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## **TERMS & CONDITIONS**

WHEREAS, VESCO-NM LLC hereby will be known as 'SELLER', the purchasing entity/person will be known as 'BUYER', and both shall be referred to as 'PARTY' and/or 'PARTIES'

**1. GENERAL.** Unless otherwise provided in Seller's written quotation or agreed to in writing by Seller, orders are accepted by Seller subject to these terms and conditions. In case of a conflict, inconsistency or addition not expressly accepted in writing by Seller, the terms and conditions of sale provided herein shall be considered as superseding the conflicting, inconsistent or additional terms stated in Buyer's purchase order, order form, contract or otherwise. The acceptance of an order will supersede all prior communications and constitute a complete and binding contract between Buyer and Seller, which contract cannot be modified or canceled without the prior written agreement of both parties.

**2. SHIPMENT.** Seller shall attempt to comply with, but will not guarantee, shipping date and loading and routing instructions. Seller reserves the right to allow or prorate shipments against all orders whenever, in its judgment, an oversold condition exists as to any particular product manufactured or sold by it. In the event of a default by Buyer, Seller may decline to make further shipments without waiving any of its rights under such order. If, despite such default, Seller elects to continue to make shipment, its action shall not constitute a waiver regarding or otherwise diminish Seller's legal remedies with respect to such default or any future default.

**3. TITLE & DELIVERY.** Buyer shall pay all freight duties and handling. Title and risk of loss or damage shall pass from Seller to Buyer upon the placement of the item purchased hereunder in good condition into the possession of a common carrier, such carrier acting as Buyer's agent. During all phases of shipment to the Buyer site and regardless of the shipping terms selected by Seller and Buyer, insurance shall be arranged by Seller. All claims for damages must be filed with the carrier.

**4. PRICES.** Irrespective of any prices quoted by Seller or listed on Buyer's order, an order is accepted only at the prices shown on the written quotation. Installation of utilities required for

equipment is not included in the specified price.

**5. PAYMENT TERMS.** Invoices are payable at the place set forth on the written quotation, purchase order, or the invoice. Any exchange charges, any charges for non-par clearance of checks or collection charges (including reasonable attorney's fees) will be paid by Buyer. Any amounts not paid when due will bear interest at a rate of 15% per annum or, if lower, the maximum rate permissible by law. All payments shall be made by Buyer without set-off or other deduction. Buyer grants to Seller a security interest in the products purchased hereunder to secure payment for those products. If requested by Seller, Buyer agrees to execute financing statements to perfect such security interest. Buyer grants Seller an irrevocable power of attorney to sign Buyer's name to such financing statements if necessary or convenient for the perfection of Seller's security interest.

Terms of payment are subject to change by Seller. If, in the judgment of Seller, the financial condition of Buyer does not justify continuation of production or shipment on the terms of payment originally specified, Seller may require full or partial payment in advance. In the event any proceeding is brought by or against Buyer under any bankruptcy or insolvency laws, Seller shall be entitled, in addition to any other remedies at law or in equity, to (i) stop or divert any shipment in transit, (ii) cancel any order then outstanding and (iii) receive reimbursement for its cancellation charges.

Each shipment shall be considered a separate independent transaction, and payment therefore shall be made accordingly. If for any reason Buyer is not prepared to accept delivery of goods, Seller may store the goods at Buyer's expense and risk in the name of Buyer, and such storage shall constitute shipment and delivery to Buyer.

**6. TAXES.** Quoted prices do not include federal, state or local excise, sales, use or similar taxes. Accordingly, in addition to the prices specified on the written quotation, the amount of any applicable excise, sales, use and/or similar taxes will appear as separate items on the invoice and will be paid by Buyer unless prior to shipment Seller receives an appropriate tax exemption certificate from Buyer.

**7. FORCE MAJEURE.** Neither party shall be liable for failure to perform occasioned by strikes, lockouts, labor difficulties, riots, inability or difficulty in obtaining or procuring supplies, labor or transportation, fires, storms, floods, earthquakes, explosions, accidents, acts of God, interference by civil or military authorities, whether legal or de facto, acts of the public enemy, war, rebellion, insurrection, sabotage, embargoes, orders given priority by any public authority or any other cause beyond the reasonable control of such party (such occurrences “force majeure events”). The party claiming the force majeure event shall promptly notify the other party in writing of its occurrence and shall undertake appropriate remedial measures to mitigate its impact.

**8. CANCELLATION.** In the event of cancellation by Buyer of any order (where a Purchase Order has been issued), Buyer shall pay Seller a Cancellation Penalty as follows. For orders cancelled more than 90 days prior to shipment, Buyer will compensate Seller 35% of Purchase Price. For order cancelled 61-90 days prior to shipment, Buyer will compensate Seller 50% of Purchase Price. For order cancelled 31-60 days prior to shipment, Buyer will compensate Seller 75% of Purchase Price. For order cancelled 0-30 days prior to shipment, Buyer will compensate Seller 100% of Purchase Price.

