



McCarty Equipment Company TERMS AND CONDITIONS OF SALE

1. ACCEPTANCE - AGREEMENT

MCCARTY EQUIPMENT COMPANY's acceptance of any purchase order is limited to Purchaser's agreement to the express terms contained herein. Purchaser's agreement to these terms and conditions shall be conclusively presumed from Purchaser's placement of an online order with MCCARTY EQUIPMENT COMPANY. Any proposal for additional or different terms, or any attempt by Purchaser to vary in any degree any of the terms herein, is hereby objected to and rejected. Any provisions on the face or reverse side of any purchase order which Purchaser may send to MCCARTY EQUIPMENT COMPANY in connection herewith are for order identification only, are expressly objected to by MCCARTY EQUIPMENT COMPANY and waived by Purchaser, and made inapplicable to any purchase of MCCARTY EQUIPMENT COMPANY products and/or services.

2. TERMS OF PAYMENT AND FAILURE TO PAY

Payment is due 30 days from the invoice date in US Dollars, unless otherwise specified herein. If Purchaser fails to pay any invoice when due, or if the financial condition or credit of Purchaser becomes unsatisfactory to MCCARTY EQUIPMENT COMPANY, MCCARTY EQUIPMENT COMPANY, at its option and without affecting any other lawful remedy, may change the terms of payment or suspend work and further deliveries, or both, until Purchaser provides security or other assurances for performance as demanded by MCCARTY EQUIPMENT COMPANY. The failure or refusal of Purchaser to provide assurances within ten (10) days after a request by MCCARTY EQUIPMENT COMPANY will constitute a repudiation, at MCCARTY EQUIPMENT COMPANY's discretion, of the entire contract. By submitting any purchase order or other writing, either prior or subsequent to the date of MCCARTY EQUIPMENT COMPANY's quotation, Purchaser represents that it is solvent for all purposes.

3. PRICES - QUOTATIONS

Quotations are subject to change without notice and cover only the specified quantity. Due to conditions affecting prices, MCCARTY EQUIPMENT COMPANY will accept orders with the understanding that MCCARTY EQUIPMENT COMPANY reserves the right (with the exception to any price quoted for a special article) to change the price at any time, or from time to time, as to any part of the order then unfilled. Delivery of any part of an order at the price stated thereon shall be without prejudice to MCCARTY EQUIPMENT COMPANY's right, as stated, to change the price as to any remaining part of the order.

4. TITLE AND RISK OF LOSS

Unless otherwise stated with the order, Purchaser is responsible for any freight costs associated with the delivery of products to its destination. Title and risk of loss will pass to Purchaser upon delivery to the common carrier or upon customer pick-up.

5. TAXES

Any tax imposed on MCCARTY EQUIPMENT COMPANY by any law or governmental entity on the sale or use of the products sold by MCCARTY EQUIPMENT COMPANY shall be in addition to the sales price thereof.

6. DELIVERIES; FORCE MAJEURE

(a) While MCCARTY EQUIPMENT COMPANY shall try to schedule Purchaser's order for delivery as nearly in accordance with its instructions as possible, MCCARTY EQUIPMENT COMPANY does not guarantee nor assume liability for failure to meet any delivery dates.
(b) MCCARTY EQUIPMENT COMPANY shall not be liable for failure to deliver products ordered by Purchaser if due to fire, flood, hurricane, riots, war, terrorism, government regulation, shortages of material, qualified labor, or inventory, discontinuance or change in design of ordered products, acts of God, or other similar or dissimilar causes beyond the reasonable control of MCCARTY EQUIPMENT COMPANY.

7. CANCELLATIONS

Cancellation of orders once placed with and accepted by MCCARTY EQUIPMENT COMPANY can be made only with MCCARTY EQUIPMENT COMPANY's consent. Orders may be cancelled or deliveries deferred only upon the condition that Purchaser assumes immediate liability and makes payments to MCCARTY EQUIPMENT COMPANY for (a) all work completed at the unit price; (b) work in progress on the basis of percentage of completion thereof times the order unit price, and (c) raw materials, unamortized tooling, engineering and other cancellation charges incurred on the basis of cost to MCCARTY EQUIPMENT COMPANY, plus handling and overhead charges. All cancellation charges shall be determined at the time of cancellation and are immediately due and payable.

8. DEFERRED DELIVERIES

MCCARTY EQUIPMENT COMPANY may, but is not obligated to, accept a written request by Purchaser to delay shipment of any ordered products. If delayed shipment is accepted by MCCARTY EQUIPMENT COMPANY, Purchaser shall pay any additional costs incurred by the delay and the price for the balance of the order shall be adjusted to reflect prices and costs in effect at the time of actual shipment. Any agreed to shipping delay is not to exceed thirty (30) days on that portion of the order which is not then in process or completed on condition that at the expiration of such time definite shipping instructions which meet with MCCARTY EQUIPMENT COMPANY's approval are given. Should the Purchaser at the expiration of the delay period fail to furnish definite acceptable shipping instructions, MCCARTY EQUIPMENT COMPANY shall have the right to make a cancellation charge on the same conditions and terms of payment as outlined under "Cancellation".

9. RETURNED GOODS POLICY

Requests for the return of products purchased from MCCARTY EQUIPMENT COMPANY will be considered only if the product is in new, resalable condition and in its original packaging. Fabricated

custom hoses and gaskets, and special order non-inventoried items are not eligible for return. Eligible return items will be subject to restocking charges and should only be returned to MCCARTY EQUIPMENT COMPANY after a Return Goods Authorization Number has been obtained from MCCARTY EQUIPMENT COMPANY's customer service department.

