

PREFERRED PUMP & EQUIPMENT, LP'S TERMS AND CONDITIONS OF SALE

1. **TERMS AND CONDITIONS.** These terms and conditions of sale apply to all orders by Buyer and all goods and services to be provided by Seller to Buyer, except as provided below. The invoice on the reverse hereof and these terms and conditions constitute Buyer's order. Seller retains the right to alter or change these terms and conditions at any time upon written notice to Buyer as provided by law. By placing an order(s) after receipt of such notice, Buyer agrees that all subsequent charges will be subject to Seller's alterations or changes. Buyer acknowledges and agrees that any terms and conditions set forth on any purchase order or other document subsequently submitted by Buyer which are different than or conflict with these terms and conditions are rejected by Seller. These terms and conditions may not be waived or modified except as specifically set forth in writing by Seller. The order and any applicable Commercial Credit Agreement and Personal Guaranty contain the final and complete agreement between the parties for provision of the goods and services and supersede all prior or contemporaneous conduct, agreements, statements, representations, negotiations, course of conduct, course of dealing, or communications pertaining to those goods and services, whether written or oral. Seller's failure to object to provisions contained in any of Buyer's forms shall not be deemed to be a waiver of these terms and conditions.
2. **CHANGES.** All orders must be approved and accepted by Seller. All requests for changes to any order must be made to Seller in writing. Seller may accept such changes in writing in its sole and absolute discretion, for such additional charges as may be determined by Seller.
3. **CREDIT AND PAYMENT TERMS.** Buyer agrees to pay the full amount shown on the order, plus applicable sales tax, shipping and other charges. Tax-exempt Buyers must furnish a certificate of exemption or pay sales tax. Unless otherwise indicated on the order or as provided below, payment is due and payable in full as set forth on the invoice. In the event Buyer fails to make payment when due, Seller may suspend or cancel any further shipments, and Buyer shall reimburse Seller for any fees, costs or expenses it incurs in attempting to collect such amounts due from Buyer, whether by lawsuit or otherwise, including without limitation attorneys' fees and collection fees based on a percentage of recovery against Buyer. Seller may assess a 1.5% monthly interest charge on the entire unpaid balance of the account for any monthly period during which any payment is more than 30 days late. If, in the sole judgment of Seller, the financial condition of Buyer at any time does not justify continuance of shipment, Seller may require full or partial payment in advance at any time.
4. **CANCELLATION.** Once an order is accepted by Seller, the order is a binding contract subject to the terms and conditions set forth herein and may not be cancelled without Seller's written consent, which may be withheld in Seller's sole and absolute discretion. Canceled orders are subject to a 25% restocking fee based on the sales price of the items canceled.
5. **SHIPPING.** All sales are F.O.B., Seller's warehouse at Buyer's sole expense unless otherwise agreed in writing by Seller. Unless otherwise noted on the order, delivery shall be via ground transportation as Seller deems appropriate in its sole discretion. Seller is not responsible for delays caused by carriers. Buyer assumes risk of loss when goods are delivered to common carrier.
6. **DELIVERY, INSPECTION AND ACCEPTANCE.** Buyer or Buyer's representative must be present at time of delivery to sign for goods and acknowledge quantity and condition of goods. Buyer shall inspect all goods upon delivery. Unless Buyer notifies Seller in writing of Buyer's rejection and the reason therefore at the time of delivery, the goods shall be conclusively presumed to be accepted by Buyer.
7. **SCHEDULING AND DELAYS.** If goods cannot be delivered on the scheduled delivery date for reasons beyond Seller's control, Seller shall have a reasonable period of time to deliver the goods once delays have been eliminated. Delays for reasons beyond Seller's control do not constitute grounds for non-acceptance of goods or non-payment by the Buyer.
8. **NO WARRANTIES; LIMITATION OF DAMAGES; REMEDY.** **NO EXPRESS OR IMPLIED WARRANTIES ARE GIVEN BY SELLER. THE GOODS PURCHASED HEREUNDER ARE SOLD BY SELLER "AS IS." BUYER MUST PROCEED DIRECTLY AGAINST THE MANUFACTURER WITH RESPECT TO BREACHES OF THE MANUFACTURER'S WARRANTIES (IF ANY). SELLER EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, INCLUDING BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND OF ALL OTHER OBLIGATIONS OR LIABILITY ON SELLER'S PART. THE BUYER AND GUARANTOR (IF ANY) ARE NOT ENTERING THIS AGREEMENT IN RELIANCE ON ANY STATEMENT OF SELLER NOT FOUND IN THIS AGREEMENT. IN NO EVENT SHALL SELLER BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, GENERAL, EXEMPLARY OR SPECIAL DAMAGES, INCLUDING LOST PROFITS, REGARDLESS OF THE FORESEEABILITY OF SUCH DAMAGES, WHETHER BASED ON CONTRACT, REPRESENTATION, WARRANTY OR TORT, ARISING OUT OF OR RELATED TO PURCHASE, INSTALLATION, USE OR PERFORMANCE OF GOODS. WITHOUT LIMITING THE FOREGOING, BUYER'S SOLE AND EXCLUSIVE REMEDY, AND SELLER'S SOLE AND EXCLUSIVE LIABILITY, WITH RESPECT TO GOODS PURCHASED HEREUNDER, SHALL BE, AT SELLER'S OPTION, TO REPAIR OR REPLACE SUCH GOODS, REFUND THE PURCHASE PRICE, OR CREDIT BUYER'S ACCOUNT, PROVIDED BUYER COMPLIES WITH SELLER'S RETURN PROCEDURES AND SELLER'S EXAMINATION OF SUCH GOODS DISCLOSES TO SELLER'S SATISFACTION THAT SOME PROBLEM ACTUALLY EXISTS THAT WAS NOT CAUSED BY ACCIDENT, MISUSE, ALTERATION, DAMAGE IN TRANSIT, OR MISHANDLING.**
9. **FORCE MAJEURE.** Seller shall not be held responsible for any losses of any kind resulting if the fulfillment of any term or provision of any order is delayed or prevented by any excusing cause, including revolutions or other disorders, wars, acts of enemies, strikes, fires, floods, or acts of God. Without limiting the foregoing, the term "excusing causes" includes any cause not within the control of Seller that Seller is unable to prevent by the exercise of reasonable diligence.
10. **MISCELLANEOUS.** These terms and conditions shall be governed in all respects, including validity, interpretation and effect, by, and shall be enforceable in accordance with the laws of the State of Texas, without regard to or application of conflict of law rules or principals. Should any dispute arise concerning this agreement, or arising out of or related thereto, such claims will be litigated exclusively in the state courts of Tarrant County, Texas, which such courts shall have the exclusive jurisdiction and venue of these matters. Buyer agrees that such jurisdiction is not unreasonable and presents no overly burdensome difficulty or inconvenience to the Buyer. For any such litigation, the Parties submit to the jurisdiction of the Tarrant County State District Courts and waive any such rights each may have to transfer or change this jurisdiction or venue of any such litigation brought against them by any other Party to this agreement. No waiver of any breach shall be held to be a waiver of any other or subsequent breach. If any action, suit or proceeding (including without limitation proceedings in arbitration or mediation or in collection) arising out of or relating to this order is brought by either party, the prevailing party will be entitled to receive from the other party, in addition to any other relief that may be granted, the reasonable attorneys' fees, experts' fees, costs, and expenses incurred in the action or proceeding by the prevailing party.



