



US VACUUM PUMPS LLC

GENERAL TERMS OF SALE

1. **GENERAL.** This order together with any additional writings signed by Seller shall represent the final, complete and exclusive statement of the Agreement between the parties and may not be modified, supplemented, explained or waived by parol evidence, Buyer's purchase order, a course of dealing, Seller's performance of delivery, or in any other way except in writing signed by an authorized employee of the Seller. These terms are intended to cover all activity of Seller and Buyer hereunder, including sales and use of products, parts and work and all related matters (references to products include parts and references to work include construction, installation, and start-up). Any reference by Seller to Buyer's specification and similar requirements are only to describe the products and work covered hereby, and no warranties or other terms therein shall have any force or effect. Catalogs, circulars and similar pamphlets of the Seller are issued for general information purposes only and shall not be deemed to modify the provisions hereof. Prior courses of dealing, trade usage and verbal agreements not reduced to a writing signed by Seller, to the extent they modify, add or detract from the sales contract, shall not be binding on Seller.
2. **CONTRACT PERFORMANCE, INSPECTION AND ACCEPTANCE.**
 - A. Unless Seller specifically assumes installation, construction or start-up responsibility, all products shall be finally inspected and accepted within thirty (30) days after completion of the applicable work by Seller. All claims whatsoever by Buyer (including claims for shortages), excepting only those provided for under the WARRANTY AND LIMITATION OF LIABILITY and PATENTS Clause hereof, must be asserted in writing by Buyer within a thirty (30) day period or they are waived. If this contract involves partial performance, all such claims must be asserted within said thirty (30) day period for each partial performance. There shall be no revocation of acceptance. Rejection may be only for defects substantially impairing the value of products or work and Buyer's remedy for lesser defects shall be those provide for under the WARRANTY AND LIMITATION OF LIABILITY Clause.
 - B. Seller shall not be responsible for nonperformance or delays in performance occasioned by any causes beyond Seller's reasonable control, including, but not limited to labor difficulties, delays of vendors or carriers, fires, governmental actions and material shortages. Any so occasioned shall effect a corresponding extension of Seller's performance dates which are in any event, understood to be approximate. In no event shall Buyer be entitled to incidental or consequential damages for late performance or failure to perform.
3. **SELECTION AND INSTALLATION.** Buyer represents that the goods sold hereunder are fit for their actual or intended use and that Buyer placed no reliance on Seller's skill or judgments in selecting suitable goods. Installation of the goods shall be Buyer's responsibility. Buyer represents that the use and installation of the goods shall be made in compliance with all applicable government requirements.
4. **TITLE AND RISK OF LOSS.** Full risk of loss (including transportation delays and losses) shall pass to the Buyer upon delivery of products to the Ex-works point or if Seller consents to a delay in shipment beyond the contract date at the request of the Buyer upon notification by the Seller that the products are manufactured.
5. **PATENTS.** Seller agrees to assume the defense of any suit for infringement of any United States patents brought against Buyer to the extent such suit charged infringement of an apparatus or product claim by Seller's product in and of itself, provided (i) said products is built entirely to Seller's design, (ii) Buyer notifies Seller in writing of the filing of such suit within ten (10) working days after the service of the process thereof, and (iii) Seller's given complete control to the defense of such suit, including the right to defend, settle and make changes in the product for the purpose of avoiding infringement. Seller assumes no responsibility for charges of its infringement of any process or method claims, unless infringement of such claims is the result of following specific instructions furnished by Seller.
6. **PRICE AND TERMS OF PAYMENT.**
 - A. The price of the goods sold pursuant to the contract shall be based upon Seller's prices in effect at the time of shipment. Unless otherwise provided, price is F.O.B. Seller's point of shipment and terms of payment shall be NET 30 DAYS from date of invoice. If the contract is for more than one unit of goods, the goods may be shipped in a single lot or in several lots at the discretion of Seller, and each such shipment shall be paid for separately. Seller may require full or partial payment or payment guarantee in advance of shipment.

Unless other terms are specified, all payment shall be in US dollars and shall become due in 30 days after shipment. All shipments, unless otherwise specified, shall be Ex-works manufacturer's plant. If delivery is delayed by purchaser, date of readiness for delivery shall be billed separately for payment purposes. If manufacture is delayed by purchaser, a payment shall be due based on purchase price and percentage of completion. Balance payable in accordance with terms stated herein.

