

AD Process Supply Standard Terms and Conditions of Sale

PURPOSE: To state the terms and conditions of sale by AD Process Supply hereinafter referred to as "Seller".

1. **EXCLUSIVE CONDITIONS OF SALE:** Orders require a valid corresponding quotation. Quotations and/or Orders are subject to the terms and conditions contained here-in and supersedes Buyer's specification and/or purchase order. Seller will recognize no modifications or additions to these conditions unless specifically agreed to in writing by Seller. Failure of Seller to object to provisions contained in the Buyer's purchase order or any other communication from Buyer shall not be construed as a waiver of these conditions or an acceptance of any such provisions. If Buyer places an order with Seller based on Seller's quotation, whether the order is placed in writing or orally, then the Quotation (including Seller's terms and conditions) and the Seller's acceptance of the Order will constitute the entire contract between Buyer and Seller with respect to the subject matter thereof notwithstanding any terms and conditions inconsistent with these terms and conditions on any of Buyer's forms or correspondence. All orders, sales contracts and other documentation between Buyer and Seller shall become effective only when approved and accepted by the Seller in writing. In all cases of conflict between these conditions and the requirements of the purchase order, these conditions shall prevail. Clerical or stenographic errors are subject to correction.
2. **PRICES:** Prices quoted herein are based upon presently prevailing duties, rates of duties, taxes, special assessments, monetary exchange and freight as applied to materials and/or equipment purchased or imported by Seller. Seller reserves the right to amend the price(s) in this quotation where variations in regulated costs such as rate of duties, taxes, special assessments, monetary exchange and freight between the date of quotation and date of delivery are deemed significant by the Seller.
3. **TERMS OF PAYMENT:** Standard terms are Net fifteen (15) days from date of invoice with a service and interest charge of 1-1/2% per month (18% per annum) applied on past due invoices. Terms of payment for first time buyers, orders for customized equipment or where credit is not established is Cash with Order (CWO) via certified funds only (certified cheque, bank draft or money order). The Seller reserves the right to revoke any credit extended at the Seller's sole discretion. Credit privileges and shipments will be suspended if payments are not received within forty-five (45) days from date of invoice. Buyer agrees to pay such invoices when due regardless of other scheduled deliveries. If Buyer defaults in any payment when due or refuses to accept delivery or becomes insolvent, the Seller at its option, without prejudice to other lawful remedies, may defer deliveries or cancel the remainder of the order. Equipment held for Buyer shall be at the risk and expense of Buyer and payment shall become due from the date of which Seller is prepared to make shipment. Printed terms on face of Seller's quotation shall take precedence.
4. **TERMS OF SALE:** Unless otherwise specified in writing, all shipments are FOB Origin (EX-Works (IncoTerms)/Seller's shipping point), Freight Collect, in which case Seller is not responsible for damage, apparent or concealed, or loss in transit and all claims on "collect" shipments must be made by Buyer direct to the carrier. Seller will assist insofar as practical in securing satisfactory adjustment to reasonable claims. The Buyer assumes all of the essential risks and burdens in transportation, including loss or damage. Buyer shall bear all costs of transportation and insurance and will promptly reimburse Seller if Seller prepays or otherwise pays for such expenses. Minimum order value is \$200.00 Net.
5. **TITLE:** Title to the goods covered by this Quotation and the right to immediate possession thereof shall remain with the Seller until the purchase price is paid in full and Buyer hereby grants to Seller a security interest in the equipment (and all proceeds thereof) to secure the Buyer's obligation to pay for the equipment.
6. **CERTIFICATIONS AND TAXES:** Prices do not include taxes. The Seller will add an amount equal to the appropriate taxes to the invoice where the Seller has the legal obligation to collect such taxes. Buyer shall pay such amount to the Seller unless Buyer provides Seller with a valid tax exemption certificate authorized by the appropriate taxing authority. Any certification for special duty, tax rate or exemption must be supplied at time of order. A service charge will be applied on any credit notes necessitated by the Buyer not providing proper certification at time of order. Exception from taxes extended to the Buyer does not prejudice our right to charge the Buyer with taxes plus any penalties assessed at any subsequent date should the taxing authorities determine that the equipment is taxable.
7. **SHIPMENT:** Shipping dates are approximate, subject to preceding orders and based, to a great extent, on prompt receipt by Seller of all necessary ordering information from Buyer. Seller shall not be in default by reason of any failure in its performance under this or any contract if such failure results from, whether directly or indirectly, fire, explosion, strike, freight embargo, act of God, or of the public enemy, war, civil disturbance, act of any government, or agency or official thereof, material or labor shortage, transportation contingencies, unusually severe weather, default of any other manufacturer or a supplier or subcontractor, quarantine, restriction, epidemic, or catastrophe, lack of timely instructions or essential information from Buyer, or otherwise arisen out of causes beyond the control of the Seller. Nor shall the Seller at any time be liable for any incidental, special or consequential damages.
8. **PENALTIES AND DELAYS:** No penalty clause of any kind, in any specification of order will be effective unless specifically approved in writing by Seller. Seller shall not be liable for any damage, expenses or consequential damages caused by delays beyond Seller's control including without limiting the generality of the foregoing; fire, strike, act of the Buyer, restriction by civil or military authority, Act of God, transportation failures or inability to obtain labor, materials or manufacturing facilities. In the event of any such delay, the date of delivery shall be extended for a period equal to the time lost by reason of the delay.

