

**TERMS AND CONDITIONS OF SALE**  
**Gardner Denver Nash**

**SAVE TO THE EXTENT THAT WE HAVE 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.**

**1. BASIS OF CONTRACT**

(a) Gardner Denver Nash, Road One, Winsford Industrial Estate, Winsford, Cheshire CW7 3PL (the "Company") – designs, manufactures, markets and installs liquid ring vacuum pumps and compressors, and spare parts therefor, and provides ancillary goods and services (the "Products"). Nash and Gardner Denver Nash are trading names of Gardner Denver Limited, whose registered office is at Springmill Street, Bradford, West Yorkshire, BD5 7HW, England, registered in England with company number 3047245 and Gardner Denver Limited is the contracting Party referred to as Company in these terms.

(b) No representation, undertaking or promise shall be taken to have been given or implied from anything said or written in negotiations between the parties prior to the date of this Contract except as expressly stated in this Contract.

(c) This Contract shall be construed in accordance with English law and subject to the exclusive jurisdiction of the English Courts.

(d) All orders arising out of this proposal shall not be binding upon the Company until accepted and acknowledged in writing by an authorized employee of the Company.

(e) Any order based upon this proposal must be submitted to the Company within thirty (30) days from the date hereof. Prices quoted are Ex Works (EXW, Incoterms 2010) Company's plant 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 Customer. Finally, 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.

(f) When approval of drawings is required or shipment is extended for Customer'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.

(g) The minimum order value is £50.

**2. DELIVERY AND TIMING OF DELIVERY**

(a) In the event of delay beyond any date agreed for the Company's performance of its obligations under this Contract that is caused by circumstances beyond either party's control and/or otherwise than as provided for in sub-clause (c) below, the Company will be entitled to a reasonable extension of time. In the event of any such delay that is caused by the Customer, the Company will be entitled to a reasonable extension of time and to compensation for any costs, expenses and losses it suffers by reason thereof. In the event shipment is postponed at the Customer's request or if Customer is unable to accept delivery when tendered by the Company, the Customer will pay the Company a storage fee. Risk of loss during such storage will be on the Customer. The Customer shall deliver to the Company evidence of insurance in appropriate amounts and with responsible companies insuring the goods during storage. In the event the Customer fails to deliver such evidence of insurance, the Company may obtain insurance at the Customer's expense.

(b) While dates or periods for readiness for dispatch or 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.

(c) Unless otherwise specified in this proposal, the goods described herewith shall be sold and delivered on an Ex Works (EXW, Incoterms 2010) Company's plant unpacked basis. Upon request, the Company may accept a delivery method other than Ex Works. Whenever the Company accepts delivery other than Ex Works, the Company 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 Customer. Prior to the scheduled shipping date, Customer shall deliver to the Company evidence of insurance in appropriate amounts and with responsible companies insuring the goods during transport. In the event Customer fails to deliver such evidence of insurance, the Company may obtain insurance at Customer's cost.

**3. ENGINEERING CRITERIA**

The Products are sophisticated engineering products; accordingly, the Customer undertakes:

(a) That it has provided and will promptly provide all the information reasonably necessary to enable the Company to (i) evaluate the requirements for performing and (ii) perform the Contract, and that all such information is full and accurate;

(b) 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;

(c) Fully to co-operate with the Company in the design, engineering, installation, testing and use of the Products;

(d) To use the Products for the intended purpose only and in accordance with the Product literature;

(e) 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 the Company relating to the quality of the Products.

The Customer further agrees that it will be liable to the Company for any costs, expenses and losses it suffers by reason of any breach of these undertakings.

**4. TESTS**

(a) Each vacuum pump and compressor, before shipment, is given a standard production test by the Company 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.

(b) This production test is the sole criterion used for acceptance on the basis of performance.

**5. DRAWINGS, DESIGNS AND CONFIDENTIALITY**

(a) All of the Company'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 the Customer has specified in writing a particular indication upon which he is relying and the Company 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.

(b) The Designs (including all copyright, design right and other intellectual property in them) shall as between the parties be the property of the Company; and the Customer is not entitled to make any use of the Designs other than for the purpose of this Contract.

