

SKF Reliability Systems General Conditions of Sale

RELIABILITY SYSTEMS, A BUSINESS UNIT OF SKF USA INC. ("SKF"), ACKNOWLEDGES RECEIPT OF YOUR ORDER OR REQUEST FOR QUOTE. SKF'S ACCEPTANCE OF AN ORDER IS EXPRESSLY CONDITIONED UPON YOUR ACCEPTANCE OF THE TERMS AND CONDITIONS STATED HEREIN. ANY DOCUMENT THAT YOU SEND US SHALL BE CONSTRUED ONLY AS A DOCUMENT THAT IDENTIFIES THE PRODUCTS AND SERVICES YOU ARE ORDERING FROM US AND NOT AS A DOCUMENT THAT ADDS TO OR MODIFIES THESE TERMS AND CONDITIONS. ANY DIFFERENT OR ADDITIONAL TERMS AND CONDITIONS IN YOUR ORDER OR OTHER DOCUMENT ARE REJECTED UNLESS EXPRESSLY AGREED TO IN A WRITING SIGNED BY AN AUTHORIZED REPRESENTATIVE OF EACH OF SKF AND YOU AS THE "BUYER." YOU SHOULD ADVISE US PROMPTLY IF ANY OF THE TERMS AND CONDITIONS BELOW ARE NOT ACCEPTABLE TO YOU OTHERWISE YOU WILL HAVE ACCEPTED THESE TERMS AND CONDITION AND WE WILL PROCEED AS THOUGH THEY ARE MUTUALLY BINDING ON BOTH OF US. ANY REFERENCE MADE HEREIN TO BUYER'S ORDER SHALL NOT BE INTERPRETED AS AN INTENTION TO INCORPORATE INTO THE AGREEMENT ANY TERM OR CONDITION CONTAINED THEREIN, AND THE SAME SHALL BE WITHOUT ANY FORCE OR EFFECT WITH RESPECT TO THE AGREEMENT MADE BETWEEN SKF AND BUYER.

1. Applicability. These General Conditions of Sale ("General Conditions") apply in full to all SKF Reliability Services' products and services provided in response to Buyer's order for such products and services.

2. Payment Terms. Payment terms on all invoices rendered by SKF hereunder shall be net thirty (30) days from invoice date. SKF shall be entitled to charge a finance charge of one and one-half percent (1 ½%) per month, i.e., eighteen percent (18%) annually, on any account past due over thirty (30) days. Buyer agrees that if its account hereunder is referred for collection to an attorney or agency, Buyer will pay all of SKF's attorneys' fees and other costs of collection, including without limitation, courts costs, expert witness fees, execution costs and filing fees. Interest shall accrue on all sums outstanding at the rate specified above notwithstanding the entry of judgment. In the event any finance charge is determined to be excessive by a court or other tribunal, such charge shall be reduced to the maximum allowable under the law.

3. Charges and Reimbursement of Expenses.

(a) **Service Charges.** Buyer will pay SKF for the services performed by SKF in accordance with the rates and policies as quotation by SKF.

(b) **Reimbursement of Service Expenses.** Buyer shall reimburse SKF for transportation expenses, living expense and rental and transportation costs in accordance with SKF's quotation.

(c) **Product Charges.** Unless otherwise indicated in SKF's quotation or otherwise agreed to in a writing signed by SKF's authorized representative, prices quoted by SKF for product are subject to change without notice at any time.

(d) **Additional Charges for Repair/Maintenance Services.** If services performed by SKF include repair and maintenance of Buyer's equipment ("Equipment"), Buyer shall pay to SKF the fair value of all replacement parts used by SKF in the course of such repair and maintenance. In addition, if SKF shall incur any additional costs as a result of the Buyer's failure to comply with the instructions given by SKF or as a result of improper or abnormal use of Buyer's Equipment or as a result of events beyond the control of SKF, SKF shall be entitled to recover such extra costs from Buyer upon submission of a written invoice therefore, and payment of such invoice by Buyer shall be made in accordance with the payment terms set forth herein.

