



## MARSHALL PUMP SYSTEMS LIMITED

Rhodes Bank, Oldham, Lancashire, OL1 1UA (Referred to from now on as 'the Company')

- 1) **GENERAL**  
These terms and conditions apply in preference to and supersede any terms and conditions referred to offered or relied on by the Company, whether in negotiation or at any stage in the dealings with the Company and the Buyer with reference to the goods/services to which this contract relates. Without prejudice to the generality of the foregoing, the Company will not be bound by any standard or printed terms furnished by the Buyer in any of its documents, unless the Buyer specifically states in writing separately from such terms that the Buyer intends such terms to apply and the Company acknowledges such notification in writing.
- 2) **QUALITY ASSURANCE**  
The conduct of any Contract/Order enacted by the Company is in accordance with a document quality management system to BS EN ISO 9001:2008. An uncontrolled copy of the Companies Quality Manual is available for inspection on the Company's premises. Any instruction of the Buyers which conflicts with the requirements of the Company quality system will render the Contract/Order outside the scope of the quality system.
- 3) **VALIDITY**  
Unless previously withdrawn, our quotations/tenders are open for the period stated therein, or, when no period is stated, for thirty days from date of quotation/tender, see also condition 6.
- 4) **ACCEPTANCE**  
Orders shall be binding on us, and by us, whether in respect of a tender/quotation or not, at such time as a verbal instruction or written order has been given and accepted. The placing of an order implies acceptance of the following terms and conditions upon which alone such an order is accepted an no purported terms or conditions proposed by the Buyer, which is consistent with any of the conditions, shall have any effect and these conditions shall in all circumstances prevail unless agreed otherwise by us in writing.
- 5) **VARIATION**  
Neither the Buyer nor the Company shall be bound by any variation, waiver of, or addition to these conditions except as agreed by both parties either in writing and signed or agreed verbal instruction.
- 6) **PRICES**  
Owing to fluctuations in labour, surcharges on materials and other costs, including cost imposed by laws or by acts or omissions of the Buyer, the Company reserves the right to alter prices quoted for the goods at any time prior to delivery and all goods shall be sold at the Company's prices current at the time of delivery. All prices quoted (unless otherwise stated) excluded VAT.
- 7) **SPECIFICATIONS**  
All specifications, performance figures, drawings and particulars of weights and dimensions submitted by us in our catalogue price list and other literature are intended for illustrative purposes only and none of these shall form part of the contract. Only such specifications, drawings and particulars of weights, dimensions and performance as are specifically agreed by us in writing to form part of the contract shall form part of the contract. Designs and information concerning the goods contained on any drawings which are supplied must not be disclosed to a third party without our consent in writing.
- 8) **DELIVERY**  
Delivery periods and dates are given as accurately as possible, but they do not form any contract and no liability or penalty whatsoever will be attached to the Company in respect of such delivery dates not being met for any reason whatsoever. The Company shall not entertain any claim for 'time penalty clauses' whatsoever unless agreed in writing and signed by a director of the selling company.
- 9) **CUSTOMERS GOODS**  
Buyers goods sent to the Company or held by the Company on customers behalf for any purpose, shall be at the sole risk of the Buyer at all times and the Company shall be at liberty to store the same other than on their premises or deliver the same to a sub-contractor or sub-contractors in the carrying out of the whole or any part of any work ordered.
- 10) **PAYMENT**  
For Buyers who have "Bona Fide" credit accounts, unless otherwise agreed in writing, invoices are due for payment at the end of the month following the month of delivery. Where discounts are applicable, be it trade or settlement, payment must be received by the Company within 30 days of the date of invoice. In the event of any delay in payment, the Company reserves the right to charge interest on overdue accounts at the rate of 4% per month over and above Barclays Bank PLC base rate. Where the purchaser does not have credit facilities, payment must be received and cleared before the goods or services are provided.
- 11) **RISK**  
Goods shall be at the Buyers risk from time of delivery/ collection and whilst they are in the Buyers possession or control, until full payment has been received by the Company. The Buyer shall insure and keep the goods insured for not less than their full invoice value under an insurance policy on which the Company's interest has been noted.
- 12) **RETENTION OF TITLE, ALSO PROCEEDS ON SALE - TRACING**  
(a) Full legal and beneficial title to the goods shall remain with the Company until payment in full of all monies owing from the Buyer to the Company (whether in relation to this Order/Contract or any account whatsoever) are received and cleared through the Company's bank account. The Buyer shall remain in possession of the goods solely as Bailee and fiduciary agent of the Company. He shall store them separately from his own goods or those of any other person and in a manner which makes them readily identifiable as goods of the Company.  
(b) The Buyers right to possession of the goods shall cease if the Company becomes entitled to determine the contract under Condition 13 (whether or not the Company has given notice of determination). The Company may then enter any premises where the goods are stored (or are reasonably believed by the Company to be stored) with or without prior notice at any time and retake possession of the whole or any part of the goods.  
(c) So long as the Buyer remains entitled to possession of the goods (see above), the Buyer may possess the goods before title has passed and/or incorporate them in or with other products, provided that any product containing the Company's goods shall be separately stored and marked so as to be identified accordingly.  
(d) If the Company's goods are processed with and/or incorporated in goods belonging to another person (whether the Buyer or a third party), the full legal and beneficial title to the resulting product shall become or shall be deemed to be vested in the Company in common with that of the other party.  
(e) The Buyer may agree before title in the goods/service has passed to sell-on the goods or any product produced from or with the goods, but the entire proceeds shall be placed into a separate bank account and held in trust for the Company and any other co-owner of the Goods/Services sold, and shall not be mixed with the Buyers money. The separate bank account shall be designated by a title which indicates clearly that the funds therein are held for the Company.  
(f) Nothing in the condition shall confer any rights upon the Buyer to return any goods or to refuse or delay payment of unless otherwise agreed in writing.
- 13) **DETERMINATION OF CONTRACT**  
If the Buyer shall make a default in or commit a breach of this contract or any other of its obligations to the Company, or if any distress or execution shall be levied upon the Buyers property or assets, or if the Buyer shall make or offer to make any arrangement or composition with creditors or commit any act of bankruptcy, or if any petition or receiving order in bankruptcy shall be presented or made against him, or if the Buyer shall be a Limited Company and any resolution, going into legal Administration or petition to wind up such company's business (other than for the purpose of amalgamation or reconstruction) shall be passed or presented or if a receiver of such company's undertaking property or assets or any part thereof shall be appointed or if the business of the Buyer is closed down by a executive or Judicial Authorities, the Company shall have the right forthwith to determine any contract then and upon written notice of such determination being posted by it to the Buyers last known address, any subsisting contracts shall be deemed to have determined to any claim or right which the Company might otherwise make or exercise.
- 14) **MODE OF CARRIAGE**  
We reserve the right to effect carriage of whatever means and by whatever route we shall select.
- 15) **DAMAGE OR LOSS IN TRANSIT**  
We shall repair, or in our opinion replace, free of charge any of the goods damaged or lost in transit to the place of delivery. Delivery of such lost or damaged goods shall not be deemed to have taken place until the repaired or replaced goods have been delivered. Provided always that in the cases of

