

# Terms & Conditions

## 1. Acceptance:

The sales contract incorporating these terms and conditions becomes a binding contract on the terms set forth herein, when it is accepted by acknowledgment or commencement of performance. This contract can be accepted only on the exact terms set forth herein (including the modes of acceptance specified in the immediately preceding sentence) and no terms which are in any manner whatsoever additional to or different from those set forth herein shall become a part of or in any way alter this contract without the express written consent of Delavan Ag Pumps, Inc., a Minnesota corporation ("Delavan Ag Pumps").

## 2. Terms of Payment:

Unless otherwise stated on the invoice face Delavan Ag Pumps' domestic terms are 1% 10 net 30 days after the date of Delavan Ag Pumps' invoice. INTEREST WILL BE CHARGED AT THE RATE OF 1 1/2% PER MONTH OR THE MAXIMUM LEGAL RATE, WHICHEVER IS LESS, ON PAST DUE ACCOUNTS AFTER 30 DAYS FROM DATE OF INVOICE. Export terms require a confirmed irrevocable letter of credit to be opened by Purchaser at its expense including bank confirmation charges through a prime US bank unless otherwise specified. All letters of credit shall be in favor of and acceptable to Delavan Ag Pumps, shall be maintained in sufficient amounts and for the period necessary to meet all payment obligations, shall be irrevocable and shall be issued or confirmed by the bank to Delavan Ag Pumps within sixty (60) days after acceptance of the order by Delavan Ag Pumps, shall permit partial deliveries and shall provide for pro-rata payments upon presentation of Delavan Ag Pumps' invoices and certificate of delivery, or of delivery into storage with certification of cause therefor, and for the payment of any cancellation charges. Boxing, cartage, freight, insurance, handling, labor, rental and similar expenses are net cash upon receipt of invoice. All deliveries are at Delavan Ag Pumps' docks at its plant in Minneapolis, Minnesota, unless otherwise specified in Delavan Ag Pumps' sales order or quote. In the event that collection of invoices is placed in the hands of an attorney, Purchaser agrees to pay all reasonable costs and attorney's fees.

## 3. Prices:

Prices in effect at time of delivery will apply unless otherwise stated in writing.

## 4. Limited Warranty, Remedy, Disclaimer:

Delavan Ag Pumps warrants that for a period of one year from the date of delivery equipment manufactured by Delavan Ag Pumps shall be free of defects in materials and workmanship under normal use and service, and provided the equipment is installed, operated and maintained in accordance with instructions supplied by Delavan Ag Pumps. THIS LIMITED WARRANTY IS Delavan Ag Pumps SOLE AND EXCLUSIVE WARRANTY. If a defect in Delavan Ag Pumps equipment appears within one year from the date of delivery, and Purchaser has given written notice of such defect within thirty (30) days from the discovery thereof, Delavan Ag Pumps will repair or replace the defective part, at its option. Delavan Ag Pumps requires the return to a designated Delavan Ag Pumps location, of the defective part, transportation prepaid, to establish Purchaser's claim. A return goods authorization must be received prior to the return of the defective part. No allowance will be made for repairs undertaken without Delavan Ag Pumps' written consent or approval. This limited warranty does not cover normal wear, or wear caused by or related to abrasion, corrosion, abuse, negligence, accident, faulty installation, or tampering which impairs normal operation of the equipment. This limited warranty applies only to equipment manufactured by Delavan Ag Pumps. Warranties, if any, on equipment manufactured by others including but not limited to electric motors (if applicable), are assigned to the Purchaser by Delavan Ag Pumps (without recourse) at time of delivery. Any descriptions of the equipment drawings, specifications, and any samples, models, bulletins, or similar material, used in connection with this sale are for the sole purpose of identifying the equipment and are not to be construed as an express warranty that the equipment will conform to such description. Any field advisory or installation support is advisory only. THE FOREGOING WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES. WHETHER ORAL, WRITTEN, EXPRESS, IMPLIED OR STATUTORY, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE WILL NOT APPLY. Delavan Ag Pumps' WARRANTY OBLIGATIONS AND PURCHASER'S REMEDIES THEREUNDER ARE SOLELY AND EXCLUSIVELY AS STATED HEREIN. The Purchaser's sole and exclusive remedy, whether based upon warranty, contract or tort, including negligence, will be to proceed under this warranty. All liability of Delavan Ag Pumps shall terminate one year from the date of delivery of the equipment.

## 5. Limitation of Liability:

Delavan Ag Pumps shall in no event be liable for special, indirect, incidental or consequential damages, including environmental damage claims. Delavan Ag Pumps' total liability on any claim of any kind arising out of this sales contract shall in no case exceed the price paid by Purchaser for the equipment or the part thereof giving rise to the claim. Delavan Ag Pumps disclaims all liability, whether in contract, tort, warranty, or otherwise, to any party other than Purchaser.

