



**GIRTZ INDUSTRIES INC
TERMS AND CONDITIONS**

The following terms and conditions (“Terms and Conditions”) govern all transactions with Girtz Industries Inc (“Girtz” or “Seller”) unless otherwise expressly agreed in writing; provided, however, that the provisions contained within Girtz’s Quote and Statement of Work to Buyer (collectively and singularly referred to as “Quote”) shall be controlling, in the event of any inconsistencies between the Quote and these Terms and Conditions. For purposes of these Terms and Conditions, the terms “Buyer” and “Buyers” shall mean and include all individuals or entities accepting a quote from Girtz. These Terms and Conditions are incorporated by reference into all quotes and/or sales orders issued by Girtz, all purchase orders submitted by Buyers, and all electronic orders, as if expressly set forth therein.

1. CONTRACT AND ACCEPTANCE. Buyer has read and understands these Terms and Conditions, Quote, and Girtz’s Sales Order to Buyer (“Sales Order”) (collectively, the Terms and Conditions, Quote, Sales Order, and any applicable purchase order shall be referred to as the “Contract”), and Buyer acknowledges and agrees that (a) any goods or services sold by Seller and purchased by Buyer are subject to these Terms and Conditions in all respects and (b) Buyer’s order placement to Girtz for any goods, product, system, software, or services (collectively and singularly referred to as “Goods”) shall constitute Buyer’s acceptance of these Terms and Conditions in all respects.

2. SHIPPING. At Seller’s option, in the event Seller is unable to ship all of the Goods ordered, Seller may ship a partial order, in which event Buyer shall pay Seller for the Goods received. Shipments to Buyer will be made in accordance with the provisions of the Quote and/or Sales Order. The failure to ship Goods within the time period specified in the Quote and/or Sales Order shall not be a ground for Buyer’s rejection of the Goods, unless Buyer gives notice of cancellation of the order, prior to Girtz’s manufacturing, shipment, and/or provision of the Goods. Unless otherwise specified in the Quote, all shipments by Girtz are F.O.B. origin (5262 N. East Shafer Drive, Monticello, IN 47960), freight collect.

3. QUOTATION. The prices in Seller’s Quote shall be void the lesser of: (i) thirty (30) days from the date thereof, (ii) the date of Seller’s subsequent notification of a price change to Buyer, or (iii) the expiration date listed in Seller’s Quote. Except for any federal excise tax that may be due as a result of the transaction, the prices quoted herein do not include any federal, state, county, local or other taxes levied on the Goods, their use or sale, or on the Contract by any jurisdiction either inside or outside the United States. Such taxes, where Seller is required by law to collect them, whether designated as sales tax, gross receipts tax, occupation tax, etc., will be billed to Buyer based on the law in effect at the time of delivery unless Buyer furnishes Seller with a proper tax exemption certificate. Buyer shall reimburse Seller for any state, county, or local property taxes respecting the Goods, imposed, assessed, billed or becoming due and payable by Seller on or after the date the Goods are located on Buyer’s premises or the premises of any of Buyer’s subcontractors and/or agents.

4. CHANGES; COST CREEP. Seller reserves the right at any time to change the scope of the work covered by the Contract to the extent caused by Buyer’s requirements. Any difference in price or time for performance resulting from such changes shall be borne by Buyer.

5. NON-CONFORMING GOODS. Buyer shall perform incoming inspections of the Goods upon the earlier of: (i) within thirty (30) days following Seller sending notice of completion of final test; or (ii) actual receipt of the Goods. Failure to timely (the earlier of within five (5) days of receipt by Buyer or within thirty (30) days of notice of completion of final test) notify Seller of any patent non-conformity of Goods received shall result in the waiver of any right of Buyer to assert a claim of any such non-conformity against Seller. The failure to timely notify Girtz of the nonconformance of product shall be conclusive to establish Buyer’s acceptance of the Goods.



6. FORCE MAJEURE. Any delay or failure of either party to perform its obligations hereunder shall be excused if Seller is unable to produce, sell or deliver, or if Buyer is unable to accept delivery, buy or use, the Goods, as a result of an event or occurrence beyond the reasonable control of the applicable party and without its fault or negligence, including, but not limited to, acts of God, actions by any governmental authority (whether valid or invalid), illegality or regulatory restriction, fires, floods, windstorms, explosions, riots, natural disasters, wars or other casualty, sabotage, labor problems (including lockouts, strikes and slowdowns), inability to obtain power, material, labor, goods and/or services, energy, utilities or transportation, or court injunction or order; provided that written notice of such delay (including the anticipated duration of the delay) shall be given by the affected party to the other party as soon as possible after the event or occurrence (but in no event more than ten (10) days thereafter).

