


**VILLAGE OF LOMBARD**  
**REQUEST FOR BOARD OF TRUSTEES ACTION**  
For Inclusion on Board Agenda  
Bids and Proposals

TO : President and Village Board of Trustees

FROM : Scott Neihaus, Village Manager

DATE : April 12, 2016 Agenda Date April 21, 2016

TITLE : Waiver of Bids - Xylem Water Solutions, Inc  
 North Broadway Interim Pump Station Dewatering Pump

SUBMITTED BY: Brian M. Jack, Utilities Superintendent 

**RESULTS:**

Date Bids Were Published \_\_\_\_\_ Bidding Closed \_\_\_\_\_

Total Number of Bids Received \_\_\_\_\_

Total Number of Bidders Meeting Specifications \_\_\_\_\_

Bid Security Required \_\_\_\_\_ Yes \_\_\_\_\_ No

Performance Bond Required \_\_\_\_\_ Yes \_\_\_\_\_ No

Were Any Bids Withdrawn \_\_\_\_\_ Yes \_\_\_\_\_ No

Explanation:

Waiver of Bids Requested? \_\_\_\_\_ X \_\_\_\_\_ Yes \_\_\_\_\_ No

If yes, explain: Purchase is directly from manufacturer.

Award Recommended to Lowest \_\_\_\_\_ Yes \_\_\_\_\_ No

Responsible Bidder?

If no, explain:

**FISCAL IMPACT:**

Engineer's estimate/budget estimate \$102,000.00 Amount of Award \$88,829.13  
 Water & Sewer Capital Reserve Fund: 520.790.715.75420 Proj: SS 15 01 Construction

**BACKGROUND/RECOMMENDATION:**

Waive bids and award a contract to Xylem Water Solutions, Inc for the purchase of one pump station pump & associated draft tubes and accessories for North Broadway Interim Pump Station in an amount not to exceed \$88,829.13.

Has Recommended Bidder Worked for Village Previously X Yes \_\_\_\_\_ No

If yes, was quality of work acceptable X Yes \_\_\_\_\_ No

Was item bid in accordance with Public Act 85-1295? \_\_\_\_\_ Yes X No

Waiver of bids - Public Act 85-1295 does not apply X Yes

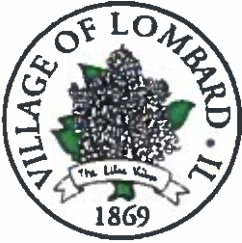
**REVIEW (as needed):**

Village Attorney XX \_\_\_\_\_ Date \_\_\_\_\_

Finance Director XX \_\_\_\_\_ Date \_\_\_\_\_

Village Manager XX \_\_\_\_\_ Date \_\_\_\_\_

**NOTE: All materials must be submitted to and approved by the Village Manager's Office by 4:30 pm, Wednesday, prior to the Board Agenda distribution.**



## MEMORANDUM

**To:** Scott Niehaus, Village Manager  
**From:** Brian Jack, Utilities Superintendent *B*  
**Through:** Carl S. Goldsmith, Director of Public Works *g*  
**Date:** March 30, 2016  
**Subject:** **Waiver of Bids – Xylem Water Solutions, Inc.  
North Broadway Interim Pump Station – Pumping Equipment**

### Background

To expedite construction of the above project, the Public Works Department requests authorization to waive bids and to directly purchase one dewatering pump and associated draft tubes and accessories for North Broadway Interim Pump Station from Xylem Water Solutions, Inc. for the above referenced project.

The Village has standardized on Xylem (Flygt) pumps and accessories and has acquired multiple Xylem pumps throughout the course of the lift station modernization project that has been underway since 2001. There are fifty-three (53) Xylem (Flygt) pumps at the various lift stations throughout town. The pumps have performed satisfactorily and Xylem has provided adequate support for the equipment. The Water Treatment & Wastewater Pumping staff has attended training to maintain the Xylem (Flygt) pumps and it is more efficient for them to specialize in maintaining one manufacturer rather than multiple types of pumps.

Xylem (Flygt) has provided a price that includes the pump station dewatering pump and associated draft tubes and accessories for North Broadway Interim Pump Station. The cost for dewatering pump & associated draft tubes and accessories for the North Broadway Interim Pumping Station site is \$88,829.13. The proposal from Xylem does not include installation. The installation for the dewatering pump and associated draft tubes and accessories will be bid together under a separate contract for the project and installed by a contractor. By purchasing the pump and associated draft tubes outright, the Village is saving approximately 15% (or \$13,000) and avoiding contractor markup. Scheduling and coordination of the delivery will be handled by the Village's consultant for the project.

