

HERVEY COMPANY, LLC COMPLETE TERMS AND CONDITIONS



1. APPLICABILITY

(A) These terms and conditions for the sale of goods (these “terms”) are the only terms which govern the sale of the goods (“goods”) by Hervey Company, LLC (“Seller”) to the buyer named in Seller’s confirmation of sale (“Buyer”). Notwithstanding anything herein to the contrary, if a written contract signed by both parties is in existence covering the sale of the goods covered hereby, the terms and conditions of said contract shall prevail to the extent they are inconsistent with these terms. Any written or oral purchase order received by Seller from Buyer shall be construed as a written acceptance of Seller’s offer to sell and shall be billed in accordance with the terms and conditions of sale set forth herein. Seller’s acceptance of this order is expressly conditioned on Buyer’s consent to the terms and conditions of sale contained herein.

(B) Seller’s confirmation of sale (the “sales confirmation”) and these terms (collectively, this “agreement”), together with any written financing, security, credit support and/or guarantee agreements entered into by the parties in connection with the purchase of goods by Buyer from Seller, comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. These terms prevail over any of Buyer’s general terms and conditions of purchase regardless whether or when Buyer has submitted its purchase order or such terms. Specifically, the terms and conditions of sale contained herein shall prevail over any conflicting or different terms in Buyer’s oral or written purchase order unless Buyer notifies Seller in writing of its objections within fourteen (14) days of receipt of Seller’s acknowledgment. Buyer’s standard terms of purchase will not be considered a counter offer to Seller’s terms and conditions of sale. The failure of Seller to object to any provisions and conflict herewith, further contained on Buyer’s purchase order or otherwise, shall not be construed as a waiver of the provisions hereof nor an acceptance thereof. Fulfillment of Buyer’s order also does not constitute acceptance of any of Buyer’s terms and conditions and does not serve to modify or amend these terms.

2. DELIVERY

(A) The goods will be delivered within a reasonable time after Seller’s delivery of the sales confirmation to Buyer. In no event shall Seller shall be liable for any damages, including but not limited to financial compensation, refunds, discounts, or expedited freight charges, resulting from delays in the delivery of the goods or loss or damage to the goods in transit.

(B) Unless otherwise set forth in the sales confirmation, Seller shall deliver the goods to the Buyer’s facility of its choice (the “delivery point”) using Seller’s standard methods for packaging and shipping such goods. Buyer shall take delivery of the goods within three (3) days of Seller’s written notice that the goods have been delivered to the delivery point. Unless otherwise set forth in the sales confirmation, Buyer shall be responsible for all loading costs and provide equipment and labor reasonably suited for receipt of the goods at the delivery point. For the avoidance of doubt, the Buyer shall be responsible for all expenses related to the shipping of the goods from the delivery point to the final destination of the goods (see section 5) and assume risk of loss of the goods upon their delivery to the delivery point (see section 6).

(C) Seller may, in its sole discretion, without liability or penalty, make partial shipments of goods to Buyer. Each shipment will constitute a separate sale, and Buyer shall pay for the units shipped whether such shipment is in whole or partial fulfillment of Buyer's purchase order.

(D) If for any reason Buyer fails to accept delivery of any of the goods on the date fixed pursuant to Seller's notice that the goods have been delivered at the delivery point, or if Seller is unable to deliver the goods at the delivery point on such date because Buyer has not provided appropriate instructions, documents, licenses or authorizations: (i) risk of loss to the goods shall pass to Buyer; (ii) the goods shall be deemed to have been delivered; and (iii) Seller, at its option, may store the goods until Buyer picks them up, whereupon Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

3. NON-DELIVERY AND CANCELLATION

(A) The quantity of any installment of goods as recorded by Seller on dispatch from Seller's place of business is conclusive evidence of the quantity received by Buyer on delivery unless Buyer can provide conclusive evidence proving the contrary.

(B) Seller shall not be liable for any non-delivery of goods (even if caused by Seller's negligence) unless Buyer gives written notice to Seller of the non-delivery within five (5) days of the date when the goods would in the ordinary course of events have been received.

(C) Any liability of Seller for non-delivery of the goods shall be limited to replacing the goods within a reasonable time or adjusting the invoice respecting such goods to reflect the actual quantity delivered.

