



**PUMP SUPPLY**

**General Terms and Conditions of Sale and Delivery**

Valid from 1 January 2016

## 1. Introduction

1. These general terms and conditions of sale and delivery (hereinafter **Terms of Delivery**) apply to all deliveries of goods and services as specified in the order confirmation and the contract (hereinafter **Delivery**) from Pump Supply AS (hereinafter **PS**) to a buyer (hereinafter **Buyer**). Deviations from the Terms of Delivery shall not apply unless agreed in writing by the parties. If the Delivery includes delivery of services, the Terms of Delivery shall apply to the extent applicable.
2. The Buyer is obliged to familiarize himself with the Terms of Delivery.
3. The contract documents are listed in point 1-5 below. In case of conflict between these documents, the following order of precedence shall apply:
  1. Order confirmation from PS
  2. Written agreement between the parties
  3. The Terms of Delivery
  4. The Buyer's written order
  5. The offer from PS
4. Other contract terms, including the Buyer's own standard terms of purchase, will only apply if PS has expressly accepted these in writing.
5. PS may use sub-contractors.

## 2. Offers

1. Offers to the Buyer are provided subject to stock availability of the goods offered or subject to PS' access to the specialists who will perform the service offered, at the time of the Buyer's acceptance of the offer. If the goods are out of stock or PS does not have access to specialists, at this time, PS will have no further obligations or liabilities in respect of the offer provided.
2. Specification of technical data of any kind stated in an offer, including, but not limited to, illustrations, drawings, specifications of weight and dimensions, must be deemed to be approximates until these are finally determined in the contract documents between the Buyer and PS. PS does not assume any liability for faults or defects due to technical data included in an offer.

## 3. Product Information etc.

1. PS only assumes responsibility for information regarding products and services that are included in the contract documents. Information contained in product catalogs, price lists or other promotional materials are binding only to the extent that they are by reference expressly included in the contract documents.

## 4. Technical Documentation and Information

1. All technical documentation regarding the Delivery submitted by PS to the Buyer, prior or subsequent to the formation of the contract, shall remain the property of PS. The Buyer may not use documentation or information received from PS for any other purpose than that for which it was submitted. This documentation may not be copied, stored, reproduced, distributed or disclosed to a third party without the prior written consent of PS.
2. PS is not obliged to supply documentation for manufacturing of the Delivery.

## 5. Prices

1. The Delivery shall be delivered at the price («**Contract Price**») that is quoted in the written agreement between the parties, the order confirmation or the offer. If no price has been agreed, PS' standard price lists for goods and services applicable at the time of delivery shall apply.
2. Unless otherwise agreed, all prices are in Norwegian kroner, exclusive of value-added tax and other public and industry taxes, as well as packaging, storage, loading, freight and insurance.
3. The contract price is subject to change due to rises in prices of material and labour and in case of exchange rate fluctuations. PS shall notify the Buyer in writing of any price adjustment at least 2 weeks prior to the effective date of the price change.
4. For Deliveries under NOK 500 excl. VAT, a handling fee of NOK 150 will be charged.
5. PS is also entitled to adjust the Contact Price due to changes pursuant to Article 6 below - Changes.
6. If PS has provided prices and terms and conditions for delivery that apply to a specific delivery period, PS is entitled to change prices and terms and conditions for delivery following the expiration of the specified period of delivery.

## 6. Changes

1. PS is entitled to make changes to the Delivery that do not affect the Buyer or the Buyer's use of the Delivery.
2. The Buyer may not, other than as agreed with PS, postpone the time of delivery or change or cancel the Delivery in full or in part. If the right to return is agreed in writing, PS will only accept standard products in unopened original packaging not older than 6 months. Return costs are 20% on products in stock and 30% on non-stock products.
3. If the Buyer would like to make changes to the Delivery, the request must be submitted in writing within reasonable time prior to the agreed delivery. In case of change requests, the Buyer shall provide accurate information concerning the change(s) required. PS is entitled to charge an increased price in case of changes, including an increase in the unit prices, and to postpone the delivery time. PS shall within reasonable time decide whether to accept the request, and in case of acceptance, inform the Buyer in writing of the effect of the change order on the Contract Price and delivery times. If the Buyer would like to implement the change, PS and the Buyer will confirm the change in writing.
4. If the Delivery needs to be changed due to amendments in legislation, including technical standards, regulations or case law that have come into effect following the formation of the contract, PS reserves the right to make a proportional adjustment of the Contract Price and delivery times.

