

The Water Works Board of the City of Calera met on June 21, 2021, at 5:00 p.m. at Calera City Hall with the following present:

Chairman: Jon Graham
Members: Calvin Morgan, Bill Davis, Chris Bunn, Fred Hoskins
Department Heads: Kelly Ellison, Bill Hilyer, Chris Pappas
Guests: Kenny Dale Cost, Scott Jennings, Ann Davis

Chairman Graham called the meeting to order. Fred Hoskins made a motion to approve the following minutes:
Regular Meeting – May 17, 2021

Calvin Morgan seconded said motion which was carried unanimously.

WATER SUPERINTENDENT REPORT:

No report given

PUBLIC WORKS DIRECTOR REPORT:

Bill Hilyer, Public Works Director updated the Board on the following items:

30 new meters installed

Capital Purchase Request Proposal: New Pall System Purchase. Purchase request would include the following: PLC System, 1- PC 1- Laptop, Installation of System. Purchase price \$104,945.76 (See Attached Document)

Fred Hoskins made a motion to approve the capital purchase request. Chris Bunn seconded said motion which was carried unanimously.

Additional Staffing Request Proposal: Two additional operators. First operator workload will be 100% Water Treatment. Second operator would split workload between the Water Treatment Plant and the Revenue Department.

Calvin Morgan made a motion to approve the additional staffing request. Fred Hoskins seconded said motion which was carried unanimously.

REPORTS OF WATER BOARD MEMBERS:

No reports given

ENGINEER REPORT:

Chris Pappas, Engineer is currently scheduling a meeting with Argos to bring the water source at their location back online.

FINANCE DIRECTOR REPORT:

Kelly Ellison, Finance Director presented the following reports for discussion: (Documents Attached)

Department Head Report as of May 31, 2021
Audited Financial Statements
Budget Adjustments

Fred Hoskins made a motion to approve the Budget Adjustments as presented. Calvin Morgan seconded said motion which was carried unanimously.

Audited Financial Statements, Click Link below to view:

<https://www.cityofcalera.org/ArchiveCenter/ViewFile/Item/1162>

CHAIRMAN REPORT:

No report given

GUESTS:

There being no further business, Fred Hoskins made a motion to adjourn at 5:43 p.m.

Approved this 19th of July 2021.

Jon G. Graham, Chairman

ATTEST:

Connie B. Payton, City Clerk



Scott Jennings Calera Water

Controls Upgrade Proposal

Scope of Services

Item 1: PLC Upgrade –

Pall Water Pall Technology Services

839 State Route 13 Cortland New York 13045-5630

Tel: 866.475.0115 ▲ FAX: 607.758.4526

Email: pall_technology_csc@pall.com

Pall Proposal No.: OPP1616614rev2

Date: May 19, 2021

Pall Water will provide support for completing the upgrade of the microfiltration system PLC at Calera, AL. Work will include:

- off-site programming work
- Three days on-site work to complete programming and wiring changes needed to install the new PLC hardware (provided by others)
- Travel and travel time to customer's site
- Electrical drawing updates after completion of installation and programming

OFS (OPC Factory Server) software is not included as it is not believed to be necessary.

Pall Water will provide hardware and labor to convert the existing communications between the microfiltration system Main Control Panel and the motor control center from Modbus Plus to Modbus/TCP. A Field Service Engineer will remove the existing Modbus Plus cable and communications cards in the MCC, then install new Modbus/TCP communication cards in the MCC, run new Cat5 Ethernet cable using the same routing/conduit/wireway wherever possible. The FSE will then make and test the cable terminations to ensure reliable communications.

After the conclusion of the installation work, Pall Water will provide updated electrical drawings reflecting the changes made in the main control panel as a result of the PLC upgrade. These are expected to be complete 3-4 weeks after the installation work is completed.

Freight charges are not included.

Disclaimer: This proposal is based on information and conditions known at the time of quotation. Pall Water reserves the right to revise this proposal through change order(s) should conditions vary significantly from those known at the time of quotation and require additional work or materials.

Item 2: Windows 10 Desktop SCADA PC with backup Laptop

Pall proposes to provide a desktop SCADA PC to operate as the microfiltration equipment SCADA system operating on Microsoft Windows 10, and upgrading the SCADA system software from RSView to FactoryTalk View SE as part of this upgrade. The desktop computer will be configured with Pall Water Daily Reporting spreadsheets.