4. Buyer Liable for Taxes. All charges, fees and prices are exclusive of taxes and duties. Buyer shall be solely liable for all taxes and duties, regardless of whether or not the sums are separately stated or invoiced by SKF.

5. Further Obligations of Buyer. Without charge to or any obligation therefore on the part of SKF, Buyer shall comply with the following in good faith: (i) give SKF free and safe access to the Equipment and provide sufficient work space and/or office space to SKF's representative who is engaged by SKF to perform the services and ensure the safety of the work site and the Equipment in accordance with any applicable regulations or other statutory requirements; (ii) furnish all labor and supervision, materials, supplies, utilities, tools and equipment as may be required by SKF's representative; (iii) ensure that adequate supervisory personnel for Buyer's employees, subcontractors or agents are on duty at all times during the representative's work hours; (iv) not use SKF's representative in any manner as a lead hand, foreman or supervisor of Buyer's employees, subcontractors or agents; (v) make available to SKF all specific technical information such as drawings, technical manuals and interface specifications and provide SKF in writing of all alterations to the work site, the Equipment or to the conditions of its use likely to affect the services to be provided by SKF; (vi) advise SKF in writing of any transfer, replacement or modification of the Equipment (in such cases SKF shall be entitled to an appropriate and reasonable change of the service fee); and (vii) obtain any local working permits, if required and provide access and egress from the working site. All services provided by SKF hereunder shall be promptly inspected and accepted upon completion thereof and prior to SKF's representative leaving Buyer's premises.

6. Sale of Products. If Buyer's Order is for or includes the purchase of products from SKF ("Products"), the following terms and conditions apply:

(a) **Delivery by SKF.** Delivery dates by SKF for any Products ordered by Buyer are approximate and SKF will not be liable for any delays in delivery for whatever reason unless the parties have expressly agreed in a writing signed by SKF's authorized representative to specific liquidated damages for late deliveries.

(b) **Return of Non-Conforming Products.** Products that are not in conformance with the description found in the order are returnable for credit or replacement provided SKF is advised in writing within 30 days of delivery by SKF of such non-conformance and written authorization therefore is given by SKF. Approved returns must be shipped freight prepaid and arrive in good

condition to qualify for credit or replacement. Such authorization for the return of Products by SKF shall not be deemed a waiver of SKF's right to charge a restocking fee for returned Products which are found to be in conformance with contract requirements. Except in the case of any Products found to be nonconforming, Buyer must make payment of the purchase price within the time allotted for payment even if Buyer has not completed its inspection of the Products, but such payment shall not constitute acceptance of the Products or impair Buyer's rights or remedies it may have hereunder for nonconforming Products.

(c) **Limited Warranty as to SKF Brand Products.** SKF warrants for a period of one (1) year from the date of shipment, that the SKF brand Products, if any, that are sold hereunder, shall be fit for the ordinary purposes for which such goods are designed when properly cared for, installed, operated and/or maintained, and shall be free of defects in material and workmanship at time of shipment.

(d) **Remedy for Breach of Warranty.** SKF's sole liability and Buyer's sole and exclusive remedy for SKF's breach of warranty under this Section 6 is expressly limited to the replacement of any Products sole hereunder, which SKF determined, by laboratory examination if necessary, are not in conformance with the limited warranty of SKF expressly stated herein; provided that SKF is advised in writing within thirty (30) days of the date of discovery thereof and in any event no later than one (1) year from the date of shipment.

7. SKF Service and Repairs. If Buyer's Order is for, or includes, the purchase of services from SKF ("Services"), the following terms and conditions apply:

(a) **Reliability Services by SKF.** Services purchased from SKF hereunder shall be those reliability maintenance services described in SKF's quote issued to Buyer or as described in Buyer's order provided such description was accepted by SKF. SKF will perform the Services in a professional and competent manner consistent with industry standards applicable to such Services. Buyer's sole and exclusive remedy, and SKF's sole obligation, for any failure of the Services to be performed as required in this Section 7(a) shall be for SKF to re-perform the Services at no cost to Buyer. Buyer shall promptly notify SKF in writing of any such defective Services. SKF shall not be liable for defective Services if notice thereof is not received within one (1) year of the date of performance.

