal holiday.
- c. "Seller" shall mean C&D Technologies, Inc. or the operating division or wholly-owned subsidiary thereof indicated in any Order, including, but not limited to, Trojan Battery Company, LLC.
- d. "Services" shall mean the services that Customer has either purchased or contracted to purchase from Seller.
- e. "Work Order" shall mean Seller's quotation with respect to the Services, as accepted by Customer by issuance of a purchase order.

2. Conditional Offer: The terms and conditions set forth herein shall exclusively apply to the provision of all Services and shall be deemed incorporated into any Work Order whether or not attached thereto. Seller does not accept, and hereby expressly rejects, all terms and conditions contained in Customer's purchase order and/or any other document issued by Customer that purport to pertain to the Services and/or the relationship between Seller and Customer, which terms and conditions are in addition to, or inconsistent with, the terms and conditions set forth herein. Any such terms shall not become part of any Work Order, and provision of the Services or other performance by Seller with respect to the Services shall not constitute Seller's acceptance of any additional or different terms and conditions. If Customer should find any of these terms and conditions not acceptable, Customer must so notify Seller within five (5) Days of receipt thereof, or any objections which Customer may have shall be considered forever waived. Seller reserves the right to revoke or modify these terms and conditions, in whole or in part, prior to Customer's submission of a purchase order for the Services.

3. Order and Order Acceptance: The provision of Services shall be made by purchase order sent to Seller incorporating the terms of Seller's quotation. No purchase order, or the resulting Work Order, shall be binding upon Seller until acknowledged and accepted by Seller in writing, and Seller shall have no liability to Customer with respect to purchase

orders that are not acknowledged and accepted.

- 4. **Prices:** Pricing for all Services will be as stated in the applicable Work Order. All prices exclude the sale of goods, including industrial batteries, chargers and electronic products and related equipment (the "Products"), which must be purchased by the Customer separately and made available to Seller's representatives when they arrive to perform the Services. Seller expressly disclaims any representation or warranty concerning "most favored customer" pricing which may appear in any of Customer's documents in connection with the Services.
- 5. **Permits and Site Access:** Customer shall be solely responsible for ensuring that it has obtained all local, state, and federal licenses, permits and other authorizations necessary or appropriate to allow Seller to legally perform the Services and access the work site(s) at which the Services are to be performed (the "Sites") on or before the date the Services are scheduled to commence. Customer will make available to Seller clear, safe and unimpeded access to the Sites; will provide Seller with clear directions on how and where to access the Sites; and, will take all actions necessary or appropriate to ensure the safety of Seller's representatives when performing the Services at the Sites. Without limiting the generality of the foregoing, Customer will be solely responsible for providing any equipment necessary or appropriate for Seller to safely and effectively access the Site(s), free of cost to Seller.
- 6. **Additional Charges:** Seller reserves the right to impose additional charges on Customer in the event Customer fails to fulfill its obligations pursuant to Section 5 hereof. By way of example, but not limitation, in the event that Seller cannot commence work due to Customer's failure to meet its obligations under Section 5, additional charges may include daily personnel rates for assigned employees, subcontractor fees, rental equipment fees, transportation costs, and storage fees.
- 7. **Limited Warranty:** Seller warrants that the Services shall be performed in a professional and workmanlike fashion by persons of requisite skill and expertise (as applicable, the "Limited Warranty"). The Limited Warranty does not apply to the Products, which will be subject to the warranties, if any, provided by the manufacturer of such Products (including Seller's standard product warranties, to the extent such Products are manufactured and/or supplied by Seller under separate agreement).
- 8. **DISCLAIMER OF OTHER WARRANTIES:** THE LIMITED WARRANTY MADE PURSUANT TO SECTION 7 ABOVE IS

EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

9. **LIMITATION OF DAMAGES:** IN NO EVENT SHALL SELLER'S LIABILITY FOR ANY DAMAGES ARISING OUT OF THE PROVISION OF THE SERVICES HEREUNDER, REGARDLESS OF THE LEGAL THEORY ON WHICH SUCH DAMAGES MAY BE BASED, EXCEED THE AMOUNT THAT SELLER HAS BEEN PAID FOR SUCH SERVICES UNDER THIS AGREEMENT. UNDER NO CIRCUMSTANCES SHALL SELLER BE SUBJECT TO ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL OR CONTINGENT DAMAGES WHATSOEVER, INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOST PROFITS OR GOODWILL.
10. **Delays:** Seller shall not, under any circumstances, be liable for any delay in or default of any of its obligations hereunder when such delay or default is directly or indirectly caused by, or in any manner arises out of, any cause beyond its reasonable control and not due to its gross negligence, including, without limitation, fire, flood, acts of God, war, embargo, acts of terrorism, epidemic, pandemic or labor actions.
11. **Adequate Assurances:** In the event that either, (a) Customer is determined to be insolvent; (b) Customer is placed in receivership; (c) Customer becomes the subject of any voluntary or involuntary bankruptcy petition; or (d) in the opinion of Seller, a material adverse deterioration in Customer's financial condition has occurred, Seller may, in addition to any other remedies available at law or in equity, elect to require that Customer provide adequate assurance of payment, including, without limitation, full or partial prepayment of the cost of any Services for which Customer has submitted a purchase order.
12. **Payment Terms:** Provided that Customer satisfies Seller's credit criteria, Customer shall have thirty (30) Days from the date indicated on each invoice received from Seller to remit payment to Seller for the Services. Customer agrees that time shall be of the essence with respect to Customer's payment obligations hereunder. All payments due to Seller hereunder shall be paid in U.S. denominations by check, wire transfer, or ACH transfer of immediately available funds, or such other method as Seller may approve from time to time. Payment instructions will be provided to Customer either in Seller's invoice or on Seller's letterhead. Customer must telephonically verify any change to the payment instructions provided by Seller by calling Seller's Accounts Receivable Department. Seller reserves the right, at any time, to impose more restrictive payment terms on future provision of Services based on Customer's payment history or current credit worthiness. Customer agrees to pay Seller's reasonable attorneys' fees incurred in collecting past due amounts owed.
13. **Late Payment:** Customer agrees that any balances that are unpaid after thirty (30) Days shall be subject to a monthly service charge equal to one and one-half percent (1.5%) percent of the total overdue balance owed to Seller or the maximum amount permitted under applicable law, whichever is greater. In addition to other remedies available to Seller, should Customer fail to pay for any Services when due, Seller reserves the right to revoke any credit extended to Customer for the Services, cancel any open Work Orders for Services that Customer may have placed with Seller during the period of delinquency, or suspend performance of Services until Customer remits full payment to Seller for any outstanding Work Orders or charges.
14. **Patent Infringement:** Customer acknowledges and agrees that the know-how, methods, processes, tools, equipment and other materials Seller uses to perform the Services (the "Seller Know-How") are confidential and proprietary to Seller. Nothing in these terms ~~&~~and conditions, any Work Order or the provision of the Services will be deemed to convey any license or right to Customer, expressly or by implication, to the Seller Know-How. To the extent that any Seller Know-How is disclosed or made available to Customer, orally, in writing, by observation or otherwise, Customer will hold such Seller Know-How in strict confidence and not use or disclose such Seller Know-How to any third party without Seller's prior written consent.
15. **Waiver:** Except as otherwise expressly provided herein, no waiver, alteration or modification of any of the provisions hereof or any right granted hereunder shall be effective unless such waiver is in writing and signed by a duly authorized officer or employee of Seller. Any waiver (express or implied) by either party of any default or breach of these terms and conditions shall not constitute a waiver of any other subsequent default or breach. These terms and conditions shall not be modified, varied or supplemented by any course of dealing, usage of trade or otherwise except as agreed in writing signed by the parties hereto.
16. **Governing Law:** These terms and conditions shall be governed, construed and enforced solely by the laws of the State of Delaware. Customer and Seller further agree that venue for any action to enforce or interpret these terms and conditions shall be adjudicated exclusively in a state court located in Montgomery County, Pennsylvania, or in the federal courts for the Eastern District of Pennsylvania and all parties hereby consent to the jurisdiction of such court in any such action or proceeding and waive any objection to venue based on inconvenient forum. Customer and Seller hereby

waive all rights under and agree that these terms and conditions shall not be governed by, Article 2 of the Uniform Commercial Code or any version of the U.N. Convention For The International Sale of Goods.

17. **Notices:** All notices, requests, demands and other communications required or permitted hereunder shall be in writing and delivered by registered mail to the respective addresses of the parties listed on the applicable Work Order. Notices shall be deemed to have been duly given, made and received upon actual receipt by the recipient.

18. **Successors and Assigns; Assignment:** Customer may not assign or delegate any of its rights or obligations under these terms and conditions or any Work Order without the prior written consent of the Seller. Any attempted assignment or delegation in violation of this Section will be null and void. Subject to the foregoing, these terms and conditions shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and permitted assigns.

