



STANDARD TERMS AND CONDITIONS

1. **TERMS OF AGREEMENT.** These terms and conditions are the terms and conditions under which HECO Kentucky Service Company, LLC. ("HECO") will sell the equipment or other goods ("goods"), and will provide the services ("services") being offered to Buyer, and all terms and conditions contained herein shall be deemed part of the contract entered into for the sale of the goods or provision of services. Any acceptance of HECO's offer to sell the goods or provide the services must be strictly in accordance with the terms and conditions contained herein, and such acceptance may not contain, or seek to impose, any additional or contrary terms. Any such additional or contrary terms shall automatically be deemed rejected by HECO. To the extent that any response to Buyer by HECO is construed to be an acceptance of an offer from Buyer, HECO's acceptance is expressly conditioned upon Buyer's assent to the terms and conditions stated herein.
2. **COMPLETE AGREEMENT, NO MODIFICATION.** These standard Terms and Conditions, together with any additional writings signed by HECO shall represent the final, complete and exclusive statement of the agreement between the parties. All prior understandings, representations and warranties, written or oral, express or implied, are merged into said writings. This agreement may not be modified, supplemented, explained or waived by parol evidence, by Buyer's purchase order, by any course of dealing, by HECO's performance or delivery, or by any other means except in writing, signed by an authorized representative of HECO. Advertising, listings, catalogs, circulars and pamphlets of HECO are issued for general information purposes only and shall not be deemed to modify the provisions hereof.
3. **PRICES.** Prices are FOB shipping point, regardless of whether transportation or freight charges are expressly included in any price submitted to Buyer, unless otherwise designated in a writing signed by HECO. Prices and transportation charges are subject to adjustment for any increase or decrease in exchange rates. Any direct tax, including sales or use tax, imposed by law with respect to the sale or manufacture of the goods will be paid by Buyer.
4. **PAYMENT TERMS.** Unless otherwise specified, all invoices are due and payable in full on the 30th day following date of invoice, no cash discount being allowed. Regardless of any credit or payment terms extended to Buyer by HECO, HECO may require tender of payment contemporaneous with, and/or as a condition precedent to, delivery of the goods or services being sold if HECO learns of circumstances that cause HECO to question Buyer's ability to satisfy its obligations under the agreement. All past due amounts arising hereunder or otherwise owing to HECO shall bear interest at 18% per annum. Any claims for shortages or defects or deductions for erroneous charges must be made within 30 days after receipt of goods or shall be deemed waived.
5. **DELIVERY.** HECO shall not be responsible for any delay or failure to make delivery which is occasioned by causes beyond its control, including but not restricted to: fires; floods; strikes; labor disputes; accidents; embargoes; delays in transportation; vehicle, fuel, material, or labor shortages; failure to obtain delivery from manufacturers or subcontractors; or any ruling, regulation, or law of any governmental bureau or agency. Delays so caused shall not release Buyer from its obligation to accept and pay for goods or services. HECO's responsibility for delivery of goods ceases upon delivery of the goods to the carrier. Except in the event of FOB destination shipments, HECO will not participate in any settlement of claims for concealed or other shipment damage. When shipment has been made on an FOB destination basis, Buyer must unpack immediately and, if damage is discovered, must: (i) not remove the goods from the point of examination; (ii) retain all shipping container and packing material; (iii) promptly notify the carrier in writing of any apparent damage; (iv) promptly notify HECO in writing of any apparent damage; and, (v) send HECO a copy of the carrier's inspection report.
6. **WARRANTIES.** Except as otherwise set forth herein, any reference by HECO to Buyer's specifications and similar requirements are only to describe the goods and services covered hereby, and no warranties or other terms therein shall have any force or effect. **THE WARRANTIES SET FORTH HEREIN ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED. BUYER AGREES THAT THERE IS NO EXPRESS OR IMPLIED WARRANTY BY HECO AS TO THE FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, CAPACITY, OR EFFICIENCY OF ANY GOODS SOLD OR SERVICES PROVIDED, AND THAT THERE ARE NO ORAL OR IMPLIED ADDITIONAL WARRANTIES MADE IN CONNECTION WITH ANY SALE OF GOODS OR SERVICES.**
 - A. Subject to the conditions, limitations and exclusions contained herein, HECO warrants that reconditioning and rewind services provided by HECO will be free from defects in material and workmanship for the period indicated below:
 - Reconditioning of motor = one (1) year
 - Rewind with VPI = two (2) years
 - Rewind without VPI = one (1) year

