

# 1 COMMERCIAL TERMS

## Delivery and shipment

- Upon acceptance of the order ("Order"), Gardner Denver Deutschland GmbH (a company organized under the laws of Germany, registered by the Court of Registration of Schweinfurt, Germany under registration number HRB 4817 and having its registered address at Industriestraße 26, 97616 Bad Neustadt a. d. Saale, Germany; the "Seller") will deliver the agreed goods or services specified in the Seller's quote ("Quote").
- "Buyer" means the person, firm or corporation to whom the Seller's Quote is addressed.
- "Time is of the essence" will not apply to delivery dates.
- Delays by Buyer in shipments or suspension by Buyer of any Orders not based on any statutory rights of Buyer require Seller's consent, and if given, Buyer must pay Seller any reasonable costs, expenses and losses caused by such delay and/or suspension.
- In case of suspension in accordance with the foregoing, any impact of the suspension on the delivery dates and/or on cost of order execution by Seller will be mutually agreed between the Buyer and Seller before the Order is resumed.
- If Buyer is in delay with its acceptance of delivery in accordance with the statutory provisions, Seller will store the goods at Buyer's cost. Unless otherwise agreed by the parties, at the end of the agreed storage period, Buyer is required to accept the delivery of the goods and will pay the purchase price for the goods to Seller.
- Buyer will bear the risk of loss during storage and shall be responsible to insure the goods in such storage as Buyer deems necessary.

**Price Adjustments:** If, in accordance with the agreement between the parties regarding the goods or services, including these terms and conditions, ("Agreement"), delivery is rendered more than four weeks after conclusion of the Agreement, and an unforeseeable event occurs between conclusion of the Agreement and delivery which leads to a change in any raw material costs (e.g. Steel, Copper, Aluminium) or costs for freight and logistics above 10 %, Seller may adjust the price proportionally to such change according to its equitable discretion. An increase in the price shall be possible and a reduction in the price shall be made if any of the foregoing cost elements increase or decrease. Increases in one cost element (e.g. freight costs) may only be used to increase the price to the extent that such increases are not compensated by decreases in costs in other areas (e.g. raw material costs). In the event of cost reductions (e.g. raw material costs), the price shall be reduced by Seller insofar as these cost reductions are not fully or partially offset by increases in other areas (e.g. freight costs). In exercising its reasonable discretion, Seller shall consider that cost reductions are not taken into account according to standards that are less favorable for Buyer than cost increases. Seller shall inform Buyer of any price adjustments without undue delay. Insofar as Buyer cannot reasonably be expected to accept the delivery as a result of a price increase, it may withdraw from the Agreement with immediate effect by giving notice to Seller.

**Title and risk of loss:** Unless other Incoterms are agreed by the parties, risk of loss or damage will pass to Buyer upon delivery FCA 2020 Seller's facility. The ownership title to goods will be transferred to the Buyer upon full payment of the purchase price and all related costs (shipping costs, custom duty, VAT, insurance cost etc.) as stated in the Incoterms or otherwise agreed by both Parties, to Seller.

## Termination

- In the case where the goods are being designed or adapted to the Buyer's specific requirements, then the Buyer shall (subject to the last paragraph of this section "Termination") be entitled to withdraw from the Agreement (or to terminate the Agreement) *only* by agreement in writing by the parties and upon payment to the

Seller of such amount as may be necessary to indemnify the Seller against all loss and expense resulting from such withdrawal or termination.

