

TERMS OF CONDITIONS OF SALE

Not intended for sale or use for personal, family, or household purposes.

All orders shall be made out to Aurora Pump at North Aurora, Illinois and shall be subject to acceptance by us at North Aurora.

CONSTRUCTION AND LEGAL EFFECT. Our sale to you will be solely upon the terms and conditions set forth herein. They supersede and reject any conflicting terms and conditions of yours, any statement in yours to the contrary notwithstanding. Exceptions to any of our terms and conditions must be contained in a written or typed (not printed) statement received from you; we shall not be deemed to have waived any of our terms and conditions or to have assented to any modification or alteration of such terms and conditions unless such waiver or assent is in writing and signed by an authorized officer. No representation of any kind has been made by us except as set forth herein; this agreement conclusively supersedes all prior writings and negotiations with respect thereto and we will furnish only the quantities and items specifically listed on the face hereof; we assume no responsibility for furnishing other equipment or material shown in any plans and/or specifications for a project to which the goods ordered herein pertain. Any action for breach of contract must be commenced within one year after the cause of action has accrued. Our published or quoted prices, discounts, terms and conditions are subject to change without notice.

PRICES. Unless otherwise noted on the face hereof, prices are net F.O.B. our producing factory, and include standard catalogue literature only. Service time of a factory-trained service man is not included and may be charged extra. The amount of any applicable present or future tax or other government charge upon the production, sale, shipment or use of goods ordered or sold will be added to billing unless you provide us with an appropriate exemption certificate. We may adjust prices to our prices in effect at time of shipment. Purchased equipment such as motors, controls, gasoline engines, etc., will be invoiced at prices in effect at time of shipment in accordance with pricing policy of manufacturer.

DEFECTIVE EQUIPMENT. Providing Purchaser notifies us promptly, if within one year from date of shipment equipment or parts manufactured by us fail to function properly under normal, proper and rated use and service because of defects in materials or workmanship demonstrated to our satisfaction to have existed at the time of delivery, the Company reserving the right to either inspect them in your hands or request their return to us will at our option repair or replace at our expense F.O.B. our producing factory, or give you proper credit for such equipment or parts determined by us to be defective, if returned transportation prepaid by Purchaser. The foregoing shall not apply to equipment that shall have been altered or repaired after shipment to you by anyone except our authorized employees, and the Company will not be liable in any event for alterations or repair except those made with its written consent. Purchaser shall be solely responsible for determining suitability for use and the Company shall in no event be liable in this respect. The equipment or parts manufactured by others but furnished by us, will be repaired or replaced only to the extent of the original manufacturer's guarantee. Our obligations and liabilities hereunder shall not be enforceable until such equipment has been fully paid for. Purchaser agrees that if the products sold hereunder are resold by purchase, he will include in the contract for resale, provisions which limit recoveries against us in accordance with this section. In case of our failure to fulfill any performance representation, it is agreed that we may at our option remove and reclaim the equipment covered by this agreement at our own expense and discharge all liability by repayment to the purchaser of all sums received on account of the purchase price. (The foregoing obligations are in lieu of all other obligations and liabilities including negligence and all warranties, of merchantability or otherwise, express or implied by fact or by law, and state our entire and exclusive liability design, suitability for use, installation or operation.) We will in no event be liable for any direct, indirect, special or consequential damages or delay resulting from any defect whatsoever, and our liability under no circumstances will exceed the contract price for the goods for which liability is claimed.

DELIVERY. Delivery, shipment and installation dates are estimated dates only, and unless otherwise specified, are figured from date of receipt of complete technical data and approved drawings as such may be necessary. In estimating such dates, no allowance has been made, nor shall we be liable directly or indirectly for, delays of carriers or delays from labor difficulties, shortages, strikes or stoppages of any sort, fires, accidents, failure or delay in obtaining materials or manufacturing facilities acts of government affecting us directly or indirectly, bad weather, or any causes beyond our control or causes designated Acts of God or force majeure by any court of law, and the estimated delivery date shall be extended accordingly. We will not be liable for any damages or penalties whatsoever, whether direct, indirect, special or consequential, resulting from our failure to perform or delay in performing unless otherwise agreed in writing by an authorized officer.

OPERATING CONDITIONS AND ACCEPTANCE. Recommendations and quotations are made upon the basis of operating conditions specified by the Purchaser. If actual conditions are different than those specified and performance of the equipment is adversely affected thereby, Purchaser will be responsible for the cost of all changes in the equipment required to accommodate such conditions, and we reserve the right to cancel this order and Purchaser shall reimburse us for all costs and expenses incurred in, and reasonable profit for, performance hereunder. We reserve the right to refuse any order based upon a quotation containing an error. The provisions in any specification or chart are descriptive only and are not warranties or representations; we will certify to a rated capacity in any particular product upon request. Capacity, head and efficiency certifications are based on shop tests and when handling clear, fresh water at a temperature of not over 85°F. Certifications are at this specified rating only and do not cover sustained performance over any period of time nor under conditions varying from these.

