

TERMS AND CONDITIONS OF THE WORK

THESE TERMS AND CONDITIONS COMPRISE THE ENTIRE AGREEMENT (the "Agreement"), between Seattle Industrial Motor & Machine Co., a Washington corporation with offices located at 10831 East Marginal Way South Tukwila, Washington 98168 ("SIMMCO") and Customer. SIMMCO and Customer may each be referred to herein individually as a "Party" or collectively as the "Parties."

1. **HEADINGS AND DEFINITIONS.** All headings used in this Agreement are inserted for convenience only and are not intended to affect the meaning or interpretation of this Agreement of any clause. Except for articles and section headings, terms which begin with capital letters shall have the following meanings assigned to them:

1.1 "Applicable Laws" means all international, federal, state and local laws, ordinances, regulations and orders applicable to the performance of a Party's obligations under this Agreement.

1.2 "Claims" has the meaning ascribed to it in Section 7.1.

1.3 "Deliverable" has the meaning ascribed to it in Section 0.

1.4 "Force Majeure Event" has the meaning ascribed to it in Section 9.

1.5 "Product" or "Products" are the assets to be sold by SIMMCO to Customer as identified in a Statement of Work.

1.6 "Services" means the services to be performed by SIMMCO for Customer as identified in a Statement of Work.

1.7 "Statement of Work" means the statement of work on the reverse of this form.

1.8 "Third Party IP Rights" has the meaning ascribed to it in Section 6.3.

1.9 "Warranty Period" has the meaning set forth in Section 6.1.

2. **SCOPE AND STATEMENT OF WORK.**

SIMMCO will sell to Customer and Customer shall purchase from SIMMCO, all Products, documentation, goods (collectively, "Deliverables") and Services described in each Statement of Work. The Deliverables and Services shall conform to the specifications indicated in the Statement of Work or Schedule A thereto.

3. **DELIVERABLES AND STATEMENT OF WORK.**

3.1 **Delivery.** SIMMCO shall deliver the Deliverables to Customer at the address and on the dates indicated on the relevant Statement of Work. Customer will be responsible for all transportation and delivery costs unless expressly stated otherwise in the Statement of Work.

3.2 **Services.** SIMMCO shall perform the Services at the address and on the dates indicated in the relevant Statement of Work. In the event that Services are to be performed at Customer's location or a third party location, Customer shall make adequate space and facilities available for SIMMCO to perform the Services, including but not limited to the use of reasonably necessary office, shop, garage or other space and Customer shall be responsible for any janitorial service, trash disposal, proper disposal of waste fluids (oil, antifreeze, etc.) and routine cleaning. At SIMMCO's option, title to all scrap material resulting from the Deliverables and Services shall vest in SIMMCO.

3.3 **Hazardous Substances.** SIMMCO will not handle, move, store, treat or dispose of insulating oil, polychlorinated biphenyl, asbestos or other hazardous substances. If hazardous substances are found in Customer's equipment to be serviced or, if Services are not to be performed at SIMMCO's facility, the location where Services are to be performed, SIMMCO may terminate the applicable Statement of Work and following termination Customer shall pay SIMMCO for work performed and costs incurred (including reasonable termination costs) prior to the time of termination.

3.4 **Subcontracting.** SIMMCO may subcontract its obligations under this Agreement to a third party without the prior written consent of Customer.

4. **ACCEPTANCE AND TITLE.**

4.1 **Acceptance.** Unless Customer provides SIMMCO with a notice of rejection, Customer shall be deemed to accept all Deliverables and Services provided by SIMMCO on the earlier of (a) the fifth (5th) day after delivery of such Deliverables, or (b) the delivery of written notice of acceptance by Customer to SIMMCO.

4.2 **Title.** Title to all Deliverables delivered to by SIMMCO to Customer shall pass to Customer after such Deliverables have been paid for pursuant to Section 5.

5. **PRICING AND PAYMENT.**

5.1 **Price.** The prices to be paid by Customer to SIMMCO for the Services and Deliverables are set forth in the Statement of Work.

5.2 **Invoicing.** SIMMCO shall invoice Customer monthly. Each invoice issued by SIMMCO to Customer hereunder will reference the applicable Statement of Work. The terms of this Agreement shall supersede any conflicting or additional terms set forth in any purchase order or other materials provided by Customer to SIMMCO.

5.3 **Payment.** Customer shall pay invoices within thirty (30) days of the date Customer receives each invoice. Customer shall pay interest at the lower of 1.5% per month (or fraction thereof) and the highest legal rate on all payments thirty (30) or more days overdue (without prejudice to SIMMCO's right to immediate payment). Payment shall not be contingent upon the results of any testing procedures not contemplated in the Statement of Work. If completion of the Services is delayed due to Customer's actions or failure to act, SIMMCO may require immediate payment for materials accumulated and the portion of Services performed prior to or during the period of delay.

