

## STANDARD TERMS AND CONDITIONS OF SALES

1. **ACCEPTANCE.** Purchaser's order will be filled only after credit approval and acceptance of the order at Seller's administrative offices in Collierville, Tennessee. Any acceptance of the order is subject to the terms and conditions set forth herein, which supersede any inconsistent or additional terms and conditions contained in Purchaser's order. There are no agreements or representations, oral or otherwise, outside of this document. Submittal of technical information does not constitute acceptance of Purchaser's Terms and Conditions. Once Seller accepts an order, Purchaser shall not be permitted to change the order by Purchaser unless Seller agreed to in writing by Seller.

2. **DEFINITIONS.** (a) As used herein, "Service" refers to all labor, equipment, materials, accessories and/or parts which Seller proposes to provide for repair and/or service. (b) As used herein, "Equipment" refers to all equipment, materials, accessories and/or parts which Seller proposes to manufacture hereunder. (c) As used herein, "Seller" refers to American-Marsh Pumps, a Division of Wilo USA, LLC in Collierville, Tennessee and does not include any of its distributors or other representatives. (d) "Purchaser" refers to the entity to whom Seller either provides "Service" or "Equipment" and is identified on page 5 of 5 of these Standard Terms and Conditions of Sales. (e) "International Agreement" refers to international sales of Equipment by American-Marsh Pumps to a Purchaser outside of the United States or a Purchaser organized or with a principal place of business or substantial assets outside of the United States.

3. **SHIPPING DATE.** Though Seller recognizes the desirability of delivering Equipment and Service promptly, the dates specified in Seller's quotation, in Purchaser's Order or in any other document relating to the shipping of Equipment or for Service are approximate only. Seller shall not be liable for any damages whatsoever due to delays in obtaining parts or services from third parties necessary to complete the manufacture of the Equipment. Seller will ship Equipment as soon as manufacturing is completed and Equipment meets design and performance specifications. Shipment date is not subject to Purchaser's prior approval of performance testing where testing has demonstrated that the Equipment meets performance specifications. Purchaser acknowledges that Seller cannot begin the manufacturing process until after Purchaser approves Seller's submittals and drawings and Purchaser issues a release to manufacture. Purchaser acknowledges that Seller's estimated lead time does not begin until Seller receives a release to manufacture and may be altered based upon any delay by Purchaser in issuing a release to manufacture. SELLER SHALL NOT BE RESPONSIBLE FOR ANY LOSS OR DAMAGE OF ANY KIND, INCLUDING BUT NOT LIMITED TO LIQUIDATED DAMAGES, CONSEQUENTIAL DAMAGES AND INCIDENTAL DAMAGES, RESULTING FROM ANY DELAY IN DELIVERY OR FAILURE TO DELIVER THE EQUIPMENT OR SERVICE, INCLUDING BUT NOT LIMITED TO ANY DELAY IN DELIVERY OR FAILURE TO DELIVER THE EQUIPMENT OR SERVICE WHERE SUCH DELAY OR FAILURE IS CAUSED BY FIRE, DELAYS OF SUBCONTRACTORS, CASTING FAILURES, FLOOD, NATURAL CAUSES, LABOR TROUBLES (INCLUDING STRIKES, SLOWDOWNS AND LOCKOUTS), WAR, GOVERNMENT REGULATIONS, INSURRECTIONS OR RIOTS, EMBARGOES, CARGO OR SHIP SHORTAGES, CIVIL DISORDERS, INTERRUPTION OF OR DELAY IN TRANSPORTATION, POWER FAILURE, ACCIDENTS, ACTS OF GOD, ACTIONS TAKEN BY SELLER GIVING PRIORITY TO ORDERS PLACED BY THE UNITED STATES GOVERNMENT OR ANY DEPARTMENT THEREOF, INABILITY TO OBTAIN LABOR, MATERIALS, SUPPLIES, PARTS, EQUIPMENT OR MANUFACTURING FACILITIES OR ANY OTHER CAUSE BEYOND SELLER'S CONTROL.

