

**EXCEPT AS OTHERWISE AGREED IN WRITING, THESE TERMS AND CONDITIONS GOVERN ALL OUR CONTRACTS TO THE EXCLUSION OF OTHER TERMS AND CONDITIONS. OUR QUOTATIONS AND ESTIMATES ARE NOT OFFERS CAPABLE OF ACCEPTANCE BY YOU, AND ANY ORDER PLACED BY YOU WILL ONLY BE ACCEPTED BY OUR WRITTEN CONFIRMATION OF SUCH ORDER.**

## GENERAL PROVISIONS

1. The definition of terms used, interpretation of this agreement and rights of parties hereto shall be construed under and governed by the Uniform Commercial Code of the State of Illinois. "Seller" when used herein means GARDNER DENVER NASH LLC, d/b/a Industrial Sales and Technologies, LLC. "Purchaser" when used herein means the person, firm or corporation to whom this quotation is addressed. And "Equipment" or "Products" means those articles, supplies, drawings, data or other property or services described herein.
2. All quotations are for immediate acceptance and subject to change or withdrawal without notice before an order is acknowledged by Seller. This proposal shall not become effective until accepted by an authorized employee of the Seller. This proposal cannot be changed or varied by any verbal agreement. If this proposal is deemed to constitute an offer, it may be accepted only on terms set forth in this proposal, including, without limitation, these Terms and Conditions. If this proposal constitutes an acceptance of an offer, such acceptance is expressly conditioned on Purchaser's assent solely to the terms of proposal, including, without limitation, these Terms and Conditions. An acceptance of any part of the Equipment or services covered hereunder shall be deemed to constitute such assent. Any additional and/or different terms and conditions proposed by Purchaser and/or any attempt by Purchaser to vary any of these terms and conditions shall be deemed a material alteration and is hereby objected to and rejected. Any variation between Purchaser's own resale terms and conditions and these Terms and Conditions shall be the Purchaser's responsibility.
3. Any order based upon this proposal must be submitted to the Seller within thirty (30) days from the date hereof. Prices quoted are Ex Works (EXW, Incoterms 2010) unpacked and do not include (unless specifically stated to the contrary) the amount of any sales, use, goods and services, value added, privilege, excise or similar taxes, whether local, state or federal, or any applicable customs or duties, all of which are the sole responsibility of the Purchaser. If the estimated shipping date exceeds six (6) months from the date hereof, the prices quoted herein will be subject to adjustment pursuant to the terms and conditions upon which an order is accepted.
4. When approval of drawings is required or shipment is extended for Purchaser's convenience, escalation will commence 26 weeks after order entry until the scheduled shipping date determined when the order reaches production stage. Escalation will not apply unless prices increase prior to actual shipping date. Escalation will be 1% per month beyond the firm price period of 26 weeks.
5. The minimum order value is \$250.00
6. Unless otherwise agreed by Seller in writing, Seller's prices are subject to change without advance notice at any time prior to order acknowledgment. Seller reserves the right to adjust the invoice price, after the price is quoted and/or acknowledged, to take account of any material variation in Seller's costs beyond Seller's reasonable control since the date of the quotation or (if no quotation is issued) the order acknowledgement, and the invoice so adjusted shall be payable as if the price set out therein were the original contract price.
7. All sales under all orders and these terms and conditions are subject to Seller and/or Government priorities, laws and regulations, now or hereafter established.
8. The Seller reserves the right to change, discontinue or modify the design and construction of any product or to substitute material equal to or superior to that originally specified, without notice to the Purchaser.
9. All claims by Purchaser for shortages in a shipment of Equipment or Equipment damaged in transit must be made against the carrier. All claims by Purchaser against Seller for nonconforming Equipment and claims for shortages in a shipment or damaged Equipment (other than claims to be made against the carrier) must be made in writing to Seller within ten (10) days after receipt of shipment or thirty (30) days after date of shipment, whichever occurs first, or they are waived.
10. Any action for breach of the contract hereunder must be commenced within one year after the cause of action has accrued. Only variations or modifications to the contract which are made in writing signed by Seller and Purchaser shall be enforceable. Any failure by Seller to enforce its rights under this contract will not be deemed a waiver of such rights.
11. Purchaser may not assign, novate or otherwise transfer its rights or obligations under this contract without Seller's prior written consent, and any attempt to do so shall be null and void and of no effect.
12. In case of conflict or discrepancies, errors, or omissions among the various documents comprising any contract arising out of acceptance of this proposal, the matter shall be submitted immediately by the party discovering such conflict, discrepancy, error or omission to the other party. Conflicts or discrepancies, errors, or omissions in such various documents will not be strictly construed against the drafter of the contract language; rather, they shall be resolved by applying the most reasonable interpretation under the circumstances, giving full consideration to the intentions of the parties at the time of contracting.
13. In the event that any dispute arises out of the contract, either party may call a settlement conference for the resolution of any such dispute. Such settlement conference shall be held at the Seller's office, unless otherwise agreed by the parties, within three (3) business days from the date of receipt of a written request therefore by the party to whom such request is directed. The settlement conference shall be attended by representatives of the parties who shall have authority to settle the claim, shall not be attorneys, and shall attempt in good