Two remaining pumps are slated to be purchased in 2017 for the full implementation of the station and will be purchased under Phase II of the North Broadway Interim Pump Station Sewer Separation Project in 2017. The pump and associated draft tubes and accessories that are being installed under Phase I in 2016 are to prepare the station for commissioning in 2017. The pump being install this year is a low flow dewatering

pump that will be used to eliminate water in the wet well during maintenance activities such as pump repairs or wet well cleaning. Additional Board memos will follow in 2017 for the purchase of the remaining pumps.

**Recommendation**

Please request the Board of Trustees to waive bids and award a contract in an amount not to exceed \$88,829.13 for the purchase of one dewatering pump and associated draft tubes and accessories for the North Broadway Interim Pump Station from Xylem Water Solutions, Inc. of Chicago, IL at their April 21<sup>st</sup>, 2016 meeting.

Please execute signature on the attached contract and return two copies to the Water Treatment and Wastewater Pumping Division for further processing.

## VILLAGE OF LOMBARD

### Contract for Purchase of Pumping Equipment for The North Broadway Interim Pump Station

This agreement is made this 21<sup>st</sup> day of April, 2016, by and between, and shall be binding upon, the Village of Lombard, an Illinois municipal Corporation hereinafter referred to as (the "Village") and Xylem Water Solutions, Inc., of Chicago, IL hereinafter referred to as (the "Contractor").

Witnesseth That in consideration of the mutual promises of the parties delineated in the Contract Documents, the Contractor agrees to sell and the Village agrees to pay for the following described items as set forth in the Contract Documents:

Pumping Equipment - in an amount not to exceed \$88,829.13

1. This Contract shall embrace and include all of the applicable Contract Documents listed below as if attached hereto or repeated herein:
  - a. The Contractor's Quote #2015-CHI-0476 Alternate 1, V3 dated November 24, 2015
  - b. Required Certificate of Insurance, Indemnification, Venue, Other Contractor Responsibilities
2. The Village agrees to pay, and the Contractor agrees to accept as full payment for the items which are the subject matter of this Contract the total sum of \$88,829.13 paid in accordance with the provisions of the Local Government Prompt Payment Act and the provisions of the Contract Documents.
3. Risk of loss, destruction or damage of or to goods under this Contract shall be on contractor until delivery of the goods to the Village and acceptance of the goods by the Village.
4. The Contractor agrees to perform the terms of this Contract according to the following schedule: Deliver submittals for Village approval within one (1) week of Notice to Proceed and deliver equipment within seven (7) weeks from the date the Village approves the submittals. Time is of the essence of this Contract.
5. Where the terms of this Contract conflict with the provisions of the Contract Documents, the Contract Documents shall be binding.

IN WITNESS WHEREOF, the Village of Lombard, Illinois by Village President, and the Contractor have hereunto set their hands this 21<sup>st</sup> day of April, 2016.

If an individual or partnership, all individual names of each partner shall be signed or if a corporation, an officer duly authorized shall sign here:

Accepted this \_\_\_\_ day of \_\_\_\_\_, 2016.

Individual or Partnership \_\_\_\_\_ Corporation \_\_\_\_\_

\_\_\_\_\_  
By Position/Title

\_\_\_\_\_  
By Position/Title

\_\_\_\_\_  
Print Company Name

THE VILLAGE OF LOMBARD, ILLINOIS

Accepted this 21st day of April, 2016.

\_\_\_\_\_  
Keith T. Giagnorio  
Village President

Attest:

\_\_\_\_\_  
Sharon Kuderna  
Village Clerk

**VILLAGE OF LOMBARD  
CONTRACTOR'S CERTIFICATION**

\_\_\_\_\_, having been first duly sworn, depose and states as follows: (Officer or Owner of Company)

I am the \_\_\_\_\_ for \_\_\_\_\_  
(Title) (Name of Company)

(the "Contractor"), which has submitted a quote for the North Broadway Interim Pumping Station to the Village of Lombard and, having personal knowledge of the matters certified to herein, and being authorized by the Contractor to make the certifications set forth herein, hereby certifies that said Contractor:

1. has a written sexual harassment policy in place, in full compliance with 775 ILCS 5/2-105(A) (4);
2. is not delinquent in the payment of any tax administered by the Illinois Department of Revenue, or if it is:
  - a. it is contesting its liability for the tax or the amount of tax in accordance with procedures established by the appropriate revenue Act; or
  - b. it has entered into an agreement with the Department of Revenue for payment of all taxes due and is currently in compliance with that agreement;
3. is in full compliance with the Federal Highway Administration Rules on Controlled Substances and Alcohol Use and Testing, 49 CFR Parts 40 and 382, and that

\_\_\_\_\_  
(Name of employee/driver or "all employee drivers")

is/are currently participating in a drug and alcohol testing program pursuant to the aforementioned rules; and

4. is not barred from contracting with any unit of state or local government as a result of a violation of either Section 33E-3 or 33E-4 of Article 33E of the Illinois Criminal Code of 1961.