7. WARRANTY.

a. General Warranty: Seller makes no warranty for Goods sold to Buyer that were manufactured by a third party. To the extent Buyer is purchasing a system developed by Seller, Buyer agrees and acknowledges that any warranty for third party goods that are part of that system shall be limited to the extent of the warranty offered by the third party manufacturer of those goods, and that Buyer's sole and exclusive remedy for any warranty claims for a defect in those goods shall be a claim against the third party manufacturer of the goods (or if unavailable, then Buyer's claim against Seller shall be limited to the extent of Seller's successful claim against the third party manufacturer, less attorneys' fees and costs incurred to pursue said claim by Seller).

Seller's sole warranty with respect to Goods sold to Buyer is that the Goods shall perform within a reasonable range of the specifications provided by Buyer or as set forth by Seller, for twelve (12) months after acceptance of the Goods by Buyer (including, without limitation, any paint on the Goods), provided that the Goods are maintained and calibrated by Buyer as specified and/or as is otherwise commercially reasonable. Notwithstanding the preceding sentence, Seller's warranty does not extend to damages caused by third party manufactured Goods or components. In the event of a claim for breach of this warranty, Buyer shall first have to provide Seller with a reasonable opportunity to inspect and remedy the claimed defect, and to inspect Buyer's equipment and the Goods to determine compliance with all maintenance and calibration obligations of Buyer, including, without limitation, confirming to Seller's sole satisfaction that the Goods have not been exposed to and/or abused by any chemical application and/or unforeseen environmental factors. In the event that Buyer's equipment and/or the Goods are not properly maintained and/or calibrated, Seller's warranty is null and void. If after such time the defect cannot be remedied such that the Goods are performing at a level comparable to the level they were performing at the time the Goods were accepted by Buyer, then Buyer's sole remedy is a refund of the purchase price less the reduced value of the Goods caused by wear and tear to the Goods prior to the defect, less Seller's cost to tear down/dismantle the Goods, and less shipping and transportation costs incurred by Seller. In no event will Seller be liable for any fines imposed on Buyer by a governmental agency as a result of Buyer's use or misuse of the Goods. The total damages that can be awarded in any claim, lawsuit, arbitration or litigation arising out of any and all causes of action which may be alleged by Buyer relating to Seller's obligations under the Contract shall not exceed the lesser of (a) the price paid for the Goods under this Contract, or (b) the fair market value of the Goods immediately prior to the act/event that gave rise to Buyer's claim against Seller.

b. Z-PURE® Oxicat System ("Oxicat") Warranty:

(1) In addition to, but subject to, the provisions in Paragraph 7(a), Seller warrants the following with respect to the Oxicat:

a. that the Oxicat is free from defects in material and workmanship and when used in accordance with the user manual, will operate substantially in accordance with the applicable functional specifications;



- b. that upon payment in full for the Oxicat, it shall be free and clear of third-party liens, claims or encumbrances; and,
 - c. the Oxicat's RICE NEHSAP Performance warranty shall extend to the original end user or purchaser of the Oxicat for a period of thirty-six (36) months from the date of delivery, unless otherwise stated on a formal quotation issued by Seller.
- (2) Seller's sole liability under this Paragraph 7(b) warranty shall be to either (a) repair or to replace, at Seller's option, the defective Oxicat component(s), or (b) if after repeated efforts Seller is unable to resolve the defect by repair or replacement, to refund the purchase price upon return of the defective item. The warranty period for a repaired or replaced Oxicat shall be the remainder of the original warranty period for the repaired or replaced item. Seller shall incur no obligation under this warranty if:
- a. the allegedly defective Oxicat is returned to Seller after the expiration of the applicable warranty period;
 - b. Seller's tests disclose that the alleged defect is not due to defects in material or workmanship; or
 - c. if the Oxicat has been subjected to misuse or neglect, alteration, or improper maintenance. Conditions of improper use that will render this warranty null and void include, without limitation: exposure of the catalyst Oxicat to maximum instantaneous temperatures in excess of 1250F or where stated otherwise, and other related over-temperature conditions that cause deactivation of the catalyst and exposure to poisons that are known to degrade the performance of the catalyst Oxicats. Possible poisons will include but are not limited to the following: Antimony, Arsenic, Sulfur, Lead, Cadmium, Chromium, Copper, Zinc, Phosphorus, Potassium, Sodium, Mercury, Tin, Nickel, Sulfur and Silicon. Concentration of these or any other poison in excess of 5 grams/cubic foot on the catalyst and/or the presence of halogen-containing compounds or chemicals in the flow-stream in excess of 1 ppm will render the warranty null and void. Any concentration of silicon-containing compounds will also nullify the warranty.
 - d. Oxicat is not used with fuel type specified in the quote; e.g. ultra-low sulfur diesel (<15 ppmw sulfur). Use of additives is prohibited.
- (3) Engine must be maintained to manufacturer's specifications to keep catalyst warranty valid. Specifications include power performance, fuel consumption, requirements for lubrication oil and emissions performance.