faith to resolve the claim. If such claim has not been resolved within five (5) business days after the settlement conference has been held, the matter shall be submitted to arbitration in accordance with the rules of the American Arbitration Association (the "AAA") then in effect. Such arbitration shall be held in Trumbull, Connecticut, and the award rendered by the arbitrators shall be binding as between the parties and judgment on such award may be entered in any court having jurisdiction thereof. Three arbitrators familiar with vacuum pump and compressor industry shall be appointed: one by the Seller, one by the Purchaser, and a third selected by the two arbitrators selected by the parties. In the event the first two arbitrators cannot agree on the selection of a third, such third arbitrator shall be appointed by the AAA. All decisions and awards shall be made by a majority of the three arbitrators. Notice of a demand for arbitration of any dispute subject to arbitration by one party shall be filed in writing with the other party and with the AAA. Each party shall advise the other of its selected arbitrator within 10 days of the date of notice. A stenographic record shall be made of all arbitration hearings. The parties shall share all costs of arbitration. Each party shall be responsible for its attorneys' fees and costs.

## CANCELLATION

1. Purchaser may cancel its order, in whole or in part, only upon written notice to Seller and upon payment of reasonable cancellation charges, which shall include all expenses and commitment costs incurred by the Seller and attributable to such order; cancellation charges shall be, at a minimum, at least 10% of the purchase price of the goods covered by the cancelled orders.
2. If Purchaser's financial condition does not in the Seller's opinion warrant the commencement or continuation of production or shipment of the goods ordered, the Seller may require a full or partial cash payment, irrevocable letter of credit from a reputable U.S. bank, or other security in advance as a condition to such commencement, continuation or shipment. If the Seller does not receive such payment, letter of credit, or security, it may cancel an order and shall be entitled to receive cancellation charges pursuant to Section 1 above.

## ENGINEERING CRITERIA

The Equipment furnished by Seller are sophisticated engineering products; accordingly, Purchaser undertakes:

1. That it has provided and will promptly provide all the information reasonably necessary to enable Seller to (i) evaluate the requirements for performing and (ii) perform the Contract, and that all such information is full and accurate;
2. That all premises, plant, engineering support, spare parts, connected pipe work and machinery and inputs that it is required to provide for the design, engineering, installation, testing and use of the Products are fit for their purpose and of good engineering quality;
3. Fully to co-operate with Seller in the design, engineering, installation, testing and use of the Products;
4. To use the Products for the intended purpose only and in accordance with the Product literature; and
5. Not under any circumstances, to use any unapproved spare part, connected machinery, service or repair or use the Products in any manner as may render the Products dangerous and agrees that any breach of these negative criteria will negate all specific and implied conditions and obligations on the part of Seller relating to the quality of the Products.

Purchaser further agrees that it will be liable to Seller for any costs, expenses and losses it suffers by reason of any breach of these undertakings.

## DRAWINGS, DESIGNS AND CONFIDENTIALITY

1. All of Seller's specifications, designs, drawings, indications of physical, chemical and electronic properties and indications of inlet pressure or vacuum, pressure output and power consumptions ("the Designs") are made in good faith and are approximate indications only and are not binding in detail unless Purchaser has specified in writing a particular indication upon which he is relying and Seller shall be entitled to vary the same and/or to correct errors and omissions provided the Products remain in substantial conformity with the contractual requirements.
2. The Designs (including all copyright, design right and other intellectual property in them) shall as between the parties be the property of Seller; and Purchaser is not entitled to make any use of the Designs other than for the purpose of this Contract.
3. Any inventions, modifications, improvements, techniques or know-how affecting the Products made or gained in the course of performing this Contract, shall belong to Seller absolutely.
4. Neither party shall disclose to third parties or use for its own purposes any confidential information or trade secrets of the other party.

