Powell Fabrication & Manufacturing LLC
Terms and Conditions of Sale

Acceptance of this offer is limited to acceptance of the express terms of the offer set forth in these Terms and Conditions of Sale, including, but not limited to, SELLER's Limited warranty in Section 5 and Limitation of Remedy and Liability in Section 6. Any proposal for additional or different terms or attempt by BUYER to vary any of the terms hereof in BUYER's acceptance by purchase order or otherwise shall not operate as a rejection of this offer to sell, but shall be deemed a material alteration thereof, and this offer shall be deemed accepted by BUYER without said additional or different terms. If this document shall be deemed an acceptance of a prior offer by BUYER, such acceptance is expressly conditional upon BUYER's assent to any additional or different terms set forth in these Terms and Conditions. The terms of this Agreement are exclusive.

Terms and Conditions of Sale

These terms and conditions, the attendant quotation or acknowledgment, and all documents incorporated by reference therein, binds Seller (i.e. Powell Fabrication & Manufacturing LLC) hereinafter Seller, and the buyer, hereinafter Buyer, and constitutes the entire agreement (Agreement) between Buyer and Seller for the provision of services (Services) and/or the sale of goods (Goods) including (except as provided in Section 12) software incorporated therein.

1. PRICES: Unless otherwise specified by Seller, Seller's price for the Goods and/or Services shall remain in effect for thirty (30) days after the date of Seller's quotation or acceptance of the order for the Goods/Services, whichever is delivered first, provided an unconditional, complete authorization for the immediate manufacture and shipment of the Goods and/or provision of Services pursuant to Seller's standard order processing procedures is received and accepted by Seller within such time period. If such authorization is not received by Seller within such thirty (30) day period, Seller shall have the right to change the price for the Goods/Services to Seller's price in effect for the Goods/Services at the time the order is released to final manufacture. Notwithstanding any of the foregoing to the contrary, the price for Goods/Services sold by Seller, but manufactured by others, shall be Seller's price in effect at the time of shipment to Buyer.

2. DELIVERY: All shipping dates are approximate and are based upon Seller's prompt receipt of all necessary information from Buyer to properly process the order. The Agreement shall be a shipment contract, and the Products shall be delivered FCA St. Louis, Michigan, unless otherwise provided in the Agreement. Whether or not Seller prepays shipping charges, title to each shipment of the Products sold hereunder and risk of loss thereon shall pass to Buyer when Seller or its agent delivers such shipment to a common carrier or licensed trucker consigned to Buyer or his agent, but such shipment shall remain subject to Seller's rights of stoppage in transit, rights of reclamation and other legal rights of Seller. Seller's breach of the Agreement shall not affect the passing of the risk of loss to Buyer notwithstanding any provision of law to the contrary.

3. EXCUSE OF PERFORMANCE: Seller shall not be liable for delays in performance or for non-performance due to acts of God, war, riot, fire, terrorism, labor trouble, unavailability of materials or components, explosion, accident, compliance with governmental requests, laws, regulations, orders or actions, or other unforeseen circumstances or causes beyond Seller's reasonable control.

4. TERMINATION, SUSPENSION AND RETURNED ITEMS BY BUYER: Buyer may terminate or suspend its order for any or all of the Goods/Services covered by the Agreement, provided that Buyer gives Seller reasonable advance written notice of such termination or suspension and reimburses Seller for all losses, damages, costs and expenses arising from such termination or suspension. Seller may charge Buyer a restocking charge equal to twenty-five percent (25%) of the invoice price of returned Products. Returned Products must be returned to Seller in the original packaging and Buyer must first obtain a written consent from Seller to return the Products. Seller may offset the restocking charge against any amounts Seller owes to Buyer. Equipment built to Buyer specifications is only eligible for return at Seller's discretion and terms.

