

Vacuum Pump Services Corp

TERMS OF SALE

Definitions

- A. BUYER is the person and/or entity purchasing the GOODS and/or SERVICES described in the Vacuum Pump Services Corp's PROPOSAL or QUOTATION.
- B. SELLER is defined as VACUUM PUMP SERVICES CORP., a manufacturer of GOODS (including, but not limited to, vacuum pumps and pump components) and/or provider of SERVICES described in the PROPOSAL or QUOTATION.
- C. GOODS include, but are not limited to, vacuum pumps, manufactured subassemblies, materials and/or products.
- D. SERVICES include, but are not limited to, field services, training, materials supplied, vacuum pump refurbishment, component testing, material transportation, and pump repairs related to BUYER owned material and/or equipment.
- E. SERVICED MATERIAL and EQUIPMENT is BUYER supplied GOODS and EQUIPMENT provided to SELLER for the purpose of performing SERVICES.
- F. QUOTATION or PROPOSAL is a written document provided by SELLER detailing the costs to BUYER and conditions for the GOODS and/or SERVICES to be purchased.
- G. ORDER or PURCHASE ORDER is a written document provided by BUYER to SELLER requesting GOODS and/or SERVICES to be purchased, manufactured or assembled.
- H. TERMS OF SALE is defined as the contents of this document.
- I. LIMITATION OF LIABILITY is as stated in the TERMS OF SALE.

1. General

All QUOTATIONS are provided in accordance with the TERMS OF SALE. All ORDERS by BUYER are subject to acceptance by SELLER. Acceptance of an ORDER is expressly limited to these TERMS OF SALE and the terms and conditions contained in the QUOTATION. Any additional or different terms and conditions contained in BUYER's ORDER or other response hereto shall be deemed objected to by SELLER and shall be of no effect nor in any circumstances binding upon SELLER unless expressly agreed otherwise in writing by an officer of SELLER.

2. Quotation

Unless previously withdrawn, SELLER's QUOTATION is open for acceptance for the period stated therein or when no period is stated, for 30 days from the date of SELLER's QUOTATION.

3. Services And Goods

All descriptions and illustrations contained in SELLER's brochures, price lists and advertisements, and all specifications, drawings and particulars of thermal processes and weights and dimensions contained therein that are submitted with any QUOTATION to BUYER or otherwise communicated to BUYER are intended merely to present a general idea of available SERVICES and/or GOODS and nothing contained in any of them shall form any part of the contract unless included in SELLER's QUOTATION.

4. Price

Unless otherwise specified in SELLER's QUOTATION, the price excludes the cost of delivery of SERVICES and/or GOODS. Price includes such taxes as payroll taxes, unemployment taxes and social security taxes of employees of SELLER. The prices quoted herein do not include any federal, state, or other taxes including duties or other import/export fees levied on the SERVICES or GOODS, or their use or sale. Such taxes, where SELLER is required by law to collect them, whether designated as sales tax, use tax, gross receipts tax, etc., will be billed to BUYER based on the law in effect at the time of delivery unless BUYER furnishes SELLER with a proper tax exemption certificate. BUYER agrees to reimburse SELLER for any such taxes that SELLER or its suppliers are required to pay. BUYER agrees to reimburse SELLER for any additional costs attributed to changes in the specifications, directions, or scope of the SERVICES and/or design of GOODS made at BUYER's request. SELLER will issue a supplementary QUOTATION to BUYER covering such changes and will not proceed with implementation prior to receiving BUYER's approval.

5. Variation, Delay And Cancellation

If SELLER is prevented from proceeding with the ORDER by reason of delay or suspension by BUYER, any costs reasonably incurred by SELLER as a result of such events shall be reimbursable to SELLER. Any request by BUYER for deferral of delivery shall also result in additional costs that will be charged to BUYER. Upon BUYER's request, SELLER will complete the SERVICES and assembly of GOODS, invoice BUYER and hold SERVICED MATERIAL and/or manufactured GOODS for BUYER at BUYER's risk and expense. If BUYER wishes to cancel the ORDER at any time, BUYER shall notify SELLER in writing. SELLER will make safe all partly finished SERVICED MATERIAL and/or manufactured GOODS and terminate all incomplete suborders and/or subcontracts. The costs of all work up to the time of cancellation, together with all costs incurred in making safe partly finished SERVICED MATERIAL and/or manufactured GOODS and any cancellation costs incurred by SELLER, plus a reasonable profit, will be charged to BUYER. Under such circumstances, finished or partly finished SERVICED MATERIAL and/or GOODS will become BUYER's property with the agreed terms of payment.