Please note that the current SCADA software used at the customer's site, Rockwell Software RSView, will only operate on the 32-bit version of Microsoft Windows 7. Microsoft will end support of Windows 7 in January 2020. Since this SCADA software will not function on 64-bit operating systems or Windows 10, Pall Water is urging customers to upgrade their RSView software to Rockwell Software FactoryTalk SE. This allows an easier upgrade path while maintaining security in their SCADA systems. An upgrade to FactoryTalk SE operating on 64-bit Windows 10 is included in this proposal.

Pall will perform the following:

Pall Water Pall Technology Services

- Purchase, provide and install a new license of FactoryTalk SE View software, associated utilities, add-ons and extensions. This include the "runtime" version of the software.
- Purchase, provide and install a new license of Rockwell Software RSLinx
- Purchase, provide and install a new license of XL Reporter
- Re-creation of existing screens in FactoryTalk SE format, based on the existing RSView screens
- Move the existing license of Unity PRO PLC programming software (see note below)
- Purchase, provide and install of Microsoft Office software (required for Daily Reporting to function)
- Purchase, provide and install Symantec Endpoint anti-virus software, with a one-year support license
- Simulate & test the operation of the PC before shipment to site

Pall will send the PC to the customer as a "plug-and-play" installation. No site visit by a Pall Field Service Engineer is provided. The customer will install the computer upon its return to the customer's site. The customer will then be required to contact Pall to log into the computer remotely to make any final modifications. Pall will provide remote telephone support to guide the customer through the installation process as needed.

All software licenses for the software listed above will be provided new. As necessary, Pall will work with the customer to obtain the most current copies of SCADA screens and other site-specific programming for installation on the new PC. Customer must verify current software license numbers of all Rockwell Software (RSView, RSLinx). Installation of any software not originally provided by Pall, as listed above, is not included and must be completed by others. All software licenses purchased under this project will be transferred to the customer upon completion of work.

UNITY PRO SOFTWARE NOTE: This quote assumes that the version of Unity PRO currently installed is either Version 11 or newer, or that your plant is currently under "Active Support" with Modicon. If not, additional charges will apply. Note - Customer needs to be under Modicon's "Active Support" license. If not, they will need to pay to get back under Modicon's support. Pall Water prefers that customer go directly through Modicon for this.

Schedule - Usually, customers receive upgraded PC's within 6-8 weeks after PO acknowledgement. Pall anticipates the project progressing as follows:

Week 1: Purchase computer, monitor, SCADA, MSOffice and anti-virus software.

Week 2: Receive software.

Obtain copies of current programming from existing computer

Week 3: Begin conversion of RSView screens to FactoryTalk

Week 4: Complete conversion of RSView SCADA files to FactoryTalk

Install anti-virus software

Install data reporting ("Daily Report")

Complete Factory Acceptance Testing of new computer and simulation testing of new

FactoryTalk SCADA

Package and ship computer to site

Week 5: Customer receives computer, sets up and connects new computer

Customer contacts Pall Water for any assistance needed from software engineer to ensure

new computer is operating properly

Customer removes old computer.

This schedule is provided for informational purposes only. Schedule may change during execution for unforeseen reasons.

Pall proposes to provide a new, business-class laptop PC fully configured to operate as a backup plant SCADA system, operating Rockwell Software FactoryTalk under Microsoft Windows 10. Licenses required for Rockwell software operation (PLC programming) will be facilitated by a license "dongle" that can be moved to the backup computer from the main computer when necessary, eliminating the expense of new licenses for the backup. The computer can be used for other purposes when not used as a SCADA PC for the plant, or stored until needed.

- Install FactoryTalk Run Time Read Only software and associated utilities, add-ons and extensions
- Install RSLinx and RSLogix5000 software and required reference files
- Copies of all existing screens in FactoryTalk SE format

- Installation of Microsoft Office (new license provided with new computer)
- Installation of McAfee anti-virus software
- Installation of XL Reporter software
- Simulate & test the operation of the PC before shipment to site

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Pall will send the PC to the customer as a “plug-and-play” installation. No site visit by a Pall Field Service Engineer is provided for this part of the scope. The customer will install the computer upon its return to the customer’s site. The customer will then be required to contact Pall to log into the computer remotely to make any final modifications. Pall will provide remote telephone support to guide the customer through the installation process as needed.

A license transfer "dongle" will be provided for moving Rockwell Software licenses (FactoryTalk, RSLinx) as needed between the main SCADA PC and the backup computer. Instructions for the dongle will be sent with the computer to the customer's site.

All software licenses for the software listed above will be moved from the old computer to the new one, unless otherwise noted. As necessary, Pall will work with the customer to obtain the most current copies of SCADA screens and other site-specific programming for installation on the new PC. Installation of any software not originally provided by Pall, as listed above, is not included and must be completed by others.

