



PRODUCT WARRANTY, TERMS & CONDITIONS FOR SALES MADE BY VAUGHAN CO., INC.

1. **GENERAL:** The Terms & Conditions herein established by Vaughan Co., Inc. (“us”, “we”, “our”) as may be amended by us from time to time (“Terms and Conditions”) apply to all dealings with our potential and actual customers (“you” and “your”), whether made by you or us, for any solicitation, submission, inquiry, offer, request or arrangement (a “Communication”) or sale by us with respect to goods we sell (“Product(s)”). Written authorization is only valid if executed by an authorized officer of Vaughan Co.
2. **SCOPE OF SUPPLY:** Scope of supply will be limited to accepted quotation or approved submittals, if required.
3. **ACCEPTANCE OF ORDERS:** No Communication is binding on us unless written authorization is obtained by an authorized officer of Vaughan Co. Any sample provided by us is not part of an Accepted Order.
4. **SUBMITTALS:** Drawings and submittals for approval will typically be supplied four to six (4-6) weeks from the receipt of the order in pdf format. Vaughan will not be responsible for damages, fees or charges for any additional submittal reviews that were not the fault of Vaughan.
5. **PRODUCTION TIME:** Vaughan’s production time will begin after complete submittal approval, release to production, execution of the purchase order and receipt of progress payments, if applicable. Production time excludes time to approve test results.
6. **NO CANCELLATION:** Accepted Orders cannot be cancelled or modified, in whole or in part, without our prior written consent, which consent may be withheld or subject to conditions and reasonable charges we may impose. Any custom ordered parts cannot be cancelled without full payment.
7. **DEFAULT:** If Buyer defaults on the contract, Vaughan shall have the right to be cancel the contract in part or whole. Buyer shall be responsible for reasonable termination charges up to the total agreement value. The termination charge is at Vaughan’s discretion dependent upon the percentage of the Agreement price reflecting the percentage of the work fabricated prior to the default plus actual direct costs resulting from default, including cancellation charges directly associated with costs for items that are in production at time of cancellation.
8. **PRICE INCREASE:** Price of Product(s) is subject to increase if equipment is not released to production within six months from the date Vaughan receives the initial purchase order from you.
9. **TAXES:** All prices are subject to all applicable sales and use taxes and any other taxes now or hereafter imposed and/or levied by any governmental authority with respect to the sale of the Product(s) (“Applicable Taxes”). Customers located in states where Vaughan is registered for sales tax sales must pay sales tax on all orders delivered or picked up within said state unless Vaughan Co. has in its possession an accurate and current resale or exemption certificate or other acceptable alternate document on file for your company and/or project. If you have a certificate on file with Vaughan Co., please indicate on the purchase order if tax is to be applied or not at the time of the order. Our failure to charge or collect Applicable Taxes when due shall not relieve you of your obligation for its payment. Regardless of any other payment terms, all Applicable Taxes are due net 30 days from the invoice date.
10. **PAYMENT TERMS:** Terms of sale will be shown on each invoice or purchase order, and it is agreed that invoices will be paid in full when due. Standard payment terms for projects covered by a project payment bond that extends coverage to Vaughan Co. are as follows:
 - 10% upon submittal approval;
 - 10% prior to shipment of equipment;
 - 75% net 30 from shipment of equipment;
 - 5% due at the earlier of startup or 120 days from shipment of equipment.However, Vaughan may at their discretion alter these percentages on a case by case basis. Projects that are not covered by a project payment bond, or payment bonds that do not extend coverage to Vaughan Co., must be 100% prepaid in advance of shipment. Payment is not subject to hold-backs or contingent upon the Buyer receiving payment from the Owner. If payment in full on any invoice is not received when due, or if your credit worthiness is deemed unsatisfactory by us at any time, we may take, without incurring any liability, one or more of the following actions: (a) impose a service charge at the rate that is the lesser of (i) 1.5% per month or (ii) the maximum rate allowed by applicable law, on any amount past due commencing from the date of such invoice, (b) modify or accelerate payments terms, (c) withhold delivery of Product(s) under any Accepted Order not yet shipped and/or delay, recall or reclaim shipments of Product(s) en route to you or delivered until arrangements satisfactory to us are made to secure payment for any outstanding invoice and for all open Accepted Orders and/or (d) file a lien or bond claim for any unpaid labor or material.
11. **RETAINAGE:** Retainage, if applicable, is limited to 5% of the total Accepted Order price less any applicable taxes and is due at the earlier of start-up or 10 days upon owner’s acceptance, however, retainage shall not exceed 120 days from the shipment of equipment.
12. **FREIGHT:** Unless otherwise stated in the purchase order or quote, freight for a single shipment is included. Additional freight cost for split-shipments will be the responsibility of the Buyer. Buyer is responsible for providing complete shipping information and requirements including, but not limited to residential delivery, lift gates, limited access, advance notice, construction/jobsite, etc. Failure to provide accurate information may result in additional shipping fees. Those fees are the responsibility of the Buyer and will be billed accordingly
13. **DATE OF SHIPMENT:** Shipment dates are approximate and subject to change based upon Product(s) availability, production schedules, and other prevailing conditions. Shipment date is contingent upon the receipt of approved submittals, execution of purchase order, receipt of progress payments and approved factory tests, if applicable. You must accept delivery after approval of submittals, production time and factory test approval or issue us a change to the Accepted Order that must be accepted by us in writing. . If Vaughan does not receive approval to ship equipment within 30 days from the submission of factory tests, Buyer will pay Vaughan \$100 per day for storage of equipment.
14. **LONG TERM STORAGE:** We will hold Product(s) in long term storage contingent upon payment of full purchase order price less retainage. Long term storage duration, fees, and any other considerations will be evaluated on a case by case basis.
15. **YOUR ACCEPTANCE OF PRODUCT(S):** You are responsible to promptly inspect Product(s) delivered and notify us within five (5) calendar days following receipt of the Product(s) for which a claim is filed of any shortages, visible material defects or non-conformance of the Product(s) with the Accepted Order. If the equipment is damaged during transport that was arranged by Vaughan, Vaughan will file the claim with the freight carrier. Any damages will be limited to the amounts recovered by Vaughan from the freight carrier.



