



**Peerless Pump Company**  
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### GENERAL TERMS AND CONDITIONS

1. **ACCEPTANCE.** Peerless Pump Company (hereinafter called "Seller"), hereby acknowledges Purchaser's order. The order will be filled only after credit approval and acceptance of the order at Seller's administrative offices in Indianapolis, Indiana. Any acceptance of the order is subject to the terms and conditions set forth herein, which supersede any inconsistent or additional terms and conditions contained in Purchaser's order form. There are no agreements or representations, oral or otherwise, outside of the acknowledgment. Submittal of technical information does not constitute acceptance of Purchaser's Terms and Conditions.

2. **DEFINITIONS.** (a) As used herein "Service" refers to all labor, equipment, materials, accessories and/or parts which Seller proposes in Seller's quotation to provide for repair and/or Service. (b) As used herein "Equipment" refers to all equipment, materials, accessories and/or parts which Seller proposes to sell hereunder.

3. **SHIPPING DATE.** Seller will give its best efforts to the prompt delivery of Equipment and Service. Though Seller recognizes the desirability of delivering Equipment and Service promptly, the dates specified herein for shipping of Equipment or for Service are approximate only. Seller will ship Equipment as soon as manufacturing is completed and Equipment meets design and performance specifications. SELLER SHALL NOT BE RESPONSIBLE FOR ANY LOSS OR DAMAGE OF ANY KIND, INCLUDING LIQUIDATED DAMAGES, RESULTING FROM ANY DELAY IN DELIVERY OR FAILURE TO DELIVER THE EQUIPMENT OR SERVICE, UNLESS AGREED TO UP FRONT AND IN WRITING PRIOR TO ACCEPTANCE OF THE ORDER.

4. **FORCE MAJEURE.** Seller shall not be responsible for any loss or damage, including liquidated damages resulting from any delay in delivery or failure to deliver the Equipment or Service where such delay or failure is caused by fire, flood, natural causes, labor troubles (including strikes, slowdowns and lockouts), war, government regulations, riots, civil disorders, interruption of or delay in transportation, power failure, inability to obtain materials and supplies, accidents, acts of God or any other cause beyond Seller's control.

5. **SHIPMENTS.** All prices are EXW (Ex-works) Plant of Manufacture, packed for domestic shipment (Incoterms 2000), unless otherwise agreed. The origin point of shipment, method of transportation, and routing are at the Seller's discretion. If Purchaser specifies "freight collect," it is clearly understood that there will be no freight allowance. Purchaser may request shipment via a transportation mode other than truck. In such case, all additional expenses incurred will be billed to the Purchaser. If shipment is accepted by Purchaser at one destination and re-forwarded by Purchaser, the re-forwarding is at the Purchaser's expense and risk. The risk shall pass to Customer when the Equipment made available for delivery in accordance with this paragraph. If a copy of a freight bill is required, we will provide a Peerless freight invoice as we have confidential contracts with our carriers and neither we nor the carrier can supply a copy of the carrier's freight bill.

6. **PRICES.** Unless otherwise specified by Seller, prices set forth herein are firm, provided, within thirty (30) days after the date of Seller's Acknowledgment, this proposal becomes a binding contract (Buyer provides to Seller all necessary credit information, and Seller approves Purchaser's credit and accepts the order). Further, if Purchaser fails to furnish Seller with all necessary drawings duly approved by the Purchaser within thirty (30) days after submission of drawings to Purchaser by Seller, Seller's prices are subject to change at Seller's sole discretion after notice to Purchaser. Where shipment is requested by Purchaser beyond the normal shipment schedule, or in the event that shipment is deferred at the request of the Purchaser by failure of Purchaser to fulfill its obligations to facilitate shipment as agreed, by any other act or failure to act on the part of the Purchaser resulting in a delay of timely shipment without fault on the part of Seller, including but not limited to providing necessary shipment information to Seller or failure to schedule carrier in a timely manner if so required or by reason of Government action, Purchaser agrees to pay a delayed delivery storage fee at the rate of three percent (3%) of the Equipment price per month beyond the normal shipping date.

