Terms & Conditions of Sale

Maxxim Rebuild Co., LLC d/b/a Maxxim Manufacturing ("Manufacturer")

1. **MANUFACTURER'S QUOTE; CONTRACT.** Manufacturer's acceptance or fulfillment of any purchase order by a purchaser ("Purchaser") of goods ("Product" or "Products") and/or product repair/rebuild or other services ("Services") is limited to Purchaser's agreement to the express terms contained in Manufacturer's applicable quote (the "Quote") and in these Terms & Conditions of Sale, and any such order as accepted or fulfilled by Manufacturer, together with these Terms & Conditions of Sale, shall constitute a binding agreement (the "Contract"). The term "Products" as used herein shall include parts, components or equipment rebuilt or refurbished by Manufacturer for Purchaser. Purchaser's agreement to these terms and conditions shall be conclusively presumed from Purchaser's placement of an order with Manufacturer. Any proposal for additional or different terms, or any attempt by Purchaser to vary in any degree any of the terms herein, is hereby objected to and rejected. Any provisions on the face or reverse side of any purchase order or other document which Purchaser may send to Manufacturer in connection with an order are for order identification only, are expressly objected to by Manufacturer and waived by Purchaser and made inapplicable to any purchase of Products and/or Services by Purchaser from Manufacturer. As such, no other pre-printed terms and conditions on any form issued by Purchaser shall modify these Terms & Conditions, even if any such form is signed by or on behalf of Manufacturer.

2. **PRICE QUOTES DO NOT INCLUDE OTHER CHARGES.** Unless otherwise stated by Manufacturer in its written Quote, quoted prices do not include domestic or international shipping charges beyond the point of delivery, the cost of insurance during the time Purchaser bears risk of loss, or charges for demurrage or any other similar costs.

3. **TERMS OF PAYMENT AND FAILURE TO PAY.** Payment is due 30 days from the invoice date in US Dollars, unless otherwise specified in the quote or in the invoice. If Purchaser fails to pay any invoice when due, or if the financial condition or credit of Purchaser becomes reasonably unsatisfactory to Manufacturer, Manufacturer, at its option and without affecting any other lawful remedy, may change the terms of payment or suspend Product work / Services and further deliveries, or both, until Purchaser provides security or other adequate assurances of performance as reasonably demanded by Manufacturer. The failure or refusal of Purchaser to provide assurances within ten (10) days after a request by Manufacturer will constitute a repudiation, at Manufacturer's discretion, of the entire Contract. By submitting any purchase order or other writing, either prior or after the date of Manufacturer's quotation, Purchaser represents that it is solvent for all purposes. If Purchaser fails to make any payments to Manufacturer when due, without limiting Manufacturer's rights and remedies, Purchaser shall incur and pay a late payment charge computed at the rate of 2% per month on the overdue balance, or the maximum rate permitted by law, whichever is less, for each calendar month, or fraction thereof, that payment is late. For each day payment is delayed by Purchaser, Manufacturer's delivery or performance obligation shall be extended for a like period.

4. **TITLE AND RISK OF LOSS.** Unless otherwise stated in the Contract, Purchaser is responsible for any freight costs associated with the delivery of any Product to its destination. Title and risk of loss will pass to Purchaser upon delivery to the common carrier or upon pick-up by Purchaser.

5. **TAXES.** Any tax, duty, fee or tariff imposed on Manufacturer, on Purchaser or on the transaction by any law or governmental entity on the sale or use of the Products sold to Purchaser or Services performed for Purchaser by Manufacturer shall be in addition to the sales price thereof and shall be the sole responsibility for Purchaser to pay ("Purchaser Taxes"). The sales price under the Contract does not include the amount of any Purchaser Taxes and no such taxes shall be deducted from Purchaser's payment under the Contract. Purchaser Taxes shall not be collected from Purchaser if it is entitled to exemption if Purchaser duly furnishes Manufacturer with a proper exemption certificate or direct-pay documentation, as applicable.

6. **DELIVERIES; EXCUSABLE DELAY.** While Manufacturer shall try to schedule Purchaser's order for delivery as nearly in accordance with its instructions as possible, Manufacturer does not guarantee nor assume liability for failure to meet any delivery dates. Manufacturer shall not be liable or considered in breach of its obligations under the Contract to the extent that Manufacturer's performance is delayed or prevented, directly or indirectly, by any cause beyond its reasonable control including, but not limited, to acts of God, fire, terrorism, war (declared or undeclared), epidemics, material shortages, insurrection, acts or omissions of Purchaser, any act or omission by any governmental authority, strikes, labor disputes, transportation shortages, or any vendor non-performance or delay caused by any of the foregoing. In such a case, Seller shall have no obligation to purchase substitute goods or make other substitute arrangements in order to complete delivery to Buyer or to ship substitute goods from any other facility, and the schedule for Manufacturer's performance shall be extended by the amount of time lost by reason of the event plus such additional time as may be needed to overcome the effect of the event and resume performance. If acts or omissions of the Purchaser or its affiliates, or their agents or other contractors or suppliers cause the delay, Manufacturer shall also be entitled to an equitable price adjustment.

