

Terms and Conditions

All descriptions, quotations, proposals, offers, acknowledgements, acceptances, and sales of products or services by Ryan Herco Products Corp., d/b/a Denver Industrial Pumps ("Seller") to you, the buyer ("Buyer"), are subject to and shall be governed by the terms and conditions stated herein. Buyer's acceptance of any offer to sell is limited to these terms and conditions. Any terms or conditions in addition to, or inconsistent with those stated herein, proposed by Buyer in any acceptance of an offer by Seller, are hereby objected to. No such additional, different, or inconsistent terms and conditions shall become part of the contract between Buyer and Seller unless expressly accepted in writing by Seller. Seller's acceptance of any offer to purchase by Buyer is expressly conditional upon Buyer's assent to all the terms and conditions stated herein. Acceptance of Seller's products shall in all events constitute such assent.

1. **Acceptance**

Any quotation provided by Seller is void unless a purchase order is placed with us within thirty (30) days from date of bid opening or date of written proposal or quotation. Seller will not be bound by any additional Terms and Conditions provided or referenced in Buyer's purchase order.

2. **Terms**

Net due thirty (30) days after the date of invoice unless otherwise stated in the proposal. These terms are subject to approval by Denver Industrial Pumps' Credit Department. Buyer's payment to Seller will not be dependent or contingent upon receipt of payment by Buyer or any other parties. Any balance remaining due beyond the due date will be subject to a monthly service fee of 1.5% until paid. Should Seller have to engage an attorney to collect the balance due us, including the service fee, Buyer agrees to reimburse Seller for all collection costs including reasonable attorney fees. Buyer is responsible for all bank charges and fees in connection with payment. Payment by check is not approved until the check has been cleared by the Buyer's bank.

3. **Taxes & Other Charges**

Unless otherwise indicated, no Sales, Use, Retailer's Occupation, Service Occupation, Service Use, Tariffs, Duties or similar taxes and similar charges, have been included in Seller's prices. The amount of any such Sales and Use Tax, Retailer's Occupation, Service Occupation, Service Use, Tariffs, Duties or similar taxes or charges which are paid or assessed in connection with this order and which are not specifically stated as being included in the purchase price, shall be paid by Buyer, either directly to the appropriate authorities (in which event Buyer shall furnish Seller with satisfactory evidence of such payments) or to Seller if we have paid, or are required to pay, such taxes or charges. If Buyer is tax exempt on this job, Buyer must supply Seller with an exemption certificate. Buyer agrees to reimburse Seller for taxes that Seller must pay on the Buyer's behalf. Buyer is responsible for obtaining permits in connection with the sale or installation of the equipment. Prices are subject to increase based on increased taxes, tariffs, duties or manufacturer price increases.

4. **Warranty**

All goods, products or equipment sold will be covered under the individual manufacturer's warranty and such manufacturer's terms will apply. If there is a warranty claim, Seller will work with the manufacturer or supplier to assist Buyer with the warranty concerns. Seller warrants all repairs, unless otherwise stated in Seller's proposal, for a period not to exceed ninety (90) days from the date of repair completion. The warranty covers workmanship only. All parts and components utilized in the repair process will be covered under the manufacturer's warranty and their terms will apply. If a warranty claim is approved, Seller will not be liable for any loss incurred from the defective unit including but not limited to downtime, transportation costs, installation, production delays, etc. All claims are subject to evaluation and approval by Seller

This warranty shall not apply to:

- a. Any equipment which has been subjected to misuse, neglect, or accident.
- b. Any equipment which has been altered, tampered with, or upon which corrective work has been done without Seller's specific written consent.
- c. Any equipment which has been operated or maintained in a manner, which in any way deviates from the maintenance, schedules, specifications, and parameters set forth in the manufacturer's Operator's Manual for such equipment.

