

## TERMS AND CONDITIONS - TOOL PURCHASE

### WHEREAS:

- A. IDSI carries on the business of providing oil and gas drilling and exploration tools, services and equipment;
- B. The Purchaser may, from time to time, pursuant to orders, requests and/or delivery tickets issued by the Purchaser or by IDSI, as the case may be from time to time, request certain Equipment to be sold by IDSI to the Purchaser; and
- C. IDSI and the Purchaser wish to set out the terms and conditions which will apply to the purchase of Equipment and govern all orders, requests and delivery tickets issued by the Purchaser or IDSI, as the case may be, for purchase and sale of Equipment.

**THE FOLLOWING TERMS AND CONDITIONS SHALL GOVERN AND FORM THE BASIS OF THE AGREEMENT BETWEEN IDSI AND THE PURCHASER IN CONNECTION WITH THE PURCHASE OF EQUIPMENT BY THE PURCHASER FROM IDSI PURSUANT TO ANY ORDER. TO THE EXTENT OF ANY CONFLICT BETWEEN THE TERMS OF THE ORDER AND THE TERMS AND CONDITIONS SET OUT HEREIN, THE TERMS AND CONDITIONS CONTAINED HEREIN SHALL PREVAIL.**

### ARTICLE 1 INTERPRETATION

#### 1.1 Definitions

In this Agreement, the following terms shall have the following meanings:

- (a) **“Agreement”** or **“Terms and Conditions”** shall mean this agreement, the recitals and schedules hereto, and any amendments to the foregoing;
- (b) **“Applicable Laws”** mean with respect to a Person, property, transaction or event from time to time (including the supply of Equipment by IDSI to the Purchaser pursuant to this Agreement and the use and operation of such Equipment by the Purchaser), means all applicable laws (including the common law and principles of equity), statutes, regulations, treaties, by laws, ordinances, judgments, decrees and (whether or not having the force of law) all applicable official directives, rules, consents, approvals, authorizations, guidelines, standards, codes of practice, orders (including judicial or administrative orders) and policies of any governmental authority having authority over, or application to, that Person, property, transaction or event, as the same may be amended from time to time during the Term;
- (c) **“Claims”** means all liabilities (statutory or otherwise), obligations, claims (including direct or indirect claims), damages, penalties, demands, causes of actions, costs and expenses, Losses and injuries in any manner relating to or arising out of or with respect to the rental, purchase, transportation, operation or storage of the Equipment;
- (d) **“Equipment”** means the materials, equipment / tools to be sold by IDSI to the Purchaser pursuant to any Order and this Agreement;
- (e) **“Force Majeure Event”** means the occurrence of an act or event:

- (i) which is beyond the reasonable control of the claiming Party;
- (ii) which the claiming Party was unable to prevent, provide against, or avoid by the exercise of reasonable diligence;
- (iii) which renders the claiming Party unable to fully or partially comply with its obligations hereunder; and
- (iv) which is not caused by the action, omission, or negligence of the claiming Party;

provided however that lack of finances, insolvency or lack of availability of manpower, materials or equipment shall not in any circumstances constitute a Force Majeure Event;

- (f) “**IDS**” means InFocus Downhole Solutions Inc.;
- (g) “**including**” means including but without limiting the generality of the foregoing, unless the context otherwise expressly provides such as “**including only**”, and “**includes**” shall have a corresponding meaning;
- (h) “**Intellectual Property**” means, in respect of the Equipment, collectively, all intellectual property of whatsoever nature, kind or description, including:
  - (i) all trade-marks, trade-mark registrations or applications, common-law rights, rights under license agreements, trade names and other trade-mark rights;
  - (ii) all copyrights and copyright applications, including all manuals, brochures, computer software, logos, marketing documents and rights related thereto, including moral rights;
  - (iii) all inventions, industrial designs, design patents, utility models, patents, patent applications and patent rights (including any patents issuing on any patent application);
  - (iv) trade secrets, integrated circuit topography, ideas, processes, formulas, programs, works of authorship, works in progress, know how, materials and Equipment, process information, technical information, improvements, discoveries, developments, designs, facility layout and equipment, materials, techniques and test results;
  - (v) information concerning current and prospective research, experimental work, development and products;
  - (vi) all formula, confidential or proprietary information, trade secrets and know-how and technical information and knowledge;
  - (vii) all other intellectual and industrial property, whether or not registrable or registered or the subject matter for applications or registrations;
  - (viii) any and all records, documents and materials relating to the foregoing, including records of invention, original letters patent, copies of patent applications, log books, reports, files, agreements and assurances; and