- In the case where the goods are *not* being designed or adapted to the Buyer's specific requirements, then the Buyer may, prior to shipment, withdraw from or terminate this Agreement without cause, in whole or in part, upon notice to Seller. In such case, Buyer will pay to Seller a termination fee equal to a pro rata portion of the purchase price based on the work completed to date.
- The Seller shall be entitled forthwith to terminate this Agreement in the event of non-payment (in whole or in part) of the purchase price by Buyer to Seller by the due date.
- Either party may, if it becomes apparent after conclusion of the Agreement that the claim for payment of the purchase price/delivery is jeopardized by the other party's lack of ability to perform (e.g. by filing for insolvency proceedings), refuse performance and – if necessary, after setting a time limit – withdraw from the Agreement in accordance with the statutory provisions.
- In the event of withdrawal from or termination of the Agreement, the Buyer shall be liable to the Seller for all the costs and expenses which the Seller incurred up until the date of such withdrawal or termination and for the profit the Seller reasonably expected to make on the Agreement had the Agreement been fully performed, less such net sum (if any) as the Seller is able to make in disposing of the goods which are the subject of the Agreement.

# 2 CREDIT TERMS AND TAXES

## Credit terms and financial conditions

- Payment of the purchase price by Buyer to Seller in accordance with the payment schedule agreed between the parties is due net-30 days from the invoice date. Buyer may only set off or withhold any amounts due to the extent that the respective claim is undisputed or granted by a final and binding decision of a competent court or arbitral award (any counter claims of Buyer in case of defects shall remain unaffected by the foregoing).
- Buyer shall be liable for interest on any late payments in accordance with the statutory provisions.
- In case of payment delay by Buyer in accordance with statutory provisions, Seller may charge Buyer for all expenses associated with collection of overdue amounts, including reasonable attorneys' fees and (without prejudice to its other rights, e.g. termination rights) suspend performance under the Agreement.

**Taxes:** Seller's quoted prices do not include any sales, use, occupation, license, excise or other taxes, permits or fees with respect to the sale, delivery or use of the goods or services. Buyer is responsible for payment of all such taxes, permits and fees except to the extent Buyer provides a valid tax exemption certificate. If the sale is invoiced with 0 % VAT and the Buyer is responsible for the transport from Seller facility to abroad, it is Buyer's obligation to ensure that he will have all documents required by applicable VAT law to prove the sale was eligible for 0 % VAT and the Buyer will keep such documents in accordance with the respective retention period under applicable law. The Buyer is obliged to send Seller such documents in case of Seller's reasonable request. If the supplied documents are incorrect, not provided at all or circumstances influencing VAT obligations appear which were not known by Seller at the time of the contract or order resulting in a situation that Seller will be imposed sanctions (VAT, interests, penalties) by the tax or customs authorities then Seller is entitled to claim a full compensation from the Buyer if such sanctions were caused by fault of the Buyer. The principles of contributory fault shall remain unaffected by the foregoing.

### 3 WARRANTY

**Warranty (“Gewährleistung”) rights:** In the event of defects of quality (including wrong delivery or underdelivery, improper assembly or installation and defective instruction) and/or defects of title, the statutory provisions shall apply, unless otherwise agreed by the parties or specified below. Insofar as the delivered goods are defective, Buyer is, within the scope of the statutory provisions, entitled to subsequent performance in the form of rectification of the defect or delivery of defect-free goods. Seller reserves the right to choose the form of subsequent performance. Any right of Seller to refuse subsequent performance according to statutory law shall remain unaffected. If the subsequent performance fails in accordance with the statutory law, Buyer is entitled to reduce the purchase price or to withdraw from the contract if the legal requirements are met.

**Warranty (“Gewährleistung”) limitations:** The limitation period for warranty (“Gewährleistung”) claims for the delivered goods is – except in the case of claims for damages – twelve (12) months from delivery or, (if acceptance is required by statutory law, then) from acceptance of the goods. Special statutory provisions on limitations (e.g. in case the defect consists of a right in rem of a third party, on the basis of which the surrender of the Products can be demanded) shall remain unaffected by the foregoing. Claims of the Buyer for reimbursement of expenses pursuant to section 445a para. 1 German Civil Code (BGB) shall be excluded. Claims for damages resulting from defects are subject to clause 4 “Our Liabilities” below and are otherwise excluded.

