

## BOOTS SMITH TERMS AND CONDITIONS

These Terms and Conditions of purchase are part of the Order and constitute the entire agreement between Boots Smith Energy Group, Inc. and Supplier regarding the Order.

### 1. Definitions Used in these Terms.

- (a) "Claims" means all claims, demands, causes of action, liabilities, damages, judgments, awards, losses, costs, expenses (including, without limitation, reasonable attorneys' fees and costs of litigation in defense of any claim) of any kind or character.
- (b) "Company" means Boots Smith Energy Group, Inc., its affiliated companies, joint venturers, and partners, its and their contractors and subcontractors, its and their affiliates, and the officers, directors, employees, agents, consultants, servants, and invitees of each of them. "Company" is the party requesting the Work, its joint venturers, partners, lessors, and co-lessors, its and their contractors and subcontractors (other than the Company), its and their affiliates, and the officers, directors, employees, agents, consultants, servants, and invitees of each of them.
- (c) "Delivery Date" means the date for delivery originally agreed by the parties.
- (d) "Dispute" means any dispute, controversy, or claim arising out of or in connection with the Order or the parties' performance hereunder.
- (e) "Escape" means Work received by Company in a non-compliant form and for which the non-compliance is not detected prior to the Good or service leaving a Company facility.
- (f) "Force Majeure" means any causes not reasonably within the control of a party, including but not limited to acts of God, government action, war, terrorism, civil disturbance, and strikes or labor problems.
- (g) "Good" or "Goods" means the tangible property manufactured or supplied to Company by Supplier, in whole or in part, in Supplier's completion of its obligations under the Order.
- (h) "Order" means the request for Work made by Company to Supplier.
- (i) "REGARDLESS OF FAULT" means without regard to the cause or causes thereof including without limitation pre-existing conditions, whether such conditions be patent or latent, imperfection of material, defect or failure of equipment, breach of representation or warranty (express or implied), ultra-hazardous activity, strict liability, tort, breach of contract, breach of statutory duty, breach of any safety requirement or regulation or the negligence or fault of any person, party, or entity, including the indemnified Party or Parties, whether such negligence be sole, joint, or concurrent, active, passive, or gross, or any other theory of legal liability.
- (j) "Supplier" means the party providing the Work to Company.
- (k) "Third Party" means any person or entity other than a member of Company or Supplier.
- (l) "Work" means any services performed for or any Goods provided to Company by Supplier, in whole or in part, as requested by the Order.
- (m) The Terms set forth herein take precedence over any alternative terms in any other document connected with the Work unless such alternative terms are part of a written master service or other similar agreement executed within three years prior to the work being ordered by Company, which has been negotiated between Company and Supplier and which Company and Supplier have expressly agreed in writing overrides these Terms in the event of a conflict. Except as provided in the immediately preceding sentence, the Terms constitute the sole and entire agreement governing the provision of Work by Supplier to Company and supersede (a) all prior discussions and agreements between Company and Supplier, (b) other inconsistent terms submitted by Supplier and (c) any conflicting provisions of any contract, work order, purchase order, or other similar document issued by Company at any time. The Terms may not be altered or amended unless agreed to in writing by Company and Supplier. No field employee of Company shall be empowered to alter the Terms. Failure of Company to object to any provisions which may be contained in any other writing of Supplier shall not be construed as a waiver of the Terms or an acceptance by Company of any other terms and conditions of Supplier. Supplier shall be deemed to have accepted these Terms upon the earlier of when Supplier acknowledges receipt of an Order, performs any portion of the Work called for by the Order, provides any Goods, or sends any invoice or request for payment to Company. Any acceptance of the Terms is limited to acceptance of the express provisions contained herein, and any document submitted by Supplier containing conflicting or additional terms and conditions from those contained herein is hereby rejected unless expressly agreed to in writing by Company. No document submitted by Supplier containing conflicting or additional terms from those herein shall be deemed a rejection of these Terms.