7. **DEFERRED DELIVERIES.** Manufacturer may, but is not obligated to, accept a written request by Purchaser to delay shipment of any ordered Products. If deferred shipment is accepted by Manufacturer, Purchaser shall pay any additional costs incurred by Manufacturer as a result of the delay and the price for the balance of the order shall be adjusted to reflect prices and costs in effect at the time of actual shipment. Any agreed-to shipping delay is not to exceed thirty (30) days on that portion of the order which is not then in process or completed on condition that, at the expiration of such time, definite shipping instructions which meet with Manufacturer's approval are given. Should the Purchaser at the expiration of the delay period fail to furnish definite acceptable shipping instructions, Manufacturer shall have the right to make a cancellation charge on the same conditions and terms of payment as outlined under "Cancellations", above.

8. **WARRANTY PROVISIONS.**

   a) Manufacturer warrants that any Products and Services (including product repairs and rebuilds) supplied or performed under the Contract shall be delivered free from defects in material and workmanship and shall conform to any applicable Contract specifications. **The applicable warranty period shall be as specified in the Quote** (the "Warranty Period"), **or if none is specified, then no warranty shall apply**.

   b) If any Product or Service does not meet the above warranties within the applicable Warranty Period, Purchaser shall give written notice thereof to Manufacturer within no more than three (3) calendar days after such defect is or should have been discovered. Products claimed to be defective must be held for Manufacturer's shipping instructions and no claim for Products or Services alleged to be defective will be allowed until Manufacturer has had a reasonable opportunity to examine such Products or the item on which the Services were rendered.

   c) If Manufacturer determines that the Product or part thereof, or Services provided, failed to meet the foregoing warranties within the applicable Warranty Period, then Manufacturer shall, at its option, (i) repair or replace the defective Product(s), as applicable; and/or (ii) re-perform defective Services. If despite Manufacturer's reasonable efforts, Manufacturer determines that a non-conforming Product cannot be repaired or replaced, Manufacturer shall give the Purchaser a credit for the price the Purchaser paid for such non-conforming Product, provided Purchaser returns the same to Manufacturer undamaged (*i.e.*, with no damage other than associated with the claimed defect). Warranty repair, replacement or re-performance by Manufacturer shall not extend or renew the applicable Warranty Period. Purchaser shall bear the costs of access for Manufacturer's remedial warranty efforts including removal and/or installation costs associated with the repair and replacement of the defective Products and transportation of the Products to Manufacturer and back to Purchaser. Manufacturer's obligation with respect to defective Products and Services is expressly limited, at Manufacturer's option, to the repair, replacement, or allowing credit for any such Products and Services, as provided above.

d) The provisions of this warranty section provide the exclusive remedies for any and all claims based on failure of or defect in Products or Services, regardless of when the failure or defect arises, and whether a claim, however described, is based on contract, warranty, indemnity, tort/extra-contractual liability (including negligence), strict liability or otherwise. The warranties provided herein are exclusive and are in lieu of all other warranties, conditions and guarantees, whether written, oral, implied or statutory. THIS WARRANTY IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, AT LAW OR IN EQUITY, WITH RESPECT TO PRODUCTS AND SERVICES OR THEIR CHARACTERISTICS, QUALITY OR PERFORMANCE, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL SUCH WARRANTIES AND REPRESENTATIONS ARE HEREBY DISCLAIMED.

e) The warranties and remedies provided for herein are conditioned upon: (i) proper storage, installation, use, operation, and maintenance of Products, including proper and timely oil sampling; (ii) Purchaser keeping accurate and complete records of operation and maintenance during the Warranty Period and providing Manufacturer access to those records; and (iii) modification of Products or Services only as authorized by Manufacturer in writing. Manufacturer's obligations hereunder shall not apply to: (a) normal wear and tear; (b) any Product that is normally consumed in operation; (d) any Product that has a normal life inherently shorter than the applicable Warranty Period hereunder; (e) any Product or Service that has been subjected to any other kind of misuse or detrimental exposure, has been involved in an accident or other casualty (a) any losses due to misuse, accident, abuse, neglect, normal wear and tear, or improper installation, maintenance or application; (b) Products that have been repaired or altered by someone other than Manufacturer; or (c) any labor charges for removal and/or replacement of the non-conforming or defective Product or part thereof. This warranty extends to Purchaser only and not to Purchaser's customers or end users of Purchaser's products. If Purchaser attempts any work inside a gear casing, then any warranty otherwise applicable thereto shall be null and void.