## 6. Shipping Dates:

The time given for shipment is approximate and is estimated from the date of receipt of the order together with complete manufacturing information and approval of drawings as may be necessary. Partial deliveries shall be permitted.

Delavan Ag Pumps shall not be liable for any losses or damages for delay or non-delivery due to the acts of civil or military authority, fuel shortages, acts of the Purchaser or by reason for "force majeure" which shall be deemed to mean all causes whatsoever not reasonably within the control of Delavan Ag Pumps including, but not limited to acts of God, war, riot, insurrection, boycott or other civil disturbances, blockages, embargoes, sabotage, epidemics, fires, strikes, lockouts, or other industrial disturbances, delays of carriers, and inability to secure materials, labor or manufacturing facilities. The foregoing extension of delivery will apply even though such cause(s) may occur after Delavan Ag Pumps' delivery has been delayed for other causes. If any part of the equipment cannot be delivered when ready due to any cause referred to above, Delavan Ag Pumps may place such equipment in storage. In such event (1) Delavan Ag Pumps' delivery obligations shall be deemed fulfilled and title and all risk of loss or damage shall thereupon pass to Purchaser, (2) any amounts otherwise payable to Delavan Ag Pumps upon delivery shall be payable upon presentation of Delavan Ag Pumps' invoices and its certification as to such cause, and (3) all expenses incurred by Delavan Ag Pumps such as for preparation for and placement into storage, handling, inspection, preservation and insurance, shall be payable by Purchaser upon submission of Delavan Ag Pumps' invoices.

The delivery dates are based on standard quality control checks as a part of the normal production sequence. Additional inspection or testing required by Purchaser which affects normal production sequence, will be considered as extending the shipping dates accordingly.

## 7. Payments:

The prices specified are in US currency, payable in Minneapolis, Minnesota exchange free of all expenses to Delavan Ag Pumps for collection charges. Pro rata payments shall be made for partial shipments. If delivery is prevented or postponed at the Purchaser's request, or by reason of any other cause set forth specifically or by implication in paragraph 6 above, then all dates of payment related to delivery shall relate instead to the placement of such equipment in storage. Letters of credit or other credit instruments established to provide payment for the equipment shall make provision for payment as set forth above where delivery is prevented or postponed under such circumstances. Storage of such equipment shall be at Purchaser's expense and risk. When in the opinion of Delavan Ag Pumps the financial condition of the Purchaser renders it necessary, Delavan Ag Pumps may require cash payment or satisfactory security before shipment.

## 8. Changes and Drawings:

Delavan Ag Pumps reserves the right to change or modify the design and construction of equipment and to substitute other suitable material. Delavan Ag Pumps is not required to retrofit units in the field because of an engineering change.

If Purchaser for any reason makes changes within the general scope of this contract which affect the (1) drawings, designs or specifications of equipment being specifically manufactured for Purchaser; (2) method of shipment or packing; (3) place of delivery; and, (4) delivery schedules, and any such change causes an increase or decrease in the cost of, or the time required for, performance of this contract, an equitable adjustment shall be made in the contract price or delivery schedule or both. Changes in this contract shall, however, only be considered if they are directed in writing to Delavan Ag Pumps by Purchaser's Purchasing Department and accepted in writing by Delavan Ag Pumps. On receipt of such written directions Delavan Ag Pumps shall within 30 days notify Purchaser of its claim for adjustment.

## 9. Cancellation:

The Purchaser may cancel his order only upon written notice and payment to Delavan Ag Pumps of Delavan Ag Pumps' cancellation charges. Equipment or parts of special design, size or materials are normally not returnable. Written permission must be secured before returning standard equipment or parts, and these returns will be subject to a restocking charge as determined by Delavan Ag Pumps. No rubber products may be returned for credit after six (6) months from date of delivery.

## 10. Suspension:

If Delavan Ag Pumps performance of the work is delayed for a period of more than six (6) months at the request of Purchaser or by reason of the acts of civil or military authority, or "force majeure", upon removal of the cause for any such delay, performance shall be resumed, delivery will be rescheduled, and the purchase price shall be adjusted to that in effect at the time of resumption of performance subject to such price adjusted clause as may then be applicable. If Purchaser is unwilling to accept the adjusted price and projected delivery date, Purchaser may cancel its order by giving written notice thereof to Delavan Ag Pumps at any time within thirty (30) days after Purchaser has been advised of Delavan Ag Pumps adjusted price and projected delivery date and upon payment of reasonable cancellation charges specified by Delavan Ag Pumps.