



## TERMS & CONDITIONS OF SALE

- 1. GENERAL** The terms and Conditions of Sale outlined herein (hereinafter referred to as "the Contract") shall apply to the sale by Air Pumping Limited, trading as Air Pumping Engineering Services Limited (hereinafter referred to as "the Company") to the person, firm or company to whom the Company's offer is made (hereinafter referred to as "the Purchaser") of products, equipment and parts relating thereto (hereinafter referred to as "the Equipment"). Unless otherwise agreed in writing by the Company, it shall be understood that the company proceeding with any work shall be in accordance with the Terms and Conditions outlined herein. THESE TERMS AND CONDITIONS SHALL PREVAIL OVER ANY TERMS AND CONDITIONS PUT FORWARD BY THE PURCHASER, UNLESS THE COMPANY AGREES TO THEM EXPRESSLY IN WRITING. NO CONDUCT BY THE COMPANY SHALL BE DEEMED TO CONSTITUTE ACCEPTANCE OF ANY TERMS PUT FORWARD BY THE PURCHASER. Unless otherwise agreed between the parties, the Terms of Payment are net cash within thirty days of invoice date. Unless otherwise agreed, all prices shall be Ex Works prices ruling at the date of dispatch. Nothing in this contract shall affect the statutory rights of a consumer.
- 2. TITLE** (a) Until payment in full has been made of all sums due to the Company under the Contract (or in the case of the Company accepting any cheque bill of exchange or promissory note, until the same has been honoured) the property in the Equipment supplied by the Company, even if affixed to other goods of the Purchaser or a third party, shall remain in the Company. (b) The Purchaser shall be at liberty to sell the goods as principal in the ordinary course of business, however the proceeds of any such sale and the benefit of any such contract of sale shall be the property of the Company and held in trust for the Company absolutely, provided always that the Company may by written notice terminate the Purchaser's power of sale at any time if it appears to the Company that the Purchaser may go or threatens to go into receivership or liquidation and at any time after the termination of the power of sale, the Company may repossess the Equipment. If necessary the Company shall have the right to enter onto the Purchaser's premises to recover the Equipment or any part of it.
- 3. RISK** Notwithstanding that the property in the Equipment may not have passed to the Purchaser as provided in Condition 2 hereof the risk in the Equipment shall pass to the Purchaser at the time of first tender of delivery to the Purchaser, his agent or carrier. In the event of any shortages, defects, damage or other errors whatsoever in the Equipment existing at the time of delivery, they shall be notified to the Company within two (2) days after delivery of the Equipment in accordance with Condition 5. Strict compliance with this requirement is a condition precedent to the Company being liable in accordance herewith.
- 4. ASSIGNMENT** Neither party shall assign or transfer this Contract without the prior written consent of the other party, except that the Company may assign or transfer the Contract for the purposes of internal reorganisation. The Company shall, in addition however, be permitted to assign or transfer without the prior written consent of the Purchaser the Company's right to receive all or any portion of the payment due from the Purchaser under the Contract.
- 5. DELIVERY & DELAYS** Delivery dates shall be quoted by the Company. Such dates shall be interpreted as estimated only and in no event shall they be subject to strict compliance or be construed as falling within the meaning of "time of the essence" or any similar concept. Without prejudice, the Company shall not be liable for loss, damage, detention or delay due to war, riots, civil insurrection or acts of the common enemy, fire, flood, strikes or other labour difficulties, including the Company's own plants, acts or omissions of the Purchaser, embargo, transport shortage, damage or delay in transportation, inability to obtain necessary labour or materials from usual sources, faulty forgings or castings or other causes whatsoever beyond the reasonable control of the Company. In the event of delay in performance due to any such cause the date of delivery or time for completion will be adjusted to reflect the actual length of time lost by reason of such delay to property. The Purchaser's acceptance of Equipment shall constitute a waiver of any claims for delay.
- 6. TAXES** All prices are exclusive of taxes (including without any limitation any value added sales or similar tax), port rates, transportation, insurance, custom duties, licence fees or other charges.
- 7. SET OFFS** Neither the Purchaser nor any affiliated company or assignee shall have the right to claim compensation or to set off any claims against any amounts which become payable to the Company under the Contract or otherwise.
- 8. PATENTS** The Company shall defend any action or proceeding brought against the Purchaser and shall pay any adverse judgement entered therein so far as such action or proceeding is based upon a claim that the use of the Equipment thereof manufactured or sold by the Company and furnished under the Contract constitutes infringement of any patent of a country where the Equipment is sold, or of a country where the Company is aware at the date of the sale that the Equipment will be used, providing the Company is promptly notified in writing and given authority, information and assistance for defence of same, and the Company shall, at its option, procure for the Purchaser the right to continue to use said Equipment, or modify it so that it becomes non-infringing, or replace the same with non-infringing Equipment, or remove said Equipment and refund the purchase price. The foregoing shall not be construed to include any agreement by the Company to accept any liability whatsoever in respect of patents for inventions including more than the Equipment furnished hereunder, or in respect of patents for methods and processes to be carried out with the aid of said Equipment. The foregoing states the entire liability of the Company with regard to patent infringement which is limited by Condition 10 hereof.
