

CAERUS PICEANCE LLC. - PURCHASE ORDER -TERMS AND CONDITIONS

1. DEFINITIONS

- 1.1 "Affiliate" means a corporation or partnership or any other business organization directly or indirectly controlling, controlled by, or under common control of Caerus.
- 1.2 "Claim(s)" means, any and all damages, costs and expenses, disbursements, penalties, fines, claims, demands, actions, proceedings, liens, judgments, awards, decrees, and unpaid taxes (including withholding tax) of whatsoever nature (including without limitation, reasonable professional fees and costs of investigation, litigation, settlement and judgment of this provision).
- 1.3 "Date Required" means the date(s) by which Seller shall deliver the Goods, as specified in this Purchase Order.
- 1.4 "Ship To Location" means the location to which Seller shall deliver the Goods, as specified in this Purchase Order.
- 1.5 "Caerus" means Caerus Piceance LLC or any Affiliate identified in the Purchase Order.
- 1.6 "Caerus Policies" means the policies and practices as described on Caerus' website, <http://caerusoilandgas.com/policies/> and such other policies and practices and amendments, as are identified by Caerus to Seller from time to time.
- 1.7 "Goods" means all the goods, materials, equipment, supplies, component(s), software and information to be supplied by Seller in accordance with this Purchase Order.
- 1.8 "herein"/"hereunder" means in/under this Purchase Order.
- 1.9 "include(s)"/"including" means include(s)/including without limitation.
- 1.10 "Laws" means all applicable federal, state, territorial and municipal laws, by-laws, statutes, regulations, rules, orders, ordinances, directives, permits, standards, codes and licenses.
- 1.11 "Purchase Order" means the face of this Purchase Order these Terms and Conditions and all specifications, drawings and attachments, exhibits and documents referenced therein.
- 1.12 "Purchase Price" means the price for Goods set forth in this Purchase Order.
- 1.13 "Representatives" means the employees, directors, officers, subcontractors, suppliers, contractors, servers, agents, and other representatives of a party.
- 1.14 "Seller" means the party named in the Purchase Order as the supplier of Goods to Caerus.
- 1.15 "Warranty Period" means 12 months after Caerus accepts physical possession of the last Goods to be supplied hereunder.

2. ACCEPTANCE

- 2.1 The Purchase Order shall become a binding agreement upon the Seller signing and returning a written acceptance of the Purchase Order or upon the Seller otherwise acknowledging acceptance of the Purchase Order or commencing performance of the Purchase Order, whichever occurs first. Upon acceptance Seller shall supply the Goods to Caerus in accordance with the Purchase Order.

3. REPRESENTATIONS, WARRANTIES AND COVENANTS

- 3.1 Seller expressly represents and warrants that all Goods shall during the Warranty Period:
 - 3.1.1 Be free of any liens, encumbrances of any kind or claims and Seller has full right and authority to sell the Goods;
 - 3.1.2 Conform to Caerus' specifications, be fit for their ordinary intended purpose and any special purpose specified in the Purchase Order, be of at least acceptable industry standards, and of good material and workmanship;
 - 3.1.3 Be new and of the best quality in every respect, unless otherwise specified in the Purchase Order; and
 - 3.1.4 Be free from defects in design, materials and workmanship.
- 3.2 Seller shall assign to Caerus all applicable and assignable warranties relating to Goods, including warranties of dealers, manufacturers, sellers, suppliers, installers, subcontractors and providers of maintenance and overhaul facilities. If any such warranties are not assignable, Seller will take such action, as Caerus may reasonably request to enforce any such warranties.

4. PACKING AND SHIPPING

- 4.1 Seller shall provide Caerus with all relevant information concerning the safe and proper mode of employment, handling, use and implementation of Goods and Caerus shall have the full right to duplicate and use such information, including drawings, manuals and technical documentation, for any purpose Caerus deems appropriate, including the purchase and repair of replacement parts.