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- 16. RETURNS:** Product(s) may not be returned for any reason without authorization by us. Please refer to the "Returned Goods Authorization Policy" for further information on returns.
- 17. WARRANTY:** Vaughan Co., Inc. warrants to the original purchaser/end user all pumps and pump parts manufactured by Vaughan Co. to be free from defects in workmanship or material for a period of one (1) year from date of startup or eighteen (18) months from the date of shipment from Vaughan Co., whichever occurs sooner. If during said warranty period, any pump or pump parts manufactured by Vaughan Co. prove to be defective in workmanship or material under normal use and service, and if such pump or pump parts are returned to Vaughan Co.'s factory at Montesano, WA, or to a Vaughan authorized Service Facility, transportation charges prepaid, and if the pump or pump parts are found to be defective in workmanship or material, they will be replaced or repaired by Vaughan Co. free of charge. Products repaired or replaced from the Vaughan Co. factory or a Vaughan authorized Service Facility under this warranty will be returned freight prepaid. Vaughan Co. shall not be responsible for the cost of labor for pump or part removal and/or re-installation. All warranty claims must be submitted in writing to Vaughan Co. not later than thirty (30) days after warranty breach occurrence. The original warranty length shall not be extended with respect to pumps or parts repaired or replaced by Vaughan Co. under this Warranty. This Warranty is voided as to pumps or parts repaired/replaced by other than Vaughan Co. or its duly authorized representatives. Vaughan Co. shall not be liable for consequential damages of any kind and the purchaser by acceptance of delivery assumes all liability for the consequences of the use or misuse of Vaughan Co. products by the purchaser, its employees or others. Vaughan Co. will not be held responsible for travel expenses, rented equipment, outside contractor's fees, or unauthorized repair service or parts. This warranty shall not apply to any product or part of product which has been subjected to misuse, accident, negligence, operated in the dashed portion of the published pump curves, used in a manner contrary to Vaughan's printed instructions or damaged due to a defective power supply, improper electrical protection or faulty installation, maintenance, or repair. Wear caused by pumping abrasive or corrosive fluids or by cavitation is not covered under this warranty. Equipment and accessories purchased by Vaughan Co. from outside sources which are incorporated into any Vaughan pump or any pump part are warranted only to the extent of and by the original manufacturer's warranty or guarantee, if any, which warranty, if appropriate, will be assigned by Vaughan Co. to the purchaser/end user. *THIS IS VAUGHAN CO.'S SOLE WARRANTY AND IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, WHICH ARE HEREBY EXCLUDED INCLUDING IN PARTICULAR ALL WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.* Vaughan Co. neither assumes, nor authorizes any person or company to assume for it, any other obligation in connection with the sale of its equipment with the exception of a valid Vaughan "Performance Guarantee" or "Extended Warranty," if applicable. Any other enlargement or modification of this warranty by a representative or other selling agent shall not be legally binding on Vaughan Co.
- 18. FORCE MAJEURE:** Vaughan shall have no liability in respect of failure to deliver or perform or delay in delivering or performing any obligations due to causes such as fire, earthquakes, flooding or other natural disasters, failure of our supplier to deliver on time, war, acts or threats of terrorism, strikes and any other circumstance outside the reasonable control of Vaughan.
- 19. DAMAGES:** Vaughan is not responsible for any damages due to delays, special, indirect, consequential or punitive damages.
- 20. BACK CHARGES:** You shall not charge Vaughan back charges without first receiving written approval from an authorized officer of Vaughan Co.
- 21. COLLECTION CHARGES:** You shall pay all costs and expenses, including without limitation reasonable attorneys' fees and administrative charges, we incur in endeavoring to protect our rights arising out of your failure to perform your obligations to us, including without limitation any attempt to collect any amount you owe us.
- 22. CONFIDENTIALITY:** Buyer shall take reasonable efforts to maintain as confidential, such items marked or identified as such by Vaughan. Such confidential information shall not include information which may have been provided to Vaughan in connection with this Agreement. All devices, designs (including drawings, plans and specifications), estimates, prices, notes, electronic data, software and other documents or information prepared or disclosed by Vaughan, and all related intellectual property rights, shall remain Vaughan's property. Vaughan grants Buyer and Owner a non-exclusive, non-transferable license to use any such material solely for Buyer's use of the work. Buyer shall not disclose any such material to third parties without Vaughan's prior written consent
- 23. EAR COMPLIANCE:** If Product(s) are exported by us, we provide the following statement: "these commodities, technology or software were exported from the United States in accordance with the export Administration Regulations. Diversion contrary to U.S. law is prohibited."
- 24. GOVERNING LAW:** The transactions between you and us are made in Washington State, shall be governed by the laws of Washington State, and you agree to submit exclusively to jurisdiction and venue of such state with respect to any dispute arising out of any transaction between you and us. **YOU AND WE KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING ARISING OUT OF ANY SUCH DISPUTE.**
- 25. DISPUTES:** Any claim or dispute between Vaughan and Buyer, arising out of or relating to either's obligations to the other under this Contract, shall, if possible, be resolved by negotiation between Vaughan's and Buyer's designated representatives. Vaughan and Buyer each commit to seeking resolution of such matters in an amicable, professional and expeditious manner so as to avoid unnecessary losses, delays and disruptions to the Work. If a matter cannot be resolved by the parties' designated on-site representatives, the following dispute resolution procedure shall apply:
- i. No later than thirty (30) days after the designated representatives fail to reach agreement, representatives from executive management of Seller and Contractor shall attempt to resolve the matter.
 - ii. If resolution cannot be reached by the parties' executive managers, no later than thirty (30) days after the executive managers fail to reach agreement, the parties shall submit the dispute to non-binding mediation. The parties shall select a mediator that is mutually acceptable. The location of the mediation shall be in County wherein the project is located.
 - iii. If resolution cannot be reached by the parties through mediation, within thirty (30) days after the mediation has concluded, either party may file a demand for arbitration. Such arbitration shall be administered by the American Arbitration Association ("AAA") in accordance



