

TERMS & CONDITIONS OF TRADING

The Buyer's attention is drawn in particular to conditions 6.3, 8.3 – 8.9 & 9

1 Definitions

- 1.1 "Buyer" means the person who buys or agrees to buy the Goods from the Seller.
- 1.2 "Conditions" means the terms and conditions of sale set out in this document and any special terms and conditions agreed in writing by the Seller.
- 1.3 "Delivery Date" means the date given by the Seller when the goods are to be delivered.
- 1.4 "Goods" means the articles which the Buyer agrees to buy from the Seller.
- 1.5 "Price" means the price for the Goods excluding carriage, packing, insurance and VAT.
- 1.6 "Seller" means Pump Technical Services Limited whose registered office is at Pump House, Unit 12 Bilton Road Industrial Estate, Erith, Kent DA8 2AN England or any other subsidiary or associated company in the "Pump" group engaging in this contract.

2 Conditions Applicable

- 2.1 These conditions shall apply to all contracts for the sale of Goods by the Seller to the Buyer to the exclusion of all other terms and conditions including any terms or conditions which the Buyer may purport to apply under any purchase order confirmation of order or similar document.
- 2.2 All orders for Goods shall be deemed to be an offer by the Buyer to purchase Goods pursuant to these Conditions.
- 2.3 Acceptance of delivery of the Goods shall be deemed conclusive evidence of the Buyer's acceptance of these Conditions.
- 2.4 No quotation for the supply of Goods shall be binding upon the Seller unless it is in writing and signed by a director of the Seller.
- 2.5 Any variation of these Conditions (including any special terms and conditions agreed between the parties) shall be inapplicable unless agreed in writing by a director of the Seller.

3. The Price and Payment

- 3.1 The Price is exclusive of VAT which shall be due at the rate applying on the date of the Seller's invoice.
- 3.2 Payment of the Price and VAT shall be due within 30 days of the date of the invoice. Time for payment shall be of the essence.
- 3.3 Interest on overdue invoices shall accrue from the date when payment becomes due from day to day until the date of payment at a rate of 8% and shall accrue at such a rate after as well as before any judgment.
- 3.4 Prices are the Seller's ex works prices. Where the Seller agrees to arrange for the Goods to be sent to the Buyer the Buyer shall be responsible for the costs of loading carriage insurance and unloading.
- 3.5 The cost of pallets and returnable packing will be due from the Buyer in addition to the Price but will be credited to the Buyer provided that they are returned to the Seller in good condition before the due payment date.
- 3.6 The Buyer may not withhold payment of any invoice or other amount due to the Seller by reason of any right of set-off or counterclaim which the Buyer may have or allege to have or for any reason whatever.

4. The Goods

- 4.1 The quantity and description of the Goods shall be as set out in the Seller's quotation.
- 4.2 The Specifications and designs of the Goods (including the copyright, design right or other intellectual property in them) shall as between the parties be the property of the Seller. Where any designs or specification have been supplied by the Buyer for manufacture by or to the order of the Seller then the Buyer warrants that the use of those designs or specifications for the manufacture, processing, assembly or supply of the Goods shall not infringe the rights of any third party.

5. Warranty

- 5.1 The Seller warrants that the Goods will at the time of delivery correspond to the description given by the Seller and, provided they are operated and serviced according to their manufacturer's operating instructions, the Seller warrants that the Goods will perform according to their specification for a period of twelve (12) months from either the Delivery Date or, where applicable, the date of their installation or commissioning by the Seller, whichever shall be the later..
- 5.2 Except where the Buyer is dealing as a consumer (as defined in the Consumer Rights Act 2015) all other warranties, conditions or terms relating to fitness for purpose, merchantability or condition of the Goods and whether implied by statute or common law or otherwise are excluded.
- 5.3 If the goods are to be installed as part of a system which has not been designed by the Seller, the Seller accepts no responsibility for the integrity of the system nor for the adequacy of the Goods to operate within that system.

