

M. P. PUMPS, INC.
Terms and Conditions of Sale

1. **Exclusive and Entire Agreement.** All sales by M. P. Pumps, Inc., a Michigan corporation (herein, "Seller"), of any goods to any customer (herein, "Buyer") are subject to these Terms and Conditions of Sale as well as any writing from Seller that references or is attached to these Terms and Conditions of Sale (collectively, the "terms"), and the terms constitute the entire, complete, and exclusive agreement between the parties with respect to any goods provided by Seller as specified in these terms. **If these terms are different from, or contain terms and conditions in addition to, Buyer's purchase order or any other document provided by Buyer (including any modifications thereto) Seller expressly rejects such different or additional terms in Buyer's document, and Seller's provision of the goods is expressly conditioned upon Buyer's assent to these terms. Notwithstanding any other acts or omissions of the parties, Buyer's acceptance of a product constitutes Buyer's assent to all of these terms.** No order received by Seller shall be a contract binding Seller unless accepted by Seller in writing.
2. **Delivery.** Delivery is F.O.B. Seller's facility. Except as otherwise set forth in a quotation, Buyer assumes full responsibility for goods upon Seller's delivery to Buyer's carrier at Seller's facility, including proper arrangement and security for transport.
3. **Price.** Except to the extent Seller provides a signed quotation that states that it is a firm quote for a fixed period of time, all prices provided by Seller, whether in its catalog, pricing software or otherwise, are subject to change and revision by Seller at any time. All orders are deemed made at Seller's prices current at the time of order acceptance and may be accepted by Seller on those terms. The price specified in any quote for goods is exclusive of taxes and shipping related costs and is payable only in U.S. currency. Availability of goods and descriptions and specifications of goods is subject to change without notice. Buyer shall reimburse Seller for all taxes, shipping related costs or other charges which Seller may be required to pay upon the sale, transportation or use of the goods. The opening and maintenance of a credit account with Seller is subject to Buyer providing satisfactory references and observing all of the terms on which credit is given. Seller reserves the right to refuse to extend credit at any time and for any reason.
4. **Payment Terms.** Unless otherwise agrees by Seller in writing, Payment terms for all sales are net 30 days. If Buyer fails to make payment when due, in addition to Seller's other rights and remedies, (i) Buyer shall pay Seller a late charge equal to the greater of 2%, per month and/or part of a month on the remaining unpaid balance due Seller or the highest lawful amount which may be charged to Buyer and pay all expenses of collection of amounts due Seller from Buyer, including reasonable attorneys' fees and (ii) Seller may suspend performance without responsibility or liability to Buyer for resultant delay. Buyer shall not be entitled to make any deductions or set off of any amounts (including those for alleged damages) against payments due to Seller hereunder. Seller may treat any failure by Buyer to make any payment within 10 days of the due date as an improper cancellation of this order under Section 8 hereof.
5. **Security Interest.** Until the entire amount due Seller is paid, Buyer grants Seller a purchase money security interest in all goods, including the proceeds thereof, with all rights and remedies of a secured party in any jurisdiction. Buyer authorizes Seller to file financing statements, or such other documents, appropriate to protect Seller's security interest, without Buyer's signature. If Buyer has granted a third party a blanket security interest in the type of collateral of which the goods would be characterized under the Uniform Commercial Code or applicable law, Buyer shall notify Seller of such fact in writing prior to shipment of goods.
6. **Inspection and Acceptance.** Buyer cannot reject goods as non-conforming unless promptly upon delivery, but no later than fifteen (15) days after delivery, Buyer shall (i) examine and inspect all goods, and (ii) notify Seller of any defect in material or workmanship or any other fact that causes the goods not to conform to the agreement between Buyer and Seller. Failure to so inspect and inform Seller of a defect within the foregoing time period or the use of any goods by Buyer at any time shall be conclusive evidence that Seller has satisfactorily tendered delivery and that Buyer has inspected and accepted the goods. Should Buyer so notify Seller of any defects in goods, in addition to any obligations Buyer may have to Seller, Buyer shall re-pack the goods into their original packaging and store those goods in an appropriate environment

pending instructions from Seller. At Seller's option, Seller may ship and bill to Buyer product replacing defective goods and issue a credit to Buyer only when the rejected goods are received by Seller.

