

PLEASE READ THESE TERMS AND CONDITIONS VERY CAREFULLY.

THE TERMS AND CONDITIONS ARE LIMITED TO THOSE CONTAINED HEREIN. ANY ADDITIONAL OR DIFFERENT TERMS IN ANY FORMS DELIVERED BY YOU (“VENDOR”) ARE HEREBY DEEMED TO BE MATERIAL ALTERATIONS AND NOTICE OF OBJECTION TO THEM AND REJECTION OF THEM IS HEREBY GIVEN.

ACCEPTANCE OF THE PURCHASE ORDER OR OTHER APO PUMPS & COMPRESSORS, LLC (APO) DOCUMENTATION, VENDOR AGREES TO BE BOUND BY AND ACCEPTS THESE TERMS AND CONDITIONS.

These terms and conditions constitute a binding contract between Vendor and the APO. entity identified on Vendor’s invoice (“APO”) and are referred to herein as the “Agreement.” Vendor accepts this Agreement by accepting a Purchase Order from APO.

I. CONDITIONS

- a. No terms and conditions contained in any order placed with APO other than those stated herein shall be binding on APO unless hereafter agreed in writing.
- b. Purchase Orders must be accepted and confirmed through an order acknowledgement within 24 hours of receipt.
- c. APO’s Purchase Order number must be referenced on carrier’s bill of lading.
- d. Orders are not binding upon APO until an order acknowledgment is received and accepted by APO.
- e. All order acknowledgements are subject to acceptance by an officer of APO.

II. PRICES

- a. Prices quoted to APO are not subject to change without notice. Vendor is responsible for typographical, stenographical, or clerical errors.

III. PAYMENT TERMS

- a. DXP promises to pay any and all amounts billed for products and services rendered. Vendor accepts the proposed payment of net 30 unless otherwise agreed upon through a mutually signed agreement. Vendor also understands that APO may not be assessed financial charges, attorney’s fees, collection costs, or any other fees, no exceptions. The financial obligation of APO will be limited to the agreed amount stated in the Purchase Order.

IV. INABILITY TO PERFORM

- a. Vendor may be liable for loss or damage of any kind resulting from delay in delivering or inability to deliver ordered products or other nonperformance hereunder, unless such loss or damage is a result of fire, acts of civil authorities, and acts of military authorities, strikes, riots or acts of God. In lieu of actual damages for such delay, the Vendor agrees that liquidated damages as set forth in a Purchase Order may be assessed and recovered by APO as against Vendor, in the event of delayed goods and/or material and without APO being required to present any evidence of the amount or character of actual damages sustained by reason thereof. APO also reserves the right to cancel partial or complete orders at its sole discretion without any liability or financial obligation to APO.

V. CONTROLLING LAW

- a. This Agreement shall be construed and interpreted according to the laws of the State of Ohio. It is further expressly understood and agreed that this Agreement shall be deemed to have been executed in Hudson, OH.

I. DISPUTES

- a. Any disputes relating to this Agreement and/or any Purchase Order will be resolved in state district court in Summit County, OH; provided, however, that in APO's discretion such an action may be heard in some other place designated by APO if necessary to acquire jurisdiction over third persons so that the dispute may be resolved in one action. Vendor hereby agrees to appear in any such action and hereby consents to the jurisdiction of such courts. All attorney's fees and court costs of all the parties involved will be financial responsibility of their own.

II. WARRANTY

- a. Vendor warrants that products sold by it hereunder will be free from defects in workmanship and material, merchantable, free of all liens and security interests, and fit for their ordinary intended purpose. Vendor's obligation will be to repair or replace any such products which prove to be defective in normal use. Materials and/or goods shall be received subject to APO's right to inspect, test and approve all such goods and/or materials prior to acceptance or payment. These materials and/or goods will be covered under warranty for a period of eighteen months from the date of delivery.

III. SHIPMENT

- a. Any shipment dates quoted by Vendor is not subject to change, unless otherwise agreed upon by APO, and must be submitted in writing and accepted by APO prior to order placement.
- b. Shipping terms will be FOB Destination.
- c. The selection of any carrier other than one specified on this Purchase Order must be approved prior to shipment. All deviations will be debited in full.
- d. Unless specified in the Ship Via box, please ship via DXP's Freight carriers:
 - 1. UPS Ground Collection – 150 pounds or less. Do not add additional Declared Value insurance without approval.
 - 2. UPS FREIGHT Collect – over 150 pounds.

IV. RETURNS

- a. APO may return items to the Vendor. Any restocking charges may apply but must be mutually agreed to in writing.

V. EXCLUSIVE TERMS AND CONDITIONS

- a. The provisions of this Agreement will not be changed or modified, except by an instrument in writing signed by APO. This instrument, together with the acknowledgment and any attachment by APO hereto, contains the entire and the only agreement between the parties with respect to the sale of the products covered hereby and supersedes any alleged related representation, promise or conditions not specifically incorporated herein, and notwithstanding any different or additional terms or conditions contained in Vendor's invoice or other proper communication. APO's order was processed and invoiced only on the conditions by Vendor accepting the terms and conditions contained herein. In the absence of Vendor's acceptance of the terms and conditions contained herein, Vendor's commencement of order will not be construed as acceptance of Vendor's terms and conditions, or any of them. Any confirmation of a Purchase Order or this Agreement by Vendor which states different or additional terms will be operative as an acceptance of this Agreement, but such different or additional terms are hereby rejected unless specifically agreed upon in writing by APO. If a contract is not earlier formed by mutual agreement in writing, Vendor's acceptance of the order will be deemed acceptance of all of the terms and conditions stated herein.