6. Delivery of the Goods

- 6.1 Delivery of the Goods shall be made to the Buyer's address on the Delivery Date. The Buyer shall make all arrangements necessary to take delivery of the Goods whenever they are rendered for delivery.
- 6.2 If delivery of completed Goods is delayed or deferred by the Buyer more than one month beyond the Delivery Date, payment for the Goods shall nevertheless become due on the Delivery Date and a monthly warehouse charge of 2% of the Price and any wasted transportation charges shall be paid by the Buyer.
- 6.3 The Delivery Date given by the Seller shall be an estimate only and time for delivery shall not be made of the essence by notice. Subject to the other provisions of these Conditions, the Seller shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused or incurred directly or indirectly as a result of any delay in the delivery of the Goods (even if caused by the Seller's negligence) nor shall any delay in delivery entitle the Buyer to terminate or rescind the Contract unless such delay exceeds 3 calendar months after the Delivery Date.
- 6.4 The Seller shall not be liable to the Buyer for late delivery or short delivery of the Goods.

7. Acceptance of the Goods

- 7.1 The Buyer shall be deemed to have accepted the Goods 24 hours after delivery to the Buyer.
- 7.2 After acceptance the Buyer shall not be entitled to reject the Goods on the grounds that they do not conform to the Buyer's order.
- 7.3 No Goods delivered to the Buyer which conform to the Buyer's order will be acceptable for return without prior written approval of the Seller in accordance with the Seller's returns authorisation procedure and on terms to be determined at the absolute discretion of the Seller.
- 7.4 If the Seller agrees to accept the Goods for return the Buyer shall be liable to pay a handling charge the amount of which shall be determined in the absolute discretion of the Seller. Such Goods must be returned by the Buyer carriage-paid to the Seller in their original shipping carton.

HEAD OFFICE

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8. Title and Risk

- 8.1 The Goods shall be at the Buyer's risk as from delivery.
- 8.2 In spite of delivery having been made, property in the Goods shall not pass from the Seller until:
- 8.2.1 the Buyer shall have paid the Price plus VAT in full; and
- 8.2.2 no other sums whatever shall be due from the Buyer to the Seller.
- 8.3 Until property in the Goods passes to the Buyer in accordance with this clause the Buyer shall hold the Goods and each of them on a fiduciary basis as Bailee for the Seller. The Buyer shall store the Goods (at no cost to the Seller) separately from all other goods in its possession and marked in such a way that they are clearly identified as the Seller's property.
- 8.4 Notwithstanding that the Goods (or any of them) remain the property of the Seller, the Buyer may sell or use the Goods in the ordinary course of the Buyer's business at full market value for the account of the Seller. Any such sale or dealing shall be a sale or use of the Seller's property by the Buyer for the Buyer's own behalf and the Buyer shall deal as principal when making such sales or dealings. Until property in the Goods passes from the Seller the entire proceeds of sale or otherwise of the Goods shall be held in trust for the Seller and shall not be mixed with other money or paid into any overdrawn bank account and shall be at all material times identified as the Seller's money.
- 8.5 The Seller shall be entitled to recover the Price (plus VAT) notwithstanding that property in any of the Goods has not passed from the Seller.
- 8.6 Until such time as property in the Goods passes from the Seller the Buyer shall upon request deliver up such of the Goods as have not ceased to be in existence or resold to the Seller. On the making of such request the rights of the Buyer under Clause 8.4 shall cease. The Buyer hereby grants the Seller, its agents and employees an irrevocable licence to enter any premises where the Goods are or may be stored in order to inspect them or, where the Buyer's right to possession of the Goods has terminated, to recover any Goods which are the Seller's property or to which the Seller has either or both of the legal and equitable title.
- 8.7 The Buyer shall not pledge or in any way charge by way of security for any indebtedness any of the Goods which are the property of the Seller. Without prejudice to the other rights of the Seller, if the Buyer does so all sums whatever owing by the Buyer to the Seller shall forthwith become due and payable.
- 8.8 The Buyer shall insure and keep insured the Goods to the full Price against 'all risks' to the reasonable satisfaction of the Seller until the date that property in Goods passes from the Seller, and shall whenever requested by the Seller produce a copy of the policy of insurance. Without prejudice to the other rights of the Seller, if the Buyer fails to do so all sums whatever owing by the Buyer to the Seller shall forthwith become due and payable.
- 8.9 The Buyer shall promptly deliver the prescribed particulars of this contract to the Registrar of Companies in accordance with the Companies Act 2006 Part 25. Without prejudice to the other rights of the Seller, if the Buyer fails to do so all sums whatever owing to the Buyer by the Seller shall forthwith become due and payable.