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with its Construction Industry Arbitration Rules. Judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

- 26. NO RIGHT OF SET-OFF:** Each Accepted Order constitutes a separate and distinct contract when accepted by us and you may not withhold payment for an invoice or offset same, in whole or in part, against sums you claim are due you by us with respect to another Accepted Order, invoice or for any other cause or reason whatsoever.
- 27. INDEMNITY CLAUSE:** Any indemnification shall not include claims of, or damages resulting from the negligence, gross negligence, or willful, wanton or intentional misconduct of the parties indemnified hereunder. To the extent that conditions, acts, activities or conduct involve the contributory negligence or misconduct of you or other third parties, liability will be apportioned between the parties according to comparative fault.
- 28. OUR RIGHTS ARE NOT EXCLUSIVE:** Our rights hereunder are in addition to and not in lieu of any other rights and remedies available to us at law or in equity.
- 29. NOTICES:** All notices of claims or disputes given by either you or us with respect to any Communication, Accepted Order or these Terms & Conditions shall be in writing and sent by (a) first class mail with a copy by certified mail, return receipt requested, postage pre-paid, or (b) overnight delivery service, charges prepaid, and address as follows: (i) if intended for us, to our address to which a Communications was sent or an Accepted Order was placed, and (ii) if to you, at your address last known to us. Notice will be effective the first business day after notice is sent.
- 30. NO OTHER TERMS ACCEPTED:** No terms or conditions, other than these Terms and Conditions, shall apply to any Accepted Order and no agreement or understanding in any way adding to or otherwise modifying these Terms and Conditions shall be binding on us unless set forth in writing and signed by an officer of Vaughan Co. Vaughan Co. is only bound to the terms of the contract/agreement/purchase order between Vaughan and Buyer. The Buyer's Prime Contract with an Owner shall not affect the contract between Vaughan and Buyer unless specifically accepted in writing by an authorized officer of Vaughan Co.
- 31. COUNTERPARTS:** This Agreement may be executed in counterpart, and may be executed by way of facsimile, email or electronic signature, and if so, shall be considered an original.
- 32. MISCELLANEOUS:** No waiver of any rights or remedies shall be binding on us unless set forth in a written waiver signed by us. We do not give up any of our rights or remedies if we fail or delay in seeking a remedy or if we accept a payment while there is a breach by you. Any such waiver, delay or failure by us on one occasion shall not be deemed a waiver by us of any future default by you or of any future right or remedy available to us. The Section, Paragraph and other heading in these Terms & Conditions are for convenience of reference only and shall not limit or otherwise affect the meaning of any provision contained in these Terms and Conditions. The invalidity of enforceability of any provision in these Terms and conditions shall in no way effect the validity or enforceability of any other provision.