**2. DELIVERY.** Time, quantity, and accuracy of deliveries are of the essence. Supplier shall immediately notify Company in the event Supplier's performance under the Order is delayed or likely to be delayed, in whole or in part, including the reasons for such delay. Such notice shall not constitute a waiver by Company of any of Supplier's obligations under the Order. If the Work is not completed by the time, at the location and in the quantities required by the Order, such failure shall be a default and Company reserves the right, without liability and in addition to its other rights and remedies: (i) to expedite shipments at the sole cost and expense of Supplier; and (ii) to purchase substitute goods or services elsewhere and charge Supplier with any difference between the cost of the Work as set forth in the Order and the cost of obtaining the substitute goods or services. Company reserves the right to reject and return at Supplier's expense any Goods delivered to Company more than seven (7) days prior to the Delivery Date. Should Company fail to return Goods delivered early, title to such Goods shall remain with Supplier until the seventh day prior to the Delivery Date.

**3. INVOICES AND PAYMENT.** Company will not accept an invoice received more than ninety days after performance of the Work and will not be liable for payment requested in a late invoice. If an invoice is disputed by Company in whole or in part, Company will provide prompt written notice of the dispute to Supplier. Company will pay any undisputed amounts within the time limit stated in the terms for payment set out on the face of the Order, but will not be required to pay disputed amounts until the dispute is settled.

### 4. SUPPLIER'S PERFORMANCE AND WARRANTY OF WORK.

- (a) Supplier warrants and represents that all Work shall comply with the terms and conditions of the Order and conform to all specifications provided by Company. If no specifications are provided, the Work must conform to generally accepted industry standards. All services constituting part of the Work shall be performed in a good and workmanlike manner.
- (b) All Goods constituting part of the Work shall be new (unless otherwise approved in writing by Company) and of good quality; merchantable; free from defects; free and clear of any liens, security interests, charges, or encumbrances of any kind; and suited for Company's purposes.
- (c) Supplier represents and warrants that Supplier's Work shall not interrupt, delay, or otherwise adversely impact the operations of Company or its customers.
- (d) Supplier will provide written certification or certificates of conformance with each shipment of Goods to Company. Such certification will verify compliance with the requirements for product usage, plating/coating operations, heat treatment, or other special processes to be used in manufacturing the Goods, as defined on the product documentation or in the Order.
- (e) All above warranties survive termination or expiration of the Order or acceptance of Work by Company.
- (f) In the event that the Work does not comply with all of the warranties set forth herein, as determined by Company in its sole discretion:

(1) Supplier agrees to re-perform such Work to the satisfaction of Company, at no cost to Company. In the event Supplier does not remedy such defects to Company's satisfaction and the Work is completed by Company or a third party, any outstanding sums due to Supplier will be offset by any costs to Company in having the Work completed. Company will not be obligated to pay for any Work that does not meet Supplier's warranties set forth herein.

(2) If the Work is comprised of Goods, then Company may, at its option: (i) hold rejected Goods for Supplier's instructions and at Supplier's risk; (ii) return the Goods at Supplier's expense; (iii) rescind the Order; (iv) accept the Goods at an equitable reduction in price; or (v) rework the Goods to bring them within the standards set forth here, with any costs to Company offsetting any outstanding sums due to Supplier.

i. No replacement of rejected Work shall be made unless otherwise specified by Company at the time the Work is returned. Payment for or use of Work prior to inspection shall not constitute acceptance. Supplier will refund all amounts paid for any rejected Work, including cost of freight and handling. Title to non-compliant Work shall remain with Supplier until Company's acceptance. Supplier shall reimburse Company for any and all damages sustained by Company as a result of Supplier's nonperformance.

(3) For each Escape that Company determines is a result of the delivery of non-compliant Goods by Supplier, Company may assess and oblige Supplier to pay Company liquidated damages in the amount of USD 1500 to cover costs and expenses associated with administrative processing of the non-compliant Goods. Such assessment may be credited by Company against any amount due and owing Supplier. Supplier shall have the right to prove to Company that any costs and expenses actually incurred by Company were lower than the assessment, or nonexistent. Company's right to pursue other remedies, such

as the cost of the replacement Goods, is not limited by this assessment.