If any failure to meet this service warranty appears within the terms above (measured from the date of delivery of serviced equipment), the Buyer shall provide HECO written notice describing with reasonable particularity the warranty failure. Such written notice must be sent to and received by HECO within ten (10) days after the warranty failure is or should have been discovered by the Buyer. On the condition that HECO receives such notice, HECO will, at its sole and exclusive option, either (1) re-perform the service or (2) refund the amounts paid for the services. The foregoing warranty does not apply to defects that result from misuse by Buyer or by reason of improper installation, application, circuit protection, assembly or repair of the apparatus by others subsequent to service by HECO. The provisions of Section 6(G) below also apply to HECO's warranty for services.
 - B. **New Equipment.** New equipment purchased from an original equipment manufacturer ("OEM") either directly or through an OEM's authorized dealer/distributor network and for which an OEM warranty is in effect. As to such equipment, HECO agrees only to transfer, to the extent transferable, the warranty of the OEM, and HECO shall have no further liability or responsibility with respect to such equipment. A copy of the warranty given by each OEM has either been furnished to the Buyer, or is available to the Buyer upon written request to HECO.
 - C. **Remanufactured and Warranted.** Equipment designated as Remanufactured and Warranted as per HECO's Standard Terms and Conditions, is warranted to be free from defects in workmanship and material for a period of one (1) year from the date of shipment. During the warranty period, any part proven defective, after inspection by and to the satisfaction of HECO, will be repaired, or replaced, at HECO's sole option, upon the return of the defective part to HECO. Unless otherwise agreed, all transportation charges shall be paid by Buyer. In addition, the provisions of paragraph 6 (G) below are also applicable to equipment designated as Remanufactured and Warranted.
 - D. **E-OK.** Equipment warranted as E-OK is warranted to comply with the stamped nameplate ratings at not less than one Meg to ground (earth), as of the time of shipment. In addition, the provisions of paragraph 6 (G) below are also applicable to equipment designated as E-OK. No other warranties shall apply to equipment warranted as E-OK.
 - E. **Mechanically OK.** Equipment warranted as Mechanically OK is warranted to contain all parts necessary for the operation of the equipment, and that none of the parts are visibly broken. The condition or tolerance of the parts and components are not warranted. In addition, the provisions of paragraph 6 (G) below are also applicable to equipment designated as Mechanically OK. No other warranties shall apply to equipment warranted as Mechanically OK.

