

**PROFLOW PUMPING SOLUTIONS, INC.  
GENERAL TERMS AND CONDITIONS OF SALE**

**1. DEFINITIONS**

"Equipment" means all equipment (including materials and labor, incorporated therein) or operational spare parts or renewal parts or any other material (including tooling) or parts, or any combination thereof, furnished by Seller to Customer under the contract of purchase.

"Product" means any process, equipment, information, service, output or other thing of value which incorporates or results directly or indirectly from the Equipment of Services.

"Services" means work, direction of work, technical information or technical consulting and advice or other services furnished by Seller to Customer under contract of purchase and include such activities as the installation, testing, alignment, startup, operation, repair and maintenance of the Equipment.

"Suppliers" means any of the Seller's suppliers of material or services for the Equipment or Services, regardless of tier, including any engineering design review or services contracted for and performed by other companies.

**2. ACCEPTANCE**

This quotation supersedes all previous quotations and agreements and is void unless accepted within 30 days from date hereof unless otherwise stated and is subject to change upon notice. Recommendations and quotations are made upon the basis of operating conditions specified by Customer. Should actual conditions be different than those specified and performance of the Equipment be adversely affected thereby or not adequate, Customer shall be responsible for the cost of all changes in the Equipment required to accommodate such conditions, and Seller reserves the right to cancel Customer's order and Seller shall be reimbursed for all costs and expenses incurred and reasonable profit for performance executed prior to the date of such termination.

**3. DELIVERY**

Delivery of the Equipment hereunder shall be made F.O.B. Seller's plant. Shipping dates are approximate and are based on prompt receipt of all necessary information at Seller's plant. In case of delay in furnishing complete information, dates of shipment may be extended for a reasonable time based on conditions at Seller's plant. Receipt of the Equipment by Customer shall constitute a waiver of all claims for delay.

Seller shall not be liable for delay in delivery due to causes beyond its reasonable control or due to acts of God, acts of Customer, fires, labor disputes, boycotts, floods, epidemics, quarantine restrictions, war, insurrection, riot, civil or military authority, freight embargoes, transportation shortages or delays, unusually severe weather or inability to obtain necessary labor, materials or manufacturing facilities due to such causes. In the event of any such delay, the date of delivery shall be extended for a length of time equal to the period of delay.

**4. WARRANTIES**

Equipment and accessories supplied by Seller are warranted to be free from defects in materials and workmanship, and will conform to specification. Customer will notify Seller immediately if any defect within this warranty should appear. Seller's obligations under this warranty shall expire (12) months from installation, or (18) months from shipment; whichever comes first. It will be assumed that the customer will immediately put the equipment in to service upon receipt unless Seller is notified in writing by Customer of actual commission date. Written notification of delayed equipment installation/start-up must be received at least 1 week prior to actual commission date in order to extend the warranty.

Drawings, curves, calculations, instructions and all other data, including installation, operation and maintenance instruction Sheets, that are provided indicate general detail only and may or may not be specific. No liability will be assumed, nor will the Customer expect Seller to assume liability for damage, delay, or work done by the Customer or others resulting directly or indirectly from dependence on any reference material provided.

Customer acknowledges and agrees that Seller's warranty does not extend to:

- Corrosive or erosive related failures and/or damage;
- Failures not reported to Seller within stated warranty period;
- Failures or damage due to misapplication, abuse, improper installation, abnormal conditions of temperature, water, dirt or corrosive matter;
- Failures or damage due to operation above rated capabilities or in an otherwise improper manner;

- Products which have been in any way tampered with or altered by anyone other than an authorized representative of Seller;

- Products damaged in shipment, storage, or, otherwise without fault of Seller; and

- Labor and/or material expenses incurred by Customer, which relate in any manner to any alleged defective products.

**5. CONDITIONS APPLYING TO WARRANTIES**

This warranty for Equipment is conditioned upon the Equipment being received, unloaded, stored, handled, installed, tested, maintained and operated in a proper manner. Neither the warranty for Equipment nor the warranty for Services shall be applicable in the event that failure to meet such warranty is the result of acts or omissions of persons (other than the Seller's Suppliers in connection with the work performed by them hereunder), accidents, or alteration abuse or misuse of the Equipment or alteration or misuse of the Services.