(D) Purchase orders once placed and accepted by Seller can be canceled only with Seller's written consent, and upon terms, which will save Seller from loss. No goods may be returned for credit or adjustment without written permission from an authorized officer of Seller. No product(s) may be returned for credit without written authorization from Hervey Company, LLC. Credit will not be issued for product(s) after the return period. There are no returns on customer specific equipment unless authorized in writing from Hervey Company, LLC.

4. QUANTITY

Seller shall deliver to Buyer the quantity of goods set forth in the sales confirmation.

5. SHIPPING TERMS

Unless otherwise set forth in the sales confirmation, delivery shall be made in accordance with Incoterms® 2010 EXW and at the delivery point.

6. TITLE AND RISK OF LOSS

Title to the goods shall pass from Seller to Buyer upon payment in full of the price for the goods. Risk of loss of the goods and cost allocation passes from Seller to Buyer upon delivery of the goods at the delivery point. As collateral security for the payment of the purchase price of the goods, Buyer hereby grants to Seller a lien on and security interest in and to all of the right, title and interest of Buyer in, to

and under the goods, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. Buyer acknowledges that Seller may file a financing statement for such security interest and Buyer shall execute such statements or other documentation necessary to perfect Seller's security interest in such goods.

7. INSPECTION AND REJECTION OF NONCONFORMING GOODS

(A) Buyer shall inspect the goods within seven (7) days of Buyer's receipt of such goods ("inspection period"). Buyer will be deemed to have accepted the goods unless it notifies Seller in writing of any nonconforming goods during the inspection period and furnishes such written evidence or other documentation as reasonably required by Seller. "Nonconforming goods" means only the following: (i) product shipped is different than identified in the sales confirmation; or (ii) product's label or packaging incorrectly identifies its contents.

(B) If Buyer timely notifies Seller of any nonconforming goods, Seller shall, in its sole discretion, (i) replace such nonconforming goods with conforming goods, or (ii) credit or refund the price for such nonconforming goods, together with any reasonable shipping and handling expenses incurred by Buyer in connection therewith. Buyer shall ship, at its expense and risk of loss, the nonconforming goods to the Hervey Company facility of Seller's choosing specified by Seller in writing after Buyer timely notifies Seller and prior to shipping goods to Seller. If Seller exercises its option to replace nonconforming goods, Seller shall, after receiving Buyer's shipment of nonconforming goods, ship to Buyer, at Buyer's expense and risk of loss, the replaced goods to the delivery point.

(C) Buyer acknowledges and agrees that the remedies set forth in section 7(b) are Buyer's exclusive remedies for the delivery of nonconforming goods. Except as provided under section 7(b), all sales of goods to Buyer are made on a one-way basis and Buyer has no right to return goods purchased under this agreement to Seller.

8. ESTIMATES AND PRICE

(A) All estimates are made for prompt acceptance and any terms on the estimate are subject to change without notice after ten (10) days from the estimate unless otherwise noted on the estimate. Any estimate for any product or services is made subject to prior sale. All prices on the estimate, shown or invoiced are in U.S. Dollars and are FOB Seller's point of shipment. Any cost for banking charges resulting from electronic funds transfers or similar such charges as a result of Buyer's choice of method of payment shall be borne and paid for by Buyer. All amounts due to Seller from Buyer are payable in Midland, Midland County, Texas and shall be due Net thirty (30) days from date of invoice, unless otherwise stated. Buyer agrees that any past due amount shall bear interest from due date until paid at the lesser amount of 1-1/2% per annum or the maximum non-usurious rate of interest permitted by applicable laws in effect, from time to time.

(B) Buyer shall purchase the goods from Seller at the price(s) (the "price") set forth in Seller's estimate in force as of the date of the sales confirmation. If the price(s) in the sales confirmation are greater than the price(s) set forth in published price list in force as of the date of the sales confirmation, the price(s) set forth in the sales confirmation shall control and Buyer shall be billed by Seller on the basis of such increased price(s).

(C) All prices are exclusive of all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any governmental authority on any amounts payable by Buyer. Buyer shall be responsible for all such charges, costs and taxes; provided, that, Buyer shall not be responsible for any taxes imposed on, or with respect to, Seller's income, revenues, gross receipts, personnel or real or personal property or other assets.

