



Pipeline Equipment Resources Company, LLC

TERMS & CONDITIONS OF SALE

GENERAL TERMS & CONDITIONS

- 1) **DEFINITIONS.** "Buyer" shall mean the party purchasing Products and/or Services pursuant to these Terms of Sale. "PERC" shall mean Pipeline Equipment Resources Company, LLC, a New Jersey corporation. "Products" means the Products manufactured by third parties and sold or otherwise provided by PERC pursuant to this Agreement or Products manufactured by PERC. "Services" means the services offered by PERC or performed by Subcontractor. "Subcontractor" shall mean subcontractors as may be contracted by PERC.
- 2) **CONTRACT OF SALE FOR PRODUCTS OR SERVICES**
 - a) Buyer understands and agrees that all quotations and accepted orders by PERC are expressly conditioned upon these terms and conditions. Buyer's acceptance of a quotation confirms that Buyer has read and agrees to the Terms & Conditions herein which are deemed automatically incorporated into any and all purchase orders.
 - b) All Products and Services are offered for sale by PERC subject to the prices and other terms specified in (a) the applicable PERC quotation, proposal or pricelist, and (b) these Terms of Sale, all of which are subject to the correction of clerical errors and updates, revisions or modifications by PERC. A Buyer's purchase order, written or verbal, shall constitute an acceptance of the offer to sell. Any acceptance by Buyer with additional or different terms proposed in the acceptance shall be deemed a rejection of PERC's offer. Any attempt to vary any of the terms in PERC's quotation, proposal or pricelist shall be deemed a material alteration and notice is hereby given that PERC objects to any additional or different terms ("Additional Terms") and that such Additional Terms are rejected, considered null and void, and shall not be binding upon PERC unless agreed in writing signed by PERC.
 - c) Each order for Products submitted to PERC shall be subject to the written acceptance of PERC, and PERC may, in its sole discretion, accept or reject any order for Products or Services without obligation or liability to Buyer by reason of its rejection of any such request.
 - d) Buyer acknowledges and agrees that PERC may change any term or part of these terms and conditions as to unfulfilled orders by sending Buyer a written notice at least 10 days before the change is to become effective. If Buyer does not agree to this change, Buyer must notify PERC within 10 days after the effective date of the change, in which case Buyer's unfulfilled orders will be closed and must pay PERC any outstanding invoices under the existing terms of the unchanged terms and conditions for such business accounts. Placement of a new order after the effective date of any change shall be deemed acceptance of the new terms and conditions, even if the aforementioned 20 days have not yet expired.
- 3) **PRICING & RATES**
 - a) Pricing and rates are valid for 30 days from the date of original quotation unless otherwise noted or unless due to an error or omission by PERC. As to all other terms, until signed and returned, the quotation or proposal is merely a quotation of prices and rates. The quotation or proposal will be deemed accepted only if signed and returned within 30 days from the date of the original quotation.
 - b) Volume pricing is conditioned upon Buyer's acceptance of full requested quantities and/or service time unless noted on quote.
 - c) Quotations for blanket orders shall be subject to review and modifications at intervals mutually agreed upon in writing prior to PERC's blanket order acceptance.
 - d) Quotations for services are estimates based on information available to PERC at the time of quotation and PERC shall not be bound by such quotations. Buyer agrees and acknowledges that it will be charged for and agrees to pay for actual time for Services which will be invoiced at project completion.
 - e) Services rendered outside the scope of a specific quote will be invoiced per PERC's then-current prevailing labor rates.
 - f) All information within and pertaining to our quotation(s) is confidential and intended solely for use by the Buyer listed on the quotation. PERC reserves all rights to rescind or withdraw any quotation, proposal or purchase order should it discover that Buyer has shared such information with any other person or entity.
- 4) **TAXES.** All prices quoted are exclusive of federal, state and municipal taxes. Buyer shall be liable for all sales, use and other taxes (whether local, state or federal) related to or imposed on this Agreement or on the Products and/or Services provided to Buyer hereunder.
- 5) **PAYMENT TERMS.** All invoices are issued upon shipment or notification of readiness to ship. Buyer shall pay all invoices within thirty (30) days of the invoice date unless unique payment terms are required based on criteria defined by order type below.

