

INGERSOLL-RAND INTERNATIONAL LIMITED
TERMS AND CONDITIONS OF SALE

1. GENERAL

- (a) The Terms and Conditions of Sale outlined herein (hereinafter referred to as "the Contract") shall apply to the sale by Ingersoll-Rand International Limited (hereinafter referred to as "the Company") to the person, firm or company to whom the Company's offer is made (hereinafter referred to as "the Purchaser") of products, equipment and parts relating thereto (hereinafter referred to as "the Equipment").
- (b) In the event of a conflict between the Contract and any Distributor Agreement between the Company and the Purchaser, the terms of the Distributor Agreement shall prevail.
- (c) Unless otherwise agreed in writing by the Company, it shall be understood that the company proceeding with any work shall be in accordance with the terms and conditions outlined herein. THESE TERMS AND CONDITIONS SHALL PREVAIL OVER ANY TERMS PUT FORWARD BY THE PURCHASER, UNLESS THE COMPANY AGREES TO THEM EXPRESSLY IN WRITING. NO CONDUCT BY THE COMPANY SHALL BE DEEMED TO CONSTITUTE ACCEPTANCE OF ANY TERMS PUT FORWARD BY THE PURCHASER. Unless otherwise agreed in writing between the parties, the Terms of Payment are net cash payable in full upon delivery. All prices are subject to alteration to conform with the prices ruling at the date of delivery. The Company shall have the right to change its prices from time to time. Unless otherwise stated, all prices are FCA (2000 - Incoterms). Prices do not include the cost of special packaging, insurance, foreign taxes or duties, nor any other charges which may be applicable to the export or import of the Equipment. In the event that Incoterms other than FCA are agreed, a further incremental charge shall be added to the Equipment price to cover the extra cost. Any such extra costs shall be reflected in the invoice sent to the Purchaser. The Company may send invoices, acknowledgments and statements to the Pruchaser solely by use of electronic means, including by email with attachment. Nothing in this Contract shall affect the statutory rights of a consumer.
- (d) The Company reserves the right to charge interest at the annual rate of 5 (five) percent over EURIBOR (Euro InterBank Offered Rate) on all overdue accounts, such interest shall accrue on a day to day basis.
- (e) If payment is agreed to be made by installments, in the event of default in payment of any one installment, all other sums payable under the Contract shall become immediately due and payable.
- (f) If any provision of the Contract shall be held to be void, unlawful or unenforceable, such provision shall be deemed stricken from the Contract but the remaining provisions of the Contract shall continue in full force and effect. If the Contract shall be held to be incomplete, the missing provision shall automatically be replaced by such provision as comes closest to the economic purpose of the Contract.
- (g) Any error of any kind whatsoever in any invoice of the Company shall be notified to the Company within seven (7) days of receipt of such invoice by the Purchaser. Failure to notify as herein required shall mean that the Purchaser is deemed to accept that the invoice is correct in all respects. Notwithstanding the foregoing, where there has been an error in the price, and the Company notifies the Purchaser of the error, either before of after dispatch of the Equipment, the Purchaser will pay the correct price for the Equipment.

2. TITLE

The legal title, right to possession and control, beneficial ownership and all other incidents of ownership ("title") shall pass to the Purchaser as follows:

- (a) Until payment in full has been made of all sums due to the Company whether under the Agreement or otherwise (or in the case of the Company accepting any cheque, bill of exchange or promissory note, until the same has been cleared):
 - (i) Title in the Products supplied by the Company, even if affixed to or incorporated into other goods of the Purchaser or any third party, shall remain with the Company.
 - (ii) The Purchaser shall be at liberty to sell the Products at full market value as principal in the ordinary course of business. However, the proceeds of any such sale will be held in trust for the Company absolutely, provided always that the Company may by written notice terminate the Purchaser's power of sale at any time if it appears to the Company that the Purchaser appoints or threatens to appoint a receiver, administrative receiver, administrator, liquidator or makes any other arrangements with the majority of its creditors, and at any time after the termination of the power of sale, the Company may repossess any Products to which title has not passed to the Purchaser.
 - (iii) The Company its agents and employees shall have an irrevocable licence to enter the premises of the Purchaser to inspect or recover such Products or any part thereof.
- (b) Until ownership of the Products has passed to the Purchaser, the Purchaser must hold the Products on a fiduciary basis as the Company's bailee; store the Products (at no cost to the Company) separately from all other equipment of the Purchaser or any third party in such a way that they remain readily identifiable as the Company's property; not destroy, deface or obscure any identifying mark or packaging on or relating to the Products; and maintain the Products in satisfactory condition insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company, and will whenever requested by the Company produce a copy of the policy of insurance.