Freight charges are not included.

Disclaimer: This proposal is based on information and conditions known at the time of quotation. Pall Water reserves the right to revise this proposal through change order(s) should conditions vary significantly from those known at the time of quotation and require additional work or materials.

PROPOSAL SUMMARY

	\$62,487.94
Item 1: PLC Upgrade	
	\$42,457.82
Item 2: SCADA PC Upgrade with Laptop Backup	
Total \$ 104,945.76	

Total amount for purchase order:

Validity: Price valid until May 31, 2021

Terms of Sale: Pall Standard Terms and Conditions of Sale for Non-Systems (attached).

Terms of Service: Regular minimum service charge is for a 10-hour day.



Pall Water Pall Technology Services

Service Order acceptance and payment terms: Pall Water requires all accounts outstanding beyond 30 days to be paid in full prior to order acceptance. Your account status will be verified at the time of order placement, and you will be notified if you have a balance due. To avoid order processing, goods shipment or service scheduling delays, please insure your account is up to date in advance of placing your order. Charges per the proposal will be billed automatically upon completion of the service, and sign-off of the service report, and become payable within 30 business days of receipt of the invoice.

Changes: Pall shall not implement any changes in the scope of services described in Pall’s proposal unless the Customer and Pall agree to the details of the change. Any resulting price, schedule or other contractual modifications, will require a verbal change called into Pall’s Customer Service Department, with a follow up written confirmation. This includes any changes necessitated by a change in applicable law.

A Purchase Order or written authorization to accept the contract of work as described, along with a signed copy of the attached Customer authorization for service is required in advance of PASS providing the service defined in this proposal.

Please direct your purchase order to:

Pall Water

Pall System Services P.O. Box 5630

839 State Route 13

Cortland, New York 13045-5630

Tel: 866-475-0115 / Fax: 607.758.4526

Email: Pall_Technology_csc@pall.com Attn: Customer Service

Please feel free to contact me anytime to discuss this proposal or other plant needs. Thank you in advance for your consideration.

Regards,



Jay Garcia

Key Account Manager Phone:

516.301.6332

E-mail: jay_garcia@pall.com

 **Pall Corporation**

Pall Water Pall Technology Services

Pall Proposal No.: OPP1616614rev2

Date: May 19, 2021

Pall Proposal No.:

Effective Date and Duration : This Agreement will be effective as of the date signed below, and will remain in effect:

- until on site service work has been completed by Pall,
- for 12 consecutive months (or as indicated in the annual or multi-year contract)
- or until 30 days after receipt of notice of termination by either party.

Customer Billing Address: _____

 **Pall Corporation**

Pall Water Pall Technology Services

**Standard Terms and Conditions of Sale Non-Systems – The Americas
Pall Water**

1. Applicability: Entire Agreement:

1.1. These terms and conditions of sale (these "**Terms**") are the only terms which govern the sale of the goods identified on Buyer's purchase order (the "**Goods**") by Seller to Buyer. By placing a purchase order, Buyer makes an offer to purchase the Goods pursuant to these Terms, including (a) a list of the Goods to be purchased; (b) the quantity of each of the Goods ordered; (c) the requested delivery date; (d) the unit Price for

each of the Goods to be purchased; (e) the billing address; and (f) the delivery location (the “**Basic Purchase Order Terms**”), and on no other terms.

1.2. The accompanying quotation, proposal, confirmation of sale, invoice, order acknowledgment or similar document delivered by Seller to Buyer (the “**Sales Confirmation**”), the Basic Purchase Order Terms and these Terms (collectively, this “**Agreement**”) comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. These Terms prevail over any of Buyer's general terms and conditions of purchase regardless whether or when Buyer has submitted its purchase order or such terms. Fulfillment of Buyer's order does not constitute acceptance of any of Buyer's terms and conditions and does not serve to modify or amend these Terms.

1.3. Notwithstanding anything herein to the contrary, if a written contract signed by both parties is in existence covering the sale of the Goods covered hereby, the terms and conditions of said contract shall prevail to the extent they are inconsistent with these Terms.

2. Non-delivery:

2.1 The quantity of any installment of Goods as recorded by Seller on dispatch from Seller's Shipment Point (as defined in **Section 4**) is conclusive evidence of the quantity received by Buyer on delivery unless Buyer can provide conclusive evidence proving the contrary.

2.2 Seller shall not be liable for any non-delivery of Goods (even if caused by Seller's negligence) unless Buyer gives written notice to Seller of the non-delivery within 10 days of the date when the Goods would in the ordinary course of events have been received.