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- 9. CANCELLATION:** Orders once accepted are not subject to cancellation unless under agreed upon terms that will indemnify Seller against loss and/or expenses incurred.
- 10. DESIGN:** The Seller reserves the right to discontinue any model or to modify the design of a model without incurring any obligation to make the modifications to any models previously sold.
- 11. ORDER CHANGES:** Any order changes will be subject to additional charges in accordance with the specified change(s), administrative charges and any other applicable additional fees and/or costs associated with the subject change(s).
- 12. ACCEPTANCE, INSPECTION:** By virtue of Buyer issuing an order for equipment in accordance with this Quotation, Buyer also accepts Seller's Terms and Conditions as part of the order. Buyer shall inspect the goods immediately upon the receipt thereof. All claims by Buyer (including claims for shortages), except only those provided for under the WARRANTY clauses below, must be asserted in writing by Buyer within a 10 day period or they are waived. If this contract involves partial performances, all such claims must be asserted within a 10-day period for each partial performance.
- 13. CLAIMS:** Claims for shortages or incorrect material must be noted on the bill of lading and made within 10 days of the delivery date. Seller will not be responsible for breakage or shortage after this time.
- 14. DAMAGES:** Subject to the balance of the provisions of this clause, Seller shall only be liable for the cost of replacement of any defective equipment provided hereunder. Seller shall not be liable to the Buyer in any circumstances for any incidental, special, consequential or indirect damages, including but not limited to loss of profits or revenue, loss of use of equipment and facilities, and claims by or payments to customers, suppliers or other parties who have a relationship with the Buyer. This disclaimer applies to consequential damages based upon any cause of action whatever asserted against Seller including causes of action arising out of any breach of warranty, express or implied, guarantee, product liability, negligence, tort, or any other cause pertaining to the performance or non-performance of this Quotation or contract by Seller and the Buyer hereby waives any right to claim punitive, aggravated or exemplary damages with respect to a breach of this Quotation or the performance or non-performance of the Equipment, and whether such claim is founded in contract, tort or otherwise. Seller shall not be responsible for losses or damages arising out of the negligence of the Buyer, its' employees, agents or third party contractors. In no event will Sellers maximum liability to the Buyer in connection with the Equipment, including without limitation resulting from breach of contract or any other performance or non-performance of this Quotation or contract, exceed the amount of the purchase price paid to Seller hereunder.
- 15. RETURN OF EQUIPMENT:** Buyer shall not return any equipment unless and until Buyer obtains Seller's written authorization. A return authorization number must accompany all returns. Returned equipment, which Seller elects to accept for credit is subject to reasonable handling and minimum restocking charge of twenty-five percent (25%) of the invoice value of the return, commensurate with the policy of the manufacturer plus all charges incurred by Seller. Seller is not responsible for equipment that is returned without complying with the foregoing. Equipment is returned at the expense and risk of the Buyer. Returned equipment must be unused and in the original packaging. Impellers of less than maximum diameter, obsolete equipment and customized equipment are not returnable for credit. Customized Equipment cannot be returned.

Seller shall not authorize the return of any equipment unless:

1. the Equipment was shipped to Buyer no longer than thirty (30) days prior to the requested return;
2. the Equipment's design is currently catalogued for sale by Manufacturer;
3. the Equipment is unused and in its original and undamaged shipping carton; and
4. the Equipment can still be sold by Manufacturer with the original complete factory warranty.