(b) **No Warranty as to Services.** SKF DOES NOT MAKE ANY PROMISE, REPRESENTATION, GUARANTEE OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE SUFFICIENCY OF THE SERVICES TO BE PROVIDED HEREUNDER BY SKF, INCLUDING ANY WARRANTY AGAINST BUYER'S EQUIPMENT BECOMING DEFECTIVE OR INOPERABLE EVEN FOR REASONS THAT MAY BE RELATED TO BEARING PERFORMANCE, OR THAT THE EQUIPMENT OR ANY OR ALL DEFICIENCIES, ERRORS, DEFECTS OR NONCONFORMITIES THEREIN WILL BE CORRECTED BY SKF.

(c) **Subcontracting.** SKF may, from time to time, subcontract or delegate any part of the work to be completed by SKF hereunder.

8. Software. If the Order includes any SKF proprietary Software ("SKF Software") the terms and conditions in this Section 8 shall also apply. Buyer is responsible for providing a suitable computer for such installation. SKF makes no representation and accepts no liability for the compatibility of Buyer's computer system or servers with the SKF Software. Buyer is responsible for providing internet access. Buyer hereby agrees to be bound by the terms of the SKF software license agreement applicable to such SKF Software.

9. Limitation of Liability.

(a) **Warranty Disclaimer.** EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN SECTION 6(c) RELATED TO PRODUCTS, OR SECTION 7(a) RELATED TO SERVICE, SKF MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES, PRODUCTS, OR ANY SOFTWARE PROVIDED UNDER THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT OF THIRD-PARTY RIGHTS, AND SKF HEREBY EXPRESSLY DISCLAIMS THE SAME. BUYER AGREES THAT, WITH RESPECT TO NON-SKF BRAND PRODUCTS, IT SHALL BE LIMITED TO THE WARRANTIES OF THE RESPECTIVE MANUFACTURERS OF SUCH PRODUCTS SOLD BY SKF HEREUNDER.

(b) **Limitation of Liability.** Anything contained herein to the contrary notwithstanding, and to the fullest and broadest extent permitted by applicable law, IN NO EVENT SHALL SKF BE LIABLE UNDER THE AGREEMENT, WHETHER IN CONTRACT, IN TORT, UNDER ANY WARRANTY, OR CONSEQUENTIAL DAMAGES OF ANY KIND OR IN ANY AMOUNT, INCLUDING WITHOUT LIMITATION ANY LOSS, COST, OR DAMAGE RELATED TO EQUIPMENT DOWNTIME OR LOSS OF USE OR AVAILABILITY OF WORK SITE, LOST PROFITS, LOSS OF REVENUES, OR OTHER SIMILAR LOSSES, EVEN IF SKF HAS BEEN ADVISED AS TO THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF WHETHER OR NOT ANY SUCH DAMAGES WERE FORESEEABLE. SKF'S TOTAL AND EXCLUSIVE LIABILITY FOR NONPERFORMANCE HEREUNDER SHALL NOT EXCEED THE RETURN OF THE AMOUNT OF THE PURCHASE PRICE FOR ANY PRODUCTS AND THE SERVICE CHARGES PAID BY BUYER TO SKF.

(c) **Disclaimer.** Buyer acknowledges and agrees that any and all representations, promises, warranties or statements by SKF's salesperson, representative or agent that differ in any way from the terms hereof shall be given no force or effect. If SKF furnishes Buyer with any advice or assistance concerning any products, systems or work which is not required pursuant to the Agreement, the furnishing of such advice or assistance shall not subject SKF to any liability whatsoever to Buyer, whether in contract, in tort (including negligence), under warranty or otherwise.

