

LSM • PUMPS USA Inc.

LSM Pumps USA Inc. – 875 N, Michigan Ave., Suite 3950 – 60611 Chicago. IL – USA
Phone : +1 (312) 239 6323 – www.lsmumps.com – info@lsmumps.com

General Terms and Conditions for Sale of Products

These General Terms and Conditions for Sale of Products (the “**Terms**”), together with the other Contract Documents, (collectively, the “**Contract**”) are entered into as of the Effective Date by and between LSM Pumps USA Inc., a Delaware corporation (“**LSM**”), on the one hand, and the company or companies in the Order Confirmation (the “**Customer**”) to which these Terms are attached, on the other hand. The sales order acceptance is made and given on the express condition and understanding that the following Terms, together with the terms in the other Contract Documents, will apply to the sale. Accordingly, LSM objects to any additional or different terms and conditions, whether contained in Customer’s purchase order, forms or otherwise. These Terms shall also apply to any repaired or replaced Products provided by LSM.

1. Offers

1.1 Purchase Order. Customer, its Affiliates may issue a purchase order to LSM for the Product(s). Such purchase order, shall constitute an offer to purchase the Product(s) on these Terms. LSM, in its sole discretion, may or may not accept such offer, and the receipt of an electronic or other form of confirmation does not mean or constitute acceptance of such purchase order, unless an Order Confirmation is issued in accordance with Section 2.1.

1.2 Offers made by LSM. Any quotes made by LSM shall constitute an invitation for the Customer to make an offer pursuant to Section 1.1. Unless provided otherwise in a quote, such invitation to make an offer shall be valid for sixty (60) calendar days from the date of the quote and will hereafter automatically lapse.

2. Acceptance

2.1 Acceptance. Customer’s purchase order is subject to acceptance by LSM. Such acceptance takes place only when LSM sends an express confirmation of acceptance (“**Order Confirmation**”).

2.2 Price Changes. The Customer accepts and acknowledges the purchase price in any quote, purchase order, and Order Confirmation is based on the Supply

Cost at that time. In the event of a Supply Cost increase, LSM reserves the right, in its sole discretion, to increase the price, even after an Order Confirmation is issued or acceptance of the purchase order, to an equitable amount to such Supply Cost increase. In such an event, LSM will notify the Customer of the increase.

2.3 Taxes. All amounts payable to LSM are exclusive of all sales taxes, use taxes, value added taxes, tariffs or customs duties, and any other similar taxes or duties imposed by any federal, state, provincial or local governmental entity on the sale of the Products. When LSM has the legal obligation to collect such taxes or duties, the appropriate amount shall be invoiced to and paid by Customer, unless Customer provides LSM with a valid tax exemption certificate to its satisfaction.

Financial Documents. LSM may require Customer to provide a bank guarantee or letter of credit or other financial documents as proof of Customer’s ability to satisfy its payment obligations (collectively, “**Financial Document(s)**”). In the event LSM requires Customer to provide Financial Documents, the delivery of the Product(s) will be subject to Customer providing such Financial documents to the satisfaction of LSM

3. Delivery

3.1 Terms of Delivery. Unless otherwise stated in the Order Confirmation, the Product(s) will be delivered; Ex Work (EXW), Incoterms 2000.

3.2 Delivery Date. Any delivery dates in the Order Confirmation, is a good faith estimate only, and may be subject to changes. If no specific delivery date has been indicated in the Order Confirmation, LSM, acting reasonably, is entitled to stipulate a delivery date taking into consideration the quantity and the nature of the Products to be delivered.

3.3 Delivery Conditions. In the event the delivery is condition upon Customer providing a Financial Document and/or specifications for the manufacturing of the Product, the delivery will be subject to Customer providing such Financial Documents and/or specifications. LSM reserves the right to change the date of delivery, if Customer does not provide such Financial Documents and/or specifications within the date specified in the Order Confirmation, or if no date is specified, within reasonable time.

3.4 Packing. Unless otherwise specified by Customer, LSM will ensure that the Products are properly packed, secured and labelled in accordance with accepted industry practice.