7. Shortages and Delays. Any dates quoted for delivery are approximate only. In the event of inability for any reason to supply the total demand for goods, Seller may allocate its available supply among any or all purchasers, as well as departments and divisions of the Seller, on such basis as it may deem fair and practical, without liability for any failure of performance which may result therefrom. Seller shall not be liable for loss, damage, detention or delay nor be deemed to be in default from causes beyond its reasonable control including without limitation fire, strike, labor difficulties, act or omission of any governmental authority or of Buyer, compliance with import or export regulations, insurrection or riot, embargo, delays or shortages in transportation or inability to obtain necessary labor, materials or manufacturing facilities from usual sources, failure of supply. In the event of delay due to any such cause, the date of delivery will be postponed by such length of time as may be reasonably necessary to compensate for the delay, without liability to Seller. In no event shall Seller be liable for any production losses due to late delivery or failure of any goods whether or not due to any of the foregoing enumerated causes. If shipments are delayed at Buyer's request, due to Buyer's acts or omissions, or due to circumstances that are not within Seller's control, payment shall be made by Buyer within seven (7) days after Buyer has been notified by Seller that the particular goods are ready for shipment. If shipment is delayed, in addition to any other remedy available to Seller, the goods may be stored by Seller at Buyer's risk and expense. If an order is delayed at Buyer's request or due to Buyer's fault for more than 30 days, the order shall, if Seller so elects, be considered cancelled unless other arrangements acceptable to Seller are made.

8. Returns/Cancellation. No goods may be returned outside of warranty except upon Seller's written authorization in Seller's sole discretion. Section 11 governs warranty service. Any such authorized return must (i) be in new condition, suitable for resale and with all its original parts and in original undamaged packaging and (ii) not have been used, installed, modified, rebuilt, reconditioned, repaired, altered or damaged. If Seller agrees to accept a return Buyer must pay all costs and bear all risk of returning the goods to Seller's facility and pay a restocking charge of 25% of the price for all returns out of warranty. Orders accepted by Seller can be cancelled only with the written consent of Seller in Seller's sole discretion and only upon payment of a cancellation charge of 20% of the price or such greater amount as may be specified by Seller in its consent. Any cancellation without Seller's consent or other improper cancellation by Buyer shall obligate Buyer to pay reasonable and proper termination charges based on Seller's costs plus a fixed sum of 30% the price of the goods. Any cancellation shall terminate all of Seller's obligations with respect to the order.

9. Buyer Responsibilities. Unless and only to the extent set forth in the quotation of which these terms are a part, Buyer, its employees and agents will take all necessary steps to ensure that the goods will be set-up, assembled, installed, labeled and used (whether by Buyer or a third party) in accordance with Seller's instructions, the instruction manual provided as well as all requirements of all applicable governmental authorities pertaining to the installation and operation of the goods. Buyer shall be fully responsible for the safety of any worksite at which any services by Seller away from Seller's premises are performed. Buyer shall indemnify, defend and hold harmless Seller against all damages, losses, costs, claims and expenses, including reasonable legal fees incurred by Seller, arising out of any of the foregoing.

10. Limited Warranty. Seller warrants to Buyer and, if Buyer is not the original end-user purchaser, to the original end-user purchaser, that the goods sold will be free from defects in material and workmanship (in either case the "Limited Warranty"). The period of the Limited Warranty (the "Warranty Period") shall be twenty-four months for FLOMAX® brand product (except for the drive, which is warranted for twelve months) and twelve months for all other goods, in each case measured from the date of sale to the Buyer or the original end-user purchaser as applicable. This Limited Warranty covers only parts of new goods which are found upon examination by Seller's factory in Fraser, Michigan, to be defective in material or workmanship as delivered to Buyer or the original end-user purchaser as applicable.

