

Warranty and Terms & Conditions of Sale

1. Limited Materials and Workmanship Warranty

- a. The following Materials and Workmanship Warranty covers only the equipment, systems and/or services supplied by PES, and or by a supplier represented by PES (Supplier). In the latter case, the Warranty provided by Supplier will be transferred fully to the Buyer. The Warranty of the Supplier becomes superior to those provided by PES.
- b. This warranty does not cover pre-owned equipment supplied by PES or others. All pre-owned equipment is sold AS-IS.
- c. If, within 18 months after the date of shipment or one year after start up, whichever occurs first, any Equipment furnished by PES or Supplier proves to be defective in material or workmanship upon examination by PES, PES at its sole discretion, will repair the defective Equipment or supply identical or substantially similar replacement Equipment F.O.B. point of manufacture. Any replacement Equipment will be warranted against defects in material or workmanship for the unexpired portion of the original warranty period, applicable to the particular Equipment. For the provisions of this paragraph to apply, it shall be a condition precedent that Buyer must submit a notice of defect to PES, in writing, within 10 working days after discovering the defect.
- d. PES will not be responsible for any costs associated with the removal, installation, or re-installation of any equipment or items not supplied by PES or Supplier, where such removal, installation, or reinstallation is required to repair or replace any defective Equipment supplied by PES or Supplier.
- e. This warranty will be voided if:
 - The Equipment has not been stored, installed, maintained or operated in accordance with accepted industrial practice or any specific instructions provided by PES;
 - The Equipment has been subjected to any accident, misapplication, environmental contaminant, corrosion, improper passivation, abuse or misuse;
 - Buyer has used, repaired, or modified the Equipment after discovery of the defect without PES' prior written consent;
 - Buyer refuses to permit PES to examine the Equipment and operating data to determine the nature of the defect claimed; or
 - Buyer fails to meet its obligations under the following paragraph.

2. Obligations of Buyer

- a. Buyer is solely responsible for identifying and defining all processes and mechanical considerations, which may affect the sizing, selection, performance, reliability or operation of the Goods furnished by PES. PES' quotation and any sale is based upon the covenant by Buyer that all the information and data provided to PES by Buyer is full, complete, accurate and does not contain information which is misleading.
- b. Except as provided in this warranty agreement, all warranties, undertakings, conditions, or representations (whether innocent or negligent), including without limitation those with respect to merchantability, fitness for any particular purpose, quality or durability, whether expressed, implied, statutory or arising from a course of dealing, usage of the trade, or otherwise with respect to any equipment or order, are expressly excluded. No express or implied warranty is given as to the capacity, efficiency, or performance of any equipment, except as may be provided in a written agreement signed by PES.

3. Limitation of Remedies and Liabilities

- a. Buyer's exclusive remedies are specifically limited to the repair or replacement of the defective Equipment by PES and are exclusive of all other remedies.
- b. PES' total liability is limited to the price allocatable to the Equipment determined defective and in no event will PES' cumulative liability be in excess of the total sales order price, whether arising under warranty, contract, negligence, strict liability, indemnification, or any other cause or combination of causes whatsoever.
- c. Except as otherwise provided in this document, PES will not be liable for general, special, direct, indirect, incidental, or consequential damages, including, without limitation, loss of profits, revenues, or other economic losses, whether arising under warranty, contract, negligence (including negligent misrepresentation), strict liability, indemnification, or any other cause or combination of causes, including any theories of concurrent liability arising from a duty of care by operation of law or otherwise.

4. Other Terms & Conditions

- a. **TECHNICAL ASSISTANCE.** It is expressly understood that any technical assistance or installation services furnished by PES will be addressed in a separate written purchase order/agreement between the parties. In no event will any technical assistance or installation provided by PES without such written purchase order/agreement constitute a waiver of this condition.
- b. **PATENTS.** PES will defend and indemnify Buyer from any claim, suit or proceeding brought against Buyer based on an allegation that the Equipment as manufactured and furnished by PES and used in the manner for which it was intended and sold to Buyer, constitutes an infringement of any United States patent, if PES is notified promptly in writing and given authority, information, and assistance, for the defense of such claim, suit or proceeding. All aspects of the defense and settlement of any such claim, suit or proceeding shall be within PES' sole discretion. Buyer remains solely responsible for its own costs, including all fees and expenses of its own counsel, if any, or its personnel, incurred in conjunction with the defense of such claim, suit or proceeding. Should it be held that the Equipment constitutes an infringement and the use of the Equipment is enjoined, PES will, in its sole discretion and at its own expense, either procure for Buyer the right to continue using the Equipment, or replace the Equipment with non-infringing goods, or modify the Equipment to become non-infringing. This indemnification does not apply to any liability for infringement (i) of any method patent where the Equipment is used with other apparatus' for carrying out a process resulting in a combination of elements which is deemed to infringe a method patent or patent directed to a combination of elements, (ii) the Equipment is modified by Buyer, or (iii) the Equipment is used by Buyer in a manner different than the use communicated to and understood by PES at the time the Equipment was sold to Buyer and such use constitutes infringement. PES' obligations under this indemnity including all of its costs associated with the defense of any such suit or proceeding shall in no event exceed the purchase price of the infringing Equipment. Buyer will indemnify PES from any suit or proceeding brought against PES by any third party based on claims resulting from exceptions (i), (ii) and (iii) as stated above, or with respect to claims of infringement where the Equipment was designed and manufactured in accordance with the design or specifications furnished or required by Buyer.
- c. **BACKCHARGES.** No back charges will be paid or allowed by PES unless PES is notified in writing of any Equipment defect claim or omission pursuant to paragraph 1.b above. All back charges must be provided in writing by Buyer and accepted in writing by PES, before any Equipment is repaired, replaced or altered in any manner by Buyer or its designee, or returned to PES.
- d. **CANCELLATION FEE.** Buyer may not cancel any order except upon written notice and payment to PES of all reasonable costs arising from the cancellation, plus a cancellation fee of 25% of all costs born to the date of cancellation. In any event the cancellation fee may not be less than \$1,000.
- e. **FORCE MAJEURE.** PES or Buyer will be excused from their respective obligations in the event and to the extent that their respective performance is delayed or prevented (a) by any circumstance reasonably beyond their control or (b) by fire, explosion, breakdown of machinery or equipment, plant shutdown, strikes or other labor disputes, riots or other civil disturbances, or voluntary or involuntary compliance with any law, order, regulation, recommendation or request of any governmental authority. In addition, PES will be excused in the event of its inability to obtain materials necessary for manufacture of the equipment, or total or partial failure of any of its usual means of transportation of the Equipment.
- f. **ASSIGNABILITY.** No claim against PES arising directly or indirectly out of or in connection with the Equipment furnished by PES to Buyer may be assigned by Buyer or by operation of law without the prior written approval of PES.
- g. **SEVERABILITY.** Should any of the provisions contained in this warranty agreement be invalidated, the remaining provisions shall remain in force and effect.
- h. **WAIVER.** Failure by PES to enforce any provision contained herein, in any particular instance will not constitute a waiver of or preclude subsequent enforcement of any of these provisions.
- i. **APPLICABLE LAW.** The agreement of the parties shall be construed and enforced in accordance with the laws of the State of Idaho, and venue for any disputes shall be in Coeur d'Alene, Idaho.

5. Specific Condition Relating to Acoustic Cleaning Systems

No Warranty is provided for any type of damage to collateral equipment that may be caused by acoustic waves generated by the Acoustic Cleaning System.