



# General Sales Conditions

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## I. General

1. These General Sales Conditions shall apply to all sales of pumps and other equipment ("Goods") by the Seller, as well as any engineering, consulting, installation or supervision of installation and remote control and hotline services with regard to the Goods sold ("Services"). The general purchase conditions of the Buyer, changes or additions to these General Sales Conditions and other agreements with respect to the Goods and Services are specifically rejected and shall not bind the Seller unless they are confirmed in writing by the Seller in the contract documents pertaining to the sale (the "Contract").

2. The trade terms shall be construed according to the International Chamber of Commerce INCOTERMS ("ICC INCOTERMS") valid at the date of formation of the Contract.

## II. Product Information, Drawings, Description and Ownership

1. Any prices, data and technical information included in Seller's catalogues, estimates, advertising materials, price lists or technical brochures, as well as all documents pertaining to Seller's offer such as, but not limited to, drawings, descriptions, weights and measurements, are given for approximate guidance only. They shall only be binding on the parties if they are expressly provided for in the Contract. Seller reserves the right to change the price, shape, size or substance of devices, machinery, machinery parts or spare parts, drawings, lists and technical description which are contained in Seller's catalogues, estimates, advertising materials, price lists, technical brochures or any other documents relating to information about the Goods and Services.

2. Any drawings or technical documents related to the Goods or their fabrication submitted by the Seller to the Buyer before or after the formation of the Contract shall remain the exclusive property of the Seller. These drawings, technical documents or other technical information shall not be used by the Buyer without the prior written consent of the Seller, except for the installation, operation or maintenance of the Goods, nor shall they be copied, reproduced, transmitted or communicated to any third party by the Buyer. Any drawings or technical documents submitted by the Seller to the Buyer shall be returned by the Buyer to the Seller upon request.

3. The Seller shall retain the intellectual property rights and exclusive title to any engineering documents prepared by Seller in connection with the Contract, and such rights and title shall not be transferred by the Buyer to a third party without the Seller's written approval.

4. Unless expressly agreed in writing by the Seller, the Seller shall not be obligated to provide the Buyer with any environmental impact measurement or calculation in connection with the Contract.

## III. Effective Date - Scope of Supply

1. The Contract shall become effective on the occurrence of the following, as applicable (the "Effective Date"):

- a) after receipt of Buyer's order, on the date of issuance of the Order Confirmation by the Seller; or
- b) if the Seller has submitted a written offer with a time limit for acceptance, on Buyer's written acceptance of the offer within that time limit; or
- c) if a sale and purchase agreement is signed by the parties, on the date of the later party to sign such agreement.

2. The scope of supply of the Goods and Services shall be, in the case referred to in Section 1 a), as stated in the Order Confirmation of the Seller; in the case referred to in Section 1 b), as stated in the offer; and in the case of Section 1 c), as stated in such agreement.

## IV. Price and Payment – Termination for Convenience

1. Except as otherwise stated in the Contract, the price basis shall be FCA Seller's manufacturing facility, warehouse or premises ("Seller's Facility"). Any taxes (including value added taxes), customs and other duties, or other charges imposed by Seller's country or the country of destination are for the account of the Buyer.

2. Seller's prices remain firm for a period of three (3) calendar months after the delivery date set forth in the Contract. If delivery is delayed for reasons not attributable to Seller, Seller may adjust the price for increased cost caused by the delay, such as storage costs, exchange rates, etc.



## General Sales Conditions

3. The sales price shall be paid by the Buyer to the Seller without any deduction, in accordance with the payment terms as set forth in, as applicable:

- a) the Order Confirmation, if the Contract is made between the Buyer and the Seller by virtue of an order accepted by the Seller; or
- b) the Seller's offer, if such offer is accepted in writing by the Buyer, such acceptance being expressed within the time limit set forth in the offer; or
- c) the relevant clauses of the sale and purchase agreement between the Buyer and the Seller.

