

ANDRITZ SEPARATION INC.
ADDENDUM TO CITY OF HOLLYWOOD, FL
BELT FILTER PRESS ROLLS REHABILITATION – TERMS AND CONDITIONS

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

Amend as follows:

DEFAULT

In third line, after the word "excess" add "direct".

TERMINATION

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

INDEMNIFICATION

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

At end of 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 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."

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, Seller 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 Seller written notice thereof within 10 days of such discovery, Seller 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. 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 City 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 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, Seller will cause them to be discharged promptly after notification from City 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 City'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 City 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 *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 Seller, 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 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 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 five times the contract price, for orders under \$100,000.00, excluding third party indemnification for personal injury and physical property damage, arising out of Seller's negligence, from the cap. First Party 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.
- (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.

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


Signature
ROBERT KING
Print
VICE PRESIDENT
Title
3/27/2019
Date

Signature

Print

Title

Date