 - B. If Seller has not received full payment within thirty (30) days after such payment is due, then Buyer's outstanding balance will be subject to an interest and penalty charge. NO CREDIT CARD CHARGEBACKS: Buyer/Purchaser agrees to NOT, under any circumstances, initiate a credit card chargeback with respect to any charges.
7. **CANCELLATION.** The sales contract may be modified or terminated only upon Seller's written consent. If all or part of the sales contract is terminated, Buyer shall pay termination charges based upon expenses and costs incurred in the production of the goods to the date such termination is accepted by Seller plus a reasonable profit, except that any goods complete on or prior to Seller's acceptance of such termination shall be accepted and paid in full by Buyer, plus Seller's non-recoverable costs (including incidental and consequential damages) attributed to this order.
8. **TOOLING.** Charges for tools, patterns, dies and fixtures cover only a portion of their cost and therefore Seller shall retain title and right of possession. Special tools, dies, taps, marking dies, jigs, fixtures, gages, and their engineering and design, applicable to this quotation are considered an integral part of the manufacturing process and may be quoted and billed as a fitting up charge. Payment of the fitting up charge by the Buyer for these items does not convey ownership or right of removal from US Vacuum Pumps LLC facility.
9. **TAXES.** Any sales, use or other similar type taxes imposed on this sale or on this transaction are not included in the price. Such taxes shall be billed separately to the Buyer. Seller will accept a valid exemption certificate from the Buyer if applicable; however, if an exemption certificate previously accepted is not recognized by the governmental taxing authority involved and the Seller is required to pay the tax covered by such exemption certificate, Buyer agrees to promptly reimburse Seller for taxes paid.

10. **DELIVERY AND QUANTITIES.** Promises of delivery from stock are subject to prior sale. Delivery dates are not guaranteed but are estimated on the basis of immediate receipt by Seller of all information to be furnished by Buyer and the absence of delays, direct or indirect, resulting from or contributed by circumstances beyond Seller's reasonable control. Seller shall in good faith endeavor to meet estimated delivery dates. Seller may ship overages or underages to the extent of 10% of quantity ordered. Quantities of all items may be determined by weight.
11. **RETURNED GOODS.** Unused, unaltered standard catalog items only may be returned at Buyer's expense for credit upon Seller's prior written consent and upon the terms specified by Seller. A restocking and handling charge computed at the minimum rate of 25% of the total invoice price excluding taxes on such returned items will be assessed on any such return. Buyer assumes all risk of loss of such returned goods until actual receipt by Seller. ALL claims for errors, adjustments or damages of any kind must be made, in writing, within 7 days of receipt of goods.
12. **SECURITY INTEREST.** Buyer represents that the product is to be used for business, and shall remain personalty. Buyer grants Seller a security interest in the product to secure the payment of the purchase price. Buyer will not lease, transfer or encumber the product and will keep it free from any and all liens and security interest. Upon default, Seller shall have all the remedies available to it under the Uniform Commercial Code and other applicable laws of the state in which the product is located and shall be entitled to all legal costs, reasonable attorney's fees, and all other reasonable expenses and costs permitted by law which are incurred by Seller in enforcing its remedies. The security interest herein granted shall be in Buyer's interest in the product and shall be fully discharged upon receipt by Seller of the unpaid balance of the purchase price. Buyer agrees (a) to sign all financing statements and other instruments or documents that Seller may reasonably believe are necessary to protect this security interest (b) if movement of the product to another location is allowed under any other documents relating to this proposal to give Seller at least thirty (30) days advance written notice of any such change in location, (c) to inform Seller of any change in the law of jurisdiction in which the product is located whether such change is statutory or otherwise, which change could affect the continued status of the product as personalty and (d) to procure and maintain insurance on the product for its full purchase price, the policy to name the Seller as loss payee.
13. **CONFIDENTIALITY.** Technical data, layouts and pricing supplied by Seller in connection herewith are confidential pending Buyer's acceptance of this proposal.
14. **OSHA LAWS.** Seller has taken the Occupational Safety and Health Act of 1970 (OSHA) and like state and local laws into account in the design of its products with the objectives that when such equipment is placed in appropriate environment it will enable the operator or user to comply with the applicable OSHA and similar requirements; however, because compliance is significantly affected by many factors over which Seller has little control (such as installation, plant layout, building acoustics, materials processed, processing procedures and supervision and training of employees). Seller does not represent or warrant that equipment sold by it complies with OSHA or any like state or local law or regulation and the cost for modifications and responsibility for compliance are the Buyer's responsibility.
15. **WARRANTY AND LIMITATION OF LIABILITY.**
- A.** US Vacuum Pumps LLC (hereafter referred to as "Seller") warrants to Buyer that the goods at the time of shipment will be commercially free from defects in material and workmanship. This warranty does not cover equipment such as electric motors and other accessories furnished by third parties which are only warranted to the extent of any third party warranty to the company. This warranty shall be ineffective and shall not extend to goods subjected to misuse, neglect, accident or improper installation or maintenance, goods which have been altered or repaired by anyone other than Seller or its authorized representative, or if more than 1 Yr has elapsed from the date of the contract. Any model or sample provided to Buyer was used merely to illustrate the general type and quality of goods and not to warrant that goods shipped would be of that type or quality. No agent, employee or representative of Seller has any authority to bind Seller to any affirmation, representation or warranty concerning the goods sold hereunder, and any such affirmation, representation, or warranty has not formed a part of the basis of the bargain and shall be unenforceable. Seller's sole obligation under the foregoing warranty is limited to, at seller's option, replacing or repairing defective goods, or refunding the purchase price. Buyer's exclusive remedy for breach or warranty will be enforcement of such obligation of seller. The warranty contained herein is made only to and for the exclusive benefit of Buyer, and does not extend to any subsequent purchaser or user of the goods or of any product of which the goods may be a component part. THE ABOVE WARRANTY COMPRISES THE COMPANY'S SOLE AND ENTIRE WARRANTY OBLIGATION AND LIABILITY, IF ANY, IN CONNECTION WITH US VACUUM PUMPS LLC NAMED PRODUCTS. ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE EXPRESSLY EXCLUDED. All claims for defective products, parts, or work under this warranty must be made in writing immediately upon discovery and, in any event within (365) three hundred sixty five from date of shipment of the applicable item and all claims for defective work must be made in writing immediately upon discovery and in any event within (365) three hundred sixty five from date of completion thereof by Seller. Unless done with prior written consent of Seller, any repairs, alterations or disassembly of Seller's equipment shall void warranty. Installation and transportation costs are not included and defective items must be held for Seller's inspection and returned to Seller's Ex-works point upon request.
- B.** Any improper use, operation beyond capacity, substitution of parts not approved by manufacturer, or any alteration or repair by others in such manner as in Seller's judgment affects the product materially and adversely shall void this warranty.
- C.** The foregoing is Seller's only obligation and Buyer's only remedy for breach of warranty, and except for gross negligence, willful misconduct and remedies permitted under the General Terms of Sale in the sections on CONTRACT PERFORMANCE, INSPECTION AND ACCEPTANCE and the PATENT Clause hereof, the foregoing is BUYER'S ONLY REMEDY HEREUNDER BY WAY OF BREACH OF CONTRACT, TORT OR OTHERWISE, WITHOUT REGARD TO WHETHER ANY DEFECT WAS DISCOVERED OR LATENT AT THE TIME OF DELIVERY OF THE PRODUCT OR WORK. In no event shall Buyer be entitled to incidental or consequential damages. Any action for breach of this agreement must commence within one (1) year after the cause of action has occurred. 9. Limitation of Liability and Indemnification
- D** Purchaser assumes all risk and liability for loss, damage or injury to persons or to property of Purchaser or others arising out of (a) the transport, storage or use of Products or Software, including infringement of any third-party intellectual property rights resulting from Purchaser's specific use of Products or Software and (b) any provision or use of Services. If Seller's performance of its obligations is prevented or delayed by any act or omission of Purchaser, its agents or subcontractors, Seller shall not be deemed in breach of its obligations or otherwise liable for any costs, charges, or losses sustained or incurred by Purchaser or others, in each case, to the extent arising directly or indirectly from such prevention or delay.
- E** Purchaser shall indemnify and hold Seller, its affiliates, and their respective agents, employees, and representatives, harmless from and against all claims, damages, losses, costs and expenses (including attorney's fees) (a) arising from or in connection with the transport, storage, sale or use of Products, (b) resulting from Purchaser's breach of the Agreement, and/or (c) arising from the negligence, recklessness or misconduct of Purchaser, its affiliates, or their respective agents, employees, partners or subcontractors.