c. NOTWITHSTANDING ANYTHING TO THE CONTRARY, GIRTZ MAKES NO OTHER WARRANTIES OR CONDITIONS (EXCEPT THOSE PROVIDED IN THIS PARAGRAPH 7), EXPRESS, STATUTORY, IMPLIED OR OTHERWISE, AND GIRTZ SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE; THE REMEDIES PROVIDED FOR HEREIN ARE THE SOLE AND EXCLUSIVE REMEDIES OF BUYER; IT IS UNDERSTOOD AND AGREED THAT GIRTZ'S LIABILITY WHETHER IN CONTRACT, IN TORT, UNDER ANY WARRANTY, IN NEGLIGENCE OR OTHERWISE SHALL NOT EXCEED THE AMOUNTS SET FORTH IN THIS PARAGRAPH 7, AND UNDER NO CIRCUMSTANCES SHALL GIRTZ BE LIABLE FOR SPECIAL, INDIRECT, CONSEQUENTIAL, OR PUNITIVE DAMAGES; UNDER NO CIRCUMSTANCES SHALL GIRTZ BE LIABLE FOR AMOUNTS CHARGED TO BUYER BY ANY GOVERNMENTAL AGENCIES; THE PRICE STATED FOR THE GOODS IS BASED IN PART ON THIS LIMITATION RESPECTING GIRTZ'S LIABILITY.



8. SITE PREPARATION AND ACCEPTANCE. It is the obligation of Buyer to ensure that all of its equipment to which any Goods are applied and/or incorporated, are properly calibrated and maintained. Buyer acknowledges that the success of the Goods is based upon Seller's assumption that Buyer's equipment is properly calibrated and maintained, and/or calibrated and maintained in the manner represented by Buyer to Seller. When Buyer is deemed to have accepted the Goods, said Goods shall be considered to be performing at a level that is acceptable to Buyer and within the terms, specifications, and provisions of the Contract. As applicable, Seller agrees to supply instructions and drawings for Buyer to install and operate the Goods furnished hereunder, where site preparation is required. Buyer agrees at Buyer's sole expense to: (a) prepare the site in accordance with Seller's written site specifications; (b) provide labor and unpacking and locating the equipment; (c) assume responsibility for compliance with local laws, electrical codes, etc.; and (d) obtain any permit required for installation and use

9. PAYMENT TERMS. Unless otherwise agreed to in writing by Seller, payment for the Goods shall be due at Seller's main office in Monticello, Indiana, no later than thirty (30) days after Seller sends to Buyer a notice of completion of final test pertaining to the Goods. Buyer grants Seller a security interest under the Uniform Commercial Code in all the goods and equipment it purchases from Seller and all proceeds thereof to secure payment of any and all amounts due from Buyer to Seller pursuant to the Contract or any other obligation. Buyer authorizes Seller to file any financing statements required to perfect its security interest and shall execute any document required to perfect Seller's security interest. Buyer is permitted to sell and convey title to encumbered goods in the ordinary course of business: *provided that*, Buyer has a fiduciary duty to segregate sums sufficient to satisfy Seller from payments related to sale of its collateral and remit them immediately to Seller. To the extent Seller retains a security interest in any goods; (a) Buyer shall provide Seller free to access to its premises and equipment to recover the encumbered goods, and (b) Buyer authorizes Seller to recover the goods in Buyer's name from any third party in possession of the encumbered goods. Any payment not made when due shall accrue interest at the rate the lower of either eighteen percent (18%) per annum or the highest lawful rate. In the event any action is brought to enforce the Contract, then the prevailing party shall be entitled to have and recover from the other party any and all direct, actual costs and expenses, including reasonable attorneys' fees, incurred in such action and any appeal thereof. Unless stated elsewhere, payment terms are as set forth in the Quote. No payment shall be withheld or delayed by reason of any claim, counterclaim or set-off unless confirmed and quantified in writing by Seller to Buyer or by a final court order. In the event that Buyer fails to make timely payment to Seller, Seller may, in its sole discretion and with prejudice to Seller's claim for damages and without further liability to Buyer, suspend work on the whole or any part of the Contract or terminate the Contract.

