

**PUMPS VALVES & EQUIPMENT INC.**  
**DBA, THE SCRUGGS COMPANY**  
**TERMS AND CONDITIONS OF SALE**

**NOTE: These Terms and Conditions of Sale control the rights and responsibilities of the parties in connection with goods and/or services sold to any customer or purchaser of goods or services hereunder (hereinafter, "Buyer") by Pumps Valves & Equipment, Inc. DBA, The Scruggs Company and its affiliates (individually and/or collectively "Seller"). Please read this document carefully because of its significant legal consequences.**

**1. ACCEPTANCE:** Acceptance by Seller of Buyer's order or proposal is expressly made conditional on assent to these Terms and Condition of Sale, either by written acknowledgement or by conduct by Buyer that recognizes the existence and controlling nature of these Terms and Conditions of Sale.

**2. FORM OF CONTRACT AND NO WAIVER:** Seller will not be deemed to have accepted any proposal or sales order through course of dealing, performance, implied consent, or waiver. Specifically, but without limitation, Seller's (i) supplying products or performing services in response to Buyer's purchase order or proposal, and/or (ii) failing to complain of Buyer's non-compliance with these Terms and Conditions of Sale or the presence of any conflicting terms and conditions in any other purchase order or similar document, and/or (iii) accepting payment for products or services, shall not be construed as acceptance of any terms and conditions proposed by Buyer. No attempted modification by Buyer of these Terms and Conditions of Sale will be effective against Seller unless expressly accepted in a writing signed by Seller's competent authority with the express authority of Seller to make such agreements.

**3. CONFLICTING PROVISIONS VOID:** Seller hereby objects to and rejects any terms and conditions included in Buyer's purchase order or other writing or modification that conflict with these Terms and Conditions of Sale. Any inconsistent terms and conditions contained in Buyer's purchase order, terms and conditions, or any other writing that represents Buyer's offer are not a part of the agreement between Seller and Buyer and shall have no effect.

**4. PAYMENT:** Payment terms are net cash thirty (30) days from the date of Seller's invoice. Seller at its sole discretion reserves the right to require progress payments or payment in advance. If payment is not made when due, the unpaid balance will be subject to a finance charge of 1 1/2% of the unpaid balance per month or at the highest interest rate allowed by law, whichever is less. The amount of all finance charges will be added to the balance owed to Seller. If Buyer fails to pay any invoice when due, or if the financial condition or credit of Buyer becomes unsatisfactory to Seller, Seller, at its sole discretion and without affecting any other lawful remedy, may change the terms of payment or suspend work and further deliveries, or both, until Buyer provides security or other assurances of performance as demanded by Seller. In the event Seller institutes legal or collection action against Buyer for non-payment, Buyer shall be liable to Seller for all reasonable costs and attorney's fees incurred by Seller in connection therewith. In the event of a dispute between Seller and Buyer regarding any separate sale(s), purchase(s), project(s), or service(s), Buyer shall not be entitled to withhold payments due Seller as a setoff for claims based on separate sale(s), purchase(s), project(s), or service(s).

**5. LIMITED WARRANTY:** Subject to the limitations contained below, Seller warrants that services performed by Seller will be free from defects in workmanship under normal care and use until the expiration of the applicable warranty periods hereafter set forth. Said services are warranted for a period of ninety (90) days from the date of services. If Buyer discovers any warranty defects and notifies Seller thereof in writing and during the applicable warranty period, Seller shall, at its sole discretion, promptly correct any errors that are found by the Seller in the services or refund the purchase price of the defective services. All replacements or repairs necessitated by inadequate maintenance, normal wear and usage, unsuitable environmental conditions, accident, misuse, or by improper installation, modification, repair, storage, or handling, or any other cause not the fault of Seller, are not covered by this limited warranty, and shall be at Buyer's expense. Seller shall not be obligated to pay any costs or charges incurred by Buyer or any other party except as may be agreed upon in writing and in advance by an authorized representative of Seller. All costs of transportation and time and expenses of Seller's personnel for site travel and diagnosis under this warranty clause will be borne by Buyer. Warranty services rendered during the warranty period shall be warranted for the remainder of the original warranty period. This limited warranty is the sole warranty made by Seller and can be amended only in writing signed by an authorized representative of Seller.