- (ix) the original of and copies of all such foregoing information and knowledge, however so recorded and maintained;
- (i) **“Purchaser”** means the purchaser of the Equipment identified in the Order;
- (j) **“Losses”** mean, with respect to any matter, all liabilities (statutory, contingent or otherwise), obligations, claims, losses, damages, costs and expenses of whatever kind or nature and howsoever arising including, whether directly or indirectly as a consequence of such matter, without limitation, loss of property value, loss of profit or revenue, loss of business, consequential and incidental damages and special damages;
- (k) **“Order”** means the written request or verbal instructions to IDSI, whether prepared by the Purchaser or IDSI and whether in the form of a procurement order, proposal, quote, telephone order, online order, delivery ticket or otherwise, to purchase Equipment;
- (l) **“Parties”** shall mean IDSI and the Purchaser and **“Party”** shall mean either of IDSI or the Purchaser;
- (m) **“Person”** means any individual, partnership, limited partnership, joint venture, syndicate, sole proprietorship, company or corporation with or without share capital, unincorporated association, trust, trustee, executor, administrator or other legal personal representative, regulatory body or agency, government or government authority, authority or entity however designated or constituted; and

## 1.2 Currency and Payment

All sums due under this Agreement shall be paid in Canadian dollars, unless otherwise expressly indicated to the contrary, and shall be paid by bank draft or in such other manner as may be specified by IDSI from time to time.

## 1.3 Headings

The division of this Agreement into articles and sections and the insertion of headings are for the convenience of reference only and shall not affect the construction or interpretation of this Agreement. The terms “this Agreement”, “hereof”, “hereunder” and similar expressions refer to this Agreement and not to any particular Article, Section or other portion thereof and include any agreement supplementary hereto. Unless something or subject matter or context is inconsistent thereof, references herein to Articles and Sections are to Articles and Sections of this Agreement.

## 1.4 Number

In this Agreement, words importing the singular number only shall include the plural and vice versa. Words importing the masculine gender shall include the feminine and neuter genders and vice versa and words importing persons shall include individuals, partnerships, associations, trusts, unincorporated organizations and corporations, and vice versa.

## **ARTICLE 2 APPLICATION AND PRECEDENCE OF AGREEMENT**

### **2.1 Entire Agreement**

These Terms and Conditions, together with the applicable Order, contain the entire understanding of the Parties and supersedes all prior negotiations, representations or agreements, either written or oral, including without limitation any bids, proposals or other documents relating to the Equipment whether prepared by IDSI or the Purchaser. There are no other promises, terms, conditions or obligations, oral or written, expressed or implied, other than those contained in this Agreement. To the extent of conflict between these Terms and Conditions and the terms of the Order, these Terms and Conditions shall prevail.

### **2.2 Orders**

Each Order will be deemed to be an offer by the Purchaser to purchase Equipment subject to these Terms and Conditions and shall be deemed to be accepted by IDSI upon either express acceptance of the offer or impliedly by fulfilling the Order, in whole or in part. Once issued by the Purchaser and accepted by IDSI, each Order is incorporated into and forms part of this Agreement.

### **2.3 Amendments to Orders**

No amendment to this Agreement or any Order shall be effective unless expressly agreed to in writing and signed by an authorized representative of IDSI and the Purchaser. If any provision of the within terms and conditions of this Agreement are inconsistent with a provision of the Order, this Agreement shall prevail.

### **2.4 No Obligation to Order**

The Parties understand and agree that this Agreement is for supply of Equipment on an as-needed basis as requested by the Purchaser through the issuance of an Order and that the Purchaser is under no obligation to issue an Order or request supply of Equipment.