## TESTS

1. Each vacuum pump and compressor, before shipment, is given a standard production test by the Seller in order to establish the performance of the Products. Performance will be considered satisfactory and shipment made if the capacity and power measurements are within acceptable industry standards established by HEI and/or PNEUROP.
2. This production test is the sole criterion used for acceptance on the basis of performance.



## INDEMNITY

Purchaser will indemnify, defend and hold Seller, its affiliated companies and their respective directors, officers, employees and agents harmless from any loss, claim, cost, expense or damage (including payment of reasonable attorneys' fees) suffered or incurred by any of them and/or for which any of them may be liable to any third party due to, arising from or in connection with, directly or indirectly:

- (i) any violation of law, negligence, omission or intentional misconduct on the part of the Purchaser, its servants, agents or employees;
- (ii) Purchaser's instructions or lack of instructions or Purchaser's failure or delay in taking delivery;
- (iii) the breach of any provision of this Agreement by Purchaser; or
- (iv) any infringement or alleged infringement of patents, trademarks, copyright, design, right or other intellectual property right occasioned by the importation, manufacture or sale of the Equipment if made to the specification or special requirement of Purchaser.

## SHIPMENT, ACCEPTANCE, PAYMENT AND CREDIT

1. Terms of Payment: A. Domestic – Net thirty (30) days from date of invoice. Purchase orders over \$100K require progress payment as follows: 10% with submittal of drawings, 40% 45 days prior to shipment. Balance of 50% N30 after shipment, pending credit approval. Delinquent accounts shall bear interest at 18% per annum thereafter, until paid. Said interest rate shall be reduced to the maximum permissible rate in any state having laws which so require. B. International – Unless otherwise agreed to by the Seller's Manager of Credit and Collection, payment shall be in U.S. Funds by wire transfer or irrevocable Letter of Credit, confirmed by a major U.S. Bank. Advance payment may be required prior to shipment or service. In addition to such late payment charges, Seller may add to the amount past due any costs associated with collection thereof, including reasonable attorneys' fees.
2. Seller may, in its sole discretion, accept payment for Products by cash in advance or by money-down with scheduled progress payments.
3. Shipments and deliveries shall be subject to approval of Seller's Credit Department. If Purchaser fails to fulfill the terms of payment, or if at any time before payment in full is made (whether or not payment is yet due) a petition is presented or resolution passed for the winding up or bankruptcy of Purchaser, or in the event of the appointment of a receiver or administrator of Purchaser's business, Seller may defer further shipment or at its option, cancel the unshipped balance. No failure of Seller to exercise any right accruing from any default of Purchaser shall impair Seller's right in case of any shipment default of Purchaser.
4. Unless otherwise specified in this proposal, the goods described herewith shall be sold and delivered on an Ex Works (EXW, Incoterms 2010) Seller's plant unpacked basis. Upon request, the Seller may accept a delivery method other than Ex Works. Whenever the Seller accepts delivery other than Ex Works, the Seller reserves the right to use its own appointed forwarder and/or arrange for the transportation of the goods to the delivery point. In all events risk of loss of the goods during transport shall be on the Purchaser.
5. While expected dates of delivery of goods are given in good faith, the same are not of the essence of or in any way terms of the contract or representations of fact. All shipping dates given are approximate, and while effort is made to maintain schedules, Seller will not be liable for damages on account of delay. In case of delay by Purchaser in furnishing complete schedules or information, delivery dates may be extended for a reasonable time depending on factory conditions. The Seller shall not be responsible for reasonable or excusable delays nor shall the Purchaser refuse to accept delivery because of any such delays. Excusable delays include, without limitation, delays resulting from accidents, fires, floods, severe weather or other acts of God, strike, lockout or other labor difficulties, embargoes, government controls or other forms of intervention, inability to obtain labor, materials or services and other causes beyond Seller's control. If there is a scarcity in any of its products or goods, Seller will allocate its available supply in its sole discretion.
6. Title to the Products shall transfer to the Purchaser on the earlier of full payment and delivery; provided, however, that in the event delivery is prior to full payment, the Seller shall retain a security interest in the Products until the Seller receives payment in full. Pending payment of the full purchase price of the Equipment or parts furnished by Seller, Purchaser shall at all times keep the Equipment or parts comprehensively insured against loss or damage by accident, fire, theft and other risks usually covered by insurance in the type of business carried on by Purchaser in an amount at least equal to the balance of the price for the same from time to time remaining outstanding. In addition, the Purchaser undertakes not to charge by way of security any of the Products that remain the collateral of the Seller.
7. In the event shipment is postponed at the Purchaser's request or if Purchaser is unable to accept delivery when tendered by the Seller, the Purchaser will pay the Seller storage fees, transportation charges, and monthly maintenance fees. Risk of loss during such storage will be on the Purchaser. The Purchaser shall deliver to the Seller evidence of insurance in appropriate amounts and with responsible companies insuring the goods during storage. In the event the Purchaser fails to deliver such evidence of insurance, the Seller may obtain insurance at the Purchaser's expense.

