

ATLANTIC PUMP & ENGINEERING
TERMS OF SALE

The following terms and conditions, including those on our sales quotation, shall constitute the entire Agreement for the purchase and sale of Atlantic Pump & Engineering's products. Any acceptance contained herein is made expressly conditional upon the Purchaser's assent to the terms, which are different from, in addition to, or vary the terms contained in the Purchaser's purchase order or request for quotations. Such assent should be deemed to occur upon the failure of the Purchaser to object in writing specifically to such term within 14 days from the receipt hereof. Any terms and conditions contained in the Purchaser's purchase order or request for quotation which are different from, in addition to, or vary Atlantic Pump & Engineering's terms and conditions shall not be binding upon Atlantic Pump & Engineering, and Atlantic Pump & Engineering hereby objects thereto.

1. **Changes.**

Prior to the date of delivery of any product or products there under, the Purchaser shall have the right to make changes in the order only if Atlantic Pump & Engineering receives written notice of the desired changes and the Purchaser accepts the additional charge therefore as determined by Atlantic Pump & Engineering in its sole discretion. Changes, which interfere with or alter Atlantic Pump & Engineering's production or delivery schedules, will not be acceptable unless the time for performance is extended for such a period as deemed necessary by Atlantic Pump & Engineering. Failure of Atlantic Pump & Engineering to accept a Purchaser's request to change its purchase order shall not be cause for Purchaser's cancellation of its order.

2. **Cancellation.**

- (a) Atlantic Pump & Engineering shall have the absolute right to cancel this Agreement upon breach thereof by the Purchaser, failure by the Purchaser to make any payment required by this Agreement, or the insolvency or bankruptcy of the Purchaser.
- (b) Orders are not cancelable by Purchaser unless and until all cancellation provisions, if any, are agreed to by Atlantic Pump & Engineering in writing and all cancellation charges determined by Atlantic Pump & Engineering in its sole discretion, if any, have been paid by Purchaser.

3. **Limited Warranties.**

- (a) Except as set forth in the following paragraph, the only warranties on products and systems sold by Atlantic Pump & Engineering are the warranties, if any, provided by the respective manufacturer for such products and systems. Reference should be made by Purchaser to the terms of such manufacturer's warranties for the conditions thereof.
- (b) If Atlantic Pump & Engineering has modified, altered or fabricated any of the products or systems sold by it, Atlantic Pump & Engineering warrants that such modification, alteration or fabrication shall be free from defects in material or workmanship for one year from the date of shipment to Purchaser. As to such warranties by Atlantic Pump & Engineering, the liability of Atlantic Pump & Engineering is limited exclusively to, at the election of Atlantic Pump & Engineering in its sole discretion (i) replacing or repairing the product, or (ii) refunding the price for such modification if made by the Purchaser, if previously approved in writing by Atlantic Pump & Engineering. Alterations or repairs (actual or attempted) by or on behalf of the Purchaser to the product or systems supplied by Atlantic Pump & Engineering shall void all warranties of Atlantic Pump & Engineering unless Purchaser has obtained prior written authorization from Atlantic Pump & Engineering consenting to such modifications or alteration.
- (c) ATLANTIC PUMP & ENGINEERING MAKES NO OTHER WARRANTY. ALL OTHER WARRANTIES, ORAL OR WRITTEN, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY OF FITNESS FOR A SPECIFIC PURPOSE, ARE HEREBY EXCLUDED AND DISCLAIMED. IN NO EVENT SHALL ATLANTIC PUMP & ENGINEERING BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES.
- (d) Atlantic Pump & Engineering employees are not authorized to warrant the suitability of products or systems for any particular application.
- (e) Atlantic Pump & Engineering reserves the right to inspect products claimed defective under warranty either at the Purchaser's location or at an office of Atlantic Pump & Engineering. A defective product shall not be returned to Atlantic Pump & Engineering's office unless authorization in writing by Atlantic Pump & Engineering. Products so returned shall be returned to Atlantic Pump & Engineering's office, freight prepaid. Any products which within one year from date of shipment prove defective due to faulty modifications or alterations made by Atlantic Pump & Engineering will be replaced or repaired free of charge. Atlantic Pump & Engineering assumes no liability for labor charges incidental to the adjustment, service, repairing, removal or replacement of the product or other costs, or for the expense of repairs made outside of its factory except when made pursuant to Atlantic Pump & Engineering's prior written consent. Atlantic Pump & Engineering at its options, may ship a replacement of replacements immediately under standard billing and make warranty adjustment after inspection of the defective product by means of credit memorandum.