THIS SECTION SETS FORTH BUYER'S SOLE REMEDY AND SELLER'S EXCLUSIVE OBLIGATION WITH REGARD TO NON-CONFORMING PRODUCTS, GOODS, EQUIPMENT, COMPONENTS, PARTS, SERVICES OR RENTAL. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED PURSUANT TO THE PROVISIONS OF THIS SECTION, SELLER MAKES NO OTHER WARRANTIES OR REPRESENTATIONS OF ANY KIND, EXPRESS OR IMPLIED, AND SELLER DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. NOTWITHSTANDING THE FOREGOING, THERE ARE NO WARRANTIES WHATSOEVER ON ITEMS BUILT OR ACQUIRED WHOLLY OR PARTIALLY TO BUYER'S DESIGNS OR SPECIFICATIONS.

5. **Security Interest**

Until all amounts due hereunder have been paid in full, Seller has a security interest in the equipment and has all rights of a secured party under the Uniform Commercial Code including, without limitation, the right to take possession of the equipment without legal process and the right to require Buyer to assemble the equipment and make it available to Seller at a place reasonably convenient to both parties. At Seller's request, Buyer shall execute any financing statement or statements submitted by Seller in order that Seller's security interest in the equipment may be perfected.

6. **Changes & Delay-Cost**

If Buyer makes a change, or delays, or interrupts, the progress of the work, Buyer will reimburse Seller for any additional expense resulting from such cause. Any such changes or delays which may adversely affect the operation of the equipment will nullify the warranty unless we consent in writing thereto.

7. **Delays**

Seller shall not be liable for delay in delivery or performance caused by any reason beyond our control, including but not limited to the Buyer's delay in promptly submitting all information necessary for Seller to proceed with the work, Buyer's delay in approval of drawings, acts of God, casualty, civil disturbance, labor disputes, strikes, transportation, supply chain delays or difficulties, labor disturbances, manufacturing delays, materials shortages, any interruption of the Seller's facilities, or any acts of the governmental authorities. In the event of such conditions, Seller is entitled to cancel the order or to extend the time for delivery specified herein during the continuance of such conditions and for a reasonable time thereafter.

8. **Claims**

Claims for errors or shortages existing prior to Seller's delivery of the goods, products or equipment to the carrier will be considered only when made to Seller

immediately after receipt of shipment. Claims shall be confirmed in writing. Buyer shall immediately inspect the equipment upon receipt thereof. Seller is not obligated to consider any claim for shortages or non-conformance unless notified thereof by Buyer within eight (8) days after Buyer's receipt of goods, products or equipment. Seller will supply only the safety devices, if any, described in the order.

9. **Transportation Expense**

Unless otherwise noted, the prices shown in Seller's proposal do not include freight to the destination shown. Freight charges will be determined after shipment. If freight is included within Seller's proposal, Seller reserves the right to use the lowest available freight rates on a common carrier of our choice. If the buyer requires the seller to ship another way, the buyer will bear any additional expense. All freight is shipped F.O.B. Seller's factory or F.O.B Seller's shipping point, the risk of loss shall be on Buyer once shipped. For Seller to ensure delivery, it is agreed by the Buyer and Seller that Buyer will provide Seller with an access road to and from the job site, which can support the weight and size of trucks carrying the goods, products or equipment.

10. **Liability**

It is expressly understood that the Seller's liability, including that for negligence, for products or services or repairs is limited to the furnishing of such replacement parts, or the reperformance of the services or repairs. No claim by Buyer hereunder, whether relating to products delivered or for non-delivery, shall be greater than the purchase price of the goods, products or equipment in respect to which such claim is made. IN NO EVENT SHALL SELLER BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES OF ANY KIND OR NATURE WHATSOEVER, INCLUDING BUT NOT LIMITED TO LOST PROFITS ARISING FROM OR IN ANY WAY CONNECTED WITH THIS AGREEMENT OR ITEMS SOLD HEREUNDER, WHETHER ALLEGED TO ARISE FROM BREACH OF CONTRACT, EXPRESS OR IMPLIED IN WARRANTY, OR IN TORT, INCLUDING WITHOUT LIMITATION, NEGLIGENCE, FAILURE TO WARN OR STRICT LIABILITY. THE FOREGOING LIMITATIONS ON SELLER'S LIABILITY SHALL ALSO BE THE ABSOLUTE LIMIT OF SELLER'S LIABILITY FOR NEGLIGENCE OR DEFECT IN THE MANUFACTURE, INSTALLATION OR OTHER ACTION WITH RESPECT TO THE PRODUCTS SOLD HEREUNDER.

