



## GENERAL TERMS & CONDITIONS OF SALE

The following terms and conditions shall apply to the purchase and sale of any products, materials, parts or other goods (collectively, "Goods") from Toyo Pumps North America Corp. ("TPNA") or Hevvy Pumps Inc. ("Hevvy" and, together with TPNA, the "Seller"), and the performance of any installation, repair, advisory, consulting or other services by Seller (collectively, the "Services"):

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**1. Acceptance of Purchase Order:** Formal acknowledgment of the purchase order by Seller by return to the purchasing party (the "Buyer") of the executed copy or Seller's commencement of such performance or acceptance of any payment shall constitute acceptance by Seller subject to having the Goods in stock and/or being willing to manufacture the Goods and perform the Services and these terms and conditions. If the Buyer submitted a purchase order to any company, partnership or other entity that directly or indirectly through one or more intermediaries controls, is controlled by or is under common control with Seller (in each case, an "affiliate"), including Toyo Pumps North America, L.L.C. ("TPNA LLC"), or to any field or business consultant, salesman or other contractor of Seller or their respective affiliates, then the Buyer acknowledges that such affiliate (including TPNA LLC), consultant, salesman or other contractor, as the case may be, does not have the authority to bind Seller and the purchase order will not be accepted until the earlier of receipt by the Buyer of an executed copy of the purchase order signed by an officer of Seller, Seller's commencement of performance under the purchase order or acceptance by Seller of any payment under the purchase order. Seller's acceptance of the purchase order is conditional upon the Buyer's agreement that the terms and conditions set out in this Agreement govern the relationship between the parties. In the event of any conflict or inconsistency between the terms and conditions of sale herein and the terms and conditions contained in the Buyer's order or in any other form issued by the Buyer, whether or not any such form has been acknowledged or accepted by Seller, Seller's terms and conditions herein shall prevail. No waiver, alteration or modification of these terms and conditions shall be binding upon Seller unless made in writing and signed by a duly authorized representative of Seller.

**2. Materials and Compatibility with Buyer's System or Process:** Quotations and recommendations including, but not limited to, materials of construction and compatibility of the Goods with the Buyer's system and process are based on information supplied by the Buyer. The Buyer is responsible for final confirmation of the metallurgical suitability of the construction materials and compatibility of the Goods with the Buyer's system or process. By placing an order further to a quotation, the Buyer acknowledges and agrees that it has confirmed the metallurgical suitability of the construction materials and the compatibility of the Buyer's system and process with the Goods. Seller expressly disclaims any warranty that the Goods will be compatible with the Buyer's operating system or process, and that the construction materials are metallurgically suitable for the Buyer's purposes. In the event that the Goods are not compatible with the Buyer's operating system or process, and/or that the construction materials are not metallurgically suitable, the Buyer shall be responsible for the cost of all changes in the Goods, and if the Buyer's order is cancelled, Seller shall be reimbursed for all costs and expenses incurred and reasonable profit for performance executed prior to the date of such termination.

**3. Taxes:** Any taxes, excise duties, levies or other assessments under any existing or future laws which Seller may be required to pay or collect in connection with the order, under any existing or future laws, including any taxes, excise duties, levies or other assessments levied on the sale, purchase, delivery, storage, processing, use or consumption of any other materials necessary for the completion of this order are not included in the purchase price and shall be for the account of the Buyer. The Buyer shall promptly pay the amount thereof to Seller upon demand, or in lieu thereof, furnish Seller with a tax exemption certificate acceptable to the taxing authorities. Without restricting the generality of the foregoing, HST or GST, if applicable, shall be added to the purchase price.

**4. Payments:** For orders of Goods having an aggregate purchase price of less than \$100,000 and orders for Services, Seller's regular terms are net 30 days subject to credit approval and at Seller's discretion. For orders of Goods having an aggregate purchase price equal to or greater than \$100,000, progress payments in accordance with the following milestones shall apply:

### Milestone

Acceptance of Purchase Order	15%
Submittal of Approval Drawings	20%
Purchase of Major Components	20%
Goods ready to ship	25%
30 days after Shipment*	20%

\*(subject to credit approval and at Seller's discretion)

All milestone payments are due upon receipt of invoice, with the exception of the 30 days after Shipment milestone.

Interest will accrue at the annual rate of 24% per annum to be compounded monthly on the balance due and owing but will not exceed the maximum permitted by law.

Should the Buyer for any reason default in payments due under this Agreement, the Buyer agrees to pay all collection costs and indemnify Seller for all solicitors' fees arising from the default in payment.

