



Frank I. Rounds Co. Master Sales and Service Agreement

1. **Agreement.** These terms and conditions of sale apply to all goods, services, or combination of goods and services, sold, furnished, or provided by Frank I. Rounds Company (“Seller”). The buyer (“Customer”) acknowledges and agrees that these Terms and Conditions (“Terms”) are incorporated in, and are a part of, each purchase order or other agreement relating to the provision of products or services by Seller, whether expressed in written form, by electronic data interchange or otherwise. These Terms supersede all conflicting or additional terms on any proposal, purchase order, contract, acknowledgement, confirmation, requisition, work order, shipping instruction, specification and/or any other document or communication by or between Seller and/or Customer.
2. **Price.** The price is stated in Seller’s proposal and is valid for thirty (30) days. Unless specifically itemized in the proposal, prices do not include taxes, freight, insurance, permits, costs associated with participation in, or subscription to, third party accounting platforms, or any other items.
3. **Payment Terms.**

For equipment and service orders totaling less than \$50,000.00, thirty (30) days net (with credit approval) from invoice date unless otherwise agreed in writing. For equipment and service orders totaling greater than \$50,000.00, progress payments will be applied and invoiced based on the following schedule: 20% Upon Order, 30% Upon Equipment Shipment, 50% Upon Substantial Completion. All invoice payments shall be made without deductions or set-offs of any nature. All amounts due and not paid within thirty (30) days shall bear interest at 1.5 percent (1.5%) per month. Pricing includes a discount for payment by Cash, Check or Wire Transfer. Invoices paid by Credit Card will forfeit the discount, and a fee of \$3 for every \$100 over \$1000 shall be added to the total invoiced. For annual service contract renewals, Seller reserves the right to increase pricing to reflect current market rates. A new proposal shall be offered at time of renewal for review and approval by Customer.
4. **Specific Exclusions.** Any products or services not specifically outlined in the proposal are NOT included. For additional products or services, a change order proposal shall be offered for review and approval by Customer.

For water treatment service: as of the Effective Date of the proposal, any additional chemical costs based on changes to water quality shall be handled as a change order. Unless specified in writing, the agreement and any service or equipment proposal does not include the material or labor costs associated with the treatment of microbiological induced corrosion, including but not limited to sulfate reducing and iron reducing bacteria.
5. **Taxes and Other Charges.** Any use tax, sales tax, excise tax, duty, custom, inspection or testing fee, or any other tax, fee or charge of any nature whatsoever imposed by any governmental authority, on or measured by the transaction between Frank I. Rounds Company and Customer shall be paid by Customer as invoiced by Frank I. Rounds Company.
6. **Performance and Delivery.** Unless otherwise noted, freight is “Ex-Works” point of shipment. Seller will use commercially reasonable efforts to ensure on time delivery. Seller reserves the right to supply an order for products in any number of installments. When Customer has requested and paid the shipper directly, Customer shall pay all insurance costs associated with delivery, and Customer shall be responsible for filing and pursuing claims with carriers for loss or damage in transit. Customer waives any claim for shortage of any products delivered if a claim has not been made in writing to Seller within seven (7) days from the date of receipt of products by Customer. Seller is not responsible to Customer for any loss or damage to products in transit caused by any event of any kind by any person. Seller may provide Customer with such assistance as may be necessary to press claims on carriers so long as Customer: (a) has notified Seller and the carriers in writing immediately after loss or damage is discovered on receipt of products, and (b) lodges a claim for compensation on the carrier within three (3) days of the date of receipt of the products.
7. **Customer Obligations.** Customer is fully responsible for complying with all use and service instructions provided by the manufacturer (operation and maintenance manuals) and Seller and is solely responsible for any damage, or service issues related to the misuse, negligence, or unauthorized use of products by Customer. Any damage or problems caused by operating products contrary to the manufacturer or Seller recommendations or the use of inferior or improperly maintained equipment will not be covered by the limited warranties in Section 9.