## 7. Delivery / Delivery Time

1. Unless otherwise agreed, delivery shall take place «Ex Works» (in accordance with the Incoterms as applicable at the time of contract) from PS' workshop in Solbergelva, Nedre Eiker, Norway.
2. PS shall notify the Buyer that the Delivery is ready to dispatch. If it is agreed that PS shall arrange the transportation to the Buyer, the parties shall agree on a final date for delivery that shall be no later than a week after the Delivery was ready to dispatch from PS.

3. If time of delivery is agreed in number of days, weeks or months, the delivery time limit will start to run two days following PS' confirmation of the order in the form of a written order confirmation.
4. The time of delivery is binding on PS provided that:
  - a) The parties agree on design, specifications etc. of the Delivery,
  - b) PS has received all required information, approvals, permits or documentation to be submitted by the Buyer,
  - c) the Buyer, or a sub-contractor of the Buyer, has carried out required work to be completed before delivery, within the agreed time,
  - d) the Buyer has fulfilled his payment obligations.

The delivery time shall be postponed in accordance with the delay until the above-mentioned premises are met.

5. The delivery time may change due to:
  - a) An act or omission on the Buyer's part as mentioned under clause 4 above,
  - b) If PS encounters an impediment due to circumstances beyond PS' control. This includes, without limitation, unforeseen delays from sub-contractors, production breakdown, lack of labour, labour disputes, strike or force majeure. Such circumstances entitle PS to postpone the delivery time proportionally until the impediment to delivery is removed,
  - c) The parties agree to changes, pursuant to Article 6 – Changes.

Each party may terminate the contract with immediate effect by written notice to the other party, in case of an impediment of performance of the contract lasting more than 6 months as mentioned in this clause 6 b).

3. If no delivery time is agreed, PS shall deliver the Delivery as soon as possible.
4. The Buyer may not refuse part delivery and shall pay for part deliveries.

## **8. Delays**

1. If PS finds that it will not be able to deliver by the agreed time, PS shall, without undue delay, inform the Buyer thereof. Furthermore, PS shall state a new delivery time, if possible.
2. The Buyer will lose his right to make a claim following a delay unless he complains in writing within reasonable time and no later than 8 workdays after notice of delay was provided.
3. If the delay lasts for more than 60 days, the Buyer may – by written notice to PS – demand delivery and stipulate a final delivery time, which may not be less than 8 workdays. If PS fails to deliver by this last final time, and this is not owing to circumstances for which the Buyer is responsible, or circumstances as described in clause 6 b), the Buyer is entitled to terminate the contract with immediate effect by notice to PS, if the delay substantially invalidates his purpose of the purchase. In case of such immediate termination, the Buyer is entitled to claim compensation for any direct loss suffered due to PS' delay. Such compensation may not exceed 10% of that part of the Contract Price that is related to the part of the Delivery affected by the termination.
4. If the Buyer finds that he will be unable to accept receipt of the Delivery at the agreed time of delivery, or that a delay is considered to be likely, he shall notify PS thereof in writing without undue delay, and at the same time specify the reason for the delay, and to the extent possible,

indicate the expected time for receipt. If the Buyer fails to receive the Delivery at the agreed delivery time, the Buyer is still obliged to pay any amounts related to the agreed delivery time as if the Delivery had been made. In such event, PS has a right, but no obligation, to store the goods in a suitable location at the Buyer's expense and risk. PS is entitled to charge a standard storage cost of ½ % of the Contract Price per day; however not exceeding 5% of the Contract Price, unless documentation of higher storage costs can be presented. Storage costs also includes the transportation to and from the storage location and all other related costs. PS has a right, but no obligation, to insure the Delivery at the Buyer's expense. If the agreed delivery time is exceeded by more than 1 month and no delivery is made owing to circumstances for which the Buyer is responsible, PS is entitled to terminate the contract with immediate effect, make a compulsory sale of the delivery and claim compensation for their loss and outlays.