### **2.5 Non-Exclusivity**

The Parties agree that this Agreement is non-exclusive and that the Purchaser may retain other good suppliers without any obligation to IDSI whatsoever and IDSI may contract with and supply Equipment or other equipment, services, tools and products to any third party, including competitors of the Purchaser, without any obligation to the Purchaser whatsoever.

## **ARTICLE 3 ORDERS AND PURCHASE PRICE**

### **3.1 Prices, Service Fees and Terms of Payment**

The Purchaser will pay IDSI the applicable purchase price(s) for the Equipment as set out in the Order. Unless otherwise stated on the Order, the Purchaser shall pay all invoices rendered by IDSI within thirty (30) days of the date of any such invoice.

### **3.2 Overdue Accounts**

All overdue amounts owed by the Purchaser to IDSI shall bear interest at the rate of two percent (2%) per month (twenty-four percent (24%) per annum) both before and after default and judgment, calculated from the due date for payment, whether or not the relevant Order

or invoice makes any reference to interest on overdue accounts. At any time when amounts payable to IDSI by the Purchaser are overdue, IDSI, at its option, may refuse to deliver the Equipment to the Purchaser.

### 3.3 Deposit to Accompany Order

In the event that the Order contemplates a deposit be provided by the Purchaser or in the event that IDSI shall require a deposit accompany any Order, the Purchaser shall include such deposit (the "**Deposit**"), which Deposit shall be credited to the Purchaser on the invoice following delivery of the Equipment and otherwise dealt with in accordance with the following provisions.

### 3.4 Cancellation of Order by Purchaser

The Purchaser shall not cancel any Order unless such cancellation is given in writing to IDSI and the cancellation is delivered to IDSI prior to the happening of any of the following:

- (a) any of the Equipment or parts contained in the Order having been purchased or ordered from any third party; or
- (b) any commencement of the engineering, development or manufacturing of any of the Equipment by IDSI or any third party engaged by IDSI;

and further provided that the Purchaser shall forthwith reimburse IDSI for any costs incurred in association with the cancellation of such Order by forfeiture of the Deposit, if applicable.

### 3.5 Other Charges

The Purchaser shall be responsible for any and all goods and services taxes, sales taxes, value added taxes, or any other taxes imposed by governmental authority with respect to the sale by IDSI of the Equipment pursuant to this Agreement, whether characterized as goods and services taxes, sales taxes, value added taxes or otherwise.

### 3.6 Delivery

Unless stated otherwise in the Order, delivery of all Equipment shall be 'FOB origin' and the Purchaser shall be responsible for all delivery and shipping costs both to and from IDSI.

## **ARTICLE 4 INSPECTION AND RISK**

### 4.1 Inspection by Purchaser

Upon taking of possession of the Equipment, the Purchaser shall inspect and examine the Equipment. Unless rejected for non-conformance in accordance with Article 6.1(a), the Equipment shall be deemed for all purposes hereof to have been accepted by the Purchaser as in good condition and running order on an 'as-is, where-is' basis. The Purchaser acknowledges and agrees that except for those express representations and warranties of IDSI contained herein, the sale of the Equipment to the Purchaser is without any representation or warranty of any nature or kind, including, but not limited to, warranties and representations of fitness, merchantability, suitability for purpose and condition.

#### 4.2 Risk

The Equipment shall be at the sole risk of the Purchaser and the Purchaser assumes the risk of liability and shall pay for any Losses or damage arising from or pertaining to the ownership, possession, operation or use of the Equipment or from any cause whatsoever and, without limiting the generality of the foregoing, liability or loss arising out of personal injury, death, fire, theft, loss, confiscation or expropriation. For no reason shall IDSI be responsible or liable to the Purchaser or any third party for any economic, indirect, financial or consequential losses or damages of any nature whatsoever, howsoever caused, that may be suffered or sustained by the Purchaser or any third party in respect of the Equipment or the use, misuse, transport, storage and/or loss thereof by the Purchaser.