- 9. WARRANTY** Unless a longer warranty period is agreed to in writing by the Company, the Company warrants the Equipment sold by it to the Purchaser to be free of defects in material and workmanship for a period of three (3) months from the date of placing the Equipment in operation or six (6) months from the date of shipment, whichever first occurs. The Company will provide a new part or repaired part, at its election, in place of any part which is found upon its inspection to be defective in material or workmanship during the period described above. Such part will be repaired or replaced without charge to the Purchaser during normal working hours at the place of business of a Distributor of the Company authorised to sell the type of Equipment involved or other establishment authorised by the Company. Purchaser must present proof of purchase (and purchase date) at the time of making a claim under this warranty. This warranty does not apply to failures occurring as a result of abuse, misuse, negligent repairs, corrosion erosion, normal wear and tear alterations and modifications made to the Equipment without express written consent of the Company, or failure to follow the recommended operating practices, services and maintenance procedures as provided in the Equipment's operating and maintenance publications. All maintenance, service and repair work must be completed by an authorised Company Distributor or establishment and only genuine Company parts shall be used in such work. Failure to comply strictly with these requirements shall invalidate this warranty. THE COMPANY EXCLUDES OTHER CONDITIONS, WARRANTIES OR REPRESENTATIONS OF ALL KINDS EXPRESSED OR IMPLIED STATUTORY OR OTHERWISE (EXCEPT THAT OF TITLE) INCLUDING ALL IMPLIED WARRANTIES AND CONDITIONS RELATING TO MERCHANTABILITY, SATISFACTORY QUALITY AND FITNESS FOR A PARTICULAR PURPOSE. Corrections by the Company of non-conformities whether patent or latent, in the manner and for the period of time provided above shall constitute fulfilment of all liabilities of the Company for such non-conformities, whether based on contract, warranty, tort, negligence, indemnity, strict liability or otherwise with respect to or arising out of such Equipment.
- 10. LIMITATION OF LIABILITY** THE REMEDIES OF THE PURCHASER SET FORTH HEREIN ARE EXCLUSIVE AND THE TOTAL LIABILITY OF THE COMPANY WITH RESPECT TO THIS CONTRACT OR THE EQUIPMENT AND SERVICES FURNISHED HEREUNDER, IN CONNECTION WITH THE PERFORMANCE OR BREACH THEREOF OR FROM THE MANUFACTURE, SALE, DELIVERY, INSTALLATION, REPAIR OR TECHNICAL DIRECTION COVERED BY OR FURNISHED UNDER THIS CONTRACT WHETHER BASED ON CONTRACT WARRANTY, TORT, NEGLIGENCE, INDEMNITY, STRICT LIABILITY OR OTHERWISE, SHALL NOT EXCEED THE PURCHASE PRICE OF THE UNIT OF EQUIPMENT UPON WHICH SUCH LIABILITY IS BASED. THE COMPANY AND ITS SUPPLIERS SHALL IN NO EVENT BE LIABLE TO THE PURCHASER, ANY SUCCESSORS IN INTEREST OR ANY BENEFICIARY OR ASSIGNEE OF THIS CONTRACT FOR ANY CONSEQUENTIAL INCIDENTAL, INDIRECT, SPECIAL OR PUNITIVE DAMAGES ARISING OUT OF THIS CONTRACT, OR ANY BREACH HEREOF OR ANY DEFECT IN, OR FAILURE OF, OR MALFUNCTION OF THE EQUIPMENT SUPPLIED HEREUNDER WHETHER BASED UPON LOSS OF USE, LOST PROFITS, REVENUE OR INTEREST, LOST GOODWILL, WORK STOPPAGE, IMPAIRMENT OF OTHER GOODS, LOSS BY REASON OF SHUTDOWN OR NON-OPERATION, INCREASED EXPENSES OF OPERATION, COST OF PURCHASE OF REPLACEMENT, POWER OR CLAIMS OF THE PURCHASER OR CUSTOMERS OF THE PURCHASER FOR SERVICE INTERRUPTION WHETHER OR NOT SUCH LOSS OR DAMAGE IS BASED ON CONTRACT, WARRANTY, TORT, NEGLIGENCE, INDEMNITY, STRICT LIABILITY OR OTHERWISE.
- 11. VIOLATIONS OF LAW** The Company shall not be bound by or required to adhere to any term or provision of a purchase order, quotation, bid, letter of credit or like document or any provision of law regulation or custom, which would cause the Company, its parent or any of its affiliates to be in violation of or fail to comply with the export laws, taxing statutes or regulations of the country wherein the goods are manufactured or from which they are exported or are otherwise subject to jurisdiction.
- 12. NUCLEAR LIABILITY** In the event that the Equipment sold hereunder is to be used in a nuclear facility, the Purchaser and / or Owner of the facility hereby releases and agrees to indemnify the Company and its suppliers for any nuclear damage, occurring on-site or off-site, including loss of use, in any manner arising out of a nuclear incident, whether alleged to be due in whole or in part to the negligence or otherwise of the Company or its suppliers.
- 13. GOVERNING LAW** The rights and obligations of the Purchaser and the Company shall be governed and construed in accordance with the Laws of England and the Purchaser submits to the exclusive jurisdiction of the English Courts.
- 14. EXECUTION** The Company shall not be bound by any contract or any modification thereto until approved in writing by an officer of the Company. The Contract when so approved, shall supersede all previous communications, either oral or written.