9. PAYMENT TERMS

(A) Buyer shall pay all invoiced amounts due to Seller within thirty (30) days from the date of Seller's invoice. Buyer shall make all payments hereunder by wire transfer and in us dollars.

(B) Buyer shall pay interest on all late payments at the lesser of the rate of 1.5% Per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. Buyer shall reimburse Seller for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees. In addition to all other remedies available under these terms or at law (which Seller does not waive by the exercise of any rights hereunder), Seller shall be entitled to suspend the delivery of any goods if Buyer fails to pay any amounts when due hereunder and such failure continues for fifteen (15) days following written notice thereof.

(C) Buyer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Seller, whether relating to Seller's breach, bankruptcy or otherwise.

10. LIMITED WARRANTY

(A) Seller warrants to Buyer that for a period of thirty (30) days from the date of shipment of the goods ("warranty period"), that such goods will be free from material defects in material and workmanship when operated under normal use (as defined herein) and normal service (as defined herein). This warranty set forth in this section 10(a) is valid only for Buyer as the original purchaser of the goods and is non-transferable. "Normal use" shall mean the intended use of the good for which it was designed by Seller. "Normal service" shall mean the necessary servicing as suggested or required by Seller, industry standards or applicable laws or regulations.

(B) Except for the limited warranty set forth in section 10(a), Seller makes no warranty whatsoever with respect to the goods, including any (a) warranty of merchantability; (b) warranty of fitness for a particular purpose; (c) warranty of title; or (d) warranty against infringement of intellectual property rights of a third party; whether express or implied by law, course of dealing, course of performance, usage of trade or otherwise. All other warranties, expressed or implied, oral or statutory, are hereby waived by Buyer.

(C) Products manufactured by a third party ("third party product") may constitute, contain, be contained in, incorporated into, attached to or packaged together with, the goods. Third party products are not covered by the warranty in section 10(a). For the avoidance of doubt, Seller makes no representations or warranties with respect to any third party product, including any (a) warranty of merchantability; (b) warranty of fitness for a particular purpose; (c) warranty of title; or (d) warranty against infringement of intellectual property rights of a third party; whether express or implied by law, course of dealing, course of performance, usage of trade or otherwise.

(D) Seller shall not be liable for a breach of the warranty set forth in section 10(a) unless: (i) Buyer gives written notice of the defect, reasonably described, to Seller within thirty (30) days of the time when buyer discovers or ought to have discovered the defect and such notice is given within the warranty period; (ii) Seller is given a reasonable opportunity after receiving the notice to examine such goods and Buyer (if requested to do so by Seller) returns such goods to Seller's place of business at Seller's cost for the examination to take place there; and (iii) Seller reasonably verifies Buyer's claim that the goods are defective. Seller shall have the right to refuse any delivery of an allegedly defective good to Seller if the procedures set forth in this section 10(d) have not been complied with, and such shipment will be returned to the sender at the sender's expense.

(E) Seller shall not be liable for a breach of the warranty set forth in section 10(a) if:

(I) such good has been tested to, or subject to, any pressure greater than the maximum internal pressure that such good is designed to contain and/or control (the "stated product working pressure") at any time, other than by Seller during Seller's testing processes per applicable law and regulations and industry standards; **(II)** such good is repaired, altered or modified by any contractor, laborer, person or entity that has not been previously authorized in writing by Seller to conduct such repair, alteration or modification; **(III)** such good, in Seller's reasonable judgment, has been subject to negligence, accident, improper storage or improper handling by any person(s) other than Seller; **(IV)** such good, in Seller's reasonable judgment, has not been used, operated or maintained in accordance with standard practices and in conformity with all manufacturer's recommendations, industry standards and use, operation and maintenance specifications of Seller; **(V)** Buyer makes any further use of such goods after the giving of notice to Seller pursuant to section 10(d); **(VI)** unless otherwise expressly set forth in the sales confirmation, the good is a custom order good where modifications are made to Seller's standard products by Seller in accordance with the requests or specifications of Buyer to meet Buyer's design criteria and do not conform to Seller's standard design criteria; or (v) in the case of any good that is a gate valve that is used in extreme service conditions such as "frac" applications, failure to comply with best industry practices related to lubrication of the gate valve body cavity and bonnet assemblies between each frac stage (or zone).