3.5 Delay. The delivery date is an estimate, only, and the delivery or time will not be considered of “essence”. Accordingly, LSM cannot be held liable for any damage or loss that the Customer may suffer as a result of delay or non-delivery. In the event that LSM is unable to deliver the Products or make timely delivery, LSM will notify the Customer at the earliest possible opportunity, and the parties shall find a new revised delivery date. If the delay(s) persist(s) for more than thirty (30) days and the delay is not caused by Force Majeure Event (as defined in Section 10.1), the Customer may choose to terminate the Contract and receive a refund. The foregoing shall be the Customer’s exclusive remedy for the delay.

3.6 Title. Title to the Product(s) or any part thereof shall not pass from LSM to Customer until all payments due hereunder have been duly made. The Product shall be and remain personal or moveable property, notwithstanding their mode of attachment to realty or other property. The Customer shall at all times keep such Product separated from any other products held in stock, and must ensure that the Product can at all times be identified by Customer. If default is made in any of the payments due, Customer agrees that LSM shall be free and authorized to enter the premises where the Product may be located and remove them as LSM’s property, without prejudice to LSM’s right to recover any further expenses or damages LSM’s may suffer by reason of such nonpayment. The Customer shall be liable to LSM for any damages to the Product until they have been paid for in full as stated above.

4. Inspection

4.1 Inspection of the Product. Customer shall inspect the Product(s) upon Customer coming into possession of the Product(s). Such inspection shall at minimum include;

- (a) Checking that correct Product(s) have been delivered;
- (b) Checking that correct quantity of the Product(s) has been delivered;
- (c) Ensuring that the Product are of an acceptable quality; and
- (d) Check for any visible damages to the crates or packing;

(Collectively, “***Non-Conforming State***”)

4.2 Acceptance. Customer will be deemed to have accepted the Products delivered, unless a claim has been filed within three (3) business days of Customer coming into possession of the Product (the “***Inspection Period***”) in accordance with the below procedures.

4.3 Procedure. A claim for a Non-Conforming State shall be submitted to the e-mail address in the Order

Confirmation, and must include, at minimum, the following:

- (a) Copy of the Order Confirmation;
- (b) Detailed description of the issue;
- (c) Images of the Product(s); showing the Non-Conforming State; and
- (d) For transportation damages; images of shipping boxes and labelling.

LSM reserves the right to make final determination on all claims raised.

4.4 Remedy. If Customer notifies LSM within the Inspection Period, LSM shall determine, in its reasonable discretion, whether the Product(s) is subject to a Non-Conforming State, and if LSM determines that the Product(s) is subject to a Non-Conforming State, it shall, in LSM's discretion and at its expense, either; (i) replace such Products subject to a Non-Conforming State, or (ii) replace or repair the part of the Product(s) that is subject to a Non-Conforming State. Notwithstanding any other provisions of the Contract, this Section 4.4 contains Customer's sole and exclusive remedy for a Non-Conforming State.

5. Payment

5.1 Terms of Payment. Invoices will only be issued on or after delivery of the Products. Except as otherwise provided in the Order Confirmation, the Customer will pay LSM's charges thirty (30) days after the date of delivery of the Products to the Customer, or if prepayments or milestone payments are agreed, the Customer will pay LSM's charges at each date for each prepayment date or milestone date. For the avoidance of doubt, Customer has no right to withhold or set off any payments to LSM for any defect, delay, claim or for whatever reason, unless LSM has explicitly agreed to it in writing.

5.2 Dispute; Interest. Except for invoiced payments that Customer has successfully paid, Customer shall pay interest on all late payments, at the lesser of; the annual interest rate of eight percent (8%) or the highest rate permissible under applicable law. In addition to all other remedies available under these Terms or at law (which LSM does not waive by the exercise of any rights pursuant to these Terms), if Customer fails to pay any amounts when due under these Terms, LSM may; (a) suspend the delivery of any Product(s); or (b) cancel any accepted or outstanding purchase orders. In addition, Customer will be responsible for all reasonable expenses (including attorneys' fees) incurred by LSM in collecting the outstanding amount and interest.

6. Product Warranty

6.1 Limited Warranty. LSM warrants to Customer that the Product(s) will for the Warranty Period be free from significant defects in material and workmanship and design (the "*Warranty*").

6.2 Warranty Limitation. The warranty under Section 6.1, does not apply to; (a) defects that is a result of misuse, natural variations in materials, abuse, neglect, negligence, improper testing, improper storage, improper handling, normal tear, transportation damages, or other unauthorized handling of the Product; (b) Products used contrary to any instructions or specifications provided by LSM; (c) repairs performed by a third party not approved by LSM; or (d) Wear Parts.