5. DELIVERY

- 5.1 Seller shall deliver Goods to the Ship To Location by the Date Required as specified in this Purchase Order. In addition to Caerus' other rights and remedies, if Seller fails to so timely deliver, then at Caerus' sole discretion, Seller shall indemnify and hold harmless Caerus from all resulting Claims and this Purchase Order shall remain in full force and effect, or Caerus may cancel all or a portion of the Purchase Order and purchase the Goods elsewhere. Caerus shall have no obligation to pay for any portion of a Purchase Order cancelled under this Article.
- 5.2 Caerus is not obligated to accept any Goods that do not comply with any provision of this Purchase Order. Caerus is not required to accept partial or incomplete delivery, unless the parties have agreed to delivery by installments and delivery is performed in accordance with such agreement. Acceptance of any partial delivery shall not bind Caerus to accept any future shipments.

6. INSPECTION OF GOODS

- 6.1 Upon reasonable notice during regular business hours Caerus or its nominee shall have full access to the place where Goods are being manufactured and the right to inspect and test all materials being incorporated into the Goods. Any inspection, acceptance or testing of Goods by Caerus, or failure to do so, shall not relieve Seller of its obligations hereunder. Caerus may cancel all or any part of this Purchase Order, notwithstanding acceptance, testing or inspection of Goods.

7. TITLE AND RISK OF LOSS

- 7.1 Title to the Goods, or part thereof, shall be vested in Caerus when the first of the following events occurs: a) the Goods, or part thereof, are first identifiable as being appropriated to the Purchase Order; b) Caerus pays for the Goods, or part thereof; or c) the Goods, or part thereof, are delivered to the Ship To Location.
- 7.2 Care, custody, control and risk of loss of the Goods shall remain with the Seller until Caerus takes physical possession and accepts delivery of the Goods.
- 7.3 Acceptance of title and risk by Caerus shall not prejudice any rights or remedies of Caerus hereunder or at law, regardless of any receipt executed by Caerus.

8. CHANGES

- 8.1 Upon mutual written agreement, the parties may make changes to the Purchase Order (including changes pertaining to quantity, quality, nature, timing and delivery). If any change increases or decreases the cost or time required for Seller's performance, as soon as practicable, Caerus and Seller shall agree to an equitable adjustment to the Purchase Price and/or delivery schedule, as applicable. Seller shall not delay the performance of its obligations hereunder while the parties settle issues of price and performance. Seller shall not, without Caerus' prior written authorization, make any changes to the Purchase Order, including any alterations, substitutions or additions to the Goods. Seller is not entitled to payment for unauthorized Goods.
- 8.2 Seller acknowledges and agrees that the Purchase Price is fixed, and limited to the price set forth on the face of this Purchase Order, and under no circumstances shall Caerus be liable for any additional profit, costs, fees or expenses, including without limitation costs fees and expenses whatsoever relating to packing, crating, marking, transportation, bracing and dunnage, or any other fees or charges of any kind incurred by Seller in relation to this Purchase Order.

9. PRICE AND TAXES

- 9.1 Unless otherwise specified in the Purchase Order, the Purchase Price includes all charges for the Goods including packing, crating, marking, transportation, bracing and dunnage, unloading, assembly, installation, fees or charges of any kind incurred by Seller and profit, and Caerus shall not be charged additional amounts.
- 9.2 The Purchase Price excludes duties and assessments of any kind, state or local tax, and any other tax on the recipient of goods and any other sales or similar taxes. All such taxes and charges shall be shown as separate items on Seller's invoice.
- 9.3 Seller is liable for and shall pay before delinquency any and all taxes, assessments, duties, lienable claims, charges, encumbrances, or other impositions imposed or levied on Seller or Caerus in respect of Goods. In the event Seller fails to timely pay any of the items described above in this Section 9, Caerus may pay such item and charge the cost thereof to Seller, or set-off the cost thereof against amounts due Seller hereunder.