5. LIMITED WARRANTY: Subject to the limitations contained in Sections 5 and 6 in this Agreement, Seller warrants that the software embodied in the Goods will execute the programming instructions provided by Seller, and that the Goods manufactured or Services provided by Seller will be free from defects in materials or workmanship under normal use and care until the expiration of the applicable warranty period. Goods are warranted for twelve (12) months from the date of shipment by Seller. Seller does not provide any warranty, express or implied, under these terms or the law, for any and all mechanical pump seals or consumables sold by Seller to Buyer. Products purchased by Seller from a third party for resale to Buyer ("Resale Products") shall carry only the warranty extended by the original manufacturer to the Buyer, if any. Buyer agrees that Seller has no liability for Resale Products beyond making a reasonable commercial effort to arrange for procurement by the Buyer of the Resale Products. If Buyer discovers any warranty defects and notifies Seller thereof in writing during the applicable warranty period, Seller shall, at its option, correct any errors that are found by Seller in the software or Services, or repair or replace FOB point of manufacture that portion of the Goods or software found by Seller to be a warranty defect, or refund the purchase price of the defective portion of the Goods. The foregoing limited warranty is conditioned upon (i) installation, maintenance and normal use in conformity with instructions furnished by Seller from time to time, if any, and (ii) the Goods (and/or embedded software) not having been subject to misuse, neglect, improper power, or accident, or to alteration, improper installation, storage, handling, repair or improper testing in any respect which, in the judgment of Seller, adversely affects the condition or operation of the Goods (and/or the embedded software). All replacements or repairs necessitated by inadequate maintenance, normal wear and usage, unsuitable power sources or environmental conditions, accident, misuse, improper installation, modification, repair, storage or handling, or any other cause not the fault of Seller are not covered by this limited warranty, and shall be at Buyer's sole expense. Seller shall not be obligated to pay any costs or charges incurred by Buyer or any other party relating to any alleged defect, except as may be agreed upon in writing in advance by Seller and as provided for under this Agreement. All costs of dismantling, reinstallation and freight and the time and expenses of Seller's personnel and representatives for site travel and diagnosis under this warranty clause shall be borne by Buyer unless accepted in writing by Seller. Goods repaired and parts replaced by Seller during the warranty period shall be in warranty for the remainder of the original warranty period. This limited warranty is the only warranty made by Seller and can be amended only in a writing signed by Seller. THE WARRANTIES AND REMEDIES SET FORTH ABOVE ARE EXCLUSIVE.THERE ARE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, AS TO MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE OR ANY OTHER MATTER WITH RESPECT TO ANY OF THE GOODS OR SERVICES.

6. LIMITATION OF REMEDY AND LIABILITY: SELLER SHALL NOT BE LIABLE FOR DAMAGES CAUSED BY DELAY IN PERFORMANCE. THE REMEDIES OF BUYER SET FORTH IN THIS AGREEMENT ARE EXCLUSIVE. IN NO EVENT, REGARDLESS OF THE FORM OF THE CLAIM OR CAUSE OF ACTION (WHETHER BASED IN CONTRACT, INFRINGEMENT, NEGLIGENCE, STRICT LIABILITY, OTHER TORT OR OTHERWISE), SHALL SELLER'S LIABILITY TO BUYER AND/OR ITS CUSTOMERS EXCEED THE PRICE TO BUYER OF THE SPECIFIC GOODS MANUFACTURED OR SERVICES PROVIDED BY SELLER GIVING RISE TO THE CLAIM OR CAUSE OF ACTION. BUYER AGREES THAT IN NO EVENT SHALL SELLER'S LIABILITY TO BUYER AND/OR ITS CUSTOMERS EXTEND TO INCLUDE INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES. THE TERM "CONSEQUENTIAL DAMAGES" SHALL INCLUDE, BUT NOT BE LIMITED TO, LOSS OF ANTICIPATED PROFITS, REVENUE OR USE AND COSTS INCURRED INCLUDING WITHOUT LIMITATION FOR CAPITAL, FUEL AND POWER, AND CLAIMS OF BUYER'S CUSTOMERS.

7. PATENTS: Subject to the limitations contained in Section 6, Seller shall defend any suits brought against Buyer based on a claim that use of the Goods manufactured by Seller constitutes an infringement of a valid patent of the United States, and shall pay any damages awarded therein against Buyer, provided that Buyer: promptly notifies Seller in writing of the filing of such suit or the threat thereof; permits Seller to control completely the defense or compromise of such claim of infringement; and provides all reasonable assistance and cooperation requested by Seller for the defense of such suit. In the event that only the Goods manufactured by Seller are held to be infringing in such suit and their use is enjoined, Seller shall, at its sole option and expense, provide a commercially reasonable alternative, including, but not limited to, procuring for Buyer the right to continue using the Goods, replacing them with a non-infringing product or modifying them so they become non-infringing. Buyer agrees that Seller shall not be liable for infringement, and that Buyer shall fully indemnify Seller therefore, if infringement is based upon the use of Goods in connection with goods not manufactured by Seller or in a manner for which the Goods were not designed by the Seller or if the Goods were not designed by the Seller or if the Goods were designed by the Buyer or were modified by or for the Buyer in a manner to cause them to become infringing.