(F) Subject to section 10(d) and section 10(e) above, with respect to any such defective goods during the warranty period, Seller shall, in its sole discretion, either:

(I) repair or replace such goods (or the defective part), provided, that buyer Shall, upon Seller's request and at Buyer's expense, return such goods to Seller or **(II)** credit or refund the price of such goods at the pro rata contract rate provided that, if Seller so requests, Buyer shall, at Buyer's expense, return such goods to Seller. Any labor costs for installing a good that has been repaired or replaced shall be borne by Buyer. Any goods (or parts thereof) repaired or replaced in accordance with this section 10(f) shall be, subject to section 10(d) and section 10(e), covered by the limited warranty set forth in section 10(a) for the remainder of the warranty period.

(G) The remedies set forth in section 10(f) shall be the Buyer's sole and exclusive remedy and Seller's entire liability for any breach of the limited warranty set forth in section 10(a). Buyer hereby waives any other remedies that Buyer may have, whether by contract or law, for any breach of the limited warranty set forth in section 10(a).

11. LIMITATION OF LIABILITY

(A) In no event shall seller be liable to Buyer or any third party for any loss of use, revenue or profit or loss of data or diminution in value, or for any consequential, indirect, incidental, special, exemplary, or punitive damages whether arising out of breach of contract, tort (including negligence) or otherwise, regardless of whether such damages were foreseeable and whether or not Seller has been advised of the possibility of such damages, and notwithstanding the failure of any agreed or other remedy of its essential purpose.

(B) In no event shall Seller's aggregate liability arising out of or related to this agreement, whether arising out of or related to breach of contract, tort (including negligence) or otherwise, exceed the total of the amounts paid to Seller for the goods sold hereunder.

(C) The limitations of liability set forth in section 11(a) and/or section 11(b) above shall not apply to (i) liability resulting from Seller's gross negligence or intentional misconduct and (ii) death or bodily injury of Buyer resulting from Seller's acts or omissions.

12. COMPLIANCE WITH EXPORT AND IMPORT LAWS

Buyer shall comply with all export and import laws of all countries involved in the sale of the goods under this agreement or any resale of the goods by Buyer. Buyer assumes all responsibility for shipments of goods requiring any government import clearance. Seller may terminate this agreement if any governmental authority imposes antidumping or countervailing duties or any other penalties on the goods. Buyer shall notify Seller of the final destination of the goods. For the avoidance of doubt, "final destination" means the jurisdiction or country where the goods, or any portion thereof, will come to rest.

13. INTELLECTUAL PROPERTY RIGHTS

Buyer acknowledges and agrees that (i) except to the extent provided in a separate written agreement between Buyer and Seller, Seller (or its licensors) will retain all intellectual property rights, including copyrights, patents, patent disclosures and inventions (whether patentable or not), trademarks service marks, trade secrets, know-how and other confidential information, trade dress, trade names, logos, corporate names and domain names, together with all of the goodwill associated therewith, derivative works and all other rights (collectively, "intellectual property rights") used to create, embodied in, used in and otherwise relating to the goods and any of their component parts; (ii) any and all Seller's intellectual property rights are the sole and exclusive property of Seller or its licensors; (iii) Buyer shall not acquire any ownership interest in any of seller's intellectual property rights under this agreement; and (iv) Buyer shall use Seller's intellectual property rights only in accordance with this agreement and any instructions of Seller. Seller hereby grants buyer a license to use all intellectual property rights free of additional charge and on a non-exclusive, worldwide, non-transferable, non-sublicenseable, fully paid-up, royalty-free and perpetual basis to the extent necessary to enable Buyer to make reasonable use of the goods.