F Except as otherwise expressly provided herein, Seller shall not indemnify nor be liable to Purchaser or any person or entity for any claim, damage or loss arising out of the Products, including the sale, transport, storage, failure, use or distribution thereof, the provision of Services, or the license of Software regardless of the theory of liability, including but not limited to warranty, negligence or strict liability. In addition, Seller shall not be liable for incidental, consequential, indirect, exemplary or special damages of any kind, including, without limitation, liability for loss of use, loss of work in progress, loss of revenue or profits, cost of substitute equipment, facilities or services, downtime costs, or any liability of Purchaser to a third party. The total liability of Seller hereunder shall not exceed the purchase price of Products or Services, or the license fee of Software involved. Without limiting the provisions regarding and limiting warranty claims hereunder, all claims must be brought within one (1) year of delivery of Products or Software or performance of Services, regardless of their nature.

16. **GOVERNING LAW AND LIMITATION.** The formation and performance of the sales contract shall be governed by the Uniform Commercial Code as adopted in the State of Texas. Whenever a term defined by said Uniform Commercial Code is used in these standard provisions, the definition contained in said Uniform Commercial Code is to control. Any action for breach of the sales contract or any covenant or warranty must be commenced within one year after the cause of action has accrued.
17. **Venue.** Waiver of jury trial- The parties agree that jurisdiction and venue for any litigation shall be exclusively in courts located in the state of Texas, county of Van Zandt and any trial (if trial occurs) shall be without jury, notwithstanding any constitutional or statutory rights or provisions

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