4. **SHIPMENTS.** Prices are F.O.B. Shipping Point, unless otherwise agreed. When price includes transportation and other changes pertaining to the shipment of the goods, any increase in transportation rates and other charges will be billed to Purchaser. The origin point of shipment, method of transportation, and routing are at the Seller's discretion. If Purchaser specifies "freight collect," it is clearly understood that there will be no freight allowance. Purchaser may request shipment via a transportation mode other than truck. In such case, all additional expenses incurred will be billed to the Purchaser. If shipment is accepted by Purchaser at one destination and re-forwarded by Purchaser, the re-forwarding is at the Purchaser's expense and risk.

5. **PRICES.** Unless otherwise specified by Seller, written quotations are valid for 30 days. If Purchaser fails to furnish Seller with all necessary drawings duly approved by the Purchaser within 30 days after submission of drawings to Purchaser by Seller, Seller's prices are subject to change at Seller's sole discretion. Clerical errors in quotations are subject to correction. Where shipment is requested by Purchaser beyond the normal shipment schedule, or in the event that shipment is deferred at the request of the Purchaser by failure of Purchaser to fulfill its obligations to facilitate shipment as agreed or by any other act or failure to act on the part of the Purchaser resulting in a delay of timely shipment without fault on the part of Seller, including but not limited to providing necessary shipment information to Seller or failure to schedule a carrier in a timely manner if so required or by reason of Government action, Purchaser agrees to pay a delayed delivery storage fee at the rate of three percent (3%) of the Equipment price per month beyond the normal shipping date. Equipment will be packed, boxed or crated in accordance with the Company's standard commercial practice. Eight and one-half percent (8.5%) of the net price will be added to the price for packing of Equipment to be exported.

In addition to Seller's quotation for any Service, Purchaser shall pay Seller's (1) transportation expenses from Seller's facility and return thereto, (2) meals and room and board from the time Seller leaves its facility until Seller returns, (3) transportation costs for any required special tools or equipment, plus costs for any of these items not returned to Seller upon completion of the Service. Purchaser shall be responsible for procuring all necessary workmen and proper labor supervision. Purchaser shall be responsible for providing all tools and equipment required for installation or service work. Seller shall not be responsible for material or acts of workers furnished by Purchaser. Seller shall not be responsible for the rate of progress or the date of completion of the work nor for incorrect operation or damage incurred due to improper storage or handling.

6. **TAXES.** Prices specified herein do not include any export fees, duties, federal, state or municipal sales taxes, use taxes, excise taxes or other taxes. Therefore, in addition to the prices specified herein, the amount of any such sales, use, excise or other taxes applicable to the sale of the Equipment shall be paid by Purchaser, or in lieu thereof, Purchaser shall furnish Seller with tax-exemption certificates acceptable to said taxing authorities. Taxes payable outside the United States are the responsibility of the Purchaser.

7. **PAYMENTS.** Unless provided otherwise herein, payment for Equipment is due upon shipment or when Seller notifies Purchaser that Equipment is packed for shipment, whichever occurs first. Payment for Service is due upon completion unless otherwise specified herein. Progress Payments shall become due and payable as partial shipments are made hereunder. In the event delay in making any partial shipment is caused by Purchaser, payment for such shipment shall be due on the date Seller notifies Purchaser that Seller is prepared to make shipment. If Purchaser's financial condition does not justify continuance of production or shipment on the terms of payment specified herein, Purchaser will, upon request by Seller, furnish further assurance of ability to make payments. Seller may also refuse to make shipment except upon payment of cash fully or partially in advance. If Seller has already shipped the Equipment, but the Equipment has not been delivered and accepted by Purchaser at the shipment's destination (regardless of F.O.B. point), Seller may recall the shipment.

