

## Terms and Conditions

### 1. GENERAL; OFFER AND ACCEPTANCE.

This Proposal is an offer by ABEL Pumps, L.P. ("ABEL") to Purchaser. Acceptance of the offer contained in this Proposal is expressly limited to its terms. Any terms and conditions pre-printed, linked, referenced or otherwise contained in an order or any other document issued by the Purchaser or online portal which are inconsistent with these terms are expressly rejected. Upon acceptance by Purchaser, this Proposal will be the final written expression of agreement between Purchaser and ABEL, constituting the entire contract between the parties and superseding all previous oral or written communications. This Proposal, and the contract resulting from its acceptance, may be waived, varied, modified or amended only by a writing signed by an officer of ABEL.

### 2. SHIPMENT; DELIVERY; CLAIMS.

Unless otherwise agreed in writing by the parties, the costs for shipment and delivery of the products shall be the responsibility of Purchaser. Delivery shall be EXW ABEL's facility in Mansfield, Ohio (Incoterms 2020). Any delivery information (including time for shipment) is approximate. ABEL will exercise reasonable efforts to make delivery as scheduled; however, ABEL shall not be liable for any loss or damage or for failure to deliver or delays in delivery caused by a labor dispute (including strikes, slowdowns and lockouts), fire, flood, governmental act or regulation, riot, inability to obtain supplies, materials or shipping space, plant breakdown, power failure, delay or interruption of carriers, accident, Acts of God or other causes beyond ABEL's control. Furthermore, ABEL shall not be liable for any incidental, special or consequential damages resulting from its failure to meet delivery schedules for the foregoing or any other causes. ALL RISK OF LOSS OR DAMAGE IN TRANSIT SHALL BE ON THE PURCHASER AND ALL CLAIMS FOR LOSS OR DAMAGE IN TRANSIT OR FOR NON-DELIVERY SHALL BE MADE BY PURCHASER AGAINST THE CARRIER.

### 3. INSPECTION.

Within five (5) business days of receipt of the products, Purchaser shall inspect the products to check for shortages, loss or damage in transit, and any other nonconformity. Purchaser shall thereafter notify ABEL in writing of any nonconformity (other than that relating to loss or damage in transit, which claims shall be made in accordance with the terms of Section 2 hereof) within ten (10) business days of inspection. The failure to provide ABEL with such written notice within this time period shall constitute an unqualified acceptance of the products as well as a waiver by Purchaser of all claims for shortages, incorrect material and other similar nonconformity's, including a waiver of any right of revocation of acceptance. Tests of the products by Purchaser to determine acceptability shall be permitted only by written agreement of the parties.

### 4. CANCELLATION.

The contract resulting from Purchaser's acceptance of this Proposal is not subject to cancellation by Purchaser unless Purchaser obtains specific written approval from ABEL in advance of shipment of the products. If the contract is cancelled, Purchaser shall pay ABEL reasonable cancellation charges as invoiced by ABEL for expenses already incurred by ABEL in performing or preparing to perform the contract, cancellation costs and ABEL's anticipated profit.

### 5. LIMITED WARRANTY AND PURCHASER'S EXCLUSIVE REMEDY.

Except as stated below, ABEL warrants that the products will conform to their written specifications and will be free from defects in material and workmanship under normal use and service for a period of twelve (12) months from the date of installation or for a period of eighteen (18) months from the date of delivery, whichever period expires first. If Purchaser claims that the products do not conform to this limited warranty, it must return any defective part(s) to ABEL with freight or other transportation charges prepaid, or, alternatively, permit ABEL's personnel to inspect the products at their site of installation or use. If, after inspection, ABEL determines that the products

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do not conform to this limited warranty, ABEL will repair or replace the products or issue a refund, at ABEL's sole option, without charge to Purchaser.

This limited warranty extends only to the original purchaser of the products, and does not cover normal wear and tear of parts as specified on our proposal, or damage or loss resulting from misuse, accident, neglect, improper installation or maintenance. This Warranty does not cover products modified, altered or changed outside of ABEL's plant, without the prior written consent of ABEL. Any unauthorized repair, modification, alteration or change of or to the products voids the warranty set forth herein. In order to qualify for warranty coverage, Purchaser must use and maintain the products in strict accordance with the instructions and recommendations contained in the literature delivered to Purchaser. In addition, Purchaser must permit repairs or modifications to the products to be made only by ABEL's authorized service personnel.