(c) Any inventions, modifications, improvements, techniques or know-how affecting the Products made or gained in the course of performing this Contract, shall belong to the Company absolutely.

(d) Neither party shall disclose to third parties or use for its own purposes any confidential information or trade secrets of the other party.

Each party warrants that it has the necessary intellectual property rights to enable it to perform its contractual obligations and will forthwith inform the other on discovery of any infringement of intellectual property rights.

**6. PAYMENT, TERM, ACCEPTANCE AND VESTING**

(a) All invoices shall be paid in British pounds or other Freely Convertible Currency within 30 days from the date of invoice (the "Due Date") unless expressly agreed otherwise, without any deduction or withholding on account of any rights of equitable set-off which the Customer may have (save where the same are based on fraud). If the Customer's financial condition does not in the Company's opinion warrant the commencement or continuation of production or shipment of the Products ordered, the Company may require a full or partial cash payment or security in advance as a condition to such commencement, continuation or shipment. If the Company does not receive such payment or security, it may cancel an order and shall be entitled to receive cancellation charges pursuant to clause 9 below. The Company shall have the right at any time to review the credit limit requirements relating to the Customer and to increase or reduce the same by notice in writing to the Customer. The Company shall without prejudice to its other rights have the right by notice in writing to the Customer to demand immediate payment of all monies due from the Customer to the Company for any goods delivered at any time. As used in this clause, "Freely Convertible Currency" means a currency that is widely traded in international foreign exchange markets and widely used in international transactions.

(b) The Company may, in its sole discretion, accept payment for Products by cash in advance or by money-down with scheduled progress payments. The Company may require, in its sole discretion, that payment for export orders be by irrevocable letter of credit, which shall be in a form acceptable to the Company and confirmed by a London Bank of international reputation.

(c) The Company may charge interest on any sums still outstanding on the Due Date at the rate of 4% per annum above the base rate for the time being of the Company's bank. In addition to such late payment charges, the Company may, in its sole discretion, charge costs and expenses associated with collection of past due amounts, including reasonable attorneys' fees.

(d) In case of any non-payment, the Company shall be entitled (without prejudice to its other rights) to suspend performance and charge the Customer for all costs and expenses occasioned thereby and/or at any time thereafter to terminate the Contract in accordance with clause 9 below.

(e) Customer shall inspect and either accept or reject goods shipped by the Company within 5 days after receipt thereof. If goods are rejected, Customer shall give notice of such rejection to the Company within 5 days after Customer's receipt of the goods. Customer's failure to give such notice shall constitute an irrevocable acceptance of such goods.

(f) Title and risk of loss to the Products shall transfer to the Customer on the earlier of full payment and delivery; provided, however, that in the event delivery is prior to full payment, Company shall retain a security interest in the Products until Company receives payment in full. Pending payment of all monies owing to the Company (whether under this Contract or otherwise), the Customer shall at all times keep the Products 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 the Customer in an amount at least equal to the balance of the price for the same from time to time remaining outstanding. The policy shall bear an endorsement recording the Company's interest. In addition, the Customer undertakes not to charge by way of security any of the Products which remain the collateral of the Company.

(g) In the event of Termination in accordance with clause 9 below or in the event of non-payment (in full or in part) for the Products or other materials (whether delivered under this Contract or otherwise) by the applicable Due Date, the Customer hereby irrevocably licenses the Company (insofar as it is able) to enter upon any premises to repossess the Products.

(h) Unless otherwise agreed by the Company in writing, the Company's prices are subject to adjustment without advance notice at any time prior to order acknowledgement. The Company reserves the right to adjust the invoice price, after the Quotation and/or acknowledgement, to take account of any material variation in the Company's costs beyond the reasonable control of the Company 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. WARRANTY

(a) The Company warrants that (i) the goods will be of the kind described on its acceptance of Customer's order as modified by any subsequent mutual agreement of the parties in writing, (ii) it will convey to Customer good title to such goods, (iii) such goods will be delivered free of any lawful security interest or lien or encumbrances unknown to Customer, 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 the Company 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