Any order totaling \$300,000.00 and above (before taxes) must include the Standard Progress Payment Plan in the payment terms. "Standard Progress Payment Plan" is defined as a payment plan that includes the following terms:

- (a) Twenty percent (20%) of the Sales Price is payable upon Seller's acceptance of Purchaser's order;
- (b) Twenty percent (20%) of the Sales Price is payable upon Seller's submittals of drawings;
- (c) Twenty percent (20%) of the Sales Price is payable upon before the release for production or when drawings are approved,

whichever occurs first.

- (d) Twenty percent (20%) of the Sales Price is payable upon Seller's notification to Buyer that the Equipment is ready for shipment; and
- (e) Twenty percent (20%) of the Sales Price is payable no later than thirty (30) days after the Equipment is shipped or thirty (30) days after notification that Seller is ready to ship, whichever occurs first.

Progress payments are payable upon receipt of invoice. In the event that a progress payment is not paid when due, Seller, at its sole discretion, may do any and all of the following: (a) Delay manufacturing and/or partial shipments until Buyer's progress payments are brought current, (b) Revise payment terms, (c) Adjust delivery dates and schedule without penalty, breach, damages, or any liability therefore.

Any order totally less than \$300,000.00, Seller may allow the following Progress Payments, at Seller's sole discretion, as agreed to in writing at the time of Seller's acceptance of Purchaser's order:

- (a) Fifteen Percent (15%) on receipt of approved drawings;
- (b) Thirty-Five Percent (35%) on receipt of castings at our facility;
- (c) Thirty-Five Percent (35%) on receipt of motors or drives at our facility (or direct ship to site);
- (d) Fifteen (15%) upon final shipment from Seller.

If for any reason the Purchaser should fail to pay the Seller at the time the payment of any amount becomes due, then the Seller may charge the Buyer 18% per annum for said invoice(s).

Purchaser acknowledges that payment is due as set forth above and that Purchaser may not retain or withhold payment as an offset to any claim Purchaser may allege against Seller arising under any purchase order from Purchaser or contract between Seller and Purchaser. In addition to the foregoing, should Purchaser fail to pay Seller when payment is due, the Seller may, at its option, stop work until Purchaser has paid in full the amount owed, and the contract price will be adjusted for the additional costs of shutdown, delay and start-up. Failure to pay Seller when payment is due is a material breach of this agreement. The foregoing is in addition to all other rights and remedies available to Seller under this agreement or at law or equity. In addition, Purchaser shall be liable to Seller for Seller's reasonable costs (including its reasonable attorneys' fees) to collect overdue payments. If Purchaser is in default on payment to Seller, Seller will not undertake repair or replacement activities under Seller's limited warranty until Purchaser's account with Seller is brought current. Seller's warranty is not tolled during this time. If Seller stops work under the provisions of this section, Seller at Seller's sole discretion, may adjust date of Seller's performance and delivery for periods equal to the length of the stoppage, or for an additional period if reasonably caused by the work stoppage, without penalty or liability.

Purchaser must provide Seller with irrevocable letters of credit, confirmed by an acceptable U.S. bank, for any and all international purchases. Seller shall assess a finance charge of a 1.25% per month, or the maximum rate permitted by law, whichever is less, on all past due account balances.

Seller may change, alter, or modify the time of payment for merchandise or any agreement for extension of credit, or may require partial or full payment prior to manufacturing, assembling or shipping any merchandise, notwithstanding any contrary provisions specified herein or in any documents or orders submitted by Purchaser.

Purchaser must pre-pay Seller for Equipment from a third-party.

**8. DESIGN.** Seller reserves the right to discontinue any model or to modify the design of a model without incurring any obligation to make the modifications to any models previously sold. Once Purchaser approves the Seller's submittal drawings, Purchaser waives any and all claims against Seller for any defects in design.

