

PELICAN INDUSTRIAL, INC.
General Terms and Conditions of Sale

1 - GENERAL - This Contract ("Contract") constitutes the entire agreement between **Pelican Industrial, Inc.** and Customer relating to the provision of products or services, including parts (collectively, the "Deliverable(s)") supplied by **Pelican Industrial, Inc.** This Contract supersedes all other correspondence, quotations or agreements relating to the subject matter hereof, and shall govern and apply to the supply of Deliverable(s) to Customer, regardless of any terms and conditions appearing on any purchase order or other forms submitted by Customer or the inconsistency of any terms therein and herein (which additional or inconsistent terms and conditions are expressly rejected). Signature or other authorization by Customer to furnish any Deliverable will constitute acceptance of these terms and conditions.

2 - PRICE AND PAYMENTS - Prices are those in effect at the time of order. Unless otherwise specified on the front page, all prices are **Pelican Industrial, Inc.**, Houston, TX facility. Prices exclude freight, insurance, duties, handling charges and taxes. All additional charges will be invoiced as a separate charge to be paid for by Customer. Unless otherwise specified in writing by **Pelican Industrial, Inc.**, payment terms are as indicated on invoices from the date of **Pelican Industrial, Inc.**'s invoice unless the Customer is on a COD basis. In the event of late payment, Customer shall be responsible for late charges calculated at the lower of one percent (1%) per month or the highest rate permitted by law. **Pelican Industrial, Inc.** may, at its option, refuse to provide any Deliverables to Customer if the financial condition of Customer becomes impaired or is unsatisfactory in the discretion of **Pelican Industrial, Inc.**, or if Customer is delinquent in the payment of any account to **Pelican Industrial, Inc.** ***TRAINING PRICING, PAYMENTS AND CANCELLATIONS - Customer must provide **Pelican Industrial, Inc.** seven(7) days' advanced written notice of training cancellation or full fee will be charged for all registered students. If less than 7 days' cancellation notice is provided to **Pelican Industrial, Inc.**, including on-site cancellation, then customer will be charged in full and attendance may be rescheduled within six (6) months of original scheduled date. Additionally, any on-site expenses incurred by **Pelican Industrial, Inc.** due to cancellation will be charged to customer. **Pelican Industrial, Inc.** reserves the right to cancel any class at any time and is not responsible for non-refundable travel arrangements.

3 - DELAYS AND FORCE MAJEURE - **Pelican Industrial, Inc.**'s obligations are subject to, and **Pelican Industrial, Inc.** shall not be held responsible for, any delay or failure to perform due to circumstances beyond the reasonable control of **Pelican Industrial, Inc.**, including, but not limited to, acts of Customer, prerequisite work by others, natural disasters or acts of God, acts of war or terror, labor disturbances, delays in transportation, or inability or delay in obtaining suitable Deliverable(s). In the event of any such occurrence, **Pelican Industrial, Inc.**, at its option, shall be excused from performance hereunder or the performance of **Pelican Industrial, Inc.** shall be correspondingly extended. In the event **Pelican Industrial, Inc.** is delayed by acts or omissions of Customer or by prerequisite work by contractors or suppliers of Customer, **Pelican Industrial, Inc.** shall be entitled to an equitable price adjustment in addition to extension of the time of performance.

4 - TERMINATION - **Pelican Industrial, Inc.** may, in its sole discretion, terminate at any time all or any portion of this Contract upon written notice

to Customer, with or without cause, including without limitation, in the event Customer shall (i) fail to pay any sums due to **Pelican Industrial, Inc.** under this Contract or otherwise; or (ii) otherwise breach this Contract or any other obligation owing to **Pelican Industrial, Inc.** Customer may not terminate this Contract without the prior written consent of **Pelican Industrial, Inc.** Within ten (10) days after the effective date of the termination of this Contract for any reason, Customer shall pay **Pelican Industrial, Inc.**, the entire amount of any unpaid balance, which is due for this Contract or in connection with any and all Deliverable(s) provided by **Pelican Industrial, Inc.** hereunder. All Deliverable(s) provided after termination shall be billed at the regular rates of **Pelican Industrial, Inc.**

5 - CHOICE OF LAW AND ARBITRATION - (a) This Contract and the relationship of the parties hereto shall be deemed to have been made in and governed by the laws of the State of Texas, without regard to its choice-of-law provisions. The U.N. Convention on Contracts for the International Sale of Goods shall not apply to this Contract. All rights and remedies available to **Pelican Industrial, Inc.** under law, equity and herein are reserved to **Pelican Industrial, Inc.** as cumulative. Except as provided in subparagraph (b), all controversies or claims arising out of this Contract and/or the relationship of the parties shall be resolved exclusively by arbitration in Houston, TX, such arbitration to be conducted in accordance with the Commercial Rules of the American Arbitration Association before a panel of three (3) arbitrators. The arbitration award is final and binding upon the parties to the arbitration and judgment thereon may be entered in any court having jurisdiction. (b) Notwithstanding the foregoing, **Pelican Industrial, Inc.** reserves the right to seek equitable, including injunctive relief, or sue to collect any unpaid account balance, in any court of competent jurisdiction.

