

RYAN HERCO PRODUCTS CORP., D/B/A PHOENIX PUMPS

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Terms and Conditions of Sale and Warranty

All descriptions, quotations, proposals, offers, acknowledgements, acceptances, and sales of goods, products or services by Ryan Herco Products Corp., d/b/a Phoenix 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**

All Seller quotations are valid for thirty (30) days from the quotation date unless agreed upon by Seller. Quotations are limited only to those technical portions of the Engineer's Mechanical Specifications specifically referred to herein, and to the terms and conditions of sale as outlined in the quotation. In the event of conflict between terms and conditions of this document and the terms and conditions of any other documents provided by Buyer, this document shall govern.

2. **Terms**

Subject to prior credit approval, all invoices are due net thirty (30) days from receipt unless extended terms are approved by Seller. Terms are subject to review by Seller's Credit Department and are subject to change upon thirty (30) day notice to Buyer. The Buyer's payment to Seller will not be dependent or contingent upon receipt of payment to the Buyer or any other parties. Any balance remaining beyond the negotiated terms will be subject to a monthly finance charge of 1.5% of the remaining balance until receipt of payment in full. Payment is not deemed complete and paid, until funds have been verified by Seller. Returned checks are subject to a \$35.00 collection fee. If Buyer fails to pay an invoice, Seller reserves the right to engage an attorney or collection agency to collect the balance due and shall be entitled to all collections and attorney's fees incurred.

3. **Taxes & Other Charges**

Unless otherwise indicated, Sales and Use Tax, Retailer's Occupation, Service Occupation, Service Use, Tariffs, Duties or similar taxes or charges, have not been included in the quotation price. Any Sales and Use Tax, Retailer's Occupation, Service Occupation, Service Use, Tariffs, Duties or similar taxes or charges which are applicable will be assessed at the time of invoicing and will be the responsibility of the Buyer. If the purchase is tax exempt, the Buyer is responsible to supply Seller all legally signed and completed documentation supporting exemption status. Buyer is responsible for obtaining permits and licenses relating to the sale or installation of the equipment.

4. **Warranty**

a. **Manufacturer's Warranty**

All new goods, and products supplied by Seller carry specific manufactures' warranty and will be covered by their respective terms. In the event there is a warranty claim, Seller will assist in working with the manufacturer or supplier to handle any warranty concerns.

b. **Service Warranty**

Seller's service warranty shall be as set forth in attachment A, attached hereto and incorporated herein by reference.

c. **Exclusions**

The warranties provided herein shall not apply to items damaged by standard wear, neglect or abuse, items that have been altered or tampered with, and items which have not been operated or maintained in accordance with manufacturer specifications. All claims are subject to evaluation and approval by Seller.

Waiver

THIS SECTION SETS FORTH BUYER'S SOLE REMEDY AND SELLER'S EXCLUSIVE OBLIGATION WITH REGARD TO NON-CONFORMING PRODUCTS, GOODS, EQUIPMENT, 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 have been paid in full, Seller retains 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 protected.

6. **Changes & Delay-Cost**

If Buyer makes a change, delays or interrupts the progress of the delivery of goods, products or service, Buyer will reimburse Seller for any additional expense incurred. Seller reserves the right to ship and bill for goods/products or material when ready for shipment in accordance with agreed upon shipment or delivery terms as indicated within the quotation.

7. **Delays**

Seller shall not be liable for delay in delivery caused by any reason beyond Seller's control, including but not limited to the Buyer's delay in promptly submitting all information and/or documentation, acts of God, casualty, civil disturbance, labor disputes, strikes, transportation, supply difficulties, manufacturing delays, materials shortages, epidemics or pandemics, any interruption of the seller's facilities, or any acts of governmental authorities. In the event of such conditions, Seller is entitled to cancel the order or to extend the time for delivery.

8. **Claims**

Buyer shall immediately inspect the equipment upon receipt. Seller is not obligated to consider any claim for shortages or non-conformance unless notified by Buyer within 24 hours after Buyer's receipt of goods, or products. Modifications to the goods, or products furnished by Seller to meet OSHA or local safety codes will not be the responsibility of Seller unless specifically requested and agreed upon. Seller will supply only the safety devices, if any, described in the order.

