

Paradigm Controls of Texas, LLC (“Paradigm”) TERMS AND CONDITIONS OF SALE

- GENERAL:** As used in these General Terms and Conditions of Sale (“Terms”), the term “Service(s)” shall mean all services furnished by Paradigm, including the supply or sale of equipment, parts, provision of rental equipment or for services of Paradigm personnel and equipment, tools, trucks and/or any other tangible item necessary to perform any such personnel’s job; the term “Buyer” shall mean the entity or person to whom such Services are furnished or offered. These Terms are an essential part of the offer for Service by Paradigm and contain all of the terms applicable to any such transaction.
- ACCEPTANCE:** Buyer may accept Paradigm’s offer for Service where these Terms are attached in any written form, which specifically refer to Paradigm’s offer. Any acceptance of Paradigm’s offer shall result in an agreement (hereinafter “Agreement”) for Service specified in the offer; and acceptance is expressly subject to these Terms. Any additional or inconsistent terms are expressly rejected by Paradigm. In the event there is a Master Service Agreement (MSA) between Paradigm and Buyer, the terms and conditions of that MSA shall control.
- PRICE:** Unless otherwise stated, all prices are in US Dollars. Prices are subject to change without notice. Prices do not include applicable taxes or duties. Buyer is solely responsible for paying all taxes and duties. Buyer shall promptly pay any tax or duty charge directly to the governmental authority assessing them or reimburse, on demand, any such charges paid by Paradigm at cost plus 20%.
- VARIABLE CHARGES:** (A) Personnel: Unless stated otherwise in an applicable price list, (i) all Services are on a daily or hourly basis, as indicated, subject to any minimum charge indicated; (ii) Service charges begin when each person departs from the Paradigm location where such person is based and continue until such person returns to that location; (iii) Buyer will furnish quarters and meals for Paradigm personnel or reimburse Paradigm for reasonable living expenses incurred at cost plus 15% from the time each Service person leaves their base location until such person returns; (iv) all Service charges are on a daily basis for a 24-hour day or any part stated therein (Buyer shall be charged a full calendar day’s Service charge for any portion of a calendar day, which day shall end at midnight); and (v) if Service personnel are dispatched at Buyer’s request and the request is then cancelled by Buyer, Buyer will be invoiced for a “dead call” as provided in any applicable price list. (B) Transportation: Buyer will be invoiced at cost plus 20% for commercial transportation of Service personnel, as appropriate. Any transportation charges levied on Buyer will be paid in addition to any Service charges hereunder. Any waiting time in excess of one hour spent on location to pick up or deliver any parts or goods will be charged to Buyer at the current Service rates. (C) Weather Conditions: Weather conditions, which may prevent satisfactory or timely performance of any Services, do not relieve Buyer of responsibility for any charges.
- PAYMENTS:** Buyer shall pay the full amount on each invoice submitted by Paradigm without offset, deduction or withholding of any kind within 30 days of invoice date. If Buyer is in default in payment or otherwise with any order or contract with Paradigm, Paradigm shall have the right, in addition to all other legal remedies and without prejudice to any rights hereunder, to defer further Service until such default is corrected and to declare all outstanding bills from Buyer immediately due. Paradigm is entitled to request reasonable assurances that Buyer will pay for Services, including but not limited to requiring payments on account or in advance. Until assurances satisfactory to Paradigm are received, Paradigm is entitled to stop any Service, cancel this Agreement, sue to recover the purchase price or any expenses incurred to the date of cancellation or exercise any other remedy available at law or in equity for breach of contract.
- CANCELLATION:** This Agreement and any other orders for Service may not be assigned, cancelled or rescheduled by Buyer after acceptance by Paradigm without Paradigm’s express written consent. In the event Paradigm provides such consent, any assignment, cancellation or rescheduling may result in a charge to Buyer determined by Paradigm.
- INSPECTION:** The signature of Buyer’s representative on any service or delivery ticket is conclusive evidence of Buyer’s inspection and acceptance of any Service furnished by Paradigm. Time spent for any additional inspection or testing by Paradigm performed according to regional, Buyer or Buyer’s customers requirements shall be paid for by Buyer.
- DELAYS:** Paradigm shall have no liability for any delay or failure to deliver or furnish Service to Buyer if such failure arises from causes beyond the reasonable control of Paradigm, including but not limited to, delays of suppliers or carriers, government actions, shortages of materials, labor difficulties, fires, floods, acts of God and the effects of civil disobedience. Paradigm may, at its option, suspend Service while such cause continues, apportion available personnel and stock between its customers as it decides and terminate any contract so affected with written notice to Buyer without any liability.
- WARRANTY DISCLAIMER:** Paradigm warrants to Buyer that the equipment and services to be delivered hereunder will be free from defects in material or workmanship and will be of the kind and quality designated or specified in the contract. This warranty shall apply only to defects appearing within 1 year from the date of shipment by Paradigm; provided, however, that if Buyer, in the course of its regular and usual business, transfers title to or leases such products (including equipment incorporating such products) to a third-party, such period shall run until 1 year from startup by Paradigm. If Paradigm installs the equipment or supplies technical direction of installation by contract, the warranty period shall run from the completion of installation, provided same is not unreasonably delayed by Buyer. If Buyer’s third-party representative installs the equipment without technical direction from a Paradigm technician, this warranty may be void if incorrect procedures are used at installation. The conditions of any tests shall be mutually agreed upon and Paradigm Controls shall be notified of, and may be represented at, all tests that may be made. If the equipment delivered hereunder does not meet above warranty, and if Buyer promptly notifies Paradigm, Paradigm shall thereupon correct any defect, including nonconformance with the specifications, either (at Paradigm’s sole option) by repairing any defective or damaged parts of the equipment, or by making available at the Paradigm necessary repaired or replacement parts. The liability of the Paradigm under this warranty (except as to title), or for any loss or damage to the equipment whether the claim is based on contract or negligence, shall not in any case exceed the cost of correcting defects in the equipment as herein provided and upon the expiration of the warranty period all such liability shall terminate. The foregoing shall constitute the exclusive remedy of Buyer and the exclusive liability of Paradigm. The foregoing warranty is exclusive and in lieu of all other warranties, whether written, oral, implied or statutory. **NO IMPLIED STATUTORY WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR PURPOSE SHALL APPLY.** Paradigm does not warrant any equipment previously acquired by Buyer.