#### **9. Payment (30-40-30)**

1. Unless otherwise agreed, the Delivery will be invoiced upon delivery and payable within 10 days of the date of invoice.
2. For larger projects, or if PS has justifiable basis, PS is entitled to claim the payment of 30% of the Contract Price upon order confirmation, 40% when PS submits written notice that the Delivery or the essential part of the Delivery is ready to dispatch, and 30% within 10 days following delivery. If relevant, PS is entitled to demand security for payment (guarantee etc.)
3. In case of agreed part delivery, the Buyer is obliged to pay a proportional share of the total Contract Price.
4. Payment is not considered to have been made until the payment is finally credited to PS' bank account. In case of late payments, interests will be charged on the amount overdue in accordance with the Norwegian act on interest in case of late payments.
5. Any complaints relating to an invoice must be submitted within 10 calendar days after the invoice date.
6. In case of delayed payment, PS is, following written notice to the Buyer, entitled to suspend the performance of its contractual obligations until payment has been made. If the Buyer fails to pay the overdue amount in full within 3 months, PS is entitled to terminate the contract immediately by written notice to the Buyer and – in addition to interest on late payment – claim compensation for the loss PS has suffered.

#### **10. Non-Possessory Security Interest**

1. PS retains the title to the Delivery until the Contract Price, inclusive of interests and costs, and any storage charge and insurance, is paid in full pursuant to the Norwegian act on non-possessory pledges. The Buyer is not entitled to resell or incorporate the Delivery.

#### **11. Defects. Guarantee. Limitation of Liability.**

1. PS is liable to the Buyer for defects in the Delivery. PS' liability does not include issues that originate from circumstances that arose after the risk passed to the Buyer. Only the following shall be deemed to constitute a defect: faults due to deficiencies, poor workmanship on the part of PS, insufficient design and incorrect presentation of technical data on the part of PS.
2. The Buyer shall immediately upon receipt inspect the Delivery for any defects. The Buyer will lose his right to claim any defects unless he issues a written notice of defects to PS within

reasonable time, and no later than 8 workdays after the defect was discovered, or should have been discovered. The notice must include a description of the defect.

3. PS' shall only be liable for defects that appear during a period of 12 months after the risk passed to the Buyer. If the Delivery is used more intensely than foreseeable to PS, this period will be shortened correspondingly.
4. Pumps from Hammelmann have the following guarantee periods, calculated from the time when the risk passed to the Buyer:
  - a. 24 months for 1 shift operation (max 7.5 t per day), or
  - b. 12 months for 2 shift operation (max 15 t per day), or
  - c. 6 months for 3 shift operation (max 22.5 t per day),However, never more than 2000 hours of operations.
5. PS is entitled to assess any alleged defects and make any repairs where the goods are located, or at another location that is suitable to PS. PS shall, at its own discretion, have the right to repair said defects, to deliver new goods or to grant the Buyer a reduction in the price, pursuant to clause 7 below. If PS is not given the opportunity of making such repair or new delivery within reasonable time, the Buyer will lose his right to make a claim for such defect against PS.
6. If dismantling and reinstallation of parts does not require special knowledge, PS may demand that the defective part is sent to PS or to a place as instructed by PS. The Buyer shall follow PS' instructions concerning the method of transport. In such case, PS has fulfilled its obligations in respect of the defective part upon delivery of a duly repaired or new part. If remedy of the defect requires intervention in other equipment than the Delivery, the Buyer shall be responsible for any works and costs caused thereby. For parts that are replaced or repaired, PS assumes the same obligations as it assumed for the original Delivery.
7. If PS does not want to repair or replace, PS shall instead pay the Buyer a reduction in the price, not exceeding 20% of the Contract Price.
8. PS is entitled to demand that defective goods or parts are returned to PS at the Buyer's expense and risk. Defective products/parts that are replaced become the property of PS.
9. If the Buyer has submitted a notice of defect, and it appears that no defect for which PS is responsible exists, PS is entitled to compensation for the works and costs incurred due to this notice of defect. The Buyer will be invoiced in accordance with PS' price list, as applicable from time to time.
10. In case of a substantial defect in the Delivery; If PS fails to fulfill its obligations with regard to remedy or price reduction, for which PS is responsible, within reasonable time, the Buyer may by written notice require PS to do so within a final time. If PS fails to fulfill its obligations within that time limit, the Buyer is entitled to terminate the contract with immediate effect. In case of such termination, the Buyer will be entitled to claim compensation for the direct loss he has suffered, however not exceeding 20% of the Contract Price.
11. The Buyer may only claim defects in the Delivery if the Buyer documents that the operating and maintenance instructions are adhered to and that the operation and maintenance have been carried out by qualified personnel.
12. PS' liability for defects does not include incorrect installation, incorrect adjustment, neglectful handling, incorrect storage, excessive load or unsuitable method of operations. PS is not liable for faults or defects due to modifications and repairs made by the Buyer or a third party for who PS carries no responsibility.