4. If payments are effected

- by an irrevocable letter of credit, such letter of credit must be opened by Buyer in favor of Seller through a first-class bank to be approved by Seller. This letter of credit shall be opened at the latest 30 days after signing the Contract and shall be payable at sight against the shipping documents and the invoices. The letter of credit shall be opened in the currency of the Contract, shall have a minimum validity of 3 months after expiry of the delivery time according to VI and shall be extended if necessary. The letter of credit shall be in accordance with the terms of payment as stated above. Moreover, the Uniform Customs and Practice for Documentary Credits, 2007 revision, ICC Publication N° 600, shall apply. All expenses connected with opening, amending, confirming (if any), negotiating and maintaining of the letter of credit shall be borne by Buyer, or

- by bank transfer or cash against documents, such payment terms must be covered by a first written demand bank guarantee of payment or a stand-by letter of credit issued by a first-class bank to be approved by Seller and notified through a first-class bank to be approved by Seller. This first written demand bank guarantee of payment or this stand-by letter of credit shall be issued at the latest 30 days after signing the Contract. The first written demand bank guarantee of payment or the stand-by letter of credit shall be issued in the currency of the Contract, shall be in accordance with the terms of payment as stated above and shall have a minimum validity of 3 months after the payment's maturity date and shall be extended if necessary. Moreover, the Uniform Rules for Demand Guarantees (URGD), 2010 revision, ICC Publication N° 758, shall apply for first written demand bank guarantee of payment and Uniform Customs and Practice for Stand-by Letter of Credits, 1998 ICC Publication N°

590 shall apply for Stand-by Letter of Credits. All expenses connected with issuing, amending, confirming (if any), negotiating and maintaining of the first written demand bank guarantee of payment or the stand-by letter of credit shall be borne by Buyer.

The Buyer shall not be entitled to withhold or set off payments due to the Seller in respect of counterclaims disputed by the Seller.

In case of payment by letter of credit, payment shall be made under CFR/CIF (for marine transportation) or CPT (for other mode of transportation) ICC INCOTERMS.

If the Buyer fails to pay by the due date, the Seller shall be entitled to interest from the day on which payment was due. The rate of interest shall be the lower of (i) one (1) percent per month or (ii) the highest rate allowed by law. The Seller may, after having notified the Buyer of the late payment in writing, suspend Seller's performance of the Contract until Seller receives payment. If the Buyer has failed to pay the amount due within three (3) months from the due date, the Seller shall be entitled to terminate the Contract by written notice to the Buyer and to claim compensation for the loss Seller has incurred. The compensation shall not exceed the total sales price of the Contract.

### V. Packing

Packing expenses shall be borne by the Buyer and no packaging material shall be returned to Seller unless provided otherwise in the Contract. Failing any specific instructions in the Contract in this respect, Seller shall package the Goods for shipment that in its judgment will prevent any reasonably expectable damage to the Goods. For ocean shipments, Seller shall apply packing standards MIL STD Method 50. Buyer must ensure that the Goods remain packed and thoroughly protected under roof until installation.

### VI. Acceptance Tests

1. Acceptance tests provided for in the Contract shall, unless otherwise agreed, be carried out at the place of manufacture during normal working hours. If the Contract does not specify the technical requirements, the tests shall be carried out in accordance with the general practice in Seller's industry in the country of manufacture.



## General Sales Conditions

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2. The Seller shall notify the Buyer of the date of the performance of the acceptance tests in due time to permit the Buyer to be represented at the tests. If the Buyer is not represented, the report of the result of the tests will be provided to the Buyer and shall be deemed correct.

3. If the acceptance tests show the Goods not to be in accordance with the specifications in the Contract, the Seller shall without delay remedy any deficiencies in order for the Goods to comply with the Contract specifications. New tests shall then be carried out if the Buyer so requests, except in the event the deficiency was not material.

### VII. Delivery Time

1. The estimated delivery date shall be set forth in the Contract. If the delivery time is stated as a time period, such as days, weeks or months, the delivery time period shall start at the date of receipt by Seller of -cumulatively- (a) the first down payment as per the payment terms set forth in the applicable document under Section IV.3, a), b), or c), and (b) the acceptable bank commitment, as per Section IV.4.