	ORDER TYPE	BUYERS SHALL PAY
a)	Capital Project Equipment Orders for products from manufacturer's in which deposits/progress payment terms exist	Deposit/progress payment in line with manufacturer's policies
b)	Capital Project Equipment Orders / Complete Projects Totaling > \$150,000 for long-term investment projects requiring relatively large sums to acquire, develop, improve, and/or maintain a capital asset.	20% deposit due within 10 days of purchase order. 80%, plus applicable freight, invoiced upon shipment or notification of readiness to ship.
c)	Custom Fabricated Item Orders > \$50,000 up to \$250,000 in which component parts/equipment must be purchased and assembled	30% deposit due within 10 days of purchase order. 70%, plus applicable freight, invoiced upon shipment or notification of product readiness to ship
d)	Custom Fabricated Item Orders > \$250,000 in which component parts/equipment must be purchased and assembled	May incur unique payment terms independent of currently documented policies
e)	Custom Fabricated Item Orders > \$50,000 with an anticipated time frame exceeding 30 days in which component parts/equipment must be purchased and assembled	May incur unique payment terms independent of currently documented policies

PERC reserves the right to establish credit limits for Buyer. Any invoices not paid within thirty (30) days of the invoice or within such other time as provided in these Terms of Sale or Agreement shall bear interest at the lower of (i) one and a half percent (1.5%) per month up to