5.4 **Taxes.** Customer shall pay all applicable federal, state or local sales or use taxes that are imposed upon the fees and charges paid by Customer to SIMMCO pursuant to this Agreement, unless Customer has furnished SIMMCO with a certificate of exemption with respect thereto. SIMMCO will be responsible for all other taxes arising from the transactions contemplated by this Agreement.

6. **REPRESENTATIONS AND WARRANTIES.**

6.1 **Warranty.** SIMMCO warrants that, for a period of twelve (12) months from the date of delivery of each Deliverable and the completion of Services (the "Warranty Period"), such Deliverables and Services shall conform in all material respects with, and perform the functions set forth in, the applicable Statement of Work, and shall be free from defects in design, material or workmanship. If, during the Warranty Period, SIMMCO is notified by Customer of any such defects in design, material or workmanship or nonconformity with the specifications set forth in the applicable Statement of Work, then SIMMCO shall promptly, at its expense, repair or replace the applicable product. Such repair or replacement shall include, without limitation, material, labor and services. With respect to any Products or Services replaced, repaired, or corrected during the Warranty Period, the such repaired or replaced Product or corrected Services shall be the balance of its Warranty Period.

6.2 **Third-Party Warranties.** Products and Deliverables supplied by SIMMCO pursuant to this Agreement but manufactured or developed by third party vendors will, in addition to (and not in lieu of) the warranties set forth in this Section 6, carry the warranties specified by the applicable third party vendor, which warranties SIMMCO shall extend to Customer to the full extent permissible under such warranties.

6.3 **Intellectual Property.** To SIMMCO's knowledge, at the time of delivery or performance, the Deliverables and Services do not infringe or misappropriate any copyright, patent, trade secret, trademark, or other intellectual property right held by any third party (collectively, "Third Party IP Rights"), and are free of any lien, claim, security interest or encumbrance.

6.4 **Use and Testing.** The warranties provided under this Agreement shall not apply to the extent that Customer (a) installs, operates or maintains the Deliverables in a manner not consistent with reasonable instructions of SIMMCO or standard industry practice, or (b) subjects the Deliverables to tests other than those specified by the latest

revision of American National Standards Institute (ANSI) tests relevant to the applicable Deliverable.

6.5 **Limitation of Warranties.** EXCEPT AS OTHERWISE STATED IN THIS AGREEMENT, SIMMCO MAKES NO WARRANTIES (EXPRESS OR IMPLIED) WITH RESPECT TO THE PERFORMANCE OF THE DELIVERABLES OR SERVICES, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

7. **INDEMNIFICATION; LIMITATION OF LIABILITY.**

7.1 **Indemnification.** Customer (including its employees or any permitted subcontractors) will defend, indemnify and hold harmless SIMMCO and its affiliates, directors, officers, employees and agents, from and against any and all claims, costs, losses, damages, liabilities, judgments and expenses (including, without limitation reasonable attorneys' fees) arising out of or in connection with Customer's negligence or willful misconduct, its actions or omissions, or its breach of this agreement (collectively, "Claims").

7.2 **LIMITATION OF LIABILITY.** NEITHER PARTY SHALL BE LIABLE FOR ANY INCIDENTAL, SPECIAL, PUNITIVE, INDIRECT, OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOST DATA, LOST REVENUES, AND LOSS OF BUSINESS OPPORTUNITY, WHETHER OR NOT THE OTHER PARTY WAS AWARE OR SHOULD HAVE BEEN AWARE OF THE POSSIBILITY OF THESE DAMAGES.

8. **TERMINATION.**

8.1 **Termination for Cause.**

8.1.1 Either Party may terminate this Agreement, effective immediately upon written notice if the other Party: (a) becomes insolvent, (b) makes an assignment for the benefit of creditors, (c) files a bankruptcy petition, (d) acquiesces to an involuntary bankruptcy petition, (e) is adjudicated bankrupt, or (g) ceases to do business.

8.1.2 If either Party materially breaches this Agreement and fails to cure the breach within thirty (30) days of being notified by the other Party, the non-breaching Party may terminate this Agreement, effective on the thirty-first (31st) day after such notification was delivered (unless a later date for termination is specified in such notice).

8.1.3 SIMMCO may terminate this Agreement, effective immediately upon written notice to Customer if Customer (a) makes an assignment in violation of Section 11.2, (b) sells all or significantly all of its business assets, (c) undergoes a change in beneficial ownership in fifty percent (50%) or greater of its issued and outstanding stock, membership interests, partnership interests or other indicia of equity ownership, or (d) enters into a merger with a third party and Customer is not the surviving entity.