2.3 Any liability of Seller for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or adjusting the invoice respecting such Goods to reflect the actual quantity delivered.

3. Delivery:

3.1 The Goods will be delivered within a reasonable time after the receipt of Buyer's purchase order, subject to availability of finished Goods. The delivery and/or shipping schedule is the best estimate possible based on conditions existing at the time of Seller's Sales Confirmation or Seller's quotation and receipt of all specifications, as applicable, and in the case of non-standard items, any such date is subject to Seller's receipt of complete information necessary for design and manufacture. Seller shall not be liable for any delays, loss or damage in transit or for any other direct, indirect, or consequential damages due to delays, including without limitation, loss of use.

3.2 Seller may, in its sole discretion, without liability or penalty, deliver partial shipments of Goods to Buyer and ship the Goods as they become available, in advance of the quoted delivery date. If the Goods are delivered in installments, then insofar as each shipment is subject to the same



Agreement, the Agreement will be treated as a single contract and not severable.

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3.3 Seller shall make the Goods available to Buyer at Seller's factory or designated shipment point (each, “**Seller's Shipment Point**”) using Seller's standard methods for packaging and shipping such Goods. Buyer shall take delivery of the Goods within 5 days of Seller's written notice that the Goods have been delivered to the Seller's Shipment Point.

3.4 If for any reason Buyer fails to accept delivery of any of the Goods on the date fixed pursuant to Seller's notice that the Goods have been delivered at the Seller's Shipment Point, or if Seller is unable to deliver the Goods at the Seller's Shipment Point on such date because Buyer has not provided appropriate instructions, documents, licenses or authorizations: (i) title and risk of loss to the Goods shall pass to Buyer; (ii) the Goods shall be deemed to have been delivered; and (iii)

Seller, at its option, may store the Goods until Buyer picks them up, whereupon Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

4. **Shipping Terms:** Unless otherwise mutually agreed to in writing by the parties, delivery shall be FCA (Seller's Shipment Point) INCOTERMS 2010. At Buyer's request, Seller will, at Buyer's risk and expense, arrange for the delivery of the Goods to Buyer's site/facility and Buyer will pay, or reimburse Seller, for all freight charges, taxes, duties, entry fees, brokers' fees, special, miscellaneous and all other ancillary charges and special packaging charges incurred.
5. **Title and Risk of Loss:** Title and risk of loss passes to Buyer upon the earlier of (i) delivery of the Goods at the Seller's Shipment Point or (ii) deemed delivery pursuant to clause 3.4 above. As collateral security for the payment of the purchase price of the Goods, Buyer hereby grants to Seller a lien on and security interest in and to all of the right, title and interest of Buyer in, to and under the Goods, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase money security interest under the New York Uniform Commercial Code.

6. Inspection and Rejection of Nonconforming Goods:

- 6.1 Buyer shall inspect the Goods within 10 days of receipt (the "**Inspection Period**"). Buyer will be deemed to have accepted the Goods unless it notifies Seller in writing of any nonconforming Goods during the Inspection Period and furnishes such written evidence or other documentation as required by Seller. Such notification shall identify each and every alleged nonconformity of the Goods and describe that portion of the shipment being rejected. Seller shall then respond with instructions as to the disposition of the Goods.
- 6.2 If Buyer timely notifies Seller of any nonconforming Goods, Seller shall, in its sole discretion, (i) replace such nonconforming Goods with conforming Goods, or (ii) credit or refund the Price for such nonconforming Goods, together with any reasonable shipping and handling expenses incurred by Buyer in connection therewith. Buyer shall ship, at its expense and risk of loss, the nonconforming Goods to Seller's Shipment Point. If Seller exercises its option to replace nonconforming Goods, Seller shall, after receiving Buyer's shipment of nonconforming Goods, ship to Buyer, at Buyer's expense and risk of loss, the replaced Goods to the Seller's Shipment Point.
- 6.3 Buyer acknowledges and agrees that the remedies set forth in **Section 6.2** are Buyer's exclusive remedies for the delivery of Nonconforming Goods. Except as provided under **Section 6.2**, all sales of Goods to Buyer are made on a one-way basis and Buyer has no right to return Goods purchased under this Agreement to Seller.
- 6.4 If Seller delivers to Buyer a quantity of Goods of up to 5% more or less than the quantity set forth in the Sales Confirmation, Buyer shall not be entitled to object to or reject the Goods or any portion of them by reason of the surplus or shortfall and shall pay for such Goods the price set forth in



the Sales Confirmation adjusted pro rata.