- 16. WARRANTY:** Seller warrants to the Buyer that its products to be free from defects in materials and workmanship when operated under normal conditions for a period of twelve (12) months from the date of shipment or eighteen (18) months from the date of manufacture whichever occurs first. All repairs covered by this warranty must be done at the Seller's repair facility or a warranty repair facility designated by the Seller. Any defect corrected within twelve (12) months and found to be within the scope of the warranty will be the responsibility of the manufacturer. If it is determined that either no fault exists in manufacture, or the damage to be repaired was caused by negligence of Buyer, its agents, employees or customers, Buyer agrees to pay all charges associated with each such repair. THIS CONSTITUTES THE SOLE WARRANTY MADE BY THE SELLER EITHER EXPRESSED OR IMPLIED. THERE ARE NO OTHER WARRANTIES EXPRESSED OR IMPLIED WHICH EXTEND BEYOND THE FACE HEREOF, HEREIN, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL SELLER BE LIABLE FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES AND PURCHASER'S REMEDIES SHALL BE LIMITED TO REPAIR OR REPLACEMENT OF NONCONFORMING UNITS OR PARTS.

This warranty does not cover the cost of transportation, labor, removal, installation, or re-testing of the new or repaired goods or parts, or any other direct or incidental expenses incurred in shipping the product to or from Seller. Replacement goods or parts are warranted for the remainder of the warranty period applicable to the goods originally supplied by the seller. No warranty shall apply to any equipment upon which repairs or alterations have been made unless authorized by Seller, nor to equipment which has been subjected to misuse, negligence or mishandling.

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- 17. MISUSE OF EQUIPMENT:** Any tampering, misuse or negligence in handling or use of Equipment renders the warranty void. Further, the warranty is void if, at any time, Buyer attempts to make any internal changes to any of the components of the Equipment; if at any time the power supplied to the motor of the Equipment exceeds the rated tolerance; if any external device attached by Buyer creates conditions exceeding the tolerance of the Equipment; or if any time the serial number plate is removed or defaced. OPERATION OF THE EQUIPMENT THAT RENDERS THIS WARRANTY VOID WILL BE DEFINED TO INCLUDE ALL OF THE POSSIBILITIES DESCRIBED IN THIS PARAGRAPH, TOGETHER WITH ANY PRACTICE WHICH RESULTS IN CONDITIONS EXCEEDING THE DESIGN TOLERANCE OF THE EQUIPMENT.
- 18. FIELD PERFORMANCE TESTS:** Field performance testing to determine head, capacity, brake horsepower (BHP) or efficiency contract compliance is unacceptable. When performance contract compliance must be demonstrated, a factory laboratory performance test only will be acceptable and must be requested by the Buyer in the original quotation as a separately priced option and clearly specified in the original written purchase order.
- 19. CONSIGNMENT:** The Seller shall not furnish any consigned stock whatsoever. Notations on the purchase order such as "on trial", "sample", "when satisfactory" and/or "to be paid for when sold", shall not bind the Seller.
- 20. PRIVILEGE AND LIEN RIGHTS:** Seller retains all lien rights with regard to the equipment in accordance with any Builder's Lien Act, Mechanic's Lien Act, Builder and Works Act or other legislation passed pursuant to or in replacement thereof.
- 21. BACK CHARGES:** Seller will accept no back charges for any reason without Seller's written permission to incur such back charges.
- 22. TECHNICAL ADVICE:** Any technical advice furnished or recommendation made by Seller or any representative of Seller concerning any use or application of any of the goods is believed to be reliable, but SELLER MAKES NO WARRANTY, EXPRESSED OR IMPLIED, ON RESULTS TO BE OBTAINED. BUYER ASSUMES ALL RESPONSIBILITY FOR LOSS OR DAMAGE RESULTING FROM THE HANDLING OR USE OF ANY OF THE GOODS.
- 23. INVALIDITY:** If any provision of this contract shall be found to be invalid or illegal by reason of any determination made by a court of competent jurisdiction or any governmental authority having jurisdiction in the circumstances, such provisions shall be severed from this contract to the extent of such invalidity or illegality and the validity, legality or enforceability of the remaining provisions of this contract shall not in any way be affected or impaired thereby. Waiver of any default shall not be a waiver of any other or subsequent default.
- 24. GST NUMBER:** AD Process Supply **GST Number** is 861241198 – RT001
- 25. APPLICABLE LAWS AND FORUM:** This contract shall be interpreted in accordance with and shall be governed by the laws of the Province of Ontario, and the parties agree that any disputes hereunder or with respect to this quotation or the resulting contract between the parties shall be determined exclusively by the Courts in the Province of Ontario, and the parties hereby expressly attorn to the exclusive jurisdiction of the Courts in the Province of Ontario.
- 26. LANGUAGE:** The parties acknowledge that they have required that this contract and all related documents be prepared in English. *Les parties reconnaissent avoir exigé que la présente convention et tous les documents connexes soient rédigés en anglais.*
- 27. LIABILITY:** Notwithstanding anything to the contrary herein contained, the Liability of the Seller under any circumstances whatsoever and without exception shall be limited to the Purchase Price of the particular item forming part of the goods.