- a maximum of eighteen percent (18%) per year, or (ii) the highest rate permitted by applicable law. Should Buyer become delinquent in payment of sums due hereunder, Seller shall be permitted to immediately cease all Services and all deliveries of Products and shall not be obligated to continue further performance. If Buyer defaults in the payment of any invoice or purchase price when due, PERC may, without prejudice to other lawful remedies, immediately place the account on hold and defer further performance until the defaulted payments are made.
- 6) **FORCE MAJEURE.** If PERC becomes unable, either wholly or in part, by an event of Force Majeure, to fulfill its obligations under these Terms of Sale, PERC's obligations affected by the event of Force Majeure shall be suspended during the continuance of that inability. To the extent reasonably feasible, PERC will take reasonable steps to mitigate the Force Majeure. "Force Majeure" means an event beyond the reasonable control of PERC, including acts of God, hurricane, flood, volcano, tsunami, tornado, storm, tempest, mudslide, vandalism, illegal or unauthorized radio frequency interference, strikes, lockouts, or other industrial disturbances, unavailability of component parts of any Products provided hereunder, unavailability of Products from any manufacturer, acts of public enemies or terrorists, wars, blockades, insurrections, riots, pandemics, epidemics, earthquakes, fires, orders, restraints, or prohibitions by any government entity, court, board, department, commission or agency of the United States or any State, any arrests and restraints, civil disturbances and explosions.
- 7) **LIMITATION OF LIABILITY.** NOTWITHSTANDING ANY OTHER PROVISION, THIS CLAUSE 7 SETS OUT THE LIMIT ON THE ENTIRE AGGREGATE FINANCIAL LIABILITY OF PERC (INCLUDING ANY LIABILITY FOR THE ACTS OR OMISSIONS OF ITS EMPLOYEES, AGENTS, REPRESENTATIVES OR CONSULTANTS) REGARDING:
 - a) ANY AND ALL CLAIMS OR CAUSES OF ACTION ARISING UNDER, OUT OF, OR IN RELATION TO THESE TERMS AND CONDITIONS AND THIS AGREEMENT, ITS NEGOTIATION, PERFORMANCE, BREACH OR TERMINATION, OR TO THE PRODUCTS OR SERVICES PURCHASED HEREUNDER, OR ANY REPRESENTATION, STATEMENT OR TORTIOUS ACT OR OMISSION (INCLUDING NEGLIGENCE) ARISING UNDER OR IN CONNECTION WITH THESE TERMS AND CONDITIONS OR THIS AGREEMENT OR THE PURCHASE OF THE PRODUCTS OR SERVICES (COLLECTIVELY "CLAIMS"). PERC'S TOTAL AGGREGATE LIABILITY TO BUYER FOR ANY CLAIMS, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE OR BREACH OF STATUTORY DUTY), MISREPRESENTATION, RESTITUTION, STRICT LIABILITY OR OTHERWISE ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT SHALL NOT EXCEED THE TOTAL AMOUNT PAID BY BUYER TO PERC UNDER THIS AGREEMENT.
 - b) AS A SEPARATE AND INDEPENDENT LIMITATION ON LIABILITY, PERC'S LIABILITY SHALL BE LIMITED TO DIRECT DAMAGES ONLY. PERC SHALL NOT BE LIABLE FOR: (I) ANY INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY, SPECIAL OR CONSEQUENTIAL DAMAGES; NOR (II) LOSS OF PROFITS OR REVENUE, LOSS OF BUSINESS, DEPLETION OF GOODWILL AND/OR SIMILAR LOSSES, LOSS OF GOODS, LOSS OF CONTRACT, LOSS OF USE, BY BUYER, ITS AFFILIATES, OR FROM ANY END USER IRRESPECTIVE OF WHETHER SUCH LOSS IS CATEGORIZED AS DIRECT DAMAGES OR OTHERWISE.
 - c) The limitations on liability set forth in these Terms and Conditions and this Agreement are material conditions to and inducements to PERC entering into this Agreement. They apply unconditionally and in all respects. The limitations on liability shall be interpreted broadly so as to give PERC the maximum protection permitted under law.
 - d) To the maximum extent permitted by law, no Claim may be instituted by Buyer against PERC more than TWELVE (12) MONTHS after the invoice date related to the Product or Services provided by PERC. In the calculation of any damages in any Claim no damages incurred more than TWELVE (12) MONTHS prior to the filing of the Claim shall be recoverable.
- 8) **CONFIDENTIALITY.** Buyer shall, and shall cause its employees and contractors to keep all PERC Confidential Information strictly confidential and shall not disclose it to any third party or use it, except to the extent reasonably required to perform and enforce this Agreement or as required under applicable law, court order or regulation. As used herein, "PERC Confidential Information" means any and all non-public information of PERC, including but not limited to, PERC's pricing, pricelist or quotation. Notwithstanding the foregoing, "PERC Confidential Information" shall not include: (i) any information that is in the public domain other than due to Buyer's breach of this Agreement; (ii) any information in the possession of the Buyer without restriction prior to disclosure by PERC; or (iii) any information independently developed by the Buyer without reliance on or access to the information disclosed hereunder by PERC.
- 9) **GOVERNING LAW AND DISPUTE RESOLUTION.** This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of New Jersey, without regard to conflicts of law principles. Any and all disputes arising under, out of, or in relation to this Agreement or its performance ("Disputes") shall first be submitted to mediation before the American Arbitration Association which mediation shall be venue in New Jersey. If the Dispute is not resolved within sixty (60) days after the commencement of mediation, it shall be litigated in the state or federal courts located in the State of New Jersey. The Parties agree to the exclusive personal jurisdiction of the State and Federal Courts of the State of New Jersey and hereby waive all objections to venue in those courts. TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE PARTIES AGREE TO A BENCH TRIAL AND THE PARTIES EXPRESSLY WAIVE THEIR RIGHT TO A TRIAL BY JURY IN ANY DISPUTE.
- 10) **SEVERABILITY.** In the event any provision of this Agreement is held to be void, unlawful or otherwise unenforceable, that provision will be severed from the remainder of the Agreement and replaced automatically by a provision containing terms as nearly like the void, unlawful, or unenforceable provision as possible and the Agreement, as so modified, will continue to be in full force and effect. The invalidity in whole or in part of any of these Terms and Conditions shall not affect the validity or enforceability of any other term or condition.
- 11) **NON-WAIVER.** Failure or delay of PERC to exercise a right or power under this Agreement shall not operate as a waiver thereof, nor shall any single or partial exercise of a right or power preclude any other future exercise thereof.
- 12) **TRAINING POLICY (WHERE APPLICABLE)**
 - a) Technician's day meals and incidentals are included in all quotes.
 - b) Rates based on class size up to 8 students. Additional students may attend for the prevailing additional fee.
 - c) Phone training is billed at a minimum of 1 hour. Any portion of a call beyond an hourly increment is billed a complete hour.