6.3 Notification. Customer shall promptly after discovering the defect notify the LSM in writing (a "*Warranty Claim*"). Such Warranty Claim, shall at minimum include; a detailed description of the defects and pictures of good quality of the defect. LSM may request Customer to provide other reasonable information to determine the defect.

6.4 Remedy. Upon the receipt of a Warranty Claim, LSM will within reasonable time investigate the Warranty

Claim, and determine, if the Warranty Claim is subject to the Warranty. If, LSM, in its sole discretion, determines the Warranty Claim is subject to the Warranty, LSM will, at its sole expense, correct the defect to comply fully with the Warranty. For the avoidance of doubt, LSM may, in its sole discretion, utilize subcontractors to correct the defect under the Warranty. The foregoing remedy will be Customer's sole and exclusive remedy for defects under the Warranty Period.

6.5 Disclaimer. EXCEPT FOR THE EXPRESS LIMITED WARRANTIES SET FORTH UNDER SECTION 6.1, LSM MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE PRODUCT(S), INCLUDING ANY (A) WARRANTY OF MERCHANTABILITY; (B) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; OR (C) WARRANTY OF TITLE; WHETHER ARISING BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE. Customer acknowledges that it has not relied upon any representation or warranty made by LSM, or any other person on LSM's behalf, except as specifically provided in Section 6.1.

7. Proprietary Rights

7.1 Intellectual Property. Customer acknowledges and agrees that any and all of LSM's Intellectual Property Rights, including any enhancement or development based on LSM's Intellectual Property Rights, regardless of how such enhancements or developments are made, are the sole and exclusive property of LSM or its licensors, as the case may be, and Customer shall acquire no rights therein or thereto. Customer further acknowledges and agrees that;

- (a) any and all of LSM's Intellectual Property Rights are the sole and exclusive property of LSM or its licensors;

- (b) Customer shall not acquire any ownership interest in any of LSM's Intellectual Property Rights under this Contract; and
- (c) any goodwill derived from the use by Customer of the LSM's Intellectual Property Rights inures to the benefit of the LSM or its licensors, as the case may be.

8. Confidentiality

8.1 Restriction. Except to the extent required by law, order, regulation, or legal process (and then only after prior notice to and consultation with the other), the Recipient agrees to use the Confidential Information provided by the Disclosing Party solely for the purpose of its performance under this Contract, and for no other purpose, and further agrees to keep the Confidential Information confidential and not disclose to any third party any Confidential Information, except for; (a) on a need-to-know basis, to its employees, agents, subcontractors and representatives; (b) as required by law, governmental regulation or requirement, court order, or subpoena; (c) information that is lawfully known at the time of disclosure; or (d) with respect to the terms of the Contract, as may be necessary to establish or assert its rights hereunder.

8.2 Compelled Disclosure. In the event that the Recipient are legally required to disclose all or any part of the information contained in the Confidential Information under the terms of a law, rule, regulation, legal process, subpoena or other order issued by a court or governmental or regulatory body of competent jurisdiction (collectively, "**Law**"), the Recipient agree to, except to the extent prohibited by Law, promptly notify the Disclosing Party of the existence, terms and circumstances surrounding such requirement so that it may seek (at the Disclosing Party's sole expense) an appropriate protective order or waive its compliance with the provisions of this Contract, and, if the Disclosing Party seeks such an order, to provide such cooperation as the Disclosing Party shall reasonably request. In any such

case, the Recipient agree to cooperate with the Disclosing Party and use commercially reasonable efforts to avoid or minimize the required disclosure or obtain such protective order or other relief. If, failing the entry of a protective order or the receipt of a waiver hereunder, the disclosure of such information is required upon the advice of Recipient's legal counsel, as applicable, Recipient will exercise commercially reasonable efforts to obtain reliable assurance that confidential treatment will be accorded to such of the disclosed information, and Recipient shall then disclose only that portion of the Confidential Information that is legally required to be disclosed.