10. SHORTAGES

Shortages or differences in shipments must be reported in writing to MCCARTY EQUIPMENT COMPANY within ten (10) days after receipt of shipment.

11. WARRANTY; LIMITATION OF LIABILITY

Warranties for the products shall be as follows: (1) with respect to the design, workmanship and materials of the products, MCCARTY EQUIPMENT COMPANY extends to Purchaser, and does hereby assign to Purchaser, the same warranty or warranties regarding design, workmanship and materials relating to the products as the manufacturer or supplier of the products extends to MCCARTY EQUIPMENT COMPANY, which shall be the sole warranty or warranties extended to Purchaser with regard to the products, and (2) with respect to any fabrication work relating to the products performed by MCCARTY EQUIPMENT COMPANY, MCCARTY EQUIPMENT COMPANY warrants its workmanship for a period of one (1) year from the shipment date.

With respect to services supplied to Purchaser, MCCARTY EQUIPMENT COMPANY warrants it will perform all services in a workmanlike manner in accordance with (i) any specifications set forth on any applicable service order; (ii) any Purchaser site requirements communicated to MCCARTY EQUIPMENT COMPANY; and (iii) generally accepted industry practices applicable to the services; and (iv) these Terms and Conditions. If MCCARTY EQUIPMENT COMPANY breaches this warranty with respect to the services, upon notice from Purchaser delivered not less than 60 days after such services have been provided, MCCARTY EQUIPMENT COMPANY will promptly repair, replace or re-supply the services in question (including shipping and labor costs, but not including removal or re-installation costs) at no cost to Purchaser.

THIS WARRANTY IS IN LIEU OF AND EXCLUDES ALL OTHER EXPRESS OR IMPLIED WARRANTIES ARISING BY OPERATION OF LAW OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

IN NO EVENT WILL MCCARTY EQUIPMENT COMPANY BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES. THE TOTAL LIABILITY OF MCCARTY EQUIPMENT COMPANY FOR ANY DAMAGES HEREUNDER SHALL BE LIMITED TO THE AMOUNT PAID BY PURCHASER FOR THE PRODUCTS AND/OR SERVICES PURCHASED HEREBY.

Written notice of any claimed defect must be given to MCCARTY EQUIPMENT COMPANY within thirty (30) days after such defect is or should have been discovered. Products claimed to be defective must be held for MCCARTY EQUIPMENT COMPANY's shipping instructions. No claim for products alleged to be defective will be allowed until MCCARTY EQUIPMENT COMPANY has had a reasonable opportunity to examine the products. MCCARTY EQUIPMENT COMPANY's obligation with respect to defective products is expressly limited to the repair or replacement of, or at its option, allowing credit for any such products, all as herein above provided.

This warranty does not extend to (a) any losses due to misuse, accident, abuse, neglect, normal wear and tear, or improper installation, maintenance or application; (b) products that have been repaired or altered outside of MCCARTY EQUIPMENT COMPANY's facility, unless authorized in writing by MCCARTY EQUIPMENT COMPANY or unless such installation, repair or alteration is performed by MCCARTY EQUIPMENT COMPANY; or (c) any labor charges for removal and/or replacement of the non-conforming or defective product or part thereof. This warranty extends to Purchaser only and not to Purchaser's customers or users of Purchaser's products.

12. DOCUMENTS DISCLAIMER

ANY AND ALL DRAWINGS PROVIDED BY MCCARTY EQUIPMENT COMPANY ARE NOT ENGINEERING DRAWINGS AND ARE PROVIDED FOR ILLUSTRATIVE PURPOSES ONLY. THEY SHOULD NOT BE USED FOR FABRICATION, MANUFACTURING, PRODUCTION, OR ANY OTHER APPLICATION WITHOUT VERIFICATION BY AN ENGINEER OR OTHER APPROPRIATE DESIGN PROFESSIONAL THAT THEY MEET ANY AND ALL CODES AND ENGINEERING AND OTHER REQUIREMENTS APPLICABLE TO SUCH APPLICATION. MCCARTY EQUIPMENT COMPANY MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE USE, ACCURACY, CURRENCY, SUITABILITY OR RELIABILITY OF THE DATA PROVIDED IN THE DRAWINGS FOR ANY PURPOSE. THE USER ACCEPTS THE DATA "AS IS", AND ASSUMES ALL RISKS ASSOCIATED WITH ITS USE. MCCARTY EQUIPMENT COMPANY ASSUMES NO RESPONSIBILITY FOR ACTUAL OR CONSEQUENTIAL DAMAGES INCURRED AS A RESULT OF ANY USER'S RELIANCE ON THE DATA.

13. GOVERNING LAW; VENUE

This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, without reference to any conflict of laws principles. Venue for any action shall lie in the federal or state courts of Houston, Harris County, Texas, and without regard to the United Nations Convention on the International Sale of Goods or other international treaty, rule or accord.

14. ENTIRE AGREEMENT

These Terms and Conditions of Sale and Purchaser's underlying online order to which they relate constitute the entire agreement between the parties. Except as otherwise provided for herein, any changes must be agreed to in writing by MCCARTY EQUIPMENT COMPANY. No statement, recommendation or assistance made or offered by MCCARTY EQUIPMENT COMPANY through its salespersons or other representatives to the Purchaser with respect to the use of any product sold by MCCARTY EQUIPMENT COMPANY shall be or constitute a waiver by MCCARTY EQUIPMENT COMPANY of any of the provisions hereof.