11. **Liquidated Damages**

Under no circumstances shall Seller accept any liquidated damages or penalty clauses for failure to complete shipment.

12. **Installation Representative**

At Buyer's request, and subject to the Seller's option and availability of personnel at time of requirement, Seller will provide the services of a competent person to advise Buyer concerning the installation of the equipment covered by this order. These services are not supervisory but are advisory only, and are offered subject to the express understanding that our function and responsibility is limited to interpretation of assembly drawings and identification of materials for their proper location in the equipment or system layouts. These services are offered on a "no risk" basis by Seller

13. **Cancellation**

Cancellation or suspension of an order will be accepted only upon terms that will indemnify Seller against loss. In such cases, Buyer agrees to reimburse Seller for all costs incurred in such cancellation, including overhead and administrative costs. Notwithstanding anything herein to the contrary, all goods, products or equipment provided are NON-RETURNABLE and NON-CANCELLABLE by Buyer unless approved by Seller prior to return and subject to Seller's then in effect restocking/cancellation fee as provided by Seller in writing with return approval. All approved returns are limited to standard stocked items in new and resaleable condition per Seller's sole and reasonable discretion. Seller may cancel the order prior to or at the time of receiving the final approval drawings if Seller deems itself insecure or determines that it is commercially unreasonable for us to proceed. In the event of a Seller initiated order cancellation, Buyer will be refunded any deposits made to Seller.

14. **Complete Agreement**

Buyer and Seller both agree that these terms and conditions of sale and warranty, and the Seller's quote or order acknowledgement to which they have been incorporated by reference, shall constitute the complete, exclusive and final agreement between the Parties and may not be modified, supplemented, explained, or waived by oral evidence, Buyer's purchase order, course of dealing, or any other way, except where made in writing and signed by an authorized officer of Seller and Buyer.

15. **Applicable Law**

This Agreement, and all rights and obligations hereunder, including matters of construction, validity and performance, shall be governed by the laws of the State of Colorado. THE JURISDICTION AND VENUE OF ANY LEGAL PROCEEDINGS FOR THE RESOLUTION OF DISPUTES ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY SALE BY SELLER TO PURCHASER SHALL BE IN THE FEDERAL OR STATE COURTS SITTING IN JEFFERSON COUNTY, COLORADO. BUYER HEREBY SUBMITS TO THE JURISDICTION OF ALL SUCH FEDERAL AND STATE COURTS SITTING IN JEFFERSON COUNTY, COLORADO.

16. **Confidential Information**

All information and data herein furnished to Buyer hereunder, relating to price, size, type and design is submitted with the understanding that it is for the Buyer's own confidential use and is not to be shown or otherwise made known or available to any third party at any time without Seller's written consent.

17. **Pre-lien's**

Upon Request from Seller, Buyer agrees to provide in a timely fashion, all pertinent information regarding specific jobs for the purpose of filing pre-lien notices.

18. **MISCELLANEOUS -**

(a) This Agreement may not be assigned or otherwise transferred by Buyer without the prior written consent of Seller, and any such prior written consent shall be null and void and of no force or effect whatsoever. (b) Seller's failure to insist, in one or more instances, upon the performance of any term hereunder shall not be construed as a waiver or relinquishment of its right to such performance or the future performance of such term and Buyer's obligation with respect thereto shall continue in full force and effect. (c) Any notice or other communication required or permitted hereunder shall be sufficiently given if sent in writing by registered or certified mail, postage prepaid, to the other party thereto at its respective address contained herein. Seller's address is 15165 W. 44th Avenue Golden, CO 80403. Any such notice, if so mailed, shall be deemed to have been received on the third business day following such mailing. Either party hereto may change its address for notice purposes by written notice to the other party. (d) The invalidity, in whole or in part, of any provision of this Agreement shall not affect the validity or enforceability of any other of its provisions.