**5. Shipping:** Unless shipping instructions accompany each order and are accepted by Seller, the manner of shipping is at the discretion of Seller. Seller's responsibility for the Goods ceases when they pass into the hands of the carrier at which time the Buyer assumes the risk for the Goods.

**6. Damaged Goods:** Seller's Goods are carefully inspected and checked for any damage prior to shipment. The Buyer assumes all responsibility for risk relating to loss or damage of Goods once the Goods pass into the hands of the carrier.

**7. Delayed Performance:** Seller shall not be responsible for delays in shipments or performance of the Services caused by labour difficulties, material shortages, transportation delays, accidents, acts of God or other causes beyond Seller's reasonable control; or for delay caused by the acts or omissions of Seller, its servants, employees, contractors, subcontractors or agents. In any event, Seller shall not be responsible for the Buyer's lost profits or other consequential damages incurred by the Buyer for any delay or failure by Seller to make delivery of Goods or performance of Services under any order, it being agreed that Seller's sole liability shall be to refund any amounts prepaid by the Buyer to Seller on account of such delayed or non-delivered order.

**8. Warranties:** Seller makes no warranties expressed or implied, other than the following:

- Seller warrants its Goods to be free from defects in material and workmanship until the earlier of one year from the date of start of operation or use of the Goods or 18 months from the date of shipment to the original retail customer, provided no alteration has been made thereto after delivery.
- Any part or parts contained in the Goods which are proven defective after inspection by and to the satisfaction of Seller will be (at Seller's option) adjusted or repaired or replaced free of charge, on return of such defective part(s) by the Buyer. The Buyer shall assume all responsibility and expense for removal, reinstallation, freight and any related duties or taxes in connection with the foregoing.
- Seller shall not be liable and shall not have any obligation for fair wear and tear, seal failures, damage caused by vibration, failure to properly maintain, damage caused by operating without flow or adequate submersion, damage caused by corrosives, abrasives or foreign objects and other damage caused by the improper storage, handling, operation, or maintenance contrary to good practice or instructions in any manuals, or due to the fault, negligence, want of skill or wrongful acts of the Buyer, its employees, agents, contractors or suppliers.
- With respect to any equipment and materials which are included in the Goods furnished by Seller, but manufactured by others, the Buyer shall accept in lieu of any liability or guarantees on the part of Seller, the benefits of any guarantees (if any) that are obtained by Seller from such manufacturers or vendors.
- Seller shall perform the Services in a workmanlike manner consistent with industry standards applicable at the time and place where such Services are performed.

The above warranties cease to be effective if the Goods are altered or repaired other than by persons authorized or approved by Seller to perform such work. Repairs or replacement deliveries do not interrupt or prolong the term of the warranty. The warranties above cease to be effective if the Buyer fails to operate and use the Goods sold hereunder in a safe and reasonable manner and in accordance with any written instructions from the manufacturer.

**9. Exclusivity of Warranties:** Seller expressly disclaims to the full extent permitted by law all express, implied, statutory and other warranties, guarantees or representations, including, without limitation, the warranties of merchantability, merchantable quality, durability or fitness for a particular purpose, and non-infringement of proprietary and intellectual property rights. For further clarity, the parties acknowledge and agree that, to the extent permitted by law, section 18 of the Sale of Goods Act, R.S.B.C. 1996, c. 410, and any similar legislation in other applicable jurisdictions, is excluded from and inapplicable to this Agreement.

**10. Limitation of Liability:** The liability of Seller and their respective affiliates, including but not limited to TPNA LLC, and their respective directors, officers, employees, contractors, subcontractors and agents ("Seller and Others") is limited to the repair, replacement or refund of the original purchase price actually paid by the Buyer for the particular Goods or Services which are the subject of the claim. Except as expressly provided in the foregoing, Seller and Others will not be liable for any loss, damage or expense including, but not limited to, the following: bodily harm to any individual, loss of profits, revenue, interest, loss by reason of shutdown or non-operation, increased expense of operation of the equipment, loss of power system, cost of purchase or replacement power, or claims of Buyer or customers of Buyer for service interruption, or any special, indirect, incidental or consequential damages arising out of this contract or any breach thereof, negligence of Seller and Others, the performance of the Services or defect in, failure of, or malfunction of the Goods furnished to the Buyer or the customers of the Buyer. Seller and Others will not be responsible for any special, indirect, consequential or incidental damages or expense of any kind or nature, regardless of the cause, even if Seller and Others have any knowledge regarding the probability of their occurrence.