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7. **Services:** Seller will provide such services as are expressly described in the Sales Confirmation (collectively, the "**Services**"), during normal business hours, unless otherwise specified in the Sales Confirmation. Services requested or required by Buyer outside of these hours or in addition to the quoted or agreed upon services will be charged at Seller's then current schedule of rates, including overtime charges, if applicable, and will be in addition to the charges outlined in the Sales Confirmation.
8. **Purchase Price:** The price for the Goods and/or Services thereof shall be Seller's quoted price. Seller may also at any time assess a fuel or energy surcharge (in addition to the price of the Goods) (the "**Purchase Price**"). The Purchase Price is based on the project schedule defined in this Agreement, Sales Confirmation or applicable contract documents. Notwithstanding anything to the contrary set out herein, in the event of any delay to Seller's delivery schedule caused by Buyer or its representatives (other than for Force Majeure or

delays caused by Seller), including without limitation, a suspension of work or the project, a postponement of the delivery date or failure to timely issue of a notice of commencement or similar document, then the Purchase Price shall increase by 1% for every month or partial month of such delay and this Agreement shall be construed as if the increased Purchase Price were originally inserted herein, and Buyer shall be billed by Seller on the basis of such increased Purchase Price.

- 9. Taxes:** The Purchase Price is exclusive of any applicable federal, state or local sales, use, excise or other similar taxes, including, without limitation, value added tax, goods and services tax or other similar tax imposed by any governmental authority on any amounts payable by Buyer. All such taxes will be for Buyer's account and will be paid by Buyer to Seller upon submission of Seller's invoices. Buyer agrees to make tax accruals and payments to the tax authorities as appropriate. If Buyer is exempt from any applicable sales tax or equivalent, but fails to notify Seller of such exemption or fails to furnish its Sales Tax Exemption Number to Seller in a timely manner and Seller is required to pay such tax, the amount of any such payment made by Seller will be reimbursed by Buyer to Seller upon submission of Seller's invoices.

10. Payment:

- 10.1** Buyer shall pay all invoiced amounts due to Seller within 30 days from the date of Seller's invoice. Buyer shall make all payments hereunder by EFT, wire transfer, or check and in US dollars. Payment for foreign billing shall be in accordance with Seller's written instructions.
- 10.2** Buyer shall pay interest on all late payments at the lesser of the rate of 1.5% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. Buyer shall reimburse Seller for all costs incurred in collecting any late payments, including, without limitation, reasonable attorneys' fees. In addition to all other remedies available under these Terms or at law (which Seller does not waive by the exercise of any rights hereunder), Seller shall be entitled to suspend performance of any Purchase Order, or suspend the delivery of any Goods, if Buyer fails to pay any amounts when due hereunder and such failure continues for 5 days following written notice thereof. Additionally Seller may require payment in cash, security or other adequate assurance satisfactory to Seller when, in Seller's opinion, the financial condition of Buyer or other grounds for insecurity warrant such action.
- 10.3** All sales are subject to the approval of Seller's credit department. Seller and Buyer both recognize that there is a risk of banking fraud when individuals impersonating a business demand payment under new banking or mailing instructions. To avoid this risk, Buyer must verbally confirm any new bank or mailing instructions by calling Seller and speaking with Seller's accounts receivable contact before mailing or transferring any monies using the new instructions. Both parties agree that they will not institute any mailing or bank transfer instruction changes or require immediate payment under the new instructions but will instead provide a ten (10) day grace period to verify any payment instruction changes before any new or outstanding payments are due using the new instructions.



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- 10.4** Buyer may not withhold or setoff any amounts that may be claimed by Buyer against any amounts that are due and payable to Seller by reason of any set-off of any claim or dispute with Seller, whether relating to Seller's breach, bankruptcy or otherwise.
- 10.5** Notwithstanding anything herein to the contrary, this Agreement may be modified or terminated/cancelled, and scheduled shipments hereunder may be deferred or changed, only: (i) upon Buyer's prior written notice to Seller, and Seller's written acknowledgment of the notice; and (ii) upon terms satisfactory to Seller. Buyer shall pay to Seller all fees, charges and/or costs that Seller assesses because of any modification, termination/cancellation, deferment and/or change, including without limitation all termination/cancellation fees, restocking fees, storage fees, insurance costs, freight costs, nonrecurring engineering or production costs and recovery of cost plus reasonable profit required in the event of Buyer's termination without cause.