10. Termination of Agreement. This Order may be terminated by either party for a material default of the other party, if, after receiving written notice of such default, the defaulting party fails to cure the default within thirty (30) days, or where cure is not commercially feasible an acceptable cure is not commenced within thirty (30) days of such notice. Either party shall be entitled to terminate the Agreement immediately if the other party institutes proceedings in bankruptcy or if involuntary proceedings in bankruptcy shall be

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instituted against it and not cease and terminate within thirty (30) days after the initiation of such proceedings, or if the non-terminating party is rendered or declared insolvent. All rights and obligations of the parties that shall have accrued prior to the expiration or termination of this Order shall not be affected thereby; including, without limitation Buyer's obligation to pay SKF for any service charges, accrued services expenses and any other accrued expenses for services performed prior to the date of termination. The termination or expiration of the Order shall not terminate any contract for the sale of any undelivered Products created by SKF's acceptance of Buyer's Order prior to the effective date of termination except in the case of termination for material breach. Except as described above, any other termination of an Order by Buyer prior to completion of the Order shall be subject to a fee representing liquidated damages in the amount of 15% of the value of the Order.

11. Assignment. The Buyer may not assign its rights and obligations with respect to the Order without the express written consent of SKF. SKF may assign its rights and obligations with respect to the Order to another company within the SKF Group without Buyer's consent.

12. Governing Law; Jurisdiction. Any controversy or claim arising out of or relating to this Agreement, including any claim arising from an alleged tort, shall be governed by the substantive laws of the Commonwealth of Pennsylvania, without reference to the conflicts of laws principles thereof. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement. THE EXCLUSIVE FORUM FOR CLAIMS AGAINST SKF SHALL BE MONTGOMERY COUNTY, PENNSYLVANIA, OR THE U.S. DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA AND EACH OF THE PARTIES HEREBY IRREVOCABLY CONSENTS TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS. The parties hereby irrevocably waive their rights to a jury trial.

13. Parties Bound. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and permitted assigns.

14. Indemnification. Buyer shall indemnify and hold SKF harmless from and against any claim, loss, cost, expense, damage or liability and from all court costs, attorneys' fees and other expenses paid or incurred by, or imposed upon SKF by a third party as a result of SKF performing Services on Buyer's Equipment, unless such claim, loss, cost, expense, damage or liability are due to SKF having been grossly negligent.

15. Confidential Information. In connection with the Order, SKF and Buyer may each have access to confidential or proprietary information of the other party that is subject to reasonable limitations and restrictions that are intended to maintain the secrecy and confidentiality of such information (as applicable, "Confidential Information"). Each party will not, without the prior written consent of the other party, use or disclose to any person any Confidential Information of the other party disclosed or made available to it, except for use of such Confidential Information as required in connection with the performance of its obligations or use of the Services or Products hereunder. Each party (as applicable, a "Recipient") will (i) treat the Confidential Information of the other party (as applicable, a "Discloser") as secret and confidential, (ii) limit access to the Discloser's Confidential Information to those of the Recipient's employees who require it in order to effectuate the purposes of this Agreement, and (iii) not disclose the Discloser's Confidential Information to any other person without the prior written consent of the Discloser. Notwithstanding the foregoing, however, the following shall not be considered Confidential Information: (i) any information that the Recipient can demonstrate was within its legitimate possession prior to the time of disclosure by the Discloser; (ii) any information that was in the public domain prior to disclosure by the Discloser; (iii) any information that, after disclosure by the Discloser, comes into the public domain through no fault of the Recipient, or (iv) any information that is disclosed to the Recipient without restriction by a third party who has legitimate possession thereof and the legal right to make such disclosure. Notwithstanding its obligations of confidentiality in this Agreement, SKF may disclose Buyer Confidential Information (1) in response to a subpoena or court order, (2) in response to an administrative order or other directive from a governmental entity having jurisdiction over SKF, or (3) as otherwise required by applicable law.