The conditions of any tests and the basis of any calculations in connection with the warranties for Equipment or Services shall be acceptable to Seller and Customer and the tests may be witnessed by representatives of either. Measurement readings shall be based on plant instrumentation, if applicable, and actual readings shall be utilized. In lieu thereof, Customer or Seller, may at its expense, provide temporary special test instruments. Customer and Seller reserve the right to inspect and calibrate any instruments to insure accuracy of measurements, and such expenses shall be borne by the party exercising such right.

**6. EQUIPMENT USE AND INSTALLATION**

Equipment shall be used and installed in a manner and in an environment that conforms to the manufacturer's operating specifications and requirements. Customer will bear all cost and expense for any additional necessities required for such proper use and installation. Upon request, Seller may provide a competent technical representative to supply technical advice and assistance on the installation and/or operation of any product(s) supplied hereunder, subject to the terms and conditions of a written consulting services agreement executed by each party's duly authorized representatives. Customer agrees that it shall be strictly liable for any breach of the foregoing provision and shall indemnify, defend and hold Seller harmless from and against any and all liability, loss, or damages arising from the use of any Equipment that is not in accordance with the provisions of this paragraph.

**7. REMEDY**

Seller warrants that all Services supplied shall be performed in accordance with industry practices. Seller's obligations under this warranty shall expire one (12) months after the Services are performed except that Seller's warranty obligations for repair work shall expire twelve (12) months from the date of initial start-up or (18) months after completions of repair work; whichever occurs first. It will be assumed that the Customer will immediately put the equipment in to service upon receipt unless Seller is notified in writing by Customer of actual commission date. Seller agrees to repair or replace F.O.B. Seller's plant any Equipment supplied by the Seller which does not conform to the warranty for Equipment and to re-perform Services which do not conform to the warranty for Services, provided that notice of claim of defect is received by Seller within one year from date of shipment of Equipment from Sellers' plant of performance of Services. Equipment claimed to be defective must be returned, freight prepaid, and in accordance with Seller's instructions to the point of manufacture, unless Seller directs otherwise.

Customer shall give Seller written notice of any defect, damage or nonconformity as soon as possible in order to permit Seller to make a timely investigation of the facts. In connection with the performance of any corrective work, all removal and reinstallation of the Equipment shall be performed by Customer. Customer shall, at its expense, be responsible for removing, reinstalling, replacing or supplying any equipment, materials or structures which are necessary to provide reasonable access to the Equipment to be repaired or replaced. Any decontamination or radiation protection necessary in connection with the removal or on-site repair of the Equipment shall be performed by Customer without cost to Seller.

Title to and risk of loss of any Equipment being repaired shall remain with Customer at all times during the correction period wherever the repair takes place; provided, however, that Seller shall bear the risk of loss of any Equipment being repaired while such Equipment is away from Customer's facility and under Seller's care, custody and control. Transportation costs with respect to any replacement Equipment shall be paid by Customer.

**NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN OR ELSEWHERE, SELLER SHALL NOT BE LIABLE TO CUSTOMER OR TO ANY THIRD PARTY, WHETHER OR NOT CLAIMING BY OR THROUGH CUSTOMER, FOR ANY SPECIAL, PUNITIVE, INCIDENTAL OR**

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**CONSEQUENTIAL DAMAGES OF ANY KIND OR NATURE WHATSOEVER, SUCH AS, BUT NOT LIMITED TO, DAMAGES FOR: (1) LOSS OF THE USE OF THE EQUIPMENT OR DEPENDENT EQUIPMENT, (2) INJURY TO ANY SUCH EQUIPMENT, (3) LOSS OF PROFITS, (4) LOSS OF REVENUE, (5) LOSS OF PRODUCTION, OR (6) REPLACEMENT OR REPAIR COSTS (OTHER THAN AS PROVIDED IN CONNECTION THE ABOVE STATED WARRANTY), REGARDLESS OF WHETHER SUCH DAMAGES ARE BASED UPON CONTRACT, TORT, STRICT LIABILITY IN TORT, NEGLIGENCE, OR INDEMNITY.**

and settlements made by Seller under Section 4 "Warranties" and (3) any refund of the price for the Equipment or Services in the event of a rescission.

In all cases where Customer's claim, whether based upon contract, tort (including negligence) strict liability or otherwise, involves defective work or nonconforming Equipment or Services or damage resulting therefrom, Customer's exclusive remedies and Seller's sole liability shall be those specifically provided for under Section 4 "Warranties".

