

TERMS AND CONDITIONS OF SALE

All transactions for all products sold by Petroleum Marketing Equipment (PME) (hereinafter "Seller") are subject to the then current published Terms and Conditions of Sale of Seller and to any special conditions of sale which may be contained in applicable Seller quotations and or sales order acknowledgements.

1.0 GOVERNING PROVISIONS AND ACCEPTANCE: All quotations are subject to these terms and conditions of sale. Acceptance of an order by Seller shall be subject expressly conditioned on Buyer's assent to the terms and conditions. Buyer's direction to proceed with an order or shipment and invoice by Seller shall be deemed evidence of this assent. No modified or other conditions will be applicable including but not limited to any pre-printed terms or conditions on Buyer's purchase orders, unless those conditions are so stated in Seller's sales order and or quote or are specifically agreed to in writing and signed by an authorized representative of Seller. Failure to object to provisions contained in any purchase order or other communication from Buyer (including without limitation, penalty clauses of any kind) shall not be construed as a waiver to these terms and conditions of sale, nor an acceptance of any other provisions. These terms are Seller's specific terms of sale and can only be varied in writing signed by an authorized representative of Seller. Seller reserves the right to modify these terms and conditions of sale at any time without prior notice to Buyer. These terms may not be modified by course of dealing, course of performance or usage of trade. These terms and conditions of sale supersede all previous published versions. Any contract for sale between Seller and Buyer shall be governed by and construed according to the laws of the State of California.

2.0 QUOTATIONS: Written quotations shall be valid for no more than sixty (60) days from their date, unless otherwise stated in the quotation. All quotations are subject to change by the Seller at any time upon notice to Buyer. It is Buyer's obligation to review the quotation carefully and to immediately advise Seller in writing of any differing interpretation Buyer has so any necessary change can be made.

3.0 PRICE: Prices payable by Buyer for Seller's products shall be in accordance with the then current product price list applicable to Buyer or as otherwise quoted. Buyer is responsible for all material costs including shipping and handling. All prices are subject to change at any time without notice unless otherwise agreed to in writing in Seller's quotation or sales order. In the event of a net price change and unless otherwise agreed to in writing, prices for orders scheduled for immediate release shall be those in effect at time of order entry. Prices for orders placed for future shipment without an agreed ship date will be billed at the pricing as of the shipment date. Seller reserves the right to make price changes within the periods of contracts and blanket orders, unless expressly stated otherwise in the Seller's quotation or sales order.

4.0 **TAXES:** Any use tax, sales tax, excise tax or any other tax fee or charge of any nature whatsoever imposed by any governmental authority or measured by any transaction between seller and buyer, shall be paid by the Buyer in addition to the prices quoted or invoiced. All such charges will appear as a separate line item on the invoice. In the event the any quoted taxes should change and Seller is required to pay any such tax, Buyer shall reimburse Seller. Buyer is responsible for submitting any exemption certificate or other document to Seller that is acceptable to the authority imposing the tax in lieu of making such payment.

5.0 **ORDERS:** Buyer shall submit orders via their sales representative's e-mail, designated branch office e-mail or such other designation as Seller may establish from time to time, and in accordance with Seller's ordering process.

5.1 Order must state Buyers ship to address, item description, quantity ordered, and unit price. Orders will not be processed without this information. All orders are subject to approval and acceptance by Seller. A written sales order acknowledgement or confirmation will confirm order information, anticipated delivery and net price. It is Buyer's obligation to review the information carefully and to immediately advise Seller in writing of any price discrepancy so any necessary change can be made.

5.2 Drop shipments are allowed. However, options of orders for shipment to other addresses will be considered separately for pricing, freight and taxes.

5.3 Seller may refuse to accept any order for any reason, and will have no liability to Buyer or to any third party in the event Seller decided not to accept any order.

5.4 Seller shall have the right to cancel, in whole or in part, any previously accepted order placed by Buyer, at any time or refuse or delay shipment thereof if Buyer shall fail to meet payment schedules or other credit or financial requirements established by Seller or if in Seller's reasonable opinion Buyer's credit or financial ability shall become impaired or if Buyer failed to comply with any term or Condition or any other agreement with Seller or if Buyer causes material delays in releasing product for manufacture or approval of drawings, or excessive changes to specifications or drawings.

5.5 Orders confirmed and acknowledged by Seller may not be cancelled or changed or deliveries deferred by Buyer except with Seller's prior written consent, and then only upon such terms as shall be acceptable to Seller. Order changes by Buyer must be made in writing or verified in writing before Seller can complete processing of the order.

5.6 If any order is cancelled, in whole or in part by Buyer such cancellation shall only be of effect upon Buyer's written notice to Seller and upon payment of reasonable and proper cancellation charges based on the price of the cancelled order and the reimbursement of all direct costs and expenses associated with the order caused by such cancellation. Special order or custom non-stock item cancellation charges shall include, but not be limited to price of product already shipped (plus

freight charges), finished goods, cost for work -in –progress, vendor items Seller cannot return (plus vendor cancellation charges).