For water treatment service: It is Customer’s responsibility to ensure the technical data made available to Seller when originally surveying Customer’s system and the operating conditions is accurate. On a quarterly basis, Seller may review the water treatment program (including without limitation supply water, operational variances from design basis, application of Seller’s supplied chemicals, and actual amount of Seller’s reagents and other chemicals provided/used). On an ongoing basis, Customer will provide Seller complete and accurate information relevant to the water treatment program and services. Customer will report any change in the condition of Customer’s operations or equipment that could affect the effectiveness of Seller’s products, or the quality or quantity of water used in the various pieces of equipment. This includes feed water, water usage, water quality, process leaks, and other site and system conditions. If the quantity of any of Seller’s chemicals (including reagents) provided during any quarter exceeds anticipated Seller’s quarterly estimate due to: system water leaks; unforeseen system upsets due to equipment, mechanical or power failure; operational variances from design basis; new microbiological infestation; significant variation in weather conditions; increased quantity of water treated; or systems, conditions or reasons beyond Seller’s control; then Seller reserves the right to charge, and Customer will pay, for such excess chemicals (including reagents), based on Seller’s then current standard prices list. Quantity of chemicals will be based on quarterly average.
8. **Term.** Unless otherwise specified on the first page, the Term for service agreements shall extend for twelve (12) calendar months following the date of this Agreement. This Agreement will automatically be renewed for additional one-year terms unless terminated or modified by either party with thirty (30) days’ written notice.
9. **Limited Warranty.**

Seller hereby assigns to Customer any rights it may have under any warranty extended by a third party covering the goods or any part thereof. Goods manufactured by others and resold by Seller carry the original warranty but do not carry any additional warranty by



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Seller unless stated specifically in writing or as set forth below. (a) **LIMITED WARRANTY.** Seller warrants that all services furnished shall be performed in a good and workmanlike manner. The duration of this warranty is thirty (30) days from the performance of the services, unless otherwise agreed in writing. In cases where a manufacturer's warranty is not available, Seller further warrants that any goods provided by Seller will be free from defects in material and workmanship for a period of 60 days from the date of install, unless otherwise agreed to in writing. (b) **WARRANTY NOTICE AND REMEDY.** Customer must make a claim for any breach of warranty by written notice to Seller's home office within thirty (30) days of the discovery of the defect or non-conformance. Seller will, at its option and expense, repair or replace, F.O.B. Seller's plant, any goods that it determines are defective, or will re-perform any services which do not meet this warranty. No expenses incurred by Customer in replacing, repairing, or returning defective goods, services, or replacement parts will be reimbursed by Seller. If Seller is unable to repair the goods or re-perform the services so that they conform to the warranty after a reasonable number of attempts, Seller will refund the portion of the purchase price paid that is attributable to the goods or services that were defective. These remedies are the exclusive remedies for breach of warranty. (c) **EXCLUSIONS FROM WARRANTY.** These warranties are inapplicable to and exclude: (i) damage caused by accident or negligence, normal wear and tear, erosion, corrosion or by disasters such as fire, flood, wind and lightning; (ii) damage caused by the failure to follow all installation and operating instructions or manuals or to provide normal maintenance; (iii) damage caused by improper water treatment; (iv) damage caused by unauthorized or improper installation of attachments, repairs or modifications; or (v) any other abuse or misuse. SELLER EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

For water treatment service: Seller provides a limited warranty guaranteeing that if the heat exchanger surfaces are free of deposits at the beginning of the treatment program (with sufficient proof beforehand) and (i) Seller's recommendations are followed, and (ii) and there are no intervening causes, such as drought or misuse by Customer, the heat exchanger surfaces will remain free of deposits that affect system efficiency. If Seller determines there were no intervening causes and deposits found, Seller will chemically remove deposits at no cost to the owner. Mud or airborne contaminants are not included under this guarantee as their accumulation is beyond the normal control of the chemical program.