By: \_\_\_\_\_  
Authorized Agent of Contractor

Subscribed and sworn to  
before me this \_\_\_\_\_  
day of \_\_\_\_\_, 2016.

Notary Public



**Xylem Water Solutions USA, Inc.**  
**Flygt Products**

November 24, 2015

ESI Consultants, Ltd.  
1979 N. Mill Street,  
Suite 100  
Naperville IL 60563

8402 183rd Street Suite A  
Tinley Park, IL 60487  
Tel (708) 342-0484  
Fax (708) 342-0491

Quote # 2015-CHI-0476  
Alternate 1, Version 3

Re: Lombard - North Broadway LS

Attn: Anthony Malone- Vice President

Xylem Water Solutions USA, Flygt Products is pleased to provide our Complete Scope Letter with Pricing for the project referenced above. The equipment noted as follows has been designed in strict accordance to the Engineers Specifications and meets the project requirements 100%. We greatly appreciate your consideration and opportunity to be of service.

**Pumps**

| Qty | Description   |
|-----|---|
| 1   | Flygt Model NP-3127.095 4" volute Submersible pump equipped with a 460 Volt / 3 phase / 60 Hz 10 HP 1750 RPM motor, 488 impeller, 1 x 50 Ft. length of SUBCAB 4G6+2x1,5 submersible cable, FLS leakage detector, volute is prepared for Flush Valve |

**Pumps Price USD      \$ 8,242.78**

**Accessories**

| Qty | Description                                  |
|-----|--|
| 1   | BRACKET, GUIDE BAR UPPER 2" 316              |
| 1   | CONNECTION, DISCH 4X4" CI                    |
| 1   | HOOK, SAFETY ASSEMBLY SS                     |
| 1   | HARDWARE, DISC CONN ASSY 304SS               |
| 1   | KIT, HARDWARE 3/8IN SS (2X)                  |
| 30  | CHAIN, 3/16" 316L                            |
| 1   | KIT, CHAIN FITTING 3067-3127+ 316SS          |
| 1   | BRACKET, INT GB 2 X 4" 304SS+ FOR STEEL PIPE |
| 80  | TS3042 FEET 2" GUIDE RAIL 304SS              |

**Accessories Price USD    \$ 4,118.66**



**Draft Tube FSI**

| Qty | Description  |
|-----|--|
| 2   | <p>STEEL (A-36) PUMP TUBE 32" OD X ±27'-6" FT LONG WITH SIDE DISCHARGE 30" OD X 30" LG FROM TUBE CL. TUBE AS WELL AS DISCHARGE ARE MADE OUT OF 1/4" THICK PLATE, 3/4" X 55" X 55" BASE PLATE WITH 1/2" THICK GUSSETS AND MOUNTING HOLES, 3/4" THICK TOP FLANGE WITH CABLE BEAM POCKETS AND ROXTEC CABLE ENTRY, 1" THICK TOP COVER WITH LIFTING LUGS AND BOLTED WITH SS304 HEX HEAD BOLTS/NUT AND 1/4" GASKET, 3/4" THICK PUMP SUPPORT RING WITH ANTI-ROTATION GUSSETS FOR XYLEM PUMP LL 3356 AND 1" THICK BOTTOM FLANGE TO CONNECT TO FSI.</p> <p>Finish: Sandblast steel to an SSPC SP-10 OR NACE #2 (near-white blast) ID and OD.</p> <p>Primer: Apply coat of Coal Tar Epoxy for 8 mils DFT minimum.</p> <p>Finish coat: Apply coat of Coal Tar Epoxy 8 mils DFT minimum for a total thickness 16 mils DFT minimum.</p> |
| 2   | <p>SPECIAL FSI STEEL</p> <p>ST (A-36) FORMED SUCTION INTAKE FOR 32" PUMP TUBE 51 11/16" W X 65 3/8" LG X 18 5/8" H MADE OUT OF 3/8" PLATE REINFORCED WITH 4" X 4" X 1/2" ANGLES, 1" THICK TOP FLANGE WITH 1 1/8" DIA. HOLES TO BE BOLTED TO PUMP TUBE. THIS INTAKE WILL ALSO INCLUDED SUPPORT LEGS MADE OUT OF 4" X 4" X 1/2" ANGLES WITH BASE PLATES AS WELL AS HARDWARE TO CONNECT TO TUBE INCLUDING 1/4" NEOPREME GASKET AND SS304 BOLTS/NUTS. FSI DIMENSIONS AS PER FLYGT DWG 14-682855. APPROXIMATE WEIGHT: 1945 LBS</p> <p>Finish: Sandblast steel to an SSPC SP-10 OR NACE #2 (near-white blast) ID and OD.</p> <p>Primer: Apply coat of Coal Tar Epoxy for 8 mils DFT minimum.</p> <p>Finish coat: Apply coat of Coal Tar Epoxy 8 mils DFT minimum for a total thickness 16 mils DFT minimum.</p>                  |