2. The agreed delivery date or time period is met if, by that date or within that period, the Goods have been delivered according to the agreed trade term or Seller has notified Buyer that the Goods are ready for shipment. Partial shipment of the Goods is permitted.

3. Should delay in delivery be caused by force majeure as per Section XIII, the delivery date or time period shall be reasonably adjusted.

4. If the Buyer fails to accept delivery of the Goods on the due date, and the Goods have passed the acceptance test, if any, Buyer shall nevertheless make such payments as are due on delivery as if the Goods had been delivered. The Seller shall arrange for the storage of the Goods at the risk and cost of the Buyer. If the Goods are stored at the Seller's Facility, the monthly fee for storage shall be the higher of (i) 0.5% of the Contract sales price or (ii) \$500. If the Goods are stored at Seller's Facility, Buyer may request Seller to arrange for insurance to cover the Goods during storage, at the cost of the Buyer.

5. To the extent that the Buyer serves the Seller with a written notice for cancellation of the Contract for its convenience, the Seller shall promptly cease all further works being related to the Contract.

As a consequence for such cancellation, the Seller shall be entitled to claim for cancellation costs, which shall include, but not be limited, to the following costs:

- i. Incurred costs for engineering, manpower, workmanship and raw materials up to the date of the cancellation notice;
- ii. Incurred costs for amending or terminating existing bank commitments related to the Contract;
- iii. Termination costs claimed by the Seller's contractors and suppliers;
- iv. Waste disposal costs, provided that the Goods (or parts thereof) cannot be re-used by the Seller;
- v. Reasonable overheads and profits.

The above cancellation costs shall be assessed by the Seller, acting reasonably.

Unless agreed otherwise by the Seller in writing, the Seller shall retain title to and risks of the Goods.

### VIII. Passing of Risk

1. The risk for the Goods shall pass to Buyer on delivery of the Goods to Buyer according to the ICC INCOTERMS. This shall apply also in the event of partial shipment or in the event that the Seller has to perform additional services, such as payment of freight or further shipment or installation.

2. If delivery or shipment to Buyer is delayed due to circumstances attributable to the Buyer, the risk shall pass to Buyer on the date on which the Goods are ready for delivery or shipment.

3. Buyer shall take delivery of the Goods, even if the Goods show minor deficiencies, without prejudice to its rights under the warranty provisions.

4. Any expenses related to transportation, insurance, customs, excise, maintenance or installation on site, shall be borne by the Buyer. Buyer shall inspect Goods on arrival, and exercise Buyer's rights of redress against the transporter, if the Goods were damaged during transportation. If the Goods are not inspected by Buyer at the time of delivery to Buyer's site, Seller has no responsibility in case of damage to the Goods occurring during transportation.

### IX. Passage of Title



## General Sales Conditions

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Without prejudice to Section VIII.1, title to the Goods shall remain with the Seller until the Goods are paid in full. If retention of title is not valid under the applicable law, the Seller reserves and may exercise any other right related to the Goods as permitted by the applicable law until payment is made in full. The Buyer shall at the request of the Seller assist Seller in taking any measures necessary to protect the Seller's title to the Goods or any such other rights as are permitted by law. The Buyer shall not grant any pledge, lien encumbrance or other right or transfer title in the Goods to any third party. In the event that the Goods are seized by any third party, or a lien is granted by court order to such third party, Buyer shall notify the Seller thereof immediately.

### X. Warranty

1. The Seller warrants to Buyer that the Goods delivered to Buyer conform to the specifications set forth in the Contract and that the Goods are free from defects in material, design and workmanship for one (1) year from the date the Goods are placed into service, or eighteen (18) months from the date of shipment of the Goods or, if applicable, of the passing of risk pursuant to Section VIII 2, whichever expires earlier ("Goods Warranty Period"), provided that the Buyer gives Seller written notice of the breach of warranty within the Goods Warranty Period.

2. Buyer's sole remedy and Seller's sole obligation for a breach of Seller's warranty with respect to the Goods, is for Seller to repair or replace, free of charge, the Goods or any part thereof that do not conform to Seller's warranty. The decision to either replace or repair the defective or non-conforming Goods shall be made by the Seller. At Seller's option, warranty repair work may be performed at Seller's Facility.

