

GENERAL TERMS AND CONDITIONS OF SALE



1. General. THESE GENERAL CONDITIONS, TOGETHER WITH ANY NONCONFLICTING PROVISIONS IN PROMINENT FLUID CONTROL, INC.'S QUOTATION (THE "SELLER"), ARE INTENDED BY THE PARTIES AS THE FINAL EXPRESSION, AND CONTAIN THE COMPLETE AND EXCLUSIVE STATEMENT, OF THE TERMS AND CONDITIONS OF THIS AGREEMENT SUPERSEDING ALL PREVIOUS OR SIMULTANEOUS COMMUNICATIONS EITHER ORAL OR WRITTEN. Seller's quotations, including without limitation specifically referenced, or attached, mutually agreed upon customer drawings, functional specifications, or other requirements, are offers which may only be accepted in full. If Purchaser's order or other form states terms additional to or different from those set forth herein (a "Non-Conforming Purchase Order"), this writing shall be deemed notification of objection to such additional or different terms. In the event Seller receives a Non-Conforming Purchase Order in response to Seller's quotation, Seller may, at its discretion, either (a) proceed with the transaction in accordance with Seller's original quotation, rejecting and disregarding any additional or different terms in Purchaser's Non-Conforming Purchase Order; or (b) requote the order, in which case, such requote shall become Seller's quotation and offer hereunder, subject to these terms and conditions. This Agreement is conditioned on Purchaser's acceptance and assent to the terms and conditions contained herein. Acceptance of this Agreement shall be deemed to have occurred at the earlier of (i) 7 days from the date specified on Seller's Order Confirmation (in response to an executed Purchase Order) unless written objection is received by Seller during such 7 day period, or (ii) Seller's Delivery of goods in accordance with this Agreement. If Purchaser desires to modify any aspect of the order as specified in Seller's quotation, Seller reserves the right to require a change order process pursuant to which the parties shall confer and mutually agree upon the scope of Purchaser's requested changes and Seller shall then submit a written change order proposal to Purchaser. Such change order proposal shall include, among other items, an estimate of additional charges to Purchaser for requested changes, if any, and any expected impact the change will have on schedule. On Purchaser's written approval of the change order proposal, the change order proposal will become a part of the relevant order, subject always to these General Conditions. No change to any order shall be binding on the parties unless the change is embodied in a writing that has been signed by an authorized representative of each party. This Agreement cannot be waived, varied, modified or amended in any manner (including subsequent conduct between the parties) except in a writing signed by Seller. Any portion deemed invalid or unenforceable shall be struck and the remainder of this Agreement shall continue to be effective and binding. This Agreement shall bind and inure to the benefit of the parties and their respective successors and assigns. This Agreement is made under, and for all purposes shall be construed and enforced in accordance with and governed by, the laws of the Commonwealth of Pennsylvania, excluding (i) its conflict of laws provisions and (ii) the United Nations Convention for the International Sale of Goods. All actions arising hereunder shall be instituted in Allegheny County, Pennsylvania. Purchaser hereby consents to the jurisdiction of the state and federal courts sitting in Allegheny County, appoints the Secretary of State of Pennsylvania in Harrisburg as its agent for service of process and agrees to appear in action upon written notice thereof.

2. Price and Payment. Unless otherwise stated, all prices for the Products are net EXW (INCOTERMS 2010) Seller's facility in Pittsburgh, Pennsylvania ("EXW"), with freight and insurance for Purchaser's account, and shall be those prices in effect at the time Seller accepts Purchaser's order except as provided below. Prices stated in Seller's quotations are valid and will be held firm for a period of thirty (30) days from the date of Seller's quotation, or such other period as may be expressly stated in writing in Seller's quotation. Quotations not yet accepted in writing by Purchaser prior to the expiration of such validity period shall be subject to change at Seller's discretion. Prices exclude all duties, taxes, tariffs, or other charges ("Charges") which may be imposed upon the sale or use of the Products. All Charges paid by Seller shall be for Purchaser's account. Any claim for exemption from Charges must be plainly designated on the face of the order and accompanied by all required exemption certificates. Seller may invoice Purchaser upon delivery in accordance with Section 4 below. Payments are due net 30 days, or with a 2% discount if paid in full in cash within 10 days, from the date of invoice without deductions or set-off. For the sake of clarity, Purchaser acknowledges that payments by credit card or debit card shall not be eligible for a 2% discount, even if paid within 10 days. Seller may require payment to be made C.O.D. or via irrevocable letter of credit in favor of, and acceptable to, Seller, established at Purchaser's expense. If payment is not made when due, Seller may suspend all future delivery or other performance with respect to Purchaser without liability or penalty and, in addition to all other sums payable hereunder, Purchaser shall pay to Seller the reasonable costs and expenses incurred by Seller in connection with all actions taken to enforce collection or to preserve and protect Seller's rights hereunder, whether by legal proceedings or otherwise, including without limitation reasonable attorneys' fees, court costs and other expenses. Without limiting the foregoing, Seller may additionally charge Purchaser interest on all amounts unpaid after 30 days charged at the monthly rate of 1-1/2% or the highest rate permitted by law, whichever is lower.

