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SAVAGE ASSOCIATES INC. STANDARD TERMS AND CONDITIONS

- 1. Acceptance.** This proposal, when accepted by the Purchaser, will constitute a bona fide contract, subject to these terms and conditions and the approval of the Seller's credit manager. Delivery of the materials/equipment herewith, installation of the specified equipment, the Purchaser's acceptance hereof (either in writing or orally in person or over the telephone), and/or the issuance of an invoice, constitutes a binding acceptance by the Purchaser of the proposal herein. This agreement is the entire undertaking of the parties for the subject matter hereof and there are no promises, agreements, or understandings, oral or written, not specified herein.
- 2. Prices; Terms of Sale; Credit.**
 - a.** All prices are quoted in good faith; however, from time to time, manufacturers may change prices without notice prior to shipment, we may quote an incorrect price, or applicable taxes may increase in which case any price or tax increase may be added to the Purchaser's price.
 - b.** All payments are to be made to the Seller at the address and pursuant to the terms on the opposite side. All credits and terms of sale must be approved by the Seller's Main Office at the time of the order and are subject to review and approval during the life of any contract. A finance charge of 1.5 % per month (18% per year) may be charged on any unpaid balance remaining at the end of every 30-day period. If payment is not made promptly when due, the Purchaser must pay all costs and expenses of collection, including reasonable attorneys' fees. A time payment plan can be arranged only with advance approval by the Seller's Main Office. The Seller may revoke any credit extended to the Purchaser because of its failure to pay when due or for any other reason.
 - c.** A deposit will be required on all purchases greater than \$100,000. The deposit amount required will be based on the size of the order and the Purchaser's credit history with Savage Associates.
 - d.** The Purchaser shall be responsible for and shall pay all sales, use, excise, governmental surcharge, and other taxes (including penalties and interest) levied in connection with this sale. The stated prices do not include applicable taxes unless specified, and the Seller may charge for the same by a subsequent or supplemental invoice.
 - e.** The Purchaser hereby grants and the Seller retains a purchase money security interest in said products/equipment, including the proceeds therefrom, for the purpose of securing the Purchaser's obligation to make payment in full, until payment is received in full in cash or collected funds, at which time the security

interest shall cease. The Seller may, at its option, repossess the products/equipment upon the Purchaser's default in payment, and charge the Purchaser with any deficiency. The Purchaser agrees to execute upon demand the appropriate financing statements for perfecting this security interest. If the work is to be performed on a property not owned by the Purchaser, upon the Seller's request, the Purchaser shall provide a Landlord's Waiver in a form acceptable to the Seller.

3. Delivery; Shipment Terms; Freight Damage Claims

- a. Shipping dates are approximate and are contingent on fire, accidents, strikes, floods, manufacture productions schedules, installation schedules and coordination of trades, transportation delays, or other causes beyond the Seller's control. The Seller will exert the utmost effort to perform satisfactorily its shipping obligations and meet installation schedules, but shall not be liable for delay for any reason or for damage in transit of any materials furnished. The Seller may make delivery installments, which will be separately invoiced.
- b. The shipping terms, including the F.O.B. point (such as "shipper's dock" or a designated destination), must be indicated on the face of this proposal. The shipping terms should also include whether freight is "collect" or to be "prepaid and added." If these terms are not indicated, they may be chosen by the Seller. Whenever merchandise is delivered to the designated F.O.B. point, a common carrier (by manufacturer or the Seller), or is received by the Purchaser, whichever is earlier, the Seller's responsibility ceases and full risk of loss (including transportation delays and losses) and title passes to the Purchaser, and the Purchaser shall be liable to the Seller for the full price of the merchandise. Delivery to the Seller's facility for purposes of convenience, coordination, or price protection shall be considered "delivery" for invoice purposes.
- c. If any damage is evident upon delivery, the Purchaser must make a notation on the freight bill of lading and have the carrier's agent sign upon delivery for claim records. The Purchaser must immediately notify the Seller and file a claim with the carrier, as the Seller assumes no responsibility for goods damaged in shipment. Shortages and hidden damages or defects to goods must be reported to the Seller and carrier within 30 days of receipt of shipment. The quoted prices do not include the cost of unloading, which is the Purchaser's responsibility.