If the Goods or any part thereof has to be replaced, the replacement Goods or part shall be covered by Seller's warranty during the original Goods Warranty Period.

3. Seller shall pass on to Buyer any warranty from the manufacturers of Goods and parts not manufactured by Seller which are resold by Seller to Buyer. Buyer's sole remedy is to pursue the warranty of the manufacturers, and Seller shall have no warranty obligations with respect to such Goods and parts.

4. The Seller's warranty does not cover (i) normal wear and tear, (ii) the cost for dismantling and reassembling of equipment other than the Goods, or (iii) damage to the Goods caused by Buyer or a third party, such as: faulty or negligent installation, operation, maintenance or repair; damages caused by chemicals or electricity; material or design supplied by Buyer; or environmentally caused damages, such as improper location for the operation of the Goods.

5. During the Goods Warranty Period, the Buyer must not repair or have a third party repair the Goods or any part thereof. In the event of imminent danger affecting the operational safety of the Goods or related equipment at Buyer's site or to avoid damage to property at Buyer's site, Buyer may repair the Goods or any part thereof by a trained, competent employee of Buyer familiar with the operation of the Goods or a trained competent third party technician or repairman, but only after notifying Seller and consulting with Seller as to the proper means to repair the Goods or any part thereof.

6. Seller warrants to Buyer that the Services for Buyer as described in the Order Confirmation shall be performed in good workmanlike manner and shall be free from defects in workmanship for ninety (90) days from the date of performance ("Service Warranty Period"). Buyer's sole remedy, and Seller's sole obligation for a breach of this Service warranty is for Seller to re-perform the Services, free of charge, until the Services are properly performed, provided that the Buyer gives Seller written notice of the breach of warranty within the Service Warranty Period.

7. The remedies of Buyer for breach of warranty as set forth in this Section X are exclusive.

8. SELLER DOES NOT MAKE ANY OTHER EXPRESS WARRANTY REGARDING THE GOODS AND SERVICES. SELLER SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES FOR THE GOODS AND SERVICES, INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR ANY PARTICULAR PURPOSE.

### XI. Limitation of Liability and Damages

1. REGARDLESS OF THE LEGAL THEORY (FOR EXAMPLE, BREACH OF CONTRACT OR WARRANTY, NEGLIGENCE, STRICT LIABILITY, ETC.), IN NO EVENT SHALL



## General Sales Conditions

SELLER BE LIABLE FOR SPECIAL, LIQUIDATED, INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY, OR ANY CONSEQUENTIAL DAMAGES OR FOR ECONOMIC LOSS, INCLUDING ANY LOSS OF BUSINESS, PRODUCTION OR PROFITS.

2. Seller's total and aggregate liability arising under or in connection with the Contract shall under no circumstances exceed ten (10) percent of the Contract sales price.

### XII. Patent Indemnity

In the event a third party claims that the Goods or any part thereof, as delivered to Buyer, infringe any patent or other intellectual property right of the third party, Seller shall indemnify, defend and hold Buyer harmless with respect to any such third party claim or lawsuit, provided that:

- (a) the Buyer shall have given to the Seller prompt and timely notice of any such alleged claim or lawsuit;
- (b) the Buyer cooperates and provides reasonable support to the Seller in defending against such claim or lawsuit;
- (c) the Buyer does not admit the alleged infringement, settle or compromise any such claim or lawsuit without Seller's prior written consent;
- (d) the defense of the claim or lawsuit shall be under the control of the Seller;
- (e) the infringement is not caused by Buyer, including by any detailed specifications provided by Buyer;
- (f) the alleged infringement is not due to any modification or use of the Goods by Buyer.

The Seller may, at its option, choose to remedy the third party claim or lawsuit by:

- (i) securing Buyer the right to continue using the Goods;
- (ii) replacing the Goods with non-infringing Goods;
- (iii) modifying the Goods so that they become non-infringing; or
- (iv) if none of the above options (i) to (iii) (inclusive) can be reasonably implemented by the Seller, refunding to Buyer the amount paid for any infringing Goods, provided the Goods are returned to Seller.