6 - DELIVERY/SCHEDULE - All delivery and service dates are estimates only and based upon the prompt receipt of all necessary information from Customer. Unless otherwise instructed, **Pelican Industrial, Inc.** will ship goods to Customer via United Parcel Service (UPS) Ground delivery or similar carrier. Unless otherwise agreed in writing by **Pelican Industrial, Inc.** in a service contract or warranty, Customer is responsible for payment of delivery costs, including any costs for expedited delivery. Other portions of the Deliverables may be created or provided at Customer's facility. In no event shall **Pelican Industrial, Inc.** be responsible or liable for any delays, including any special, incidental or consequential damages or "down time".

7 - EXPORT AND USE RESTRICTIONS - If Customer intends to, or shall, export (or re-export), directly or indirectly, any portion of the Deliverable(s) or technical information relating thereto, it is the responsibility of Customer to assure compliance with United States and other export control laws and regulations and if appropriate, to secure any required export licenses or approvals in its own name. The Deliverable(s) to be provided hereunder are not intended for use in any weapons of mass destruction production (nuclear weapon, chemical weapon, biological weapon or missiles) or other activity where failure or use of the Deliverable(s) could lead directly to death, personal injury or severe physical or environmental damage. If so used, **Pelican Industrial, Inc.** (and its parent and affiliated companies) disclaim all liability for any damages arising as a result of the hazardous nature of the business in question, including but not limited to nuclear, chemical or environmental damage, injury or contamination.

8 - SALES AND SIMILAR TAXES - In addition to any price specified herein, Customer shall pay, or reimburse **Pelican Industrial, Inc.** for, the gross amount of any present or future sales, use, excise, income, value-added or other similar tax applicable to the price, sale, furnishing or use of any Deliverable(s) hereunder, or Customer shall provide **Pelican Industrial, Inc.** with sufficient evidence of tax exemption acceptable to the applicable taxing authorities. Customer is also responsible for all costs of importation, including without limitation tariffs, duties and the like.

9 - ACCEPTANCE, RETURNS AND EXCHANGE CREDITS - All orders for Deliverable(s) are subject to acceptance by **Pelican Industrial, Inc.** at Houston, Texas. Customer shall not return any Deliverable(s) actually delivered to Customer without the consent of and receipt of a Return Material Authorization Number from **Pelican Industrial, Inc.** Items returned for credit (other than exchanges), are subject to a 20% restocking fee based on List Price. **Pelican Industrial, Inc.** will provide an exchange credit to Customers who return an exchangeable part that is replaced with a part purchased from **Pelican Industrial, Inc.** Customers must return the exchangeable part within 30 days of receipt of the new part. Exchangeable parts include, but are not limited to PCB's, Amplifier Units and Motors and are identified by Return Material Authorizations forms included within the shipment of the new part. Acceptance of these parts and the amount of the exchange credit will be determined after each part is inspected and determined to be repairable by **Pelican Industrial, Inc.** Any part that is not repairable will be returned/discarded at the Customer's expense. Motors must be completely assembled and include all parts for exchange credit. These exchange credits will be only applied as directed by Customer and will be valid for 12 months following issuance of the applicable Credit Memo.

10 - DISCLAIMER OF WARRANTY - EXCEPT AS OTHERWISE AGREED TO BY **PELICAN INDUSTRIAL, INC.** IN WRITING, ALL DELIVERABLE(S) ARE PROVIDED ON AN "AS IS" BASIS ONLY, NOT SUBJECT TO ANY WARRANTY OR CONDITION WHATSOEVER INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, OR NON-INFRINGEMENT. **PELICAN INDUSTRIAL, INC.** MAKES NO WARRANTY FOR THE SELECTION OR COMPATIBILITY OF ANY CNC, SERVO OR OTHER HARDWARE OR SOFTWARE. EXCEPT AS EXPRESSLY AGREED TO BY **PELICAN INDUSTRIAL, INC.** IN WRITING, THIS DISCLAIMER OF WARRANTY SHALL SUPERSEDE ANY EQUIPMENT, PARTS OR SERVICE OR OTHER WARRANTY OF **PELICAN INDUSTRIAL, INC.** THE MAXIMUM LIABILITY OF **PELICAN INDUSTRIAL, INC.** WITH RESPECT TO ANY ASSERTION THAT ANY DELIVERABLE(S) ARE DEFECTIVE OR NON-CONFORMING, SHALL BE, AT **PELICAN INDUSTRIAL, INC.'S** SOLE ELECTION, (1) REPAIR OR REPLACEMENT OF ANY PARTICULAR DELIVERABLE OR PROVISION OF SUPPORT SERVICES WITHIN NINETY (90) DAYS FOLLOWING **PELICAN INDUSTRIAL, INC.'S** INITIAL PROVISION OF THE DELIVERABLES TO CUSTOMER, OR (2) RETURN OF THE CONTRACT PRICE PAID FOR THE PARTICULAR DELIVERABLE(S) PROVIDED UNDER THIS CONTRACT. **PELICAN INDUSTRIAL, INC.** SHALL NOT BE RESPONSIBLE FOR ANY DELIVERABLE(S) WHICH HAVE BEEN SUBJECT TO ABUSE, MISUSE, IMPROPER INSTALLATION OR MAINTENANCE OR DELIVERABLE(S) WHICH HAVE BEEN TAMPERED WITH, ALTERED, MODIFIED, REPAIRED OR SERVICED BY ANY PARTY OTHER THAN **PELICAN INDUSTRIAL, INC.** IN NO EVENT MAY CUSTOMER ASSERT THAT THE REMEDIES PROVIDED HEREIN ARE INADEQUATE OR HAVE FAILED OF THEIR ESSENTIAL PURPOSE. CUSTOMER DISCLAIMS ANY RELIANCE UPON ANY WRITTEN OR VERBAL STATEMENT EXCEPT AS EXPRESSLY SET FORTH IN THIS CONTRACT.