f) If Purchaser uses non-Manufacturer parts or non-Manufacturer approved repairs with respect to Products or with respect to products as to which Manufacturer performed Services, then any damage to, failure of, or performance degradation of the Products or products on which Services were performed, directly or indirectly resulting from the use of such parts or repairs, shall not be warranted by Manufacturer. Further, if such parts or repairs cause personal injury, death or property damage to third parties, Purchaser shall indemnify and hold Manufacturer harmless from all claims and liabilities connected therewith. This indemnification obligation shall survive the termination or expiration of the Contract.

g) For any resale by Manufacturer of Products not manufactured by Manufacturer, such Products shall be covered exclusively by any applicable warranty issued by the underlying manufacturer, it being understood that Manufacturer shall exercise commercially reasonable efforts to provide Purchaser with available documentation relating to manufacturer warranties as needed for Purchaser to obtain the benefit thereof, including (if permitted by the manufacturer) to assign to Purchaser any applicable manufacturer warranties covering such Products.

9. INSPECTION & FACTORY TESTS. Manufacturer will apply its normal quality control procedures in manufacturing or rebuilding any Product and/or performing any Services. Manufacturer shall attempt to accommodate requests by Purchaser to witness, at Purchaser's sole cost and expense, Manufacturer's factory tests of Products, subject to appropriate access restrictions, if such witnessing can be arranged without delaying completion of work on the Product(s) or performance of any Services.

10. LIMITATION OF LIABILITY. IN NO EVENT WILL MANUFACTURER BE LIABLE TO PURCHASER, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, STATUTORY LIABILITY, OR OTHERWISE, FOR INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE, TREBLE, EXEMPLARY OR INDIRECT DAMAGES, INCLUDING LOST PROFITS, LOST REVENUE(S), OR LOST GOODWILL, WHETHER OR NOT THE POSSIBILITY OF SUCH DAMAGES HAS BEEN DISCLOSED OR COULD HAVE BEEN REASONABLY FORESEEN. THE TOTAL LIABILITY OF MANUFACTURER

FOR ANY DAMAGES HEREUNDER, OR FOR ANY CLAIM ARISING OUT OF A TRANSACTION RELATED HERETO, SHALL BE LIMITED TO THE AMOUNT PAID BY PURCHASER FOR THE PRODUCTS AND/OR SERVICES PURCHASED UNDER THE CONTRACT.

11. **GOVERNING LAW; VENUE; WAIVER OF TRIAL BY JURY.** This Agreement shall be governed by and construed in accordance with the laws of the State of West Virginia, without reference to any conflict of laws principles. Venue for any action relating to the Contract or any dispute or claim hereunder shall lie in the federal or state courts of with territorial jurisdiction over Mercer County, West Virginia, and without regard to the United Nations Convention on the International Sale of Goods or any other international treaty, rule or accord. Each of the parties hereto irrevocably waives any and all rights each such party may have to a trial by jury in any action, proceeding or claim of any nature relating to this Contract, any documents executed in connection herewith, or any transaction contemplated herein or consummated between the parties. Each of the parties acknowledges that the foregoing waivers are knowing and voluntary.

12. **NO INFERENCE.** No inference shall be drawn in favor of or against any party based on its participation, or lack thereof, in the drafting of these Terms & Conditions of Sale or any of the other constituent parts of the Contract.

13. **INDEPENDENT CONTRACTOR.** The parties agree that in the performance of the Contract, each party shall be acting solely as an independent contractor, as buyer or seller, and that no relationship of partnership or joint venture shall be deemed to exist between the parties.

14. **NO WAIVER.** The failure of any party to insist in any one or more instances upon strict performance of any of the provisions of the Contract or to take advantage of any of its rights hereunder shall not be construed as a waiver of any such provisions or the relinquishment of any such rights, but the same shall continue and remain in full force and effect.

15. **SEVERABILITY.** If any provision of the Contract or its application is determined by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, then the validity, legality and enforceability of all other applications of that provision, and of all other provisions and applications hereof, will not in any way be affected or impaired. If any such court shall determine that any provision of the Contract is in any way unenforceable, such provision shall be reduced to whatever extent is necessary to make such provision enforceable.

16. **ENTIRE AGREEMENT; AMENDMENT.** The Contract consisting of these Terms & Conditions of Sale, Manufacturer's Quote and Purchaser's order (excluding any other terms and conditions) constitute the entire agreement between the parties. No modification, change, amendment or waiver shall be binding on either party unless agreed in writing by the respective authorized representatives of both parties. The parties represent and warrant that they did not rely upon any statement, oral or written, not contained in the Contract in making their respective decisions to enter into the transaction(s) provided for by the Contract.