**No guarantee:** Seller has not authorized any party to make any representation or guarantee. Except as set forth in this clause, **Seller expressly disclaims all guarantees, whether express or implied, including but not limited to any implied guarantee of merchantability or fitness for a particular purpose.**

### 4 OUR LIABILITIES



**Limitation of liability:** Unless otherwise agreed between the parties or set forth herein, any claims for damages against Seller, whether arising from contract, tort or otherwise, are excluded. The foregoing exclusion of liability does not apply to claims for damages relating to: (i) Injury to life, body or health; (ii) Breach of essential contractual obligations (those whose fulfillment makes the proper execution of the contract possible and on whose compliance Buyer typically relies or may rely) or (iii) Gross negligence or willful misconduct. In the event of a breach of essential contractual obligations, Seller shall only be liable for the foreseeable damage typical for the contract if such damage was caused by simple negligence, unless the claims for damages are based on injury to life, body or health. The limitations of liability resulting from the above shall not apply insofar as Seller has fraudulently concealed a defect or has assumed a guarantee for the quality of the goods. The provisions of the German Product Liability Act shall remain unaffected. The limitations of liability under this clause shall also apply to representatives or agents of Seller.



**Insurance:** Seller will maintain in force the insurance coverage described in the certificate of insurance provided by Seller to Buyer or as otherwise agreed by the parties.



**Force majeure:** Subject to section 287 sentence 2 German Civil Code (BGB), neither party will be liable for any delay or failure to perform the Agreement resulting from unforeseeable circumstances beyond the party’s reasonable control, however this clause will not excuse the non-payment of any sums due to Seller. Any statutory rights of cancellation, termination or withdrawal shall remain unaffected by the foregoing.

**Delay in delivery:**

- Delay in delivery shall be determined in accordance with the statutory provisions. In case of a delay in delivery without intent or

gross negligence of the Seller, claims for damages of the Buyer for the Seller’s late delivery in accordance with sections 280 paras. 1 and 2, 286 German Civil Code (BGB) shall be limited to lump sum compensation in the amount of 0.5% of the total net amount paid or to be paid for the respective good or services per full week delayed, capped at 5% of the total net amount paid or to be paid for the affected goods or services by the Buyer to Seller under the Agreement. The Seller reserves the right to prove that the Buyer has not suffered any damage or that the Buyer’s damage is significantly less than the foregoing lump-sum. The foregoing shall not affect the Seller’s performance obligations or the Buyer’s claims for damages in case of non-performance of the Seller. Any further statutory rights of the Buyer or the Seller (other than claims for damages for delay in delivery in accordance with the foregoing) shall remain unaffected by the above. With regard to any further claims for damages of the Buyer, clause 4 “Our Liability” applies.

- In case of unforeseeable exceptional economic situation outside the Seller’s reasonable control leading to a temporary delay in the delivery times of raw materials, if Seller suffers (or will suffer) delay as a result of such situation then Seller will be entitled to a reasonable extension of time. Any expected new delivery dates will be communicated to Buyer without undue delay.

### 5 DATA & CONFIDENTIALITY



**Data**

- In the context of the performance of the Agreement, Seller and Buyer agree to comply with applicable data protection laws and to process personal data only for the purposes it was provided to them. Details about the processing of personal data by Seller are described in Seller’s privacy policy, an up-to-date version of which is available under <https://company.ingersollrand.com/privacy-policy.html>.
- Buyer understands that the goods may include technology that allows Seller to collect information regarding such goods and conduct remote diagnostic testing of such goods. Buyer grants Seller a transferable, sub-licensable, non-exclusive, non-revocable, worldwide right to access and use the data collected by this technology for Seller’s business purposes. Seller may share such data with its affiliates, subsidiaries, and third parties.
- If Seller receives personal data regarding Buyer from such technology, Seller will take reasonable steps to protect the confidentiality of such data and prohibit the unlawful disclosure of Buyer’s personal data to third parties.
- In situations where Seller or Buyer would, as a processor, process personal data on behalf of the other (as controller), they will enter into a data processing agreement in conformity with applicable data protection law.



**Confidentiality:** Neither party will disclose to third parties nor use for its own purposes any confidential information or trade secrets of the other party unless required for the execution of this Agreement, by applicable law or official decree.