10. **Indemnification.** Each party shall indemnify and hold harmless the other party and its agents, employees, officers, directors, successors, and assigns, from and against all damages, liabilities, losses, expenses, costs or claims (including without limitation reasonable attorneys' fees), to the extent that such claims and losses are directly caused by (a) the negligence or willful misconduct of the indemnifying party or (b) the indemnifying party's breach of any of its covenants, representations or warranties set forth herein.
11. **Hazardous Materials.** Any hazardous materials encountered by Seller at Customer's site will be the responsibility of Customer and may cause delays in performance. Seller assumes no responsibility for identifying, removal or disposal of said materials.
12. **Seller's Remedies.** Seller has the right to recover all amounts owed or incurred because of the goods and services it has provided. Customer specifically agrees that in the event customer's creditworthiness becomes unsatisfactory to Seller or upon customer's default prior to receipt of payment in full, Seller shall have the following rights, in addition to any and all other rights that Seller may possess under federal, state, or local law: (a) at any reasonable time, to withhold shipment or suspend providing services in whole or in part; (b) to require cash payments or satisfactory security for future deliveries of goods or the provision of services; (c) to recall goods in transit and retake the same; (d) file mechanics lien; (e) to terminate this agreement. Customer acknowledges and agrees that all goods withheld, recalled, retaken, or repossessed shall become the absolute and sole property of Seller subject to the equitable right of set-off for any partial payment made to Seller for such goods.

Dispute Resolution. This agreement and any dispute arising under or with respect thereto shall be governed and decided in accordance with the laws of the Commonwealth of Massachusetts. Except for Seller's right to institute litigation and/or assert a mechanic's lien for collection of amounts past due, any dispute, controversy or claim arising out of, or in connection with the provision of goods, services, this agreement, or any combination thereof, including its breach, termination, or invalidity, shall be finally settled without recourse to the courts in accordance with the rules of the American Arbitration Association. The number of arbitrators shall be one, and the location of the arbitration shall be in Boston, MA. The parties agree to discuss any point of disagreement in good faith and to escalate issues within their respective companies before taking the dispute to arbitration in accordance with this section, except if doing so would cause undue delay, including but not limited to failing to comply with any statute of limitations or to otherwise preserve any legal rights. In the event Seller is required to pursue litigation or arbitration in order to collect any balance due, or to otherwise redress any breach of this Agreement, Seller shall be entitled to recover its reasonable attorney's fees as part of any arbitration award or judgment.
13. **Notices.** Unless specifically directed otherwise, whenever written notice is required under this Agreement, it may be provided by e-mail or other recognized electronic means and the parties further agree that communications and other business dealings between the parties may, where appropriate, also be conducted by such means.
14. **Limitation on Liability.** Neither Seller nor Customer shall be liable for, and mutually release any claims against each other for any direct, special, incidental, exemplary, indirect, or consequential damages, including lost sales, revenue or profit, loss or return of or damage to product, loss of prospective economic advantage and loss of facilities, inventory, work in process, or time and materials, arising from any performance or failure of performance by either party for any reason, even if made aware in advance of the possibility of any such damages. The total liability of Seller, if any, for damages of any kind relating to the goods supplied or services performed hereunder or other breach of this agreement shall not exceed the purchase price paid to Seller for such goods and services. Any action by Customer against Seller must be commenced within one year after the cause of action has accrued.

For water treatment service: Customer does hereby release and hold harmless Seller, its servants, employees and agents, from any and all claims for damages and all liability by reason of damage either to person or property which may hereby in anyway be caused



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or occasioned, directly or indirectly, purposely or accidentally by (a) chemical cleaning conducted by Seller, (b) any misuse of products by Customer or use of products other than those stipulated and recommended by Seller, (c) Customer's failure to follow recommendations provided by Seller related to any products or services covered under the Agreement, or (d) Customer's violation of any of these Terms. Any action by Customer against Seller must be commenced within one year after the cause of action has accrued. No employee or agent of Seller is authorized to make any warranty other than that which is specifically set forth in these Terms. The provisions in any specification, brochure or chart issued by Seller are descriptive only and are not warranties.