Pipeline Equipment Resources Company, LLC

TERMS & CONDITIONS OF SALE

TERMS AND CONDITIONS SPECIFIC TO PRODUCT SALES

13) PRODUCT SHIPMENT TERMS

- a) All Products are shipped FOB shipping point, freight prepaid and added to invoice. Title, risk of loss and property in the Products pass upon shipment.
- b) All Products are shipped when available unless a customer specified "do not ship before" date is acknowledged and agreed to in writing by PERC. Customer may, subject to PERC's approval, request delay of shipment provided request is made at least 30 days prior to acknowledged shipment date. Invoices for delayed shipments will be issued on the acknowledged shipment date and title to, risk of loss and property in, the Products shall immediately pass to Buyer on the date of such invoice.
- c) Please refer to Payment Terms for Delinquent accounts.

14) **PRODUCT PACKAGING.** PERC reserves the right to select the manner in which Products are packaged. Quoted prices include regular packaging. Special requirements for packaging may be subject to extra charges.

15) **PRODUCT DELIVERY AND ACCEPTANCE.** Any shipping dates given in advance of actual shipment are estimated and are not guaranteed; PERC reserves the right to extend shipping dates as it deems necessary in its sole discretion, without liability to Buyer. In the absence of shipping instructions from Buyer, PERC will use its discretion as to the selection of shipping services and routings. Installation of Products is the responsibility of the Buyer unless quoted separately. Buyer shall make an examination of any goods or Products delivered immediately upon its receipt. Buyer's failure to give written notice of any claim within 10 days after the receipt of such material shall constitute Buyer's acceptance of such material. Upon acceptance, Buyer assumes all risks and liability for the results obtained in its business by the use of any materials delivered or by the use of such materials in combination with other goods or materials. Responsibility for filing claims with the manufacturer or carrier, as the case may be, rest with the Buyer.

16) PRODUCT ORDER CANCELLATIONS AND DELAYS

- a) Orders submitted to PERC may not be canceled or amended or deliveries deferred by Buyer except with PERC's prior written consent and then only upon such terms and conditions as shall be acceptable to PERC. If an order is cancelled, Buyer shall reimburse PERC for any cost it incurs as a result of such cancellation, including but not limited to cancellation or restocking fees.
- b) Orders for Custom Fabricated or Buyer specified Products may not be canceled or, if canceled, Buyer shall be responsible for payment for fabrication process completed and parts or goods purchased as of the date of cancellation.
- c) If Buyer requests shipment of a product be delayed beyond the scheduled shipping date, PERC will invoice Buyer as of the scheduled shipping date and payment will be immediately due per payment terms within the acknowledged P.O. from the date of that invoice as if delivery had taken place. PERC will apply storage fees effective 10 business days thereafter.