10. PAYMENTS AND INVOICES

- 10.1 Unless otherwise stated in the Purchase Order, Seller shall submit its invoices for Goods within 30 days after the Goods have been delivered to the Ship To Location and accepted by Caerus. Caerus shall pay any portion of the invoices not subject to withholding, deduction or set off within 45 days of receipt, provided the invoices show a complete and accurate statement of charges, net of any discounts received or given by Seller, and conform to the Purchase Order.
- 10.2 Invoices shall only contain charges based on the Purchase Price, shall comply with this Article 10 and be accompanied by all applicable work tickets, third party invoices and any other supporting documentation requested by Caerus.
- 10.3 Invoices shall be submitted to the address specified in this Purchase Order, and shall set out the Seller's vendor number, if known, the Caerus business contact name, the Caerus business unit and any other billing information requested by Caerus.
- 10.4 Any discounts shall be computed from the date Caerus receives an invoice in compliance with this Purchase Order, or delivery and acceptance of Goods.

11. WITHHOLDING PAYMENT, DEDUCTIONS AND SET-OFF

- 11.1 Caerus may, in its sole discretion, withhold payments or deduct amounts due to Seller without liability or interest: a) until satisfied as to the quality of Goods and the payment of all amounts required to be paid by Seller under this Purchase Order; b) for any claim or liabilities which may be the basis of a claim made by a third party; c) for any other matter which may be in dispute until the dispute is settled; d) for any costs incurred by Caerus due to Seller's negligence or breach of Seller's obligations hereunder; and e) for any default or deemed default by Seller of any of its obligations hereunder, and e) in accordance with any Law, including holdbacks for labor or materials.
- 11.2 Any amount withheld or deducted shall correspond to the amount in issue, as determined by Caerus in its sole discretion, and any payments or adjustments in respect of such amount shall be made in accordance with the resolution of the matter at issue. Caerus may deduct and set-off any amounts owed by Caerus to Seller hereunder, from any amount owed to Seller by Caerus under any contract Caerus has with the Seller.

12. REMEDIES

- 12.1 If any Goods are not provided in accordance with the provisions of this Purchase Order, including any specifications made by Caerus pertaining to quality, quantity and delivery, time and location, and any other representations and warranties, Caerus shall, without prejudice to any other right or remedy that Caerus may have, be entitled to any or all of the following remedies:
- 12.1.1 At any time cancel or suspend all or any part of the Purchase Order;
- 12.1.2 Reject the Goods and return them to Seller at Seller's sole risk and expense on Seller's instructions. If Seller does not provide instructions within a reasonable time after request then Goods will be disposed of as determined by Caerus at Seller's risk and expense. Upon request Seller shall promptly refund to Caerus any money paid for returned Goods;
- 12.1.3 Require Seller to remediate any of the deficiencies as follows:
- 12.1.3.1 Caerus shall notify Seller of any deficiencies in the Goods and Caerus shall, at its convenience, make the deficient Goods available to Seller for remediation. Seller, at its sole cost, risk and expense, shall thereafter promptly and within a time frame acceptable to Caerus, correct any defect, including repairing or replacing any defective parts;
- 12.1.3.2 If, after five (5) days notice to Seller, Seller has not responded to Caerus' notice of deficiency, or if, after a reasonable time following Seller's response, the deficiency is not corrected or Caerus determines, in its sole discretion, that it cannot be corrected by Seller within a reasonable time, Caerus may correct the deficiency and the total cost of such correction, including all labor, materials, and transportation shall be charged to Seller;
- 12.1.3.3 Notwithstanding anything contained herein, if remediation of a deficiency is required on an urgent basis, Caerus shall first notify Seller to remediate it on an urgent basis. If Seller is unable to remedy the deficiency within the time required by Caerus, Caerus may correct the deficiency and the total cost of such correction, including all labor, materials, and transportation charged to Seller.
- 12.1.3.4 The obligation to remediate deficiencies shall continue and survive until the deficiencies are corrected. Any deficiencies that are corrected shall be warranted for an additional 12 months on the same basis after the correction of such deficiencies.