- (c) If payment of all monies due to the Company from the Purchaser is received in advance of delivery of the Products, title in the Products shall pass when the shipment arrives ex ship port of discharge country of destination or arrives at the first point of entry for customs purposes in the country of destination in the event of any other mode of transport.
- (d) The Company will be entitled to recover payment for the Products notwithstanding that title in any of the Products has not passed from the Company.

3. RISK

Notwithstanding that the property in the Equipment may not have passed to the Purchaser as provided for in Article 2 of the Contract, the risk of loss in the Equipment shall pass to the Purchaser at the time of first tender of delivery to the Purchaser, its agent or any carrier. Strict compliance with the requirements of this paragraph is a condition precedent to the Company being liable pursuant to this Article 3.

4. ASSIGNMENT

The Contract may not be assigned or transferred by the Purchaser without the prior written consent of the Company. The Company may assign or transfer the Contract without the necessity of consent. The Company shall, however, be permitted to assign or transfer without the consent of the Purchaser the Company's right to receive all or any portion of the payment due from the Purchaser under the Contract.

5. SHIPMENT

- (a) Unless specified by the Purchaser, the Company shall select the method of transportation, including place or places of storage, if necessary, in accordance with the shipping conditions current at time of or during shipment. Upon the Purchaser's request, the Company will arrange to obtain ocean freight space, marine insurance (which shall include standard warehouse to warehouse coverage), war risk insurance and forwarder's services. All such charges shall be payable by the Purchaser.
- (b) All shipments are made for the Purchaser's account. If shipments are delayed because of delayed payments or insufficient or delayed shipping instructions from the Purchaser, the Purchaser shall be charged for storage costs beginning immediately after the Company's notice that the Equipment ordered is ready for shipment and, if the Equipment is stored in the Company's factory, for not less than one half (1/2) of one per cent per month of the amount invoiced.
- (c) Partial shipments may be made and payments therefore shall become due in accordance with the terms hereof, as shipments are made and invoices raised.
- (d) Claims for shortages must be made by the Purchaser within two (2) days of receipt of goods.

6. DELIVERY AND DELAYS

Shipment dates are understood to be estimated and in no event shall such dates be construed as falling within the meaning of "time is of the essence" or other broadly similar concepts having the same legal effect. The Company shall not be liable for loss, damage, detention, delay or completion of an order due to acts of God, acts of terrorism, war, riots, civil insurrection, strikes, work stoppages, fires, accidents, acts of civil or military authority including governmental laws, embargoes, orders, priorities, or regulations, delay in transportation, shortages, delay by suppliers of materials, acts of the Purchaser, or any other causes whatsoever beyond the reasonable control of the Company. Acceptance of delivery shall constitute a waiver of all claims for damages by reason of delay in deliveries.

7. TAXES

Unless otherwise stated, the Purchaser shall pay all VAT, sales and other taxes and levies of whatever nature chargeable on the purchase price of the Equipment.

8. PAYMENT

- (a) The Purchaser agrees that it shall make no deduction or set-off against sums due to the Company on the sale of the Equipment to the Purchaser unless the Company has issued a credit memorandum in the amount of such deduction or set-off.
- (b) Payment must be made in the currency reflected on the purchase order or invoice.

9. PATENTS

The Company shall defend any action or proceeding brought against the Purchaser and shall pay any adverse judgement entered therein so far as such action or proceeding is based upon a claim that the use of the Equipment thereof manufactured by the Company and furnished under the Contract constitutes infringement of any patent of a country where the Equipment is sold, or of a country where the Company is aware at the date of the sale that the Equipment will be used providing the Company is promptly notified in writing and given authority information and assistance for defence of same. In the event that a claim of infringement is asserted, the Company may, at its sole discretion, procure for the Purchaser the right to continue to use said Equipment, or modify it so that it becomes non-infringing, or replace the same with non-infringing Equipment, or remove said Equipment and refund the purchase price. The foregoing shall not be construed to include any agreement

by the Company to accept any liability whatsoever in respect of patents for inventions including more than the Equipment furnished hereunder, or in respect of patents for methods and processes to be carried out with the aid of said Equipment. The foregoing states the entire liability of the Company with regard to patent infringement which is limited by Condition 10 hereof.