Seller is not a manufacturer and therefore does not warrant any goods that it sells. Goods or services purchased by Seller from a third party for resale to Buyer ("Resale Goods/Services") shall carry only the warranty extended by the original manufacturer or service provider. Buyer agrees that Seller has no liability for Resale Goods/Services other than making a reasonable commercial effort to arrange for procurement and shipping of the Resale Goods/Services. **OTHER THAN AS EXPRESSED ABOVE, THERE ARE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, AT LAW, BY CONTRACT, OR OTHERWISE, AS TO THE MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE, OR ANY OTHER MATTER WITH RESPECT TO ANY OF THE GOODS OR SERVICES.**

**6. LIMITATION OF REMEDY AND LIABILITY:** In no event, regardless of the form of the claim or cause of action (including but not limited to claims based in contract, patent or trademark infringement, negligence, strict liability, other tort, or otherwise), shall Seller's liability to Buyer and/or its affiliates exceed the contract price. The parties agree that in no event shall either party's liability to the other and/or their affiliates extend to include incidental, consequential, punitive, or exemplary damages. The term "consequential damages" shall include, but not be limited to, lost or deferred production, loss of anticipated profits, loss of use, loss of revenue, and cost of capital.

**7. DELIVERY:** Seller's obligation is to deliver the goods F.O.B. Seller's warehouse, place of manufacture, or other place from which the goods are actually shipped within the U.S.A., at which point risk of loss shall pass to Buyer. Freight will be prepaid and added to invoice unless otherwise agreed to by Seller in writing. Delivery dates given to Buyer in any manner are approximate. Seller will not be liable for failure to make delivery or delay in making delivery that directly or indirectly results from or is contributed to by any cause beyond Seller's reasonable control, including but not limited to: fire, flood or other acts of God; strikes or other labor disagreements; accidents; acts or requirements of government or civil authorities; riot; war; embargo; shortages of labor, material or energy; delays in transportation; failures or delays by subcontractors or suppliers; or necessary changes in production or shipment schedules. In the event of such delay, Seller, at its sole discretion, will have the right to apportion available supplies among its customers, including Buyer, in any manner that Seller determines, and any delivery date will be postponed for a period of time equal to the delay. If shipments are held at Seller's premises at request of Buyer, invoices will be rendered for all completed goods as though actually shipped, and Buyer will also pay Seller for all extra expenses incurred.

**8. CANCELLATION BY BUYER:** Buyer may cancel its order, or any part of it, by sending written notice of cancellation to Seller and by paying Seller a reasonable cancellation fee. The reasonable cancellation fee will be determined by Seller and will reflect, among other factors: the expenses already incurred, other commitments made by Seller, sales and administrative overhead, and profits. Goods may not be returned without Seller's prior written consent. Restocking charges may be assessed at the sole discretion of Seller.

**9. PRICES:** Unless otherwise specified by Seller, Seller's prices for the goods or services shall remain in effect for thirty (30) days from the date of Seller's quotation or acceptance of the order for the goods, whichever occurs first; provided an unconditional, complete authorization for the immediate procurement and shipment of the goods pursuant to Seller's standard invoicing procedures is received and accepted by the Seller from the Buyer within such time period. After such thirty (30) day period, Seller shall have the right to revise the price of the goods or services up to Seller's price in effect for the goods at the time the order is released by Buyer and Seller prior to shipment. The price for any Resale Goods or Services shall be Seller's price in effect at the time of shipment to Buyer.

**10. PATENTS:** Seller warrants that to the best of its knowledge that any goods sold by Seller do not infringe on patent rights of other persons. However, seller is not a manufacturer and therefore assumes no responsibility if the manufacture and sale of goods specified by Buyer are an infringement of patent rights of other persons.

**11. INSTALLATION:** All goods shall be installed by and at the expense of the Buyer.

**12. TAXES:** Buyer is responsible for any taxes, charges or other fees presently or subsequently imposed by any law, order, regulation or ordinance of the Federal, State or Municipal governments for production, sale, use, transportation, delivery or servicing of the products sold hereby. The foregoing shall not apply to taxes based upon Seller's net income.