8. RESTRICTIONS: Buyer shall not attempt to reverse engineer, reverse decompile, disassemble, modify, adapt, translate, create derivative works from, rent, lease, loan, distribute, or sublicense the equipment or Seller proprietary information to any other party or affiliate of Buyer, without the express written consent of Seller.

9. INSTALLATION: Buyer shall be responsible for receiving, storing, installing, starting up and maintaining all Goods. Seller shall provide a quotation for services to assist Buyer in these functions if requested.

10. TAXES, DUTIES, FEES, ETC.: Unless otherwise expressly provided by Seller in the Agreement, prices do not include sales, excise, use, value-added or other similar taxes now in effect or hereafter levied, transportation charges (such as freight, insurance, shipping, storage, handling, demurrage or similar charges), engineering documentation, special packaging, marketing or testing, and Buyer shall pay all such charges, including applicable sales or other taxes levied with respect to Products and the Agreement (unless exempt therefrom), as well as any government fees levied on the inspection and/or installation of the Products, upon receipt of the related invoice from Seller and in accordance with this Agreement. In the event that the Agreement expressly provides that any of the foregoing charges are specifically included in the price, any charges attributable to increases in applicable rates after the date such price is quoted to Buyer shall be added to the price.

11. TERMS OF PAYMENT: Invoices may be rendered separately for each shipment (including any early shipment) made by Seller, and payment will be due net thirty (30) days after the date of shipment, unless a different period is stated elsewhere in the Agreement. Buyer shall be liable for the price of all Products substantially conforming to the Agreement, notwithstanding that Buyer may not have accepted or may have revoked acceptance of same. Buyer shall not be entitled to deduct, counterclaim or set off against the price of Products, or against any other amount owing under the Agreement including under any invoice, any claim or alleged claim arising out of the Agreement or any other transaction with Seller.

12. SOFTWARE: Notwithstanding any other provision herein to the contrary, Seller shall retain all rights of ownership and title in its respective software and all copies of such software. Except as otherwise provided herein, Buyer is hereby granted a nonexclusive, royalty free license to use software, and copies of software, incorporated into the Goods only in conjunction with such Goods and only at the Buyer's plant site where the Goods are first used. Buyer may negotiate with Seller separate licenses to use such copies and software at other plant sites.

13. BUYER SUPPLIED DATA: To the extent that Seller has relied upon any specifications, information, representation of operating conditions or other data or information supplied by Buyer to Seller in the selection or design of the Goods and/or provision of the Services and the preparation of Seller's quotation, and in the event that actual operating conditions or other conditions differ from those represented by Buyer and relied upon by Seller, any warranties or other provisions contained herein which are affected by such conditions shall be null and void, unless otherwise mutually agreed upon in writing.

14. EXPORT/IMPORT: Buyer agrees that all applicable import and export control laws, regulations, orders and requirements of the United States, and the jurisdictions in which the Seller and Buyer are established or from which items may be supplied, will apply to its receipt and use of Goods and Services. In no event shall Buyer use, transfer, release, import, export or reexport Goods in violation of such applicable laws, regulations, orders or requirements.

15. GENERAL PROVISIONS: (a) Buyer shall not assign its rights or obligations under the Agreement without Seller's prior written consent. (b) There are no understandings, agreements or representations, express or implied, not specified in the Agreement. (c) No action, regardless of form, arising out of transactions under the Agreement, may be brought by either party more than two [2] years after the cause of action has accrued. (d) Any modification of these terms and conditions must be set forth in a written instrument signed by a duly authorized representative of Seller. (e) The Agreement is formed and shall be construed, performed and enforced under the laws of the State of Michigan, without regard to its conflict of law rules. The U.N. Convention on the International Sale of Products shall not apply. However, Buyer and Seller agree that the proper venue for all actions arising under the Agreement shall be only in the State where the Goods involved in such actions were manufactured. (f) If any provision of the Agreement is invalid under any statute or rule of law, such provision, to that extent only, shall be deemed to be omitted without affecting the validity of the remainder of the Agreement.