17) PRODUCT WARRANTIES

- a) PERC provides a limited warranty for the Products it manufactures for 1 year from invoice date. PERC's Warranty is limited exclusively to the repair or replacement of the component part or assembly where a defect in product material or workmanship exists. PERC in its sole discretion shall determine whether a defect in product material or workmanship exists.
- b) Except as stated above, PERC MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, AS TO SUITABILITY OR MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE, OR ANY OTHER MATTER WITH RESPECT TO ANY OF THE PRODUCTS MANUFACTURED BY PERC. THIS DISCLAIMER IS FOR ALL LIABILITY IN CONTRACT, IN TORT OR OTHERWISE FOR INCIDENTAL, CONSEQUENTIAL, SPECIAL DAMAGES, OR ANY LOSS OR DAMAGE, WHETHER TO PROPERTY OR INJURY TO PERSONS, WHETHER FORESEEABLE OR NOT FORESEEABLE, RESULTING DIRECTLY OR INDIRECTLY, FROM THE USE OR LOSS OF USE OF ANY PRODUCT SOLD.
- c) WITH RESECT TO ANY PRODUCT MANUFACTURED BY A THIRD PARTY, PERC MAKES NO REPRESENTATIONS OR WARRANTIES, AS TO (a) WARRANTY OF MERCHANTABILITY; (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (c) WARRANTY OF TITLE; (d) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; or (e) WORKMANSHIP, PERFORMANCE, QUALITY, DURABILITY; WHETHER EXPRESS OR IMPLIED BY LAW, THROUGH COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE. THIS DISCLAIMER IS FOR ALL LIABILITY IN CONTRACT, IN TORT OR OTHERWISE FOR INCIDENTAL, CONSEQUENTIAL, SPECIAL DAMAGES, OR ANY LOSS OR DAMAGE, WHETHER TO PROPERTY OR INJURY TO PERSONS, WHETHER FORESEEABLE OR NOT FORESEEABLE, RESULTING DIRECTLY OR INDIRECTLY, FROM THE USE OR LOSS OF USE OF ANY PRODUCT SOLD.
- d) PERC does not warrant Products manufactured by third parties. PERC agrees to assign and passthrough to Buyer any warranties expressly provided by the manufacturer of the Product purchased, which shall be Buyer's exclusive rights of warranty. Buyer's remedies are subject to any limitations contained in manufacturer's terms and conditions to Seller. If there is no warranty provided by the manufacturer, then the goods/Products are sold "as is." While PERC may provide manufacturer warranty information, it does not warrant or guarantee any such delivery or advice.

18) **PRODUCT RETURNS.** Product(s) may be returned for credit or repair with prior written authorization of PERC or the applicable manufacturer. PERC in its sole discretion will determine whether to issue a credit or to repair the Product. Authorized return shipments must be returned in good condition in accordance with the instructions in the Return Material Authorization (RMA), must be accompanied by a packing slip, including the applicable RMA, and must have transportation charges prepaid. Correspondence concerning returned Products must be addressed to authorized personnel within PERC's corporate office. PERC reserves the right to charge a service fee equal to 30% of invoiced Product price to cover all inspection, testing, handling, and restocking. PERC reserves all rights to reject any Return Shipments that fail to comply with these Terms & Conditions or Agreement; if PERC rejects such Return Shipments, Buyer shall be responsible for payment of any and all fees and costs incurred for shipping the product back to Buyer.

TERMS AND CONDITIONS SPECIFIC TO TOOL REPAIR SERVICES

19) **LIMITED WARRANTY.** To the fullest extent permitted by law, PERC warrants its tool repair services for 30 days from date of invoice. In the event applicable law imposes any implied warranties disclaimed or excluded in these Terms and Conditions, the implied warranty period is limited to 30 days from the date of invoice. If a manufacturer's warranty is available for a part, Buyer agrees that it shall pursue the manufacturer's warranty before PERC's limited warranty will become effective.

20) **CUSTOMER REMEDIES.** PERC's entire liability and Customer's exclusive remedy for Tool Repair Services shall be, at PERC's sole option and discretion, either (a) return of the price paid for the repair, or (b) repair or replacement of the part that does not meet this Limited Warranty and which is returned to PERC with a copy of Customer's receipt. This Limited Warranty shall not apply and shall be void if failure of the repair has resulted from any action, omission, misuse or abuse, or misapplication of the tool by Buyer, or by accident not caused by PERC, which shall be determined solely by PERC in its discretion. Any repair service or replacement part will be warranted for the remainder of the original warranty period or thirty days, whichever is longer.