**THE WARRANTY SET FORTH IN THIS AGREEMENT IS THE ONLY WARRANTY PROVIDED BY ABEL, IS STRICTLY LIMITED TO ITS TERMS, AND IS IN LIEU OF ALL OTHER EXPRESS OR IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.** Any demonstration of the products is for illustrative purposes only and does not amount to a warranty of any kind. See published specifications for performance criteria.

### 6. DISCLAIMER;

**EXCLUSION OF CONSEQUENTIAL DAMAGES; LIMITATION OF LIABILITY.** Purchaser understands and agrees that ABEL shall not be liable for loss of use, income or profit, incidental, special or consequential or other similar damages arising, directly or indirectly, out of or occasioned by the use, installation, repair or replacement of the products, whether such damages are based on a claim of breach of express or implied warranty (including any implied warranty of merchantability or fitness for a particular purpose), tortious conduct (including negligence and strict liability) or any other cause of action. **PURCHASER SPECIFICALLY UNDERSTANDS AND AGREES THAT ITS SOLE AND EXCLUSIVE REMEDY FOR BREACH OF WARRANTY, TORTIOUS CONDUCT OR ANY OTHER CAUSE OF ACTION AGAINST ABEL IS THE REMEDY PROVIDED IN PARAGRAPH 5 ABOVE.**

IN NO EVENT WILL ABEL'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS PROPOSAL OR THE PRODUCTS SOLD HEREUNDER, WHETHER IN CONTRACT OR TORT OR ANY OTHER THEORY OF LIABILITY, EXCEED THE PURCHASE PRICE OF THE PRODUCTS GIVING RISE TO THE CLAIM, EVEN IF ABEL IS ADVISED OR PLACED ON NOTICE OF THE POSSIBILITY OF SUCH PENALTIES OR DAMAGES.

### 7. PRICES.

The price of the products quoted in ABEL's Proposal is subject to change without notice. Additionally, all orders are subject to increase in costs of materials and labor during progress in completion of the work. Such increased costs, if any, shall be considered as part of the price for the products. The actual sales price shall be ABEL's price in effect on the date of shipment. Prices are subject to being adjusted due to extraordinary market conditions. As used herein, "extraordinary market conditions" means any increase in the cost of materials caused by changes in the market or for any other reason that is outside of ABEL's control such as tariffs, surcharges, increased logistics costs and fluctuations in currency and raw materials, which results in a price increase of the product price set forth in a contract, quote, purchase order or order acknowledgment. Buyer agrees to promptly pay any such increase as set forth in an invoice.

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### **8. INTELLECTUAL PROPERTY.**

All drawings, designs, know-how, inventions, devices, works of authorship, technology, ABEL's Confidential Information, improvements thereto, and all associated patent, patent applications, copyright, including applications and registrations, trade secret, or other similar proprietary or intellectual property rights (collectively, "ABEL IP") in or related to the conception, creation, development, reduction to practice, design, production, delivery, operation, use, application or performance of products, are and will remain the sole and exclusive property of ABEL.

In no event may Purchaser make or apply for a patent, copyright, or other claim to the ownership or license of ABEL products and/or ABEL IP. Nothing in this section precludes Purchaser from incorporating a description or reference to ABEL products and/or non-confidential aspects of ABEL's technology or processes where necessary to support a patent, copyright, or other claim to Purchaser's product, provided, however, that no use of ABEL's name, trademarks or logos may be made without ABEL's prior written consent. Nothing in this Proposal will be construed as granting to Purchaser any license, ownership, or grant of intellectual property rights with regards to the products or ABEL IP. To the extent Purchaser creates, conceives, develops, or reduces to practice any improvements in relation to ABEL IP, Purchaser hereby irrevocably assigns all right, title, and interest in and to such improvements and related intellectual property rights to ABEL. ABEL's sale of products to Purchaser does not include any research, development, design, or other services associated with ABEL's IP.

