



## BEST Pump and Flow Terms and Conditions

1. **ACCEPTANCE AND COMPLETE AGREEMENT.** This Purchase Order ("PO") is Buyer's offer to Seller to purchase the goods and/or services ("Goods") identified herein, subject to these Terms and Conditions. Acceptance of this offer by Seller shall be made upon (a) Seller acknowledging acceptance of the PO, or (b) Seller delivering any of the Goods ordered herein. Any additional or different terms proposed by Seller are rejected, unless expressly contained in the PO. This PO is the complete and exclusive statement of the terms and conditions of the agreement between Seller and Buyer and shall govern and control over all prior discussion and agreements.

2. **PACKING AND SHIPPING.** All Goods shall be packed, rated and braced to prevent damage or deterioration. All Hazardous shipments must have a Hazardous Material Manufacturer's Safety Data Sheet (SDS) at or before delivery and all containers shall have OSHA approved labels. No charges will be paid by Buyer of preparation, packing, crating or cartage unless separately stated and itemized in the PO. All shipments to be forwarded on one day via one route shall be consolidated and shipped to protect the lowest transportation charge. Seller must follow instructions per Buyer's ASN Procedure. All excess costs not stated in the PO shall be borne by Seller. Delivery of Goods shall be D.D.P. (Incoterms 2010) at the destination and on the date(s) specified in the PO. Time is of the essence.

3. **CANCELLATION.** Buyer reserves the right to cancel the PO for cause, in whole or part, without liability, if; (a) delivery is not made when and as specified; (b) Seller fails to meet contract commitments as to exact time, price, quality or quantity; (c) Seller ceases to conduct its operation in the normal course of business; (d) Seller is unable to meet its obligations as they mature; (e) proceedings are instituted against Seller under the bankruptcy laws or any other laws relating to the relief of creditors or insolvency of Seller; (f) a receiver or trustee is appointed or applied for by Seller; or (g) any assignment is made by Seller for the benefit of creditors. Buyer reserves the right to cancel the PO at any time without cause, in whole or part. In the event the PO is cancelled by Buyer without cause after Seller has begun fulfillment, Buyer's liability to Seller shall not exceed 15% of the applicable PO.

4. **INVOICE AND PAYMENT.** A separate invoice shall be issued for each shipment. Unless otherwise specified on the PO, no invoice shall be issued prior to shipment of the Goods and no payment shall be due prior to receipt and a two-week inspection period of both the Goods and a correct invoice. Applicable discount periods shall be computed from the date of receipt of the Goods and a correct invoice to the date Buyer's check is mailed. Unless freight and other charges are itemized, discount shall be taken on the full amount of invoice. "NET 60" means that sixty (60) days after the inspection period, if applicable, Buyer will route the invoice for payment of undisputed amounts. If Buyer disputes any item(s) in an invoice, Buyer shall notify Seller of the item(s) in dispute and may withhold payment for such item(s), until settlement of the dispute. Seller shall maintain all records related to the Goods for three (3) years after delivery. Upon ten (10) days prior notice Buyer shall have the right to audit and review all records of Seller, its suppliers, vendors, laborers or other subcontractors for discrepancy with payment to Seller or the terms of the PO. Discrepancies, if any, including overpayment of amounts to Seller, shall be corrected within thirty (30) days after the audit.

5. **WARRANTIES.** Seller warrants that: a. Price. The prices for the Goods sold to Buyer under this PO are not less favorable than those currently extended to any other customer for the same or like Goods in comparable or less quantities. b. Quality. All goods delivered under this PO will conform to the requirements of this PO (including all applicable descriptions, specifications, and drawings), will be new (unless otherwise specified), free from defects in material and workmanship and will, to the extent not



manufactured pursuant to detailed designs furnished by Buyer, be free from defects in design, manufactured in a good workmanlike manner, free from liens, merchantable, and fit for the intended purposes. Seller further warrant its warranties and warranties provided to Seller for the Goods shall be assigned to Buyer and shall be enforceable by Buyer's customers as the end users of the Goods, as well as by Buyer; c. Compliance with Laws. In the performance of this PO, Seller will comply with all applicable Federal, State, and local laws, ordinances, lawful orders, rules and regulations.