### **ARTICLE 5 USE AND COMPLIANCE**

#### 5.1 Use

The Purchaser shall use the Equipment for its intended purpose and for no other purpose whatsoever.

#### 5.2 Compliance

The Purchaser, at its own cost and expense, shall comply with all applicable laws, ordinances, regulations and legislation any way relating to the ownership, possession, use, operation, repair, maintenance, servicing or transport of the Equipment.

### **ARTICLE 6 WARRANTY**

#### 6.1 Limited Warranty

The following shall be the only warranty given by IDSI with respect to the Equipment and no other warranty by IDSI, express or implied, shall be applicable to the sale of Equipment by IDSI, including any implied warranty of merchantability or any implied warranty of fitness for a particular purpose:

##### (a) Acceptance of Products

In the event of any shortage, damage, or discrepancy in or to a shipment of Equipment, the Purchaser shall promptly report the same to IDSI and furnish such written evidence or other documentation as IDSI may deem appropriate. IDSI shall not be liable for any such defects unless IDSI has received notice and substantiating evidence thereof from the Purchaser within thirty (30) days of arrival of the Products at the Delivery Point. If the substantiating evidence delivered by the Purchaser demonstrates to IDSI's satisfaction that IDSI is responsible for such shortage, damage, or discrepancy, IDSI shall promptly deliver additional or substitute Equipment to the Purchaser. In no event shall IDSI be liable for any additional costs, expenses, or damages incurred by the Purchaser directly or indirectly as a result of such shortage, damage, or discrepancy in or to a shipment of Equipment.

##### (b) Limited Product Warranty

Subject to the limitations and conditions herein, IDSI warrants the Equipment to be free from defects in workmanship and material under ordinary use and service for a period one (1) year from the date of delivery to the Purchaser (the "**Warranty**"). If

the Equipment is believed to have defective materials or defective workmanship, it must be returned to IDSI's facility at the Purchaser's expense for inspection. Materials (with the exception of purchased components described below) and or workmanship, upon examination, which is determined by IDSI to be defective shall be repaired or replaced by IDSI at its facility.

IDSI's obligations under this Warranty shall be limited to replacing or issuing credit for, at IDSI's option, any Equipment it finds to be defective. In no event shall IDSI have any responsibility or bear any liability for the cost of labor for the repair of any defective Equipment, the removal of defective Equipment, or the installation of replacement Equipment. All costs of shipment of the replacement Equipment to the Purchaser shall be borne by IDSI. The Purchaser shall retain all replaced Equipment subject to the foregoing warranty for IDSI's inspection for a period of six (6) months after their replacement. All such replaced Equipment shall become the property of IDSI upon their replacement.

(c) Notice

Warranty claims hereunder must be made promptly and in writing, must recite the nature and details of the claim, the date the cause of the claim was first observed and the serial number of the Equipment concerned, and must be received by IDSI no later than fifteen (15) days after the expiration of the warranty period provided for in Article 6.1(b).

(d) Excluded Claims

The Warranty shall be the Purchaser's exclusive remedy with respect to the Equipment. In no event shall IDSI be liable for incidental, consequential, special, indirect or other damages of any nature. Further, the Warranty shall not apply and will be void if the Equipment fails as a result of ordinary wear and abrasion, use or maintenance; operation outside of IDSI's recommended guidelines; alteration; accident; abuse or negligence; or servicing by any party other than IDSI;

(e) Limited Warranty

The Warranty is personal to, and is intended solely for the benefit of the Purchaser. All claims hereunder shall be made by the Purchaser and may not be made by any third party.

(f) Revision of Warranty

IDSI shall have the ability to amend or revise the Warranty upon notice to the Purchaser and such revisions shall apply to all subsequent Orders.

## **ARTICLE 7   SERVICING AND REPAIR**

### **7.1      Servicing**

All servicing and repair of the Equipment shall be performed by IDSI (Nisku Location), or at an authorized service provider approved by IDSI, and the costs of all such servicing and repair, as set out in Schedule "A" hereto, shall be the sole responsibility of the Purchaser and shall be charged to the Purchaser in accordance with Article 3.