Except as expressly set forth in this Section 10 or specifically authorized by an executive officer of Seller in writing, the Limited Warranty is not transferable or assignable and any such transfer or assignment is void. The Limited Warranty does not cover service trips, service calls, costs of removing and reinstalling goods or components and other labor charges or the cost of shipment of replacement parts. The Limited Warranty

does not cover and excludes damages due to (i) failure to install, label, operate or maintain goods as directed in any instruction manual or bulletin or under applicable law or regulation, (ii) misuse, abuse, neglect or modification of the goods in any way, (iii) improper service, use of replacement parts or accessories that are not specified by Seller, (iv) improper installation, incorrect supply, accident, fire, flood, acts of God or other casualty, (v) use of any goods other than their intended purpose and normal usage, (vi) damage during shipment (all claims must be filed with carrier), or (vii) incompatibility with items not supplied by Seller. Wear items or normal maintenance items including but not restricted to seals and wear plates, etc. are not included under the Limited Warranty. No warranty coverage is applicable if Buyer or the original end-user purchaser cannot prove the original purchase date, the data plate and/or serial number on any goods is removed, defaced, modified or altered in any way, or Seller is not permitted to inspect the damaged goods.

The Limited Warranty is VOID if the goods are not decontaminated prior to return to Seller or if the material pumped is not identified as provided below.

11. Securing Warranty Service. Warranty service can be arranged by contacting Seller at M. P. PUMPS, Inc., c/o Service Manager, 34800 Bennett Drive, Fraser, Michigan 48026. Warranty service can only be obtained through Seller at its factory in Fraser, Michigan. At the time of requesting warranty service, evidence must be presented of the date of sale to the Buyer or original end-user purchaser as applicable and the serial number of the goods. Seller, at its option, will supply a "Return Goods Authorization Form" ("RGA") or will prepare an RGA and provide an RGA reference number. The person requesting service must fully identify the product pumped and that product shall be listed on the RGA. All goods or parts returned to Seller for any reason must be completely and properly decontaminated prior to delivery to Seller. If the product pumped requires a Material Safety Data Sheet ("MSDS"), reference to this fact must be indicated under "Application Information" on the RGA form which must be returned with the part(s) or if an RGA was completed by Seller the person requesting service must provide the RGA reference number. A copy of all applicable MSDS's must also be included with the returned RGA forms or with the RGA reference number. New or unused goods need not be decontaminated. This fact must be indicated under "Application Information" on the RGA form which must be returned with the goods. The person seeking service shall pay any charges for making service calls and/or for transporting the goods to and from the place where the inspection and/or warranty work is performed. Goods submitted for inspection and/or warranty work that are not covered by the Limited Warranty or which do not comply with the requirements of this section will be returned to the sender at the sender's expense or scrapped at Seller's facility and no credits will be issued. The person requesting service shall be responsible for any damage or loss incurred in connection with the transportation of the goods or any component submitted for inspection and/or warranty work.

12. Limitation on Warranties/Damages. Any claim under the Limited Warranty must be made within the Warranty Period or such claim is waived.

No person (including without limitation any dealer or distributor) other than an executive officer of Seller has authority to change or extend the terms of the Limited Warranty, and Buyer confirms that no other warranty terms have been extended by Seller or are applicable to the goods. Change or extensions to the terms of the Limited Warranty (whether before or after sale) are binding only if confirmed in writing by Seller's duly authorized executive officer.

Except as set forth in these terms, Seller makes no representation or warranty of any type, express or implied, including any warranty of merchantability, warranty of fitness for a particular purpose or warranty of non-infringement or warranty arising from any course of dealing, course of performance or usage of trade.

Seller will not under any circumstances, be liable for any special, indirect, punitive or consequential damages (even if Seller has been notified of the possibility of such damages) resulting from or related to a product including, without limitation, any loss of profits, or loss of opportunity. Some jurisdictions do not allow limitations on warranties or damages, so this limitation or exclusion may not apply.

