

SITECH SOLUTIONS HAWAII, LLC

Sales and Service Terms and Conditions

1. **Agreement:** These Sitech Solutions Hawaii, LLC Sales and Service Terms and Conditions govern the purchase of goods including, but not limited to, new and used equipment, technology, and parts (“Goods”) and professional services (“Services”) from Sitech Solutions Hawaii, LLC (“SITECH”) by any individual or entity that purchases such Goods or Services from SITECH (“Client”). The placing of an order with SITECH or the receipt or acceptance of Goods or Services by Client constitutes Client’s acceptance of these Terms exactly as written. No waiver, alteration, or modification of the provisions hereof shall be binding on SITECH unless agreed to in writing by a duly authorized official of SITECH.

2. **Order and Delivery of Goods or Services:** All orders for Goods or Services are subject to credit approval and final acceptance by SITECH in its sole discretion. If Client requests partial shipment of its order for Goods or Services, payment for the partial order must be made pursuant to Section 6 below. Client acknowledges that estimated delivery dates for Goods are estimates only; actual delivery dates depend on a variety of factors, including, but not limited to, the production schedules of manufacturers. SITECH will use commercially reasonable efforts to meet estimated delivery dates and shall keep Client advised of the status of delivery, but SITECH shall have no liability for any loss associated with delay in the delivery of Goods. SITECH shall have no liability for any delay in performance of Services or delivery of Goods caused by any circumstances beyond its reasonable control, including, but not limited to, delays caused by:

- Acts of God
- Pandemics
- Acts of war or terrorism
- Fire or other casualty
- Storms or adverse weather
- Strikes, labor shortages or disturbances, shortages of materials,
- Manufacturer delays,
- Theft or vandalism, transport and handling accidents, or
- Revisions to laws, regulations or governmental requirements.

3. **Cancellation:** Client may cancel all or part of any purchase order for Goods once a purchase order is issued to SITECH if written notice of cancellation is received by SITECH at least 30 days before the scheduled delivery date of the Goods. In such instance, Client shall pay for any special work or customization performed by SITECH or its suppliers prior to SITECH’s receipt of the written cancellation notice.

4. **Returns:** Returns require prior written authorization from SITECH. No returns, except for Goods needing repair, will be accepted unless Client notifies SITECH of its request to return within seven days of Client’s receipt of Goods, and SITECH receives the returned Goods within 30 days from Client’s receipt of Goods. Any returned Goods must be new and in resalable condition. Returns must be shipped prepaid by Client. SITECH is not responsible for damage in shipment. Client must enclose a packing slip or note containing its name, address, phone number, and description of the reason for the return. All returns are subject to a minimum 15% restocking charge. Software and electronic equipment / parts are not returnable.

5. **Pricing:** Unless otherwise set forth on a written quote issued and signed by SITECH (“Quote”), the price for Goods are at SITECH’s list price for such Goods on the date such Goods are delivered to Client. Unless otherwise set forth on a Quote, the labor rates for Services shall be SITECH’s standard labor rates for the applicable type of Service (field rates, shop rates, mine rates, overtime, premium time or specialty / professional rates, as applicable) in effect at the time the Services are performed. Pricing for future orders is subject to change without notice. Client will promptly pay to SITECH any taxes that SITECH is required to collect with respect to the purchase of Goods or Services, including, but not limited to, value added, personal property, sales, use, and similar taxes (“Taxes”). For any Taxes from which Client claims

exemption, Client shall provide SITECH with properly completed exemption certificates and any documentation needed to validate the exemption. If Client fails to provide an appropriate exemption certificate and supporting documentation, as determined by SITECH, Client will remain liable for all such Taxes and will indemnify SITECH for any liability related to the same. Pricing and risk of loss for purchased Goods shall be FOB factory, unless otherwise provided by SITECH in a quote or invoice. Client must make any claims for shortages, damages, or delays in shipment directly to the carrier.

6. **Payment Terms:** For Clients with an open credit account with SITECH, payments are due net 10th prox. of the month following the invoice date. For Clients who do not have an open credit account with SITECH, payment is due upon delivery of Goods or completion of Services. SITECH may, in its sole discretion, at any time: (a) revoke credit; (b) modify terms and conditions of credit; (c) require payment in advance; and/or (d) withhold Goods, completed Services or scheduled Services until receipt of payment. If Client fails to pay for Goods or Services as and when due, the outstanding charges are subject to a late charge of 1.5% of the invoice balance each month until charges are paid in full. Client shall pay SITECH all reasonable attorneys' fees and collection costs incurred by SITECH. In addition to any other right of setoff or recoupment SITECH has under applicable law, Client agrees that, with respect to any amounts due from Client or Client's affiliates to SITECH or SITECH's affiliates, SITECH and its affiliates may set-off such amounts against any amounts owing to Client or Client's affiliates. If Client requests customization of Goods, Client agrees to pay all parts and labor costs SITECH incurs in customizing the Goods, regardless of whether or not Client completes the purchase of the customized Goods. Client must pick up its equipment from SITECH's facility within two business days after notification from SITECH of completion of Services. If Client's equipment is not picked up within 15 business days after such notification, Client could be liable for storage charges of up to \$50.00 per day from the date of completion of Services until Client's equipment is picked up. SITECH may sell Client's equipment if such equipment remains in SITECH's possession after 90 days and any amounts owed remain unpaid.

7. **Title and Security Interest:** SITECH retains title to the Goods until Client performs all of its obligations under these Terms. SITECH retains a security interest in the Goods, including all accessions to and replacements of them, to secure performance of all Client's obligations under these Terms. If Client fails to perform its payment obligations pursuant to this Agreement, in addition to all other remedies allowed at law or in equity, SITECH and its agents may without notice or legal process, enter into any job, building, or place where the Goods may be, and repossess the Goods.