All components, accessories and shaft seals not manufactured by the Company 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 the Company, unless such goods have been separately stated and quoted by the Company, in which case only the warranties in clauses (i), (ii), and (iii) shall apply. **THE COMPANY 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.** No warranty shall apply to goods of standard construction when handling corrosive gases or using corrosive liquid compressants nor will clause (iv) above apply to goods which have been damaged (including but not limited to normal wear and tear due to environment), altered or negligently maintained or operated after delivery. Customer 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 the Company upon its request. The Company shall be under no liability for any breach of the Warranty in respect of wearing and consumable parts, and shall be under no liability for any breach of the Warranty unless the Products have been properly installed, used, maintained and serviced. No warranty shall apply if Customer places Products in long-term storage and fails to perform proper long-term storage preparations per the Company's instructions.

Customer's exclusive remedy for the Company's breach of the warranties set forth in clauses (i), (ii), and (iii) above shall be the replacement by the Company of non-conforming goods with conforming goods, without extra costs to Customer, F.O.B. point of manufacture, with transportation prepaid to U.K. destination or domestic port, and Customer's exclusive remedy for the Company's breach of the warranty contained in clause (iv) above shall be the repair by the Company without charge, or the furnishing by the Company, F.O.B. point of manufacture, with transportation prepaid to U.K. 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; provided that (i) Customer shall have notified the Company of any such breach not later than 10 days after the discovery thereof but in no event later than the expiration of the applicable warranty period set forth above, and that (ii) the Company shall have the option of requiring the return of any defective material transportation prepaid to establish a claim. The Company shall in no event be liable for Customer's manufacturing costs, lost profits, goodwill, expenses, or any other consequential or incidental damages resulting from a breach by the Company of any warranty. To the fullest extent permitted by applicable law, and without prejudice to clause 8(e), **THE COMPANY EXCLUDES ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED** (including but not limited to the warranties arising from course of dealing, usage or trade and the implied warranties of fitness for a particular purpose and merchantability, which also will not apply) **WHICH EXTEND BEYOND THE WARRANTIES SET FORTH HEREIN**

(b) If the Warranty Period has expired, then, without prejudice to clause 8(e), the Company will offer advice (free of charge) and may offer repair or replacement at the Customer's expense.

(c) Any dispute as to whether a defect is covered by the Warranty shall be immediately referred to an expert to be agreed by the Company and the Customer (or in default of agreement to be appointed by the President of the Bar Association of New South Wales) whose decision shall be final and binding upon the parties and whose fees shall be shared equally by the parties.

(d) There are no third party beneficiaries of the Warranty granted by the Company herein.

## 8. LIMITATION OF LIABILITY, INDEMNIFICATION AND FORCE MAJEURE

(a) To the fullest extent permitted by law, and without prejudice to sub-clause (f), the Company shall in no circumstances be liable (whether in contract, tort or for negligence or breach of statutory duty or otherwise arising out of, or in connection with, the Contract) to the Customer to the extent that such liability: (i) is calculated by reference to profits, income, production or accruals or loss of business, loss of data, loss of profits, loss of goodwill, loss of anticipated savings, loss of revenue; (ii) arises from any inaccuracies or omissions in any instructions, information, drawings, calculations, or specifications or material supplied by the Customer to the Company; (iii) is of a special, incidental, indirect, consequential or exemplary nature; (iv) is recovered by the Customer under the terms of any insurance policy (apart from any excess applicable to the relevant insurance); or (v) has been made good or is otherwise compensated without cost to the Customer.

(b) The Company 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 Products ("local laws"). The Customer acknowledges that it is the Customer's responsibility to comply with all applicable laws, rules and regulations relating to the installation and operation of the Products and indemnifies the Company from any claims actions, losses (including without limitation, loss of profit), damages, costs and expenses (including without limitation, legal costs and expenses) arising thereof.

(c) The Company shall be liable for damage to the Customer's physical property caused by the Company's negligence in connection with the production, manufacture or installation of the Products provided that the Company's total aggregate liability for such damage shall in no event exceed £1 million with respect to any one event or series of connected events.

(d) Without prejudice to sub-clause (g), the Company's maximum aggregate liability under or in connection with this Contract, whether arising in breach of contract, tort (including negligence), breach of statutory duty or otherwise, shall in no event exceed the greater of £200,000 and the total amount paid by the Customer under this Contract.

