

GENERAL TERMS AND CONDITIONS

THESE GENERAL TERMS AND CONDITIONS CONTAIN INDEMNITY PROVISIONS - PLEASE READ CAREFULLY

1. **Acceptance.** By requesting Newpark's services, equipment, or products, Customer voluntarily elects to enter into and be bound by these General Terms and Conditions.
2. **Definitions.** The following definitions apply to these General Terms and Conditions:
 - a. "Newpark" means the Newpark Resources, Inc. affiliate or subsidiary which is providing the services, equipment or products requested by Customer.
 - b. "Customer" means the person or entity to whom services, equipment, and/or products are provided, as well as its parents, affiliates and subsidiaries and their respective directors, officers, employees, agents, joint venturers, working interest partners and partners.
 - c. "Bid" or "Proposal" means shall mean a written quotation, bid or proposal submitted by Newpark to Customer for Services, and signed by an authorized representative of Newpark.
 - d. "Delivery Ticket" means any one or group of documents that Newpark requests that the Customer or its agent sign at the well or service site prior to or at the time of delivery of products or rendering of services.
 - e. "Services" means the products, equipment and services to be provided by Newpark to Customer.
3. **Price.** Customer agrees to pay Newpark for the Services in accordance with Newpark's current price list in effect at the time the Services are rendered. In the event that Newpark has agreed to charge Customer other than as set forth in such price list, the charges agreed upon by Customer and Newpark shall be those set forth in the Delivery Ticket or the Bid and the agreement of Customer to such terms shall be conclusively established by the execution of the Delivery Ticket or performance of the Services by Newpark pursuant to the Bid. All payments shall be made in United States Dollars.
4. **Terms.** All amounts owed to Newpark shall be paid in cash, in advance, unless Newpark has approved credit prior to the sale. Credit terms of sales for approved accounts are total invoice amount due at Newpark's office, on or before the 30th day from the date of the invoice. Past due accounts are to pay interest on the balance due at the rate of 1.5% per month or the maximum allowance by applicable state or federal laws if such laws limit interest to a lesser amount. In the event it is necessary to employ any agency or attorney to affect the collection of any account, Customer hereby agrees to pay all fees directly or indirectly incurred for such collection. Unless specified otherwise in Newpark's Bid, all sales are FOB Newpark's point of shipment. Unless otherwise specified, risk of loss, including transportation delays and losses, shall pass to Customer as soon as products or equipment depart Newpark's point of shipment.
5. **Returns.** At its discretion, Newpark may accept product returns from Customer, in which event Newpark may specify the condition of the products being returned, their packaging, method of delivery and any value associated with such returned products. Unless otherwise provided for in the Proposal, Product returns may in Newpark's discretion be subject to a twenty-five percent (25%) restocking charge, plus any transportation costs.
6. **Third Party Charges.** Customer shall pay all third party charges as set forth in Newpark's current price list or as otherwise agreed to in the Bid, as well as any sales, use, rental or other taxes that may be applicable to transactions hereunder. Customer shall pay all applicable customs, excise, import and other duties applicable to transactions hereunder and shall provide necessary import licenses and extensions thereof. If Customer requests that such third party charges be included in Newpark's invoices to Customer, Newpark may include an administrative fee amounting to up to twenty-five percent (25%) of such third party charges.
7. **Taxes.** The prices shown on Newpark's price lists and Bids do not include any sales or use tax. All taxes due and owing for each order shall be indicated as a separate item on Newpark's regular billing. Customer shall pay any and all taxes or other levies (other than income taxes) imposed by any government, government unit, or similar authority with respect to charges made or payments received in connection with the Services.
8. **Independent Contractor.** Newpark is and shall be an independent contractor with respect to the performance of Services provided to Customer, and neither Newpark or anyone employed by Newpark shall be the agent, representative, employee, or servant of Customer in the performance of such Services or any part hereof.
9. **Obligations of Customer.**
 - a. **Well and Site Conditions; Notification of Hazardous Conditions.** Customer having custody and control of the well and the location where Services are to be performed and having superior knowledge of the well, the site and conditions surrounding same shall provide Newpark with all necessary information to enable Newpark to perform its Services safely and effectively. Customer warrants that the well and/or service site shall be in proper condition to receive and accommodate the Services to be delivered or rendered by Newpark. Customer shall be solely responsible for obtaining all necessary permits and licenses for the performance of the Services.