13. INFRINGEMENT

- 13.1 The Goods shall not infringe or misappropriate any trade secret, trademark, copyright, patent, confidential know-how, moral rights or other intellectual property rights ("Intellectual Property") rights of a third party.
- 13.2 If all or any portion of the Goods infringe any third party Intellectual Property rights then Caerus shall be entitled, in its sole discretion to:
- 13.2.1 Terminate the Purchase Order in accordance with Section 17.1.1; or
- 13.2.2 Require Seller, at no expense to Caerus and within a time frame acceptable to Caerus, to a) procure for Caerus the right to use such infringing third party Intellectual Property; or b) replace or modify those Goods containing such Intellectual Property to make such Goods non-infringing, while yielding substantially equivalent results to the Goods as specified in the Purchase Order.
- 13.3 Seller shall defend, indemnify and save harmless Caerus, its Affiliates and its and their Representatives from and against all Claims which Caerus may suffer, sustain, pay or incur in connection with or arising out of actual or alleged infringement or misappropriation of any Intellectual Property rights in connection with Goods.

14. LIABILITY AND INDEMNITY

Seller shall release, defend, indemnify, and hold harmless Caerus, its Affiliates and co-venturers, and its and their Representatives from and against all Claims of any kind directly or indirectly arising out of or related to Seller's breach of this Purchase Order (including warranty obligations), defects in the Goods, or the negligence or willful misconduct (including strict liability) of Seller and/or its Representatives relating to or arising out of this Purchase Order or the Goods, including Claims for bodily injury, sickness, disease, death or injury or damage or destruction of property. Seller's indemnity obligations shall be without limit.

- 14.1 Except with respect to Seller's indemnity obligations, neither party shall be liable to the other for indirect, incidental or consequential damages; provided, however, nothing in this Purchase Order shall exclude or limit Seller's liability for Claims sustained or incurred by Caerus, its Affiliates and co-venturers, and its and their Representatives as a result of third party Claims against such parties that relate to or arise out of this Purchase Order or the Goods.
- 14.2 In addition to any rights and remedies of Caerus (including damages), Caerus shall be entitled to injunctive and other equitable relief in order to protect Caerus' rights and property as set out in Article 18 (Use of Name) and Article 19 (Confidentiality).
- 14.3 Caerus shall have the right at its option to participate in the defense of any Claim against Caerus without relieving Seller of its defense and indemnity obligations.

15. INSURANCE

- 15.1 Seller shall, without limiting any of its obligations or liabilities hereunder, obtain and carry and cause its subcontractors to maintain and carry at all times to obtain and carry Comprehensive General Liability Insurance, including contractual liability and products liability coverage, including without limitation insurance for the indemnity agreements set forth in this Purchase Order, with limits of not less than \$5,000,000 per occurrence. Upon request, Seller shall provide Caerus with satisfactory evidence that such insurance is in full force and effect. The policies shall include a provision requiring insurer to give Caerus not less than 30 days' prior written notice of cancellation or material change.

16. SERVICES

- 16.1 All services performed by Seller in connection with this Purchase Order, including delivery and warranty services, shall be performed by qualified and experienced personnel in a good and workmanlike manner and in accordance with all applicable Laws and generally accepted industry standards. If Seller or its subcontractors provides any services on a Caerus location, then Seller and its subcontractors shall comply with Caerus Policies, and all site specific rules, practices and policies implemented by Caerus.
- 16.2 Notwithstanding anything in this Agreement to the contrary, Seller shall be responsible for and shall release, defend, indemnify, and hold harmless Caerus, its Affiliates and co-venturers, and its and their Representatives from and against all Claims of any kind caused by, resulting from, incident to, connected with or arising out of services performed by Seller and/or its Representatives on a Caerus location, including Claims for bodily injury, sickness, disease, death or injury or damage or destruction of property.