**Draft Tube FSI Price USD\$ 64,460.30****Services**

| Qty | Description                                       |
|-----|---|
| 1   | START UP,FLYGT,NO TAX 1-TP MODELS: 3000,7000,8000 |
| 1   | TEST FAL 2.2 PLOTTED 3045-3127 FAL 15-900006      |

**Services Price USD \$ 1,264.00****Electrical**

| Qty | Description                         |
|-----|-------------------------------------|
| 2   | BASE UNIT/PANEL ASSEMBLY MAS        |
| 2   | TRANSFORMER,CURRENT 400:1           |
| 1   | MINI-CASII/FUS 120/24VAC,24VDC      |
| 1   | SOCKET,11 PIN OCTAL DIN MOUNT 12/02 |

**Electrical Price USD \$ 8,744.39****Total Project Price \$ 86,830.13****Freight Charge \$ 1,999.00****Total Project Price \$ 88,829.13**



**Incoterm:** 1 FCA - Free Carrier    **Named Placed:** 02 - US WH/ Factory

Incoterms 2010 clarify responsibility for costs, risks, & tasks associated with the shipment of goods to the named place.

**Taxes:** State, local and other applicable taxes are not included in this quotation.

**Time of delivery:** Approx. 16-20 working weeks after receipt of order.

**Terms of payment:** Net 30 Standard

**Validity:** This Quote will expire in ninety (90) days unless extended in writing by Xylem Water Solutions USA, Inc..

**SERVICES AND OTHER ITEMS INCLUDED:**

- Complete submittal package and O & M Manual
- 4 weeks - Preparation time of engineering submittal
- Delivery time 14-16 weeks - After approval/release of submittal, (does not include test curve approval time).
- Start Up services by factory authorized representative.
- This Quote is valid for ninety (150) days.
- MAS 711 for large pumps and Mini CASS for dewatering pumps is included in the Electrical section
- 5 Years Prorated Warranty Included in the package price.

**NOT INCLUDED IN SCOPE OF EQUIPMENT SUPPLY AND SERVICES:**

Unless specifically listed above, this quotation does not include, special crating, shipping, offloading at jobsite, storage, installation, installation equipment, foundations, templates, caution signs, external piping and tubing, valves, gauges, external wiring, special finishes, field testing, special engineering, special inspection, special certifications, consideration of non-listed specifications or plans, or similar special options, accessories, services or documentation. Submittals, O&M manuals and other documentation media supplied by Xylem Inc. shall be furnished in factory standard design, format, content and quantities including equipment manufactured by Xylem Inc. and equipment or accessories manufactured by our sub-vendors. Provision of special documentation, including but not limited to special binders, paper type, dividers, labeling, formatting, electronic media or similar custom work will be evaluated on a case by case basis. All data sent herewith is for preliminary sales purposes only and is not certified. No witness test included

**NOTES AND CLARIFICATION:**

MAS 711 transformer is included in the quote. It is advisable to include the Electrical components in the first phase of the purchase as it is going to be electrically integrated at the time of building the panel.

The second phase of purchase will only include the pumps and ROX system.

Thank you for the opportunity to provide this quotation. Please contact us if there are any questions.

Sincerely,

Ramesh Anchan  
Tech. Sales Representative  
Phone: 7087811072  
Cell: 708-603-0282  
ram.anchan@xyleminc.com



## Terms & Conditions:

### TERMS AND CONDITIONS OF SALE - NORTH AMERICA Page 1 of 3 (January 2015)

**1. Agreement, Integration and Conflict of Terms.** These terms and conditions, together with any special conditions expressly incorporated thereto in the quotation or sales form, are to govern any sale between the Seller and Buyer. The Seller shall mean the applicable affiliate of Xylem Inc. that is party to the Agreement ("Seller"). The Buyer shall mean the entity that is party to the Agreement with Seller. This writing is an offer or counteroffer by Seller to sell the goods and/or services set forth on the quotation or sales form subject to these terms and conditions and is expressly made conditional on Buyer's assent to these terms and conditions. Acceptance by Buyer is expressly limited to these terms and conditions. Any additional or different terms and conditions contained in Buyer's purchase order or other communication shall not be effective or binding upon Seller unless specifically agreed to in writing by Seller. Seller hereby objects to any such conditions, and the failure of Seller to object to specific provisions contained in any purchase order or other communication from Buyer shall not be construed as a waiver of these terms and conditions nor an acceptance of any such provisions. Neither Seller's commencement of performance nor delivery shall be deemed or construed as acceptance of Buyer's additional or different terms and conditions. Buyer agrees that these terms and conditions, together with any accompanying quotation and any special conditions or limited process guarantees or documents referred to or included within the quotation and expressly made a part of this agreement, (e.g., drawings, illustrations, specifications, or diagrams), is the complete and final agreement between Buyer and the Seller ("Agreement"). This Agreement supersedes all prior negotiations, representations, or agreements, either written or oral, between the parties and, further, can only be altered, modified or amended with the express written consent of Seller.