9. Limitation of Liability

- 9.1 Subject to the provisions of Clauses 5 and 6 the following provisions set out the entire financial liability of the Seller (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:
- 9.1.1 any breach of these Terms and Conditions;
- 9.1.2 any use made (including but not limited to modifications) or resale by the Buyer of any of the Goods, or of any product incorporating any of the Goods; and
- 9.1.3 any representation, statement or tortious act or omission including negligence arising under or in connection with the sale of the Goods to the Buyer.
- 9.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded.
- 9.3 Nothing in these Terms and Conditions excludes or limits the liability of the Seller:
- 9.3.1 for death or personal injury caused by the Seller's negligence;
- 9.3.2 for any matter which it would be illegal for the Seller to exclude or attempt to exclude its liability; or
- 9.3.3 for fraud or fraudulent misrepresentation.
- 9.4 Subject to sub-Clauses 9.2 and 9.3:
- 9.4.1 the Seller's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the sale or contemplated sale of the Goods shall be limited to the Price; and
- 9.4.2 the Seller shall not be liable to the Buyer for any pure economic loss, loss of profit, loss of business, depletion of goodwill or otherwise, in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the sale of the Goods to the Buyer.
- 9.5 Notwithstanding the generality of the foregoing, the Seller's liability in respect of any claim for breach of Warranty shall further be limited as follows:
- 9.5.1 Within 12 months of the delivery of pumping equipment sold on a supply only basis the Company will accept it back (at the Buyer's cost) at the Company's premises for inspection subject to completion of relevant paperwork (which the Company will supply);
- 9.5.2 Where pumping equipment that has been installed and/or commissioned by the Company fails within 12 months from the completion of the installation or commissioning the Company's engineer will attend the Buyer's site and inspect the equipment to determine applicability of the warranty;
- 9.5.3 Repairs are warranted for 6 months from the date of repair and or date of Invoice whichever is the earliest.

10. Miscellaneous

- 10.1 All headings are for ease of reference only and shall not affect the construction of this contract.
- 10.2 Any provision of this contract which is or may be void or unenforceable shall to the extent of such invalidity or unenforceability be deemed severable and shall not affect any other provision of this contract.
- 10.3 No waiver or forbearance by the Seller (whether express or implied) in enforcing any of its rights under the contract shall prejudice its rights to do so in the future.
- 10.4 The Seller may licence or sub-contract all or any part of its rights and obligations under this contract without the Buyer's consent.
- 10.5 Neither party shall be liable for any default due to any act of God, war, strike, lockout, industrial action, fire, flood, drought, tempest or other event beyond the reasonable control of either party.
- 10.6 The Seller may cancel this contract at any time before the Goods are delivered by giving written notice to the Buyer. On giving such notice the Seller shall promptly repay to the Buyer all sums paid in respect of the Price. The Seller shall not be liable for any loss or damage whatever arising from such cancellation.
- 10.7 In the event that the Seller is obliged to issue court proceedings against the Buyer for the recovery of any sum due from the Buyer to the Seller, the Seller shall pay on an indemnity basis all legal costs court fees and administrative expenses incurred by the Seller in the pursuit of the court proceedings.
- 10.8 The courts of England and Wales shall have exclusive jurisdiction over any claim or matter arising under or in connection with this Agreement and any proceedings in respect of any such claim or matter shall be brought in such court.

NOTE: A VERSION OF THESE TERMS & CONDITIONS IS AVAILABLE IN A LARGER PRINT SIZE UPON REQUEST TO THE SELLER

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