7. **TAXES.** Prices specified herein do not include any federal, state or municipal sales, use, excise or other taxes. Therefore, in addition to the prices specified herein, the amount of any such sales, use, excise or other taxes applicable to the sale of the Equipment shall be paid by Purchaser, or in lieu thereof, Purchaser shall furnish Seller with tax-exemption certificates acceptable to said taxing authorities. Taxes payable outside the United States are the responsibility of the Purchaser, unless otherwise agreed.

8. **PAYMENTS.** Payment for the Equipment is due upon shipment or when Seller notifies Purchaser that Equipment is packed for shipment EXW (Ex-works) Plant of Manufacture, whichever occurs first, unless otherwise specified herein. Payment for Service is due upon completion unless otherwise specified herein. In some circumstances, Seller may agree to Progress Payments. Normally Progress Payments shall become due and payable as partial shipments are made hereunder. In the event delay in making any partial shipment is caused by Purchaser, payment for such shipment shall be due on the date Seller notifies Purchaser that Seller is prepared to make such shipment. Shipment date is not subject to Purchaser's prior approval of performance testing where testing has demonstrated that the Equipment meets performance specifications, unless otherwise agreed to in writing prior to acceptance of the order or contract. If Purchaser's financial condition does not justify continuance of production or shipment on the terms of payment specified herein, Purchaser will, upon request by Seller, furnish further assurance of ability to make payments. Seller may also refuse to make shipment except upon payment of cash fully or partially in advance.

If specified in Seller's acknowledgement or in any event for any order totaling \$300,000.00 and above (before taxes) must include the Standard Progress Payment Plan in the payment terms. "Standard Progress Payment Plan" is defined as a payment plan that includes the following terms in the Purchase Order or in the acknowledgment:

- (a) Fifteen percent (15%) of the Sales Price (and a proportionate amount of any applicable taxes) is payable before the release for production or when drawings are approved, whichever occurs first.
- (b) Sixty percent (60%) of the Sales Price (and a proportionate amount of any applicable taxes) is payable in equal payments every sixty (60) days throughout the proposed manufacturing schedule; the first of these equal payments shall be due sixty (60) days after the first payment of 15% is made.
- (c) The last twenty-five percent (25%) of the Sales Price (and a proportionate amount of any applicable taxes) is payable no later than thirty (30) days after the Equipment is shipped or thirty (30) days after notification that Seller is ready to ship, whichever occurs first.

Progress payments are payable upon receipt of Invoice. In the event that a progress payment is not paid when due, Seller, at its sole discretion, may do any and all of the following: (a) Delay partial shipments until Buyer's progress payments are brought current, (b) Revise payment terms, (c) Adjust delivery dates and schedule without penalty, breach, damages, or any liability therefore.

In orders where there are no shipments to be made, Seller may allow the following Progress Payments, at Seller's sole discretion, as agreed to in writing at the time of the Agreement:

- (a) Ten Percent (10%) on receipt of approved drawings
- (b) Thirty Percent (30%) on receipt of castings at our facility
- (c) Thirty Five Percent (35%) on receipt of motors or drives at our facility (or direct ship to site)
- (d) Twenty Five (25%) upon final shipment from Peerless factory

If for any reason the Purchaser should fail to pay the Seller at the time the payment of any amount becomes due, then the Seller may charge the Buyer 18% per annum for said invoice(s). Purchaser acknowledges that payment is due as set forth above, and that Purchaser may not retain or withhold payment as an offset to

any claim Purchaser may allege against Seller, whether arising under this or any other Purchase Order or Contract (except in accordance with retainage terms agreed to in writing by the parties at the time of acceptance of the Purchaser's order). In addition to the foregoing, should Purchaser fail to pay Seller when payment is due, the Seller may, at its option, stop work until Purchaser has paid in full the amount owed, and the Contract Price will be adjusted for the additional costs of shutdown, delay and start-up. Failure to pay Seller when payment is due is a material breach of this agreement. The foregoing is in addition to all other rights and remedies available to the Seller under this agreement or at law or equity. In addition, Purchaser shall be liable to Seller for Seller's reasonable costs (including attorney fees) to collect Seller's overdue payments. If Purchaser is in default on payment to Seller, Purchaser will not undertake repair or replacement activities under Seller's limited warranty until Purchaser's account with Seller is brought current. If Seller stops work under the provisions of this section, Seller at Seller's sole discretion, may adjust date of Seller's performance and delivery for periods equal to the length of the stoppage, or for an additional period if reasonably caused by the work stoppage, without penalty or liability.