 - b. **Chemicals/Wastes.** The handling and disposal of any chemical, waste, or by-product used or generated in the performance of these General Terms and Conditions ("Wastes") is the sole responsibility of Customer, who shall, under all circumstances, be considered the owner and generator thereof. Customer hereby waives, releases and agrees not to assert any claim or bring any cost recovery action against Newpark in connection with the use, generation, storage, transportation, or disposal of Wastes arising out of these General Terms and Conditions under any common law theories or federal, state, or local environmental laws or regulations now existing or hereinafter enacted, **without regard to the cause or causes thereof or the negligence of any party.**
10. **Limited Warranty- Products and Services.** Newpark expressly warrants that it shall convey good title to the products furnished to Customer and that such products shall conform to written descriptions provided by Newpark. Newpark does not warrant in any way products not manufactured or made by Newpark, and such will be sold or provided hereunder only with the warranties given by the manufacturer thereof. In interpreting information and making recommendations, either written or oral, as to the type or amounts of materials or services to be furnished, or manner of performance, or in predicting results to be obtained therefrom, Newpark will give Customer the best judgment based on its experience. Nevertheless, all such recommendations or predictions are opinions only, and, in view of numerous factors, including without limitation, the superior knowledge of Customer regarding the well or work site, the lack of control which Newpark has over the conditions in and about the well or work site, and the necessity for Newpark to rely on facts and supporting services furnished by others, **NEWPARK MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR THAT SERVICES, INCLUDING PRODUCTS, EQUIPMENT AND SERVICES, SHALL BE FIT FOR ANY PARTICULAR PURPOSE.** Newpark's sole liability and Customer's exclusive remedy in any cause of action (whether in contract or in tort) arising out of the sale or use of a product or Services furnished by Newpark is expressly limited to: (a) the replacement of any defective product or Service, or (b) at Newpark's option, the allowance to Customer of credit for the cost of such product or Service.
11. **Indemnity Obligations.**
 - a. Notwithstanding any provision herein to the contrary, Customer shall protect, defend, indemnify, hold harmless and release and hold Newpark, its parent, subsidiary and affiliated companies and contractors or subcontractors hired and/or engaged by Newpark and their respective officers, directors, agents, and employees and invitees (hereafter the "Newpark Group") harmless from and against all damage, loss, liability, claims, demands and causes of action of every kind or character (including all costs and expenses and reasonable attorney's fees), arising out of or resulting from services that are the subject matter of these General Terms and Conditions on account of: (1) bodily injury, illness or death to Customer's employees or the employees of any contractors or subcontractors hired or engaged by Customer; or (2) damage to or loss of or loss of use of property owned, operated, leased, controlled or provided by Customer or any contractor or subcontractor hired or engaged by customer or engaged by customer, regardless, in each case, if the claim, demand or cause of action has been caused by the sole, joint or comparative negligence, strict liability, products liability, breaches of express or implied warranties, the unseaworthiness of any vessel, the contractual liability of any member of the Newpark Group or other fault of any party specifically including but not limited to the Newpark Group.
 - b. Notwithstanding any provision herein to the contrary, Customer shall protect, defend, release, indemnify and hold harmless and release the Newpark Group, from and against all claims, demands, and causes of action of every kind and character (including all costs and expenses and reasonable attorney's fees) without regard to the cause or causes thereof, the unseaworthiness of any vessel, strict liability, breach of contract, breach of warranty or the negligence of any party, whether such negligence be the sole, joint, concurrent, comparative, contributory, active or passive negligence of the Newpark Group, arising out of or resulting from the work/Services that is/are the subject matter of these General Terms and Conditions on account of bodily injury, illness, or death of persons who are third parties and/or damage to or loss of property owned, operated, leased, controlled, or provided by third parties, regardless, in each case, if the claim, demand or cause of action has been caused by the sole, joint and/or comparative negligence, strict liability, products liability, breaches of express or implied warranties, the unseaworthiness of any vessel, the contractual liability of any member of the Newpark Group or other fault of any party specifically including but not limited to the Newpark Group. As used in this paragraph, third party shall mean any person or entity other than a member of the Newpark Group, Customer or Customer's other contractors or their subcontractors including customer's employees or the employees of customer's other contractors or subcontractors.