4. Insurance, Limited Warranty, Indemnity, and Hold Harmless

- a. The Seller does not extend warranties to the Purchaser of materials and equipment. The products sold by the Seller may be warranted by the manufacturer of the product but only to the extent of any warranty offered by the manufacturer. The Purchaser shall register equipment warranties with the manufacturer. THE MANUFACTURER OR THE SELLER HAVE NO LIABILITY WHATSOEVER FOR INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, including but not limited to the lost profits, downtime, loss of material or product, clean-up cost associated with loss of product, or damage to the other equipment, unless said damage or loss is proven to have been caused by the Seller's sole negligence. No warranty is extended where equipment is improperly installed by the Purchaser, its employees, or contractor. The Seller represents that it will convey good title to the items purchased, however, except as modified in the next paragraph, THE SELLER MAKES NO OTHER WARRANTY OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE

ARE HEREBY DISCLAIMED BY THE SELLER.

- b.** The Seller extends to the Purchaser a limited warranty for the Seller's work performed under this proposal that such work will be rendered in accordance with good commercial practice for a limited period of 90 days from the date of the Seller's completion of such work unless otherwise required by applicable law; HOWEVER, IF DURING THIS PERIOD, THERE IS A MALFUNCTION DUE TO THE SELLER'S IMPROPER OR SUBSTANDARD PERFORMANCE, THE SELLER'S LIABILITY IS LIMITED TO THE COST OF REPAIR OR REPLACEMENT OF SUCH EQUIPMENT (PROVIDED THAT THE SELLER IS GIVEN THE OPTION OF PERFORMING SUCH REPAIR OR REPLACEMENT WORK). THIS LIMITED WARRANTY IS NULL AND VOID IN THE EVENT THAT THE PURCHASER OR A THIRD PARTY PERFORMS SUBSEQUENT WORK ON THE EQUIPMENT INSTALLED OR REPAIRED BY THE SELLER. UNDER NO CIRCUMSTANCE IS THE SELLER LIABLE FOR INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOST PROFITS, DOWNTIME, LOSS OF MATERIAL OR PRODUCT, CLEAN-UP COSTS ASSOCIATED WITH LOSS OF PRODUCT, OR ANY DAMAGE TO EQUIPMENT NOT SERVICED, REPAIRED, OR INSTALLED BY THE SELLER. IN THE EVENT THAT THE SELLER SHALL BE LIABLE TO THE PURCHASER FOR DAMAGES ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT, WHETHER ARISING BY NEGLIGENCE, INTENDED CONDUCT (BUT NOT INTENTIONAL MISCONDUCT), OR OTHERWISE, THE PURCHASER MAY RECOVER FROM THE SELLER ITS DIRECT DAMAGES NOT TO EXCEED THE AGGREGATE AMOUNT OF THE PURCHASE PRICE PAID BY THE PURCHASER FOR THE PARTICULAR GOODS OR SERVICES WHICH A CLAIM OF LIABILITY IS ASSERTED.
- c.** The Purchaser agrees to hold the Seller harmless from and defend and indemnify it against any of the Seller's or the Purchaser's losses in connection with any property damage, personal injury, or death, whether same relates to any claim, penalty, or fine by a government agency for pollution, environmental damage, clean up, or otherwise, or whether any claim is made by any third party against the Seller or the Purchaser for said damage, personal injury or death is claimed or sustained by the Purchaser or made against the Purchaser or the Seller in connection therewith, including but not limited to damages, costs, expenses, and attorney's fees, except for the extent that said damage, personal injury or death is proven to have been caused by the Seller's sole negligence. Where a penalty, fine, or claim for pollution damage or cleanup is made against the Seller in connection with the installation of materials or equipment, the Purchaser agrees to hold the Seller harmless from and defend and indemnify it against the same.
- d.** The Seller shall have NO LIABILITY under the warranty if equipment malfunction or other problems result, directly or indirectly, from an accident (not caused by the Seller), subsequent work on equipment by the Purchaser or third party, improper operation or equipment, inadequate maintenance, and/or failure to properly protect the equipment from environmental hazards. The Seller does not assume any liability and the Purchaser agrees to hold the Seller harmless from and defend and indemnify the Seller for losses or claims for any tank(s) that emerge from their set

position and/or are lost after installation due to improper ballasting, groundwater, high water tables, or hydrostatic pressure, unless proper anchorage is provided for under the terms of this proposal, and the Purchaser shall at all times provide adequate ballast.