10. SPECIFICATIONS AND IMPROVEMENTS

Unless expressly otherwise provided, the Company's specifications concerning the Equipment are subject to change by the Company in the course of manufacture without notice to the Purchaser. It is the Company's policy to constantly strive to improve its Equipment. The Company, therefore, reserves the right to make changes in design, and other changes, whenever the Company believes its Equipment will be improved thereby, but without any obligation to incorporate such changes retroactively.

11. WARRANTY

- (a) Unless otherwise stated in the warranty documentation, the Company, through the Purchaser, warrants (a) that the Equipment sold will be free of defects in material and workmanship for a period of twelve (12) months from the date of shipment, (b) that parts sold will be free of defects in material and workmanship for a period of six (6) months from the date of shipment, and (c) that reconditioned parts will be free of defects in material and workmanship for a period of three (3) months from the date of shipment.
- (b) The Company will provide a new part or repaired part, at its election, in place of any part which is found upon its inspection to be defective in material and workmanship during the period described above. At the option of the Company, such part will be repaired or replaced without charge to the initial user. Initial user must present proof of purchase (and purchase date) at the time of making a claim under this warranty. This warranty does not apply to failures occurring as a result of abuse, misuse, negligent repairs, corrosion, erosion, normal wear and tear, alterations and modifications made to the product without express written consent of the Company, or failure to follow the recommended operating practices, services and maintenance procedures as provided in the product's operating and maintenance publications. All maintenance, service and repair work must be completed by an authorised distributor of the Company or other approved establishment and only genuine Company approved parts shall be used in such work. Failure to comply strictly with these requirements shall invalidate this warranty.
- (c) The warranty provided herein does not apply to engines and motors which are manufactured by others as they are warranted by their respective manufacturers directly to the initial user.
- (d) THE COMPANY EXCLUDES OTHER CONDITIONS, WARRANTIES OR REPRESENTATIONS OF ALL KINDS, EXPRESSED OR IMPLIED, STATUTORY OR OTHERWISE (EXCEPT THAT OF TITLE) INCLUDING ALL IMPLIED WARRANTIES AND CONDITIONS RELATING TO MERCHANTABILITY, SATISFACTORY QUALITY AND FITNESS FOR A PARTICULAR PURPOSE.
- (e) CORRECTIONS BY THE COMPANY OF NONCONFORMITIES WHETHER PATENT OR LATENT, IN THE MANNER AND FOR THE TIME PERIOD PROVIDED ABOVE, SHALL CONSTITUTE FULFILMENT OF ALL LIABILITIES OF THE COMPANY FOR SUCH NONCONFORMITIES, WHETHER BASED ON CONTRACT, WARRANTY, TORT, NEGLIGENCE, INDEMNITY, STRICT LIABILITY OR OTHERWISE WITH RESPECT TO OR ARISING OUT OF SUCH PRODUCT.

12. LIMITATION OF LIABILITY

- (a) The remedies of the parties are as set forth under the Contract.
- (b) **PROVIDED THAT NOTHING IN THE AGREEMENT WILL EXCLUDE OR LIMIT THE COMPANY'S (OR ITS ASSOCIATED, AFFILIATED, SUBSIDIARY OR HOLDING COMPANIES') LIABILITY FOR FRAUD OR DAMAGES FOR DEATH OR PERSONAL INJURY CAUSED BY ITS NEGLIGENCE, THE COMPANY (OR ITS ASSOCIATED, AFFILIATED, SUBSIDIARY OR HOLDING COMPANIES) WILL NOT BE LIABLE TO THE PURCHASER OR ITS CUSTOMERS UNDER OR IN CONNECTION WITH THE AGREEMENT OR ANY COLLATERAL CONTRACT, OR ANY PRODUCT OR PART SUPPLIED UNDER THIS AGREEMENT, FOR ANY LOSS OF PROFIT, LOSS OF INCOME OR CONTRACT, LOSS OF GOODWILL, OR FOR SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL LOSS OR DAMAGE OF ANY KIND WHATSOEVER, WHETHER BASED ON OR ARISING IN TORT (INCLUDING NEGLIGENCE), BREACH OF CONTRACT OR OTHERWISE.**
- (c) **WITHOUT PREJUDICE TO PARAGRAPH 12(B), AND NOTWITHSTANDING THE UNENFORCEABILITY OR INVALIDITY OF ANY OTHER PROVISION OF THE AGREEMENT, THE COMPANY'S (OR ITS ASSOCIATED, AFFILIATED, SUBSIDIARY OR HOLDING COMPANIES) MAXIMUM LIABILITY TO PURCHASER AND/OR ITS CUSTOMERS FOR, UNDER OR IN CONNECTION WITH THE AGREEMENT, AND ANY PRODUCT OR PART SUPPLIED UNDER THIS AGREEMENT, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE SHALL NOT EXCEED, IN RESPECT OF EACH EVENT OR SERIES OF CONNECTED EVENTS, THE PURCHASE PRICE OF THE PRODUCT UPON WHICH SUCH LIABILITY IS BASED.**