**9. CANCELLATION.** Once an order is accepted by Seller, Purchaser may not cancel its order unless (1) Purchaser obtains Seller's written consent (2) Purchaser indemnifies Seller against any loss (3) Purchaser pays Seller for expenses already incurred (4) Purchaser pays Seller for Seller's anticipated profit and (5) Purchaser pays Seller a 15% cancellation fee.

Seller may cancel the order without recourse if (1) Conditions are such that shipment from Seller's factory will be delayed, resulting in Seller's inability to deliver the Equipment beyond Seller's estimated date of delivery; (2) Purchaser fails to make payment to Seller on any order accepted by Seller; (3) Seller terminates or alters its relationship with the distributor or other representative from whom Purchaser placed its order; or (4) Purchaser is or becomes insolvent or is unable to provide further assurances of ability to make payment as provided in paragraph 7 herein, in which case Seller may cancel all pending orders placed by Purchaser. Upon cancellation of the order(s) by Seller, Purchaser shall indemnify Seller against any loss and shall pay for all expenses already incurred by Seller.

Notwithstanding any contrary provisions provided herein and except where prohibited by law, Seller shall retain title to the Equipment until the Equipment has been delivered or until Seller has received payment in full for the Equipment, whichever is later.

**10. FIELD PERFORMANCE TESTS.** Field performance testing to determine head, capacity, BHP or efficiency contract compliance is unacceptable. When performance contract compliance must be demonstrated, a factory laboratory performance test must be priced and included in the order.

**11. RETURN OF EQUIPMENT.** Purchaser shall not return any Equipment unless and until Purchaser obtains Seller's written authorization. A return authorization number must accompany all returns. Purchaser must pay transportation charges for returns to Seller. Seller shall not authorize the return of any Equipment with a purchase price of less than \$100.00. Seller shall not authorize the return of any Equipment unless (1) the Equipment was shipped to Purchaser no longer than ninety (90) days prior to the requested return; (2) the Equipment's design is currently cataloged for sale by Seller; (3) the Equipment is in its original, undamaged shipping carton; and (4) the Equipment can still be sold by Seller with the original complete factory warranty. Customized Equipment cannot be returned. Equipment authorized for return is subject to a minimum handling charge of 20% of the invoice value of the return. All returned goods must be properly packaged and marked. Impellers of less than maximum diameter, obsolete Equipment and customized Equipment are not returnable for store credit. Claims for shortages or incorrect material must be made within 30 days of the invoice date.

**12. DISTRIBUTORS/DEALERS.** Equipment and Services sold to distributors and dealers shall be governed by the terms and conditions stated herein. Seller shall not furnish any consigned stock. All pricing catalogs shall remain the property of Seller and must be returned to Seller upon demand.

Nothing herein shall be construed as limiting Seller's rights to sell directly or indirectly to (1) Federal and State Government; (2) Purchasers that purchase Seller's Equipment for integration into other products; or (3) any other class of purchaser to whom the Company may from time to time elect to sell. Seller's use of any distributor or dealer in any territory shall not be exclusive unless Seller has executed an exclusive commercial agency agreement.

Any commissions to be paid to distributors or other representatives by Seller shall not become due and payable until 30 days after Seller has received payment in full from Purchaser. For all orders utilizing a progress payment plan, commissions shall not become due and payable until 30 days after Seller has received the last progress payment from Purchaser. Commission values shall be determined on an individual project basis. Should Seller become involved in litigation that involves the sale of Equipment or services to Purchaser, commissions shall be

adjusted on a pro rata basis to reflect any losses sustained by Seller, including but not limited to the attorneys' fees incurred by Seller during the course of the litigation.