9. **Transportation Expense**

Unless otherwise noted, the prices listed in the quotation do not include freight. Freight charges will be determined at the time of shipment. In the event, that freight (Prepaid and Allowed) is included within the proposal, Seller reserves the right to use the lowest available freight rates on a common carrier of our choice. If the Buyer

requires Seller to ship another carrier, the Buyer will bear any additional expense. All freight is shipped F.O.B. factory or Seller's shipping point, unless otherwise noted, and becomes the responsibility of the Buyer once shipped. For Seller to ensure delivery, it is agreed by the Buyer to provide all necessary access to specified location, which would include standard vehicle/truck accessibility. The responsibility for the protection of the equipment will be the Buyers after it is delivered to the specified location. Damage to the goods, or products after delivery, which is caused by vandalism, the elements or otherwise, will be the responsibility of the Buyer.

10. **Limitation of Liability**

It is expressly understood that Seller's liability for goods, products, services or repairs is limited to the furnishing of replacement parts or 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 AMOUNTS ACTUALLY PAID BY SELLER'S INSURERS. 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 the Buyer's request, and subject to Seller's option and availability of personnel at time of requirement, Seller may provide a service representative to advise the Buyer concerning the installation and use of purchased equipment. These services are not supervisory but are advisory only and are offered subject to the express understanding that Seller's function and responsibility is limited to assistance in the interpretation of assembly drawings and identification of materials for their proper location in the equipment or system layouts. This Seller service is offered on a "no risk" basis and at the current service hourly rate.

13. **Cancellation**

Cancellation or suspension of a contract will be accepted only upon terms that will indemnify Seller against loss. Seller deems the right to cancel any orders prior to or at the time of receiving the final approved drawings. In this event, the Buyer will be refunded any deposits made to Seller. Notwithstanding anything herein to the contrary, all goods or products 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.

14. **Complete Agreement**

Buyer agrees that these terms and conditions of sale and warranty and the Seller's quote or order acknowledgement in which they have been referenced, contain the complete and final agreement between Seller and the Buyer 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 the Buyer and a Seller authorized officer.

15. **Applicable Law and Venue**

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 Arizona. 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 MARICOPA COUNTY, ARIZONA. BUYER HEREBY SUBMITS TO THE JURISDICTION OF ALL SUCH FEDERAL AND STATE COURTS SITTING IN MARICOPA COUNTY, ARIZONA. THE PARTIES HERETO IRREVOCABLY WAIVE THEIR RIGHT TO A TRIAL JURY.

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-liens**

Upon request from Seller, Buyer agrees to provide in a timely manner, all pertinent information regarding specific jobs for filing pre-lien notices.

18. **Validity**

Should an individual section of these conditions, regardless of reason, be found to be invalid by a court of law, such finding will not affect the validity of the remainder of this document.

19. **Export Sales**

Buyer agrees that it will not divert, use, export or re-export the products contrary to the United States Law. Buyer expressly acknowledges and agrees that it will not export, re-export, or provide the products to any entity or person within any country that is subject to United States economic sanctions imposing comprehensive embargoes without obtaining prior authorization from the United States Government. The list of such countries subject to United States economic sanctions or embargos may change from time to time but currently includes: Cuba, Iran, Sudan and Syria. Buyer also expressly acknowledges and agrees that it will not export, re-export or provide the products to entities and persons that are ineligible under United States law to receive such items, including but not limited to, any person or entity on the United States Treasury Department's list of Specially Designated Nationals or on the United States Commerce Departments Denied Persons List, Entity List or Unverified List.

20. **Will-Call**

Purchases which are requested to be held at will-call are stored for a maximum of 14 days. Any purchases that exceed 14 days will be shipped to Buyer. All freight costs associated with the shipment of will-call purchases will be the responsibility of the Buyer.

ATTACHMENT A - SERVICE WARRANTY

Seller warrants all repairs and installation services (workmanship only) for a period not to exceed one (1) year from the date of repair/installation. All new parts and equipment supplied by Seller and utilized in the repair/installation process carry specific manufacturers' warranty and will be covered by the manufacturer's respective terms.

Limitations

The warranty does not cover faults created by these situations:

- Inadequate or improper maintenance
- Incorrect installation not performed by Seller
- Improper long-term storage
- Unauthorized modifications or alternations
- Repairs performed by non-approved parties
- Normal wear and tear

Seller assumes no liability for these situations:

- Bodily injuries
- Material damages
- Economic losses

Warranty claim

All warranty claims are subject to evaluation and approval by Seller.