9. **CANCELLATION.** Purchaser may cancel its order at any time prior to shipment or Service, but only upon payment to Seller of reasonable cancellation charges, which shall include expenses already incurred, the cost to Seller of canceling, and Seller's anticipated profit.

10. **LIMITED WARRANTY.** NEW EQUIPMENT MANUFACTURED BY SELLER OR SERVICE SUPPLIED BY SELLER IS WARRANTED TO BE FREE FROM DEFECTS IN MATERIAL AND WORKMANSHIP UNDER NORMAL USE AND SERVICE FOR A PERIOD OF ONE YEAR FROM DATE OF SHIPMENT. IN THE CASE OF SPARE OR REPLACEMENT PARTS MANUFACTURED BY SELLER, THE WARRANTY PERIOD SHALL BE FOR A PERIOD OF TWELVE MONTHS FROM SHIPMENT. SELLER'S OBLIGATION UNDER THIS WARRANTY IS LIMITED TO REPAIRING OR REPLACING, AT ITS OPTION, ANY PART FOUND TO ITS SATISFACTION TO BE SO DEFECTIVE, PROVIDED THAT SUCH PART IS, UPON REQUEST, RETURNED TO SELLER'S FACTORY FROM WHICH IT WAS SHIPPED, TRANSPORTATION PREPAID. PARTS REPLACED UNDER WARRANTY SHALL BE WARRANTED ONLY FROM DATE OF REPAIR. THIS WARRANTY DOES NOT COVER PARTS DAMAGED BY DECOMPOSITION FROM CHEMICAL ACTION OR WEAR CAUSED BY ABRASIVE MATERIALS, NOR DOES IT COVER DAMAGE RESULTING FROM MISUSE, ACCIDENT, NEGLIGENCE, OR FROM IMPROPER OPERATION, MAINTENANCE, INSTALLATION, MODIFICATION OR ADJUSTMENT. THIS WARRANTY DOES NOT COVER PARTS REPAIRED OUTSIDE SELLER'S FACTORY WITHOUT PRIOR WRITTEN APPROVAL. SELLER MAKES NO WARRANTY AS TO STARTING EQUIPMENT, ELECTRICAL APPARATUS OR OTHER MATERIAL NOT OF ITS MANUFACTURE. IF PURCHASER OR OTHERS REPAIR, REPLACE, OR ADJUST EQUIPMENT OR PARTS WITHOUT SELLER'S PRIOR WRITTEN APPROVAL, SELLER IS RELIEVED OF ANY FURTHER OBLIGATION TO PURCHASER UNDER THIS SECTION WITH RESPECT TO SUCH EQUIPMENT OR PARTS, UNLESS SUCH REPAIR, REPLACEMENT, OR ADJUSTMENT WAS MADE AFTER SELLER FAILED TO SATISFY WITHIN A REASONABLE TIME SELLER'S OBLIGATIONS UNDER THIS PARAGRAPH. SELLER'S LIABILITY FOR BREACH OF THESE WARRANTIES (OR FOR