11. Limited Warranty:

11.1 Limited Warranty for Goods. Seller warrants to Buyer that for a period of twelve months from the date of delivery of the Goods, including deemed delivery pursuant to clause 3.4 above (the "**Warranty Period**"), that the Goods manufactured by Seller, when properly installed and maintained, and operated at ratings, specifications and design conditions specified by Seller, will materially conform to Seller's specifications for such Goods set forth in Seller's proposal, or, in the absence of such a proposal, such specifications for such Goods appearing in Seller's product catalogues and literature or in the Sales Confirmation, at the time of the order and will be free from material defects in material and workmanship (this "**Limited Warranty**"). Buyer shall notify Seller promptly in writing of any claims within the Warranty Period and provide Seller with an opportunity to inspect and test the Goods or service claimed to fail to meet this Limited Warranty. Buyer shall provide Seller with a copy of the original invoice for the product or service, and prepay all freight charges to return any Goods to Seller's factory, or other facility designated by Seller. All claims must be accompanied by full particulars, including system operating conditions, if applicable. If the defects are of such type and nature as to be covered by this Limited Warranty, Seller shall, at its option and in its sole discretion, either: (a) accept return of the defective Goods and furnish replacement Goods; (b) furnish replacement parts for the defective Goods; (c) repair the defective Goods; or (d) accept return of the defective Goods and return payments made, or issue credits for, such defective Goods. If Seller determines that any warranty claim is not, in fact, covered by this Limited Warranty, Buyer shall pay Seller its then customary charges for any additionally required service or products.

11.2 Limited Warranty for Services. Seller further warrants that all Services performed hereunder, if any, will be performed in a workmanlike manner in accordance with applicable law and industry standards by qualified personnel (this "**Limited Warranty for Services**"); this Limited Warranty for Services shall survive for 30 days following Seller's completion of the Services (the "**Service Warranty Period**"). In the event of a warranty claim under this Limited Warranty for Services, Buyer shall inform Seller promptly in writing of the details of the claim within the Service Warranty Period. Seller's liability under any service warranty is limited (in Seller's sole discretion) to repeating the service that during the Service Warranty Period does not meet this Limited Warranty for Services or issuing credit for the nonconforming portions of the service. If Seller determines that any warranty claim is not, in fact, covered by the foregoing Limited Warranty for Services, Buyer shall pay Seller its then customary charges for all services performed by Seller.

11.3 No Warranty as to Third Party Products. Products manufactured by a third party ("**Third Party Product**") may constitute, contain, be contained in, incorporated into, attached to or packaged together with, the Goods. Third Party Products are not covered by the warranty in **Section 11.1**. For the avoidance of doubt, **SELLER MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO ANY THIRD PARTY PRODUCT, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (c) WARRANTY OF TITLE; OR (d) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.**



Pall Water Pall Technology Services

With respect to any Third Party Product, the warranty, if any, is provided solely through the manufacturer of such Third Party Product, the terms of which vary from manufacturer to manufacturer and Seller assumes no responsibility on their behalf. For Third Party Products, specific warranty terms may be obtained from the manufacturer's warranty statement.

11.4 Other Limits. EXCEPT FOR THE WARRANTIES SET FORTH IN SECTIONS 11.1 and 11.2, SELLER MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS AND SERVICES, INCLUDING WITHOUT LIMITATION ANY (a) WARRANTY OF MERCHANTABILITY; (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (c) WARRANTY OF TITLE; OR (d) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE. Seller does not warrant against, and in no event shall Seller be liable for, damages or defects arising out of improper or abnormal use, misuse, abuse, improper installation (other than by Seller), application, operation, maintenance or repair, alteration, accident, or for negligence in use, storage, transportation or handling or other negligence of Buyer. In no event shall Seller be liable for any Goods repaired or altered by someone other than Seller other than pursuant to written authorization by Seller. All product warranties and performance guarantees shall only be enforceable if (a) all equipment is properly installed, inspected regularly and is in good working order,

(b) all operations are consistent with Seller recommendations, (c) operating conditions at the job site have not materially changed and remain within anticipated specifications, and (d) no reasonably unforeseeable circumstances exist or arise.

11.5 Exclusive Obligation. THIS WARRANTY IS EXCLUSIVE. THE LIMITED WARRANTY AND THE LIMITED WARRANTY FOR SERVICES ARE THE SOLE AND EXCLUSIVE OBLIGATIONS OF SELLER WITH RESPECT TO THE DEFECTIVE GOODS AND SERVICES. SELLER SHALL NOT HAVE ANY OTHER OBLIGATION WITH RESPECT TO THE GOODS, SERVICES, OR ANY PART THEREOF, WHETHER BASED ON CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE. THE REMEDIES SET FORTH IN SECTIONS 11.1 AND 11.2 SHALL BE THE BUYER'S SOLE AND EXCLUSIVE REMEDY AND SELLER'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTY SET FORTH IN SECTION 11.1 AND 11.2.

