

PHONE: 610-376-9738  
FAX: 610-376-0471

www.hafers.com



34 Angstadt Lane, Birdsboro, Pa. 19508  
Hafer Petroleum Equipment, LTD.

### Terms and Conditions

**ACCEPTANCE** – This proposal, when accepted by the Buyer within the said period set out in this agreement, will constitute a bona fide contract between us (Hafer Petroleum Equipment); subject to all terms and conditions to follow and to the approval of the Seller's representative (credit manager, sales manager, executive officer, etc.). It is expressly agreed that there are no promises, agreements or understandings, oral or written, not specified in this contract. No waiver, alteration or modification of the terms and conditions of this contract shall be binding unless in writing and signed by the Seller's (sales manager, executive officer, etc.).

**PRICES** – Prices quoted are for acceptance within 30 days and, unless otherwise specified, are subject to change or withdrawal without notice after that date. Due to the uncertainty of the prices of major components of this proposal, prices quoted are those currently in effect but may be significantly higher at time of delivery. Accordingly, such increases will be added to the contract amount. If increases are required, notification shall be given to the Buyer for approval or cancellation of this contract. The Buyer may order changes in the work or the installation of additional equipment and the contract sum shall be increased accordingly. All such orders and increases shall be in writing, and the Buyer shall consent in writing to the extra charges before the Seller shall begin any changes or additional work.

**RELATED WORK** – Labor, materials and outside services for blacktop, water and sewer work are not included in contract unless specified. Anchors, foundations and cathodic protection are not included in this contract unless specified. If concrete slab is placed and finished under this contract, the Seller is not responsible for the slab if not protected from traffic by the Buyer for 15 days. In case of winter work, frost removal is not included in this contract unless specified.

**DELIVERY** – Delivery promises are contingent upon fires, strikes, accidents, lockout, work stoppages, war, riot, availability of materials, acts of God, governmental action or regulation, or from other causes beyond the Seller's control. The Seller shall have no liability for any delay, failure to delivery, loss or damage which might result therefrom. The Seller will endeavor to maintain schedules, but cannot guarantee to do so. Time for delivery shall not be of the essence of this contract. The Seller is not liable for any loss or damages resulting from delay, howsoever caused or occasioned. Delivery, unless otherwise specified, does not include unloading.

**DELAYS** – Due to the increasing cost of labor and materials, any delay of progress, not under the Seller's direct control and not due to causes not within the control of the parties, will result in an additional charge to the Buyer.

**TERMS** – Terms are Net Fifteen (15) Days on completion of all services or installation work in total, unless otherwise specified. Terms on equipment, unless otherwise specified, are Net Fifteen (15) Days from date of delivery in total. Delivery to our plant for purposes of convenience or coordination shall be considered "Delivery" for billing purposes. A deposit will be required on all installation contracts. The Seller may require progress payments, covering the cost of materials and the cost of labor. The cost of labor will be predicated upon the percentage of completion of the contract. The Buyer will be sent an invoice monthly for the value of materials stored and/or for the value of work completed. The Buyer shall pay for the same within ten (10) days after deducting 10% retainage. The 10% retainage and the balance of other monies due shall be paid upon completion. In the event the Buyer fails to pay any progress payment within ten (10) days of the date of the Seller's invoice, the Seller may, upon two (2) days written notice to the Buyer, suspend work, terminate the contract, or exercise any other rights it may have without incurring any liability whatsoever to the Buyer. Such rights include, but are not limited to, recovering from the Buyer payment for work executed and for any proven loss sustained upon any materials, equipment, tools and the construction equipment and machinery.

**INTEREST AND ATTORNEY'S FEES** – The Seller reserves the right to charge the Buyer 1-1/2% per month on past due balances. This represents an annual interest rate of 18%. The Buyer agrees to pay the Seller reasonable attorney's fees and court costs if its account is placed in the hands of an attorney for collection.

**MINIMUM NET INVOICE BILLING** – All orders are subject to a minimum net invoice billing of \$10.00 exclusive of non-product charges such as postage, freight, taxes, etc.