(e) Nothing in these terms shall exclude or limit the effect of warranties or conditions which may be implied by the Trade Practices Act 1974 (Cth) or any other law which cannot be excluded, restricted or modified. Subject to those laws, to the extent to which the Company is entitled to do so, its liability under such implied conditions or warranties will be limited at the option of the Company to any one or more of the following:

(i) in the case of goods:

- (A) the replacement of the relevant goods or the supply of equivalent goods; or
- (B) the payment of the cost of replacing goods or acquiring equivalent goods; or
- (C) the repair of the goods or the payment of the cost of having the goods repaired; or

(ii) in the case of services, the resupply of the services or the payment for the cost of having the services resupplied.

(f) Notwithstanding anything to the contrary in these terms, neither party shall be liable to the other for breach of its obligations under this Contract by reason of circumstances or events beyond the reasonable control of either of them.

(g) The Customer shall indemnify the Company against all actions, suits, claims, demands, costs, charges, damages, losses and expenses suffered or incurred by the Company and/or for which it may be liable to any third party due to, arising from or in connection with, directly or indirectly: (i) the Customer's instructions or lack of instructions; (ii) any failure or delay whatsoever in taking delivery or any other act, neglect or default on the part of the Customer, its servants, agents, or employees; or (iii) the breach of any provision of this Contract by the Customer.

(h) The Customer shall indemnify and keep indemnified the Company against all costs, claims, losses, expenses and damages incurred by the Company or for which it may be liable to any third party due to or arising directly or indirectly out of 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 Products if made to the specification or special requirement of the Customer.

## 9. CANCELLATION AND TERMINATION

1. The Customer may cancel its order, in whole or in part, upon written notice to the Company and upon payment of all actual expenses and costs incurred by the Company and attributable to such order.
2. The Company shall be entitled forthwith to terminate this Contract in the event of non-payment (in whole or in part) by the Due Date 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 the Customer or in the event of the appointment of a receiver or administrator of the Customer's business ("Termination").
3. In the event of Termination, the Customer shall be liable to the Company for all the costs and expenses which it incurred up until the date thereof and the profit it reasonably expected to make on the Contract had the same been fully performed, less such net sum (if any) as the Company is able to make in disposing of the Products.

## 10. GENERAL

(a) Nothing expressed or referred to in this Contract will be construed to give any person, other than the parties to this Contract, any legal or equitable right, remedy or claim under or with respect to this Contract or any provision of this Contract. Notwithstanding anything to the contrary in this Contract, the parties agree that the provisions of the United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Contract.

(b) 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.

(c) The Customer may not assign, novate or otherwise transfer its rights or obligations under this Contract without the Company's prior written consent, and any attempt to do so shall be null and void and of no effect.

(d) No waiver or amendment of any of the provisions contained in this Contract shall be valid unless made in writing and executed by both parties.

(e) Any failure by the Company to enforce its rights under this Contract will not be deemed a waiver of such rights.

(f) 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.

(g) 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 Company'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 London Court of International Arbitration ("LCIA") then in effect. Such arbitration shall be held in Manchester, United Kingdom, 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 Company, one by the Customer, 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 LCIA. 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 LCIA. 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.

#### **11. SPECIAL PROVISIONS**

(a) Neither the Products nor the parts sold hereunder are designed or manufactured for use in or with any atomic installation or activity. If the Customer or the ultimate user of the Products or parts intends to use the Equipment or parts in such an installation or activity, the Company's Terms for Nuclear Sales shall be a part of this Contract. The Company will furnish the Customer with a copy of its Terms for Nuclear Sales upon request.

(b) Customer 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"). Customer shall not export, re-export, transfer, or otherwise dispose of the Products directly or indirectly, except as permitted by applicable Trade Control Laws. Customer shall not do anything that would cause the Company or its affiliates to be in breach of applicable Trade Control Laws. Furthermore, Customer shall protect, indemnify and hold harmless the Company and its affiliates from any fines, damages, costs, losses, liabilities, penalties, and expenses incurred by the Company as a result of Customer's failure to comply with this clause.