## ARTICLE 8 ASSUMPTION OF RISK AND INDEMNITY

### 8.1 Assumption of Risk

The Purchaser acknowledges and agrees that use and operation of the Equipment involves risks, dangers and hazards to both person and property and the Purchaser hereby accepts and assumes all such risks, dangers and hazards, howsoever caused. IDSI shall not be responsible or liable for any Losses resulting to the Purchaser, its agents, employees, contractors, subcontractors, directors, officers, assigns or successors or to any third party for any Claims.

### 8.2 Indemnity

The Purchaser hereby covenants and agrees to indemnify and save harmless IDSI and, if applicable, its officers, directors, employees, agents and representatives from and against any and all Claims, actions, suits, proceedings, costs, expenses, Losses, damages and liabilities, including solicitors' fees on a solicitor and own client full-indemnity basis, arising out of, connected with or resulting from the possession, use and operation of the Equipment by the Purchaser, including, without limitation, the following:

- (a) Any injury, disability or death occasioned to or suffered by any person, including damage to any property arising from the transport, use, handling or operation of the Equipment during the Term;
- (a) Any damage of any kind or nature whatsoever or howsoever arising to the Equipment;
- (b) The failure by the Purchaser, its agents or employees to observe or perform any of its obligations pursuant to this Agreement; and
- (c) Any Claim or proceeding made by any person with respect to the subject matter of this Agreement.

### 8.3 Indemnity Procedure

If the Purchaser has knowledge of or receives notice of any Claim or action or proceeding with respect to or arising from the transport, use or operation of the Equipment during the Term, the Purchaser shall promptly provide IDSI with written notice thereof and provide all relevant information in respect of such Claim, action or proceeding. With respect to any such Claim, the Purchaser shall, at its own cost and expense, assume control of the defence of the Claim; provided, however, that the defence shall be through legal counsel acceptable to IDSI, acting reasonably, and that no admission of liability and no settlement may be made by the Purchaser without first obtaining the written consent of IDSI. If the Purchaser fails to assume the defence or settlement of any such Claim, action or proceeding in a manner acceptable to IDSI and in any event, within fourteen (14) days of the Purchaser receiving notice of same, IDSI may defend against or settle such Claim, action or proceeding and the Purchaser shall pay and indemnify IDSI for any costs and Expenses, including solicitors' fees, incurred by IDSI in negotiating, contesting, settling or defending such Claim, action or proceeding.

## **ARTICLE 9 INTELLECTUAL PROPERTY**

### **9.1 Ownership of Intellectual Property**

IDSI is and shall be deemed to be the sole and exclusive owner of all right, title and interest in and to the Intellectual Property. The Purchaser acknowledges and agrees that IDSI possesses the absolute and exclusive authority to license and exploit the Intellectual Property. The Purchaser further acknowledges and agrees that this Agreement does not give the Purchaser any interest in the Intellectual Property and the Purchaser agrees not to use the Intellectual Property granted thereby or any imitation thereof in any manner except as expressly provided for herein. The Purchaser agrees that the Intellectual Property rights are valid, and further agrees that during the term of this Agreement and forever thereafter, except as expressly provided for herein, it will not dispute or contest, directly or indirectly, the validity or enforceability of the Intellectual Property rights of IDSI, nor design around or allege infringement of the Intellectual Property rights, nor counsel, procure or assist anyone else to do any of the foregoing activities.

### **9.2 Prosecution of Intellectual Property Rights**

In the event that the Purchaser becomes aware that any person, firm, company or entity is infringing or threatening to the Intellectual Property rights of IDSI, the Purchaser shall immediately notify IDSI, in writing.

### **9.3 Limitation of Liability and Indemnity**

The Purchaser acknowledges and agrees that no representation, warranty or indemnity is given by IDSI to the Purchaser in respect of the infringement of intellectual property rights of any third party in respect of the Equipment.