**13. LIMITED WARRANTY:** NEW EQUIPMENT MANUFACTURED BY SELLER OR SERVICE SUPPLIED BY SELLER IS WARRANTED TO BE FREE FROM DEFECTS IN MATERIAL AND WORKMANSHIP UNDER NORMAL USE AND SERVICE FOR A PERIOD OF ONE YEAR FROM DATE OF SHIPMENT. SELLER'S OBLIGATION UNDER THIS WARRANTY IS LIMITED TO REPAIRING OR REPLACING, AT SELLER'S OPTION, ANY PART FOUND TO SELLER'S SATISFACTION TO BE SO DEFECTIVE. AFTER THE PART IS RETURNED TO SELLER IN COLLIERSVILLE, TENNESSEE, TRANSPORTATION PREPAID, SELLER, IN ITS SOLE DISCRETION, WILL DETERMINE IF THE PART IS COVERED UNDER THIS LIMITED WARRANTY. UNDER NO CIRCUMSTANCE SHALL SELLER BE LIABLE OR RESPONSIBLE FOR THE COST OF INSTALLING OR REMOVING THE EQUIPMENT. IN THE CASE OF SPARE OR REPLACEMENT PARTS MANUFACTURED BY SELLER, THE WARRANTY PERIOD SHALL BE FOR A PERIOD OF TWELVE MONTHS FROM SHIPMENT. PARTS REPLACED UNDER WARRANTY SHALL BE WARRANTED ONLY FROM DATE OF REPAIR.

THIS WARRANTY EXTENDS ONLY TO THE ORIGINAL RETAIL PURCHASER AND ONLY DURING THE TIME IN WHICH THE ORIGINAL RETAIL PURCHASER OCCUPIES THE SITE WHERE THE EQUIPMENT WAS ORIGINALLY INSTALLED.

THIS WARRANTY DOES NOT COVER PARTS DAMAGED BY DECOMPOSITION FROM CHEMICAL ACTION, CORROSION, EROSION OR WEAR CAUSED BY ABRASIVE MATERIALS, EXCESSIVE WATER TEMPERATURES, ELECTROLYSIS, CAVITATION OR SPECIAL MATERIALS USED TO PREVENT CORROSION, EROSION, ELECTROLYSIS, OR CAVITATION NOR DOES IT COVER DAMAGE RESULTING FROM MISUSE, ACCIDENT, NEGLIGENCE ABUSE, ALTERATION, VANDALISM OR FROM IMPROPER OPERATION, MAINTENANCE, IMPROPER ALIGNMENT, INSTALLATION, MODIFICATION OR ADJUSTMENT. THIS WARRANTY DOES NOT COVER PARTS REPAIRED OUTSIDE SELLER'S FACTORY WITHOUT PRIOR WRITTEN APPROVAL. SELLER MAKES NO WARRANTY AS TO STARTING EQUIPMENT, ELECTRICAL APPARATUS OR OTHER MATERIAL NOT OF ITS MANUFACTURE. IF PURCHASER OR OTHERS REPAIR, REPLACE, OR ADJUST EQUIPMENT OR PARTS WITHOUT SELLER'S PRIOR WRITTEN APPROVAL, SELLER IS RELIEVED OF ANY FURTHER OBLIGATION TO PURCHASER UNDER THIS SECTION WITH RESPECT TO SUCH EQUIPMENT OR PARTS.