BREACH OF ANY OTHER WARRANTIES FOUND BY A COURT OF COMPETENT JURISDICTION TO HAVE BEEN GIVEN BY SELLER) SHALL BE LIMITED TO: (A) ACCEPTING RETURN OF SUCH EQUIPMENT EXW PLANT OF MANUFACTURE, AND (B) REFUNDING ANY AMOUNT PAID THEREON BY PURCHASER (LESS DEPRECIATION AT THE RATE OF 15% PER YEAR IF PURCHASER HAS USED EQUIPMENT FOR MORE THAN THIRTY [30] DAYS), AND CANCELING ANY BALANCE STILL OWING ON THE EQUIPMENT. (C) IN THE CASE OF SERVICE, AT SELLER'S OPTION, REDOING THE SERVICE, OR REFUNDING THE PURCHASE ORDER AMOUNT OF THE SERVICE OR PORTION THEREOF UPON WHICH SUCH LIABILITY IS BASED. THESE WARRANTIES ARE EXPRESSLY IN LIEU OF ANY OTHER WARRANTIES, EXPRESS OR IMPLIED, AND SELLER SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND IN LIEU OF ANY OTHER OBLIGATION OR LIABILITY ON THE PART OF THE SELLER WHETHER A CLAIM IS BASED UPON NEGLIGENCE, BREACH OF WARRANTY, OR ANY OTHER THEORY OR CAUSE OF ACTION. IN NO EVENT SHALL SELLER BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL OR PUNITIVE DAMAGES OF ANY KIND. FOR PURPOSES OF THIS SECTION, THE EQUIPMENT WARRANTED SHALL NOT INCLUDE EQUIPMENT, PARTS, AND WORK NOT MANUFACTURED OR PERFORMED BY SELLER. WITH RESPECT TO SUCH EQUIPMENT, PARTS, OR WORK, SELLER'S ONLY OBLIGATION SHALL BE TO ASSIGN TO PURCHASER THE WARRANTIES PROVIDED TO SELLER BY THE MANUFACTURER OR SUPPLIER PROVIDING SUCH EQUIPMENT, PARTS OR WORK. NO EQUIPMENT FURNISHED BY SELLER SHALL BE DEEMED TO BE DEFECTIVE BY REASON OF NORMAL WEAR AND TEAR, FAILURE TO RESIST EROSION OR CORROSIVE ACTION OF ANY FLUID OR GAS, PURCHASER'S FAILURE TO PROPERLY STORE, INSTALL, OPERATE, OR MAINTAIN THE EQUIPMENT IN ACCORDANCE WITH GOOD INDUSTRY PRACTICES OR SPECIFIC RECOMMENDATIONS OF SELLER, INCLUDING, BUT NOT LIMITED TO SELLER'S INSTALLATION AND OPERATION MANUALS, OR PURCHASER'S FAILURE TO PROVIDE COMPLETE AND ACCURATE INFORMATION TO SELLER CONCERNING THE OPERATIONAL APPLICATION OF THE EQUIPMENT.