13. PS is not liable for personal injuries, material damages or environmental damages due to incorrect use of equipment, lack of training, failure to use protective equipment, lack of maintenance. PS has a right of recovery against the Buyer for any direct claims from the sufferer.
14. PS carries no liability for damage caused by the Delivery to real estate or chattels and the consequences of such damage, if the damage occurs when the Delivery is in the possession of the Buyer. The Buyer shall indemnify PS to the extent that liability to a third party is imposed on PS for such loss or damage as mentioned herein.
15. PS is not liable for defects resulting from incorrect information or incorrect measurements provided by the Buyer, materials obtained by the Buyer or structures stipulated or specified by the Buyer. PS does not check measurements or information provided by the Buyer as the basis for an offer.
16. To the extent that PS has submitted to the Buyer any guarantee regulations of sub-contractors, PS' liability for defects and delays is limited to the liability that follows from these guarantees.
17. The Buyer is under no circumstances entitled to compensation for lost profit, disruption of production, reduced operations or any form of consequential loss or indirect loss. This limitation does not apply in case of gross negligence or intent on the part of PS.
18. The Buyer may not claim any defects or remedies for defective performance other than those specified above, unless PS has acted with gross negligence or intent.
19. PS' total liability for the Delivery, including liability for delays, defects, guarantees and compensation, is in any case limited to 50% of the Contract Price inclusive of VAT.

## **12. Packaging and Used Materials**

1. Packaging will be charged to the Buyer at cost price and may not be returned to PS.
2. While performing service and maintenance contracts, PS is not liable for costs associated with the handling of used materials or waste.

## **13. Notices**

1. All notices, notices of defaults etc. in accordance with these Terms of Delivery shall be in writing, and they shall be submitted by post to the business address of the other party. Notices, notices of default etc. may also be submitted by e-mail, but need to be confirmed immediately by sending the original or a signed copy of the e-mail to the other party's business address by post.

## **14. Health, Safety and Environment**

1. The Buyer is obliged to use the equipment in accordance with the specified area of use and ensure that all personnel who is using the equipment have been provided with protective equipment and training in its correct use.

## **15. Confidentiality**

1. All confidential information that is disclosed to the parties as a result of the performance of the Delivery, shall be treated as confidential information and not disclosed to any third party without the prior written consent of the other party. PS is entitled to state the Buyer and the relevant purchase as a reference.

## **16. Choice of Law and Dispute Resolution**

1. The Terms of Delivery shall be subject to Norwegian law.

2. Any disputes between the parties shall be primarily settled through negotiations.
3. If the dispute has not been solved within 60 days after receipt of the claim from the other party, the dispute shall be referred to the ordinary courts of law, and the court venue shall be Drammen District Court.