4. **Delays.**

Atlantic Pump & Engineering shall not be liable for damages for delays in performance due to circumstances beyond its reasonable control, including without limiting the generality of the foregoing, any priority system established by an agency of the United States Government, fires, energy shortages, floods, storms, and other acts of God, accidents, strikes, insurrections, wars, shortage of materials, lack of transportation and failure of performance of subcontractors and/or suppliers for similar reasons. Failure of Atlantic Pump & Engineering to perform for these reasons aforesaid shall not be grounds for Purchaser's cancellation of its order but the delivery date shall be extended accordingly.

5. **Limitation of Liability.**

No claim made hereunder by the Purchaser, whether as to goods delivered or for non-delivery, shall be greater than the purchase price of the goods in respect of which such claim is made.

6. **Taxes.**

All applicable federal, state or local sales, use, or excise taxes are the responsibility of the Purchaser and shall be in addition to the price stated on the invoice unless otherwise specifically stated. Atlantic Pump & Engineering shall have the right to invoice separately any such tax as may be imposed at a later time. Applicable tax exemption certificates must accompany any order to which the same applies.

7. **Payment Terms; Delivery.**

- (a) CASH PAYMENT NET 30 DAYS. A FINANCE CHARGE AT THE LESSOR OF 18% PER ANNUM OR MAXIMUM RATE ALLOWED BY LAW WILL BE CHARGED ON BALANCES WHICH ARE OVER 30 DAYS.
- (b) F.O.B – SHIPPING POINT UNLESS OTHERWISE STATED. ALL RISK OF LOSS OR DAMAGE SHALL PASS TO PURCHASER UPON DELIVERY OF THE PRODUCT TO THE CARRIER.
- (c) Acceptance of less than the full invoice amount by Atlantic Pump & Engineering shall not be construed as waiver of the right of Atlantic Pump & Engineering to collect the remaining amounts due. The Purchaser expressly agrees and understands that Atlantic Pump & Engineering reserves all rights and remedies for nonpayment, breach or default hereunder by the Purchaser.

8. **Returns.**

Stock and non-stock items are subject to a re-stocking fee; non-stock items and special buys may have limited return value.

9. **Miscellaneous.**

- (a) This agreement may not be assigned or otherwise transferred by Purchaser without the prior consent Atlantic Pump & Engineering which may be withheld in the sole discretion of Atlantic Pump & Engineering, and any such assignment or transfer without such prior written consent shall be null and void and of no force or effect whatsoever.
- (b) Atlantic Pump & Engineering's failure to insist, in one or more instances, upon the performance of any terms of this Agreement shall not be construed as a waiver or relinquishment of its right to such performance or the future performance of such term or terms, and Purchaser'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. 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 paragraph headings in this Agreement are used for convenience only. They form no part of this Agreement and are in no way intended to alter or affect the meaning of this Agreement.
- (e) This Agreement may be amended at any time by mutual agreement of both parties hereto by a written amendment to this Agreement signed by each of them.
- (f) Validity, in whole or in part, of any provision of this Agreement shall not affect the validity or enforceability of any other of its provisions.
- (g) This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts. As a material consideration for entering into this Agreement, the Purchaser specifically agrees that venue and jurisdiction of any action or proceeding arising out of or in connection with this Agreement shall lie exclusively in the state courts of competent jurisdiction in and for Middlesex or Worcester County, Massachusetts, at the discretion of Atlantic Pump & Engineering. The Purchaser expressly waives all other venue and jurisdiction. The Purchaser agrees to pay all costs of collection incurred by Atlantic Pump & Engineering (including attorney's fees).