**INSTALLATION** – It is understood that the Buyer shall provide the Seller with full access to the job site and the installation location during the installation period, and the Seller shall not be held responsible for any delays caused by the Buyer's failure to so provide access. The Seller shall furnish the necessary materials and perform all the work for the installation of said equipment. The Seller shall install the equipment at the location to be designated by the Buyer on the job site. The installation shall be performed by the Seller in the Seller's customary manner in accordance with its normal procedures. It is understood that the Buyer has submitted no specifications regarding the manner of the performance of this agreement, unless otherwise specifically stated in the contract.

**EXCAVATING** – Excavation quotations are based on normal soil conditions. In the event any underground structures, cables, conduit, debris, rock, water, running sand, concrete foundations, poles, sewer lines, manholes, or similar non-visible obstructions are encountered, destroyed or damaged during the performance of the contract, the Seller shall not be held responsible. Should any non-visible obstructions or unforeseen underground conditions be encountered, removed or destroyed, and if additional work is necessary to either preserve or destroy these unforeseen obstacles and to complete the excavation such extra work shall be at the Buyer's expense. Mechanical compaction of backfill is not included in the contract unless specified. Finished grades are to be established and verified by the Buyer. This expense shall in no case exceed the existing rate scale for labor and materials had the quotation been based on labor and materials. If it becomes necessary for the Seller to abandon the site of excavation, any expense incurred for work performed and additional work necessary to complete the contract shall be borne by the Buyer. This expense shall in no case exceed the existing rate scale for labor and materials had the quotation been based on labor and materials.

**FLOATING TANKS** – The Buyer will be responsible for filling all underground storage tanks with product for ballast immediately upon setting tanks in excavations. The Seller shall notify the Buyer when product will be needed. The Seller shall not be responsible for the contamination or loss of product used for ballast. In the event tank is not filled as requested, the Buyer accepts responsibility for damage that may occur from tank floating because of water, and accepts the expense for equipment, labor and material to reinstall tank. If product is not available, tank shall be filled with water. There is an additional charge for the water and removing the water.

**SPECIAL FEES** – Unless otherwise stated, no provision is made in this contract for special fees, permits, licenses, etc. If Seller is requested to furnish same, such charges will be added to the contract price. The Buyer shall furnish all surveys necessary for proper installation. Easements for permanent structures or permanent changes in existing facilities shall be secured and paid for by the Buyer. The Seller will furnish State Fire Marshal's Permit, if required.

**DEFAULT BY SELLER** – If the Seller defaults, neglects or fails to perform any provision of this contract, the Buyer may without prejudice to any other remedy it may have, after 30 days written notice to the Seller, make good such deficiencies and deduct the cost thereof from the payment then or thereafter due the Seller. The Buyer may finish the work specified in this contract by whatever method Buyer may deem expedient. If the unpaid balance of the contract exceeds the cost of finishing the work, such excess shall be paid to the Seller, but if such expense exceeds the unpaid balance, the Seller shall pay the difference to the Buyer in full satisfaction of all claims for liquidated damages. Seller assumes no responsibility for, nor shall it be obligated to pay, claims for consequential damages.

**EXCUSED DEFAULT** – It is mutually agreed by the parties hereto that neither party shall be held responsible for any losses resulting if the fulfillment of any terms or provisions of this agreement shall be delayed or prevented by revolution or other disorders, wars, acts of enemies, strikes, fires, floods, acts of God, acts of governmental authorities, or without limiting the foregoing, by any other cause not within the control of the party whose performance is interfered with, and which by the exercise of reasonable diligence, said party was unable to prevent, whether or not the class of clauses hereinabove enumerated.

**WARRANTY** – The Seller makes no warranty, express or implied, whether of merchantability, fitness for purpose and any and all other representations to the Buyer except as follows: (a) if the installation is supplied by the Seller, the Seller warrants that the installation will be suitable for the purposes for which it was designed by the Seller and that all work shall be guaranteed free of defects of workmanship for a period of one (1) year from date of completion; (b) if the finished part or component sold is not manufactured by the Seller, the Seller makes no warranties whatsoever as to such article. If such part or component is covered by a manufacturer's or supplier's warranty and such warranty may be extended to the Buyer, then such part or component is warranted only to the extent Seller is able to enforce such warranty. In enforcing such warranty it is understood the Seller shall have no obligation to initiate litigation unless the Buyer undertakes to pay all costs and expenses therefore, including but not limited to attorney's fees, and indemnifies the Seller against any liabilities to the Seller's vendors arising out of such litigation.

