

## Cardinal Pumps and Exchangers Terms and Conditions

CARDINAL PUMPS AND EXCHANGERS, INC. ("Cardinal"), provides the following terms and conditions which apply to all quotations and sales of equipment ("Equipment") made by Cardinal. All purchases by customer, owner or its agent ("Buyer") are expressly limited and conditioned upon acceptance of the following terms and conditions and any provision, printed or otherwise, contained in any purchase order, confirmation or acknowledgment inconsistent with, different from or in addition to these Standard Terms and Conditions are not accepted by Cardinal unless expressly agreed to in writing.

1. **QUOTATIONS.** Cardinal's quotation is valid for 30 days from the date of the quotation unless otherwise stated. This quotation supersedes all previous quotations or correspondence concerning the same transaction or inquiry. All sales are subject to the approval of Buyer's credit. Cardinal reserves the right to refuse to extend credit or to revoke credit terms at any time. Quotations contain proprietary information of Cardinal and are provided to Buyer with the understanding that Buyer may only use the information for internal purposes. Quotations and all information provided by Cardinal are proprietary and may not be disclosed to any third party or be used in the preparation of any request for quotation for equipment similar to, or as a substitution for, the Equipment.

2. **PRICE MODIFICATION AND OTHER CHARGES.** Cardinal's price does not include any transportation, crating or packaging charges, or any taxes, excises, duties, tariffs or other governmental charges which Cardinal may be required to pay or collect under any existing or future law, with respect to the sale, transportation, delivery, storage, installation or use of any of the Equipment.

3. **PAYMENT AND CREDIT TERMS.** Each shipment is a separate transaction and payment will be made accordingly. Unless otherwise specified in writing by Cardinal, payment for Equipment furnished will be made net 30 days from the date of shipment. If Buyer delays shipments, payment will become due from the date Cardinal is prepared to make shipment. Equipment held for Buyer because of any delay due to Buyer's request to hold or inability to receive the Equipment will be at the risk and expense of Buyer.

4. **LIMITED WARRANTY.** If, within 18 months after the date of shipment or one year after start-up, whichever occurs first, any Equipment proves to be defective in material or workmanship upon examination by Cardinal, Cardinal will repair the Equipment or supply identical or substantially similar replacement Equipment, F.O.B. Cardinal's manufacturing facility, at Cardinal's sole discretion. Any replacement Equipment will be warranted against defects in material or workmanship for the unexpired portion of the warranty applicable to the particular Equipment.

Cardinal will not be responsible for costs of removal, installation or reinstallation of any Equipment or items supplied by third parties, where such removal, installation or reinstallation is required to repair or replace any defective Equipment.

Furthermore, Cardinal will not be responsible for and assumes no liability for materials or workmanship or any transportation charges, labor costs or other related expenses for any work performed by third parties in the repair or replacement of defective Equipment, without Cardinal's prior written consent.

This warranty will be voided if (a) the Equipment has not been stored, installed, maintained or operated in accordance with accepted industrial practice or any specific instructions provided by Cardinal; (b) the Equipment has been subjected to any accident, misapplication, environmental contaminant, corrosion, improper passivation, abuse or misuse; (c) Buyer has used, repaired, or modified the Equipment after discovery of the defect without Cardinal's prior written consent to continue use; (d) Buyer refuses to permit Cardinal to examine the Equipment and operating data to determine the nature of the defect claimed; or (e) Buyer fails to meet its obligations under Paragraph 5.

EXCEPT AS PROVIDED IN THESE STANDARD TERMS AND CONDITIONS, ALL WARRANTIES, UNDERTAKINGS, CONDITIONS OR REPRESENTATIONS (WHETHER INNOCENT OR NEGLIGENT), INCLUDING WITHOUT LIMITATION THOSE WITH RESPECT TO MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, QUALITY OR DURABILITY, WHETHER EXPRESS, IMPLIED, STATUTORY OR ARISING FROM A COURSE OF DEALING, USAGE OF THE TRADE OR OTHERWISE WITH RESPECT TO ANY EQUIPMENT OR ORDER, ARE EXPRESSLY EXCLUDED.

5. **OBLIGATIONS OF BUYER.** Buyer is solely responsible for identifying and defining all process and mechanical considerations which may affect the performance, reliability or operation of the Equipment, including such considerations as selecting and specifying the materials of construction for the Equipment, determining whether the process application may form solids or

otherwise develop or create fouling of the Equipment, and specifying and designing any internal screens or external filters. Following delivery it is Buyer's responsibility to (a) protect the Equipment from corrosion, damage and debris; (b) install the Equipment in a clean condition and environment consistent with accepted industrial practice or any specific instructions provided by Cardinal; (c) to start-up, operate and shutdown the unit in which the Equipment has been installed so as to assure that no foreign debris, catalyst, polymerized material or other material may form in the Equipment, or enter the Equipment from any associated piping, heat exchangers, or other auxiliary equipment which may cause the fouling or corrosion of the Equipment, and (d) start-up, operate and shut down the unit in which the Equipment has been installed in a manner that maintains the process or mechanical loadings within the design conditions.

6. **LIMITATION OF LIABILITY.** CARDINAL'S LIABILITY IS LIMITED TO THE PRICE ALLOCABLE TO THE EQUIPMENT DETERMINED DEFECTIVE, AND IN NO EVENT WILL CARDINAL'S CUMULATIVE LIABILITY BE IN EXCESS OF THE TOTAL SALES ORDER PRICE, WHETHER ARISING UNDER WARRANTY, CONTRACT, NEGLIGENCE, STRICT LIABILITY, INDEMNIFICATION, OR ANY OTHER CAUSE OR COMBINATION OF CAUSES WHATSOEVER.