- e. NO EMPLOYEE OR REPRESENTATIVE OF THE SELLER IS AUTHORIZED TO CHANGE THIS WARRANTY IN ANY WAY.
 - f. The Purchaser will defend and indemnify the Seller against any claims for damages or profits arising from infringements of patents, designs, trade secrets, copyrights, trade names, and/or trademarks with respect to goods manufactured, either in whole or part, to the Purchaser's specifications. The Seller assumes no liability for sales engineering or application information extended by its personnel; the Purchaser agrees to hold the Seller and its representatives harmless from and indemnify them against any and all claims, losses, suits, damages, judgments, and costs, whether direct or indirect, or by reason of any reliance upon said representations concerning sales, engineering or application information provided by the Seller and/or its representatives.
 - g. The Seller shall maintain workers' compensation insurance covering its employees. Unless otherwise specified, the Purchaser shall maintain general liability, completed operations and builders all risk insurance, and shall meet financial responsibility requirements of federal and state storage tank regulations sufficient to protect against claims that may arise under this proposal. Unless otherwise specified, the Seller shall not be required to obtain fidelity or surety bonds, and the cost of any such bonds may be added to the price.
 - h. The Seller, in furnishing services hereunder, is acting only as an independent contractor. The Seller does not undertake by this agreement or otherwise to perform any obligations of the Purchaser, whether regulatory or contractual, to assume any responsibility for the Purchaser's business or operations.
5. **Cancellations and Return of Goods.** The Purchaser may cancel an order only upon advance written approval by the Seller and provided the Purchaser pays the freight charges and the Seller's reasonable cancellation and restocking charges, based in part on the manufacturer's charges. Returns for restocking fees will only apply to cancellations made within 30 days of receiving goods. Once goods have been on hand for 30 days, only a return for credit will be accepted. No merchandise is returnable without the Seller's advance written consent, with shipping instructions furnished, and no merchandise will be accepted for credit without the Seller's written authorization. At the option of the Seller, the return of material prior to receiving the Seller's approval will result in material remaining the property of the Purchaser, and it will be stored at the Purchaser's risk and expense. If the Seller accepts the material in return for credit, a handling charge based in part on acceptance of the material for return by the manufacturer will be charged, and no credit will be issued to the Purchaser until credit from the manufacturer is received.
6. **Governmental Compliance.** Environmental compliance is the Purchaser's responsibility. The Purchaser's failure to comply strictly with applicable federal, state, or local requirements, rules, and/or regulations (including but not limited to those applicable to notice) shall completely void all express or implied warranties of the Seller. It is the Purchaser's responsibility to report any inventory shortage or suspected releases to federal, state, and all other authorities having jurisdiction and to the Seller or a certified tank handler within 24 hours of occurrence. The Purchaser agrees to hold the Seller harmless from and indemnify and defend the Seller against any claims or liability relating to the

Purchaser's failure to comply strictly with all federal, state, or local environmental requirements, rules, and/or regulations, including those applicable to notice. Unless otherwise specified herein, the Purchaser or its agent shall furnish a state fire marshal's permit, if required, and all other permits, licenses, inspection fees, or approvals, whether required by federal, state, or local regulations. The Purchaser shall register all new or replacement regulated storage tanks in accordance with applicable state and local regulations. The Purchaser represents that no consent, approval, authorization, declaration, or filing with any third party or governmental agency is required in connection with the performance of the Purchaser's obligations hereunder or to permit the Seller to perform its obligations hereunder, other than those approvals that have been previously obtained by the Purchaser.