**11. Cancellation or Modification:** The Buyer may cancel or modify a shipment of any part thereof only upon Seller receiving written notice seven (7) days prior to the cancellation or modification and upon payment to Seller of reasonable and proper cancellation or modification charges based upon expenses already incurred and commitments made by Seller, including, without limitation, any labour done, material purchased, Services performed and also including Seller's usual overhead and reasonable profit and cancellation charges from Seller's suppliers.

**12. Cancellation or Modifications due to Unusual Market Conditions:** The Seller will take all possible precautions to mitigate risk related to Gross or Unusual Market and Supply Conditions related to commodities/ materials, economic tariffs, and sanctions, but reserves the right in such cases to delay, adjust pricing or cancel said order(s), in agreement with the customer, when such fluctuations make the transaction of supplying said product or service financially unviable. Every effort will be made in cooperation with the Buyer to establish an abatement program which best services all parties involved.

**13. Return of Goods:** No credit or refund will be permitted for Goods returned unless Seller's prior written permission has been obtained. If accepted, returned Goods may be subject to a handling or restocking charge.

**14. Back Orders:** The Buyer agrees that if it has ordered items which are unavailable at the time of the placement of the order, Seller will ship them as soon as they are available or at a later time.

**15. Arbitration:** If there is any disagreement, dispute or controversy (a "Dispute") between the parties with respect to any matter arising under this Agreement or the construction of this Agreement, then the Dispute shall be referred to and finally resolved by arbitration under the rules of the Arbitration Act, R.S.B.C. 1996, c. 55 by a sole arbitrator. The award of the arbitrator shall be final and binding upon each of the parties and shall not be subject to appeal or judicial review.

**16. Governing Law:** This Agreement shall be governed by and interpreted in accordance with the laws in effect in the Province of British Columbia, and, subject to Article 14, the parties attorn to the courts of the Province of British Columbia for the resolution of any disputes arising out of this Agreement. The United Nations Convention on Contracts for the International Sale of Goods will not apply to the supply of Goods or Services.

**17. Exclusion of Liability for Oral Representations:** The Buyer acknowledges that none of Seller, their respective affiliates or agents has made any oral or written representations, inducements, or promises that are not expressly contained in this Agreement. The Buyer acknowledges and agrees that ANY ORAL OR WRITTEN REPRESENTATIONS, INDUCEMENTS OR PROMISES MADE BY ANY FIELD OR BUSINESS CONSULTANT, SALESMAN OR OTHER CONTRACTOR OF SELLER OR THEIR RESPECTIVE AFFILIATES ARE EXPRESSION OF OPINION ONLY AND ARE NOT BINDING ON SELLER OR THEIR RESPECTIVE AFFILIATES UNLESS EXPRESSLY CONTAINED HEREIN. NEITHER SELLER NOR ANY OF THEIR RESPECTIVE AFFILIATES IS LIABLE FOR ANY ORAL OR WRITTEN REPRESENTATIONS, INDUCEMENTS OR PROMISES MADE BY ANY FIELD OR BUSINESS CONSULTANT, SALESMAN OR OTHER CONTRACTOR OF SELLER OR THEIR RESPECTIVE AFFILIATES UNLESS EXPRESSLY CONTAINED IN THIS AGREEMENT. This Agreement may be modified only in writing signed by the Buyer and an officer of either Seller. The Buyer acknowledges that any field or business consultant, salesman or other contractor of Seller or its affiliates is not authorized to modify or change any term of this Agreement.

**18. Intellectual Property:** Title to, ownership of and all intellectual property rights in, any facilities, designs, equipment, specifications, drawings, formulas, engineering notices, technical data, software, processes, documentation and information used in connection with Seller's supply of the Goods or Services (the "Goods Components") shall be and remain with Seller, or their suppliers or licensors. This Agreement does not grant to the Buyer any intellectual property or other rights or licenses in or to any Goods Components. Buyer shall not, and shall not knowingly permit a third party to, whether directly or indirectly, modify, reverse engineer or disassemble any Goods without the prior written consent of Seller.

**19. Severability:** If any provision of this Agreement is determined to be invalid, void or unenforceable, in whole or in part, such invalidity, voidance or unenforceability shall attach only to such provision or part thereof, and the remaining part of such provision and all other provisions thereof shall continue in full force and effect.

**20. Applicability:** This Agreement applies only to this order. Prospective orders may be subject to revised terms and conditions. It is the Buyer's responsibility to request and review Seller's current terms and conditions in respect of prospective orders.

**21. Entire Agreement Clause:** This Agreement constitutes the entire agreement between the parties, and is subject to no other oral or written proposals, agreements, implied terms, agreements through course of conduct, conditions precedent or understandings whatsoever.

End of General Terms & Conditions of Sale