## **ARTICLE 10 RELATIONSHIP OF PARTIES**

### **10.1 Independent Contractors**

It is understood and agreed by the Parties that this Agreement does not create a fiduciary relationship between them, and that IDSI and the Purchaser shall be independent contractors and that nothing in this Agreement is intended to make either party a general or specific agent, legal representative, subsidiary, joint venturer, partner, employee or servant of the other Party for any purpose whatsoever. Neither Party shall have any right to obligate or bind the other in any manner whatsoever and nothing contained in this Agreement shall give or is intended to give any rights of any kind to Persons not a party to this Agreement. Each party shall ensure that neither it nor any of its employees represent to any third party that it or they are servants or agents of the other.

## **ARTICLE 11 ASSIGNMENT**

### **11.1 By IDSI**

This Agreement and any part hereof, including the Intellectual Property rights of IDSI may be assigned or licensed by IDSI without the prior written consent of the Purchaser. In the event that this Agreement is assigned or the Intellectual Property rights of IDSI are licensed, the Purchaser shall thereafter be bound in all respects as if the successor in interest were the original party to the Agreement.

## 11.2 By the Purchaser

Neither this Agreement nor any part hereof shall be assignable or transferable, by operation of law or otherwise, including by way of merger, change in control, amalgamation, or license by the Purchaser, except with the prior written consent of IDSI. For the purposes of this Article 11.2, a change of beneficial ownership of more than 50% of the shares of the Purchaser shall constitute a “change in control” of the Purchaser.

## ARTICLE 12 NOTICES

### 12.1 Notices to Purchaser

Unless specifically provided to the contrary herein, all notices, requests, demands and other communication required, pursuant to this Agreement, to be given shall be in writing and shall be deemed to have been validly and effectively given: if transmitted by facsimile, on the date which the Party sending such facsimile receives a facsimile from the receiving Party acknowledging receipt thereof; if delivered, on the date of delivery; or if mailed by registered mail return receipt requested, on the date of the execution of the receipt at the addresses set out below:

to the Purchaser:

At the Purchaser’s place of business or registered office.

to InFocus Downhole Solutions Inc.:

#102, 2317 – 9 St.  
Nisku, AB  
T9E 7Z7

**Attention: Mark Luchak and Allan Pearson**

### 12.2 Change of Address for Notice

Either Party may change its address for service provided for hereunder by giving the other Party notice pursuant to the terms of this Agreement.

## ARTICLE 13 GENERAL PROVISIONS

### 13.1 Governing Law and Jurisdiction

This Agreement shall be governed by and construed in accordance with the laws of Province of Alberta. The Parties hereby irrevocably submit to the exclusive jurisdiction of the courts of the Province of Alberta and waive any objection based on venue or *forum non conveniens* with respect to any Claims arising under this Agreement and/or any Order or any related transactions between the Parties.

### 13.2 Waiver

No waiver, modification or cancellation of any term or condition or of any breach of any term or condition of this Agreement shall excuse the performance of any act other than the act specifically referred to in such a waiver. No assent to or waiver of any breach of any one or more of the covenants and agreements herein contained, whether such assent or waiver be expressed or implied, shall be deemed to be taken to be a waiver of any succeeding or other

breach. The various rights, revenues, powers, options and elections of the Parties hereto expressed or contained herein are cumulative, and no one of them shall be deemed to be exclusive of the others or of such other rights, revenues, powers, options or elections as are now or may hereafter be conferred upon the Parties by law.

13.3 Exclusions of Warranties

Neither of the Parties makes nor has made any warranties, inducements, promises or representations to the other respecting the subject matter of this Agreement, except as may be expressly stated in this Agreement.

13.4 Entire Agreement

This Agreement contains the entire agreement between IDSI and the Purchaser with respect to the subject matter thereof as of its date and supersedes all other prior agreements, negotiations, representations and proposals, written or oral, relating to its subject matter.

13.5 Specific Performance/Injunctive Relief

Nothing herein contained shall bar either IDSI's or the Purchaser's right to obtain specific performance of the provisions of this Agreement and injunctive relief against threatened conduct that will cause its loss or damages, under customary equity rules, including applicable rules for obtaining restraining orders and preliminary injunctions. The Purchaser and IDSI agree that either Party may have injunctive relief, without bond, in addition to such further and other relief as may be available in equity or at law or otherwise provided for in this Agreement.