**2. Quotation, Withdrawal, Expiration.** Quotes are valid for thirty (30) calendar days from the date of issuance unless otherwise provided therein. Seller reserves the right to cancel or withdraw the quotation at any time with or without notice or cause prior to acceptance by Buyer. There is no Agreement if any conditions specified within the quotation or sales form are not completed by Buyer to Seller's satisfaction within thirty (30) calendar days of Seller's acknowledgement in writing of an order. Seller nevertheless reserves its right to accept any contractual documents received from Buyer after this 30-day period.

**3. Prices.** Prices apply to the specific quantities stated on the quotation or sales form. Unless otherwise agreed to in writing by Seller, all prices are FCA; Origin (as defined in accordance with the latest version of Incoterms), and do not include transportation costs or charges relating to transportation unless otherwise specified. Prices include standard packing according to Seller's specifications for delivery. All costs and taxes for special packing requested by Buyer, including packing for exports, shall be paid by Buyer as an additional charge. Prices are subject to change without notice.

**4. Taxes.** The price for the goods does not include any applicable sales, use, excise, GST, VAT, or similar tax, duties or levies. Buyer shall have the responsibility for the payment of such taxes if applicable.

**5. Payment Terms.** Seller reserves the right to require payment in advance or C.O.D. and otherwise modify credit terms should Buyer's credit standing not meet Seller's acceptance. Unless different payment terms are expressly set forth in the quotation or sales form or order acknowledgment or Sales Policy Manual, goods will be invoiced upon shipment. Payment shall be made in U.S. Dollars. Payment in full is due within thirty (30) days from the invoice date. In the event payment is not made when due, Buyer agrees to pay Seller a service or finance charge of the lesser of (i) one and one-half percent (1.5%) per month (18% per annum), or (ii) the highest rate permitted by applicable law, on the unpaid balance of the invoice from and after the invoice due date. Buyer is responsible for all costs and expenses associated with any checks returned due to insufficient funds. All credit sales are subject to prior approval of Seller's credit department. Export shipments will require payment prior to shipment or an appropriate Letter of Credit. If, during the performance of the contract with Buyer, the financial responsibility or condition of Buyer is such that Seller in good faith deems itself insecure, or if Buyer becomes insolvent, or if a material change in the ownership of Buyer occurs, or if Buyer fails to make any payments in accordance with the terms of its contract with Seller, then, in any such event, Seller is not obligated to continue performance under the contract and may stop goods in transit and defer or decline to make delivery of goods, except upon receipt of satisfactory security or cash payments in advance, or Seller may terminate the order upon written notice to Buyer without further obligation to Buyer whatsoever. If Buyer fails to make payments or fails to furnish security satisfactory to Seller, then Seller shall also have the right to enforce payment to the full contract price of the work completed and in process. Upon default by Buyer in payment when due, Buyer shall immediately pay to Seller the entire unpaid amounts for any and all shipments made to Buyer irrespective of the terms of said shipment and whether said shipments are made pursuant to this Agreement or any other contract of sale between Seller and Buyer, and Seller may withhold all subsequent shipments until the full amount is settled. Acceptance by Seller of less than full payment shall not be a waiver of any of its rights hereunder. Buyer shall not assign or transfer this Agreement or any interest in it, or monies payable under it, without the written consent of Seller and any assignment made without such consent shall be null and void.

**6. Delivery, Risk of Loss.** Delivery dates are estimates, and time is not of the essence. All shipments will be made FCA; Origin, unless otherwise specified. Seller shall not be responsible to Buyer for any loss, whether direct, indirect, incidental or consequential in nature, including without limitation loss of profits, arising out of or relating to any failure of the goods to be delivered by the specified delivery date. In the absence of specific instructions, Seller will select the carrier. Upon delivery to the common carrier, title and the risk of loss for the material shall pass to Buyer. Buyer shall reimburse Seller for the additional cost of its performance resulting from inaccurate or lack of delivery instructions, or by any act or omission on Buyer's part. Any such additional cost may include, but is not limited to, storage, insurance, protection, re-inspection and delivery expenses. Buyer further agrees that any payment due on delivery shall be made on delivery into storage as though goods had been delivered in accordance with the order.