HECO – All Systems Go

- F. As Is. Equipment designated "As Is" carries no warranties whatsoever. Buyer assumes total responsibility for the condition and suitability of the equipment.
- G. Provisions applicable to all HECO warranties. No equipment, parts, or other goods shall be returned without the express prior written approval of HECO. Buyer's remedies for breach of warranty or for otherwise nonconforming goods or services are expressly limited to repair or replacement, at HECO's sole option. HECO, its contractors and suppliers of any tier, shall not, under any circumstances, be liable in contract, in tort (including negligence or strict liability) or otherwise for interruption of business, downtime costs, loss of profits or revenue, loss of use of equipment, cost of capital, additional expenses incurred in using existing facilities, claims of customers of Buyer, or for any special, indirect, incidental or consequential damage whatsoever, including, but not limited to damages or delay caused by any defects, time spent by employees, agent, representatives, or independent contractors of Buyer as a result of any defects, any expenses incurred by Buyer as a result of any defects, "in and out" charges, other damages, losses or other expenses arising from installation, use, or any other causes, regardless of advice or recommendations that may have been rendered concerning the installation or use of its goods, nor shall HECO be liable for penalties of any kind. The remedies of Buyer set forth herein are exclusive and the total cumulative liability of HECO with respect to this contract, or anything done in connection therewith such as the performance or breach thereof, or from the manufacture, sale, delivery, resale or use of any goods or services covered by or furnished under the contract, whether in contract, in tort (including negligence or strict liability) or otherwise shall not exceed the price of the goods or services on which such liability is based. Unless specifically agreed in writing, HECO shall in no event be liable for repairs or alterations performed by any entity other than HECO. HECO shall not be liable for costs of inspection to determine whether goods or services sold are conforming. HECO shall not be liable for damages or wear caused by abnormal conditions, vibration, improper operation including failure to properly prime pumps or operating pumps without sufficient flow, or caused by corrosion, abrasive or foreign objects, application of excessive voltage to motors, or any other misuse of the equipment. Any such use of the equipment will render all warranties void. In the event the equipment is altered or repaired by any entity other than HECO without prior written approval of HECO, all warranties shall be void. Any warranties given herein, and all limitations herein, are extended to the initial user of the equipment, and are not transferable to any subsequent user, provided that, if Buyer is not the initial user of the equipment, then no warranties shall be extended to the initial user unless the Buyer herein sets forth the limitations of warranties and remedies in the documents by which the Buyer resells the equipment.
7. SECURITY INTEREST. Buyer hereby grants HECO a security interest in the goods being sold, and any and all additions, accessions, attachments, accessories, repairs, replacements, substitutions and proceeds thereof, to secure the payment of the purchase price of the goods being sold. If the purchase price is not paid when due, HECO shall have the remedies of a secured party under the Michigan Uniform Commercial Code. Buyer agrees that HECO may prepare and file a UCC-1 Financing Statement sufficient to perfect HECO's security interest.
8. HECO'S REMEDIES. If any of the following events or conditions occur, it shall be considered a "Material Buyer Default": (i) default in the payment of the purchase price; (ii) any warranty, representation or statement made or furnished to HECO by or on behalf of the Buyer in connection with this sale proving to have been false in any material respect when made or furnished; (iii) death, dissolution, termination of existence, insolvency, business failure, appointment of a receiver of any part of the property of assignment for the benefit of creditors by, Buyer; or any other event which in the sole opinion of HECO causes HECO to question Buyer's ability to satisfy its obligations under the agreement. Upon the occurrence of a Material Buyer Default, or at any time thereafter (such default not having previously been cured), HECO at its option may exercise one or all of the following special remedies: declare the purchase price to be immediately due and payable; exercise any remedy provided under the Michigan Uniform Commercial Code; exercise the remedies provided under paragraph 7, above; and bring an action for the outstanding balance of the contract price and incidental damages without making any effort to resell the goods, notwithstanding any provisions to the contrary in the Michigan Uniform Commercial Code. In addition to such special remedies in the event of a Material Buyer Default, HECO shall have all remedies available at law or in equity for any breach of this agreement by Buyer, or for damages sustained by HECO due to Buyer's negligence or intentional acts. HECO's remedies shall be cumulative. If HECO retains an attorney to enforce any of the terms or conditions stated herein, HECO shall be entitled to be reimbursed by Buyer for all costs associated with pursuing any claims, dispute, action, or litigation, including but not limited to attorney's and expert's fees both at trial and on appeal. In the event of any of a Material Buyer Default, HECO's obligation to make future delivery of goods or services to the Buyer may be conditioned upon Buyer's payment of all interest and attorney fees payable hereunder.
9. ASSIGNMENT. Buyer may not assign any rights under the contract contemplated herein without the express written consent of HECO.
10. JURISDICTION AND APPLICABLE LAW. The agreement between HECO and Buyer shall be construed and interpreted in accordance with the laws of the State of Michigan. Any court action between the parties to enforce the provisions of the agreement, or to resolve any dispute related to the agreement, shall be initiated solely and exclusively in the state or federal courts serving Kalamazoo County, MI, and Buyer consents to personal jurisdiction in such courts and waives any right to object based on venue or inconvenient forum.

14528499_6.doc

HECO – All Systems Go

3509 South Burdick Street | Kalamazoo, MI | 49001 | www.hecoinc.com
Phone: 269-381-7200 | **24Hr Emergency:** 1-800-432-2645 | **Fax:** 269-381-0099