1. ACCEPTANCE
Order or other requests, whether oral or written, for the supply of machinery or equipment (“Equipment”), or for the supply of spare or replacement parts (“Parts”), are subject to Seller’s written acceptance or to written acknowledgment by Seller.

2. PRICES

3. PAYMENT TERMS

4. DELIVERY

5. FORCE MAJEURE

6. CANCELLATION

7. TITLE AND RISK OF LOSS

8. LIMITED WARRANTY

9. CHANGES

GDS INTERNATIONAL, LLC
AND ITS AFFILIATES

TERMS AND CONDITIONS FOR THE PROVISION OF EQUIPMENT, PARTS, SERVICES OR RENTAL
except as otherwise expressly provided pursuant to the provisions of this Article 8, Seller undertakes no responsibility for the quality of the goods. There are no warranties that extend beyond the description on the face hereof. Seller makes no warranty or representation, and no one is authorized to make any warranty or representation, on behalf of Seller, except as otherwise expressly provided herein.

AS-NEW Equipment/Parts, remanufactured to “As New” Equipment/Parts, and as Buyer’s sole remedy, either repair or replace such defective Equipment/Parts with the type originally furnished. This warranty expressly assumes that parts normally considered consumables (including, but not limited to rubber goods, seals, rubber, polymer and/or metallics) and bearings, are replaced during replacement or overhaul. If Buyer requests that such parts not be replaced, Seller hereby disclaims any warranty for said Recertified or Overhauled Equipment.

Certified or Overhauled Equipment.

Secondhand Parts.

Secondhand parts are sold “as is.”

For warranty work in the field, all travel expenses and stand-by time incurred by the Seller will be borne by the Buyer. For warranty work at Seller’s facility, all costs of freight will be borne by the Buyer. Seller’s warranty obligations hereunder shall not apply if non-conformity or failure was caused by (a) Buyer’s failure to properly store or maintain the equipment; or (b) the unauthorized modification, repair or service of the equipment or parts by Buyer; or (c) utilization of replacement parts not manufactured by Seller; or (d) use or handling of the equipment by Buyer in a manner inconsistent with Seller’s recommendations in manuals, bulletins or other publications. Further, Seller’s warranty obligations under this Article 8shall terminate if (A) Buyer fails to perform its obligations under this or any other Agreement between the parties, or (B) Buyer fails to pay any charges due Seller. Any third party warranties provided with such equipment or parts manufactured by Seller are assigned to Buyer, without recourse, at the time of delivery, provided such warranties are assignable.
10. RETURN OF MAKE TO STOCK GOODS

With Seller’s written approval, unused, incorrectly shipped or “Made to Stock” goods ordered incorrectly, in new condition and of current manufacture and catalog specifications may be returned by Buyer for credit (subject to a restocking fee), provided written request is received within one (1) year after the purchase date. Non-standard items or items that are returned as goods of sale may be accepted for return with the prior written agreement of Seller. Requests for return of goods must show agreement number, invoice number, description of material, and date of purchase. Return of goods does not relieve Buyer of the obligation to make payment against Seller’s invoice, and any credit or refund allowed will be issued following Seller’s receipt of the goods. The credit allowed on returned goods, if any, is a merchandise credit and is applicable only against future purchases of Seller’s future purchases of Seller’s future purchases of Seller. All future credit given will be solely in Seller’s discretion and may be based on original or a subsequently adjusted price. A charge will be assessed to clean-up, refurbish and restock the goods, if applicable. Non-merchantable or electronic products or components may be returned for credit after six (6) months from date of purchase.

11. LIABILITIES, RELEASES AND INDEMNIFICATION

For purpose of this Article 11, the following definitions shall apply:

“Seller Group” shall mean (i) Seller, its parent, subsidiary or related companies, (ii) its and their working interest owners, co-lessees, co-owners, partners, joint venturers, and their respective parents, subsidiary or related companies and (iii) the officers, directors, employees, consultants, agents and invitees of all of the foregoing.