### 6 ENGINEERING MATTERS & IP RIGHTS



**Buyer’s Obligations:**

- Buyer 1. will promptly provide all the information reasonably necessary to enable Seller to evaluate the requirements for performing the Agreement and to perform the Agreement; 2. will provide premises, plant, engineering support, spare parts, connected pipe work and machinery and inputs that are reasonably required to provide for the design, engineering, installation, testing and use of the goods which are fit for their purpose; 3. Buyer will co-operate with Seller as reasonably required in the design, engineering, installation, testing and use of the goods; 4. Buyer will only use the goods for their intended purpose and only in accordance with the applicable product literature; and 5. Buyer will not use any unapproved spare part,

connected machinery, service or repair or otherwise use the goods in any manner as may render the goods dangerous.

- Insofar as any culpable breach of these representations lead to a defect in the goods, Buyer agrees that such breach will negate Seller warranties and obligations of Seller with respect to such defect.
- Buyer agrees that it will be liable to Seller for any costs, expenses and losses it incurs due to any culpable breach of these representations.



**IP rights and infringements:** Any inventions, modifications, improvements, techniques or know-how affecting the goods or services, whether arising prior to the conclusion of the Agreement, or made or gained by Seller in the course of performing the Agreement, will belong to Seller. Subject to the principles of contributory fault, Seller will have no liability to Buyer for any patent, trademark or copyright infringements based on any designs, plans or other information provided to Seller by Buyer.

All documents prepared by Seller as a deliverable under the Agreement will be provided to the Buyer with a limited right to use, including make copies of such documents as is reasonably necessary, for the installation, maintenance and operation of the goods or services, however, nothing in the clause transfers to Buyer any of Seller's underlying intellectual property rights including the right to make the goods or have the goods made.

provisions. The United Nations Convention on Contracts for the International Sale of Goods will not apply to this Agreement.

The parties agree that the district court of Cologne, Germany (*Landgericht Köln*) shall have exclusive jurisdiction to settle any dispute arising out or in connection with this Agreement.

**Assignment:** A party cannot assign the Agreement without the prior written consent of the other party. Section 354a of the German Commercial Code (HGB) shall not be affected by the foregoing.

## 7 COMPLIANCE WITH LAWS



In the performance of this Agreement, **Seller will comply** with all applicable legal obligations. Insofar as Seller has no reasonable control over compliance with any laws or regulations applicable to the use, installation and operation of the equipment or any other matters, Seller assumes no responsibility for such compliance.

Buyer will not, directly or indirectly, export, re-export, transfer or re-transfer any goods or technical data received from Seller to any destination, persons or territories prohibited by the export laws of the United States of America, European Union, United Kingdom Of Great Britain or other applicable export regulations or to any country that Seller does not support according to the Seller's Trade Compliance policy which is available on Seller's homepage. Seller will provide a list of the Prohibited and Restricted Countries to the Buyer on request. Seller reserves the right to amend its Trade Compliance policy at any time. At Seller's reasonable request, Buyer shall provide a completed end-user statement on a format provided by Seller and will keep Seller updated of any changes that may impact such document during the execution of the contract.

## 8 OTHER TERMS



**Complete Agreement:** The Agreement and its attachments contain the entire understanding between the parties. Deviating, conflicting or supplementary general terms and conditions of the Buyer or a third party shall not apply, even if they are not expressly rejected.

**Severability:** Any provision declared invalid shall be deemed severable and not affect the validity or enforceability of the remainder.



**Changes:** Any amendments to the Agreement must be agreed in writing by the parties.

**Offsetting and Withholding:** The Buyer shall only have the right to offset or withhold any sums due to the extent that the respective claim is undisputed or granted by a final and binding decision of a competent court or arbitral award (any counter claims of the Buyer in case of defects shall remain unaffected by the foregoing).



**Governing Law:** This Agreement and rights of parties will be governed by the laws of Germany excluding any conflict of law