SELLER'S LIABILITY FOR BREACH OF THESE WARRANTIES (OR FOR BREACH OF ANY OTHER WARRANTIES FOUND BY A COURT OF COMPETENT JURISDICTION TO HAVE BEEN GIVEN BY SELLER) SHALL BE LIMITED TO: (A) ACCEPTING RETURN OF SUCH EQUIPMENT AND (B) REFUNDING ANY AMOUNT PAID THEREON BY PURCHASER (LESS DEPRECIATION AT THE RATE OF 15% PER YEAR IF PURCHASER HAS USED EQUIPMENT FOR MORE THAN THIRTY [30] DAYS), AND CANCELING ANY BALANCE STILL OWING ON THE EQUIPMENT. (C) IN THE CASE OF SERVICE, AT SELLER'S OPTION, REDOING THE SERVICE, OR REFUNDING THE PURCHASE ORDER AMOUNT OF THE SERVICE OR PORTION THEREOF UPON WHICH SUCH LIABILITY IS BASED. THESE WARRANTIES ARE EXPRESSLY IN LIEU OF ANY OTHER WARRANTIES, EXPRESS OR IMPLIED, AND SELLER SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND IN LIEU OF ANY OTHER OBLIGATION OR LIABILITY ON THE PART OF THE SELLER WHETHER A CLAIM IS BASED UPON NEGLIGENCE, BREACH OF WARRANTY, OR ANY OTHER THEORY OR CAUSE OF ACTION. IN NO EVENT SHALL SELLER BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL OR PUNITIVE DAMAGES OF ANY KIND. FOR PURPOSES OF THIS SECTION, THE EQUIPMENT WARRANTED SHALL NOT INCLUDE EQUIPMENT, PARTS, AND WORK NOT MANUFACTURED OR PERFORMED BY SELLER. WITH RESPECT TO SUCH EQUIPMENT, PARTS, OR WORK, SELLER'S ONLY OBLIGATION SHALL BE TO ASSIGN TO PURCHASER THE WARRANTIES PROVIDED TO SELLER BY THE MANUFACTURER OR SUPPLIER PROVIDING SUCH EQUIPMENT, PARTS OR WORK. NO EQUIPMENT FURNISHED BY SELLER SHALL BE DEEMED TO BE DEFECTIVE BY REASON OF NORMAL WEAR AND TEAR, FAILURE TO RESIST EROSION OR CORROSIVE ACTION OF ANY FLUID OR GAS, PURCHASER'S FAILURE TO PROPERLY STORE, INSTALL, OPERATE, OR MAINTAIN THE EQUIPMENT IN ACCORDANCE WITH GOOD INDUSTRY PRACTICES OR SPECIFIC RECOMMENDATIONS OF SELLER, INCLUDING, BUT NOT LIMITED TO SELLER'S INSTALLATION AND OPERATION MANUALS, OR PURCHASER'S FAILURE TO PROVIDE COMPLETE AND ACCURATE INFORMATION TO SELLER CONCERNING THE OPERATIONAL APPLICATION OF THE EQUIPMENT.

**14. COMPLIANCE WITH LAWS.** Purchaser shall be solely responsible for securing any necessary permits under and for compliance with all safety, health and sanitation laws, ordinances and regulations in connection with the installation, service, repair and operation of the Equipment. Purchaser agrees to provide Seller, upon request, with evidence of the securing of any such permits and of compliance with any such laws, ordinances and regulations. Seller shall be responsible for requesting any U. S. Export License Permits which may be required, and Seller agrees to provide all necessary information to enable Purchaser to apply for the permit. Purchaser agrees to comply with applicable United States international trade laws and regulations in its business dealings with Seller. Purchaser agrees to disclose the name and address and business of the user of the goods supplied upon Seller's request. Purchaser shall automatically disclose this information if the goods are to be exported outside of the United States, Notwithstanding Purchaser's sole responsibility to ensure compliance with all relevant laws, Seller reserves the right to cancel order without compensation to Purchaser if Seller considers or suspects that goods may breach any laws of the United States.

**15. INDEMNIFICATION.** It is understood that Seller has relied upon data furnished by and on behalf of Purchaser with respect to the safety aspects of the Equipment, and that it is Purchaser's responsibility to assure that the Equipment will, when installed and put in use, be in compliance with safety requirements fixed by law and otherwise legally adequate to safeguard against injuries or damage to persons or property. Purchaser hereby agrees to defend, indemnify and hold harmless Seller, its agents and employees against any and all losses, costs, damages, claims, liabilities or expenses, including but not limited to reasonable attorneys' fees, arising out of or resulting from any injury or damage to any person or property caused by the inadequacy of safety features, devices or characteristics in the Equipment or arising out of the installation, service, repair, or use or operation of the same, except where the injury or damage is solely caused by Seller's negligence and except for claims for repair or replacement of defective parts in accordance with Paragraph 13 hereof. Purchaser indemnifies Seller for any loss to Seller, including reasonable attorneys' fees, caused by Seller's manufacturing, installing or building to specifications provided by the Purchaser.