13. Remedy. Seller's sole obligation and Buyer's and the original end-user purchaser's exclusive remedy with respect to any goods, whether arising in contract, tort (including negligence), strict liability, breach of warranty or otherwise, is limited to Seller, at its discretion, replacing or repairing the defective goods, providing replacement parts or issuing Buyer a credit equal to the price paid to

Seller for such defective goods, and in no event will Seller's liability exceed the amounts actually received by Seller for any goods.

This exclusive remedy shall not be deemed to have failed its essential purpose so long as Seller is willing and able to repair or replace defective goods or parts thereof or, also at Seller's option, to refund the price received by Seller for the defective goods, within a reasonable time after Buyer demonstrates that a defect exists in accordance with the terms and limitations of the Limited Warranty.

14. Intellectual Property. Seller is not transferring to Buyer any patent, copyright, trademark or other intellectual property rights in or related to any goods, other than the limited license to use the goods for Buyer's internal business purposes. The goods provided hereunder may be subject to patent, trade secret and other intellectual property rights and Buyer agrees that should the goods or certain information relevant thereto be made available to others it would cause irreparable harm to Seller. Therefore Buyer agrees not to, and not to permit others to, use, disclose, copy or replicate (through for example reverse engineering or other similar process) any goods and/or any documentation or information regarding any goods.

Should Buyer request that any goods conform to a certain specification or description, including but not limited to specifications or descriptions regarding design, performance or labeling and marking of goods, Buyer warrants to Seller that Seller's compliance with such specifications or descriptions will not infringe any third-party's intellectual property rights and Buyer shall indemnify, defend and hold Seller harmless from any losses, liabilities, claims, causes of action and expenses (including reasonable attorneys' fees) arising out of Seller's compliance with Buyer's specifications.

15. Limitation of Actions. **Any action against Seller arising out of this transaction shall be commenced within one (1) year from the date such cause of action has accrued, otherwise the same shall be barred.**

16. Export Control. If any goods are being exported, the commodities, technologies and software are exported from the United States in accordance with the Export Administration Regulations. Diversion contrary to United States Law is prohibited.

17. Governing Law. These terms shall be governed by and construed in accordance with the laws of the State of Michigan, without regard to its principles of conflicts of laws, and shall not be governed by the provisions of the United Nations Convention on Contracts for International Sales of Goods. The parties agree that all actions or proceedings between them shall be tried and litigated only in the state and federal courts located in the County of Macomb, State of Michigan USA.

18. Termination. Seller may terminate these terms, and have no obligation to supply goods, immediately upon the bankruptcy or insolvency of Buyer or Buyer's breach of these terms. Buyer will pay the price for any goods delivered on or before the date of termination. Seller is not liable for any other costs, expenses, losses, damages or liabilities arising out of such termination. Termination or cancellation will not alter or terminate any of the parties' obligations under any section of the terms that by its nature extends beyond termination or cancellation.

19. Severability/Revision. Should any provision of these terms be held by a court of law, or other body having proper jurisdiction to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remaining provisions of these terms shall not be affected or impaired thereby and the parties agree that partial enforcement of these terms or revisions of the illegal, invalid or unenforceable provision is appropriate.

20. Notices. To be effective, all notices and other communications under these terms shall be in writing and sent to the intended recipient by personal delivery, by recognized overnight courier or international courier, at the party's address as set forth in the face of the purchase order. Each party may change its address for receipt of notice by giving notice of such change pursuant to this section. Notice is given immediately upon personal delivery, the next day following the date on which such notice is sent by overnight courier or three days following the date on which such notice is sent by international courier.

21. Entire Agreement. These terms constitute the entire agreement between the parties as to the subject matter thereof, and may be modified, or any right waived, only by a written document signed by the party to be charged that specifically references these terms and the section(s) so modified.

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