Buyer grants to Seller a continuing security interest in and a lien upon the products and the proceeds thereof (including insurance proceeds), as security for the payment of all such amounts and the performance by Buyer of all of its obligations to Seller pursuant to the order and all such other sales, and Buyer shall have no right to sell, encumber or dispose of the products. Buyer shall execute any and all financing statements and other documents and instruments and do and perform any and all other acts and things which Seller may consider necessary, desirable or appropriate to establish, perfect or protect Seller's title, security interest and lien. In addition, Buyer authorizes Seller and its agents and employees to execute any and all such documents and instruments and do and perform any and all such acts and things, at Buyer's expense, in Buyer's name and on its behalf. Such documents and instruments may also be filed

without the signature of Buyer to the extent permitted by law.

**7.Warranty.** For goods sold by Seller to Buyer that are used by Buyer for personal, family or household purposes, Seller warrants the goods to Buyer on the terms of Seller's limited warranty available on Seller's website. For goods sold by Seller to Buyer for any other purpose, Seller warrants that the goods sold to Buyer hereunder (with the exception of membranes, seals, gaskets, elastomer materials, coatings and other "wear parts" or consumables all of which are not warranted except as otherwise provided in the quotation or sales form) will be (i) be built in accordance with the specifications referred to in the quotation or sales form, if such specifications are expressly made a part of this Agreement, and (ii) free from defects in material and workmanship for a period of one (1) year from the date of installation or eighteen (18) months from the date of shipment (which date of shipment shall not be greater than thirty (30) days after receipt of notice that the goods are ready to ship), whichever shall occur first, unless an alternate period of time is provided by law or is specified in the product documentation from Xylem (the "Warranty").

Except as otherwise provided by law, Seller shall, at its option and at no cost to Buyer, either repair or replace any product which fails to conform with the Warranty; provided, however, that under either option, Seller shall not be obligated to remove the defective product or install the replaced or repaired product and Buyer shall be responsible for all other costs, including, but not limited to, service costs, shipping fees and expenses. Seller shall have complete discretion as to the method or means of repair or replacement. Buyer's failure to comply with Seller's repair or replacement directions shall

#### **TERMS AND CONDITIONS OF SALE - NORTH AMERICA Page 2 of 3 (January 2015)**

constitute a waiver of its rights and render all warranties void. Any parts repaired or replaced under the Warranty are warranted only for the balance of the warranty period on the parts that were repaired or replaced. The Warranty is conditioned on Buyer giving written notice to Seller of any defects in material or workmanship of warranted goods within ten (10) days of the date when any defects are first manifest. Seller shall have no warranty obligations to Buyer with respect to any product or parts of a product that: (a) have been repaired by third parties other than Seller or without Seller's written approval; (b) have been subject to misuse, misapplication, neglect, alteration, accident, or physical damage; (c) have been used in a manner contrary to Seller's instructions for installation, operation and maintenance; (d) have been damaged from ordinary wear and tear, corrosion, or chemical attack; (e) have been damaged due to abnormal conditions, vibration, failure to properly prime, or operation without flow; (f) have been damaged due to a defective power supply or improper electrical protection; or (g) have been damaged resulting from the use of accessory equipment not sold by Seller or not approved by Seller in connection with products supplied by Seller hereunder. In any case of products not manufactured by Seller, there is no warranty from Seller, however, Seller will extend to Buyer any warranty received from Seller's supplier of such products.

**THE FOREGOING WARRANTY IS EXCLUSIVE AND IN LIEU OF ANY AND ALL OTHER EXPRESS OR IMPLIED WARRANTIES, GUARANTEES, CONDITIONS OR TERMS OF WHATEVER NATURE RELATING TO THE GOODS PROVIDED HEREUNDER, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WHICH ARE HEREBY EXPRESSLY DISCLAIMED AND EXCLUDED. EXCEPT AS OTHERWISE PROVIDED BY LAW, BUYER'S EXCLUSIVE REMEDY AND SELLER'S AGGREGATE LIABILITY FOR BREACH OF ANY OF THE FOREGOING WARRANTIES ARE LIMITED TO REPAIRING OR REPLACING THE PRODUCT AND SHALL IN ALL CASES BE LIMITED TO THE AMOUNT PAID BY THE BUYER HEREUNDER. IN NO EVENT IS SELLER LIABLE FOR ANY OTHER FORM OF DAMAGES, WHETHER DIRECT, INDIRECT, LIQUIDATED, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, EXEMPLARY OR SPECIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF PROFIT, LOSS OF ANTICIPATED SAVINGS OR REVENUE, LOSS OF INCOME, LOSS OF BUSINESS, LOSS OF PRODUCTION, LOSS OF OPPORTUNITY OR LOSS OF REPUTATION.**

**8. Inspection.** Buyer shall have the right to inspect the goods upon their receipt. When delivery is to Buyer's site or to a project site ("Site"), Buyer shall notify Seller in writing of any nonconformity of the goods with this Agreement within three (3) days from receipt by Buyer. For all other deliveries, Buyer shall notify Seller in writing of any nonconformity with this Agreement within fourteen (14) days from receipt by Buyer. Failure to give such applicable notice shall constitute a waiver of Buyer's right to inspect and/or reject the goods for nonconformity and shall be equivalent to an irrevocable acceptance of the goods by Buyer. Claims for loss of or damage to goods in transit must be made to the carrier, and not to Seller.