“Buyer Group” shall mean (i) Buyer, its parent, subsidiary or related companies, (ii) its and their working interest owners, co-lessees, co-owners, partners, joint venturers, and their respective parents, subsidiary or related companies and (iii) the officers, directors, employees, consultants, agents and invitees of all of the foregoing.

“Claim” shall mean all claims, demands, causes of action, liabilities, damages, judgments, fines, penalties, awards, losses, costs, expenses (including, without limitation, attorneys’ fees and costs of litigation) of any kind or character arising out of or relating to the performance of this Agreement (including, without limitation, property loss or damage, personal or bodily injury, sickness, disease or death, loss of sales profits and/or business interruption or any resulting consequential, incidental or special damages or losses). Any term “Claim” shall include any third party or governmental action, proceeding or claim.

a) Seller shall release, indemnify, defend and hold Buyer Group harmless from and against any and all Claims in respect of personal or bodily injury to, sickness, disease or death of any member of Seller Group or Seller Group’s subcontractors or their employees, agents or invitees, and all Claims in respect of damage to or loss of property owned, leased, rented or hired by any member of Buyer Group or Buyer Group’s contractors or their employees, agents or invitees, and all Claims in respect of damage to or loss or destruction of property owned, leased, rented or hired by any member of Buyer Group or Buyer Group’s other contractors or their employees, agents or invitees.

b) Buyer shall release, indemnify, defend and hold Seller Group harmless from and against any and all Claims in respect of personal or bodily injury to, sickness, disease or death of any member of Buyer Group or Buyer Group’s other contractors or their employees, agents or invitees, and all Claims in respect of damage to or loss of property owned, leased, rented or hired by Buyer Group or Buyer Group’s subcontractors or their employees, agents or invitees.

c) Each party covenants and agrees to support the other party for the matters, claims, damages and losses covered by such provisions.

d) Seller shall indemnify, defend and hold Buyer harmless from and against any and all Claims in respect of personal or bodily injury to, sickness, disease or death of any member of Buyer Group or Buyer Group’s contractors or their employees, agents or invitees, and all Claims in respect of damage to or loss or destruction of property owned, leased, rented or hired by any member of Buyer Group or Buyer Group’s other contractors or their employees, agents or invitees.

12. INSURANCE

Upon written request, each party shall furnish to the other party certain certificates of insurance evidencing the fact that the adequate insurance to support each party’s obligations hereunder has been secured. To the extent each party’s release and indemnity obligations expressly assumed by each party hereunder, each party agrees that no provision shall be construed to be primary to the other party’s insurance; (b) include the otherparty, its parent, subsidiary and affiliated or related companies, and itsand their respective directors, officers, employees, consultants and agents, and (c) be bonded or bonded pursuant to reasonable local, state, provincial and/or federal laws, the validity of the remaining provisions of this Agreement, and portions thereof, shall not be affected by such unforeseeability or conflict, and this Agreement shall be construed as though provision supersedes all prior oral or written agreements or representations. Buyer acknowledges that it has not relied on any representations other than those contained in this Agreement. This Agreement shall not be varied, supplemented, qualified, or interpreted by any prior course of dealing, course of performance or usage of trade.
19. SOFTWARE LICENSE

All software and its related documentation ("Software") used in connection with the products supplied by Seller is owned by Seller or licensed by Seller from its owner and is licensed or sublicensed to Buyer. Buyer agrees that Seller or its licensor is the sole owner of the Software and of all intellectual property rights therein. The license granted herein is a limited, personal, and non-transferrable license that permits Buyer to use the Software as installed by Seller and solely for Buyer's own business purposes. Any other use of the Software is prohibited. Buyer agrees not to disclose the Software to any third parties. Buyer shall not circumvent any technological measure used to control access to the Software. Buyer shall not copy, reverse engineer, decompile, disassemble or electronically transfer the Software. Buyer shall not establish an interface with the Software in order to read or write data by other components nor replace the Software with any version not provided by Seller.