

# ENGINEERED PUMP SERVICES, INC.

## General Provisions for Service and Repair

### A. SCOPE OF WORK

1. The company will perform equipment repair and/or service as directed by the Purchaser, or if the Contract is for a firm price, the Company will provide repairs and/or service to the extent called for in the Contract and the Description of Work
2. If the service and/or repair is performed at the Purchaser's plant, Company Representatives and others employed by the Company shall comply with the Purchaser's rules for visitors pertaining to safety and protection, and the operation and parking of vehicles. Company Representatives are not authorized nor licensed to operate Purchaser's equipment, and all such responsibility shall remain with the Purchaser.
3. Neither the Company nor its Representative shall be responsible for any acts, omissions or workmanship of employees, contractors, subcontractors, or agents of the Purchaser.

### B. WARRANTY

Company warrants the new parts, new materials and the workmanship involved in its performing this repair and/or service contract, merchantable and free of defects.

THIS WARRANTY IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, INCLUDING, BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS, AND CONSTITUTES THE ONLY WARRANTY OF COMPANY WITH RESPECT TO THE REPAIR AND/OR SERVICE WORK.

If within one year from the date of shipment by Company of the repaired item, or if the repair and/or service occurred at Purchaser's premises, one year from the date Company notifies Purchaser the repair and/or service is completed, Purchaser discovers that the parts, material or workmanship are not as warranted and promptly notifies Company in writing thereof, company shall remedy such nonconformance by, at Company's option, adjustment of repair or replacement of the non conforming parts, material or work. Purchaser shall assume all responsibility and expense for removal, reinstallation and freight, in connection with foregoing remedies. The same obligations and conditions as expressed herein shall extend to replacement parts and labor furnished by Company hereunder. Company shall have the right of disposal of parts replaced by it.

COMPANY'S LIABILITY TO PURCHASER ARISING OUT OF THE REPAIR AND/OR SERVICE WORK WHETHER IN CONTRACT OR IN TORT OR UNDER ANY LEGAL THEORY AND WHETHER ARISING OUT OF WARRANTIES, REPRESENTATIONS, INSTRUCTIONS, INSTALLATIONS, OR DEFECTS FROM ANY CAUSE, SHALL BE LIMITED EXCLUSIVELY TO CORRECTING THE PARTS, MATERIALS OR WORKMANSHIP AND UNDER THE CONDITIONS AFORESAID.

### C. LIABILITY

The Company will carry Worker's Compensation Insurance to cover its employees and will require similar coverage from its subcontractors, if any, while involved in the subject repair and/or service work will maintain public liability and property damage insurance in reasonable amounts to cover the liability arising from their activities. The Company shall be liable for loss or damage to equipment or property of the Purchaser only if caused by the Company's negligence and only if and to the extent such damage or loss is not covered by the Purchaser's insurance. The liability of the Company, whether in contract, in tort, including negligence, or otherwise, shall expire one year after the completion of the work, and shall not, in any event, exceed the total contract price for service rendered hereunder.

2. NEITHER COMPANY NOR ITS SUPPLIERS SHALL BE LIABLE, WHETHER IN CONTRACT OR IN TORT, (INCLUDING NEGLIGENCE), OR UNDER ANY OTHER LEGAL THEORY, FOR LOSS OF USE, REVENUE OR PROFIT, OR FOR COST OF CAPITAL OR OF SUBSTITUTE USE OR PERFORMANCE OR FOR INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES, OR FOR ANY OTHER LOSS OR COST OF SIMILAR TYPE, OR FOR CLAIMS BY PURCHASER FOR DAMAGES OF PURCHASER'S CUSTOMERS.

Likewise, company shall not, under any circumstances be liable for the fault, negligence or wrongful acts of Purchaser or Purchaser's employees or Purchaser's other Contractors or Suppliers.

The Purchaser shall indemnify and hold Company, together with its employees, agents and suppliers of any tier, harmless from any loss, liability or claim resulting from nuclear incident (as said term is defined in Section II (q) of the U.S. Atomic Energy Act) as amended occurring at any facility at which the equipment, parts or service sold herein may be used, whether or not such incident is due to anyone's fault or negligence including the fault or negligence of the company or any other indemnitee.

### D. DELAYS

If the work is suspended or delayed due to no fault of the Company, such as, but not limited to, act of God, war, act of government, act of Purchaser, fires, flood, strike or sabotage, the time of performance, if any such is specified, shall be extended for a period of time equal to the period of delay and its consequences. Rates current at the time the work is resumed and any additional costs incurred by the Company because of the foregoing will be charged to the Purchaser.

### E. PATENTS

The Company may, in the performance of this contract, furnish or install equipment, components, materials and supplies which may be purchased from other sources, manufactured by the Company to meet the specific circumstances arising under this contract, and manufactured by the company in accordance with the Purchaser's instructions, designs, or specifications.

Purchaser understands that company has made no investigation of the risk of possible patent infringement, and accordingly, the Purchaser agrees to hold the Company harmless with respect to such risks.

### F. MODIFICATIONS

It is recognized that the nature of repair and/or service work is such that changes in the scope of the work as originally contemplated often occur. The Company will undertake additional work within the normal scope of such service but reserves the right to require the Purchaser to confirm in writing any extension of the work originally ordered. Pending receipt of requested written confirmation, the Company shall be entitled to rely upon oral order, including instructions of Purchaser's representatives. Any additional services performed by the Company pursuant to such written or oral orders or instructions shall be paid for on the basis set forth herein or as otherwise agreed to in writing between the parties.

### G. TITLE

All Scrap resulting from the work shall be the property of the Company and title to all rental equipment shall remain with the Company. The title and right of possession of equipment repaired, modified, inspected, tested or maintained under this contract shall remain with the Purchaser subject to any applicable lien rights of the Company and to its right of sale in the event of nonpayment as provided herein.

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