**9.Seller's Limitation of Liability.** EXCEPT AS OTHERWISE PROVIDED BY LAW, IN NO EVENT SHALL SELLER'S LIABILITY UNDER THIS AGREEMENT EXCEED THE AMOUNT PAID BY BUYER UNDER THIS AGREEMENT. SELLER SHALL HAVE NO LIABILITY FOR LOSS OF PROFIT, LOSS OF ANTICIPATED SAVINGS OR REVENUE, LOSS OF INCOME, LOSS OF BUSINESS, LOSS OF PRODUCTION, LOSS OF OPPORTUNITY, LOSS OF REPUTATION, INDIRECT, CONSEQUENTIAL, INCIDENTAL, PUNITIVE OR EXEMPLARY DAMAGES.

**10.Force Majeure.** Seller may cancel or suspend this Agreement and Seller shall have no liability for any failure to deliver or perform, or for any delay in delivering or performing any obligations, due to acts or omissions of Buyer and/or its contractors, or due to circumstances beyond Seller's reasonable control, including but not limited to acts of God, fire, flood or other natural disasters, war and civil disturbance, riot, acts of governments, terrorism, disease, currency restrictions, labor shortages or disputes, unavailability of materials, fuel, power, energy or transportation facilities, failures of suppliers or subcontractors to effect deliveries, in which case the time for performance shall be extended in an amount equal to the excused period, provided that Seller shall have, as soon as reasonably practicable after it has actual knowledge of the beginning of any excusable delay, notified Buyer of such delay, of the reason therefor and of the probable duration and consequence thereof. Seller shall use its best efforts to eliminate the cause of the delay, interruption or cessation and to resume performance of its obligations hereunder with the least possible delay.

**11.Cancellation.** Except as otherwise provided in this Agreement, no order may be cancelled on special or made-to-order goods or unless otherwise requested in writing by either party and accepted in writing by the other. In the event of a cancellation by Buyer, Buyer shall, within thirty (30) days of such cancellation, pay Seller a cancellation fee, which shall include all costs and expenses incurred by Seller prior to the receipt of the request for cancellation including, but not limited to, all commitments to its suppliers, subcontractors and others, all fully burdened labor and overhead expended by Seller, plus a reasonable profit charge." Return of goods shall be in accordance with Seller's most current Return Materials Authorization and subject to a

minimum fifteen percent (15%) restocking fee.

Notwithstanding anything to the contrary herein, in the event of the commencement by or against Buyer of any voluntary or involuntary proceedings in bankruptcy or insolvency, or in the event Buyer shall be adjusted bankrupt, make a general assignment for the benefit of its creditors, or if a receiver shall be appointed on account of Buyer's insolvency, or if Buyer fails to make payment when due under this Agreement, or in the event Buyer does not correct or, if immediate correction is not possible, commence and diligently continue action to correct any default of Buyer to comply with any of the provisions or requirements of this Agreement within ten (10) calendar days after being notified in writing of such default by Seller, Seller may, by written notice to Buyer, without prejudice to any other rights or remedies which Seller may have, terminate its further performance of this Agreement. In the event of such termination, Seller shall be entitled to receive payment as if Buyer has cancelled the Agreement as per the preceding paragraph. Seller may nevertheless elect to complete its performance of this Agreement by any means it chooses. Buyer agrees to be responsible for any additional costs incurred by Seller in so doing. Upon termination of this Agreement, the rights, obligations and liabilities of the parties which shall have arisen or been incurred under this Agreement prior to its termination shall survive such termination.

**12. Drawings.** All drawings are the property of Seller. Seller does not supply detailed or shop working drawings of the goods; however, Seller will supply necessary installation drawings. The drawings and bulletin illustrations submitted with Seller's quotation show general type, arrangement and approximate dimensions of the goods to be furnished for Buyer's information only and Seller makes no representation or warranty regarding their accuracy. Unless expressly stated to the contrary within the quotation or sales form, all drawings, illustrations, specifications or diagrams form no part of this Agreement. Seller reserves the right to alter such details in design or arrangement of its goods which, in its judgment, constitute an improvement in construction, application or operation. All engineering information necessary for installation of the goods shall be forwarded by Seller to Buyer upon Buyer's acceptance of this Agreement. After Buyer's acceptance of this Agreement, any changes in the type of goods, the arrangement of the goods, or application of the goods requested by Buyer will be made at Buyer's expense. Instructions necessary for installation, operating and maintenance will be supplied when the goods are shipped.