17. TERMINATION

- 17.1 Caerus may, upon delivering notice to Seller:
- 17.1.1 Immediately terminate the Purchase Order, or the provision of any Goods, upon Seller being subject to any insolvency, receivership, reorganization, bankruptcy or similar proceedings; or Seller being in breach of any of its obligations hereunder and failing to cure such breach within the time expressly provided for in this Purchase Order, and if no such time is provided for, within five (5) days, or any other shorter or longer time specified by Caerus after receipt of notice; or
- 17.1.2 Terminate the Purchase Order or any part thereof without cause, on seven (7) days prior notice.
- 17.2 Upon receipt of such notice pursuant to Section 17.1, Seller shall cease all operations hereunder except as directed by Caerus and take all reasonable steps to mitigate any resulting costs or losses.
- 17.3 In the event of termination pursuant to Section 17.1.1, Caerus shall pay Seller for those Goods properly provided up to the effective date of termination, less any reasonable costs incurred by Caerus in having the Goods provided by others and less any other reasonable amounts properly chargeable against Seller. In the event that such results in a credit to Caerus, Seller shall immediately refund such amount to Caerus.
- 17.4 In the event of termination pursuant to Section 17.1.2 and unless otherwise stated, Caerus' only obligation to Seller shall be to pay Seller for its reasonable actual direct costs for Goods provided up to the effective date of termination.
- 17.5 Upon termination of the Purchase Order, Caerus shall be relieved of all further obligations hereunder, except for the payments pursuant to Sections 17.3 and 17.4, and in no event shall Caerus be liable for Seller's loss of profit (actual or anticipated), any indirect, incidental or consequential losses, or penalties.
- 17.6 Articles 3, 12, 13, 14, and 19 (and any other of Seller's indemnities, warranties and confidentiality obligations) shall survive termination or completion of the Purchase Order.

18. USE OF NAME

- 18.1 Seller shall not use the name, logos or trade marks of Caerus or any of its Affiliates in any advertising, promotional material or publicity release (in any media whatsoever, including electronic or web-based) without Caerus' prior written consent.

19. CONFIDENTIALITY

- 19.1 Seller shall, and shall cause its Representatives to, maintain in confidence all information received from Caerus and all information that pertains to Caerus received from any other source, and shall not disclose such information to any third party or use it for any purpose other than for the performance of the Purchase Order. Such confidence shall not apply to information: a) known to Seller prior to obtaining it from Caerus; b) which, at the time of disclosure by Seller, is in the public domain through no breach of these confidentiality obligations by Seller; or c) obtained by Seller from a third party not bound by confidentiality obligations to Caerus. Seller shall comply with any other reasonable confidentiality requests of Caerus which may include execution of a confidentiality letter or agreement.

20. AUDIT

- 20.1 Upon providing written notice to Seller, at any time during normal business hours until 3 years following completion of Seller's obligations hereunder, Caerus or its nominees shall have the right to inspect and audit the Seller's records and accounts in relation to Seller's obligations hereunder, and in relation to duty and tax payments (for the purpose of recovering any potential overpayments or for the purpose of obtaining relief from government authorities on any payments for duty or taxes assessed on the Goods).
- 20.2 Seller shall maintain accurate and complete records and accounts and shall preserve them until any claims or discrepancies are resolved. Seller shall provide copies of invoices, product literature, customs documents, returns and any other documents as required to support claims filed by Caerus. Seller shall respond to any claim resulting from the audit within 30 days of receipt and shall rectify the matter or reimburse Caerus appropriately.

21. INDEPENDENT CONTRACTOR

- 21.1 Seller shall be an independent contractor with respect to the performance of this Purchase Order and shall not hold itself out as Caerus' agent or representative.