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both damage and so far as is possible, loss, we are given written notification of such loss or damage within such time as will enable us to comply with the carriers conditions of carriage or within, namely within three days of the Company's Delivery/Advice Note. If the Buyer fails to give us notice of damage or loss within the above terms, we shall not be liable to repair or replace the lost or damaged goods and such goods shall be deemed to have been delivered for the purpose of the Contract/Order.

### GUARANTEE

- (a) In the event of failure of the goods within 12 months of delivery by reason of defective materials or workmanship, the Company will repair or replace the goods free of charge as the case may necessitate provided that the Buyer has made no alterations, repairs or interfered with the goods in any way and provided the goods have been used with due care, properly stored and maintained, have not been subjected to excessive load or use, were suited to the function being performed and were properly installed. When goods have been repaired or replaced the original date of delivery refers. We will not refund the cost of carriage on such returned parts but the repaired or new parts will be delivered by us free of charge to the same location as the original delivery.  
(b) The foregoing guarantee is given by the Company and accepted by the Buyer to the exclusion of any other condition guarantee or warranty whether expressed, implied by statement or otherwise.  
(c) The Company shall be under no liability for loss or damage arising out of the use of the goods or caused by any defect or failure of the goods (whether or not such defect or failure is covered by the foregoing guarantee).  
(d) Where the Company is requested by the Buyer to carry out claimed warranty work other than on the Company's premises, the Company is entitled to charge for work or costs not provided for in the warranty terms as described in (a) above.

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### FORCE MAJEURE

The Company shall not be under any liability whatsoever in respect of any failure to deliver any of the goods, delay in delivery thereof or other defective performance of the contract caused directly or indirectly by any event of whatever nature or however arising not within the control of the Company. Such events shall be deemed to include, but without prejudice to the generality of the foregoing, Act of God, war, invasion, rebellion, revolution, insurrection, riot, commotion, disorder, malicious damage, fire, flood, tempest, epidemic, quarantine restrictions, strike or other industrial dispute, lock out freight embargoes, unusually severe weather, shortage of raw materials or energy supplies, transportation delays or failure by sub-contractor or suppliers to perform. Following notification by the Company to the Buyer of any such event, the Company shall be entitled to cancel or suspend the Order/Contract without incurring liability for any loss or damages resulting therefrom.

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### CANCELLATION

The Buyer shall not be entitled to cancel the Contract/Order unless with specific consent of the Company which may be held in the Company's absolute discretion. In the event of an agreed cancellation, the Buyer shall pay the appropriate sum in compensation as determined by the Company.

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### TESTING AND PACKING

Some goods shall be inspected and submitted to the Company's standard factory tests prior to delivery, and upon passing such tests shall be deemed to be in accordance with the requirements of the Contract/Order. Unless otherwise agreed, the extent of packing and/or protection of all goods shall be at the Company's discretion. Any special testing or packing requirements of the Buyer which are agreed by the Company may result in increased prices and/or extended delivery times.