**5. CHANGES.** Company may issue a revised Order to change any aspect of the original Order. In the event the revised Order results in an increase or decrease in expense to Supplier, then Supplier shall immediately notify Company and the parties will negotiate a mutually-agreeable rate prior to Supplier performing any Work under such revised Order. Any changes shall be documented in a revised Order.

### 6. TERMINATION.

- (a) **Without Cause:** Company may suspend or terminate the Order at any time by providing Supplier with 15 days' written notice. In the event of termination without cause, Company shall pay for materials and labor properly expended by Supplier up to the date of notice of termination. Supplier shall deliver all such materials to Company within ten (10) days of termination.
- (b) **With Cause:** Company will have the right to terminate the Order:
- (1) immediately if Supplier fails to meet or satisfy the requirements in Paragraph 7 below;
  - (2) upon written notice, if Supplier defaults on any of its obligations, and fails to remedy the default within five (5) days of Company's provision of notice of the default; or
  - (3) upon 15 days' written notice if insolvency, receivership, or bankruptcy proceedings are commenced by or against Supplier, or if Supplier generally becomes unable to pay its accounts when they become due.
- (c) If Company terminates the Order with cause, Company has no further obligation to Supplier.
- (d) The termination or expiration of the Order will not relieve or release a party from the obligations or liabilities accrued as of the date of termination or expiration, including but not limited to the obligations under Paragraphs 4 and 7 herein.

### 7. INDEMNITY AND INSURANCE

- (a) To the greatest extent allowed by law, Supplier shall release, defend, indemnify and hold harmless Company from and against any and all claims brought by any employee, agent, contractor, or affiliate of Supplier (or their family members) against Company for property damage/destruction, personal or bodily injury, or death arising out of the Work, REGARDLESS OF FAULT, except that Supplier shall not be obligated or required to indemnify or hold harmless Company for its own negligence or fault.
- (b) To the greatest extent allowed by law, Supplier shall defend, indemnify and hold harmless Company from and against any and all claims for property damage/destruction, personal or bodily injury, or death arising out of the Work REGARDLESS OF FAULT, except that Supplier shall have no obligation to indemnify or hold harmless Company for its own negligence or fault. Company's defense shall be provided by counsel of its own choosing.
- (c) To the greatest extent allowed by law, Supplier shall defend, indemnify and hold harmless Company from and against any and all demands, actions, enforcement proceedings, penalties, fines, and required remediation, including payment of any legal fees, costs, and expenses, arising from Supplier's failure to fully comply with any law, regulation, or permitting requirement, regardless of whether such law, regulation, or requirement is promulgated by federal, state, or local governmental agency.
- (d) To the greatest extent allowed by law, Supplier shall defend, indemnify, and hold harmless, Company for all claims, losses, damages, costs, expenses, or other liabilities of any kind or character arising from or relating to the Work for (i) a wild well condition, including costs of regaining control and debris removal, (ii) loss or damage to any reservoir, well or well bore, including loss of oil, gas, water or any other mineral substance, (iii) fire, explosion, seepage, pollution (above or below ground), or blowout of any well, including without limitation any cratering or other uncontrolled well or underground condition, (iv) property damage, personal or bodily injury, or death arising out of the conditions identified in (i)-(iii) herein, and (v) costs or expenses incurred in attempts to control the conditions set forth in (i)-(iii) herein.
- (e) In the event Supplier suffers any loss of equipment downhole or in the drill string below the rotary table, Supplier shall be responsible for the replacement costs and retrieval expenses associated with removal of such lost-in-hole equipment.
- (f) In the event of loss of equipment rented or leased, Supplier shall be responsible for replacement and repair costs, or other costs required by any rental or lease agreement, of such equipment.
- (g) Company and Supplier shall each maintain (i) commercial general liability insurance, all-risks insurance, or qualified self-insurance in the amount of \$1,000,000 (per occurrence), (ii) workers' compensation coverage in statutorily required amount or \$1,000,000, (iii) automobile liability coverage of \$1,000,000 (for bodily injury and property damage, per accident), and (iv) umbrella or excess coverage for the foregoing coverages in the minimum amount of \$5,000,000.
- (h) Company and Supplier shall each be named in the foregoing insurance policies (except workers' compensation) maintained by the other as an additional insured on a primary and non-contributory basis to the extent of the indemnities assumed herein. Company's status as an additional insured shall not be restricted to vicarious liability for Supplier or any other similar restriction. Company and Supplier shall be entitled to status as an additional insured even if any indemnity provision of this Section is unenforceable.
- (i) The policies of insurance noted above shall be endorsed to waive all rights of subrogation against Company and Supplier, as the case may be, and against their respective insurers, for all Claims caused by or resulting from the Work. Such policies shall be endorsed to provide that all insurance shall be primary and non-contributing with any other insurance maintained by Company or Supplier regarding all Claims caused by or resulting from the Work to the extent of the liabilities assumed by Company or Supplier in these Terms. Company and Supplier shall each cause their respective insurer(s) to provide the other with 30 days prior notice in the event of any cancellation or material change in their respective insurance policies.
- (j) Notwithstanding anything herein to the contrary, neither Company nor Supplier will be responsible for punitive, special, indirect, incidental, or consequential damages of any kind, including without limitation loss of revenue, profits, business opportunities, production, damages for failure to meet deadlines, loss of use, rig time expenses, subsurface damage, loss of hole, re-drilling expenses, reservoir formation damage, pollution damage, and/or wreck or debris removal expense.