Seller shall not be responsible for the acts and workmanship of the employees, contractors, subcontractors or agents of Customer.

Seller shall not be liable for any property damage (including the equipment within the work description) or personal injury caused by (a) the negligence or fault of Customer's employees, contractors, subcontractors, agents or material men, (b) failure to observe Seller's advice, (c) failure or malfunctioning of any tools, equipment, facilities or devices not furnished by Seller, or (d) use of instruments or the making of adjustments by Customer's employees, contractors, subcontractors or agents.

In no event, whether based upon contract, tort (including negligence), strict liability or otherwise, and whether arising before or after completion of its obligations under the contract of purchase, shall Seller be liable to Customer for losses or damages caused by reason of loss of use, revenue or profits, or cost of capital, or special, consequential or penal damages of any nature, and Customer shall indemnify Seller against any such claims by any third party.

The liability, if any, for any claims, whether based upon contract, tort (including negligence), strict liability or otherwise, for any loss or damage arising out of, connected with, or resulting from, the performance or breach of the contract of purchase shall be limited to specifically identified claims submitted prior to the expiration of the applicable warranty period as set forth under Section 4 "Warranties".

The provisions of this Section "General Limitations of Liability" shall also protect Seller's Suppliers and shall apply to the full extent permitted by law regardless of fault and shall survive termination, cancellation or completion of the work under the context of purpose.

Customer shall not sell the Equipment, Service or Product or otherwise transfer any interest therein without first securing from the transferee limitations of liability at least equivalent to that afforded Seller and its Suppliers.

**8. REPAIRED OR REPLACEMENT EQUIPMENT; RE-PERFORMED SERVICES**

When any Equipment is repaired or replaced or a Service is re-performed, the Equipment repaired or its replacement or the re-performed Service shall be subject to the same warranties, the same conditions, and the same remedies provided for the original Equipment or Service; provided that the warranty period for the repaired or replacement Equipment or re-performed Service shall be for the balance remaining of the warranty period for the original Equipment or Service extending from the date of repair or replacement of the repaired or replacement Equipment or re-performance of the Service; provided, however, that the warranty period shall expire in no event later than twenty-four (24) months after the delivery of the original Equipment or performance of the original Service.

**9. EXCLUSIVITY OF WARRANTIES**

THE EXPRESS WARRANTIES SET FORTH HERIN ARE THE EXCLUSIVE WARRANTIES OF SELLER AND NO OTHER WARRANTY, EXPRESS OR IMPLIED IN FACT OR BY LAW, IS APPLICABLE, INCLUDING ANY WARRANTY AS TO MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE OR PURPOSE.

**10. PRICES**

Until a purchase order is confirmed and accepted by Seller, all prices quoted by Seller are subject to change without notice. Should customer require any changes to be made in the specifications, quantities, or, drawings contained in any purchase order that has been accepted by Seller, then Seller shall be entitled to an equitable adjustment in price, delivery date, or both contained in such purchase order.

**11. TERMS OF PAYMENT**

All prices are net cash 30 days, F.O.B. Seller's plant unless otherwise stated in this quotation. Seller reserves the right at any time to require cash payment in advance, security for payment or other payment terms satisfactory to Seller, and such modification shall not be a breach of the contract of purchase in the event Seller so elects to modify the terms of payment. For orders above \$100,000, progress payments in accordance with the following milestone shall apply.

**Milestone:**

- Submittal of Outline Drawings.....20%
- Purchase of Major Components/Accessories.....40%
- Completion of Major Machining .....20%
- Time of Shipment..... 20%

Should Customer for any reason default in the payment of the contract of purchase, Customer agrees to pay all collection costs and/or attorney fees. A Service Charge of 1-1/2% per month on any unpaid balance shall be imposed on all accounts not paid when due.

**12. TAXES**

Sales, use, excise, or other similar tax applicable to the sale or use of Equipment or Services hereunder shall be paid by Customer; or in lieu thereof Customer shall provide Seller with a tax-exemption certificate acceptable to the taxing authorities.