**16. RISK OF LOSS.** The risk of loss or damages to Equipment passes to Purchaser upon tender of delivery F.O.B. manufacturing facility unless otherwise agreed upon by the parties. Acceptance of Equipment by common carrier constitutes a waiver of any claims against Seller for damage to the Equipment during transit and any claims against Seller for Equipment that is lost during transit.

**17. LIMITATION OF DAMAGES AND DISCLAIMER OF CONSEQUENTIAL DAMAGES OR PENALTIES.** TO THE EXTENT PERMITTED BY LAW, SELLER SHALL NOT BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL OR PUNITIVE DAMAGES, ARISING OUT OF THE CONTRACT, OR OUT OF ANY BREACH OF ANY OF SELLER'S OBLIGATIONS HEREUNDER, OR OUT OF ANY DEFECT IN, OR FAILURE OF, OR MALFUNCTION OF THE EQUIPMENT, WHETHER OR NOT CAUSED BY SELLER'S NEGLIGENCE. CONSEQUENTIAL DAMAGES, FOR THE PURPOSE OF THIS AGREEMENT, SHALL INCLUDE BUT NOT BE LIMITED TO, PERSONAL INJURY, LOSS OF USE, LOST INCOME OR PROFITS, LOST INTEREST, LOST GOODWILL, WORK STOPPAGE, IMPAIRMENT OF OTHER EQUIPMENT, ENVIRONMENTAL DAMAGE, INCREASED EXPENSES OF OPERATION, COST OF PURCHASE OF REPLACEMENT EQUIPMENT OR CLAIMS OF PURCHASER OR CUSTOMERS OF PURCHASER FOR SERVICE INTERRUPTION, DAMAGE TO PROPERTY (INCLUDING, BUT NOT LIMITED TO, PRODUCTS MANUFACTURED, PROCESSED OR TRANSPORTED BY THE USE OF THE EQUIPMENT), OR ANY OTHER LOSS

OCCASIONED BY OR ARISING OUT OF THE OPERATION, USE, INSTALLATION, REPAIR OR REPLACEMENT OF THE EQUIPMENT OR OTHERWISE, WHETHER OR NOT SUCH LOSS IS BASED UPON CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR OTHERWISE. SELLER'S DAMAGES ARE LIMITED TO DAMAGES SET FORTH IN PARAGRAPH 13, LIMITED WARRANTY. SELLER SHALL NOT BE LIABLE FOR ANY DAMAGES, PENALTIES OR LIQUIDATED DAMAGES BASED UPON OR RELATING TO SELLER'S FAILURE OR INABILITY TO SHIP WITHIN A SPECIFIED TIME. THE FOREGOING NOTWITHSTANDING, SELLER'S MAXIMUM AGGREGATE LIABILITY RELATED TO THE PERFORMANCE OF THIS CONTRACT SHALL NOT EXCEED THE PURCHASE ORDER AMOUNT OF THE EQUIPMENT OR SERVICE PORTION THEREOF UPON WHICH SUCH LIABILITY IS BASED. ALL SUCH LIABILITY SHALL TERMINATE ONE YEAR FROM THE DATE OF SHIPMENT.

18. **GENERAL.** Any Purchaser document which contains terms in addition to or inconsistent with the terms stated herein or a rejection of any term stated herein shall be deemed to be a counter-offer to Seller and shall not be binding upon Seller unless specifically accepted in writing by a duly authorized representative of Seller. This clause shall constitute a continuing objection to any such items not specifically so accepted by Seller.