14. NO REVERSE ENGINEERING OR ALTERNATIVE PRODUCTION

Seller has expended considerable time, effort, and resources into designing and manufacturing the products it sells. As a material component of Hervey Company's decision to sell to you certain products and/or parts, You hereby agree that you will not, directly or indirectly, (or allow or enable others to)

copy, decompile, reverse engineer, disassemble, attempt to replicate in any way, directly or indirectly through another manufacturer, any product, component, part, or any other item purchased from Hervey Company. Hervey Company is explicitly relying upon your representation and agreement not to copy or attempt to produce its products and parts in its decision to sell those products to you, and if you had disclosed any intent to replicate its products in any way, Hervey Company would not sell those products to you. Any effort to replicate any of Hervey Company's products likely constitutes fraud, fraudulent inducement, and/or a breach of contract. As such, Hervey Company will endeavor to protect all of its rights and enforce this agreement to the fullest extent possible.

15. TERMINATION

In addition to any remedies that may be provided under these terms, Seller may terminate this agreement with immediate effect upon written notice to Buyer, if Buyer: (i) fails to pay any amount when due under this agreement and such failure continues for fifteen (15) days after Buyer's receipt of written notice of nonpayment; (ii) has not otherwise performed or complied with any of these terms, in whole or in part; or (iii) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors.

16. WAIVER

No waiver by Seller of any of the provisions of this agreement is effective unless explicitly set forth in writing and signed by Seller. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this agreement operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

17. CONFIDENTIAL INFORMATION

All non-public, confidential or proprietary information of Seller, including but not limited to specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by Seller to Buyer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential" in connection with this agreement is confidential, solely for the use of performing this agreement and may not be disclosed or copied unless authorized in advance by Seller in writing. Upon Seller's request, Buyer shall promptly return all documents and other materials received from Seller. Seller shall be entitled to injunctive relief for any violation of this section. This section does not apply to information that is: (a) in the public domain; (b) known to Buyer at the time of disclosure; or (c) rightfully obtained by Buyer on a non-confidential basis from a third party.

18. FORCE MAJEURE

The Seller shall not be liable or responsible to Buyer, nor be deemed to have defaulted or breached this agreement, for any failure or delay in fulfilling or performing any term of this agreement when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of Seller including, without limitation, acts of god, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic, lockouts, strikes or other labor

disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, materials or telecommunication breakdown or power outage.

19. AMENDMENT AND MODIFICATION

These terms may only be amended or modified in writing which specifically states that it amends these terms and is signed by an authorized representative of each party.

20. ASSIGNMENT

Buyer shall not assign any of its rights or delegate any of its obligations under this agreement without the prior written consent of Seller. Any purported assignment or delegation in violation of this section is null and void. No assignment or delegation relieves buyer of any of its obligations under this agreement.

21. RELATIONSHIP OF THE PARTIES

The relationship between the parties is that of independent contractors. Nothing contained in this agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

22. NO THIRD-PARTY BENEFICIARIES

This agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these terms.

23. GOVERNING LAW

All matters arising out of or relating to this agreement is governed by and construed in accordance with the internal laws of the state of texas without giving effect to any choice or conflict of law provision or rule (whether of the state of texas or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the state of texas.

24. SUBMISSION TO JURISDICTION AND WAIVER OF JURY TRIAL

Any legal suit, action or proceeding arising out of or relating to this agreement shall be instituted exclusively in the United States District Court for the Western District of Texas or the courts of the State of Texas sitting in Midland County and any appellate court from any thereof, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding. Buyer and Seller both waive a trial by jury of any and all issues arising in any action or proceeding between the parties hereto or their successors, under or connected with this sale, this agreement, or the goods being purchased under this agreement.

25. NOTICES

All notices, request, consents, claims, demands, waivers and other communications hereunder (each, a “notice”) shall be in writing and addressed to the parties at the addresses set forth in the sales confirmation or to such other address that may be designated by the receiving party in writing. All notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this agreement, a notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the notice has complied with the requirements of this section.

26. SEVERABILITY

If any term or provision of this agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

27. SURVIVAL

Provisions of these terms which by their nature should apply beyond their terms will remain in force after any termination or expiration of this agreement including, but not limited to, the following provisions: section 10 (limited warranty), section 11 (limitation of liability), section 13 (intellectual property rights), section 15 (no reverse engineering or alternative production), section 17 (confidential information), section 23 (governing law), section 24 (submission to jurisdiction) and section 27 (survival).