 - c. Notwithstanding any provision herein to the contrary, Customer shall agree to protect, release, indemnify, defend, and hold Newpark Group harmless and release the Newpark Group from and against any and all damage, loss, liability, claims, demands and causes of action of every kind or character (including all costs and expenses and reasonable attorney's fees) without regard to the cause or causes thereof, including the unseaworthiness of any vessel, strict liability, breach of contract, breach of warranty or the negligence of any party, whether such negligence be the sole, joint, concurrent, comparative, contributory, active or passive negligence of the Newpark Group, asserted by or in favor of Customer or any third party (including without limitation Customer's co-working interest owners) arising out of or resulting from: (i) loss of or damage to any well or hole (including without limitation the costs of re-drill, pipeline, or transmission line; (ii) blowout, fire, explosion, cratering or any uncontrolled well condition (including without limitation the cost to control a wild well and the removal of debris); and, (iii) damage to any reservoir, geological formation, or underground strata or the loss of oil, water, or gas therefrom; (iv) pollution or contamination of any kind, (other than surface spillage of fuels, lubricants, rig sewage or garbage to the extent attributable to the negligence of Newpark) including without limitation the cost of control, removal, and cleanup; and (v) damage to or escape of any substance from any pipeline, vessel or storage facility.
 - d. Anti-Indemnity Savings Clause. If any defense, indemnity, or insurance provision contained in this Contract conflicts with, is prohibited by, or violates any public policy under any federal, state, or other law determined to be applicable to a particular situation arising from or involving any work and/or services hereunder, it is understood and agreed that the conflicting, prohibited, or violating provision shall be deemed automatically amended in that situation to the extent- but only to the extent- necessary to conform with, not be prohibited by and avoid violating public policy under such applicable law.
12. **Insurance.** Newpark and Customer agree to support their indemnity obligations herein by furnishing liability insurance coverage or qualified self insurance in an amount of no less than \$2,000,000. However, Newpark and Customer agree and intend that, to the fullest extent allowed from time to time by applicable law, their respective indemnities under these General Terms and Conditions are to apply without limit and are not to be limited to the amount of insurance either of them may from time to time maintain or agree to maintain. If it should be determined that the indemnity obligations assumed hereunder that are to be supported by either insurance or self insurance exceed that which is permitted under applicable law, then such indemnities shall automatically be amended to conform to the monetary limits permitted under such law.
13. **Confidential Information.** Customer and Newpark shall each maintain the confidentiality of all data and information obtained from each other in connection with the work performed by Newpark and will not disclose any such information to third parties without the prior written consent of the other party. Notwithstanding the foregoing, Newpark may use information generated by the performance of services for the Customer, including well performance data, in the development of job recommendations and well programs for its other customers.
14. **Waiver.**
 - a. Neither Newpark or Customer will be liable to the other for special, incidental, indirect or consequential damages resulting from or arising out of the products or equipment provided or the services performed by Newpark hereunder, including but not limited to, loss of profit or revenue or business interruption losses, whether or not arising under an alleged breach of warranty or caused by the sole, joint and/or comparative negligence, strict liability or other fault of either party.
 - b. Failure of Newpark to enforce any of these General Terms and Conditions shall not prevent a subsequent enforcement of such terms and conditions or be deemed a waiver of any subsequent breach. Customer represents that it is a business consumer purchasing products and services from Newpark for commercial use, that it has experience in business matters that enable it to evaluate the merits and risks of the purchase of such products and services, and that it is not in a significantly disparate bargaining position with Newpark. Customer waives the provisions of the Texas Deceptive Trade Practices Act (other than Section 17), as amended.
15. **AMENDMENTS AND MODIFICATIONS. NO FIELD EMPLOYEE OF NEWPARK IS AUTHORIZED OR EMPOWERED TO ALTER THESE GENERAL TERMS AND CONDITIONS.** Any attempt by either party to vary any of the terms hereof, through a work order, purchase order, inspection report or other document, shall be deemed immaterial and shall be void, unless this provision is expressly referenced and specifically waived. By requesting the Services, Customer agrees to all the terms and conditions contained herein, which shall constitute the entire agreement between the parties, and Newpark's willingness to perform the Services is expressly limited to the terms and conditions contained herein. In the event that Newpark and Customer have entered into a master service agreement or master work contract applicable to the Services performed hereunder, then any term or condition herein which conflicts with the provisions of such master agreement shall be deemed invalid. Newpark hereby objects to any term of any purchase order. These General Terms and Conditions may not be varied, supplemented, qualified or interpreted by any prior course of dealing between the parties, by any usage of trade, or by the use of any Delivery Ticket or any other document provided by Customer that varies from or conflicts with the terms and conditions herein. These General Terms and Conditions may only be amended in a writing signed by a duly authorized officer of Newpark.