8.3 Return. Promptly upon the Disclosing Party's written request, the Recipient shall either deliver to the Disclosing Party all Confidential Information provided by the Disclosing Party (including all copies and summaries or synopses thereof or cause all such Confidential Information to be destroyed). If requested in writing, such destruction shall be confirmed in writing (email being sufficient) by the Recipient. Notwithstanding the foregoing, the Recipient may only retain Confidential Information as required by law, rule, regulation or compliance policy or pursuant to professional obligations for litigation purposes or as otherwise stored in standard archival or computer back-up systems; provided, that, such retained Confidential Information shall be subject to the confidentiality obligations and other terms of this Contract until such time as such information is no longer retained (i.e., is returned or destroyed).

8.4 Relief. The Recipient acknowledges that breach of this Section 8 would cause the Disclosing Party irreparable harm for which monetary damages would not provide an adequate remedy and the Disclosing Party.

9. Limitation of Liability

9.1 Limitation of Liability. NOTWITHSTANDING ANY OTHER PROVISION UNDER THIS CONTRACT, IN NO EVENT WILL LSM OR ITS PARENT COMPANY, SUBSIDIARIES OR AFFILIATES (COLLECTIVELY, THE "**LSM GROUP**") BE LIABLE FOR LOSS OF ANTICIPATED REVENUE OR PROFITS, INTEREST, PENALTIES OR INCIDENTAL, CONSEQUENTIAL, PUNITIVE, MULTIPLE, OR EXEMPLARY DAMAGES IN CONNECTION WITH THIS CONTRACT OR PRODUCT OR THESE TERMS, WHETHER FOR BREACH OF CONTRACT, PROPERTY DAMAGE, PERSONAL INJURY, ILLNESS, OR DEATH OR OTHERWISE.

9.2 Maximum Liability. NOTWITHSTANDING ANY OTHER PROVISION UNDER THIS CONTRACT, IN NO EVENT WILL LSM GROUP'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THE CONTRACT OR THESE TERMS OR IN ANY WAY RELATING TO, ARISING OUT OF OR RESULTING FROM ANY PRODUCT(S), WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, PERSON INJURY, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL AMOUNT PAID TO LSM BY CUSTOMER FOR THE PRODUCT TO WHICH GIVEN RISE TO THE ACTION, OMISSION, EVENT, CLAIM OR CHARGE CAUSING LIABILITY. The foregoing limitations of liability are independent of any exclusive remedies for breach of warranty set forth in this Contract.

9.3 Essential Basis. THE CUSTOMER ACKNOWLEDGE AND AGREE THAT THE FEES SET FORTH UNDER THIS CONTRACT AND THE DISCLAIMERS, EXCLUSIONS AND LIMITATIONS OF LIABILITY SET FORTH IN THIS SECTION 0 FORM AN ESSENTIAL BASIS OF THE PARTIES' BARGAIN AND REFLECTS THE ALLOCATION OF RISK IN THE CONTRACT, AND THAT, ABSENT

ANY OF SUCH DISCLAIMERS, EXCLUSIONS OR LIMITATIONS OF LIABILITY, THE TERMS OF THIS CONTRACT, INCLUDING, WITHOUT LIMITATION, THE ECONOMIC TERMS, WOULD BE SUBSTANTIALLY DIFFERENT.

10. Miscellaneous.

10.1 Force Majeure. Neither Party shall be liable to the other for any delay or failure in performing its obligations under this Contract to the extent that such delay or failure is caused by an event or circumstance that is beyond the reasonable control of that party, without such party's fault or negligence, and which by its nature could not have been foreseen by such party or, if it could have been foreseen, was unavoidable. Such causes shall include, without limitations: (a) acts of God; (b) storms, pandemic restrictions, flood, fire, earthquake or explosion; (c) war, invasion, hostilities, terrorist threats or acts, riot or other civil unrest; (d) strikes, labor stoppages, supply chain issues, or slowdowns or other industrial disturbances; and (e) national or regional emergency and restrictions (each a "*Force Majeure Event*").

10.2 Severability. If any term or provision of these Terms is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of these Terms or invalidate or render unenforceable the terms or provisions thereof in any other jurisdiction.

10.3 Assignment. Customer shall not assign, transfer or delegate any of its rights or obligations under the Contract without the prior written consent of LSM. Any purported assignment or delegation in violation of this Section shall be null and void. No assignment or delegation shall relieve the Customer of any of its obligations hereunder. LSM may at any time assign, transfer or subcontract any or all of its rights or obligations under the Contract without Customer's prior written consent.