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### REPRESENTATIONS AND SERVICE

Any service or advice which may be offered by the Company, its servants or agents to users of its products/services is rendered in all good faith, and the Company shall not be liable for any damage or loss resulting therefrom. The Buyer acknowledges that in entering the Order/Contract he has not relied on any statement or representations made by/or on behalf of the Company other than

- (a) The contents of the Company's quotation and any documents enclosed therewith,  
(b) Any statement or representation which the Buyer identified in writing to the Company before the Contract/Order is made.

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### PATENT INFRINGEMENT

The Company warrants that at the time of manufacture, the goods did not infringe any trademark or letters patent in the country of manufacture provided always that his warrant shall not extend to goods manufactured according to the Buyers designs or drawings and the Buyer will indemnify us against any actions claims or demands whatsoever arising by virtue of such manufacture. The Company does not warrant that the importation or use of the goods in any other country is free of infringement of any patents or trademarks or copyright of such country, and the Buyer will indemnify us against any actions, claims or demands whatsoever arising in respect of the importation or use of the goods in any such country.

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### HEALTH AND SAFETY AT WORK ACT 1974

Goods supplied by the Company or his agent comply with the above act. The Company cannot be held liable, however, for any contravention of the terms of the act if any changes to the goods or installation are made without the Company's knowledge and authority. It is the Buyers responsibility to ensure that any equipment is installed and maintained in accordance with the instructions supplied by the Company and the Company cannot be held by any such omission by the Buyer or his agent. Where health and safety considerations are applicable to equipment supplied by the Company it is the Buyers responsibility to ensure that no risk is presented by the installation and operation of the equipment. Where goods are returned or otherwise delivered to the Company it is the responsibility of the Buyer (sender) to ensure that all relevant COSHH requirements are met and specifically that clear notification of the presence of any substances listed as hazardous to health in the COSHH regulations.

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### SERVICE/INSTALLATION WORK ON SITE

Whilst not excluding or limiting any of the contents and terms of the General Conditions of Sale, the Company may impose specific conditions of sale which apply to Service / Installation work on site and which form the basis of any such Contract/Order. A copy of these conditions of sale, if deemed necessary, will have been issued prior to work commencing.

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### LIABILITY FOR ACCIDENT AND DAMAGE

- If the Company or his agents are on site for the purposes of the Contract/Order and until the guarantee period on the goods shall have expired, or be deemed to have expired, our liability for accident and damage shall be limited to the following:-  
(a) The Company shall indemnify the Buyer against direct but not consequential damage or injury to the Buyers property or person of that of others, caused by the negligence of the Company or his servants but not otherwise and that to the extent or repairing the damage to property or compensating personal injury provided that such damage or injury is not caused by or does not arise wholly or partially from the Buyer or his servants, acts or omissions, or the acts or omissions of others, or is not due to circumstances over which the Company has no control and provided always that the Company's total liability for loss, damage or injury shall not exceed the total price of the goods supplied under the Contract/Order and which the Company has manufactured/supplied and provided further that the Company shall have no liability for his servants when they are acting under the Buyers or his agents instructions those for whom the Buyer is responsible or under the instructions of other contractors, in all of which cases the Buyer shall be responsible for the acts or omissions of the Company's servants and shall indemnify us against all claims arising therefrom.  
(b) The Company shall indemnify the Buyer against claims and actions brought against the Buyer in respect of injury or death sustained by persons in the Company's employ on the site and caused by negligence of the Company of his servants, or by the Company's breach of duty under and subject to the provisions of the statutes in force at the time dealing the Employers Liability for injury sustained by employees provided that when the Company's servant are acting under the Buyers instructions, or those for whom the Buyer is responsible or under the instructions of other contractors, the Buyer is responsible for the acts or omissions of the Company's servants and shall indemnify the Company against claims arising therefrom. Subject to the foregoing, the Company shall have no liability for any loss, injury or damage whatsoever direct or consequential arising out of accidents or damages to property or person after such taking over as aforesaid, all liability on the Company's part for accidents or damage ceases.

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### VALUE ADDED TAX

When the Contract/Order is to the account for or a Buyer resident in the United Kingdom, V.A.T. shall be charged at the rate applicable at the time of supply, which in the Company's case is delivery.

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### ARBITRATION

If at any time any question, dispute or difference whatsoever shall arise between the Company and the Buyer in relation to or in connection with any contract to follow thereon, the same shall be referred to the Arbitration of a person to be mutually agreed upon, or failing agreement within one month or receipt of notice in writing by either party to the other of the existence of such question, dispute or difference of an Arbitrator appointed by the President for the time being of the Institution of Mechanical Engineers.

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### APPLICABLE LAW

The contract shall be interpreted according to and shall be governed by English Law and the Buyer agrees to submit to the exclusive jurisdiction of the English Courts in any dispute or differences of any kind which may arise concerning the Contract/Order.