a) **NO OTHER WARRANTIES.** TO THE FULLEST EXTENT PERMITTED BY LAW, PERC MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, AS TO THE TOOL(S) OR PART(S) REPAIRED AS TO SUITABILITY OR MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE, OR ANY OTHER MATTER WITH RESPECT TO ANY OF THE PRODUCTS MANUFACTURED BY PERC. THIS DISCLAIMER IS FOR ALL LIABILITY IN CONTRACT, IN TORT OR OTHERWISE FOR INCIDENTAL, CONSEQUENTIAL, SPECIAL DAMAGES, OR ANY LOSS OR DAMAGE, WHETHER TO PROPERTY OR INJURY TO PERSONS, WHETHER FORESEEABLE OR NOT FORESEEABLE, RESULTING DIRECTLY OR INDIRECTLY, FROM THE USE OR LOSS OF USE OF ANY PRODUCT SOLD.

b) **NO LIABILITY FOR DAMAGES.** TO THE FULLEST EXTENT PERMITTED BY LAW, PERC SHALL NOT BE LIABLE FOR ANY (I)INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY, SPECIAL OR CONSEQUENTIAL DAMAGES; (II) LOSS OF PROFITS OR REVENUE, LOSS OF BUSINESS, DEPLETION OF GOODWILL AND/OR SIMILAR LOSSES, LOSS OF GOODS, LOSS OF CONTRACT, LOSS OF USE; (III) PERSONAL INJURY, OR (IV) ANY OTHER PECUNIARY LOSS, BY BUYER, ITS AFFILIATES, OR FROM ANY END USER IRRESPECTIVE OF WHETHER SUCH LOSS IS CATEGORIZED AS DIRECT DAMAGES OR OTHERWISE, ARISING OUT OF THE USE OF OR INABILITY TO USE THE PART(S) REPAIRED, EVEN IF PERC HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. PERC'S ENTIRE LIABILITY UNDER ANY PROVISION OF THIS AGREEMENT SHALL BE LIMITED TO THE AMOUNT ACTUALLY PAID BY CUSTOMER FOR THE REPAIR SERVICES AND/OR PARTS.

TERMS AND CONDITIONS SPECIFIC TO FIELD / FABRICATION SERVICES

21) SERVICE WARRANTY

- a) OEM products purchased and used as a part of an installation or fabrication carry original manufacturer's warranty (available upon request). PERC MAKES NO REPRESENTATIONS OR WARRANTIES, AS TO (a) WARRANTY OF MERCHANTABILITY; (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (c) WARRANTY OF TITLE; (d) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; or (e) WORKMANSHIP, PERFORMANCE, QUALITY, DURABILITY; WHETHER EXPRESS OR IMPLIED BY LAW, THROUGH COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE. THIS DISCLAIMER IS FOR ALL LIABILITY IN CONTRACT, IN TORT OR OTHERWISE FOR INCIDENTAL, CONSEQUENTIAL, SPECIAL DAMAGES, OR ANY LOSS OR DAMAGE, WHETHER TO PROPERTY OR INJURY TO PERSONS, WHETHER FORESEEABLE OR NOT FORESEEABLE, RESULTING DIRECTLY OR INDIRECTLY, FROM THE USE OR LOSS OF USE OF ANY PRODUCT SOLD.
- b) Technician workmanship and installation are warranted for 1 year from date of project completion.
- c) If any component installed by the Technician at the time of the Service is proven to have a manufacturing defect that is not caused or contributed to by Buyer's actions or inactions during the warranty period, which will be determined solely by PERC in its discretion, upon the written request of the Buyer, PERC will replace the component at no cost, which shall be Buyer's sole remedy.