### XIII. Force Majeure

1. Neither party shall be liable to the other party for its failure or delay in performing its obligations under the Contract to the extent that such performance is impeded or made unreasonably onerous by any circumstance

not under the party's control and occurring after formation of the Contract, or, if occurred prior to the formation of the Contract, to the extent its effect on the performance of the Contract could not be foreseen at the time of the formation of the Contract. Such force majeure events include, but are not limited to:

Industrial disputes and strikes, fire, storm, earthquake, flood, or other acts of God, accidents, shipwreck, war (whether declared or not), military mobilization, insurrection, acts of terrorism, kidnapping and other criminal assaults against a party's personnel, transport accidents, requisition, seizure, embargo, government action, restrictions in the use of power, equipment and machinery failures, casting rejects, serious diseases, epidemics and pandemics and performance failures or delays in deliveries by sub-suppliers or subcontractors or any force majeure event described above at a sub-supplier or subcontractor, or any other circumstance beyond the control of the party.

2. The party claiming to be affected by force majeure shall promptly notify the other party in writing of the force majeure event and the estimated expected delay.

3. Either party may terminate the Contract by notice in writing to the other party if performance of the Contract is suspended by a force majeure event for more than six (6) months.

### XIV. Confidentiality

1. The parties may disclose confidential and proprietary information to each other. Such information shall include, but is not limited to, technical, technology, financial, prices, marketing, sales, customers, business plans, strategic plans, and similar technical and business information ("Confidential Information"). Confidential Information may be disclosed in documents, orally or visually, or electronically.

2. In order for Confidential Information to be covered by this Section, any written information must be identified as such by the disclosing party by marking the document "Confidential". Any Confidential Information transmitted orally or visually must be identified as such and described in reasonable detail in writing and sent by the disclosing party to the receiving party within twenty (20) days of the date of oral or visual disclosure.



## General Sales Conditions

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3. The receiving party shall maintain in confidence any and all Confidential Information received from the disclosing party. The receiving party shall be permitted to disclose the Confidential Information only in connection with the performance under the Contract and only to those employees, agents and consultants who need to know and who are legally required to maintain such Confidential Information in confidence. The receiving party shall not otherwise use, copy, or disclose to third parties such Confidential Information.

4. The confidentiality and non-use provisions of this Section shall not apply to any Confidential Information if it:

(a) is now in or hereafter comes into the public domain without breach of this Section and through no fault of the receiving party, or

(b) is properly and lawfully known to the receiving party prior to disclosure hereunder as evidenced by its written records, or

(c) subsequent to disclosure hereunder, is lawfully received by the receiving party from a third party whose rights therein are without any restriction to disseminate the Confidential Information, or

(d) is developed by employees, agents, or consultants of the receiving party independently of and without reference to any Confidential Information of the disclosing party as shown by tangible evidence, or

(e) which the receiving party is lawfully required to disclose to a governmental or judicial body, provided that the receiving party shall promptly notify the disclosing party of such requirement, shall disclose only that portion of Confidential Information which, based upon the written opinion of legal counsel, is legally required to be disclosed, and shall use reasonable efforts to obtain reliable assurance that confidential treatment will be accorded such Confidential Information.

5. The receiving party's obligation to protect Confidential Information received hereunder shall survive for five (5) years from the effective date of the Contract.

6. All Confidential Information identified in accordance with the provisions of this Section shall remain the property of the disclosing party and shall be returned to the disclosing party upon written request. The disclosing party's failure to request such return or destruction, shall not relieve the receiving party of its confidentiality and non-use obligations.

### **XV. Assignment**

Neither party may assign the Contract or delegate its rights and obligations under the Contract without the prior written consent of the other party, except that a party may make such assignment or delegation to an "Affiliated Company" of that party. For the purpose of this Section, an "Affiliated Company" shall be defined as any company or legal entity that controls or is controlled by or under common control with the party in question. "Control" means either (i) the direct or indirect ownership of more than fifty (50) per cent of the voting rights in a company or other legal entity, or (ii) the right to appoint or remove a majority of the party's board of directors, supervisory board, or any other body in charge of supervising the management of the party.

