

**ANDRITZ SEPARATION INC. ADDENDUM TO CITY OF HOLLYWOOD, FL  
BID NO. 17-9621 - BELT FILTER PRESS CONTROL PANEL UPGRADE  
TERMS AND CONDITIONS**

The provisions listed below supersede any inconsistent provisions in any instrument forming part of this agreement:

**CITY OF HOLLYWOOD – TERMS AND CONDITONS: Amend as follows:**

**23. INDEMNIFICATION:** *Amend as follows:*

After first sentence add the following: Contractor shall be entitled to control the defense and resolution of such claim, provided that City shall be entitled to be represented in the matter by counsel of its choosing at City's sole expense. Where such Loss results from the Fault of both Contractor and City or a third party, then Contractor's defense and indemnity obligation shall be limited to the proportion of the Loss that Contractor's Fault bears to the total Fault.

**19. WARRANTY:** *The Andritz Warranty is an Express Warranty, requiring the exclusion of implied damages. Add the following Warranty Clause:*

(a) In the case of PARTS and reconditioned machinery or equipment, and unless otherwise indicated, Contractor warrants to City that the PARTS or the used or reconditioned machinery or equipment manufactured by it will be delivered free from defects in material and workmanship. This warranty shall commence upon delivery of the PARTS or the used or reconditioned machinery or equipment to the City and shall expire 12 months from successful start-up, not to exceed 18 months from delivery thereof (the "Warranty Period").

(b) If during the Warranty Period City discovers a defect in material or workmanship and gives Contractor written notice thereof within 10 days of such discovery, Contractor will either deliver to City, on the same terms as the original delivery was made, according to INCOTERMS 2010, a replacement part or repair the defect in place. Any repair or replacement part furnish pursuant to this warranty are warranted against defects in material and workmanship for one period of 12 months from completion of such repair or replacement, with no further extension. Contractor will have no warranty obligations under paragraph 19 (b), as applicable,: (i) if the Products have not been operated and maintained in accordance with generally approved industry practice and with Contractor's specific written instructions; (ii) if the Products are used in connection with any mixture or substance or operating condition other than that for which they were designed; (iii) if City fails to give Contractor such written 10 day notice; (iv) if the Products are repaired by someone other than Contractor or have been intentionally or accidentally damaged; or (v) for corrosion, erosion, ordinary wear and tear or in respect of any parts which by their nature are exposed to severe wear and tear or are considered.

(c) Contractor further warrants to City that at delivery, the Products manufactured by it will be free of any liens or encumbrances. If there are any such liens or encumbrances, Contractor will cause them to be discharged promptly after notification from City of their existence.

(d) THE EXPRESS WARRANTIES CONTRACTOR MAKES IN THIS PARAGRAPH ARE THE ONLY WARRANTIES IT WILL MAKE. THERE ARE NO OTHER WARRANTIES, WHETHER STATUTORY, ORAL, EXPRESS OR IMPLIED. IN PARTICULAR, THERE ARE NO IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

(e) The remedies provided in paragraphs 19(b) and 19(c) are City's exclusive remedy for breach of warranty.

(f) With respect to any Product or part thereof not manufactured by Contractor, Contractor shall pass on to City only those warranties made to Contractor by the manufacturer of such Product or part which are capable of being so passed on.

**ADD – 28. LIMITATION OF LIABILITY:** *Andritz Corporate Policy requires an aggregate cap for damages and an exclusion of consequential damages. Add the following Limitation of Liability Clause:*

Notwithstanding any other provision in this Purchase Order, the following limitations of liability shall apply:

(a) In no event, whether based on contract, tort (including negligence), strict liability or otherwise, shall Contractor, its officers, directors, employees, subcontractors, suppliers or affiliated companies be liable to City or any third party for loss of profits, revenue or business opportunity, loss by reason of shutdown of facilities or inability to operate any facility at full capacity, or cost of obtaining other means for performing the functions performed by the Goods, loss of future contracts, claims of customers, cost of money or loss of use of capital, in each case whether or not foreseeable, or for any indirect, special, incidental or consequential damages of any nature.

(b) The aggregate liability of Contractor, its officers, directors, employees, subcontractors, suppliers or affiliated companies, for all claims of any kind for any loss, damage, or expense resulting from, arising out of or connected with the Goods or this Purchase Order or from the performance or breach thereof, together with the cost of performing make good obligations to pass performance tests, if applicable, shall in no event exceed the contract price, excluding third party indemnification for personal injury and physical property damage. Physical property damage shall be limited to \$1,000,000.00 per occurrence.

(c) The limitations and exclusions of liability set forth in this paragraph shall take precedence over any other provision of this Purchase Order and shall apply whether the claim of liability is based on contract, warranty, tort (including negligence), strict liability, indemnity, or otherwise. The remedies provided in this Purchase Order are City's exclusive remedies.

**BID FORM – HOLD HARMLESS AND INDEMNITY CLAUSE**

Replace entirely with Item 23. INDEMNIFICATION of CITY OF HOLLYWOOD TERMS AND CONDITONS, with revisions listed above.

**EXHIBIT “A” – SAMPLE INSURANCE FORM:** Replace with ANDRITZ Sample provided in Bid.

Please acknowledge acceptance of the above changes by signing and returning to writer, via email or fax. The signed Addendum will be attached and returned with the Acknowledgment of applicable Purchase Order/Agreement, as incorporation of same.

Accepted By:

**Andritz Separation Inc.**

**CITY OF HOLLYWOOD, FL**

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