11.6 Buyer Breach. In no event shall Buyer be entitled to claim under the above Limited Warranties if Buyer is in breach of its obligations, including but not limited to payment, hereunder.

12. Limitation of Liability:

12.1 IN NO EVENT SHALL SELLER BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES, LOST PROFITS OR REVENUES OR DIMINUTION IN VALUE, INCLUDING WITHOUT LIMITATION, REMANUFACTURING COSTS AND REWORK COSTS, DE-INSTALLATION OR REINSTALLATION COST, WHETHER OR NOT THE POSSIBILITY OF SUCH DAMAGES HAS BEEN DISCLOSED IN ADVANCE BY BUYER OR COULD HAVE BEEN REASONABLY FORESEEN BY BUYER, REGARDLESS OF THE LEGAL OR EQUITABLE THEORY (TORT, CONTRACT, OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, AND WHATEVER THE FORUM, WHETHER ARISING OUT OF OR IN CONNECTION WITH THE MANUFACTURE, PACKAGING, DELIVERY, STORAGE, USE, MISUSE OR NON-USE OF ANY OF ITS GOODS OR SERVICES OR ANY OTHER CAUSE WHATSOEVER.

12.2 IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO SELLER FOR THE GOODS SOLD HEREUNDER

12.3 The limitation of liability set forth in **Section 12.2** above shall not apply to liability resulting from Seller's gross negligence or willful misconduct.



Pall Water Pall Technology Services

13 Cancellation: Buyer may not cancel this Agreement after Sales Confirmation unless all the details are approved in writing by the parties, including Buyer's agreement to pay a stated amount of termination charges.

14 Termination: In addition to any remedies that may be provided under these Terms, Seller may terminate this Agreement with immediate effect upon written notice to Buyer, if Buyer: (i) fails to pay any amount when due under this Agreement and such failure continues for 10 days after Buyer's receipt of written notice of nonpayment; (ii) has not otherwise performed or complied with any of these Terms, in whole or in part; or (iii) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors.

15 Changes: Seller shall not be obligated to implement any changes or variations in the scope of work described in Seller's Documentation unless Buyer and Seller agree in writing to the details of the change and any resulting price, schedule or other contractual modifications. This includes any changes or variations necessitated by a change in applicable law occurring after the effective date of this Agreement including these Terms.

16 Intellectual Property Infringement: Buyer has no authorization to make any representation, statement or warranty on behalf of Seller relating to any Goods sold hereunder. Buyer shall indemnify and defend, at its own expense, Seller against claims or liability for U.S. or applicable foreign patent, copyright, trademark or other

intellectual property infringement and for product liability arising from the preparation or manufacture of the Goods according to Buyer's specifications or instructions, or from Buyer's unauthorized or improper use of the Goods or part thereof, or from any changes or alterations to the Goods or part thereof made by persons other than Seller, or from the use of the Goods in combination with products not furnished by Seller or from the manufacture or sale or use of Buyer products which incorporate or integrate the Goods.

17 Ownership of Materials: All ideas, concepts, whether patentable or not, devices, inventions, copyrights, improvements or discoveries, designs (including drawings, plans and specifications), estimates, prices, notes, electronic data and other documents or information that are: a) created, prepared, reduced to practice or disclosed by Seller; and/or b) based upon, derived from, or utilize the Confidential Information of Seller, and all related intellectual property rights, shall at all times remain Seller's property. No right, title or interest in any patents, trademarks, trade names or trade secrets, or in any pattern, drawing or design for any of the Goods or in any other Seller intellectual property right, shall pass or transfer to the Buyer and Seller shall at all times retain ownership rights therein. Notwithstanding the foregoing, Seller grants Buyer a non-exclusive, non-transferable license to use any such material to the extent necessary and solely for Buyer's use of the Goods purchased by Buyer from Seller hereunder. Buyer shall not disclose any such material to third parties without Seller's prior written consent. As a condition to Seller's delivery to Buyer of the Goods, Buyer shall not, directly or indirectly, and shall cause its employees, agents and representatives not to: (i) alter or modify the Goods, (ii) disassemble, decompile or otherwise reverse engineer or analyze the Goods, (iii) remove any product identification or proprietary rights notices, (iv) modify or create derivative works, (v) otherwise take any action contrary to Seller's rights in the technology and intellectual property relating to the Goods, (vi) assist or ask others to do any of the foregoing.