**13. SOFTWARE AND FIRMWARE:** Notwithstanding any other provision herein to the contrary, Seller or applicable third party owner shall retain all rights of ownership and title in its respective firmware and software, including all copyrights relating to such firmware and software and all copies of such firmware and software. Except as otherwise provided herein, Buyer is hereby granted a nonexclusive, royalty free license to use firmware and software, and copies of firmware and software, incorporated into the Goods only in conjunction with such Goods and only at the Buyer's plant site where the Goods are first used. Buyer's use of certain firmware (as specified by Seller) and all other software shall be governed exclusively by Seller's and/or third party owner's applicable license terms.

**14. ASSIGNMENT:** Buyer shall not (by operation of law or otherwise) assign its rights or delegate its performance hereunder without the prior written consent of Seller, and any attempted assignment or delegation without such consent shall be void.

**15. GOVERNING LAW:** All sales shall be governed by and construed for all purposes, including, without limitation, Seller's obligations or liabilities respecting its products, according to the laws of the State of Texas.

**16. ENTIRE AGREEMENT:** These Terms and Conditions of Sale (and any of Seller's purchase or work orders in connection therewith) constitute a complete and exclusive statement of the agreement between Seller and Buyer. There are no understandings, agreements or representations, express or implied, not specified in the Agreement. These Terms and Conditions of Sale control over any conflicting provision in any purchase or work order issued by Buyer. There are no other promises, conditions, understandings, representations or warranties. All provisions are severable, and if any of these Terms and Conditions of Sale are found by a court of competent jurisdiction to be unenforceable, then the Terms and Conditions of Sale shall be deemed modified only to the extent necessary to make them enforceable.

**17. EXPORT CONTROLS STATEMENT:** The items that are sold and shipped to Buyer pursuant to any order/invoice are subject to the export laws of the United States and perhaps other countries as well. Seller is committed to compliance with all relevant export control laws. Buyer shall cooperate with any U.S. and foreign regulatory requirements or any government inquiry, audit, investigation or other inquiry, upon notice to Buyer by Seller or any relevant government or government agency, department, or division. If Buyer intends to resell or re-export these products to another country (ies), Buyer is hereby notified and aware that these products are sold and/or exported by Seller in accordance with U.S. export control laws. Buyer is hereby notified and aware that compliance with these laws is mandatory on all parties anywhere in the world under U.S. law and diversion of products or acts contrary to relevant U.S. foreign export laws is prohibited and may subject Buyer to significant penalties and other sanctions. Moreover, Buyer shall release, defend, indemnify and hold Seller harmless from and against any liability or obligation (including, but not limited to, penalties, other sanctions, and defense costs) arising from or in any way connected to Buyer's failure to comply with such laws or to cooperate with such government entities.

**18. CREDIT BALANCES:** Buyer agrees that any credit balances issued will be applied within one (1) year of its issuance. IF NOT APPLIED OR REQUESTED WITHIN ONE (1) YEAR, ANY BALANCE REMAINING WILL BE SUBJECT TO CANCELLATION, AND SELLER SHALL HAVE NO FURTHER LIABILITY.

**19. GENERAL PROVISIONS:** (a) No action, regardless of form, arising out of transactions under the Agreement, may be brought by either party more than two (2) years after the cause of action has accrued. (b) UNLESS OTHERWISE SPECIFICALLY PROVIDED IN SELLER'S QUOTATION, GOODS AND SERVICES HEREUNDER ARE NOT INTENDED FOR USE IN ANY NUCLEAR OR NUCLEAR RELATED APPLICATIONS. Buyer (i) accepts Goods and Services in accordance with the restriction set forth in the immediately preceding sentence, (ii) agrees to communicate such restriction in writing to any and all subsequent purchasers or users and (iii) agrees to defend, indemnify and hold harmless Seller from any and all claims, losses, liabilities, suits, judgments and damages, including incidental and consequential damages, arising from use of Goods and Services in any nuclear or nuclear related applications, whether the cause of action be based in tort, contract or otherwise, including allegations that the Seller's liability is based on negligence or strict liability. (c) The 1980 United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement. (d) Seller specifically objects to the application of any Federal Acquisition Regulation ("FAR") provision or clause to the Agreement.

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