All questions relating to the formation of or performance under the contract based hereon shall be determined in accordance with the laws of the State of Tennessee in the United States of America, excluding the application of its conflict of law provisions. The parties stipulate that the state and federal courts of Shelby County, Tennessee, or any other court in which Seller initiates proceedings, have exclusive jurisdiction over all matters arising out of this agreement. In the event of any dispute or difference arising out of or relating to an International Agreement or the breach thereof, the parties hereto first shall use their best endeavors to settle such disputes or differences. To this effect, the parties shall consult and negotiate with each other, in good faith and understanding of their mutual interest, to reach a just and equitable solution satisfactory to both parties. If the parties do not reach such solution within a period of sixty (60) days from the commencement of consultations and negotiations, before arbitration may be invoked, one of the parties must, by written notice to the other party, have the dispute referred to their respective Chief Executive Officers (or the equivalent), or to their designated representatives who have the final authority to resolve the dispute, with the request that they attempt in good faith to resolve the dispute within sixty (60) calendar days after valid notice is served pursuant to this Agreement. No party may invoke arbitration without first complying with the provisions of this section. In the event that the foregoing designated representatives of the parties are not able, for whatever reason, to resolve such dispute in good faith within the sixty (60) calendar day period, the parties agree that the disputes or differences shall be settled by arbitration in accordance with the rules set forth by the United Nations Commission for International Trade Law (UNCITRAL) Arbitration Rules, under the auspices of the American Arbitration Association (Arbitration). The arbitration shall take place in Memphis, Tennessee, USA, or another location, at the sole discretion of American-Marsh Pumps. The arbitration shall be conducted in and the award rendered in English and payable in US Dollars, and such award shall be final and binding on the parties, not subject to any appeal, and shall deal with the question of costs of arbitration and all matters related thereto. The parties agree that any judgment, decision, or award of the arbitrators shall be made enforceable in any court of competent jurisdiction, including courts in the country of Purchaser. Judgment upon the award rendered may be entered into any court having jurisdiction, or application may be made to such court for a judicial recognition of the award or an order of enforcement thereof, as the case may be. The terms of this paragraph shall survive any termination or expiration of this Agreement. The United Nations Convention on contracts for the International Sales of Goods shall have no application to this Agreement or to any proceeding brought pursuant hereto.

If any part hereof is contrary to, prohibited by, or deemed invalid under applicable laws or regulations, such provision shall be inapplicable and deemed omitted to the extent so contrary, prohibited or invalid, but remainder hereof shall not be invalidated and shall be given effect so far as possible. No waiver of any term or condition or the breach of any term or condition of this agreement shall be deemed to constitute a waiver of any subsequent breach of such term or condition nor justify or authorize a nonobservance upon any occasion of such term or condition or any other term or condition.; nor shall the acceptance of payment by Seller at any time when Purchaser is in default of any term or condition be construed as a waiver of such default or waiver of Seller's right to terminate this agreement on account of such default.

The Purchaser warrants and represents that only persons with authority to execute the documents related to this agreement will sign on behalf of the Purchaser and that electronic orders will be placed only by persons so authorized by the Purchaser and shall be binding on the Purchaser upon acceptance by the Seller with or without hand written signature of Purchaser.

IN ANY LITIGATION, ARBITRATION, OR OTHER PROCEEDING IN WHICH SELLER PREVAILS IN SEEKING TO ENFORCE ITS RIGHTS UNDER THIS AGREEMENT (WHETHER IN CONTRACT, TORT, OR BOTH) OR IN REMEDYING PURCHASER'S BREACH OF THIS AGREEMENT, SELLER SHALL BE AWARDED ITS REASONABLE ATTORNEY FEES, COSTS AND EXPENSES, INCLUDING BUT NOT LIMITED TO COURT FEES, COURT REPORTER FEES AND EXPERT FEES.

Purchaser hereby acknowledges that it has received Seller's operation manual and declares it is familiar with the Hydraulic Institute Standards.

\_\_\_\_\_  
PURCHASER (as defined in paragraph 2, above)

\_\_\_\_\_  
DATE

BY: \_\_\_\_\_

\_\_\_\_\_  
TITLE