19. **Export Controls:**

a. Customer acknowledges that certain U.S. export control laws and regulations, including but not limited to the International Traffic in Arms Regulations (ITAR) (22 CFR 120, et seq.), the Export Administration Regulations (EAR) 15 CFR 730-774), and regulations of the Bureau of Alcohol, Tobacco, and Firearms (BATF) (27 CFR 447, et seq.) (collectively, the "Export Control Laws") may apply to the performance of these terms and conditions and/or any Work Order. Customer shall comply at all times with all applicable Export Control Laws.

b. Customer represents that it has obtained all registrations and licenses necessary to perform its obligations under these terms and conditions and/or each Work Order. Customer shall not transfer any export controlled items, technical data, technology, or service, unless the Customer is registered with appropriate U.S. authorities and obtains all required export licenses, license exceptions, or license exemptions, as applicable, under applicable Export Control Laws.

c. Customer represents that neither Customer nor any parent, subsidiary, or affiliate of Customer is included on any of the restricted party lists maintained by the U.S. Government, including, but not limited to the Specially Designated Nationals List administered by the U.S. Treasury Department's Office of Foreign Assets Control (OFAC), Denied Parties List, Unverified List or Entity List maintained by the U.S. Commerce Department's Bureau of Industry and Security (BIS), or the List of Statutorily Debarred Parties maintained by the U.S. State Department's Directorate of Defense Trade Controls (collectively, "Restricted Party Lists"). Customer shall immediately notify the Seller if Customer, or

any parent, subsidiary, or affiliate of Customer becomes listed on any Restricted Party List or if Customer's export privileges are otherwise denied, suspended or revoked in whole or in part by any U.S. or non-U.S. government entity or agency.

20. **Indemnification:**

a. Customer will indemnify, defend and hold Seller, its employees, agents and contractors (collectively, the "Seller Parties") harmless from and against any and all losses, liabilities, actions, claims, damages, demands and expenses (including without limitation attorneys' fees and court costs) (collectively, "Losses") suffered or incurred by any Seller Party, as a result of or in connection with (i) any breach of these terms and conditions by Customer, its affiliates or their respective employees, agents or contractors (collectively, the "Customer Parties"), (ii) any property damage, injury to or death of any Seller Party performing Services at a Site, or (iii) Customer's use of any Service or Product, except in the case of (ii) or (iii) to the extent caused by the gross negligence or willful misconduct of a Seller Party in performing the Services.

b. Seller will indemnify, defend and hold the Customer Parties harmless from and against any and all Losses suffered or incurred by any Customer Party, as a result of or in connection with (i) any breach of these terms and conditions by any Seller Party, or (ii) the gross negligence or willful misconduct of a Seller Party in performing the Services.

21. **Anti-Corruption:**

a. Customer acknowledges and agrees that it is aware of and familiar with the provisions of the Foreign Corrupt Practices Act of 1977, as amended, 15 U.S.C. 78dd-1, et seq., and all other applicable anti-corruption laws or regulations ("Anti-Corruption Laws") and further agrees that it shall comply with and take no action and make, offer, or receive no payment or other advantage in violation of or that might cause Customer or the Seller to be in violation of any Anti-Corruption Law.

b. Customer will indemnify, defend and hold the Seller harmless from and against any Losses suffered or incurred in connection with a breach of Section 19 or this Section 21 by Customer and/or its affiliates, employees, agents or representatives.

22. **Code of Conduct:** Customer hereby covenants and agrees that it accepts and shall comply with C&D Technologies' Business Partner Code of Conduct, available at <http://www.cdtechno.com/resource/resource.html>, as it

may reasonably be amended by Seller from time to time.

23. **Independent Contractor:** In making and performing these terms and conditions, Seller shall be deemed to be acting as an independent contractor of Customer. Neither Party shall be deemed a principal, agent, legal representative, joint venturer or partner of the other. Neither Party is authorized to bind the other to any obligation, affirmation or commitment with respect to any other person or entity. In addition, neither Party's employees shall be deemed to be employees of the other Party for any purpose whatsoever.
24. **Subcontracting:** Seller may engage one or more third parties to perform some or all of the Services under these terms and conditions and/or any Work Order.
25. **Third Party Beneficiaries:** Except as expressly stated herein, nothing in these terms and conditions shall confer any rights upon any person other than the Parties and their respective successors and permitted assigns.
26. **Entire Agreement:** ~~The terms of t~~These terms and conditions are intended by the parties as a final expression of their agreement with respect to such terms and also as a complete and exclusive statement of such terms. No failure by Seller to take any action or assert any right hereunder shall be deemed to be a waiver of such right in the event of the continuation or repetition of the circumstances giving rise to such right.
27. **Severability:** In case any one or more of the provisions contained in these terms and conditions shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and these terms and conditions shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.