3. Title and Security Interest. Seller reserves, and Purchaser hereby grants to and creates in favor of Seller, a first priority purchase money security interest in each Product (or the equivalent under Purchaser's local law), including all component parts added by modification or repair, and all proceeds from the sale thereof, until full payment is received.

Purchaser agrees to sign upon request, and hereby authorizes Seller to sign on its behalf and as its attorney in fact, any documents necessary to perfect Seller's security interest. Upon resale, Purchaser agrees to take, and immediately assign to Seller, a perfected security interest in each Product.

4. Shipment; Delivery; Inspection. Unless otherwise agreed in writing, shipment and delivery of the Products shall be EXW. All shipment, insurance or similar charges shall be borne by Purchaser. Delivery of the Products by Seller shall be completed when Seller notifies Purchaser that the Products are available for pickup by the first carrier at Seller's designated facility, whereupon risk of loss is transferred to Purchaser. All claims for loss or damage in transit or for non-receipt shall be made by Purchaser against the carrier. All delivery information (including time for shipment) is approximate. Seller's sole responsibility is to use reasonable commercial efforts to meet specified shipment dates. Purchaser expressly absolves Seller from any liability for any loss or damage resulting from a failure to deliver or delays in delivery caused by any conditions related to, or caused by, failure to process or inaccurate processing of time-sensitive information and/or mechanisms, a labor dispute (e.g. strike, slowdown or lockout), fire, flood, governmental act or regulation (e.g. denial of export licenses), riot, inability to obtain supplies or shipping space, plant breakdown, power failure, delay or interruption of carriers, accidents, acts of God or other causes beyond Seller's control. Notwithstanding the above, Seller shall not be liable for any damage or penalties whatsoever, whether indirect, incidental, special or consequential, resulting from Seller's failure to deliver or delay in delivery for any reason. Purchaser shall inspect the Products promptly upon receipt, and in no case any later than ten (10) days after receipt of Products sold by Seller. Unless Purchaser notifies Seller in writing of any nonconformities within the applicable period of time referenced immediately above, Purchaser shall be deemed to have accepted the Products without qualification, and cannot, thereafter, reject any Products as nonconforming. Once used, Products are deemed to be fully conforming to this Agreement; subject only to Seller's express warranties as set forth herein.

5. Cancellation, Failure to Take Delivery; Unopened Items Returned for Credit. This Agreement cannot be canceled or postponed by Purchaser except with Seller's consent and upon terms that will indemnify Seller against loss. If Purchaser cancels all or part of an order for a System and/or special, non-standard Products ("Buy-Outs"), Purchaser shall pay Seller the greater of an amount equal to (i) 100% of the price for such cancelled System and/or Buy-Outs, or (ii) the actual and consequential damages incurred by Seller, including without limitation Seller's anticipated profit and expenses already incurred by Seller. If Purchaser cancels all or part of an order for standard Products ("Standard Products"), Purchaser shall pay Seller the greater of an amount equal to (i) 50% of the price for such cancelled Standard Products, or (ii) the actual and consequential damages incurred by Seller, including without limitation Seller's anticipated profit and expenses already incurred by Seller. If Purchaser postpones delivery, at Seller's option, Purchaser shall pay to Seller the sum of (i) a monthly charge equal to 1 1/2% of the total price for the Products subject to such postponement, and/or (ii) reasonable postponement charges; e.g. Seller's idle time, warehousing expense, etc. Subject to Purchaser's compliance with Seller's Returned Goods Authorization process in accordance with Section 9 below, Seller may, at Seller's discretion, accept unopened and undamaged Products to be returned by Purchaser for credit against Purchaser's future purchases from Seller; provided such Products are verified by Seller upon receipt as new, unopened and in good, salable condition. Such return for credit shall be subject to a restocking fee of 25% and such credit shall be issued by Seller and available for Purchaser's use within thirty (30) days of Seller's receipt and confirmation of Product's eligibility for return under this Section 5. Only Seller's standard, stand-alone Products are eligible for this return for credit. Special orders, systems and/or "skids" are not eligible for return for credit treatment under this Section 5.