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LIMITED WARRANTY

New equipment manufactured by FloWise ("Seller"; such equipment, "Equipment") is hereby warranted to be free from material defects in material and workmanship under normal use and service for a period of one (1) year from the date of shipment (the "Warranty Period"). If, prior to the end of the Warranty period, the purchaser ("Purchaser") timely notifies Seller of a potential defect in the Equipment and provides reasonable detail about such suspected defect, then Seller shall, upon Seller's confirmation that the Equipment is defective, either (a) repair, (b) replace, or (c) accept the return of, such defective Equipment, in each case (a) through (c) at Seller's sole election. If Seller elects to accept the return of any defective Equipment in accordance with (c) above, then Purchaser shall ship such Equipment to Seller (F.O.B. Seller's branch of origin from which it was originally shipped), and Seller shall (i) refund any amount paid thereon by Purchaser (less depreciation at the rate of fifteen percent (15%) per year if Purchaser has used such Equipment for more than thirty (30) days) and (ii) cancel any balance still owed by Purchaser on such Equipment. Upon Seller's request, Purchaser shall ship any defective Equipment replaced in accordance with (b) above to Seller (F.O.B. Seller's branch of origin).

EXCEPT FOR THE WARRANTIES SET FORTH IN THE IMMEDIATELY PRECEDING PARAGRAPH, SELLER MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO SELLER'S EQUIPMENT, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; OR (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE. THE REMEDIES DESCRIBED IN THE IMMEDIATELY PRECEDING PARAGRAPH ARE PURCHASER'S SOLE AND EXCLUSIVE REMEDIES AND SELLER'S ENTIRE LIABILITY FOR ANY BREACH OF THIS LIMITED WARRANTY. SELLER'S LIABILITY SHALL UNDER NO CIRCUMSTANCES EXCEED THE ACTUAL AMOUNT PAID BY PURCHASER FOR THE DEFECTIVE EQUIPMENT, NOR SHALL SELLER UNDER ANY CIRCUMSTANCES BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL OR PUNITIVE DAMAGES OR LOSSES, WHETHER DIRECT OR INDIRECT.

For the avoidance of doubt, this limited warranty does not cover any Equipment defect or damage due to: (a) transportation; (b) storage; (c) improper use, installation, or adjustment; (d) failure to follow the product instructions or to perform any preventive maintenance; (e) modifications; (f) unauthorized repair; (g) normal wear and tear; (h) external causes such as accidents, abuse, neglect, or other actions or events beyond Seller's reasonable control; or (i) decomposition from chemical action or wear caused by abrasive materials.

For the avoidance of doubt, this limited warranty does not cover any Equipment or parts thereof repaired outside of Seller's branch of origin without prior written approval of Seller, and Seller makes no warranty as to any product manufactured by a third party ("Third Party Product"), including, without limitation, any starting equipment, electrical apparatus or other material used alone or in combination with Seller's Equipment. For the avoidance of doubt, SELLER MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO ANY THIRD PARTY PRODUCT, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (c) WARRANTY OF TITLE; OR (d) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.