15. Returns and Cancellations of Products. All parts with electrical or electronic components are not returnable unless there is a manufacturer's warranty issue. All parts must be returned in the original box/container and will be subject to a 30% restocking fee. The parts must be accompanied by the original counter slip or the billing invoice. Parts must be returned within 15 business days of purchase. The Parts Manager retains the option to decline acceptance of any part. Parts returned for warranty purposes will be credited to the original account billed from. The credit will reflect the manufacturer's warranty policies. All parts returned for warranty purposes must include the following information: Original counter slip or billing invoice, the boiler/burner model number, serial number, and drawing number (if applicable), date of installation, name of person installing part, reason for return. There are no exchanges, discounts, or cancellations on all "Special Order" Products (defined as Products that are designed, produced, and/or manufactured to explicit specifications per Customer's request). Sales of all "Special Order" Products are final at the time the order is placed.

For water treatment service: Products supplied pursuant to the Contract cannot be returned without Seller's prior written authorization. Duly authorized returns: (a) shall be sent to Seller's premises at Customer's expense; (b) may be subject to a handling charge; and (c) must be in the same condition as originally delivered to Customer. Customer may not, without the prior written consent of Seller, cancel an order, including, without limitation, any order for products that involve special requirements of Customer once the order has been accepted by Seller. Should Seller provide consent to cancel an order, the cancellation will be subject to a handling charge. Any remaining product at the end of the contract is the property of Seller and reserves the right to remove such product.

16. Force Majeure. Failure of Seller to make any delivery (or portions thereof) when due or failure to perform any services, if occasioned in whole or in part by any act of God or other act beyond the reasonable control of Seller, including without limitation fire, explosion, flood, drought, adverse weather conditions, war, riots, civil insurrection, terrorism, sabotage, accident, embargo, governmental priority, requisition, pandemic or shortage or failure of supply of materials or labor, or strikes or other labor trouble, shall be excused. Seller shall have no obligation or liability whatsoever arising out of or in connection with any such failure.

17. Severability. Any provision or provisions of the Agreement that in any way contravenes the law of any state or country in which the Contract is effective shall, in such state or country, to the extent of such contravention of law, be deemed separable and shall not affect any other provision of the Agreement or its validity.

18. Survival. Any obligations and duties which by their nature extend beyond the expiration or termination of the Agreement shall survive any expiration or termination of the Agreement.

19. Waiver. Any waiver on the part of either party hereto of any right or interest shall not imply the waiver of any other right or interest, or any subsequent waiver.

20. Amendments. Any modifications to these Terms or the Agreement, including the incorporation of additional terms, may only be made by written instrument, signed by both parties, specifically identifying, and purporting to modify these Terms or the Agreement.

21. Return of Leased Equipment. Upon the expiration, cancellation or earlier termination of this Agreement, Customer shall at the option and direction of Seller: (a) return all equipment supplied to Customer under the terms of the proposal and as provided below, or (b) pay Seller the fair market value of the equipment supplied to Customer under the terms of the proposal. With respect to any equipment to be returned to Seller, Customer shall (c) immediately discontinue all use of the equipment and at its own cost, de-install, pack and ship the equipment to a location or locations as instructed by Seller, (d) take all actions, prior to returning the equipment, to ensure that the equipment is in good working order, ordinary wear and tear excepted; and (e) pay for any and all costs for repair or replacement of any damaged equipment or any equipment that is not returned in good working order, ordinary wear and tear excepted. Until Customer has complied with all of the requirements of this Section, this Agreement shall continue in full force and effect until the conditions of this Section have been satisfied.

Date: _____

Signature: _____

Printed Name: _____

Title: _____