6. Warranty. Subject to the warranty limitation set forth in Section 7, Seller warrants that the Products sold hereunder will substantially conform to Seller's published specifications and will be free from defects in material and workmanship under normal and proper use and service. For pump drive units and controller electronics, the applicable "Warranty Period" for the above stated express warranty shall be two (2) years after delivery EXW. For sensors, the applicable "Warranty Period" for the above stated express warranty shall be six (6) months after delivery EXW. For all other products and for systems, the applicable "Warranty Period" for products and system components covered by Seller's above stated express warranty shall be one (1) year after delivery EXW. Extended warranty periods ("Extended Warranty Plans") may be purchased separately from Seller to extend the Warranty Periods set forth above. Subject to availability, upon payment in full for such Extended Warranty Plans, the Warranty Periods hereunder shall be extended in accordance with Seller's applicable Extended Warranty Plans, subject to all applicable terms and conditions. Drawings, functional specifications, formal submittals and any other requirements documents prepared by Seller and approved by Purchaser shall be deemed the correct interpretations of the work to be performed even if inconsistent with other, conflicting plans and specifications, whether prepared by Seller, Purchaser or otherwise. Upon resale, Purchaser agrees to extend to its customers no greater warranties, and limit its liability and remedies to the same extent, as those set forth herein.

7. **Warranty Limitation.** The warranty and remedies for breach of warranty provided for in these General Conditions extend only to the original end-user's production use of Products and do not cover, and Seller shall not be liable for, (i) Third-party products provided/specified by Purchaser, and any other third-party products expressly identified as such, are specifically excluded from Seller's warranty set forth herein. Seller's sole and exclusive warranty liability, responsibility and obligation with respect to such third-party product is to use all commercially reasonable efforts to pass through to Purchaser any applicable warranties provided by the sellers of such third-party products, if any, (ii) Products returned contaminated by chemicals or other substance, (iii) abnormal wear and tear or damage caused by installation, maintenance, or use which is improper or contrary to the instructions published by Seller, (iv) storage of Products in a wet or damp area or unprotected from weather and other job conditions, (v) any cause beyond the control of Seller, including without limitation conditions caused by movement, settlement or structural defects of the environment in which the Products are installed, fire, wind, hail, flood, lightning or other acts of God, any conditions related to, or caused by, failure to process or inaccurate processing of time-sensitive information and/or mechanisms, intentional acts, accidents, negligence or exposure to harmful chemicals, pollutants or other foreign matter or energy, (vi) repair or damage caused by anyone except personnel authorized by Seller, or (vii) any damage to the finish of the Products after they leave Seller's facility. Items repaired or replaced and designs corrected under warranty are warranted until: (a) the expiration of the original warranty period; or (b) ninety (90) days from the date Purchaser receives the repaired or replaced item, whichever is later in time. All Product literature is for illustrative purposes only and does not contain a warranty of any kind. Seller's advice relating to the technical usage of the Products or the intellectual property rights of others, whether provided orally or in writing or through the provision of test results, is given in accordance with Seller's best knowledge at that time, but shall at all times be deemed to be non-binding. Such advice does not relieve Purchaser from the obligation, and Purchaser accepts full responsibility, to confirm for himself the suitability of the Products for the intended purpose(s). **THE WARRANTY SET FORTH IN SECTION 6 IS STRICTLY LIMITED TO ITS TERMS AND IS IN LIEU OF ALL OTHER WARRANTIES, GUARANTEES, EXPRESS OR IMPLIED, ARISING BY OPERATION OF LAW, COURSE OF DEALING, USAGE OF TRADE OR OTHERWISE, SPECIFICALLY EXCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

