

TERMS & CONDITIONS OF SALE
REV 03 (06/2018)

These terms and conditions, the attendant quotation or the acknowledgement, and all documents incorporated by reference therein, binds Brodie Meter Co., LLC, who issues the quotation or acknowledgment for the provision of services and/or the sale of goods (except as provided in Section 11), to be provided hereunder by seller (Brodie Meter Co., LLC) hereinafter Seller, and the buyer, hereinafter Buyer, and constitute the entire agreement (Agreement) between Buyer and Seller regarding such sale and/or provision.

1. **PRICES:** Unless otherwise specified by Seller, Seller's price for the Goods and/or Services shall remain in effect for thirty (30) days after the date of Seller's quotation or acceptance of the order for the Goods/Services, whichever is delivered first, provided an unconditional, complete authorization for the immediate manufacture and shipment of the Goods and/or provision of Services pursuant to Seller's standard order processing procedures is received and accepted by Seller within such time period. If such authorization is not received by Seller within such thirty (30) day period, Seller shall exercise the right to change the price for the Goods/Services to Seller's price in effect for the Goods/Services at the time the order is released to final manufacture. Notwithstanding, any of the foregoing, to the contrary, the price for Goods/Services sold by Buyer, but manufactured by others, shall be Seller's price in effect at the time of shipment to Buyer.

2. **DELIVERY, PASSING OF RISK, RETENTION OF TITLE, AND DOCUMENTATION:** All shipping dates are approximate and are based upon Seller's prompt receipt of all necessary information from Buyer to properly process the order. Any agreed trade term shall be construed in accordance with the INCOTERMS® in force at the formulation of the contract. If no trade term has been specifically agreed, the delivery shall be F.O.B. Brodie Factory, FCA Brodie Factory, or EXWORKS Brodie Factory. Notwithstanding, any provisions to the contrary in this or other documents related to this transaction, the passing of risk of loss thereto shall transfer to Buyer upon delivery to the first freight carrier at the shipping point. The Goods shall remain the property of the Seller until paid for in full to the extent that such retention of title is valid under the relevant law. The retention of title shall not affect the passing of risk. The Seller shall provide Buyer with that data/documentation which is specifically identified in the contract. If additional copies of data / documentation or non-standard data/documentation are to be provided by Seller, they shall be provided to Buyer at Seller's price then in effect.

3. **EXCUSE OF PERFORMANCE:** Seller shall not be liable for delays in performance or for non-performance due to acts of God, war, riot, fire, labor trouble, unavailability of materials or components, explosion, accident, compliance with governmental requests, laws, regulations, orders or actions, or other unforeseen circumstances or causes beyond Seller's reasonable control.

4. **TERMINATION AND SUSPENSION BY BUYER:** Buyer may terminate or suspend its order for any or all of the Goods/Services covered by the Agreement, provided that Buyer gives Seller reasonable advance written notice of such termination or suspension and reimburses Seller for all losses, damages, costs and expenses arising from such termination or suspension.