8. **Warranties:**

(a) **New Goods:** If Client is purchasing new Goods from SITECH, Client acknowledges:

- SITECH is not the manufacturer of the Goods;
- If the Goods include a manufacturer's warranty, SITECH will pass through to Client the manufacturer's warranty to the extent permitted by the terms of such warranty;
- The manufacturer's warranty will be subject to all conditions and exclusions set forth therein.

Client may have the option of purchasing an equipment protection plan or extended service coverage:

If such an Extended Protection Product is available and purchased by Client at the time of sale, the Extended Protection Product will be subject to all conditions and exclusions included in such Extended Protection Product. SITECH's liability during the applicable manufacturer's warranty period is limited to servicing any Goods returned to SITECH by Client for that purpose, and to replacing any defective part, whether the defective part is returned or not, all in accordance with and subject to the manufacturer's warranty. The warranties described herein apply only to Client and are non-transferable; SITECH shall have no liability to Client's successors, assigns, or subsequent purchasers. Warranty repaired Goods will be returned to Client by pre-paid surface transportation, unless Client specifically authorizes return by air shipment and agrees to pay the cost.

(b) **Used Goods:** If Client is purchasing used Goods from SITECH, such Goods shall be sold in "AS IS, WHERE IS, WITH ALL FAULTS" condition, unless otherwise expressly set forth in a bill of sale.

(c) **Services:** If Client is purchasing Services from SITECH, the Services will be completed in a professional, skillful manner and will meet the manufacturer's specifications at the time the Services are completed. SITECH makes no further warranty, express or implied, with respect to Services once Client has accepted the Goods on which the Services were performed. If the replacement parts used by SITECH in connection with the provision of Services include a manufacturer's warranty, SITECH will pass such warranty through to Client to the extent permitted by the terms of the manufacturer's warranty.

SITECH's warranty for Services is void in the event of any of the following occurrences:

- Misapplication or abuse of Goods by Client
- Repairs performed by Client or vendors other than SITECH
- Use beyond ordinary wear and tear
- Failure to maintain and operate Goods in accordance with the maintenance and operations manual of the manufacturer (including, but not limited to, use of fluids that do not meet the manufacturer's standards, or failure to maintain fluid levels recommended by the manufacturer)
- Damage due to theft, vandalism or casualty

(d) **WARRANTY DISCLAIMER.** SITECH makes no warranty, express or implied, with respect to any Goods or Services other than the foregoing warranties, including, but not limited to, any implied warranties of merchantability or fitness for a particular purpose or any implied warranties that may arise from the course of dealing between the parties. To the maximum extent permitted by law, all such warranties are hereby disclaimed by SITECH and waived by Client.

9. **Specifications:** SITECH reserves the right to change specifications of or discontinue Goods at any time. SITECH has no obligation to retain previous specifications or to incorporate modifications on Goods previously sold.

10. **Use of Data:** Client must treat as confidential all drawings and data submitted by SITECH pertaining to price, size, and design. Client may not give or show such drawings or data to others under any circumstances, unless specifically approved by SITECH in writing. All such drawings and data remain the property of SITECH. The Model File has been produced using the data provided to SITECH up to the date identified in the file. SITECH accepts no liability for the use of the Model other than the purpose to assist in surveying and/or grading operations. The recipient shall verify the Model accuracy and use of the Model shall be at the recipient's own risk. It is a condition precedent of the provision of this data that the recipient indemnifies SITECH against any and all claims whether in contract or in tort, in negligence, for breach of statutory duty or otherwise arising from any other use of Model Files.

11. **Indemnification:** Each party agrees to defend, indemnify and hold harmless the other party for, from and against any third-party claims related to the Goods or Services to the extent such third party claims (including, but not limited to claims related to the death or injury of any person(s) or damage to or destruction of any real or personal property) are caused by the indemnifying party's negligent acts or omissions, subject to the limitations set forth in Section 12 below.

12. **Liability Limitation:** In no event shall either party be liable, whether based in contract, warranty, indemnity, tort, strict liability or any other theory of law or equity, for any special, incidental, indirect, punitive, exemplary or consequential damages, including, but not limited to, lost profits, loss of use of property or equipment, downtime, loss of third party contracts or lost production, regardless of whether or not such party was advised of the possibility of such damages. SITECH's maximum aggregate liability (whether in contract, warranty, indemnity, tort, strict liability or any other theory of law or equity) for damages or loss, howsoever arising or caused, shall in no event exceed the amount Client paid to SITECH for the Goods or Services to which the liability relates. The parties recognize that the pricing associated with Goods and Services reflects this allocation of risk and is the basis of the bargain between the parties. The foregoing limitations shall be valid and enforceable, notwithstanding any alleged failure of essential purpose of the limited remedies set forth herein. Any claims arising out of or relating to the Goods and/or Services are barred unless a legal proceeding is commenced within one (1) year from completion of the Services or delivery of the Goods to Client.

13. **Choice of Law.** These Terms are governed by and construed in accordance with the laws of the State of Hawaii without giving effect to conflict of law provisions. The parties agree that exclusive jurisdiction and venue for any proceeding at law or in equity will be in the state or federal courts located in Honolulu, Hawaii.

14. **General Provisions.** Client may not assign Client's rights or obligations hereunder without SITECH's prior written consent, and any such attempted assignment will be void. If any provision in these Terms are found to be invalid, unlawful or unenforceable, the remaining provisions in these Terms shall remain in full force and effect. A party's waiver of any breach will not constitute a waiver of any different or subsequent breach. No employment, agency, joint venture, or similar arrangement is created or intended between Client and SITECH.