22) SERVICE PERFORMANCE & SCHEDULING

- a) **4 weeks** advance written notice is requested for all training and field service.
- b) **Emergency / Fast Response service**, that is requested to be performed within 48 hours (two business days) of Buyer's initial request, will be invoiced at 1-1/2 x the prevailing standard, weekend, or holiday hourly rate.
- c) **Weekends and Holidays will be charged at 1-1/2 x prevailing standard hourly rate for the category of service provided.**
- d) **Overtime** rate of 1-1/2 x the prevailing standard, weekend or holiday hourly rate will be charged for any time traveling to/from or worked on customer site that:
 - Are outside the hours of 7:00AM to 6:00PM.
 - Exceed 9 hours within a single 24-hour period.
- e) All expert consulting services provided by PERC, including but not limited to such expert consultant services for legal cases, requires the execution of a separate retainer agreement clearly outlining the parameters of the services to be offered and any special circumstances or limits to said service. If expert consulting requires the use of retained legal counsel, to the extent available, applicable counsel's fees shall be paid by Buyer and included as part of the final invoice.
- f) Expert Consultant rates apply to phone time as well as on site services offered. An initial retainer fee independent of the rate charged for services rendered shall be charged for Expert Consulting engagements involving legal cases. Retainer fee will be commensurate with project scope.
- g) Phone consultation is billed for a minimum of 1 hour. Any portion of a call beyond an hourly increment is billed a complete hour.



- h) If PERC technicians encounter a safety hazard that will compromise their ability to perform their job properly or without risk of injury, they will alert PERC home office representatives and inform Buyer's supervisory personnel prior to performing any Services. If PERC and the Buyer cannot mutually agree on a means to immediately remedy the safety hazard, PERC shall terminate service until the issue is rectified at no cost or liability to PERC. PERC shall be permitted to invoice Buyer for such attempted Services.
- i) Technician's **day** meals and incidentals are included in all rates except expert consulting.
- j) **3 Hour minimum billing** in addition to travel time applies to all services rendered.
- k) If project travel and labor requirements exceed DOT restrictions of 14 hours per day/person or 11 hours travel per day/person, the project may need to be extended and will be billed at the prevailing rate.
- l) Original Equipment Manufacturer's recommended spare parts are used to complete all maintenance service unless otherwise specified in writing by customer and listed in customer accepted quotation.
- m) Any wetted odorant parts remaining after job completion will be left on site in sealed, properly labeled containers containing active carbon. Unless removal is specifically identified PERC's quotation as a priced service, remediation shall be Buyer's sole responsibility. PERC can provide a separate quote for this service upon Buyer's written request.
- n) Existing infrastructure removed from service during a project will be left neatly on site out of operator work areas. Unless removal or replacement is specifically identified on PERC's quotation as a priced service, remediation shall be Buyer's responsibility. PERC can provide a separate quote for this service upon Buyer's written request.

23) SERVICE EQUIPMENT USE

If, in connection with Services provided, equipment is left on Buyer's property, the following additional terms and conditions shall apply:

- a) Title to the Equipment shall at all times remain with PERC/Subcontractor;
- b) Buyer shall promptly pay all fees associated with the use of the Equipment as set forth in the applicable quotation;
- c) Buyer shall provide a safe and secure location for the Equipment;
- d) Under no conditions shall Buyer, without prior written authorization from PERC/Subcontractor:
 - 1. turn Equipment on or off;
 - 2. adjust Equipment settings;
 - 3. alter or modify the Equipment;
 - 4. repair or attempt to repair the Equipment;
 - 5. affix the Equipment to the property so as to change its character from personal property to realty;
 - 6. alter, modify or remove identification plates, tags or signs.
- e) PERC/Subcontractor shall have the right to inspect the Equipment upon reasonable notice to Buyer and without notice to the Buyer in the case of emergency.
- f) Buyer assumes all liability for loss, theft or damage to the Equipment or injury to persons or property arising directly or indirectly out of the possession, use or operation of the Equipment by Buyer whether or not caused by negligence, and whether or not such loss, damage or injury is caused by, in whole or in part, or otherwise attributable to Buyer or persons for whom Buyer is responsible. Buyer shall indemnify and hold harmless PERC/Subcontractor and their employees, agents, consultants, and representatives, against all losses, damages, costs, fines, liabilities and all expenses, including reasonable legal, expert and/or other professional expenses, suffered or incurred by PERC/Subcontractor for any claims, actions, proceedings, lawsuits, demands, or investigations, arising out of the Terms and Conditions of this Agreement or any services rendered by PERC/Subcontractor hereunder. To the fullest extent permitted by law, this indemnity shall apply notwithstanding that the loss was caused or contributed in part by a party indemnified hereunder and whether or not they were caused by Buyer or persons for whom Buyer is responsible. This indemnity shall survive termination of this Agreement.
- g) Buyer shall notify PERC/Subcontractor in writing when Buyer no longer requires the use of the Equipment and shall allow PERC/Subcontractor a commercially reasonable time to remove the Equipment from Buyer's premises.