16. Intellectual Property.

(a) As between SKF and Buyer, SKF owns all patent, copyright, trademark, trade secret, ideas, concepts, know-how, documentation or techniques and other intellectual property rights that may exist in (i) the Services, Products, SKF Software, training materials, deliverables, and the SKF network or databases that may be utilized to provide the Services, and (ii) any information, data, trends, analyses, metadata or other data which may be derived from any of the foregoing that is derived or created by SKF by reference to the Services and SKF's databases and network (subject, at all times, however, to SKF's obligation of confidentiality in favor of Buyer as provided in Section 15 above). No grant, sale, or other conveyance of any right, title, license or other interest under any patent, trade secret or other intellectual property of SKF is intended hereby except for the right of a buyer to use the goods (for the ordinary purposes intended by their design) purchased from a seller in the ordinary course of the seller's business.

(b) Certain reliability services performed by SKF may require the collection of data from Buyer's Equipment relevant to its reliability and predictive maintenance services ("Asset Information") which may be entered into and stored on SKF's databases hosted on SKF's server. Buyer acknowledges and agrees that SKF shall be entitled to retain any such Asset Information for its own purposes provided that SKF shall not disclose such Asset Information to any third-party in such a manner that any such third-party could reasonably identify the Buyer with Asset Information.

(c) Buyer acknowledges that SKF provides professional services for other parties and agrees that nothing herein will be deemed or construed to prevent SKF from carrying on such services. SKF will have the right to use techniques, methodologies, tools, ideas and other know-how gained during the performance of this Agreement in the furtherance of its own business and to perfect all other intellectual property rights related thereto, including patent, copyrights, trademark and trade secrets.

17. Force Majeure. Neither party is liable for any default or delay in the performance of any of its obligations under this Order (other than failure to make payments when due) if such default or delay is caused, directly or indirectly, by forces beyond such party's reasonable control, including, without limitation, fire, flood, acts of God, labor disputes, accidents, acts of war or terrorism, interruptions of transportation or communications, or supply shortages.

18. Solicitation of SKF's Employee for Employment by Buyer. If during the term of the Order or within six (6) months after completion thereof, Buyer, or any party acting on behalf of Buyer, makes an offer of employment to an employee of SKF who has been engaged in the delivery of services to Buyer, Buyer shall pay SKF a fee of twenty-five percent (25%) of the total annual or annualized remuneration package provided by Buyer to the affected employee. Buyer shall pay all fees due pursuant to this paragraph to SKF (without further notice from SKF) within seven (7) days of the commencement of employment Buyer of the affected employee.

19. Severability. If any provision or portion of any provision of this Order, including these General Conditions, shall be held to be illegal, invalid or unenforceable by a court of competent jurisdiction, it is the intention of the parties that the remaining provisions or portions thereof shall constitute their agreement with respect to the subject matter hereof, and all such remaining provisions or portions thereof shall remain in full force and effect.

20. Complete Agreement. These General Conditions and any terms and conditions stated in SKF's quotation constitute the final, complete and exclusive agreement between Buyer and SKF, and, as such, it is the intent of the parties that these shall fully define the contractual rights and obligations of the parties related to Services and Products provided hereunder. THIS AGREEMENT, THEREFORE, SUPERSEDES AND VOIDS ANY PRIOR UNDERSTANDINGS, CONTRACTS, EXPRESS OR IMPLIED WARRANTIES, WRITTEN OR ORAL AGREEMENTS BETWEEN THE PARTIES RESPECTING THE WITHIN SUBJECT MATTER. All modifications of this Order, including these General Conditions, in order to be effective must be evidence by writing, clearly stating the terms of modification, and signed by the authorized representative of both parties.

21. Export Control. Buyer may not export, reexport, transfer or make available, whether directly or indirectly, any regulated item or information to anyone outside the United States in connection with the Order without first complying with all export control laws and regulations which may be imposed by the United States government and any country or organization of nations within whose jurisdiction Buyer operates or does business. SKF quotation to which the Order relates.