11. **COMPLIANCE WITH LAWS.** Purchaser shall be solely responsible for securing any necessary permits under and for compliance with all safety, health and sanitation laws, ordinances and regulations in connection with the installation, service, repair and operation of the Equipment. Purchaser agrees to provide Seller, upon request, with evidence of the securing of any such permits and of compliance with any such laws, ordinances and regulations. Seller shall be responsible for requesting any U. S. Export License Permits which may be required, and Purchaser agrees to provide all necessary information to enable Seller to apply for the permit. Purchaser agrees to comply with applicable United States international trade laws and regulations in its business dealings with Seller and will deliver to Seller at the time of execution of this agreement an executed original of Exhibit 1 signed by an authorized officer or owner of Purchaser. Purchaser agrees to disclose the name and address and business of the user of the goods supplied upon Seller's request. Purchaser shall automatically disclose this information if the goods are to be exported outside of the United States. Notwithstanding Purchaser's sole responsibility to ensure compliance with all relevant laws, Seller reserves the right to cancel order without compensation to Purchaser if Seller considers or suspects that goods may breach any laws of the United States.

12. **INDEMNIFICATION.** It is understood that Seller has relied upon data furnished by and on behalf of Purchaser with respect to the safety aspects of the Equipment, and that it is Purchaser's responsibility to assure that the Equipment will, when installed and put in use, be in compliance with safety requirements fixed by law and otherwise legally adequate to safeguard against injuries or damage to persons or property. Purchaser hereby agrees to defend, indemnify and hold harmless Seller, its agents and employees against any and all losses, costs, damages, claims, liabilities or expenses, including but not limited to reasonable attorneys' fees, arising out of or resulting from any injury or damage to any person or property caused by the inadequacy of safety features, devices or characteristics in the Equipment or arising out of the installation, Service, repair, or use or operation of the same, except where the injury or damage is solely caused by Seller's negligence and except for claims for repair or replacement of defective parts in accordance with Paragraph 10 hereof. Purchaser indemnifies Seller for any loss to Seller, including reasonable attorneys' fees, caused by Seller's manufacturing, installing or building to specifications provided by the Purchaser.

13. **RISK OF LOSS.** The risk of loss or damages to Equipment is on Purchaser from and after goods are made available for delivery to Purchaser or in accordance with the agreed terms under Incoterms 2000.

14. **LIMITATION OF DAMAGES AND DISCLAIMER OF CONSEQUENTIAL DAMAGES OR PENALTIES.** TO THE EXTENT PERMITTED BY LAW, SELLER SHALL NOT BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL OR PUNITIVE DAMAGES, ARISING OUT OF THE CONTRACT, OR OUT OF ANY BREACH OF ANY OF SELLER'S OBLIGATIONS HEREUNDER, OR OUT OF ANY DEFECT IN, OR FAILURE OF, OR MALFUNCTION OF THE EQUIPMENT, WHETHER OR NOT CAUSED BY SELLER'S NEGLIGENCE. CONSEQUENTIAL DAMAGES, FOR THE PURPOSE OF THIS AGREEMENT, SHALL INCLUDE BUT NOT BE LIMITED TO, PERSONAL INJURY, LOSS OF USE, LOST INCOME OR PROFITS, LOST INTEREST, LOST GOODWILL, WORK STOPPAGE, IMPAIRMENT OF OTHER EQUIPMENT, ENVIRONMENTAL DAMAGE, INCREASED EXPENSES OF OPERATION, COST OF PURCHASE OF REPLACEMENT POWER OR CLAIMS OF PURCHASER OR CUSTOMERS OF PURCHASER FOR SERVICE INTERRUPTION, DAMAGE TO PROPERTY (INCLUDING, BUT NOT LIMITED TO, PRODUCTS MANUFACTURED, PROCESSED OR TRANSPORTED BY THE USE OF THE EQUIPMENT), OR ANY OTHER LOSS OCCASIONED BY OR ARISING OUT OF THE OPERATION, USE, INSTALLATION, REPAIR OR REPLACEMENT OF

THE EQUIPMENT OR OTHERWISE, WHETHER OR NOT SUCH LOSS IS BASED UPON CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR OTHERWISE. SELLER'S DAMAGES ARE LIMITED TO DAMAGES SET FORTH IN PARAGRAPH 10, WARRANTY. SELLER SHALL NOT BE LIABLE FOR ANY DAMAGES, PENALTIES OR LIQUIDATED DAMAGES BASED UPON OR RELATING TO SELLER'S FAILURE OR INABILITY TO SHIP WITHIN A SPECIFIED TIME. THE FOREGOING NOTWITHSTANDING, SELLER'S MAXIMUM AGGREGATE LIABILITY RELATED TO THE PERFORMANCE OF THIS CONTRACT SHALL NOT EXCEED THE PURCHASE ORDER AMOUNT OF THE EQUIPMENT OR SERVICE PORTION THEREOF UPON WHICH SUCH LIABILITY IS BASED. ALL SUCH LIABILITY SHALL TERMINATE FOUR YEARS FROM THE DATE OF THE PURCHASE ORDER IF NOT SOONER TERMINATED.