24) PRE-SERVICE GENERAL REQUIREMENTS

Unless specifically called out in our quotation, Scope of Work or Site Readiness, Buyer shall be responsible for:

- a) All applicable trench preparation and/or installation of concrete pads, poles, electrical & signal/phone wiring and conduit from initiating source to equipment being serviced or installed. Additional requirement details may be provided in addenda provided with your site readiness form or quotation.
- b) Providing technician(s) with any applicable safety or procedural manuals required for the specific project.
- c) A secure site for placement of our trailer during working hours.
- d) A safe environment with good air quality and free of physical hazards.
- e) Following safe digging practices prior to the arrival of technicians.
- f) Should Buyer fail to provide any of the foregoing, PERC shall be permitted to delay Services, with no liability to Buyer, until all Pre-Service Requirements are met to PERC's satisfaction and shall be permitted to invoice Buyer for appearance or attendance at a site which is not ready.

25) SERVICE TRAVEL, MOBILIZATION, MEALS & LODGING

- a) Ground travel is charged at an hourly rate consistent with the category of service provided and per the prevailing rate at time of service. Applicable air travel expenses will be added to final invoice.
- b) Technician travel charges begins with ground travel from nearest regional service center that qualified technician travels from and ends with return to same.
- c) Mobilization fees are charged at the prevailing flat rate per mile for all equipment requiring delivery by trailer or to remain on the customer project site for a week or longer.
- d) Applicable shipping charges are invoiced in addition to technician ground travel.
- e) Equipment Use charges begin when the equipment leaves our service center and ends with return to same.
- f) Overnight hotel stays, night meals and incidentals are charged at the prevailing rate on a per/day per/person basis regardless of service category.

26) EARLY COMPLETION, DELAY OR CANCELLATION OF SERVICE

- a) If PERC completes the requested Service early or if the requested Service is terminated for reasons beyond PERC's reasonable control (including a delay exceeding 4 hours), Buyer shall be billed for a **3-hour minimum** charge.
- b) Should Buyer cause Service delays exceeding 2 hours from any agreed upon start time necessitate working past PERC's published end of day, beginning prior to its published beginning of day or require an unplanned return trip to complete the Service. Such additional work hours and any additional travel/mobilization and lodging shall be invoiced at prevailing standard/overtime rates.
- c) Service delays exceeding 4 hours shall default to the above cancellation policy and work will be rescheduled.
- d) Buyer caused delay of equipment installation/startup Services exceeding above service delay times will be rescheduled accordingly. Any discounted "**Startup Value Adder Rates**" associated with Service shall be replaced by full start up rate, travel/mobilization and lodging fees for Buyer caused delay.
- e) Scheduled Service can be cancelled at least two (2) business days prior to scheduled time/date without penalty. If scheduled Service is cancelled less than two (2) business days of scheduled time/date, a 1-day minimum labor (at prevailing rate), unrecoverable travel/hotel expenses, non-cancellable equipment rental fees and unreturnable/non-cancellable material procured uniquely for the cancelled service shall be invoiced and paid by Buyer.
- f) Fabricated items or equipment unique to the project are the property of Buyer at time of purchase and shall be invoiced if service is cancelled.