8. **Remedy.** Purchaser's sole and exclusive remedy, and Seller's only obligation for breach of warranty hereunder, shall be, at Seller's option in its sole discretion, to (i) repair or replace the defective Product (other than Product sold as systems (or skids)) which fails within the applicable Warranty Period, free of charge, provided that Purchaser promptly notifies Seller of such failure and, after receipt of prior written authorization from Seller, returns such Product to the place requested by Seller, freight prepaid, and thereupon Seller finds such to be defective; or (ii) with respect to Products that were sold as systems (or skids), repair or replacement of defective Product which falls within the applicable Warranty Period, free of charge, provided that Purchaser (A) promptly notifies Seller of such failure; (B) properly prepares the Product for service (including without limitation ensuring that the Products to be inspected/serviced are not pressurized, flushing such Products of all substances, and such other preparation as Seller may reasonably specify); and (C) make such Products available for inspection and/or service by Seller's designated service provider in a safe work environment that is appropriate for the work to be performed. Seller reserves the right to charge Purchaser for travel and service time for on-site service technicians in the event Purchaser fails to meet its commitments above. Without limiting the above, Seller may, at its own cost and expense, decide to uninstall and remove the system/skid in question to Seller's designated facility for inspection and/or repair. In such cases, Seller shall also, at its own expense, return the repaired or replaced system/skid to Purchaser's site and install such system/skid. Seller's obligations with respect to breach of warranty are strictly limited to repair, or replacement as stated above. Except as may be otherwise specifically agreed in writing in Seller's quotation or similar written document issued by Seller, Purchaser must pay all other costs related to repair or replacement of Product under warranty, including removal, installation or reinstallation costs. Seller's personnel must be granted access to inspect the Products claimed to be defective at the site of their installation or use.

9. **Return Goods Authorization.** All returns, whether under warranty or otherwise, are subject to Seller's required return goods authorization ("RGA") process. No Products will be accepted for return unless Purchaser has fulfilled/met all applicable RGA requirements as set forth below: (i) Purchaser must certify that all Product to be returned to Seller (whether under warranty or otherwise) is certified "Contaminate-Free". Prior to returning any Product, Purchaser must contact Seller to obtain Seller's "Contaminate-Free Certification" form and complete, sign and return such certification form assuring Seller that Products to be returned are not contaminated with chemical agents. Such Contaminate-Free Certification must accompany returned Product; (ii) Any Product returned, or to be returned, for repair under warranty is subject to Seller's verification that such return under warranty is (a) within the applicable Warranty Period; and (b) eligible for warranty repair subject to the warranty limitations set forth in Section 7 above; (iii) Any Product returned for credit in accordance with Section 5 above (excluding Product for which credit is issued by Seller as remedy for breach of warranty) must be returned unused, in good condition, and, in Seller's sole discretion, in restockable and resaleable condition; (iv) In the event any Product that is returned to Seller without meeting all of the applicable requirements set forth in this Section 9, Seller shall contact Purchaser and attempt to resolve any issues in good faith using commercially reasonable measures; provided, however Seller reserves the right, at any time and in Seller's sole discretion, to send any such non-compliant return Product back to Purchaser, at Purchaser's sole cost, expense and risk; (v) Purchaser agrees that Seller's decisions on the RGA matters set forth in this Section 9 are final and binding.

10. **Disclaimer; Limitation of Liability, Time For Claims.** Purchaser agrees that Seller shall not be liable for INCIDENTAL, SPECIAL, INDIRECT OR CONSEQUENTIAL OR OTHER SIMILAR DAMAGES including but not limited to loss of profit or revenues, damage for loss of use of the Products, damage to property, claims of third parties, including personal injury or death on account of use of the Products or failure of Seller to warn against or instruct on, or adequately warn against or instruct on, the dangers of the Products or the safe and proper use of the Products, whether or not Seller has been advised of the potential for such damages. Seller's total liability hereunder from any cause whatsoever (except liability from personal injury caused by Seller's negligence), whether arising under contract, warranty, tort (including negligence), strict liability, products liability or any other theory of liability, will be limited to the lesser of Purchaser's actual damages or the price paid to Seller for the Products that are the subject of Purchaser's claim. All claims against Seller must be brought within one year after the cause of action arises, and Purchaser expressly waives any longer statute of limitations.