- 6.0 **PAYMENT:** Acceptance of all orders is subject to Buyer providing Seller a signed credit application and meeting Seller credit standards. If credit is extended, the amount of terms of credit may be changed or credit withdrawn by Seller at any time. Upon Seller's request, Buyer shall furnish updated financial and credit information.
- 6.1 Unless otherwise specified on the sales order, payment terms shall be cash with order or C.O.D. Where Seller has extended credit to Buyer, payment terms are **Net 30 (30) days from date of invoice** unless otherwise stated in Seller's quotation.
- 6.2 Seller reserves the right at any time to demand full or partial payment before proceeding with a contract of sale if, in its sole judgement, as a result of changes in the financial condition of the Buyer the terms of payment originally specified are no longer justified. Seller further reserves the right to withhold shipments or Buyer on a C.O.D. basis or require Buyer to provide payment in advance if in Seller's sole judgement Buyer presents an unusual credit risk or Buyer's account is not maintained in a current payment status.
- 6.3 Payments can be made either by check, cashier's check, approved credit card (Buyer must prepay all credit card fees Seller will be liable for) or wire transfer.
- 6.4 If delivery is delayed or deferred by the Buyer beyond the scheduled date, payment shall be due in full when Seller is prepared to ship. The product may be stored at the risk and expense of the Buyer.
- 6.5 Payments shall be made to the remittance name and address specified on the invoice without set Off. Any payment or portion thereof, not made when due shall be subject to a service charge at the lesser of one and one half percent (1-1/2%) per month (18%per annum), or the maximum rate permitted by law, from the due date until the amount is paid in full. Buyer is responsible for and shall reimburse Seller for all costs for collection, including reasonable attorney's fees and court costs, incurred by Seller in connection with any amount due Seller from Buyer.
- 6.6 Seller will retain security interest in and right to repossess, any product until paid therefore.
- 7.0 **Delivery:** The delivery terms for all orders are F.O.B. Shipping Point, unless otherwise agreed to by Seller in writing.
- 7.1 Delivery by Seller to the point of shipment (Seller's facility) constitutes delivery to the Buyer; and title and all risk of loss or damage in transit shall pass to the Buyer at time of delivery at the ship point. Buyer is responsible for pursuing any damage claims with the carrier.

8.0 **Excusable Delays:** Seller shall not be liable for any damages as a result of any delays due to any causes beyond Seller's control, including without limitation: an act of God; act of buyer or Seller supplier; embargo or other governmental act, regulation or request (whether compliance is mandatory or voluntary); fire; accident; strike; slowdown; flood; fuel or energy shortage; sabotage; war; riot; act of terrorism; delay in transportation; or any other force majeure event. In the event of any such delay, the date of delivery shall be extended for a period of time reasonably necessary to overcome the effect of such delay.

9.0 **WARRANTY:** The warranty obligations for products sold by Seller will in all respects conform and be limited to the warranty extended by the manufacture of such products, if transferable. The sole remedy available to Buyer with respect to defects in such products will be against such manufacturer under any applicable manufacturer's warranty to the extent available to Buyer. To the extent the manufacturer warranty is not transferable to Buyer, Seller makes no warranty, express or implied, with respect to or in any way relating to the products, whether based on breach of warranty or contract, negligence, strict liability or otherwise, including without limitation any implied warranties of merchantability or fitness for a particular purpose.

10.0 **LIMITATION on LIABILITY:** In no event will Seller be liable for any indirect, incidental, special, consequential, unitive or similar damages including, but not limited to, lost profits, loss of data or business interruption losses. In no event will the total, aggregate liability of Seller exceed the price for products in the quotation or sales order under which liability is claimed. The liability limitations shall apply even if Seller has been notified of the possibility of likelihood of such damages occurring and regardless of form of action, whether in contract, negligence, strict liability, tort, products liability or otherwise. Both Seller and Buyer agree that these limits of liability shall survive and continue in full force and effect despite any termination of an order. No employee or agent of Seller is authorized to make any warranty for products sold by Seller.

10.1 Seller shall not be liable to Buyer for any claims damages, expenses, fees, costs, losses, causes of action or suits, which result from, in whole or in part, Buyer's direction, negligence, acts, omissions, use of the product in a manner not specifically authorized by manufacturer, willful misconduct, or other fault of any nature of Buyer, its employees, agents or customers.

11.0 **INDEMNIFICATION:** Buyer shall indemnify and hold harmless Seller and its agents, employees, officers, directors, successors and assigns, from and against any and all damages, liabilities, losses, expenses, costs, suits or claims (including without limitation reasonable attorneys' fees), arising from the installation and/ or use of products.