- LIMITATION OF LIABILITY:** IN NO EVENT WILL PARADIGM BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, INDIRECT, SPECIAL, OR PUNITIVE DAMAGES INCLUDING, BUT NOT LIMITED TO, FAILURE TO FULLY PERFORM ANY AGREEMENT, LOSS OF USE OF GOODS, LOSS OF PROFITS, ENVIRONMENTAL, LOSS OF REVENUE, INTEREST, LOST GOODWILL, WORK STOPPAGE, INCREASED EXPENSES OF OPERATION, OR CLAIMS OF BUYER’S CUSTOMERS, WHETHER BASED ON CONTRACT, WARRANTY, TORT (INCLUDING WITHOUT LIMITATION STRICT LIABILITY OR NEGLIGENCE), PATENT INFRINGEMENT OR OTHERWISE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES INCLUDING MULTIPLE DAMAGES UNDER ANY TRADE PRACTICE OR CONSUMER PROTECTION LAWS. IN NO EVENT SHALL PARADIGM EVER BE LIABLE, REGARDLESS OF CAUSE, FOR MORE THAN THE LINE ITEM VALUE OF THE SERVICE FROM WHICH THE ALLEGED LOSS HAS ARISEN. NO ACTION ARISING OUT OF ANY CLAIMED BREACH OF THIS AGREEMENT BY PARADIGM MAY BE BROUGHT BY BUYER MORE THAN ONE (1) YEAR AFTER THE CAUSE OF ACTION HAS ARISEN.
- ENVIRONMENTAL:** Paradigm shall be responsible only for any claim from pollution or contamination that results from spills of fuels, lubricants, motor oils, pipedope, paints, solvents, ballast, bilge, metallic objects and garbage in Paradigm’s possession and control where Paradigm is the sole and exclusive user on Buyer’s site of the particular pollutant or contaminant spilled. Paradigm’s initiation or participation in clean-up operations including control, response and removal by Paradigm shall not be an admission or assumption of liability.
- INDEMNITY:** BUYER AGREES TO PROTECT, DEFEND, INDEMNIFY AND HOLD HARMLESS PARADIGM, ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS AND INVITEES, FROM AND AGAINST ALL CLAIMS, DEMANDS, AND CAUSES OF ACTION OF EVERY KIND AND CHARACTER WITHOUT LIMIT AND WITHOUT REGARD TO THE CAUSE OR CAUSES THEREOF OR THE NEGLIGENCE OR FAULT (ACTIVE OR PASSIVE) OF ANY PARTY OR PARTIES INCLUDING THE SOLE, JOINT OR CONCURRENT NEGLIGENCE OF PARADIGM, ANY THEORY OF STRICT LIABILITY, ANY PROFESSIONAL LIABILITY OR DEFECT OF PREMISES (WHETHER PREEXISTING DATE OF THIS AGREEMENT OR NOT), ARISING IN CONNECTION HERewith IN FAVOR OF BUYER’S EMPLOYEES OR INVITEES ON ACCOUNT OF BODILY INJURY, DEATH OR DAMAGE TO PROPERTY OR AS A RESULT OF DAMAGE TO BUYER’S PROPERTY. This clause is a material part of this transaction for Paradigm, supported by and in consideration of a reduction in the purchase price.
- INSURANCE:** To the extent of the indemnity obligations herein, Buyer agrees that all insurance policies shall, (A) be primary to Paradigm’s insurance, (b) include Paradigm as an additional insured, and (C) be endorsed to waive subrogation against Paradigm.
- WAIVER:** Any waiver by Paradigm of any breach under these Terms shall not be deemed to be a waiver of any subsequent breach of a like or different nature. The failure to enforce any provision of these Terms shall not be deemed a waiver of such provision.
- CONFIDENTIALITY:** Buyer agrees that the prices and Terms and any document that becomes a part of this Agreement are confidential information. Buyer will not disclose this confidential information to any third party without the express written permission of Paradigm.
- GOVERNING LAW:** This Agreement to sell Services shall be interpreted and enforced according to the laws of the state of Texas. The parties to this Agreement exclusively submit to the jurisdiction of the courts sitting in Harris County, Texas. **TO THE FULLEST EXTENT PERMITTED BY LAW, THE PARTIES EXPRESSLY WAIVE THE RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THESE TERMS & CONDITIONS, ANY INDEMNITY, OR ANY OF THE GOODS TO BE PROVIDED HEREUNDER.**
- ENTIRE AGREEMENT:** These Terms constitute the entire agreement of the parties and supersede all discussions, arrangements, negotiations, representations and warranties, if any, relating to the Services covered hereby. These Terms are subject to change without prior notice from time to time at Paradigm’s discretion.