11. **Specifications, Intellectual Property.** Seller assumes no liability for any errors or omissions in any specifications provided or required by Purchaser ("Purchaser Specifications"), including any errors or omissions made by Seller in interpreting Purchaser Specifications. Absent a separate confidentiality/non-disclosure agreement between Purchaser and Seller, in the event Purchaser Specifications are clearly and conspicuously identified in writing to Seller as Purchaser's confidential and proprietary information, Seller's sole and exclusive obligation hereunder shall be to use commercially reasonable efforts to protect such Purchaser Specifications from disclosure to third-parties (other than Purchaser's agents, contractors and/or designees) without Purchaser's consent. Purchaser Specifications not listed and priced by Seller are not part of this Agreement. Purchaser agrees, at its own expense, to defend, indemnify and hold harmless Seller, its officers, agents, employees and principals, against any and all losses, costs, including investigation costs, damages, claims, liabilities or expenses of any kind, including without limitation reasonable attorneys' fees, arising out of or resulting from, directly or indirectly, any claims of violation of proprietary rights of third parties due to, or injury or death to persons or damage to property caused by, Purchaser Specifications. Seller retains all copyrights and other ownership rights with respect to all drawings, models, plans, software, samples, and other documentation (collectively "Seller Documentation"). Seller Documentation may not be copied or disclosed to others without Seller's express written consent and must be promptly returned to Seller (i) if an order is not placed or (ii) at Seller's request. If an order is not placed in response to Seller Documentation, Seller reserves the right to claim reasonable compensation for its time and effort spent in preparing such Seller Documentation from Purchaser.

12. **Compliance with Law.** Purchaser acknowledges and agrees that it is subject to (a) the United States of America rules, laws and requirements governing the export and/or reexport of Seller's products, services and/or technology including, but not limited to the Export Administration Regulations, the International Traffic in Arms Regulations, regulations promulgating financial transaction restrictions administered by the United States Department of the Treasury, Office of Foreign Asset Controls or any of the laws, rules and regulations regarding prohibited and restricted parties, the International Emergency Economic Powers Act, the United States Export Administration Act, the United States Arms Export Control Act, the United States Trading with the Enemy Act, and all regulations, orders and licenses issued thereunder (collectively the "Export Laws"); and (b) all applicable rules, laws and requirements regarding bribery and corruption including, but not limited to, the United States Foreign Corrupt Practices Act (collectively, the "Anti-Corruption Laws"). Purchaser represents and warrants that, as of the date hereof, it is compliant with all Export Laws and Anti-Corruption Laws; and further represents and warrants that it will remain in compliance with such Export Control Laws and Anti-Corruption Laws. In particular, Purchaser hereby gives assurance that unless notice is given to and prior governmental authorization is obtained as required by the Export Laws, Purchaser will not knowingly reexport, directly or indirectly, any Products or any technical data transferred by Seller to Purchaser to any destination or person or entity in violation of the Export Laws. Purchaser additionally warrants that it has not been, and is not currently, debarred, suspended, prohibited or impaired from exporting, reexporting, receiving, purchasing, procuring, or otherwise obtaining any product, commodity, or technical data regulated by any agency of the government of the United States. Purchaser shall respond, in a prompt and timely manner after reasonable investigation (where necessary), to Seller's requests for written assurances of compliance with the Export Laws and/or Anti-Corruption Laws, including without limitation Seller's requests for anti-diversion certifications, written assurance of compliance and other certifications with respect to Export Laws. Purchaser acknowledges that failure to comply shall constitute a breach of this Agreement and failure to provide adequate assurance of compliance with Export Laws and/or Anti-Corruption Laws shall constitute Seller's good cause for holding, suspending or cancelling pending orders for Product(s) and/or Seller's services. Purchaser shall use commercially reasonable efforts to inform and train its employees and any third-parties that traffic in, or otherwise access, receive, or handle, Seller's goods, services and/or technology regarding compliance with Export Laws and Anti-Corruption Laws and shall use commercially reasonable efforts to ensure that such employees and third-parties comply with Export Laws and Anti-Corruption Laws with respect to their dealings with Seller and Seller's products, services, and technology. Without limiting the foregoing, Purchaser hereby represents, warrants, and covenants that, at no time during the negotiation and execution of this contract, nor at any time during Purchaser's dealings with Seller and Seller's officers, directors, employees, contractors and agents, Purchaser has not, and will not, promise, offer or grant to any person any undue advantage or request or accept any undue benefit or advantage to improperly influence actions.