13.6 Rights of Parties are Cumulative

The rights of the Parties hereunder are cumulative. The exercise or enforcement by either IDSI or the Purchaser of any right or remedy hereunder shall not preclude the exercise or endorsement by either the Purchaser or IDSI of any other right or remedy hereunder or which IDSI or the Purchaser is entitled by law to enforce.

13.7 Costs and Legal Fees

If a claim for amounts owed by the Purchaser to IDSI is asserted in any legal proceeding before an arbitral tribunal, or if the Purchaser or IDSI is required to enforce this Agreement in a legal proceeding, the Party prevailing in such proceedings shall be entitled to reimbursement of its costs and expenses, including reasonable accounting and legal fees, on a solicitor and client basis.

13.8 Time of Essence

Time shall be of the essence of this Agreement.

13.9 Counterpart Execution

This Agreement may be executed in one or more counter, including facsimile and e-mail transmission thereof, each of which shall be deemed an original and when so executed all such counter taken together shall form one agreement and shall be valid and binding on all parties to this Agreement.

#### 13.10 Fees and Expenses

The Parties agree that all expenses incurred by or on behalf of the Parties, including fees and expenses of agents, solicitors and accountants employed by the Parties in connection with the authorization, preparation, execution and performance of this Agreement shall be born solely by the Party or Parties who have incurred same, unless otherwise specifically provided to the contrary in this Agreement.

#### 13.11 Strict Compliance

Failure by either Party to insist upon strict compliance with any of the terms, covenants or conditions of this Agreement shall not be deemed to be a waiver of such term, covenant or condition, nor shall any waiver by any Party of any term, covenant or condition contained herein on any one (1) or more occasion be deemed to be a waiver of such term, covenant or condition with respect to the subsequent occurrence of any event unless such waiver specifically contains a provision to that effect.

#### 13.12 Amending Procedure

This Agreement may be amended in writing from time to time upon the mutual agreement of the Purchaser and the IDSI, such amendments to be signed by authorized corporate officers of the Parties hereto.

#### 13.13 Contra Proferentum

The Parties expressly acknowledge and agree that they are of equal bargaining strength and agree that the doctrine of *contra proferentum* shall not apply to this Agreement.

#### 13.14 Force Majeure

In the event of an inability or failure by IDSI to manufacture or supply any of the Product herein by reason of any fire, explosion, war, riot, strike, walkout, labour controversy, flood, excess of water, shortage of water, excessive or unusual rain, power, labour or transportation difficulties of necessary materials or supplies, default or failure of carriers, breakdown in or loss of production or anticipated production from plant or equipment, act of God or public enemy, any law, act or order of any Court, board, government or other authority of jurisdiction, or any other direct cause (whether or not of the same character as the foregoing) out of the reasonable control of IDSI, then IDSI shall not be liable to the Purchaser during the period and to the extent of such inability or failure. Delivery of Product omitted in whole or in part while such inability remains in effect shall be cancelled.

#### 13.15 Binding Agreement

This Agreement shall be binding upon the Parties and their respective successors and permitted assigns.

**SCHEDULE "A"**  
**PRICING AND FEES**

**1. EQUIPMENT SERVICING**

If applicable, servicing of all Equipment is to be performed by IDSI (Nisku location), or at an authorized service centre approved by IDSI, in writing.

**2. TRANSPORTATION**

All transportation costs are borne directly by Purchaser. Transportation costs billed to IDSI will be invoiced back to customer at invoice cost + 15%. All Equipment shall be delivered to the Purchaser F.O.B. IDSI facility in Nisku, Alberta.

**3. OTHER CHARGES**

If applicable, see attached page for other standard charges that may apply depending on tool configuration or well type.

**4. PRICING**

All Equipment pricing in accordance with the Order. Any change in price schedules will be done in a 30 day period and be effective only when made in writing and signed by an authorized IDSI representative.