22. ASSIGNMENT AND SUBCONTRACTING

- 22.1 Seller shall not assign, subcontract, or transfer any of its rights or obligations hereunder without Caerus' prior written consent.

23. FORCE MAJEURE

- 23.1 Either party shall be excused from performance of this Purchase Order when and to the extent that performance is delayed or prevented by any cause, except lack of finances, beyond its reasonable control ("force majeure"). The party wishing to invoke this Article shall promptly notify the other in writing of the cause upon which it relies, including reasonably full particulars in respect thereof and likely duration of such circumstances.
- 23.2 Seller shall give Caerus written notice if Goods are, or will likely be, delayed for more than 7 days due to force majeure, in which case Caerus may either cancel all or a portion of Purchase Order or authorize any necessary delays and adjustments (including reductions in quantity, nature or extent of the Goods ordered) without incurring any liability for any resulting costs.

24. NOTICES

- 24.1 Any communication given hereunder shall be in writing and may be delivered personally or by facsimile, e-mail, courier or registered mail to the recipient's address set out on the face hereof.
- 24.2 Any notice or other communication given personally or by courier shall be deemed to have been given on the date delivered, any delivery by facsimile or e-mail shall be deemed to be given as at the commencement of the next following business day, and any notice or other communication given by prepaid mail shall be deemed to have been received on the 3rd business day following deposit in the mail. In times of labor strikes or slow-downs affecting the mail delivery, notice shall be effective only if delivered. Any party may change its address for service by notice in writing served as set out above.

25. GENERAL PROVISIONS

- 25.1 This Purchase Order is the entire agreement between Seller and Caerus respecting the subject matter and supersedes and replaces all other prior written or oral agreements between the parties (or any of their predecessors) respecting the subject matter and shall only be amended by both parties in writing. In the event of any conflict between the terms and conditions of this Purchase Order and any other document, or the face page of the Purchase Order, the terms and conditions of this Purchase Order shall take precedence.
- 25.2 This Purchase Order shall be governed by the laws of the State of Colorado without giving effect to any conflict of laws principles that would require the application of the laws of another jurisdiction.
- 25.3 This Purchase Order shall be subject to the Laws pertaining to the locations where Goods are provided, including those jurisdictions through which Goods are transported.
- 25.4 Seller shall comply with all Laws pertaining to the Goods or Seller's performance under this Purchase Order, including those pertaining to manufacturing, supply and delivery (including those related to the transport of hazardous, toxic and regulated substance), Workers' Compensation, import/export, environment, and health and safety. Further, the Goods shall meet or exceed the minimum standards required by any applicable governmental authorities. In addition, Seller shall comply with Caerus Policies, and any of Caerus' other rules and guidelines provided by Caerus to Seller or which it has actual knowledge.
- 25.5 If any provision of this Purchase Order is or becomes illegal, invalid or unenforceable, such provision shall be deemed to be separate and severable from this Purchase Order and in all other respects this Purchase Order shall continue in full force and effect.
- 25.6 Caerus shall be entitled to strict performance of Seller's obligations hereunder, and such right shall not be affected by any prior waiver, forbearance or course of dealing. Any waiver by Caerus of its rights hereunder shall not be binding unless in writing and signed by Caerus.
- 25.7 Time shall be of the essence for the provision of Goods.
- 25.8 The rights and remedies herein are cumulative and are not exclusive of any rights or remedies provided in law, equity or otherwise and shall extend to Caerus, its successors, and assigns.
- 25.9 The covenants, conditions, provisions and warranties contained in this Purchase Order shall not terminate upon supply of the Goods, but to the extent that they have not been fulfilled and satisfied, shall remain in full force and effect.
- 25.10 This Purchase Order may be executed in one or more counterparts each of which shall be deemed an original and when taken together shall constitute one and the same document. Facsimile and/or electronic copies of signatures shall be deemed to be original signatures for all purposes.