**INDEMNITY CLAUSE** – The Buyer agrees to hold the Seller safe and harmless against all loss and from all liability, claims demands or suits for: (a) bodily injury and property damage arising out of the work undertaken by the Seller, its employees, agents or its subcontractors and arising out of any other operation, no matter by whom, performed for and on behalf of the Buyer, whether or not due in whole or in part to conditions, acts or omissions done or permitted by Buyer or Seller, except for such liability as is covered by the Seller's Workmen's Compensation Insurance and (b) alleged or actual infringement of any letters patent, copyrights or trademarks, either domestic or foreign, arising from the manufacture and/or sale of goods herein in accordance with patterns, designs, specifications, drawings, directions or technical information of data furnished to the Seller by the Buyer.

**TITLE AND RISK OF LOSS** – Full risk of loss (including transportation delays and losses) shall pass to the Buyer upon delivery of products/equipment to the F.O.B. point. Title to and the right to possess each item of equipment is and shall remain vested in the Seller until the Buyer pays the entire purchase price. In the event the Buyer does not promptly pay the purchase price according to the terms hereof, or in the event the Buyer's credit or financial responsibility becomes impaired or unsatisfactory, as the Seller may determine, or in the event the Buyer fails to perform any condition or obligation, the Seller may, at its election, demand immediate payment in cash before making delivery, suspend delivery and terminate this contract, or mature the entire unpaid portion of the purchase price, in each event without notice and without any liability whatsoever to the Buyer. The Buyer's bankruptcy, receivership, or failure to pay any amount when due shall, at the option of the Seller, mature the entire unpaid portion of the purchase price without notice and the Seller may declare this contract terminated, enter the premises, and retake possession of said property, whereupon all payments made by the Buyer will be forfeited as liquidated damages, rentals and costs. The Buyer shall effect and maintain term fire, theft and other casualty insurance including vandalism during the installation in amounts necessary to cover any losses resulting to the Seller for any losses or damage at the job site to the Seller's construction equipment or the equipment to be installed pursuant to this agreement, except any such loss or damage which is caused by the Seller's employees or agents. It is specifically understood that the Buyer shall be responsible for any such loss or damage which is not caused by the Seller, its employees or agents.

**TAXES** – Prices quoted on equipment and repair parts are subject to all Federal, State and Local taxes which may be in effect or which may be imposed prior to the actual shipment of materials and equipment. No Federal, State or Local taxes are included in this contract unless specifically so stated, and will be extra if applicable.

**STATE LAW APPLIES** – All of the provisions hereof and of all resulting order are to be governed and construed according to the laws of the State of Pennsylvania. Any provision prohibited by the laws of this State shall be ineffective to the extent of such provision without invalidating or modifying the remaining provisions of this contract.

**LIEN RIGHTS** – To protect all parties, a mechanic's lien will be automatically filed where payment is not received according to the terms stated in this contract.

**ERRORS** – Stenographic, clerical and mathematical errors made by the Seller in quotation, acknowledgements or invoices are subject to correction. Claims for shortages, defective goods, errors and allowances must be made within 10 days from date of invoice.

**ASSIGNABILITY** – This contract and all rights thereunder may be assigned and thereupon the assignee shall have all the rights and remedies of the assignor.

**RETURNED GOODS** – No goods may be returned without the Seller's written permission. If such authorization is given, unless otherwise noted in the authorization, transportation charges must be prepaid by the Buyer. All goods authorized for return are subject to the Seller's inspection and acceptance. Merchandise must be returned within 10 days of Buyer's receipt of written authorization and must be accompanied by the invoice number and/or a copy of the sales receipt. All material returned that is a non-stocking item will be subject to a 35% handling charge. All stocking items will be subject to a 15% restocking charge. It is understood that no goods can be returned for credit without adhering to the above conditions.