**13. GENERAL LIMITATIONS OF LIABILITY**

Seller's total liability to Customer for all claims of any kind, whether based on contract, tort (including negligence), strict liability or otherwise, for any loss or damage arising out of, connected with, or resulting from the performance or breach of the contract of purchase shall in no event exceed the amount of the price of the specific Equipment or Service which gives rise to the claim. In applying the monetary limitation of Seller's total liability shall be reduced by the sum of (1) of any damages paid to Customer by Seller, (2) any costs incurred

**14. SEVERABILITY**

If any provision of the contract of purchase is deemed to be void, invalid or inoperative for any reason, or any phrase or clause within such provision is deemed to be void, invalid or inoperative, that phrase, clause or provision shall be deemed modified to the extent necessary to make it valid and operative; or, if it cannot be so modified, then such phrase, clause or provision shall be deemed severed from the contract of purchase, with the remaining phrases, clauses and provisions continuing in full force and effect as if the contract of purchase, had been signed with the void, invalid or inoperative portion so modified or eliminated.

**15. CANCELLATION**

Customer may cancel the contract of purchase only upon written notice and upon payment to Seller of reasonable and proper cancellation charges as follows:

**CANCELLATION CHARGE SCHEDULE**

<u>Phase Completed</u>	<u>% of Total Order</u>	<u>Cumulative %</u>
Order Entry	10%	10%
Engineering	10%	20%
Purchasing	30%	50%
Material Procurement	25%	75%
Assembly	20%	95%
Paint/Prep/Ship	5%	100%

If in the opinion of Seller, the financial condition of Customer, does not justify continuance of the contract, Seller may require full or partial payment in advance

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or shall receive reimbursement for its reasonable and proper cancellation charges. This shall also pertain to nonpayment of milestone invoices.

For engineered (nonstandard) products, seller reserves the right to charge for reimbursement according to the table above and if not paid in 60 days, product will be restocked, and the order cancelled. Any down payments will be applied to the outstanding amount owed by Buyer to Seller.

In the event of bankruptcy or insolvency of Customer or in the event any proceeding is brought against the contract of purchase at any time during the period allowed for filing claims against the estate and shall receive reimbursement for its reasonable and proper cancellation charges.

**16. ENERGY PRICING AND DELIVERY**

The prices, specifications, and delivery schedules set forth in this order assume that materials, fuels, and energy supplies will continue to be available at not less than present levels and that Seller and its subcontractors, suppliers, and transporters will continue to have unimpeded use of their facilities and equipment. Any significant reduction in the availability of any of the foregoing as a result of any situation commonly described as an "Energy Crisis", whether resulting from Governmental action or otherwise, here or abroad, shall render the prices and delivery schedules of this order subject to adjustment, so as to reflect the impact thereof.

**17. SUSPENSION**

In the event Customer elects to suspend work under the contract of purchase, Customer shall notify Seller one week in advance of the suspension date. This notification shall be in writing and include the anticipated suspension period. Seller shall advise Customer of the price adjustment which shall be based on Seller's ability to reallocate manpower, material and equipment during the suspension period and any other differences in costs caused by the suspension.

**18. APPLICABLE LAW**

The rights and obligations of the parties under the contracts of purchase shall be interpreted and governed in all respects by the laws of the State of Illinois.

**19. SELLER'S AGENTS**

Customer acknowledges that it has been advised that no agent, employee, representative or dealer of Seller has any authority to bind Seller to any affirmation, promise, representation, or warranty concerning any of the products and, unless such affirmation, promise, representation, or warranty is specifically set forth in this Agreement, it does not form a basis of this bargain and shall not be enforceable against Seller.

**20. TITLE AND RIGHT OF OWNERSHIP**

Orders are accepted with the understanding that the title and right of possession to the goods shall remain in the name of the Seller until all payments have been made in cash.

**21. ENTIRE AGREEMENT**

The contract of purchase, consisting of these terms and conditions, Seller's quotation and Customer's order if accepted in writing by Seller, constitutes the entire agreement between Customer and Seller. All other previous and collateral agreements (including letters of intent or purchase orders issued by Customer), representations, warranties, promises and conditions relating to the subject matter hereof are superseded by the contract of purchase. Any understanding, promise, representation, warranty or condition not incorporated in the contract of purchase shall not be binding on either party.

**22. GOVERNMENT IMPOSED TARIFFS**

PSI reserves the right to assess your order with the applicable tariff percentage, and or a fixed assessment in USD, as imposed by the United States International Trade Commission (USITC), on products and or parts offered herein, identified as the scope of supply.

**SELLER'S ACCEPTANCE OF CUSTOMER'S PURCHASE ORDER IS EXPRESSLY CONDITIONED ON CUSTOMER'S ASSENT TO THESE TERMS AND CONDITIONS OF SALE.**