ABEL does not warrant that the use or resale of the products will not infringe any intellectual property rights of any third party, and Purchaser specifically agrees that ABEL shall not be responsible for any damages of any nature whatsoever arising therefrom. ABEL, however, in lieu of liability for any damages resulting from any infringement of any such intellectual property rights upon the holding by a court of competent jurisdiction that the products infringe a United States patent and must be enjoined, at its own expense and at its option, shall (1) procure for Purchaser the right to continue using the products, (2) replace the products with a non-infringing version satisfactory to Purchaser, (3) modify the products in a way satisfactory to the Purchaser so that the products become non-infringing, or (4) refund to Purchaser the price paid for the products, if no other option is satisfactory.

### **9. TAXES.**

Purchaser shall pay (in addition to the actual sales price applicable on the date of shipment) all local, state or federal sales, use, excise, privilege, occupational, personal property or other similar taxes. If any (however designated, levied or based), on the manufacture, sale or shipment of the products, now or hereafter imposed. In the event ABEL pays any such taxes, Purchaser will reimburse ABEL therefor forthwith upon demand.

### **10. PAYMENT.**

Purchaser shall pay the net amount due, per ABEL's invoice, within thirty (30) days from the date thereof. Purchaser shall neither retain payment on account of any claim nor shall Purchaser offset any claim the purchase price. If Purchaser fails to fulfill the terms of payment or if ABEL has any doubt at any time regarding Purchaser's financial responsibility, ABEL may decline to make further deliveries and may claim payment of all invoices, even if not yet due for payment.

### **11. DELINQUENT PAYMENTS; ATTORNEYS' FEES; INTEREST.**

In the event Purchaser fails to make any payment when due, then Purchaser shall pay, in addition to all other sums payable hereunder, the reasonable costs and expenses incurred by ABEL in connection with all actions taken to enforce collection or to preserve and protect its rights, whether by legal proceedings or otherwise, including without limitation the payment of reasonable attorneys' fees and court costs. In addition, Purchaser shall be responsible for interest at a rate of one and one half percent (1 - 1/2%) per month on the amount of any unpaid payment.

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### 12. TITLE.

Title to the products supplied hereunder shall remain in ABEL until the purchase price for the products (and any other sums payable hereunder) is paid in full by Purchaser. Purchaser hereby agrees to execute any financing statements (including UCC-1's) relating to the products, as may be requested by ABEL to perfect ABEL's security interest in the products.

### 13. PROPRIETARY AND TRADE SECRET INFORMATION.

Purchaser hereby acknowledges that the products (including all specifications, drawings and descriptions or illustrations submitted therewith), assistance, know-how and all other information furnished by ABEL hereunder ("Confidential Information") is confidential and proprietary to ABEL and shall be treated as such by Purchaser. Purchaser shall not disclose such information to anyone for any purpose other than for Purchaser's own operations. Purchaser shall implement sufficient security measures to protect ABEL's proprietary interests as described herein.

### 14. COMPLIANCE WITH PURCHASER'S SPECIFICATIONS.

ABEL assumes no liability for any errors or omissions in any specifications provided by Purchaser, including errors or omissions made by ABEL in the interpretation of any such specifications. Furthermore, ABEL shall have no liability to Purchaser for any patent infringement or alleged patent infringement resulting from compliance with the specific requirements of the plans, specifications, drawings or other specific written instructions received from Purchaser.

### 15. INDEMNIFICATION.

Purchaser hereby agrees, at its own expense, to defend, indemnify and hold harmless ABEL against any and all losses, costs, damages, claims, liabilities or expenses of any kind, including without limitation reasonable attorneys' fees, arising out of or resulting from, directly or indirectly, any injury or death to persons or damage to property caused by the designs, specifications, or instructions provided by or required for Purchaser which are incorporated by ABEL into the products.

### 16. SEPARABILITY; INVALIDITY.

If any portion of this contract shall for any reason be held by a court of competent jurisdiction to be invalid and unenforceable, the valid and enforceable provisions will continue to be given effect and bind the parties hereto.

### 17. SUCCESSION.

The provisions of this contract shall bind and insure to the benefit of the successors and assigns of the parties hereto.

### 18. GOVERNING LAW; STATUTE OF LIMITATIONS; VENUE.

The contract resulting from acceptance of this Proposal shall be construed and enforced in accordance with and governed by or under the laws of the State of Ohio. Any suit by Purchaser must be filed within one (1) year from the date the cause of action accrues and must be brought in the United States District Court.

**Signature:** \_\_\_\_\_

**Date:** \_\_\_\_\_