### **XVI. Merger**

The Contract contains the entire understanding and agreement between Seller and Buyer with respect to the subject matter of the Contract. All prior understandings, agreements, correspondence and discussions of the parties are superseded and merged into the Contract.

### **XVII. Amendments**

No amendment, notification or alteration shall be effective unless made in writing and signed by duly authorized representatives of the parties.

### **XVIII. Severability**

Should any provision in these General Sales Conditions or in the Contract prove to be invalid, void, ineffective or inoperable by a court or arbitration panel, the other provisions shall remain in full force and effect. The Buyer and the Seller shall be obliged, however, to replace the respective provision by a valid and operative provision which meets as closely as possible the purpose of the original provision.

### **XIX. Applicable Law**

The Contract shall be governed by and construed in accordance with the laws of the state of New York, without giving effect to any rules of conflict of laws.

### **XX. Dispute Resolution**

All disputes arising from the Contract shall be resolved as follows:



## General Sales Conditions

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1. The senior management of both parties shall meet to attempt to resolve such dispute. The meeting shall take place within fifteen (15) days of receipt by a party of a written notification from the other party describing the dispute and requesting such a meeting.

2. If the dispute cannot be resolved by senior management within thirty (30) days after the meeting of senior management, either party may recommend in writing mediation before a single impartial mediator to be mutually agreed upon by the parties. The mediation shall proceed only if the other party agrees to such mediation within fifteen (15) days of receipt of the recommendation from the requesting party.

3. If the dispute is not resolved by senior management or by mediation, or if mediation is not mutually agreed upon, either party may initiate binding arbitration under the rules of the American Arbitration Association ("AAA") to be held in New York, New York. Each party shall appoint one arbitrator and the two selected arbitrators shall appoint the third arbitrator, who shall act as Chairman of the arbitration panel. If the two arbitrators fail to agree on the third arbitrator within thirty (30) days after their appointment, either party may petition the American Arbitration Association to appoint the third arbitrator. Any award rendered by the arbitration panel may be enforced in any court having jurisdiction, subject to Article XX.4.

4. Notwithstanding any language to the contrary in these Conditions, the Parties hereby agree that the award may be appealed pursuant to the AAA's Optional Appellate Arbitration Rules ("Appellate Rules"); that the award rendered by the arbitrators shall, at a minimum, be a reasoned award; and that the award shall not be considered final until after the time for filing the notice of appeal pursuant to the Appellate Rules has expired.

Appeals must be initiated within thirty (30) days of receipt of an award, as defined by Rule A-3 of the Appellate Rules, by filing a Notice of Appeal with any AAA office. Following the appeal process the decision rendered by the appeal tribunal may be entered in any court having jurisdiction thereof.

### XXI. Specific Performance

Notwithstanding the provisions of Section XX, the parties agree that any breach of the confidentiality provisions of Section XIV, above, may cause irreparable harm, and that monetary damages may not provide an adequate remedy. Accordingly, the non-

breaching party shall be entitled to seek injunctive relief to prevent irreparable harm in a court having subject matter jurisdiction.

### XXII. Compliance with applicable laws and regulations

1. Seller and Buyer hereby agree to abide by any and all national, federal, provincial and local laws, regulations, directives and other applicable obligations, including but not limited to the Foreign Corrupt Practices Act of 1977 as amended from time to time, as well as any other laws and regulations directly or indirectly related to fair trade practices, embargoes, antitrust, importation and exportation control and other sanctions issued by the United Nations, the European Union and/or any governmental agency of the United States (collectively, and including any future amendments, the "RULES").

2. The Buyer warrants that the performance of its obligations arising under the Contract is in compliance with any and all United States and any other nations' Export Control laws and regulations, as amended from time to time (such laws and regulations being included in the definition of the "RULES" as per Art. XXII.1).

3. The Buyer hereby agrees to indemnify, defend, and hold Seller harmless from any losses, damages, expenses, costs (including attorneys' fees) arising out of or in connection with any breach by Buyer of the RULES. If Buyer breaches any of the RULES, Seller reserves the right to terminate the Contract without further liability on the part of the Seller.