6. Payment

Terms of payment shall be as specified in the QUOTATION and, unless otherwise agreed, payment shall be made within 30 days from the date of invoice. No discounts shall be provided for payments earlier than 30 days. Late payments shall accrue interest at the rate of one and one half percent (1.5%) per month, or the highest interest rate allowable by applicable law, whichever is lower. BUYER shall pay all of SELLER's costs and expenses (including reasonable collection agency and attorney's fees) to enforce and preserve SELLER's right to collect all amounts payable by BUYER to SELLER. In addition, in the event that BUYER becomes delinquent in the payment of any sum due to SELLER, SELLER shall have the right to suspend performance under any ORDER until such delinquency is corrected. Partial shipments made under any ORDER shall be treated as a separate transaction and payment thereof shall be made accordingly. In the event of any default by BUYER, SELLER may decline to make further shipments without in any way affecting its rights under such ORDER or any other ORDERS or agreements between SELLER and BUYER.

7. Pre-delivery Inspection/Tests

All SERVICES and/or GOODS supplied pursuant to any ORDER will be subject to SELLER's standard inspection and test procedures prior to shipment together with any additional tests and/or inspection identified in SELLER's QUOTATION. Should BUYER require any additional testing or inspection, or request to be present during SELLER's standard testing, such attendance and/or any additional testing or inspection required by BUYER will constitute a change to the ORDER and all additional costs will be payable by BUYER.

8. Delivery

Unless otherwise stated in SELLER's QUOTATION, delivery dates are estimates only and are based, among other things, on the timely receipt of full and final technical information from BUYER. SELLER shall not be liable for any loss, liability, damages (whether direct, indirect or consequential) or other obligations because of any delay or failure to deliver all or any part of any ORDER for any reason, including, without limitation, SELLER's active or passive negligence or any cause beyond SELLER's control. SELLER shall be entitled to deliver the SERVICED MATERIAL and/or GOODS in one or more consignments unless otherwise expressly agreed. Delivery shall be deemed to take place when SELLER or its agent have delivered the SERVICED MATERIAL and/or GOODS to the point of delivery defined in the QUOTATION. Unless otherwise specified in SELLER's QUOTATION, BUYER shall be responsible and assumes all risk for unloading the SERVICED MATERIAL and/or GOODS at the point of delivery. If SELLER does not receive sufficient delivery instructions to enable it to dispatch the SERVICED MATERIAL and/or GOODS within 14 days of notification to BUYER that the SERVICED MATERIAL and/or GOODS are ready for dispatch, they shall be deemed to have been delivered for payment purposes.

9. Passing Of Risk And Property

Risk of loss of or damage to the SERVICED MATERIAL and/or GOODS and title to the GOODS shall pass to BUYER at the time the SERVICED MATERIAL and/or GOODS reach the delivery point defined as the shipping dock of SELLER's facility, unless a different delivery point is specified and agreed to in writing by SELLER. SELLER shall not be liable for any loss of any kind to BUYER arising from any damage to the SERVICED MATERIAL and/or GOODS occurring after the risk has passed to BUYER however caused, nor shall any liability or obligation of BUYER to SELLER be diminished or extinguished by reason of such loss.

10. Inspection Of Serviced Material And/Or Goods

BUYER shall inspect the SERVICED MATERIAL and/or GOODS immediately on receipt thereof and shall within five (5) days give written notice to SELLER of any grounds on which BUYER alleges that the SERVICED MATERIAL and/or GOODS are damaged, defective or not in accordance with the TERMS OF SALE. If BUYER fails to give such notice, the SERVICED MATERIAL and/or GOODS shall be conclusively presumed to be in all respects in accordance with contract and free from any defect that would be apparent on reasonable examination of the SERVICED MATERIAL and/or GOODS. BUYER shall be deemed to have irrevocably accepted the SERVICED MATERIAL and/or GOODS accordingly. Notwithstanding the foregoing, any use of the SERVICED MATERIAL and/or GOODS for any purpose after

delivery, including further processing, assembly or any other work, shall constitute an irrevocable acceptance of the SERVICED MATERIAL and/or GOODS by BUYER.

11. Confidentiality And Intellectual Property Rights

SELLER retains for itself all of its intellectual property rights in any supporting documentation supplied hereunder, including but not limited to, all designs, engineering details, vacuum pump and manufacturing fixtures, and other data or information pertaining to any SERVICES and/or GOODS sold except where such rights are assigned under written agreement by an officer of SELLER. No title to or ownership of any intellectual property or manufacturing procedure or any parts thereof is transferred to BUYER by any delivery of such information to BUYER hereunder.