### 8. MISCELLANEOUS.

- (a) **Overshipments.** Supplier shall ship to Company the quantity called for by the Order at the price quoted by Supplier, in accordance with the other terms and conditions of the Order. Any increased quantity shipped without prior acceptance may be returned by Company to Supplier at Supplier's sole expense.
- (b) **Assignment.** Supplier shall neither assign nor subcontract to any other party for the furnishing of any Work covered by the Order without Company's prior express written consent. Company shall have the right to assign the Order to any member of Company without the approval of Supplier.
- (c) **Force Majeure.** If either party is unable by reason of Force Majeure to carry out any of its obligations under the Order, other than obligations to pay money, the affected party shall provide written notice, whereupon such obligations shall be suspended for the duration of the Force Majeure.
- (d) **Law and Venue.** The Order and all Disputes will be governed by and interpreted in accordance with the substantive laws of Mississippi, regardless of any conflicts- or choice-of-law provisions. The parties affirmatively select and accept the Second Judicial District of Jones County, Mississippi as the venue for the resolution of any and all Disputes arising from the Order.
- (e) **Waiver.** No waiver, modification, amendment, or addition affecting the Order is of any force or effect unless made in writing and signed by an authorized representative of each party. No waiver of any breach made in compliance with this provision will constitute a waiver of any other breach of the Order.
- (f) **Taxes.**

(1) Supplier shall bear and pay any and all liabilities or claims for any taxes or charges that any governmental authority claiming jurisdiction over the Order hereunder may impose, assess, or levy against Supplier on account of or resulting from Supplier's execution of or performance under the Order.

(2) All compensation due Supplier hereunder is stated exclusive of any tax that may be levied on such compensation, including but not limited to sales tax. Any such tax, if imposed by the taxing authorities having jurisdiction over the Order, shall be separately stated on the applicable invoices and shall be paid by Company to Supplier (unless Company is required by law to withhold any such tax or governmental charge). Supplier shall remit such taxes collected to the appropriate taxing authorities.

(g) **Severability.** If any provision of the Order is held by a court of law or the Tribunal to be invalid or unenforceable, the remaining provisions shall remain in full force and effect. No remedy conferred or reserved to Company under the Order is exclusive of any other available remedy or remedies.