10. INDEMNIFICATION. Buyer shall indemnify and hold Seller harmless from and against any liability, claims, demands or expenses (including attorney and other professional fees) for damages to the property of or injuries (including death) to Seller, its employees or any other person, directly or indirectly arising from or in connection with Buyer's conduct, premises, property and/or facilities. Buyer shall indemnify and hold Seller harmless from and against any liability, claims, demands or expenses (including attorney and other professional fees) arising directly or indirectly out of or in relation to Buyer's and/or any third party's misuse of the Goods (including but not limited to Buyer's failure to maintain the Goods pursuant to Seller's instructions and/or commercially reasonable standards). Notwithstanding anything in the Contract to the contrary, neither party shall be liable to the other party for any special, incidental, indirect, consequential, punitive, or exemplary damages of any kind arising from the Contract or relating to the obligations hereunder.

11. INTELLECTUAL PROPERTY. Unless otherwise agreed in writing and signed by Seller's authorized representatives, Seller does not transfer to Buyer any patent, trade secret, copyright, or other intellectual property right or confidential proprietary information of Seller related to the Goods or the manufacture or design thereof, other than the Buyer's right to use, resell or repair Goods furnished by Seller to Buyer in connection with the Contract.



12. NO IMPLIED WAIVER. The failure of either party at any time to require performance by the other party of any provision of the Contract shall in no way affect the right to require such performance at any time thereafter, nor shall the waiver of either party of a breach of any provision of the Contract constitute a waiver of any succeeding breach of the same or any other provision.

13. ASSIGNMENT. Buyer may not assign or delegate its rights or obligations under the Contract without Seller's prior written consent. A change of control by Buyer where it sells or exchanges a sufficient amount of its stock that effects a change in the control of Buyer shall be deemed an assignment hereunder and shall also be prohibited without Seller's prior written consent, which shall not be unreasonably withheld.

14. RELATIONSHIP OF PARTIES. Buyer and Seller are independent contracting parties and nothing in the Contract shall make either party the agent or legal representative of the other for any purpose whatsoever, nor does it grant either party any authority to assume or to create any obligation on behalf of or in the name of the other.

15. GOVERNING LAW; JURISDICTION. This Contract is to be construed according to the laws of the State of Indiana. Any action or proceedings by Buyer against Seller shall be brought exclusively in the state or federal courts in White County, Indiana. Each of the parties to this agreement: (i) irrevocably and unconditionally consents and submits to the *in personam* jurisdiction of such courts in any such action; (ii) consents to service of process in accordance with the rules governing proceedings in any such court; and (iii) irrevocably waives and covenants not to assert any objection to the laying of venue in any such court in any such action.

16. SEVERABILITY. If any provision of the Contract is invalid or unenforceable under any statute, regulation, ordinance, executive order or other rule of law, such provision shall be deemed reformed or deleted, as the case may be, but only to the extent necessary to comply with such statute, regulation, ordinance, order or rule, and the remaining provisions of the Contract shall remain in full force and effect.

17. ENTIRE AGREEMENT; MODIFICATION; PRIORITY. The Contract, together with any attachments, exhibits, supplements, schedules, purchase orders, other terms of Seller specifically referenced in these Terms and Conditions, constitute the entire agreement between Seller and Buyer with respect to the matters contained in the Contract and supersedes all prior oral or written agreements. Notwithstanding anything to the contrary, all quotes submitted by Girtz to Buyer have been expressly conditioned upon the acceptance, in their entirety, of the terms and conditions herein, it being the intention of the parties that the Contract shall constitute all of the terms of agreement of the parties. Accordingly, Buyer acknowledges and agrees that any additional or contrary terms, provisions or conditions contained in purchase orders or other documents submitted to Girtz by Buyer shall be of no force or effect. No amendment to the Contract shall be binding on either party unless such amendment is in writing and signed by authorized representatives of Buyer and Seller. In the event and to the extent of any inconsistencies between the Quote and these Terms and Conditions, the terms of the Quote shall be controlling.

18. HEADINGS. The section headings have been inserted for convenient reference and shall not be considered in any question of interpretation or construction of these Terms and Conditions.