12. Limited Warranty – Limitation Of Liability And Remedies

SELLER WARRANTS TO BUYER THAT ANY EQUIPMENT OR GOODS SOLD WILL BE FREE FROM DEFECTS IN MATERIAL OR WORKMANSHIP FOR A PERIOD OF TWELVE (12) MONTHS FROM THE DATE OF SHIPMENT. IF DURING THE WARRANTY PERIOD, BUYER NOTIFIES THE SELLER OF A DEFECT, THE SELLER SHALL, AT ITS OPTION, REPAIR OR REPLACE THE DEFECTIVE MATERIAL OR WORKMANSHIP. BUYER SHALL BEAR THE COST OF FREIGHT TO AND FROM SELLER'S PLANT. MATERIALS AND GOODS THAT ARE NOT WARRANTED ARE ITEMS THAT ARE SUBJECT TO NORMAL WEAR AND TEAR, SUCH AS, BUT NOT LIMITED TO, LAMPS, BELTS, FILTERS, AND OILS/LUBRICANTS. IN ADDITION, CONTACT POINTS OR WEAR SURFACES OR ANY CONSUMABLE OR PERISHABLE ITEMS SHALL NOT BE WARRANTED. IF MATERIALS HAVE BEEN ADDED TO THE GOODS OR IF ANY PART HAS BEEN MODIFIED BY BUYER WITHOUT THE CONSENT OR KNOWLEDGE OF THE SELLER OR IF THE EQUIPMENT'S DESIGNED PURPOSE IS CHANGED DURING THE WARRANTY PERIOD, OR IF THE EQUIPMENT OR GOODS HAVE BEEN MISUSED OR NEGLIGENTLY OPERATED OR MAINTAINED BY BUYER OR IF GOODS HAVE BEEN DAMAGED BY A PROCESS THAT WOULD CAUSE AN ADVERSE METALLURGICAL REACTION, THEN THIS WARRANTY IS VOID, AND SELLER IS RELEASED FROM ALL LIABILITY AND RESPONSIBILITY UNDER THESE TERMS OF SALE.

EXCEPT FOR THE LIMITED WARRANTY STATED ABOVE, SELLER DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND DISCLAIMS ALL WARRANTIES FOR TRADE OR SAMPLES PREVIOUSLY SUPPLIED. THE STATED WARRANTY AND REMEDY PROVIDED ARE IN LIEU OF OTHER POSSIBLE LIABILITY AND DAMAGES AGAINST SELLER, AND IN NO EVENT SHALL SELLER BE LIABLE FOR SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES RESULTING FROM THE BREACH OF THIS WARRANTY OR ANY OTHER PROVISION OF THESE TERMS OF SALE AND CONDITIONS, THE PROPOSAL, THE PURCHASE ORDER AND/OR ANY AGREEMENT BETWEEN BUYER AND SELLER OR CLAIM ARISING OUT OF OR IN CONNECTION WITH THE GOODS OR THEIR SALE, DELIVERY, DISTRIBUTION, INSTALLATION, MAINTENANCE, OPERATION, SERVICE, PERFORMANCE OR USE, INCLUDING, WITHOUT LIMITATION, ANY LOSS OF USE, LOST REVENUES, LOST PROFITS, DELAY IN PRODUCTION, DAMAGE TO ASSOCIATED EQUIPMENT OR TO FACILITIES, LOST DATA, COSTS OF SUBSTITUTED GOODS, EQUIPMENT FACILITIES OR SERVICES, AND ANY SIMILAR OR DISSIMILAR LOSSES, COSTS OR DAMAGES WHETHER BASED ON WARRANTY, CONTRACT, STRICT LIABILITY OR NEGLIGENCE. IN NO EVENT SHALL THE LIABILITY OF SELLER EXCEED THE ACTUAL COST OF CORRECTING DEFECTS OF THE SELLERS GOODS AS HEREIN PROVIDED.