8.2 **Termination for Convenience.** SIMMCO may terminate this Agreement for any reason, or for no reason, upon thirty (30) days prior written notice to Customer.

8.3 **Effect of Termination.** If this Agreement expires or is terminated, (a) SIMMCO will have no further obligations to Customer other than: (i) SIMMCO will refund to Customer any payment received for all Deliverables rejected by Customer within fifteen (15) days of the date of rejection, and (ii) SIMMCO will refund to Customer any payment received for all undelivered Deliverables or unperformed Services within fifteen (15) days of the date the Agreement expires or is terminated, and (b) Customer shall pay SIMMCO a pro rata amount of the fees set forth in any open Statement of Work for all applicable Services performed and Deliverables partially produced prior to the date of termination.

9. **FORCE MAJEURE.** Neither Party will be held responsible for any delay or failure in performance of any part of this Agreement to the extent such delay or failure is directly caused by fire, flood, explosion, war, terrorism, strike, embargo, government requirement, civil or military authority, act of God, nature or the public enemy, act or omission to act of carriers, or any other causes beyond its reasonable control (each a "Force Majeure Event"). If a Party provides the other Party with written notice that it is unable to perform its obligations under this Agreement due to a Force Majeure Event, an equitable time adjustment shall be

allowed, provided that the Force Majeure Event does not last more than fifteen (15) days. If the other Party is materially prejudiced by the delay caused by the Force Majeure Event, or if the duration of the Force Majeure Event extends sixteen (16) days or longer, then the other Party may terminate this Agreement or any applicable Statement of Work without consequences, effective immediately upon delivery of written notice to the Party unable to perform.

10. **RELATIONSHIP OF PARTIES.** Each Party is an independent contractor and is not an agent of the other. This Agreement does not create an agency, partnership, joint venture, or similar business relationship.

11. **MISCELLANEOUS.**

11.1 **Compliance with Laws.** Customer shall (a) comply with all Applicable Laws and will not cause SIMMCO to be in violation of any Applicable Laws at any time, (b) file all reports required by Applicable Laws relating to its performance hereunder, (c) pay all amounts required under Applicable Laws when due.

11.2 **Successors and Assigns.** This Agreement extends to and binds the respective heirs, personal representatives, successors, and assigns of the Parties to this Agreement. Customer will not assign this Agreement or any rights or obligations hereunder without the prior written consent of SIMMCO. Any attempted assignment without SIMMCO's consent shall be void and ineffective. SIMMCO may assign its rights and obligations hereunder to: (a) any corporation or other business entity resulting from any merger, consolidation or other reorganization involving SIMMCO, (b) any individual or entity to which SIMMCO may transfer all or substantially all of the assets and business of SIMMCO, or (c) any entity controlling SIMMCO, controlled by SIMMCO or under common control with SIMMCO.

11.3 **No Third Party Beneficiaries.** Nothing in this Agreement is intended to benefit any third party not a signatory hereto.

11.4 **Severability.** If any of the provisions of this Agreement shall be invalid or unenforceable, such invalidity or unenforceability shall not invalidate or render unenforceable the entire Agreement, but rather, the entire Agreement shall be construed as if not containing the particular invalid or unenforceable provision or provisions.

11.5 **Governing Law; Jurisdiction; Venue.** This Agreement is governed by, and is to be construed in accordance with, the laws of the State of Washington, without reference to conflict-of-laws or choice-of-laws rules that would direct the general application of the laws of another jurisdiction. The U.N. Convention on Contracts for the International Sales of Goods will not apply to the sale hereunder. The Parties each consent to the exclusive jurisdiction and venue in the state and federal courts located in King County, Washington for any action or dispute arising under or relating to this Agreement.

11.6 **Attorney's Fees.** In the event that any Party institutes any legal suit, action or proceeding, including arbitration, against the other Party to obtain any remedy arising out of or relating to this Agreement, the prevailing party in the suit, action or proceeding shall be entitled to receive in addition to all other damages to which it may be entitled, the costs incurred by such Party in conducting the suit, action or proceeding, including [reasonable/actual] attorneys' fees and expenses and court/arbitration costs.

11.7 **No Waiver.** Neither Party is deemed to have waived any rights under this Agreement unless such waiver is in writing and signed by the Party. No delay or omission on the part of either Party in exercising any right will operate as a waiver of such right or any other right. A waiver by either Party of a provision of this Agreement will not prejudice the Party's rights to demand strict compliance with that provision in the future.

11.8 **Integration; Amendment.** This Agreement contains the entire agreement between the parties and supersedes all previous negotiations, commitments, and communications. It will continue in effect for so long as either Party owes any duty or obligation to the other. This Agreement may not be modified, except in writing signed by both Parties.