7. **Manufacturer Information.** The Seller will provide the manufacturer's product information and installation instructions for informational purposes, but makes no representations regarding such information.
8. **Testing.** Unless otherwise specified herein, the Seller shall perform all testing required by government regulations concerning the installation of equipment installed by the Seller under this agreement (not including product testing). Any other required testing shall be the responsibility of the Purchaser, and all costs to perform said tests shall be paid by the Purchaser unless otherwise specified in writing.
9. **Hardware/Software Compatibility.** In connection with this proposal, the parties assume that any system hardware and software supplied by the Purchaser is inherently compatible and requires only routine start-up and programming. If on start-up, it is discovered that the hardware and/or software is not compatible or has innate deficiencies that require additional configuration or upgrading. The Seller will be held harmless from any resulting delays in completion of the work and shall be entitled to full payment on Contract Price.
10. **Administrative Provisions**
 - a. **Changes.** This agreement may be amended at the request of either party from time to time by written Change Order signed by both parties, setting forth the particular changes to be made and the effect of such changes on the price and on the time of completion, subject to the Seller's approval. A charge may be made for changes in drawings and/or specifications after the Purchaser and the Seller have previously agreed upon the same. The total charge will include order reprocessing costs, additional material, and labor costs. The total charge for these changes will be agreed to after receipt of written Purchaser authorization or direction for these changes.
 - b. **Recordkeeping.** The Purchaser is responsible to keep daily accurate inventory records on products stored in tanks, lines, and dispensing equipment. In the event of a shortage within 30 days from the date of installation. The Purchaser shall immediately notify the Seller. In no event shall the Seller be responsible for shortages, clean-up, or related costs incurred for said shortages prior to notifications. Notification must be made by telephone contact, immediately followed by written confirmation.
 - c. **Contingencies.** The Seller will be excused from performance under this agreement and will have no liability for any period it is prevented from performing any of its obligations, in whole or in part, as a result of delays caused by the Purchaser of a third party or by an act of God, war, civil disturbance, fire, floods, frost, manufacturers' production schedules, installation schedules and coordination of trades, delays in transportation, acts of government agencies, accidents, court

order, labor dispute, third party performance or nonperformance, or other cause beyond the Seller's reasonable control, including failures or fluctuations in electrical power, heat, light, or telecommunications, and such nonperformance shall not be a default hereunder or grounds for termination of this agreement.

- d. The Seller may take photographs and video recordings of all aspects of excavation and installation.

11. NOTICE OF LIEN RIGHTS. TO PROTECT ALL PARTIES, A MECHANICS LIEN WILL BE AUTOMATICALLY FILED WHERE PAYMENTS ARE NOT RECEIVED ACCORDING TO THE TERMS OF THIS AGREEMENT. THE SELLER HEREBY NOTIFIES THE PURCHASER THAT PERSONS OR COMPANIES FURNISHING LABOR OR MATERIALS FOR THE CONSTRUCTION ON THE PURCHASER'S LAND MAY HAVE LIEN RIGHTS ON SAID LAND AND BUILDINGS IF NOT PAID. THOSE ENTITLED TO LIEN RIGHTS IN ADDITION TO THE SELLER ARE THOSE WHO CONTRACT DIRECTLY WITH THE PURCHASER OR THOSE WHO GIVE THE PURCHASER NOTICE WITHIN 60 DAYS AFTER THEY FIRST FURNISH LABOR OR MATERIALS FOR THE CONSTRUCTION. ACCORDINGLY, THE PURCHASER WILL RECEIVE NOTICE FROM THOSE WHO FURNISH LABOR OR MATERIALS FOR THE CONSTRUCTION AND SHOULD GIVE A COPY OF EACH NOTICE RECEIVED TO HIS MORTGAGE LENDER, IF ANY. THE SELLER AGREES TO COOPERATE WITH THE PURCHASER AND HIS LENDER, IF ANY, TO SEE THAT ALL POTENTIAL LIEN CLAIMANTS ARE DULY PAID.

12. Enforceability/Severability, Non-Waiver, and Non-Assignability. If any of the provisions hereof shall be deemed unenforceable by reason of law or court ruling, the remaining provisions shall be deemed enforceable. Any waiver of a breach of this agreement shall not be construed as a waiver of any other breach. The Purchaser may not assign this agreement or any rights hereunder, in whole or in part, without the prior written consent of the Seller.

13. MANDATORY MEDIATION AND CHOICE OF LAW AND FORUM. ANY DISPUTE INVOLVING THE ENFORCEMENT OR INTERPRETATION OF THIS AGREEMENT IS SUBJECT TO MANDATORY, NON-BINDING MEDIATION UNDER THE CONSTRUCTION INDUSTRY MEDIATION RULES OF THE AMERICAN ARBITRATION ASSOCIATION, THE COST OF WHICH IS TO BE BORNE BY THE PARTIES EQUALLY, PRIOR TO EITHER PARTY HAVING THE RIGHT TO FILE A LEGAL ACTION. THE PLACE OF THE MEDIATION SHALL BE IN THE COUNTRY OF THE SELLER'S HOME OFFICE NOT OF THE JOB SITE. All of the provisions hereof and of all resulting orders are to be governed and construed under the laws of the state of the Seller's home office, and the courts of said state shall have sole jurisdiction over any dispute cornering this agreement.