8. Purchaser shall inspect and either accept or reject goods shipped by the Seller within 5 days after receipt thereof. If goods are rejected, Purchaser shall give notice of such rejection to the Seller within 5 days after Purchaser's receipt of the goods. Purchaser's failure to give such notice shall constitute an irrevocable acceptance of such goods.
9. In the event of Cancellation in accordance with the provisions hereof, or in the event of non-payment (in full or in part) for the Equipment by the due date, Purchaser hereby irrevocably licenses Seller (insofar as it is able) to enter upon any premises to repossess the Equipment.

## RETURN OF GOODS

If any "stock" Goods (Goods Seller holds in stock) prove to be unsuitable for Purchaser's needs, Purchaser may return the Goods if Purchaser provides notice to Seller within five (5) days of receipt of the Goods by calling 1-800-770-6274 or 636-279-2209; provided, however, that Seller in its own discretion determines what is considered a 'stock' Good and what is not. Any such Goods must be returned in unused condition and must be received by Seller within thirty (30) days of the invoice date in order for Seller to issue full credit to Purchaser's account, less any damage to the returned Goods (whether incurred during transit or caused by Purchaser). Arrangements may be made for replacement of the returned Goods, subject to additional charges. Custom or Special orders may not be returned for credit. Prior to returning 'stock' Goods, a Return Goods Authorization (RGA) number must be obtained by contacting Gardner Denver Nash Customer Service Department at the number above. The following information will be needed in order to issue an RGA number: customer name, invoice number and date, purchase order number, and nature of problem. The returned Goods must be clearly marked with the RGA number provided by Gardner Denver Nash. Unauthorized returns will be refused.

All returned Goods are subject to a restocking fee.

## LIABILITY

Seller's total liability for any and all claims' damages, losses and injuries arising out of or relating to Seller's performance or breach of any term herein shall not exceed the purchase price of the Equipment. IN NO EVENT, WHETHER IN CONTRACT, TORT OR OTHERWISE, SHALL SELLER BE LIABLE FOR LIQUIDATED, INDIRECT, EXEMPLARY, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, EXPENSES OR COSTS, INCLUDING BUT NOT LIMITED TO: (1) LOSS OF PROFITS, BUSINESS OR GOODWILL; (2) LOSS OF USE OF EQUIPMENT OR FACILITIES; OR (3) LOSS RESULTING FROM UNUSABLE MACHINERY OR FACILITY DOWNTIME, HOWSOEVER CAUSED AND EVEN IF THE POTENTIAL FOR SUCH DAMAGES WAS DISCLOSED AND/OR KNOWN.

## DISCLAIMER OF WARRANTY

SELLER DOES NOT WARRANT THE MERCHANTABILITY OF ITS PRODUCTS AND DOES NOT WARRANT THE FITNESS OF THE PRODUCTS FOR A PARTICULAR PURPOSE. SELLER DOES NOT MAKE, AND HEREBY DISCLAIMS AND EXCLUDES, ANY WARRANTY, EXPRESS OR IMPLIED, OTHER THAN THE WARRANTY CONTAINED HEREIN. THERE ARE NO WARRANTIES EXPRESS OR IMPLIED BEYOND THAT WHICH IS DESCRIBED BELOW.

## WARRANTY OF GOODS MANUFACTURED BY SELLER

1. Seller warrants that (i) the goods will be of the kind described on its acceptance of Purchaser's order as modified by any subsequent mutual agreement of the parties in writing, (ii) it will convey to Purchaser good title to such goods, (iii) such goods will be delivered free of any lawful security interest or lien or encumbrances unknown to Purchaser, and (iv) such goods will be of merchantable quality and free from defects in material or workmanship under normal use and prescribed maintenance for the following periods (except to the extent Seller specifies another warranty period in writing):