18. Export: As a condition to Seller's delivery to Buyer of the Goods, Buyer agrees, with respect to the exportation or resale of the Goods by Buyer, to comply with all requirements of the International Traffic in Arms Regulations ("ITAR") and the Export Administration Regulations ("EAR"), regulations issued thereunder and any subsequent amendments thereto, and all other national, including, but not limited to, European, government laws and regulations on export controls, including laws and regulations pertaining to export licenses, restrictions on export to embargoed countries and restrictions on sales to certain persons and/or entities. Buyer further agrees that the shipment and/or delivery of the Goods by Seller is contingent upon Seller obtaining all required export authorizations, licenses, and permits (collectively, "Authorizations") and Buyer agrees that Seller shall not be liable to Buyer for any failure or delay in the shipment or delivery of the Goods if such Authorizations are delayed, conditioned, denied or not issued by the regulatory or governmental agencies having jurisdiction over such Authorizations.



Pall Water Pall Technology Services

19. Confidentiality: If Seller discloses or grants Buyer access to any research, development, technical, economic, or other business information or "know-how" of a confidential nature, whether reduced to writing or not, Buyer will not use or disclose any such information to any other person or company at any time, without Seller's prior written consent. In the event that Buyer and Seller have entered into a separate confidentiality agreement (the "Confidentiality Agreement"), the terms and conditions of the Confidentiality Agreement shall take precedence over the terms of this paragraph.

20. No Waiver: No waiver by Seller of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Seller. Seller's failure to exercise, or to delay in exercising, any right, remedy, power or privilege arising from this Agreement, or to insist on Buyer's strict performance of these Terms shall not operate as or be construed as a waiver by Seller.

21. Force Majeure: Under no circumstances shall Pall have any liability for any breach relating to nonperformance or underperformance caused by extreme weather, natural disaster, fire, accident or other act of God; strike, lock out or other labor shortage or disturbance; lock down, boycott, embargo or tariff; terrorism or act of terrorism, war or war condition or civil disturbance or riot; failure of public or private telecommunications networks; delay of carriers or other industrial, agricultural or transportation disturbance; failure of normal sources of supply; epidemics, pandemics, contagion, disease or quarantine; law, regulation or any act of government; or any other cause beyond Pall's reasonable control. Pall's performance shall be excused and deemed suspended during the continuation of such event or events and, for a reasonable time thereafter, delayed or adjusted accordingly.

22. No Third-Party Beneficiaries: This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms.

23. Relationship of the Parties: The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

24. Validity: If any provision of this Agreement, the Sales Confirmation or these Terms is held by any competent authority to be invalid or unenforceable in whole or in any part, such provision shall be ineffective, but only to the extent of such invalidity or unenforceability, without invalidating the remainder of such provision nor the other provisions, which shall not be affected.

25. Governing Law: This Agreement, and all the rights and duties of the parties arising from or relating in any way to the subject matter of this Agreement or the transaction(s) contemplated by it, shall be governed by the laws of the State of New York, without giving effect to any choice or conflict of law provision or rule (whether of the State of New York or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of New York.

The parties expressly exclude the application of the United Nations Conventions on Contracts for the International Sale of Goods, and further exclude the applications of the International Sale of Goods Contracts Convention Act, S.C. 1990-1991, C. 13, and the International Sale of Goods Act, R.S.O. 1990, C.I. 10, as amended.

26. Submission to Jurisdiction: Buyer and Seller hereby unconditionally and irrevocably submit to (and waive any objection on the grounds of inconvenient forum or otherwise) the jurisdiction of the Supreme Court of the State of New York, County of Nassau or the United States District Court for the Southern District of New York, which courts shall have exclusive jurisdiction to adjudicate and determine any suit, action or proceeding regarding or relating to this Agreement and the purchase and supply of the Goods. A judgment, order or decision of those courts in respect of any such claim or dispute shall be conclusive and may be recognized and enforced by any courts of any state, country or other jurisdiction.



Pall Water Pall Technology Services

27. **No Jury Trial: BUYER AND SELLER HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT.**
28. **Survival:** All payment, confidentiality and indemnity obligations, warranties, limitations of liability, product return, and ownership of materials provisions, together with those sections the survival of which is necessary for the interpretation or enforcement of these Terms, shall continue in full force and effect for the duration stated in such provisions or the applicable statute of limitations.
29. **Amendment and Modification:** This Agreement may only be amended or modified in a writing which specifically states that it amends this Agreement and is signed by an authorized representative of each party.