6. INDEMNITY AND INSURANCE. A. Patent Indemnity. Seller, at its expense, shall protect, defend, indemnify and hold harmless Buyer, Buyer's customers, and the users of Buyer's goods against all claims, losses, liability and cost of proceedings, including attorneys' fees, alleging infringement of any patent or other intellectual or property right of the Goods. Seller's indemnity obligation shall not apply to Goods manufactured pursuant to detailed designs furnished by Buyer nor to goods not provided by Seller to Buyer. B. General Indemnity. Seller, at its expense, shall indemnify, protect, defend and hold Buyer harmless from any and all liability, demands, causes of action or claims, including attorneys' fees, for injury, illness or death to any person, or damage to property, real or personal, arising out of or related to the Goods or the operations of Seller, or that of its subcontractor, contractors or agents in performing carrying out its obligations in the PO. C. Insurance. Seller, at its cost and expense, to the extent such insurance applies to Seller's obligations and conduct, shall obtain and maintain, and/or require its subcontractors, contractors and agents to obtain and maintain insurance: (i), General liability insurance (\$1M occurrence / \$2M aggregate) with endorsements for products/completed operations coverage, (ii) Automobile liability insurance (\$1M occurrence / \$2M aggregate) with coverage or endorsements for owned, leased and non-owned vehicles, MCS 90 and CA 9948, (iii) Workmen's Compensation and employer's liability insurance (with at least statutory limits, and (iv) Excess liability insurance (\$3M) to follow form. Seller shall provide certificates of insurance to Buyer evidencing the insurance coverage applicable to Seller and require it subcontractors, contractors and agents to provide certificates of insurance to Buyer for insurance applicable to them. Buyer shall be named as an additional insured on a primary and non-contributory basis on all policies (excluding workers' compensation), with insurers waiving subrogation against Buyer and providing no less than thirty (30) days' notice for cancellation or modification of any policy.

7. INSPECTION AND REJECTION. Goods are subject to inspection after delivery at destination notwithstanding payment or prior inspection. Seller shall provide a First Article Inspection Report, confirming that the Goods conform to all contract requirements and Material Test Reports (MTR's) to demonstrate compliance to the applicable Best Engineering Standards (BES) and/or drawings, to Buyer at the time of shipment, unless otherwise specified by Buyer. Buyer may reject non-conforming Goods at any time and at Buyer's election, Seller's, at its sole risk and expense, shall remove such Goods and, if requested by Buyer, replace or correct the non-conforming Goods at no cost to Buyer.

8. CHANGES AND DISCREPANCIES. Seller agrees that any questions, discrepancies, omissions or lack of clarity in drawings, specifications, or the PO, shall be referred back to the Buyer for written interpretation and instruction before the PO is processed. Buyer shall have the right at any time before completion of the PO, to make changes in quantities, drawings and specifications, delivery schedules, and the methods of shipment and packaging. If such changes cause an increase or decrease in price or in the time required for performance, Seller shall promptly notify Buyer thereof in writing and equitable adjustment shall be made.

9. FORCE MAJEURE. Seller shall not be liable for any delay or failure to deliver any or all of the Goods covered by this PO in the event of delay or failure caused by governmental regulations, labor disputes outside Seller's control, strikes, war, riots, insurrection, civil commotion, explosion, fire, flood, accident,



storm or any act of God, embargoes, or other causes beyond Seller's reasonable control. Similarly, Buyer shall not be liable for failure to take delivery of the Goods for any of the above causes, or other causes beyond Buyer's reasonable control if they render it commercially impracticable for Buyer to receive or use the Goods on a timely basis. Where only a part of Seller's capacity to perform is excused under this paragraph, Seller must allocate production and deliveries among itself and its various customers then under contract for similar Goods during the period. The allocation must be made in a fair and equitable manner. Where either Seller or Buyer claims an excuse of nonperformance under this paragraph, it must immediately give notice in writing to the other party. Seller shall not be obligated to sell or Buyer obligated to purchase at a later date that portion of the Goods that Seller is unable to deliver or Buyer is unable to receive or use because of any of the aforementioned causes. No Goods are to be tendered by Seller after expiration of the terms specified in this PO without consent of Buyer.

10. ASSIGNMENTS. No assignment of any rights, including rights to money due or to become due hereunder, or delegation of any duties under the PO shall be binding upon Buyer until its written consent has been obtained.

11. INSTALLATION AND RELATIONSHIP. If the PO requires Seller to furnish services of its employees, alone or in connection with the Goods, on Buyer's premises, Seller agrees, whether or not a separate charge is made therefore, that such employees of Seller are not and shall not be deemed to be the agent or employee, whether direct, leased or borrowed, of Buyer. Seller assumes full responsibility for its employees acts and omissions and any amounts related to the employment of such employees and agrees to indemnify, defend, protect and hold Buyer harmless from any claims, losses or damages related to its employees, including liability for any benefits, payroll or other taxes imposed upon an employer by Federal, State or local laws.

12. GOVERNING LAW. This PO shall be governed and construed by Texas law, excluding conflicts of law rules. Tarrant County, Texas shall be the exclusive venue for the resolution of any claims or disputes relating to the PO or Goods. Each party consents to personal jurisdiction in Tarrant County, waives any and all rights to a trial by jury in any legal proceeding and further waives any objection to venue, including forum non-conveniens.

13. CONFIDENTIALITY. Any of Buyer's or its customer's data or information regardless of how and in what form it is embodied ("Information") is confidential and Buyer's sole and exclusive property, provided to Seller for the sole purpose of Seller's performance hereunder. Seller expressly agrees that Information will not be disclosed or used by others for any purpose, other than fulfilling the PO. All Information shall be returned to Buyer promptly upon request, without any copies being retained. Seller shall not use Buyer's or its customer's name, brand, or trademarks in any advertising or in a promotional manner without the prior written consent of Buyer.