

**ADDENDUM TO CITY OF HOLLYWOOD, FL  
BLANKET PURCHASE AGREEMENT NO.**

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

Amend as follows:

**EXCUSABLE DELAY**

Delete and replace entirely with the following:

In the event of an unexcused late delivery and after one-week grace period, the Seller shall pay to Buyer 0.5% of the contract price as liquidated damages, and not as a penalty, for each full week late. Buyer agrees that any such liquidated damage paid by Seller shall be Buyer's sole remedy in the event of late delivery. In no event shall the liquidated damage total assessment exceed 5% of the contract price.

Seller shall not be liable for any loss or delay due to Force Majeure, acts of Buyer, or other causes beyond the reasonable control of Seller. In the event of any such delay in performance due to such causes, the date of delivery or performance shall be deferred for a period equal to the time lost by the reason of the delay. "Force Majeure" will mean all events, whether or not foreseeable, beyond the reasonable control of either party which affect the performance of this Agreement, including, without limitation, acts of God, acts or advisories of governmental authorities, laws or regulations, wars, riots, epidemics, pandemics, outbreaks of infectious disease or other threats to public health, fires, storms, and severe weather.

Buyer agrees Seller shall not be liable for liquidated damages if Seller's delay in achieving a milestone subject to liquidated damages has not delayed Buyer's ability to use the applicable Products and/or Services.

**DEFAULT**

After the word "excess", add "direct".

**TERMINATION**

In the first sentence, after the word "default" add "after Seller's failure to cure or commence an acceptable cure of the default within five business days of receiving written notification of said default:"

**UNIFORM COMMERCIAL CODE**

At the end of Section, add "Both parties waive any right it has to a trial by jury."

**INDEMNIFICATION**

In the first sentence, replace "claims," with "third party claims of".

At the end of the first sentence after the word "order" add the following: ", resulting in bodily injury or physical property damage. Seller shall be entitled to control the defense and resolution of such claim, provided that the 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 Seller and City or a third party, then Seller's defense and indemnity obligation shall be limited to the proportion of the Loss that Seller's Fault bears to the total Fault."

The following sections shall be added in their entirety:

**WARRANTY**

(a) In the case of PARTS and reconditioned machinery or equipment, and unless otherwise indicated, Seller warrants to Buyer 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 Buyer 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 Buyer discovers a defect in material or workmanship and gives Seller written notice thereof within 10 days of such discovery, Seller will either deliver to Buyer, 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. Seller will have no warranty obligations under paragraph (b), as applicable: (i) if the Products have not been operated and maintained in accordance with generally approved industry practice and with Seller'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 Buyer fails to give Seller such written 10 day notice; (iv) if the Products are repaired by someone other than Seller 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) Seller further warrants to Buyer that at delivery, the Products manufactured by it will be free of any liens or encumbrances. If there are any such liens or encumbrances, Seller will cause them to be discharged promptly after notification from Buyer of their existence.
- (d) THE EXPRESS WARRANTIES SELLER 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 (b) and (c) are Buyer's exclusive remedy for breach of warranty.
- (f) With respect to any Product or part thereof not manufactured by Seller, Seller shall pass on to Buyer only those warranties made to Seller by the manufacturer of such Product or part which are capable of being so passed on.

#### **LIMITATION OF LIABILITY**

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

- (a) In no event, whether based on contract, tort (including negligence), strict liability or otherwise, shall Seller, its officers, directors, employees, subcontractors, suppliers or affiliated companies be liable to Buyer 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 resulting from, arising out of, or connected with the Goods, Services, or this Agreement or from the performance or breach hereof.
- (b) The aggregate liability of Seller, 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 Agreement 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, or five times the contract price for orders under \$100,000.00 (excluding third party indemnification for bodily injury and physical property damage arising out of Seller's negligence, willful misconduct, or other legal fault). This limitation shall not apply to Seller's liability for damage to Buyer's physical property caused by acts of Seller, which shall be limited in the aggregate to \$1,000,000. Notwithstanding the foregoing, Seller's aggregate liability for any delay in performance shall be limited to 5% of the contract price.
- (c) The limitations and exclusions of liability set forth in this paragraph shall take precedence over any other provision of this Purchase Agreement 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 Contract are Buyer's exclusive remedies.
- (d) All liability of Seller, its officers, directors, employees, subcontractors, suppliers or affiliated companies, resulting from, arising out of or connected with the Goods or Services of this Agreement or from the performance or breach hereof shall terminate on the third anniversary of the date of this Agreement.

#### **CONFIDENTIALITY AND OWNERSHIP OF WORK PRODUCT**

To the extent permitted by law, including Chapter 119, Florida Statutes entitled "Public Records Act", Buyer agrees not to disclose Seller's confidential or proprietary information to third parties without Seller's prior written consent unless in the event the Buyer is ordered to disclose Seller's confidential or proprietary information by a court of law. Seller retains all of its proprietary rights and ownership of intellectual property related to or incorporated into its products and manufacturing processes, including all product components and preexisting product designs. Seller hereby grants Buyer a perpetual, non-exclusive, non-transferable, fully paid-up, royalty-free license to use Seller's confidential information and intellectual property for the purpose of the installation, operation, maintenance, and repair of the products and services that are the subject of this Purchase Agreement. Buyer owns all tangible and Intellectual property rights in any goods, equipment (including the Equipment), apparatus, documents, drawings, computer software and artwork which Buyer provides to Seller.

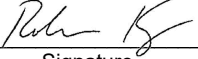
#### **ENTIRE AGREEMENT**

This Purchase, including the Addendum, contains the entire and only agreement between the parties with respect to the subject matter hereof and supersedes all prior oral and written understandings between Buyer and Seller concerning the Goods and/or Services and any prior course of dealings or usage of the trade not expressly incorporated herein.

SIGNATURES ON FOLLOWING PAGE

Accepted By:

Andritz Separation Inc.

  
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Signature  
Robert King  
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Print  
Vice President Operations  
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Title  
04/23/2020  
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Date

City of Hollywood, Florida

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Signature  
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Title  
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Date

Approved As to Form & Legal Sufficiency  
for the use and reliance of the City of Hollywood,  
Florida, only.

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Douglas R. Gonzales  
City Attorney