10.4 Notice. All notices pertaining to the Contract must be in writing and delivered to the contact information

provided by each Party under the Contract. The notice may either be; (a) by registered or certified mail; (b) by email addressed to the authorized representative.

10.5 Relationship of Parties. Nothing in this Contract creates any agency, joint venture, partnership or other form of joint enterprise, employment or fiduciary relationship between the Parties. Customer is an independent contractor pursuant to the Contract. Neither Party has any express or implied right or authority to assume or create any obligations on behalf of or in the name of the other Party or to bind the other Party to any contract, agreement, or undertaking with any third party.

10.6 Governing Law. This Contract and all matters arising out of or relating to this Contract shall be governed by and construed in accordance with the internal laws of the State of New York, USA, without giving effect to any choice or conflict of law provision or rule (whether of the State of New York or any other jurisdiction) that would cause the application of laws of any jurisdiction other than those of the State of New York.

10.7 Arbitration. Any dispute, claim or controversy arising out of or relating to this Contract or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this Contract to arbitrate, shall be determined by arbitration in New York City, NY, USA. The arbitration shall be administered by JAMS pursuant to JAMS' Streamlined Arbitration Rules and Procedures, which are available here: <https://www.jamsadr.com/rules-streamlined-arbitration/>. Judgment on the Award may be entered in any court having jurisdiction. This clause shall not preclude Parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction.

11. Definitions.

11.1 Definitions. In addition to the terms defined elsewhere in these Terms, as used herein, the following terms shall have the meanings set forth below:

i. "**Contract Documents**" means these Terms, the purchase order (excluding Customer's terms of conditions or other legal terms) and Confirmation Order, documents and attachments referenced in any of the foregoing (including specifications), pricing, Financial Documents, and any other additional written agreements *provided* that such agreements are signed by authorized representatives of both Parties and pertain to the Products.

ii. "**Confidential Information**" means all information concerning or related to the business of a Disclosing Party, including, but not limited to, financial and accounting information, product and service information, product specifications, product designs, patents, concepts, , Intellectual Property Rights, price lists, and other customer information and data that the Disclosing Party discloses to the Recipient in connection with the Contract, whatever manner the information is documented or disclosed or regardless if the information is marked "confidential". "Confidential Information" shall not mean and include information that; (i) is or becomes generally available to the public through no breach or violation of the Contract by the Recipient; (ii) was within Recipient's possession prior to it being furnished to the Recipient by or on behalf of the Disclosing Party pursuant hereto; (iii) becomes available to Recipient on a non-confidential basis from a source other than the Disclosing Party; or (iv) is independently acquired, discovered or developed by or for Recipient without the reference to or use of the Confidential Information.

iii. "**Disclosing Party**" means the party furnishing Confidential Information.

iv. "**Effective Date**" means the date the Order Confirmation is issued by LSM.

v. "**Intellectual Property Rights**" means all industrial and other intellectual property rights comprising or relating to: (a) patents; (b) trademarks; (c) internet domain names,

whether or not trademarks, registered by any authorized private registrar or governmental authority, web addresses, web pages, website and URLs; (d) works of authorship, expressions, designs and design registrations, whether or not copyrightable, including copyrights and copyrightable works, software and firmware, data, data files, and databases and other specifications and documentation; (e) trade secrets; and (f) all industrial and other intellectual property rights, and all rights, interests and protections that are associated with, equivalent or similar to, or required for the exercise of, any of the foregoing, however arising, in each case whether registered or unregistered and including all registrations and applications for, and renewals or extensions of, these rights or forms of protection under the laws of any jurisdiction throughout in any part of the world.

vi. "**Party or Parties**" means either Customer or LSM, or collectively Customer and LSM together.

vii. "**Product**" means all products identified in an Order Confirmation.

viii. "**Recipient**" means the party, including its Representatives, receiving Confidential Information.

ix. "**Representatives**" means the officers, directors, employees, partners, members, managers, agents, advisors, subsidiaries, affiliates or representatives of the Recipient.

x. "**Supplier Cost**" means any price increase to the costs of raw material, foreign exchange, or other material changes to material or suppliers LSM is using to manufacture the Product.

xi. "**Warranty Period**" means, for each Product, the period twenty-four (24) months from the date of delivery.

xii. "**Wear Parts**" means any parts, hoses, components that are intended to have a short life cycle or be disbursed or consumed within an eighteen (18) month period from the date of delivery.