11 - LIMITATION OF LIABILITY - IN NO EVENT SHALL **PELICAN INDUSTRIAL, INC.** BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, CLAIMS FOR LOSS OF REVENUE OR PROFITS, "DOWN TIME" OR BUSINESS INTERRUPTION, INCREASED COST OF OPERATION, DAMAGE TO EQUIPMENT OR PROPERTY, COST OF CAPITAL, COST TO SUBSTITUTE EQUIPMENT, FACILITIES OR

SERVICES, CLAIMS OF CUSTOMER'S CUSTOMERS, OR DAMAGES OR PENALTIES RESULTING FROM CUSTOMER'S CONTRACTS WITH ITS CUSTOMERS, WHETHER ARISING OUT OF WARRANTY, CONTRACT, INDEMNITY, EQUITY, STRICT LIABILITY OR TORT, WHETHER OR NOT CAUSED BY THE NEGLIGENCE OR FAULT OF **PELICAN INDUSTRIAL, INC.**, AND REGARDLESS OF ANY OTHER LEGAL THEORY UPON WHICH THE CLAIM IS BASED AND REGARDLESS OF WHETHER **PELICAN INDUSTRIAL, INC.** HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. IN NO EVENT MAY CUSTOMER SEEK OR RECOVER PUNITIVE OR EXEMPLARY DAMAGES, NOR SHALL **PELICAN INDUSTRIAL, INC.** BE LIABLE FOR SUCH DAMAGES. NO CLAIM ARISING OUT OF ANY CLAIMED BREACH OR RELATING TO THE DELIVERABLE(S) MAY BE BROUGHT BY CUSTOMER IN MORE THAN ONE (1) YEAR AFTER THE DATE ON WHICH THE EVENTS GIVING RISE TO SUCH CLAIM OCCURS.

12 - INDEMNITY - CUSTOMER SHALL INDEMNIFY, HOLD HARMLESS AND DEFEND **PELICAN INDUSTRIAL, INC.** AND ITS RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS (COLLECTIVELY, THE "**PELICAN INDUSTRIAL, INC.** INDEMNITEES"), FROM AND AGAINST ALL CLAIMS, LOSSES, DAMAGES, PENALTIES, INJURIES, AND COSTS, INCLUDING ATTORNEYS' FEES AND LITIGATION COSTS, (COLLECTIVELY, "DAMAGES"), TO THE EXTENT ARISING FROM OR RELATED TO (1) THE ACTS OR OMISSIONS OF CUSTOMER OR ITS EMPLOYEES OR AGENTS, INCLUDING ANY ALLEGED OR ACTUAL NEGLIGENT, RECKLESS OR INTENTIONAL ACTS OR OMISSIONS OR NONCOMPLIANCE WITH ANY OF THE TERMS OF THIS CONTRACT, INCLUDING ANY ALLEGED OR ACTUAL INJURIES TO PERSON OR PROPERTY, AND (2) ALL CLAIMS FOR DAMAGES EXCLUDED IN THE ABOVE LIMITATION OF LIABILITY, INCLUDING CLAIMS OF CUSTOMER'S CUSTOMERS, REGARDLESS, AS TO (1) OR (2), OF WHETHER **PELICAN INDUSTRIAL, INC.** WAS CONTRIBUTORILY NEGLIGENT OR HAD KNOWLEDGE OF THE POSSIBILITY OF SUCH CLAIMS OR DAMAGES.

13 - TESTING AND SUPPORT - The conditions of any tests, including specification or acceptance testing, shall be mutually agreed upon in writing and **PELICAN INDUSTRIAL, INC.** shall be notified of, and reserves the right to be present or represented at, all tests that may be conducted. In no case does any remedy or warranty, if any, apply to any failure or nonconformance with a specification caused by or attributable to any associated or complementary product or service not supplied by **PELICAN INDUSTRIAL, INC.** under this Contract, nor shall any such remedy or warranty in any case apply to the quality of Customer's own products or Customer's process of manufacture on which any Deliverable(s) is used.