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SHIPPING. Unless you specify otherwise in writing, (a) goods will be boxed or crated as we may deem proper for protection against normal handling, and extra charge will be made for preservation, waterproofing, export boxing and similar added protection of goods; (b) routing and manner of shipment will be at our discretion, and may be insured at your expense, value to be stated at order price. On all shipments F.O.B. our producing factory, delivery of goods to the initial carrier will constitute delivery to you and all goods will be shipped at your risk. A claim for loss or damage in transit must be entered with the carrier and prosecuted by you. Acceptance of material from a common carrier constitutes a waiver of any claims against us for delay or damage or loss.

PATENT INFRINGEMENT. We will not be liable for any claim of infringement unless due to infringement by goods manufactured by us in the form in which we supply such goods to you and without regard to their use by you. If you notify us promptly of any such claim of infringement and, if we so request, authorize us to defend or settle any suit or controversy involving such claim, we will indemnify you against the reasonable expenses of any such suit and will satisfy any judgement or settlement in which we acquiesce, but only to an amount not exceeding the price paid to us for the allegedly infringing goods. If an injunction is issued against the further use of allegedly infringing goods we shall have the option of procuring for you the right to use the goods, or replacing them with non-infringing goods, or modifying them so that they become non-infringing, or of removing them and refunding the purchase price. The foregoing expresses our entire and exclusive warranty and liability as to patents, and we will not be liable for any damages whatsoever, suffered by reason of any infringement claimed, except as provided herein. You will hold us harmless and indemnified against any and all claims, demands, liabilities, damages, costs and expenses resulting from or connected with any claim of patent infringement arising out of the manufacture by us of goods in accordance with a design or specifications which you furnish us.

CANCELLATION AND RETURNED EQUIPMENT. Orders may be cancelled only with our written consent and upon payment of reasonable and proper cancellation charges. Goods may be returned only when specifically authorized and you will be charged for placing returned goods in saleable condition, any sales expenses then incurred by us, plus a restocking charge and any outgoing and incoming transportation costs which we pay.

CREDIT AND PAYMENT. Payment for products shall be 30 days net. Pro-rata payments shall become due with partial shipments. A late charge of 1 1/2 percent per month or the maximum permitted by law, whichever is less, will be imposed on all past due invoices. We reserve the right at any time to alter, suspend, credit or to change credit terms provided herein, when in its sole opinion your financial condition so warrants. In such a case, in addition to any other remedies herein or by law provided, cash payment or satisfactory security from you may be required by us before shipment; or, the due date of payment by you under this contract may be accelerated by us. Failure to pay invoices at maturity date at our election makes all subsequent invoices immediately due and payable irrespective of terms, and we may withhold all subsequent deliveries until the full account is settled, and we may terminate this agreement. Acceptance by us of less than full payment shall not be a waiver of any of our rights. You represent by sending each purchase order to us that you are not insolvent as that term is defined in applicable state or federal statutes. In the event you become insolvent before delivery of any products purchased hereunder, you will notify us in writing. A failure to notify us of insolvency at the time of delivery shall be construed as a reaffirmation of your solvency at that time. Irrespective of whether the products purchased hereunder are delivered directly to you, or to a customer of yours, and irrespective of the size of the shipment, we shall have the right to stop delivery of the goods by a bailee if you become insolvent, repudiate, or fail to make a payment due before delivery, or if for any other reason we have a right to withhold or reclaim goods under the applicable state and federal statutes. Where you are responsible for any delay in shipment the date of completion of goods may be treated by us as the date of shipment for purposes of payment. Completed goods shall be held at your cost and risk and we shall have the right to bill you for reasonable storage and insurance expenses.

SPECIAL JIGS, FIXTURES AND PATTERNS. Any jigs, fixtures, patterns and like items which may be included in an order will remain our property without credit to you. We will assume the maintenance and replacement expenses of such items, but shall have the right to discard and scrap them after they have been inactive for one year without credit to you.

INSPECTION. Inspection of goods in our plant by you or your representative will be permitted insofar as this does not unduly interfere with our production workflow, provided that complete details of the inspection you desire are submitted to us in writing in advance.

RECORDS, AUDITS AND PROPRIETARY DATA. Unless otherwise specifically agreed in writing signed by an authorized officer, neither you nor any representative of yours, nor any other person, shall have any right to examine or audit our cost accounts, books or records of any kind or on any matter, or be entitled to, or have control over, any engineering or production prints, drawings or technical data which we, in our sole discretion, may consider in whole or in part proprietary to ourselves.