EXCEPT AS OTHERWISE PROVIDED IN THESE STANDARD TERMS AND CONDITIONS, CARDINAL WILL NOT BE LIABLE FOR GENERAL, SPECIAL, DIRECT, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, LOSS OF PROFITS, REVENUES OR OTHER ECONOMIC LOSSES, WHETHER ARISING UNDER WARRANTY, CONTRACT, NEGLIGENCE (INCLUDING NEGLIGENT MISREPRESENTATION), STRICT LIABILITY, INDEMNIFICATION, OR ANY OTHER CAUSE OR COMBINATION OF CAUSES, INCLUDING ANY THEORIES OF CONCURRENT LIABILITY ARISING FROM A DUTY OF CARE BY OPERATION OF LAW OR OTHERWISE. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

BUYER'S REMEDIES ARE SPECIFICALLY LIMITED TO THE REPAIR OR REPLACEMENT OF THE EQUIPMENT AND ARE EXCLUSIVE OF ALL OTHER REMEDIES. SHOULD THESE REMEDIES BE FOUND INADEQUATE OR TO HAVE FAILED OF THEIR ESSENTIAL PURPOSE FOR ANY REASON WHATSOEVER, BUYER AGREES THAT RETURN OF THE FULL SALES ORDER PRICE TO IT BY CARDINAL SHALL PREVENT THE REMEDIES FROM FAILING OF THEIR ESSENTIAL PURPOSE AND SHALL BE CONSIDERED BY BUYER AS A FAIR AND ADEQUATE REMEDY.

7. **TECHNICAL ASSISTANCE.** It is expressly understood that any technical assistance or installation services furnished by Cardinal will be addressed in a separate written agreement between the parties. In no event will any technical assistance or installation provided by Cardinal constitute a waiver by it of any of these Standard Terms and Conditions or affect or expand Cardinal's obligations as stated in Paragraphs 4 and 6.

8. **PATENTS.** Cardinal will defend and indemnify Buyer from any suit or proceeding brought against Buyer based on a claim that the Equipment infringes any Canadian or United States patent, if Cardinal is notified promptly in writing and given authority, information and assistance, at its expense, for the defense of the suit or proceeding. Defense and settlement of any claim shall be within Cardinal's sole discretion. Should it be held that the Equipment constitutes infringement and the use of the Equipment is enjoined, Cardinal will, at its election, either procure for Buyer the right to continue using the Equipment, replace the Equipment with non-infringing goods, modify the Equipment to become non-infringing, or remove the infringing Equipment and refund the price paid for the respective Equipment. Cardinal does not accept any liability for infringement of any chemical, process or flow patents, or for Equipment designed for or used in connection with such chemical, process or flow patents. Buyer will indemnify Cardinal from any suit or proceeding brought against Cardinal by any third party based on claims that the Equipment infringes any such patent, or with respect to any Equipment designed and manufactured in accordance with designs furnished by Buyer or modified by Buyer.

9. **BACKCHARGES.** No backcharges will be paid or allowed by Cardinal unless Cardinal is notified in writing of any Equipment defect claim or omission pursuant to Paragraph 4. All backcharges must be approved in writing before any Equipment is repaired, replaced or altered in any manner by Buyer or its designee, or returned to Cardinal.



Cardinal Pumps & Exchangers Inc.  
9321 Ravenna Road  
Suite H  
Twinsburg, Ohio 44087  
USA

Phone: 330.425.7146  
Fax: 330.425.0900  
[www.wabtec.com](http://www.wabtec.com)  
[www.cardinalpumps.com](http://www.cardinalpumps.com)

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10. **CANCELLATION FEE.** Buyer may not cancel any order except upon written notice and payment to Cardinal of all reasonable costs arising from the cancellation, plus a cancellation fee of 25%. In any event, the minimum cancellation fee shall be \$250.00.

11. **FORCE MAJEURE.** Cardinal or Buyer will be excused from their respective obligations in the event and to the extent that their respective performance is delayed or prevented (a) by any circumstance (except financial) reasonably beyond their control or (b) by fire, explosion, breakdown of machinery or equipment, plant shutdown, strikes or other labor disputes, riots or other civil disturbances, or voluntary or involuntary compliance with any laws, order, regulation, recommendation or request of any governmental authority. In addition, Cardinal will be excused in the event of its inability to obtain materials necessary for manufacture of the Equipment, or total or partial failure of any of its usual means of transportation of the Equipment.

12. **ASSIGNABILITY.** No claim against Cardinal arising directly or indirectly out of or in connection with the Equipment may be assigned by Buyer or by operation of law without the prior written approval of Cardinal.

13. **SHIPMENT.** All Equipment will be shipped F.O.B. Cardinal's manufacturing facility unless otherwise stated. Cardinal will ship Equipment Prepaid & Add at the Buyer's request, and will invoice the freight at 125% of Cardinal's cost to the Buyer. If Buyer has not issued inspection and shipping instruction by the time the Equipment is ready for shipment, Cardinal may select any reasonable method of shipment, without liability by reason of its selection. Shipments may be insured at Buyer's expense, and Cardinal will not place a valuation upon shipments unless specifically requested in writing by Buyer or required for export purposes.

14. **SEVERABILITY.** Invalidation of any of these Standard Terms and Conditions will not affect the validity of any other provision and the remaining provisions will remain in force and effect.

15. **WAIVER.** Failure to enforce any of these Standard Terms and Conditions in a particular instance will not constitute a waiver of or preclude subsequent enforcement of any of these provisions.

16. **APPLICABLE LAW.** The agreement of the parties shall be construed and enforced in accordance with the laws of the State of Ohio. The parties disclaim any applicability of the U.N. Convention of the International Sale of Goods to the order.