5. **LIMITED WARRANTY:** Subject to the limitations contained in Section 2 herein and except as otherwise expressly provided herein, Brodie Meter Co., LLC ("Brodie") warrants the Goods-manufactured by Brodie will be free from defects in materials or workmanship under normal use and care until the expiration of the applicable warranty period. Goods are warranted for twelve (12) months from the date of installation and 18 months from date of shipment, whichever occurs first. Consumables and Services are warranted for a period of 90 days from the date of shipment or completion of the Services. Products purchased by Brodie from a third party for resale to Buyer ("Resale Products") shall carry only the warranty extended by the original manufacturer. Buyer agrees that Brodie has no liability for Resale Products beyond making a reasonable commercial effort to arrange for procurement and shipping of the Resale Products. If Buyer discovers any warranty defects and notifies Brodie thereof in writing during the applicable warranty period, Brodie shall, at its option, repair or replace, that portion of the Goods found by Brodie to be defective or refund the purchase price of the defective portion of the Goods/Services. All replacements or repairs necessitated by inadequate maintenance, normal wear and usage, unsuitable power sources, unsuitable environmental conditions, accident, misuse, improper installation, modification, repair, storage or handling, or any other cause not the fault of Brodie, are not covered by this limited warranty, and shall be at Buyer's expense. Brodie shall not be obligated to pay any costs or charges incurred by Buyer or any other party except as may be agreed upon in writing in advance by an authorized Brodie representative. All costs of dismantling, reinstallation and freight and the time and expenses of Brodie's personnel for site travel and diagnosis under this warranty clause shall be borne by Buyer unless accepted in writing by Brodie. Brodie is not responsible for damages that incur during shipment to Buyer for shipments that are F.O.B. Brodie Factory, FCA Brodie Factory, or EXWORKS Brodie Factory. Shipping charges for goods returned to Brodie under warranty will be at Buyer's expense. Products found not to be warranted can be repaired and returned at Buyer's expense and return charges born by Brodie will be added to the cost of repair or returned to Buyer "as received" at Buyer's expense. Insurance for returned products will be at Buyer's expense. For all returned products please package to prevent damage, or future damage during shipment. Make sure the products are cleaned, free from grease oil, chemicals and other materials that may hamper defect detection and impede repair. All returned items must be accompanied with a MSDS for the products that have been in contact with the equipment, including cleaning agents. A decontamination statement, RMA, and Customer Problem Report must also accompany equipment returned. Product received in an unsuitable condition will be returned at Buyer's expense without being examined. Goods repaired, and parts replaced during the warranty period shall be in warranty for the remainder of the original warranty period or ninety (90) days, whichever is longer. This limited warranty is the only warranty made by Brodie and can be amended only in a writing signed by an authorized representative of Brodie. Except as otherwise expressly provided in the Agreement, there are no representations or warranties of any kind, expressed or implied, as to merchantability, fitness for a particular purpose, or any other matter with respect to any of the goods or services. It is understood that corrosion or erosion of materials is not covered by our guarantee unless the Buyer has notified the Seller the product will be used in an environment conducive to corrosion and/or erosion and the product has been coated with Brodie's recommended method of protection against corrosion / erosion.

6. **LIMITATION OF REMEDY AND LIABILITY:** Brodie shall not be liable for damages caused in delay in performance. The sole and exclusive remedy for breach of warranty hereunder shall be limited to repair, correction, replacement or refund of purchase price under the limited warranty clause in section 5. In no event, regardless of the form of the claim or cause of action (whether based in contract, infringement, negligence, strict liability, other tort or otherwise), shall Brodie's liability to buyer and/or its customers exceed the price to buyer of the specific goods manufactured or services provided by Brodie giving rise to the claim or cause of action.

Buyer agrees that in no event shall Brodie's liability to buyer and/or its customers extend to include incidental, consequential or punitive damages. The term "consequential damages" shall include, but not be limited to, loss of anticipated profits, loss of use, loss of revenue and cost of capital.

7. **PATENTS:** Subject to the limitations contained in Section 6, Seller shall defend any suits brought against Buyer based on a claim that use of the Goods manufactured by Seller constitutes an infringement of a valid patent of the United States, and shall pay any damages awarded therein against Buyer, provided that Buyer: promptly notifies Seller in writing of the filing of such suit or the threat thereof; permits Seller to control completely the defense or compromise of such claim of infringement; and provides all reasonable assistance and cooperation requested by Seller for the defense of such suit. In the event that only the Goods manufactured by Seller are held to be infringing in such suit and their use is enjoined, Seller shall, at its sole option and expense, provide a commercially reasonable alternative, including, but not limited to, procuring for Buyer the right to continue using the Goods, replacing them with a non-infringing product or modifying them so they become non-infringing. Buyer agrees that Seller shall not be liable for infringement, and that Buyer shall fully indemnify Seller therefore, if infringement is based upon the use of Goods in connection with Goods not manufactured by Seller or in a manner for which the Goods were not designed by the Seller or if the Goods were not designed by the Seller or if the Goods were designed by the Buyer or were modified by or for the Buyer in a manner to cause them to become infringing.

8. **INSTALLATION:** Buyer shall be responsible for receiving, storing, installing, starting up and maintaining all Goods. Seller shall provide a quotation for services to assist Buyer in these functions if requested.

9. **TAXES:** Any tax or governmental charge payable by the Seller because of the manufacture, sale or delivery of the Goods, or provision of Services, may at Seller's option be added to the price herein specified. The foregoing shall not apply to taxes based upon Seller's net income.