16. **Special Provisions.**

a. **Damage to or loss of Mats or other Equipment Provided by Newpark.** Notwithstanding any provision herein to the contrary, Customer agrees to be responsible for loss or damage to the mats (both wood and composite) and accessories and any other equipment rented from Newpark while such are in Customer's possession, custody, or control excepting damage caused by ordinary wear and tear. Unless otherwise provided for in the Proposal, Customer will be charged the lesser of: (1) the costs to repair any damaged mat or other equipment; or, (2) for wood mats, the current cost of purchasing replacement mats, for composite mats, the current list price charged for the sale of composite mats (and accessories) by Newpark and for all other equipment, the replacement costs. Unless otherwise expressly provided for in its Proposal Newpark shall have no obligation to maintain the location or site where its mats or other equipment have been deployed. Any modification or movement of the mats by Customer, its agents, representatives or subcontractors is not authorized by Newpark and shall be entirely at the risk, responsibility and liability of Customer. To the extent that Newpark delivers loose lumber to the location or site, such shall be used only by Newpark representatives for repair or rebuilding of wood mats.

b. **Waste Disposal Services.** Notwithstanding any provision herein to the contrary, if the Services to be rendered to Customer by Newpark include the disposal of waste, the following shall apply:

- i. Prior to acceptance of any waste, Newpark shall have the right to perform an analysis of the waste to determine whether it conforms to the specifications for non-hazardous waste and/or if it has any other non-qualifying characteristics defined by Newpark's protocol. If such waste does not conform to Newpark's specifications, Newpark reserves the right to reject the waste. At unmanned salt water injection wells locations, Customer is authorized to deliver only non-hazardous, RCRA exempt waters produced from oil and gas wells and Customer expressly represents that any waste delivered to such locations meets these specifications.
- ii. Title, risk of loss, possession, and all other incidents of ownership to conforming waste shall transfer from Customer to Newpark upon Customer's taking possession of the waste, which will only occur after all of the following have occurred: (A) the waste has been delivered to Newpark's offloading site, (B) Newpark has inspected and/or sampled the load and made a reasonable effort to confirm Customer's compliance with all applicable rules and regulations for non-hazardous waste, and (C) Newpark or Customer has completed the offloading of the load from the transportation vehicle into Newpark's facility. Customer shall, upon request by Newpark, sign and deliver to Newpark on Newpark's approval form, a manifest or bill of lading for all waste delivered to Newpark. Customer shall have no right to the recovery of any materials contained in such waste, nor any credit for their potential value.

iii. **If waste transferred from Customer to Newpark is determined to be nonconforming after it is commingled with other waste by Newpark, then ownership of and title to the nonconforming waste shall not vest in Newpark, and Customer shall defend, indemnify and hold Newpark Group harmless from and against any and all claims, losses, expenses, fines, penalties, assessments and other rights, whether statutory or tortious, directly or indirectly arising out of Customer delivering nonconforming waste to Newpark, whether or not caused by the sole, joint and/or concurrent negligence, fault or strict liability of Newpark Group. It is the express intention of the parties hereto, both Customer and Newpark, that the indemnity provided for in this paragraph is an indemnity by Customer to indemnify and protect Newpark Group from the consequences of Newpark Group's own negligence, fault or strict liability, whether that negligence, fault or strict liability is the sole, joint or concurring cause of the claim, loss, expense, fine, penalty, assessment or other right.**

iv. Customer or subcontractors which are retained by Customer shall provide suitable vehicles and trained employees to transport waste in accordance with all applicable laws and regulations. Newpark will not provide transportation services, shipping containers, or trailers to Customer. Newpark will not be responsible to ascertain that any vehicles or vessels or shipping containers used to deliver waste to Newpark's facilities have obtained permits, licenses, certificates or approvals, it being understood that such determination shall be the responsibility of Customer, notwithstanding any dispatching assistance which may be voluntary provided by Newpark from time to time.

17. **Miscellaneous.** Newpark shall not be liable for any delay or non-performance due to governmental regulation, labor disputes, hostile action, weather, fire, acts of God or any other causes beyond the reasonable control of Newpark. These General Terms and Conditions and any action or dispute arising out of the Agreement will be governed by the laws of the State of Texas without regard to conflict of law principles. The parties hereto agree that all actions and proceedings arising out of these General Terms and Conditions shall be tried and litigated exclusively in the state and federal courts located in Harris County, Texas. The aforementioned choice of venue is intended by the parties to be mandatory and not permissive in nature, thereby precluding the possibility of litigation between the parties with respect to or arising out of these General Terms and Conditions in any jurisdiction other than that specified in this paragraph. Each party hereby waives any right it may have to assert the doctrine of forum non conveniens or similar doctrine or to object to venue with respect to any proceeding brought in accordance with this paragraph, and stipulates that the state and federal courts located in Harris County, Texas, shall have in personam jurisdiction and venue over each of them for the purpose of litigating any dispute, controversy, or proceeding arising out of or related to these General Terms and Conditions. In the event one or more of the provisions contained in these General Terms and Conditions shall be held, for any reason, to be invalid, void, illegal, or unenforceable in any respect, such invalidity, voidness, illegality, or unenforceability shall not affect the remaining provisions hereof, and these General Terms and Conditions shall remain unaffected and shall be construed as if such invalid, void, illegal, or unenforceable provision never had been contained herein.