SELLER'S LIABILITY TO BUYER SHALL CEASE ONCE ANY MODIFICATIONS, ASSEMBLY OR ANY OTHER WORK HAS BEEN UNDERTAKEN BY BUYER OR ANY THIRD PARTY WITH RESPECT TO THE GOODS SOLD. THE SALE OF SERVICES AND/OR GOODS IS EXPRESSLY LIMITED TO THE TERMS AND CONDITIONS STATED HEREIN. ANY DIFFERENT OR ADDITIONAL TERMS CONTAINED IN ANY OF BUYER'S FORMS ARE HEREBY DEEMED TO BE A MATERIAL ALTERATION AND NOTICE OF OBJECTION TO THEM IS HEREBY GIVEN. IT IS EXPRESSLY AGREED AND UNDERSTOOD BY BUYER THAT UNDER NO CIRCUMSTANCES WILL SELLER BE RESPONSIBLE FOR MATERIAL DAMAGED BY ANY EQUIPMENT ASSOCIATED WITH ANY GOODS OR SERVICES SUPPLIED BY SELLER.

BUYER AGREES TO ACCEPT THE LIMITS OF LIABILITY AS EXPRESSED IN THIS STATEMENT TO THE EXCLUSION OF ANY AND ALL PROVISIONS REGARDING STATEMENTS OF LIABILITY ON BUYER'S OWN INVOICES, PURCHASE ORDERS AND/OR OTHER DOCUMENTS. IF BUYER DESIRES OTHER TERMS OF LIABILITY TO BE IN FORCE AND EFFECT, THE OTHER TERMS OF LIABILITY MUST BE AGREED TO IN WRITING AND SIGNED BY AN OFFICER OF SELLER. IN SUCH EVENT, A DIFFERENT CHARGE FOR SELLER'S GOODS OR SERVICES, REFLECTING THE HIGHER RISK TO SELLER, SHALL BE AGREED TO BY BUYER AND SELLER.

13. Excusable Delays

SELLER shall not be liable for delays or failure to perform due, directly or indirectly, to (a) causes beyond SELLER's reasonable control, and (b) acts (including failure to act) of any governmental authority, wars, (declared or undeclared), electrical outages, strikes or other labor disputes, fires, and natural calamities (such as floods, earthquakes, storms, and epidemics).

14. Indemnity By Buyer

To the fullest extent permitted by law, BUYER shall indemnify and hold harmless SELLER from and against any and all claims, losses, damages, costs, expenses, suits, debts, actions, proceedings, causes of action, reasonable legal fees and liability of any kind that SELLER may incur, suffer, sustain, or be required to pay by reason of: (1) the injury to and/or the death of any person or the damage to any property whatsoever caused or alleged to have been caused in whole or in part by any act or omission of SELLER or any other responsible party; or (2) the failure of BUYER to perform, or to properly perform, its obligations. Without limiting the generality of the foregoing, this indemnity shall be deemed to cover claims by employees of BUYER, including claims for workers' compensation. BUYER agrees to waive any immunity under workers' compensation statutes and to indemnify SELLER for claims caused or alleged to have been caused solely or in part by the negligence of SELLER. If any action, suit or proceeding is instituted or any claim is asserted against SELLER that is covered by the indemnification provision, SELLER may give written notice thereof to BUYER and upon receipt of such notice, BUYER shall defend, using counsel acceptable to SELLER, against any such action, suit, proceeding or claim paying all costs of defense, including attorney's fees.

15. Insurance

BUYER shall procure and submit to SELLER evidence of Comprehensive General Liability insurance coverage with limits of liability no less than One Million Dollars (\$1,000,000.00). BUYER's insurance coverage shall be primary with respect to SELLER. Any insurance or self-insurance maintained by SELLER shall be in excess of BUYER's insurance.

16. Notice Of Dispute

If, at any time, any dispute or question shall arise out of the contract or as to the rights or liabilities of the parties thereunder or in connection therewith or as to the construction or interpretation thereof either party shall give notice in writing to the other of the intent to file suit pursuant to the provisions herein regarding the proper applicable law, jurisdiction and venue.

17. Proper Law

These TERMS OF SALE, all PROPOSALS, QUOTATIONS, ORDERS and/or PURCHASE ORDERS are subject to the laws of the Commonwealth of Pennsylvania and the laws of the Commonwealth of Pennsylvania apply in any lawsuit or arbitration unless otherwise agreed to in writing by SELLER. If any provision of these TERMS OF SALE is found to be invalid or unenforceable, the remaining provisions shall remain in full force and effect.

18. Venue

Any and all disputes arising between the parties shall be resolved in the Bucks County Court of Common Pleas, Bucks County, Pennsylvania whether by arbitration or other legal proceedings.

19. Assignment

BUYER shall not assign any benefit under the contract without the consent in writing of SELLER which will not be unreasonably withheld.

20. Clause Headings

The clause headings used in these TERMS OF SALE are exclusively for reference purposes and in the interpretation of the subject clause the applicable clause title shall not act to limit, alter or otherwise affect the content of the clause.