Higher cancellation charges, up to the full value of the order, may apply in the case of special, custom or modified equipment or parts. At Seller’s discretion, Seller may accept the return of parts, provided that (i) Buyer first receives Seller’s written authorization to return the parts and thereafter follows Seller’s shipping instructions, (ii) restocking charges in the amount of twenty percent (20%) of the original purchase price may be imposed by Seller, and (iii) returns are to be in the original packaging and in the original condition when delivered to Buyer.

**9. ASSIGNMENT.** Buyer shall not assign this order or any portion thereof without the prior written consent of Seller.

**10. WARRANTY.** Seller warrants to the original Buyer that new equipment will be free of defects in material and workmanship for a period of one year commencing on the earlier of (x) final acceptance, (y) equipment demonstration sign-off, if applicable or (z) 90 days from shipping. This warranty covers the cost of parts and labor (including, where applicable, field service labor



and travel required to restore the equipment to normal operation), and includes parts provided after initial shipment, if any, that may be required in order to achieve final acceptance.

Seller warrants to the original Buyer that replacement or repaired parts provided under the original warranty will be new or of equal functional quality and warranted for the remaining portion of the original warranty or 90 days from shipping, whichever is longer.

Seller's obligation under these warranties is limited to repairing or replacing, at Seller's option, defective parts or software. These services will be performed, at Seller's option, at either Seller's facility or Buyer's business location.

The warranty obligation of Seller shall not extend to defects that do not impair service or to provide warranty service beyond normal business hours, Monday through Friday (excluding Seller holidays). No claim will be allowed for any defect unless Seller shall have received notice of the defect within thirty days following its discovery by Buyer. Within thirty days of Buyer's receipt of equipment, Seller must receive notice of any defect which Buyer could have discovered by prompt inspection.

Expendable items, including, but not limited to, filters, lamps, wafer carriers, pilot lights, filaments, fuses, mechanical pump belts, V-belts, wafer transport belts, pump fluids, O-rings and seals ARE SPECIFICALLY EXCLUDED FROM THE FOREGOING WARRANTIES. Seller's sole warranty with respect to expendable items is that at the time of delivery, the form, fit and function of the expendable item shall be suitable for use with Seller's equipment. Replacement and repaired parts provided by Seller which are not covered by the original equipment warranty shall be free of defects in materials and workmanship for a period of ninety (90) days from shipping.

All used equipment is sold 'AS IS, WHERE IS,' WITHOUT ANY WARRANTY, EXPRESS OR IMPLIED. With the exception of manufacturing defects, regular maintenance on pumps or other components is excluded from this warranty.

Specifically excluded from this warranty is all stand-alone computer and data storage equipment not manufactured by Seller (such as computers, monitors, printers and printers). Such

equipment will carry only the original manufacturer's warranty.

Seller assumes no liability under the above warranties for equipment or system failures resulting from

(1) abuse, misuse, modification or mishandling; (2) damage due to forces external to the machine including, but not limited to, acts of God, flooding, power surges, power failures, defective electrical work, transportation, foreign equipment/attachments, or utilities or services such as gas; (3) the use of parts, expendable items, or labor not provided by Seller or authorized for use by Seller; (4) improper operation or maintenance or (5) failure to perform preventive maintenance in accordance with Seller's recommendations (including keeping an accurate log of preventive maintenance). In addition, this warranty does not apply if any equipment or part has been modified without the written permission of Seller or if any Seller serial number has been removed or defaced.

These warranties are for the benefit of the original Buyer only and are not transferable. No one is authorized to extend or alter these warranties on Seller's behalf without the written authorization of Seller.

**11. LIMITATION OF LIABILITY.** Seller shall not be liable for consequential damages, for anticipated or lost profits, incidental, indirect, special or punitive damages, loss of time, loss of use, or other losses, even if advised of the possibility of such damages, incurred by Buyer or any third party in connection with the equipment or services provided by Seller. In no event will Seller's liability in connection with an item of equipment or a particular service provided by Seller exceed the amounts paid to Seller by Buyer for such item of equipment or particular service.

**12. NONSOLICITATION.** Buyer agrees not to solicit the employment of any employee of Seller who has come into contact with Buyer in connection with the products and/or services provided to Buyer hereunder.

**13. COMPLIANCE WITH LAWS.** All quotations by Seller and all purchase orders are subject to compliance with all applicable laws and regulations. Buyer acknowledges that Seller's products and related technical information are subject to export control regulations of the United States

and other foreign governments (“Export Control Laws”). Buyer agrees to take all steps necessary to comply with applicable Export Control Laws, U.S. anti-boycott laws and the related policies and procedures of Seller as in effect from time to time. Buyer also agrees to assist Seller in obtaining export, import and other regulatory approvals that may be necessary or appropriate in connection with the performance of the transactions hereunder.

**14. APPLICABLE LAW.** The contract created hereby shall be interpreted and construed under the laws of the State of New Mexico, without regard to the choice of law provisions thereof and not including the U.N. Convention on Contracts for the International Sale of Goods, if otherwise applicable. Some jurisdictions do not allow the exclusion or limitation of implied warranties or liability for incidental or consequential damages, so the above limitation or exclusion may not apply to Buyer. Seller’s warranty gives Buyer specific legal rights, and Buyer may have other rights which vary from jurisdiction to jurisdiction.