- (d) Neither the Purchaser nor any affiliated company or assignee shall have the right to compensation unless expressly otherwise provided,
- (e) The provisions of this Article 12 shall survive the termination of the Contract.

13. COMPLIANCE

Purchaser will not sell, export or re-export the Equipment either directly or indirectly to persons or territories prohibited by the export laws of the United States of America, European Union or other applicable export regulations.

14. VIOLATIONS OF LAW

The Company shall not be bound by or required to adhere to any term or provision of a purchase order, quotation, bid, letter of credit or like document or any provision of law regulation or custom, which would cause the Company, its parent or any of its affiliates to be in violation of or fail to comply with the export laws, taxing statutes or regulations of the country wherein the Equipment is manufactured or from which it is exported or is otherwise subject to jurisdiction.

15. NUCLEAR LIABILITY

In the event that the Equipment sold hereunder is to be used in a nuclear facility, the Purchaser and/or Owner of the facility hereby releases and agrees to indemnify the Company and its suppliers for any nuclear damage, occurring on site or off- site, including loss of use, in any manner arising out of a nuclear incident, whether alleged to be due in whole or in part to the negligence or otherwise of the Company or its suppliers.

16. ELECTRONIC ORDER ENTRY

In the event that this sale is made through the Company's electronic order entry system (the "System"), the following conditions shall apply:

- (a) Use of the System may require the Company to set up user password(s) and/or other security protection measures. The Purchaser agrees to keep secret its user password and such protection measures (if any) and not to disclose the same to anyone not authorised to access the System. The Purchaser shall be liable to the Company for any unauthorised access to or use of the System.
- (b) All information disclosed to the Purchaser through access to and use of the System is Confidential Information and shall not be disclosed to any third party not authorised by the Company to receive it.
- (c) To the extent that any information entered onto the System by the Purchaser is personal data, such personal data will be processed in accordance with Data Protection legislation applicable thereto. Personal data may be shared with third parties, and may be transferred within the E.E.A. and beyond, to which transfer the Purchaser expressly agrees.

17. GOVERNING LAW AND JURISDICTION

- (a) The Company and the Purchaser agree that this Contract is executed in Ireland and shall be governed by, and construed in accordance with, the laws of Ireland.
- (b) The Company and the Purchaser hereby understand and agree that the United Nations Convention on Contracts for the International Sale of Goods is specifically excluded from and will not in any way be applicable to this Contract.
- (c) Subject to sub-paragraph (d) hereunder, the Company and the Purchaser irrevocably agree that the Irish courts shall have exclusive jurisdiction in relation to any legal proceedings arising out of or in connection with this Contract (including, without prejudice to the generality of the foregoing, a dispute regarding the existence, validity or termination of this Contract) and the Purchaser waives any objections to proceedings in such courts on the grounds of venue or on the grounds that proceedings have been brought in an inappropriate forum.
- (d) Notwithstanding sub-paragraph (c) above, the Company and the Purchaser agree that sub-paragraph (c) operates for the benefit of the Company only and accordingly, the Company shall be entitled to take proceedings in any other court or courts having jurisdiction.

18. EXECUTION

The Company shall not be bound by any contract or any modification thereto until approved in writing by an officer of the Company. The Contract when so approved, shall supersede all previous communications, either oral or written.