15. **GENERAL.** (a) Any Purchaser document which contains terms in addition to or inconsistent with the terms of the acknowledgment or a rejection of any term of the acknowledgment shall be deemed to be a counter offer to Seller and shall not be binding upon Seller unless specifically accepted in writing by a duly authorized representative of Seller. This clause shall constitute a continuing objection to any such items not specifically so accepted by Seller. (b) All questions relating to the formation of or performance under the contract based hereon shall be determined in accordance with the laws of the State of Indiana. The parties stipulate that the state and federal courts of Marion County, Indiana, or any other court in which Seller initiates proceedings, have exclusive jurisdiction over all matters arising out of this agreement, and that service of process in any such proceeding will be effective if served by Certified mail to Purchaser at 2005 Dr. Martin Luther King Jr. Street, Indianapolis, IN 46202. For international sales (sales of Equipment by Peerless Pump Company ["Seller"] to a Purchaser outside of the United States or a Purchaser organized or with a principal place of business or substantial assets outside of the United States ["International Agreement"], all disputes arising in connection with the agreement shall be finally settled by arbitration in accordance with the rules set forth by the United Nations Commission for International Trade Law (UNCITRAL) Arbitration Rules, under the auspices of the American Arbitration Association (Arbitration).

In the event of any dispute or difference arising out of or relating to an International Agreement or the breach thereof, the parties hereto first shall use their best endeavors to settle such disputes or differences. To this effect, the parties shall consult and negotiate with each other, in good faith and understanding of their mutual interest, to reach a just and equitable solution satisfactory to both parties. If the parties do not reach such solution within a period of ninety (90) days from the commencement of consultations and negotiations, before arbitration may be invoked, one of the parties must, by written notice to the other party, have the dispute referred to their respective Chief Executive Officers (or the equivalent), or to their designated representatives who have the final authority to resolve the dispute, with the request that they attempt in good faith to resolve the dispute within ninety (90) calendar days after valid notice is served pursuant to this Agreement. No party may invoke arbitration without first complying with the provisions of this section.

In the event that the foregoing designated representatives of the parties are not able, for whatever reason, to resolve such dispute in good faith within the ninety (90) calendar day period, the parties agree that the disputes or differences shall be settled by arbitration in accordance with the rules set forth by the United Nations Commission for International Trade Law (UNCITRAL) Arbitration Rules, under the auspices of the American Arbitration Association (Arbitration).

The arbitration shall take place in Indianapolis, Indiana, USA, or another location, at the sole discretion of Peerless Pump Company. The arbitration shall be conducted in and the award rendered in English and payable in US Dollars, and such award shall be final and binding on the parties, not subject to any appeal, and shall deal with the question of costs of arbitration and all matters related thereto.

The parties agree that any judgment, decision, or award of the arbitrators shall be made enforceable in any court of competent jurisdiction, including courts in the country of Purchaser. Judgment upon the award rendered may be entered into any court having jurisdiction, or application may be made to such court for a judicial recognition of the award or an order of enforcement thereof, as the case may be.

The terms of this paragraph shall survive any termination or expiration of this Agreement. This agreement shall be governed by and construed in accordance with the laws of the State of Indiana, USA, excluding the application of its conflicts of law provisions. The United Nations Convention on contracts for the International Sales of Goods shall have no application to this Agreement or to any proceeding brought pursuant hereto (c) If any part hereof is contrary to, prohibited by, or deemed invalid under applicable laws or regulations, such provision shall be inapplicable and deemed omitted to the extent so contrary, prohibited or invalid, but remainder hereof shall not be invalidated and shall be given effect so far as possible. (d) No waiver of any term or condition or the breach of any term or condition of this agreement shall be deemed to constitute a waiver of any subsequent breach of such term or condition nor justify or authorize a nonobservance upon any occasion of such term or condition or any other term or condition.; nor shall the acceptance of payment by Seller at any time when Purchaser is in default of any term or condition be construed as a waiver of such default or waiver of Seller's right to terminate this agreement on account of such default. (e) The Purchaser warrants and represents that only persons with authority to execute the documents related to this agreement will sign on behalf of the Purchaser and that electronic orders will be placed only by persons so authorized by the Purchaser and shall be binding on the Purchaser upon acceptance by the Seller with or without hand written signature of Purchaser.

As approved 9/20/07