Nash product:	Warranty Period
Liquid Ring Vacuum Pumps	two (2) years from the date of shipment
Liquid Ring Compressors	two (2) years from the date of shipment
Ejectors	two (2) years from the date of shipment
Dry Pumps	one (1) year from the date of shipment
Rotary Vane Pumps	one (1) year from the date of shipment

provided, however, Purchaser's exclusive remedy for Seller's breach of the warranties set forth in clauses (i), (ii), and (iii) above shall be the replacement by Seller of non-conforming goods with conforming goods, without extra costs to Purchaser, F.O.B. point of manufacture, with transportation prepaid to U.S. destination or domestic port, and Purchaser's exclusive remedy for Seller's breach of the warranty contained in clause (iv) above shall be the repair by Seller without charge, or the furnishing by Seller, F.O.B. point of manufacture, with transportation prepaid to U.S. destination or domestic port of a part or item of equipment to replace any part or item of equipment which is proved to have been defective. Seller shall have the option of requiring the return of any defective material transportation prepaid to establish a claim.

2. Seller shall be under no liability for breach of the warranty set forth above: (i) unless the Equipment has been properly installed, used, maintained and



served; (ii) unless Purchaser has promptly informed Seller in writing of the defect alleged within the Warranty Period and within 10 days of the discovery thereof; (iii) with respect to wearing and consumable parts; (iv) with respect to Equipment used to handle corrosive liquid compressants; (v) if Purchaser places Products in long-term storage and fails to perform proper long-term storage preparations per Seller's instructions; and/or (vi) to Equipment or component parts or accessories thereof not manufactured by Seller. Purchaser shall keep proper records of operation and maintenance during the Warranty Period. These records shall be kept in the form of logsheets and copies shall be submitted to Seller upon its request.

3. Seller makes no representation regarding compliance with any state, provincial, or local law, rules, regulations, building code or ordinance relating to the installation or operation of the Equipment.
4. If the Purchaser informs the Seller of a defect after the Warranty Period has expired, then Seller may offer advice (free of charge) and may offer repair or replacement at Purchaser's expense. Any dispute as to whether a defect is covered by the Warranty shall be immediately referred to an expert to be agreed by Seller and Purchaser whose decision shall be final and binding upon the parties.
5. There are no third party beneficiaries of the Warranty granted by Seller herein.

#### **WARRANTY OF OTHER MANUFACTURER'S PRODUCTS**

All components, accessories and shaft seals not manufactured by Seller shall be warranted for a period of one (1) year from the date of shipment. The warranties specified shall also extend to goods manufactured by others and supplied by Seller, unless such goods have been separately stated and quoted by Seller, in which case only the warranties in clauses (i), (ii), and (iii) shall apply. SELLER MAKES NO WARRANTY, EXPRESSED OR IMPLIED, INCLUDING, WITHOUT LIMITATION, AS TO THE MERCHANTABILITY OF GOODS MANUFACTURED BY ITS SUPPLIERS AND SEPARATELY STATED AND QUOTED HEREWITH, EXCEPT AS EXPRESSLY PROVIDED HEREIN.

Seller has not authorized any party to make any representation or warranty other than the above warranty statements.

#### **CONFLICTING LAW**

Some jurisdictions provide rights in addition to those listed above, or do not allow the exclusion or limitation of implied warranties, or liability for incidental or consequential damages. If any provision or part of a provision of these terms is found to be illegal, invalid or unenforceable under any applicable law, such provision or part of a provision shall, insofar as it is severable from the remaining terms, be deemed omitted from these terms and shall in no way affect the legality, validity or enforceability of the remaining terms.

#### **SPECIAL PROVISIONS**

1. Neither the Products nor the parts sold hereunder are designed or manufactured for use in or with any atomic installation or activity. If the Purchaser or the ultimate user of the Products or parts intends to use the Products or parts in such an installation or activity, the Seller's Terms for Nuclear Sales shall be a part of this Contract. The Seller will furnish the Purchaser with a copy of its Terms for Nuclear Sales upon request.
2. Purchaser understands and agrees that the Products may be subject to export and other foreign trade controls restricting resales and/or transfers to other countries and parties, including, but not limited to, licensing requirements under applicable laws and regulations of the United States (together, "Trade Control Laws"). Purchaser shall not export, re-export, transfer, or otherwise dispose of the Products directly or indirectly, except as permitted by applicable Trade Control Laws. Purchaser shall not do anything that would cause the Seller or its affiliates to be in breach of applicable Trade Control Laws. Furthermore, Purchaser shall protect, indemnify and hold harmless the Seller and its affiliates from any fines, damages, costs, losses, liabilities, penalties, and expenses incurred by the Seller as a result of Purchaser's failure to comply with this clause.