10. **TERMS OF SHIPMENT AND PAYMENT:** Subject to the approval of Seller's Credit Department, shipping terms are F.O.B. Brodie Factory, FCA Brodie Factory, or EXWORKS Brodie Factory. Payment terms are subject to the approval of Seller's Credit Department and may vary based on Buyer's creditworthiness. Payment is expected, in U.S. currency, as per the prearranged agreement between the Buyer and Seller, unless there are alternative arrangements between Buyer and Seller. If any payment owed to Seller hereunder is not paid when due, it shall bear interest, at a rate to be determined by Seller which shall not exceed the maximum rate permitted by law, from the date on which it is due until it is received. Seller shall have the right, among other remedies, either to terminate the Agreement or to suspend further deliveries under this and/or other agreements with Buyer in the event Buyer fails to make any payment hereunder when due. Buyer shall be liable for all expenses attendant to collection of past due amounts, including attorneys' fees.

11. **STORAGE FEES**

1. Per diem charges are applicable when equipment is held beyond the acknowledged ready for shipment date.

Per diem storage charges will be assessed on each calendar day excluding the date of readiness.

The customer shall indemnify and hold Brodie International harmless from any and all liability and expense for such damages that might result from extended storage beyond six months.

Brodie may place the cargo in another warehouse facility with all charges associated with the transfer and storage to be paid by the customer.

12. **SOFTWARE AND FIRMWARE:** Notwithstanding any other provision herein to the contrary, Seller or applicable third-party owner shall retain all rights of ownership and title in its respective firmware and software, including all copyrights relating to such firmware and software and all copies of such firmware and software. Except as otherwise provided herein, Buyer is hereby granted a nonexclusive, royalty free license to use firmware and software, and copies of firmware and software, incorporated into the Goods only in conjunction with such Goods and only at the Buyer's plant site where the Goods are first used. Buyer may negotiate with Seller separate licenses to use such copies and firmware and software at other plant sites. Buyer's use of certain firmware (as specified by Seller) and all other software shall be governed exclusively by Seller's and/or third-party owner's applicable license terms.

13. **BUYER SUPPLIED DATA:** To the extent that Seller has relied upon any specifications, information, representation of operating conditions or other data or information supplied by Buyer to Seller in the selection or design of the Goods and/or provision of the Services and the preparation of Seller's quotation, and in the event that actual operating conditions or other conditions differ from those represented by Buyer and relied upon by Seller, any warranties or other provisions contained herein which are affected by such conditions shall be null and void, unless otherwise mutually agreed upon in writing.

14. **GENERAL PROVISIONS:** (a) Buyer shall not assign its rights or obligations under the Agreement without Seller's prior written consent. (b) There are no understandings, agreements or representations, express or implied, not specified in the Agreement. (c) No action, regardless of form, arising out of transactions under the Agreement, may be brought by either party more than two (2) years after the cause of action has accrued. (d) Any modification of these terms and conditions must be set forth in a written instrument signed by a duly authorized representative of Seller. (e) The Agreement is formed and shall be construed, performed and enforced under the laws of the state of Georgia. However, Buyer and Seller agree that the proper venue for all actions arising under the Agreement shall be only in the State where the Goods involved in such actions were manufactured. (f) GOODS AND SERVICES PROVIDED HEREUNDER ARE NOT SOLD OR INTENDED FOR USE IN ANY NUCLEAR OR NUCLEAR RELATED APPLICATIONS. Buyer (i) accepts Goods and Services in accordance with the restriction set forth in the immediately preceding sentence, (ii) agrees to communicate such restriction in writing to any and all subsequent purchasers or users and (iii) agrees to defend, indemnify and hold harmless Seller from any and all claims, losses, liabilities, suits, judgments and damages, including incidental and consequential damages, arising from use of Goods and Services in any nuclear or nuclear related applications, whether the cause of action be based in tort, contract or otherwise, including allegations that the Seller's liability is based on negligence or strict liability. (g) The 1980 United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement. (h) If any provision of the Agreement is invalid under any statute or rule of law, such provision, to that extent only, shall be deemed to be omitted without affecting the validity of the remainder of the Agreement.