**13. Proprietary Information, Injunction.** Seller's designs, illustrations, drawings, specifications, technical data, catalogues, "know-how", economic or other business or manufacturing information (collectively "Proprietary Information") disclosed to Buyer shall be deemed proprietary and confidential to Seller. Buyer agrees not to disclose, use, or reproduce any Proprietary Information without first having obtained Seller's express written consent. Buyer's agreement to refrain from disclosing, using or reproducing Proprietary Information shall survive completion of the work under this Agreement. Buyer acknowledges that its improper disclosure of Proprietary Information to any third party will result in Seller's suffering irreparable harm.

#### **TERMS AND CONDITIONS**

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Seller may seek injunctive or equitable relief to prevent Buyer's unauthorized disclosure.

**14. Installation and Start-up.** Unless otherwise agreed to in writing by Seller, installation shall be the sole responsibility of Buyer. Where start-up service is required with respect to the goods purchased hereunder, it must be performed by Seller's authorized personnel or agents; otherwise, the Warranty is void. In the event Buyer has engaged Seller to provide an engineer for startup supervision, such engineer will function in a supervisory capacity only and Seller shall have no responsibility for the quality of workmanship of the installation. In any event, Buyer understands and agrees that it shall furnish, at Buyer's expense, all necessary foundations, supplies, labor and facilities that might be required to install and operate the goods.

**15. Specifications.** Changes in specifications requested by Buyer are subject to approval in writing by Seller. In the event such changes are approved, the price for the goods and the delivery schedule shall be changed to reflect such changes.

**16. Buyer Warranty.** Buyer warrants the accuracy of any and all information relating to the details of its operating conditions, including temperatures, pressures, and where applicable, the nature of all hazardous materials. Seller can justifiably rely upon the accuracy of Buyer's information in its performance. Should Buyer's information prove inaccurate, Buyer agrees to reimburse Seller for any losses, liabilities, damages and expenses that Seller may have incurred as a result of any inaccurate information provided by Buyer to Seller.

**17. Minimum Order.** Seller reserves the right to refuse to process any order that does not meet quantity requirements that Seller may establish for any given product or group of products.

**18. Quality Levels.** Prices are based on quality levels commensurate with normal processing. If a different quality level is required, Buyer must specify its requirements, as approved in writing by Seller, and pay any additional costs that may be applicable.

**19. Product Recalls.** In cases where Buyer purchases for resale, Buyer shall take all reasonable steps (including, without limitation, those measures prescribed by the seller): (a) to ensure that all customers of the Buyer and authorized repairers who own or use affected products are advised of every applicable recall campaign of which the Buyer is notified by the Seller; (b) to ensure that modifications notified to Buyer by Seller by means of service campaigns, recall campaigns, service programmes or otherwise are made with respect to any products sold or serviced by Buyer to its customers or authorized repairers. The reimbursement of Buyer for parts and labor used in making those modifications shall be as set forth in the campaign or program instructions. Without the prior consent of the Seller, the Buyer shall not disclose to any third party the information contained in service campaign, recall campaign or service programme literature. Should Buyer fail to perform any of the actions required under this section, Seller shall have the right to obtain names and address of the Buyer's customers and shall be entitled to get into direct contact with such customers.

**19. GOVERNING LAW. THE TERMS OF THIS AGREEMENT AND ALL RIGHTS AND OBLIGATIONS HEREUNDER SHALL BE**

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GOVERNED BY THE LAWS OF THE STATE OF SELLER'S OFFICE TO WHICH THIS ORDER HAS BEEN SUBMITTED (WITHOUT REFERENCE TO PRINCIPLES OF CONFLICTS OF LAWS). THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL NOT BE GOVERNED BY THE 1980 U.N. CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS.

20. **Titles.** The section titles are for reference only, and shall not limit or restrict the interpretation or construction of this Agreement.

21. **Waiver.** Seller's failure to insist, in any one or more instances, upon Buyer's performance of this Agreement, or to exercise any rights conferred, shall not constitute a waiver or relinquishment of any such right or right to insist upon Buyer's performance in any other regard.

22. **Severability.** The partial or complete invalidity of any one or more provisions of this Agreement shall not affect the validity or continuing force and effect of any other provision.

**Customer Acceptance:** A signed facsimile copy of this quote is acceptable as a binding contract.

Signature: \_\_\_\_\_ Company/Utility: \_\_\_\_\_

Name : \_\_\_\_\_ Address: \_\_\_\_\_  
(PLEASE PRINT)

Email: \_\_\_\_\_

Date: \_\_\_\_\_ Phone \_\_\_\_\_

PO#: \_\_\_\_\_ Fax: \_\_\_\_\_

